Before the
UNITED STATES COPYRIGHT ROYALTY BOARD
LIBRARY OF CONGRESS
Washington, D.C.

In The Matter Of: Digital Performance Right in Sound Recording and Ephemeral Recordings for a New Subscription Service	Docket No. 2005-5 CRB DTNSRA

2006-1 CRB DSTRA Oral Testimony of

ERIC LOGAN

Executive Vice President of Programming, XM Satellite Radio Inc.

Witness for XM Satellite Radio Inc.

XM Exhibit 2

Before the

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Washington, D.C.

In the matter of:	º
Adjustment of Rates and Terms	º
for Preexisting Subscriptions	ºDocket No.2006-1
Services,	ºCRB DSTRA
and	º
Satellite Digital Audio Radio	º
Services	º

VOLUME II

Room LM-408

Library of Congress

First and Independence Avenue,

S.E.

Washington, D.C. 20540

Monday,

June 5, 2007

The above-entitled matter came on for hearing, pursuant to notice, at 9:30 a.m.

BEFORE:

THE HONORABLE JAMES SLEDGE, Chief Judge

THE HONORABLE WILLIAM J. ROBERTS, JR., Judge

THE HONORABLE STAN WISNIEWSKI, Judge

APPEARANCES:

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I N D E X

WITNESS	DIR	CRS	REDIR	RECRS	VOIR DIRE
GARY PARSONS	5	33	93	101	75
ERIC LOGAN	119	210	218	---	---
MARK VENDETTI	284	---	---	---	---

EXHIBIT	IDENTIFIED	RECEIVED
SX 1	60	---
SX 2	66	71
SX 3	82	---
SX 4	87	89
SX 5	89	92
SX 6	211	220
SX 7	220	---
SX 8	229	232
SX 9	249	---
SX 10	253	254
SX 11	255	---
SX 12	267	---
SX 13	269	270
SX 14	272	---
SX 15	273	---
SX 16	277	278
XM 2	125	126
XM 3	132	135
XM 4	295	297
XM 5	304	---

1 I didn't want the Panel to think I was showing
2 any disrespect or being overly casual.
3 CHIEF JUDGE SLEDGE: I hope we're
4 not that sensitive.
5 MR. MEYER: Thank you.
6 WHEREUPON,
7 ERIC LOGAN
8 was called as a witness by Counsel for XM
9 Satellite Radio I&C., having been first duly
10 sworn, assumed the witness stand, was examined
11 and testified as follows:
12 DIRECT EXAMINATION
13 BY MR. MEYER:
14 Q Please state your name for the
15 record.
16 A My name is Eric Logan.
17 Q And how are you currently
18 employed?
19 A I'm employed by XM Satellite Radio
20 as the Head of Programming.
21 Q What is your official title?
22 A Executive Vice President of

1 Programming.
2 Q Okay. And in terms of your role
3 as Executive Vice President of Programming,
4 can you describe generally for us your
5 responsibilities?
6 A Sure. I oversee two distinct
7 parts of our business. I oversee the content
8 creation of our channels and oversee the
9 rights, if you will, of management of those
10 channels.
11 And I also oversee the bandwidth
12 management or the infrastructure that provides
13 our content given to our uplink. So I have
14 two distinct different roles as the Head of
15 Programming.
16 Q Now I'm going to touch briefly on
17 your employment history without going through
18 it in extreme detail. But I do have a
19 question I want to bring out the most
20 embarrassing aspect of it which is your first
21 job in radio. Can you describe that for us.
22 A Yes. My first job in radio was I

1 was Chuck the Duck, a radio station mascot in
2 Oklahoma City.
3 Q And, in fact, you were so
4 effective in that role that you actually
5 received a promotion. Isn't that correct?
6 A That is correct. I was hired
7 subsequently by the station across the street
8 for a promotion to become Cody the Coyote.
9 Those were my first two jobs.
10 Q Okay.
11 CHIEF JUDGE SLEDGE: Mr. Logan,
12 for someone that features Howard Stern as a
13 primary program, I can't imagine how you would
14 be embarrassed by that history.
15 (Laughter.)
16 MR. MEYER: To be clear, of course
17 XM does not have Howard Stern.
18 CHIEF JUDGE SLEDGE: That's true.
19 MR. MEYER: But we do have Opie &
20 Anthony.
21 (Laughter.)
22 MR. MEYER: And I'm not sure any

1 more which way that cuts.

2 BY MR. MEYER:

3 Q Okay now, Mr. Logan, with that

4 aside, can you just briefly tell us what your

5 experience was, particularly focusing on the

6 radio industry before you joined XM?

7 A Sure. As I stated, I started in

8 radio. I was an on-air personality for a few

9 years. But I quickly became a Program

10 Director for many radio stations across

11 America. I worked in markets such as Oklahoma

12 City, Seattle, San Francisco, Tampa, Chicago,

13 and New York City.

14 And upon moving from Chicago to

15 New York City, I became the Vice President of

16 Programming for Infinity Broadcasting at the

17 time, which rolled up into CBS Radio.

18 From there, I worked about a year

19 and a half, became the President of

20 Programming for Citadel Broadcasting where I

21 oversaw the day-to-day operations of about

22 160-plus radio stations across the country.

1 And then about three years ago, I
2 got a call from Hugh Panero, our current CEO,
3 who asked me if I would like to come be the
4 Head of Programming for XM Satellite Radio.
5 Q And what part of the country do
6 you hail from?
7 A Oklahoma.
8 Q And you worked at radio stations
9 in Oklahoma?
10 A Yes, sir.
11 Q Now I'd just like to begin as we
12 did with Mr. Parsons, if I could have you look
13 at your direct written testimony in this case.
14 And the attachments thereto. Do you have
15 somebody assisting you with copies there? Do
16 you need a copy?
17 A Yes.
18 Q Now, Mr. Logan, what I placed
19 before you, is this a copy of your direct
20 written testimony in connection with this
21 proceeding?
22 A Yes, it is.

1 Q Okay. And at the time did you
2 review all of this testimony and believe it to
3 be truthful?
4 A Yes, I did.
5 Q And then you signed it?
6 A Yes, I did.
7 Q Okay. And you also reviewed the
8 attachments to the direct testimony?
9 A Yes, I did.
10 Q Okay. I haven't actually put a
11 mark on it but we will do that.
12 MR. MEYER: I'd like to move it
13 into evidence. I believe it is XM Exhibit 2
14 with the Parson's Declaration and Exhibits
15 being Exhibit 1. But we will take back your
16 copies and mark them and give you back,
17 hopefully, the marked copies if that is okay.
18 CHIEF JUDGE SLEDGE: I'm not clear
19 on what you are proposing.
20 MR. MEYER: We don't have an
21 exhibit sticker on it. So I'm simply
22 proposing that at some point, if Your Honors

1 wish, we will mark -- we will put stickers on
2 your copies so it is clear. Assuming it is
3 admitted. To say XM Exhibit 2.
4 CHIEF JUDGE SLEDGE: Exhibit 2?
5 MR. MEYER: Well, I know that Mr.
6 Rich with Mr. Parsons admitted Mr. Parson's
7 direct testimony and attachments as XM Exhibit
8 1. And, again, it may not have contained a
9 sticker marking it as such. So this, I
10 presume, would be Exhibit 2.
11 (Whereupon, the above-referred to
12 document was marked as XM Exhibit
13 No. 2 for identification.)
14 CHIEF JUDGE SLEDGE: Any objection
15 to the direct written statement of Eric Logan
16 being offered as XM Exhibit 2?
17 MR. HANDZO: No objection to the
18 admission of the testimony, Your Honor.
19 Just as a logistical matter, I
20 think what we did in the webcasting case was
21 we didn't -- the testimony got admitted but we
22 didn't actually mark it as an exhibit because

1 we just have to kill more trees to put it in
2 exhibit binders. And the Court already has
3 that. So I was just going to propose that as
4 the way we proceed in this case as well.
5 CHIEF JUDGE SLEDGE: I have no
6 response to that.
7 MR. HANDZO: I guess we will work
8 it out among Counsel.
9 MR. MEYER: That is fine, Your
10 Honor.
11 CHIEF JUDGE SLEDGE: With no
12 objection, Exhibit 2 is admitted.
13 (Whereupon, the above-referred to
14 document was received into the
15 record as XM Exhibit No. 2.)
16 BY MR. MEYER:
17 Q Okay. Now, Mr. Logan, going back
18 to your responsibilities, are you responsible
19 for just music content on XM? Or other forms
20 of content as well?
21 A No, I'm responsible for all
22 content on our network for talk, music,

1 information, and such.
2 Q And do you have a staff that works
3 for you in programming the content?
4 A Yes, I do.
5 Q Approximately how many people work
6 for you?
7 A It varies because there is a
8 constant turnover but approximately 380 to 390
9 people.
10 Q Okay. And as a general matter,
11 can you just explain to the Panel what is XM's
12 content strategy?
13 A Sure. Our goal is to leverage
14 this infrastructure that we created, this
15 national footprint we have, to create and
16 offer a content that is diverse enough that
17 people would pay us $12.95 a month for it.
18 Our underpinning philosophy of
19 that is to try to attract enough people that
20 when they come to the service, there is
21 something for everyone. There is a rich
22 portfolio of talk, of music, of sports, of

1 information, and services.
2 So we constantly challenge
3 ourselves to make sure that if somebody comes
4 to us through a variety of our paths, whether
5 or not it is our OEM or our automotive
6 segment, or they go to a Best Buy/Circuit City
7 and purchase one of our radios, that when they
8 get to the network they find not only what
9 they were looking for but for other things
10 that they didn't know they were looking for as
11 well.
12 Q Okay. And you mentioned, I
13 believe, in describing your responsibilities,
14 you mentioned something about managing the
15 bandwidth.
16 A Yes.
17 Q Is there a finite amount of
18 bandwidth that XM is allowed to use?
19 A Yes, there is.
20 Q And who decides -- who gives you
21 that allocation?
22 A Well, the FCC grants us the

1 spectrum. And we utilize approximately about
2 what we call four megabits of the spectrum
3 that we can utilize to associate to each
4 individual channel. And the kilobits are
5 actually the technical mechanism that brings
6 to life the channels on the radios.
7 Q Okay. And did XM have to apply
8 for a license to the FCC?
9 A Yes, we did. We applied for a
10 license. We were granted and purchased the
11 license for I think approximately 90 million
12 dollars.
13 Q Okay. And let me direct your
14 attention to Exhibit 1 of your written
15 testimony. And can you just describe for us
16 what this is?
17 A Well, this is a depiction, a small
18 one, of our channel lineup that you would
19 expect to see on our website, you would see in
20 many of our retail establishments that we
21 entice people to come to our network. It
22 provides a look across all of our channels

1 with short descriptions of some of the
2 content.
3 And we have broken it into very
4 manageable-type sections. Whether or not it
5 is sports, or music by genre, or news, or
6 traffic, or weather. So when you look at it,
7 it also has a variety of personalities that
8 are on here.
9 These personalities are people we
10 feel, from a marketing standpoint, speak to
11 the gross segments or the people that we are
12 trying to target to entice them to come to our
13 service and pay us a subscription a month.
14 Q Okay. Now this -- is this exhibit
15 accurate as of the date of your affidavit?
16 A As of the date of my affidavit,
17 that is correct.
18 Q Okay. And has the content changed
19 somewhat since the date of your direct written
20 testimony?
21 A Yes, it has.
22 Q Okay.

1 MR. MEYER: And with the Panel's
2 permission, we have really just an updated
3 version of the same document that reflects the
4 content as it exists on the channel today.
5 And I'd like to mark that as an exhibit,
6 Exhibit 3.
7 MR. MEYER: I'd like to offer
8 that.
9 CHIEF JUDGE SLEDGE: This isn't
10 marked.
11 MR. MEYER: Again, I apologize,
12 Your Honor.
13 CHIEF JUDGE SLEDGE: It won't
14 suffice.
15 MR. MEYER: Okay.
16 CHIEF JUDGE SLEDGE: These have to
17 be marked.
18 MR. MEYER: Would it be okay if I
19 marked it with a -- do we have an exhibit
20 sticker? We're going to mark it with an
21 exhibit sticker, Your Honor.
22 CHIEF JUDGE SLEDGE: Mr. Meyer,

1 that is clearly provided in our regulations.
2 MR. MEYER: I apologize, Your
3 Honor.
4 (Whereupon, the above-referred to
5 document was marked as XM Exhibit
6 No. 3 for identification.)
7 MR. MEYER: Thank you.
8 Todd, can you -- do you want to
9 talk to your assistant?
10 CHIEF JUDGE SLEDGE: Do we need to
11 take a recess for you to get your presentation
12 prepared?
13 MR. MEYER: Your Honor, I think it
14 will just take a few seconds.
15 CHIEF JUDGE SLEDGE: Is this going
16 to be the last one?
17 MR. MEYER: Yes, the last time
18 this will happen?
19 CHIEF JUDGE SLEDGE: Yes.
20 MR. MEYER: Yes, Your Honor. And
21 it is the last exhibit that I will be
22 introducing.

1 Well, while we are waiting, may I
2 proceed with questions --
3 CHIEF JUDGE SLEDGE: Yes, sir.
4 MR. MEYER: -- so as not to waste
5 the time?
6 BY MR. MEYER:
7 Q Now, Mr. Logan, with respect to
8 the channels on XM currently, I think Mr.
9 Parsons mentioned this. How many channels are
10 there on XM currently?
11 A As of today, I think we have 177
12 today.
13 Q And how does that compare to the
14 number of channels that were on XM upon XM's
15 launch?
16 A Upon XM's launch, I think we had
17 101 or right about 100.
18 Q Okay. And has the mix of content
19 between music and non-music content changed
20 over that period of time to your knowledge?
21 A Yes, it has.
22 Q Okay. And can you describe how?

1 A Yes, we've added approximately 77
2 or so channels of which I think we have added
3 somewhere in the neighborhood of, you know,
4 seven music channels in total. But we have
5 added upwards of 70-plus non-music channels
6 over the point of time from the launch of our
7 service through today.
8 Q So is it correct to say then that
9 as I believe Mr. Rich said in his opening,
10 that the content on XM is tending towards
11 greater non-music content?
12 A That would be true, yes.
13 Q Okay. All right. And now if we
14 could look at what I have marked as
15 SoundExchange Exhibit 3 -- and again with
16 apologies to the Panel, is this simply an
17 updated version of Exhibit 1 that was attached
18 to your report, sir?
19 A That is correct.
20 Q Okay.
21 MR. MEYER: And I would ask that
22 it be admitted.

