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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

) CASE NO: 13-35998
)
) HOUSTON REGIONAL SPORTS) Houston, Texas
NETWORK, L.P.,)
) Friday, December 20, 2019
)
) Debtor.) 9:01 a.m. - 9:48 a.m.
)
) -----)

STATUS CONFERENCE

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

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1 MR. GOLDBLATT: Good morning, Your Honor. Craig
2 Goldblatt on behalf of Comcast entity, go -- Mr. Burnovski,
3 who I'm sure is also on the line with me taking the lead in
4 this discussion.

5 THE COURT: Thank you. Mr. Slusher. Mr. Slusher.

6 MR. SLUSHER: Good morning, Your Honor. Vincent
7 Slusher, Drinker Biddle, for Comcast.

8 THE COURT: Good morning. Mr. Rogers. Let me try
9 that again; it looks like I may have missed it, Mr. Rogers.

10 MR. ROCKFORD: Do you mean Mr. Rockford with
11 (indiscernible).

12 THE COURT: From 215 area code.

13 MR. ROCKFORD: Yes. This is Mark Rockford for in-
14 house counsel of Comcast. Good morning, Your Honor.

15 THE COURT: Good morning. I'm sorry that I must
16 have typed your name wrong the last time you appeared, Mr.
17 Rockford, but thank you.

18 MR. ROCKFORD: No worries.

19 THE COURT: From the 212 area code, it's 450-4666.

20 MR. BURNOVSKI: Good morning, Your Honor. Bryan
21 Burnovski on behalf of Comcast. I'm going to echo Mr.
22 Brown's comments. Thank you for accommodating my schedule
23 and hearing us telephonically this morning.

24 THE COURT: Thank you, Mr. Burnovski. From 212,
25 we have 836-8317.

1 MR. FUISZ: Good morning, Your Honor. This is
2 Jeff Fuisz, F-U-I-S-Z, from Arnold & Porter on behalf of
3 AT&T SportsNet SW.

4 THE COURT: Good morning. Again from New York,
5 it's 318-8035.

6 MR. ROSENZWEIG: Good morning, Your Honor. It's
7 David Rosenzweig from Norton Rose Fulbright, also on behalf
8 of AT&T SportsNet SW.

9 THE COURT: Thank you, Mr. Rosenzweig. And
10 finally from 212-819-8586.

11 MR. BAUMSTEIN: Your Honor, it's Doug Baumstein
12 from White & Case on behalf of the Rockets. Mr. Kampfner
13 will be taking the lead for us today.

14 THE COURT: Thank you. So what I'd like to do is
15 to just get updated in terms of what the current disputes
16 are, and then I would like to have a discussion of why the
17 parties disagree on the relevance of what's been requested
18 and then figure out what additional submissions that you all
19 believe are appropriate for me to review before we reach a
20 conclusion.

21 So I don't know who wants to take the lead. I
22 probably ought to go and let Mr. Kampfner maybe take that,
23 but if somebody else wants to take the lead, that's fine in
24 terms of telling me where the current level of dispute is.

25 MR. KAMPFNER: Your Honor, I think Mr. Brown will

1 take the lead on the dispute with, and I'll take them on the
2 dispute with disputes with AT&T.

3 THE COURT: Either one.

4 MR. KAMPFNER: On the AT&T issues, I think there
5 are really two categories of documents that are in dispute:
6 one are projections, that was projections for subscriber
7 accounts going forward; and the other are copies of any new
8 carried agreements that may have been entered into since
9 confirmation.

10 You know, AT&T takes the position that they're not
11 relevant and are highly commercially sensitive. We think
12 that they're relevant for the DCF we're going to have to
13 run, and we believe it's not very onerous for them to
14 produce it. And we're prepared to, you know, enter into
15 whatever confidentiality discussions that are reasonable to
16 make sure that the commercially sensitive information is
17 protected, and I think that's where we are with AT&T.

18 THE COURT: All right, thank you. Mr. Brown.

19 MR. BROWN: Your Honor, yes. Thank you, Your
20 Honor. Your Honor, with respect to Comcast, the parties
21 engaged in exclusive meet and confer efforts. And to be
22 honest, those have continued after we -- the team's filed
23 their motion to compel. And to that end, we have been able
24 to resolve some of the team's request, but not all of them.

