

TRANSCRIPT OF PROCEEDINGS

-----X
IN THE MATTER OF:)
)
DETERMINATION OF RATES AND TERMS) Docket No.
FOR DIGITAL PERFORMANCE OF SOUND) 19-CRB-0005-WR
RECORDINGS AND MAKING OF) (2021-2025)
EPHEMERAL COPIES TO FACILITATE)
THOSE PERFORMANCES (WEB V))
-----X

OPEN SESSIONS

Pages: 6062 through 6481 (with excerpts)
Place: Washington, D.C.
Date: November 19, 2020

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, N.W., Suite 206
Washington, D.C. 20005
(202) 628-4888
contracts@hrccourtreporters.com

1 UNITED STATES COPYRIGHT ROYALTY JUDGES

2 The Library of Congress

3 -----X

4 IN THE MATTER OF:)

5)

6 DETERMINATION OF RATES AND TERMS) Docket No.

7 FOR DIGITAL PERFORMANCE OF SOUND) 19-CRB-0005-WR

8 RECORDINGS AND MAKING OF) (2021-2025)

9 EPHEMERAL COPIES TO FACILITATE)

10 THOSE PERFORMANCES (WEB V))

11 -----X

12 BEFORE: THE HONORABLE JESSE M. FEDER

13 THE HONORABLE DAVID R. STRICKLER

14 THE HONORABLE STEVE RUWE

15

16 Library of Congress

17 Madison Building

18 101 Independence Avenue, S.E.

19 Washington, D.C.

20 November 19, 2020

21 10:30 a.m. EST

22 REMOTE HEARING

23 VOLUME XXI

24

25 Reported by: Karen Brynteson, RMR, CRR, FAPR

1 A P P E A R A N C E S:

2 ** All Appearances by Zoom Webinar **

3 On behalf of SoundExchange, The American Federation
4 of Musicians of the United States and Canada, Screen
5 Actors Guild and American Federation of Television
6 and Radio Artists (SAG-AFTRA), American Association
7 of Independent Music (A2IM), Universal Music Group
8 (UMG), Warner Music Group, Sony Music Entertainment,
9 Jagjaguwar:

10 DAVID A. HANDZO, ESQ.

11 ANDREW B. CHERRY, ESQ.

12 STEVEN R. ENGLUND, ESQ.

13 ALEX S. TREPP, ESQ.

14 DEVI M. RAO, ESQ.

15 PREVIN WARREN, ESQ.

16 LOREAL R. ROCK, ESQ.

17 SARAH J. CLARK, ESQ.

18 EMILY CHAPUIS, ESQ.

19 Jenner & Block, LLP

20 1099 New York Avenue, N.W.

21 Suite 900

22 Washington, D.C. 20001

23 202-639-6000

24

25

1 APPEARANCES (Continued):

2 On behalf of Google Inc.:

3 DAVID P. MATTERN, ESQ.

4 PETER SCHMIDT, ESQ.

5 King & Spalding LLP

6 1700 Pennsylvania Avenue, N.W.

7 2nd floor

8 Washington, D.C. 20006

9 202-737-0500

10

11 KENNETH L. STEINTHAL, ESQ.

12 King & Spalding LLP

13 706 De Haro Street

14 San Francisco, CA 94107

15

16 JASON BLAKE CUNNINGHAM, ESQ.

17 King & Spalding LLP

18 401 Congress Avenue

19 Austin, TX 78701

20

21 LIDA RAMSEY, ESQ.

22 King & Spalding LLP

23 1185 6th Avenue, Floor 35

24 New York, New York 10036

25

1 APPEARANCES (Continued):
2 On behalf of Pandora and SiriusXM Radio, Inc.:
3 BENJAMIN E. MARKS, ESQ.
4 TODD D. LARSON, ESQ.
5 JEREMY C. CAIN, ESQ.
6 JEREMY P. AUSTER, ESQ.
7 JESSICA L. FALK, ESQ.
8 LUCAS F. TESORIERO, ESQ.
9 REED L. COLLINS, ESQ.
10 RANDI SINGER, ESQ.
11 Weil, Gotshal & Manges LLP
12 767 Fifth Avenue
13 New York, New York 10153
14 212-310-8007
15
16
17
18
19
20
21
22
23
24
25

1 APPEARANCES (Continued):

2 On behalf of National Association of Broadcasters:

3 JOSEPH WETZEL, ESQ.

4 ANDREW GASS, ESQ.

5 SADIK HUSENY, ESQ.

6 SARANG V. DAMLE, ESQ.

7 IVANA DUKANOVIC, ESQ.

8 ALICIA R. JOVAIS, ESQ.

9 BRITT N. LOVEJOY, ESQ.

10 CAROLINE ESSER, ESQ.

11 KRISTINE W. HANSON, ESQ.

12 LAUREN DEIFE, ESQ.

13 Latham & Watkins LLP

14 505 Montgomery Street

15 Suite 2000

16 San Francisco, CA 94111

17 415-391-0600

18

19

20

21

22

23

24

25

1 APPEARANCES (Continued):

2 On behalf of National Religious Broadcasters

3 Noncommercial Music License Committee:

4 KARYN K. ABLIN, ESQ.

5 THOMAS URBAN, ESQ.

6 ELIZABETH CRAIG, ESQ.

7 Fletcher, Heald & Hildreth

8 1300 N. 17th Street, Suite 1100

9 Arlington, VA 22209

10

11 ** Index appears at end of transcript.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

2 (10:30 a.m. EST)

3 THE CLERK: It's 10:30. Let's raise the
4 curtain.

5 MR. SACK: The curtain is raised.

6 CHIEF JUDGE FEDER: Good morning. And
7 welcome. This is the day set down for closing
8 arguments in Docket No. 19-CRB-005-WR, Determination
9 of Rates and Terms For Digital Performance of Sound
10 Recordings, and Making of Ephemeral Copies to
11 Facilitate Performances; in other words, Web V.

12 This is the 21st and final day of this
13 hearing. We will be hearing from the parties in the
14 following order: SoundExchange won the coin toss;
15 and, in fact, we did toss a coin to determine this.
16 They will proceed first, followed by Pandora,
17 SiriusXM, Google, NAB, the NRBNMLC. And then if
18 SoundExchange has remaining time out of their three
19 hours and 45 minutes, they -- and has more to say,
20 they may proceed.

21 Following that, the Judges have reserved the
22 right to seek additional oral argument, either on
23 their own volition, sua sponte, or for good cause
24 shown upon an oral motion of one of the parties.

25 We have seven and a half hours of closing

1 arguments scheduled. That's a lot to fit into one
2 day. We will be having a half-hour lunch break,
3 instead of the usual hour. It will be either --
4 depends on when SoundExchange finishes. It will
5 either be directly after SoundExchange's presentation
6 or after Pandora/SiriusXM's presentation, depending
7 on how much time SoundExchange chooses to reserve.

8 So it's a very full day. Without further
9 ado, let's commence with the closing arguments.

10 Mr. Handzo, over to you.

11 CLOSING ARGUMENT BY COUNSEL FOR SOUNDEXCHANGE

12 MR. HANDZO: Thank you, Judge Feder, Judges.
13 For the record, I'm David Handzo on behalf of
14 SoundExchange, the American Federation of Musicians,
15 SAG-AFTRA, A2IM, Sony Music Entertainment, Universal
16 Music Group Recordings, Warner Music Group,
17 Jagjaguwar, and I'm going to be referring to that
18 group collectively as SoundExchange.

19 One process point before I begin. It is my
20 understanding that all of the participants and
21 attendees who are in this proceeding are allowed to
22 see restricted information that is on the screen, so
23 that when we go into restricted session, which I will
24 need to do sometimes, we will only need to cut off
25 the audio. We won't need to cut off the video frame.

1 So with that, I have to say at the outset
2 that it has been a long trial and a long year.
3 Fortunately, the trial is ending even if the year
4 seems like it never will.

5 I'm going to start with SoundExchange's rate
6 proposal, which you see here. SoundExchange is
7 seeking commercial service subscription rates for
8 2001 of .0031 per play, commercial ad-supported rates
9 for 2001 of .0028 per play with a CPI adjustment over
10 the years, and a minimum fee of a thousand dollars
11 per channel per year.

12 Now, I want to start this morning by taking
13 a little bit of a look back at the Web IV decision
14 and the market as it existed at that time. And I'm
15 certainly aware that in these proceedings the Judges
16 don't adjust rates. You set them anew. Even so, I
17 think it's useful to look back and see how we got to
18 where we are now.

19 Directionally, the changes in the market
20 since Web IV all point to higher rates for commercial
21 webcasting.

22 The first change is that opportunity cost
23 has clearly risen for the record companies since the
24 time of Web IV. Now, I don't recall from the Web IV
25 record any real quantification of opportunity cost

1 for ad-supported services, but I do recall that the
2 survey evidence in that case suggested to the Judges
3 that there was what the Judges characterized as a
4 bi-modal chasm and that only a small part of the
5 market, the downstream market, would be willing to
6 pay for subscription services.

7 And, presumably, the thought at the time was
8 that since very few people who use ad-supported
9 services would have any willingness to pay for music,
10 the opportunity cost must be low.

11 And since then, we know that lots of
12 consumers have, in fact, purchased subscriptions.
13 You see the -- just one indication of that here in
14 this bar chart. But there's obviously a lot more
15 willingness to pay for music and for subscriptions
16 than was understood at the time of Web IV. Now we
17 know that lots of those people who are on
18 ad-supported services can be persuaded, with the
19 right measures, to buy music.

20 Now, we'll argue later about how much
21 opportunity cost there is here and how to measure it.
22 But, surely, it's higher than it was at the time of
23 Web IV. And that points to higher royalties.

24 Second, since the time of Web IV, the
25 per-unit revenues for ad-supported services, in

1 particular, are up. In his written direct testimony,
2 Mr. Phillips from Pandora talks about how since Web
3 IV Pandora has achieved greater success in increasing
4 its revenues from its ad-supported service. And then
5 I -- I won't read the next part of the slide, which
6 is restricted, but you see testimony there about
7 another service and what's happened with its
8 revenues.

9 And a bargaining model would suggest that as
10 those per unit revenues go up, the parties would be
11 splitting the surplus and, therefore, the effective
12 per-play rates would go up as well. And that's
13 consistent with the metrics that you see in the
14 marketplace agreements, which tend to be
15 percentage-of-revenue rates, which would drive up
16 effective per-play rates as the revenue goes up.

17 So that too is another indicator that rates
18 should be going up in this case compared to Web IV.

19 The third change is that the subscription
20 interactive market that served as a benchmark in Web
21 IV, and serves as a benchmark here, has changed in
22 ways that affect whether and to what degree there
23 should be a competition adjustment for that
24 benchmark.

25 Now, the Services will say no, there has

1 been no change since Web IV. The majors were
2 must-haves then and they're must-haves now. But you
3 have to look at both the buyers and the sellers. And
4 there can't really be any serious doubt that the
5 subscription interactive services, especially Spotify
6 and Apple, have substantially grown and become more
7 important.

8 And there can't be any serious doubt that
9 their ability to influence market share directly or
10 indirectly has grown as well. And that clearly
11 increases their bargaining power and so we believe at
12 this point there would be no effective competition
13 adjustment necessary. Even if there was, it would
14 clearly be small.

15 And then another change since the time of
16 Web IV.

17 JUDGE STRICKLER: Mr. Handzo, this is Judge
18 Strickler. How are you this morning, sir?

19 MR. HANDZO: Good, thank you.

20 JUDGE STRICKLER: Question for you. You
21 said that there should be -- a moment ago, there
22 should be no effective competition adjustment, or if
23 there is one, it clearly should be small.

24 If the Judges were of a mind to say that
25 the -- whatever -- whatever increased market power

1 exists with regard to the -- the services, Apple and
2 Spotify, as -- as your argument goes, what would be
3 the appropriate effective competition adjustment, if
4 one is necessary?

5 MR. HANDZO: Let me just say, first of all,
6 Judge Strickler, that I'm hoping to persuade you that
7 your question is moot because there should be no
8 adjustment. But we have proposed, and I will -- I
9 will get to this, but in the way that Professor
10 Shapiro makes his proposed adjustment, I think if you
11 do it correctly, what you see would be an adjustment
12 something on the order of 2 percent.

13 Alternatively, I think Dr. Peterson uses the
14 Web IV adjustment as part of his approach, and our
15 belief is that if you were to use that evidence, we
16 think it's stale, but if you were to use it, you
17 would then have to adjust that downward to account
18 for the changes in rates since the time of Web IV,
19 and that would produce an adjustment of something
20 like 4 to 5 percent.

21 But I will get to this a little bit more.

22 JUDGE STRICKLER: I know you will. But just
23 while we're on the thread for a moment, the
24 adjustment -- the adjustment that I -- and correct me
25 if I'm wrong -- that you primarily rely on within the

1 interactive market to show that there's a
2 countervailing power on the part of Spotify and
3 perhaps Apple as well is the decrease in the rate
4 from 55 percent to 52 percent.

5 Now, if I remember correctly that -- I'm
6 sorry. Go ahead.

7 MR. HANDZO: I'm sorry. I don't mean to
8 interrupt, but I believe that actually is restricted
9 information. So --

10 JUDGE STRICKLER: Well, I was doing it off
11 the top of my head, so I'm sure I'm wrong.

12 MR. HANDZO: I -- no doubt. In fact, I'll
13 confirm that.

14 JUDGE STRICKLER: Very good. So are you
15 saying that whatever the percentage is in the -- in
16 any reductions in rates from the period in time you
17 rely on to the period -- to the start of the period
18 to the end of the period or to the new period, that
19 that percentage needs to be subtracted from the --
20 the -- the effective competition adjustment that was
21 made in Web IV?

22 MR. HANDZO: Yes. That's one way to do it.
23 It's not the only way, but it is one way. And I
24 think Mr. Orszag testified to that in his testimony,
25 that that was a way to look at it. Another way to

1 look at it might be to look at a difference in rates
2 between certain on-demand subscription services that
3 we believe have the most market power and the others
4 that we believe have less. That would result in
5 actually a slightly even lower adjustment than what
6 I'm proposing. Those would be two ways to look at
7 it.

8 But, basically, yes, you're correct.

9 JUDGE STRICKLER: Thank you, Mr. Handzo.

10 MR. HANDZO: And just back to that same vein
11 of what has changed in the market and the increase in
12 market power of the subscription interactive
13 services, these -- this slide, which is restricted,
14 so I won't read anything, but does have what has
15 happened to the rates since Web IV.

16 One more change in the market that I wanted
17 to talk about, and that was that at the time of Web
18 IV, the Judges reduced the ad-supported rate paid to
19 the majors because the records suggested a lower rate
20 for Indies. And so in Web IV, you blended those two
21 and came up with a lower blended rate.

22 The evidence in this case, which, again, I'm
23 just not going to -- I'm not going to read what's on
24 the slide because it's restricted, but that's an
25 issue that Mr. Orszag looked at, and we would argue

1 that based on the record in this case, no such
2 downward adjustment would be necessary, which, again,
3 would tend to raise the rates above what they were at
4 the time of Web IV.

5 So all of those factors, we think,
6 directionally point up. And now I want to get a
7 little bit more into the record to talk about exactly
8 how and why and what we think it should be.

9 This is my -- my roadmap and where I'm going
10 to start. I'm going to start with subscription
11 non-interactive services and go through the
12 benchmarking and then get to the bargaining models.
13 And then at the end, I will turn things over to my
14 colleague, Mr. Warren, who I assure you is
15 appropriately dressed today, so that he can deal
16 with -- talk about the non-commercial religious
17 broadcasters.

18 CHIEF JUDGE FEDER: You mean he is wearing
19 his Metallica T-shirt?

20 MR. HANDZO: I think we have it handy, if he
21 needs to change into it, yes.

22 JUDGE STRICKLER: I think he's free to wear
23 it under his jacket and shirt and tie.

24 MR. HANDZO: I'll resist the temptation to
25 go any further in light of the time limitations. But

1 starting with subscription non-interactive services
2 and the benchmarking for that, Mr. Orszag and
3 Professor Shapiro both start their benchmarking
4 exercise with subscription interactive services as
5 their benchmark.

6 And both have to make adjustments for
7 interactivity, and both profess to apply the ratio
8 equivalency concepts, accepted by the Judges in Web
9 IV as a way to adjust for interactivity, at least in
10 part.

11 So I'm not going to talk about whether ratio
12 equivalency applies here, since the Judges found that
13 it did in Web IV for subscription markets, and no one
14 suggests that that has changed.

15 So there are three big-picture issues that I
16 think we then need to address, which I've laid out on
17 the slide. But the first is have you applied ratio
18 equivalency? There actually is a dispute here. The
19 second is when you're looking at the benchmark
20 market, are you analyzing it based on all plans
21 authored by subscription interactive services or just
22 full-price plans? And then the third issue is the
23 number of interactivity adjustments. Mr. Orszag has
24 one; Professor Shapiro has two.

25 So turning to that first question, how do we

1 apply ratio equivalency? Mr. Orszag calculated rates
2 in a manner intended to result in the target services
3 paying the same percentage of revenue as benchmark
4 services.

5 Professor Shapiro and the services say
6 that's wrong and you really have to start with
7 per-play rates in the benchmark market and adjust
8 them.

9 And whether that results in the target
10 services paying the same ratio of revenue to royalty
11 in the benchmark -- as the benchmark services is
12 really not relevant to their approach.

13 The argument is that ratio equivalency means
14 what it says. It's the ratio of revenue to royalty,
15 and it's -- that ratio of revenue to royalty is
16 predicted to be the same from the benchmark and the
17 target markets. That's what the prior decisions say,
18 starting with Web III.

19 In Web III, SoundExchange's expert in that
20 case was Dr. Michael Pelcovits. The Judges described
21 his approach saying that his approach was, quote, "it
22 is reasonable to predict that the ratio of
23 per-subscriber royalty fees to consumer subscription
24 prices will be essentially the same in both the
25 benchmark and target markets."

1 So that language talks about a ratio. But a
2 percentage is just a way of expressing a ratio, so I
3 think it's basically saying the percentage should be
4 the same in both markets, and the Judges accepted
5 that approach. You had some concerns with Dr.
6 Pelcovits's data but not with the approach.

7 And then in Web IV, Professor Rubinfeld said
8 he was adopting Dr. Pelcovits's approach. He
9 testified, as the Judges recite in the decision, that
10 he calculated what the effective percentage of
11 revenue was in the benchmark market and then, you
12 know, quoting the Judges, they said, "Thus, given
13 Dr. Rubinfeld's assumption that the ratios should be
14 equal in both markets, the per-play royalty rate for
15 the non-interactive service, D (i.e., the statutory
16 rate) would also have to provide the record companies
17 with the same minimum percentage of revenue out of C
18 (the average monthly retail non-interactive
19 subscription prices)."

20 So, again, I just don't see how you read
21 that language as saying anything other than,
22 regardless of whether the rates are paid on a
23 per-play basis or a per-subscriber basis or a
24 percentage-of-revenue basis, the effective royalty
25 paid in the target market should wind up being

1 essentially the same percentage of revenue as the
2 percentage of revenue paid in the benchmark market.

3 JUDGE STRICKLER: Mr. -- Mr. Handzo -- Mr.
4 Handzo --

5 MR. HANDZO: Yes.

6 JUDGE STRICKLER: -- the first bullet point
7 you have up there on slide 11, you -- you quote us,
8 and the point is relating subscription revenues to
9 royalties in the interactive market and royalties in
10 the non-interactive market.

11 You would concede, would you not, that in
12 Web IV, what we were dealing with in doing -- in
13 applying the ratio was a per-play rate that was
14 understood by the Judges to be the effective rate;
15 that is to say, that while there were various prongs
16 in the interactive market, the prong that was
17 understood to be controlling in that market or
18 dominant -- although there is some dispute on that in
19 this record -- is the per-play rate, rather than
20 a percent of revenue rate? Would you acknowledge
21 that that was the factual backdrop as the Judges
22 understood it in Web IV?

23 MR. HANDZO: I think the factual backdrop at
24 that time was that per-play rates were the dominant
25 metric at the time, not percentage-of-revenue rates.

1 JUDGE STRICKLER: And -- and because of that
2 fact or assumption, whatever you would call it at the
3 moment, that is, in fact, what the Judges did in Web
4 IV; they related subscription prices, the -- the 9.99
5 that was in the market retail at that time to the
6 per-play royalty rate in the -- in the benchmark
7 market to the 4.99, which was the retail price in the
8 non-interactive target market, to -- to find or solve
9 for D, which was the denominator in the target
10 market.

11 Isn't -- isn't that what was done in Web IV?

12 MR. HANDZO: Yes, I believe that's correct,
13 just one -- one nuance there, I think. I think you
14 referred to effective per-play rates. What Professor
15 Shapiro -- Professor Rubinfeld was using in Web IV
16 was the headline per-play rates. But --

17 JUDGE STRICKLER: Well, is there any
18 difference on that? If it turns out, given the fact
19 or the assumption that it was the per-play headline
20 rate that controlled, it was both a per-play rate and
21 happened to be the effective rate. There was no need
22 to convert to get to the effective rate. It had --
23 it -- it was the rate that everybody effectively and
24 explicitly paid if the per-play prong was the one
25 that applied, right?

1 MR. HANDZO: I -- I think that's right. I'd
2 have to confess I'm not as conversant with the Web IV
3 record as I should be, but -- but, again, I think it
4 is correct, Number 1, that Professor Rubinfeld used
5 headline per-play rates but it was the Judges
6 understanding of the record that those headline
7 per-play rates were the governing metric, rather than
8 a per-sub or a percentage-of-revenue rate. And
9 that's why in that case the approach was to adjust
10 the per-play rates, as you suggested.

11 JUDGE STRICKLER: Well, it seems --

12 MR. HANDZO: Of course, the market has
13 changed now.

14 JUDGE STRICKLER: It seems to me -- because
15 this is a large issue in this case, a bone of
16 contention between Mr. Orszag, certainly, and
17 Professor Shapiro, it seems to me that we never had
18 to deal with the issue of how to use an effective
19 per-play rate in Web IV, if the effective -- excuse
20 me, an effective rate in Web IV, if the effective
21 rate turned out to have been or would have been the
22 percentage-of-revenue rate.

23 So it seems to me, and correct me if you
24 disagree, that it might be the case that your
25 argument is that there is a different -- it's not

1 that you're -- you're correctly applying or
2 incorrectly applying Web IV or that Professor Shapiro
3 is correctly or incorrectly applying Web IV; it's
4 that the facts have changed, that the prong that --
5 that applies -- and I think your evidence suggests
6 that there would not -- there is not even a per-play
7 prong any longer in the market -- it's your point
8 that we have a different factual situation here in
9 Web V, which is that we have to make a conversion to
10 the effective per-play rates and the true dispute is
11 how you go about making that conversion. And that's
12 the true dispute between Professor Shapiro and Mr.
13 Orszag.

14 Is that an accurate portrayal of your
15 position?

16 MR. HANDZO: I would say not exactly. I
17 think it is certainly true that the facts on the
18 ground have changed in the way that you described,
19 but I don't think that really causes any problems
20 with figuring out how to apply ratio equivalency.

21 And, for example, in Web III, I think what
22 Dr. Pelcovits was using was not per-play rates. It
23 was actually per-subscriber rates. So the -- the
24 underlying notion of ratio equivalency never actually
25 turned on which metric you were using. It was always

1 we can do the adjustments to get where we need to go
2 based on the underlying concept.

3 And, actually, that may help lead me to my
4 next slide, because I think that the reality is --
5 and this, of course, is the equation that you used
6 from Web IV -- it doesn't really matter how you get
7 to the results of making the ratio of royalty to
8 revenue in the target market match the ratio of
9 revenue to royalty in the benchmark market.

10 Now, you -- the Judges offered this
11 equation, but in the Web IV decision, you observed
12 that it could be solved in a number of different
13 ways. It doesn't matter which order you solve the
14 equation. You said so in a -- in a footnote in Web
15 IV.

16 So Mr. Orszag took the ratio of B -- of A
17 over B and multiplied it times C to solve the
18 equation. Mathematically, that works just fine, but
19 you can also do it Professor Shapiro's way as well,
20 which I think was to take the ratio of C and A and
21 multiply it times B. But they both solve the
22 equation in the same way. It just doesn't matter.

23 And it also doesn't matter whether you use
24 per-play, per-sub, or percentage of revenue. Mr.
25 Orszag explained why, and I think we ran through this

1 math in our proposed findings of fact.

2 If you're solving the equation the way Mr.
3 Orszag did, so A over B, you can use total revenue
4 for A over B and you get a certain ratio, you can use
5 revenue per play and revenue -- and royalty per play
6 for A over B and you get exactly the same ratio. It
7 just -- it doesn't matter which ones you use.

8 So I think fundamentally the concept is
9 you're going to wind up with the same ratio of
10 revenue to royalty in the two markets, but whether
11 you get there by per-play, per-sub, or percentage of
12 revenue does not actually really affect the
13 calculations.

14 JUDGE STRICKLER: Mr. Handzo, you're know no
15 doubt correct in what you just said, but it leads me
16 to an important question. And I reviewed the -- the
17 post-hearing submissions, and I'm not sure I -- I
18 fully grasp your response to a claim that relates to
19 this made by the services.

20 And it's a claim made by Professor Shapiro.
21 And that is his point is that -- his point is that if
22 you wanted a ratio equivalency between the
23 interactive market and the non-interactive market,
24 you could just have had a percentage-of-revenue rate
25 of whatever, 50, 55 percent, 52, 54, whatever your --

1 your numbers came out to be or whatever the
2 appropriate percentage calculation was, but because
3 SoundExchange decided for rational -- very rational
4 and reasonable reasons that it wanted a per-play rate
5 rather than a percent-of-revenue rate, because
6 there's a lot of problems in measuring revenue,
7 that's what made it such a rational and reasonable
8 thing to do, once you convert back to a per-play rate
9 based on the percent of revenue in the -- in the
10 benchmark market, that is the interactive market, the
11 claim -- the claim by Professor Shapiro and the
12 services is there's no reason to believe that any
13 particular service in the non-interactive market
14 will, in fact, pay that percentage-of-revenue rate.
15 It depends on their -- the amount of revenue they
16 have. It depends on the number of plays they have,
17 which is obviously a necessary denominator to be able
18 to divide in to the -- to the royalty -- to the total
19 royalties to get a per-play royalty.

20 So do you agree or disagree with -- with the
21 services' point that you, in fact, will not get a
22 ratio equivalency, that is to say, the same percent
23 of revenue, in the -- in the target market except
24 maybe by happenstance?

25 MR. HANDZO: Well, I think you'll get

1 actually a match between the per-play rate and the
2 percentage of revenue that we're pointing to for a
3 very, very, very large percentage of the market. I'm
4 not going to say the number, because I think it is
5 restricted. But the way the math works -- and we
6 showed this in proposed findings of fact -- for
7 Pandora, you do get to that percentage using our
8 proposed per-play rate. So for that really huge
9 segment of the market -- and actually when Mr. Orszag
10 did the calculations, he was using both Pandora and
11 iHeart.

12 So you really do get to it for the vast
13 majority. And then there's parts of the market where
14 you actually wouldn't necessarily want to get exactly
15 there anyway, because, for example, with
16 simulcasters -- and you addressed this issue in Web
17 IV -- simulcasters are using music less intensively.

18 And so there, because they are, you would
19 have either had to have -- if you're using percentage
20 of revenue, you would have had to have a different
21 percentage of revenue to account for their less use
22 of music. But this way, using per-play, you account
23 for it automatically because they pay less, they --
24 they have fewer plays, so their royalties are -- are
25 lower and so it adjusts more or less automatically.

1 But I think the -- the answer is I don't
2 think you're ever going to get a rate that works
3 exactly as it's supposed to for every single member
4 of the market, but this rate, as calculated by Mr.
5 Orszag, does actually get to the appropriate
6 percentage of revenue for the very, very substantial
7 majority of the market. And we've demonstrated that
8 mathematically.

9 JUDGE STRICKLER: And -- and in that
10 mathematical demonstration, did it come out exactly
11 the same as the -- as the percent of revenue in the
12 benchmark interactive market?

13 MR. HANDZO: Yes, it came out -- I forget --
14 but, you know, very, very, very close.

15 JUDGE STRICKLER: Thank you.

16 MR. HANDZO: So I said there were three
17 big-picture issues. Let me move on to the next one.
18 There we go. The second one, and the other point of
19 dispute between Mr. Orszag and -- and Professor
20 Shapiro, is when you solve the ratio equivalency
21 equation, as Mr. Orszag does, to adjust for
22 interactivity, do you use, as -- as inputs for A and
23 B in the benchmark market just the full-price
24 individual plans from the benchmark market or plans
25 including all discount plans?

1 Mr. Orszag used only the full-price
2 individual plans in the benchmark subscription
3 interactive market. And the reason for that was that
4 the target market services, particularly Pandora,
5 really don't offer discount plans. So Mr. Orszag
6 felt that that was making an apples-to-apples
7 comparison.

8 But this is an example of where, I think,
9 under Mr. Orszag's approach to ratio equivalency,
10 which we believe is correct, it actually doesn't make
11 a big difference whether you use the revenue and
12 royalty from full-price plans for A and B in the
13 benchmark market or the revenue and royalty for
14 all -- including all plans for A and B in the
15 benchmark market.

16 In fact, that ratio using all plans produces
17 a modestly higher percentage of revenue in the
18 benchmark market, compared to only using full-price
19 plans as Mr. Orszag did, which means if you use all
20 plans, as Professor Shapiro says you should, Mr.
21 Orszag's rates go up a bit. And there's actually a
22 table that I'll show you in a little bit that -- that
23 does that.

24 So -- but there's a more critical point here
25 in terms of the dispute between Mr. Orszag and

1 Professor Shapiro. Let me just go back one, if I
2 may, back to our equation.

3 Under the Shapiro approach, he starts by
4 calculating the effective per-play rate. So he's
5 using -- in the benchmark market. So he's using that
6 for B in this equation. And he's calculating that
7 using all plans, including discount plans in his
8 benchmark market, rather than full-price plans. And
9 so the effective rate per play by doing that is much
10 lower than it would be if he was using full-price
11 plans only.

12 No surprise. The effective per-play rate is
13 lower when you include discount plans because if you
14 have two, three, four, five, six people using a
15 subscription but not two, three, four, five six times
16 the revenue, you're going to get a lower effective
17 per-play rate.

18 So, so far so good, but then Professor
19 Shapiro adjusts that effective per-play rate B, using
20 the ratio of A to C. But for A to C, he's using list
21 prices for full-price individual plans, even though
22 he includes discount plans when he calculates B.

23 So for his effective per-play calculation,
24 he includes plays for people who don't pay full
25 price, and he adjusts those effective rates as though

1 they all do pay full price.

2 Now, Professor Shapiro's response, as I
3 recall, was, well, that's a clean comparison using A
4 to C as full-price retail plans. But it really
5 isn't, because basically what that seems to assume is
6 that there's some universal value of interactivity,
7 all people and for all uses of interactive --
8 interactivity by the services. And that's just
9 clearly not true.

10 And we know it's not true because the whole
11 point of discount plans is price discrimination.
12 Everyone says so, including Professor Shapiro. Price
13 discrimination, by definition, is lowering the price
14 to people with a lower willingness to pay.

15 So Professor Shapiro is looking at the value
16 of interactivity, based on only the subset of people
17 who have the highest willingness to pay for it, not
18 the value of interactivity based on the people who
19 buy discount plans and who have shown that they value
20 that interactivity less. And he's doing that even
21 though he's calculating effective per-play rates
22 using plays that come at least, in part, from those
23 discount plans and those people who are willing to
24 only pay less.

25 So another one of Professor Shapiro's

1 responses here is, well, gosh, we don't really know
2 how to calculate ARPU in the benchmark market. We
3 don't really know what ARPU is in the benchmark
4 market. Maybe none of this would make any
5 difference, even if I used ARPU for -- doe discount
6 plans instead of list prices for full-price plans.
7 Maybe it doesn't matter.

8 That too is wrong. The record companies are
9 clear that when you calculate ARPU, they include the
10 number of users for each subscription. So a 14.99
11 family plan with three users would produce an ARPU of
12 \$5.

13 And although the services say there's no
14 ARPU information in the record for interactive
15 subscription services, that's not correct. The
16 record company ARPU figures for subscription
17 interactive services appears in the written direct
18 testimony of Ms. Adadevoh and Mr. Piibe. And it's
19 very simple math, as Mr. Orszag explained, to change
20 that from record company ARPU in service ARPU. You
21 just gross it up based on the percentage of revenue
22 that the record companies get.

23 And that produces ARPU figures in the
24 interactive subscription market, which -- I can't
25 tell from my notes whether this is restricted on are

1 not, so I won't say the numbers, but they're
2 considerably lower than the -- the retail prices.

3 JUDGE STRICKLER: This argument that you're
4 making at the moment --

5 MR. HANDZO: And --

6 JUDGE STRICKLER: This argument -- I'm
7 sorry, Mr. Handzo. This argument you're making at
8 the moment, this is the argument, just so I
9 understand correctly, that the services have taken
10 issue with as we've -- with regard to admissibility,
11 their argument being that this is something that Mr.
12 Orszag tried to present that wasn't in his direct or
13 rebuttal papers. And we ruled at the hearing, and
14 now -- on that issue, and I take it your position is
15 Mr. Orszag didn't need to do it because -- by
16 creating a new analysis, because the analysis was
17 already self-evident in the -- in the record; is that
18 your argument?

19 MR. HANDZO: Basically, yes. I mean, two
20 things. Number 1, the services did not object to Mr.
21 Orszag testifying about the theory for why what
22 Professor Shapiro did was wrong.

23 And then he, Professor -- Mr. Orszag had
24 actually calculated ARPU. The services did
25 successfully object to that. But then Mr. Orszag did

1 testify without objection that there was another way
2 to get there, which is the way I just described,
3 which is the record company ARPU is in the record,
4 always has been from the time of the filing of the
5 written direct cases, and you can calculate it from
6 that.

7 And he did testify to that without
8 objection. So the -- the way that I'm getting at it
9 now has not been objected to and is fairly in the
10 record. There's no evidentiary issue there.

11 JUDGE STRICKLER: Thank you.

12 MR. HANDZO: There's also, by the way, some
13 testimony from Dr. Leonard, who had an ARPU number
14 that he was quoting from an industry source, and that
15 also is in the record without objection. So from the
16 record company ARPU, which you can calculate service
17 level ARPU, and an industry source cited by
18 Dr. Leonard, we can see that if you include discount
19 plans, the ARPU for the interactive subscription
20 services isn't the 9.99 that Professor Shapiro uses,
21 and you can see what it is there down at the bottom
22 of the slide.

23 If you compare that for ARPU for
24 non-interactive services, or C in the equation,
25 Professor Shapiro uses Napster, Pandora Plus and

1 Slacker for his value of C and it's 4.99. That's the
2 list prices.

3 Now, we know from Pandora documents that
4 Pandora's ARPU -- again I am not going to say the
5 number; it's restricted, but you have it here on the
6 slide -- it's not a lot different. So not a lot
7 different from their list price.

8 So if you basically took all of that
9 information, the Pandora ARPU, and then the ARPU
10 we've calculated for interactive subscription
11 services, the ratio of -- that Professor Shapiro uses
12 to -- for his interactivity adjustment would be very
13 different and very much lower than what he, in fact,
14 used.

15 But, again, fundamentally it comes down
16 to -- I mean, whether or not this ARPU information is
17 in the record, and it is, it's just a fundamental
18 error by Professor Shapiro of mixing and matching
19 effective rates that he calculates using discount
20 plans with an interactivity adjustment not using
21 discount plans.

22 JUDGE STRICKLER: Am I correct --

23 MR. HANDZO: And it's just a fundamental
24 problem.

25 JUDGE STRICKLER: Am I correct, Mr. Handzo,

1 that there was a problem -- I thought there was a
2 consensus on this -- there's a consensus on the fact
3 that there is no consensus in the industry as to how
4 to calculate ARPU when you have a family plan, for
5 example, where you have multiple users and you have
6 to figure out, I guess the problem is, who is -- how
7 many users do you have? Is the user the -- the
8 entire subscription or is the user each -- a separate
9 user for each person who is authorized under the
10 plan? Wasn't that a problem that -- that both sides
11 seem to agree had not ripened into a consensus in the
12 industry?

13 MR. HANDZO: No, I don't think so. I don't
14 think there is a consensus that there was no
15 consensus. I think the testimony from the fact
16 witnesses was clear about how these things are
17 calculated. They testify about it in their written
18 direct testimony. It's clear from how they calculate
19 it in -- in their written testimony.

20 And I think also if you look at the industry
21 sources that Dr. Leonard cites, it's clear, at least
22 by implication, that the ARPU numbers that are being
23 cited there are based on the number of users for each
24 subscription plan, not the -- the number of
25 subscriptions.

1 JUDGE STRICKLER: I'm probably going to be
2 mistaken here, but was it -- was the citation to Dr.
3 Leonard's testimony a footnote that -- that cited to
4 a Rolling Stone article?

5 MR. HANDZO: It was a footnote that cited to
6 an article, whether it was Rolling Stone or another
7 media source, I don't recall, but yes, you're
8 correct.

9 JUDGE STRICKLER: Thank you.

10 MR. HANDZO: I will just point out that it
11 was entirely consistent with the ARPU that we
12 calculated using the record company ARPU data, and
13 the whole point of Dr. Leonard's testimony was to
14 show that ARPU has been declining substantially for
15 non-interactive subscription services.

16 So let me just move on to the sort of third
17 big issue between Mr. Orszag and Professor Shapiro,
18 and that is, in addition to his first interactivity
19 adjustment, Professor Shapiro has a second one.

20 And his theory is that in calculating the
21 value of interactivity in part by using the list
22 prices for mid-tier services like Pandora Plus, he's
23 overestimated or perhaps underestimated the value of
24 interactivity.

25 So in his equation -- and I'm just going to

1 go back one more time, hopefully. Oops. There we
2 go. So in this equation for C, he's using list
3 prices for Pandora Plus and Napster and others, and
4 he says, well, those services have some additional
5 non-statutory functionality, and so my C is too high,
6 which means my adjustment is too low, so I need to
7 adjust it down. And that's why he does his second
8 interactivity adjustment.

9 The problem is that -- that that additional
10 functionality that he is talking about simply has no
11 impact on the price that he uses for his first
12 interactivity adjustment, for C. So there's no need
13 to -- for any further adjustment. C, in Professor
14 Shapiro's equation, would be 4.99 per month, with or
15 without the non-statutory functionality. That's --
16 that's, I think, a fact pretty clearly established in
17 the record. So that additional functionality just
18 didn't have any impact on the prices that he used for
19 his calculations.

20 So two responses from Professor Shapiro.
21 The first is that, well, maybe Pandora would have
22 changed its price if it hadn't gotten this additional
23 functionality. You will recall that Pandora licensed
24 that additional functionality in 2016, 2017, and they
25 changed the name of the product from Pandora One to

1 Pandora Plus. But at the time, they didn't change
2 the price. It was 4.99 before they got the
3 additional functionality, and it remained 4.99 after.

4 So Professor Shapiro says: Well, okay, but
5 maybe they would have reduced the price if they
6 didn't get that additional functionality. But he
7 relies on Mr. Phillips from Pandora and Mr.
8 Phillips's written testimony, which says no such
9 thing. So he just doesn't have that support for
10 that. It's the sheerest speculation.

11 The second response of Professor Shapiro is:
12 Well, Pandora paid more, so they must have been
13 paying for something. But he doesn't know what,
14 because he never asked Pandora, and Pandora never
15 said in the course of this hearing. So whether this
16 additional functionality was intended to benefit
17 Pandora Plus or some other part of Pandora's digital
18 ecosystem, we don't really know. But Professor
19 Shapiro opines that it was probably about growing the
20 number of subscribers.

21 Even if that were so -- and, again, we just
22 don't really have any evidence that it was -- growing
23 the number of subscribers wouldn't impact the royalty
24 rates the way anyone calculates it. If you look at
25 the way Mr. Orszag calculates the royalty rates, the

1 way Professor Shapiro does for his benchmarking
2 analysis, or the way Professor Shapiro and Professor
3 Willig do for their models, the royalty rate is
4 driven by the revenue per subscriber or revenue per
5 play, but it has no -- it's not affected at all by
6 the number of subscribers.

7 So unless additional functionality affected
8 those per unit numbers, and it didn't, no further
9 adjustment is necessary.

10 JUDGE STRICKLER: Well, Mr. Handzo --

11 MR. HANDZO: Let me see if I can --

12 JUDGE STRICKLER: Mr. Handzo, before you go
13 on, assuming the A in the ratio equivalency formula
14 is supposed to reflect retail revenue, if one were to
15 make that assumption, I think the argument that the
16 services make relying on Professor Shapiro is that,
17 well, if you keep the price the same, 4.99 in the
18 retail market, but you add functionality to make it
19 somewhat interactive, that you're going to increase
20 quantity, and revenue increases either through an
21 increase in price or through an increase in quantity
22 or some combination of both. So it, therefore,
23 increases the overall revenue and, therefore, there's
24 more revenue for the -- for the royalty receiver, if
25 you will, to be able to share on a

1 percentage-of-royalty basis.

2 I thought that was his argument. Assuming
3 that is his argument, that you agree that that's his
4 argument, how -- how do you respond to that?

5 MR. HANDZO: Well, if that's his argument --
6 I'm not sure it is -- but if that's his argument,
7 it's wrong, and it's demonstrably wrong. And the
8 reason I can say it's demonstrably wrong is there was
9 an analysis by Pandora -- I'm not going to refer to
10 it by name; I think I'll be able to point it out in a
11 slide later -- but we went through in our proposed
12 findings of fact and used Pandora's own analysis to
13 show that that functionality was actually not adding
14 any value per play or per subscriber.

15 Whether or not it added more subscribers,
16 again, that's back to my prior point, more
17 subscribers doesn't change the royalty calculation
18 the way anybody does it. And we can show from
19 Pandora's own analysis that it does not change the
20 revenue per play or per subscriber. It just doesn't
21 change any of those per-unit economics that drive the
22 royalty rates.

23 So it's just a factually wrong argument, if
24 that is indeed Professor Shapiro's argument.

25 So let me see if I can get back to the --

1 the right place here. Okay. I think I'm in the
2 right place.

3 Now, in addition to the interactivity
4 adjustment for benchmarking, there's also a skips
5 adjustment to be made to address the fact that the
6 interactive services do not pay for skips and
7 statutory services do.

8 And Professor Shapiro agrees that
9 Mr. Orszag's methodology for adjusting for
10 interactivity does, in fact, include by its nature a
11 skips adjustment. And what we're looking at here is
12 Figure 4 from Professor Shapiro's written rebuttal
13 testimony where he has walked through this. And I'm
14 going to use it to show why Mr. Orszag's analysis has
15 a skips adjustment embedded in it, but it also nicely
16 walks through Mr. Orszag's math.

17 And here's how the math works. You start in
18 -- let's start in the left-hand column using
19 Spotify's subscription undiscounted plans as a
20 benchmark, which is what Mr. Orszag does. The
21 percentage of revenue for interactive subscription at
22 the top is the -- essentially the result of the A
23 over B part of the Web IV ratio equivalency equation
24 that I've now shown you about four times.

25 And C in the ratio equivalency equation is

1 the total revenue line for the target services. So
2 that's, I think, the line right after where it says
3 "limited interactive subscription."

4 So you take those two and you solve for D,
5 the total royalty, which we see there. And then you
6 turn it into a per-play rate by dividing the total
7 number of plays. That's the plays for all services
8 line. And that gives you Mr. Orszag's per-play rate.

9 But because those total plays are
10 predominantly Pandora and Pandora's play count
11 includes skipped plays, that takes care of the skips
12 adjustment for Mr. Orszag, and Professor Shapiro
13 actually agrees with that. He agreed during his oral
14 testimony at trial.

15 So even though he shows, on -- towards the
16 bottom of that slide, an additional skips adjustment,
17 he actually now agrees that you would not apply that
18 skips adjustment to Mr. Orszag's methodology here,
19 that it would not be necessary; it would be double
20 counting, in effect.

21 And so, as a result, for Spotify
22 undiscounted plans, the way Mr. Orszag does it, you
23 get -- again, I don't recall if this is restricted,
24 so I'll just direct you to the -- the number that
25 says royalty per play in the middle of the -- the

1 slide.

2 But then you can go over one column and look
3 at the Spotify all plans numbers where Professor
4 Shapiro does the same calculation using all plans,
5 including discount plans, but using Mr. Orszag's
6 methodology.

7 And, as I said earlier, because of
8 Mr. Orszag's approach to using ratio equivalency,
9 which we believe is correct, what happens is if you
10 use all plans, the rate actually goes up a little bit
11 because the percentage of revenue is a little higher.

12 So for Mr. Orszag, as long as he's right
13 about his approach to ratio equivalency, whether you
14 use all plans or full-price plans doesn't actually
15 make a great deal of difference. The real question
16 is who applied the ratio equivalency correctly.

17 Now, in this table, Professor Shapiro lists
18 some additional adjustments at the bottom. We've
19 already agreed that -- or he agreed, that the skips
20 one is unnecessary in this analysis. I've already
21 addressed the second interactivity adjustment, which
22 he calls the limited -- limited interactivity
23 adjustment.

24 JUDGE STRICKLER: Before you leave that --

25 MR. HANDZO: And the bottom --

1 JUDGE STRICKLER: Before we leave that one,
2 Mr. Handzo, I'm sorry, there was another point I
3 wanted to raise about that very point, the limited
4 interactivity adjustment.

5 I thought what -- and i -- I would like to
6 hear your response. I thought it was Professor
7 Shapiro -- Shapiro's point that the limited
8 interactivity adjustment or the value of -- of the
9 limited interactivity, according to him, anyway, is
10 that it's a cleaner measure, a more direct, I think
11 is the actual word he uses, a more direct measure of
12 interactivity when you distinguish between what the
13 statutory rate is for a non-interactive service,
14 which is -- a subscription, which is .0023, and the
15 higher number that I won't mention, because I assume
16 it's confidential and restricted, the higher amount
17 that -- that Pandora paid to be able to get access to
18 recordings for its limited interactive service.

19 And he said while -- while measuring
20 interactivity at the retail level, which we did in
21 Web IV and which you just discussed, is a -- an
22 indirect proxy for the value of interactivity, a more
23 direct measure is the difference between what Pandora
24 actually paid to be able to have that limited
25 interactivity in terms of royalties, minus the amount

1 that it otherwise would have paid if it didn't have
2 that interactivity, which is the statutory rate.

3 Can you reply to that?

4 MR. HANDZO: Sure. I think you are
5 correctly articulating his argument, but then in a
6 different part of -- of his examination, I know when
7 I cross-examined him, he agreed that the services
8 demand for interactivity -- interactive functionality
9 is a derived demand. And it's derived from the
10 demand for that functionality in the downstream
11 market.

12 And so in order to figure out what the
13 functionality is worth, if it's a derived demand that
14 he agrees that it is, then you need to look at the
15 demand and what people are willing to pay in the
16 downstream market, which is precisely what he's not
17 doing with this limited interactivity adjustment.

18 And as for his notion that it's somehow
19 cleaner, it's really not, because it gets you into
20 questions of: Well, you have to figure out why did
21 Pandora agree to -- to do this? And what benefit
22 were they trying to get? And maybe they weren't
23 trying to get a benefit for this particular service.
24 Maybe it was really more related to some other part
25 of their business, or maybe it was related to perhaps

1 buying a little bit more market share, which wouldn't
2 actually affect the royalty rates for the reasons I
3 just discussed.

4 So it's really not clean at all. You kind
5 of start to have to get into, well, why did they do
6 it? What was the point? What were they getting out
7 of it? None of which is in the record here. Whereas
8 the really clean way to do it is it's a derived
9 demand. Professor Shapiro agrees that it's a derived
10 demand. So let's look at the value in the downstream
11 market and we're not seeing any value in the
12 downstream market.

13 So there is no reason to do this additional
14 adjustment.

15 JUDGE STRICKLER: Thank you.

16 MR. HANDZO: So that -- that takes me to the
17 bottom of this slide, effective competition, and
18 that's -- that's a long conversation. So I'm going
19 to get to that a little later.

20 With that, I'm going to switch to
21 ad-supported services. And we have all three
22 economists, Mr. Orszag, Professor Shapiro,
23 Dr. Peterson, used Spotify's ad-supported -- Spotify
24 as a benchmark, Spotify's interactive service, with
25 the obvious difference that Professor Shapiro and Dr.

1 Peterson use Spotify's ad-supported service and Mr.
2 Orszag uses Spotify's subscription service. But,
3 again, that's not actually a particularly key issue,
4 even though we all spill a lot of ink on it. And
5 I'll come back to that issue, but that is not where I
6 want to start.

7 Again, the issue is how do you adjust for
8 interactivity using ratio equivalency and how? So I
9 do want to kind of start with whether you adjust
10 using the ratio equivalency concepts from Web IV, and
11 I don't think you should conflate whether and how.

12 The Judges in Web IV established the
13 conditions for when ratio equivalency will apply.
14 And the services argue that it does not apply when a
15 subscription service is used as a benchmark for an
16 ad-supported service. And we've addressed that at
17 considerable length in our reply findings, so I'm not
18 going to repeat it here.

19 But it doesn't really matter. I don't think
20 there's any serious argument that ratio equivalency
21 would not apply when ad-supported service is a
22 benchmark for an ad- -- ad-supported target service.

23 I think Professor Shapiro implicitly assumed
24 that it does, because his adjustment in his written
25 testimony essentially involved ratio equivalency

1 because he was using his adjustment from the
2 subscription market, which was based on ratio
3 equivalency.

4 But as well, I mean, I think, there's no
5 difference between the ad-supported services,
6 Spotify, and the target services, in terms of
7 functionality, except for interactivity. And, of
8 course, that's what we're adjusting for using ratio
9 equivalency. But there's no other material
10 difference. There's no difference in the way they're
11 used.

12 And willingness to pay is consumers are --
13 are -- is based on willingness of consumers to listen
14 to ads and advertisers willing to pay for it. So
15 there's really no reason to think there's any
16 difference in willingness to pay between the
17 benchmark and target markets, if you're using
18 ad-supported.

19 And so in Web IV, where there was no
20 difference except interactive functionality between
21 the benchmark and target markets, the Judges accepted
22 that the requirements for ratio equivalency were --
23 were met.

24 So with that, we get to the question of how
25 to apply it. And with Mr. Orszag, it's -- it's

1 essentially the same as before. It's the ratio of
2 revenue to royalty in the subscription interactive
3 market, but then Mr. Orszag applies that to the
4 revenue in the ad-supported non-interactive market,
5 and divided by the number of plays for the
6 ad-supported non-interactive market.

7 And by doing it that way, he takes into
8 account the lower willingness to pay in the
9 ad-supported market. And that's what distinguishes
10 him from Professor Rubinfeld's approach, which the
11 Judges rejected in -- in Web IV.

12 But a key point here is that if you think
13 Mr. Orszag was wrong to use the subscription market
14 as a benchmark and that he should have used the
15 ad-supported Spotify service as a benchmark, then it
16 actually doesn't make very much difference because --
17 and I won't read the numbers -- but at the bottom of
18 the slide, you see the percentage of revenue paid by
19 Spotify for its subscription service versus its
20 ad-supported service, and the reality is it wouldn't
21 make a lot of difference to Mr. Orszag's analysis
22 which one you used. And I will show you that later.

23 Now, that's how Mr. Orszag did it. With
24 respect to Professor Shapiro's adjustments for
25 interactivity for the ad-supported market, Professor

1 Shapiro didn't actually determine the value of
2 interactivity for the ad-supported market. He
3 determined the value of interactivity for the
4 subscription market and then assumed that
5 interactivity had the same value for ad-supported
6 services.

7 And he agrees, I think, in his testimony,
8 that he used subscription as a proxy for ad-supported
9 services. He really has no basis to do that. The
10 demand for interactivity and, more generally, for
11 music in the upstream market is a derived demand, as
12 I talked about before, derived from the downstream
13 market.

14 For subscription, that derived demand in the
15 downstream market is represented by the subscription
16 prices paid by consumers. For ad-supported in the
17 downstream market, the services are monetized by a
18 combination of users willing to listen to ads and
19 advertisers willing to pay for them.

20 And those two things are very different.
21 The subscription, you know, demand in the downstream
22 market is very different from the demand evidenced by
23 willingness to listen to ads and willingness of
24 advertisers to pay for it, which is why Mr. Orszag in
25 his analysis uses the revenue in the ad-supported

1 market for his analysis, but Professor Shapiro does
2 not.

3 JUDGE STRICKLER: Mr. Handzo --

4 MR. HANDZO: So --

5 JUDGE STRICKLER: Mr. Handzo, just to sort
6 of clean this up a bit, I -- I appreciate the point
7 you're making and it was made at the hearing, that
8 the value in the downstream market is -- is indicated
9 by two things. One is the tolerance of listeners to
10 listen to advertising, which we can't really put a
11 direct monetary basis on it. We don't even know for
12 sure that it's a bad thing because the very fact that
13 advertisers are willing to pay means there's some
14 value, consumers are getting some value out of the
15 advertising.

16 So when -- when Mr. Orszag does his
17 equivalency, he's -- he's really using not whatever
18 value one could try to put on the disaffection of
19 listeners for ads; he's using the -- the advertising
20 revenue and comparing the advertising revenue, in
21 essence, between the two markets, interactive and
22 non-interactive. Isn't that correct?

23 MR. HANDZO: Yes. He is using the
24 advertising revenue. And I think you're correct that
25 the advertising revenue is a function of two things.

1 It's a function of willingness of consumers to listen
2 to ads and a function of the willingness of
3 advertisers to pay for them.

4 JUDGE STRICKLER: Well, you -- you may --
5 you may well be right about that, but it seems to me
6 that what -- what -- the important point, and correct
7 me if I'm wrong, that you're making here is that you
8 therefore don't make an interactivity adjustment if
9 all you're doing is looking at how much advertisers
10 are willing to pay.

11 MR. HANDZO: Well, no, I think you actually
12 would be making an interactivity adjustments because,
13 let's say hypothetically, that if you compare the
14 benchmark and the target markets and what you find is
15 that interactivity is causing users to be more
16 engaged with the service and listen to more ads, and
17 so that's going to increase your advertising revenue.

18 Or if you found -- nobody actually thinks
19 this is right, but if you found that advertisers were
20 more willing to pay for ads on a service that is
21 interactive because maybe they're just getting to a
22 different market where they have more, you know,
23 information about that market or the people who are
24 listening, so they're willing to pay more for ads, so
25 you can have situations where interactivity actually

1 does increase the advertising revenue because people
2 will listen to more ads or advertisers will pay for
3 it.

4 So there -- there can be an interactivity
5 adjustment that reflects the value of interactivity
6 in the downstream markets for an interactive service
7 that's ad-supported versus a non-interactive service
8 that's ad-supported.

9 Now, in this case, as I'm going to get to,
10 you're not really seeing that value. But,
11 conceptually, you certainly could see it. You
12 certainly can imagine a world in which users are much
13 more willing to tolerate ads because they really
14 value the -- the service and the interactivity that
15 it provides.

16 So it -- I think it is not correct to say
17 this means there's no interactivity adjustment. I
18 would disagree with that.

19 But, actually, again, you're -- you're
20 generally one step ahead of me, Judge Strickler, in
21 terms of the slides that I'm about to get to. So,
22 you know, this slide, which, again, frankly, I'm not
23 quite sure why it's restricted, but I won't read
24 what's in it.

25 But these were the sort of propositions that

1 I put to Professor Shapiro on cross, with respect to
2 how you value interactivity and how it's valued in
3 the downstream market and -- and whether it's a
4 derived demand and how you look at willingness to
5 pay.

6 And he agreed with all of those
7 propositions. So given that, and I'll just give you
8 a minute to -- to look through it, since I can't read
9 it out loud and my next slide will kind of turn on
10 it, but basically he's agreeing that ad-supported
11 service, willingness to pay is derived from selling
12 ads.

13 So let me just, with that, look at the
14 implications of that. If we're looking at
15 interactive service versus non-interactive service,
16 both ad-supported, are we really seeing in the data
17 whether -- that there's any difference in the value,
18 is interactivity adding any value here in the
19 downstream market? And the answer is it really is
20 not.

21 It's not adding revenue per play, no
22 surprise, because, Dr. Leonard says, and I think
23 everybody agrees, advertisers aren't likely to be
24 willing to pay more for interactivity. But it also
25 appears to be the case that consumers are not willing

1 to listen to more ads either.

2 And I don't have this in the slides but, you
3 know, in his cross-examination -- and this is in the
4 proposed findings of fact -- Professor Shapiro agreed
5 that, given he agrees that it's -- that there's a
6 derived demand for the interactivity, it's derived
7 from value in the downstream market, he agreed that
8 it would be reasonable to look at that derived demand
9 by evaluating revenue per play and by evaluating ARPU
10 and comparing the two.

11 So, again, I think we have that whole quote
12 in our proposed findings of fact. I don't have it
13 here, but he did agree. And when you look at them,
14 what you see is that interactivity is just not adding
15 any value or much value in the downstream market for
16 ad-supported service.

17 So that's why we think Professor Shapiro is
18 totally wrong to just assume that the value of
19 interactivity is the same between a subscription
20 market and an ad-supported market. It's not just
21 not.

22 That takes me to Dr. Peterson, who makes no
23 pretense in his interactivity adjustment of -- of
24 using ratio equivalency. He adjusts by the
25 difference between the statutory rate and the direct

1 license rate for licenses that have some
2 non-statutory functionality.

3 That's divorced from value in the downstream
4 market. There's -- he's made no showing that it
5 raises revenue at all; that is, that additional
6 functionality does. Pandora is not getting any value
7 in the downstream market. And we've analyzed their
8 internal documents, which we refer to in the
9 restricted -- the grayed-out part of this slide, and
10 we know that there's just not any additional value
11 there.

12 Professor -- or Dr. Peterson tried in his
13 written direct testimony to argue that the additional
14 functionality that Pandora licensed actually did
15 allow them to sell additional video ads and raise
16 their revenue per -- per play, but it turns out on
17 cross he had to agree that he couldn't show that
18 because actually Pandora was selling those video ads
19 long before it got this functionality.

20 The reality is, I think, if you look at --
21 and this goes back, Judge Strickler, perhaps, to a
22 question you asked earlier in a different context --
23 why is it that Pandora licensed the additional
24 functionality? It doesn't provide -- its licenses
25 don't provide any greater functionality generally for

1 the ad-supported services, not more skips, not more
2 replays, not caching. The interactivity relates only
3 to their Premium Access service. Otherwise, as Mr.
4 Phillips says, Pandora's ad-supported service is
5 fundamentally the same product as it was at the time
6 of Web IV.

7 So they're only using that additional
8 functionality that they have licensed for Premium
9 Access sessions. And as the services say in their
10 reply findings of fact, those premium access sessions
11 fall outside the scope of the statutory license,
12 which is kind of our point.

13 Whatever the value of that additional
14 functionality under the direct license was, it
15 relates to a different part of the business. It's
16 not aimed at growing or monetizing the ad-supported
17 service. It's money that Pandora is paying for
18 premium -- the money that Pandora is paying for
19 Premium Access, it's money it's paying to help a
20 different part of its digital ecosystem, not money
21 intended to help this ad-supported part of its
22 digital system, digital ecosystem, which is what
23 we're setting the rates for.

24 So with that, let me turn to a couple of the
25 services' objections to Mr. Orszag's interactivity

1 analysis. First thing is they say you can't take the
2 ratio of revenue to royalty in the benchmark market,
3 as Mr. Orszag does, using Pandora's ad-supported
4 service because Pandora is not a good proxy.

5 To be clear, Mr. Orszag used both Pandora
6 and iHeart. But it is true that Pandora dominates.
7 And it is also true, however, that Professor Shapiro
8 also used Pandora as his proxy for the market, as did
9 Professor Willig when they did their modeling.

10 And none of the services' economists were
11 able to articulate what a good proxy would be if
12 Pandora is not. Google, Dr. Peterson kind of
13 shrugged and said, well, he doesn't know if Google
14 would be a good proxy. Any other service? Dr.
15 Peterson can't think of one. Dr. Peterson said,
16 well, there's 3400 webcasters out there, and he
17 vaguely talked about finding their central tendencies
18 in the market, as though the statute requires the
19 Judges to set a rate not for willing -- willing
20 buyers and willing sellers, but for the central
21 tendencies of buyers.

22 We have a -- we're dealing with a willing
23 buyer/willing seller standard here, and it seems odd
24 to suggest that the sellers would set a rate lower
25 than what the biggest buyer with a very large

1 percentage of the market would pay. There's no
2 suggestion that the record companies could price
3 discriminate here. Obviously, you can't under the
4 statutory license. So there's no reason to think
5 that the record companies would choose to price down
6 for the small part of the market that's not
7 represented by Pandora.

8 One thing I just -- I'm just going to touch
9 on this because it comes back to something, Judge
10 Strickler, that you were talking about a little bit
11 before, you know, is there -- is there an
12 interactivity adjustment for ad-supported services?
13 And I think my answer is yes, there is.

14 But if you look at value in the downstream
15 market, that adjustment is going to be extremely
16 small, if -- if anything. And I would -- for support
17 for that, I would actually point you to the --
18 Google's proposed findings of fact. In particular,
19 Google's proposed findings of fact at paragraph 30.
20 And what they said is, "the value of interactivity
21 stems from a service's ability to earn more revenue
22 in the downstream market and the greater risk of
23 cannibalization experienced by the record company."

24 So if we look at Spotify, its rates are
25 relatively low because of its promotional value; in

1 other words, the record companies don't see the
2 opportunity cost or cannibalization risk there. So
3 that reason for having higher interactive rates, as
4 articulated by Google, doesn't really exist for
5 Spotify.

6 And then to the other part of the equation,
7 Google says, well, the value of interactivity also
8 stems from the services' ability to earn more revenue
9 in the downstream market.

10 Well, that's exactly what we're looking at.
11 We looked at that. We looked at ARPU. We looked at
12 revenue per play. And we're not seeing that
13 interactivity is increasing the services' ability to
14 earn more revenue in the downstream market.

15 So the reasons that Google gave, which we
16 agree with, for why interactivity might be valuable,
17 don't -- aren't met here when we're using Spotify as
18 the benchmark market.

19 So I talked through interactivity, and I
20 think I'm running behind on time, right Andrew? Yes,
21 I am, okay. So I'm going to try and skip a few
22 things here.

23 But one of the obvious questions here is,
24 circling back to the question of which interactive
25 service benchmark are we going to use, subscription

1 Spotify or ad-supported Spotify, you know, the issue
2 with a benchmark is always, as Mr. Orszag explained,
3 benchmarks are almost always different from the
4 target market. So you have to adjust.

5 And one of Mr. Orszag's concerns about
6 Spotify ad-supported as a benchmark was it is viewed
7 by the record companies as being very promotional.
8 And so if you're going to use it, you'd have to
9 adjust.

10 But as the case developed, you had all this
11 testimony about how Spotify is uniquely good at
12 upselling, and then you sort of had a back and forth
13 with Professor Shapiro and Mr. Orszag in which
14 Professor Shapiro -- Mr. Orszag essentially proposed
15 a way to adjust for that, and Professor Shapiro
16 appeared to agree with it. And so the adjustment was
17 if you want to use Spotify's free service,
18 ad-supported service as benchmark, you're going to
19 have to adjust the effective rates up by about
20 14 percent.

21 Now, not a complete solution from
22 Mr. Orszag's perspective because there are other
23 aspects of the contractual agreement that that
24 doesn't account for, but there was at least agreement
25 to that degree.

1 Now, Dr. Peterson is not --

2 JUDGE STRICKLER: Mr. Handzo, can you go
3 back one slide for a second, please?

4 MR. HANDZO: Sure.

5 JUDGE STRICKLER: Thank you. The number
6 that's grayed out there, so I won't say it, is that
7 after making the 14 percent adjustment or without the
8 14 percent adjustment?

9 MR. HANDZO: That is after making the
10 14 percent adjustment.

11 JUDGE STRICKLER: After. Thank you.

12 MR. HANDZO: So it's -- right.

13 So one of the arguments from Dr. Peterson
14 is, well, we shouldn't really adjust the Spotify
15 benchmark up because it's promotional because, gosh,
16 you know, all services should be promotional. They
17 all should have an incentive to upsell.

18 The problem is twofold. First of all, not
19 all webcasters have premium tiers to upsell to.
20 Simulcasters, for example, do not. But there's --
21 Dr. Peterson said there's 3400 webcasters out there,
22 and I'm pretty sure that about 3390 of them don't
23 have premium services to upsell to. But even those
24 that do, don't do what Spotify does. They're just
25 not as good at it. And even Mr. Phillips from

1 Pandora said, you know, we're not very good at this
2 upselling thing.

3 And -- and a service like Pandora may have
4 very different incentives because Spotify is willing
5 to degrade its ad-supported service by increasing ad
6 load over time. Pandora, not so much.

7 Pandora's focus is its ad-supported service.
8 That's its flagship service. That's what it says.
9 It's not going to degrade that service in order to
10 move people you will the funnel; whereas Spotify is
11 willing to do it because, for Spotify, the
12 subscription is much more important.

13 So the incentives are actually not the same
14 even for the services that may have a premium tier to
15 upsell to. Certainly, we know that they don't all
16 achieve the same success, and the record companies
17 aren't really interested in good intentions; they're
18 interested in results. They get them from Spotify.
19 They don't get them from anyone else. So you
20 wouldn't get that kind of discount for anyone else.

21 And then the last thing is that we're
22 setting a statutory rate for statutory services.
23 Nothing in the statute requires a service to have a
24 subscription interactive tier to upsell to. Nothing
25 in the regulations would impose the contractual

1 provisions that Spotify has agreed to.

2 So we shouldn't set a rate that has a
3 promotional discount built into it for statutory
4 services that don't have to promote.

5 So with that, I do want to, at long last,
6 get to the issue of effective competition. How far
7 behind am I? Twelve minutes. All right. I somehow
8 have to make up 12 minutes here. Not going to be
9 easy to do in effective competition, but let me try.

10 The big picture in -- since Web IV, the
11 interactive services, Spotify and Apple, have greatly
12 increased in market power. Now, the services focus
13 on the major theme must-haves, but we think you have
14 to look at the offsetting market power of the buyers.
15 And I think the Judges have recognized that in prior
16 cases, like Web II and SDARS III.

17 So before I leap into the facts, I do want
18 to dispose of some red-herrings. And I've a number
19 of slides and I'll probably skip some in the interest
20 of time, but this one, I don't want to skip.

21 You know, the services seem to suggest that
22 you don't have -- even if this -- the service can
23 affect market share, that's not going to affect the
24 negotiated prices unless you're actually seeing the
25 record companies offering lower rates in return for

1 higher market share.

2 And that's just not what is required here.
3 The Judges said so a number of times in Web IV. You
4 don't need to have an offer from the record company.
5 You can have a threat by the service that does just
6 the same thing.

7 You don't actually have to have the service
8 altering anybody's market share. Again, just the
9 threat can produce lower rates, the threat to steer.
10 You don't actually have to see anybody's market share
11 changing. In fact, in equilibrium, the expectation
12 is that everyone will wind up back at their original
13 market share or at the same market share.

14 So the notion that we have to see some
15 offers from the record companies seeking greater
16 market share or that we have to see market share
17 actually change simply isn't true. All you need to
18 see is the threats from the -- the service.

19 Then the next red-herring, I do need to talk
20 about this as well is, well, the record companies can
21 snuff out steering-based competition with
22 antidiscrimination clauses. And that's really not
23 correct for a number of reasons.

24 Oh, I'm sorry. I am reminded that for -- at
25 this part of the argument, I should go into

1 restricted session. Thank you, Andrew.

2 CHIEF JUDGE FEDER: Okay. We will now go
3 into restricted session. Will the host please cut
4 off the public feed.

5 MR. SACK: Your Honor, please stand by. We
6 are beginning to clear the room now.

7 If you're an attendee in the Zoom meeting
8 who is not allowed to attend restricted session,
9 please leave the session by clicking the red leave
10 button on the bottom right-hand side of your screen
11 or click the "X" on the top right-hand side.

12 Your counsel will inform you when you're
13 allowed to return to the proceeding.

14 Please stand by, Your Honors and counsel,
15 while we work to clear the room.

16 (Whereupon, the hearing proceeded in
17 confidential session.)

18

19

20

21

22

23

24

25

1 O P E N S E S S I O N

2 CHIEF JUDGE FEDER: Okay. As soon as the
3 host reopens the public feed, we can begin. Mr.
4 Sack?

5 MR. TOTH: The public feed is live, Your
6 Honor.

7 CHIEF JUDGE FEDER: Thank you, Mr. Toth. We
8 are back in public session.

9 You may proceed, Mr. Handzo.

10 MR. HANDZO: Thank you, Your Honor.

11 In addition to the benchmarking approach
12 offered by Mr. Orszag, we, of course, have a
13 modeling, bargaining model and opportunity cost
14 approach offered by Professor Willig. And the rates
15 that result from Professor Willig's analysis
16 are .0029 per-play for ad-supported, .0030 for
17 subscription.

18 Now, the obvious place to start in talking
19 about this topic is which bargaining models to use,
20 Shapley or Nash-in-Nash. I think everyone agrees
21 that it doesn't actually matter a great deal which of
22 those two models you use, if the majors are
23 must-haves for statutory services, in that case, the
24 two models produce very similar results. And I think
25 Professor Willig's written direct testimony shows you

1 that.

2 But we do have three kind of big picture
3 issues to talk about here. First, I think, is does
4 the Shapley Value, as used by Professor Willig,
5 produce results that are consistent with effective
6 competition.

7 The second is, is Nash-in-Nash capable of
8 providing useful information, if you assume, as
9 Professor Shapiro does, that no major is a must-have,
10 but a successful service would need at least two
11 majors. And Professor Willig has explained why it
12 will not do so.

13 And then the third question is, is there any
14 role here for the late-arriving Myerson Value
15 concept. So let me start with Shapley.

16 I assume this is a picture of Lloyd Shapley,
17 though I never met the man. But Shapley was a model,
18 as you know, used by the Judges in the Phonorecords
19 III case and it was chosen by Professor Willig here
20 as his primary model because, as he explained, its
21 virtue is that it produces fair results giving each
22 participant the value that it brings to the
23 enterprise.

24 And even if the majors are must-haves, it
25 does not give them rates reflecting complementary

1 oligopoly power, and here's why.

2 The Shapley model, by its design and as used
3 by Professor Willig, considers the outcomes of a wide
4 variety of orderings of which players enter the
5 bargain and when.

6 So if you have one service and three
7 must-have record companies, and you assume the
8 service and the record companies -- you assume that
9 the service and record companies A and B bargain. No
10 one brings any incremental value because they don't
11 have must-have record company C in the bargain.

12 So A and B get nothing incremental from the
13 proposed joint venture, nor does the service, because
14 you don't have a viable business.

15 Then record company C enters the bargain.
16 It is credited with a lot of incremental value
17 because there wasn't a viable service until it
18 arrived.

19 But in a different ordering, in a different
20 ordering, you would have C entering the bargain
21 before A and B, in which case it's C that gets
22 nothing incremental from the proposed venture or, in
23 yet a different ordering, you might have record
24 companies A, B, and C in the bargain, but the service
25 is not, in which case A, B, and C record companies

1 get nothing incremental from the venture.

2 And then when the service enters the bargain
3 last, it's the one that now makes the business viable
4 and is credited with creating the surplus value.

5 So by considering all of those different
6 orderings or arrivals in the bargain, each of the
7 participants might have holdout value in one
8 ordering, but not holdout value in another ordering,
9 or really any incremental value at all in other
10 orderings.

11 So by averaging all of those out, the record
12 companies do not get the must-have value that they
13 would otherwise have even if they aren't must-haves.
14 I should say they wouldn't get the holdout value that
15 they might have if they were otherwise must-haves.

16 And the service under this Shapley approach
17 has an equal opportunity to function as the must-have
18 that creates the valuable deal.

19 Now, the Judges recognized this virtue of
20 Shapley in Phonorecords III. You see a quote here.
21 I won't bother to read it, but it has been recognized
22 before.

23 Now, the service, services' attacks on
24 Professor Willig's use of Shapley, one attack is
25 that, according to the service economists,

1 particularly Professor Shapiro, Shapley permits
2 collusion.

3 No, it doesn't, and Professor Willig has
4 explained why. And I will try and do justice to his
5 explanation. But in Shapley, each player brings an
6 outside value, a value it can obtain on its own
7 without a successful coalition.

8 And then there's the incremental value that
9 a player might get on top of that outside value if
10 there's a successful coalition, that is a successful
11 -- a coalition that has all of the must-haves in it.

12 So if party A is a must-have, and it arrives
13 at the bargain before party B, which is also a
14 must-have, then party A gets only its outside value
15 and not any incremental value.

16 And in this way there's no collusion and no
17 holdout value for party A in this order. But the
18 services say: Professor Willig's Shapley model with
19 multiple sellers produces higher royalties than a
20 model with record companies as a single entity with
21 monopoly power.

22 That's not evidence of complementary
23 oligopoly power built into Professor Willig's Shapley
24 model. Basically all that is showing is having more
25 players means the surplus available to be split gets

1 divided in more ways and then, therefore, in smaller
2 shares.

3 So if you have a surplus of X and two
4 must-have players, a service and the record company,
5 each player gets an equal share. So the service gets
6 half of X.

7 But if you have four players, a service and
8 three record companies, each of them a must-have, and
9 each of those four players gets an equal share, and
10 the service now only gets 25 of X and each record
11 company gets 25 percent of X.

12 Although, offsetting that, as Professor
13 Willig explained, what would happen in that situation
14 is the pie being split, likely winds up being larger
15 because these three record companies compete with
16 each other. And by competing with each other, they
17 are producing more value, more -- more sound
18 recordings, more valuable sound recordings.

19 So actually the enterprise as a whole
20 benefits from having the multiple record companies in
21 the bargain but it does mean that the surplus gets
22 split up in more ways and so you wind up with a
23 smaller share for each player.

24 The irony here is that Professor Shapiro, in
25 rebuttal, offers his Myerson Value, which in his

1 version actually does permit side deals or collusion.
2 And we spell that out in some detail in paragraphs
3 821 through 830 of our opening proposed findings of
4 fact.

5 And we actually walk through the equations
6 that are in Professor Shapiro's Myerson Value
7 calculations.

8 And Professor Willig explained this in his
9 testimony at pages 3868 through 3876 -- and I can't
10 go through that in detail -- but Professor Willig
11 explained exactly why Professor Shapiro's Myerson
12 Value does permit that kind of collusion or side
13 deals.

14 Professor Shapiro says: Oh, no, my Myerson
15 Value doesn't permit bribes. But that's not the
16 point. We're not saying or Professor Willig wasn't
17 saying that some bag of cash needs to pass. The
18 point is that in his -- in Professor Shapiro's
19 Myerson Value, the record companies can adjust what
20 each receives and exchange value between them,
21 precisely what the services inaccurately accuse
22 Professor Willig's Shapley Value of doing.

