

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

PLUMBERS LOCAL UNION NO. 519  
PENSION TRUST FUND; AND CITY OF  
STERLING HEIGHTS POLICE AND FIRE  
RETIREMENT SYSTEM, DERIVATIVELY  
ON BEHALF OF NOMINAL DEFENDANT  
DISH NETWORK CORPORATION,

Appellants,

vs.

CHARLES W. ERGEN; JAMES DEFRANCO;  
CANTEY M. ERGEN; STEVEN R.  
GOODBARN; DAVID K. MOSKOWITZ; TOM  
A. ORTOLF; CARL E. VOGEL; GEORGE R.  
BROKAW; JOSEPH P. CLAYTON; GARY S.  
HOWARD; DISH NETWORK  
CORPORATION, A NEVADA  
CORPORATION; AND SPECIAL  
LITIGATION COMMITTEE OF DISH  
NETWORK CORPORATION,

Respondents.

Electronically Filed  
Mar 29 2021 05:14 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Supreme Court No. 81704

District Court No.  
A-17-763397-B

**JOINT APPENDIX**  
**Vol. 37 of 85**  
**[JA008441-JA008690]**

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<b>Evidentiary Hearing SLC Exhibit 102<sup>2</sup></b>			

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<sup>1</sup> Volumes 2-85 of the Joint Appendix include only a per-volume table of contents. Volume 1 of the Joint Appendix includes a full table of contents incorporating all documents in Volumes 1-85.

<sup>2</sup> The Evidentiary Hearing Exhibits were filed with the District Court on July 6, 2020.

1           A. well, in a sense a press 1 is live outbound  
2 dialing, but at an accelerated rate.

3           Q. So you wouldn't have been able to make your  
4 numbers if you were using any of those other  
5 market --

6           THE COURT: I'm sorry. What is line paper  
7 click?

8           Q. Could you explain what --

9           A. Online pay per click. Google, they -- you  
10 can bid on certain keywords. You pay a price for  
11 that word. And if somebody clicks on that, your  
12 link, it will go to a landing page or your website  
13 or a phone number.

14          By a keyword. Like if somebody searched for  
15 DISH Network, if you bid \$20, somebody clicks on  
16 that, so in theory you will get that traffic.

17          Q. Did a man named Reza Akhavanfard?

18          (Court reporter requested clarification.)

19          A. Reza did. He with a one of Blaze's  
20 associates. He worked for us for about six or seven  
21 days. Just to see -- basically he wanted to steal  
22 our scripts and what we did. And then he got a  
23 log-in from someone else and just opened up a call  
24 center.

25          Q. What's your understanding of what percentage

1 of the robo calls you sent out were answered by a  
2 live person?

3 A. Well, we -- well, I made sure -- well, it  
4 was an average of four out of every ten calls were  
5 answered by a live person. And the others were --  
6 went to answering machine. And our data, we would  
7 keep track of those numbers.

8 Q. And there eventually became a time when DISH  
9 terminated you?

10 A. Yes.

11 Q. Can you tell about that situation?

12 A. Well, it was Valentine's Day and I didn't  
13 even get a kiss. So yeah, they terminated us  
14 Valentine's Day, 2007? 2007.

15 Q. What happened?

16 A. Basically, we were waiting for our funds to  
17 be in our account. Then they weren't there. So at  
18 the end of the day we contacted -- I myself spoke to  
19 Reji and asked her why haven't we had funds. And  
20 she said there was an interruption of something and  
21 we'll have them tomorrow, which was the next day.

22 Q. And then what happened?

23 A. Then when they weren't there I called. And  
24 then she basically didn't have the courage to tell  
25 me that they pulled our plug. And they referred us

1 to some other gentleman, I don't remember what his  
2 name was, to tell us that.

3 Q. In your opinion was your termination  
4 profitable for DISH?

5 A. Absolutely.

6 Q. Why?

7 A. Well, because we had thousands of accounts  
8 that we have done and installed. We still had  
9 hundreds pending. And then we also had thousands of  
10 accounts that we were getting residual income on as  
11 well.

12 Q. And you didn't get paid for any of that?

13 A. Nothing.

14 Q. But JSR continued in a different form;  
15 right?

16 A. Well, we made the attempt. Because at that  
17 time log-ins were easily -- it was like Orange  
18 County crack. It was everyone had log-ins for DISH  
19 Network.