25 And Comcast, in their pleading, says there are two

1 remaining issues. The way I think about it, there are
2 three remaining issues, but I think we're all in agreement
3 on what the remaining issues are. They are as follows, Your
4 Honor: one is the appropriate date range to be used for
5 collecting documents, emails and the like, Your Honor. Our
6 motion originally requested that Comcast go back to October
7 of 2010. They had refused to do so. We moved, and they
8 have since agreed to extend their collection review
9 production back to that date.

10 So the remaining issue in terms of date range,
11 Your Honor, is whether or not Comcast needs to collectively
12 review and produce documents after December 31, 2016 up to
13 present; that's the issue.

14 Let me identify the two other issues with respect
15 to Comcast, Your Honor, and happy to discuss what we think
16 are the relevance of those materials list. The second issue
17 in dispute with Comcast is whether Comcast needs to add as
18 two custodians for their collection review, et cetera, two
19 individuals from a Comcast group known as EBI -- Enterprise
20 Business Intelligence, I believe that is, Your Honor.

21 And that function did, as we understand it, what
22 Comcast terms drop analyses, and that was typically an
23 analysis of whether to continue to carry or to drop a
24 particular network. Those two individuals, we've identified
25 them in our motion, Messrs. Brassel and Hall, we think

1 performs drop analyses that are germane to the dispute here,
2 and particularly the replacement value here that the team's
3 intended to offer the Court. I'll speak more of the
4 relevance of that in a moment, Your Honor.

5 The third dispute is whether it started off as
6 whether Comcast will even add as a custodian an individual,
7 Mrs. Squire, who is in Comcast Content Acquisition Group and
8 reports up to Ms. (indiscernible). Originally, Comcast
9 flat-out refused to include Ms. Squire as a custodian.
10 After we filed our motion, they agreed to include her as a
11 custodian, but for a very narrow and limited purpose,
12 limited solely to her documents regarding the old network,
13 the new network, the Houston Regional Sports Network in
14 whatever name or ownership it existed.

15 And we think that that is improperly narrow, Your
16 Honor. So the issue there with respect to Ms. Squire as a
17 custodian is whether Comcast needs to extend the scope of
18 documents with respect to her to beyond, to go beyond those
19 related to the old network or the new network. Those are
20 the three issues, Your Honor.

21 Let me circle back to the first now and briefly
22 address your question as to the relevance, and specifically
23 with respect to the date range. The lion's share of the
24 documents that we're seeking with respect to Comcast really
25 cuts across all three of these issues are germane to a

1 replacement value theory that Your Honor is familiar with
2 from five years ago and what the parties have discussed in
3 their pleadings.

4 And the theory effectively, Your Honor, is what
5 the terms would be. I guess first a threshold question,
6 would Comcast have entered into a new contract for carriage,
7 a new affiliation agreement with the new network if,
8 hypothetically, the network had rejected the Comcast Cable
9 affiliation agreement in the bankruptcy. And then the
10 secondary question is part of that here, Your Honor, is if
11 the new network and Comcast were to have entered into a new
12 affiliation agreement, what effectively would the terms be
13 or how would they differ, if at all, from the terms of the
14 Comcast Cable affiliation agreement.

15 And the documents that we seek from Comcast,
16 documents post-dated December 31, 2016, documents from the
17 files of Messrs. Brassel and Hall and the additional
18 documents from the files of Ms. Squire, go to those
19 theories. We understand that Comcast did drop analysis with
20 respect to other networks and other regional sports
21 networks. Those dropped analyses are the very sorts of
22 analyses that we're talking about in a replacement value
23 theory. That threshold point that I mentioned to Your
24 Honor, would Comcast carry the network.

25 And at this stage, the question is whether the

1 information is discoverable, not whether it's admissible at
2 trial. And we think information after December 31, 2016,
3 information from the files of the EBI personnel who actually
4 ran these analyses and information from the files of Ms.
5 Squire going back even before December 31, 2016, back in
6 time to 2015, 2014 -- potentially earlier, Your Honor, we
7 don't know -- are all germane to this question of whether
8 the threshold question in a replacement value theory and
9 whether Comcast would actually agree to enter into a new
10 affiliation agreement with the network, the new network, had
11 the old affiliation agreement be existing, I guess, Comcast
12 carry affiliation agreement been rejected, and we think
13 that's relevant. So happy to talk further about it if Your
14 Honor wants.