23 So it doesn't have to be a bag of cash but
24 there is built into Professor Shapiro's Myerson Value
25 the potential for an exchange of value, that permits

1 collusion in his model, even though it doesn't exist
2 in Professor Willig's Shapley Value.

3 So let me just turn then to Nash-in-Nash,
4 which is Professor Shapiro's principal model. And as
5 before, you get the same results as Shapley if the
6 majors are must-haves. And we believe the evidence
7 shows that they are for reasons that I'm going to get
8 to.

9 But consider the use of Nash-in-Nash, if the
10 record companies are not must-haves, because that's
11 how Professor Shapiro uses the model. And the
12 problem there is that Nash-in-Nash models a series of
13 bilateral negotiations, assuming that for each
14 negotiation all the other pairs have or will reach an
15 agreement.

16 So, in a sense, the record company that
17 Professor Shapiro is setting the rate for in his
18 Nash-in-Nash model effectively is always the last to
19 the bargaining table.

20 And because Professor Shapiro credits the
21 LSEs as part of this analysis, the result of those
22 two things being last to the bargaining table and
23 using the LSEs means that the way Professor Shapiro
24 models it, each label brings very little value to the
25 -- to the service.

1 So while Professor Shapiro faults Professor
2 Willig for treating majors as entities that add
3 significant value, Professor Shapiro goes very much
4 to the opposite extreme and models them as
5 contributing very little value.

6 A related problem is that Nash-in-Nash
7 cannot address what would happen if a service needs
8 at least two majors, even if it doesn't need all
9 three.

10 If a service needs two majors, then the
11 failure to reach a deal with any one, even
12 temporarily, means the remaining two now are
13 must-haves for the service.

14 And that dynamic would inform the bargaining
15 strategy of the majors, as well as the service. So
16 the service would have an incentive to commit to a
17 higher royalty to the major record company that is
18 bargaining first in order to prevent a blackout that
19 would then make the other two majors must-haves.

20 JUDGE STRICKLER: Mr. Handzo, wasn't it
21 Professor Shapiro's point that you can't seek, in the
22 model, you can't seek wins to negotiations, the
23 negotiations are all deemed to occur simultaneously,
24 such that none of the majors would know which one
25 might ultimately be the odd man out?

1 MR. HANDZO: Well, I think that -- I don't
2 recall the testimony exactly. I think that may be
3 what Professor Shapiro is -- is saying, but that's --
4 I think that's highlighting one of the problems here,
5 is that he's modeling it in a way which, because of
6 the way the model works, every record company has to
7 assume that every other record company has reached an
8 agreement, you can't model this dynamic that I'm
9 talking about now, which is the way the real world
10 would work.

11 In the real world obviously you're not going
12 to have everybody sitting down at the table at the
13 same time. In the real world, you will have
14 sequential negotiations. And that's the dynamic that
15 Nash-in-Nash can't capture.

16 So it's a complex bargaining dynamic that
17 Nash-in-Nash simply can't deal with. Nash-in-Nash,
18 as I think you were saying, models a hypothetical
19 market which assumes that all other deals would not
20 react to the class of negotiations between a service
21 and one of the majors. That's what's built into the
22 model's DNA.

23 So Nash-in-Nash cannot address the situation
24 that can occur in the real world where a service
25 needs two of the three majors, and the failure to

1 reach an agreement with one will affect the
2 negotiations with the other. And in the real world,
3 those negotiations will happen sequentially. They're
4 not all going to happen --

5 JUDGE STRICKLER: That's -- that's a good --
6 a good response, and it's a good response in the
7 terms of making a distinction between the real world
8 and the model, but it's a problem inherent in any
9 economic model in that it divorces from reality to
10 try to show something important in the market.

11 Couldn't you make the same argument with
12 regard to the Shapley Value model, that it is very
13 useful, but the idea that there are arrival orderings
14 is -- is -- is not realistic and there's these
15 multiple different arrival orderings?

16 That's not what happens in the market.
17 That's an artifact of the model. But the model, as
18 you point out, tells us something very useful even
19 though it's not realistic?

20 MR. HANDZO: Well -- I -- I -- I really need
21 Professor Willig at the podium for that question, I
22 think, Judge Strickler, but I'll do my best.

23 I think the -- the virtue of Shapley,
24 though, is that it is not presuming any one order.
25 Precisely the virtue of Shapley is that it is

1 actually looking at a number of different orderings
2 and then averaging them out, so that you're not
3 assuming one particular order or another.

4 And to the extent that Shapley might not be
5 exactly what would happen in the marketplace, in some
6 ways that may be part of the reason for using Shapley
7 in this context, because I think part of Professor
8 Willig's point was, by using Shapley, we're
9 eliminating any holdout value or at least, you know,
10 adjusting for it in a way that might not happen in
11 the market, but that's the value of Shapley in this
12 context, is that we're using Shapley to model a
13 market that wouldn't have the effective competition
14 concerns that the Judges have with the real
15 marketplace.

16 So it actually winds up being a very nice
17 compliment to what Mr. Orszag does, which is the
18 benchmarking approach. And now we're looking at a
19 model, the purpose of which is actually to model a
20 world in which the record companies wouldn't be able
21 to use their holdout value even if in the real world
22 they might have it.

23 So hopefully that does address your -- your
24 question.

25 JUDGE STRICKLER: Thank you.

1 MR. HANDZO: So I actually need to go into
2 restricted session, I'm afraid, for the next couple
3 of slides.

4 CHIEF JUDGE FEDER: For about how long?

5 MR. HANDZO: Probably about ten minutes.

6 CHIEF JUDGE FEDER: Okay. We will be going
7 into restricted session for about ten minutes. Will
8 the host please clear the room.

9 MR. SACK: Stand by. We are beginning to
10 clear the room now. If you're an attendee in the
11 Zoom meeting who is not allowed to attend restricted
12 session, please leave the session by clicking the red
13 leave bottom at the bottom right-hand side of your
14 screen or click the X on the top right-hand side.
15 Your counsel will inform you when you are allowed to
16 return to the proceeding.

17 Please stand by, Your Honors, while we work
18 to clear the room.

19 (Whereupon, the trial proceeded in
20 confidential session.)

21

22

23

24

25

1 O P E N S E S S I O N

2 MR. SACK: Your Honor, the room is unlocked
3 and the feed is live.

4 CHIEF JUDGE FEDER: Thank you. We are back
5 in public session. You may proceed, Mr. Handzo.

6 MR. HANDZO: Thank you. So the next
7 question here is, if consumers know, are they going
8 to care that a non-interactive service has lost
9 content? And I think the answer is yes.

10 There's -- you have heard the experts
11 Professor Zauberman, Professor Tucker, Professor
12 Simonson talk about option value, vocalism, loss
13 aversion, impact bias, I mean, there is a whole
14 social science vocabulary that has grown up around
15 these concepts that say consumers care about this
16 stuff. And consumers have choices. There is other
17 places they can go to.

18 So the LSEs simply can't tell us what
19 happens if consumers are told or learn through some
20 source that their service has lost significant
21 content. LSEs can't tell us that because the LSEs
22 were secret. But surveys can tell us that.

23 Now, first, Pandora's own survey expert,
24 Professor Hanssens, shows that 61 percent of
25 respondents said that they would reduce their

1 listening if some of their favorite artists and some
2 new releases were missing. 61 percent is a little
3 difficult to square with the findings of the LSEs,
4 which say there is almost no effect by losing a major
5 label's content.

6 Now, the services responds that, well,
7 Professor Hanssens told respondents to assume that
8 they were dissatisfied. Fair enough. So that's why
9 we ran Professor Simonson's modified Hanssens'
10 survey, replicates the Hanssens survey, but without
11 telling people that they are dissatisfied.

12 And the Simonson Survey yields results very
13 similar to Hanssens in that it, too, finds that close
14 to 60 percent of respondents would reduce their
15 listening.

16 Professor Simonson then went a step further
17 to determine the percentage of plays lost. In other
18 words, Professor Simonson determines how much those
19 listeners would reduce their listening.

20 And you find overall a substantial
21 diminution in listening, about 35 percent.

22 Now, if you substitute those results for the
23 LSE results in Professor Shapiro's opportunity cost
24 analysis, it raises opportunity cost substantially.

25 Now, one small note that I should say

1 because it's not in the proposed findings, some of
2 the services claim that the Simonson Survey excluded
3 simulcast only listeners. That's actually not
4 correct. Like Professor Hanssens, they had
5 respondents who used iHeart TuneIn and Slacker, as
6 well as Pandora, and those first three do have
7 simulcast-only listeners.

8 But one last point here on this whether, you
9 know, consumers would find out from other sources and
10 would they care. Professor Shapiro says he adjusted
11 for that. But his adjustment was quite -- is really
12 literally plucked out of thin air. He adjusts by
13 using the upper end of the confidence interval for
14 the LSE results.

15 And there is just no basis to think that's a
16 right or useful adjustment. The confidence intervals
17 are just that. It's the range of possible values for
18 the results of the experiment as it was run. It has
19 nothing to do with fixing flaws in the experiment or
20 addressing issues that the experiment did not test.

21 So the adjustment is simply not related in
22 any way to an empirical assessment of the effect of
23 letting users know about the loss of content. So
24 that's the second key problem.

25 And before I go any further, I do think it

1 is fair to ask, based on the results of the Simonson
2 modification of the Hanssens Survey, would Pandora
3 survive a loss of 35 percent of its plays?

4 And Professor Willig testified that
5 35 percent loss could cause a service to fail and
6 that has the same implications as treating each
7 record company, each major record company as a
8 must-have. But there is some reason to think that
9 would be particularly true for Pandora.

10 You know, what I am showing you is a slide
11 from SiriusXM/Pandora's opening statement deck
12 showing the decline in monthly average users since
13 Web IV.

14 Now, pile a 35 percent decline in listening
15 or plays on top of that existing trend and you have a
16 service that might well be in a death spiral.
17 Services do operate at a loss for periods of time but
18 usually that's only when they are growing. Pandora
19 is not.

20 So let me just quickly go through some of
21 the other problems with the LSEs. Number 1, they
22 were run for a very short period of time, were trying
23 to predict the impact of a permanent loss.

24 And even Dr. Reiley agrees that
25 extrapolating these results out over time reflects

1 simply his best guess. And there is really no good
2 reason to think that his guess was correct.

3 As Professor Tucker explained, there is a
4 lot of Pandora users who don't use the service much,
5 just a few hours a week. So for them the suppression
6 is going to take a lot longer to detect, longer than
7 this experiment ran.

8 But as Professor Tucker points out, those
9 are also the users who are least committed to the
10 service. So once enough time passes for them to
11 notice, they may join the millions of other users who
12 have left Pandora.

13 The ad load experiment that Dr. Reiley in
14 part relied on in order to determine the long-term
15 effect just isn't much help here. Hearing ads is
16 simply not the same experience as hearing a different
17 mix of music. It's a different form of degradation
18 of the service and pretty immediately obvious.

19 The fourth problem is that the LSEs address
20 only current users, not potential future users. And
21 Professor Shapiro agreed that if Pandora lost the
22 content of a major label, Pandora would lose users
23 for two reasons: It would lose some current users,
24 but it would also lose some number of prospective
25 future users who would not sign up.

1 And as I've said, Pandora is losing current
2 users. And unless it can continue to add new users,
3 it has got a big problem. The LSEs do not address
4 how people who do not currently use Pandora, but
5 might consider it in the future, would be impacted by
6 the loss of major label content.

7 And Professor Shapiro agreed that the LSEs
8 don't address that. This is not a small issue. In
9 the AT&T/Time Warner case where Professor Shapiro was
10 an expert witness, he acknowledged there that it was
11 critical or crucial, his words, to model the impact
12 of going dark on prospective users, not just existing
13 users. Critical or crucial, those were his words.

14 The services may try and dismiss the AT&T
15 case on the grounds that it's somehow different. But
16 it wasn't in any way that matters. If you go read
17 the decision, the government's claim there was that
18 if AT&T acquired Time Warner, it could withhold Time
19 Warner content from AT&T's competitors, which would
20 then drive the subscribers from those competitors to
21 AT&T.

22 So in that sense, the same issue there as
23 here. What's the impact of losing content? And
24 there Professor Shapiro said we need to know how many
25 current users will leave the service but it is

1 critical to know how many potential subscribers won't
2 subscribe. Something the LSEs and the services did
3 not test here.

4 Professor Shapiro says there's no reason to
5 think the loss of content affects potential new users
6 any differently than existing users. But he really
7 doesn't have any basis to say that, not empirical
8 evidence, not even really any economic theory.

9 And, in fact, he did agree on
10 cross-examination that existing users have the habit
11 of using the service, and prospective users do not.
12 So in Professor Shapiro's words, there's an inertia
13 to leaving for existing users that doesn't apply to
14 potential new users, which suggests that there would
15 be a larger impact on potential new users compared to
16 existing users.

17 LSEs don't address it. Professor Shapiro
18 couldn't effectively adjust for it, even though it's
19 something that he said was critical.

20 Fifth problem. LSEs were not run on
21 subscription services. Even though the LSEs were run
22 only on ad-supported services, Professor Shapiro
23 applies them uncritically and unadjusted to calculate
24 opportunity cost for a subscription service.

25 That's a problem. Subscribers listen more,

1 a lot more. So they logically are more likely to
2 detect the loss of content more quickly.

3 And subscribers pay money. So they likely
4 have higher expectations. And Professor Shapiro
5 admits that both of those things may be right, and he
6 admits that he doesn't know the effect of running the
7 LSEs on a subscription service because they didn't
8 run that experiment.

9 Professor Shapiro compounds the problem
10 because his loss numbers from the LSEs are then --
11 which wasn't run on subscription service -- he then
12 uses those numbers and applies a diversion ratio to
13 them for -- based on a survey of SiriusXM
14 subscribers, not Pandora subscribers.

15 So the problem with that is SiriusXM
16 subscribers use a bundled product. So asking them in
17 the Hanssens Survey what they would do if SiriusXM's
18 Internet went away is unhelpful because, of course,
19 they are mostly going to divert from SiriusXM
20 Internet to SiriusXM satellite.

21 So Professor Shapiro's opportunity cost for
22 subscription services, were based on the LSEs, which
23 were not run on a subscription service, and then
24 diversion ratios from the Hanssens Survey, which
25 didn't survey consumers who subscribed to a pure play

1 Internet music service.

2 So you just can't accept his opportunity
3 cost analysis for subscription services.

4 There is also implementation problems with
5 the LSEs. I am going to skip that for now. So we
6 believe the evidence supports Professor Willig that
7 the majors are must-haves. Without them a service
8 loses most or all of its plays. In contrast to
9 Professor Shapiro who says the services lose only
10 very few based on the LSEs.

11 Now, another point of contention here is,
12 concerning opportunity cost, is where do those plays
13 go, once we figure out how many leave, what's the
14 diversion ratio. Professor Willig based his
15 opportunity cost analysis on the survey by Professor
16 Zauberman. And I am not going to dwell on all of the
17 survey stuff here. I think it suffices for the
18 moment to say there were three relevant surveys here
19 that addressed diversion for commercial webcasting
20 services, Zauberman, Simonson, and Hanssens. And all
21 three find very substantial diversion to subscription
22 interactive services.

23 And, in fact, the highest diversion ratio is
24 from Pandora's survey expert, Professor Hanssens.

25 So I've talked about the level of lost plays

1 without the content of a record company and the
2 diversion ratios. And I think Professor Willig is
3 right on both.

4 One other issue I need to talk about on
5 opportunity cost, and it's an issue where Professor
6 Shapiro just went wrong. Sorry for the dense script
7 on this slide but it's not an easy concept to
8 explain.

9 Let me try. We think the LSEs are
10 non-informative, and there is a straightforward way
11 to determine what happens if a service loses the
12 content of a major, even if you assume the major is
13 not a must-have. You run a survey.

14 And in step 1 in the survey you ask people
15 what they would do if they lost some of their
16 favorite artists and new releases. And you see what
17 percentage of respondents would reduce listening.

18 And then in step 2 in the survey, you then
19 ask those respondents who said they would reduce
20 listening what they would do to replace it? That
21 gives you the diversion ratio.

22 And then you have a straightforward
23 percentage of respondents who would buy a new
24 subscription if major label content were lost. And
25 that's what the modified Hanssens Survey does.

1 Professor Shapiro tries to perform step 1
2 through the LSEs, which are not useful for all of the
3 reasons that I have already given you. But even if
4 you accepted the LSEs, Professor Shapiro has a
5 further problem.

6 The LSEs don't tell him how many people
7 would change their listening behavior. The LSEs only
8 tell him how many plays would be lost. And that's a
9 problem for Professor Shapiro because he has to
10 somehow translate the percentage of lost plays into a
11 number of new subscriptions.

12 So let's take Pandora and Sony as an
13 example. Let's say Sony does not license Pandora and
14 some number of plays divert away from Pandora to
15 other sources of music, including subscription
16 interactive services.

17 With respect to that diversion to new
18 subscriptions, what we need to know to calculate
19 Sony's opportunity cost is not how many plays
20 diverted to those subscription services, but, rather,
21 how many new subscriptions were purchased.

22 And Professor Shapiro agreed with that. He
23 said: "In order to understand opportunity cost, we
24 really need to know how many new subscriptions will
25 be purchased."

1 I don't remember whether that was my
2 question or his -- whether he just said -- that was
3 his answer, but he said yes to that, in any event.

4 So we need to figure out how many new
5 subscriptions there are. And, of course, that's
6 because royalties to the record companies paid by a
7 subscription service are not paid on a per-play
8 basis. They are paid on a percentage of revenue or a
9 per-sub basis.

10 So if I was a Pandora user, and because I
11 was no longer hearing Sony artists I decided to buy a
12 new subscription to a new interactive service, the
13 royalties that Sony would receive as a result of that
14 new subscription would be the same whether I divert
15 five plays per month from Pandora or 50 or 500.

16 And since the LSEs don't purport to tell
17 Professor Shapiro how many new subscriptions will be
18 purchased if a new -- if a record company's content
19 is lost, he needs to find some way to translate lost
20 plays into new subscriptions.

21 So what Professor Shapiro does is he simply
22 makes an assumption. He assumes that each Pandora
23 user who buys a new subscription will divert 800
24 plays per month from Pandora to that new
25 subscription.

1 So, for example, if 80,000 plays per month
2 divert from Pandora to new subscription interactive
3 services, Professor Shapiro in effect assumes that
4 means that 100 new subscriptions would have been
5 purchased.

6 But what if his assumption is wrong?
7 Suppose that the average Pandora user who buys a new
8 subscription service diverts only 100 plays per
9 month? In that case, those 80,000 diverted plays
10 actually would represent 800 new subscriptions, not
11 100. And Professor Shapiro would have badly
12 underestimated the opportunity cost associated with
13 new subscriptions.

14 Now, I'm explaining all of this in a bit of
15 detail because you won't find any of this explanation
16 in Professor Shapiro's written testimony. It really
17 came out on cross.

18 But now that we know how his calculations
19 work, we can show that they are wrong. And we can
20 show that they are wrong using the Hanssens Survey.
21 Professor Hanssens asked respondents which
22 alternative sources of music they would use if
23 Pandora lost some of their favorite artists and new
24 releases?

25 And in response to, I think, Question 50, 82

1 respondents told Professor Hanssens that they would
2 buy a new subscription to an interactive service.

3 In response to a question regarding the same
4 hypothetical, respondents also told Professor
5 Hanssens what percentage of plays they would divert
6 to those new subscriptions.

7 So you can use those two data points coming
8 from the same survey and the same set of responses to
9 show that, on average, respondents who said they
10 would buy a new subscription to an interactive
11 service would divert about 67 plays per month to it,
12 away from Pandora, not 800, as Professor Shapiro
13 assumes.

14 We do that math in our proposed findings of
15 fact. And that shows that Professor Shapiro has, in
16 effect, underestimated the number of new
17 subscriptions by a factor of 12, even if, even if you
18 accept his use of the LSEs, which, of course, we
19 don't.

20 All right. So I have worked my way through
21 opportunity cost. And the next issue was financial
22 inputs. I am going to try and speed through that
23 one.

24 Obviously to do the modeling you need to
25 know not only what the opportunity cost is, but you

1 also need to know what surplus is being created,
2 what's the surplus available to be split. And the
3 primary dispute here really appears to be should you
4 use historical financial data, as Professor Shapiro
5 did in the first instance, or should you use
6 projections as Professor Willig did. And Professor
7 Willig has explained why his approach is right.

8 I mean, we're trying to determine the
9 surplus for that future period of time. So that's
10 the relevant time period. Looking at a projection
11 for that time period is the right thing to look at.

12 And the one thing I think you can say with
13 respect to historical data is that this is a rapidly
14 changing industry. Pandora is rapidly changing.
15 Everything is rapidly changing.

16 And so if you look at historical data and
17 try and -- you know, what are the odds that the
18 historical data for 2018 is going to accurately tell
19 you what the -- what the service is going to look
20 like in 2025. I would say the odds are almost zero.
21 It's not going to happen. Right? Because the future
22 is -- the one thing that is certain in the record
23 business is that the future is going to be different
24 than the past.

25 So looking at historical is just the wrong

1 way to do it. And as it turns out, Professor Willig
2 had some very good projections because they are
3 Pandora's projections. And they weren't -- they were
4 prepared for reasons that give him confidence in
5 them, used for the merger, filed with the SEC, given
6 to the Pandora Board.

7 And I know there's -- there's some further
8 dispute about which future projections do you use,
9 the merger proxy ones or the LSEs. We cover that in
10 our findings. Truth of the matter is that actually
11 doesn't really matter much. It doesn't really make
12 much -- have much impact on the results, and both
13 Professor Shapiro and Willig agree on that.

14 So the real question is historical versus --

15 JUDGE STRICKLER: You mentioned -- you
16 mentioned -- you mentioned, Mr. Handzo, I think you
17 may have misstated. You said the merger proxy or the
18 LSEs. You meant the LRSs, right, the Long-Run
19 Scenarios?

20 MR. HANDZO: I'm sorry, yes, thank you for
21 correcting that. You are correct.

22 JUDGE STRICKLER: That's all right.

23 MR. HANDZO: In any event, we believe that
24 Professor Willig was right to use projections and
25 that he used the correct ones and the ones that

1 Pandora relies on for filing with the SEC and for
2 important business decisions.

3 So just then to kind of wrap up here on the
4 modeling, obviously we do have a number of disputed
5 issues here. And so Professor Willig in his rebuttal
6 testimony provided some sensitivity analyses. And we
7 have got those in the proposed findings of fact. I'm
8 not going to take the time to walk through each of
9 the four sensitivity analyses that Professor Willig
10 performed, but you see the basics of them here.

11 What I do want to talk about, though, is one
12 of those sensitivity analyses. And that's Professor
13 Willig's option or Scenario Number 1.

14 So in Scenario Number 1, Professor Willig
15 used a Shapley model assuming that no one major is a
16 must-have, but a service does need at least two of
17 the majors.

18 So this addresses the services' criticism
19 about whether each of the majors is a must-have,
20 because it relaxes that specification. And in this
21 sensitivity analysis, Professor Willig accepted the
22 LSE-based power ratio of .7 for the purpose of
23 determining opportunity cost.

24 So, that is, the power ratio as I understand
25 it is how much listening is lost if a service loses a

1 major record company. And .7 means that the service
2 loses less than the record company's market share.
3 So Professor Willig is accepting those LSE-based
4 power ratios for this analysis, even though we think
5 those LSEs are flawed.

6 He accepts Professor Shapiro's retention
7 ratio. And what this shows is, using the Shapley
8 Values, if you have two majors that are must-haves,
9 even if it's not all three, even if no one of them is
10 necessarily a must-have, you still wind up with the
11 rates that you see highlighted here.

12 Now, again, I'm not quite sure why these are
13 restricted, but you see them, so I won't say them out
14 loud.

15 With that, I'm going to move on to the next
16 segment of my argument. And I am slowly but surely
17 catching up on time, apparently, so maybe I won't
18 have to talk as fast when I talk about the
19 simulcasters.

20 The NAB argues that simulcast rates should
21 be lower than webcasting rates and it offers 15
22 direct licenses between Indies and iHeart as its
23 benchmark.

24 And before I turn to the rates in those
25 direct licenses, I want to address whether

1 simulcasting should, indeed, receive different and
2 lower rates compared to webcasting.

3 That is a familiar argument lost by the NAB
4 in Web I, Web II, Web IV, and it was moot in Web III
5 where the NAB voluntarily agreed to rates that were
6 almost identical to the webcasting rates.

7 Now, much of the NAB's argument here is
8 pretty much the same as it has been at past cases.
9 So, for example, the NAB argues about DJs and
10 non-music content. It argues about public interest
11 for broadcasters. It argues about the level of
12 interactivity that broadcasters and simulcasters
13 offer, differences in ad monetization. All of those
14 things were rejected by the Judges as reasons to set
15 a different rate for simulcasters in Web IV and we
16 really don't think there is anything different here.
17 So I don't think I need to say more than just to show
18 you the excerpts from the Web IV decision.

19 I do want to talk a little bit more about
20 promotion, because that's another area where NAB says
21 it is particularly promotional, that is, simulcasters
22 are particularly promotional compared to webcasting,
23 and that's another reason in their view why
24 simulcasts should get a lower rate.

25 Now --

1 JUDGE STRICKLER: Before you get into the
2 evidence, Mr. Handzo -- excuse me. Before you get
3 into the evidence, I have a general question for you.

4 Are you arguing that given what was decided
5 in Web IV in the preceding webcasting cases, that as
6 a matter of law or prior authority, precedent, that
7 we are -- we cannot set a separate rate for
8 simulcast, or are you saying it's a -- totally on the
9 facts, that the -- that the NAB has not made a
10 sufficient case for a lower rate?

11 MR. HANDZO: I am not saying that as a
12 matter of law, the Judges cannot set a separate rate
13 for simulcasting. I think the Judges decide every
14 case anew. And if there is new and different
15 evidence that persuades you to do something
16 different, of course you are perfectly entitled to do
17 that. So that's not the argument.

18 I do think it is the case, though, that
19 where this argument has been made and lost so many
20 times before, it is appropriate to look back and see
21 whether there is anything new being offered here that
22 should cause you to reconsider your prior decisions,
23 because I do think there is value to the precedents
24 here.

25 So unless there is something new, I would

1 hope that the Judges would want to follow past
2 precedent. And there is just not a lot new here. To
3 the extent that there is, I am going to come to it in
4 a minute.

5 The other thing I think I would say is where
6 you have got all this prior precedent saying no
7 separate rate for simulcast, that does at least put a
8 burden of going forward on the NAB to show you why
9 the outcome should be different here.

10 So they are the ones who would have the
11 burden here. So I hope that answers your question.

12 JUDGE STRICKLER: It does. Thank you.

13 MR. HANDZO: So with respect to promotion,
14 again, one of the ways that NAB tries to distinguish
15 simulcasting from webcasting, in Web IV the Judges
16 pointed out that there was a lack of empirical
17 evidence to support the claim that simulcasting is
18 more promotional than webcasting.

19 And the NAB still has not filled that void.
20 Dr. Leonard concedes that he has conducted no kind of
21 empirical analysis that would show a differential
22 effect with respect to promotion as between
23 simulcasters and custom webcasters.

24 Having said that, there's -- there's two
25 ways you can look at promotion here. You can look at

1 promotion simply on webcasts, separate from
2 broadcast. And that's what actually Dr. Leonard
3 seems to do.

4 I -- I asked him, when you talk about the
5 promotional effect of simulcasting, are you talking
6 about simulcasting by itself or simulcasting as a
7 part of the larger radio broadcast business? And his
8 answer was, well, I'm talking about the promotional
9 benefit of a play on simulcast to a simulcast
10 listener.

11 So if you look at it that way, if you look
12 at simulcast separately from broadcast, then
13 simulcast lacks the most important thing that
14 broadcast offers, a really big audience with a really
15 big reach.

16 And I think the record company executives
17 and -- and possibly even some of the iHeart witnesses
18 agree that the value of broadcast is that big market,
19 and that simulcast alone doesn't offer it.

20 So if you're looking at simulcast alone it
21 simply doesn't have the promotional value that
22 broadcast does because it is just a -- a tiny
23 fraction of the broadcast coverage in the market.

24 Alternatively, you could look at simulcast
25 as a package with broadcast. And if you do that

1 there's a different problem. Simulcast is the tip of
2 the tail of the broadcast dog. I think, according to
3 Dr. Leonard, simulcast plays are about -- or
4 listening hours is about 3 percent of total listening
5 hours for broadcasters.

6 And what that means is that the programming
7 decisions by the broadcasters are driven by what's
8 best for broadcast. And the NAB actually says so in
9 its reply findings.

10 In the context of explaining why NAB thinks
11 major labels are must-haves for simulcasters, NAB
12 says "simulcasters content decisions are dictated by
13 their over-the-air broadcasts, which can play any
14 sound recording without payment." And that is kind
15 of our point.

16 Offering a lower price for the few simulcast
17 plays isn't going to induce programmers to play those
18 sound recordings on their broadcast transmission.
19 They are going to play the music that generates the
20 best ratings for the broadcast stations, not the
21 music that is cheapest for their simulcast.

22 I am not going to read the quote here
23 because it is restricted, but I think it gives you a
24 flavor of how iHeart thinks about this. When you
25 program, if you're programming the same content for

1 broadcast and simulcast, what you're doing is you're
2 thinking what's going to give me the best ratings on
3 broadcast. You're not going to try and save a few
4 pennies on the 3 percent represented by simulcasting.

5 So there is no reason to believe that any
6 promotional broad -- any promotional value on
7 broadcast would lead record companies to offer a
8 lower price for simulcast because the price for
9 simulcast play is not likely to influence what the
10 programmers decide to play on broadcast.

11 So one thing that the NAB says is different
12 this time around are direct licenses. And actually
13 not really, because it's the same ones they offered
14 in Web IV, just slightly more than half as many as
15 they had in -- in Web IV.

16 But the licenses just don't prove anything
17 that the NAB wants them to prove.

18 And at this point I think actually I need to
19 go into restricted session, because I am going to
20 talk about the direct licenses.

21 CHIEF JUDGE FEDER: All right. About how
22 long?

23 MR. HANDZO: Well --

24 MR. SACK: Stand by, please.

25 CHIEF JUDGE FEDER: Hold on, Mr. Sack.

1 MR. HANDZO: It will probably be about 15
2 minutes.

3 CHIEF JUDGE FEDER: Okay. We will go into
4 restricted session for about 15 minutes. Will the
5 host please clear the room.

6 MR. SACK: Apologies, Your Honor. Thank
7 you.

8 We are beginning to clear the room now. If
9 you're an attendee in the Zoom meeting who is not
10 allowed to attend restricted session, please leave
11 the session by clicking the red leave button on the
12 bottom right-hand side of your screen or click the X
13 on the top right-hand side.

14 Your counsel will inform you when you are
15 allowed to return to the proceeding. Please stand
16 by, Your Honors, and counsel, while we work to clear
17 the room.

18 (Whereupon, the trial proceeded in
19 confidential session.)

20
21
22
23
24
25

1 O P E N S E S S I O N

2 MR. SACK: The room is unlocked and the
3 stream is live. Thank you.

4 CHIEF JUDGE FEDER: We are back in open
5 session.

6 You may proceed, Mr. Warren.

7 MR. WARREN: Thank you, Your Honors, and
8 good afternoon. It's nice to see you all again.

9 SoundExchange's proposal relating to the
10 non-commercial broadcasters is simple and it's
11 straightforward. It has two components, a minimum
12 fee up to the 159,140 ATH per month threshold, and
13 then the per-performance commercial rate. And that's
14 really it.

15 The reason it is so simple is because it's
16 the same structure devised by the Judges in Web II
17 and subsequently endorsed by the Judges in Webs III
18 and IV.

19 Since Web II, the Judges have found that
20 economic logic dictates the structure. That's
21 because below a certain threshold that minimum fee
22 makes sense given the relatively low usage of
23 non-commercial webcasters, but above a threshold the
24 record companies would not extend a discount like
25 that.

1 The risk of cannibalization and competition
2 with commercial webcasters would simply be too high.
3 The only differences that SoundExchange proposes now
4 are increasing the minimum fee and, of course,
5 changing the commercial rate.

6 CHIEF JUDGE FEDER: One moment. Somebody
7 has an open mic and is shuffling papers. If you are
8 not Mr. Warren, please mute your microphone.

9 MR. WARREN: Thank you, Your Honor. I
10 appreciate that.

11 What I am saying is the only real change
12 SoundExchange proposes are increasing the minimum fee
13 and, of course, changing the commercial rate. Those
14 are issues that Mr. Handzo has just addressed and so
15 I won't belabor them here.

16 So besides the fact that it is consistent
17 with the Judges past decisions, does the structure
18 still make sense today? And to answer that question,
19 of course, we have to look at the familiar willing
20 buyer/willing seller framework.

21 So we can start with the willing buyer side
22 of this. And that means considering the willingness
23 to pay of non-commercial webcasters. So what does
24 that look like?

25 Well, the world of the non-comms is split

1 between hundreds of tiny mission-driven non-profits
2 that pay just the minimum fee, and then a handful of
3 non-commercial webcasters that pay for excess usage.
4 Over 97 percent of non-comms pay just the minimum
5 fee, and that results in usage at up to a 99 percent
6 discount off commercial rates.

7 NRBNMLC has not presented evidence
8 indicating that those small webcasters are unwilling
9 and unable to pay this fee and there is certainly no
10 evidence to suggest a bigger discount is warranted.

11 What about the other side, the
12 non-commercial webcasters that exceed the usage
13 threshold? Well, many of them actually pay only a
14 small amount of per-performance royalties. And it's
15 just a handful whose usage is materially above the
16 ATH threshold.

17 Those are the ones that we should focus on.

18 And the Web II appeal, the D.C. Circuit
19 noted the reality that the largest non-commercial
20 webcasters already get a huge discount.

21 The name and the number are restricted, so I
22 won't read them, but in the middle of the slide you
23 can see a statistic concerning the effective discount
24 for the largest non-commercial webcaster.

25 Is that discount insufficient? No.

1 NRBNMLC's only evidence on that score comes from
2 Family Radio, but neither of their experts actually
3 rely on Ms. Burkhiser testimony, and, in fact, in
4 their findings NRBNMLC disavows the relevance of
5 Family Radio's members as "not part of the willing
6 buyer/willing seller inquiry."

7 So that's the beginning and end of the story
8 on Family Radio. The reality per Professor Steinberg
9 is that just two companies account for the vast
10 majority of all of the reporting that's necessary for
11 access fees.

12 So I have reproduced here a graph from Mr.
13 Ploeger's testimony. The reason I've done that is to
14 emphasize just how concentrated the non-comms market
15 is when we're talking about usage above the ATH
16 threshold. As you can see, the vast majority is a
17 single non-comm.

18 Now, is that non-comm an outlier?
19 Absolutely yes. Is it irrelevant to the willing
20 buyer/willing seller analysis as NRBNMLC suggests?
21 Absolutely not.

22 The question isn't who is most
23 representative. The question is who is the buyer
24 that will use the license the most? On the
25 commercial side, that's Pandora. On the

1 non-commercial side, it's the single webcaster
2 highlighted here.

3 There's a reason it's the only webcaster
4 with separate counsel, the only non-commercial
5 webcaster with separate counsel in this proceeding.
6 They have an outsized interest in where the statutory
7 rate is set.

8 So is that webcaster a bare bones operation
9 with a rock bottom willingness to pay? Absolutely
10 not. You see here that in 2018 they ran a \$54
11 million surplus, making them more profitable than NPR
12 plus New York Public Radio combined, and making them
13 more profitable than Pandora down here.

14 But the reality is even beyond that one
15 webcaster, statutory royalties are not a meaningful
16 expense for any of the other non-comms that use above
17 the threshold. So you can see here -- and this was
18 presented by Professor Tucker -- revenue for certain
19 of these non-commercial webcasters as compared to
20 statutory royalties.

21 And you will see that the statutory
22 royalties are just very, very small, low single digit
23 percentage of the largest non-comm's revenue. So
24 there isn't a meaningful willingness to pay
25 constraint here.

1 That brings us to the willing seller side of
2 the hypothetical negotiation. What rate would a
3 record company accept? Again, it depends. Below the
4 ATH threshold there is, again, unlikely to be
5 meaningful competition with commercial counterparts,
6 but above there is much greater risk if the
7 non-commercial webcasters play similar music in
8 similar amounts to commercial webcasters.

9 If that's the case, record companies would
10 not have an incentive to extend a heavy discount.

11 So, do commercial webcasters and large
12 non-comms, in fact, play similar recordings at
13 similar frequencies? The record is very clear on
14 that point. The answer is yes.

15 Mr. Ploeger presented evidence concerning a
16 review of randomly selected commercial and
17 non-commercial station playlists. And you will see
18 here that there's a very high degree of overlap.
19 Fully 97.7 percent of the total plays on the
20 non-comms were of recordings played on the commercial
21 stations.

22 Now, that's notable and worth pausing on
23 given what the Judges said in Web II. They said
24 "music programming found on non-commercial stations
25 competes with similar music programming found on

1 commercial stations."

2 Now, NRBNNMLC simply fails to distinguish or
3 otherwise discount the cross-elasticity that would
4 result between non-commercial and commercial
5 stations. Notably, Professor Steinberg admitted on
6 cross that he had not done any study of his own to
7 evaluate whether music is played on commercial versus
8 non-commercial religious broadcasters, with what
9 frequency, or to what degree there was overlap.

10 His testimony, and I quote: "I can say
11 something but I don't have numbers to back that up."
12 We do.

13 As it turns out, Professor Cordes' economic
14 theory supports the playlist data that we just looked
15 at, and undermines NRBNNMLC's attempts to discredit
16 it.

17 He said, as a matter of economic logic, it
18 makes sense that large non-comms would meaningfully
19 compete with commercial webcasters. Why is that? It
20 is because non-comms are what he calls high
21 elasticity demanders.

22 They are willing to stream more recordings
23 per hour if offered a lower price. And they can do
24 so without advertisements, unlike commercial
25 webcasters, giving them a competitive advantage.

1 Professor Cordes also testified that even if
2 a non-commercial webcaster does not intend to compete
3 with a commercial webcaster, a competitive situation
4 could still be created if the non-commercial
5 webcaster reaches a certain size because of its
6 popularity.

7 And, finally, Professor Cordes testified
8 consistently with Mr. Orszag and Professor Steinberg
9 in saying that there is no logical inconsistency
10 between a religious webcaster fulfilling its mission
11 and reaching as big an audience as possible by
12 offering Christian content with wide appeal.

13 Now, given all that, it is not a surprise
14 that record companies approach the situation with
15 skepticism towards extending any kind of discount to
16 large non-commercial webcasters. And we saw Aaron
17 Harrison testify on behalf of UMG that that record
18 company does not distinguish between non-commercial
19 and commercial webcasters when extending a blanket
20 license.

21 So to put the point vividly, during
22 Professor Cordes's cross, he was shown a URL from
23 iHeartRadio. And that shows that when a user
24 accesses a popular commercial Christian station, in
25 this case The Fish, iHeart tells that user that

1 K-LOVE, a non-commercial station run by EMF, is "a
2 similar station."

3 Again, that explains why record companies
4 would not give a bigger discount off the commercial
5 rate to an entity like EMF. So what has NRBNMLC said
6 about opportunity cost? Not much.

7 Professor Steinberg again admitted on cross
8 that he had made no empirical attempt to assess this,
9 leaving NRBNMLC in a similar situation to where they
10 were in Web IV, when the Judges said "they had
11 nothing to say about the seller's side of the
12 equation."

13 That's true today. The most they have done
14 is present cherry-picked anecdotes of discounts to
15 non-profits, remodeling services, software, even a
16 single piano donated to a single webcaster. There's
17 no indication those examples are illustrative and
18 certainly no quantitative effort to use them to
19 justify a further discount.

20 So where SoundExchange wants to extend the
21 rate structure used in Web II, NRBNMLC wants to blow
22 it up altogether. The proponent of such a
23 significant change bears the burden of showing that
24 it's warranted, and NRBNMLC has not met that burden.

25 So what is its proposal? That's been a bit

1 of a moving target.

2 From September of last year through July
3 31st of this year, NRBNMLC proposed essentially a
4 tiered minimum fee structure, \$500 annually per
5 station or per channel for one annual block of ATH
6 usage and double that fee for double the usage,
7 triple the fee for triple the usage, and so on up the
8 staircase.

9 The Judges have never endorsed that
10 proposal, and NRBNMLC itself abandoned it on July
11 31st, 2020.

12 That's when NRBNMLC submitted their amended
13 rate proposal, after the close of written testimony.

14 And what they have proposed here they style
15 as two alternatives or two options, both purportedly
16 based on SoundExchange's settlement with CPB and NPR.
17 It's worth pausing on the timing here before I
18 explain what their concept is.

19 SoundExchange is put in the position of
20 arguing against a rate proposal offered up for the
21 first time after the conclusion of discovery and
22 after the submission of all expert reports.

23 There are not only fairness concerns here to
24 SoundExchange, who is limited in developing an
25 evidentiary record, heeds the NRBNMLC's actual

1 proposal, it leaves the Judges with the unenviable
2 task of adjudicating new proposals with an incomplete
3 record.

4 In any event, let's talk about what NRBNMLC
5 now proposes. So in the top part of the slide you
6 see what they call alternative 1, and the bottom part
7 what they call alternative 2.

8 So let's talk about alternative 2 first.
9 NRBNMLC proposes to pay an annual lump sum fee on
10 behalf of a group of up to 795 webcasters, each of
11 whom would be apportioned usage from a big annual
12 block.

13 It's not clear on what basis NRBNMLC will
14 identify the 795 webcasters, whether those webcasters
15 can elect into or out of the pool, and what happens
16 if they disagree about how much usage each one is
17 supposed to get.

18 There is just no record developed by NRBNMLC
19 on any of those points. They ask the Judges to leave
20 the details to their unchecked discretion. There is
21 no obvious basis for the Judges to delegate to the
22 committee of a trade association in that manner.

23 And, needless to say, the alternative 2
24 structure has never been endorsed by the Judges in
25 the past.

1 I suggested the word alternative is a
2 misnomer. Here is why. What happens to the
3 non-comms that NRBNMLC doesn't let in the alternative
4 2 club. Well, they are subject to NRBNMLC's
5 alternative 1.

6 That's why there is a plus sign on this
7 side. This isn't an either/or choice between two
8 options. The structure at the top needs to be
9 justified even if the structure at the bottom is also
10 adopted.

11 So what does alternative 1 do? Two big
12 changes. First, it annualizes the ATH threshold and,
13 second, it cuts the royalty for above threshold usage
14 from the full commercial rate where it has been since
15 Web II to a third of that rate.

16 I will briefly touch on the annualization
17 issue, though it's the more minor of the two points.
18 And that really has to do with seasonal usage around
19 the holidays. As I'm sure Your Honors know, starting
20 about now Christmas music will be ubiquitous and
21 unavoidable. And during the holidays users will
22 flock to Internet channels geared to Christmas music.
23 That music is the same regardless of whether the
24 station is a nonprofit or a commercial webcaster, and
25 that really creates a high degree of cross-elasticity

1 in the downstream market.

2 An annual ATH threshold sweeps that
3 competitive situation under the rug and it allows
4 non-commercial webcasters with holiday themed
5 channels to average that intense usage in December
6 across an entire year.

7 It's a discrete issue but it's still an
8 unfair one, and NRBNMLC has not justified it with any
9 sound economics or emperics.

10 Okay. The more consequential piece, of
11 course, is cutting the commercial rate by a third.
12 It is not clear why the Judges should travel back 20
13 years to Web I, which is where NRBNMLC seems to have
14 sourced this one-third ratio.

15 At trial Ms. Burkhiser dismissed as ancient
16 history Family Radio's programming decisions from
17 2011. Of course Web I was a decade before even that,
18 so can fairly be called prehistoric in nature.

19 The industry just looks nothing like it did
20 in 2001. There were no connected cars, smart
21 speakers, Smartphones, and, as this graph shows,
22 streaming was in its infancy.

23 At the time of Web I there just wasn't a
24 developed record on the cross-elasticity between
25 commercial and non-commercial webcasters, which is

1 one of the most salient economic considerations here.

2 So besides Web I, NRBNMLC repeatedly looks
3 to Webcasters Settlement Act agreements in which they
4 said and rely on liberally in their findings. It is
5 not clear why they think they can do this.

6 Those agreements are non-precedential, by
7 their express terms, and also as a matter of law.
8 I've reproduced the statute here. I won't read it.
9 But the bottom line is that Judges shall not take WSA
10 agreements into evidence or otherwise take them into
11 account.

12 And the reason for that is Congress says
13 those agreements are compromises motivated by unique
14 circumstances, not the kind of negotiation that would
15 happen in the hypothetical marketplace between a
16 willing buyer and a willing seller.

17 So even if the Judges could consider these,
18 which they can't, they really wouldn't be probative
19 at all given that they are not WB/WS negotiations.

20 And that brings us to the biggy for NRBNMLC,
21 which is the most recent settlement between CPB and
22 NPR on the one hand and SoundExchange on the other.

23 This is not the first time NRBNMLC has
24 attempted to use one of these settlements as a
25 benchmark. They tried it in Web II and they tried it

1 in Web IV. And it failed both times.

2 You know, to look back to a colloquy that
3 Mr. Handzo had with Judge Strickler, we're not
4 suggesting that the Judges are bound by this
5 precedent, but it is informative in that there is
6 really -- if the facts haven't changed, there is
7 really no reason the Judges should reach a different
8 conclusion now.

9 And as it turns out, despite this being a
10 new renewed settlement agreement, the facts just
11 haven't changed enough to compel a different outcome.

12 So I am very quickly going to wrap up -- I
13 know I am the only thing standing between everyone
14 and lunch -- by just reviewing the four steps of
15 evaluating a benchmark. And I will do this hopefully
16 fairly quickly.

17 The Judges have said as of last year there
18 is really four factors. I won't repeat them but they
19 are on the side and we're going to quickly go through
20 each one.

21 So are the parties to the benchmark
22 comparable to the parties in the hypothetical
23 transaction? They're not. On the willing buyer
24 side, you have got CPB and NPR. CPB doesn't operate
25 stations or transmit sound recordings. It uses

1 government funds to pay royalties pursuant to a
2 settlement. And NPR is a consortium of over 500
3 stations.

4 That's very, very different than an
5 individual webcaster that you would see in the
6 hypothetical negotiation in the target market.

7 Same thing on the seller side. You have got
8 SoundExchange as the other party to the purported
9 benchmark. SoundExchange is not a copyright owner
10 and it is not a record company. It's, of course, a
11 statutory designated collective, very different than
12 what you might see in the type of direct license that
13 had been offered up on the commercial side of the
14 case.

15 Lest there be any doubt about the uniqueness
16 of these parties, they said so in their motion to the
17 Judges to adopt the settlement, noting that public
18 radio has a unique history and is motivated by unique
19 business, economic, and political circumstances.

20 Okay. What about the comparability of the
21 rights? Two quick points here. In the CPB/NPR
22 settlement, SoundExchange was extended two very
23 important benefits that resulted in lower rate.

24 One is consolidated reporting. Instead of
25 having to process hundreds and hundreds of reports of

1 use, NPR bundles them all up and hands them in a
2 nice, neat package to SoundExchange, saving a ton of
3 work.

4 Second, SoundExchange has the benefit of
5 getting a single lump sum payment rather than having
6 to process payments over time. And Professor
7 Steinberg himself acknowledged that this was a
8 benefit that he had not actually quantified in his
9 own benchmarking analysis.

10 I'll quickly race through these, different
11 economic circumstances for the CPB settlement.
12 Again, you have got federal funding and backing that
13 gives CPB more leverage. You have the volatility of
14 congressional appropriations that fund CPB, reduces
15 CPB's willingness to pay, and -- and both of those
16 would really push the rate down. They are
17 directionally pointing the same place.

18 And, finally, whether the proffered
19 benchmark reflects adequate competition. Once,
20 again, this has to do with CPB's market power as a
21 consolidated buyer, really different than what you
22 would see in an individual negotiation between a
23 webcaster and the record company.

24 In the interest of time, which I don't have,
25 I will skip discussing Professor Steinberg's

1 adjustments to the benchmark and I will just say
2 that, you know, a non-comparable benchmark remains
3 non-comparable whether it is adjusted or not. And
4 what Professor Steinberg failed to do was really
5 engage in that comparability analysis to see whether
6 this is even a useful benchmark in the first place,
7 and it isn't.

8 So at the bottom, NRBNMLC makes a request
9 they have made time and time again to the Judges,
10 adopt as a benchmark a settlement between
11 SoundExchange and CPB/NPR that's fundamentally
12 different in kind of a target market.

13 SoundExchange asks the Judges to reach the
14 same result they have in the past with the exception
15 of increasing the minimum fee and changing the
16 commercial rate.

17 And I believe that's my time. So perhaps we
18 can, unless Your Honors have any questions, perhaps
19 we can break for lunch.

20 CHIEF JUDGE FEDER: Judge Strickler, Judge
21 Ruwe, any questions? You're muted, Judge Strickler.

22 JUDGE RUWE: No questions from me. Thank
23 you.

24 JUDGE STRICKLER: No, no questions.

25 CHIEF JUDGE FEDER: Thank you. Thank you,

1 Mr. Warren. We will recess for 30 minutes and have
2 our lunch and then we will reconvene.

3 (Whereupon, at 2:06 p.m. a lunch recess was
4 taken.)

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 AFTERNOON SESSION

2 (2:38 p.m. EST)

3 CHIEF JUDGE FEDER: Okay. If everyone will
4 take their places, we can get started.

5 Actually, I believe we need to get Weil
6 Gotshal up on the screen and take Jenner down.

7 Okay, Mr. Marks, will you be starting in
8 open session?

9 Okay, we still -- we still need your sound.

10 JUDGE STRICKLER: You're muted, Mr. Marks.

11 CHIEF JUDGE FEDER: They're working on it.

12 Okay. I think your mic is open now, Mr.
13 Marks.

14 MR. MARKS: Can you hear me now?

15 CHIEF JUDGE FEDER: Yes, we can. Okay.
16 Will you be starting --

17 MR. MARKS: I apologize, Your Honors.

18 CHIEF JUDGE FEDER: Will you be starting in
19 open session?

20 MR. MARKS: I will be starting in -- I will
21 be starting in open session. I'm going to do my best
22 to stay in open session until the end of the day, and
23 just refer to restricted information on the slides
24 and direct the Judges' attention to it without
25 actually revealing restricted information.

1 CHIEF JUDGE FEDER: Okay. Terrific. Al
2 right. If you're ready to begin, please proceed.

3 MR. MARKS: Yep.

4 CLOSING ARGUMENT BY COUNSEL FOR PANDORA AND SIRIUSXM

5 MR. MARKS: Good afternoon, Your Honors.
6 I'll be presenting first on behalf of the services
7 today. I'll be followed by Mr. Steinthal. He'll be
8 followed by Mr. Wetzel. And Ms. Ablin will follow
9 Mr. Wetzel. If there's time left, one of us may
10 return.

11 My presentation, broadly speaking, will
12 cover four topics.

13 The first, the Pandora/SiriusXM proposal,
14 which has been adjusted to take account of the
15 evidence as developed through trial; the record
16 evidence concerning the music streaming marketplace,
17 what has changed since Web IV and what has not; what
18 the trial evidence including, critically, the
19 experimental evidence shows about the use of a
20 bargaining model to determine reasonable rates; and
21 the use of benchmarks for rate setting here.

22 As to that last topic, I'll focus
23 principally on Dr. Shapiro's benchmark analysis and
24 why his approach is correct.

25 Mr. Steinthal will take the lead on

1 addressing the many flaws in Mr. Orszag's approach
2 and the many reasons Mr. Orszag's approach is
3 unreliable.

4 Based on the evidentiary record as it
5 developed at trial, Pandora and SiriusXM made several
6 modest changes to our proposed rates and terms. As
7 amended for 2021, we have proposed a per-play rate of
8 .11 cents per-play for ad-supported services and a
9 per-play rate of .16 cents for subscription services.

10 As I will discuss in greater detail when
11 discussing the economic expert testimony, the
12 evidence shows that those are the rates that best
13 satisfy the statutory objective, to determine the
14 rates that would emerge between a willing buyer and a
15 willing seller in an effectively competitive market.

16 We propose that those rates be adjusted each
17 year for the remainder of the rate period at issue,
18 by changes in general price levels as measured by the
19 most recent Consumer Price Index for all consumers
20 and all items.

21 And we propose to carry the -- the non-rate
22 terms subject to several specific adjustments, which
23 I won't address today but which are addressed in the
24 services' proposed findings at paragraphs 328 to 356.

25 Let me now turn to the music streaming

1 marketplace. SoundExchange, as you heard this
2 morning, is seeking more than a 30 percent increase
3 in the current statutory rates for subscription
4 webcasters and more than a 50 percent increase in the
5 current statutory rates for ad-supported webcasters.

6 These are truly remarkable propositions in
7 light of how the music streaming marketplace has
8 developed under the current rates. In Web IV,
9 SoundExchange tried to make the case that
10 non-interactive streaming was inhibiting the growth
11 of the market for interactive streaming. Well, what
12 does the evidence in this proceeding show? Massive
13 growth in the usage of interactive streaming
14 services. As Mr. Orszag and Dr. Tucker testified,
15 there have been many tens of millions of new
16 subscribers to interactive services since the Web IV
17 record closed.

18 You have massive growth in record industry
19 revenues from interactive streaming. You have
20 massive growth in record industry revenues from
21 streaming overall. And you have massive growth in
22 total record industry revenues.

23 There is zero evidence that any of these
24 trends are likely to change if rates are reduced to
25 the levels proposed by Pandora and SiriusXM.

1 SoundExchange has attempted to justify the
2 astronomical rate increases they propose on various
3 contentions that market conditions have changed. But
4 they have utterly failed to make that case.

5 I'll start with the newest one, which was
6 offered just today for the first time by Mr. Handzo
7 when he claimed that opportunity costs of licensing
8 non-interactive webcasters have risen since Web IV.
9 That's just a brand new claim.

10 There's no evidence of that. There was no
11 calculation of record company opportunity cost in Web
12 IV. Indeed, the decision noted that Dr. Rubinfeld
13 had not calculated opportunity costs.

14 So there's no way to compare and make the
15 claim that it's different now than it was then or
16 that it has gone up or that it has gone down. And
17 the idea that it's significantly higher, Professor
18 Shapiro has -- has demonstrated -- and I'll get into
19 this in more detail -- that today the opportunity
20 cost of licensing non-interactive streaming remains
21 quite low.

22 So let me turn to the two major contentions
23 -- contentions about changes in marketplace that
24 SoundExchange actually made during the trial. First
25 is the claim that at least with regard to their

1 selected benchmarks, the licensing market for
2 interactive services has become effectively
3 competitive.

4 Not so. There is still no meaningful price
5 competition between record labels and licensing
6 interactive services. Each of the majors remains
7 indisputably a must-have for on-demand services. And
8 the witnesses from the major labels who testified at
9 trial admitted as much.

10 Those admissions are part of restricted
11 testimony, so I won't quote them on open session, but
12 they are addressed in detail in the services'
13 proposed findings at paragraphs 57 through 159, and I
14 expect Mr. Steinthal may have some more to say on
15 that subject later today.

16 Second, just as SoundExchange tried but
17 failed to do in Web IV, SoundExchange once again
18 tries to show that non-interactive services and the
19 interactive services have converged.

20 This effort fails as well. The evidence
21 shows that non-interactive services and on-demand
22 services remain complements. Just as the record
23 showed in Web IV, the evidence here shows that there
24 is a broad spectrum of consumer desires for music
25 consumption, ranging from consumers with little or no

1 interest in music consumption to music aficionados
2 who consume a great deal of music, care deeply about
3 specifically what music they listen to, and are
4 willing to spend money -- more money on music than
5 casual listeners. Most people fall somewhere in
6 between, and their interest in control over music
7 selection fluctuates over the course of given day,
8 month, or year.

9 Non-interactive services and on-demand
10 streaming services complement each other to satisfy
11 those different consumer desires. Pandora listeners,
12 on average, use four other services per month. And
13 SiriusXM subscribers listen on average to more than
14 five other services per month.

15 Non-interactive services simply are not an
16 obstacle to the growth of on-demand services, and
17 many of them now offer interactive tiers themselves,
18 like Pandora Premium, to funnel users interested in
19 on-demand functionality into a paid offering.

20 SoundExchange tries to bridge the gap
21 between non-interactive and on-demand services by
22 emphasizing that playlist listening is an available
23 on interactive services when consumers do not want to
24 pick each specific song and the order in which it is
25 played.

1 The evidence, however, shows that the
2 overwhelming percentage of listening to on-demand
3 services continues to inter- -- excuse me --
4 continues to involve interactive functionality that
5 is not available to statutory services. With respect
6 to playlists, the majority of listening is to
7 user-generated playlists, where users pick the songs
8 and fully control the listening experience.

9 Even with respect to playlists generated by
10 on-demand services, the experience is still far more
11 interactive than listening to a non-interactive
12 service. Users can see exactly what songs are
13 available and will be available. They can jump
14 around the list to listen to whatever songs they want
15 in whatever order they want. And they can replay
16 tracks to their heart's content.

17 And even if subscribers to on-demand
18 services sometimes listen more passively, it is
19 precisely the availability of on-demand listening
20 that allows those services to charge twice as much
21 for subscriptions than mid-tier services that do not
22 offer that same on-demand functionality.

23 There is no credible dispute that consumers,
24 record labels, and services alike view interactivity
25 as providing substantial incremental value.

1 Subscribers are willing to pay more to get it,
2 typically twice as much more in an apples-to-apples
3 comparison. Record labels certainly demand higher
4 prices for it, charging substantial premiums whenever
5 services like Pandora seek to add interactive
6 features. And the size of the premium scales up with
7 the degree of interactivity.

8 And services are willing to pay more when
9 they want to offer interactive features. That's true
10 for subscription services and is true for
11 ad-supported services.

12 There certainly has been no convergence in
13 how record companies treat on-demand services and
14 services without on-demand functionality when they
15 license in unregulated transactions.

16 I'll turn now to the bargaining model
17 evidence. As I noted at the outset of trial, there
18 is some conceptual agreement between Professor
19 Shapiro and Professor Willig on how to construct a
20 model to determine the outcome of negotiations
21 between a willing buyer and a willing seller in an
22 effectively competitive market.

23 Number 1, they agree that the lower bound of
24 the range of possible results is the opportunity cost
25 to the record label if a deal is struck. They agree

1 that the upper bound of the range is informed by the
2 webcaster's willingness to pay, and they agree that a
3 bargaining model can be used to determine the outcome
4 within that range.

5 But that's about where the agreement ends.
6 Contested issues include how do you measure lost
7 listening, if any, on the service if there's no deal?
8 How do you measure where that lost listening would
9 go? What percentage of plays diverted to other forms
10 of listening would be of recordings owned by the
11 suppressed label? That was referred to as the
12 retention ratio during trial.

13 How do you measure royalties earned by the
14 suppressed label from plays diverted to other forms
15 of listening? How do you measure webcaster
16 willingness to pay? What's the right bargaining to
17 use and how do you specify the model?

18 I'll take each of these issues in turn
19 today.

20 So how do you measure lost listening? As
21 you, by now, know quite well, to measure the extent
22 of lost listening in the event of a failed
23 negotiation between a webcaster and a record label,
24 Professor Shapiro asked Pandora to conduct the label
25 suppression experiments, and he provided the

1 instructions for them to do so.

2 The label suppression experiments provide
3 the Judges a controlled experiment showing what
4 actually happens over many months when an actual
5 non-interactive service suppresses an actual record
6 label. Separate experiments were run for five
7 different labels.

8 And what did they show? That even after six
9 months, suppressing the content of a record label has
10 a negligible impact on listening. Professor Shapiro
11 considered whether an even longer period of
12 suppression or publicity about the failed negotiation
13 and resulting suppression would have more of an
14 effect on listening, and he made reasonable, we
15 submit conservative, adjustments for both
16 possibilities.

17 Even with these adjustments, the conclusion
18 to be drawn from the label suppression experiments is
19 clear: No label, not even the largest, is a
20 must-have for a non-interactive webcaster.

21 And that conclusion has significant
22 ramifications for the specification of an appropriate
23 bargaining model and the outcome that model produces.

24 Because the implications of the label
25 suppression experiments are so devastating to its

1 case, SoundExchange has offered testimony from a
2 self-described cadre of rebuttal experts and has
3 devoted hundreds of pages of written testimony and
4 proposed findings to attacking them.

5 I'll address their criticisms in turn.
6 SoundExchange's principal criticism is that in the
7 real world, users would be informed of the failed
8 negotiation and loss of access to the label's
9 repertoire in news articles, tweets, or similar
10 public relations efforts by labels, artists, and
11 competitors. As noted, Professor Shapiro considered
12 that issue and made an adjustment to account for it.

13 SoundExchange's contention that his
14 adjustment was insufficient cannot withstand scrutiny
15 against the record developed at trial.

16 First, all of the examples offered by
17 Professor Tucker of marketing campaigns involved
18 on-demand services or other interactive forms of
19 consumption where consumers are looking for something
20 specific at a specific on time and expect to receive
21 it.

22 We don't dispute that the loss of a major
23 label would be devastating to an on-demand service.
24 Everyone agrees that majors are must-haves for
25 on-demand services. But there is no basis for a

1 similar conclusion here with a service, not the
2 consumer, chooses the content and is prevented by
3 statute from informing the consumer of what is
4 coming.

5 Even today in his closing argument, the
6 example that Mr. Handzo put up on the screen relates
7 to YouTube, and all the quotes relate to YouTube.
8 But YouTube, again, is an on-demand service. There's
9 no dispute that on-demand services are must-haves and
10 would suffer. And there would be publicity and there
11 would be issues, if they failed to reach a deal with
12 a major.

13 Second, none of SoundExchange's experts
14 could explain how critical messages would reach the
15 bulk of Pandora's user base of more than 50 million
16 active -- monthly active users. Whereas Pandora has
17 access to the e-mail addresses and ears of every
18 single one of its users for counter-messaging, labels
19 and competitors would have to rely on other forms of
20 mass media, Twitter, Facebook, to deliver their
21 messages. And there's no credible evidence of how
22 effective those efforts would be at finding Pandora
23 users who would, A, notice and, B, care.

24 Third, SoundExchange's experts conceded that
25 consumers do not generally know which content is

1 associated with which labels. And consumers have
2 widely varying tastes, so just identifying a few
3 popular artists that the service would like would be
4 unlikely to have any broad impact.

5 Fourth and relatedly, SoundExchange's
6 witnesses conceded that many artists have recordings
7 available on more than one label. So the loss of a
8 label doesn't mean the loss of an artist in many
9 cases. They admitted that they did no analysis of
10 this issue.

11 Fifth and most important, their speculation
12 about what would happen in the real world does not
13 match what actually happens in the real world. As
14 Chris Phillips from Pandora testified, from time to
15 time and for various reasons, certain artists have
16 been unavailable on Pandora's ad-supported service,
17 notwithstanding the statutory license. His
18 un rebutted testimony is that in those circumstances,
19 Pandora does not notify users, it continues to
20 generate stations based on those artists, it has not
21 experience blow-back from consumers or competitors,
22 or any noticeable degradation in listening.

23 And SoundExchange simply has no answer for
24 the actual -- for the actual experience of another
25 significant service, whose name is restricted, which

1 has operated a non-interactive service without a
2 major label.

3 This slide shows the record evidence -- this
4 next slide shows the record evidence adduced about
5 publicity from the label and its affiliated artists
6 about the absence of that label's repertoire from
7 that service. That's the entire sum of the record
8 evidence of that type of marketing.

9 This next slide shows the record evidence
10 adduced about marketing by other services that their
11 competitor does not offer access to that label's
12 content.

13 Same thing: As a witness for that service
14 testified, there have been no such communications.
15 Those are set forth in detail in our -- in the
16 services' reply findings at paragraphs 867 to 69. It
17 is SoundExchange's analysis that is untethered from
18 the real world, not Professor Shapiro's.

19 SoundExchange's next criticism of the LSEs
20 is that the suppression in the experiments was not
21 perfect.

22 Well, first, SoundExchange gets its facts
23 wrong. As Dr. Reiley explained, Professor Tucker
24 used the wrong data field in her -- for her accounts
25 of those who allegedly did not listen or listened

1 only to a small number of tracks. Users couldn't be
2 in the experiment if they didn't listen to Pandora
3 during the period.

4 Second, that the treatment groups for the
5 experiments include a large number of light listeners
6 just reflects the realities of the Pandora user base,
7 not any sort of error. Professor Tucker admitted it
8 is appropriate to include light listeners if you're
9 trying to compute average listening impact across
10 listeners. And the fact that those users listen so
11 little just means that the suppression would have
12 very little effect on them.

13 Third, there's no evidence or reason to
14 believe that going from a 90 percent to a 100 percent
15 suppression would have an outsized non-linear
16 difference in listening than we see, than the effect
17 of zero to 90 percent. It's not --

18 JUDGE STRICKLER: Mr. Marks -- Mr. Marks?

19 MR. MARKS: Yes.

20 JUDGE STRICKLER: This is Judge Strickler.
21 How are you today, sir?

22 MR. MARKS: I'm -- I'm fine, Your Honor.
23 Thank you.

24 JUDGE STRICKLER: You just said a moment ago
25 there's no evidence or reason to believe that going

1 from a 90 percent to 100 percent suppression would
2 have an outsized non-linear difference in listening.

3 MR. MARKS: Yeah.

4 JUDGE STRICKLER: But the fact that there's
5 no evidence in that regard, whose burden was it to
6 present evidence to show that there would or would
7 not be a difference, outsized or otherwise, from
8 90 percent to 100 percent suppression? It was -- it
9 was your client's experiment and your evidence, so if
10 there's no evidence to show that potential difference
11 or the absence of that potential difference, why
12 doesn't that burden fall on -- on your client?

13 MR. MARKS: Well, thank you, Your Honor, but
14 there -- we did present evidence. What we -- what we
15 have is evidence from both the steering experiments
16 and the label suppression experience -- experiments.
17 As Dr. Reiley testified, there is a linear
18 relationship. And he also testified that his
19 expectation is that the -- the linear relationship
20 would continue.

21 In light of that testimony, I think it's
22 SoundExchange's burden, if their criticism is that
23 the last -- that the last inch is all of a sudden
24 going to be a hockey stick in terms of lost
25 listening, it's their burden to prove it.

1 JUDGE STRICKLER: Well, leaving that issue
2 aside for a moment, I want to go back to your point
3 trying to bring in the evidence regarding the Web IV
4 steering experiments.

5 I mean, there was --

6 MR. MARKS: Yeah.

7 JUDGE STRICKLER: There was a point where
8 there was a problem with regard to listeners
9 complaining about steering, if it reached a certain
10 threshold. That was also the case with regard to the
11 -- to the other agreement, the iHeart/Warner
12 agreement, as was discussed in the -- in the Web IV
13 determination.

14 So there can come a point on the margin when
15 you can't steer any more. There may come a point
16 where too much suppression becomes noticed. I'm
17 still not sure I understand why that wouldn't be your
18 -- your burden to show that complete suppression
19 would not have lost listeners to recognize and
20 defect.

21 MR. MARKS: Thank you, Your Honor, and let
22 me clarify. I do think that we have made that
23 showing. While it is true that -- that there --
24 there was a small amount of leakage in -- in the
25 experiments, there is also the testimony that users

1 don't know which songs are performed on which labels.

2 So we think it's not a logical leap that --
3 that if there is one song a month that slips through,
4 it's not affecting the user behavior in any material
5 way and that it's not likely to have any kind of
6 significant impact on the conclusions.

7 JUDGE STRICKLER: Well --

8 MR. MARKS: The notion that you have to
9 throw out the results as a result of that seems to us
10 to be an evidentiary burden that's -- that would be
11 truly astonishing and is not -- is not consistent
12 with how -- how this Board or courts generally have
13 treated experimental and survey evidence.

14 JUDGE STRICKLER: Well, if you throw out an
15 entire major label that, say for argument's sake, has
16 25 percent market share, it's not just going to be
17 one song a month; it's going to be a number of songs.
18 And I understand your point that the listeners don't
19 have any idea which artists are associated with which
20 label, but you're -- you're -- you're increasing the
21 number of artists that the listeners are not going to
22 hear.

23 Is it your point that that's going to be
24 simply irrelevant?

25 MR. MARKS: Our point isn't that it's

1 irrelevant, Your Honor. Our point is that the
2 relationship would be linear and that there's no
3 reason to think that it wouldn't be linear. We're
4 not saying that there wouldn't be a difference
5 between 90 percent and 100 percent. We're just
6 saying that the difference would -- would be modest,
7 given the numbers.

8 Our point is only that it's -- it's that
9 last -- it's that last percentage or two or five of
10 difference that SoundExchange is hanging its hat on,
11 and we're suggesting that there's no reason to
12 believe and there's no evidence to suggest that
13 that's going to have a -- a different impact than any
14 other percentage or any other set of 5 percentage
15 points.

16 It's that the relationships -- we're not
17 ignoring it. We're just saying it doesn't change the
18 results -- results materially.

19 JUDGE STRICKLER: Thank you.

20 MR. MARKS: SoundExchange also complains
21 that the experiments are underpowered, but Dr. Reiley
22 explained why SoundExchange is incorrect. The sample
23 sizes are plenty large enough to generate results at
24 the level of precision, requested by Professor
25 Shapiro, for the purposes of his analysis.

1 At bottom, SoundExchange is grasping at
2 straws, claiming that every perceived imperfection
3 requires disregarding the experiments in their
4 entirety. Complete perfection in re-creating the
5 actual conditions of a label blackout or bust.

6 That's not the standard and it's certainly
7 not one that SoundExchange applies to its own
8 evidence. One need look no further than the survey
9 evidence that SoundExchange has asked the Judges to
10 rely on in this case instead of using the label
11 suppression experiments. That survey evidence is
12 orders of magnitude further removed from mirroring
13 and measuring the reality of a label blackout.

14 None of the survey questions even mentions a
15 record label. None of the questions establishes a
16 baseline for how much listeners were using the
17 service before the contemplated change in conditions.
18 None measures any actual behavior. They just ask
19 respondents to predict how they might respond to an
20 imagined condition they had not experienced.

21 There is just no escaping the fact that
22 Pandora shut off access to five different labels for
23 six months and the effect on listenership across a
24 variety of metrics was negligible. And we
25 respectfully submit that the Judges should not ignore

1 that reality.

2 If the Judges want to use a bargaining model
3 for rate setting here and, for whatever reason, do
4 not want to use the label suppression experiment
5 results as adjusted by Dr. Shapiro or make their own
6 adjustments to them, there is one alternative that
7 has been embraced as a possibility by both Professor
8 Shapiro and Professor Willig.

9 As Professor Shapiro testified, the next
10 best alternative for estimating lost listening would
11 be to assume that the service would lose listening
12 hours in proportion to the suppressed label's market
13 share on the service prior to suppression.

14 Professor Willig used that very same
15 assumption with respect to independent labels in his
16 written direct testimony, and he used that assumption
17 with major labels as well in one of his so-called
18 rebuttal scenarios.

19 The results of adopting this assumption in
20 place of the label suppression experiments are closer
21 to but still below current rates, and those results
22 are set forth in Figure 14 of Professor Shapiro's
23 written rebuttal testimony.

24 In his written direct testimony, Professor
25 Willig did not attempt to measure lost listening at

1 all. He just made two assumptions. For the three
2 major labels, he assumed that failure to reach a deal
3 will cause the service to shut down completely. And
4 for independent labels, as I mentioned, he assumed
5 that the lost listening would be proportional to
6 their market share, what has been called a power
7 ratio of 1.0.

8 Professor Willig admitted at trial that he
9 didn't give his must- -- his must-have assumption
10 much thought or do any analysis to inform it. The
11 evidence at trial demolished the unfounded assumption
12 that each of the major labels are must-haves for a
13 non-interactive service. The best SoundExchange can
14 muster is some documents that relate to the
15 importance of specific content to on-demand services.
16 Once again, everyone agrees that the Majors are
17 must-haves for on-demand services.

18 And the other documents that SoundExchange
19 relies on are a mischaracterization of some Pandora
20 consumer surveys in which SoundExchange misstates
21 perceived limitations about the number of songs that
22 Pandora chooses to play with the 100 million
23 recordings to which Pandora has access.

24 As Mr. Phillips explained, the former is, by
25 Pandora's choice, a tiny fraction of the latter. And

1 he explained that if Pandora lost access to a major
2 label, it would still have many ten -- many tens of
3 millions of records -- of recordings available that
4 it does not currently play but it could add to its
5 service if desired.

6 And let me put the Pandora documents that
7 were excerpted in the slides shown by Mr. Handzo this
8 morning into context. Those were listeners who had
9 churned from the service, not those who stayed. Even
10 though these were users who the churned from the
11 service, less than 10 percent of them said the size
12 of the catalogue was important to them. That was a
13 prompted response. Without prompts, the number of
14 churned listeners who said size of catalogue was
15 important to them was less than 5 percent.

16 So this is the -- this is what they're
17 hanging their hat, is that less than 5 percent of
18 people thought size of catalogue is important to make
19 the argument that size of catalogue important? That
20 is, indeed, some very weak rule.

21 JUDGE STRICKLER: Mr. Marks --

22 MR. MARKS: Professor --

23 JUDGE STRICKLER: Mr. Marks, excuse me.

24 MR. MARKS: Yeah.

25 JUDGE STRICKLER: As I recall, Professor

1 Willig emphasized that -- that he understood the data
2 to show that the ability of a service to play hits
3 was -- was of particular importance and that if any
4 service -- and I don't think that he distinguished
5 between interactive and non-interactive in this
6 regard -- any service that lost a -- an important,
7 I'll potentially use that vague word, an important
8 percentage of the hits would have a -- would suffer a
9 severe economic downturn.

10 Do you have a response to that criticism?

11 MR. MARKS: I do. That the documents he
12 relied on for that were -- were documents from
13 on-demand services. Again, this is the point we're
14 making. He -- he would look at evidence that relates
15 to on-demand services, where it was important that
16 people had the latest Beyonce album or had the
17 ability to play certain hits, and then extrapolated
18 from that, that it's also important to Pandora to
19 have access to every hit and that if it didn't have
20 some number of the top hits, Pandora users would
21 leave.

22 That's not the testimony. Pandora's
23 testimony from its witnesses has been that users
24 don't come to Pandora to hear any one particular
25 song. And if they want to -- you know, Pandora

1 chooses music that it thinks the user will like,
2 based on the information the consumer has given to
3 them. If somebody seeds a station with a hit,
4 Pandora may eventually play that hit at some point,
5 but they don't play it immediately, and when they
6 don't have access to the song, they don't play it at
7 all.

8 So, again, Professor Willig is basing his
9 testimony on documents that were related to on-demand
10 services, not Pandora's situation.

11 JUDGE STRICKLER: Well, the last point you
12 made seems somewhat important in this regard, because
13 you're saying if I as a listener to Pandora tried to
14 seed a station with the latest Beyonce hit and that
15 was with a label that was not available on -- on
16 Pandora, you would just not play that song but you
17 might -- if I remember correctly from the testimony
18 at the hearing, you would play music that was -- that
19 your algorithm showed that was related to it, but I
20 -- but if I wanted to seed the station with a hit
21 from a blacked-out label, I would find out that I
22 couldn't do it, right?

