

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|---------------------------|---|-------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | CV No. 17-2511 |
| |) | |
| vs. |) | Washington, D.C. |
| |) | April 19, 2018 |
| |) | 2:51 p.m. |
| AT&T, INC., ET AL., |) | |
| |) | Afternoon Session |
| Defendants. |) | |
| <hr/> | | Day 17 |

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

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| | |
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DEFENDANT'S:

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| RANDALL STEPHENSON | 3419 | 3438 |
| RANDALL STEPHENSON | 3501 | 3502 |
| RANDALL STEPHENSON | 3503 | |
| RONALD QUINTERO | 3526 | |

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GOVERNMENT'S:

| | | |
|-----------------|------|--|
| RONALD QUINTERO | 3508 | |
|-----------------|------|--|

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

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

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

9 RANDALL STEPHENSON, WITNESS FOR THE DEFENDANTS, HAVING BEEN
10 PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED FURTHER AS
11 FOLLOWS:

12 MR. PETROCELLI: May I proceed?

13 THE COURT: When you're ready.

14 MR. PETROCELLI: Thank you.

15 DIRECT EXAMINATION (CONTINUED)

16 BY MR. PETROCELLI:

17 Q Mr. Stephenson, we left off with your Board
18 presentation on October 22, 2016. I want to show one more
19 page from that exhibit, which is page 57. And, again, we're
20 at Exhibit 640. It's entitled "Time Warner Synergies."

21 Do you have that in front of you?

22 A Yes, I do.

23 Q Before you were explaining to the Court the three
24 stages of synergies, is this stage two?

25 A This would be stage two after the due diligence

1 has been performed by the merger and acquisition team.

2 Q And this was what was presented to your Board?

3 A This is what was presented to the Board, which,
4 again, these are at the stage where you say these are highly
5 probable scenarios, very confident in achieving those.

6 Q Both on the cost side and on the revenue side?

7 A That is correct.

8 THE COURT: What's that page again?

9 MR. PETROCELLI: Your Honor, it's page 57 --

10 THE COURT: 57.

11 All right.

12 MR. PETROCELLI: -- of Exhibit 640.

13 And I'd like to move Exhibit 640 into evidence,
14 Your Honor --

15 THE COURT: All right. Any objection?

16 MR. PETROCELLI: -- under seal.

17 THE COURT: Any objection?

18 MR. CONRATH: No objection.

19 THE COURT: It will be admitted under assignment.

20 (Defendants' Exhibit DX640
21 received into evidence
under seal.)

22 BY MR. PETROCELLI:

23 Q I have one other document that I would like to
24 show you, Mr. Stephenson, and it's on the witness stand in
25 front of you.

1 MR. PETROCELLI: And, Your Honor, I've handed it
2 out.

3 THE COURT: Hmm? Oh, okay.

4 BY MR. PETROCELLI:

5 Q And it's marked as Exhibit 625. It is a letter
6 dated October 26, 2016, from Randall Stephenson to all
7 officers.

8 Do you recognize this, Mr. Stephenson?

9 A Yes, I do. I personally crafted this letter.

10 Q You wrote it yourself?

11 A I did.

12 Q And could you just generally tell the Court what
13 this is, and then I'd like to direct your attention to a
14 portion of it.

15 A Okay.

16 When we signed the transaction, we announced it
17 publicly.

18 There are a lot of questions within Time Warner,
19 within AT&T about what exactly does this mean and how we're
20 going to do business. And this was me wanting to lay out --
21 we, internally, we referred to it as our Magna Carta, that
22 this is how we will do business.

23 And as you can see, as you go down to our AT&T
24 employees, what I was trying to say is we are going to
25 continue to buy a broad array of content to distribute to

1 our customers. We're not going to get narrowly focused on
2 Time Warner content.

3 Then the second bullet was to you Time Warner
4 employees. You're going to continue to broadly distribute
5 your content. That is the value of your business. And
6 I wanted to lay it out very clearly to all of our people.

7 And then some comments about CNN and editorial
8 independence and so forth and to our consumers what they
9 could expect and, lastly, that this was -- as we like to say
10 it, we are going directly at cable, to compete against our
11 cable competitors.

12 So that's what this was trying to describe.

13 Q Could you read out loud the paragraph that you
14 wrote to the consumers.

15 A "To the consumers: We know you want more than
16 what the industry is giving you today. That's why we're
17 launching DIRECTV Now, our 100-plus channel, 100 percent
18 over-the-top product that is aggressively priced with
19 packages beginning at \$35 a month. Looking ahead, we will
20 use our digital rights and Time Warner's content to create
21 new choices, skinnier bundles, video created just for mobile
22 viewing and social media, and low-cost video products
23 supported by advertisers instead of consumers. More choice,
24 lower cost."

25 Q And when you wrote those words then, do you still

1 stand behind these words today?

2 A That is our value proposition to the market.

3 Q And is that true of everything you wrote in here?

4 A There is not a word of this I would change if I
5 were to rewrite it today.

6 MR. PETROCELLI: Okay. Your Honor, I would move
7 into evidence Exhibit 625 if there's no objection.

8 MR. CONRATH: No objection.

9 THE COURT: Okay. Is that one under seal or no?

10 MR. PETROCELLI: No.

11 THE COURT: No.

12 (Defendants' Exhibit DX625
13 received into evidence.)

13 BY MR. PETROCELLI:

14 Q Now, have you considered, Mr. Stephenson, were the
15 Court to approve this merger and allow you to proceed with
16 this merger, how you would organize the company?

17 A Yes.

18 We've put a lot of thought and, in fact, put a lot
19 of it into place already.

20 What the plan is and what has already been put in
21 place is we would stand up a communications company, which
22 this is the company that serves our business and consumer
23 customers, broadband, TV, wireless services, and so forth.
24 That is one business unit. And all the technology and so
25 forth that goes along with that would be in that business

1 unit. That is being run today by a gentleman named John
2 Donovan. We have put that business unit in place, and it's
3 executing.

4 Q Is DirecTV in that business unit?

5 A DirecTV is in that business.

6 Q And U-verse?

7 A U-verse is in that business as well.

8 So all of our consumer-facing products are in that
9 business today.

10 We will also have a media company. That is what
11 you think of when you hear "Time Warner" today. So
12 Warner Brothers studios, HBO, and Turner networks will be in
13 that.

14 And we also have some digital properties that we
15 have acquired over the years that we would also place in
16 that business unit.

17 And then we have some --

18 THE COURT: And CNN?

19 THE WITNESS: CNN will be in that business unit as
20 well.

21 BY MR. PETROCELLI:

22 Q You mean cnn.com?

23 A It's cnn.com.

24 So, yes, anything that's under the Turner
25 umbrella, CNN, cnn.com, they have a number of digital

1 properties; we have some digital properties. We will place
2 those in there.

3 And then we also have some regional sports
4 networks. Those will also be put into there because they're
5 all media-content-type properties.

6 Q So just to be clear in what you're calling
7 MediaCo, there will be all the Turner channels, right?

8 A Correct.

9 Q Including CNN, TNT, TBS, and the rest of them?

10 A All of that will be in there.

11 Q HBO?

12 A HBO will be in that MediaCo business unit, and
13 Warner Brothers studios will be in there as well.

14 THE COURT: Films. So all the films are in this
15 one?

16 THE WITNESS: All the films and the IP library.

17 THE COURT: TCM?

18 THE WITNESS: Exactly. Exactly.

19 We will have a third business unit --

20 BY MR. PETROCELLI:

21 Q Who is going head that one up? Mr. Stankey,
22 right?

23 A Oh, I'm sorry. Mr. Stankey will be running that
24 business unit.

25 We'll have a third business unit. This one has

1 already been stood up as well. We're calling it right now
2 AdCo, advertising company.

3 We have hired a gentleman, a very seasoned
4 executive, who has previously stood up another advertising
5 company. We hired him from WPP, a rather large advertising
6 business here in the United States -- actually, I guess
7 they're out of London. He will head up AdCo.

8 This is where all of our advertising technology
9 will go. This is where all of the data aggregation
10 capabilities will go.

11 And this -- responsibility of this organization is
12 to use the data out of the communication company, and we
13 have large infrastructure, big data bases and so forth that
14 have all that data, routinely and constantly being updated.

15 And the inventory from Turner networks, the
16 advertising inventory from Turner networks and the
17 advertising inventory from DirectTV and U-verse, this
18 individual's job is to put together the technology to build
19 the databases, to improve the monetization, the yields, if
20 you will, from this advertising inventory, taking it to
21 market and realizing these advertising synergies that we've
22 been talking about. That is the sole responsibility of that
23 organization.

24 Q And the person's name is what?

25 A Brian Lesser. He's the individual that we hired

1 who is running that business unit.

2 Then we have a fourth business unit, and it's our
3 international properties. So we have, as I mentioned
4 earlier, a rather large Mexico wireless property and a
5 satellite business in Mexico. We have satellite businesses
6 throughout Latin America, these are our international
7 properties. These are all aggregated, and they're under
8 Lori Lee.

9 There will be advertising opportunities in these
10 businesses as well.

11 Q We've heard a lot about efficiencies that the
12 merger can be expected to achieve. Are you going to lose
13 any efficiencies if you have these four units operating
14 independently?

15 A No.

16 We have a lot of experience in how you make
17 synergies, how you realize those.

18 And as I mentioned to you, the way the synergies
19 are built, the efficiencies are built, are people who will
20 ultimately run these business units are creating these
21 business plans.

22 When we close this transaction, most of these
23 plans are locked away. They're in clean rooms, because we
24 can't be seeing them. There's some competitive intelligence
25 in there and so forth.

1 The day the merger is closed, these plans are
2 taken out of the clean rooms. They're handed off to the
3 various teams in these organizations. And they said, these
4 are your efficiency plans. They have been put together by
5 the people we've discussed.

6 And those numbers, those impacts are built into
7 the business plans and the budgets of all the people in
8 these various business units. And compensation is set to
9 achieve those budgets, and that's how you realize those
10 efficiencies we move forward.

11 Q Turner will be in one company, MediaCo; and
12 DirectTV is in another company, the communications company,
13 right?

14 A Right.

15 Q Will they be able to share confidential
16 information? So, for example, Turner has all of these
17 carriage agreements with various distributors; then DirectTV
18 and U-verse have carriage agreements with other programmers.

19 How will that work?

20 A We -- first of all, those contracts all have
21 provisions in them about sharing information, and that would
22 constrain that kind of sharing.

23 But, second of all, this is one of the reasons you
24 structure businesses this way.

25 We have a lot of experience within AT&T of dealing

1 in areas where we're serving customers that are also our
2 competitors.

3 So an example would be Verizon. We sell them
4 fiber connections to all their cell sites, not all, but many
5 of our cell sites in our properties. They're a customer,
6 and we negotiate those price.

7 They would not want the people who that compete
8 against them on the retail side every day to know what their
9 cost structure looks like and what those price points are.
10 There are rules, but we also just have practices on how you
11 keep that information separate.

12 It's important that we do that.

13 I never want Verizon to question that the
14 information I get by doing business with them is being
15 shared with the retailer. They'll stop doing business with
16 us. And it's just -- it's bad business, but it's also just
17 inappropriate.

18 That's what I like about this structure, in terms
19 of our media company, very separate. Any dealings between
20 media company and DirecTV will be arm's-length dealings.
21 They will be negotiating pricing, just like Turner would
22 negotiate pricing with Comcast.

23 That information shall never bridge the divide.
24 It shall never cross the divide. It is proprietary. It's
25 confidential, and it shall be held as such.

1 Q So, Mr. Stephenson, I'd like to conclude by asking
2 you about why we're here today. And, in particular,
3 I think, as you know, the government is claiming that this
4 merger will harm competition.

5 What the government is saying is that, simply on
6 account of the merger and for no other reason, that Turner
7 will be able to raise its prices to other distributors,
8 other than DirecTV, in that the merged company will have an
9 incentive and ability to do that.

10 What is your reaction to that, Mr. Stephenson?

11 A On its face, the premise -- it's absurd.

12 Q Why is it absurd?

13 A The idea that after this merger -- when you
14 consider how pricing is set in Turner's business today, it
15 is aggressive negotiation. It is extensive negotiation. It
16 is a negotiation process that has been built up over many,
17 many years.

18 And Turner is getting the fair price for their
19 content. I must believe they do. I think they're very good
20 at it. I've negotiated against them, and I do believe
21 they're getting fair value for their content.

22 The idea that all of a sudden Turner is under the
23 AT&T umbrella and somehow Turner's content is worth more
24 defies logic to me. I don't understand how that mechanism
25 would work, how that would be affected in the marketplace.

1 And it just, it literally defies logic to me how
2 their content would be worth more the next day than it was
3 the day before, before we acquired them. So I just --
4 I don't even follow the logic.

5 Q The government also contends that solely as a
6 result of the merger, the company will have the incentive
7 and ability to restrict the use of HBO as a promotional tool
8 with distributors other than DirecTV.

9 What do you say about that?

10 A That probably defies business logic.

11 HBO is dependent upon all these distributors to
12 sell their product. That's how they sell their product.

13 And I will say it again. It's not that
14 complicated.

15 The value of one's content is a function of how
16 many people are watching the content, and any action that
17 would restrict the distribution of that content is
18 value-destroying action. And so it doesn't make business
19 sense to me that anybody would do that.

20 Q And, finally, the government contends that solely
21 as a result of this merger, the company will have the
22 incentive and ability to coordinate with Comcast-NBCU for
23 the purpose of harming virtual MVPDs.

24 What is your reaction to that?

25 A You probably have to live in this industry every

1 day like I do to appreciate what a stretch that is.

2 We compete every day with Comcast in the
3 marketplace. The individual that runs communication
4 company, he wakes up every day trying to think, how do I win
5 in the marketplace against Comcast?

6 He is using predominantly wireless as his
7 advantage against Comcast. Wireless distribution is a huge
8 advantage for him against Comcast, because they have no
9 wireless business, per se. They have a very small one, but
10 it's not much.

11 So he wakes up every day thinking about, how do I
12 use wireless to differentiate myself vis-à-vis Comcast?

13 Now, as you think about virtual MVPDs and the idea
14 that we might be inclined to work with Comcast to hurt
15 virtual MVPDs, it's actually the opposite with us.

16 With AT&T, we're in a unique position. We like
17 over-the-top. Over-the-top generally means, in this day and
18 age, wireless. People are using their wireless devices to
19 watch video, whether it's our video or not, we're somewhat
20 ambivalent. We'd rather it be our video; but either way, it
21 serves our interests for people to watch video over our
22 wireless network.