15 I think the last topic that Your Honor mentioned
16 was trying to figure out a path forward here and what
17 additional submissions the parties would like to make. With
18 respect to Comcast, they filed an opposition yesterday.
19 We've had an opportunity to review it. We think it would be
20 appropriate to file a reply, and we can do so promptly.
21 We're happy to do that on whatever schedule Your Honor would
22 like, and we're happy to offer any other submissions Your
23 Honor wants. And we're also happy to have an in-person
24 substantive hearing on the merits of the motion once fully
25 briefed, if that is Your Honor's preference. However Your

1 Honor wants to proceed is fine with us.

2 THE COURT: I want to hear from others. But
3 before I do that, my inclination is to think that watching
4 people make this argument will be no more effective than
5 reading stuff. Do you want to come in and make an oral
6 argument, or do you want me to rule on what I'm going to
7 hear today on the phone and on the papers that have been
8 filed, and let's assume that we give people another round of
9 filing things. I mean, if you want to come in, it's not
10 that I don't want to see you. I just -- I don't know how
11 it's (indiscernible).

12 MR. BROWN: Your Honor, I do very much enjoy being
13 in front of you and in your courtroom. I'm happy to do it
14 if you would like. But I think, as I oftentimes do, that we
15 can articulate our positions (indiscernible) and we're happy
16 to do that and address Comcast's arguments and the issues
17 raised in their opposition and their reply. And if Your
18 Honor's comfortable with not having an in-person hearing,
19 that's perfectly fine with us as well.

20 THE COURT: Okay, thank you. And who would like
21 to start with the reply on behalf of Comcast, and then we'll
22 move over to the AT&T issue.

23 MR. BURNOVSKI: Sure, Your Honor. This is Bryan
24 Burnovski.

25 THE COURT: Thank you, Mr. Burnovski.

1 MR. BURNOVSKI: So, Your Honor, as Mr. Brown
2 noted, the parties engaged in extensive meet and confer
3 discussions. Comcast agreed to produce a large number of
4 documents in response to the team's requests, and the
5 parties continue to make progress on the issues and narrow
6 the scope of the dispute since the teams originally filed
7 their motion.

8 But there, as Mr. Brown noted, there remain a few
9 areas of remaining dispute where the parties remain at an
10 impasse. As Mr. Brown explained, the vast majority of the
11 dispute concerns the appropriateness of whether or not
12 Comcast should be required to produce -- search for and
13 produce documents after the effective date, which Your Honor
14 has previously ruled should be the starting point for the
15 valuation date in connection with the current state in the
16 proceedings.

17 During the meet and confer process, Comcast had
18 agreed to produce some documents after the effective date,
19 despite the fact that Comcast believes such documents are
20 largely, it not entirely, irrelevant to the issues before
21 the Court, including drop analyses that Mr. Brown mentioned
22 and related emails going up through December of 2016.

23 But importantly, Your Honor, that was, we believe,
24 repeatedly made clear that that was without prejudice for
25 our position that such documents are relevant. And I think

1 Your Honor will recall that the parties wouldn't even
2 discuss this issue back in 2018 and asserts its remand
3 decision. And the Court during that hearing, repeatedly --
4 without formally ruling on the issue, repeatedly expressed
5 its view that documents after the effective date would not
6 be relevant to the issues before the Court if the question
7 to be decided was in order for market value, Comcast
8 collateral as of a particular date.

9 The Court subsequently -- at that time, the Court
10 had not yet ruled on what the question to be answered was.
11 But the Court later did so in a July 31st, 2019 opinion
12 where the Court answered that question by saying, yes, the
13 issues -- now instructing us to -- it shouldn't be measured
14 based on the market value of the assets.

15 Accordingly, Your Honor, you know, it is clear
16 that information and analyses and emails about stuff that
17 wasn't known or knowable as of the valuation date
18 necessarily isn't relevant to the issue before the Court,
19 both as a matter of well-settled law, standard valuation
20 principles, and consistent with the many comments that the
21 Court made on the record during the August 2018 hearing.

22 A couple of more points, Your Honor, just on sort
23 of the nature of what the teams are seeking.

24 THE COURT: Well, let me ask you to focus this a
25 little bit for me because I don't think I've varied in terms

1 of my analysis in terms of the sentence that you just said,
2 which is the critical sentence I think. Something not known
3 or knowable at the time of the confirmation hearing can't be
4 relevant to a determination that's made as of the date of
5 the confirmation hearing with respect to, for example,
6 forecasting what income ought to be.