23 MR. MARKS: I'm sorry, I -- I missed the
24 question. If you wanted to -- you could still seed
25 the station. I'm sorry, this is an important point

1 to clarify. You absolutely could still seed the
2 station with that song and Pandora will create a
3 station based on the musical properties of that song,
4 even though it won't play you the actual song you
5 request.

6 So that's addressed in detail in the
7 testimony of Mr. Phillips.

8 JUDGE STRICKLER: Okay. So if I -- thank
9 you for that clarification.

10 But if I seeded the station for a particular
11 Beyonce song, you would be able to seed the station,
12 but I would never actually hear, obviously, the
13 Beyonce song if you blacked out that label; whereas
14 if you had not blacked out that label, that Beyonce
15 song may have come up in the rotation?

16 MR. MARKS: Correct. And that's -- that's
17 exactly the situation Pandora has experienced and Mr.
18 -- Mr. Phillips explained that there has never been
19 any blow-back on those circumstances where, for
20 whatever reason, they're not making content from a
21 particular artist available. They still create the
22 station. If they still deliver the content, they
23 don't get complaints.

24 JUDGE STRICKLER: Thank you.

25 CHIEF JUDGE FEDER: Similarly in that same

1 hypothetical, you wouldn't hear any other Beyonce
2 songs, at least any other Beyonce songs recorded on
3 that label, correct?

4 MR. MARKS: You wouldn't hear the songs from
5 that label that are Beyonce, but you would hear other
6 artists that are similar to it. And if Beyonce has
7 recordings available on another label, you would hear
8 that other label's recordings of Beyonce songs, so
9 that people would still be hearing Beyonce songs from
10 time to time.

11 CHIEF JUDGE FEDER: So --

12 MR. MARKS: Or you'd hear, what is it,
13 Destiny's Child? You'd hear Destiny's Child --

14 CHIEF JUDGE FEDER: Yeah.

15 MR. MARKS: -- her band before Beyonce,
16 whatever it is.

17 CHIEF JUDGE FEDER: Right. So -- but,
18 conceivably, you could have a Beyonce or a Bruno Mars
19 or whatever station that never plays that particular
20 artist?

21 MR. MARKS: We -- Pandora has had those
22 stations. It has those stations today.

23 CHIEF JUDGE FEDER: Okay. Thank you.

24 MR. MARKS: Again, that's addressed in the
25 testimony, trial testimony of Mr. Phillips.

1 Professor Willig's analytical error in his
2 rebuttal testimony is no less profound. He attempts
3 to quantify the lost listening in the event of a
4 label blackout by using survey evidence designed to
5 measure where users who were dissatisfied with the
6 change in the service would go for music as a
7 substitute.

8 But that puts the rabbit in the hat. Those
9 surveys don't measure whether all Pandora users would
10 even notice a label blackout or let alone care.
11 Professor Willig -- sorry, those surveys build into
12 the assumption the very premise of the survey to test
13 where those -- where those users who do notice and do
14 care would go.

15 Let me -- let me turn to that next topic of
16 measuring where the lost listening goes -- would go.

17 While the Hanssens surveys or for that
18 matter Simonson Survey cannot be used to estimate the
19 amount of lost listening, there's no dispute that the
20 Hanssens surveys can be used to assess where any lost
21 listening would go. That's the purpose for which
22 they were designed, and that's how Professor Shapiro
23 uses them.

24 The Zauberman Survey is not useful at all.
25 Consistent with Professor Willig unfounded and

1 factually incorrect assumption that each major label
2 is a must-have, the survey only addresses what would
3 happen if a service went out of business entirely.

4 The many other flaws in the Zauberman Survey
5 are addressed at length in the services' Proposed
6 Findings and Reply Findings.

7 So let me turn to the -- the question of
8 determining the average royalty for diverted
9 performances. Knowing where diverted plays would go
10 allows one to -- to calculate an average royalty per
11 diverted performance. Some alternative forms have
12 relatively high royalties such as on-demand
13 listening. Others, such as terrestrial radio,
14 provide no royalties at all.

15 The Hanssens Survey shows that some of the
16 lost listening would divert to listening to on-demand
17 services, including some listeners who would listen
18 to a new subscription service and some listeners who
19 would listen to an existing service. It's undisputed
20 that listening to an existing service does not
21 generate any incremental royalties but that new
22 subscriptions do.

23 The dispute is over how many new
24 subscriptions there would be. If 5,000 performances
25 --

1 JUDGE STRICKLER: I -- excuse me, Mr. Marks.
2 I know you -- you said you're not going to be
3 covering this, this point, but am I correct that the
4 Zauberman Survey did not distinguish between survey
5 respondents who did -- who went to a subscription
6 on-demand service, who had one already, already had a
7 subscription, versus those who would have to purchase
8 a new one?

9 MR. MARKS: I believe that's correct, Your
10 Honor.

11 JUDGE STRICKLER: Okay. Thank you.

12 MR. MARKS: So that with new subscriptions,
13 the question is if you have 5,000 subscriptions --
14 5,000 performances get diverted, is that 10
15 subscriptions with 500 performances, 500
16 subscriptions with 10 performances, or some other
17 number?

18 Again, it's not disputed. The evidence
19 clearly shows that people listen to music in varying
20 amounts and utilize listening options with varying
21 degrees of intensity. For example, people willing to
22 pay \$10 a month for an on-demand service typically
23 use that service far more in any given month than the
24 average consumer listens to an ad-supported
25 webcaster.

1 Professor Shapiro reasonably assumes that
2 those -- that the listeners who would be inclined to
3 divert from Pandora to a new subscription service
4 would use that new service with the same degree of
5 intensity as the average subscriber to an on-demand
6 service, 800 plays per month. But his analysis is
7 not sensitive to that assumption.

8 As he explained at trial, there is little
9 impact on his end results if you assume the new
10 subscriber will only listen half as much as the
11 average on-demand subscriber, 400 plays per month, or
12 a quarter as much, 200 plays per month.

13 Professor Willig's testimony, on the other
14 hand, requires absurd assumptions about the
15 utilization of new subscriptions. His problem is
16 that he takes the diversion ratios from the surveys,
17 which measure only those users dissatisfied enough
18 with the label blackout to actually shift listening
19 to an alternative platform, and then applies that
20 number to the entire Pandora listening base.

21 It was uncontested at trial that if one
22 makes this incorrect assumption, as he does in his
23 rebuttal analysis, it implies that new subscribers to
24 a \$10 service would shift just 2.6 plays per month
25 and that new subscribers to a \$16 a month

1 subscription to SiriusXM satellite radio would shift
2 just one play per month.

3 It is absurd to assume that more than
4 20 percent of Pandora's user base, more than 10
5 million people, would start paying \$10 a month or \$16
6 a month for new subscriptions in response to a label
7 blackout on Pandora that had such a minute effect on
8 their non-interactive listening.

9 Indeed, Professor Shapiro explained that if
10 that were the case, SiriusXM would make far more
11 money by suppressing Universal on Pandora because the
12 massive uptick in new satellite radio subscriptions
13 would far outstrip the decline in Pandora's ad
14 revenue.

15 The other contested issue relates to the
16 manner in which Professor Willig calculated royalties
17 on CDs, MP3s, and vinyl. In the interest of time,
18 I'll refer the Judges to the proposed findings on
19 that issue.

20 Another point of contention between
21 Professor Shapiro and Professor Willig is how to
22 estimate the retention ratio; that is, the percentage
23 of diverted plays that would be of recordings owned
24 by the suppressed label.

25 Professor Willig's assumption that a label

1 could retain 100 percent of diverted performances, an
2 assumption made at various points through his
3 analysis, is simply indefensible.

4 This is true for several reasons, including
5 the fact that some of the diverted performances would
6 move to forms of listening where the music user does
7 not select what songs she will hear, as well as the
8 fact that music listeners generally don't know which
9 artists and songs are associated with particular
10 labels and so would not be in a position to select
11 solely songs from the blacked-out label.

12 His assumption that a label might retain
13 90 percent or even a majority of diverted plays fare
14 no better. They are equally unrealistic, if
15 marginally less extreme.

16 Professor Peterson explained how Professor
17 Willig's extreme assumptions about the retention
18 ratio are just one of the ways he stacks the deck to
19 preserve market power for the labels, even when he
20 nominally drops his must-have assumption. If the
21 label is guaranteed to retain the same or a similar
22 number of plays in the event of a blackout, it has no
23 incentive to keep its recordings on the
24 non-interactive service and thus has all of the
25 leverage in the negotiations.

1 The assumptions are not only unreasonable,
2 therefore; they run counter to the statutory
3 objective of determining the rates that would emerge
4 in an effectively competitive market.

5 Professor Shapiro made the far more
6 reasonable assumption that the non-licensing record
7 company's share of diverted performances would be the
8 same as its natural performance share on the
9 webcaster. And as we explained at trial, as he
10 explained at trial, that is supported by empirical
11 evidence in the record. Dr. Reiley testified that in
12 the Premium Access sessions, which are an on-demand
13 environment, there was no noticeable uptick in the
14 share of plays for the suppressed label.

15 So the disagreements about how to measure
16 lost listening, diversion ratios, the average
17 royalties earned from diverted plays, and retention
18 ratios result in the gulf between Professor Shapiro's
19 calculation of record company opportunity cost and
20 Professor Willig's calculation of that same cost. At
21 every step of the analysis, the record evidence shows
22 that Professor Shapiro has used reliable evidence and
23 made reasonable assumptions. The opposite is true as
24 to Professor Willig.

25 I'll now turn to the question of webcaster

1 willingness to pay. Professor Willig and Professor
2 Shapiro both use Pandora as a proxy for the rest of
3 the webcasting industry. As the record shows and as
4 I expect my colleagues will note as well, Pandora is
5 more effective at monetizing ad-supported listening
6 than any other service, let alone any other
7 webcaster. Its significant investments in building
8 on-line audio advertising market and its prodigious
9 efforts to its revenue listening per hour are -- are
10 well documented throughout the record and the
11 testimony of Mr. Phillips and the designated
12 testimony of Mike Herring.

13 Professor Shapiro's use of Pandora as a
14 proxy makes his analysis more favorable to
15 SoundExchange and therefore conservative. The
16 opposite is true with respect to Professor Willig's
17 use of Pandora as a proxy because his -- that also
18 makes his analysis more favorable to SoundExchange.

19 There are a few important differences in
20 their use of Pandora information. The first is that
21 Professor Willig uses older and stale projections of
22 Pandora's future financial performance; whereas
23 Professor Shapiro uses the most recent year of actual
24 Pandora financial data. For all other aspects of his
25 analysis, Professor Willig uses actual data rather

1 than projections.

2 Mr. Handzo mentioned this morning that the
3 industry is rapidly changing and so you should use
4 projections. But that doesn't make any sense because
5 he's using older projections that were prepared in
6 advance of a merger and don't reflect what actually
7 happened, rather than using more recent data that
8 does.

9 The second difference is that --

10 JUDGE STRICKLER: Excuse me, Mr. --
11 Mr. Marks. I take your point, but doesn't that --
12 that problem infect the most recent historical -- if
13 the market is, in fact, rapidly changing so that
14 projections are not necessarily going to be accurate,
15 doesn't that equally infect the -- the historical --
16 most recent historical data because that would be
17 just as likely to change as any projections?

18 MR. MARKS: I think -- I'll take the point
19 that we may be dancing on the head of a pin here,
20 Judge Strickler. My point is that the projections
21 are based on assumptions that are probably outdated
22 in a -- in a rapidly changing environment. That's
23 the only point I was making.

24 JUDGE STRICKLER: I don't think we're
25 dancing on the head of a pin. I think we're sort of

1 like -- who's the cartoon character, Wile E. Coyote,
2 who's run out of ledge and he's just dancing on air,
3 and we're all trying to predict the future. But the
4 metaphor breaks down there, of course, but the point
5 is the future -- that's the thing about the future.
6 It's unknowable and there's some level of
7 uncertainty. There's -- and if it's radical
8 uncertainty, we have no -- and as Professor Willig
9 said to us, oh, that's the problem you Judges have as
10 well. We're all trying -- to the extent we're all
11 trying to predict the future, we're going to have to
12 do it with the tools at our disposal.

13 And the mere fact that it's rapidly changing
14 doesn't answer the question as to which set of data
15 is -- is more helpful.

16 MR. MARKS: And that's why we submit that
17 the most -- the newer data and the more recent data
18 is going to be better than -- than older data that we
19 think is stale.

20 The second difference is that Professor
21 Willig misinterpreted Pandora's financial statements
22 and misallocated costs that vary with changes in the
23 number of listening hours on Pandora's ad-supported
24 service and fixed costs that do not.

25 Professor Shapiro's analysis correctly

1 allocated those costs. Professor Shapiro's analysis
2 was informed by his discussions with Jason Ryan, who
3 is the Pandora executive most familiar with its
4 financial statements. In fairness, Professor Willig
5 did not have the same kind of access to Mr. Ryan and
6 Mr. Ryan's explanations of how to properly allocate
7 costs, but that doesn't change the fact that
8 Professor Shapiro's allocations are correct and
9 Professor Willig's are not.

10 And the third difference --

11 JUDGE STRICKLER: Mr. -- excuse me, Mr.
12 Marks. In that regard, didn't Professor Willig in
13 his rebuttal testimony essentially adopt many of --
14 of Mr. Ryan's explanations based on -- on the
15 greater, more granular level of data that he had with
16 regard to the scenario 1, I think it was, the
17 scenario 1 projections? That's one question. Well,
18 let's take that one first. Go ahead.

19 MR. MARKS: The -- the answer is yes, he
20 accepted many of them, and those -- those disputes
21 are off the table. But there are other ways in which
22 he didn't allocate correctly, and that's the focus of
23 -- of the post-trial filings.

24 JUDGE STRICKLER: But now, Professor Willig
25 also said that at the end of the day, with regard to

1 his calculations, opportunity cost is so large,
2 according to what he calculates, that the
3 willingness-to-pay disputes are really pretty small
4 because they're not going to increase or decrease the
5 level of -- of royalty relative to -- to what the
6 opportunity costs generate because that eats up
7 basically so much, and there's no surplus left to
8 really divide in the bargaining model.

9 MR. MARKS: Well, he -- as we think the
10 evidence at trial shows, he's just wrong on the
11 opportunity cost.

12 JUDGE STRICKLER: But -- but is there
13 anything that you'll be able to point to in -- in
14 your Proposed Findings, Reply Proposed Findings, that
15 show how much the -- the dispute that continues to
16 exist post-Willig rebuttal with regard to willingness
17 to pay --

18 MR. MARKS: I --

19 JUDGE STRICKLER: -- would influence the
20 outcome?

21 MR. MARKS: I believe that is set forth in
22 our Proposed Findings. I don't have the citation at
23 my fingertips, but perhaps while one of my colleagues
24 is going, we can get that citation for you and come
25 back to you.

1 JUDGE STRICKLER: Thank you, Mr. Marks.

2 MR. MARKS: That brings us to the question
3 of what is the right bargaining model to use to
4 determine the point in the range between the record
5 companies' opportunity costs and the webcasters'
6 willingness to pay that best reflects the outcome of
7 a negotiation in a competitive market.

8 Professor Shapiro used a Nash-in-Nash
9 bargaining model and explained at length why it's a
10 good fit for the willing buyer/willing seller
11 framework. It involves multiple bilateral
12 negotiations, each one between one record company and
13 one service.

14 Each negotiation depends on the incremental
15 gains from licensing to both parties. And
16 split-the-difference bargaining divides the gains
17 from trade equally.

18 Each bilateral negotiation is taken on its
19 own with no coordination among record companies.
20 Each negotiation takes as given the rates negotiated
21 with other record companies and other services.
22 That's the Nash equilibrium.

23 Using the results from the label suppression
24 experiments, which show that no record company is a
25 must-have, the Nash Bargaining Solution reflects

1 carriage competition and does not reflect the
2 complementary oligopoly power that the major labels
3 possess and exercise in the market to license
4 interactive services.

5 There should be no debate that Nash-in-Nash
6 is a suitable bargaining model here. Professor
7 Willig used it in his written direct testimony,
8 albeit as a check on his primary model, and at trial
9 he again acknowledged its many virtues.

10 Professor Willig, as you know --

11 JUDGE STRICKLER: Mr. Marks -- Mr. Marks, a
12 question, and this is a little -- I should have asked
13 you this earlier, but you made mention of the label
14 suppression evidence again as a basis for making the
15 -- the value determinations here.

16 Are you offering the label suppression
17 evidence results as evidence of the way the market
18 actually would be in a -- in the absence of the
19 statutory license, or are you -- or are you also
20 asking or alternatively saying that this is a
21 hypothetical as to what the market would look like
22 for non-interactive services in a hypothetical world
23 where there was no must-have, even if they are
24 must-haves? Do you understand my question?

25 MR. MARKS: I -- I think I do. I think what

1 we're saying is that the label suppression
2 experiments show that no major label is a must-have.
3 We don't believe that major labels are a must-have.

4 If you look at the actual experience of a
5 significant company that operates a non-interactive
6 service without one of the majors, we think that's
7 further evidence in the record, but what we think the
8 suppression experiments show and it's consistent with
9 the design of a non-interactive service, we don't
10 believe that there's -- that major labels are
11 must-haves. And we don't think that there's evidence
12 in the record that reflects that they would be.

13 JUDGE STRICKLER: Thank you.

14 MR. MARKS: As you know, Professor Willig
15 uses Shapley Value analysis, but as Professor
16 Shapiro, Dr. Peterson, and Dr. Leonard all explained,
17 that model is not suited to the task at hand. It's
18 based on cooperative game theory, and although useful
19 in some instances, it's an inappropriate methodology
20 for setting the determination -- for setting the
21 outcome of bilateral negotiations between a willing
22 buyer and willing seller.

23 The -- the criticisms of the Shapley Value
24 are well documented in the testimony of the services'
25 expert, but I'll just mention most glaringly, as

1 Professor Shapiro explained, Shapley Value fails to
2 reflect negative contracting externalities which
3 arise when one party is affected by contracts signed
4 by other parties.

5 Any one of the majors would care deeply
6 whether or not it's the only label left out in the
7 cold and all the other labels are licensing a
8 non-interactive service.

9 JUDGE STRICKLER: Mr. Marks?

10 MR. MARKS: And Professor Willig's -- yeah.

11 JUDGE STRICKLER: This morning Mr. Handzo
12 made mention of that claimed criticism, the -- the
13 failure of the Shapley Value to show negative
14 contracting externalities. If I remember correctly,
15 he said that the services never actually identified
16 those negative contracting externalities.

17 Was your answer just now the identification
18 of those contracting externalities?

19 MR. MARKS: It -- well, that's my summary of
20 it, but those are addressed -- it's set forth in
21 Professor Shapiro's written rebuttal testimony, and I
22 would refer Your Honors to that, the discussion of
23 Professor Shapiro's written rebuttal testimony, for
24 the actual evidence, rather than just my summary of
25 it.

1 JUDGE STRICKLER: Is that also encapsulated
2 in your proposed findings or reply proposed findings?

3 MR. MARKS: I believe it is, Your Honor.

4 JUDGE STRICKLER: Thank you.

5 MR. MARKS: I'll have to check. I don't --
6 I don't have a perfect recall of the extent to which
7 we laid out the discussion on that point or just
8 summarized it and referred back to Professor Shapiro,
9 but I'm sure it's cited in there.

10 JUDGE STRICKLER: Thank you.

11 MR. MARKS: Okay. Because Shapley Value
12 does not account for negative contracting
13 externalities imposed on one record company by
14 coalitions consisting of a webcaster and other record
15 companies, it understates record companies'
16 incentives to join the webcaster coalition by
17 licensing to them.

18 There is, however, as Professor Shapiro
19 explained at trial, a variant of Shapley Value that
20 does account for negative externalities, Myerson
21 Value. Professor Shapiro also calculated the Myerson
22 Value and showed at trial that the use of Myerson
23 Value generates very similar results to Nash-in-Nash
24 bargaining.

25 Professor Willig offered two equally weak

1 responses to Professor Shapiro's Myerson Value
2 analysis. The first was an irrelevant distraction
3 about how he thinks that the use of the term "Myerson
4 Value" is a misnomer. It's not. Professor Shapiro
5 uses the term exactly how it's used in the academic
6 literature, and the examples are cited in his written
7 rebuttal testimony and our post-trial filings.

8 The second was a completely unsubstantiated
9 claim that the Myerson Value model involves side
10 payments to labels. Professor Shapiro testified that
11 Professor Willig is flat wrong in making this
12 assertion. There are no side payments in his model.
13 And one can look at the recursive Nash-in-Nash
14 Bargaining Model that he did as well, which is a set
15 of bilateral negotiations so there couldn't be those
16 kinds of side payments, and you get to the same
17 outcome as Myerson Value.

18 Last topic on this subject of bargaining
19 models is the specifications. Professor Willig has
20 criticized the manner in which Professor Shapiro
21 specifies his bargaining model, but they all fall
22 flat.

23 First, he criticized Professor Shapiro for
24 including multiple record companies and only one
25 service. But as Professor Shapiro explained, because

1 non-interactive webcasting generates
2 lower-than-average royalties compared to other forms
3 of music listening, including multiple services would
4 have lowered the average per-performance royalty on
5 diverted plays and generated a lower opportunity
6 cost. The criticism doesn't help SoundExchange.

7 Secondly, he criticizes Professor Shapiro
8 for solving separately for ad-supported webcasters
9 and subscription webcasters, rather than at the same
10 time. But here again, as Professor Shapiro
11 explained, doing so would have generated lower rates.

12 And, third, he criticizes Professor Shapiro
13 because each bilateral negotiation in his
14 Nash-in-Nash model takes the outcome of other
15 negotiations between the service and other record
16 companies as a given. But that's a criticism of Nash
17 equilibrium itself and the way in which it captures
18 effective competition.

19 Nash equilibrium is the norm in industrial
20 organization literature. And, in any event, using a
21 recursive Nash-in-Nash Bargaining Model instead, as
22 Professor Shapiro showed, still would just lead to
23 Myerson Value, which, as noted, is similar to the
24 outcome of Nash-in-Nash. It would not lead to
25 Shapley Value because there are no negative

1 contracting externalities here.

2 Last couple of notes on this topic, the
3 outcome of Professor Shapiro's analysis is the same
4 as the rates that we have proposed. Here, these
5 results are robust too; using a power ratio of 1.0
6 instead of the LSEs to measure lost listening.

7 Reasonable changes in the number of diverted
8 plays per new subscription, reasonable changes to the
9 retention ratio, use of merger proxy projections
10 instead of LRS data, use of Myerson Value or
11 recursive Nash-in-Nash, instead of Nash-in-Nash,
12 reasonable changes to the number of services and
13 labels specified in the model.

14 The first change would bring the results
15 closer to, but still somewhat below, current rates.
16 The other changes would have more modest effects on
17 Professor Shapiro's proposed rates.

18 SoundExchange's attempt to depict Professor
19 Shapiro's analysis as sensitive depends entirely on
20 make large and unjustified changes to his model. As
21 Professor Shapiro explained at trial, if you make
22 large changes to the inputs, you're going to get
23 changes to the outputs. That doesn't prove the model
24 is sensitive; it shows the model is not brain dead,
25 that inputs matter.

1 The rebuttal scenarios presented by
2 Professor Willig are not sensitivity tests as all.
3 For every change Professor Willig makes to his model,
4 he makes an offsetting change in the other direction
5 to some other assumption. That doesn't show his
6 model is robust. All it proves is that Professor
7 Willig is adept at manipulating the moving pieces of
8 his model to generate the same results.

9 The next few slides illustrate that point.
10 I won't go through them in detail in the interest of
11 time. We discuss them in detail in paragraphs 175 to
12 180 of the Pandora/SiriusXM proposed findings, and
13 I'll refer Your Honors to that discussion.

14 JUDGE STRICKLER: Mr. Marks?

15 MR. MARKS: Yes.

16 JUDGE STRICKLER: A question for you. I --
17 I note that the results that come out of the
18 bargaining model that Professor Shapiro proposes are
19 the same on the ad-supported and the subscription
20 webcasting service levels as you're proposing in your
21 proposed rates in this proceeding.

22 And I peeked ahead. I wanted to see what
23 you had with regard to your benchmark, which is on
24 slide 40, and those numbers are different. Is it
25 accurate to say that -- at this point, that -- that

1 Pandora and SiriusXM are proposing to primarily rely
2 on the -- the bargaining model approach rather than
3 the benchmark approach?

4 MR. MARKS: Not -- not at all, Your Honor.
5 But thank you for the -- thank you for that question.

6 That impression is left only as a function
7 of my dealing with this topic first because Mr.
8 Steinthal is going to take the lead on the
9 benchmarking approach. If you look at the results of
10 the benchmarking analysis, those are expressed as a
11 range. And depending on the analysis, he has
12 accounted for several different issues that are laid
13 out in our proposed findings. But if you'll see, for
14 instance, the ad-supported service benchmark rate
15 calculation, he expresses as adjusted the outcome as
16 a range from .0006 to .0012. Our proposal is .11.
17 It's towards the high end of his range.

18 If you make one other adjustment, you get a
19 range of 7 to 13. Again, we're at 11, towards the
20 high end of the range. If you look at what's
21 happening on the subscription side, it's a -- it's a
22 similar situation where there's a range that we think
23 supports the rate proposal. And we're selecting a
24 number within that range, and indeed we're selecting
25 a number at the high end of the range.

1 So it's very much our position whether you
2 use a benchmarking analysis or a bargaining model,
3 that either methodology would support the Pandora and
4 SiriusXM rate proposal.

5 JUDGE STRICKLER: Thank you.

6 MR. MARKS: In the interest of time, I want
7 to make sure that I give my fellow services their
8 fair share of the time here. I'm just going to make
9 a very few observations on Professor Shapiro's
10 benchmark analysis. It's set forth in detail in
11 Pandora and SiriusXM's proposed findings.

12 I think Your Honors understand that, for the
13 ad-supported webcasters, he starts with the average
14 effective per-play rates paid by Spotify and
15 SoundCloud for their free tiers. He makes the same
16 three adjustments to that benchmark rate, same three
17 types that were made in Web IV, interactivity, skips,
18 and effective competition.

19 He also considers a potential adjustment to
20 address SoundExchange's claim that Spotify's free
21 tier rate reflects a unique ability on Spotify's part
22 to convert free tier users to paid subscribers over
23 time. And he marches through and the slides -- both
24 the slides and our post-trial filings explain that's
25 -- that would be about a 14 percent uptick.

1 I just wanted to explain, we think that's
2 very conservative. That's -- that's accepting at
3 face value the claim that Spotify is uniquely --
4 uniquely good at promoting users of its ad-supported
5 tier to its -- into paid subscribers on its paid
6 tier. But what that overlooks is if you're trying --
7 if what you're trying to get at is the promotional
8 value of a non-interactive webcaster, it doesn't
9 matter where those users go when they convert to a
10 paid subscription. So it may be, even if it is --
11 even if it were the case that Spotify is better at
12 converting its ad-supported users into subscribers to
13 its service, what matters is, is the non-interactive
14 service promotional of any on-demand service?

15 And we -- we submit that we don't think that
16 SoundExchange has made the case that Spotify is
17 better at getting users of the non-interactive
18 services who then decide they want on-demand
19 listening to subscribe to any on-demand service.

20 We think that's true of non-interactive
21 services generally, that they're users complements,
22 and that all non-interactive services have people who
23 are also then going ahead and buying subscriptions to
24 -- to other services.

25 The others, just -- again, in the interest

1 of time, I'll defer. I'll defer at this point and
2 just refer the Judges to Pandora's post-trial filings
3 on Professor Shapiro's benchmark analysis and his
4 responses to the criticisms made by SoundExchange.
5 If there's time at the end, I'll come back and
6 address it in further detail.

7 CHIEF JUDGE FEDER: Thank you, Mr. Marks.

8 Okay. Can we get Mr. Steinthal up and take
9 Weil Gotshal down.

10 MR. STEINTHAL: Working on it, Judge.

11 CHIEF JUDGE FEDER: Okay. But we've lost
12 Judge Ruwe.

13 JUDGE RUWE: I'm here. I'm just drinking a
14 glass of water.

15 CHIEF JUDGE FEDER: Oh. All right. That's
16 fine.

17 Okay, Mr. Steinthal, are you going to start
18 in open session or restricted?

19 MR. STEINTHAL: I'm going to start in open
20 session, though I confess most of what I'm going to
21 do is going to have to be restricted because --

22 CHIEF JUDGE FEDER: Okay.

23 MR. STEINTHAL: -- there will be a lot of
24 record citations along the way.

25 CHIEF JUDGE FEDER: All right. Please

1 proceed.

2 CLOSING ARGUMENT BY COUNSEL FOR GOOGLE, INC.

3 MR. STEINTHAL: Good afternoon, Your Honors.

4 I reviewed my opening statement on Google's
5 behalf in advance of appearing before you today and
6 can confidently state that we delivered what we said
7 we'd deliver during the opening.

8 Today I hope to walk you through the key
9 aspects of the trial evidence that fully support the
10 position I advocated on Google's behalf on day one.

11 I'll start by addressing Google's rate
12 proposal and Dr. Peterson's benchmarking analysis in
13 support of that proposal. As promised, Dr.
14 Peterson's approach was straightforward and
15 consistent with this Board's past rulings.

16 Specifically, I'll address the following
17 aspects of Dr. Peterson's analysis: First, that Dr.
18 Peterson's choice to start with benchmarking, rather
19 than theoretical modeling, is in line with past CRB
20 practices and precedent.

21 Second, why Dr. Peterson's benchmarks are
22 superior to the subscription benchmarks used by Mr.
23 Orszag in support of SoundExchange's proposal.

24 Third, Dr. Peterson applied appropriate
25 adjustments to his benchmarks, consistent with what

1 the Judges adopted in Web IV.

2 And, fourth, I'll discuss Google's proposal
3 for a separate rate to account for emerging
4 non-portable, non-subscription services.

5 In the second part of my presentation, I'll
6 address SoundExchange's case in support of its
7 proposal for ad-supported streaming.

8 Unlike Dr. Peterson's approach, the hearing
9 showed that several essential assumptions upon which
10 SoundExchange's case was premised utterly failed.
11 Both of SoundExchange's experts made a number of
12 tenuous and unproven assumptions in their modeling,
13 when just losing on any one of those assumptions
14 would be fatal to their rate proposal. And they
15 failed on several.

16 Those assumptions led the SoundExchange
17 experts so far astray that their models generated
18 fundamentally inexplicable results, so much so that
19 they generated higher per-play rates for statutory
20 non-interactive webcast services than are being paid
21 by the benchmark interactive Spotify service.

22 Let me start by reminding Board of Google's
23 rate proposal, which pertains only to the
24 non-subscription commercial webcasting category. For
25 that category, Google proposes a rate of .13 cents

1 per-play.

2 Google also proposes that the Board
3 recognize non-portable webcasting as a distinct
4 segment and that the board set a rate for
5 non-portable webcasting at one-half the
6 non-subscription commercial webcasting rate.

7 At the hearing, Google supported its rate
8 proposal through the testimony of T. Jay Fowler,
9 Waleed Diab, and Dr. Peterson. Google also submitted
10 written testimony from Dan Pifer and Arpan Agrawal.

11 I'd like to focus first on the testimony of
12 Dr. Peterson. He took a well-charted course in this
13 litigation. To start, he engaged in a benchmarking
14 analysis, rather than seeking to build theoretical
15 models. His model is entirely transparent and
16 cogent. There are no hidden or unproven assumptions
17 in Dr. Peterson's model.

18 His proposed rates for ad-supported
19 statutory services start with the rates paid by
20 Spotify for its ad-supported service and then apply
21 well-explained adjustments, each of a nature this
22 Board has applied in the past.

23 His approach is wholly in accord with both
24 the willing buyer/willing seller rate standard the
25 Board must apply in this proceeding, as well as the

1 Board's long-expressed preference for benchmarking.

2 As you've heard, the Copyright Act tasks the
3 board with establishing rates and terms that most
4 clearly represent the rates and terms that would have
5 been negotiated in the marketplace between a willing
6 buyer and a willing seller.

7 In doing so, the Board is to set a rate that
8 accounts for substitutional and promotional effects,
9 as well as the relative contributions of the
10 Copyright Owners and the services. In past
11 proceedings, this Board has recognized that the best
12 way to account for these statutorily mandated
13 considerations is through the use of benchmarks.

14 In Web IV, this Board used a benchmarking
15 approach and explained, and I quote, that "there is a
16 presumption that marketplace benchmarks demonstrate
17 how parties to the underlying agreements commit real
18 funds and resources, which serve as strong indicators
19 of their understanding of the market."

20 The Judges also plainly stated in Web IV
21 that where, and I quote, the Judges "have sufficient
22 confidence in the available benchmark analysis. They
23 will proceed without reference to other guideposts."

24 It's not surprising that CRB case law shows
25 a strong preference for benchmarking. Over the

1 course of many years, other rate-setting bodies,
2 including the ASCAP and BMI rate courts, have also
3 employed benchmarking as the primary tool for
4 determining rates. And for good reason.

5 Purely theoretical, economic models require
6 that economists make various assumptions, which can
7 often distort the results of the model, which is
8 exactly what happened in this case.

9 As Dr. Peterson and other service economists
10 explained at trial, these assumptions skewed
11 Professor Willig's Shapley model and caused it to
12 generate proposed rates much higher than even the
13 unadjusted interactive Spotify benchmark. His
14 modeling became so laden with assumptions that it
15 became detached from reality, as I will explain
16 later.

17 Given the pitfalls of theoretical modeling,
18 it's no wonder that this Board has historically
19 preferred benchmark approaches to rate setting. In
20 fact, in past cases where the Judges have employed a
21 method other than benchmarking, it was typically only
22 after ruling out the existence of a suitable
23 benchmark.

24 For instance, in certain SDARS cases, the
25 Board has looked to other guideposts only after

1 ruling that it had, and I quote, "little confidence,"
2 unquote, in any available benchmarks.

3 Relatedly, in the very recent Phonorecords
4 III case, the D.C. Circuit actually remanded the
5 proceeding back to the Board on the grounds that the
6 Board needed to fully explore the viability of a
7 proffered benchmark, in that case the Phonorecords II
8 settlement, before moving on to the consider the
9 exact same type of game theory modeling that
10 Professor Willig champions in this case.

11 Put simply, if the Board is going to follow
12 its own guidance from past rate-setting cases, it
13 means starting with benchmarking before entertaining
14 other options.

15 And in this proceeding, there's no real
16 dispute about whether an available benchmark exists
17 for setting rates for non-subscription statutory
18 webcasters. Nor is there any doubt about Dr.
19 Peterson's selection of the Spotify benchmark.
20 Indeed, both sides agree that the benchmarking should
21 start with the amounts paid to the major labels by
22 Spotify.

23 The disagreement between Google and
24 SoundExchange's experts is regarding what particular
25 rates within the Spotify licenses to use for

1 benchmarking purposes. Spotify operates both a \$9.99
2 per-month subscription service and a non-subscription
3 ad-supported service. Mr. Orszag uses as his
4 benchmark the rates paid by Spotify to the major
5 labels for its subscription service, even when
6 proposing rates for non-subscription Section 114
7 services.

8 Dr. Peterson, in contrast, explained at
9 trial why the sounder approach in establishing rates
10 for non-subscription statutory services is to use the
11 rates Spotify pays for its ad-supported service.

12 It is telling that, in Web IV, the Judges
13 outright rejected the Spotify subscription benchmark
14 as a starting point for establishing rates for
15 non-subscription statutory services, due to
16 differences between subscription and non-subscription
17 users, differences that the trial showed persist
18 today.

19 Dr. Peterson's benchmarking approach
20 addresses the Board's concerns articulated in Web IV,
21 by benchmarking from Spotify's ad-supported effective
22 per-play rates. Just like statutory non-subscription
23 users, users of the Spotify ad-supported service have
24 demonstrated zero willingness to pay in a monetary
25 sense for the service.

1 These are unquestionably the same type --
2 the same type of users which makes the Spotify
3 ad-supported benchmark a much sounder place, compared
4 to the Spotify subscription service, to begin the
5 benchmarking analysis for ad-supported statutory
6 services.

7 I'll discuss this in more depth later in the
8 context of the shortcomings of Mr. Orszag's approach,
9 but the bottom line is that Dr. Peterson used the
10 best available benchmark.

11 I'll now move to a slightly different topic:
12 How, after selecting his benchmark, Dr. Peterson
13 applied reasonable adjustments that are in line with
14 the Board's approach in Web IV.

15 And for this, Your Honors, we're going to
16 have to go into restricted session for the remainder
17 of my presentation, which will probably be 30 to 40
18 minutes.

19 CHIEF JUDGE FEDER: Okay. We will go into
20 restricted session for 30 to 40 minutes. Will the
21 host please close the room.

22 MR. SACK: Thank you, Your Honors. Please
23 stand by. We're beginning to clear the room now.

24 If you're an attendee in the Zoom meeting
25 who is not allowed to attend restricted session,

1 please leave the session by clicking the red "leave"
2 button on the bottom right-hand of your screen or
3 click the "X" on the top right-hand side. Your
4 counsel will inform you when you're allowed to return
5 to the proceeding.

6 Please stand by, Your Honors and counsel,
7 while we work to clear the room.

8 (Whereupon, the trial proceeded in
9 confidential session.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 O P E N S E S S I O N

2 CHIEF JUDGE FEDER: We are back in open
3 session.

4 Mr. Marks, I believe you are prepared to
5 answer Judge Strickler's question. Please proceed.

6 MR. MARKS: I am. Thank you, Your Honor.

7 Your Honor, the fact that Shapley Value
8 considers all orderings of arrival does not address
9 the complementary oligopoly power of multiple
10 must-have labels.

11 We put up on the screen paragraph 183 of the
12 services' joint proposed findings of fact and
13 conclusions of law. That has -- that has a quote
14 from Professor Shapiro that Shapley Value in the
15 context here absolutely does not eliminate concerns
16 about monopoly power or complimentary oligopoly
17 power. It does not do it.

18 Professor Shapiro explained at length why
19 that's the case. And his testimony is cited in our
20 findings.

21 Professor Shapiro and Professor Leonard
22 showed that Professor Willig's Shapley Value analysis
23 with three must-have record labels is higher than a
24 Shapley Value analysis with a single monopolist
25 seller. If the label is must-have, it can shut the

1 service down. That power gives it enormous leverage
2 in the negotiations and has nothing to do with the
3 order in which it arrives.

4 It can shut the service down. It has
5 shutdown power whether it shows up first, second,
6 third, or last.

7 And because they are -- because the record
8 labels here, the major record labels here are not
9 must-have, there are significant negative contracting
10 externalities. I talked about that this morning.
11 That's what leads you to Myerson Value.

12 All of the magnitude of this difference is
13 laid out -- was laid out by Professor Shapiro. And
14 it is referenced and discussed in our Proposed
15 Findings at paragraphs 183 to 186, 224 to 228, and in
16 our reply -- in the services' Reply Findings from 570
17 to 572.

18 I have one other cite to provide, which is
19 that Judge Strickler had asked the issue about
20 whether or not Professor Willig had fixed the issues
21 in response to Mr. Ryan's testimony.

22 We point out in paragraphs 277 to 286 of the
23 services' Joint Findings and 669 to 679 of the Reply
24 Findings, that lays out chapter and verse all the
25 ways in which Professor Willig failed to fully

1 respond to the criticisms of his analysis on that
2 score.

3 With that, I will turn it over to Mr.
4 Wetzel.

5 JUDGE STRICKLER: Thank you.

6 CHIEF JUDGE FEDER: Thank you, Mr. Marks.

7 Will the host please take down Weil Gotshal
8 and, Mr. Wetzel, please start your camera. Are you
9 going to be beginning in open session or in
10 restricted session?

11 MR. WETZEL: We can begin in open session,
12 Your Honor.

13 CHIEF JUDGE FEDER: Okay. Thank you. All
14 right. So you may proceed.

15 CLOSING ARGUMENT ON BEHALF OF NAB

16 MR. WETZEL: Good around, Your Honors. Joe
17 Wetzel of Latham & Watkins for the National
18 Association of Broadcasters.

19 We're nearing the end of a long road, but as
20 Judge Feder aptly put it yesterday, we end where we
21 began. In August I stood up and described how
22 SoundExchange had failed to meaningfully grapple with
23 the evidence NAB brought to this proceeding, evidence
24 that addressed specific and fair questions raised by
25 the Judges in Web IV based on the record in that

1 case.

2 In this proceeding NAB brought two universes
3 of benchmark evidence, the iHeart/Indie renewal
4 benchmarks and the PRO benchmarks. Due to their
5 recency, and limitations in the Web IV record,
6 neither universe was available to the Judges the last
7 time they set rates for webcasters.

8 In response, SoundExchange didn't bring a
9 shred of evidence to rebut those benchmarks. Not a
10 single one of its members to say that Dr. Leonard's
11 analysis of those agreements was wrong, not a single
12 affidavit, not a single document or internal analysis
13 from any of its members. That evidentiary void
14 speaks volumes.

15 The same goes for NAB's PRO benchmarks.
16 SoundExchange again didn't offer a single fact
17 witness, affidavit, or document undermining Dr.
18 Leonard's analysis of those benchmarks. It didn't
19 ask a single question of any fact witness about PRO
20 rates for simulcasters or Pandora.

21 NAB's evidence and analysis of the PRO
22 benchmarks is in the record absolutely un rebutted.
23 NAB also presented survey evidence demonstrating
24 simulcasts extremely low rate of diversion from or
25 substitution for both interactive streaming and

1 custom radio listening.

2 That survey evidence was a key input for
3 Dr. Leonard's opportunity cost analysis. And that
4 analysis conservatively showed that the opportunity
5 cost for simulcast on a per-play basis was far, far
6 below the current statutory rate for ad-supported
7 services.

8 It also corroborated Dr. Leonard's benchmark
9 analysis. In rebuttal here, SoundExchange offered no
10 competing survey or analysis of simulcast listeners.
11 In fact, SoundExchange's survey experts, one
12 carelessly and one deliberately, overlooked simulcast
13 listeners when running their surveys.

14 Dr. Willig even conceded that he hadn't
15 thought about modeling a hypothetical negotiation
16 about rates to be paid by simulcasters at all. That
17 revealing admission tells you everything you need to
18 know.

19 What became a theme of these proceedings,
20 NAB's robust evidence and analysis, were not met by
21 in kind evidence or analysis from SoundExchange.

22 SoundExchange seemed to hope it didn't have
23 to build a case against NAB's. It just assumed that
24 the case against a differentiated rate was in the
25 bag. It didn't lift a finger to rebut NAB's case

1 because it thought it could hang its hat on past
2 determinations by different panels on different
3 records and call it a day.

4 Its experts admitted as much. You recall
5 Dr. Tucker's famously incorrect testimony about
6 limitations inherent in the statutory license because
7 she thought it cannot account for significant
8 differences between non-interactive webcasting
9 services. She's flat out wrong on that.

10 In response to a question from Judge
11 Strickler, Dr. Willig said he made a conscious
12 decision not to separate out simulcasters at the very
13 beginning of his work in this case because of his
14 understanding of precedent.

15 He also claimed the absence of any knowledge
16 about why or if that precedent would change, but
17 that's not surprising. We just saw that he didn't
18 consider the issue at all. He prejudged the
19 differentiated rate issue.

20 Because of these presumptions,
21 SoundExchange's rebuttal of NAB's case consists of
22 nothing more than shallow, unsupported assertions by
23 its experts and lawyers, nowhere close to what's
24 required for it to prevail under the statute.

25 Before getting specifically into what NAB's

1 evidence shows and why SoundExchange's arguments
2 fail, I want to address the most pernicious argument
3 in SoundExchange's case against NAB.

4 That argument concerns the interplay of
5 competition and the statutory requirement for
6 differentiated rates for different types of
7 non-interactive services. Citing various filings
8 like 10-K's that identify broad classes of media
9 competitors, SoundExchange argues essentially for a
10 hard-and-fast rule.

11 If two services compete with one another for
12 audience or advertisers, at all, they should receive
13 the exact same rates under the statute.

14 That's not a rule that exists anywhere in
15 the text of the statute, though. And it's, in fact,
16 fundamentally incompatible with the statutory
17 backdrop for this proceeding. It's incompatible with
18 the statute's mandate that rates and terms shall
19 distinguish among the different types of services
20 then in operation based on a number of criteria,
21 including but not limited to, the nature of the use
22 and the degree to which the use of the service may
23 substitute or may promote the purchase of
24 phonorecords by consumers.

25 SoundExchange's proposed rule would evade

1 this inquiry altogether. SoundExchange's proposed
2 rule is also inconsistent with the
3 interactive/non-interactive dichotomy codified in the
4 statute.

5 Congress established a narrow public
6 performance right in sound recordings, and an a even
7 narrower compulsory license covering that right.

8 Only digital audio transmissions of sound
9 recordings require a license at all for the new
10 performance right. And only a subset of those
11 services engaged in digital audio transmissions is
12 eligible for the statutory license, the
13 non-interactive services.

14 Congress adopted this
15 interactive/non-interactive dichotomy because
16 interactive services are most likely to have a
17 significant impact on traditional record sales and,
18 therefore, pose the greatest threat to the
19 livelihoods of those whose income depends upon
20 revenues derived from those sales.

21 In other words, Congress understood
22 interactive services to be highly substitutational of
23 other revenue streams; whereas non-interactive
24 services were not. So Congress treated them
25 completely differently under the law.

1 Fighting this bedrock understanding,
2 SoundExchange's entire case against NAB and, more
3 generally, depends on collapsing the distinctions
4 recognized by Congress and embodied in the Copyright
5 Act.

6 SoundExchange argues that because
7 non-commercial simulcasters may sometimes compete for
8 listeners with commercial simulcasters, they should
9 pay the same rate. And because commercial
10 simulcasters sometimes compete with services like
11 Pandora for listeners or ad sales, they should pay
12 the same rate. Because Pandora sometimes competes
13 with on-demand services, it should pay the same rate
14 as those services, and so on.

15 Under SoundExchange's transitive property of
16 rate setting, if you compete for audience to any
17 degree, the statutory inquiry is short-circuited.
18 Apparently nothing else matters.

19 Forget about Congress's memorialization of
20 the fundamental differences between interactive and
21 non-interactive services in the statute itself.
22 Forget about the requirement to set differentiated
23 rates for different categories of non-interactive
24 services.

25 SoundExchange invites Your Honors to skip

1 past all of the evidence based on its transitive
2 property of rate setting.

3 SoundExchange also asks Your Honors to
4 ignore the record of differences between simulcasters
5 and the other participants here because other
6 non-participant services might seek or require a
7 further differentiated rate in the future.

8 The record here supports different rates as
9 between simulcast services and custom radio services
10 like Pandora. The theoretical requirement for
11 further differentiation on a different record doesn't
12 make the statutory mandate optional.

13 We need look no further than the diversion
14 ratio evidence to see that SoundExchange's transitive
15 property of rate setting is wrong. As Judge
16 Strickler observed and Dr. Willig agreed, the reality
17 of whether services are, in fact, substitutes for
18 each other is found in the diversion ratios generated
19 by consumer surveys. And here is what that reality
20 reflects.

21 As you can see, simulcasts divert only a
22 tiny percentage of listening from subscription
23 interactive services, 1.4 percent. So the idea that
24 SoundExchange's proposed interactive benchmark should
25 set rates for simulcasters is preposterous.

1 The same is true for simulcasts in other
2 non-interactive services like Pandora. The diversion
3 ratio there is still just a single digit percentage.

4 Evidence shows that simulcast is a closer
5 substitute for television and video options than it
6 is for Pandora. It is a closer substitute for print
7 options than for Spotify subscriptions. That's due
8 to radio's non-music features; news, talk, local
9 content.

10 The statute requires Your Honors to consider
11 those degrees of substitution when setting rates for
12 simulcasters. Expressed visually, this is the degree
13 of overlap or competition we're actually talking
14 about. Barely any.

15 If you walked into FTC or DOJ waving a bunch
16 of 10-K's around to argue that there is a competition
17 issue with these types of services under common
18 ownership, you would be laughed out of the room. The
19 same goes for SoundExchange's rate proposal for
20 simulcasters.

21 In response to NAB's diversion evidence, the
22 best SoundExchange can muster is that diversion
23 ratios less than 100 percent can trigger scrutiny
24 under FTC and DOJ Horizontal Merger Guidelines. But
25 the Merger Guideline example Mr. Orszag cites, refers

1 to a 33 percent diversion ratio, much, much higher
2 than the diversion ratio between simulcast and custom
3 radio. And, unsurprisingly, much closer to what we
4 see for simulcasts and over-the-air broadcasts, which
5 are the same content, just over a different medium.

6 NAB's diversion ratio evidence winds up with
7 NAB's witness testimony. As Bob Pittman testified,
8 iHeart didn't launch its custom radio and
9 subscription on-demand services to cannibalize its
10 radio and simulcast audience. It launched them to
11 compete in separate and distinct product categories.

12 The custom radio product competes with other
13 custom radio products, and its on-demand product
14 competes with other on-demand products.

15 As for Wheeler Broadcasting, despite
16 SoundExchange's best efforts to put words in his
17 mouth, Leonard Wheeler testified that his primary
18 concern with not offering simulcast to his listeners
19 would be the possibility of losing listeners not to
20 wall-to-wall music streaming services like Pandora,
21 but to other local broadcasters who do provide a
22 simulcast option.

23 As Steve Newberry put it, simulcast and
24 custom radio are competitors like Bourbon and milk,
25 not exactly close. Evidence on interactivity helps

1 explain why simulcasts aren't close competitors for
2 other music services. Simulcasts and custom radio
3 and on-demand services have very different features
4 and characteristics that define them as different
5 products.

6 They sit on a spectrum of least interactive,
7 which affords the least control and least resembles
8 ownership of music to most interactive, which
9 substitutes more directly for purchasing activity.

10 IHeart's internal analyses reflect this
11 industry paradigm. They show iHeart's understanding
12 as a provider of simulcast, custom radio, and
13 subscription on-demand products that simulcast
14 listening scratches a different consumer itch than
15 listening to custom radio or to interactive services.

16 As Mr. Pittman put it, simulcast listening
17 is about community; whereas more interactive services
18 are about me time.

19 Mr. Orszag similarly described a spectrum of
20 services with broadcast radio on one end as the most
21 lean-back offering out there, fully on-demand
22 services sit on the other end, with a gray area of
23 mixed functionality in the middle.

24 Universal's Aaron Harrison also agreed, as
25 he did in Web IV, that there's a spectrum of

1 interactivity, the simulcast at one end; interactive
2 services on the other; and custom radio somewhere in
3 between.

4 Differences in interactivity matter. As I
5 said in openings, and as UMG's Harrison recognized,
6 you pay more to get more. He explained that UMG
7 charges interactive services what it does because
8 those services are replacing or substituting for
9 purchasing activity.

10 Indeed, as Congress recognized, some
11 services just pose more of a threat to sound
12 recording owners of their revenue streams than
13 others. Simulcast as the indisputably least
14 interactive, least threatening to labels' other
15 revenue streams should get the lowest rate under the
16 statute.

17 One final point on SoundExchange's
18 competition argument before I move on. Parts of
19 SoundExchange's own case show that even SoundExchange
20 doesn't believe what it is saying about competition
21 in response to NAB's case. When SoundExchange tries
22 to suggest that the interactive services market is
23 highly concentrated, here is what it shows, Your
24 Honors.

25 It defines the market as comprising

1 interactive services and interactive services alone.
2 It doesn't include non-interactive services in that
3 competition analysis. No simulcasters, no Netflix,
4 no Facebook. Of course they don't. Including them
5 would have been absurd on its face. So too is the
6 idea that de minimis competition between categories
7 of streaming products should drive them all to the
8 same rate here.

9 The fact that SoundExchange defines a market
10 narrowly to cry that Spotify has market power and
11 broadly to argue that radio competes with Spotify
12 tells you everything you need to know about the
13 quality of their argument. It is expediency over
14 principle.

15 I want to turn now to SoundExchange's
16 general theme that Web IV somehow doomed NAB's case
17 from the start. Like many of SoundExchange's
18 arguments, it is an overreading of the past findings.

19 Web IV held that as the proponent of a rate
20 structure that treats simulcasters as a separate
21 class of webcasters, NAB bears the burden of
22 demonstrating that simulcasting differs from other
23 forms of commercial webcasting in ways that would
24 cause willing buyers/willing sellers to agree to a
25 lower royalty rate in the hypothetical market.

1 And that based on the record in that
2 proceeding, the Judges didn't believe that NAB had
3 satisfied that burden. NAB has gone above and beyond
4 this stated burden here, presenting real-world
5 benchmark evidence, in both the sound recording and
6 publishing sides of the industry, and so much more.

7 This evidence came in effectively
8 uncontradicted by other evidence from SoundExchange.
9 And it collectively demonstrates that a per-play rate
10 alone can't fully account for material economic
11 differences between simulcasts and custom radio as
12 products.

13 Now I would like to talk more about NAB's
14 benchmark evidence in response to Web IV. The first
15 category is post-Web IV renewed agreements between
16 iHeart and independent record labels covering the
17 exact same activities for which Your Honors are
18 setting rates here.

19 They are the most on point benchmarks in the
20 record, and they should not be ignored. On their
21 face, the agreements treat simulcast and custom radio
22 with vastly different royalty terms.

23 SoundExchange argues as if the Judges in Web
24 IV made an all-time determination that agreements
25 with this rate structure couldn't be benchmarks.

1 That's just not true.

2 The Web IV determination declined to rely on
3 the iHeart/Indie benchmarks in that case because the
4 Judges lacked data that would permit them to
5 calculate the per-play rates, and they lacked expert
6 analysis of how to calculate the royalties paid under
7 the benchmarks.

8 The problem for SoundExchange here is that
9 the missing data and analysis from Web IV is
10 precisely what Dr. Leonard supplied in his written
11 testimony and at the hearing. Using actual
12 performance data under the agreements, Dr. Leonard
13 calculated the effective per-play rates for simulcast
14 and custom radio under the iHeart renewal benchmarks.

15 For good measure, he did so conservatively,
16 allocating all of the royalties paid under the
17 agreements, fully addressing the Judges' concerns set
18 forth in the Web IV determination. SoundExchange did
19 not independently analyze or dispute the iHeart data
20 relied upon by Dr. Leonard, and it didn't challenge
21 the accuracy of his calculations.

22 Those calculations reveal what the Judges
23 could not glean from the Web IV record, that the
24 actual per-play rates, not just the headline rates in
25 the agreements, are lower for simulcast, even when

1 you conservatively allocate all royalties paid under
2 the agreements to just webcasting activity.

3 NAB's --

4 JUDGE STRICKLER: Mr. Wetzel?

5 MR. WETZEL: Yes, sir.

6 JUDGE STRICKLER: How are you this
7 evening -- this afternoon, sir?

8 MR. WETZEL: I am well. Thank you, Judge.

9 JUDGE STRICKLER: How do you respond to Mr.
10 Handzo's point that if you look at the Big Machine
11 agreement and you allocate all of the terrestrial
12 royalties over to the -- over to webcasting, that you
13 actually get a higher -- a higher rate than a
14 statutory rate?

15 MR. WETZEL: Sure. And I will come to that
16 more -- in more detail later. My response to that is
17 that there is -- there is not a single piece of
18 testimony in the record supporting that view of the
19 agreements.

20 Dr. Leonard testified why it made no
21 economic sense to view the agreements that way. Tres
22 Williams testified that the agreements were not
23 designed to -- to be viewed that way or were not
24 understood that way by iHeart.

25 And, frankly, Mr. Handzo's allocation

1 methodology and analysis omits an enormous amount of
2 data that was analyzed by Dr. Leonard that -- that
3 when viewed correctly, shows that the overall rates
4 paid under these agreements are far below the
5 statutory rate, that Mr. Handzo wants to focus on one
6 particular aspect of the agreement and -- and create
7 a really high rate over here, while disregarding the
8 absurd result that would put on the other side of
9 creating a super, super low, well below the statutory
10 rate for -- for custom radio, is just not -- it is
11 not a realistic way to view it.

12 SoundExchange couldn't find a single expert
13 to endorse that view of the world. No one brought it
14 up on rebuttal. And -- and it is just -- it has just
15 not been adopted by anyone.

16 JUDGE STRICKLER: Well, we don't know how
17 Big Machine construed the allocation of the royalties
18 because there was no Big Machine witness; am I
19 correct about that?

20 MR. WETZEL: That's correct. And that was
21 within SoundExchange's ability to -- to procure, as
22 Big Machine is a SoundExchange member. And -- and I
23 have -- I have some material on that later.

24 JUDGE STRICKLER: Well, you may have
25 material on my next question as well, but since we're

1 talking about these benchmarks, how do you respond to
2 SoundExchange's point made by Mr. Handzo this morning
3 that these agreements that were renewed, that were
4 relied upon by Dr. Leonard, were dwarfed in volume by
5 those that were not renewed or were never created in
6 the first place?

7 MR. WETZEL: Well, Your Honor, I think that
8 there's -- the record is that it's really hard to
9 make benchmarks. It's really hard under the existing
10 statutory license, you're fighting against a series
11 of transaction costs for smaller entities. You're
12 fighting against the concern by larger labels, more
13 sophisticated labels that those benchmarks could be
14 used against them to set rates for Pandora, even
15 though it's a different type product in the context
16 of these proceedings.

17 And we see that the messaging to the
18 industry has been for the -- the messaging has been
19 careful not to enter into these benchmarks because
20 they can be used against us in these proceedings.
21 And it doesn't -- it doesn't matter whether
22 SoundExchange disclaimed that and said we're not
23 telling you what to do, but we're just suggesting
24 that you do it. That's -- that's the messaging
25 that's out there. And that's endemic to the

1 environment that we're in.

2 The fact that we found a series of
3 benchmarks where people have determined that all of
4 those things considered, transactions costs, the
5 potential use as a benchmark, there's still good
6 cause, there's still good economic reason to do these
7 deals, I think is a powerful indicator of the
8 strength of those benchmarks for simulcasters, in
9 particular.

10 JUDGE STRICKLER: Thank you.

11 MR. WETZEL: As you can see on the range of
12 rates calculated by Dr. Leonard, NAB's proposal falls
13 at the conservative or high end of each range there.
14 Calculations also show that the average effective
15 per-play rates without allocation falls well below
16 the Web IV statutory rates.

17 We just discussed Mr. Handzo's lay testimony
18 about Big Machine's effective rate this morning. NAB
19 is the only party that brought expert testimony
20 analyzing these agreements.

21 And Mr. Orszag had a full opportunity to
22 rebut that allocation, that methodology of looking at
23 them, and he did not.

24 Rather, Mr. Orszag chose instead to argue
25 that there's some unspecified value in the form of

1 non-statutory benefits under the iHeart benchmarks.

2 And we discuss in detail in paragraphs 64 to
3 75 of its Proposed Findings, in paragraphs 1185 to
4 1203 of the services' Joint Reply Findings, why each
5 of those arguments fails to carry the day.

6 But I'm going to focus here on a more
7 fundamental issue that I touched on with respect to
8 SoundExchange's attempts to rebut NAB's evidence,
9 SoundExchange's failure to even attempt to quantify
10 any of these alleged non-rate benefits when it was in
11 their interest and ability to do so, and that failure
12 is fatal to its position.

13 A common theme of SoundExchange's rebuttal
14 seems to be to try to turn its burden of rebuttal
15 back on NAB. Under its view, NAB not only had the
16 burden of producing an affirmative benchmark
17 analysis, but also to disprove any speculative
18 arguments SoundExchange could muster. And that's
19 just not how this works.

20 As the Judges in Web IV explained, and I am
21 going to read it in full because I think it lays bare
22 just how weak SoundExchange's case against the iHeart
23 benchmarks is here. The parties have a strong
24 self-interest to establish values for non-statutory
25 items that would support their positions. Thus the

1 Judges would anticipate that the record companies and
2 SoundExchange would present specific evidence of the
3 monetary value for the non-statutory consideration
4 they received under the contract that must be added
5 to the stated headline rate on a per-play basis.

6 More particularly, the Judges would expect
7 that the record companies' internal valuation and
8 spreadsheets would set forth their understanding of
9 these monetary values and not merely the existence of
10 some unquantified value.

11 Similarly, the Judges would anticipate
12 receiving expert testimony from SoundExchange's
13 economic witnesses ascribing monetary value to each
14 additional contractual consideration allegedly
15 benefitting the record companies, especially if there
16 weren't any documents to back that up.

17 In a separate context, the Judges said if
18 there's a party that seeks to increase or decrease an
19 otherwise effective benchmark rate to account for
20 other items of value and they cannot provide evidence
21 of value when it was in their self interest to do so,
22 the Judges can't arbitrarily adjust or ignore an
23 otherwise proper and reasonable benchmark. In other
24 words, if you want to argue there is material
25 non-royalty or non-statutory value baked into a

1 willing buyer/willing seller agreement, vague
2 arguments about ideological or idiosyncratic benefits
3 don't cut it.

4 SoundExchange bore the burden of producing
5 evidence supporting its arguments but instead it made
6 no effort to quantify its alleged non-rate benefits.
7 No specific evidence of the monetary value to its
8 members, no internal valuations or spreadsheets, no
9 expert testimony ascribing actual monetary value to
10 the non-rate benefits.

11 Those arguments should meet the same fate
12 they did in Web IV.

13 JUDGE STRICKLER: So essentially you are
14 making -- using the Web IV quotes to make basically a
15 burden of going forward argument with regard to
16 evidence?

17 MR. WETZEL: Exactly, Your Honor. We -- we
18 produced agreements. We had an expert analyze them
19 at face value. And SoundExchange has -- has replied
20 just by saying hey, there might be these other --
21 this other value out there, without putting forth a
22 single witness, a single analysis, no concrete
23 attempt to determine that these -- these items of
24 value were material in a way that should influence
25 the Judges' consideration of these benchmarks.

1 JUDGE STRICKLER: Thank you.

2 MR. WETZEL: Your Honors, at this point I am
3 going to need to proceed in restricted session for
4 about five minutes.

5 CHIEF JUDGE FEDER: Okay. Will the host
6 please close the hearing room.

7 MR. SACK: Stand by. We're beginning to
8 clear now.

9 If you are an attendee in the Zoom meeting
10 who is not allowed to attend restricted session,
11 please leave the session by clicking the red "leave"
12 button on the bottom right-hand of your screen or
13 click the "X" on the top right-hand side.

14 Your counsel will inform you when you are
15 allowed to return to the proceeding.

16 (Whereupon, the trial proceeded in
17 confidential session.)

18

19

20

21

22

23

24

25

1 O P E N S E S S I O N

2 MR. SACK: Your Honor, now the room is open
3 and the feed is public.

4 CHIEF JUDGE FEDER: We're back in public
5 session.

6 You may proceed, Mr. Wetzel.

7 MR. WETZEL: We spoke to this briefly before
8 too, but I'll try to keep it short.

9 With nowhere left to turn, SoundExchange
10 argues that Your Honors should ignore the iHeart
11 benchmarks because they don't cover a big enough
12 percentage of iHeart's plays, but there are several
13 problems with that argument.

14 First, it asks Your Honors to reject some
15 evidence in favor of none. SoundExchange offers no
16 benchmarks evidencing what willing buyers and willing
17 sellers would agree to for a license covering the
18 exact rights in question here.

19 Second, on the stand Mr. Orszag abandoned
20 the idea that an agreement covering a small share of
21 plays should not be representative. The evidence
22 showed that iHeart's Indie benchmarks covered over
23 20 percent of iHeart's Indie label plays, in the
24 ballpark of the Merlin benchmark proffered by Mr.
25 Orszag. And, of course, the Judges are familiar with

1 the Merlin benchmark in Web IV.

2 Another problem with SoundExchange's
3 coverage argument, as I mentioned, is that it ignores
4 the -- the head winds against directly licensing in
5 the marketplace. Dr. Leonard testified that labels
6 avoid direct licensing due to transaction costs
7 sometimes, for a number of reasons. They may
8 outweigh the benefits of direct licensing;
9 particularly for the little guys.

10 Dr. Leonard also testified that larger
11 record companies with the most at stake might avoid
12 entering into agreements that could potentially act
13 as benchmarks for webcasters in these proceedings,
14 for all webcasters, not just simulcasters. And this
15 is more than a theoretical concern.

16 Tres Williams testified that he observed
17 this phenomenon firsthand in his own licensing
18 negotiations. The record also shows that around the
19 time of Web IV, SoundExchange engaged in a campaign
20 against direct licensing by its members. We have --
21 we have talked about this before.

22 Before Web IV, it said any direct deals
23 might be used against artists and record companies as
24 evidence. After Web IV, SoundExchange came back and
25 said direct deals could provide a precedent and

1 undermine recording artists. And it said that's
2 exactly what happened to us in Web IV.

3 This is the messaging that is out there in
4 the marketplace. It doesn't matter that it came a
5 couple years ago or after some iHeart licenses were
6 struck. And it doesn't matter that, as I said,
7 SoundExchange qualified this by saying you don't --
8 you can do whatever you want.

9 That message is emblematic of the industry
10 view, embraced and driven by the major labels, that
11 negotiations with webcasters begin and end with the
12 statutory rate.

13 We didn't hear a single witness from the
14 other side testify otherwise about this. The fact
15 that iHeart's direct deals exist in the face of these
16 headwinds is power evidence of a categorical
17 difference between simulcasts and other webcasting
18 services. The only webcaster direct licenses in
19 evidence are with iHeart, NAB's largest simulcaster,
20 not Pandora.

21 No other commercial webcaster succeeded in
22 striking a willing buyer/willing seller dealer other
23 than at statutory rate since Web IV, from what we can
24 see. The iHeart benchmarks don't suffer from
25 inadequate coverage.

1 They fall in the Goldilocks zone, between
2 major labels' avoidance of benchmarks and smaller
3 labels without the wherewithal to bear the
4 transaction costs of direct licensing. It is just
5 that.

6 If the Judges have any concerns about the
7 coverage of iHeart's benchmarks, the NAB's second
8 universe of benchmarks is completely immune to
9 SoundExchange's coverage criticism. Those agreements
10 cover the complementary rights licensed to webcasters
11 by performing rights organizations; ASCAP, IBM, and
12 SESAC.

13 NAB's PRO benchmarks show that the licensors
14 of publishing rights almost unequivocally charge
15 materially lower rates to simulcasters than they do
16 to custom radio services, lower rates on a per-play
17 basis.

18 This completely new category of evidence is
19 important because the two largest performing rights
20 organizations, ASCAP and BMI, are required by
21 antitrust consent decrees to license
22 similarly-situated licensees on similar terms.

23 ASCAP and BMI can only charge different
24 rates to simulcasting custom radio services because
25 those two types of service are economically

1 dissimilar products in the eyes of the willing buyers
2 and willing sellers in the marketplace for licensing
3 music rights to webcasters. That understanding has
4 come into clear focus since Web IV.

5 Now, frankly, SoundExchange swung and missed
6 in its attempt to rebut these never-before-presented
7 benchmarks. And it has regrettably chosen to push
8 falsehoods and conspiracies in lieu of substantive
9 evidence in response to NAB's PRO benchmarks.

10 It all began when Mr. Orszag, without doing
11 any analysis, speculating that Dr. Leonard's
12 understanding of the PRO landscape was wrong.

13 That was the sum and substance of
14 SoundExchange's original rebuttal to the PRO
15 benchmarks. But the hearing quickly demonstrated
16 that Orszag's information was out of date. And he
17 admitted not knowing the PRO rates paid by Pandora
18 since Web IV.

19 The answer, of course, was staring him in
20 the face in the 10-K's that he relied on. And
21 Dr. Leonard's analysis was doubly confirmed by an
22 internal Pandora royalty analysis.

23 Nevertheless, SoundExchange inexplicably
24 persists in what's simply untrue, that the difference
25 in rates paid by custom radio and simulcast are

1 "explained by the fact that licensees pay the PROs on
2 a percentage-of-revenue basis." It is in their Reply
3 Findings.

4 And I honestly have no explanation for this
5 statement by SoundExchange. The record is crystal
6 clear that Pandora has not paid a
7 percentage-of-revenue rate to the PROs for its
8 ad-supported service at any time since Web IV.

9 Pandora's 10-K's say it, its royalty
10 analyses say it. Pandora pays a percent of sound
11 recording royalties, which we all know are calculated
12 on a per-play basis. Unequivocally it does not pay
13 a percent of its revenue. And the predicate for
14 SoundExchange's critique fails.

15 SoundExchange's arguments that flow from its
16 mistaken understanding also fail. Dr. Leonard
17 explicitly accounted for the difference in plays on
18 simulcast and custom radio when analyzing the PRO
19 benchmarks.

20 The math is in his testimony. He repeatedly
21 explained how he did so and how the difference in
22 rates paid by the two types of services is decidedly
23 not explainable by the difference in plays.

24 But let's take a minute to show how
25 SoundExchange could have at least gut-checked its

1 argument. You will recall that Mr. Huseny and Mr.
2 Orszag discussed some simple math you could use to
3 calculate the effective per-play PRO rates for
4 Pandora, on one hand, and a simulcaster, on the
5 other.

6 Pandora is easy. You take the percent of
7 sound recording royalty from its royalty analysis
8 document and multiply it by the statutory per-play
9 rate. On the right that's what Pandora paid PROs,
10 excluding GMR, on a per-play basis in 2017 and 2018.

11 For simulcasters, we can use iHeart as an
12 example. If you add the
13 undisputed percent-of-revenue rates for ASCAP, BMI,
14 and SESAC, you get a total percent of simulcast
15 revenue paid by iHeart to PROs, again excluding GMR,
16 for the same years.

17 Mr. Orszag suggested you might need plays
18 excluding GMR, but he was wrong. Neither of these
19 rate structures depends on whether a play is a GMR
20 play or not. We have an apples-to-apples comparison,
21 what Pandora and iHeart paid for everything else on a
22 per-play basis.

23 We get the total simulcast revenue and plays
24 or at least plays over 15 seconds from iHeart's
25 royalty statements in evidence. There is no

1 allocation issue here because iHeart has always had
2 to pay terrestrial radio performance rights for music
3 compositions.

4 This slide shows the simple math resulting
5 in a materially lower PRO rate per-play for iHeart
6 simulcasts during 2017 and 2018. And the disparity
7 between Pandora and the simulcaster gets even bigger
8 for smaller simulcasters that don't monetize as well
9 as iHeart does.

10 The notion that the difference in PRO rates
11 paid by Pandora and simulcasters is explainable based
12 on music intensity alone or that they were even meant
13 to be is 100 percent false. We can't say that
14 enough.

15 Grasping at straws, SoundExchange resorts to
16 speculation about unseen tradeoffs in the Pandora
17 licenses. As Mr. Handzo put it, a quid pro quo that
18 might have been.

19 In the face of the evidence presented by
20 NAB, it was SoundExchange's burden to produce
21 evidence in support of such a theory. There is not a
22 shred of evidence in the record establishing a
23 so-called tradeoffs.

24 In fact, SoundExchange's lone attempt at
25 relying on evidence to infer the existence of a

1 tradeoff falls completely flat. It actually confirms
2 the absence of one.

3 SoundExchange argues that Pandora must have
4 gotten a tradeoff because its subscription tier pays
5 lower PRO rates than its ad-supported tier. That
6 argument betrays a complete misunderstanding of the
7 evidence and the industry.

8 Pandora's royalty analysis shows the rates
9 it pays for its subscription tier. I am not going to
10 say them out loud here, but those headline rates will
11 look very familiar to Your Honors.

12 And as the Judges are aware, interactive
13 services pay both public performance rights and
14 mechanical royalties for music compositions.

15 So SoundExchange's focus on performance
16 rights alone misses half the picture when you're
17 talking about Pandora's subscription tier. This was
18 discussed during Dr. Leonard's testimony.

19 SoundExchange resorts to further innuendo
20 about how the rates reflected in Pandora's royalty
21 deck raise a red flag because they are much different
22 than the outdated rates relied on by Mr. Orszag.

23 It is not NAB's job to explain why Pandora
24 and the PROs entered into the willing buyer/willing
25 seller transactions confirmed in Pandora's public

1 filings and its internal royalty analyses.

2 SoundExchange, as the opponent of that
3 evidence, bears the burden of rebutting it. And,
4 again, it presented zero evidence backing its
5 speculation about the PRO benchmarks.

6 It neither requested nor offered into
7 evidence from -- from -- excuse me, it neither
8 requested nor offered into evidence the license
9 agreements from Pandora. It didn't ask a single
10 question of Pandora's witnesses on the subject when
11 it had them on the stand, not one question. We don't
12 get to question Pandora.

13 SoundExchange also tries to downplay the
14 significance of the Pandora PRO benchmarks as one
15 agreement involving one licensee. But it is
16 hypothetical for SoundExchange to suggest that
17 Pandora is not somehow representative of the custom
18 radio product market after it used Pandora as a proxy
19 for the entire non-interactive marketplace throughout
20 its case. They were the 800-pound gorilla in Mr.
21 Handzo's presentation this morning.

22 On the simulcast side, NAB's PRO benchmarks,
23 again, included licenses with ASCAP, BMI, and SESAC.
24 Those licenses in turn were in place with thousands
25 of commercial radio stations, representing the vast

1 majority of commercial broadcasters.

2 They blanketed the marketplace for
3 publishing rights for simulcasters. Here,
4 SoundExchange brings a completely new argument in
5 response to the PRO benchmarks that the radio
6 industry, arguing for the first time in its reply,
7 again, that those agreements may be artificially low
8 if the Radio Music License Committee is using its
9 market power to suppress rates. That's nonsense.

10 First of all, the notion that RMLC has power
11 in any coherently-defined product market is absurd.
12 Radio makes up a small fraction of the licenses that
13 PROs sell, and it has no choice but to buy those
14 licenses.

15 And the idea that RMLC exerted market power
16 over ASCAP, BMI, and SESAC, when each had recourse to
17 judicial rate-setting is nonsensical and should be
18 rejected in its own right.

19 The SESAC rate was ordered by a panel led by
20 retired Judge Vaughn Walker. The BMI license was
21 approved and entered by Judge Stanton. And ASCAP
22 agreement reflected an increase over rates approved
23 and entered by Judge Cote.

24 If these RMLC agreements were the product of
25 some conspiracy to extract sub-competitive rates,

1 then at least three current and former federal judges
2 are in on it.

3 In all events, SoundExchange made no attempt
4 to carry the burden of proving up such an allegation
5 at the time the hearing. Its reliance on unproven
6 allegations made by a non-party to NAB's benchmarks
7 in an effort to inject uncertainty at this late stage
8 is highly inappropriate.

9 One final note on NAB's PRO benchmark
10 evidence before I move on. That evidence lays waste
11 to Orszag's ratio equivalency theory. I won't
12 belabor the point here, since it is addressed in our
13 findings, but NAB's evidence shows that the percent
14 of revenue paid for publishing rights by Pandora's
15 subscription on-demand service, by Pandora's
16 ad-supported custom radio service, and by
17 simulcasters are not anywhere near the same.

