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Conflicts Counsel to Plaintiffs-Appellees

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
WINDSTREAM FINANCE, CORP., <i>et al.</i> , ¹)	Case No. 19-22397 (RDD)
Reorganized Debtors.)	(Formerly Jointly
)	Administered under Lead
WINDSTREAM HOLDINGS, INC., <i>et al.</i> ,)	Case: Windstream Holdings,
)	Inc., No. 19-22312)
Plaintiffs,)	
)	Adv. Pro. No. 19-08246
v.)	
)	
CHARTER COMMUNICATIONS, INC. and)	
CHARTER COMMUNICATIONS OPERATING, LLC,)	
)	
Defendants.)	
)	

**PLAINTIFFS-APPELLEES' DESIGNATION OF ADDITIONAL ITEMS TO BE
INCLUDED ON THE RECORD ON APPEAL**

¹ The last four digits of Reorganized Debtor Windstream Finance, Corp.'s tax identification number are 5713. Due to the large number of Reorganized Debtors in these Chapter 11 cases, for which joint administration has been granted, a complete list of the Reorganized Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Reorganized Debtors' claims and noticing agent at <http://www.kccllc.net/windstream>. The location of the Reorganized Debtors' service address for purposes of these Chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.



Pursuant to Federal Rule of Bankruptcy Procedure 8009, Windstream Holdings, Inc. and affiliates in the above-captioned Chapter 11 cases (collectively, “Plaintiffs-Appellees”) respectfully designate the following additional items to be included in the Record on Appeal. Plaintiffs-Appellees reserve their right to designate additional items for inclusion in the record.

Designation of Additional Items to be Included in the Record on Appeal

Item No.	Date	Docket No.	Document Title
264	04/04/2019	2	Debtors’ Motion for Temporary Restraining Order, Preliminary Injunction and Other Equitable Relief
265	04/05/2019	3	Affidavit of Lewis Langston in support of Debtors’ Motion for a Temporary Restraining Order, Preliminary Injunction and Other Equitable Relief
266	04/11/2019	8	Supplemental Declaration of Lewis Langston in support of Debtors’ Motion for Temporary Restraining Order, Preliminary Injunction and Other Equitable Relief
267	04/11/2019	12	Opposition to Debtors’ Motion for Temporary Restraining Order
268	04/12/2019	17	Debtors’ Reply in Support of Their Motion for Temporary Restraining Order, Preliminary Injunction and Other Equitable Relief
269	04/24/2019	31	Show Cause Order signed on 4/24/2019 Setting a Hearing with Request to Debtors’ Motion for Preliminary Injunction and Other Equitable Relief
270	05/06/2019	35	Debtors’ Memorandum of Law in support of Preliminary Injunction
271	05/06/2019	36	Declaration of Tami Sims in support of Debtors’ Motion for Preliminary Injunction
272	05/06/2019	37	Declaration of Shaya Rochester in Support of Debtors’ Motion for Preliminary Injunction
273	05/08/2019	40	Charter’s Response to Order to Show Cause
274	05/08/2019	41	Answer to Complaint

Item No.	Date	Docket No.	Document Title
275	05/08/2019	44	Declaration of Brian Hockett
276	05/10/2019	47	Debtors' Reply Memorandum in Support of a Preliminary Injunction Against Charter
277	05/10/2019	49	Supplemental Declaration of Tami Sims in Support of Debtors' Reply in Support of Motion for Preliminary Injunction
278	05/10/2019	50	Declaration of Timothy Wyatt in Support of Debtors' Reply in Support of Motion for Preliminary Injunction and Other Equitable Relief
279	05/10/2019	51	Declaration of Shonne Bandy in Support of Debtors' Reply in Support of Motion for Preliminary Injunction and Other Equitable Relief
280	05/24/2019	69	Order to Show Cause Signed on 5/24/2019. Hearing to be held 8/7/2019 with Respect to Holding Charter in Contempt for Violating Automatic Stay
281	06/07/2019	74	Confidentiality Agreement and Stipulated Protective Order Signed on 6/7/2019
282	6/18/2019	83	Transcript Regarding Hearing Held on 5/14/19
283	08/28/2019	94	Letter (Request for Telephonic Discovery Dispute Conference)
284	98/29/2019	95	Letter Debtors' Response to Charter's Telephonic Discovery Dispute Conference
285	09/09/2019	96	Windstream's Letter Request for Telephonic Discovery Dispute Conference
286	09/10/2019	98	Letter Charter's Response to Windstream's Request for Telephonic Discovery Dispute Conference to Quash Subpoenas directed to KCC
287	09/13/2019	101	Letter Charter's Request for Telephonic Discovery Dispute Conference
288	09/16/2019	102	Letter Debtors' Response to Charter's Request for Telephonic Discovery Dispute Conference
289	10/10/2019	107	Letter re Request for Pre-Motion Conference Regarding Summary Judgment
290	10/14/2019	111	Letter re Windstream's Request for Pre-

Item No.	Date	Docket No.	Document Title
			Motion Conference re Summary Judgment
291	11/18/2019	136	Letter Request for Telephonic Conference
292	11/19/2019	138	Letter Charter's Response to Windstream's Request for Telephonic Conference Regarding Charter's Undisputed Facts
293	01/9/2020	218	Debtors' Memorandum of Law in Opposition to Defendant's Motion to Strike John C. Jarosz's Declarations
294	01/13/2020	228	Debtors' Reply Memorandum in Support of Their Motion for Leave to File a Rebuttal Expert Report
295	01/16/2020	241	Windstream's Statement in Support of This Court's Jurisdiction
296	01/28/2020	250	Order Denying In Part and Continuing In Part Debtors' Motion to Exclude the Expert Testimony of Jules Kamin
297	01/28/2020	255	Order signed on 1/28/2020 Denying Defendants' Motion to Strike the Declarations of John C. Jarosz
298	01/30/2020	257	Debtors' Statement in Response to Defendant's Designations of the Record
299	01/30/2020	258	Order signed on 1/30/2020 on Defendants' Motion to Recognition that the Bankruptcy Court is Divested
300	02/06/2020	263	Debtors' Objections to Defendant's Motion to Continue the March 30, 2020 Trial Setting for Counts VI and VII Pending a Jury Trial on the Predicate Claims (Counts I-V)
301	03/02/2020	273	Debtors' Deposition Designations
302	3/16/2020	280	Debtors' Rule 26(a)(3)(B) Objections and Counter - Designations
303	3/17/2020	282	Debtors' Designation of Additional Items to be Included in the Record on Appeal
304	04/22/2020	300	Debtors' Motion <i>in Limine</i> to Strike Defendant's Use at Trail of Certain Deposition Testimony, Exhibits, and Proposed Trail Testimony
305	04/24/2020	303	Debtors' Objections to Defendant's Motion <i>in Limine</i> to Preclude the Trial Declaration of Jeffery Auman

Item No.	Date	Docket No.	Document Title
306	04/24/2020	304	Declaration of Grace A. Thompson in Support of the Debtors' Objections to Defendant's Motion <i>in Limine</i> to Preclude the Trial Declaration of Jeffrey Auman
307	04/24/2020	305	Debtors' Objection to Defendant's Motion <i>in Limine</i> to Exclude Inadmissible and Incomplete Deposition Testimony
308	04/24/2020	307	Debtors' Objection to Defendant's Omnibus Motion <i>in Limine</i>
309	04/28/2020	309	Debtors' Objection to Defendant's Motion for Judicial Notice
310	06/09/2020	318	The Committee's Post-Trial Brief on behalf of Official Committee of Unsecured Creditors
311	04/29/2021	337	Notice of Appeal
312	05/06/2020	Attached	Plaintiffs Trial Ex. No. 350 – Debtors' Objections and Responses to Charter's Written Discovery Related to Alleged Legal and Promotional Costs
313	03/02/2020	Attached	Plaintiffs' Designations from Rule 30(b)(6) Deposition of Kelly Atkinson, taken May 1, 2019
314	03/02/2020	Attached	Plaintiffs' Designations from Rule 30(b)(6) Deposition of Kelly Atkinson, taken September 19, 2019
315	03/02/2020	Attached	Plaintiffs' Designations from Rule 30(b)(6) Deposition of Keith Dardis, taken May 1, 2019
316	03/02/2020	Attached	Plaintiffs' Designations from Rule 30(b)(6) Deposition of Fredrick Gunzel, taken September 19, 2019
317	03/02/2020	Attached	Plaintiffs' Designations from Rule 30(b)(6) Deposition of Matthew Kardos, taken September 12, 2019
318	03/02/2020	Attached	Plaintiffs' Designations from Rule 30(b)(6) Deposition of Lewis Langston, taken May 1, 2019
319	03/02/2020	Attached	Plaintiffs' Designations from Deposition Pursuant to Subpoena of Peter Maguire of RAPP Worldwide Inc., taken September 12, 2019
320	03/02/2020	Attached	Plaintiffs' Designations from Deposition Pursuant to Subpoena of Andrew Sites, taken September 10, 2019

Item No.	Date	Docket No.	Document Title
321	03/02/2020	Attached	Plaintiffs' Designations from Deposition of Paul Strickland, taken September 20, 2019
322	03/02/2020	Attached	Plaintiffs' Designations from Deposition of Latisha Truong, taken September 19, 2019
323	03/02/2020	Attached	Plaintiffs' Designations from Deposition of Emmitt Walker, taken September 11, 2019

Dated: May 27, 2021
New York, NY

/s/ Terence P. Ross
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Conflicts Counsel to Plaintiffs-Appellees

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of May 2021, I caused a true and correct copy of Plaintiffs-Appellees' Designation Of Additional Items To Be Included On The Record On Appeal to be filed electronically using the CM/ECF System, which will then send a notification of such filing (NEF) to all counsel of record in this lawsuit.

Dated: May 27, 2021

/s/ Terence P. Ross

Terence P. Ross

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Conflicts Counsel to the Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

WINDSTREAM HOLDINGS, INC., *et al.*,¹

Debtors.

WINDSTREAM HOLDINGS, INC., *et al.*,

Plaintiffs,

V.

CHARTER COMMUNICATIONS, INC. and
CHARTER COMMUNICATIONS OPERATING, LLC,

Defendants.

Chapter 11

Case No. 19-22312 (RDD)

(Jointly Administered)

Adv. Pro. No. 19-08246

**DEBTORS' OBJECTIONS AND RESPONSES TO DEFENDANTS' WRITTEN
DISCOVERY RELATED TO PLAINTIFFS' COSTS RELATED TO
PROMOTIONS/CREDITS AND PLAINTIFFS' INTERNAL LEGAL COSTS**

¹ The last four digits of Debtor Windstream Holdings, Inc.'s tax identification number are 7717. Due to the large number of debtor entities in these Chapter 11 cases, for which joint administration has been granted, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <http://www.kccllc.net/windstream>. The location of the Debtors' service address for purposes of these Chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.

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Pursuant to Rules 7026 and 7034 of the Federal Rules of Bankruptcy Procedure, Rules 26 and 34 of the Federal Rules of Civil Procedure, the Local Rules of this District, and any other applicable rules (collectively, the “Applicable Rules”), Windstream Holdings, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned Chapter 11 cases (collectively, “Debtors” or “Windstream”), and as plaintiffs in the above-captioned adversary proceeding, by and through their undersigned attorneys, submit these Responses and Objections (the “Response”) to the Written Discovery Related To Plaintiffs’ Costs Related To Promotions/Credits And Plaintiffs’ Internal Legal Costs (the “Written Discovery”) of Defendants Charter Communications, Inc. and Charter Communications Operating, LLC (collectively, “Charter”).

GENERAL OBJECTIONS

Windstream asserts the following General Objections (“General Objections”) to the Requests for Production or Admission (“Request” or “Requests”) and Interrogatories (“Interrogatory” or “Interrogatories”), each of which is hereby incorporated by reference into the response to each individual Request or Interrogatory below. From time to time, Windstream may restate one or more of the General Objections as specific objections to individual Requests or Interrogatories. Such restatement, or the failure to restate, should not be taken as a waiver of any General Objection not restated.

1. Windstream responds to the Requests and Interrogatories on the basis of the facts and circumstances as they are presently known to Windstream. Windstream reserves the right to supplement its objections and responses to the Requests or Interrogatories based upon newly-discovered evidence or information of which Windstream is not aware as of the present date.

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2. Windstream objects to the Requests and Interrogatories insofar as they seek information or documents that are protected from disclosure by the attorney-client privilege, the work product doctrine, the privacy privilege, or any other privilege or immunity, and refuses to produce any such document(s). Windstream does not intend by these objections or responses to waive any claim of privilege or immunity. Windstream's objections and responses are conditioned specifically on the understanding that the provision of information or documents for which any claim of privilege is applicable shall be deemed inadvertent and not a waiver of the claim of privilege. Demand is hereby made that any privileged document inadvertently produced be returned unread immediately and all copies destroyed.

3. Windstream objects to the Requests and Interrogatories to the extent they call for information or the production of documents that are protected by its privacy rights or those of any other person or entity as provided by the New York and United States Constitutions and/or any other statute or legal authority.

4. Windstream objects to the Requests and Interrogatories to the extent that they call for the production of trade secrets, confidential information, proprietary information, commercially-sensitive information, and competitively-significant information regarding Windstream's business activities and/or business operations. Windstream will produce such documents or information, if any, pursuant to the Stipulated Protective Order [Adv. Docket No. 75] entered by the Court in this adversary proceeding.

5. Windstream objects to the Requests and Interrogatories to the extent that they call for information or the production of documents that are not relevant to any party's claim or defense or proportional to the needs of the case.

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6. Windstream objects to the Requests and Interrogatories to the extent that they purport to require production of “all documents” under circumstances in which a subset of documents would be sufficient to show the pertinent information, on the grounds that such requests for production of “all documents” are overbroad and unduly burdensome. Consistent with the Court’s ruling on April 29, 2020 on this particular objection, Windstream will interpret and respond to each Request containing such phrase as if it were written as requesting “documents sufficient to”

7. Windstream reserves the right to produce only the responsive portions of documents where such documents also contain information that is not relevant to the subject matter of this adversary proceeding, is not reasonably calculated to lead to the discovery of admissible evidence, is privileged, or is otherwise protected from disclosure.

8. Windstream objects to the Requests and Interrogatories to the extent that they purport to require Windstream to undertake a search for, and to produce, electronically stored information (“ESI”), such as emails.

9. Windstream objects to the Definitions and Instructions contained in the Written Discovery to the extent that they seek to impose obligations on Windstream different from or beyond those required by the Applicable Rules and applicable case law. Windstream will interpret each Request and Interrogatory and will respond pursuant to, and in light of, the requirements of the Applicable Rules.

10. It should not be inferred from the form or substance of any objection or response herein that documents responsive to any particular Request or Interrogatory exist.

11. Inadvertent production of any document or information that is privileged, or which is otherwise immune from discovery, shall not constitute, and is in no way intended as, a

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waiver of any privilege or any other ground for objecting to such discovery with respect to such document or any other document, the subject matter thereof, the information contained therein, or the right of Windstream to object to the use of any such document, or the information contained therein or any information derived therefrom, during any subsequent proceeding.

12. When applicable, Windstream will produce responsive information, documents and things, if any, pursuant to the Stipulated Protective Order [Adv. Docket No. 75] entered by the Court in this adversary proceeding.

RESPONSE TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All documents supporting the testimony that “in order to mitigate the effects of Charter’s false advertising, Windstream was forced to offer customer upgrades, discounts, and pricing promotions to convince customers to maintain their service with Windstream. The total approximate cost of this was \$4,033,425,” as set forth in Paragraph 15 of the Declaration of Jeffrey H. Auman in Lieu of Direct Testimony at Trial and attached hereto as Appendix 1.

RESPONSE:

Windstream incorporates by reference its General Objections stated above as though set forth fully herein. Windstream further objects to the Request to the extent that it purports to require the production of “all documents” under circumstances in which a subset of documents would be sufficient to show the pertinent information, on the grounds that such requests for production of “all documents” are overbroad and unduly burdensome. Consistent with the Court’s ruling on April 29, 2020, Windstream will interpret and respond to this Request as if it were written to request “documents sufficient to” Windstream further objects to this Request on the grounds that it seeks the disclosure of confidential, proprietary, or sensitive

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information regarding Windstream's business and/or business operations. Windstream further objects to this Request to the extent it calls for the disclosure of confidential information protected by the privacy rights of non-parties. Windstream further objects to this Request to the extent that it seeks the production of information and documents that are subject to the protection by the attorney-client privilege or work product doctrine.

Subject to and without waiver of the previously asserted objections, Windstream responds that it will produce responsive, non-privileged documents, if any, within its possession, custody, or control, that are sufficient to identify the cost of the promotional advertising campaign identified in Appendix 1 to Defendants' Written Discovery.

REQUEST FOR PRODUCTION NO. 2:

All documents supporting the testimony that "Windstream's Legal Department alone has spent approximately 1,911 hours investigating and responding to Charter's false advertising and assisting with this adversary proceeding. This represents an internal cost to Windstream of approximately \$408,000," as set forth in Paragraph 21 of the Declaration of Jeffrey H. Auman in Lieu of Direct Testimony at Trial and attached hereto as Appendix 1.

RESPONSE:

Windstream incorporates by reference its General Objections stated above as though set forth fully herein. Windstream further objects to the Request to the extent that it purports to require the production of "all documents" under circumstances in which a subset of documents would be sufficient to show the pertinent information, on the grounds that such requests for production of "all documents" are overbroad and unduly burdensome. Consistent with the Court's ruling on April 29, 2020, Windstream will interpret and respond to this Request as if it were written to request "documents sufficient to" Windstream further objects to this

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Request on the grounds that it seeks the disclosure of confidential, proprietary, or sensitive information regarding Windstream's business and/or business operations. Windstream further objects to this Request to the extent that it seeks the production of information and documents that are subject to the protection by the attorney-client privilege or work product doctrine.

Subject to and without waiver of the previously asserted objections, Windstream responds that it will produce responsive, non-privileged documents, if any, within its possession, custody, or control, that are sufficient to identify the internal cost spent by Windstream's Legal Department identified in Appendix 2 to Defendants' Written Discovery.

REQUEST FOR PRODUCTION NO. 3:

All contemporaneous time records documenting the time entries set forth in the document produced by Plaintiffs on April 27, 2020, entitled "Internal Windstream Legal Time," and attached as Appendix 2 of this Written Discovery.

RESPONSE:

Windstream incorporates by reference its General Objections stated above as though set forth fully herein. Windstream further objects to the Request to the extent that it purports to require the production of "all documents" under circumstances in which a subset of documents would be sufficient to show the pertinent information, on the grounds that such requests for production of "all documents" are overbroad and unduly burdensome. Consistent with the Court's ruling on April 29, 2020, Windstream will interpret and respond to this Request as if it were written to request "documents sufficient to" Windstream further objects to this Request on the grounds that it seeks the disclosure of confidential, proprietary, or sensitive information regarding Windstream's business and/or business operations. Windstream further

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objects to this Request to the extent that it seeks the production of information and documents that are subject to the protection by the attorney-client privilege or work product doctrine.

Subject to and without waiver of the previously asserted objections, Windstream responds that it will produce responsive, non-privileged documents, if any, within its possession, custody or control, that document the referenced time entries.

REQUEST FOR PRODUCTION NO. 4:

2019 and 2020 employment agreements for the timekeepers referenced in the document produced by Plaintiffs on April 27, 2020, entitled "Internal Windstream Legal Time," and attached as Appendix 2 of this Written Discovery.

RESPONSE:

Windstream incorporates by reference its General Objections stated above as though set forth fully herein. Windstream further states that it objected to this Request on April 29, 2020, and that the Request was subsequently withdrawn by Defendants based on Windstream's objection. Accordingly, Windstream will not provide a response to this Request.

REQUEST FOR PRODUCTION NO. 5:

All documents related to instructions or directions given by anyone for the purpose of creating the document produced by Plaintiffs on April 27, 2020, entitled "2019-2020 Charter Market Promotion," and attached as Appendix 3 of this Written Discovery.

RESPONSE:

Windstream incorporates by reference its General Objections stated above as though set forth fully herein. Windstream further objects to the Request to the extent that it purports to require the production of "all documents" under circumstances in which a subset of documents would be sufficient to show the pertinent information, on the grounds that such requests for

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production of “all documents” are overbroad and unduly burdensome. Consistent with the Court’s ruling on April 29, 2020, Windstream will interpret and respond to this Request as if it were written to request “documents sufficient to” Windstream further objects to this Request on the grounds that it seeks the disclosure of confidential, proprietary, or sensitive information regarding Windstream’s business and/or business operations. Windstream further objects to this Request to the extent that it seeks the production of information and documents that are subject to the protection by the attorney-client privilege or work product doctrine.

Subject to and without waiver of the previously asserted objections, Windstream responds that no non-privileged documents exist.

REQUEST FOR PRODUCTION NO. 6:

All invoices and/or bills for the customers that received the promotion, discount, and/or credit identified in the document produced by Plaintiffs on April 27, 2020, entitled “2019-2020 Charter Market Promotion,” and attached as Appendix 3 of this Written Discovery, for the months in which they received such promotion, discount and/or credit.

RESPONSE:

Windstream incorporates by reference its General Objections stated above as though set forth fully herein. Windstream further states that it objected to this Request in Court on April 29, 2020, and that the Court sustained those objections. Accordingly, Windstream will not provide a response to this Request.

REQUEST FOR PRODUCTION NO. 7:

All communications records (call logs or otherwise) with Plaintiffs’ customers and/or prospective customers related to any promotion, discount, and/or credit identified in the

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document produced by Plaintiffs on April 27, 2020, entitled "2019-2020 Charter Market Promotion," and attached as Appendix 3 of this Written Discovery.

RESPONSE:

Windstream incorporates by reference its General Objections stated above as though set forth fully herein. Windstream further states that it objected to this Request on April 29, 2020, and that the Request was subsequently withdrawn by Defendants based on Windstream's objection. Accordingly, Windstream will not provide a response to this Request.

REQUEST FOR PRODUCTION NO. 8:

All marketing and/or advertising used by and/or approved by Plaintiffs related to any promotion, discount, and/or credit identified in the document produced by Plaintiffs on April 27, 2020, entitled "2019-2020 Charter Market Promotion," and attached as Appendix 3 of this Written Discovery.

RESPONSE:

Windstream incorporates by reference its General Objections stated above as though set forth fully herein. Windstream further states that it objected to this Request on April 29, 2020, and that the Request was subsequently withdrawn by Defendants based on Windstream's objection. Accordingly, Windstream will not provide a response to this Request.

REQUEST FOR PRODUCTION NO. 9:

All documents related to Plaintiffs' decision to offer any promotion, discount, and/or credit identified in the document produced by Plaintiffs on April 27, 2020, entitled "2019-2020 Charter Market Promotion," as set forth in Appendix 3 of this Written Discovery, including, but not limited to, all documents related to Plaintiffs' decision as to which customers and/or prospective customers were eligible for such promotion, discount, and/or credit.

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RESPONSE:

Windstream incorporates by reference its General Objections stated above as though set forth fully herein. Windstream further objects to the Request to the extent that it purports to require the production of “all documents” under circumstances in which a subset of documents would be sufficient to show the pertinent information, on the grounds that such requests for production of “all documents” are overbroad and unduly burdensome. Consistent with the Court’s ruling on April 29, 2020, Windstream will interpret and respond to this Request as if it were written to request “documents sufficient to” Windstream further objects to this Request on the grounds that it seeks the disclosure of confidential, proprietary, or sensitive information regarding Windstream’s business and/or business operations. Windstream further objects to this Request to the extent that it seeks the production of information and documents that are subject to the protection by the attorney-client privilege or work product doctrine.

Subject to and without waiver of the previously asserted objections, Windstream responds that it will produce responsive, non-privileged documents, if any, within its possession, custody, or control, that are sufficient to identify Windstream’s decision to offer the promotion identified in Appendix 3 of Defendants’ Written Discovery.

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RESPONSE TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify which timekeepers identified in the document produced by Plaintiffs on April 27, 2020, entitled "Internal Windstream Legal Time," and attached as Appendix 2 of this Written Discovery, are paid by Plaintiffs on a salary basis, and for each such individual, provide their annual salary for 2019 and 2020.

RESPONSE TO INTERROGATORY NO. 1:

Windstream incorporates by reference its General Objections stated above as though set forth fully herein. Windstream further states that it objected to this Request on April 29, 2020, and that the Request was subsequently limited to only those timekeepers identified in Appendix 2 to Defendants' Written Discovery. Windstream further objects to this Interrogatory on the grounds that it seeks the disclosure of confidential, proprietary, or sensitive information regarding Windstream's business and/or business operations. Windstream further objects to the Interrogatory to the extent it calls for the disclosure of confidential information protected by the privacy rights of non-parties.

Subject to and without waiver of the previously asserted objections, Windstream responds that all of the timekeepers are paid on a salary basis and that the total compensation in 2019 and 2020 of each of the individuals identified in Appendix 2 of Defendants' Written Discovery is:

Total Compensation for 2019		Total Compensation for 2020	
Counsel I	\$189,482.00	Counsel I	\$199,220.00
Counsel II	\$93,738.00	Counsel II	\$95,200.00
Paralegal I	\$66,006.00	Paralegal I	\$74,662.00
Paralegal II	\$61,427.00	Paralegal II	\$65,751.00

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The document reproduced as Appendix 2 in Defendants' Request was prepared by Paula Anderson who is a paralegal in the Windstream legal department. During the first week of August 2019, she prepared the entries for the period prior to August 1, 2019. During the first week of April 2020, she prepared the entries for the period after August 1, 2019. She derived the information primarily from privileged documents. However, she also derived some entries from travel records of Kent Smith that will be produced. She also derived some entries from Katten Muchin Rosenman LLP invoices that have been filed with the Court. The hourly rate for both of the paralegals was based on Ms. Anderson's actual hourly rate for comparable work as a paralegal at the Kutak Rock LLP law firm in Little Rock, Arkansas which at the time she left that law firm in June 2014 was \$100/hour. The hourly rate for the senior associate was based on the hourly billing rate for comparable work by a senior associate at the Kutak Rock LLP law firm in Little Rock, Arkansas in February 2020 which was \$210/hour. The hourly rate for the senior partners was based on the hourly billing rate for comparable work by a senior partner at the Kutak Rock LLP law firm in Kansas City, Missouri working on a matter in Little Rock, Arkansas in March/April 2019 which was \$330/hour. In addition, a legal database was searched for cases in Arkansas that had recently approved an award of attorneys' fees to determine what hourly rates were found to be reasonable for lawyers and paralegals engaged in litigation in Arkansas. The cases found will be produced.

INTERROGATORY NO. 2:

Identify the individual who created the document produced by Plaintiffs on April 27, 2020, entitled "2019-2020 Charter Market Promotion," and attached as Appendix 3 of this Written Discovery, and describe when such document was created and how it was created, including the parameters that were selected and why they were selected.

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RESPONSE TO INTERROGATORY NO. 2:

Windstream incorporates by reference its General Objections stated above as though set forth fully herein. Windstream further objects to this Interrogatory on the grounds that it seeks the disclosure of confidential, proprietary, or sensitive information regarding Windstream's business and/or business operations. Windstream further objects to the Interrogatory to the extent it calls for the disclosure of confidential information protected by the privacy rights of non-parties.

Subject to and without waiver of the General Objections, Windstream responds that Daniel J. Martinez created the document reproduced as Appendix 3 in Defendants' Request (the "Document"), at the direction of Jeffrey H. Auman. The Document was created on or about April 27, 2020. It was created in Microsoft Excel which is a spreadsheet program. The spreadsheet was populated with data relating to the 90 day free promotion that was found in Windstream's Daily Transactional Unit Table. This is data that Windstream keeps in the regular course of business. The interface used was Microsoft SQL Server Management Studio. The parameters used for selection of data incorporated into the spreadsheet were: Date Range – 09/01/2019 – 12/31/2019; "Charter Exchanges"; DSL (Broadband); "90 days free promotion offer"; and "New Adds Only." This data was broken out into three categories – 3 months free, 1 month free and bill credits in lieu. Once the spreadsheet was populated with the foregoing data, an ARPU of \$56.00/month and a churn rate of -2.01%/month was applied to the data. This resulted in the cost of the promotion in dollar terms. These parameters were selected in order to develop the cost of the promotion and resulted in the \$4,033,425 number provided at Paragraph 15 of the Declaration of Jeffrey H. Auman.

**CONTAINS CONFIDENTIAL OR ATTORNEYS' EYES ONLY INFORMATION
SUBJECT TO STIPULATED PROTECTIVE ORDER**

INTERROGATORY NO. 3:

Describe how Plaintiffs determined to offer each promotion, discount and/or credit identified in the document produced by Plaintiffs on April 27, 2020, entitled "2019-2020 Charter Market Promotion," and attached as Appendix 3 of this Written Discovery, including, but not limited to whether any other promotions, discounts, and/or credits were considered and why such promotions, discounts, and/or credits were not offered and/or provided.

RESPONSE TO INTERROGATORY NO. 3:

Windstream incorporates by reference its General Objections stated above as though set forth fully herein. Windstream further states that it objected to this Interrogatory in Court on April 29, 2020, and that the Interrogatory was withdrawn by Defendants at the direction of the Court based on Windstream's objection. Accordingly, Windstream will not provide a response to this Request.

INTERROGATORY NO. 4:

Describe how Plaintiffs determined whether a customer and/or prospective customer was eligible to receive any of the promotions, discounts, and/or credits identified in the document produced by Plaintiffs on April 27, 2020, entitled "2019-2020 Charter Market Promotion," and attached as Appendix 3 of this Written Discovery.

RESPONSE TO INTERROGATORY NO. 4:

Windstream incorporates by reference its General Objections stated above as though set forth fully herein. Windstream further states that it objected to this Interrogatory in Court on April 29, 2020, and that the Interrogatory was withdrawn at the direction of the Court by Defendants based on Windstream's objection. Accordingly, Windstream will not provide a response to this Request.

**CONTAINS CONFIDENTIAL OR ATTORNEYS' EYES ONLY INFORMATION
SUBJECT TO STIPULATED PROTECTIVE ORDER**

INTERROGATORY NO. 5:

Identify how many of Plaintiffs' customers and/or prospective customers received any form of promotion, discount, and/or credit from Plaintiffs for Plaintiffs' services between September 2019 and February 2020.

RESPONSE TO INTERROGATORY NO. 5:

Windstream incorporates by reference its General Objections stated above as though set forth fully herein. Windstream further states that it objected to this Interrogatory in Court on April 29, 2020, and that the Interrogatory was withdrawn at the direction of the Court by Defendants based on Windstream's objection. Accordingly, Windstream will not provide a response to this Request.

RESPONSE TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Admit that the document produced by Plaintiffs and entitled "Internal Windstream Legal Time," as set forth in Appendix 2 of this Written Discovery, was not based on records made at or near the time of each task identified in the document shown in Appendix 2.

RESPONSE:

Windstream incorporates by reference its General Objections stated above as though set forth fully herein. Windstream further states that it objected to this Admission on April 29, 2020, and that the Admission was withdrawn by Defendants based on Windstream's objection. Accordingly, Windstream will not provide a response to this Admission.

**CONTAINS CONFIDENTIAL OR ATTORNEYS' EYES ONLY INFORMATION
SUBJECT TO STIPULATED PROTECTIVE ORDER**

Dated: April 30, 2020
New York, NY

/s/ Terence P. Ross
Terence P. Ross
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*Conflicts Counsel to the Debtors and Debtors in
Possession*

VERIFICATION

I, Daniel J. Martinez, declare under penalty of perjury that I have reviewed Debtors' Objections And Responses To Defendants' Written Discovery Related To Plaintiffs' Costs Related To Promotions/Credits And Plaintiffs' Internal Legal Costs, and that the response provided to Interrogatory No. 2 provided therein is true and correct to the best of my knowledge and belief.

Executed on this 30th day of April 2020, in Little Rock, Arkansas.

Daniel Martinez

Daniel Martinez

**CONTAINS CONFIDENTIAL OR ATTORNEYS' EYES ONLY INFORMATION
SUBJECT TO STIPULATED PROTECTIVE ORDER**

VERIFICATION

I, Kent Smith, declare under penalty of perjury that I have reviewed Debtors' Objections And Responses To Defendants' Written Discovery Related To Plaintiffs' Costs Related To Promotions/Credits And Plaintiffs' Internal Legal Costs, and that the response provided to Interrogatory No. 1 provided therein is true and correct to the best of my knowledge and belief.

Executed on this 30th day of April, 2020, in Little Rock, AR.

A handwritten signature in black ink, appearing to read "Kent Si", is positioned in the center-right of the page.

**CONTAINS CONFIDENTIAL OR ATTORNEYS' EYES ONLY INFORMATION
SUBJECT TO STIPULATED PROTECTIVE ORDER**

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April 2020, a true and correct copy of the Debtors' Objections And Responses To Defendants' Written Discovery Related To Plaintiffs' Costs Related To Promotions/Credits And Plaintiffs' Internal Legal Costs was served by email on all counsel of record in this adversary proceeding.

Dated: April 30, 2020

/s/ Kristin Lockhart

Kristin Lockhart

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 _____
4 In re:

5 WINDSTREAM HOLDINGS, INC., et al.,

6 Debtors.

Chapter 11

7 _____ Case No. 19-22312 (RDD)

8 WINDSTREAM HOLDINGS, INC., et al.,

9 Plaintiffs,

10 vs.

11 CHARTER COMMUNICATIONS, INC. and

12 CHARTER COMMUNICATIONS OPERATING, LLC,

13 Defendants.

14 -----X

15 ** CONFIDENTIAL - ATTORNEYS' EYES ONLY **

16
17 DEPOSITION OF KELLY ATKINSON

18 Stamford, Connecticut

19 Wednesday, May 1, 2019

20
21
22
23 REPORTER: Angela M. Shaw-Crockett, CCR, RMR, CSR

24 License No. SHR.0000519
25

1

2

3

4

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7

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9

10

11

12

May 1, 2019

13

11:59 a.m.

14

15

DEPOSITION of KELLY ATKINSON, taken by the

16

Plaintiff, held at Wiggin and Dana, Two Tresser

17

Boulevard, Two Stamford Plaza, Stamford,

18

Connecticut, before Angela M. Shaw-Crockett, a

19

Certified Court Reporter, Certified Shorthand

20

Reporter, Registered Merit Reporter and Notary

21

Public of the States of New York, New Jersey and

22

Connecticut.

23

24

25

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

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BY: STEVE RAPPOPORT, ESQ.

ALSO PRESENT: Kristin Zarnetske, The Videographer

**

**

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7

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1 THE VIDEOGRAPHER: Good morning. We are
2 now going on the record at 9:04 a.m. on May 1,
3 2019.

4 Please note that the microphones are
5 sensitive and may pick up whispers and private
6 conversations and cellular interference.
7 Please turn off all cell phones or place them
8 away from the microphones as they can interfere
9 with the deposition audio. Audio and video
10 recording will continue to take place unless
11 all parties agree to go off the record.

12 This is Media Unit No. 1 of the videotaped
13 deposition of Kelly Atkinson taken by plaintiff
14 in the matter of Windstream Holdings, Inc., et
15 al., debtors, and Windstream Holdings, Inc., et
16 al., plaintiffs, versus Charter Communications,
17 Inc., Charter Communications Operating, LLC,
18 defendants, Case No. 19-22312(RDD) in the
19 United States Bankruptcy Court for the Southern
20 District of New York.

21 This deposition is being held at the firm
22 of Wiggin and Dana at 281 Tresser Boulevard,
23 Stamford, Connecticut. My name is Kristin
24 Zarnetske. I'm the videographer, representing
25 Veritext. The court reporter, also in

1 association with Veritext, is Angie Shaw.

2 Will counsel present please introduce
3 themselves for the record.

4 MR. LARSEN: Good morning. Ryan Larsen on
5 behalf of Windstream.

6 MR. NEPPLE: Michael Nepple from Thompson
7 Coburn on behalf of Charter.

8 MR. HOCKETT: Brian Hockett of Thompson
9 Coburn on behalf of Charter.

10 MR. RAPPOPORT: Steve Rappoport, Morrison
11 & Foerster, on behalf of the committee of
12 unsecured creditors.

13 THE VIDEOGRAPHER: Thank you. Would the
14 court reporter please swear in the witness.

15 K E L L Y A T K I N S O N,
16 called as a witness, having first been
17 duly sworn, was examined and testified as
18 follows:

19 EXAMINATION

20 BY MR. LARSEN:

21 Q. Ms. Atkinson, good morning.

22 A. Good morning.

23 Q. My name is Ryan Larsen. I'm one of the
24 attorneys for Windstream in this matter.

25 Before we get started on the substance,

1 I'm sure you've had the opportunity to discuss the
2 procedures today with your attorneys, but I want to
3 take just a few minutes to go over the procedures to
4 make sure we're all on the same page. Okay?

5 Point No. 1, you just nodded your head at
6 me. If you could do your best to give audible
7 responses like yeses or noes, because --

8 A. Yes.

9 Q. -- the court reporter is taking down the
10 transcript and sometimes a nod or a shake can be
11 misunderstood later.

12 Do you understand?

13 A. I do.

14 Q. Okay. I'd like to remind you or tell you
15 that that oath you took is the same oath that you
16 would take if you were testifying in court.

17 Do you understand that?

18 A. Yes, I do.

19 Q. Okay. So the same penalty for perjury
20 would attach in the informal setting of this
21 courtroom as -- in this conference room as we would
22 have in a courtroom.

23 Do you understand?

24 A. Yes, I do.

25 Q. Okay. So the parties to this matter can

1 use this testimony at the trial in this matter or
2 any other subsequent proceeding in this matter.

3 Do you understand that?

4 A. Yes, I do.

5 Q. How this is going to work today is I'm
6 going to be asking questions, you're going to be
7 answering, the court reporter here is going to be
8 taking down everything everybody says.

9 Do you understand?

10 A. Yes.

11 Q. Okay. And for that reason, in addition to
12 giving verbal answers, it's important that we don't
13 talk over one another.

14 Do you understand?

15 A. Yes.

16 Q. So -- and it's a little difficult, because
17 that's not how people talk in real life. Usually if
18 I'm asking the question, you can see where I'm going
19 and you'd jump in with a yes or no. I'm going to
20 caution you to try not to do that today, just
21 because it's difficult for the court reporter to
22 take down two people talking at one time.

23 Do you understand?

24 A. Yes.

25 Q. Okay. Likewise, I'm going to do my very

1 best to make sure you're completely done with your
2 answer before I jump in with the next question. And
3 if I make a mistake, I apologize. I will stop. I
4 want to make sure you get all of your answer in
5 before we go to the next question.

6 Do you understand?

7 A. Yes.

8 MR. NEPPLE: And just before we begin, we
9 had a conversation off the record that we're
10 designating the entire transcript and all
11 exhibits as attorneys' eyes only for purposes
12 of this deposition. Parties will discuss, down
13 the road, de-designating or forwarding
14 designation. But right now, since the
15 committee is in the room, a designation for
16 all -- the transcript and all exhibits.

17 BY MR. LARSEN:

18 Q. So when we're done today, you're going to
19 be given a booklet to review that has everything
20 that was stated on the record today.

21 A. Okay.

22 Q. Okay?

23 And you will have the right to review it
24 and make any changes if necessary.

25 Do you understand?

1 A. Yes.

2 Q. I just want to caution you, though. If
3 you make any substantive changes, you know, turning
4 a "yes" into a "no" or changing the substance of
5 your answer, myself or any of the other attorneys in
6 this matter have the right to comment on that change
7 at trial or any other proceeding.

8 Do you understand?

9 A. Yes.

10 Q. Okay. So, for that reason, it's important
11 to do your best to give your best testimony today.

12 Do you understand?

13 A. Yes.

14 Q. Your attorneys and -- have the right to
15 make objections to certain questions today. So if I
16 ask a question and they think it's improper for some
17 reason, they have the right to jump in for an
18 objection. However, unless they specifically
19 instruct you not to answer, you still have to answer
20 the question, even though there's an objection
21 pending.

22 Do you understand?

23 A. Yes.

24 Q. Okay. If you do not hear me or if I'm not
25 speaking clearly, which is likely, please ask me to

1 rephrase the question or repeat it. I want to make
2 sure you understand all the questions today.

3 Do you understand?

4 A. Yes.

5 Q. Okay. This is not a test of endurance
6 today. We will be taking, you know, many breaks.
7 Probably every hour or so, we'll step out for five
8 minutes. But if you need a break before then, go to
9 the bathroom, grab a drink of water, anything, just
10 let me know and we'll take a break. Okay?

11 A. Okay. Thank you.

12 Q. So sometimes it's difficult to remember
13 exactly what happened in a matter, especially -- I
14 may be asking you about conversations that occurred
15 weeks or months ago. I want to caution you. I
16 don't want you to guess. I don't want you to guess
17 what you think may have happened. Rather I just
18 want the best of your recollection, the best that
19 you remember.

20 Do you understand the difference?

21 A. Yes.

22 Q. Okay. And just a dumb example that people
23 like to give is if I ask you how long this table is,
24 you could look at it and guess it's maybe 20 feet or
25 something like that. But if I asked you how long

1 the conference table in my office is, that would
2 just be a pure guess, because I assume you haven't
3 been to my office. Right?

4 A. Yes.

5 Q. Okay. So that's the distinction.

6 Do you have any questions about the
7 procedure before we get started today?

8 A. No.

9 Q. Okay. Have you ever been deposed before
10 today?

11 A. No.

12 Q. Have you ever testified under oath in any
13 other kind of proceeding before today?

14 A. No.

15 Q. Have you taken any medications or anything
16 that might affect your ability to recall events to
17 the best of your ability today?

18 A. No.

19 Q. Have you -- have you reviewed any
20 documents to prepare for your testimony today?

21 A. There were a few emails that we went
22 through that reference my name or a statement that I
23 had made.

24 Q. And is it your understanding that those
25 emails are part of the emails that have been

1 produced in this case?

2 A. Yes.

3 Q. Have you reviewed any documents that have
4 not been produced in this case?

5 A. No.

6 Q. Have you spoken to anybody to help prepare
7 you for the deposition today?

8 A. My attorneys.

9 Q. Have you spoken to anybody other than your
10 attorneys to help prepare you for the deposition
11 today?

12 A. No.

13 Q. When did you speak -- I'm not going to ask
14 you about the substance of what you spoke to your
15 attorneys with.

16 A. Right.

17 Q. When did you speak with your attorneys to
18 prepare for the deposition today?

19 A. It would have been this week or this
20 morning.

21 Q. Did you speak to them before this morning?

22 A. Yes, this week, earlier this week, Monday.

23 Q. So are those the only two meetings, on
24 Monday and then this morning, with your attorneys to
25 help prepare for this deposition?

1 A. There was one last week. I'm just not
2 recalling the day.

3 Q. Ms. Atkinson, do you have a college
4 degree?

5 A. Yes.

6 Q. And where is that from?

7 A. Villanova University.

8 Q. And when did you obtain that degree?

9 A. 1988 was graduation.

10 Q. What was your degree in?

11 A. It was in communications and business, a
12 dual degree.

13 Q. And did you go do any graduate school or
14 anything further than Villanova?

15 A. Only through Time Warner Cable. I
16 participated in some business graduate school at
17 Harvard and one at Stamford.

18 Q. When did you do that?

19 A. Stamford was in March and Harvard -- I'm
20 trying to remember the date. I think it was 2010.

21 Q. So Stamford was in March of this year?

22 A. Yes.

23 Q. And did you obtain a degree from Harvard
24 or Stamford?

25 A. It was just a business course degree, so

1 it was an abbreviated. I'm not exactly sure how
2 they characterize that. Continuing education.

3 Q. And what was the nature of the class or
4 classes you took?

5 A. It was through Women in Communications,
6 WICT association. And it's in conjunction with the
7 cable industry.

8 Q. Other than what we've just discussed, do
9 you have any other education or training about the
10 cable industry?

11 A. No.

12 Q. What was your first job after graduating
13 from Villanova?

14 A. My first job was working as an assistant
15 to an assistant at a public relations company.

16 Q. How long did you do that?

17 A. About six months. In Philadelphia.

18 Q. And what was your next job after that?

19 A. My next job was working at a radio station
20 selling radio space or radio time in Altoona,
21 Pennsylvania.

22 Q. And what was your position there?

23 A. Salesperson.

24 Q. And how long did you do that?

25 A. Approximately a year and a half.

1 Q. What was your next job after that?

2 A. My next job was working for Discover Card
3 in Chicago.

4 Q. And what was your title there?

5 A. Marketing specialist.

6 Q. And how long did you have that position?

7 A. I was at the company for nine years, but I
8 had increasing positions during that time.

9 Q. What was your general job duties as the
10 marketing specialist at Discover?

11 A. I worked in -- my first role was as a --
12 working on the merchant marketing side, dealing with
13 external merchants who would accept or accepted the
14 Discover Card, and we did marketing programs.

15 Q. How long did you do that?

16 A. For probably -- in various roles, but it
17 was probably about four and a half years.

18 Q. Did you then have another title at
19 Discover?

20 A. Yes. I -- the next title -- I'm trying to
21 remember the name of it. It was marketing manager
22 and then marketing director. So when I left, I was
23 a director.

24 Q. And what were your general duties and
25 responsibilities as marketing director?

1 A. I went on to work on the account
2 acquisition side, so we acquired new cardholders for
3 Discover Card.

4 Q. And how would you acquire new cardholders?

5 A. Through outbound telemarketing or direct
6 mail.

7 Q. Did you have a staff of people working for
8 you in that position?

9 A. I did. It was -- it was several folks.

10 Q. You said you worked there for
11 approximately nine years; is that correct?

12 A. Yes.

13 Q. What was your next job after that?

14 A. I went to work at -- it was a division of
15 Citi, Citibank. It was called Diners Club
16 International.

17 Q. How long were you there?

18 A. I was there for just over ten years.

19 Q. And what was your first title at Citibank?

20 A. It was a director of national accounts.

21 Q. And what were your general duties and
22 responsibilities in that role?

23 A. They were similar to Discover Card in that
24 I worked with major merchant accounts who took or
25 accepted the Diners Club card as a T&E product.

1 Q. Did that job also involve mass mailing?

2 A. Later on at Citibank, yes, but not in that
3 particular job.

4 Q. Did you have the same title the whole time
5 you were at Discover?

6 A. At Discover, no.

7 Q. I apologize. At Citibank?

8 A. No.

9 Q. What was your next role after director of
10 national accounts?

11 A. I was moved to vice president and managed
12 the same type of role, national accounts.

13 Q. How long did you have that role?

14 A. It was probably about three years. I'm
15 just trying to think of the chronological timing on
16 that.

17 Q. And was that the last position you had at
18 Citibank?

19 A. No. I went on to work for CitiFinancial
20 Services, which was on the banking side.

21 Q. And what did you do for CitiFinancial
22 Services?

23 A. I worked with large retail accounts in a
24 similar fashion where we managed their extended
25 financing products.

1 Q. Was this a marketing role or something
2 different?

3 A. It was a marketing role. It was in
4 marketing, but it was dealing with major accounts.

5 Q. And how did you market to those major
6 accounts?

7 A. These were more meetings and I'll call
8 them enterprise conversations, so it was direct
9 conversation.

10 Q. Did you have any other roles at Citibank?

11 A. My final role was in Citi cross-sell as a
12 senior vice president.

13 Q. And what were your duties and
14 responsibilities in that role?

15 A. I worked with various divisions of
16 Citibank on financial products, royalty programs for
17 major accounts.

18 Q. And how long did you have that position?

19 A. That would probably be two and a half
20 years.

21 Q. Any other positions at Citibank that we
22 haven't discussed so far?

23 A. Special projects that came up, but, no,
24 those were -- those were the major roles.

25 Q. And what was your next job after Citibank?

1 A. After Citibank, I left and came to Time
2 Warner Cable -- went to Time Warner Cable.

3 Q. And when did was that?

4 A. It was in the summer of 2009, June or
5 July. I'm trying to remember the exact date.

6 Q. And what was your first role with Time
7 Warner?

8 A. Vice president of marketing in New York
9 City.

10 Q. How long did you have that role?

11 A. Just over a year.

12 Q. And what were your general duties and
13 responsibilities in that role?

14 A. Acquiring and retaining new customers for
15 Time Warner Cable.

16 Q. Was that also a marketing job?

17 A. Yes.

18 Q. Did that job entail working with direct
19 mail advertisement?

20 A. Yes.

21 Q. And what was your next position after
22 that?

23 A. It was as regional vice president of the
24 west division, at Time Warner Cable.

25 Q. And how long did you have that?

1 A. That was probably just a year and then I
2 was promoted.

3 Q. Okay. What were your duties and
4 responsibilities as regional vice president of the
5 west division?

6 A. Very similar to New York, the same
7 acquisition and retention of customers, just for the
8 west region, so it was a larger area.

9 Q. And you said you then got promoted again?

10 A. Yes, to chief marketing and sales officer.

11 Q. And when was that, approximately?

12 A. I believe it was the summer of 2011.

13 Q. And how did your duties change in that
14 role?

15 A. I added the sales divisions to my job.

16 Q. Can you tell me a little bit what that
17 means? What are the sales divisions?

18 A. Inbound call centers, direct field sales,
19 outbound telemarketing.

20 Q. And how long were you in that position?

21 A. I should have brought my résumé.

22 About three years.

23 Q. And what was your next role after that?

24 A. Head of new customer acquisition for Time
25 Warner Cable. It was a senior vice president job.

1 Q. And approximately when did that start?

2 A. That started 2013/'14. It was at the end
3 of the year.

4 Q. And how did your duties change in that
5 position?

6 A. I no longer managed the sales organization
7 and I was responsible for all new customer
8 acquisition.

9 Q. And did you subsequently get a different
10 title after that?

11 A. Senior vice president of acquisition
12 marketing.

13 Q. And when did that occur?

14 A. That was the 2013/'14.

15 Q. I apologize. Bad question by me.

16 A. Sure.

17 Q. After the senior VP role, did you then
18 move on to another role?

19 A. No. I left Time Warner Cable.

20 Q. And when did you leave?

21 A. I left April of 2015.

22 Q. And what was your next job after that?

23 A. I worked for Rogers Communications as the
24 EVP of cable.

25 Q. And what were your general job duties in

1 that role?

2 A. I oversaw the product team for the
3 company, all new products and existing products.
4 And I ran the cable operations for Rogers.

5 Q. How long did you have that position?

6 A. About three and a half years.

7 Q. And then what was your next role after
8 that?

9 A. I came to Charter.

10 Q. Do you remember the date, approximately,
11 when you came to Charter?

12 A. September 28 of 2018.

13 Q. And what was your title when you came to
14 Charter?

15 A. Head of consumer marketing and SMB,
16 small/medium business.

17 Q. Is that the position you hold today?

18 A. Yes.

19 Q. And what are your general duties and
20 responsibilities at Charter?

21 A. So I'm responsible for brand creative, the
22 digital marketing group, and marketing operations.

23 Q. And who do you -- you do you directly
24 report to?

25 A. Jon -- Jonathan Hargis.

1 Q. And who's Mr. Hargis?

2 A. He is the chief marketing officer and EVP
3 of Charter.

4 Q. Is there anybody else you report to?

5 A. Well, I mean, his leaders, technically.

6 Q. And do you have a staff of people working
7 for you?

8 A. Yes.

9 Q. How many people, approximately?

10 A. Approximately 230.

11 Q. And are those 230 people split between
12 digital marketing and direct mail marketing?

13 A. Digital marketing, marketing operations,
14 and brand creative.

15 Q. Break that down little bit.

16 What exactly does "digital marketing" mean
17 at Charter?

18 A. Digital marketing is the acquisition by
19 flow and existing customer by flow where consumers
20 can purchase products and services.

21 Q. So by "digital," does that mean online?

22 A. Yes.

23 Q. And what does "marketing operations" mean?

24 A. Marketing operations manages the tactics
25 that Charter employs to acquire or communicate to

1 existing customers.

2 Q. And how is that communication generally
3 done?

4 A. Direct mail, emails.

5 Q. Do you know how many people work in the --
6 work under you in the marketing operations division?

7 A. I would say it's approximately 80. I
8 don't actually have the exact numbers.

9 Q. And I think you also mentioned brand
10 creative; is that correct?

11 A. Correct.

12 Q. What does "brand creative" refer to?

13 A. Anything that -- any television ads,
14 radio, direct mail, email, brand guidelines.

15 Q. Does Charter use outside consultants for
16 any marketing?

17 A. No.

18 Q. So Charter doesn't ever use any ad
19 agencies?

20 A. We use ad agencies. When you said
21 "consultants," I was --

22 Q. Yep. Yeah.

23 A. -- thinking of the category.

24 Q. Exactly.

25 So Charter does sometimes use ad agencies;

1 is that correct?

2 A. Yes.

3 Q. What ad agencies does Charter use?

4 A. We have about eight different ones. I
5 don't actually have all of the names of the
6 agencies. Deloitte is -- or I'm sorry. Deutsch,
7 RAPP. I'm trying to think, because I don't have the
8 list.

9 Q. Understood.

10 And when Charter does utilize ad agencies,
11 what part of marketing do they -- strike that. Bad
12 question.

13 We talked about digital, marketing
14 operations, and brand creation, right?

15 A. Yes.

16 Q. Is there specific categories amongst those
17 three that Charter sometimes uses ad agencies for?

18 A. Yes. The agencies we employ typically
19 will have a specialty: Television, advertising,
20 radio. We tend to do our own radio internal. We
21 have an internal creative team as well.

22 Q. Does Charter ever employee ad agencies to
23 work on direct mailers?

24 A. Yes.

25 Q. Do you recall which ad agencies Charter

1 uses for that or is it all of them?

2 A. Typically it's RAPP, but we do use others.

3 Q. Sorry. What's RAPP? Can you spell that?

4 A. R-A-P-P, RAPP.

5 Q. Are there some instances where Charter
6 will do the mailing all in-house and not use an
7 outside agency?

8 A. Not to my knowledge.

9 Q. I'm going to show you a document -- I
10 neglected to say that earlier. I'm going to show
11 you a bunch of documents today.

12 A. Okay.

13 Q. They're going to be marked and attached at
14 the transcript at the end.

15 A. Okay.

16 Q. So you'll get a chance to review them at
17 the end.

18 Many times -- these are fairly short
19 documents, because they're going to be emails. But
20 sometimes they're going to be longer. I want you to
21 take all the time you need to review them before you
22 answer the question, if you'd like to. That said,
23 there will be some times when, even though it's a
24 longer document, I just want to point you to one
25 specific line and ask you about it, to move things

1 along. But nonetheless, if you ever want to review
2 the whole document before answering your question,
3 please feel free to do so. Okay?

4 A. Thank you.

5 MR. LARSEN: Let's mark this as, I guess,
6 Exhibit No. 1.

7 (Charter Exhibit 1 was received and marked
8 for identification, as of this date.)

9 BY MR. LARSEN:

10 Q. Ms. Atkinson, have you seen this document
11 marked as Exhibit No. 1 before?

12 A. (Witness reviews document.) Yes.

13 Q. When did you first see this document?

14 A. Monday of this week.

15 Q. Have you discussed this document with
16 anyone other than your attorneys?

17 A. No.

18 Q. So is it your understanding that you have
19 been designated to be the person who is responsible
20 for answering questions on the categories set forth
21 in this document?

22 A. Yes.

23 Q. Is it your understanding that also someone
24 else is going to testify as to some of these
25 categories?

1 A. Yes.

2 Q. Let's look at Category No. 1. I'm on --
3 I'm on page 3 of this document.

4 A. Uh-huh. (Witness complies.)

5 Q. By the bottom, it says "Subject areas of
6 testimony."

7 A. Yes.

8 Q. Do you see that?

9 A. Yes.

10 Q. So No. 1 says "the decision by Charter to
11 launch the advertisements."

12 Adre you the witness who's designated to
13 answer questions on Topic No. 1 today?

14 A. Yes.

15 Q. Same question on No. 2, are you the
16 witness designated to answer questions on No. 2
17 today?

18 A. Yes.

19 Q. Turn to the next page, please.

20 A. (Witness complies.)

21 Q. Category No. 3, are you the witness
22 designated to respond to questions on Category No. 3
23 today?

24 A. No.

25 MR. NEPPLE: Counsel, she may have some

1 knowledge, so I would make sure to ask
2 questions.

3 MR. LARSEN: Okay.

4 MR. NEPPLE: But we also have another
5 witness, so she has partial knowledge.

6 BY MR. LARSEN:

7 Q. Okay. Let's look at the next one,
8 Category No. 4. Do you see that?

9 A. Yes.

10 Q. Are you the witness designated to answer
11 questions on Category No. 4 today?

12 A. Probably the same as the last one, partial
13 knowledge.

14 Q. What about Category No. 5?

15 A. Yes.

16 Q. Category No. 6?

17 A. I'm not sure of the question. "Charter's
18 internal communications referring to Windstream."
19 Yes.

20 Q. And what about Category No. 7?

21 A. I would have partial knowledge.

22 Q. What about Category No. 8?

23 A. I would have partial knowledge.

24 Q. What about Category No. 9?

25 A. I would be able to answer, yes.

1 Q. And what about Category No. 10?

2 A. Yes.

3 MR. NEPPLE: Counsel, just to save you
4 time, the other witness will handle 11 and 12.

5 MR. LARSEN: Okay. Thank you.

6 MR. NEPPLE: Sure.

7 THE COURT REPORTER: You said "the other
8 witness"?

9 MR. NEPPLE: The other witness.

10 THE COURT REPORTER: Okay.

11 BY MR. LARSEN:

12 Q. I'm going to refer you back to Category
13 No. 1 --

14 A. Yes.

15 Q. -- which is the --

16 MR. LARSEN: Bless you.

17 BY MR. LARSEN:

18 Q. -- which is the decision by Charter to
19 launch the advertisements.

20 A. Yes.

21 Q. Do you see that?

22 Was there a specific person who made the
23 ultimate decision to launch the advertisements at
24 issue in this case?

25 A. Yes. That would have been me.

1 Q. And do you recall when that decision was
2 made?

3 A. Late February or early March. I don't
4 have the exact date.

5 Q. And that's in 2019?

6 A. Yes.

7 Q. Did someone above you have to sign off on
8 that decision before it was done?

9 A. No.

10 Q. And what were the circumstances that led
11 you to launch the advertisements?

12 A. Well, we have mailed -- in our footprint,
13 we do mailings constantly for competitive switch
14 messaging. So it wasn't any particular trigger
15 other than a competitive switch message.

16 Q. And can you explain to me what you mean by
17 "competitive switch message"?

18 A. The homes that we pass with the capability
19 to have our services, we market -- we call those
20 "prospects." And we do about 60 million pieces of
21 mail a month to those homes that do not have a
22 relationship with us, those customers.

23 Q. Is that an ongoing thing that happens
24 every month?

25 A. Yes.

1 Q. And do you have a standard mailer that you
2 use or does that change often?

3 A. We have standardized templates that we've
4 optimized for pricing and production. And we also
5 have custom templates that we will put into market
6 to try out performance, test performance against
7 control packages.

8 Q. And was this campaign that was directed
9 towards Windstream customers, was that one of the
10 standardized templates or a custom template?

11 A. It was actually a standardized template.
12 We've used it against Allo and Google. I can't
13 really speak to any time before, because I started
14 in September, so...

15 Q. Do you recall the reason why you decided
16 to do this particular ad campaign?

17 A. We always look for competitive advantages,
18 and anytime there's an opportunity to have a new
19 message, we will do a mail campaign.

20 Q. And was there a particular opportunity you
21 recall in this case?

22 A. In this case, there is the uncertainty of
23 a bankruptcy.

24 Q. Do you recall when you learned about the
25 uncertainty of a bankruptcy?

1 A. I think it was again late February or
2 early March. I don't have the exact date. I can't
3 recall.

4 Q. Do you recall how you learned about this?

5 A. I think it was in a competitive update
6 meeting that we had.

7 Q. What's a competitive update meeting?

8 A. It's just a meeting that we discuss
9 package changing, pricing changing, channels being
10 dropped, contracts being added. It basically is a
11 internal review of our entire footprint and all
12 competitors in the footprint.

13 Q. How often do you have these meetings?

14 A. Once a month.

15 Q. So is it your recollection that in one of
16 these competitive update meetings, that's where you
17 first learned about Windstream's bankruptcy?

18 A. I believe that is where I learned, yes.

19 Q. And what do you recall learning in this
20 meeting?

21 A. That there was uncertainty because they
22 have gone into bankruptcy.

23 Q. Who led the meeting?

24 A. It's done by one of my brand creative
25 folks in the brand team that I manage.

1 Q. And who attends these meetings?

2 A. The creative teams, marketing operations
3 team, pretty much my organization, as well as the
4 pricing group that sits outside of my team.

5 Q. So approximately how many people were at
6 this meeting?

7 A. About 30.

8 Q. Is this a face-to-face in-person meeting
9 or is it done online?

10 A. It's face to face.

11 Q. Can you remember specifically what was
12 said about Windstream's bankruptcy in this meeting?

13 A. Just that they had declared bankruptcy.

14 Q. I think you mentioned word "uncertainty."
15 Did somebody use that word in this
16 meeting?

17 A. I don't recall.

18 Q. Other than this meeting, did you do any
19 independent research about what was going on with
20 the bankruptcy?

21 A. No.

22 Q. Did you ever ask anybody to do that
23 research on your behalf and report back to you?

24 A. No.

25 Q. Have you ever at any time read

1 Windstream's 10-K that was put out this year?

2 A. No.

3 Q. Again, did you ever ask anyone to read
4 that and report back to you?

5 A. No.

6 Q. Have you ever read any of the documents
7 that have been filed in Windstream's bankruptcy
8 case?

9 A. Outside of this one, no.

10 Q. Again, did you ever ask anyone to read any
11 of those documents and report back to you?

12 A. No.

13 Q. Prior to these advertisements that we're
14 talking about today, do you recall any other
15 targeted mail campaign that specifically discussed
16 Windstream?

17 A. Well, going back to the 60 million pieces
18 of mail, they would have been part of all of those
19 overall discussions for the segments that we target.
20 Anybody who has another service outside of Charter
21 Spectrum would have been part of that effort. So
22 there are ongoing efforts in terms of our monthly
23 mail campaign, 60 million pieces of mail. We hit
24 consumers' house- -- so we mail to consumers'
25 households about every two weeks.

1 Q. And do those -- again, prior to these
2 ones, do those advertisements say the word
3 "Windstream" in them?

4 A. I don't actually know.

5 Q. Do you know who would know?

6 A. One of my creative directors.

7 Q. And who would that be?

8 A. Her name is Allison Novasel.

9 Q. Does your department keep copies of all
10 the previous mailers that it sent out before?

11 A. Yes.

12 Q. Other than Windstream, are you aware: Of
13 those previous mailers, do they name competitors
14 specifically or are they more general just about
15 Charter?

16 A. We do both. We do both.

17 Q. And what are the circumstances where you
18 would choose to name a competitor directly in your
19 ads?

20 A. When we have a competitive advantage,
21 contracts or no contracts. We have no contracts.
22 We would call them out by name, AT&T, Verizon, Allo,
23 others.

24 Q. Have you ever worked on a marketing
25 campaign prior to this one that referred to a

1 competitor who was in bankruptcy?

2 A. Not that I recall.

3 Q. Do you know if Charter has ever done a
4 campaign prior to you being there that refers to
5 another -- that refers to a competitor who was in
6 bankruptcy?

7 A. Not that I know of.

8 Q. The campaign at issue here, did you
9 hire -- did Charter hire an outside advertising
10 agency to work on it?

11 A. Yes, it was our agency RAPP.

12 Q. And what was RAPP's role in this campaign?

13 A. They work on just the creative copy, the
14 design within the templates that we utilize, and
15 they present that to my team with options.

16 Q. And is there somebody on your team that
17 directly works with RAPP or is that you? How does
18 that work?

19 A. Allison Novasel, that I mentioned --

20 Q. Uh-huh.

21 A. -- and her staff specifically manage
22 direct mail and switch campaigns.

23 MR. LARSEN: All right. Let's mark this
24 as Exhibit No. 2.

25 (Charter Exhibit 2 was received and marked

1 for identification, as of this date.)

2 MR. NEPPLE: Madam Court Reporter, could
3 you make sure to mark this attorneys' eyes
4 only, please?

5 BY MR. LARSEN:

6 Q. All right. Exhibit No. 2 is a document
7 Bates-stamped Charter 540 through 543.

8 Ms. Atkinson, have you seen this document
9 before today?

10 A. (Witness reviews document.)

11 Yes, I just didn't recall the forwarded
12 email. I have seen the part that involves my
13 message, or my note.

14 Q. Can you point me to what -- so you've
15 seen -- if you turn to page 541, the second page?

16 A. The February 22.

17 Q. So you've seen from there down, but not
18 from there up; is that correct?

19 A. No, from there -- yes.

20 Q. Okay. Look at the very first email, all
21 the way to the back. Emails go back to front. The
22 first email is from someone named Brian Libretti.

23 Do you see that?

24 A. Yes.

25 Q. Who is Brian Libretti?

1 A. The manager of market intelligence.

2 Q. And do you work with him directly?

3 A. No.

4 Q. Do you know what his job duties entail?

5 A. He works in our competitive intelligence
6 team.

7 Q. Do you have any understanding of what he
8 does in that role?

9 A. He observes any -- in this particular
10 case, he's specific about Windstream, but I don't
11 know how broad his accountabilities are for other
12 competitors.

13 Q. And if you look at the next email in the
14 thread reading up, it's from David Andreski to
15 Jonathan Hargis.

16 Do you see that?

17 A. Yes.

18 Q. Do you know who David Andreski is?

19 A. Yes. He's head of our pricing and
20 competitive intelligence team.

21 Q. And you previously mentioned Mr. Hargis.

22 That's who you report to; is that correct?

23 A. Yes.

24 Q. And what's his role?

25 A. EV- -- or he's chief marketing office- --

1 marketing and sales officer and EVP.

2 Q. And then the next email up on

3 February 22 --

4 A. Uh-huh.

5 Q. -- at 1:18, you're one of the recipients
6 of that email; is that correct?

7 A. Yes.

8 Q. And then your response says, "Okay, folks.
9 Let's look at these markets and how we can push on
10 switch messaging in these areas similar to Google
11 efforts. Thanks."

12 Do you see that?

13 A. Yes.

14 Q. What are you -- what are you referring to
15 with your reference to "switch messaging"?

16 A. Meaning switch to Spectrum today and take
17 action. And we had just dropped Google mail for a
18 similar situation. And prior to that, Allo, the
19 other telecom provider, had done switch messaging
20 with them.

21 Q. So what were the circumstances from the --
22 in the Google matter?

23 A. Google had pulled out of Louisville and
24 basically said they were shutting down services.
25 And so we put mail into the market that said you are

1 losing Google service as of April 15 and switch
2 today.

3 Q. And what about Allo?

4 A. Allo is the same type of switch message,
5 but it was in a more general just switch today to
6 Spectrum.

7 Q. So had Google specifically said, you know,
8 we're leaving the area, we're no longer providing
9 the service?

10 A. Yes.

11 Q. And had Allo specifically said that?

12 A. No, Allo was just a competitive switch
13 message. It was a similar template.

14 Q. Were there different templates in the
15 Google and Allo matters that reflected each specific
16 circumstance?

17 A. There would have been some copy that was
18 referencing them by name to switch.

19 Q. Can you explain? What does that mean?

20 A. It would say, Allo customer, switch to
21 Spectrum. Or, Google customer, switch to Spectrum.
22 In that case, your services are going to be
23 discontinued, and they gave a specific date.

24 Q. So would the Google one have more specific
25 information than the Allo one?

1 A. Yes. It would have said specifically
2 Google is leaving the market and shutting down
3 services and switch before April 15. That was the
4 date that they gave.

5 Q. So on February 22, when you sent this
6 email and you said "similar to Google efforts" --

7 A. Uh-huh.

8 Q. -- in your mind, did you think Windstream
9 was leaving like Google left?

10 A. No, it was regarding the template.

11 Q. Just so I understand, when you say
12 "similar to Google efforts," that "similar" means
13 the template of the advertisement?

14 A. Yes, the creative template.

15 Q. Can you explain to me: What exactly do
16 you mean by "creative template," for somebody who's
17 not a marketing person?

18 A. We'll have standard templates which allow
19 us to get to market faster than designing a custom
20 template.

21 Q. So by using a standard template, you can
22 get the mailers out --

23 A. Quicker.

24 Q. -- quicker?

25 A. Yes.

1 MR. LARSEN: Mark this Exhibit No. 3.

2 (Charter Exhibit 3 was received and marked
3 for identification, as of this date.)

4 MR. NEPPLE: Madam Court Reporter, same
5 instruction: Mark attorneys' eyes only,
6 please.

7 BY MR. LARSEN:

8 Q. All right. Exhibit No. 3 is another email
9 produced. Bates-stamped on this is Charter 626 to
10 627.

11 A. (Witness reviews document.)

12 Q. Ms. Atkinson, have you seen this document
13 before today?

14 A. I saw it with my attorneys on Monday.

15 Q. And had you not seen it before then?

16 A. I had not.

17 Q. Look at the first email in the thread.
18 Do you know the name of the person that
19 sent that email?

20 A. No.

21 Q. Okay. Do you know any of the people on
22 the To or CC list?

23 A. I know Amy Kim, Jennifer Ingram. And I do
24 not know the others. Amy and Jennifer report to me.

25 Q. And what is -- what is Amy's position?

1 A. Amy is either a director or senior
2 director who reports to Jennifer Ingram, who is the
3 vice president of SMB marketing, small/medium
4 business.

5 Q. If you look at the second email on the
6 thread on -- from Jennifer Ingram, on February 25 --
7 do you see that?

8 A. Uh-huh, yes.

9 Q. It says, "Hi, Chris. I understand that
10 you and Amy connected earlier today. Kelly Atkinson
11 has asked the marketing team to develop a plan to
12 leverage the situation." And it goes on.

13 Is that accurate, that you asked the
14 marketing team to develop a plan to leverage the
15 situation?

16 A. Yes. It's the Exhibit 2 where I state
17 let's look at these markets and see how we can push
18 on switch messaging similar to Google. Yes, that
19 was my ask.

20 Q. Okay. Did you ask in any other way in
21 addition to the email that was Exhibit No. 2?

22 A. No.

23 Q. So there wasn't a phone call or an
24 in-person meeting?

25 A. No.

1 Q. If you read further, it says, "Kelly
2 Atkinson has asked the marketing team to develop a
3 plan to leverage the situation, so we started
4 thinking about this in partnership with the
5 residential team."

6 Do you know what "the residential team"
7 refers to?

8 A. Yes. It is the general market efforts
9 versus small- and medium-sized business, which is
10 business owners that take Charter services.

11 Q. So in your role, do you -- are you
12 responsible for the residential side as well as the
13 larger --

14 A. Yes.

15 Q. -- customer side?

16 A. Yes.

17 Q. So third sentence here says, "In addition,
18 we're exploring SMB-specific messages."

19 Do you know what "SMB" refers to?

20 A. Small/medium business. Small and medium
21 business.

22 Q. And that's also something that you're
23 responsible for?

24 A. Yes.

25 Q. So it says, "In addition, we're exploring

1 SMB-specific messages (e.g., talking points for
2 sales teams.)"

3 Do you know what "sales teams" refers to
4 there?

5 A. It would be any agent that deals directly
6 with a customer.

7 Q. And when would an agent deal directly with
8 a customer?

9 A. When a customer is signing up for services
10 or disconnecting services or they need technical
11 assistance.

12 Q. So is this an agent on the phone when a
13 customer calls in?

14 A. It could be, yes.

15 Q. What else could it be?

16 A. It could be our direct sales team,
17 outbound telemarketing, so again on the phone, but a
18 call out versus a call in.

19 Q. So part of your marketing -- part of
20 Charter's marketing efforts includes phone calls
21 directly to potential customers?

22 A. Yes, outbound telemarketing.

23 Q. And was that subsequently utilized in this
24 case?

25 A. I don't recall.

1 Q. Do you know who would recall or who could
2 check and see if that happened in this case?

3 A. It would be our head of call centers.

4 Q. And who would that be?

5 A. Christian Riaz [sic].

6 Q. And I think you mentioned -- are there
7 some in-person people that are also part of the
8 sales team?

9 A. The direct field sales team.

10 Q. Can you explain to me what the direct
11 field sales team does?

12 A. They do door knocking -- we call it door
13 knocking -- with customers or prospects, prospective
14 customers.

15 Q. And was that strategy utilized in this
16 advertising campaign?

17 A. It wasn't at my direction, but as I
18 understand it, yes.

19 Q. You say it wasn't at your direction.

20 Do you know who is responsible for that
21 part of this?

22 A. Keith Dardis.

23 Q. Did you coordinate with Mr. Dardis on the
24 messaging that would be used by the direct field
25 sales team?

1 A. No, I was unaware of this.

2 Q. In general, when you do an advertising
3 campaign -- I'm saying in general, not this specific
4 one -- do you normally coordinate with the direct
5 field sales team?

6 A. No.

7 Q. Has there been a time where that's ever
8 occurred, coordination between those two?

9 MR. NEPPLE: Object to form.

10 Go ahead.

11 A. The one that I do recall or I do know of
12 is Google, because they were leaving the market.

13 BY MR. LARSEN:

14 Q. And in that Google matter, did you work
15 with Mr. Dardis' team directly on what the -- what
16 the messaging would be?

17 A. No.

18 Q. In that Google matter, did you ever
19 subsequently learn what the messaging on the direct
20 field sales team was?

21 A. Just that they were leaving the market.
22 That was pretty common knowledge. We have field
23 sales reps, thousands, out in the market all the
24 time, so...

25 Q. Do you know: Do they take fliers with

1 them?

2 A. They have, but I don't know if they took
3 it in this case -- or in the Google case.

4 Q. And the Google case, did you ever review
5 those flyers as part of working on that campaign?

6 A. No.

7 Q. Do you know who creates the fliers for the
8 direct field sales team?

9 A. It would have been someone in my team that
10 created fliers, because, again, the brand or
11 anything that's tangible that would be in front of a
12 customer would come from my team.

13 Q. And there's never any need to coordinate
14 the direct sales part with the mailing part to make
15 sure you're not going crossways or saying two
16 different things?

17 A. We don't coordinate with them directly,
18 but if there is a creative mail that's done, it
19 would typically be leveraged for any fliers that
20 would be provided.

21 Q. Can you explain that? What do you mean
22 it's "leveraged"?

23 A. The copy. When the copy is written, it
24 would be used so that, again, you have a standard
25 template and it's consistent.

1 Q. So your -- okay. You said "copy."

2 So your understanding, the words on the
3 flier are similar to the words on the direct mail
4 advertisements?

5 A. They could be. They could be.

6 Q. And sometimes they're not.

7 Is that your understanding?

8 A. Correct.

9 MR. LARSEN: Want to take five minutes off
10 the record?

11 THE VIDEOGRAPHER: Stand by. The time is
12 10:06 a.m. on May 1, 2019. This is the end of
13 Tape No. 1.

14 (Recess was taken.)

15 THE VIDEOGRAPHER: The time is 10:15 a.m.
16 on May 1, 2019. This is Media Unit No. 2.
17 Back on the record.

18 MR. LARSEN: Let's mark this next document
19 as Exhibit No. 4.

20 (Charter Exhibit 4 was received and marked
21 for identification, as of this date.)

22 BY MR. LARSEN:

23 Q. All right.

24 MR. NEPPLE: Sorry.

25 AEO again, Madam Court Reporter, please.

1 BY MR. LARSEN:

2 Q. Exhibit 4 is an email Bates-stamped
3 Charter 652 through 654.

4 A. (Witness reviews document.)

5 Q. Ms. Atkinson, have you seen this document
6 before?

7 A. I have not.

8 Q. Look at the first email in the thread.
9 It's from someone named Christopher Dalton.

10 Do you see that?

11 A. On February 25?

12 Q. Yes.

13 A. Yes, I see that.

14 Q. Do you know who Christopher Dalton is?

15 A. I do not. I know that he works for the
16 company. I've seen his name, but I do not know him.

17 Q. You don't work with him directly?

18 A. No.

19 Q. The next email in the thread, on
20 February 26, at 5:41 from Jason Bordeaux?

21 A. Yes, I would say the same thing. I know
22 that he works for the company, but I do not know
23 him.

24 Q. Do you see on this page, in Mr. Bordeaux's
25 email and in the response, the acronym "BAU"?

1 A. Uh-huh. Yes.

2 Q. Does that have any meaning to you?

3 A. "Business as usual."

4 Q. Did you have an understanding at this time
5 that Windstream would be operating business as
6 usual?

7 A. No.

8 Q. Is that something that was ever discussed
9 when putting together the advertising that's at
10 issue in this case?

11 A. No.

12 Q. So the last email on this thread from
13 someone named Lisa Mitchell, on the first page.

14 A. Yes.

15 Q. Do you know who Lisa Mitchell is?

16 A. I do not. I know she works for the
17 company, but I do not know her.

18 Q. Looks like, in her signature block, it
19 says "director of sales planning operations."

20 Do you know what "sales planning
21 operations" refers to?

22 A. I don't.

23 Q. That's not part of your team that you work
24 with?

25 A. No.

1 Q. Look at the last email, again on the first
2 page here, from Lisa Mitchell to -- looks like three
3 people.

4 Jacquelyn Dobrich, do you know who that
5 is?

6 A. I do not. Same statement: She works for
7 the company, but I don't know her.

8 Q. How about Keven Clifton?

9 A. I do not know him either.

10 Q. And the CC line says "Scott Grotz."
11 Do you know him?

12 A. No, I do not.

13 MR. LARSEN: Let's mark this Exhibit
14 No. 5.

15 (Charter Exhibit 5 was received and marked
16 for identification, as of this date.)

17 BY MR. LARSEN:

18 Q. Exhibit No. 5 is another email thread,
19 Bates-stamped Charter 677 through 678.

20 MR. NEPPLE: Mark that AEO, Counsel,
21 please.

22 BY MR. LARSEN:

23 Q. Ms. Atkinson, have you seen this document
24 before?

25 A. (Witness reviews document.) I have not.

1 Q. Do you know who Amy Kantrowitz is?

2 A. Yes. She works for -- in my team, for my
3 head of creative, brand creative.

4 Q. If you look at Amy's first email. Look at
5 the second page of this exhibit, 678. It says,
6 "Creative: Messaging points? Anything approved?"

7 Do you know what that refers to, whether
8 something was approved?

9 MR. NEPPLE: Object to form.

10 Go ahead.

11 A. She's looking to see if there was a
12 template or copy that had been created so that she
13 could be consistent. That's how I would read that.
14 And she references "Please send DM or other pieces
15 created."

16 BY MR. LARSEN:

17 Q. Do you have an understanding of what "DM"
18 refers to in this context?

19 A. Direct mail.

20 Q. Do you know who would be the person that
21 would approve these things?

22 A. Would approve all of these things or
23 direct mail?

24 Q. Good clarification. Let's start with
25 direct mail.

1 Who would approve that?

2 A. Direct mail would be Allison Novasel, that
3 I mentioned.

4 Q. Uh-huh.

5 A. She heads up the creative for direct mail.

6 Q. Then, once Allison approves, do you have
7 to approve it before it finally goes out?

8 A. Not necessarily, because we use very
9 similar templates, as I mentioned. So I can't
10 possibly approve 60 million pieces of mail, and we
11 have hundreds of variations.

12 Q. In this particular case, on the
13 advertisements referencing Windstream and the
14 bankruptcy, did you approve it?

15 A. I saw the creative when they were
16 designing it, because it referenced this and they
17 wanted to show it to me.

18 Q. When do you recall when that happened?

19 A. Late February, beginning -- I think it was
20 beginning of March. It was that last week or two in
21 February.

22 Q. And when it was shown to you, did you make
23 any changes to it?

24 A. No.

25 Q. Did you ask any questions about it?

1 A. No. It's our normal cadence. The only
2 reason that it was shown to me was because it was
3 the Google template and Allo. We had used that same
4 template before.

5 Q. Were there specific references to the
6 bankruptcy that would not have been in the Google or
7 Allo templates?

8 A. Yes.

9 Q. And you didn't make any changes to that?

10 A. No.

11 Q. Was there anybody else besides you who
12 would have seen it before it finally went out?

13 A. Joe Leonard, who is my senior vice
14 president of brand creative. Allison works for him.

15 Q. So would Allison have shown it to Joe and
16 then Joe shown it to you? Is that how it would
17 work?

18 A. Yes.

19 Q. And you did not have any obligation to
20 show it to anybody that you report to; is that
21 correct?

22 A. Correct. Again, we do 60 million pieces
23 of mail a month with hundreds of variations.

24 Q. If you look at Ms. Novasel's response on
25 February 28, middle of the first page here.

1 Do you see that?

2 A. Yes.

3 Q. She's got some bullet points. I'm looking
4 at the third bullet, which says, "The only input re:
5 messaging is that, while in tone it should be like
6 Google, we can't say things like 'abandoned' or
7 'going away.' Just because they declared Chapter 11
8 doesn't mean they won't re-org and stay in
9 business."

10 Do you see that?

11 A. Yes.

12 Q. Did you ever have any discussions with
13 Allison about this topic?

14 A. No.

15 Q. Do you have any idea where she got that
16 information?

17 MR. NEPPLE: To the extent that she may
18 have gotten it from legal, do not include that
19 in your answer, if you can answer without
20 legal -- disclosing legal advice.

21 A. I really do not know where she came up
22 with the phrasing.

23 BY MR. LARSEN:

24 Q. Have you worked on any other campaigns
25 where you got a message like that, that you can't

1 use certain words or certain phrases?

2 A. We always operate in a factual way, with
3 clarity. And when we can say a competitor's name,
4 we do, to show an advantage that we may have, again,
5 contracts/no contracts.

6 Q. Have you ever worked on an advertising
7 campaign where something was prepared and before it
8 went out, somebody made a change that says, oh, hey,
9 we can't say that, that's not factually correct?

10 A. Yes.

11 Q. And have you personally been the person
12 that has ever said, hey, we can't say that, we need
13 to change this?

14 A. No.

15 Q. What is an instance where you recall that
16 something was changed because it wasn't factually
17 correct?

18 A. I actually don't -- I don't deal with the
19 attorneys.

20 MR. NEPPLE: Well, object. To the extent
21 it deals with anything coming from legal, do
22 not disclose that. If you have any other
23 responsive information, go ahead.

24 BY MR. LARSEN:

25 Q. Let me -- let me caution you there too. I

1 don't want any attorney/client communications.

2 A. Uh-huh.

3 Q. But nonetheless, I do think I'm entitled
4 to -- if you talked to an attorney, I think I'm
5 entitled to that information. What you said may be
6 privileged, but if you spoke to an attorney, I think
7 I'm entitled to that.

8 A. I hadn't -- I did not.

9 Q. Okay.

10 A. Since I've been at Charter, I have not.

11 Q. Do you recall anytime when just the
12 business side people decided, hey, we can't say
13 that?

14 A. Yes.

15 Q. Okay. And do you recall a specific
16 instance where that occurred?

17 A. No. It would -- it would come about
18 between the agency and the creative team where they
19 would make decisions on copy that would be included.

20 Q. So if I understand, the agency might --
21 the outside agency might propose something and then
22 your internal team would say, hey, we can't say
23 that, we need to make a change?

24 A. They would be able to make edits.

25 Q. And you recall times when that has

1 happened, but you can't recall any specifics?

2 A. Correct.

3 Q. Do I have that right? Okay.

4 A. I don't deal with the agency directly.

5 Q. And who would -- who is the person or
6 persons who would deal with the agency directly?

7 A. Allison Novasel and her team that does the
8 direct mail. And obviously there are other folks
9 that do radio and television, so they would deal
10 with them as well, with agencies.

11 Q. I'm back to this third bullet on Allison's
12 email of February 28. After the dash, where it says
13 "just because they declared Chapter 11 doesn't mean
14 they won't re-org and stay in business."

15 Do you see that?

16 A. Yes.

17 Q. Did you ever have any discussions with
18 Allison about this topic?

19 A. No.

20 Q. Did you ever have any discussions with
21 anybody about that topic?

22 A. Not about restructure, no.

23 Q. Did you ever have any discussions with
24 anyone about the fact that Windstream may stay in
25 business?

1 A. No.

2 Q. Look at the next bullet. Starts with "so
3 the goal is to create doubt."

4 See that?

5 A. Yes.

6 Q. Did you ever have any discussions with
7 Allison about that topic, that the goal of these
8 advertisements was to create doubt?

9 A. No.

10 Q. Did you ever have any discussions with
11 anybody about that topic?

12 A. When Joe brought the copy to me, he may
13 have said that, but my conversations were not with
14 Allison or the agency.

15 Q. When would you have had this conversation
16 with Joe about that?

17 A. Prior to the mail being printed.

18 Q. Do you recall: Was it face to face or on
19 the phone?

20 A. It was face to face.

21 Q. Do you recall any more details, like any
22 specific date when that conversation may have been
23 occurred?

24 A. It would have been after the February 28,
25 so probably the first week of March.

1 Q. Do you recall how that came about? Did
2 you take it to him or did he say, I want to talk to
3 you about this?

4 A. It was a random conversation passing in
5 the hallway. He knew that I had asked for a
6 competitive switch mail, and so his team was working
7 on it.

8 Q. And can you let me know what, if anything,
9 you recall about him saying in that conversation
10 about creating doubt?

11 A. I can't recall.

12 Q. Do you recall what you -- what you may
13 have said in that conversation about creating doubt?

14 A. I said nothing.

15 Q. Other than this conversation with Joe in
16 the hallway, do you recall any other conversations
17 with anyone about the goal of this mailing to be
18 creating doubt?

19 A. No.

20 MR. LARSEN: Let's mark this as Exhibit
21 No. 6.

22 MR. NEPPLE: Same instruction, AEO,
23 Ms. Court Reporter.

24 (Charter Exhibit 6 was received and marked
25 for identification, as of this date.)

1 BY MR. LARSEN:

2 Q. Exhibit 6 is another email string,
3 Bates-stamped Charter 682 through 685.

4 A. (Witness reviews document.)

5 Q. Ms. Atkinson, have you seen this email
6 string before?

7 A. I saw the -- from the part that David
8 Andreski sent to me. And, yes, I saw it in one of
9 the other strings. But I did not see the messages
10 that are the most recent from Keith or Scott. Where
11 my name is indicated, I saw that.

12 Q. You see Mr. Andreski's email to you and
13 some other people on February 22? It's on the
14 second page, 683.

15 A. Yes.

16 Q. The second line in this email says, "We
17 have seen them upgrading with fiber to many
18 competitive areas. The bankruptcy issue would slow
19 their expansion down."

20 Do you see that?

21 A. Yes.

22 Q. Did you have any discussions with
23 Mr. Andreski about this assertion that the
24 bankruptcy issue would slow their expansion down?

25 A. Nothing more than this email.

1 Q. Did you have discussions with anybody
2 about that --

3 A. No.

4 Q. -- statement?

5 A. No.

6 Q. Do you have personal -- do you have any
7 personal knowledge on whether the bankruptcy would
8 slow their expansion down?

9 A. No.

10 Q. And if you look to your response to that
11 email. It's next in the thread. It starts with,
12 "Very good. We will put together the plans."

13 Do you see that?

14 A. Yes.

15 Q. What does "put together the plans" refer
16 to?

17 A. The direct mail marketing plan. And it
18 was very similar to the Google activities that we
19 had just done.

20 Q. And if you look at Mr. Andreski's response
21 to your email on February 25 at 7:09 a.m.

22 Do you see that?

23 A. Yes.

24 Q. Do you understand what this chart in his
25 email refers to?

1 A. This chart shows where we have homes
2 passed in each of the markets where we would have
3 competitive overlap.

4 Q. And can you explain to me what "homes
5 passed" mean?

6 A. The homes that we have built services to
7 in our footprint.

8 Q. So does this chart refer to Windstream
9 customers that are in your potential area where they
10 could become your customers?

11 A. Yes.

12 Q. If you look at the next response in this
13 thread from Dardis, Keith Dardis to Scott Niles.
14 And I understand you're not copied here, but I'm
15 going to ask you a question about it.

16 In his kind of second line here,
17 Mr. Dardis says, "Want to address this with Jon
18 tomorrow along with mobile approach."

19 Do you know what "mobile approach" refers
20 to in this context?

21 MR. NEPPLE: Object to form.

22 Go ahead.

23 A. I do not.

24 BY MR. LARSEN:

25 Q. Have you ever heard the term "mobile

1 approach" while working at Charter?

2 A. We just launched mobile, so the term
3 "mobile approach" in general discussions about how
4 we would approach going to market. But I don't -- I
5 don't know what he is referencing here. His team
6 isn't selling mobile. To my knowledge, I should
7 say.

8 Q. Then, in that same sentence, it says,
9 "Want to address this with Jon tomorrow along with
10 mobile approach (FL), MTS selling Stream/Choice,
11 et cetera."

12 Do you know what "MTS" refers to here?

13 A. I don't.

14 Q. Do you know what "Stream/Choice" refers
15 to?

16 A. Yes. It is a -- the name of our video --
17 a video package that we sell. Two video packages:
18 Stream and Choice.

19 Q. Is that something that your marketing
20 efforts also works with?

21 A. Yes.

22 Q. Were there any advertisements in this case
23 relating to Windstream that had to do with the
24 Stream/Choice service?

25 A. I don't actually recall the offer that we

1 featured.

2 MR. LARSEN: Let's mark this as Exhibit 7.

3 MR. NEPPLE: Please mark it AEO, Ms. Court
4 Reporter.

5 (Charter Exhibit 7 was received and marked
6 for identification, as of this date.)

7 A. (Witness reviews document.)

8 BY MR. LARSEN:

9 Q. All right. Exhibit No. 7 is an email
10 exchange Bates-stamped Charter 936 through 941.

11 Ms. Atkinson, once you've had a chance to
12 look at this, can you tell me if you've seen this
13 document before?

14 A. I saw a portion of this, but not this
15 string. And this was with my attorney review.

16 Q. So did you only see this in preparing for
17 this deposition today, not months ago when it was
18 sent?

19 A. I never saw it before the -- before this
20 preparation.

21 Q. Thank you.

22 Look at the first email in the string --
23 it's on page 939 -- from Jennifer Smith.

24 Do you know who Jennifer Smith is?

25 A. Yes. She's on my team. She works for

1 Allison Novasel.

2 Q. She's sending it to someone named Erin
3 Mullane.

4 Do you know Erin Mullane?

5 A. I don't know her personally. She works
6 for RAPP, the creative agency.

7 Q. Does Peter Maguire also work for RAPP?

8 A. Yes. I don't know him either.

9 Q. People on the CC line, looks like they
10 work for Charter; is that correct?

11 A. Correct.

12 Q. Do you know any of those people?

13 A. Not personally, but they are in my team.

14 Q. Jennifer says, "Hi, Erin and Pete. Below
15 are details for Windstream versions in the 4/22 mail
16 drop."

17 Do you see that?

18 A. Yes.

19 Q. Does the term "mail drop" mean anything to
20 you in this context?

21 A. It means the date of April 22 where mail
22 would be expected to be in home.

23 Q. And "mail," are we talking about the
24 advertisements referring to Windstream?

25 A. Yes.

1 Q. Do you see where -- about four lines down,
2 where Jennifer Smith says, "Windstream has declared
3 Chapter 11, but doesn't mean they won't re-org to
4 stay in business"?

5 A. Yes.

6 Q. Did you have discussions with anybody on
7 your team about this concept?

8 A. No. Other than the bankruptcy
9 mentioned -- that I mentioned.

10 Q. If you turn to page 937. It's the second
11 page of this exhibit.

12 A. (Witness complies.)

13 Q. In the fifth bullet down, there's a
14 reference to "OE" and then the colon.

15 A. Yes.

16 Q. Do you see that?

17 Does O- -- the letters "OE" mean something
18 to you in this context?

19 A. Outer envelope.

20 Q. And then you can see the next bullet says,
21 "Look and feel of the OE has been aligned with the
22 Windstream website and current mail and market per
23 Compremedia."

24 A. Yes.

25 Q. Did you have any discussions with anybody

1 on your team about what the outer envelope was going
2 to look like?

3 A. No.

4 Q. Did you have any discussions with anybody
5 at RAPP on what the outer envelope was going to look
6 like?

7 A. No.

8 I should clarify when I say I have never
9 had any conversations. This is -- I would call it a
10 standard marketing practice, when you have
11 comparable services, to have them take on a look and
12 feel that's similar to increase the response rates
13 from customers or prospects.

14 Q. And why do you believe that would increase
15 the response rates?

16 A. It's similar to not putting a brand on the
17 outer envelope. It's -- people will open it to see
18 what's inside.

19 Q. Is it your understanding that people would
20 open it because they believed it was from
21 Windstream?

22 MR. NEPPLE: Object to form.

23 Go ahead.

24 A. Perhaps.

25

1 BY MR. LARSEN:

2 Q. Are there any other reasons why you would
3 think people would open it if the outer envelope had
4 that information on it?

5 MR. NEPPLE: Object to form.

6 Go ahead.

7 A. It's something that's been employed for a
8 long time and I actually have seen samples of
9 Windstream doing the same.

10 BY MR. LARSEN:

11 Q. In your experience working in the industry
12 for 20-plus years, have you ever had someone explain
13 to you, you know, this -- why this is the way we do
14 it, why we make the outer envelope, you know, look
15 like customers -- or look like competitors? Excuse
16 me.

17 A. It's -- again, when you have like
18 products, it's very similar to marketing in a
19 drugstore. Advil will be sitting beside a generic
20 brand which has similar colors and look and feel.
21 It's the same tactic that's employed for packaged
22 goods industry, credit cards, cable. So in my
23 credit card experience, we would have examples where
24 we would have our logo off of the outer envelope to
25 increase the likelihood that customers would look at

1 it, prospective customers.

2 Q. And you referred to your logo, that -- as
3 in the company that you're working for; is that
4 correct?

5 A. Yes.

6 Q. And here, this "OE" is not referring to
7 Charter's logo, but referring to Windstream's logo;
8 is that correct?

9 MR. NEPPLE: Object to form.

10 A. It's stated that.

11 BY MR. LARSEN:

12 Q. And so you discussed why you would put
13 your own logo on the outer envelope.

14 Why would you put a competitor's logo on
15 the outer envelope?

16 MR. NEPPLE: Object to form.

17 A. This wasn't a conversation that I had with
18 the team. And I see that they're providing multiple
19 options, which is typically what an agency does.

20 BY MR. LARSEN:

21 Q. Prior to this advertising campaign -- you
22 talked about, what, 60 million pieces of mail a
23 month? What does the outer envelope look like
24 generally on those pieces of mail?

25 A. It can vary across the hundred different

1 competitors we have in the markets. If it -- we
2 typically will say things using a competitor's name.
3 I could say that's employed. It's not all the time.
4 "Important account information" or statements that
5 would encourage a customer to open it and be able to
6 see the offer that we're presenting from Spectrum.

7 Q. And in those other situations, do you
8 typically use specific logos or colors from your
9 competitors?

10 A. I don't have background on that for
11 Charter.

12 Q. Well, you are aware of the 60 million
13 pieces of mail that go out every month since you've
14 been working at Charter, correct?

15 A. Yes.

16 Q. And you've reviewed some of those mailings
17 before they've gone out, I assume?

18 A. Yes, in a limited fashion.

19 Q. And in those ones that you have reviewed,
20 do they typically have color streams of your
21 competitors on the outside envelopes?

22 A. They may. I'm trying to recall the Allo
23 mailing, which used a very similar template:

24 Important information if you are an Allo customer;
25 important information if you're a Google customer.

1 So, again, we used a similar template to encourage
2 them to open it.

3 Q. Based on your experience, do you know why
4 that would encourage them to open it?

5 A. Personal reference. If they believe that
6 it is something that is the service provider that
7 they are engaging with, they may open it, have a
8 higher likelihood to open.

9 Q. In the Google campaign we've been
10 discussing, did you use -- not you -- did Charter
11 use Google's colors?

12 A. I don't actually know.

13 Q. In your time at Charter, can you
14 remember -- can you recall a specific campaign that
15 used a specific competitor's colors on the outer
16 envelope?

17 A. No.

18 Q. I'm still on page 937 here. About the
19 eighth bullet down, it says, "We have tried to align
20 the font as close as possible to the font on the
21 website and the DM."

22 Do you know what that refers to?

23 A. I saw this reviewing with my attorneys.

24 MR. NEPPLE: Go ahead.

25 A. It appears that they were trying to do a

1 creative that used a similar creative approach.

2 BY MR. LARSEN:

3 Q. A similar creative approach to what?

4 A. To Windstream.

5 Q. Again, do you know why they would want to
6 use the same font as Windstream uses?

7 MR. NEPPLE: Object to form.

8 Go ahead.

9 A. Again, trying to have a better opportunity
10 for the customer to open it.

11 BY MR. LARSEN:

12 Q. In the previous direct mail campaigns
13 you've worked on in Charter, do you recall a time
14 when Charter used the same font as a competitor?

15 A. I don't.

16 Q. Two more bullets down, it says,
17 "Disclaimer: Please confirm that [sic] there needs
18 to be a footnote with corresponding disclaimer copy
19 around digs around Windstream."

20 Do you see that?

21 MR. NEPPLE: Object to form. You misread
22 that, Counsel.

23 MR. LARSEN: Okay. I apologize. Let me
24 read it again.

25 MR. NEPPLE: That's okay. No --

1 MR. LARSEN: I got it. Let me read it
2 again.

3 BY MR. LARSEN:

4 Q. "Disclaimer: Please confirm if there
5 needs to be a footnote with corresponding disclaimer
6 copy around digs around Windstream."

7 Do you see that?

8 A. Yes.

9 Q. Do you know what that refers to?

10 A. I don't actually know, other than any
11 reference they are probably saying do we need to
12 disclaim this at all.

13 Q. What does that mean, to disclaim
14 something?

15 A. It would mean just providing additional
16 copy to clarify a statement that might be made. In
17 packaging or pricing, we often have a disclaimer.

18 Q. And what does that disclaimer often say?

19 A. What the package includes or the tier of
20 service.

21 Q. So does the -- does the disclaimer refer
22 to the offer Charter is making on what it would cost
23 to switch to Charter?

24 A. I actually don't know what it's
25 referencing here.

1 Q. But in general, is that your understanding
2 of what a disclaimer means in this context?

3 A. Yes.

4 Q. You see where it says "around digs around
5 Windstream"?

6 A. Uh-huh.

7 Q. Do you know what that refers to in this
8 context?

9 A. I don't.

10 Q. Have you otherwise ever heard anybody
11 mention "digs" in the context of a mailing?

12 A. We do millions of competitive mailings and
13 TV spots, and it could be a slang term used for
14 competitive statements.

15 Q. Is that your understanding or are you just
16 speculating?

17 A. I'm speculating on that. I have not used
18 that term.

19 MR. NEPPLE: Okay. Counsel, can we --

20 THE COURT REPORTER: You don't --

21 MR. NEPPLE: -- just have a running
22 stipulation? I don't want to have to --

23 MR. LARSEN: Yes.

24 MR. NEPPLE: -- interrupt you. Thank you.

25 Everything will be marked AEO. Great.

1 (Charter Exhibit 8 was received and marked
2 for identification, as of this date.)

3 BY MR. LARSEN:

4 Q. Ms. Atkinson, have you seen this document
5 before?

6 A. (Witness reviews document.)

7 I have not seen this particular doc -- or
8 this document in this format from RAPP. This is a
9 working document between the team and RAPP, hence
10 all the copies on here. But I have not seen this,
11 no.

12 Q. So I take it you don't know whose
13 handwriting this is on the document?

14 A. I do not.

15 Q. Typically when Charter works with RAPP,
16 does Charter mark up documents like this by hand and
17 then send them back to RAPP to make changes?

18 A. I actually don't know. Seems kind of old
19 school.

20 Q. Perhaps.

21 Is it your understanding that this
22 handwriting is somebody at Charter?

23 A. I don't know. It could have been the
24 agency.

25 Q. Do you know who would know?

1 A. Allison Novasel or Jennifer Smith that
2 managed the direct mail -- or the relationship with
3 RAPP.

4 MR. LARSEN: Let's mark this Exhibit
5 No. 9.

6 (Charter Exhibit 9 was received and marked
7 for identification, as of this date.)

8 MR. NEPPLE: Thanks.

9 BY MR. LARSEN:

10 Q. All right. Exhibit 9 is an email
11 Bates-stamped Charter 964.

12 Have you seen this document before?

13 A. I believe I saw this as part of a larger
14 document --

15 Q. Okay.

16 A. -- on creative. I did not -- I have not
17 seen this specific document in this format.

18 Q. Were you ever involved in any discussion
19 about the cost or the expense it might incur to put
20 certain colors on the outside of the envelope?

21 A. No.

22 Q. Was that something -- so that was that --
23 was that something you only learned of after the
24 fact?

25 A. When I was preparing for this.

1 Q. Okay.

2 MR. LARSEN: Let's mark this as Exhibit

3 No. 10.

4 (Charter Exhibit 10 was received and
5 marked for identification, as of this date.)

6 BY MR. LARSEN:

7 Q. Exhibit No. 10 is an email string
8 Bates-stamped Charter 1002.

9 Ms. Atkinson, have you seen this document
10 before today?

11 A. (Witness reviews document.)

12 I can't recall. It's -- it may have been
13 part of a larger string. But I did not see it prior
14 to preparing for this case.

15 Q. Okay. If you look at Jennifer Smith's
16 email to Allison Novasel on March 5, second
17 paragraph says, "The OE utilizes Windstream's
18 kinetic color palette, similar to Google."

19 Do you know what "kinetic color palette"
20 refers to?

21 A. No. I didn't until after I was prepping
22 for this.

23 Q. Do you know what it refers to now?

24 A. Similar to the way we looked at Google,
25 there could be creative integration. And similar to

1 what we've done with Allo, it's a creative tactic
2 that could be employed by the ad agency when they
3 give us different options.

4 Q. And is the idea of the creative
5 integration to make it look like a Windstream
6 envelope?

7 MR. NEPPLE: Object to form.

8 A. That would seem to be the intent.

9 BY MR. LARSEN:

10 Q. When it says "kinetic color palette," do
11 you have an understanding that refers to a specific
12 campaign that Windstream had done?

13 A. I actually -- until I came back from
14 Canada, I was not familiar with Windstream. And,
15 again, we have hundreds of competitors.

16 Q. As you sit here today, do you know what
17 the word "kinetic" means in this context?

18 A. I think it's referring to the Windstream
19 product. I'm not as clear on that.

20 MR. LARSEN: Exhibit No. 11.

21 (Charter Exhibit 11 was received and
22 marked for identification, as of this date.)

23 BY MR. LARSEN:

24 Q. Exhibit No. 11 is an email string
25 Bates-stamped Charter 1005.

1 Have you seen these emails before today?

2 A. No.

3 Q. Do you see, in the middle of the page, Joe
4 Leonard's email on March 5, 2019?

5 A. Yes.

6 Q. It says, "These look good. I would like
7 to get a few more opinions on the way we are
8 positioning Windstream's situation, but I can't
9 think of a better way to do it. 'Uncertainty' feels
10 most right, I suppose."

11 Did you ever have any discussions with Joe
12 about that topic?

13 A. No, other than doing Windstream mail.

14 Q. Did you ever have discussions with anyone
15 else on your team about what Joe is talking about
16 here?

17 A. Not that I recall. Again, we do millions
18 of pieces of mail.

19 Q. And in the second paragraph of Joe's
20 email, it says, "I don't think we need their colors
21 on the envelope. Not sure we even really want them
22 (for 10K)."

23 Did you ever have any discussions with Joe
24 about the colors on the envelope for this mailing?

25 A. No.

1 Q. Did you have discussions with anyone on
2 your team about the colors on the envelope for this
3 mailing?

4 A. No.

5 Again, it looks like there were many
6 options that were put together, a green outer
7 envelope. And, again, these are creative approaches
8 where we get options, so it's standard practice.

9 Q. Are you aware of what the -- the final
10 decision was on the colors on the envelope?

11 A. I was not. Until I saw it.

12 Q. Do you have an understanding today
13 about --

14 A. Yes.

15 Q. -- what the colors were?

16 A. Yes.

17 Q. And were the colors the ones discussed
18 here that matched Windstream's colors?

19 MR. NEPPLE: Object to form.

20 A. I would say they were similar.

21 BY MR. LARSEN:

22 Q. We talked about options here.

23 Is it your understanding that ultimately
24 the option that was chosen was the one with the
25 Windstream colors?

1 MR. NEPPLE: Object to form.

2 A. I was not part of that decision in terms
3 of outer envelope creative.

4 BY MR. LARSEN:

5 Q. Whether or not you were a part of the
6 decision, do you have an understanding of what the
7 ultimate resolution on this issue was?

8 A. Yes, when I was presented the samples of
9 the mail.

10 Q. And what is your understanding?

11 A. There was a similar color palette to what
12 Windstream may utilize.

13 MR. LARSEN: Let's mark this Exhibit

14 No. 12.

15 (Charter Exhibit 12 was received and
16 marked for identification, as of this date.)

17 A. (Witness reviews document.)

18 BY MR. LARSEN:

19 Q. Exhibit No. 12 is a document Bates-stamped
20 Charter 965.

21 Ms. Atkinson, have you seen this document
22 before today?

23 A. In preparation for this hearing -- this
24 deposition.

25 Q. And was that the first time that you've

1 seen it?

2 A. I may have seen the important information.
3 But, again, this is a tactic that's employed
4 frequently. And, again, I use Allo and Google. I
5 think it's the exact statement we used for both of
6 those, because that was the template we used.

7 Q. Is this a document that came from RAPP?

8 A. Anything that would come from the agency
9 typically has a stamp like this. So, yes, I would
10 assume so.

11 Q. And just for the record, you're referring
12 to the stamp near the bottom of the page that says
13 "RAPP, Windstream" --

14 A. Yes.

15 Q. -- dash, "OE," et cetera?

16 A. Correct.

17 Q. And is that typically what RAPP would do,
18 they would give you a copy of the envelope before it
19 would go out?

20 A. They would -- they would give us a copy of
21 any creative component before it's produced and
22 released to a printer.

23 Q. Look at the return address in the
24 left-hand corner of this screenshot, or whatever it
25 is.

1 Do you see that?

2 A. Yes.

3 Q. Do you know what that address refers to?

4 A. St. Louis, Missouri.

5 Q. Do you know what's located at that
6 dress -- at that address?

7 A. Windstream headquarters, I suppose. I
8 don't actually know.

9 Q. Okay. Were any of the mailings sent from
10 that address?

11 A. I don't know.

12 Q. Do you have any reason to believe any
13 mailings were sent from that address?

14 A. I actually don't know. I know we
15 drop-ship mail across the entire United States to
16 improve the delivery times.

17 Q. Would it be unusual to send mail from
18 Windstream's address to Windstream customers, for
19 Charter to do that?

20 MR. NEPPLE: Object to form.

21 Go ahead.

22 A. I wouldn't have seen this particular
23 approach before, nor was I part of any conversations
24 on it.

25

1 BY MR. LARSEN:

2 Q. So you said you haven't seen this
3 particular approach before.

4 In previous mailings that you've been a
5 part of, have they utilized return addresses when
6 that's not where the documents are actually sent
7 from?

8 A. I don't know.

9 Q. Can you recall a specific instance that --
10 where that occurred?

11 A. Not that I was involved in, no.

12 Q. Do you have an understanding of why an --
13 a return address would be used that's not from where
14 the mailing was sent?

15 A. No, I actually don't.

16 Q. Do you think it's likely that that was
17 used so that the customer would think that this
18 document came from Windstream?

19 MR. NEPPLE: Object to form.

20 A. That may have been what the intent was,
21 but I was not part of those conversations.

22 BY MR. LARSEN:

23 Q. Do you know who would have been part of
24 that decision-making process on the return address?

25 A. I'm assuming Allison and Jen that were

1 referenced in the other communication.

2 Q. Okay.

3 A. And RAPP.

4 Q. Did you have any discussions with Allison
5 and Jen to prepare for this deposition today?

6 A. No. I say no. Other than the use of the
7 creative historical where we've used this template
8 again with Google and Allo and others.

9 Q. And when did you have those discussions?

10 A. Would have been probably a week ago.

11 Q. Who was present for those discussions?

12 A. I think I just asked for the samples --

13 Q. Why --

14 A. -- previous samples.

15 Q. Sorry. Didn't mean to talk over you.

16 Can you finish your answer?

17 A. Okay. I just -- I just asked for copies
18 of the mailings, because we had done other
19 Windstream mailings. And they gave me Windstream
20 mailings as well as other competitors that we've had
21 since the beginning of the year.

22 Q. And why did you ask for those documents?

23 A. To familiarize myself on practices that
24 Charter employed that I was not familiar with.

25 Q. Did they give you any other documents in

1 this meeting?

2 A. Allison and Jen?

3 Q. Yes.

4 A. No.

5 Q. Did you ask them for any other documents
6 in this meeting?

7 A. No, just creative samples.

8 Q. Other than the creative samples, did you
9 discuss anything with them in this meeting?

10 A. No.

11 Q. So you didn't ask them about the colors
12 we've been discussing today?

13 A. No.

14 Q. You didn't ask them about the return
15 address?

16 A. No.

17 Q. And you didn't ask them about any specific
18 language that was in the mailings?

19 A. The only thing that I was aware of was
20 "important information enclosed for Windstream
21 customers," because the template was what was used
22 for Google and Allo and others prior to that.

23 MR. LARSEN: Let's mark this Exhibit

24 No. 13.

25 (Charter Exhibit 13 was received and

1 marked for identification, as of this date.)

2 A. (Witness reviews document.)

3 BY MR. LARSEN:

4 Q. Exhibit No. 13 is an email string
5 Bates-stamped Charter 1217 through 1220.

6 Ms. Atkinson, have you seen these emails
7 before today?

8 A. I remember the communication with Jennifer
9 when she was talking about the monthly marketing
10 review for small-/medium-sized business and
11 establishing that meeting, which was similar to the
12 residential business.

13 Q. So what is the SMB marketing team?

14 A. Jennifer Ingram leads a team that is
15 focused on small- and medium-sized business. So it
16 would be for -- it's powering Charter services for a
17 business, bar, restaurant, nail salon, et cetera,
18 not for personal use.

19 Q. And is that something under your purview?

20 A. Yes.

21 Q. So I'm looking at Jennifer's first email
22 to you on Charter 1218 where she refers to a SMB
23 monthly marketing review call.

24 Do you see that?

25 A. Yes.

1 Q. Is that a call that you participate in?

2 A. I have, but I don't typically sit in on
3 those meetings. And that's what she is referencing,
4 that she was letting me know they do this.

5 Q. If you look at your response on the bottom
6 of the first page. First line says, "Very nice. I
7 also believe that this information is extremely
8 helpful for sales teams."

9 What are you referring to there?

10 A. It allows the sales -- or it enables our
11 sales organizations to be aware of marketing efforts
12 and campaigns that we put into markets. So it's an
13 opportunity for us to have that conversation and
14 awareness of different initiatives that we may be
15 doing. And I reference that I'd like to do that for
16 general market and multicultural segments.

17 Q. So how is the SMB team different than the
18 sales team?

19 A. Well, the SMB team that's referenced here
20 is the marketing team that specifically does
21 marketing effort -- or marketing communications to
22 the small- and medium-sized business owner.

23 MR. LARSEN: All right. Let's go off the
24 record.

25 THE VIDEOGRAPHER: Stand by, please. The

1 time is 11:16 a.m. We're going off the record.

2 (Recess was taken.)

3 THE VIDEOGRAPHER: The time is 11:23 a.m.

4 We're back on the record.

5 MR. LARSEN: Let's mark this as Exhibit

6 No. 14.

7 (Charter Exhibit 14 was received and
8 marked for identification, as of this date.)

9 BY MR. LARSEN:

10 Q. So No. 14 is an email Bates-stamped
11 Charter 9885.

12 Have you seen this document before?

13 A. (Witness reviews document.) I have not.

14 Q. Do you know who Sarah Blechner is?

15 A. She works on my team.

16 Q. And do you know who Lauren McGarry is?

17 A. I do not.

18 Q. I see her email address is at
19 @wearlift.com.

20 Do you know what "wearlift" means?

21 A. I believe it's one of our agencies, but I
22 am not familiar with them personally.

23 Q. Same thing with Jon Fast, jon@wearlift, do
24 you know who that is?

25 A. No.

1 Q. You see a reference here to April emails?

2 A. Yes.

3 Q. Are you aware of an email advertising
4 campaign in April?

5 A. I was not personally aware of that.

6 Q. Are you aware of it now?

7 A. As I'm reading this, yes.

8 Q. Okay.

9 THE COURT REPORTER: I'm sorry. What was
10 the answer?

11 THE WITNESS: As I'm reading this, yes.

12 BY MR. LARSEN:

13 Q. So are you aware of whether emails were
14 sent in April referring to Windstream customers?

15 A. I do not have personal knowledge of that.

16 Q. Do you know who would?

17 A. Jennifer Smith, who heads up the
18 small/medium business team. And Sarah.

19 Q. Sarah who?

20 A. Blechner, who is on the email.

21 Q. Got it.

22 I assume Charter keeps a record of all
23 email advertisements that were sent out.

24 Is that correct?

25 A. I would assume so.

1 Q. Do you know if those documents have been
2 produced in this case?

3 A. I do not.

4 Q. Did you have discussions with anyone on
5 your team about sending out emails referencing
6 Windstream's bankruptcy?

7 A. No.

8 Q. Is that something that would normally be
9 within your purview?

10 A. It's worked on from the team that reports
11 to me, but I'm not engaged in all of the tactical
12 discussions that they do.

13 Q. Typically would you be informed after the
14 fact that emails had gone out?

15 A. Not necessarily. Email campaigns are a
16 tactic we employ, but I don't have conversations
17 about the creatives or timing or quantities.

18 Q. Setting aside the specific content of the
19 emails, would you typically have discussions about
20 whether to send out emails at all?

21 A. No, I wouldn't have discussions if it's a
22 tactic that's used standard. It's not an area that
23 I typically get involved in.

24 Q. And is Jennifer Smith the person who would
25 be in charge of any email campaigns?

1 A. Yes, for small/medium business specific to
2 that group.

3 Q. Are you aware of whether any emails went
4 out concerning Windstream's bankruptcy for groups in
5 addition to small/medium business?

6 A. I don't have personal knowledge of that.

7 Q. Is that typically something you would have
8 personal knowledge of?

9 A. In general, I know email campaigns are
10 done, but I don't know if it would have happened
11 specific to Windstream.

12 MR. LARSEN: Exhibit No. 15.

13 (Charter Exhibit 15 was received and
14 marked for identification, as of this date.)

15 A. (Witness reviews document.)

16 BY MR. LARSEN:

17 Q. Exhibit No. 15 is an email Bates-stamped
18 Charter 1421.

19 Have you seen this document before today?

20 A. I have not.

21 Q. Look at the initial email in the thread
22 from Amy Kim.

23 A. Yes.

24 Q. Do you know who Amy Kim is?

25 A. Yes, she is one of my directors who

1 reports to Jennifer Smith.

2 Q. And it says, "Hi, can you share the
3 Windstream assets for DM, EM," and it goes on.

4 Do you know what "DM" and "EM" refer to
5 here?

6 A. Direct mail and email marketing.

7 Q. And do you know what the reference to
8 "Windstream assets" for DM and EM refers to? Does
9 that mean just copies of the direct mail and the
10 emails that have gone out?

11 A. It does.

12 Q. Okay. And then second sentence in Amy's
13 email says, "Would be great to see" a plan -- strike
14 that.

15 It says, "Would be great to see as we plan
16 the SMB activities."

17 So would the SMB folks not have had copies
18 of all the advertisements that have been gone out
19 unless somebody asked for them?

20 MR. NEPPLE: Object to form.

21 A. They operate separately from the
22 residential business and multicultural.

23 BY MR. LARSEN:

24 Q. What does the multicultural business refer
25 to?

1 A. The Hispanic and African-American segments
2 within our Charter footprints.

3 Q. So you said they work separately.

4 But are there times when the SMB and the
5 residential would want to know what one another are
6 doing?

7 A. In this case, yes.

8 Q. Is that a typical ask, that somebody in
9 the SMB would ask for what the other mailings look
10 like?

11 A. I don't actually know if it's a typical
12 ask, because I just saw this and it's -- one is
13 targeting a consumer directly and the other is
14 targeting a small business, so a different message
15 and we have different offers.

16 MR. LARSEN: Exhibit No. 16.

17 (Charter Exhibit 16 was received and
18 marked for identification, as of this date.)

19 A. (Witness reviews document.)

20 BY MR. LARSEN:

21 Q. Exhibit No. 16 is Bates-stamped
22 Charter 1422, 1423. I think this was an attachment
23 to the last email. That's the way they were
24 produced, at least.

25 Have you seen these documents before?

1 A. Yes.

2 Q. Okay. And when was the first time you saw
3 these documents?

4 A. It would have been in early March when it
5 was brought to my attention that there had been a
6 interaction with Windstream.

7 Q. So did you not see these documents until
8 they had already been mailed out?

9 A. That is correct.

10 And, again, just to be clear, template is
11 very standard. I had seen the template before, so I
12 just want to --

13 Q. Understood.

14 A. -- clarify that statement.

15 Q. You hadn't seen the specific --

16 A. Correct.

17 Q. -- language with "Windstream" in it?

18 A. Correct.

19 Q. And just to follow up, after the -- I'll
20 just read the whole thing.

21 "Windstream customers, don't risk losing
22 your Internet and TV services. Windstream has filed
23 for Chapter 11 bankruptcy, which means uncertainty."

24 Do you know who, if anyone, at Charter was
25 the one that came up with that language?

1 A. I do not know who specifically came up
2 with the language, but it would have occurred with
3 the agency review and discussion with Allison
4 Novasel and the agency.

5 Q. And in preparing for today, did you ever
6 ask Allison or anyone else who came up with that
7 language?

8 A. I did not. I'm assuming it's that team,
9 though, and the agency. I don't know who
10 specifically would have come up with that language.

11 Q. The last line in this -- strike that.

12 So halfway down, there -- two-thirds of
13 the way down, there's a line. And at the end, it
14 says "three-year price guarantee."

15 Do you see that?

16 A. Actually, I don't.

17 Q. Just going -- about two-thirds of the way
18 down, there's a line that goes all the way across
19 the page. And on the right of that, there's, like,
20 a little bubble that says "three-year price
21 guarantee."

22 A. Ah. Yes. Okay.

23 Q. Right above that, in bold, it says, "Plus,
24 we will buy you out of your current contract up to
25 \$500."

1 Do you see that?

2 A. Yes.

3 Q. Do you have an understanding of what that
4 refers to?

5 A. Yes. It is part of our contract buyout
6 policy, our approach, for any competitor that has a
7 contract.

8 Q. And how does that work?

9 A. In the event that if you canceled your
10 service with the current provider and incurred any
11 charge, we would pay up to \$500.

12 MR. LARSEN: Exhibit No. 17.

13 (Charter Exhibit 17 was received and
14 marked for identification, as of this date.)

15 A. (Witness reviews document.)

16 BY MR. LARSEN:

17 Q. This is an email Bates-stamped
18 Charter 6088.

19 Ms. Atkinson, have you seen this document
20 before today?

21 A. No.

22 Q. The person that sent it, Adam Sheiner, do
23 you know who Adam Sheiner is?

24 A. I do not. I know he works for Charter,
25 but I don't know him personally.

1 Q. Okay. Do you know what his position at
2 Charter is?

3 A. I actually don't, other than what it says
4 here, director of national carrier sales. I don't
5 personally know his role.

6 Q. I'm looking at the recipients. I see a
7 Stephen Webster, Mark Holmes, Rick Gunzel, Marybeth
8 McCarroll.

9 Do you know any of those people?

10 A. Not personally, no.

11 Q. Do you know what their titles or roles are
12 in the company?

13 A. I don't, actually.

14 THE VIDEOGRAPHER: Counsel, five minutes.

15 MR. LARSEN: The tape?

16 THE VIDEOGRAPHER: Yeah.

17 MR. LARSEN: Thank you.

18 BY MR. LARSEN:

19 Q. It says, "Folks, I'm sure you're all aware
20 WIN does have funding to continue its normal
21 operation [sic] while it restructures."

22 Did you ever have conversations with
23 anyone about that topic?

24 A. No.

25 Q. Did anyone ever tell you that Windstream

1 has funding to continue its operations while it
2 restructures?

3 A. No.

4 Q. Are you aware of whether anyone on your
5 team had knowledge of this?

6 A. I don't know.

7 Q. Did you ever do any independent research
8 on your own to see if Windstream had funding to
9 continue its normal operations?

10 A. No.

11 Q. Did you ever ask anybody to do any
12 research on -- in that area?

13 A. No.

14 THE VIDEOGRAPHER: Counsel, three minutes.

15 MR. LARSEN: Okay. Exhibit No. 18.

16 (Charter Exhibit 18 was received and
17 marked for identification, as of this date.)

18 MR. LARSEN: Let's just go off the record
19 and change the tape.

20 THE VIDEOGRAPHER: Thank you.

21 The time is 10:40 -- excuse me --

22 11:40 a.m. on May 1, 2019. This is the end of
23 Media Unit No. 2.

24 (Recess was taken.)

25 THE VIDEOGRAPHER: The time is 11:43 a.m.

1 on May 1, 2019. This is Media Unit No. 3.

2 Back on the record.

3 BY MR. LARSEN:

4 Q. Okay. Ms. Atkinson, do you have
5 Exhibit 18 in front of you?

6 A. Yes, I do.

7 Q. Okay. This is an email string
8 Bates-stamped Charter 9899 through 9904. I don't
9 think you're copied on these emails.

10 But have you seen this document before
11 today?

12 A. I have not.

13 Q. And there's references to direct sales
14 fliers in these emails.

15 Do you have any knowledge of what, if any,
16 direct sales flyers may have gone out as part of
17 this campaign?

18 A. I do not.

19 Q. Okay. Is it your understanding that
20 Mr. Dardis is going to testify to those subjects?

21 A. That is my understanding.

22 MR. LARSEN: Counsel, is that correct?

23 I'll just save everybody time. I'm not going
24 to ask her if somebody else is going to testify
25 about it.

1 MR. NEPPLE: Yeah, I -- my belief is that
2 he's going to talk about direct sales.

3 Can I --

4 THE WITNESS: Yes.

5 MR. LARSEN: Do you want to go off the
6 record?

7 MR. NEPPLE: Yeah, can we go off the
8 record?

9 MR. LARSEN: Go ahead.

10 THE VIDEOGRAPHER: Stand by. The time is
11 11:45. We're going off the record.

12 (Recess was taken.)

13 THE VIDEOGRAPHER: The time is 11:45 a.m.
14 We're back on the record.

15 BY MR. LARSEN:

16 Q. You can set that aside. Thank you. You
17 could just keep that in front of you, though. I
18 mean, no -- I'm sorry. Yes, set it where you were
19 going set it. My apology.

20 A. (Witness complies.)

21 MR. LARSEN: Exhibit No. 19.

22 (Charter Exhibit 19 was received and
23 marked for identification, as of this date.)

24 A. (Witness reviews document.)
25

1 BY MR. LARSEN:

2 Q. Exhibit No. 19 are some documents
3 Bates-stamped WIN 56 through 61. And the first --
4 the first page says "Exhibit 10" and the second page
5 is a letter dated March 21, 2019.

6 Ms. Atkinson, have you seen this letter
7 dated March 21, 2019?

8 A. I recall I saw it, just the letter, but I
9 didn't read it in detail. It was brought to me by
10 Joe Leonard.

11 Q. And when did Mr. Leonard bring this to
12 you?

13 A. When our attorneys provided it to him and
14 said we had received this.

15 MR. NEPPLE: Well, do not divulge. Thank
16 you.

17 Go ahead.

18 BY MR. LARSEN:

19 Q. Do you remember the approximate date when
20 Mr. Leonard brought this letter to your attention?

21 A. It was late March. I don't remember the
22 exact date.

23 Q. And if you turn two more pages, there's an
24 attachment to the letter, which looks like an
25 advertisement. It's page Bates-stamped 59.

1 Do you see that?

2 A. This, yes.

3 Q. And to your knowledge, is this a copy of
4 an advertisement that was sent out by Charter?

5 A. This is a copy of the creative mailing, as
6 I understand it.

7 Q. When Mr. Leonard brought this letter to
8 your attention, what, if anything, did you -- did
9 the two of you discuss?

10 A. We discussed the statement which says
11 "uncertainty" and we just made a revision to the
12 letter to just make the simple statement Windstream
13 has filed for Chapter 11 bankruptcy.

14 Q. Let's take a step back.

15 Do you recall where you were when you had
16 this discussion with Mr. Leonard?

17 A. I don't, actually. It wasn't a formal
18 meeting. It was in the -- it was in the Charter
19 offices.

20 Q. So was it a face-to-face discussion, to
21 the best of your recollection?

22 A. Yes.

23 Q. And can you -- can you recall the gist of
24 what he said to you about this letter?

25 A. He just said that we were -- we had

1 mailings that were continual through the whole
2 month. He said we are taking out any subjective
3 copy and we're just stating that they filed for
4 Chapter 11 bankruptcy. And that was the extent of
5 our conversation.

6 Q. Did you ask him any questions about it?

7 A. No. It was a very brief conversation.

8 Q. Did you keep a copy of the letter when you
9 left the meeting?

10 A. No. I did not have this letter.

11 Q. Did he show it to you in the meeting or
12 did he just mention that we got a letter?

13 A. I think he just mentioned we got a letter.
14 I can't recall.

15 Q. Was there any subsequent time when you
16 actually sat down and read this letter?

17 A. No, not until now.

18 Q. So did Mr. Leonard give you -- did you
19 have something you were supposed to do in response
20 to this letter?

21 A. No, he was just updating me that the
22 mailing would have a slight change to the creative
23 and that it was continuing on as planned.

24 Q. And was it your responsibility to make
25 sure that the -- that the new mailings made the

1 changes that Mr. Leonard discussed with you?

2 A. It's not my specific responsibility. It
3 is that of my team, yes.

4 Q. And did you have any follow-up meetings
5 with your team after this discussion with
6 Mr. Leonard?

7 A. No.

8 Q. So do you know if the correct persons on
9 your team were ever notified of what changes needed
10 to be made?

11 A. My understanding is that if one of my
12 leaders says they're making a change, that it
13 happens. I don't -- I didn't follow up.

14 Q. I'm just trying to figure out how it got
15 from Mr. Leonard to one of the leaders on your team.

16 Did you have a discussion with someone on
17 your team saying, hey, I spoke to Mr. Leonard and we
18 need to make these changes to the advertisements?

19 A. No.

20 Q. Okay. Are you aware of anyone who spoke
21 to the people on your team saying, hey, directions
22 from above, we need to make some changes?

23 A. Well, Allison works for Joe. So my
24 assumption is that he would have communicated to her
25 and she would have talked to the agency.

1 Q. Did he tell you that's what he was going
2 to do?

3 A. No.

4 Q. Did you ever follow up with Allison and
5 ask her, Did you talk to Joe about this letter we
6 got?

7 A. No.

8 Q. Did you ever follow up with Allison and
9 ask, Did we make the changes to the advertisements
10 that Joe wanted?

11 A. No.

12 Q. Did you ever see any of the revised
13 advertisements that went out?

14 A. I saw the one piece of the next mailing,
15 next wave of mailings, which it just says Windstream
16 had just filed for Chapter 11 bankruptcy.

17 Q. And when did you see those?

18 A. It would have been late March, beginning
19 of April. I don't have the exact date.

20 Q. Would it have been after the fact, after
21 they were already sent out?

22 A. Yes. After this had been sent out, this
23 version, not the updated version.

24 Q. Okay. So did you see a copy of the
25 updated version before it was sent out?

1 A. I don't know the timing of that. I just
2 know we had several waves of mail.

3 Q. Did you ever ask anyone, hey, I understand
4 we're making some changes to these advertisements,
5 I'd like to see them before they're sent out?

6 A. No.

7 Q. Any reason why not?

8 A. 60 million pieces of mail a month with
9 hundreds of different versions.

10 Q. Do you recall anything else that was said
11 in this discussion between you and Joe other than
12 what you've already testified to?

13 A. Other than it's a factual statement and we
14 would just be very factual. And that was the only
15 comment.

16 Q. And who said that about the factual
17 statement?

18 A. Joe.

19 Q. So he said to you, We need to make sure
20 the advertisements have factual statements? I don't
21 want to put words in his mouth. I'm just trying to
22 understand --

23 A. No --

24 Q. -- the best of your recollection.

25 A. -- he just simply said, We are making a

1 copy change, it will be very -- it will be factual.

2 Q. Do you recall anything else he said other
3 than that, I mean other than what you've already
4 testified to?

5 A. No.

6 Q. Was anyone else present at this meeting
7 with you and Joe?

8 A. No.

9 Q. Did you tell anyone else about this
10 meeting following the meeting?

11 A. No, not to my recollection. It would have
12 been a very brief conversation. It was a very brief
13 conversation.

14 Q. In that same exhibit, if you flip through,
15 page WIN 60, there's another letter attached here,
16 dated March 26, 2019.

17 Have you seen this March 26, 2019, letter
18 before?

19 A. No.

20 Q. So this is the first time you're seeing it
21 today?

22 A. Yes.

23 Q. Did anyone at Charter inform you that a
24 subsequent letter was sent by Windstream's counsel?

25 A. Not that I recall.

1 Q. Did you ask anyone about this letter to
2 prepare for this deposition today?

3 A. No.

4 Q. If you look at the fourth paragraph of
5 this letter, it says, "Most concerning is the fact
6 that some of our customers, upon receiving the
7 targeted mail-outs, called Spectrum to inquire and
8 were told by Spectrum that they 'have a contract
9 with Windstream to buy us out.'"

10 Were you aware that Windstream was making
11 these claims?

12 A. No.

13 Q. So did you have any discussions with
14 anyone at Charter about the fact that Windstream is
15 claiming that Spectrum is saying they have a
16 contract with Windstream to buy them out?

17 A. No.

18 MR. LARSEN: Exhibit No. 20.

19 (Charter Exhibit 20 was received and
20 marked for identification, as of this date.)

21 A. (Witness reviews document.)

22 BY MR. LARSEN:

23 Q. Exhibit No. 20 is an email string
24 Bates-stamped Charter 6254 to 6255.

25 Have you seen these emails before today?

1 A. I have not.

2 Q. So the first email from Jennifer Smith, it
3 says, "Hi, Erin and Pete. We need to update
4 Windstream messaging on the 4/22 letter."

5 Do you see that?

6 A. Yes.

7 Q. Were you involved in updating the
8 Windstream messaging on the 4/22 letter?

9 A. I was not personally involved, no.

10 Q. Were you aware that this was occurring at
11 the time?

12 A. This would have been to your earlier
13 question about Joe, when he -- when he said we were
14 changing some of the verbiage. But this is the SMB
15 business. We did not talk about that, at that
16 conversation.

17 Q. How do you know this refers to the SMB
18 business?

19 A. Jennifer Smith is the -- I'm sorry. I was
20 thinking Jennifer Ingram. Jennifer Smith is in the
21 general market business. My correction.

22 Q. No problem.

23 Jennifer Smith reports to you, right?

24 A. Reports to Allison Novasel, who reports to
25 Joe, who reports to me.

1 Q. And in Jennifer Smith's email, third line
2 says "Summary," underlined. Then it says, "We need
3 to soften the 'uncertainty' claims for any future
4 mailers."

5 Are you aware that there was a -- an
6 effort to soften the uncertainty claims for any
7 future mailers?

8 A. It wasn't framed that way to me, but it
9 was along the lines of what Joe said to me, we're
10 changing the language to make the statement of
11 bankruptcy.