23 We want to propagate that. We're enthusiastic
24 about that. We want people engaged with these devices all
25 day, as much as possible, watching media and video.

1 To the extent that that is another virtual MVPD,
2 we'd rather it were ours; but actually, it serves our
3 interests, the virtual MVPD platform, to proliferate.

4 Q In your Exhibit 625, what you called the
5 Magna Carta, your letter of October 26, 2016, you indicated
6 that the company will use its rights to enhance skinny
7 bundles.

8 Do you see that, skinnier bundles?

9 A Yes, I do.

10 Q There's been a suggestion that, in connection with
11 this coordination claim, that the company would have the
12 incentive and ability to impede the emergency and the
13 development and growth of skinny bundles.

14 What is your view about that?

15 A It's taking off of what I was just speaking about
16 regarding virtual MVPDs.

17 Anything that will drive more utilization of our
18 mobile asset is a good thing. That serves our interests.

19 And, as you think about the folks in the
20 communication company -- excuse me, communication company
21 side, their world is all about, how do we get content costs
22 down? How do we meet customer demand for lower content
23 offerings?

24 Our DirecTV Now is a classic case of that. A \$35
25 offer into the marketplace, a skinny bundle.

1 That's what the customer is demanding. And only a
2 company that's directly interfacing with the consumer is
3 going to have that sensitivity.

4 I will confess that media and entertainment
5 companies may not be as motivated for skinny bundles.
6 They're selling to a wholesaler. So they want to sell as
7 much to the wholesaler as they can.

8 But the distributor, like AT&T, we have customers
9 telling us, we can't pay \$100 for a bundle of content. We
10 need another option. That's what DirecTV Now is all about,
11 getting skinnier bundles into the hands of our customers.

12 In fact, we have a product that we hope to be
13 launching here in the next couple of weeks. It's called
14 AT&T Watch, and it is a \$15 bundle.

15 It's taking basically the sports programming out
16 of DirecTV Now and getting a really skinny bundle that we
17 can put out there for \$15 to our customers.

18 And interestingly enough, if you're an AT&T
19 wireless unlimited customer, we're going to give that bundle
20 to you for free.

21 So these are the kind of things that we're
22 motivated to do as a distributor, get the bundle's density
23 down and get a skinnier, skinnier bundle into the
24 marketplace.

25 Q What if you're not an AT&T wireless customer; will

1 you be able to buy this new offering for \$15 that you called
2 AT&T Watch?

3 A We'll sell it for \$15 to anybody that wants to buy
4 it, of course.

5 Q The government says, based on these three
6 allegations, that this transaction will harm competition.

7 Do you agree with that?

8 A No, I don't agree with it at all.

9 We've been talking a lot about this here today and
10 how I am absolutely convinced at so many levels that this is
11 going to drive greater competition, is going to drive
12 consumer benefits that I -- there are some of the best
13 consumer benefits I've seen in any transaction I've been a
14 part of.

15 The ability to innovate video, media, premier
16 media for the wireless infrastructure, for the wireless
17 environment -- that's a beautiful thing. Our customers want
18 that, and we're actually excited thought that.

19 Ability to generate new advertising revenue
20 streams to help us offset the rising cost of content and
21 keep subscriptions prices low -- this is a really good thing
22 for the consumer.

23 The ability to do all this innovation for the
24 consumer -- there are few opportunities I've seen that are
25 this consumer-friendly. I would suggest that the only --

1 the only lack of competition as a result of this transaction
2 has been the delay of getting it to the marketplace.

3 And we're just anxious to get moving and get this
4 transaction put together so we can begin to bring these
5 consumer benefits to play.

6 Q Finally, Mr. Stephenson, AT&T has a long, storied
7 history. Time Warner is an iconic company that goes back to
8 the '20s when the Warner Brothers themselves started this
9 business.

10 How important is this transaction to AT&T and
11 Time Warner?

12 A You heard me talk about the history of AT&T,
13 140 years. And this company has had a lot of seminal
14 moments where significant events have happened or
15 significant technological innovation has happened, and it's
16 really changed the complexion of the company.

17 Probably the most seminal that I can think of in
18 recent memory is wireless. And this company pursued
19 wireless aggressively. And we moved very aggressively. We
20 invested hundreds of billions of dollars in that technology.

21 And it changed the company. It literally changed
22 the complexion of the company. And it changed -- we believe
23 it changed, to a certain extent, the world: How our
24 customers interact, how our customers communicate and how
25 they work and how they play. It changed all of that for our

1 customers.

2 I actually believe that we're on the cusp of
3 another one of these moments.

4 And Time Warner, the ability to bring this kind of
5 content to bear and the kind of innovation that stands in
6 front of us here, I believe we're going to look back and
7 it's going to be one of those moments where we'll have
8 fundamentally changed the very nature of the company that we
9 are and how we address the consumer.

10 And it's going to create a consumer interaction
11 with media entertainment that I think is going to be really
12 game-changing and very important for a long time. So it's
13 very important for who we are as a company.

14 MR. PETROCELLI: I have nothing further,
15 Your Honor.

16 THE COURT: All right.

17 Cross-exam.

18 MR. CONRATH: I have some binders. May I hand
19 them up?

20 THE COURT: All right.

21 MR. CONRATH: May I approach the witness,
22 Your Honor?

23 THE COURT: You may.

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

25 THE COURT: When you're ready.

1 MR. CONRATH: Thank you.

2 CROSS-EXAMINATION

3 BY MR. CONRATH:

4 Q Good afternoon, Mr. Stephenson.

5 A Good afternoon.

6 Q And we met before at your deposition --

7 A We did.

8 Q -- correct?

9 Good to see you again.

10 A Good to see you.

11 Q You were asked a couple of questions a minute ago
12 about the government's theory of the case?

13 A About the government's -- I'm sorry? About the
14 government's what?

15 Q Theory of the case, the questions Mr. Petrocelli
16 just asked you.

17 Do you recall that?

18 MR. PETROCELLI: I cannot hear you.

19 THE COURT: You're going to have to --

20 MR. CONRATH: Yeah. I'm afraid my voice is
21 just -- do you mind if I grab a lozenge?

22 THE COURT: No. Go right ahead.

23 We've got a devilish situation here. If we turn
24 these fans off --

25 MR. CONRATH: Yeah, I know.

1 THE COURT: -- it's going to get very warm in this
2 room very fast. So it's a rock and a hard place.

3 I think it's better to be cooler than to be
4 hotter --

5 THE WITNESS: Me too.

6 THE COURT: -- generally.

7 MR. CONRATH: I'm all in favor of that,
8 Your Honor, so I'll speak up.

9 THE COURT: You're just going to have to project a
10 little bit more.

11 MR. CONRATH: Right.

12 THE COURT: Take your time.

13 MR. CONRATH: Don't worry, Your Honor.

14 BY MR. CONRATH:

15 Q You said to us, Mr. Stephenson, that as to the
16 first part of the government's case, the premise was absurd.

17 Do you remember that?

18 A I remember that, yes.

19 Q I'd like you to turn in your notebook to PX442,
20 please.

21 MR. PETROCELLI: Your Honor, may we approach?

22 THE COURT: Okay.

23 Mr. Stephenson, you'll have to step down to that
24 chair there, okay?

25 Thank you, sir.

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(Sealed bench conference)

THE COURT:

MR. CONRATH:

THE COURT:

MR. PETROCELLI:

THE COURT:

MR. PETROCELLI:

THE COURT:

MR. CONRATH:

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THE COURT:

MR. CONRATH:

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MR. CONRATH:

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MR. CONRATH:

(Open court)

THE COURT: Let's move on to another topic.

MR. CONRATH: All right.

BY MR. CONRATH:

Q One of the things that you talked about with Mr. Petrocelli was your statement that the value of content depends entirely on how many people watch the content.

Do you remember that discussion?

A Yes, I do.

Q So that's not 100 -- that's not always true, is it? For example, let's take HBO. HBO could cut its price in half and get a lot more viewers, but that doesn't make any sense, does it?

The people who run it -- go -- the people who run HBO have decided that it makes sense to sell less of HBO at the price they're charging, rather than to cut it low and make it -- get more viewers, right?

A I'm sorry. Was the question -- what was the question?

Q So the question is: Sometimes it makes -- it's not only viewership that gives value to content, right? Sometimes the content has value that can be obtained by not

1 distributing it as widely as possible, like HBO?

2 A So I don't know what the price elasticity of HBO's
3 content is. I really don't. I assume they're trying to
4 optimize that.

5 But I would tell you, as a matter of course,
6 broader viewership is always better than less.

7 Q Making more money is always better than less,
8 right?

9 A In business, that is correct.

10 Q Glad to have learned one thing. Thank you.

11 So one of the things that you've talked about in
12 the course of your testimony is the number of changes in the
13 industry, right?

14 A The changes in the industry, yes, correct.

15 Q So the fact that the industry has been changing
16 over these last five, eight years, has not stopped AT&T and
17 DirectTV from the increasing the price to its video
18 customers; is that right?

19 A Yeah. We've probably increased price most years.

20 What we have is a situation where content costs,
21 which is the biggest input element for video, content costs
22 escalate year in and year out. And so in this business,
23 what you try to do is recoup as much of that through price
24 as you can.

25 But what we're finding is, as more competitive

1 alternatives find their way into the marketplace, it's
2 getting harder and harder to pass those costs along, that's
3 why you launch new products at lower price points like
4 DirecTV Now.

5 Q Right. So, for example, for your video
6 subscribers in this most recent January, you raised prices
7 something between four and five percent; is that right?

8 A I don't know exactly what we did.

9 Q And a year ago, in January 2017, you raised prices
10 about 5.1 percent; is that right?

11 A I don't know.

12 Q The year before that, the year before that, also
13 about 5-and-some percentage change?

14 A Yeah. I don't know the exact numbers. I do know
15 content costs increased in all of those years.

16 Q And in 2014, you had a price increase of
17 3.7 percent?

18 A I don't know.

19 What year did you say?

20 Q 2014.

21 Now, you told us earlier, I think, that when you
22 acquired DirecTV, you were able to get the content costs
23 down -- your U-verse content costs down substantially; is
24 that right?

25 A Yeah. We created a significant cost savings from

1 the DirectTV acquisition.

2 Q And you still had a cost increase, a price
3 increase in that year?

4 A We did, we still had a cost increase and a price
5 increase even with the synergies.

6 Q Now, you talked some about the FAANG companies,
7 Facebook, Apple, Amazon, Netflix, Google, right?

8 A Okay. Right.

9 Q Let's talk about that topic a little bit.

10 A Right.

11 Q So one thing that you told me in your -- in your
12 deposition was that the importance of CNN and sports is that
13 they're live, live content, live programming.

14 Do you remember that?

15 A Yes.

16 Q And you still agree with that?

17 A That those are still important?

18 Q Yeah.

19 A Yes, correct.

20 Q And live programming matters, you told us, because
21 when you're working towards an advertising model, live is
22 critical because live people don't skip live; people don't
23 skip through the ads?

24 A They don't tend to.

25 Q Right, right.

1 And so Netflix doesn't have live sports, right?

2 A To date, I don't believe they do.

3 Q And they don't have news?

4 A I don't know if Vice is on there or not. I'd have
5 to check.

6 Q They don't have live news?

7 A What's that?

8 Q Netflix doesn't have live news?

9 A I believe that's correct.

10 Q And Amazon doesn't have live news?

11 A I believe that's correct.

12 Q So what these companies provide is video on
13 demand; is that right?

14 A By and large, Amazon has bid on sports rights.
15 I believe they carried the NFL in 2017. I'm not exactly
16 sure.

17 Q Okay.

18 A But they have had NFL rights, so they do have some
19 live sports that they have carried.

20 Q Right. They had a small amount of NFL, right?

21 A It's the NFL.

22 Q True enough. True enough.

23 And having -- but their main business is video on
24 demand, right?

25 A I'm sorry?

1 Q But their main business is video on demand?

2 A They're main video business is video on demand.

3 Q Right. Yes.

4 And DirecTV also has video on demand, right?

5 A We do.

6 Q And having video on demand complements the live
7 sports and live news that DirecTV provides, right?

8 A Depends. For who? I mean, if we're talking video
9 on demand in general, I don't think any -- in this day and
10 age, you cannot characterize all customers the same.

11 Q No.

12 A Half, half of all the Millennials in the United
13 States have no subscription service to a satellite or a
14 cable subscription, half.

15 Now, they're obviously finding ways to get live
16 content. There are several ways they can get it. But
17 they're largely using subscription video on demand,
18 SVOD-type services.

19 Q All right. And so for -- when you say they're
20 finding a way to get it, you're, I think, agreeing with me
21 that video on demand is in substantial part, a complement to
22 the live sports, live news that you get --

23 A For those 50 percent of Millennials, it is not a
24 complement. It is a replacement. There are another 20 to
25 30 million households in the United States who have no

1 pay-TV subscription.

2 These people are not going without entertainment.
3 They're not going without news. And they're not going
4 without sports. We know they're consuming it. They're
5 finding alternatives to consuming it, and that number is
6 growing. It's not shrinking.

7 We lost, last year, DirecTV, lost 1.2 million
8 subscribers in 2017. The whole system, pay TV, cable,
9 satellite, lost 3 million.

10 Netflix just released their results this week.
11 They added 2 million U.S. subscribers this last quarter
12 alone. So we know they're getting entertainment and media.
13 They're just not getting it from the traditional cable and
14 satellite services.

15 Q All right. So let's break down a couple of parts
16 of that.

17 You said the whole system lost something like
18 3 million households, right?

19 A 3 million.

20 Q And that's on a base of more than 90 million,
21 right?

22 A Correct.

23 Q So it's declining, but it's still pretty
24 substantial. More than 90 million households in the
25 United States is still pretty substantial, right?

1 A It's declining at a rapid pace.

2 This conversation feels a little bit like ones I
3 used to have when wireless was replacing wireline
4 telephones. We used to kid ourselves into thinking, you
5 know, it's not declining that fast; and before long, it was
6 gone.

7 This is that same kind trajectory that we're on.

8 Q That was a loss of 3 million out of 90 million,
9 90-plus last year, right?

10 A That is correct.

11 Q And when you say there are 20 or 30 million
12 households that don't currently have a pay-TV subscription,
13 it's true that there have never -- it's never been the case
14 that all households in the United States have a pay-TV
15 subscription?

16 A That's correct.

17 Q So there's some number of those people who just,
18 for whatever reason, their own preference, their economic
19 situation, whatever, they're just not buying a cable or
20 satellite or other subscription service, right?