18 As Dr. Leonard explained, the theoretical
19 fulcrum for Mr. Orszag's subscription interactive
20 benchmark is demonstrably false in the real world
21 licensing transactions reflected in the PRO
22 agreements. It fails the ratio equivalency test, as
23 Dr. Leonard put it.

24 All of that, all of that is why NAB's new
25 benchmark evidence fills a key evidentiary gap in Web

1 IV for evidence that differences between simulcasting
2 and other webcasters would drive differentiated
3 per-play rates, not just in the hypothetical
4 marketplace, but they do in the real world.

5 I am only going to briefly address
6 opportunity cost because we discussed this analysis
7 in detail in our proposed findings. But let's be
8 clear. There is nothing in the record demonstrating
9 an increase in opportunity costs since Web IV or even
10 allowing the comparison that Mr. Handzo suggested
11 this morning.

12 Interactive streaming revenue, as Mr. Marks
13 said, has grown virtually unchecked alongside
14 entrenched non-interactive services. They're
15 different products. And the evidence suggests
16 webcasters are not standing in the way of interactive
17 services' growth.

18 Dr. Leonard calculated the opportunity costs
19 for simulcast to fall between .07 cents and .1 cents
20 per-play. No other expert undertook this specific
21 analysis for simulcasts. And the result was far
22 lower than what Dr. Willig calculated for
23 non-interactive services in general.

24 Taken at face value, these two opportunity
25 cost analyses provide further support for a

1 differentiated rate. Dr. Leonard's analysis also
2 corroborates his benchmarking analysis.

3 The range of simulcast rates he calculated
4 overlaps the 95 percent confidence interval his
5 opportunity cost analysis generated. In response,
6 all SoundExchange can do is criticize Dr. Leonard's
7 analyses because the overlap is not more complete,
8 arguing that the opportunity cost analysis somehow
9 undermines Dr. Leonard's benchmark analysis. Not
10 true.

11 First, the analyses are different. One is
12 based on benchmarks baking in numerous
13 considerations, including promotional value that
14 lowers the royalty. The other is a theoretical
15 exercise based on survey evidence that measures only
16 substitutional value, excluding the effect of
17 promotional value or opportunity benefit, as Judge
18 Strickler put it.

19 Second, as Judge Strickler observed, the
20 rights in question here have almost no marginal cost.
21 So licensors benefit from rates that would approach
22 the true opportunity cost.

23 SoundExchange also tries to attack the
24 Hauser Survey, underlying Dr. Leonard's analysis.
25 Again, I won't get into detail here, as we discussed

1 Professor Hauser's expert testimony in NAB's proposed
2 findings. SoundExchange didn't touch him on cross.

3 Ultimately, SoundExchange's attacks on
4 Professor Hauser are just a red-herring intended to
5 distract from the fatal flaws of their own surveys.
6 It was SoundExchange's survey expert, Professor
7 Zauberman, who was discredited at the hearing.

8 He admitted numerous issues with his survey.
9 And his testimony concluded with him conceding a
10 mistake in his definitions, the most important thing
11 Willig said, which permeate his survey questions. He
12 had to agree that his error did not reflect best
13 practices in his field.

14 Likewise, SoundExchange's other survey
15 expert, Professor Simonson, deliberately excluded
16 simulcast listeners from the survey pool. That's a
17 fact, no matter how Mr. Handzo spins what he did.

18 The Hauser Survey thus stands alone in its
19 analysis of the simulcast listeners. Separate from
20 the so-called three relevant surveys for Pandora that
21 we heard about earlier today.

22 Dr. Willig went on to mis-apply Zauberman's
23 fatally-flawed survey results in a way that led to
24 inflated opportunity costs for the services that were
25 the focus of SoundExchange's analysis.

1 Those errors, and Mr. Steinthal went into
2 some of them, included a failure to adjust for
3 complementary oligopoly power, which infected every
4 step of his analysis. And the lack of any input for
5 promotional value whatsoever, which biased his rates
6 upwards.

7 Those are all discussed at length in NAB's
8 and the services' Proposed Findings. Those flaws
9 ensure that Dr. Willig's opportunity costs would be
10 inflated, overstated, and of no help in this
11 proceeding. Certainly not for simulcasters.

12 A brief word on promotional value,
13 highlighting yet another important colloquy from
14 trial. NAB also provided evidence that record labels
15 continue to view radio play as highly promotional.

16 As Dr. Leonard explained, and Universal's
17 Aaron Harrison confirmed, simulcast is an exact
18 replica of the over-the-air broadcast shares in
19 radio's promotional attributes on a
20 listener-for-listener basis.

21 This intuitive point was not credibly
22 contradicted. The evidence indisputably shows that
23 record labels continue to invest tens of millions of
24 dollars each year to get their songs added to radio
25 playlists, without distinguishing between radio and

1 simulcast.

2 They make no corresponding investment in
3 pure non-interactive services.

4 Basic economic logic tells us the major
5 labels aren't acting irrationally here. There is a
6 reason for the investments that these sophisticated
7 global businesses are making. And that's because
8 radio play, regardless of the transmission medium,
9 promotes revenues.

10 By the way, that's how the majors pitch to
11 Tom Poleman and iHeart. It's not in any way
12 incompatible with Indies choosing to compete to get
13 on Mr. Poleman's radar with lower simulcast rates in
14 direct deals. All of this helps to explain why we
15 see benchmarks setting lower rates for simulcasters
16 than for custom radio or interactive services.

17 SoundExchange, once again, had nothing valid
18 to say in response. This was underscored by
19 Dr. Ford's bizarre effort to characterize this
20 competition by the majors for radio play as a form of
21 mutually assured destruction because -- between the
22 major labels.

23 That held up poorly under questioning by
24 Your Honors. Dr. Ford couldn't answer why, if there
25 were no promotional value to being on radio

1 playlists, labels wouldn't just stop spending this
2 money and let their competitors occupy the field.

3 Dr. Ford also admitted that he had done
4 nothing that one would expect an expert to do in
5 order to actually test his theory. For example, he
6 agreed that as a general matter, benchmark evidence
7 bakes in promotional value, but his testimony was
8 that he'd seen no evidence of simulcast having
9 promotional value.

10 No evidence? Dr. Ford admitted that he
11 didn't address or consider the benchmarks, Your
12 Honors, because he wasn't even aware of their
13 existence. That kind of incomplete, unsupported
14 opinion testimony should get zero weight here.

15 Before I wrap up, I want to quickly address
16 SoundExchange's proposal to double the current
17 minimum fee. SoundExchange justifies its demand by
18 pointing to an alleged increase in its overall cost
19 per channel but that analysis misunderstands the
20 point of the minimum fee.

21 The minimum fee is not meant to cover
22 SoundExchange's overall operating expenses. Rather,
23 as the Librarian of Congress has acknowledged, the
24 purpose of the minimum fee is to cover the
25 incremental cost of licensing.

1 In other words, the cost to the license
2 administrator of adding another license to the
3 system. Even assuming that SoundExchange could, as a
4 legal matter, justify an increase in the minimum fee
5 by pointing to an increase in its overall, rather
6 than incremental administrative costs, the amount it
7 has told Your Honors it spends on a per channel basis
8 is entirely overblown.

9 The \$55 million figure SoundExchange uses
10 for its per channel administrative expense
11 calculation includes expenses completely unrelated to
12 processing and distributing royalties.

13 For example, Mr. Ploeger admitted that it
14 includes almost \$5 million in costs related to
15 property and equipment depreciation and over \$8
16 million in costs associated with litigating
17 rate-setting proceedings.

18 SoundExchange is asking Your Honors to have
19 the smallest webcasters and non-commercial stations
20 fund the war chest it uses to try and increase their
21 rates here.

22 SoundExchange's non-expert calculations are
23 also flawed because they artificially stop counting
24 channels at 100, even when a licensee like Pandora
25 has millions of channels. That arbitrary cutoff

1 warps the average beyond recognition.

2 It doesn't matter that a minimum fee caps
3 out at 100 stations. Larger entities pay
4 SoundExchange so much in statutory royalties that the
5 minimum fee doesn't come into play for them very
6 often.

7 What matters is whether the minimum fee
8 covers the incremental costs of administering an
9 additional license. And SoundExchange made no record
10 that that cost has somehow doubled. It has no
11 explanation for the fact that under the current
12 minimum, SoundExchange actually distributes excess
13 fees as royalties to its members.

14 My colleague, Ms. Ablin, may address this
15 issue further, but at the end of the day
16 SoundExchange's request to double the minimum fee is
17 utterly unjustified.

18 In conclusion, whether we're talking about
19 the minimum fee or NAB's case-in-chief, SoundExchange
20 has not made the evidentiary record it needs to
21 prevail here. NAB filled the evidentiary gaps from
22 Web IV with benchmarks, survey evidence, opportunity
23 cost analysis, and qualitative evidence supporting a
24 lower per-play rate for simulcasters; one well below
25 the current statutory rate.

1 Giving simulcasters a lower per-play rate
2 for the music they use in their programming, it won't
3 give them a competitive advantage against Pandora or
4 other wall-to-wall music services, and it won't
5 threaten labels' other revenue streams. That's
6 because a lower per-play royalty for simulcasters
7 won't change the qualities that define them.

8 It won't change the fact that simulcast is
9 the least interactive and the most lean-back type of
10 webcasting. And it won't make simulcast any more of
11 a substitute for record sales or on-demand
12 subscription fees than it is today.

13 As Dr. Leonard testified, the evidence at
14 the hearing is that when push comes to shove, radio
15 broadcasters compete by differentiating themselves
16 based on their non-music content. And that's in a
17 world where they pay no royalties to sound recording
18 companies.

19 By definition, that non-music content will
20 remain a part of the simulcast, regardless of what
21 happens here. Recognizing the substantial economic
22 differences between simulcast and custom radio,
23 including differences in interactivity and potential
24 substitution for record companies' other revenue
25 streams, will not alter those fundamental

1 differences. Most importantly, it's what the law
2 requires.

3 Thank you, Your Honors. We respectfully ask
4 that you adopt NAB's proposed rates and terms.

5 CHIEF JUDGE FEDER: Thank you, Mr. Wetzel.

6 Any questions from the Judges?

7 JUDGE STRICKLER: Nothing further.

8 JUDGE RUWE: No, thank you.

9 MR. WETZEL: Thank you, Your Honors.

10 CHIEF JUDGE FEDER: Ms. Ablin, please turn
11 on your camera. And, Mr. Wetzel, please turn off
12 your camera.

13 Ms. Ablin, will you be starting in open
14 session? You are muted.

15 MS. ABLIN: Yes, I will, Your Honor. My
16 apologies. And I need to adjust my volume, I think.

17 MR. SACK: We're not able to hear you, Judge
18 Feder.

19 CHIEF JUDGE FEDER: Can you hear me?

20 MR. SACK: Now, we can.

21 CHIEF JUDGE FEDER: I was just observing
22 that that's a 2020 issue.

23 MR. SACK: Correct.

24 MS. ABLIN: Give me a moment here, and I
25 will --

1 JUDGE RUWE: Karyn, it sounds pretty good.

2 MS. ABLIN: The volume is okay?

3 JUDGE RUWE: I think so.

4 MS. ABLIN: All right.

5 CHIEF JUDGE FEDER: Your slides are not up,
6 if you're going to be using slides.

7 MS. ABLIN: Yes, I am working on that. I
8 think they should appear momentarily. All right.
9 Are you able to see them, Your Honor?

10 CHIEF JUDGE FEDER: Yes.

11 MS. ABLIN: Thank you.

12 Just bear with me one more moment.

13 CHIEF JUDGE FEDER: Your slides are not on
14 the document share yet, though.

15 MS. ABLIN: Yes. And that is coming up
16 momentarily as well. So I'm ready to proceed.

17 Would you prefer we wait until they are up
18 on document share?

19 JUDGE RUWE: Go ahead, with what's appearing
20 in Zoom.

21 MS. ABLIN: Okay. They will be there in
22 just a moment, so -- I think they should be there
23 now.

24 CLOSING ARGUMENT ON BEHALF OF NRBNMLC

25 MS. ABLIN: Good afternoon or, rather, good

1 evening, Your Honors, since I am on the East Coast.

2 It has been a long day but we're almost there.

3 In the interest of time, because I have got
4 a lot to cover, I'm going to get right to the key
5 points.

6 So the key question in setting
7 non-commercial rates is the starting point. And
8 there are stark differences between the two parties'
9 proposals.

10 The NRBNMLC has proposed benchmark
11 agreements setting rates for a large swath of
12 non-commercial broadcasters and agreed to by every
13 major record company, as well as independent record
14 label representatives.

15 Those agreements reflect broad
16 non-commercial buyer buy-in and near universal seller
17 buy-in, and they set rates for precisely the same
18 rights as those being valued in this proceeding and
19 for precisely the same license term.

20 By contrast, SoundExchange's approach is not
21 based on any agreements or even theoretical modeling
22 pertaining to non-commercial services.

23 It, instead, invites the Judges to set
24 above-threshold rates for non-commercial services
25 based on rates and agreements with large commercial

1 on-demand services. Those agreements involve
2 different buyers; namely, large commercial services,
3 such as Spotify, Apple, Amazon, and Google, that earn
4 billions of dollars in revenue. Even the largest
5 non-commercial broadcasters earn revenues that are a
6 tiny drop in the bucket compared to these entities.

7 SoundExchange did not even attempt to adjust
8 above-threshold rates to account for these
9 fundamental differences between nonprofit and
10 for-profit services. The agreements also involve
11 different rights on demand transmissions instead of
12 statutorily-compliant webcasting.

13 SoundExchange also relies on some abstract
14 theorizing by Professor Willig, claiming that his
15 "modeling approach is instructive" for setting
16 non-interactive webcaster royalty rates, but as
17 Professor Willig himself admitted, he analyzed no
18 data and offered no opinions about non-commercial
19 services, but instead acknowledged that
20 non-commercial rates were outside the scope of his
21 analysis.

22 Regardless of whether Your Honors adopt
23 SoundExchange's proposal precisely, though, there's
24 no basis for setting above-threshold non-commercial
25 rates at commercial levels on this record.

1 And as I will discuss in a bit, both NPR and
2 non-NPR non-commercial broadcasters of all sizes have
3 the same nonprofit traits that put them in a
4 different market segment from commercial broadcasters
5 and cause them to negotiate lower rates than those
6 currently set.

7 The NPR agreement itself is proof of that.
8 There also is no evidence of listener diversion by
9 non-commercial broadcasters and certainly no evidence
10 that non-NPR broadcasters are more likely to divert
11 listeners than are NPR broadcasters. And as I will
12 also get to, if anything, the evidence points in the
13 opposite direction.

14 So, in short, the NRBNMLC's rate proposal,
15 which is the only proposal before Your Honors based
16 on benchmark evidence from the non-commercial market,
17 is by far the superior benchmark in the record for
18 setting non-commercial willing buyer/willing seller
19 rates.

20 So it's well-trodden ground by now that a
21 critical hallmark of a good benchmark is
22 comparability with the target market. And in
23 Section 114 rate-setting cases, like this one, the
24 Judges have made clear that the test for whether a
25 benchmark market is comparable involves consideration

1 of such factors as whether it has the same buyers and
2 sellers as the target market and whether they are
3 negotiating for the same rights. That test is
4 squarely met here.

5 The NPR agreement involves the same sellers,
6 record companies through SoundExchange, including all
7 major labels and Indie representatives as well, the
8 same types of buyers; namely, non-commercial
9 broadcasters, both large and small, the same works,
10 sound recordings, the same rights, which are the same
11 non-interactive webcasting and ephemeral recording
12 rights that are being valued here, and even the same
13 license term, which is '21 to '25.

14 In short, using an actual comparable
15 non-commercial benchmark, such as the NPR agreement,
16 is far superior to using commercial agreements or
17 theoretical models based on commercial licensee
18 information. And it also removes the need to rely on
19 conclusory and one-sided conjecturing by only the
20 seller side of the market, with no buy-in by willing
21 buyers about supposed risks of listener diversion.

22 And that's exactly what the NRBNMLC's rate
23 proposal does. It includes two different options
24 that both very closely follow the NPR agreement's
25 metrics.

1 The first option adopts the threshold
2 structure identified in the NPR agreement itself
3 under the calculation of license fee provision,
4 displayed on the screen for the two most recent NPR
5 agreements.

6 That provision states that the license fee
7 includes an annual minimum fee, additional usage
8 fees, and an administrative convenience discount
9 based on the advantage of receiving a large advanced
10 payment on behalf of multiple stations.

11 Option 1 follows that structure by proposing
12 an annual minimum fee of \$500 and an above threshold
13 usage fee equal to one-third of the per-performance
14 rate that the Judges set for commercial broadcasters.

15 The specific numbers used in option 1's
16 threshold structure came from a document that
17 SoundExchange provided in discovery in response to a
18 request for a detailed description of the valuation
19 of any rate or other term in either of its two most
20 recent agreements with NPR.

21 And SoundExchange described that valuation
22 document, which is Trial Exhibit 3022, as "reflecting
23 its analysis of potential value of the NPR
24 agreement."

25 And at this point, Your Honor, I have just

1 one slide that's displayed that would require going
2 into restricted session for probably five minutes or
3 less. It is just this one slide.

4 CHIEF JUDGE FEDER: Will the host please
5 clear the room.

6 MR. SACK: Your Honor, please stand by.
7 We're beginning to clear the room now.

8 If you are an attendee in the Zoom meeting
9 who is not allowed to attend restricted session,
10 please leave the session by clicking the red "leave"
11 button on the bottom right-hand of your screen or
12 click the "X" on the top right-hand side.

13 Your counsel will inform you when you are
14 allowed to return to the proceeding. Please stand
15 by, Your Honors, and counsel, while we work to clear
16 the room.

17 (Whereupon, the trial proceeded in
18 confidential session.)

19
20
21
22
23
24
25

1 O P E N S E S S I O N

2 MR. SACK: Your Honor, the public feed is
3 reestablished.

4 CHIEF JUDGE FEDER: Thank you, Mr. Sack. We
5 are back in open session.

6 Please go ahead.

7 MS. ABLIN: Thank you, Your Honor.

8 As I mentioned, the NRBNMLC's option 1
9 incorporates a one-third ratio, rather than a
10 specific number, and there are several reasons for
11 that.

12 The first is that, as Professor Steinberg
13 and Cordes have testified, non-commercial webcasters,
14 including large ones, occupy a different market
15 segment from commercial entities and have lower
16 willingness to pay those above-threshold rates. So
17 expressing the above-threshold rate as a ratio less
18 than one of the commercial rates reflects this
19 segmentation.

20 And then, second, it's the parties'
21 perception of the expected value of an agreement that
22 -- that matters to the willing buyer/willing seller
23 inquiry, which talks about rates the parties would
24 negotiate. The numbers used in the valuation of the
25 2016 to '20 agreement was based on a per-performance

1 fee that was one-third the commercial broadcast rate
2 at the time.

3 And then, third, the NPR agreement itself is
4 an upper bound to the rates that non-NPR stations
5 would pay for at least a couple of reasons. And one
6 I will address at more length later, but it's the
7 additional source of stable funding from the
8 government that NPR stations and CPB are allowed to
9 have that increases their willingness to pay
10 vis-à-vis the non-NPR stations that don't have access
11 to that funding.

12 And then, secondly, as SoundExchange admits,
13 the music ATH that's covered by the NPR agreements is
14 very music-intensive. In other words, that music ATH
15 consists solely of sound recordings. And that
16 explains the very high sound recordings per hour
17 number that SoundExchange used in its -- in its
18 valuation document.

19 So that makes the NPR agreements music ATH
20 allotment much more valuable than the regular ATH
21 minimum fee allotment that option 1 proposes to use,
22 as it enables NPR stations to webcast many more ATH
23 within their music ATH allotment.

24 But, finally, if -- if the Judges do prefer
25 using a concrete number over a ratio, Trial Exhibit

1 3022 also provides at least a reasonable basis for
2 discerning what that number would be or at least the
3 upper bound of that number for non-NPR stations.

4 Now, annualization: I touched on this a
5 minute ago, but the option 1 also proposes to
6 annualize the cap. And that is supported by a couple
7 of things, in addition to Trial Exhibit 3022, which
8 we talked about, the NPR agreements themselves
9 support it because the caps in there are annual, not
10 monthly.

11 And so they allow those stations to do
12 precisely, you know, to broadcast seasonal or
13 transmit seasonal programming and balance that out
14 through the rest of the year to the extent that
15 spikes their -- their listenership.

16 Now, the NRBNMLC's option 2 proposes to
17 adopt the NPR agreement's flat-fee structure
18 directly, just using a 1.5 multiplier to the fee, the
19 music ATH cap, and the station count. That
20 alternative consists of the same flat-fee structure,
21 the same prepayment concept, the same covered station
22 concept, and the same definition of music ATH, as
23 does the NPR agreement itself.

24 This option also proposes to apply, though,
25 the option 1 rates, just to ensure that there is a

1 rate set for all non-commercial webcasters, including
2 those that would not be covered by this lump sum.

3 So given the -- given that the NRBMLC's
4 proposal is closely based on the NPR agreements,
5 which provide direct evidence of rates that
6 non-commercial broadcasters would agree to,
7 SoundExchange has launched a number of attacks, I
8 think I have counted at least 11, on the NPR
9 benchmarks that are the proverbial throwing spaghetti
10 at the wall.

11 So none of these arguments, though,
12 undermines the superior comparability of these
13 agreements as benchmarks as compared with the
14 commercial on-demand and commercial modeling that
15 SoundExchange has offered.

16 So I will try to go through these very
17 quickly, because, as I said, I think there are around
18 11 of them.

19 The first is that SoundExchange claims that
20 the sellers and buyers are actually different in the
21 benchmark and target markets because allegedly CPB
22 and SoundExchange are the -- are the buyer and
23 seller, rather than broadcasters and record
24 companies, but that is just not true.

25 Those entities are simply the negotiating

1 agents for the buyers and sellers of Section 114
2 permits. The buyers and sellers, as has been well
3 settled, are those entities using and granting the
4 rights and not their negotiating agents.

5 And the Judges made this clear in Web III by
6 calling the buyers, for example, in the
7 NAB/SoundExchange agreement, which also was
8 negotiated by an agent, they said there that the
9 broadcasters represented as a group by the NAB were
10 the buyers, and the sellers were the same Copyright
11 Owners whose copyrights are at issue in this case,
12 although represented by SoundExchange.

13 SoundExchange also claims that the rights
14 granted in the NPR agreements are different but, in
15 fact, those agreements grant precisely the same
16 statutory webcasting rights at issue here.
17 SoundExchange points to some non-copyright-related
18 terms in the agreement, like advanced payment, but
19 those are not the rights that are being valued in
20 this proceeding, again as Web III confirmed.

21 They have also argued that different works
22 are being licensed, simply because more works are
23 licensed under the NPR agreement than -- than an
24 individual label would license. And that -- that is
25 a particularly ironic claim, I think, that, in fact,

1 cuts in favor of the NPR agreements, because the
2 broader the swath of licensed works under an
3 agreement, the more likely it represents rates that
4 most willing sellers would agree to with most willing
5 buyers.

6 And, in fact, SoundExchange itself in other
7 proceedings has -- has criticized benchmarks for not
8 licensing a broad-enough swath of works, as it did
9 most recently in Web IV.

10 So SoundExchange also claims or questions
11 the Judges' authority to adopt the option 2 advanced
12 payment structure but that's also wrong. The Judges
13 have broad authority under Section 801 to make
14 determinations and adjustments of reasonable terms
15 and rates as provided by Sections 112 and 114 and, as
16 well, to adopt as a basis for those statutory rates
17 an agreement that some or all of parties have
18 reached.

19 There is simply no difference in the Judges'
20 authority to adopt these rates, regardless of whether
21 the Judges set those rates or the parties propose
22 them in the first instance and then they are later
23 adopted.

24 SoundExchange -- another challenge is that
25 to the provision that allowing them to receive a

1 large flat fee, allowing SoundExchange to receive a
2 large flat fee in advance on behalf of multiple
3 stations is beyond the Judges' authority.

4 And that, again, is somewhat ironic, given
5 that that advance flat fee is a significant benefit
6 to SoundExchange that it touted, in fact, in the NPR
7 agreements.

8 So while SoundExchange now takes issue with
9 the payor of that fee not actually performing sound
10 recordings, the same is true under the NPR
11 agreements. And, in fact, in any event, the entities
12 performing sound recordings will ultimately be on the
13 hook, if they don't comply with the statutory rates
14 and terms.

15 So that -- that is a more than sufficient
16 mechanism to make sure that, you know, there is
17 compliance here.

18 So SoundExchange also points to the Judges'
19 rejection of the NPR agreement in Web II. We heard
20 about that this -- this, I guess, early this
21 afternoon from Mr. Warren, but the agreement in Web
22 II that was under consideration looks nothing like
23 the ones that are proposed as benchmarks here.

24 First, the NPR agreement at issue in Web II
25 was entered into in 2001 and covered a 74-month

1 period from '98 to 2004, but it was proposed to apply
2 to a much later term, 2006 through '10.

3 By contrast, the NPR agreement here was
4 reached just last year and covers the same license
5 term being valued, 2021 to '25.

6 Second, the NPR agreement in Web II charged
7 an undifferentiated lump sum for the entire
8 multi-year license period; whereas the agreements
9 here specify precise annual fees.

10 And, third, the NPR agreement in Web II did
11 not specify any music usage included within that fee
12 and the station count doubled over the term. By
13 contrast, the NPR agreements under consideration here
14 specify permitted annual music usage and station
15 limits that are included in that base fee.

16 The circumstances leading to the prior
17 rejection of the NPR agreement do not do anything to
18 undermine the usefulness as a benchmark of the very
19 different agreements here.

20 So the circumstances also were very
21 different in Web IV, which we heard about as well
22 earlier today. So there, the NRBNMLC did not model
23 its rate proposal in structure or fee metrics any way
24 on the NPR agreement, other than for the 2000-foot
25 observation that that agreement charged a flat fee.

1 That contrasts sharply with the NRBNNMLC's
2 proposal here, which closely mirrors the fee metrics
3 of the NPR agreements and, in addition, the Judges
4 did not have before them in the Web IV record
5 evidence that is available here that enables a
6 threshold structure to be set based on the NPR
7 agreement's metrics.

8 So SoundExchange also points to allegedly
9 higher music intensity by non-NPR broadcasters, but
10 that premise is unsupported. There are hundreds of
11 music-intensive NPR stations and plenty of non-NPR
12 stations that transmit talk programming, including
13 larger broadcasters like Family Radio and Moody.

14 In addition, music intensity, as I mentioned
15 before, is accounted for by the NPR agreement's fee
16 metric, which only counts sound recordings towards
17 music ATH that NPR stations actually play.

18 If it's true that NPR stations are on
19 balance, less music-intensive than non-NPR stations,
20 it simply means that the NPR stations can transmit
21 more general ATH under the agreement than non-NPR
22 stations would be able to. And that is a principle
23 that SoundExchange itself has acknowledged in
24 claiming that in its reply findings, that a
25 per-performance rate structure resolves any

1 differences in the number of sound recordings used.

2 So SoundExchange also points to an allegedly
3 greater variety of music played by non-NPR
4 broadcasters, but, Number 1, genres of music have
5 never been relevant to the rate set, as Mr. Ploeger
6 testified. And, Number 2, again, the premise is
7 unsupported.

8 NPR does focus on three specific genres.
9 It's not all they play, but they focus on classical,
10 jazz, and alternative. And I won't read the numbers
11 here, but as the slide shows, there are many stations
12 identified with respect to each of them.

13 And, conversely, non-NPR, non-commercial
14 services play many different genres. With respect to
15 below-threshold stations, Mr. Ploeger admitted to
16 such variety in his testimony. And regarding
17 above-threshold broadcasters, there also is
18 significant variety.

19 The chart here shows just some of the
20 channels operated by above-threshold licensees that
21 have incurred significant royalties that include
22 formats, such as church, praise, and worship music,
23 classical music, and hymns and inspirational music.

24 So, third, only major record companies
25 control a substantial majority of recorded music.

1 They each have a catalogue that spans multiple
2 genres, including Christian music.

3 So different rates for particular genres, at
4 least with respect to them, would not appear to
5 affect the overall bottom lines of those companies.

6 And then, finally, SoundExchange's own
7 proposed benchmarks for non-commercial services are
8 with services that transmit a variety of genres. So
9 SoundExchange appears to violate this alleged point
10 of non-comparability.

11 So the next attack launched is an attempt to
12 undermine the NPR benchmark by claiming that actual
13 performance, rather than the negotiated metrics,
14 should be accounted for, but there are several flaws
15 with this.

16 First, as I said before, expectations are
17 what matter to the willing buyer/willing seller
18 inquiry. And the Web I CARP recognized that in that
19 initial report.

20 Here the NPR rates are what was negotiated
21 in the marketplace. And the fees and music ATH cap,
22 in particular, were heavily negotiated, as this quote
23 in the slide shows, which I won't read to keep us in
24 open session.

25 But, in any event, NPR's actual usage was

1 actually -- and I will tread generally here again, to
2 keep us in open session -- was remarkably close to
3 the stated allotments of both station counts and
4 music ATH.

5 So for stations, the first point is that the
6 number of stations included in an agreement does not
7 affect the core fee and music use metrics. It just
8 says how many -- how many people can share that
9 metric.

10 But, in any event, as the chart shows, the
11 actual station counts by NPR closely tracked the cap
12 in multiple years, even though some of those years
13 were based on only partial data.

14 With respect to music use, the same is true.
15 Again, I will keep this general, but this chart shows
16 that NPR's music use or estimated music use also --
17 also closely tracks the cap. And they heavily
18 negotiated where this -- this -- the upward movement
19 in the red line shows an increase to that cap for the
20 upcoming license term.

21 Now, government funding: So SoundExchange
22 has claimed that the availability of an additional
23 source of funding undermines the comparability of the
24 NPR agreement, but that -- that is actually backward,
25 as Professor Steinberg has testified.

1 That additional source of funding simply
2 makes CPB and NPR stations less price sensitive
3 because they know they're -- it is being paid for by
4 somebody else. And so while NPR stations can rely
5 upon both public and private donations, non-NPR
6 broadcasters are forced to rely only on private
7 donations.

8 Now, SoundExchange has suggested that the
9 government's so-called backing of CPB increases CPB's
10 negotiating leverage and reduces its willing to pay,
11 but CPB, again, is a private entity, which Professor
12 Tucker acknowledged during her testimony.

13 There's no evidence of any government
14 involvement in the negotiations that would increase
15 CPB's leverage. And, moreover, virtually the entire
16 record industry is on the other side of that
17 negotiation, so there is certainly no basis for
18 assuming outsized bargaining power on CPB's side.

19 SoundExchange also claimed for the first
20 time in its reply findings and again today that CPB
21 has implied power to lobby appropriators, but, again,
22 there's no record evidence whatsoever that that has
23 happened or is even likely to happen.

24 And so given that this factor actually
25 exerts a downward push on rates and terms for non-NPR

1 stations, we have not asked for that type of downward
2 adjustment, but we do think that it makes the NPR
3 metrics an upper bound that, if anything, should be
4 adjusted in that direction, if any adjustment occurs
5 at all.

6 Consolidated reporting: So this was a big
7 one. SoundExchange spent a lot of time talking about
8 it. And they claimed that the existence of
9 consolidated reporting in the NPR agreement is a huge
10 benefit that it received that needed to be accounted
11 for in the benchmarks, but there are several reasons
12 to refute that.

13 So, first, the NRBNMLC specifically asked
14 SoundExchange twice in discovery to describe and
15 identify documents that describe the value,
16 SoundExchange's valuation or any label's valuation of
17 consolidated reporting in the NPR agreements, but
18 SoundExchange did not do so.

19 It did produce two other documents that it
20 said included valuations of the agreements, but
21 neither one of them placed any value on consolidated
22 reporting. And it specifically conceded in its
23 interrogatory response that it did not perform any
24 additional analysis of value and that neither did any
25 of the major labels.

1 So perhaps most importantly, as the Judges
2 long have held, and I believe Mr. Wetzel touched on
3 this a bit, because only the relative difference
4 between the benchmark market and the hypothetical
5 target market would necessitate an adjustment. The
6 absence of solid empirical evidence of such a
7 difference obviates the need for that adjustment.

8 So given the failure to value this reporting
9 provision when requested to do so, there's no basis
10 or need to adjust the agreement to account for it.

11 Second, still sticking with consolidated
12 reporting, SoundExchange did not include it as one of
13 the inputs. And that was identified as constituting
14 a license fee input. It listed other factors, but
15 not this one.

16 If the value were really that much, one
17 would have expected it to be identified in that
18 provision. SoundExchange tries to dismiss that
19 provision as a recital, but that term was published
20 in the regulations. And it unequivocally shows the
21 key elements defining how the parties valued the
22 license fee.

23 So, third, consolidated reporting also was
24 not included in the NPR agreement's rates and terms
25 submitted for publication. One can scarcely ask the

1 NRBNMLC's expert to analyze any alleged reporting
2 benefits when those terms were not even included in
3 the agreement and SoundExchange did not -- provided
4 no valuation for them, even when repeatedly asked.

5 And then, fourth, to the extent that the
6 agreement, the NPR agreement addresses reporting at
7 all, the NPR -- the NRBNMLC's alternative 2 or option
8 2 includes the same provision, which says that we
9 will submit reports of use and other information
10 concerning performances as agreed upon with the
11 collective.

12 SoundExchange points to the second sentence
13 of our rate proposal, but that was simply included to
14 make sure that there were some reporting requirements
15 that applied to this group of stations.

16 And, in any event, while the evidence
17 strongly shows that this issue was a makeweight, we
18 are willing to provide, if it will be useful, a sworn
19 declaration that commits to provide consolidated
20 reporting that resembles the census reporting from
21 the top 30 percent of music ATH and sample reporting
22 for everybody else of two seven-day periods per
23 calendar quarter, that SoundExchange's counsel
24 pointed us to during the examination of Mr. Ploeger
25 as, you know, the broad outline of those terms. So

1 we are ready to do that, if that would be useful.

2 So there is just absolutely no reason for
3 this consolidated reporting provision to be an
4 impediment to the use of the NPR agreement here.

5 So SoundExchange also claims that the NPR
6 agreement is not a marketplace benchmark but a
7 regulated rate, but that's revisionist history.

8 The NPR agreement is like many other
9 agreements that have been used before in Web I and in
10 Web III that SoundExchange itself proposed. They
11 have attempted to capture -- they have attempted to
12 characterize non-interactive statutory agreements as
13 somehow less helpful than non-comparable commercial
14 on-demand services, but that's a pretty ironic
15 attempt, given that these agreements involve much
16 more widespread acceptance.

17 If that were the law, that any agreements
18 that were so widely accepted to be proposed as a
19 basis for rates were somehow less informative
20 benchmarks, it would take out of consideration an
21 entire swath of agreements that the statute
22 specifically invites the Judges to look to when
23 setting rates.

24 It also claimed earlier today that it did
25 not have a fair chance to rebut our use of the NPR

1 agreement as a benchmark. That's not correct. And,
2 in any event, it is of SoundExchange's own doing.

3 Professor Steinberg discussed the evidence
4 promptly as it came in, and the timing was driven by
5 when that evidence came in. He did not have
6 available to him the NPR agreement when direct
7 testimony went in. He promptly, once that agreement
8 was reached, he amended his direct testimony.

9 We promptly asked for valuation documents in
10 direct discovery at the first opportunity but did not
11 get them in time for that valuation to be included in
12 amended testimony, but we did get them just a few
13 days before rebuttal testimony was due.

14 And that's what Professor Steinberg did talk
15 about a threshold structure being appropriate based
16 on the NPR agreement because at that point he had the
17 evidence to -- to value the agreement at that point.

18 Moreover, SoundExchange had a full
19 opportunity to cross-examine Professor Steinberg and
20 to respond to the proposal through its own witnesses'
21 trial testimony. And, in any event, the regulations
22 would authorize proposals to be amended all the way
23 through the deadline for Proposed Findings.

24 So it is not accurate to say that we somehow
25 acted inappropriately here.

1 Next topic: So the nonprofit traits that
2 Professor Steinberg and Cordes addressed at length
3 are not just abstract qualitative traits that
4 differentiate non-commercial entities from for-profit
5 entities but they matter in economically meaningful
6 ways that drive down rates.

7 For example, the non-distribution constraint
8 limits the market behavior of nonprofits in ways that
9 reduce their willingness to pay. For example, it
10 incentivizes nonprofits to pursue less profitable
11 activities. It bars their access to equity
12 financing, et cetera.

13 And, importantly, that trait applies to both
14 non-NPR and NPR stations. The same is true for the
15 mission focus. It leads to differentiated
16 programming that decreases the likelihood of listener
17 diversion, as well as less profitable programming
18 that lowers the willingness to pay. That applies to
19 both types of stations.

20 And those traits result in nonprofit buyers
21 agreeing to lower webcasting rates with record
22 company sellers for the licenses at issue. The NPR
23 agreement is proof that that occurs.

24 And one more note here. It has been
25 suggested that nonprofit's ability to run ads gives

1 them a competitive advantage vis-à-vis commercial
2 services, but that ad ban is actually a constraint on
3 non-commercial behavior. There is certainly nothing
4 barring commercial services from limiting or reducing
5 their ads, if they choose to do so, if they think it
6 would help their bottom line.

7 And the fact that they haven't done so,
8 suggests that they have carried the ad load that's
9 most likely to maximize their listenership and
10 related profits.

11 Competition and cannibalization: So
12 SoundExchange has spent a lot of time claiming that
13 we compete with commercial services, but those
14 arguments miss the point when a benchmark is used.

15 The only question that matters under a
16 benchmark approach is relative competition or
17 diversion vis-à-vis commercial services, caused by
18 NPR versus non-NPR stations. And because it's
19 already baked into a benchmark, only that -- that
20 relative differences matter.

21 Here there is no proof that listener
22 diversion is any more likely by non-NPR broadcasters
23 than by NPR broadcasters. And to the contrary, the
24 evidence suggests that NPR stations are the ones that
25 pose a greater risk of diversion.

1 I won't read the numbers on this chart so
2 that we can stay in public session, but the reported
3 data depicted in this chart, which is in evidence,
4 shows that each and every musical genre played most
5 heavily by NPR stations is significantly more popular
6 with both frequent and casual listeners than is the
7 contemporary Christian genre that SoundExchange
8 focuses on so heavily.

9 A further indication of the greater
10 diversion risk posed by NPR broadcasters over non-NPR
11 ones comes from a statement in Web II that
12 SoundExchange cited nine times in its Reply Findings
13 alone that music programming found on non-commercial
14 stations competes with similar programming found on
15 commercial programming.

16 And SoundExchange claims that the statement
17 was not linked in any way to NPR or limited to NPR
18 but that's demonstrably not true. The Judges relied
19 on two and only two Findings of Fact to support this
20 statement. And what were those findings? They both
21 came from SoundExchange's findings and both referred
22 exclusively to NPR stations.

23 It would be highly ironic and contravene the
24 willing buyer/willing seller standard if
25 SoundExchange were to succeed in using this

1 statement, based solely on NPR evidence to set rates
2 that are disparately higher for non-NPR stations.

3 So even putting aside the evidence
4 indicating that NPR stations are more likely to cause
5 listener diversion, there's just no record evidence
6 of non-commercial listener diversion. Both Professor
7 Steinberg and Mr. Mr. Orszag testified as much. Mr.
8 Orszag said he didn't conduct any studies.

9 The major labels admitted to the same, that
10 their companies had not conducted any studies.

11 And I now have three slides, but I know I am
12 running short on time, so I will try to -- I will
13 just -- I will handle them by saying that
14 SoundExchange pointed to three exhibits that have not
15 been admitted to the record. None of them shows
16 competition between non-commercial and commercial
17 stations, including one that relates specifically to
18 two stations that were in the same market.

19 If -- I just invite Your Honors to read,
20 this is covered in our findings, to read some of the
21 content that comes out of these three documents. I
22 will say with respect to the document on the
23 screen -- which to keep us public, I won't
24 identify -- it actually shows that if there was any
25 competition at all with respect to the commercial

1 station at issue, the competition came from other
2 commercial stations, rather than a non-commercial
3 station.

4 It also showed that less than one-third of
5 the listeners -- again, I won't name the station --
6 listened only for the music, which shows that you
7 can't measure radio station programming in a
8 meaningful way and assess it for potential
9 competition by plucking it out, plucking out only the
10 sound recordings and viewing them in isolation the
11 way that SoundExchange's playlist overlap study did.

12 I will skip these two studies and refer Your
13 Honors to our findings on them. They are both not
14 admitted in the record yet.

15 And with respect to the playlist study,
16 which we are all familiar with by now, I will just
17 say that SoundExchange now apparently is walking back
18 its claim by saying that it was not a goal of this
19 study to establish direct competition, and we agree.

20 And it has also admitted that a listener
21 will only listen to one service at a time, which
22 means that when you combine groups of ten stations in
23 bulk, you can't really learn anything about actual
24 listener experience.

25 Again, I will refer Your Honors to our

1 findings regarding the playlist study here, except to
2 say that SoundExchange did not perform a similar
3 study to assess overlap of any NPR stations. And so
4 even if this type of overlap mattered, which it
5 doesn't, there's no basis for it to serve as an
6 adjustment to the NPR agreement.

7 CHIEF JUDGE FEDER: Ms. Ablin, I am informed
8 that the services' time is up. So if you could wrap
9 it up in the next couple of minutes, that would be
10 helpful.

11 MS. ABLIN: Okay. I will then just refer
12 Your Honors to claims about EMF. EMF's revenues are
13 a drop in the bucket compared to commercial services.

14 They also try to compare EMF with NPR
15 stations. The NPR stations have -- well,
16 broadcasters operate fewer stations, so there is no
17 big shock that revenues would be different.

18 Your Honors can look at the fee disparity,
19 which I talked about in my opening, so I will skip
20 all that. On burden of proof, just because this was
21 mentioned earlier today, I will say we -- we've heard
22 SoundExchange admit that the burden of -- every
23 proceeding is a new proceeding. So it's not a
24 one-sided burden, but both parties have the -- have
25 the task of establishing the reasonableness of their

1 rates. And SoundExchange has not done that here.

2 Instead they have relied on a different
3 record and statements from a different record.

4 Let's skip ahead. Then on references to WSA
5 agreements, Webcaster Settlement Act agreements, we
6 agree that Your Honors can't use them as benchmarks.
7 We're simply relying on -- we're simply citing them
8 to show what -- what the facts on the ground were in
9 the marketplace, which the registers made clear is
10 appropriate. SoundExchange itself has cited to many
11 terms from these same agreements.

12 The same is true of Exhibit 3022. The fact
13 that it relies on a WSA Agreement does not preclude
14 the use of that agreement because it is appropriate
15 for the Judges to consider agreements containing
16 provisions, even though they are copied from or
17 identical to WSA terms.

18 I will skip all of the minimum fee
19 provisions and get just to my conclusion. It will
20 just be another minute. And thank you for Your
21 Honor's indulgence for that race through -- race
22 through these last slides.

23 The NRB's proposal is based on a highly
24 comparable benchmark involving the same types of
25 non-commercial buyers and sellers, rights works, and

1 license term. Again, it shows not only near
2 universal seller buy-in but critically non-commercial
3 buyer buy-in as well, which is not present in the
4 prior non-commercial rates that have been set.

5 It is derived from key evidence regarding
6 how the NPR agreement was valued that was not in the
7 prior evidentiary record before Your Honors.
8 Adoption of the NRBNMLC's proposal would remove the
9 sharp fee disparity that currently exists among
10 services based solely on whether they have chosen to
11 affiliate with NPR, and it would bring non-commercial
12 rates back in line with the rates that willing
13 sellers and buyers repeatedly have agreed to that
14 most clearly reflect non-commercial willing
15 buyer/willing seller rates.

16 SoundExchange, by contrast, asks the Judges
17 to set above-threshold rates based on commercial
18 benchmarks or models that have nothing to do with
19 non-commercial services. So imagine if the shoe were
20 on the other foot and non-commercial broadcasters had
21 negotiated an agreement that resulted in rates
22 charged to NPR stations that were over three times
23 higher than those charged to the religious stations.

24 Certainly the NPR stations would be before
25 Your Honors strongly advocating for treatment

1 comparable with their similarly situated
2 non-commercial friends operating religious stations,
3 and they would have a point.

4 The effect of the current structure is to
5 make it significantly more difficult and expensive to
6 communicate one type of nonprofit message over
7 another, even though both types of nonprofit
8 broadcasters operate under the same constraints that
9 lower their willingness to pay. And there has been
10 zero evidence showing that non-commercial religious
11 broadcasters are more likely to divert listeners than
12 are NPR broadcasters, and even some evidence points
13 in the opposite direction.

14 So we appreciate Your Honors' willingness to
15 take a fresh look at the new evidence in this case,
16 including the NPR agreements and their valuation.
17 And we urge Your Honors to adopt NRBNMLC's rate
18 proposal, which is modeled on the NPR agreement,
19 which is by far the best evidence of non-commercial
20 willing buyer/willing seller rates.

21 And thank you very much.

22 CHIEF JUDGE FEDER: Thank you. Any
23 questions from the Judges?

24 JUDGE STRICKLER: Nothing further, Your
25 Honor.

1 JUDGE RUWE: No, thanks.

2 CHIEF JUDGE FEDER: Okay. Thank you,
3 Ms. Ablin.

4 I'm going to address this question to the
5 court reporter, Ms. Brynteson. Do you need a break
6 or can we go on to SoundExchange?

7 THE REPORTER: We can go ahead, Your Honor.

8 CHIEF JUDGE FEDER: Thank you. Okay,
9 Ms. Ablin, could you take your screen down?

10 MS. ABLIN: Yes, Your Honor, I am working on
11 that.

12 CHIEF JUDGE FEDER: And, Mr. Handzo or Mr.
13 Warren -- Mr. Warren.

14 My understanding is you have approximately
15 23 minutes reserved from this morning. Is that
16 correct? Or is that --

17 MR. WARREN: Yes. That -- that sounds
18 roughly right, Your Honor, although we may beg a
19 little additional indulgence, given that the services
20 ran long by, I think, about ten minutes, according to
21 the court reporter's count, but we will -- we will
22 endeavor not to require that time.

23 CHIEF JUDGE FEDER: Okay. Please proceed
24 with -- and are we starting -- going in open session?

25 MR. WARREN: I am public all the way

1 through. And I have promised Mr. Handzo I will keep
2 this to a minute or less, and so I will try my best
3 to do that.

4 CLOSING ARGUMENT ON BEHALF OF SOUNDEXCHANGE, et al.

5 MR. WARREN: A few brief points in response
6 to Ms. Ablin's presentation. It's notable to me how
7 little citation there was to the expert testimony put
8 in the record by NRBNMLC during Ms. Ablin's closing.
9 And that's, again, because the NPR settlement was
10 such a late-breaking development, as NRBNMLC's actual
11 benchmark.

12 Ms. Ablin suggests that it was somehow
13 SoundExchange's burden to establish overlap between
14 NPR stations and commercial stations. Well, that's
15 not true at all. It is NRBNMLC's burden to establish
16 the comparability of the NPR settlement benchmark.

17 Notably, none of their experts attempted to
18 address the intensity of music usage by NPR or more
19 to the point none of their experts compared the usage
20 of music by NPR to the usage of music by commercial
21 webcasters.

22 You heard Ms. Ablin say that it's relative
23 competition, relative cannibalization that matters.
24 We agree. And that's exactly the analysis that
25 NRBNMLC failed to conduct.

1 As for the variety of music, you saw a
2 couple slides from Ms. Ablin talking about jazz and
3 rock and other genres played on NPR. That analysis
4 was never offered by NRBNMLC's experts. In fact, the
5 first time it showed up in the record was in
6 NRBNMLC's Reply Findings. That is far too late in
7 the game to be permissible.

8 The last and only other point I want to
9 offer is that Exhibit 3022 on which Ms. Ablin has
10 placed such great reliance, this is the slide with
11 all of the green boxes and lines, is nothing more
12 than a comparison between one non-precedential,
13 non-binding WSA Agreement and another
14 non-precedential, non-binding WSA Agreement.

15 Ms. Ablin tries to stretch the Register's
16 decision in that the existence of a WSA Agreement can
17 be considered to encompass what appears to be a very
18 fulsome, detailed analysis of the terms and rates of
19 those non-precedential agreements. That she cannot
20 do.

21 Therefore, the effort to convert using that
22 document, the NPR settlement into a threshold rate
23 structure should not be permissible. And that's all
24 I have. I will hand it to Mr. Handzo.

25 CHIEF JUDGE FEDER: Thank you, Mr. Warren.

1 MR. HANDZO: Thank you. And good evening,
2 Your Honors.

3 I am actually going to need to go into
4 restricted session, I believe.

5 CHIEF JUDGE FEDER: Okay. Will the host
6 please clear the room.

7 MR. SACK: Thank you, Your Honor. We're
8 beginning to clear the room now.

9 If you are an attendee in the Zoom meeting
10 who is not allowed to attend restricted session,
11 please leave the session by clicking the red "leave"
12 button on the bottom right-hand of your screen or
13 click the "X" on the top right-hand side.

14 Your counsel will inform you when you are
15 allowed to return to the proceeding. Please stand
16 by, Your Honors and counsel, while we work to clear
17 the room.

18 (Whereupon, the trial proceeded in
19 confidential session.)

20

21

22

23

24

25

1 C O N T E N T S

2	CLOSING ARGUMENTS:	PAGE
3	By Mr. Handzo	6069
4	By Mr. Marks	6248
5	By Mr. Steinthal	6300
6	By Mr. Wetzel	6361
7	By Ms. Ablin	6414
8	By Mr. Warren	6452

9

10 AFTERNOON SESSION: 6247

11

12 CONFIDENTIAL SESSIONS:

13 6129-6155, 6169-6181, 6207-6227, 6309-6358,

14 6384-6391, 6421-6423, 6455-6479

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE

2
3 I certify that the foregoing is a true and
4 accurate transcript, to the best of my skill and
5 ability, from my stenographic notes of this
6 proceeding.

7
8
9 11/19/20

A handwritten signature in cursive script, appearing to read "K. Bryant", is written over a horizontal line.

10 Date

Signature of the Court Reporter

Determination of Rates and Terms (Web V) Docket No. 19-CRB-0005-WR (2021-2025) November 19, 2020
OPEN SESSIONS

<p>\$</p> <p>\$10 [3] 6277:22 6278:24 6279:5</p> <p>\$16 [2] 6278:25 6279:5</p> <p>\$5 [2] 6093:12 6410:14</p> <p>\$500 [2] 6237:4 6419:12</p> <p>\$54 [1] 6232:10</p> <p>\$55 [1] 6410:9</p> <p>\$8 [1] 6410:15</p> <p>\$9.99 [1] 6306:1</p> <hr/> <p>*</p> <hr/> <p>** [3] 6063:2,2 6067:11</p> <hr/> <p>0</p> <p>0006 [1] 6296:16</p> <p>0012 [1] 6296:16</p> <p>0023 [1] 6106:14</p> <p>0028 [1] 6070:9</p> <p>0029 [1] 6156:16</p> <p>0030 [1] 6156:16</p> <p>0031 [1] 6070:8</p> <p>07 [1] 6404:19</p> <hr/> <p>1</p> <p>1 [20] 6083:4 6094:20 6185:21 6191:14 6192:1 6198:13,14 6238:6 6239:5,11 6255:23 6285:16,17 6404:19 6419:11 6424:8 6425:21 6426:5,25 6433:4</p> <p>1's [1] 6419:15</p> <p>1.0 [2] 6269:7 6294:5</p> <p>1.4 [1] 6368:23</p> <p>1.5 [1] 6426:18</p> <p>10 [5] 6270:11 6277:14,16 6279:4 6431:2</p> <p>10-K's [4] 6365:8 6369:16 6396:20 6397:9</p> <p>10:30 [3] 6062:21 6068:2,3</p> <p>100 [13] 6194:4,8,11 6262:14 6263:1,8 6266:5 6269:22 6280:1 6369:23 6399:13 6410:24 6411:3</p> <p>10036 [1] 6064:24</p> <p>101 [1] 6062:18</p> <p>10153 [1] 6065:13</p> <p>1099 [1] 6063:20</p> <p>11 [6] 6081:7 6249:8 6296:16,19 6427:8,18</p> <p>11/19/20 [1] 6456:9</p> <p>1100 [1] 6067:8</p> <p>112 [1] 6429:15</p> <p>114 [4] 6306:6 6417:23 6428:1 6429:15</p> <p>1185 [2] 6064:23 6380:3</p> <p>12 [2] 6126:8 6195:17</p> <p>1203 [1] 6380:4</p> <p>13 [2] 6296:19 6301:25</p> <p>1300 [1] 6067:8</p> <p>14 [6] 6123:20 6124:7,8,10</p>	<p>6268:22 6297:25</p> <p>14.99 [1] 6093:10</p> <p>15 [4] 6199:21 6206:1,4 6398:24</p> <p>159 [1] 6252:13</p> <p>159,140 [1] 6228:12</p> <p>16 [1] 6249:9</p> <p>1700 [1] 6064:6</p> <p>175 [1] 6295:11</p> <p>17th [1] 6067:8</p> <p>180 [1] 6295:12</p> <p>183 [2] 6359:11 6360:15</p> <p>19 [1] 6062:20</p> <p>19-CRB-0005-WR [1] 6062:7</p> <p>19-CRB-005-WR [1] 6068:8</p> <hr/> <p>2</p> <p>2 [11] 6074:12 6191:18 6238:7,8,23 6239:4 6426:16 6429:11 6433:6 6439:7,8</p> <p>2.6 [1] 6278:24</p> <p>2:06 [1] 6246:3</p> <p>2:38 [1] 6247:2</p> <p>20 [4] 6240:12 6279:4 6392:23 6424:25</p> <p>200 [1] 6278:12</p> <p>2000 [1] 6066:15</p> <p>2000-foot [1] 6431:24</p> <p>20001 [1] 6063:22</p> <p>20006 [1] 6064:8</p> <p>2001 [4] 6070:8,9 6240:20 6430:25</p> <p>2004 [1] 6431:1</p> <p>2006 [1] 6431:2</p> <p>2011 [1] 6240:17</p> <p>2016 [2] 6099:24 6424:25</p> <p>2017 [3] 6099:24 6398:10 6399:6</p> <p>2018 [4] 6196:18 6232:10 6398:10 6399:6</p> <p>202-639-6000 [1] 6063:23</p> <p>202-737-0500 [1] 6064:9</p> <p>2020 [3] 6062:20 6237:11 6413:22</p> <p>2021 [2] 6249:7 6431:5</p> <p>2025 [1] 6196:20</p> <p>21 [1] 6418:13</p> <p>212-310-8007 [1] 6065:14</p> <p>21st [1] 6068:12</p> <p>22209 [1] 6067:9</p> <p>224 [1] 6360:15</p> <p>228 [1] 6360:15</p> <p>23 [1] 6451:15</p> <p>25 [5] 6161:10,11 6265:16 6418:13 6431:5</p> <p>277 [1] 6360:22</p> <p>286 [1] 6360:22</p> <p>2nd [1] 6064:7</p>	<p>3</p> <p>3 [2] 6204:4 6205:4</p> <p>30 [6] 6121:19 6246:1 6250:2 6307:17,20 6439:21</p> <p>3022 [5] 6419:22 6426:1,7 6448:12 6453:9</p> <p>31st [2] 6237:3,11</p> <p>328 [1] 6249:24</p> <p>33 [1] 6370:1</p> <p>3390 [1] 6124:22</p> <p>3400 [2] 6120:16 6124:21</p> <p>35 [5] 6064:23 6183:21 6185:3,5,14</p> <p>356 [1] 6249:24</p> <p>3868 [1] 6162:9</p> <p>3876 [1] 6162:9</p> <hr/> <p>4</p> <p>4 [2] 6074:20 6103:12</p> <p>4.99 [6] 6082:7 6096:1 6099:14 6100:2,3 6101:17</p> <p>40 [3] 6295:24 6307:17,20</p> <p>400 [1] 6278:11</p> <p>401 [1] 6064:18</p> <p>415-391-0600 [1] 6066:17</p> <p>45 [1] 6068:19</p> <hr/> <p>5</p> <p>5 [4] 6074:20 6266:14 6270:15,17</p> <p>5,000 [3] 6276:24 6277:13,14</p> <p>50 [5] 6086:25 6193:15 6194:25 6250:4 6259:15</p> <p>500 [4] 6193:15 6243:2 6277:15,15</p> <p>505 [1] 6066:14</p> <p>52 [2] 6075:4 6086:25</p> <p>54 [1] 6086:25</p> <p>55 [2] 6075:4 6086:25</p> <p>57 [1] 6252:13</p> <p>570 [1] 6360:16</p> <p>572 [1] 6360:17</p> <hr/> <p>6</p> <p>60 [1] 6183:14</p> <p>6069 [1] 6455:3</p> <p>61 [2] 6182:24 6183:2</p> <p>6129-6155 [1] 6455:13</p> <p>6169-6181 [1] 6455:13</p> <p>6207-6227 [1] 6455:13</p> <p>6247 [1] 6455:10</p> <p>6248 [1] 6455:4</p> <p>6300 [1] 6455:5</p> <p>6309-6358 [1] 6455:13</p> <p>6361 [1] 6455:6</p> <p>6384-6391 [1] 6455:14</p> <p>64 [1] 6380:2</p> <p>6414 [1] 6455:7</p> <p>6421-6423 [1] 6455:14</p> <p>6452 [1] 6455:8</p>	<p>6455-6479 [1] 6455:14</p> <p>669 [1] 6360:23</p> <p>67 [1] 6195:11</p> <p>679 [1] 6360:23</p> <p>69 [1] 6261:16</p> <p>6th [1] 6064:23</p> <hr/> <p>7</p> <p>7 [3] 6198:22 6199:1 6296:19</p> <p>706 [1] 6064:13</p> <p>74-month [1] 6430:25</p> <p>75 [1] 6380:3</p> <p>767 [1] 6065:12</p> <p>78701 [1] 6064:19</p> <p>795 [2] 6238:10,14</p> <hr/> <p>8</p> <p>80,000 [2] 6194:1,9</p> <p>800 [4] 6193:23 6194:10 6195:12 6278:6</p> <p>800-pound [1] 6401:20</p> <p>801 [1] 6429:13</p> <p>82 [1] 6194:25</p> <p>821 [1] 6162:3</p> <p>830 [1] 6162:3</p> <p>86 [1] 6360:15</p> <p>867 [1] 6261:16</p> <hr/> <p>9</p> <p>9.99 [2] 6082:4 6095:20</p> <p>90 [6] 6262:14,17 6263:1,8 6266:5 6280:13</p> <p>900 [1] 6063:21</p> <p>94107 [1] 6064:14</p> <p>94111 [1] 6066:16</p> <p>95 [1] 6405:4</p> <p>97 [1] 6230:4</p> <p>97.7 [1] 6233:19</p> <p>98 [1] 6431:1</p> <p>99 [1] 6230:5</p> <hr/> <p>A</p> <p>a.m [2] 6062:21 6068:2</p> <p>A2IM [2] 6063:7 6069:15</p> <p>Aaron [3] 6235:16 6371:24 6407:17</p> <p>abandoned [2] 6237:10 6392:19</p> <p>ability [11] 6073:9 6121:21 6122:8,13 6271:2,17 6297:21 6377:21 6380:11 6442:25 6456:5</p> <p>able [12] 6087:17 6101:25 6102:10 6106:17,24 6120:11 6167:20 6273:11 6286:13 6413:17 6414:9 6432:22</p> <p>ABLIN [26] 6067:4 6248:8 6411:14 6413:10,13,15,24 6414:2,4,7,11,15,21,25 6424:7 6447:7,11 6451:3,9,</p>	<p>10 6452:12,22 6453:2,9,15 6455:7</p> <p>Ablin's [2] 6452:6,8</p> <p>above [9] 6077:3 6228:23 6230:15 6231:15 6232:16 6233:6 6239:13 6374:3 6419:12</p> <p>above-threshold [8] 6415:24 6416:8,24 6424:16,17 6433:17,20 6449:17</p> <p>absence [6] 6261:6 6263:11 6288:18 6364:15 6400:2 6438:6</p> <p>Absolutely [7] 6231:19,21 6232:9 6273:1 6359:15 6362:22 6440:2</p> <p>abstract [2] 6416:13 6442:3</p> <p>absurd [5] 6278:14 6279:3 6373:5 6377:8 6402:11</p> <p>academic [1] 6292:5</p> <p>accept [3] 6190:2 6195:18 6233:3</p> <p>acceptance [1] 6440:16</p> <p>accepted [7] 6078:8 6080:4 6110:21 6192:4 6198:21 6285:20 6440:18</p> <p>accepting [2] 6199:3 6298:2</p> <p>accepts [1] 6199:6</p> <p>access [18] 6106:17 6119:3,9,10,19 6231:11 6258:8 6259:17 6261:11 6267:22 6269:23 6270:1 6271:19 6272:6 6281:12 6285:5 6425:10 6442:11</p> <p>accesses [1] 6235:24</p> <p>accord [1] 6302:23</p> <p>according [5] 6106:9 6159:25 6204:2 6286:2 6451:20</p> <p>account [18] 6074:17 6088:21,22 6111:8 6123:24 6231:9 6241:11 6248:14 6258:12 6291:12,20 6301:3 6303:12 6364:7 6374:10 6381:19 6416:8 6438:10</p> <p>accounted [5] 6296:12 6397:17 6432:15 6434:14 6437:10</p> <p>accounts [2] 6261:24 6303:8</p> <p>accuracy [1] 6375:21</p> <p>accurate [5] 6084:14 6283:14 6295:25 6441:24 6456:4</p> <p>accurately [1] 6196:18</p> <p>accuse [1] 6162:21</p> <p>achieve [1] 6125:16</p> <p>achieved [1] 6072:3</p> <p>acknowledge [1] 6081:20</p> <p>acknowledged [7] 6187:</p>
--	---	--	---	--

OPEN SESSIONS

<p>10 6244:7 6288:9 6409:23 6416:19 6432:23 6436:12 acquired [1] 6187:18 across [3] 6240:6 6262:9 6267:23 Act [5] 6241:3 6303:2 6367: 5 6393:12 6448:5 acted [1] 6441:25 acting [1] 6408:5 active [2] 6259:16,16 activities [2] 6374:17 6442: 11 activity [3] 6371:9 6372:9 6376:2 Actors [1] 6063:5 actual [22] 6106:11 6237: 25 6257:4,5 6260:24,24 6267:5,18 6273:4 6282:23, 25 6289:4 6290:24 6375: 11,24 6382:9 6418:14 6434:12,25 6435:11 6446: 23 6452:10 actually [79] 6075:8 6076:5 6078:18 6084:23,24 6085: 3 6086:12 6088:1,9,14 6089:5 6090:10,21 6094: 24 6102:13 6104:13,17 6105:10,14 6106:24 6108: 2 6109:3 6111:16 6112:1 6114:11,18,25 6115:19 6118:14,18 6121:17 6125: 13 6126:24 6127:7,10,17 6156:21 6161:19 6162:1,5 6167:1,16,19 6168:1 6184: 3 6194:10 6197:10 6203:2 6204:8 6205:12,18 6230: 13 6231:2 6244:8 6247:5, 25 6251:24 6257:4 6260: 13 6273:12 6278:18 6283: 6 6288:18 6290:15 6305:4 6369:13 6376:13 6400:1 6409:5 6411:12 6427:20 6430:9 6432:17 6435:1,24 6436:24 6443:2 6445:24 6454:3 ad [8] 6109:22 6125:5 6186: 13 6200:13 6279:13 6367: 11 6443:2,8 ad-supported [71] 6070:8 6071:1,8,18,25 6072:4 6076:18 6108:21,23 6109: 1,16,21,22 6110:5,18 6111: 4,6,9,15,20,25 6112:2,5,8, 16,25 6115:7,8 6116:10,16 6117:16,20 6119:1,4,16,21 6120:3 6121:12 6123:1,6, 18 6125:5,7 6156:16 6188: 22 6249:8 6250:5 6255:11 6260:16 6277:24 6282:5 6284:23 6293:8 6295:19 6296:14 6297:13 6298:4,</p>	<p>12 6301:7 6302:18,20 6306:3,11,21,23 6307:3,5 6363:6 6397:8 6400:5 6403:16 Adadevoh [1] 6093:18 add [6] 6101:18 6164:2 6187:2 6255:5 6270:4 6398:12 added [3] 6102:15 6381:4 6407:24 adding [5] 6102:13 6116: 18,21 6117:14 6410:2 addition [6] 6098:18 6103: 3 6156:11 6426:7 6432:3, 14 additional [28] 6068:22 6099:4,9,17,22,24 6100:3, 6,16 6101:7 6104:16 6105: 18 6108:13 6118:5,10,13, 15,23 6119:7,13 6381:14 6411:9 6419:7 6425:7 6435:22 6436:1 6437:24 6451:19 address [25] 6078:16 6103: 5 6164:7 6165:23 6167:23 6186:19 6187:3,8 6188:17 6199:25 6249:23 6258:5 6297:20 6299:6 6300:16 6301:6 6359:8 6365:2 6404:5 6409:11,15 6411: 14 6425:6 6451:4 6452:18 addressed [14] 6088:16 6105:21 6109:16 6190:19 6229:14 6249:23 6252:12 6273:6 6274:24 6276:5 6290:20 6361:24 6403:12 6442:2 addresses [5] 6198:18 6259:17 6276:2 6306:20 6439:6 addressing [4] 6184:20 6249:1 6300:11 6375:17 adduced [2] 6261:4,10 adept [1] 6295:7 adequate [1] 6244:19 adjudicating [1] 6238:2 adjust [21] 6070:16 6074: 17 6078:9 6079:7 6083:9 6089:21 6099:7 6109:7,9 6123:4,9,15,19 6124:14 6162:19 6188:18 6381:22 6407:2 6413:16 6416:7 6438:10 adjusted [7] 6184:10 6245: 3 6248:14 6249:16 6268:5 6296:15 6437:4 adjusting [3] 6103:9 6110: 8 6167:10 adjustment [60] 6070:9 6072:23 6073:13,22 6074: 3,8,10,11,14,19,24,24</p>	<p>6075:20 6076:5 6077:2 6096:12,20 6098:19 6099: 6,8,12,13 6101:9 6103:4,5, 11,15 6104:12,16,18 6105: 21,23 6106:4,8 6107:17 6108:14 6109:24 6110:1 6114:8 6115:5,17 6117:23 6121:12,15 6123:16 6124: 7,8,10 6184:11,16,21 6258: 12,14 6296:18 6297:19 6437:2,4 6438:5,7 6447:6 adjustments [16] 6078:6, 23 6085:1 6105:18 6111: 24 6114:12 6245:1 6249: 22 6257:15,17 6268:6 6297:16 6300:25 6302:21 6307:13 6429:14 adjusts [5] 6088:25 6091: 19,25 6117:24 6184:12 administering [1] 6411:8 administrative [3] 6410:6, 10 6419:8 administrator [1] 6410:2 admissibility [1] 6094:10 admission [1] 6363:17 admissions [1] 6252:10 admit [1] 6447:22 admits [3] 6189:5,6 6425: 12 admitted [18] 6234:5 6236: 7 6252:9 6260:9 6262:7 6269:8 6364:4 6396:17 6406:8 6409:3,10 6410:13 6416:17 6433:15 6445:9, 15 6446:14,20 ado [1] 6069:9 adopt [10] 6243:17 6245:10 6285:13 6413:4 6416:22 6426:17 6429:11,16,20 6450:17 adopted [5] 6239:10 6301: 1 6366:14 6377:15 6429: 23 adopting [2] 6080:8 6268: 19 Adoption [1] 6449:8 adopts [1] 6419:1 ads [17] 6110:14 6112:18, 23 6113:19 6114:2,16,20, 24 6115:2,13 6116:12 6117:1 6118:15,18 6186: 15 6442:25 6443:5 advance [4] 6283:6 6300:5 6430:2,5 advanced [3] 6419:9 6428: 18 6429:11 advantage [4] 6234:25 6412:3 6419:9 6443:1 advertisements [1] 6234: 24 advertisers [10] 6110:14</p>	<p>6112:19,24 6113:13 6114: 3,9,19 6115:2 6116:23 6365:12 advertising [9] 6113:10,15, 19,20,24,25 6114:17 6115: 1 6282:8 advocated [1] 6300:10 advocating [1] 6449:25 affect [8] 6072:22 6086:12 6108:2 6126:23,23 6166:1 6434:5 6435:7 affected [3] 6101:5,7 6290: 3 affecting [1] 6265:4 affects [1] 6188:5 affidavit [2] 6362:12,17 affiliate [1] 6449:11 affiliated [1] 6261:5 affirmative [1] 6380:16 affords [1] 6371:7 aficionados [1] 6253:1 afraid [1] 6168:2 afternoon [8] 6228:8 6247: 1 6248:5 6300:3 6376:7 6414:25 6430:21 6455:10 agent [1] 6428:8 agents [2] 6428:1,4 ago [4] 6073:21 6262:24 6394:5 6426:5 Agrawal [1] 6302:10 agree [23] 6087:20 6097:11 6102:3 6107:21 6117:13 6118:17 6122:16 6123:16 6188:9 6197:13 6203:18 6255:23,25 6256:2 6305: 20 6373:24 6392:17 6406: 12 6427:6 6429:4 6446:19 6448:6 6452:24 agreed [18] 6104:13 6105: 19,19 6107:7 6116:6 6117: 4,7 6126:1 6186:21 6187:7 6192:22 6200:5 6368:16 6371:24 6409:6 6415:12 6439:10 6449:13 agreeing [2] 6116:10 6442: 21 agreement [65] 6123:23, 24 6163:15 6165:8 6166:1 6242:10 6255:18 6256:5 6264:11,12 6376:11 6377: 6 6382:1 6392:20 6401:15 6402:22 6417:7 6418:5,15 6419:2,24 6424:21,25 6425:3 6426:23 6428:7,18, 23 6429:3,17 6430:19,21, 24 6431:3,6,10,17,24,25 6432:21 6435:6,24 6437:9 6438:10 6439:3,6,6 6440:4, 6,8 6441:1,6,7,16,17 6442: 23 6447:6 6448:13,14 6449:6,21 6450:18 6453:</p>	<p>13,14,16 agreement's [5] 6418:24 6426:17 6432:7,15 6438: 24 agreements [63] 6072:14 6241:3,6,10,13 6303:17 6362:11 6374:15,21,24 6375:12,17,25 6376:2,19, 21,22 6377:4 6378:3 6379: 20 6382:18 6393:12 6395: 9 6401:9 6402:7,24 6403: 22 6415:11,15,21,25 6416: 1,10 6418:16 6419:5,20 6425:13,19 6426:8 6427:4, 13 6428:14,15 6429:1 6430:7,11 6431:8,13,19 6432:3 6437:17,20 6440:9, 12,15,17,21 6448:5,5,11, 15 6450:16 6453:19 agrees [12] 6103:8 6104:13, 17 6107:14 6108:9 6112:7 6116:23 6117:5 6156:20 6185:24 6258:24 6269:16 ahead [9] 6075:6 6115:20 6285:18 6295:22 6298:23 6414:19 6424:6 6448:4 6451:7 aimed [1] 6119:16 air [2] 6184:12 6284:2 AI [2] 6248:1 6452:4 albeit [1] 6288:8 album [1] 6271:16 ALEX [1] 6063:13 algorithm [1] 6272:19 ALICIA [1] 6066:8 alike [1] 6254:24 all-time [1] 6374:24 allegation [1] 6403:4 allegations [1] 6403:6 alleged [5] 6380:10 6382:6 6409:18 6434:9 6439:1 allegedly [5] 6261:25 6381: 14 6427:21 6432:8 6433:2 allocate [4] 6285:6,22 6376:1,11 allocated [1] 6285:1 allocating [1] 6375:16 allocation [5] 6376:25 6377:17 6379:15,22 6399: 1 allocations [1] 6285:8 allotment [3] 6425:20,21, 23 allotments [1] 6435:3 allow [2] 6118:15 6426:11 allowed [16] 6069:21 6128: 8,13 6168:11,15 6206:10, 15 6307:25 6308:4 6383: 10,15 6420:9,14 6425:8 6454:10,15 allowing [3] 6404:10 6429:</p>
--	---	---	--	--

Determination of Rates and Terms (Web V) Docket No. 19-CRB-0005-WR (2021-2025) November 19, 2020
OPEN SESSIONS