20 Q. And you put your sales through different OE  
21 retailers?

22 A. I did.

23 Q. So the dialing continued?

24 A. Absolutely.

25 Q. Eventually did you leave?

1 A. I did.

2 Q. Can you explain that situation?

3 A. Well, it was just that at the time DISH was  
4 just pulling people's licenses, or -- since it is  
5 honor among thieves, people would say they got their  
6 license pulled, but they didn't. So the last straw  
7 was when I didn't get paid for two weeks of  
8 marketing. And that's when I said, "I don't need  
9 this," and walked away.

10 Q. Now, you said earlier that Reji Musso didn't  
11 have a juice card?

12 A. Well, I didn't think that she did; no.

13 Q. What did you mean by that?

14 A. Well, juice card, authority. That can do  
15 anything other than just, you know -- well, just be  
16 a yes woman.

17 Q. Who do you think had the juice card at DISH?

18 A. Well, I know Doug was -- we thought -- we  
19 respected him more than we did any e-mail from Reji.

20 Q. What about the Mikes?

21 A. Well, the Mikes, they were too busy. You  
22 know, I wasn't -- I was -- not that I was worried  
23 about them, but Doug seemed to be able to take care  
24 of everything for us.

25 Q. But you've seen a lot of DISH OE robo sales

1 with your own eyes, haven't you?

2 A. Absolutely. Millions.

3 Q. Now, I expect in a few minutes Mr. Bicks is  
4 gonna get up here and raise his voice and call you a  
5 liar.

6 A. Okay.

7 Q. Are you proud of everything you have done?

8 A. Well, not proud. Sometimes you gotta sit  
9 back and laugh though just by -- you know, the P-1s.  
10 You guys really can't appreciate it, but it was a  
11 wonderful way to reach out and touch people,  
12 millions of people, on a daily basis.

13 So do I -- and the circus atmosphere of a call  
14 center of -- it was -- I lost my train of thought.  
15 But am I proud of what I did? I tried to do what I  
16 thought was right.

17 Q. I don't have anything further right now.

18 THE COURT: Any of the states?

19 All right. Mr. Bicks.

20 MR. BICKS: Thank you, Your Honor.

21 THE WITNESS: Do I get to keep this?

22 THE COURT: Please proceed. Mr. Bicks.

23 CROSS EXAMINATION

24 BY MR. BICKS:

25 Q. Good afternoon, Mr. Goodale.



1 A. Good afternoon.

2 Q. You know today that you were sworn in here  
3 to tell the truth?

4 A. Yes.

5 Q. And you know that you actually submitted to  
6 this Court an affidavit where you took that same  
7 oath; you know that, right?

8 A. I do.

9 Q. And I have that affidavit, it's DTX739. Do  
10 you have that in front of you? Tab 1B in your  
11 binder.

12 A. 1B. Okay.

13 Q. And you see your signature at the end?

14 A. I do.

15 Q. And you see there that you swore you were  
16 gonna tell the whole truth under penalty of perjury?

17 A. Yes.

18 Q. Now, you mentioned -- I thought I heard it  
19 right, that you -- in your language, you said you  
20 probably told some fibs to Reji Musso at DISH. You  
21 said that; right?

22 A. Untruths in print; yes.

23 Q. Untruth in print. That's the same thing as  
24 a lie; right?

25 A. I reckon so. Yes, it is.

1           Q. Why don't you point out to us in this  
2 affidavit that you submitted, under penalty of  
3 perjury of the Court, where you said you lied to  
4 people at DISH?

5           A. Well, I didn't fill out the original  
6 application for the DISH Network OE license, but in  
7 my response to -- in this affidavit that I'm  
8 reading, I don't see any lies in it.

9           Q. Well, you told us that you lied to Ms.  
10 Musso. What I'm asking is how come you didn't put  
11 in this affidavit to this Court that you lied to Ms.  
12 Musso?

13          A. I didn't -- I wasn't aware that a Ms. Musso  
14 existed, or at the time of this affidavit I wasn't  
15 concerned about Rene -- what's her name?

16          Q. Her name is Reji Musso?

17          A. Reji. So I just did this. I wasn't aware  
18 of an e-mail that I sent to her perhaps.

19          Q. Well, I'll show you a bunch. But you know  
20 the truth is that you had numerous communications  
21 with Musso prior to the time of this affidavit;  
22 right?