21 A That's correct.

22 But that number is growing, and the subscription
23 number is declining unequivocally.

24 Q Now, you said that what you're accomplishing, what
25 you want to accomplish in this merger is to put together a

1 distribution company and a content company. That's the
2 vertical integration that you're talking about here, right?

3 A That is correct.

4 Q So you also said that Netflix, in your view, is
5 completely vertically integrated.

6 Do you remember that?

7 A I do.

8 Q But let's break that apart, because, first, while
9 Netflix does some production, Netflix also does buying of
10 content itself, right?

11 A Yes, they do.

12 Q Right. So they're partially virtually integrated
13 upstream, right?

14 A I guess you would have to say that, but probably,
15 there's nobody who's 100 percent vertically integrated,
16 including AT&T after this deal is done.

17 Q Fair enough. Fair enough.

18 And Netflix doesn't have a distribution company
19 that delivers content into the house. They have to go over
20 somebody else's broadband network, like maybe AT&T's, right?

21 A Or wireless.

22 But they deliver their content directly to the
23 consumer without going through anybody else.

24 Q Well, let's be precise.

25 They deliver their content to the consumer going

1 through a broadband company or a wireless company, right?

2 A Their content is traversing a wireless or a
3 broadband service.

4 Q All right. So they're not vertically integrated
5 in the same way that AT&T would be vertically integrated
6 after this merger, right?

7 A No. They have a -- I disagree.

8 You're talking about a refinement.

9 They create, develop, aggregate, and deliver
10 content directly to the consumer. They have a direct
11 relationship with the consumer. They're not going through
12 anybody else. Their relationship is one on one with the
13 consumer.

14 They have a billing relationship. They have email
15 addresses. They have the capability to communicate with the
16 consumer. That is basically what we're talking about here
17 with AT&T.

18 Now, they happen to buy a broadband service or a
19 wireless service also from us.

20 But we have a relationship with the consumer.
21 When you put Time Warner with it, we will have content
22 aggregation and content creation.

23 So there's not a lot of difference in terms of the
24 market behavior of the two.

25 Q So let's try to focus on my question.

1 You understand, Mr. Petrocelli gets a chance to
2 come back and ask you more questions.

3 A Okay.

4 Q My question, let me rephrase it.

5 So Netflix has to go through somebody else's
6 distribution, broadband or wireless, in order to get to
7 customers, correct?

8 A The traverse is somebody else's broadband service.

9 Q That's also true of Amazon?

10 A That is correct.

11 Q And that's also true of Apple?

12 A That is correct.

13 May I?

14 It's also true of DirecTV Now it's also true of
15 HBO's direct-to-consumer product. I mean, they're all the
16 same.

17 Q The FAANG companies that you talked, let's be
18 precise about what they're doing.

19 So Facebook, for example, does not have a virtual
20 MVPD?

21 A That is correct.

22 Q And nor does Amazon?

23 A Facebook, I believe, recently announced their
24 intention to do one.

25 Q They're going to do something that's kind of a

1 YouTube-type project, right?

2 A Yeah. But I thought -- my recollection is -- and
3 I will subject this to check, but that it was going to have
4 premium content.

5 Q And Apple does not have virtual MVPD?

6 A They do not.

7 Q And Google does, they have YouTube TV, right?

8 A That is correct.

9 Q And that has about 300,000 subscribers?

10 A I think that's the latest count. They just
11 launched last year.

12 Q You talked a little bit about Amazon Prime, do you
13 recall that discussion?

14 A I do. They just added 100 million subscribers.

15 Q And you talked about them having, I think your
16 words were, free access to Amazon content.

17 A I'm sorry. Three what?

18 Q Free access to --

19 A Oh, free.

20 Q -- Amazon content.

21 But to be clear, everybody who's an Amazon Prime
22 member has paid to be an Amazon Prime member, right?

23 A That is correct. There's a fee that goes with
24 that.

25 Q Right. And Amazon Prime is mainly about free

1 shipping from Amazon?

2 A Yeah. So if you're an Amazon Prime customer, you
3 get a lot of benefits from Amazon, including free shipping
4 and access to this content.

5 Q Right. And there may be quite a few Amazon Prime
6 of that large number of Amazon Prime numbers who don't even
7 know that there's some Amazon Prime access to video content
8 associated with their free shipping?

9 A I suspect that's right.

10 Q Let's talk a little bit about ad spending because
11 you talked about wanting to compete with Facebook and Google
12 for ad spending, right?

13 A Correct.

14 Q So the amount of money that Facebook and Google
15 make on advertising is from digital advertising; is that
16 right?

17 A That's correct.

18 Q And the category of digital advertising is
19 actually pretty broad, right? It includes things like ads
20 that show up when you search, right? That's --

21 A Right.

22 Q -- digital advertising?

23 Paid classifieds, like Craigslist, that's digital
24 advertising?

25 A Right.

1 Q Right.

2 Job listings, that's digital advertising?

3 A Correct.

4 Q Real estate listings, that's digital advertised
5 listings. That's digital advertising?

6 A Yes. I -- yes, correct.

7 Q It also includes display ads that show up on a
8 Website. If I'm reading a Website and there's an ad on the
9 right-hand side, that's digital advertising as well, right?

10 A It would be, yes.

11 Q So the many of these kinds of digital advertising
12 don't really lend themselves to showing up in a television
13 spot, correct?

14 A It's not relevant.

15 Advertisers are trying to get to consumers in a
16 very targeted way. So if they can use a banner ad in a
17 Website, versus placing a TV ad on a television show, it's
18 the same ad dollars; they're just being used different ways.

19 Q Well, there are some kinds where television ad
20 could be the same. There's also a substantial part of
21 digital advertising that it's going to be a really hard sell
22 for you, isn't it?

23 A Our objective is not to pursue digital
24 advertising. Our objective is to pursue premium video
25 advertising, but using a model very similar to what is used

1 in digital advertising for targeting, focused, measurable
2 kind of results.

3 Q And I think you told us that what you -- or you
4 and others of your colleagues have told us is you want to go
5 after the Facebook and Google quantity of advertising, the
6 advertising that they're taking in that you'd like to have a
7 part of; is that right?

8 A If I may rephrase it.

9 Q Sure.

10 A Our objective is to drive advertising in premium
11 video. And if you get the model right, we are convinced
12 that a lot of the advertising dollars that have come out of
13 premium video and moved into digital, our advertisers, our
14 customers that are advertisers tell us they would love to
15 bring it back if you could create the same capability and
16 put it on premium video.

17 I'll tell you this. We talk to advertisers.
18 You're hard-pressed to find an advertiser who says, I would
19 like to spend more with Facebook and Google. They would
20 like to do more in premium video.

21 And so what we're trying to do is create a
22 platform that would attract them back to premium video.

23 THE COURT: When you say "premium video," in that
24 situation there, you're not talking about YouTube?

25 THE WITNESS: No. I'm talking about TV,

1 television shows, CNN, et cetera, Your Honor.

2 THE COURT: So movies?

3 THE WITNESS: To the extent there's advertising in
4 movies, yes.

5 THE COURT: Okay.

6 So movies, TV shows, not newscasts?

7 THE WITNESS: Yes, newscasts, CNN, if that's --
8 yes, correct, CNN.

9 THE COURT: All right. Go ahead.

10 MR. CONRATH: All right.

11 BY MR. CONRATH:

12 Q So you've told us, I think, and your colleagues
13 have said, you'd like to compete more to take over -- for
14 advertising with Facebook and Google, right?

15 A I'm sorry, Mr. Conrath. I didn't hear you.

16 Q Sorry, the microphone.

17 You'd like to compete more with Facebook and
18 Google --

19 A Correct.

20 Q -- for advertising dollars?

21 A I'm sorry.

22 Yeah, we would like to compete for their
23 advertising dollars, that is correct.

24 Q It's also true, though, that you've also been
25 considering more cooperation with Facebook; isn't that

1 right?

2 A Maybe something that's going on in the
3 organization. I don't know.

4 Q Well, you met with Mark Zuckerberg, who's the CEO
5 of Facebook, in the summer of 2017; is that right?

6 A I believe that's correct.

7 Q And after that meeting, you had an email exchange?

8 A I don't recall.

9 MR. CONRATH: May I approach, Your Honor, with
10 PX558?

11 THE COURT: 558?

12 MR. CONRATH: Yes.

13 THE COURT: Thank you.

14 MR. CONRATH: May I approach the witness,
15 Your Honor?

16 THE COURT: You may.

17 BY MR. CONRATH:

18 Q Mr. Stephenson, let me know when you have had a
19 chance to look at it.

20 A Okay. I've read it.

21 Q Okay.

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

23 THE COURT: You may.

24 MR. CONRATH: Okay.

25

1 BY MR. CONRATH:

2 Q So do you recognize PX558, Mr. Stephenson?

3 A Yes, I do.

4 Q And it's an email exchange between you and Mark
5 Zuckerberg of Facebook?

6 A That's correct.

7 Q And you exchanged this in the course of your
8 responsibilities as CEO of AT&T?

9 A That is correct.

10 MR. CONRATH: Your Honor, I move the admission of
11 PX558.

12 THE COURT: All right.

13 No objection?

14 MR. PETROCELLI: No.

15 THE COURT: No. It will be admitted.

16 MR. CONRATH: All right.

17 (Government's Exhibit PX558
18 received into evidence.)

18 BY MR. CONRATH:

19 Q You wrote, Mr. Stephenson --

20 MR. PETROCELLI: Your Honor, not for the truth.

21 Hearsay document, but come in for non-hearsay purposes.

22 I'm not sure it's being offered for the truth.

23 MR. CONRATH: Well, it's being offered -- parts of
24 it are Mr. Stephenson's own statements.

25 THE COURT: Right.

1 MR. CONRATH: And it's a business record, and then
2 the parts of it are someone else's statements.

3 And obviously he's not --

4 THE COURT: Why don't you come up. We'll discuss
5 it.

6 (Sealed bench conference)

7 MR. PETROCELLI:

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16 MR. CONRATH:

17 MR. PETROCELLI:

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21 THE COURT:

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25 MR. CONRATH:

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THE COURT :

MR. CONRATH :

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MR. CONRATH:

MR. PETROCELLI:

MR. CONRATH:

THE COURT:

MR. CONRATH:

(Open court)

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

Go ahead.

BY MR. CONRATH:

Q Mr. Stephenson, you wrote -- in the response, you wrote to Mr. Zuckerberg that AT&T could give Facebook a lot more of AT&T's ad inventory if Facebook could show that doing so would yield better results, right?

A I did.

Q And Mr. Zuckerberg had written to you that he might be able to help build your ad capabilities, right?

A Yeah, but here's another one of these customer-competitor relationships.

The first part of this email is Mark and me

1 talking as me, his customer. And we hand them advertising
2 that they deliver to their customers.

3 And so the first part of this email is about, can
4 we give him more ads to deliver to his customers to try to
5 sell our products? We use them; we pay them as a customer.

6 Q And then he wrote that they might be able to help
7 you build your ad capabilities, right? That's one of the
8 things that he said to you?

9 A He did. He wrote that.

10 Q Okay.

11 A Look, this was at -- in Sun Valley at the annual
12 confab. And people run into each other. You sit down out
13 by a duck pond, and you have casual conversation,
14 particularly when you're a large paying customer to them.
15 And you have conversations.

16 He followed up with an email. There was never a
17 single minute of follow-up from this. This was a passing
18 kind of exchange.

19 Q And another thing you wrote to him in your
20 response was the Time Warner acquisition should offer both
21 of us areas to consider in the future, right?

22 A I did.

23 Q And just simply put, you're the CEO of AT&T. If
24 there were more money to be made from cooperating with
25 Facebook than from competing with it, you'd have to choose

1 the option that was better for AT&T?

2 A Well, it depends on what relationship you're
3 talking about.

4 There is Facebook, the competitor. In
5 advertising, they're a competitor. There's Facebook, the
6 customer.

7 A company like Time Warner that creates lot of
8 premium content and a company like Facebook that has
9 signaled that they intend to go into premium content, they
10 would be a customer at some point. And so I just think it's
11 really good to keep relationships with people open for those
12 kind of situations.

13 Q Okay. You can put that aside.

14 Part of what you hope to do with Time Warner and
15 AT&T combining is to build something that you call a
16 programmatic ad platform; is that right?

17 A Yes, sir. That's correct.

18 Q And we talked about this a little bit in your
19 deposition, right?

20 A We did.

21 Q And you told us at your deposition that this is
22 something that is going to take time, right?

23 A Yes, it will.

24 Q And it's going to take technology, including --
25 that includes technology that AT&T doesn't have right now,

1 right?

2 A That is correct.

3 Q And so you might have to buy technology or
4 technology companies?

5 A It's always build or buy decisions. It's a
6 function of time to market, generally, is what makes those
7 decisions.

8 Q So you might have to build some technology that
9 doesn't even exist today?

10 A There is technology like this that exists. It may
11 not exist within AT&T, but it exists. It's not like it's
12 new science or new rocket science. It's technology that
13 it's out there and does exist.

14 Q And I think you told us that the upshot of this is
15 that you'll be old and retired by the time AT&T will have a
16 programmatic platform that could be selling to other media
17 companies like Fox or Disney, right?

18 A I'm already old. I don't know how close I am to
19 retirement. But it will take time to stand this up.

20 For other players -- I mean, I want to be really
21 clear about this. The ability to build an exchange, to sell
22 our own advertising inventory and have advertisers coming in
23 and exchanging and then actually building campaigns
24 themselves into our advertising inventory, I -- that is
25 something that we can stand up, I am confident, fairly

1 quickly. There are companies that can be acquired that can
2 accelerate that significantly, and so those kind of
3 capabilities will be stood up in reasonably short order.

4 Now, over what period of time will others see what
5 you're doing and say, we would like to be apart of that?
6 Because you're building an exchange. And anybody can come
7 and participate in an exchange, and it will be open to all.
8 So I really can't say how long that will be. But that's an
9 aspiration, is to ensure that it's available for all.

10 Q And, in fact, I think, didn't you tell us that to
11 make it really work and be successful, you need to get
12 others to put their ad inventory into the platform?

13 A It would actually drive more scale, I believe we
14 can be very successful just with our own ad inventory.

15 Q You have talked about the idea of using -- the
16 idea that maybe if you can get more ad revenue, that might
17 have the effect of making it possible to reduce or limit the
18 price increases to your consumers.