<p>25 6430:1 allows [3] 6240:3 6254:20 6276:10 almost [8] 6123:3 6183:4 6196:20 6200:6 6395:14 6405:20 6410:14 6415:2 alone [10] 6203:19,20 6275: 10 6282:6 6373:1 6374:10 6399:12 6400:16 6406:18 6444:13 alongside [1] 6404:13 already [8] 6094:17 6105: 19,20 6192:3 6230:20 6277:6,6 6443:19 alter [1] 6412:25 altering [1] 6127:8 alternative [16] 6194:22 6238:6,7,8,23 6239:1,3,5, 11 6268:6,10 6276:11 6278:19 6426:20 6433:10 6439:7 Alternatively [3] 6074:13 6203:24 6288:20 alternatives [1] 6237:15 although [6] 6081:18 6093: 13 6161:12 6289:18 6428: 12 6451:18 altogether [2] 6236:22 6366:1 Amazon [1] 6416:3 amended [5] 6237:12 6249:7 6441:8,12,22 American [4] 6063:3,5,6 6069:14 among [3] 6287:19 6365: 19 6449:9 amount [8] 6087:15 6106: 16,25 6230:14 6264:24 6275:19 6377:1 6410:6 amounts [3] 6233:8 6277: 20 6305:21 analyses [9] 6198:6,9,12 6371:10 6397:10 6401:1 6404:25 6405:7,11 analysis [94] 6094:16,16 6101:2 6102:9,12,19 6103: 14 6105:20 6111:21 6112: 25 6113:1 6120:1 6156:15 6163:21 6183:24 6190:3, 15 6198:21 6199:4 6202: 21 6231:20 6244:9 6245:5 6248:23 6260:9 6261:17 6266:25 6269:10 6278:6, 23 6280:3 6281:21 6282: 14,18,25 6284:25 6285:1 6289:15 6292:2 6294:3,19 6296:10,11 6297:2,10 6299:3 6300:12,17 6302: 14 6303:22 6307:5 6359: 22,24 6361:1 6362:11,12, 18,21 6363:3,4,9,10,20,21</p>	<p>6373:3 6375:6,9 6377:1 6380:17 6382:22 6396:11, 21,22 6398:7 6400:8 6404: 6,21 6405:1,2,5,8,9,24 6406:19,25 6407:4 6409: 19 6411:23 6416:21 6419: 23 6437:24 6452:24 6453: 3,18 analytical [1] 6275:1 analyze [3] 6375:19 6382: 18 6439:1 analyzed [3] 6118:7 6377: 2 6416:17 analyzing [3] 6078:20 6379:20 6397:18 ancient [1] 6240:15 ANDREW [4] 6063:11 6066:4 6122:20 6128:1 anecdotes [1] 6236:14 anew [2] 6070:16 6201:14 annual [9] 6237:5 6238:9, 11 6240:2 6419:7,12 6426: 9 6431:9,14 annualization [2] 6239:16 6426:4 annualize [1] 6426:6 annualizes [1] 6239:12 annually [1] 6237:4 another [24] 6072:7,17 6073:15 6075:25 6092:25 6095:1 6098:6 6106:2 6159:8 6167:3 6190:11 6200:20,23 6260:24 6274: 7 6279:20 6365:11 6393:2 6407:13 6410:2 6429:24 6448:20 6450:7 6453:13 answer [15] 6089:1 6116: 19 6121:13 6182:9 6193:3 6203:8 6229:18 6233:14 6260:23 6284:14 6285:19 6290:17 6359:5 6396:19 6408:24 answers [1] 6202:11 anticipate [2] 6381:1,11 antidiscrimination [1] 6127:22 antitrust [1] 6395:21 anybody [1] 6102:18 anybody's [2] 6127:8,10 anyway [2] 6088:15 6106:9 Apologies [2] 6206:6 6413: 16 apologize [1] 6247:17 apparently [3] 6199:17 6367:18 6446:17 appeal [2] 6230:18 6235: 12 appear [2] 6414:8 6434:4 Appearances [5] 6063:2 6064:1 6065:1 6066:1 6067:1</p>	<p>appeared [1] 6123:16 appearing [2] 6300:5 6414: 19 appears [6] 6067:11 6093: 17 6116:25 6196:3 6434:9 6453:17 Apple [5] 6073:6 6074:1 6075:3 6126:11 6416:3 apples-to-apples [3] 6090:6 6255:2 6398:20 applied [7] 6078:17 6082: 25 6105:16 6300:24 6302: 22 6307:13 6439:15 applies [9] 6078:12 6084:5 6111:3 6188:23 6189:12 6267:7 6278:19 6442:13, 18 apply [13] 6078:7 6079:1 6084:20 6104:17 6109:13, 14,21 6110:25 6188:13 6302:20,25 6426:24 6431: 1 applying [4] 6081:13 6084: 1,2,3 apportioned [1] 6238:11 appreciate [3] 6113:6 6229:10 6450:14 approach [37] 6074:14 6079:12,21,21 6080:5,6,8 6083:9 6090:9 6091:3 6105:8,13 6111:10 6156: 11,14 6159:16 6167:18 6196:7 6235:14 6248:24 6249:1,2 6296:2,3,9 6300: 14 6301:8 6302:23 6303: 15 6306:9,19 6307:8,14 6405:21 6415:20 6416:15 6443:16 approaches [1] 6304:19 appropriate [10] 6074:3 6087:2 6089:5 6201:20 6257:22 6262:8 6300:24 6441:15 6448:10,14 appropriately [1] 6077:15 appropriations [1] 6244: 14 appropriators [1] 6436:21 approved [2] 6402:21,22 approximately [1] 6451: 14 aptly [1] 6361:20 arbitrarily [1] 6381:22 arbitrary [1] 6410:25 area [2] 6200:20 6371:22 aren't [6] 6116:23 6122:17 6125:17 6159:13 6371:1 6408:5 argue [8] 6071:20 6076:25 6109:14 6118:13 6369:16 6373:11 6379:24 6381:24 argued [1] 6428:21</p>	<p>argues [9] 6199:20 6200:9, 10,11 6365:9 6367:6 6374: 23 6392:10 6400:3 arguing [4] 6201:4 6237: 20 6402:6 6405:8 argument [45] 6068:22 6069:11 6074:2 6079:13 6083:25 6094:3,6,7,8,11, 18 6101:15 6102:2,3,4,5,6, 23,24 6107:5 6109:20 6127:25 6166:11 6199:16 6200:3,7 6201:17,19 6248: 4 6259:5 6270:19 6300:2 6361:15 6365:2,4 6372:18 6373:13 6382:15 6392:13 6393:3 6398:1 6400:6 6402:4 6414:24 6452:4 argument's [1] 6265:15 arguments [15] 6068:8 6069:1,9 6124:13 6365:1 6373:18 6380:5,18 6382:2, 5,11 6397:15 6427:11 6443:14 6455:2 arise [1] 6290:3 Arlington [1] 6067:9 around [8] 6182:14 6205: 12 6239:18 6254:14 6361: 16 6369:16 6393:18 6427: 17 Arpan [1] 6302:10 ARPU [28] 6093:2,3,5,9,11, 14,16,20,20,23 6094:24 6095:3,13,16,17,19,23 6096:4,9,9,16 6097:4,22 6098:11,12,14 6117:9 6122:11 arrival [3] 6166:13,15 6359: 8 arrivals [1] 6159:6 arrived [1] 6158:18 arrives [2] 6160:12 6360:3 article [2] 6098:4,6 articles [1] 6258:9 articulate [1] 6120:11 articulated [2] 6122:4 6306:20 articulating [1] 6107:5 artifact [1] 6166:17 artificially [2] 6402:7 6410: 23 artist [3] 6260:8 6273:21 6274:20 Artists [17] 6063:6 6183:1 6191:16 6193:11 6194:23 6258:10 6260:3,6,15,20 6261:5 6265:19,21 6274:6 6280:9 6393:23 6394:1 ASCAP [8] 6304:2 6395:11, 20,23 6398:13 6401:23 6402:16,21 ascribing [2] 6381:13</p>	<p>6382:9 aside [2] 6264:2 6445:3 asks [4] 6245:13 6368:3 6392:14 6449:16 aspect [1] 6377:6 aspects [4] 6123:23 6282: 24 6300:9,17 assertion [1] 6292:12 assertions [1] 6364:22 assess [4] 6236:8 6275:20 6446:8 6447:3 assessment [1] 6184:22 associated [5] 6194:12 6260:1 6265:19 6280:9 6410:16 Association [4] 6063:6 6066:2 6238:22 6361:18 assume [13] 6092:5 6106: 15 6117:18 6157:8,16 6158:7,8 6165:7 6183:7 6191:12 6268:11 6278:9 6279:3 assumed [5] 6109:23 6112: 4 6269:2,4 6363:23 assumes [5] 6165:19 6193: 22 6194:3 6195:13 6278:1 assuming [7] 6101:13 6102:2 6163:13 6167:3 6198:15 6410:3 6436:18 assumption [21] 6080:13 6082:2,19 6101:15 6193: 22 6194:6 6268:15,16,19 6269:9,11 6275:12 6276:1 6278:7,22 6279:25 6280:2, 12,20 6281:6 6295:5 assumptions [14] 6269:1 6278:14 6280:17 6281:1, 23 6283:21 6301:9,12,13, 16 6302:16 6304:6,10,14 assure [1] 6077:14 assured [1] 6408:21 astonishing [1] 6265:11 astray [1] 6301:17 astronomical [1] 6251:2 AT&T [3] 6187:14,18,21 AT&T's [1] 6187:19 AT&T/Time [1] 6187:9 ATH [20] 6228:12 6230:16 6231:15 6233:4 6237:5 6239:12 6240:2 6425:13, 14,19,20,22,23 6426:19,22 6432:17,21 6434:21 6435: 4 6439:21 attack [3] 6159:24 6405:23 6434:11 attacking [1] 6258:4 attacks [3] 6159:23 6406:3 6427:7 attempt [11] 6236:8 6268: 25 6294:18 6380:9 6382: 23 6396:6 6399:24 6403:3</p>
--	--	---	--	--

OPEN SESSIONS

<p>6416:7 6434:11 6440:15 attempted [5] 6241:24 6251:1 6440:11,11 6452:17 attempts [3] 6234:15 6275:2 6380:8 attend [7] 6128:8 6168:11 6206:10 6307:25 6383:10 6420:9 6454:10 attende [7] 6128:7 6168:10 6206:9 6307:24 6383:9 6420:8 6454:9 attende [1] 6069:21 attention [1] 6247:24 attributes [1] 6407:19 audience [5] 6203:14 6235:11 6365:12 6367:16 6370:10 audio [4] 6069:25 6282:8 6366:8,11 August [1] 6361:21 AUSTER [1] 6065:6 Austin [1] 6064:19 authored [1] 6078:21 authority [5] 6201:6 6429:11,13,20 6430:3 authorize [1] 6441:22 authorized [1] 6097:9 automatically [2] 6088:23,25 availability [2] 6254:19 6435:22 available [18] 6160:25 6196:2 6253:22 6254:5,13,13 6260:7 6270:3 6272:15 6273:21 6274:7 6303:22 6305:2,16 6307:10 6362:6 6432:5 6441:6 Avenue [6] 6062:18 6063:20 6064:6,18,23 6065:12 average [18] 6080:18 6185:12 6194:7 6195:9 6240:5 6253:12,13 6262:9 6276:8,10 6277:24 6278:5,11 6281:16 6293:4 6297:13 6379:14 6411:1 averaging [2] 6159:11 6167:2 aversion [1] 6182:13 avoid [2] 6393:6,11 avoidance [1] 6395:2 aware [3] 6070:15 6400:12 6409:12 away [3] 6189:18 6192:14 6195:12</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>back [36] 6070:13,17 6076:10 6087:8 6091:1,2 6099:1 6102:16,25 6109:5 6118:21 6121:9 6122:24 6123:</p>	<p>12 6124:3 6127:12 6156:8 6182:4 6201:20 6228:4 6234:11 6240:12 6242:2 6264:2 6286:25 6291:8 6299:5 6305:5 6359:2 6380:15 6381:16 6392:4 6393:24 6424:5 6446:17 6449:12 backdrop [3] 6081:21,23 6365:17 backing [3] 6244:12 6401:4 6436:9 backward [1] 6435:24 bad [1] 6113:12 badly [1] 6194:11 bag [3] 6162:17,23 6363:25 baked [2] 6381:25 6443:19 bakes [1] 6409:7 baking [1] 6405:12 balance [2] 6426:13 6432:19 ballpark [1] 6392:24 ban [1] 6443:2 band [1] 6274:15 bar [1] 6071:14 bare [2] 6232:8 6380:21 Barely [1] 6369:14 bargain [10] 6158:5,9,11,15,20,24 6159:2,6 6160:13 6161:21 bargaining [31] 6072:9 6073:11 6077:12 6156:13,19 6163:19,22 6164:14,18 6165:16 6248:20 6255:16 6256:3,16 6257:23 6268:2 6286:8 6287:3,9,16,25 6288:6 6291:24 6292:14,18,21 6293:21 6295:18 6296:2 6297:2 6436:18 barring [1] 6443:4 bars [1] 6442:11 base [5] 6259:15 6262:6 6278:20 6279:4 6431:15 based [45] 6077:1 6078:20 6085:2 6087:9 6092:16,18 6093:21 6097:23 6110:2,13 6185:1 6189:13,22 6190:10,14 6237:16 6249:4 6260:20 6272:2 6273:3 6283:21 6285:14 6289:18 6361:25 6365:20 6368:1 6374:1 6399:11 6405:12,15 6412:16 6415:21,25 6417:15 6418:17 6419:9 6424:25 6427:4 6432:6 6435:13 6441:15 6445:1 6448:23 6449:10,17 baseline [1] 6267:16 Basic [1] 6408:4 basically [9] 6076:8 6080:3 6092:5 6094:19 6096:8</p>	<p>6116:10 6160:24 6286:7 6382:14 basics [1] 6198:10 basing [1] 6272:8 basis [30] 6080:23,23,24 6102:1 6112:9 6113:11 6184:15 6188:7 6193:8,9 6238:13,21 6258:25 6288:14 6363:5 6381:5 6395:17 6397:2,12 6398:10,22 6407:20 6410:7 6416:24 6426:1 6429:16 6436:17 6438:9 6440:19 6447:5 bear [2] 6395:3 6414:12 bears [3] 6236:23 6373:21 6401:3 became [3] 6304:14,15 6363:19 become [2] 6073:6 6252:2 becomes [1] 6264:16 bedrock [1] 6367:1 beg [1] 6451:18 began [2] 6361:21 6396:10 begin [6] 6069:19 6156:3 6248:2 6307:4 6361:11 6394:11 beginning [10] 6128:6 6168:9 6206:8 6231:7 6307:23 6361:9 6364:13 6383:7 6420:7 6454:8 behalf [16] 6063:3 6064:2 6065:2 6066:2 6067:2 6069:13 6235:17 6238:10 6248:6 6300:5,10 6361:15 6414:24 6419:10 6430:2 6452:4 behavior [5] 6192:7 6265:4 6267:18 6442:8 6443:3 behind [2] 6122:20 6126:7 belabor [2] 6229:15 6403:12 belief [1] 6074:15 believe [27] 6073:11 6075:8 6076:3,4 6082:12 6087:12 6090:10 6105:9 6163:6 6190:6 6197:23 6205:5 6245:17 6247:5 6262:14,25 6266:12 6277:9 6286:21 6289:3,10 6291:3 6359:4 6372:20 6374:2 6438:2 6454:4 below [9] 6228:21 6233:3 6268:21 6294:15 6363:6 6377:4,9 6379:15 6411:24 below-threshold [1] 6433:15 benchmark [107] 6072:20,21,24 6078:5,19 6079:3,7,11,11,16,25 6080:11 6081:2 6082:6 6085:9 6087:10 6089:12,23,24 6090:2,13,</p>	<p>15,18 6091:5,8 6093:2,3 6103:20 6108:24 6109:15,22 6110:17,21 6111:14,15 6114:14 6120:2 6122:18,25 6123:2,6,18 6124:15 6199:23 6241:25 6242:15,21 6243:9 6244:19 6245:1,2,6,10 6248:23 6295:23 6296:3,14 6297:10,16 6299:3 6301:21 6303:22 6304:13,19,23 6305:7,16,19 6306:4,13 6307:3,10,12 6362:3 6363:8 6368:24 6374:5,14 6379:5 6380:16 6381:19,23 6392:24 6393:1 6403:9,20,25 6405:9 6409:6 6415:10 6417:16,17,21,25 6418:15 6427:21 6431:18 6434:12 6438:4 6440:6 6441:1 6443:14,16,19 6448:24 6452:11,16 benchmarking [26] 6077:12 6078:2,3 6101:1 6103:4 6156:11 6167:18 6244:9 6296:9,10 6297:2 6300:12,18 6302:13 6303:1,14,25 6304:3,21 6305:13,20 6306:1,19,21 6307:5 6405:2 benchmarks [60] 6123:3 6248:21 6252:1 6300:21,22,25 6303:13,16 6305:2 6362:4,4,9,15,18,22 6374:19,25 6375:3,7,14 6378:1,9,13,19 6379:3,8 6380:1,23 6382:25 6392:11,16,22 6393:13 6394:24 6395:2,7,8,13 6396:7,9,15 6397:19 6401:5,14,22 6402:5 6403:6 6405:12 6408:15 6409:11 6411:22 6427:9,13 6429:7 6430:23 6434:7 6437:11 6440:20 6448:6 6449:18 benefit [10] 6100:16 6107:21,23 6203:9 6244:4,8 6405:17,21 6430:5 6437:10 benefits [9] 6161:20 6243:23 6380:1,10 6382:2,6,10 6393:8 6439:2 benefitting [1] 6381:15 BENJAMIN [1] 6065:3 besides [2] 6229:16 6241:2 best [18] 6166:22 6186:1 6204:8,20 6205:2 6247:21 6249:12 6268:10 6269:13 6287:6 6303:11 6307:10 6369:22 6370:16 6406:12 6450:19 6452:2 6456:4</p>	<p>betrays [1] 6400:6 better [4] 6280:14 6284:18 6298:11,17 between [74] 6076:2 6083:16 6084:12 6086:22 6088:1 6089:19 6090:25 6098:17 6106:12,23 6110:5,16,20 6113:21 6117:19,25 6162:20 6165:20 6166:7 6199:22 6202:22 6230:1 6234:4 6235:10,18 6239:7 6240:24 6241:15,21 6242:13 6244:22 6245:10 6249:14 6252:5 6253:6,21 6255:18,21 6256:23 6266:5 6271:5 6277:4 6279:20 6281:18 6287:4,12 6289:21 6293:15 6303:5 6305:23 6306:16 6364:8 6367:20 6368:4,9 6370:2 6372:3 6373:6 6374:11,15 6394:17 6395:1 6399:7 6404:1,19 6407:25 6408:21 6412:22 6415:8 6416:9 6438:4 6445:16 6452:13 6453:12 Beyonce [13] 6271:16 6272:14 6273:11,13,14 6274:1,2,5,6,8,9,15,18 beyond [4] 6232:14 6374:3 6411:1 6430:3 bi-modal [1] 6071:4 bias [1] 6182:13 biased [1] 6407:5 big [19] 6090:11 6098:17 6126:10 6157:2 6187:3 6203:14,15,18 6235:11 6238:11 6239:11 6376:10 6377:17,18,22 6379:18 6392:11 6437:6 6447:17 big-picture [2] 6078:15 6089:17 bigger [3] 6230:10 6236:4 6399:7 biggest [1] 6120:25 biggy [1] 6241:20 bilateral [6] 6163:13 6287:11,18 6289:21 6292:15 6293:13 billions [1] 6416:4 bit [14] 6070:13 6074:21 6077:7 6090:21,22 6105:10 6108:1 6113:6 6121:10 6194:14 6200:19 6236:25 6417:1 6438:3 bizarre [1] 6408:19 black [2] 6273:13,14 black [2] 6272:21 6280:11 blackout [8] 6164:18 6267:5,13 6275:4,10 6278:18 6279:7 6280:22</p>
---	---	---	---	--

OPEN SESSIONS

<p>BLAKE ^[1] 6064:16 blanket ^[1] 6235:19 blanketed ^[1] 6402:2 blended ^[2] 6076:20,21 Block ^[3] 6063:19 6237:5 6238:12 blow ^[1] 6236:21 blow-back ^[2] 6260:21 6273:19 BMI ^[7] 6304:2 6395:20,23 6398:13 6401:23 6402:16, 20 Board ^[16] 6197:6 6265:12 6301:22 6302:2,4,22,25 6303:3,7,11,14 6304:18,25 6305:5,6,11 Board's ^[4] 6300:15 6303: 1 6306:20 6307:14 Bob ^[1] 6370:7 bodies ^[1] 6304:1 bone ^[1] 6083:15 bones ^[1] 6232:8 bore ^[1] 6382:4 both ^[47] 6073:3 6078:3,6,7 6079:24 6080:4,14 6082: 20 6085:21 6088:10 6097: 10 6101:22 6116:16 6120: 5 6189:5 6191:3 6197:12 6237:15 6242:1 6244:15 6257:15 6263:15 6268:7 6282:2 6287:15 6297:23 6301:11 6302:23 6305:20 6306:1 6362:25 6374:5 6400:13 6417:1 6418:9,24 6435:3 6436:5 6442:13,19 6444:6,20,21 6445:6 6446: 13 6447:24 6450:7 bother ^[1] 6159:21 bottom ^[23] 6095:21 6104: 16 6105:18,25 6108:17 6111:17 6128:10 6168:13, 13 6206:12 6232:9 6238:6 6239:9 6241:9 6245:8 6267:1 6307:9 6308:2 6383:12 6420:11 6434:5 6443:6 6454:12 bound ^[6] 6242:4 6255:23 6256:1 6425:4 6426:3 6437:3 Bourbon ^[1] 6370:24 boxes ^[1] 6453:11 brain ^[1] 6294:24 brand ^[1] 6251:9 break ^[3] 6069:2 6245:19 6451:5 breaks ^[1] 6284:4 bribes ^[1] 6162:15 bridge ^[1] 6253:20 brief ^[2] 6407:12 6452:5 briefly ^[3] 6239:16 6392:7 6404:5</p>	<p>bring ^[4] 6264:3 6294:14 6362:8 6449:11 brings ^[8] 6157:22 6158:10 6160:5 6163:24 6233:1 6241:20 6287:2 6402:4 BRITT ^[1] 6066:9 broad ^[7] 6205:6 6252:24 6260:4 6365:8 6415:15 6429:13 6439:25 broad-enough ^[1] 6429:8 broadcast ^[20] 6203:2,7,12, 14,18,22,23,25 6204:2,8, 18,20 6205:1,3,7,10 6371: 20 6407:18 6425:1 6426: 12 Broadcasters ^[38] 6066:2 6067:2 6077:17 6200:11, 12 6204:5,7 6228:10 6234: 8 6361:18 6370:21 6402:1 6412:15 6415:12 6416:5 6417:2,4,9,10,11 6418:9 6419:14 6427:6,23 6428:9 6432:9,13 6433:4,17 6436: 6 6443:22,23 6444:10 6447:16 6449:20 6450:8, 11,12 Broadcasting ^[1] 6370:15 broadcasts ^[2] 6204:13 6370:4 broader ^[1] 6429:2 broadly ^[2] 6248:11 6373: 11 brought ^[4] 6361:23 6362: 2 6377:13 6379:19 Bruno ^[1] 6274:18 Brynteson ^[3] 6062:25 6451:5 6456:9 bucket ^[2] 6416:6 6447:13 build ^[3] 6275:11 6302:14 6363:23 Building ^[2] 6062:17 6282: 7 built ^[4] 6126:3 6160:23 6162:24 6165:21 bulk ^[2] 6259:15 6446:23 bullet ^[1] 6081:6 bunch ^[1] 6369:15 bundled ^[1] 6189:16 bundles ^[1] 6244:1 burden ^[25] 6202:8,11 6236:23,24 6263:5,12,22, 25 6264:18 6265:10 6373: 21 6374:3,4 6380:14,16 6382:4,15 6399:20 6401:3 6403:4 6447:20,22,24 6452:13,15 Burkhisier ^[2] 6231:3 6240: 15 business ^[9] 6107:25 6119: 15 6158:14 6159:3 6196: 23 6198:2 6203:7 6243:19</p>	<p>6276:3 businesses ^[1] 6408:7 bust ^[1] 6267:5 button ^[6] 6128:10 6206:11 6308:2 6383:12 6420:11 6454:12 buy ^[7] 6071:19 6092:19 6191:23 6193:11 6195:2, 10 6402:13 buy-in ^[5] 6415:16,17 6418: 20 6449:2,3 buyer ^[13] 6120:25 6229:21 6231:23 6241:16 6242:23 6244:21 6249:14 6255:21 6289:22 6303:6 6415:16 6427:22 6449:3 buyer/willing ^[15] 6120:23 6229:20 6231:6,20 6287: 10 6302:24 6382:1 6394: 22 6400:24 6417:18 6424: 22 6434:17 6444:24 6449: 15 6450:20 buyers ^[19] 6073:3 6120:20, 21 6126:14 6392:16 6396: 1 6416:2 6418:1,8,21 6427: 20 6428:1,2,6,10 6429:5 6442:20 6448:25 6449:13 buyers/willing ^[1] 6373:24 buying ^[2] 6108:1 6298:23 buys ^[2] 6193:23 6194:7</p> <p style="text-align: center;">C</p> <p>CA ^[2] 6064:14 6066:16 caching ^[1] 6119:2 cadre ^[1] 6258:2 CAIN ^[1] 6065:5 calculate ^[12] 6093:2,9 6095:5,16 6097:4,18 6188: 23 6192:18 6276:10 6375: 5,6 6398:3 calculated ^[16] 6079:1 6080:10 6089:4 6094:24 6096:10 6097:17 6098:12 6251:13 6279:16 6291:21 6375:13 6379:12 6397:11 6404:18,22 6405:3 calculates ^[5] 6091:22 6096:19 6100:24,25 6286: 2 calculating ^[4] 6091:4,6 6092:21 6098:20 calculation ^[10] 6087:2 6091:23 6102:17 6105:4 6251:11 6281:19,20 6296: 15 6410:11 6419:3 calculations ^[10] 6086:13 6088:10 6099:19 6162:7 6194:18 6286:1 6375:21, 22 6379:14 6410:22 calendar ^[1] 6439:23 call ^[4] 6082:2 6238:6,7</p>	<p>6364:3 called ^[2] 6240:18 6269:6 calling ^[1] 6428:6 calls ^[2] 6105:22 6234:20 came ^[12] 6076:21 6087:1 6089:13 6194:17 6374:7 6393:24 6394:4 6419:16 6441:4,5 6444:21 6446:1 camera ^[3] 6361:8 6413:11, 12 campaign ^[1] 6393:19 campaigns ^[1] 6258:17 Canada ^[1] 6063:4 cannibalization ^[5] 6121: 23 6122:2 6229:1 6443:11 6452:23 cannibalize ^[1] 6370:9 cannot ^[9] 6164:7 6165:23 6201:7,12 6258:14 6275: 18 6364:7 6381:20 6453: 19 cap ^[6] 6426:6,19 6434:21 6435:11,17,19 capable ^[1] 6157:7 caps ^[2] 6411:2 6426:9 capture ^[2] 6165:15 6440: 11 captures ^[1] 6293:17 care ^[9] 6104:11 6182:8,15 6184:10 6253:2 6259:23 6275:10,14 6290:5 careful ^[1] 6378:19 carelessly ^[1] 6363:12 CAROLINE ^[1] 6066:10 CARP ^[1] 6434:18 carriage ^[1] 6288:1 carried ^[1] 6443:8 carry ^[3] 6249:21 6380:5 6403:4 cars ^[1] 6240:20 cartoon ^[1] 6284:1 case ^[56] 6071:2 6072:18 6076:22 6077:1 6079:20 6083:9,15,24 6115:9 6116: 25 6123:10 6156:23 6157: 19 6158:21,25 6187:9,15 6194:9 6201:10,14,18 6233:9 6235:25 6243:14 6250:9 6251:4 6258:1 6264:10 6267:10 6279:10 6298:11,16 6301:6,10 6303:24 6304:8 6305:4,7, 10 6359:19 6362:1 6363: 23,24,25 6364:13,21 6365: 3 6367:2 6372:19,21 6373: 16 6375:3 6380:22 6401: 20 6428:11 6450:15 case-in-chief ^[1] 6411:19 cases ^[9] 6095:5 6126:16 6200:8 6201:5 6260:9 6304:20,24 6305:12 6417:</p>	<p>23 cash ^[2] 6162:17,23 casual ^[2] 6253:5 6444:6 catalogue ^[5] 6270:12,14, 18,19 6434:1 catching ^[1] 6199:17 categorical ^[1] 6394:16 categories ^[3] 6367:23 6370:11 6373:6 category ^[4] 6301:24,25 6374:15 6395:18 cause ^[8] 6068:23 6185:5 6201:22 6269:3 6373:24 6379:6 6417:5 6445:4 caused ^[2] 6304:11 6443: 17 causes ^[1] 6084:19 causing ^[1] 6114:15 CDs ^[1] 6279:17 census ^[1] 6439:20 central ^[2] 6120:17,20 cents ^[5] 6249:8,9 6301:25 6404:19,19 certain ^[10] 6076:2 6086:4 6196:22 6228:21 6232:18 6235:5 6260:15 6264:9 6271:17 6304:24 certainly ^[16] 6070:15 6083:16 6084:17 6115:11, 12 6125:15 6230:9 6236: 18 6255:3,12 6267:6 6407: 11 6417:9 6436:17 6443:3 6449:24 CERTIFICATE ^[1] 6456:1 certify ^[1] 6456:3 cetera ^[1] 6442:12 challenge ^[2] 6375:20 6429:24 champions ^[1] 6305:10 chance ^[1] 6440:25 change ^[27] 6070:22 6072: 19 6073:1,15 6076:16 6077:21 6093:19 6100:1 6102:17,19,21 6127:17 6192:7 6229:11 6236:23 6250:24 6266:17 6267:17 6275:6 6283:17 6285:7 6294:14 6295:3,4 6364:16 6412:7,8 changed ^[12] 6072:21 6076:11 6078:14 6083:13 6084:4,18 6099:22,25 6242:6,11 6248:17 6251:3 changes ^[14] 6070:19 6074:18 6239:12 6249:6, 18 6251:23 6284:22 6294: 7,8,12,16,20,22,23 changing ^[11] 6127:11 6196:14,14,15 6229:5,13 6245:15 6283:3,13,22 6284:13</p>
---	--	--	---	--

Determination of Rates and Terms (Web V) Docket No. 19-CRB-0005-WR (2021-2025) November 19, 2020
OPEN SESSIONS

<p>channel ^[5] 6070:11 6237:5 6409:19 6410:7,10</p> <p>channels ^[5] 6239:22 6240:5 6410:24,25 6433:20</p> <p>chapter ^[1] 6360:24</p> <p>CHAPUIS ^[1] 6063:18</p> <p>character ^[1] 6284:1</p> <p>characteristics ^[1] 6371:4</p> <p>characterize ^[2] 6408:19 6440:12</p> <p>characterized ^[1] 6071:3</p> <p>charge ^[3] 6254:20 6395:14,23</p> <p>charged ^[4] 6431:6,25 6449:22,23</p> <p>charges ^[1] 6372:7</p> <p>charging ^[1] 6255:4</p> <p>chart ^[6] 6071:14 6433:19 6435:10,15 6444:1,3</p> <p>chasm ^[1] 6071:4</p> <p>cheapest ^[1] 6204:21</p> <p>check ^[2] 6288:8 6291:5</p> <p>CHERRY ^[1] 6063:11</p> <p>cherry-picked ^[1] 6236:14</p> <p>chest ^[1] 6410:20</p> <p>CHIEF ^[53] 6068:6 6077:18 6128:2 6156:2,7 6168:4,6 6182:4 6205:21,25 6206:3 6228:4 6229:6 6245:20,25 6247:3,11,15,18 6248:1 6273:25 6274:11,14,17,23 6299:7,11,15,22,25 6307:19 6359:2 6361:6,13 6383:5 6392:4 6413:5,10,19,21 6414:5,10,13 6420:4 6424:4 6447:7 6450:22 6451:2,8,12,23 6453:25 6454:5</p> <p>Child ^[2] 6274:13,13</p> <p>choice ^[4] 6239:7 6269:25 6300:18 6402:13</p> <p>choices ^[1] 6182:16</p> <p>choose ^[2] 6121:5 6443:5</p> <p>chooses ^[4] 6069:7 6259:2 6269:22 6272:1</p> <p>choosing ^[1] 6408:12</p> <p>chose ^[1] 6379:24</p> <p>chosen ^[3] 6157:19 6396:7 6449:10</p> <p>Chris ^[1] 6260:14</p> <p>Christian ^[4] 6235:12,24 6434:2 6444:7</p> <p>Christmas ^[2] 6239:20,22</p> <p>church ^[1] 6433:22</p> <p>churned ^[3] 6270:9,10,14</p> <p>circling ^[1] 6122:24</p> <p>Circuit ^[2] 6230:18 6305:4</p> <p>circumstances ^[7] 6241:14 6243:19 6244:11 6260:18 6273:19 6431:16,20</p> <p>citation ^[4] 6098:2 6286:22,24 6452:7</p>	<p>citations ^[1] 6299:24</p> <p>cite ^[1] 6360:18</p> <p>cited ^[9] 6095:17 6097:23 6098:3,5 6291:9 6292:6 6359:19 6444:12 6448:10</p> <p>cites ^[2] 6097:21 6369:25</p> <p>Citing ^[2] 6365:7 6448:7</p> <p>claim ^[15] 6086:18,20 6087:11,11 6184:2 6187:17 6202:17 6251:9,15,25 6292:9 6297:20 6298:3 6428:25 6446:18</p> <p>claimed ^[7] 6251:7 6290:12 6364:15 6435:22 6436:19 6437:8 6440:24</p> <p>claiming ^[5] 6267:2 6416:14 6432:24 6434:12 6443:12</p> <p>claims ^[6] 6427:19 6428:13 6429:10 6440:5 6444:16 6447:12</p> <p>clarification ^[1] 6273:9</p> <p>clarify ^[2] 6264:22 6273:1</p> <p>CLARK ^[1] 6063:17</p> <p>class ^[2] 6165:20 6373:21</p> <p>classes ^[1] 6365:8</p> <p>classical ^[2] 6433:9,23</p> <p>clauses ^[1] 6127:22</p> <p>clean ^[4] 6092:3 6108:4,8 6113:6</p> <p>cleaner ^[2] 6106:10 6107:19</p> <p>clear ^[33] 6093:9 6097:16,18,21 6120:5 6128:6,15 6168:8,10,18 6206:5,8,16 6233:13 6238:13 6240:12 6241:5 6257:19 6307:23 6308:7 6383:8 6396:4 6397:6 6404:8 6417:24 6420:5,7,15 6428:5 6448:9 6454:6,8,16</p> <p>clearly ^[9] 6070:23 6073:10,14,23 6092:9 6099:16 6277:19 6303:4 6449:14</p> <p>CLERK ^[1] 6068:3</p> <p>click ^[7] 6128:11 6168:14 6206:12 6308:3 6383:13 6420:12 6454:13</p> <p>clicking ^[7] 6128:9 6168:12 6206:11 6308:1 6383:11 6420:10 6454:11</p> <p>client ^[1] 6263:12</p> <p>client's ^[1] 6263:9</p> <p>close ^[9] 6089:14 6183:13 6237:13 6307:21 6364:23 6370:25 6371:1 6383:6 6435:2</p> <p>closed ^[1] 6250:17</p> <p>closely ^[5] 6418:24 6427:4 6432:2 6435:11,17</p> <p>closer ^[5] 6268:20 6294:15</p>	<p>6369:4,6 6370:3</p> <p>closing ^[12] 6068:7,25 6069:9,11 6248:4 6259:5 6300:2 6361:15 6414:24 6452:4,8 6455:2</p> <p>club ^[1] 6239:4</p> <p>coalition ^[4] 6160:7,10,11 6291:16</p> <p>coalitions ^[1] 6291:14</p> <p>Coast ^[1] 6415:1</p> <p>codified ^[1] 6366:3</p> <p>cogent ^[1] 6302:16</p> <p>coherently-defined ^[1] 6402:11</p> <p>coin ^[2] 6068:14,15</p> <p>cold ^[1] 6290:7</p> <p>collapsing ^[1] 6367:3</p> <p>colleague ^[2] 6077:14 6411:14</p> <p>colleagues ^[2] 6282:4 6286:23</p> <p>collective ^[2] 6243:11 6439:11</p> <p>collectively ^[2] 6069:18 6374:9</p> <p>COLLINS ^[1] 6065:9</p> <p>colloquy ^[2] 6242:2 6407:13</p> <p>collusion ^[5] 6160:2,16 6162:1,12 6163:1</p> <p>column ^[2] 6103:18 6105:2</p> <p>combination ^[2] 6101:22 6112:18</p> <p>combine ^[1] 6446:22</p> <p>combined ^[1] 6232:12</p> <p>come ^[14] 6089:10 6092:22 6109:5 6202:3 6264:14,15 6271:24 6273:15 6286:24 6295:17 6299:5 6376:15 6396:4 6411:5</p> <p>comes ^[6] 6096:15 6121:9 6231:1 6412:14 6444:11 6445:21</p> <p>coming ^[3] 6195:7 6259:4 6414:15</p> <p>commence ^[1] 6069:9</p> <p>commercial ^[63] 6070:7,8,20 6190:19 6228:13 6229:2,5,13 6230:6 6231:25 6233:5,8,11,16,20 6234:1,4,7,19,24 6235:3,19,24 6236:4 6239:14,24 6240:11,25 6243:13 6245:16 6301:24 6302:6 6367:8,9 6373:23 6394:21 6401:25 6402:1 6415:25 6416:2,25 6417:4 6418:16,17 6419:14 6424:15,18 6425:1 6427:14,14 6440:13 6443:1,4,13,17 6444:15 6445:16,25 6446:2 6447:13 6449:</p>	<p>17 6452:14,20</p> <p>commit ^[2] 6164:16 6303:17</p> <p>commits ^[1] 6439:19</p> <p>committed ^[1] 6186:9</p> <p>Committee ^[3] 6067:3 6238:22 6402:8</p> <p>common ^[2] 6369:17 6380:13</p> <p>communicate ^[1] 6450:6</p> <p>communications ^[1] 6261:14</p> <p>community ^[1] 6371:17</p> <p>companies ^[48] 6070:23 6080:16 6093:8,22 6121:2,5 6122:1 6123:7 6125:16 6126:25 6127:15,20 6158:7,8,9,24,25 6159:12 6160:20 6161:8,15,20 6162:19 6163:10 6167:20 6193:6 6205:7 6228:24 6231:9 6233:9 6235:14 6236:3 6255:13 6287:19,21 6291:15 6292:24 6293:16 6381:1,15 6393:11,23 6412:18 6418:6 6427:24 6433:24 6434:5 6445:10</p> <p>companies' ^[4] 6287:5 6291:15 6381:7 6412:24</p> <p>company ^[32] 6093:16,20 6095:3,16 6098:12 6121:23 6127:4 6158:11,15 6161:4,11 6163:16 6164:17 6165:6,7 6185:7,7 6191:1 6199:1 6203:16 6233:3 6235:18 6243:10 6244:23 6251:11 6281:19 6287:12,24 6289:5 6291:13 6415:13 6442:22</p> <p>company's ^[3] 6193:18 6199:2 6281:7</p> <p>comparability ^[6] 6243:20 6245:5 6417:22 6427:12 6435:23 6452:16</p> <p>comparable ^[5] 6242:22 6417:25 6418:14 6448:24 6450:1</p> <p>compare ^[4] 6095:23 6114:13 6251:14 6447:14</p> <p>compared ^[12] 6072:18 6090:18 6188:15 6200:2,22 6232:19 6293:2 6307:3 6416:6 6427:13 6447:13 6452:19</p> <p>comparing ^[2] 6113:20 6117:10</p> <p>comparison ^[6] 6090:7 6092:3 6255:3 6398:20 6404:10 6453:12</p> <p>compel ^[1] 6242:11</p> <p>compete ^[11] 6161:15</p>	<p>6234:19 6235:2 6365:11 6367:7,10,16 6370:11 6408:12 6412:15 6443:13</p> <p>competes ^[6] 6233:25 6367:12 6370:12,14 6373:11 6444:14</p> <p>competing ^[2] 6161:16 6363:10</p> <p>competition ^[34] 6072:23 6073:12,22 6074:3 6075:20 6108:17 6126:6,9 6127:21 6157:6 6167:13 6229:1 6233:5 6244:19 6252:5 6288:1 6293:18 6297:18 6365:5 6369:13,16 6372:18,20 6373:3,6 6408:20 6443:11,16 6445:16,25 6446:1,9,19 6452:23</p> <p>competitive ^[10] 6234:25 6235:3 6240:3 6249:15 6252:3 6255:22 6281:4 6287:7 6412:3 6443:1</p> <p>competitor ^[1] 6261:11</p> <p>competitors ^[9] 6187:19,20 6258:11 6259:19 6260:21 6365:9 6370:24 6371:1 6409:2</p> <p>complaining ^[1] 6264:9</p> <p>complains ^[1] 6266:20</p> <p>complaints ^[1] 6273:23</p> <p>complement ^[1] 6253:10</p> <p>complementary ^[6] 6157:25 6160:22 6288:2 6359:9 6395:10 6407:3</p> <p>complements ^[2] 6252:22 6298:21</p> <p>complete ^[5] 6123:21 6264:18 6267:4 6400:6 6405:7</p> <p>completely ^[8] 6269:3 6292:8 6366:25 6395:8,18 6400:1 6402:4 6410:11</p> <p>complex ^[1] 6165:16</p> <p>compliance ^[1] 6430:17</p> <p>compliment ^[1] 6167:17</p> <p>complimentary ^[1] 6359:16</p> <p>comply ^[1] 6430:13</p> <p>components ^[1] 6228:11</p> <p>compositions ^[2] 6399:3 6400:14</p> <p>compounds ^[1] 6189:9</p> <p>comprising ^[1] 6372:25</p> <p>compromises ^[1] 6241:13</p> <p>compulsory ^[1] 6366:7</p> <p>compute ^[1] 6262:9</p> <p>concede ^[1] 6081:11</p> <p>conceded ^[4] 6259:24 6260:6 6363:14 6437:22</p> <p>concedes ^[1] 6202:20</p> <p>conceding ^[1] 6406:9</p>
---	--	--	---	--

OPEN SESSIONS

<p>conceivably ^[1] 6274:18 concentrated ^[2] 6231:14 6372:23 concept ^[7] 6085:2 6086:8 6157:15 6191:7 6237:18 6426:21,22 concepts ^[3] 6078:8 6109: 10 6182:15 conceptual ^[1] 6255:18 conceptually ^[1] 6115:11 concern ^[3] 6370:18 6378: 12 6393:15 concerning ^[5] 6190:12 6230:23 6233:15 6248:16 6439:10 concerns ^[9] 6080:5 6123: 5 6167:14 6237:23 6306: 20 6359:15 6365:4 6375: 17 6395:6 concluded ^[1] 6406:9 conclusion ^[7] 6237:21 6242:8 6257:17,21 6259:1 6411:18 6448:19 conclusions ^[2] 6265:6 6359:13 conclusory ^[1] 6418:19 concrete ^[2] 6382:22 6425: 25 condition ^[1] 6267:20 conditions ^[4] 6109:13 6251:3 6267:5,17 conduct ^[3] 6256:24 6445: 8 6452:25 conducted ^[2] 6202:20 6445:10 confess ^[2] 6083:2 6299: 20 confidence ^[6] 6184:13,16 6197:4 6303:22 6305:1 6405:4 confidential ^[9] 6106:16 6128:17 6168:20 6206:19 6308:9 6383:17 6420:18 6454:19 6455:12 confidently ^[1] 6300:6 confirm ^[1] 6075:13 confirmed ^[4] 6396:21 6400:25 6407:17 6428:20 confirms ^[1] 6400:1 conflate ^[1] 6109:11 Congress ^[11] 6062:2,16 6064:18 6241:12 6366:5, 14,21,24 6367:4 6372:10 6409:23 Congress's ^[1] 6367:19 congressional ^[1] 6244: 14 conjecturing ^[1] 6418:19 connected ^[1] 6240:20 conscious ^[1] 6364:11 consensus ^[6] 6097:2,2,3,</p>	<p>11,14,15 consent ^[1] 6395:21 consequential ^[1] 6240: 10 conservative ^[4] 6257:15 6282:15 6298:2 6379:13 conservatively ^[3] 6363:4 6375:15 6376:1 consider ^[8] 6163:9 6187: 5 6241:17 6305:8 6364:18 6369:10 6409:11 6448:15 considerable ^[1] 6109:17 considerably ^[1] 6094:2 consideration ^[7] 6381:3, 14 6382:25 6417:25 6430: 22 6431:13 6440:20 considerations ^[3] 6241:1 6303:13 6405:13 considered ^[4] 6257:11 6258:11 6379:4 6453:17 considering ^[2] 6159:5 6229:22 considers ^[3] 6158:3 6297: 19 6359:8 consistent ^[9] 6072:13 6098:11 6157:5 6229:16 6265:11 6275:25 6289:8 6300:15,25 consistently ^[1] 6235:8 consisting ^[1] 6291:14 consists ^[3] 6364:21 6425: 15 6426:20 consolidated ^[10] 6243:24 6244:21 6437:6,9,17,21 6438:11,23 6439:19 6440: 3 consortium ^[1] 6243:2 conspiracies ^[1] 6396:8 conspiracy ^[1] 6402:25 constituting ^[1] 6438:13 constraint ^[3] 6232:25 6442:7 6443:2 constraints ^[1] 6450:8 construct ^[1] 6255:19 construed ^[1] 6377:17 consume ^[1] 6253:2 consumer ^[11] 6079:23 6249:19 6252:24 6253:11 6259:2,3 6269:20 6272:2 6277:24 6368:19 6371:14 consumers ^[22] 6071:12 6110:12,13 6112:16 6113: 14 6114:1 6116:25 6182:7, 15,16,19 6184:9 6189:25 6249:19 6252:25 6253:23 6254:23 6258:19 6259:25 6260:1,21 6365:24 consumption ^[3] 6252:25 6253:1 6258:19 containing ^[1] 6448:15 contemplated ^[1] 6267:17</p>	<p>contemporary ^[1] 6444:7 content ^[31] 6182:9,21 6183:5 6184:23 6186:22 6187:6,19,23 6188:5 6189: 2 6191:1,12,24 6193:18 6200:10 6204:12,25 6235: 12 6254:16 6257:9 6259:2, 25 6261:12 6269:15 6273: 20,22 6369:9 6370:5 6412: 16,19 6445:21 contention ^[4] 6083:16 6190:11 6258:13 6279:20 contentions ^[3] 6251:3,22, 23 Contested ^[2] 6256:6 6279:15 context ^[9] 6118:22 6167:7, 12 6204:10 6270:8 6307:8 6359:15 6378:15 6381:17 continue ^[4] 6187:2 6263: 20 6407:15,23 Continued ^[4] 6064:1 6065:1 6066:1 6067:1 continues ^[4] 6254:3,4 6260:19 6286:15 contract ^[1] 6381:4 contracting ^[7] 6290:2,14, 16,18 6291:12 6294:1 6360:9 contracts ^[1] 6290:3 contractual ^[3] 6123:23 6125:25 6381:14 contradicted ^[1] 6407:22 contrary ^[1] 6443:23 contrast ^[6] 6190:8 6306:8 6415:20 6431:3,13 6449: 16 contrasts ^[1] 6432:1 contravene ^[1] 6444:23 contributing ^[1] 6164:5 contributions ^[1] 6303:9 control ^[4] 6253:6 6254:8 6371:7 6433:25 controlled ^[2] 6082:20 6257:3 controlling ^[1] 6081:17 convenience ^[1] 6419:8 converged ^[1] 6252:19 convergence ^[1] 6255:12 conversant ^[1] 6083:2 conversation ^[1] 6108:18 conversely ^[1] 6433:13 conversion ^[2] 6084:9,11 convert ^[5] 6082:22 6087:8 6297:22 6298:9 6453:21 converting ^[1] 6298:12 cooperative ^[1] 6289:18 coordination ^[1] 6287:19 copied ^[1] 6448:16 COPIES ^[2] 6062:9 6068: 10</p>	<p>COPYRIGHT ^[6] 6062:1 6243:9 6303:2,10 6367:4 6428:10 copyrights ^[1] 6428:11 Cordes ^[4] 6235:1,7 6424: 13 6442:2 Cordes' ^[1] 6234:13 Cordes's ^[1] 6235:22 core ^[1] 6435:7 correct ^[32] 6074:24 6076: 8 6082:12 6083:4,23 6086: 15 6090:10 6093:15 6096: 22,25 6098:8 6105:9 6113: 22,24 6114:6 6115:16 6127:23 6184:4 6186:2 6197:21,25 6248:24 6273: 16 6274:3 6277:3,9 6285:8 6377:19,20 6413:23 6441: 1 6451:16 correcting ^[1] 6197:21 correctly ^[12] 6074:11 6075:5 6084:1,3 6094:9 6105:16 6107:5 6272:17 6284:25 6285:22 6290:14 6377:3 corresponding ^[1] 6408:2 corroborated ^[1] 6363:8 corroborates ^[1] 6405:2 cost ^[42] 6070:22,25 6071: 10,21 6122:2 6156:13 6183:23,24 6188:24 6189: 21 6190:3,12,15 6191:5 6192:19,23 6194:12 6195: 21,25 6198:23 6236:6 6251:11,20 6255:24 6281: 19,20 6286:1,11 6293:6 6363:3,5 6404:6,25 6405:5, 8,20,22 6409:18,25 6410:1 6411:10,23 costs ^[20] 6251:7,13 6284: 22,24 6285:1,7 6286:6 6287:5 6378:11 6379:4 6393:6 6395:4 6404:9,18 6406:24 6407:9 6410:6,14, 16 6411:8 Cote ^[1] 6402:23 couldn't ^[9] 6118:17 6166: 11 6188:18 6262:1 6272: 22 6292:15 6374:25 6377: 12 6408:24 COUNSEL ^[18] 6069:11 6128:12,14 6168:15 6206: 14,16 6232:4,5 6248:4 6300:2 6308:4,6 6383:14 6420:13,15 6439:23 6454: 14,16 count ^[4] 6104:10 6426:19 6431:12 6451:21 counted ^[1] 6287:8 counter ^[1] 6281:2 counter-messaging ^[1]</p>	<p>6259:18 counterparts ^[1] 6233:5 countervailing ^[1] 6075:2 counting ^[2] 6104:20 6410: 23 counts ^[3] 6432:16 6435:3, 11 couple ^[8] 6119:24 6168:2 6294:2 6394:5 6425:5 6426:6 6447:9 6453:2 course ^[22] 6083:12 6085: 5 6100:15 6110:8 6156:12 6189:18 6193:5 6195:18 6201:16 6229:4,13,19 6240:11,17 6243:10 6253: 7 6284:4 6302:12 6304:1 6373:4 6392:25 6396:19 court ^[3] 6451:5,21 6456: 10 courts ^[2] 6265:12 6304:2 cover ^[7] 6197:9 6248:12 6392:11 6395:10 6409:21, 24 6415:4 coverage ^[5] 6203:23 6393:3 6394:25 6395:7,9 covered ^[6] 6392:22 6425: 13 6426:21 6427:2 6430: 25 6445:20 covering ^[5] 6277:3 6366: 7 6374:16 6392:17,20 covers ^[2] 6411:8 6431:4 Coyote ^[1] 6284:1 CPB ^[13] 6237:16 6241:21 6242:24,24 6244:11,13,14 6425:8 6427:21 6436:2,9, 11,20 CPB's ^[5] 6244:15,20 6436: 9,15,18 CPB/NPR ^[2] 6243:21 6245:11 CPI ^[1] 6070:9 CRAIG ^[1] 6067:6 CRB ^[2] 6300:19 6303:24 create ^[3] 6273:2,21 6377: 6 created ^[3] 6196:1 6235:4 6378:5 creates ^[2] 6159:18 6239: 25 creating ^[3] 6094:16 6159: 4 6377:9 credible ^[2] 6254:23 6259: 21 credibly ^[1] 6407:21 credited ^[2] 6158:16 6159: 4 credits ^[1] 6163:20 criteria ^[1] 6365:20 critical ^[7] 6090:24 6187: 11,13 6188:1,19 6259:14 6417:21</p>
---	--	---	--	---

OPEN SESSIONS

<p>critically ^[2] 6248:18 6449:2</p> <p>criticism ^[9] 6198:18 6258:6 6261:19 6263:22 6271:10 6290:12 6293:6,16 6395:9</p> <p>criticisms ^[4] 6258:5 6289:23 6299:4 6361:1</p> <p>criticize ^[1] 6405:6</p> <p>criticized ^[3] 6292:20,23 6429:7</p> <p>criticizes ^[2] 6293:7,12</p> <p>critique ^[1] 6397:14</p> <p>cross ^[7] 6116:1 6118:17 6194:17 6234:6 6235:22 6236:7 6406:2</p> <p>cross-elasticity ^[3] 6234:3 6239:25 6240:24</p> <p>cross-examination ^[2] 6117:3 6188:10</p> <p>cross-examine ^[1] 6441:19</p> <p>cross-examined ^[1] 6107:7</p> <p>CRR ^[1] 6062:25</p> <p>crucial ^[2] 6187:11,13</p> <p>cry ^[1] 6373:10</p> <p>crystal ^[1] 6397:5</p> <p>CUNNINGHAM ^[1] 6064:16</p> <p>current ^[15] 6186:20,23 6187:1,25 6250:3,5,8 6268:21 6294:15 6363:6 6403:1 6409:16 6411:11,25 6450:4</p> <p>currently ^[4] 6187:4 6270:4 6417:6 6449:9</p> <p>curtain ^[2] 6068:4,5</p> <p>custom ^[24] 6202:23 6363:1 6368:9 6370:2,8,12,13,24 6371:2,12,15 6372:2 6374:11,21 6375:14 6377:10 6395:16,24 6396:25 6397:18 6401:17 6403:16 6408:16 6412:22</p> <p>cut ^[4] 6069:24,25 6128:3 6382:3</p> <p>cutoff ^[1] 6410:25</p> <p>cuts ^[2] 6239:13 6429:1</p> <p>cutting ^[1] 6240:11</p> <hr/> <p>D</p> <p>D.C ^[5] 6062:19 6063:22 6064:8 6230:18 6305:4</p> <p>DAMLE ^[1] 6066:6</p> <p>Dan ^[1] 6302:10</p> <p>dancing ^[3] 6283:19,25 6284:2</p> <p>dark ^[1] 6187:12</p> <p>data ^[29] 6080:6 6098:12 6116:16 6195:7 6196:4,13,</p>	<p>16,18 6234:14 6261:24 6271:1 6282:24,25 6283:7,16 6284:14,17,17,18 6285:15 6294:10 6375:4,9,12,19 6377:2 6416:18 6435:13 6444:3</p> <p>date ^[2] 6396:16 6456:10</p> <p>DAVID ^[4] 6062:13 6063:10 6064:3 6069:13</p> <p>day ^[12] 6068:7,12 6069:2,8 6247:22 6253:7 6285:25 6300:10 6364:3 6380:5 6411:15 6415:2</p> <p>days ^[1] 6441:13</p> <p>De ^[2] 6064:13 6373:6</p> <p>dead ^[1] 6294:24</p> <p>deadline ^[1] 6441:23</p> <p>deal ^[12] 6077:15 6083:18 6105:15 6156:21 6159:18 6164:11 6165:17 6253:2 6255:25 6256:7 6259:11 6269:2</p> <p>dealer ^[1] 6394:22</p> <p>dealing ^[3] 6081:12 6120:22 6296:7</p> <p>deals ^[8] 6162:1,13 6165:19 6379:7 6393:22,25 6394:15 6408:14</p> <p>death ^[1] 6185:16</p> <p>debate ^[1] 6288:5</p> <p>decade ^[1] 6240:17</p> <p>December ^[1] 6240:5</p> <p>decide ^[3] 6201:13 6205:10 6298:18</p> <p>decided ^[3] 6087:3 6193:11 6201:4</p> <p>decidedly ^[1] 6397:22</p> <p>decision ^[8] 6070:13 6080:9 6085:11 6187:17 6200:18 6251:12 6364:12 6453:16</p> <p>decisions ^[7] 6079:17 6198:2 6201:22 6204:7,12 6229:17 6240:16</p> <p>deck ^[3] 6185:11 6280:18 6400:21</p> <p>declaration ^[1] 6439:19</p> <p>decline ^[3] 6185:12,14 6279:13</p> <p>declined ^[1] 6375:2</p> <p>declining ^[1] 6098:14</p> <p>decrease ^[3] 6075:3 6286:4 6381:18</p> <p>decreases ^[1] 6442:16</p> <p>decrees ^[1] 6395:21</p> <p>deemed ^[1] 6164:23</p> <p>deeply ^[2] 6253:2 6290:5</p> <p>defect ^[1] 6264:20</p> <p>defer ^[2] 6299:1,1</p> <p>define ^[2] 6371:4 6412:7</p> <p>defines ^[2] 6372:25 6373:9</p>	<p>defining ^[1] 6438:21</p> <p>definition ^[3] 6092:13 6412:19 6426:22</p> <p>definitions ^[1] 6406:10</p> <p>degradation ^[2] 6186:17 6260:22</p> <p>degrade ^[2] 6125:5,9</p> <p>degree ^[10] 6072:22 6123:25 6233:18 6234:9 6239:25 6255:7 6278:4 6365:22 6367:17 6369:12</p> <p>degrees ^[2] 6277:21 6369:11</p> <p>DEIFE ^[1] 6066:12</p> <p>delegate ^[1] 6238:21</p> <p>deliberately ^[2] 6363:12 6406:15</p> <p>deliver ^[3] 6259:20 6273:22 6300:7</p> <p>delivered ^[1] 6300:6</p> <p>demand ^[18] 6107:8,9,10,13,15 6108:9,10 6112:10,11,14,21,22 6116:4 6117:6,8 6255:3 6409:17 6416:11</p> <p>demanders ^[1] 6234:21</p> <p>demolished ^[1] 6269:11</p> <p>demonstrably ^[4] 6102:7,8 6403:20 6444:18</p> <p>demonstrate ^[1] 6303:16</p> <p>demonstrated ^[4] 6089:7 6251:18 6306:24 6396:15</p> <p>demonstrates ^[1] 6374:9</p> <p>demonstrating ^[3] 6362:23 6373:22 6404:8</p> <p>demonstration ^[1] 6089:10</p> <p>denominator ^[2] 6082:9 6087:17</p> <p>dense ^[1] 6191:6</p> <p>depending ^[2] 6069:6 6296:11</p> <p>depends ^[9] 6069:4 6087:15,16 6233:3 6287:14 6294:19 6366:19 6367:3 6398:19</p> <p>depict ^[1] 6294:18</p> <p>depicted ^[1] 6444:3</p> <p>depreciation ^[1] 6410:15</p> <p>depth ^[1] 6307:7</p> <p>derived ^[15] 6107:9,9,13 6108:8,9 6112:11,12,14 6116:4,11 6117:6,6,8 6366:20 6449:5</p> <p>describe ^[2] 6437:14,15</p> <p>described ^[6] 6079:20 6084:18 6095:2 6361:21 6371:19 6419:21</p> <p>description ^[1] 6419:18</p> <p>design ^[2] 6158:2 6289:9</p> <p>designated ^[2] 6243:11 6282:11</p>	<p>designed ^[3] 6275:4,22 6376:23</p> <p>desired ^[1] 6270:5</p> <p>desires ^[2] 6252:24 6253:11</p> <p>despite ^[2] 6242:9 6370:15</p> <p>Destiny's ^[2] 6274:13,13</p> <p>destruction ^[1] 6408:21</p> <p>detached ^[1] 6304:15</p> <p>detail ^[16] 6162:2,10 6194:15 6249:10 6251:19 6252:12 6261:15 6273:6 6295:10,11 6297:10 6299:6 6376:16 6380:2 6404:7 6405:25</p> <p>detailed ^[2] 6419:18 6453:18</p> <p>details ^[1] 6238:20</p> <p>detect ^[2] 6186:6 6189:2</p> <p>DETERMINATION ^[7] 6062:6 6068:8 6264:13 6289:20 6374:24 6375:2,18</p> <p>determinations ^[3] 6288:15 6364:2 6429:14</p> <p>determine ^[12] 6068:15 6112:1 6183:17 6186:14 6191:11 6196:8 6248:20 6249:13 6255:20 6256:3 6287:4 6382:23</p> <p>determined ^[2] 6112:3 6379:3</p> <p>determines ^[1] 6183:18</p> <p>determining ^[4] 6198:23 6276:8 6281:3 6304:4</p> <p>devastating ^[2] 6257:25 6258:23</p> <p>developed ^[7] 6123:10 6238:18 6240:24 6248:15 6249:5 6250:8 6258:15</p> <p>developing ^[1] 6237:24</p> <p>development ^[1] 6452:10</p> <p>DEVI ^[1] 6063:14</p> <p>devised ^[1] 6228:16</p> <p>devoted ^[1] 6258:3</p> <p>Diab ^[1] 6302:9</p> <p>dichotomy ^[2] 6366:3,15</p> <p>dictated ^[1] 6204:12</p> <p>dictates ^[1] 6228:20</p> <p>difference ^[37] 6076:1 6082:18 6090:11 6093:5 6105:15 6106:23 6108:25 6110:5,10,10,16,20 6111:16,21 6116:17 6117:25 6262:16 6263:2,7,10,11 6266:4,6,10 6283:9 6284:20 6285:10 6360:12 6394:17 6396:24 6397:17,21,23 6399:10 6429:19 6438:3,7</p> <p>differences ^[18] 6200:13 6229:3 6282:19 6306:16,</p>	<p>17 6364:8 6367:20 6368:4 6372:4 6374:11 6404:1 6412:22,23 6413:1 6415:8 6416:9 6433:1 6443:20</p> <p>different ^[81] 6083:25 6084:8 6085:12 6088:20 6096:6,7,13 6107:6 6112:20,22 6114:22 6118:22 6119:15,20 6123:3 6125:4 6158:19,19,23 6159:5 6166:15 6167:1 6186:16,17 6187:15 6196:23 6200:1,15,16 6201:14,16 6202:9 6204:1 6205:11 6242:7,11 6243:4,11 6244:10,21 6245:12 6251:15 6253:11 6257:7 6266:13 6267:22 6295:24 6296:12 6307:11 6364:2,2 6365:6,19 6367:23 6368:8,11 6370:5 6371:3,4,14 6374:22 6378:15 6395:23 6400:21 6404:15 6405:11 6416:2,11 6417:4 6418:23 6424:14 6427:20 6428:14,21 6431:19,21 6433:14 6434:3 6447:17 6448:2,3</p> <p>differential ^[1] 6202:21</p> <p>differentiate ^[1] 6442:4</p> <p>differentiated ^[8] 6363:24 6364:19 6365:6 6367:22 6368:7 6404:2 6405:1 6442:15</p> <p>differentiating ^[1] 6412:15</p> <p>differentiation ^[1] 6368:11</p> <p>differently ^[2] 6188:6 6366:25</p> <p>differs ^[1] 6373:22</p> <p>difficult ^[2] 6183:3 6450:5</p> <p>digit ^[2] 6232:22 6369:3</p> <p>DIGITAL ^[8] 6062:7 6068:9 6100:17 6119:20,22,22 6366:8,11</p> <p>diminution ^[1] 6183:21</p> <p>direct ^[37] 6072:1 6093:17 6094:12 6095:5 6097:18 6104:24 6106:10,11,23 6113:11 6117:25 6118:13 6119:14 6156:25 6199:22,25 6205:12,20 6243:12 6247:24 6268:16,24 6288:7 6393:6,8,20,22,25 6394:15,18 6395:4 6408:14 6427:5 6441:6,8,10 6446:19</p> <p>direction ^[4] 6295:4 6417:13 6437:4 6450:13</p> <p>Directionally ^[3] 6070:19 6077:6 6244:17</p> <p>directly ^[5] 6069:5 6073:9</p>
---	--	--	--	--

OPEN SESSIONS

<p>6371:9 6393:4 6426:18 disaffection [1] 6113:18 disagree [4] 6083:24 6087:20 6115:18 6238:16 disagreement [1] 6305:23 disagreements [1] 6281:15 disavows [1] 6231:4 discerning [1] 6426:2 disclaimed [1] 6378:22 discount [27] 6089:25 6090:5 6091:7,13,22 6092:11,19,23 6093:5 6095:18 6096:19,21 6105:5 6125:20 6126:3 6228:24 6230:6,10,20,23,25 6233:10 6234:3 6235:15 6236:4,19 6419:8 discounts [1] 6236:14 discovery [4] 6237:21 6419:17 6437:14 6441:10 discredit [1] 6234:15 discredited [1] 6406:7 discrete [1] 6240:7 discretion [1] 6238:20 discriminate [1] 6121:3 discrimination [2] 6092:11,13 discuss [6] 6249:10 6295:11 6301:2 6307:7 6380:2 6417:1 discussed [11] 6106:21 6108:3 6264:12 6360:14 6379:17 6398:2 6400:18 6404:6 6405:25 6407:7 6441:3 discussing [2] 6244:25 6249:11 discussion [3] 6290:22 6291:7 6295:13 discussions [1] 6285:2 dismiss [2] 6187:14 6438:18 dismissed [1] 6240:15 disparately [1] 6445:2 disparity [3] 6399:6 6447:18 6449:9 displayed [2] 6419:4 6420:1 disposal [1] 6284:12 dispose [1] 6126:18 disprove [1] 6380:17 dispute [16] 6078:18 6081:18 6084:10,12 6089:19 6090:25 6196:3 6197:8 6254:23 6258:22 6259:9 6275:19 6276:23 6286:15 6305:16 6375:19 disputed [2] 6198:4 6277:18 disputes [2] 6285:20 6286:</p>	<p>3 disregarding [2] 6267:3 6377:7 dissatisfied [4] 6183:8,11 6275:5 6278:17 dissimilar [1] 6396:1 distinct [2] 6302:3 6370:11 distinction [1] 6166:7 distinctions [1] 6367:3 distinguish [6] 6106:12 6202:14 6234:2 6235:18 6277:4 6365:19 distinguished [1] 6271:4 distinguishes [1] 6111:9 distinguishing [1] 6407:25 distort [1] 6304:7 distract [1] 6406:5 distraction [1] 6292:2 distributes [1] 6411:12 distributing [1] 6410:12 diversion [29] 6189:12,24 6190:14,19,21,23 6191:2,21 6192:17 6278:16 6281:16 6362:24 6368:13,18 6369:2,21,22 6370:1,2,6 6417:8 6418:21 6442:17 6443:17,22,25 6444:10 6445:5,6 divert [12] 6189:19 6192:14 6193:14,23 6194:2 6195:5,11 6276:16 6278:3 6368:21 6417:10 6450:11 diverted [16] 6192:20 6194:9 6256:9,14 6276:8,9,11 6277:14 6279:23 6280:1,5,13 6281:7,17 6293:5 6294:7 diverts [1] 6194:8 divide [2] 6087:18 6286:8 divided [2] 6111:5 6161:1 divides [1] 6287:16 dividing [1] 6104:6 divorced [1] 6118:3 divorces [1] 6166:9 DJs [1] 6200:9 DNA [1] 6165:22 Docket [2] 6062:6 6068:8 document [10] 6362:12,17 6398:8 6414:14,18 6419:16,22 6425:18 6445:22 6453:22 documented [2] 6282:10 6289:24 documents [13] 6096:3 6118:8 6269:14,18 6270:6 6271:11,12 6272:9 6381:16 6437:15,19 6441:9 6445:21 doe [1] 6093:5 dog [1] 6204:2</p>	<p>doing [13] 6075:10 6081:12 6091:9 6092:20 6107:17 6111:7 6114:9 6162:22 6205:1 6293:11 6303:7 6396:10 6441:2 DOJ [2] 6369:15,24 dollars [3] 6070:10 6407:24 6416:4 dominant [2] 6081:18,24 dominates [1] 6120:6 donated [1] 6236:16 donations [2] 6436:5,7 done [7] 6082:11 6231:13 6234:6 6236:13 6409:3 6443:7 6448:1 doomed [1] 6373:16 double [5] 6104:19 6237:6,6 6409:16 6411:16 doubled [2] 6411:10 6431:12 doubly [1] 6396:21 doubt [6] 6073:4,8 6075:12 6086:15 6243:15 6305:18 down [18] 6068:7 6095:21 6096:15 6099:7 6121:5 6165:12 6232:13 6244:16 6247:6 6251:16 6269:3 6284:4 6299:9 6360:1,4 6361:7 6442:6 6451:9 downplay [1] 6401:13 downstream [22] 6071:5 6107:10,16 6108:10,12 6112:12,15,17,21 6113:8 6115:6 6116:3,19 6117:7,15 6118:3,7 6121:14,22 6122:9,14 6240:1 downturn [1] 6271:9 downward [4] 6074:17 6077:2 6436:25 6437:1 drawn [1] 6257:18 dressed [1] 6077:15 drinking [1] 6299:13 drive [6] 6072:15 6102:21 6187:20 6373:7 6404:2 6442:6 driven [4] 6101:4 6204:7 6394:10 6441:4 drop [2] 6416:6 6447:13 drops [1] 6280:20 due [5] 6306:15 6362:4 6369:7 6393:6 6441:13 DUKANOVIC [1] 6066:7 during [12] 6104:13 6235:21 6239:21 6251:24 6256:12 6262:3 6300:7 6399:6 6400:18 6436:12 6439:24 6452:8 dwarfed [1] 6378:4 dwell [1] 6190:16 dynamic [4] 6164:14 6165:8,14,16</p>	<p>E e-mail [1] 6259:17 each [47] 6093:10 6097:8,9,23 6157:21 6159:6 6160:5 6161:5,8,9,10,16,16,23 6162:20 6163:13,24 6185:6,7 6193:22 6198:8,19 6238:10,16 6242:20 6249:16 6252:6 6253:10,24 6256:18 6269:12 6276:1 6287:12,14,18,20 6293:13 6302:21 6368:18 6379:13 6380:4 6381:13 6402:16 6407:24 6433:12 6434:1 6444:4 earlier [7] 6105:7 6118:22 6288:13 6406:21 6431:22 6440:24 6447:21 early [1] 6430:20 earn [5] 6121:21 6122:8,14 6416:3,5 earned [2] 6256:13 6281:17 ears [1] 6259:17 East [1] 6415:1 easy [3] 6126:9 6191:7 6398:6 eats [1] 6286:6 economic [17] 6166:9 6188:8 6228:20 6234:13,17 6241:1 6243:19 6244:11 6249:11 6271:9 6304:5 6374:10 6376:21 6379:6 6381:13 6408:4 6412:21 economically [2] 6395:25 6442:5 economics [2] 6102:21 6240:9 economists [5] 6108:22 6120:10 6159:25 6304:6,9 ecosystem [3] 6100:18 6119:20,22 effect [16] 6104:20 6183:4 6184:22 6186:15 6189:6 6194:3 6195:16 6202:22 6203:5 6257:14 6262:12,16 6267:23 6279:7 6405:16 6450:4 effective [44] 6072:11,16 6073:12,22 6074:3 6075:20 6080:10,24 6081:14 6082:14,21,22 6083:18,19,20,20 6084:10 6091:4,9,12,16,19,23,25 6092:21 6096:19 6108:17 6123:19 6126:6,9 6157:5 6167:13 6230:23 6259:22 6282:5 6293:18 6297:14,18 6306:21 6375:13 6379:14,18 6381:19 6398:3</p>	<p>effectively [8] 6082:23 6163:18 6188:18 6249:15 6252:2 6255:22 6281:4 6374:7 effects [2] 6294:16 6303:8 effort [6] 6236:18 6252:20 6382:6 6403:7 6408:19 6453:21 efforts [4] 6258:10 6259:22 6282:9 6370:16 either [8] 6068:22 6069:3,5 6088:19 6101:20 6117:1 6297:3 6419:19 either/or [1] 6239:7 elasticity [1] 6234:21 elect [1] 6238:15 elements [1] 6438:21 eligible [1] 6366:12 eliminate [1] 6359:15 eliminating [1] 6167:9 ELIZABETH [1] 6067:6 embedded [1] 6103:15 emblematic [1] 6394:9 embodied [1] 6367:4 embraced [2] 6268:7 6394:10 emerge [2] 6249:14 6281:3 emerging [1] 6301:3 EMF [4] 6236:1,5 6447:12,14 EMF's [1] 6447:12 EMILY [1] 6063:18 emperics [1] 6240:9 emphasize [1] 6231:14 emphasized [1] 6271:1 emphasizing [1] 6253:22 empirical [7] 6184:22 6188:7 6202:16,21 6236:8 6281:10 6438:6 employed [2] 6304:3,20 enables [2] 6425:22 6432:5 encapsulated [1] 6291:1 encompass [1] 6453:17 end [20] 6067:11 6075:18 6077:13 6184:13 6231:7 6247:22 6278:9 6285:25 6296:17,20,25 6299:5 6361:19,20 6371:20,22 6372:1 6379:13 6394:11 6411:15 endeavor [1] 6451:22 endemic [1] 6378:25 ending [1] 6070:3 endorse [1] 6377:13 endorsed [3] 6228:17 6237:9 6238:24 ends [1] 6256:5 engage [1] 6245:5 engaged [4] 6114:16 6302:13 6366:11 6393:19</p>
--	---	--	---	--