23          A. From nine years ago. Apparently so, yes.

24          Q. Right. And you didn't put in this affidavit  
25 to the Court that, to use your words, you fibbed,

1 otherwise known as lied, to Ms. Musso. That's not  
2 in here, right?

3 A. At the time of my questioning and putting  
4 this together Reji Musso did not come to mind; no.

5 Q. And neither did Doug Chang; right? Why  
6 don't you point out in the affidavit that you  
7 submitted under penalty of perjury where his name  
8 appears?

9 A. It's not there.

10 Q. It's not in the affidavit that you submitted  
11 to the Court, is it?

12 A. No, it is not.

13 Q. And you swore in this affidavit on the  
14 second page that it was under the penalty of  
15 perjury; right?

16 A. Correct.

17 Q. And you didn't say anything, by the way, in  
18 this affidavit, about some of your prior problems  
19 with the law?

20 A. Well, in an affidavit, it was for the facts  
21 of why they were contacting me. Should I have  
22 brought up the fact that, you know, I got drunk  
23 drivings and should that be a declaration under  
24 penalty of perjury as well that would prevent me  
25 from testifying?

1 Q. well, you didn't mention actually some  
2 issues you had with a federal court in California in  
3 the year 2001. Do you remember that?

4 A. Federal Court?

5 Q. In California. Richard Goodale versus  
6 Steven Gooley, United States District Court, Central  
7 District of California, December 6th, 2000 --

8 A. Oh, yeah, I was fighting the state. Yes.

9 Q. You were cautioned by a Court about making  
10 vexatious filings, do you remember --

11 A. I was not. No, that was not it. It was  
12 just that I didn't understand the full procedure of  
13 how to file a habeas corpus and/or a lawsuit that  
14 would bring the state into a federal court.

15 Q. You don't remember that the Court warned you  
16 that abuse of the Court's process may result in  
17 issuance of an order against you? You don't  
18 remember any of that?

19 A. I did get that; yes.

20 Q. You did get that --

21 A. And then I --

22 Q. You didn't put that in this affidavit to  
23 this Court, did you?

24 A. well, once again, I wasn't aware that this  
25 affidavit had anything to do with other than what it

1 was, and that was my DISH Network affiliation.

2 Q. Well actually, in this affidavit, why don't  
3 you point out where the mention is of United  
4 Satellite?

5 A. It's not in there.

6 Q. This was the affidavit you did under penalty  
7 of perjury to this Court?

8 A. Yes.

9 Q. Now, I want to show you a retailer  
10 application I think you mentioned, but let's take a  
11 look at that. Remember you were asked about that on  
12 direct? A retailer application?

13 A. Yes.

14 Q. And you're familiar with that; right?

15 A. I'm familiar what it looks like. I did not  
16 fill it out.

17 Q. Hm-mm. And you actually know -- well,  
18 you've seen it before; right?

19 A. Have I seen what it looked like? Yes. Did  
20 I see it filled out? No.

21 Q. Let's look at Tab 7. So we're clear, you've  
22 been here for a while rehearsing your testimony;  
23 right?

24 A. That is not true.

25 Q. You weren't shown this document before you

1     came here?

2           A. I can't see that.

3           Q. Let's go to Plaintiff's Exhibit 235.

4           A. I haven't seen that.

5           Q. You have seen this, haven't you?

6           A. That I saw.

7           Q. You were asked about this on redirect. You  
8 saw this before you came to testify?

9           A. This wasn't asked in the direct questioning.

10          Q. I thought you were asked about a business  
11 plan that was submitted? Do you remember that?

12          A. I was not asked about a business plan  
13 submitted.

14          Q. Well, I'm gonna ask you about it now. Have  
15 you seen that before?

16          A. I just saw that yesterday.

17          Q. Okay. So you saw it, or you didn't see it?

18          A. You asked me if I saw that. Yes, I saw it  
19 for the first time yesterday.

20          Q. Right. And you recognize the signature down  
21 at the bottom?

22          A. No.

23          Q. Well, that's Mr. Grider, right?

24          A. Apparently, yes.

25          Q. Right. And JSR, you were the Richard, R in

1 JSR; right?

2 A. That is correct.

3 Q. He is the J for Jerry?

4 A. Yes.

5 Q. The other fellow is S for Sean?

6 A. Correct.

7 Q. You saw this yesterday?

8 A. I saw that it was filled out by Jerry, yes,  
9 that one page, absolutely.

10 Q. Right. And this was given to DISH; right?  
11 You know that?

12 A. Submitted to DISH by Jerry; right.

13 Q. And this was your partner; right?

14 A. My partners that weren't involved in the  
15 opening of the office. They eventually came onboard  
16 after.

17 Q. Right, right. So what does this say? Let's  
18 blow up "forms of advertising," what Mr. Grider told  
19 DISH. Do you see that?