7 But as I heard Mr. Brown's argument, it was
8 somewhat different than that, and this may be in part
9 because I misunderstand either his argument or the scope of
10 what's being asked for. But let me assume that in 2017,
11 since that's one of the years at issue, that a drop
12 analysis was done on an unrelated network. The way in which
13 that drop analysis was done might inform the right way to do
14 one as of the petition date; in other words, not because of
15 economics turned out to be differently, but because of the
16 method of the analysis.

17 And I'm hoping I can get you to answer that in the
18 context to whether that would be relevant the way I've
19 described it, but also in the context of whether he's asked
20 for stuff that goes far beyond that type of a question.

21 MR. BURNOVSKI: Yes, Your Honor. It's a great
22 question and, Your Honor, just said it exactly where I was
23 going to go. So a drop analysis is analysis that Comcast
24 started doing in 2015. Mr. Brown described the enterprise,
25 Business Intelligent Unit, a group at Comcast, which is a

1 group within Comcast Cable that support the content
2 acquisition group being the group that negotiates carriage
3 agreements as content providers.

4 So I think, Your Honor, in theory, you know, we
5 don't disagree that, you know, analyses of the post-date --
6 the effective date to the extent there's similar stuff that
7 Comcast would have done as of the effective date, you know,
8 could be relevant.

9 The issue here, Your Honor, is that what the teams
10 are asking for in these drop analyses simply didn't exist as
11 of the effective date. This was a type of analysis that
12 Comcast started doing in 2015. They first began doing it --
13 the first such analysis was in connection with Comcast's
14 consideration of whether to carry the S Network; ultimately,
15 Comcast ended up dropping the S Network in late 2015. And
16 since that time, those analyses have evolved and become more
17 sophisticated. But even in its rudimentary form, such
18 analysis simply didn't exist as of the effective date, as
19 we've explained to the teams.

20 THE COURT: But I guess I'm not sure why that
21 matters because I'm trying to look at the real value. And
22 if that's simply a better way of analyzing the data that was
23 in existence on the confirmation date, why wouldn't we use a
24 better method of analysis?

25 In other words, it's not that the num- -- I don't

1 really care, I don't think, about what the actual 2017
2 revenues were on a drop analysis, other than how they would
3 fold into what our confirmation date analysis should have
4 been if we'd used the best methodology. And so, I'm not
5 understanding why the fact that nobody had thought of the
6 methodology that matters if it's still the right way to view
7 the data.

8 MR. BURNOVSKI: Well, I think the question -- the
9 question, Your Honor, isn't in a hypothetical question about
10 the best way to do the data. The question at issue for the
11 team's replacement value theory is back in 2014, what would
12 Comcast have done in the hypothetical scenario where the
13 network rejected the Comcast affiliation rather than assume
14 it.

15 Now, as you know, Your Honor, just a small
16 diversion. You know, Comcast believed that it's
17 inappropriate for the teams to rely on a replacement value
18 theory at this stage in the proceedings for a number of
19 reasons --

20 THE COURT: Right.

21 MR. BURNOVSKI: -- including the fact that, say
22 they had the opportunity to rely on that back at the time --
23 back in the day and consider it and expressly rejected it.
24 But we don't need to decide that now. I just want to note
25 that for the record.

1 But, Your Honor, to the extent Comcast started
2 undertaking different types of analyses in later years that
3 didn't exist as of the effective date, I would submit, Your
4 Honor, that it's not relevant how Comcast would have gone
5 about thinking about that issue in 2014, which is a relevant
6 question.

7 If those types of analyses did not exist, then by
8 definition they can't inform what Comcast would have done in
9 2014 with respect to the hypothetical negotiation with the
10 network over whether to carry it and on what terms to carry
11 it. It's sort of different in times, and that's why I
12 think, Your Honor, it's irrelevant.

13 And I think, Your Honor, just going back to the
14 August 2018 hearing, Your Honor also recognized that the
15 issue of the irrelevance of post-effective date information
16 applied equally to DCF analysis as well a replacement value
17 analysis. And Mr. Baumstein -- I think he's on the phone --
18 agreed on the record with those views.