19 Do you recall that discussion?

20 A Yeah. That's a very important piece of it.

21 Q So just looking historically, in 2017, AT&T
22 collected 7 percent more ad revenue than it had in the year
23 before, but you still increased subscriber fees in 2018;
24 isn't that right?

25 A It's a rather small business today. It's a

1 \$1 billion business. And so if it were up 7 percent, that's
2 \$70 million.

3 So you can't say just because prices went up, that
4 it had no effect on pricing. It's a small number. It's
5 hard to measure, but --

6 Q Well, in fact, if we looked back, AT&T has had
7 increases in its ad revenues over the last four years, and
8 yet has had pretty substantial consumer price increases in
9 every one of those years; isn't that true?

10 A It's a still small and very nascent business.

11 Q Now, in trying to achieve the synergies that you
12 hope to accomplish with this merger, one issue involves
13 corporate culture, right?

14 A I'm sorry?

15 Q Let me ask it this way.

16 AT&T and Time Warner have very different corporate
17 cultures, correct?

18 A Yeah. Most companies do have different cultures.

19 Q And some people would describe AT&T as a pipes
20 company, somebody that delivers data --

21 A I don't describe it that way.

22 Q I understand you don't, but I believe we talked
23 about this in your deposition.

24 That's the -- AT&T delivers data through pipes or
25 wires to people's households, right?

1 A That's one of the services we provide.

2 Q Right.

3 And Time Warner is a creative company?

4 A Yes, they are. Their whole business proposition
5 is around creativity.

6 Q And when two companies merge, having different
7 cultures is a potential source of risk; is that right?

8 A It always is. We've done a number of business
9 combinations.

10 It's always one of the more difficult issues to
11 manage through.

12 Q And, in fact, you've said about this cultural
13 divide, between AT&T and Time Warner, that this is the issue
14 that will determine the success or failure of the deal? Can
15 we maintain the culture necessary to continue attracting the
16 talent and creativity in a media and entertainment company?

17 You said that, didn't you?

18 A It's the very reason behind the organization's
19 structure that Mr. Petrocelli took me through.

20 Q And there's no guarantee that culture clashes
21 aren't going to interfere with achieving some of the
22 synergies that you hope to achieve or the efficiencies that
23 you hope to achieve?

24 A I disagree with that.

25 And there's no guarantee, but the efficiencies

1 we're talking about here, particularly redundant costs and
2 removing redundant costs, vendor billings, standing up an
3 advertising business, I don't think the creative culture is
4 going to get in the way of achieving those. We can achieve
5 the lion's share of those just through normal business
6 operations.

7 The culture, the preserving the culture, that is
8 the main reason we're talking about organizing the business
9 the way we are, is to preserve the culture of both
10 companies, by the way.

11 Q And when you talked about how the business is
12 going to be organized into separate groups, you, in essence,
13 were trying to tell us that there's going to be a wall of
14 sorts between the media company and the communications
15 company; is that right?

16 A No. I didn't mention anything about a wall.

17 Q Well, they're going to be kept separate in some
18 important ways, right?

19 A They're going to be operated and run independently
20 and autonomously, they'll have their own profit objectives.
21 And they'll be making their own business decisions and
22 strategic decisions and capital allocation decisions.

23 Q Then they all report up to you; is that right?

24 A That is correct.

25 Q And you're going to be responsible for setting the

1 overall direction of both the media company and the
2 communications company, right?

3 A That is correct.

4 Q And, in fact, I think you told us in your
5 deposition that there's only one strategic planner at AT&T
6 and it's you?

7 A I lead the whole process.

8 Q Right.

9 And as the CEO, you have an obligation to maximize
10 shareholder value, right?

11 A I do.

12 Q And if that means making sure that the different
13 parts of the company work together, you'll make sure they
14 work together?

15 A My job is to create long-term shareholder value.

16 Q And it is correct, isn't it, that the management
17 at AT&T for most senior executives, their -- a very
18 substantial part of their compensation is tied to the
19 overall company's stock price?

20 A That is correct. They're compensated with AT&T
21 stock, so, thereby --

22 Q You, I think, told us that you -- well, you had a
23 communication with Jeff Bewkes of Time Warner in early
24 August 2016, right?

25 A That's correct.

1 I don't remember the date. I thought it was later
2 in August, but you may be right.

3 Q So I think your meeting was later in August,
4 right?

5 A Oh, we had a phone call; you're correct.

6 Q You had a phone call in early August.

7 And you relayed that phone call or reported on it
8 to John Stankey in an email; is that right?

9 A I remember that, yes.

10 Q Yeah.

11 Could you turn to PX47 in your binder.

12 A 47?

13 Q Yes.

14 A I'm sorry. I'm not seeing 47. Maybe it's back.

15 Hang on.

16 Q It's the second one in.

17 A Second one in.

18 Oh, I got it.

19 Q And PX47 is an email from you to John Stankey and
20 a couple of other -- and Lori Lee and John Stephens, right?

21 A Yeah, that's correct.

22 Q Subject, Jeff Bewkes.

23 And this is your reporting of a conversation that
24 you had with Mr. Bewkes, right?

25 A That is correct.

1 MR. CONRATH: Your Honor, I move the admission of
2 PX47.

3 MR. PETROCELLI: No objection.

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

5 (Government's Exhibit PX47
6 received into evidence.)

6 BY MR. CONRATH:

7 Q So looking at -- do you need to read this over to
8 remind yourself of the event?

9 A I've read it. I've read it. Thank you.

10 Q Okay. Sure.

11 So in this telephone conversation that you're
12 reporting here, Mr. Bewkes told you that Time Warner was
13 going to announce the next day that it was taking a
14 10 percent ownership stake in Hulu, right?

15 A Correct.

16 Q And further, Mr. Bewkes told you that Hulu was
17 going to launch an over-the-top MVPD-type service offering
18 that included Turner content and also other large
19 programmers, right?

20 A I don't recall if it had all that specificity, but
21 I believe that's correct.

22 Q It's in the second sentence there of the email.

23 A Yeah. I just didn't have the specificity of what
24 Time Warner content is what I was saying.

25 Q You're correct. Right.

1 And Mr. Bewkes said to you he didn't think it
2 would impact our relationship with them, right?

3 A Correct.

4 Q And you responded and disagreed with that
5 proposition, right?

6 A Yeah. I didn't say how it wouldn't affect our
7 relationship, because all relationships are changing right
8 now.

9 Q Right.

10 I mean, these -- "Thanks for the call, but it's
11 hard to imagine it won't impact all of our relationships,"
12 is what you said?

13 A Yes.

14 Q Were you a little annoyed with him for that?

15 A No, I wouldn't I was annoyed. It was the same
16 call I asked if we could get together and talk.

17 Q Right?

18 A But what I was articulating is, look, everybody is
19 trying to figure out how to maneuver in this new world. And
20 so what I was articulating was, you're going to take your
21 content and put in a virtual MVPD. We're standing our own
22 up.

23 What I hope is we get the same rights for ours.
24 I hope we get the same stacking rights. That's what we were
25 trying to convey in here, make sure we're all treated the

1 same in this world.

2 Q Okay. So let's take that step by step.

3 You said to Mr. Bewkes, "We are trying to figure
4 out how to navigate a very new world where you folks are
5 going around us, while trying to preserve the old revenue
6 streams and business models from us."

7 That's what you said to Mr. Bewkes, right?

8 A Correct. You're trying to go direct to the
9 consumer --

10 Q Right.

11 A -- but at the same time preserve the revenue
12 streams from us exactly as they are.

13 Q Right.

14 And so "going around us," you meant this virtual
15 MVPD thing they were getting into?

16 A As one example, yeah.

17 Q Right.

18 And -- but what you said in your deposition was
19 that you were concerned about whether Time Warner, with this
20 ownership stake in the Hulu product, would preclude it from
21 licensing content to AT&T, that same content for AT&T's
22 virtual MVPD, DirecTV Now, right?

23 A That's what I was trying to say earlier, is that
24 we just -- what protection do we have if you go take an
25 ownership stake that we'll still have access to the content?

1 We just want to make sure we get the same access.

2 Q So you were afraid that them being a part-owner of
3 a virtual MVPD might make them -- didn't mean that they
4 would necessarily want to license their content to your
5 virtual MVPD?

6 A Just trying to make sure we had the same access as
7 others.

8 Q You can set that aside.

9 When you were talking about how you came to do
10 this deal with Time Warner, you told us that previously, you
11 had a string of pearl -- a different option, the "string of
12 pearls" option.

13 Do you remember that testimony?

14 A I do.

15 Q And you had to plan that way to go ahead and
16 acquire content companies, a number of different ones,
17 right?

18 A Correct.

19 Q And your Board of Directors had been onboard with
20 that plan?

21 A They had given us permission to go forward.

22 Q Right.

23 And you'd already talked to two potential pearls?

24 A We had.

25 Q And if you hadn't been able to come to a deal with

1 Time Warner remember, you would have continued work on the
2 "string of pearls" approach?

3 A That would have had to have been some kind of
4 fallback position.

5 Q And that's because you said you have a need, you
6 felt you already had decided you had a need to own content?

7 A Yeah. It's hard to say if we didn't do
8 Time Warner exactly what we'd do.

9 It's kind of hard to even put myself in that
10 position right now.

11 Q All right. But you'd already decided you had a
12 need to own content?

13 A We had. We concluded we wanted to own content.

14 Q So one of the ways you might have owned content
15 came up in the course of having conversations with the
16 Department of Justice about this lawsuit; is that right?

17 A I'm sorry. I did not hear you.

18 Q Sure.

19 One of the ways that you might have come up with
20 owning content -- let's back up.

21 You had some discussions with the Department of
22 Justice before this lawsuit got started, right?

23 A Meaning regarding this transaction?

24 Q Yes.

25 A Correct, we did.

1 Q Right.

2 And one of the suggestions that the Department of
3 Justice made to you would have indicated a willingness to
4 permit AT&T to acquire all of Warner Brothers?

5 A To acquire all of what?

6 Q Warner Brothers.

7 MR. PETROCELLI: May we approach?

8 THE COURT: You may.

9 (Sealed bench conference)

10 MR. PETROCELLI:

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20 THE COURT:

21 MR. PETROCELLI:

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23 MR. CONRATH:

24 MR. PETROCELLI:

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MR. CONRATH:

MR. PETROCELLI:

THE COURT:

MR. CONRATH:

MR. PETROCELLI:

(Open court)

THE COURT: We're going to take an afternoon recess.

You remain a witness under oath. You know the rules. Don't discuss your testimony with anybody. See you back in 15 minutes.

1 DEPUTY CLERK: All rise.

2 This Honorable Court will now take a brief recess.

3 (Recess from 4:12 p.m. to 4:33 p.m.)

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

9 THE COURT: All right. The witness remains under
10 oath.

11 You may continue.

12 MR. CONRATH: Thank you, Your Honor.

13 I have one housekeeping mattering, if I can, which
14 is PX558 was admitted, but I'd like to request that it be
15 admitted under seal until we can make one redaction on it.

16 THE COURT: All right. Is that all right with the
17 defendant?

18 MR. PETROCELLI: No objection.

19 THE COURT: All right.

20 MR. CONRATH: Thank you, Your Honor.

21 (Government's Exhibit PX558
22 received into evidence under seal.)

23 BY MR. CONRATH:

24 Q Mr. Stephenson, you talked a little bit about the
25 desire to do targeted advertising by using information about
customers and marrying that with the inventory of

1 Time Warner; is that right?

2 A That is correct.

3 Q And you want AT&T, for example, to be able to tell
4 a car dealer that someone who saw an advertisement actually
5 showed up on a car lot?

6 A That would be an opportunity.

7 Q And you'd do that by tracing the person's location
8 through their cell phone, right?

9 A With their permission.

10 Q Right.

11 And you want to be able to distribute Turner's
12 advertisements through Turner's content into the mobile
13 environment, because I think you said AT&T knows so much
14 more about the customer when they're consuming in the mobile
15 environment; is that right?

16 A I didn't follow all of that. I'm sorry.

17 Q Sure. Let me phrase it again.

18 I think you told us at your deposition that
19 it's -- one of the reasons you want to be able to put Turner
20 content into the mobile environment is that AT&T knows so
21 much more about the customer when they're consuming in the
22 mobile environment?

23 A Correct.

24 Q And when they're in the mobile environment,
25 you know -- you can know where customers are?

1 A Is that what the deposition said or is that --

2 Q That's a question to you.

3 A Oh, okay.

4 Yeah. When you have location-based data with
5 their permission, it gives you good insight for advertisers.

6 Q And you know what Websites they visit?

7 A Again, with their permission.

8 Q Including after they view a particular
9 advertisement?

10 A After they what?

11 Q Including you know what Website they go to after
12 they view a particular advertisement?

13 A That can be discerned.

14 Q And when you say this is with permission, it's
15 correct, isn't it, that some of the data that you collect is
16 where the consumer has to opt in to give permission; and
17 there's other data, though, that you collect on consumers,
18 where the consumer has to opt out. If they just do nothing,
19 the data is collected; isn't that right?

20 A I don't know if that's accurate.

21 Q It just shows up as part of the sign-up; isn't
22 that right?

23 A I'm sorry.

24 Q The agreement to allow AT&T to use the data shows
25 up as part of the sign-up, unless the consumer affirmatively

1 opts out, for some of the data that you collect; isn't that
2 correct?

3 A There is a requirement that they must select to
4 allow us to use their data.

5 Q And your wish to use the data is to produce -- to
6 send consumers more targeted advertisements;
7 isn't that correct?

8 A That is correct.

9 Q And you don't really have a way of knowing if
10 consumers want targeted data based on all their information
11 of where they've been, what Websites they visited, and what
12 other -- and that kind of information, do you? You don't
13 know if consumers really want that?

14 A The consumer would be required to opt in to allow
15 us to use their information for that purpose.

16 Q But you don't know if they'd really want it?

17 A I don't know how to answer the question.

18 Q Okay.

19 Could you turn to PX -- oh, I'm sorry, DX609,
20 which is the document that's in your small -- it's in the
21 small binder that Mr. Petrocelli gave you.

22 And I want to direct your attention to page 8 of
23 DX609.

24 A Okay.

25 Q Okay. You have that?

1 A I do.

2 Q That's the -- this is the page you talked about
3 with Mr. Petrocelli, right?

4 A Correct.

5 Q So under the heading, key issues/concerns, you
6 have three bullets, right?

7 A Correct.

8 Q The first one says, "How can you advantage your
9 own distribution -- TV, broadband, wireless -- without
10 harming Time Warner's position as a wide distributor of
11 content to other SVOD cable networks and broadcast
12 networks."