1 CHIEF JUDGE SLEDGE: Mr. Meyer, I
2 don't have an Exhibit 3. I have an Exhibit 2.
3 MR. MEYER: I apologize again,
4 sir.
5 PARTICIPANT: Excuse me, Your
6 Honor, it is my slip.
7 MR. MEYER: I apologize again and
8 renew my offer.
9 CHIEF JUDGE SLEDGE: Is there any
10 objection to XM Exhibit 3?
11 MR. HANDZO: No, Your Honor.
12 CHIEF JUDGE SLEDGE: Without
13 objection, it is admitted.
14 (Whereupon, the above-referred to
15 document was received into the
16 record as XM Exhibit No. 3.)
17 MR. MEYER: Thank you. And I
18 believe we have a board of this as well. If
19 my colleague, Mr. Thompson, is correct.
20 BY MR. MEYER:
21 Q Now, Mr. Logan, what I'd like to
22 do is just walk through this a little bit

1 since we've obviously had a lot of testimony
2 about XM and about Sirius but very little
3 description of what is actually on the
4 services.
5 Obviously we are not going to go
6 through every one of these items. But I take
7 it on the left side that describes the music
8 channels. Is that correct?
9 A That is correct.
10 Q Okay. And I think you said how
11 many music channels are there?
12 A Currently on this line up we have
13 69 commercial-free music channels.
14 Q Okay. And there was some mention
15 made earlier in Mr. Parson's testimony about
16 some music channels that were programmed by
17 Clear Channel. Can you just explain to the
18 Panel what that is?
19 A Sure. Clear Channel has the
20 right, through an investment in our company,
21 to program approximately 400 kilobits of
22 bandwidth. We mutually agree upon formatic

1 direction or where they are trying to appeal
2 to a marketplace.
3 We have a revenue share
4 arrangement with them so they program these
5 channels and through their bandwidth, they
6 have elected to program five music channels as
7 part of that. So in total, we have 74 music
8 channels but 69 of which are commercial free.
9 Q Okay. And the Clear Channel
10 channels, is that reflected on the chart here
11 in Exhibit 3?
12 A Yes, it is.
13 Q And where is that?
14 A To the far right-hand column, if
15 you look where it says regional, talk, the
16 news, and music, the four channels are
17 Nashville, KISS, Mix, Sunny, and WSIX.
18 Q Okay. All right. And I think
19 this is simple arithmetic but out of the 170
20 channels currently on XM, approximately how
21 many of them are non-music channels?
22 A Seventy-four less 77, so 103

1 approximately.
2 Q Okay. All right. Now let's just
3 again walk through a few examples of the
4 content you have. Now you see on the far left
5 column, you have Decades channels. Can you
6 just explain briefly what those are?
7 A Sure. You know what we try to do
8 with all of our music programming is to create
9 something that is easy and an experience for
10 our subscribers to navigate and move around.
11 So one of the tactics by which we
12 have chosen to showcase some of the more
13 classic record or early recordings is cut them
14 by decades. And we just found it to be really
15 simple that from a marketing proposition, to
16 say that the 40s are on Channel 4, 50s on 5,
17 60s on 6, and we do that all the way until we
18 get to the 90s on 9.
19 So in that channel what you will
20 hear is music that is book marked basically
21 from January 1st, 1980, for example, all the
22 way through December 31st of 1989. And that

1 channel will play music from that ten-year
2 era.
3 Q Okay. And we've heard that music
4 pre-1972 is not subject to the license in this
5 case. Can you point to which channels, if
6 any, predominantly play music recorded prior
7 to 1972?
8 A Well, in the Decades example,
9 clearly the 40s, 50s, 60s, some of the 70s do.
10 But as you continue through our network, for
11 example in our rock category, when you have a
12 channel like Top Tracks, it plays a lot of
13 music that is from the 60s.
14 So in total, and I don't have the
15 number off the top of my head, Your Honor, but
16 I will tell you we have somewhere between 10
17 to 12 different channels that play a
18 predominant mix of music that could be pre-
19 1972.
20 Q For example do you have a Frank
21 Sinatra channel?
22 A No, we do not.

1 Q Okay.
2 A We have a channel called High
3 Standards, which is Channel 73, which used to
4 be called Frank's Place. But it is now called
5 High Standards. And that plays music
6 predominantly of one of the ones that I cited
7 pre-1972.
8 Q And, by the way, the Decade
9 channels, 40s, 50s, 60s, 70s, are those
10 popular channels?
11 A Very popular.
12 Q Now underneath the Decades
13 channels on the left, it says country. And I
14 noticed there are -- I think there are seven
15 country channels. Is that correct?
16 A Actually there are nine country
17 channels on the network, seven of which are
18 commercial free and two additional channels
19 that are programmed by Clear Channel.
20 Q Okay. And from the standpoint of
21 you as the Chief Programmer at XM, what is the
22 benefit or the attractiveness to consumers of

1 having nine country channels?
2 A Well, country is a very big genre
3 of music. And generically we feel that the
4 experience should be where somebody wants to
5 specialize and understand things about classic
6 country music, we want to provide an
7 environment for that to be.
8 Conversely, there are people who
9 are just more interested in the current or
10 contemporary country music. And we want to
11 provide that, which we do, which is Channel
12 16.
13 And then there is a group of
14 people who are interested really in what is
15 referred to often in the country circles is
16 the Urban Cowboy era, which would have been
17 the late 70s through the 80s era. And we have
18 a channel that does that.
19 And then there is also a very
20 popular channel that we have called Cross
21 Country, which is a regional segment of
22 country music out of Texas that is called

1 Americana by some standards. And some people
2 refer to it as Texas Country.
3 We took this genre from the launch
4 of our network and took a small regional
5 format to a national audience and provided an
6 opportunity for that music to be heard.
7 And also many of country artists
8 of today and songwriters have strong roots
9 into folk music. So one of our channels is to
10 showcase the breadth and depth of folk music,
11 another format or genre of music that is not
12 widely available anywhere in America in the
13 local markets and clearly on a national basis
14 we do that now.
15 Q Now are there major --
16 JUDGE ROBERTS: Excuse me, Mr.
17 Logan, some of the country music that you play
18 is that pre-1972?
19 THE WITNESS: Yes, sir, it is.
20 JUDGE ROBERTS: And, of course,
21 some of the classical recordings that you play
22 are pre-1972 as well as the rock and roll and

1 the others you identified?
2 THE WITNESS: Yes, Your Honor.
3 JUDGE ROBERTS: What percentage of
4 all the music that XM plays in a given year is
5 pre-1972?
6 THE WITNESS: Your Honor, in a
7 given year, it's tough without me actually
8 doing an analysis. But of our -- we have a
9 service called Dillett, which is our database
10 of music that we actually draw from and our
11 programmers draw from.
12 And depending upon what week you
13 could look at in just spot checking, we play
14 somewhere between eight and 13 percent of that
15 catalogue would be music predominantly from
16 pre-1972.
17 JUDGE ROBERTS: That is in a given
18 week?
19 THE WITNESS: It's -- honestly,
20 that was when we looked at it in a couple of
21 days. And just grabbing some snapshot days.
22 We have not done a detailed analysis, Your

1 Honor, of everything we play over the course
2 of the year.
3 JUDGE ROBERTS: You don't think
4 that that would be important to a proceeding
5 like this to know what that percentage was?
6 THE WITNESS: I think it would be,
7 Your Honor.
8 MR. MEYER: Your Honor, that may
9 be something we will address in rebuttal.
10 BY MR. MEYER:
11 Q But going back just to the
12 diversity of the country stations, are there
13 major markets -- I'm using country as an
14 example -- are there major markets in the
15 United States that don't have any country
16 channels?
17 A Yes, that is true.
18 Q Can you give some examples?
19 A New York City in one market in
20 America. They don't have any form of country
21 music in New York City. Los Angeles was
22 without a country radio station for a period

1 of time. They just launched one. San
2 Francisco just launched one a few years ago.
3 But there was a point not too
4 recently where in the top five markets in
5 America, Chicago and Philadelphia, out of the
6 top five markets, were the only two markets
7 that had a major country outlet in that
8 market.
9 CHIEF JUDGE SLEDGE: Excuse me.
10 THE WITNESS: Yes, sir.
11 CHIEF JUDGE SLEDGE: Are you
12 referring to terrestrial radio?
13 THE WITNESS: Yes, sir, I am.
14 CHIEF JUDGE SLEDGE: That is
15 incredible. I've listened to country music
16 stations in those markets.
17 THE WITNESS: In New York City?
18 CHIEF JUDGE SLEDGE: Yes.
19 THE WITNESS: Okay.
20 BY MR. MEYER:
21 Q Is it your understanding that
22 currently there is or is not a country --

1 predominantly country music station in New
2 York City?
3 A In New York City, there is a
4 potential that there could be a New Jersey
5 radio station. But there is no New York City-
6 licensed FM or AM to my knowledge today that
7 is playing country music.
8 Q As sad as that may be from some
9 people's perspectives, certainly is there
10 anywhere in the United States where a country
11 music fan could receive nine country music
12 channels?
13 A Not to my knowledge, no.
14 Q And similarly under Christian, you
15 have three Christian music channels. Is that
16 correct?
17 A Yes, sir.
18 Q And is that available anywhere
19 else in the country as far as you know?
20 A Yes, there are markets that do
21 play a blend of Christian pop and rock. But
22 specifically part of our Christian

1 presentation, we have a channel that we are
2 very excited about that we actually feel that
3 we helped break on a national basis which is
4 Southern Gospel.
5 We are very proud to be one of the
6 first national media outlets to bring Southern
7 Gospel music to a national audience.
8 We actually tested this format
9 online with our streaming service. And upon
10 putting on the network, it was our number one-
11 rated Christian channel within a matter of
12 months.
13 Q Okay, and again, I'm not going to
14 go through all of this but focusing on the
15 rock channels, how many rock channels do you
16 currently have on XM?
17 A We have around 14.
18 Q Okay. And by way of comparison,
19 do you know how many rock channels there are
20 in New York City?
21 A In the New York City metro area,
22 they just received a new rock channel about

1 two weeks ago. So to my knowledge, that makes
2 two.
3 Q Now leaving the music channels for
4 a moment and in the middle column we see the
5 sports package -- yes, please.
6 JUDGE WISNIEWSKI: How do you
7 define the New York City metropolitan area?
8 THE WITNESS: Well, it is a large
9 market. And programming in New York, like I
10 have, we look at stations that are --
11 JUDGE WISNIEWSKI: Let me cut to
12 the chase here.
13 THE WITNESS: Sure.
14 JUDGE WISNIEWSKI: Do you use the
15 standard statistical definition from the
16 Bureau of Census or is this just some notion
17 that you have of what constitutes that area?
18 THE WITNESS: No, Your Honor. We
19 use what is defined by the market from
20 Arbitron which uses a portion of the census
21 data.
22 BY MR. MEYER:

1 Q Now with respect to the sports
2 content, can you just describe for the Panel -
3 - and, again, without going through every
4 channel but the major channels, the major
5 types of sports content that XM offers?
6 A There are two different types of
7 sports content. There is sports talk content
8 and sports play-by-play content. So let's
9 talk about sports talk content. On the sports
10 talk content side, we carry brands such as
11 ESPN Radio, Fox News, and also Hispanic brands
12 of sports like XM Deportivo, which is a
13 national Hispanic sports-focused channel. It
14 focuses on baseball and boxing and soccer.
15 We also have our own channel
16 called XM Sports Nation, which is our branded
17 sports talk show channel, which features
18 exclusive programming from Jimmie Johnson,
19 Dale Earnhardt, Jr., Mike Krzyzewski, a show
20 that we created with James Carville and Luke
21 Russert called 60/20 Sports among other shows.
22 Then there is the sports play-by-

1 play, which we broadcast somewhere in the
2 magnitude of over 5,000 live sporting events
3 each year. And our sports portfolio, it is
4 really driven by two key areas, baseball,
5 which we carry every team or every game
6 everywhere you go. And we have around 14
7 play-by-play channels of baseball.
8 In addition to that, we created a
9 baseball talk channel for the baseball heads
10 to listen 24 hours a day about talk. And we
11 have been increasing our coverage and
12 penetration in college sports.
13 We've just announced a deal with
14 the Southeastern Conference to migrate
15 Southeastern Conference from our competitor to
16 XM over the next two years. And, in fact,
17 today we just announced LSU joining us as
18 well.
19 So that makes five of the six
20 major conferences we carry. So from a sports
21 perspective, those are the two thrusts.
22 And in addition to that, we carry

1 the National Hockey League, which will be
2 moving to an exclusive partnership with us
3 starting next year. We carry IRL races, which
4 just featured the Indianapolis 500. And we
5 carry PGA Tour coverage of play-by-play for
6 golf. But that covers the majority of our
7 coverage.
8 Q Okay. Now I want to come back and
9 ask you about this issue of exclusivity that
10 has already been raised to some extent. But
11 just going through it, finishing up,
12 summarizing the content, you have Oprah &
13 Friends, Mr. Parsons spoke to that. Is that
14 an important part of your content on XM?
15 A Yes, it is.
16 Q Okay. Is it popular?
17 A Yes, it is.
18 Q Okay. And what do you get -- what
19 kind of content do you get as a result of your
20 deal with Oprah?
21 A Well, we get -- from Oprah,
22 herself, we get an exclusive radio show from

1 her every week that only can be heard on XM
2 Satellite Radio. In addition to that, she is
3 effectively the Executive Producer that helps
4 guide and create the rest of the channel,
5 which is comprised of her friends.
6 And her friends are her panel of
7 experts, if you will, that have helped her in
8 her personal life, whether it is finance or
9 health or dietary or physical fitness and even
10 interior design.
11 So the channel, over the course of
12 the week, will have a variety of these shows
13 anchored by the friends. Oprah has a show.
14 And Oprah's best friend, Gayle King, has a
15 show, a daily show on the channel as well.
16 Q Okay. And just below Oprah and
17 Her Friends, we see the biggest names in the
18 news. And can you just hit the highlights for
19 us please in terms of the news content that
20 you have on XM?
21 A Sure. We hoped to create an
22 environment so that people, regardless of

1 their political affiliation, would feel that
2 there was something for them, keeping with our
3 theme of the network. So we have a rich
4 portfolio of the biggest names in news,
5 whether it is CNN or Fox News or Headline
6 News.
7 We also carry CNBC and Bloomberg
8 for those who are interested in financial
9 news. And we also carry BBC for the
10 international view of what is happening around
11 the world.
12 We carry CSPAN exclusively now,
13 which is the coverage of what happens here
14 with our government as well. And we are very
15 proud to be creating our own brand of
16 nationally public radio, a national brand,
17 called XMPR, which is hosted by Bob Edwards
18 exclusively on our channel.
19 Q And you have on the upper right
20 All-Star Talk and Entertainment. And can you
21 describe what that is?
22 A In that category, we have a

1 variety of talk, scope, and word content that
2 would range from classic radio shows, old-
3 time radio featuring the Green Horn or Chicken
4 Man or a variety of theme which is very
5 popular.
6 Also we have in there featured
7 conservative talk and liberal talk with Air
8 American or America Right. We have African-
9 American Talk, which is really focusing on the
10 African-American marketplace.
11 We have Family Talk, which is
12 Christian talk. And we also have Open Road,
13 which is a truckers' channel, which is a
14 channel that discusses what happens on the
15 road and people traveling and then challenges
16 that they face as well.
17 Q Now I noted there you had the
18 conservative talk station and the progressive
19 talk station right next to each other on the
20 dial. I hope that that is okay. And people
21 don't accidently turn to one or the other and
22 get upset.