12 Q. Are you aware of whether anyone at Charter
13 informed Windstream of any changes they would make
14 to future advertisements?

15 A. I'm not personally aware of anyone in my
16 team that said anything.

17 Q. Have you asked anyone -- to prepare for
18 this deposition, have you asked anyone at Charter
19 whether they reached out to Windstream to let them
20 know of any changes to future advertisements?

21 A. No.

22 MR. LARSEN: Exhibit No. 21.

23 (Charter Exhibit 21 was received and
24 marked for identification, as of this date.)

25 A. (Witness reviews document.)

1 BY MR. LARSEN:

2 Q. Exhibit No. 21 is an email string
3 Bates-stamped Charter 6319 to 6325.

4 Ms. Atkinson, have you seen these
5 documents before today?

6 A. I believe a portion of it is in with one
7 of the other exhibits, but this is the first time
8 I've seen this, before today.

9 Q. Okay. Yeah, this looks like a follow-up
10 on that exhibit concerning emails; is that correct?

11 A. Yes. Yes.

12 Q. And if I recall your testimony, you never
13 saw any of these emails before they went out; is
14 that correct?

15 A. Correct.

16 Q. And were you ever aware of any discussions
17 about changes that needed to be made to any emails
18 before they went out?

19 A. I would -- I know there's a creative
20 process that goes back and forth, so my knowledge is
21 I'm aware that they go back and forth. But I was
22 not aware of any of the content of those exchanges.

23 Q. And in preparation for your testimony
24 today, did you discuss the email advertisements with
25 anybody who would have had knowledge about that

1 topic?

2 A. No.

3 MR. LARSEN: Exhibit No. 22.

4 (Charter Exhibit 22 was received and
5 marked for identification, as of this date.)

6 A. (Witness reviews document.)

7 BY MR. LARSEN:

8 Q. Exhibit No. 22 is an email Bates-stamped
9 Charter 881 -- strike that -- Bates-stamped
10 Charter 8116.

11 Have you seen this document before today?

12 A. I had not. I have not.

13 Q. This email says, "Hi, Geoff. Per our
14 conversation, print status of the GM 4/22 thick card
15 Windstream competitive versions is attached."

16 Do you know what a "thick card" refers to
17 in this context?

18 A. It would be a creative template that --
19 that's nicknamed "thick card."

20 Q. So it's like -- is it like a draft?

21 A. It's a version, a template.

22 Q. Do you know who Robert Bala is?

23 A. He's one of the senior managers in direct
24 marketing, the team that reports in to Geoff Boytos
25 on the email.

1 Q. So is this something within your purview
2 or a separate department?

3 A. This is in my purview. It's part of the
4 marketing operations team I referenced.

5 Q. Second sentence says, "Materials are not
6 scheduled to arrive in homes until 4/22, so we still
7 have the opportunity to extract palettes containing
8 Windstream mail."

9 Were you involved in any discussions about
10 potentially pulling back mailers?

11 A. Yes.

12 Q. Okay. What do you recall about that?

13 A. That there was a call to discuss the
14 Windstream mailings that we were doing and this was,
15 as I recall, after the judge hearing, if that's what
16 you call it.

17 Q. Do you recall when this call took place?

18 A. I didn't participate in this discussion
19 directly.

20 Q. So you were not physically a part of the
21 call?

22 A. I was not part of this at all, no.

23 Q. Were you otherwise aware of the call
24 for -- from some other source?

25 A. I was aware that this was when Keith

1 Dardis had been in front of the judge and the ruling
2 had come out to cease mail.

3 Q. And were you involved in the efforts, if
4 any, to cease sending these mailers out?

5 A. Yes, my team was, because we were the ones
6 who printed it. It was at the printer and we manage
7 that relationship.

8 Q. So when do you first recall learning of
9 the fact that there was this issue about pulling the
10 mailers back?

11 A. It was just after the judge filed the -- I
12 don't have the exact date. I don't recall the exact
13 date, but it was the day that the judge put his
14 filing in to say cease all mail.

15 Q. And do you know if these mailers were, in
16 fact, ceased?

17 A. We know that we destroyed over 8 million
18 pieces of mail, including general market mail,
19 multicultural, along with the 800-and-some-thousand
20 Windstream.

21 Q. So is your understanding that all of
22 the -- strike that.

23 So is your understanding that the -- all
24 of the Windstream mailings that had not gone out at
25 the time of the judge's ruling at the hearing, they

1 were all pulled back and none of them went out? Is
2 that correct?

3 A. That is my understanding. Everything that
4 we were able to destroy was destroyed.

5 MR. NEPPLE: Sorry.

6 MR. LARSEN: Bless you.

7 BY MR. LARSEN:

8 Q. Do you know what date they were destroyed?

9 A. Without looking at my calendar, I don't.
10 I don't know offhand.

11 Q. Okay.

12 A. It was that same day, though.

13 Q. Sure.

14 And was there an expense incurred in doing
15 this?

16 A. Yes.

17 Q. Do you know what that expense was?

18 A. It was close to -- I don't have the exact
19 number, but it was close to 800-, \$900,000 of
20 production costs.

21 Q. And what goes into production costs?

22 A. The purchase of the paper, the services of
23 the printer to collate and get it ready to be
24 shipped to the post office.

25 Q. And was any efforts made to pull out the

1 Windstream documents or was it easier just to
2 destroy everything?

3 A. We went down to palettes which may have
4 had 10,000 pieces of mail and there could have been
5 one Windstream. We destroyed it that far.

6 Q. Was there any effort to try to go in and
7 see if you could just pull out the Windstream
8 documents instead of destroying everything?

9 A. There wasn't any real way to do that. It
10 was holding up our overall larger mail of about
11 20 million pieces.

12 Q. Do you know who -- I assume you weren't
13 the person talking to the printer directly?

14 A. I was not.

15 Q. Okay. Do you know who was in charge of
16 that?

17 A. It would be Geoff Boytos.

18 Q. Okay. Did you ever have any personal
19 discussions with Mr. Boytos about this?

20 A. I did. I wanted to -- I needed to find
21 out where we were in the status and our ability to
22 identify and pull the mail.

23 Q. And when did you have that discussion with
24 him?

25 A. The day that the judge made the ruling.

1 Q. And what did he say?

2 A. He said he would connect with the printer
3 immediately and look to size it, because it was
4 hundreds of palettes. So he didn't have an answer
5 for me at the moment.

6 Q. And did he subsequently come back to you
7 and -- when it was finished, and tell you that
8 the -- everything had been destroyed?

9 A. No, because he gave me an overview of what
10 it would entail with the million pieces of mail and
11 he left. It was in a status, a holding pattern
12 until we saw the judge's ruling, and then we made
13 the decision -- I made the decision to destroy all
14 the mail.

15 MR. LARSEN: Do one more exhibit and we'll
16 break for lunch, if it's okay.

17 MR. NEPPLE: Sure.

18 MR. LARSEN: Exhibit No. 23.

19 (Charter Exhibit 23 was received and
20 marked for identification, as of this date.)

21 BY MR. LARSEN:

22 Q. Exhibit No. 23 is an email Bates-stamped
23 Charter 8573.

24 Ms. Atkinson, have you seen this document
25 before today?

1 A. (Witness reviews document.) I have not.

2 Q. This says, "Hi, Geoff. Joe Leonard
3 indicated that it's not necessary to delay 4/22
4 Windstream mail, per Jon, and we should mail as
5 originally planned."

6 Were you aware that Mr. Leonard had said
7 this to Mr. Bala?

8 A. I was not.

9 Q. Okay. Did you have any discussions with
10 Geoff about this?

11 A. I don't -- there was no meeting. There
12 may have been a question that was asked, but I
13 didn't have any information from anyone telling me
14 that we had to delay this.

15 Q. Is it still your understanding that they
16 were eventually destroyed?

17 A. Yes. I made that call.

18 Q. Okay. Did you have any understanding at
19 the time that there was some discussion about
20 whether they needed to be pulled back or not?

21 A. I had not had that conversation. There
22 was some confusion in the department and primarily,
23 you know, are we supposed to make any other creative
24 changes, because we hadn't done a creative change
25 before. I wasn't part of those conversations, but I

1 knew there was some confusion in the department.

2 Q. So Exhibit No. 22, that email is 4/5/2019.

3 Exhibit No. 23 is 4/8/2019.

4 Do you recall when you learned that the
5 documents had actually been destroyed?

6 A. The mail?

7 Q. Yes.

8 A. It was the day the judge made the ruling.
9 It was within about a few hours.

10 MR. LARSEN: All right. Off the record.

11 THE VIDEOGRAPHER: Stand by. The time is
12 12:15 p.m. We're going off the record.

13 (At 12:15 p.m. a luncheon recess was
14 taken.)

15 (At 1:05 p.m. the deposition resumes.)

16 *****

17 A F T E R N O O N S E S S I O N

18 *****

19 THE VIDEOGRAPHER: The time is -- the time
20 is 1:05 p.m. We're back on the record.

21 CONTINUED EXAMINATION

22 BY MR. LARSEN:

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. Ms. Atkinson, are you aware of whether

1 there are currently any mailings going out that
2 reference Windstream?

3 A. To my knowledge, no.

4 Q. Are you aware of whether there are
5 currently any emails that are going out representing
6 Windstream?

7 A. To my knowledge, no.

8 Q. How about any phone calls going out that
9 reference Windstream?

10 A. To my knowledge, no.

11 Q. Okay. And do you know whether there are
12 any door-to-door campaigns currently happening that
13 reference Windstream?

14 A. To my knowledge, no.

15 Q. And to all those categories we've just
16 discussed, are you aware of whether there are any
17 plans for such campaigns to start up again in the
18 future?

19 A. We go after all of our homes passed in
20 terms of marketing and sales efforts, so at some
21 point. And it could be part of what is happening
22 now, that there are activities, but they're not
23 calling out Windstream, to my knowledge.

24 Q. Got it.

25 So mailers may be going out to homes that

1 are Windstream customers, but those mailers don't
2 reference the word "Windstream."

3 Is that your understanding?

4 A. Correct.

5 Q. Do you know the geographic area that the
6 mailings were sent that reference Windstream?

7 A. I have a general idea, but I don't have
8 specifics on it.

9 Q. Can you tell me what you know, please?

10 A. North Carolina, Florida, Missouri,
11 St. Louis. I actually don't have a lot more detail.

12 Q. Do you know who would have that
13 information?

14 A. Our competitive intelligence team that
15 looks at all competition in our footprint.

16 Q. And did you have any discussions with them
17 to prepare for your testimony today?

18 A. No.

19 Q. Did you have any discussions with anybody
20 on the topic of the geographic location of where the
21 mailers were sent?

22 A. This morning, I looked up, just on a
23 website, so I could familiarize myself.

24 Q. And what website did you look at?

25 A. It just said "Windstream locations of

1 service." It was a general Google search.

2 Q. Is it your understanding that the mailers
3 were sent everywhere that Windstream has a
4 footprint?

5 A. I don't actually know the answer to that.
6 I know that it covered where they were in our
7 footprint.

8 Q. Okay.

9 A. But I can't clarify on that.

10 Q. So is it your understanding that mailers
11 were sent everywhere there was an overlap between
12 Windstream's footprint and your footprint?

13 A. It's my understanding that that is how we
14 targeted it.

15 Q. Is it your understanding that that was
16 something specific for this particular campaign or
17 is that something that happens in all campaigns?

18 A. All campaigns.

19 Q. Do you know how many advertisements were
20 sent out that referenced Windstream?

21 A. Which mailing?

22 Q. Sure.

23 How about the first mailing that led to
24 the letters that were received from Windstream's
25 counsel?

1 A. On average, I believe it was a little over
2 800,000. But I don't have a specific number.

3 Q. Sure.

4 And where did you get that 800,000 number?

5 A. That was part of -- when we had to make
6 the destruction of mail, I had them pull how much
7 mail was out there and that's where I got that
8 number. So that was specific to the decision on
9 destroying the mail as well. That's where that
10 number came up.

11 Q. So the ones that were destroyed, that
12 was -- that was after an initial round of mailings
13 had already gone out, correct?

14 A. Correct.

15 Q. And is it your understanding that the
16 second round of mailings that were pulled back, they
17 were going to the exact same addresses as the first
18 round?

19 A. I don't actually know the detailed answer
20 to that. It would have been the -- a similar pool.

21 Q. If you had to go back and figure it out,
22 who would you ask to get that information?

23 A. In my marketing operations team, I have a
24 group that pulls data files for all of our
25 prospective customers, our prospects.

1 Q. Now, amongst those approximate 800,000 --
2 and I understand it's approximate -- do you have an
3 idea of how many of those recipients were actual
4 Windstream customers other than just being in their
5 footprint?

6 A. I don't.

7 Q. Do you have an estimate?

8 A. It would have been in the one court -- or
9 the document where it showed -- one of the
10 exhibits -- I don't recall which exhibit -- where
11 there was an overlap of where we had determined that
12 could be where they were operating. And so that's
13 where the -- where the file would have gone -- or
14 come from.

15 Q. And I understand that that's where they
16 could be.

17 But is there a way that you have
18 internally to know specifically this person at this
19 address is a Windstream customer and I know that if
20 I send the mailing there, it's going to go to a
21 Windstream customer?

22 A. Not with a hundred percent certainty.

23 Q. So what kind of certainty do you have?

24 A. They could have -- the certainty we have
25 is that they are in an area that's serviced by

1 Windstream and it doesn't mean that they are a
2 Windstream customer.

3 Q. Do you have some sort of industry standard
4 or rule of thumb of knowing what percentage of
5 people in that area would be Windstream customers?

6 A. I don't specifically have that detail, but
7 it would be part of our competitive intelligence
8 detail to make certain assumptions on that.

9 Q. And, again, if you wanted that
10 information, you'd go back to the competitive
11 intelligence folks --

12 A. Yes.

13 Q. -- and ask them?

14 A. Yes.

15 Q. And you didn't talk to any of those
16 competitive intelligence people to prepare for
17 responding to questions today?

18 A. I did not.

19 Q. And my understanding is that you're not
20 here today to answer questions about the
21 door-to-door campaign; is that correct?

22 A. That is correct. It's my understanding
23 Keith Dardis will cover that.

24 Q. Okay. And to clarify too, you're also not
25 here to answer any questions about the telephone

1 campaign?

2 A. The outbound telemarketing?

3 Q. Yes.

4 A. That's not my area.

5 Q. Okay. Okay. I just want to follow up.

6 I'm reading Topic No. 3, which says --

7 A. In here?

8 Q. Yes.

9 A. Okay.

10 Q. -- "the use of the advertisements by
11 Charter, including any door-to-door campaign,
12 in-person solicitations, or telephone campaign."
13 And I think your counsel said -- or you and/or your
14 counsel said at the outset that you had partial
15 knowledge on that topic.

16 A. Yes.

17 Q. What knowledge do you have on Topic No. 3?

18 A. My knowledge on this was that I became
19 aware that Jennifer Ingram, in one of the exhibits
20 that you showed, that they were crafting a piece of
21 collateral for door-to-door. I was not aware of
22 that prior to seeing the documents.

23 Q. Okay. And does that exhaust your
24 knowledge of Topic No. 3?

25 A. Other than the point that my team would

1 try to have similar language in terms of a
2 cohesiveness and they would have been involved in --
3 in creating that.

4 Q. And is there any standard -- strike that.

5 In general, when you do a campaign, is
6 there a way that you coordinate with the other teams
7 to try to have consistent messaging?

8 A. Outside of collateral we produce, no.

9 Q. And "collateral," does that mean the
10 mailer?

11 A. Yes.

12 Q. And collateral door-to-door, that would
13 mean the flier?

14 A. Yes.

15 Q. Are those things usually identical or are
16 they different?

17 A. I actually don't know if they're identical
18 and I also don't know if they're different. They
19 would have, again, typically the price of the offer
20 we have, they have contracts, we don't, just
21 standard competitive intelligence.

22 Q. And, in general, do you -- would you
23 review the fliers before they went out to ensure
24 that they're, you know, similar to what you're doing
25 on the mailing?

1 A. I personally would not.

2 Q. Are you aware of whether anyone on your
3 team typically does that?

4 A. According to the exhibit, yes, they would
5 have crafted those in consistency with any mailing,
6 which is the request that they asked in the one
7 exhibit, to send over any residential.

8 Q. Sure. I was talking about just in
9 general, not in this case.

10 A. Right.

11 Q. Is that your understanding too, in
12 general, that they would coordinate in that fashion?

13 A. Yes.

14 Q. Okay. And your understanding, in this
15 particular case, is there was that same
16 coordination?

17 A. I would assume so.

18 Q. Okay. And turn to Topic No. 4.

19 A. Okay.

20 Q. Again, this is one I think -- I was told
21 you have partial knowledge on.

22 A. No. 4 here?

23 Q. Yeah.

24 A. "Charter's customer service training
25 relating to the advertisements and Windstream's

1 Chapter 11 filing."

2 Q. Yes.

3 A. Uh-huh.

4 Q. Is that accurate, that you have some
5 knowledge as to this topic?

6 A. I would have some knowledge.

7 Q. Okay. Which parts of this topic would you
8 have the knowledge of?

9 A. I -- I know that our customer service
10 training is not specific to any particular
11 competitor. It's a general overview of where we
12 have advantages and may have detail on just those
13 competitive advantages, price points, contracts, no
14 contracts.

15 Q. And are we talking about people on the
16 phone that make the phone calls?

17 A. In this case, customer service, I'm
18 looking at it as we have a team that's called
19 "customer service," which is separate from sales.

20 Q. And what does that separate team -- that
21 separate customer service team do?

22 A. Technical questions, billing, anything
23 related to the customer's service of their account.

24 Q. And are you aware of whether those
25 customer service people had any specific training

1 relating to the Windstream advertisements?

2 A. I am not.

3 Q. Did you inquire to see if they did?

4 A. No.

5 Q. If you wanted to find out if they did or
6 not, who would you ask?

7 A. This would be -- customer service is
8 headed by Kip Mayo.

9 Q. Kip, how do you spell his last name?

10 A. M-A-Y-O. It's a woman.

11 Q. Just like it sounds. All right.

12 A. It's a woman.

13 Q. Okay. And what is Ms. Mayo's position?

14 A. Head of -- she's the executive vice
15 president of customer service.

16 Q. Do you have any knowledge of whether, in
17 general -- when a new campaign goes out, whether the
18 customer service people are made aware of it?

19 A. In general, they know that we mail ongoing
20 and across our whole footprint with hundreds of
21 competitors. But to my knowledge, there isn't any
22 specific training done for those competitors.

23 Q. And you don't know if there's any specific
24 training done in this specific case related to the
25 Windstream advertisements?

1 A. I do not know that.

2 Q. If you turn to Category No. 6?

3 A. (Witness complies.) Here?

4 Q. Yeah. Same -- I'm turning. You're on the
5 same page.

6 A. Okay.

7 Q. Yeah. I'm looking at No. 6. It says
8 "Charter's internal communications referring to
9 Windstream's Chapter 11 filing."

10 Are you the person with the most knowledge
11 on that topic?

12 A. I would -- between Keith and I or in
13 general?

14 Q. I'm saying: In general, are you the
15 witness today that's going to answer questions on
16 that topic?

17 A. Yes.

18 Q. Okay. What did you do to prepare yourself
19 to answer questions on this topic?

20 A. I -- actually, I didn't do anything.

21 Q. So did you -- did you ask anybody at
22 Charter about what discussions they may have had
23 relating to the bankruptcy filing?

24 A. No. Outside of the exhibits where I saw
25 the bankruptcy filing and it was communicated to me,

1 no.

2 Q. Any reason why you didn't?

3 A. We have so many competitors. I mean, we
4 have a broad range: AT&T, Verizon, Cincinnati Bell.
5 It goes on and on, so...

6 Q. What does that have to do with preparing
7 for this topic today?

8 A. I didn't prepare for that specifically
9 because those aren't my areas.

10 Q. I'm looking at Category No. 7. It says,
11 "All requests from Windstream customers to switch to
12 Spectrum received by Charter from March 15, 2019, to
13 the present."

14 MR. NEPPLE: And so we're clear, we're
15 going to stand on our objection that we filed
16 on here. We're not producing a designee on
17 this because we see this as a damages issue.
18 But you can inquire from both her and the next
19 designee what they have personal knowledge of.
20 But we are not producing a designee on 7.

21 MR. LARSEN: Okay. Well, we'll mark that
22 and --

23 MR. NEPPLE: Sure.

24 MR. LARSEN: -- make whatever motions need
25 to be made.

1 MR. NEPPLE: Sure.

2 BY MR. LARSEN:

3 Q. Okay. So my understanding is, on Category
4 No. 7, you didn't -- sounds like you didn't do any
5 independent research to prepare yourself for that
6 topic today; is that correct?

7 A. That's correct.

8 Q. Okay. Do you have any personal knowledge
9 as to that topic?

10 A. I do not have any specifics on that.

11 Q. Okay. If you wanted to find out the
12 specifics, where would you go to find out?

13 A. I'm trying to think, actually. Our
14 inbound sales organization, who takes the actual
15 calls, and our competitive intelligence team that I
16 mentioned, David Andreski, who had the -- who was in
17 one of the exhibits.

18 Q. So do you have any knowledge of whether --
19 when a customer happens to call up to switch,
20 whether that's something that's noted internally?

21 Strike -- that was a bad question.

22 A. Okay.

23 Q. Let me try to clarify.

24 A. Okay.

25 Q. So I would assume that often someone calls

1 up Charter's customer service and says, I would like
2 to switch from my current provider to Charter.

3 A. Yes.

4 Q. Correct?

5 A. Correct.

6 Q. When that happens and if the person
7 switches from a specific other service like
8 Windstream, is that notated somewhere in Charter's
9 file so they know that we took a customer from
10 Windstream?

11 A. Not to my knowledge.

12 Q. And, again, would the inbound sales
13 organization be the people that would know that for
14 sure?

15 A. I don't actually know the answer to that.

16 Q. Okay. I'm now looking at Category No. 8,
17 which says, "All communications with present or
18 potential customers referring to Windstream since
19 March 15, 2019, including but not limited to,
20 communications referring to Windstream, Windstream's
21 Chapter 11 cases, Windstream's future, Windstream's
22 potentially going out of business or cutting off
23 services, or the Charter advertisements referring to
24 Windstream." And I think I also heard at the
25 beginning that you have partial knowledge as to

1 that.

2 Is that correct?

3 A. Yes.

4 Q. Okay. Which parts of this do you have
5 knowledge about?

6 A. The direct mail campaign that we sent out,
7 and then, just today, in the exhibits, the details
8 around collateral that may have been developed.

9 Q. Just to be clear -- I think I know what it
10 means. But can you define what "collateral" means?

11 A. Any material that could be used to show a
12 customer comparative offering for our products and
13 services.

14 Q. So a direct mailer and a flier are both
15 collateral?

16 A. Yes, they could be considered that.

17 Q. Is there anything else that would fall
18 under the definition of "collateral"?

19 A. Not in that category. I say that because
20 we do television and radio, but that's not
21 collateral. They're assets.

22 Q. I'm looking at Category No. 9: "The
23 identities of all third parties, agents, or
24 entities, hired or engaged by Charter to create or
25 produce any the [sic] advertisements." This is a

1 typo.

2 We've talked about RAPP, correct?

3 A. Uh-huh. Yes.

4 Q. Is there anyone other than RAPP that would
5 fall under this category?

6 A. The printer, Quad, that's in the exhibit.
7 We have other agencies that do TV, radio, other
8 things, but not pertaining to this.

9 Q. Are you aware of whether there have been
10 any advertisements on TV or radio relating to
11 Windstream specifically?

12 A. I know there is nothing on TV. I'm not
13 sure about the radio.

14 Q. And who would know about the radio?

15 A. It would be within my team, Joe Leonard.

16 Q. And is there a separate team that does --
17 that works on radio?

18 A. There is. It is an in-house creative team
19 for the majority of those campaigns. They would
20 create a script.

21 Q. And you're not involved in that?

22 A. It's in my team --

23 Q. Okay.

24 A. -- but I am not personally involved in it.

25 Q. But you supervise the people that do it?

1 A. Yes, for that team.

2 Q. And are -- did you -- strike that.

3 Are you aware of whether there was any
4 radio campaigns done for the advertisements
5 referring to Windstream?

6 A. To my knowledge, there was not.

7 Q. Okay. And is that something you would
8 likely know about if there was?

9 A. I would likely know about it.

10 Q. All right. Category No. 10 says, "The
11 design of the envelope appended hereto as Exhibit B,
12 including the decision to use the phrase 'important
13 information for Windstream customers,' the color
14 strip blending from dark purple to pink, and the
15 lack of a corporate identification in the return
16 address."

17 You're here on that topic, correct?

18 A. Yes.

19 Q. Okay. And we've discussed a lot about
20 that, I believe.

21 A. Yes.

22 Q. Is there anything you did to prepare
23 yourself to gather information to speak on that
24 topic today?

25 A. Other -- the obtaining of the samples that

1 I mentioned earlier.

2 Q. Did you talk to anybody in your team
3 about, you know, where this information came from or
4 the process of how it was developed?

5 A. No. They assume I understand. It's with
6 the agency.

7 Q. And did you talk to anybody at RAPP about
8 how this came about?

9 A. No.

10 Q. Do you believe this was something that was
11 developed in-house or something that RAPP developed?

12 MR. NEPPLE: Object to form.

13 BY MR. LARSEN:

14 Q. Or do you not know?

15 A. It was RAPP, given the creative emails
16 that were shown today.

17 Q. And what I mean is, is the specific
18 language. Like, you know, "Goodbye, Windstream;
19 Hello, Charter," things like that, is that something
20 that your team comes up with or is that something
21 that RAPP comes up with and then your team signs off
22 on?

23 A. It would be something that the agency
24 presented as an option to us.

25 Q. Is that typically how that works, the

1 agency comes up with the specific language and then
2 you approve or change?

3 A. That's typically how it works, yes, unless
4 there's a template that is being utilized.

5 THE COURT REPORTER: That is?

6 THE WITNESS: Being utilized. We have
7 templates.

8 BY MR. LARSEN:

9 Q. And in this particular case, did you
10 give -- not you -- did Charter give RAPP the Google
11 template we've been talking about?

12 A. It's my understanding the team did use
13 that and they referenced it in several emails.

14 Q. In your understanding, did the Google
15 template have the same type of language, you know,
16 "Goodbye, Google; Hello, Charter," that type of
17 thing in it?

18 A. I can't actually recall the exact language
19 on that. It does have a switch message.

20 MR. LARSEN: I don't think I have any
21 further questions of this witness.

22 MR. NEPPLE: Okay.

23 THE VIDEOGRAPHER: Okay. Counsel?

24 MR. NEPPLE: Oh. Yes. Okay. We'll
25 obviously read and sign her portion. And we'll

1 read and sign Keith's portion.

2 THE VIDEOGRAPHER: Thank you.

3 MR. NEPPLE: You can go off the record.

4 THE VIDEOGRAPHER: The time is 1:30 p.m.
5 on May 1, 2019. This is the end of Media Unit
6 No. 3 and this completes the videotaped
7 deposition of Kelly Atkinson.

8

9 (Time noted: 1:30 p.m.)

10

11

12

KELLY ATKINSON

13

14 Subscribed and sworn to

15 before me this day

16 of 2019.

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CERTIFICATE

STATE OF CONNECTICUT

I, ANGELA M. SHAW-CROCKETT, Notary Public, duly
commissioned and qualified in and for the States of
New York, New Jersey and Connecticut, before whom the
foregoing deposition was taken, do hereby certify that the
witness whose testimony appears in the foregoing deposition
was duly sworn by me; that the testimony of said witness
was taken by me to the best of my ability and
thereafter reduced to typewriting under my direction;
that I am neither counsel for, related to, nor
employed by any of the parties for the action in
which this deposition was taken, and further that I
am not a relative or employee of any attorney or
counsel employed by the parties thereto, nor
financially or otherwise interested in the outcome of
the action. Witness will read and sign.

IN WITNESS THEREOF, I have hereunto set my
hand this 3rd day of May, 2019.



Angela M. Shaw-Crockett, Notary Public

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 CHAPTER 11 CASE NO. 19-22312 (RDD)

4 - - - - - /
5 In re:

6 WINDSTREAM HOLDINGS, INC., et al.,
7
8 Debtors,

9
10 WINDSTREAM HOLDINGS, INC., et al.,
11
12 Plaintiffs,

13 vs.

14 CHARTER COMMUNICATIONS, INC., and
15 CHARTER COMMUNICATIONS OPERATING, LLC,
16
17 Defendants.

18 - - - - - /

19 The videotaped 30(b)(6) deposition of
20 KELLY CHRISTINE ATKINSON, in her capacity as
21 designated corporate representative for defendants,
22 was taken at the law offices of Wiggin and
23 Dana, LLP, Two Stamford Plaza, Stamford,
24 Connecticut, before Mercedes Marney-Sheldon,
25 CT-LSR #530, a registered professional reporter in
the state of Connecticut and a notary public for the
State of Connecticut, on Thursday, September 19,
2019, at 9:25 a.m.

1 oOo

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

3
4 REPRESENTING THE OFFICIAL COMMITTEE and
5 UNSECURED CREDITORS:

6 MORRISON & FOERSTER, LLP

7 250 West 55th Street

8 New York, New York 10019-9601

9
10 BY: JOCELYN E. GREER, ESQ.

11
12 ALSO PRESENT:

13 SERENA PARKER
14 Charter Communications, Inc.

15 ADAM VENURINI, Videographer
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----- I N D E X -----

TESTIMONY OF: KELLY CHRISTINE ATKINSON

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----- INFORMATION REQUEST -----

INSTRUCTION TO WITNESS: (None)

REQUEST FOR PRODUCTION: (None)

INFORMATION TO BE FURNISHED: (None)

STIPULATIONS: (None)

MOTIONS: (None)

MARKED FOR RULING: (None)

----- E X H I B I T S -----

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Public copy of the complaint filed by Windstream in the adversary proceeding involving Charter's advertising	

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7	to Kelly Atkinson, dated April 5;	
8	Bates-stamped Charter 031754	
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10	E-mail string, with top e-mail dated	
11	March 27 from Matt Bury; Bates-stamped	
12	Charter -29749, through -29756 inclusive	
13	Defendants' Exhibit 5	71
14	E-mail string, starting with Bates Number	
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20	E-mail string, starting with Bates Number	
21	Charter -1217	
22	Defendants' Exhibit 8	89
23	E-mail string, with top e-mail dated	
24	April 2, from Kelly Atkinson to	
25	Keith Dardis; Bates-stamped Charter -7830	
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	Defendants' Exhibit 9	92
	E-mail dated February 22, from John Hargis	
	to Kelly Atkinson, David Andreski,	
	Keith Dardis, and Scott Niles;	
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(Exhibits were retained by the court reporter)

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2
3 S T I P U L A T I O N S
4

5 It is stipulated by counsel for the parties
6 that all objections are reserved until the time of
7 trial, except those objections as are directed to
8 the form of the question.

9
10 It is stipulated and agreed between counsel
11 for the parties that the proof of the authority of
12 the notary before whom this deposition is taken is
13 waived.

14 It is further stipulated that any defects
15 in the notice are waived.

16
17 It is further stipulated that the reading and
18 signing of the deposition transcript by the witness
19 may be signed before any notary public.

20 * * * * *

1 K.C. Atkinson - 09/19/19

2 THE VIDEOGRAPHER: This is Tape 1.

3 We are now on the record at

4 9:25 a.m., Thursday, September 19, 2019.

5 This is the 30(b)(6) deposition of

6 Kelly Atkinson, in the matter of

7 Windstream Holdings v. Charter.

8 This deposition is being held at the

9 offices of Wiggin and Dana, LLP, located

10 at Two Stamford Plaza, Stamford,

11 Connecticut 06901.

12 The court reporter is Mercedes Marney

13 with U.S. Legal.

14 I'm the legal videographer,

15 Adam Venturini, also with U.S. Legal.

16 Will counsel please introduce

17 themselves and state whom they represent.

18 MR. JUSTUS: Sure.

19 Michael Justice from Katten, on

20 behalf of Windstream Holdings and the

21 affiliated debtors and debtors in

22 possession.

23 MS. GREER: Jocelyn Greer, Morrison &

24 Foerster, on behalf of the official

25 committee of unsecured creditors.

1 K.C. Atkinson - 09/19/19

2 MR. KINGSTON: John Kingston on
3 behalf of Charter. And with me is
4 Nino Przulj and Serena Parker.

5 THE VIDEOGRAPHER: Will the court
6 reporter please swear in the witness.

7 (The witness was duly sworn by the
8 court reporter.)

9 MR. JUSTUS: Well, John, you and
10 I talked before we got on the record.
11 I think there's going to be four different
12 witnesses called today, at least that's
13 the expectation.

14 Exhibit 1 is just going to be the
15 second amended 30(b)(6) notice.

16 So it may be easier for you and I to
17 talk about those topics first, and who is
18 going to be put forth on what topic.

19 MR. KINGSTON: I think that that's
20 perfect.

21 MR. JUSTUS: Okay.

22 MR. KINGSTON: If you want to --

23 MR. JUSTUS: So we had marked as
24 Exhibit 1, the second amended notice.
25

1 K.C. Atkinson - 09/19/19

2 (Defendants' Exhibit Number 1 was
3 marked for identification as of this
4 date.)

5 MR. JUSTUS: So you want to just go
6 topic by topic right now?

7 MR. KINGSTON: Sure.

8 And maybe the most efficient way is,
9 I'll kind of just walk through the topics,
10 and advise who will be appearing on what
11 topic.

12 MR. JUSTUS: Okay.

13 MR. KINGSTON: Ms. Atkinson,
14 Kelly Atkinson, will be appearing for --
15 on Topics 1, 2, and 3, and, in part, for
16 Topic 4.

17 Latisha Truong, T-R-U-O-N-G, will be
18 appearing also on Topic 4, to discuss
19 Charter's training and directions.

20 Ms. Atkinson will be appearing on
21 Topics 5, 8, 9, and 10.

22 Matt Kardos --

23 MR. JUSTUS: Hold on, I'm sorry.

24 Okay.

25 MR. KINGSTON: Matthew Kardos will be

1 K.C. Atkinson - 09/19/19

2 appearing on Topic 7.

3 Rick Gunzel, his name is spelled,

4 G-U-N-Z-E-L. And I think it's

5 Frederick Gunzel.

6 MR. KINGSTON: So it's Frederick, not

7 Richard, Gunzel, will be appearing on

8 Topic 11.

9 Ms. Atkinson, Ms. Atkinson will be

10 appearing on Topics 12, 13, 14, and -- 15,

11 and 16.

12 Mr. Kardos will be appearing on

13 Topic 17.

14 With respect to Topic 20,

15 Ms. Atkinson is available to testify to

16 facts related to the topics on which she's

17 appearing.

18 MR. JUSTUS: Okay.

19 MR. KINGSTON: Ms. Truong, likewise,

20 will be made available to testify on the

21 facts related to the topics on which she's

22 appearing.

23 And, Mr. Kardos, again, will be

24 appearing to provide testimony related to

25 the -- on the facts related to the

1 K.C. Atkinson - 09/19/19

2 topics -- the other topics on which he's
3 appearing.

4 And, finally, Mr. Gunzel will also be
5 made available to testify related to facts
6 that are related to the topics on which he
7 is appearing.

8 MR. JUSTUS: How about the facts in
9 the pleadings?

10 MR. KINGSTON: I think that those --
11 I think that the topics cover the --
12 the -- I think the -- the Windstream
13 corporate-rep topics, to which Charter has
14 not objected, cover the -- the front of
15 the topics of the facts related to the
16 pleadings.

17 To the extent there are facts that
18 are beyond those, I think those would
19 probably be on Ms. Atkinson.

20 MR. JUSTUS: Okay.

21 MR. KINGSTON: Does it make it easy
22 with the -- like, I'm envisioning sort of
23 the (indiscernible cross-talking) --

24 MR. JUSTUS: More or less
25 (indiscernible cross-talking) --

1 K.C. Atkinson - 09/19/19

2 MR. KINGSTON: -- (indiscernible
3 cross-talking) --

4 THE COURT REPORTER: All right, one
5 at a time, please.

6 MR. KINGSTON: That's a good --
7 that's a good interruption.

8 MR. JUSTUS: Yeah, I -- I, more or
9 less, understand I'll start with
10 Ms. Atkinson. And, of course, there's
11 three other people if there's some things
12 she's not prepared for.

13 MR. KINGSTON: Okay. Very good.

14 And Ms. Atkinson will be testifying
15 on Topics 21, 22, 23, and 24.

16 Mr. Gunzel will be testifying on
17 Topic 25.

18 And Ms. Atkinson will be testifying
19 on Topic 26.

20 Ms. Atkinson is here now.

21 MR. JUSTUS: Uh-huh.

22 MR. KINGSTON: After she finishes,
23 Ms. Truong, we'd like to get her on,
24 because we'd like to get her on a flight
25 to get back to Ohio.

1 K.C. Atkinson - 09/19/19

2 MR. JUSTUS: That's fine.

3 MR. KINGSTON: And then Mr. Kardos
4 and Mr. Gunzel are both available this
5 afternoon.

6 I think we were looking at doing
7 Mr. Kardos first, but I think there is
8 some flexibility there, and I'm happy to
9 talk about it with you on a break.

10 MR. JUSTUS: But they'll be available
11 starting at a certain time this afternoon?

12 MR. KINGSTON: I would say, I think
13 they would be available anytime after
14 noon, but, I'm not positive on that.

15 MR. JUSTUS: Okay.

16 MR. KINGSTON: But my suspicion is,
17 my hope is, that we'll be finished with
18 Ms. Atkinson by noon. We'll see.

19 MR. JUSTUS: Okay.

20 All right, we'll see how it goes.

21 All right. Well, thank you for that,
22 John.

23 MR. KINGSTON: My pleasure.
24
25

K.C. Atkinson - 09/19/19

K E L L Y C H R I S T I N E A T K I N S O N ,
called as a witness, having been first
duly sworn in by the court reporter,
a notary public of the State of Connecticut,
is examined and testifies as follows:

- - -

DIRECT EXAMINATION

- - -

BY MR. JUSTUS:

Q. Can you please state your full name
for the record?

A. Kelly Christine Atkinson.

Q. And you're currently an employee of
Charter; right?

A. I am.

Q. And what's your job title?

A. I'm head of marketing for consumer,
and small and medium business.

Q. And how long have you been in that
role?

A. It will be one year, September 28th.

Q. And how long have you been employed
by Charter in total in any role?

1 K.C. Atkinson - 09/19/19

2 A. The same period of time.

3 Q. The same period. Okay.

4 A. Uh-huh.

5 Q. And are you based in Charter's
6 Stamford office?

7 A. I am.

8 Q. Okay.

9 So there's two Charter entities that
10 are defendants in this case.

11 Just to streamline things, I'm going
12 to refer to them both as "Charter."

13 A. Okay.

14 Q. Okay?

15 Okay. And you were deposed earlier
16 in this case; right?

17 A. Yes.

18 Q. That was back, I think, it was
19 May 1st. Does that sound right?

20 A. May. I can't remember the exact
21 date.

22 Q. Okay.

23 And you have Exhibit 1 in front of
24 you?

25 THE THE COURT REPORTER: Uh-uh.

1 K.C. Atkinson - 09/19/19

2 MR. JUSTUS: No.

3 THE THE COURT REPORTER: One moment.

4 BY MR. JUSTUS:

5 Q. And we just talked, I just spoke with
6 your counsel, about the topics you're going to
7 testify here today.

8 Were you following along with his
9 comments on which topics you're going to be
10 testifying here today?

11 A. I was. I just don't have them
12 marked, exactly.

13 Q. Right, but they sounded right to you
14 as he read them to me?

15 A. Yes.

16 Q. Okay.

17 So what did you do to prepare for
18 this deposition?

19 A. I had a meeting with my attorneys
20 last week, and yesterday.

21 Q. Okay. Did you speak with anyone
22 other than your attorneys?

23 A. No.

24 Q. Okay. No employees at Charter who
25 are not attorneys?

1 K.C. Atkinson - 09/19/19

2 A. No.

3 Q. Okay.

4 Did you review any documents to
5 prepare?

6 A. Yes, I did.

7 Q. Which documents did you review?

8 A. I have copies of Keith Dardis and
9 Scott Niles' e-mails. And there were various
10 marketing materials that I had looked at, just
11 general industry marketing materials.

12 Q. Okay. Starting with the e-mails,
13 were those e-mails produced to Windstream in this
14 case?

15 A. My understanding is yes.

16 Q. Okay. And they have little Bates
17 numbers at the bottom?

18 A. I don't know what Bates numbers --

19 Q. There's numbers that says "Charter,"
20 and then some numbers after that, or --

21 A. Oh, yes.

22 It says "Charter," and then it has
23 six-digit numbers.

24 Q. Okay. I would expect those to be the
25 Bates numbers.

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2 A. Okay.

3 Q. That's fine.

4 A. I wasn't familiar with the term.

5 Q. So you brought those documents with
6 you?

7 A. Yes.

8 Q. Those are the only two e-mails that
9 you looked at to prepare?

10 A. Yes.

11 Q. Okay.

12 A. For this topic.

13 Q. Right.

14 And you mentioned you looked at
15 marketing materials; is that right?

16 A. Yes.

17 Q. Are those Charter's marketing
18 materials?

19 A. They were industry marketing
20 materials, just general visuals, because I was
21 looking at -- and Windstream's. I was looking at
22 past communications that Windstream had done.

23 Q. When you say "industry," you mean not
24 Charter?

25 A. Not Charter. Not Windstream.

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2 Just general. Pharmaceutical, Lyft,
3 Instagram; basically, just coloring.

4 Q. "Coloring"?

5 A. Coloring.

6 Q. What do you mean by "coloring"?

7 A. I know that one of the topics that
8 I had been deposed on before was about the use of
9 the color on the envelope.

10 And so I was looking at this
11 particular color pallet, which is a gradation,
12 which is more than frequently used in the
13 industry.

14 Q. Oh, okay.

15 And when you say "industry," you
16 mean --

17 A. Marketing.

18 Q. -- Internet and phone and TV --

19 A. Marketing. Just overall marketing.

20 Q. Oh, used in marketing across
21 (indiscernible cross-talking) --

22 A. Just overall marketing across --

23 THE THE COURT REPORTER: Please,
24 please, one at a time.

25 THE WITNESS: -- overall marketing

1 K.C. Atkinson - 09/19/19
2 across, probably, 12 to 15 different
3 industry segments.

4 BY MR. JUSTUS:

5 Q. Okay.

6 So we've talked about all the
7 documents that you looked at to prepare?

8 A. Yes.

9 Q. Okay.

10 All right. So one of the things --
11 do you know that we took the deposition of
12 RAPP Worldwide last week? Are you aware that?

13 A. I am aware of that.

14 Q. Okay. One of the things we talked to
15 RAPP about was how many different advertisements
16 did they actually create for Charter, because
17 that was not clear to us.

18 A. Uh-huh.

19 Q. And the witness for RAPP testified
20 that there were three separate projects.

21 One was a residential mailer and
22 envelope;

23 Two, was a "direct-sales flyer," he
24 referred to it as;

25 And three was an e-mail campaign.

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2 A. Yes.

3 Q. And one of the basic facts that
4 I want to try to get to, without -- I have a
5 bunch of exhibits. I hope I don't need them.

6 I'm just trying to figure, out of
7 those three, which ones actually went out the
8 door; which ones were actually sent out to
9 customers, potential customers, the public.

10 The residential mailer and envelope
11 was sent out the door; right?

12 A. Yes.

13 Q. To, I think, over 800,000 people;
14 right?

15 A. Yes.

16 Q. The second project, the direct-sales
17 flyer, did that actually go out the door to
18 customers, potential customers, or the public?

19 A. No.

20 Q. Never went out the door?

21 A. It did not go out the door. It was
22 paused. So it was not an authorized
23 distribution.

24 Q. So you're saying there may have been
25 distribution that was unauthorized?

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2 A. I'm aware that there were a few
3 instances where it was. And those employees are
4 on corrective action right now, because it states
5 in our employee handbook that that's not
6 authorized.

7 MR. KINGSTON: I don't want to step
8 on your record, Counsel, but I -- you --
9 I understood counsel's question to be
10 directed to the flyer that was being
11 prepared at RAPP, pursuant to the
12 instructions of Mr. Bury.

13 And the witness may have been talking
14 past you to -- about distributions made by
15 Mr. Walker that were not the "Bury"
16 flyers.

17 I'm not sure you guys are on the same
18 page.

19 I will not interrupt again.

20 BY MR. JUSTUS:

21 Q. Do you need to change anything you've
22 testified based on your counsel's comments?

23 A. My understanding, and what I had
24 testified on, what went out was the direct
25 mailing.

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2 Q. Uh-huh?

3 A. That was the eight-hundred --

4 Q. Yes.

5 A. -- -and-some-thousand.

6 Q. And then the second project, which
7 was the direct-sales flyer?

8 A. And that was not distributed.

9 Q. Not -- it was not authorized to be
10 distributed, but it may have been distributed --

11 A. It was not --

12 Q. -- on an unauthorized basis, is that
13 what you said?

14 A. It was not authorized to be
15 distributed. In fact, the program was canceled.

16 Q. And I think you said you're aware of
17 instances where it was distributed, but it was
18 not authorized. So it was distributed in a way
19 that was, I think you said, contrary to Charter
20 policy. Is that right?

21 A. Yes.

22 Q. Okay. And how many instances are you
23 aware of where that sales flyer was distributed?

24 A. I'm aware of two, of Charter
25 employees;

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2 And one third party, a Walmart
3 employee, that just came to light. But I have no
4 background on that.

5 Q. A Walmart employee, you say?

6 A. Yes, it was a Walmart employee.

7 Q. Okay.

8 And the two Charter employees, was
9 one Mr. Sites?

10 A. Let me just -- let me just validate
11 my names.

12 Andrew Sites.

13 Q. And the other?

14 A. Rebecca Root.

15 Q. Okay. So that's, Sites, S-I-T-E-S,
16 and, Root, R-O-O-T. Right?

17 A. Yes.

18 Q. What about a Mr. Emmitt Walker?

19 A. He made copies of the direct mailing
20 and distributed less than 10 of those.

21 And he is also on probation, and
22 potential termination.

23 Q. Okay. And what do you know about the
24 Walmart employee?

25 A. Nothing, actually, other than there

1 K.C. Atkinson - 09/19/19

2 was an unidentified individual.

3 That we utilized third parties as
4 resellers, it's a common practice.

5 And this employee, apparently, made
6 reference to this. But I have no other details.

7 Q. So Walmart is an authorized reseller
8 of Charter services?

9 A. Yes.

10 Q. But it would actually be Walmart
11 employees who do the selling activities?

12 A. Yes.

13 Q. Are they given a handbook or any
14 direction on how to sell Charter services?

15 A. I don't actually have the details of
16 what they're done --

17 Q. Okay.

18 A. -- or, what they're provided.

19 Q. And how did you become aware of that
20 Walmart employee?

21 A. Yesterday, with discussion with my
22 counsel.

23 Q. Okay.

24 And has anyone at Charter attempted
25 to identify the Walmart employee?

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2 A. Not to my knowledge.

3 That wouldn't my role.

4 Q. Okay. Whose role would that be to
5 follow up on this?

6 A. It would be, the leader of that team
7 is Patty Eliason.

8 Q. Okay. Is she on Mr. Dardin's (sic)
9 team?

10 A. No. She's on -- she runs our third
11 parties and stores.

12 Q. Okay.

13 A. She doesn't report to Keith.

14 We all report to John Hargis.

15 Q. Okay. And she's on the direct sales
16 side?

17 A. She's on the sales channel side.

18 Q. Sales channel side.

19 Okay, I got it.

20 A. Not direct sales.

21 Q. Okay. And then the third project was
22 e-mail marketing.

23 Did any e-mail marketing, referencing
24 Windstream's bankruptcy, actually go out the door
25 to customers, potential customers, or the public?

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2 A. No.

3 Q. No.

4 But there was an e-mail campaign that
5 was created by RAPP --

6 A. Yes.

7 Q. -- is that right?

8 It just never went out the door?

9 A. Yes.

10 It's common practice that they
11 prepare various tactics for us. It doesn't mean
12 that we actually implement them.

13 Q. Okay.

14 So going back to the first project,
15 the direct-mail piece that did go out the door,
16 what geographic markets was that mailed in?

17 A. It was designed to go to the
18 Windstream markets. It was through -- we utilize
19 models that help us determine, is this a
20 Windstream customer or not?

21 It's not 100 percent accurate, it's
22 an assumption, based on the service providers in
23 the area.

24 And from that, we send out mailings
25 that may be generic or may be specific to the

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2 customers.

3 And there's always the chance that a
4 Windstream mailing goes to someone who has no
5 Windstream service. They could have Verizon
6 services.

7 But it's an opportunity to try to
8 make the communication a little more relevant so
9 that it can -- the call to action can be taken.

10 Q. Okay. And the models, I think you
11 said they try to determine where Windstream
12 customers are located? Is that what you said?

13 A. Windstream, and over 300 different
14 competitors that we track.

15 Q. Right.

16 How do the models work?

17 A. I don't actually know. I don't run
18 the models.

19 Q. Okay, who would know the answer to
20 that?

21 A. That would be David Andreski's team.
22 He runs the different modeling and segmentation
23 for our business.

24 Q. Is anyone from his team going to be
25 testifying here today, Ms. Truong or Mr. Gunzel

1 K.C. Atkinson - 09/19/19

2 or Mr. Kardos?

3 A. Matt Kardos reports to
4 David Andreski.

5 Q. And so do you know the specific
6 geographic areas where the mailer was sent;
7 states, for instance?

8 A. Not really.

9 We track over 300 competitors.

10 And Windstream is a very small
11 competitor in our over 50-million passing.

12 Q. But this -- this specific residential
13 mailer, do you know the states it was mailed to,
14 in fact?

15 A. Not directly, no.

16 Q. Okay.

17 MR. JUSTUS: Counsel, is there one of
18 these witnesses who can tell us that?

19 MR. KINGSTON: Well, I --

20 MR. JUSTUS: It's not a trick. It's
21 just -- I just which states.

22 MR. KINGSTON: Well, I mean, the --
23 so --

24 MR. JUSTUS: I mean, we can have
25 someone call on a break if we have to do

1 K.C. Atkinson - 09/19/19
2 that. But, it's just a basic fact we need
3 today.

4 THE WITNESS: So --

5 MR. KINGSTON: The topic is
6 Number 5 -- as I understand it, the
7 question relates to Topic Number 5, which
8 is: The intended or actual recipients of
9 the advertisements, including areas in
10 which the advertisements were distributed
11 or used.

12 The direct mail went out to some
13 800,000 people.

14 The complete list of those 800,000
15 people, with names and addresses and
16 ZIP codes, which would tell you the
17 geographic region, has been produced.

18 But this witness, obviously, hasn't
19 memorized that list.

20 MR. JUSTUS: Right. I'm just asking
21 the states. It was a handful, I think,
22 maybe. But...

23 THE WITNESS: I -- St. Louis.

24 I really don't have the details of
25 the states.

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2 BY MR. JUSTUS:

3 Q. Okay.

4 A. It's -- literally, we do over
5 60 million pieces of mail a month.

6 MR. JUSTUS: But, Counsel, you're
7 representing that we have a document where
8 we can deduce the states and the
9 locations?

10 MR. KINGSTON: Yes. There is an
11 Excel spreadsheet that does have everybody
12 to whom the direct mail was directed.

13 And I believe that that spreadsheet
14 was actually the basis for a corrected
15 mailer that Windstream sent in connection
16 with the preliminary injunction.

17 MR. JUSTUS: Okay.

18 MR. KINGSTON: So I think you have
19 that list, and I think that you've used
20 it.

21 MR. JUSTUS: Okay, that's fine.

22 BY MR. JUSTUS:

23 Q. When was the residential direct mail
24 piece sent out, the date?

25 A. The first mailing happened in March.

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2 Q. Do you know the exact date?

3 A. Mid-March. I actually don't recall
4 the exact date.

5 Q. And was there more than one mailing?

6 A. There was a second mailing.

7 We mail every two weeks, so there was
8 a second mailing.

9 Q. And when was that?

10 A. That would have been in early April.

11 Q. Do you know the date?

12 A. I do not.

13 Q. And that was the same exact
14 direct-mail piece, both times, both batches?

15 A. No.

16 Q. Okay, what were the differences
17 between those two mailers?

18 A. The first mailing went out, and it
19 had a statement, it said, "uncertainty."

20 And we received a communication from
21 our legal that Windstream had, I guess,
22 complained about that from a cease-and-desist.

23 And so we corrected that and took it
24 out.

25 That was the only thing that they

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2 stated they wanted changed.

3 So the mailing, with the exception of
4 that line removed, went out again.

5 Q. The line being -- relating to
6 "uncertainty" --

7 A. Correct.

8 Q. -- you said?

9 Okay.

10 MR. JUSTUS: Please mark this as
11 Exhibit 2.

12 (Defendants' Exhibit Number 2 was
13 marked for identification as of this
14 date.)

15 BY MR. JUSTUS:

16 Q. And I'll represent, this is the
17 complaint that Windstream filed in this adversary
18 proceeding involving Charter's advertising.

19 Some of the pages are redacted. This
20 is the public copy. But I'm not going to ask you
21 about anything that's redacted.

22 And if you would turn to page 13,
23 please?

24 Do you recognize that as the front
25 page of the direct-mail piece we've been

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2 discussing?

3 A. Yes.

4 Q. And on page 14, do you recognize that
5 as the back page of the direct-mail piece we've
6 been discussing?

7 A. Yes.

8 Q. And so back on page 13, I see a line
9 that says, "Windstream has filed for Chapter 11
10 bankruptcy, which means uncertainty."

11 So is that the line you're
12 referencing that was removed for the April
13 mailing?

14 A. Yes.

15 Q. That whole sentence?

16 A. I don't actually recall the exact
17 words. I never saw the creative. It was all
18 conversation; a quick conversation.

19 MR. JUSTUS: Counsel, do you know if
20 the revised version was ever produced to
21 us?

22 MR. KINGSTON: It was, it was.

23 And I don't want to put words in the
24 witness's mouth, but I think that there
25 was a reference to a March mailing and an

1 K.C. Atkinson - 09/19/19

2 April mailing.

3 The March mailing was attached to
4 Windstream's motion for a TRO.

5 There was an April mailing that was
6 produced, that speaks for itself, that --
7 but it doesn't exclude the reference to
8 "uncertainty."

9 The April mailing was an attachment
10 to Charter's opposition to Windstream's
11 TRO, and was, I believe, destroyed after
12 the TRO was entered.

13 But there -- so I know that the --
14 I know that the April mailing was produced
15 for sure, as an attachment to a pleading.

16 And I -- I believe it was produced in
17 part of the document production.

18 MR. JUSTUS: Okay.

19 MR. KINGSTON: I think when we -- we
20 produced everything Windstream-related.

21 BY MR. JUSTUS:

22 Q. And so that second mailer, that
23 change was made to remove the line about
24 "uncertainty."

25 Is that the mailer that was on

1 K.C. Atkinson - 09/19/19

2 pallets that were destroyed?

3 A. Yes.

4 Q. Okay.

5 Was there any other mailing?

6 It was just those two, one in March,
7 one in April, is that it?

8 A. Those two mailings.

9 But we -- we mail to all of our
10 customers -- all of our prospects in our
11 50-plus-million homes passed.

12 So there were subsequent mailings,
13 but they didn't have anything to do with this
14 creative. They would have just been our general
15 templates.

16 Q. They didn't mention Windstream's
17 bankruptcy?

18 A. Correct, no, they did not.

19 Q. That's fine. Thank you.

20 So how would we be able to find out
21 the exact dates in March and April that those
22 mailings went out?

23 A. I can -- on my staff I have a
24 gentleman who would have the exact dates.

25 I just don't recall them.

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2 Q. Could you --

3 A. Did you get my --

4 Q. Could you call the gentleman --

5 A. -- first deposition --

6 Q. Sorry, sorry to interrupt.

7 Could you call the gentleman on a
8 break and just ask those two dates?

9 A. Yes.

10 Q. Just a basic fact that we need for
11 the record today.

12 A. Yes.

13 Q. Thank you very much.

14 Did Charter run any TV ads relating
15 to Windstream's bankruptcy?

16 A. No.

17 Q. How about radio ads relating to the
18 bankruptcy?

19 A. No.

20 Q. How about Internet or online ads
21 relating to Windstream's bankruptcy?

22 A. No.

23 Q. So other than the residential
24 direct-mail piece that we've talked about, no
25 other ads went out the door that referenced

1 K.C. Atkinson - 09/19/19

2 Windstream's bankruptcy; is that right?

3 A. That is correct.

4 Q. Okay.

5 All right. So turning back to the
6 direct-mail piece on page 13 in Exhibit 2, what
7 was Charter's factual basis for saying that
8 Chapter 11 bankruptcy meant uncertainty?

9 A. We directly -- we track over
10 300 different competitors in our footprint.

11 One Touch is a third party that the
12 company has utilized for years, that assesses
13 competitive market -- markets.

14 And they had a specific write-up that
15 said Windstream was going into bankruptcy, and
16 the uncertainty surrounding it.

17 And it was a direct to Lyft.

18 (Clarification requested by the
19 court reporter.)

20 THE WITNESS: Direct Lyft of their
21 positioning, from the third-party --

22 BY MR. JUSTUS:

23 Q. And what does that mean?

24 A. It means that the phrasing that they
25 utilized was, this bankruptcy -- the bankruptcy

1 K.C. Atkinson - 09/19/19

2 means uncertainty.

3 And that was utilized as part of the
4 creative approach that was provided to RAPP for a
5 brief.

6 Q. Was there any detail in that
7 One Touch piece explaining what "uncertainty"
8 meant?

9 A. It went into some detail. I don't
10 have the document with me right now. But it is
11 through our competitive analysis, and it talked
12 about just the overall bankruptcy position, and
13 that it's -- it means uncertainty to consumers.

14 Q. Okay. Did Charter do anything to
15 verify that there would be uncertainty
16 surrounding Windstream's bankruptcy?

17 A. The third party that provides this to
18 us is really a third party that just gives us the
19 information. We don't do any specific background
20 on that.

21 The assumption is, if we checked
22 anything with regard to offers or different
23 situations with any competitor, AT&T, for
24 example, that they are validating it in the
25 industry.

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2 And that's part of a research firm --
3 competitive research firm, that's part of how
4 they position themselves. So Charter just --
5 sorry. Go ahead.

6 A. We pay them for that.

7 And our team, before we would put
8 anything into market, obviously, we go through
9 the appropriate legal reviews of the documents.

10 Q. Okay. So Charter relied on the
11 statements in the One Touch piece. Charter did
12 not separately verify any facts surrounding
13 uncertainty with Windstream's bankruptcy. Is
14 that right?

15 A. Not to my knowledge.

16 Q. And Charter has -- let me make sure
17 you're the witness for this topic.

18 Charter has filed for Chapter 11
19 bankruptcy in the past; is that right?

20 A. That is my understanding.

21 Q. And Charter did not go out of
22 business as a result; right?

23 A. That's my understanding.

24 Q. Because you're sitting here today;
25 right?

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2 A. Correct.

3 Q. Okay.

4 Was there a lot of uncertainty
5 surrounding Charter's business operations at the
6 time it filed for Chapter 11 bankruptcy?

7 A. I actually wasn't even in the
8 industry, so I didn't have any knowledge of it
9 until this particular case came up.

10 Q. Well, you are designated to testify
11 on this topic.

12 So, just on behalf of Charter, is
13 Charter's position that there was a lot of
14 uncertainty around Charter at the time it filed
15 its own Chapter 11 bankruptcy?

16 MR. KINGSTON: I will object.

17 I know that the witness has been
18 produced, subject to objections, and those
19 objections include that Charter will
20 produce a witness to testify about the
21 Chapter 11 bankruptcy in 2019, to the
22 extent that that bankruptcy had any impact
23 on the decision to run the advertising.

24 THE WITNESS: It had no impact on my
25 decisioning because I didn't have

1 K.C. Atkinson - 09/19/19

2 background on Charter's bankruptcy.

3 MR. KINGSTON: I made a poor
4 objection, and I stepped on your question,
5 and I'm sorry.

6 I object on the basis of foundation
7 as to the question that I think was posed.

8 And the reason why Ms. Atkinson --
9 the reason why I'm lodging that foundation
10 objection is, Ms. Atkinson can talk to and
11 speak to the extent to which the
12 Chapter 11 bankruptcy impacted decisions
13 related to the advertising.

14 It has not been reached generally on
15 that topic.

16 MR. JUSTUS: Okay.

17 BY MR. JUSTUS:

18 Q. So did Charter's 2009 Chapter 11
19 bankruptcy filing affect the decision by Charter
20 to run the advertisements relating to
21 Windstream's bankruptcy?

22 A. No.

23 Q. Did Charter seek advice of counsel
24 with respect to its own bankruptcy in relation to
25 the new campaign relating to Windstream's

1 K.C. Atkinson - 09/19/19

2 bankruptcy?

3 A. Not to my knowledge.

4 Q. Were there any discussions internally
5 at Charter when the Windstream bankruptcy
6 campaign was being designed, with someone saying,
7 well, Charter has filed bankruptcy. This seems
8 similar to what we went through; were there any
9 discussion along those lines?

10 A. No.

11 Q. And I think you're also designated
12 for Topic 24, Charter's false-advertising claims
13 against DirecTV or other third parties relating
14 to Charter's 2009 Charter 11 bankruptcy; is that
15 right?

16 A. Yes.

17 Q. So I have similar questions.

18 Did Charter's previous lawsuit
19 against DirecTV affect decisions relating to the
20 campaign relating to Windstream's bankruptcy?

21 A. No.

22 Q. Did Charter seek legal counsel with
23 respect to how its own lawsuit against DirecTV
24 could impact the legality of its campaign
25 involving Windstream's bankruptcy?

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2 A. Not to my knowledge.

3 Q. Did anyone at Charter go back and
4 review documents from the DirectTV case during the
5 period of time when it was considering and
6 creating the campaign relating to Windstream's
7 bankruptcy?

8 A. Not to my knowledge.

9 MR. JUSTUS: Can we please mark this
10 as Exhibit 3?

11 (Defendants' Exhibit Number 3 was
12 marked for identification as of this
13 date.)

14 BY MR. JUSTUS:

15 Q. Have you seen Exhibit 3 before?

16 A. Yes.

17 MR. JUSTUS: Counsel?

18 MR. KINGSTON: Yeah, we're going to
19 take a break, for the purpose of
20 discussing whether or not to assert a
21 privilege. It will be a short one.

22 I just want to make sure
23 I understand, with somebody being referred
24 to in this e-mail as -- so we'll go off
25 for just a moment to talk about whether or

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2 not to assert a privilege.

3 MR. JUSTUS: That's fine.

4 THE VIDEOGRAPHER: We are off the
5 record at 10:02 a.m.

6 (Off the record.)

7 (Back on the record.)

8 THE VIDEOGRAPHER: We are back on the
9 record at 10:08 a.m.

10 MR. JUSTUS: Okay. I had a
11 discussion with counsel for Charter.

12 Charter would like to claw back as
13 privileged, the second sentence on
14 document -- it's Exhibit 3,
15 Charter 031754, on privilege grounds, for
16 purposes of this deposition.

17 We'll stipulate to that, but reserve
18 our right to revisit when I have a chance
19 to analyze it more fully.

20 MR. KINGSTON: That's fine, Counsel.
21 And thank you for the courtesy.

22 MR. JUSTUS: Thank you.

23

24

25

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2 - - -

3 DIRECT EXAMINATION CONTINUED

4 - - -

5 BY MR. JUSTUS:

6 Q. So, Ms. Atkinson, have you seen
7 Exhibit 3 before, before today?

8 A. When it was sent to me.

9 Q. Okay. And this was sent to you on
10 April 5th; right?

11 A. Correct.

12 Q. Okay. And in the e-mail to you, from
13 Mr. Hargis, on April 5th, it says "I would like
14 to know when we get these."

15 What is that referring to?

16 A. That any communication from
17 competitors that we receive, to our legal, he
18 wants to be aware of them.

19 Q. From competitors to your legal
20 department, is that what you said?

21 A. A cease and desist, as example.

22 Q. Okay. Is this relating to
23 Windstream's cease-and-desist letters?

24 A. That, and any other competitors.

25 Q. And the sentence, "I would like to

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2 vote on when we take a risk," what is that
3 referring to?

4 A. I report to John. And, typically,
5 any changes to plan would go directly to him.

6 But with my joining Charter, they
7 come to me now.

8 So he is referencing that he would
9 like to be part of that conversation.

10 Q. And what risk is being discussed
11 here?

12 A. When we do a competitive claim
13 against any of the 300-plus companies that
14 compete in our footprint, we are factual and
15 straightforward on what we receive from the
16 third party, One Touch, that I mentioned.

17 It could pertain to offers, or other.
18 And we will often use those in our competitive
19 messaging to customers.

20 Q. And this specific e-mail string, the
21 subject line is: Re Windstream.

22 Are you discussing Windstream
23 specifically in this e-mail?

24 A. Yes.

25 Q. Okay. What was the risk specific to

1 K.C. Atkinson - 09/19/19

2 Windstream that's being discussed here?

3 A. He thought that I had perhaps stopped
4 mailings.

5 Q. Is that the direct-mail pieces that
6 we talked about earlier?

7 A. Yes.

8 Q. And so there was -- he's saying there
9 may be a risk with continuing to send out the
10 mailings?

11 A. I'm not really sure how he thought of
12 it. We didn't have a direct conversation on
13 that, other than this e-mail.

14 Q. Was there ever a vote relating to
15 that risk, as he is asking for here?

16 A. There was never a vote, no.

17 Q. Was there ever further discussion
18 about the risk that he's asking for here?

19 A. Not on this, no.

20 Q. And then the final sentence in that
21 e-mail, "I could also help influence a more
22 marketing-friendly outcome," what does that
23 relate to?

24 A. Oftentimes, when our attorneys will
25 provide us counsel on, there is a risk associated

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2 with doing or saying something.

3 MR. KINGSTON: Just a -- I'm going to
4 instruct the witness to answer the
5 question, to the extent that she can do
6 so, without disclosing confidential
7 communications with your lawyers.

8 So if you can answer the question --

9 THE WITNESS: Yes.

10 MR. KINGSTON: -- without disclosing
11 confidential communications with your
12 lawyers, you can answer.

13 If you can't, I would instruct you
14 not to answer.

15 I'm sorry, Counsel. I didn't
16 understand the question to be asking that,
17 so I -- that's why I interrupted in the
18 middle of her response rather than after
19 your question.

20 MR. JUSTUS: I don't know what the
21 sentence means, that's why I'm asking.

22 But if the sentence is relating to
23 substantive legal advice, then
24 I understand the objection.

25 But I don't know.

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2 MR. KINGSTON: Maybe the better
3 objection I should have made is, lack of
4 foundation as to what Mr. Hargis was
5 referring to.

6 BY MR. JUSTUS:

7 Q. Well, if you know, you can answer
8 then.

9 MR. KINGSTON: If you know, and you
10 know that it's not -- actually, if you
11 know, and you know that it's -- if the
12 witness knows that Mr. Hargis was
13 referring to conversations with counsel,
14 she can disclose that.

15 She can't disclose the substance of
16 any confidential communications with
17 counsel.

18 THE WITNESS: I had never actually
19 heard that term before.

20 BY MR. JUSTUS:

21 Q. Which term?

22 A. "Marketing-friendly outcome."

23 Q. So you had no follow-up discussions
24 with Mr. Hargis about getting a more
25 marketing-friendly outcome?

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2 A. No.

3 Q. Okay, fair enough.

4 So this is dated April 5th, and
5 you're saying you had not stopped sending the
6 mailer yet; right?

7 A. Yes.

8 Q. And so one of the things you were
9 going to check on a break was the date of that
10 second batch of mailers.

11 So it's obviously after April 5th;
12 right?

13 A. Yes.

14 Q. Okay.

15 Okay, you can set that aside.

16 So going back to Exhibit 1 again, the
17 list of topics, do you have that in front of you?

18 A. Yes.

19 Q. If you turn to page 4, Topic 8?

20 I understood from counsel that you're
21 prepared to testify on Topic 8; is that right?

22 A. Yes.

23 Q. Okay.

24 Is Charter aware of any Windstream
25 customers who have contacted Charter and

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2 expressed a belief that Charter's direct-mail
3 piece was sent by Windstream?

4 A. Not to my knowledge.

5 Q. Well, to Charter's knowledge, not to
6 your personal knowledge.

7 A. Not to my personal knowledge.

8 Q. Okay. Well, since it's a deposition
9 of the corporation, you're designated for that
10 topic.

11 A. Uh-huh.

12 Q. I'm not asking for your personal
13 knowledge; I'm asking for Charter's response on
14 that issue.

15 Is Charter aware of any Windstream
16 customers who have contacted Charter and
17 expressed a belief that Charter's direct-mail
18 piece was sent by Windstream?

19 A. I don't know how to answer that,
20 other than saying I don't know personally if any
21 customers contacted us and specifically
22 referenced that communication.

23 Q. Well, so what did you do to prepare
24 to testify on Topic Number 8?

25 A. I understand the direct-mail pieces

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2 that we sent out.

3 And I understand the materials that
4 RAPP created, which were never utilized.

5 And I'm aware of the
6 eight-hundred-and-some --
7 eight-hundred-plus-thousand customers on the mail
8 file that we provided, that were mailed this
9 particular creative. And I'll get the exact
10 dates.

11 MR. JUSTUS: Well, John, I think you
12 know what I'm asking about.

13 And it sounds like (indiscernible
14 cross-talking) --

15 MR. KINGSTON: I think the answer is,
16 that we don't -- the -- the -- I can't
17 speak for the company.

18 I think the company's answer is, that
19 we don't know of any.

20 We can -- if Ms. Atkinson can do
21 something over a break, to allow her to
22 give that answer on behalf of the company,
23 as opposed to answering on personal
24 knowledge, we'll try and do that over the
25 break.

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2 But I don't think --

3 MR. JUSTUS: Yeah, I had a -- you
4 know, a number of questions about that,
5 that's obviously important to us, whether
6 or not Windstream customers are calling up
7 Charter, expressing confusion about
8 various aspects.

9 And, you know, that's obviously
10 within Topic 8.

11 So, we're going to need testimony
12 from someone about that.

13 MR. KINGSTON: I think that what --
14 I think the -- what you're talking about
15 would also be included in -- or, the
16 answer to your question would also be
17 included in Topic 4, because I think what
18 you're describing is Windstream customers
19 calling Charter customer service
20 representatives.

21 And Ms. Atkinson can speak to that,
22 and I think that that would -- that would
23 maybe give -- put some meat on the bone as
24 to why Charter is just not aware of any
25 Windstream customers calling and saying,

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2 We're worried about Windstream.

3 MR. JUSTUS: Good.

4 BY MR. JUSTUS:

5 Q. So, Ms. Atkinson, did you check with
6 anyone within the call center function of Charter
7 to check if any Windstream customers had called
8 in and expressed that belief?

9 A. Not specifically on this, no.

10 Q. Did you do -- you said "not
11 specifically."

12 Did you do anything generally?

13 A. Generally, we look across all of our
14 markets in terms of sales, and we see sales
15 coming in. But, I don't listen to phone
16 recordings on these to know if any customers
17 specifically asked about that.

18 MR. JUSTUS: Well, John, I don't know
19 what to say. We need that testimony.

20 MR. KINGSTON: We'll either prepare
21 Ms. -- or, excuse me, Ms. Atkinson, but --
22 we'll provide a witness who can -- I --
23 I -- I think that -- we will get you a
24 witness who can do that, or we will
25 prepare this witness to give it to you.

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2 MR. JUSTUS: Today, you mean?

3 MR. KINGSTON: Yes.

4 MR. JUSTUS: Okay.

5 Can we please mark this as Exhibit 4?

6 (Defendants' Exhibit Number 4 was
7 marked for identification as of this
8 date.)

9 BY MR. JUSTUS:

10 Q. Exhibit 4, for the record, is
11 e-mails, with -- starting with Bates,
12 Charter 029749.

13 So go ahead and read through that,
14 and let me know when you're ready, Ms. Atkinson.

15 A. (Witness reviews document.)

16 MR. KINGSTON: Once again, going to
17 take a break, for the purpose of
18 discussing whether or not to assert a
19 privilege.

20 MR. JUSTUS: Okay.

21 THE VIDEOGRAPHER: We are going off
22 the record at 10:20 a.m.

23 (Off the record.)

24 (Back on the record.)

25 THE VIDEOGRAPHER: We are back on the

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2 record at 10:31 a.m.

3 MR. KINGSTON: Just for the record,
4 Charter is requesting to claw back the
5 first sentence on Exhibit 4, which is
6 Bates-labeled Charter -29749, through
7 -29756 inclusive.

8 And Charter has also requested, and
9 with counsel discussed this earlier, to
10 claw back the second sentence on
11 Exhibit -- on the first page of Exhibit 3,
12 which is Bates-labeled Charter 31754.

13 Counsel, as I understand it, has
14 agreed to forgo questioning related to
15 those sentences that Charter has requested
16 to claw back for this deposition,
17 reserving all rights to (1) challenge
18 Charter's claw back, and (2) ask questions
19 related to the claw-back sentences should
20 that -- should that challenge prevail.

21 And we would -- the intent of the
22 parties is to provide the court reporter
23 with redacted versions of the exhibits,
24 consistent with Charter's claw-back
25 request, with the understanding that those

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2 could be substituted for unredacted
3 versions with the same Bates numbers at a
4 later date.

5 MR. JUSTUS: Agreed.

6 MR. KINGSTON: Great.

7 - - -

8 DIRECT EXAMINATION CONTINUED

9 - - -

10 BY MR. JUSTUS:

11 Q. Okay, so, Ms. Atkinson, turning back
12 to Exhibit 4, at the top you have a March 27th
13 e-mail from Matt Bury, B-U-R-Y. Right?

14 A. Yes.

15 Q. Okay. Is this e-mail string relating
16 to the second project we talked earlier, which
17 was the direct-sales flyer?

18 A. Yes.

19 Q. Okay. And that -- that flyer was
20 created by the RAPP agency; correct?

21 A. Yes.

22 Q. And how was this flyer intended to be
23 distributed?

24 A. It's a website that -- called
25 "Badger," where they post it for our direct field

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2 sales reps.

3 And in the case of this particular
4 flyer, posting occurred, but we can track that
5 there were absolutely no downloads; meaning it
6 was never accessed --

7 Q. Okay.

8 A. -- before it was removed.

9 Q. So RAPP provided the final creative
10 to Charter, Charter uploaded it onto the Badger
11 system, but Charter's records show there were no
12 downloads of this the piece from the Badger
13 system?

14 A. Correct. And we removed it.

15 Q. And how long was it up on the Badger
16 system?

17 A. I believe it might have been a day or
18 two. I don't actually have the specific dates.

19 Q. Okay.

20 In the previous 30(b)(6) deposition
21 on May 1st, Mr. Dardis testified that the Badger
22 system does not tell you whether or not someone
23 could have downloaded the flyer locally.

24 Do you understand what he meant by
25 that?

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2 MR. KINGSTON: Objection, lack of
3 foundation.

4 THE WITNESS: No.

5 BY MR. JUSTUS:

6 Q. Are you aware of any way someone
7 could have gotten this flyer off of Badger in a
8 way that your systems would not track?

9 A. I do not. I don't have the explicit
10 understanding of the working platform.

11 Q. And who would know the answer to
12 that?

13 A. Matt Bury and the team. He works for
14 me.

15 Q. Could you try to call Matt on a break
16 and ask him that question, whether or not it's
17 possible someone could have downloaded the flyer
18 off of Badger without it being tracked in your
19 system?

20 MR. KINGSTON: We can -- we can reach
21 out to Matt Bury, or we can answer that
22 question for you.

23 I mean, I --

24 MR. JUSTUS: In Mr. Dardis's
25 testimony, and that point is pretty clear,

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2 he said, it's not imp -- it's not possible
3 for Charter to know if someone got it
4 locally.

5 MR. KINGSTON: I don't think that
6 this witness disputes that testimony.

7 MR. JUSTUS: Okay.

8 MR. KINGSTON: I think that
9 there's -- the -- I think there was a --
10 this witness doesn't know anything beyond
11 what Mr. Dardis testified to, which
12 I think was -- I mean, I thought it -- as
13 I recall his testimony, it speaks for
14 itself.

15 But I thought there was a
16 professional printing option that we could
17 track. And there was an individual
18 option -- there was a kind of an
19 individual download option that was not
20 trackable.

21 And I don't think that --

22 MR. JUSTUS: Okay.

23 MR. KINGSTON: -- we can -- you
24 probably want that from this witness, and
25 not me. So we'll get you that information

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2 on a break.

3 MR. JUSTUS: Okay, that would be
4 great.

5 And from my point of view, if the
6 answer is just the same as what Mr. Dardis
7 said, which is that that cannot be
8 tracked, the individual downloads, then
9 we're fine with that.

10 MR. KINGSTON: I do -- I -- we'll --
11 we'll confirm that.

12 MR. JUSTUS: Okay. Thank you.

13 BY MR. JUSTUS:

14 Q. So you if you turn, Ms. Atkinson, to
15 page -29753?

16 A. Yes.

17 Q. So I understand that to be a draft
18 version of the flyer which was later revised. Is
19 that right?

20 A. Yes.

21 Q. You see the wording in that flyer, on
22 -29753, "Windstream customers: Don't risk losing
23 your Internet and phone services. Windstream
24 filed for Charter 11. Their future is uncertain.
25 Don't leave your business up to chance"?

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2 A. Yes, I see it.

3 Q. And what did the wording, "Don't
4 leave your business up to chance," refer to?

5 A. I don't really have the details on
6 that particular phrase.

7 I know this was a draft. So I did
8 not see the progression of the creative.

9 But I know that the communication of
10 "future uncertain" was the complaint filed. And
11 that was communicated to the teams that we were
12 not phrasing it that way.

13 Q. Okay. And so, not on your personal
14 knowledge, but just Charter's -- Charter's
15 understanding of what it meant by that wording,
16 do you know what Charter meant when it said,
17 "Don't leave your business up to chance"?

18 A. It was a creative draft from the RAPP
19 agency that came in, initially, on March 11th.

20 But through the period of time, until
21 the 27th, I know it underwent a number of
22 revisions. So this -- that are -- that Matt
23 details out in terms of changes.

24 Q. Okay.

25 A. So regarding that particular

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2 statement, I didn't have any discussion on that
3 phrasing.

4 Q. And if you turn to the next-to-last
5 page of Exhibit 4, it's Charter -29756?

6 A. Yes.

7 Q. Is that the final wording for this
8 flyer, the final draft?

9 A. It says 3/26.

10 I don't know if it's the absolute
11 final, but it definitely is a subsequent version
12 from the initial.

13 Q. So I will represent to you that
14 -29756 is the attachment to the first e-mail in
15 Exhibit 4, where we have the privilege redaction.

16 So do you know if that March 27th
17 e-mail, if that would have been attaching the
18 final version, or were there subsequent revisions
19 after that?

20 A. I would not know that particular --
21 I don't know if this is the final version because
22 it never happened.

23 Q. Okay. But -- so you can say,
24 definitively, that this sales flyer was never
25 distributed to customers, potential customers, or

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2 the public, other than, perhaps, if there were
3 downloads from the Badger system that were not
4 tracked by Charter; is that right?

5 A. That is correct.

6 Q. Okay.

7 And we talked about the third
8 project, the e-mail campaign.

9 No e-mails ever went out referencing
10 Windstream's bankruptcy; right?

11 A. That is correct.

12 Q. And that would include the e-mail
13 campaign that Charter asked RAPP to work on?

14 A. That is correct.

15 Q. And was there a second e-mail
16 campaign from the Lyft Agency?

17 A. Not to my knowledge.

18 Q. Okay.

19 A. I know there was -- there was a
20 proposed e-mail campaign. But since nothing
21 happened, I didn't go into detail on that.

22 MR. JUSTUS: Will you please mark
23 this as Exhibit 5?

24

25

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2 (Defendants' Exhibit Number 5 was
3 marked for identification as of this
4 date.)

5 BY MR. JUSTUS:

6 Q. You can go ahead and take a look at
7 that, and let me know when you're ready.

8 A. (Witness reviews document.)

9 Yes.

10 Q. Okay, ready?

11 A. Yes. Uh-huh.

12 Q. So Exhibit 5 is a string of e-mails,
13 starting with Charter -6319.

14 So I see some e-mail addresses on
15 here, @WeAreLyft.com?

16 A. Yes.

17 Q. Is that the Lyft Agency?

18 A. Yes.

19 Q. And is that an outside ad agency that
20 Charter uses to create marketing creative or
21 collateral?

22 A. Yes.

23 Q. Do you know what these e-mails are
24 referring to?

25 A. They are referring to e-mails that

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2 were being created, or drafted.

3 Q. Did Lyft ever deliver a final --
4 final creative for this e-mail campaign?

5 A. Not to my knowledge.

6 I think it's what it says, and
7 I think the last message, "We never released
8 this; correct?"

9 And that was the understanding that
10 we did not do any e-mails.

11 Q. Well, I know that's what this e-mail
12 says. But I -- for all I know, there could be
13 other e-mails later than that, so I can't rely on
14 that.

15 So are you able to testify that this
16 e-mail campaign, referencing Windstream's
17 bankruptcy, it was never sent out publicly?

18 A. It was never. Not --

19 Q. You're certain of that?

20 A. -- yes.

21 Q. Okay, you don't need to check with
22 anyone else? You're certain that this --

23 A. We didn't --

24 Q. -- never went out?

25 A. -- do e-mails.

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2 Q. Okay.

3 And going back to the residential
4 direct-mail piece that was in Exhibit 2, the only
5 advertisement that actually did go out the door
6 from Charter?

7 This version that you see here on
8 pages 13 and 14 of Exhibit 2, was that
9 advertisement reviewed by legal counsel before it
10 was sent out the door?

11 A. Yes.

12 Q. And was that Charter's in-house legal
13 counsel or an outside law firm?

14 A. In-house.

15 Q. Okay. No outside law firm?

16 A. No.

17 Q. What would have been the timing of
18 legal-counsel review of this piece?

19 A. The mailing occurred the latter part
20 of March, so, early March.

21 Q. Okay.

22 MR. JUSTUS: And, John, just as a
23 follow-up to our privileged claw-back
24 issues, you had mentioned
25 advice-of-counsel defense.

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2 Charter is not asserting that

3 defense; right?

4 Because, otherwise, I need to start

5 exploring --

6 MR. KINGSTON: Charter is not

7 asserting an advice-of-counsel defense

8 related to the subject, advertising.

9 THE WITNESS: Okay. Thank you.

10 BY MR. JUSTUS:

11 Q. So turning back to Exhibit 1, which

12 is the list of topics for this deposition,

13 Topic 4 is, "Charter's training, directions, and

14 guidelines for customer service and sales

15 personnel," et cetera.

16 Counsel said that you may have

17 partial knowledge on Topic 4; is that right?

18 A. Yes.

19 Q. So what knowledge do you have on

20 Topic 4?

21 A. The creation of the materials that we

22 discussed by the agencies. And the deployment of

23 the direct mail.

24 Are we talking --

25 Q. That's on Topic 4?

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2 A. -- yeah -- I'm sorry.

3 Am I looking (indiscernible
4 cross-talking) --

5 Q. Exhibit 1, page 4, Topic 4?

6 A. -- ah, okay. Sorry.

7 Ah, I'm sorry.

8 Q. No, worries.

9 A. Page 4.

10 (Witness reading under her breath.)

11 Yes, I would have partial information
12 about that.

13 Q. So which aspect of Topic 4 do you
14 have knowledge on?

15 A. I know what our company policies are,
16 and procedures, with regard to how customer
17 service receives communication, and sales
18 personnel. But they -- I do not manage those
19 teams.

20 Q. Understood.

21 And "customer service," is that
22 referring to a call center that takes calls from
23 the public?

24 A. Yes, for existing customers. Our --

25 Q. Existing Charter customers?

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2 A. -- Charter customers, yes.

3 Q. Not with respect to Windstream
4 customers who wanted to switch, for example?

5 A. That is correct.

6 Q. Okay.

7 Is there a separate call center --

8 A. Yes.

9 Q. -- for those types of calls?

10 A. Yes. That would be the sales call
11 center.

12 Q. The sales call center.

13 A. The sales personnel, or field sales,
14 that Keith Dardis manages.

15 Q. Is that something you have knowledge
16 on, the sales call center?

17 A. Yes.

18 Q. Okay.

19 Well, let's focus on that one, the
20 sales call center.

21 Were there any directions or
22 guidelines in place for the sales call center as
23 it relates to calls regarding Windstream's
24 bankruptcy?

25 A. No.

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2 Q. Any training in that regard?

3 A. No.

4 Q. And how about, with respect to
5 complying with the Court's injunction in the
6 case -- in this case, was there any training
7 given to the sales call center in that regard?

8 A. No.

9 Q. Any directions or guidelines in that
10 regard?

11 A. No.

12 Q. Okay, Topic 15 on page 5 of
13 Exhibit 1, "The nature and extent of any
14 coordination between Charter's various sales,
15 advertising, creative, and marketing teams with
16 respect to creation and dissemination of the
17 advertisements," are you here to testify on that
18 topic?

19 A. Yes.

20 Q. Okay.

21 So I -- preparing for this, I read
22 through the transcript from your prior
23 deposition, and Mr. Dardin's (sic) prior
24 deposition.

25 And I -- to be honest, I honestly am

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2 not sure whether there was any coordination. It
3 seemed to go both ways.

4 So just that's one basic fact I want
5 to try to understand today.

6 So I have with me, you know, several
7 e-mails, where both you and Mr. -- is it Dardin
8 or Dardis?

9 A. Dardis.

10 Q. -- where both you and Mr. Dardis are
11 on the same e-mail thread, talking about creating
12 plans for how to take advantage of Windstream's
13 bankruptcy.

14 And to me that reflects that there's
15 some level of coordination between, on the one
16 hand, the direct-sales folks, and on the other
17 hand, the more traditional marketing folks, which
18 is in your area.

19 A. Yes.

20 Q. I mean, is that accurate?

21 A. I would say that my team is
22 responsible for providing materials that are
23 going to market.

24 And when we talk in our sales
25 organization about activities that we're doing

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2 that are incremental in nature, which was the
3 Windstream, there's reference to it being
4 "incremental mail." We do over 60 million pieces
5 of mail.

6 Based on the competitive tool, we
7 took advantage of adding incremental mail to the
8 mail flow for that month, based on the knowledge
9 that we had seen in there from the third party.

10 That same competitive tool is
11 available to our sales organization.

12 And, obviously, the -- in the market
13 activities of our -- you know, the organization
14 that Keith manages, are constant door-knocking
15 for all prospects that are not our existing
16 customers.

17 And so timing would be consistent
18 with when this was happening. But the actual
19 "sitting down and plotting out" coordination,
20 it's not to the level of detail that we go to, to
21 have people specifically knock on those doors at
22 the time mailing is dropping.

23 Q. But there were phone calls that
24 people from the direct-sales function would
25 attend, and also people from your area, the more

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2 traditional marketing, would attend, relating to
3 Windstream's bankruptcy and the messaging
4 surrounding that?

5 A. There weren't any meetings
6 specifically on Windstream's bankruptcy.

7 It's, more or less, our overall
8 approach to acquiring customers.

9 Q. But there were meetings in which
10 Windstream's bankruptcy was discussed, where
11 there were people from both the direct sales side
12 and your more traditional marketing side?

13 A. Not specific to a Windstream meeting,
14 but the topic could have come up, yes.

15 Q. Well, did the topic come up; were
16 there meetings where Windstream's bankruptcy was
17 discussed?

18 A. Other than the mention from the
19 competitive tool, not to my knowledge.

20 Q. Okay.

21 Now, were you ever invited to join
22 any sales calls with the direct sales team to
23 talk about this messaging?

24 A. No.

25 Q. Does the direct sales team -- strike

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2 that.

3 In this case, relating to the
4 Windstream bankruptcy, did the direct sales team
5 endeavor to align its messaging with the
6 messaging in the more traditional marketing, like
7 the residential direct-mail piece?

8 A. Not to my knowledge.

9 Q. Okay.

10 A. Again, we do over 60 million pieces
11 of mail. And with over 300 competitors, we don't
12 go into that level of detail.

13 MR. JUSTUS: Would you please mark
14 this as Exhibit 6.

15 (Defendants' Exhibit Number 6 was
16 marked for identification as of this
17 date.)

18 BY MR. JUSTUS:

19 Q. Go ahead and take a look, and let me
20 know when you're ready.

21 A. (Witness reviews document.)

22 Okay.

23 Q. So Exhibit 6 is e-mails, starting
24 with Charter -626.

25 So in the middle of that first page,

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2 -626, there's a February 25th e-mail from
3 Jennifer Ingram.

4 Is Jennifer Ingram on your team, the
5 traditional marketing function?

6 A. Yes. She's vice president of small
7 and medium-size business.

8 Q. Okay.

9 And it says, "Kelly Atkinson has
10 asked the marketing team to develop a plan to
11 leverage this situation."

12 "This situation" being Windstream's
13 bankruptcy; right?

14 A. It's -- that's the topic,
15 "Windstream."

16 Q. So, "yes"?

17 A. Yes.

18 Q. Okay.

19 It goes on to say, "So we've started
20 thinking about this in partnership with the
21 residential team."

22 Is that reference to the "residential
23 team," would that be on the direct sales side or
24 on the traditional marketing side that you
25 handle?

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2 A. Traditional marketing side.

3 Q. Okay.

4 And then it goes on to say, "In
5 addition, we're exploring SMB-specific messages?"

6 A. Small-medium business.

7 Q. Okay.

8 "e.g., talking points for sales
9 teams."

10 So that would be direct sales teams?

11 A. In this case, I would assume so,
12 because it's referring to the channel partners
13 and national account channels.

14 Q. What are those?

15 A. "Channel partners" would be a third
16 party selling on behalf of.

17 And "national account channels" would
18 reference the larger "B" businesses that we work
19 with, that we go after. The sales teams that
20 solicit -- or, I should say, try to acquire those
21 national accounts.

22 Q. Okay, so "sales teams" in this e-mail
23 refers to direct sales teams?

24 A. Yes.

25 Q. Is Walmart a channel partner?

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2 A. Yes.

3 Q. That's what you're -- okay.

4 Thank you.

5 And who is Chris Czekaj (pronounced
6 as Zay-kaj.)

7 A. No. I actually don't know how to
8 pronounce his name.

9 (Clarification requested by the
10 court reporter.)

11 THE WITNESS: Czekaj (pronounced as
12 Zi-zick.)

13 MR. KINGSTON: It's pronounced,
14 Czekaj (pronounced as Che-ki.)

15 It's spelled, C-Z-E-K-A-J.

16 MR. JUSTUS: Czekaj (pronounced as
17 Chi-ki).

18 MR. KINGSTON: With a hard C.

19 BY MR. JUSTUS:

20 Q. And what is his role with Charter?

21 A. He reports to Keith Dardis, and
22 serves as the vice president of strategic
23 channels.

24 Q. Understood.

25 So he's within the direct sales team?

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2 A. Yes.

3 Q. Okay.

4 So on this e-mail from

5 Jennifer Ingram, there's people from the direct

6 sales team and the more traditional marketing

7 function?

8 A. Correct.

9 Q. Okay.

10 We have a few more questions on this

11 line of questioning, and then we'll take a short

12 break.

13 MR. KINGSTON: Ms. Atkinson, you can

14 take a break at any time you want. Your

15 lawyer cannot.

16 THE WITNESS: Okay.

17 MR. JUSTUS: Will you please mark

18 this as 7.

19 (Defendants' Exhibit Number 7 was

20 marked for identification as of this

21 date.)

22 BY MR. JUSTUS:

23 Q. Exhibit 7 is e-mail, starting with

24 Charter -1217.

25 Just let me know when you're ready,

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2 Ms. Atkinson.

3 A. (Witness reviews document.)

4 I'm ready.

5 Q. Okay. If you turn to the last page,
6 Charter -1220?

7 A. Yes.

8 Q. In the paragraph that begins
9 "Finally," you see a reference to the Windstream
10 bankruptcy there; right?

11 A. Yes.

12 Q. Okay.

13 And then if you flip to -1218, in the
14 middle of the page, there's an e-mail from
15 Jennifer Ingram to you?

16 A. Yes.

17 Q. Is that e-mail inviting you to attend
18 a call?

19 A. A meeting. A monthly marketing
20 in-person meeting.

21 Q. And it's not a call?

22 A. There may be some people that call
23 in, but it's mostly in-person here in Stamford.

24 Q. Okay.

25 And who attends that call; is that

1 K.C. Atkinson - 09/19/19

2 direct sales?

3 A. It would be everyone who is listed on
4 this e-mail on February 28th from Matt Bury, and
5 marketing.

6 I'm looking.

7 There are salespeople listed from the
8 pricing team.

9 It's, pretty much, an overall,
10 marketing, sales. It's not all-inclusive,
11 though.

12 Q. And Mr. Dardis is on that
13 distribution list from the February 28th e-mail;
14 right?

15 A. Yes.

16 Q. And what -- sorry, I don't recall if
17 I already asked you this.

18 What is Matt Bury's role within
19 the --

20 A. He is a director, working for
21 Jennifer Ingram, in the SMB team, marketing team.

22 Q. On the marketing team --

23 A. On the marketing team.

24 Q. -- not direct sales?

25 A. Correct.

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2 Q. Understood.

3 So on -- at this meeting -- did you
4 attend this meeting?

5 A. No.

6 Q. You did not.

7 But people from the marketing
8 function --

9 A. Yes.

10 Q. -- attended this meeting?

11 A. Yes.

12 Q. And messaging relating to
13 Windstream's bankruptcy was discussed at this
14 meeting?

15 A. I wasn't there, but it references
16 something in Matt's summary.

17 But, again, I wasn't there.

18 And it's -- it has an article that
19 was attached.

20 Q. And what was that article?

21 A. "Bloomberg News" from 2/25.

22 Q. Relating to Windstream's bankruptcy;
23 right?

24 A. Yes.

25 Q. Can you turn to the very first page

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2 of -- -1217?

3 At the bottom there's an e-mail from
4 you to Jennifer, copying a few others, March 8th.

5 Do you see that?

6 A. Yes.

7 Q. And you said, "Very nice. I also
8 believe that this information is extremely
9 helpful for sales teams."

10 What did you mean by that?

11 A. I meant that having a better
12 transparency about overall marketing messages and
13 tactics that we had in market would be
14 informative for our sales organization.

15 Q. Meaning the direct sales
16 organization?

17 A. Any sale -- any of the sales
18 channels: inbound sales, direct sales, outbound
19 telemarketing teams.

20 Q. Okay.

21 (Defendants' Exhibit Number 8 was
22 marked for identification as of this
23 date.)

24 BY MR. JUSTUS:

25 Q. Just let me know when you're ready.

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2 A. (Witness reviews document.)

3 Yes.

4 Q. Okay.

5 Exhibit 8 is e-mails, Charter -7830
6 through -31.

7 At the top of the first page, this is
8 an April 2nd e-mail from you to Keith Dardis;
9 correct?

10 A. It is.

11 Q. And what were you telling Keith in
12 this e-mail?

13 A. That we had pushback on the reference
14 to bankruptcy in our direct mail, and we took it
15 out. And we state, "They declared it. Now's a
16 great time to switch."

17 Q. And, "pushback," what is that
18 referring to; pushback from whom?

19 A. Windstream.

20 This was when Windstream communicated
21 to us that they had issue with that phrase.

22 Q. Understood.

23 And why were you informing Mr. Dardis
24 of that fact?

25 A. Because he was aware, based on

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2 subsequent communications, that we were doing
3 incremental mail on Windstream.

4 Q. And what impact does that have on his
5 direct sales function?

6 A. More of an awareness in the markets
7 that he serves.

8 Q. How so; can you elaborate on that?

9 A. Just letting him know, in addition to
10 Google and ALLO, when we have opportunities from
11 a competitive's perspective, particularly when
12 Competitive Eye (ph.), the third party that
13 I reference, provides opportunities for us to
14 have topical competitive messaging for the
15 markets, we do that.

16 Google Fiber being another example.

17 Q. So is it helpful for Mr. Dardis to
18 understand what's going on in the marketing side
19 of things?

20 A. You would have to ask him, but
21 I would say probably feeling that he understands
22 a little more about what's happening.

23 Q. Well, did you send this to him
24 because you thought it would be helpful to him?

25 A. Yes.

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2 Q. Okay.

3 One more quick exhibit in this line
4 of questioning, and then I promise we'll take a
5 break.

6 (Defendants' Exhibit Number 9 was
7 marked for identification as of this
8 date.)

9 MR. JUSTUS: Please mark this as
10 Exhibit 9.

11 A. (Witness reviews document.)

12 BY MR. JUSTUS:

13 Q. Exhibit 9 is e-mail, Charter -514.
14 Please let me know when you're ready.

15 A. I'm ready.

16 Q. Okay.

17 This is an e-mail, February 22nd,
18 from Jonathan Hargis to yourself, David Andreski,
19 Keith Dardis, and Scott Niles. Correct?

20 A. Yes.

21 Q. The subject is Windstream. Correct?

22 A. Yes.

23 Q. It says, "Looks like Windstream is
24 declaring bankruptcy next month. Should we have
25 a going-out-of-business offer, radio print,

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2 DSR blitz plan?"

3 So what is this referring to?

4 A. John was bringing up the competitive
5 intelligence that he was aware of, and that we
6 all had access to, that was outlining that
7 Windstream was declaring bankruptcy, and whether
8 we were going to put together a plan.

9 Q. And what does "DSR blitz plan" mean?

10 A. Direct sales rep blitz plan.

11 Q. Okay.

12 And why was Mr. Hargis sending the
13 e-mail to both yourself and Mr. Dardis, given
14 that you're in two different functions, marketing
15 and direct sales?

16 A. We both report to him, and he will
17 ask us to do marketing activities or do field
18 sales activities.

19 And in this particular case, it was
20 whether or not we were putting together a plan.

21 Q. Did Mr. Hargis request or instruct in
22 this case, relating to Windstream, that the
23 direct sales side and marketing side coordinate
24 efforts?

25 A. No.

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2 Q. Did he request or instruct that the
3 marketing side and direct sales side keep in
4 touch to make sure they know what each other is
5 doing?

6 A. No.

7 Q. Do the people on this e-mail ever
8 have meetings or calls just amongst themselves,
9 what I would refer to as, you know, a high-level
10 leader call within the marketing and direct sales
11 functions?

12 A. Yes. It's usually a broader group.

13 Q. And how much broader?

14 A. It can be as broad as the exhibit we
15 just talked about, with -- that Matt Bury sent.

16 Q. Okay.

17 So in the previous exhibit, you sent
18 Mr. Dardis some information because you thought
19 it would be helpful for him --

20 A. Yes.

21 Q. -- on the direct sales side?

22 A. Yes.

23 Q. So you do that of your own volition;
24 that's not a company policy or an instruction
25 you've received to keep in touch with the direct

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2 sales side?

3 A. That is correct.

4 Q. But you do that as a matter of
5 course; you do, in fact, let Mr. Dardis know what
6 is happening on the marketing side so that he can
7 be consistent on the direct sales side?

8 A. In this particular case, yes, I sent
9 him a note, also regarding Google and ALLO,
10 because it was incremental mail.

11 Q. Okay. And, "incremental," does that
12 mean urgent?

13 A. No.

14 "Incremental" means we mail customers
15 every two weeks, a little over 60 million mailing
16 pieces a month. And most of them just flow in
17 with our entire prospect footprint; so all
18 50 million households, less the 30 million we
19 have as customers, so it's about 20-some million.

20 And those customers receive a piece
21 of mail -- or, those prospects receive a piece of
22 mail from us, on average, every two weeks.

23 When we do incremental mail, it means
24 that that's in addition to that flow.

25 Q. Understood.

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2 MR. JUSTUS: All right, let's take a
3 10-minute break. Let's go off the record.

4 THE VIDEOGRAPHER: We are off the
5 record at 11:13 a.m.

6 (Off the record.)

7 (Back on the record.)

8 THE VIDEOGRAPHER: We are back on the
9 record at 11:33 a.m.

10 MR. JUSTUS: Okay, thank you.

11 - - -

12 DIRECT EXAMINATION CONTINUED

13 - - -

14 BY MR. JUSTUS:

15 Q. Ms. Atkinson, so we talked earlier,
16 and you said Walmart was a channel partner of
17 Charter; is that correct?

18 A. Yes.

19 Q. And does Charter provide its channel
20 partners with any training on how to discuss
21 questions relating to Windstream's bankruptcy?

22 A. Not to my knowledge.

23 Q. Okay. And how about guidelines or
24 any written directives relating to talking points
25 with Windstream's bankruptcy?

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2 A. Not to my knowledge.

3 Q. And you're saying in your personal
4 knowledge?

5 A. In my personal knowledge.

6 Q. Okay. Who would be able to answer
7 that on behalf of Charter?

8 A. It would either be Keith Dardis or
9 Patty Eliason.

10 Q. Okay.

11 MR. JUSTUS: So, John, that's another
12 one we would like to get.

13 MR. KINGSTON: As far as guidance to
14 channel partners --

15 MR. JUSTUS: Right.

16 MR. KINGSTON: -- related to
17 Windstream?

18 MR. JUSTUS: Yeah, exactly.

19 Guidance, talking points, et cetera.

20 MR. KINGSTON: I think we'll be able
21 to educate Ms. Atkinson or a different
22 witness on that topic.

23 MR. JUSTUS: Okay.

24 BY MR. JUSTUS:

25 Q. All right.

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2 And earlier I believe you testified
3 that Mr. Emmitt Walker, a Mr. Andrew Sites, and a
4 Ms. Rebecca Root have been disciplined by Charter
5 in relation to oral or written statements made
6 about Windstream's bankruptcy. Is that right?

7 A. That is correct.

8 Q. Has any other Charter employee been
9 disciplined, other than those three people I just
10 named, in relation to statements made surrounding
11 Windstream's bankruptcy?

12 A. Not to my knowledge.

13 Q. And so, again, I have to ask it: If
14 that's just your personal knowledge, how would we
15 get a definitive answer to that question?

16 A. These employees, as I understand it,
17 are part of Keith Dardis's organization. And
18 would have -- you know, following the employee
19 handbook on how we treat the employees if they do
20 something that's -- regarding unapproved
21 collateral, door tagging, using any of those
22 materials is not allowed.

23 Q. Okay. And just to clarify, I just
24 need to -- a definitive answer on behalf of
25 Charter, if those are the only three employees

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2 who have been disciplined for making statements
3 in relation to Windstream's bankruptcy.

4 So if your personal knowledge doesn't
5 give me a definitive 100 percent answer on
6 that --

7 MR. JUSTUS: -- then that's something
8 else, John, that we'll just have to follow
9 up on.

10 MR. KINGSTON: Certainly.

11 If it's useful, there are certain
12 topics, Ms. Atkinson, where -- where
13 I think that Mr. Justus is asking for what
14 you know based on your own personal
15 knowledge, what you saw with your own
16 eyes, or with your own ears.

17 There are some topics where you've
18 been designated by Charter to speak on
19 behalf of the company. And for a lot of
20 those, if you can remember, you know, what
21 was discussed during your preparation,
22 that's great. If you have notes to help
23 you remember what was discussed during
24 your preparation, that's great.

25 But we have -- or, Charter has

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2 provided Ms. Atkinson with the information
3 related to all of the known instances of
4 employees being disciplined in connection
5 with using -- or, references to
6 Windstream's bankruptcy.

7 THE WITNESS: Yes.

8 MR. JUSTUS: So maybe on a -- after
9 the next break, you could review your
10 notes, and then provide that testimony.

11 Would that be okay?

12 THE WITNESS: Yes.

13 MR. JUSTUS: Okay.

14 THE WITNESS: It's my understanding
15 that those three individuals did something
16 outside of approved process, and they have
17 been disciplined.

18 BY MR. JUSTUS:

19 Q. Okay, what have you done to make sure
20 there's only been those three employees who have
21 been so disciplined?

22 A. It was preparation with my legal
23 counsel, where they communicated, these are the
24 individuals that have probation, or, they're in
25 this category.

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2 Q. Okay, that's fine.

3 MR. JUSTUS: And no need to revisit
4 that, John, unless the witness's testimony
5 is not accurate.

6 BY MR. JUSTUS:

7 Q. Turning back to the Walmart employee
8 who you mentioned earlier, I believe I asked you,
9 do you know the identity of that employee? And
10 you said no. Correct?

11 A. That is correct.

12 Q. Is Charter doing any other
13 fact-gathering to look into that incident?

14 A. It's under investigation.

15 Q. Okay.

16 MR. JUSTUS: So, John, obviously,
17 that's something we'll follow up with you
18 on, to learn the facts when the
19 investigation is complete, as part of
20 supplementary and discovery responses.

21 MR. KINGSTON: I think that's fine.

22 I will note that this is -- that
23 Charter's investigation started when
24 Charter learned from Windstream of these
25 allegations on the -- I think, the

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2 interrogatory --

3 MR. JUSTUS: That was two days ago.

4 MR. KINGSTON: -- yeah (indiscernible
5 cross-talking).

6 MR. JUSTUS: Understood.

7 Yeah, that's all I'm saying.

8 MR. KINGSTON: And it's fine.

9 Look, what's going on with Lexington
10 Walmart is a fair inquiry, and it's one
11 that we will look into and we will circle
12 back with.

13 MR. JUSTUS: Okay.

14 BY MR. JUSTUS:

15 Q. When the channel partners sell
16 Charter services on behalf of Charter, do they
17 wear a Charter hat or a Charter shirt?

18 A. No.

19 Q. No.

20 A. Not to my knowledge, no.

21 Q. So this would be a Walmart employee
22 in their normal Walmart-employee uniform --

23 A. Yes.

24 Q. -- who stands at some sort of desk or
25 booth to sell Charter services.

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2 Is that fair?

3 A. Yes. It could be a desk, a booth, an
4 area of the store, where our products and
5 services would be communicated that they are an
6 authorized reseller of our services.

7 Q. Okay. And is that -- is that on some
8 sort of sales contingency or percentage, or is
9 there some sort of monthly or annual compensation
10 to Walmart, for selling Charter services?

11 A. They are compensated for selling our
12 services. The exact details I don't have. And
13 they vary by channel partners. They can vary.

14 Q. Is it possible that it can be on a
15 commission-based system?

16 A. Yes, it's possible.

17 Q. But you don't know if -- the
18 Lexington Walmart, for example, you don't know
19 that that channel partner is on a
20 commission-based system?

21 A. I know they're compensated for
22 selling our services. I don't have the details
23 of the exact structure of that compensation, and
24 whether it's direct to employee or if it's
25 overall company.

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2 Q. Okay.

3 How many channel partners does
4 Charter have?

5 A. I actually don't know the answer to
6 that.

7 Q. Do you know if it's more than five?

8 A. It is more than five.

9 Q. More than 100?

10 A. I don't know.

11 Q. And Walmart is a pretty big company,
12 obviously, I'll make that representation, big
13 company.

14 Are channel partners generally very
15 large companies, or could it be a very small
16 business as well?

17 A. I'm not sure how you would define
18 "small."

19 Q. 10 employees or less.

20 A. Typically not.

21 Q. Okay.

22 And Charter is not aware of any other
23 channel partners that have made statements about
24 Windstream's bankruptcy in the course of selling
25 Charter services; is that right?

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2 A. That's my understanding.

3 Q. Just this one Walmart employee in
4 Lexington that we've been talking about?

5 A. Yes.

6 I did not know it was Lexington,
7 though.

8 Q. Okay. I believe it was.

9 A. Okay.

10 Q. Does Charter have an in-house
11 creative department in addition to using outside
12 agencies?

13 A. Yes.

14 Q. Did Charter's in-house creative
15 department design or create any collateral
16 referencing Windstream's bankruptcy?

17 A. No, not to my knowledge.

18 Q. Would you know if they had?

19 A. I would.

20 Q. So they have not?

21 A. They have not.

22 Q. Okay.

23 Is Charter currently disseminating
24 any ads or promotional materials referencing
25 Windstream's bankruptcy?

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2 A. No.

3 Q. Do you know when that would have
4 stopped?

5 A. When we received the request from the
6 judge, the PI and the TRO, which would have
7 happened in early April.

8 Q. Okay. So after the judge issued the
9 temporary restraining order in April, at that
10 point Charter stopped disseminating ads and
11 promotional materials referencing Windstream's
12 bankruptcy?

13 A. That is correct.

14 Q. Okay.

15 Are any outside agencies currently
16 working on any drafts of any ads or materials
17 that reference Windstream's bankruptcy?

18 A. No.

19 Q. Okay.

20 MR. JUSTUS: Will you please mark
21 this as -- I believe it's Exhibit 10? --
22 Exhibit 10?

23 (Defendants' Exhibit Number 10 was
24 marked for identification as of this
25 date.)

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2 BY MR. JUSTUS:

3 Q. So I will represent to you that this
4 is Charter's answer filed in this case, May 8th.

5 Have you seen this document before?

6 A. I do not recall seeing this.

7 Q. Well, take your time and flip
8 through, and let me know when you're ready.

9 A. Okay.

10 (Witness reviews document.)

11 MR. KINGSTON: While the witness is
12 reviewing that...

13 (Off-the-record discussion.)

14 (Back on the record.)

15 BY MR. JUSTUS:

16 Q. Okay?

17 A. Yes.

18 Q. Okay. If you turn to page 11,
19 please, you see the section, "Affirmative
20 Defenses"? Do you see that?

21 A. Yes.

22 Q. So Affirmative Defense Number 2,
23 where it says, among other things, "Charter acted
24 in good faith," do you see that?

25 A. Yes.

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2 Q. And what is Charter's factual basis
3 that it argued -- that it acted in good faith?

4 A. I'm not sure I understand your
5 question.

6 Q. Well -- so this is Topic -- in
7 Exhibit 1, this is Topic 20, and I'll read it to
8 you.

9 It's Charter's admissions, denials,
10 factual allegations, and affirmative defenses in
11 its answer in this adversary proceeding.

12 And your counsel objected, but said
13 the witnesses will be put forward to testify on
14 factual basis or factual underpinnings for the
15 claims and defenses in here.

16 And so I understand that you are
17 designated as one of four people who will testify
18 on that topic.

19 Given that there's four people
20 designated, I don't know which of these
21 26 affirmative defenses you have the knowledge on
22 amongst the four people, but, the question is:

23 In Affirmative Defense Number 2,
24 which is, essentially, that Charter acted in good
25 faith, what is Charter's factual basis for saying

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2 that it acted in good faith with respect to the
3 ads discussing Windstream's bankruptcy?

4 MR. KINGSTON: I will object to the
5 question, to the extent that it calls for
6 a legal conclusion.

7 BY MR. JUSTUS:

8 Q. Okay, you can answer.

9 A. I actually don't understand it.

10 Q. Okay.

11 Well --

12 MR. KINGSTON: So I think that --

13 I mean, "good faith" is a legal term.

14 I think that Ms. Atkinson can testify
15 as to the motivation and thinking related
16 to the direct-mail campaign at issue, and
17 to the extent the judge, or somebody else
18 down the road, thinks that testimony is
19 relevant to good faith. And that would --
20 those would be the facts that would be
21 relevant on that topic.

22 But I -- I don't know that
23 Ms. Atkinson can do what the lawyer is
24 supposed to do, in try to apply the facts
25 to that -- to those legal claims.

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2 So for what it's worth, I -- I think
3 the facts that relate to this, that
4 Ms. Atkinson can speak to, would relate
5 generally to the direct mail --

6 MR. JUSTUS: I understand.

7 MR. KINGSTON: -- and that stuff.

8 MR. JUSTUS: Okay.

9 MR. KINGSTON: If it's --

10 MR. JUSTUS: Yeah, I understand the
11 objection. I think I have a way that can
12 help us both.

13 THE WITNESS: Okay.

14 And I think I understand the
15 clarification in terms of my role --

16 MR. JUSTUS: Okay.

17 THE WITNESS: -- in this.

18 MR. JUSTUS: Understood.

19 BY MR. JUSTUS:

20 Q. So the term "good faith," it is, of
21 course, a legal term. I'm not going to try to
22 hide the ball on that.

23 But, this -- in ordinary parlance,
24 you've heard people say "good faith" --

25 A. Yes.

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2 Q. -- meaning, not in bad faith, not
3 intentionally --

4 A. Yes.

5 Q. -- doing something wrong, et cetera?

6 A. Yes.

7 Q. So Charter is saying in this
8 affirmative defense that it acted in good
9 faith --

10 A. Yes.

11 Q. -- when it put out the residential
12 direct mail relating to Windstream's bankruptcy.

13 So what is the factual basis for
14 saying that it was acting good faith when it put
15 out these ads?

16 MR. KINGSTON: I will object to the
17 question. It calls for both a legal
18 conclusion and a narrative.

19 But subject to my objection, you can
20 answer.

21 THE WITNESS: I would say my role in
22 the "good faith," and in overseeing
23 marketing, was that, when we were asked by
24 Windstream to remove anything subjective
25 to "uncertainty," we did that immediately.

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2 That was the only request that was
3 made.

4 When the Court -- when the judge
5 ruled, we acted in good faith, from a
6 marketing standpoint, by destroying the
7 over 800,000 pieces of mail, along with
8 over 8 million pieces of general-market
9 mail which had nothing to do with
10 Windstream.

11 And that was done in order to comply
12 with complete openness, that we were not
13 allowing anything to move forward from the
14 point that the judge said that we weren't.

15 BY MR. JUSTUS:

16 Q. Okay. That's fine.

17 If you'll flip to page 12, please?

18 Affirmative Defense Number 6, and

19 I will read it:

20 "Windstream's claims, in whole or
21 part, are barred, in that any statements
22 allegedly made by Charter regarding Windstream
23 were true or substantially true."

24 Do you understand the factual basis
25 for that defense?

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2 A. Yes.

3 Q. And what was that factual basis?

4 A. We had a third party that outlined
5 this situation with Windstream, and referenced
6 the uncertainty in the market regarding its
7 business moving forward. That was the one, the
8 competitive intelligence.

9 Q. So the claim relating to uncertainty
10 was true, in that, that was reported to you by
11 the third-party competitive intelligence report?

12 A. Yes. It has those exact statements.

13 Q. Okay.

14 If you go down to Affirmative Defense
15 Number 9, and I will read it, "Charter's alleged
16 statements are not material to
17 customer-purchasing decisions."

18 So what is Charter's factual basis
19 for Defense Number 9?

20 A. Customers have the ability to make
21 their own decision. We just present them with
22 offers.

23 Q. Would the uncertainty of a bankruptcy
24 be material to a purchasing decision?

25 A. I think that it's, more or less, a

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2 call to action in terms of looking at us as an
3 opportunity -- as a competitor that they could
4 switch to.

5 Q. But would uncertainty surrounding a
6 business being in bankruptcy affect a customer's
7 decision whether or not to stay with that
8 business?

9 A. We removed it, and continued -- and
10 were planning to mail again. So it wasn't
11 something that we saw as limiting us from
12 communicating to the customer and talking to them
13 directly.

14 So once we removed the statements, if
15 we felt that it was material, we would have not
16 done anymore mailings, but, we still planned to.

17 Q. But the wording relating to
18 "uncertainty" was included in the first place
19 because you hoped that Windstream customers would
20 switch to Charter; right?

21 A. It was a direct lift off the
22 competitive report, the third-party report.

23 We just took, literally, that was the
24 agency's creative brief, was the competitive
25 tool.

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2 Q. Yes, but everything in a competitive
3 brief, surely you don't put into ads. You made a
4 decision to use that wording in this ad. Right?

5 A. It was one of the agency creative
6 templates.

7 Q. So I think you testified at your last
8 deposition that the direct-mail piece was called
9 a "competitive switch message." Is that right?

10 A. Yes.

11 Q. Okay. So does that mean that the
12 goal of the direct mailer is to get people to
13 switch to Charter's services?

14 A. Yes.

15 Q. And would the inclusion of the word
16 "uncertainty" in this ad further that goal?

17 A. I hadn't actually reviewed the copy
18 in detail.

19 What really came to my attention was
20 when the Court -- or, when Windstream sent the
21 notice that they were upset about that.

22 And that was the only term, and we
23 took it out.

24 Q. So I understand, but going back to
25 the personal knowledge versus corporate

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2 knowledge --

3 A. Uh-huh.

4 Q. -- so that sounded more like your
5 personal knowledge; right?

6 A. Yes.

7 Q. So when Charter decided to include
8 the wording, "Windstream has filed for Chapter 11
9 bankruptcy, which means uncertainty," it included
10 that wording because it hoped to induce people to
11 switch from Windstream to Charter; right?

12 A. The entire mail piece was a
13 switch-mail piece, yes.

14 Q. And how would that sentence further
15 that goal of getting customers to switch from
16 Windstream to Charter?

17 A. It was just a line of copy. That it
18 was a creative template that was used, and it was
19 a direct lift.

20 Again, the agency was given a brief,
21 and then we used the competitive tool to showcase
22 that, where it talked about uncertainty in quite
23 a number of spots.

24 Q. And what is the uncertainty again;
25 the uncertainty of, what?

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2 A. The competitive -- I don't have a
3 copy of it --

4 Q. On Exhibit -- Exhibit 2 has the ad on
5 it, page 13 of Exhibit 2.

6 A. And the question again?

7 Q. Well, this ad from Charter uses the
8 word "uncertainty."

9 What is that referring to;
10 uncertainty of, what?

11 A. The bankruptcy means uncertainty in
12 terms of anything that could change.

13 Q. Does that include Windstream
14 customers potentially losing service?

15 A. We didn't go into any detail on it,
16 so I wouldn't say that's what it means.

17 Q. What would you say that it means?

18 A. That they're in bankruptcy.

19 And whenever a company is in
20 bankruptcy, there's always uncertainty around it.
21 It's reported by third parties as such.

22 And so, again, it was a creative
23 position based on a competitive third party.

24 Q. So Charter never intended for
25 "uncertainties" to suggest to Windstream

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2 customers that they may lose their services?

3 A. No.

4 Q. Never?

5 A. No.

6 Q. So the next sentence in the ad on
7 page 13 says, "Will they be able to provide the
8 Internet and TV services you rely on in the
9 future?"

10 The next sentence says, "To ensure
11 you are not left without vital Internet and TV
12 services, switch to Spectrum."

13 That wording doesn't in any way
14 suggest that Windstream customers might be losing
15 their services?

16 A. That too was also referenced by the
17 third party to say, while they're in bankruptcy,
18 customers may be confused about their services.

19 And so, again, that was a third party
20 lift.

21 Q. And so this -- the goal of this --
22 the goal of this piece was to capitalize on that
23 confusion?

24 A. I would expect that.

25 Q. And then down below, again it says,

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2 "Goodbye, Windstream, Hello Spectrum."

3 Do you see that?

4 A. Yes.

5 Q. And that is part of this competitive
6 switch messaging; is that right?

7 A. We use it quite frequently. It's a
8 call to action.

9 Q. What is the call to action calling
10 the audience to do; what action is it calling
11 them to take?

12 A. To call us, and that's why the
13 number's depicted here, or visit our website, to
14 switch services.

15 Q. So turning you back to Exhibit 1,
16 which is, again, a list of topics for the
17 deposition, page 6, Topic 21, "The circumstances
18 surrounding Charter's collection and production
19 of documents in this adversary proceeding" --

20 A. Yes.

21 Q. -- are you here to testify on that,
22 Ms. Atkinson?

23 THE WITNESS: I'm just confirming
24 with my lawyer that, yes, I'm here for the
25 21?

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2 MR. KINGSTON: You are here for 21.

3 And there were -- you did take notes, we
4 took notes, during your preparation
5 related to 21.

6 THE WITNESS: Okay.

7 BY MR. JUSTUS:

8 Q. And this is, as you may be aware in
9 litigation, any litigation, both parties exchange
10 documents during the discovery process.

11 A. Yes.

12 Q. So since you're here as a 30(b)(6)
13 witness, someone had to --

14 A. Yes.

15 Q. -- talk about this. Apparently,
16 that's you.

17 A. Yes.

18 Q. So, not the most exciting topic --

19 A. Right.

20 Q. -- but it's things we need to know --

21 A. Yes --

22 Q. -- just as a basic factual matter.

23 A. Yes.

24 Q. So I believe, and John can correct me
25 if I'm wrong, but Charter has produced, I think,

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2 over 50,000 pages of documents in this case.

3 A. That is correct.

4 Q. Okay. And can you just walk me
5 through what Charter did to look for and collect
6 the documents that it ultimately produced?

7 A. They went to -- there are
8 approximately 54 custodians, which the attorneys
9 collected and reviewed over 934,942 documents
10 from those 54 individuals.

11 Q. Is that 900,000 pages or
12 900,000 documents?

13 A. Documents.

14 Q. And to actually search for documents,
15 was it running keyword searches?

16 A. I believe so. I don't actually know
17 the mechanics behind how it was searched.

18 I believe it was keyword searches.

19 MR. KINGSTON: It was keyword
20 searches, and we can provide you a list of
21 the keywords.

22 MR. JUSTUS: Okay.

23 BY MR. JUSTUS:

24 Q. And so keyword searches are obviously
25 for electronically-stored --

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2 (In-room interference.)

3 Q. -- electronically-stored --

4 THE COURT REPORTER: I didn't hear
5 you, I'm sorry.

6 BY MR. JUSTUS:

7 Q. Keyword searches is obviously for
8 electronically-stored searches; you can't run
9 keywords on pieces of paper a file cabinet?

10 A. Correct.

11 Q. So did you -- did Charter also search
12 any paper records or paper documents that it has?

13 A. Yes.

14 Q. Do you know, just generally, what are
15 the nature of those paper records?

16 Is it -- is there a file for the
17 Windstream switch campaign and there's documents
18 in there; or where would there be paper
19 documents?

20 A. We would have had samples of the
21 direct-mail pieces. We keep samples of all
22 direct-mail pieces.

23 That would primarily be the source.

24 Q. So samples of creative and --

25 A. Sample of the creative, yes.

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2 Q. -- and collateral -- okay.

3 And I believe you searched --

4 I believe Charter searched instant messages as
5 well; is that right?

6 A. I don't know.

7 MR. JUSTUS: I thought I may --

8 I thought I saw some in the production,
9 but I could be mistaken.

10 MR. KINGSTON: The answer is,
11 I believe that we did, and we can confirm
12 it on a break.

13 BY MR. JUSTUS:

14 Q. And did Charter search its -- well,
15 let me back up.

16 Charter's call center, the external
17 sales call center that would take calls from, not
18 Charter customers, but Windstream customers or
19 the public, does it keep recordings of every
20 call?

21 A. I don't believe so.

22 Q. Does it keep transcripts of every
23 call?

24 A. No.

25 Q. So no recordings, no transcripts?

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2 A. Not to my knowledge.

3 Q. Does it take notes when people call
4 in at all; is there some system of taking notes?

5 It would be unusual to have nothing,
6 I would say.

7 A. The tools that the agents sell off
8 of, they're basically placing the order. So they
9 would have a platform that places the order based
10 on what the customer is looking for.

11 Q. So if someone calls in to place an
12 order, there's a sales software, where you take
13 down the customer's information and what they
14 want to buy --

15 A. Yes.

16 Q. -- and process a sales transaction?

17 A. Yes.

18 Q. What if it were a call where someone
19 was not buying something and they were just
20 calling to ask a question?

21 A. That would go into our customer
22 service call centers, and they would -- there
23 would typically be a note on the account, based
24 on how they resolve the customer's issue or
25 question.

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2 Q. And you're talking about if it's a
3 current Charter customer?

4 A. A current -- current Charter
5 customer, yes.

6 Q. So what if a Windstream customer
7 called Charter, not to switch to Charter or buy
8 anything, but to ask a question about the mailer
9 referencing the bankruptcy, would that go to the
10 outside sales call center or the customer service
11 call center?

12 A. Outside. They're completely
13 separate.

14 Q. Okay. And so, in that case, where
15 they're not buying anything, would notes be taken
16 or any records exist from those types of calls?

17 A. Not that I'm aware of.

18 Q. Okay. And who would know the certain
19 answer to that question?

20 A. That would be one of our inbound call
21 center leaders.

22 Q. Okay.

23 MR. JUSTUS: So, John, that's another
24 one.

25 MR. KINGSTON: True.

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2 BY MR. JUSTUS:

3 Q. So other than running keywords across
4 electronic documents, checking any paper files,
5 we believe checking instant messages, is there
6 anything else that Charter did to collect
7 documents that were produced in this case?

8 A. Not to my it awareness.

9 MR. JUSTUS: All right.

10 Let's take a lunch break, and that
11 will give you all a chance to also follow
12 up on a couple of these things.

13 MR. KINGSTON: Sure.

14 MR. JUSTUS: Let's take an hour.

15 It's 12:11.

16 Let's go off the record, please.

17 THE VIDEOGRAPHER: We are off the
18 record at 12:12 p.m.

19 (LUNCHTIME RECESS: 12:12 p.m.)

20

21

22

23

24

25

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2 A F T E R N O O N S E S S I O N

3 (Time Noted: 1:15 p.m.)

4

5 THE VIDEOGRAPHER: We are back on the
6 record at 1:15 p.m.

7 MR. JUSTUS: Okay, thank you.

8

9 K E L L Y C H R I S T I N E A T K I N S O N ,
10 remaining under oath,
11 resumes testifying as follows:

12 - - -

13 DIRECT EXAMINATION CONTINUED

14 - - -

15 BY MR. JUSTUS:

16 Q. Good afternoon.

17 In the morning session we talked
18 about a couple things you were going to try to
19 make some calls and follow up on.

20 One of them was the dates that the
21 March and April direct-mail pieces went out.

22 Were you able to get those dates?

23 A. Yes.

24 So the mailer that's in -- on page 13
25 was dropped -- stagger-dropped from March 16th

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2 through March 25th. And so those are the

3 estimated in-home period.

4 Q. Uh-huh?

5 A. The second mailing which --

6 (Outside interference.)

7 The second mailing planned for

8 Windstream was on April 8th, which ended up being

9 completely destroyed once we received the TRO.

10 So that never went into market with all the --

11 I mean, we covered destruction of the

12 eight-hundred-and-plus pieces -- -thousand

13 pieces, in conjunction with...

14 MR. KINGSTON: No, no, no. Please go

15 ahead.

16 THE WITNESS: ...in conjunction with

17 over 8 million pieces of other market mail

18 that were in that drop.

19 BY MR. JUSTUS:

20 Q. So there was no second mailer, you're
21 saying?

22 A. No. It was produced, but destroyed.

23 Q. Okay. So there was only one batch of
24 mail that went out, March 16 to 25, and that's
25 the direct-mail piece in Exhibit 2, pages 13

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2 and 14?

3 A. Yes.

4 Q. And with the envelope on page 9;

5 right?

6 A. Yes.

7 Q. Okay. Thank you.

8 A. Uh-huh.

9 Q. One of the other questions was,
10 whether any guidance or talking points were given
11 to channel partners relating to the Windstream
12 bankruptcy.

13 Were you able to get any information
14 on that?

15 A. We confirmed that there was an e-mail
16 sent out to all of our sales, our third party,
17 and our enterprise, when both the PI -- both the
18 TRO in April and the PI in May were done. And it
19 still remains up on the third-party sites today.

20 Q. So you're saying two different
21 e-mails?

22 A. One e-mail, which sits on those
23 sites. So it's been up.

24 Q. What was the date when that was put
25 up?

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2 A. I have April for the TRO, so it would
3 have been as soon as we received the TRO.

4 And May for the PI. I don't have the
5 exact date on that.

6 Q. But those are not two different
7 things?

8 A. No. No, no, no.

9 Q. Just, it was updated (indiscernible
10 cross-talking) --

11 A. It was just -- it was just --

12 THE COURT REPORTER: One at a time.

13 THE WITNESS: It was just the time
14 frame. It was just April. And we -- it
15 was, basically, reinforced.

16 BY MR. JUSTUS:

17 Q. "Reinforced" meaning, just resent to
18 the same people?

19 A. Just resent.

20 Q. Okay.

21 MR. KINGSTON: Was it -- just for
22 clarity, are you talking about, the TRO
23 was sent and then the PI was sent?

24 THE WITNESS: The TRO was sent, and
25 the PI was sent, yes.

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2 BY MR. JUSTUS:

3 Q. And it sounds to me like two
4 different -- those are two different legal
5 documents?

6 So there was something in April,
7 where the TRO was distributed. And then --

8 A. That was the first --

9 Q. -- something in May with the --

10 THE THE COURT REPORTER: Please
11 don't.

12 BY MR. JUSTUS:

13 Q. -- preliminary injunction was
14 distributed?

15 A. I know that that -- that as soon as
16 we got TRO, the channel partners, as well as the
17 sales partners, all got those details, with
18 instructions to avoid any bankruptcy commentary.

19 And that stays up today; it's still
20 up.

21 Q. And where is it up?

22 On the Charter website?

23 A. No. It's up on the -- their
24 communication or platform tool. I don't have the
25 name of that tool.

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2 Q. Okay. So there's a tool that channel
3 partners can access.

4 Does it mean like logging into a
5 portal, that type of thing?

6 A. I don't have the exact details, but
7 I would assume, yes.

8 Q. That's fine, that's fine.

9 So other than, you know, distributing
10 the TRO and the PI, there's no other guidelines
11 or talking points that were given to channel
12 partners?

13 A. No.

14 Q. Okay. Thank you.

15 So another question was about Badger,
16 and whether or not it would be possible for there
17 to be downloads from Badger that were not
18 tracked.

19 And Mr. Dardis had said that wasn't
20 the case. It's impossible to tell.

21 Now, were you able to confirm that?

22 A. Not as of this point.

23 Q. I'm sorry?

24 MR. KINGSTON: It's --

25 THE WITNESS: No.

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2 MR. KINGSTON: It's -- it remains the
3 same.

4 MR. JUSTUS: Answer would be the
5 same?

6 (Indiscernible cross-talking.)

7 MR. KINGSTON: Dardis's testimony was
8 accurate.

9 MR. JUSTUS: Stand -- okay, Dardis's
10 testimony is accurate on that point.

11 Thank you.

12 BY MR. JUSTUS:

13 Q. Another was the, I think we're
14 calling it the "sales call center," the call
15 center that would have gotten calls from
16 non-Charter customers, whether or not the call
17 center personnel would take notes, or otherwise
18 log calls, when a sale was not actually being
19 completed, no transaction was being completed?

20 A. They would not.

21 Q. There would be no notes --

22 A. If there's no sale, there would be no
23 record.

24 Q. Okay.

25 Was the -- let's call it the "sales

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2 call center," the personnel instructed to flag or
3 let anyone know if they received any calls
4 relating to Windstream customers and the
5 Windstream bankruptcy advertising?

6 A. I'm sorry, I don't understand the
7 question.

8 Q. The sales call center that we're
9 talking about --

10 A. Yes.

11 Q. -- were the employees of the call
12 center instructed to let anyone know, a
13 supervisor or otherwise, if they received a call
14 from a Windstream customer?

15 A. No, there is no specialized handling.

16 Q. It's actually really hot in here now,
17 as an aside.

18 A. Yes, maybe they can turn it down now.

19 Q. So just to follow up on that point --
20 never mind.

21 Now, the final thing I had written
22 down to follow up on was this concept of
23 Exhibit 3 --

24 Make sure I get this right.

25 -- well, the whole topic that I was

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2 going to ask about was: Has any Windstream
3 customer called in and expressed an understanding
4 that they believed this direct-mail piece was
5 sent by Windstream as opposed to Charter?