13 Right? Did I read that right?

14 A I see it, yes.

15 Q And the second one says, "How to use distribution
16 business to increase the value of the media business."

17 Do you see that?

18 A I do.

19 Q And if I understood your description of this in
20 the discussion with Mr. Petrocelli, you said that you, in
21 using these notes to talk to the Board, you basically
22 rejected the first point, but you wanted to pursue the
23 second point; is that right? Did I understand that
24 testimony right?

25 A That's what I was conveying. But as you see in

1 the third bullet, it's not yet clear to me how we execute on
2 all of this.

3 Q Right. And I don't recall you talking about the
4 third bullet earlier. But I think what it says is, "Jeff
5 and I discussed at length it's not clear to me how we
6 execute on this."

7 Right?

8 A Right.

9 Q So it doesn't say -- in the third bullet, it
10 doesn't say anything about rejecting the first bullet, about
11 advantaging your own distribution, does it?

12 A It doesn't say it specifically, no.

13 Q And both of the two key issues, the first two key
14 issues and concerns are phrased similarly, right? How can
15 you do this? How to use this. That's a parallel
16 construction, isn't it?

17 A I'll take your word for the grammatical
18 description.

19 Q And the third bullet says you discussed it; you
20 don't know how to execute on it, right?

21 A Correct. We have two issues here. And as you
22 evaluate this transaction, here are two issues you have to
23 understand.

24 Can you use the media and entertainment content to
25 advantage your distribution business? That's the hard one.

1 When -- as you can see here, when, as a wide
2 distributor of content, that's the criterion. It has to be
3 a wide distributor of content.

4 So can you use something that requires wide
5 distribution to advantage your own distribution?

6 That's a question. I don't see how you execute on
7 that. It's not yet clear exactly how you execute on that.

8 How to use distribution to increase the value of
9 the media business, that's a question. But I feel like
10 I have better framework. I have better understanding as to
11 how you do that.

12 The first one, it wasn't clear to me how you could
13 ever execute on that one, period.

14 Q Well, there's nowhere in these notes that you made
15 for the preparation of the Board that says that you can't do
16 the first bullet or you don't want to do the first bullet or
17 anything negative about the first bullet, is there?

18 A These are mental notes for me. This is not a memo
19 to my Board, where I'm going to be audited and they're going
20 to ask me, exactly what does this mean? These are cues from
21 me to talk to my Board about.

22 And the cue for me, I knew where I was going with
23 this. The cue for me is, ask the Board, how can you use
24 your distribution business to -- or the content to advance
25 your distribution business?

1 You probably can't. And I was telling the Board,
2 you need to get your head around that. Don't think that's a
3 value creator.

4 The second one -- as a cue to me and my memory,
5 the second one is easy. That one is easy to grasp and
6 understand. These are mental cues from me in discussing
7 with them, not a memo.

8 Q Well, you understand that the first bullet there,
9 the first part of it, "How can you advantage your own
10 distribution?" is parallel to the government's case here;
11 isn't that correct?

12 A And it's an important question. In fact, the
13 reality of it is, you can't. You can't make a value
14 equation work if you're going to use the content to
15 advantage your own distribution.

16 So set the government case aside. There's just no
17 business logic to it. That's basically the premise of this
18 statement. There is no business logic.

19 Q What it is is a question of how to do it.

20 And let's just be clear. You're expecting us to
21 take your explanation today that what you meant when you
22 wrote it then, where it doesn't say anything negative about
23 it, your explanation today is that it was your cue to
24 yourself to tell the Board that this was impossible?

25 A Well, regardless of how one might want to

1 attribute my intent in this memo, the reality is -- as you
2 go through all the documents on this deal, the reality is,
3 we've said you can't do it.

4 The value of the content is broad distribution.
5 The two don't go together. They don't match. They're
6 inconsistent equations.

7 And so regardless here -- and the intent of this
8 was to tell the Board, you can't do that. Don't have that
9 in your mind. It doesn't work from a business standpoint.

10 I wasn't even talking about it from an antitrust
11 standpoint. Just from a business standpoint, it doesn't
12 make sense.

13 MR. CONRATH: May we approach the bench? I have a
14 question, Your Honor.

15 THE COURT: Yep.

16 (Sealed bench conference)

17 MR. CONRATH:

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21 MR. CONRATH:

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23 MR. CONRATH:

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(Open court)

THE COURT: All right. You may proceed,
consistent with our discussion.

MR. CONRATH: All right. Thank you, Your Honor.

BY MR. CONRATH:

Q Mr. Stephenson, would you look at your big binder
there.

A My what?

Q The big binder.

A Oh, yeah.

Q And I'd like you to look at PX442.

Do you have it there?

1 A I do.

2 Q All right. Do you see that PX442 is comments of
3 AT&T, Inc.?

4 A Yes, I do.

5 Q And that was in the period when you were the CEO?

6 A I'm trying to find the date on it. The date is --

7 Q Lower left.

8 THE COURT: Look on the front page.

9 THE WITNESS: Oh, here we go. June 2012.

10 Okay. Thank you.

11 BY MR. CONRATH:

12 Q You were the CEO in that time?

13 A 2012 I was.

14 Q Yes. Okay.

15 I'd like you to look at the page, the third page
16 of the document. It's got the 003 at the bottom.

17 A Okay.

18 Q And I want to direct your attention to the
19 sentence that begins the second paragraph, starts with "V."

20 A Okay.

21 Q Just read that silently to yourself.

22 MR. PETROCELLI: Your Honor, can we have some
23 foundation? Has he ever seen this document before?

24 THE COURT: Oh, yeah. I assume we're go to get
25 there.

1 MR. CONRATH: We're going to get there, right.

2 THE COURT: Yeah. Let him read it.

3 THE WITNESS: Okay.

4 BY MR. CONRATH:

5 Q Okay. Do you recall whether you saw this document
6 at the time?

7 A I don't.

8 Q Is this something that you would ordinarily be
9 briefed on before something, a filing is made at the Federal
10 Communications Commission?

11 A Something like program access, not always, no.

12 Q Let me ask you to just focus on the first sentence
13 of that paragraph and ask you if that, you understood that
14 to be the position of AT&T as expressed to the FCC at the
15 time.

16 A Well, I'm apprehensive to answer any questions
17 about the first sentence because it doesn't reflect the full
18 paragraph. And what this is all about as I -- I mean, I'm
19 reading this for the first time. And it's some fairly
20 detailed language.

21 But I'm apprehensive to comment on the first
22 sentence.

23 Q Let me rephrase it, then.

24 Having read the whole paragraph, do you take that
25 to be the statement -- the position of AT&T to the FCC at

1 the time it was written.

2 MR. PETROCELLI: Your Honor, I need to object on
3 lack of foundation. This is utter speculation.

4 THE COURT: Yes. I'm going to sustain that
5 objection.

6 MR. CONRATH: Okay.

7 THE COURT: You can have a different question if
8 you have one.

9 BY MR. CONRATH:

10 Q Do you recognize that the point made in this
11 paragraph has validity in the marketplace as you know it?

12 A I don't know that I would agree with that, to be
13 candid with you. And I'm looking at a document written in
14 2012. What may apply in 2012 is irrelevant today.

15 So I don't even know how to respond. I don't --

16 I don't even know that I agree with the comment,
17 to be honest with you.

18 MR. CONRATH: All right. Your Honor, I'm going to
19 respectfully -- since the witness has confirmed that this
20 was a statement of AT&T as of the time when he was the
21 chairman and was reflected in a filing to the FCC, I'll
22 renew my request to admit the document.

23 MR. PETROCELLI: Objection for all the reasons
24 stated: 402, 403, no foundation.

25 THE COURT: Yeah. I'm going to sustain the

1 objection.

2 MR. CONRATH: Okay.

3 Give me one moment, Your Honor.

4 THE COURT: Yes.

5 BY MR. CONRATH:

6 Q Would you -- I'm sorry, but pull up your other
7 binder again one more time.

8 A Sure.

9 Q And if you would look at PX609, the first
10 document.

11 A Okay.

12 Q Page 12.

13 Page 12, you're making a comparison of a number of
14 companies, including comparing them to Time Warner,
15 is that right, on the top half of this page?

16 A Yes, that's what it's doing.

17 Q Right.

18 And what you said about Viacom is their cable
19 networks is a disaster; is that right?

20 A That's what it says.

21 MR. CONRATH: Your Honor, I have no more
22 questions.

23 THE COURT: Redirect?

24 MR. PETROCELLI: Just one or two questions.

25 THE COURT: Okay.

1 REDIRECT EXAMINATION

2 BY MR. PETROCELLI:

3 Q You were asked about price increases by DirecTV to
4 consumers after the merger, assuming the Court approves the
5 merger. Will having Turner and DirecTV owned by one company
6 allow DirecTV to be more aggressive in lowering prices to
7 consumers?

8 A To be more aggressive?

9 Q In lowering prices to consumers.

10 A Well, the merger synergies, by definition, will
11 facilitate prices to be contained or lowered.

12 Q To DirecTV's subscribers?

13 A To DirecTV subscribers.

14 Q And also, will it allow for reinvest --
15 reinvesting in the product as well?

16 A Yes.

17 So the advantage of synergies are they generate
18 margins and cash flow, and so those are either reinvested
19 back into the business through pricing or reinvested in
20 product enhancements or infrastructure.

21 Q When you say "invested it back in the business
22 through pricing," it will yield lower prices to the DirecTV
23 subscribers; is that right?

24 A Yes. That's the objective.

25 MR. PETROCELLI: Okay. Thank you, Your Honor.

1 MR. CONRATH: On that point, Your Honor?

2 THE COURT: On that point.

3 RE-CROSS-EXAMINATION

4 BY MR. CONRATH:

5 Q So Mr. Petrocelli asked you about whether you'll
6 be able to get lower prices by being in one company. Did
7 you tell us a while ago that you expect pricing decisions
8 between the media company and the communications group to be
9 arm's-length negotiations?

10 A I absolutely do.

11 Q And do you expect, therefore, the media company to
12 get equivalent prices from -- apply equivalent prices to the
13 communications group as those that would apply to an outside
14 party that is of similar size?

15 A There will be arm's-length negotiations.

16 Q And do you expect the outcome will be similar
17 prices to what it would be if the communications group were
18 an outside company?

19 A In terms of the prices they pay for content, I do.

20 That is not all of the costs, though, in the
21 communication company for delivering TV service. And these
22 merger synergies we're talking about -- vendor cost
23 reductions, marketing cost reductions -- there's an
24 incredible amount of marketing costs in this business. And
25 to the extent putting these two companies together yield

1 those marketing cost reductions, cost of service goes down.
2 That's money available to compete in marketplace or to
3 reinvest in the product.

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

5 MR. PETROCELLI: One follow up, Your Honor, on
6 that, just on that one piece.

7 REDIRECT EXAMINATION

8 BY MR. PETROCELLI:

9 Q When you have stacked margins, how will that get
10 handled at the parent level such that it would result in
11 lower prices to DirecTV consumers for the --

12 MR. CONRATH: Objection; leading.

13 Q How will --

14 THE COURT: Rephrase the question.

15 MR. PETROCELLI: Yeah, I was trying to get to the
16 point.

17 THE COURT: You were trying to rush.

18 MR. PETROCELLI: Rush, exactly, because you had
19 that look, Your Honor, and I'm borrowed --

20 THE COURT: I'm about to have that look again.

21 MR. PETROCELLI: I know. I'm on borrowed time
22 here.

23 BY MR. PETROCELLI:

24 Q But explain to the Court how, at the parent level,
25 these stacked margins work.

1 A So I'm going to be at 30,000 feet, but there will
2 be arm's-length negotiations.

3 By the way, this happens in our business today.
4 We do this exact same thing, arm's-length negotiations, for
5 services between business units. And they're getting
6 market-based pricing in their arm's-length negotiations.

7 However, at the AT&T consolidated level, the
8 reality is those content costs that are being sold to
9 DirecTV, the cost to AT&T is truly what is the cost to
10 create the content, not that pricing in the marketplace.

11 And so when we roll everything up, there is
12 enhanced margins at the consolidated level.

13 What we do at AT&T is I have enhanced margins up
14 here; it relieves the profit requirements I have on
15 communication company. And so I reduced my profit and cash
16 flow requirements out of that business; therefore, they
17 effectively get the benefits of those cost reductions when
18 they're in the marketplace setting prices.

19 MR. PETROCELLI: I have nothing further.

20 MR. CONRATH: No.

21 THE COURT: I have a question for you.

22 THE WITNESS: Okay. Yes, sir.

23 THE COURT: This arbitration clause --

24 THE WITNESS: Yes, sir.

25 THE COURT: -- that you all offered, right, it was

1 modeled after the NBC-Comcast idea? Is that the essence of
2 it?

3 THE WITNESS: Yes, Your Honor. That was -- my
4 understanding, that was the objective when Turner put that
5 in the marketplace; it would mimick the Comcast.

6 THE COURT: And the 7 years' time frame was picked
7 because it was a 7-year in NBC-Comcast?

8 THE WITNESS: I honestly --

9 THE COURT: You're not sure.

10 THE WITNESS: I don't know.

11 THE COURT: Well, you've been speaking a lot
12 tonight, today, I should say --

13 THE WITNESS: Yes, sir I'm sorry.

14 THE COURT: -- about your vision.

15 Where do you think this universe, this ecosystem
16 that you've been describing today, will be seven years from
17 now?

18 THE WITNESS: If you'd ask me seven years ago what
19 this world would look like today, I would have missed it so
20 far.

21 But I do believe this: And that is, as we
22 continue to put this kind of capability into these mobile
23 networks and more and more fiber into homes, the need for
24 people, for content creators, to go through cable companies
25 and satellite companies to get their content to the

1 consumer, that is a thing of the past. They will have
2 direct and immediate access to those consumers.

3 And the consumers' availability and access to
4 content, it has just in the last four or five years
5 exploded.

6 I think the explosion goes to a whole different
7 level, and I think the availability of content is going to
8 be radical.

9 And as a result, if we allow this to proliferate
10 and this constant to be delivered over these mobile devices
11 and services, inherently, that means the cost of content has
12 to come down. Just the proliferation of it means it gets
13 cheaper over time.

14 And this is why I think the more we can do to
15 incentivize and motivate this kind of proliferation, embrace
16 what the tech community is doing -- you know, they're a
17 great competitor, but they have also created some great
18 opportunities and benefits for the consumer. This content
19 is costing less.