19 THE COURT: Right. But at least in my mind, I was
20 thinking of data, not methodology. And so what I'm hearing
21 now is just an interesting question that I really haven't
22 thought through, which is, you know, what happens if a
23 different way of looking at the world develops later, but
24 it's better. Am I supposed to use the better way or am I
25 supposed to use an inferior way if that was the best that

1 people had thought of at the time? If I'm understanding the
2 arguments of the parties correctly, I actually don't have a
3 predisposed notion of that.

4 MR. BROWN: Your Honor --

5 Let's let him go ahead and finish, and then I'm
6 going to come back to you.

7 MR. BURNOVSKI: So, Your Honor, again, my answer
8 is I think going back to the principles in terms of what was
9 known or knowable as of the evaluation date, and I think you
10 would take into account the analyses that existed as of the
11 valuation date, not new or better analyses that existed
12 later in time.

13 THE COURT: I got the argument. I'm not sure what
14 to do with it, yup, but I got it.

15 MR. BURNOVSKI: Yeah. And so, Your Honor, the
16 issue over the custodian is very similar. You got
17 custodians, again, the EBI group to have provided -- and
18 most important to the content acquisition group in
19 connection with -- as we explain in our papers, in
20 connection with any hypothetical negotiation that would have
21 taken place in late 2014. It would have been the content
22 acquisition group, particularly, the primary decisionmakers
23 would have been Mr. Rigdon and Ms. (indiscernible), who are
24 mentioned in our papers, who would have been involved in
25 making that decision about whether to carry and on what

1 terms.

2 The EBI folks, I would submit, are irrelevant to
3 that issue, (a) because they would have been involved in the
4 relevant decision, and (b) because, as I noted, they weren't
5 providing any analytical support or analysis to Comcast back
6 in 2014. Again, those analyses just didn't exist.

7 And then finally, Your Honor, with respect to Ms.
8 -- I'm sorry, Miss Squire. It's a similar issue that the
9 teams, their motion seeks -- we've already agreed to produce
10 her documents relating to the network. And so, the team's
11 motion indicates that her documents are relevant and
12 responsive because she was involved directly in running some
13 analyses during the bankruptcy relating to carriage of the
14 network.

15 We've agreed to produce that stuff to the team
16 and, thereby, mooted that issue. So what remains is
17 whether or not Comcast take the burden of searching
18 additional documents of hers from 2014 through the present
19 relating to other networks that we think just aren't
20 relevant to the issues before the Court.

21 THE COURT: All right, thank you. Mr. Brown, go
22 ahead.

23 MR. BROWN: Thank you, Your Honor. Let me first
24 address the date range issue, and whether to look beyond
25 December 31, 2016. I want to address something that Mr.

1 Burnovski said that went to Your Honor's question to him.
2 And first, Mr. Burnovski repeatedly argued that EBI did not
3 exist, did not begin running these drop analyses until 2015
4 and after. And I don't question Mr. Burnovski's sincerity
5 in that position, and that may actually turn out to be the
6 case, Your Honor.

7 However, the teams have articulated to Comcast's
8 counsel in the course of the meet and confers and in our
9 correspondence. We have found evidence on the web, for
10 example, Your Honor, just doing Google searches ourselves,
11 that individuals at Comcast claim to be a member of EBI back
12 in 2013. What those individuals were doing, what EBI was
13 doing, we don't know. But right now, we're at the stage of
14 discovery. And while I don't doubt Mr. Burnovski's
15 sincerity in his position, we're entitled to test that
16 through discovery.

17 And so, part of what we're looking for are those
18 potential analyses back in 2013 and 2014. If that's a null
19 set, by the way, there was no certainly on Comcast. If it's
20 a null set, as Mr. Burnovski seems to suggest, there's
21 certainly no burden on them to, you know, collect or even
22 produce something that does exist.

23 So with respect to documents after December 31,
24 2016, Your Honor, I firmly agree with how you articulated
25 the issue. While the outcome of an analysis, a drop

1 analysis in 2017 may not be particularly germane to a
2 hypothetical analysis of HRS back in 2014, the process, the
3 way of looking at the data, the way of looking at the
4 information certainly may be. And that's the type of
5 information that we think is not only relevant in our mind,
6 but, frankly, more important for today's purposes; that's
7 the kind of information that we think is discoverable.