6 A. No.

7 Q. To Charter's knowledge, no Windstream
8 customer has called in and expressed that belief?

9 A. That is correct.

10 Q. And to Charter's knowledge, has any
11 Windstream customer called and expressed a belief
12 that Windstream was going out of business?

13 A. Not to my knowledge.

14 Q. Well, again, not to your personal
15 knowledge?

16 A. Right.

17 Q. But are you answering on behalf of
18 Charter?

19 A. Yes.

20 Q. Okay, Charter is not aware of anyone
21 calling in and expressing a belief that
22 Windstream is going out of business?

23 A. That is correct.

24 The only -- I was just going to say,
25 that there is a whole file of the customers that

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2 we provided the eight hundred -- the number of
3 customers that we provided that received the
4 mailing piece.

5 But I don't have any details that any
6 of those specifically called in regarding a
7 bankruptcy question.

8 Q. And is there any way to search
9 whether or not any calls were received from
10 Windstream customers?

11 A. We -- we don't keep those recordings.
12 It's random. I don't have any details on being
13 able to do that.

14 Q. What's "random"?

15 A. Just ran -- I mean, on calls that
16 come in, we don't have any ability to pool those.

17 Q. I think you said before there's no
18 audio recordings, right --

19 A. Right.

20 Q. -- of any calls?

21 MR. KINGSTON: I would object that
22 that misstates the testimony.

23 I mean, the first question was: Do
24 you record all?

25 And the next question was -- I think

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2 there was -- I thought the answer was, We
3 don't record all.

4 But I don't think the answer to the
5 fol -- I don't think the next question was
6 directed towards, Do you record any?

7 So I -- I -- the witness can speak
8 to -- to it herself, but...

9 THE WITNESS: Customer service logs
10 information when our customer calls, so
11 that we know the resolution of the call.

12 In the sales center, the only
13 tracking would be if there was an actual
14 sale made.

15 BY MR. JUSTUS:

16 Q. None of the sales center calls are
17 recorded?

18 A. Correct.

19 Q. There are no transcriptions of the
20 sales center calls?

21 A. None.

22 Q. Unless a sales transaction takes
23 place, there would be no notes from the sales
24 center calls?

25 A. Correct. And the only notes would be

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2 the sale of what the customer purchased.

3 Q. Right.

4 So if a sale does take place, and a
5 Windstream customer calls the sales center,
6 and decides to switch to Charter, would that
7 sales record note the incumbent provider;
8 i.e., Windstream?

9 A. No.

10 Q. It would not?

11 A. No.

12 Q. What information is taken in that
13 sales system? Just name, telephone number,
14 address; anything else?

15 A. The products that they purchased.

16 Q. Okay.

17 And if someone were to call the sales
18 call center, they're a Windstream customer, and
19 they switched to Charter, and they said -- and
20 volunteered the information, "I'm a Windstream
21 customer. I saw your ad about Windstream's
22 bankruptcy. I would like to switch to Charter,"
23 would that be noted anywhere within the sales
24 files or a note section --

25 A. No.

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2 Q. -- or comment section?

3 A. No.

4 Q. And the Charter sales call center
5 personnel, again, were not instructed to flag or
6 let anyone know, whether that be a supervisor or
7 someone else --

8 A. No.

9 Q. -- if Windstream customers were
10 switching and mentioning the ad with the
11 bankruptcy?

12 A. No.

13 Q. Okay.

14 As part of preparing to testify
15 today, did you speak with anyone who works at the
16 sales call center?

17 A. No.

18 Q. Do you know if anyone within Charter
19 has spoken with someone in the call center in
20 order to gather information for discovery in this
21 case, whether that be documents or information
22 about the types of calls we've been discussing,
23 Windstream customers?

24 A. I just spoke to my attorneys on
25 the -- I don't have personal knowledge of the

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2 934,000 documents and where they came from.

3 Q. So you don't know if Charter made
4 inquiry to its call center personnel about these
5 topics I'm asking about, whether or not
6 Windstream customers have, in fact, been calling
7 in and expressing confusion?

8 A. I was not part of any of that
9 discussion, no.

10 Q. But do you know if anyone else did as
11 part of Charter preparing to give its documents
12 and testimony to us in this case?

13 Did anyone check to see if there were
14 any confused customers?

15 A. It's not a practice of any way that
16 we operate, so we don't -- we don't capture that
17 information.

18 Again, going back to this mailing in
19 question, it's not a definite that all
20 eight-hundred-and-some-thousand customers were
21 Windstream customers.

22 Q. Uh-huh?

23 A. They could have any other service
24 provider.

25 So any calls that we get from that

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2 toll-free number could be any type of customer.

3 They could be a satellite customer.

4 They could be a Verizon customer.

5 It is our best, you know,
6 understanding that it could be a Windstream
7 customer. It doesn't mean that it is.

8 Q. And the phone number on page 13 of
9 Exhibit 2, the "1-855" number --

10 A. Yes.

11 Q. -- that number goes to the sales call
12 center we're talking about?

13 A. Yes, it does.

14 Q. Okay.

15 And you said, as far as you're aware,
16 no one has checked with call center personnel and
17 asked them, Have you been receiving any calls
18 from confused Windstream customers?

19 A. They would not be able to even pull
20 that information for me, or anyone, because
21 they -- their agents just don't -- they don't
22 notate it. So there's no ability to say, out of
23 those calls, Was it a Windstream customer, and
24 what did they say?

25 That's -- nobody has that record of

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2 information, because we don't check it. We

3 don't --

4 Q. Right?

5 A. -- notate it.

6 Q. And separate from the actual

7 documentation and notes in the sales system, no

8 one checked, you know, anecdotally, Have you been

9 getting calls from Windstream customers

10 expressing confusion about the bankruptcy?

11 A. No.

12 Q. Okay.

13 I want to make sure I understand the

14 topics that you're not here on.

15 You're not here to testify -- and

16 this is Exhibit 1 again. Apologies.

17 On page 4 of Exhibit 1, Topic

18 Number 7, about "Requests from customers to

19 switch" --

20 A. Correct.

21 Q. -- you are not here to testify on

22 that; correct?

23 THE WITNESS: John?

24 MR. KINGSTON: Correct.

25 I'm sorry.

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2 THE WITNESS: Correct?

3 Correct.

4 Sorry.

5 MR. JUSTUS: And on the following

6 page, Topic 11, "The interruption or

7 disconnection of service"?

8 MR. KINGSTON: Also correct.

9 MR. JUSTUS: Also correct.

10 And 17?

11 MR. KINGSTON: Also correct.

12 MR. JUSTUS: And 25?

13 MR. KINGSTON: Also correct.

14 MR. JUSTUS: Okay, let me take

15 five minutes, and I may be passing the

16 witness.

17 MR. KINGSTON: Very good.

18 MR. JUSTUS: Off the record, please.

19 THE VIDEOGRAPHER: We are off the

20 record at 1:31 p.m.

21 (Off the record.)

22 (Back on the record.)

23 THE VIDEOGRAPHER: We are back on the

24 record at 1:42 p.m.

25 MR. JUSTUS: Okay, thank you.

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2 And, John, this is more a question
3 for you, before I pass the witness.

4 There's a different witness here
5 today on the topics relating to customers
6 who switched from Windstream to Charter.

7 MR. KINGSTON: There are -- go ahead.

8 MR. JUSTUS: But before we have
9 Ms. Atkinson step down and switch
10 witnesses, et cetera --

11 And I understand you have the right
12 to ask questions. That's not what
13 I meant.

14 MR. KINGSTON: I understand.

15 MR. JUSTUS: -- does that other
16 witness know about customers who switched
17 with respect to direct sales activities,
18 as well as people who would have, you
19 know, called into the sales center?

20 And the reason I'm asking, I'm going
21 to ask questions about, you know, when
22 people are going door-to-door, and someone
23 decides to switch from one provider to the
24 other, are notes taken about that?

25 MR. KINGSTON: That, new customers,

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2 Charter does not track who new customers
3 come from.

4 So whether it comes from a
5 door-to-door sale or a direct mail,
6 Charter doesn't track who the prior
7 provider was.

8 MR. JUSTUS: As far as the correct
9 witness to tell me that, would it be
10 Ms. Atkinson?

11 MR. KINGSTON: I think it would be,
12 I think it would be Ms. Atkinson.

13 Mr. Kardos can speak to what
14 information is available.

15 But it -- I don't want to --

16 MR. JUSTUS: Because I don't --

17 MR. KINGSTON: -- spoiler alert,
18 there's not a lot.

19 MR. JUSTUS: -- I don't know what he
20 does. So --

21 MR. KINGSTON: Yeah, yeah.

22 Not, it's -- it's not information
23 that anybody I think that -- it's -- they
24 don't track it, so they -- nobody has that
25 information. I mean, it's not --

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2 MR. JUSTUS: Well, I'll ask a couple
3 of questions of Ms. Atkinson, and I can
4 always ask him as well.

5 MR. KINGSTON: I think that -- yeah,
6 you're welcome to do that, of course.

7 - - -

8 DIRECT EXAMINATION CONTINUED

9 - - -

10 BY MR. JUSTUS:

11 Q. All right, well, hello again,
12 Ms. Atkinson.

13 So you heard the questions where I'm
14 going with that, but I'll ask them to you.

15 With the direct sales personnel out
16 in the field, going door to door, if a
17 salesperson knocks on the door of a Windstream
18 customer, gives a sales pitch, the Windstream
19 customer decides, "Yes, I want to switch to
20 Charter," does the Charter salesperson take note
21 of who that customer is switching from; who the
22 incumbent provider is?

23 A. Nothing that would be pooled in a
24 system that we have, no. We don't capture that.

25 Q. And what do they capture; just name,

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2 address, phone number --

3 A. The order.

4 Q. -- and what they're buying?

5 A. Yes.

6 Q. And nothing else?

7 A. Nothing else. It's just the services
8 they're getting.

9 Q. And Charter is not aware of when a
10 Windstream customer, in the door-to-door setting,
11 has decided to switch to Charter, of the
12 Windstream customer giving a reason that they're
13 switching, because Windstream is going out of
14 business or because Windstream is bankrupt?

15 A. We don't capture any commentary,
16 other than the sale.

17 Q. Okay. And aside from, you know,
18 capturing it in the ordinary course of business,
19 anecdotally, has Charter become aware from
20 talking to its direct sales folks --

21 A. No.

22 Q. -- of any instances of that
23 happening?

24 A. No.

25 Q. Okay.

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2 MR. JUSTUS: Okay, I pass the
3 witness.

4 MR. KINGSTON: Before I begin, you
5 may want to -- there is a -- I think there
6 was a correction or a date appointed that
7 Ms. Atkinson didn't have when you were
8 talking about calls, where a Windstream
9 customer indicated that they received a
10 Charter mailer, and may have believed it
11 was from Windstream.

12 And I don't know if -- if you want to
13 inquire about that, we've given the
14 witness the documents that we have, that
15 I pulled out of a binder that I had, so
16 they've -- there's highlighting on it
17 that's mine, and then I think there's
18 Ms. Atkinson's note.

19 But that -- you can inquire about it
20 or I can just try and go through it when
21 I ask her questions, whatever is easiest?

22 MR. JUSTUS: Well, I'll try, I'll
23 give it a shot. I don't have the
24 documents.

25 MR. KINGSTON: Do you want -- we can

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2 share them, or you can make copies,

3 however you want to do it.

4 MR. JUSTUS: Okay. Let's mark this

5 as Exhibit 11 -- actually, let's just do

6 all of these together as Exhibit 11.

7 And Exhibit 11 is -- well, it's

8 several things.

9 It's Charter -44484;

10 Win 002064 through -2071.

11 And I don't know, are these supposed

12 to be in there or not?

13 MR. KINGSTON: Oh, probably not.

14 Thanks, man.

15 MR. JUSTUS: And that's it, then.

16 So the Charter -4484 document, and

17 then, the Win -2064 through -2071, a

18 multi-page document.

19 So those together will be Exhibit 11.

20 THE COURT REPORTER: Can I mark it?

21 MR. JUSTUS: Yes.

22 THE COURT REPORTER: Hand it to the

23 witness, or do you want it back?

24 MR. JUSTUS: Let me take another

25 quick look.

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2 (Defendants' Exhibit Number 11 was
3 marked for identification as of this
4 date.)

5 - - -

6 DIRECT EXAMINATION CONTINUED

7 - - -

8 BY MR. JUSTUS:

9 Q. And so you've just recently looked
10 at --

11 A. Yes.

12 Q. -- Exhibit 11 on a break; right?

13 A. Yes.

14 Q. So the first -- the first page, it's
15 what I understand to be a disciplinary report for
16 Rebecca Root; is that right?

17 A. It would be -- yes, her conversation
18 with Gene Chewing -- Chewing.

19 Q. How do you spell that?

20 A. C-H-E-W-N-I-N-G.

21 Q. And in that conversation, Ms. Root
22 states that a Windstream customer received
23 Charter's direct-mail piece --

24 A. Yes.

25 Q. -- and thought that it had been sent

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2 by Windstream; is that right?

3 A. Yes.

4 She said she had a flyer that
5 Windstream had sent out. And that was -- she saw
6 it was a Spectrum mailing.

7 Q. And that would have to be this
8 direct-mail piece on page 13 and 14 of Exhibit 2,
9 because that was the only piece referencing
10 Windstream's bankruptcy that ever went public?

11 A. Yes.

12 And this is Rebecca Root, who took a
13 copy of that and handed it to two -- I think two
14 people, two flyers.

15 Q. Okay.

16 And so is that the only instance
17 Charter is aware of where a Windstream customer
18 expressed a belief that Charter's direct-mail
19 piece had actually come from Windstream?

20 A. This is the only one that I've seen,
21 yes.

22 MR. JUSTUS: Okay. I pass the
23 witness.

24 THE WITNESS: Here.

25

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2 - - -

3 CROSS-EXAMINATION

4 - - -

5 BY MR. KINGSTON:

6 Q. Ms. Atkinson, I'm going to read into
7 the record, a portion of Exhibit 11, and ask you
8 if I've read it correctly.

9 I'm just looking at the top of what
10 appears to be a reproduction of a conversation.

11 "GENE: Have you seen this flyer?

12 "REBECCA:" --

13 There's a portion redacted.

14 -- "(Blank) gave it to me. I sold
15 her on Friday.

16 "She called me on Monday and said she
17 had gold for me.

18 "I asked her what it was.

19 "She said she had a flyer that
20 Windstream sent out and she would give it to me.

21 "I told her I was off, and would stop
22 by the next day to pick it up.

23 "Emmitt and I went there, and I saw
24 the flyer. And sent an e-mail to Jay. I saw
25 that it was a Spectrum mailer. It's my

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2 understanding that nothing is sent out unless
3 it's preapproved. I thought it was okay, so we
4 made some copies and told Jay. We only gave out
5 two flyers.

6 "Emmitt wouldn't have had this. It
7 wasn't for me.

8 "We have" --

9 "Emmitt wouldn't have had this if it
10 wasn't for me. We have given" -- "we haven't
11 given any out for a week. I saw a list with
12 different company names on it."

13 Have I read that correctly?

14 A. Yes.

15 Q. And if you look at the other
16 documents affixed to Exhibit 11, do you see the
17 list of --

18 A. Yes.

19 Q. -- the list of companies Ms. Root
20 referred to?

21 A. Yes.

22 Q. And what is the Bates number for
23 that -- what is the Bates number for that list?

24 Can you just read the -- the --
25 direct me in the record to -- or, excuse me,

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2 direct me in the document to the number in the

3 bottom right-hand corner where the list of

4 companies appears.

5 A. This number (indicating)?

6 Q. Yes, ma'am.

7 A. Win 002064.

8 Q. And is -- where is the actual list of

9 companies, though? Is that on --

10 A. It's on the -- it starts on

11 Win 002065. -066. -067. -068. -06 -- -070.

12 It skips, there's not a list. And then -071.

13 Q. And that's the list of companies that

14 Ms. Root was referring to?

15 A. Yes.

16 Q. Okay.

17 You can put Exhibit 11 aside.

18 MR. KINGSTON: I think I will staple

19 it at some point.

20 BY MR. KINGSTON:

21 Q. Ms. Atkinson, you've talked a little

22 bit with Mr. Justus about a company called

23 One Touch.

24 Do you recall that?

25 A. Yes.

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2 Q. And what is One Touch?

3 A. It is a third party.

4 And it would be helpful to just have
5 the One Touch materials --

6 Q. Sure.

7 A. -- for it.

8 It is a third-party competitive
9 intelligence company that does research in all of
10 our footprint across 300-plus competitors.

11 MR. KINGSTON: Ms. Marney, would you
12 please mark this as Exhibit 12?

13 (Plaintiffs' Exhibit Number 12 was
14 marked for identification as of this
15 date.)

16 BY MR. KINGSTON:

17 Q. Ms. Atkinson, I'm about to hand you
18 Plaintiffs' Exhibit 12, which, for the record, is
19 a multi-page document, Bates-labeled Charter -836
20 through Charter -847 inclusive.

21 At the top it is labeled
22 Exhibit 11 -- excuse me, Exhibit 12 is labeled
23 "TELCOTRAK, a service of One Touch Intelligence
24 competitive monitoring and analysis of telco
25 broadband and wireless activities," dated

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2 February 16 through 28 of 2019.

3 Can you take a moment to review
4 Exhibit 12, and let me know when you're ready,
5 please?

6 A. (Witness reviews document.)

7 Yes.

8 Q. And so is Exhibit 12 a TELCOTRAK
9 newsletter sent out by the One Touch Intelligence
10 company?

11 A. Yes, it is.

12 Q. And One Touch Intelligence is a
13 company that provides market analytical
14 information in the telco, broad -- related to
15 telco, broadband, and wireless activities?

16 A. Yes, that is correct.

17 Q. And that's a company that Charter
18 pays to perform research for Charter?

19 A. Yes.

20 Q. And does Charter rely on the
21 expertise of TELCOTRAK in making marketing
22 decisions?

23 A. Yes.

24 Q. And does Charter rely on TELCOTRAK to
25 monitor a small number of competitors or a large

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2 number of competitors?

3 A. A large number.

4 Q. And so I think you testified as
5 to 300 competitors that are monitored by
6 One Touch Intelligence?

7 A. That is correct.

8 Q. And does Exhibit 12 reflect
9 information on all 300 of those competitors?

10 A. No.

11 It's specific to Windstream,
12 Frontier, Verizon, FIG Wireless. And a little
13 bit about AT&T referenced in the Verizon.

14 Q. And so One Touch Intelligence sends
15 out these monthly TELCOTRAK newsletters; is that
16 fair -- or, is that true?

17 A. Yes.

18 Q. Okay. And One Touch Intelligence
19 decides which among the 300, give or take,
20 competitors that it monitors to talk about in
21 those newsletters?

22 A. Yes.

23 Q. And in your understanding, does
24 One Touch Intelligence seek to -- when it talks
25 about those -- when it chooses competitors for

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2 inclusion in its newsletter, does it typically
3 choose competitors where there's something
4 important to talk about with those competitors?

5 A. Yes.

6 MR. JUSTUS: Objection, foundation.

7 BY MR. KINGSTON:

8 Q. Does Charter depend on One Touch to
9 identify which among its competitors, at any
10 given time frame, there is information that is
11 important enough to be included in a newsletter
12 about?

13 A. It's really what happens in the news,
14 for the most part.

15 And there's, obviously, topical
16 points that they know we have interest in.
17 5G rollout, for example.

18 Q. Uh-huh?

19 A. And so they would make sure that, at
20 some point, they're doing detailed overviews of
21 those areas.

22 Q. And so among the 300 competitors
23 monitored by One Touch, One Touch chose
24 three competitors for discussion in articles
25 on Exhibit 12; true?

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2 A. True.

3 Q. And the very first one that One Touch
4 referenced was Windstream?

5 A. Yes.

6 Q. And what's the headline of OneTouch's
7 article about Windstream on the first page of
8 Exhibit 12?

9 A. "Windstream sends up white flag and
10 files Chapter 11 bankruptcy."

11 Q. I want to direct your attention to --
12 well, it -- the right-hand side of the first page
13 of Exhibit 12, where it appears that there are
14 three bolded -- bolded topics listed on -- at the
15 beginning of each paragraph.

16 Do you see that?

17 A. Yes.

18 Q. And so it looks like the first -- the
19 first page of Exhibit 12, the discussion of
20 Windstream is chunked into three sections: one
21 identifying the issue, one providing background,
22 and one discussing the implications?

23 A. Yes.

24 Q. And the -- I read the issue
25 identified by One Touch as follows:

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2 "Long-suffering telco Windstream has
3 bowed to financial reality in the wake of a
4 potentially crippling court ruling, and has filed
5 for Chapter 11 bankruptcy."

6 Have I read that correctly?

7 A. Yes.

8 Q. And directing your attention to the
9 "Implications" section, do you see that?

10 A. Yes.

11 Q. I read the second sentence in the
12 "Implications" section as follows:

13 "But while Chapter 11 will provide
14 some legal shelter while the telco reorganizes
15 its tangled debt structure, uncertainty about the
16 service impacts will make some residential and
17 business customers uneasy."

18 Have I read that correctly?

19 A. Yes.

20 Q. And so throughout your deposition
21 you've been talking -- or, you've mentioned from
22 time to time, analysis that Charter received from
23 a third party.

24 Is this the analysis that you were
25 referring to?

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2 A. Yes.

3 Q. And so does One Touch identify
4 uncertainty about -- related to Windstream's
5 Chapter 11 bankruptcy?

6 A. Yes.

7 Q. And does One Touch indicate that that
8 uncertainty could extend to the services?

9 A. It does.

10 Q. And was that information from
11 One Touch incorporated into the direct mailer
12 that Charter sent in March of 2019 related to
13 Windstream?

14 A. Yes. This was the foundation for the
15 creative brief.

16 Q. The foundation for the creative
17 brief, uh --

18 A. For the Windstream mailing.

19 Q. The foundation for the creative brief
20 for the Windstream mailer was this analytical
21 report provided by One Touch Intelligence?

22 A. Yes.

23 Q. And does Charter rely on
24 One Touch Intelligence because of its particular
25 expertise in the telephone, broadband, and

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2 wireless industry?

3 A. We do.

4 Q. Do you recall earlier when you
5 discussed potential confusion as to what was
6 going on at Windstream throughout its bankruptcy?

7 A. Yes -- with regard to the mailing?

8 Q. Yes, ma'am.

9 A. Yes.

10 Q. And does this One Touch mailer, in
11 fact, suggest that there is confusion and
12 uncertainty as to what is going on at Windstream?

13 A. Yes.

14 Q. Directing your attention to the page,
15 -838, in the bottom right-hand corner?

16 I read the fourth paragraph from the
17 bottom -- or, excuse me, fourth paragraph from
18 the top to include a discussion of potential
19 customer concerns.

20 Do you see that?

21 A. Yes.

22 Q. And I read One Touch to say, that:

23 "Customers will propaly (ph.)" --

24 "will probably be more concerned that
25 distractions and tighter financial restrictions

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2 during Windstream's bankruptcy may lead to
3 service issues, ranging from outages to spiraling
4 customer support response times. Windstream may
5 also be limited in its ability to capitalize on
6 higher-speed qualifications for new and existing
7 customers."

8 Have I read that correctly?

9 A. Yes.

10 Q. And so are those distractions and
11 tighter financial restrictions, are those among
12 the issues that, in your view, would create
13 confusion related to Windstream's bankruptcy?

14 A. Yes, it would.

15 Q. And that would be confusion as to
16 what was going on at Windstream?

17 A. Yes.

18 Q. And is it possible that -- or -- and
19 was -- was something -- strike that.

20 Mind if I start over, Ms. Atkinson?

21 A. Sure.

22 Q. And in your view, Ms. Atkinson, is a
23 customer's concern about confusion as to what is
24 going on at Windstream during its bankruptcy, a
25 legitimate reason for that customer to switch to

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2 Charter?

3 A. Yes.

4 Q. You understand that Charter provides
5 services to Windstream customers through what's
6 called a "last-mile service contract"?

7 A. Yes, I am familiar with that.

8 Q. And did you know that Charter
9 provides service to some 14,000 Windstream
10 customers pursuant to that last-mile service
11 contract?

12 A. Yes.

13 Q. And do you know that -- or, were you
14 aware that, during the bankruptcy -- strike that.

15 Do you mind if I start over?

16 A. Yes --

17 MR. JUSTUS: And, John --

18 THE WITNESS: -- yes, I'm okay.

19 MR. JUSTUS: -- I'm just going to
20 lodge an objection as beyond the scope, to
21 the extent you're talking -- you're going
22 to ask questions about the last-mile
23 service and any disconnections, anything
24 like that.

25 I specifically didn't ask those

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2 questions to this witness.

3 MR. KINGSTON: That's -- that's a
4 fair objection, and I don't intend to.

5 And to the extent that I do here --
6 to the extent that you feel like I've
7 gotten into the disconnect issue, you
8 are -- counsel is welcome to address those
9 on recross.

10 MR. JUSTUS: Okay.

11 MR. KINGSTON: But I don't intend to
12 get into that issue.

13 BY MR. KINGSTON:

14 Q. After that colloquy, are you ready
15 for us to take another run at it, Ms. Atkinson?

16 A. Yes.

17 Q. So Charter's understanding is that
18 Windstream -- you mind if I start over again?

19 I'm sorry, I stepped on my toes.

20 A. Go ahead.

21 Q. Thank you.

22 Charter's understanding is that it
23 provides services to some 14,000 Windstream
24 customers pursuant to a last-mile contract; is
25 that right?

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2 A. Yes.

3 Q. And that last-mile contract is a
4 contract that Windstream may assume or not assume
5 during the bankruptcy.

6 Is Charter aware of that?

7 A. Yes.

8 Q. And if Windstream doesn't assume
9 that last-mile contract, service to those
10 14,000 customers would be interrupted, wouldn't
11 it, Ms. Atkinson?

12 A. It would.

13 Q. And so is your knowledge that, an
14 open contract in the bankruptcy, that has not
15 been assumed, could lead to an interruption of
16 service to 14,000 customers, that Charter knows
17 of, consistent with the concerns about service
18 issues described in Exhibit 12?

19 A. That is correct.

20 Q. I direct your attention to the
21 third paragraph from the bottom on page -838
22 of Exhibit 12.

23 I read the second sentence as
24 follows:

25 "As a result, the new Windstream that

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2 emerges from bankruptcy, sometime in the next
3 year or two, could be smaller, but not
4 necessarily stronger telco, with an even more
5 uncertain future."

6 Have I read that correctly?

7 A. Yes.

8 Q. And so did Charter develop its
9 understanding that there was uncertainty related
10 to Windstream's bankruptcy from information
11 provided by One Touch?

12 A. Yes.

13 Q. And was that same information
14 incorporated into the March 2019 direct mailer?

15 A. It was.

16 Q. Okay.

17 MR. KINGSTON: Ms. Marney, would you
18 mind marking this as Exhibit 13?

19 (Plaintiffs' Exhibit Number 13 was
20 marked for identification as of this
21 date.)

22 BY MR. KINGSTON:

23 Q. Ms. Atkinson, you've been handed
24 Exhibit 13.

25 Do you recognize that?

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2 A. Yes.

3 Q. Can you tell me what that is?

4 A. It is from One Touch, our tracking
5 company. It's called a "Competitive Alert," and
6 it's dated February 25th.

7 Q. And does it include -- does the
8 One Touch Competitive Alert, on the left-hand
9 side, include a summary, and then an impact
10 analysis?

11 A. It does.

12 Q. And does the One Touch impact
13 analysis, in the last paragraph, include the
14 following sentence:

15 "It's likely the uncertainty
16 surrounding its bankruptcy will make business
17 customers think twice about inking or renewing a
18 service contract with Windstream"?

19 A. It does.

20 Q. All right. And is that consistent
21 with the message that Charter adopted in the
22 March 2019 mailer?

23 A. Yes.

24 Q. Ms. Atkinson, are you familiar -- or,
25 does Charter occasionally use databases like

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2 Comperemedia?

3 A. Yes.

4 Q. And just tell me, kind of in general
5 terms, what that database is.

6 A. The Comperemedia is -- actually, I'm
7 just trying to remember the exact details of
8 what -- it provides us competitive information,
9 but, also, spending activities in markets; how
10 much money, from reported spend in media
11 purchasing, is in the marketplace.

12 Q. So if Charter were interested in what
13 sort of direct-mail advertisements were being
14 used by competitors, such as Windstream, would it
15 be able to obtain exemplars and samples from
16 Comperemedia?

17 A. We would.

18 Q. And, in March -- in March and April
19 of 2019, did Charter obtain exemplars of the
20 available Windstream direct-mail advertisements
21 from Comperemedia?

22 A. Yes.

23 We also do that just to know the
24 offers that are in market.

25 Q. So one reason why Charter would

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2 sometimes look at the direct-mail offers that --
3 or, direct-mail advertising that is available
4 through databases, such as Comperemedia, would be
5 to see what sort of terms and services were being
6 offered by its competition?

7 A. Yes.

8 MR. KINGSTON: Ms. Marney.

9 (Counsel hands the court reporter a
10 document.)

11 THE COURT REPORTER: 14 is next.

12 (Plaintiffs' Exhibit Number 14 was
13 marked for identification as of this
14 date.)

15 BY MR. KINGSTON:

16 Q. Ms. Atkinson -- I'm sorry.

17 Ms. Atkinson, Ms. Marney has handed
18 you Exhibit 13 (sic).

19 Exhibit 13 (sic) is a multi-page
20 document, the first page of which appears to be
21 a -- an unlabeled envelope, with a stamp, and an
22 address, in the upper left-hand corner.

23 The following pages appear to be a
24 Windstream Kinetic TV mailing piece.

25 Do you recognize Exhibit 13 (sic)?

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2 A. I do.

3 Q. And have I correctly described it?

4 A. You have.

5 Q. And is this one of -- is

6 Exhibit 13 (sic) of the direct-mail exemplars

7 that Charter obtained through Comperemedia in

8 March and April of 2019?

9 A. It is.

10 MR. JUSTUS: John, is there a

11 redaction on the first page of Exhibit 14?

12 MR. KINGSTON: There is not.

13 THE WITNESS: No.

14 MR. JUSTUS: So this is a stamped

15 envelope with no addressee?

16 THE WITNESS: Yes. I can elaborate

17 on this.

18 BY MR. KINGSTON:

19 Q. Are you familiar, Ms. Atkinson, with
20 the concept of what's called a "blind OE"?

21 A. Yes, I am.

22 Q. And explain that to me.

23 MR. JUSTUS: Objection. This is

24 beyond the scope of my examination.

25 THE WITNESS: A "blind OE" is

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2 designed to look like an invitation,
3 usually scripted font. And it's --
4 purposely leaves off the company's name
5 because, in some cases, the customer
6 wouldn't open it if they saw the company
7 that was soliciting.

8 And so blind OEs are traditionally
9 used to drive a higher open rate, and,
10 therefore, potentially, response rate,
11 once they see the inside materials.

12 BY MR. KINGSTON:

13 Q. And so is Exhibit 13 (sic) a
14 Windstream blind OE?

15 A. Yes, it is.

16 Q. Ms. Atkinson, I'm handing you a
17 document that was previously identified as
18 Charter 7 in a -- in, I believe, your deposition
19 on May 1st of 2019.

20 So I'm handing you Exhibit 7 from the
21 May 1, 2019, deposition of Charter's corporate
22 representative.

23 MR. KINGSTON: Ms. Marney, I was
24 going to -- I was just going to -- I was
25 just going to just rely on the prior --

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2 the fact that it was a previously
3 introduced exhibit.

4 But I think I want you to have a copy
5 of all of them, so I'm going to go ahead
6 and mark this.

7 And I'm sorry that I had to make you
8 transcribe all that.

9 And I'll stop talking as soon as
10 I hand this to you.

11 THE COURT REPORTER: This will be 15.

12 (Plaintiffs' Exhibit Number 15 was
13 marked for identification as of this
14 date.)

15 BY MR. KINGSTON:

16 Q. Ms. Atkinson, Ms. Marney has handed
17 you Exhibit 15, which is a multi-page document,
18 Bates-labeled Charter -936 through Charter -941
19 inclusive.

20 Exhibit 15 appears to be an
21 electronic mail message chain, beginning
22 with a message from Jennifer Smith to
23 Erin Mullane, among others, on February 28, 2019,
24 and ending with a message from Erin Mullane to
25 Jennifer Smith, dated March 4, 2019.

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2 Do you recognize Exhibit 15?

3 A. Yes.

4 Q. And have I correctly described it?

5 A. Yes.

6 Q. And is Ms. Mullane's name spelled,

7 M-U-L-L-A-N-E?

8 A. Yes.

9 Q. And does Ms. Mullane work for Charter
10 or does she work for RAPP?

11 A. She works for RAPP.

12 Q. If I direct your attention to the
13 bottom of the page, Bates-labeled Charter -936,
14 through the very top of the page, Bates-labeled
15 -938, is that an extended -- or, a little more
16 than a one-page e-mail from Erin Mullane?

17 A. Yes.

18 Q. And so all of the words on the page,
19 Bates-labeled Charter -937, those are the words
20 of a RAPP employee named Erin Mullane; is that
21 right?

22 A. Yes.

23 Q. And I'm going to direct your
24 attention to -- I direct attention to page -939.

25 Do you see a February 28, 2019,

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2 e-mail from Jennifer Smith to Erin Mullane, among
3 others?

4 A. Yes.

5 Q. Skipping down to the section on
6 "Message," I read the first line as follows:

7 "Tone to be consistent with Google,
8 but we cannot say things like 'abandoned' or
9 'going away.'"

10 Have I read that correctly?

11 A. Yes.

12 Q. And so is Ms. Smith a Charter
13 employee?

14 A. Yes.

15 Q. And did that Charter employee
16 instruct RAPP that "we cannot say things like
17 'abandoned' or 'going away'?"

18 A. She did.

19 Q. All right.

20 And did Charter ever suggest to RAPP
21 that they could say things like "abandoned" or
22 "going away"?

23 A. We did not.

24 Q. Did Charter ever suggest to RAPP that
25 it should predict that Windstream would be going

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2 away?

3 A. We did not.

4 Q. In Charter's view, does the
5 March 2019 mailer predict that Windstream is
6 going away?

7 A. It does not.

8 Q. Second sentence of that same
9 "Message" subpart:

10 "Windstream has declared bankruptcy,
11 but doesn't mean they won't reorg to stay in
12 business."

13 Have I -- have I read that correctly?

14 A. Yes.

15 Q. Did Charter ever instruct RAPP to
16 suggest that Chapter 11 does mean that Windstream
17 won't reorganize to stay in business?

18 A. We did not.

19 Q. And in Charter's view, does the
20 March 2019 mailer suggest that Chapter 11 does
21 mean that Windstream won't reorganize to stay in
22 business?

23 A. I'm sorry, just repeat that question?

24 Q. I'm happy to. It kind of got away
25 from me.

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2 In Charter's' view, does the
3 March 2019 direct mailer suggest that Windstream
4 will not reorganize and will convert to
5 Chapter 7?

6 A. It does not.

7 Q. If I direct your attention to
8 page -937, I see, about a little less than
9 halfway up the page, there's a bullet point that
10 includes, "CTA: Goodbye, Windstream, Hello
11 Spectrum."

12 Do you see that?

13 A. Yes.

14 Q. What's a CTA -- what's your
15 understanding of what a "CTA" is?

16 A. A call to action.

17 Q. And is a call to action asking the
18 customer to do something, or is it a prediction
19 of something that is going to happen?

20 A. It is asking them to do something.

21 Q. And is "Goodbye, one guy, hello the
22 next guy," a common or an unusual call to action,
23 in your view?

24 A. Common.

25

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2 (Plaintiffs' Exhibit Number 16 was
3 marked for identification as of this
4 date.)

5 MR. KINGSTON: Can I have that back,
6 just because I don't have one on me?

7 BY MR. KINGSTON:

8 Q. Ms. Atkinson, I'm about to hand you
9 Exhibit 16, which appears to be a Windstream
10 direct-mail offer related to Kinetic TV.

11 Do you recognize Exhibit 16?

12 MR. JUSTUS: And I'll object as
13 beyond the scope again.

14 THE WITNESS: It is. It looks like a
15 Kinetic mailing piece, yes.

16 BY MR. KINGSTON:

17 Q. And does that Kinetic mailing piece
18 include the "goodbye" comment, "hello," call to
19 action?

20 A. It does.

21 "Say goodbye to cable, and hello to
22 Kinetic."

23 (Clarification requested by the
24 court reporter.)

25

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2 (The record was read back by the
3 court reporter.)

4 THE WITNESS: It says, "Say goodbye
5 to cable, and hello to Kinetic. Call or
6 go online today to learn more."

7 BY MR. KINGSTON:

8 Q. And do you understand Windstream to
9 be suggesting that cable is going out of business
10 with that call to action?

11 A. No.

12 Q. And when Charter included a similar
13 call to action at the bottom of its March 2019
14 mailer, was it trying to suggest that Windstream
15 was going out of business?

16 A. No.

17 It's a standard call to action.

18 MR. KINGSTON: I only have one copy
19 of this one. I'm sorry.

20 Ms. Marney, could please mark this as
21 Exhibit 17?

22 (Plaintiffs' Exhibit Number 17 was
23 marked for identification as of this
24 date.)

25

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2 BY MR. KINGSTON:

3 Q. And, Ms. Atkinson, Exhibit 17 appears
4 to me to be another Windstream direct-mail piece.

5 A. Yes.

6 Q. And is Exhibit 17 another Windstream
7 direct-mail piece?

8 A. It is.

9 Q. And does --

10 MR. JUSTUS: Object to foundation.

11 BY MR. KINGSTON:

12 Q. And does that -- do you see, in the
13 left-hand side of Exhibit 17, a distinctive
14 Kinetic logo and the name "Kinetic"?

15 A. I do.

16 Q. All right. And do you recognize,
17 based on those -- that distinctive
18 characteristic, Exhibit 17 as a Kinetic
19 direct-mail piece?

20 A. Yes.

21 MR. JUSTUS: Just object to form.

22 BY MR. KINGSTON:

23 Q. And does that Kinetic direct-mail
24 piece include a call to action?

25 A. It does.

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2 Q. And what does that call to action
3 say?

4 A. "Say Goodbye to cable, and hello to
5 Kinetic TV."

6 MR. KINGSTON: Ms. Marney, if you
7 could mark that as Exhibit 18.

8 (Plaintiffs' Exhibit Number 18 was
9 marked for identification as of this
10 date.)

11 BY MR. KINGSTON:

12 Q. Ms. Atkinson, Exhibit 18 is a
13 multi-page document.

14 The first page appears to be a
15 green-and-white envelope, with the word
16 "Windstream," and a distinctive kind of a
17 stylized W.

18 A. Yes.

19 Q. And the remainder of the page -- the
20 remainder of Exhibit 18 appears to be a direct
21 mailer from Windstream.

22 Do you recognize Exhibit 18?

23 A. Yes.

24 Q. And is that a Windstream direct
25 mailer?

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2 A. It is.

3 MR. JUSTUS: Object to foundation,
4 and beyond the scope.

5 BY MR. KINGSTON:

6 Q. On the third page of Exhibit 18, at
7 the bottom, do you see a reference -- or, do you
8 see the last line from the Windstream signature
9 block?

10 A. Yes.

11 Q. I read that as follows:

12 "Say hello to Kinetic. Call or go
13 online today to take advantage of this
14 limited-time offer."

15 Have I read that correctly?

16 A. Yes.

17 Q. And is that a variant of "Goodbye, A,
18 Hello B," call to action?

19 A. Yes.

20 And at the top it says that again.

21 Q. Oh, yes, I see.

22 Thank you.

23 (Plaintiffs' Exhibit Number 19 was
24 marked for identification as of this
25 date.)

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2 BY MR. KINGSTON:

3 Q. Ms. Atkinson, Ms. Marney has handed
4 you Exhibit 19, which appears to be a marked-up
5 draft of the March 2019 direct mail?

6 A. Yes.

7 Q. And I just want to direct your
8 attention to the notations at the bottom, where
9 it looks like the "Goodbye, Windstream, Hello
10 Spectrum" call to action was to be inserted.

11 Do you see that, ma'am?

12 A. I do.

13 Q. And I see that the words
14 "Hello Spectrum" are circled, and then there's
15 a notation indicating that they should be put in
16 bold?

17 A. Yes.

18 Q. And I read that to suggest that
19 "Hello Spectrum" should be put in bold letters.

20 Do you read that the same way?

21 A. I do.

22 Q. And by putting it in -- by putting
23 the phrase "Hello Spectrum" in bold letters, was
24 Charter trying to emphasize or deemphasize the
25 "Hello Spectrum" portion of the call to action?

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2 A. Emphasize.

3 Q. Okay.

4 So the part of the call to action
5 that Charter was trying to emphasize in the
6 March 2019 direct mailer was "Hello Spectrum"?

7 A. Yes.

8 Q. And is that --

9 MR. JUSTUS: Objection, misstates
10 testimony.

11 BY MR. KINGSTON:

12 Q. -- and is -- is the call to action
13 located close to or far away from the phone
14 number that Charter is asking the reader to call?

15 A. Close to it.

16 Q. And is that consistent with the
17 phrase "Goodbye, Windstream, Hello Spectrum"
18 being a call to action, as opposed to a
19 prediction of what's going to happen to
20 Windstream?

21 A. Yes.

22 Q. Typically, the call to action goes
23 next to the phone number that you want people to
24 call; is that true?

25 A. And the website address.

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2 Q. So, typically, the call to action
3 goes next to the phone number or the website
4 address that you would like the reader to call or
5 log onto?

6 A. Correct.

7 Q. Ms. Atkinson, I would like to talk to
8 you a little bit about Charter's -- well, let me
9 start that over.

10 Do you mind if I start over,
11 Ms. Atkinson?

12 A. That's fine.

13 MR. KINGSTON: I only have the one
14 copy of this (indicating). So --

15 MR. JUSTUS: Can you use the version
16 in the -- Exhibit 2?

17 MR. KINGSTON: I -- no. I would
18 prefer to use the actual envelope.

19 Ms. Marney, can we mark this as
20 Exhibit 20?

21 And then when you -- well, are we on
22 Exhibit 20?

23 MR. JUSTUS: And, obviously, I'll
24 need to see it before you --

25 MR. KINGSTON: You're certainly

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2 welcome to.

3 Can we mark this as Exhibit 20.

4 And then we're going to ask you to
5 keep the exhibits. And I'd just like you
6 to scan it as a color PDF, to get both
7 sides. So it will end up being a -- it's
8 an envelope, it will be two pages when you
9 do it.

10 THE COURT REPORTER: Can I go off the
11 record?

12 MR. KINGSTON: We can.

13 THE VIDEOGRAPHER: We are off the
14 record at 2:34 p.m.

15 (Off the record.)

16 (Back on the record.)

17 THE VIDEOGRAPHER: We are back on the
18 record at 2:36 p.m.

19 (Plaintiffs' Exhibit Number 20 was
20 marked for identification as of this
21 date.)

22

23

24

25

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2 - - -

3 CROSS-EXAMINATION CONTINUED

4 - - -

5 BY MR. KINGSTON:

6 Q. Ms. Atkinson, I'm handing you
7 Plaintiffs' Exhibit -- or, I'm handing you
8 Exhibit 20, which I read to be -- well, which
9 I believe to be an exemplar of the envelope for
10 the March 2019 direct mail?

11 A. Yes.

12 Q. Do you recognize Exhibit 20?

13 A. Yes, I do.

14 Q. And is it a exemplar of the envelope
15 for the March 2019 direct mail?

16 A. It is.

17 Q. And does it have a front and a back
18 side?

19 A. It does.

20 Q. And if you look at it from the front
21 side, yes, ma'am, if you look at it from the
22 front side, can you see the gradient flap on the
23 back?

24 A. No.

25 Q. And if you look at it from the back

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2 side, can you see the word "Windstream"?

3 A. No.

4 Q. All right.

5 I want to talk to you a little bit
6 about the decision to use the gradient -- well,
7 the gradient on the back side.

8 Can you close up Exhibit 20, and take
9 a look at it again?

10 MR. JUSTUS: So I'll object again to
11 this line of questioning. I didn't ask
12 about the design of the envelope in
13 direct.

14 MR. KINGSTON: Yeah, responding to
15 counsel's objection, I'll note that
16 counsel inquired about Charter's good
17 faith during his examination.

18 And that I will represent that this
19 line of questioning speaks to that, among
20 other things.

21 BY MR. KINGSTON:

22 Q. Take -- if you would, Ms. Atkinson,
23 can you pick up Exhibit 20?

24 And if you turn the exhibit around,
25 do you see the back of Exhibit 20?

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2 A. Yes.

3 Q. And is that a pink-to-purple gradient
4 on the back side?

5 A. It is.

6 Q. And does that -- have you seen that
7 kind of gradient before?

8 A. Instagram, Lyft, and a number of
9 other industries, at least ten, that have
10 utilized this color just within the last year.

11 MR. KINGSTON: And I'm going to
12 hand -- Ms. Marney, if you would mark that
13 as Exhibit 21.

14 (Plaintiffs' Exhibit Number 21 was
15 marked for identification as of this
16 date.)

17 MR. JUSTUS: Do you have copies of
18 this one, Counsel?

19 MR. KINGSTON: I do, and I apologize.
20 I should have given them to you before
21 I gave them to the witness. I was
22 rule-gathering, and I wasn't -- didn't
23 mean to be rude.

24 BY MR. KINGSTON:

25 Q. Ms. Atkinson, I read Exhibit 21 --

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2 or, for the record, Exhibit 21 is a single-page
3 document, Bates-labeled Charter -1005, with an
4 exhibit sticker from a prior deposition.

5 Exhibit 21 appears to be an
6 electronic mail message chain, starting on -- or,
7 all of which, a series of e-mails, on March 5th
8 of 2019.

9 Do you recognize Exhibit 21?

10 A. I do.

11 Q. And have I correctly described it?

12 A. Yes.

13 Q. I just want to direct your attention
14 to the top of Exhibit 21, where I see a message
15 from a Jennifer Smith at Charter to
16 Allison Novasel and Joe Leonard, also at Charter.

17 A. Yes.

18 Q. And I read Ms. Smith's e-mail, in the
19 second sentence, to say: The gradient OE stands
20 out against nothing and the green, don't you
21 think?

22 Have I read that correctly?

23 A. Yes.

24 Q. And was Charter looking at three
25 options for the outside envelope of the

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2 March 2019 mailer?

3 A. We were.

4 Q. And one would be a blank envelope,
5 one would be green, and one would include the
6 gradient?

7 A. That is correct.

8 Q. And Ms. Smith indicates that the
9 gradient stands out?

10 A. That is correct.

11 Q. And, ultimately, was the gradient for
12 the back of the envelope chosen by Charter
13 because it stands out?

14 A. Yes.

15 Q. I believe that Mr. Maguire with RAPP
16 testified that the gradient "popped."

17 Do you agree with his assessment?

18 A. Yes.

19 There was actually articles written
20 on that in the industry.

21 Q. Articles written on the...?

22 A. On this -- on the gradient-color
23 transition, and how to optimize your marketing
24 materials, which is why it's used so commonly in
25 the industry for companies like Instagram.

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2 Q. Thank you.

3 And if you look at -- take a look, if
4 you would, at Exhibit 20, the back.

5 And I would like you to just -- you
6 can compare Exhibit 20 to the -- well, I think
7 you can leave it the way it was. I'm sorry.

8 A. Uh-huh.

9 Q. So if you look at Exhibit 20, and you
10 compare it to the outside envelope in the
11 plaintiffs' complaint, I guess this is a
12 ticky-tack issue, but it looks like the outside
13 envelope in plaintiffs' complaint has been torn,
14 and then repositioned, so that the gradient is
15 purple-to-pink. But the actual back of the
16 envelope is pink-to-purple.

17 Is that right?

18 A. That is correct.

19 Q. And I think you answered this before,
20 but is that -- is that purple-to-pink or
21 pink-to-purple gradient common or uncommon, in
22 your experience?

23 A. Very common.

24

25

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2 (Plaintiffs' Exhibit Number 22 was
3 marked for identification as of this
4 date.)

5 BY MR. KINGSTON:

6 Q. Ms. Atkinson, Ms. Marney has handed
7 you Exhibit 22.

8 I view Exhibit 22 -- or, I see
9 Exhibit 22 to be a representation of the
10 distinctive Instagram logo?

11 A. That is correct.

12 MR. JUSTUS: I'll just object to
13 beyond the scope and irrelevant.

14 BY MR. KINGSTON:

15 Q. And is that -- does that Instagram
16 logo gradient with elements of pink and purple?

17 A. It is.

18 Q. And are you aware of any affiliation
19 between Instagram and Windstream?

20 A. There's none.

21 Q. And is that Instagram logo
22 eye-catching?

23 A. Yes.

24 MR. JUSTUS: Objection, vague.
25

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2 (Plaintiffs' Exhibit Number 23 was
3 marked for identification as of this
4 date.)

5 BY MR. KINGSTON:

6 Q. Ms. Atkinson, Ms. Marney has handed
7 you Exhibit 23.

8 Do you have that before you?

9 A. I do.

10 Q. And is Exhibit 23 an advertisement
11 for Lyft?

12 A. It is.

13 Q. And does Lyft employ that -- or,
14 employ a purple-to-pink gradient?

15 A. Almost identical.

16 MR. JUSTUS: An objection: beyond the
17 scope and irrelevant.

18 BY MR. KINGSTON:

19 Q. And does the pink-to-purple gradient
20 employed by Lyft stand out or "pop" in your view?

21 A. It does.

22 Q. Are you familiar with an entity known
23 as Xfinity, Ms. Atkinson?

24 A. I am.

25 THE COURT REPORTER: Exhibit 24.

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2 (Plaintiffs' Exhibit Number 24 was
3 marked for identification as of this
4 date.)

5 BY MR. KINGSTON:

6 Q. And Ms. Marney has handed you
7 Exhibit 24, which is a -- which appears to be a
8 screenshot of the Xfinity website.

9 Do you recognize Exhibit 24?

10 A. I do.

11 Q. And is it a screenshot of the Xfinity
12 website?

13 A. It is.

14 Q. And do you see at the top there is a
15 gradient, pink-to-purple?

16 A. Yes.

17 MR. JUSTUS: Objection: beyond the
18 scope and irrelevant.

19 BY MR. KINGSTON:

20 Q. And I want you to set the -- you
21 know, I'd like you to place the back of the
22 Charter direct-mail envelope below the
23 gradient -- I didn't describe that very well.

24 Mind if I start over, Ms. Atkinson?

25 A. Yes.

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2 Q. I would like you to take a look at
3 the back of the -- of Exhibit 20.

4 A. Yes.

5 Q. And is the back of Exhibit 20 the
6 gradient envelope flap?

7 A. Yes.

8 Q. And is the gradient envelope flap --
9 gradient envelope flap, is it colored with a
10 pink-to-purple gradient?

11 A. It is.

12 Q. And if you place that envelope below
13 the pink-to-purple gradient on the Xfinity
14 screenshot, do they align -- or, do they look
15 similar?

16 A. Yes.

17 Q. Now, what I would like you to do, is
18 to take Exhibit 2, which I believe is plaintiffs'
19 complaint?

20 A. Yes.

21 Q. And I would like you to take the page
22 that purports to be a rendering of the Charter
23 envelope?

24 A. Yes.

25 Q. And is the Xfinity, is the gradient

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2 line on the -- or, the gradient bar on the --
3 mind if I start over, Ms. Atkinson?

4 A. That's okay, yes.

5 Q. Does the gradient bar at the top of
6 the Xfinity website match up with the
7 purple-to-pink in Plaintiffs' Exhibit 2 on
8 page 9?

9 A. Reversed, but, yes.

10 Yes, they match it up, backwards.

11 Q. I didn't do that very well.

12 Take a look at the -- I guess the
13 preceding page of Exhibit 2.

14 I think (indiscernible) --

15 A. Here?

16 Q. -- can -- does Exhibit 2 include a
17 screenshot of a Windstream website?

18 There we go.

19 A. Yes, yes.

20 Q. Does the back of Exhibit 20 match up
21 more closely to the pink-to-purple Xfinity
22 website or the purple-to-pink Windstream website?

23 A. It matches more closely to Xfinity.

24 Q. And whether it's pink-to-purple or
25 purple-to-pink, is that kind of a gradient common

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2 in the tech and Internet industry?

3 A. It is.

4 Q. Are you familiar with AT&T?

5 A. Yes, I am.

6 Q. Are you familiar with the FirstNet
7 product AT&T offers to first responders?

8 A. I have knowledge of it, yes.

9 MR. KINGSTON: This is Exhibit 25?

10 THE COURT REPORTER: Uh-huh.

11 (Plaintiffs' Exhibit Number 25 was
12 marked for identification as of this
13 date.)

14 BY MR. KINGSTON:

15 Q. Ms. Atkinson, do you recognize
16 Exhibit 25 as a copy of a FirstNet advertisement?

17 A. Yes.

18 Q. And does it say "FirstNet built with
19 AT&T"?

20 A. It does.

21 Q. And does that have a purple-to-pink
22 gradient?

23 A. It does.

24 MR. JUSTUS: The same objection:
25 beyond the scope and irrelevant.

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2 BY MR. KINGSTON:

3 Q. Ms. Atkinson, are you somewhat
4 familiar with Khloe Kardashian?

5 A. Very.

6 Q. To your knowledge, does
7 Khloe Kardashian have any affiliation with
8 Windstream?

9 A. She does not.

10 MR. JUSTUS: Object to foundation.

11 (Plaintiffs' Exhibit Number 26 was
12 marked for identification as of this
13 date.)

14 BY MR. KINGSTON:

15 Q. Ms. Atkinson, you've been handed
16 Exhibit 26, which appears to me to be a marketing
17 material for Revenge Body with Khloe Kardashian.

18 Do you recognize that?

19 A. Yes.

20 Q. And does that include that
21 purple-to-pink gradient?

22 A. It does.

23 MR. JUSTUS: Same objection: beyond
24 the scope and irrelevant.

25

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2 BY MR. KINGSTON:

3 Q. And does that purple-to-pink gradient
4 "pop"?

5 A. It does.

6 Q. And is it eye-catching?

7 A. Very.

8 Q. I'm going to direct your attention
9 back to Exhibit 18, which is the green Windstream
10 envelope?

11 A. Yes.

12 Q. And what I would like you to do, is
13 to compare Exhibit 20 to Exhibit --

14 A. Exhibit 18?

15 Q. -- yes, ma'am.

16 A. To 20.

17 Okay.

18 Q. And Exhibit 20 is the outside
19 envelope for the Charter direct mail?

20 A. Okay?

21 Q. Is that right?

22 A. Yes.

23 Q. And Exhibit 18 is a Windstream
24 direct-mail product?

25 A. Yes.

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2 Q. And does Exhibit 20, the Charter
3 outside envelope, look like the Windstream
4 direct-mail piece?

5 A. No.

6 Q. And did Charter tell RAPP that it was
7 trying to -- that it wished to trick Windstream
8 customers into believing that the March 2019
9 direct mail came from Windstream?

10 A. No. We never do that.

11 It would not --

12 (In-room interference.)

13 THE WITNESS: Bless you.

14 THE COURT REPORTER: Thank you.

15 THE WITNESS: It would not be a good
16 customer experience to have them think
17 they're being tricked.

18 BY MR. KINGSTON:

19 Q. Yeah, if customers are tricked, do
20 they tend to -- in your experience, to be happy
21 or happy with the entity that tricked them?

22 A. Usually are very upset.

23 Q. Okay. And so as of -- as a practice,
24 does Charter try to avoid tricking potential
25 customers?

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2 A. Always.

3 MR. JUSTUS: Were any of these
4 produced to us, John, or were you just
5 waiting for this deposition?

6 MR. KINGSTON: In answer to counsel's
7 question, I don't believe they were
8 produced.

9 I do believe that Charter submitted
10 requests to production to Windstream,
11 asking for all direct-mail outside
12 envelopes, all direct-mail pieces that
13 Windstream -- or, exemplars of all
14 direct-mail Windstream -- all direct-mail
15 pieces that Windstream had sent.

16 And those were not produced to us.

17 MR. JUSTUS: How about Revenge Body,
18 were we asked to produce that, or any of
19 these other third-parties' things, that
20 we've never seen before?

21 MR. KINGSTON: I will stipulate that
22 counsel was not asked -- that Windstream
23 was not asked to produce Revenge Body by
24 Khloe Kardashian, or any of the other
25 myriad of gradient advertisements that one

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2 can see walking through the streets of any
3 city or small town.

4 MR. JUSTUS: And, also, that Charter
5 didn't produce these to Windstream?

6 MR. KINGSTON: Charter -- Charter did
7 not produce the purple-to-pink gradient
8 stuff that I put in front of Ms. Atkinson,
9 nor the pink-to-purple gradient stuff that
10 I put in front of Ms. Atkinson, unless it
11 was something that bears a Bates label.

12 (Plaintiffs' Exhibit Number 27 was
13 marked for identification as of this
14 date.)

15 BY MR. KINGSTON:

16 Q. Ms. Atkinson, you've been handed
17 Exhibit 27.

18 Is Exhibit -- is Exhibit 27 one of
19 those Windstream direct-mail pieces that Charter
20 obtained in that March to April 2019 time period?

21 A. Yes.

22 Q. And is that a -- an exemplar of a
23 Windstream direct-mail piece?

24 A. It is.

25 Q. And does that look like the -- if you

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2 look at the -- is it an -- is it an outside
3 envelope and -- you mind if I start that over,
4 Ms. Atkinson?

5 A. Yes.

6 Q. I see Exhibit 27 to be an outside
7 envelope of a direct-mail piece with a couple of
8 mailers on the inside.

9 Do you see that?

10 A. I do.

11 Q. And does that outside envelope look
12 like the Charter outside envelope that is
13 Exhibit 20?

14 A. It does not.

15 (Plaintiffs' Exhibit Number 28 was
16 marked for identification as of this
17 date.)

18 BY MR. KINGSTON:

19 Q. Ms. Atkinson, you've been handed
20 Exhibit 28.

21 Exhibit 28 appears to be a Kinetic
22 direct-mail piece.

23 Do you recognize Exhibit 28?

24 A. I do.

25 Q. And is that a Windstream direct-mail

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2 piece?

3 A. It is, from January of '19.

4 Q. And does that look like -- does that
5 look like the Charter mailer?

6 A. It does not.

7 Q. Exhibit 28 does not look like
8 Exhibit 20; is that true?

9 A. That is true.

10 (Plaintiffs' Exhibit Number 29 was
11 marked for identification as of this
12 date.)

13 MR. JUSTUS: Again, continued
14 objection to all of these exhibits as
15 beyond the scope and irrelevant.

16 BY MR. KINGSTON:

17 Q. Ms. Atkinson, do you recognize
18 Exhibit 29?

19 A. I do.

20 It is a Kinetic and DirecTV mailing.

21 Q. Does Exhibit 29 -- and -- so is
22 Exhibit 29 a Windstream direct-mail piece?

23 A. Yes, along with DirecTV.

24 Q. And does Exhibit 29 look like the
25 outside envelope of Charter's March 2019 mailer?

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2 A. It does not.

3 Q. And was Charter trying to get just
4 Internet customers in March of 2019, or was it
5 trying to get Internet and TV customers?

6 A. Internet, TV, and home phone as well.

7 (Plaintiffs' Exhibit Number 30 was
8 marked for identification as of this
9 date.)

10 BY MR. KINGSTON:

11 Q. Ms. Atkinson, you've been handed
12 Exhibit 30. Do you recognize that?

13 A. Yes. It's a "Kinetic Internet by
14 Windstream" mailer.

15 Q. And is Exhibit 30 one of the
16 direct-mail samples that Charter pulled in that
17 March-April 2019 time period?

18 A. It is.

19 Q. And does Exhibit 30 look like
20 Exhibit 20?

21 A. It does not.

22 MR. JUSTUS: So, again, objection,
23 beyond the scope.

24 I never asked about colors, and we've
25 been talking for, I think, over an hour

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2 now about colors.

3 (Off-the-record discussion.)

4 THE VIDEOGRAPHER: We are off the
5 record at 3 p.m.

6 (Off the record.)

7 (Back on the record.)

8 (Plaintiffs' Exhibit Number 31 was
9 marked for identification as of this
10 date.)

11 (Plaintiffs' Exhibit Number 32 was
12 marked for identification as of this
13 date.)

14 (Plaintiffs' Exhibit Number 33 was
15 marked for identification as of this
16 date.)

17 (Plaintiffs' Exhibit Number 34 was
18 marked for identification as of this
19 date.)

20 (Plaintiffs' Exhibit Number 35 was
21 marked for identification as of this
22 date.)

23 (Plaintiffs' Exhibit Number 36 was
24 marked for identification as of this
25 date.)

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2 (Plaintiffs' Exhibit Number 37 was
3 marked for identification as of this
4 date.)

5 (Plaintiffs' Exhibit Number 38 was
6 marked for identification as of this
7 date.)

8 (Plaintiffs' Exhibit Number 39 was
9 marked for identification as of this
10 date.)

11 (Plaintiffs' Exhibit Number 40 was
12 marked for identification as of this
13 date.)

14 THE VIDEOGRAPHER: We are back on the
15 record at 3:15 p.m.

16 MS. GREER: I just wanted to state,
17 before you start, John, on the record,
18 that we -- the parties have discussed off
19 the record that we agreed to stipulate
20 that the Committee joins in all the
21 objections of the debtors, Windstream.

22 MR. KINGSTON: That's correct.

23 And my understanding, based on our
24 discussions, had been that that was the
25 case throughout the deposition, so that

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2 every time Mr. Justus objected during this
3 deposition, I understood the Committee to
4 be joining in that objection.

5 MS. GREER: That's correct.

6 Thank you.

7 MR. KINGSTON: Uh-huh.

8 MR. JUSTUS: And, John, just before
9 we keep going with these exhibits, would
10 you stipulate to a running objection, the
11 same one I've been making over and over,
12 that it's beyond the scope and irrelevant?

13 MR. KINGSTON: I would.

14 MR. JUSTUS: And that's for 31 --
15 Exhibits 31 through 40 forthcoming.

16 MR. KINGSTON: And my view is that --
17 my view, on behalf of Charter, is that
18 objections as to relevance or beyond the
19 scope of the deposition are all preserved
20 and not waived.

21 So whether you make them now, or make
22 them down the road when we're designating
23 portions of the transcript, I think those
24 objections are preserved.

25 MR. JUSTUS: Thank you.

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2 MR. KINGSTON: Uh-huh.

3 - - -

4 CROSS-EXAMINATION CONTINUED

5 - - -

6 BY MR. KINGSTON:

7 Q. Ms. Atkinson, Ms. Marney has handed
8 you a stack of exhibits that are exhibits,
9 Numbers --

10 A. 31.

11 Q. -- 31 through 40?

12 A. 40.

13 Q. Take a moment to review all of those
14 exhibits, and let me know when you're ready.

15 A. (Witness reviews document.)

16 Yes, I have looked at them.

17 Q. And are Exhibits 31 through 40 all
18 samples of Windstream's direct mailers that
19 Charter obtained in that March-April 2019 time
20 period?

21 A. Yes.

22 Q. And does the outside envelope for
23 Charter's March of 2019 direct mailer look
24 anything like Exhibits 31 through 40?

25 A. It does not.

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2 Q. Did Charter spend \$226,000 on the
3 March 2019 direct-mail campaign?

4 A. That estimate sounds right.

5 Q. You talked earlier in your deposition
6 about a Charter employee named Andrew Sites.

7 Do you remember that?

8 A. I do.

9 Q. And did Mr. Sites send fewer than
10 10 e-mails to customers referencing the
11 Windstream bankruptcy?

12 A. That is correct. He e-mailed seven
13 customers.

14 Q. And what happened to Mr. Sites after
15 he e-mailed seven customers?

16 A. His management notified him of a
17 breach of the employee handbook. And he's on a
18 year probation, one strike from termination;
19 meaning, if there's anything that he does during
20 this year, he would be terminated immediately.

21 Q. And so Mr. Sites did not use
22 collateral produced by marketing or anybody else
23 related to Windstream. He just sent e-mails.

24 Is that right?

25 A. That is correct.

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2 (Plaintiffs' Exhibit Number 41 was
3 marked for identification as of this
4 date.)

5 BY MR. KINGSTON:

6 Q. Ms. Atkinson, you've been handed
7 Exhibit 41.

8 Exhibit 41 is a multi-page document.

9 It says, "Spectrum Sales Policies and
10 Procedures," Bates-labeled -44923 through -44968
11 inclusive.

12 Do you recognize Exhibit 41?

13 A. Yes.

14 Q. And are those the Charter sales -- a
15 copy of the Charter sales procedures?

16 A. They are.

17 Q. And does -- does the version have a
18 date?

19 A. December of 2018.

20 Q. Okay. And so these would have been
21 the policies and procedures in place as of
22 March of 2019?

23 A. They would.

24 Q. And I will direct your attention to
25 page 19.

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2 A. 19.

3 Q. Do you see a section on the use of
4 unauthorized, unapproved marketing materials?

5 A. I do.

6 Q. And I read the first paragraph as
7 follows:

8 "The company will provide direct-mail
9 representatives and multi-tenant sales
10 representatives with marketing materials, which
11 may include business cards and pricing product
12 information. Representatives may not create or
13 distribute personalized marketing materials."

14 Have I read that correctly?

15 A. Yes.

16 Q. And so is it -- is it permissible for
17 Charter sales representatives to use collateral
18 that has not been approved?

19 A. Never.

20 Q. I read the next line of the
21 "Unauthorized and Unapproved Marketing Materials"
22 section as follows:

23 "Widespread door-tagging, mailing, or
24 marketing of residences prohibited."

25 Have I read that correctly?

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2 A. Yes.

3 Q. And so does that prohibit widespread
4 door-to-door campaigns (indiscernible
5 cross-talking) --

6 A. It does.

7 Q. Let me -- let me take another run at
8 that.

9 Does that prohibit widespread
10 door-to-door campaigns that involve tagging,
11 mailing, or marketing flyers and the like on
12 various doors?

13 A. Yes.

14 By the direct sales teams, yes.

15 Q. I read the second-from-the-bottom
16 line, "Use of unauthorized, unapproved marketing
17 material, tactics, special events, or offers is
18 prohibited, and may result in corrective action
19 up to and including a termination of employment."

20 Have I read that correctly?

21 A. Yes.

22 Q. And do unapproved tactics include
23 saying things about competitors that are not
24 true?

25 A. Yes.

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2 Q. And if a Charter employee does that,
3 he or she would be subject to termination; is
4 that true?

5 A. Yes.

6 Q. You can put that aside.

7 I direct your attention,
8 Ms. Atkinson, to Exhibit 2, which I believe is
9 Windstream's complaint.

10 Do you have it in front of you?

11 A. Sorry, I didn't keep it all in order.

12 MR. JUSTUS: It might be that --

13 THE WITNESS: What's that?

14 MR. JUSTUS: -- big one.

15 THE WITNESS: Oh, this one. Sorry.

16 Of course it's the big one, right
17 there.

18 Thank you.

19 MR. KINGSTON: I'm afraid I don't
20 have my copy.

21 May I borrow this for just a moment?

22 THE WITNESS: Yes.

23 MR. KINGSTON: Thank you.

24 BY MR. KINGSTON:

25 Q. If I could direct your attention,

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2 Ms. Atkinson, to the copy of the Charter mailer
3 on page 13 on the Windstream complaint.

4 A. Yes.

5 Q. I would also like to direct your
6 attention to Exhibit 13, which is the One Touch
7 TELCOTRAK newsletter.

8 A. Yes -- oh, wait.
9 12?

10 Q. Yes, ma'am.

11 A. Okay.

12 Q. Directing your attention to the
13 bottom of Exhibit 12, I read One Touch to make
14 the following statement:

15 "But while Chapter 11 will provide
16 some legal shelter while the telco reorganizes
17 its tangled debt structure, uncertainty about the
18 service impacts will make some residential and
19 business customers uneasy."

20 Have I read that correctly?

21 A. Yes.

22 Q. And so One Touch is suggesting that
23 there is uncertainty related to Windstream's
24 bankruptcy?

25 A. Yes.

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2 THE VIDEOGRAPHER: Sorry to
3 interrupt.

4 Ms. Atkinson, would you mind not
5 touching your necklace.

6 Thank you.

7 THE WITNESS: Sorry.

8 Yes, that is correct.

9 BY MR. KINGSTON:

10 Q. And on the Charter mailer I read,
11 "Windstream has filed for Chapter 11 bankruptcy,
12 which means uncertainty."

13 Have I read that correctly?

14 A. Yes.

15 Q. And is that statement consistent or
16 inconsistent with OneTouch's analysis that
17 Windstream's Chapter 11 means uncertainty?

18 A. Consistent.

19 Q. And then sticking with Exhibit 12,
20 I read, "OneTouch's analysis to suggest that that
21 uncertainty is about the service."

22 Have I read that correctly?

23 A. Yes.

24 Q. And is the phrase "Don't risk losing
25 your Internet and TV service" consistent or

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2 inconsistent with OneTouch's indication that the
3 uncertainty extends to the service?

4 A. It is consistent.

5 Q. In the March 2019 mailer, was Charter
6 trying to convey anything that it didn't
7 (1) receive from One Touch, and (2) believe to be
8 true?

9 MR. JUSTUS: Objection to form.

10 THE WITNESS: You are correct in that
11 statement.

12 BY MR. KINGSTON:

13 Q. I guess -- is it -- is it true,
14 Ms. Atkinson, that Charter was not trying to
15 convey anything that it had not learned from
16 One Touch or did not believe to be true?

17 MR. JUSTUS: Objection, leading.

18 THE WITNESS: That is correct
19 statement.

20 BY MR. KINGSTON:

21 Q. Okay. Is it a true statement -- I --
22 mind if I take another run at it?

23 A. Sure.

24 Q. Just responding to counsel's
25 objection, is it a true statement or an untrue

1 K.C. Atkinson - 09/19/19
2 statement, that Charter relied on One Touch when
3 it referenced "uncertainty" and "services" in the
4 March 2019 direct mail?

5 A. That is a true statement.

6 Q. Okay.

7 A. This was used as a creative brief for
8 the agency.

9 Q. Does Charter have any reason to
10 believe that One Touch was misleading Charter
11 when it indicated that there was uncertainty
12 related to Windstream's bankruptcy, and that that
13 uncertainty could extend to Windstream's ability
14 to provide services?

15 A. They were not misleading.

16 MR. KINGSTON: I pass the witness.

17 MR. JUSTUS: Okay. I do have some
18 questions, but I need a five-minute break
19 to get my notes together.

20 We can off the record.

21 THE VIDEOGRAPHER: We are off the
22 record at 3:31 p.m.

23 (Off the record.)

24 (Back on the record.)

25 THE VIDEOGRAPHER: We are back on the

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2 record at 3:37 p.m.

3 - - -

4 REDIRECT EXAMINATION

5 - - -

6 BY MR. JUSTUS:

7 Q. Okay, hello, again, Ms. Atkinson.

8 If you could put in front of you
9 Exhibit 13, the one-page Competitive Alert from
10 One Touch that you testified about earlier.

11 Do you have that?

12 A. Yes.

13 Q. On the left-hand side, under the
14 header "Impact Analysis," it states, and I think
15 John read this, but I'll read it again:

16 "But while the reorganization is
17 designed to ensure Windstream survives, it will
18 have a negative impact on its marketing to
19 business customers. It's unlikely the
20 uncertainty surrounding its bankruptcy will make
21 business customers think twice about inking or
22 renewing a service contract with Windstream."

23 Did I read that correctly?

24 A. It's "'likely' the uncertainty
25 surrounding the bankruptcy will make them think

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2 twice" --

3 Q. Yes.

4 Did I say "unlikely"?

5 A. Yes.

6 Q. My mistake. That was not on purpose.

7 (Indiscernible.)

8 A. That's okay.

9 Q. It's right here on the page.

10 So thank you for correcting me.

11 So this is referring to business

12 customers; right?

13 A. Yes.

14 Q. And the direct-mail piece only went

15 out to residential customers; is that right?

16 A. Yes.

17 Q. So you testified about -- I believe
18 you did, correct me if I'm wrong, you testified
19 about, if Windstream does not assume a contract,
20 service may be interrupted.

21 Do you remember that testimony?

22 A. That was John's comment, I believe,
23 when you were talking about the 14,000 customers.

24 Q. Yes, 14,000 last-mile service
25 contracts, that Windstream may not assume the

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2 contract.

3 Do you recall that testimony?

4 A. I didn't say that testimony.

5 That was John reading that to me.

6 Q. So do you know what that means, "to
7 assume a contract" or "not assume a contract"?

8 A. When we went through our discussion,
9 it means that it's going to be determined whether
10 or not that relationship continues, is how
11 I understand it.

12 Q. How so, what do you mean, "how the
13 relationship continues"?

14 A. Whether or not Windstream continues
15 that relationship.

16 Q. Which relationship?

17 A. That service contract.

18 Q. So what does it mean to "assume the
19 contract"?

20 MR. KINGSTON: Objection: it calls
21 for legal conclusion, lack of foundation.

22 THE WITNESS: I actually don't know
23 what that means.

24 BY MR. JUSTUS:

25 Q. Okay. Moving on.

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2 Can you pull up Exhibit 14, please?

3 And just let me know when you have
4 that in front of you, please.

5 A. What, this one?

6 Ah, here we go.

7 Q. Envelope with the stamp on it.

8 A. Yes, the blind envelope?

9 Yes.

10 Q. All right. So you testified that
11 Exhibit 14 was a "blind OE," or, blind outer
12 envelope; is that correct?

13 A. Yes.

14 Q. And the envelope that Charter sent
15 out with its direct-mail piece was also a
16 blind OE; right?

17 A. I'm sorry --

18 Q. In Exhibit 2 --

19 A. -- 20?

20 Q. -- on page, I believe it's 9, there's
21 the envelope that Charter sent out in its
22 direct-mail piece?

23 A. Yes.

24 Q. Is that also a blind OE?

25 A. It would be considered lacking the --

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2 the logo seals, yes, similar to a blind envelope
3 with no logos of the company.

4 Q. In Exhibit 14, the first page that
5 shows the envelope, is there any competitor name
6 on that page, on that envelope?

7 A. No. It's designed to be an
8 invitation.

9 Q. Is there any use of a competitor's
10 font on that envelope?

11 A. Not to my knowledge.

12 Q. Is there any use of a competitor's
13 colors on that envelope?

14 A. No.

15 Q. Will you please pull up Exhibit 16?

16 Actually, my apologies.

17 Can you go back to 14 for one
18 moment -- Exhibit 14, the same envelope?

19 A. Yes.

20 Q. And if you look at the second, third,
21 fourth, and fifth pages, I think you testified
22 those are Windstream direct-mail pieces, or one
23 direct-mail piece; is that right?

24 A. Yes.

25 Q. Is there any competitive switch

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2 message in here naming a competitor?

3 A. "The cable TV alternative you've been
4 waiting for," cable is called out --

5 Q. So cable is not a -- that's not a
6 company, right, that's just a generic industry?

7 A. Correct.

8 Q. So there's no competitive switch
9 message naming a competitor; is that correct?

10 (Clarification requested by the
11 court reporter.)

12 BY MR. JUSTUS:

13 Q. There's no competitive switch message
14 naming a competitor; correct?

15 A. Not in this.

16 Q. Okay.

17 You can set that one aside. Thank
18 you.

19 I'm -- so now turning to Exhibit 16,
20 if you will?

21 So I think, with Exhibit 16, you
22 testified as to the bottom of the page, where it
23 "Say goodbye to cable, and hello to Kinetic."

24 So is there any competitive switch
25 message here specific to a competitor?

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2 A. Yes. The industry, cable.

3 Q. But no specific competitor; right?

4 A. No. It's generic.

5 Q. Is there any reference to a specific
6 competitor filing for bankruptcy?

7 A. No.

8 Q. Is there any reference to uncertainty
9 surrounding a specific competitor's bankruptcy?

10 A. No.

11 Q. If you could pull up Exhibit 17,
12 please?

13 A. Yes.

14 Q. And again, in Exhibit 17, it says,
15 "Say goodbye to cable, and hello to Kinetic TV."

16 Do you see that?

17 A. Yes.

18 Q. Is there any reference to a specific
19 competitor?

20 A. No.

21 Q. Is there any reference to a specific
22 competitor filing for bankruptcy?

23 A. No.

24 Q. Is there any reference to a specific
25 competitor filing for bankruptcy and uncertainty

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2 surrounding the bankruptcy?

3 A. No.

4 Q. If you could please pull up

5 Exhibit 18?

6 Do you have that in front of you?

7 A. Yes.

8 Q. I think again you testified relating
9 to, "say hello to Kinetic" on the third page, and
10 then at the top of the third page you say,
11 "Bye-bye to cable forever."

12 Do you remember that?

13 A. Yes.

14 Q. Does this piece name any specific
15 competitor?

16 A. No.

17 Q. Does it reference any bankruptcy of a
18 specific competitor?

19 A. No.

20 Q. Does it reference any uncertainty
21 stemming from a bankruptcy of a specific
22 competitor?

23 A. No.

24 Q. Can you please pull up Exhibit 21?

25 A. Yes.

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2 Q. Exhibit 21, e-mails, Charter -1005,
3 I believe you testified about Jennifer Smith's
4 March 5th e-mail, where it says, "The gradient OE
5 stands out against nothing and the green."

6 Do you recall that?

7 A. Yes.

8 Q. Isn't it true that the Kinetic color
9 pallet was used to mimic Windstream's colors?

10 A. I'm sorry, are you asking about the
11 green or the gradient?

12 Q. The gradient.

13 A. The gradient.

14 It's a commonly-used envelope format,
15 that, I think we went through, even Xfinity uses
16 it.

17 So, in the cable industry, it's very
18 common. It's even on their website.

19 So, it's nothing that's been
20 trademarked, but it does definitely pop.

21 Q. Okay. So in this specific case, a
22 specific direct-mail piece, the envelope that
23 Charter created referencing Windstream, was that
24 color gradient used specifically to look like
25 Windstream's colors?

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2 A. It was used to stand out. Meaning --

3 Q. Is that a "no"?

4 A. That is a "no."

5 Q. Okay.

6 A. -- it was used to stand out.

7 Q. And if you could pull up Exhibit 15,
8 please.

9 It's e-mails with RAPP, starting at
10 Charter -936?

11 A. Yes.

12 Q. If you turn to the second page, -937,
13 about six bullets down?

14 A. Uh-huh.

15 Q. It says, "Look and feel of the OE has
16 been aligned with the Windstream website and
17 current mail and market per Comperemedia."

18 A. Uh-huh.

19 Q. The next bullet says, "The
20 dark-purple-to-red gradient aligns with what we
21 saw for in-market DM."

22 So is that not referencing aligning
23 the colors with Windstream's colors?

24 MR. KINGSTON: Objection, lack of
25 foundation as to what Ms. Mullane is

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2 referencing in that e-mail.

3 BY MR. JUSTUS:

4 Q. You can answer the question.

5 A. She's making a -- an observation to
6 market -- marketing materials.

7 Q. So you do not understand that wording
8 to mean that the color gradient was aligned to
9 look like Windstream's colors; is that correct?

10 A. This back-and-forth with the agency,
11 they also talk about different OE options. Make
12 the switch.

13 These were creative options that were
14 presented to us, among many things.

15 So, if they looked at it from
16 Comperemedia, which is what this is saying, they
17 can create a similar look.

18 This isn't -- this is not something
19 that's limited to Windstream.

20 MR. JUSTUS: Okay, can we mark this
21 as Exhibit 42, please?

22 (Defendants' Exhibit Number 42 was
23 marked for identification as of this
24 date.)

25

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2 BY MR. JUSTUS:

3 Q. And let me know when you're ready,
4 please?

5 A. Yes.

6 Q. In Jennifer Smith's -- so backing up,
7 Exhibit 42 is e-mails, Charter -1002.

8 In the middle of the page is an
9 e-mail from Jennifer Smith to Alan (sic) Novasel
10 on Tuesday March 5th.

11 Do you see that?

12 A. Yes.

13 Q. And who is Jennifer Smith?

14 A. She reports to Allison. She is a
15 director on my team.

16 Q. And who is Allison Novasel?

17 A. A vice president on my team.

18 Q. Did Jennifer and Allison make the
19 final decisions as to the creative for this
20 direct-mail piece?

21 A. Yes.

22 And it was similar to a Google
23 campaign that we had done just prior, so the
24 template was the one we used.

25 Q. So Jen's -- Jennifer's e-mail -- or,

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2 Ms. Smith's e-mail to Ms. Novasel, it says, "The
3 OE utilizes Windstream's Kinetic color pallet."

4 Do you see that?

5 A. "Similar to Google," yes.

6 Q. Does that mean that the envelope for
7 the direct-mail piece used colors similar to
8 Windstream's colors?

9 A. From what they saw in the market,
10 apparently, yes.

11 Q. So the intent of the use of the color
12 gradient on the envelope was to make the envelope
13 look like it was using Windstream's colors;
14 right?

15 A. It was to make it "pop," so -- and
16 have more of a likelihood of opening.

17 And we used green and blank as other
18 options, but they felt that the color gradient
19 stood out more.

20 Q. So in this e-mail it says, "The OE
21 utilizes Windstream's Kinetic color pallet."

22 Does that mean that the envelope used
23 colors similar to Windstream's colors?

24 MR. KINGSTON: Objection, asked and
25 answered.

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2 BY MR. JUSTUS:

3 Q. You can answer.

4 A. I have.

5 Q. So is your testimony that the colors
6 used on the envelope are not supposed to look
7 like Windstream's colors? Is that right?

8 A. No.

9 They're designed to grab a consumer's
10 attention so that it has a higher likelihood of
11 opening, similar to a blind OE.

12 And the gradation color is one that's
13 commonly used in the industry, and has actually
14 been written up as something that has a higher
15 likelihood of looking at it, paying attention to
16 it, and responding to it.

17 Q. Okay.

18 In your prior 30(b)(6) deposition
19 on --

20 Was it May 1st?

21 A. Yes.

22 Q. -- May 1st, you were questioned about
23 this precise document, Exhibit 42.

24 And the question was: And is the
25 idea of the creative integration to make it look

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2 like a Windstream envelope?

3 And your response was: That would
4 seem to be the intent.

5 Do you stand by that testimony?

6 A. Yes.

7 Q. If you could please go to Exhibit 22?

8 A. Yes.

9 Q. Is Instagram a direct competitor of
10 Charter?

11 A. No.

12 Q. Can you please turn to Exhibit 23?

13 And this relates to Lyft; correct?

14 A. Yes.

15 Q. Is Lyft a direct competitor of
16 Charter?

17 A. No.

18 Q. And how about, is this

19 Khloe Kardashian --

20 A. Yes.

21 Q. -- Exhibit 26?

22 Is she a -- is her Revenge Body

23 product or service a direct competitor of

24 Charter?

25 A. No.

1 K.C. Atkinson - 09/19/19

2 MR. JUSTUS: I pass the witness.

3 - - -

4 RECROSS-EXAMINATION

5 - - -

6 BY MR. KINGSTON:

7 Q. Ms. Atkinson, briefly, can you please
8 take Exhibit 12, which I believe is the One Touch
9 marketing report?

10 A. Yes.

11 Q. And at the bottom of Exhibit 12, do
12 you see a reference to -- on the bottom of the
13 first page of Exhibits 12, do you see a reference
14 to "uncertainty about service"?

15 A. Yes.

16 Q. And is that reference to "uncertainty
17 about service" in the One Touch marketing report,
18 is it limited to business customers, or does it
19 say "some residential and business customers"?

20 A. "Some residential and business
21 customers."

22 MR. KINGSTON: I pass the witness.

23 MR. JUSTUS: No further questions.

24 MR. KINGSTON: Ms. Atkinson, thank
25 you for your time.

1 K.C. Atkinson - 09/19/19

2 THE WITNESS: Thank you.

3 THE VIDEOGRAPHER: We are off the
4 record at 3:56 p.m.

5 (At 3:56 p.m., the record was
6 closed.)

7 (The witness reserved the right to
8 read and sign the deposition transcript.)

9

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1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 _____
4 In re:

5 WINDSTREAM HOLDINGS, INC., et al.,

6 Debtors.

Chapter 11

7 _____ Case No. 19-22312 (RDD)

8 WINDSTREAM HOLDINGS, INC., et al.,

9 Plaintiffs,

10 vs.

11 CHARTER COMMUNICATIONS, INC. and

12 CHARTER COMMUNICATIONS OPERATING, LLC,

13 Defendants.

14 -----X

15 ** CONFIDENTIAL - ATTORNEYS' EYES ONLY **

16
17 DEPOSITION OF KEITH DARDIS

18 Stamford, Connecticut

19 Wednesday, May 1, 2019

20
21
22
23 REPORTER: Angela M. Shaw-Crockett, CCR, RMR, CSR

24 License No. SHR.0000519
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May 1, 2019

13

11:59 a.m.

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16

DEPOSITION of KEITH DARDIS, taken by the

17

Plaintiff, held at Wiggin and Dana, Two Tresser

18

Boulevard, Two Stamford Plaza, Stamford,

19

Connecticut, before Angela M. Shaw-Crockett, a

20

Certified Court Reporter, Certified Shorthand

21

Reporter, Registered Merit Reporter and Notary

22

Public of the States of New York, New Jersey and

23

Connecticut.

24

25

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ALSO PRESENT: Kristin Zarnetske, The Videographer

**

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CONFIDENTIAL EXHIBITS
ATTORNEYS' EYES ONLY

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1 THE VIDEOGRAPHER: Good afternoon. We are
2 now going on the record at 2:02 p.m. on May 1,
3 2019. Please note that the microphones are
4 sensitive and may pick up whispering, private
5 conversations, and cellular interference.
6 Please turn off all cell phones and place them
7 away from the table as they may interfere with
8 the deposition audio. Audio and video
9 recording will continue to take place until all
10 parties agree to go off the record.

11 This is Media Unit No. 1 of the videotaped
12 deposition of Mr. Keith Dardis taken by
13 plaintiffs in the matter of In re: Windstream
14 Holdings, Inc., debtors, versus -- and
15 Windstream Holdings, Inc., et al., plaintiffs,
16 versus Charter Communications, Inc., and
17 Charter Communications Operating, LLC,
18 defendants, filed in the United States
19 Bankruptcy Court for the Southern District of
20 New York, Case No. 19-22312 (RDD).

21 My name is Kristin Zarnetske. I'm the
22 videographer representing Veritext. The court
23 reporter, also in association with Veritext, is
24 Angela Grant [sic]. And also I'm not
25 authorized to administer an oath and I'm not

1 related to any party in this action, nor am I
2 financially interested in the outcome.

3 Will counsel present please introduce
4 themselves for the record.

5 MR. LARSEN: Ryan Larsen on behalf of the
6 plaintiff Windstream.

7 MR. NEPPLE: Mike Nepple, Thompson Coburn,
8 on behalf of the Charter defendants.

9 MR. RAPPOPORT: Steve Rappoport, Morrison
10 & Foerster, on behalf of the committee of
11 unsecured creditors.

12 THE VIDEOGRAPHER: Thank you. Would the
13 court reporter please swear in the witness.

14 K E I T H D A R D I S,
15 called as a witness, having first been
16 duly sworn, was examined and testified as
17 follows:

18 EXAMINATION

19 BY MR. LARSEN:

20 Q. Mr. Dardis, good afternoon.

21 A. Hi.

22 Q. My name is Ryan Larsen. I'm one of the
23 attorneys for the debtor and I'll be taking the
24 deposition.

25 A. Okay.

1 Q. I assume you've had a chance to talk to
2 your attorneys about the ground rules for the
3 deposition, but I'm going to take about five minutes
4 just to go over them and make sure we're on the same
5 page. Okay?

6 A. Okay.

7 Q. First thing is: That oath you took,
8 that's the same oath you take in a courtroom. It's
9 the same penalties of -- penalty of perjury applies
10 here in this informal setting as it would in a
11 courtroom or any other matter.

12 Do you understand that?

13 A. I do.

14 Q. Okay. The testimony you're giving today
15 can be used by the parties at trial or any other
16 proceeding in this matter.

17 Do you understand that too?

18 A. I do.

19 Q. Okay. I'll be asking you questions and
20 the court reporter will be transcribing everything
21 everyone said. So that leads to a couple of things.

22 One, we need to make sure and speak
23 audibly, which you're doing well on so far. Thank
24 you. That means "yes" and "no," not "uh-huh" or
25 "uh-huh," which could be misinterpreted. Not shake

1 your head or nod your head, because that's difficult
2 for her to take down.

3 Do you understand?

4 A. Understood.

5 Q. Okay. Likewise, it's very difficult for
6 her to take down when people are talking too fast,
7 so try to take a breath, if you can. It's difficult
8 for her to take down when people are talking over
9 one another. So in a real-life conversation when
10 you see where I'm going with the question, you jump
11 in with a yes or no. Can't do that here. So let me
12 finish the whole question. Then you answer.
13 Likewise, I'll do my best to make sure you finish
14 your whole answer. Then I'll jump in with another
15 question.

16 Do you understand?

17 A. I do.

18 Q. Okay. When we're done today, the court
19 reporter is going to transcribe everything we said.
20 We're all going to get a copy. You'll have the
21 right to review it and make any changes. I just
22 want to caution you that if you do make any changes,
23 myself or any other attorney in this matter has the
24 right to comment on those changes if they're
25 substantive.

1 Do you understand?

2 A. Understood.

3 Q. Okay. There may be objections to certain
4 of my questions today that your attorneys may object
5 to the form of the question. The important thing
6 for you to understand is unless they specifically
7 instruct you not to answer, you still have to answer
8 even though there's an objection pending.

9 Do you understand?

10 A. I do.

11 Q. Okay. If you -- if you do not understand
12 my question, please let me know. It's my fault. I
13 will rephrase it. Likewise, if you didn't hear it,
14 let me know. I'll re-state. Okay?

15 A. Okay.

16 Q. Okay. Not a test of endurance today.
17 We'll probably take a five-minute break every hour
18 or so. If you need a break for any reason before
19 that, let me know. And as long as we're not in the
20 middle of a question or topic, we'll take a break.
21 Okay?

22 A. Okay.

23 Q. It may be difficult to remember -- thank
24 you so much -- details of specific conversations,
25 especially if they happened, you know, a while back.

1 I don't want you to guess today. I'm entitled to
2 your best recollection, but not you guessing or
3 estimating on what things might have been.

4 Do you understand the difference?

5 A. I do.

6 Q. Okay. A dumb example people like to give
7 is: If you had to estimate how long this table is,
8 you could look at it and say maybe it's 20 feet or
9 so. If I asked you how long the table is in my
10 conference room in Los Angeles, you'd have no idea
11 because I assume you haven't seen it. Correct?

12 A. Correct.

13 Q. So that's the difference.

14 A. Okay.

15 Q. Okay. Lastly, is there -- have you taken
16 any medications within the last 24 hours or anything
17 that might impact your ability to recall events and
18 give your best testimony today?

19 A. I haven't.

20 Q. Okay. Any questions about the procedure
21 before we get started?

22 A. No.

23 Q. Mr. Dardis, have you ever been deposed
24 before today?

25 A. I have, a long time ago.

1 Q. Okay. How long ago?

2 A. I'd be guessing, but at least seven-plus
3 years.

4 Q. And what did that matter -- what was that
5 matter about?

6 A. It was an employee matter with my previous
7 company, Sprint.

8 Q. Like an employment case?

9 A. Yes.

10 Q. Other than that, have you ever testified
11 in a deposition?

12 A. No.

13 Q. Okay. I know you testified in a hearing
14 in this matter.

15 Other than that, have you ever testified
16 in court before?

17 A. No.

18 Q. Did you review any documents prior to
19 coming today to prepare for your deposition?

20 A. This morning, I looked over this document.

21 Q. And by "this," you're referring to the
22 deposition notice in this case, I believe?

23 A. That is correct.

24 Q. Okay. Any other documents you reviewed to
25 prepare for today?

1 A. I just looked at previous emails that I
2 thought I might be responsible for within this
3 document.

4 Q. Other than conversations with your
5 attorney, which I'm not asking you about, did you
6 have any conversations with anybody to prepare for
7 this deposition today?

8 A. Today? No.

9 Q. Bad question by me. I didn't mean any
10 conversations necessarily today. Conversations at
11 any time to prepare for giving your testimony today.

12 A. No.

13 Q. Okay. Let me go through your background
14 real quick and we'll get into this as quickly as we
15 can.

16 Do you have a college degree, Mr. Dardis?

17 A. I do.

18 Q. When did you obtain that?

19 A. 1988, I graduated.

20 Q. And where did you get your degree from?

21 A. Villanova University.

22 Q. Two in a row.

23 What was your degree?

24 A. Finance.

25 Q. Okay. Did you -- do you have any other

1 degrees after that degree?

2 A. No.

3 Q. Okay. Did you attend any other -- further
4 graduate school after you graduated from Villanova?

5 A. Not a graduate school, no.

6 Q. Okay. Do you have any other trainings or
7 certifications that you have obtained, you know,
8 since then?

9 A. Other than corporate classes and seminars
10 and things of that nature, no.

11 Q. When did you start working at Charter?

12 A. Three and a half years ago.

13 Q. And what was your position when you
14 started?

15 A. I was the vice president of
16 small-/medium-sized business for direct sales.

17 Q. And what were your jobs and
18 responsibilities in that position?

19 A. I had -- responsible for -- this was
20 premerger with TWC and Bright House, so I had
21 responsibility for legacy Charter's direct sales
22 force selling door to door into small-/medium-sized
23 businesses.

24 Q. And has that title changed since you've
25 been at Charter?

1 A. It has, twice.

2 Q. Okay. Tell me about those two times.

3 A. So I was promoted to group vice president,
4 where I took responsibility for SMB direct sales as
5 well as our strategic direct sales groups. And that
6 was 20-some -- 20 to 25 months ago. And then 18
7 months ago, 17 months ago, I was promoted to senior
8 vice president of SMB and residential direct sales,
9 where I have responsibility for the same group in
10 SMB. So SMB direct sales, strategic direct sales,
11 and residential direct sales, and bulk direct sales.

12 Q. And "SMB" stands for small business?

13 A. Small-/medium-sized business.

14 Q. Small-/medium-sized.

15 Where were you employed directly before
16 Charter?

17 A. I had a noncompete for 12 months, so I was
18 doing some consulting stuff. But prior to that, I
19 was with Sprint Corporation for 23 years.

20 Q. And can you go through the titles you held
21 at Sprint?

22 A. Starting with the last one and going down?

23 Q. Sure. Yep. Let me start over.

24 I don't want to go through, like, 10 or 12
25 titles, if it's that many. But what was the -- what

1 was the last title you had at Sprint?

2 A. I was vice president of enterprise sales,
3 so I had responsibility for a region, selling
4 business customers.

5 Q. Okay. And how long had you had that job?

6 A. It changed titles a lot, but the
7 effectiveness and the functionality of the job was
8 the same. So I was probably in the job for -- this
9 is a little bit of a guess, so three to five years.

10 Q. Is that job similar to what you do at
11 Charter or is that something different?

12 A. In both cases, we're selling to customers
13 from a direct sales basis, so similar. Different
14 product set.

15 Q. All your jobs at Sprint, did they relate
16 to sales?

17 A. No. I was in strategy. I mean -- but it
18 was as a result of strategically how do salespeople
19 approach it, so I guess you could say it was related
20 to sales.

21 And I was in a finance position as well
22 when I first started, which was a long time ago.

23 Q. Okay. I think you've got Exhibit No. 1 in
24 front of you.

25 THE WITNESS: How would I know it's

1 Exhibit 1? Is it --

2 MR. NEPPLE: It's a copy. He's got the
3 first -- same.

4 THE WITNESS: Okay.

5 A. Yes.

6 BY MR. LARSEN:

7 Q. Right. And I think you said you saw --
8 you've seen this document before today, correct?

9 A. I have.

10 Q. My understanding is that you are here to
11 testify on some but not all of these categories; is
12 that correct?

13 A. I have knowledge based on some of them,
14 yes.

15 Q. Okay. Let's just go through, so we can
16 make sure we're on the same page --

17 A. Uh-huh.

18 Q. -- which ones.

19 My understanding is that you have partial
20 knowledge on Category No. 3.

21 Is that correct?

22 A. Yes.

23 Q. And you have partial knowledge on Category
24 No. 4?

25 A. Not really, but --

1 Q. Okay.

2 A. -- maybe.

3 Q. Okay. You may have partial knowledge on
4 Category No. 7; is that correct?

5 A. Yes.

6 Q. Okay. And you are going to testify on
7 Category No. 11; is that correct?

8 A. Correct.

9 Q. And you're going to testify on Category
10 No. 12?

11 A. That's correct.

12 Q. Okay. Are there any other categories on
13 here that I didn't just discuss that you're here to
14 testify about?

15 MR. NEPPLE: He has some partial knowledge
16 with respect to 6 and 8, depending on where the
17 questions go.

18 BY MR. LARSEN:

19 Q. In your current role, are you involved in
20 door-to-door campaigning?

21 A. I am.

22 Q. Okay. And are you head of that department
23 or division or however you'd say it?

24 A. Yes. I'm the senior vice president.

25 Q. And how long have you been involved with

1 door-to-door campaigning?

2 A. Since March of last year.

3 MR. NEPPLE: Thank you.

4 MR. LARSEN: You're welcome.

5 BY MR. LARSEN:

6 Q. Can you give me a general description of
7 what door-to-door campaigning means?

8 A. Sure.

9 So, like, literally from a residential
10 standpoint, it would be a rep that goes out to a
11 community and literally canvases that community. So
12 he'll -- he or she will knock on the door.
13 Hopefully someone will be home and answer it. And
14 they'll try to sell Spectrum cable services, which
15 traditionally would be a combination of Internet,
16 voice, and video services.

17 Q. So they're knocking on residential doors?

18 A. This -- residential direct sales is.

19 Q. And are there other direct sales that go
20 to businesses or other places?

21 A. Correct. I have an SMB direct sales group
22 as well.

23 Q. Okay. And you're in charge of both of
24 those?

25 A. I am.

1 Q. Okay. Are there any other direct sales
2 teams in addition to those two we just discussed?

3 A. Yes. There's community sales. So they
4 would be going out to sell large high-rises. We
5 call them MDUs, multidwelling units.

6 And then I have a strategic sales
7 organization that would sell into large accounts,
8 just coax services. So we have another group that
9 sells fiber services. But I have a group that sells
10 coax services. So they would sell into named
11 accounts, like an IBM or a Citigroup.

12 And then I have the indirect/direct sales
13 group that would go in and work with the channel
14 partners and the value-added resellers.

15 Q. So are that all -- are those all the
16 groups under your purview?

17 A. Yes, it is.

18 Q. Okay. And when direct salespeople go out,
19 do they take product with them?

20 MR. NEPPLE: Object to form.

21 Go ahead.

22 A. No. They carry a business card. Again,
23 it depends on the channel. So if you want to
24 elaborate on which channel or --

25

1 BY MR. LARSEN:

2 Q. Sure. Let's talk about the residential,
3 the ones that go door-to-door to people's homes.

4 A. Uh-huh.

5 Q. Do they take physical product with them to
6 hand to somebody who might answer the door?

7 A. They don't.

8 Q. Okay. They never do?

9 A. They shouldn't.

10 Q. Are there any of the direct salespeople
11 that take product with them when they go out?

12 A. Again, has it happened? Allegedly here it
13 happened with an individual. But they're instructed
14 not to. And, in fact, it's a -- it's an offense
15 that if they -- we call it collateral. If they
16 leave collateral behind, they actually will go into
17 corrective action. And we'll terminate somebody if
18 they do it twice.

19 Q. Okay. So they are not given fliers and
20 say, hey, when you go to somebody, hand them this
21 flier and talk about it?

22 A. Absolutely not.

23 Q. You talked about instruction.

24 Do they -- is there a formal process or
25 program where the direct salespeople receive

1 instruction on how they're supposed to interact with
2 potential customers?

3 A. Yes.

4 Q. And could you describe that?

5 A. Sure. It's new-hire training for new
6 people that come onboard. We have policy and
7 procedure documents. And we have online training.

8 Q. And this happens when they're first hired?

9 A. For the new-hire training, yes.

10 Q. And then when somebody is hired, is there
11 any sort of ongoing training about this?

12 A. About what specifically?

13 Q. About how they're supposed to interact
14 with customers?

15 A. Well, there's a lot of -- yeah, there's a
16 lot of ongoing training about how they should
17 interact with customers.

18 Q. Can you describe some of that?

19 A. Sure. It's how to sell, you know, how to
20 position yourself to be able to get in the door, how
21 to position our products, what the value proposition
22 of our products are.

23 Q. And are these, like, company-wide meetings
24 or are they emails that are sent around? Or how do
25 they receive this training?

1 A. Combination of a lot. They get it through
2 individual branch meetings. So their supervisors or
3 managers will hold meetings with them. So that's
4 one way they can get it.

5 Another would be through online training.
6 So we'll send out product training to sales reps and
7 they'll get certified online.

8 Q. Are these people commission-based?

9 A. Partly, yes.

10 Q. Do they wear certain clothes that identify
11 them as being agents of Charter?

12 A. The residential direct sales group does,
13 yes. They have a shirt, hat, jacket.

14 Q. And are the residential people authorized
15 the sign up customers right there on the spot?

16 A. They are.

17 Q. How does that work? Do they bring forms
18 with them or a pad or --

19 A. Yeah, they have a -- they have a tablet,
20 that they bring in, that they can sign the customer
21 up, tell them what the deal is, and have the
22 customer authorize it, and then move forward with an
23 installation.

24 Q. So you told me they don't have fliers or
25 any collateral.

1 Do they have a script they're supposed to
2 follow?

3 A. No, that's part of the training. So we
4 give that to them in the training.

5 Q. Now, do the residential salespeople who
6 we're talking about, does their training change
7 depending on if a particular, you know, marketing
8 campaign is occurring at the time?

9 A. No. I mean, their training can change,
10 but it wouldn't have anything to do with a marketing
11 campaign.

12 Q. So they're not going to give a different
13 spiel to a customer, you know, if certain
14 advertisements have been sent or not?

15 A. No. We're not -- we're not linked into
16 the advertising side of the business. They might
17 give a different conversation to the customer based
18 on whether or not they think the customer is more
19 interested in a certain product or a certain price.

20 Q. Take a look at Exhibit No. 3. Counsel has
21 a copy there.

22 I forgot to mention in my little spiel at
23 the beginning I'm going to be showing you documents
24 today.

25 A. Okay.

1 Q. At the end, when you get the transcript,
2 the documents will be attached as well.

3 So take as much time as you need to look
4 at it, and then let me know when you're done and
5 I'll ask you some questions.

6 A. Okay.

7 Q. So have you seen this document before
8 today?

9 A. I have, yes.

10 Q. Looks like it got forwarded to you on
11 February 26, 2019; is that correct?

12 A. That is correct.

13 Q. Okay. And who's the person that forwarded
14 to you, Chris -- I'm not going --

15 A. Yes.

16 Q. -- to be able to pronounce that correctly.

17 A. Czekaaj.

18 Q. Czekaaj. Who is Chris Czekaaj?

19 A. Czekaaj -- Chris Czekaaj is the vice
20 president of strategic channels.

21 Q. And do you report to him or does he report
22 to you?

23 A. He reports to me.

24 Q. Okay. Did you discuss with Mr. Czekaaj why
25 he sent you this email?

1 A. I don't remember if we talked about it.

2 Q. So I'm reading the second email down from
3 Jennifer Ingram.

4 Do you know who Jennifer Ingram is?

5 A. I do.

6 Q. Who is she?

7 A. She's the vice president of SMB marketing.

8 Title could be wrong, but that's effective -- oh.

9 It's right there, vice president of SMB marketing.

10 Q. Yep. There you go. Yep.

11 She says, "Hi, Chris. I understand that
12 you and Amy connected earlier today. Kelly Atkinson
13 has asked the marketing team to develop a plan to
14 leverage the situation, so we've started thinking
15 about this in partnership with the residential
16 team." And it goes on.

17 Do you recall discussions about a
18 partnership with the marketing team?

19 A. In reference to?

20 Q. Sure. I wasn't going to read the whole
21 thing, but I can.

22 It looks like this is referring to some
23 marketing related to Windstream.

24 Is that your understanding?

25 A. This -- yeah. Well, this email appears to

1 be related to Windstream, correct.

2 Q. Yeah, subject line is "Windstream," right?

3 A. Right.

4 Q. And it looks to me like there is some
5 discussions between Ms. Ingram and Mr. -- I already
6 forgot how to --

7 A. Czekaj.

8 Q. -- Czekaj about developing a plan.

9 Did -- were you involved in any
10 conversations about that?

11 A. I was copied on emails and I think I had a
12 conversation with Chris.

13 Q. Okay. What do you recall about that
14 conversation with Chris?

15 A. That Chris was interested in figuring out
16 if there was something that we should post to our
17 subagents and partners around whether -- you know,
18 is there any way that we should market that
19 Windstream was in Chapter 11.

20 Q. And you're talking about door-to-door
21 marketing?

22 A. No.

23 Q. Okay. What kind of marketing were you
24 talking about in this discussion with Mr. Czekaj?

25 A. Chris has responsibility for SMB strategic

1 channels. So Chris has responsibility for channel
2 partners that resell our services, VARs that
3 aggregate our services, and national accounts which
4 go out to our larger services.

5 Q. And is that within your purview?

6 A. Yes, it is.

7 Q. And what else do you recall about this
8 discussion you had with Chris?

9 A. He was just exploring what the -- whether
10 or not this was something that would make sense and
11 that we would want to do.

12 Q. Okay. And is this something that you
13 subsequently did do?

14 A. I believe marketing collateral was created
15 for SMB, for a brief period of time, that was
16 specific to Windstream.

17 Q. And do you believe that was sent out to
18 SMB customers?

19 A. Well, it's not sent out. It's posted into
20 a portal and then it's available to download.

21 Q. So each one of your customers has access
22 to a portal of information about Charter; is that
23 correct?

24 A. Again, it depends on the channel, but this
25 portal would be something that the employee has

1 access to. So the SMB direct sales rep or the
2 people that sell into the channel partners or the
3 people that sell into the VARs would have access to
4 a portal, to be able to pull that information.

5 Q. So this is people at Charter?

6 A. Correct.

7 Q. Okay. How does -- how does that
8 information get to your SMB customers?

9 A. To our SMB customers or channel? It's a
10 little bit of an -- so there's SMB direct sales.
11 This is SMB strategic sales.

12 So you mean to our SMB strategic sales?

13 Q. Is that what we're talking about in this?

14 A. Yes.

15 Q. Okay.

16 A. That's what Chris has responsibility for.

17 Q. Got it.

18 A. So it would go to somebody that has -- so
19 VAR, for instance. So Windstream is a VAR of Chris
20 Czekaj's, right? That means that we send to
21 Windstream. They send to end users. There's a rep
22 that would be responsible for the relationship with
23 Windstream. So that rep would have -- would have
24 access to be able to download that information and
25 provide it to Windstream.

1 Q. So you're talking about the agreement to
2 provide the last mile of service for Windstream?

3 A. No. I'm talking about Windstream taking
4 our product --

5 Q. Uh-huh.

6 A. -- and selling it in conjunction with
7 other MSOs to an end user. I can explain that if
8 you'd like, because it's a little complicated.

9 Q. Go ahead, please.

10 A. So if you're IBM. And IBM, instead of
11 dealing with a Sprint or an AT&T or somebody, wants
12 to -- wants a product that's coming from cable, but
13 doesn't want to have a relationship with Charter,
14 Comcast, Altice, you know, and every other cable
15 company out there. Windstream, Comcast, other
16 value-added resellers will form an agreement with
17 each of the cable companies to aggregate all those
18 services so they're the customer of record.

19 So in the case of Windstream -- they were
20 the customer of record -- we would sell the services
21 to Windstream. Windstream would then sell it to an
22 end user.

23 Q. But that's not what we're talking about in
24 Exhibit No. 3, is it?

25 A. I think it is, actually.

1 Q. Is it?

2 A. I think this is Windstream being a VAR and
3 Windstream potentially -- and Windstream is probably
4 not the best example here, but if somebody else
5 wanted collateral, they could -- they could pull it
6 up.

7 Q. If you look at the first email on this
8 thread.

9 A. Uh-huh.

10 Q. "Amy/Jennifer, as you may know,
11 Windstream" is in a -- "is in challenging market
12 position and I'd like to target a marketing program
13 specifically targeting their remaining customers."

14 A. Uh-huh.

15 Q. Okay. So how was what you were doing
16 going to target their remaining customers?

17 A. So this again -- so for Chris's account,
18 which is SMB strategic accounts, what he's saying is
19 how do I -- is there an opportunity to create
20 marketing, collateral, campaign, whatever it might
21 be, to go after existing Windstream customers.

22 Q. Okay. And --

23 A. Or sell to existing Windstream customers.

24 Q. And did you subsequently attempt to do
25 that in that channel?

1 A. I don't know if collateral was developed
2 for this channel. I don't know.

3 Q. Okay. You don't recall following up with
4 Chris about it to see if this happened or not?

5 A. I do know it was developed in SMB for a
6 period -- I think it was up for a period of a week
7 before we -- before it was taken down. But I don't
8 know if that was eligible within the strategic
9 channels or not.

10 Q. When you say it was up in SMB, what does
11 that mean?

12 A. So the collateral was developed, it was
13 put within the portal, and it was accessible if
14 somebody wanted to download it, if a -- if a Charter
15 employee wanted to download it or order it.

16 So when you order it, they literally would
17 go through -- it's a site called Badger. And they
18 would order those services. Nobody downloaded
19 the -- nobody ordered the services through Badger.
20 We could -- we checked that to ensure that that
21 wasn't done. But it could have been downloaded
22 locally and it could have been handed out.

23 Q. That's the part I'm trying to understand.

24 So how does it get handed out to the
25 ultimate, you know, customer here?

1 A. In the case that I was giving you before,
2 if I was the rep that was responsible for the
3 Windstream relationship where they're reselling our
4 services, if I'm the rep, I could download it from
5 the portal and then I could go to Windstream and
6 give them the collateral as an SMB strategic sales
7 rep.

8 Q. And you don't believe that occurred in
9 this situation?

10 A. I don't know. I have no idea.

11 Q. Okay. Is there any way to find out if
12 that occurred here?

13 A. We would be taking the word of every
14 salesperson out there. I mean, we could -- you
15 know, it's a smaller organization. There's probably
16 25, 30 of these folks. I mean, we can certainly ask
17 them, but there's no way that I would -- the systems
18 that track it would know whether or not we
19 downloaded something from the online portal, which
20 didn't happen. I can't tell if somebody did it from
21 a localized basis and just printed the materials
22 themselves, as opposed to asking for somebody to
23 professionally print it, send it to them, and have
24 it look nice.

25 Q. Okay. And the latter one, to make it

1 professionally look nice, you checked and --

2 A. No one.

3 Q. -- you think that didn't occur?

4 A. We think that didn't happen.

5 Q. And how did you check? Who did you ask to
6 confirm that?

7 A. The marketing individuals. So, in this
8 case, it would be, you know, Jennifer Ingram's
9 group.

10 Q. Okay. So you asked everybody in that
11 group whether they did that and they all said no?

12 A. We just asked the one person that's
13 responsible for the portal, which can determine
14 whether or not anything was ordered. And nothing
15 was ordered.

16 Q. Okay. Take a look at Exhibit No. 6.

17 A. (Witness complies.)

18 Q. Once you've had a chance to review, let me
19 know if you've seen this document.

20 A. Okay.

21 Q. Okay. Do you recall seeing these emails
22 before?

23 A. I do.

24 Q. This initial email on February 18, was
25 this the first time that you learned that Windstream

1 may be heading to bankruptcy?

2 A. The last page?

3 Q. It looks like the first email on the
4 thread, February 18.

5 A. I don't recall if that's the first time I
6 heard of it.

7 Q. Do you recall discussions about, you know,
8 what opportunity that may present?

9 A. Yes.

10 Q. Okay. And what, if anything, did you do
11 about that opportunity?

12 A. So for residential direct sales, is what
13 we're referring to, what this is -- this whole
14 document is referring to is that we asked and we
15 received a breakdown of where Windstream has the
16 ability to sell in the same footprints as to where
17 Charter has the ability to sell. So where their
18 footprint -- we'll just call it overlaps our
19 footprint. So in those environments where both
20 Windstream and Charter can sell against each other,
21 we wanted to know where those environments were.

22 Q. And was the idea, then, that you would
23 send people door to door in those environments?

24 A. That's correct.

25 Q. And did you subsequently do that?

1 A. We did. We -- so we have -- we sign out
2 leads. They're all acquisition-based, so they
3 get -- each rep gets a certain amount of leads. And
4 the purpose of this was to prioritize the Windstream
5 leads.

6 Q. Do you know which specific residential
7 units were contacted during this period?

8 A. I don't know. I know -- no, I wouldn't
9 know who was -- if we have -- I don't even know how
10 many reps this is, to be honest. So no.

11 Q. If you wanted to know, is there a way to
12 go and look in your systems to figure it out?

13 A. I don't know. Let me think about that for
14 a second.

15 We could -- we certainly know what leads
16 were assigned out. We know where we had success
17 against those leads. That, we would know. I don't
18 know what -- every door that was knocked and -- you
19 know, and every door that was knocked, who was home
20 and what was presented. We don't even know if they
21 have Windstream service. So they could have
22 somebody else's service as well.

23 Q. You said you know where you've had
24 success.

25 So would you know, out of all of this

1 area, how many people you signed up for Charter
2 services?

3 A. Yes, we would know -- we would -- we would
4 know, based on geography and a lead list, how many
5 sales were made.

6 Q. And do you know, in this particular case,
7 how many sales were made?

8 A. I don't, not for a specific time frame.
9 And, again, we wouldn't know who the existing
10 incumbent was.

11 Q. Yeah, I understand.

12 A. Okay.

13 Q. So -- two different things.

14 A. Right.

15 Q. So -- but you could go back and figure
16 out, as a result of this door-to-door campaign, we
17 signed up X number of customers?

18 A. Not -- this isn't really a campaign. So
19 every month, we provide them a set amount of leads,
20 500 leads. They go out there and they sell to those
21 500. Acquisition, right? We will know what their
22 success is against those 500 leads.

23 Q. And when the people are out in the field,
24 do they make a note if they are taking a customer
25 from a competitor?

1 A. I would have to check. I don't believe we
2 capture the data that says who the incumbent was.

3 Q. So if somebody was a Windstream customer
4 and said, Yeah, I'll switch to Charter, that doesn't
5 get noted down on the pad or something somewhere?

6 A. I don't believe so. I'm not a hundred
7 percent certain on that, but I don't believe so.

8 Q. If you wanted to be a hundred percent
9 certain, who would you ask to see if you had that
10 information?

11 A. Probably our VP of operations that's
12 responsible for the tool.

13 Q. In this particular case, when the
14 door-to-door people were sent out on these leads,
15 did they receive any specific training on what was
16 supposed to occur this time or was it just the same
17 as what they always do?

18 A. Same as always.

19 Q. Take a look at Exhibit No. 14.

20 A. (Witness review document.)

21 Q. Have you seen this document before?

22 A. I'm reading it.

23 I don't believe so.

24 Q. I see you're not copied. I was just
25 asking if you've --

1 A. No.

2 Q. Are you involved with any email campaigns
3 out of Charter?

4 A. No. I -- no, I mean, the -- our process
5 isn't to allow an email campaign for residential
6 direct sales, yeah. And they just go door to door.
7 They don't email. They shouldn't be emailing other
8 than follow-up.

9 Q. But are you aware that Charter does email
10 some customers?

11 A. Yeah, I'm sure they do.

12 Q. Okay. But that's not within your purview?

13 A. No.

14 Q. Okay. Do you know who's responsible for
15 that?

16 A. I really don't.

17 Q. So I would assume there's no need to
18 coordinate door-to-door efforts with any email
19 campaign that may be going on at the same time?

20 A. No. We -- effectively, we're one channel.
21 They're another channel. We compete with the same
22 lead list. I'm hoping the customer signs with us
23 from a direct standpoint versus goes to -- I mean,
24 we're all one company, but we kind of compete
25 against each other.

1 Q. So in your job, as it relates to direct
2 sales, do you have any knowledge of what mailing
3 campaigns may be occurring at the same time?

4 A. I'm sure I could attend marketing meetings
5 that would be -- that would be part of that meeting,
6 but there's nothing that I would be looped in, make
7 decisions on, or be involved in as a standard course
8 of business.

9 Q. So you, as a standard course, you don't
10 get copied, hey, here's the new mailers going out
11 this week, so everybody is on the same page?

12 A. No.

13 Q. And is there ever a time you would be
14 involved in that?

15 A. I wouldn't be involved in the decision.
16 But there certainly could be a time where someone
17 might send a -- just a distributed email out to
18 everybody to say, hey, we're doing a mailing
19 campaign to introduce a new product or introduce a
20 new price point or something. But it wouldn't have
21 any impact on how we would approach our business.

22 Q. You can set that down. Thank you.

23 A. Sure.

24 Q. Take a look at Exhibit No. 17, please.

25 A. (Witness complies.)

1 Q. Again, you're not copied on this email, so
2 I have no reason to think you've seen it.

3 But I'm going to ask: Have you seen this
4 document before?

5 A. Not that I can recall.

6 Q. Were you aware of any discussion in this
7 time frame about Windstream's bankruptcy?

8 A. Time frame being 3/20?

9 Q. Yeah, in March of 2019.

10 A. Any discussions with whom, with Adam? I
11 don't know who Adam is.

12 Q. Sure.

13 Were you a part of any discussions with
14 anyone in Charter about the effect of Windstream's
15 bankruptcy on your business?

16 A. Well, similar to what we just discussed in
17 the previous email -- two emails ago, yeah, we had
18 conversations about understanding where Windstream
19 overlapped our customer base.

20 Q. Here this email says, "Folks, I'm sure
21 you're all aware WIN does have funding to continue
22 its normal operations while it restructures."

23 Did you have -- did you ever have any
24 conversations with anyone internal in Charter about
25 that topic?

1 A. No, we didn't. I don't -- again, prior
2 to -- prior to, you know, the discussions that this
3 was initially brought up through the one direct
4 sales rep that we're referring to, we didn't really
5 have any conversations in regards to impact of
6 Chapter 11, that I can recall.

7 Q. Sure. You can set that down. Thank you.

8 A. (Witness complies.)

9 MR. LARSEN: I'll mark this next document
10 as Exhibit No. 24.

11 (Charter Exhibit 24 was received and
12 marked for identification, as of this date.)

13 MR. NEPPLE: And just to be clear, we're
14 marking it AEO, like we did this morning with
15 all documents.

16 A. (Witness reviews document.)

17 BY MR. LARSEN:

18 Q. Mr. Dardis, have you seen this document
19 before?

20 A. I don't remember seeing this document --

21 Q. Okay.

22 A. -- but -- yeah.

23 Q. Do you know who Marybeth McCarroll is?

24 A. I do not.

25 Q. Are you familiar with the Spectrum

1 business value-added seller agreement?

2 A. I know of -- yes, it's one of our
3 contracts. That would be the VAR contract, correct.

4 Q. From reading this document, do you believe
5 that's what this is referring to, services provided
6 under that agreement?

7 A. I don't know. It's tough to say from
8 this. Windstream had services with our enterprise
9 division as well. So this could be both -- this be
10 could be enterprise. This could be my organization.
11 It could be either.

12 Q. Is the business value-added seller
13 agreement, is that something within your purview?

14 A. It is.

15 Q. And are you familiar with a brief period
16 of time when services were discontinued under that
17 agreement?

18 A. I am.

19 Q. But you're not sure if that's what Exhibit
20 No. 24 here refers to or a different agreement?

21 A. This looks like an aging -- you know, a
22 accounts receivable aging. So this could be -- I
23 don't know if this is enterprise or VAR or anything
24 else.

25 MR. LARSEN: Mark this Exhibit No. 25.

1 (Charter Exhibit 25 was received and
2 marked for identification, as of this date.)

3 BY MR. LARSEN:

4 Q. I apologize for the format of this
5 document, but I didn't produce it.

6 Are you aware of what archived instant
7 message conversations are at Charter?

8 A. I -- yeah, I know what instant messaging
9 is. "Archived," I just assume, means it's held in
10 history.

11 Q. And does this look like an instant message
12 conversation between two people at Charter?

13 MR. NEPPLE: Object to form, foundation.

14 A. I honestly can't tell.

15 BY MR. LARSEN:

16 Q. Okay. Do you ever utilize the instant
17 message function?

18 A. Yes.

19 Q. Do you know who Shauna Brauchler is?

20 A. Not to my immediate knowledge, no.

21 Q. Okay. Do you know who Kelly Hill is?

22 A. No, I do not. Not that I'm aware of.

23 Q. You see about -- let's see -- four down,
24 Ms. Brauchler says, "You received the letter I sent
25 from Windstream regarding their BK"?

1 A. I see -- yes, I see, "You received the
2 letter I sent you" -- yeah, I see the line.

3 Q. Okay. Do you recall ever personally
4 seeing a letter regarding Windstream's bankruptcy?

5 A. A what -- I don't know. Clarify what type
6 of letter or what -- any?

7 Q. I'm saying: Did you recall seeing a
8 letter? There's a reference here. I don't know
9 what it means either. I'm asking you if you know.

10 A. I don't know what this is, no. I don't
11 recall knowing what this is.

12 Q. So in any -- in any circumstance, do you
13 remember, in or about this time in March 2019,
14 reviewing some sort of letter about the Windstream
15 bankruptcy?

16 A. I don't recall.

17 Q. Do you remember there being any
18 discussions about Windstream being behind in
19 payments it owed to Charter?

20 A. Yes.

21 Q. Okay. What do you recall about that?

22 A. That we -- that we looked at the accounts
23 aging to determine what was owed by Windstream, both
24 from an enterprise standpoint and from a cable ops.
25 That's our organization--on the VAR side. So we

1 have -- we had looked at those individual aging
2 reports.

3 Q. So you mentioned enterprise standpoint.

4 Is that a different contract between
5 Charter and Windstream?

6 A. Yes, it would be.

7 Q. Okay. And the cable ops, does that refer
8 to this value-added seller agreement?

9 A. Yes. Cable ops is, for the most part,
10 collect services. That's -- I fall into that world.
11 And then we have a separate segment, enterprise,
12 that handles fiber services. So that -- when you
13 referred to the last-mile services --

14 Q. Uh-huh.

15 A. -- before, that probably would be more of
16 the fiber side.

17 Q. Okay. Were you involved in any
18 discussions -- actually, strike that.

19 Okay. I asked you about any discussions
20 about Windstream and Charter, and you said that you
21 recall looking and saw that they were behind.

22 Is that correct?

23 A. Yeah, I was aware -- I was aware that --
24 that they were -- that they were aging, yes.

25 Q. Okay.

1 A. I don't remember the time frame, but I was
2 aware of it.

3 Q. Okay. Do you recall what the outcome, if
4 anything, was after those discussions?

5 A. No. I need to check the time frames, but
6 there was conversations to determine, you know,
7 what, if anything, we should do. But this -- I --
8 my belief is that might have been -- I don't -- I
9 have to check the time frames. I don't know if that
10 was following the letter that came to us in
11 conversations around, you know, the allegedness of
12 what went -- and I don't know if it was post- or
13 prebankruptcy, to be honest.

14 Q. Okay.

15 A. So pre- -- bankruptcy was on 2/25? Yeah,
16 I don't know if this was before or after that, those
17 conversations.

18 Q. Okay. Well, again -- and I understand
19 this is not your document.

20 A. It --

21 Q. Fair enough. I understand.

22 This is dated March 15, 2019, and it looks
23 like there are discussions here about what we're
24 going to do about the nonpayment.

25 MR. NEPPLE: Object to form, foundation.

1 A. Okay.

2 BY MR. LARSEN:

3 Q. Were you involved in any discussions in
4 this time frame, in the middle of March, about what
5 to do about the fact that they were behind on this
6 agreement?

7 A. Yes, I was -- I was asked if there was
8 anything, you know, what specifically we should do
9 going forward. So for new business that was coming
10 in, how should we handle that.

11 Q. And what was your response?

12 A. Well, I asked for interpretation and
13 our -- the ultimate result was to treat it as
14 business as usual and to move forward providing
15 services as -- that we normally would.

16 Q. You said you asked. Who did you ask?

17 MR. NEPPLE: To the extent your answer
18 would divulge conversations with the attorneys,
19 don't include that.

20 THE WITNESS: Okay.

21 A. So involved in those conversations would
22 have been the enterprise side of the house and would
23 have been our finance side. I'm just not sure who
24 that gentleman was. I'm trying to remember his
25 name.

1 BY MR. LARSEN:

2 Q. But the takeaway from that conversation is
3 that you -- it was decided that Charter was going to
4 continue business as normal?

5 A. Yeah. We -- I didn't understand really
6 what Chapter 11 federal bankruptcy meant and what
7 our obligations were. So they were explaining to me
8 that we're obligated to -- anything that was, you
9 know, prebankruptcy that was aging was either
10 eliminated or we'll try to get a piece of down the
11 road. And anything going forward we had to treat as
12 business as usual, which we chose to do. Or
13 directed to do, I guess, anyway.

14 MR. LARSEN: Let's mark this as Exhibit
15 No. 26.

16 (Charter Exhibit 26 was received and
17 marked for identification, as of this date.)

18 BY MR. LARSEN:

19 Q. Have you seen -- Exhibit No. 26 is a
20 series of emails Bates-stamped Charter 1492 to 1496.

21 Have you seen these documents before?

22 A. I -- if you give me a minute, I'll read
23 it.

24 Q. Yeah.

25 A. I don't know if I've seen this specific

1 one, but I'm aware of the situation.

2 Q. Okay. When did you first learn of the
3 situation?

4 A. It was right before -- it was the Friday
5 before, I believe, these circuits were taken down,
6 so that probably would have been the 14th or 15th of
7 March.

8 Q. And what do you recall about that?

9 A. I got a call Saturday morning from my VP
10 of strategic accounts, Chris Czekaj, letting me know
11 that we had pulled a bunch of our -- a bunch of
12 circuits had been disconnected for nonpayment for
13 Windstream. And Windstream specifically -- I
14 believe her name was Jeanie [sic] -- Jeanne
15 somebody. Hold on. I think I just saw her name
16 here. Jeanne -- yeah, Jeanne Dale had sent a couple
17 emails to Chris and copied myself as well, I
18 believe, along with a slew of other people, that
19 services were down and they shouldn't be down
20 because of the protection from federal bankruptcy.

21 Q. And what did you do once you learned of
22 that information?

23 A. Chris was already doing it, but it was how
24 fast can we turn these services back up.

25 Q. Did you ever figure out how the services

1 got turned off or why?

2 MR. NEPPLE: Well, hold on. Let me
3 object. We're going to stand on our objection
4 to No. 11. He's free to talk about a portion
5 of it, but he's going to be our designee to
6 talk about was there any coordination with any
7 other portion of Charter. You're free to ask
8 him any questions he has -- of whether he has
9 any personal knowledge. But we're not
10 producing a designee on how the disconnections
11 occurred.

12 So go ahead.

13 A. Yeah, my understanding is just that it was
14 due to nonpayment.

15 MR. LARSEN: All right. We seriously
16 object to that. And we --

17 MR. NEPPLE: I understand.

18 MR. LARSEN: Just want to put that on the
19 record. I don't think that's proper, to not
20 bring somebody on this topic, which is
21 certainly relevant.

22 MR. NEPPLE: Well, we objected. Right?

23 MR. LARSEN: I understand.

24 MR. NEPPLE: Okay. So the objection
25 hasn't been ruled upon and we preserved our

1 objection. And I have instructed the witness.
2 You can ask in his personal capacity. I'm just
3 informing you we're going to stand our
4 objection and you feel free. So you -- we
5 understand each other.

6 MR. LARSEN: Your objection is on the
7 record.

8 MR. NEPPLE: Yep. Fine.

9 MR. LARSEN: Okay. I just want to make
10 sure what -- you instructed him not to answer
11 and then you told him to answer. So --

12 MR. NEPPLE: No.

13 MR. LARSEN: -- I'm a little unclear --

14 MR. NEPPLE: No.

15 MR. LARSEN: -- on how we're proceeding.

16 MR. NEPPLE: No, what I said, so that
17 we're clear, you are free to ask, as a
18 designee, whether there was any coordination
19 with any other units of Charter. Anything on
20 disconnection other than that, he is free to
21 answer if he knows, but he will not be our --
22 he is not our designee. We're standing on our
23 objection on that part, if that makes sense.

24 BY MR. LARSEN:

25 Q. I think the question was: After you

1 learned of this -- you answered that question.

2 I think the next question was: Did you
3 subsequently learn how and why they got turned off?

4 MR. NEPPLE: Object to form, speculation,
5 foundation.

6 Go ahead.

7 BY MR. LARSEN:

8 Q. If you know.

9 A. The only reason -- the only thing I was
10 aware of is they were turned off for nonpayment.

11 Q. And did you ask any follow-up questions on
12 how that occurred?

13 MR. NEPPLE: Same objection.

14 A. I did not.

15 BY MR. LARSEN:

16 Q. And since that time, at any point in time
17 between now and then, have you subsequently
18 endeavored to find out how, in fact, they got turned
19 off for nonpayment?

20 MR. NEPPLE: Same objection, foundation,
21 speculation.

22 A. No, I -- we just know they were turned off
23 for nonpayment and we were -- when we were told that
24 we needed to turn them back on, we worked to turn
25 them back on immediately.

1 BY MR. LARSEN:

2 Q. To your knowledge, subsequent to this
3 issue around this weekend on 3/15, have there been
4 any other issues about service being turned off?

5 A. I think there was a circuit or two that
6 continued, that was turned off, an oversight, I
7 believe.

8 Q. And then did that subsequently get turned
9 back on?

10 A. I believe so, yes.

11 Q. Other than that, have you -- are you aware
12 of any other instances?

13 A. Not that I'm aware of.

14 MR. LARSEN: Mark this Exhibit No. 27.

15 (Charter Exhibit 27 was received and
16 marked for identification, as of this date.)

17 MR. NEPPLE: 26.

18 THE WITNESS: Oh, I'm sorry.

19 A. (Witness reviews document.)

20 BY MR. LARSEN:

21 Q. Exhibit No. 27 is an email string
22 Bates-stamped Charter 9191 to 9192.

23 Mr. Dardis, have you seen these documents
24 before?

25 A. Not that I can recall.

1 Q. Looks like this is dated April 11?

2 A. Correct.

3 Q. Do you believe this refers to that
4 subsequent occasion when one circuit may have been
5 turned off?

6 A. I don't know, because I thought these
7 circuits would have been more towards April 14 or
8 15, that the circuits went out. Maybe I ought to
9 read this again. Is this referring to 295 accounts
10 shut down? Hold on for one second.

11 Q. Take your time.

12 A. Let me read it from bottom up.

13 What was the question? I'm sorry.

14 Q. Sure.

15 Does -- after reading this, do you think
16 this refers to that one subsequent account that
17 mistakenly got turned off?

18 MR. NEPPLE: Objection to form,
19 foundation, speculation.

20 Go ahead.

21 A. I'm not sure what this refers to.

22 BY MR. LARSEN:

23 Q. Okay. Were you aware of another issue on
24 or about April 11 about a customer's service being
25 turned off?

1 A. Not that I can recall.

2 To clarify, I'm aware of the 295 accounts
3 that were shut down.

4 Q. Uh-huh.

5 A. If this is referring to that, I'm aware of
6 it. But I'm not aware of something that would have
7 been subsequent to that, that I can recall.