20 And there is nothing but downward pricing
21 pressure.

22 I know our satellite TV prices go up. My view,
23 that's inconsequential. What we're all working towards is
24 creating 35 and \$15 bundles. And that's where the world is
25 moving and the Millennials are moving. So content -- or I

1 should say -- yeah, content pricing to the consumer can do
2 nothing but continue to go down in the foreseeable future.

3 THE COURT: You're excused.

4 THE WITNESS: Thank you.

5 THE COURT: Do you have any other witnesses?

6 MR. PETROCELLI: No, Your Honor. I just need to
7 introduce into evidence Defense Exhibit 893. It is the
8 government's answers to our interrogatories 8 and 9.

9 There's no objection to this.

10 MR. CONRATH: No objection, Your Honor.

11 MR. PETROCELLI: And with that, the defendants
12 rest.

13 THE COURT: All right.

14 Does the government wish to put on a rebuttal
15 case?

16 MR. CONRATH: We do, Your Honor.

17 THE COURT: Call your first witness.

18 MR. CONRATH: Our first witness is Mr. Ron
19 Quintero.

20 And my colleague, Matthew Siegel, will be handling
21 this witness.

22 Just give us one moment to clear out.

23 MR. PETROCELLI: Your Honor, Mr. Walters is
24 handling that witness.

25 THE COURT: All right. Thank you.

1 MR. SIEGEL: Good afternoon, Your Honor.

2 Matthew Siegel for the United States.

3 The United States calls Ronald G. Quintero.

4 Your Honor, I've given the witness copies of his
5 expert reports.

6 I should also mention that the defendants have
7 claimed confidentiality in a fair amount of the information
8 that Mr. Quintero is going to be discussing.

9 But we framed our questions in order to avoid
10 disclosing the information, to keep things moving.

11 THE COURT: Good.

12 DEPUTY CLERK: Please raise your right hand.

13 (Witness is placed under oath.)

14 DEPUTY CLERK: Please be seated.

15 THE COURT: Welcome.

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

17 You may.

18 RONALD QUINTERO, WITNESS FOR THE GOVERNMENT, HAVING BEEN
19 DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION ON QUALIFICATIONS

21 BY MR. SIEGEL:

22 Q Good afternoon.

23 A Good afternoon.

24 Q Could you please state your name for the record.

25 A Ronald Gary Quintero.

1 Q Mr. Quintero, how are you currently employed?

2 A Chartered Capital Advisers and by
3 R. G. Quintero & Company.

4 Q And those are your companies?

5 A They are.

6 Q And you're here today to give expert testimony on
7 the synergies of the defendants' claim from the merger?

8 A I am.

9 Q You have an MS in accountancy and an advanced
10 professional certificate in investment management, both from
11 the NYU Stern School of Business?

12 A That is correct.

13 Q Can you briefly summarize your employment history
14 for the Court.

15 A Yes, sir.

16 I have 43 years of professional experience,
17 initially at Peat, Marwick, Mitchell & Company, now called
18 KPMG, first of the audit staff. Then I moved to the firm's
19 merger and acquisition department and ultimately started and
20 ran their corporate finance consulting practice in New York.

21 After that, I joined Zolfo Cooper, which is one of
22 the principal financial restructuring firms; then the
23 investment banking department of Bear Stearns; and
24 ultimately, in 1988, I started both my firms,
25 R. G. Quintero & Company, a specialty CPA firm, and

1 Chartered Capital Advisers, a financially oriented
2 management consulting firm.

3 Q Thank you.

4 And could you explain to the Court what kinds of
5 projects your firms work on.

6 A The most frequent type of projects I work on are
7 involved in mergers and acquisitions, valuations, financial
8 restructuring, forensic accounting, financial forecasting,
9 due diligence, and certain other financially oriented
10 projects, some of which involved litigated matters.

11 Q You also have several professional certificates
12 relevant to the work that you've done in this matter?

13 A That is correct. I have ten professional
14 licenses.

15 Q Could you briefly list for the Court just the ones
16 that are most relevant here.

17 A Those most relevant to this matter are that I'm a
18 certified public accountant, a chartered financial analyst,
19 a certified management accountant, and I am certified by the
20 American Institute of CPAs in forensic accounting.

21 Q Do you teach numerous professional and academic
22 programs, including the CFA preparatory program?

23 A That is true.

24 Q Have you ever testified as an expert witness in a
25 court before?

1 A Yes, I have.

2 Q Ever in Federal District Court?

3 A I have.

4 Q When you've testified as an expert witness, how
5 often has your work involved forensic accounting or
6 financial forecasting?

7 A Most projects employ one or both of those
8 disciplines.

9 Q Has the Court ever failed to recognize you as an
10 expert when you've been put forward as one?

11 A Never.

12 Q Have you ever testified as an expert in any
13 antitrust merger matters?

14 A Yes, I have.

15 Q Which cases?

16 A About a year and a half ago in the *Anthem-Cigna*
17 antitrust case.

18 Q And that was here in the district of D.C.?

19 A It was.

20 Q What subject matter did you address there?

21 A Claimed synergies.

22 MR. SIEGEL: Your Honor, the United States offers
23 Ronald G. Quintero as an expert in financial forecasting and
24 forensic accounting to testify regarding the claimed
25 synergies in this matter.

1 MR. WALTERS: Your Honor, may we approach?

2 THE COURT: You may.

3 You'll have to step down to that chair.

4 (Sealed bench conference)

5 MR. WALTERS:

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(Open court)

THE COURT: All right. So the Court will
recognize the witness as an expert in forensic accounting
and financial forecasting.

1 DIRECT EXAMINATION

2 BY MR. SIEGEL:

3 Q Mr. Quintero, what were you retained to do in this
4 matter?5 A To evaluate the synergies proffered by the
6 defendants with respect to cost synergies and one of the
7 claimed revenue synergies.8 MR. SCHWINGLER: Your Honor, I have a
9 demonstrative that I'd like to use with this witness.
10 Defendants have been provided a copy.

11 May I hand one up to the Court?

12 THE COURT: Yes.

13 MR. SIEGEL: And may I approach the witness?

14 THE COURT: You may.

15 MR. SIEGEL: Your Honor, this exhibit --

16 THE COURT: Well, let's hear, first, about what
17 materials he reviewed personally.

18 MR. SIEGEL: What materials he reviewed?

19 THE COURT: Yes. What did you give him to review
20 and analyze?

21 MR. SIEGEL: Okay.

22 BY MR. SIEGEL:

23 Q Mr. Quintero, can you briefly describe for the
24 Court the materials that you and others who assisted you on
25 this matter reviewed to reach the opinions that you've

1 reached in this case?

2 A Yes.

3 I reviewed version -- what has been commonly
4 referred to as version 41, which details and quantifies the
5 defendants' representations with respect to claimed
6 synergies in this matter.

7 I reviewed all of the supporting documentation
8 represented by the defendants as being the basis for
9 version 41, as well as all the documentation that the
10 consultant that the defendants hired with respect to
11 synergies indicated as being a basis for version 41.

12 Q Pardon me, Mr. Quintero. When you say the
13 supporting information identified by defendants as
14 supportive of version 41, could you tell the Court what you
15 mean by that.

16 A The defendants proffered 306 documents in January
17 of 2018 that they represented as being the basis underlying
18 version 41.

19 The defendants' consultant, who was retained with
20 respect to claimed synergies, made reference to 284
21 documents that also pertained to version 41.

22 And through the work that I and my colleagues did,
23 we reviewed approximately, not only the aforementioned
24 documents, put about a thousand documents pertaining to
25 claimed synergies and synergies that we thought, prior to

1 hearing any representations with respect to claimed
2 synergies, that we believed would be synergies that the
3 defendants would assert.

4 And I also reviewed --

5 THE COURT: Are those thousand documents above and
6 beyond the 590 that you just referred to, 306 and 284?

7 THE WITNESS: No, Your Honor. It is inclusive of.

8 THE COURT: Okay.

9 THE WITNESS: And then I also reviewed deposition
10 testimony in connection with the claimed synergies.

11 BY MR. SIEGEL:

12 Q And did you have a chance to indirectly elicit
13 deposition testimony by providing advice as to questions or
14 topics that you wanted explored?

15 A I did.

16 I provided the Department of Justice both an
17 indication of the type of information that I was looking for
18 and, prior to depositions, the type of information that I
19 was seeking to elicit.

20 And I also attended two of the depositions, and
21 members of my staff attended two other depositions.

22 THE COURT: How many people in your staff worked
23 on this with you?

24 THE WITNESS: Including myself, five, over a
25 period of more than 12 months.

1 MR. SIEGEL: May we proceed, Your Honor?

2 THE COURT: Yes.

3 MR. SIEGEL: Okay. Your Honor, the demonstratives
4 given to Mr. Quintero have been marked as PXD16 for
5 identification.

6 THE COURT: All right.

7 MR. SIEGEL: May we proceed?

8 THE COURT: Yes, you may proceed.

9 MR. SIEGEL: Okay.

10 BY MR. SIEGEL:

11 Q Mr. Quintero, please turn to page 1 of PXD16
12 marked for identification.

13 And what does page 1 show?

14 A Page 1 summarizes the claimed cost synergies and
15 claimed revenue synergies that have been asserted by the
16 defendants based on the annualized rate of an amount of
17 those synergies projected for the year 2020.

18 MR. SIEGEL: I should mention that the numbers on
19 this page, Your Honor, like most of the dollar figures we're
20 going to be looking at today, have been designated
21 confidential by the defendants.

22 So we're going to take care not to disclose them,
23 with the exception of the two numbers at the very bottom,
24 the larger totals.

25

1 BY MR. SIEGEL:

2 Q Now, you saw Mr. Stankey testify yesterday,
3 Mr. Quintero?

4 A I did.

5 Q And these figures on page 1, are they from
6 version 41, the version that Mr. Stankey talked about?

7 A They are.

8 Q And that is also a document that's been admitted
9 as DX658?

10 A That's what I understand.

11 Q Now, just to clarify the record, Mr. Stankey
12 talked about types of synergies called content and OTT.

13 Do you recall that?

14 A Yes.

15 Q And those are included -- the content and OTT
16 categories are included in the corporate spend category
17 there on the left, first line above the bottom;
18 is that right?

19 A That's correct.

20 Q And he also talked about a category called network
21 IT synergies?

22 A Yes. That is correct.

23 Q And that category is included in the vendor spend
24 category, which is just between the marketing spend and the
25 corporate spend there on the left?

1 A That is correct.

2 Q And the categories that are shown here on page 1
3 are consistent with other discussions, other categorizations
4 of the synergies that were done in version 41, and that's
5 why you used this categorization; is that right?

6 A Yes, that is correct.

7 Q Now, does the bottom row, left side of page 1, say
8 the defendants are claiming about \$1.5 billion a year in
9 synergies by 2020?

10 A Yes.

11 Q Does it say defendants -- on the right-hand side
12 bottom, does it say the defendants are claiming \$1 billion,
13 roughly, per year in revenue synergies?

14 A That is correct.

15 Q And you mentioned that you reviewed version 41,
16 right?

17 A I did.

18 Q You mentioned that you had a staff working with
19 you. About how many hours did you and your staff spend
20 studying the asserted synergies in this case?

21 A Over a period of more than 12 months, in excess of
22 2,000 manhours.

23 Q And what criteria did you apply to assess the
24 claimed synergies?

25 A I evaluated them from the perspective of whether

1 or not, in the case of cost synergies, they were
2 merger-specific, verifiable, and whether or not they
3 pertained to variable costs.

4 Q And why did you look at these particular factors?

5 A These are the criteria that I have routinely been
6 asked to use for purposes of evaluating claimed synergies in
7 connection with antitrust matters.

8 Q Now, when you testified at *Anthem-Cigna*, what
9 criteria did you use in that case?

10 A The same three criteria that I just enumerated.

11 Q What does it mean for a synergy to be
12 merger-specific?

13 A For it to be merger-specific, it would be a
14 synergy that can only be accomplished by way of a merger and
15 then could not be accomplished absent a merger.

16 Q And could you tell the Court what it means for a
17 synergy to be verifiable?

18 A It is a synergy that can be objectively verified
19 by reasonable means, both with respect to likelihood and
20 amount.

21 Q And, finally, could you just briefly tell the
22 Court what it means for a synergy to affect a variable cost.

23 A A variable cost is one that changes in direct
24 response to changes in volume, such as number of
25 subscribers, viewers or MVPDs.

1 Q Now, I'd like to focus you on the cost synergies
2 first. I'm going to ask you for a broad summary of your
3 opinion before diving into the individual categories, the
4 ones that we see here on page 1.

5 On the cost side, that is, the left-hand side of
6 page 1, have you reached an opinion about the cost synergies
7 being claimed by the defendants in this matter?

8 A I have.

9 Q And what is that?

10 A Based on the information proffered by the
11 defendants, they have not been demonstrated to be
12 merger-specific, verifiable, nor do they pertain to variable
13 costs.

14 Q And focusing, similarly, on the revenue synergies
15 on the right-hand side, have you -- which of those synergy
16 categories did you look at?

17 A Those pertaining to combined assets.

18 Q And have you -- well, stepping back, what
19 briefly -- could you tell the Court what are the combined
20 asset synergies?

21 A The combined asset synergies are claimed
22 additional operating income or, in other words, the net of
23 revenues minus expenses that the defendants assert could
24 come about as a result of cross-promotion of their various
25 products or services or bundling their products and

1 services.

2 Q Have you reached an opinion as to the combined
3 asset revenue synergies being claimed by the defendants?

4 A I have.

5 Q And what is it?

6 A Based on the information proffered by the
7 defendants, they are neither merger-specific nor verifiable.

8 MR. WELSH: Your Honor, may we approach?

9 THE COURT: Yes.

10 (Sealed bench conference)

11 MR. WALTERS:

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MR. SIEGEL:

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4 MR. SIEGEL:

5 MR. WALTERS:

6 (Open court)

7 THE COURT: All right. You may proceed.

8 BY MR. SIEGEL:

9 Q Mr. Quintero, we were talking about the combined
10 asset revenue synergies. Had you finished telling your
11 opinion with regard to those?

12 A I have.

13 Q And I noticed that you did not address the issue
14 of variable costs, an issue that you did address on the side
15 of the cost synergies. Just wanted to give you a chance to
16 explain that.

17 A Because costs do not pertain to revenue, so they
18 would not be relevant considerations for evaluating revenue
19 synergies.