20 A. I do.

21 Q. You see he says 30 percent print?

22 A. Yeah.

23 Q. 30 percent telemarketing?

24 A. Yes.

25 Q. 40 percent direct mail?

1 A. Okay.

2 Q. Right? That's a fib?

3 A. I didn't fill it out. So therefore, I have  
4 no knowledge of what -- what might be on that  
5 application, because it was Jerry Grider that filled  
6 it out.

7 Q. Right.

8 A. I didn't see that until yesterday.

9 Q. Is that right?

10 A. That, what you're showing my right there,  
11 absolutely.

12 Q. So you swore out an affidavit to the Court  
13 in this case, and you didn't -- you didn't even look  
14 at the business plan of your own company that was  
15 given to DISH?

16 A. I didn't have it. I never had it.

17 Q. Nobody from the government provided this to  
18 you?

19 A. I've seen this one page.

20 Q. All right. And that was for the first time  
21 yesterday?

22 A. That was filled out by Jerry.

23 Q. Sir, please ask -- answer my questions. You  
24 filled out an affidavit to this Court?

25 A. I did.



1 Q. And it was done under penalty of perjury?

2 A. That's correct.

3 Q. You didn't mention in that affidavit this  
4 business plan; right?

5 A. No, I did not.

6 Q. And are you telling us here today that  
7 before you submitted that affidavit to the Court the  
8 government didn't provide this business plan to you?

9 A. I never -- no. I never saw this business  
10 plan, because I didn't fill out the application.  
11 What you're assuming is that we were hand in hand in  
12 getting this thing started. Jerry had another job  
13 somewhere else. Sean was somewhere else. He was  
14 taking care of the application, I was setting up the  
15 call center using Sean Portela's log-in.

16 Q. Okay. Let's look at the application. Blow  
17 up the comment section. You see that?

18 And point out to me where this says anything  
19 about robo calling or calls from the Philippines?

20 A. It doesn't.

21 Q. Doesn't say anything about that, does it?

22 A. It doesn't read that; no.

23 Q. Mm-hmm. And you had various communications  
24 with Musso, Ms. Musso, didn't you?

25 A. To my knowledge two or three at tops.

1 Q. And did you look at those before you came  
2 here to testify?

3 A. I don't know. No.

4 Q. You didn't look at the communications --

5 A. They showed me -- yesterday they showed me  
6 an e-mail that I sent. Because what I did is when  
7 they came out and asked me if I had any information  
8 regarding this case, I gave them a hard drive from a  
9 computer that was sitting for years in an office  
10 that I happen to acquire. And in that they found an  
11 e-mail or two. They showed me an e-mail that I had  
12 to respond and I did respond to for some woman,  
13 Melissa something.

14 Q. Right. So let's get this very clear. You  
15 now know that there are communications that you had  
16 with DISH responding to certain complaints; right?

17 A. I saw three.

18 Q. Right. And what I want to ask you is, go  
19 back to your sworn affidavit to the Court in this  
20 case, you didn't mention any of your communications  
21 back to DISH, did you?

22 A. No, I didn't.

23 Q. And I'm gonna get to this in a minute. But  
24 you know that in those communications to DISH you  
25 told DISH that you were complying with the law? You

1 remember those representations?

2 A. Do I remember that we were scrubbing our  
3 lists? Yes. So in the fact of the e-mail that I  
4 sent regarding that one -- they showed me two others  
5 I was unaware of. This is nine years ago. I can  
6 barely remember how to get back to the hotel. So --

7 Q. But hold on a minute. You can barely  
8 remember to get back to the hotel, but you kind of  
9 had a specific recollection about some other things  
10 that happened 10, 15 years ago that aren't in your  
11 sworn statement to the Court?