8 Q. I see a reference here five lines down:
9 "Did even one [sic] of those child accounts
10 disconnect?"

11 Do you know what a child account refers to
12 in this context?

13 A. I'm assuming that there's a parent
14 hierarchy account and then subaccounts under it, but
15 that's an assumption.

16 THE COURT REPORTER: There's a what,
17 parent?

18 THE WITNESS: Yeah, a --

19 MR. NEPPLE: "Hierarchy" is what the word
20 is.

21 THE WITNESS: Yeah, "hierarchy." I'm
22 sorry.

23 A. So I have no idea. I don't know how the
24 billing system works from that standpoint.

25

1 BY MR. LARSEN:

2 Q. But you don't recall anything being
3 brought to your attention, on or about April 11,
4 about another account perhaps being turned off?

5 A. A Windstream account?

6 Q. Yes.

7 A. Not that I can recall.

8 MR. LARSEN: Can I go off the record for a
9 second?

10 MR. NEPPLE: Sure.

11 THE VIDEOGRAPHER: Stand by, please. The
12 time is 3:08 p.m. We're going off the record.

13 (Recess was taken.)

14 THE VIDEOGRAPHER: The time is 3:11 p.m.
15 We're back on the record.

16 MR. LARSEN: Let's mark this as Exhibit
17 No. 28.

18 (Charter Exhibit 28 was received and
19 marked for identification, as of this date.)

20 BY MR. LARSEN:

21 Q. Okay. Exhibit No. 28 is an April 11,
22 2019, email that your counsel was kind enough to
23 give me a copy of. So it doesn't have a Bates stamp
24 number right now. Once you're done reading, if you
25 let me know if you've seen this document before.

1 A. I have.

2 MR. NEPPLE: Oh. Okay. And just so we're
3 clear, we're also adding a notice of
4 confidential. So if you'd just write
5 "confidential" at the bottom.

6 THE WITNESS: I will.

7 MR. NEPPLE: Both confidential and AEO
8 until we get it worked out.

9 BY MR. LARSEN:

10 Q. Mr. Dardis, when did you first see this
11 email?

12 A. That same day, April 11.

13 Q. Did you direct this email to be sent?

14 A. I did.

15 Q. And who is Scott Niles?

16 A. Scott Niles is the group vice president in
17 charge of residential direct sales, so he has the
18 3,500 salespeople who knock on the doors. And he
19 also has the nonbulk residential direct sales group
20 as well, about 240 of those folks.

21 Q. Why did you direct Mr. Niles to send this
22 email?

23 A. Because I received a message from
24 counsel --

25 MR. NEPPLE: Well, to the extent you can

1 answer without saying you were directed by your
2 counsel, otherwise --

3 A. It wasn't directed by counsel, so it
4 was -- we received an email from our internal legal
5 group basically stating -- letting --

6 THE WITNESS: Okay. Sorry.

7 MR. NEPPLE: I'm going to object as
8 attorney/client privilege. I don't know how
9 you can -- it was sent. He received it.

10 A. I received an email --

11 THE WITNESS: Do you want me to --

12 MR. NEPPLE: Yeah, how about you received
13 an email.

14 A. I received an email with the allegations
15 concerning Emmett Walker. And as a result of that
16 email, I sent a message to Scott saying, Make sure
17 your team understands that we can say they're in
18 Chapter 11, but we can't make any inferences around
19 what that means.

20 BY MR. LARSEN:

21 Q. And what did you learn about this
22 individual named Emmett Walker?

23 A. Just what was sent, which is that the
24 allegation was that he was using some collateral
25 and, as a result of that, there was a complaint

1 issued when a Windstream VP picked up the phone and
2 called him and, I assume, probably didn't tell him
3 who he was in the beginning, must have said he was a
4 prospective client or something, and allegedly
5 Emmett went into a sales pitch where he mentioned
6 that Windstream was going out of business.

7 Q. Did you ever personally follow up with
8 Mr. Walker to see what he said about this situation?

9 A. I didn't personally, but we had a
10 couple -- his manager, I believe it was, followed
11 up.

12 Q. Did you -- did you ever learn the outcome
13 of this meeting between Mr. Walker and his manager?

14 A. Yes.

15 Q. And what was that?

16 A. That he was asked if he used collateral.
17 He said he did use collateral as a leave-behind. So
18 when he talked to a prospective customer and the
19 customer wasn't going to buy at that point in time,
20 he had left a piece of collateral with his business
21 card attached to it. And in addition to that, we
22 asked him if he left -- you know, left it at doors
23 where no one was there. He said no. And we asked
24 him if he said that, you know, Windstream was going
25 out of business and he said no.

1 Q. Did Mr. Walker say where he got this piece
2 of collateral?

3 A. He did.

4 Q. What did he say?

5 A. He said he got it from a customer.

6 Q. So he said the customer handed this to him
7 and then he left it with the customer?

8 A. A customer that his peer -- Rebecca Root,
9 I believe her name is. She is also a direct sales
10 rep, so she has the same job that Emmett does. A
11 customer had -- that she had sold previously had
12 contacted her saying, I have a piece of collateral
13 for you. And she picked it up. They photocopied
14 it. And as a result of that, they felt they could
15 distribute it, which they can't.

16 Q. Did you follow up with Ms. Root about
17 this?

18 A. She was -- she was spoken with again by
19 the manager and everybody else.

20 Q. Did the same person talk to Mr. Walker and
21 Ms. Root?

22 A. I don't know. I don't know if it was the
23 same manager.

24 Q. Do you know the names of the -- either one
25 of the managers?

1 A. I can -- we can certainly get those. Not
2 off the top of my head. Brenda Auger, A-U-G-E-R, is
3 the director.

4 MR. LARSEN: Bless you.

5 BY MR. LARSEN:

6 Q. Do you know the outcome of the
7 conversation with Ms. Root?

8 A. Just what I mentioned, that she received
9 the piece of collateral from a customer, and she had
10 provided it to Emmett, and Emmett allegedly took it
11 and put his name on it and left it behind with some
12 prospective prospects.

13 Q. Did Ms. Root say that she had used this
14 piece of collateral in her sales efforts?

15 A. I don't believe she did. I'm not a
16 hundred percent sure, but she -- I don't believe she
17 said she did.

18 Q. Did she say that she gave it to anybody
19 else in addition to Mr. Walker?

20 A. Not that I'm aware of.

21 Q. So I'm looking back at this email.

22 Did you dictate this email or did
23 Mr. Niles come up with the specific language?

24 A. He came up with the language. I think, in
25 my email, I said something like, They're in

1 Chapter 11 bankruptcy, no -- or "Simply put: Yes,
2 they're in Chapter 11 bankruptcy; no, we cannot tell
3 prospects they are going to lose service." I think
4 that's similar to -- he might have paraphrased what
5 I put in mine.

6 Q. Okay. Did he run this by you before he
7 sent it or did he just send it?

8 A. No, he didn't.

9 Q. Looking at the first sentence, it says,
10 "All, it has been brought to my attention that we
11 may have reps making inappropriate, inaccurate,
12 and/or disparaging claims about Windstream."

13 Do you know if he's referring to anything
14 other than this issue with Mr. Walker?

15 A. He isn't. He's just referring to --
16 that's the only thing he was aware of at the time,
17 too, was Emmett.

18 Q. And do you know that because you discussed
19 it with Mr. Niles?

20 A. That's correct.

21 Q. Did you get any -- I guess your -- it
22 wasn't your email.

23 Do you know if Mr. Niles got any responses
24 to this email?

25 A. I don't know.

1 Q. Did you ever ask Mr. Niles if he got any
2 responses to this email?

3 A. I asked Mr. Niles if he had conversations
4 with his team regarding this email, which he did.

5 Q. Who are the recipients of this email; do
6 you know?

7 A. Yes. These are his VPs that reside out in
8 the field.

9 Q. And do you know if this email subsequently
10 got sent to all the people underneath these VPs in
11 the To line?

12 A. That's the subsequent conversations that
13 he had with them, to ensure that they were cascading
14 the email down.

15 Q. Just so I understand, Mr. Niles told you
16 that all of these people told him that they had sent
17 these emails to the people working under them?

18 A. The three -- the four main ones: Amanda
19 Field, Damon Miiller, Nat- -- Nate Purses. And,
20 actually, he was acting as one, so there's only
21 three. The VP of the northeast is gone at this
22 time, so he wasn't copied on that. Scott has that
23 job. So, yes, he did inform me that he had
24 conversations with all of them.

25 Q. Okay. And when he -- when he informed you

1 of this, did he tell you of any substance of these
2 conversation other than them confirming that's what
3 they had done?

4 A. Well, they confirmed that that's what they
5 had done. But what he was confirming is that they
6 were taking this email and making sure that their
7 teams were aware that they shouldn't -- that's
8 inappropriate behavior.

9 Q. Okay. All right. So let me -- maybe I
10 haven't been clear.

11 Do you have confirmation that this email
12 was subsequently sent to all the people out in the
13 field or do you think it was just discussed?

14 A. I -- the only confirmation I have is that
15 Scott told me that he followed up with his team and
16 told them to cascade it down. I don't have email
17 receipts from everybody in the field saying they
18 received the email, no.

19 Q. Gotcha. And I wasn't even asking that.

20 A. Okay.

21 Q. But when you say "cascaded down," that
22 means send an email?

23 A. That means -- right. "Cascaded down"
24 means to send it down to the level below you and
25 continue to send it down till it gets to the rep

1 level.

2 Q. Okay. Other than this, you know, alleged
3 incident with Mr. Walker, are you aware of any other
4 complaints along these lines?

5 A. With residential direct sales, no.

6 Q. Any complaints in any other areas that are
7 under your purview?

8 A. Recently became aware of one from the SMB
9 direct sales side of the house, yes.

10 Q. And tell me about that, please.

11 A. His name, Sikes. S-I-K-E-S, I believe. I
12 believe he resides in Ohio, and it was a
13 similar-type situation, that prior to April, he had
14 taken it upon himself to send out an email to
15 prospects saying that Windstream is in Chapter 11
16 and, you know, I'm your new provider.

17 Q. Have you personally seen that email?

18 A. I have.

19 Q. Do you know if that email was produced in
20 this case?

21 A. I don't know if -- I don't know if it was
22 produced or not.

23 Q. What -- can you tell me everything you
24 recall about when you saw it?

25 A. I just saw it recently. Again, it came

1 through our legal group, so that's the first time I
2 saw it. And it was how I just referenced it. It
3 was an email from this salesperson, sent out to a
4 couple of prospects that he was going after and
5 implying that, you know, Windstream might not come
6 out of bankruptcy.

7 Q. Was there any attachments to the email,
8 like a flier or an advertisement?

9 A. I don't believe so, but I don't know for
10 sure.

11 Q. What, if anything, did you do when you
12 learned about this issue with Mr. Sikes?

13 A. I contacted the group vice president in
14 charge of SMB direct sales, Brian Miller. And Brian
15 was on it immediately and had similar conversations
16 with his management team.

17 Q. And was a similar email sent out to
18 Mr. Miller's team?

19 A. I don't believe so, because around this
20 time, we had sent out a message to everybody,
21 including all the direct sales reps, with the TRO
22 attached to it that basically told -- outlined --
23 you know, ensuring that everybody knew how to handle
24 Windstream or any other account in a Chapter 11
25 status. So that message had just recently been

1 delivered to the entire sales field, including SMB
2 direct sales.

3 Q. Did this issue with Mr. Sikes occur before
4 that message was sent out to everyone?

5 A. The issue occurred before, but I don't
6 believe we were aware of it until after that message
7 was sent. It's just recent.

8 Q. Other than Mr. Walker and Mr. Sikes and
9 what you testified to, are there any other
10 individuals where this has arisen that you're aware
11 of?

12 A. Not that I'm aware.

13 Q. Have you reviewed the letters that were
14 sent by Windstream's counsel in this case, kind of
15 cease-and-desist letters?

16 A. Windstream's -- I don't know which ones.
17 Yeah. You mean the TRO?

18 Q. I could show them to you, but if you
19 haven't seen them, I'm not going to waste time.
20 It's -- I'm sure you saw them in regards to the TRO
21 hearing. Here, I'll just --

22 A. Yeah, I --

23 MR. NEPPLE: 19.

24 MR. LARSEN: Correct. Exhibit 19. Thank
25 you.

1 A. Is there something -- do you want me to
2 read the whole thing or is --

3 BY MR. LARSEN:

4 Q. I don't. I just --

5 MR. NEPPLE: If he has questions.

6 THE WITNESS: Okay.

7 BY MR. LARSEN:

8 Q. Yeah, the -- there's two letters attached
9 to this exhibit. The first one is a letter of
10 March 29 -- or March 21, 2019.

11 Did you -- did you see this letter on or
12 about the time that it arrived on March 21?

13 A. This, you're referring to? I'm sorry.
14 This advertisement or --

15 Q. No, the -- you got Exhibit No. 19?

16 A. Oh, the letter itself?

17 Q. There you go.

18 A. I don't recall even seeing this, to be
19 honest.

20 Q. Okay.

21 A. I haven't read it, I guess.

22 Q. Okay. That's fair enough.

23 So you did not have any discussions with
24 anyone at Charter concerning this letter on or about
25 March 21 when it came in?

1 A. Hard answer unless I -- you know, I just
2 don't know --

3 Q. Take your time.

4 A. Okay. On March 21?

5 MR. NEPPLE: And to the extent your
6 conversation would reveal conversations with
7 in-house Charter counsel or outside Charter
8 counsel, don't include that, please.

9 A. Well, I don't -- it looks like this
10 wouldn't even be sent to me. This looks like this
11 would go to direct mail or branding or marketing or
12 somebody, right?

13 I don't believe I was copied on this or
14 was aware of it on March 21.

15 BY MR. LARSEN:

16 Q. Was there a time when you subsequently
17 became aware of it?

18 A. I was aware that there was -- when -- you
19 know, when we first got brought into the TRO case,
20 then I was brought up to speed on what the -- what
21 the concerns were.

22 Q. If you turn a couple more pages, WIN 60 on
23 the bottom. There's another letter dated March 26,
24 2019.

25 A. Uh-huh.

1 Q. Same question: Were you aware of this
2 letter on or about March 26 when it came in?

3 A. I don't believe so, but I don't know for
4 sure. It wasn't sent to me.

5 Q. And you don't recall having any
6 discussions with anyone at Charter about what we
7 need to do, if anything, in response to this letter?

8 A. I wouldn't be involved in this decision.

9 Q. Okay.

10 A. Assuming this is just pertaining to the
11 direct mail piece, which it looks like it is.

12 MR. LARSEN: I don't have any further
13 questions. I do just want to get on the record
14 what we discussed briefly off the record.

15 I think we do take the position that --
16 not this witness, but at least the initial
17 witness, there were several categories that she
18 was not adequately prepared for and not ready
19 to discuss all the topics that were noticed.
20 So we do reserve our rights on, you know,
21 making the motion to compel a further
22 deposition or whatever else may occur.

23 MR. NEPPLE: Well, and --

24 MR. RAPPOPORT: By the way, I want to go
25 on the record. The committee agrees and joins

1 that position.

2 MR. NEPPLE: Well, and I'll respond as,
3 you know, the topics talked about
4 communications. She went through 30 pieces
5 and -- or exhibits and was here to talk about
6 any communications you put in front of her and
7 they were produced in the litigation. But I
8 understand your objection and we'll deal with
9 it down the road.

10 He will read and sign, please.

11 THE VIDEOGRAPHER: The time -- the time is
12 3:28 p.m. on May 1, 2019. This is the end of
13 Media Unit No. 1 and this completes the
14 videotaped deposition of Mr. Keith Dardis.

15 (Deposition continues - Next page)

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1 MR. LARSEN: Rough draft. Friday final.

2 MR. HOCKETT: We'll want the same. Rough
3 and expedite.

4 MR. RAPPOPORT: No order.

5 MR. LARSEN: Scanned exhibits.

6 MR. HOCKETT: Scanned exhibits.

7

8

9 (Time noted: 3:28 p.m.)

10

11

12

KEITH DARDIS

13

14 Subscribed and sworn to

15 before me this day

16 of 2019.

17

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CERTIFICATE

STATE OF CONNECTICUT

I, ANGELA M. SHAW-CROCKETT, Notary Public, duly
commissioned and qualified in and for the States of
New York, New Jersey and Connecticut, before whom the
foregoing deposition was taken, do hereby certify that the
witness whose testimony appears in the foregoing deposition
was duly sworn by me; that the testimony of said witness
was taken by me to the best of my ability and
thereafter reduced to typewriting under my direction;
that I am neither counsel for, related to, nor
employed by any of the parties for the action in
which this deposition was taken, and further that I
am not a relative or employee of any attorney or
counsel employed by the parties thereto, nor
financially or otherwise interested in the outcome of
the action. Witness will read and sign.

IN WITNESS THEREOF, I have hereunto set my
hand this 3rd day of May, 2019.



Angela M. Shaw-Crockett, Notary Public

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 CHAPTER 11 CASE NO. 19-22312 (RDD)

4 - - - - - /
5 In re:

6 WINDSTREAM HOLDINGS, INC., et al.,
7 Debtors,

8 WINDSTREAM HOLDINGS, INC., et al.,
9 Plaintiffs,

10 vs.

11 CHARTER COMMUNICATIONS, INC., and
12 CHARTER COMMUNICATIONS OPERATING, LLC,
13 Defendants.

14 - - - - - /
15
16 The videotaped 30(b)(6) deposition of FREDERICK
17 GUNZEL in his capacity as designated corporate
18 representative for defendants, was taken at the law
19 offices of Wiggin and Dana, LLP, Two Stamford Plaza,
20 Stamford, Connecticut, before
21 Mercedes Marney-Sheldon, CT-LSR #530, a registered
22 professional reporter in the state of Connecticut
23 and a notary public for the State of Connecticut, on
24 Thursday, September 19, 2019, at 5:00 p.m.
25

1 oOo

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

3
4 REPRESENTING THE DEBTORS/PLAINTIFFS:

5 KATTEN MUCHIN ROSENMAN, LLP

6 2900 K Street NW

7 North Tower - Suite 200

8 Washington, D.C. 20007-5118

9
10 BY: MICHAEL R. JUSTUS, ESQ.

11
12
13
14 REPRESENTING THE DEFENDANTS:

15 THOMPSON COBURN, LLP

16 One US Bank Plaza

17 St. Louis, Missouri 63101

18
19 BY: JOHN KINGSTON, ESQ.

20
21 BY: NINO PRZULJ, ESQ.

1 oOo

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

3
4 REPRESENTING THE OFFICIAL COMMITTEE and
5 UNSECURED CREDITORS:

6 MORRISON & FOERSTER, LLP

7 250 West 55th Street

8 New York, New York 10019-9601

9
10 BY: JOCELYN E. GREER, ESQ.

11
12 ALSO PRESENT:

13 SERENA PARKER
14 Charter Communications, Inc.

15 ADAM VENURINI, Videographer
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----- I N D E X -----

TESTIMONY OF: MATTHEW KARDOS

EXAMINATIONS	PAGE
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Redirect by Mr. Justus	74

----- INFORMATION REQUEST -----

	PAGE
REQUESTS: Request by Mr. Justus to mark Exhibit 45 as "Confidential"	16

INSTRUCTION TO WITNESS: (None)

INFORMATION TO BE FURNISHED: (None)

STIPULATIONS: (None)

MOTIONS: (None)

MARKED FOR RULING: (None)

----- E X H I B I T S -----

MARKED FOR IDENTIFICATION	PAGE
Exhibit 44	12
E-mail string labeled Charter 020848 - 020852	
Exhibit 45	15
Letter referencing three disconnects of Windstream customers (Marked "Confidential")	
Exhibit 46	17
E-mail string labeled Charter 45203 - 45206	

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----- INDEX CONTINUED -----

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MARKED FOR IDENTIFICATION	PAGE
Exhibit 47	20
E-mail labeled Charter 020839	
Exhibit 48	45
Multi-page document captioned "Notice of Chapter 11 Bankruptcy Case."	
Exhibit 49	58
E-mail from Charter to Windstream seeking information about last-mile accounts	
Exhibit 50	60
Multi-page document	
Exhibit 51	63
Correspondence from Mr. Ross to others	

1 F. Gunzel - 9/19/2019

2
3 THE VIDEOGRAPHER: This is tape 1.
4 We are now on the record at 5:12 p.m.,
5 Thursday September 19th, 2019. This is
6 the 30(b)(6) deposition of Frederick
7 Gunzel in the matter of Windstream
8 Holdings and Charter. This deposition is
9 being held at the law offices of Wiggin
10 and Dana, LLP, located at 2 Stamford
11 Plaza, Stamford, Connecticut 06901.

12 The court reporter is Mercedes Marney
13 with US Legal. I'm the legal
14 videographer, Adam Venturini also with US
15 Legal.

16 Would counsel please introduce
17 themselves and state whom they represent.

18 MR. JUSTUS: Michael Justus of
19 Katten, on behalf of Windstream and its
20 affiliated debtors and debtors in
21 possession.

22 MS. GREER: Jocelyn Greer of Morrison
23 & Foerster, on behalf of the official
24 committee of unsecured creditors.

25 MR. KINGSTON: John Kingston on

1 F. Gunzel - 9/19/2019
2 behalf of defendants. With me are Serena
3 Parker and Nino Przulj.

4 THE VIDEOGRAPHER: Will the court
5 reporter please swear in the witness.

6 FREDERICK JOHN GUNZEL
7 called as a witness, having been first duly
8 sworn by a Notary Public of the State of
9 Connecticut, was examined and testified as
10 follows:

11 - - -

12 DIRECT EXAMINATION

13 - - -

14 BY MR. JUSTUS:

15 Q. Okay. Thank you.

16 Mr. Gunzel, can you please state your
17 full name for the record.

18 A. Frederick John Gunzel.

19 Q. Can you spell Gunzel, please.

20 A. G-U-N-Z-E-L.

21 Q. And are you currently an employee of
22 Charter?

23 A. I am.

24 Q. And what is your job title?

25 A. Vice president of enterprise

1 F. Gunzel - 9/19/2019

2 planning.

3 Q. And what does enterprise planning
4 entail?

5 A. The department or my job
6 specifically?

7 Q. Either. I'm just trying to get a
8 general sense.

9 A. Sure, yeah. So, you know, enterprise
10 is a business unit of Charter, or Spectrum
11 Enterprise. And the planning function really is
12 the finance function. And there's a lot of
13 things that go along with it. There's FP-
14 (indiscernible).

15 (Admonishment by the Court Reporter.)

16 THE COURT REPORTER: "And there's a
17 lot of things that go along with" --

18 THE WITNESS: With that function.

19 So there's your classic financial
20 planning and analysis group. There's
21 billing and collections. There is
22 marketing and planning. There's also deal
23 support.

24 And then there's, you know, some
25 other operational functions that go with

1 F. Gunzel - 9/19/2019

2 that.

3 BY MR. JUSTUS:

4 Q. And it's mostly related to financial
5 matters? Is that what it does?

6 A. It is, yeah. You know, Spectrum
7 calls it planning, but it's really -- at any
8 other company, it would be the financing team.

9 Q. Okay. And how long have you been
10 with Charter?

11 A. With Charter, three years. Charter
12 purchased Time Warner Cable, as you're aware, so
13 I was --

14 (Clarification requested by the Court
15 Reporter.)

16 THE WITNESS: With Charter three
17 years.

18 Charter purchased Time Warner Cable.

19 Three years ago, I was with Time Warner.

20 So all in 10 years.

21 BY MR. JUSTUS:

22 Q. Okay. And how long have you been in
23 your current role?

24 A. Three years.

25 Q. Are you based in Charter's Stamford

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2 office?

3 A. Yes.

4 Q. Okay. All right.

5 MR. JUSTUS: And, John, I understand
6 that Mr. Gunzel is here on topics 11 and
7 25, both of which relate to the Spectrum
8 business value-added seller agreement.

9 Do I have that right?

10 MR. KINGSTON: Yes, I think that's
11 right.

12 MR. JUSTUS: Okay.

13 BY MR. JUSTUS:

14 Q. So, Mr. Gunzel, when I say the
15 Spectrum business value-added seller agreement
16 that involves Windstream, do you know what I'm
17 talking about?

18 A. I do.

19 Q. Okay. So the questions I want to ask
20 you are actually very straightforward. It's
21 really one topic. And the topic is, under that
22 agreement, from the time that Windstream filed
23 bankruptcy -- filed for bankruptcy protection
24 until now, there have been some disconnections of
25 service through some Windstream customers under

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2 that agreement, the value-added agreement.

3 So most of what I'm going to ask you
4 is just how many of those disconnections have
5 occurred and when, and things like that. Just
6 straightforward factual matters.

7 So let me start and tell you what I
8 think I know, and you can correct me if I'm
9 wrong. I think that's the quickest and easiest
10 way to do it.

11 A. Sure.

12 Q. So I understand that around
13 March 15th there was a weekend, and there were
14 about 295 disconnections; is that right?

15 A. I have it at 289.

16 Q. 289.

17 A. But your timeline is accurate.

18 Q. Okay. And then thereafter, there was
19 another disconnection in April; is that right?

20 A. There were four after that --

21 Q. Okay.

22 A. -- that spanned, I think, April, May.

23 Q. Okay. Were there any disconnections
24 under that agreement with Windstream in June?

25 A. Not that I'm aware of.

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2 Q. How about July?

3 A. Not that I'm aware of.

4 Q. How about August?

5 A. Not that I'm aware of.

6 Q. And September to date?

7 A. Not that I'm aware of.

8 Q. And would you be aware if any had
9 occurred?

10 A. Absolutely.

11 Q. So we can safely say none June, July,
12 August, September?

13 A. Yes.

14 Q. Okay.

15 Okay. I'm just going to quickly show
16 you a couple documents relating to disconnects,
17 and make sure that the ones I have here are
18 reflected in the numbers you just gave me.

19 MR. JUSTUS: Can we please mark this
20 as 44.

21 (Plaintiffs' Exhibit Number 44 was
22 marked for identification, as of this
23 date.)

24 BY MR. JUSTUS:

25 Q. Just go ahead and take a look at

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2 Exhibit 44, and let me know when you're ready.

3 A. (Witness reviews document.)

4 Okay.

5 Q. Does this --

6 MR. JUSTUS: And Exhibit 44, for the
7 record, is e-mails, Charter 020848 through
8 020852.

9 BY MR. JUSTUS:

10 Q. Mr. Gunzel, do you recognize this
11 e-mail string to relate to a disconnect of a
12 Windstream customer under that value-added seller
13 agreement we talked about?

14 A. I don't. This appears to be a
15 cancellation of a new connect, and not a
16 disconnect.

17 Q. Can you walk me through the
18 difference? I don't know --

19 A. I'm just -- there's not a lot of
20 detail. Why was this order rejected is the --
21 you know, the second page? Is there an issue?

22 There's nothing -- you know what? I
23 missed the back. Opportunity number and SRO.
24 I'm on, I guess, the back page.

25 Q. So 20851 --

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2 A. Then we go into why was this order --
3 our schedule -- the e-mails are -- so our
4 scheduling, this is coming from Windstream had
5 placed -- at least the way it appears to me,
6 Windstream had placed an order for a new connect.
7 And this looks like initially it was rejected.
8 We said, no, we're canceling the order. It looks
9 like it got resolved, but this has nothing to do
10 with the disconnect, and everything to do with a
11 new connect.

12 Q. Why was it rejected? Does it say
13 here?

14 A. I don't know.

15 Q. Okay. So this would not have been
16 counted in the four disconnects in April and May
17 that you noted?

18 A. No. No. This would not have been
19 active at that time.

20 Q. Okay. I guess before we get to this
21 next exhibit, let me ask first, the four
22 disconnects in April and May, do you recall what
23 geographic areas those occurred in?

24 A. I believe one was in Florida; one was
25 in Texas. The other two, off the top of my head,

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2 I -- I don't recall. But definitely one in
3 Florida and one in Texas.

4 Q. Okay. And the 289 figure for the
5 March 15th weekend --

6 A. Yeah.

7 Q. -- how was that number calculated?

8 A. I have a list of the accounts
9 specifically and I add them up.

10 Q. So you personally added up --

11 A. Yes.

12 Q. -- a list of accounts that --

13 A. I add every --

14 Q. -- had a disconnect issue.

15 A. Correct.

16 THE COURT REPORTER: If you could let
17 him finish --

18 THE WITNESS: I'm sorry.

19 THE COURT REPORTER: -- before you
20 answer.

21 MR. JUSTUS: Okay. Please mark this
22 as Exhibit 45.

23 (Plaintiffs' Exhibit Number 45 was
24 marked for identification, as of this
25 date.)

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2 BY MR. JUSTUS:

3 Q. Just go ahead and look at it. Let me
4 know when you're ready.

5 A. (Witness reviews document.)

6 MR. JUSTUS: And we designate

7 Exhibit 45 confidential for the record.

8 REQ

9 BY MR. JUSTUS:

10 Q. I'll go ahead and represent to you
11 I'm not going to ask you about the legal
12 positions taken in this letter, just the facts of
13 the three listed disconnects.

14 A. Okay.

15 Q. Okay. Ready?

16 A. Yeah.

17 Q. All right. As I understand it, this
18 letter references three disconnects of Windstream
19 customers.

20 On the first page it references a
21 May 16th, 2019, disconnect of last-mile
22 connectivity at Signature Healthcare in Ohio.

23 Is that one of the four April, May
24 disconnects that you had referenced prior?

25 A. It is, yeah.

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2 Q. Okay.

3 A. All three of these are in that group?

4 Q. So we have one Ohio, one New York,
5 and one Florida?

6 A. Right.

7 Q. And so you had said definitely
8 Florida and Texas. So the other two are Ohio and
9 New York?

10 A. Okay.

11 Q. Well, I'm asking: Does that sound
12 right?

13 A. It -- yes.

14 Q. And the Texas disconnect is not
15 referenced in this letter?

16 A. It is not.

17 Q. Okay.

18 MR. JUSTUS: Can you please mark this
19 as 46.

20 (Plaintiffs' Exhibit Number 46 was
21 marked for identification, as of this
22 date.)

23 BY MR. JUSTUS:

24 Q. Just go ahead and take a look, and
25 let me know when you're ready.

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2 A. (Witness reviews document.)

3 MR. JUSTUS: And Exhibit 46, for the
4 record, is e-mails, Charter 45203 to
5 45206.

6 THE WITNESS: (Witness reviews
7 document.)

8 Okay.

9 BY MR. JUSTUS:

10 Q. Okay. So Exhibit 46 are e-mails
11 dated between May 8th and -- well, they're all
12 from May 8th; is that right?

13 A. That appears to be correct.

14 Q. Okay. Do you read this e-mail string
15 as referencing a disconnect of a Windstream --

16 A. I do.

17 Q. -- or more than one, perhaps?

18 A. It's just one.

19 Q. Just one.

20 A. There's a single account number being
21 referenced on the second page.

22 Q. Okay. So on 45204, on the bottom
23 right corner, that page number?

24 A. Yeah.

25 Q. There's a single account number.

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2 A. Uh-huh.

3 Q. And the subject line of these e-mails
4 say, "Spectrum disconnect three times in error."

5 A. Uh-huh.

6 Q. Does that mean the same account was
7 disconnected three times?

8 A. It does.

9 Q. On the same day or does it not say?

10 A. It doesn't say.

11 Q. Okay. So this was in May.

12 So do you know which one of the four
13 May disconnects we've talked about that this
14 relates to?

15 A. Based on the account number, this is
16 the Texas one.

17 Q. Okay. So there we have it.

18 So other than the 289 disconnects in
19 March, that we've talked about, and the four
20 additional disconnects in April and May, each of
21 which we've now talked about, you're not aware of
22 any other disconnects?

23 A. I'm not aware of any other
24 disconnects.

25 Q. And you would likely know.

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2 A. Let me clarify. I'm not aware of any
3 other non-pay disconnects.

4 If a customer calls in and
5 voluntarily disconnects, they call Windstream and
6 they say I'm disconnecting from you voluntarily,
7 sure, that can happen.

8 Q. Is non-pay the only type of
9 involuntary disconnect?

10 A. Yes.

11 Q. Okay. All right.

12 MR. JUSTUS: Please mark this as
13 Exhibit 47.

14 (Plaintiffs' Exhibit Number 47 was
15 marked for identification, as of this
16 date.)

17 BY MR. JUSTUS:

18 Q. Please let me know when you're ready.

19 MR. JUSTUS: For the record,
20 Exhibit 47 is e-mail Charter 020839.

21 THE WITNESS: (Witness reviews
22 document.)

23 Okay.

24 BY MR. JUSTUS:

25 Q. Okay. So Exhibit 47 has an e-mail

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2 from May 9th and an e-mail from May 16th, right?

3 A. Uh-huh.

4 Q. The May 9th e-mail is from Tasha

5 Bonds-Yates (ph.) --

6 A. Yes.

7 Q. -- to Tim Laughlin?

8 A. Yes.

9 Q. Do you know who those two people are?

10 A. I do.

11 Q. And they are both Charter employees?

12 A. They are.

13 Q. And are they within the same job

14 function as you?

15 A. Similar.

16 Q. Within the finance function?

17 A. They really are account receivable

18 management for our SMB types of clients.

19 Q. For the small business clients?

20 A. Small biz.

21 Q. As opposed to residential?

22 A. Well, no. They have residential and

23 small biz. We consider that cable ops.

24 (Clarification requested by the Court

25 Reporter.)

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2 THE WITNESS: Cable ops.

3 So think of them as tactical for
4 collections.

5 BY MR. JUSTUS:

6 Q. Okay. It says, "New approval" -- in
7 the May 9th e-mail it says, "New approval
8 request. Please reply with your approval to move
9 forward with quarantined bankruptcy protections
10 for SMB accounts."

11 So what does that refer to?

12 A. So as a company, we have a lot of
13 rules that go into not overcounting our
14 describers, because we're publicly traded.

15 And all of our billing systems are
16 designed that if you get to a certain point in
17 debt, especially on the SMB and residential
18 customer base, they go down automatically. The
19 billing system -- you hit a certain level of
20 debt, you have not paid your bill, the billing
21 system is designed to soft disconnect you and
22 take your services down, for a variety of
23 reasons.

24 The quarantine really is taking this
25 group of customers that we've identified through

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2 a lot of work and saying, okay, for these ones,
3 because of the bankruptcy, we're going to treat
4 them different. We're not going to disconnect
5 them automatically.

6 Q. And so this is referring to
7 Windstream customers --

8 A. Correct.

9 Q. -- under the Spectrum value-added
10 services agreement? Okay.

11 And so prior to -- well, let's go to
12 the May 16th e-mail at the top. It just says
13 "approved."

14 A. Uh-huh.

15 Q. So on or after May 16th, this
16 quarantined protection went into effect?

17 A. Correct.

18 Q. Do you know when it went into effect?

19 A. Specifically no.

20 Q. Was it something that would take a
21 long time to implement?

22 A. So Windstream has approximately 14
23 and a half thousand service accounts with
24 Charter. So it would have taken some time to do
25 that, but it's not like we're going into every

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2 account individually and doing it. There's
3 macros that are run, and things can be updated in
4 the billing system via macro for large
5 populations of accounts.

6 Sorry. Things can be updated via
7 macro for large populations of accounts.

8 BY MR. JUSTUS:

9 Q. Was that process complete today?

10 A. It is complete today. It didn't
11 complete today, but it is complete as of today.

12 Q. As of today it's completed?

13 A. Correct.

14 Q. Do you know when it was completed?

15 A. I don't.

16 Q. Ballpark?

17 A. I don't.

18 Q. And so prior to May 16th, there was
19 no quarantine protection in place?

20 A. There was the risk. We were at that
21 point, I think, had gathered all of the accounts
22 together and had identified them. And that
23 was -- you know, it's one thing to have the
24 mechanics to take them out of the collections
25 mix, but you need to know who to take out.

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2 So I think part of the reason why it
3 took a while to get done was just identifying all
4 the individual accounts and billing and making
5 sure we had the correct population.

6 Q. And when did that process begin?

7 A. That kicked off as soon as we got the
8 bankruptcy order.

9 Q. And which order do you mean? Sorry.
10 There's been several.

11 A. I guess the one that was -- the one
12 that was distributed on or around February 25th.
13 We started searching through to gather --

14 Q. Once Windstream filed for bankruptcy?

15 A. Correct.

16 Q. And then it took from that time in
17 February until May 9th to finish the process; is
18 that right?

19 A. I don't know if it's right, but that
20 timing sounds in the ballpark.

21 Q. And what was the process for trying
22 to identify the Windstream customers that needed
23 to be quarantined?

24 A. Sure. So, you know, Windstream
25 doesn't go by just Windstream, as you know.

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2 Windstream goes by a lot of different --

3 (Admonishment by the Court Reporter.)

4 A. Windstream doesn't go by just

5 Windstream. Windstream has a lot of companies

6 that they've purchased and merged with over the

7 years.

8 Part of our research came from

9 initially going through and, you know, searching

10 for Windstream and Windstream subsidiaries to get

11 the names.

12 Part of it came from, we had gotten

13 information back from legal saying here is the

14 complete list of Windstream and Windstream

15 affiliates.

16 Then we essentially have a billing --

17 we have billing systems. We have seven of them.

18 And then we have a CRM called sales

19 force. And between the billers and CRM, it was

20 query searching anything under those names that

21 we could find.

22 We did get a list back from

23 Windstream that identified approximately 4500

24 accounts.

25 We had gotten that back when we were

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2 in the middle of our process, and we had
3 already -- already identified well over 10,000.
4 So we knew that their list was relatively
5 incomplete.

6 So it was a lot of hard work to get
7 them identified and then flagged to take them out
8 of the collection schemes.

9 Q. Okay. Going back to the May 9th
10 e-mail where it says "summary." Still on the
11 same Exhibit 47.

12 A. Oh, I'm sorry. Yes.

13 Q. It says, "Summary: Due to the recent
14 Windstream bankruptcy, there have been some
15 inefficiencies identified in our bankruptcy
16 process to properly protect accounts from further
17 collection actions during bankruptcy automatic
18 stays."

19 And so what were the inefficiencies
20 identified?

21 A. So our billing system is, like I
22 said, designed to disconnect if you don't pay.
23 It's automatic. Especially on these types of
24 accounts. Once you hit a certain, you know, day
25 mark and a certain debt, it just takes your

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2 service down. I would say that's the
3 inefficiency. It's not designed to keep people
4 up if they owe us money. It's designed to
5 disconnect you if you owe us money.

6 Q. So as a result of this process, has
7 that feature been disabled, or is that feature
8 still in place, the automatic disconnect?

9 A. For any other account, it's in place.
10 But the Windstream accounts, the quarantine
11 really speaks to we can flag an account to say
12 treat it differently.

13 Q. And so the 289 disconnects in March,
14 was that as a result of the automatic disconnect
15 process?

16 A. Absolutely.

17 Q. How about the four in April and May?

18 A. No. Those were -- all four of those
19 were relatively unique situations, every single
20 one of them.

21 One, there was -- well, maybe more
22 than one. At least two, there were charges
23 applied to an account that should have never been
24 applied to those accounts. You could consider
25 those post petition charges. So in reality, I

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2 think, you know, they were fair game.

3 However, understanding the
4 relationship with Windstream, we didn't want to
5 touch anything. So there were charges placed on
6 accounts that shouldn't have been, and that
7 triggered disconnects.

8 The other two, I can't remember the
9 specifics on it, but it wasn't a matter of, you
10 know, we hadn't -- it was probably a matter of we
11 had not found them yet, those other two.

12 Q. So they were not added to the
13 quarantine list --

14 A. Right. So what we do is, you know,
15 we work within what's called a parent-child
16 billing relationship (indiscernible) with our
17 billers --

18 (Clarification requested by the Court
19 Reporter.)

20 THE WITNESS: A parent-child billing
21 relationship.

22 And think of that as an account that
23 bills. And then underneath that, there's
24 several thousand accounts that provide the
25 service. So the only place the dollars go

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2 is to the account that bills. The other
3 ones provide service.

4 So two of those or one of those or
5 some of those were not aligned properly
6 into this parent-child hierarchy. So we
7 couldn't find them.

8 In addition, they had names like --
9 nothing to do with Windstream or any of
10 its subsidiaries or affiliates. So they
11 could not be identified properly to flag
12 them.

13 BY MR. JUSTUS:

14 Q. Okay. Thank you.

15 MR. JUSTUS: Okay. I will pass the
16 witness, John.

17 MR. KINGSTON: Let me use the
18 restroom, and I will have a little bit of
19 redirect.

20 MR. JUSTUS: Okay. Go off the
21 record.

22 Is five minutes okay?

23 THE VIDEOGRAPHER: Off the record at
24 5:41 p.m.

25 (Off the record.)

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2 THE VIDEOGRAPHER: We are back on the
3 record at 5:45 p.m.

4 CROSS-EXAMINATION

5 - - -

6 BY MR. KINGSTON:

7 Q. Mr. Gunzel, tell me your role with
8 respect to the Windstream value-added reseller
9 contract.

10 A. So my role related to Windstream, the
11 value-added reseller contract is really --
12 because the relationship is split between
13 different services, Windstream has services under
14 SMB and Windstream has services under enterprise.

15 Enterprise is primarily fed by a
16 fiber-based service. SMB is fed by a
17 coaxed-based fiber service.

18 (Clarification requested by the Court
19 Reporter.)

20 THE WITNESS: SMB is fed by a
21 coaxed-based fiber service -- coaxed-based
22 service.

23 But because it's kind of a hybrid
24 relationship with two types of services,
25 the AR management, the accounts receivable

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2 management, falls under me and my team for
3 the entire relationship.

4 BY MR. KINGSTON:

5 Q. So if somebody were to decide to
6 disconnect Windstream services for failure to pay
7 a debt, would that be you?

8 A. Yes, it would.

9 Q. And at any time since February of
10 2019, have you instructed that Windstream
11 services be disconnected for not paying a debt?

12 A. I have not.

13 Q. You testified earlier about the fact
14 that billing systems are geared towards
15 disconnecting customers that don't pay
16 automatically.

17 Do you recall that, sir?

18 A. I do.

19 Q. I want to talk to you a little bit
20 about why that is.

21 Can we do that?

22 A. Sure.

23 Q. Are one of the data points that
24 telecom companies and cable companies provide to
25 their -- provide to the public, subscriber

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2 accounts?

3 A. Correct. Charter considers them PSU
4 accounts, primary service unit, but it's the same
5 thing. It's the account of our customer base.

6 Q. And so the PSUs are -- from
7 10,000 feet, would that be sort of picking an
8 individual subscriber and chop her up into the
9 services that she purchases?

10 So if I'm a Charter subscriber and I
11 have telephone and Internet, that would be two
12 PSUs?

13 A. Correct.

14 Q. Okay. And just because it's easier
15 for me to think in terms of subscribers, I'm
16 going to talk about subscriber accounts.

17 Does that make sense?

18 A. That's fine.

19 Q. And you understand that entities like
20 Charter and Windstream and other entities report
21 their subscribers to the general public?

22 A. I do.

23 Q. And they -- and is it true that the
24 subscriber accounts are reported to the general
25 public with the understanding that people may

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2 decide to purchase or sell shares in the company
3 that's reporting those subscriber accounts?

4 A. Yes.

5 Q. So one of the things you're looking
6 at if you're thinking about buying stock is what
7 do the subscriber numbers look like?

8 A. Absolutely.

9 Q. And the reason that people who are
10 considering buying and selling stock are
11 interested in what -- how many subscribers you
12 have is because each subscriber represents a
13 revenue stream that may continue going forward;
14 isn't that right?

15 A. Correct.

16 Q. And it's important not to mislead
17 people who are considering buying your stock.

18 Can we agree with that?

19 A. I agree with that.

20 Q. And if you identify as a subscriber
21 somebody who is not paying you, is there a
22 possibility of misleading people who are buying
23 your stock?

24 A. Yes.

25 Q. And if you're saying, hey, I have

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2 this many subscribers but a bunch of those
3 subscribers aren't paying, they think that you
4 have a revenue stream that you don't actually
5 have?

6 A. That is correct.

7 Q. And one way that you could
8 artificially inflate -- or that a company could
9 artificially inflate its subscribers account is
10 by declining to disconnect customers who stop
11 paying?

12 A. That is correct.

13 Q. And it is true that in decades
14 passed, officers of companies have actually gone
15 to prison for declining to disconnect subscribers
16 who stopped paying?

17 A. Correct.

18 Q. And they went to prison for
19 securities fraud?

20 A. They did.

21 Q. And so because it's important not to
22 identify non-paying customers as subscribers,
23 Charter's billing systems are geared towards
24 automatically disconnecting people who don't pay?

25 A. Yes.

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2 Q. And is that unusual or usual in the
3 cable and telecommunications industry?

4 A. In my experience, that's the norm.
5 That's usual.

6 Q. And it makes sense for that to be the
7 norm because everybody in this industry would
8 like to avoid --

9 MR. KINGSTON: I'm sorry.

10 BY MR. KINGSTON:

11 Q. And it would make sense for that to
12 be the norm because everybody in this industry
13 would like to avoid committing securities fraud?

14 A. Absolutely.

15 Q. Okay. And so that's the reason
16 why -- or one of the reasons why Charter's
17 billing systems are geared towards automatically
18 disconnecting customers that don't pay?

19 A. Yes.

20 Q. I want to talk to you about whether
21 or not Charter's billing systems are complicated
22 or simple.

23 Can we do that, sir?

24 A. Yes.

25 Q. Charter is -- hasn't been the same

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2 company since 1999, have they?

3 That's a bad question. Do you mind
4 if I start over, sir?

5 A. Please.

6 Q. Charter bought Time Warner, true?

7 A. True.

8 Q. Charter bought another company called
9 Bright House?

10 A. Correct.

11 Q. And both Time Warner and Bright House
12 were themselves amalgamations --

13 THE COURT REPORTER: I --

14 MR. KINGSTON: Amalgamation isn't a
15 good word?

16 THE COURT REPORTER: No, it's just
17 too fast. I'm tired.

18 MR. KINGSTON: That's okay. Tell me
19 every single time. I --

20 MR. JUSTUS: I like when he goes
21 fast.

22 THE COURT REPORTER: No, I want to
23 get out of here too.

24 BY MR. KINGSTON:

25 Q. Mr. Gunzel, do you mind if we take

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2 another run at that?

3 A. I do not mind.

4 Q. So time Warner, before it was
5 purchased by Charter, was an amalgamation of
6 companies?

7 A. Correct.

8 Q. And it was an amalgamation of
9 companies that all had their own billing systems?

10 A. Yes.

11 Q. And Bright House, before it was
12 purchased by Charter, was itself an amalgamation
13 of companies?

14 A. To a lesser extent, yes.

15 Q. And to a lesser extent, it had a
16 variety of billing systems within Bright House as
17 well?

18 A. It did.

19 Q. And Charter, before it bought those
20 companies, was itself an amalgamation; is that
21 true?

22 A. Lesser so, but still Charter had --
23 legacy Charter had its own issues similar.

24 Q. All right. And did each of those
25 amalgamations before they were joined in the

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2 various mergers, did they have one billing system
3 or multiple billing systems?

4 A. Multiple. Time Warner cable had
5 four, five -- five. Charter had one, but they
6 had different slices of that one, so that's six.
7 And then Bright House had two.

8 Q. And so after the various mergers, all
9 of those varied billing systems were kind of
10 cobbled together?

11 A. Cobbled is a good word, yes.

12 Q. And how many employees are able to
13 put in an entry that would ultimately result in a
14 disconnection of service for nonpayment in
15 those -- how many billing systems?

16 A. Eight.

17 Q. Across those eight billing systems,
18 how many employees are capable of making an entry
19 that would ultimately result in a disconnection?

20 A. Over 25,000. I think in total,
21 Charter has 96,000 employees, give or take. The
22 folks that are identified as customer operations
23 or customer care is approximately 25,000.

24 Q. So there's roughly 25,000 customer
25 care employees?

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2 A. Correct.

3 Q. And those -- among those 25,000
4 customer care employees, generally, any of them
5 can make an entry that would ultimately result in
6 a disconnection of service?

7 A. They could.

8 Q. And so it's very easy for service to
9 be disconnected within these cobbled-together
10 billing systems?

11 A. Yes.

12 Q. And is the fact that it's very easy
13 for these services to be disconnected in these
14 cobbled-together billing systems --

15 (Clarification requested by the Court
16 Reporter.)

17 BY MR. KINGSTON:

18 Q. -- cobbled-together billing systems,
19 consistent with the notion that one shouldn't
20 count as subscribers people who aren't paying you
21 in the telecom and cable industry?

22 A. Yes.

23 Q. I want to talk about February and
24 March of 2019, starting in February, when Charter
25 received the notice of bankruptcy for Windstream.

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2 Can we do that, sir?

3 A. Yes.

4 Q. Excuse me just one moment.

5 (Pause.)

6 BY MR. KINGSTON:

7 Q. So when Charter first received
8 Windstream's notice of bankruptcy, it knew that
9 there were thousands of accounts being serviced
10 under the last-mile contract?

11 A. Uh-huh. Yes.

12 Q. And those thousands of accounts that
13 Charter was aware of that were being serviced
14 under the last-mile contract, that wasn't all of
15 the accounts that ultimately we've uncovered; is
16 that true?

17 A. That is true.

18 Q. And are those accounts listed under a
19 single name, or are they listed under multiple
20 names?

21 A. Multiple names.

22 Q. All right. Well, tell me a little
23 bit more about that. So I -- how is it that
24 accounts under the last-mile contract are listed
25 under multiple names?

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2 A. To step through the entire billing
3 relationship, as I mentioned before, there's
4 approximately 14,500 individual service accounts
5 within those eight different billing systems.
6 Those roll up to approximately 105 individual
7 billing accounts.

8 So we have 105 accounts that are
9 billing, covering 14,500 service accounts.

10 Q. I want to talk -- I'm going to stop
11 you and talk a little bit about the difference
12 between a billing account and a service account.

13 What's a billing account?

14 A. Windstream does not want 14,500
15 individual bills from us. They would like,
16 preferably, one bill with 14,500 lines that they
17 can reconcile. So when we bill out large-account
18 relationships like this, we align the service
19 accounts with a master billing account so we can
20 provide that service to the end-point customer.

21 Q. So there would be a single billing
22 account that would be the account that is charged
23 and pays the bills, and below that account would
24 be dozens or hundreds of service accounts, all of
25 which receive service, but none of which are ever

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2 billed --

3 A. Correct.

4 Q. -- is that a fair description?

5 A. That is fair.

6 Q. And are occasionally the billing
7 accounts referred to as "parent accounts"?

8 A. Yes.

9 Q. And the service accounts would be
10 referred to as "child accounts"?

11 A. Child accounts.

12 Q. Okay. And in cable, as in life, the
13 parent accounts pay all the bills and the child
14 accounts run up all the bills?

15 A. Correct.

16 Q. And so the services -- so in the
17 ordinary course, whether they're referred to as a
18 child account or a service account, those are
19 accounts that would never be charged?

20 A. That is correct.

21 Q. And because they would never be
22 charged, they would never be in arrears? They
23 would never be -- they would never not pay -- or
24 they would never -- do you mind if I start that
25 over, sir?

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2 A. Yes, certainly.

3 Q. Because those accounts would never be
4 charged, they would never -- or they should not
5 ever be late on making payments?

6 A. Not correct. Because, you know,
7 within the parent account, you know, we know
8 which -- which accounts underneath the parent
9 account are billing and what it is.

10 When a payment comes into the larger
11 parent account, it's distributed across all the
12 child accounts. They bill and roll up, payment
13 goes down, and then so on and so forth.

14 So things like a one-time charge, an
15 individual charge, shouldn't ever get applied to
16 a child account. And all the billing rolls from
17 the child account to the parent.

18 Q. So if a one-time charge were applied
19 to a child account, that would be the result of a
20 data entry error?

21 A. It's a mistake, yeah. It would never
22 go there.

23 Q. And so it would be possible for a
24 one-time charge to be plugged into a child, or
25 service account, if one of these 25,000 customer

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2 care employees made a data entry error?

3 A. Absolutely.

4 Q. Okay. So in February of 2019, when

5 Windstream filed for bankruptcy, sometime

6 thereafter Charter received a notice of

7 bankruptcy?

8 A. Yes.

9 MR. KINGSTON: Ms. Marney, I'm going

10 to mark this as Exhibit 48.

11 (Plaintiffs' Exhibit Number 48 was

12 marked for identification, as of this

13 date.)

14 BY MR. KINGSTON:

15 Q. And is -- Mr. Gunzel, you've been

16 handed Exhibit 48, which is a multi-page document

17 captioned "Notice of Chapter 11 Bankruptcy Case."

18 Do you recognize Exhibit 48, sir?

19 A. I do.

20 Q. And is that the notice of bankruptcy

21 that Charter eventually received from Windstream

22 in February -- or February 2019?

23 A. It is.

24 Q. And I see 205 different names on that

25 notice of bankruptcy.

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2 A. I agree.

3 Q. And those are -- if I turn a few
4 pages, do you see a variety of other names used
5 in the last -- in the last eight years?

6 A. I do.

7 Q. And is that another 79 additional
8 names?

9 A. Without counting them, I would say
10 approximately yes.

11 Q. And so did Charter need to search
12 among these thousands of parent and child
13 accounts for all of these 280 names?

14 A. Charter did.

15 Q. And that was across -- so Charter had
16 to search for all of those 280 names across all
17 of these thousands of parent and child accounts
18 across seven discreet billing systems?

19 A. Correct.

20 Q. Was that a time-consuming process?

21 A. It was very time consuming. There
22 were several teams on it. My team alone spent
23 roughly 1800 hours doing that search, and
24 gathering up as many of these accounts as
25 possible.

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2 Q. So as far as the time spent in terms
3 of labor hours on the Charter side, identifying
4 and protecting Windstream last-mile accounts so
5 that they wouldn't be turned off if Windstream
6 didn't pay its bills, that was more than 1800
7 hours -- excuse me, 1,800 hours?

8 A. 1,800 hours.

9 Q. And that was for your team, but --
10 but was your team the only one working on it?

11 A. It was not.

12 Q. Do you know how many hours the other
13 team -- or an estimate of how many hours the
14 other team spent on it?

15 A. I would estimate about the same.

16 Q. So a fair estimate of the amount of
17 time that Charter employees have spent ensuring
18 that Windstream last-mile accounts are not
19 disconnected would be somewhere in the
20 neighborhood of 3600 hours?

21 A. 3,600 hours.

22 Q. Now, you talked about coaxial
23 accounts and enterprise accounts.

24 Do you recall that, sir?

25 A. I do.

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2 Q. And are coaxial accounts, accounts
3 that can be automatically disconnected if there
4 is a non-pay situation?

5 A. Yes.

6 Q. Walk me through how that happens.

7 A. So within the telecommunications
8 industry, your services need to be provisioned.
9 Provisioning means we turn you on and you get the
10 services that you're paying for, whether it be
11 for your high-speed data, your voice, or your
12 video. The billing system is the tool that
13 provisions this, these services, and turns them
14 on or off.

15 The billing system -- these are for
16 coax products. So if, you know, you set up the
17 billing system, in a way, to say, if a customer
18 is past due 60 days, turn them off automatically,
19 the billing system has the power to turn that
20 account off.

21 Q. And is one of the reasons why that
22 automatic process would be in place is to avoid
23 counting non-paying customers as subscribers?

24 A. That is correct.

25 Q. And so this automatic disconnect

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2 scheme, was that in place for the accounts that
3 were disconnected in -- last-mile accounts that
4 were disconnected in around March 15?

5 A. Yes. They were still on a scheme
6 that turned them off automatically, and they had
7 debt.

8 Q. And so around March 15 -- so it
9 wasn't as if somebody made the decision, we need
10 to turn these accounts off sometime in March of
11 2019?

12 A. Nobody made that decision. They were
13 already on that path. They had debt. They hit a
14 time limit, and the billing system automatically
15 turned them off.

16 Q. And so for those accounts not to have
17 been turned off, they would have been placed into
18 some sort of protective status?

19 A. Correct.

20 Q. Walk me through how the accounts are
21 placed in protective status.

22 A. So what automatically disconnects an
23 account is what's called a scheme in the billing
24 system. Executives in the companies define the
25 rules saying, okay, that scheme has to do a

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2 couple of things. Maybe at day 30 we send that
3 customer a letter saying, you're past due. Day
4 45 triggers an alert to a rep to place a phone
5 call. And then at day 60, it automatically
6 triggers a disconnect.

7 That's an example of a non-pay
8 disconnect scheme. And it's a program that runs
9 against the billing system.

10 We have a different scheme that would
11 be considered a VIP scheme, that would still have
12 the -- send them a letter, would still have
13 the -- trigger a rep to call them.

14 But the third one, disconnects you,
15 would be taken out of that program.

16 Q. And so would the -- to avoid
17 disconnection, would the Windstream accounts have
18 to be manually moved into those sort of schemes?

19 A. Manually in -- well, it would never
20 be automatic, because you first have to identify
21 the group of customers that you want to place on
22 those VIP schemes.

23 Now, once we have those groups of
24 customers, we can build a list and then run
25 what's called a macro. So we're not going in an

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2 individual account one at a time. We are saying,
3 okay, here's a list of 500 accounts in this
4 billing system. In this geography, move them
5 from this scheme to this scheme.

6 Q. Okay. And so identifying those
7 accounts and moving them from a regular
8 collection scheme to a protected scheme, that was
9 part of the work that went into the estimated
10 3600 hours of work that Charter has spent trying
11 to ensure that Windstream last-mile customers
12 aren't disconnected?

13 A. That is correct.

14 Q. Okay. And so as of March 15 of 2019,
15 had Charter been able to identify, among all the
16 thousands of Windstream accounts, the roughly
17 200 -- all of the accounts associated with the
18 roughly 280 names on the notice of bankruptcy?

19 A. I would say no. I was comfortable
20 with what we had identified by mid-April, knowing
21 that we were doing it based on these larger
22 parent relationships.

23 However, the couple examples that
24 came out earlier on the four that happened after
25 that fact, they were not associated with a parent

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2 or they had, you know, some kind of an oddity
3 with the account that drove them to a disconnect.

4 I think at this point, we've
5 identified customers that are not even on this
6 list that are associated with Windstream. And
7 we've done that via web searches, industry
8 paperwork, those sort of things, looking back at,
9 okay, who has Windstream purchased over the
10 years. And I think at this point, I'm
11 comfortable that we've captured them, all of
12 them.

13 Q. All right. So roughly 3600 hours
14 later, we feel comfortable that we've identified
15 all of the last-mile Windstream accounts and
16 protected them?

17 A. That's correct.

18 Q. And among the accounts that we've
19 identified and protected include accounts that
20 aren't connected to debtors identified on the
21 notice of bankruptcy?

22 A. Correct. And it could be something
23 as simple as, you know, this list, Broadview
24 Networks of Massachusetts.

25 (Clarification requested by the Court

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2 Reporter.).

3 THE WITNESS: Broadview Networks of
4 Massachusetts.

5 That might be identified in our tools
6 and systems as, you know, Broadview period
7 or Broadview networks of some place else.

8 So we've got to go through and do
9 things like that.

10 There's another one on here called
11 ARC Networks, and this one sticks out. We
12 always found that as just ARC, not the
13 "networks" part.

14 (Clarification requested by the Court
15 Reporter.)

16 THE WITNESS: There's a subsidiary on
17 here called ARC Networks. I said this one
18 sticks out because I remember dealing with
19 this one.

20 In every piece of information we
21 have, it's just listed as ARC.

22 BY MR. KINGSTON:

23 Q. I want to talk to you about some --
24 during the same time frame -- well, let me back
25 up.

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2 Do you mind if I start over?

3 A. Sure.

4 Q. Since -- since Windstream notified
5 Charter that it was in bankruptcy in February of
6 2019, has Windstream's -- has Windstream been
7 late, slow, or slow in paying?

8 A. They have.

9 We -- part of the reason to identify
10 all the accounts was to track very carefully
11 their pre-petition balance and their
12 post-petition balance, understanding anything
13 prepetition we can't touch. We have to keep a
14 careful eye on that to make sure that we don't
15 disconnect as a result of a pre-petition balance,
16 and understanding that the pre-petition balance
17 is locked down --

18 (Clarification requested by the Court
19 Reporter.)

20 THE WITNESS: Sorry.

21 And understanding that the
22 pre-petition balance is locked down and it
23 won't grow.

24 What that leaves is the post-petition
25 balance.

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2 Windstream with Spectrum bills about
3 \$3.4 million a month. And it's their
4 obligation, at least from my
5 understanding, the rules is that they have
6 to maintain payment of that post-petition
7 balance.

8 BY MR. KINGSTON:

9 Q. So whatever Windstream owed before
10 filing its notice of bankruptcy, that's to be
11 sorted out in the bankruptcy --

12 A. Correct.

13 Q. -- but as Windstream continues to run
14 up bills in the neighborhood of \$3 million a
15 month, the expectation is that those would be
16 paid?

17 A. That is the expectation.

18 So we had --

19 Q. Go ahead.

20 Has reality matched up with that
21 expectation?

22 A. Not in every case. We had three
23 examples between March and August where their
24 balance doubled as a result of not paying on
25 time. So in April -- well, think of it this way.

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2 Their post-petition balance should always be
3 around \$3.4 million. It should always be a
4 single month of billing.

5 In April, their post-petition balance
6 was \$5.7 million, so approximately \$2.3 million
7 over. In May, their post-petition balance was
8 \$6.7 million, approximately \$3.3 million over.
9 In July, their post-petition balance was
10 \$5.9 million, approximately \$2.4 million over.

11 Q. So in April, Windstream was -- had
12 \$2.3 million that was 60 days overdue?

13 A. That is correct.

14 Q. And in May, Windstream had
15 \$3.3 million that was 60 days past due?

16 A. Yes.

17 Q. And in July -- in June?

18 A. July.

19 Q. In July, Windstream had \$2.4 million
20 that was 60 days past due?

21 A. Yes.

22 Q. And for April, May, and for all those
23 millions of dollars that were past due in April,
24 May, and July, that was all post petition?

25 A. That is all post petition.

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2 MR. JUSTUS: I'm going to go ahead
3 and object to this line of questioning as
4 beyond the scope and irrelevant.

5 BY MR. KINGSTON:

6 Q. And at any point when Windstream
7 was -- these millions of dollars more than 60
8 days -- or at 60 days past due, did you instruct
9 anybody to disconnect any services --

10 A. I did not, no.

11 Q. Okay. You referenced a disconnect in
12 Clearwater, Florida, a Windstream account?

13 A. Yes.

14 Q. Was that because of a network outage?

15 A. I do believe that one was a network
16 outage.

17 Q. Okay. There was a disconnect of a --
18 an account in -- let me back up.

19 Do you have an understanding as to
20 whether or not Charter reached out to Windstream
21 seeking assistance in identifying last-mile
22 accounts so those accounts can be placed in
23 protective status?

24 A. I do.

25 Q. And did Charter reach out to

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2 Windstream?

3 A. Charter did reach out to Windstream
4 to have their list.

5 MR. KINGSTON: 49?

6 THE COURT REPORTER: Uh-huh.

7 MR. KINGSTON: Ms. Marney is
8 marking --I do that to you every time.
9 I'll stop. I'm sorry.

10 (Plaintiffs' Exhibit Number 49 was
11 marked for identification, as of this
12 date.)

13 MR. KINGSTON: Can I borrow your copy
14 for a moment? I'll return it in just a
15 second.

16 (Off the record discussion.)

17 BY MR. KINGSTON:

18 Q. Mr. Gunzel, directing your attention
19 to Exhibit 49. I read that to be an
20 electronic-mail message from somebody at Charter
21 to somebody at Windstream seeking information
22 about last-mile accounts.

23 Have I correctly identified
24 Exhibit 49?

25 A. Yes.

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2 Q. And I read -- is that -- who is Chris
3 Czekaj?

4 A. Chris Czekaj is one of the sales
5 leaders within our strategic channel.

6 Q. And Mr. Czekaj's last name is spelled
7 C-Z-E-K-A-J; is that correct?

8 A. That is correct.

9 Q. And I read Mr. Czekaj's April 17,
10 2019, correspondence in the second paragraph as
11 follows: "Following up on our conversation on
12 April 5, 2019, Spectrum business, again, requests
13 that Windstream provides a full list of all end
14 users with Spectrum coax-based services. We will
15 compare your site list against our records. If
16 any sites previously not identified are found in
17 your site list, we will apply protections against
18 service interruptions due to nonpay to these
19 sites."

20 Have I read that correctly?

21 A. Yes.

22 Q. And so is generally the idea
23 Windstream -- give us your list so we can compare
24 it to our list and make sure everybody is
25 protected?

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2 A. Yes.

3 (Plaintiffs' Exhibit Number 50 was
4 marked for identification, as of this
5 date.)

6 BY MR. KINGSTON:

7 Q. Mr. Gunzel, Ms. Marney has handed you
8 Exhibit 50, which is a multi-page document. It's
9 a -- includes an electronic mail message from
10 Terrence Ross, counsel for Windstream, to John
11 Kingston, Brian Hockett, and copying a number of
12 other lawyers.

13 Have I correctly described
14 Exhibit 50?

15 A. Yes.

16 Q. And I read the first sentence of --
17 I'm going to direct your attention, sir, to
18 Mr. Ross's April 18 e-mail.

19 A. Okay.

20 Q. I read the first sentence of
21 Mr. Ross's e-mail as follows: "The attached
22 letter was sent yesterday by an employee of your
23 client, Charter Communications, Chris Czekaj, to
24 an employee of our client, Windstream Holdings,
25 Jeanne Dale."

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2 Have I read that correctly?

3 A. Yes.

4 Q. And is Ms. Dale's name spelled

5 J-E-A-N-N-E, D-A-L-E?

6 A. Yes.

7 Q. And if you look to the very last page
8 of Exhibit 50, do you see the letter in question?

9 A. I do.

10 Q. All right. And then directing your
11 attention back to the first page, I read Mr. Ross
12 to continue: "As you will see, the letter does
13 not relate to routine, day-to-day operational
14 issues, rather it directly relates to an issue in
15 the adversary proceeding between our respective
16 clients. Indeed, it is the subject of
17 interrogatory number 1 propounded by Charter to
18 Windstream in this litigation."

19 Have I read that correctly?

20 A. You have.

21 Q. Was it your understanding that
22 Charter propounded an interrogatory to Windstream
23 seeking the identities of all the last-mile
24 customers so those customers could be protected?

25 A. I don't recall that -- neither

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2 interrogatory or propounded, no.

3 Q. So that was a conversation you
4 weren't involved in at Charter -- or, excuse
5 me -- yeah, at Charter?

6 A. I was not.

7 Q. All right. I read Mr. Ross's next
8 line as follows: "It is inappropriate for your
9 client to directly contact our client on issues
10 that are the subject of this litigation."

11 Have I read that correctly?

12 A. Yes.

13 Q. And so I read that to be Windstream's
14 lawyer telling Charter don't have your clients
15 talk to our client about the last-mile customer
16 list.

17 Do you read it the same way, sir?

18 A. I do.

19 Q. Mr. Ross continues: "Indeed, I
20 specifically told you yesterday during our call
21 that I understood your request relating to last
22 mile customers and I would address it."

23 Have I read that correctly?

24 A. You have.

25 MR. JUSTUS: John, I just object that

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2 the document speaks for itself.

3 MR. KINGSTON: Very good.

4 MR. JUSTUS: -- he hasn't seen it, we
5 don't need to read it into the record.

6 BY MR. KINGSTON:

7 Q. Let me ask you this question. Does
8 having all the correspondence and communications
9 related to identifying the last-mile customers
10 funneled through lawyers make it easier or harder
11 to quickly identify and protect those customers?

12 A. Much harder.

13 (Plaintiffs' Exhibit Number 51 was
14 marked for identification, as of this
15 date.)

16 BY MR. KINGSTON:

17 Q. Mr. Gunzel, Ms. Marney has handed you
18 a document that's been labeled Exhibit --

19 THE COURT REPORTER: 51.

20 BY MR. KINGSTON:

21 Q. -- 51. Exhibit 51 appears to be
22 correspondence from Mr. Ross to Mr. Kingston and
23 Mr. Hockett, again, copying some other attorneys.

24 Do you see that, sir?

25 A. I do.

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2 Q. And I will just direct your attention
3 to the first paragraph where Mr. Ross states as
4 follows:

5 "On or about February 26, 2019, Adam
6 Zonville (ph.) of Windstream provided the
7 attached Excel spreadsheet to Carrie Taylor (ph.)
8 at Charter. We believe that this spreadsheet
9 contains the names of all last-mile customers at
10 Windstream serviced by Charter and known to
11 Windstream as of that date.

12 "As you know, Windstream has not been
13 allowed to add any new last-mile customers after
14 February 28, 2019. Accordingly, this list should
15 relatively reliable."

16 Have I read that correctly, sir?

17 A. You have.

18 Q. Do you know the list that's being
19 referred to there?

20 A. I do.

21 Q. How many customers were identified on
22 that list?

23 A. Approximately 4500.

24 Q. And that's approximately 10,000 fewer
25 than the accounts that Charter was able to

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2 identify?

3 A. Correct.

4 Q. And do you agree with the assertion
5 that the list is relatively reliable?

6 A. I don't.

7 Q. And to your knowledge, has Windstream
8 ever provided a more complete list than that
9 which was provided on February 28 of 2019 -- or,
10 excuse me, February 26 of 2019, as referenced in
11 Mr. Ross's e-mail?

12 A. Not to my knowledge. There was not a
13 second list.

14 Q. By declining to provide Charter with
15 a list of customers -- of last-mile customers,
16 did Windstream make it easier or harder for
17 Charter to identify and protect those customers
18 from disconnection?

19 MR. JUSTUS: Object to form.

20 THE WITNESS: Harder.

21 BY MR. KINGSTON:

22 Q. The GNC disconnect in Texas was not
23 on the list provided by -- of 4500 accounts
24 provided by Windstream; isn't that true, sir?

25 A. That is true.

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2 Q. The Physicians Healthcare disconnect
3 referenced in Ohio was an account that also was
4 not on the list of accounts provided by
5 Windstream?

6 A. That is correct.

7 Q. The CityMD disconnect that has been
8 identified by Windstream, that one was also not
9 on the list of 4500 accounts provided by
10 Windstream; is that true?

11 A. That is true.

12 Q. Okay. With respect to the GNC
13 account in Texas, was that account disconnected
14 because one of the 25,000 employees -- customer
15 care employees accidentally applied a one-time
16 truck-roll charge --

17 (Clarification requested by the Court
18 Reporter.)

19 BY MR. KINGSTON:

20 Q. -- truck-roll charge to a service
21 account?

22 A. Yes.

23 Q. And so what's a truck-roll charge?

24 A. It's a fee for us to send a service
25 technician to your location for repair.

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2 Q. And was that in April or May? I
3 can't recall.

4 A. I believe...
5 May.

6 Q. And so in May of 2019, a single GNC
7 location was accidentally disconnected because one
8 of 25,000 employees accidentally applied a charge
9 to an account to which a charge should never be
10 applied?

11 A. Correct.

12 Q. Okay. And at the time that that GNC
13 account was disconnected in May of 2019,
14 Windstream was 60 days past due on \$3.3 million?

15 A. That is correct.

16 Q. Did you ever give any -- anybody any
17 instructions to disconnect Windstream or any part
18 of Windstream because of that \$3.3 million in
19 post-petition debt that was 60 days past due?

20 A. I did not.

21 Q. And the \$120 truck-roll charge that
22 was accidentally applied to the GNC account, was
23 that a post-petition truck-roll charge?

24 A. That was a post-petition truck-roll
25 account.

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2 Q. So just to summarize for the GNC
3 account in Texas, it was never identified by
4 Windstream on its list of accounts, true?

5 A. True.

6 Q. It was a post-petition \$120
7 truck-roll charge?

8 A. True.

9 Q. The truck-roll charge of \$120 was
10 accidentally applied to a Windstream service
11 account by one of Charter's 25,000 customer care
12 employees?

13 A. True.

14 Q. And at that time, there had been no
15 instruction from you to take any steps to
16 disconnect Windstream customers -- or Windstream
17 last-mile customers despite the fact that
18 Windstream was, at that time, 60 days past due on
19 \$3.3 million of post-petition debt?

20 A. Correct.

21 Q. Okay. The Signature Healthcare
22 account in Ohio, was that also the product of a
23 one-time charge being accidentally applied to a
24 child or service account?

25 A. I don't know.

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2 Q. At the time that the Signature
3 Healthcare account was disconnected, was that
4 disconnect the product of any order that you
5 gave?

6 A. It was not.

7 Q. Was it the product of an accidental
8 error by one of the 25,000 Charter employees?

9 A. Most likely.

10 Q. At that time -- when was the
11 Signature Healthcare one? That was May of 2019?
12 I have it.

13 A. You have it?

14 Q. If you direct your attention to
15 Exhibit 45, you see reference to a May 16, 2019,
16 disconnect?

17 A. Yeah, I got it.

18 Q. So let me ask you, Mr. Gunzel, if you
19 weren't going to disconnect Windstream for being
20 60 days past due on \$3.3 million, would you
21 disconnect Windstream for a couple hundred
22 dollars that were a one-time charge to Signature
23 Healthcare?

24 MR. JUSTUS: Object to form.

25 THE WITNESS: I would not.

1 F. Gunzel - 9/19/2019

2 BY MR. KINGSTON:

3 Q. Was the Signature Healthcare
4 disconnection an accident or on purpose?

5 A. It was an accident.

6 Q. Was the Signature Healthcare
7 disconnect an attempt to collect a debt?

8 A. It was not.

9 Q. And, I guess, likewise, there was a
10 CityMD disconnect in June.

11 Was the CityMD disconnect in June an
12 accident or on purpose?

13 A. It was an accident.

14 Q. In June of 2019, how much money was
15 Windstream owing in post-petition debt that was
16 60 days past due?

17 A. Nothing in June; however, in July
18 there was 2.4 million.

19 Q. Okay. Was the June disconnect
20 authorized or ordered by you?

21 A. Was not.

22 Q. Was the June disconnect an effort to
23 collect a debt?

24 A. It was not.

25 Q. It was an accident among one of

1 F. Gunzel - 9/19/2019

2 25,000 different employees?

3 A. Yes.

4 Q. Giving your -- given that Charter
5 provides services to Windstream's last-mile
6 customers, does Charter know when those customers
7 cancel their service with Windstream?

8 A. Only after Windstream communicates
9 with us.

10 Q. All right. So if a customer -- if a
11 last-mile customer leaves Windstream, Windstream
12 will notify you that that account needs to be
13 turned off?

14 A. Correct.

15 Q. Has Windstream notified you that any
16 last-mile customer accounts need to be turned
17 off?

18 A. Not that I'm aware of.

19 Q. So as far as Charter's aware, the
20 number of customers that Windstream has lost
21 through the last-mile -- so as far as Charter's
22 aware --

23 (Clarification requested by the Court
24 Reporter.)

25 MR. KINGSTON: Why don't I start that

1 F. Gunzel - 9/19/2019

2 over.

3 BY MR. KINGSTON:

4 Q. Mr. Gunzel, do you mind if I do that?

5 A. I do not.

6 Q. So as far as Charter is aware, the
7 number of last-mile customers that Windstream has
8 lost related to disconnects is zero?

9 A. Related to non-pay disconnects. They
10 could have lost customers related to voluntary
11 disconnects.

12 Q. So as far as Charter is aware, the
13 number of customers that Windstream has lost
14 because of non -- non-paid disconnects under the
15 last-mile contract is zero?

16 A. Correct.

17 Q. All right. And Charter services
18 14,000-plus accounts --

19 A. Yes.

20 Q. -- under the last-mile contract?

21 A. Yes.

22 Q. If the last-mile contract is
23 terminated, will service to those 14,000-plus
24 customers be discontinued?

25 A. It would be.

1 F. Gunzel - 9/19/2019

2 MR. KINGSTON: I pass the witness.

3 REDIRECT EXAMINATION

4 - - -

5 BY MR. JUSTUS:

6 Q. Could you please get Exhibit 50 in
7 front of you, please. Thank you.

8 A. Okay.

9 Q. You have Exhibit 50 in front of you?

10 A. I do.

11 Q. So this April 18th e-mail from my
12 partner, Terry Ross, I believe you testified that
13 this made it harder for your team to do its job
14 of identifying the last-mile customers; is that
15 right?

16 A. I did.

17 Q. And you also testified earlier that
18 by mid-April, you were comfortable that you had
19 already identified almost all of the last-mile
20 customers, right?

21 A. I did.

22 MR. JUSTUS: Pass the witness.

23 RECROSS-EXAMINATION

24 - - -
25

1 F. Gunzel - 9/19/2019

2 BY MR. KINGSTON:

3 Q. Going back to these March of 2019 --
4 March 15, 2019, disconnects, do you recall our
5 discussion on that sir?

6 A. I do.

7 Q. Were those small business customers?

8 A. They were.

9 Q. And so those weren't residential
10 customers?

11 A. No.

12 Q. So direct mailing that went to
13 residential customers would not have gone to any
14 of the customers that were disconnected in --
15 around March 15 of 2019?

16 A. I can't answer that.

17 Q. Okay.

18 MR. KINGSTON: I pass the witness.

19 MR. JUSTUS: Okay. I do have one
20 more question.

21 FURTHER DIRECT EXAMINATION BY MR. JUSTUS

22 - - -

23 BY MR. JUSTUS:

24 Q. All of the disconnects that occurred
25 that we talked about today, that's all small

1 F. Gunzel - 9/19/2019

2 business customers?

3 A. Yes.

4 Q. So no residential customers had

5 disconnect issues?

6 A. No.

7 MR. JUSTUS: I pass the witness.

8 MR. KINGSTON: We'll read and sign.

9 MR. JUSTUS: So subject to the one
10 issue holding it open as to the contract
11 buyouts --

12 MR. KINGSTON: Yes, sir.

13 MR. JUSTUS: -- then we're done.

14 MR. KINGSTON: I think you preserved
15 that with the last one.

16 And we can go off.

17 THE VIDEOGRAPHER: Okay. We're off
18 the record at 6:33 p.m.

19 (At 6:33 p.m., the record was
20 closed.)

21 (The witness reserved the right to
22 read and sign the deposition transcript.)

23 * * * * *

24

25

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 CHAPTER 11 CASE NO. 19-22312 (RDD)

4 - - - - - /
5 In re:

6 WINDSTREAM HOLDINGS, INC., et al.,
7 Debtors,

8 WINDSTREAM HOLDINGS, INC., et al.,
9 Plaintiffs,

10 vs.

11 CHARTER COMMUNICATIONS, INC., and
12 CHARTER COMMUNICATIONS OPERATING, LLC,
13 Defendants.

14 - - - - - /
15
16 The videotaped 30(b)(6) deposition of
17 MATTHEW KARDOS, in his capacity as designated
18 corporate representative for defendants, was taken
19 at the law offices of Wiggin and Dana, LLP,
20 Two Stamford Plaza, Stamford, Connecticut, before
21 Mercedes Marney-Sheldon, CT-LSR #530, a registered
22 professional reporter in the state of Connecticut
23 and a notary public for the State of Connecticut, on
24 Thursday, September 19, 2019, at 4:30 p.m.
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----- I N D E X -----

TESTIMONY OF: MATTHEW KARDOS

EXAMINATIONS	PAGE
Direct examination by Mr. Justus	8
Cross-examination by Mr. Kingston	21
Redirect examination by Mr. Justus	24

----- INFORMATION REQUEST -----

REQUESTS:	PAGE
Request by Mr. Kingston to mark Exhibit 43 as "Attorneys' Eyes Only"	23

INSTRUCTION TO WITNESS: (None)

INFORMATION TO BE FURNISHED: (None)

STIPULATIONS: (None)

MOTIONS: (None)

MARKED FOR RULING: (None)

----- E X H I B I T S -----

MARKED FOR IDENTIFICATION	PAGE
Defendants' Exhibit 1	14

PREVIOUSLY MARKED EXHIBIT:
Second amended notice

Defendants' Exhibit 2	18
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Public copy of the complaint filed by
Windstream in the adversary proceeding
involving Charter's advertising

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----- INDEX CONTINUED -----

----- E X H I B I T S -----

MARKED FOR IDENTIFICATION	PAGE
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Plaintiffs' Exhibit 43	23
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Some information from responses
to direct-mail mailings
("Attorneys' Eyes Only")

(Exhibits were retained by the court reporter)

1 oOo

2
3 S T I P U L A T I O N S
4

5 It is stipulated by counsel for the parties
6 that all objections are reserved until the time of
7 trial, except those objections as are directed to
8 the form of the question.

9
10 It is stipulated and agreed between counsel
11 for the parties that the proof of the authority of
12 the notary before whom this deposition is taken is
13 waived.

14 It is further stipulated that any defects
15 in the notice are waived.

16
17 It is further stipulated that the reading and
18 signing of the deposition transcript by the witness
19 may be signed before any notary public.

20 * * * * *

1 M. Kardos - 09/19/19

2 THE VIDEOGRAPHER: This is Tape 1.

3 We are on the record at 4:30 p.m. on
4 Thursday, September 19, 2019.

5 This is the 30(b)(6) testimony of
6 Matthew Kardos, in the matter of
7 Windstream Holding v. Charter.

8 This deposition is being held at the
9 offices of Wiggin and Dana, LLP, located
10 at Two Stamford Plaza, Stamford,
11 Connecticut 06901.

12 The court reporter is Mercedes Marney
13 with U.S. Legal.

14 I am the legal videographer,
15 Adam Venturini, also with U.S. Legal.

16 Will counsel please introduce
17 themselves and state whom they represent.

18 MR. JUSTUS: Michael Justus of
19 Katten, on behalf of Windstream and its
20 affiliated debtors and debtors in
21 possession.

22 MS. GREER: Jocelyn Greer, Morrison &
23 Foerster, on behalf of the official
24 committee of unsecured creditors.

25 MR. KINGSTON: John Kingston on

1 M. Kardos - 09/19/19
2 behalf of defendants. With me is
3 Nino Przulj and Serena Parker.

4 THE VIDEOGRAPHER: Okay. Will the
5 court reporter please swear in the
6 witness.

7
8 M A T T H E W K A R D O S,
9 called as a witness, having been first
10 duly sworn in by the court reporter,
11 a notary public of the State of Connecticut,
12 is examined and testifies as follows:

13
14 - - -
15 DIRECT EXAMINATION
16 - - -
17 BY MR. JUSTUS:

18 Q. All right.
19 Can you please state your full name
20 for the record?
21 A. Matthew Kardos.
22 Q. Can you spell Kardos, please?
23 A. K-A-R-D-O-S.
24 Q. Are you currently an employee of
25 Charter?

1 M. Kardos - 09/19/19

2 A. I am.

3 Q. And what is your job title?

4 A. Vice president of competitive
5 intelligence and performance analytics.

6 Q. And how long have you been in that
7 role?

8 A. Just going on 3 1/2 years with
9 Charter.

10 Q. With Charter overall?

11 A. Correct.

12 Q. And how about in that specific role?

13 A. So prior to Charter I was doing the
14 same role for, let's just say, another
15 four years.

16 Q. So sorry, I think I asked that wrong.

17 Your current job title at Charter,
18 how long have you held that exact title at
19 Charter?

20 A. The same period.

21 Q. 3 1/2?

22 A. 3 1/2 years.

23 Q. Okay. Thank you.

24 And are you based in Charter's
25 Stamford office?

1 M. Kardos - 09/19/19

2 A. I am.

3 Q. Okay.

4 All right, so you may have heard your
5 counsel and I talking off the record about a
6 prior witness earlier today, Ms. Atkinson.

7 I was asking her about the
8 eight-hundred-and-some-thousand-people list that
9 Charter's direct-mail piece was mailed out to.

10 A. Sure.

11 Q. And she said that there's some sort
12 of models or modeling that they -- that Charter
13 uses to locate where they believe Windstream
14 customers may be located.

15 And I was told that you may know
16 something about that.

17 A. Sure.

18 Q. So do you know what I'm talking
19 about?

20 A. I do, I do.

21 So we use publicly-available data,
22 such as FCC 477 disclosures from companies,
23 saying where they operate, to just get an
24 understanding of where competitors are.

25 So we would not know where the

1 M. Kardos - 09/19/19
2 customer -- whether or not somebody's a customer,
3 but we would know if a company serves a household
4 that is in Charter's footprint.

5 Q. And, "household," you mean a specific
6 household?

7 A. Specific address, correct.

8 Q. So you can tell specific addresses
9 that are Windstream customers?

10 A. Not customers.

11 Based on the data provided by
12 companies, such as Windstream, we could tell if
13 they have said, through their 477 filings, that
14 they serve the addresses in that census block,
15 effectively.

16 They do business there. It doesn't
17 mean they have the customer. They have the
18 ability to serve.

19 Q. They do business in the area where
20 that household is located?

21 A. Correct.

22 Q. But they don't necessarily do
23 business with that household?

24 A. That's correct.

25 Q. Okay. Thank you.

1 M. Kardos - 09/19/19

2 I was just confused by that.

3 Thank you.

4 All right, so when coming up with the
5 list of the 800,000 people, is that something you
6 personally helped with?

7 A. No.

8 Q. Okay. Is that someone on your team?

9 A. It's -- it's -- we have a database
10 that's available to multiple people in the
11 organization.

12 Q. Is that including marketing people?

13 A. Correct.

14 Q. So the marketing folks would be able
15 to go on the database and figure out what
16 geographic areas Windstream does business in?

17 A. Correct.

18 Q. Okay.

19 Is your role limited specifically to
20 competitive intelligence for Windstream?

21 A. No. It's for all of Charter's
22 residential, and small and media business,
23 segment competitors.

24 Q. Is there one Charter employee who is
25 specifically assigned to competitive intelligence

1 M. Kardos - 09/19/19

2 on Windstream?

3 A. Not to my knowledge.

4 Q. Is that something you'd probably
5 know?

6 A. I would know --

7 Q. Okay.

8 A. -- yes.

9 Q. So I guess that's a "no," then?

10 A. That's a "no."

11 Could be hiding people away.

12 MR. KINGSTON: We are not hiding
13 people away.

14 BY MR. JUSTUS:

15 Q. And so just to button that up,
16 there's no way, that you're aware of, for Charter
17 to identify specific Windstream customers?

18 A. Correct.

19 Q. Okay.

20 Are you aware of geographic locations
21 where Windstream is the only provider, so it
22 necessarily must be Windstream that services that
23 area?

24 A. Yes.

25 Q. Are you able to name any such areas?

1 M. Kardos - 09/19/19

2 A. No.

3 It would be pockets of multiple
4 geographies. It could be areas as small as a
5 census block; i.e.; 30 homes, or, as big as part
6 of a city.

7 So I couldn't tell you offhand.

8 Q. But you can find that out in the
9 database you mentioned earlier?

10 A. Correct.

11 MR. JUSTUS: All right, if we could
12 show the witness Exhibit 1, please?

13 (Defendants' Exhibit Number 1 was
14 previously marked this date.)

15 BY MR. JUSTUS:

16 Q. And I'll represent to you, this is
17 the deposition notice for today. There's
18 26 different topics, and Charter is putting on
19 four different witnesses, of which you are one,
20 to talk about various topics.

21 Your counsel's told me you're here
22 today to talk about Topic Number 7 on page 4; so
23 it has to do with Windstream customers requesting
24 to switch services to Charter.

25 Is that something you're prepared to

1 M. Kardos - 09/19/19

2 talk about today?

3 A. Yes.

4 Q. So on Topic Number 7, it sets the
5 relevant time frame, from March 15, 2019, or
6 earlier date, that an advisement was
7 disseminated.

8 I now know what that is, March 16th.

9 So from March 16th to present, how
10 many customers have switched from Windstream to
11 Charter?

12 A. So we do not have the ability to
13 determine specific customers or accounts of
14 customers who have come to Charter from other
15 competitors.

16 Q. No ability whatsoever?

17 A. Beyond phone number porting data,
18 which would tell us of customers who ported their
19 number from Windstream to Charter.

20 Q. So how many customers have ported
21 their data from Windstream to Charter during the
22 relevant time frame?

23 A. I have not seen that data from
24 Charter's database.

25 MR. JUSTUS: John, are any of our

1 M. Kardos - 09/19/19

2 witnesses prepared to answer that?

3 MR. KINGSTON: There -- no. It would
4 be Mr. Kardos.

5 We can get you a "ported" customer
6 list comparable to one you guys gave us.

7 I have to think that it would be --

8 MR. JUSTUS: Maybe?

9 MR. KINGSTON: -- if it's not, then
10 it's not.

11 But I --

12 MR. JUSTUS: So you will produce us a
13 list, you're saying?

14 MR. KINGSTON: We will produce a list
15 of ported customers.

16 We're not suggesting -- well, I guess
17 we're not suggesting that that list
18 reflects anything beyond a list of
19 customers who ported a phone number from
20 Windstream to Charter.

21 But we'll provide that; we'll provide
22 the ported list.

23 MR. JUSTUS: Okay. Thank you.

24 BY MR. JUSTUS:

25 Q. And, Mr. Kardos, the ported number

1 M. Kardos - 09/19/19

2 list, that would only include customers who
3 ported their phone number from their prior
4 carrier; in this case, Windstream to Charter.
5 Right?

6 A. Correct, whether or not they remained
7 in the Windstream footprint.

8 Q. I'm sorry, what do you mean by that?

9 A. So it's possible some of those ports
10 could have moved from where Windstream delivers
11 service to areas in Charter's footprint that
12 Windstream does not deliver service.

13 So we wouldn't consider all of those
14 for switching, is my point.

15 Q. Okay.

16 Yeah, I was just -- I'm asking about
17 like a technical matter.

18 So if a customer just has Internet,
19 and they want to switch their Internet service
20 from Windstream to Spectrum, they would not show
21 up on the ported list?

22 A. They would not.

23 Q. And same for TV?

24 A. Correct.

25 Q. And there may be customers who have

1 M. Kardos - 09/19/19

2 phone with Windstream, and they switch to
3 Charter, and they just choose not to port their
4 number, and they wouldn't show up on that list?

5 A. Correct.

6 Q. Okay.

7 So other than the phone-porting data,
8 what other ways would Charter have to determine
9 who switched from Windstream to Charter?

10 A. There are none.

11 Q. And the phone-porting data lists the
12 prior carrier; is that right?

13 A. Correct.

14 MR. JUSTUS: So -- can we show the
15 witness Exhibit 2, please, John?

16 MR. KINGSTON: Be happy to.

17 (Defendants' Exhibit Number 2 was
18 marked for identification as of this
19 date.)

20 BY MR. JUSTUS:

21 Q. And I'll represent to you that
22 Exhibit 2 is the complaint that Windstream filed
23 against Charter in this case. It's a big, thick
24 document, but I'm just going to direct you to one
25 page, if that's okay with you?

1 M. Kardos - 09/19/19

2 A. That's fine.

3 Q. So if you will flip to page 13 of
4 Exhibit 2?

5 A. Is that, this?

6 Q. That's correct.

7 I'll represent to you, because this
8 isn't your topic, but other witnesses have
9 testified, page 13 and 14 is the front and back
10 of a direct-mail piece that Charter mailed out in
11 March of this year. This is one of Charter's
12 Spectrum advertising pieces that was mailed out
13 to the over 800,000 people that we were talking
14 about.

15 And so if you see, on page 13, above
16 the horizontal line that goes across the ad, it
17 says, "Windstream has a two-year contract. With
18 Spectrum, there are no contracts, plus, we will
19 buy you out of your current contract, up to
20 \$500."

21 Do you see that?

22 A. I do.

23 Q. So if a Windstream customer were to
24 take Charter up on their offer to buy them out of
25 their current contract, would the -- would that

1 M. Kardos - 09/19/19
2 buyout be tracked in some sort of software or
3 database, the fact that that buyout occurred?

4 A. I don't know.

5 MR. JUSTUS: Do I have the wrong
6 witness for that?

7 MR. KINGSTON: No. We -- uh --
8 you -- to have a question that we haven't
9 prepared anybody to answer, we'll get you
10 an answer.

11 I don't know the answer to that
12 either.

13 MR. JUSTUS: Okay.

14 BY MR. JUSTUS:

15 Q. Going back to the porting data --

16 A. Uh-huh?

17 Q. -- would that specify the reason why
18 the customer switched to Charter or Spectrum?

19 A. No, it would not.

20 MR. JUSTUS: I pass the witness.

21 MR. KINGSTON: Why don't we --
22 let's -- give me five -- I don't have any
23 sort of an extensive redirect.

24 Give me five minutes to see if
25 I can't track down that contract thing.

1 M. Kardos - 09/19/19

2 MR. JUSTUS: That would be great.

3 MR. KINGSTON: Can we go off?

4 THE VIDEOGRAPHER: We are off the
5 record at 4:45 p.m.

6 (Off the record.)

7 (Back on the record.)

8 THE VIDEOGRAPHER: We are back on the
9 record at 4:56 p.m.

10 MR. KINGSTON: I apologize, Counsel.
11 You had passed the witness?

12 MR. JUSTUS: I have passed the
13 witness, correct.

14 MR. KINGSTON: Okay.

15 - - -

16 CROSS-EXAMINATION

17 - - -

18 BY MR. KINGSTON:

19 Q. Mr. Kardos, directing your attention
20 to page 13 of Exhibit 2 --

21 MR. PRZULJ: I'm sorry, John.

22 Before you go on, did you want to
23 make your record about the stipulation we
24 just entered into?

25 MR. KINGSTON: I think he was

1 M. Kardos - 09/19/19
2 probably going to do that after I got done
3 asking my questions, if he would follow
4 up, and then say he was --
5 (indiscernible).

6 MR. PRZULJ: I apologize. I didn't
7 mean to interrupt.

8 MR. JUSTUS: Either is fine.

9 MR. KINGSTON: Is there like a stage
10 thing you put for withering look directed
11 at Nino?

12 MR. JUSTUS: Thank you, though.

13 BY MR. KINGSTON:

14 Q. Mr. Kardos, do you mind if we start
15 over?

16 A. Please do.

17 Q. Okay.

18 Looking at page 13 of Exhibit 2, do
19 you see a reproduction of a Charter direct
20 mailer?

21 A. Yes.

22 Q. And do you see a "1-855" number in
23 the bottom left-hand corner?

24 A. I do.

25 Q. And can Charter, in some instances,

1 M. Kardos - 09/19/19

2 track the responses to the phone numbers listed
3 on direct mailings?

4 A. Yes.

5 Q. And did Charter do that in this
6 instance?

7 A. Yes.

8 MR. KINGSTON: I'm marking, as
9 Exhibit 43.

10 (Off-the-record discussion.)

11 (Plaintiffs' Exhibit Number 43 was
12 marked for identification, as of this
13 date.)

14 (Back on the record.)

15 MR. JUSTUS: Is this 43?

16 MR. KINGSTON: Uh-huh.

17 And, Counsel, we have -- a version of
18 Exhibit 43 has been previously produced.

19 I think when it was previously
20 produced, we neglected to identify it as
21 "Attorneys' Eyes Only."

22 REQ So we will be reproducing it, and
23 identifying it as "Attorneys' Eyes Only,"
24 and we will be -- we would like Exhibit 43
25 to be marked as "Attorneys' Eyes Only" as

1 M. Kardos - 09/19/19

2 well.

3 MR. JUSTUS: Okay.

4 BY MR. KINGSTON:

5 Q. And, Mr. Kardos, does Exhibit 43
6 reflect some of the information that Charter can
7 pull from mailings -- or, from responses to
8 direct-mail mailings?

9 A. It does.

10 Q. And it looks like the March 2019
11 incremental mailing is listed at the top?

12 A. It is.

13 MR. KINGSTON: I pass the witness.

14 MR. JUSTUS: Okay.

15 - - -

16 REDIRECT EXAMINATION

17 - - -

18 BY MR. JUSTUS:

19 Q. Sticking with Exhibit 43, just so
20 I understand what's on here:

21 So, mail quantity, or, "Mail Qty,"
22 that would be the number of the direct-mail
23 pieces that were mailed out?

24 A. Correct.

25 Q. Okay.

1 M. Kardos - 09/19/19

2 And then "Calls" means, that's the
3 total number of calls received to the
4 "1-855" number in the mailer?

5 A. Correct.

6 Q. What is "GRR Percent"?

7 A. Gross response rate.

8 Q. So that's calls divided by mail
9 quantity?

10 A. Correct.

11 Q. And "Offer Calls," what does that
12 mean?

13 MR. KINGSTON: I will object as to
14 foundation.

15 This isn't necessarily Mr. Kardos'
16 document, but he may know.

17 BY MR. JUSTUS:

18 Q. Do you know what "Offer Calls" means?

19 A. I do not.

20 Q. How about "Offer Percentage"?

21 A. I do not.

22 Q. Okay.

23 How about "Sales"?

24 A. Our work orders associated with the
25 calls that responded to this piece of direct

1 M. Kardos - 09/19/19

2 mail.

3 Q. So that's people who actually
4 purchased services from Spectrum --

5 A. Correct.

6 Q. -- after calling --

7 A. Yes.

8 Q. -- or while calling, either/or?

9 And "Sales Percentage," is that sales
10 divided by calls?

11 A. I don't know, but we could probably
12 back into it with a calculator.

13 Q. Yeah.

14 (Clarification requested by the
15 court reporter.)

16 THE WITNESS: I don't know.

17 (The record was read back by the
18 court reporter.)

19 THE WITNESS: Yeah.

20 But we could probably calculate it,
21 back into it with a calculator.

22 BY MR. JUSTUS:

23 Q. Do you have any idea what "PSUs"
24 means?

25 A. Yeah, those are -- that's a -- an

1 M. Kardos - 09/19/19

2 acronym for our products, product service units;

3 so video, Internet, and voice.

4 Q. That's units of product sold --

5 A. Correct.

6 Q. -- from these calls?

7 A. Units of product sold from the calls.

8 Q. I will take a stab at "PSU per sale."

9 That's, for each one of the

10 663 sales, the average person bought 2.27 units

11 of product?

12 A. Correct.

13 Q. Okay.

14 Do you know what "Mobile Sales"

15 means?

16 A. Sales of Spectrum Mobile.

17 Q. And "Video Sales" would be TV?

18 A. Correct.

19 Q. I can figure out the last two.

20 M and -- mobile and voice are

21 separate categories within Charter and Spectrum?

22 A. Correct.

23 "Voice" is landline.

24 Q. Understood.

25 And then, "Sales Per Mail," I can use

1 M. Kardos - 09/19/19

2 my calculator later, but I'm guessing that's
3 sales divided by mail quantity?

4 A. Per thousand pieces.

5 Q. Per thousand pieces. Okay.

6 So I probably wouldn't have figured
7 that out.

8 And why is that metric used, "per
9 thousand pieces"?

10 A. It's a -- just a comparative
11 diagnostic, to compare to other mail groups, such
12 as the others on the page. It's an efficiency
13 metric.

14 Q. So just to have a standardized
15 number --

16 A. Exactly.

17 Q. -- for different mailing programs?
18 Understood.

19 And what does "NDM" mean in the
20 left -- in the first column?

21 A. I don't know.

22 Q. Okay.

23 MR. JUSTUS: Okay. I pass the
24 witness.

25 MR. KINGSTON: We'll read and sign --

1 M. Kardos - 09/19/19

2 oh, no.

3 Before you pass the witness, let's do
4 our stipulation as to holding the
5 deposition open.

6 MR. JUSTUS: Oh, that's a great idea.

7 I should have listened to Nino when
8 I had the chance.

9 So, we're holding the 30(b)(6) open
10 as to the topic of the questions I asked
11 Mr. Kardos about contract buyouts, and
12 tracking contract buyouts, and the number
13 of people who switched under the contract
14 buyout offer, et cetera.

15 MR. KINGSTON: Yes.

16 MR. JUSTUS: Thank you.

17 MR. KINGSTON: Now we will read and
18 sign.

19 THE VIDEOGRAPHER: We are off the
20 record at 5:03 p.m.

21 (At 5:03 p.m., the record was
22 closed.)

23 (The witness reserved the right to
24 read and sign the deposition transcript.)

25 * * * * *

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M. Kardos - 09/19/19

1 oOo

2 C E R T I F I C A T E

3
4 STATE OF CONNECTICUT)
5) ss.
6 COUNTY OF FAIRFIELD)

7 I, MERCEDES MARNEY-SHELDON, a court reporter
8 within the state of Connecticut, and a notary public
9 for the State of Connecticut, do hereby certify:

10 That MATTHEW KARDOS, the witness whose
11 deposition is hereinbefore set forth, was duly sworn
12 by me, and that such deposition is a true record of
13 the testimony given by the witness.

14 I further certify that I am not employed by nor
15 related to any of the parties to this action by
16 blood or marriage, and that I am in no way
17 interested in the outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto set my hand
19 this 3rd day of October, 2019.

20
21
22 

23 Mercedes Marney-Sheldon - Shorthand Reporter
24 Notary Public - State of Connecticut
25 Account Number: 167303
Date Appointed: 08/07/2014
Expiration Date: 08/31/2023

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE: CHAPTER 11
WINDSTREAM HOLDINGS, INC., CASE NO. 19-22312 (RDD)
ET AL,
Debtors.
WINDSTREAM HOLDINGS, INC., ET AL,
Plaintiffs,
vs. ADV. PROC. NO. 19-08246 (RDD)
CHARTER COMMUNICATIONS, INC. AND
CHARTER COMMUNICATIONS OPERATING, LLC,
Defendants.

ORAL DEPOSITION OF **LEWIS LANGSTON**

TAKEN BEFORE Garold W. Pritsch, Certified Court
Reporter, LS Certificate No. 329, Bushman Court
Reporting, 620 West Third Street, Suite 302, Little Rock,
Arkansas 72201 on **May 1st, 2019** at Windstream Holdings,
Inc., 4001 North Rodney Parham Road, Building 3, Little
Rock, Arkansas commencing at 9:25 a.m.

GAROLD W. PRITSCH
BUSHMAN COURT REPORTING
(501) 372-5115

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1 APPEARANCES:

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15 *** For the Defendants ***

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20 *** For the Unsecured Creditors ***

21 ALSO PRESENT:

22 Mr. Sims, Videographer
23
24
25

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1 EXAMINATION

2 MR. SIMS: We are on the audio and video
3 record. Today's date is May the 1st, 2019.
4 The time is approximately 9:25 a.m.

5 This is the videotaped deposition of
6 Lewis Langston.

7 This is the case of Windstream Holdings,
8 Incorporated, et al, versus Charter
9 Communications, Incorporated.

10 My name is John Sims. I'm a videographer
11 out of Little Rock, Arkansas.

12 Will counsel please make a record of your
13 appearance?

14 MR. KINGSTON: This is John Kingston on
15 behalf of defendants Charter Communications,
16 Inc. and Charter Communications Operating, LLC.

17 MS. SIMS: Tami Sims, Katten Muchin
18 Rosenman, on behalf of all plaintiffs of
19 Windstream, et al.

20 MR. SMITH: Kent Smith, in-house counsel
21 for Windstream.

22 MS. GREER: Jocelyn Greer, Morrison &
23 Foerster on behalf of proposed intervenors,
24 unsecured creditors pending.

25 (The witness was sworn.)

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1 BY MR. KINGSTON:

2 Q. Mr. Langston, can you state and spell your name for
3 the record, sir?

4 A. Lewis, L-E-W-I-S, last name is Langston,
5 L-A-N-G-S-T-O-N.

6 Q. Mr. Langston, have you ever been deposed before?

7 A. Yes, I have.

8 Q. How many times?

9 A. Approximately twice.

10 Q. When was the last time that you were deposed, sir?

11 A. Nine years ago.

12 Q. What was the context of that deposition?

13 A. It was a class action lawsuit against Verizon
14 Wireless related to slamming of services.

15 Q. At that time were you employed by Verizon?

16 A. No, it was shortly after my departure from Verizon
17 Wireless.

18 Q. And when were you deposed prior to being deposed in
19 relation to that class action lawsuit involving Verizon?

20 A. December of 2009.

21 Q. What was the context of that deposition?

22 A. That was a proposed TRO against me by Verizon
23 Wireless.

24 Q. Is that like a noncompetition thing?

25 A. It was a proposed noncompetition.

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1 Q. Sure. Mr. Langston, can you think of any reason
2 why either that first or second deposition that you've
3 described to me has any bearing on the stuff that we're
4 fussing about in this lawsuit?

5 A. It does not.

6 Q. Sir, since it's been a while since your last
7 deposition, I think it might be a good idea for us to
8 review the ground rules. Is that okay if we do that?

9 A. Sure.

10 Q. We're recording your testimony just as if you were
11 testifying in a court of law in the adversary proceeding
12 that's currently pending in the Bankruptcy Court in the
13 United States District Court for the Southern District of
14 New York. I'm going to ask you a series of questions,
15 and Mr. Pritsch is going to record both my questions and
16 your answers.

17 Do you understand that, sir?

18 A. Yes.

19 Q. And you're under oath, just like you were in a --
20 in a court of law?

21 A. Yes.

22 Q. And you're doing a great job of this, and I will
23 probably screw it up, but because Mr. Pritsch is writing
24 down everything that we say, it would be helpful if we
25 don't talk over each other.

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1 A. I will try my best.

2 Q. And I'll do the same, and I'll bet you at the end
3 of the day that I'm worse at it.

4 One of the most important instructions is from time
5 to time I'm going to ask a question that doesn't make any
6 sense to you and it's hard to understand. If I do that,
7 please don't answer the question. Just tell me you don't
8 understand it, and we'll kind of work it through until we
9 arrive at a question that you understand and can answer.
10 Is that fair?

11 A. That is.

12 Q. All right. So you won't answer any question that I
13 ask unless you understand the question; is that right?

14 A. Correct.

15 Q. The parties have exchanged a fair number of pieces
16 of paper in this lawsuit so far. If from time to time I
17 ask a question and you think it might be helpful for you
18 to review any documents or E-mails or that kind of thing
19 to answer my question, let me know, and we'll see if we
20 can't track these down. Is that fair?

21 A. That is fair.

22 Q. If at any time you think about one of the answers
23 that you've already given, and you think you need to add
24 to that answer or clarify it to make sure that it's not
25 in any way misleading or incomplete, you're welcome to do

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1 that at any time. Do you understand, sir?

2 A. Yes.

3 Q. You can take a break any time you want. All that I
4 ask is if there is a question pending or we're in sort of
5 a series of related questions that you let -- you answer
6 that question or we get through the series before you
7 take a break.

8 A. That's great. No problem.

9 Q. From time to time your lawyer may pose an objection
10 to one of the questions that I ask. Unless she advises
11 you not to answer it and you decide to accept that
12 advice, I would like it if you answer those questions.
13 Do you understand that, sir?

14 A. Correct.

15 Q. All right. Is there any reason why you can't
16 provide complete and honest testimony today?

17 A. No.

18 MR. KINGSTON: I will advise my friends on
19 the other side of the table that sometimes I
20 have four copies of stuff and sometimes I have
21 three, so I may not always be able to get you
22 an extra copy, but I'll at least have one extra
23 copy that I can slide across.

24 (Exhibit 1 was marked.)

25 BY MR. KINGSTON (CONT.):

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1 Q. Mr. Langston, I'm handing you a document that I
2 have marked as Exhibit 1. Exhibit 1 is, excuse me, an
3 Amended Notice of Deposition Pursuant to Federal Rule of
4 Civil Procedure 30(b)(6) of Windstream Holdings, Inc.
5 It's an eight page document.

6 Do you recognize Exhibit 1, sir?

7 A. Yes, I do.

8 Q. And you understand that for certain of the topics
9 identified on Exhibit 1, you've been identified as a
10 corporate representative to speak on behalf of Windstream
11 Holdings?

12 A. Correct.

13 Q. And I believe that you've been designated to
14 testify on topics one, five, 12, 13, 15 with a caveat
15 I'll circle back to, and 21 and 22; is that right, sir?

16 A. I believe that's true, yes.

17 Q. And circling back to 15, I read category 15 as
18 follows: All communications with customers since
19 February of 2019, including, but not limited to any
20 communications regarding Windstream's Chapter 11 cases,
21 Windstream's future and Windstream potentially going out
22 of business or potentially cutting off services.

23 Have I read category 15 correctly?

24 A. Yes, you have.

25 Q. And I think that your lawyers have fairly pointed

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1 out that that's pretty broad and have proposed the
2 following addition -- or excuse me, edit to category 15,
3 and that would be deleting but not in that first line and
4 replacing it with and.

5 A. Okay.

6 Q. I see you made that edit on Exhibit 1; is that
7 right, sir?

8 A. That is correct.

9 Q. And so with that edit, I read subcategory 15 to
10 refer to all communications with customers since
11 February, 2009, including and limited to any
12 communications regarding Windstream's Chapter 11 cases,
13 Windstream's future and Windstream's -- and Windstream
14 potentially going out of business or potentially cutting
15 off services.

16 A. That is correct.

17 Q. And you're prepared to talk about those topics that
18 we've identified; is that right, sir?

19 A. That is correct.

20 Q. And we may address some of these other topics, and
21 to the extent that you can provide information relating
22 to those topics based on your personal knowledge, that's
23 great, but we understand that Windstream is not producing
24 you as a witness on behalf of the company for these
25 topics; is that right?

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1 A. That's what I understand, yes.

2 Q. And I'll count on Miss Sims to tell me if I have
3 that wrong.

4 MS. SIMS: That's correct, but I will say
5 that we would object to him answering any
6 questions in his personal capacity. That's not
7 the purpose of this deposition, but we can
8 cross that road when we come to a --

9 MR. KINGSTON: Sure.

10 MS. SIMS: -- particular question I might
11 raise.

12 MR. KINGSTON: That's fine.

13 BY MR. KINGSTON (CONT.):

14 Q. Let's start out of with topic number one, sir, all
15 statements --

16 Well, maybe I should back up, Mr. Langston.

17 Tell me what you did to get ready for today's
18 deposition.

19 A. I reviewed the -- my prior affidavit which was
20 referenced here in number one. I also reviewed my
21 supplemental affidavit and also reviewed most, if not all
22 of the exhibits that were included in those affidavits,
23 both the original and the supplemental, as well as
24 reviewed additional materials or exhibits that were
25 produced since then.

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1 Q. Did you choose any documents on your own to review
2 to prepare for today's deposition?

3 A. I did choose, but nothing outside of the scope that
4 I just mentioned.

5 Q. So what are the additional documents that you chose
6 on your own?

7 A. They weren't additional documents. They were -- I
8 chose which of those documents I chose to read. Those
9 weren't any additional documents other than what I just
10 mentioned, affidavit, supplemental affidavit, exhibits,
11 the materials exchanged back and forth between the
12 parties. That -- that was the extent. There were no
13 other materials other than that.

14 Q. Okay. And so did you -- did you -- did you review
15 some of the documents that Windstream produced to Charter
16 in a kind of initial document exchange in this case?

17 A. Yes, I did.

18 Q. All right. What did you review?

19 A. Well, you know, nothing that wasn't in the exhibits
20 that were in my affidavit. So the letters back and forth
21 between Carol Keith and the counsel at Charter, some of
22 the call center logs and scripts, some of the advertising
23 campaigns on the behalf of both parties.

24 Let me think. What else?

25 Maybe some of the transcripts of social media posts

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1 by our customers, things like that, so --

2 Q. You refer to a call center script. Tell me what
3 that is.

4 A. Call center script -- sorry, my tongue is tied.

5 The call center script is actually talking points
6 that we give to our representative such that if they
7 receive certain types of calls, we educate them on how to
8 respond to those calls or how to go address potential
9 questions or concerns.

10 Q. And so was a script provided to Windstream call
11 center workers related to the Spectrum advertising that
12 is at issue in this lawsuit?

13 A. Yes, it was.

14 Q. Was a script provided to Windstream call center
15 workers just generally related to Windstream's
16 bankruptcy?

17 A. Yes.

18 Q. When -- when did that happen?

19 A. The talking points, and I'd have to deal with
20 approximations here, but shortly -- really the day of the
21 filing back in February. We provided those to our call
22 center reps, as well as I can't recall if this is
23 accurate, but probably some follow on talking points that
24 were -- that were provided within, you know, a day or two
25 after the initial filing.

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1 Q. So roundabout February 25, 2019, Windstream
2 provided a script to its call center workers with talking
3 points related to Windstream's bankruptcy filing?

4 A. Yes. We provided it to all employees as well
5 though, too. It wasn't necessarily specific to the call
6 center reps. It was provided to all Windstream employees
7 in case there were questions or concerns.

8 Q. Okay. So this was a document that was provided to
9 Windstream employees, including call center employees,
10 that would have talking points that would be useful for
11 those employees to field questions related to
12 Windstream's filing of the bankruptcy?

13 A. Yeah, just in case if a customer did call in that
14 they would be prepared of how to go address that
15 question.

16 Q. Were the call center employees given training
17 related to fielding phone calls inquiring about
18 Windstream's bankruptcy in February of 2019?

19 A. I wouldn't -- I wouldn't call it training. They
20 were given these talking points. They were educated,
21 what we call huddle sessions, where usually the
22 supervisor gets together with their representatives that
23 they supervise. They say, you know, here's some talking
24 points. New talking points that we might have in case
25 you get these calls. That was the extent of it.

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1 Training -- nothing -- nothing that formal.

2 Q. How many call center employees does Windstream
3 have?

4 A. I have no idea what the exact number is.

5 Q. A rough number is fine, sir.

6 A. It would be a few thousand.

7 Q. So several thousand call center employees?

8 A. It would be two, three thousand potentially.

9 Q. And are those two to three thousand call center
10 employees provided guidance as to what they can and can
11 not say about Windstream's competitors?

12 A. Clarify your question a little bit. I'm not
13 exactly sure where you're --

14 Q. Does Windstream tell any of those two to three
15 thousand call center customer employees, hey, don't say
16 thus and such about Charter or don't say thus and such
17 about AT&T, anything like that?

18 A. As a general answer, that's not necessary, but in
19 specific situation if there's a special event, you know,
20 in our case, you know, bankruptcy filing, if that
21 happened with one of our competitors, we would give them
22 specific guidance of what they could and could not do,
23 rules of the road.

24 Q. So was -- were you with Windstream in 2009?

25 A. No, I was not.

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1 Q. You were with Verizon?

2 A. I was with Verizon.

3 Q. Give me some -- leaving aside bankruptcy, give me
4 some examples of the sort of special events that would
5 have prompted Windstream to -- excuse me, that would have
6 prompted Windstream to provide guidance to its call
7 center employees as to things they could or could not say
8 about competitors.

9 MS. SIMS: I'm going to object to this
10 line of questioning. I don't believe it's on
11 one of the topics designated, and on that
12 basis, I would instruct the witness not to
13 answer.

14 If you can point to me the topic that
15 would be helpful.

16 MR. KINGSTON: I -- I think that it's
17 appropriate to instruct a witness not to answer
18 based upon privilege and if I'm harassing the
19 witness and you're going to terminate the
20 deposition.

21 I -- I don't think that -- I don't
22 understand counsel to be invoking a privilege
23 objection. I don't think the record is going
24 to suggest that I'm harassing the witness. So
25 I would ask that the witness answer the

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1 question. If -- if we want to by agreement
2 agree that for both depositions, the one that's
3 going on right now and the one that's going on
4 in Stanford, Connecticut where a Charter
5 corporate representative is being deposed, that
6 questions beyond the scope of the corporate
7 representative notice are ones for which it is
8 appropriate and the parties will consent to an
9 instruction not to answer, we can do that. We
10 can get on the horn with somebody there, but
11 absent that agreement, I think I would like the
12 witness to answer.

13 MS. SIMS: Let's take a break and discuss
14 this off record for a moment.

15 MR. KINGSTON: Sure.

16 MR. SIMS: We're going off the record.
17 The time is approximately 9:42 a.m.

18 (The deposition recessed at 9:42 a.m. and
19 reconvened at 9:53 a.m.)

20 MR. SIMS: We are back on the record. The
21 time is approximately 9:53 a.m.

22 MR. KINGSTON: We had an off-the-record
23 colloquy, and I'll let Miss Sims -- looking for
24 a ring, I will let Miss Sims correct me where I
25 screw anything up, but I think the parties'

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1 understanding is that to the extent that a
2 question -- a question calls for an answer that
3 would be beyond the scope of the -- what are
4 the live issues for a preliminary injunction
5 hearing, that an instruction not to answer
6 would be proper.

7 MS. SIMS: And I would add to that, our
8 position is that questions beyond the scope of
9 the topics that Mr. Langston has been
10 designated for would be off topic with respect
11 to the deposition today.

12 MR. KINGSTON: Okay. And this is
13 splitting hairs as only somebody who's paid by
14 the hour would do, but -- so if I ask
15 Mr. Langston a question that's not on the
16 topic, but is within the scope of the PI, would
17 that be the subject of instruction not to
18 answer?

19 MS. SIMS: I would because he's not been
20 designated on that particular topic, and
21 it's -- he's in here in the capacity of a
22 representative for those particular topics
23 today.

24 MR. KINGSTON: So if Mr. Langston has
25 personal knowledge about something that's

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1 beyond the scope -- or excuse me. If
2 Mr. Langston has personal knowledge of
3 something that is beyond the scope of -- I'm
4 screwing it up again. Do you mind if I take
5 one more run at that, Miss Sims?

6 MS. SIMS: No problem.

7 MR. KINGSTON: If Mr. Langston has
8 personal knowledge of something that is within
9 the scope of the disputed issues for the
10 pending preliminary injunction hearing, but is
11 not in counsel's judgment within the scope of
12 the corporate designee topics for which he's
13 been designated, then it's counsel's intent to
14 instruct Mr. Langston not to answer?

15 MS. SIMS: Correct. However, I would say
16 that's a very abstract example. I'm very hard
17 pressed to think of any question you're going
18 to ask that could possibly --

19 MR. KINGSTON: I want everybody in this
20 room to remember that Miss Sims said that.

21 BY MR. KINGSTON (CONT.):

22 Q. Okay. Mr. Langston, you understand that one of the
23 allegations made by Windstream in this lawsuit is that
24 folks working the phones for Charter said things that
25 they ought not have said about Windstream's bankruptcy?

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1 A. That is correct.

2 Q. Okay. Tell me what Windstream does to ensure that
3 folks that answer the telephone for Windstream don't say
4 things that they ought not say about their competitors?

5 A. We provide -- as I stated earlier, we provide
6 scripts to our call center reps, not just specific to,
7 you know, unique situations, but general conversations
8 around company policies, products that we offer, services
9 that we offer, how to handle troubleshooting, scripts on
10 how to troubleshoot customer problems, things like that.
11 To -- to ensure that, we provide basically plugging and
12 coaching where a supervisor might actually plug into a
13 live call, listen to a call with a rep, provide realtime
14 coaching, provide coaching after the call. We do
15 extensive call monitoring where we record our calls, come
16 back and do coaching afterwards on that. If a rep is --
17 a customer service rep or a care rep has provided, you
18 know, conversation to a customer that would be out of
19 context or out of line with that, we provide coaching to
20 that representative. That would be the general nature of
21 what we do.

22 Q. This realtime coaching, how does that work?

23 A. We have the ability for a supervisor to listen to a
24 call at the same time that the representative is having a
25 call with the customer. So they can actually listen in

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1 to the call and provide guidance either through instant
2 messaging or through standing over the shoulder providing
3 guidance. The -- the representative may put the customer
4 on hold, the supervisor provides guidance. In some
5 cases, a care rep is not able to handle a call
6 themselves. They might actually provide escalation to
7 the supervisor where the representative is actually
8 listening to the supervisor talk to the customer as well.

9 Q. So supervisors can provide guidance to people that
10 are answering the phone calls from customers through
11 instant messaging?

12 A. They can provide through instant messaging. More
13 than likely, the supervisor if they're listening to a
14 call and -- and there's aspects of the call that the
15 representative is either not handling well or should be
16 handling differently, the supervisor will get up and go
17 over to the representative themselves. They're in the
18 same physical proximity.

19 Q. How many -- so, generally, how many call center
20 employees to a supervisor?

21 A. Generally somewhere between eight and 10.

22 Q. And so there's eight to 10 people -- between eight
23 and 10 people in the room. Supervisor has the ability to
24 plug in and listen to calls in realtime and provide
25 guidance to the call center employee as they are on the

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1 phone with the customers?

2 A. That is correct.

3 Q. If I wanted to identify circumstances in which what
4 we just described happened among the transcripts of
5 telephone calls that have been produced in this lawsuit,
6 how would I go about doing that?

7 A. Can you restate your question?

8 Q. Sure. You understand that -- Windstream records
9 its phone calls with customers?

10 A. Yes.

11 Q. And you understand that transcripts of those phone
12 calls have been provided to -- have been produced by
13 Windstream in this lawsuit?

14 A. Yes. Yes.

15 Q. And some of those calls could have involved
16 realtime supervisor coaching?

17 A. Some of those could have involved that. Some of
18 those could have -- and you wouldn't necessarily hear the
19 supervisor on the recording. That would be, you know,
20 basically an off-the-record conversation with the
21 supervisor and the representative or maybe they put the
22 customer on hold and they provide coaching to the
23 representative or it could have been them, you know,
24 whispering over their shoulder to them.

25 Q. Would the -- you understand that among the

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1 documents produced by Windstream in this lawsuit, there
2 are screenshots of call center notations?

3 A. As they were taking -- as they were on the call
4 with the customer, yes.

5 Q. And notations can't possibly be the right word.
6 What am I trying to say there?

7 A. Notes.

8 Q. Notes. So is there --

9 A. You were close.

10 Q. Well, sadly, I use to say utilize instead of use.
11 I'm ashamed of myself for doing that.

12 A. I'm sure it costs more.

13 Q. What -- so is there -- there's a app. There's kind
14 of an application that's available to Windstream customer
15 service representatives where they can kind of plug in
16 their notes in realtime?

17 A. It's actually in our billing system.

18 Q. Okay.

19 A. So the billing system, the customer records are --
20 the main customer records are stored are in the billing
21 system as well as clearly their bills, right, and so if a
22 customer calls in with a question, we have the ability to
23 create a notation on a customer's account so that if you
24 want to go back later and say, okay, this customer called
25 in. Why did they call in? What happened? Should there

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1 be a follow-up call from the customer that comes in to a
2 different representative or if there's a problem with
3 that customer and initiates escalating that somebody else
4 needs to take a look at it, then there's notes on the
5 account so that you have a record of the call.

6 Q. Are -- thank you for that.

7 I will note that you used notation in there, but if
8 there is a -- if there's an interaction where a
9 supervisor -- do you mind if I take another run at that,
10 Mr. Langston?

11 A. Sure.

12 Q. Will the customer call notes reflect where a
13 supervisor has provided guidance either by instant
14 messaging or over the shoulder?

15 A. No.

16 Q. Okay.

17 A. No.

18 Q. Does Windstream save those instant messages for the
19 realtime supervisor -- supervision?

20 A. I believe we do retain instant messaging and that's
21 company -- I don't know how long they're retained.

22 It's -- and quite frankly, while I refer to the instant
23 messaging, most situations I would tell you that is a
24 very rare situation. Most of it is going to be live
25 coaching because of the proximity of the supervisor to

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1 the representative. It's just -- it's easier to handle.
2 Because if a customer is on the phone working with the --
3 working with the customer and they're looking at a
4 screen, the distraction of having an instant message
5 going down here is fine. More than likely, they will
6 signal to the supervisor. The supervisor will walk over
7 or they'll plug in, one of the two.

8 Q. You have been with Windstream since 2009?

9 A. I've been with Windstream since 2015.

10 Q. 2015. I'm sorry. Well, let me -- tell me where
11 you were between 2009 and 2015.

12 A. Oh, my. Well, I was with Verizon in 2009. I left
13 Verizon and joined a company called Allied Wireless
14 Communications Corporation. We sold that to AT&T. I was
15 with AT&T for approximately four to five months. I did
16 some consulting on my own after leaving AT&T, and then I
17 joined Windstream.

18 Q. Was Allied Wireless -- is that affiliated with
19 Alltel in some respect?

20 A. We purchased the properties that Verizon could not
21 keep when they acquired Alltel.

22 Q. Okay.

23 A. So they were former Alltel properties, and they
24 were brand named underneath the Alltel brand name.

25 Q. And then what did you do at AT&T?

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1 A. I assisted with the transition after the purchase
2 of Allied Wireless.

3 Q. All right. So you've been with Windstream since
4 2015?

5 A. Correct.

6 Q. How did you come to develop expertise about
7 Windstream's policies and practices in its call centers
8 since 2015?

9 A. I was in the position of chief information officer,
10 so I provided assistance that support our call center
11 reps up to and including our IVRs, are billing system,
12 the systems that all the representatives use. I'm fairly
13 well acquainted with the processes associated with how
14 they use the systems.

15 Q. Did you ever act as a supervisor in a call center?

16 A. No, I did manage a major call center organization
17 in a prior life at Alltel.

18 Q. If I wanted to talk to the person at Windstream who
19 was -- who could identify specific call center
20 supervisors by name, who would I talk to?

21 A. Within Windstream, probably Paul Strickland. He
22 manages the call center organization for Windstream.

23 Q. Can you spell Mr. Strickland's name? His last
24 name.

25 A. S-T-R-I-C-K-L-A-N-D.

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1 Q. You said IVR. What does that stand for?

2 A. Interactive voice response system.

3 Q. Well, now what is it? What is IVR?

4 A. IVR, you call in. It's an automated system that
5 handles phone calls coming in. So, you know, you call
6 in. It's an automated system. It says what is your
7 question. You press the option for what your issue is
8 and it directs you to the appropriate representative.

9 Q. You talked --

10 A. It's a -- as a general description. I'm sure it
11 does a lot more than that, but that's a general
12 description.

13 Q. You talked about scripts provided to customer
14 service representatives. Without telling me the details
15 of any scripts, does Windstream provide competitor
16 specific scripts to its customer service representatives?

17 A. You know, I -- generally speaking, no. I mean,
18 other than providing potentially, you know, competitive
19 selling. I mean, of saying how our product compares to,
20 but all that's public information anyway on the Internet,
21 but it just helps reps if a customer calls in and they're
22 trying to compare prices. So that's about -- that's all
23 I'm generally aware of unless there's an extraordinary
24 situation that would require that.

25 Q. So in one of the -- I will represent to you,

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1 Mr. Langston, that in one of the transcripts that was
2 provided by Windstream in this litigation, a Windstream
3 technician made the representation that Charter in-home
4 technicians steal dogs.

5 A. They do what?

6 Q. Steal dogs.

7 A. I'm not aware of that.

8 Q. Does Windstream -- just with respect to Charter,
9 has Windstream taken any steps to ensure that its
10 technicians don't accuse Charter technicians of stealing
11 dogs?

12 A. Proactively or reactively?

13 Q. Either way, sir.

14 A. You know, proactively, I'm not aware of a company
15 policy where we instruct representatives to stop stealing
16 dogs. Reactively, if we were aware of that situation, we
17 would provide coaching to that employee.

18 Q. And that would be appropriate. If somebody -- if
19 an employee says something they ought not say about a
20 competitor, you would instruct that employee don't do
21 that any more?

22 A. Provided it was out of company policy or, you know,
23 not correct.

24 Q. Right.

25 A. But I would very much view that as a rogue

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1 behavior, not a concerted effort on the part of multiple
2 employees.

3 Q. Excuse me. Did Windstream send out a notice to its
4 customers when it filed bankruptcy?

5 A. By law we're required to notice all of our
6 customers.

7 Q. So Windstream did send out a notice to all of its
8 customers?

9 A. Yes, in accordance with the bankruptcy code.

10 Q. Tell me -- tell me what was included in the notice
11 that Windstream sent out to all of its customers
12 regarding the Windstream bankruptcy.

13 A. Generally that Windstream had filed for bankruptcy,
14 talked generally about the bankruptcy process, also
15 talked about their -- their services and workings with
16 Windstream would not be affected by that. That's a
17 general statement. I would have to look at the full
18 detail.

19 Q. Was there -- was there a -- so Windstream sent out
20 kind of the official notice of bankruptcy? Yes?

21 A. Yes.

22 Q. And then was there a cover letter as well?

23 A. I don't recall.

24 Q. You don't know whether Windstream sent out just the
25 notice or the --

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1 A. I don't think we sent out anything extraordinary
2 besides what the legal notice is required for bankruptcy
3 code.

4 Q. So Windstream sent out the notice, but no cover
5 letter?

6 A. I don't believe so, but, you know, I don't -- quite
7 frankly, I don't recall.

8 Q. What's your current position at Windstream?

9 A. Special adviser to the CEO.

10 Q. And what are your responsibilities as special
11 adviser to the CEO?

12 A. Coordination of bankruptcy operation.

13 Q. So tell me -- kind of tell me, I guess, the day to
14 day of your responsibilities as the person in charge of
15 coordinating bankruptcy operations.

16 A. We have multiple advisers in with Windstream. We
17 have Alvarez & Marsal that's helping manage bankruptcy
18 operations. We have our law firms that represent us for
19 in terms of this. We have our financial advisers with
20 PJT. We have our outside call centers and notice agents
21 with KCC. So I help to provide coordination amongst
22 that.

23 In addition to that, should there be operational
24 issues, we help to troubleshoot those issues, such as
25 maybe vendors that cut off services that need to be

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1 restored due to the -- due to the bankruptcy, appropriate
2 escalation through legal channels if those happen to be
3 against, you know, the first day hearings. You know, if
4 there's any customer issues, escalation around customer
5 issues. If there appears to be policy changes or
6 additions made for a company -- company policy, I'll help
7 oversee to make sure those are made. I might not
8 necessarily make those, but I'll ensure that the
9 appropriate parties are making those.

10 Q. When did you assume all these responsibilities that
11 you've just described?

12 A. Approximately 48 hours after the Aurelius ruling.

13 Q. And what -- tell me what you mean by the Aurelius
14 ruling.

15 Before you do that, sir, spell Aurelius for --

16 A. A-U-R-E-L-I-U-S, I believe.

17 Q. Okay. Now tell me what you mean by the Aurelius
18 ruling, sir.

19 A. That would be the ruling where the judge found in
20 favor of Aurelius in their lawsuit against Windstream for
21 default on our -- on our bonds related to our spinoff of
22 the Uniti.

23 Q. Was that -- was it February of 2000 -- was that
24 February or January?

25 A. That was February. I'd have to look at the

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1 calendar to see the specific date, but it was on a
2 Friday.

3 Q. So February of 2019 you get involved in
4 coordinating Windstream's bankruptcy related operations?

5 A. Correct.

6 Q. And did that involvement include any involvement in
7 the notices that Windstream sent out related to its
8 bankruptcy?

9 A. Yes, it would.

10 Q. So you'd be in a position to know whether or not
11 Windstream sent a cover letter when it notified its
12 customers that it was entering bankruptcy?

13 A. I would be aware of it at that time. We -- there's
14 multiple required notices related to bankruptcy. To say
15 I remember every one of them in detail and what's
16 included would be more than farfetched.

17 Q. Sure. This may be one of those situations we
18 talked about earlier where looking at a piece of paper
19 could help you answer a question?

20 A. Correct.

21 Q. Do you know whether Windstream has produced any
22 cover letter -- well, let me back up. Do you mind if I
23 do that, sir?

24 A. Sure.

25 Q. Assuming that a cover letter exists, do you know

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1 whether Windstream has produced any cover letter that
2 would have gone out in connection with a notice of
3 bankruptcy being provided to Windstream customers?

4 A. I don't recall if a cover letter is provided
5 related to -- the notices we've sent out are particular
6 to the bankruptcy code, that we have to notice our
7 customers. We have to notice our creditors. We have to
8 notice our vendors. There may be other parties in that
9 scope as well.