20 Q You heard Mr. Stankey talk about the marketing
21 cost savings yesterday as one category of cost synergies
22 being claimed?

23 A I did.

24 Q And can you tell the Court a bit about what is it
25 in your background that enables you to assess the marketing

1 synergies in this case?

2 A As a CPA, doing this type of work for many types
3 of clients, whether it's in connection with a matter like
4 this, on behalf of a lender that wants to evaluate a
5 business plan, I'm routinely reviewing claimed synergies or
6 related types of assertions to determine whether or not
7 they're verifiable based on underlying documents and
8 information. That is a core discipline that I apply
9 throughout my practice.

10 Q Is the marketing savings a kind of particular type
11 of procurement savings, basically, in the marketing area?

12 A It is.

13 Q And in what kind of other matters would you be
14 called upon to look into procurements, synergies of that
15 kind?

16 A It could be in connection with due diligence in a
17 merger and acquisition transaction, a valuation engagement,
18 working on behalf of a lender, considering whether or not to
19 extend more or less credit for a company.

20 It could be in connection with a bankruptcy
21 proceeding. Or it could be a bankruptcy trustee, examiner,
22 representative of various parties in interest, where I have
23 to test assertions and see, are they objectively verifiable
24 beyond just somebody's representation?

25 Q And one point that -- just to get on the public

1 record, you mentioned that you're assessing the combined
2 asset synergies in this case, but you did not look at the
3 other two categories of asset -- of revenue synergies, the
4 content intelligence and the advertising growth;
5 is that right?

6 A That is correct.

7 Q Why is that?

8 A Because there is another consultant who,
9 I understand, has evaluated those two classifications of
10 revenue synergies.

11 Q Now, what did you think of Mr. Stankey's testimony
12 on this point of marketing cost synergies generally?

13 A I thought it was very articulate. It was very
14 passionate. But from my vantage point as a CPA, who's very
15 familiar with the underlying documentation, it is not
16 objectively verifiable.

17 Q Did you examine the marketing cost savings claimed
18 by the defendants?

19 A I did.

20 Q And what have you concluded with regard to the
21 marketing cost savings, based on the criteria you employed?

22 A That they're not merger-specific, verifiable, nor
23 do they relate to variable costs.

24 Q I'd ask you to turn it page 4 --

25 MR. WALTERS: Objection, Your Honor. We move to

1 strike as to merger specificity, and we move to strike as to
2 variable versus fixed --

3 THE COURT: You can approach.

4 MR. WALTERS: -- without -- because of the
5 foundation -- there's no foundation for that.

6 THE COURT: You can approach.

7 (Sealed bench conference)

8 THE COURT:

9 MR. WALTERS:

10 MR. SIEGEL:

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25 MR. WALTERS:

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MR. SIEGEL:

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MR. SIEGEL:

THE COURT:

MR. SIEGEL:

THE COURT:

MR. WALTERS:

(Open court)

BY MR. SIEGEL:

Q So please turn to page 4, Mr. Quintero, of the
PXD16, if you would.

Now, is page 4 a summary of the how the defendants
calculated their marketing spend synergies?

A It is.

1 Q Now, why did you conclude that these synergies are
2 not verifiable or merger-specific?

3 A With --

4 MR. WALTERS: Objection, Your Honor. Foundation
5 as to the latter.

6 THE COURT: Well, let's -- I'll overrule that.

7 Come on. Let's see how it goes.

8 THE WITNESS: With all but one of these
9 categories, they're calculated by just applying and assumed
10 percentage savings to the Time Warner spend or, in some
11 cases, to the AT&T spend and assuming, without any
12 additional level of documentation, that the assumed
13 percentages is correct.

14 And then there's one category on this page that
15 just has assumed dollar amounts that would be saved.

16 BY MR. SIEGEL:

17 Q Now, Mr. Quintero, how do you know that these
18 percentages that you see on this page are just assumed
19 percentages and not based on data or analysis of any kind?

20 A Because I reviewed all of the underlying
21 documentation that's been proffered by the defendants.

22 Q Did AT&T point to any calculations or evidence
23 underlying these percentage savings?

24 A Not below this level.

25 Q Not below the level shown on page 4?

1 A The level -- that is correct.

2 Q Looking at the domestic paid media synergy, the
3 top item on page 4, could you just tell the Court what that
4 means, domestic paid media.

5 A Money saved on advertising.

6 Q And how is the domestic paid media synergy in
7 particular calculated by AT&T?

8 A AT&T has assumed that 15 percent of the
9 Time Warner spend in this area would be saved by the year
10 2020.

11 Q And how is that 15 percent figure derived?

12 A It is an assumption.

13 Q Did you have any reason to believe that this
14 synergy, the domestic paid media synergy, is not
15 merger-specific?

16 A I do. Because --

17 Q What was that? I'm sorry.

18 A Because the basis underlying the asserted
19 assumption is that by Time Warner consolidating from three
20 media buying services to one, they would be able to reduce
21 their costs by 15 percent.

22 Now, Time Warner is a very sophisticated company
23 in this area. They spend almost as much money as does AT&T.
24 And, in fact, they're in the business of selling advertising
25 through the Turner network, so they certainly know this

1 business well.

2 And so it is reasonable to believe, without any
3 additional explanation, that the reason that they choose
4 three buying services is because, considering not only the
5 costs, but also the effectiveness of the spend, that is the
6 right thing to do.

7 And with respect to merger specificity, if they
8 wanted to save money without regard, again, to the effect,
9 by consolidating from three to one and they believe it would
10 really save money, they can do this without having to go
11 through a merger.

12 Q You can put page 4 aside, Mr. Quintero.

13 Did you hear Mr. Stankey talk about the vendor
14 spend category of synergies?

15 A I did.

16 Q And what does the vendor spend category mean?

17 A That is a category of money that's spent with
18 third-party vendors, such as professional service firms,
19 provider of transportation services, and the like.

20 Q Now, why did you conclude that the vendor spend
21 synergies are not verifiable?

22 A Because they are based on pretty much the same
23 types of calculations, an assumed percentage savings that's
24 attributed to one or more vendors in a particular category,
25 sometimes more than one assumed percentage, but, again, a

1 non-verifiable assumed percentage savings.

2 Q Now, Mr. Quintero, the vendor spend synergy that
3 you're describing sounds a lot like the marketing spend
4 synergy that you described a moment ago.

5 Are they different?

6 A Only in terms of what is being saved in terms of
7 what category of expenditure.

8 But the mathematical calculation is a similar type
9 of calculation.

10 Q And how about in terms of the areas of expertise,
11 of your particular expertise, that would enable you to
12 assess the vendor spend synergy? Are they different in any
13 way from the areas and emphases of expertise that enable you
14 to assess the marketing spend synergies?

15 A No, sir. These are the disciplines I've applied
16 throughout most of my career.

17 Q Please look at page 5, if you would, of PXD16.
18 May we proceed, Your Honor?

19 THE COURT: Yes.

20 BY MR. SIEGEL:

21 Q Page 5, is this an example of a calculation of a
22 synergy in the vendor spend category?

23 A It is.

24 Q And where did this calculation shown on page 5
25 come from?

1 A This calculation comes from version 41.

2 Q And did you hear Mr. Stankey talk about the --
3 sorry. Pardon me. Strike that.

4 This calculation shown on page 5, is this an
5 example of a vendor spend calculation?

6 A It is.

7 Q And it's the logistics and distribution vendor
8 spend calculation?

9 A Yes.

10 Q Please tell the Court, what does that mean, the
11 logistics and distribution synergies?

12 A These are organizations that get involved in
13 packaging and delivering products and other items, as well
14 as a provider of office supplies.

15 Q And what's wrong with this calculation, in your
16 view?

17 A Again, it's got the same very general
18 non-verifiable aspect to it in the way that it was conceived
19 and applied.

20 Q Could you explain to the Court what you mean by
21 the very general non-verifiable aspect.

22 A Yes, sir.

23 There's three components to these calculations.

24 There's a projection on the Time Warner part,
25 which is where all the claimed savings are purported to

1 exist, of expenses by seven different vendors, 2018, '19,
2 and '20. So since these synergies are all assumed based on
3 projected amounts in 2020, it takes the projected
4 expenditures in 2020 for each of these seven vendors.

5 It assumes, without further explanation, that
6 either 30 percent saved will be realized on three of the
7 vendors or 5 percent on the other five.

8 Now, what's particularly interesting about these
9 assumptions is, in five of the seven categories, Time Warner
10 actually spends more money than does AT&T. And, in fact, in
11 two of them, AT&T doesn't spend any money at all. So it
12 raised the question, why are these vendors going to suddenly
13 choose to give such a break post-business combination to
14 Time Warner. No explanation in the underlying documentation
15 is provided.

16 So the product of the assumed spend for each of
17 these vendors in 2020, times the assumed savings in
18 connection with each of these vendors in 2020 gives rise to
19 the total number that you see in the lower right-hand corner
20 of this schedule.

21 Q In your experience, Mr. Quintero, is that the way
22 such a calculation is typically done?

23 A No, not at all. There always has to be underlying
24 information, comparison of contracts from the, in this case,
25 it would be between Time Warner contracts and AT&T contracts

1 to see, is there a basis for assuming savings, other
2 documentation, in order to be able to substantiate the
3 asserted savings.

4 Q And is this calculation seen on page 5
5 representative, fairly representative, of the ones that you
6 saw in the vendor spend category?

7 A Yes. It's a consistent theme.

8 Q Now, I probably should have asked. Was the
9 marketing calculation that you described with regard to the
10 domestic paid media, was that fairly representative of the
11 others that you saw in that category?

12 A It was, except for the one that I said was based
13 on just an absolute dollar amount of savings.

14 Q What was the analysis or data source behind that
15 absolute dollar amount for that exceptional case?

16 A It was an assumed savings pertaining to
17 data-driven marketing, both on the part of AT&T and
18 Time Warner.

19 Q Okay. You can set page 5 aside.

20 Did you hear Mr. Stankey talk about the combined
21 asset revenue synergies?

22 A I did.

23 Q And those were cross-promotional and bundling
24 synergies?

25 A That is correct.

1 Q Can you tell the Court about a -- well, strike
2 that.

3 Can you tell the Court a bit about how the work
4 that you typically do and, including your educational and
5 professional background, enables you to assess these
6 combined asset revenue synergies?

7 A Because, just like the cost synergies, I'm
8 routinely reviewing information prepared by clients or other
9 third parties for a variety of reasons in order to evaluate
10 how reliable they are.

11 And I'm reporting on such, either back to the
12 clients or to other third parties. Sometimes I'm using the
13 information for my own analyses.

14 Q And similarly, Mr. Quintero, how does your work
15 experience and training qualify you to evaluate whether a
16 claimed efficiency is merger-specific?

17 A Because my work experience professional,
18 background, professional licenses are heavily geared towards
19 being able to dig deep into information, to solicit
20 information, in order to be able to take raw data and see if
21 it can be converted into something that is reliable, or to
22 determine that it's not reliable.

23 Q Moving back to the combined asset revenue
24 synergies. What -- I think you mentioned those are
25 cross-promotional and bundling synergies, right?

1 A That is correct.

2 Q Can you tell the Court about a typical example of
3 one of these combined asset revenue synergies?

4 A For example, the claimed revenue synergies in
5 connection with promoting Warner Brothers films.

6 Q Please turn to page 3 of PXD16.

7 MR. SIEGEL: May we proceed, Your Honor?

8 THE COURT: Okay.

9 BY MR. SIEGEL:

10 Q Mr. Quintero, does this table shown in page 3 come
11 from version 41?

12 A It does.

13 Q And does this table on page 3 show how the
14 defendants calculated the Warner Brothers film synergy?

15 A It does.

16 Q And that's one of the combined asset revenue
17 synergies?

18 A It is.

19 Q And what does this synergy reflect?

20 A This synergy reflects the asserted incremental
21 operating income or difference between revenues and costs
22 that the defendants assert would come about as a result of
23 promoting Warner Brothers films at the AT&T stores and via
24 any other methods, although the only ones for which costs
25 have been projected is promoting them at the AT&T stores.

1 Q And could you please explain for the Court what's
2 wrong with this synergy calculation.

3 And, Mr. Quintero, I just caution you, as you do
4 that, please don't disclose any of the numbers, basically,
5 in this -- in page 3, with the exception of the "lift per
6 film" lines.

7 A Okay.

8 MR. WALTERS: Your Honor, may we approach?

9 THE COURT: You may.

10 (Sealed bench conference)

11 MR. WALTERS:

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18 THE COURT:

19 MR. SIEGEL:

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23 MR. WALTERS:

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MR. SIEGEL:

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MR. SIEGEL:

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MR. WALTERS:

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MR. SIEGEL:

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MR. SIEGEL:

MR. WALTERS:

(Open court)

1 BY MR. SIEGEL:

2 Q Mr. Quintero, do you have any experience working
3 in the film or entertainment industries?

4 A I do.

5 Q And can you tell the Court a bit about that.

6 A Things that really -- that immediately occur to
7 me -- and, Your Honor, I've worked during the course of my
8 43-year career on over a thousand projects. So I'm just to
9 tell you what occurs to me off the top of my head.

10 I got involved in the advising in connection with
11 the acquisition of 20th Century Fox in evaluating the
12 various business units in connection with developing pricing
13 for the various business units.

14 As recently as a few months ago, I got involved in
15 a matter pertaining to the largest television studio in --
16 east of California, in evaluating certain financial and
17 other information.

18 I've been involved in testifying as an expert
19 witness with respect to values of television stations. I've
20 testified as an expert witness in Bankruptcy Court on the
21 emergence from Chapter 11 on a couple of major television
22 stations.

23 And I'm sure if I looked deeper, I would find
24 others. But those are ones that immediately occur to me,
25 but I believe that there are others.

1 Q Were there any people on your staff who worked on
2 this matter, who, to your knowledge, had experience or have
3 experience in the media or entertainment industries?

4 A One of the members of my staff who worked on this
5 engagement was formerly in the strategic planning and
6 finance department, an M&A department, of
7 Charter Communications.

8 Q A cable company?

9 A And with the others, I've just not asked them
10 about that industry-specific issue because what we're doing
11 is really applying a functional area of expertise that
12 applies to many industries.

13 Q What about promotional opportunities; have you had
14 occasion to consider promotional opportunities that
15 businesses were considering?

16 A Routinely because in developing financial
17 projections, with respect to revenues, that's one of the
18 areas that would be considered.

19 Q So, Mr. Quintero, what is this, I believe you told
20 us this synergy shown on page 3 reflects the incremental
21 operating income that might be obtained from promoting
22 Warner Brothers films at AT&T stores and possibly through
23 other AT&T assets; is that fair?