8 Let me briefly turn to the issue of custodians,
9 and Mr. Burnovski's comments there on custodians, and let's
10 look at the two EBI custodians for a minute. And I think,
11 frankly, Your Honor, the easiest way to figure out this is
12 stuff sort of December 31, 2016 and earlier and then stuff
13 after

14 With respect to those two custodians before
15 December 31, 2016, I really don't understand what Comcast's
16 argument is with respect to his refusal to include his
17 custodians before December 31, 2016. These two individuals,
18 and the group EBI as a whole, were unquestionably conducting
19 drop analyses, and Comcast has already agreed to get certain
20 information regarding those drop analyses. And we think the
21 information from the people and the group that were actually
22 run analyses, running the data, looking at the data; that
23 information is certainly discoverable.

24 With respect to the EBI custodians' data and
25 materials after December 31, 2016, I'll harken back to the

1 date range argument just a moment ago. Similarly with
2 respect to Ms. Squire, Your Honor, I sort of bifurcate that
3 on a date basis as well; things before December 31, 2016 and
4 materials January 1, 2017 and after.

5 With respect to the earlier time period, again,
6 Comcast has recognized that she has relevant and
7 discoverable information with respect to the network. We
8 pointed out to Comcast that she had that information,
9 (indiscernible) numbers. You even asked (indiscernible) had
10 to concede and include her as a custodian with respect to
11 information regarding the network.

12 And now, the only question is whether we get her
13 information with respect to other RSNs and evaluations of
14 other RSNs. And, again, we think that that information is,
15 at minimum, discoverable. It certainly exists and we don't
16 understand their burden concern here, and so we think that's
17 discoverable as well.

18 And with respect to Ms. Squire's materials,
19 January 2, 2017 and after, you know, I come back to the date
20 range argument from earlier, Your Honor.

21 THE COURT: Okay, thank you.

22 MR. BROWN: Your Honor, that is all I wanted to
23 address. Thank you.

24 THE COURT: So I am going to want both parties to
25 file some follow-up briefing -- and here's the way I'll

1 refrain my current query, if I could -- and then we're going
2 to move over, by the way, to the AT&T issue. I want to say
3 I think it depends on what the question is that we need to
4 answer.

5 If the question that we need to answer is what
6 Comcast would have done on the confirmation date, then I
7 don't really understand how subsequently available types of
8 analysis would be relevant. I do understand why it's going
9 to be relevant to you if Comcast had already started doing
10 this type of analysis. And we're going to have to figure
11 out a way and you all need to propose a way to get to the
12 bottom of that question.

13 But if the question for me isn't what Comcast
14 would have done, but what was the replacement value in a
15 more universal way of asking it. Just sort of running
16 through my mind is a paternity test, and I hate to bring
17 that up. But, you know, if a court had determined that the
18 defendant was the father of the child before DNA testing was
19 available and a year later, DNA testing became available,
20 I'm pretty sure courts then would fix their ruling to
21 conform to science.

22 And so, that was the question of was he really the
23 father, not whether someone believed he was the father at
24 the date. And so, that's why I need to understand perhaps
25 how to frame the question better, which I'm not prepared at

1 all to rule on today, as to whether it would have been
2 Comcast's beliefs at that date -- or a more esoteric
3 question, what the court would have determined --
4 replacement value would have been.

5 So I hope you can address that in a subsequent re-
6 filed brief by the two of you.

7 I also want you all, though, to address some sort
8 of initial determination, maybe that's by a short and
9 focused deposition of an individual within Comcast, as to
10 whether drop analyses was performed at all even in its
11 infancy by Comcast as of the confirmation date. And there
12 has to be a pretty straightforward way to get that question,
13 and I would ask you all to confer about how to get to an
14 answer on that.

15 Let's move over, Mr. Kampfner, if you would
16 describe to me the relevance and the show you want from
17 AT&T, and then we're going to let AT&T respond to that.

18 MR. KAMPFNER: Your Honor, as I indicated earlier,
19 the two areas of dispute are whether we would be entitled to
20 projections of subscriber levels going forward and whether
21 we would be entitled to see any new carriage agreements
22 entered into after confirmation. We think those are
23 relevant because, in doing a DCF analysis, you know, the
24 contracts, the way they're structured is you get paid a
25 certain amount per subscriber. And, obviously, the amount

1 of new carriage that the network has is relevant also to
2 determining -- to determining a proper DCF.