12 A. That is correct.

13 Q. Now, I want to ask you about some of the  
14 things that you said to DISH. You think it's fair  
15 when you say something to DISH that they can trust  
16 you?

17 A. Trust me?

18 Q. Yeah.

19 A. In what manner?

20 Q. Believe you that you're telling the truth?

21 A. Am I speaking to DISH or am I speaking to  
22 you?

23 Q. When you're saying something to DISH, do you  
24 think it was fair for them to trust you?

25 A. I think I wasn't concerned about them

1 trusting me or not. It was a woman -- this was some  
2 woman that we had no -- we weren't afraid of whoever  
3 this Reji Musso was.

4 Q. So you kind of thought that it was okay to  
5 say -- tell fibs to Ms. Musso even though you knew  
6 she was in charge of compliance --

7 A. In the letter that I wrote regarding that  
8 Melissa complaint, what I stated in that e-mail was  
9 accurate and factual.

10 Q. Let's actually go through these -- well, let  
11 me -- because I gotta hear this again. Could  
12 Ms. Musso believe what you said, or were you  
13 attempting to mislead her?

14 A. She should have believed what I said; yes.

15 Q. So when you told her your company was  
16 compliant with the law, she should have trusted you;  
17 right?

18 A. In the -- in the manner of which I responded  
19 to, if the -- at what I was doing, and I was in  
20 compliance by ensuring that DNCs were scrubbed, our  
21 lists were scrubbed. But I had two partners that  
22 were doing other things that I was unaware of.

23 Q. Right. And what you're telling us is that  
24 you were being truthful then in those responses;  
25 right?

1 A. The one I read yesterday, absolutely.

2 Q. All right. Let me actually go through them.  
3 You remember that there was a complaint, the Hannah  
4 Klein complaint. Do you remember that?

5 A. No.

6 Q. All right. So let's look at Plaintiffs'  
7 510.

8 A. Where would that be?

9 Q. It's tab 13 in your binder, 510. Do you  
10 remember getting this, and seeing it?

11 A. Okay.

12 Q. Do you see this, it relates to somebody  
13 named Hannah Klein. Do you see that?

14 A. I see it, yes.

15 Q. And you -- you're familiar with this because  
16 you responded to it; right?

17 A. Well, see you're assuming that -- this  
18 computer that we had that was in our office, it was  
19 a computer used by many people. And I don't recall  
20 this at all.

21 Q. All right. Well, look at Plaintiff's  
22 Exhibit 420. Maybe this will help you.

23 A. Where is 420?

24 Q. 420 is tab 15 in your notebook. Do you see  
25 that?

1 A. I do.

2 Q. This has got your name on it; right?

3 A. This does.

4 Q. Were you intending to be truthful?

5 A. This was truthful.

6 Q. And when somebody gets this, could they  
7 trust it and rely on what you said?

8 A. Based on the facts that I presented through  
9 this e-mail, it was -- it was the truth.

10 Q. Yeah. And what are you saying here when  
11 this complaint was brought to your attention?  
12 You're saying it was due to a corrupted DNC download  
13 file; right? Do you see that?

14 A. I do.

15 Q. And that's what you told the people at DISH?

16 A. I presented that in this e-mail; yes.

17 Q. And that was the truth; right?

18 A. That was the only thing that made sense when  
19 it came to a do not call violations based on my --  
20 what I did for my part of the partnership.

21 Q. Okay. So was that the truth? Yes or no?

22 A. Absolutely.

23 Q. And you intended for them to rely on that;  
24 right?

25 A. It was the truth.

1           Q. Right. And actually, what you say there is,  
2           you can assure, because oversight, no other known  
3           DNC violations will occur. Was that truthful?

4           A. That is truthful.

5           Q. All right. You intended for them to rely on  
6           that?

7           A. I did.

8           Q. And then you say here, (as read:) We here  
9           at JSR wish to maintain the highest standards of  
10          marketing in the industry.

11          Was that truthful?

12          A. Absolutely.

13          Q. How come you didn't put anything in here  
14          about lighting up the calls, like you said on  
15          direct?

16          A. It was just the way it was done in Orange  
17          County, and DISH Network. Everyone ran a press 1  
18          call center.

19          Q. Well, you didn't put that in your e-mail  
20          when you said, (as read:) We'll continue to  
21          maintain any and all state or federal guidelines  
22          pursuant to the Telemarketing Act?