OPEN SESSIONS

<p>ENGLUND ^[1] 6063:12 enormous ^[2] 6360:1 6377:1 enough ^[7] 6183:8 6186:10 6242:11 6266:23 6278:17 6392:11 6399:14 ensure ^[2] 6407:9 6426:25 enter ^[2] 6158:4 6378:19 entered ^[4] 6400:24 6402:21,23 6430:25 entering ^[2] 6158:20 6393:12 enterprise ^[2] 6157:23 6161:19 enters ^[2] 6158:15 6159:2 entertaining ^[1] 6305:13 Entertainment ^[2] 6063:8 6069:15 entire ^[10] 6097:8 6240:6 6261:7 6265:15 6278:20 6367:2 6401:19 6431:7 6436:15 6440:21 entirely ^[5] 6098:11 6276:3 6294:19 6302:15 6410:8 entirety ^[1] 6267:4 entities ^[10] 6164:2 6378:11 6411:3 6416:6 6424:15 6427:25 6428:3 6430:11 6442:4,5 entitled ^[1] 6201:16 entity ^[3] 6160:20 6236:5 6436:11 entrenched ^[1] 6404:14 environment ^[3] 6281:13 6283:22 6379:1 EPHEMERAL ^[3] 6062:9 6068:10 6418:11 equal ^[5] 6080:14 6159:17 6161:5,9 6419:13 equally ^[4] 6280:14 6283:15 6287:17 6291:25 equation ^[17] 6085:5,11,14,18,22 6086:2 6089:21 6091:2,6 6095:24 6098:25 6099:2,14 6103:23,25 6122:6 6236:12 equations ^[1] 6162:5 equilibrium ^[4] 6127:11 6287:22 6293:17,19 equipment ^[1] 6410:15 equity ^[1] 6442:11 equivalency ^[29] 6078:8,12,18 6079:1,13 6084:20,24 6086:22 6087:22 6089:20 6090:9 6101:13 6103:23,25 6105:8,13,16 6109:8,10,13,20,25 6110:3,9,22 6113:17 6117:24 6403:11,22 error ^[4] 6096:18 6262:7 6275:1 6406:12</p>	<p>errors ^[1] 6407:1 escaping ^[1] 6267:21 especially ^[2] 6073:5 6381:15 ESQ ^[35] 6063:10,11,12,13,14,15,16,17,18 6064:3,4,11,16,21 6065:3,4,5,6,7,8,9,10 6066:3,4,5,6,7,8,9,10,11,12 6067:4,5,6 essence ^[1] 6113:21 essential ^[1] 6301:9 essentially ^[10] 6079:24 6081:1 6103:22 6109:25 6111:1 6123:14 6237:3 6285:13 6365:9 6382:13 ESSER ^[1] 6066:10 EST ^[3] 6062:21 6068:2 6247:2 establish ^[4] 6380:24 6446:19 6452:13,15 established ^[3] 6099:16 6109:12 6366:5 establishes ^[1] 6267:15 establishing ^[5] 6303:3 6306:9,14 6399:22 6447:25 estimate ^[2] 6275:18 6279:22 estimated ^[1] 6435:16 estimating ^[1] 6268:10 et ^[2] 6442:12 6452:4 evade ^[1] 6365:25 evaluate ^[1] 6234:7 evaluating ^[3] 6117:9,9 6242:15 even ^[85] 6070:3,16 6073:13 6076:5 6084:6 6091:21 6092:20 6093:5 6100:21 6104:15 6109:4 6113:11 6124:23,25 6125:14 6126:22 6157:24 6159:13 6163:1 6164:8,11 6166:18 6167:21 6185:24 6188:8,18,21 6191:12 6192:3 6195:17,17 6199:4,9,9 6203:17 6232:14 6235:1 6236:15 6239:9 6240:17 6241:17 6245:6 6254:9,17 6257:8,11,17,19 6259:5 6267:14 6270:9 6273:4 6275:10 6280:13,19 6288:23 6298:10,11 6304:12 6306:5 6363:14 6366:6 6372:19 6375:25 6378:14 6380:9 6399:7,12 6404:9 6409:12 6410:3,24 6415:21 6416:4,7 6418:12 6435:12 6436:23 6439:2,4 6445:3 6447:4 6448:16 6450:7,12 evening ^[3] 6376:7 6415:1 6454:1</p>	<p>event ^[13] 6193:3 6197:23 6238:4 6256:22 6275:3 6280:22 6293:20 6430:11 6434:25 6435:10 6439:16 6441:2,21 events ^[1] 6403:3 eventually ^[1] 6272:4 everybody ^[4] 6082:23 6116:23 6165:12 6439:22 Everyone ^[7] 6092:12 6127:12 6156:20 6242:13 6247:3 6258:24 6269:16 Everything ^[4] 6196:15 6363:17 6373:12 6398:21 evidence ^[145] 6071:2 6074:15 6076:22 6084:5 6100:22 6160:22 6163:6 6188:8 6190:6 6201:2,3,15 6202:17 6230:7,10 6231:1 6233:15 6241:10 6248:15,16,18,19 6249:12 6250:12,23 6251:10 6252:20,23 6254:1 6255:17 6259:21 6261:3,4,8,9 6262:13,25 6263:5,6,9,10,14,15 6264:3 6265:13 6266:12 6267:8,9,11 6269:11 6271:14 6275:4 6277:18 6281:11,21,22 6286:10 6288:14,17,17 6289:7,11 6290:24 6300:9 6361:23,23 6362:3,9,21,23 6363:2,20,21 6365:1 6368:1,14 6369:4,21 6370:6,25 6374:5,7,8,14 6380:8 6381:2,20 6382:5,7,16 6392:15,21 6393:24 6394:16,19 6395:18 6396:9 6398:25 6399:19,21,22,25 6400:7 6401:3,4,7,8 6403:10,10,13,25 6404:1,15 6405:15 6407:14,22 6409:6,8,10 6411:22,23 6412:13 6417:8,9,12,16 6427:5 6432:5 6436:13,22 6438:6 6439:16 6441:3,5,17 6443:24 6444:3 6445:1,3,5 6449:5 6450:10,12,15,19 evidenced ^[1] 6112:22 evidencing ^[1] 6392:16 evidentiary ^[9] 6095:10 6237:25 6249:4 6265:10 6362:13 6403:25 6411:20,21 6449:7 exact ^[5] 6305:9 6365:13 6374:17 6392:18 6407:17 exactly ^[19] 6077:7 6084:16 6086:6 6088:14 6089:3,10 6122:10 6162:11 6165:2 6167:5 6254:12 6273:17 6292:5 6304:8 6370:25</p>	<p>6382:17 6394:2 6418:22 6452:24 examination ^[2] 6107:6 6439:24 example ^[17] 6084:21 6088:15 6090:8 6097:5 6124:20 6192:13 6194:1 6200:9 6259:6 6277:21 6369:25 6398:12 6409:5 6410:13 6428:6 6442:7,9 examples ^[3] 6236:17 6258:16 6292:6 exceed ^[1] 6230:12 except ^[4] 6087:23 6110:7,20 6447:1 exception ^[1] 6245:14 excerpted ^[1] 6270:7 excerpts ^[1] 6200:18 excess ^[2] 6230:3 6411:12 exchange ^[2] 6162:20,25 excluded ^[2] 6184:2 6406:15 excluding ^[4] 6398:10,15,18 6405:16 exclusively ^[1] 6444:22 excuse ^[8] 6083:19 6201:2 6254:3 6270:23 6277:1 6283:10 6285:11 6401:7 executive ^[1] 6285:3 executives ^[1] 6203:16 exercise ^[3] 6078:4 6288:3 6405:15 exerted ^[1] 6402:15 exerts ^[1] 6436:25 Exhibit ^[5] 6419:22 6425:25 6426:7 6448:12 6453:9 exhibits ^[1] 6445:14 exist ^[4] 6122:4 6163:1 6286:16 6394:15 existed ^[1] 6070:14 existence ^[6] 6304:22 6381:9 6399:25 6409:13 6437:8 6453:16 existing ^[9] 6185:15 6187:12 6188:6,10,13,16 6276:19,20 6378:9 exists ^[4] 6074:1 6305:16 6365:14 6449:9 expect ^[5] 6252:14 6258:20 6282:4 6381:6 6409:4 expectation ^[2] 6127:11 6263:19 expectations ^[2] 6189:4 6434:16 expected ^[2] 6424:21 6438:17 expediency ^[1] 6373:13 expense ^[2] 6232:16 6410:10 expenses ^[2] 6409:22 6410:11</p>	<p>expensive ^[1] 6450:5 experience ^[8] 6186:16 6254:8,10 6260:21,24 6263:16 6289:4 6446:24 experienced ^[3] 6121:23 6267:20 6273:17 experiment ^[10] 6184:18,19,20 6186:7,13 6189:8 6257:3 6262:2 6263:9 6268:4 experimental ^[2] 6248:19 6265:13 experiments ^[18] 6256:25 6257:2,6,18,25 6261:20 6262:5 6263:15,16 6264:4,25 6266:21 6267:3,11 6268:20 6287:24 6289:2,8 expert ^[20] 6079:19 6182:23 6187:10 6190:24 6237:22 6249:11 6289:25 6375:5 6377:12 6379:19 6381:12 6382:9,18 6404:20 6406:1,6,15 6409:4 6439:1 6452:7 experts ^[14] 6182:10 6231:2 6258:2 6259:13,24 6301:11,17 6305:24 6363:11 6364:4,23 6452:17,19 6453:4 explain ^[9] 6191:8 6237:18 6259:14 6297:24 6298:1 6304:15 6371:1 6400:23 6408:14 explainable ^[2] 6397:23 6399:11 explained ^[38] 6085:25 6093:19 6123:2 6157:11,20 6160:4 6161:13 6162:8,11 6186:3 6196:7 6261:23 6266:22 6269:24 6270:1 6273:18 6278:8 6279:9 6280:16 6281:9,10 6287:9 6289:16 6290:1 6291:19 6292:25 6293:11 6294:21 6303:15 6304:10 6306:8 6359:18 6372:6 6380:20 6397:1,21 6403:18 6407:16 explaining ^[2] 6194:14 6204:10 explains ^[2] 6236:3 6425:16 explanation ^[4] 6160:5 6194:15 6397:4 6411:11 explanations ^[2] 6285:6,14 explicitly ^[2] 6082:24 6397:17 explore ^[1] 6305:6 express ^[1] 6241:7 expressed ^[2] 6296:10</p>
---	---	---	--	---

OPEN SESSIONS

<p>6369:12 expresses [1] 6296:15 expressing [2] 6080:2 6424:17 extend [3] 6228:24 6233: 10 6236:20 extended [1] 6243:22 extending [2] 6235:15,19 extent [7] 6167:4 6202:3 6256:21 6284:10 6291:6 6426:14 6439:5 externalities [8] 6290:2,14, 16,18 6291:13,20 6294:1 6360:10 extract [1] 6402:25 extrapolated [1] 6271:17 extrapolating [1] 6185:25 extreme [3] 6164:4 6280: 15,17 extremely [2] 6121:15 6362:24 eyes [1] 6396:1</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>face [8] 6298:3 6373:5 6374:21 6382:19 6394:15 6396:20 6399:19 6404:24 Facebook [2] 6259:20 6373:4 FACILITATE [2] 6062:9 6068:11 fact [66] 6068:15 6071:12 6075:12 6082:2,3,18 6086: 1 6087:14,21 6088:6 6090: 16 6096:13 6097:2,15 6099:16 6102:12 6103:5, 10 6113:12 6117:4,12 6119:10 6121:18,19 6127: 11 6162:4 6188:9 6190:23 6195:15 6198:7 6229:16 6231:3 6233:12 6262:10 6263:4 6267:21 6280:5,8 6283:13 6284:13 6285:7 6304:20 6359:7,12 6362: 16,19 6363:11 6365:15 6368:17 6373:9 6379:2 6394:14 6397:1 6399:24 6406:17 6411:11 6412:8 6428:15,25 6429:6 6430:6, 11 6443:7 6444:19 6448: 12 6453:4 factor [2] 6195:17 6436:24 factors [4] 6077:5 6242:18 6418:1 6438:14 facts [8] 6084:4,17 6126:17 6201:9 6242:6,10 6261:22 6448:8 factual [3] 6081:21,23 6084:8 factually [2] 6102:23 6276: 1</p>	<p>fail [3] 6185:5 6365:2 6397: 16 failed [13] 6242:1 6245:4 6251:4 6252:17 6256:22 6257:12 6258:7 6259:11 6301:10,15 6360:25 6361: 22 6452:25 fails [6] 6234:2 6252:20 6290:1 6380:5 6397:14 6403:22 failure [8] 6164:11 6165:25 6269:2 6290:13 6380:9,11 6407:2 6438:8 fair [6] 6157:21 6183:8 6185:1 6297:8 6361:24 6440:25 fairly [3] 6095:9 6240:18 6242:16 fairness [2] 6237:23 6285: 4 FALK [1] 6065:7 fall [6] 6119:11 6253:5 6263:12 6292:21 6395:1 6404:19 falls [3] 6379:12,15 6400:1 false [2] 6399:13 6403:20 falsehoods [1] 6396:8 familiar [6] 6200:3 6229:19 6285:3 6392:25 6400:11 6446:16 family [7] 6093:11 6097:4 6231:2,5,8 6240:16 6432: 13 famously [1] 6364:5 FAPR [1] 6062:25 far [16] 6091:18 6126:6 6254:10 6277:23 6279:10, 13 6281:5 6301:17 6363:5, 5 6377:4 6404:21 6417:17 6418:16 6450:19 6453:6 fare [1] 6280:13 fast [1] 6199:18 fatal [3] 6301:14 6380:12 6406:5 fatally-flawed [1] 6406:23 fate [1] 6382:11 faults [1] 6164:1 favor [2] 6392:15 6429:1 favorable [2] 6282:14,18 favorite [3] 6183:1 6191:16 6194:23 features [4] 6255:6,9 6369: 8 6371:3 FEDER [57] 6062:12 6068: 6 6069:12 6077:18 6128:2 6156:2,7 6168:4,6 6182:4 6205:21,25 6206:3 6228:4 6229:6 6245:20,25 6247:3, 11,15,18 6248:1 6273:25 6274:11,14,17,23 6299:7, 11,15,22,25 6307:19 6359:</p>	<p>2 6361:6,13,20 6383:5 6392:4 6413:5,10,18,19,21 6414:5,10,13 6420:4 6424: 4 6447:7 6450:22 6451:2,8, 12,23 6453:25 6454:5 federal [2] 6244:12 6403:1 Federation [3] 6063:3,5 6069:14 fee [47] 6070:10 6228:12,21 6229:4,12 6230:2,5,9 6237: 4,6,7 6238:9 6245:15 6409: 17,20,21,24 6410:4 6411:2, 5,7,16,19 6419:3,6,7,12,13 6425:1,21 6426:18 6430:1, 2,5,9 6431:11,15,23,25 6432:2,15 6435:7 6438:14, 22 6447:18 6448:18 6449: 9 feed [6] 6128:4 6156:3,5 6182:3 6392:3 6424:2 fees [7] 6079:23 6231:11 6411:13 6412:12 6419:8 6431:9 6434:21 fellow [1] 6297:7 felt [1] 6090:6 few [12] 6071:8 6122:21 6186:5 6190:10 6204:16 6205:3 6260:2 6282:19 6295:9 6297:9 6441:12 6452:5 fewer [2] 6088:24 6447:16 field [3] 6261:24 6406:13 6409:2 Fifth [3] 6065:12 6188:20 6260:11 Fighting [3] 6367:1 6378: 10,12 figure [8] 6097:6 6103:12 6107:12,20 6190:13 6193: 4 6268:22 6410:9 figures [2] 6093:16,23 figuring [1] 6084:20 filed [1] 6197:5 filing [2] 6095:4 6198:1 filings [6] 6285:23 6292:7 6297:24 6299:2 6365:7 6401:1 filled [2] 6202:19 6411:21 fills [1] 6403:25 final [3] 6068:12 6372:17 6403:9 finally [4] 6235:7 6244:18 6425:24 6434:6 financial [6] 6195:21 6196: 4 6282:22,24 6284:21 6285:4 financing [1] 6442:12 find [9] 6082:8 6114:14 6183:20 6184:9 6190:21 6193:19 6194:15 6272:21 6377:12</p>	<p>finding [2] 6120:17 6259: 22 findings [58] 6086:1 6088: 6 6102:12 6109:17 6117:4, 12 6119:10 6121:18,19 6162:3 6183:3 6184:1 6195:14 6197:10 6198:7 6204:9 6231:4 6241:4 6249:24 6252:13 6258:4 6261:16 6276:6,6 6279:18 6286:14,14,22 6291:2,2 6295:12 6296:13 6297:11 6359:12,20 6360:15,16,23, 24 6373:18 6380:3,4 6397: 3 6403:13 6404:7 6406:2 6407:8 6432:24 6436:20 6441:23 6444:12,19,20,21 6445:20 6446:13 6447:1 6453:6 finds [1] 6183:13 fine [3] 6085:18 6262:22 6299:16 finger [1] 6363:25 fingertips [1] 6286:23 finishes [1] 6069:4 first [53] 6068:16 6070:22 6074:5 6078:17,25 6081:6 6098:18 6099:11,21 6120: 1 6124:18 6157:3 6164:18 6182:23 6184:6 6196:5 6237:21 6238:8 6239:12 6241:23 6245:6 6248:6,13 6251:6,24 6258:16 6261: 22 6282:20 6285:18 6292: 2,23 6294:14 6296:7 6300: 17 6302:11 6360:5 6374: 14 6378:6 6392:14 6402:6, 10 6405:11 6419:1 6424: 12 6427:19 6429:22 6430: 24 6434:16 6435:5 6436: 19 6437:13 6441:10 6453: 5 firsthand [1] 6393:17 Fish [1] 6235:25 fit [2] 6069:1 6287:10 five [9] 6091:14,15 6193:15 6253:14 6257:6 6266:9 6267:22 6383:4 6420:2 fixed [2] 6284:24 6360:20 fixing [1] 6184:19 flag [1] 6400:21 flagship [1] 6125:8 flat [8] 6292:11,22 6364:9 6400:1 6430:1,2,5 6431:25 flat-fee [2] 6426:17,20 flavor [1] 6204:24 flawed [2] 6199:5 6410:23 flaws [6] 6184:19 6249:1 6276:4 6406:5 6407:8 6434:14 Fletcher [1] 6067:7</p>	<p>flock [1] 6239:22 floor [2] 6064:7,23 flow [1] 6397:15 fluctuates [1] 6253:7 focus [14] 6125:7 6126:12 6230:17 6248:22 6285:22 6302:11 6377:5 6380:6 6396:4 6400:15 6406:25 6433:8,9 6442:15 focuses [1] 6444:8 follow [4] 6202:1 6248:8 6305:11 6418:24 followed [3] 6068:16 6248: 7,8 following [3] 6068:14,21 6300:16 follows [1] 6419:11 foot [1] 6449:20 footnote [3] 6085:14 6098: 3,5 for-profit [2] 6416:10 6442: 4 forced [1] 6436:6 Ford [3] 6408:24 6409:3,10 Ford's [1] 6408:19 foregoing [1] 6456:3 forget [3] 6089:13 6367:19, 22 form [3] 6186:17 6379:25 6408:20 formats [1] 6433:22 former [2] 6269:24 6403:1 forms [8] 6256:9,14 6258: 18 6259:19 6276:11 6280: 6 6293:2 6373:23 formula [1] 6101:13 forth [9] 6123:12 6261:15 6268:22 6286:21 6290:20 6297:10 6375:18 6381:8 6382:21 Fortunately [1] 6070:3 forward [2] 6202:8 6382: 15 found [10] 6078:12 6114: 18,19 6228:19 6233:24,25 6368:18 6379:2 6444:13, 14 four [10] 6091:14,15 6103: 24 6161:7,9 6198:9 6242: 14,18 6248:12 6253:12 fourth [4] 6186:19 6260:5 6301:2 6439:5 Fowler [1] 6302:8 fraction [3] 6203:23 6269: 25 6402:12 frame [1] 6069:25 framework [2] 6229:20 6287:11 Francisco [2] 6064:14 6066:16 frankly [3] 6115:22 6376:</p>
---	--	---	--	---

OPEN SESSIONS

<p>25 6396:5 free [5] 6077:22 6123:17 6297:15,20,22 frequencies [1] 6233:13 frequency [1] 6234:9 frequent [1] 6444:6 fresh [1] 6450:15 friends [1] 6450:2 FTC [2] 6369:15,24 fulcrum [1] 6403:19 fulfilling [1] 6235:10 full [7] 6069:8 6091:24 6092:1 6239:14 6379:21 6380:21 6441:18 full-price [11] 6078:22 6089:23 6090:1,12,18 6091:8,10,21 6092:4 6093: 6 6105:14 fully [9] 6086:18 6233:19 6254:8 6300:9 6305:6 6360:25 6371:21 6374:10 6375:17 fulsome [1] 6453:18 function [5] 6113:25 6114: 1,2 6159:17 6296:6 functionality [30] 6099:5, 10,15,17,23,24 6100:3,6, 16 6101:7,18 6102:13 6107:8,10,13 6110:7,20 6118:2,6,14,19,24,25 6119: 8,14 6253:19 6254:4,22 6255:14 6371:23 fund [2] 6244:14 6410:20 fundamental [6] 6096:17, 23 6367:20 6380:7 6412: 25 6416:9 fundamentally [6] 6086:8 6096:15 6119:5 6245:11 6301:18 6365:16 funding [6] 6244:12 6425: 7,11 6435:21,23 6436:1 funds [2] 6243:1 6303:18 funnel [2] 6125:10 6253:18 further [22] 6069:8 6077:25 6099:13 6101:8 6183:16 6184:25 6192:5 6197:7 6236:19 6267:8,12 6289:7 6299:6 6368:7,11,13 6400: 19 6404:25 6411:15 6413: 7 6444:9 6450:24 future [13] 6186:20,25 6187:5 6196:9,21,23 6197: 8 6282:22 6284:3,5,11 6368:7</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gains [2] 6287:15,16 game [3] 6289:18 6305:9 6453:7 gap [2] 6253:20 6403:25 gaps [1] 6411:21</p>	<p>GASS [1] 6066:4 gave [1] 6122:15 geared [1] 6239:22 general [7] 6201:3 6249:18 6373:16 6404:23 6409:6 6432:21 6435:15 generally [9] 6112:10 6115: 20 6118:25 6259:25 6265: 12 6280:8 6298:21 6367:3 6435:1 generate [6] 6260:20 6266: 23 6276:21 6286:6 6295:8 6304:12 generated [7] 6254:9 6293: 5,11 6301:17,19 6368:18 6405:5 generates [3] 6204:19 6291:23 6293:1 genre [2] 6444:4,7 genres [7] 6433:4,8,14 6434:2,3,8 6453:3 gets [12] 6107:19 6158:21 6160:14,25 6161:5,5,9,10, 11,21 6261:22 6399:7 getting [8] 6095:8 6108:6 6113:14 6114:21 6118:6 6244:5 6298:17 6364:25 give [9] 6116:7 6157:25 6197:4 6205:2 6236:4 6269:9 6297:7 6412:3 6413:24 given [25] 6080:12 6082:18 6116:7 6117:5 6192:3 6197:5 6201:4 6228:22 6233:23 6235:13 6241:19 6253:7 6266:7 6272:2 6277:23 6287:20 6293:16 6304:17 6427:3,3 6430:4 6436:24 6438:8 6440:15 6451:19 gives [6] 6104:8 6191:21 6204:23 6244:13 6360:1 6442:25 giving [3] 6157:21 6234:25 6412:1 glaringly [1] 6289:25 glass [1] 6299:14 glean [1] 6375:23 global [1] 6408:7 GMR [4] 6398:10,15,18,19 goal [1] 6446:18 Goldilocks [1] 6395:1 Google [14] 6064:2 6068: 17 6120:12,13 6122:4,7,15 6300:2 6301:25 6302:2,7,9 6305:23 6416:3 Google's [7] 6121:18,19 6300:4,10,11 6301:2,22 gorilla [1] 6401:20 gosh [2] 6093:1 6124:15 got [10] 6070:17 6100:2</p>	<p>6118:19 6187:3 6198:7 6202:6 6242:24 6243:7 6244:12 6415:3 Gotshal [4] 6065:11 6247: 6 6299:9 6361:7 gotten [2] 6099:22 6400:4 governing [1] 6083:7 government [4] 6243:1 6425:8 6435:21 6436:13 government's [2] 6187:17 6436:9 grant [1] 6428:15 granted [1] 6428:14 granting [1] 6428:3 granular [1] 6285:15 graph [2] 6231:12 6240:21 grapple [1] 6361:22 grasp [1] 6086:18 grasping [2] 6267:1 6399: 15 gray [1] 6371:22 grayed [1] 6124:6 grayed-out [1] 6118:9 great [4] 6105:15 6156:21 6253:2 6453:10 greater [10] 6072:3 6118: 25 6121:22 6127:15 6233: 6 6249:10 6285:15 6433:3 6443:25 6444:9 greatest [1] 6366:18 greatly [1] 6126:11 green [1] 6453:11 gross [1] 6093:21 ground [3] 6084:18 6417: 20 6448:8 grounds [2] 6187:15 6305: 5 Group [8] 6063:7,8 6069: 16,16,18 6238:10 6428:9 6439:15 groups [2] 6262:4 6446:22 growing [4] 6100:19,22 6119:16 6185:18 grown [4] 6073:6,10 6182: 14 6404:13 growth [7] 6250:10,13,18, 20,21 6253:16 6404:17 guaranteed [1] 6280:21 guess [4] 6097:6 6186:1,2 6430:20 guidance [1] 6305:12 Guideline [1] 6369:25 Guidelines [1] 6369:24 guideposts [2] 6303:23 6304:25 Guild [1] 6063:5 gulf [1] 6281:18 gut-checked [1] 6397:25 guys [1] 6393:9</p> <hr/> <p style="text-align: center;">H</p> <hr/>	<p>habit [1] 6188:10 half [5] 6068:25 6161:6 6205:14 6278:10 6400:16 half-hour [1] 6069:2 hallmark [1] 6417:21 hand [5] 6241:22 6278:14 6289:17 6398:4 6453:24 handful [2] 6230:2,15 handle [1] 6445:13 hands [1] 6244:1 handy [1] 6077:20 HANDZO [86] 6063:10 6069:10,12,13 6073:17,19 6074:5 6075:7,12,22 6076: 9,10 6077:20,24 6081:3,4, 5,23 6082:12 6083:1,12 6084:16 6086:14 6087:25 6089:13,16 6094:5,7,19 6095:12 6096:23,25 6097: 13 6098:5,10 6101:10,11, 12 6102:5 6105:25 6106:2 6107:4 6108:16 6113:3,4,5, 23 6114:11 6124:2,4,9,12 6156:9,10 6164:20 6165:1 6166:20 6168:1,5 6182:5,6 6197:16,20,23 6201:2,11 6202:13 6205:23 6206:1 6229:14 6242:3 6251:6 6259:6 6270:7 6283:2 6290:11 6377:5 6378:2 6399:17 6404:10 6406:17 6451:12 6452:1 6453:24 6454:1 6455:3 Handzo's [4] 6376:10,25 6379:17 6401:21 hang [1] 6364:1 hanging [2] 6266:10 6270: 17 HANSON [1] 6066:11 Hanssens [18] 6182:24 6183:7,10,13 6184:4 6185: 2 6189:17,24 6190:20,24 6191:25 6194:20,21 6195: 1,5 6275:17,20 6276:15 Hanssens' [1] 6183:9 happen [11] 6161:13 6164: 7 6166:3,4 6167:5,10 6196: 21 6241:15 6260:12 6276: 3 6436:23 happened [7] 6072:7 6076: 15 6082:21 6283:7 6304:8 6394:2 6436:23 happening [1] 6296:21 happens [9] 6105:9 6166: 16 6182:19 6191:11 6238: 15 6239:2 6257:4 6260:13 6412:21 happenstance [1] 6087: 24 hard [2] 6378:8,9 hard-and-fast [1] 6365:10</p>	<p>Haro [1] 6064:13 Harrison [4] 6235:17 6371: 24 6372:5 6407:17 hat [4] 6266:10 6270:17 6275:8 6364:1 Hauser [3] 6405:24 6406:4, 18 Hauser's [1] 6406:1 He'll [1] 6248:7 head [4] 6075:11 6283:19, 25 6393:4 headline [7] 6082:16,19 6083:5,6 6375:24 6381:5 6400:10 headwinds [1] 6394:16 Heald [1] 6067:7 hear [15] 6106:6 6247:14 6265:22 6271:24 6273:12 6274:1,4,5,7,12,13 6280:7 6394:13 6413:17,19 heard [8] 6182:10 6250:1 6303:2 6406:21 6430:19 6431:21 6447:21 6452:22 HEARING [20] 6062:22 6068:13,13 6094:13 6100: 15 6113:7 6128:16 6186: 15,16 6193:11 6272:18 6274:9 6301:8 6302:7 6375:11 6383:6 6396:15 6403:5 6406:7 6412:14 heart's [1] 6254:16 heavily [4] 6434:22 6435: 17 6444:5,8 heavy [1] 6233:10 heeds [1] 6237:25 held [3] 6373:19 6408:23 6438:2 help [7] 6085:3 6119:19,21 6186:15 6293:6 6407:10 6443:6 helpful [3] 6284:15 6440: 13 6447:10 helps [2] 6370:25 6408:14 Herring [1] 6282:12 hidden [1] 6302:16 high [12] 6099:5 6229:2 6233:18 6234:20 6239:25 6276:12 6296:17,20,25 6377:7 6379:13 6425:16 higher [23] 6070:20 6071: 22,23 6090:17 6105:11 6106:15,16 6122:3 6127:1 6160:19 6164:17 6189:4 6251:17 6255:3 6301:19 6304:12 6359:23 6370:1 6376:13,13 6432:9 6445:2 6449:23 highest [2] 6092:17 6190: 23 highlighted [2] 6199:11 6232:2</p>
---	--	--	---	--

Determination of Rates and Terms (Web V) Docket No. 19-CRB-0005-WR (2021-2025) November 19, 2020
OPEN SESSIONS

<p>highlighting [2] 6165:4 6407:13 highly [6] 6366:22 6372:23 6403:8 6407:15 6444:23 6448:23 Hildreth [1] 6067:7 himself [2] 6244:7 6416:17 historical [9] 6196:4,13,16, 18,25 6197:14 6283:12,15, 16 historically [1] 6304:18 history [3] 6240:16 6243: 18 6440:7 hit [5] 6271:19 6272:3,4,14, 20 hits [4] 6271:2,8,17,20 hockey [1] 6263:24 Hold [1] 6205:25 holdout [6] 6159:7,8,14 6160:17 6167:9,21 holiday [1] 6240:4 holidays [2] 6239:19,21 honestly [1] 6397:4 Honor [30] 6128:5 6156:6, 10 6182:2 6206:6 6229:9 6262:22 6263:13 6264:21 6266:1 6277:10 6291:3 6296:4 6359:6,7 6361:12 6378:7 6382:17 6392:2 6413:15 6414:9 6419:25 6420:6 6424:2,7 6450:25 6451:7,10,18 6454:7 Honor's [1] 6448:21 HONORABLE [3] 6062:12, 13,14 Honors [46] 6128:14 6168: 17 6206:16 6228:7 6239: 19 6245:18 6247:17 6248: 5 6290:22 6295:13 6297: 12 6300:3 6307:15,22 6308:6 6361:16 6367:25 6368:3 6369:10 6372:24 6374:17 6383:2 6392:10, 14 6400:11 6408:24 6409: 12 6410:7,18 6413:3,9 6415:1 6416:22 6417:15 6420:15 6445:19 6446:13, 25 6447:12,18 6448:6 6449:7,25 6450:17 6454:2, 16 Honors' [1] 6450:14 hook [1] 6430:13 hope [4] 6202:1,11 6300:8 6363:22 hopefully [3] 6099:1 6167: 23 6242:15 hoping [1] 6074:6 Horizontal [1] 6369:24 host [9] 6128:3 6156:3 6168:8 6206:5 6307:21 6361:7 6383:5 6420:4</p>	<p>6454:5 hour [4] 6069:3 6234:23 6282:9 6425:16 hours [7] 6068:19,25 6186: 5 6204:4,5 6268:12 6284: 23 however [3] 6120:7 6254:1 6291:18 huge [3] 6088:8 6230:20 6437:9 hundreds [5] 6230:1 6243: 25,25 6258:3 6432:10 HUSENY [2] 6066:5 6398: 1 hymns [1] 6433:23 hypothetical [14] 6165:18 6195:4 6233:2 6241:15 6242:22 6243:6 6274:1 6288:21,22 6363:15 6373: 25 6401:16 6404:3 6438:4 hypothetically [1] 6114:13</p> <hr/> <p>I i.e [1] 6080:15 IBM [1] 6395:11 idea [7] 6166:13 6251:17 6265:19 6368:23 6373:6 6392:20 6402:15 identical [2] 6200:6 6448: 17 identification [1] 6290:17 identified [5] 6290:15 6419:2 6433:12 6438:13, 17 identify [4] 6238:14 6365:8 6437:15 6445:24 identifying [1] 6260:2 ideological [1] 6382:2 idiosyncratic [1] 6382:2 ignore [4] 6267:25 6368:4 6381:22 6392:10 ignored [1] 6374:20 ignores [1] 6393:3 ignoring [1] 6266:17 iHeart [25] 6088:11 6120:6 6184:5 6199:22 6203:17 6204:24 6235:25 6370:8 6374:16 6375:14,19 6376: 24 6380:1,22 6392:10 6394:5,19,24 6398:11,15, 21 6399:1,5,9 6408:11 iHeart's [8] 6371:10,11 6392:12,22,23 6394:15 6395:7 6398:24 iHeart/Indie [2] 6362:3 6375:3 iHeart/Warner [1] 6264:11 iHeartRadio [1] 6235:23 II [16] 6126:16 6200:4 6228: 16,19 6230:18 6233:23 6236:21 6239:15 6241:25</p>	<p>6305:7 6430:19,22,24 6431:6,10 6444:11 III [12] 6079:18,19 6084:21 6126:16 6157:19 6159:20 6200:4 6228:17 6305:4 6428:5,20 6440:10 illustrate [1] 6295:9 illustrative [1] 6236:17 imagine [2] 6115:12 6449: 19 imagined [1] 6267:20 immediately [2] 6186:18 6272:5 immune [1] 6395:8 impact [16] 6099:11,18 6100:23 6182:13 6185:23 6187:11,23 6188:15 6197: 12 6257:10 6260:4 6262:9 6265:6 6266:13 6278:9 6366:17 impacted [1] 6187:5 impediment [1] 6440:4 imperfection [1] 6267:2 implementation [1] 6190: 4 implication [1] 6097:22 implications [3] 6116:14 6185:6 6257:24 implicitly [1] 6109:23 implied [1] 6436:21 implies [1] 6278:23 importance [2] 6269:15 6271:3 important [23] 6073:7 6086:16 6114:6 6125:12 6166:10 6198:2 6203:13 6243:23 6260:11 6270:12, 15,18,19 6271:6,7,15,18 6272:12,25 6282:19 6395: 19 6406:10 6407:13 importantly [3] 6413:1 6438:1 6442:13 impose [1] 6125:25 imposed [1] 6291:13 impression [1] 6296:6 inaccurately [1] 6162:21 inadequate [1] 6394:25 inappropriate [2] 6289:19 6403:8 inappropriately [1] 6441: 25 Inc [3] 6064:2 6065:2 6300: 2 incentive [4] 6124:17 6164: 16 6233:10 6280:23 incentives [3] 6125:4,13 6291:16 incentivizes [1] 6442:10 inch [1] 6263:23 inclined [1] 6278:2 include [10] 6091:13 6093:</p>	<p>9 6095:18 6103:10 6256:6 6262:5,8 6373:2 6433:21 6438:12 included [10] 6401:23 6407:2 6431:11,15 6435:6 6437:20 6438:24 6439:2, 13 6441:11 includes [8] 6091:22,24 6104:11 6410:11,14 6418: 23 6419:7 6439:8 including [23] 6089:25 6090:14 6091:7 6092:12 6105:5 6192:15 6248:18 6276:17 6280:4 6292:24 6293:3 6304:2 6365:21 6373:4 6405:13 6412:23 6418:6 6424:14 6427:1 6432:12 6434:2 6445:17 6450:16 income [1] 6366:19 incompatible [3] 6365:16, 17 6408:12 incomplete [2] 6238:2 6409:13 inconsistency [1] 6235:9 inconsistent [1] 6366:2 incorporates [1] 6424:9 incorrect [4] 6266:22 6276: 1 6278:22 6364:5 incorrectly [2] 6084:2,3 increase [18] 6076:11 6101:19,21,21 6114:17 6115:1 6250:2,4 6286:4 6381:18 6402:22 6404:9 6409:18 6410:4,5,20 6435: 19 6436:14 increased [2] 6073:25 6126:12 increases [6] 6073:11 6101:20,23 6251:2 6425:9 6436:9 increasing [7] 6072:3 6122:13 6125:5 6229:4,12 6245:15 6265:20 incremental [14] 6158:10, 12,16,22 6159:1,9 6160:8, 15 6254:25 6276:21 6287: 14 6409:25 6410:6 6411:8 incurred [1] 6433:21 indeed [8] 6102:24 6200:1 6251:12 6270:20 6279:9 6296:24 6305:20 6372:10 indefensible [1] 6280:3 Independence [1] 6062: 18 Independent [5] 6063:7 6268:15 6269:4 6374:16 6415:13 independently [1] 6375: 19 Index [2] 6067:11 6249:19</p>	<p>indicated [1] 6113:8 indicating [2] 6230:8 6445: 4 indication [3] 6071:13 6236:17 6444:9 indicator [2] 6072:17 6379: 7 indicators [1] 6303:18 Indie [3] 6392:22,23 6418:7 Indies [3] 6076:20 6199:22 6408:12 indirect [1] 6106:22 indirectly [1] 6073:10 indisputably [3] 6252:7 6372:13 6407:22 individual [6] 6089:24 6090:2 6091:21 6243:5 6244:22 6428:24 induce [1] 6204:17 indulgence [2] 6448:21 6451:19 industrial [1] 6293:19 industry [19] 6095:14,17 6097:3,12,20 6196:14 6240:19 6250:18,20,22 6282:3 6283:3 6371:11 6374:6 6378:18 6394:9 6400:7 6402:6 6436:16 inertia [1] 6188:12 inexplicable [1] 6301:18 inexplicably [1] 6396:23 infancy [1] 6240:22 infect [2] 6283:12,15 infected [1] 6407:3 infer [1] 6399:25 inflated [2] 6406:24 6407: 10 influence [4] 6073:9 6205: 9 6286:19 6382:24 inform [9] 6128:12 6164:14 6168:15 6206:14 6269:10 6308:4 6383:14 6420:13 6454:14 information [14] 6069:22 6075:9 6093:14 6096:9,16 6114:23 6157:8 6247:23, 25 6272:2 6282:20 6396: 16 6418:18 6439:9 informative [2] 6242:5 6440:19 informed [4] 6256:1 6258: 7 6285:2 6447:7 informing [1] 6259:3 inherent [2] 6166:8 6364:6 inhibiting [1] 6250:10 initial [1] 6434:19 inject [1] 6403:7 ink [1] 6109:4 innuendo [1] 6400:19 input [3] 6363:2 6407:4 6438:14</p>
--	--	---	--	--

OPEN SESSIONS

inputs ^[5] 6089:22 6195:22
6294:22,25 **6438:**13
inquiry ^[5] **6231:**6 **6366:**1
6367:17 **6424:**23 **6434:**18
inspirational ^[1] **6433:**23
instance ^[4] **6196:**5 **6296:**14
6304:24 **6429:**22
instances ^[1] **6289:**19
instead ^[14] **6069:**3 **6093:**6
6243:24 **6267:**10 **6293:**21
6294:6,10,11 **6379:**24
6382:5 **6415:**23 **6416:**11,19
6448:2
instructions ^[1] **6257:**1
instructive ^[1] **6416:**15
insufficient ^[2] **6230:**25
6258:14
intend ^[1] **6235:**2
intended ^[4] **6079:**2 **6100:**16
6119:21 **6406:**4
intense ^[1] **6240:**5
intensity ^[6] **6277:**21 **6278:**5
6399:12 **6432:**9,14 **6452:**18
intensively ^[1] **6088:**17
intentions ^[1] **6125:**17
inter ^[1] **6254:**3
interactive ^[81] **6072:**20
6073:5 **6075:**1 **6076:**12
6078:4,21 **6081:**9,16 **6086:**23
6087:10 **6089:**12 **6090:**3
6092:7 **6093:**14,17,24
6095:19 **6096:**10 **6101:**19
6103:6,21 **6104:**3 **6106:**18
6107:8 **6108:**24 **6110:**20
6111:2 **6113:**21 **6114:**21
6115:6 **6116:**15 **6122:**3,24
6125:24 **6126:**11 **6190:**22
6192:16 **6193:**12 **6194:**2
6195:2,10 **6250:**11,13,16,19
6252:2,6,19 **6253:**17,23
6254:4,11 **6255:**5,9 **6258:**18
6271:5 **6288:**4 **6301:**21
6304:13 **6362:**25 **6366:**16,22
6367:20 **6368:**23,24
6371:6,8,15,17 **6372:**1,7,14,22
6373:1,1 **6400:**12
6403:19 **6404:**12,16 **6408:**16
6412:9
interactive/non-interactive ^[2] **6366:**3,15
interactivity ^[68] **6078:**7,9,23
6089:22 **6092:**6,8,16,18,20
6096:12,20 **6098:**18,21,24
6099:8,12 **6103:**3,10
6105:21,22 **6106:**4,8,9,12,20,22,25
6107:2,8,17 **6109:**8
6110:7 **6111:**25 **6112:**2,3,5,10
6114:8,12,15,25 **6115:**4,5,14,17
6116:2,18,24
6117:6,14,19,23 **6119:**2,25

OPEN SESSIONS

6288:2 6289:3,10 6290:7 6292:10 6294:13 6305:21 6306:5 6359:10,23 6360:8, 8 6374:16 6378:12,13 6393:5 6394:10 6395:3 6407:14,23 6408:5,22 6409:1 6418:7 6437:25 6445:9 labels ^[3] 6372:14 6395:2 6412:5 lack ^[2] 6202:16 6407:4 lacked ^[2] 6375:4,5 lacks ^[1] 6203:13 laden ^[1] 6304:14 laid ^[5] 6078:16 6291:7 6296:12 6360:13,13 landscape ^[1] 6396:12 language ^[2] 6080:1,21 large ^[19] 6083:15 6088:3 6120:25 6233:11 6234:18 6235:16 6262:5 6266:23 6286:1 6294:20,22 6415: 11,25 6416:2 6418:9 6419: 9 6424:14 6430:1,2 larger ^[7] 6161:14 6188:15 6203:7 6378:12 6393:10 6411:3 6432:13 largest ^[7] 6230:19,24 6232:23 6257:19 6394:19 6395:19 6416:4 LARSON ^[1] 6065:4 last ^[21] 6125:21 6126:5 6159:3 6163:18,22 6184:8 6237:2 6242:17 6248:22 6263:23,23 6266:9,9 6272: 11 6292:18 6294:2 6360:6 6362:6 6431:4 6448:22 6453:8 late ^[2] 6403:7 6453:6 late-arriving ^[1] 6157:14 late-breaking ^[1] 6452:10 later ^[12] 6071:20 6102:11 6108:19 6111:22 6252:15 6304:16 6307:7 6376:16 6377:23 6425:6 6429:22 6431:2 latest ^[2] 6271:16 6272:14 Latham ^[2] 6066:13 6361: 17 latter ^[1] 6269:25 laughed ^[1] 6369:18 launch ^[1] 6370:8 launched ^[3] 6370:10 6427:7 6434:11 LAUREN ^[1] 6066:12 law ^[8] 6201:6,12 6241:7 6303:24 6359:13 6366:25 6413:1 6440:17 lawyers ^[1] 6364:23 lay ^[1] 6379:17 lays ^[3] 6360:24 6380:21	6403:10 lead ^[6] 6085:3 6205:7 6248:25 6293:22,24 6296: 8 leading ^[1] 6431:16 leads ^[3] 6086:15 6360:11 6442:15 leakage ^[1] 6264:24 lean-back ^[2] 6371:21 6412:9 leap ^[2] 6126:17 6265:2 learn ^[2] 6182:19 6446:23 least ^[26] 6078:9 6092:22 6097:21 6123:24 6157:10 6164:8 6167:9 6186:9 6198:16 6202:7 6251:25 6274:2 6371:6,7,7 6372:13, 14 6397:25 6398:24 6403: 1 6412:9 6425:5 6426:1,2 6427:8 6434:4 leave ^[20] 6105:24 6106:1 6128:9,9 6168:12,13 6187: 25 6190:13 6206:10,11 6238:19 6271:21 6308:1,1 6383:11,11 6420:10,10 6454:11,11 leaves ^[1] 6238:1 leaving ^[3] 6188:13 6236:9 6264:1 led ^[3] 6301:16 6402:19 6406:23 ledge ^[1] 6284:2 left ^[6] 6186:12 6248:9 6286:7 6290:6 6296:6 6392:9 left-hand ^[1] 6103:18 legal ^[1] 6410:4 length ^[7] 6109:17 6276:5 6287:9 6359:18 6407:7 6425:6 6442:2 Leonard ^[25] 6095:13,18 6097:21 6116:22 6202:20 6203:2 6204:3 6289:16 6359:21 6370:17 6375:10, 12,20 6376:20 6377:2 6378:4 6379:12 6393:5,10 6397:16 6403:18,23 6404: 18 6407:16 6412:13 Leonard's ^[13] 6098:3,13 6362:10,18 6363:3,8 6396: 11,21 6400:18 6405:1,6,9, 24 less ^[24] 6076:4 6088:17,21, 23,25 6092:20,24 6199:2 6270:11,15,17 6275:2 6280:15 6369:23 6420:3 6424:17 6432:19 6436:2 6440:13,19 6442:10,17 6446:4 6452:2 Lest ^[1] 6243:15 letting ^[1] 6184:23	level ^[8] 6095:17 6106:20 6190:25 6200:11 6266:24 6284:6 6285:15 6286:5 levels ^[4] 6249:18 6250:25 6295:20 6416:25 leverage ^[5] 6244:13 6280: 25 6360:1 6436:10,15 liberally ^[1] 6241:4 Librarian ^[1] 6409:23 Library ^[2] 6062:2,16 License ^[37] 6067:3 6118:1 6119:11,14 6121:4 6192: 13 6231:24 6235:20 6243: 12 6255:15 6260:17 6288: 3,19 6364:6 6366:7,9,12 6378:10 6392:17 6395:21 6401:8 6402:8,20 6410:1,2 6411:9 6415:19 6418:13 6419:3,6 6428:24 6431:4,8 6435:20 6438:14,22 6449: 1 licensed ^[8] 6099:23 6118: 14,23 6119:8 6395:10 6428:22,23 6429:2 licensee ^[3] 6401:15 6410: 24 6418:17 licensees ^[3] 6395:22 6397:1 6433:20 licenses ^[16] 6118:1,24 6199:22,25 6205:12,16,20 6305:25 6394:5,18 6399: 17 6401:23,24 6402:12,14 6442:22 licensing ^[17] 6251:7,20 6252:1,5 6287:15 6290:7 6291:17 6393:4,6,8,17,20 6395:4 6396:2 6403:21 6409:25 6429:8 licensors ^[2] 6395:13 6405:21 LIDA ^[1] 6064:21 lieu ^[1] 6396:8 lift ^[1] 6363:25 light ^[5] 6077:25 6250:7 6262:5,8 6263:21 likelihood ^[1] 6442:16 likely ^[16] 6116:23 6161:14 6189:1,3 6205:9 6250:24 6265:5 6283:17 6366:16 6417:10 6429:3 6436:23 6443:9,22 6445:4 6450:11 Likewise ^[1] 6406:14 limitations ^[4] 6077:25 6269:21 6362:5 6364:6 limited ^[12] 6104:3 6105:22, 22 6106:3,7,9,18,24 6107: 17 6237:24 6365:21 6444: 17 limiting ^[1] 6443:4 limits ^[2] 6431:15 6442:8 line ^[10] 6104:1,2,8 6241:9	6300:19 6307:9,13 6435: 19 6443:6 6449:12 linear ^[4] 6263:17,19 6266: 2,3 lines ^[2] 6434:5 6453:11 linked ^[1] 6444:17 list ^[7] 6091:20 6093:6 6096:2,7 6098:21 6099:2 6254:14 listed ^[1] 6438:14 listen ^[21] 6110:13 6112:18, 23 6113:10 6114:1,16 6115:2 6117:1 6188:25 6253:3,13 6254:14,18 6261:25 6262:2,10 6276: 17,19 6277:19 6278:10 6446:21 listened ^[2] 6261:25 6446: 6 listener ^[10] 6203:10 6272: 13 6417:8 6418:21 6442: 16 6443:21 6445:5,6 6446: 20,24 listener-for-listener ^[1] 6407:20 listeners ^[33] 6113:9,19 6183:19 6184:3,7 6253:5, 11 6262:5,8,10 6264:8,19 6265:18,21 6267:16 6270: 8,14 6276:17,18 6278:2 6280:8 6363:10,13 6367:8, 11 6370:18,19 6406:16,19 6417:11 6444:6 6446:5 6450:11 listenership ^[3] 6267:23 6426:15 6443:9 listening ^[60] 6114:24 6183:1,15,19,21 6185:14 6191:17,20 6192:7 6198: 25 6204:4,4 6253:22 6254: 2,6,8,11,19 6256:7,8,10,15, 20,22 6257:10,14 6260:22 6262:9,16 6263:2,25 6268: 10,11,25 6269:5 6275:3,16, 19,21 6276:13,16,16,20 6277:20 6278:18,20 6279: 8 6280:6 6281:16 6282:5,9 6284:23 6293:3 6294:6 6298:19 6363:1 6368:22 6371:14,15,16 listens ^[1] 6277:24 lists ^[1] 6105:17 literally ^[1] 6184:12 literature ^[2] 6292:6 6293: 20 litigating ^[1] 6410:16 litigation ^[1] 6302:13 little ^[22] 6070:13 6074:21 6077:7 6090:22 6105:10, 11 6108:1,19 6121:10 6163:24 6164:5 6183:2	6200:19 6252:25 6262:11, 12 6278:8 6288:12 6305:1 6393:9 6451:19 6452:7 live ^[3] 6156:5 6182:3 6228: 3 livelihoods ^[1] 6366:19 Lloyd ^[1] 6157:16 LLP ^[7] 6063:19 6064:5,12, 17,22 6065:11 6066:13 load ^[3] 6125:6 6186:13 6443:8 lobby ^[1] 6436:21 local ^[2] 6369:8 6370:21 logic ^[3] 6228:20 6234:17 6408:4 logical ^[2] 6235:9 6265:2 logically ^[1] 6189:1 lone ^[1] 6399:24 long ^[12] 6070:2,2 6105:12 6108:18 6118:19 6126:5 6168:4 6205:22 6361:19 6415:2 6438:2 6451:20 long-expressed ^[1] 6303: 1 Long-Run ^[1] 6197:18 long-term ^[1] 6186:14 longer ^[5] 6084:7 6186:6,6 6193:11 6257:11 look ^[46] 6070:13,17 6073: 3 6075:25 6076:1,1,6 6097: 20 6100:24 6105:2 6107: 14 6108:10 6116:4,8,13 6117:8,13 6118:20 6121: 14,24 6126:14 6196:11,16, 19 6201:20 6202:25,25 6203:11,11,24 6229:19,24 6242:2 6267:8 6271:14 6288:21 6289:4 6292:13 6296:9,20 6368:13 6376: 10 6400:11 6440:22 6447: 18 6450:15 looked ^[6] 6076:25 6122: 11,11,11 6234:14 6304:25 looking ^[13] 6078:19 6092: 15 6103:11 6114:9 6116: 14 6122:10 6167:1,18 6196:10,25 6203:20 6258: 19 6379:22 looks ^[3] 6240:19 6241:2 6430:22 LOREAL ^[1] 6063:16 lose ^[5] 6186:22,23,24 6190:9 6268:11 loses ^[4] 6190:8 6191:11 6198:25 6199:2 losing ^[5] 6183:4 6187:1, 23 6301:13 6370:19 loss ^[14] 6182:12 6184:23 6185:3,5,17,23 6187:6 6188:5 6189:2,10 6258:8, 22 6260:7,8
--	---	---	---	--

OPEN SESSIONS

<p>lost ^[34] 6182:8,20 6183:17 6186:21 6190:25 6191:15, 24 6192:8,10 6193:19,19 6194:23 6198:25 6200:3 6201:19 6256:6,8,20,22 6263:24 6264:19 6268:10, 25 6269:5 6270:1 6271:6 6275:3,16,19,20 6276:16 6281:16 6294:6 6299:11</p> <p>lot ^[16] 6069:1 6071:14 6087:6 6096:6,6 6109:4 6111:21 6158:16 6186:4,6 6189:1 6202:2 6299:23 6415:4 6437:7 6443:12</p> <p>lots ^[2] 6071:11,17</p> <p>loud ^[3] 6116:9 6199:14 6400:10</p> <p>LOVEJOY ^[1] 6066:9</p> <p>low ^[9] 6071:10 6099:6 6121:25 6228:22 6232:22 6251:21 6362:24 6377:9 6402:7</p> <p>lower ^[41] 6076:5,19,21 6088:25 6091:10,13,16 6092:14 6094:2 6096:13 6111:8 6120:24 6126:25 6127:9 6199:21 6200:2,24 6201:10 6204:16 6205:8 6234:23 6243:23 6255:23 6293:5,11 6373:25 6375: 25 6395:15,16 6399:5 6400:5 6404:22 6408:13, 15 6411:24 6412:1,6 6417: 5 6424:15 6442:21 6450:9</p> <p>lower-than-average ^[1] 6293:2</p> <p>lowered ^[1] 6293:4</p> <p>lowering ^[1] 6092:13</p> <p>lowers ^[2] 6405:14 6442: 18</p> <p>lowest ^[1] 6372:15</p> <p>LRS ^[1] 6294:10</p> <p>LRSs ^[1] 6197:18</p> <p>LSE ^[2] 6183:23 6184:14</p> <p>LSE-based ^[2] 6198:22 6199:3</p> <p>LSEs ^[31] 6163:21,23 6182: 18,21,21 6183:3 6185:21 6186:19 6187:3,7 6188:2, 17,20,21 6189:7,10,22 6190:5,10 6191:9 6192:2,4, 6,7 6193:16 6195:18 6197: 9,18 6199:5 6261:19 6294: 6</p> <p>LUCAS ^[1] 6065:8</p> <p>lump ^[4] 6238:9 6244:5 6427:2 6431:7</p> <p>lunch ^[5] 6069:2 6242:14 6245:19 6246:2,3</p> <hr/> <p style="text-align: center;">M</p> <hr/>	<p>Machine ^[4] 6376:10 6377: 17,18,22</p> <p>Machine's ^[1] 6379:18</p> <p>made ^[39] 6075:21 6086:19, 20 6087:7 6103:5 6113:7 6118:4 6201:9,19 6236:8 6245:9 6249:5 6251:24 6257:14 6258:12 6264:22 6269:1 6272:12 6280:2 6281:5,23 6288:13 6290: 12 6297:17 6298:16 6299: 4 6301:11 6364:11 6374: 24 6376:20 6378:2 6382:5 6403:3,6 6411:9,20 6417: 24 6428:5 6448:9</p> <p>Madison ^[1] 6062:17</p> <p>magnitude ^[2] 6267:12 6360:12</p> <p>major ^[40] 6126:13 6157:9 6164:17 6183:4 6185:7 6186:22 6187:6 6191:12, 12,24 6198:15 6199:1 6204:11 6251:22 6252:8 6258:22 6259:12 6261:2 6265:15 6268:17 6269:2, 12 6270:1 6276:1 6288:2 6289:2,3,10 6305:21 6306: 4 6360:8 6394:10 6395:2 6408:4,22 6415:13 6418:7 6433:24 6437:25 6445:9</p> <p>majority ^[8] 6088:13 6089: 7 6231:10,16 6254:6 6280: 13 6402:1 6433:25</p> <p>major ^[25] 6073:1 6076: 19 6156:22 6157:11,24 6163:6 6164:2,8,10,15,19, 24 6165:21,25 6190:7 6198:17,19 6199:8 6252:6 6258:24 6269:16 6289:6 6290:5 6408:10,20</p> <p>makeweight ^[1] 6439:17</p> <p>man ^[2] 6157:17 6164:25</p> <p>mandate ^[2] 6365:18 6368: 12</p> <p>mandated ^[1] 6303:12</p> <p>Manges ^[1] 6065:11</p> <p>manipulating ^[1] 6295:7</p> <p>manner ^[4] 6079:2 6238:22 6279:16 6292:20</p> <p>many ^[37] 6097:7 6187:24 6188:1 6190:13 6192:6,8, 19,21,24 6193:4,17 6201: 19 6205:14 6230:13 6249: 1,2 6250:15 6253:17 6257: 4 6260:6,8 6270:2,2 6276: 4,23 6285:13,20 6288:9 6304:1 6373:17 6425:22 6433:11,14 6435:8,8 6440: 8 6448:10</p> <p>marches ^[1] 6297:23</p> <p>margin ^[1] 6264:14</p>	<p>marginal ^[1] 6405:20</p> <p>marginally ^[1] 6280:15</p> <p>market ^[156] 6070:14,19 6071:5,5 6072:20 6073:9, 25 6075:1 6076:3,11,12,16 6078:20 6079:7 6080:11, 25 6081:2,9,10,16,17 6082: 5,7,8,10 6083:12 6084:7 6085:8,9 6086:23,23 6087: 10,10,13,23 6088:3,9,13 6089:4,7,12,23,24 6090:3, 4,13,15,18 6091:5,8 6093: 2,4,24 6101:18 6107:11,16 6108:1,11,12 6110:2 6111: 3,4,6,9,13,25 6112:2,4,11, 13,15,17,22 6113:1,8 6114: 22,23 6116:3,19 6117:7,15, 20,20 6118:4,7 6120:2,8, 18 6121:1,6,15,22 6122:9, 14,18 6123:4 6126:12,14, 23 6127:1,8,10,13,13,16, 16 6165:19 6166:10,16 6167:11,13 6199:2 6203: 18,23 6231:14 6240:1 6243:6 6244:20 6245:12 6249:15 6250:11 6251:3 6252:1 6255:22 6265:16 6268:12 6269:6 6280:19 6281:4 6282:8 6283:13 6287:7 6288:3,17,21 6303: 19 6372:22,25 6373:9,10, 25 6401:18 6402:9,11,15 6417:4,16,22,25 6418:2,20 6424:14 6438:4,5 6442:8 6445:18</p> <p>marketing ^[3] 6258:17 6261:8,10</p> <p>marketplace ^[19] 6072:14 6167:5,15 6241:15 6248: 16 6250:1,7 6251:23 6303: 5,16 6393:5 6394:4 6396:2 6401:19 6402:2 6404:4 6434:21 6440:6 6448:9</p> <p>markets ^[12] 6078:13 6079: 17,25 6080:4,14 6086:10 6110:17,21 6113:21 6114: 14 6115:6 6427:21</p> <p>MARKS ^[65] 6065:3 6247:7, 10,13,14,17,20 6248:3,5 6262:18,18,19,22 6263:3, 13 6264:6,21 6265:8,25 6266:20 6270:21,22,23,24 6271:11 6272:23 6273:16 6274:4,12,15,21,24 6277:1, 9,12 6283:11,18 6284:16 6285:12,19 6286:9,18,21 6287:1,2 6288:11,11,25 6289:14 6290:9,10,19 6291:3,5,11 6295:14,15 6296:4 6297:6 6299:7 6359:4,6 6361:6 6404:12</p>	<p>6455:4</p> <p>Mars ^[1] 6274:18</p> <p>mass ^[1] 6259:20</p> <p>Massive ^[5] 6250:12,18,20, 21 6279:12</p> <p>match ^[3] 6085:8 6088:1 6260:13</p> <p>matching ^[1] 6096:18</p> <p>material ^[7] 6110:9 6265:4 6374:10 6377:23,25 6381: 24 6382:24</p> <p>materially ^[4] 6230:15 6266:18 6395:15 6399:5</p> <p>math ^[9] 6086:1 6088:5 6093:19 6103:16,17 6195: 14 6397:20 6398:2 6399:4</p> <p>mathematical ^[1] 6089:10</p> <p>Mathematically ^[2] 6085: 18 6089:8</p> <p>MATTER ^[29] 6062:4 6085: 6,13,22,23 6086:7 6093:7 6109:19 6156:21 6197:10, 11 6201:6,12 6234:17 6241:7 6275:18 6294:25 6298:9 6372:4 6378:21 6394:4,6 6406:17 6409:6 6410:4 6411:2 6434:17 6442:5 6443:20</p> <p>mattered ^[1] 6447:4</p> <p>MATTERN ^[1] 6064:3</p> <p>matters ^[7] 6187:16 6298: 13 6367:18 6411:7 6424: 22 6443:15 6452:23</p> <p>maximize ^[1] 6443:9</p> <p>mean ^[10] 6075:7 6077:18 6094:19 6096:16 6110:4 6161:21 6182:13 6196:8 6260:8 6264:5</p> <p>meaningful ^[6] 6232:15,24 6233:5 6252:4 6442:5 6446:8</p> <p>meaningfully ^[2] 6234:18 6361:22</p> <p>means ^[16] 6079:13 6090: 19 6099:6 6113:13 6115: 17 6160:25 6163:23 6164: 12 6194:4 6199:1 6204:6 6229:22 6262:11 6305:13 6432:20 6446:22</p> <p>meant ^[3] 6197:18 6399:12 6409:21</p> <p>measure ^[18] 6071:21 6106:10,11,23 6256:6,8,13, 15,20,21 6268:25 6275:5,9 6278:17 6281:15 6294:6 6375:15 6446:7</p> <p>measured ^[1] 6249:18</p> <p>measures ^[3] 6071:19 6267:18 6405:15</p> <p>measuring ^[4] 6087:6 6106:19 6267:13 6275:16</p>	<p>mechanical ^[1] 6400:14</p> <p>mechanism ^[1] 6430:16</p> <p>media ^[3] 6098:7 6259:20 6365:8</p> <p>medium ^[2] 6370:5 6408:8</p> <p>meet ^[1] 6382:11</p> <p>meeting ^[7] 6128:7 6168: 11 6206:9 6307:24 6383:9 6420:8 6454:9</p> <p>member ^[2] 6089:3 6377: 22</p> <p>members ^[6] 6231:5 6362: 10,13 6382:8 6393:20 6411:13</p> <p>memorialization ^[1] 6367: 19</p> <p>mention ^[4] 6106:15 6288: 13 6289:25 6290:12</p> <p>mentioned ^[9] 6197:15,16, 16 6269:4 6283:2 6393:3 6424:8 6432:14 6447:21</p> <p>mentions ^[1] 6267:14</p> <p>mere ^[1] 6284:13</p> <p>merely ^[1] 6381:9</p> <p>merger ^[6] 6197:5,9,17 6283:6 6294:9 6369:24,25</p> <p>Merlin ^[2] 6392:24 6393:1</p> <p>message ^[2] 6394:9 6450: 6</p> <p>messages ^[2] 6259:14,21</p> <p>messaging ^[4] 6378:17,18, 24 6394:3</p> <p>met ^[6] 6110:23 6122:17 6157:17 6236:24 6363:20 6418:4</p> <p>Metallica ^[1] 6077:19</p> <p>metaphor ^[1] 6284:4</p> <p>method ^[1] 6304:21</p> <p>methodology ^[7] 6103:9 6104:18 6105:6 6289:19 6297:3 6377:1 6379:22</p> <p>metric ^[5] 6081:25 6083:7 6084:25 6432:16 6435:9</p> <p>metrics ^[9] 6072:13 6267: 24 6418:25 6431:23 6432: 2,7 6434:13 6435:7 6437:3</p> <p>mic ^[2] 6229:7 6247:12</p> <p>Michael ^[1] 6079:20</p> <p>microphone ^[1] 6229:8</p> <p>mid-tier ^[2] 6098:22 6254: 21</p> <p>middle ^[3] 6104:25 6230: 22 6371:23</p> <p>might ^[23] 6076:1 6083:24 6122:16 6158:23 6159:7, 15 6160:9 6164:25 6167:4, 10,22 6185:16 6187:5 6243:12 6267:19 6272:17 6280:12 6368:6 6382:20 6393:11,23 6398:17 6399: 18</p>
--	---	---	---	--

OPEN SESSIONS

<p>Mike ^[1] 6282:12 milk ^[1] 6370:24 million ^[7] 6232:11 6259:15 6269:22 6279:5 6410:9,14,16 millions ^[5] 6186:11 6250:15 6270:3 6407:23 6410:25 mind ^[1] 6073:24 minimis ^[1] 6373:6 minimum ^[25] 6070:10 6080:17 6228:11,21 6229:4,12 6230:2,4 6237:4 6245:15 6409:17,20,21,24 6410:4 6411:2,5,7,12,16,19 6419:7,12 6425:21 6448:18 minor ^[1] 6239:17 minus ^[1] 6106:25 minute ^[7] 6116:8 6202:4 6279:7 6397:24 6426:5 6448:20 6452:2 minutes ^[15] 6068:19 6126:7,8 6168:5,7 6206:2,4 6246:1 6307:18,20 6383:4 6420:2 6447:9 6451:15,20 mirroring ^[1] 6267:12 mirrors ^[1] 6432:2 mis-apply ^[1] 6406:22 misallocated ^[1] 6284:22 mischaracterization ^[1] 6269:19 misinterpreted ^[1] 6284:21 misnomer ^[2] 6239:2 6292:4 miss ^[1] 6443:14 missed ^[2] 6272:23 6396:5 misses ^[1] 6400:16 missing ^[2] 6183:2 6375:9 mission ^[2] 6235:10 6442:15 mission-driven ^[1] 6230:1 misstated ^[1] 6197:17 misstates ^[1] 6269:20 mistake ^[1] 6406:10 mistaken ^[2] 6098:2 6397:16 misunderstanding ^[1] 6400:6 misunderstands ^[1] 6409:19 mix ^[1] 6186:17 mixed ^[1] 6371:23 mixing ^[1] 6096:18 model ^[60] 6072:9 6156:13 6157:17,20 6158:2 6160:18,20,24 6163:1,4,11,18 6164:22 6165:6,8 6166:8,9,12,17,17 6167:12,19,19 6187:11 6198:15 6248:20</p>	<p>6255:16,20 6256:3,17 6257:23,23 6268:2 6286:8 6287:3,9 6288:6,8 6289:17 6292:9,12,14,21 6293:14,21 6294:13,20,23,24 6295:3,6,8,18 6296:2 6297:2 6302:15,17 6304:7,11 6431:22 model's ^[1] 6165:22 modeled ^[1] 6450:18 modeling ^[14] 6120:9 6156:13 6165:5 6195:24 6198:4 6300:19 6301:12 6304:14,17 6305:9 6363:15 6415:21 6416:15 6427:14 models ^[15] 6077:12 6101:3 6156:19,22,24 6163:12,24 6164:4 6165:18 6292:19 6301:17 6302:15 6304:5 6418:17 6449:18 modest ^[3] 6249:6 6266:6 6294:16 modestly ^[1] 6090:17 modification ^[1] 6185:2 modified ^[2] 6183:9 6191:25 moment ^[12] 6073:21 6074:23 6082:3 6094:4,8 6190:18 6229:6 6262:24 6264:2 6413:24 6414:12,22 momentarily ^[2] 6414:8,16 monetary ^[7] 6113:11 6306:24 6381:3,9,13 6382:7,9 monetization ^[1] 6200:13 monetize ^[1] 6399:8 monetized ^[1] 6112:17 monetizing ^[2] 6119:16 6282:5 money ^[9] 6119:17,18,19,20 6189:3 6253:4,4 6279:11 6409:2 monopolist ^[1] 6359:24 monopoly ^[2] 6160:21 6359:16 Montgomery ^[1] 6066:14 month ^[22] 6099:14 6193:15,24 6194:1,9 6195:11 6228:12 6253:8,12,14 6265:3,17 6277:22,23 6278:6,11,12,24,25 6279:2,5,6 monthly ^[4] 6080:18 6185:12 6259:16 6426:10 months ^[3] 6257:4,9 6267:23 Moody ^[1] 6432:13 moot ^[2] 6074:7 6200:4 moreover ^[2] 6436:15 6441:18 morning ^[13] 6068:6 6070:</p>	<p>12 6073:18 6250:2 6270:8 6283:2 6290:11 6360:10 6378:2 6379:18 6401:21 6404:11 6451:15 most ^[37] 6076:3 6190:8 6203:13 6231:22,24 6236:13 6241:1,21 6249:19 6253:5 6260:11 6282:23 6283:12,16 6284:17 6285:3 6289:25 6299:20 6303:3 6365:2 6366:16 6371:8,20 6374:19 6393:11 6406:10 6412:9 6413:1 6419:4,19 6429:4,4,9 6438:1 6443:9 6444:4 6449:14 mostly ^[1] 6189:19 motion ^[2] 6068:24 6243:16 motivated ^[2] 6241:13 6243:18 mouth ^[1] 6370:17 move ^[8] 6089:17 6098:16 6125:10 6199:15 6280:6 6307:11 6372:18 6403:10 movement ^[1] 6435:18 moving ^[3] 6237:1 6295:7 6305:8 MP3s ^[1] 6279:17 Ms ^[31] 6093:18 6231:3 6240:15 6248:8 6411:14 6413:10,13,15,24 6414:2,4,7,11,15,21,25 6424:7 6447:7,11 6451:3,5,9,10 6452:6,8,12,22 6453:2,9,15 6455:7 much ^[50] 6069:7 6071:20 6091:9 6096:13 6111:16 6114:9 6115:12 6117:15 6125:6,12 6164:3 6183:18 6186:4,15 6197:11,12,12 6198:25 6200:7,8 6233:6 6236:6 6238:16 6252:9 6254:20 6255:2 6264:16 6267:16 6269:10 6278:10,12 6286:7,15 6297:1 6301:18 6304:12 6307:3 6364:4 6370:1,1,3 6374:6 6400:21 6411:4 6425:20 6431:2 6438:16 6440:15 6445:7 6450:21 multi-year ^[1] 6431:8 multiple ^[12] 6097:5 6160:19 6161:20 6166:15 6287:11 6292:24 6293:3 6359:9 6419:10 6430:2 6434:1 6435:12 multiplied ^[1] 6085:17 multiplier ^[1] 6426:18 multiply ^[2] 6085:21 6398:8 Music ^[85] 6063:7,7,8,8</p>	<p>6067:3 6069:15,16,16 6071:9,15,19 6088:17,22 6112:11 6186:17 6190:1 6192:15 6194:22 6204:19,21 6233:7,24,25 6234:7 6239:20,22,23 6248:16 6249:25 6250:7 6252:24 6253:1,1,2,3,4,6 6272:1,18 6275:6 6277:19 6280:6,8 6293:3 6370:20 6371:2,8 6396:3 6399:2,12 6400:14 6402:8 6412:2,4 6425:13,14,19,23 6426:19,22 6431:11,14 6432:9,14,17 6433:3,4,22,23,23,25 6434:2,21 6435:4,7,14,16,16 6439:21 6444:13 6446:6 6452:18,20,20 6453:1 music-intensive ^[3] 6425:14 6432:11,19 musical ^[2] 6273:3 6444:4 Musicians ^[2] 6063:4 6069:14 must ^[6] 6071:10 6100:12 6269:9 6302:25 6381:4 6400:3 must-have ^[27] 6157:9 6158:7,11 6159:12,17 6160:12,14 6161:4,8 6185:8 6191:13 6198:16,19 6199:10 6252:7 6257:20 6269:9 6276:2 6280:20 6287:25 6288:23 6289:2,3 6359:10,23,25 6360:9 must-haves ^[21] 6073:2,2 6126:13 6156:23 6157:24 6159:13,15 6160:11 6163:6,10 6164:13,19 6190:7 6199:8 6204:11 6258:24 6259:9 6269:12,17 6288:24 6289:11 muster ^[3] 6269:14 6369:22 6380:18 mute ^[1] 6229:8 muted ^[3] 6245:21 6247:10 6413:14 mutually ^[1] 6408:21 Myerson ^[17] 6157:14 6161:25 6162:6,11,14,19,24 6291:20,21,22 6292:1,3,9,17 6293:23 6294:10 6360:11</p>	<p>15 6399:20 6407:14 6411:21 6428:9 NAB's ^[31] 6200:7 6362:15,21 6363:20,23,25 6364:21,25 6369:21 6370:6,7 6372:21 6373:16 6374:13 6376:3 6379:12 6380:8 6394:19 6395:7,13 6396:9 6400:23 6401:22 6403:6,9,13,24 6406:1 6407:7 6411:19 6413:4 NAB/SoundExchange ^[1] 6428:7 name ^[5] 6099:25 6102:10 6230:21 6260:25 6446:5 namely ^[2] 6416:2 6418:8 Napster ^[2] 6095:25 6099:3 narrow ^[1] 6366:5 narrower ^[1] 6366:7 narrowly ^[1] 6373:10 Nash ^[4] 6287:22,25 6293:16,19 Nash-in-Nash ^[20] 6156:20 6157:7 6163:3,9,12,18 6164:6 6165:15,17,17,23 6287:8 6288:5 6291:23 6292:13 6293:14,21,24 6294:11,11 National ^[3] 6066:2 6067:2 6361:17 natural ^[1] 6281:8 nature ^[4] 6103:10 6240:18 6302:21 6365:21 near ^[3] 6403:17 6415:16 6449:1 nearing ^[1] 6361:19 neat ^[1] 6244:2 necessarily ^[3] 6088:14 6199:10 6283:14 necessary ^[7] 6073:13 6074:4 6077:2 6087:17 6101:9 6104:19 6231:10 necessitate ^[1] 6438:5 need ^[41] 6069:24,24,25 6078:16 6082:21 6085:1 6094:15 6099:6,12 6107:14 6127:4,17,19 6157:10 6164:8 6166:20 6168:1 6187:24 6191:4 6192:18,24 6193:4 6195:24 6196:1 6198:16 6200:17 6205:18 6247:5,9 6267:8 6363:17 6368:13 6373:12 6383:3 6398:17 6413:16 6418:18 6438:7,10 6451:5 6454:3 needed ^[2] 6305:6 6437:10 needless ^[1] 6238:23 needs ^[9] 6075:19 6077:21 6162:17 6164:7,10 6165:25 6193:19 6239:8 6411:</p>
---	--	--	---	---

N

N.W ^[2] 6063:20 6064:6
NAB ^[31] 6068:17 6199:20 6200:3,5,9,20 6201:9 6202:8,14,19 6204:8,10,11 6205:11,17 6361:15,23 6362:2,23 6365:3 6367:2 6373:21 6374:2,3 6379:18 6380:15,