10 I'm not aware of necessarily, quote, cover letters.
11 I know the official notice that we sent out, but I can't
12 necessarily rule that out. I -- there's multiple -- in
13 addition to that, we had to since then send other
14 communications out to customers related to Charter's
15 mailing that went out. So, you know, there's a number of
16 things that we've had to send out now that weren't
17 necessarily planned.

18 Q. When did Windstream send a notice of bankruptcy to
19 its customers?

20 A. I don't recall. It would have to be -- have to be
21 later March.

22 Q. Did any of Windstream's customers call Windstream
23 in response to the notice of bankruptcy that Windstream
24 sent to its customers?

25 A. Not that I am aware of. I can't say that they

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1 didn't, but not that I specifically aware of.

2 Q. As far as you're specifically aware, zero
3 Windstream customers called in response to the notice of
4 bankruptcy that was sent to all Windstream customers
5 pursuant to the bankruptcy rules?

6 A. I'm not saying here. I'm just saying I'm not aware
7 of them. I haven't -- I haven't gone and -- I haven't
8 had a tremendous amount of escalation. In fact, the
9 knowledge -- any knowledge I would have of this after we
10 sent the mailings, we did query our business operations
11 to see if we've had extraordinary call volume, any
12 additional issues come in from the customers related to
13 bankruptcy. I'm not aware of any that were raised to me.

14 Q. You queried who?

15 A. Our business operations. So they would be like
16 Paul Strickland that I mentioned earlier. We would have
17 queried him to check on that.

18 Q. So at some point after Windstream sent a notice of
19 bankruptcy to all of its customers, you made an inquiry
20 to Mr. Strickland asking whether or not there was an
21 increase in call volume related to bankruptcy, and he
22 told you no?

23 A. Correct.

24 Now, in all fairness, at the bottom of the -- of
25 the notice that went out, it did inform the customers

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1 there was nothing they needed to do at this time. So --

2 Q. When you say at the bottom, what do you mean?

3 A. I think at the bottom of the notice, if I remember
4 correctly, somewhere in that notice, I believe it's
5 towards the bottom, it'd say after -- after they read
6 through the notice, it'd say at this time there's nothing
7 that you need to do about this.

8 Q. Do you know how many pages the notice of bankruptcy
9 that Windstream sent to its customer?

10 A. I don't -- I don't recall.

11 Q. More than five?

12 A. Oh, no. No. It would be -- it would be less than
13 that. It may have been -- if I recall correctly, it may
14 have been a single sheet.

15 Q. A single sheet of paper that says Windstream has
16 declared -- has filed for Chapter 11 bankruptcy?

17 A. Right.

18 Q. And then at the bottom of that single sheet of
19 paper, it says you don't need to do anything?

20 A. That's right, because the notice in itself just
21 says this is an official filing. This is the
22 circumstances of the bankruptcy. You know, your services
23 and your products from Windstream will not be
24 interrupted. It will not be impacted, and there's
25 nothing that you need to do at this time. I believe

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1 that's the general context of that notice, but like I
2 said, that was, you know, over a month ago.

3 Q. The notice went out over a month ago?

4 A. Yes, I think that notice according to the
5 bankruptcy code probably -- I'm thinking if the timing is
6 correct would probably have been late March.

7 Q. And Mr. Strickland can confirm that the call volume
8 related to -- I guess for bankruptcy related inquiries
9 didn't go up after the notice of bankruptcy went out to
10 all of Windstream's customers?

11 A. He would be able -- yeah, talk about -- talk about
12 that more specifically. They just -- those business
13 operations, such as Paul, indicated we didn't -- they
14 didn't have anything extraordinary.

15 Q. Are you aware of any of Windstream's competitors
16 other than Charter referring to Windstream's bankruptcy
17 in advertising?

18 A. I'm not aware of any.

19 Q. As far as you know, Charter is the only Windstream
20 competitor to refer to Windstream's bankruptcy?

21 A. As far as I know.

22 Q. If we wanted to see if wind center had received
23 calls related to other competitors making statements
24 about Windstream's bankruptcy, would Mr. Strickland be
25 the guy that we talk to?

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1 A. I believe so.

2 Q. Tell me -- you may have already told me this, sir,
3 but tell me Mr. Strickland's position again, please.

4 A. He is vice president of customer service for our
5 consumer/small business business unit.

6 Q. I think you referred to your involvement in first
7 day motions when you were kind of describing your
8 responsibilities as -- as they relate to Windstream's
9 bankruptcy. Do you recall that, sir?

10 A. I'm aware of the first -- I wasn't involved in
11 first day motions. I was involved in helping to prepare
12 for the first day motions and coordination of some of the
13 activity, but our legal counsel and other executives were
14 involved with the actual first day hearings.

15 Q. Tell me your involvement in preparing for the first
16 day motions.

17 A. There are certain motions that have to be prepared
18 and reviewed, may have been wages and salaries, could be
19 vendor operations, could be critical vendors. You know,
20 there's any number of motions associated with a
21 Chapter 11 filing. My participation in that would have
22 been to review such documents, maybe gather additional
23 data or materials required for those motions and help --
24 help provide that to the team preparing them.

25 Q. And those first day motions, you understand they

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1 asked for both interim relief and final relief?

2 A. Yes.

3 Q. And what's your understanding of what interim
4 relief is?

5 A. Well, interim relief is that -- my understanding,
6 this is very much layman's terms, it's protection from --
7 from the creditors so that business operations are not
8 impacted.

9 Q. So it's -- is it temporary or permanent protection?

10 A. That would be temporary until -- until a final
11 hearing is done or final ruling is done.

12 Q. And so the idea is here's my interim decision, and
13 I'll make a final decision down the record if I'm the
14 court?

15 A. That's my basic understanding, but I think you've
16 reached the extent of my bankruptcy law knowledge.

17 Q. We're fast approaching mine as well.

18 Okay. Who do you report to?

19 A. Tony Thomas, the chief executive officer of
20 Windstream.

21 Q. And who reports to you?

22 A. Nobody.

23 Q. Who do you -- who do you work with on a day-to-day
24 basis?

25 A. I work with each of Tony Thomas' direct reports. I

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1 work with certain business operation leaders and
2 organizations as necessary to gather maybe materials or
3 help facilitate problems for them that they need to have
4 resolved. We have a representative of our project
5 management organization helps me coordinate the
6 bankruptcy activities. Doesn't report to me, but helps
7 me coordinate those activities. And then I deal with all
8 my new adviser friends. Mostly Alvarez & Marsal.

9 Q. Could you spell that, please?

10 A. A-L-V-A-R-E-Z and Marsal, M-A-R-S-A-L.

11 (Exhibit 2 was marked.)

12 BY MR. KINGSTON (CONT.):

13 Q. Mr. Langston, I am marking as Exhibit 2 a -- an 11
14 page document that I will represent to you is the
15 affidavit that you submitted in support of debtors'
16 motion for both the temporary restraining order and a
17 preliminary injunction in this litigation without
18 exhibits.

19 Do you recognize Exhibit 2, sir?

20 MS. SIMS: At this point I want to make
21 sure just to see if this is the redacted
22 version or not.

23 MR. KINGSTON: Oh, can you slide that back
24 to me? I'm sorry.

25 MS. SIMS: So, John, this is not the

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1 redacted version. We find this confidential,
2 but --

3 MR. KINGSTON: I'll defer to you
4 completely, however you want to mark it. I
5 don't have strong feelings about sharing it
6 with our other friend across the table.

7 MS. SIMS: So we'll just see -- it's
8 redacted specifically because of
9 confidentiality clause in the contract. So
10 that was -- that was the reason for the
11 redaction in this, so --

12 MR. KINGSTON: Okay. So how would you
13 like to designate it?

14 MS. SIMS: I think I would be comfortable
15 just saying as to the committee would be
16 attorney's eyes only given our kind of working
17 process of how we're doing that.

18 MR. KINGSTON: That's fine with me.

19 MS. SIMS: Okay.

20 MR. SMITH: Yes.

21 MR. KINGSTON: If counsel for the
22 committee will confirm that their -- that
23 Deposition Exhibit 2 won't be shared with
24 anyone beyond outside counsel for the committee
25 until we've reach some other agreement or

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1 gotten contrary guidance by the court, I'm
2 happy to slide it back across the table.

3 MS. GREER: Sure. Counsel for the
4 committee agrees.

5 MR. KINGSTON: Okay.

6 MS. SIMS: I would note such for purposes
7 that this should be designated confidential so
8 it's not inadvertently filed in this form.

9 MR. KINGSTON: Sure. And why don't we go
10 ahead, and if -- Mr. Langston, if you'll slide
11 that back to me, I'll -- I'll write
12 confidential, and I'll right AOE on it as well
13 which --

14 MS. SIMS: Okay.

15 MR. KINGSTON: -- we'll agree stands for
16 attorney's eyes only.

17 Here you go.

18 MR. LANGSTON: What's your question?

19 BY MR. KINGSTON (CONT.):

20 Q. Is that your affidavit, sir?

21 A. It is.

22 Q. Take a look, if you would, sir, at paragraph five.

23 A. Okay.

24 Q. I read -- I won't need to read the first sentence
25 of paragraph five into the record, but I read a reference

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1 there to a national footprint spanning approximately
2 150,000 fiber miles?

3 A. That is correct.

4 Q. That is -- what is that? Is that --

5 A. So fiber is a network technology. It's basically
6 the technology path that you distribute communications
7 across, so whether it be data communications or voice
8 communication. So it traverses, you know, terrain,
9 geographical terrain, geographical areas of the country.

10 Q. And does Windstream -- does Windstream own that
11 150,000 miles of fiber?

12 A. They do. Some of it they lease. Some of it they
13 actually directly -- directly own, so --

14 Q. How much do they lease?

15 A. I don't know the breakout --

16 Q. Is that --

17 A. -- of lease versus strictly -- directly owned.

18 Q. I'm sorry.

19 A. I don't know the difference between -- I don't know
20 the appropriate amount of what is owned versus what's
21 leased.

22 Q. Was a big chunk of that 150,000 fiber miles owned
23 by the entity that was involved in the Aurelius
24 litigation?

25 A. I can't really speak to how much of that, if any,

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1 that -- that entity owned. That wouldn't be my area of
2 expertise.

3 Q. Your understanding is that Uniti, and that's
4 U-N-I-T-I, owns some percentage of the fiber that
5 Windstream uses to provide broadband, entertainment and
6 core transport solutions to its customers -- to its
7 consumer and business customers?

8 A. I don't know -- they would own some of that. I
9 don't know to what degree it supports consumer versus
10 broadband versus entertainment versus core transport. I
11 don't know the breakout of what they do. So a lot of
12 that is owned on our own network. We own that ourselves,
13 but I can't tell you the breakout, and then there's other
14 third parties involved, too, besides Uniti. You could
15 have other third party providers that we lease fiber
16 network from, so --

17 Q. So it lease -- Windstream leases fiber from other
18 third party providers and then Uniti?

19 A. Oh, yes.

20 Q. And Windstream at some point sold a whole bunch of
21 fiber to Uniti and then leased it back; right?

22 A. I don't -- well, I'm not sure that we sold it. We
23 spun it -- we spun it off as a legal entity. Those were
24 part of the assets that went with the transaction, but
25 like I said, I can't tell you how much of that is fiber

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1 versus copper versus whatever network technology. That's
2 just -- it's just not my area.

3 Q. Is the -- in your work on the bankruptcy on behalf
4 of Windstream, have you done anything with the -- related
5 to the master lease agreement with Uniti?

6 A. I have not.

7 Q. Do you know how much Windstream pays on that lease
8 agreement per year?

9 A. I believe the amount is 650 million.

10 Q. 650 million a year?

11 A. Uh-huh.

12 Q. So Windstream pays 650 million a year to lease
13 fiber and probably coaxial from Uniti?

14 A. I -- like I said, it's just -- I would be
15 speculating as -- I'm just not a subject matter expert
16 into what assets specifically Uniti owns and what
17 technology the rest is comprised of.

18 Q. But one of the contracts that is at issue in this
19 bankruptcy is the \$650 million a year lease with Uniti;
20 right?

21 A. That is correct.

22 Q. And then there's some other contracts that are at
23 issue in this bankruptcy that are other -- that wherein
24 Windstream leases other fiber that's within that 150,000
25 miles of fiber that's referenced in paragraph five;

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1 right?

2 A. I'm not sure I understand the question.

3 Q. That question got away from me a little bit, didn't
4 it, sir?

5 A. Yeah.

6 Q. Miss Sims was making, you know, polite signs. I
7 wanted to make sure we were still talking about paragraph
8 five.

9 So within that 150,000 miles of fiber that's
10 referenced in paragraph five of the affidavit, there's
11 some 66,000 miles that are leased from Uniti?

12 A. I -- I don't know. I know some is. I can't tell
13 you the specific breakout. Like I said, it's just not my
14 area of expertise.

15 Q. Beyond the \$650 million a year that's tied to that
16 master lease agreement with Uniti, do you know how much
17 Windstream pays for fiber leasing from the other third
18 parties?

19 A. No, I don't.

20 Q. I'll move along.

21 I read the last sentence of paragraph five to say
22 that Windstream's operational performance is on an upward
23 trajectory throughout 2018, Windstream added over 14,000
24 new broadband subscribers and improved strategic sales
25 revenue.

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1 Have I read that correctly, sir?

2 A. That is correct.

3 Q. What does strategic sales revenue mean?

4 A. That's associated with our strategic product sales.
5 So products we specifically designated as strategic to
6 the future performance of the company, ongoing product
7 sales that are important.

8 Q. What are the products that you've designated as
9 strategic products?

10 A. Including, but not limited to things such as
11 SD-WAN, unified communication as a service or UCAS,
12 network security products, those would be some. I can't
13 really say that those are all of them, but those are the
14 majority of what we've talked about. Broadband services
15 clearly is also a strategic product.

16 Q. Tell me what you meant when you said that the
17 strategic sales revenue had improved as that relates to
18 SD-WAN.

19 A. We've increased the sales revenue for those
20 products.

21 Q. By how much? From what to what?

22 A. I don't recall.

23 Q. What about UCAS, U-C-A-S?

24 A. I don't know the specific numbers.

25 Q. Can you tell me any specific numbers that are tied

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1 to the improved strategic revenue -- excuse me, improved
2 strategic sales revenue in paragraph five of your
3 affidavit?

4 A. Not without referencing some other materials.

5 Q. What would you need to reference?

6 A. I would need to reference to some of our financial
7 documents related to that. I think and I believe we
8 indicate some of that within our 10-K as well.

9 Q. Was the 10-K one of the documents you reviewed to
10 prepare for today's deposition?

11 A. No.

12 Q. But if I wanted information that was tied to your
13 representations regarding improved strategic sales
14 revenue in paragraph five of your declaration, I could
15 take a look at Windstream's 10-K?

16 A. I believe you could.

17 Q. Do you see the reference to 14,000 new broadband
18 subscribers?

19 A. Yes.

20 Q. How many total broadband subscribers does
21 Windstream have?

22 A. Oh. I think approximately 1.2 million, maybe
23 1.2 million and change.

24 Q. How many employees does Windstream have?

25 A. In total, 12,000.

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1 Q. Take a look at paragraph nine if you would, sir.

2 A. Okay.

3 Q. And I read the first sentence of paragraph nine as
4 follows: On information and belief, Windstream's strong
5 operational achievements will not be disrupted by the
6 Chapter 11 filing. Have I read that correctly?

7 A. Yes.

8 Q. What did you mean by on information and belief,
9 sir?

10 A. Based upon the information provided to me and my
11 understanding in conversations with others, my belief is
12 those operational achievements won't be interrupted.

13 Q. What was the information that was provided to you?
14 I need to back up. Do you mind if I take another
15 run at that, sir?

16 A. Sure.

17 Q. So when you say on information and believe, you're
18 describing what you believe?

19 A. What I believe and what I -- yes. Yes.

20 Q. And so that's your opinion?

21 A. That's my opinion.

22 Q. And so your opinion is that Windstream's strong
23 operational achievement will not be disrupted by the
24 Chapter 11 filing. Is that fair?

25 A. That is correct.

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1 Q. I read the next sentence of paragraph nine to say
2 the debtors' business will continue operating in the
3 ordinary course and the debtor will be able to pay
4 employees, maintain relationships with vendors and
5 business partners, and most importantly serve customers
6 as usual without disruption.

7 Have I read that correctly, sir?

8 A. Yes.

9 Q. And you're referring to things that the debtor will
10 be able to continue to do?

11 A. Yes.

12 Q. And, again, that's your opinion, sir?

13 A. That's my opinion and knowledge based upon what's
14 actually occurred since filing.

15 Q. Take a look if you would -- if you would, sir, at
16 paragraph 11.

17 A. Okay.

18 Q. So -- and we were talking about strategic sales
19 earlier. You see a reference to three consecutive
20 quarters of strategic sales in excess of total enterprise
21 sales?

22 A. Yes.

23 Q. What does that mean?

24 A. It means the strategic product sales, that growth
25 or the growth in those areas are starting to exceed the

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1 total sales for that area, meaning other products and
2 services there, the strategic products are starting to
3 eclipse the older products sales.

4 Q. Okay. Can you give me sort of concrete examples of
5 that, sir?

6 A. You know, old services you might have provided
7 would have been like providing TDM circuits, TDM sales,
8 maybe some MPLS sales, things like that, and we're
9 starting to see now that strategic sales where they're
10 eclipsing those older products.

11 Q. And I guess what I'm looking at is what does total
12 enterprise sales mean?

13 A. Total enterprise sales would be all -- all of the
14 sales of those -- of those products. So the growth --
15 the growth of the strategic products as in terms of
16 growth percentages eclipsing the total growth. So the
17 older products are starting to diminish, right. These
18 new products are eclipsing those.

19 Q. So total enterprise -- so when you're talking about
20 total enterprise sales, you're talking about the growth
21 rate of the total of everything that you sell?

22 A. Right. Of the -- for the enterprise sales, for the
23 enterprise business unit.

24 Q. Okay. So that -- maybe that's what I'm missing.

25 A. Enterprise --

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1 Q. Enterprise sales is --

2 A. Yes, that's business unit specific.

3 Q. Okay. And -- and that's sales to businesses?

4 A. Yeah, EA is B to B for everything above a small
5 business. So small business is within the consumer/small
6 business business unit, and then you have all other
7 businesses, including the wholesale business that are in
8 the enterprise.

9 Q. And if somebody says something about I've heard
10 logo customers. Have you heard that phrase?

11 A. I haven't heard -- well, you have new logo
12 customers, which represents brand new customers to
13 Windstream versus existing customers.

14 Q. That doesn't have anything to do with enterprise
15 sales or if it does, it's is happenstance?

16 A. Yeah. Yeah.

17 Q. So enterprise sales are businesses that are not
18 small businesses?

19 A. That's right.

20 Q. Would enterprise sales -- it's kind of skipping
21 ahead, but you know there was the disconnects around
22 March 15th, were those to enterprise sales?

23 A. Some of those were enterprise and some of those
24 were small business.

25 Q. So the last mile customers that are referred to

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1 kind of further on in your declaration, those would be
2 small business customers and enterprise customers?

3 A. Yes.

4 Q. Are there any consumer last mile customers?

5 A. You know, I don't know. I don't know.

6 Q. You can't identify any consumer -- it's a bad
7 question. You wouldn't be able to specifically identify
8 any consumer customers anyway?

9 A. That's right.

10 Q. But you don't know sitting here today whether or
11 not the last mile customers includes consumer customers?

12 A. I don't know that.

13 Q. Okay. And just to be sure we're clear on that
14 point, sir, can you take a look at paragraph 25 on page
15 eight?

16 A. Okay.

17 Q. And I read the first sentence of paragraph 25 as
18 follows: Windstream has a contractual relationship with
19 Charter whereby it uses Charter for, open quote, last
20 mile, closed quote, connectivity to provide access for a
21 customer in Windstream's network.

22 Have I read that correctly, sir?

23 A. Yes.

24 Q. So as far as that hypothetical customer that's
25 referenced in the first paragraph -- excuse me, in the

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1 first sentence of paragraph five, you don't know of any
2 consumer customers that would fit that definition?

3 A. I don't know the makeup of the customers that were
4 in those that are disconnected. I know of some of them
5 specifically, such as a homeless shelter, you know, a
6 preschool, things like that. There might have been, you
7 know, restaurants, entertainment venues that the
8 consumers would be in when they were cut off, but I don't
9 know the exact makeup of the type of customer that were
10 in that 350 disconnects.

11 Q. Mr. Langston, you can't say sitting her today that
12 any of the customers referenced in the first sentence of
13 paragraph 25 were consumer customers; isn't that true?

14 A. That is correct.

15 Q. Did sending out the notice of bankruptcy to all of
16 Windstream's customers do any harm to Windstream's good
17 will?

18 A. Not that I'm aware of.

19 Q. Notifying every single one of Windstream's
20 customers that Windstream had filed Chapter 11 bankruptcy
21 didn't hurt Windstream's good will?

22 A. I can't speculate. I -- I don't know that it did
23 or didn't. Not that I'm aware of though.

24 Q. You're not aware?

25 A. Of any damage to good will from that.

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1 Q. You're not aware of any damage to Windstream's good
2 will from Windstream notifying every single one of its
3 customers that it had entered Chapter 11 bankruptcy?

4 A. I'm not. I'm not aware of any.

5 Q. Take a look at subparagraph D, if you would, sir,
6 of paragraph 11. It's on page five.

7 A. Okay.

8 Q. I read that subpart as follows: The growth was
9 driven by both stronger sales and lower churn as
10 Windstream benefited from recent investments in its
11 network. Have I read that correctly?

12 A. That is correct.

13 Q. What do you mean by lower churn?

14 A. Less customers disconnecting.

15 Q. What are the recent investments that you refer to
16 in that subparagraph?

17 A. Can we pause for --

18 Q. Sure.

19 A. -- a question with my counsel?

20 Q. Yeah. You want to take a break?

21 A. Sure.

22 MS. SIMS: Was there a question pending
23 though?

24 MR. LANGSTON: There is a question
25 pending.

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1 MR. KINGSTON: There was, but I think he's
2 going to talk to you about whether or not he
3 wants to assert a privilege.

4 MS. SIMS: Okay.

5 MR. KINGSTON: And which -- it's something
6 I should have said is I'd like you to answer --
7 if I ask you a question, I'd like to answer the
8 question before we take a break unless you'd
9 like to talk to you counsel about whether or
10 not to assert a privilege.

11 MR. LANGSTON: I'd like to talk to counsel
12 about asserting a privilege.

13 MR. KINGSTON: That's fine, sir.

14 MR. SIMS: All right. We're going off the
15 record. The time is approximately 10:43 a.m.

16 (The deposition recessed at 10:43 a.m. and
17 reconvened at 10:56 a.m.)

18 MR. SIMS: We are back on the record. The
19 time is approximately 10:56 a.m.

20 MR. KINGSTON: And I'll note for the
21 record that we're going to go ahead and
22 designate the entire transcript as attorney's
23 eyes only, which means that it will -- which is
24 effectively outside counsel -- outside
25 counsel's eyes only under the -- currently --

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1 or under -- according to the stipulation that's
2 currently being discussed, recognizing, of
3 course, that Windstream's counsel is obviously
4 welcome to take a look at all this stuff seeing
5 as it's Windstream's witnesses.

6 BY MR. KINGSTON (CONT.):

7 Q. Mr. Langston, do you remember my last question?

8 A. I do.

9 Q. All right. What was -- what's the answer?

10 A. So I believe your question was how did Windstream
11 benefit from the recent investments in our network. So
12 through investments and additional network technology,
13 expansion of network technology, we were able to see
14 additional customer growth, meaning retention of existing
15 customers. They were able to take advantage of these new
16 increased speeds in our network, as well as the
17 attraction and addition of new customers to Windstream as
18 well.

19 Q. So investments with speed related?

20 A. For expansion of higher speeds.

21 Q. So is that essentially adding more fiber or thicker
22 fiber so Windstream can push more data through?

23 A. Could be fiber. There's many -- there's many
24 attributes of a network that could cause increased speed.

25 Q. Okay. But, essentially, you bought more stuff, you

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1 installed more stuff, and that let people run their --
2 get faster speed on the Internet?

3 A. For broadband, yes.

4 Q. And what -- in rough terms, tell me a dollar amount
5 of that recent investment that you're referring to in
6 subpart D.

7 A. I don't recall.

8 Q. Millions, billions, thousands?

9 A. I'd say approximately hundreds of millions.

10 Q. Hundreds of millions.

11 And is that -- is that -- the recent investment in
12 your network, is that tied to this sub part E, which I
13 read to say, Windstream has steadily increased the
14 percentage of its footprint with access to high speed
15 Internet?

16 A. That is correct.

17 Q. Take a look at paragraph 12, sir, please.

18 I read that second sentence to say that the
19 bankruptcy court has already granted the relief requested
20 in all debtors' first day motions to help ensure that the
21 debtors' businesses will continue operating in the
22 ordinary course and that the debtors will be able to pay
23 employees, maintain relationships with vendors and
24 business partners, and, most importantly, serve customers
25 as usual without disruption.

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1 Have I read that correctly, sir?

2 A. That is correct.

3 Q. And those are those interim motions or -- the
4 interim relief that was granted on the first day of
5 bankruptcy?

6 A. On the first day motions, yes.

7 Q. Had Windstream registered any trade dress with the
8 United States Patent & Trademark Office?

9 A. Trade dress?

10 Q. Yes, sir.

11 A. What does that mean?

12 Q. You don't know what trade dress means?

13 A. No.

14 Q. And so it's a fair inference then that if
15 Windstream has reference -- has -- mind if I take another
16 run at that, sir?

17 A. Sure.

18 Q. It's a fair inference then, isn't it, Mr. Langston,
19 that Windstream has not registered any trade dress with
20 the United States Patent & Trademark Office given that
21 you don't know what trade dress means?

22 MS. SIMS: I'll object on -- I don't
23 believe this is a topic or something that he
24 would have been designated for. Like all trade
25 dress registrations?

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1 MR. KINGSTON: If -- if counsel is
2 representing that Windstream's trade dress is
3 beyond the scope of the preliminary injunction
4 hearing, I'm happy to move on. I guess --

5 MS. SIMS: I think if you can be more
6 specific as to the topic of your question.
7 You're asking very general across company
8 lines, so I don't believe that is relevant. If
9 you can be more specific, that would be
10 helpful.

11 MR. KINGSTON: Sure.

12 BY MR. KINGSTON (CONT.):

13 Q. Take a look at Exhibit Number 1.

14 A. Okay.

15 Q. Paragraph -- subpart seven.

16 A. Yes.

17 Q. Do you see a reference to Windstream's support
18 after the statement Charter deliberately used
19 Windstream's distinct color pattern on the envelope to
20 cause consumer confusion as alleged in paragraph 20 of
21 the Windstream complaint?

22 A. Yes.

23 Q. Have I read that correctly, sir?

24 A. Yes.

25 Q. All right. Has Windstream, to your knowledge,

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1 registered any trade dress with the United States Patent
2 & Trademark Office?

3 A. You mean have they -- well, I don't want to
4 speculate here. So I -- I don't know the term dress. I
5 know about trademarks. I know about registering names or
6 logos or things like that, but Windstream has registered
7 its -- clearly its name, its trade -- its brand name
8 Windstream, and I believe we've also filed based upon my
9 knowledge of talking with counsel, we filed for
10 trademarks associated with --

11 MS. SIMS: Okay. Hold on. I just want to
12 be clear, if you're talking specifically about
13 a conversation with counsel, don't --

14 MR. LANGSTON: Okay.

15 MS. SIMS: -- don't talk about that.

16 MR. LANGSTON: Okay.

17 MS. SIMS: Wait until he asks the
18 question.

19 MR. KINGSTON: Sure.

20 MR. LANGSTON: Okay.

21 BY MR. KINGSTON (CONT.):

22 Q. You know that Windstream has registered logos and
23 its name with the trademark office?

24 A. Yes.

25 Q. Do you know of anything else that Windstream has

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1 registered with the trademark office?

2 A. I'm not aware of the entire scope of anything that
3 we may or may not have registered with the trademark
4 office.

5 Q. But you don't know of anything else that Windstream
6 has registered with the trademark office, sir?

7 A. I'm not aware of any.

8 Q. Take a look if you would at paragraph 24,
9 Mr. Langston.

10 MS. SIMS: Of Exhibit 2?

11 MR. KINGSTON: I'm sorry. Exhibit 2.

12 Thank you, counsel.

13 BY MR. KINGSTON (CONT.):

14 Q. So Exhibit 2, page eight, paragraph 24, do you see
15 that, sir?

16 A. Yes.

17 Q. I read the first sentence as follows: As a direct
18 result of Charter's advertising campaign, Windstream has
19 been forced to expend substantial time, money and
20 resources to combat Charter's false claims. Have I read
21 that correctly?

22 A. Correct.

23 Q. How much time has Windstream been forced to expend?

24 A. I don't know the specific number, but it's been
25 significant on the part of any number of people across

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1 the company up to and including myself, people in our
2 business units, clearly outside counsel, just inside
3 counsel, members of our executive team. All of our call
4 center representatives that had to be briefed on talking
5 points to explain to customers about the Spectrum
6 advertisement, so thousands of people, varying -- varying
7 degrees of time.

8 Q. What's the difference between the talking points
9 that were provided to customers following Windstream's
10 providing notice of -- do you mind if I try that again,
11 sir?

12 A. Sure.

13 Q. I think I misspoke.

14 Tell me the difference between the talking points
15 that were provided to Windstream call center
16 representatives following Windstream providing notice of
17 bankruptcy to all of its customers and the talking points
18 that were provided to those customer service
19 representatives following Windstream's discovery of the
20 challenge to advertisements in this lawsuit?

21 A. To characterize the two, the first set of talking
22 points were very general about bankruptcy, about
23 generally what bankruptcy is and more importantly what it
24 isn't, meaning it doesn't interrupt your operations. It
25 doesn't interrupt your services. They won't be impacted

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1 by it.

2 The talking points associated related to Spectrum
3 were specific to the fact that there was a Spectrum
4 communication that went out, what was incorrect in that
5 statement, and to specifically alleviate customers'
6 concerns about those specific services that Spectrum
7 noted in their communication that would be interrupted or
8 potentially interrupted by the bankruptcy that were
9 false. So most of it was to do to calm and soothe
10 customer concerns and to, in some cases, work with those
11 customers to, you know, potentially stop them from
12 leaving Windstream and going -- going to Spectrum or
13 Charter.

14 Q. When -- the talking points that were provided after
15 Windstream provided notice of bankruptcy to all of its
16 customers would have instructed the call center
17 technicians to say that it was business as usual?

18 A. Correct.

19 Q. Is that sometimes abbreviated as BAU?

20 A. Correct.

21 Q. And the talking points related to Spectrum would
22 have instructed call center employees to say that it is
23 business as usual; isn't that right?

24 A. Correct.

25 Q. The talking points that were provided to call

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1 center employees following Windstream providing notice of
2 bankruptcy to all of its customers would have included an
3 instruction to inform customers that their service would
4 not be interrupted; isn't that right?

5 A. That is correct.

6 Q. And the talking points that were provided to
7 customers -- or excuse me, that were provided to call
8 center employees after a written response to the Spectrum
9 advertising would have instructed the call center
10 employees to say that service wasn't being interrupted;
11 isn't that right?

12 A. Amongst other things, yes.

13 Let me -- and let me --

14 Q. Talking point -- go ahead.

15 A. Let me correct one of the statements. So back in
16 the first answer, say that the -- on the original
17 bankruptcy filings that their services wouldn't be
18 interrupted specifically as a result of the bankruptcy
19 operation or bankruptcy filing. Nothing related to
20 bankruptcy would interrupt their services.

21 Q. I follow. So after the notification of bankruptcy
22 was provided to all of Windstream's customers, Windstream
23 would have circulated talking points that included an
24 instruction to tell customers that the bankruptcy
25 wouldn't cause an interruption of service?

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1 A. That is correct.

2 Q. And that same talking point that the bankruptcy
3 wouldn't cause an interruption in service would have been
4 provided to call center employees in response to the
5 Spectrum advertising?

6 A. Amongst other things we told them as a result of
7 the Spectrum advertising.

8 Q. And the talking point that the bankruptcy wouldn't
9 cause service interruptions would have been provided in
10 response to the Spectrum advertising; isn't that right?

11 A. Can you restate your question?

12 Q. Sure. Windstream notifies all of its customers
13 that it's in bankruptcy. Yes?

14 A. Correct.

15 Q. After it does that, Windstream provides talking
16 points. Yes?

17 A. Yes.

18 Q. Those talking points include an instruction to say
19 that it's business as usual?

20 A. Correct.

21 Q. And that same instruction in response to the
22 Charter advertising?

23 A. Amongst other things in the Charter one. The
24 Charter one was more specific based upon specific points
25 made in the Charter advertisement.

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1 Q. The instruction to say that it's business as usual
2 was in both the --

3 A. I believe so.

4 Q. The -- I'm sorry. I'm going to have to finish it
5 off just because --

6 A. I'm sorry.

7 Q. No, you didn't interrupt me. I was --

8 A. I thought you had stopped.

9 Q. I sort of trailed off. The fault is mine on that.

10 A. No problem.

11 Q. The instruction to say that it was business as
12 usual at Windstream was in response to both Windstream's
13 own notice of bankruptcy to its customers and the
14 Spectrum advertising; correct?

15 A. That is correct.

16 Q. The instruction that there would be no bankruptcy
17 related interruption of service was in the talking points
18 for both Windstream's notice of bankruptcy to its
19 customers and its response to the Spectrum advertising;
20 correct?

21 A. I believe so.

22 Q. The instruction to inform customers that the
23 bankruptcy was not the product of operational failures
24 would have been in both the response to the -- to
25 Windstream's own notice of bankruptcy to its customers

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1 and the Spectrum advertising; isn't that true?

2 A. I don't recall. I know it was in the first general
3 one. I don't recall if it was in the second one or not.
4 I'm not saying it wasn't. I just don't recall if it was.

5 Q. So we know that the representation that the
6 bankruptcy was not the product of operational failures
7 was in the talking points circulated in response to the
8 Windstream notice of bankruptcy by Windstream. We don't
9 know -- it may or may not be the case that that
10 instruction was included in the talking points that were
11 circulated in response to the Spectrum advertising?

12 A. Yeah, I just -- I don't recall. I just don't know.
13 It may have been in there. I don't know.

14 Q. When customers inquired about bankruptcy in
15 response to Windstream's notice of bankruptcy, were they
16 offered higher speeds?

17 A. Are you talking about the first -- as a result of
18 the first notice?

19 Q. Yes, sir.

20 A. I don't recall. As I stated earlier, I don't
21 recall a specific -- of -- or have knowledge of specific
22 calls from customers coming in related to the first
23 notice. I'm not saying there weren't. I just don't know
24 of any. We asked, and they said there weren't any --
25 wasn't any extraordinary call volume.

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1 So on the first -- related to the first one, I
2 don't believe we had as part of our talking points any
3 specific, you know, that weren't already normal
4 promotional offers. I mean, we always have promotional
5 officers there for retention. That's normal course of
6 business.

7 Q. What are the normal promotional offers that you
8 have for retention that would have been available after
9 that Windstream notice of bankruptcy?

10 A. Well, it would have been available before and
11 after. And they're just -- I don't think we did anything
12 extraordinary. It may be increase your speed for the
13 same cost. It may increase your speed for a minor cost.
14 It might have been a -- you know, extension of a
15 promotional credit. There's just general things that are
16 used like that, and I'm not saying that's inclusive of
17 everything. It's just ones I don't have knowledge of.

18 Q. What were the -- were there specific -- were there
19 specific promotions offered to customers in response to
20 the Spectrum advertising?

21 A. I do know that we -- there were -- yes, there were.
22 We -- well, let me -- let me explain that further, so --

23 Q. Please.

24 A. -- I don't know that those were new promotions
25 created. We instructed our representatives to use

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1 promotions more proactively in the cases that a customer
2 called in and was trying to move to Spectrum as a result
3 of the advertising, and we saw that they had certain
4 abilities in their areas to get increased speed or they
5 were available for promotions, we were more actively,
6 more proactively offering those than we normally would.

7 Q. So if I'm an existing Windstream customer and I
8 decide I want to change my provider because I hate the
9 Kinetic, the -- that sort of flower shaped logo, and I
10 call in, what -- would there be -- there would be
11 promotions that would not be available for that customer
12 that would be available for a customer that called in in
13 response to the Spectrum advertising?

14 A. I don't know. I don't know.

15 Q. Okay. I'm not -- I'm not sure that question made a
16 lot of sense. I'm going to take another run at that.

17 There were promotions that were available to
18 customers who called in in response to the Spectrum
19 advertising. Yes?

20 A. Yes.

21 Q. Which of those promotions would not have been
22 available to a customer that called in for another
23 reason?

24 A. I don't know.

25 Q. Any?

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1 A. I just -- I don't know.

2 Q. Sitting here today, you can't identify any
3 promotions that would have been available specific to the
4 Spectrum advertising that wouldn't have been available in
5 the general course?

6 A. Well, as I said earlier, I don't know that we
7 necessarily created unique promotions. We -- I think we
8 just made those promotions available to people or to
9 customers that we would not normally have done or we were
10 more proactive in encouraging to take a promotion than we
11 would have been prior to the Spectrum advertisement.

12 Q. So as far as promotions that were only available
13 for customers calling in or related to the Spectrum
14 advertising that would not be otherwise available to the
15 customers, there were none; correct?

16 A. Well, let me -- let me clarify my answer on this.
17 So I'm not saying is it's a unique promotion. What I'm
18 saying is we're making promotion available to people that
19 we would not normally have made the promotion available
20 to, and we did it more proactively. Sometimes you do
21 those reactively if a customer calls in. Sometimes we
22 proactively go out and reach them because we say they're
23 available, they're clearly concerned about the Spectrum
24 advertising, so we're going to proactively offer this to
25 them, and we would not have normally done that without

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1 the customer asking.

2 Q. So, no, there were no unique promotions created in
3 response to the Spectrum advertising?

4 A. Not that I'm aware of.

5 Q. Call center representatives would have been
6 instructed to be more proactive in offering promotions to
7 customers that called in about the Spectrum advertising?

8 A. Correct.

9 Q. What is the difference to Windstream in a customer
10 that's lost because of Spectrum advertising and a
11 customer that's lost because he or she doesn't care for
12 the Kinetic logo?

13 A. Well, a lost customer related to just the general
14 disconnect or dissatisfaction with service or they like
15 another company better or lots of cases they decide they
16 can't afford broadband. They just disconnect. That's,
17 you know, a lost customer.

18 The disconnect to go to Charter is a customer that
19 would not have normally disconnected if it had not been
20 for the Charter advertisement. So it's a unexpected
21 disconnect so to speak. It's not planned, would not have
22 been a normal course of business disconnect.

23 Q. Okay. So your review of the notes related to
24 customer call ins that were calling in about Spectrum
25 indicated that those customers weren't switching to

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1 Charter because of lower costs or higher speeds?

2 A. I'd have to -- I just don't recall reading through
3 all those transcripts all the different reasons. I mean,
4 I'm not -- I'm not saying they couldn't have been related
5 to Charter's offers or higher speeds. The vast majority
6 of the call transcripts I read were related specifically
7 to the Spectrum advertisement and the customer calling in
8 and being concerned.

9 Q. If the customer disconnects from Windstream --
10 well, I'm struggling maybe -- I'm hoping you can explain
11 to me the difference between a customer that -- that
12 hasn't reviewed the Spectrum advertising at issue and
13 calls in and says Windstream just costs too much and the
14 customer who calls in and just says Windstream costs too
15 much? What's the difference between those two?

16 A. The difference is the Charter advertising
17 precipitated the call to come in and the conversation
18 versus a general disconnect would have been a -- just a
19 normal course of wanting to change or disconnect service.

20 Q. And so if a customer that calls in and says
21 Windstream costs too much, there are promotions that
22 wouldn't be available to that customer, but that would be
23 available to a customer that says I reviewed the Spectrum
24 ad and I think Windstream costs too much?

25 A. I can't say it's a different promotion. It's the

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1 context and what is used and what the situation that it's
2 offered. It's very dependent upon the customer's
3 situation, the availability of service in their area, the
4 availability of what pricing or network technology in the
5 area. There's a lot of different variables, but,
6 primarily, it's not that it's a different set of
7 promotions. It's the nature in which the promotion is
8 used.

9 Q. Did any of the promotions offered to customers to
10 stay with Windstream cause Windstream to lose money on
11 its contracts -- or excuse me, on its relationship with
12 that customer?

13 A. Are you -- are you talking specifically about as a
14 result of the Charter advertising?

15 Q. Yes, sir.

16 A. Yes, it would.

17 Q. So there are customers right now who Windstream is
18 losing money by providing service to?

19 A. We're making less money is another way of saying
20 that.

21 Q. I want to -- I want to be clear that we're talking
22 about --

23 A. Okay.

24 Q. -- the difference between making less money and
25 losing money.

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1 A. Okay.

2 Q. Is Windstream losing money on any customers that it
3 is providing services to right now?

4 A. Not that I'm aware of.

5 Q. Is -- so given that Windstream isn't, as far as
6 you're aware, losing money on any customers that it's
7 providing services to, it's fair to say that Windstream
8 isn't losing money on any customers that it's providing
9 services to that reviewed the Spectrum advertisement?

10 A. That I'm aware of, yes.

11 Q. So the concern with the customers that were offered
12 promotions because they reviewed the Spectrum advertising
13 isn't that Windstream is losing money on those customers.
14 It's that it's making less money on those customers;
15 correct?

16 A. Correct.

17 Q. And even though Windstream is making less money on
18 those customers in connection with the promotions, those
19 customers are either receiving faster speeds or paying a
20 lower bill; true?

21 A. Those -- those could be the results.

22 Q. All right. How many manhours did Windstream expend
23 to combat Charter's claim that's alleged in paragraph 24
24 of your affidavit?

25 A. I don't have a specific number. I would say it's

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1 10s of thousands.

2 Q. If I wanted to look at pieces of paper that could
3 validate the contention that Windstream was forced to
4 expend 10s of thousands of hours responding to Charter's
5 advertising campaign, what pieces of paper would I look
6 to?

7 A. I don't necessarily look at pieces of paper. I
8 think we'd have to look -- I'm not saying there's a
9 specific official document. You would have to look at
10 the time that it took to coach each of the call center
11 reps through the script, to provide the script, their
12 time to go read or view those scripts, any questions they
13 might have had. I don't know if it's necessarily a piece
14 of paper for, for example, my time associated with this
15 or internal counsel's time or other analysts' time.
16 That's pieces of paper, but, you know, it -- it could be
17 a educated approximation.

18 Q. So --

19 A. You've got 3,000 call center reps times some period
20 of time it takes to go do that.

21 Then on top of that, you've got all the time
22 associated with handling the customer calls related to
23 these, the escalation time related to these, the --

24 Q. Are call center reps -- I'm sorry.

25 A. Go ahead.

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1 Q. Are call center representatives paid hourly or by
2 the call?

3 A. Hourly.

4 Q. If I wanted -- say that you said you spend 10s of
5 thousands of hours responding to the Spectrum campaign,
6 and I said, 10s of thousands of hours seems like an awful
7 lot. And you said, no, really, here's some pieces of
8 paper that I could show you to validate my 10s of
9 thousands of hours claimed, what would -- what documents
10 would we be looking at, sir?

11 A. I don't know that you just look at time
12 documents -- I mean, that you look at time tracking
13 documents in this stuff. It would just have to go
14 through each of the individuals that are communicated to,
15 approximately based upon our supervisor's knowledge how
16 long it took to communicate that, how many calls were
17 received. We'd have to go back and estimate the time
18 associated with our marketing department to prepare the
19 advertising campaigns to combat inaccuracies as well as,
20 you know, accounting for all of my time, et cetera, as
21 well as our counsel time, outside counsel time.

22 Q. Are you paid hourly, sir?

23 A. No.

24 Q. Miss Sims is we'll stipulate.

25 Who would I talk -- as far as if I wanted to talk

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1 to a person other than you who could validate that 10s of
2 thousands of hours were spent responding to the Spectrum
3 advertising, who are the people that I would talk to?

4 A. Oh, you would have to talk to, once again,
5 Paul Strickland, our vice president of customer service.
6 You'd have to talk to Jeff Small, the president of our
7 business unit for customer -- consumer/small business,
8 and talk to who all in his organization was involved in
9 the efforts both from a marketing perspective, the call
10 center perspective. You'd have to talk to our general
11 counsel, Kristi Moody, in terms of all the legal
12 representatives and paralegals that's involved with that.
13 You know -- you know, that's offhand what I would think
14 of in addition -- in addition to others.

15 There's also support organizations within
16 consumer/small business that were involved with gathering
17 all of the materials to determine the extent of the
18 damage. There's just a number of -- there's a number of
19 people that we'd have to call to be -- once again, it
20 would be extraordinary effort just to gather the amount
21 of hours called to deal with the original calls.

22 Q. Tell me -- you said was it Christine?

23 A. Kristi Moody.

24 Q. Chris -- Kristi.

25 A. K -- K-R-I-S-T-I Moody. She's the general counsel

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1 at Windstream.

2 Q. M-O-O-D?

3 A. Y.

4 Q. Y.

5 How much money has Windstream spent as a result of
6 this Spectrum advertising?

7 A. I don't have the specific number.

8 Q. More than a thousand dollars?

9 A. Oh, yes.

10 Q. More than a billion dollars?

11 A. No.

12 Q. Roughly, sir.

13 A. You know, I'm not saying it's fully inclusive or
14 it's inclusive of all damages or all costs associated
15 with this, but it's going to be north of -- north of a
16 million dollars.

17 Q. Between one and two million?

18 A. I feel more comfortable saying keep it between one
19 and five million maybe or I have no idea to the extent
20 that we're paying outside counsel. I have no knowledge
21 of their fee structure, what we're having to do to pay --
22 pay them. So I -- you know, my internal knowledge would
23 be between one and five. Beyond that, there would be
24 more costs that I'm not aware of.

25 Q. Well, what was in your mind, sir, when you said

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1 that Windstream has been forced to expend substantial
2 money?

3 A. The involvement of internal personal as well as
4 marketing campaigns.

5 Q. Was there a dollar amount in your mind?

6 A. Dollar amount was between that one and
7 five million. It's my general instinct that that's where
8 the range is going to come in.

9 Q. And who are the people that I would talk to? I
10 mean, dollar amount, we could get receipts or something;
11 right?

12 A. We can get receipts. We could also go back and do
13 approximation on, once again, of the internal labor cost
14 time to go deal with this.

15 Q. So what would we look to as far as documents for --
16 I guess electronically stored information that we could
17 review to determine how much money Windstream has been
18 forced to expend as contended in the first sentence of
19 paragraph 24 of your affidavit?

20 A. We would have to go back to probably our finance
21 leader for the consumer/small business unit and look at
22 the cost there. We would have to go to our legal team
23 here within Windstream to get the estimates on all the
24 outside counsel, as well as all the internal time and
25 effort spent as well. We would have to go to our

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1 marketing teams for the consumer/small business to get
2 the receipts for all the outside -- all the campaigns
3 we've had to go run. And then I think we'd have to get
4 some sort of estimation from our call center organization
5 about how long it took to do the talking points for
6 the -- each of the customer service representatives.

7 Q. What was included in the talking points for -- in
8 response to the Spectrum advertising that wasn't included
9 in the talking points related to Windstream's own notice
10 of bankruptcy?

11 A. Acknowledgment of -- of Spectrum's ads, the nature
12 of the false statements made and how to respond or
13 assuage customers' concerns associated with those
14 advertisements.

15 Q. What were you saying other than business as usual,
16 not operational and your services aren't going to be
17 interrupted because of the bankruptcy?

18 A. The -- we've talked about the specific Internet
19 services, broadband services, entertainment services that
20 Spectrum referenced in their ad that would be interrupted
21 as a result of Windstream's bankruptcy.

22 Q. So in response to the original notice of
23 bankruptcy, Windstream didn't say that Internet services
24 aren't going to be interrupted as a result of bankruptcy?

25 A. We talked about services generally. We didn't talk

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1 them as specifically as the Spectrum ad did.

2 Q. So the Spectrum ad said something about Internet
3 and broadband?

4 A. I don't recall. I mean, it talked about specific
5 services. They're in there. I'd have to go refresh
6 myself and look at that again.

7 Q. So the differences that you've articulated between
8 the talking points in response to the Spectrum ad that
9 weren't in the talking points related to Windstream's own
10 notice of bankruptcy are to say, well, there's the
11 Spectrum ad and that Internet and broadband services
12 won't be interrupted because of bankruptcy?

13 A. Yeah. So the -- the original notice to the
14 customers were -- was very general in nature about
15 services being interrupted. The Spectrum ad was much
16 more specific about specific services being interrupted,
17 and the talking points that we had given to the customer
18 service reps would have been related to the specific
19 services as well as once again reiterating generally all
20 services won't be interrupted.

21 Q. So when I go back and I look at the call center
22 notes and the transcripts, I'll be able to tell that a
23 customer -- that a customer service representative is
24 talking about -- is using talking points in response to
25 Spectrum ads because he or she will be referring to

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1 specific broadband and Internet services not being
2 interrupted as opposed to making general statements about
3 services not being interrupted?

4 A. That is correct. Specific calls that I actually
5 listened to as well as I saw the transcripts of were
6 customers relating to specific services called out in the
7 Spectrum ad and the customers questioning if those
8 services were going to be cut off.

9 Q. So if it's a call about a Spectrum advertisement,
10 we're more likely to see references to specific Internet
11 service or broadband service not being interrupted. If
12 it's a call related to just the notification of
13 bankruptcy, it's going to be more general, and it's just
14 going to talk about service interruptions; correct?

15 A. That's my knowledge of it. To the best of my
16 knowledge.

17 Q. I'm sorry. You said -- I thought you said you
18 would talk to the finance leader if we were looking to
19 validate the one to five million dollars?

20 A. That would be one of the sources.

21 Q. What's a -- is a finance leader a person?

22 A. There's a -- there's a specific finance leader for
23 the consumer/small business unit. His name is Ben Bruce.

24 Q. Spell --

25 A. B -- B-E-N Bruce, B-R-U-C-E.

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1 Q. So Mr. Bruce is somebody we would talk to?

2 A. He would be one source of information. It would
3 require some effort to -- and, you know, there's specific
4 sources we have to get stuff to, but there's -- it's
5 spider webbed through -- extensively throughout the
6 organization. So it would be an extensive effort to go
7 after each person's time that spent time on this thing.
8 So it was an extensive issue across one of our largest
9 organizations.

10 Q. Who else would we talk to in addition to Mr. Bruce?

11 A. Probably Paul Strickland once again, talk to
12 Jeff Auman, who's our -- who owns our marketing
13 organization to get the estimates of time and cost
14 associated with the marketing campaigns, and then I would
15 think we would have a number of people within the
16 corporate groups that we -- the corporate support groups
17 that we'd have to go talk to to understand the complete
18 amount of time. We'd have to go talk to Kristi Moody and
19 her organization to get the amount of time and cost
20 associated with the outside counsel and the preparation
21 time for this, and the cost associated with just getting
22 ready for this.

23 Q. How long has Carol Keith been with Windstream?

24 A. I have no idea.

25 Q. Have you worked with miss -- Mrs. Keith before?

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1 A. I have worked with her from time to time.

2 Q. Is she sort of a false advertising specialist in
3 the legal department?

4 A. No. She's just our -- I believe it's associate
5 general counsel.

6 Q. Is there -- is there, excuse me, a false
7 advertising specialist in the legal department?

8 A. No. In that case given our size, if we get into a
9 specific topical area, we typically go to outside
10 counsel.

11 Q. And so what, Miss Keith was working with outside
12 counsel?

13 A. I don't know to the degree that she consulted with
14 outside counsel before her letters back and forth with
15 Charter.

16 Q. You don't know whether Miss Keith talked to outside
17 counsel before sending letters -- the cease and desist
18 letters that are referenced in your affidavit?

19 A. I don't know.

20 Q. She may have, she may not have?

21 A. Correct.

22 Q. Whether it was by virtue of her contact with
23 outside counsel or based on her own personal expertise,
24 we can infer that Miss Keith was sufficiently experienced
25 in false advertising issues that she felt comfortable

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1 signing a cease and desist letter with specific
2 references to false advertising and deceptive trade
3 practice statutes. Is that fair?

4 A. That would be speculation on my part. I --

5 Q. You don't think that's an unfair inference, do you,
6 sir?

7 A. I don't think it's unfair.

8 Q. Do you see in -- sticking with paragraph 25, the
9 penultimate sentence I read to say, in addition, as a
10 direct result of Charter's advertising campaign,
11 Windstream has undertaken an extensive mailing and
12 advertising campaign at significant cost and expense to
13 counter Charter's false and misleading advertising
14 campaign?

15 A. Did you say paragraph 25? I think --

16 Q. Oh, did I say paragraph 25?

17 A. You did.

18 MS. SIMS: Yes.

19 BY MR. KINGSTON (CONT.):

20 Q. Dog gone it. I said penultimate and everything in
21 that one. I was pretty proud of that question.

22 A. That was a -- that was a big dollar word.

23 Q. It was. It was pretty good.

24 A. Yeah, penultimate is a great word.

25 Q. All right. We're going to move up to 24. I guess

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1 we're going to -- second to last sentence, please, sir.

2 Is that okay with you?

3 A. It's your question.

4 Q. I read the second to last sentence in paragraph 24
5 as follows: In addition, as a direct result of Charter's
6 advertising campaign, Windstream has undertaken an
7 extensive mailing and advertising campaign at significant
8 cost and expense to counter Charter's false and
9 misleading advertising campaign.

10 Have I read that correctly?

11 A. That is correct.

12 Q. Can you tell me how much -- tell me the cost.

13 A. That I'm aware of, and I don't think it's limited
14 to this yet, because I believe there will be ongoing
15 campaigns as well, but to date the latest estimate I've
16 seen is approximately a million dollars.

17 Q. So a million dollar ad campaign?

18 A. Yes.

19 Q. And how many customers did that million dollar ad
20 campaign target?

21 A. And this, again, is going to be a rough
22 approximation. I'd say around 800,000, seven hundred to
23 eight hundred thousand customers were the -- was the
24 target. Not just customers, seven to eight hundred
25 thousand mailings went out, which would have been a very

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1 broad set of customers and potential customers.

2 Q. So it cost Windstream a million dollars to send
3 letters to 800,000 people?

4 A. Well, not just to send, but you also have to pay
5 for materials that's comprised of the letter.

6 Q. Okay.

7 A. So you have mailing and you have the actual
8 physical document, and then you have the printing expense
9 as well.

10 Q. So Windstream works with somebody who does creative
11 work that puts together a mailing for Windstream?

12 A. Correct.

13 Q. And Windstream pays whoever that is; correct?

14 A. That is correct.

15 Q. Who does Windstream use?

16 A. I don't know.

17 Q. Who would know?

18 A. Probably Jeff Auman, who's our -- and don't ask me
19 to spell his last name. I'd probable butcher it all up,
20 but he's our senior vice president over sales and
21 marketing for consumer/small business.

22 Q. So you say it's a million dollars. It's a million
23 dollars for working with an outside creative firm, an
24 outside printer and for mailing costs?

25 A. That is correct.

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1 Q. Is there anything else included in that million
2 dollars beyond those three things that I've articulated?

3 A. Those are expenses I've seen. I've not included
4 any kind of internal resource time to work on the
5 creative or work on the design. Those are just the
6 out-of-pocket expenses to a third party that I've seen so
7 far.

8 Q. What's the -- what's the piece of the million
9 dollars that would be associated with just the physical
10 mailing.

11 A. What's the piece of it?

12 Q. Yeah, like is it 700,000, 800,000? What's the
13 dollar amount --

14 A. Of the mailing?

15 Q. -- specifically with just mailing?

16 A. The mailing expense?

17 Q. Yes, sir.

18 A. I don't know the breakout of that. I've seen it,
19 but I haven't -- I don't recall the exact mail cost.

20 Q. But you've seen it on a piece of paper or an
21 E-mail?

22 A. Yeah, I saw it -- I saw it in a -- in a document
23 explaining what the marketing campaign was going to be.

24 Q. So there's a document out there that identifies the
25 cost associated with that marketing campaign and that

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1 document is what you're relying on when you say that the
2 campaign was in the million dollar range?

3 A. Correct.

4 MR. KINGSTON: Now a good time for a
5 break?

6 MS. SIMS: Yes.

7 MR. SIMS: We're going off the record.
8 The time is approximately 11:40 a.m.

9 (The deposition recessed at 11:40 a.m. and
10 reconvened at 12:26 p.m.)

11 MR. SIMS: We are back on the record. The
12 time is approximately 12:26 p.m.

13 BY MR. KINGSTON (CONT.):

14 Q. Mr. Langston, I'm going to stick with your -- with
15 Exhibit 2, your declaration in support of the motion for
16 preliminary injunction, and I'm going to direct your
17 attention to paragraph 21 on page seven where you state
18 that Windstream customer care associates take
19 contemporaneous notes of calls made to the customer
20 service center. Do you see that, sir?

21 A. Yes.

22 Q. How would I be able to tell from those
23 contemporaneous notes whether a particular call was in
24 response to an AT&T advertisement, Windstream's own
25 notice of bankruptcy or the Spectrum advertising that's

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1 in issue in this adversary proceeding?

2 A. Most likely what you would see a specific reference
3 to the name of it, it being either Spectrum, Charter,
4 AT&T or specifically call out the term bankruptcy. There
5 wouldn't be necessarily an abbreviation associated with
6 that that's a standard abbreviation.

7 Q. Okay.

8 I apologize.

9 I'd like to review if we could, Mr. Langston, some
10 of the contemporaneous notes that were produced to
11 Charter by Windstream in this action.

12 MR. KINGSTON: Miss Sims, I'll let you
13 take a look at this and tell me if you want
14 to -- I'll share it or not share it, however
15 you see fit.

16 MS. SIMS: We'll continue just as we have
17 been doing.

18 MR. KINGSTON: Rather than deface all
19 these, the exhibits are all labeled as
20 confidential, and can we just agree, counsel,
21 that it's all to be treated as attorney's eyes
22 only?

23 MS. GREER: Yes, I agree.

24 MR. KINGSTON: And if you'd just make a
25 note of that, that's perfect. Thank you.

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1 BY MR. KINGSTON (CONT.):

2 Q. Mr. Langston, what's your understanding of the --
3 you understand that some notes that were in the
4 Windstream billing system were produced to Charter in
5 this lawsuit?

6 A. Yes.

7 Q. And what's your understanding of what notes were
8 produced?

9 A. Notes related to customers calling in specific to
10 Charter's advertisements.

11 (Exhibit 3 was marked.)

12 BY MR. KINGSTON (CONT.):

13 Q. I'm handing you a document that I've labeled as
14 Exhibit 3. Exhibit 3 is a one page document that is
15 Bates labeled WIN 332 at the bottom. In the upper
16 right-hand corner, it includes the following series of
17 numbers 091809961. Do you recognize Exhibit 3, sir?

18 A. Yes.

19 Q. What is Exhibit 3?

20 A. These are call notes in relation to a customer
21 calling in to disconnect for -- to move to Spectrum.

22 Q. Where on Exhibit 3 would I find a reference to
23 Windstream's bankruptcy?

24 A. You wouldn't.

25 Q. There's no reference to Windstream's bankruptcy in

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1 these call notes?

2 A. I'm reading through it. I apologize.

3 Q. Oh, no, you're fine.

4 A. No, I don't.

5 Q. So I -- it looks like the notes kind of work in
6 chronological -- excuse me, chronological order from the
7 bottom to the top?

8 A. Correct.

9 Q. And so it looks like there was a call in on
10 April 5th, 2019, whether it was a customer inquiry about
11 only getting 50 megabytes. Spectrum offered -- only
12 getting 50 megabytes. Spectrum offered a hundred
13 megabytes. I advised due to Kinticity -- Kinetic TV,
14 only getting 50 megabytes for WiFi. I offered DirecTV.
15 He got a letter about TV.

16 A. That would be correct.

17 Q. So what's -- I read that to see the customer is
18 concerned about speed, not bankruptcy. Do you read it
19 the same way, sir?

20 A. Yes.

21 Q. What is the -- what is that number in the top
22 right-hand corner? Do you know what that is?

23 A. The time.

24 Q. The 091809961. I'm sorry, sir. I'm talking
25 about --

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1 A. Oh.

2 Q. Yeah.

3 A. Yes. I don't know what that is.

4 Q. Was there a -- I guess, a list of -- it looks there
5 may have been a production -- an internal production of
6 all customer service notes or some big chunk of customer
7 service notes within a specific timeframe, and that would
8 be -- those would have been labeled by the number in the
9 upper right-hand corner, and then the production of stuff
10 related to the Spectrum advertising bankruptcy issue
11 would have been produced and Bates labeled in the
12 lower -- lower right-hand corner. Does that look fair to
13 you, sir?

14 A. I don't know.

15 Q. Okay.

16 MS. SIMS: John, I will represent to you
17 that that number in the upper right is the
18 account number.

19 MR. KINGSTON: Oh, is that right?

20 MS. SIMS: Yes.

21 MR. KINGSTON: Oh, okay. Thank you for
22 that clarification. That's very helpful. I
23 was lost.

24 BY MR. KINGSTON (CONT.):

25 Q. So the number in the upper right-hand corner is the

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1 account number. The number in the lower right-hand
2 corner is the Bates number. Is -- Exhibit 3 is a
3 Windstream -- Windstream customer note that includes no
4 reference to Windstream's bankruptcy; is that right?

5 A. I don't see any reference, no.

6 (Exhibit 4 was marked.)

7 BY MR. KINGSTON (CONT.):

8 Q. I think Exhibit 4 matters less with that
9 clarification, but I'll go ahead and give it to you.

10 Do you see any reference to Windstream's bankruptcy
11 in Exhibit 4?

12 A. No, the whole remarks section has been redacted.

13 Q. And for the record, Exhibit 4 is single page
14 document that looks to be a screenshot of customer notes,
15 and it is Bates labeled WIN 333. And, again, there's no
16 reference to Windstream's bankruptcy in Exhibit 4 either;
17 isn't that right, sir?

18 A. No.

19 (Exhibit 5 was marked.)

20 BY MR. KINGSTON (CONT.):

21 Q. Exhibit 5 is a single page document Bates labeled
22 WIN 295. Do you recognize Exhibit 5, sir?

23 A. Yes.

24 Q. And what is that?

25 A. It is another record of a customer call in and the

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1 notes associated with the call.

2 Q. And I read the remarks for Exhibit 5 as follows:
3 Customer inquiry to check on modem return ported out,
4 said due to we filed Chapter 11 and sent him a letter. I
5 advised only restructuring, not going to close. He
6 changed to Spectrum, said would have anyway due to cost.

7 Have I read that correctly, sir?

8 A. That is correct.

9 Q. And so this looks like a reference to -- when --
10 what do you read the phrase -- do you mind if I start
11 that over, Mr. Langston?

12 A. No, not at all.

13 Q. What do you read the phrase we filed Chapter 11 and
14 sent him a letter to mean?

15 A. Meaning that Windstream filed for Chapter 11 and
16 Windstream sent him a letter.

17 Q. So is this a reference to Spectrum advertising or
18 Windstream's own notice of bankruptcy?

19 A. It would appear to be related to Windstream's
20 notice.

21 Q. In any event, the bankruptcy wasn't the reason why
22 the customer changed providers. He changed to
23 Spectrum -- or the customer changed to Spectrum due to
24 cost; isn't that right?

25 A. That's what it indicates.

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1 (Exhibit 6 was marked.)

2 BY MR. KINGSTON (CONT.):

3 Q. Mr. Langston, Exhibit 6 is a single page
4 document -- excuse me.

5 Mr. Langston, Exhibit 6 is a single page document
6 that is Bates labeled WIN 236. Can you tell me what
7 Exhibit 6 is, sir?

8 A. It is another record of a customer call coming in
9 and the notes taken as a result.

10 Q. Is the customer considering switching to Spectrum?

11 A. Yes.

12 Q. And is there any indication in Exhibit 6 that the
13 customer was considering switching to Spectrum because of
14 Windstream's bankruptcy?

15 A. No.

16 Q. And, ultimately, the customer stayed with
17 Windstream?

18 A. It appears to be so.

19 Q. What does -- and what does CAMP mean? C-A-M-P,
20 that kind of salutation at the end with a -- bracketed by
21 explanation point.

22 A. I'm not sure. We actually have a system called
23 CAMP. They might be referencing that. It could be
24 referencing the billing system, which is called CAMS, and
25 they put something in there. I really don't know.

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1 Q. Okay.

2 A. It could be many things.

3 (Exhibit 7 was marked.)

4 BY MR. KINGSTON (CONT.):

5 Q. Mr. Langston, Exhibit 7 is a single page document
6 Bates labeled WIN 257. Do you recognize Exhibit 7, sir?

7 A. It appears to be notes in our system related to
8 another customer call.

9 Q. And I read those notes at follows: Called and I
10 let know that we did file Chapter 11 and we are not
11 closing and all is fine. Have I read that correctly,
12 sir?

13 A. Yes.

14 Q. How can you tell from Exhibit 7 whether or not this
15 customer is calling in response to an advertisement by
16 AT&T, an advertisement by Spectrum or Windstream's own
17 notice of bankruptcy to all of its customers?

18 A. You can not.

19 Q. When Windstream was identifying customer inquiries
20 in support of its motion for a preliminary injunction,
21 how did it go about excluding inquiries from customers
22 that were calling in response to Windstream's own notice
23 of bankruptcy -- bankruptcy and inquiries from customers
24 that were calling in response to bankruptcy related
25 advertising by other competitors such as AT&T and

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1 Verizon?

2 A. I don't know.

3 (Exhibit 8 was marked.)

4 BY MR. KINGSTON (CONT.):

5 Q. Exhibit 8 is a single page document Bates labeled
6 WIN 262. Do you recognize Exhibit 8, sir?

7 A. Yes.

8 Q. And what is it?

9 A. Another customer call and associated notes with
10 that call.

11 Q. How can you tell from Exhibit 8 whether the
12 customer was inquiring as a result of receiving a
13 Spectrum advertisement as opposed to receiving
14 Windstream's own notice of bankruptcy or an advertisement
15 from a different Windstream competitor?

16 A. You can not.

17 (Exhibit 9 was marked.)

18 BY MR. KINGSTON (CONT.):

19 Q. Exhibit 9 is a single page document Bates labeled
20 WIN 275. Do you recognize Exhibit 9, sir?

21 A. Yes.

22 Q. And what is it?

23 A. Another customer call with the associated notes.

24 Q. And can you tell -- and I read Exhibit 9 to include
25 the following notes: Customer inquiry verified wanted to

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1 ask if Windstream is going out of business. Advised no
2 and reviewed account.

3 Have I read that correctly?

4 A. That is correct.

5 Q. And can you tell from Exhibit 9 whether the
6 customer is calling in response to Windstream's own
7 notice of bankruptcy?

8 A. No, you can't tell that.

9 Q. And can you tell from Exhibit 9 whether the
10 customer is calling in response to bankruptcy related
11 advertising by, for example, AT&T?

12 A. No.

13 Q. You can't tell one way or the other from Exhibit 9,
14 can you, sir?

15 A. No.

16 (Exhibit 10 was marked.)

17 BY MR. KINGSTON (CONT.):

18 Q. Exhibit 10 is a single page document Bates labeled
19 WIN 291. Do you recognize Exhibit 10, sir?

20 A. Yes.

21 Q. And what is that?

22 A. Another customer call with the associated notes.

23 Q. And I read the notes as follows: Customer inquiry,
24 was sent letter from Spectrum about bankruptcy. Wanted
25 us to beat offer from Spectrum. Offered modem credit,

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1 accepted.

2 Have I read that correctly?

3 A. Yes.

4 Q. And so in this instance, a customer received a
5 Spectrum advertisement about bankruptcy and then asked
6 Windstream to beat Spectrum's offer?

7 A. That is correct.

8 Q. And it appears from Exhibit 10 that the customer
9 stayed with Spectrum -- or excuse me, stayed with
10 Windstream; isn't that right?

11 A. Yes.

12 Q. And that customer -- or that consumer received a
13 modem credit from Windstream?

14 A. Yes.

15 Q. What's a modem credit?

16 A. That would be, you know, the monthly rental fee
17 that we charge for a modem. We give them credit for
18 that.

19 Q. So Windstream sells -- does Windstream sell modems
20 or does it rent them?

21 A. Rents them.

22 Q. And at some point --

23 A. I don't know if they gave -- I can't discern from
24 this whether they got credit for one month's rental or
25 the life of the modem or what they got. I just know they

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1 got a credit related to a modem.

2 Q. Do you know what Windstream charges for modem
3 rental?

4 A. No, I don't.

5 (Exhibit 11 was marked.)

6 BY MR. KINGSTON (CONT.):

7 Q. I marked as Exhibit 11 a single page document.
8 It's Bates labeled WIN 365. Do you recognize Exhibit 11,
9 sir?

10 A. Yes.

11 Q. And what is it?

12 A. It is a call -- customer call and the associated
13 notes.

14 Q. I read the notes, customer inquiry, verified wanted
15 to know if Windstream is going out of business. Advised
16 BAU. Have I read that correctly?

17 A. That is correct.

18 Q. And BAU is that acronym -- or I guess the
19 abbreviation that we discussed earlier business as usual?

20 A. That is correct.

21 Q. And business as usual was one of the talking points
22 that was circulated in connection with Windstream
23 providing a notice of bankruptcy to all of its customers?

24 A. That is correct.

25 Q. And can you tell from the notes in Exhibit 11

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1 whether or not that customer is calling in response to
2 Windstream's own notice of bankruptcy or the Spectrum
3 advertising?

4 A. You can't tell.

5 There's a quota for those.

6 (Exhibit 12 was marked.)

7 BY MR. KINGSTON (CONT.):

8 Q. And, sir, I've marked as Exhibit 12, excuse me, a
9 single page document that is Bates labeled WIN 367. Do
10 you recognize Exhibit 12, sir?

11 A. I do.

12 Q. And what is Exhibit 12?

13 A. Another customer call in and associated notes.

14 Q. And can you tell from that customer call in whether
15 the customer is calling in response to something -- in
16 response to an advertisement by one of Windstream's
17 competitors other than Spectrum, in response to
18 Windstream's own notice of bankruptcy to all of its
19 customers or in response to the Spectrum advertising at
20 issue?

21 A. You can't tell.

22 Q. If you'd put those aside, sir.

23 Can we talk a little bit about the last mile
24 contractual relationship discussed in paragraph 25 of
25 your affidavit?

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1 A. Okay.

2 Q. Now, that -- that's a contractual relationship
3 between Windstream and Charter?

4 A. That is correct.

5 Q. And in that circumstance, Windstream is the
6 customer and Charter is the vendor?

7 A. That is correct.

8 Q. And then Windstream -- Windstream maintains the
9 relationship with the end users?

10 A. That is correct.

11 Q. And if the end users have a problem, they contact
12 Windstream?

13 A. Typically, yes.

14 Q. In what circumstances wouldn't they contact
15 Windstream?

16 A. I think in specific to this situation in paragraph
17 25, and to be honest with you, I'm not sure how they got
18 in contact with Charter, but these customers actually
19 contacted Charter because of their circuits being turned
20 off.

21 Q. You don't know how the customers referenced in
22 paragraph 25 of your affidavit were able to contact
23 Charter?

24 A. I'm not aware of how they did that, no.

25 Q. Windstream didn't provide its customers with

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1 Charter customer service lines or anything like that?

2 A. Not that I'm aware of.

3 And I'm not sure where in the sequence when they
4 contacted Windstream, did they then contact Charter after
5 that or vice versa. I don't know what order they
6 contacted them.

7 Q. The contact -- the contacting Charter isn't
8 something that Windstream would encourage its customers
9 to do?

10 A. No. No. We would maintain that relationship.

11 (Exhibit 13 was marked.)

12 BY MR. KINGSTON (CONT.):

13 Q. Mr. Langston, I'm handing you a document that I've
14 marked as Exhibit 13, which I will represent to you and
15 to your counsel and counsel for the unsecured creditors
16 is Exhibit 3 to your affidavit. Do you recognize
17 Exhibit 3 to your affidavit, sir?

18 A. Yes.

19 Q. And Exhibit 3 contains the Spectrum advertising
20 that Windstream objects to in this adversary proceeding?

21 A. Yes.

22 Q. Some of it, I understand.

23 A. Some of it. It's not totally inclusive, but some
24 of it.

25 Q. If it's -- if it's in Exhibit 3, it's fair to say

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1 that Windstream objects to it?

2 A. I think that's fair.

3 Q. About seven pages in, do you see an insert that
4 says Now is the time to switch to Spectrum?

5 A. Yes.

6 Q. If you look at the bottom, it says -- in the
7 bottom, there's a small rectangle in the -- in the center
8 of the page that includes the following sequence of
9 numbers 00020538. Do you see that, sir?

10 A. Yes.

11 Q. I don't see any reference to bankruptcy in that ad.
12 Do you, sir?

13 A. No.

14 Q. So explain to me what Windstream finds
15 objectionable about this particular mailer.

16 A. I would say the overall collective implication that
17 our future is unknown, meaning Windstream. We don't know
18 what's going to happen with Windstream. And then
19 secondly, the implication at the bottom that says we're
20 going away by the fact that it says good-bye, Windstream.

21 Q. So the message at the bottom that says good-bye,
22 Windstream, hello, Spectrum, and then a reference to
23 Windstream's future is unknown, you think that suggests
24 that Windstream is going out of business?

25 A. I think -- I think it does. I think the

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1 collective -- the collective message of all of that
2 entire series of statements implies that Windstream is
3 going away and going out of business.

4 Q. So if Windstream is successful in its
5 reorganization efforts and emerges from Chapter 11 and
6 Charter ran this identical ad, would that in your view be
7 false and deceptive?

8 A. When Windstream -- I couldn't speculate. I
9 would -- I still think it's false if our future is not
10 unknown, and we're not going away anywhere, so I still
11 think it's a false implication.

12 Q. I mean, is -- is the concern that the context of
13 this ad is one in which Windstream's bankruptcy is known
14 to all of its customers by virtue of Windstream's notice
15 of bankruptcy?

16 A. It's taking advantage of Windstream's bankruptcy
17 filing to create uncertainty about the future existence
18 of the company.

19 Q. And so this ad takes advantage of Windstream's
20 bankruptcy filing in your view without mentioning the
21 word bankruptcy at all?

22 A. That is correct.

23 Q. And that's because --

24 A. Logical proximity to the timing of the filing.

25 Q. Explain that to me.

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1 A. Meaning this -- this ad was run, you know, very
2 closely after Windstream filed for bankruptcy to create
3 the uncertainty and doubt. So even if the customers
4 weren't aware of Windstream's bankruptcy, it elicited
5 concern about Windstream's future existence.

6 Q. So a customer that wasn't aware of Windstream's
7 bankruptcy would, in your view, be concerned about
8 Windstream's future existence solely based on what this
9 ad says?

10 A. Yes.

11 Q. Well, then why does it matter the proximity to the
12 timing of Windstream's bankruptcy?

13 A. Well, I was -- there are customers that were aware
14 of the bankruptcy. There are customers that weren't. I
15 think if you looked at the collective group, you have to
16 say that not all customers might have been aware of it.
17 So this would elicit some amount of concern for those
18 customers part, but there were a great amount of
19 customers that were aware of it, and this ad, I believe,
20 was run -- and I don't know for certain, but I believe
21 this ad was run prior to us sending out the notice to all
22 of our customers about the bankruptcy filing.

23 Q. So you sent out the notice for the bankruptcy file
24 beginning March 15th of 2009 -- 19?

25 A. As I stated earlier today, I don't recall the

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1 specific date. I know it was in later March, past the
2 middle of the month sometime I believe.

3 Q. So your -- your belief that the advertisement that
4 includes that two -- 20538 number at the bottom went out
5 before Windstream's -- Windstream notified its customers
6 that it was entering bankruptcy is based on your
7 understanding that the -- that Windstream notified its
8 customers that it was going into bankruptcy in the end of
9 March?

10 A. I said later March in terms of Windstream's notice.
11 I'm not sure when -- once again, that's just my
12 recollection. I -- I don't know for certain the date
13 that we mailed the notices, but I believe in proximity to
14 when these are, the notices came out after the
15 advertisement.

16 Q. So I'm trying to understand, are you -- are you
17 concerned about this ad that doesn't reference bankruptcy
18 at all because you think it would work in combination
19 with Windstream's own notice of bankruptcy or are you
20 concerned about it in isolation?

21 A. I'm worried about the ad in the context of, one,
22 news that Windstream had gone bankrupt out there, whether
23 we had mailed the notice or -- or they received the
24 notice or not. Secondly, if we -- if they weren't aware
25 that we had filed for bankruptcy and they hadn't received

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1 the notice, it created doubt as to Windstream's
2 existence. And then thirdly, taking in the context of
3 all the other advertising that Spectrum had done
4 specifically referencing -- calling attention to
5 Windstream customers on the envelopes, that this just
6 adds to the general concern, the collective impact of all
7 the advertising that's connected with that.

8 Q. And your belief is this -- this particular piece of
9 advertising, which doesn't include the word bankruptcy,
10 is false and deceptive because it creates a misleading
11 impression related to Windstream's bankruptcy?

12 A. Yes.

13 MR. KINGSTON: Let's go off the record for
14 like five minutes. I think I may be wrapping
15 up.

16 MR. SIMS: We're going off the record.
17 The time is approximately 1 p.m.

18 (The deposition recessed at 1:00 p.m. and
19 reconvened at 1:16 p.m.)

20 MR. SIMS: We are back on the record. The
21 time is approximately 1:16 p.m.

22 (Exhibit 14 was marked.)

23 BY MR. KINGSTON (CONT.):

24 Q. Mr. Langston, I'm handing you Exhibit 14. I'll
25 just ask you one question about Exhibit 14. Is that the

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1 advertisement among the multiple advertisements in
2 Exhibit 13 that we were discussing?

3 A. Yes, it is.

4 Q. I direct your attention back to Exhibit 1, the
5 notice of deposition.

6 A. Okay.

7 Q. And I'd like to briefly talk to you about
8 categories 21 and 22, which are on page six.

9 A. Okay.

10 Q. And I read category 21 to be the alleged
11 interruption or disconnection of services to certain
12 Windstream customers. Have I read that correctly?

13 A. That is correct.

14 Q. And who did you talk to to prepare yourself to
15 provide deposition testimony on behalf of Windstream with
16 respect to that company -- excuse me, with respect to
17 that category?

18 A. I spoke to our operational team that supports that.
19 So that would have been our service delivery organization
20 with Rick Hausman, also talked to I think -- who all was
21 involved with this thing. With members of our executive
22 team, the business unit leaders that are over that, that
23 would have been like Layne Levine, and also talked to our
24 access team, which is the team responsible for acquiring
25 these services from Charter. So that team -- there's

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1 multiple people on that team that are involved in that,
2 but our access team is the primary one that acquires the
3 services. So if there's a disconnect to underlying
4 services, that's the team that escalates back with
5 Charter.

6 Q. So who specifically on the access team did you talk
7 to?

8 A. That would be Jean -- Jeanne Dale primarily, maybe
9 Wendy Hayes as well.

10 Q. Do -- you said Rick Hausman?

11 A. Rick Hausman is over the service delivery work
12 section. So if the customer has a problem, they're
13 primarily going to call into Rick's organization first.
14 They may also call Elizabeth Orth as well, which is over
15 customer service.

16 Q. Tell me Elizabeth -- I got --

17 A. Orth, O-R-T-H.

18 Q. Tell me how to spell Mr. Hausman's last name.

19 A. H-A-U-S-M-A-N.

20 Q. So Rick Hausman, what's his title?

21 A. He is the executive vice president of service
22 delivery.

23 Q. And you said he contacts -- he's in contact with
24 the customer?

25 A. So if there's a service delivery -- if there's a

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1 service interruption with a customer, they're more than
2 likely either going to call him -- call his organization,
3 somewhere in his organization for service delivery, or
4 they're going to call our customer care organization
5 underneath Elizabeth Orth to -- to notify us of a
6 problem, that there's a problem.

7 Q. And is Mr. Hausman's organization, do they liaise
8 with enterprise customers or --

9 A. Those are enter -- those are enterprise customers.
10 Like I said earlier, if -- and if they were -- some of
11 these were underlying small business customers that were
12 in our consumer/small business unit, then that would have
13 come through Paul Strickland's organization.

14 Q. Paul Strickland wasn't a person that you talked to
15 to prepare for --

16 A. Paul Strickland -- not specifically on this one.
17 Most of this I -- this knowledge I acquired was through
18 our access team. And then we had further information
19 from them about the customers impacted, but that was all
20 via the access team. So I guess to be specific, to
21 correct myself and be very specific to your answer, it
22 would have been Jeanne Dale, Wendy Hayes.

23 Q. And they're on the access team?

24 A. And that's the access -- yes, they're two of the
25 leaders in the access team.

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1 Q. And I'm -- I'm trying to get my arms around what --
2 access team, what's their -- what's the responsibility of
3 the access team?

4 A. They're the ones that acquire the underlying
5 services or that last mile access referenced here in
6 my -- in my affidavit.

7 Q. I see.

8 A. They're the ones that actually acquire the service
9 from Charter.

10 Q. They're the folks who talk to Charter?

11 A. Yes.

12 Q. So the notion is Windstream has 99 miles of fiber
13 and needs one more. It gets that one more by -- through
14 a -- through a contract with other providers, one of --
15 for example, Charter?

16 A. That is correct.

17 Q. And so is this -- is this kind of the cable
18 industry analog to like a reciprocal compensation
19 agreement in the telephone industry?

20 A. It's akin to it. It's a good -- that's a fairly
21 good analogy. In some cases where we don't have service,
22 we have to lean on other carriers for that last mile
23 access. In some cases, we're the last mile access. So
24 it is very much akin to that.

25 Q. Does -- so does Windstream provide last mile access

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1 to other carriers?

2 A. Yes.

3 Q. If I ask who, is that a question that's going to
4 make you or your counsel uncomfortable?

5 MS. SIMS: Can you repeat the question?

6 MR. KINGSTON: If I ask who Windstream
7 provides last mile access to, is that a --

8 MS. SIMS: I don't believe that's relevant
9 at all, so -- or a topic, so yes.

10 BY MR. KINGSTON (CONT.):

11 Q. Not Charter.

12 A. I -- I don't know.

13 Q. Okay.

14 A. I don't know who all -- I don't know who all we
15 provide to. I know we do in general. I can't -- and
16 I -- but I just don't know them all.

17 Q. Okay. And tell me who -- so I think your answer is
18 going to be the same for topic 22, but as far as
19 Windstream's communications with customers regarding the
20 alleged interruption or disconnection of service to
21 certain Windstream customers, would that have been
22 Miss Dale and Miss Hayes as well?

23 A. That -- they would have provided the status back
24 to -- once again, there are front line organizations;
25 right? Are the ones that take the calls from the

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1 customers and handle the customer issues, so those would
2 have been Mr. Hausman's organization, Miss Orth's
3 organization or Mr. Strickland's organizations. They're
4 the ones that interface directly with the customers. Not
5 to say the access team may not get involved to help
6 explain what was going on with those customers, but they
7 wouldn't be the primary source of contact. That would be
8 the not -- not the normal flow of the conversations.

9 Q. And you didn't talk to Mr. Strickland to gather
10 information related to section -- particularly 22; right?

11 A. No. My knowledge was all obtained through the
12 access organization. And -- and also on the -- well, I
13 would tell you the other piece of this. We received
14 executive escalations about the outage from our general
15 counsel, Kristi Moody. The issue was escalated to her
16 from the business unit organizations upon customers being
17 cut off because they were pre-petition balances were the
18 reasons being given, and so there's immediate escalation
19 so that Miss Moody can escalate with counsel at Charter
20 to get the services turned back on.

21 Q. So you talked to Windstream lawyers. You talked to
22 Mr. Hausman, and you talked to Mr. Orth?

23 A. Yes.

24 Q. And I'm just focusing just on category 22,
25 Windstream's communications with customers regarding the

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1 alleged interruption or disconnection of service to
2 certain Windstream customers; right?

3 A. Yes.

4 Q. So legal, Hausman, Orth as far as communications
5 with the customers; right?

6 A. Yes.

7 Q. And what is -- what is Mr. Orth's first name again?

8 A. Elizabeth.

9 Q. Oh, that's -- so what, is it Ms. Orth? It's
10 probably misses. Mrs. Orth's first name?

11 A. I prefer to say miss.

12 Q. Oh, miss.

13 A. And lack of understanding, yeah.

14 Q. That's fine. Miss Orth's first name is Elizabeth.
15 And what's her -- what's her group again?

16 A. Customer care for our enterprise business unit.

17 Q. And when I -- tell me -- tell me about Windstream's
18 communications with customers regarding the
19 interruptions.

20 A. One, the communication would be to acknowledge
21 receipt when they call in and say we acknowledge -- yes,
22 we see you have an issue. We have to research what's
23 going on with the issue. Secondly, then to follow back
24 up with the customer to status them -- on the status of
25 their issue. In this situation, I know we were receiving

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1 customer -- you know, calls back from the customer
2 saying, you know, when is this going to be fixed, you
3 know, we're out of service. We can't -- we can't
4 operate. Some of those services that were impacted the
5 customers called back were things like they lost 911
6 access. They lost Internet access. Some of those -- as
7 I said earlier today, some of those were homeless
8 shelters, day cares, et cetera, so they had a heightened
9 sense of escalation. And I don't know all 350 businesses
10 sitting here today, but those were typical of what's
11 going on.

12 So, you know, proactive communication back with
13 them as well throughout the outage to let them know what
14 was going on to status them on their tickets, and that
15 was probably done in that case not by -- not by
16 specifically a care rep, by an account -- an account
17 representative that owns that account, that relationship
18 with the account, was statusing back with them as well.
19 That would be the normal path that we would follow.

20 Q. So were there 350 discrete businesses?

21 A. My understanding there were 350 discrete customers
22 impacted. Those customers could have been a small
23 business, a B to B business and within that range. So it
24 could have been a restaurant. It could have been, as I
25 said, lack of better terms, I know two of them

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1 specifically were a homeless shelter and a day care.

2 Q. Right, but you're saying there was 350 specific,
3 individual businesses?

4 A. Discrete -- discrete customers. Just call them
5 customers because I don't know the exact discernment
6 between were they a large B to B customer, were they a
7 small B to B customer, were they individual small
8 business owner. It could have been. It could have been
9 a small business owner with a connection going into a
10 location that was also a household.

11 Q. Among those 350 customers, are you aware of a
12 single consumer customer?

13 A. Like I said, I don't know the specific breakdown.
14 I'm not -- I'm not aware that one of them was. I'm not
15 aware that one of them was not.

16 Q. Are you aware of a single one of those, excuse me,
17 350 customers that received the advertisements or any --
18 any of the advertisements that are collected in Exhibit 3
19 to your affidavit?

20 A. I'm not aware that any of them received it or did
21 not receive it.

22 Q. You're not aware?

23 A. There were 800,000 sent out by Charter in all of
24 our operating territory, so that's a pretty significant
25 coverage.

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1 Q. You're not aware of any of those 350 customers
2 referencing Windstream's complaint that received the
3 advertisements that are collected as Exhibit 3 to your
4 affidavit?

5 A. I'm not aware of that, no.

6 Q. And you're the person designated by Windstream to
7 provide testimony on behalf of the company related to
8 Windstream's communications with customers regarding the
9 alleged interruption or disconnection of service to
10 certain Windstream customers?

11 A. That is correct.

12 MR. KINGSTON: I pass the witness.

13 MS. SIMS: Okay. If we can take a short
14 break and we'll get set up.

15 MR. SIMS: We're going off the record.
16 The time is approximately 1:29 p.m.

17 (The deposition recessed at 1:29 p.m. and
18 reconvened at 1:42 p.m.)

19 MR. SIMS: We are back on the record. The
20 time is approximately 1:42 p.m.

21 BY MS. SIMS:

22 Q. Good afternoon, Mr. Langston.

23 A. Good afternoon.

24 Q. Can you please tell me generally about Windstream's
25 business?

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1 A. We are a nationwide provider of telecommunication
2 services including consumer services such as broadband,
3 entertainment services, things such as that. We're also
4 a long haul carrier of things like big customer networks
5 from B to B customers. We have a wholesale business
6 where we wholesale the network assets that we own or that
7 we have to third parties, such as other
8 telecommunications providers and wireless companies, et
9 cetera. And maybe hosting sites such as, you know, Apple
10 or Google or things like that.

11 Q. And where are Windstream's customers located?

12 A. We're in 18 states, such states as Arkansas, North
13 Carolina, Georgia, Ohio, Kentucky, Florida, amongst
14 others, Iowa.

15 Q. Do you have customers in Alabama?

16 A. Yes.

17 Q. Minnesota?

18 A. Yes.

19 Q. What about Mississippi?

20 A. I don't know if they're on that list or not.

21 Q. What about Missouri?

22 A. I don't know.

23 Q. Nebraska?

24 A. Yes.

25 Q. And what New Mexico?

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1 A. Yes. And Texas.

2 Q. Are you familiar with Windstream's consumer
3 broadband customer numbers for 2018?

4 A. Yes.

5 Q. And can you tell me generally what those numbers
6 were like?

7 A. Our end of year number was, you know, approximately
8 1.2 million at the end of the year. We grew that
9 customer base by 14,000 over -- over the period of that
10 year.

11 Q. And how was this growth accomplished?

12 A. Many factors. One, we were coming off an extended
13 period, I'd say the last three to four years, of
14 significant network investment to acquire and expand our
15 high speed network and improve the access to high speed
16 services in many of those markets. The other thing was,
17 you know, creation of new products and pricing plans over
18 the last couple of years, and then an extensive
19 advertising campaign using our Kinetic brand starting in
20 September, 2017.

21 Q. And are you familiar with Windstream's customer
22 broadband numbers for 2019?

23 A. Generally speaking, I can speak towards it. So
24 we've continued to see broadband growth through the first
25 part of this year as a continuation we saw last year.

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1 And so at this point I would say through February, we've
2 continued that broadband growth.

3 Q. Are you familiar with Windstream's Chapter 11
4 bankruptcy filing?

5 A. Yes.

6 Q. And what prompted Windstream to file for
7 Chapter 11?

8 A. We had a -- a ruling from a judge regarding a
9 lawsuit from one of our bondholders regarding some of the
10 conditions in our bonds or the contractual nature of our
11 bonds that resulted in a -- you know, potential cause of
12 default of our -- of our bonds. So given -- given that
13 adversarial ruling, we had to declare bankruptcy. So it
14 was totally external to the operations of the company.

15 Q. What is Windstream's goal in filing for Chapter 11?

16 A. Our main goal is to restructure our debt
17 considerations, potentially some of our lease or
18 contractual obligations, and then to exit out of
19 bankruptcy as a much healthier company and to continue to
20 offer -- and expand and offer the broadband services as
21 well as other new strategic services we've been launching
22 over the last few years.

23 Q. And to your knowledge, has Windstream's day-to-day
24 operations been affected by the Chapter 11?

25 A. No.

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1 Q. And to your knowledge, has Windstream's services to
2 its customers been impacted by the Chapter 11?

3 A. None other than the impact of Charter cutting off
4 the customers that we've spoken about previously.

5 Q. Other than disconnect, is there any impact at all
6 with respect to customers being impacted by Chapter 11?

7 A. Not that I'm aware of.

8 Q. Are there any plans for Windstream to liquidate?

9 A. No.

10 Q. Are there any plans for Windstream to downsize its
11 operations?

12 A. No.

13 Q. Are there any plans for Windstream to downsize its
14 services to its customers?

15 A. No, not at all.

16 Q. And there are any plans for Windstream to terminate
17 services to its customers?

18 A. Not at all.

19 Q. Do you know whether Windstream has received
20 debtor-in-possession financing?

21 A. We have.

22 Q. Do you know approximately how much?

23 A. Approximately \$1 billion.

24 Q. Do you know whether that financing was accompanied
25 with a ranking or a grade?

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1 A. Yes, we received investor -- investment grade
2 ranking on those -- on that debt.

3 Q. What does that mean?

4 A. That means basically it's of a much higher quality
5 debt and one that people are more willing to participate
6 in. It attracts a higher level of investors.

7 Q. And do you know what the debtor-in-possession
8 financing will be used for generally?

9 A. Primarily for just normal day in/day out
10 operations, business as usual type operations. You know,
11 prior to the bankruptcy filing, we had a revolver, but
12 because of the judge's ruling related to the Aurelius
13 case, you know, that got locked down, and so we had to
14 acquire financing to continue operations and so that's
15 what the debtor-in-possession financing is. It's just
16 normal day in/day out operation.

17 Q. And does that debtor-in-possession financing ensure
18 that the day-to-day operations are not impacted by the
19 Chapter 11?

20 A. Yes. Yes.

21 Q. You mentioned a Kinetic Internet earlier; is that
22 right?

23 A. Correct.

24 Q. Can you explain what that is?

25 A. So that's our -- that's our -- Kinetic is our brand

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1 name that we use for a lot of our consumer/small business
2 services. The internet side of that is our broadband or
3 high speed data connection services into consumer
4 households or into small business households.

5 Q. And do you know whether Windstream has advertised
6 its Kinetic Internet?

7 A. Yes, we have, extensively.

8 Q. And did you -- did you say when that advertising
9 started?

10 A. That advertising started in September, 2017, I
11 believe.

12 Q. And how has Windstream advertised Kinetic Internet?

13 A. Oh, we've had print advertising, media advertising.
14 We've had Internet advertising. We've had direct mail
15 pieces. Many, many different advertising forms and
16 channels.

17 Q. I'm going to hand you a document that was
18 previously marked at Exhibit 1 to your declaration.
19 Consistent with the earlier deposition exhibits for the
20 deposition, I'm going to go ahead and retain that exhibit
21 cover sheet, and I'm going to mark this as Exhibit 15.

22 (Exhibit 15 was marked.)

23 MR. KINGSTON: I'm trying to be
24 consistent. Are we marking on the top? Hold a
25 moment.

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1 BY MS. SIMS (CONT.):

2 Q. There you go, Mr. Langston. And can you please
3 take a look at the document?

4 A. Okay.

5 Q. Do you recognize it?

6 A. It's one of Windstream's Kinetic advertisements.

7 Q. And if you go to the third -- the last page of the
8 exhibit, it's Bates numbered WIN -- WIN 4?

9 A. Yes.

10 Q. What is that?

11 A. That is our -- our Web site. So it would be one of
12 our Web advertisements.

13 Q. And where were -- where was Kinetic Internet
14 advertised?

15 A. Well, so it would be all -- all the states we offer
16 consumer services in. So -- so of note would be our --
17 respectfully our most -- our largest competitive states,
18 so Ohio, Kentucky, Nebraska, North Carolina, amongst
19 others.

20 Q. Do your -- I'm sorry. How did you describe it?
21 You said the highest -- the most highest?

22 A. I said of note, those are the highest ones, but it
23 would be all the states that we offer our consumer
24 services in.

25 Q. Are Alabama and Georgia included in the highest

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1 kind of competitive market states?

2 A. Yes. I mean, they would be. I mean, yeah, I'm
3 just calling out of note those states, those other
4 states.

5 Q. You can set that aside for now.

6 I'm going to hand to you -- actually, I'm going to
7 take a moment to mark two exhibits at the same time
8 because they're --

9 (Exhibits 16 and 17 were marked.)

10 BY MS. SIMS (CONT.):

11 Q. I'm marking two documents. The first one is going
12 to be Exhibit 16, and the -- it's Bates numbered WIN 167
13 to WIN 168. The second document is Exhibit 17, and it's
14 Bates numbered WIN 173 to 176. I'll hand these to you.
15 I'll also hand copies to counsel.

16 Mr. Langston, do you recognize Exhibit 16?

17 A. Yes.

18 Q. And what is that?

19 A. It's a direct mail piece advertising our Kinetic
20 high speed Internet.

21 Q. And turning to Exhibit 17, do you recognize that
22 document?

23 A. Yes, another direct mail piece for our high speed
24 Internet.

25 Q. And that's for Kinetic Internet?

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1 A. For Kinetic Internet, specifically advertising our
2 gig service.

3 Q. And do you know whether Windstream has registered
4 its name Windstream as a trademark?

5 A. We have.

6 Q. You can set those aside for now.

7 Are you familiar with Charter Communications, Inc.
8 and Charter Communications Operating, LLC?

9 A. Generally.

10 Q. And generally what is your knowledge of Charter
11 generally?

12 A. They're a large telecommunications provider,
13 primarily cable and broadband services to both, you know,
14 consumer as well as business.

15 Q. How would you describe Windstream's relationship
16 with Charter?

17 A. They're a competitor, but at the same time they're
18 also somebody that we buy services for for last mile
19 services.

20 Q. And when you say that Charter is a competitor, can
21 you be more specific?

22 A. We sell the same services in the same markets, and
23 so we're competing for customers, for the same customers.

24 Q. And which market would that be?

25 A. Those 18 states that we're in, those consumer

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1 services states that we're in.

2 Q. And specifically for what service?

3 A. I would tell you two. The primary service would be
4 broadband, but there are some -- in some cases
5 entertainment services as well, video.

6 Q. And how competitive is the broadband industry in
7 the market?

8 A. It's very competitive.

9 Q. And is Charter one of Windstream's main competitors
10 in that market space?

11 A. Yes.

12 Q. Would you say that Charter competes directly with
13 Windstream?

14 A. Absolutely.

15 Q. Are you familiar with an advertising campaign by
16 Charter involving Windstream's Chapter 11?

17 A. Yes, I am.

18 Q. And do you know when this advertising campaign
19 began?

20 A. Basically upon, my knowledge, it would be about the
21 middle of March, maybe a little bit earlier than that.

22 Q. And what generally, to your knowledge, did that --
23 did Charter's advertising campaign regarding Windstream's
24 Chapter 11 consist of?

25 A. Informing the people that were the recipients of

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1 the advertising that Windstream had declared bankruptcy,
2 that our future was uncertain and that specific -- don't
3 risk certain services like Internet being interrupted and
4 that Charter was -- was here to stay, and then at the end
5 of the advertisement it saying, you know, basically
6 good-bye, Windstream; hello, Spectrum.

7 Q. And do you know what form the advertisements
8 were -- let me rephrase.

9 Do you know the format of the advertisements
10 that -- that Charter ran?

11 A. Explain format.

12 Q. Do you know if it was direct mail?

13 A. You had direct mail. Later there were door
14 hangers, but the initial way that was launched in early
15 March were primarily direct mail.

16 Q. I'm going to refer to you what's previously marked
17 as Exhibit 13. Do you recognize this document?

18 A. Yes.

19 Q. And what is this document?

20 A. These are the examples of the Spectrum advertising
21 or Charter advertising that Windstream became in
22 possession of related to that early to mid March
23 advertising campaign I mentioned earlier.

24 Q. And do you know where these advertisements were
25 disseminated?

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1 A. Where they were disseminated?

2 Q. Yes.

3 A. Into Windstream's markets.

4 Q. And do you know which specific markets those were?

5 A. I know Kentucky, Ohio, Nebraska. I haven't heard
6 that it wasn't sent -- that it was limited not to be sent
7 to other markets, but those are the ones that I'm
8 primarily aware of, North Carolina.

9 Q. Do you know whether the direct advertisements were
10 sent to customers in Alabama?

11 A. No, I don't know that.

12 Q. And do you know whether the direct advertisements
13 were sent to customers in Georgia?

14 A. No, I don't know that.

15 Q. And the states that you mentioned that the
16 advertisements were sent to, are these any -- are any of
17 those states Windstream's top performing states?

18 A. Yes. I mean, the most competitive states that
19 we've got or the largest market states, the biggest
20 opportunities are Kentucky, you know, Ohio, Nebraska, you
21 know, those -- those are -- you know, north -- I mean
22 north Georgia as well. Those are all highly competitive
23 states, North Carolina as well.

24 (Exhibit 18 was marked.)

25 BY MS. SIMS (CONT.):

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1 Q. I'm going to hand you a document that we're going
2 to mark as Exhibit 18. Mr. Langston, do you recognize
3 this document?

4 A. Yes, I do.

5 Q. And what is it?

6 A. This is the front of the envelope and the sealing
7 flap on the back of the same envelope on the direct mail
8 piece from Charter to the Windstream customers or -- and
9 even more than Windstream customers.

10 Q. And -- what was your action when you saw this
11 envelope?

12 A. One, that it's targeted to -- to Windstream
13 customers. Secondly, you really don't know who it comes
14 from. So it looks like -- and based upon the color
15 markings on the back seal, using Windstream's colors that
16 we've used on our Kinetic campaign, that it looks like it
17 comes from Windstream.

18 Q. Do you see Charter's name on the envelope?

19 A. No, I do not.

20 Q. And do you see Charter's logo anywhere on the
21 envelope?

22 A. No, I do not.

23 Q. And what is the -- what's the -- how is the
24 envelope addressed?

25 A. It's addressed to Windstream customers.

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1 Q. And what specifically does it state in terms of
2 being addressed to Windstream customers?

3 A. Important information enclosed to draw your
4 attention to it.

5 Q. And you mentioned a door-to-door campaign; is that
6 correct?

7 A. Yes.

8 Q. What's your understanding of the door-to-door
9 campaign?

10 A. That in certain markets, I'm not -- I'm not exactly
11 sure what markets this was limited to, but at least in
12 the case that -- of the example that we came across it.
13 It was in Ohio, Elyria, Ohio. Once again, campaign --
14 once again telling Windstream customers that, you know,
15 don't risk your service being cut off. Cut over to
16 Spectrum, special promotional offer being offered to come
17 over to Spectrum.

18 In addition, upon acquisition of the direct mail
19 piece or of that door hanger, our -- one of our vice
20 presidents of sales actually called the sales
21 representative's name and number on the door hanger, and
22 in conversation with that sales representative, the sales
23 representative that Windstream would cut off their
24 services within two months, that they were working in
25 partnership with Windstream to move the customers over,

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1 that that's normal in a bankruptcy situation and that we
2 had provided our list of customers to Spectrum to do
3 that.

4 MR. KINGSTON: I'm sorry.

5 MS. SIMS: What was the name?

6 MR. KINGSTON: I'll object, and I'll move
7 to strike that answer as based on hearsay.

8 Sorry.

9 BY MS. SIMS (CONT.):

10 Q. What was the name of the Spectrum -- do you know
11 the name of the Spectrum representative?

12 A. I believe -- I'd have to look at the document to be
13 sure, but I believe it was a Emmitt Walker.

14 Q. What was the name of the Windstream representative?

15 A. Wayne Parrish.

16 Q. And how did you learn this information from
17 Mr. Parrish?

18 A. I actually had a call from Mr. Parrish directly
19 where he recounted everything that had happened up --
20 including the conversation with Mr. Walker and -- so
21 that's how I got it.

22 (Exhibit 19 was marked.)

23 BY MS. SIMS (CONT.):

24 Q. I'm going to hand you a document that we're marking
25 as Exhibit 19, and Exhibit 19 is Bates numbered WIN 64 to

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1 68.

2 And I -- there's a slip sheet on the cover of this.
3 Is this -- I believe was the Exhibit 1 to your
4 supplemental declaration. And, Mr. Langston, do you
5 recognize this document?

6 A. Yes.

7 Q. And what is that?

8 A. So this is the advertisement from Spectrum that I
9 was referencing for the door hanger that Mr. Walker, the
10 sales representative for Spectrum, meaning Charter, put
11 out there.

12 Q. And was the -- was the materials in Exhibit 19, was
13 this provide to you by Mr. Parrish?

14 A. Yes.

15 (Exhibit 20 was marked.)

16 BY MS. SIMS (CONT.):

17 Q. I'm going to hand you a document that I'm going to
18 mark as Exhibit 20.

19 MR. KINGSTON: Thank you.

20 BY MS. SIMS (CONT.):

21 Q. Mr. Langston, do you recognize this document?

22 A. Yes.

23 Q. And what is it?

24 A. It's a voice mail message into one of our care
25 centers from a customer that also received the same door

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1 hanger from Mr. Walker or received the door hanger. I'm
2 not sure it came from Mr. Walker.

3 Q. Okay. You can set that aside.

4 Are you aware of any Windstream customers
5 contacting Windstream because of the Spectrum
6 advertisements?

7 A. Yes.

8 Q. And do you know the total current number of
9 Windstream customers that have contacted Windstream
10 regarding the Spectrum advertisements?

11 A. The last number that I have is 215.

12 Q. To your knowledge, has Windstream kept track of the
13 customers that have contacted it regarding the Spectrum
14 advertisements?

15 A. Yes.

16 Q. And to your knowledge, what has been done in terms
17 of tracking this information?

18 A. What do you mean by what has been done?

19 Q. To your knowledge, what information has been
20 gathered, if any, regarding the customer contacts?

21 A. We've retrieved the -- the screenshots that are the
22 actual notes the customer care rep makes when they
23 receive a customer's call. They put that into our -- our
24 system to keep track of that. In addition to that, we've
25 gone back after the calls and captured the call

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1 recordings of all the conversation of the entire call.
2 And then we've also, you know, just gathered the call
3 stats on how many of the calls have come in themselves.

4 (Exhibit 21 was marked.)

5 BY MS. SIMS (CONT.):

6 Q. I'm going to hand to you a document we'll mark as
7 Exhibit 21.

8 Mr. Langston, do you recognize this document?

9 A. Yes, I do.

10 Q. And what is it?

11 A. So this is a log of all the customer calls that we
12 captured so far of what's come in regarding the Spectrum
13 advertising. And it notes the date of the call, the
14 account number of the call, the state that the customer
15 resides in, the type of contact, whether it was a call or
16 a social media post or some other form of contact, so the
17 form of contact. It also indicates whether we're able to
18 pull the call recording, that's the call pulled category,
19 and then it also contains whether we were able to
20 retrieve a screenshot of the customer care system and
21 notes contained therein.

22 Q. And for the record, because I forgot to say at the
23 beginning, Exhibit 21 is Bates numbered WIN 2058 to 2063.

24 Stepping back for a moment, can you tell me what
25 generally happens in terms of the process when a

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1 Windstream customer calls in to the customer service
2 center?

3 A. We're going to greet the customer and then ask how
4 we can help and why are they calling in. Then we -- or
5 we discern, you know, basically what the issue, concern
6 or problem is that the customer has and try to figure out
7 how to go deal with that appropriately.

8 Q. And who -- and who is it that the customer talks
9 to?

10 A. A customer care representative.

11 Q. And do the customer care representatives take notes
12 of the call?

13 A. Yes. They take that into our customer care system.
14 It's called wind -- WindCare.

15 Q. Do the customer care associates use shorthand for
16 these notes?

17 A. Yes.

18 Q. Do you know what the abbreviation CI stands for?

19 A. Customer inquiry.

20 Q. And do you know what the abbreviation ADV stands
21 for?

22 A. Advice.

23 Q. And do you know whether or not the -- these notes
24 contain like every detail of the call with that customer?

25 A. No, they don't. They contain just a -- what I

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1 would call a very brief synopsis of what's in the call.
2 They -- the customer care reps are trying to work with
3 the customer to get through the problem, and they're
4 trying to take the notes the best they can through the
5 call. So I would say it's a very abbreviated set of
6 notes to give them reference for future purposes. It
7 doesn't contain a great majority of the conversation.

8 (Exhibit 22 was marked.)

9 BY MS. SIMS (CONT.):

10 Q. I'm going to hand to you what we're marking as
11 Exhibit 22, and this was Exhibit 4 to your original
12 declaration. And it's Bates numbered now WIN 28 through
13 31.

14 And, Mr. Langston, do you recognize Exhibit 22?

15 A. Yes.

16 Q. And what is Exhibit 22?

17 A. This is the transcript of a customer service call
18 recording.

19 Q. Just to clarify, does this contain any notes at all
20 from the customer -- from a customer care associate?

21 A. Yes.

22 Q. Is this -- are these customer care associate notes
23 or is this a transcript of a call?

24 A. I'm trying to go through with all the redactions
25 and determine.

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1 It appears to be --

2 MR. KINGSTON: I'll object, lack of
3 foundation.

4 MR. LANGSTON: It appears to be notes.
5 BY MS. SIMS (CONT.):

6 Q. As part of your process in terms of -- let me
7 rephrase.

8 In preparing for this deposition, did you inquire
9 and obtain information regarding customer contacts
10 from -- contacts to Windstream regarding Spectrum
11 advertisements?

12 A. Yes.

13 Q. And what are the sources of materials that you were
14 provided?

15 A. So sources of materials would have been our call
16 recordings. They also would have been any kind of notes
17 taken during the calls in reference specifically to those
18 calls that we believed were associated with the Spectrum
19 advertising.

20 Q. And in looking at Exhibit 22, do you recognize this
21 as one of -- as one of the documents that you were
22 provided?

23 A. Yes.

24 Q. And in looking at this document again, are you able
25 to tell what it reflects?

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1 A. It reflects the customer coming -- saying that
2 Spectrum is going door to door telling people we're going
3 out of business, also advised that she spoke with a
4 representative of Spectrum -- the customer spoke to a
5 representative of Spectrum, and then advised her of the
6 Chapter 11 filing and an offer that Spectrum provided.

7 I'm not sure exactly what tin means, but it says
8 the customer would rather use a tin than go talk to
9 Spectrum. It says the customer also received a flyer
10 about Spectrum and about Windstream service and a
11 Chapter 11 filing. It was a flyer. And then -- also
12 talks about a letter from Charter.

13 The call from Lincoln, Nebraska. The customer
14 called in very upset about the flyer he got from
15 Spectrum. Said it makes him very angry that Spectrum did
16 this.

17 And another call coming in from Covington, Ohio
18 making sure that these services were not going to be
19 disconnected because of reading the flyer from Spectrum.

20 Another call from Kentucky, customer called in
21 upset that Spectrum called her and sent letter in mailing
22 that we filed bankruptcy and they needed to switch over.

23 So multiple calls from customers in different
24 states reflecting the Charter advertisements,
25 door-to-door campaign and messaging.

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1 Q. Okay. You can set that aside.

2 (Exhibit 23 was marked.)

3 BY MS. SIMS (CONT.):

4 Q. I'm going to hand you a document that I'm marking
5 now as Exhibit 23, and this was previously Exhibit 5 to
6 your declaration. The Bates numbers on this document are
7 WIN 32 through 36.

8 Mr. Langston, do you recognize this document?

9 A. Yes.

10 Q. And what is it?

11 A. So this is a listing of different customer calls
12 associated with the -- about customers calling in about
13 the Spectrum advertising. So you had different customers
14 in multiple states calling in about it, and these appear
15 to be out of the summary notes taken by the care reps.

16 Q. Thank you. Just set that aside.

17 MR. KINGSTON: I'm sorry. What exhibit
18 was that?

19 MS. SIMS: That was 23.

20 MR. LANGSTON: 23.

21 MS. SIMS: 23.

22 MR. KINGSTON: Thank you.

23 (Exhibit 24 was marked.)

24 BY MS. SIMS (CONT.):

25 Q. All right. I'm going to hand to you a document

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1 that we're going to mark as Exhibit 24. I will note that
2 it's possible that certain of these pages were previously
3 marked as single exhibits, but I don't -- for convenience
4 sake, I'm going to keep this all as one -- one exhibit.
5 And Exhibit 24 is a document that is Bates numbered WIN
6 221 through WIN 374.

7 And, Mr. Langston, do you recognize these
8 documents?

9 A. Yes.

10 Q. And what are they?

11 A. So this is a screenshot of a -- of the notes the
12 customer care rep has taken based upon a conversation he
13 had with the customer.

14 Q. And you see that there is a date in the upper right
15 of that screenshot. What does that date reflect?

16 A. April 16th, 2019.

17 Q. And do you know what that date represents?

18 A. That would be the date of the actual call. So
19 that's a system -- that's a screenshot of the date.

20 Well, no, that date -- no. Let me take that back.
21 Let me retract that. That's the date where we inquired
22 into -- into that actual transaction.

23 Q. And it looks like there's another date on the
24 middle left-hand side under remarks?

25 A. That is correct.

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1 Q. For example, on this first page, that date is
2 March 25th. What does that date represent?

3 A. That date would be the actual date of the call. I
4 apologize for the confusion.

5 Q. And when you say that there are customer care
6 representative notes, are you referring to the text that
7 is under the section labeled remarks?

8 A. Yes, I am.

9 Q. You can set that aside.

10 (Exhibit 25 was marked.)

11 BY MS. SIMS (CONT.):

12 Q. I'm going to hand to you a document that we'll mark
13 as Exhibit 25. And Exhibit 25 bears the Bates numbers
14 WIN 1771 through 1773.

15 And, Mr. Langston, do you recognize these
16 documents?

17 A. Yes.

18 Q. And what are they?

19 A. This is another screenshot of our care system
20 recording the notes from a customer call.

21 Q. And to your knowledge, do you -- do you know what
22 the customer calls are generally about?

23 A. Well, the customer called in on April 23rd, stated
24 that -- wanted to let us know that Spectrum knocked on
25 her door today and they seemed shady. Wanted to -- she

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1 wanted to report them to us. She told them she was happy
2 with her service. So, you know, apparently a -- you
3 know, concerned about Spectrum talking to her -- asked
4 her -- contacting her.

5 Q. You can set that aside.

6 A. Okay.

7 Q. And to your knowledge, are customer calls to the
8 customer call center, are they recorded?

9 A. Yes.

10 Q. And do you know whether the customer calls
11 specifically regarding the Spectrum advertisements --
12 sorry. Let me rephrase.

13 Do you know whether the customer call recordings
14 for calls regarding the Spectrum advertisements were
15 gathered in connection with this case?

16 A. Yes, they were.

17 Q. And do you know whether there are transcripts of
18 those recorded calls?

19 A. Yes.

20 Q. And have you reviewed any of the transcripts?

21 A. I have.

22 Q. I'm going to hand to you a document -- hold on.
23 It's a very large document.

24 (Exhibit 26 was marked.)

25 BY MS. SIMS (CONT.):

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1 Q. I'm going to hand to you a document that we're
2 going to mark as Exhibit 26, and I will note for the
3 record the beginning Bates number is WIN 381 and the very
4 last Bates number is WIN 1770, but the Bates numbers are
5 not consecutive all throughout -- throughout the document
6 for the record.

7 And, Mr. Langston, do you recognize these -- this
8 document?

9 MR. KINGSTON: I will object on
10 foundation. I mean, if you'll represent what
11 they are, I think that's fine, but I don't know
12 that the witness is in a position to
13 authenticate an entire phone book. I'll take
14 you at your word, just tell me what they are.

15 BY MS. SIMS (CONT.):

16 Q. Do you recognize what these are, what Exhibit 26
17 consists of?

18 A. Yes, these are the transcriptions of customer
19 calls, of the customer call recordings.

20 Q. And do you know whether these were the customer
21 call recordings regarding the Spectrum advertisements?

22 A. Yes, they are.

23 Q. Okay. You can set that aside.

24 And do you know generally some of the concerns, if
25 any, that Windstream customers have stated when they've

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1 called in regarding the Spectrum advertisements?

2 A. The basic --

3 MS. SIMS: I'm sorry. I object to lack of
4 foundation, but you can answer.

5 MR. LANGSTON: The basic concern the
6 customers have had is is Windstream really
7 going away and are they going to lose their
8 services. That's -- that's the basic extent of
9 their concerns.

10 (Exhibit 27 was marked.)

11 BY MS. SIMS (CONT.):

12 Q. I'm going to hand to you a document that was
13 previously Exhibit 9 to your declaration. I'm now going
14 to mark that as Exhibit 27.

15 And, Mr. Langston, do you recognize this document?

16 A. Yes.

17 Q. And what is it?

18 A. It's a social media post to us regarding
19 advertisements received by a customer from Spectrum.

20 Q. You can set that aside.

21 And, Mr. Langston, in your view, has Windstream
22 suffered harm as a result of Charter's advertisements?

23 A. Yes.

24 Q. And in what form has that harm taken?

25 A. Brand image or degradation of brand image, you

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1 know, loss of good will with our customers, you know,
2 being able to trust Windstream and think that
3 Windstream's going to be around, creating doubt and
4 confusion around that, loss of customers. You know, I
5 think just general reputation and, you know, the
6 things -- you know, we've tried to create a brand name,
7 tried to create an image around our service and clearly
8 seen good results with our broadband growth and clearly,
9 you know, see that as -- as harm to that.

10 Q. And when you say that, did you say customer image
11 or what was the phrase that you --

12 A. Brand image.

13 Q. Brand image.

14 A. Degradation of brand image.

15 Q. How has Windstream built that brand image?

16 MR. KINGSTON: I'm going to object to the
17 question. Calls for a narrative.

18 BY MS. SIMS (CONT.):

19 Q. You can answer.

20 A. So one, I mean, the most demonstrative version of
21 that would be through our advertising campaigns, through
22 the Kinetic advertising, you know, as I said earlier
23 starting in September of '17, but also built that image
24 through, you know, significant investment into our
25 network infrastructure to expand our high speed

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1 broadband. You know, improvements to our customer
2 service, our overall sales campaigns, promotional
3 campaigns, you know, to our customers reflecting the
4 availability of these services, and then just a, you
5 know, focus over time that, you know, we're -- we're
6 willing to invest in our customer base and want to be in
7 these markets and compete.

8 Q. And when you say harm to the brand image, what do
9 you mean by that?

10 A. You know, associating that there's uncertainty
11 around Windstream, the name Windstream, and in our brand
12 that we're going away. That -- the -- creating doubt and
13 uncertainty over specific services that we offer and that
14 people are going to lose those services, and then, you
15 know, just the general uncertainty created by the
16 advertisement, you know, indicating that we're going
17 away.

18 Q. And you indicated a loss of customer good will.
19 What do you mean by that?

20 A. You know, the customer seeing us as somebody who is
21 trustworthy, that's going to be here, that's going to be
22 here for the long term and be there to take care of them
23 and honor our agreements with them, and, you know, the
24 customers want to do business with somebody they could
25 trust.

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1 Q. And to your knowledge, how has Windstream built its
2 good will?

3 A. You know, one is the indication we've done
4 extensive advertising to the investments we've made into
5 the markets and expanding the networks. We've also
6 indicated through our advertising campaigns. We invested
7 greatly into local market operations and bring a very
8 local influence to how are markets operate and really
9 returning to the fact that we're a -- we're a local
10 telecommunications provider there, that we're part of the
11 community.

12 Q. And what does harm to the customer good will mean?

13 A. Explain your question.

14 Q. Well, you indicated before that you believe that
15 like loss of customer good will was one of the harms. I
16 just wanted to understand what you meant by that.

17 A. Well, you just -- you're creating doubt and
18 uncertainty in the -- in the customer's minds that
19 Windstream is somebody there that's going to be around to
20 take care of them, that they're going to be there in the
21 long term and that it's somebody they want to do business
22 with and, quite frankly, that we're, you know, somebody
23 who's going to be present and available to them as a
24 provider.

25 Q. And when good will is harmed, can you be rebuilt?

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1 MR. KINGSTON: Objection, calls for expert
2 opinion testimony. You can answer.

3 MR. LANGSTON: It -- it can. It takes a
4 long time. In our case, we've had to invest
5 significant amounts of money to expand our
6 network and grow our network over a number of
7 years. Our brand campaign has been going for
8 almost two years, a year and -- a year and
9 three-quarters. It takes quite a while to
10 build that up, and it takes -- the people that
11 run these markets have put a lot of effort into
12 it.

13 BY MS. SIMS (CONT.):

14 Q. And you mentioned of losing customers. Are you
15 aware of Windstream losing customers especially because
16 of the advertisements?

17 A. Yes.

18 Q. And what does losing a customer mean to Windstream?

19 A. You know, you would think, you know, because you
20 think about a company having a customer base of
21 1.2 million broadband customers that losing a customer
22 doesn't matter a lot, but, you know, simplistic economic
23 terms, acquiring one customer costs, you know, quite a
24 bit of money, but more importantly, we truly try and go
25 after each customer relationship. We have -- we have

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1 effort in the install. We put effort into care. We
2 invest in the network for that individual customer, so,
3 you know, it's -- every customer lost is pretty painful.

4 Q. And do you believe that 215 is the absolute cap on
5 the number of customers who have concerns about the
6 Spectrum advertisements?

7 A. No, I don't. You know, the reality is, you know,
8 the customers that actually call in are the most vocal
9 piece. Most don't call in. They're generally concerned,
10 they might have concerns, you know, there -- and there's
11 also those that receive this flyer that aren't Windstream
12 customers, and they might have been considering
13 Windstream, but now with this advertisement, they look at
14 it differently. You also don't know who else the 215
15 people talked to.

16 So, no, I don't -- I believe it's just the tip of
17 the iceberg. You know, I -- for one, I don't like
18 calling in to customer service. So to get to a customer
19 and be so concerned to call in customer service, they
20 represent a very small minority of the general
21 population.

22 Q. And has Windstream taken actions in response to
23 this Spectrum advertising campaign?

24 A. Yes, we have.

25 Q. And what actions has Windstream taken?

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1 A. Well, in the most simplistic form, we had to
2 provide call scripting notes to our customer care reps
3 and to our sales reps and to others on how to go explain
4 what Spectrum put out there and what it really means and
5 what it doesn't mean out there as well to counter the
6 false advertising, the -- on a bigger note, we've had to
7 go down significant mail campaigns and advertising
8 campaigns to work on restoring the confidence and brand
9 image, you know, that was harmed by the Spectrum
10 advertising.

11 (Exhibit 29 was marked.)

12 BY MS. SIMS (CONT.):

13 Q. I'm going to mark as Exhibit 29 a document that
14 bears the Bates number WIN 74 through 76, although I will
15 note that 76 is actually a blank page.

16 And, Mr. Langston, do you recognize Exhibit 27?

17 A. These are some of the scripting guidance we gave to
18 call center reps related to general bankruptcy
19 information.

20 Q. And is there any scripting with respect to the
21 Spectrum advertising?

22 A. Yes, there is.

23 Q. And is the located on WIN 75?

24 A. Yes, it is.

25 Q. And is this what you were referring to when you

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1 said that you provided the customer care representatives
2 with call scripts?

3 A. Yes.

4 (Exhibit 28 was marked.)

5 BY MS. SIMS (CONT.):

6 Q. I'm going to hand to you a document that we'll mark
7 as Exhibit 28, and Exhibit 28 is Bates numbered WIN 77
8 through WIN 84.

9 And, Mr. Langston, do you recognize this document?

10 A. This is our marketing campaign in response to the
11 Spectrum campaign.

12 Q. And do you know approximately how many
13 advertisements for the corrective campaign were sent out?

14 A. I think it's somewhere around 800,000.

15 Q. And do you know the approximate cost of -- do you
16 know the approximate cost for creating and sending out
17 this corrective advertisement?

18 A. The total dollar amount is approximately a million
19 dollars for this piece of -- for this piece of the
20 campaign.

21 Q. And has Windstream taken other steps in response to
22 Charter's advertisement -- advertising campaign?

23 A. You know, it's not saying that it's limited to
24 this, but I know that in response to customers calling
25 and being concerned or saying that they want to switch to

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1 Spectrum as a result of this, we've had to offer, you
2 know, maybe promotions, practically offer retention
3 offers to keep those customers to say. We've also had
4 to, you know, educate our sales force as well about how
5 to go counter this, particularly I think our small
6 business sales. Those would be the primary ones that I'm
7 aware of.

8 Q. And what effect, if any, do these counter response
9 measures have on Windstream's bottom line?

10 A. Well, it's a cost we didn't budget for. I mean, we
11 did not plan on spending this money, and like most
12 companies, we have a budget for the year, and so clearly
13 we've had to spend the money on this advertising campaign
14 versus spending on other things. We planned to continued
15 to expand our brand and our sales.

16 (Exhibit 30 was marked.)

17 BY MS. SIMS (CONT.):

18 Q. I'm going to hand to you a document that was
19 previously Exhibit 10 to your declaration, and I'm
20 marking that as Exhibit 30.

21 And, Mr. Langston, do you recognize exhibit -- I'm
22 sorry. And for the record, Exhibit 30 is Bates numbered
23 WIN 56 through 61.

24 Mr. Langston, do you recognize Exhibit 30?

25 A. Yes, I do.

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1 Q. And what is it?

2 A. It is the initial letter from Carol Keith to
3 Charter's associate general counsel asking them to cease
4 and desist their advertising campaign regarding our
5 Chapter 11.

6 Q. And if you go to WIN 60, Bates number 60, what is
7 that portion of the exhibit?

8 A. Okay.

9 Q. And what is it?

10 A. This is a follow-up letter dated five --
11 approximately five days later regarding the first cease
12 and desist letter and -- and asking once again,
13 reiterating to cease and desist. Specifically calls out
14 mailouts surfacing in Alabama, North Carolina, Nebraska
15 and elsewhere.

16 And then also referencing conversations told by
17 Spectrum to these customers they have a contract with
18 Windstream to buy us out.

19 Q. And do you know whether Charter responded to
20 Windstream's letter?

21 A. Shortly after this March 26th letter, we received a
22 response from Charter's counsel.

23 (Exhibit 31 was marked.)

24 BY MS. SIMS (CONT.):

25 Q. I'm going to mark a document that was previously

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1 Exhibit 11 to your declaration and now bears the Exhibit
2 Number 31. The Bates numbers are WIN 62 through 63.

3 Mr. Langston, do you recognize this document?

4 A. Yes.

5 Q. And what is it?

6 A. It's a letter from Cody Harrison, the VP and
7 associate general counsel at Charter, to Carol Keith
8 disagreeing that they -- that there's any failing --
9 false or misleading about the advertising.

10 Q. And to your knowledge, other than Exhibit 31, did
11 Charter have any other response to Windstream's cease and
12 desist letters?

13 A. Not that I'm aware of, no.

14 Q. And do you know whether Charter sent Windstream any
15 copies of future direct mail pieces regarding the
16 bankruptcy?

17 A. I am aware of -- I've seen the future follow on
18 advertisements. I don't know if they directly sent those
19 to us or not. I don't know the source. I've just seen
20 them.

21 Q. And you've seen that because of your role in this
22 case?

23 A. Yes.

24 Q. And testifying at the TRO hearing?

25 A. Yes, I saw them -- I saw them in evidence.

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1 Q. You can set that aside.

2 And, Mr. Langston, to your knowledge, did
3 Windstream and Charter have a contractual relationship?

4 A. Yes.

5 Q. All right. Can you please describe that
6 contractual relationship?

7 A. It's a -- it's a relationship for Windstream to buy
8 what in the industry is called last mile services to
9 connect from Windstream's network into our customers and
10 acquiring that -- that last mile connection from Charter,
11 and then that's part of Windstream's service to the
12 customer.

13 Q. So can you describe, I guess, maybe more
14 specifically in layman's terms what that last mile means?

15 A. So if Windstream's network comes within a certain
16 range of the customer's network, but we don't actually
17 provide a connection all the way from our network all the
18 way into the customer, sometimes we have to acquire a
19 competitor's service in order to connect from our network
20 into the actual physical customer premise.

21 Q. And that last bit of connection from your network
22 to the customer's premise, is that considered what you
23 mean by last mile?

24 A. That's last mile.

25 Q. Okay. And have there been any recent instances

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1 regarding that last mile connection that Charter
2 provides?

3 A. Yes. In March of this year, I think it was
4 March 15th, Charter disconnected approximately 350 lines
5 of service that would be comprised of that last mile
6 service. It was done on, like I said, the afternoon of
7 the 15th I believe.

8 Q. Bear with me a minute.

9 MS. SIMS: Actually, if we can just take a
10 short break, I just want to organize these last
11 couple of exhibits that I have.

12 MR. KINGSTON: Which is fine.

13 MS. SIMS: Go off the record for a minute.

14 MR. SIMS: We're going off the record.

15 The time is approximately 2:40 p.m.

16 (The deposition recessed at 2:40 p.m. and
17 reconvened at 2:47 p.m.)

18 MR. SIMS: We're back on the record. The
19 time is approximately 2:47 p.m.

20 (Exhibit 32 was marked.)

21 BY MS. SIMS (CONT.):

22 Q. Mr. Langston, I've marked and handed to you a
23 document that is marked as Exhibit Number 32 that bears
24 the Bates numbers WIN 469 through --

25 Sorry. I didn't have my microphone. Let me repeat

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1 that.

2 I've handed you a document that I've marked as
3 Exhibit Number 32 and that bears the Bates numbers 469
4 through 474.

5 A. Yes.

6 Q. All right. Mr. Langston, do you recognize this
7 document?

8 A. I do.

9 Q. And what is it?

10 A. This is a list of our last mile connections that
11 were disconnected on the 15th that are with Charter
12 Communications.

13 Q. And do you have an understanding as to why these
14 Windstream customers were disconnected by Spectrum?

15 MR. KINGSTON: Objection, lack of
16 foundation.

17 MR. LANGSTON: My understanding is we were
18 told that we were -- they were disconnected
19 because of pre -- of lack of payment of
20 pre-petition balances.

21 BY MS. SIMS (CONT.):

22 Q. And prior to disconnecting these customers, do you
23 know whether any of these customers received a
24 notification from Spectrum?

25 MR. KINGSTON: Same objection.

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1 MR. LANGSTON: No.

2 BY MS. SIMS (CONT.):

3 Q. Sorry. To clarify, do you know whether or not
4 these Windstream customers received a notification from
5 Spectrum?

6 A. I'm not aware of any notification of being
7 disconnected, no.

8 Q. Have you seen any documents indicating that
9 Spectrum provided a notification to Windstream's
10 customers before disconnecting them?

11 A. No.

12 (Exhibit 33 was marked.)

13 BY MS. SIMS (CONT.):

14 Q. I'm going to hand to you a document that we're
15 going to mark as Exhibit 33. And for the record,
16 Exhibit 33 is a document bearing the Bates numbers WIN
17 476 through 477.

18 Mr. Langston, do you recognize Exhibit 33?

19 A. I do.

20 Q. And what -- what is Exhibit 33?

21 A. It is a notice of disconnect for nonpayment from
22 Spectrum dated March 22nd and then the corresponding
23 E-mails, and then the disconnect notice was sent to the
24 Windstream team to let them know about this, and then
25 there's a -- the last E-mail is from Jeanne Dale, who's

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1 in your access team, one of our leaders in our access
2 team, to Spectrum and that -- indicating that they could
3 not disconnect for those pre-petition balances because of
4 the bankruptcy code.

5 Q. And do you know, does this pertain to the
6 disconnect on March 15th or is this something else?

7 A. This appears to be in addition to the 15th, about
8 additional disconnects that were going to occur.

9 It says they will be disconnected on March 8th,
10 and, actually, given the fact that the letter was sent on
11 March 22nd, and this is March 8, that would be nine -- 17
12 days, that would be 13 days short of the contractual
13 notification period if they were even allowed to do this
14 underneath the bankruptcy code.

15 Q. And to your knowledge, what is the contractual
16 notification period for disconnecting Windstream
17 customers from Charter?

18 A. 30 days notice.

19 (Exhibit 34 was marked.)

20 BY MS. SIMS (CONT.):

21 Q. I'm going to hand to you a document that we'll mark
22 as Exhibit 34, and Exhibit 34 is a document bearing the
23 Bates numbers WIN 482 to 495.

24 Mr. Langston, do you recognize Exhibit 34?

25 A. Yes.

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1 Q. And what is it?

2 A. It's a series of communications once again amongst
3 the Windstream access team that manages the connections
4 with -- last mile services with Charter about sites that
5 have been disconnected, that Charter disconnected.

6 Q. And does this relate to the March 15th disconnect?

7 A. Yes, which would indicate that it extended on
8 past the -- past the 18th, that Monday. It looks like it
9 was extending all the way into, oh, 10 days -- 10 days
10 later, which was actually later than I thought. It
11 actually lists some of the customers that are impacted as
12 well.