23          A. Well, you yourself are reading that, and now  
24          you also will see that, yes, they -- so they knew we  
25          did a violation. So obviously they knew we were

1 calling people. So, you know, our oversight was  
2 that DNC went out, but you can see clearly that we  
3 did violate a do not call policy. And you can also  
4 see that we were trying to maintain -- or I was, the  
5 standard of making sure it didn't happen again.

6 Q. Well, so is this truthful statement? You at  
7 JSR maintain the highest standard of marketing in  
8 the industry, and you're going to continue to  
9 maintain any and all state or federal guidelines  
10 pursuant to the telemarketing --

11 A. Absolutely.

12 Q. That's the truth?

13 A. That is the truth.

14 Q. And when you said that, you expected them to  
15 rely on it and believe you; right?

16 A. It was truth.

17 Q. So that was the first complaint; right?

18 A. I don't know.

19 Q. Well, I'm going in time. It's -- this is  
20 the Ms. Klein complaint. I want to ask you about  
21 the Melissa Wallace complaint. You talked to DISH  
22 about that as well; right?

23 A. I did.

24 Q. Hm-mm. So let's look at Plaintiffs' 247.

25 THE COURT: Were 510 and 420 plaintiffs'?



1 MR. BICKS: I'm sorry, Your Honor?

2 THE COURT: Were 510 and 420 plaintiffs'  
3 exhibits?

4 MR. BICKS: 510 was a plaintiffs' Exhibit.  
5 And 420 was a plaintiffs' exhibit, Your Honor.

6 THE COURT: Thank you.

7 Q. Plaintiffs' 247. You remember this, sir?  
8 Right?

9 A. Melissa wallace.

10 Q. Yep. And you remember you worked on a  
11 response to it?

12 A. I absolutely did.

13 Q. And was your response the whole truth and  
14 nothing but the truth?

15 A. It absolutely was.

16 Q. And was it something that DISH could rely on  
17 and believe?

18 A. When I researched this, because we did buy  
19 the Federal Do Not Call Registry from the  
20 government. At the time of this alleged complaint  
21 of a DNC violation she was not on the do not call  
22 list.

23 Q. Right. So from your prospective it wasn't a  
24 violation; right?

25 A. Correct.

1 Q. And that's what you told DISH; right?

2 A. Yeah.

3 Q. And that's what you believed to be the  
4 truth; right?

5 A. It was the truth.

6 Q. Okay. Then let's look and make sure we see  
7 everything you said. Let's look at DTX737.

8 This was your response to the Melissa Wallace  
9 complaint; right? DTX737, tab 18C. You've seen  
10 this before; right?

11 A. No.

12 Q. You weren't shown this? (As read:) Dear  
13 Reji, the following response is the alleged  
14 violation as reported by Melissa Wallace.

15 A. That doesn't look like I -- I don't know.  
16 That one I don't know. It's -- now maybe -- I mean  
17 I know that I did research and she was not in the  
18 DNC, but I don't recall this.

19 Q. Let me help you. Let's go to DX750. This  
20 is the cover document that attaches this, maybe this  
21 will refresh your memory.

22 You see this? 750, it's tab 18A. DTX750. Do  
23 you see that, sir? It's on the screen. It's got  
24 your name on it?

25 A. I see.

1           Q. Do you see where it says on it (as read:)  
2 Per your request enclosed please find the response  
3 to the Melissa wallace issue, and our scales  
4 scripts.

5           Does that refresh your memory?

6           A. No.

7           Q. You're not gonna deny that's your response  
8 to Melissa wallace?

9           A. That is my response.

10          Q. Is it your response; right?

11          A. Yeah.

12          Q. So can we go back, please, to DTX737. And  
13 see exactly what you said?

14          You went one by one. And by the way, did you  
15 write this?

16          A. Probably. I guess I did.

17          Q. And you see that in summation at the bottom  
18 you disagree with all claims made by Melissa  
19 wallace; right?

20          A. Absolutely.

21          Q. And if we go step by step. Failure to  
22 register with the State of Utah. You said her  
23 number wasn't registered; right? That's what you  
24 told DISH?

25          A. That is absolutely correct.

1 Q. That's the truth; right?

2 A. Yes.

3 Q. And then you said use of a prerecorded  
4 message. And let's see what you said. Did you do  
5 this research on your own or did you have a lawyer  
6 help you?