3 So this was with respect to the DCF issue, not the
4 replacement value issues, and I think those are clearly
5 relevant to giving our experts the information they need to
6 run a proper model.

7 THE COURT: But if that's information -- I'm going
8 to go back to what we talked about earlier -- not known or
9 knowable at the confirmation date, in what way do you think
10 it can be used by an expert?

11 MR. KAMPFNER: Well, Your Honor, I think the
12 question is, you know, there were determinations made,
13 assumptions made as of the effective date. And I think part
14 of the dispute, for example, was, you know, how much
15 additional carriage would there be or not be. And I think
16 that it is relevant to determine, you know, what has
17 happened, actually happened to see, you know, what the
18 proper projection, right, as of the effective date.

19 In other words, it was relevant to determine --
20 for an expert to determine what assumptions were the proper
21 assumptions to make as of the effective date.

22 THE COURT: All right. Who wants to respond for
23 AT&T?

24 MR. FUISZ: Your Honor, it's Jeff Fuisz from
25 Arnold Porter.

1 THE COURT: Thank you.

2 MR. FUISZ: Your Honor, simply and
3 straightforwardly, we think that both case law and valuation
4 theory reject the idea out of hand that you can rely on
5 actual events in performing a DCF analysis; and here, it is
6 only a DCF analysis. And so AT&T's projections for 2020
7 going forward can't be relevant to a DCF analysis being done
8 for a date years ago. It's what the reasonable projections
9 were as of that time.

10 The same is true of the carriage agreements. You
11 know, I think, you know, Your Honor, in the contract
12 discussion, there's a question about the difference between
13 data and methodology; and here, it's just a question of the
14 data. And case after case and article after article say
15 it's what was reasonably known or reasonably knowable at
16 that period of time.

17 And what AT&T's actual projections are today for
18 next year simply is not relevant to performing the DCF
19 analysis, simply cannot be a proper part of the expert's
20 model. And so, we just don't think it's a close case on the
21 relevance point.

22 To answer the question you posed at the beginning,
23 Your Honor, we have not filed an opposition as of yet to the
24 motion. We obviously would like to make that point and the
25 point about the confidentiality, the information,

1 understanding that the teams have said that they are willing
2 to work with us on that should Your Honor rule it's
3 relevant. And we would propose to stick to the original
4 schedule and lay out for you why we think this doesn't --
5 cannot be a part of their DCF analysis by January 2nd.

6 THE COURT: So in general, I don't understand how
7 an actual 2018 or any year after the confirmation hearing
8 would be directly relevant in terms of plucking it into a
9 DCF analysis. I just can't understand how we could have
10 valued it with that kind of crystal ball.

11 However, once we were to receive expert reports
12 who make forecasts that turn out to be vastly wrong, it's
13 not that we would substitute the new number, but that might
14 become relevant to the cross-examination of the expert as to
15 a methodology that produced a flawed result.

16 In other words, to substitute the flawed result,
17 but to figure out whether there was a flaw in the
18 methodology itself. Sometimes perfect methodologies produce
19 forecasts that are still vastly wrong, and that's just kind
20 of the breaks. I mean, that's the way businesses operate.

21 But if there's a challenge to methodology of
22 determining a forecast, for example, if we see a comparison
23 of Comcast's forecasts using one set of theoretical
24 assumptions based on information available as of the
25 confirmation date, but we see the team's expert use a

1 different set of assumptions, it may then become relevant in
2 order to cross-examine witnesses.

3 I'm inclined to defer this decision until we see
4 what gaps there are in the expert reports. Because if the
5 two experts independently use the same type of
6 methodologies, then I don't know why this should be
7 relevant. So I am going to allow everybody to file some
8 post-briefs, but I'm a bit inclined to postpone the AT&T
9 discovery until after experts produced their reports with
10 their methodologies to see if it then becomes relevant
11 because of different assumptions that are made.

12 But you all can all brief both those questions on
13 both cases. So I don't see any reason not to have
14 simultaneous further briefing. What do you all think of a
15 January 17th deadline for everyone to file one additional
16 brief on the issues that we have discussed today? Page
17 limit; let's say 20 pages per brief.

18 MR. ROSENZWEIG: Your Honor, that's fine with
19 AT&T.

20 THE COURT: All right. And the teams can file one
21 brief in the AT&T matter and a separate brief in the Comcast
22 matter, so there'll be four total briefs each 20 pages.
23 Does that work?