OPEN SESSIONS

<p>20 negative [7] 6290:2,13,16 6291:12,20 6293:25 6360: 9 negligible [2] 6257:10 6267:24 negotiate [2] 6417:5 6424: 24 negotiated [9] 6126:24 6287:20 6303:5 6428:8 6434:13,20,22 6435:18 6449:21 negotiating [4] 6418:3 6427:25 6428:4 6436:10 negotiation [15] 6163:14 6233:2 6241:14 6243:6 6244:22 6256:23 6257:12 6258:8 6287:7,14,18,20 6293:13 6363:15 6436:17 negotiations [18] 6163:13 6164:22,23 6165:14,20 6166:2,3 6241:19 6255:20 6280:25 6287:12 6289:21 6292:15 6293:15 6360:2 6393:18 6394:11 6436:14 neither [7] 6231:2 6362:6 6398:18 6401:6,7 6437:21, 24 Netflix [1] 6373:3 never [15] 6070:4 6083:17 6084:24 6100:14,14 6157: 17 6237:9 6238:24 6273: 12,18 6274:19 6290:15 6378:5 6433:5 6453:4 never-before-presented [1] 6396:6 Nevertheless [1] 6396:23 New [66] 6063:20 6064:24, 24 6065:13,13 6075:18 6094:16 6183:2 6187:2 6188:5,14,15 6191:16,23 6192:11,17,21,24 6193:4, 12,12,14,17,18,20,23,24 6194:2,4,7,10,13,23 6195: 2,6,10,16 6201:14,21,25 6202:2 6232:12 6238:2 6242:10 6250:15 6251:9 6276:18,21,23 6277:8,12 6278:3,4,9,15,23,25 6279: 6,12 6294:8 6366:9 6395: 18 6402:4 6403:24 6447: 23 6450:15 Newberry [1] 6370:23 newer [1] 6284:17 newest [1] 6251:5 news [2] 6258:9 6369:8 next [19] 6072:5 6085:4 6089:17 6116:9 6127:19 6168:2 6182:6 6195:21 6199:15 6261:4,9,19 6268: 9 6275:15 6295:9 6377:25</p>	<p>6434:11 6442:1 6447:9 nice [3] 6167:16 6228:8 6244:2 nicely [1] 6103:15 nine [1] 6444:12 nobody [1] 6114:18 nominally [1] 6280:20 non-binding [2] 6453:13, 14 non-comm [2] 6231:17,18 non-comm's [1] 6232:23 non-commercial [61] 6077:16 6228:10,23 6229: 23 6230:3,12,19,24 6232:1, 4,19 6233:7,17,24 6234:4, 8 6235:2,4,16,18 6236:1 6240:4,25 6367:7 6410:19 6415:7,12,16,22,24 6416:5, 18,20,24 6417:2,9,16,18 6418:8,15 6424:13 6427:1, 6 6433:13 6434:7 6442:4 6443:3 6444:13 6445:6,16 6446:2 6448:25 6449:2,4, 11,14,19,20 6450:2,10,19 non-comms [9] 6229:25 6230:4 6231:14 6232:16 6233:12,20 6234:18,20 6239:3 non-comparability [1] 6434:10 non-comparable [3] 6245: 2,3 6440:13 non-copyright-related [1] 6428:17 non-distribution [1] 6442: 7 non-expert [1] 6410:22 non-informative [1] 6191: 10 non-interactive [59] 6077: 11 6078:1 6080:15,18 6081:10 6082:8 6086:23 6087:13 6095:24 6098:15 6106:13 6111:4,6 6113:22 6115:7 6116:15 6182:8 6250:10 6251:8,20 6252: 18,21 6253:9,15,21 6254: 11 6257:5,20 6261:1 6269: 13 6271:5 6279:8 6280:24 6288:22 6289:5,9 6290:8 6293:1 6298:8,13,17,20,22 6301:20 6364:8 6365:7 6366:13,23 6367:21,23 6369:2 6373:2 6401:19 6404:14,23 6408:3 6416: 16 6418:11 6440:12 non-licensing [1] 6281:6 non-linear [2] 6262:15 6263:2 non-music [4] 6200:10 6369:8 6412:16,19</p>	<p>non-NPR [18] 6417:2,10 6425:4,10 6426:3 6432:9, 11,19,21 6433:3,13 6436:5, 25 6442:14 6443:18,22 6444:10 6445:2 non-participant [1] 6368: 6 non-party [1] 6403:6 non-portable [3] 6301:4 6302:3,5 non-precedential [4] 6241:6 6453:12,14,19 non-profits [2] 6230:1 6236:15 non-rate [4] 6249:21 6380: 10 6382:6,10 non-royalty [1] 6381:25 non-statutory [7] 6099:5, 15 6118:2 6380:1,24 6381: 3,25 non-subscription [10] 6301:4,24 6302:6 6305:17 6306:2,6,10,15,16,22 Noncommercial [1] 6067: 3 none [13] 6093:4 6108:7 6120:10 6164:24 6259:13 6267:14,15,18 6392:15 6427:11 6445:15 6452:17, 19 nonprofit [7] 6239:24 6416:9 6417:3 6442:1,20 6450:6,7 nonprofit's [1] 6442:25 nonprofits [2] 6442:8,10 nonsense [1] 6402:9 nonsensical [1] 6402:17 nor [4] 6158:13 6305:18 6401:6,8 norm [1] 6293:19 notable [2] 6233:22 6452:6 Notably [2] 6234:5 6452:17 note [5] 6183:25 6282:4 6295:17 6403:9 6442:24 noted [5] 6230:19 6251:12 6255:17 6258:11 6293:23 notes [3] 6093:25 6294:2 6456:5 Nothing [20] 6125:23,24 6158:12,22 6159:1 6184: 19 6236:11 6240:19 6360: 2 6364:22 6367:18 6404:8 6408:17 6409:4 6413:7 6430:22 6443:3 6449:18 6450:24 6453:11 notice [4] 6186:11 6259:23 6275:10,13 noticeable [2] 6260:22 6281:13 noticed [1] 6264:16 notify [1] 6260:19</p>	<p>noting [1] 6243:17 notion [6] 6084:24 6107:18 6127:14 6265:8 6399:10 6402:10 notwithstanding [1] 6260: 17 November [1] 6062:20 nowhere [2] 6364:23 6392: 9 NPR [95] 6232:11 6237:16 6241:22 6242:24 6243:2 6244:1 6417:1,7,11 6418:5, 15,24 6419:2,4,20,23 6425: 3,8,13,19,22 6426:8,17,23 6427:4,8 6428:14,23 6429: 1 6430:6,10,19,24 6431:3, 6,10,13,17,24 6432:3,6,11, 15,17,18,20 6433:8 6434: 12,20 6435:11,24 6436:2,4 6437:2,9,17 6438:24 6439: 6,7 6440:4,5,8,25 6441:6, 16 6442:14,22 6443:18,23, 24 6444:5,10,17,17,22 6445:1,4 6447:3,6,14,15 6449:6,11,22,24 6450:12, 16,18 6452:9,14,16,18,20 6453:3,22 NPR's [2] 6434:25 6435:16 NRB's [1] 6448:23 NRBNMLC [29] 6068:17 6230:7 6231:4,20 6234:2 6236:5,9,21,24 6237:3,10, 12 6238:4,9,13,18 6239:3 6240:8,13 6241:2,20,23 6245:8 6414:24 6415:10 6431:22 6437:13 6452:8, 25 NRBNMLC's [18] 6231:1 6234:15 6237:25 6239:4 6417:14 6418:22 6424:8 6426:16 6427:3 6432:1 6439:1,7 6449:8 6450:17 6452:10,15 6453:4,6 nuance [1] 6082:13 number [61] 6078:23 6083: 4 6085:12 6087:16 6088:4 6093:10 6094:20 6095:13 6096:5 6097:23,24 6100: 20,23 6101:6 6104:7,24 6106:15 6111:5 6124:5 6126:18 6127:3,23 6167:1 6185:21 6186:24 6192:11, 14 6195:16 6198:4,13,14 6230:21 6255:23 6262:1,5 6265:17,21 6269:21 6270: 13 6271:20 6277:17 6278: 20 6280:22 6284:23 6294: 7,12 6296:24,25 6301:11 6365:20 6393:7 6424:10 6425:17,25 6426:2,3 6427: 7 6433:1,4,6 6435:6</p>	<p>numbers [15] 6087:1 6094: 1 6097:22 6101:8 6105:3 6111:17 6189:10,12 6234: 11 6266:7 6295:24 6419: 15 6424:24 6433:10 6444: 1 numerous [2] 6405:12 6406:8</p> <hr/> <p>O</p> <p>object [2] 6094:20,25 objected [1] 6095:9 objection [3] 6095:1,8,15 objections [1] 6119:25 objective [2] 6249:13 6281: 3 observation [1] 6431:25 observations [1] 6297:9 observed [4] 6085:11 6368:16 6393:16 6405:19 observing [1] 6413:21 obstacle [1] 6253:16 obtain [1] 6160:6 obviates [1] 6438:7 obvious [5] 6108:25 6122: 23 6156:18 6186:18 6238: 21 obviously [7] 6071:14 6087:17 6121:3 6165:11 6195:24 6198:4 6273:12 occupy [2] 6409:2 6424:14 occur [2] 6164:23 6165:24 occurs [2] 6437:4 6442:23 odd [2] 6120:23 6164:25 odds [2] 6196:17,20 offer [11] 6090:5 6127:4 6200:13 6203:19 6205:7 6253:17 6254:22 6255:9 6261:11 6362:16 6453:9 offered [18] 6085:10 6156: 12,14 6201:21 6205:13 6234:23 6237:20 6243:13 6251:6 6258:1,16 6291:25 6363:9 6401:6,8 6416:18 6427:15 6453:4 offering [7] 6126:25 6204: 16 6235:12 6253:19 6288: 16 6370:18 6371:21 offers [5] 6127:15 6161:25 6199:21 6203:14 6392:15 offsetting [3] 6126:14 6161:12 6295:4 often [2] 6304:7 6411:6 okay [33] 6100:4 6103:1 6122:21 6128:2 6156:2 6168:6 6206:3 6240:10 6243:20 6247:3,7,9,12,15 6248:1 6273:8 6274:23 6277:11 6291:11 6299:8, 11,17,22 6307:19 6361:13 6383:5 6414:2,21 6447:11</p>
---	--	--	--	---

OPEN SESSIONS

<p>6451:2,8,23 6454:5 older [3] 6282:21 6283:5 6284:18 oligopoly [6] 6158:1 6160: 23 6288:2 6359:9,16 6407: 3 omits [1] 6377:1 on-demand [46] 6076:2 6252:7,21 6253:9,16,19,21 6254:2,10,17,19,22 6255: 13,14 6258:18,23,25 6259: 8,9 6269:15,17 6271:13,15 6272:9 6276:12,16 6277:6, 22 6278:5,11 6281:12 6298:14,18,19 6367:13 6370:9,13,14 6371:3,13,21 6403:15 6412:11 6416:1 6427:14 6440:14 on-line [1] 6282:8 once [8] 6087:8 6186:10 6190:13 6244:19 6252:17 6269:16 6408:17 6441:7 one [137] 6068:24 6069:1, 19 6071:13 6073:23 6074: 4 6075:22,23 6076:16 6078:13,24 6082:13,13,24 6089:17,18 6091:1 6092: 25 6098:19 6099:1,25 6101:14 6105:2,20 6106:1 6111:22 6113:9,18 6115: 20 6120:15 6121:8 6122: 23 6123:5 6124:3,13 6126: 20 6158:6,10 6159:3,7,24 6164:11,24 6165:4,21 6166:1,24 6167:3 6183:25 6184:8 6191:4 6195:23 6196:12,22 6198:11,15 6199:9 6202:14 6205:11 6229:6 6232:14 6237:5 6238:16 6240:8 6241:1,22, 24 6242:20 6243:24 6248: 9 6251:5 6259:18 6260:7 6265:3,17 6267:7,8 6268:6, 17 6271:24 6276:10 6277: 6,8 6278:21 6279:2 6280: 18 6285:17,18 6286:23 6287:12,12,13 6289:6 6290:3,5 6291:13 6292:13, 24 6296:18 6300:10 6301: 13 6360:18 6362:10 6363: 11,12 6365:11 6371:20 6372:1,17 6377:5,13 6398: 4 6400:2 6401:11,14,15 6403:9 6405:11 6409:4 6411:24 6414:12 6417:23 6420:1,3 6424:18 6425:5 6437:7,21 6438:12,15,16, 25 6442:24 6445:17 6446: 21 6450:6 6453:12 one-half [1] 6302:5 one-sided [2] 6418:19</p>	<p>6447:24 one-third [5] 6240:14 6419: 13 6424:9 6425:1 6446:4 ones [11] 6086:7 6197:9,25, 25 6202:10 6205:13 6230: 17 6424:14 6430:23 6443: 24 6444:11 only [65] 6069:24 6071:4 6075:23 6090:1,18 6091: 11 6092:16,24 6119:2,7 6160:14 6161:10 6184:3 6185:18 6186:20 6188:22 6190:9 6192:7 6194:8 6195:25 6229:3,11 6230: 13 6231:1 6232:3,4 6237: 23 6242:13 6262:1 6266:8 6276:2 6278:10,17 6281:1 6283:23 6290:6 6292:24 6296:6 6301:23 6304:21, 25 6366:8,10 6368:21 6379:19 6380:15 6394:18 6395:23 6404:5 6405:15 6417:15 6418:19 6432:16 6433:24 6435:13 6436:6 6438:3 6443:15,19 6444: 19 6446:6,9,21 6449:1 6453:8 Oops [1] 6099:1 open [19] 6228:4 6229:7 6247:8,12,19,21,22 6252: 11 6299:18,19 6359:2 6361:9,11 6392:2 6413:13 6424:5 6434:24 6435:2 6451:24 opening [5] 6162:3 6185: 11 6300:4,7 6447:19 openings [1] 6372:5 operate [4] 6185:17 6242: 24 6447:16 6450:8 operated [2] 6261:1 6433: 20 operates [2] 6289:5 6306: 1 operating [2] 6409:22 6450:2 operation [2] 6232:8 6365: 20 opines [1] 6100:19 opinion [1] 6409:14 opinions [1] 6416:18 opponent [1] 6401:2 opportunity [49] 6070:22, 25 6071:10,21 6122:2 6156:13 6159:17 6183:23, 24 6188:24 6189:21 6190: 2,12,15 6191:5 6192:19,23 6194:12 6195:21,25 6198: 23 6236:6 6251:7,11,13,19 6255:24 6281:19 6286:1,6, 11 6287:5 6293:5 6363:3,4 6379:21 6404:6,9,18,24</p>	<p>6405:5,8,17,22 6406:24 6407:9 6411:22 6441:10, 19 opposite [5] 6164:4 6281: 23 6282:16 6417:13 6450: 13 option [14] 6182:12 6198: 13 6370:22 6419:1,11,15 6424:8 6425:21 6426:5,16, 24,25 6429:11 6439:7 optional [1] 6368:12 options [7] 6237:15 6239:8 6277:20 6305:14 6369:5,7 6418:23 oral [3] 6068:22,24 6104:13 order [15] 6068:14 6074:12 6085:13 6107:12 6125:9 6160:17 6164:18 6166:24 6167:3 6186:14 6192:23 6253:24 6254:15 6360:3 6409:5 ordered [1] 6402:19 ordering [5] 6158:19,20,23 6159:8,8 orderings [7] 6158:4 6159: 6,10 6166:13,15 6167:1 6359:8 orders [1] 6267:12 organization [1] 6293:20 organizations [2] 6395:11, 20 original [2] 6127:12 6396: 14 Orszag [61] 6075:24 6076: 25 6078:2,23 6079:1 6083: 16 6084:13 6085:16,25 6086:3 6088:9 6089:5,19, 21 6090:1,5,19,25 6093:19 6094:12,15,21,23,25 6098: 17 6100:25 6103:20 6104: 12,22 6105:12 6108:22 6109:2 6110:25 6111:3,13, 23 6112:24 6113:16 6120: 3,5 6123:2,13,14 6156:12 6167:17 6235:8 6250:14 6300:23 6306:3 6369:25 6371:19 6379:21,24 6392: 19,25 6396:10 6398:2,17 6400:22 6445:7,8 Orszag's [19] 6090:9,21 6103:9,14,16 6104:8,18 6105:5,8 6111:21 6119:25 6123:5,22 6249:1,2 6307:8 6396:16 6403:11,19 other [120] 6068:11 6080: 21 6089:18 6100:17 6107: 24 6110:9 6120:14 6122:1, 6 6123:22 6159:9 6161:16, 16 6163:14 6164:19 6165: 7,19 6166:2 6182:16 6183: 17 6184:9 6185:21 6186:</p>	<p>11 6191:4 6192:15 6202:5 6230:11 6232:16 6241:22 6243:8 6253:10,12,14 6256:9,14 6258:18 6259: 19 6261:10 6264:11 6266: 14,14 6269:18 6274:1,2,5, 8 6276:4 6277:16 6278:13 6279:15 6282:6,6,24 6285: 21 6287:21,21 6290:4,7 6291:14 6293:2,14,15 6294:16 6295:4,5 6296:18 6298:24 6303:23 6304:1,9, 21,25 6305:14 6360:18 6366:21,23 6368:5,5,18 6369:1 6370:12,14,21 6371:2,22 6372:2,14 6373: 22 6374:8 6377:8 6381:20, 23 6382:20,21 6394:14,17, 21,22 6398:5 6404:2,20 6405:14 6406:14 6410:1 6412:4,5,24 6419:19 6425: 14 6429:6 6431:24 6436: 16 6437:19 6438:14 6439: 9 6440:8 6446:1 6449:20 6453:3,8 others [9] 6076:3 6099:3 6276:13 6298:25 6372:13 otherwise [10] 6107:1 6119:3 6159:13,15 6234:3 6241:10 6263:7 6381:19, 23 6394:14 out [71] 6068:18 6078:16 6080:17 6082:18 6083:21 6084:20 6087:1 6089:10, 13 6097:6 6098:10 6102: 10 6107:12,20 6108:6 6113:14 6116:9 6118:16 6120:16 6124:6,21 6127: 21 6159:11 6162:2 6164: 25 6166:18 6167:2 6184:9, 12 6185:25 6186:8 6190: 13 6193:4 6194:17 6197:1 6199:13 6202:16 6234:13 6238:15 6242:9 6265:9,14 6272:21 6273:13,14 6276: 3 6284:2 6290:6 6291:7 6295:17 6296:13 6304:22 6360:13,13,22,24 6364:9, 12 6369:18 6371:21 6378: 25 6382:21 6394:3 6396: 16 6400:10 6411:3 6426: 13 6440:20 6445:21 6446: 9,9 outcome [13] 6202:9 6242: 11 6255:20 6256:3 6257: 23 6286:20 6287:6 6289: 21 6292:17 6293:14,24 6294:3 6296:15 outcomes [1] 6158:3 outdated [2] 6283:21 6400: 22</p>	<p>outlier [1] 6231:18 outline [1] 6439:25 outputs [1] 6294:23 outright [1] 6306:13 outset [2] 6070:1 6255:17 outside [5] 6119:11 6160:6, 9,14 6416:20 outsized [5] 6232:6 6262: 15 6263:2,7 6436:18 outstrip [1] 6279:13 outweigh [1] 6393:8 over [36] 6069:10 6070:9 6077:13 6085:17 6086:3,4, 6 6103:23 6105:2 6125:6 6185:25 6230:4 6243:2 6244:6 6253:6,7 6257:4 6276:23 6297:22 6303:25 6361:3 6370:5 6373:13 6376:12,12 6377:7 6392: 22 6398:24 6402:16,22 6410:15 6425:25 6431:12 6444:10 6449:22 6450:6 over-the-air [3] 6204:13 6370:4 6407:18 overall [8] 6101:23 6183: 20 6250:21 6377:3 6409: 18,22 6410:5 6434:5 overblown [1] 6410:8 overestimated [1] 6098: 23 overlap [8] 6233:18 6234:9 6369:13 6405:7 6446:11 6447:3,4 6452:13 overlaps [1] 6405:4 overlooked [1] 6363:12 overlooks [1] 6298:6 overreading [1] 6373:18 overstated [1] 6407:10 overwhelming [1] 6254:2 own [18] 6068:23 6102:12, 19 6160:6 6182:23 6234:6 6244:9 6267:7 6268:5 6287:19 6305:12 6372:19 6393:17 6402:18 6406:5 6434:6 6441:2,20 owned [2] 6256:10 6279: 23 owner [1] 6243:9 Owners [3] 6303:10 6372: 12 6428:11 ownership [2] 6369:18 6371:8</p>
---	---	---	---	--

P

p.m [2] 6246:3 6247:2
package [2] 6203:25 6244:
2
PAGE [1] 6455:2
pages [2] 6162:9 6258:3
paid [39] 6076:18 6080:22,
25 6081:2 6082:24 6100:

OPEN SESSIONS

<p>12 6106:17,24 6107:1 6111:18 6112:16 6193:6,7, 8 6253:19 6297:14,22 6298:5,5,10 6301:20 6302: 19 6305:21 6306:4 6363: 16 6375:6,16 6376:1 6377: 4 6396:17,25 6397:6,22 6398:9,15,21 6399:11 6403:14 6436:3 pairs ^[1] 6163:14 Pandora ^[142] 6065:2 6068: 16 6072:2,3 6088:7,10 6090:4 6095:25 6096:3,9 6098:22 6099:3,21,23,25 6100:1,7,12,14,14,17 6102: 9 6104:10 6106:17,23 6107:21 6118:6,14,18,23 6119:17,18 6120:4,5,6,8, 12 6121:7 6125:1,3,6 6184: 6 6185:2,9,18 6186:4,12, 21,22 6187:1,4 6189:14 6192:12,13,14 6193:10,15, 22,24 6194:2,7,23 6195:12 6196:14 6197:6 6198:1 6231:25 6232:13 6248:4 6249:5 6250:25 6253:11, 18 6255:5 6256:24 6259: 16,22 6260:14,19 6262:2,6 6267:22 6269:19,22,23 6270:1,6 6271:18,20,24,25 6272:4,13,16 6273:2,17 6274:21 6275:9 6278:3,20 6279:7,11 6282:2,4,13,17, 20,24 6285:3 6296:1 6297: 3,11 6362:20 6367:11,12 6368:10 6369:2,6 6370:20 6378:14 6394:20 6396:17, 22 6397:6,10 6398:4,6,9, 21 6399:7,11,16 6400:3,23 6401:9,12,14,17,18 6406: 20 6410:24 6412:3 Pandora's ^[30] 6096:4 6100:17 6102:12,19 6104: 10 6119:4 6120:3 6125:7 6182:23 6190:24 6197:3 6259:15 6260:16 6269:25 6271:22 6272:10 6279:4, 13 6282:22 6284:21,23 6299:2 6397:9 6400:8,17, 20,25 6401:10 6403:14,15 Pandora/SiriusXM ^[2] 6248:13 6295:12 Pandora/SiriusXM's ^[1] 6069:6 panel ^[1] 6402:19 panels ^[1] 6364:2 papers ^[2] 6094:13 6229:7 paradigm ^[1] 6371:11 paragraph ^[2] 6121:19 6359:11 paragraphs ^[9] 6162:2</p>	<p>6249:24 6252:13 6261:16 6295:11 6360:15,22 6380: 2,3 part ^[30] 6071:4 6072:5 6074:14 6075:2 6078:10 6092:22 6098:21 6100:17 6103:23 6107:6,24 6118:9 6119:15,20,21 6121:6 6122:6 6127:25 6163:21 6167:6,7 6186:14 6203:7 6231:5 6238:5,6 6252:10 6297:21 6301:5 6412:20 partial ^[1] 6435:13 participant ^[1] 6157:22 participants ^[3] 6069:20 6159:7 6368:5 particular ^[16] 6072:1 6087:13 6107:23 6121:18 6167:3 6271:3,24 6273:10, 21 6274:19 6280:9 6305: 24 6377:6 6379:9 6434:3, 22 particularly ^[9] 6090:4 6109:3 6160:1 6185:9 6200:21,22 6381:6 6393:9 6428:25 parties ^[15] 6068:13,24 6072:10 6242:21,22 6243: 16 6287:15 6290:4 6303: 17 6380:23 6424:23 6429: 17,21 6438:21 6447:24 parties' ^[2] 6415:8 6424:20 parts ^[2] 6088:13 6372:18 party ^[8] 6160:12,13,14,17 6243:8 6290:3 6379:19 6381:18 pass ^[1] 6162:17 passes ^[1] 6186:10 passively ^[1] 6254:18 past ^[15] 6196:24 6200:8 6202:1 6229:17 6238:25 6245:14 6300:15,19 6302: 22 6303:10 6304:20 6305: 12 6364:1 6368:1 6373:18 pausing ^[2] 6233:22 6237: 17 pay ^[66] 6071:6,9,15 6087: 14 6088:23 6091:24 6092: 1,14,17,24 6103:6 6107:15 6110:12,14,16 6111:8 6112:19,24 6113:13 6114: 3,10,20,24 6115:2 6116:5, 11,24 6121:1 6189:3 6229: 23 6230:2,3,4,9,13 6232:9, 24 6238:9 6243:1 6244:15 6255:1,8 6256:2,16 6277: 22 6282:1 6286:17 6287:6 6306:24 6367:9,11,13 6372:6 6397:1,12 6399:2 6400:13 6411:3 6412:17 6424:16 6425:5,9 6436:10</p>	<p>6442:9,18 6450:9 paying ^[7] 6079:3,10 6100: 13 6119:17,18,19 6279:5 payment ^[5] 6204:14 6244: 5 6419:10 6428:18 6429: 12 payments ^[4] 6244:6 6292: 10,12,16 payor ^[1] 6430:9 pays ^[4] 6306:11 6397:10 6400:4,9 peeked ^[1] 6295:22 Pelcovits ^[2] 6079:20 6084:22 Pelcovits's ^[2] 6080:6,8 pennies ^[1] 6205:4 Pennsylvania ^[1] 6064:6 people ^[27] 6071:8,17 6091: 14,24 6092:7,14,16,18,23 6107:15 6114:23 6115:1 6125:10 6183:11 6187:4 6191:14 6192:6 6253:5 6270:18 6271:16 6274:9 6277:19,21 6279:5 6298: 22 6379:3 6435:8 per ^[47] 6070:8,9,11,11 6072:10 6086:5,5 6091:9 6099:14 6101:4,4,8 6102: 14,14,20,20 6104:25 6116: 21 6117:9 6118:16,16 6122:12 6193:15,24 6194: 1,8 6195:11 6228:12 6231: 8 6234:23 6237:4,5 6253: 12,14 6276:10 6278:6,11, 12,24 6279:2 6282:9 6294: 8 6409:19 6410:7,10 6425: 16 6439:22 per-month ^[1] 6306:2 per-performance ^[6] 6228:13 6230:14 6293:4 6419:13 6424:25 6432:25 per-play ^[65] 6072:12,16 6079:7 6080:14,23 6081: 13,19,24 6082:6,14,16,19, 20,24 6083:5,7,10,19 6084: 6,10,22 6085:24 6086:11 6087:4,8,19 6088:1,8,22 6091:4,12,17,19,23 6092: 21 6104:6,8 6156:16 6193: 7 6249:7,8,9 6297:14 6301: 19 6302:1 6306:22 6363:5 6374:9 6375:5,13,24 6379: 15 6381:5 6395:16 6397: 12 6398:3,8,10,22 6399:5 6404:3,20 6411:24 6412:1, 6 per-sub ^[4] 6083:8 6085: 24 6086:11 6193:9 per-subscriber ^[3] 6079: 23 6080:23 6084:23 per-unit ^[2] 6071:25 6102:</p>	<p>21 perceived ^[2] 6267:2 6269: 21 percent ^[57] 6074:12,20 6075:4,4 6081:20 6086:25 6087:9,22 6089:11 6123: 20 6124:7,8,10 6161:11 6182:24 6183:2,14,21 6185:3,5,14 6204:4 6205:4 6230:4,5 6233:19 6250:2,4 6262:14,14,17 6263:1,1,8, 8 6265:16 6266:5,5 6270: 11,15,17 6279:4 6280:1,13 6297:25 6368:23 6369:23 6370:1 6392:23 6397:10, 13 6398:6,14 6399:13 6403:13 6405:4 6439:21 percent-of-revenue ^[2] 6087:5 6398:13 percentage ^[41] 6075:15, 19 6079:3 6080:2,3,10,17 6081:1,2 6085:24 6086:11 6087:2 6088:2,3,7,19,21 6089:6 6090:17 6093:21 6103:21 6105:11 6111:18 6121:1 6183:17 6191:17, 23 6192:10 6193:8 6195:5 6232:23 6254:2 6256:9 6266:9,14,14 6271:8 6279: 22 6368:22 6369:3 6392: 12 percentage-of-revenue ^[9] 6072:15 6080:24 6081:25 6083:8,22 6086:24 6087: 14 6397:2,7 percentage-of-royalty ^[1] 6102:1 perception ^[1] 6424:21 perfect ^[2] 6261:21 6291:6 perfection ^[1] 6267:4 perfectly ^[1] 6201:16 perform ^[3] 6192:1 6437: 23 6447:2 PERFORMANCE ^[12] 6062:7 6068:9 6276:11 6281:8 6282:22 6366:6,10 6375:12 6399:2 6400:13, 15 6434:13 PERFORMANCES ^[11] 6062:10 6068:11 6276:9, 24 6277:14,15,16 6280:1,5 6281:7 6439:10 performed ^[2] 6198:10 6265:1 performing ^[4] 6395:11,19 6430:9,12 perhaps ^[8] 6075:3 6098: 23 6107:25 6118:21 6245: 17,18 6286:23 6438:1 period ^[14] 6075:16,17,17, 18,18 6185:22 6196:9,10,</p>	<p>11 6249:17 6257:11 6262: 3 6431:1,8 periods ^[2] 6185:17 6439: 22 permanent ^[1] 6185:23 permeate ^[1] 6406:11 permissible ^[2] 6453:7,23 permit ^[4] 6162:1,12,15 6375:4 permits ^[3] 6160:1 6162:25 6428:2 permitted ^[1] 6431:14 pernicious ^[1] 6365:2 persist ^[1] 6306:17 persists ^[1] 6396:24 person ^[1] 6097:9 perspective ^[1] 6123:22 persuade ^[1] 6074:6 persuaded ^[1] 6071:18 persuades ^[1] 6201:15 pertaining ^[1] 6415:22 pertains ^[1] 6301:23 PETER ^[1] 6064:4 Peterson ^[20] 6074:13 6108:23 6109:1 6117:22 6118:12 6120:12,15,15 6124:1,13,21 6280:16 6289:16 6300:24 6302:9, 12 6304:9 6306:8 6307:9, 12 Peterson's ^[9] 6300:12,14, 17,18,21 6301:8 6302:17 6305:19 6306:19 phenomenon ^[1] 6393:17 Phillips ^[10] 6072:2 6100:7 6119:4 6124:25 6260:14 6269:24 6273:7,18 6274: 25 6282:11 Phillips's ^[1] 6100:8 Phonorecords ^[5] 6157: 18 6159:20 6305:3,7 6365: 24 piano ^[1] 6236:16 pick ^[2] 6253:24 6254:7 picture ^[4] 6126:10 6157:2, 16 6400:16 pie ^[1] 6161:14 piece ^[2] 6240:10 6376:17 pieces ^[1] 6295:7 Pifer ^[1] 6302:10 Piibe ^[1] 6093:18 pile ^[1] 6185:14 pin ^[2] 6283:19,25 pitch ^[1] 6408:10 pitfalls ^[1] 6304:17 Pittman ^[2] 6370:7 6371: 16 place ^[9] 6103:1,2 6156:18 6244:17 6245:6 6268:20 6307:3 6378:6 6401:24 placed ^[2] 6437:21 6453:</p>
--	--	---	--	---

OPEN SESSIONS

<p>10 places [2] 6182:17 6247:4 plainly [1] 6303:20 plan [4] 6093:11 6097:4,10, 24 plans [36] 6078:20,22 6089:24,24,25 6090:2,5,12,14, 16,19,20 6091:7,7,8,11,13, 21,22 6092:4,11,19,23 6093:6,6 6095:19 6096:20, 21 6103:19 6104:22 6105:3,4,5,10,14,14 platform [1] 6278:19 play [43] 6070:8,9 6086:5,5 6091:9 6101:5 6102:14,20 6104:10,25 6116:21 6117:9 6118:16 6122:12 6189:25 6203:9 6204:13,17,19 6205:9,10 6233:7,12 6269:22 6270:4 6271:2,17 6272:4,5,6,16,18 6273:4 6279:2 6398:19,20 6407:15 6408:8,20 6411:5 6432:17 6433:9,14 played [6] 6233:20 6234:7 6253:25 6433:3 6444:4 6453:3 player [4] 6160:5,9 6161:5, 23 players [5] 6158:4 6160:25 6161:4,7,9 playlist [5] 6234:14 6253:22 6446:11,15 6447:1 playlists [6] 6233:5 6274:6,7,9 6407:25 6409:1 plays [53] 6087:16 6088:24 6091:24 6092:22 6104:7,7, 9,11 6111:5 6183:17 6185:3,15 6190:8,12,25 6192:8, 10,14,19 6193:15,20,24 6194:1,8,9 6195:5,11 6204:3,17 6233:19 6256:9,14 6274:19 6276:9 6278:6,11, 12,24 6279:23 6280:13,22 6281:14,17 6293:5 6294:8 6392:12,21,23 6397:17,23 6398:17,23,24 please [35] 6124:3 6128:3, 5,9,14 6168:8,12,17 6205:24 6206:5,10,15 6229:8 6248:2 6299:25 6307:21, 22 6308:1,6 6359:5 6361:7, 8 6383:6,11 6413:10,11 6420:4,6,10,14 6424:6 6451:23 6454:6,11,15 plenty [2] 6266:23 6432:11 Ploeger [5] 6233:15 6410:13 6433:5,15 6439:24 Ploeger's [1] 6231:13 plucked [1] 6184:12 plucking [2] 6446:9,9</p>	<p>Plus [7] 6095:25 6098:22 6099:3 6100:1,17 6232:12 6239:6 podium [1] 6166:21 point [83] 6069:19 6070:20 6073:12 6077:6 6081:6,8 6084:7 6086:21,21 6087:21 6089:18 6090:24 6092:11 6098:10,13 6102:10,16 6106:2,3,7 6108:6 6111:12 6113:6 6114:6 6119:12 6121:17 6162:16,18 6164:21 6166:18 6167:8 6184:8 6190:11 6204:15 6205:18 6233:14 6235:21 6264:2,7, 14,15 6265:18,23,25 6266:1,8 6271:13 6272:4,11,25 6277:3 6279:20 6283:11, 18,20,23 6284:4 6286:13 6287:4 6291:7 6295:9,25 6299:1 6306:14 6360:22 6372:17 6374:19 6376:10 6378:2 6383:2 6403:12 6407:21 6409:20 6415:7 6419:25 6434:9 6435:5 6441:16,17 6443:14 6450:3 6452:19 6453:8 pointed [3] 6202:16 6439:24 6445:14 pointing [4] 6088:2 6244:17 6409:18 6410:5 points [17] 6071:23 6186:8 6195:7 6238:19 6239:17 6243:21 6266:15 6280:2 6415:5 6417:12 6428:17 6430:18 6432:8 6433:2 6439:12 6450:12 6452:5 Poleman [1] 6408:11 Poleman's [1] 6408:13 political [1] 6243:19 pool [2] 6238:15 6406:16 poorly [1] 6408:23 popular [3] 6235:24 6260:3 6444:5 popularity [1] 6235:6 portrayal [1] 6084:14 pose [3] 6366:18 6372:11 6443:25 posed [1] 6444:10 position [7] 6084:15 6094:14 6237:19 6280:10 6297:1 6300:10 6380:12 positions [1] 6380:25 possess [1] 6288:3 possibilities [1] 6257:16 possibility [2] 6268:7 6370:19 possible [3] 6184:17 6235:11 6255:24 possibly [1] 6203:17 post-hearing [1] 6086:17</p>	<p>post-trial [4] 6285:23 6292:7 6297:24 6299:2 post-Web [1] 6374:15 post-Willig [1] 6286:16 potential [13] 6162:25 6186:20 6188:1,5,14,15 6263:10,11 6297:19 6379:5 6412:23 6419:23 6446:8 potentially [2] 6271:7 6393:12 power [31] 6073:11,25 6075:2 6076:3,12 6126:12, 14 6158:1 6160:21,23 6198:22,24 6199:4 6244:20 6269:6 6280:19 6288:2 6294:5 6359:9,16,17 6360:1,5 6373:10 6394:16 6402:9,10,15 6407:3 6436:18,21 powerful [1] 6379:7 practices [2] 6300:20 6406:13 praise [1] 6433:22 precedent [8] 6201:6 6202:2,6 6242:5 6300:20 6364:14,16 6393:25 precedents [1] 6201:23 preceding [1] 6201:5 precise [1] 6431:9 precisely [10] 6107:16 6162:21 6166:25 6254:19 6375:10 6415:17,19 6416:23 6426:12 6428:15 precision [1] 6266:24 preclude [1] 6448:13 predicate [1] 6397:13 predict [5] 6079:22 6185:23 6267:19 6284:3,11 predicted [1] 6079:16 predominantly [1] 6104:10 prefer [2] 6414:17 6425:24 preference [2] 6303:1,25 preferred [1] 6304:19 prehistoric [1] 6240:18 prejudged [1] 6364:18 premise [3] 6275:12 6432:10 6433:6 premised [1] 6301:10 Premium [11] 6119:3,8,10, 18,19 6124:19,23 6125:14 6253:18 6255:6 6281:12 premiums [1] 6255:4 prepared [3] 6197:4 6283:5 6359:4 prepayment [1] 6426:21 preposterous [1] 6368:25 present [6] 6094:12 6236:14 6263:6,14 6381:2 6449:3 presentation [7] 6069:5,6 6248:11 6301:5 6307:17</p>	<p>6401:21 6452:6 presented [7] 6230:7 6232:18 6233:15 6295:1 6362:23 6399:19 6401:4 presenting [2] 6248:6 6374:4 preserve [1] 6280:19 presumably [1] 6071:7 presuming [1] 6166:24 presumption [1] 6303:16 presumptions [1] 6364:20 pretense [1] 6117:23 pretty [7] 6099:16 6124:22 6186:18 6200:8 6286:3 6414:1 6440:14 prevail [2] 6364:24 6411:21 prevent [1] 6164:18 prevented [1] 6259:2 PREVIN [1] 6063:15 price [23] 6082:7 6091:25 6092:1,11,12,13 6096:7 6099:11,22 6100:2,5 6101:17,21 6121:2,5 6204:16 6205:8,8 6234:23 6249:18, 19 6252:4 6436:2 prices [13] 6079:24 6080:19 6082:4 6091:21 6093:6 6094:2 6096:2 6098:22 6099:3,18 6112:16 6126:24 6255:4 primarily [2] 6074:25 6296:1 primary [5] 6157:20 6196:3 6288:8 6304:3 6370:17 principal [2] 6163:4 6258:6 principally [1] 6248:23 principle [2] 6373:14 6432:22 print [1] 6369:6 prior [10] 6079:17 6102:16 6126:15 6201:6,22 6202:6 6268:13 6431:16 6449:4,7 private [3] 6436:5,6,11 PRO [21] 6362:4,15,19,21 6395:13 6396:9,12,14,17 6397:18 6398:3 6399:5,10, 17 6400:5 6401:5,14,22 6402:5 6403:9,21 probably [8] 6098:1 6100:19 6126:19 6168:5 6206:1 6283:21 6307:17 6420:2 probative [1] 6241:18 problem [25] 6096:24 6097:1,6,10 6099:9 6124:18 6163:12 6164:6 6166:8 6184:24 6186:19 6187:3 6188:20,25 6189:9,15 6192:5,9 6204:1 6264:8 6278:15 6283:12 6284:9</p>	<p>6375:8 6393:2 problems [6] 6084:19 6087:6 6165:4 6185:21 6190:4 6392:13 proceed [14] 6068:16,20 6156:9 6182:5 6228:6 6248:2 6300:1 6303:23 6359:5 6361:14 6383:3 6392:6 6414:16 6451:23 proceeded [7] 6128:16 6168:19 6206:18 6308:8 6383:16 6420:17 6454:18 proceeding [24] 6069:21 6128:13 6168:16 6206:15 6232:5 6250:12 6295:21 6302:25 6305:5,15 6308:5 6361:23 6362:2 6365:17 6374:2 6383:15 6407:11 6415:18 6420:14 6428:20 6447:23,23 6454:15 6456:6 proceedings [8] 6070:15 6303:11 6363:19 6378:16, 20 6393:13 6410:17 6429:7 process [3] 6069:19 6243:25 6244:6 processing [1] 6410:12 procure [1] 6377:21 prodigious [1] 6282:8 produce [7] 6074:19 6093:11 6127:9 6156:24 6157:5 6399:20 6437:19 produced [1] 6382:18 produces [5] 6090:16 6093:23 6157:21 6160:19 6257:23 producing [3] 6161:17 6380:16 6382:4 product [10] 6099:25 6119:5 6189:16 6370:11,12,13 6378:15 6401:18 6402:11, 24 products [8] 6370:13,14 6371:5,13 6373:7 6374:12 6396:1 6404:15 profess [1] 6078:7 Professor [285] 6074:9 6078:3,24 6079:5 6080:7 6082:14,15 6083:4,17 6084:2,12 6085:19 6086:20 6087:11 6089:19 6090:20 6091:1,18 6092:2,12,15, 25 6094:22,23 6095:20,25 6096:11,18 6098:17,19 6099:13,20 6100:4,11,18 6101:1,2,2,16 6102:24 6103:8,12 6104:12 6105:3, 17 6106:6 6108:9,22,25 6109:23 6111:10,24,25 6113:1 6116:1 6117:4,17</p>
--	--	--	---	--

Determination of Rates and Terms (Web V) Docket No. 19-CRB-0005-WR (2021-2025) November 19, 2020
OPEN SESSIONS

<p>6118:12 6120:7,9 6123:13, 14,15 6156:14,15,25 6157: 4,9,11,19 6158:3 6159:24 6160:1,3,18,23 6161:12,24 6162:6,8,10,11,14,16,18, 22,24 6163:2,4,11,17,20, 23 6164:1,1,3,21 6165:3 6166:21 6167:7 6182:11, 11,11,24 6183:7,9,16,18, 23 6184:4,10 6185:4 6186: 3,8,21 6187:7,9,24 6188:4, 12,17,22 6189:4,9,21 6190: 6,9,14,15,24 6191:2,5 6192:1,4,9,22 6193:17,21 6194:3,11,16,21 6195:1,4, 12,15 6196:4,6,6 6197:1, 13,24 6198:5,9,12,14,21 6199:3,6 6231:8 6232:18 6234:5,13 6235:1,7,8,22 6236:7 6244:6,25 6245:4 6251:17 6255:18,19 6256: 24 6257:10 6258:11,17 6261:18,23 6262:7 6266: 24 6268:7,8,9,14,22,24 6269:8 6270:22,25 6272:8 6275:1,11,22,25 6278:1,13 6279:9,16,21,21,25 6280: 16,16 6281:5,18,20,22,24 6282:1,1,13,16,21,23,25 6284:8,20,25 6285:1,4,8,9, 12,24 6287:8 6288:6,10 6289:14,15 6290:1,10,21, 23 6291:8,18,21,25 6292:1, 4,10,11,19,20,23,25 6293: 7,10,12,22 6294:3,17,18, 21 6295:2,3,6,18 6297:9 6299:3 6304:11 6305:10 6359:14,18,21,21,22 6360: 13,20,25 6406:1,4,6,15 6416:14,17 6424:12 6435: 25 6436:11 6441:3,14,19 6442:2 6445:6 proffered [3] 6244:18 6305:7 6392:24 profitable [4] 6232:11,13 6442:10,17 profits [1] 6443:10 profound [1] 6275:2 program [1] 6204:25 programmers [2] 6204:17 6205:10 programming [14] 6204:6, 25 6233:24,25 6240:16 6412:2 6426:13 6432:12 6442:16,17 6444:13,14,15 6446:7 projection [1] 6196:10 projections [14] 6196:6 6197:2,3,8,24 6282:21 6283:1,4,5,14,17,20 6285: 17 6294:9</p>	<p>promised [2] 6300:13 6452:1 promote [2] 6126:4 6365: 23 promotes [1] 6408:9 promoting [1] 6298:4 promotion [5] 6200:20 6202:13,22,25 6203:1 promotional [25] 6121:25 6123:7 6124:15,16 6126:3 6200:21,22 6202:18 6203: 5,8,21 6205:6,6 6298:7,14 6303:8 6405:13,17 6407:5, 12,15,19 6408:25 6409:7,9 prompted [1] 6270:13 promptly [3] 6441:4,7,9 prompts [1] 6270:13 prong [4] 6081:16 6082:24 6084:4,7 prongs [1] 6081:15 proof [4] 6417:7 6442:23 6443:21 6447:20 proper [1] 6381:23 properly [1] 6285:6 properties [1] 6273:3 property [4] 6367:15 6368: 2,15 6410:15 proponent [2] 6236:22 6373:19 proportion [1] 6268:12 proportional [1] 6269:5 proposal [34] 6070:6 6228: 9 6236:25 6237:10,13,20 6238:1 6248:13 6296:16, 23 6297:4 6300:12,13,23 6301:2,7,14,23 6302:8 6369:19 6379:12 6409:16 6416:23 6417:14,15 6418: 23 6427:4 6431:23 6432:2 6439:13 6441:20 6448:23 6449:8 6450:18 proposals [3] 6238:2 6415: 9 6441:22 propose [4] 6249:16,21 6251:2 6429:21 proposed [57] 6074:8,10 6086:1 6088:6,8 6102:11 6117:4,12 6121:18,19 6123:14 6158:13,22 6162: 3 6184:1 6195:14 6198:7 6237:3,14 6249:6,7,24 6250:25 6252:13 6258:4 6276:5 6279:18 6286:14, 14,22 6291:2,2 6294:4,17 6295:12,21 6296:13 6297: 11 6302:18 6304:12 6359: 12 6360:14 6365:25 6366: 1 6368:24 6380:3 6404:7 6406:1 6407:8 6413:4 6415:10 6430:23 6431:1 6434:7 6440:10,18 6441:</p>	<p>23 proposes [11] 6229:3,12 6238:5,9 6295:18 6301:25 6302:2 6425:21 6426:5,16, 24 proposing [5] 6076:6 6295:20 6296:1 6306:6 6419:11 propositions [3] 6115:25 6116:7 6250:6 PROs [6] 6397:1,7 6398:9, 15 6400:24 6402:13 prospective [3] 6186:24 6187:12 6188:11 prove [4] 6205:16,17 6263: 25 6294:23 proverbial [1] 6427:9 proves [1] 6295:6 provide [13] 6080:16 6118: 24,25 6257:2 6276:14 6360:18 6370:21 6381:20 6393:25 6404:25 6427:5 6439:18,19 provided [6] 6198:6 6256: 25 6407:14 6419:17 6429: 15 6439:3 provider [1] 6371:12 provides [2] 6115:15 6426: 1 providing [2] 6157:8 6254: 25 proving [1] 6403:4 provision [8] 6419:3,6 6429:25 6438:9,18,19 6439:8 6440:3 provisions [3] 6126:1 6448:16,19 proxy [13] 6106:22 6112:8 6120:4,8,11,14 6197:9,17 6282:2,14,17 6294:9 6401: 18 public [19] 6128:4 6156:3,5, 8 6182:5 6200:10 6232:12 6243:17 6258:10 6366:5 6392:3,4 6400:13,25 6424: 2 6436:5 6444:2 6445:23 6451:25 publication [1] 6438:25 publicity [3] 6257:12 6259: 10 6261:5 published [1] 6438:19 publishing [4] 6374:6 6395:14 6402:3 6403:14 purchase [2] 6277:7 6365: 23 purchased [5] 6071:12 6192:21,25 6193:18 6194: 5 purchasing [2] 6371:9 6372:9 pure [2] 6189:25 6408:3</p>	<p>Purely [1] 6304:5 purport [1] 6193:16 purported [1] 6243:8 purportedly [1] 6237:15 purpose [4] 6167:19 6198: 22 6275:21 6409:24 purposes [2] 6266:25 6306:1 pursuant [1] 6243:1 pursue [1] 6442:10 push [4] 6244:16 6396:7 6412:14 6436:25 put [20] 6113:10,18 6116:1 6202:7 6235:21 6237:19 6259:6 6270:6 6305:11 6359:11 6361:20 6370:16, 23 6371:16 6377:8 6399: 17 6403:23 6405:18 6417: 3 6452:7 puts [1] 6275:8 putting [2] 6382:21 6445:3</p>	<p>quid [1] 6399:17 quite [5] 6115:23 6184:11 6199:12 6251:21 6256:21 quo [1] 6399:17 quote [12] 6079:21 6081:7 6117:11 6159:20 6204:22 6234:10 6252:11 6303:15, 21 6305:1 6359:13 6434: 22 quotes [2] 6259:7 6382:14 quoting [2] 6080:12 6095: 14</p>
R				
<p>rabbit [1] 6275:8 race [3] 6244:10 6448:21, 21 radar [1] 6408:13 radical [1] 6284:7 Radio [50] 6063:6 6065:2 6203:7 6231:2,8 6232:12 6243:18 6276:13 6279:1, 12 6363:1 6368:9 6370:3,8, 10,12,13,24 6371:2,12,15, 20 6372:2 6373:11 6374: 11,21 6375:14 6377:10 6395:16,24 6396:25 6397: 18 6399:2 6401:18,25 6402:5,8,12 6403:16 6407: 15,24,25 6408:8,16,20,25 6412:14,22 6432:13 6446: 7 Radio's [4] 6231:5 6240:16 6369:8 6407:19 raise [5] 6068:3 6077:3 6106:3 6118:15 6400:21 raised [2] 6068:5 6361:24 raises [2] 6118:5 6183:24 ramifications [1] 6257:22 RAMSEY [1] 6064:21 ran [5] 6085:25 6183:9 6186:7 6232:10 6451:20 RANDI [1] 6065:10 randomly [1] 6233:16 range [16] 6184:17 6255:24 6256:1,4 6287:4 6296:11, 16,17,19,20,22,24,25 6379: 11,13 6405:3 ranging [1] 6252:25 RAO [1] 6063:14 rapidly [7] 6196:13,14,15 6283:3,13,22 6284:13 rate [144] 6070:5 6075:3 6076:18,19,21 6080:14,16 6081:13,14,19,20 6082:6, 20,20,21,22,23 6083:8,19, 20,21,22 6086:24 6087:4,5, 8,14 6088:1,8 6089:2,4 6091:4,9,12,17,19 6101:3 6104:6,8 6105:10 6106:13 6107:2 6117:25 6118:1</p>				
Q				
<p>qualified [1] 6394:7 qualitative [2] 6411:23 6442:3 qualities [1] 6412:7 quality [1] 6373:13 quantification [1] 6070:25 quantified [1] 6244:8 quantify [3] 6275:3 6380:9 6382:6 quantitative [1] 6236:18 quantity [2] 6101:20,21 quarter [2] 6278:12 6439: 23 Question [44] 6073:20 6074:7 6078:25 6086:16 6105:15 6110:24 6118:22 6122:24 6157:13 6166:21 6167:24 6182:7 6193:2 6194:25 6195:3 6197:14 6201:3 6202:11 6229:18 6231:22,23 6272:24 6276: 7 6277:13 6281:25 6284: 14 6285:17 6287:2 6288: 12,24 6295:16 6296:5 6359:5 6362:19 6364:10 6377:25 6392:18 6401:10, 11,12 6405:20 6415:6 6443:15 6451:4 questioning [1] 6408:23 questions [13] 6107:20 6122:23 6245:18,21,22,24 6267:14,15 6361:24 6406: 11 6413:6 6429:10 6450: 23 quick [1] 6243:21 quickly [9] 6185:20 6189:2 6242:12,16,19 6244:10 6396:15 6409:15 6427:17</p>				

Determination of Rates and Terms (Web V) Docket No. 19-CRB-0005-WR (2021-2025) November 19, 2020
OPEN SESSIONS

<p>6120:19,24 6125:22 6126:2 2 6163:17 6200:15,24 6201:7,10,12 6202:7 6228: 13 6229:5,13 6232:7 6233: 2 6236:5,21 6237:13,20 6239:14,15 6240:11 6243: 23 6244:16 6245:16 6248: 21 6249:7,9,17 6251:2 6268:3 6296:14,23 6297:4, 16,21 6300:11 6301:3,14, 23,25 6302:4,6,7,24 6303: 7 6304:2,19 6362:24 6363: 6,24 6364:19 6367:9,12,13, 16 6368:2,7,15 6369:19 6372:15 6373:8,19,25 6374:9,25 6376:13,14 6377:5,7,10 6379:18 6381: 5,19 6394:12,23 6397:7 6398:9,19 6399:5 6402:19 6405:1 6411:24,25 6412:1 6417:14 6418:22 6419:14, 19 6424:17 6425:1 6427:1 6431:23 6432:25 6433:5 6439:13 6440:7 6450:17 6453:22 rate-setting [5] 6304:1 6305:12 6402:17 6410:17 6417:23 RATES [171] 6062:6 6068:9 6070:7,8,16,20 6072:12,15, 16,17 6074:18 6075:16 6076:1,15 6077:3 6079:1,7 6080:22 6081:24,25 6082: 14,16 6083:5,7,10 6084:10, 22,23 6090:21 6091:25 6092:21 6096:19 6100:24, 25 6102:22 6108:2 6119: 23 6121:24 6122:3 6123: 19 6126:25 6127:9 6156: 14 6157:25 6199:11,20,21, 24 6200:2,5,6 6230:6 6248: 20 6249:6,12,14,16 6250:3, 5,8,24 6268:21 6281:3 6287:20 6293:11 6294:4, 15,17 6295:21 6297:14 6301:19 6302:18,19 6303: 3,4 6304:4,12 6305:17,25 6306:4,6,9,11,14,22 6362: 7,20 6363:16 6365:6,13,18 6367:23 6368:8,25 6369: 11 6374:18 6375:5,13,24, 24 6377:3 6378:14 6379: 12,15,16 6395:15,16,24 6396:17,25 6397:22 6398: 3,13 6399:10 6400:5,8,10, 20,22 6402:9,22,25 6404:3 6405:3,21 6407:5 6408:13, 15 6410:21 6413:4 6415:7, 11,17,24,25 6416:8,16,20, 25 6417:5,19 6424:16,18, 23 6425:4 6426:25 6427:5</p>	<p>6429:3,15,16,20,21 6430: 13 6434:3,20 6436:25 6438:24 6440:19,23 6442: 6,21 6445:1 6448:1 6449:4, 12,12,15,17,21 6450:20 6453:18 rather [21] 6081:19 6083:7 6087:5 6091:8 6192:20 6244:5 6282:25 6283:7 6290:24 6293:9 6296:2 6300:18 6302:14 6379:24 6409:22 6410:5 6414:25 6424:9 6427:23 6434:13 6446:2 ratings [2] 6204:20 6205:2 ratio [69] 6078:7,11,17 6079:1,10,13,14,15,22 6080:1,2 6081:13 6084:20, 24 6085:7,8,16,20 6086:4, 6,9,22 6087:22 6089:20 6090:9,16 6091:20 6096: 11 6101:13 6103:23,25 6105:8,13,16 6109:8,10,13, 20,25 6110:2,8,22 6111:1 6117:24 6120:2 6189:12 6190:14,23 6191:21 6198: 22,24 6199:7 6240:14 6256:12 6269:7 6279:22 6280:18 6294:5,9 6368:14 6369:3 6370:1,2,6 6403:11, 22 6424:9,17 6425:25 rational [3] 6087:3,3,7 ratios [9] 6080:13 6189:24 6191:2 6199:4 6278:16 6281:16,18 6368:18 6369: 23 re-creating [1] 6267:4 reach [9] 6163:14 6164:11 6166:1 6203:15 6242:7 6245:13 6259:11,14 6269: 2 reached [5] 6165:7 6264:9 6429:18 6431:4 6441:8 reaches [1] 6235:5 reaching [1] 6235:11 react [1] 6165:20 read [18] 6072:5 6076:14, 23 6080:20 6111:17 6115: 23 6116:8 6159:21 6187: 16 6204:22 6230:22 6241: 8 6380:21 6433:10 6434: 23 6444:1 6445:19,20 ready [3] 6248:2 6414:16 6440:1 real [20] 6070:25 6105:15 6165:9,11,13,24 6166:2,7 6167:14,21 6197:14 6229: 11 6258:7 6260:12,13 6261:18 6303:17 6305:15 6403:20 6404:4 real-world [1] 6374:4</p>	<p>realistic [3] 6166:14,19 6377:11 realities [1] 6262:6 reality [12] 6085:4 6111:20 6118:20 6166:9 6230:19 6231:8 6232:14 6267:13 6268:1 6304:15 6368:16, 19 really [63] 6073:4 6079:6, 12 6084:19 6085:6 6086: 12 6088:8,12 6090:5 6092: 4 6093:1,3 6100:18,22 6107:19,24 6108:4,8 6109: 19 6110:15 6112:9 6113: 10,17 6115:10,13 6116:16, 19 6122:4 6124:14 6125: 17 6127:22 6159:9 6166: 20 6184:11 6186:1 6188:6, 8 6192:24 6194:16 6196:3 6197:11,11 6200:16 6203: 14,14 6205:13 6228:14 6239:18,25 6241:18 6242: 6,7,18 6244:16,21 6245:4 6286:3,8 6377:7 6378:8,9 6438:16 6446:23 reason [28] 6087:12 6090: 3 6102:8 6108:13 6110:15 6121:4 6122:3 6167:6 6185:8 6186:2 6188:4 6200:23 6205:5 6228:15 6231:13 6232:3 6241:12 6242:7 6262:13,25 6266:3, 11 6268:3 6273:20 6304:4 6379:6 6408:6 6440:2 reasonable [15] 6079:22 6087:4,7 6117:8 6248:20 6257:14 6281:6,23 6294:7, 8,12 6307:13 6381:23 6426:1 6429:14 reasonableness [1] 6447: 25 reasonably [1] 6278:1 reasons [16] 6087:4 6108: 2 6122:15 6127:23 6163:7 6186:23 6192:3 6197:4 6200:14 6249:2 6260:15 6280:4 6393:7 6424:10 6425:5 6437:11 rebut [6] 6362:9 6363:25 6379:22 6380:8 6396:6 6440:25 rebuttal [22] 6094:13 6103: 12 6161:25 6198:5 6258:2 6268:18,23 6275:2 6278: 23 6285:13 6286:16 6290: 21,23 6292:7 6295:1 6363: 9 6364:21 6377:14 6380: 13,14 6396:14 6441:13 rebutting [1] 6401:3 recall [11] 6070:24 6071:1 6092:3 6098:7 6099:23</p>	<p>6104:23 6165:2 6270:25 6291:6 6364:4 6398:1 receive [6] 6193:13 6200:1 6258:20 6365:12 6429:25 6430:1 received [2] 6381:4 6437: 10 receiver [1] 6101:24 receives [1] 6162:20 receiving [2] 6381:12 6419:9 recency [1] 6362:5 recent [10] 6241:21 6249: 19 6282:23 6283:7,12,16 6284:17 6305:3 6419:4,20 recently [1] 6429:9 recess [2] 6246:1,3 recital [1] 6438:19 recite [1] 6080:9 recognition [1] 6411:1 recognize [2] 6264:19 6302:3 recognized [8] 6126:15 6159:19,21 6303:11 6367: 4 6372:5,10 6434:18 Recognizing [1] 6412:21 reconsider [1] 6201:22 reconvene [1] 6246:2 record [169] 6069:13 6070: 23,25 6077:1,7 6080:16 6081:19 6083:3,6 6093:8, 14,16,20,22 6094:17 6095: 3,3,10,15,16 6096:17 6098: 12 6099:17 6108:7 6121:2, 5,23 6122:1 6123:7 6125: 16 6126:25 6127:4,15,20 6158:7,8,9,11,15,23,25 6159:11 6160:20 6161:4,8, 10,15,20 6162:19 6163:10, 16 6164:17 6165:6,7 6167: 20 6185:7,7 6191:1 6193:6, 18 6196:22 6199:1,2 6203: 16 6205:7 6228:24 6233:3, 9,13 6235:14,17 6236:3 6237:25 6238:3,18 6240: 24 6243:10 6244:23 6248: 15 6249:4 6250:17,18,20, 22 6251:11 6252:5,22 6254:24 6255:3,13,25 6256:23 6257:5,9 6258:15 6261:3,4,7,9 6267:15 6281: 6,11,19,21 6282:3,10 6287: 4,12,19,21,24 6289:7,12 6291:13,14,15 6292:24 6293:15 6299:24 6359:23 6360:7,8 6361:25 6362:5, 22 6366:17 6368:4,8,11 6374:1,16,20 6375:23 6376:18 6378:8 6381:1,7, 15 6393:11,18,23 6397:5 6399:22 6404:8 6407:14,</p>	<p>23 6411:9,20 6412:11,24 6415:13,13 6416:25 6417: 17 6418:6 6427:23 6432:4 6433:24 6436:16,22 6442: 21 6445:5,15 6446:14 6448:3,3 6449:7 6452:8 6453:5 recorded [2] 6274:2 6433: 25 recording [8] 6204:14 6372:12 6374:5 6394:1 6397:11 6398:7 6412:17 6418:11 RECORDINGS [29] 6062:8 6068:10 6069:16 6106:18 6161:18,18 6204:18 6233: 12,20 6234:22 6242:25 6256:10 6260:6 6269:23 6270:3 6274:7,8 6279:23 6280:23 6366:6,9 6418:10 6425:15,16 6430:10,12 6432:16 6433:1 6446:10 records [3] 6076:19 6270: 3 6364:3 recourse [1] 6402:16 recursive [3] 6292:13 6293:21 6294:11 red [9] 6128:9 6168:12 6206:11 6308:1 6383:11 6400:21 6420:10 6435:19 6454:11 red-herring [2] 6127:19 6406:4 red-herrings [1] 6126:18 reduce [6] 6182:25 6183: 14,19 6191:17,19 6442:9 reduced [3] 6076:18 6100: 5 6250:24 reduces [2] 6244:14 6436: 10 reducing [1] 6443:4 reductions [1] 6075:16 REED [1] 6065:9 reestablished [1] 6424:3 refer [10] 6102:9 6118:8 6247:23 6279:18 6290:22 6295:13 6299:2 6446:12, 25 6447:11 reference [1] 6303:23 referenced [1] 6360:14 references [1] 6448:4 referred [4] 6082:14 6256: 11 6291:8 6444:21 referring [1] 6069:17 refers [1] 6369:25 reflect [8] 6101:14 6283:6 6288:1 6290:2 6371:10 6406:12 6415:15 6449:14 reflected [3] 6400:20 6402: 22 6403:21 reflecting [2] 6157:25</p>
---	--	--	---	---

OPEN SESSIONS

<p>6419:22 reflects ^[10] 6115:5 6185: 25 6244:19 6262:6 6287:6, 25 6289:12 6297:21 6368: 20 6424:18 refute ^[1] 6437:12 regard ^[15] 6074:1 6094:10 6166:12 6251:25 6263:5 6264:8,10 6271:6 6272:12 6285:12,16,25 6286:16 6295:23 6382:15 regarding ^[6] 6195:3 6264: 3 6305:24 6433:16 6447:1 6449:5 regardless ^[6] 6080:22 6239:23 6408:8 6412:20 6416:22 6429:20 Register's ^[1] 6453:15 registers ^[1] 6448:9 regrettably ^[1] 6396:7 regular ^[1] 6425:20 regulated ^[1] 6440:7 regulations ^[3] 6125:25 6438:20 6441:21 Reiley ^[6] 6185:24 6186:13 6261:23 6263:17 6266:21 6281:11 reject ^[1] 6392:14 rejected ^[4] 6111:11 6200: 14 6306:13 6402:18 rejection ^[2] 6430:19 6431: 17 relate ^[2] 6259:7 6269:14 related ^[9] 6082:4 6107:24, 25 6164:6 6184:21 6272:9, 19 6410:14 6443:10 relatedly ^[2] 6260:5 6305:3 relates ^[7] 6086:18 6119:2, 15 6259:6 6271:14 6279: 15 6445:17 relating ^[2] 6081:8 6228:9 relations ^[1] 6258:10 relationship ^[3] 6263:18, 19 6266:2 relationships ^[1] 6266:16 relative ^[7] 6286:5 6303:9 6438:3 6443:16,20 6452: 22,23 relatively ^[3] 6121:25 6228: 22 6276:12 relaxes ^[1] 6198:20 releases ^[3] 6183:2 6191: 16 6194:24 relevance ^[1] 6231:4 relevant ^[5] 6079:12 6190: 18 6196:10 6406:20 6433: 5 reliable ^[1] 6281:22 reliance ^[2] 6403:5 6453: 10 relied ^[8] 6186:14 6271:12</p>	<p>6375:20 6378:4 6396:20 6400:22 6444:18 6448:2 relies ^[5] 6100:7 6198:1 6269:19 6416:13 6448:13 Religious ^[7] 6067:2 6077: 16 6234:8 6235:10 6449: 23 6450:2,10 rely ^[11] 6074:25 6075:17 6231:3 6241:4 6259:19 6267:10 6296:1 6375:2 6418:18 6436:4,6 relying ^[3] 6101:16 6399: 25 6448:7 remain ^[2] 6252:22 6412: 20 remainder ^[2] 6249:17 6307:16 remained ^[1] 6100:3 remaining ^[2] 6068:18 6164:12 remains ^[3] 6245:2 6251: 20 6252:6 remanded ^[1] 6305:4 remarkable ^[1] 6250:6 remarkably ^[1] 6435:2 remember ^[4] 6075:5 6193: 1 6272:17 6290:14 reminded ^[1] 6127:24 reminding ^[1] 6301:22 remodeling ^[1] 6236:15 REMOTE ^[1] 6062:22 remove ^[1] 6449:8 removed ^[1] 6267:12 removes ^[1] 6418:18 renewal ^[2] 6362:3 6375: 14 renewed ^[4] 6242:10 6374: 15 6378:3,5 reopens ^[1] 6156:3 repeat ^[2] 6109:18 6242:18 repeatedly ^[4] 6241:2 6397:20 6439:4 6449:13 repertoire ^[2] 6258:9 6261: 6 replace ^[1] 6191:20 replacing ^[1] 6372:8 replay ^[1] 6254:15 replays ^[1] 6119:2 replica ^[1] 6407:18 replicates ^[1] 6183:10 replied ^[1] 6382:19 reply ^[18] 6107:3 6109:17 6119:10 6204:9 6261:16 6276:6 6286:14 6291:2 6360:16,16,23 6380:4 6397:2 6402:6 6432:24 6436:20 6444:12 6453:6 report ^[1] 6434:19 Reported ^[2] 6062:25 6444:2 reporter ^[3] 6451:5,7 6456:</p>	<p>10 reporter's ^[1] 6451:21 reporting ^[16] 6231:10 6243:24 6437:6,9,17,22 6438:8,12,23 6439:1,6,14, 20,20,21 6440:3 reports ^[3] 6237:22 6243: 25 6439:9 represent ^[2] 6194:10 6303:4 representative ^[3] 6231: 23 6392:21 6401:17 representatives ^[2] 6415: 14 6418:7 represented ^[5] 6112:15 6121:7 6205:4 6428:9,12 representing ^[1] 6401:25 represents ^[1] 6429:3 reproduced ^[2] 6231:12 6241:8 request ^[4] 6245:8 6273:5 6411:16 6419:18 requested ^[4] 6266:24 6401:6,8 6438:9 require ^[5] 6304:5 6366:9 6368:6 6420:1 6451:22 required ^[3] 6127:2 6364: 24 6395:20 requirement ^[3] 6365:5 6367:22 6368:10 requirements ^[2] 6110:22 6439:14 requires ^[6] 6120:18 6125: 23 6267:3 6278:14 6369: 10 6413:2 resembles ^[2] 6371:7 6439:20 reserve ^[1] 6069:7 reserved ^[2] 6068:21 6451: 15 resist ^[1] 6077:24 resolves ^[1] 6432:25 resorts ^[2] 6399:15 6400: 19 resources ^[1] 6303:18 respect ^[18] 6111:24 6116: 1 6192:17 6196:13 6202: 13,22 6254:5,9 6268:15 6282:16 6380:7 6433:12, 14 6434:4 6435:14 6445: 22,25 6446:15 respectfully ^[2] 6267:25 6413:3 respond ^[6] 6102:4 6267: 19 6361:1 6376:9 6378:1 6441:20 respondents ^[13] 6182:25 6183:7,14 6184:5 6191:17, 19,23 6194:21 6195:1,4,9 6267:19 6277:5 responds ^[1] 6183:6</p>	<p>response ^[25] 6086:18 6092:2 6100:11 6106:6 6166:6,6 6194:25 6195:3 6270:13 6271:10 6279:6 6360:21 6362:8 6364:10 6369:21 6372:21 6374:14 6376:16 6396:9 6402:5 6405:5 6408:18 6419:17 6437:23 6452:5 responses ^[5] 6093:1 6099:20 6195:8 6292:1 6299:4 rest ^[2] 6282:2 6426:14 restricted ^[41] 6069:22,23 6072:6 6075:8 6076:13,24 6088:5 6093:25 6096:5 6104:23 6106:16 6115:23 6118:9 6128:1,3,8 6168:2, 7,11 6199:13 6204:23 6205:19 6206:4,10 6230: 21 6247:23,25 6252:10 6260:25 6299:18,21 6307: 16,20,25 6361:10 6383:3, 10 6420:2,9 6454:4,10 result ^[14] 6076:4 6079:2 6103:22 6104:21 6156:15 6163:21 6193:13 6234:4 6245:14 6265:9 6281:18 6377:8 6404:21 6442:20 resulted ^[2] 6243:23 6449: 21 resulting ^[2] 6257:13 6399: 4 results ^[36] 6079:9 6085:7 6125:18 6156:24 6157:5, 21 6163:5 6183:12,22,23 6184:14,18 6185:1,25 6197:12 6230:5 6255:24 6265:9 6266:18,18,23 6268:5,19,21 6278:9 6287: 23 6288:17 6291:23 6294: 5,14 6295:8,17 6296:9 6301:18 6304:7 6406:23 retail ^[8] 6080:18 6082:5,7 6092:4 6094:2 6101:14,18 6106:20 retain ^[3] 6280:1,12,21 retention ^[6] 6199:6 6256: 12 6279:22 6280:17 6281: 17 6294:9 retired ^[1] 6402:20 return ^[9] 6126:25 6128:13 6168:16 6206:15 6248:10 6308:4 6383:15 6420:14 6454:15 reveal ^[1] 6375:22 revealing ^[2] 6247:25 6363:17 revenue ^[77] 6072:16 6079: 3,10,14,15 6080:11,17 6081:1,2,20 6085:8,9,24</p>	<p>6086:3,5,5,10,12 6087:6,9, 15,23 6088:2,20,21 6089:6, 11 6090:11,13,17 6091:16 6093:21 6101:4,4,14,20,23, 24 6102:20 6103:21 6104: 1 6105:11 6111:2,4,18 6112:25 6113:20,20,24,25 6114:17 6115:1 6116:21 6117:9 6118:5,16 6120:2 6121:21 6122:8,12,14 6193:8 6232:18,23 6279: 14 6282:9 6366:23 6372: 12,15 6397:13 6398:15,23 6403:14 6404:12 6412:5, 24 6416:4 revenues ^[13] 6071:25 6072:4,8,10 6081:8 6250: 19,20,22 6366:20 6408:9 6416:5 6447:12,17 review ^[1] 6233:16 reviewed ^[2] 6086:16 6300: 4 reviewing ^[1] 6242:14 revisionist ^[1] 6440:7 right-hand ^[14] 6128:10,11 6168:13,14 6206:12,13 6308:2,3 6383:12,13 6420: 11,12 6454:12,13 rights ^[23] 6243:21 6392: 18 6395:10,11,14,19 6396: 3 6399:2 6400:13,16 6402: 3 6403:14 6405:20 6415: 18 6416:11 6418:3,10,12 6428:4,13,16,19 6448:25 ripened ^[1] 6097:11 risen ^[2] 6070:23 6251:8 risk ^[6] 6121:22 6122:2 6229:1 6233:6 6443:25 6444:10 risks ^[1] 6418:21 RMLC ^[3] 6402:10,15,24 RMR ^[1] 6062:25 road ^[1] 6361:19 roadmap ^[1] 6077:9 robust ^[3] 6294:5 6295:6 6363:20 ROCK ^[3] 6063:16 6232:9 6453:3 role ^[1] 6157:14 Rolling ^[2] 6098:4,6 room ^[22] 6128:6,15 6168:8, 10,18 6182:2 6206:5,8,17 6228:2 6307:21,23 6308:7 6369:18 6383:6 6392:2 6420:5,7,16 6454:6,8,17 rotation ^[1] 6273:15 roughly ^[1] 6451:18 royalties ^[33] 6071:23 6081:9,9 6087:19 6088:24 6106:25 6160:19 6193:6, 13 6230:14 6232:15,20,22</p>
--	---	---	---	---

OPEN SESSIONS

<p>6243:1 6256:13 6276:12, 14,21 6279:16 6281:17 6293:2 6375:6,16 6376:1, 12 6377:17 6397:11 6400: 14 6410:12 6411:4,13 6412:17 6433:21 ROYALTY [46] 6062:1 6079:10,14,15,23 6080:14, 24 6082:6 6085:7,9 6086:5, 10 6087:18,19 6090:12,13 6100:23,25 6101:3,24 6102:17,22 6104:5,25 6108:2 6111:2 6120:2 6164:17 6239:13 6276:8, 10 6286:5 6293:4 6373:25 6374:22 6396:22 6397:9 6398:7,7,25 6400:8,20 6401:1 6405:14 6412:6 6416:16 Rubinfeld [4] 6080:7 6082: 15 6083:4 6251:12 Rubinfeld's [2] 6080:13 6111:10 rug [1] 6240:3 rule [5] 6270:20 6365:10,14, 25 6366:2 ruled [1] 6094:13 ruling [2] 6304:22 6305:1 rulings [1] 6300:15 run [13] 6184:18 6185:22 6188:20,21 6189:8,11,23 6191:13 6236:1 6257:6 6281:2 6284:2 6442:25 running [4] 6122:20 6189: 6 6363:13 6445:12 RUWE [10] 6062:14 6245: 21,22 6299:12,13 6413:8 6414:1,3,19 6451:1 Ryan [2] 6285:2,5 Ryan's [3] 6285:6,14 6360: 21</p> <p style="text-align: center;">S</p> <p>S.E [1] 6062:18 SACK [19] 6068:5 6128:5 6156:4 6168:9 6182:2 6205:24,25 6206:6 6228:2 6307:22 6383:7 6392:2 6413:17,20,23 6420:6 6424:2,4 6454:7 SADIK [1] 6066:5 SAG-AFTRA [2] 6063:6 6069:15 sake [1] 6265:15 sales [4] 6366:17,20 6367: 11 6412:11 salient [1] 6241:1 same [101] 6076:10 6079:3, 10,16,24 6080:4,17 6081:1 6085:22 6086:6,9 6087:22 6089:11 6101:17 6105:4</p>	<p>6111:1 6112:5 6117:19 6119:5 6125:13,16 6127:6, 13 6163:5 6165:13 6166: 11 6185:6 6186:16 6187: 22 6193:14 6195:3,8,8 6200:8 6204:25 6205:13 6228:16 6239:23 6243:7 6244:17 6245:14 6254:22 6261:13 6268:14 6273:25 6278:4 6280:21 6281:8,20 6285:5 6292:16 6293:9 6294:3 6295:8,19 6297:15, 16 6305:9 6307:1,2 6362: 15 6365:13 6367:9,12,13 6369:1,19 6370:5 6373:8 6374:17 6382:11 6398:16 6403:17 6415:17,19 6417: 3 6418:1,3,5,8,9,10,10,12 6426:20,21,21,22 6428:10, 15 6430:10 6431:4 6435: 14 6439:8 6442:14 6445:9, 18 6448:11,12,24 6450:8 sample [2] 6266:22 6439: 21 San [2] 6064:14 6066:16 SARAH [1] 6063:17 SARANG [1] 6066:6 satellite [3] 6189:20 6279: 1,12 satisfied [1] 6374:3 satisfy [2] 6249:13 6253:10 save [1] 6205:3 saving [1] 6244:2 saw [3] 6235:16 6364:17 6453:1 saying [24] 6075:15 6079: 21 6080:3,21 6162:16,17 6165:3,18 6201:8,11 6202: 6 6229:11 6235:9 6266:4,6, 17 6272:13 6288:20 6289: 1 6372:20 6382:20 6394:7 6445:13 6446:18 says [23] 6079:14 6090:20 6092:12 6099:4 6100:4,8 6104:2,25 6116:22 6119:4 6122:7 6125:8 6162:14 6184:10 6188:4 6190:9 6200:20 6204:8,12 6205: 11 6241:12 6435:8 6439:8 scales [1] 6255:6 scarcely [1] 6438:25 Scenario [4] 6198:13,14 6285:16,17 Scenarios [3] 6197:19 6268:18 6295:1 scheduled [1] 6069:1 SCHMIDT [1] 6064:4 science [1] 6182:14 scope [2] 6119:11 6416:20 score [2] 6231:1 6361:2 scratches [1] 6371:14</p>	<p>Screen [15] 6063:4 6069: 22 6128:10 6168:14 6206: 12 6247:6 6259:6 6308:2 6359:11 6383:12 6419:4 6420:11 6445:23 6451:9 6454:12 script [1] 6191:6 scrutiny [2] 6258:14 6369: 23 SDARS [2] 6126:16 6304: 24 seasonal [3] 6239:18 6426: 12,13 SEC [2] 6197:5 6198:1 Second [28] 6071:24 6078: 19 6089:18 6098:19 6099: 7 6100:11 6105:21 6124:3 6157:7 6184:24 6239:13 6244:4 6252:16 6259:13 6262:4 6283:9 6284:20 6292:8 6300:21 6301:5 6360:5 6392:19 6395:7 6405:19 6424:20 6431:6 6438:11 6439:12 Secondly [2] 6293:7 6425: 12 seconds [1] 6398:24 secret [1] 6182:22 Section [4] 6306:6 6417:23 6428:1 6429:13 Sections [1] 6429:15 see [51] 6069:22 6070:6,17 6071:13 6072:6,13 6074: 11 6080:20 6095:18,21 6101:11 6102:25 6104:5 6111:18 6115:11 6117:14 6122:1 6127:10,14,16,18 6159:20 6191:16 6198:10 6199:11,13 6201:20 6228: 8 6230:23 6231:16 6232: 10,17,21 6233:17 6238:6 6243:5,12 6244:22 6245:5 6254:12 6262:16 6295:22 6296:13 6368:14,21 6370: 4 6378:17 6379:11 6394: 24 6408:15 6414:9 seed [5] 6272:14,20,24 6273:1,11 seeded [1] 6273:10 seeds [1] 6272:3 seeing [5] 6108:11 6115: 10 6116:16 6122:12 6126: 24 seek [5] 6068:22 6164:21, 22 6255:5 6368:6 seeking [4] 6070:7 6127: 15 6250:2 6302:14 seeks [1] 6381:18 seem [2] 6097:11 6126:21 seemed [1] 6363:22 seems [13] 6070:4 6083:11,</p>	<p>14,17,23 6092:5 6114:5 6120:23 6203:3 6240:13 6265:9 6272:12 6380:14 seen [1] 6409:8 segment [5] 6088:9 6199: 16 6302:4 6417:4 6424:15 segmentation [1] 6424:19 select [2] 6280:7,10 selected [2] 6233:16 6252: 1 selecting [3] 6296:23,24 6307:12 selection [2] 6253:7 6305: 19 self [1] 6381:21 self-described [1] 6258:2 self-evident [1] 6094:17 self-interest [1] 6380:24 sell [2] 6118:15 6402:13 seller [27] 6120:23 6229:20 6231:6,20 6233:1 6241:16 6243:7 6249:15 6255:21 6287:10 6289:22 6302:24 6303:6 6359:25 6382:1 6394:22 6400:25 6415:16 6417:18 6418:20 6424:22 6427:23 6434:17 6444:24 6449:2,15 6450:20 seller's [1] 6236:11 sellers [17] 6073:3 6120:20, 24 6160:19 6373:24 6392: 17 6396:2 6418:2,5 6427: 20 6428:1,2,10 6429:4 6442:22 6448:25 6449:13 selling [2] 6116:11 6118: 18 sense [8] 6163:16 6187:22 6228:22 6229:18 6234:18 6283:4 6306:25 6376:21 sensitive [4] 6278:7 6294: 19,24 6436:2 sensitivity [5] 6198:6,9,12, 21 6295:2 sentence [1] 6439:12 separate [14] 6097:8 6201: 7,12 6202:7 6203:1 6232:4, 5 6257:6 6301:3 6364:12 6370:11 6373:20 6381:17 6406:19 separately [2] 6203:12 6293:8 September [1] 6237:2 sequential [1] 6165:14 sequentially [1] 6166:3 series [3] 6163:12 6378:10 6379:2 serious [3] 6073:4,8 6109: 20 serve [2] 6303:18 6447:5 served [1] 6072:20 serves [1] 6072:21</p>	<p>service [163] 6070:7 6072: 4,7 6080:15 6087:13 6093: 20 6095:16 6106:13,18 6107:23 6108:24 6109:1,2, 15,16,21,22 6111:15,19,20 6114:16,20 6115:6,7,14 6116:11,15,15 6117:16 6119:3,4,17 6120:4,14 6122:25 6123:17,18 6125: 3,5,7,8,9,23 6126:22 6127: 5,7,18 6157:10 6158:6,8,9, 13,17,24 6159:2,16,23,25 6161:4,5,7,10 6163:25 6164:7,10,13,15,16 6165: 20,24 6182:8,20 6185:5,16 6186:4,10,18 6187:25 6188:11,24 6189:7,11,23 6190:1,7 6191:11 6193:7, 12 6194:8 6195:2,11 6196: 19 6198:16,25 6199:1 6254:12 6256:7 6257:5 6258:23 6259:1,8 6260:3, 16,25 6261:1,7,13 6267:17 6268:11,13 6269:3,13 6270:5,9,11 6271:2,4,6 6275:6 6276:3,18,19,20 6277:6,22,23 6278:3,4,6, 24 6280:24 6282:6 6284: 24 6287:13 6289:6,9 6290: 8 6292:25 6293:15 6295: 20 6296:14 6298:13,14,14, 19 6301:21 6302:20 6304: 9 6306:2,3,5,11,23,25 6307:4 6360:1,4 6365:22 6395:25 6397:8 6403:15, 16 6446:21 service's [1] 6121:21 services [207] 6071:1,6,9, 18,25 6072:25 6073:5 6074:1 6076:2,13 6077:11 6078:1,4,21 6079:2,4,5,10, 11 6086:19 6087:12 6090: 4 6092:8 6093:13,15,17 6094:9,20,24 6095:20,24 6096:11 6098:15,22 6099: 4 6101:16 6103:6,7 6104:1, 7 6107:7 6108:21 6109:14 6110:5,6 6112:6,9,17 6119: 1,9 6121:12 6124:16,23 6125:14,22 6126:4,11,12, 21 6156:23 6160:18 6162: 21 6183:6 6184:2 6185:17 6187:14 6188:2,21,22 6189:22 6190:3,9,20,22 6192:16,20 6194:3 6236: 15 6248:6 6249:8,9 6250: 14,16 6252:2,6,7,18,19,21, 22 6253:9,10,12,14,15,16, 21,23 6254:3,5,10,18,20, 21,24 6255:5,8,10,11,13, 14 6258:18,25 6259:9</p>
--	--	--	---	--