1 Kids programming, could you
2 describe what that is? I know this -- I am
3 painfully aware of this from my kids who
4 insist on listening only to Channel 115, Radio
5 Disney. But just explain what kind of content
6 you have.
7 A Sure. Radio Disney and XM Kids is
8 part of our belief that kids programming, on
9 a national basis, is not deeply penetrated
10 enough. So we partner with Radio Disney.
11 They provide that feed for us, which is a safe
12 environment for some popular music of today.
13 Then we create our own brand of
14 children's entertainment called XM Kids, which
15 is really focused on children between the ages
16 of three and six, whereas Radio Disney is
17 focused on ages six and over.
18 XM Kids, we have a staff of
19 personalities, in fact our morning show is a
20 morning show that is actually a radio cartoon.
21 He has chipmunks who come in and skunks. And
22 they take out trash. And it is very

1 interactive. And even at night, they help
2 kids with their homework. So it is a very
3 interactive kids channel.
4 Q Okay. Now I'm going to come back
5 to Opie & Anthony. But the instant traffic,
6 weather, and alerts, what type of content do
7 you have in that area?
8 A We offer 21 channels of discreet
9 information for particular cities. So, for
10 example, you could go to Channel 214 on your
11 XM radio anywhere in the country with our
12 service and you can get up-to-the-minute
13 information about the weather in Washington,
14 D.C. and also the traffic. And we do that for
15 21 cities.
16 In addition to that, we also have
17 a channel called 247, which is 24/7, which is
18 our emergency alert channel. And that is the
19 channel we use to track national emergencies,
20 whether they are forest fires or blizzards.
21 And last year, through the hurricane and even
22 with Katrina, 247 was the channel that we

1 disseminated much of the information from
2 FEMA.
3 In addition, at times we expand
4 this category by another channel or two,
5 depending upon the needs. So when the Red
6 Cross approached us about Hurricane Katrina,
7 we actually put a channel dedicated to the Red
8 Cross.
9 They utilized our national
10 infrastructure to communicate with people on
11 the ground in Louisiana and the Gulf Coast
12 because the terrestrial repeaters were down
13 and the cell phone service was down. So we
14 utilize that in partnering with a lot of
15 variety of public service interests.
16 Q Okay. And then finally under the
17 comedy category, can you describe for those
18 who have not had the pleasure of hearing them,
19 Opie & Anthony, what they are. And their
20 importance to the network?
21 A Well, we offer five channels of
22 comedy. Again, that theme of something for

1 everyone. We have comedy that is safe. And
2 then we have comedy that is over the top. And
3 Opie & Anthony would be in that category.
4 It is a show that is targeted
5 toward a male demographic. And it is very
6 aggressive, male lifestyle show.
7 Q Do you know, by the way, what the
8 demographic is of your listeners on XM?
9 A Yes, approximately -- without
10 having it in front of me, the average age of
11 our network is somewhere around the age of 46,
12 47. And it ranges depending upon what survey
13 we see. And the gender split is somewhere in
14 the range of 65, with 35 skewing toward the
15 male.
16 Q Okay. Now of all this content, do
17 you know which channel is the most popular in
18 terms of listenership?
19 A Yes, I do.
20 Q Which one?
21 A It is Opie & Anthony.
22 Q And prior to Opie & Anthony

1 assuming that lofty title, do you know who the
2 predecessor was as the most popular channel?
3 A Yes, I do.
4 Q And what was that?
5 A Fox News.
6 Q All right. Now let me ask you
7 about exclusivity. Now which, if any, of this
8 content is exclusive. And if you need to
9 clarify in terms of degrees of exclusivity,
10 please do so.
11 A Well, let me define the degrees of
12 exclusivity. And then we can hone in on that
13 if I could.
14 Q Sure.
15 A Under the degrees of exclusivity,
16 because of our national service in that we
17 broadcast to the entire country, we have one
18 degree of exclusivity that is with no ability
19 for any consumer to get the content anywhere
20 else. In any form or fashion.
21 And a good example of that would
22 be Oprah Winfrey. The only way you can get

1 Oprah & Friends radio show is by being a
2 subscriber to XM.
3 Then there is a segment of
4 exclusivity that is exclusive to XM and not on
5 Sirius but potentially could be on terrestrial
6 radio. And a good example of that could be
7 Air America or the, if you will, the liberal
8 talk network that we have.
9 Our competitor doesn't have it.
10 However, AM and FM does. So that is an
11 example of exclusivity vis-þ-vis Sirius.
12 Then there is a level of
13 exclusivity that is exclusive only to
14 satellite radio as a category and not to
15 terrestrial radio. Fox News and CNN, which we
16 take the television feed for, is exclusive to
17 us and Sirius but not to AM and FM radio.
18 Q Now as a general matter, does XM
19 pay more for exclusive content than non-
20 exclusive content?
21 A Yes.
22 Q And why is that?

1 A Well, the reason why is because we
2 feel that in order to bring people to the
3 network, we have to tap in to things that are
4 of mass appeal to them. Whether or not it is
5 major league baseball with the value
6 proposition of being able to get into your car
7 or get our service and get every game
8 everywhere you go, that is an exclusive
9 relationship that we would have that we would
10 pay a premium for.
11 Oprah Winfrey is an example of
12 Oprah Winfrey promoting on her show, on her TV
13 show and her magazines, I have this channel on
14 XM. But I really wish you could listen to my
15 channel. And motivate sales and attract
16 people to us.
17 Q Now, of course, perhaps it is
18 asking the obvious, people are used to
19 listening to regular terrestrial radio in
20 their cars, they pay nothing for that,
21 correct?
22 A Correct.

1 Q And the subscription price for XM
2 is $12.95?
3 A Today, correct.
4 Q Okay. And did it used to be
5 something --
6 JUDGE WISNIEWSKI: Is it your
7 proposition that advertising costs the
8 consumer nothing ultimately?
9 MR. MEYER: I'll defer to you as
10 the economist, Judge Wisniewski.
11 BY MR. MEYER:
12 Q But there is clearly no monthly
13 subscription fee for terrestrial radio,
14 correct?
15 A Yes, sir.
16 Q As there is for XM. And I think
17 you said -- did it use to be less than $12.95?
18 A Yes, when we launched our service
19 initially, we were $9.95. And a few years ago
20 we raised our fee from $9.99 to $12.99.
21 Q And we may get into more of this
22 with Mr. Cook but are there other options,

1 family plans, and things that consumers can
2 use to pay less than $12.95?
3 A Yes, there is.
4 Q Could you just describe that?
5 A Yes, in the broadest sense, you
6 can have a radio at $12.95 in your car that
7 you purchased from one of our car partners.
8 Hopefully you fall in love with the service
9 and you see value in it.
10 And there is an opportunity for
11 you to get a second radio in your home or even
12 in your office. We offer you the ability to
13 get that for $6.99. And you can purchase --
14 and if I'm not mistaken, I think up to four
15 additional radios under that one what we refer
16 to as a family plan.
17 Q Okay. Now with respect to
18 exclusivity and taking major league baseball
19 as an example, you say you have exclusive
20 rights to all major league baseball games? Do
21 I have that right?
22 A We have the exclusive satellite

1 radio rights to major league baseball.
2 Q Now isn't it true that all
3 baseball games or virtually all baseball games
4 are, in fact, broadcast on terrestrial radio?
5 A That is correct.
6 Q So then in what sense can you say
7 that you have the exclusive rights to it?
8 A We have the exclusive rights for -
9 - an example of if you are a Chicago Cubs fan
10 in Baltimore, Maryland, we have the broadcast
11 rights to have the ability to broadcast the
12 Chicago Cubs game into all the markets in
13 America. We have the rights from all 30 teams
14 to do that.
15 So in a market for which the
16 exclusivity could be that you have the
17 Nationals or you have the Oriels, we would be
18 broadcasting into that market all the games at
19 the same time.
20 Q And you do that on a nationwide
21 basis?
22 A We do that on a nationwide basis.

1 Q Now are there any features of the
2 major league baseball contract that reflect
3 the value of exclusivity?
4 A Yes, there is.
5 Q Okay. And without giving specific
6 numbers, can you describe that?
7 A Sure. In our agreement with major
8 league baseball, there is a provision that we
9 pay to baseball that is a premium for
10 exclusivity. We refer to it in our house as
11 a ratchet down provision.
12 And in the broadest sense, if we
13 were to not have exclusivity of major league
14 baseball, the way the agreement reads is that
15 our fee would be ratcheted down 70 percent.
16 MR. MEYER: Now I'm about to enter
17 into another area, Your Honor. I don't know
18 what your preference is, whether I should take
19 up the remaining five minutes or not.
20 CHIEF JUDGE SLEDGE: It is your
21 five minutes.
22 MR. MEYER: Okay. If I'm going to

1 get charged with five minutes either way, then
2 I will continue to ask questions.
3 BY MR. MEYER:
4 Q Let me ask you about the music
5 programming, now is the music programming
6 exclusive in any way?
7 A There are aspects of our
8 programming that we have with shows like Bob
9 Dylan that are exclusive to us. And that
10 would be the degree of exclusivity that we
11 have.
12 Q Okay. But with respect to in
13 general, for example, the country stations or
14 the rock stations or the hip hop stations, is
15 there any exclusivity?
16 A No.
17 Q That's all content that a consumer
18 could hear theoretically on terrestrial radio,
19 right?
20 A That is correct.
21 Q Now what is the role of music
22 programming at XM? Or let me rephrase that.

1 You mentioned that you have this
2 very large staff of people who work for you,
3 correct?
4 A Yes.
5 Q And some of those people, their
6 job is to program these music stations?
7 A Yes.
8 Q Okay. And could you just describe
9 generally the process by which they do that?
10 A Yes, generally what we have done
11 is we have a very experienced, highly
12 decorated staff of individuals who look at
13 this -- I referred to Dillett a moment ago --
14 but look at all the available music that could
15 be played.
16 Through their expertise and their
17 guidance, they say this is what I feel, as the
18 expert that I have hired or my team has hired,
19 to represent that particular genre. They have
20 full creative freedom to showcase it any way
21 they see fit.
22 We don't research our music so

1 they do have the ability to change with the
2 times. A great example is the guy who
3 programs Willie's Place is the former
4 president of MCA Records out of Nashville. A
5 guy named Eddie Kilroy who produced many
6 records with Jerry Lee Lewis.
7 Not a radio veteran. Not a radio
8 programmer. But works with Willie Nelson
9 collectively and says this is the type of
10 presentation that we want to present in terms
11 of classic country music.
12 Jonathan Schwartz, who programs
13 our High Standards channel, has authored books
14 on American standards and authored books on
15 Frank Sinatra, presents a channel about
16 standards music or the Rat Pack from his point
17 of view. So he has full creativity to change
18 or contextualize or communicate or take calls
19 on the fly, if you will.
20 And basically from all of our
21 music channels, that is the same sort of
22 approach that our programmers have about how

1 they can go after a channel.
2 Q And how does this programming
3 strategy differ from terrestrial radio?
4 A Greatly. In terrestrial radio,
5 you are constrained by their business model,
6 which is they have to aggregate a large amount
7 of audience so they can charge a premium for
8 that audience in terms of advertising because
9 that is their fundamental business
10 proposition.
11 We take a different approach
12 because have elected through our presentation
13 not to play commercials, to charge a
14 subscription as part of the experience, and
15 our Program Directors feel that it is
16 important to take people on these musical
17 journeys through the depth and breadth of folk
18 music. Or through the depth and breadth of
19 alternative. Or any of these genres that we
20 represent today.
21 There is no need for us to worry
22 about how many audience members we get into

1 one general channel because we are not selling
2 advertising. So the theory that I used to
3 work from for 20 years of my life in broadcast
4 for terrestrial radio is aggregate, get big,
5 and play. And then sell.
6 And in this case, for us, it is
7 about how satisfied our subscribers are with
8 this channel versus this channel. So it is
9 almost the exact opposite as terrestrial radio
10 in that regard of how we program.
11 Q Okay. Based on your experience in
12 terrestrial radio, do programmers generally
13 have the ability to select any song they want
14 to play from the station's library?
15 A Well, they could. But corporate
16 programmers, like myself, would then call them
17 and say you are breaking format. And they
18 wouldn't. So there are a lot of very rigid
19 formatic directions. And typically a radio
20 station such as a -- using country again as
21 your example, a country radio station on
22 average would play somewhere between 300 to

1 400 records for that particular radio station.
2 And they would rotate between those records.
3 Those records would be researched.
4 And tested in the marketplace so that that
5 particular market would say this is the music
6 that I want to hear in my market.
7 But what that really does for a
8 consumer is it limits the sort of choice that
9 they have the ability to hear. It limits the
10 ability, if there is a new record from a new
11 artist or if there is an older record with
12 other cuts on there, the consumer who listens
13 in terrestrial radio can't get the variety
14 from their favorite artists or even the
15 variety from the format that we offer on XM.
16 JUDGE WISNIEWSKI: I'm not sure I
17 understand the thrust of this line of
18 questioning.
19 MR. MEYER: Yes.
20 JUDGE WISNIEWSKI: It seems to me
21 that you had, at least from previous testimony
22 and other testimony, underscored your

1 competition with terrestrial radio. It seems
2 to me here that Mr. Logan is saying that you
3 offer a differentiated product that would, in
4 fact, not be competitive with terrestrial
5 radio.
6 MR. MEYER: I don't think that is
7 what he is suggesting. Or what we mean to
8 suggest. Basically --
9 JUDGE WISNIEWSKI: Through your
10 questioning shed some light on where you are
11 going.
12 MR. MEYER: Okay.
13 BY MR. MEYER:
14 Q We have established terrestrial
15 radio is free, correct?
16 A Correct.
17 Q And why would consumers, based on
18 your knowledge and understanding, pay $12.95
19 a month for radio which they are used to
20 getting for free?
21 A Well, that is a very tough
22 proposition. And one of the ways we get at it

1 -- one of many ways we get at it is knowing
2 that in terrestrial radio, which is where a
3 majority of our subscribers are coming from
4 today, they are dissatisfied with the amount
5 of commercials and the lack of play list or
6 variety depth.
7 So we actually use that as an
8 advantage to try to, if you will, mine that
9 opportunity. And try to convince somebody,
10 who may like a genre of music, to come to us
11 for that particular reason.
12 Q And to go even more directly to
13 the question, is there a value added, value
14 that XM programmers add to the music which is
15 not present on terrestrial radio and which
16 consumers find attractive?
17 A Clearly. You can look at Bob
18 Dylan as a clear example of that. We have a
19 partnership with Bob Dylan who actively does
20 a weekly radio show such as we do with
21 Ludacris or we do with Snoop Dogg or we do
22 with Wynton Marsalis.

1 Or even some of our original
2 programming that we have talked about that is
3 in my testimony as well in terms of how we
4 create radio specials and showcases for
5 artists who can't do things on terrestrial
6 radio because of the limited, structured
7 formats they have and the pressures of
8 commercials, 12, 13, 14 an hour that music
9 channels would have to play in most markets in
10 America.
11 Q And if you don't successfully
12 retain that consumer or persuade that consumer
13 that your satellite radio service is worth
14 $12.95 a month, what do they do?
15 A They probably get it for free.
16 Q That is you have a word for that?
17 A Yes. We refer to it in terms of
18 retention. What we talk about is many times
19 within the walls of programming is what brings
20 somebody to satellite radio isn't necessarily
21 what always keeps them.
22 We see examples all the time of

1 people who came and purchased it for baseball,
2 hockey, golf, any number of points of entry.
3 And they wind up staying for multiple reasons.
4 I've seen, as my testimony I think said at
5 certain points, that, you know, subscribers
6 have discovered genres of music and talk
7 aspect or entertainment aspects that they
8 never knew existed.
9 And a great success story for us
10 in terms of retention is the example of
11 comedy. When we have attracted people to our
12 network, XM Comedy Channel 150 is one of our
13 top-performing channels on our network.
14 But if we were to go out and sell
15 to a mass market in America, comedy on the
16 radio, it is a tough concept for somebody to
17 understand. But when you hear it, you
18 immediately get it. So comedy is a very good
19 example of something that somebody has
20 discovered and it has added value from a
21 retention standpoint.
22 Q Now what about sound quality? How

1 does the sound quality of XM compare to FM or
2 AM radio?
3 A It is superior. And it is
4 something that we have marketed in the past.
5 And we continue to market the sound quality.
6 In fact, we do have a couple of channels that
7 broadcast in 5.1 surround sound, which are the
8 classical channels that we have and also, if
9 I'm not mistaken -- I'll have to double check
10 -- but it also Fine Tuning which is a very
11 eclectic variety of content.
12 So we have better sounding talk
13 channels than you would experience in AM
14 radio. And in most cases, better sounding
15 music channels than you would experience in
16 terrestrial radio.
17 Q And is that something, to your
18 knowledge, that consumers notice and
19 appreciate?
20 A Yes, it is.
21 Q Now let's talk about some of the -
22 - well, I just want to mention a couple of the

1 other programmers that you have. Let's take
2 jazz, for example. We haven't talked much --
3 CHIEF JUDGE SLEDGE: Would this be
4 a good time for you to break?
5 MR. MEYER: Yes, Your Honor.
6 CHIEF JUDGE SLEDGE: Okay.
7 Mr. Logan, there are two questions
8 on programming that are most important that
9 you weren't asked. What is the length or
10 depth of your play list on the opera station?
11 THE WITNESS: Without checking,
12 Your Honor, I don't know. But I'm sure it
13 could be deep. Or, in this case, it might not
14 be deep enough.
15 CHIEF JUDGE SLEDGE: Well, that
16 would be -- if it deep, that would be a vast
17 departure from any I have ever heard before.
18 THE WITNESS: I think it is Channel
19 112. It's VOX.
20 CHIEF JUDGE SLEDGE: Opera?
21 THE WITNESS: It is VOX, yes.
22 CHIEF JUDGE SLEDGE: They

1 physically play ten songs over and over again.
2 (Laughter.)
3 THE WITNESS: I think we play more
4 than that, Your Honor.
5 CHIEF JUDGE SLEDGE: And where in
6 your channels is your root music?
7 THE WITNESS: Root music?
8 CHIEF JUDGE SLEDGE: Yes, sir.
9 THE WITNESS: I will have to get
10 back to Your Honor on root music.
11 CHIEF JUDGE SLEDGE: It appears to
12 be a gross deficiency in your programming.
13 Thank you. We will recess until
14 one-thirty.
15 MR. MEYER: Thank you, Your Honor.
16 (Whereupon, the foregoing matter
17 went off the record at 12:37 p.m.
18 and reconvened at 1:31 p.m.)
19 MR. MEYER: May I proceed, Your
20 Honor?
21 CHIEF JUDGE SLEDGE: Please.
22 BY MR. MEYER:

1 Q All right. Now, Mr. Logan, first
2 of all, during the lunch break, have we --
3 have we confirmed the amount of opera songs
4 that are played on XM?
5 A Yes, we have.
6 Q And how many is that?
7 A Our VOX channel plays 10,462 opera
8 songs.
9 CHIEF JUDGE SLEDGE: Is that the
10 same thing as a playlist?
11 THE WITNESS: That's the playlist.
12 Yes, sir, it is.
13 CHIEF JUDGE SLEDGE: Thank you.
14 THE WITNESS: You're welcome, Your
15 Honor.
16 BY MR. MEYER:
17 Q Now, Mr. Logan, I want to talk
18 again about the value -- the ways in which XM
19 adds value to music in its programming. And
20 you refer in paragraph 49 of your direct
21 written testimony to the fact that, according
22 to you, recorded music is a commodity that

1 adds enhanced value through the context in
2 which XM showcases it and on which our
3 subscribers experience it. So can you explain
4 what you meant in that context by "music is a
5 commodity"?
6 A What I meant by the term
7 "commodity" in that context is that music is
8 predominantly widely available for free,
9 mostly from AM and FM radio. As our business
10 has continued to grow, more places and more
11 outlets are offering music to get for free.
12 AM/FM radios are in cars, they're in hotels,
13 and you can turn it on and you can receive
14 music.
15 The experience that we often talk
16 about, and I talk about it in my testimony and
17 I've talked about today, is all the things
18 that we do and the investments we make in the
19 personalities, the staffs, the individual
20 program directors that would take, you know,
21 10,000 records for a VOX channel, which is our
22 opera channel, and make that channel come to

1 life and describe the meaning of a
2 performance, or whether or not it's George
3 Taylor Morris, who is one of the most
4 acclaimed interviewers who has done over 400
5 interviews for NBC and Westwood One, who will
6 play what we refer to as a deep track of
7 classic rock and talk about what was happening
8 at the time that record was being recorded.
9 So it's the vibrant, lively nature
10 that we bring to life with the context of this
11 commodity, as I called it in my testimony,
12 with music that makes this experience for our
13 subscribers part of the larger XM experience.
14 But that's how we get at the music experience
15 for our subscribers.
16 Q And can you give an example -- I
17 believe you mentioned on your classical
18 channels you have some programmers of some
19 note.
20 A Yes, we have a gentleman by the
21 name of Martin Goldsmith who programs XM
22 classics and who is acclaimed author himself

1 in terms of writing for The Beatles and
2 classical performances.
3 He hosts many public radio shows
4 prior to joining XM, but he is one of
5 America's leading experts in the classical
6 arena and is often sought out by publications
7 to be cited and quoted, such as Jonathan
8 Schwartz, who, as we discussed earlier, does
9 it for our standards,and, in fact, is a
10 contributing editor and writer for articles in
11 Business Week publication, which appears every
12 week.
13 Q And in what way --
14 CHIEF JUDGE SLEDGE: Mr. Goldsmith
15 was just featured by the National Symphony
16 about two weeks ago in a concert.
17 THE WITNESS: Yes, sir. Yes, he
18 was, Your Honor.
19 BY MR. MEYER:
20 Q In what ways do they add value to
21 the music?
22 A Well, again, using Mr. Goldsmith

1 as an example, Your Honor, he is able to
2 provide insight and clarity for somebody who
3 is candidly a novice in classical music, like
4 myself. I can listen to XM classics and gain
5 an appreciation and education from one of
6 America's experts.
7 That's something that I can't do
8 just by listening to Beethoven's Fifth
9 Symphony. I don't understand the meaning or
10 what to listen for or the subtle differences.
11 And these are the type of ways that our
12 personalities, our programmers bring this
13 music to life.
14 Q And in terms of, again, ways in
15 which XM adds value, I think we mentioned
16 earlier the sound quality. Can you just
17 describe briefly what's involved in presenting
18 that superior sound quality that XM presents?
19 A Yes. When we discussed earlier
20 our bandwidth we have, or the finite amount of
21 kilobits we have in order to transmit our
22 audio channels, audio requires different

1 levels of intensity of bits to be
2 processed/put through. So in the simplest
3 term, you don't need a lot of kilobits to
4 replicate a voice or just merely spoken word
5 content. So you can run channels at a lower
6 bit rate from that perspective.
7 To broadcast something in a
8 classical sense, in order to have an
9 acceptable experience, you need to be able to
10 hear discretely the different sounds of the
11 movement, the ability for a crescendo to go up
12 and down as you listen to a piece of work.
13 The amount of bandwidth that is
14 needed to replicate that at the end user
15 requires more kilobits. And when you deal
16 with records that were recorded in mono, not
17 recorded in stereo, you don't need extra
18 kilobits per se to broadcast that channel in
19 stereo if predominantly the recordings were
20 made in mono.
21 So each individual sonic density,
22 if you will, of channels or the type of music

1 they play really helps us dictate how many
2 kilobits we need to allocate per channel.
3 Q Well, I guess what I'm asking is,
4 what accounts for the higher sound quality of
5 the music on XM? How do you accomplish that?
6 A There's a proprietary box that we
7 use exclusively for XM. It's a company called
8 Neural, and it uses a technology which is
9 pretty commonplace called Perceptual Codec.
10 And what it does is it takes a linear piece of
11 audio, compresses it down, and hides the
12 effective digital noise.
13 And these boxes -- we call them
14 Neural Boxes -- are tuned for each channel to
15 hide different aspects of the noise. These
16 boxes now have gotten to the point where
17 they're actually adaptative, meaning they can
18 look ahead. So as we put songs into the
19 playlists and have prerecorded content, it
20 actually can anticipate or look ahead and see
21 how the subtle -- in essence, in a generic
22 sense, the bass and treble could change sort

1 of on the fly, and it's done through these
2 boxes.
3 Q And, finally, another way in which
4 XM adds value, there has been some reference
5 to the term "ubiquitousness." Can you explain
6 how you understand that and how adds value to
7 a listener?
8 A Yes. I think that, you know, one
9 of the things that clearly, you know, in order
10 to have a national service, this ubiquitous
11 coverage that we have really is the
12 underpinning of our value proposition, that a
13 consumer can travel from market to market and
14 have this same breadth of depth of choice of
15 music, sports, talk, comedy, and entertainment
16 across the spectrum.
17 So often when I refer to the
18 ubiquitous nature of our content what I'm
19 talking about is our national footprint and
20 the ability for a consumer to driver cross
21 country and not lose our signal.
22 Q Now, are you familiar with data

1 that shows that time spent listening to music
2 is considerable?
3 A Yes, I am.
4 Q Okay. And in your view, does that
5 necessarily mean that music is the reason why
6 consumers choose to either subscribe to XM or
7 continue to subscribe to XM?
8 A Well, time spent listening is not
9 a measurement of how important a particular
10 piece of content in terms of acquisition or
11 why somebody comes to your service. We talked
12 earlier about baseball.
13 So if you use baseball as an
14 example -- and I think we discussed the Cubs.
15 If you're a fan of the Chicago Cubs, the
16 ability to listen to a Cubs game in your car
17 as you drive around in the D.C. area is one
18 that, you know, I would buy a radio for. So
19 when you purchase that for the value
20 proposition of the Cubs, you go through the
21 effort of installing the radio, the antenna,
22 and the cost of the subscription.

1 However, with a broad portfolio
2 content that we have, what happens is they
3 discover -- so there is something else they
4 need to do with their time while they're on
5 the network. So what typically happens is
6 they go on a discovery, and we encourage
7 people to check out music channels or niche
8 music or other talk or other sports.
9 So there really isn't a
10 correlation from my view in terms of how long
11 somebody would listen to something versus why
12 they would subscribe for something.
13 Q Okay. Now, just a couple of other
14 types of programming I want to cover. You
15 have something called artist-led programming.
16 Can you explain what that involves?
17 A Sure. Artist-led programming is
18 really sort of the swim lane or the category
19 by which we will reach out to many established
20 artists -- Wynton Marsalis, Bob Dylan, Tom
21 Petty -- of the sort -- we have a stable of
22 these, if you will. And these artists and us

1 work collaboratively to establish a program
2 that they would wish to showcase music that
3 either inspired them or a discussion or a
4 dialogue about a show.
5 The artist-led programs kind of
6 come in a variety of fashions. We have --
7 again, we talked about Dylan. We also have
8 Ludacris, and we have, you know, Wenton. But
9 from time to time and very often we're
10 approached by up and coming performers as
11 well, or an individual member of a band or
12 even other established acts who don't want to
13 do a weekly show because of the time and
14 energy it requires.
15 We provide them an opportunity,
16 through a feature we call Off Stage, which
17 allows them to take over a channel of their
18 choice, if you will, and talk about and
19 discuss music that was important to them. So
20 we really have a wide berth, if you will, of
21 opportunity for musicians, in this case for
22 them to showcase their passion for what they

1 do in a way that they could never do anywhere
2 else.
3 Q Let's take the Bob Dylan Show for
4 example. Can you describe for someone who
5 hasn't heard it what the Bob Dylan Show
6 consists of?
7 A Sure. Bob Dylan sits back and
8 comes together. The name of the show is The
9 Theme Time Hour with Bob Dylan. So Bob will
10 establish a theme, and Bob is a very unique
11 individual and has a unique view on many
12 things.
13 And he will sit back and say,
14 "This season we want to discuss" -- I'll give
15 you examples of last season -- coffee. So he
16 will spend an hour talking about his
17 interaction about coffee, music that has
18 coffee in it, and just dialogue about coffee
19 or questions that he puts on his website that
20 people interact to about it.
21 Around the launch of the baseball
22 season he did one about baseball. He's very

1 passionate about baseball. And I think in my
2 testimony I discuss this, that he actually sat
3 down and recorded, you know, just live in his
4 studio when he was cutting his show, Take Me
5 Out to the Ballgame, in a very Bob Dylanesque
6 presentation, which was unique.
7 And then, it was -- it was
8 actually accepted by the National Baseball
9 Hall of Fame, and is actually in the Hall of
10 Fame now. So it's a very unique point of view
11 from Bob that you can only get on XM.
12 Q Now -- yes.
13 CHIEF JUDGE SLEDGE: Excuse me.
14 Who translates what he says in --
15 (Laughter.)
16 THE WITNESS: That's a great
17 question, Your Honor. Luckily, believe it or
18 not -- a true story -- Bob Dylan, his -- he
19 actually is more articulate today than he used
20 to be 10 or 15 years ago.
21 (Laughter.)
22 He actually listens to old

1 Q All right. Now, but here's my
2 point. If you just played those songs on a
3 channel, do you think anyone would listen to
4 it?
5 A Highly doubtful.
6 Q Okay. The fact that Bob Dylan has
7 selected those songs and is commenting on
8 those songs and presenting those songs as
9 something that he presumably thinks influenced
10 him or has value, does that add value to the
11 sound recordings?
12 A That is the only reason why people
13 would listen to that selection of content is
14 because it's from Bob's point of view.
15 Q Okay. All right. Now, let's just
16 briefly touch on a subject we haven't talked
17 about, which is live music. Now, here we're
18 not talking about playing sound recordings at
19 all, right? We're not talking about playing
20 prerecorded music, correct?
21 A Correct.
22 Q And does XM have a significant

1 amount of live music that they play?
2 A Yes. It's one of the things that
3 we believe we can bring to our fans for
4 retention and also hopefully attract people is
5 to showcase what we feel is a lost art, which
6 is live performance, live music, and the
7 ability for people to hear their favorite
8 musician perform in that setting.
9 Q Okay. And give us some examples
10 of the different live music series that you
11 have.
12 A Well, we have a series that is
13 Live from B.B. King's, where we installed
14 equipment at our expense and we record
15 professionally performances from anybody who
16 travels through B.B. King's in New York.
17 We have a -- we will collect live
18 recordings of performances from a festival
19 that -- it would be coming up called Bonoroo,
20 which happens in Nashville, just outside of
21 Nashville, and it's a very progressive rock,
22 sort of underground ND fare.

1 We often travel at our expense to
2 Austin City Limits in Austin for South by
3 Southwest, and we record multiple stages there
4 and we'll take that and showcase that. So we
5 broadcast last year, for example, two years
6 ago -- excuse me -- Live Eight, which was the
7 concert that benefitted Africa, and we
8 dedicated a channel for every country.
9 We are a partner with Live Earth,
10 which is coming up on July 7th. And every
11 single performance that's going to happen in
12 real time, from all around the world for this
13 global event, will have its own channel. So
14 it's a unique way that we can take our
15 subscribers and have them experience live
16 music in a multitude of fashions.
17 Q And you have artists who come into
18 your studios and perform live?
19 A Yes. We have a series of original
20 programming where we will have -- like, for
21 example, we'll talk about Artists
22 Confidential, where they will actually come in

1 and sit down for an hour, and this is our
2 marque original programming show that is
3 hosted by one of our premier personalities,
4 George Taylor Morris, as we discussed.
5 And we will have artists such as
6 Phil Collins, Paul McCartney, classical
7 artists even, Chili Bartoli, Josh Groban,
8 we've had a variety of artists from all walks,
9 sit down, and we do a long form 60-minute
10 interview, and they perform live in front of
11 a live studio audience at our performance
12 theater here in D.C., or at a performance
13 theater in New York City.
14 We also have another recordings
15 facility in our building where artists can
16 come in for one of our regular features on the
17 channel called The Loft. And it's called Loft
18 Sessions. And they will come in with a
19 guitar, and it's a singer or songwriter, and
20 they will perform for us live in the studio.
21 So there are many, many
22 opportunities for us to showcase live music,

1 and it is something that we feel very
2 passionate about.
3 Q Now, who pays for this live music?
4 A Predominantly, nobody pays for it.
5 I mean, the artists come to us, and we do it
6 and give them exposure and the ability to
7 promote their music. We had in the early days
8 of XM -- and when I say "early days" talking
9 about my tenure about three years ago, a
10 little over three years ago -- we had to pay
11 some artists, because we were still a very
12 small industry. We are today, but we were
13 even smaller then.
14 To get an artist to come by, they
15 wanted to be paid for it. But quickly many of
16 the artists have seen that as the company has
17 grown, and as the influence of exposure and
18 our penetration and over eight million
19 subscribers, they see a value to coming to us
20 and donating their time, giving the time, in
21 return for us broadcasting or promoting or
22 talking about whatever performance that they

1 have.
2 Q Which leads conveniently to my
3 final subject area, which is the subject of
4 promotion versus substitution. Now, based on
5 your experience and your work as the head of
6 programming at XM, is it your belief that the
7 XM service overall causes people to buy fewer
8 CDs than they otherwise would?
9 A No, sir.
10 Q Okay. Is it your view that, in
11 fact, the XM service leads to people buying
12 more CDs?
13 A That is my experience.
14 Q Okay. And can you explain what
15 your basis is for saying that?
16 A With over, you know, again, as we
17 said, 100 people just specifically in the
18 music area who program or interact with the
19 major record companies, but probably more
20 importantly a lot of the independent labels
21 and smaller labels across the country, we see
22 e-mails, have dialogue with artists,

1 musicians, record labels, who thank us for
2 playing music they cannot get aired in the
3 terrestrial market because of the
4 consolidation, the limited choice available in
5 AM and FM.
6 As a result of that exposure, they
7 see -- and they have told us that they have
8 seen an increase in people coming to the
9 concerts, and they have also seen an increase
10 in people purchasing their CDs.
11 I have also seen that from the
12 other end with our consumers who come and join
13 the network for a particular generic reason,
14 whether or not it was in their car or Oprah
15 Winfrey or baseball, and said, "Well, I was
16 playing around with my dial, and I discovered
17 this reggae channel, and I had no idea that
18 reggae was so popular. Thanks for introducing
19 me to it. My new favorite artist is X, so I
20 just bought his CD. Thank you."
21 And I have some examples I think
22 that I submitted in my testimony to that