13 Q. And what page are you referring to?

14 A. Page WIN 484.

15 Q. And what customers were those?

16 A. These are just -- can you have these six circuits
17 checked immediately. MB2 Dental Solutions, New York
18 State Land Title Association, Crohn's & Colitis
19 Foundation of America, La Maison Du Chocolat, Corbett --
20 Corbett International, Bloomingdale Family Program.

21 Additionally, next E-mail on the 19th, which would
22 have been the Tuesday after the disconnect, indicates
23 that 41 sites down over the weekend. All restored. This
24 is on Tuesday. 50 additional sites down Monday. Total
25 number of sites suspended so far are 91.

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1 So it's more of a chronological list kind of going
2 through the process of what happened.

3 MR. KINGSTON: Just for completeness, I'll
4 read in the two bullet points that were omitted
5 from that reading. Under the 41 sites down
6 over the weekend, all restored. Under the 50
7 additional sites down on Monday, all restored.

8 MS. SIMS: Counsel, if you have any
9 further clarifications, would you please just
10 restrict it to your --

11 MR. KINGSTON: It wasn't a clarification.
12 It was an objection invoking the rule of
13 completeness. So what happened is the witness
14 read a piece of that document, and to make sure
15 that the portions that the witness chose to
16 read wasn't misleading, I read the balance of
17 it.

18 (Exhibit 35 was marked.)

19 BY MS. SIMS (CONT.):

20 Q. I'm going to hand to you a document we're going to
21 mark as Exhibit 35. And Exhibit 35 bears the Bates
22 numbers WIN 502 to WIN 508.

23 Do you recognize this document?

24 A. Yes, I do.

25 Q. And what is it?

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1 A. It is an E-mail from Curt Allen, who's over our
2 channel partner group, to Elizabeth Orth, who's the
3 customer care leader for enterprise -- for the enterprise
4 business unit.

5 Q. And so did you say a customer care channel?

6 A. Yes. Elizabeth Orth runs our customer care group
7 for the enterprise business unit. Curt Allen is in
8 charge of our channel partner group.

9 Q. And what's a channel partner?

10 A. That would be a third party that sells Windstream
11 services.

12 Q. And what did the E-mail chain pertain to?

13 A. It refers to three specific sites that went down on
14 Friday, March 15th. It says about -- anyway, it just
15 talks about those -- those three sites being down and
16 then why another six were down. It gives the trouble
17 ticket numbers. So it's an escalation of an outage for
18 customer sites.

19 Q. And were these outages part of the March 15
20 disconnect that we've been discussing?

21 MR. KINGSTON: Objection, lack of
22 foundation.

23 MR. LANGSTON: Yes, they are.

24 BY MS. SIMS (CONT.):

25 Q. You can set that aside.

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1 MS. SIMS: I'm going to take a short break
2 here, and when we come back, I'll finish up my
3 portion.

4 MR. SIMS: We're going off the record.
5 The time is approximately 2:57 p.m.

6 (The deposition recessed at 2:57 p.m. and
7 reconvened at 3:16 p.m.)

8 MR. SIMS: We are back on the record. The
9 time is approximately 3:16 p.m.

10 (Exhibit 36 was marked.)

11 BY MS. SIMS (CONT.):

12 Q. Mr. Langston, I'm going to hand you a document
13 we're going to mark as Exhibit 36. And Exhibit 36 -- the
14 first page of Exhibit 36 bears the Bates number 1725 and
15 the second page is Bates number 1749 and the last page is
16 1770.

17 And, Mr. Langston, do you recognize Exhibit 36?

18 A. I do. It's a transcription of recorded phone calls
19 from customers into Windstream.

20 Q. And if you look at the first page of Exhibit 36, do
21 you see it says audio files transcribed and then there's
22 a list of numbers?

23 A. Yes.

24 Q. What are those numbers if you know?

25 A. Those are the account numbers -- the account

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1 numbers of the customers that called in. So the account
2 number associated with each of the calls.

3 Q. If you can turn to the second page of Exhibit 36,
4 on line 11, can you -- can you read what the number is on
5 line 11?

6 A. 091815868.

7 Q. And what does that number represent?

8 A. That's the account number for the following call.

9 Q. And if you could please refer to -- I'm going to
10 give you the Bates numbers. If you can read page 1751 to
11 1753, please, of this document.

12 A. 17 -- starting at 1751.

13 Q. To 1753. You can just read it silently to yourself
14 first.

15 A. Okay.

16 Q. And let me know when you're finished.

17 A. Okay.

18 Q. To your knowledge, based off of the information you
19 read, what was the customer calling in with regards to?

20 A. They received the -- they received a letter from
21 Spectrum saying that Windstream was going away.

22 Q. You can set that aside.

23 (Exhibit 37 was marked.)

24 BY MS. SIMS (CONT.):

25 Q. I'm going to hand to you an exhibit that we're

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1 going to mark as Exhibit 37. And the first page of
2 Exhibit 37 is Bates numbered WIN 862.

3 And, Mr. Langston, do you recognize this document?

4 A. Yes. It's another transcription of recorded
5 customer phone calls into Windstream.

6 Q. If you can refer to the second page of Exhibit 37,
7 on line five, can you please read that number?

8 A. 002820725.

9 Q. And what does that number represent?

10 A. That's the account number of the customer on the
11 following recording.

12 Q. And if you can, please read to yourself the pages
13 Bates numbered 902 to 904.

14 A. Okay.

15 Q. And what issue was this Windstream customer calling
16 in about?

17 A. Calling regarding Spectrum once again sending out a
18 letter saying that Windstream was going away and they
19 were going to lose their Internet and TV services.

20 (Exhibit 38 was marked.)

21 BY MS. SIMS (CONT.):

22 Q. I'm going to hand to you a document I'm going to
23 mark as Exhibit 38. Exhibit 38 on that first page bears
24 the Bates number WIN 1780.

25 A. Okay.

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1 Q. And, Mr. Langston, do you recognize this document?

2 A. I do. It's another transcription of recorded phone
3 calls from customers into Windstream.

4 Q. And if you can refer to the second page of
5 Exhibit 38.

6 A. Okay.

7 Q. Line six, can you please read that number?

8 A. 060896163.

9 Q. And what is that number?

10 A. That's the account number for the customer on the
11 transcription of the call below.

12 Q. Okay. And if you can, please, read 17 -- the Bates
13 number 1790 to 1792 to yourself.

14 A. Okay.

15 Q. And what issue was this Windstream customer calling
16 in about?

17 MR. KINGSTON: Objection, foundation.

18 MR. LANGSTON: They received a letter from
19 Spectrum as well stating that Windstream was
20 going away, that they were -- it was going
21 away, and they were going to lose their
22 services, and, additionally, they were
23 apparently scared, said it was a scary
24 notification, and they -- they weren't sure who
25 it was from, but they saw the Windstream name

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1 on it and that's why they opened it.

2 BY MS. SIMS (CONT.):

3 Q. You can set that aside.

4 (Exhibit 39 was marked.)

5 BY MS. SIMS (CONT.):

6 Q. I'm going to hand you a document that I'm marking
7 as Exhibit 39, and the first page of Exhibit 9 bears the
8 Bates number WIN 993.

9 MR. KINGSTON: That's the first page of
10 Exhibit 39?

11 MS. SIMS: Correct.

12 MR. LANGSTON: Okay.

13 BY MS. SIMS (CONT.):

14 Q. Mr. Langston, do you recognize this document?

15 A. I do. It's another transcript of phone calls from
16 customers into Windstream.

17 Q. And if you can refer to the second page of
18 Exhibit 39 on line one, if you'll please read that
19 number.

20 A. 061811169.

21 Q. And what is that number?

22 A. That's the account number for the customer's call
23 that's recorded below.

24 Q. If you can read this -- this page WIN 994 to
25 yourself, please.

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1 A. Okay.

2 Q. And what issue was this customer calling in about?

3 A. They received a letter in the mail from Spectrum
4 saying Windstream customers don't risk losing your TV and
5 Internet service. So once again generated for -- because
6 of the Spectrum letter calling in about their concern
7 they're going to lose their service from Windstream.

8 Q. You can set that aside.

9 (Exhibit 40 was marked.)

10 BY MS. SIMS (CONT.):

11 Q. I'm going to hand to you a document that I'm
12 marking as Exhibit 40. The first page of Exhibit 40
13 bears the Bates number WIN 1443.

14 MR. KINGSTON: Thank you.

15 MR. LANGSTON: Okay.

16 BY MS. SIMS (CONT.):

17 Q. Mr. Langston, do you recognize this document?

18 A. Another transcription of phone calls from customers
19 into Windstream.

20 Q. And if you can please refer to the second page of
21 Exhibit 40, line four, can you please read that number?

22 A. 062223720.

23 Q. And what is that number?

24 A. That is the account number for the customers that
25 called in and the recording below.

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1 Q. And if you can please read to yourself the pages
2 that are Bates numbered WIN 1470 to 1471.

3 A. Okay.

4 Q. And what issue was this Windstream customer calling
5 in about?

6 MR. KINGSTON: Objection, lack of
7 foundation. You can answer.

8 MR. LANGSTON: This customer received a --
9 they reference a flyer from Spectrum indicating
10 that Windstream was going to be cutting their
11 customers off or going out of business, and the
12 customer also indicates that the letter or
13 flyer looks like their bill, and so they were
14 confused by that.

15 BY MS. SIMS (CONT.):

16 Q. You can set that aside.

17 (Exhibit 41 was marked.)

18 BY MS. SIMS (CONT.):

19 Q. And I'm going to hand you a document I'm marking as
20 Exhibit 41. Exhibit 41, the first page of it, bears the
21 Bates number one -- WIN 1491.

22 Mr. Langston, do you recognize this document?

23 A. Yes, it's another recorded or transcription of
24 phone calls from customers into Windstream.

25 Q. And if you can please refer to the second page of

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1 Exhibit 41, line 23, can you please read that number?

2 A. 062864311.

3 Q. And what is that?

4 A. It's the account number of the customer calling in
5 for the transcription.

6 Q. And if you can please read the pages bearing the
7 Bates numbers WIN 1509 to 1510 to yourself, please.

8 A. Okay. Through 15 what?

9 Q. 1510.

10 A. 1510. Okay.

11 Okay.

12 Q. And what issue was this Windstream customer calling
13 in about?

14 MR. KINGSTON: Objection, foundation.

15 MR. LANGSTON: They received a -- a letter
16 from Spectrum once again stating that
17 Windstream was going through Chapter 11 through
18 bankruptcy and that their services could be
19 interrupted.

20 And then they proceeded to say that they
21 understood they could get a better deal from
22 Spectrum and what could Windstream do to help
23 with that.

24 BY MS. SIMS (CONT.):

25 Q. You can set that aside.

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1 (Exhibit 42 was marked.)

2 BY MS. SIMS (CONT.):

3 Q. I'm going to hand you a document we're marking as
4 Exhibit 42. Exhibit 42 -- the front page of Exhibit 42
5 bears the Bates number WIN 1909.

6 A. Okay.

7 Q. Mr. Langston, do you recognize Exhibit 42?

8 A. I do.

9 Q. And what is it?

10 A. Another transcription of the phone calls of
11 customers into Windstream.

12 Q. I'm going to refer you to the second page of
13 Exhibit 42, line 10. If you could please read that
14 number.

15 A. 162834261.

16 Q. And what number is -- what does that number
17 reflect?

18 A. It's the account number of the customer's
19 conversation that's transcribed below.

20 Q. If you can please read the pages that bear the
21 Bates number WIN 1932 to 1933 to yourself.

22 A. Okay.

23 Q. And what issue was this Windstream customer calling
24 in about?

25 MR. KINGSTON: Objection, lack of

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1 foundation.

2 MR. LANGSTON: They're calling in because
3 they received a communication from Spectrum
4 that indicated Windstream is going through
5 bankruptcy and that they were potentially going
6 to lose their services. The customer went on
7 to state that they didn't think it was
8 appropriate for Spectrum to be doing that or
9 sending that out or saying those things.

10 BY MS. SIMS (CONT.):

11 Q. And you can set that aside.

12 (Exhibit 43 was marked.)

13 BY MS. SIMS (CONT.):

14 Q. I'm going to hand to you a document that I've
15 marked as Exhibit 43. On the cover page of exhibit --
16 first page of Exhibit 43 bears the Bates number WIN 381.

17 Mr. Langston, do you recognize this document?

18 A. I do.

19 Q. And what is it?

20 A. It's another transcription of customer phone calls
21 into Windstream.

22 Q. And please refer to the second page of Exhibit 43.
23 It bears the Bates number 389. Can you please read the
24 number on line one?

25 A. 001032957.

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1 Q. And what does that number reflect?

2 A. That is the account number for the customer calling
3 in whose conversation is transcribed below.

4 Q. If you could please refer to the page that is Bates
5 numbered WIN 391 to yourself.

6 Sorry. Let me -- let me correct that.

7 Please read the pages bearing the Bates number
8 WIN 390 through 391 to yourself.

9 A. Okay.

10 Q. And what issue was this Windstream customer calling
11 in about?

12 MR. KINGSTON: Objection, lack of
13 foundation.

14 MR. LANGSTON: This customer called in
15 because once again they received a notification
16 or a letter from Spectrum, and the customer
17 wanted to know if Windstream was staying in
18 business and going to continue to operate.
19 They went on to say that they were confused
20 because the -- actually, the envelope said
21 attention Windstream customer. So they thought
22 it was from Windstream. And then they went on
23 to say that it's actually from Spectrum.

24 MS. SIMS: No further questions at the
25 moment. I'll pass the witness.

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1 MR. KINGSTON: I think that we may be done
2 with those I'm hoping.

3 BY MR. KINGSTON:

4 Q. Can you pull out one of the -- you can just pick
5 one, sir, one of the screenshot exhibits that we were
6 looking at earlier in your examination?

7 A. Feel free to forage.

8 Q. Thanks a lot.

9 A. Well, it was either you or me.

10 Q. I know. I'm happy to do it.

11 MS. SIMS: Do you want to take a break or
12 are you good?

13 MR. KINGSTON: No, no, no, no. I think
14 we're fine.

15 BY MR. KINGSTON (CONT.):

16 Q. I'm handing you, sir, Exhibit 3, and you see in the
17 screenshot there is a line that says EL, slash, ACCT,
18 telephone account number.

19 A. Oh, where?

20 Q. I think you're looking at it.

21 A. Where? Right here?

22 Q. Yes, sir.

23 A. The one that's redacted?

24 Q. It is redacted.

25 A. Okay.

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1 Q. Why did you redact the account number out of the
2 screenshot and then plug it in somewhere else?

3 A. The telephone number's been redacted. So that is
4 CP&I regulated. The account number is not necessarily,
5 but if you associate the two, then it's a violation.

6 Q. I apologize for my confusion. I thought the
7 account number was redacted out, and I couldn't tell
8 which ones they matched up to?

9 A. The account --

10 Q. Thank you for that clarification --

11 A. Yeah, the account is in the top right corner.

12 Q. -- during the deposition.

13 All right. Can you take a look at Exhibit 34?

14 A. Sure.

15 Okay.

16 Q. Do you recall going over Exhibit 34 with counsel?

17 A. Yes.

18 Q. Take a look at page 484 of Exhibit 34.

19 A. Yes.

20 Q. Do you recall reading into the record the
21 correspondence between Cary Taylor, Jeanne Dale and
22 Stacey Manzano?

23 A. Yes.

24 Q. Do you recall reading into the record issue began
25 3:30 p.m. eastern time Friday?

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1 A. Yes.

2 Q. And then you read 41 sites down over the weekend;
3 right?

4 A. Yes.

5 Q. And then you declined to read all restored.

6 MS. SIMS: Objection, argumentative.

7 BY MR. KINGSTON (CONT.):

8 Q. Right? Did you read in all restored?

9 A. Yes. I thought I did. I may not have. I don't --
10 I don't recall.

11 Q. So if you didn't read in all restored, why did you
12 decline to read in all restored?

13 A. I don't know necessarily that I didn't decline to.
14 I just say I don't recall if I did or not.

15 Q. You may have -- you may have read it, you may not
16 have. You can't remember?

17 A. Right, but this -- that E-mail is dated Tuesday,
18 March 19th. So I don't know exactly when they were
19 restored after the weekend.

20 Q. You recall reading just moments ago with Miss Sims
21 41 sites down over the weekend, 50 additional sites down
22 Monday, total sites suspended for non-pay 91. Do you
23 recall reading it just in that fashion, sir?

24 A. Yes.

25 Q. All right. And when you read that, you didn't read

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1 all restored even though it's right below 41 sites down;
2 isn't that right?

3 A. I don't recall that I did or didn't.

4 Q. And you didn't read all restored just under 50
5 additional sites down; isn't that right?

6 A. I don't recall that, that I did or didn't.

7 Q. Right.

8 A. I may not have. I don't know.

9 Q. If you didn't, would it be fair to suggest that you
10 didn't read that on purpose?

11 MS. SIMS: Objection, argumentative. It
12 mischaracterizes his testimony.

13 MS. GREER: Join in the objection.

14 MR. LANGSTON: I don't know that I
15 knowingly did not do it, so I can't say there
16 was any intention.

17 BY MR. KINGSTON (CONT.):

18 Q. Okay. You understand that Charter's service center
19 is in Denver, Colorado, or one of them is?

20 A. No, I didn't know that, but --

21 Q. Do you have any reason to disbelieve that?

22 A. No.

23 Q. And you understand that Colorado is two hours
24 behind Eastern time?

25 A. Yes.

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1 Q. Mountain time is two hours behind Eastern time?

2 A. Yes, I understand that.

3 Q. And take a look at the first page of Exhibit 34 if
4 you would.

5 A. Okay.

6 Q. Do you see Stacey Manzano from Windstream at 4:21
7 Eastern E-mailed Shauna, we have another disconnect due
8 to nonpayment. Do you see that, sir?

9 A. Yes.

10 Q. At the bottom of the page.

11 A. The one dated March 26th?

12 Q. Yes, sir.

13 A. Yes.

14 Q. So on March 26th at 4:21 p.m., Stacey Manzano
15 E-mailed Shauna, we have another disconnect due to
16 nonpayment. Do you see that?

17 A. Yes.

18 Q. All right. And then Shauna Brauchler,
19 B-R-A-U-C-H-L-E-R, do you see that reference, sir?

20 A. I do.

21 Q. And when does Miss Brauchler respond to
22 Miss Manzano?

23 A. 2:24 p.m.

24 Q. And can we agree with each other that
25 Miss Brauchler probably doesn't have a time machine?

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1 A. That would be -- that time on that E-mail would be
2 her local time according to her E-mail. So if she was
3 mountain time, that would be three minute after the 4:21
4 p.m.

5 Q. Okay. So the Charter person responds to the
6 Windstream person three minutes after the E-mail and
7 confirms that she gets the right account; isn't that
8 right?

9 A. Yes.

10 Q. All right. And then four minutes after that the
11 Windstream person says, this is the correct address; is
12 that right?

13 A. That is correct.

14 Q. And then one minute after that the Charter
15 representative says, thank you. I understand this is
16 back up and working. Can you confirm? Isn't that right?

17 A. That is correct.

18 Q. And then what does the Windstream person say?

19 A. Yes, they are back up. And then can you confirm
20 that no other services on this billing account were
21 impacted?

22 Q. And we don't know what the response to that is, do
23 we, sir?

24 A. No, we don't.

25 Q. And this is a document that was produced by

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1 Windstream; isn't that right, sir?

2 A. I believe so, yes.

3 Q. And so whatever the response is that would be
4 something that Windstream would have?

5 A. I -- I'd have to assume.

6 Q. Okay.

7 May I direct your attention to Exhibit 33?

8 Actually, I don't think I need that one. I'm
9 sorry.

10 A. Okay.

11 Q. You testified that Windstream had 3,000 customer
12 care associates?

13 A. Approximately.

14 Q. And are those full time or part time?

15 A. Both.

16 Q. So 3,000, how many full time?

17 A. I have no idea.

18 We have people on flex time. We have people, you
19 know, based upon working mothers, different times of day,
20 you know, whatever, so I don't know how many.

21 Q. So 3,000, some part time, some full time?

22 A. Yes.

23 Q. Do you know how many calls per day those 3,000
24 customer care associates field?

25 A. No, I don't.

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1 Q. Any estimate at all?

2 A. No.

3 Q. Who would be able to find that out for us?

4 A. Paul Strickland.

5 Q. Do you know the average time of a phone call
6 handled by one of those 3,000 customer care associates?

7 A. I don't know the current average handle time.

8 Q. Would that be something Mr. Strickland would know
9 as well?

10 A. Absolutely.

11 Q. Mr. Strickland could tell us the average time of a
12 phone call, couldn't he?

13 A. Yes.

14 Q. He could tell us how many of those 3,000 customer
15 care associates are part time and how many are full time?

16 A. Yes.

17 Q. Do you have Exhibit 21 in front of you, sir?

18 A. I'm sure I do.

19 Fish it out of the pile.

20 Q. It looks like this without the chicken scratch on
21 it.

22 A. Is that a technical term?

23 Q. Yeah.

24 A. 21. Okay.

25 Yes.

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1 Q. You see there that there were 215 calls handled by
2 some of those 3,000 customer care associates?

3 A. Yes.

4 Q. And can you tell which among those 215 calls
5 involved realtime coaching via instant messaging?

6 A. No, you can't tell that from this.

7 Q. And can you tell which of those 215 calls involved
8 realtime coaching with somebody sort of standing over
9 their shoulder as you described to me earlier today?

10 A. No.

11 Q. Take a look at Exhibit 27 if you would, sir.

12 A. Okay.

13 Q. You see on page WIN 75 in the bottom right-hand
14 corner?

15 A. Did you say Exhibit 27?

16 MS. SIMS: 27? Maybe we have a double 27.

17 MR. PRITSCH: I think you've got double
18 27.

19 MS. SIMS: Oh-oh. We have a double 27.
20 We may have to mark a 27A/B.

21 MR. KINGSTON: You want me to do that
22 right now?

23 MS. SIMS: Hold on. Let's just confirm.
24 Can we take a second?

25 MR. KINGSTON: Sure.

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1 MS. SIMS: Take a quick break. Let's just
2 confirm.

3 MR. LANGSTON: Okay.

4 MS. SIMS: Let's confirm there's actually
5 two 27s.

6 MR. LANGSTON: I've got a 27 and then I
7 skip to a 29. No, there's 28.

8 MS. SIMS: Oh, 28. Yeah. I think it's --
9 let me see.

10 MR. LANGSTON: So I go 27, 28.

11 MS. SIMS: 27.

12 MR. LANGSTON: 26 I've got as this.

13 MS. SIMS: 28, 29.

14 MR. LANGSTON: Voluminous.

15 MS. SIMS: Which -- which exhibit are you
16 referring to?

17 MR. KINGSTON: This one.

18 MS. SIMS: That looks like it's 29.

19 MR. LANGSTON: 29.

20 MR. KINGSTON: Oh, perfect. Even better.
21 You want to take another run at that?

22 MS. SIMS: Yeah, absolute. Yeah.

23 MR. LANGSTON: I'll give it a go.

24 MS. SIMS: You can go back on.

25 MR. KINGSTON: You're probably still on.

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1 I just keep talking to myself.

2 MS. SIMS: That was a fake off the record.

3 MR. LANGSTON: Okay. What document do you
4 want to look at?

5 BY MR. KINGSTON (CONT.):

6 Q. Let's take a look at Exhibit 29, sir. Can we do
7 that?

8 A. Sure.

9 Q. I direct your attention to page WIN 75.

10 A. Okay.

11 Q. You see a reference to Windstream customer
12 notifications?

13 A. Yes.

14 Q. I see that communication was sent out beginning
15 March 15th of 2019; is that right?

16 A. That is correct.

17 Q. And so Windstream notified its customers of -- that
18 it was going into bankruptcy on March 15th of 2019?

19 A. Yes.

20 Q. And I see that customers should have received these
21 notifications the week of March 18 and March 25th?

22 A. Yes.

23 Q. So Windstream customers would have received a
24 notice of bankruptcy the week of March -- March 18th and
25 March 25th; isn't that right?

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1 A. Yes.

2 Q. And do you see that there's -- this is --
3 Exhibit 29 is a reproduction of a Web site or looks to
4 be?

5 A. On where? Where are you talking? At the bottom?

6 Q. The entirety of Exhibit 29 looks to be a
7 reproduction of some sort of a Web site where information
8 is on some sort of a Web site?

9 A. Most likely, yeah. It would be an internal support
10 site.

11 Q. I infer from the fact that cover letter and notice
12 of bankruptcy are bolded that those are probably
13 hyperlinks that one could click on and actually get the
14 document itself?

15 A. I would -- I would surmise that, yes.

16 MR. KINGSTON: All right. I don't think
17 we received a copy of the cover letter and --
18 or the notice of bankruptcy, counsel, and I
19 would like one or I guess I would like one of
20 each.

21 MS. SIMS: I believe we can do that.

22 MR. KINGSTON: Thank you.

23 MS. SIMS: And sorry. Just for the
24 record, I think you said Exhibit 29 again, but
25 you're referring to Exhibit 27; right?

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1 MR. KINGSTON: No, I think I'm referring
2 to Exhibit 29 this time.

3 MS. SIMS: Okay.

4 MR. LANGSTON: This is 29.

5 MR. KINGSTON: Yes.

6 MS. SIMS: Okay. It's Exhibit 27. I have
7 it written down wrong.

8 MR. KINGSTON: I think that I cribbed off
9 of you and that's why I got the exhibit number
10 wrong.

11 MS. SIMS: My apologies.

12 MR. KINGSTON: That's all right. All
13 right.

14 MR. LANGSTON: Where do you want to go
15 now?

16 BY MR. KINGSTON (CONT.):

17 Q. Dog gone it. I'm going to ask, which one is this?

18 A. Oh, my.

19 Q. This was the one bearing the Bates label 1771 in
20 the bottom right-hand corner.

21 A. Is this in the ones that you provided or the
22 ones --

23 Q. I think it was a black and white, and it was double
24 sided.

25 MS. SIMS: So --

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1 MR. KINGSTON: Oh, no, single sided, but
2 it was black and white.

3 MR. LANGSTON: Right here. Exhibit 25.

4 BY MR. KINGSTON (CONT.):

5 Q. All right. Sir, can I direct you're attention to
6 Exhibit 25?

7 A. Okay.

8 Q. I see the second page, 1772.

9 A. Yes.

10 Q. It looks like the customer, what was that, call in
11 to report AT&T and Spectrum false advertising?

12 A. It reads that way, yes.

13 Q. And then is there a reference to Spectrum on page
14 1773?

15 A. No, there is not.

16 Q. But this is one where knowing as we do now that the
17 account number is in that upper right-hand corner, is
18 that the transcript might reflect a reference to
19 Spectrum?

20 A. Yes.

21 Q. Okay.

22 A. I do have a clarification for you from earlier.

23 Q. Sure.

24 A. The terminology CAMP on there appears to be a stamp
25 of the source system for the data. So when they type --

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1 when they -- it's a system stamp about what the source of
2 the data is. So when they -- when they type in -- into
3 this WindCare platform, the care platform that you're
4 seeing the screenshot of --

5 Q. Okay.

6 A. -- it gets cross-referenced from CAMP. So it's
7 just a system stamp. It doesn't mean anything about the
8 call.

9 Q. Thank you. A lot of people got very excited about
10 CAMP every time they got off the call, but --

11 A. Yeah, I know, and what is the exclamation points on
12 it.

13 Q. Exhibit 20.

14 A. Okay.

15 Q. I don't see a reference to a door hanger in the
16 text of Exhibit 20 on page WIN 70. Can you direct me to
17 that?

18 A. It doesn't speak towards the door hanger. It talks
19 about the Spectrum sales individual knocking on their
20 door.

21 Q. Okay. So if earlier you had testified that there
22 was a reference to a door hanger in this portion of the
23 transcript, that testimony would have been incorrect?

24 A. That would be incorrect.

25 Q. And does the -- does the voice mail message from

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1 the customer indicate that the letter about Windstream
2 saying they're in bankruptcy came from Windstream or
3 Charter or AT&T or somebody else?

4 A. It says I got those letters about Windstream saying
5 they're in bankruptcy. Well, today the Spectrum guy
6 comes knocking on the door to tell me in two months I
7 won't have any -- I won't have no service.

8 Q. So the person as I read to say, what I was calling
9 about, I got those letters about Windstream saying
10 they're in bankruptcy. Have I read that correctly?

11 A. Yes.

12 Q. And can you tell from that sentence whether those
13 letters about Windstream saying they're in bankruptcy
14 came from Windstream, Charter or AT&T?

15 A. You can't tell who they came from.

16 Q. Okay.

17 Does Windstream ever utilize direct mail without
18 the Windstream name on the outside of the envelope?

19 A. I don't know.

20 Q. Is that something that Windstream might do?

21 A. I don't know that they would do. I don't think so.

22 Q. You don't believe that Windstream ever uses direct
23 mail without Windstream's name on the outside envelope?

24 A. I don't believe so, but I don't -- like I said,
25 I'll go back to my original answer. I don't know.

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1 Q. What about Windstream's logo? Does Windstream ever
2 use direct mail without its logo on the outside envelope?

3 A. I don't know.

4 Q. How did Windstream go about identifying -- let me
5 back up, sir.

6 Windstream records all of its calls with customers
7 on the customer service lines?

8 A. I don't know that it's a hundred percent, but it's
9 an extensive amount of our calls recorded. I mean, we
10 try to do a lot of them through there because at times
11 there might be a customer inquiry back on one of those
12 calls, and we have to look at the call report and
13 potentially provide our representative coaching.

14 Q. So how did Windstream -- how did Windstream go
15 about identifying the Spectrum related calls that are
16 referenced in Exhibit 21?

17 A. So two different -- two different ways of doing it.
18 One, we went back through the call notes associated with
19 the customers, ran data analysis against the system to
20 see who called in about Spectrum. Secondly, we actually
21 manually went through recordings for customers as well to
22 discern which ones were referencing Spectrum. So we
23 could do a search on the data within the call recordings
24 as well.

25 Q. So you could search by key words. You searched for

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1 Spectrum or bankruptcy?

2 A. I believe that's the technique that they use.

3 That's what I was indicated.

4 Q. Somebody didn't sit and listen to gajillions of
5 hours of telephone calls?

6 A. No. No. You couldn't. No.

7 Q. But so -- and we can -- we can infer, can't we,
8 sir, that the call notes wouldn't have been the only way
9 to identify customer calls related to Spectrum because we
10 went through a bunch of customer calls that didn't say
11 anything about Spectrum, and then we went through the
12 transcripts and they said stuff about Spectrum; right?

13 A. Right.

14 Q. So --

15 A. But we don't know -- are you talking referencing
16 the screenshots --

17 Q. Yes, sir.

18 A. -- as exhibits?

19 So those screenshots are just shorthand
20 transcription. It doesn't necessarily mean that it's
21 fully inclusive of the conversation.

22 Q. No, I --

23 A. You'd have to look at the recording to understand
24 that.

25 Q. I think your lawyer demonstrated that point.

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1 A. Okay.

2 Q. So my question was just as far as identifying those
3 portions of the transcript --

4 A. Oh, gotcha.

5 Q. -- we wouldn't have been able to identify them from
6 this -- the call notes because some of them didn't say
7 Spectrum; right?

8 A. No, I mean, you'd have to go back -- you'd have to
9 go back and look at the recording and see that it says
10 Spectrum and then go back and look at the account notes.

11 Q. So it's searchable. In some fashion, it's
12 searchable?

13 A. In some form or fashion, it's searchable.

14 Q. Okay.

15 A. You're not going to sit down and comb through a
16 hundred thousand calls.

17 Q. Nobody sat -- the way this was produced wasn't by
18 just listening. It was by doing some form of a search?

19 A. Right.

20 Q. Okay.

21 MR. KINGSTON: I think I pass the witness.
22 I know I pass the witness.

23 MS. SIMS: Okay. I don't believe I have
24 any questions.

25 I do want to take a short break just to

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1 confirm that all the numbers are correct in
2 here just to be sure.

3 MR. KINGSTON: That's fine.

4 MR. LANGSTON: I'm not touching the pile.

5 MR. SIMS: We're going off the record.

6 The time is approximately 3:54 p.m.

7 (The deposition recessed at 3:54 p.m. and
8 reconvened at 3:59 p.m.)

9 MR. SIMS: We are back on the record. The
10 time is approximately 3:59 p.m.

11 MS. SIMS: I'm just going to go back on
12 the record to clarify a couple of exhibit
13 numbers to the extent there was an inadvertent
14 misreference to the exhibit numbers.

15 Exhibit 27 bears the Bates numbers WIN 54
16 through 55, and it is -- it was Exhibit 9 to
17 Mr. Langston's declaration. It's the customer
18 tweet.

19 Exhibit 28 bears the Bates numbers WIN 77
20 through WIN 84 and that was the document
21 consisting of the corrective advertisements.

22 And Exhibit Number 29 bears the Bates
23 numbers WIN 74 through 76 and that document
24 consisted of a call script.

25 And with that, I believe both parties are

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1 done.

2 MR. KINGSTON: Yes, ma'am.

3 MS. SIMS: You can go off the record.

4 MR. SIMS: Okay. This concludes the
5 deposition. We're going off the record. The
6 time is approximately 4 p.m.

7 (The taking of the above-styled deposition
8 concluded at 4:00 p.m.)
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1 C E R T I F I C A T E

2 STATE OF ARKANSAS*

3 * ss

4 COUNTY OF GARLAND*

5 I, GAROLD W. PRITSCH, Certified Court Reporter, a
6 Notary Public in and for the aforesaid county and state,
7 do hereby certify that the witness, LEWIS LANGSTON, was
8 duly sworn by me prior to the taking of testimony as to
9 the truth of the matters attested to and contained
therein; that the testimony of said witness was taken by
me in machine shorthand notes and was thereafter reduced
to typewritten form by me or under my direction and
supervision; that the foregoing transcript is a true and
accurate record of the testimony given to the best of my
understanding and ability.

10 In accordance with Rule 30(e) of the Rules of Civil
11 Procedure, review of the transcript was requested by the
deponent or a party thereto.

12 I FURTHER CERTIFY that I am neither counsel for,
13 related to, nor employed by any of the parties to the
14 action in which this proceeding was taken; and, further,
15 that I am not a relative or employee of any attorney or
16 counsel employed by the parties hereto, nor financially
17 interested, or otherwise, in the outcome of this action;
18 and that I have no contract with the parties, attorneys,
19 or persons with an interest in the action that affects or
20 has a substantial tendency to affect impartiality, that
21 requires me to relinquish control of an original
22 deposition transcript or copies of the transcript before
23 it is certified and delivered to the custodial attorney,
24 or that requires me to provide any service not made
25 available to all parties to the action.

26 GIVEN UNDER MY HAND and SEAL OF OFFICE on this
27 3rd day of May, 2019.

28 Garold W. Pritsch, CCR, LS No. 329, Notary
29 Public in and for Garland County, Arkansas

30 My Commission expires February 27, 2020.

GAROLD W. PRITSCH
BUSHMAN COURT REPORTING
(501) 372-5115

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REPORTER'S CERTIFICATION OF CERTIFIED COPY

I, GAROLD W. PRITSCH, LS No. 329, Certified Court Reporter in the State of Arkansas, certify that the foregoing pages 1 through 203 constitute a true and correct copy of the original deposition of LEWIS LANGSTON taken on May 1st, 2019.

I declare under penalty of perjury under the laws of the State of Arkansas that the foregoing is true and correct.

Dated this 3rd day of May, 2019.

Garold W. Pritsch, CCR, LS No. 329, Notary
Public in and for Garland County, Arkansas

My Commission expires February 27, 2020.

GAROLD W. PRITSCH
BUSHMAN COURT REPORTING
(501) 372-5115

- Peter Maguire -

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

----- X

In Re:)

WINDSTREAM HOLDINGS, INC., et al.,) Case No:

Debtors.) 19-22312 (RDD)

_____))

WINDSTREAM HOLDINGS, INC., et al.,)

Plaintiffs,)

vs.)

CHARTER COMMUNICATIONS, INC., AND)

CHARTER COMMUNICATIONS OPERATING,)

LLC,)

Defendants.)

----- X

DATE: September 12, 2019

TIME: 9:44 a.m.

DEPOSITION OF RAPP WORLDWIDE, INC.,

by PETER MAGUIRE, a 30(b)(6) Witness, held at the

offices of Katten Muchin Rosenman, 575 Madison

Avenue, New York, New York, pursuant to Subpoena,

before Hope Menaker, a Shorthand Reporter and

Notary Public of the State of New York.

1 - Peter Maguire -

2 A P P E A R A N C E S

3 KATTEN MUCHIN ROSENMAN, LLP

4 Attorneys for Debtors in Possession - Windstream

5 2900 K Street NW

6 North Tower - Suite 200

7 Washington, D.C. 20007-5118

8 BY: MICHAEL JUSTUS, ESQ.
9 GRACE A. THOMPSON, ESQ. (NY Office)

10 MORRISON & FOERSTER, LLP

11 Attorneys for the Committee of Unsecured Debtors

12 250 West 55th Street

13 New York, New York 10019-9601

14 BY: JOCELYN E. GREER, ESQ.

15

16 THOMPSON COBURN, LLP

17 Attorneys for Defendants - Charter Communications

18 U.S. Bank Plaza

19 St. Louis, Missouri 63101

20 BY: JOHN KINGSTON, ESQ.

21

22 ALSO PRESENT:

23 Vincenzo Petulla - Videographer

24

25

1 - Peter Maguire -

2 THE VIDEOGRAPHER: This is the
3 videotaped deposition of Peter Maguire in the
4 matter of Windstream Holdings versus Charter
5 Communications in the United States
6 Bankruptcy Court, Southern District of New
7 York. Case number 19-22312(RDD).

8 This deposition is being held at
9 Katten Muchin Rosenman LLP, on September
10 12th, 2019.

11 My name is Vincenzo Petulla from U.S.
12 Legal Support and I am the video specialist.

13 The court reporter today is Hope
14 Menaker, also from U.S. Legal Support.

15 We're going on the record at
16 9:44 a.m. Would counsel please state their
17 appearances for the record, please.

18 MR. JUSTUS: Sure. Michael Justus of
19 Katten on behalf of Windstream Holdings and
20 its affiliated debtors and debtors in
21 possession.

22 MS. GREER: Jocelyn Greer, Morrison &
23 Foerster, on behalf of the official committee
24 of unsecured creditors.

25 MR. KINGSTON: John Kingston on

1 - Peter Maguire -

2 behalf of the Defendants.

3 THE VIDEOGRAPHER: Will the court
4 reporter please swear in the witness.

5 PETER MAGUIRE, called as a witness,
6 having been duly sworn on September 12, 2019,
7 by a Notary Public, was examined and
8 testified as follows:

9 220 East 42nd Street
10 New York, New York 10017
11 (Business)

12
13 EXAMINATION BY MR. JUSTUS:

14 Q. Okay. Good morning.

15 A. Good morning.

16 Q. Can you please state your full name
17 for the record.

18 A. It is Peter Maguire.

19 Q. Can you spell the last name, please;
20 the surname?

21 A. Sure. It's M-A-G-U-I-R-E.

22 Q. Are you currently an employee of RAPP
23 Worldwide?

24 A. I am indeed.

25 Q. What is your job title at RAPP?

1 - Peter Maguire -

2 A. My job title is vice president group
3 account director.

4 Q. Group account director?

5 A. Uh-huh.

6 Q. And How long have you been employed
7 by RAPP?

8 A. At RAPP Worldwide since January 2007
9 and I moved to the New York office just under
10 seven years ago.

11 Q. Is there a different RAPP that's not
12 RAPP Worldwide that you moved from?

13 A. RAPP -- it all rolls up to that one
14 Worldwide. So I've worked for RAPP Worldwide
15 since January 2007.

16 Q. How long have you been in your
17 current role at RAPP?

18 A. As vice president group account
19 director?

20 Q. Yes, sir.

21 A. I've been in that role since October
22 2016.

23 Q. Okay. Are you the account manager
24 for Charter Communications and Charter
25 Communications Operating?

1 - Peter Maguire -

2 A. Yeah. I'm what's called the business
3 leader for that account; but, yes, I'm the primary
4 and lead point of contact.

5 There's, of course, a team that work
6 with me to support the business but I'm the main
7 point of contact.

8 Q. Does the team work under you? Are
9 you the supervisor of the team?

10 A. Yes. To be clear, I have a boss, of
11 course, who is the president of the company; but
12 primarily on the Charter business I have a team
13 supporting me.

14 Q. And who is the president of the
15 company?

16 A. His name is Justin Thomas Cortland.
17 He's the president of RAPP New York.

18 Q. Okay. And could you just give me the
19 names of your team that works under you when
20 you're doing work for Charter?

21 A. Sure. I mean, it depends how far we
22 want to go and --

23 Q. How about your immediate team?

24 A. Immediate team? So there's Erin
25 Mullane, M-U-L-L-A-N-E, and her job title is

1 - Peter Maguire -
2 senior account executive and she's the face of
3 most of the day-to-day work that we do with
4 Charter and she works across the different lines
5 of business that we -- we work with.

6 We also then have two project
7 managers; Jimmy Lee and Shaley Chan, who are also
8 dedicated to the Charter business.

9 Those would be the main client-facing
10 people. Beyond that, we have a team of designers,
11 copywriters, et cetera, working in the background.

12 Q. Understood. Thank you.

13 And I should ask, are you represented
14 by counsel here today?

15 A. I am not.

16 Q. Okay. Does RAPP have its own
17 in-house legal counsel; in other words, an
18 employee of RAPP who is a lawyer and provides
19 legal counsel for the business?

20 A. I can't say that I know the specific
21 details of our legal counsel system. I know it's
22 certainly there but whether -- the exact
23 infrastructure of that I wouldn't be able to
24 answer.

25 Q. So there is a legal department within

1 - Peter Maguire -

2 RAPP?

3 A. There is legal counsel available in
4 RAPP, yes. I don't know if it's a department per
5 se. It depends on the definition of that.

6 Q. Okay.

7 MR. JUSTUS: All right. Can we
8 please mark this as Exhibit 1.

9 (Whereupon, RAPP Exhibit 1 was marked
10 at this time.)

11 Q. You can go ahead and take a look
12 through Exhibit 1, but I'll represent to you that
13 is the subpoena package that was served on RAPP.

14 Does that look familiar to you?

15 A. I've seen this document.

16 Q. You understand it's a legal document
17 that relates to a case in Federal Bankruptcy Court
18 between Windstream on the one hand and the Charter
19 entities on the other hand?

20 A. I do understand that, yes.

21 Q. Okay. And just to streamline things,
22 there are two Charter entities that are defendants
23 in this case, Charter Communications, Inc. and
24 Charter Communications Operating, LLC. I'll just
25 refer to those and the Spectrum portion of the

1 - Peter Maguire -

2 business, just all as Charter. So I don't have to
3 state all the entities all the time.

4 A. Understood.

5 Q. Actually, I should ask, is RAPP an
6 outside advertising agency for Charter?

7 A. Yes.

8 Q. And what does that entail?

9 A. So we have -- it entails many things.
10 But we are primarily engaged in supporting direct
11 marketing efforts for Charter Communications. By
12 direct marketing efforts, I mean one-to-one
13 targeted communications; be that e-mail, direct
14 mail. It's not about brand advertising on TV.
15 It's targeted one-to-one communications.

16 Q. How long has RAPP served as an agency
17 for Charter?

18 A. Yeah. So our first project with
19 Charter was in September 2016. It should be noted
20 that previously we were working with Time Warner
21 Cable which then became Charter Communications; it
22 was purchased by Charter Communications. But our
23 first project specifically with Charter was in
24 September 2016.

25 Q. Thank you.

1 - Peter Maguire -

2 Okay. So the subpoena package,
3 Exhibit 1, you understand that you were asked to
4 provide some documents and then appear today for a
5 deposition, right?

6 A. Yes.

7 Q. And earlier you provided me with a
8 folder of documents and it's separated into three
9 piles.

10 A. Uh-huh.

11 Q. Is that right?

12 A. Yes.

13 Q. And those three piles in that folder,
14 those relate to three separate projects that RAPP
15 has done for Charter?

16 A. Specific to Windstream.

17 Q. Specific to Windstream. Thank you.

18 A. Yes.

19 MR. JUSTUS: John, I'll give one of
20 these. We made four copies.

21 MR. KINGSTON: Thank you very much.

22 MR. JUSTUS: Those were the documents
23 provided pursuant to subpoena.

24 Q. So if you could turn to Page 4 of
25 Schedule A to the subpoena which is probably about

1 - Peter Maguire -

2 the tenth page of the whole packet.

3 So you've got it?

4 A. Uh-huh.

5 Q. At the bottom of Page 4, you see
6 where it says, "Documents to be produced"?

7 A. Yes.

8 Q. And there's two categories, one at
9 the bottom of Page 4 and another at the top of
10 Page 5?

11 A. Uh-huh.

12 Q. Did RAPP provide documents responsive
13 to both of those documents requests?

14 A. I believe we did, yes.

15 Q. Then on Page 5 it says subject
16 matters and it lists four topics.

17 A. Uh-huh.

18 Q. Those are the topics of testimony for
19 the deposition here today.

20 A. Uh-huh.

21 Yes.

22 Q. Sorry. Please say yes or no because
23 she has to type the answer.

24 A. Understood. Yes.

25 Q. And you are the designee of RAPP to

1 - Peter Maguire -
2 testify on all four of these topics today, right?
3 A. I am, yes.

4 Q. Okay. What did you do to prepare for
5 the deposition?

6 A. To prepare, I re-familiarized myself
7 with the work that we had done pertinent to
8 Windstream as it's been -- there has been a
9 significant period of time passed and the pace of
10 our work is incredibly fast and things turn very,
11 very quickly.

12 And so I've reminded myself through
13 the collection of the documents on some of the
14 specific details of the work that we did with --
15 between Charter and Windstream.

16 Q. And did that entail looking through
17 the e-mails?

18 A. It did, yes.

19 Q. Anything other than e-mails?

20 A. E-mails. We have some -- we use our
21 project management tool called Base Camp which one
22 of our clients only specifically uses. That's why
23 when I provided documents for the three different
24 projects, one of them you will notice has Base
25 Camp and materials in there, that's a project

1 - Peter Maguire -

2 management tool.

3 So to answer your question, I also
4 looked through Base Camp and any printed documents
5 that we had pertinent to Windstream.

6 Q. So you have -- when you say "printed
7 documents," are there files of printed documents
8 for Charter as a client or per project?

9 A. So there are -- there are project
10 folders and -- which you will see some of the
11 copies of project materials with things like
12 scored outs on it with client direction, et cetera
13 -- you'll see that in the documents we've
14 provide -- with score outs, and those can be seen
15 in the examples that I provided.

16 Q. Are score outs handwritten notes
17 or --

18 A. They can be either. So in some cases
19 they're handwritten notes. If we receive a
20 telephone call or an e-mail with direction, we
21 will sometimes score it out manually. Other times
22 we use PDF functionality to annotate specific
23 comments.

24 Q. Those would be comments or revisions
25 on draft creative?

1 - Peter Maguire -

2 A. Correct.

3 Q. Okay. Did you personally -- you said
4 you went back through e-mails, correct?

5 A. Yes.

6 Q. Did you also personally go through
7 Base Camp to collect documents?

8 A. So, Erin, who I mentioned, who works
9 on the team and was responsible for that specific
10 project collected all of the documents from Base
11 Camp that I reviewed.

12 Q. Okay. And how about the printed
13 documents, who reviewed and collected those?

14 A. I reviewed those.

15 Q. Okay. Other than the documents that
16 you brought with you and produced to us today, did
17 you review any other documents to prepare for the
18 deposition today?

19 A. No. Any documents that were provided
20 were the documents that I used to prepare. If
21 there's any other documents, I would have provided
22 if I had used them if -- if they were pertinent to
23 Windstream.

24 Q. Understood.

25 Did you speak with anyone to prepare

1 - Peter Maguire -

2 for the deposition?

3 A. Speak with anyone at all?

4 Q. Anyone at all to prepare for this
5 deposition.

6 A. I spoke to people on my team. We had
7 a discussion, again, to the previous point, to
8 refresh our memories of some of the specifics of
9 this case. I did not -- not specific to
10 preparing, but I did speak to a couple of very
11 day-to-day contacts at Charter to let them know in
12 the normal course of conversation that I would be
13 -- I had been subpoenaed and would be testifying
14 today.

15 Q. Okay. Who at Charter did you speak
16 to about that?

17 A. I spoke to Allison Novasel, who is
18 vice president of direct marketing and Jennifer
19 Smith who is senior director of direct marketing.

20 Q. What was the substance of those
21 discussions with Allison and Jennifer?

22 A. The substance was to make them aware
23 of this deposition and to let them know that I
24 would be appearing today, and that I was preparing
25 by refreshing my memory on some of the details of

1 - Peter Maguire -

2 the case.

3 I speak to both of those clients
4 very, very regularly, sometimes eight, nine, ten
5 times a day. So as I say, it was normal in the
6 course of conversation to mention that.

7 Q. Was that by e-mail, by phone?

8 A. It was actually in person. So the
9 client is based in Stamford, Connecticut. And so
10 again, I'm up there very regularly, so I had
11 chatted in person.

12 Q. Okay. Did you discuss the substance
13 of the testimony you plan to give today with
14 Allison or Jennifer?

15 A. I did not because I didn't know what
16 questions I was going to be asked, so I did not.

17 Q. That's quite fair.

18 Did you discuss with them documents
19 you plan to produce today?

20 A. No, because -- well, what I said was
21 we have been requested to provide any and all
22 documents relating to Windstream. Therefore, I
23 didn't discuss specific documents as it was all
24 documents.

25 Q. Did they ask you to not provide any

1 - Peter Maguire -

2 documents to us today?

3 A. Absolutely not.

4 Q. Did they ask you not to say anything
5 specific at the deposition today?

6 A. Absolutely not.

7 Q. Great, thank you.

8 Okay. So other than Allison and
9 Jennifer at Charter and your own team that you
10 mentioned previously, is there anyone else who you
11 spoke to to prepare for the deposition today?

12 A. There is nobody else that I spoke to
13 to prepare for the deposition.

14 Q. Okay. Thank you.

15 So going back to Exhibit 1, this big
16 package. If you go to what's around Page 20,
17 which is also Page 9 at the bottom --

18 A. Uh-huh.

19 Q. -- of Windstream's Complaint in this
20 legal proceeding.

21 A. Yes.

22 Q. You see on Page 9, you'll see it says
23 Charter envelope at the top and it shows an
24 envelope design.

25 A. Yes.

1 - Peter Maguire -

2 Q. Did RAPP design that envelope?

3 A. RAPP did design that envelope on
4 behalf of Charter.

5 Q. Okay. Could you describe the role
6 that RAPP played in designing the envelope?

7 A. Absolutely. So we received a brief
8 order request for Charter Communications to work
9 on what is called incremental mail. And by
10 incremental mail, I mean there are planned direct
11 mail drops that happen very regularly, but also
12 very regularly we receive a phone call or an
13 e-mail to say there's an incremental need for
14 something beyond business as usual.

15 This was one of those cases where the
16 client had requested -- had given us information
17 and what we would call competitive information
18 around Windstream and asked us to create a direct
19 mail piece specifically to target Windstream
20 customers and encourage them to switch to Spectrum
21 Charter.

22 Q. Do you remember when it was when
23 Charter reached out to RAPP with that request that
24 you're describing?

25 A. I do not recall the specific date.

1 - Peter Maguire -

2 Q. Okay. I think we have e-mails that
3 you gave us. We'll bring those up later. That's
4 fine.

5 A. Sure.

6 Q. If you turn forward a couple of pages
7 to what is 13 and 14 of the Complaint, 13 and 14
8 at the bottom. 13 at the top says, Charter
9 advertisement; 14 at the top says Charter
10 advertisement.

11 You see those?

12 A. I do.

13 Q. Did RAPP design those advertisements
14 or that one advertisements for Charter?

15 A. RAPP did design the advertisement on
16 behalf of Charter.

17 Q. Is that one advertisement front and
18 back?

19 A. As indeed, and it's the advertisement
20 that went inside the envelope that you showed me
21 on the previous page.

22 Q. Okay. Can you just talk generally
23 about the process of working with Charter to
24 design the envelope and this ad?

25 A. In general terms?

1 - Peter Maguire -

2 Q. Yes.

3 What happened day-to-day as the two
4 companies worked together to design and create
5 these?

6 A. Absolutely. So to reiterate a point
7 that I made earlier, the pace of work is
8 incredibly fast and in this specific case,
9 specifically, when I said incremental mail,
10 incremental equals shorthand for fast. So this
11 project moved -- moved very quickly.

12 And normal course of process is a
13 mixture, there's two different ways generally that
14 we would communicate about a project like this.
15 We, one, would be we'd receive an e-mail with what
16 we call a heads up and that will give us a line of
17 sight that a project is coming and will probably
18 need to happen quickly.

19 And the second way, specifically for
20 incremental mail, that we often brief discuss the
21 requirements is by telephone.

22 Q. Okay. And in this specific case,
23 this envelope and this advertisement, there were
24 communications by e-mail and by telephone?

25 A. That is correct, both e-mail and

1 - Peter Maguire -

2 telephone.

3 Q. And that was an ongoing creative
4 process with many e-mails back and forth between
5 chart and a RAPP and many telephone calls?

6 A. Yes, it was a very fluid and agile
7 process.

8 Q. Okay. Do you remember the
9 approximate length of the time period that all of
10 that played out from when RAPP was first asked to
11 work on this project until a final final creative
12 was delivered?

13 A. This would be approximate but my
14 estimation would be somewhere in the two- to
15 three-week region specific for this piece of
16 communication.

17 Q. Correct. Okay. Thank you.

18 Were there any other final versions
19 of this specific ad that RAPP created for chart?
20 Is this the only final version of this ad that
21 RAPP delivered to chart?

22 A. The reason I'm hesitating is that
23 there are at time requirements for two different
24 what we call speed versions. It could -- it could
25 be possible that there was a 100 mbps version of

1 - Peter Maguire -

2 this later. If that were the case, the only
3 difference would be in the speed. So I'm --

4 Q. The Internet speed?

5 A. The Internet speed. That would have
6 been the only difference if there was an
7 additional version.

8 Q. Fair enough.

9 So throughout that fast-moving
10 creative process that you described --

11 A. Yes.

12 Q. -- did RAPP provide clarity with a
13 number of different draft versions to look at and
14 then Charter eventually picked a final version?

15 A. That is correct.

16 Q. Okay. Do you recall how many
17 versions of this particular advertisement RAPP
18 proposed to Charter?

19 A. I remember -- I recall that there was
20 at least three -- three outer envelopes. So by
21 outer envelope, again, I mean the envelope on the
22 previous page.

23 Q. Uh-huh.

24 A. There were three different options
25 for that for Charter to select from, and of the

1 - Peter Maguire -

2 letters I believe there may have been two. And
3 most of the focus was on the outer envelope than
4 the letter.

5 Q. Okay. So the three different
6 versions of the outer envelope --

7 A. Yes.

8 Q. -- do you recall what the differences
9 were between the three versions?

10 A. I do. I do. And that was specific
11 design differences between the three versions;
12 there is the one version which is the one you
13 showed me that went into market, that had a
14 purple-pink flap, what we call a flap on the back
15 of the envelope. There was another option
16 provided that had a solid green band on the back
17 of the envelope. And there was a third option
18 provided that did not have any color on the back
19 of the envelope.

20 Q. Okay. You said there were two
21 different draft versions of the advertisement?

22 A. As I recall.

23 Q. As you recall.

24 Do you recall what the differences
25 are between the two versions?

1 - Peter Maguire -

2 A. The differences would have been both
3 copy, so the actual words that set up about above
4 the advertisement, and design layout.

5 Q. Okay.

6 A. From memory. I'm much clearer on the
7 envelope but on the inside, that's from memory.

8 Q. Okay. That is fair.

9 MR. JUSTUS: Can we please mark this
10 as Exhibit 2.

11 (Whereupon, RAPP Exhibit 2 was marked
12 at this time.)

13 Q. You can go ahead and just take a look
14 at that.

15 A. Uh-huh.

16 Q. So in Exhibit 2, do you see the two
17 different versions of the draft advertisement?

18 A. I do.

19 Q. Okay. Could you tell me which page
20 is the final version of the ad?

21 A. So no page is the final version
22 because these -- neither of these as are went into
23 market. So no page is the final version.

24 Q. Which page is the design that was
25 eventually made into the final version as opposed

1 - Peter Maguire -

2 to the copy and other things that you mention?

3 A. We used the first page as the version
4 that we were moving forward with to apply edits
5 to.

6 Q. Okay.

7 A. With the cross and archive wording
8 indicates that this option was not selected to
9 move forward with.

10 Q. Understood.

11 So everything crossed out was not
12 moved forward with?

13 A. Correct.

14 Q. Okay. So Page 1 is the draft of the
15 front of that advertisement --

16 A. Yup.

17 Q. -- Page 2 the back draft?

18 A. That's correct.

19 Q. Page 3 is the envelope; 4 and 5 were
20 not used.

21 The last page, that's not crossed out
22 but it says archive. Is that --

23 A. It should have been crossed out.

24 Archive indicates it's not moving forward.

25 Q. Understood, okay.

1 - Peter Maguire -

2 It's ultimately Charter's decision of
3 which draft they want to use, right?

4 A. Yes.

5 Q. When did Charter advise RAPP that it
6 had made a final decision of which version of the
7 ad and envelope it wanted to use?

8 Do you recall a date?

9 A. I do not recall a specific date. I
10 do know we were given specific direction because
11 we need to receive that direction to then upload
12 the files to the printer but I couldn't tell you
13 the specific date. But to your earlier point,
14 you'll have the document that shows that.

15 Q. Okay. So we can revisit that.
16 That's fine.

17 MR. JUSTUS: Can we please mark this
18 as Exhibit 3.

19 (Whereupon, RAPP Exhibit 3 was marked
20 at this time.

21 Q. So this is an e-mail from Arquimedes
22 Delacruz at RAPP --

23 A. Uh-huh.

24 Q. -- From March 14th, right?

25 A. Yes.

1 - Peter Maguire -

2 Q. I don't remember you mentioning that
3 name. Is that someone on your team?

4 A. So, as I mentioned, there's an
5 extended team of designer and Arquimedes Delacruz
6 is a designer and no longer works at RAPP. He is
7 a designer -- was a designer.

8 Q. Okay. Is this e-mail -- sorry.
9 Strike that.

10 Who is CharterTeam@QG.com?

11 A. So that is what we call a
12 distribution list. So Charter@QDGraphic.com is --
13 QD Graphics is called Graphic, QDAD graphic, who
14 are responsible for printing.

15 They're one of several vendors that
16 Charter uses to print things and
17 Charter@QDADgraphic.com is a distribution list
18 that goes to the whole team at QDAD.

19 Q. So what is Mr. Delacruz sending to
20 the CharterTeam@QG with this e-mail?

21 A. This e-mail is what we call a final
22 upload e-mail. So this is an e-mail that goes out
23 with final artwork and that would then be proofed
24 and printed by the printer.

25 So this e-mail indicates a hand-off

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2 and the process between RAPP and the printer.

3 Q. So at this time Charter would have
4 already made a final decision of which version it
5 wants to use?

6 A. That is correct.

7 Q. Okay.

8 A. Now, I should clarify something on
9 that question.

10 Yes, they would have made a final
11 decision on the version they want to use, as
12 possible and it has happened before, that after
13 something goes to the printer, changes can be made
14 during that process.

15 Q. Did that happen in this case?

16 A. I don't know because we are not privy
17 to that information, if changes are made after the
18 release to the printer. That's the hand-off
19 between RAPP and the printer.

20 Q. So if at that point Charter wanted to
21 make changes, they'd have to reach out to the
22 printer directly and they would not involve RAPP?

23 A. It's unlikely. The only reason they
24 would involve RAPP is if there were significant
25 creative changes that required a redesign.

1 - Peter Maguire -

2 If it were small text changes, RAPP
3 would not be involved at that stage.

4 Q. Would they normally -- would Charter
5 normally tell RAPP if there was a change to the
6 copy within it?

7 A. In normal conversations it would
8 normally come up. As I said earlier, we speak
9 several times day. So in the midst of everything
10 happening, yes, it wouldn't be unusual for Allison
11 or Jen to say we made a further change at the
12 printer.

13 Q. But in this case, Charter never told
14 RAPP we made changes to the copy or made any
15 changes to that?

16 A. I do not recall that happening, no.

17 Q. Okay. So we talked earlier about the
18 fluid creative process back and forth between RAPP
19 and Charter.

20 Do you have any way of estimating the
21 number of revisions -- rounds of revisions that
22 went back and forth? Is it less than five or more
23 than ten or is it many times a day throughout that
24 two week period? Can you give me a sense of that?

25 A. Specific to this Windstream

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2 communication?

3 Q. Specific to this ad and envelope,
4 yes.

5 A. It was less than ten. I can say that
6 with confidence. I don't know if I could say with
7 confidence that it was less than five, 'cause
8 there are varying degrees to which changes are
9 required, sometimes it's what we called a
10 quick-fire round; with a very small change, shoot
11 it back over very quickly. Other rounds are more
12 significant creative changes.

13 Q. Okay. You said earlier that feedback
14 can come by e-mail or by phone?

15 A. Yes, correct.

16 Q. Or in person, too?

17 A. Yes. Absolutely, if we happen to be
18 at Charter's offices on a day that we're scheduled
19 to get feedback or a moment we're scheduled to get
20 feedback, often it can be delivered in person.

21 Q. Do you have regular meetings set up
22 between RAPP and Charter, weekly meetings, et
23 cetera?

24 A. It's not a fixed cadence. I don't
25 want the repeat myself, but it's very regular

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2 contact; but no -- for that reason, there is no
3 fixed cadence as there is a need to chat several
4 times a day. Therefore, there's no need for a
5 every Tuesday at this time we chat.

6 Q. Understood.

7 So when Charter was proposing
8 revisions to the drafts, would they contact you
9 directly or would it be your team beneath you who
10 Charter would contact?

11 A. It could be both. So often, and in
12 this specific case on the Windstream
13 Communication, I was involved and -- in some of
14 the communications, but you will see in the
15 documents provided that there's a mix.

16 So sometimes it was directly with
17 Erin, who I mentioned on my team, other times it
18 was directly with me.

19 The normal course of a project would
20 mean that I'm involved more at the start of the
21 project, at the higher strategic discussions. As
22 the project moves in life cycle to execution, Erin
23 would be more involved.

24 Q. Okay. And from the Charter side of
25 things, were Allison and Jennifer that you

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2 mentioned earlier, are they normally involved in
3 those conversations with respect to this ad and
4 this envelope?

5 A. Yes. Yes. So Jennifer primarily.
6 Jennifer was the main point of contact and is
7 generally the main point of contact on all
8 creative efforts for RAPP.

9 Q. Is there any chat program that allows
10 Charter and RAPP to chat or instant message?

11 A. There is not. So RAPP has one that
12 it uses internally and Charter has one that it
13 uses internally but they're not able to speak to
14 each other.

15 Q. Understood.

16 Did Charter provide to RAPP any
17 information or documents for RAPP to reference
18 when it designed and created the envelope in this
19 ad?

20 A. Yes, and let me explain. There's two
21 -- two parts to that. So there was one document,
22 a PowerPoint document that we were provided and
23 the -- it's in the documents that I gave you
24 today. That was what's called competitive
25 intelligence and that was specific to Windstream

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2 and some background information. That was
3 provided to us by the small business team. So the
4 business-to-business group, specific to one of the
5 other asks that we've not discussed yet.

6 So we were provided that four-page
7 document. We were also provided some information
8 on e-mail from Jennifer giving us information on
9 the nature of the ask.

10 Q. What do you mean by "the nature of
11 the ask?" What types of information?

12 A. Essentially what RAPP is being asked
13 to do, what the key message for the communication
14 was, and what the objective of the piece was.

15 Q. Okay. What was the key message that
16 you were asked to work on?

17 A. So primarily we were looking to
18 attract Windstream customers to switch to Spectrum
19 services. And the new information, if you will,
20 was around Windstream having filed for Chapter 11.

21 Q. Okay. That was the key message or
22 the objective?

23 A. The objective -- I'm sorry, the
24 objective was to attract new customers to switch
25 to Windstream -- switch to Spectrum, and the key

1 - Peter Maguire -
2 message was around a Chapter 11. And
3 specifically, around creating some uncertainty
4 around that. Nobody was clear on what the outcome
5 would be.

6 But the ask was to use -- to leverage
7 the message as a -- as a supporting point and
8 encouraging people to switch to Charter.

9 MR. JUSTUS: Can we please mark this
10 as Exhibit 4.

11 (Whereupon, RAPP Exhibit 4 was marked
12 at this time.)

13 MR. KINGSTON: Just for the record,
14 when I look back at this transcript so I
15 don't get lost, Exhibit 4 is a multipage
16 document, the first page of which is an
17 e-mail chain forwarding a Thursday, February
18 28, 2019, e-mail to Peter Maguire on
19 September 10 of 2019.

20 And then the balance of Exhibit 4 is
21 a multipage -- what appears to be a
22 PowerPoint presentation.

23 Counsel, I apologize for stepping on
24 your examination.

25 MR. JUSTUS: No problem.

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2 Q. So you provided this document here
3 today, right?

4 A. Yes.

5 Q. Is this the initial e-mail, this
6 February 28 e-mail to you from Matt Bury at
7 Charter, is that the initial ask to work on this
8 project from Charter?

9 A. It's the initial ask to work on it.
10 So not the project we've been talking about, so
11 not the outer envelope with the advertisement that
12 you've already shown me. This was a different
13 project. But, yes, this was the initial ask or
14 e-mail with a supporting PowerPoint document.

15 Q. The initial ask for the envelope and
16 advertisement, did that happen before this or
17 after this? "This" being February 28th e-mail.

18 A. If memory serves me right, I believe
19 that that was the first ask that we received. So
20 the outer envelope and advertisement ask would
21 have come after this.

22 Q. So this was the first ask for any of
23 the three projects relating to Windstream
24 bankruptcy; is that right?

25 A. If I recall correctly, yes.

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2 Q. Okay. And the attachment, you said
3 that's a PowerPoint presentation?

4 A. It was.

5 Q. Okay. So why was Charter sending the
6 PowerPoint to RAPP?

7 A. As background information to inform
8 the creative execution.

9 Q. And the next to the last page of the
10 PowerPoint, do you see at the top it says; "Now is
11 the time to move on from Windstream"?

12 A. I do.

13 Q. These are -- this was drafted by
14 Charter?

15 A. It was, yes.

16 Q. And this meant to be suggestions for
17 RAPP on how to design this campaign, the creative
18 for this campaign?

19 A. Yes. As stated in the e-mail from
20 Matthew.

21 Q. So once RAPP received these
22 suggestions, what did it do next?

23 A. So, the next step after receiving
24 this initial e-mail, we went -- we were provided
25 the flow chain but we went back to Matthew with

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2 some questions on the brief that was received.

3 We went back and forth and aligned on
4 a SOW, by that I mean -- aligned on scope of work;
5 by scope of work I mean agreed dollar amount to
6 carry out this work. And RAPP then briefed their
7 creative team. And based on the information
8 received to come up with -- create a creative
9 execution.

10 Q. For the statement of work is there
11 any written agreement?

12 A. In the document provided there was --
13 the dollar amount was very low. It was somewhere
14 in the region of 7- to \$8,000, but -- and it's in
15 the documentation provided.

16 To clarify, that is specific to this
17 ask; the outer envelope and flier was different.

18 Q. Understood.

19 You said RAPP briefed its creative
20 team --

21 A. I did.

22 Q. -- is that right?

23 Would that brief happen in person, by
24 e-mail, by phone?

25 A. That briefing would happen in person

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2 in RAPP offices.

3 Q. Were you at that briefing?

4 A. I was.

5 Q. What was discussed at that briefing?

6 A. At that briefing we discussed the
7 specific ask from the client, the details of the
8 e-mail, and we shared with the creative team the
9 background PowerPoint document and specific
10 specification requirements for the piece that was
11 being created.

12 By specification requirements I mean
13 the channel that we were executing in was a sales
14 flier on the B-to-B side -- business-to-business.
15 We provide to the creative team details on
16 dimensions, sizing, et cetera.

17 Q. When you say -- you said sales flier;
18 is that right?

19 A. Sales flier, yes.

20 Q. Is that intended for person-to-person
21 handouts, physically handing it to someone as
22 opposed to mailing it in the mail?

23 A. That is correct.

24 Q. Okay. And you said it's for business
25 customers; Charter's business customers or

1 - Peter Maguire -

2 Windstream's business customers?

3 A. Exactly, specifically small business
4 customers.

5 Q. Small business customers, okay.

6 In the creative briefing was there
7 brainstorming of what copy to use and what the
8 messaging should be?

9 A. We -- the business leadership team
10 that I'm in do not take part in brainstorming.
11 Our role is to brief the creative team with the
12 information available and the creative teams will
13 then brainstorm.

14 In the case of Charter, we tend to
15 follow direction pretty closely in terms of what
16 we provide back.

17 Q. So when you were creating the sales
18 flier that this PowerPoint related to, did you
19 follow the direction pretty closely that's
20 provided here on the next to the last page?

21 A. We certainly used the direction as
22 stimulus. Some of the wording was suggested to be
23 different but heavily influenced the work that we
24 created, yes.

25 Q. Okay. How was the wording that you

1 - Peter Maguire -

2 created different than what was suggested here in
3 this PowerPoint?

4 A. I don't know the specific details but
5 what I mean by that is often we will suggest
6 grammar changes or positioning changes or
7 hierarchy changes as part of the normal and
8 standard creative process.

9 Q. Did RAPP include in any draft
10 creative for this project the words, "Now is the
11 time to move on from Windstream"?

12 A. I would have to look back at the
13 specifics. I would have to look.

14 Q. Do you know if you provided that in
15 the set of documents?

16 A. We provided multiple drafts of that
17 sales flier --

18 Q. Okay.

19 A. -- so -- so you'll be --

20 Q. So we can look at those?

21 A. Yes. There's a lot of headlines go
22 back and forth so --

23 Q. Did RAPP's team spend any time
24 discussing what Chapter 11 bankruptcy entails?

25 A. We had a high-level discussion about

1 - Peter Maguire -

2 what it entails. But to be clear, the nature of
3 the relationship with Charter is that we follow
4 direction pretty closely.

5 Q. What directions was RAPP given with
6 respect to messaging around the Chapter 11
7 bankruptcy?

8 A. In this specific case the direction
9 is included in the PowerPoint.

10 Q. Nothing other than what's here on the
11 next to the last page of the PowerPoint?

12 A. There were additional phone calls
13 that were -- we discussed positioning and
14 messaging. I don't recall the specific detail of
15 all the phone calls, but I do know there were
16 follow-up phone calls to discuss messaging.

17 Q. In those follow-up phone calls or
18 discussions with Charter, did Charter specifically
19 say to use the word "uncertainty" in the
20 advertisement?

21 A. I don't recall if that was a specific
22 request.

23 Q. Do you know if any of the documents
24 you gave us today refer to messaging or copy that
25 includes the word uncertainty?

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2 A. I believe -- I believe an e-mail
3 there was a mention of creating uncertainty, yes.

4 Q. What did RAPP understand that to
5 mean; creating uncertainty around the bankruptcy?

6 A. I believe we were trying to get the
7 attention of Windstream customers, inform them
8 that Chapter 11 proceedings were underway, and
9 encourage them to switch to Spectrum.

10 Q. Why would there be uncertainty from
11 the bankruptcy?

12 A. The -- I'm not a lawyer so I don't
13 want to answer that specifically. As I said, the
14 specific ask around sort of creating an
15 uncertainty and it was clear and that's what we
16 executed against.

17 Q. How did you execute on that directive
18 from Charter?

19 A. I think you can see in the final
20 creative how that was executed which has been
21 provided.

22 Q. So RAPP felt that when it provided
23 the creative to Charter, it had met that objective
24 of creating uncertainty with the design of the
25 advertisement and the envelope?

1 - Peter Maguire -

2 A. The specific objective was not to
3 create uncertainty; that was a mood -- M-O-O-D
4 that we were trying to create around it. It
5 wasn't a specific objective. I outlined the
6 objective earlier for the piece.

7 Q. What do you mean by mood? Is that a
8 term of art that's in the advertising agency
9 world?

10 A. I don't know if it's a term of art.
11 Art is in the eye of the beholder.

12 I -- by create a mood, it's to
13 communicate something in an implied fashion.

14 Q. A mood would not be an objective?

15 A. A mood is different from an
16 objective, in my opinion.

17 Q. So what -- the mood was to create
18 uncertainty. What was the objective of this
19 piece?

20 A. To get Windstream customers to switch
21 to Spectrum.

22 Q. Understood.

23 Does Charter ever use the word mood
24 or is that just how you're referring to it?

25 A. We use it at RAPP. It may be --

1 - Peter Maguire -

2 you're calling to my attention to the fact that it
3 may be a word in advertising. Apologies, if so.

4 I don't recall if I specifically have
5 used the word mood with Charter. I have certainly
6 used the word mood internally at RAPP.

7 Q. Okay. Did you receive -- did RAPP
8 receive a PowerPoint similar to this one for the
9 other project relating to the advertisement and
10 the envelope?

11 A. We did not.

12 Q. So just take a step back. One
13 project is the sales flier --

14 A. Correct.

15 Q. -- here. A second project is the
16 envelope and advertisement that we talked about
17 earlier?

18 A. Correct.

19 Q. What is the third project?

20 A. The third project was also on the
21 business-to-business, B-to-B side and it was to
22 create an e-mail, and specifically with this
23 messaging. That was the project that I was
24 referring to that was managed via Base Camp, the
25 project management tool, and those documents have

1 - Peter Maguire -

2 been provided.

3 Q. Okay. So the envelope and
4 advertisement was for residential?

5 A. That is correct.

6 Q. The other two are for business?

7 A. That is correct. Small business.

8 Q. Both -- small business?

9 A. Correct.

10 Q. Okay. Did Charter provide to RAPP
11 any templates to use in creating any of those
12 three projects?

13 A. Templates meaning -- can you be more
14 specific?

15 Q. Sure.

16 Did Charter provide RAPP with any
17 information or documents relating to a Charter
18 campaign involving Google and ask you to use that
19 to inform your work --

20 A. Yes --

21 Q. -- involving --

22 A. -- that is created specific to the
23 residential ask.

24 Q. The envelope --

25 A. The envelope and the letter, yes.

1 - Peter Maguire -

2 Q. Understood.

3 So what did that involve? What did
4 they give you -- what did Charter give to RAPP
5 involving the Google campaign?

6 A. So that was a campaign that RAPP had
7 worked on previously for Google Fiber. We were
8 asked to -- as you can see in the e-mail chain, we
9 were asked to use that campaign as a starting
10 point for the work we were to create for the
11 Windstream incremental mail.

12 Q. What was the general theme of that
13 Google campaign?

14 A. The Google campaign was a highly
15 competitive campaign to encourage Google Fiber
16 customers to switch from Google Fiber to Spectrum.

17 Q. Did that campaign specifically
18 reference to Google stopping services to its
19 customers?

20 A. It did.

21 Q. Okay. So what aspect from the Google
22 company did RAPP use in the Windstream campaign?

23 A. As I said, it was used as a creative
24 starting point in terms of the competitive
25 approach both on the outer envelope and on the

1 - Peter Maguire -

2 inside of the piece, but the core messages,
3 reasons to believe, were different so that had to
4 be updated. And in the case of Google, there was
5 no mention of Chapter 11 as that wasn't relevant.

6 Q. Okay. So let's talk about the
7 envelope first. So RAPP designed an envelope for
8 Charter for use in that Google campaign?

9 A. It did.

10 Q. And what elements of that envelope
11 for the Google campaign were used or influenced
12 the Windstream campaign envelope?

13 A. If I recall correctly, the copy
14 construct, the copy -- the words on the envelope
15 was the same in terms of important information
16 for, if I recall correctly.

17 Q. And you're referring to in the case
18 of the Windstream envelope it says, "Important
19 information enclosed for Windstream customers"?

20 A. Exactly, yes.

21 Q. How about the design of the envelope,
22 specifically to the colors; were there colors on
23 the Google envelope?

24 A. I don't recall. I do believe the
25 Google envelope didn't use color but that was due

1 - Peter Maguire -

2 to what we call printer color restrictions. So
3 the job had been specified with the printer to
4 only use one color, meaning use of color was
5 impossible in the case of the Google mail.

6 Q. Okay. In the case of the
7 advertisement created for the Google campaign --

8 A. Yes.

9 Q. -- what elements were taken from or
10 were an influence in the Windstream advertisement?

11 A. The design construct was very
12 similar. And by design construct, I mean the
13 position of where everything is on the page.

14 So primary headline, body copy, offer
15 at the bottom, and a similar construct on the back
16 of the letter.

17 Q. The wording, "Goodbye Windstream,
18 hello Spectrum" in the Google campaign, did it
19 say, Goodbye Google, hello Spectrum, or something
20 similar to that?

21 A. If I'm honest, I don't recall
22 specifically.

23 Q. Okay. Did Charter provide RAPP with
24 any samples of Windstream advertising to reference
25 when RAPP was creating any of these three creative

1 - Peter Maguire -

2 projects relating to Windstream for Charter?

3 A. I do not recall us being provided
4 with specific examples, but I do recall during a
5 telephone conversation with Jennifer that we
6 together looked on the Windstream website, which
7 would be normal practice in a competitive campaign
8 to look at the competitor's website, so I do
9 recall doing that.

10 Q. What specifically were you looking at
11 on the Windstream website?

12 A. We were looking at the messaging that
13 they led with and the general look and feel and
14 tone of the website.

15 Q. What do you mean by "look and feel"
16 of the website?

17 A. How it looks.

18 Q. Does that include colors?

19 A. It does.

20 Q. Okay.

21 MR. JUSTUS: I think we're at Exhibit
22 5. Could you please mark this as Exhibit 5,
23 please.

24 (Whereupon, RAPP Exhibit 5 was marked
25 at this time.)

1 - Peter Maguire -

2 Q. Feel free to flip through those
3 e-mails, please. I'll ask you some questions
4 about them.

5 A. Sure.

6 Q. Just let me know when you're done,
7 take your time.

8 A. Sure.

9 Q. Okay?

10 A. Yes.

11 Q. Starting all the way at the back, the
12 first e-mail dated February 28, from Jennifer
13 Smith to yourself and Erin Mullane -- is it
14 Mullane or Mullany?

15 A. Mullane.

16 Q. Some others are copied as well?

17 A. Uh-huh.

18 Q. Under the section of that e-mail that
19 says message.

20 A. Uh-hum.

21 Q. It says, "Tone to be consistent with
22 Google but we cannot say things like abandoned or
23 going away."

24 A. Yes.

25 Q. What did that mean?

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2 A. That was referring to the fact that
3 in the case of the Google mail, we were talking
4 about Google coming out of a market, a late thing
5 to come out of a market which was a different
6 circumstance than Windstream. Therefore, we
7 couldn't say the same thing as it was different
8 circumstances, different messaging.

9 Q. How were the circumstances and
10 messaging different with Windstream?

11 A. So, the -- I mean, it's outlined
12 here. The messaging for Windstream was focused on
13 getting Windstream customers to switch to
14 Spectrum, and mentioning that they've declared
15 bankruptcy, so now may be the time to switch to
16 Spectrum which is not the same message as Google.

17 Q. Okay. So why would, as you said, now
18 be the time to switch because of the Chapter 11
19 bankruptcy? What's the message there?

20 A. So I think that comes back to the
21 point I was making earlier around the mood of
22 uncertainty.

23 Q. Okay. If you flip forward one page.
24 It says Charter 938 at the bottom corner.

25 A. Yup.

1 - Peter Maguire -

2 Q. I'm looking at the Monday, March 4th
3 e-mail at 12:26 p.m.

4 Do you see that?

5 A. I do.

6 Q. Okay. Apologies. The e-mail below
7 that, March -- there's just a small header there,
8 March 4th at 12:15.

9 A. Yes.

10 Q. That's an e-mail it says that you
11 wrote; is that right?

12 A. That's correct.

13 Q. Okay. And you said in that e-mail,
14 "We'll base the creative very closely on Google in
15 terms of layout/tone but change the messaging as
16 needed (per your direction below)."

17 A. Yes.

18 Q. So the, basing the creative very
19 closely on Google in terms of layout and tone, is
20 that what we already discussed in terms of the
21 copy on the envelope and then the lay out of the
22 advertisement?

23 A. That's exactly what we discussed,
24 yes.

25 Q. Is there anything that we haven't

1 - Peter Maguire -

2 discussed that would involve making the creative
3 very closely based on Google?

4 A. I don't believe so, no.

5 Q. Okay. If you flip to Charter 937 at
6 the bottom corner.

7 A. Uh-huh.

8 Q. That looks like a March 4th e-mail
9 from Erin Mullane?

10 A. Uh-huh.

11 Q. And I believe that e-mail is Erin to
12 Jennifer Smith at Charter and others.

13 So is that her sending a draft of the
14 creative to Charter?

15 A. Yes. It says, "Please see attached."
16 So, yes, that would be sending a draft of the
17 creative.

18 Q. Was that the first time that --

19 A. This indicates it was round one
20 creative, so the first draft.

21 Q. Okay.

22 A. The subject line says, "R1 creative"
23 which would mean first draft.

24 Q. Interesting, okay.

25 In the first bullet of that e-mail,

1 - Peter Maguire -

2 "We've leveraged the template creative look and
3 feel from the Google Fiber incremental mailing
4 that released last week."

5 So the Google campaign had just
6 released recently, a week before this it sounds
7 like?

8 A. Yes.

9 Q. Okay. In the second bullet says,
10 "Messaging has been aligned per your notes below
11 about Windstream filing for Chapter 11."

12 A. Yes.

13 Q. So what did that mean? Was that the
14 mood of uncertainty that you've been talking
15 about?

16 A. That is referring to the notes that
17 Jen provided here, that Jennifer provided on the
18 Thursday, February 28 e-mail. It's referring to
19 aligning to the direction received in that e-mail.

20 Q. How did RAPP ensure to align the
21 messaging in the drafts to what Jennifer had
22 proposed on that February 28 e-mail?

23 A. So creative is apparently very
24 subjective matter. So the point of the rounds of
25 reviewing the drafts is for RAPP to give their

1 - Peter Maguire -
2 point of view owned how we've aligned to the
3 direction and the client will then in due course
4 provide feedback and tell us if we have or haven't
5 successfully aligned.

6 Q. So at the point on March 4th when
7 this round one creative is going out, Charter has
8 not yet seen or made any proposed revisions?

9 A. That is correct.

10 Q. So the fifth bullet point just says
11 OE.

12 A. Uh-huh.

13 Q. That's outer envelope?

14 A. That's correct.

15 Q. The bullet below that says, "Look and
16 feel of the OE has been aligned with the
17 Windstream website and current mail in market for
18 Compra Media."

19 A. Yes.

20 Q. What is Compra Media?

21 A. Compra Media is a competitive
22 tracking tool that allows anybody that has a
23 subscription to go on and search for specific
24 channels; be it e-mail, direct mail, display
25 advertising, et cetera.

1 - Peter Maguire -

2 Q. Okay. What does it mean that the
3 look and feel of the outer envelope has been
4 aligned with the Windstream website and current
5 mail?

6 A. It means that the look and feel of
7 the OE, the colors used on the OE, were not the
8 same but similar to Windstream.

9 Q. Did RAPP's internal design team
10 create that color band that was put on the draft
11 envelope?

12 A. That's correct.

13 Q. And they did that basically by
14 looking at Windstream materials and trying to
15 match the colors?

16 A. So, the ask to the team was to take
17 inspiration from the -- from the Windstream
18 colors, with the objective being we were trying to
19 grab attention of current Windstream customers.

20 So it wasn't exactly the same because
21 it couldn't be because we don't know the color
22 pallet and the technical build of the Windstream
23 colors, but the team took inspiration from the
24 Windstream colors.

25 Q. The team tried to make it as close as

1 - Peter Maguire -

2 they could without knowing the exact Pantones?

3 A. They took inspiration. I don't know
4 if we can say they tried to make it as close as
5 possible. They certainly took inspiration from
6 the Windstream website.

7 Q. The team wasn't directed to make it
8 as close as possible?

9 A. No, but the team -- in fairness, the
10 team were given the Windstream website and said,
11 please use this as inspiration for how we could
12 incorporate some color onto the OE to make it pop
13 and attract attention from Windstream customers.

14 Q. So if you go down two more bullets,
15 it says, "We have tried to align the fonts as
16 close as possible to the font on the website and
17 the DM."

18 A. Uh-huh.

19 Q. So that is aligning the font on the
20 outer envelope as closely as possible to the font
21 Windstream uses?

22 A. That is correct.

23 Q. Why did they do that? Why did the
24 designers align the font as closely as possible to
25 Windstream font?

1 - Peter Maguire -

2 A. The objective, from discussions with
3 Charter, was to grab attention from current
4 Windstream customers and make the outer envelope
5 pop as much as possible.

6 Therefore, one way to do that is to
7 attract attention using a pallet and a feel that
8 Windstream customers may be accustomed to.

9 Q. I think you said that one of the
10 other drafts of the outer envelope had a green
11 band on it?

12 A. It did.

13 Q. Was that also a way to try to make it
14 pop, as you say?

15 A. Exactly, yup; to grab attention.

16 There was a third option that had no
17 color, I think, of the image.

18 Q. That doesn't sound like it would pop
19 at all.

20 A. It doesn't; but one of the premises
21 of our relationship with Charter was to provide
22 ranges and options at all times for consideration.
23 It's easier to compare that way.

24 Q. Obviously Charter eventually selected
25 the option that had that color gradient band on

1 - Peter Maguire -

2 it?

3 A. They did.

4 Q. Did Charter specify to RAPP why they
5 chose that option?

6 A. To overuse the word, they said it
7 felt it popped the most and was the most attention
8 grabbing.

9 Q. Did they specify why they thought it
10 would be attention grabbing --

11 A. They did not specify. I do not
12 recall them specifying why they thought it would
13 be particularly attention grabbing.

14 Q. If you go down a handful more
15 bullets, you'll see OE option 1 and OE option 2?

16 A. Yes.

17 Q. Under OE option 1 it says, "Important
18 information if you are a Windstream customer."

19 A. Yes.

20 Q. Under OE option 2 it says, "Important
21 information enclosed for Windstream customers."

22 A. Yes.

23 Q. Did that wording come as a directive
24 from Charter or did RAPP come up with that wording
25 on its own?

1 - Peter Maguire -

2 A. So if you remember the direction was
3 to closely align with the work that we had done on
4 Google Fiber. This was a very similar approach to
5 the work done on Google Fiber; therefore, we were
6 following that direction.

7 Q. On the Google Fiber campaign, did
8 RAPP propose the wording at that time or was that
9 wording proposed to RAPP by Charter?

10 A. I do not recall specifically on the
11 Google Fiber copy.

12 Q. If you go down another five or so
13 bullets, it says, "CTA: Goodbye Windstream, hello
14 Spectrum."

15 Is CTA, call to action?

16 A. That's correct.

17 Q. So again, did RAPP come up with that
18 wording or was that wording suggested by Charter?

19 A. I don't recall specifically. As I
20 said, there were telephone conversations; one in
21 which I remember looking at the website. We did
22 discuss copy in that call. I can't remember if
23 that was a specific directive or if that was a
24 RAPP suggestion. It could have been either.

25 Q. But it would have come on a phone

1 - Peter Maguire -

2 call, you think?

3 A. If it was direction from Charter, I
4 believe that would have come in a phone call, yes.

5 Q. Do you normally take phone notes when
6 you're having these phone calls with Charter?

7 A. You may call them notes, you may call
8 them scribbles, but yes.

9 Q. Okay. How about the others on your
10 team, as far as you know, do they typically take
11 notes down when they're talking to Charter about
12 revisions to creative?

13 A. There is a convention that says that
14 the more junior person on the call would take
15 notes; therefore, if I was on the phone on my own
16 with Charter, I would take notes. If I was on the
17 phone with Erin, Erin would take notes.

18 Q. Okay. And then the documents you
19 gave to us today, are any of those phone notes in
20 there?

21 A. Phone notes are not something that we
22 would retain in the medium term. They're used,
23 they remain, as I stated, more of a scribble for
24 what needs to be done right now and then move on.
25 So I don't retain telephone notes of that nature.

1 - Peter Maguire -

2 Q. You don't but does anyone on your
3 team, the more junior person who takes the notes,
4 et cetera?

5 A. Maybe if it was a practice I had
6 instilled, she would; but to my knowledge, no, she
7 doesn't.

8 Q. You didn't specifically look for
9 phone notes when you were collecting documents to
10 produce to us?

11 A. No.

12 Q. Okay. Is it possible that there are
13 some phone notes that still exist from those
14 calls?

15 A. I don't believe it's possible because
16 they happen -- it's a note pad that comes and goes
17 very quickly.

18 Q. They don't go in a file, a chrono
19 file or anything like that?

20 A. They don't.

21 Q. Do you recall if in the Google
22 campaign the outer envelope had Charter or
23 Spectrum's name on it, the outer envelope?

24 A. I don't believe it did.

25 Q. Okay.

1 - Peter Maguire -

2 A. It did have -- as the Windstream one
3 did, it did have Charter's return address in the
4 top left corner.

5 Q. Okay. So that's St. Louis, Missouri
6 address --

7 A. Yes.

8 Q. -- that's Charter?

9 A. Yes.

10 Q. I thought they were in Stamford?

11 A. The return address is a legal thing
12 I'm not privy to, but we're given the specific
13 return address to use.

14 Q. Given to you by Charter.

15 A. Yes.

16 Q. You don't know if it's a Charter
17 building at that address?

18 A. Yes. We're told that that's the
19 Charter return address to use.

20 Q. Okay.

21 MR. JUSTUS: Everything okay, John?

22 MR. KINGSTON: It is. I didn't want
23 to be insidious.

24 MR. JUSTUS: Okay. Thanks,
25 appreciate that.

1 - Peter Maguire -

2 MR. KINGSTON: No problem.

3 Q. Did RAPP have any discussions with
4 Charter about whether or not to include the
5 Charter or Spectrum name on the outer envelope?

6 A. So, in this specific case the
7 direction was to follow what we did on Google
8 Fiber, and Google Fiber we didn't do it;
9 therefore, I don't believe it was a discussion
10 because we were following the model from Google
11 Fiber.

12 However, that is an approach that we
13 have used several times across multiple clients is
14 called blind OEs, B-L-I-N-D, outer envelopes.

15 And what that means is that there's
16 no local, it's used across industry and across
17 verticals.

18 Q. And blind OEs always have a different
19 company's name on the outer envelope, in this case
20 Windstream?

21 A. No, that's not the case, no.

22 Q. When we talked earlier about aligning
23 the font as closely as possible to Windstream's
24 font, does that include the font used on the outer
25 envelope?

1 - Peter Maguire -

2 A. Yes, it did. It was specifically
3 talking about the font on the outer envelope.

4 Q. Okay. So that font was not also used
5 on the advertisement inside?

6 A. It was not.

7 Q. All right, understood.

8 Did Charter ever request or direct
9 RAPP to make the outer envelope look like it was
10 being sent by Windstream?

11 A. Those specific words were not used
12 that I recall, no.

13 Q. Any similar words to the same effect?

14 A. No. The conversation that we had
15 that I recall was that in making outer envelope
16 pop and attractive to Windstream customers making
17 it stand out in the mail. The biggest barrier in
18 direct mail is getting people to open it.

19 The discussions we had were around
20 how can we make that outer envelope upon and stand
21 out for Windstream -- to attract Windstream
22 customers.

23 Q. Why would this color scheme on the
24 outer envelope attract the attention of Windstream
25 customers?

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2 A. It may or may not attract the
3 attention of Windstream customers by being
4 inspired by Windstream's colors.

5 Q. So you're saying Windstream customers
6 would see similar colors to Windstream colors?

7 A. There may be a visual association
8 between the two, yes.

9 Q. Was that the goal of the goal to
10 create a visual association between the two?

11 A. The goal was not to do that
12 specifically. The goal was to attract attention
13 of Windstream customers and make this pop in the
14 mail, so that they were more likely to open it.

15 Q. But the main reason it would attract
16 Windstream customers because they're familiar with
17 those colors because Windstream uses those colors,
18 right?

19 A. It may or may not be that reason.
20 The main objective was to grab the attention. The
21 metric of success around this piece relied on
22 getting Windstream customers' attention.

23 Q. How did you measure that metric?

24 A. Call volume.

25 Q. Call volume to whom?

1 - Peter Maguire -

2 A. Charter.

3 So RAPP is not in any way responsible
4 for measurement but the success of pieces is
5 deemed on how many calls are received.

6 Q. So, people who receive this mail
7 piece would call Charter?

8 A. There's a telephone number on the
9 advertisement.

10 Q. Okay. And Charter tracks the number
11 of calls they get and they ask did you call in
12 relation to the specific piece; that's how they
13 measure that?

14 A. I -- we are not responsible for
15 tracking. So it would be --

16 Q. Do you have an understanding of how
17 they track --

18 A. I have a limited understanding. And
19 I know they're able to track calls to -- to direct
20 mail pieces, yes.

21 Q. Then they share those metrics with
22 you?

23 A. On an ad hoc basis not on a formal
24 basis.

25 THE VIDEOGRAPHER: Sorry to

1 - Peter Maguire -

2 interrupt. You have two minutes.

3 MR. JUSTUS: Do you want to just
4 change now. That would be good, thanks.

5 THE VIDEOGRAPHER: We're off the
6 record at 10:55 a.m.

7 (Whereupon, there was a brief recess
8 in the proceedings.)

9 THE VIDEOGRAPHER: This is Tape 2.
10 We are now on the record at 11:02 a.m.

11 BY MR. JUSTUS:

12 Q. Okay. Back on the record.

13 So, again, with the outer envelope
14 that we have been talking about, so this is what
15 you'd refer to as a blind OE which is when the
16 company sending it doesn't have their name or logo
17 on the outer envelope, right?

18 A. Yes.

19 Q. And it used fonts as closely as
20 possible the Windstream's font, right?

21 A. Yes.

22 Q. And it uses the Windstream name --

23 A. Uh-huh.

24 Q. -- right?

25 A. Yes.

1 - Peter Maguire -

2 Q. And it used a color scheme that was
3 similar to Windstream's color scheme?

4 A. It was inspired by it, yes.

5 Q. Did that ever concern RAPP using all
6 of those elements together that there may be some
7 legal concern?

8 A. There has been in the past -- the
9 practice of -- a similar practice to this is not
10 uncommon in the direct marketing space, so it
11 would not have been the first time that we used
12 similar creative techniques. Therefore, there
13 were no specific concerns raised.

14 And to reiterate, we followed
15 direction closely from Charter Communications and
16 execute against what we were asked to do.

17 Q. Did RAPP seek legal counsel with
18 respect to the design of the envelope?

19 A. RAPP provided the designs through
20 Charter. If Charter Communications provides final
21 solid sign off, then we will proceed.

22 Q. Is that a no?

23 A. A no to what question specifically?

24 Q. Did RAPP seek legal counsel with
25 respect to the design of the envelope?

1 - Peter Maguire -

2 A. We did not. We did not, no.

3 Q. Did RAPP have any discussions with
4 Charter about any legal concerns with the design
5 of the envelope?

6 A. We did not. We were following
7 direction closely that we'd received from Charter
8 Communications and executing against it. So no,
9 we did not.

10 Q. So there were no discussions between
11 RAPP and Charter about any legal issues with the
12 design of the envelope, none?

13 A. There were not.

14 Q. By e-mail, none?

15 A. About legal issues? Not that I
16 recall, no.

17 Q. How about concerns generally with
18 using font, colors, and name from Windstream on a
19 blind OE?

20 A. Part of the reason we provided a
21 range of options was to be able to have points of
22 reference and points of comparison. So there are
23 degrees to which creative execution can push in a
24 certain direction.

25 We wanted to provide a range that

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2 some pushed further; some didn't push as hard in
3 terms of the objective for the piece.

4 Q. Were there any discussions about --
5 I'm sorry, I don't think that answered my
6 question.

7 A. Okay. Ask again, please.

8 Q. Were there any discussions about --
9 even if the word legal or law wasn't used, were
10 there any concerns generally that were discussed
11 between RAPP and Charter about using all of these
12 different envelopes -- sorry -- using all these
13 different elements on the envelope; the font --

14 A. Not that I recall specifically. Not
15 that I recall.

16 Q. And that's by e-mail, by phone, in
17 person, you recall no discussion about any
18 concerns relating to the design of the envelope?

19 A. Not that I recall.

20 Q. Okay. So, I know you're not
21 represented by counsel but this is a deposition of
22 RAPP, not of you personally. So you're answering
23 on behalf of the company.

24 And so, you know, the notice topics,
25 those two topics that we talked about, one is all

1 - Peter Maguire -

2 communications between Charter and RAPP about the
3 design, et cetera. So you're required to be
4 prepared for and answer those types of questions.

5 So it sounds like you're answering
6 some things just on your personal knowledge, as
7 opposed to having prepared to answer some of these
8 questions. So we're going to have to think about
9 what to do about that. Some of these things we
10 need answers to, and so for this type of
11 depositions you're required to actually learn the
12 answers in advance and then come and share them.

13 So we can discuss that after the next
14 break, I'll have to think about that.

15 A. Okay. I'm happy to discuss further.

16 Q. You understand that when you're
17 answering these questions, it's not on behalf of
18 you personally, it's on behalf of RAPP?

19 A. I do.

20 Q. Did RAPP internally ever have any
21 discussions about any concerns with using these
22 various elements on the envelope; the name, the
23 colors, the font, and the blind OE?

24 A. When we briefed the creative team,
25 the briefing I mentioned to you earlier on, we

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2 did -- we did say there's a lot of different
3 elements here; the elements that you just
4 mentioned. But again, we were following direction
5 closely from Charter which is essentially what
6 we're paid to do. So we're paid to execute
7 against specific requests from Charter.

8 Q. So there was a concern that there
9 were a lot of different elements; is that what
10 you're saying?

11 A. There was a discussion around it and
12 -- there was a discussion and a remark around it.
13 I don't know if I would call it a concern. But
14 there was a discussion, yes.

15 Q. What was the substance of the
16 discussion?

17 A. The substance of the discussion was
18 there are a lot of different things happening here
19 and is this the best way to make it pop for
20 Windstream -- to grab attention from Windstream
21 customers. And the resolution of that discussion
22 was it's important to provide a range of options
23 so that we have points of comparison.

24 Q. Did anyone at that -- you said it was
25 a brief?

1 - Peter Maguire -

2 A. Uh-huh.

3 Q. Did anyone at that brief say, I'm
4 concerned that we're using too many Windstream
5 elements on this piece or something to that
6 effect?

7 A. Nobody said that, no.

8 Q. Okay. So the discussion was, We're
9 using a lot of different elements?

10 A. Yes.

11 Q. I don't understand why was that a
12 discussion. What is it a discussion of then?

13 A. So the discussion -- sorry, if I'm
14 not being clear. The discussion was, we give the
15 creative team direction for different elements of
16 direction. Direction point number one is leverage
17 the Google Fiber campaign as a starting point, as
18 we discussed.

19 Number two, is we're looking at the
20 Windstream website and taking inspiration from the
21 color scheme.

22 Number 3 is around the copy, and
23 there was a discussion that said this is -- this
24 is a bold approach. I think the word bold may
25 have been used, which we discussed internally and

1 - Peter Maguire -

2 aligned on. And as I said, it's important to
3 provide a range of options to the Charter team so
4 that they can make the final selection.

5 Q. So what was the discussion around why
6 it was a bold approach?

7 A. It was a bold approach because it's
8 highly -- it's a highly competitive approach.
9 It's highly competitive.

10 Q. Can you elaborate on that?

11 A. So by highly competitive I mean it's
12 very direct and pointed and that was the
13 discussion that we had. It's -- as you can see
14 from the piece, it's not an approach of soft
15 selling. It's a very sort of hard-hitting piece
16 of communication.

17 Q. Hard-hitting meaning it has those
18 elements of the Windstream font, color, name?

19 A. Hard-hitting meaning, yes, there's a
20 lot in play to grab the attention of Windstream
21 customers, yes.

22 Q. Of course, ultimately the goal was to
23 have people open the envelope and see what's
24 inside, right?

25 A. Yes. Right. Absolutely, yes.

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2 Q. And just to close the loop on that,
3 during the discussion about it being a bold
4 strategy, no one raised any concerns that it may
5 be too bold or cross any lines; is that right?

6 A. Not that I recall, no.

7 MR. JUSTUS: Can we please mark this
8 as Exhibit 6.

9 (Whereupon, RAPP Exhibit 6 was marked
10 at this time.)

11 Q. Feel free to take a look at this and
12 let me know when you're ready.

13 Ready?

14 A. Yep, sure. Yes.

15 Q. In the Exhibit Number 6 marked
16 Charter 6254, the e-mail dated March 22nd, from
17 Jennifer Smith at Charterer to you, Erin and
18 others copied.

19 It says, "We need to update
20 Windstream messaging on the 4/22 letter."

21 Is that this letter we're talking
22 about that went out with the envelope?

23 A. It is that letter; a future version
24 of it, yes.

25 Q. So there was a future -- there were

1 - Peter Maguire -

2 more than one version, more than one final version
3 that have letter advertisement?

4 A. Yes, yes.

5 Q. Okay. Is the version that I showed
6 you in Exhibit 1 in this Complaint, is that the
7 first version or a later version?

8 A. What page was it on?

9 Q. It's 13 and 14 of the Complaint which
10 is somewhere in the mid-20s of the whole package.

11 A. This was the final version I believe,
12 so the date on that was 4/22.

13 Q. 3/22.

14 A. No, I'm sorry. I'm looking at the
15 expiration date on the letter. It says 4/25.

16 I would honestly have to double-check
17 if this -- which version this one is.

18 Q. Okay. Further down in that e-mail,
19 turning back to the e-mail Exhibit 6.

20 A. Yes.

21 Q. It says, Summary: "We need to soften
22 the 'uncertainty' claim for any future mailers."

23 What is the referring to?

24 A. The mood of uncertainty that I was
25 talking about earlier is referring to that and

1 - Peter Maguire -

2 this idea of creating uncertainty around

3 Windstream filing for Chapter 11.

4 Q. Can you tell by looking at Exhibit 1,
5 13 and 14 --

6 A. This is what I was trying to do --

7 Q. -- it has been softened with respect
8 to the uncertainty claim?

9 A. No, this is the original version
10 before softening.

11 Q. Okay. How were you able to determine
12 that?

13 A. A couple of things. So first of all,
14 the opening paragraph clearly states Windstream
15 has filed for Chapter 11 bankruptcy which means
16 uncertainty. So the word uncertainty is still in
17 there.

18 And secondly, looking at the date
19 quoting at the bottom which is the reference we
20 use to identify the piece for printers, says 3/22.
21 And this communication Jen is referring to 4/22 --
22 3/25, sorry, she's referring to 4/22.

23 Q. Okay. So the first point there,
24 softening the uncertainty claims meant removing
25 entirely the word uncertainty?

1 - Peter Maguire -

2 A. Uh-huh. Yes.

3 Q. So then RAPP created a second version
4 of this ad that no longer had the word
5 uncertainty; is that right?

6 A. If I recall correctly, yes.

7 Q. Did Charter provide a reason for why
8 the uncertainty claims needed to be softened?

9 A. They did not. They did not. We were
10 given direction to soften but they did not give us
11 specific reason why.

12 Q. RAPP did not ask why?

13 A. Not that I recall, no.

14 Q. Then the last sentence under that
15 summary paragraph says, "Let customers draw their
16 own conclusion about the impact of the filing on
17 Windstream services."

18 So what do you understand that to
19 mean?

20 A. My understanding of that is don't
21 tell customers what the specific implications will
22 be; state the fact that Chapter 11 is in progress
23 and let them draw their own conclusion. That
24 would be my interpretation.

25 Q. Okay. Are those the only two

1 - Peter Maguire -

2 versions of this ad, the version in Exhibit 1 and
3 then the later version after March 22nd, where you
4 removed the word uncertainty and maybe made some
5 other changes, are those the only two final
6 versions of this ad?

7 A. With the exception I mentioned
8 earlier of speed diversioning --

9 Q. Sure.

10 A. -- with the exception of that as
11 principal basis, yes.

12 Q. Sorry. Going back to Exhibit 6 at
13 the top e-mail from Erin on March 22nd says, "I'll
14 bring the three 4/22 Windstream letters to the
15 4:00 p.m. so we can chat."

16 What does that mean; the three, 4/22
17 Windstream letters?

18 A. It would mean that there were three
19 versions of the letter in play that were in
20 progress at that time. So Erin was referring to
21 bringing those to the discussion.

22 Q. Okay. So three different drafts of
23 the second version of this advertisement?

24 A. Yes, but those drafts may or may not
25 have been different creative approaches. It could

1 - Peter Maguire -

2 have been different offers --

3 Q. Or speeds?

4 A. -- speeds, exactly.

5 Q. And the 4:00 p.m. is referring to a
6 4:00 p.m. --

7 A. Phone call.

8 Q. -- call? Telephone call?

9 A. Yes.

10 Q. Were you on that call?

11 A. I don't think I was on that call. I
12 don't know.

13 Q. Did anyone brief you about what
14 happened on that call?

15 A. It may have happened at the time.
16 This was several months ago, so I don't
17 specifically remember. But Erin and I are very
18 close and have daily touch basis on everything
19 going on. So if there are calls that I'm not on,
20 she would let me know what's happened. So it's
21 very possible, but given it was several months ago
22 I don't remember the specific conversation.

23 Q. Fair enough.

24 So going back to the three projects
25 relating to Windstream bankruptcy.

1 - Peter Maguire -

2 A. Yes.

3 Q. The direct mail envelope and
4 advertisement that went in the envelope --

5 A. Correct.

6 Q. -- which was sent by mail.

7 A. Uh-huh.

8 Q. Then there was the sales flier?

9 A. Yes.

10 Q. And that was distributed by hand by
11 salespeople?

12 A. Yes.

13 MR. KINGSTON: Objection. Just a
14 moment. Objection, lack of foundation.

15 Q. Your answer is yes?

16 A. To my knowledge, yes.

17 Q. Is that what it was designed for? It
18 was designed for the purpose of being delivered by
19 hand?

20 A. It was called a direct sales flier,
21 yes.

22 Q. What does that typically mean?

23 A. Direct sales flier would mean that
24 the door-to-door sales force have materials that
25 they're able to hand out, leave behind. I can't

1 - Peter Maguire -

2 confirm if that ever happened, but that's how it
3 was designed.

4 Q. You didn't design an envelope as part
5 of that project?

6 A. No, we did not. We did not.

7 Q. All right. Then the third project
8 was an e-mail?

9 A. Yes. Specifically for small
10 business. I am not aware if that e-mail ever
11 deployed. I know that we designed it but I
12 couldn't tell you if it deployed or not by
13 Charter.

14 Q. So RAPP delivered a final creative of
15 that e-mail --

16 A. We did.

17 Q. -- to send Charter but you don't know
18 if Charter e-mailed it?

19 A. Yes.

20 Q. I think you already said this but
21 just to be clear, RAPP doesn't do mailing services
22 or actually distribute ads to customers --

23 A. We do not.

24 Q. -- you just provide creative to
25 customers like Charter, and then Charter handles

1 - Peter Maguire -

2 how it gets mailed out, how it gets e-mailed out,
3 things like that?

4 A. So that process varies by client but
5 in the occasion of Charter, yes.

6 Q. Okay. As between the sales flier for
7 small business customers --

8 A. Yes.

9 Q. -- and the envelope and advertisement
10 for residential customers --

11 A. Yes.

12 Q. -- was there any difference in the
13 messaging between those two things?

14 A. The primary difference in messaging
15 between them was the audience was significantly
16 different. So the target audience was different,
17 therefore, the creative approach was different.

18 In terms of the actual messages
19 around Windstream and the competitive comparison,
20 they were largely similar -- the initial iteration
21 of the direct mail piece, yes.

22 The design and esthetic was clearly
23 very different.

24 Q. Okay.

25 MR. JUSTUS: Can we please mark this

1 - Peter Maguire -

2 as Exhibit 7.

3 (Whereupon, RAPP Exhibit 7 was marked
4 at this time.)

5 Q. Please go ahead and take a look and
6 let me know when you're ready.

7 Ready?

8 A. Ready.

9 Q. So this is Exhibit 7 is marked
10 Charter 6103, it's a group of e-mails. Is this
11 e-mail thread relating to the small business flier
12 project that we have been talking about?

13 A. That is correct.

14 Q. Okay. If you go to a March 18
15 e-mail, on the second page, 6104, e-mail from
16 Erin, March 18 at 3:15 p.m., in the middle of the
17 page.

18 A. Uh-huh, yup.

19 Q. The first bullet it says, "Do we need
20 to use a footnote with corresponding legal copy if
21 we are speaking against Windstream so
22 competitively on the back of the flier?"

23 A. Uh-huh.

24 Q. What does that refer to?

25 A. So on the back of the flier there was

1 - Peter Maguire -
2 a competitive comparison chart and which does a
3 side-by-side comparison of Spectrum product
4 benefits and Windstream product benefits. So
5 that's what Erin is referring to by speaking
6 competitively.

7 I believe we also made a savings
8 claim. So both of those things would be deemed
9 competitive and would normally be disclaimed at
10 the bottom in the disclaimer section.

11 Q. If you go 6107, further back in this
12 document. That's the ad you're referring to and
13 the Charter you're referring to?

14 A. That's correct. Correct. Correct.

15 The savings claim I was referring to
16 just sits below the chart.

17 Q. Understood, okay.

18 MR. JUSTUS: Please mark this as
19 Exhibit 8.

20 (Whereupon, RAPP Exhibit 8 was marked
21 at this time.)

22 Q. Feel free to flip through and let me
23 know when you're ready.

24 A. Ready.

25 Q. Ready?

1 - Peter Maguire -

2 A. Yup.

3 Q. So Exhibit 8, e-mail thread starting
4 with Charter 10013. If you flip all the way to
5 the back, the very first e-mail on 10020.

6 A. Yes.

7 Q. Is that the same e-mail from Matt to
8 you that we talked about earlier that's attached
9 to PowerPoint deck?

10 A. That's exactly the e-mail.

11 Q. Okay. Does this whole e-mail thread
12 relate to the sales flier for small businesses?

13 A. It does. The whole thread does, yes.

14 Q. Okay. In your -- at the top of that
15 same page, 10020, it's an e-mail from you,
16 correct?

17 A. Yes, that's correct.

18 Q. Okay. And in the next to the last
19 bullet in that e-mail it says, "Should the
20 bankruptcy be the lead message or a supporting
21 message?"

22 A. Yup. Yes.

23 Q. Could you just tell me what you meant
24 by that?

25 A. So if you look at the e-mail below

1 - Peter Maguire -
2 from Matt Bury, he specifically says, "They
3 recently announced they would be filing Chapter 11
4 bankruptcy and we want to use to drive new
5 customer acquisitions."

6 Therefore my clarifying question was
7 -- and the attached PowerPoint. Therefore, my
8 clarifying question was around the hierarchy of
9 messaging that had been requested.

10 Q. So what was the answer to that
11 question?

12 A. The e-mail did not answer this
13 directly. But the focus -- a big focus is around
14 price discrepancy, and was that the response that
15 we received on the e-mail.

16 Q. So when the final sales flier was
17 created and delivered by RAPP to Charter, was
18 bankruptcy the lead message or a supporting
19 message?

20 A. I'll give you my point of view on
21 that by looking at the creative.

22 I would say it was a prominent
23 message.

24 Q. Why do you say that?

25 A. I say it's prominent message as the

1 - Peter Maguire -

2 headline says, "Don't risk losing your Internet
3 and phone services." And the sub head to pay that
4 off says, "Windstream filed for Chapter 11. Their
5 future is uncertain. Don't leave you business up
6 to chance."

7 Q. Okay.

8 A. That is the front of a flier, which
9 is why I would say it's a lead message.

10 Q. Understood.

11 If you go to Page 10018.

12 A. Uh-huh.

13 Q. At the bottom is an e-mail from you,
14 March 4th.

15 A. Yes.

16 Q. The first bullet says, RAPP to
17 concept minimum to creative options for review, et
18 cetera. It says, "Same look/feel as our
19 competitive campaign."

20 A. Uh-huh.

21 Q. What does that refer to, what
22 competitive campaign?

23 A. That refers to -- so when Q4 of last
24 year we worked with the small business team to
25 develop a new competitive campaign called We Mean

1 - Peter Maguire -

2 Business, and that was a campaign against multiple
3 competitors and it had a very specific messaging
4 strategy and look and feel.

5 So the question on my e-mail was to
6 clarify whether we were leveraging the look and
7 feel approach from that campaign to bring it
8 through here or if we were looking for a totally
9 unique approach.

10 Q. Did the final version end up using
11 that look and feel?

12 A. It used the look and feel but the
13 messaging was very different.

14 Q. Of course. Because it related to
15 Windstream and bankruptcy, of course?

16 A. Yes, but the look and feel was
17 similar, yes.

18 Q. Thank you.

19 So further up on that same page, I
20 think again this is another e-mail from you,
21 right?

22 A. Uh-huh. Yes.

23 Q. This appears to be an e-mail where
24 you're providing four options for the sales flier;
25 is that right?

1 - Peter Maguire -

2 A. Yes, that's correct.

3 Q. Okay. So on Page 10017, the
4 beginning of that e-mail, it's a rather long
5 e-mail.

6 A. Yes.

7 Q. You say, "Given this is an unusual
8 mix of messaging, we have provided four creative
9 options," et cetera.

10 A. Yes.

11 Q. What did you mean by it's "an unusual
12 mix of messaging"?

13 A. It's very unusual that we're talking
14 about bankruptcy and Chapter 11 and materials, it
15 was unusual.

16 Q. And "the mix" is because it referred
17 to both bankruptcy and something else; is that
18 what you meant by mix?

19 A. By the mix, I mean the balance of
20 that -- the competitive message which was tied to
21 Windstream's product inferiority and the
22 bankruptcy paired with the positive Spectrum story
23 of the good things that Spectrum business can
24 offer.

25 Q. Understood.

1 - Peter Maguire -

2 If you go down to the fifth bullet,
3 it says, All competitive charts have used the
4 Windstream logo, as we found this in residential
5 to be powerful and resonate with the customer if
6 they had the service with the completion --

7 A. Competition.

8 Q. -- competition. Sorry.

9 So why are you referring to
10 residential there? This is for business or small
11 business, right?

12 A. For small business. So we are
13 encouraged to share learnings and base practices
14 between the work that we do, although it's a
15 different audience between the work that we do
16 with small business and the work we do with
17 residential.

18 Here I'm not referring to the
19 Windstream work with residential. I'm referring
20 to the work we've done for residential in general.

21 Q. So you learned from general work in
22 residential that, including logo on a competitive
23 chart is more powerful and so, therefore, you're
24 suggesting to use it on this business piece?

25 A. That is correct.

1 - Peter Maguire -

2 Q. How do you measure whether or not
3 that's powerful and resonates with the customer?

4 A. So I mentioned earlier that we're
5 given ad hoc anecdotal information on results. So
6 without going into detail, the residential team
7 has got a very robust testing program. So there's
8 a lot of testing that happens in marketing that
9 gives us learnings on things like that.

10 Q. Okay. Down another couple bullets
11 under option 1.

12 A. Uh-huh.

13 Q. Second bullet under option 1. It
14 says, "Powerful headline immediately grabs the
15 customer in if they have existing Windstream
16 service. Not sure if this will be a bit OTT but
17 wanted to provide a range."

18 So what does OTT mean?

19 A. Yes, it's me being casual on e-mail.
20 OTT means over the top.

21 Q. Okay.

22 A. So that ties to the point I was
23 making earlier about ranges and we did feel that
24 option 1 was a little pushy. But again, for the
25 purposes of range and discussion and comparison,

1 - Peter Maguire -

2 that's why we provided that first option.

3 Q. If you go down another say five
4 bullets or so there's an option 2.

5 A. Yes.

6 Q. Then the fourth bullet under option 2
7 it says, "Within orange bar before the CTA we have
8 included an additional Windstream competitive
9 dig."

10 A. Yes.

11 Q. "'Windstream's future is uncertain.
12 Don't leave your business up to chance. Switch to
13 Spectrum business.'"

14 A. Yes.

15 Q. So what did you mean by Windstream
16 competitive dig?

17 A. So, competitive digs is what we will
18 -- so if we're working on an end-to-end marketing
19 piece, whenever we mention the competitor
20 specifically we'll call that a dig.

21 Q. Regardless of the tone, it's always
22 called a dig if someone mentions a competitor?

23 A. Exactly.

24 Q. Understood.

25 Okay. Then flipping the next page

1 - Peter Maguire -

2 towards the end of the same e-mail.

3 A. Yes.

4 Q. Now on 10018, the second bullet from
5 the top says, "Below the price lockup we have
6 included a powerful message to close the flier,
7 'Don't put your business at risk. Think twice
8 before renewing your contract with Windstream.'"

9 A. Yes.

10 Q. So what was the intention behind the
11 wording "don't put your business at risk"?

12 A. So the intention it was back to --
13 which we've talked about a lot, but back to the
14 mood of uncertainty. So specifically for small
15 businesses, Internet and phone services are the
16 life bloods; like business can't continue if
17 there's no Internet and phone service. So that's
18 what it was relating to uncertainty.

19 Q. So in other words, the business
20 customers might lose their Internet and phone
21 service?

22 A. It was creating uncertainty.

23 Q. Then if you go to 10016, e-mail from
24 Erin on March 8 at 12:52 p.m.

25 A. Yes.

1 - Peter Maguire -

2 Q. Do you see that?

3 A. I do.

4 Q. It said, "Hi Matt" -- meaning Matt
5 Bury, right?

6 A. That's correct.

7 Q. It says, "Thanks for popping by Jen's
8 office to chat quick."

9 Is that the Jennifer we talked about
10 earlier at Charter?

11 A. That's correct.

12 Q. What is her surname again?

13 A. Smith.

14 Q. So Erin was in the Charter office
15 that day --

16 A. Yes.

17 Q. -- having a meeting. Okay.

18 If you go down one, two, three, four,
19 six dashes. It says, "First headline is like the
20 most aggressive but liked the most." Do you know
21 a that means?

22 A. That's referring to the headline
23 options that I talked about in my previous e-mail.

24 Q. So option 1?

25 A. Yes.

1 - Peter Maguire -

2 Q. So it's saying option 1 is the most
3 aggressive but liked the most?

4 A. Yes.

5 Q. If you flip to 10015, e-mail from
6 Erin to you and Matt and copying others, March 8,
7 5:05 p.m.

8 Do you see that?

9 A. I do.

10 Q. Okay. The third bullet, it says, "We
11 have provided the alt headline, "Windstream
12 customers, don't risk losing your Internet and
13 phone services,' to align with the softer message
14 used in residential."

15 What is that referring to, "the
16 softer message used in residential"?

17 A. I do not off the top of my head know
18 what specific message that's referring to.

19 Q. So to find out we'd have to ask Erin,
20 in other words?

21 A. I would be able to find out, I just
22 don't know the answer off the top of my head.

23 Q. Could you call Erin and ask on a
24 break today?

25 A. I could.

1 - Peter Maguire -

2 Q. If you wouldn't mind, that would be
3 very helpful.

4 A. Sure.

5 Q. Going back to 10014, e-mail from Matt
6 Bury at Charter to yourself, Erin, and others
7 copied, March 8, 5:36.

8 A. Yes.

9 Q. First bullet it says, "Move the
10 'Windstream filed for Chapter 11...' up to pay off
11 the headline."

12 A. Yes.

13 Q. What does that mean, pay off the
14 headline?

15 A. So payoff the headline means -- so
16 normally in direct response materials we would
17 have a primary headline and a sub headline, those
18 two work in conjunction. So whatever the message
19 in the -- the main headline is has to be paid off
20 by a sub headline. So that's what Matt's
21 referring to.

22 Q. So here if you look at 10015, the
23 creative --

24 A. Yes.

25 Q. -- which is the main headline and

1 - Peter Maguire -

2 which is the sub headline?

3 A. So you can actually see from the
4 annotation what the direction is. So the main
5 headline is, "Don't risk losing your Internet and
6 phone services." And the sub headline is,
7 "Windstream filed for Chapter 11. Their future is
8 uncertain. Don't leave your business up to
9 chance."

10 And you can see from the annotation
11 that the direction is to move that up to become a
12 sub head, sub headline.

13 Q. Moving it up as a sub headline
14 underneath --

15 A. The main headline.

16 Q. -- don't risk losing, et cetera?

17 A. Yes.

18 Q. So in the final version, that's how
19 it was; there was the main heading and then the
20 subheading underneath that?

21 A. Yes.

22 Q. Okay. And Indeed, on 10013, the
23 third bullet in this e-mail from Erin March 11,
24 4:05 p.m.

25 A. Uh-huh.

1 - Peter Maguire -

2 Q. The third bullet says, "Move the
3 subhead 'Windstream filed for Chapter 11. Their
4 future is uncertain,' et cetera, et cetera, below
5 the headline."

6 A. Yes, correct.

7 Q. Okay.

8 MR. JUSTUS: I'm going to suggest we
9 take a break for lunch. I need to look at
10 some of the documents you brought and come
11 back and I'll have some additional questions.

12 THE WITNESS: Sure.

13 MR. JUSTUS: So let's go with 45
14 minutes. Is that enough for everyone or you
15 do want to do an hour? I don't care.

16 THE WITNESS: I would be happier with
17 less, honestly, so whatever you want to do.

18 THE VIDEOGRAPHER: Want to go off the
19 record?

20 MR. JUSTUS: Sure.

21 THE VIDEOGRAPHER: We're now off the
22 record at 11:44 a.m.

23 (Whereupon, a lunch break was taken
24 from 11:44 a.m. to 12:35 p.m.)

25 THE VIDEOGRAPHER: We're now back on

1 - Peter Maguire -

2 the record at 12:35 p.m.

3 BY MR. JUSTUS:

4 Q. In the morning session I think you
5 mentioned, Peter, that you may try to call Erin
6 about a question that we had regarding the softer
7 messaging used in residential?

8 A. Yes.

9 Q. Were you able to get ahold of her?

10 A. I was. I was.

11 Q. What did she tell you about that?

12 A. I think the answer is more obvious
13 than I had thought. When they're referring to the
14 old headline, "Windstream customers don't risk
15 losing your Internet and phone services." She was
16 referring to the headline that had been used or
17 was being used on the residential piece.

18 Q. Just to be clear, this is Exhibit 8
19 page 10015 that we're talking about.

20 A. Yes.

21 Q. And the softer message was what, I'm
22 sorry?

23 A. The soft message is what was in
24 inverted commas here. That is the softer message
25 that she's referring to.

1 - Peter Maguire -

2 Q. Understood.

3 So it no longer says the word
4 uncertainty?

5 A. Exactly.

6 Q. Thank you. Okay. Thanks for doing
7 that on the break. Appreciate it.

8 A. No problem.

9 Q. All right. So in our three projects
10 that RAPP had done for Charter relating to the
11 Windstream bankruptcy, the third one was an e-mail
12 marketing campaign?

13 A. Yes.

14 Q. We've talked a little bit about that
15 so far?

16 A. Yes.

17 Q. RAPP delivered a final e-mail
18 creative to Charter, but RAPP does not know if
19 Charter actually e-mailed it out --

20 A. That is correct.

21 Q. -- does that sound correct?

22 Okay. And you -- the documents you
23 provided this morning, you had separated them into
24 three stacks for the three projects, right?

25 A. Yes, that's correct.

1 - Peter Maguire -

2 Q. There is a stack here that appears to
3 be relating to the e-mail project?

4 A. Yes.

5 MR. JUSTUS: I'd like to mark this as
6 Exhibit 9.

7 THE WITNESS: Yes.

8 (Whereupon, RAPP Exhibit 9 was marked
9 at this time.)

10 MR. KINGSTON: Exhibit 9 is the
11 multipage document that starts with a -- sort
12 of a printout in landscape mode and
13 continues.

14 MR. JUSTUS: It starts with
15 EM2019-Windstream e-mail-RAPP on the top of
16 the first page.

17 MR. KINGSTON: Okay.

18 Q. So Peter, you brought these documents
19 today?

20 A. Yes.

21 Q. So you're familiar with these
22 documents?

23 A. Yes.

24 Q. And these documents, Exhibit 9,
25 relates to this e-mail project?

1 - Peter Maguire -

2 A. That is correct.

3 Q. Okay. Is somewhere in this package
4 the final version of the e-mail ad that RAPP
5 created?

6 A. The final version is on -- I don't
7 know if these are page numbered, they don't appear
8 to be. But the final version is this one here and
9 there is four pages from the end of the packet.

10 Q. Okay.

11 A. And the reason I know it's final is
12 the client just after that says, Hi, Ed -- and
13 we're fully approved, please proceed with mobile
14 version.

15 Q. You're referring to the page it says
16 posted by Erin Mullane on April 4?

17 A. That is correct.

18 Q. It said, "Hi Matt and Cindy, Please
19 see attached for Windstream e-mails," et cetera?

20 A. Yes.

21 Q. Okay. So obviously from the face of
22 this creative here I can see that the e-mail
23 campaign referred to the Chapter 11 bankruptcy; is
24 that right?

25 A. Yes, that's correct.

1 - Peter Maguire -

2 Q. Is the word uncertainty used anywhere
3 in the final e-mail campaign creative?

4 A. It does not appear to be, based on
5 what I'm looking at, no.

6 Q. Okay. Am --

7 A. I'm sorry.

8 Q. Please finish.

9 A. I was just going to say keep in mind
10 that the timing of that came later and so some of
11 the discussions that I had uncertainty had been
12 ongoing.

13 Q. Understood.

14 Is this from a chat program or e-mail
15 program?

16 A. Base Camp.

17 Q. This is from Base Camp?

18 A. Which is a project management tool.

19 Q. You did tell me that.

20 So within Base Camp there is a
21 communication function?

22 A. Exactly.

23 Q. Is it a function like e-mail or chat?

24 A. Essentially -- it's not like chat, I
25 would say more like e-mail. It's essentially a

1 - Peter Maguire -

2 project repository where all of the assets
3 relating to a project are kept; e-mail
4 communications, creative files, anything
5 pertaining to that specific project. So it's all
6 in one place.

7 Q. Both Charter and RAPP have access to
8 that?

9 A. That is correct. But it's down to
10 the individual client preference. So we do not
11 use Base Camp for every single project, but the
12 client we work with on small business e-mails like
13 to use Base Camp which is why this project was
14 managed through Base Camp.

15 Q. Who is that client contact who
16 preferred to use Base Camp?

17 A. Cindy Fein.

18 Q. That's at Charter?

19 A. At Charter, that's correct.

20 Q. She is the point of contact for RAPP
21 only on small business e-mail?

22 A. That is exactly correct. She reports
23 to Matthew Bury.

24 Q. Okay. If there was a residential
25 e-mail campaign, would that also be Cindy or

1 - Peter Maguire -

2 totally different person?

3 A. Totally different person.

4 Q. Who would that be?

5 A. So we don't -- we have only worked on
6 one residential e-mail. We do not tend to work on
7 residential e-mails, but the one time we worked on
8 it it was with Jennifer Smith, and someone called
9 Sarah Blechner, S-A-R-A-H, B-L-E-C-H-N-E-R.

10 Q. And how about as between direct mail
11 pieces that will be sent out in the mail?

12 A. Yes.

13 Q. Do you have a different point of
14 contact at Charter for residential and small
15 business?

16 A. Yes, absolutely; it's two separate
17 teams.

18 Q. Okay. No person overlaps on both
19 teams?

20 A. They do at a very senior level, a
21 senior vice president level; they sit over both
22 small business and residential. But at the
23 day-to-day point of contact level, there's two
24 separate teams.

25 Q. And same for I believe we were

1 - Peter Maguire -

2 calling them sales fliers?

3 A. Yes. So that sits within the small
4 business team. And that's different from
5 residential. Yes, different point of contact.

6 Q. Understood.

7 Looks like the last communications
8 here are April 8.

9 A. Yes, that's correct.

10 Q. So your understanding would be April
11 8th, RAPP had done its work, delivered its final
12 creative and there was no further work on the
13 e-mail project after April 8th?

14 A. That is correct. The final
15 communication signals that the Charter should let
16 us know if they need any further assistance with
17 the e-mail project.

18 Q. And there was no further assistance
19 needed?

20 A. There was not.

21 Q. Okay. Did Charter inform RAPP that
22 Charter had been sued for false advertising by
23 Windstream?

24 A. I'm trying -- I'm trying to remember
25 if there was a discussion around that. We are

1 - Peter Maguire -

2 normally informed if there was a cease and desist
3 which you'll be familiar with.

4 I do not remember -- I do not believe
5 we were told that they were being sued. No, I do
6 not remember that conversations happening.

7 Q. Were you told that there was a cease
8 and desist?

9 A. In this case I wasn't, actually. I
10 wasn't aware -- I was aware that there was some
11 sort of discussion happening in the background.
12 And by in the background I mean between the first
13 time we worked on direct mail and the second time
14 where we had to quote/unquote soften the claims.

15 I was aware that there must have been
16 discussions happening in the background, but we
17 were not specifically told that there had been a
18 cease and desist, no.

19 Q. Or a lawsuit?

20 A. No.

21 Q. So I think I asked you a long, long
22 time ago in the beginning if there was a written
23 agreement between Charter and RAPP and you
24 described statements of work?

25 A. Yes.

1 - Peter Maguire -

2 Q. Which is more or less an exchange of
3 e-mails with a price for a project?

4 A. Yes. So it's complicated. So I'll
5 explain the depth because there's a nuance between
6 both sides of the business.

7 So on the small business side, on the
8 -- for the e-mail and for the sales flier, we did
9 not have a retainer agreement. So all of the
10 projects, the e-mail and the sales flier, are
11 quoted as individual projects.

12 On the residential side of the
13 business, we operate on a retainer where we're
14 paid a monthly fee against all of the deliverables
15 that we work on.

16 So on residential there is no
17 specific statement of work against this individual
18 project.

19 Q. So for residential there's a
20 retainer?

21 A. Yes.

22 Q. For small business there is not?

23 A. Yes, it's project based on small
24 business.

25 Q. Okay. Is the retainer a written

1 - Peter Maguire -

2 agreement?

3 A. Yes.

4 Q. Okay. And that was not provided to
5 us, right?

6 A. It was not as it was not specific to
7 Windstream. It's a master agreement that was not
8 specific to Windstream.

9 Q. Okay. So it applies to all
10 residential work that you do for Charter?

11 A. Exactly, exactly.

12 Q. Okay. Does that retainer agreement
13 have any indemnification provision whereby either
14 Charter or RAPP may be responsible for any legal
15 claims arising from RAPP's work?

16 A. The specifics -- sp there's what's
17 called an MSA, a master service agreement. I am
18 not a hundred percent certain of the positioning
19 within that in terms of indemnity, as you asked.
20 But, again, that's something that we could follow
21 up on.

22 I know that has part of the agreement
23 we require full sign-off from Charter before
24 releasing any files to a printer or e-mail vendors
25 or whatever that may be, we require approval to --

1 - Peter Maguire -

2 to release the work.

3 Q. So who -- who would know the answer
4 to whether or not there's an indemnification
5 provision in the MSA?

6 A. I would be able to speak to her -- so
7 the person that leads that on the RAPP side was
8 the MVP of finance who actually left RAPP last
9 week, but he has he -- has a replacement, who I
10 would be able to speak to and ask that specific
11 question.