OPEN SESSIONS

<p>6261:10 6269:15,17 6271:13,15 6272:10 6276:17 6287:21 6288:4,22 6290:15 6293:3 6294:12 6297:7 6298:18,21,22,24 6301:4,20 6302:19 6303:10 6306:7,10,15 6307:6 6363:7 6364:9 6365:7,11,19 6366:11,13,16,22,24 6367:10,13,14,21,24 6368:6,9,9,17,23 6369:2,17 6370:9,20 6371:2,3,15,17,20,22 6372:2,7,8,11,22 6373:1,1,2 6394:18 6395:16,24 6397:22 6400:13 6404:14,23 6406:24 6408:3,16 6412:4 6415:22,24 6416:1,2,10,19 6433:14 6434:7,8 6440:14 6443:2,4,13,17 6447:13 6449:10,19 6451:19 services^[19] 6087:21 6119:25 6120:10 6122:8,13 6159:23 6198:18 6249:24 6252:12 6261:16 6276:5 6289:24 6359:12 6360:16,23 6380:4 6404:17 6407:8 6447:8 SESAC^[5] 6395:12 6398:14 6401:23 6402:16,19 session^[56] 6069:23 6128:1,3,8,9,17 6156:8 6168:2,7,12,12,20 6182:5 6205:19 6206:4,10,11,19 6228:5 6247:1,8,19,21,22 6252:11 6299:18,20 6307:16,20,25 6308:1,9 6359:3 6361:9,10,11 6383:3,10,11,17 6392:5 6413:14 6420:2,9,10,18 6424:5 6434:24 6435:2 6444:2 6451:24 6454:4,10,11,19 6455:10 sessions^[4] 6119:9,10 6281:12 6455:12 set^[37] 6068:7 6070:16 6120:19,24 6126:2 6195:8 6200:14 6201:7,12 6232:7 6261:15 6266:14 6268:22 6284:14 6286:21 6290:20 6292:14 6297:10 6302:4 6303:7 6362:7 6367:22 6368:25 6375:17 6378:14 6381:8 6415:17,23 6417:6 6419:14 6427:1 6429:21 6432:6 6433:5 6445:1 6449:4,17 setting^[21] 6119:23 6125:22 6163:17 6248:21 6268:3 6289:20,20 6304:19 6305:17 6367:16 6368:2,15 6369:11 6374:18 6408:15 6415:6,11 6416:15,24</p>	<p>6417:18 6440:23 settled^[1] 6428:3 settlement^[14] 6237:16 6241:3,21 6242:10 6243:2,17,22 6244:11 6245:10 6305:8 6448:5 6452:9,16 6453:22 settlements^[1] 6241:24 seven^[1] 6068:25 seven-day^[1] 6439:22 several^[10] 6249:5,22 6280:4 6296:12 6301:9,15 6392:12 6424:10 6434:14 6437:11 severe^[1] 6271:9 shall^[2] 6241:9 6365:18 shallow^[1] 6364:22 Shapiro^[122] 6074:10 6078:3,24 6079:5 6082:15 6083:17 6084:2,12 6086:20 6087:11 6089:20 6090:20 6091:1,3,19 6092:12,15 6094:22 6095:20,25 6096:11,18 6098:17,19 6099:20 6100:4,11,19 6101:1,2,16 6103:8 6104:12 6105:4,17 6106:7 6108:9,22,25 6109:23 6112:1 6113:1 6116:1 6117:4,17 6120:7 6123:13,14,15 6157:9 6160:1 6161:24 6162:14 6163:11,17,20,23 6164:1,3 6165:3 6184:10 6186:21 6187:7,9,24 6188:4,17,22 6189:4,9 6190:9 6191:6 6192:1,4,9,22 6193:17,21 6194:3,11 6195:12,15 6196:4 6197:13 6251:18 6255:19 6256:24 6257:10 6258:11 6266:25 6268:5,8,9 6275:22 6278:1 6279:9,21 6281:5,22 6282:2,23 6287:8 6289:16 6290:1 6291:8,18,21 6292:4,10,20,23,25 6293:7,10,12,22 6294:21 6295:18 6359:14,18,21 6360:13 Shapiro's^[35] 6085:19 6092:2,25 6099:14 6102:24 6103:12 6106:7 6111:24 6162:6,11,18,24 6163:4 6164:21 6183:23 6188:12 6189:21 6194:16 6199:6 6248:23 6261:18 6268:22 6281:18 6282:13 6284:25 6285:1,8 6290:21,23 6292:1 6294:3,17,19 6297:9 6299:3 Shapley^[38] 6156:20 6157:4,15,16,17 6158:2 6159:16,20,24 6160:1,5,18,23 6162:22 6163:2,5 6166:12,23,25</p>	<p>6167:4,6,8,11,12 6198:15 6199:7 6289:15,23 6290:1,13 6291:11,19 6293:25 6304:11 6359:7,14,22,24 share^[26] 6073:9 6101:25 6108:1 6126:23 6127:1,8,10,13,13,16,16 6161:5,9,23 6199:2 6265:16 6268:13 6269:6 6281:7,8,14 6297:8 6392:20 6414:14,18 6435:8 shares^[2] 6161:2 6407:18 sharp^[1] 6449:9 sharply^[1] 6432:1 She's^[1] 6364:9 sheerest^[1] 6100:10 shift^[3] 6278:18,24 6279:1 shirt^[1] 6077:23 shock^[1] 6447:17 shoe^[1] 6449:19 short^[5] 6185:22 6392:8 6417:14 6418:14 6445:12 short-circuited^[1] 6367:17 shortcomings^[1] 6307:8 shouldn't^[2] 6124:14 6126:2 shove^[1] 6412:14 show^[34] 6075:1 6090:22 6098:14 6102:13,18 6103:14 6111:22 6118:17 6166:10 6194:19,20 6195:9 6200:17 6202:8,21 6250:12 6252:18 6257:8 6263:6,10 6264:18 6271:2 6286:15 6287:24 6289:2,8 6290:13 6295:5 6371:11 6372:19 6379:14 6395:13 6397:24 6448:8 showed^[12] 6088:6 6252:23 6272:19 6291:22 6293:22 6301:9 6306:17 6359:22 6363:4 6392:22 6446:4 6453:5 showing^[8] 6118:4 6160:24 6185:10,12 6236:23 6257:3 6264:23 6450:10 shown^[5] 6068:24 6092:19 6103:24 6235:22 6270:7 shows^[46] 6104:15 6156:25 6163:7 6182:24 6195:15 6199:7 6235:23 6240:21 6248:19 6249:12 6252:21,23 6254:1 6261:3,4,9 6276:15 6277:19 6281:21 6282:3 6286:10 6294:24 6303:24 6360:5 6365:1 6369:4 6372:23 6377:3 6393:18 6399:4 6400:8 6403:13 6407:22 6433:11,</p>	<p>19 6434:23 6435:10,15,19 6438:20 6439:17 6444:4 6445:15,24 6446:6 6449:1 shred^[2] 6362:9 6399:22 shrugged^[1] 6120:13 shuffling^[1] 6229:7 shut^[4] 6267:22 6269:3 6359:25 6360:4 shutdown^[1] 6360:5 side^[33] 6128:10,11 6162:1,12 6168:13,14 6206:12,13 6229:21 6230:11 6231:25 6232:1 6233:1 6236:11 6239:7 6242:19,24 6243:7,13 6292:9,12,16 6296:21 6308:3 6377:8 6383:13 6394:14 6401:22 6418:20 6420:12 6436:16,18 6454:13 sides^[3] 6097:10 6305:20 6374:6 sign^[2] 6186:25 6239:6 Signature^[1] 6456:10 signed^[1] 6290:3 significance^[1] 6401:14 significant^[14] 6164:3 6182:20 6236:23 6257:21 6260:25 6265:6 6282:7 6289:5 6360:9 6364:7 6366:17 6430:5 6433:18,21 significantly^[3] 6251:17 6444:5 6450:5 similar^[19] 6156:24 6183:13 6233:7,8,12,13,25 6236:2,9 6258:9 6259:1 6274:6 6280:21 6291:23 6293:23 6296:22 6395:22 6444:14 6447:2 Similarly^[4] 6273:25 6371:19 6381:11 6450:1 similarly-situated^[1] 6395:22 Simonson^[9] 6182:12 6183:12,16,18 6184:2 6185:1 6190:20 6275:18 6406:15 Simonson's^[1] 6183:9 simple^[5] 6093:19 6228:10,15 6398:2 6399:4 simply^[26] 6099:10 6127:17 6165:17 6182:18 6184:21 6186:1,16 6193:21 6203:1,21 6229:2 6234:2 6253:15 6260:23 6265:24 6280:3 6305:11 6396:24 6427:25 6428:22 6429:19 6432:20 6436:1 6439:13 6448:7,7 simulcast^[53] 6184:3 6199:20 6201:8 6202:7</p>	<p>6203:9,9,12,13,19,20,24 6204:1,3,16,21 6205:1,8,9 6363:5,10,12 6368:9 6369:4 6370:2,10,18,22,23 6371:12,13,16 6372:1,13 6374:21 6375:13,25 6396:25 6397:18 6398:14,23 6401:22 6404:19 6405:3 6406:16,19 6407:17 6408:1,13 6409:8 6412:8,10,20,22 simulcast-only^[1] 6184:7 simulcaster^[3] 6394:19 6398:4 6399:7 simulcasters^[35] 6088:16,17 6124:20 6199:19 6200:12,15,21 6202:23 6204:11,12 6362:20 6363:16 6364:12 6367:7,8,10 6368:4,25 6369:12,20 6373:3,20 6379:8 6393:14 6395:15 6398:11 6399:8,11 6402:3 6403:17 6407:11 6408:15 6411:24 6412:1,6 simulcasting^[11] 6200:1 6201:13 6202:15,17 6203:5,6,6 6205:4 6373:22 6395:24 6404:1 simulcasts^[11] 6200:24 6362:24 6368:21 6369:1 6370:4 6371:1,2 6374:11 6394:17 6399:6 6404:21 simultaneously^[1] 6164:23 since^[28] 6070:20,23 6071:8,11,24 6072:2 6073:1,15 6074:18 6076:15 6078:12 6116:8 6126:10 6185:12 6193:16 6228:19 6239:14 6248:17 6250:16 6251:8 6377:25 6394:23 6396:4,18 6397:8 6403:12 6404:9 6415:1 SINGER^[1] 6065:10 single^[22] 6089:3 6160:20 6231:17 6232:1,22 6236:16,16 6244:5 6259:18 6359:24 6362:10,11,12,16,19 6369:3 6376:17 6377:12 6382:22,22 6394:13 6401:9 sir^[4] 6073:18 6262:21 6376:5,7 SiriusXM^[14] 6065:2 6068:17 6189:13,15,19,20 6248:4 6249:5 6250:25 6253:13 6279:1,10 6296:1 6297:4 SiriusXM's^[2] 6189:17 6297:11 SiriusXM/Pandora's^[1] 6185:11 sit^[2] 6371:6,22</p>
---	---	---	---	---

OPEN SESSIONS

<p>sitting ^[1] 6165:12</p> <p>situated ^[1] 6450:1</p> <p>situation ^[10] 6084:8 6161:13 6165:23 6235:3,14 6236:9 6240:3 6272:10 6273:17 6296:22</p> <p>situations ^[1] 6114:25</p> <p>six ^[4] 6091:14,15 6257:8 6267:23</p> <p>size ^[6] 6235:5 6255:6 6270:11,14,18,19</p> <p>sizes ^[2] 6266:23 6417:2</p> <p>skepticism ^[1] 6235:15</p> <p>skewed ^[1] 6304:10</p> <p>skill ^[1] 6456:4</p> <p>skip ^[10] 6122:21 6126:19,20 6190:5 6244:25 6367:25 6446:12 6447:19 6448:4,18</p> <p>skipped ^[1] 6104:11</p> <p>skips ^[10] 6103:4,6,11,15 6104:11,16,18 6105:19 6119:1 6297:17</p> <p>Slacker ^[2] 6096:1 6184:5</p> <p>slide ^[31] 6072:5 6076:13,24 6078:17 6081:7 6085:4 6095:22 6096:6 6102:11 6104:16 6105:1 6108:17 6111:18 6115:22 6116:9 6118:9 6124:3 6185:10 6191:7 6230:22 6238:5 6261:3,4,9 6295:24 6399:4 6420:1,3 6433:11 6434:23 6453:10</p> <p>slides ^[15] 6115:21 6117:2 6126:19 6168:3 6247:23 6270:7 6295:9 6297:23,24 6414:5,6,13 6445:11 6448:22 6453:2</p> <p>slightly ^[3] 6076:5 6205:14 6307:11</p> <p>slips ^[1] 6265:3</p> <p>slowly ^[1] 6199:16</p> <p>small ^[16] 6071:4 6073:14,23 6121:6,16 6183:25 6187:8 6230:8,14 6232:22 6262:1 6264:24 6286:3 6392:20 6402:12 6418:9</p> <p>smaller ^[5] 6161:1,23 6378:11 6395:2 6399:8</p> <p>smallest ^[1] 6410:19</p> <p>smart ^[1] 6240:20</p> <p>Smartphones ^[1] 6240:21</p> <p>snuff ^[1] 6127:21</p> <p>so-called ^[4] 6268:17 6399:23 6406:20 6436:9</p> <p>social ^[1] 6182:14</p> <p>software ^[1] 6236:15</p> <p>solely ^[4] 6280:11 6425:15 6445:1 6449:10</p> <p>solid ^[1] 6438:6</p>	<p>solution ^[2] 6123:21 6287:25</p> <p>solve ^[6] 6082:8 6085:13,17,21 6089:20 6104:4</p> <p>solved ^[1] 6085:12</p> <p>solving ^[2] 6086:2 6293:8</p> <p>Somebody ^[3] 6229:6 6272:3 6436:4</p> <p>somehow ^[12] 6107:18 6126:7 6187:15 6192:10 6373:16 6401:17 6405:8 6411:10 6440:13,19 6441:24 6452:12</p> <p>sometimes ^[6] 6069:24 6254:18 6367:7,10,12 6393:7</p> <p>somewhat ^[4] 6101:19 6272:12 6294:15 6430:4</p> <p>somewhere ^[2] 6253:5 6372:2</p> <p>song ^[12] 6253:24 6265:3,17 6271:25 6272:6,16 6273:2,3,4,11,13,15</p> <p>songs ^[15] 6254:7,12,14 6265:1,17 6269:21 6274:2,2,4,8,9 6280:7,9,11 6407:24</p> <p>Sony ^[6] 6063:8 6069:15 6192:12,13 6193:11,13</p> <p>Sony's ^[1] 6192:19</p> <p>soon ^[1] 6156:2</p> <p>sophisticated ^[2] 6378:13 6408:6</p> <p>sorry ^[10] 6075:6,7 6094:7 6106:2 6127:24 6191:6 6197:20 6272:23,25 6275:11</p> <p>sort ^[6] 6098:16 6113:5 6115:25 6123:12 6262:7 6283:25</p> <p>SOUND ^[24] 6062:7 6068:9 6161:17,18 6204:14,18 6240:9 6242:25 6247:9 6366:6,8 6372:11 6374:5 6397:10 6398:7 6412:17 6418:10 6425:15,16 6430:9,12 6432:16 6433:1 6446:10</p> <p>SoundCloud ^[1] 6297:15</p> <p>sounder ^[2] 6306:9 6307:3</p> <p>SoundExchange ^[154] 6063:3 6068:14,18 6069:4,7,11,14,18 6070:6 6087:3 6229:3,12 6236:20 6237:19,24 6241:22 6243:8,9,22 6244:2,4 6245:11,13 6250:1,9 6251:1,24 6252:16,17 6253:20 6258:1 6260:23 6261:22 6266:10,20,22 6267:1,7,9 6269:13,18,20 6282:15,18 6293:6 6298:</p>	<p>16 6299:4 6301:16 6361:22 6362:8,16 6363:9,21,22 6365:9 6367:6,25 6368:3 6369:22 6372:19,21 6373:9 6374:8,23 6375:8,18 6377:12,22 6378:22 6380:18 6381:2 6382:4,19 6392:9,15 6393:19,24 6394:7 6396:5,23 6397:5,25 6399:15 6400:3,19 6401:2,13,16 6402:4 6403:3 6405:6,23 6406:2 6408:17 6409:17 6410:3,9,18 6411:4,9,12,19 6416:7,13 6418:6 6419:17,21 6425:12,17 6427:7,15,19,22 6428:12,13,17 6429:6,10,24 6430:1,6,8,18 6432:8,23 6433:2 6434:9 6435:21 6436:8,19 6437:7,14,18 6438:12,18 6439:3,12 6440:5,10 6441:18 6443:12 6444:7,12,16,25 6445:14 6446:17 6447:2,22 6448:1,10 6449:16 6451:6 6452:4</p> <p>SoundExchange's ^[68] 6069:5 6070:5 6079:19 6228:9 6237:16 6258:6,13 6259:13,24 6260:5 6261:17,19 6263:22 6294:18 6297:20 6300:23 6301:6,10,11 6305:24 6363:11 6364:21 6365:1,3,25 6366:1 6367:2,15 6368:14,24 6369:19 6370:16 6372:17,19 6373:15,17 6377:21 6378:2 6380:8,9,13,22 6381:12 6393:2 6395:9 6396:14 6397:14,15 6399:20,24 6400:15 6406:3,6,14,25 6409:16,22 6410:22 6411:16 6415:20 6416:23 6434:6 6437:16 6439:23 6441:2 6444:21 6446:11 6452:13</p> <p>sounds ^[2] 6414:1 6451:17</p> <p>source ^[7] 6095:14,17 6098:7 6182:20 6425:7 6435:23 6436:1</p> <p>sourced ^[1] 6240:14</p> <p>sources ^[4] 6097:21 6184:9 6192:15 6194:22</p> <p>spaghetti ^[1] 6427:9</p> <p>Spalding ^[4] 6064:5,12,17,22</p> <p>spans ^[1] 6434:1</p> <p>speakers ^[1] 6240:21</p> <p>speaking ^[1] 6248:11</p> <p>speaks ^[1] 6362:14</p> <p>specific ^[12] 6249:22 6253:24 6258:20,20 6269:15</p>	<p>6361:24 6381:2 6382:7 6404:20 6419:15 6424:10 6433:8</p> <p>specifically ^[7] 6253:3 6300:16 6364:25 6437:13,22 6440:22 6445:17</p> <p>specification ^[2] 6198:20 6257:22</p> <p>specifications ^[1] 6292:19</p> <p>specified ^[1] 6294:13</p> <p>specifies ^[1] 6292:21</p> <p>specify ^[4] 6256:17 6431:9,11,14</p> <p>spectrum ^[4] 6252:24 6371:6,19,25</p> <p>speculating ^[1] 6396:11</p> <p>speculation ^[4] 6100:10 6260:11 6399:16 6401:5</p> <p>speculative ^[1] 6380:17</p> <p>speed ^[1] 6195:22</p> <p>spell ^[1] 6162:2</p> <p>spend ^[1] 6253:4</p> <p>spending ^[1] 6409:1</p> <p>spends ^[1] 6410:7</p> <p>spent ^[2] 6437:7 6443:12</p> <p>spikes ^[1] 6426:15</p> <p>spill ^[1] 6109:4</p> <p>spins ^[1] 6406:17</p> <p>spiral ^[1] 6185:16</p> <p>split ^[5] 6160:25 6161:14,22 6196:2 6229:25</p> <p>split-the-difference ^[1] 6287:16</p> <p>splitting ^[1] 6072:11</p> <p>spoke ^[1] 6392:7</p> <p>sponte ^[1] 6068:23</p> <p>Spotify ^[45] 6073:5 6074:2 6075:2 6104:21 6105:3 6108:23 6110:6 6111:15,19 6121:24 6122:5,17 6123:1,1,6,11 6124:14,24 6125:4,10,11,18 6126:1,11 6297:14 6298:3,11,16 6301:21 6302:20 6304:13 6305:19,22,25 6306:1,4,11,13,23 6307:2,4 6369:7 6373:10,11 6416:3</p> <p>Spotify's ^[9] 6103:19 6108:23,24 6109:1,2 6123:17 6297:20,21 6306:21</p> <p>spreadsheets ^[2] 6381:8 6382:8</p> <p>square ^[1] 6183:3</p> <p>squarely ^[1] 6418:4</p> <p>stable ^[1] 6425:7</p> <p>stacks ^[1] 6280:18</p> <p>stage ^[1] 6403:7</p> <p>staircase ^[1] 6237:8</p> <p>stake ^[1] 6393:11</p> <p>stale ^[3] 6074:16 6282:21</p>	<p>6284:19</p> <p>stand ^[14] 6128:5,14 6168:9,17 6205:24 6206:15 6307:23 6308:6 6383:7 6392:19 6401:11 6420:6,14 6454:15</p> <p>standard ^[4] 6120:23 6267:6 6302:24 6444:24</p> <p>standing ^[2] 6242:13 6404:16</p> <p>stands ^[1] 6406:18</p> <p>Stanton ^[1] 6402:21</p> <p>staring ^[1] 6396:19</p> <p>stark ^[1] 6415:8</p> <p>start ^[27] 6070:5,12 6075:17 6077:10,10 6078:3 6079:6 6103:17,18 6108:5 6109:6,9 6156:18 6157:15 6229:21 6251:5 6279:5 6299:17,19 6300:11,18 6301:22 6302:13,19 6305:21 6361:8 6373:17</p> <p>started ^[1] 6247:4</p> <p>starting ^[13] 6078:1 6079:18 6239:19 6247:7,16,18,20,21 6305:13 6306:14 6413:13 6415:7 6451:24</p> <p>starts ^[2] 6091:3 6297:13</p> <p>state ^[1] 6300:6</p> <p>stated ^[4] 6303:20 6374:4 6381:5 6435:3</p> <p>statement ^[7] 6185:11 6300:4 6397:5 6444:11,16,20 6445:1</p> <p>statements ^[4] 6284:21 6285:4 6398:25 6448:3</p> <p>STATES ^[3] 6062:1 6063:4 6419:6</p> <p>station ^[26] 6233:17 6235:24 6236:1,2 6237:5 6239:24 6272:3,14,20,25 6273:2,3,10,11,22 6274:19 6426:19,21 6431:12,14 6435:3,11 6446:1,3,5,7</p> <p>stations ^[59] 6204:20 6233:21,24 6234:1,5 6242:25 6243:3 6260:20 6274:22,22 6401:25 6410:19 6411:3 6419:10 6425:4,8,10,22 6426:3,11 6430:3 6432:11,12,17,18,19,20,22 6433:11,15 6435:5,6 6436:2,4 6437:1 6439:15 6442:14,19 6443:18,24 6444:5,14,22 6445:2,4,17,18 6446:2,22 6447:3,15,15,16 6449:22,23,24 6450:2 6452:14,14</p> <p>statistic ^[1] 6230:23</p> <p>statute ^[12] 6120:18 6125:23 6241:8 6259:3 6364:24 6365:13,15 6366:4 6367:</p>
--	--	---	--	--

OPEN SESSIONS

<p>21 6369:10 6372:16 6440:21 statute's ^[1] 6365:18 statutorily ^[1] 6303:12 statutorily-compliant ^[1] 6416:12 statutory ^[5] 6080:15 6103:7 6106:13 6107:2 6117:25 6119:11 6121:4 6125:22,22 6126:3 6156: 23 6232:6,15,20,21 6243: 11 6249:13 6250:3,5 6254: 5 6260:17 6281:2 6288:19 6301:19 6302:19 6305:17 6306:10,15,22 6307:5 6363:6 6364:6 6365:5,16 6366:12 6367:17 6368:12 6376:14 6377:5,9 6378:10 6379:16 6394:12,23 6398: 8 6411:4,25 6428:16 6429: 16 6430:13 6440:12 stay ^[2] 6247:22 6444:2 stayed ^[1] 6270:9 steer ^[2] 6127:9 6264:15 steering ^[3] 6263:15 6264: 4,9 steering-based ^[1] 6127: 21 Steinberg ^[13] 6231:8 6234:5 6235:8 6236:7 6244:7 6245:4 6424:12 6435:25 6441:3,14,19 6442:2 6445:7 Steinberg's ^[1] 6244:25 STEINTHAL ^[13] 6064:11 6248:7,25 6252:14 6296:8 6299:8,10,17,19,23 6300:3 6407:1 6455:5 stems ^[2] 6121:21 6122:8 stenographic ^[1] 6456:5 step ^[7] 6115:20 6183:16 6191:14,18 6192:1 6281: 21 6407:4 steps ^[1] 6242:14 STEVE ^[2] 6062:14 6370: 23 STEVEN ^[1] 6063:12 stick ^[1] 6263:24 sticking ^[1] 6438:11 still ^[23] 6199:10 6202:19 6229:18 6235:4 6240:7 6247:9,9 6252:4 6254:10 6264:17 6268:21 6270:2 6272:24 6273:1,21,22 6274:9 6293:22 6294:15 6369:3 6379:5,6 6438:11 Stone ^[2] 6098:4,6 stood ^[1] 6361:21 stop ^[2] 6409:1 6410:23 story ^[1] 6231:7 straightforward ^[4] 6191:</p>	<p>10,22 6228:11 6300:14 strategy ^[1] 6164:15 straws ^[2] 6267:2 6399:15 stream ^[2] 6228:3 6234:22 streaming ^[16] 6240:22 6248:16 6249:25 6250:7, 10,11,13,19,21 6251:20 6253:10 6301:7 6362:25 6370:20 6373:7 6404:12 streams ^[5] 6366:23 6372: 12,15 6412:5,25 Street ^[3] 6064:13 6066:14 6067:8 strength ^[1] 6379:8 stretch ^[1] 6453:15 STRICKLER ^[105] 6062:13 6073:17,18,20 6074:6,22 6075:10,14 6076:9 6077: 22 6081:3,6 6082:1,17 6083:11,14 6086:14 6089: 9,15 6094:3,6 6095:11 6096:22,25 6098:1,9 6101: 10,12 6105:24 6106:1 6108:15 6113:3,5 6114:4 6115:20 6118:21 6121:10 6124:2,5,11 6164:20 6166: 5,22 6167:25 6197:15,22 6201:1 6202:12 6242:3 6245:20,21,24 6247:10 6262:18,20,20,24 6263:4 6264:1,7 6265:7,14 6266: 19 6270:21,23,25 6272:11 6273:8,24 6277:1,11 6283: 10,20,24 6285:11,24 6286: 12,19 6287:1 6288:11 6289:13 6290:9,11 6291:1, 4,10 6295:14,16 6297:5 6360:19 6361:5 6364:11 6368:16 6376:4,6,9 6377: 16,24 6379:10 6382:13 6383:1 6405:18,19 6413:7 6450:24 Strickler's ^[1] 6359:5 striking ^[1] 6394:22 strong ^[3] 6303:18,25 6380: 23 strongly ^[2] 6439:17 6449: 25 struck ^[2] 6255:25 6394:6 structure ^[22] 6228:16,20 6229:17 6236:21 6237:4 6238:24 6239:8,9 6373:20 6374:25 6419:2,11,16 6426:17,20 6429:12 6431: 23 6432:6,25 6441:15 6450:4 6453:23 structures ^[1] 6398:19 studies ^[3] 6445:8,10 6446: 12 study ^[6] 6234:6 6446:11, 15,19 6447:1,3</p>	<p>stuff ^[2] 6182:16 6190:17 style ^[1] 6237:14 sua ^[1] 6068:23 sub-competitive ^[1] 6402: 25 subject ^[5] 6239:4 6249:22 6252:15 6292:18 6401:10 submission ^[1] 6237:22 submissions ^[1] 6086:17 submit ^[5] 6257:15 6267: 25 6284:16 6298:15 6439: 9 submitted ^[3] 6237:12 6302:9 6438:25 subscribe ^[2] 6188:2 6298: 19 subscribed ^[1] 6189:25 subscriber ^[6] 6101:4 6102:14,20 6278:5,10,11 subscribers ^[21] 6100:20, 23 6101:6 6102:15,17 6187:20 6188:1,25 6189:3, 14,14,16 6250:16 6253:13 6254:17 6255:1 6278:23, 25 6297:22 6298:5,12 subscription ^[94] 6070:7 6071:6 6072:19 6073:5 6076:2,12 6077:10 6078:1, 4,13,21 6079:23 6080:19 6081:8 6082:4 6090:2 6091:15 6093:10,15,16,24 6095:19 6096:10 6097:8, 24 6098:15 6103:19,21 6104:3 6106:14 6109:2,15 6110:2 6111:2,13,19 6112: 4,8,14,15,21 6117:19 6122: 25 6125:12,24 6156:17 6188:21,24 6189:7,11,22, 23 6190:3,21 6191:24 6192:15,20 6193:7,12,14, 23,25 6194:2,8 6195:2,10 6249:9 6250:3 6255:10 6276:18 6277:5,7 6278:3 6279:1 6293:9 6294:8 6295:19 6296:21 6298:10 6300:22 6306:2,5,13,16 6307:4 6368:22 6370:9 6371:13 6400:4,9,17 6403: 15,19 6412:12 subscriptions ^[27] 6071: 12,15 6097:25 6192:11,18, 21,24 6193:5,17,20 6194:4, 10,13 6195:6,17 6254:21 6276:22,24 6277:12,13,15, 16 6278:15 6279:6,12 6298:23 6369:7 subsequently ^[1] 6228:17 subset ^[2] 6092:16 6366: 10 substance ^[1] 6396:13 substantial ^[7] 6089:6</p>	<p>6183:20 6190:21 6254:25 6255:4 6412:21 6433:25 substantially ^[3] 6073:6 6098:14 6183:24 substantive ^[1] 6396:8 substitute ^[6] 6183:22 6275:7 6365:23 6369:5,6 6412:11 substitutes ^[2] 6368:17 6371:9 substituting ^[1] 6372:8 substitution ^[3] 6362:25 6369:11 6412:24 substitutional ^[3] 6303:8 6366:22 6405:16 subtracted ^[1] 6075:19 succeed ^[1] 6444:25 succeeded ^[1] 6394:21 success ^[2] 6072:3 6125: 16 successful ^[4] 6157:10 6160:7,10,10 successfully ^[1] 6094:25 sudden ^[1] 6263:23 suffer ^[3] 6259:10 6271:8 6394:24 suffices ^[1] 6190:17 sufficient ^[3] 6201:10 6303:21 6430:15 suggest ^[7] 6072:9 6120: 24 6126:21 6230:10 6266: 12 6372:22 6401:16 suggested ^[8] 6071:2 6076:19 6083:10 6239:1 6398:17 6404:10 6436:8 6442:25 suggesting ^[3] 6242:4 6266:11 6378:23 suggestion ^[1] 6121:2 suggests ^[8] 6078:14 6084:5 6188:14 6231:20 6404:15 6443:8,24 6452: 12 suitable ^[2] 6288:6 6304: 22 Suite ^[3] 6063:21 6066:15 6067:8 suited ^[1] 6289:17 sum ^[6] 6238:9 6244:5 6261:7 6396:13 6427:2 6431:7 summarized ^[1] 6291:8 summary ^[2] 6290:19,24 super ^[2] 6377:9,9 superior ^[4] 6300:22 6417: 17 6418:16 6427:12 supplied ^[1] 6375:10 support ^[13] 6100:9 6121: 16 6202:17 6297:3 6300:9, 13,23 6301:6 6380:25 6399:21 6404:25 6426:9</p>	<p>6444:19 supported ^[3] 6281:10 6302:7 6426:6 supporting ^[3] 6376:18 6382:5 6411:23 supports ^[4] 6190:6 6234: 14 6296:23 6368:8 Suppose ^[1] 6194:7 supposed ^[4] 6089:3 6101: 14 6238:17 6418:21 suppress ^[1] 6402:9 suppressed ^[5] 6256:11, 14 6268:12 6279:24 6281: 14 suppresses ^[1] 6257:5 suppressing ^[2] 6257:9 6279:11 suppression ^[24] 6186:5 6256:25 6257:2,12,13,18, 25 6261:20 6262:11,15 6263:1,8,16 6264:16,18 6267:11 6268:4,13,20 6287:23 6288:14,16 6289: 1,8 surely ^[2] 6071:22 6199:16 surplus ^[10] 6072:11 6159: 4 6160:25 6161:3,21 6196: 1,2,9 6232:11 6286:7 surprise ^[3] 6091:12 6116: 22 6235:13 surprising ^[2] 6303:24 6364:17 survey ^[47] 6071:2 6182:23 6183:10,10,12 6184:2 6185:2 6189:13,17,24,25 6190:15,17,24 6191:13,14, 18,25 6194:20 6195:8 6265:13 6267:8,11,14 6275:4,12,18,24 6276:2,4, 15 6277:4,4 6362:23 6363: 2,10,11 6405:15,24 6406:6, 8,11,14,16,18,23 6411:22 surveys ^[12] 6182:22 6190: 18 6269:20 6275:9,11,17, 20 6278:16 6363:13 6368: 19 6406:5,20 survive ^[1] 6185:3 swath ^[4] 6415:11 6429:2,8 6440:21 sweeps ^[1] 6240:2 switch ^[1] 6108:20 sworn ^[1] 6439:18 swung ^[1] 6396:5 system ^[2] 6119:22 6410:3</p>
---	--	---	---	--

T

T-shirt ^[1] 6077:19
table ^[6] 6090:22 6105:17
6163:19,22 6165:12 6285:
21
tail ^[1] 6204:2

OPEN SESSIONS

<p>talked ^[8] 6112:12 6120:17 6122:19 6190:25 6360:10 6393:21 6426:8 6447:19</p> <p>talks ^[3] 6072:2 6080:1 6424:23</p> <p>target ^[24] 6079:2,9,17,25 6080:25 6082:8,9 6085:8 6087:23 6090:4 6104:1 6109:22 6110:6,17,21 6114:14 6123:4 6237:1 6243:6 6245:12 6417:22 6418:2 6427:21 6438:5</p> <p>task ^[3] 6238:2 6289:17 6447:25</p> <p>tasks ^[1] 6303:2</p> <p>tastes ^[1] 6260:2</p> <p>Television ^[2] 6063:5 6369:5</p> <p>tells ^[5] 6166:18 6235:25 6363:17 6373:12 6408:4</p> <p>temporarily ^[1] 6164:12</p> <p>temptation ^[1] 6077:24</p> <p>ten ^[5] 6168:5,7 6270:2 6446:22 6451:20</p> <p>tend ^[2] 6072:14 6077:3</p> <p>tendencies ^[2] 6120:17,21</p> <p>tens ^[3] 6250:15 6270:2 6407:23</p> <p>tenuous ^[1] 6301:12</p> <p>term ^[11] 6292:3,5 6415:19 6418:13 6419:19 6431:2,5,12 6435:20 6438:19 6449:1</p> <p>TERMS ^[27] 6062:6 6068:9 6090:25 6106:25 6110:6 6115:21 6166:7 6241:7 6249:6,22 6263:24 6303:3,4 6365:18 6374:22 6395:22 6413:4 6428:18 6429:14 6430:14 6436:25 6438:24 6439:2,25 6448:11,17 6453:18</p> <p>terrestrial ^[3] 6276:13 6376:11 6399:2</p> <p>Terrific ^[1] 6248:1</p> <p>TESORIERO ^[1] 6065:8</p> <p>test ^[7] 6184:20 6188:3 6275:12 6403:22 6409:5 6417:24 6418:3</p> <p>testified ^[26] 6075:24 6080:9 6185:4 6235:1,7 6250:14 6252:8 6260:14 6261:14 6263:17,18 6268:9 6281:11 6292:10 6370:7,17 6376:20,22 6393:5,10,16 6412:13 6424:13 6433:6 6435:25 6445:7</p> <p>testify ^[5] 6095:1,7 6097:17 6235:17 6394:14</p> <p>testifying ^[1] 6094:21</p> <p>testimony ^[80] 6072:1,6</p>	<p>6075:24 6093:18 6095:13 6097:15,18,19 6098:3,13 6100:8 6103:13 6104:14 6109:25 6112:7 6118:13 6123:11 6156:25 6162:9 6165:2 6194:16 6198:6 6231:3,13 6234:10 6237:13 6249:11 6252:11 6258:1,3 6260:18 6263:21 6264:25 6268:16,23,24 6271:22,23 6272:9,17 6273:7 6274:25,25 6275:2 6278:13 6282:11,12 6285:13 6288:7 6289:24 6290:21,23 6292:7 6302:8,10,11 6359:19 6360:21 6364:5 6370:7 6375:11 6376:18 6379:17,19 6381:12 6382:9 6397:20 6400:18 6406:1,9 6409:7,14 6433:16 6436:12 6441:7,8,12,13,21 6452:7</p> <p>tests ^[1] 6295:2</p> <p>text ^[1] 6365:15</p> <p>thanks ^[1] 6451:1</p> <p>theme ^[4] 6126:13 6363:19 6373:16 6380:13</p> <p>themed ^[1] 6240:4</p> <p>themselves ^[3] 6253:17 6412:15 6426:8</p> <p>theoretical ^[10] 6300:19 6302:14 6304:5,17 6368:10 6393:15 6403:18 6405:14 6415:21 6418:17</p> <p>theorizing ^[1] 6416:14</p> <p>theory ^[9] 6094:21 6098:20 6188:8 6234:14 6289:18 6305:9 6399:21 6403:11 6409:5</p> <p>there's ^[81] 6071:14 6075:1 6087:6,12 6088:13 6090:21,24 6092:6 6093:13 6095:10,12 6097:2 6099:12 6101:23 6103:4 6109:20 6110:4,9,10,15,15 6113:13 6115:17 6116:17 6117:5 6118:4,10 6120:16 6121:1,4 6124:20,21 6160:8,10,16 6166:14 6182:10 6188:4,12 6197:7,7 6202:24,24 6204:1 6232:3 6233:18 6236:16 6248:9 6251:10,14 6256:7 6259:8,21 6262:13,25 6263:4,10 6266:2,11,12 6275:19 6284:6,7 6286:7 6289:10,11 6296:22 6299:5 6305:15 6371:25 6378:8 6379:5,6,25 6381:18 6416:23 6436:13,22 6438:9 6445:5 6447:5</p> <p>therefore ^[9] 6072:11 6101:22,23 6114:8 6161:1 6281:</p>	<p>2 6282:15 6366:18 6453:21</p> <p>thin ^[1] 6184:12</p> <p>thinking ^[1] 6205:2</p> <p>thinks ^[5] 6114:18 6204:10,24 6272:1 6292:3</p> <p>third ^[16] 6072:19 6078:22 6098:16 6157:13 6239:15 6240:11 6259:24 6262:13 6285:10 6293:12 6300:24 6360:6 6425:3 6431:10 6433:24 6438:23</p> <p>THOMAS ^[1] 6067:5</p> <p>though ^[28] 6091:21,25 6092:21 6104:15 6109:4 6120:18 6157:17 6163:1 6166:19,24 6188:18,21 6198:11 6199:4 6201:18 6239:17 6270:10 6273:4 6299:20 6365:15 6378:15 6414:14 6416:23 6426:24 6427:11 6435:12 6448:16 6450:7</p> <p>thousand ^[1] 6070:10</p> <p>thousands ^[1] 6401:24</p> <p>thread ^[1] 6074:23</p> <p>threat ^[5] 6127:5,9,9 6366:18 6372:11</p> <p>threaten ^[1] 6412:5</p> <p>threatening ^[1] 6372:14</p> <p>threats ^[1] 6127:18</p> <p>three ^[28] 6068:18 6078:15 6089:16 6091:14,15 6093:11 6108:21 6157:2 6158:6 6161:8,15 6164:9 6165:25 6184:6 6190:18,21 6199:9 6269:1 6297:16,16 6359:23 6403:1 6406:20 6433:8 6445:11,14,21 6449:22</p> <p>threshold ^[18] 6228:12,21,23 6230:13,16 6231:16 6232:17 6233:4 6239:12,13 6240:2 6264:10 6419:1,12,16 6432:6 6441:15 6453:22</p> <p>throughout ^[2] 6282:10 6401:19</p> <p>throw ^[2] 6265:9,14</p> <p>throwing ^[1] 6427:9</p> <p>tie ^[1] 6077:23</p> <p>tier ^[10] 6125:14,24 6297:21,22 6298:5,6 6400:4,5,9,17</p> <p>tiered ^[1] 6237:4</p> <p>tiers ^[3] 6124:19 6253:17 6297:15</p> <p>timing ^[2] 6237:17 6441:4</p> <p>tiny ^[5] 6203:22 6230:1 6269:25 6368:22 6416:6</p> <p>tip ^[1] 6204:1</p> <p>today ^[21] 6077:15 6229:18</p>	<p>6236:13 6248:7 6249:23 6251:6,19 6252:15 6256:19 6259:5 6262:21 6274:22 6300:5,8 6306:18 6406:21 6412:12 6431:22 6436:20 6440:24 6447:21</p> <p>TODD ^[1] 6065:4</p> <p>tolerance ^[1] 6113:9</p> <p>tolerate ^[1] 6115:13</p> <p>Tom ^[1] 6408:11</p> <p>ton ^[1] 6244:2</p> <p>took ^[3] 6085:16 6096:8 6302:12</p> <p>tool ^[1] 6304:3</p> <p>tools ^[1] 6284:12</p> <p>top ^[15] 6075:11 6103:22 6128:11 6160:9 6168:14 6185:15 6206:13 6238:5 6239:8 6271:20 6308:3 6383:13 6420:12 6439:21 6454:13</p> <p>topic ^[8] 6156:19 6248:22 6275:15 6292:18 6294:2 6296:7 6307:11 6442:1</p> <p>topics ^[1] 6248:12</p> <p>toss ^[2] 6068:14,15</p> <p>total ^[11] 6086:3 6087:18 6104:1,5,6,9 6204:4 6233:19 6250:22 6398:14,23</p> <p>totally ^[2] 6117:18 6201:8</p> <p>TOTH ^[2] 6156:5,7</p> <p>touch ^[3] 6121:8 6239:16 6406:2</p> <p>touched ^[3] 6380:7 6426:4 6438:2</p> <p>touted ^[1] 6430:6</p> <p>towards ^[5] 6104:15 6235:15 6296:17,19 6432:16</p> <p>tracked ^[1] 6435:11</p> <p>tracks ^[3] 6254:16 6262:1 6435:17</p> <p>trade ^[2] 6238:22 6287:17</p> <p>tradeoff ^[2] 6400:1,4</p> <p>tradeoffs ^[2] 6399:16,23</p> <p>traditional ^[1] 6366:17</p> <p>trait ^[1] 6442:13</p> <p>traits ^[4] 6417:3 6442:1,3,20</p> <p>transaction ^[4] 6242:23 6378:11 6393:6 6395:4</p> <p>transactions ^[4] 6255:15 6379:4 6400:25 6403:21</p> <p>transcript ^[2] 6067:11 6456:4</p> <p>transitive ^[3] 6367:15 6368:1,14</p> <p>translate ^[2] 6192:10 6193:19</p> <p>transmission ^[2] 6204:18 6408:8</p> <p>transmissions ^[3] 6366:8,</p>	<p>11 6416:11</p> <p>transmit ^[5] 6242:25 6426:13 6432:12,20 6434:8</p> <p>transparent ^[1] 6302:15</p> <p>travel ^[1] 6240:12</p> <p>tread ^[1] 6435:1</p> <p>treat ^[2] 6255:13 6374:21</p> <p>treated ^[2] 6265:13 6366:24</p> <p>treating ^[2] 6164:2 6185:6</p> <p>treatment ^[2] 6262:4 6449:25</p> <p>treats ^[1] 6373:20</p> <p>trend ^[1] 6185:15</p> <p>trends ^[1] 6250:24</p> <p>TREPP ^[1] 6063:13</p> <p>Tres ^[2] 6376:21 6393:16</p> <p>trial ^[39] 6070:2,3 6104:14 6168:19 6206:18 6240:15 6248:15,18 6249:5 6251:24 6252:9 6255:17 6256:12 6258:15 6269:8,11 6274:25 6278:8,21 6281:9,10 6286:10 6288:8 6291:19,22 6294:21 6300:9 6304:10 6306:9,17 6308:8 6383:16 6407:14 6419:22 6420:17 6425:25 6426:7 6441:21 6454:18</p> <p>tried ^[7] 6094:12 6118:12 6241:25,25 6250:9 6252:16 6272:13</p> <p>tries ^[9] 6192:1 6202:14 6252:18 6253:20 6372:21 6401:13 6405:23 6438:18 6453:15</p> <p>trigger ^[1] 6369:23</p> <p>triple ^[2] 6237:7,7</p> <p>true ^[30] 6084:10,12,17 6092:9,10 6120:6,7 6127:17 6185:9 6236:13 6255:9,10 6264:23 6280:4 6281:23 6282:16 6298:20 6369:1 6375:1 6405:10,22 6427:24 6430:10 6432:18 6435:14 6442:14 6444:18 6448:12 6452:15 6456:3</p> <p>truly ^[2] 6250:6 6265:11</p> <p>Truth ^[1] 6197:10</p> <p>try ^[17] 6113:18 6122:21 6126:9 6160:4 6166:10 6187:14 6191:9 6195:22 6196:17 6205:3 6380:14 6392:8 6410:20 6427:16 6445:12 6447:14 6452:2</p> <p>trying ^[11] 6107:22,23 6185:22 6196:8 6262:9 6264:3 6284:3,10,11 6298:6,7</p> <p>Tucker ^[9] 6182:11 6186:3,8 6232:18 6250:14 6258:17 6261:23 6262:7 6436:</p>
---	--	--	---	--

OPEN SESSIONS

<p>12 Tucker's ^[1] 6364:5 Tuneln ^[1] 6184:5 turn ^[21] 6077:13 6104:6 6116:9 6119:24 6163:3 6199:24 6249:25 6251:22 6255:16 6256:18 6258:5 6275:15 6276:7 6281:25 6361:3 6373:15 6380:14 6392:9 6401:24 6413:10, 11 turned ^[2] 6083:21 6084:25 turning ^[1] 6078:25 turns ^[5] 6082:18 6118:16 6197:1 6234:13 6242:9 tweets ^[1] 6258:9 Twelve ^[1] 6126:7 twice ^[3] 6254:20 6255:2 6437:14 Twitter ^[1] 6259:20 two ^[58] 6076:6,20 6078:24 6086:10 6091:14,15 6094: 19 6099:20 6104:4 6112: 20 6113:9,21,25 6117:10 6156:22,24 6157:10 6161: 3 6163:22 6164:8,10,12,19 6165:25 6186:23 6195:7 6198:16 6199:8 6202:24 6228:11 6231:9 6237:15, 15 6239:7,11,17 6243:21, 22 6251:22 6266:9 6269:1 6291:25 6362:2 6365:11 6395:19,25 6397:22 6404: 24 6415:8 6418:23 6419:4, 19 6437:19 6439:22 6444: 19,19 6445:18 6446:12 twofold ^[1] 6124:18 TX ^[1] 6064:19 type ^[10] 6243:12 6261:8 6305:9 6307:1,2 6378:15 6412:9 6437:1 6447:4 6450:6 types ^[10] 6297:17 6365:6, 19 6369:17 6395:25 6397: 22 6418:8 6442:19 6448: 24 6450:7 typically ^[3] 6255:2 6277: 22 6304:21</p> <hr/> <p style="text-align: center;">U</p> <p>ubiquitous ^[1] 6239:20 ultimately ^[3] 6164:25 6406:3 6430:12 UMG ^[3] 6063:8 6235:17 6372:6 UMG's ^[1] 6372:5 unable ^[1] 6230:9 unadjusted ^[2] 6188:23 6304:13 unavailable ^[1] 6260:16 unavoidable ^[1] 6239:21</p>	<p>uncertainty ^[3] 6284:7,8 6403:7 unchecked ^[2] 6238:20 6404:13 uncontested ^[1] 6278:21 uncontradicted ^[1] 6374: 8 uncritically ^[1] 6188:23 under ^[38] 6077:23 6090:9 6091:3 6097:9 6119:14 6121:3 6159:16 6240:3 6250:8 6364:24 6365:13 6366:25 6367:15 6369:17, 24 6372:15 6375:6,12,14, 16 6376:1 6377:4 6378:9 6380:1,15 6381:4 6408:23 6411:11 6419:3 6428:23 6429:2,13 6430:10,22 6431:13 6432:21 6443:15 6450:8 underestimated ^[3] 6098: 23 6194:12 6195:16 underlying ^[4] 6084:24 6085:2 6303:17 6405:24 undermine ^[3] 6394:1 6431:18 6434:12 undermines ^[4] 6234:15 6405:9 6427:12 6435:23 undermining ^[1] 6362:17 underpowered ^[1] 6266: 21 underscored ^[1] 6408:18 understand ^[7] 6094:9 6192:23 6198:24 6264:17 6265:18 6288:24 6297:12 understanding ^[11] 6069: 20 6083:6 6303:19 6364: 14 6367:1 6371:11 6381:8 6396:3,12 6397:16 6451: 14 understates ^[1] 6291:15 understood ^[7] 6071:16 6081:14,17,22 6271:1 6366:21 6376:24 undertook ^[1] 6404:20 undifferentiated ^[1] 6431: 7 undiscounted ^[2] 6103:19 6104:22 undisputed ^[2] 6276:19 6398:13 unenviable ^[1] 6238:1 unequivocally ^[3] 6395:14 6397:12 6438:20 unfair ^[1] 6240:8 unfounded ^[2] 6269:11 6275:25 unhelpful ^[1] 6189:18 unique ^[4] 6241:13 6243: 18,18 6297:21 uniquely ^[3] 6123:11 6298:</p>	<p>3,4 uniqueness ^[1] 6243:15 unit ^[2] 6072:10 6101:8 UNITED ^[2] 6062:1 6063:4 Universal ^[6] 6063:7 6069: 15 6092:6 6279:11 6415: 16 6449:2 Universal's ^[2] 6371:24 6407:16 universe ^[2] 6362:6 6395:8 universes ^[1] 6362:2 unjustified ^[2] 6294:20 6411:17 unknowable ^[1] 6284:6 unless ^[5] 6101:7 6126:24 6187:2 6201:25 6245:18 unlike ^[2] 6234:24 6301:8 unlikely ^[2] 6233:4 6260:4 unlocked ^[2] 6182:2 6228: 2 unnecessary ^[1] 6105:20 unproven ^[3] 6301:12 6302:16 6403:5 unquantified ^[1] 6381:10 unquestionably ^[1] 6307: 1 unquote ^[1] 6305:2 unrealistic ^[1] 6280:14 unreasonable ^[1] 6281:1 unrebutted ^[2] 6260:18 6362:22 unregulated ^[1] 6255:15 unrelated ^[1] 6410:11 unreliable ^[1] 6249:3 unseen ^[1] 6399:16 unspecified ^[1] 6379:25 unsubstantiated ^[1] 6292: 8 unsupported ^[4] 6364:22 6409:13 6432:10 6433:7 unsurprisingly ^[1] 6370:3 untethered ^[1] 6261:17 until ^[3] 6158:17 6247:22 6414:17 untrue ^[1] 6396:24 unwilling ^[1] 6230:8 up ^[61] 6072:1,10,12,15,16, 18 6076:21 6077:6 6080: 25 6081:7 6086:9 6090:21 6093:21 6105:10 6113:6 6123:19 6124:15 6126:8 6127:12 6161:14,22,22 6167:16 6182:14 6186:25 6198:3 6199:10,17 6228: 12 6230:5 6234:11 6236: 22 6237:7,20 6238:10 6242:12 6243:13 6244:1 6247:6 6251:16 6255:6 6259:6 6273:15 6286:6 6299:8 6359:11 6360:5 6361:21 6370:6 6377:14</p>	<p>6381:16 6402:12 6403:4 6408:23 6409:15 6414:5, 15,17 6447:8,9 6453:5 upcoming ^[1] 6435:20 upper ^[5] 6184:13 6256:1 6425:4 6426:3 6437:3 upsell ^[5] 6124:17,19,23 6125:15,24 upselling ^[2] 6123:12 6125:2 upstream ^[1] 6112:11 uptick ^[3] 6279:12 6281:13 6297:25 upward ^[1] 6435:18 upwards ^[1] 6407:6 URBAN ^[1] 6067:5 urge ^[1] 6450:17 URL ^[1] 6235:22 usage ^[23] 6228:22 6230:3, 5,12,15 6231:15 6237:6,6, 7 6238:11,16 6239:13,18 6240:5 6250:13 6419:7,13 6431:11,14 6434:25 6452: 18,19,20 useful ^[11] 6070:17 6157:8 6166:13,18 6184:16 6192: 2 6245:6 6275:24 6289:18 6439:18 6440:1 usefulness ^[1] 6431:18 user ^[14] 6097:7,8,9 6193: 10,23 6194:7 6235:23,25 6259:15 6262:6 6265:4 6272:1 6279:4 6280:6 user-generated ^[1] 6254: 7 users ^[60] 6093:10,11 6097: 5,7,23 6112:18 6114:15 6115:12 6184:23 6185:12 6186:4,9,11,20,20,22,23, 25 6187:2,2,12,13,25 6188: 5,6,10,11,13,14,15,16 6239:21 6253:18 6254:7, 12 6258:7 6259:16,18,23 6260:19 6262:1,10 6264: 25 6270:10 6271:20,23 6275:5,9,13 6278:17 6297: 22 6298:4,9,12,17,21 6306: 17,23,23 6307:2 uses ^[21] 6074:13 6092:7 6095:20,25 6096:11 6099: 11 6106:11 6109:2 6112: 25 6163:11 6189:12 6242: 25 6275:23 6282:21,23,25 6289:15 6292:5 6306:3 6410:9,20 using ^[67] 6082:15 6084:22, 25 6088:7,10,17,19,22 6090:16,18 6091:5,5,7,10, 14,19,20 6092:3,22 6096: 19,20 6098:12,21 6099:2 6103:18 6105:4,5,8 6109:8,</p>	<p>10 6110:1,8,17 6113:17,19, 23 6117:24 6119:7 6120:3 6122:17 6163:23 6167:6,8, 12 6184:13 6188:11 6194: 20 6199:7 6267:10,16 6275:4 6283:5,7 6287:23 6293:20 6294:5 6375:11 6382:14 6402:8 6414:6 6418:14,16 6425:25 6426: 18 6428:3 6444:25 6453: 21 usual ^[1] 6069:3 utilization ^[1] 6278:15 utilize ^[1] 6277:20 utterly ^[3] 6251:4 6301:10 6411:17</p> <hr/> <p style="text-align: center;">V</p> <p>VA ^[1] 6067:9 vague ^[2] 6271:7 6382:1 vaguely ^[1] 6120:17 valid ^[1] 6408:17 valuable ^[4] 6122:16 6159: 18 6161:18 6425:20 valuation ^[11] 6381:7 6419: 18,21 6424:24 6425:18 6437:16,16 6439:4 6441:9, 11 6450:16 valuations ^[2] 6382:8 6437:20 value ^[132] 6092:6,15,18,19 6096:1 6098:21,23 6102: 14 6106:8,22 6108:10,11 6112:1,3,5 6113:8,14,14, 18 6115:5,10,14 6116:2,17, 18 6117:7,15,15,18 6118:3, 6,10 6119:13 6121:14,20, 25 6122:7 6157:4,14,22 6158:10,16 6159:4,7,8,9, 12,14 6160:6,8,9,14,15, 17 6161:17,25 6162:6,12, 15,19,20,22,24,25 6163:2, 24 6164:3,5 6166:12 6167: 9,11,21 6182:12 6201:23 6203:18,21 6205:6 6254: 25 6288:15 6289:15,23 6290:1,13 6291:11,19,21, 22,23 6292:1,4,9,17 6293: 23,25 6294:10 6298:3,8 6359:7,14,22,24 6360:11 6379:25 6381:3,10,13,20, 21,25 6382:7,9,19,21,24 6404:24 6405:13,16,17 6407:5,12 6408:25 6409:7, 9 6419:23 6424:21 6437: 15,21,24 6438:8,16 6441: 17 valued ^[7] 6116:2 6415:18 6418:12 6428:19 6431:5 6438:21 6449:6 values ^[4] 6184:17 6199:8</p>
---	--	--	---	--

OPEN SESSIONS

<p>6380:24 6381:9 variant ^[1] 6291:19 variety ^[7] 6158:4 6267:24 6433:3,16,18 6434:8 6453:1 various ^[6] 6081:15 6251:2 6260:15 6280:2 6304:6 6365:7 vary ^[1] 6284:22 varying ^[3] 6260:2 6277:19,20 vast ^[4] 6088:12 6231:9,16 6401:25 vastly ^[1] 6374:22 Vaughn ^[1] 6402:20 vein ^[1] 6076:10 venture ^[3] 6158:13,22 6159:1 verse ^[1] 6360:24 version ^[1] 6162:1 versus ^[7] 6111:19 6115:7 6116:15 6197:14 6234:7 6277:7 6443:18 viability ^[1] 6305:6 viable ^[3] 6158:14,17 6159:3 video ^[4] 6069:25 6118:15,18 6369:5 view ^[9] 6200:23 6254:24 6376:18,21 6377:11,13 6380:15 6394:10 6407:15 viewed ^[3] 6123:6 6376:23 6377:3 viewing ^[1] 6446:10 vinyl ^[1] 6279:17 violate ^[1] 6434:9 virtually ^[2] 6404:13 6436:15 virtue ^[4] 6157:21 6159:19 6166:23,25 virtues ^[1] 6288:9 vis-à-vis ^[3] 6425:10 6443:1,17 visually ^[1] 6369:12 vividly ^[1] 6235:21 vocabulary ^[1] 6182:14 vocalism ^[1] 6182:12 void ^[2] 6202:19 6362:13 volatility ^[1] 6244:13 volition ^[1] 6068:23 VOLUME ^[4] 6062:23 6378:4 6413:16 6414:2 volumes ^[1] 6362:14 voluntarily ^[1] 6200:5</p> <p style="text-align: center;">W</p> <p>wait ^[1] 6414:17 Waleed ^[1] 6302:9 walk ^[3] 6162:5 6198:8 6300:8 walked ^[2] 6103:13 6369:</p>	<p>15 Walker ^[1] 6402:20 walking ^[1] 6446:17 walks ^[1] 6103:16 wall ^[1] 6427:10 wall-to-wall ^[2] 6370:20 6412:4 wanted ^[8] 6076:16 6086:22 6087:4 6106:3 6272:20,24 6295:22 6298:1 wants ^[4] 6205:17 6236:20,21 6377:5 war ^[1] 6410:20 Warner ^[5] 6063:8 6069:16 6187:9,18,19 warps ^[1] 6411:1 warranted ^[2] 6230:10 6236:24 WARREN ^[15] 6063:15 6077:14 6228:6,7 6229:8,9 6246:1 6430:21 6451:13,13,17,25 6452:5 6453:25 6455:8 Washington ^[3] 6062:19 6063:22 6064:8 waste ^[1] 6403:10 water ^[1] 6299:14 Watkins ^[2] 6066:13 6361:17 waving ^[1] 6369:15 way ^[62] 6074:9 6075:22,23,23,25,25 6078:9 6080:2 6084:18 6085:19,22 6086:2 6088:5,22 6095:1,2,8,12 6100:24,25 6101:1,2 6102:18 6104:22 6108:8 6110:10 6111:7 6123:15 6160:16 6163:23 6165:5,6,9 6167:10 6184:22 6187:16 6191:10 6193:19 6195:20 6197:1 6203:11 6251:14 6265:5 6288:17 6293:17 6299:24 6303:12 6376:21,23,24 6377:11 6382:24 6404:16 6406:23 6408:10,11 6431:23 6441:22 6444:17 6446:8,11 6451:25 ways ^[14] 6072:22 6076:6 6085:13 6161:1,22 6167:6 6202:14,25 6280:18 6285:21 6360:25 6373:23 6442:6,8 WB/WS ^[1] 6241:19 weak ^[3] 6270:20 6291:25 6380:22 wear ^[1] 6077:22 wearing ^[1] 6077:18 WEB ^[133] 6062:10 6068:11 6070:13,20,24,24 6071:16,23,24 6072:2,18,20 6073:1,16 6074:14,18 6075:21</p>	<p>6076:15,17,20 6077:4 6078:8,13 6079:18,19 6080:7 6081:12,22 6082:3,11,15 6083:2,19,20 6084:2,3,9,21 6085:6,11,14 6088:16 6103:23 6106:21 6109:10,12 6110:19 6111:11 6119:6 6126:10,16 6127:3 6185:13 6200:4,4,4,4,15,18 6201:5 6202:15 6205:14,15 6228:16,19 6230:18 6233:23 6236:10,21 6239:15 6240:13,17,23 6241:2,25 6242:1 6248:17 6250:8,16 6251:8,11 6252:17,23 6264:3,12 6297:17 6301:1 6303:14,20 6306:12,20 6307:14 6361:25 6362:5 6371:25 6373:16,19 6374:14,23 6375:2,9,18,23 6379:16 6380:20 6382:12,14 6393:1,19,22,24 6394:2,23 6396:4,18 6397:8 6403:25 6404:9 6411:22 6428:5,20 6429:9 6430:19,21,24 6431:6,10,21 6432:4 6434:18 6440:9,10 6444:11 webcast ^[2] 6301:20 6425:22 webcaster ^[28] 6230:24 6232:1,3,5,8,15 6235:2,3,5,10 6236:16 6239:24 6243:5 6244:23 6256:15,23 6257:20 6277:25 6281:9,25 6282:7 6291:14,16 6298:8 6394:18,21 6416:16 6448:5 webcaster's ^[1] 6256:2 webcasters ^[45] 6120:16 6124:19,21 6202:23 6228:23 6229:2,23 6230:3,8,12,20 6232:19 6233:7,8,11 6234:19,25 6235:16,19 6238:10,14,14 6240:4,25 6241:3 6250:4,5 6251:8 6293:8,9 6297:13 6305:18 6362:7 6373:21 6393:13,14 6394:11 6395:10 6396:3 6404:2,16 6410:19 6424:13 6427:1 6452:21 webcasters' ^[1] 6287:5 webcasting ^[26] 6070:21 6190:19 6199:21 6200:2,6,22 6201:5 6202:15,18 6282:3 6293:1 6295:20 6301:24 6302:3,5,6 6364:8 6373:23 6376:2,12 6394:17 6412:10 6416:12 6418:11 6428:16 6442:21 webcasts ^[1] 6203:1 Webinar ^[1] 6063:2</p>	<p>Webs ^[1] 6228:17 week ^[1] 6186:5 weight ^[1] 6409:14 Weil ^[4] 6065:11 6247:5 6299:9 6361:7 welcome ^[1] 6068:7 well-charted ^[1] 6302:12 well-explained ^[1] 6302:21 well-trodden ^[1] 6417:20 WETZEL ^[24] 6066:3 6248:8,9 6361:4,8,11,16,17 6376:4,5,8,15 6377:20 6378:7 6379:11 6382:17 6383:2 6392:6,7 6413:5,9,11 6438:2 6455:6 whatever ^[16] 6073:25,25 6075:15 6082:2 6086:25,25 6087:1 6113:17 6119:13 6254:14,15 6268:3 6273:20 6274:16,19 6394:8 whatsoever ^[2] 6407:5 6436:22 Wheeler ^[2] 6370:15,17 whenever ^[1] 6255:4 Whereas ^[8] 6108:7 6125:10 6259:16 6273:13 6282:22 6366:23 6371:17 6431:8 Whereupon ^[8] 6128:16 6168:19 6206:18 6246:3 6308:8 6383:16 6420:17 6454:18 wherewithal ^[1] 6395:3 whether ^[48] 6072:22 6078:11 6079:9 6080:22 6085:23 6086:10 6090:11 6093:25 6096:16 6098:6 6100:15 6102:15 6105:13 6109:9,11 6116:3,17 6184:8 6193:1,2,14 6198:19 6199:25 6201:21 6234:7 6238:14 6239:23 6244:18 6245:3,5 6257:11 6275:9 6290:6 6297:1 6305:16 6360:5,20 6368:17 6378:21 6398:19 6411:7,18 6416:22 6417:24 6418:1,2 6429:20 6449:10 who's ^[2] 6284:1,2 whole ^[5] 6092:10 6098:13 6117:11 6161:19 6182:13 wholly ^[1] 6302:23 whom ^[1] 6238:11 wide ^[2] 6158:3 6235:12 widely ^[2] 6260:2 6440:18 widespread ^[1] 6440:16 Wile ^[1] 6284:1 will ^[127] 6068:13,16 6069:2,3,4,23,24 6070:4 6072:25</p>	<p>6074:8,9,21,22 6077:13 6079:24 6087:14,21 6098:10 6099:23 6101:25 6109:13 6111:22 6115:2,2 6116:9 6125:10 6127:12 6128:2,3,12 6157:12 6160:4 6163:14 6165:13 6166:1,3 6168:6,7,15 6187:25 6192:24 6193:17,23 6206:1,3,4,14 6231:24 6232:21 6233:17 6238:13 6239:16,20,21 6242:15 6244:25 6245:1 6246:1,2 6247:3,7,16,18,20,20 6248:8,11,25 6249:10 6254:13 6269:3 6272:1 6273:2 6278:10 6280:7 6282:4 6299:23 6303:23 6304:15 6307:17,19,20 6308:4 6361:3,7 6376:15 6383:5,14 6398:1 6400:10 6412:19,25 6413:13,15,25 6414:21 6417:1,11 6420:4,13 6425:6 6427:16 6430:12 6435:1,15 6439:9,18 6445:12,12,13,22 6446:12,16,21,25 6447:11,19,21 6448:18,19 6451:21,21 6452:1,2 6453:24 6454:5,14 Williams ^[2] 6376:22 6393:16 Willig ^[68] 6101:3 6120:9 6156:14 6157:4,11,19 6158:3 6160:3 6161:13 6162:8,10,16 6164:2 6166:21 6185:4 6190:6,14 6191:2 6196:6,7 6197:1,13,24 6198:5,9,14,21 6199:3 6255:19 6268:8,14,25 6269:8 6271:1 6272:8 6275:11,25 6279:16,21 6281:24 6282:1,21,25 6284:8,21 6285:4,12,24 6288:7,10 6289:14 6291:25 6292:11,19 6295:2,3,7 6305:10 6360:20,25 6363:14 6364:11 6368:16 6404:22 6406:11,22 6416:14,17 Willig's ^[20] 6156:15,25 6159:24 6160:18,23 6162:22 6163:2 6167:8 6198:13 6275:1 6278:13 6279:25 6280:17 6281:20 6282:16 6285:9 6290:10 6304:11 6359:22 6407:9 willing ^[62] 6071:5 6092:23 6107:15 6110:14 6112:18,19 6113:13 6114:10,20,24 6115:13 6116:24,25 6120:19,19,20,22 6125:4,11 6229:19,21 6231:5,19</p>
--	---	---	---	---

Determination of Rates and Terms (Web V) Docket No. 19-CRB-0005-WR (2021-2025) November 19, 2020
OPEN SESSIONS

6233:1 6234:22 6241:16, 16 6242:23 6249:14,15 6253:4 6255:1,8,21,21 6277:21 6287:10 6289:21, 22 6302:24 6303:5,6 6373: 24 6382:1 6392:16,16 6394:22 6396:1,2 6400:24 6417:18 6418:20 6424:22 6429:4,4 6434:17 6436:10 6439:18 6444:24 6449:12, 14 6450:20 willingness [30] 6071:9,15 6092:14,17 6110:12,13,16 6111:8 6112:23,23 6114:1, 2 6116:4,11 6229:22 6232: 9,24 6244:15 6256:2,16 6282:1 6286:16 6287:6 6306:24 6424:16 6425:9 6442:9,18 6450:9,14 willingness-to-pay [1] 6286:3 wind [5] 6080:25 6086:9 6127:12 6161:22 6199:10 winds [4] 6161:14 6167:16 6370:6 6393:4 wins [1] 6164:22 withhold [1] 6187:18 within [7] 6074:25 6256:4 6296:24 6305:25 6377:21 6425:23 6431:11 Without [23] 6069:8 6095:1, 7,15 6099:15 6124:7 6160: 7 6183:10 6190:7 6191:1 6204:14 6234:24 6247:24 6255:14 6261:1 6270:13 6289:6 6303:23 6379:15 6382:21 6395:3 6396:10 6407:25 withstand [1] 6258:14 witness [8] 6187:10 6261: 13 6362:17,19 6370:7 6377:18 6382:22 6394:13 witnesses [7] 6097:16 6203:17 6252:8 6260:6 6271:23 6381:13 6401:10 witnesses' [1] 6441:20 won [1] 6068:14 wonder [1] 6304:18 word [4] 6106:11 6239:1 6271:7 6407:12 words [11] 6068:11 6122:1 6183:18 6187:11,13 6188: 12 6366:21 6370:16 6381: 24 6410:1 6425:14 work [10] 6128:15 6165:10 6168:17 6194:19 6206:16 6244:3 6308:7 6364:13 6420:15 6454:16 worked [1] 6195:20 working [4] 6247:11 6299: 10 6414:7 6451:10	works [12] 6085:18 6088:5 6089:2 6103:17 6165:6 6380:19 6418:9 6428:21, 22 6429:2,8 6448:25 world [19] 6115:12 6165:9, 11,13,24 6166:2,7 6167:20, 21 6229:25 6258:7 6260: 12,13 6261:18 6288:22 6377:13 6403:20 6404:4 6412:17 worship [1] 6433:22 worth [3] 6107:13 6233:22 6237:17 wrap [4] 6198:3 6242:12 6409:15 6447:8 written [22] 6072:1 6093: 17 6095:5 6097:17,19 6100:8 6103:12 6109:24 6118:13 6156:25 6194:16 6237:13 6258:3 6268:16, 23,24 6288:7 6290:21,23 6292:6 6302:10 6375:10 WSA [7] 6241:9 6448:4,13, 17 6453:13,14,16 <hr/> X <hr/> XXI [1] 6062:23 <hr/> Y <hr/> year [13] 6070:2,3,11 6237: 2,3 6240:6 6242:17 6249: 17 6253:8 6282:23 6407: 24 6426:14 6431:4 years [7] 6070:10 6240:13 6304:1 6394:5 6398:16 6435:12,12 Yep [1] 6248:3 yesterday [1] 6361:20 yields [1] 6183:12 York [6] 6063:20 6064:24, 24 6065:13,13 6232:12 YouTube [3] 6259:7,7,8 <hr/> Z <hr/> Zauberman [7] 6182:11 6190:16,20 6275:24 6276: 4 6277:4 6406:7 Zauberman's [1] 6406:22 zero [7] 6196:20 6250:23 6262:17 6306:24 6401:4 6409:14 6450:10 zone [1] 6395:1 Zoom [9] 6063:2 6128:7 6168:11 6206:9 6307:24 6383:9 6414:20 6420:8 6454:9
---	---