1 effect. But that's what we see on a very
2 frequent and regular basis.
3 Q Okay. Now, is that -- can you
4 just direct the Panel's attention to where in
5 your direct -- is that Exhibits 22 and 23?
6 A Yes, let me -- give me a moment,
7 sir. So under Exhibit 22, these are e-mails,
8 it looks, from members. The first e-mail is -
9 - I think this is from a label. I apologize,
10 I can't see who it is. You know, the quote
11 out of this, for example, "Also, just to let
12 you know the power of XM, since we do not get
13 a lot of smooth jazz airplay from those other
14 guys, I saw how XM was able to sell product,"
15 and it quotes the artist and number of units.
16 And as you thumb through this,
17 that's the theme that appears through here.
18 And this is the type of frequent communication
19 and dialogue we'll have with members of the
20 record community. And when I use the term
21 "record community" I'm referring to the
22 musicians themselves, the artists themselves,

1 and also the labels and the managers.
2 Q Now, I'm not sure it has been
3 described yet, the XM satellite radio service
4 actually displays information on the front of
5 the panel, doesn't it?
6 A Correct.
7 Q Okay. And what information is
8 displayed?
9 A Well, with all of our programming,
10 not just specifically music, but with all of
11 our programming we do something that's called
12 PAD, and it stands for Program Associated
13 Data. And it's a labeling mechanism that we
14 have that allows our consumers to in real time
15 know exactly what they're hearing.
16 So in the music case, what it does
17 is always display the artist and title of what
18 song is currently on the air on that
19 particular channel. We see that that is a --
20 we see that that's something very valuable
21 that we provide our subscribers. And in my
22 experience prior to joining XM, when I was

1 programming terrestrial radio stations and
2 running companies of such programming, one of
3 the complaints among many in terms of
4 commercialization and also type playlists has
5 been when something new does come on the air,
6 the talent never tell you who it is, and they
7 never identify it.
8 And through our technology and
9 through our infrastructure and our signal, we
10 have the ability to close that gap. And so
11 for every artist that we play for the first
12 time on the air, no matter who it is, they can
13 look down and see exactly what it is, and go,
14 "Wow, I love that song. I wonder who it was."
15 We're able to close that loop for a consumer,
16 which is very powerful.
17 Q Now, with respect to, again, the
18 promotional value, I believe it was Judge
19 Roberts who asked Mr. Parsons -- you weren't
20 here, Mr. Logan -- but there was a question
21 about the statement that we had some -- we
22 played some Lowe and Billboard's lists of top

1 hits. Can you explain, please, to the Judges
2 how that works?
3 A Sure. The Billboard's charts --
4 JUDGE ROBERTS: Mr. Logan, I'll --
5 since Mr. Meyer brought that up, I'll read you
6 the sentence. This appears in your boss'
7 testimony.
8 THE WITNESS: Okay.
9 JUDGE ROBERTS: It says, "As a
10 result, support from XM has a significant
11 impact on whether a record can reach number
12 one on the charts."
13 THE WITNESS: Okay.
14 MR. MEYER: And for the record,
15 Judge Roberts, that's also in Mr. Logan's
16 direct testimony at paragraph 79 on page 30.
17 JUDGE ROBERTS: Thank you.
18 THE WITNESS: So what is meant by
19 that statement, Your Honor, is out of -- using
20 country as an example, just for -- it's my
21 background. So there is over 2,000 radio
22 stations across the country that play country

1 music in some form or fashion.
2 The Billboard chart or most charts
3 have moved to what is referred to as a spin
4 count, where through technology such as BDS
5 and Media Base, which actually count the
6 number of times a record is played on a
7 particular radio station, it will then say if
8 record A has 300 plays, record B has 290, that
9 record A would be higher on the charts than
10 the record B.
11 In the case where the spin totals
12 go down week over week, it would lose its
13 bullet or its positive momentum. Recently, a
14 number of XM's channels had been selected to
15 participate in this very exclusive panel by
16 genre. So in country's case, as we're
17 talking, Highway 16, which is our top country
18 hits channel that we have, has been selected
19 to participate in a panel somewhere between
20 150 to 200.
21 So if we represent a portion of
22 that and it's needed for us to play, let's

1 say, 100 plays a week for a particular record,
2 if we -- we're not to play that record, that
3 100 plays would have to be reallocated across
4 the rest of the panel in order for it to
5 maintain its number to get to number one.
6 So what -- the real message in
7 there, in my opinion, is that in the early
8 days of our business we were looked at as just
9 a true nascent industry. The record companies
10 and the publishers and the charts are ow
11 looking at our channels as very influential
12 and very powerful ways of measuring what the
13 popularity of some of these records are, and
14 so it's a big statement from an industry point
15 of view for us to be selected to be on this
16 panel.
17 JUDGE ROBERTS: Who put this panel
18 together?
19 THE WITNESS: The panel is
20 comprised of -- there was two, and through the
21 merger I think Billboard is the surviving one,
22 so excuse me if I don't have the precise

1 answer. But Radio and Records and Billboard
2 are the two primary charts for most genres.
3 And the chart editors of each
4 genre for those charts actually determine who
5 will participate on those panels.
6 JUDGE ROBERTS: Thank you.
7 BY MR. MEYER:
8 Q And Radio and Records is what?
9 A Radio and Records is a trade
10 publication that recently went through a
11 merger with Billboard.
12 Q Okay. All right. Mr. Logan, let
13 me just ask you actually one more -- one more
14 thing about promotion. Does XM give the
15 ability for new artists who are either on
16 independent labels or were not signed to any
17 record label to have a vehicle to present
18 their music to the public?
19 A Yes. We have a channel called
20 XMU, which is our ND music channel, and it has
21 big blocks of what we refer to as unsigned
22 blocks, where people will come to us and bring

1 us unsigned material for us to play.
2 Our Program Director, Billy Zero
3 is his name, will receive those mail crates,
4 like four at a time each week, just the brown
5 wrappers of guys who sit in garages and small
6 independent labels and ask us to play their
7 music. He will have -- you know, he will
8 have, candidly, you know, 400 to 500 records
9 over the course of a two- to three-week period
10 that he has to listen to and evaluate to put
11 into his rotation.
12 In addition to that, you know, it
13 really is a statement for us to be able to
14 take these acts and become very involved with
15 them in a very nascent part of their career
16 and watch them flourish.
17 And in my testimony I give some
18 examples of people who we've given exposure
19 to, such as Jennifer Nettles of Sugarland, or
20 Morningstar, or some of these other bands
21 along the way, that we played them before they
22 had major record deals. And we are very

1 involved in helping them promote their tours,
2 because, really, that's their primary source
3 of income in the early days, because they
4 don't have record sales yet. So we expose
5 them and provide that avenue for up and coming
6 and independent artists.
7 Q One last question. I believe you
8 said earlier in your testimony that you had a
9 library of some millions of songs?
10 A Yes, sir.
11 Q And where did you get the sound
12 recordings?
13 A Well, most of the sound recordings
14 -- I mean, to be honest with you, I'm not
15 really sure is the answer. I don't know.
16 Q Do you get sound recordings given
17 to you for free by the record labels?
18 A As a part of standard practice
19 today, the record companies will provide us
20 copies of current and new releases as they
21 become available.
22 MR. MEYER: Okay. All right. I

1 have no further questions. Thank you.
2 CHIEF JUDGE SLEDGE: Mr. Joseph,
3 any questions?
4 MR. JOSEPH: No questions, Your
5 Honor.
6 CHIEF JUDGE SLEDGE: Any questions
7 by Music Choice?
8 MR. FAKLER: No questions.
9 CHIEF JUDGE SLEDGE: Any cross by
10 SoundExchange?
11 MR. HANDZO: Yes, sir.
12 CROSS EXAMINATION
13 BY MR. HANDZO:
14 Q Good afternoon, Mr. Logan. Mr.
15 Logan, in your written direct testimony, on
16 page 2, you say that non-music channels play
17 a major role in reporting -- in promoting
18 subscriber acquisition. Do you recall that?
19 A Yes, sir.
20 Q Now, XM conducts survey research
21 to try and figure out what sort of content
22 will bring in new subscribers, doesn't it?

1 A Yes, sir.
2 Q Okay. And you see the results of
3 that survey research, don't you?
4 A Not generally all of it. There's
5 a lot of research that happens at our company,
6 and I don't see the majority of it. I see
7 things that could pertain to me, but I'm not
8 included in the Research Department.
9 Q Okay. But you do see some of it?
10 A I do see some of it, yes.
11 Q Okay. Let me show you what we've
12 marked as SoundExchange Trial Exhibit 6.
13 (Whereupon, the above-referred to
14 document was marked as SX Exhibit
15 No. 6 for identification.)
16 A Okay.
17 Q Okay. Have you seen that document
18 before?
19 A I have not seen the entire
20 document, but recently I have become familiar
21 with the document through this litigation.
22 Q Okay. Let me ask you to flip to -

1 - it actually says it's page 1 of the
2 document, but it's the second page of your
3 exhibit.
4 A Okay.
5 Q First of all, when you get survey
6 research results, does it sometimes come, do
7 you get it in sort of different ways? In
8 other words, you might not have seen this
9 actual document, but you might have seen some
10 parts of it?
11 A Yes, that's very common.
12 Q Okay. So looking at the second
13 page of this document, have you seen this
14 slide before?
15 A I might have.
16 Q Okay. And this slide indicates,
17 does it not, among other things, that
18 "diversity of music and music offerings is the
19 most highly rated advantage among all
20 potential segments," do you see that?
21 A Yes, I do.
22 Q So that is information from your

1 Research Department, that actually the most
2 important content for attracting new
3 subscribers is music?
4 A Well, I -- it says "highly rated."
5 I don't know what it's rated against.
6 Q Okay. It says it is the most
7 highly rated, does it not?
8 A Yes. But, again, I'm sorry, I
9 apologize, I don't know what -- the context of
10 what they mean by "highly rated."
11 Q Just on its face, this would
12 suggest to you that music is the most
13 important for attracting new customers?
14 A Again, it's hard for me to say
15 that music is the most important. This says
16 "most highly rated advantage," and I don't
17 really understand what "most highly rated
18 advantage" means.
19 Q Were you aware of this slide at
20 the time that you wrote your written
21 testimony?
22 A I do not think I was.

1 Q So when you wrote your testimony
2 and you expressed the opinions that you gave
3 there, you were not aware of this information,
4 is that right?
5 MR. MEYER: I would object to the
6 question, Your Honor. Asked and answered.
7 CHIEF JUDGE SLEDGE: Overruled.
8 THE WITNESS: Could you repeat the
9 question?
10 BY MR. HANDZO:
11 Q Sure. At the time you wrote your
12 written testimony and you expressed the
13 opinions that you gave there, you weren't
14 aware of the information that's contained on
15 the second page of this exhibit. Is that
16 correct?
17 A Well, I thought you were asking me
18 -- I apologize -- about the highly rated
19 advantage. But let me read the rest of the
20 page. Generally, I'm aware that the pool of
21 prospects is not growing as fast as it should.
22 I was generally aware of that fact when I

1 wrote my testimony. So there are facts in
2 there that I was generally aware of, yes.
3 Q Okay. Were you aware of the fact
4 that, according to your research people,
5 diversity of music and music offerings are the
6 most highly rated advantage among all
7 potential segments?
8 A No, because I don't really know
9 what the segments are, to be honest.
10 Q And were you aware of the findings
11 by -- aware at the time you wrote your written
12 testimony of the findings by your marketing --
13 or by your research people that sports
14 programming has less or more narrow appeal?
15 A I don't think I was knowledgeable
16 of that fact, that less or narrow appeal.
17 Q So, again, it's fair to say that
18 you did not take either of those facts into
19 account when you wrote your testimony?
20 A When I wrote my testimony, I
21 talked about the XM experience, and as the
22 head of programming how I approach that

1 experience and how I create this place for us
2 to try to generate value for somebody to pay
3 $12.95 a month. And I take all of my
4 experience as a programmer historically, and
5 the data that I know, into that consideration.
6 Q Okay. I take that, then, as a no,
7 you were not aware of these statements when
8 you wrote your testimony.
9 A I was not aware of these specific
10 statements when I wrote my testimony.
11 Q Okay.
12 MR. HANDZO: Your Honor, I'm going
13 to move Exhibit -- is it 6? Okay. I'm going
14 to move Exhibit 6 into evidence, and I'm just
15 going to anticipate an objection that this
16 witness says he didn't see the particular
17 slide that I was talking about. But --
18 MR. MEYER: Well, I have a
19 different objection.
20 MR. HANDZO: Okay.
21 MR. MEYER: If I'm allowed to
22 articulate it.

1 MR. HANDZO: Well, that's fine.
2 Why don't I hear the objection before I
3 respond to it.
4 (Laughter.)
5 That's probably the better way to
6 go.
7 MR. MEYER: You're a good lawyer,
8 but I haven't hired you to be my lawyer.
9 Actually, the problem is more fundamental,
10 which is they have laid no foundation
11 whatsoever as to who created this document,
12 where it comes from, how the research was
13 done, and what it represents.
14 MR. HANDZO: Well, Your Honor, it
15 comes from XM, because it's got an XM Bates
16 Number on it. So it is -- I think the record
17 establishes authentic as an XM document. And
18 I think in terms of its findings, the document
19 speaks for itself in terms of what it says.
20 But the relevance of the document
21 is to show what this witness knew or didn't
22 know at the time that he wrote his testimony.

1 And for that purpose, I certainly think it is
2 admissible.
3 CHIEF JUDGE SLEDGE: You hadn't
4 addressed foundation. The foundation
5 objection is sustained.
6 BY MR. HANDZO:
7 Q Mr. Logan, do you receive
8 documents from your XM Research Department in
9 this format?
10 A I occasionally get them in this
11 format. I sometimes get excerpts or an e-mail
12 that may have a bullet point or two. But I
13 don't have a structured, formal way that they
14 present them.
15 Q Okay. But does this appear to you
16 to be a document created by XM?
17 A Yes, it does.
18 Q And a document created by XM's
19 Research Department?
20 A Without it saying it on there, to
21 be honest, I can't say that it does. But it
22 does look like it came from XM.

1 Q Okay. And in your experience at
2 XM, this would probably have come from the
3 Research Department?
4 A Yes, it would.
5 Q Okay. And your Research
6 Department regularly creates documents like
7 this?
8 A Yes, it does.
9 MR. HANDZO: Okay. Your Honor,
10 with that further foundation, I would offer
11 Exhibit 6.
12 CHIEF JUDGE SLEDGE: Any
13 objection?
14 MR. MEYER: Yes, I would renew my
15 objection, Your Honor. I don't think that
16 goes far enough to establish, again, who did
17 it, what it is. The fact that it -- we can
18 stipulate we produced it. It has an XM
19 sticker on it, so it was probably produced by
20 someone at XM. But without any further
21 foundation, I think that adequate foundation
22 still hasn't been laid to admit it.

1 CHIEF JUDGE SLEDGE: Objection is
2 overruled. Exhibit 6 is admitted.
3 (Whereupon, the above-referred to
4 document, previously marked as
5 SX Exhibit No. 6 for
6 identification, was admitted into
7 evidence.)
8 BY MR. HANDZO:
9 Q Mr. Logan, I've handed you what
10 we've marked as Exhibit 7, which for the
11 record has a cover page which says XM
12 Satellite Radio Messaging Study. Have you
13 seen that document before?
14 (Whereupon, the above-referred to
15 document was marked as SX Exhibit
16 No. 7 for identification.)
17 A Again, I have become familiar with
18 it as part of this litigation.
19 Q And this is a document created by
20 XM?
21 A I think it was published by XM,
22 but I see Data Development Worldwide in the

1 bottom left-hand corner, and I don't know who
2 that is.
3 Q When you say it was published by
4 XM, what do you mean?
5 A I assume, as we discussed earlier,
6 it came from XM. There's an XM logo on it, so
7 either it was prepared by us or distributed by
8 us or prepared for us. I don't know. I can't
9 speak to who made it or what -- I just see --
10 when it says Data Development Worldwide, I
11 don't know who that is.
12 Q Okay. This comes from the files
13 of XM, right?
14 A I assume so.
15 Q Okay. And XM sometimes uses third
16 parties to conduct survey research for it?
17 A Yes, it does.
18 Q That's common, is it not?
19 A Yes, it is.
20 Q So it would not be unusual for you
21 to receive, in the ordinary course of
22 business, a survey research circulated within

1 XM that was performed by -- for XM by other
2 parties?
3 A Again, it just depends on the type
4 of research that it is. I had not seen this
5 study in totality prior to the litigation.
6 Q Okay. And so the information that
7 is contained -- well, actually, let me ask
8 that question later. Let me ask you to turn
9 to page 6 if you would. Now, I think you
10 indicated just a minute ago that you have seen
11 this document prior to today, right?
12 A Recently, correct.
13 Q Yes. And do you understand this
14 to be a study of what kinds of advertising
15 messages appeal to potential consumers?
16 MR. MEYER: If I can just object,
17 Your Honor. He testimony was he had seen it
18 in the context of the litigation. In other
19 words, in being deposed, in preparing for
20 testimony. He has not testified -- he has not
21 laid a foundation that the witness has
22 otherwise seen it or is familiar with it.