24 A That is correct.

25 Q Now, what's wrong with this synergy calculation?

1 I asked you that before, and I was warning you not to
2 disclose the particular dollar figures here other than the
3 lift per film percentages.

4 MR. WALTERS: Your Honor, we renew the objection.
5 No foundation.

6 THE COURT: Overruled.

7 Go ahead.

8 THE WITNESS: First of all, in terms of putting
9 this in perspective, I've reviewed correspondence from
10 senior Warner Brothers executives. An EVP for business
11 strategy reviewed these projections -- or I don't know if
12 it's these, but reviewed the general projections proffered
13 by AT&T. He characterized those specifically pertaining to
14 combined asset synergy --

15 THE COURT: Don't testify to as to what he said.

16 THE WITNESS: Okay.

17 THE COURT: That's hearsay. You can't testify as
18 to that.

19 THE WITNESS: All right.

20 BY MR. SIEGEL:

21 Q If you would, just walk us through the most
22 relevant elements, most relevant or emblematic of your
23 assessment here on page 3, if you would.

24 A Certainly.

25 The first row entitled "WB, Domestic Box Office,

1 Per Tentpole."

2 A tentpole is a heavily promoted film.

3 The basis for that first row is the average box
4 office receipts per tentpole in 2016.

5 Now, I reviewed the box office receipts, not only
6 for 2016, but the three years preceding that.

7 2016 was the highest year, so they built off the
8 highest year, made that even larger to make it the
9 foundation for 2020.

10 And so the assumption is that on the amount shown
11 on 2020, that there would be four such promoted tentpole
12 films.

13 And the third row, the lift per film, or the
14 increased box office receipts per film, would be 15 percent.

15 Why 15 percent? I don't know. Could be zero
16 percent; could be more or less. There's no basis shown for
17 the 15 percent.

18 The only relevant information that has been
19 proffered by the defendants pertaining to 15 percent is that
20 they would presumably, through such promotion, close half
21 the gap between the Warner Brothers tentpole films and those
22 of another major, highly successful studio.

23 Now, why half a gap as opposed to none of the gap
24 or all the gap? Again, it is just an assumption.

25 So that's the assumption with regard to that first

1 category. And it's repeated in the second category, the
2 other films that are shown in this page, to show, in the
3 middle of page, the total incremental box office that is
4 assumed to be realized from these cross-promotional
5 activities.

6 Q And then to consider the Court's time, without
7 walking through all of the detail, are there other
8 assumptions that concern you in the calculation to get to
9 the bottom line there on the bottom right?

10 A There are.

11 Q Of a similar nature to the ones you discussed?

12 A Yes, that is correct.

13 Q Now, is this Warner Brothers film calculation a
14 typical example of how the defendants calculated their
15 combined-asset revenue synergies?

16 A That is correct.

17 Q Do you generally regard cross-promotional
18 synergies such as this one to be merger-specific?

19 A No, because they can also be accomplished without
20 going through a merger.

21 Q Well, what makes you think they can?

22 A Because, first of all, this year, AT&T and
23 Warner Brothers have done such a cross-promotion without
24 having to go through a merger.

25 Also, I saw deposition testimony indicating that

1 Turner has also done cross-promotions with some major
2 retailers in the United States, again, without having to
3 enter into a business combination.

4 Q You can put page 3 aside, Mr. Quintero.

5 Now, Mr. Quintero we've covered all of the synergy
6 calculations -- strike that.

7 Mr. Quintero, have we covered all the synergy
8 calculations you did in your work on this matter?

9 A No, sir.

10 We talked about the three major categories of
11 costs, the one major category of revenues. In fact, there
12 are approximately 30 subcategories that I looked at in
13 connection with the work that I did.

14 Q And we're not going to go into all those right
15 now, correct?

16 A I would if you would like me to, but I don't think
17 you do.

18 Q I would not.

19 Are the shortcomings in the calculations that we
20 have just discussed typical of those you observed in the
21 rest of the defendants' work in version 41?

22 A Yes, sir.

23 Q Did you consider any other claimed synergies aside
24 from the cost and revenue synergies in this matter?

25 A I did.

1 Q Which synergies are you referring to?

2 A The defendants have also claimed innovation
3 synergies.

4 Q What would an example be?

5 A An example would be optimize movie content so it
6 can be seen on a mobile phone.

7 Q Have you reached an opinion on the innovation
8 synergies you considered?

9 A I have.

10 Q And what is that?

11 A Well, recognize my area of expertise is in
12 finance. And so what I focused on or would have focused on
13 would be any claimed financial synergies or incremental,
14 either incremental or revenues or reduced costs associated
15 with innovation synergies. They were not quantified by the
16 defendants; therefore, I'm unable to say that any are
17 verifiable.

18 Q Mr. Quintero, I'm not going to ask you to go
19 through any more detailed examples. But before we wrap up,
20 I just want to turn briefly to a couple points Mr. Stankey
21 hit on in his testimony yesterday.

22 Did you hear Mr. Stankey mention that AT&T has
23 often met its synergy targets in previous mergers?

24 A I have.

25 Q And did that convince you that some of the

1 synergies asserted here are, indeed, verifiable?

2 A No.

3 Q Why not? Now, I caution you, when answering that
4 question, AT&T is taking the position that the dollar
5 figures concerning the DirecTV revenue synergies are
6 confidential.

7 A I understand.

8 Q So why did the track record, for what want of a
9 better term, in other mergers not convince you that the
10 synergies being proffered here are verifiable?

11 A I heard Mr. Stankey testify that he had been
12 involved in eight prior mergers where claimed synergies had
13 been accomplished. First of all, I don't have documentation
14 to any degree of detail on those eight mergers he is
15 referring to. The one that I got the most information is
16 DirecTV.

17 However, each merger is unique. So the fact that
18 they may or may not have achieved the synergies in prior
19 mergers is not relevant to this specific merger. The prior
20 mergers are, as I understand, all horizontal mergers,
21 merging with another company in the same business.

22 It's a lot easier to project potential synergies
23 on horizontal mergers, where you have a good understanding
24 of the revenue and cost structure and you are able to
25 eliminate redundant costs.

1 THE COURT: Is this the first one you testified in
2 where it's a vertical merger as an expert? Is this the
3 first time you testified as an expert witness in a
4 vertical-merger case.

5 THE WITNESS: With respect to antitrust matters,
6 yes, sir.

7 THE COURT: Okay. Thank you.

8 BY MR. SIEGEL:

9 Q And so each one has its unique attributes.

10 Now, with respect to --

11 THE COURT: What's the question?

12 BY MR. SIEGEL:

13 Q The question was -- I think the question is
14 just -- I'm not sure if the witness has finished or not.

15 Why it is that Mr. Stankey's testimony about the
16 experience of meeting synergies in certain prior mergers did
17 not convince him that the synergies being proffered in this
18 merger are verifiable.

19 A And if I combine verifiable and merger-specific,
20 also, to the extent that any of these other mergers achieve
21 synergies, it's not necessarily because of merger
22 specificity. There can be other factors.

23 Now, with respect to the DirectTV merger,
24 Mr. Stankey testified, as I saw based on the underlying
25 data, there's a huge miss on the revenue synergies.

1 And with respect to the cost savings, the largest
2 element of cost savings was on savings with respect to
3 content, because of the fact that DirecTV had a better deal
4 than did AT&T's U-verse; however, that type of synergy is
5 not being reflected in this matter. So that's why I say
6 specific to this merger, whatever did or didn't happen in
7 the prior mergers really have no bearing on this one.

8 Q And, Mr. Quintero, did you hear Mr. Stankey
9 testify that the managers who estimated these synergies
10 shown in version 41 will be held accountable to achieve
11 them?

12 A I heard that testimony.

13 Q And did that convince you that some of these
14 synergies being proffered here are, indeed, verifiable?

15 A No, sir.

16 Q Why not?

17 A First of all, I don't know if those managers were
18 one and the same as the people who quantified these
19 synergies.

20 I also heard Mr. Stankey say that the AT&T process
21 is, after the transaction closes, that's when they update
22 the quantification of synergies.

23 So I don't even know if the ones for which they
24 will be held accountable for are, indeed, the same ones that
25 we see in version 41.

1 Also, even when people are well intentioned in
2 quantifying synergies, even when they have incentives to be
3 able to achieve them and potential penalties to come up
4 short, it doesn't mean that they're going to achieve them.

5 And, in fact, I've not heard what the incentives
6 are or what the penalties for failure to achieve the
7 synergies.

8 So that does not equate to verifiability.

9 Q Mr. Quintero, did you hear my colleague,
10 Mr. Welsh, ask Mr. Stankey about why the synergy roll-up on
11 page 7 of version 41 was dated July 2017?

12 A I heard that question.

13 Q And Mr. Stankey asserted that the synergies
14 covered by version 41 are actually from October, the date
15 that it was dated.

16 Do you remember that?

17 A I heard that.

18 Q Okay. Do you have an opinion about that?

19 A I do.

20 Q What is it?

21 A Well, the synergies in the 1010 version 41
22 document are actually almost the very same as the ones that
23 were contained in a predecessor document dated May 25th.

24 And by July 31st, those synergies were the same
25 ones as what was reflected in 1010. So really, the latest

1 date that I could say that they applied to was July 31st,
2 and everything subsequent is just rolling them forward in
3 other documents.

4 Q So the numbers themselves were the same?

5 A That is correct.

6 Q And as of July 31st, had Mr. Stankey taken over as
7 head of integration?

8 A No, sir. My understanding is that he took over
9 August 3rd.

10 Q Now, we're down to our final topic, Mr. Quintero,
11 your opinions on the fixed versus variable cost question.

12 Do you -- you said that you found none of the
13 claimed -- step back for a moment.

14 What, in your background and practice, in your
15 work, enables you to assess the difference between a fixed
16 cost and a variable cost?

17 A Well, throughout my entire career, I've dealt with
18 distinguishing between fixed and variable cost. That's part
19 of the training in accountancy as a CPA, as a certified
20 management accountant, in my developing and reviewing
21 financial projections. Understanding the distinction
22 between fixed and variable cost is a very important
23 discipline to be cognizant of and to be able to apply.

24 Q Did you -- you said that you found none of the
25 claimed cost savings have been shown to be variable costs in

1 nature?

2 A That is correct.

3 Q Do you have an understanding of why you were asked
4 to look at variable costs?

5 A Yes, I do.

6 Q What is that?

7 A First of all, my experience has been, in all of
8 the antitrust matters that I've been asked to review,
9 potential cost synergies, the distinction between fixed and
10 variable costs and knowing which ones are variable is
11 important.

12 Also, all of those -- I've testified I'm an
13 accountant, a financial person. I'm not an economist. But
14 I understand economists regard variable cost savings as
15 being the ones that can potentially be available for
16 providing benefits to consumers.

17 Q Now, why in this case do you conclude that no
18 variable cost savings have been demonstrated?

19 A First of all, the defendants have not claimed in
20 any of the documentation or in version 41 that any of these
21 claimed costs savings are variable costs.

22 Also, from my having looked at the underlying data
23 and how they quantified the claimed savings, none of them
24 were based on the sort of volumetrics, such as number of
25 subscribers or MVPDs, that are normally associated with

1 quantifying variable costs.

2 Q In version 41, do defendants claim anywhere any
3 kind of cost synergies or variable or fixed?

4 A I didn't see any.

5 Q Did Mr. Stankey discuss any synergy categories
6 yesterday that are routinely regarded in your profession as
7 fixed costs?

8 A Yes.

9 Q Which ones?

10 Well, let me step back.

11 Can you provide the Court with a few examples?

12 A In terms of what he discussed yesterday?

13 Q Yes.

14 A Well, for example, any cost savings pertaining to
15 corporate overhead, those are routinely referred to as fixed
16 costs. Advertising, marketing, those are fixed costs. You
17 have a budget, and you implement according to the budget.

18 Q Please now turn to page 7 of PXD16, Mr. Quintero.

19 This is -- yeah, page 7.

20 MR. SIEGEL: May we proceed, Your Honor?

21 THE COURT: You may.

22 MR. SIEGEL: I'll wait till you're there.

23 Okay.

24 BY MR. SIEGEL:

25 Q Mr. Quintero, is it your opinion that there will

1 be no synergies whatsoever from this merger?

2 A No, sir.

3 Q What is your opinion, then?

4 A It's my opinion that, based on the documentation
5 provided by the defendants, that there are no synergies that
6 are verifiable, merger-specific, or that pertain to variable
7 costs.

8 Q And with regard to -- were you speaking with
9 regard to the cost or the revenue synergies?

10 A Well, I would say the same for the revenue
11 synergies that I had reviewed, other than the issue with
12 respect to verifiable costs.

13 Q And is that conclusion essentially what's depicted
14 on page 7 of the demonstrative?

15 A Yes, sir.

16 Q Now, Mr. Quintero, what is your professional
17 opinion of the backup and documentation that defendants
18 provided for their claimed synergies?

19 A As a CPA, I would be in violation of my
20 professional obligations if I were to represent that they
21 are objectively verifiable. They're simply assertions
22 without an appropriate level of underlying documentation or
23 proof.

24 MR. SIEGEL: Thank you, Mr. Quintero.

25 I pass the witness.

1 THE COURT: All right. Well, we've reached the
2 end of the day today.

3 You're a witness under oath in the case. It means
4 you will not be at liberty to discuss your testimony so far
5 or what it might be when we return on Monday.

6 THE WITNESS: I understand, Your Honor.

7 THE COURT: So you need to be back here at 10:30,
8 ready to go. We actually might have an argument on a legal
9 matter before we start, but we should be back here ready to
10 go at 10:30, just in case.

11 THE WITNESS: I will be.

12 THE COURT: Don't discuss your testimony with
13 anyone, including your own counsel, between now and then.

14 THE WITNESS: I understand, Your Honor.

15 THE COURT: All right. You're excused.

16 THE WITNESS: Thank you.

17 MR. PETROCELLI: Your Honor, may I approach?

18 THE COURT: Yes.

19 (Sealed bench conference)

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8 (Open court)

9 THE COURT: All right. See you at 10:30 on
10 Monday.

11 DEPUTY CLERK: All rise.

12 This Honorable Court will stand in recess until
13 the return of court.

14 (Proceedings concluded at 6:40 p.m.)

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C E R T I F I C A T E

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

Date: April 19, 2018 /S/ William P. Zaremba

William P. Zaremba, RMR, CRR