12 Q. We'll take a short break in a little
13 bit, would you mind trying to give him a call and
14 him that question?

15 A. It's a she, but yes.

16 Q. Apologies.

17 A. Yeah, I will certainly try. I may
18 not be able to get a hold of them because they are
19 in meetings but I can be sure to follow up on
20 that.

21 Q. Thank you.

22 You've already said that Charter
23 never specifically told RAPP that Charter had been
24 sued for false advertising?

25 A. Yes.

1 - Peter Maguire -

2 Q. So obviously my next question, I'll
3 go ahead and ask it anyway, Charter never told
4 RAPP that the court had entered an injunction
5 against Charter and the advertisements we're
6 talking about today?

7 A. No, they did not.

8 Q. Okay. Is RAPP currently working on
9 any projects for Charter involving Windstream's
10 bankruptcy?

11 A. No, absolutely not. No.

12 Q. Was the last project relating to
13 Windstream's bankruptcy the e-mail project?

14 A. The last project -- again, I would
15 need to align on the timing of this stuff; April
16 8th, it would either be e-mail or the other which
17 was part of the package we sent you, the second
18 directed mail which looked very different than the
19 first. It would have been one of those two but I
20 would have to align on the date.

21 Q. Okay. But either way, all three of
22 the projects we talked about are now closed?

23 A. They are completely closed, yes.

24 Q. You would suspect it's been -- it was
25 sometime in April that all three were closed?

1 - Peter Maguire -

2 A. Yes.

3 Q. Is the residential retainer that we
4 talked about, is that still active?

5 A. That is, yes.

6 Q. And the MSA, is that still active?

7 A. Yes. The MSA -- the MSA is -- I'm
8 using those words interchangeably. The MSA is the
9 document I'm referring to. The SOW, from a dollar
10 perspective, is agreed on a month-by-month basis
11 depending on the work flow of the retainer.

12 So we're given a purchase order for a
13 certain amount money every month to reflect the
14 deliverables for that specific month. But the MSA
15 sits above and has been in place for two years or
16 so, two or three years.

17 Q. Okay. Just so to make sure I
18 understand, the retainer is the MSA or are those
19 two different things?

20 A. No, I'm sorry. By retainer I'm
21 talking about the fact that it is a monthly
22 payment against an aggregate group of
23 deliverables. It's not we quote for project A,
24 project B, project C; it's a group sum of money
25 against a large group deliverables.

1 - Peter Maguire -

2 Q. Retainer is money not an agreement?

3 A. Yes.

4 Q. The MSA is the agreement.

5 A. Yes, yes, exactly.

6 Q. Did RAPP provide to Charter any
7 creative for the residential market that was not a
8 direct mail piece; in other words, it was intended
9 to be delivered other than through mail?

10 A. Specifically for Windstream?

11 Q. Correct.

12 A. No.

13 MR. JUSTUS: Can we mark this as
14 Exhibit 11 -- I'm sorry, Exhibit 10, please.

15 (Whereupon, RAPP Exhibit 10 was
16 marked at this time.)

17 MR. JUSTUS: Exhibit 10, for the
18 record and for John, it's the big package
19 that Peter produced today that relates to the
20 flier.

21 MR. KINGSTON: Mr. Maguire, do you
22 mind if I just take a peek at Exhibit 10?

23 THE WITNESS: Of course.

24 MR. KINGSTON: Then I'll just hand it
25 back to you. It may be the easiest way to do

1 - Peter Maguire -

2 it. Okay.

3 THE WITNESS: Thank you.

4 MR. KINGSTON: Thank you.

5 Q. You want to go ahead and flip through
6 or are you familiar?

7 A. I'm familiar but let me refresh my
8 memory on this one.

9 Q. Of course.

10 A. Okay.

11 Q. Okay. So Exhibit 10 is the stack of
12 documents relating to the small business flier?

13 A. Yes.

14 Q. Is that right?

15 A. Yes.

16 Q. Apologies because there's obviously
17 no page numbers on everything, so I'm looking at a
18 March 25th, e-mail from Matt Bury to Erin, copied
19 to you.

20 A. March 25th.

21 Q. March 25th at 6:55:00 p.m..

22 A. Yes.

23 Q. So it says, "I don't anticipate any
24 changes from legal, '-famous last words..."

25 Do you see that?

1 - Peter Maguire -

2 A. Yes.

3 Q. And it goes on to say, "It turns out
4 that we really need to modify our headline and
5 subhead."

6 So what was that referring to?

7 A. That was referring to Matt --
8 Matthew's internal approvals process at Charter,
9 and he was referring to head -- the legal team on
10 the Charter side.

11 Q. What modifications were made to the
12 headline and sub head?

13 A. At this point there were so many
14 iterations of this I don't know what that one
15 specifically is referring to. But around this
16 time is when we were talking about removal of
17 uncertainty. So it could be pertaining -- it
18 could be, I'm not definitely sure, but it could be
19 pertaining to that.

20 Q. I think we talked earlier there was a
21 March 22nd e-mail and it talked about softening
22 the message around uncertainty --

23 A. Yes. It's --

24 Q. -- this is three days after that?

25 A. It's likely that it was related to

1 - Peter Maguire -

2 that.

3 Q. Okay. Who is the Jen referred in
4 this e-mail?

5 A. Jen is Jennifer Smith on the
6 residential team. So her and Matt Bury are peers
7 on the small business and the residential side.

8 Q. Okay. So Jen was making the changes
9 to the small business flier, even though she's on
10 residential?

11 A. No, no. So what he's saying here is
12 she's making this modification with some of other
13 mail, so he's referring to changes that Jen is
14 making to residential mail, that he is going to
15 pull through to what he's doing small business.

16 Q. To make the same change to both or to
17 make them consistent?

18 A. Yes.

19 Q. Understood. Okay.

20 I think you already answered this
21 question but I'll ask one more time.

22 You did not meet with legal counsel
23 to prepare for this deposition today?

24 A. Legal counsel?

25 Q. Uh-huh.

1 - Peter Maguire -

2 A. At Charter?

3 Q. Any lawyer. Did you speak with any
4 lawyer about this deposition?

5 A. No.

6 Q. Today?

7 A. No.

8 Q. No.

9 MR. JUSTUS: I must say you're a good
10 witness.

11 So subject to you calling and
12 checking on the indemnification and the MSA,
13 I have no further questions at this time,
14 although reserve the right for redirect after
15 John goes.

16 THE WITNESS: Okay.

17 MR. KINGSTON: Miss Greer, did you
18 have anything?

19 MS. GREER: I don't have any
20 questions.

21 MR. JUSTUS: Thanks, John.

22 MR. KINGSTON: No problem at all.

23 EXAMINATION BY MR. KINGSTON:

24 Q. Mr. Maguire, I'm going direct your
25 attention to Exhibit 5. Which, for the record, is

1 - Peter Maguire -

2 a multipage document bearing the Bates numbers
3 Charter 936 through Charter 941 consecutive.

4 When lawyers give each other
5 documents in lawsuit they always put little
6 numbers in the corners and those are called Bates
7 numbers.

8 A. Sure.

9 Q. I may refer to Bates numbers from
10 time to time. That's what I'll be talking about.

11 A. Okay.

12 Q. If I can direct your attention to the
13 page that's labeled Bates Charter 937.

14 A. Yes.

15 Q. I believe that you discussed this
16 before. But about a third of the way from the
17 bottom of the page I see a reference to "CTA:
18 Goodbye Windstream hello Spectrum."

19 Do you see that?

20 A. I do.

21 Q. What does CTA refer to?

22 A. Call to action.

23 Q. What is a call to action?

24 A. A call to action is a closing line
25 that's tied to a mechanic to get in touch. So

1 - Peter Maguire -

2 what I mean by that as it would normally set -- a
3 call to action would normally set along decide a
4 telephone number or a website URL.

5 So in this case, this example that we
6 provided, "Goodbye Windstream, hello Spectrum,"
7 call 1-800, whatever the number was.

8 Q. So is it fair to suggest that a call
9 to action is calling on the reader of the mailer
10 to take some action?

11 A. That is correct.

12 Q. A call to action is exhorting a
13 reader to do something?

14 A. Exhorting, I don't know if I would
15 use that word. But encouraging a user to do
16 something.

17 Q. Let me take another run at that with
18 your language. Is that all right, sir?

19 A. Yes, sir.

20 Q. It's fair to say the call to action
21 is encouraging a reader to do something?

22 A. That's correct.

23 Q. That would be in contrast to
24 predicting a future event; is that right?

25 A. That's correct, yes.

1 - Peter Maguire -

2 Q. So is it fair to suggest that the
3 call to action, Goodbye Windstream, hello
4 Spectrum, was in your view encouraging the reader
5 to take some action as opposed to predicting the
6 ultimate outcome of Windstream bankruptcy?

7 MR. JUSTUS: Object to form.

8 Q. You can answer.

9 A. Okay. My understand -- the purpose
10 of a call to action, to be very clear, in my -- in
11 advertising, the purpose of a call to action is to
12 encourage the recipient to do something. That's
13 what the purpose of it is.

14 Q. Okay. Something that -- that I
15 should have mentioned earlier is that from time to
16 time during my examination, my friend across the
17 table may object or -- just as I objected during
18 his on one or two occasions; when that happens,
19 you still get the answer the question.

20 A. Understood, okay.

21 Q. If you were represented by counsel
22 today, there could be a circumstance where that
23 lawyer would instruct you not to answer in which
24 case that would be the only time when you wouldn't
25 answer. It's not really relevant here since

1 - Peter Maguire -

2 there's not a lawyer here.

3 Mr. Justus has been a gentleman in
4 not taking advantage of the fact that you're not
5 represented by counsel today and I'll try to do
6 the same.

7 Does that all make sense to you, sir?

8 A. Yes. Thank you.

9 Q. So the two references I see to
10 "goodbye Windstream, hello Spectrum" are both on
11 Exhibit 5 accompanied by the abbreviation CTA?

12 A. Yes.

13 Q. Does that mean call to action?

14 A. It does.

15 Q. Did anyone at Charter ever suggest to
16 you that was some sort of a prediction as opposed
17 a call to action?

18 A. No, there was no suggestion it was a
19 prediction. No.

20 Q. Can I direct your attention, sir, to
21 Exhibit 12. I misspoke, Mr. Maguire, Exhibit 2.

22 A. Sure.

23 Q. Which is a multipage document without
24 Bates labels that appears to have a bunch of
25 handwritten notations on draft mailers.

1 - Peter Maguire -

2 A. Yes.

3 Q. Do you know who made those notations,
4 Mr. Maguire?

5 A. I do. That is Erin Mullane on my
6 team, that is her handwriting.

7 Q. Very good.

8 One of the things that you deal with
9 in the direct mail business, I take it, Mr.
10 Maguire, is font?

11 A. Font?

12 Q. Yes.

13 A. Yes.

14 Q. And you're familiar that in some
15 circumstances certain words or phrases are placed
16 in bold font?

17 A. That is correct, yes.

18 Q. When a word or phrase is placed in
19 bold font, what is your understanding of the
20 purpose of doing that, sir?

21 A. To place emphasis on what's being
22 bolded or underlined or whatever it may be.

23 Q. Do you see at the bottom of the first
24 page of Exhibit 2, it looks like there was a
25 substitution of one call -- there were notes that

1 - Peter Maguire -

2 are not made that were consistent with
3 substituting one call of action with another.

4 Do you see that, sir?

5 A. I do. Yeah, I do.

6 Q. It looks like, as I read Exhibit 2,
7 it looks like the call to action to make the
8 switch to Spectrum today was going to be replaced
9 by the call to action, goodbye Windstream, hello
10 Spectrum.

11 Do you see that, sir?

12 A. I do.

13 Q. And is there an indication on Exhibit
14 2 as to whether a certain portion of that call to
15 action was to be placed in bold font?

16 A. Yes, that's the circle around hello
17 Spectrum with the annotation bold.

18 Q. The introduction was to place the
19 hello Spectrum in bold?

20 A. That's correct.

21 Q. And was it your understanding that
22 would be to emphasize the hello Spectrum portion
23 of the call to action at the bottom of Exhibit 2?

24 A. That's the standard purpose of
25 bolding is to call attention and emphasize, yes.

1 - Peter Maguire -

2 Q. Returning your attention sir to
3 Exhibit 5.

4 A. 5, yeah. Yes.

5 Q. Do you see on the page that bears the
6 Bates number Charter 939, an electronic mail
7 message from Jennifer Smith to a number of people
8 including you?

9 A. I do.

10 Q. And I read -- about in the middle of
11 the page under the heading, "Message"; "A tone to
12 be consistent with Google but we cannot say things
13 like abandoned or going away."

14 Have I read that correctly, sir?

15 A. Yes.

16 Q. At any time after Ms. Smith sent the
17 electronic mail message on July 28, did anybody at
18 Charter indicate to you that you should create a
19 mailer that somehow predicted that, in fact,
20 Windstream would be going away?

21 A. Prediction of going away, no.

22 Q. So on February 28 of 2019, Miss Smith
23 from Charter indicated that we cannot say things
24 like abandoned or going away, true?

25 A. She did.

1 - Peter Maguire -

2 Q. And nobody at Charter ever told you
3 that you, in fact, could say things like going
4 away?

5 A. That's correct.

6 Q. Did anybody at Charter ever suggest
7 to you that you can suggest that Windstream was
8 going away?

9 A. No.

10 MR. JUSTUS: Object to form.

11 Q. If you'll skip down to the next line,
12 sir, I read that as follows: "Windstream has
13 declared Chapter 11 but doesn't mean they wouldn't
14 reorg to stay in business."

15 Have I read that correctly?

16 A. Yes, you have.

17 Q. Did anybody at Charter ever tell you
18 that they wanted to predict or convey the
19 prediction that Windstream wouldn't ultimately be
20 able to reorg -- reorganize and stay in business?

21 A. No, we did not receive that specific
22 direction, no.

23 Q. Directing your attention, sir, to
24 Exhibit 4.

25 A. One second.

1 - Peter Maguire -

2 Q. Which is on electronic mail message
3 with what appears to be a PowerPoint attached to
4 it.

5 A. Yes.

6 Q. I'm looking at the first page of that
7 PowerPoint, sir, where there's a competitive alert
8 that's printed in landscape mode.

9 A. Yes.

10 Q. Are you familiar with One Touch
11 Intelligence?

12 A. We do not use One Touch Intelligence
13 as a source. We were provided this document.

14 Q. Do you know who one -- who or what
15 One Touch Intelligence is, excuse me?

16 A. It's a tracking service but beyond it
17 being a tracking service, no, I don't know.

18 Q. Okay. And there's an analyst contact
19 down at the bottom of the competitive alert.

20 Do you see that, sir?

21 A. I do.

22 Q. And the identification of Karen
23 Brown, I take it, then, sir, you don't know Miss
24 Brown either?

25 A. I certainly do not, no.

1 - Peter Maguire -

2 MR. KINGSTON: I pass the witness.

3 MR. JUSTUS: Why don't we take a
4 five-minute break and you could try to make
5 the phone call about the MSA and then I may
6 have one more question after that.

7 THE WITNESS: Okay. Can I -- so in
8 very specific terms, what the question is?

9 MR. JUSTUS: Is there an
10 indemnification provision in the MSA; and if
11 so, which party is indemnifying which party?

12 So is RAPP indemnifying Charter? Is
13 Charter indemnifying RAPP?

14 And then: Does that relate to legal
15 claims that would involve false advertising?

16 Those are the questions.

17 THE WITNESS: So I'll ask the
18 question.

19 THE VIDEOGRAPHER: We're off the
20 record at 1:09 p.m.

21 (Whereupon, there was a brief recess
22 in the proceedings.)

23 THE VIDEOGRAPHER: We are now back on
24 the record at 1:15 p.m.

25 MR. JUSTUS: Peter, were you able to

1 - Peter Maguire -

2 get a hold of anyone about the question about
3 the MSA we talked about?

4 THE WITNESS: I phoned and the person
5 did not answer. So no, I wasn't able to
6 speak to anyone.

7 MR. JUSTUS: Okay. Would you be
8 willing to send me an e-mail with answers to
9 those questions? If we conclude the
10 deposition now, would you be willing to send
11 a follow-up e-mail that answers my questions
12 on the indemnification?

13 THE WITNESS: Yeah, it would be
14 helpful if you send me an e-mail with the
15 specific questions and I'm happy to response
16 to once I've spoken to the appropriate people
17 at RAPP.

18 MR. JUSTUS: I will do that and I
19 think I have your e-mail hundreds of times on
20 the documents --

21 THE WITNESS: Sure do.

22 MR. JUSTUS: -- but would you tell me
23 again?

24 THE WITNESS: It's Peter, P-E-T-E-R,
25 dot Maguire M-A-G-U-I-R-E, at RAPP.com.

1 - Peter Maguire -

2 R-A-P-P, dot com.

3 MR. JUSTUS: Okay. No further
4 questions.

5 MR. KINGSTON: I would just ask that
6 we be copied on this e-mail.

7 MR. JUSTUS: Yes, absolutely.

8 MR. KINGSTON: I have no further
9 questions but I will ask you, Mr. Maguire,
10 whether you want to read and sign your
11 deposition transcript or whether you want to
12 waive your signature.

13 THE WITNESS: Yes, I'll read the
14 transcript.

15 MR. JUSTUS: Okay. So the witness
16 will read and sign. We're done.

17 Off the record.

18 THE VIDEOGRAPHER: This concludes
19 today's deposition of Peter Maguire. We're
20 now off the record at 1:17 p.m.

21 (Whereupon, the deposition concluded
22 at 1:17 p.m.)

23

24

25

A C K N O W L E D G E M E N T

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, PETER MAGUIRE, hereby certify that I have
read the transcript of my testimony taken under
oath in my deposition of September 12, 2019; that
the transcript is a true, complete and correct
record of my testimony, and that the answers on
the record as given by me are true and correct.

PETER MAGUIRE

Subscribed and sworn
to before me on this the
_____ day of _____, 2019.
Notary Public, State of New York

C E R T I F I C A T E

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, HOPE LYNN MENAKER, a Notary Public within
and for the State of New York, do hereby certify:

That PETER MAGUIRE, the witness whose
deposition is hereinbefore set forth, was duly
sworn by me and that such deposition is a true
record of the testimony given by the witness.

I further certify that I am not related to
any of the parties to this action by blood or
marriage, and that I am in no way interested in
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 24th day of September, 2019.



HOPE LYNN MENAKER

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WITNESS: PETER MAGUIRE

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:

WINDSTREAM HOLDINGS, INC., et al.,
Debtors.

WINDSTREAM HOLDINGS, INC., et al.,
Plaintiffs,

vs.

Chapter 11

CHARTER COMMUNICATIONS, INC. and 19-22312 (RDD)
CHARTER COMMUNICATIONS OPERATING, LLC,
Defendants.

September 10, 2019

Videotaped Deposition of

Andrew Sites

a witness herein, called by the Debtor
and Debtor in Possession for cross-examination
under the applicable Rules of Ohio Civil Court
Procedure, taken before me, Linda A. Schilt, a
Court Reporter and Notary Public in and for the
State of Ohio, taken pursuant to Subpoena, at the
offices of Ice Miller, 250 West Street, Columbus,
Ohio 43215, on Tuesday, September 10, 2019,
commencing at approximately 12:54 p.m., and
concluding at approximately 2:19 p.m.

1 APPEARANCES:

2 TERENCE P. ROSS, ESQ.
3 Katten Muchin Rosenman, LLP
4 2900 K Street NW
5 North Tower - Suite 200
6 Washington, DC 20007-5118

7
8 On behalf of the Debtor and
9 Debtor in Possession.

10
11 STEVEN T. RAPPOPORT, ESQ.
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13 250 West 55th Street
14 New York, New York 10019-9601

15
16 On behalf of the Committee of
17 Unsecured Creditors.

18
19 JOHN KINGSTON, ESQ.
20 Thompson Coburn, LLP
21 501 North 7th Street
22 St. Louis, Missouri 63101

23
24 On behalf of the Defendants.

25
Also present:

Marlene Dori, Legal Video Specialist

- - -

Tuesday Afternoon Session
September 10, 2019
12:54 p.m.

- - -

STIPULATIONS

It is hereby stipulated by and between counsel
for the respective parties herein that this
deposition of Andrew Sites may be taken at this
time by the Notary; that said deposition is being
taken pursuant to Subpoena; that said deposition
may be reduced to writing in stenotypy by the
Notary, whose notes may thereafter be transcribed
out of the presence of the witness; that proof of
the official character and qualifications of the
Notary, the time and place of the taking of said
deposition are hereby waived.

- - -

I N D E X

- - -

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1 THE VIDEOGRAPHER: We're now on the
2 record. This is a video recorded deposition of --

3 MR. SITES: Andrew Sites.

4 THE VIDEOGRAPHER: Thank you.
5 Being taken at -- on September the 10th, 2019. The
6 time now is 12:54 p.m. We're located at Ice
7 Miller, 250 West Street, Suite 700, Columbus, Ohio.

8 We are here in the matter of
9 Windstream Holdings versus Charter Communications.
10 This is in the case number 19-23312, Chapter 11.
11 It is in the United States Bankruptcy Court,
12 Southern District of New York. My name is Marlene
13 Dori, video technician.

14 Will the court reporter swear in the
15 witness.

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

17 - - -

18 ANDREW SITES,
19 being by me first duly sworn, as hereinafter
20 certified, deposes and says as follows:

21 THE VIDEOGRAPHER: And the
22 attorneys briefly identify themselves for the
23 record, please.

24 MR. ROSS: Terence Ross with the
25 law firm of Katten Muchin Rosenman. We are

1 conflicts counsel for the Debtors and Debtors in
2 Possession, Windstream Holdings, Inc., et al.

3 MR. RAPPOPORT: Steve Rappoport of
4 Morrison Foerster. We represent the Official
5 Committee of Unsecured Creditors of Windstream
6 Holdings.

7 MR. KINGSTON: John Kingston with
8 Thompson Coburn appearing on behalf of Mr. Sites
9 and Charter.

10 THE VIDEOGRAPHER: This is media
11 number one. You may begin.

12 CROSS-EXAMINATION

13 BY MR. ROSS:

14 Q. So, Mr. Sites, would you please
15 state your full legal name for the record?

16 A. Andrew Joseph Sites.

17 Q. Have you ever been known by any
18 other names than that?

19 A. Nothing, no. That's not -- just a
20 nickname with buddies, but no.

21 Q. By whom are you currently employed?

22 A. Charter Communications.

23 Q. And what's your title there?

24 A. Business account executive.

25 Q. And how long have you had that

1 title?

2 A. About a year and a half.

3 Q. So since beginning of 2017?

4 A. End of May, beginning -- yeah, end
5 of May 2017.

6 Q. And how long have you worked for
7 Charter Communications?

8 A. Since then. I started out as this
9 job. I started out with that job. I got hired in
10 as a business account executive.

11 Q. Can you just briefly tell us what
12 you do as a business account executive?

13 A. We go door-to-door,
14 business-to-business and meet face-to-face with new
15 customers. We get a list of customers to go visit
16 and basically try to sell them, switch them from,
17 you know, competitors and switch to our services.

18 Q. Where actually do you work? Is
19 there an office you work out of?

20 A. I'm in Lima, Ohio. 3100 Elida Road.
21 I work mostly just right around there. Lima. I
22 worked in Lima for a while. I've worked Paulding,
23 Van Wert, and Delphos.

24 Q. Do you have a geographic region that
25 you personally are assigned to?

1 A. Yeah. I get once a month and then I
2 work that area for four months. We get zip codes.

3 Q. In March and April of 2019, earlier
4 this year, what geographic region were you working?

5 A. I was in Lima.

6 Q. And are you familiar with an entity
7 Spectrum?

8 A. Yes.

9 Q. Can you just describe what you know
10 about that?

11 A. That is basically Charter merged
12 with Bright House, and Bright House and Time Warner
13 obviously, and they basically re-branded, you know,
14 the cable and internet and phone provider from Time
15 Warner or Charter, Bright House, and just made it
16 one, Spectrum, from my understanding at least.

17 Q. Are you familiar with the term doing
18 business as name, a d/b/a?

19 A. Not really.

20 Q. That's fine. Do you work on
21 commission?

22 A. Yes.

23 Q. What portion of your annual income
24 is commission-based?

25 A. Close to half.

1 Q. Do you have any college?

2 A. Yeah. I graduated from The Ohio
3 State University.

4 Q. I think you're supposed to emphasize
5 The Ohio State University.

6 A. I said it.

7 Q. You were served a subpoena in this
8 lawsuit, correct?

9 A. Yes.

10 Q. So let me have that marked as Sites
11 Exhibit Number 1 for identification.

12 - - -

13 Thereupon, a document was marked for
14 purposes of identification as Sites Exhibit 1 by
15 the reporter.

16 - - -

17 MR. ROSS: At the same time, let's
18 mark this as Sites Exhibit Number 2.

19 - - -

20 Thereupon, a document was marked for
21 purposes of identification as Sites Exhibit 2 by
22 the reporter.

23 - - -

24 MR. KINGSTON: Is this the one you
25 want to give me? It looks like it was in a binder.

1 MR. ROSS: Why don't you take that
2 one instead.

3 MR. KINGSTON: I just didn't know
4 if it might have your notes on it, that's why I was
5 asking.

6 MR. ROSS: No, my notes were on
7 this one, but thanks for asking.

8 BY MR. ROSS:

9 Q. So, Mr. Sites, you've been handed
10 two documents. The first is, I'll represent to
11 you, the subpoena that we issued to you, which we
12 marked for identification as Sites Exhibit
13 Number 1.

14 Do you recall receiving this?

15 A. Yes.

16 Q. And let me get you to look then at
17 the second document that was handed to you. This
18 is a letter with several attachments from my law
19 firm that was provided to you, which we've marked
20 for identification as Sites Exhibit Number 2.

21 Did you receive this?

22 A. I believe so, yes.

23 Q. Did you read it?

24 A. I did not read the whole thing, no.

25 Q. Okay. So with respect to the

1 subpoena, you understand that you were required, in
2 addition to showing up for this deposition today,
3 to search for some documents and produce them,
4 correct?

5 A. Yes, I believe so.

6 Q. So what steps did you undertake to
7 search for and produce documents?

8 A. Well, the documents that I would
9 have had from my e-mail, they disappear on my end
10 after a few days and I believe my company found
11 those for me.

12 Q. So --

13 A. I no longer have access to them
14 after a certain amount of time, but we do have them
15 here. I personally can't pull them up.

16 Q. So when you refer to your e-mail, is
17 that a company e-mail or personal?

18 A. My company e-mail.

19 Q. And could you just tell me for the
20 record what your company e-mail is?

21 A. andrew.sites@charter.com.

22 Q. Thank you. Did you, in addition to
23 asking the company to pull up your e-mails, did you
24 search in your home or office at work for any
25 documents?

1 A. There wasn't any documents that I
2 had that I would be searching for.

3 Q. Did you search, though?

4 A. Yes.

5 Q. And you found nothing?

6 A. No.

7 Q. Okay. As part of what we've marked
8 as Sites Exhibit Number 2 for identification,
9 there's attached several pages into the document a
10 copy of the complaint that initiated the lawsuit in
11 this case.

12 Do you see that?

13 A. Which page is that on?

14 Q. So it would be about five, six pages
15 in.

16 A. This one?

17 Q. Yes. Did you read that document?

18 A. Not -- I mean, I skimmed it, I
19 guess. I didn't really read it word for word.

20 Q. Okay. Do you have any understanding
21 as to why you were subpoenaed to testify in this
22 lawsuit?

23 A. Yes. I mean, I'm assuming the
24 e-mails that I sent Windstream customers.

25 Q. Anything else?

1 A. Not necessarily. But, I mean,
2 obviously, I'm a Charter employee, but --

3 Q. What do you know about the lawsuit
4 between Windstream and Charter?

5 A. Basically that we -- we were trying
6 to -- our company as a whole was trying to use
7 Windstream's bankruptcy against them. That's what
8 my understanding has been.

9 Q. Well, let me ask you this: When did
10 you first become aware of that lawsuit?

11 A. Of the big -- the lawsuit that's
12 going on right now between --

13 Q. Between Windstream and Charter, yes.

14 A. Probably shortly after I sent those
15 e-mails I was made aware of it several times, but
16 the ship had already sailed, so to speak.

17 Q. And, I'm sorry, I spoke over you
18 during your last answer. I apologize for that.

19 A. Okay.

20 Q. It's really important for the record
21 that we try not to do that, but that was my bad,
22 okay?

23 A. I understand.

24 Q. How did you learn about the lawsuit
25 the first time?

1 A. I'm not 100 percent on the first
2 time I had heard about it, whether it was a
3 co-worker or on a call, but we've addressed it
4 several times on calls, you know, since the first
5 time, obviously, saying not to do what I had
6 already done.

7 Q. But those calls were after you'd
8 taken these actions that you're talking about?

9 A. I believe so, yes. I'm not 100
10 percent sure on that. They could have been the
11 week of. I think we did discuss it on a call right
12 before that, but I didn't have any -- there was no
13 Windstream customers in my territory, so I probably
14 didn't pay attention to it as much as I could have,
15 which, I mean, an 8:15 a.m. call is not always -- I
16 don't know. It's just we did discuss it. I don't
17 think I paid enough attention to it as I should
18 have, honestly, because I didn't think it would be
19 a concern because I didn't have any Windstream in
20 my area.

21 Q. Okay. You talked about calls. What
22 are you referring to, some sort of sales call or
23 team call of some sort?

24 A. Yeah. Our weekly -- we do weekly
25 calls between our team, Northwest Ohio.

1 Q. Is there a specific supervisor you
2 report to?

3 A. Yes. Jim Ruhland, R-u-h-l-a-n-d. I
4 guess it's James, but...

5 Q. Do you happen to know what his title
6 is?

7 A. Business sales manager, I would
8 assume.

9 Q. And is he for the Northwest Ohio
10 region?

11 A. Yes.

12 Q. And so when you were referring
13 earlier to weekly calls, these are calls relating
14 to Northwest Ohio, correct?

15 A. For the most part, but we will --
16 mostly it's about numbers between, you know, me and
17 our Findlay guys and our Perrysburg, and then I
18 think the other office is in Lorain. And it mostly
19 pertains to Northwest Ohio, but if Charter has,
20 obviously, something that goes nationwide, we'll
21 usually discuss that. But it's mostly just our
22 numbers and, you know, weekly goals and stuff like
23 that.

24 Q. By numbers you mean new subscribers
25 or --

1 A. Yes, yes. Like new internet and
2 phone and TV customers.

3 Q. That's a good point. Why don't you
4 just, for the record, describe what the service is
5 that you sell?

6 A. Phone, internet and cable TV to
7 businesses. Business class.

8 Q. Any particular size of business?

9 A. Mostly small. Very small. Not --
10 larger companies, like corporations, obviously, we
11 don't really sell too much. And I can't touch
12 government or hospitals, but small business is the
13 main.

14 Q. How about residential customers?

15 A. No residential customers. Unless
16 they have a home business, then I have to have
17 approved paperwork.

18 Q. So I have to ask you a couple of
19 questions about the lawsuit at issue here. I just
20 don't want you to be confused. I'm shifting to
21 something else.

22 When was the first time that you
23 became aware that Windstream filed for bankruptcy
24 protection in the courts?

25 A. The same -- I'm not 100 percent

1 sure, but the same call we addressed that
2 Windstream, again, I wasn't -- I didn't pay too
3 much attention because Windstream wasn't really in
4 my area, but that was the same -- the same call
5 we -- I heard about it was the first time I heard
6 about the bankruptcy and the lawsuit, I guess it
7 would be. I guess I kind of tied the two together.

8 Q. Have you ever filed for bankruptcy
9 protection yourself?

10 A. No.

11 Q. And you're not a lawyer, are you?

12 A. No.

13 Q. For that matter, have you ever
14 testified in a lawsuit before?

15 A. No.

16 Q. But you're represented by counsel
17 today, correct?

18 A. Yes.

19 Q. That's Mr. Kingsman (sic), right?

20 A. Yes.

21 Q. Kingston.

22 A. Yes.

23 Q. What did you major in in college?

24 A. Family financial planning.

25 Q. When did you graduate from The Ohio

1 State University?

2 A. 2011.

3 Q. What did you do between graduation
4 and the time you actually started working for
5 Charter?

6 A. I worked. And I worked for Michigan
7 Grain Inspection, which was a subsidiary of the
8 USDA. And then for Lima Radio Hospital, which is a
9 subsidiary for Verizon Wireless.

10 Q. And were those sales positions?

11 A. The second, the Verizon job was.
12 The first one was not.

13 Q. So one of the reasons we're here
14 today is that there, I take it, came a time when
15 you started telling potential customers that
16 Windstream was going out of business, so they had
17 to switch their service.

18 Do you recall when that happened?

19 A. Yeah. It was March or April, I
20 believe. And I only sent a few e-mails, but it
21 wasn't like -- it was more, like I've discussed
22 several times, it was more work finding who I sent
23 an e-mail to or a phone call to, but I didn't even
24 get to the point of even really messing with it.

25 I looked up street sheets on where

1 Kenton customers that weren't active and kind of
2 reached out to some of them.

3 But, like I said, it was -- there
4 wasn't enough info for me to really -- without
5 going there and going door-to-door like we're
6 supposed to, there's just not enough info on that
7 list to really attack it. So it was kind of a
8 waste of time, which e-mailing, unless you've
9 already discussed with a customer face-to-face is
10 really kind of pointless. It's you're just
11 basically throwing darts at a wall.

12 Q. So when you said March or April, you
13 meant 2019, correct?

14 A. Yes, I believe so. Yes.

15 Q. In your job, do you often -- strike
16 that.

17 To what extent do you engage in
18 e-mail solicitations as part of your job?

19 A. It's usually a follow-up. It's not
20 not -- if I did send something like what I did with
21 the Windstream stuff, I should get it approved
22 with, you know, my manager and higher-ups and I
23 didn't do it that time.

24 Q. So would it be accurate to say that
25 the initial contact is almost you always

1 face-to-face?

2 A. For the most part, yes. Vast
3 majority of the times, unless they reach out to me.

4 Q. Is there an actual storefront that a
5 customer could walk into it and say, I'm interested
6 in switching service?

7 A. Yes.

8 Q. But that's not your responsibility?

9 A. No. They just -- the retail reps
10 just started selling business class at least, you
11 know, regularly. So it's not really something that
12 they sell a whole lot. They are now, but in the
13 past they haven't. But when I first started, they
14 were giving me information.

15 Q. So your primary modus operandi is to
16 go door-to-door in an office building, a strip
17 mall, someplace where there are small businesses;
18 is that right?

19 A. Yes.

20 Q. Now, in this instance, there were a
21 number of communications with customers by --
22 potential customers by e-mail. What was the
23 genesis of that? Why e-mail?

24 A. That was just the easiest way to
25 get, you know, ahold of customers quick. And like

1 I said, it's not -- it wasn't something I was
2 going -- wanted to spend a whole lot of time on.
3 So I just -- honestly, it was hoping something's
4 thrown, like I said, darts at the wall and hoping
5 something stuck. And, frankly, nothing stuck.

6 Q. So let me put in front of you
7 another document, and we'll mark this as Sites
8 Exhibit Number 3 for identification.

9 - - -

10 Thereupon, a document was marked for
11 purposes of identification as Sites Exhibit 3 by
12 the reporter.

13 - - -

14 BY MR. ROSS:

15 Q. So, Mr. Sites, this is a collection
16 of e-mails that was produced in the course of this
17 lawsuit. And you are free to look through them,
18 but I'm going to ask you some questions whenever
19 you're ready.

20 A. Yeah, I'm familiar with these
21 e-mails, so I'm ready.

22 Q. So on the very first page of Sites
23 Exhibit Number 3, there's at the top an e-mail
24 address that seems to indicate this is coming from
25 you, correct?

1 A. Yes.

2 Q. And then there's a signature block
3 and that's your signature block, right?

4 A. Correct.

5 Q. And that's your office address,
6 right?

7 A. Yes.

8 Q. So right under that appears to be an
9 e-mail that you're forwarding to a Mr. Ruhland. Is
10 that pronounced right?

11 A. Yes. That's my boss.

12 Q. Yes. So underneath that is an
13 e-mail that you had sent to Mr. McCready and --
14 just it's a Mr. McCready twice.

15 Who is Mr. McCready, Steven
16 McCready?

17 A. I believe he was a lawyer from
18 Martin & Brown.

19 Q. Who's Martin & Brown?

20 A. I'm not sure. It was a law office.

21 Q. And --

22 A. Not too familiar with them.

23 Q. Why were you sending him an e-mail?

24 A. Because I received an e-mail. Well,
25 it was -- originally, it was an e-mail -- they sent

1 me a letter, which I found letter, but at the time
2 I had not been aware of the letter. And I received
3 an e-mail from Dino, who was in Spectrum Reach,
4 which is marketing. He said a law office was
5 trying to get ahold of me. So he forwarded this on
6 to me and I read, you know, what the law office was
7 saying. And instead of calling a supervisor, which
8 is our policy, I just replied and tried to
9 basically get out of trouble before I got into
10 trouble. But that's not what we're supposed to do.

11 Q. So in the first sentence of that
12 e-mail, who is Dino?

13 A. Dino is the man I just described
14 from Spectrum Reach.

15 Q. Are you saying Spectrum Reach?

16 A. Yes.

17 Q. What is that?

18 A. It's our marketing.

19 Q. Do you know his last name?

20 A. Gerdeman.

21 Q. Can you spell that for the record as
22 best you can?

23 A. G-e-r-d-e-m-a-n. I don't believe
24 he's an employee anymore, though. They downsized
25 that -- that part of Spectrum in our area, so...

1 Q. Was he in your supervisory chain in
2 some way?

3 A. Not at all. He just works in Lima.
4 They were looking for somebody from Lima to get
5 ahold on and they found Dino.

6 Q. So he was just facilitating getting
7 the letter from Mr. McCready to you?

8 A. Yes.

9 Q. Okay. You say in the second -- I'm
10 sorry, the third sentence, I was given misleading
11 information.

12 A. That is just -- that was basically
13 me just trying to -- if you see the previous
14 e-mails, which we haven't discussed yet, I said
15 that they're going out of business and at no point
16 was I told that Windstream was going out of
17 business. And, honestly, at this point, I was just
18 trying to make myself look better by not -- not a
19 complete idiot that assumes a bankruptcy is going
20 out of business when there's obviously differences
21 between the two.

22 I know that more than, you know --
23 more than what this shows. I understand that. But
24 I was just more excited at the time more than
25 anything. You know, the initial e-mails and this

1 one, I was obviously nervous because a law office
2 was getting ahold of me. It's not something you
3 deal with every day.

4 Q. No. The misleading information is
5 that because Windstream was in bankruptcy, it was
6 going out of business?

7 A. That -- not necessarily. I mean,
8 that was just me kind of -- I said that to cover my
9 own behind. Not really -- there's a big difference
10 between a bankruptcy and going out of business, I
11 understand that, but at the time in the e-mails it
12 wasn't really -- I didn't really look over my work
13 as well as I should have, I would say.

14 Q. So but I'm just trying to understand
15 when you say, I was given misleading information,
16 are you telling me that that assertion was
17 incorrect?

18 A. Yes. You're saying my assertion
19 into that?

20 Q. Yes.

21 A. Yeah. I acted alone on writing
22 that. So, like I said, I just didn't want to look
23 like a complete buffoon.

24 Q. So there's further down on that
25 e-mail six -- a list of six e-mails, do you see

1 that?

2 A. Yep.

3 Q. And are those the potential
4 customers that you talked to about the Windstream
5 bankruptcy?

6 A. Yes.

7 Q. And that's all there was?

8 A. Yes.

9 Q. And on a couple of them, they have a
10 domain name Windstream from which, I guess, you
11 could assume they were a Windstream customer,
12 right?

13 A. Yes.

14 Q. But on a couple of them, there
15 aren't, and my question to you is: How did you
16 know that the HC Humane Society was a Windstream
17 customer?

18 A. I really didn't for 100 percent. I
19 wasn't completely certain that they were Windstream
20 customers.

21 Q. And same with Sparky's Pizza?

22 A. Yes.

23 Q. So attached to that first page are a
24 series of e-mails, and I certainly don't want to
25 put words in your mouth, but they just appear on

1 their face to be the e-mails that you sent to this
2 list; am I right?

3 A. Yes.

4 Q. And in addition, with respect to
5 each e-mail you sent out there's a follow-up e-mail
6 that you sent to them?

7 A. Yes.

8 Q. Am I correct about that?

9 A. Yes.

10 Q. Okay. So we can look at any one of
11 these that you want to, but on -- I'm on page 2,
12 which is Bates stamped at the bottom
13 Charter_020213. Can we look at the original e-mail
14 you sent to the potential customer at the bottom;
15 is that okay?

16 A. Yes.

17 Q. This is to somebody named Vanessa.
18 Says, I was referred to you by another rep in our
19 area. Who was that?

20 A. I got a list of -- I got a list of
21 potential Windstream customers from another rep. I
22 can work another area if it's a referral from
23 another customer, because Kenton wasn't my area.
24 So I kind of used that to say I was referred, but
25 it's really just kind of a loose term, honestly.

1 Q. But the referral came from another
2 rep?

3 A. Yes.

4 Q. Who was that?

5 A. It was Julianne Jordan (phonetic).
6 She didn't really give me a referral. She just
7 gave me a list of potential Windstream customers in
8 Kenton.

9 Q. Just for the record, Kenton is
10 another town in Northwest Ohio, right?

11 A. That's the town that all these are
12 from, yes.

13 Q. So you say in this e-mail, "I'm
14 contacting you because your current phone provider
15 is going out of business." And that would have
16 been -- that's the Windstream reference that you're
17 referring to?

18 A. Yes.

19 Q. And I wanted to make -- "I wanted to
20 help you make a seamless transition to a new
21 service," to complete the sentence. You then go on
22 to talk about wanting the opportunity to quote
23 service to them, correct?

24 A. Yes.

25 Q. So do you notice the date of that

1 e-mail?

2 A. March 29th.

3 Q. So at that point in time, how did
4 you know that Windstream was in bankruptcy?

5 A. As we discussed earlier, it was --
6 I'm not 100 percent. It could have been the call,
7 it could have been a fellow employee. I'm not 100
8 percent sure on where I heard exactly.

9 I just, like I said, I kind of
10 didn't pay as much attention when we did first talk
11 about it, didn't think it would be a big deal
12 because I didn't have any Windstream customers.

13 Q. Let me get you to look for a moment
14 at Sites Exhibit Number 2. It's the thick
15 document. And to that page that we looked at
16 before. The first page of the lawsuit. And you
17 may have to move the clip that's holding the pages
18 together, but up in the top right-hand corner is
19 the filing date.

20 A. Shows 4/5/19.

21 Q. So that was after you contacted
22 these customers, correct?

23 A. Yes.

24 Q. So you could not have known of the
25 lawsuit by Windstream against Charter at that

1 point?

2 A. No, I wouldn't have known about the
3 lawsuit.

4 Q. Okay.

5 A. And that would -- my original
6 thought was that I kind of heard they had filed
7 bankruptcy and then after I sent a few e-mails, we
8 really got into it on a call like don't --
9 basically don't do what I had already done.

10 Q. So take your time to look through
11 the rest of these e-mails, but I think they're all
12 dated March --

13 A. Yeah, they're all the same day.

14 Q. Okay.

15 A. And I stopped, but like, honestly,
16 it took, to even send these few e-mails, it took,
17 you know, two hours. It wasn't really worth my
18 time to -- and, like I said, nothing really came
19 from it, because I was doing basically blind
20 research online and, you know, Facebook pages and
21 websites, et cetera. There's not a whole lot of
22 information when you just blindly look for a
23 business and try to get, you know, who you talk to.

24 Q. So then on top of that page, and I'm
25 now referring to the second page in Sites Exhibit

1 for identification Number 3, Bates stamp

2 Charter_020213, the top is, I take it, the

3 follow-up e-mail to this Vanessa?

4 A. Yeah.

5 Q. And --

6 A. That was -- sorry, go ahead.

7 Q. No, you go ahead. I'm sorry.

8 A. That was after I had received the
9 e-mail from the law firm, the Martin & Brown.

10 Instead of going to my higher-ups like I should
11 have done and talked to them about it, I tried just
12 e-mailing all the customers that I had spoken with
13 that day, again, trying to cover my own bum and it
14 wasn't really the best idea.

15 Q. So, again, where you say, apologies
16 I was given misinformation, are you not accurately
17 representing what happened there?

18 A. That's not accurate, no.

19 Q. But you are aware at that point that
20 Windstream is not going out of business?

21 A. Yes.

22 Q. Okay.

23 A. And I was aware the first point.

24 Like I said, I was excited and I think I just -- I
25 didn't think about what I was saying when I sent

1 those first e-mails. That was kind of what
2 happened.

3 Q. When you sent those first e-mails,
4 you were aware that Windstream was not going out of
5 business?

6 A. I was aware they were bankrupt. I
7 wasn't -- I think I misconstrued the term
8 bankruptcy with going out of business, but they're
9 not the same thing.

10 Q. If you could actually go to the next
11 to last page of this same exhibit, Sites 3 for
12 identification. It's got the Bates stamp
13 Charter_020217 on the bottom.

14 Are you on that page?

15 A. Yes.

16 Q. So that's a couple of days,
17 actually, before, March 27th.

18 A. Yes.

19 Q. So I'm not trying to trip you up in
20 any way, but is it possible that these six e-mails
21 all went out the same week and that's what you --

22 A. Yeah, I guess I could have sent a
23 couple of them prior.

24 Q. Okay.

25 A. I thought it was all the same day,

1 but being a day or two apart, that's not unheard
2 of.

3 Q. Let me have this marked as Sites
4 Exhibit Number 4 for identification.

5 - - -

6 Thereupon, a document was marked for
7 purposes of identification as Sites Exhibit 4 by
8 the reporter.

9 - - -

10 BY MR. ROSS:

11 Q. So, Mr. Sites, take a moment to look
12 at this, but in particular I want to focus your
13 attention on the date of April 11, 2019. And
14 whenever you're ready, my first question to you is
15 going to be who is Scott Niles?

16 A. I am not sure who Scott Niles is
17 without -- but I would assume he's a higher-up
18 maybe, but I'm not sure who Scott Niles is.

19 Q. Okay. So I don't see your e-mail
20 address on this e-mail. Can you just confirm
21 that's correct for me?

22 A. Correct.

23 Q. Do you recall -- have you read the
24 document yet?

25 A. This e-mail?

1 Q. Yes.

2 A. No, I haven't read the whole thing.

3 I was looking for my name.

4 Q. Why don't you read it real quick.

5 My question to you, though, is going to be: Do you
6 recall ever receiving this e-mail?

7 A. I don't recall this e-mail
8 particularly. We could have received this e-mail
9 on -- I'm sure I did. If this was sent to
10 everyone, I'm sure I got it and we did --
11 basically, what this e-mail is discussing we talked
12 about several times on different calls between
13 our -- we have our Great Lakes development call
14 every other Wednesday and that was something we
15 really dug into it, is not to contact Windstream
16 customers and not to -- definitely don't mention
17 their bankruptcy.

18 And as I said before, once I knew
19 there was, you know, don't talk to those, I threw
20 away the list I had and stopped even contacting
21 anyone from Windstream.

22 Q. You just referred to the Great Lakes
23 and I missed the last part.

24 A. The Great Lakes, we have a
25 development call, but it's where we discuss, you

1 know, we have -- discuss different topics and
2 anything that's, you know, big for our area or big
3 for the company.

4 Q. So Great Lakes is a broader region
5 than Northwest Ohio?

6 A. Yes.

7 Q. So that would be a call where
8 multiple regions talked about it?

9 A. Yes.

10 Q. So do you recognize any of the
11 recipients of this e-mail as being in your
12 immediate supervisory chain?

13 A. No.

14 Q. Okay.

15 A. I don't recognize any of these.
16 These could be, though, you know, higher-ups above
17 them, but, I mean, I could be wrong as well.

18 Q. Well, if you don't know, you don't
19 know.

20 A. Yeah.

21 Q. I mean, that's fair.

22 So you said that -- again, the
23 testimony will speak for itself, but essentially
24 that you knew when you told these folks that
25 Windstream was going out of business that they were

1 only in bankruptcy, right?

2 A. Correct.

3 Q. And so what was the motivation
4 behind telling them that, telling customers that
5 they were going out of business?

6 A. I wasn't thinking. So, I mean,
7 that's the only motivation. Looking back, that's
8 the only motivation I can think of is had I taken
9 that e-mail template and showed even any other rep
10 or showed my supervisor before I clicked send, I
11 don't think we'd be here right now, because I
12 wouldn't have said anything like that. They would
13 have said no, don't -- absolutely don't send that
14 type of e-mail.

15 Q. So but your motivation really was to
16 make a sale, wasn't it?

17 A. Yes.

18 Q. And you had no factual basis for
19 saying that Windstream was going out of business,
20 correct?

21 A. Neg -- no, I did not.

22 Q. And in the e-mail we saw earlier,
23 Sites Exhibit 3 for identification, with the six
24 e-mail listing, how did you know that there was
25 just six? Did you somehow go back on your computer

1 and --

2 A. I went back and checked my e-mail
3 how many I sent.

4 Q. Okay. I take it that would have
5 been before April 19th when you said this, right?

6 A. Yes. And, honestly, when I got the
7 information on the lawsuit that we discussed in our
8 Great Lakes call, don't contact these customers,
9 don't call, I didn't even go back and look at these
10 and see what I said exactly. I just was kind of
11 like, I'm not even messing with this anymore,
12 because it's -- but I should have. I mean,
13 obviously, I should have went back and noticed
14 that. Apologized to the customer before I received
15 a letter, but regardless --

16 Q. But then the letter came from the
17 Martin & Brown law firm?

18 A. Yes, yes.

19 Q. And did the e-mails apologizing go
20 out before or after you got that letter?

21 A. The second I read the e-mail, the
22 information that Martin & Brown gave me, I e-mailed
23 those customers. Because it said -- the e-mail
24 specifically said to apologize to the customers I
25 had spoken with and tell them that's not true,

1 because it wasn't true, they weren't going out of
2 business, they were filing for bankruptcy. And I
3 know there's a difference. It was just me being
4 excited and wanting to get a sale thinking this was
5 fish in a barrel and it really wasn't.

6 It's not even -- big companies file
7 bankruptcy all the -- well, not all the time, but
8 it does happen without a company going under.

9 Q. So was that letter directed
10 specifically to you or was it to multiple people?

11 A. The one from Martin & Brown, that
12 was specifically to me.

13 Q. Addressed exactly to you?

14 A. Yes.

15 Q. Is that something you still have?

16 A. Maybe. I'm not 100 percent sure if
17 I have that letter or not.

18 Q. Did you produce it to us today in
19 connection with this subpoena duces tecum?

20 A. Not that I'm aware of, no.

21 Q. How did -- when you say a letter,
22 was it, in fact, a traditional snail mail letter?

23 A. What do you mean snail mail?

24 Q. Well, was it a hard copy of a letter
25 as opposed to an e-mail? A lot of people now, they

1 just confuse the two.

2 A. No, it was an actual letter. There
3 was an e-mail too. That's what I said I received
4 from Dino.

5 Q. Dino sort of sent you an e-mail
6 saying look at the letter?

7 A. Pretty much, yeah.

8 MR. ROSS: So, Counsel, we'd ask
9 for that to be produced.

10 MR. KINGSTON: Okay.

11 BY MR. ROSS:

12 Q. So when you got the letter, other
13 than -- I won't be able to pronounce his last
14 name, sorry, but Dino, other than Dino, did you
15 talk to anyone about it?

16 A. Just my supervisor to tell them,
17 hey, I got this letter. Actually, he called me,
18 because I didn't -- I tried basically putting it
19 under the rug and just contact the customer and get
20 it taken care of before I actually contacted my
21 supervisor.

22 Q. So the first time Mr. Ruhland heard
23 about this was after you had gotten the letter and
24 you went to him?

25 A. I believe he called me. I think

1 Dino -- well, Dino e-mailed me and Jim together.

2 Q. Okay.

3 A. I'm fairly certain in the first
4 place about that. And then after the fact, I
5 checked where our mail is, because I don't get very
6 much mail in our office, so I don't check it every
7 day, and there was a letter from them sitting
8 there.

9 Q. Okay.

10 A. But, I mean, that's been six, seven
11 months. I'm not sure I even still have it.

12 Q. Well, what did Mr. Ruhland tell you
13 to do, if anything?

14 A. About?

15 Q. About the letter.

16 A. He basically just said stop
17 contacting anyone and we have lawyers and stuff and
18 let the chain of command handle it, not me. Like
19 it was basically I was an idiot for e-mailing these
20 people in the first place and for -- he didn't say
21 that exactly, but that's what I, you know -- I
22 shouldn't have e-mailed the people in the first
23 place and I really shouldn't have replied to them.

24 Q. As a result of these e-mails and
25 everything that happened afterwards, were you

1 disciplined in some way by the company?

2 A. Yes. I was put on disciplinary or
3 corrective action for one year. That was as of
4 July -- or June 1st.

5 Q. What does it mean corrective action
6 for one year?

7 A. Basically, I can't get in any
8 trouble. I have to have a good driving record and
9 I have to have my sales, obviously, stay in good
10 standing.

11 Q. When you say June 1st, you meant
12 June 1, 2019, correct?

13 A. Yes.

14 Q. And is this the sort of thing that's
15 like a warning and if you -- if anything happens
16 during that year, that you get fired, or how does
17 that work?

18 A. That was my understanding. I have
19 to -- you know, I'm basically make sure I do my job
20 correctly and as I'm supposed to be doing. I'd
21 already done -- I sneezed on a conference call and
22 used an F word. So that was -- but I apologized,
23 so I didn't get anything official. I thought -- I
24 didn't know I wasn't on mute at the time, but so I
25 had already kind of been little -- little bit on

1 thin ice with that. Not thin ice, but, you know,
2 just didn't help it.

3 From my understanding, this had been
4 discussed with all the way up to our VP on the east
5 coast, so...

6 Q. Did anyone other than your immediate
7 supervisor, Mr. Ruhland, talk to you about this
8 incident?

9 A. Yes. When I had to go up and sign
10 the paperwork for the one-year corrective action,
11 it was my director. Basically my boss' boss.

12 Q. Who is that?

13 A. Brian Yates.

14 Q. Do you know what his title is?

15 A. Director of sales. Spectrum
16 Business.

17 Q. Where is he located?

18 A. He is in Bay City, Michigan.

19 Q. And you actually met with him or you
20 simply had to go up to sign a form?

21 A. I met with him for corrective action
22 for several minutes. I mean, I was in Toledo for
23 about an hour meeting with them to make sure I
24 understood not to contact the Windstream customers
25 like I did before and not to be just blindly

1 e-mailing customers.

2 Q. When did this happen?

3 A. That was on June 1st.

4 Q. Okay. Who else did you meet with
5 besides Mr. Yates?

6 A. My supervisor, Jim Ruhland.

7 Q. That was it?

8 A. Yes.

9 Q. What did they tell you?

10 A. Basically about my corrective
11 action, what it pertained to and, you know, keep my
12 sales up and don't get in trouble.

13 Q. So they didn't discuss the actual
14 incident in any way?

15 A. We did. We discussed, you know, why
16 would you just e-mail people? That's not what we
17 do. We go door-to-door and talk to people
18 face-to-face. And e-mail should only be used as a
19 follow-up, not as, you know, trying to sell stuff.

20 Q. And they explained to you that
21 you're not supposed to give out misinformation to
22 customers?

23 A. Yes, that was also explained.

24 Q. Are you aware of any other reps who
25 have been telling customers that Windstream was

1 bankrupt?

2 A. Not to my knowledge, no. I'm sure
3 it has happened. I would assume that's why we're
4 all here, but no, I have no idea about any other
5 rep doing that.

6 Q. Okay.

7 A. It's not -- Windstream is not very
8 prevalent in my area. Kenton is not technically
9 Northwest Ohio, it's technically part of Columbus.
10 So which would be -- I'm not sure if they're
11 Southern Ohio or Mid-Ohio or what, but they're not
12 in the Great Lakes, so they're --

13 Q. Okay. Let me get you to look again
14 at what we've marked for identification as Sites
15 Exhibit Number 2. And, again, go to that -- the
16 complaint which initiated the lawsuit. And within
17 that document, I'd like you to go to page 13 and
18 14. Let's start with the page 13, and I'll
19 represent to you that this is an advertisement that
20 Spectrum sent earlier in 2019 by mail. And take
21 your time to read it, but my question to you is
22 going to be: Did you see this before today?

23 A. No, I did not. The mailers don't
24 really pertain to our, you know, what we do. We
25 have our own flyers and stuff that we hand out and

1 they're pretty broad. They don't specifically talk
2 to Windstream customers or anything like that. The
3 first time I've seen this was when I got the
4 subpoena.

5 Q. Okay. I'm going to ask the same
6 question about the advertisement that's on page 14.
7 Again, take your time to look at that one.

8 A. Yeah, same thing. This isn't
9 something that we had. And, again, my area doesn't
10 even have Windstream. But this is a completely
11 different, I guess, department that would get
12 these. The mailers are a little different than
13 what we do.

14 Q. So, again, the first time you saw it
15 was when you received the subpoena and looked at
16 the complaint?

17 A. Yes, sir.

18 Q. And I take it that means if you
19 hadn't seen it before, you never distributed either
20 of these documents?

21 A. No, I did not.

22 Q. Are you aware of anybody -- strike
23 that.

24 Are you aware of any other
25 representative of Charter who was distributing

1 these door-to-door?

2 A. No. This doesn't look like
3 something we would do door-to-door. This looks
4 like something that would come in the mail.

5 Q. Do you know Mr. Emmitt Walker?

6 A. No, I do not know Emmitt Walker.

7 Q. You never saw this advertisement,
8 either of these advertisements that we've been
9 looking at posted in the Lima store?

10 A. No. And another thing, those
11 advertisements don't even -- my stuff would say
12 Spectrum Business, this is just Spectrum. I
13 believe this would be for residential customers.

14 Q. Okay. Did you ever at any point
15 have any discussions with anybody about these
16 advertisements? And by that I mean, within the
17 company Charter?

18 A. No. No discussion whatsoever about
19 them. I've never seen them before, never heard of
20 them until these documents I was given from the
21 person who served me my subpoena.

22 Q. At some point in time did you learn
23 that a court had issued a temporary restraining
24 order against Charter and its employees instructing
25 them to stop telling customers that Windstream was

1 going out of business?

2 A. I don't know specifically if that
3 was, you know, the exact case, but I do know that
4 we were told don't. Don't mention the bankruptcy,
5 don't mention anything about that. The only thing
6 you could sell to anybody, much less Windstream,
7 is we're faster, speed reliability, price, et
8 cetera.

9 Q. So you were told not to reference
10 Windstream, but you don't remember anyone within
11 the company telling you that a temporary
12 restraining order had been issued?

13 A. I'm sure that's not exactly -- I
14 mean, I don't -- I don't know, honestly. That
15 might have been the exact words they used or might
16 not. But I know my boss said do not -- don't
17 mention the bankruptcy. He didn't say -- he just
18 said there was lawsuits more than anything.

19 Now, we could have discussed it
20 specifically like that in a call with the Great
21 Lakes area, but that's again -- that's -- those
22 exact words, no, I'm not sure.

23 Q. Okay. So got a similar question to
24 ask you.

25 A. Yeah.

1 Q. But it is different. But I don't
2 want to confuse you.

3 So after that, the court then issued
4 a preliminary injunction directing Charter and its
5 employees not to tell customers or potential
6 customers that Windstream was going out of
7 business.

8 Do you remember the issuance of that
9 preliminary injunction or being told about the
10 issuance of that preliminary injunction?

11 A. Not specifically on that and not a
12 specific date, but, like I said, we continued to
13 get -- be told do not -- do not mention anything
14 about that to customers.

15 Q. Okay, fair enough.

16 A. And, I mean, before that, any of
17 those lawsuits came out, I had already sent a few
18 e-mails. And I honestly threw my list that I had
19 away, because I didn't want to mess with it, didn't
20 want to be, you know -- I was trying to wash my
21 hands of that whole situation.

22 Q. So can I get you to go back to what
23 we marked for identification as Sites Exhibit
24 Number 3. It's this one. And just want to ask you
25 whether or not any of these customers you sent

1 e-mails to ever followed up in any way with you?

2 A. No. I have not followed up with a
3 single one of these customers or spoke with them
4 past the, you know, initial e-mail. They never
5 even e-mailed me back.

6 Q. So none of these customers, to your
7 knowledge, switched their service?

8 A. No. Definitely not with me.

9 Q. Okay. So now, in connection with
10 your subpoena today, you were asked to search for
11 and produce some documents, and your counsel's
12 given me a manila folder with those documents that
13 are supposedly complying with the subpoena.

14 What I'd like to do, since they're
15 not stamped in some way, is have them, each one,
16 entered one by one.

17 A. Okay.

18 Q. Take us a couple of minutes, but my
19 question is always going to be the same to you,
20 which is: You agree that you're producing this
21 document --

22 A. Yes.

23 Q. -- in connection with the subpoena.
24 So let's just do that.

25 MR. ROSS: Linda, what number am I

1 up to?

2 THE COURT REPORTER: Five.

3 A. Yep, five.

4 - - -

5 Thereupon, a document was marked for
6 purposes of identification as Sites Exhibit 5 by
7 the reporter.

8 - - -

9 THE COURT REPORTER: Are you
10 marking them all now?

11 MR. ROSS: Yes. One by one. So
12 just give that to him. So that's Sites Exhibit
13 Number 5 for identification.

14 And this will be Sites Exhibit
15 Number 6 for identification. Seven.

16 Sites Exhibit Number 8.

17 That's Sites Exhibit Number 9.

18 And, Linda, I'm giving you Sites
19 Exhibit Number 10.

20 And here is Sites Exhibit Number 11.

21 And Sites Exhibit Number 12.

22 Here's Sites Exhibit 13.

23 Sites Exhibit 14.

24 Sites Exhibit 15.

25 Sites Exhibit 16.

1 Sites Exhibit Number 17.

2 And, finally, Sites Exhibit

3 Number 18.

4 - - -

5 Thereupon, documents were marked for
6 purposes of identification as Sites Exhibits 6
7 through 18 by the reporter.

8 - - -

9 BY MR. ROSS:

10 Q. Okay. Mr. Sites, I've given you
11 what we've marked for identification as Sites
12 Exhibits 5 through 18. I think you've had a chance
13 to look at them each as we've marked them.

14 Could you just confirm these are the
15 documents that you're producing in response to our
16 subpoena?

17 A. Yes.

18 Q. So let me just ask you a few
19 questions about this. The very first one, Sites
20 Exhibit Number 5 for identification, appears to be
21 going to someone called tim@goldengraphics. It
22 doesn't appear to be on the list of e-mails that
23 you identified in Sites Exhibit Number 3.

24 A. No, it does not.

25 Q. So does this, does Sites Exhibit

1 Number 5 for identification have nothing to do with
2 Windstream?

3 A. I don't believe it does. I think
4 Golden Graphics was a different -- I'm not 100
5 percent sure, honestly, but it says something about
6 Windstream, so I would assume it does. I just must
7 have missed this one.

8 Q. Okay. Let me get you to look at
9 Sites Exhibit Number 6.

10 A. That is the same e-mail that we
11 looked at earlier.

12 Q. This is the same as Sites Exhibit
13 Number 3, correct?

14 A. Yes.

15 Q. Okay. And Sites Exhibit Number 7
16 appears to be the e-mail we discussed where you --
17 to a Vanessa person, right?

18 A. Yes.

19 Q. And then Sites Exhibit Number 8 is
20 the one to somebody named Connie, correct?

21 A. Yes.

22 Q. And then Sites Exhibit Number 9 for
23 identification is the one to Dr. Wesson that we
24 already discussed, right?

25 A. Yes.

1 Q. Sites Exhibit Number 10 --

2 A. Is to Connie again, it looks like.

3 Q. Appears to be a duplicate of that
4 one. Specifically, a duplicate of Sites Exhibit
5 Number 8, correct?

6 A. Yes.

7 Q. And then Sites Exhibit Number 11 is
8 a duplicate of the e-mail to Vanessa, right?

9 A. Yes.

10 Q. So let me get you to look at Sites
11 Exhibit Number 12 for identification for a moment.
12 This is going to somebody referred to as Denise at
13 Whitaker Enterprises?

14 A. Yes.

15 Q. And that is listed on Sites Exhibit
16 Number 3 as one of the e-mails that you sent the
17 Windstream information about, right?

18 A. Yes.

19 Q. And you start by saying, Hello,
20 thanks for the information on the phone.

21 That sounds like she actually --
22 that you actually did talk to her by phone?

23 A. I believe this -- there was one or
24 two that I didn't find an e-mail online, so I just
25 called them quick and they gave me an e-mail --

1 Q. So --

2 A. -- at least to send a quote over.

3 Q. Sites Exhibit Number 12 was sent
4 before you sent the information about Windstream?

5 A. I believe so, yes.

6 Q. Okay. And would that also be true
7 for Sites Exhibit Number 13?

8 A. Yes.

9 Q. Okay. So Sites Exhibit Number 14,
10 could you just tell us for the record what this is?

11 A. That's just a quick quote for
12 service. It's a template my -- that I just use. I
13 don't -- I don't think it's really an approved -- I
14 don't think we have, like, an exact approved quote.
15 We might, but this is the one I typically use
16 because it's easier for me to do.

17 Q. So this would have been attached to
18 the e-mail you sent to Golden Graphics?

19 A. Yes.

20 Q. So Sites Exhibit Number 15 for
21 identification, which goes to the HC Humane
22 Society, again, there's reference to being referred
23 to you by another rep in our area. Who is that
24 other rep?

25 A. That was the same rep as before,

1 Julianne Jordan. And that was just me covering my
2 own behind with, you know, reaching out to somebody
3 not in my area specifically.

4 Q. So Sites Exhibit Number 16 doesn't
5 have that mention of being referred by another rep.
6 Is that because Wingfield Crop was in your business
7 area?

8 A. No. I just didn't mention it in
9 that e-mail.

10 Q. Okay. And Sites Exhibit Number 17
11 and 18 are just, again, the form of a quote that
12 you personally use for potential customers?

13 A. Yes.

14 Q. And they would have been attached to
15 the e-mails to these customers?

16 A. Yes.

17 MR. ROSS: So we've been going for
18 an hour now. Actually, a little bit more than an
19 hour. Why don't we take a brief break. You can --
20 we'll go off the record, you can use the restroom,
21 and then we'll finish up relatively quickly. Is
22 that okay?

23 THE WITNESS: Okay.

24 THE VIDEOGRAPHER: We're going off
25 the record. The time is 1:58. Stand by, please.

1 (A recess was taken.)

2 THE VIDEOGRAPHER: We're back on
3 the record. The time is 2:15. You may begin.

4 MR. ROSS: So, Mr. Sites, that's
5 all the questions I have for you at the moment.
6 Thank you very much for your time.

7 THE WITNESS: Thank you.

8 MR. KINGSTON: I just have a few,
9 Counsel.

10 MR. ROSS: I think he goes first.

11 MR. KINGSTON: You know, I
12 apologize. You're 100 percent right.

13 MR. RAPPOPORT: I have no
14 questions.

15 MR. KINGSTON: Sorry about that.

16 MR. RAPPOPORT: No, you're fine.

17 CROSS-EXAMINATION

18 BY MR. KINGSTON:

19 Q. Mr. Sites, I want to talk a little
20 bit about the discussion you had with Mr. Ross
21 regarding telephone calls in which Windstream's
22 bankruptcy was mentioned. Do you recall those?

23 A. Yes.

24 Q. And there was -- the record will
25 obviously speak for itself, but I think there was a

1 little confusion as to kind of the timing of the
2 telephone calls that may or may not have preceded
3 your e-mails to various Windstream customers where
4 you talked about the Windstream bankruptcy.

5 Do you recall that?

6 A. Yes.

7 Q. Were you ever on a telephone call at
8 Charter related to the Windstream bankruptcy where
9 you were given instructions related to the
10 Windstream bankruptcy other than not to mention it?

11 A. No. Just -- no. The only thing we
12 were told was don't mention anything about the
13 bankruptcy, anything of that nature. The only
14 thing we were told when we're working on a
15 Windstream area, it's, you know, we're faster, more
16 reliable and cheaper. That's the standard for
17 anything, any other company.

18 Q. So it would be incorrect to suggest
19 that there was instructions given to employees,
20 such as yourself, to use the Windstream bankruptcy
21 as a ploy to gain business on one of these
22 telephone calls?

23 A. Yes.

24 Q. And then I think that you and
25 Mr. Ross had a discussion about what you were told

1 related to a preliminary injunction or a temporary
2 restraining order filed in the Windstream case.

3 Do you recall that?

4 A. Yes.

5 Q. And it wasn't clear to me if you
6 were talking about what you were told or what you
7 may have received by e-mail.

8 A. We could have received an e-mail.
9 I'm sure we did. If it was something that went
10 company-wide, I'm sure we got the e-mail. But
11 usually with those big e-mails, I know if it's
12 something really important, we're going to discuss
13 it on our calls and individually with our boss and
14 stuff. So I probably should pay attention more to
15 those things. We get flyers and stuff all the time
16 about national stuff, national issues. Whereas,
17 you know, if it's -- again, if it's something
18 really important, we'll discuss it, you know,
19 amongst our smaller team.

20 It's almost like a college. You
21 talk about stuff in your giant group and then you
22 go down to your smaller groups and discuss.

23 Q. So as between an e-mail and a
24 discussion, you have a recollection of discussions
25 related to Windstream, but you don't have any

1 recollection of a specific e-mail related --

2 A. Not a specific e-mail, no. But I'm
3 sure we got it. I have no doubts with something
4 like this we would have got something.

5 MR. KINGSTON: I pass the witness.

6 FURTHER CROSS-EXAMINATION

7 BY MR. ROSS:

8 Q. So you have no recollection but you
9 have no doubts. What's the basis for that?

10 A. Yeah. It sounds like something that
11 we would have had to have received.

12 Q. So you're guessing?

13 A. I guess it's an educated guess.

14 MR. ROSS: Okay. That's all, thank
15 you.

16 THE VIDEOGRAPHER: This concludes
17 today's deposition of Mr. Sites. This is the end
18 of media one of one. We're going off the record.
19 The time now is 2:19. Stand by, please.

20 MR. KINGSTON: We'll read and sign.

21 (Signature not waived.)

22 - - -

23 Thereupon, the deposition concluded at
24 approximately 2:19 p.m.

25 - - -

C E R T I F I C A T E

- - -

THE STATE OF OHIO:

SS:

COUNTY OF FRANKLIN:

I, Linda A. Schilt, a Court Reporter and Notary Public in and for the State of Ohio, do hereby certify that before the taking of his said deposition, the said Andrew Sites was first duly sworn by me to tell the truth, the whole truth, and nothing but the truth;

That said deposition was taken in all respects pursuant to the stipulations of counsel heretofore set forth; that the foregoing is the deposition given at the said time and place by the said Andrew Sites;

That I am not an attorney for or relative of either party and have no interest whatsoever in the event of this litigation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Columbus, Ohio, this 25th day of September, 2019.

/s/Linda A. Schilt
Notary Public, State of Ohio



My Commission Expires: July 29, 2024.

In the Matter Of:

Windstream Holdings, Inc., et al. vs
Charter Communications, Inc., et al.

Paul G Strickland Jr

September 20, 2019



A. William Roberts, Jr. & Associates

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1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 IN RE Chapter 11
4 (Jointly Administered)
Case No. 19-22312 (RDD)
5 WINDSTREAM HOLDINGS, INC.,
et al.,
6 Debtors.

7 WINDSTREAM HOLDINGS, INC.,
8 et al.,

9 vs. Plaintiffs,
Adv. Proc. No. 19-08246 (RDD)

10 (Caption continued on Page 2)

11 DEPOSITION OF: PAUL G. STRICKLAND, JR.

12 DATE: September 20, 2019

13 TIME: 9:02 a.m.

14 LOCATION: A. William Roberts Jr. & Associates
15 6135 Park South Drive
Charlotte, NC

16 TAKEN BY: Counsel for the Defendants

17 REPORTED BY: SOLANGE RUIZ-URIBE, Court Reporter

18 A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Windstream Holdings, Inc., et al. vs
Charter Communications, Inc., et al.

Paul G Strickland Jr
September 20, 2019

2

(caption continued)

CHARTER COMMUNICATIONS,
INC. and CHARTER COMMUNICATIONS
OPERATING, LLC,

Defendants.

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(INDEX AT REAR OF TRANSCRIPT)

4

1 PAUL G. STRICKLAND, JR.,
2 after first being duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. NEPPLE:

5 Q. Please state your full name for the
6 record?

7 A. Paul Graham Strickland, Junior.

8 Q. And what is your home address, sir?

9 A. 6335 Fair Valley Drive, Charlotte, North
10 Carolina 28226.

11 Q. And what you are business address?

12 A. 1720 Galleria Boulevard, Charlotte, North
13 Carolina 28270.

14 Q. What's your current title sir?

15 A. Vice president of customer care.

16 Q. For Windstream?

17 A. For Windstream.

18 Q. Okay. Have you been deposed before?

19 A. I have.

20 Q. How many times?

21 A. Once.

22 Q. Okay. Since you have been deposed before
23 I will kind of short circuit, but I will go over the
24 ground rules. I'm going to be asking questions, the
25 court reporter here will listen to the questions,

1 take it down and take down your answers.

2 If you will wait until I finish my
3 question so that she can get it down before you
4 begin your answer, I will appreciate that.

5 A. Okay.

6 Q. A yes or a no would be appreciated as
7 opposed to uh-huh or huh-uh, which are sort of tough
8 for a court reporter to take down, okay?

9 A. Okay.

10 Q. If you have a question about my question,
11 let me know. If you don't understand it, let me
12 know.

13 A. Okay.

14 Q. I'm not here to try to trick you. I just
15 want to get my questions out, I want you to
16 understand them and I want your answer to the
17 question that you understand, okay? Is that okay?
18 Is that fair?

19 A. Yes.

20 Q. Okay. Do you understand that you are
21 under oath subject to the penalty of perjury,
22 correct?

23 A. I do.

24 Q. Okay. If you want to take a break at any
25 time, let me know. We can take a break as often as

1 you want. The only thing I ask is if there is a
2 question pending answer the question and then we can
3 take a break, okay?

4 A. Okay.

5 Q. All right. Since I just asked you to tell
6 me if you don't understand the question, if you go
7 ahead and answer the question and don't ask for
8 clarification I'm going to assume that you
9 understood the question; is that fair?

10 A. That is fair.

11 Q. What was your prior deposition in, what
12 type of case?

13 A. It was a wrongful termination case.

14 Q. Okay. For were you representing
15 Windstream -- strike that.

16 Were you employed by Windstream at
17 the time or a different entity?

18 A. Yes, I was employed by Windstream at the
19 time.

20 Q. Okay. How long ago was that?

21 A. I don't know exactly.

22 Q. Can you tell me what did you to prepare
23 for this deposition?

24 A. Yes.

25 Q. What did you do to prepare for this

1 deposition?

2 A. I had several sessions with attorneys.

3 Q. Okay. Windstream's attorneys?

4 A. Yes.

5 Q. And are you represented by counsel here
6 today?

7 A. Yes.

8 Q. The Windstream attorneys sitting on your
9 right and left, correct?

10 A. Yes.

11 Q. Okay. And I don't want to get into the
12 substance of your conversation with the attorneys,
13 okay, so leave that out of my next few questions.
14 Did you review any documents to prepare for your
15 deposition?

16 A. Yes.

17 Q. What documents did you review?

18 A. Can you rephrase the question?

19 Q. Sure. I asked you if you reviewed any
20 documents in preparation for your deposition and you
21 told me yes. I'm asking what kind of documents did
22 you review? Did you review pleadings that are filed
23 in the case? Did you review discovery responses,
24 which are documents that are exchanged between the
25 parties or did you review other documents?

1 A. I reviewed several documents. I'm not
2 sure if any of them fall into the categories that
3 you just mentioned, but I did review several
4 documents.

5 Q. Okay. Can you tell me what you reviewed
6 to the best of your knowledge?

7 A. I reviewed a couple, a screen shot or two
8 of our billing system. I reviewed a printout of a
9 web page that some of our employees used to process
10 calls.

11 Q. Anything else?

12 A. Not that I can recall right now.

13 Q. Can you give me the estimate of the number
14 of hours that you took to prepare for this
15 deposition?

16 A. Yes.

17 Q. What's the number?

18 A. Three hours.

19 Q. Did you talk to any other Windstream
20 employees in preparation for this deposition?

21 A. No.

22 Q. Okay. Did you review any deposition
23 transcripts?

24 A. Yes.

25 Q. Whose deposition did you review?

1 A. Lewis Langston.

2 Q. Any others?

3 MS. LOCKHART: Just to clarify for the
4 record, that's the 30(b)(6) deposition.

5 MR. NEPPLE: Thank you.

6 THE WITNESS: No.

7 BY MR. NEPPLE:

8 Q. Have you been asked to appear live at the
9 hearing or trial that would be held in White Plains,
10 New York for this case?

11 A. No.

12 Q. Can you tell me a little bit about your
13 day-to-day duties for Windstream?

14 A. I run the customer care call center where
15 we process inbound interactions from Windstream
16 customers.

17 Q. Is there more than one inbound call
18 center?

19 A. Yes.

20 Q. How many are there?

21 A. Five main centers.

22 Q. Do you know which locations?

23 A. I do.

24 Q. Can you tell me?

25 A. Yes. We have two in Georgia; one in

10

1 Newton, Iowa; one in Charlotte, North Carolina; and
2 one in Jamaica.

3 Q. Jamaica the country or Jamaica, New York?

4 A. Jamaica the country.

5 Q. Thank you. Do you travel to these call
6 centers or are you pretty much based this Charlotte?

7 A. I'm based in Charlotte and I do travel to
8 the centers as well.

9 Q. Okay. Are there any other people that
10 handle inbound Windstream calls that are not located
11 at one of the five call centers that you just
12 identified?

13 A. Yes.

14 Q. Tell me about that.

15 MS. LOCKHART: Objection, vague.

16 THE WITNESS: Can you restate the
17 question.

18 BY MR. NEPPLE:

19 Q. Sure.

20 A. It would be easier for me to answer it if
21 was more specific.

22 Q. I understand. You said there are five
23 call centers but you said people also handle inbound
24 calls for Windstream in other formats, what formats
25 would those be?

1 A. We receive customer inquiries in a number
2 of formats. We also have other centers that handle
3 other interactions from other sides of the business
4 that are not within my area of responsibility.

5 Q. Okay. Let's talk about outside your area
6 of responsibility, what kind of customer
7 interactions are handled by call centers or people
8 out of call centers?

9 MS. LOCKHART: Objection. I think this
10 testimony or the deposition is supposed to be
11 related specifically to the call centers so this is
12 irrelevant.

13 BY MR. NEPPLE:

14 Q. Okay. You can go ahead and answer.

15 A. Can you restate the question?

16 MR. NEPPLE: Read it back.

17 (Whereupon the Court Reporter read the
18 previous question.)

19 THE WITNESS: I don't understand that
20 question. I can't answer it.

21 BY MR. NEPPLE:

22 Q. Okay. What customer interactions are you
23 aware that do not come through the call centers or
24 the people that you supervise?

25 A. There is a side of the business that

1 handles calls from enterprise customers. We have
2 call centers that support those that do not report
3 to me.

4 Q. Okay. Anything else?

5 A. We have repair centers that process calls
6 that do not report to me.

7 Q. Okay. Anything else?

8 A. Those are the main ones. I'm not aware of
9 any. There are probably others, but they are small
10 in nature and numerous and I would not be able to
11 articulate those out.

12 Q. Would you be able to give me an example of
13 how an interaction would fall in that group?

14 A. Into which group?

15 Q. The group that you said you have no
16 responsibility, that other group, not the enterprise
17 and not the repair?

18 MS. LOCKHART: Objection, vague. Okay.
19 Sorry, you just clarified.

20 THE WITNESS: We have a wholesale business
21 that interacts with large carriers and they receive
22 inbound calls; that is not an area of my
23 responsibility.

24 BY MR. NEPPLE:

25 Q. Okay.

1 A. They have call centers, contact centers.
2 I don't know where they are located or what they do.

3 Q. Okay. All right. So setting aside the
4 wholesale that we will call the other group and the
5 repair calls and the enterprise calls. For the
6 calls that you supervise whether it's at the five
7 locations that you identified or the other ones,
8 explain how that works to me. Are all calls routed
9 to one number or are there multiple numbers, inbound
10 numbers?

11 A. There are multiple inbound numbers.

12 Q. Okay. How would a call end up at one of
13 your call centers versus some other inbound call?

14 A. If they call the number on their bill and
15 have a billing question, it would land in my center.

16 Q. Okay. One of the five centers?

17 A. Yes.

18 Q. Okay. When you say my center, you are in
19 Charlotte. All right. Explain to me how it ends up
20 someplace not at one of the five call centers?

21 MS. LOCKHART: Objection to form. Calls
22 for a narrative.

23 THE WITNESS: So if a customer has a
24 service outage and they need it fixed, they would
25 call one of the repair centers. That does not

1 report to me.

2 BY MR. NEPPLE:

3 Q. Okay. And the other categories of calls
4 that would fall in that group?

5 A. Into which group?

6 Q. All right. Let's see if we can make this
7 clear. You have five inbound call centers and then
8 you have others that you are responsible for. I
9 think that was your testimony before; is that
10 accurate?

11 MS. LOCKHART: I think that misstates his
12 testimony. He said that there are others that he is
13 not responsible for.

14 MR. NEPPLE: I understand. He said there
15 are others that he is.

16 MS. LOCKHART: Just for the record, it's a
17 paper that says: Five call centers. Others you are
18 responsible for.

19 Can you ask a question?

20 MR. NEPPLE: I have asked a question. I'm
21 waiting for an answer.

22 THE WITNESS: I have five primary call
23 centers that I'm responsible for. I have other work
24 groups that I'm responsible for. The other call
25 centers that I am not responsible for are primarily

1 the ones that process inbound calls.

2 BY MR. NEPPLE:

3 Q. Okay. If I want to call into Windstream
4 and disconnect service, will my call end up in a
5 center or someone's group that you are responsible
6 for?

7 A. Yes.

8 Q. Okay. So if it doesn't go to one of the
9 five call centers, where else could that call go to?

10 A. If it's in the area of the business that
11 I'm responsible for it will go to one of those five
12 locations.

13 Q. Okay. I don't know what area of the
14 business that you are responsible for. I don't know
15 what that means. Can you explain that to me?

16 A. Primarily what it means is we are split
17 into two divisions. I'm in one division. We have
18 another division that handles a different type of
19 customer. I don't have any responsibility for any
20 of those interactions.

21 Q. Okay. What division are you in?

22 A. What we refer to as the kinetic business
23 unit.

24 Q. What's the other business that you don't
25 have responsibility for?

1 A. Windstream Enterprise.

2 Q. And can you explain to me what Windstream
3 Enterprise is?

4 A. Primarily handling our larger business
5 customers that we provide service to.

6 Q. Okay. For purposes of the lawsuit, the
7 present lawsuit, did any of the calls go through the
8 enterprise portion of your responsibility?

9 MS. LOCKHART: Objection. Vague. Can you
10 clarify to him what calls you are referring to?

11 MR. NEPPLE: Just object to form.

12 BY MR. NEPPLE:

13 Q. You can answer. Can you answer the
14 question?

15 A. No.

16 Q. Okay.

17 MR. NEPPLE: Steve, you might want to move
18 to a later flight.

19 BY MR. NEPPLE:

20 Q. If a business calls in, does that go to
21 one of the five call centers?

22 A. If it's a business that falls on the
23 kinetic B-U side of the company, yes.

24 Q. And what other side would it fall on?

25 A. If it's a business that is handled by the

17
1 Windstream Enterprise business unit it would not hit
2 one of the five call centers.

3 Q. What's the dividing line between those two
4 business units?

5 A. Primarily it's revenue based, but there
6 are other variables as well.

7 Q. Okay. You are familiar with this lawsuit,
8 correct?

9 A. Yes.

10 Q. You understand what the general
11 allegations are in this lawsuit, correct?

12 A. Yes.

13 Q. And you understand one of the allegations
14 is that certain customers were disconnected, certain
15 Windstream customer were disconnected by Charter,
16 correct?

17 A. Yes.

18 Q. Any of those customers fall in the kinetic
19 side or on the Windstream business unit side?

20 A. The ones that I'm familiar with fall in
21 the kinetic side.

22 Q. Okay. So to your understanding, the
23 people that called in relevant to the lawsuit that
24 we are here for were either under the kinetic
25 business unit side or one of the call centers [sic],

1 correct?

2 MS. LOCKHART: Objection, vague.

3 THE WITNESS: Can you restate the
4 question?

5 MR. NEPPLE: Please read it back.

6 (Whereupon the Court Reporter read the
7 previous question.)

8 THE WITNESS: I don't understand the
9 question. Particularly the last part.

10 BY MR. NEPPLE:

11 Q. Okay. You understand in this case that
12 persons, individuals complained about disconnections
13 by Charter, correct?

14 A. Yes.

15 Q. You understand that certain businesses
16 complained about disconnections by Charter, correct?

17 A. No.

18 Q. You are not aware of any business
19 complaining that Charter disconnected service?

20 MS. LOCKHART: Objection, vague.

21 THE WITNESS: Let me restate the question.
22 So the question is: Am I aware of any
23 disconnections that Charter performed on Windstream
24 customers?

25

1 BY MR. NEPPLE:

2 Q. Windstream customers that are not people
3 but are business?

4 A. I am not familiar with that aspect --

5 Q. Okay.

6 A. -- of the lawsuit.

7 Q. So your understanding as you sit here
8 today is only individuals that had their service
9 disconnected by Charter?

10 MS. LOCKHART: Objection. Misstates the
11 his testimony.

12 THE WITNESS: Can you restate the
13 question?

14 MR. NEPPLE: Repeat the question.

15 (Whereupon the Court Reporter read the
16 previous question.)

17 THE WITNESS: I can't answer that
18 question.

19 BY MR. NEPPLE:

20 Q. You can't answer it because you don't have
21 the information or you don't understand the
22 question?

23 A. I don't understand the question.

24 Q. Okay. You understand there is a general
25 allegations that Charter disconnected Windstream

1 customers, correct?

2 A. Yes.

3 Q. Okay. And those Windstream customers
4 could be individuals, correct?

5 A. Yes.

6 Q. And you are aware of that, correct?

7 A. Yes.

8 Q. Okay. Could those Windstream entities --
9 strike that.

10 Could those Windstream customers be
11 businesses? In other words, Joe's Tire Shop, Bob's
12 Sandwich Shop. Have their services been
13 disconnected by Charter?

14 A. Those businesses could have or I'm aware
15 that we had businesses that due to the false
16 advertising that Charter send out called in with a
17 desire to disconnect their services as a result of
18 the information that was provided by Charter .

19 MR. NEPPLE: Move to strike of none
20 responsive.

21 BY MR. NEPPLE:

22 Q. The question is: Are you aware of any
23 Windstream customers that are businesses that called
24 in to complain about being disconnected?

25 A. I'm not aware of that.

1 Q. What are your day-to-day duties as far as
2 managing whether it's the call centers or the other
3 inbound calls?

4 A. Primarily my day-to-day responsibilities
5 are equipping the front line agents with the tools
6 and resources that they need to perform their jobs.

7 Q. And you used a couple of term there.
8 Tools and resources, what are those?

9 A. Training, leadership, support, general
10 skill development.

11 Q. And then you used a term, front line
12 agent; what's a front line agent in your usage
13 there?

14 A. Front line agent is a general term for a
15 call center agent that's processing calls from
16 Windstream customers.

17 Q. Okay. Do you yourself take any inbound
18 calls?

19 A. Can you define inbound call?

20 Q. Sure. Any call that comes into one of the
21 five call centers or an area of your responsibility,
22 do you take any of the inbound calls?

23 A. No.

24 Q. Okay. Have you ever, as you moved up,
25 have you ever taken inbound calls in that same

1 circumstance?

2 A. Yes.

3 Q. Okay. When was the last time that you
4 might have done that?

5 A. Twenty years ago.

6 Q. Okay. Do you listen to my inbound calls
7 that your front line agents take now?

8 A. Yes.

9 Q. How often do you do something like that?

10 A. Weekly.

11 Q. How many calls do you think you listen to
12 in a week?

13 A. Ten.

14 Q. And how are those calls elevated to your
15 attention?

16 A. I generally pick them on my own, but I get
17 sent some as well.

18 Q. You get sent some by?

19 A. Numerous people.

20 Q. Can you give me some examples?

21 A. Members of my leadership team.

22 Q. Would these be calls where a customer was
23 particularly unhappy or is this a call of, hey, this
24 is a new area where we are seeing calls, we need to
25 understand how to manage this. Can you explain how

1 that works for me?

2 A. I get sent all types of calls, good ones,
3 bad ones.

4 Q. As part of the tools and resources that
5 you say you provide to your front line agents, do
6 you provide them with scripts or talking point to
7 handle various issues that arise during a customers
8 call?

9 A. Yes.

10 Q. Do you develop those scripts or talking
11 point?

12 A. No.

13 Q. Okay. Who does that?

14 A. Members of my team.

15 Q. Okay. Do you have final approach or have
16 a say on what those scripts and talking points look
17 like?

18 A. Sometimes.

19 Q. Okay.

20 A. But not most of the time.

21 Q. Okay. What people would develop a script
22 or talking point for your inbound calls that you are
23 responsible for?

24 A. It depends on the issue that we are
25 addressing with the talking points.

1 Q. Okay. Can you give me a couple of
2 examples?

3 A. If it's a routine issue my channel support
4 team would develop the talking points. If it's
5 something more unusual it would be other resources
6 that would be engaged maybe the training team, other
7 members of the corporate support organization that
8 would be involved.

9 THE WITNESS: I'd like to take a break.

10 MR. NEPPLE: Sure.

11 (A recess was taken.)

12 BY MR. NEPPLE:

13 Q. All right. Back on the record here. Let
14 me make sure I understand your area of
15 responsibility and maybe there is been some
16 disconnect.

17 You have to five call centers. What
18 other calls, inbound calls, from Windstream
19 customers are you responsible for?

20 A. Primarily the ones that are processed in
21 those five locations.

22 Q. Okay. You did say I think, as I
23 understood your testimony and correct me if I'm
24 wrong, but that there are people outside of those
25 calls centers that take inbound calls, correct?

1 A. There are. We have some on the enterprise
2 side.

3 Q. Okay.

4 A. I am not responsible for that.

5 Q. Okay. But for your responsibilities, the
6 five call centers?

7 A. Primarily. There is a few smaller work
8 groups, the dispatch team, things like that. There
9 are some calls that come in there from time to time
10 from a customer but those are the primary locations.

11 Q. Okay. Do you have any employees tied to
12 or tied into any of those call centers that work at
13 home or work at a location outside of those five
14 call centers?

15 A. The employees that are part of those five
16 locations work at those five locations. They don't
17 work at home.

18 Q. If I call a number that's tied to those
19 call centers, do any of those calls get kicked to
20 anyone who is not in one of those five call centers?

21 A. I can't think of a reason why.

22 Q. Okay. How many employees typically do you
23 have staffed at those five call centers on an
24 average day?

25 A. 400.

1 Q. Across the five call centers?

2 A. Yes.

3 Q. Okay. What's the largest call center?

4 A. Cornelia, Georgia.

5 Q. And how many would be in Cornelia,
6 Georgia?

7 A. 125.

8 Q. Okay. Do you provide 24/7 call center
9 support or only business hours or some mix?

10 A. I don't provide 24/7. Business hours is
11 how I would characterize it.

12 Q. Do you know what the business hours are by
13 any chance?

14 A. 7:00 a.m. to 7:00 p.m.

15 Q. Okay.

16 A. Eastern time.

17 Q. Okay. And are those 400 on an average
18 day, are they there for the 12 hours or do you split
19 up shifts?

20 A. We split up shifts.

21 Q. Okay. But on average you have the
22 capacity of 400 people or is it less?

23 A. It's less by virtue of those being spread
24 out by the operating hours.

25 Q. Do you have like a full-time equivalent,

1 an FTE of how many people you have on staff on those
2 five call centers during an average day?

3 A. Not with me.

4 Q. Do you have an estimate of what that would
5 be?

6 A. I don't.

7 Q. Okay. Would it be a fair statement to say
8 that you have 3,000 or so call center employees
9 total?

10 A. I have no idea.

11 Q. You have no idea of how many call center
12 employees you supervises?

13 A. I do know that. I don't know how many
14 Windstream has.

15 Q. Okay. For the ones that you supervises,
16 how many employees are in those five call centers?

17 MS. LOCKHART: Objection. Asked and
18 answered.

19 THE WITNESS: 400.

20 BY MR. NEPPLE:

21 Q. Okay. Out of the people that staff the
22 call centers that you are responsible for, are they
23 Windstream employees or are they independent
24 contractors?

25 A. We have both.

1 Q. Okay. Do you know what the division of
2 that is?

3 A. I do.

4 Q. Okay. Can you tell me?

5 A. We have one outsource location with about
6 75 employees on any given day.

7 Q. Okay. That location is?

8 A. Montego Bay, Jamaica.

9 Q. Okay. And then 325, if my math is right,
10 are Windstream employees?

11 A. That's accurate.

12 Q. Okay. The employees, are they salaried or
13 are they hourly or how are they compensated?

14 A. The front line agents are hourly.

15 Q. Okay. That would imply that there are
16 people that are not front line agents that are
17 salaried, correct?

18 A. That is correct.

19 Q. Okay. How many are salaried out of the
20 325?

21 A. I don't have that number.

22 Q. Do you have a ballpark?

23 A. Thirty to forty.

24 Q. Okay. When a Windstream customer calls in
25 to one the call centers that you have responsibility

1 for, is that interaction recorded?

2 A. Yes.

3 Q. Is that recorded every time?

4 A. Yes.

5 Q. Do any of your employees or independent
6 contractors have the ability not to record the
7 interaction?

8 A. Not that I'm aware of.

9 Q. Okay. And how long do you maintain the
10 recording of interaction with your Windstream
11 customers?

12 A. Generally speaking, it's 60 days.

13 Q. Is there any circumstances where it would
14 be longer than 60 days?

15 A. I can't think of one.

16 Q. Okay. As part of the process of when a
17 call comes in, I'm assuming each of the call center
18 employees has a computer and has access to the
19 caller's file?

20 MS. LOCKHART: Objection. Can you ask the
21 question.

22 THE WITNESS: Can you restate the
23 question.

24 BY MR. NEPPLE:

25 Q. Sure.

1 A. Maybe be more specific.

2 Q. Sure. When a Windstream customer calls in
3 and the call goes to one of the call centers that
4 you are responsible for and one of your front line
5 employees takes that call, at some point do they
6 have a computer screen that has information on the
7 caller?

8 A. Yes.

9 Q. Okay. And you said earlier in your
10 testimony that you look at some screen shots, is
11 that what you looked at, the screen shot of what
12 that intake screen looks like or is that something
13 different?

14 A. Yes.

15 Q. Is it?

16 A. The screen shots that I reviewed were
17 screen shots that employees would use to process a
18 call.

19 Q. All right. Those screen shots, are those
20 identical across the five call centers, this is the
21 script or the computer form that we use for every
22 call?

23 A. Can you restate the question?

24 Q. Sure. If the call center employee at the
25 Newton, Iowa location and pulls up a form of a

1 customer that calls in, if that call had been routed
2 to the Georgia call center, would the same form come
3 up?

4 A. Generally speaking, our processes are the
5 same for processing the call across the locations.

6 Q. Okay. Is there any difference that you
7 can think of as you sit here that they vary by
8 location?

9 A. Yes.

10 Q. Okay. Tell me how they vary by location
11 to your understanding?

12 A. We have some experienced employees that
13 may use systems they are more familiar with that
14 some of the new employees would not use.

15 Q. More trusted employees, would that be a
16 fair way to say it?

17 A. No.

18 Q. Okay. More experienced because -- strike
19 is that.

20 Then explain to me how those
21 employees would use a different system?

22 A. The system contains the same information.
23 It's a different method of accessing it.

24 Q. Okay.

25 A. The more experienced employees may use a

1 different access method, but would be using the same
2 information to process the call. It's just
3 accessing it via a different interface.

4 Q. Why would they access it with a different
5 interface?

6 A. Comfortability.

7 Q. Is it quicker?

8 A. In some cases it could be.

9 Q. Okay. Well, you said comfortability, what
10 do you mean by that?

11 A. When they were trained that was the system
12 they were trained on because the new system did not
13 exist.

14 Q. Okay. And when you say a new system, was
15 that new system in place in 2019?

16 A. Yes.

17 Q. Okay. When did that new system go in
18 place, ballpark?

19 A. Three or four years ago.

20 Q. Okay. If your call system volume gets too
21 high, do you have the ability to bring people in to
22 handle that or just the times just become extended?

23 MS. LOCKHART: Objection, compound.

24 THE WITNESS: Can you restate the
25 question?

1 BY MR. NEPPLE:

2 Q. Sure. If for some reason, maybe there is
3 storms or maybe there is a line cut and you get a
4 high volume of calls that your 325 people can't
5 handle or that their delay time becomes too long, do
6 you have the ability to go get other employees to
7 come in whether it's call center employees or any
8 other back up to handle the increased call volume?

9 A. I don't.

10 Q. Okay. So the 325 that you have or however
11 many you have at a specific time, those are the
12 people that are handling the calls that are coming
13 in to Windstream high or low volume, those are the
14 people?

15 A. In my area of responsibility, yes.

16 Q. In your area of responsibility. Do you
17 keep metric of the calls and -- strike that.

18 Do you keep metrics of the calls that
19 come into the call centers that you have
20 responsibility for?

21 A. Yes.

22 Q. Okay. What type of metrics do you keep or
23 maintain?

24 A. A lot of different ones. Primarily the
25 number of calls, how long it took to process them

1 and how quickly we answered the call.

2 Q. Okay. And so quickly would be how long
3 the wait time was?

4 A. Yes, that's one way we measure it.

5 Q. What other ways do you measure it?

6 A. The percentage of time, the percentage of
7 calls that were answered within a certain time
8 parameter.

9 Q. Okay. You are going to need to explain
10 that to me. Is it from the time the call connected
11 to the call center or the number of rings? I don't
12 understand what you mean by that.

13 A. We measure it based on how long the
14 customer had to hold before they reached a live
15 agent.

16 Q. Okay.

17 A. We measure that in two primary ways; how
18 long they held, we covert that to an average; and
19 then we also measure it as a percentage of the time
20 a customer was answered within a certain time
21 parameter.

22 Q. Okay. So you have a metric that you want
23 an X percentage of your customer calls to be
24 answered within Y minutes; is that what you are
25 saying?

1 A. Yes.

2 Q. Okay. And what's the X and the Y in my
3 last question?

4 A. The X is 70 percent, the Y is 60 seconds.

5 Q. Okay. So your goal is to have a customer
6 call in 70 percent of those customers will start
7 talking to a Windstream rep live within 60 seconds?

8 MS. LOCKHART: Objection, Windstream rep
9 is a little bit vague.

10 THE WITNESS: Yes.

11 BY MR. NEPPLE:

12 Q. Okay. Do you keep other metrics in
13 addition to what you just discussed?

14 A. Yes.

15 Q. What other metrics do you keep?

16 A. We keep average handle time. We have a
17 scheduled adherence metric. We have a quality
18 metric. We measure abandonment rate. Those are the
19 primary ones that I can think of off the top of my
20 head.

21 Q. Okay. And I apologize, I missed the
22 second one. Unless the court reporter can read your
23 answer back. I missed the second one.

24 A. Can you read the ones you have?

25 Q. Sure. Average handling time. Quality

1 metric. Abandonment metric and the second one I am
2 missing.

3 (Whereupon the Court Reporter read a portion
4 of the previous answer.)

5 BY MR. NEPPLE:

6 Q. Okay. Let's go through this. So is that
7 a fair statement, those are the four primary metrics
8 that you measure, average handling time, schedule of
9 adherence metric, quality metric and abandonment.

10 A. Yes, those are the primary ones. Schedule
11 of adherence is scheduled adherence.

12 Q. Okay. Let's go in reverse order. What
13 are you measuring when you look at abandonment
14 metric?

15 A. The percentage of callers that hung up
16 before they reached a call center agent.

17 Q. Do you have a target for keeping that
18 percentage less than?

19 A. Yes.

20 Q. What's that target?

21 A. 5 percent.

22 Q. And is that 5 percent independent of time,
23 it's just 5 percent of the people that call in, you
24 want 95 percent to reach a Windstream front line
25 agent?

1 A. Yes.

2 Q. Okay. And then your quality metric,
3 what's your quality metric?

4 A. We listen to calls and grade agents'
5 performance and turn that into percentage.

6 Q. Okay. You rate them on a scale?

7 A. Yes.

8 Q. One to ten, A through F, how do you assign
9 the number to agent?

10 A. It's percentage based.

11 Q. Okay. And the best score would be
12 100 percent?

13 A. Yes.

14 Q. And the worse would be zero?

15 A. Yes.

16 Q. I think my career managing a call center
17 is useful here. All right. What's the third one
18 the scheduled -- I'm not going to get it.

19 THE COURT REPORTER: Scheduled adherence.

20 BY MR. NEPPLE:

21 Q. Scheduled adherence?

22 A. That measures the agent's actual schedule
23 worked compared to the schedule that we provided
24 them for that day.

25 Q. Okay. So punch in and punch out time

1 compared to what you asked them to do; is that a
2 fair summary?

3 A. Yes.

4 Q. Okay. And then average hold time, what is
5 your goal for the average hold time or sorry,
6 average handle time?

7 A. 425 seconds.

8 Q. And that's the goal from the time that a
9 Windstream customer calls and starts talking to a
10 front line representative that you are responsible
11 for and the call is completed, 425 seconds?

12 A. Yes.

13 Q. Okay. I was told there would be no math,
14 but seven minutes five seconds?

15 A. Yes, that sounds right.

16 Q. Okay. And what's your average handling
17 time?

18 A. For what period of time?

19 Q. 2019.

20 A. I don't know.

21 Q. Do you know for any period of time?

22 A. I can get close for the last month.

23 Q. Okay. Give me last month.

24 A. 420 seconds.

25 Q. As we sit here today, can you recall

1 whether you've been above or below your call for the
2 months of 2019?

3 A. Can you clarify which metric?

4 Q. Sure. It's a fair question. Your goal of
5 425 seconds of average handling time per call, you
6 said last month it was 420 seconds, do you recall
7 any times during this year of 2019 where that number
8 was higher than 425 seconds?

9 A. Yes, for certain locations, not an
10 aggregate.

11 Q. So an aggregate across the five call
12 centers that are responsible for, you have met the
13 425 seconds standard in aggregate?

14 A. To the best of my recollection, yes.

15 Q. Okay. Has that number been pretty
16 consistent for you as a goal for the call centers
17 you manage since you've been in that position?

18 A. Yes.

19 Q. So if I make the statement, and tell me if
20 this is fair, on average across the five call
21 centers that you manage, the typical response time
22 for you, for a front line employee to talk to a
23 Windstream customer and handle that call is
24 approximately 425 seconds?

25 MS. LOCKHART: Objection, vague.

1 THE WITNESS: 425 seconds is not typical
2 of the response time. It is typical of the
3 processing time.

4 BY MR. NEPPLE:

5 Q. Oh. Is it a fair statement to say that
6 once a Windstream customer is connected with a
7 Windstream front line person that you manage at one
8 of the five call centers that on average that call
9 is going to take approximately 425 seconds from when
10 they first start talking to when they hang up?

11 A. Yes.

12 Q. Okay. Do you know how many calls you
13 handle on average in a typical day or a typical
14 month, and just so we are clear, when I'm asking you
15 questions, okay, just assume any one of mine is just
16 the call centers that you are responsible for.

17 Can we have that ongoing
18 understanding so we don't have to do that dance each
19 and every time, okay, so I'm talking about your
20 responsibilities, okay?

21 A. Yes.

22 Q. Okay. Can you tell me how many calls you
23 get on an average day or average month?

24 A. Yes.

25 Q. Okay. What's that number?

1 A. 200,000 a month.

2 Q. Okay.

3 A. Seven to 10,000 a day.

4 Q. Okay. Are there any particular months of
5 the year that are higher or lower or are they pretty
6 steady across the 12 month span?

7 A. We have seasonality that creates peaks and
8 valleys.

9 Q. What's your high seasonality?

10 A. The summer.

11 Q. Why would that be high during the summer?

12 A. Because people move frequently in the
13 summer.

14 Q. Okay. What kind of numbers on average for
15 a month, a high summer month would that be?

16 A. 250,000.

17 Q. Okay. And on the low side, what would be
18 a low month during a year?

19 A. February.

20 Q. Okay. What would a month like February
21 look like?

22 A. 170,000.

23 Q. Is that a combination of 28 or 29 days
24 plus people are not moving, are those the primary
25 drivers or anything else?

1 A. The primary driver is that not a lot of
2 people are moving. It's the moving activity that
3 primarily drives an increase in call volume.

4 Q. So would it be a fair statement to say
5 that your higher months are the spring and the fall
6 through the summer and the spring to the fall and
7 the winter is lower?

8 MS. LOCKHART: Objection, form.

9 THE WITNESS: I would not characterize it
10 that way, no.

11 BY MR. NEPPLE:

12 Q. Okay. How would you characterize it?

13 A. Summer months being higher and the winter
14 being lower. Spring and fall being somewhere in
15 between.

16 Q. Okay. And now moving down to the seven to
17 10,000 calls per day, is there specific day or days
18 of the week that the volume is higher?

19 A. Yes.

20 Q. What are those days?

21 A. Mondays and Tuesdays.

22 Q. Okay. And what are your low days?

23 A. Wednesdays and Thursdays.

24 Q. And do you have an understanding of why
25 your high days are Monday and Tuesday?

1 A. Yes.

2 Q. What's your understanding?

3 A. We don't process calls on Sunday.

4 Q. Okay. Do you process calls on Saturday?

5 A. Yes.

6 Q. So call in six days a week 7:00 a.m. to
7 7:00 p.m.?

8 A. Yes, generally speaking. We are open 8:30
9 to 5:00 on Saturday.

10 Q. Okay. So 7:00 a.m. to 7:00 p.m. Monday to
11 Friday and 8:30 to 5:00 on Saturday and closed on
12 Sunday?

13 A. Generally speaking. We are open to
14 8:00 p.m. in some locations.

15 Q. Okay. But closed on Sunday throughout
16 your five call centers?

17 A. Yes.

18 Q. Okay. And why is your low on Wednesday
19 Thursday?

20 A. I honestly don't know the driver behind
21 that. It's the way it shakes out.

22 Q. For the call centers that you are
23 responsible for, are the incoming calls that you are
24 responsible for what products is Windstream offering
25 to your customers or potential customers?

1 A. Primarily broadband service as well as
2 voice and TV.

3 Q. Do you as you sit here, do you have a
4 breakdown as to how those three categories break
5 down percentage wise, just a general ballpark?

6 A. I don't understand the question.

7 Q. So is 70 percent of your business
8 broadband, 20 percent voice, 10 percent TV, do you
9 have a breakdown of how you would break those
10 categories down?

11 A. I don't.

12 Q. Do you have even a general understanding
13 of what's the -- is broadband the primary service
14 for your customers?

15 A. Yes.

16 Q. Okay. Would voice be second and TV third;
17 if you know?

18 A. I don't know.

19 Q. Okay.

20 A. It would -- I would be speculating. I
21 don't know.

22 Q. Okay. If I'm a Windstream customer and I
23 want to add services or disconnect service whether
24 it's broadband, voice, or TV, is my call going to
25 one of your call centers or one of the other

1 locations that comes within your area of
2 responsibility?

3 A. If you are going to disconnect, yes. If
4 you want to add service to an existing account, yes.
5 If you are prospect and you want to become a
6 Windstream customer, that call would not come to me.

7 Q. Okay. Those calls, prospect calls, who do
8 they go to?

9 A. Our sales, inbound sales centers.

10 Q. Okay. But it does fall within your
11 purview for Windstream customers who want to
12 disconnect or add, that call comes in one of the
13 centers or locations that you manage?

14 A. Yes.

15 Q. Okay. Is it a fair statement that it's
16 more expensive to go get a new client than to
17 maintain a current client?

18 MS. LOCKHART: Objection, vague.

19 THE WITNESS: Can you restate it real
20 quick?

21 BY MR. NEPPLE:

22 Q. Sure, sure. Is it easier for you and
23 cheaper for you to go get a new Windstream customer
24 or maintain a Windstream customer who is looking to
25 disconnect?

1 A. It's cheaper to maintain a customer than
2 to go get a new one.

3 Q. Okay. And as part of the training and the
4 general supervision and the leadership that you
5 provide to your front line call people, is one of
6 the things that you train and provide leadership on
7 is when a Windstream customer who is looking to
8 disconnect calls into one of your call centers you
9 try to convince them not to disconnect?

10 A. Yes.

11 Q. Okay. And is there a name for that
12 process in the industry or that Windstream uses?

13 A. Yes.

14 Q. What's that name?

15 A. Retention process.

16 Q. Okay. Explain to me generally what the
17 Windstream's retention process is for a customer who
18 is looking to disconnect or has raised the
19 possibility of disconnection to one the call centers
20 that you manage or supervise?

21 A. The agents are trained to ask the
22 customers questions to understand the root cause of
23 the disconnect request. Based on that information
24 they deploy tools to try to convince the customer to
25 stay with us by addressing the root cause of the

1 disconnect request.

2 Q. Okay. And those tools, what kind of tools
3 are those that you provide to them?

4 A. I'll give two examples. If they are
5 unhappy with the speed they are receiving, we would
6 give them a speed upgrade either for free or at a
7 discounted rate. If they are unhappy with the price
8 they are paying, we may offer them a monthly
9 recurring discount.

10 Q. Okay. Any other incentives that you
11 provide to a customer that is looking to disconnect
12 other than upgrade in speed or decrease in price or
13 both?

14 A. Those are the main ones that virtually
15 everything that we provide calls in those two
16 categories.

17 Q. Okay. And tell me if I'm wrong, would
18 there not be a category where people who are just
19 unhappy with the service, it's out, it's not
20 consistent, I'm having trouble maintaining my
21 connection, we'll call it technical issues, there is
22 not a pile of technical issues tool?

23 A. Yes.

24 Q. What tools do you offer people who are
25 having technical issues?

1 A. We would troubleshoot the issue, dispatch
2 the technician, in come cases to try to remedy the
3 situation.

4 Q. Okay. If I'm a Windstream and I call one
5 of your call centers and I'm saying I'm not happy
6 with the speed, is there a script or talking point
7 that come up for speed root cause?

8 A. Yes, that's accurate.

9 Q. Okay. And same thing for price root
10 cause?

11 A. Yes that's accurate.

12 Q. Okay. And then would there be one for
13 technical root cause?

14 A. Yes.

15 Q. Okay. Is that script pretty consistent
16 other than updating the prices and the speeds, but
17 taking out those variables of price and speed, is
18 the script generally consistent over the last few
19 years that you have been in this job?

20 A. Yes. Although I would not characterize it
21 as a script. It's more of a call handling process
22 guide.

23 Q. Okay.

24 A. It doesn't contain necessarily scripting.

25 Q. Okay. They are not reading it word for

1 word, but they have bullet points on what they, what
2 you or what Windstream wants them to mention to a
3 customer call complaining of speed or price?

4 A. Yes, that's accurate.

5 Q. Okay. I think you testified at the start
6 of the depo that you have some input on what the
7 front line person sees, do you have input on those
8 bullet points or that summary for both the speed or
9 the price or technical issues?

10 A. Yes.

11 Q. Okay. Let's talk about the general
12 disconnection process. If I'm a Windstream customer
13 and I want to disconnect for any reason, I'm either
14 not happy or I'm moving or I'm getting married and
15 combining homes, whatever that may be. Take out
16 why, I just want to disconnect. How is that process
17 done? I can call one of your call centers; is that
18 correct?

19 A. Yes.

20 Q. And I can disconnection TV, voice and
21 Internet broadband in a call center call?

22 A. Yes.

23 Q. Okay. Can I disconnect all three of those
24 service by email?

25 A. You can send us written notification that

50

1 you want to disconnect, that can be done over email,
2 but we would make a phone call to confirm the
3 disconnect.

4 Q. Okay. And as part of that process you
5 then want to talk to that customer to find out if
6 there is a root cause and hopefully offer something
7 that they will stay with you if it's something that
8 you can solve, if it's a problem that you can solve
9 you want to solve that problem, right? You want to
10 have a conversation with that person?

11 A. Yes.

12 Q. Okay. I assume the same thing if someone
13 sends you is letter; does anyone send snail mail
14 saying disconnect my services anymore?

15 A. It does happen. It's not common.

16 Q. Okay. Pretty rear?

17 A. That's accurate.

18 Q. It's the same thing, you would call that
19 person just like if you got an email from them and
20 again, go through the process of trying to maintain
21 your customer?

22 A. Yes.

23 Q. Any other methods that they can disconnect
24 other than calling in, emailing or sending you U.S.
25 mail?

1 A. In some cases we get notified of a
2 disconnect request from another provider.

3 Q. Okay. Explain that to me, please.

4 A. So if one of our customers calls another
5 provider and wants to establish service with them
6 and they want to move their telephone number over,
7 we call it porting in the industry, there is a
8 process where we are notified of that request.

9 Q. Does that porting apply to all three
10 forms, broadband, voice and TV?

11 A. It primarily applies to voice. There is a
12 process associated with the broadband when it's a
13 combined customer and we get one of those
14 notifications, but it primarily pertains to voice.

15 Q. Okay. Are these customers who don't like
16 confrontation and want their new provider to do it
17 for them or is this standard in the industry that
18 this porting process is just what happens in the
19 industry between competitors?

20 MS. LOCKHART: Objection. Assumes facts
21 not in evidence.

22 THE WITNESS: I can't speak for the
23 customer and why they choose to go that route versus
24 others, but this is something that's been in place
25 for a long time.

1 BY MR. NEPPLE:

2 Q. Okay. Do you track the number of
3 customers who are trying to disconnect service
4 through your call centers that you manage?

5 A. Yes.

6 Q. Okay. Do you track that on a daily basis
7 or a monthly basis?

8 A. We track it daily.

9 Q. Okay. And on average, how many
10 disconnection requests do you get on a daily basis?

11 A. Four or 500, somewhere in that range.

12 Q. And like your other numbers does that
13 number vary by the month of the year?

14 A. It does.

15 Q. Would it track basically higher in the
16 spring when people are moving and lower in the
17 winter or is there a different driver?

18 A. It does not track higher in the spring
19 because customers are moving. It tracks higher in
20 the summer because customers are moving.

21 Q. Okay. And that four to 500 people that
22 want to disconnect on a daily basis, do you track a
23 metric versus the number of subscribers you have as
24 a percentage? In other words, we have X number of
25 request and we have this many subscribers our

percentage is Y?

A. I don't track that number.

Q. Okay. And do you track your batting average of, let's say 500 people call today and want to disconnect, do you track the percentage of the number of people that you are able to convince to stay with your service?

A. Yes, we do track that.

Q. What's the percentage -- strike that. What do you call that conversion rate, retention rate or what term would you apply to it?

A. Saved percentage.

Q. Saved percentage, okay. What is Windstream's saved percentage for 2019?

A. I don't know the exam number.

Q. Ballpark?

A. 64 percent.

Q. Is there a goal that Windstream tries to set for its saved percentage?

A. Yes.

Q. And what's the goal?

A. It varies by month.

Q. Okay. On a high end and low end, can you give me a range?

1 A. Sixty-seven to 63, generally speaking.

2 Q. Is that pretty consistent throughout your
3 tenure in your current position?

4 A. No.

5 Q. Has the number of saved percentage
6 increased over the years has it increased or has the
7 saved percentage gone down?

8 A. It has increased.

9 Q. Okay. How long have you been in your
10 current position?

11 A. Since December 2015.

12 Q. Okay. So in the almost four years you
13 have been in your current position has the saved
14 percentage increased?

15 A. Yes, that would be accurate.

16 Q. Okay. How much has that saved percentage
17 increased?

18 A. I don't know exactly.

19 Q. Okay. Would it have been in the 50s or in
20 the low 60s?

21 A. We definitely had months in the 50s at one
22 point.

23 Q. Okay. Has this process, this save
24 percentage and retention process been in place
25 pretty consistently since you stepped in your role

1 in 2015?

2 A. No.

3 Q. Okay. Did you implement it?

4 A. Yes.

5 Q. Okay. What changes did you make from the
6 process that was in place before you implemented it?

7 A. We established a team that was exclusively
8 focused on that function.

9 Q. On saved percentage and preventing
10 disconnect?

11 A. Yes.

12 Q. Is it then fair if I call in and say, I
13 want added services that will stay with like certain
14 group of your call center employees, but if I want
15 to disconnect that goes to a subset of that?

16 A. Yes.

17 Q. Okay. How big is the subset of the
18 disconnect employees?

19 A. Fifty agents.

20 Q. Okay. How many disconnect agents are in
21 place on an average day?

22 A. I don't know.

23 Q. Okay. What is about the skill set of the
24 50 agents that they have been tasked with the
25 disconnect and the retention plan?

1 A. They received additional training by
2 virtue of the role that they are in.

3 Q. Are these people that you consider better
4 personalities, brighter personalities, better
5 salespeople, how do they get on the disconnect team?

6 MS. LOCKHART: Object to form.

7 THE WITNESS: It's primarily by virtue of
8 the location they sit in because we have that
9 function only in one location, but we do have a
10 selection process to try to find the best fits for
11 that particular role in that location.

12 BY MR. NEPPLE:

13 Q. Okay. What is the location of the
14 disconnect team?

15 A. Newton, Iowa.

16 Q. Okay. How often are you traveling to the
17 Newton, Iowa call center?

18 A. A couple of times a year.

19 Q. To the Des Moines International Airport?
20 It's a joke. I'm from Des Moines.

21 A. Yes.

22 Q. Thanks. Is it fair to say that when
23 customers call in and they want to disconnect you
24 want to try to talk them out of it?

25 A. Yes.

1 Q. Okay. And are all those disconnection
2 calls recorded?

3 A. Yes.

4 Q. Okay. Do you ask or are your -- strike
5 that.

6 Are your disconnect agents asked who
7 their current service is with? Strike that, that's
8 a horrible question.

9 Your agents in the disconnect center,
10 do they ask your Windstream customers who they are
11 disconnecting for, who they want to disconnect for?

12 A. Yes, if it's relevant to the call that
13 they are taking.

14 Q. Okay. Are they asked as a matter of
15 course?

16 A. I would not characterize it as a matter of
17 course, no.

18 Q. Do you train those disconnect agents to
19 ask?

20 A. We train them primarily to dig into the
21 root cause of the disconnect, which is much more
22 important to us than who they are currently with.

23 Q. Okay. As part of the display screen that
24 comes up with when a Windstream customer calls in
25 and wants to disconnect, are you able to tell based

1 upon their geographical location who their likely
2 providers are other -- strike that.

3 As part of the call center intakes
4 where the disconnects are processed and that screen
5 comes up, can an operator, one of your front line
6 employees look at the location and have an
7 understanding of who the competitors are in that
8 location?

9 A. Yes.

10 Q. Okay. So if my parents in Clive, Iowa
11 call up and say I'm looking to leave Windstream and
12 you pull up their address and you see they are in
13 Clive Iowa you know who the competitors for
14 Windstream are for their address?

15 A. Yes, that's accurate.

16 Q. Okay. And do you know every single time
17 who the competitors are?

18 A. Yes, that's accurate.

19 Q. Okay.

20 A. I'm sure there are exceptions but
21 primarily, yes.

22 Q. Okay. So is it a fair summary to say that
23 if someone calls and they want to disconnect your
24 service and the screen pops up, the person knows who
25 your competitors are and their first goal is to find

1 out the root cause of the disconnect request?

2 A. Yes.

3 Q. Okay. And try to address the root cause
4 of the disconnect request?

5 A. Yes.

6 Q. Okay. How empowered are your front line
7 employees to make an offer whether it's speed or
8 price or whatever to solve that root problem, do you
9 have a metric that can only offer X, Y or Z or are
10 they given pretty while latitude whatever they need
11 to do to keep that customer happy and not
12 disconnect?

13 A. I would characterize it as Y latitude with
14 parameters or guardrails on those.

15 Q. Okay. So you can up speed to this number,
16 you can decrease price to this number, you can offer
17 other incentives within a range?

18 A. Yes, that's accurate.

19 Q. Other than price and speed, what other
20 incentives can they offer within the guardrails?

21 MS. LOCKHART: Objection, asked and
22 answered.

23 THE WITNESS: In some cases we would offer
24 an expedited, you know, service dispatch or
25 correction or troubleshooting or something along

1 those lines, but I would characterize the process
2 and the responses that the agents give to disconnect
3 request as primarily falling in those two
4 categories, speed and price.

5 BY MR. NEPPLE:

6 Q. Okay. Is any of the compensation paid to
7 the Windstream employees or independent contractors
8 in any of your call centers that you manage based
9 upon their retention rate?

10 A. Yes.

11 Q. Okay. How does that work?

12 A. They receive higher compensation in the
13 retention team if the retention or save percentage
14 is higher.

15 Q. Okay. Is it based on average save
16 percentage or are they compensated per individual
17 save?

18 A. It's based on the average, the percentage.

19 Q. Okay. Are they compensated based upon
20 what the Windstream save amounted to, in other
21 words, we only had to offer X for speed, we only had
22 to offer Y for price, is that taken into account or
23 is it simply the fact that it was a save taken into
24 account?

25 A. The latter, it is just based on

percentage.

Q. Okay.

A. There is no penalty for the type of tactic deployed.

Q. Okay. So make sure I understand, is it a fair statement to say if Windstream call service center employee A offers a \$20 discount and their save percentage is 65 and the call center employee B offers \$10 discount but their save percentage is still 65 percent they are going to be compensated the same?

A. Yes, that's my recollection.

Q. Okay. Is it a fair statement to say that Windstream wants the opportunity to talk to any current Windstream customer face to or on the phone before that customer disconnects?

MS. LOCKHART: Objection, form.

THE WITNESS: Yes.

BY MR. NEPPLE:

Q. Let me clean it up. Is it fair to say that Windstream wants an opportunity to talk to that customer on the phone, that Windstream customer before they disconnect?

A. Yes.

MR. NEPPLE: You want to take a short

1 break? We have been going for about an hour.

2 MS. LOCKHART: Yeah, sure.

3 (A recess was taken.)

4 BY MR. NEPPLE:

5 Q. All right. Now, you said you had some
6 input based on whether it's a script or talking
7 points for your call center employees, correct?

8 A. Yes.

9 Q. As part of the Windstream bankruptcy, did
10 you draft any talking points or scripts or whatever
11 for questions that came up about the Windstream
12 bankruptcy filing?

13 A. No.

14 Q. Were any talking points or scripts or any
15 sort of information provided to call center
16 employees on how to handle the Windstream bankruptcy
17 if that issue came up?

18 A. We did provide some call processing
19 documentation that had scripting in it because how
20 we handle certain calls changed when we filed for
21 Chapter 11. I am aware of that.

22 Q. Okay. Let me try to unpack that because I
23 don't know if I understood it. You provided call
24 processing information, what did you provide?

25 A. I'll give you one example. So the way we

1 would process a customer credit changed after we
2 filed. Back up.

3 The way we process a credit request
4 from a customer changed after we filed for
5 bankruptcy.

6 Q. Okay.

7 A. So as a result of that we provided
8 information to the front line agents to enable them
9 to process those calls in the new environment.

10 Q. Okay. Did you provide any information
11 specific to the bankruptcy, you know, why
12 Windstream, why they filed or what they thought or
13 what they predicted the outcome will be, anything
14 like that to the call center employees?

15 A. I did not provide that information.

16 Q. Are you aware of any new information being
17 provided to call center employees on those topics?

18 A. I don't recall anything being provided.

19 Q. When did you first hear that Windstream
20 had either filed bankruptcy or was going to file
21 bankruptcy?

22 A. I don't recall the exact date.

23 Q. Okay. Does February or March of this year
24 sound right?

25 A. It was in February.

1 Q. Did you know before they filed or after
2 they filed?

3 A. I don't recall specifically if I was told
4 we were going to file. I just don't recall.

5 Q. Okay. Had you heard any rumors that
6 Windstream was going to file for bankruptcy before
7 they filed?

8 A. Yes.

9 Q. Did you as part of your review whether
10 listening to ten calls a day that you talk about or
11 otherwise have input on how your call centers should
12 respond to questions about the Windstream bankruptcy
13 at any point in time?

14 A. Not immediately after the filing.

15 Q. Okay. At what point did that change?

16 A. When Charter sent out the false
17 advertisement.

18 MR. NEPPLE: Move to strike that.

19 Argumentative but go ahead.

20 BY MR. NEPPLE:

21 Q. Did you provide any messaging whether it's
22 a script or talking points or guidance whatsoever on
23 how your call center employees should deal with or
24 respond to questions specific to the letter that
25 Windstream sent out regarding the filing of their

1 bankruptcy?

2 MS. LOCKHART: Objection.

3 THE WITNESS: I did not provide anything
4 and to my recollection. My team didn't provide
5 anything either.

6 BY MR. NEPPLE:

7 Q. Are you aware of anyone else providing
8 that to your call center employees?

9 A. I may have been aware of one point, but I
10 don't recall anything specific.

11 Q. Okay. Did you personally receive a copy
12 of the Windstream letter and notice from the
13 bankruptcy court regarding Windstream's bankruptcy
14 filing?

15 A. Yes, I believe I did.

16 Q. Okay. Do you have a stock ownership in
17 Windstream?

18 MS. LOCKHART: Objection, relevance.

19 BY MR. NEPPLE:

20 Q. You can go ahead and answer.

21 A. I do not.

22 Q. No stock ownership either in 401K or
23 otherwise?

24 A. I don't know for -- I don't think I have
25 any in my 401K.

1 Q. Is any of your compensation tied to
2 Windstream's financial performance other than the
3 continuing existence of Windstream?

4 A. Yes.

5 Q. How does that work?

6 A. I receive a salary. I also receive a
7 short term incentive or I'm eligible for a short
8 term incentive bonus as provided in cash and then I
9 have a long term incentive structure that is also
10 provided in cash.

11 Q. Okay. And what's the short term? Yearly?

12 A. No, not know. Now it's quarterly.

13 Q. I'm sorry?

14 A. Not now. Now it's quarterly.

15 Q. What's the long term?

16 A. It is granted annually. In some cases at
17 best quarterly.

18 Q. Have you reviewed at any point in time any
19 call transcripts from your call center employees
20 where the issue of Windstream's bankruptcy arose?

21 A. Yes.

22 Q. What did you do then?

23 MS. LOCKHART: Objection. Can we just
24 stipulate to a running objection related to the
25 bankruptcy specifically.

1 MR. NEPPLE: I don't know what --

2 MS. LOCKHART: On relevance grounds.

3 MR. NEPPLE: Sure. You can have a
4 relevance objection.

5 THE WITNESS: Have I answered?

6 MR. NEPPLE: No, you have not answered the
7 question.

8 Can you read back the question?

9 (Whereupon the Court Reporter read the
10 previous question.)

11 THE WITNESS: Yes, I reviewed some --
12 certainly reviewed some transcripts where the
13 bankruptcy came up. I'm sure I took action, but I
14 don't recall any specific action.

15 BY MR. NEPPLE:

16 Q. Did you review that as an ordinary course
17 of your responsibilities or as part of your
18 preparation for this deposition?

19 A. I reviewed some in the ordinary course of
20 my responsibilities.

21 Q. Did you see statements that call center
22 employees were making to Windstream customers
23 regarding Windstream's bankruptcy?

24 A. Yes.

25 Q. And do you recall seeing statements

1 similar to, Windstream is not going out of business,
2 Windstream is going to continue unevaded, do you
3 review call statements like that?

4 MS. LOCKHART: Objection, foundation.

5 THE WITNESS: Yes, I did.

6 BY MR. NEPPLE:

7 Q. Okay. Do you know where that information
8 how that information came into the possession of the
9 Windstream front line call center employees?

10 A. I do.

11 Q. Okay. How? What's your recollection?

12 A. We had some scripting, again, associated
13 with the new call handling environment that we were
14 in by virtue of the filing that contained some of
15 that information. At least to the best of my
16 recollection it did.

17 Q. Okay. Is there any source of information
18 related to the Windstream bankruptcy for your call
19 center employees other than the scripting
20 information that you just discussed?

21 A. I'm not aware of anything.

22 Q. Okay. As you sit here today, what's your
23 recollection of what the scripting was for the
24 customers who raised the issue of Windstream's
25 bankruptcy?

1 A. Generally speaking, that we were still on
2 firm financial footing and had sufficiently
3 liquidity to see through the bankruptcy.

4 Q. And how did -- how was that -- strike
5 that.

6 What was the source of those
7 statements or those predictions?

8 A. I don't know.

9 Q. Did you review them before they went to
10 the call center employees?

11 A. I don't recall doing that.

12 Q. Was it provide by in-house legal?

13 A. I don't know.

14 Q. You have no idea of the source of the
15 information that was provided to the call center
16 employees on how to address Windstream's bankruptcy?

17 A. I was not involved in those discussions so
18 I just can't say with any degree of certainly where
19 they came from.

20 Q. Okay. Well, whether it's any degree of
21 certainty or not, do you have any suspicion, any
22 idea, any belief of where those talking points or
23 scripting came to get into the possession of the
24 front line call center employees?

25 A. Generally speaking, this was a corporate

1 initiative that was handled by corporate support
2 employees that I was not involved in.

3 Q. Okay.

4 A. Beyond that I really don't have any
5 working knowledge of it.

6 Q. Okay. When you say it's handled by
7 corporate and corporate support employees, who is
8 that?

9 A. Our public relations department, general
10 counsel, legal.

11 Q. So it's your understanding or your belief
12 that the source of the information or prediction
13 that Windstream's call center employees were to
14 transmit to Windstream's customers regarding
15 Windstream's Chapter 11 bankruptcy filing came from
16 general counsel, in-house legal and the public
17 relations group?

18 A. Yes.

19 Q. Did you ever review the letter that you
20 received from Windstream with it's Chapter 11 notice
21 from the bankruptcy court?

22 MS. LOCKHART: Objection, assumes facts
23 not in evidence. Foundation.

24 THE WITNESS: It was mailed to me and I
25 read it.

1 BY MR. NEPPLE:

2 Q. Okay.

3 A. Not in detail.

4 Q. Okay. Did you at any time ever look at
5 scripting developed by PR, in-house legal or GC
6 regarding the opinions or predictions on the future
7 of Windstream and say, that's not accurate?

8 A. No.

9 Q. So if a call got elevated to your level
10 whether it's one of the ten that you review a day or
11 in any other sort of form and you saw or heard one
12 of your customer service employees tell a Windstream
13 customer that Windstream has filed for bankruptcy
14 but it's not going anywhere and it's going to be
15 able to continue on moving forward you would have no
16 objection to that statement?

17 MS. LOCKHART: Objection, misstates his
18 testimony.

19 BY MR. NEPPLE:

20 Q. Go ahead.

21 A. I would have no objection to that call
22 being handled that way.

23 Q. In any of the transcripts that you
24 reviewed of Windstream customers regarding
25 Windstream's filing of Chapter 11 bankruptcy, did

1 you see where the customers expressed either concern
2 or uncertainty regarding Windstream's future?