1 CHIEF JUDGE SLEDGE: And that is
2 an objection to that last question?
3 MR. MEYER: Well, I think he
4 mischaracterized the witness' testimony is the
5 objection. He said he had testified that he -
6 - you've seen this before.
7 CHIEF JUDGE SLEDGE: And he said
8 he had.
9 MR. MEYER: Well, I think earlier
10 he said --
11 CHIEF JUDGE SLEDGE: The objection
12 is overruled.
13 THE WITNESS: I'm sorry. Could
14 you repeat the question?
15 BY MR. HANDZO:
16 Q Sure. Based on your prior review
17 of this document, do you understand this to be
18 research to determine what kinds of
19 advertising messages would appeal to potential
20 subscribers of XM?
21 A Yes.
22 Q Okay. And looking at page 6, it

1 is correct, is it not, that the two messages
2 which appear to resonate especially well with
3 potential XM customers were 100 percent
4 moneyback guarantee and 100 percent
5 commercial-free music?
6 MR. MEYER: Your Honor, I
7 apologize. Objection.
8 CHIEF JUDGE SLEDGE: Objection
9 sustained.
10 THE WITNESS: Would you repeat the
11 question again?
12 CHIEF JUDGE SLEDGE: It was
13 sustained.
14 THE WITNESS: Oh. Thank you.
15 (Laughter.)
16 BY MR. HANDZO:
17 Q Mr. Logan, do you understand that
18 the finding of this survey was that
19 commercial-free music was one of the best
20 advertising messages XM has?
21 MR. MEYER: Your Honor, and,
22 really, I don't intend to be obstructive at

1 all, I think part of the problem is that Mr.
2 Handzo in his cross examinations has adopted
3 a practice of reading from the documents or
4 conveying the contents before and without
5 actually offering them into evidence.
6 It should be the fact that you
7 cannot read from a document that is not in
8 evidence. And if he offers the document into
9 evidence, then I'll object to it. But I think
10 to try and get around my objection to its
11 admissibility by reading from it without
12 offering it is not proper. So that's the
13 basis for my objection.
14 CHIEF JUDGE SLEDGE: Objection of
15 reading from a document before it's admitted
16 into evidence.
17 MR. MEYER: Yes, Your Honor.
18 CHIEF JUDGE SLEDGE: Objection is
19 overruled.
20 BY MR. HANDZO:
21 Q Do you recall the question, Mr.
22 Logan, or --

1 A If you could repeat it. I'm
2 sorry.
3 Q Is it your understanding that the
4 finding of this survey was that one of the
5 best advertising messages XM had is
6 advertising 100 percent commercial-free music?
7 CHIEF JUDGE SLEDGE: If you have
8 an understanding.
9 THE WITNESS: I do have an
10 understanding.
11 BY MR. HANDZO:
12 Q Okay. And what is that
13 understanding?
14 A That that message does resonate,
15 among others. That that is a powerful
16 marketing tool, such as a moneyback guarantee,
17 our signal, on many other things.
18 Q Okay. And do you understand from
19 this survey that 100 percent commercial-free
20 music and 100 percent moneyback guarantee were
21 the two best messages?
22 A Again, I'm just going by what the

1 paper says. I have not ready this survey.
2 That's what it says.
3 Q Okay. And it is true, is it not,
4 that XM tested other messages besides this?
5 A Again, I have not read it. I
6 would assume that we did, but I don't really
7 know.
8 Q Okay.
9 CHIEF JUDGE SLEDGE: You can't ask
10 him to read something that he is not familiar
11 with and give you an answer of what he is
12 reading. That objection has not been made,
13 but I will sustain it.
14 MR. HANDZO: Your Honor, I am
15 going to move Exhibit 7 into evidence. I
16 think he has established a foundation for it
17 with respect to the fact that it came from XM
18 and was created within XM, perhaps relying on
19 third parties, but it is an XM document
20 created in the ordinary course of business.
21 CHIEF JUDGE SLEDGE: Any objection
22 to Exhibit 7?

1 MR. MEYER: Yes, Your Honor. I
2 will object. I don't think the foundation has
3 been laid. In addition, I want to call the
4 Court's attention to Section 351.10 of what I
5 understand to be the governing rules of this
6 proceeding, which says, among other things, no
7 evidence, including exhibits, may be submitted
8 without a sponsoring witness, except for good
9 cause shown. And in this case, since the
10 witness has testified he is not familiar with
11 it, I don't think we have a sponsoring
12 witness.
13 CHIEF JUDGE SLEDGE: Mr. Handzo?
14 MR. HANDZO: Your Honor, I think
15 he is a sponsoring witness in the sense that
16 he is able to authenticate the document, and
17 that's to show us that it is what it purports
18 to be. And to that extent, I think he
19 qualifies as a sponsoring witness under that
20 regulation.
21 CHIEF JUDGE SLEDGE: The Court has
22 heard his testimony very differently than you.

1 The witness has not authenticated the
2 document. The objection is sustained.
3 BY MR. HANDZO:
4 Q Mr. Logan, I'm showing you what
5 we've marked as XM Exhibit Number 8. The
6 front page says XM Research NASCAR Survey.
7 Have you seen this document before?
8 (Whereupon, the above-referred to
9 document was marked as SX Exhibit
10 No. 8 for identification.)
11 A Yes, I have.
12 Q Okay. And did you receive it in
13 the ordinary course of business?
14 A This document, yes, I did.
15 Q Okay. And this document contains
16 focus group research by XM, is that right?
17 A I believe that is correct.
18 Q Was that conducted by XM's
19 Research Department?
20 A Give me one moment, please. To be
21 clear, I think this is a combination study
22 that actually utilizes aided methodology as

1 indicated on page 2, and then there is a focus
2 group summary, which was a second I think
3 subset of this. So this deck actually
4 comprises two different types, I believe, if
5 I'm reading it correctly.
6 Q Do you recall when you received
7 this document?
8 A I would have to defer to the date,
9 November '06. That's probably about the time
10 I got it.
11 Q Okay. And at the time, was XM
12 negotiating with NASCAR?
13 A At this time, no, we were not.
14 Q Did XM carry NASCAR content at the
15 time this document was prepared?
16 A At the time this document was
17 prepared, we were winding up, we were
18 completely our coverage, or had just been
19 completed of -- our coverage of NASCAR.
20 Q Okay. So you had had NASCAR up to
21 that point or close to that point?
22 A Correct.

1 Q And the focus group portion of the
2 study looked at people who were NASCAR fans,
3 right?
4 A I'm just going by what it says,
5 sir. But, yes --
6 Q Okay.
7 A -- it appears so.
8 MR. HANDZO: I'll just go ahead
9 right now and move this document into
10 evidence, Your Honor.
11 CHIEF JUDGE SLEDGE: Any objection
12 to Exhibit 8?
13 MR. MEYER: No objection, Your
14 Honor, except to request that this document be
15 put on the restricted record, and, in
16 addition, the last exhibit admitted, which was
17 SoundExchange Trial Exhibit 6. And I'm happy
18 to address the reasons, if Your Honor would
19 wish to hear them.
20 CHIEF JUDGE SLEDGE: The last
21 document was Exhibit 7, you're referring to?
22 MR. MEYER: Was 7 the one that did

1 not get in? Exhibit 7 was not admitted, Your
2 Honor, so I mean the last one that was
3 admitted, which was Exhibit 6.
4 CHIEF JUDGE SLEDGE: We're not
5 dealing with that one at this time.
6 MR. MEYER: Okay. Well --
7 CHIEF JUDGE SLEDGE: All right.
8 Without objection, Exhibit 8 is admitted.
9 Proceed on your motion.
10 (Whereupon, the above-referred to
11 document, previously marked as
12 SX Exhibit No. 8 for
13 identification, was admitted into
14 evidence.)
15 MR. MEYER: Your Honor, this
16 reflects marketing research, and, again, I
17 think as with respect to any marketing
18 research, it is by its very nature
19 proprietary, particularly vis-a-vis
20 competitors like Sirius.
21 Certainly, you know, Coke and
22 Pepsi do marketing research all the time

1 trying to gauge the sentiments, the likes, the
2 dislikes, and the demographics of their
3 customers. And, certainly, neither would want
4 the other competitor to see that information.
5 It's extremely competitively sensitive, which
6 I'm sure Mr. Logan can confirm, if Your Honor
7 should wish to hear testimony.
8 (Pause.)
9 CHIEF JUDGE SLEDGE: Mr. Meyer,
10 hearing your comments about the
11 confidentiality of information like this
12 reminds me of the fairy tale of The Emperor
13 has No Clothes, of how people persuade
14 themselves that things are important and
15 protected and secret. Without objection, the
16 motion is granted.
17 BY MR. HANDZO:
18 Q Mr. Logan, looking at page 12 of
19 Exhibit 8, this indicates, does it not, that
20 the focus group study found that diversity of
21 music is the primary reason participants
22 report getting XM?

1 A This is what the slide says, but
2 there's actually -- I'd like to explain, if I
3 could.
4 Q I expect you might get a chance on
5 redirect.
6 A Sure.
7 Q And when they talk about the
8 participants here, they're talking about focus
9 group study members who were NASCAR fans,
10 right?
11 A The point that I was going to make
12 prior to that was the fact that --
13 Q Well, I think --
14 A -- early in the document it's not
15 NASCAR fans, it's passive, not who were NASCAR
16 fans. There was a difference in who it was.
17 Q Okay. They are NASCAR fans?
18 A Generally, yes.
19 Q Mr. Logan, I'm going to show you
20 what we marked as Trial Exhibit 1 this
21 morning.
22 CHIEF JUDGE SLEDGE: Let's clear

1 up the record. Mr. Handzo introduced -- begin
2 with Exhibit 8 being XM Exhibit 8, and that is
3 SoundExchange Exhibit 8 rather than XM
4 Exhibit 8.
5 MR. HANDZO: I am sorry, Your
6 Honor.
7 BY MR. HANDZO:
8 Q Mr. Logan, looking at
9 SoundExchange Trial Exhibit 1, have you seen
10 this document before?
11 A I've seen this document in
12 connection with this litigation, but prior to
13 that I have not seen this entire document, no.
14 Q Is this a document produced by XM?
15 A It looks like it would be, yes.
16 Q Let me ask you to look at page 2.
17 Have you seen the information that's conveyed
18 on this page before?
19 A Yes, I'm familiar with parts of
20 it.
21 Q Are you familiar with the part of
22 it that's reflected in the second bullet

1 point?
2 A My only question is that I don't
3 understand what it means when it talks about
4 programming genre. We typically don't look at
5 music programming as a programming genre. So
6 without understanding what the roll-up date is
7 behind this, I don't understand what that word
8 means in this context.
9 Q You just talked about the roll-up
10 date. What do you mean by that?
11 A Well, what I mean by "roll-up
12 date," it's like there's probably a lot of
13 data behind that sentence that justifies that
14 point. And I assume that that's probably
15 what's through here. And without actually
16 going through it, I -- I don't know how
17 they're defining that word "genre" is my
18 point.
19 Q Okay. But has the information
20 that appears in the second bullet point been
21 conveyed to you in the course of business in
22 some fashion?

1 A Yes. I mean, I think -- I think
2 I've stated and continue to state, you know,
3 the music and music experience as we call it
4 is an important part of what we do.
5 Q Okay. And this indicates that
6 music programming is the most important part.
7 Has that information been conveyed to you?
8 A Again, I mean, I -- the most
9 important part, has that been conveyed to me?
10 No. I mean, is it part of our service and
11 what we do? Yes, it's an important part. But
12 without knowing what it means in the context
13 of this study, I don't see a data. I
14 apologize, I don't know when this study was
15 done. I don't have any clarity as to what
16 that specific sentence means.
17 Q Okay. So I take it that you did
18 not have this available to you when you wrote
19 your written testimony in this case?
20 A This document? No, sir.
21 Q Okay. Let me ask you to turn to
22 page 24. Have you seen that data previously?

1 A Well, I have not seen this slide
2 before.
3 Q Have you seen this same data
4 conveyed in some other form?
5 A I have not seen data specifically
6 comparing, you know, Sirius and XM in this
7 form before. But I have seen data that looks
8 at relative importance, if you will, of some
9 other, you know, segments, if you will, of our
10 content.
11 Q Okay. So leaving out the Sirius
12 part of this slide, and looking just at the XM
13 portion of it, have you seen the data that is
14 conveyed there?
15 A I'm struggling with how you're
16 defining "seen the data." I apologize.
17 Q All right. Well, have you seen
18 data in the ordinary course of business which
19 indicates to you that -- the importance of
20 music programming versus news and sports and
21 local and weather, and so on.
22 A Yes, I have seen data that talks

1 about the importance of all of these, yes.
2 Q Okay. And has the data that
3 you've seen been consistent with this data
4 with respect to the fact that music
5 programming is the most important type of
6 programming for subscribers?
7 A My experience in seeing all of the
8 data that I see, you know, the segments of it,
9 I've seen data where it shows that aspects of
10 music programming like Bob Dylan is more
11 important than certain things, and I've seen
12 a variety of data that would show equality,
13 show in some regards the importance of traffic
14 and weather more important than others.
15 But I have seen -- I have seen
16 generally this sort of breakout in terms of
17 how we look at it. It's all predicated on the
18 type of questions we've asked and what was the
19 point of the survey that we were trying to do.
20 Q Okay. And the point of this
21 survey is to look at customer satisfaction,
22 right?

1 MR. MEYER: Objection. There is
2 no foundation from this witness as to the
3 point, as Mr. Handzo said, of the survey.
4 CHIEF JUDGE SLEDGE: Overruled.
5 BY MR. HANDZO:
6 Q I'm sorry. The point of this
7 survey is to explore customer satisfactory,
8 right?
9 A It appears to, correct.
10 Q Okay. And that's important to XM,
11 because once you get the customers in the door
12 you want to make sure you keep them, right?
13 A Yes, it is.
14 Q So you want to make sure they're
15 satisfied.
16 A That is correct.
17 Q All right. And --
18 CHIEF JUDGE SLEDGE: I don't think
19 I understood the question the same as it was
20 asked the second time and answered, as that
21 question was asked the second time. Your
22 objection is sustained. He asked him to read

1 something from the -- from the exhibit, and
2 that objection is sustained.
3 BY MR. HANDZO:
4 Q Correct me if I'm wrong, Mr.
5 Logan, but I assume that you have seen survey
6 data that ranks different types of content
7 with respect to consumer -- customer
8 satisfaction.
9 A Sure, I have.
10 Q Okay. And are the rankings that
11 you've seen of various types of content
12 consistent with what you see on page 24 of
13 this document?
14 A In some respects they are. In
15 some respects they are not.
16 Q Are they consistent with respect
17 to music programming being the highest rated?
18 A Not every time.
19 Q Okay. Mr. Logan, on page 4 of
20 your written direct testimony, you say that
21 bandwidth is XM's principal commodity. Do you
22 see that?