24 MR. BROWN: Your Honor --

25 MR. ROSENZWEIG: I'm fine with that.

1 MR. BROWN: Yeah, Your Honor. Judson Brown on
2 behalf of the Astros. That works for the Astros as well,
3 both in terms of timing and in terms of pages and, you know,
4 two briefs. We appreciate that, Your Honor. Can I add one
5 other--

6 THE COURT: Let me hear from Comcast about the
7 timing and the page length before we get to whatever else
8 you have.

9 MR. BURNOVSKI: Your Honor, Bryan Burnovski.
10 That's fine with Comcast.

11 THE COURT: Thank you. I'm sorry. Go ahead,
12 please, Mr. Brown.

13 MR. BROWN: Thank you, Your Honor. I just wanted
14 to add one other topic. It doesn't need to be decided
15 today, but I wanted to raise it. We are now well, in the
16 third week of December, and we haven't received one document
17 from Comcast or AT&T, for that matter. The parties had
18 filed an agreed-upon schedule with Your Honor that included
19 a trial date of March 16.

20 Your Honor set this case for trial on March 16,
21 and the March 16 trial date was based on a schedule that had
22 document production substantially complete by late November.
23 We're nearly a month later and we still don't have a single
24 document. And now, we're, you know, we're going to be
25 continuing to hash out these discovery issues, which I do

1 think are important and I do want to address appropriately
2 for Your Honor and give Your Honor time to address them
3 until late January.

4 We don't have to address it now, but I do think
5 the schedule is going to have to shift as a result of just
6 this discovery process. I wanted to apply for Your Honor
7 and let you know that we will work with Comcast, as we've
8 done for many years now, to try to reach an agreement on the
9 schedule. Hopefully, we can all come to an agreement. I
10 mean, we've waited five years to come back to this, so I
11 don't see why we need to rush through and have a trial March
12 16 or the following week.

13 And, hopefully, we can come to an agreement on an
14 appropriate schedule that will allow the parties to brief
15 documents, allow Your Honor to address these important
16 discovery issues, and we can move forward promptly, but not
17 killing ourselves to hit a March 16th trial deadline that,
18 frankly, is just not possible at this point.

19 THE COURT: Yeah. Look, let me just say a couple
20 of things. First, on behalf of the whole court system, I
21 apologize you guys have been here for all this time. I
22 think it's a shame, shouldn't have happened. But it did,
23 and we're living with that.

24 Second, I believe that today's discovery disputes
25 that we're hearing are complicated and are in good faith. I

1 don't see that anyone is raising from any one of the sides'
2 arguments that are close to not being bona fide arguments.
3 We're not in the range of somebody delaying this. So in
4 that context, you can file what's appropriate if you all
5 can't reach an agreement. But, look, I'm not having
6 discovery disputes here that are frivolous. It shouldn't
7 result is us taking them into account and we figure out how
8 to go to trial.

9 So, hopefully, the parties can meet and confer
10 about what to do about it. But I hope that the questions
11 that I've asked show that I'm respecting all the arguments
12 because I am. I think they're important arguments, and I
13 think this remand is a difficult remand to grasp and to deal
14 with. And everyone is trying to deal with it, and I
15 appreciate that. So you all can confer, and I appreciate
16 the heads up. And if you all can't reach a deal, file a
17 motion with arguments about it.

18 MR. BURNOVSKI: Your Honor, this is Bryan
19 Burnovski for Comcast. I just (indiscernible) Comcast
20 agrees with Mr. Brown on the schedule. And I'm sure the
21 parties will be able to work together to work something out
22 and we'll, you know, submit a revised schedule to Your Honor
23 once we have greater clarity on the timeline here. But what
24 we're currently prepared to work with the other side to
25 address it.

1 THE COURT: I appreciate that very much and hope
2 everybody has a great holiday season. We'll see briefs on
3 the 17th. We're going to take this under advisement. On
4 January 21st, I'll try and get you a ruling promptly. I
5 don't intend to schedule more oral arguments on it. We'll
6 just take it under advisement and try and get you out a
7 written discovery order.

8 Thank you very much. Have a good holiday.

9 MR. BURNOVSKI: Thank you, Your Honor. You too.

10 CLERK: All rise.

11 MR. BURNOVSKI: Thank you, Your Honor.

12 (Proceedings adjourned at 9:48 a.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



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