3 A. Yes.

4 Q. And in response to their concerns about
5 Windstream's future based upon the receipt of the
6 information from Windstream that it had filed for
7 bankruptcy, you didn't have a problem with
8 Windstream front line call center employees saying,
9 don't worry Windstream is going to be here in the
10 future, no problems?

11 MS. LOCKHART: Objection, misstates his
12 testimony.

13 THE WITNESS: I wouldn't have any problem
14 with that call being handled that way.

15 BY MR. NEPPLE:

16 Q. Okay. Do you think it's reasonable or
17 anticipated that a Windstream customer who gets the
18 Windstream notice from -- letter -- strike that.

19 Do you think it's reasonable or
20 anticipated that a Windstream customer who gets the
21 Windstream letter and notice from the bankruptcy
22 court would be concerned about the future of
23 Windstream when they see bankruptcy?

24 MS. LOCKHART: Objection. Counsel, can we
25 go off the record?

1 MR. NEPPLE: Sure.

2 (Off the record discussion.)

3 MR. NEPPLE: You can't have it both ways.
4 He's either a fact witness and I can ask him what
5 facts he knows or he's a corporate designee. My
6 understanding is he's not a corporate designee so
7 he's a fact witness.

8 MS. LOCKHART: Your understanding is
9 correct, he is not a corporate designee.

10 MR. NEPPLE: Okay.

11 MS. LOCKHART: But we offered him
12 specifically for topics related to the call center.
13 I am saying now on the record that this line of
14 questioning is irrelevant as the judge has held on
15 multiple occasions that what Windstream has done
16 related to its own bankruptcy is irrelevant to what
17 Charter did with respect to Windstream's bankruptcy.

18 MR. NEPPLE: Okay. I understand your
19 objection.

20 MS. LOCKHART: So it's -- the stipulation
21 to continue this objection is ongoing with respect
22 to this line of questioning.

23 MR. NEPPLE: I understand. You have a
24 relevancy objection to the continuing of questions.

25 Read back the question, please.

1 (Whereupon the Court Reporter read the
2 previous question.)

3 THE WITNESS: That would be a reasonable
4 response.

5 BY MR. NEPPLE:

6 Q. When those people, those Windstream
7 customers mentioned that concern, did you log that
8 in your call logs at any place or is it just
9 recorded, right?

10 A. It's recorded.

11 Q. Yeah.

12 A. And in some cases logged.

13 Q. Okay. Tell me what is logged versus
14 recorded? I'm assuming -- strike that.

15 My understanding is every call is
16 recorded, correct?

17 A. Yes.

18 Q. Okay. What is logged and who has the
19 discretion on what to log?

20 A. The agent should --

21 MS. LOCKHART: Objection.

22 MR. NEPPLE: Go ahead. She is going to
23 make an objection. Go ahead.

24 MR. LOCKHART: Objection, compound. You
25 can answer.

1 THE WITNESS: The agents are trained to
2 make notes on the account that are relevant to the
3 call they process and in some cases the information
4 in the question you asked would be logged there.

5 BY MR. NEPPLE:

6 Q. Okay. Did you provide any guidance to
7 those agents that say, if the customer mentions our
8 bankruptcy you must log it or is it in their
9 discretion?

10 A. I did not provide that sort of information
11 or set that expectation personally. I'm unsure if
12 members of my team did.

13 Q. Okay. Whether you are unsure whether
14 members of your team or whatever source, are you
15 aware of any instruction to the front line call
16 center employees that if they mention the Windstream
17 Chapter 11 bankruptcy that they are to log it?

18 A. We did establish a process to identify
19 those calls and log those calls.

20 Q. Okay. What was that process?

21 A. It was a process we established in some of
22 the centers that I manage to provide that sort of
23 location to a centralized resource.

24 Q. Okay. You have to unpack that for me.
25 What do you mean, provide that information to a

1 centralized resource?

2 A. Provide the information meaning in the
3 question you asked customers that were calling in
4 unsettled about the bankruptcy -- we established a
5 process for customers that were calling in and were
6 unsettled about the advertisements they received in
7 the mail from Charter to log those calls in an
8 effort to understand what our customers were going
9 through so that we can provide the information to
10 the front line for them to be able to process those
11 calls.

12 Q. Okay. That wasn't my question.

13 My question was: Did you provide
14 that same guidance to the same people regarding
15 customers who were unsettled by the receipt of the
16 notice of bankruptcy and the cover letter from
17 Windstream?

18 A. No.

19 Q. Okay. So you only sought to capture the
20 impact of Charter 's advertisement and did not seek
21 to capture the impact of Windstream's own letter and
22 the notice of bankruptcy from the court?

23 A. Yes, and we did that because the notice of
24 bankruptcy was not a meaningful call driver event
25 for us.

1 Q. Okay. And I understand that, but let me
2 just make sure I'm clear. You put no processes in
3 place to capture any callers who made calls to your
4 call centers regarding Windstream's cover letter and
5 the notice of bankruptcy, yes or no?

6 MS. LOCKHART: Can we go off the record
7 real quick?

8 THE COURT REPORTER: Counsel?

9 MS. LOCKHART: I'm sorry, withdraw the
10 objection. That's my mistake.

11 THE WITNESS: Can you restate the
12 question? I just want to make sure I answered it
13 the right way, yes or no?

14 THE COURT REPORTER: Read it back?

15 MR. NEPPLE: Yes.

16 THE WITNESS: Yes, please.

17 (Whereupon the Court Reporter read the
18 previous question.)

19 THE WITNESS: Yes, that is an accurate
20 statement.

21 BY MR. NEPPLE:

22 Q. I am correct you put no processes. I'm
23 trying not to confuse you and I am asking horrible
24 questions.

25 There are no processes put in place

1 to capture the caller uncertainty regarding the
2 Windstream cover letter and notice of bankruptcy,
3 correct?

4 A. Correct, none that I'm aware of.

5 Q. Okay. In your review of call logs or
6 recorded calls with Windstream customers, did you
7 see any call logs -- strike that.

8 In your review of call logs with
9 Windstream customers, did you see any of those
10 customers who were concerned about the notice of
11 bankruptcy and cover letter they received from
12 Windstream?

13 A. I don't recall that specifically, no.

14 Q. Okay. Are you familiar with an entity
15 called KCC?

16 A. Yes.

17 Q. What's your understanding of KCC?

18 A. They provide some ongoing support during
19 the bankruptcy process for us. That's extent of it.

20 Q. Okay. Was there any process that you put
21 in place or a process that you are aware of that of
22 the issue of Windstream's bankruptcy came up you
23 were to refer them to KCC and a KCC phone number?

24 A. Yes. I have some recollection of that,
25 but I don't recall the specifics of what those were.

1 Q. Okay. And your recollection is?

2 A. Vague, it's vague. That there was a
3 number that was established and there was some types
4 of calls that we were attempting to push in that
5 direction.

6 Q. Okay. Push in that direction meaning
7 being pushed to KCC?

8 A. That's correct.

9 Q. Okay. So based on your experience and
10 understanding, would it be a fair statement to say
11 that questions or concerns or uncertainties
12 regarding Windstream and the Windstream notice of
13 bankruptcy and cover letter were as a general matter
14 pushed to KCC while issues related to the Charter
15 advertisements were logged and captured by your
16 team; is that a fair statement?

17 A. No, it's not.

18 Q. Okay.

19 A. I don't have a specific enough
20 recollection in terms of what KCC was even charged
21 with doing or handling or any of that.

22 Q. Okay. You did testify just a couple of
23 minutes ago that it was your understanding that KCC
24 was assisting with the bankruptcy, correct?

25 A. Yes.

1 Q. And certain calls were kicked to KCC from
2 your call centers, correct?

3 A. I have a vague recollection of that.

4 Q. Okay.

5 A. I don't --

6 Q. And you're testifying that you don't have
7 an understanding of why certain calls were kicked to
8 KCC?

9 A. That is my testimony, yes.

10 Q. Okay. I just wanted your understanding.
11 You understand there were calls kicked to KCC, but
12 you are testifying that you don't know the
13 circumstances of why they would have been kicked the
14 KCC; is that fair?

15 A. A more accurate representation would be
16 that I don't recall what those were.

17 Q. Okay. Did you recall at one time and
18 don't recall now?

19 A. That's accurate.

20 Q. Okay. And since you said you did recall
21 at one time, what was the source of your knowledge
22 at that time, was it some directive from corporate,
23 was it some policy, how did that -- how did you at
24 one time have the knowledge that you can't tell me
25 about now?

1 A. It was something I read. I don't recall
2 the source.

3 Q. Okay.

4 MR. NEPPLE: Can you read that answer
5 back, please.

6 (Whereupon the Court Reporter read the
7 previous answer.)

8 BY MR. NEPPLE:

9 Q. Something internal to Windstream?

10 A. I don't recall.

11 Q. Okay. Did you ever read the Windstream
12 annual report or quarterly reports filed with the
13 government?

14 A. I've read portions of those in the past.

15 Q. Do you recall as you sit here any
16 statements that Windstream made to the government
17 regarding the Chapter 11 bankruptcy?

18 A. Can you repeat that, please.

19 Q. Sure. As you sit here today, do you
20 recall any portions of the filings that you read
21 that you recall relating to the Chapter 11
22 bankruptcy issue?

23 A. No.

24 Q. Okay. All right. Moving on to the
25 Spectrum ads or Spectrum mailer, if I say just

1 Spectrum adds, you know what I'm talking about here?

2 A. Yes.

3 Q. Okay. When did you first become aware of
4 the Spectrum adds?

5 A. March 20th.

6 Q. Okay. What was the source of that
7 knowledge?

8 A. One of my team members informed me of a
9 call that we took related to those advertisements.

10 Q. Okay. And were you -- what did you do in
11 response to that knowledge?

12 A. I don't recall the specific action I took,
13 not right afterwards.

14 Q. Okay. Did you go about trying to secure a
15 copy of the add, did you go review the transcript of
16 that specific call, did you talk to the front line
17 person; do you recall any of that?

18 A. Yes to all of those.

19 Q. Okay. At some point were you asked in
20 your position to develop and capture information
21 from Windstream customers relating to the Spectrum
22 add?

23 A. Yes.

24 Q. Okay. I'm talking specifically about the
25 Spectrum adds that are at issue in this lawsuit, not

1 just a general day to day Spectrum add but the ones
2 that are at issue in the complaint?

3 A. Yes, I do know what you are talking about.

4 Q. Okay. I just want to make sure we are
5 clear that we are not talking about generic day to
6 day Spectrum adds. Who asked you to capture the
7 information related to the Spectrum adds at issue in
8 this case?

9 A. Nobody asked me specifically, as I recall,
10 but in a general sense it was our legal department
11 that asked us to keep a log.

12 Q. Okay. Did you have a role in developing
13 that log?

14 A. Not a personal one. It was a member of my
15 team that developed the process.

16 Q. Okay. Did you review the log before it
17 went to your front line employees?

18 A. I did not.

19 Q. Are you aware of any changes to that log
20 from the time you first learned about the Spectrum
21 adds at issue in this case until now?

22 A. The process we implemented to capture the
23 activity by and large it did not change.

24 Q. Okay. And what was the process that
25 you -- strike that.

1 What was the process that you are
2 aware of?

3 A. In some of our centers we instructed the
4 agent to email a member of my team when they
5 encountered one of these calls. We had specific
6 information that we asked them to capture in the
7 email and then that went to a resource on my team
8 who converted that information into a log on an
9 Excel spreadsheet.

10 Q. Okay. Your answer had three subpoints
11 here. Let me see if I can understand it. You said
12 some of the centers got that instruction; why didn't
13 all of the centers get that instruction?

14 A. Because that sort of activity is a
15 distraction to agents and the efforts that we
16 undertook were not an effort to quantify the
17 activity, it was an effort to understand what our
18 customers were going through so that we can arm the
19 agents with the information they needed to better
20 process the calls.

21 Q. Okay. I guess I don't understand that
22 answer. Let me see what I can get. I'm going to
23 try again.

24 Why did you not tell every call
25 center? I'm not understanding your answer.

1 A. In the call center environment, really any
2 production environment, the amount of time that it
3 takes to process a transaction is important and when
4 you interject some additional process or
5 documentation requirement into that, you inevitably
6 drive up the average handle time thereby driving
7 down your efficiency.

8 Since this was not a quantification
9 effort and we were only attempting to understand
10 what our customers were going through we made the
11 decision to not deploy this process everywhere
12 because to get an understanding of the type of
13 information we were trying to secure here and what
14 we were trying to do that would have been
15 unnecessary.

16 Q. I see. So it is a fair statement to say
17 that you tasked certain call centers with trying to
18 get an understanding of what's going on in the
19 background?

20 A. That would be an accurate statement.

21 Q. Okay. Is it a fair statement to say you
22 still continue to record every call and every call
23 for the 60 days or however long your hold time is
24 could be searched for certain specific terms whether
25 its Charter, Charter add, bankruptcy, whatever;

1 correct?

2 A. Nothing changed with the call recording,
3 we did not change anything there. We do not have
4 the ability to search calls.

5 Q. You don't have the ability to search
6 calls?

7 A. That is correct.

8 Q. Do you know how certain transcripts were
9 produced in this case of calls to the call center?

10 MS. LOCKHART: Objection. Attorney-work
11 product.

12 THE WITNESS: Do I need to answer?

13 MS. LOCKHART: You can answer.

14 THE WITNESS: Can you restate the
15 question?

16 MR. NEPPLE: Read it back.

17 (Whereupon the Court Reporter read the
18 previous question.)

19 THE WITNESS: I did not provide those. I
20 don't know exactly how those were produced.

21 BY MR. NEPPLE:

22 Q. Okay. Do you have any recollection
23 whether you have complete knowledge or partial
24 knowledge or have a hint or a suspicion or whatever
25 level that you want to clarify it with on how

1 Windstream was able to produce transcripts of calls
2 to the call centers involving Charter adds?

3 A. Yes. My suspicion is we just simply took
4 the calls that were logged and went and listened to
5 those and provided a transcript or somebody did.

6 Q. Okay. So if it's been represented that
7 calls, recorded calls were searched, that is not
8 accurate; you would agree with that?

9 A. Yes, I would agree with that. We don't
10 have the ability to search.

11 Q. Okay. So what logging is done with
12 respect to Charter adds, is there a drop down box,
13 is there just a caller notes of your front line
14 employee, is there a click box, how is that retained
15 or stored?

16 A. The process that we put in place in some
17 of our centers were for agents that received calls
18 pertaining to these advertisements, they were to
19 email a member of my team who took the information
20 contained in the email and converted it into a log
21 on an Excel spreadsheet. That was the possess.

22 Q. Okay. So if a front line call center
23 employee, the issue of the Charter add is raised,
24 that employee was to email a member of your team and
25 then a spreadsheet was created from that

1 interaction, correct?

2 A. That is correct.

3 Q. Okay. Were your employees, call center
4 employees directed to discuss the Charter add, were
5 they provided talking points or a script or any
6 other mandatory or optional ways of handling that
7 issue?

8 A. Yes, my team was provided with that sort
9 of information.

10 Q. Okay. What information were they
11 provided?

12 A. Talking points to help them process the
13 calls.

14 Q. Okay. Anything else?

15 A. Some scripting. We had talking point and
16 scripting, as I recall.

17 Q. Okay. And as I understand the terms, tell
18 me if I'm wrong, the talking points are just like
19 bullet points, A, B and C; we want to communicate
20 these three topics. The scripting is we want you to
21 essentially read or paraphrase what's in the script;
22 is that a fair summary?

23 A. That's fair.

24 Q. And you recall both, talking points and
25 scripting to address the Charter adds?

1 A. Yes. I would characterize that we had
2 talking points and I think a few of the bullets were
3 actual like italicized scripts that, you know, the
4 agent could lean on if they got tongue tied on a
5 call.

6 Q. Some sort of conglomeration of the two,
7 the bullet points and script?

8 A. Yes.

9 Q. Okay. Did that go to just the subgroup
10 that you routed calls to or from or did that go out
11 to all the call centers you mentioned?

12 A. It went out to all my call center
13 employees.

14 Q. Okay. Were your call center employees
15 empowered to deviate from let's call it bullet
16 points or script or a conglomeration, were they
17 empowered to deviate from what was provided to them?

18 A. Yes.

19 Q. How could they deviate from what was
20 provided to them?

21 A. In a number of different ways. To
22 summarize, they would ask clarifying questions, open
23 ended questions, things of that nature to get to the
24 heart or the reason for the call and then respond
25 appropriately based on the information they had been

1 provided and the training they received.

2 Q. As you sit here today, can you recall
3 looking at any transcript of calls from your front
4 line employees where your front line employees made
5 the representation that the Charter adds were
6 illegal?

7 A. I don't recall that, no.

8 Q. As you sit here today, based upon your
9 review of any of the transcripts of front line
10 employees, do you recall whether front line
11 employees told Windstream customers that Charter was
12 illegally using quote, our colors, unquote?

13 A. I don't recall reviewing any transcript
14 with that sort of response.

15 Q. Shifting gears a little bit, is it a fair
16 statement to say that when a Windstream customer
17 calls in and they are thing about disconnection that
18 you are going to make them at least an offer whether
19 it's increased speed or lower cost?

20 A. Yes.

21 Q. Okay. So if they pick up the phone and
22 they are concerned about disconnection, they are
23 going to get a better deal whether it's greater
24 speed or something else, they are going to get a
25 better deal than what they have right now; is that a

1 fair statement?

2 A. I wouldn't say that's a fair statement,
3 not as blanket statement, but in most cases we are
4 able to do something to make the situation better.

5 Q. The vast majority; is that fair?

6 A. Yes.

7 Q. More than half?

8 A. Yes.

9 Q. Okay. More than 90 percent?

10 A. I would be speculating.

11 Q. Okay. I understand. What would be a
12 circumstance where you can't offer increased speed
13 or decreased cost?

14 A. On the speed side, if they are already at
15 the maximum available speed, we obviously can't
16 increase their speed; and on the price side, if they
17 are at basement pricing structure.

18 Q. Okay. So you have a rear guy -- strike
19 that.

20 If you have a rear customer who is at
21 max speed and what you consider to be low cost, you
22 are not going to be able to help that customer?

23 A. We cannot help customers that are at their
24 max speed or at their lowest, our lowest available
25 price. I would not necessarily characterize it at

1 rather.

2 Q. Okay. Do you keep a metric on how long
3 you keep a Windstream customer on average?

4 A. I don't keep that.

5 Q. Okay. Are you aware of a metric kept on
6 how long you keep a Windstream customer on average?

7 MS. LOCKHART: Objection, relevance.

8 THE WITNESS: I think our marketing
9 department keeps that. It's not something I see
10 that regular.

11 BY MR. NEPPLE:

12 Q. Are you aware of what the number is?

13 A. I'm not.

14 Q. Okay. Would you agree it's a fair
15 statement to say that Windstream may emerge from the
16 bankruptcy?

17 A. Yeah, that's fair.

18 Q. Do you believe it's a fair statement to
19 say that Windstream may not emerge from the
20 bankruptcy?

21 A. I don't know. The information I have been
22 provided tells me that we are going to emerge and
23 that's my understanding of how the process works.

24 BY MR. NEPPLE:

25 Q. Is it fair statement to say that

1 Windstream may emerge from the bankruptcy, but may
2 not emerge in all the areas in all the markets in
3 all the services that it provided before the
4 bankruptcy?

5 A. I have no idea.

6 (Defendant's Exhibit No. 1, CALL TRANSCRIPT,
7 was marked for identification.)

8 BY MR. NEPPLE:

9 Q. I'll show the what the court reporter has
10 marked as Exhibit One that's what has been provided
11 to us in discovery. Take your time and read it and
12 I'm going to ask you a few questions and I can point
13 you to the page or you can take your time and read
14 the whole thing.

15 A. I prefer you point me to the page.

16 Q. We are going to start on 728 starting at
17 the bottom half, why don't you take a moment to read
18 it from there to the end of the page.

19 A. Okay.

20 Q. Okay. You see on 728 the middle of the
21 page the customer who was called this says, quote,
22 well, I just got a letter in the mail from -- strike
23 that.

24 Well, I just got a letter in the mail
25 about Windstream filing for Chapter 11 bankruptcy;

1 do you see that?

2 A. I do see that.

3 Q. Okay. Do you see later down starting on
4 line 18 the associates' response which continues on
5 to page 729?

6 A. I do see that.

7 Q. Okay. And the response and I'm not going
8 to read it into the record, we can all see what it
9 is, but the response basically on lines 18 to 25 is
10 consistent with the either bullet point messaging or
11 script or combination that you provided to your
12 front line employees?

13 MS. LOCKHART: Objection, misstates his
14 testimony.

15 BY MR. NEPPLE:

16 Q. You can go ahead.

17 A. Yeah, I would say that the associate's
18 response starting on line 18 through line eight of
19 the next page is generally in line with the talking
20 points that I recall being provided after the
21 Spectrum adds went out.

22 Q. Okay. And you see on line 23 you see the
23 prediction, we are not going under?

24 A. I do see that.

25 Q. You see the prediction on lines 24 and 25,

1 nobody is going to experience any difference in
2 their services; do you see that?

3 A. I do see that.

4 Q. Okay. And that's consistent with the
5 messaging that you provided to front line employees,
6 correct?

7 A. Correct.

8 Q. Okay. Turn to page 735, and again, you
9 are free it to read all you want but I'm going to
10 ask you questions starting around line 20 through
11 about line six of the next page.

12 A. Do you have a question pending for me?

13 Q. Are you done reviewing?

14 A. Yes.

15 Q. Okay. Sorry. Do you see on page 735
16 starting on line 20 where the customer says, quote,
17 and I also got a notice from a competitor saying,
18 internal quotes, hey, you ought to switch because,
19 you know, they are probably going out the business,
20 end of quotation. Did I read that accurately?

21 A. Yes.

22 Q. And this would be different than the
23 Chapter 11 notice, this would be the Spectrum add
24 that we discussed earlier in your testimony,
25 correct?

1 A. Yes.

2 Q. Okay. Because your associate says, is it
3 Spectrum? The customer says, yes. Correct?

4 A. Yes.

5 Q. Okay. Turn the page 736, do you see where
6 your front line associate says, quote, and I'm going
7 to pick it up in the middle of the sentence, line
8 three, quote, we are trying to have that stopped
9 because that's illegal. They are using our colors,
10 our an envelop that looks like it's coming from
11 Windstream and it's not.

12 Did I read that accurately?

13 A. Yes.

14 Q. Did you see the statement that the
15 associate says that it's illegal?

16 A. I do see that.

17 Q. Okay. Is that consistent with the
18 messaging that was provided to the front line
19 associates?

20 A. Not to my recollection.

21 Q. Would you want your front line associates
22 to make a blanket statement on whether conduct is
23 legal or illegal?

24 A. No.

25 Q. You would not have wanted them to do that,

1 correct?

2 A. That is correct.

3 Q. Okay. I am correct then. Did the
4 statement of our colors, are you aware of what the
5 front line associate is claiming to be, quote, our
6 colors, end quote?

7 A. To me that refers to the color we use four
8 our kinetic brand.

9 Q. What are those colors?

10 A. I would characterize it as a color pallet
11 and I remember different colors in it, but it's
12 easily recognizable.

13 MS. LOCKHART: Can we take a break?

14 MR. NEPPLE: Sure.

15 (A recess was taken.)

16 BY MR. NEPPLE:

17 Q. Picking up where we left off, I was
18 directing your attention to the statement regarding,
19 quote, they are using our colors, unquote, on page
20 Windstream 736. Do you see that?

21 A. Yes.

22 Q. Was the statement, they are using or
23 colors, part of the information provided to your
24 front line employees?

25 A. Not that I recall.

1 Q. Okay. And your interpretation of our
2 colors would be the pink to purple pallet that we
3 discussed earlier?

4 A. Yes.

5 Q. Okay. And you are aware that there are
6 other companies that use pink to purple pallets,
7 correct?

8 MS. LOCKHART: Objection. Calls for legal
9 conclusion.

10 THE WITNESS: I'm not aware of other
11 companies that use our color pallet to market their
12 services.

13 (Defendant's Exhibit No. 2, SPREADSHEETS, was
14 marked for identification.)

15 BY MR. NEPPLE:

16 Q. Sir, I'll show you what the court reporter
17 marked as Exhibit Two. I'll let you look at that
18 and I'll ask you a couple of questions about it.

19 A. Okay.

20 Q. Is that the spreadsheet that you discussed
21 earlier in your testimony that was create from some
22 of the call centers?

23 A. It is not.

24 Q. Okay. Do you recognize what Exhibit Two
25 is then?

1 A. I do recognize it.

2 Q. Okay. Can you identify what it is?

3 A. This is a document I saw yesterday that
4 looks like it was derived from the call log that we
5 kept.

6 Q. Okay. And across the top there are
7 obviously column entries, number, date of call,
8 account number, et cetera. A couple of questions,
9 one is, type of contact; do you see that?

10 A. Yes.

11 Q. And one of those is tweet, correct?

12 A. Yes.

13 Q. Okay. So you also respond to tweets in
14 addition it to calls, emails, U.S. mail?

15 A. Yes.

16 Q. Okay.

17 A. I mean, I do not personally respond to
18 tweets.

19 Q. I understand. Windstream responds to a
20 tweet or at least it did on that occasion?

21 A. I'm not personally familiar with this one,
22 no.

23 Q. Okay, that's fine. I just want to make
24 sure I am understanding what this is.

25 Call pulled question mark. Is that

1 going back, does that mean going back and pulling
2 the recording of that call?

3 A. I'm not certain.

4 Q. Okay. And customer care screen shot,
5 what's that to your knowledge?

6 A. I'm not certain what that is either
7 exactly.

8 Q. Okay. When you say what you see as
9 Exhibit Two was derived from your spreadsheet, what
10 is in your spreadsheet that's not shown in Exhibit
11 Two?

12 A. I don't have enough specific recollection
13 of that to be able to compare the two off memory.

14 Q. Okay. Would there be additional data
15 columns?

16 A. I don't know.

17 Q. Would there be additional accounts?

18 A. I don't know.

19 Q. Okay. Can you explain what the purpose of
20 Exhibit Two was?

21 A. It's not -- again, I'm not familiar with
22 this. I saw this yesterday for the first time.

23 Q. Okay.

24 A. So I'm not sure of the purpose of this
25 particular document, no.

1 Q. Okay.

2 (Defendant's Exhibit No. 3, CALL TRANSCRIPT,
3 was marked for identification.)

4 BY MR. NEPPLE:

5 Q. Sir, I'm showing you what the court
6 reporter has marked as Exhibit Three, which is Bates
7 number Windstream 927 through 930. You are welcome,
8 again, to read the entire document, but I'm going to
9 ask you questions on page 929.

10 A. Okay.

11 Q. Okay. Turning to page 929 lines six
12 through ten, this is a customer calling in and says,
13 in addition to that we just received a flier from
14 Spectrum that tells us and I just confirmed that,
15 that they can give her unlimited long distance and
16 her monthly bill will only be \$10 a month.

17 Did I quote that accurately?

18 A. You did.

19 Q. Okay. That is just competition based on
20 price; is there any indication in this transcript
21 and you are welcome to look at the whole thing that
22 this is regarding the Charter add at issue?

23 A. Okay, I've read it.

24 Q. Okay. Do you see anywhere in there
25 indicating that it's the Charter add at issue as

1 opposed to just Charter offering a better financial
2 deal?

3 MS. LOCKHART: Objection, form.

4 THE WITNESS: No. I see the primary drive
5 of this call to be a price concern on the part of
6 customer. Nothing else.

7 BY MR. NEPPLE:

8 Q. Okay.

9 (Defendant's Exhibit No. 4, CALL TRANSCRIPT,
10 was marked for identification.)

11 BY MR. NEPPLE:

12 Q. Sir, I'll show you what the court reporter
13 has marked at Exhibit Four. It's Bates stamped
14 Windstream 1049 through 1054. Again, you are
15 welcome to read the entire thing, but I'm going to
16 ask you questions on pages 1051 and 1052.

17 A. Okay.

18 MS. LOCKHART: Sorry, you said what pages,
19 1051 and 1052?

20 MR. NEPPLE: Yes, 1051 and 1052.

21 THE WITNESS: Okay.

22 BY MR. NEPPLE:

23 Q. Do you see an page 1051 where your
24 associate is trying to drill down to the root cause
25 in line 20?

1 A. Yes, I see that.

2 Q. Okay. And the customer responds that
3 Chapter 11 was one of the reasons that that customer
4 wants to switch, correct?

5 A. Yes, I do see that.

6 Q. And you see on 1051 continuing and 1052
7 the customer drills down or -- strike that.

8 The associate drills down on lines 15
9 through 19, again, and goes back to the customer and
10 says, had we not sent you that letter, sir, would
11 you have stayed with us or would you have still
12 switched to Spectrum? And the customer responds, I
13 probably would have switched anyway.

14 Did I read that accurately?

15 A. Yes, you did.

16 Q. Okay. Would it be your interpretation of
17 this call log that this customer switched because of
18 the letter that they received from Windstream?

19 A. That's not the way I interpret it.

20 Q. Okay. Give me your interpretation,
21 please.

22 A. My interpretation, particularly of line 15
23 through 19, is that the reason they disconnected was
24 not primarily driven by the letter they received.

25 Q. Okay.

1 A. Because the customer states, I probably
2 would have switched anyways.

3 Q. And then the customer on line 23 says,
4 that was one reason, correct?

5 MS. LOCKHART: On the prior page?

6 MR. NEPPLE: Page 1051.

7 THE WITNESS: Yes, they stated that on
8 page 1051 line 23.

9 BY MR. NEPPLE:

10 Q. Okay. And do you have any reason to
11 believe that what the -- what is reported that the
12 customer stated on page 1051 or 1052 was
13 inaccurately transcribed?

14 A. I have not way of knowing that.

15 Q. Okay.

16 (Defendant's Exhibit No. 5, CALL TRANSCRIPT,
17 was marked for identification.)

18 BY MR. NEPPLE:

19 Q. Sir, I'll show you what the court reporter
20 has marked as Exhibit Five. It's Windstream 1502
21 through 1508. Again, the same request, I'm going to
22 ask you questions regarding the document most of
23 them are regarding pages 1505, but feel free to read
24 the entire document.

25 A. Okay.

1 Q. Okay. Do you see on page 1505 that the
2 customer is inquiring about Windstream being in
3 bankruptcy?

4 A. What line is that on?

5 Q. It's a continuation of the customer on
6 pages 1504 lines 22 through page 1505 line four.

7 A. Okay. I've read it. I can respond now.

8 Q. All right. So on 1504 the customer is
9 raising questions regarding Windstream's bankruptcy,
10 correct?

11 A. That is correct.

12 Q. Okay. And then on 1505 they say they have
13 a letter from Spectrum, correct?

14 A. That is correct.

15 Q. Okay. And then your associate responds,
16 yeah, Spectrum is sending those out illegally and we
17 have discussed that messaging previously, correct?

18 A. This is the first time I've seen this.

19 Q. Okay.

20 A. I'm not familiar with who Anna is so the
21 characterization that it is my agent, I can't attest
22 to that.

23 Q. Okay. Look, I understand. This has been
24 provided to us in discovery. I'll represent that
25 it's my understanding that it is a transcript of one

1 of your agents talking to one of your customers. So
2 based upon my representation --

3 A. Yes, it appears to be a Windstream agent
4 certainly talking to a Windstream customer.

5 Q. And I'm talking the first sentence here,
6 the first sentence I talked to you on page 1505
7 lines five and six, and we talked about this earlier
8 in your testimony where the associates says, yes,
9 Spectrum is sending those out illegally. You did
10 not want that messaging, correct?

11 A. That is correct.

12 Q. Okay. And then on lines 11 through 13 the
13 customer says, quote, it doesn't say that you are
14 shutting down. It just says, which means
15 uncertainty and I think that's a fair statement.
16 And your associates says, no, not really because.
17 And the customer comes back, bankruptcy does mean
18 uncertainty. Your associate says, okay, if you feel
19 that way, that's fine.

20 So the customer at least in the
21 customer's mind bankruptcy meant uncertainty and
22 that's what was reported to your agent, front line
23 agent?

24 A. Is there a question there?

25 Q. Was that what was reported to your front

1 line agent that the customer believed bankruptcy
2 means uncertainty?

3 A. This call transcript of the call reflects
4 that, yes.

5 Q. Okay. And do you agree with that
6 statement?

7 MS. LOCKHART: Objection, calls for
8 speculation.

9 THE WITNESS: I do not.

10 BY MR. NEPPLE:

11 Q. And why do you disagree with that
12 statement?

13 A. Based on what I know of the process that
14 would be an inaccurate characterization of the type
15 of filing that we are going through.

16 Q. Okay. You've worked with the kinetic line
17 for awhile, correct?

18 MS. LOCKHART: Objection, vague.

19 THE WITNESS: Can you be more specific?

20 BY MR. NEPPLE:

21 Q. Sure. What's the kinetic line?

22 A. The kinetic side of the business is our
23 consumer and small immediate business segment.

24 Q. Okay. And you've had some familiarity
25 with that?

1 A. Yes, I see -- that's the side of the
2 business that I work on today.

3 Q. Okay. And you've seen kinetic adds,
4 correct?

5 A. Yes.

6 Q. And you've seen kinetic adds using the
7 purple to pink or pink to purple color pallet,
8 correct?

9 A. Yes.

10 Q. How long has Windstream been using that
11 for its kinetic line?

12 MS. LOCKHART: Objection, this is
13 irrelevant. I need to show you -- we can go on the
14 record for this, but I need to show you this email
15 from your partner, your colleague. I need to find
16 it. Just give me a couple of minutes. What's his
17 name again? Kingston.

18 MR. NEPPLE: I'll make it easy, Counsel,
19 I'll just withdraw the question.

20 BY MR. NEPPLE:

21 Q. Do you know who Emmett Walker is?

22 A. I don't recall that name.

23 MR. LOCKHART: Is --

24 MR. NEPPLE: I have like five close out
25 questions here just to make sure he's not going to

1 come in to trial -- I'm entitled to ask the fact
2 witness these questions.

3 MR. SMITH: We never said he was coming to
4 trial, did we?

5 BY MR. NEPPLE:

6 Q. All right. Do you know who Emmett Walker
7 is?

8 MS. LOCKHART: Objection. Again, I need
9 to show you this email.

10 MR. NEPPLE: Okay. Is there some email
11 that says I can't ask who Emmett Walker is?

12 MS. LOCKHART: Yeah, actually, there is.

13 MR. NEPPLE: Okay.

14 MS. LOCKHART: Your partner agreed to only
15 speak to the call center recordings and the call
16 center related to Windstream Chapter 11 filing.

17 MR. NEPPLE: Okay. Show me the email. If
18 that's what the deal is, I am more than willing.

19 MS. LOCKHART: So we agreed --

20 MR. NEPPLE: Can you show me? I can read
21 the email.

22 MS. LOCKHART: That's the initial email to
23 not move to quash the deposition if we can limit it
24 to the certain topics and your partner agreed to do
25 so and we --

1 MR. NEPPLE: Okay, that's fine.

2 BY MR. NEPPLE:

3 Q. I don't have much left.

4 MR. NEPPLE: Actually, give me five
5 minutes to go over my notes. I don't have more than
6 five minutes left.

7 MS. LOCKHART: Okay.

8 (A recess was taken.)

9 BY MR. NEPPLE:

10 Q. I'm going to jump around a fill in a few
11 bases so if you don't know where I'm going just ask
12 me the questions of where I'm at, but the people
13 that called in that you were in the process of doing
14 I'll say a collection of information related to the
15 Spectrum mailer, okay, the Spectrum add, did you log
16 the outcomes of those calls?

17 In other words, can I look at any
18 sort of document that you have that someone called
19 in and you logged it and it has the email process,
20 sends an email to the team, a Spectrum add, is there
21 a log of the outcome of those interactions?

22 In other words, did we retain this
23 customer, did we not retain this customer?

24 A. That was not the purpose of what we were
25 doing so to the extent that exists I don't have

1 knowledge of that. That's not what we set out.

2 Q. I understand that's not what you set out.
3 The question is: Did you keep that metric?

4 A. Not to my knowledge.

5 Q. Okay. But could we recreate that metric
6 by just going and working our way backwards from the
7 customers where emails were sent to the special
8 person you had setup for the Spectrum add and we can
9 go back and we can look at those customer accounts
10 and we can just determine which of those left,
11 right, were not retained or retained?

12 A. That is possible.

13 MR. NEPPLE: Counsel, don't shake your
14 head no. In-house counsel, don't do that again or
15 I'm going to call the judge.

16 MR. SMITH: I did not shake my head no so
17 I disagree with that characterization. Please don't
18 try to direct me on what to do. I'll call the judge
19 too. I'm sure the Judge would be glad to talk to
20 us.

21 BY MR. NEPPLE:

22 Q. The same question but with respect to
23 those you may have retained, again, where you were
24 doing this email to the special person in the team,
25 did you keep a log of or can it be recreated on

1 whether you sold additional services to that
2 customer?

3 MS. LOCKHART: Objection. Assumes facts
4 not in evidence.

5 THE WITNESS: I'm not aware that we logged
6 that.

7 BY MR. NEPPLE:

8 Q. Could we recreate it?

9 A. I imagine it's possible.

10 Q. Okay.

11 MR. NEPPLE: I don't have any further
12 questions. I appreciate your time.

13 MR. RAPPORT: I have no questions.

14 MS. LOCKHART: I don't have any questions
15 either.

16 I have one question. Let me review my
17 notes real quick. I want to clarify something.

18 EXAMINATION

19 BY MS. LOCKHART:

20 Q. So you said that the calls with your
21 customers are recorded, correct?

22 A. Yes.

23 Q. Does the call center maintain transcripts
24 of those call recordings?

25 A. No.

1 MS. LOCKHART: No further questions.

2 MR. NEPPLE: No follow-up.

3 (The deposition concluded at 12:12 p.m.)

4 (The witness, after having been advised of
5 his right to read and sign this transcript, does not
6 waive that right.)

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A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO

Windstream Holdings, Inc., et al. vs
Charter Communications, Inc., et al.

Paul G Strickland Jr
September 20, 2019

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SIGNATURE OF DEPONENT

DEPONENT: PAUL G. STRICKLAND, JR.
DEPOSITION DATE: September 20, 2019
REPORTER: SOLANGE RUIZ-URIBE
CASE CAPTION: WINDSTREAM HOLDINGS, INC., ET AL. vs.
CHARTER COMMUNICATIONS, INC. AND CHARTER COMMUNICATIONS
OPERATING, LLC

(Please return both Signature of Deponent pages)

I, the undersigned, PAUL G. STRICKLAND JR., do
hereby certify that I have read the foregoing deposition
and find it to be a true and accurate transcription of
my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON
8	21	Strike "NO" and add Kathy Wiskow, Mollie Chewing and Nate Bradbury.	I spoke with these Windstream employees briefly about Windstream processes prior to my deposition

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Windstream Holdings, Inc., et al. vs
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Paul G Strickland Jr
September 20, 2019

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SIGNATURE OF DEPONENT (CONTINUED)

DEPOSITION DATE: September 20, 2019

REPORTER: SOLANGE RUIZ-URIBE

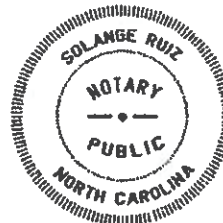
CASE CAPTION: WINDSTREAM HOLDINGS, INC., ET AL. vs
CHARTER COMMUNICATIONS, INC. AND CHARTER COMMUNICATIONS
OPERATING, LLC

PAGE	LINE	CHANGE	REASON
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Paul G. Strickland, Jr. 9/30/19

Paul G. Strickland, Jr. Date

I, Solange Ruiz-Urbe, Notary Public for the State of North Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent pages within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.



Solange Ruiz-Urbe
My Commission expires
March 7, 2022

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO

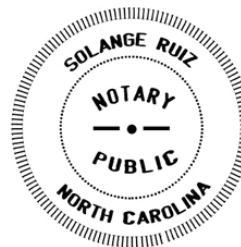


CERTIFICATE OF REPORTER

I, Solange Ruiz-Urbe, Notary Public for the State of North Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 20th day of September, 2019 at Charlotte, Mecklenburg County, North Carolina.



Solange Ruiz-Urbe
My Commission expires
March 7, 2022

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO

Windstream Holdings, Inc., et al. vs
Charter Communications, Inc., et al.

Paul G Strickland Jr
September 20, 2019

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I N D E X

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WITNESS EXAMINATION

PAUL G. STRICKLAND, JR.

4

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EXAMINATION

BY MR. NEPPLE

4

3

EXAMINATION

BY MS. LOCKHART

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SIGNATURE OF DEPONENT

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CERTIFICATE OF REPORTER

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REQUESTED INFORMATION INDEX

(No Information Index Requested)

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO



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A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CHAPTER 11 CASE NO. 19-22312 (RDD)

- - - - - /
In re:

WINDSTREAM HOLDINGS, INC., et al.,

Debtors,

WINDSTREAM HOLDINGS, INC., et al.,

Plaintiffs,

vs.

CHARTER COMMUNICATIONS, INC., and
CHARTER COMMUNICATIONS OPERATING, LLC,

Defendants.

- - - - - /

The videotaped 30(b)(6) deposition of
LATISHA TRUONG, in her capacity as designated
corporate representative for defendants, was taken
at the law offices of Wiggin and Dana, LLP,
Two Stamford Plaza, Stamford, Connecticut, before
Mercedes Marney-Sheldon, CT-LSR #530, a registered
professional reporter in the state of Connecticut
and a notary public for the State of Connecticut, on
Thursday, September 19, 2019, at 4:00 p.m.

1 oOo

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

3
4 REPRESENTING THE DEBTORS/PLAINTIFFS:

5 KATTEN MUCHIN ROSENMAN, LLP

6 2900 K Street NW

7 North Tower - Suite 200

8 Washington, D.C. 20007-5118

9
10 BY: MICHAEL R. JUSTUS, ESQ.

11
12
13
14 REPRESENTING THE DEFENDANTS:

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16 One US Bank Plaza

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18
19 BY: JOHN KINGSTON, ESQ.

20
21 BY: NINO PRZULJ, ESQ.

1 oOo

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

3
4 REPRESENTING THE OFFICIAL COMMITTEE and
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6 MORRISON & FOERSTER, LLP

7 250 West 55th Street

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9
10 BY: JOCELYN E. GREER, ESQ.

11
12 ALSO PRESENT:

13 SERENA PARKER
14 Charter Communications, Inc.

15 ADAM VENURINI, Videographer
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----- I N D E X -----

TESTIMONY OF: LATISHA TRUONG

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----- INFORMATION REQUEST -----

INSTRUCTION TO WITNESS: (None)

REQUEST FOR PRODUCTION: (None)

INFORMATION TO BE FURNISHED: (None)

STIPULATIONS: (None)

MOTIONS: (None)

MARKED FOR RULING: (None)

----- E X H I B I T S -----

MARKED FOR IDENTIFICATION	PAGE
Defendants' Exhibit 1	8

PREVIOUSLY MARKED EXHIBIT:
Second amended notice

(Exhibits were retained by the court reporter)

1 oOo

2
3 S T I P U L A T I O N S
4

5 It is stipulated by counsel for the parties
6 that all objections are reserved until the time of
7 trial, except those objections as are directed to
8 the form of the question.

9
10 It is stipulated and agreed between counsel
11 for the parties that the proof of the authority of
12 the notary before whom this deposition is taken is
13 waived.

14 It is further stipulated that any defects
15 in the notice are waived.

16
17 It is further stipulated that the reading and
18 signing of the deposition transcript by the witness
19 may be signed before any notary public.

20 * * * * *

1 L. Truong - 09/19/19

2 THE VIDEOGRAPHER: This is Tape 1.

3 We are on the record at 4:02 p.m.,
4 Thursday, September 19, 2019.

5 This is the 30(b)(6) deposition of
6 Latisha Truong, in the matter of
7 Windstream Holdings v. Charter.

8 This deposition is being held at the
9 offices of Wiggin and Dana, LLP, located
10 at Two Stamford Plaza, Stamford,
11 Connecticut 06901.

12 The court reporter is Mercedes Marney
13 with U.S. Legal.

14 I am legal videographer,
15 Adam Venturini, also with U.S. Legal.

16 Will counsel please introduce
17 themselves and state whom they represent.

18 MR. JUSTUS: Michael Justus of
19 Katten, on behalf of Windstream and its
20 affiliated debtors and debtors in
21 possession.

22 MS. GREER: Jocelyn Greer, Morrison &
23 Foerster, on behalf of the official
24 committee of unsecured creditors.

25 MR. KINGSTON: John Kingston on

1 L. Truong - 09/19/19
2 behalf of defendants. With me is
3 Serena Parker and Nino Przulj.

4 THE VIDEOGRAPHER: Okay. Will the
5 court reporter please swear in the
6 witness.

8 L A T I S H A T R U O N G,
9 called as a witness, having been first
10 duly sworn in by the court reporter,
11 a notary public of the State of Connecticut,
12 is examined and testifies as follows:

13
14 - - -
15 DIRECT EXAMINATION
16 - - -
17

18 BY MR. JUSTUS:

19 Q. Good afternoon.

20 A. Hello.

21 Q. Can you please state your full name
22 for the record?

23 A. Yes. Latisha Truong.

24 Q. And are you currently an employee of
25 Charter?

1 L. Truong - 09/19/19

2 A. Yes.

3 Q. And what is your job title at

4 Charter?

5 A. SMB sales.

6 Q. Is that small and medium business?

7 A. Yes.

8 Q. And how long have you been employed

9 by Charter?

10 A. Since 2011.

11 Q. And how long have you been in your

12 current role?

13 A. About a year and a half.

14 Q. And are you based in Charter's

15 Stamford office?

16 A. No. I'm based in Columbus, Ohio.

17 MR. JUSTUS: Could we please give the
18 witness Exhibit 1?

19 I don't know where that is.

20 MR. KINGSTON: I think they might
21 be -- Ms. Truong, excuse me, if I can?

22 MR. JUSTUS: It's the notice, the
23 30(b)(6) notice.

24 (Defendants' Exhibit Number 1 was
25 previously marked this date.)

1 L. Truong - 09/19/19

2 MR. KINGSTON: I will give you that,
3 and keep the rest of these organized.

4 BY MR. JUSTUS:

5 Q. Ms. Truong, have you seen this
6 document before, Exhibit 1?

7 A. (Witness reviews document.)

8 MR. KINGSTON: We'll stipulate that
9 she hasn't.

10 MR. JUSTUS: Okay.

11 Well, I'll skip that line of
12 questioning and ask you, John:

13 John, I think you said that
14 Ms. Truong will only be designated for
15 Topic 4; is that right?

16 MR. KINGSTON: I think that that's
17 right.

18 Forgive me, Counsel. I don't have a
19 copy of Exhibit 1 in front of me.

20 But I believe that Exhibit (sic) 4
21 references training of sales --

22 Thank you.

23 -- yeah, Ms. Truong can speak to
24 Charter's training and directions
25 concerning the advertisements, to check

1 L. Truong - 09/19/19

2 for in filing the TRO --

3 THE COURT REPORTER: I didn't
4 understand you. A little slower.

5 THE WITNESS: I was going pretty fast
6 there.

7 (The record was read back by the
8 court reporter.)

9 MR. KINGSTON: Yes, ma'am.

10 Ms. Truong can testify related to
11 Charter's training and directions
12 regarding the advertisements, the
13 Chapter 11 filing, the TRO, and the
14 preliminary injunction.

15 BY MR. JUSTUS:

16 Q. Okay. And, Ms. Truong, apologies,
17 one more time: What is your job title?

18 A. Small to medium business sales.

19 Q. "SMB sales"?

20 A. Uh-huh.

21 Q. Okay. And does that involve dealings
22 with the sales call center?

23 A. No. I'm outside sales, direct sales.

24 Q. And what does that mean?

25 A. So that means that it's my job to go

1 L. Truong - 09/19/19

2 door-to-door to businesses to sell Spectrum
3 services.

4 Q. Okay. So it's fair to say you have
5 no dealings whatsoever with the sales call
6 center?

7 A. Correct.

8 Q. Okay.

9 What training, directions, and
10 guidelines have you received from Charter with
11 respect to talking about Windstream's bankruptcy?

12 A. I received an e-mail in April,
13 stating that we were not to mention the
14 bankruptcy or use that information to try to gain
15 customers.

16 And then I was also in a meeting with
17 my leadership, who also gave us that same
18 direction and information.

19 Q. Was that a meeting by phone or in
20 person?

21 A. In person.

22 Q. So your leader -- your local
23 leadership in the -- Columbus, Ohio?

24 A. Uh-huh.

25 Q. Okay.

1 L. Truong - 09/19/19

2 Do you remember, was that also in
3 April?

4 A. Yes.

5 Q. And prior to that time, were you
6 given any training, directions, or guidelines
7 with respect to referencing Windstream's
8 bankruptcy?

9 A. No. Just in April.

10 Q. Was any marketing collateral ever
11 made available to you that referenced
12 Windstream's bankruptcy?

13 A. No.

14 Q. Are you aware of any other direct
15 sales personnel making statements to customers or
16 potential customers about Windstream's
17 bankruptcy?

18 A. No.

19 Q. Were you aware, prior to the April
20 e-mail and meeting, that Windstream had filed for
21 bankruptcy?

22 A. I read a news article in February,
23 but I -- I quickly dismissed it, because I don't
24 really deal with any Windstream customers,
25 generally.

1 L. Truong - 09/19/19

2 Q. And that article was something you
3 found on your own; it wasn't sent to you by
4 someone else within Charter?

5 A. Correct.

6 Q. When you talk to a potential
7 customer, and they decide to switch from their
8 current provider to Charter, do you ever ask who
9 their current provider is that they're switching
10 from?

11 A. The only time it's relevant is if
12 we're porting a phone number. We need to know
13 who that carrier is, based on stipulations on
14 port-time intervals.

15 But other than that, it's not
16 relevant to getting services with Spectrum.

17 Q. And if someone wants to switch to
18 Charter Spectrum phone service, do you ask them
19 if they want to port their phone number?

20 A. Yes.

21 Q. Okay, each time?

22 A. Every time, yeah.

23 Q. And if they say yes, then you have to
24 ask who their current carrier is?

25 A. Correct.

1 L. Truong - 09/19/19

2 Q. And do you make a note of who the
3 current carrier is that you're going to be
4 porting the number from?

5 A. No.

6 So when we call in our order, I don't
7 write anything down. We call in our orders.

8 There's -- nobody on the phone asks
9 us, unless we're porting a phone number. And
10 there's nowhere to notate that in our billing
11 system.

12 Q. So you make a phone call after you
13 close the sale?

14 A. Correct.

15 Q. And who do you call?

16 A. I call our sales support number to
17 place the order. We give them the phone number,
18 we tell them who the provider is. But they don't
19 notate that anywhere. They just use that
20 information to chose when the port interval is
21 going to happen to schedule the installation.

22 Q. Can you go into a little bit more
23 detail on that, you say "port interval"?

24 A. Yes.

25 Q. What does that mean?

1 L. Truong - 09/19/19

2 A. So, basically, if a customer is
3 switching from one provider to another, there's a
4 certain day period that that other company will
5 hold the phone number before they will allow us
6 to have it.

7 So every company operates differently
8 when it comes to a port interval.

9 So we have to look at who that
10 company is, to decide how many days, or when
11 we're able to schedule that customer, based on
12 the current phone provider.

13 Q. So in order to do the porting
14 process, you have to know who the previous
15 provider was?

16 A. Right. If they're porting their
17 phone number, yes.

18 Q. And you're saying you -- as far as
19 you know, you don't think there's a record, that
20 the porting process took place on X date from
21 X company to Charter or Spectrum?

22 A. No.

23 There's a database that we -- they
24 look up the phone number to see what that date
25 would be before that company releases the phone

1 L. Truong - 09/19/19

2 number. And then as soon as it looks up, that
3 information isn't saved anywhere.

4 Q. And do you personally have access to
5 see what the software system looks like that the
6 sales support people are using when you call
7 them?

8 A. I have read-only access. I'm not
9 able to actually go in and see the information.
10 I can just see the name and the address of the
11 customer, and that's it.

12 Q. So there's other information that you
13 can't see?

14 A. Correct.

15 Q. Okay.

16 All right. Has any Windstream
17 customer that you've ever spoken to during a
18 sales pitch ever mentioned Windstream's
19 bankruptcy?

20 A. I had one specific customer,
21 Judy Spencer, with Physicians Weight Loss, during
22 the questions, she had mentioned -- I had asked
23 her what her Internet speed was.

24 And she mentioned, Oh, I have
25 OneStream. My Internet speed is very slow.

1 L. Truong - 09/19/19

2 We got into the conversation about
3 increasing Internet with Spectrum, saving her
4 money.

5 And then she turned around and said,
6 Oh, by the way, I received a letter from
7 OneStream, and their bankruptcy. I got it for my
8 house. I have not received one for my business.
9 Is this going to impact my business? You know,
10 what do you know about this bankruptcy?

11 So she was the only customer that had
12 mentioned the OneStream bankruptcy to me.

13 Q. Did she show you that letter?

14 A. She didn't. She held it, and I could
15 only see the back of the page. And she kind of
16 read through it. But I wasn't able to see the
17 document that she was holding.

18 Q. You couldn't see anything on the back
19 of the page?

20 A. No.

21 Q. Was there anything on the back of the
22 page or was it blank?

23 A. I don't recall. I wasn't really
24 looking that closely.

25 Q. And did Ms. Spencer express a belief

1 L. Truong - 09/19/19

2 that Windstream was going out of business?

3 A. She did, based on the letter that she
4 had received.

5 Q. And how did you respond to that?

6 A. This was after my meeting in April,
7 where our leadership directed us not to talk
8 about the Windstream bankruptcy at all.

9 So, in the back of my mind,
10 I proceeded with caution.

11 I just let Judy know that it was
12 irrelevant to our conversation about switching
13 her services to Spectrum.

14 THE COURT REPORTER: Just a little
15 slower. I can only go so fast.

16 THE WITNESS: Sorry.

17 THE COURT REPORTER: "I let Judy know
18 that it was irrelevant"...?

19 THE WITNESS: ...to switching
20 services to Spectrum.

21 Sorry, I lost my train of thought.

22 Can you repeat --

23 BY MR. JUSTUS:

24 Q. I think that answered my question.

25 And then was this -- this is in Ohio?

1 L. Truong - 09/19/19

2 A. Uh-huh.

3 Q. Is it Columbus, Ohio, you said?

4 A. So she was in Newark, Ohio.

5 Q. Newark, Ohio.

6 And you said it was after the April

7 call -- e-mail and meeting -- after the April

8 e-mail and meeting?

9 A. Correct.

10 Oh, I was going to say, I just told

11 her that it -- it's not for me to talk about

12 anything to do with Windstream because it is

13 irrelevant to our conversation. And any

14 questions she has about the bankruptcy, she

15 should contact Windstream.

16 Q. Did Ms. Spencer switch to Charter

17 Spectrum?

18 A. She did not.

19 Q. Okay.

20 And that's the only time any

21 customer -- potential customer that you've spoken

22 to mentioned the Windstream bankruptcy?

23 A. Correct.

24 MR. JUSTUS: Is there anything

25 I should talk about?

1 L. Truong - 09/19/19

2 MS. GREER: I don't think so.

3 MR. JUSTUS: Okay.

4 I pass the witness, John.

5 - - -

6 CROSS-EXAMINATION

7 - - -

8 BY MR. KINGSTON:

9 Q. Ms. Truong, I'll go back to your
10 conversation with Mr. Spencer in Newark, Ohio.

11 Can we do that, please?

12 A. Yes.

13 Q. When you were talking to Ms. Spencer,
14 did she appear calm or did she appear excited?

15 A. She appeared -- I wouldn't say either
16 of those. She appeared concerned.

17 Q. She appeared concerned to you?

18 A. Uh-huh.

19 Q. And -- and, yes -- I'm sorry.

20 So one of the rules in depositions
21 that I neglected to talk to you about, was it's
22 important to answer "yes" or "no" so the
23 court reporter can have a clean record of what
24 we're -- what the questions I'm asking, and the
25 answers that you're giving.

1 L. Truong - 09/19/19

2 A. Okay.

3 Q. Does that make sense?

4 A. Yes.

5 Q. All right.

6 So did Ms. Spencer appear concerned
7 to you?

8 A. Yes.

9 Q. And did Ms. Spencer indicate that the
10 reason she was concerned is because she believed
11 Windstream was going out of business?

12 A. Yes.

13 Q. And Ms. Spencer indicated that the
14 reasons she was concerned about Windstream going
15 out of business was because she had received a
16 letter?

17 A. Yes.

18 Q. And Ms. Spencer indicated that the
19 reason she was concerned about Windstream going
20 out of business is because she had received a
21 letter from Windstream?

22 A. Yes.

23 Q. All right.

24 You understand, Ms. Truong, that
25 Charter sent a direct mail to some 800,000-plus

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2 people in various states?

3 A. Yes.

4 Q. And did you review an Excel
5 spreadsheet, listing the people to whom that
6 mailer was sent?

7 A. Yes.

8 Q. And was that spreadsheet searchable?

9 A. Yes.

10 Q. And did you review a search of the
11 spreadsheet, including all of the people to whom
12 the March 2019 direct mail was made, for the name
13 "Spencer"?

14 A. Yes.

15 Q. And did you -- through that search,
16 were you able to identify a Judy Spencer in
17 Newark, Ohio?

18 A. No.

19 Q. Is it a fair inference, then,
20 Ms. Truong, that the letter that Ms. Spencer was
21 referring to, while she was expressing these
22 concerns, was not the direct mail that came from
23 Charter in March of 2019?

24 MR. JUSTUS: Objection, leading the
25 witness.

1 L. Truong - 09/19/19

2 BY MR. KINGSTON:

3 Q. Is it a fair or an unfair inference,
4 Ms. Truong, that the letter that Ms. Spencer was
5 concerned about did not come from Charter, given
6 your review of the March 2019 mailing list?

7 A. That is fair, yes.

8 Q. Did anybody at Charter ever instruct
9 you to predict that Windstream was going out of
10 business when you were attempting to make sales?

11 A. No.

12 Q. Did anybody at Charter ever instruct
13 you to predict that there would be interruptions
14 of Windstream's services?

15 A. No.

16 Q. Did anybody at Charter ever instruct
17 you to suggest that Windstream would be
18 experiencing operational problems related to the
19 bankruptcy?

20 A. No.

21 Q. Did you ever have a conversation with
22 a potential sales contact where you were the
23 first person to mention Windstream's bankruptcy?

24 A. I'm sorry, can you repeat the
25 question?

1 L. Truong - 09/19/19

2 Q. I'll take another run at that.

3 I have cotton-mouth in the middle of my question.

4 Do you mind if I start over?

5 A. Sure.

6 Q. Did you ever mention Windstream's
7 bankruptcy first in a conversation with a sales
8 prospect?

9 A. No.

10 Q. Was the "don't talk about
11 Windstream's bankruptcy" message ever reinforced
12 at team meetings?

13 A. Yes.

14 Q. Is that something you would talk
15 about on a regular basis?

16 A. I can recall three meetings that
17 we've talked about it.

18 Q. And did you receive an electronic
19 mail message with a copy of the temporary
20 restraining order entered in this case?

21 A. Yes.

22 Q. And did you receive an electronic
23 mail message with a copy of the preliminary
24 injunction entered in this case?

25 A. Yes.

1 L. Truong - 09/19/19

2 MR. KINGSTON: I pass the witness.

3 MR. JUSTUS: Okay, I have a couple
4 more questions.

5 - - -

6 REDIRECT EXAMINATION

7 - - -

8 BY MR. JUSTUS:

9 Q. Ms. Truong, you testified
10 that you searched a list of
11 eight-hundred-and-some-thousand people for the
12 name "Judy Spencer"; right?

13 A. Uh-huh.

14 Q. Isn't it true that accounts can be
15 under different names than, say, the name of the
16 person who answers the door when you're going
17 door to door?

18 MR. KINGSTON: Objection, lack of
19 foundation.

20 You can answer.

21 THE WITNESS: Yes.

22 BY MR. JUSTUS:

23 Q. Are you aware of any circumstances
24 where someone might answer the door and have a
25 different name than what their actual account is

1 L. Truong - 09/19/19

2 under?

3 MR. KINGSTON: Same objection.

4 THE WITNESS: No.

5 We do a credit check, so if they have
6 an account with us, it would match their
7 social security number.

8 BY MR. JUSTUS:

9 Q. And, actually, I think I'm asking the
10 wrong question.

11 So the database, or the spreadsheet,
12 of the 800,000 people, those were the names and
13 addresses that Charter sent its mailer to; right?

14 A. Yes.

15 Q. Yeah, just a name and a mailing
16 address?

17 A. Uh-huh.

18 Q. Okay. Where did Charter get those
19 names and addresses?

20 MR. KINGSTON: I will object, lack of
21 foundation.

22 MR. JUSTUS: So different witness for
23 that, you're saying?

24 MR. KINGSTON: (Counsel nods head.)

25 MR. JUSTUS: And who would that be?

1 L. Truong - 09/19/19

2 MR. KINGSTON: Mr. Kardos.

3 MR. JUSTUS: Okay.

4 BY MR. JUSTUS:

5 Q. Well, you --

6 MR. KINGSTON: I -- actually, I'm not
7 positive that it's Mr. Kardos. But he can
8 speak to something along those lines.

9 I know that it's not Ms. Truong.

10 BY MR. JUSTUS:

11 Q. And I think you already answered this
12 question, but I have to ask it one more time,
13 because I can't remember.

14 It's possible that someone could
15 answer the door, and you could talk to them, and
16 they may have a different name than the person
17 who owns the house at that address or owns an
18 account at that address; right?

19 A. I still don't think I'm understanding
20 the question.

21 Q. I think you said yes the first time,
22 but I can't remember.

23 So you go door to door, and you,
24 literally, knock on the door; right?

25 A. Uh-huh.

1 L. Truong - 09/19/19

2 Q. And you don't know for sure that the
3 person who answers the door, that you talk to,
4 has the same name as the person who owns that
5 house or that would have an account at that
6 address; right?

7 A. Yes.

8 Q. Okay.

9 MR. JUSTUS: No more questions.

10 MR. KINGSTON: We'll read and sign.

11 And we'll read and sign for all
12 corporate-rep witnesses.

13 Ms. Truong, thank you for your time.

14 THE VIDEOGRAPHER: Okay. We are off
15 the record at 4:23 p.m.

16 (At 4:23 p.m., the record was
17 closed.)

18 (The witness reserved the right to
19 read and sign the deposition transcript.)
20

21 * * * * *

22

23

24

25

oOo

C E R T I F I C A T E

STATE OF CONNECTICUT)
) ss.
COUNTY OF FAIRFIELD)

I, MERCEDES MARNEY-SHELDON, a court reporter
within the state of Connecticut, and a notary public
for the State of Connecticut, do hereby certify:

That LATISHA TRUONG, the witness whose
deposition is hereinbefore set forth, was duly sworn
by me, and that such deposition is a true record of
the testimony given by the witness.

I further certify that I am not employed by nor
related to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand
this 3rd day of October, 2019.



Mercedes Marney-Sheldon - Shorthand Reporter
Notary Public - State of Connecticut

Account Number: 167303
Date Appointed: 08/07/2014
Expiration Date: 08/31/2023

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:)
)
WINDSTREAM HOLDINGS, INC.,)
et al.,) Case No. 19-22312
Debtor.) Chapter 11
)
WINDSTREAM HOLDINGS, INC.,)
et al.,)
) Adv. Pro. No. 19-08246
Plaintiffs,)
vs.)
)
CHARTER COMMUNICATIONS,)
INC., and CHARTER)
COMMUNICATIONS OPERATING,)
LLC,)
Defendants.)

- - - - -
THE VIDEOTAPED DEPOSITION OF EMMITT WALKER
WEDNESDAY, SEPTEMBER 11th, 2019
- - - - -

The deposition of EMMITT WALKER, called for
examination pursuant to the Federal Rules of Civil
Procedure, taken before me, the undersigned,
Charles A. Cady, Notary Public within and for the
State of Ohio, taken at the offices of Benesch,
Friedlander, Coplan & Aronoff LLP, 200 Public
Square, Suite 2300, Cleveland, Ohio, commencing at
9:59 a.m., the day and date above set forth.

1 APPEARANCES:

2
3 Conflict counsel for the debtors and debtors
4 in possession:

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7 575 Madison Avenue
8 New York, NY 10022

9 On behalf of the Plaintiffs Charter
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11 Charter Communications Operating, LLC:

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16 On behalf of the Official Committee of
17 Unsecured Creditors:

18 Jocelyn Greer, Esq.
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1 THE VIDEOGRAPHER: We're on the
2 record. The time is 9:59 a.m. Today's date
3 is September 11, 2019. We are here in re the
4 bankruptcy proceedings of Windstream Holdings
5 Incorporated, et al., in the adversarial
6 proceedings in Windstream Holdings
7 Incorporated, et al., versus Charter
8 Communications Incorporated and Charter
9 Communications Operating, LLC, in the United
10 States Bankruptcy Court for the Southern
11 District of New York, case number 19-22312.

12 Will the attorneys present please
13 identify themselves for the record.

14 MR. ROSS: Terence Ross
15 from the law firm of Katten Muchin Rosenman,
16 representing the conflict -- we are conflict
17 counsel for the debtors and debtors in
18 possession.

19 MS. GREER: Jocelyn Greer
20 from Morrison and Foerster for the official
21 committee of unsecured creditors.

22 MR. NEPPLE: Mike Nepple of
23 Thompson Coburn for the Charter entities.

24 THE VIDEOGRAPHER: Will the
25 court reporter please swear in the witness.

1 EMMITT WALKER
2 of lawful age, called for examination pursuant to
3 the Federal Rules of Civil Procedure, having been
4 first duly sworn, as hereinafter certified, was
5 examined and testified as follows:

6 EXAMINATION OF EMMITT WALKER

7 BY MR. ROSS:

8 Q Good morning, Mr. Walker. Could you just for
9 the record state your full legal name.

10 A Yes. My name is Emmitt Walker.

11 Q And have you ever been known by any other
12 name?

13 A No.

14 Q Are you represented by counsel here today?

15 A Yes.

16 Q Could you identify that person?

17 A Mike.

18 Q Okay. Mike Nepple?

19 A Mike Nepple.

20 THE WITNESS: Sorry.

21 Q By whom are you currently employed?

22 A Spectrum. Charter Communications.

23 Q Do you understand the difference between
24 Charter and Spectrum?

25 A Yes. Spectrum is our product and Charter is

1 the name of the company.

2 Q Okay. What's your formal business title that
3 would be on your business card perhaps?

4 A I am a direct sales rep.

5 Q And how long have you been a direct sales rep
6 for Charter?

7 A For a year.

8 Q Starting roughly September of 2018?

9 A Starting November of 2018. So for eight
10 months --

11 Q And --

12 A -- if that's right.

13 Q Is that the first time you went to work for
14 Charter?

15 A No.

16 Q So when did you first go to work for Charter?

17 A July of 2017.

18 Q And what were you doing for Charter starting
19 in July of 2017?

20 A It was an inbound sales agent.

21 Q Do you have any college education?

22 A No.

23 Q Why don't you start by telling me what job of
24 sales agent entails. What are your duties?

25 A I am responsible to sell people either cable,

1 internet or voice service, and now recently
2 mobile.

3 Q So is there a difference between sales agent
4 and a direct sales representative?

5 A Yes.

6 Q What's the --

7 A No. Well, inbound sales agent I was at the
8 call center. Now I'm going door to door.

9 Q So as a sales agent you were at a call center
10 answering the phone?

11 A Yes.

12 Q Where was that call center located
13 physically?

14 A Akron, Ohio on South Main Street.

15 Q Charter under its Spectrum brand sells
16 multiple services, right?

17 A Right.

18 Q At the call center were you serving -- were
19 you servicing calls from all aspects of the
20 business or a particular line of business?

21 A Residential.

22 Q And residential voice or internet or cable?

23 A Um --

24 Q Or all of the above?

25 A All of the above.

1 Q Okay. You started there in July of 2017, and
2 then you became a direct sales rep in
3 November of 2018, right?

4 A Right.

5 Q And I think you just said the job of the
6 direct sales representative is face to face
7 as opposed to over the phone, right?

8 A Right.

9 Q Are you again selling to a particular segment
10 of customers?

11 A We get to choose our turf, what addresses we
12 go to.

13 Q But is it business?

14 A Oh. Residential.

15 Q You sell residential?

16 A Uh-huh.

17 Q Do you work out of a physical location, an
18 office, or out of your home?

19 A Out of an office.

20 Q And where is that located?

21 A It is located in Lorain, Ohio, on Elyria
22 Street.

23 Q Now, as I understand it, there are different
24 regions for Spectrum sales.

25 What region is that in?

1 A Elyria-Lorain area --

2 Q Okay.

3 A -- and sometimes Cleveland.

4 Q Are you familiar with the term "Great Lakes
5 region"?

6 A Yes.

7 Q Is it part of the Great Lakes region?

8 A Yes.

9 Q Okay. Is there a subregion beneath the Great
10 Lakes region that that's part of?

11 A I don't know.

12 Q Okay. So as a sales agent working at the
13 call center, were you taking calls from a
14 particular region or from all across the
15 country?

16 A Certain regions.

17 Q Which regions?

18 A North Carolina, Ohio. Those are the ones I
19 remember. It's been awhile.

20 Q And as a direct sales representative you've
21 been in this Lorain area the entire time?

22 A Yes.

23 Q Can you describe the training you received to
24 become a direct sales representative?

25 A Pretty much just a refresher on products and

1 what we sell.

2 Q No training with respect to how to sell?

3 MR. NEPPLE: Object to form.

4 Go ahead.

5 A Just to be honest, no. I don't know.

6 Q Okay. Could you elaborate in any way upon
7 how you do door-to-door sales? Kind of a
8 general description of the job?

9 A Generally, I just go to a door, I ask them if
10 they have internet or TV. If so, then I just
11 tell them our prices for said products.

12 Q The purpose is to try to get them to buy
13 Spectrum services?

14 A Right. Uh-huh.

15 Q Do you work on commission?

16 A Yes.

17 Q What percentage of your compensation is based
18 on commission?

19 A It differs depending on what we sell.

20 Q Do you want to explain that?

21 A Well, if we sell TV -- well, we have to sell
22 a bundled product. So if we sell internet
23 only, that's 60 dollars. If I sell internet
24 and phone, it's 120. If I sell internet,
25 phone and TV, it's 180. And depending on how

1 many sales I make for the month determines
2 how much each is. So it's in a tier system.

3 Q So if you sell a very large amount above what
4 they expect you to sell, you actually get
5 more by way of contingent fee, right?

6 A Yes.

7 Q What did you do before you started to work at
8 Charter?

9 A I was a server at a restaurant.

10 Q So I assume since your office is in Lorain,
11 Ohio, that the residential customers you're
12 trying to sell are in that same geographic
13 area?

14 A Yes.

15 Q And I think you said you had some choice with
16 respect to who you try to sell? Am I wrong
17 about that?

18 A We have an option to choose our own addresses
19 of where we want to go.

20 Q Where do you get the addresses from?

21 A From my supervisor.

22 Q Who is your supervisor?

23 A James Roman.

24 Q Do you know what his title is?

25 A He is my general supervisor.

1 Q So, Mr. Walker, you received a subpoena to
2 appear here today to testify, correct?

3 A Yes.

4 MR. ROSS: Let me have
5 this marked as Walker Deposition Exhibit
6 Number 1 for identification.

7 - - - - -

8 (Walker Exhibit 1 was marked.)

9 - - - - -

10 Q Mr. Walker, I've handed you what we have
11 marked for identification as Walker Exhibit
12 Number 1.

13 You did receive this subpoena, correct?

14 A Yes.

15 Q And you note there that in addition to
16 showing up for the deposition which you're
17 here for today that you were required to
18 search for and produce certain documents; is
19 that correct?

20 A Yes.

21 Q And did you do that?

22 A I didn't have any documents to give.

23 Q Did you search?

24 A Yes.

25 Q Well, what kind of search did you conduct?

1 A I looked in my bag and I didn't have any.

2 Q Do you have a computer or a laptop of some
3 sort?

4 A I have a tablet that I use for work.

5 Q And did you look on that?

6 A Yes.

7 Q That's issued to you by Charter?

8 A Yes.

9 Q Did you find anything?

10 A No.

11 MR. ROSS: Let me have
12 this marked as Walker Exhibit Number 2 for
13 identification.

14 - - - - -

15 (Walker Exhibit 2 was marked.)

16 - - - - -

17 Q Mr. Walker, I have handed you what we have
18 marked for identification as Walker
19 Deposition Exhibit Number 2, which is a
20 letter dated August 15, 2019, to you with
21 some attachment.

22 Did you receive this?

23 A Yes.

24 Q And did you review it?

25 A Somewhat. Not completely.

1 Q So attached to the letter is a notice of
2 deposition. Then attached to that, about 10
3 pages in, is something referred to as a
4 complaint, which is how you start a lawsuit
5 in a federal court.

6 Did you read that complaint?

7 A No.

8 Q Not at all?

9 A No.

10 Q Do you have any idea as to why you got
11 subpoenaed to testify?

12 A Because I gave a flyer to a customer.

13 Q When was this?

14 A I don't remember.

15 Q Well, you understand that a lawsuit was filed
16 by Windstream against Charter, correct?

17 A Yes.

18 Q And what do you understand about that
19 lawsuit?

20 A It's pertaining to the bankruptcy Windstream
21 is having.

22 Q Why is Windstream suing Charter?

23 A Honestly, I don't know.

24 Q Okay. Do you sell to any businesses or are
25 you not allowed to sell to businesses because

1 you're on the residential side?

2 A I'm in residential, so no.

3 Q No, you don't sell to businesses?

4 A Huh-uh.

5 Q You've got to --

6 A No.

7 Q When did you first become aware that there
8 was a lawsuit between Charter and Windstream?

9 A I believe in March.

10 Q Of 2019?

11 A Yes.

12 Q How did you learn about it?

13 A Because when I gave out the flyer, I got in
14 trouble at work. And that's when they told
15 me that I guess there were a filing in court
16 about us.

17 Q You said "they" told you. Who was the
18 "they"?

19 A Upper management, my supervisor.

20 Q Mr. Roman?

21 A Yes.

22 Q Well, we just talked about when you first
23 became aware of the lawsuit, then we'll talk
24 about when did you first become aware of the
25 bankruptcy? Not the lawsuit, but the

1 bankruptcy of Windstream?

2 A I don't remember.

3 Q You did become aware at some point they
4 were -- they had filed for bankruptcy
5 protection, right?

6 A No, I didn't know.

7 Q Sitting here today you know that they filed
8 for bankruptcy protection, correct?

9 A Yes.

10 Q Have you ever filed for bankruptcy protection
11 yourself?

12 A No.

13 Q You ever testified in a lawsuit before?

14 A I don't understand.

15 Q Have you ever gone to court and given
16 testimony before?

17 A No. This is the first time.

18 Q Okay. So you had responded earlier to a
19 question that you hadn't found any documents
20 in response to the subpoena. Your counsel
21 actually gave me some documents or entered
22 them into evidence so that you can see them.
23 This will take a couple minutes though.

24 Okay?

25 A Okay.

1 MR. ROSS: Are you ready?
2 Let's just briefly go off the record so that
3 we can go over what's marked up.

4 THE VIDEOGRAPHER: Off the record.
5 The time is 10:14.

6 - - - - -
7 (Walker Exhibits 3 through 7 and 9
8 through 15 were marked.)

9 - - - - -
10 THE VIDEOGRAPHER: Back on the
11 record. The time is 10:17.

12 BY MR. ROSS:

13 Q So, Mr. Walker, I'm going to hand you some
14 exhibits and I'll identify them as I go. The
15 first one is Walker Deposition Exhibit Number
16 3 for identification, which appears to be an
17 April 15, 2019 performance improvement plan
18 for you.

19 Walker Deposition Exhibit Number 4 for
20 identification is Bates stamped
21 CHARTER_020026 to 27.

22 Walker Deposition Exhibit Number 5 for
23 identification is Bates stamped
24 CHARTER_020028 to 29.

25 Walker Deposition Exhibit Number 6 for

identification is Charter -- is Bates stamped
CHARTER number 020030 through 32.

Walker Deposition Exhibit Number 7 for
identification is Bates stamped
CHARTER_020037 through 41.

Walker Deposition Exhibit Number 8 for
identification is Bates stamped
CHARTER_020037 -- okay. So that's a
duplicate. We're going to eliminate Walker
Deposition Exhibit Number 8.

Walker Deposition Exhibit Number 9 for
identification is Charter -- Bates stamped
CHARTER_020042 to 43.

Walker Deposition Exhibit Number 10 is
Bates stamped CHARTER_020413 through 418.

Walker Deposition Exhibit Number 11 for
identification is Bates stamped
CHARTER_045784 to 86.

Walker Deposition Exhibit Number 12 for
identification is Bates stamped
CHARTER_045787 to 90.

Walker Deposition Exhibit Number 13 for
identification is Bates stamped
CHARTER_046025 through 27.

Walker Deposition Exhibit Number 14 is

1 Bates stamped CHARTER_046029 through 32.

2 And Walker Deposition Exhibit Number 15
3 for identification is not Bates stamped but
4 it's an e-mail chain on May -- on April 29,
5 2019.

6 So take your time and look at any of
7 those that you want to, and then I'm going to
8 ask you some questions about them.

9 A I'm ready.

10 Q So none of these were produced out of your
11 own personal records?

12 A The corrective action.

13 Q So the --

14 A But I never physically had possession of
15 them. I was written up and I signed them and
16 I gave them to my supervisor, James Roman.

17 Q Okay. So for the record, you have to just
18 identify what documents those are by these
19 numbers at the bottom.

20 A Okay.

21 Q So are you telling me that that's Exhibit
22 13 -- 11, 12 and 13?

23 A I never had possession of 13. I never had
24 possession of 12. I never had possession of
25 11. I never had possession of 10, nor 14, 15

1 and 9.

2 7 was my flyer I gave out. And Exhibit
3 6, 5 was my statement after the incident of
4 me giving out the flyer when I was written up
5 at work for it. And Exhibit 4 and 3 I don't
6 recognize.

7 Q Okay. So the only ones you had in your
8 possession then are Exhibits 5, 6 and 7; is
9 that correct?

10 A Well, this was a conversation -- like Exhibit
11 6 and 5 was a conversation I had concerning
12 me getting written up for work and why I was
13 giving out the flyer. But the only one I had
14 possession of and handed out was 7.

15 Q Okay. So Walker Exhibit 7 for identification
16 is the flyer that you had given out in
17 person?

18 MR. NEPPLE: Look at --

19 A Yes.

20 MR. NEPPLE: Look at the
21 whole document, please.

22 A Yes.

23 Q On the second page of Walker Deposition
24 Exhibit Number 7 for identification, that's
25 your business card at the top right-hand

1 corner?

2 A Yes.

3 Q So why don't we talk about that exhibit,
4 Walker Deposition Exhibit Number 7 for
5 identification.

6 Where did you get that advertisement?

7 A The Windstream customer, the one right
8 here -- well, actually, I never had page 3.

9 Q Okay.

10 A The one I handed out was this one.

11 Q Page 2 of --

12 A Page 2 and page 4.

13 Q Of Walker Deposition Exhibit Number 7,
14 correct?

15 A Yes.

16 Q Okay.

17 MR. NEPPLE: Can we clean
18 that up Bates number, please? By the Bates
19 number. Can you --

20 MR. ROSS: I don't have
21 it.

22 MR. NEPPLE: Oh, that's
23 right.

24 MR. ROSS: You only gave
25 me one copy. So why don't you just grab it

1 and tell us what the Bates number is?

2 MR. NEPPLE: To be clear

3 when you said pages 2 and 4, page 2 is

4 CHARTER_020038, correct?

5 A Yes.

6 MR. NEPPLE: And page 4 is

7 CHARTER_020040, correct?

8 A Yes.

9 MR. NEPPLE: Okay. Just so

10 the record is clear.

11 Q And you got the page 2 that you just
12 referenced from a Windstream customer?

13 A Former, yes.

14 Q And why do you say "former"?

15 A Because we were at that customer house the
16 day before I received it and she was -- and
17 she switched.

18 Q Okay. And do you remember her name?

19 A I don't remember.

20 Q Okay. And she gave you this advertisement
21 which she had received?

22 A Yes.

23 Q And you took it away, obviously.

24 A She gave it, yes.

25 Q But you took it back away with you to your

1 office, correct?

2 A Yes.

3 Q And was there anyone else with you at the
4 time?

5 A Yes.

6 Q Who was that?

7 A Rebecca Root, my partner.

8 Q So when you say your "partner," what does
9 that mean?

10 A Her and I work together sometimes.

11 Q Okay. And when you say "work together," does
12 that mean go door to door together?

13 A Yes.

14 Q Is she also a direct sales representative?

15 A Yes.

16 Q And is she in the same office as you?

17 A Yes.

18 Q And she also sells residential, I assume?

19 A Yes.

20 Q During your training period, did you go out
21 on sales calls with direct sales
22 representatives who were more senior in the
23 business than you?

24 A Yes.

25 Q Was she one of them?

1 A Yes.

2 Q But she was not and is not your supervisor or
3 manager in any sense, right?

4 A Right.

5 Q So you went to this customer, got this
6 advertisement, you took it back to the
7 office.

8 Did you make copies of it?

9 A I did, yes.

10 Q I'm sorry. What was the name of your partner
11 again?

12 A Rebecca Root.

13 Q How do you spell that last name?

14 A R-o-o-t.

15 Q And did you give any of the copies to her to
16 use?

17 A No.

18 Q And what did you do with the copies you made?

19 A I passed them out to customers I spoke to.

20 Q Okay. And did you share them with any other
21 direct sales representatives?

22 A No.

23 Q Did you discuss them with Ms. Root?

24 A We discussed the mailer, yes.

25 Q What did you discuss with her?

1 A That it was our mailer and I was going to use
2 it.

3 Q When you say "our mailer," you mean
4 Charter's?

5 A Yes.

6 Q Did you assume that it was authorized to be
7 used?

8 MR. NEPPLE: Object to form.
9 Go ahead.

10 A Yes.

11 Q Did Ms. Root tell you anything about it?

12 A No.

13 Q Do you recall approximately what date this
14 all happened?

15 A No.

16 Q So that advertisement mentions that
17 Windstream has filed for Chapter 11
18 bankruptcy.

19 Do you see that on page 2?

20 A Yes.

21 Q So I assume when you read that, you knew that
22 they had filed for bankruptcy, right?

23 A Yes.

24 Q Did you undertake any steps to investigate
25 what that meant?

1 A I Googled it, yes.

2 Q What did you come up with?

3 A That they were filing for bankruptcy.

4 Q That's all?

5 A Yes.

6 Q So did there come a time when you got a phone
7 call about this advertisement?

8 A Yes.

9 Q And that phone call was from a Mr. Parrish,
10 right?

11 A Yes.

12 Q And tell me what you remember about that
13 phone call.

14 A He called and asked me if he was losing his
15 service. I told him I don't know and that he
16 will have to call Windstream and ask them.

17 Q That's what you remember?

18 A That's the main thing I remember from the
19 conversation.

20 Q Is there anything you remember that's not the
21 main thing?

22 A He asked me why. And from what I remember
23 when I Googled that Windstream tried to
24 update their infrastructure and they pretty
25 much ran out of money. I predicted that they

1 ran out of money.

2 Q Do you recall Mr. Parrish asking you if his
3 services as a Windstream customer would be
4 disconnected?

5 A Yes.

6 Q And you told him yes, his services would be
7 disconnected in a few months, correct?

8 MR. NEPPLE: Object to form.
9 Go ahead.

10 A No. I said I don't know, he could lose his
11 service in a month, two years, three years, I
12 don't know. You will have to call them.

13 Q And you then told him that Windstream had
14 provided Spectrum with a list of Windstream
15 customers so that Spectrum could set up
16 service to make it easier for them to switch
17 when Windstream goes out of business?

18 A I said I had a list of customers in order
19 to sell Spectrum to.

20 Q Did you tell him that other companies get
21 together to help out those who are in
22 bankruptcy and that Spectrum is helping
23 Windstream?

24 A Yes.

25 Q And did you say that they would definitely be

1 disconnected in the near future because they
2 are "Going out of business"?

3 MR. NEPPLE: Object to form.
4 Go ahead.

5 A I predicted they were going out of business
6 because they were filing for bankruptcy.

7 Q And did you state "Windstream overextended
8 themselves trying to upgrade their network
9 and never finished the job"?

10 A Yes.

11 Q Did Mr. Parrish at the end of the
12 conversation disclose that he was a
13 Windstream employee?

14 A Yes.

15 Q Did he tell you weren't being truthful?

16 A Yes.

17 Q Did he ask for your supervisor's name and
18 contact information?

19 A He did.

20 Q You provided that, right?

21 A Yes.

22 Q And you told him that your supervisor's name
23 was John Aaron?

24 A James Roman.

25 Q Do you know a John Aaron?

1 A No.

2 MR. ROSS: Let me have
3 this marked as our next deposition exhibit.

4 - - - - -

5 (Walker Exhibit 16 was marked.)

6 - - - - -

7 Q So, Mr. Walker, I have handed you what we
8 have marked as Walker Deposition Exhibit
9 Number 16, which is an e-mail chain in the
10 period of April 2019.

11 As you know, when you print out these
12 e-mails, you've got to start at the back to
13 follow chronologically and read forward.

14 So why don't you take a look at that and
15 tell me when you've had a chance to read
16 through those e-mails. Keep in mind that
17 they're double-sided.

18 MR. NEPPLE: Read the entire
19 chain, please.

20 THE WITNESS: Okay.

21 A Okay.

22 Q So on the third page of this exhibit, there's
23 an e-mail dated April 15, 2019.

24 Do you see it?

25 A Yep. Yes.

1 Q So does that refresh your recollection that
2 this incident you've been discussing with me
3 had to have occurred before April 15, 2019?

4 A Yes, going by the date.

5 Q So there is a section "Reason For Corrective
6 Action."

7 Do you see that?

8 A Yes.

9 Q I'll just read it. It says, "Emmitt Walker
10 violated Charter's Unauthorized, Unapproved
11 Use of Marketing Material when distributing a
12 flyer referencing Windstream's bankruptcy,
13 with his attached business card, to a
14 customer and consequently, a Final Written
15 Warning + PIP is recommended."

16 Is that an accurate summary of what
17 happened?

18 A Yes.

19 Q What's a "PIP"?

20 A It's a final. And if I don't make my sales
21 for the month, I can be let go.

22 Q Do you still work for Spectrum?

23 A Yes.

24 Q So this is some form of disciplinary action
25 against you as an employee of Charter,

1 correct?

2 A Yes.

3 Q How did you hear about this?

4 MR. NEPPLE: Object to form.

5 MR. ROSS: Well, that's a
6 fair objection.

7 Q You're not on the --

8 MR. NEPPLE: There's one.

9 MR. ROSS: Yes. That's
10 seldom.

11 Q You're not mentioned in any of these e-mails.
12 You've read them all through. You're not in
13 this e-mail chain, right?

14 A Yes.

15 Q So how did you come to learn about this
16 corrective action being taken?

17 A Well, I was placed on a final in PIP, so
18 that's how I found out I was in trouble.

19 Q I'm asking you how did that happen. Did
20 somebody come in and talk to you? Did you
21 get sent an e-mail? What happened?

22 A I was called into the office.

23 Q By whom?

24 A By James Roman.

25 Q And what did he say?

1 A He told me I was not allowed to give out
2 flyers, so I was placed in a corrective
3 action.

4 Q And what did you say to him?

5 A "Okay. I didn't know. I apologize. Since
6 it was sent out I thought it was okay."

7 Q Since the flyer had been sent out by Charter,
8 you thought it was okay for you to hand it
9 out?

10 A Yes.

11 MR. ROSS: Let me have
12 this marked as Walker Deposition Exhibit
13 Number 17 for identification.

14 - - - - -

15 (Walker Exhibit 17 was marked.)

16 - - - - -

17 Q Mr. Walker, I have handed you what we have
18 marked for identification as Walker
19 Deposition Exhibit Number 17. This again is
20 an e-mail from the period of April 11th
21 through 13th, 2019, with a couple
22 attachments, which appear to be transcripts
23 of conversations with you.

24 Why don't you look it over and then let
25 me know when you're ready to answer some

1 questions about it.

2 A Okay. I'm ready.

3 Q So on the very first page of Walker
4 Deposition Exhibit Number 17 for
5 identification, there's an e-mail in the
6 middle from a Brenda Auger to a Scott Niles.

7 Do you know either of those people?

8 A Brenda is our regional direct sales manager.

9 Q Okay. So she's somewhere in your supervisory
10 chain of command?

11 A Yes.

12 Q She's above Mr. Roman?

13 A Yes.

14 Q So she summarizes there conversations with
15 Emmitt Walker and Rebecca Root.

16 Do you see those seven bullet points?

17 A Yes.

18 Q I just want to ask you about a couple.
19 There's one here where she says, "Feeling
20 that the flyer was approved by Charter,
21 Emmitt and Rebecca made some copies and gave
22 flyers to two customers with DSR Emmitt
23 Walker's business card attached."

24 Is that accurate?

25 A Yes.

1 Q Let's go to the bullet point above that where
2 it says, "A customer gave Emmitt Walker and
3 another DSR (Rebecca Root) a flyer that she
4 had received in the mail from Charter."

5 Do you see that?

6 A Yes.

7 Q So that's essentially what you just testified
8 to, correct?

9 A Yes.

10 Q As to how the whole thing got started, right?

11 A Yes.

12 Q And we looked at that flyer already.

13 So then in the next-to-last bullet point
14 it says, "Emmitt Walker stated that he didn't
15 know that he was doing anything wrong and
16 since an approved flyer was being sent to
17 potential customers in his assigned turf, he
18 thought he was allowed to use the flyer."

19 Does that accurately summarize what your
20 sort of explanation for this whole incident
21 was?

22 A Yes.

23 Q It seems kind of a reasonable explanation.
24 What did they say in response to that? Did
25 they reject it outright?

1 MR. NEPPLE: Object to form.

2 Go ahead.

3 A They told me I'm not allowed to give out

4 anything unless it is approved by our

5 department.

6 Q So because the flyer was approved by a

7 different department you couldn't give it

8 out?

9 A Yes.

10 Q If you continue down there's another e-mail

11 under that from Mr. Scott Niles to various

12 people. And it continues onto the back of

13 the page.

14 You're not in the e-mail chain, but I'm

15 just going to ask you if you had ever seen

16 that e-mail before?

17 A No.

18 Q Did one of your supervisors essentially

19 advise you of what Mr. Niles is saying on

20 page 2 of Walker Deposition Exhibit Number 17

21 for identification?

22 MR. NEPPLE: Object to form.

23 A What was the question?

24 Q Sure. I'll start again now that you've read

25 it.

1 So you see that you're not in the e-mail
2 chain, correct?

3 A Yes.

4 Q But Brenda Auger is in the e-mail chain,
5 right?

6 A Yes.

7 Q At the bottom of the e-mail Mr. Niles says,
8 "Please make sure your teams are aware ASAP."

9 Do you see that?

10 A Yes.

11 Q So you're at some point underneath Brenda
12 Auger's team, right?

13 A Yes.

14 Q Did she make you aware of the facts in
15 Mr. Niles' e-mail?

16 MR. NEPPLE: Object to form.

17 Go ahead.

18 A When I was written up, that's when they told
19 me I'm not allowed to mention anything about
20 Windstream.

21 Q Okay. Was there ever a meeting of direct
22 representatives, sales representatives, where
23 this subject was discussed?

24 A We have weekly huddles, and it was told
25 during the huddle also.

1 Q Do you remember when that was?

2 A No.

3 Q Was it before or after you were disciplined?

4 A After.

5 Q Did you -- well, let's talk about the next
6 page. You looked at this exhibit when I
7 first gave it to you.

8 Did you have a chance to actually read
9 this transcript?

10 A Yes.

11 Q Okay. So this appears to be a transcript of
12 a conversation with you on April 11, 2019.

13 Do you remember such a conversation?

14 A Yes.

15 Q You had a chance to read it. Is it accurate?

16 MR. NEPPLE: Object to form.

17 Q It goes over to page 2, by the way,
18 Mr. Walker, just to make sure you're not
19 confused.

20 A So what was the question again?

21 Q So is this an accurate recording of your
22 conversation?

23 MR. NEPPLE: Same objection.

24 You can answer.

25 THE WITNESS: Oh, okay.

1 A Yes.

2 Q So who is Scott Collins?

3 A He is a manager in our department.

4 Q Is he somehow responsible for your work?

5 A Yes.

6 Q Is he above Mr. Roman in the chain of
7 command?

8 A Yes.

9 Q Is he underneath Ms. Auger?

10 A Yes.

11 Q Who is Jerry Hawthorne?

12 A A manager also.

13 Q And is he a supervisor of yours?

14 A Not a supervisor, but he's the manager of
15 James Roman.

16 Q Okay. And what about Jean Chewning, if I
17 pronounced that right.

18 A Jean was our human resource person.

19 Q At Charter?

20 A Yes.

21 Q And this was a meeting they convened to
22 discuss the incident of the flyer, right?

23 A Right.

24 Q And did they record it?

25 A No, I don't believe so.

1 Q How did this transcript get prepared, then?

2 A During the conversation between Jean and I,
3 Jerry was writing down everything. And the
4 discussion between Scott and I, that was done
5 over the phone.

6 Q Did they tell you that they were recording it
7 over the phone?

8 A I don't remember.

9 Q So if you look at page 2 of that. You're
10 looking at it, the backside of the page.

11 A Uh-huh.

12 Q So you gave whatever flyers you had left to
13 Jerry, correct?

14 A Yes.

15 Q Who's Jay?

16 A James Roman.

17 Q Oh, okay. He goes by "Jay"?

18 A Yes.

19 Q So he was on that conversation too, even
20 though he's not listed on page 1?

21 A Yes. He was listening.

22 Q This one is the phone conversation, right?

23 A Yes.

24 Q So he said I'll take them and shred them,
25 right?

1 A Yes.

2 MR. NEPPLE: Object to form.

3 Go ahead.

4 Q So then that all took place on April 11,
5 2019, right?

6 A Yes.

7 Q And then there was another conversation on
8 April 12, 2019. Was this also by telephone?

9 A No. In person.

10 Q And where did it take place?

11 A In an office at our store.

12 Q In Ohio, right?

13 A Yes.

14 Q And Ms. Chewning is not based there, is she?

15 A I don't believe so. I don't know.

16 Q So again look at this. And my question to
17 you is, is it an accurate transcript of the
18 conversation that took place?

19 A It is, yes.

20 Q And did you know it was being recorded?

21 A No.

22 Q Okay. Why was there need for a second
23 conversation?

24 A The first conversation was with Scott, and
25 then since I was written up I needed to have

1 a conversation with the human resource person
2 also.

3 Q So in the third colloquy there Jean says,
4 "Did you notify your supervisor?"

5 And you say, "We told Jay over the phone
6 and Becky gave the flyer to Jay."

7 Is that on the same day that you got the
8 flyer you told Jay about it?

9 A No. I don't remember.

10 Q How is it that your management found out you
11 were giving out these flyers?

12 MR. NEPPLE: Object to form.

13 Go ahead.

14 A After the conversation with Scott, I told Jay
15 about it.

16 Q The conversation with Scott on April 11th
17 that we've talked about?

18 A Yeah. Mr. Parrish. What was his name?

19 Q Oh, I'm sorry. You mean the conversation
20 with Mr. Parrish. After that conversation
21 you told Jay about it?

22 A Yes.

23 Q And then what did he do, report it to his
24 superiors?

25 A I don't know.

1 Q Look at the third-from-the-last colloquy
2 there. And you say at one point, "I figured
3 some of them are Windstream customers."

4 How did you do that?

5 A Well, typically in certain areas there's only
6 two providers in an area, it's either us or
7 Windstream. So if they don't have us, I
8 assume they have Windstream.

9 Q So in your particular geographic region that
10 you sell to, there's just two providers?

11 A Yes.

12 Q And it's Charter and Windstream?

13 A Yes.

14 Q So you say here, "I didn't say we were
15 helping Windstream"; is that right?

16 A Right.

17 Q You say, "I said Windstream sent out a list
18 of other company names"; is that accurate?

19 A Yes.

20 Q So Windstream got you a -- is that a company
21 name?

22 MR. NEPPLE: Object to form.

23 Go ahead.

24 A No. When we were out knocking doors, I will
25 always ask customers if they received

1 anything from Windstream. And a customer
2 told me that they received a list of names of
3 companies trying to help out with the
4 bankruptcy.

5 Q That was a different customer than the one
6 who gave you the flyer?

7 A Yes.

8 Q It says at the bottom, "Do you have that
9 list?"

10 "No."

11 I assume you don't have the list?

12 A No.

13 Q It says, it quotes you saying, "I don't even
14 know about bankruptcy"; is that accurate?

15 A Right.

16 Q You don't really know what happens when a
17 company goes into bankruptcy, correct?

18 A No.

19 Q Were there any other meetings besides these
20 two on April 11th and April 12th of 2019
21 regarding the incident of the flyer?

22 A No other meetings.

23 MR. ROSS: Can I have this
24 marked as Walker Deposition Exhibit Number
25 18.

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(Walker Exhibit 18 was marked.)

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Q Mr. Walker, this appears to be again a transcript of a conversation that took place on April 12, 2019, with Rebecca Root, Jerry Hawthorne and Jean Chewning.

Were you present for this meeting?

A No.

Q Did Ms. Root tell you about it?

A No.

Q Did anybody tell you about it?

A No.

Q Is this the first time you're seeing this document?

A Yes.

Q So do you want to take a minute to read it before I ask you questions?

A Yes.

I'm ready.

Q So did Ms. Root ever talk to you about this conversation she had with Jerry Hawthorne and Jean Chewning?

A No.

Q Second line at the top of the transcript

1 there's a reference to a Sandra Ley.

2 Do you see that?

3 A Yes.

4 Q Does that refresh your recollection that
5 that's the customer from whom the
6 advertisement was obtained?

7 A Yes.

8 Q It says here, "She called me on Monday and
9 she said she had gold for me."

10 Do you know what that means?

11 MR. NEPPLE: Object.

12 A No.

13 THE WITNESS: Oh.

14 MR. NEPPLE: Object. Form
15 and foundation.

16 Go ahead.

17 A No.

18 Q It says here that "Emmitt and I went there
19 and I saw the flyer and sent an e-mail to
20 Jay."

21 Do you see that?

22 A Yes.

23 Q Were you there when she sent the e-mail to
24 Jay?

25 MR. NEPPLE: Object. Form

1 and foundation.

2 Go ahead.

3 A No.

4 Q She didn't tell you she was sending an e-mail
5 to Jay?

6 MR. NEPPLE: Object. Form
7 and foundation.

8 Go ahead.

9 A No.

10 Q Does that refresh your recollection that Jay
11 knew about this earlier than when you
12 reported it to him?

13 A Yes.

14 MR. ROSS: Why don't we
15 take -- we can take as long of a break as you
16 want, but 10 minutes; is that fair?

17 THE WITNESS: Yes. Please.

18 MR. ROSS: Thank you.

19 THE VIDEOGRAPHER: Off the record.

20 The time is 10:59.

21 (Recess taken.)

22 THE VIDEOGRAPHER: Back on the
23 record. The time is 11:08.

24 BY MR. ROSS:

25 Q Mr. Walker, prior to the incident with the

1 advertising flyer we've been discussing, had
2 you already been put on some sort of
3 performance improvement plan?

4 A No.

5 Q For the month of February 22nd to March 21,
6 2019, you had missed your sales goal,
7 correct?

8 A Yes.

9 Q And you weren't put on a performance
10 improvement plan as a result of that?

11 A No.

12 Q Is a performance improvement plan a form of
13 disciplinary action within the company?

14 A Yes.

15 Q Can you just describe as a result of this
16 incident what the discipline that was imposed
17 upon you was?

18 A Not any. I didn't get in trouble.

19 Q Okay.

20 A It was my third month in door to door, so I
21 wasn't good at it.

22 Q I'm sorry. I don't understand that.

23 A Well, it was just when I transferred from
24 inbound sales to door to door.

25 Q You weren't meeting your sales goals?

1 A Only one time.

2 Q One time.

3 A Uh-huh.

4 Q And they did not take corrective action
5 because of that?

6 A No.

7 Q Now, earlier today you said that, and the
8 testimony speak for itself and just correct
9 me if am wrong, that you've been disciplined
10 as a result of this flyer being handed out.
11 Am I wrong about that?

12 MR. NEPPLE: Object to form.

13 Go ahead.

14 A You're right.

15 Q And what was that action taken against you by
16 the company?

17 A It was the corrective action and PIP.

18 Q Which was what?

19 A For using unauthorized material.

20 Q No. What I'm asking you is, what was the
21 PIP, as you put it?

22 A I will have to meet my sales quota every
23 month, which is eight.

24 Q Or else what happens?

25 MR. NEPPLE: Object to form.

1 Foundation.

2 Go ahead.

3 A I will be terminated.

4 Q And that was the result of this incident with
5 the flyer, right?

6 A Yes.

7 Q And you still work for Charter, correct?

8 A Yes.

9 Q So I assume you have met your goal every
10 month since then?

11 A Yes.

12 Q Is there a time limit for how long that
13 corrective action plan lasts?

14 A Six months.

15 Q So it ends in October?

16 A Yes.

17 Q So I've shown you what we've marked as Walker
18 Deposition Exhibit Number 3 for
19 identification. Let me hand that back to
20 you.

21 Is this the performance improvement plan
22 we've been talking about?

23 A Yes.

24 Q If you look at the last page of Exhibit 3, I
25 think you'll see there's lines for

1 signatures. This document is not signed.

2 Did you at some point sign this document?

3 A Yes.

4 Q So let me show you what we have marked as
5 Walker Deposition Exhibit Number 11. This
6 seems to be some sort of form dated April 15,
7 2019 from Charter.

8 I think you've already testified you
9 haven't seen this before today, right?

10 A Right. I don't remember.

11 Q So again, on the last page there's a spot for
12 employee signature.

13 Do you recall signing this at some point?

14 A If it was in the stack of papers when I
15 received my PIP, then yes; if not, I don't
16 remember signing anything like this.

17 Q Look at the first page. Do you mind if I
18 just lean over --

19 A Yes.

20 Q We don't have multiple copies.

21 See here, "Performance Improvement
22 Period"?

23 A Yes.

24 Q It's marked there "30 days."

25 Was that changed to six months at some

1 point, or have you misremembered?

2 A I was under the impression it was for six
3 months.

4 Q Okay. So let me show you what we've marked
5 as Plaintiff's Deposition Exhibit Number 12
6 for identification. It's captioned at the
7 top an "Incident Investigation Report." And
8 I think you've already said you hadn't seen
9 it before today.

10 Again, take your time to look through
11 whatever you need to read. I don't want you
12 to -- since you haven't seen it today, I
13 don't want you to be caught off guard.

14 A Yes, I've never seen this.

15 Q Okay. If you look on the next-to-last page,
16 there appears to be a summary of the events
17 that led up to your disciplinary action.

18 Do you see that? Yes, I actually started
19 talking -- yes, right there.

20 So I'm looking at the entry marked for
21 April 11, 2019. And it appears that James
22 Roman, who you identified as your direct
23 supervisor, notified Scott Collins, Jerry
24 Hawthorne and Jean Chewning about this flyer
25 incident, right?

1 A Yes.

2 Q So does this refresh your recollection that
3 the incident was before April 11, 2019?

4 A Yes.

5 Q In the next box there's reference to a
6 temporary restraining order filed by
7 Windstream against Charter.

8 Do you see that?

9 A Yes.

10 Q Do you have any knowledge of a temporary
11 restraining order?

12 A No.

13 MR. NEPPLE: Object to form.

14 Go ahead.

15 A No.

16 Q Did there come a time when someone within the
17 company either told you or sent you an e-mail
18 that Windstream had obtained a temporary
19 restraining order against Charter?

20 MR. NEPPLE: Same objection.

21 A No. We received an e-mail saying that we are
22 not allowed to discuss at all about the
23 Windstream bankruptcy.

24 Q When did you receive that?

25 A After the incident.

1 Q During this week of April 11th-12th, 2019?

2 A Yes.

3 Q Was that directed to you specifically or to a
4 broader group of people?

5 A Everyone that's in direct sales. There was a
6 big e-mail.

7 Q Everyone in the Charter direct sales
8 organization?

9 A Yes.

10 Q So not just Ohio, but everywhere?

11 A Yes.

12 Q Other than Rebecca Root -- okay? Other than
13 Rebecca Root, have you heard of any other
14 DSRs telling customers that Windstream was
15 bankrupt and going out of business?

16 A No.

17 Q So in front of you is what we've marked for
18 identification as Walker Deposition Exhibit
19 Number 7. And looking at page 2.

20 Prior to being given that by this
21 customer, had you ever seen that flyer
22 before?

23 A No.

24 Q Did you post a copy of that at your store in
25 Ohio?

1 A No.

2 Q Did you e-mail it to anyone?

3 A No.

4 Q Did you e-mail to any potential customers the
5 information contained in the flyer without
6 the flyer?

7 A No.

8 Q Do you know a person by the name of Stephen
9 McCready?

10 A No.

11 Q We mentioned earlier this temporary
12 restraining order you heard about through a
13 mass e-mail, right?

14 Did you also learn about a subsequent
15 issuance by the court of a preliminary
16 injunction against Charter by Windstream?

17 A No.

18 Q Prior to being given this PIP that we've been
19 talking about, had any other disciplinary
20 action been taken against you?

21 A No.

22 Q This is a document we've already marked for
23 identification as Walker Deposition Exhibit
24 Number 15. You looked at it earlier and you
25 said you had not seen that before. But just

1 to confirm, is that correct, you have not
2 seen that before today?

3 A Right.

4 Q So on that second page -- it's the only copy
5 we have. But Scott Niles writes "Did we put
6 him on corrective action, and if so, at what
7 level?"

8 Do you see that?

9 A Yes.

10 Q Do you have any understanding as to what that
11 reference to "what level" means?

12 A Like a final.

13 Q And the disciplinary action taken against you
14 was final, correct?

15 A Yes.

16 Q I don't know that you would know this, but
17 I'll ask you anyway. Was the disciplinary
18 action taken against Rebecca Root also final?

19 MR. NEPPLE: Object. Form
20 and foundation.

21 Go ahead.

22 A I don't know.

23 Q Do you even know if she was disciplined?

24 MR. NEPPLE: Same
25 objections.

1 A I don't know.

2 Q So you don't know that she did get
3 disciplined?

4 A Right. When I was disciplined, I was told
5 not to talk to anyone about it.

6 Q So I want to give this back to you.

7 A Uh-huh.

8 Q Let me hand you what we have marked for
9 identification as Walker Deposition Exhibit
10 Number 14. It looks very much like Exhibit
11 12. So you want to read it, but recognize
12 that it is different.

13 A Yes. This is to Rebecca Root.

14 Q Rebecca Root, right?

15 A Yes.

16 Q But you had not seen that before today?

17 A No.

18 Q And the information about the disciplinary
19 action you had no knowledge of before you
20 read that document, right?

21 A Okay.

22 Q Let me get you to look at what we've already
23 marked as Walker Deposition Exhibit Number 2
24 for identification. It would be in that
25 stack. It's probably the thickest one.

1 A Exhibit 2?

2 Q Yes. About 13 to 14 pages into the document,
3 it will be a color page.

4 A Okay.

5 Q Yes, you're there. At the bottom is the page
6 number 13.

7 Is that the flyer that you received from
8 the customer and gave out in a color format?

9 A No.

10 Q This is a different one?

11 A Different.

12 Q Okay. Had you ever seen this one before
13 today?

14 A No.

15 Q So next page over in Walker Exhibit Number 2
16 for identification.

17 Have you ever seen that flyer before
18 today?

19 A No.

20 Q Let me get you to look at -- keep continuing
21 backwards into that document and you'll come
22 to a page that says Exhibit B and then it's
23 two pages -- the other way.

24 A Exhibit B.

25 Q And turn the page one more time. Now, is

1 this a copy of that flyer that you were
2 handed by the customer and gave out?

3 A Yes.

4 Q So it would seem -- I've just now shown you
5 three different flyers, one of which you had
6 seen before today, two you hadn't.

7 Have you seen any other flyers similar to
8 these?

9 A No.

10 Q Okay.

11 MR. ROSS: Why don't we
12 take a five-minute break. I'll go over my
13 notes. We may be finished.

14 THE VIDEOGRAPHER: Off the record.
15 The time is 11:31.

16 (Recess taken.)

17 THE VIDEOGRAPHER: Back on the
18 record. The time is 11:38.

19 MR. ROSS: Mr. Walker,
20 thanks for coming. I don't have any further
21 questions for you at this time.

22 MS. GREER: I have nothing
23 further either.

24 - - - - -

25

1 EXAMINATION OF EMMITT WALKER

2 BY MR. NEPPLE:

3 Q Mr. Walker, we met before. I'm Mike Nepple.

4 And you understand that I represent Charter,
5 correct?

6 A Yes.

7 Q We just met for the first time face to face
8 yesterday, correct?

9 A Yes.

10 Q You've given some testimony here and I want
11 to ask you a few questions about that and
12 maybe touch upon a few topics that you might
13 not have talked about. Okay?

14 A Okay.

15 Q You're here pursuant to a subpoena, correct?

16 A Yes.

17 Q And that subpoena was served upon you and
18 requested that you be here, correct?

19 A Yes.

20 Q And you complied with that subpoena?

21 A Yes.

22 Q Can you tell me what's your level of
23 education? Did you graduate high school?

24 A High school graduate.

25 Q When did you graduate high school?

1 A In '09.

2 Q How old of a man are you, sir?

3 A 30.

4 Q Do you have any training beyond high school,
5 whether it's courses or online courses or
6 classes you may have been to?

7 A No.

8 Q Do you have any legal training of any kind?

9 A No.

10 Q Do you have any familiarity with bankruptcy
11 rules and regulations of any kind?

12 A No.

13 Q Let's talk a little bit about what you do
14 from day to day. How is it in your current
15 role and the role that you were in earlier
16 this year, how is it that you go about your
17 job?

18 A Pretty much I get out to the field around
19 1:00 p.m. I just knock on people's doors. I
20 ask them if they have TV, internet or voice
21 currently.

22 If they say yes, I ask them how much
23 they're paying, and then I pitch our price
24 and then ask them is that something that
25 they'd be interested in --

1 Q Okay.

2 A -- switching.

3 Q And how many doors do you knock on in an
4 average day?

5 A Between 30 to 40. It depends on how long I
6 speak to people at the door.

7 Q And how do you get that list of doors to
8 knock on?

9 A Well, at the beginning of every fiscal month,
10 we get to choose our area where we want to
11 knock doors at. And then my supervisor,
12 James Roman, gives us a list of addresses of
13 people who does not have our service.

14 Q Okay. So the lists that you're given are
15 provided by Charter is not current Charter
16 subscribers, correct?

17 A Correct. Yes.

18 Q And I think you testified earlier that in
19 your area, the places where your knock or
20 that you knock that the only internet
21 provider is Windstream, correct?

22 A Yes.

23 Q So when you get a list from your supervisor
24 or you select an area to knock, you know
25 you're going to Windstream customers,

1 correct?

2 A Yes.

3 Q Okay. Now, this flyer that -- you can take a
4 look at Exhibit 7, the flyer that we've been
5 talking about and the one that got you into
6 trouble here, can you take a look at that?

7 Now, that was provided to you by a
8 Windstream customer, correct?

9 A Yes.

10 Q Can you describe that process? Did you ask
11 for it? Did your partner ask for it? Did
12 that customer just give it to you?

13 A She called Rebecca Root and told Rebecca that
14 she received a flyer from us. And Rebecca
15 asked her if we can come over and take a look
16 at it.

17 Q Okay. And did Rebecca know this customer,
18 have a prior relationship with this customer?

19 A Yes.

20 Q Do you know the extent of that relationship?

21 A From what Rebecca told me she used to be a
22 bartender, and she used to come into the
23 place where she used to bartend.

24 Q Okay. And then you got possession of Exhibit
25 7, the flyer, correct?

1 A Yes.

2 Q And then what did you do?

3 A I made copies of it.

4 Q Where did you make copies?

5 A At the Spectrum store.

6 Q How many copies did you make?

7 A 10 to 15.

8 Q Is that your best recollection?

9 A Yes.

10 Q How many of those 10 to 15 flyers did you
11 hand out to people out in the field?

12 A Not even five. I don't remember.

13 Q And you still had some left when the issue
14 arose with the phone call we talked about
15 earlier and the whole incident where you
16 ended up on a performance improvement plan,
17 correct?

18 A Yes.

19 Q You still had copies left to give to Charter,
20 correct?

21 A Yes.

22 Q Do you know how many copies you had left to
23 give to Charter?

24 A No.

25 Q Okay. So your best estimate as you sit here

1 on how many copies of the flyer reflected in
2 Exhibit 7 that you gave out would be what
3 number?

4 A No more than five.

5 Q Okay. Did anyone at Charter, and I'm talking
6 about your management or from anyone that you
7 considered a supervisor -- strike that.

8 Did anyone from Charter, any person that
9 you know to be employed by Charter, tell you
10 to use that flyer?

11 A No.

12 Q Did they ever hint or intimate or give you
13 the old nudge, nudge, wink, wink you need to
14 use this flyer?

15 A No.

16 Q Who made the decision to use this flyer?

17 A I did.

18 Q As a result of that decision, what happened
19 to you once Charter found out?

20 A I was put on a final.

21 Q Okay. Do you know what areas you handed out
22 the five or so copies that you believe that
23 you handed out?

24 A In the Elyria area.

25 Q Okay. Were you aware, as you sit here today,

1 of anyone else who handed out copies of the
2 flyer reflected in Exhibit 7?

3 A No.

4 Q Did any of the people, of the five or so
5 flyers that you handed out, ever contact you
6 and ask you questions about the flyer?

7 A No. Just the one.

8 Q Just the -- excuse me. Which one?

9 A The Mr. Parrish guy.

10 Q We'll get to Mr. Parrish in a moment here.

11 Did anyone call you and ask you what this
12 meant, what the flyer reflected in Exhibit
13 Number 7 meant?

14 A No.

15 Q Did you get any sales or did you secure any
16 sales from any of the five flyers that you
17 handed out?

18 A No.

19 Q Did anyone explain to you that they were
20 confused by the five or so flyers that you
21 handed out?

22 A No.

23 Q At any point up until you were disciplined by
24 Charter, did any of the people that you've
25 knocked on doors with or contacted or

1 otherwise, did they have any questions for
2 you regarding Windstream's bankruptcy?

3 A No.

4 Q Did they ever -- any of these people talk to
5 you about any mailings they may have received
6 regarding Windstream's bankruptcy?

7 A One did.

8 Q Tell me about that. Do you know who that
9 was?

10 A No.

11 Q Do you know if it was in your area?

12 A It was in our area. It was someone that we
13 spoke -- that I spoke to when knocking, when
14 knocking.

15 Q Okay. Face to face?

16 A Yes.

17 Q What did they say?

18 A So one of the questions I always ask is like
19 if they ever received anything from
20 Windstream. And this one customer told me
21 they did and it was a list of like other
22 companies helping out with the bankruptcy.

23 Q Okay. And they had received a notice in
24 Windstream's bankruptcy with a list of
25 companies?

1 A Yes.

2 Q And that person, what did they understand
3 that list to be?

4 A Just different providers that they can maybe
5 switch to or just companies helping out with
6 the bankruptcy.

7 Q And did you ever see that list?

8 A No.

9 Q And given that you never saw the list, did
10 you have that same belief about what that
11 list meant?

12 A Yes.

13 Q Let's talk a little bit about the effect on
14 you. You were put under a PIP, a performance
15 improvement program, correct?

16 A Yes.

17 Q It's your recollection how long has that been
18 in place?

19 A Since April.

20 Q Okay. And as I understood your prior
21 testimony, there's two portions. One is they
22 provided you some coaching or instruction on
23 the use of flyers, correct?

24 A Yes.

25 Q And the other is they monitored your sales

1 performance in the field, correct?

2 A Yes.

3 Q Was there anything else that you see as part
4 of the performance improvement plan or the
5 corrective action or anything else that arose
6 as a result of this incident that you
7 testified to earlier today?

8 A I have to have the one-on-one with James
9 Roman every week.

10 Q Okay.

11 A Concerning my performance over the week.

12 Q And James Roman is your direct supervisor?

13 A Yes.

14 Q Do you believe -- what's your understanding --
15 strike that.

16 What's your understanding on whether that
17 will continue, and if so, how long will that
18 will continue?

19 A Until October. For six months.

20 Q Where did you obtain that understanding from,
21 Mr. Roman or someone else?

22 A Both Mr. Roman and Jerry Hawthorne.

23 Q Okay. You at some point received a call from
24 a Mr. Parrish, correct?

25 A Yes.

1 Q At the start of that call, what did he
2 identify himself as?

3 A As a customer I spoke with.

4 Q He said you and him had spoken in the field?

5 A Yes.

6 Q Did he disclose to you at the start of that
7 call that he was employed by Windstream?

8 A No.

9 Q So he represented to you that he -- that you
10 had spoken with him, correct?

11 A Yes.

12 Q As you sit here now, do you know whether you
13 actually did speak with him in the field?

14 A I spoke with maybe four, five people that
15 day.

16 Q Okay.

17 A Maybe.

18 Q Did he say he was a Windstream customer or
19 that he was -- or that you had spoken in the
20 field only?

21 A That he was a Windstream customer.

22 Q Did he tell you where his address was?

23 A No.

24 Q How long did this call with Mr. Parrish go
25 on?

1 A Maybe like 10 minutes.

2 Q At what point in the 10-minute period of this
3 call with Mr. Parrish did he finally disclose
4 to you that he was employed by Windstream?

5 A Like seven to eight minutes into the call.

6 Q Did you identify yourself as working for
7 Charter?

8 A Yes.

9 Q Did Mr. Parrish, or the person who
10 represented he was Mr. Parrish on the phone,
11 inform you that there was any ongoing
12 litigation between Windstream and Charter
13 before you jumped into this discussion?

14 A No.

15 Q Did this person, Mr. Parrish or the person
16 who represented he was Mr. Parrish, disclose
17 to you that he was trying to secure evidence
18 regarding a lawsuit between Windstream and
19 Charter?

20 A No.

21 Q Did he ever explain to you, Mr. Parrish or
22 the person who purports to be Mr. Parrish,
23 why he thought it was appropriate for him to
24 reach out to talk to you?

25 A No.

1 Q Did he ever -- strike that.

2 Did Mr. Parrish or the person purporting
3 to be Mr. Parrish ever indicate to you that
4 he was recording your conversation?

5 A No.

6 Q Did Mr. Parrish or the person purporting to
7 be Mr. Parrish ever indicate to you that he
8 was taking notes of your conversations?

9 A No.

10 Q As you sit here today, do you know or have
11 any belief on whether Mr. Parrish either
12 recorded you or took notes of your
13 conversation?

14 A No.

15 Q You have no idea?

16 A No.

17 Q Am I correct you have no idea?

18 A I have no idea.

19 Q What did Mr. Parrish say how he got your name
20 and business card?

21 A He said that I spoke with him earlier that
22 day. And usually when I spoke to people I
23 always give them my business card.

24 Q If Mr. Parrish was not located in Ohio that
25 day and he was, in fact, in another state, he

1 lied to you, correct?

2 MR. ROSS: So I'm going to
3 object to that. It's assumes facts not in
4 evidence. It's argumentative.

5 Q You can go ahead and answer.

6 A Yes.

7 Q I want you to assume that Mr. Parrish for
8 purposes of my question was not in Ohio that
9 day.

10 If you assume that to be true, did
11 Mr. Parrish make any statements to you that
12 would be a lie?

13 MR. ROSS: So I'm going to
14 object to that. It's argumentative, assumes
15 facts not in evidence, and is asking for a
16 hypothetical question to a nonexpert witness.

17 Q Go ahead.

18 A I don't understand.

19 Q Sure. Let me repeat the question.

20 You only knocked on doors in Ohio --

21 A Yes.

22 Q -- correct?

23 A Uh-huh. Yes.

24 Q The person who said he was Mr. Parrish either
25 personally or purported to be Mr. Parrish,

1 said that he had talked to you that day,
2 correct?

3 MR. ROSS: No. That
4 misstates his testimony.

5 MR. NEPPLE: No. Just make
6 an objection, Counsel.

7 MR. ROSS: I just did.
8 Misstates his testimony.

9 MR. NEPPLE: Then just say
10 "form."

11 MR. ROSS: No. No. I'm
12 required by law to tell you my objection so
13 you have the opportunity to correct it and
14 can't later complain. You're misstating his
15 testimony. That's going to be on the record.

16 Now go ahead, Michael.

17 MR. NEPPLE: Well, thank
18 you.

19 Q Okay. What did the person who said he was
20 Mr. Parrish or Mr. Parrish say to you when he
21 had a conversation with you?

22 MR. ROSS: So objection.
23 Asked and answered.

24 MR. NEPPLE: Okay.

25 Q Go ahead.

1 A He said he was a person I talked to when I
2 was out knocking doors.

3 Q Did he say he was a person that was out
4 knocking doors that day?

5 A Yes.

6 Q If Mr. Parrish was not in Ohio on that day,
7 the conversation he had with you, then he
8 lied to you, correct?

9 MR. ROSS: Objection.
10 Argumentative, assumes a fact not in
11 evidence, and is asking for a hypothetical
12 from a witness who is not an expert.

13 Q Go ahead. You can answer.

14 A Yes.

15 Q Did Charter at any time ever provide you with
16 any talking points or notes or any written
17 communication regarding Windstream's
18 bankruptcy before you got in trouble with the
19 flyer set forth in Exhibit 7?

20 A No.

21 Q Why did you believe that the list of
22 companies, other providers, in the Windstream
23 bankruptcy notice were helping Windstream
24 out?

25 A Because I predicted that they were going out

1 of business and that those companies was
2 going to help out with Windstream's
3 customers.

4 Q And why do you believe they were going to
5 help out with Windstream customers?

6 A Because they were filing for bankruptcy.

7 Q And what was your belief what -- at the time
8 of Exhibit 7, what was your belief of what
9 "filing for bankruptcy" meant?

10 A That they were going out of business.

11 Q Did you tell Mr. Parrish in this phone call
12 that they were definitely going out of
13 business?

14 A No.

15 Q What did you say? What exact words can you
16 recall as you sit here right now?

17 MR. ROSS: I'm going to
18 object. His prior testimony speak for
19 itself. He's already been asked this
20 question.

21 Q Go ahead.

22 A I told him I don't know, that he could maybe
23 lose his service in a month or two or maybe
24 years, that he will have to call Windstream.

25 Q And what did you base this prediction on?

1 A That I don't work for the company so I didn't
2 have an answer for him on whether or not he
3 was going to lose his service or not.

4 Q Do you know who a Lewis Langston is?

5 A No.

6 Q Have you ever had any conversations with a
7 person named Lewis Langston or a person who
8 purports to be Lewis Langston?

9 A No.

10 - - - - -

11 (Walker Exhibit 19 was marked.)

12 - - - - -

13 Q Mr. Walker, I've shown you what the court
14 reporter has marked as Exhibit 19 for
15 identification. I'll ask you to read that
16 carefully from start to finish and then I'm
17 going to ask you some questions.

18 A Okay.

19 Q Take a look at paragraph 6, please. Do you
20 have that in front of you?

21 A Yes.

22 Q The last sentence in that states,
23 "Mr. Walker's supervisor's name is John
24 Aaron."

25 Do you see that?

1 A Yes.

2 Q Is that correct?

3 A No.

4 Q Who was your supervisor at the time?

5 A James Roman.

6 Q Do you know anyone named John Aaron?

7 A No.

8 Q Okay. Let's look at paragraph 5. I'm going
9 to walk you through that sentence by
10 sentence.

11 First sentence, "Immediately upon
12 receiving copies of the flyers, Mr. Parrish
13 called Mr. Walker at the phone number listed
14 on his business card."

15 Did you get a call from someone
16 purporting to be Mr. Parrish or identifying
17 himself as Mr. Parrish?

18 A No. Well, at the beginning no. At the end
19 of the call he told me.

20 Q I understand. I thought you were confused.

21 At some point during the call he
22 identified himself as a Mr. Parrish, correct?

23 A Yes.

24 Q The next sentence, "Mr. Parrish asked
25 Mr. Walker if his services would be

1 disconnected if he was a Windstream
2 customer."

3 Is that statement accurate in your view?

4 A No.

5 Q What's inaccurate in that statement in your
6 view?

7 A I didn't say, yes, that his service will be
8 disconnected in a few months.

9 Q Okay. So the next sentence, "He responded
10 that 'yes' his services would be disconnected
11 in a few months."

12 Is that statement accurate in your view?

13 A No.

14 Q What's inaccurate about that statement?

15 A I never said "yes." I didn't say "yes."

16 Q Next sentence, "Mr. Walker then stated that
17 Windstream had provided Spectrum with a list
18 of Windstream's customers so that Spectrum
19 could set up services to make it easier for
20 Windstream's customers when Windstream went
21 out of business."

22 Is that sentence accurate?

23 A No.

24 Q What list of customers that had been provided
25 to you were you trying to reference in talks

1 with Mr. Parrish?

2 A The list of customers -- I mean the list of
3 addresses that we get for our assigned turf.

4 Q And that list came from Charter?

5 A Yes.

6 Q Okay. The next sentence, "Mr. Parrish
7 responded that Windstream had said that it is
8 continuing service."

9 Did Mr. Parrish or the person purporting
10 to be Mr. Parrish say this?

11 A No.

12 Q What did he say? Did he say anything similar
13 to this statement?

14 A No.

15 Q Next sentence, "Mr. Walker then stated that
16 other companies get together to help out
17 those who are in bankruptcy, and that
18 Spectrum is helping Windstream."

19 Is that statement accurate? And what was
20 the basis of that statement?

21 A Because typically when someone says they have
22 like another provider, like Windstream, I'll
23 tell them, like, that's the reason why I'm in
24 the area because we have like special pricing
25 available for you.

1 Q Okay. And then the next sentence,
2 "Mr. Walker again stated that services with
3 Windstream would definitely be disconnected
4 in the near future and that '[t]hey are going
5 out of business.'"

6 Did you say that? Did you say they're
7 definitely going out of business?

8 A No. I predicted that they were going out of
9 business.

10 Q Okay. Then the last sentence, "He also
11 claimed that 'Windstream over extended
12 themselves trying to upgrade their network
13 and never finished the job.'"

14 Do you see that sentence?

15 A Yes.

16 Q Do you see that sentence is in quotes, in
17 quotations?

18 A Yes. Yeah. Uh-huh.

19 Q Did you say that sentence?

20 A Yes.

21 Q And what was the basis of why you said that
22 sentence?

23 A Because typically I would think that
24 companies are always trying to make their
25 service better and that they were just trying

1 to upgrade their network and just never
2 finished, hence why they went to bankruptcy.

3 MR. NEPPLE: I think I'm
4 close. I'll take five minutes to go over my
5 notes. Can we go off the record, please?

6 THE VIDEOGRAPHER: Off the record.
7 The time is 12:05.

8 (Recess taken.)

9 THE VIDEOGRAPHER: We're back on
10 the record. The time is 12:09.

11 BY MR. NEPPLE:

12 Q Mr. Walker, just a couple of last minute
13 cleanup questions here.

14 I think you testified earlier when I was
15 asking you questions that you knock on 30 to
16 40 doors a day, correct?

17 A Yes.

18 Q How long had you been doing that at the time
19 this incident occurred in April of 2019?

20 A Before the incident or after the incident?

21 Q Your current position. When did you start in
22 your current position?

23 A In November.

24 Q From November to say April of 2019, is that
25 pretty consistent, that number of 30 to 40 a

1 day?

2 A No.

3 Q Okay. Had it gone up or gone down?

4 A Well, after today? Or today?

5 Q Let's try again.

6 The position that you hold today you
7 started when?

8 A In November.

9 Q Of this year?

10 A Yes.

11 Q Okay. The position --

12 A No. November of 2018.

13 Q Okay. From November of 2018 to April of
14 2019, is it fair to say that you knocked on
15 about 30, 40 doors a day each business day;
16 is that a fair statement?

17 A No.

18 Q What would be a fair statement of the number
19 of doors you knocked on each business day?

20 A 15 to 20.

21 Q Okay. And as you sit here today, are you
22 aware of anyone at Charter who handed out the
23 exhibit reflected in Exhibit 7 -- strike
24 that.

25 As you sit here today, are you aware of

1 anyone at Charter who handed out the
2 advertising reflected in Exhibit 7 other than
3 you?

4 A No.

5 Q I am correct?

6 A Yes.

7 Q Did anyone at Charter ask you or tell you or
8 instruct you or imply to you that you should
9 hand out the advertisement reflected in
10 Exhibit 7?

11 A No.

12 MR. NEPPLE: I don't have
13 any further questions.

14 MR. ROSS: So I've got a
15 few questions by way of redirect.

16 - - - - -

17 FURTHER EXAMINATION OF EMMITT WALKER

18 BY MR. ROSS:

19 Q Mr. Walker, you're aware you're appearing
20 here today, you're testifying under oath
21 subject to laws of criminal perjury, correct?

22 A Yes.

23 Q You took an oath at the beginning to tell the
24 truth, right?

25 A Yes.

1 Q So I want you to think very carefully about
2 these questions I want to ask you.

3 You got a call from Mr. Parrish, right?

4 A Yes.

5 Q At the start of the call he said he was a
6 Windstream customer, correct?

7 A Yes.

8 Q From that you assumed that you must have
9 talked to him, right?

10 A Yes.

11 MR. NEPPLE: Object to form.

12 Q Now, he also said he received -- had gotten
13 ahold of your business card, right?

14 A Yes.

15 Q And then he started talking to you about the
16 bankruptcy situation at Windstream; isn't
17 that right?

18 A Not right away.

19 Q Okay. What was the -- yes, you're right, not
20 right away. Sorry.

21 At some point he did talk to you about
22 the bankruptcy situation at Windstream,
23 right?

24 A Yes.

25 Q And you told him that Windstream was in

1 bankruptcy and would go out of business at
2 some point in the future?

3 MR. NEPPLE: Object to form.

4 Go ahead.

5 A Yes.

6 MR. ROSS: That's all I
7 have for you.

8 MR. NEPPLE: We'll read and
9 sign.

10 THE VIDEOGRAPHER: Off the record.
11 The time is 12:13.

12

13 (Deposition concluded at 12:13 p.m.)

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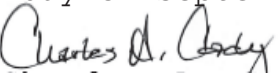
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1 THE STATE OF OHIO,) SS:
2 COUNTY OF CUYAHOGA.)

3 I, Charles A. Cady, a Notary Public within
4 and for the State of Ohio, duly commissioned and
5 qualified, do hereby certify that EMMITT WALKER,
6 was first duly sworn to testify the truth, the
7 whole truth and nothing but the truth in the cause
8 aforesaid; that the testimony then given by him
9 was by me reduced to stenotypy in the presence of
10 said witness, afterwards transcribed on a
11 computer/printer, and that the foregoing is a true
12 and correct transcript of the testimony so given
13 by him as aforesaid.

14 I do further certify that this deposition
15 was taken at the time and place in the foregoing
16 caption specified. I do further certify that I am
17 not a relative, counsel or attorney of either
18 party, or otherwise interested in the event of
19 this action.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand and affixed my seal of office at Cleveland,
22 Ohio, on this 24rd day of September, 2019.

23 
24 Charles A. Cady, Notary Public
within and for the State of Ohio

25 My Commission expires November 3, 2019.