1 A Yes, I do.
2 Q And am I correct that you are the
3 person who decides how bandwidth gets
4 allocated at XM?
5 A Yes, I am.
6 Q Mr. Logan, let me show you a copy
7 of the document that was admitted into
8 evidence earlier today as SoundExchange
9 Exhibit 2. I'm going to ask you to turn to
10 page 29 of this document. Do you see there
11 that it indicates that currently -- this
12 indicates that the current bandwidth
13 allocation to music is about 68 percent of
14 total bandwidth?
15 A Approximately, that's correct.
16 Q And that's a result of your
17 decisions, is it not?
18 A I have the final say-off, but it's
19 a company decision that ultimately, you know,
20 bandwidth, our principal commodity, is how we
21 make our business, how we monetize our
22 business, that we are willing to devote 70

1 percent approximately, or 68 in this case, of
2 our bandwidth to music.
3 Q Well, on the next page, there's a
4 slide which says future bandwidth
5 considerations.
6 A Yes.
7 CHIEF JUDGE SLEDGE: What page?
8 MR. HANDZO: I'm sorry. The next
9 page, Your Honor, which is page 30 of the
10 document.
11 BY MR. HANDZO:
12 Q And that indicates, does it not,
13 that the bandwidth allocation to music is not
14 anticipated to change much?
15 A Well, if I can explain what this
16 chart means, this is -- this is us -- this
17 document was created for a strategy session
18 that we did at the company. We have new
19 technology called hierarchical modulation that
20 will provide us additional bandwidth that will
21 only be applicable to new receivers and new
22 chip sets.

1 What this slide was -- taking the
2 same percentage of our base bandwidth and
3 applying that to the future bandwidth, just we
4 could look and see, if we just did steady
5 state with our new spectrum, what would it
6 look like. That's all this slide was -- is
7 able to do.
8 Q My understanding, Mr. Logan, is
9 that you can actually fit two talk channels
10 into the bandwidth you would need for one
11 music channel. Is that right?
12 A Generally speaking, yes.
13 Q And at this point, has XM used all
14 of its bandwidth capacity? In other words,
15 could you add a new channel without having to
16 drop one?
17 A No, we could not.
18 Q When you added -- when XM added
19 Oprah, for example, it had to drop a channel,
20 didn't it?
21 A Yes, it did.
22 Q Okay. And it dropped a talk

1 channel, not a music channel, right?
2 A Precisely, we don't look at it --
3 I actually manage the pipe from a bit ratio
4 standpoint, to have bits fund the channels.
5 We made a variety of changes in terms of
6 changing some bit rates on some channels,
7 eliminating a particular talk channel. So,
8 generally speaking, yes, we eliminated a talk
9 channel, but there were other things that
10 happened at the time with that change.
11 Q Okay. Currently, XM has 69
12 channels of music, is that right?
13 A No, sir.
14 Q How many do you have?
15 A 74.
16 Q 74. Sorry. 69 that are
17 programmed by XM and some that are programmed
18 by Clear Channel?
19 A Correct.
20 Q Okay. And at any given time,
21 eight or nine of the most listened to channels
22 are music, isn't that right?

1 A Could you define what you mean by
2 "most listened to" for me?
3 Q Well, there are a number of
4 different ways of looking at listenership, is
5 that right?
6 A Correct.
7 Q AQH would be one?
8 A Correct.
9 Q Cume would be another?
10 A Correct.
11 Q And just we've got our record
12 clear, can you tell us what you understand
13 "cume" to mean?
14 A "Cume" is short -- "cume" is an
15 Arbitron term that was really coined by the
16 company Arbitron. It's short for cumulative.
17 It is the cumulative number of people who
18 would sample a station, or a channel in this
19 case, for less than a five-minute period in
20 one quarter-hour over the course of whatever
21 that period would be.
22 So, generally speaking, we look at

1 things on a Monday through Friday, 6:00 a.m.
2 to midnight basis.
3 Q Okay. And can you give us your
4 definition of "AQH"?
5 A Sure. AQH is the average quarter-
6 hour, which Arbitron -- it's an Arbitron term
7 again that is used to approximate the number
8 of people who spend approximately 15 minutes
9 with a particular channel, or a station in
10 this case, over the course of the same period.
11 Q Okay. Now, on an AQH basis, is it
12 not the fact that at any given time generally
13 eight or nine of your top channels are music
14 channels?
15 A Eight or nine, correct.
16 Q Okay. And, actually, the same
17 would be true if you measure it on a cume
18 basis, isn't that true?
19 A That would be true on a cume
20 basis.
21 Q Now, among the other top channels
22 on, let's say, an AQH basis, comedy channels

1 are popular, are they not?
2 A Yes, they are.
3 Q You have four comedy channels?
4 A In the category I think five, but
5 --
6 Q Okay. And those comedy channels
7 play prerecorded comedy, do they not?
8 A Correct.
9 Q There are also two kids' channels?
10 A Yes, there is.
11 Q Those channels play sound
12 recordings, do they not?
13 A Yes, they do.
14 Q Do you know what -- of the total
15 sound recordings played by XM, do you know
16 what percentage of sound recordings are played
17 on those kids' channels?
18 A I don't understand what -- could
19 you just restate it again for me? What
20 percentage of sound recordings?
21 Q If we're looking at the total
22 number of sound recordings played by XM, what

1 percentage of sound recordings are played on
2 the kids' channels?
3 A Well, I don't know. I don't know
4 the amount. I apologize.
5 Q And if we looked at the total
6 number of sound recordings played on XM, do
7 you know what percentage of sound recordings
8 are played on the comedy channels?
9 A In total again?
10 Q Yes.
11 A No. Sorry, I don't. Not off the
12 top of my head, sorry.
13 Q Okay. Mr. Logan, I've given you
14 what we've marked as SoundExchange Trial
15 Exhibit 9, which on the coverage page says XM
16 Research Overview. Have you seen this before?
17 (Whereupon, the above-referred to
18 document was marked as SX Exhibit
19 No. 9 for identification.)
20 A I have become familiar with this
21 document.
22 Q In connection with litigation or

1 not in connection with this litigation?
2 A Specifically with this litigation.
3 Q Had you not seen it other than in
4 connection with this litigation?
5 A I think I -- there are some slides
6 that I would have been familiar with, but the
7 entire document I would not be.
8 Q Okay. Let me ask you to turn to
9 the page that has a Bates Number 45107 towards
10 the back of the document. Have you seen that
11 slide before?
12 A I've seen a variation of this
13 presentation, yes.
14 Q Okay. And when you say "a
15 variation," how is it different?
16 A The numbers may be -- my differ
17 from this slide from what's actually on here.
18 Q Okay. Are the numbers that are
19 represented here generally in line with what
20 you've seen in other versions of this chart?
21 A Yes.
22 Q Okay. So that -- and by the way,

1 when you've seen other versions, has it been
2 a pie chart like this?
3 A Yes.
4 Q Okay. And do you know if you've
5 seen pie charts which actually have these
6 particular numbers on it?
7 A It's very possible that I could
8 have, but specifically I can't say that I
9 have, but very likely that I did.
10 Q Okay. You know you've seen pie
11 charts, they look like this, you just don't
12 know if the numbers are exactly the same.
13 A That's correct.
14 Q But they were generally in this
15 range?
16 A Correct.
17 Q Okay. So is it accurate, as you
18 understand it, that music programming
19 represents about 62 percent of the percentage
20 of time subscribers use XM?
21 A It's my understanding that the
22 time spent listing, this is how long they

1 would listen, yes, to that particular genre.
2 Q Okay. So this number appears
3 accurate to you?
4 A Yes, generally in the same place.
5 MR. HANDZO: Your Honor, I am
6 going to move the admission of this page of
7 the document.
8 CHIEF JUDGE SLEDGE: I don't think
9 you can do that.
10 MR. HANDZO: In that case, Your
11 Honor, I will move the admission of the whole
12 document.
13 CHIEF JUDGE SLEDGE: Any objection
14 to Exhibit 9?
15 MR. MEYER: Your Honor, based on
16 this record as it exists now, a foundation has
17 not been laid for the entire document. And if
18 it is admitted, I would, Your Honor, move that
19 it be put on the restricted record.
20 CHIEF JUDGE SLEDGE: Mr. Handzo?
21 MR. HANDZO: Your Honor, there has
22 certainly been a foundation laid for the

1 portion of the document that I showed the
2 witness. And since that is the relevant
3 portion of the document, I believe it can be
4 admitted under those circumstances.
5 CHIEF JUDGE SLEDGE: With no
6 foundation laid for the Exhibit 9, the
7 objection is sustained.
8 BY MR. HANDZO:
9 Q Okay. Mr. Logan, I'm going to
10 hand you what we've now marked as
11 SoundExchange Trial Exhibit 10, a page from
12 this document you were just looking at. We've
13 just separated it out as a separate document.
14 (Whereupon, the above-referred to
15 document was marked as SX Exhibit
16 No. 10 for identification.)
17 MR. HANDZO: So, Your Honor, I
18 would move the admission of SoundExchange
19 Trial Exhibit 10.
20 MR. MEYER: I think Your Honor
21 already covered this with the initial attempt
22 to do this. It's the same thing. You can't

1 take part of a document out of context.
2 Without the rest of the document, it's
3 misleading. So I would object on that basis.
4 CHIEF JUDGE SLEDGE: The witness
5 has said that this page is familiar to him,
6 and consistent with his information, the page
7 is -- objection is overruled and Exhibit 10 is
8 admitted.
9 (Whereupon, the above-referred to
10 document, previously marked as
11 SX Exhibit No. 10 for
12 identification, was received into
13 evidence.)
14 BY MR. HANDZO:
15 Q Mr. Logan, while we're redoing
16 that document, let me ask you an unrelated
17 question. In your experience, when the non-
18 music content deals come up for renewal, the
19 rates for those deals typically increase, is
20 that right?
21 A Not necessarily.
22 Q Okay. But typically, they do,

1 isn't that true?
2 A That's what the content providers
3 want to have happen, but we've been successful
4 in going the other way.
5 Q Okay. Mr. Logan, I'm showing you
6 a transcript of your deposition, and I'm going
7 to ask you to turn to page 109.
8 (Whereupon, the above-referred to
9 document was marked as SX Exhibit
10 No. 11 for identification.)
11 CHIEF JUDGE SLEDGE: Mr. Joseph?
12 MR. JOSEPH: Your Honor, we have
13 not been handed a copy of the what the witness
14 has been handed.
15 MR. HANDZO: I'm sorry.
16 MR. JOSEPH: Thank you.
17 JUDGE ROBERTS: 109, Mr. Handzo?
18 MR. HANDZO: Yes, Your Honor. I'm
19 starting actually at the end of page 108.
20 BY MR. HANDZO:
21 Q And didn't you testify in your
22 deposition, Mr. Logan --

1 MR. MEYER: Your Honor?
2 CHIEF JUDGE SLEDGE: Mr. Meyer?
3 MR. MEYER: Can I object? This
4 deposition was taken of Mr. Logan in the 2005-
5 5 case. As you know, we have fairly stringent
6 restrictions on the number of depositions that
7 can be taken in each case. And they could
8 have noticed Mr. Logan in 2006 and taken his
9 deposition, but I'm sure preserving their
10 number of depositions, saving some for
11 rebuttal, they chose not to. So since it's
12 not taken in this case, I would object on that
13 basis.
14 MR. HANDZO: Your Honor, I think
15 if you're impeaching a witness with a prior
16 statement, it's utterly irrelevant in what
17 manner it was taken. I mean, if he testified
18 in a totally different trial in a totally
19 different court, I'd be able to use a
20 deposition from that matter. As long as there
21 is a matter in which he testified under oath,
22 he can be impeached with the prior testimony.

1 CHIEF JUDGE SLEDGE: Mr. Meyer?
2 MR. MEYER: Again, Your Honor, I
3 don't think we should allow a procedure
4 whereby the limitations on the number of
5 depositions in each proceeding can effectively
6 be circumvented by noticing a deposition in
7 one case and then using it in the other case.
8 If that's the case, then the limitations can
9 easily be circumvented, and they really have
10 no meaning.
11 CHIEF JUDGE SLEDGE: Do you have
12 any disagreement with the statement Mr. Handzo
13 made?
14 MR. MEYER: Which statement, Your
15 Honor?
16 CHIEF JUDGE SLEDGE: The statement
17 he made in offering this exhibit.
18 MR. MEYER: I agree that prior
19 testimony under oath can be used to impeach
20 the witness. In this particular circumstance,
21 we have a particular rule limiting the number
22 of depositions.

1 CHIEF JUDGE SLEDGE: Well, I've
2 heard that.
3 MR. MEYER: And I think that --
4 CHIEF JUDGE SLEDGE: Don't repeat
5 yourself. I've heard what you said there.
6 What's your response to what he said other
7 than that?
8 MR. MEYER: I think it would give
9 him an unfair tactical advantage to be able to
10 use it in this case.
11 CHIEF JUDGE SLEDGE: All right.
12 Without any objection to the offer, with the
13 objection being raised as to something else,
14 the objection is overruled.
15 BY MR. HANDZO:
16 Q Mr. Logan, didn't you testify, "I
17 have seen on many occasions where, as we do
18 renewals, the renewal rate goes up. It's
19 customary in business and content, especially
20 in the entertainment business, that rates
21 typically increase; they don't decrease. So
22 that has been my experience at XM, yes."

1 Didn't you give that answer?
2 A I gave that answer.
3 Q Okay. And you were referring
4 there to non-music content deals, were you
5 not?
6 A Yes, I was.
7 Q Okay. And that was a correct
8 statement, was it not, that your experience at
9 XM has been that rates typically increase,
10 they don't decrease?
11 A I clarified further in my
12 deposition, and I gave examples of what I said
13 a moment ago to you, sir, which was they
14 typically generally go up, but we have been
15 successful -- and in my deposition I give
16 examples of us walking from deals that were
17 too expensive, of successfully negotiating
18 contracts at a lower fee.
19 Q So let me just be clear.
20 Regardless of whether it has always been the
21 case that rates go up, it is your testimony in
22 this deposition that typically they do,

1 correct?
2 A Yes. What I testified to was that
3 it's customary in business in a content
4 entertainment space that they customarily
5 would like to go up. And I further clarified
6 in my deposition examples of where
7 specifically I have negotiated them down.
8 Q What you testified to, Mr. Logan,
9 was not what your content partners want. What
10 you said was, "In the entertainment business,
11 rates typically increase, so that has been my
12 experience." That's what you said, right?
13 A That's correct.
14 Q And that is a correct statement,
15 is it not?
16 A That is a correct statement in
17 that context.
18 Q Mr. Logan, you testified earlier
19 today about some of the personalities who host
20 shows, like Bob Dylan. Do you recall that?
21 A Yes.
22 Q Mr. Dylan's show is one hour a

1 week, is that right?
2 A He creates a one-hour weekly show,
3 but it's not necessarily weekly. He'll give
4 us a slate of 26 or 30 shows over the course
5 of a year.
6 Q So maybe less than a week? I'm
7 sorry, less than one per week?
8 A Well, I mean, he'll give us a
9 show, and we run it multiple times. We'll run
10 a show 15, 20 times over the course of a week.
11 Q Okay.
12 A But he'll give us, much like
13 network television, an episode.
14 Q All right. So what Mr. Dylan
15 gives you is 20 or 30 one-hour shows in the
16 course of a year?
17 A Correct.
18 Q Tom Petty Show, that's one or two
19 hours per week?
20 A It's a one-hour show, and, again,
21 I think without reading it specifically it's
22 40 shows a year.

1 Q Okay. And you also get shows from
2 Snoop Dogg?
3 A That we do.
4 Q Those are an hour to an hour and a
5 half apiece?
6 A Those actually I think range
7 between an hour and a half to two hours.
8 Q All right. And how many shows per
9 year do you get from Snoop Dogg?
10 A Assuming he delivers the shows on
11 time, we're supposed to get 30.
12 (Laughter.)
13 Q I take it that's a problem?
14 A It has been a recurring problem,
15 yes.
16 Q Probably no one here is surprised.
17 CHIEF JUDGE SLEDGE: I'm
18 surprised.
19 (Laughter.)
20 I have never heard of Snoop Dogg.
21 (Laughter.)
22 BY MR. HANDZO:

1 Q Now, you mentioned in your written
2 testimony some special music events that
3 include Artists Confidential, Then Again Live,
4 Artist to Artist, and Off Stage, do you recall
5 that?
6 A Yes, I do.
7 Q Okay. XM has done about 70
8 Artists Confidential shows, is that right?
9 A Approximately, yes.
10 Q Okay. And that's 70 over the
11 entire course of time that you've been
12 offering that kind of show, correct?
13 A Yes. We started that program in
14 late '04.
15 Q Okay. So since late 2004, there
16 have been 70 of those shows.
17 A Yes, there have been.
18 Q And that's a one-hour show?
19 A Yes, it is.
20 Q Then Again Live shows, there have
21 been 10 or 11 of those?
22 A That is -- approximately, yes.

1 Q That's an hour-long show?
2 A Some of them run a little over an
3 hour, but generally speaking, yes, it's an
4 hour.
5 Q Artist to Artist, there have been
6 four or five of those shows?
7 A That's correct.
8 Q And you don't offer those anymore?
9 A No, sir.
10 Q Now, the Off Stage shows, those
11 are ones where you play recorded music, right?
12 A That is correct.
13 CHIEF JUDGE SLEDGE: Did I
14 understand you to say that you consolidate
15 Ballyhoo to one hour?
16 THE WITNESS: Excuse me?
17 CHIEF JUDGE SLEDGE: Did I
18 understand you to say that you consolidate
19 Ballyhoo to one hour?
20 THE WITNESS: I don't understand,
21 sir. I apologize. Ballyhoo?
22 CHIEF JUDGE SLEDGE: Don't you

1 record the Festival of Ballyhoo?
2 THE WITNESS: Oh, Bonoroo?
3 CHIEF JUDGE SLEDGE: Bonoroo.
4 Thank you.
5 THE WITNESS: Okay. I'm sorry.
6 Sorry, Your Honor. No. We actually -- we
7 record that festival, and we will play back as
8 many of the performances as it requires us to
9 play back. So a broadcast here on Cross
10 Country could last four to five hours in that
11 example.
12 CHIEF JUDGE SLEDGE: And that's
13 one of your live performances.
14 THE WITNESS: Yes, sir, it is.
15 CHIEF JUDGE SLEDGE: Okay.
16 MR. HANDZO: Your Honor, it's
17 3:00, and this is probably a good break time
18 for me, if the Court wants to do that.
19 CHIEF JUDGE SLEDGE: We'll recess
20 for 10 minutes, please.
21 (Whereupon, the proceedings in the
22 foregoing matter went off the

1 record at 3:00 p.m. and went back
2 on the record at 3:12 p.m.)
3 CHIEF JUDGE SLEDGE: Mr. Handzo?
4 MR. HANDZO: Thank you, Your
5 Honor.
6 BY MR. HANDZO:
7 Q Mr. Logan, you were talking before
8 we broke about some of the special musical
9 events, like Artists Confidential. And I just
10 had one or two more questions about that.
11 In terms of the artists who
12 actually appear on Artists Confidential, it is
13 sometimes the case that XM reaches out to
14 artists and wants them to be part of that,
15 correct?
16 A Yes, it is.
17 Q And that's because those are
18 popular artists and they create exclusive
19 material for you, right?
20 A In some cases, yes.
21 Q So it is a two-way street here?
22 There's benefit to XM, and there's benefit to

1 the artist, correct?
2 A Correct.
3 Q Now, with respect to the sort of
4 what we'll call on air personalities others
5 might think of as DJs, there are a lot of
6 subscribers who actually don't like that,
7 right?
8 A There are some who would prefer us
9 to have none, I'm sure.
10 Q You actually sometimes get e-mail
11 that says, "We would like less DJ chatter,"
12 right?
13 A Yes, we do.
14 Q Mr. Logan, I'm going to show you
15 what we have marked as SoundExchange trial
16 exhibit 12.
17 (Whereupon, the aforementioned
18 document was marked for
19 identification as SoundExchange
20 Trial Exhibit No. SX 12.)
21 MR. HANDZO: And I will represent
22 to the Court and counsel that this is another

1 page that was extracted from what was
2 originally marked as SoundExchange trial
3 exhibit 9.
4 BY MR. HANDZO:
5 Q And my first question, Mr. Logan,
6 is whether you have seen this page before.
7 MR. MEYER: Can I ask, please,
8 what page of exhibit 9?
9 MR. HANDZO: The page number is on
10 the page.
11 CHIEF JUDGE SLEDGE: Mine has got
12 it printed on there. Yours doesn't have it
13 printed on there?
14 MR. HANDZO: XM-45079.
15 CHIEF JUDGE SLEDGE: Thank you.
16 MR. MEYER: That's 45079?
17 MR. HANDZO: Correct.
18 BY MR. HANDZO:
19 Q Mr. Logan, have you seen that page
20 before?
21 A Only recently with this
22 proceeding.

1 Q I take it, then, you were not
2 aware of this document at the time you wrote
3 your written testimony?
4 A No, I was not.
5 Q Mr. Logan, I'm showing you what we
6 have marked as SoundExchange trial exhibit 13,
7 which on the first page says "Voice of the
8 Subscribers."
9 (Whereupon, the aforementioned
10 document was marked for
11 identification as SoundExchange
12 Trial Exhibit No. SX 13.)
13 BY MR. HANDZO:
14 Q Have you seen this document
15 before?
16 A I think I have, actually.
17 Q And have you seen it in the
18 ordinary course of business?
19 A Yes, I have.
20 Q This another sort of compilation
21 of survey research. Is that right?
22 A Yeah. And on page 2, it talks

1 about something that is referred to as a
2 omnibus, which was a study that was sort of
3 ongoing that measures certain metrics. And
4 then there were open-ended responses from our
5 subscribers from three of these surveys.
6 Q So this is aggregating responses
7 from three surveys?
8 A It appears to be that, yes.
9 MR. HANDZO: Your Honor, I would
10 move the admission of SoundExchange trial
11 exhibit 13.
12 MR. MEYER: Object to the lack of
13 foundation, Your Honor. I don't think the
14 witness testified that he is familiar with it
15 other than what it appears to be the sort of
16 things that would be speculating.
17 CHIEF JUDGE SLEDGE: Overruled.
18 It's not his answers.
19 (Whereupon, the aforementioned
20 document, having previously been
21 marked for identification as
22 SoundExchange Trial Exhibit No.

1 SX 13, was received in evidence.)
2 BY MR. HANDZO:
3 Q Mr. Logan, if you turn to page 4,
4 you'll see in the fourth bullet point there is
5 a statement that regarding music channels,
6 there are a number of complaints about DJs
7 talking too much. Do you see that?
8 A Yes, I do.
9 Q Was that information that you took
10 into account when you wrote your written
11 testimony?
12 A Can you define "written" and "into
13 account"?
14 Q Did you have this document at the
15 time you wrote your written testimony?
16 A Yes, I did.
17 Q Now, Mr. Logan, you talked towards
18 the end of your direct testimony today about
19 promotion with respect to XM. And you
20 attached a number of documents to your written
21 testimony in exhibit 23 that include a lot of
22 e-mails. Did you select those e-mails?

1 A Personally?
2 Q Yes.
3 A Not all of them, no.
4 Q Who selected them for you?
5 A I requested it from members of my
6 programming staff to pull for me some of the
7 e-mails at the time that it was requested. I
8 read them and put them into part of my
9 testimony.
10 Q And you collected e-mails that go
11 all the way back to 2002. Is that right?
12 A Correct. I did, yes.
13 Q You didn't cite any survey
14 evidence in your testimony, did you, with
15 respect to promotion?
16 A No, sir, I did not.
17 MR. HANDZO: This one, 14.
18 (Whereupon, the aforementioned
19 document was marked for
20 identification as SoundExchange
21 Trial Exhibit No. SX 14.)
22 BY MR. HANDZO:

1 Q Mr. Logan, I am showing you what
2 we have marked as SoundExchange trial exhibit
3 14, which on the first page has a heading that
4 reads, "XM Satellite Radio Advanced Tracking
5 Program." Have you seen this document
6 previously?
7 A Prior to this litigation, no.
8 Q Let me ask you to flip to page 50
9 of this document.
10 A I'm sorry? Again?
11 Q Fifty. Do you see the chart on
12 that page?
13 A Yes, I do.
14 Q Have you received that chart or
15 have you seen that chart previously other than
16 in connection with this litigation?
17 A No, sir, I have not.
18 MR. HANDZO: Let's mark this.
19 (Whereupon, the aforementioned
20 document was marked for
21 identification as SoundExchange
22 Trial Exhibit No. SX 15.)

1 BY MR. HANDZO:
2 Q Mr. Logan, sir, if I can show you
3 what we have marked as SoundExchange trial
4 exhibit 15, which is headed, "Recent XM
5 Activation Satisfaction Study"? Again, have
6 you seen this before?
7 A No, sir, I have not.
8 Q Let met ask you to turn to page
9 35.
10 JUDGE ROBERTS: Let me ask you a
11 quick question, Mr. Logan.
12 THE WITNESS: Yes, sir?
13 JUDGE ROBERTS: If you're not
14 seeing a document like this or exhibit 14, who
15 at XM is?
16 THE WITNESS: That would be our
17 Marketing Department, our consumer group that
18 actually would be looking at what messaging
19 and how to adopt -- this is a tracking, so
20 like for Major League Baseball somebody who
21 would determine messaging. This is an
22 activation satisfaction, which would, I think,

1 believe denote why people subscribe and
2 understand why they activated.
3 JUDGE ROBERTS: So that is a
4 separate operation within XM?
5 THE WITNESS: Yes, sir. It falls
6 under our Marketing Department.
7 JUDGE ROBERTS: And you don't have
8 any witness testifying from the Marketing
9 Department?
10 MR. MEYER: Well, actually, Your
11 Honor, we have Mr. Cook coming up next, who is
12 no longer in the Marketing Department but was
13 previously.
14 JUDGE ROBERTS: All right.
15 BY MR. HANDZO:
16 Q Mr. Logan, turning to page 35 of
17 this document, have you seen the information
18 that is presented here previously?
19 A I've seen it in connection with
20 this, yes.
21 Q I'm sorry? When you say, "in
22 connection with this," do you mean in

1 connection --
2 A Litigation.
3 Q -- with this litigation?
4 A With this, yes.
5 Q I'm sorry. You need to wait for
6 me to finish my question before you answer.
7 A Yes, sir.
8 Q You've seen it in connection with
9 this litigation but not in the ordinary course
10 of business. Is that correct?
11 A That is correct.
12 Q Have you seen any similar
13 information from XM which indicates the impact
14 on listening to CDs and cassettes as a result
15 of a subscriber getting XM Radio?
16 A I personally have not.
17 Q So that's not survey research that
18 you took into account in drafting your
19 testimony. Is that right?
20 A No, sir, it was not.
21 Q Mr. Logan, I'm showing you what we
22 have marked as SoundExchange trial exhibit 16.

1 (Whereupon, the aforementioned
2 document was marked for
3 identification as SoundExchange
4 Trial Exhibit No. SX 16.)
5 BY MR. HANDZO:
6 Q This is an e-mail to you, correct?
7 A Yes, it is.
8 Q Actually, the very top is an e-
9 mail from you, right?
10 A Correct.
11 Q And then right below that is an e-
12 mail to you from Lee Abrams?
13 A That is correct.
14 Q And who is Mr. Abrams?
15 A Lee Abrams is my chief creative
16 officer.
17 Q As your chief creative officer,
18 what are his duties?
19 A Lee's duties are to really be one
20 of my point liaisons between most of our high
21 profile talent, Bob Dillon, Paul McCartney,
22 the book of our artist confidentials as part

1 of his responsibility.
2 Another part of his responsibility
3 is for him to ensure that we're pushing the
4 bounds of creativity and exploration and doing
5 new things across our entire network.
6 Q And you received this e-mail from
7 Mr. Abrams in the ordinary course of business?
8 A Yes. I think in the opening line,
9 it was requested. He was following up on a
10 request I made to him.
11 MR. HANDZO: Your Honor, I would
12 move the admission of SoundExchange trial
13 exhibit 16.
14 CHIEF JUDGE SLEDGE: Any
15 objection?
16 MR. MEYER: No objection, Your
17 Honor.
18 CHIEF JUDGE SLEDGE: Without
19 objection, it is admitted.
20 (Whereupon, the aforementioned
21 document, having previously been
22 marked for identification as

1 SoundExchange Trial Exhibit No.
2 SX 16, was received in evidence.)
3 BY MR. HANDZO:
4 Q Mr. Abrams in his e-mail refers to
5 a McCartney deal. Do you see that?
6 A Yes.
7 Q I assume we're talking there about
8 Paul McCartney?
9 A That is correct.
10 Q And is that a deal where XM agree
11 to buy advertising to support a CD being
12 released by Mr. McCartney?
13 A Yes, it was.
14 Q And that was advertising not on
15 XM? That was actually advertising somewhere
16 else?
17 A That is correct.
18 Q And that's what Mr. McCartney
19 wanted, to promote his CD, correct?
20 A Correct.
21 MR. HANDZO: I think that's all I
22 have, Your Honor. If I might just have a

1 moment?

2 (Pause.)

3 MR. HANDZO: That's all I have,

4 Your Honor. Thank you.

5 CHIEF JUDGE SLEDGE: Any redirect,

6 Mr. Meyer?

7 MR. MEYER: One question, Your

8 Honor.

9 CHIEF JUDGE SLEDGE: Usually when

10 a gentleman says that, they regret it.

11 MR. MEYER: I've learned over the

12 years not to say it. In this case I really

13 mean it.

14 REDIRECT EXAMINATION

15 BY MR. MEYER:

16 Q Mr. Logan, anything you have been

17 shown by Mr. Handzo today about which you have

18 said you don't recall seeing at the time you

19 did your affidavit, has anything changed in

20 your view anything that is in your affidavit?

21 A No, sir, it has not.

22 MR. MEYER: Thank you very much.

1 CHIEF JUDGE SLEDGE: I cannot
2 imagine any follow-up questions to that.
3 (Laughter.)
4 CHIEF JUDGE SLEDGE: Any questions
5 from the Bench?
6 JUDGE WISNIEWSKI: Yes, I have.
7 CHIEF JUDGE SLEDGE: All right.
8 JUDGE WISNIEWSKI: Can we return
9 to your exhibit 23, Mr. Logan? I take it that
10 this exhibit is meant to display e-mails that
11 indicate they either purchased more CDs as a
12 result of listening to XM or are thinking
13 about doing so or something of that sort. Is
14 that a fair characterization?
15 THE WITNESS: Yes, Your Honor, it
16 is.
17 JUDGE WISNIEWSKI: How many unique
18 e-mails are there?
19 THE WITNESS: In this document?
20 JUDGE WISNIEWSKI: Yes.
21 THE WITNESS: Precisely I don't
22 know off the top of my head, Your Honor.

1 JUDGE WISNIEWSKI: Can somebody
2 tell me at some point here?
3 MR. MEYER: Yes, Your Honor.
4 JUDGE WISNIEWSKI: I take it that
5 it also covers the period 2002 to 2006?
6 THE WITNESS: That is correct,
7 Your Honor.
8 JUDGE WISNIEWSKI: Does it go
9 earlier than that?
10 THE WITNESS: To the best of my
11 knowledge, it doesn't, Your Honor.
12 JUDGE WISNIEWSKI: And since you
13 don't know how many are here, I don't suppose
14 you could answer this question, but I'll ask
15 it anyway. What percent of subscribers does
16 this represent?
17 THE WITNESS: That's a very
18 difficult question to answer. I do not know
19 the answer to that, Your Honor.
20 JUDGE WISNIEWSKI: I would
21 appreciate an answer to that, too. Thank you.
22 MR. MEYER: Very well.

1 JUDGE WISNIEWSKI: That's all the
2 questions I have.
3 CHIEF JUDGE SLEDGE: Thank you,
4 sir.
5 THE WITNESS: Thank you.
6 (Whereupon, the witness was
7 excused.)
8 CHIEF JUDGE SLEDGE: Next witness?
9 MR. RICH: Your Honor, Mr.
10 Vendetti is our next witness and will be
11 examined by my partner, Ralph Miller.
12 MR. MILLER: May it please the
13 Court, my name is Ralph Miller, here for --
14 CHIEF JUDGE SLEDGE: Mr. Miller, I
15 will call on you when I am ready.
16 MR. MILLER: Thank you. I am
17 sorry, Your Honor.
18 (Pause.)
19 CHIEF JUDGE SLEDGE: Mr. Vendetti,
20 will you please stand? If you will raise your
21 right hand?
22 Whereupon,