7 A. No. I didn't need an attorney.

8 Q. Because you knew what the truth was; right?  
9 You put it in the e-mail?

10 A. Yeah.

11 Q. So let's see what you said about prerecorded  
12 message. Blow it up please, Trudy.

13 (As read:) Telemarketer may play a prerecorded  
14 message when a consumer answers, but only in a  
15 maximum of three percent of calls answered by  
16 consumers in person.

17 Is that what you said?

18 A. Yeah. Well, that's the statute, isn't it?

19 Q. That's in fact what you told DISH that you  
20 were doing; right?

21 A. Absolutely.

22 Q. And that was truthful and DISH could rely on  
23 you; right?

24 A. They can rely on that fact statement; yes.

25 Q. Because you went and did the research on it

1 and you told them the truth; right?

2 A. I told them based on the laws that we were  
3 presented; yes.

4 Q. And you also said that -- in the bottom of  
5 this, that JSR Enterprises owns and operates its own  
6 satellite business under failure to honor.

7 Trudy, blow that up.

8 You see that, sir? You wrote that; right?

9 A. I didn't write that.

10 Q. Oh, the -- that's something you didn't write  
11 in the e-mail?

12 A. Well, in reading that, maybe I put that in  
13 there.

14 Q. Okay. So let's blow it up so we can make  
15 sure we can see it.

16 A. I just read it.

17 Q. Okay. You said (as read:) In as much as  
18 JSR Enterprises owns and operates its own satellite  
19 service business.

20 Is that right?

21 A. We were a retailer for DISH Network; yes.

22 Q. Right. And it was owned and operated by  
23 JSR, and you were one of the three people; right?

24 A. I was the -- yeah.

25 Q. And that you put in the e-mail was outside

1 of the control of DISH Network; right? That's what  
2 you said?

3 A. Well, if you read in the context of the  
4 total language of what I responded to, is that we  
5 were trying to -- or at the time, now that I'm  
6 reading this, to ensure them that they were not  
7 liable for a claim which was based on a non-truth  
8 from this Melissa woman.

9 Q. Right. So I just want to ask very clearly,  
10 what you said here was the whole truth and nothing  
11 the truth; right?

12 A. At the time I wrote that that is not under  
13 penalty of perjury, or declaration of perjury. It's  
14 an excerpt from an e-mail that was sent nine years  
15 ago.

16 Q. Okay. So is it the truth or a fib?

17 A. What you're reading is based on the response  
18 at the time to that Melissa Wallace. And everything  
19 on there you yourself, being an attorney, you should  
20 have done the research to know that was true as  
21 well.

22 Q. Yeah, sir, let's please try to answer my  
23 question. Is this a truth or a fib?

24 A. That --

25 MR. RUNKLE: Asked and answered, Your

1 Honor.

2 THE COURT: The objection is overruled.

3 A. I'm sorry?

4 Q. Is it a truth or a --

5 A. This, what we're reading, is truth when I  
6 responded to the individual complaint of Melissa  
7 Wallace; yes.

8 Q. All right. And DISH didn't hire the  
9 employees at JSR, did it?

10 A. No.

11 Q. DISH didn't set your salary, did it?

12 A. No.

13 Q. And when you went off whatever arrangement  
14 you made with the Philippines, that's something JSR  
15 did; right?

16 A. Well, my back-stabbing partners did; yes.

17 Q. Right. And who was it again who did that is  
18 this?

19 A. Jerry Grider and Shaun Gazzara.

20 Q. Right. And DISH didn't do anything  
21 respecting your company's payrolls taxes or anything  
22 like that? That was your company's job; right?

23 A. Yes.

24 Q. DISH didn't determine whether you got hired,  
25 did they?

1           A. They determined who can have a license based  
2 on credit.

3           Q. They didn't determine your partnership with  
4 JSR; right?

5           A. They did not.

6           Q. That was something you and Mr. Grider and  
7 Shaun Gazzara did; right?

8           A. Yes.

9           Q. Now, you got another complaint. It's  
10 plaintiffs' 340. Do you remembered the Foard  
11 complaint?

12          A. No.

13          Q. You weren't shown that in the preparation to  
14 come here today?

15          A. No, I don't recall this one.

16          Q. It's tab 19B. It's an admitted exhibit.  
17 It's Plaintiff Experience 420. You haven't seen  
18 this? It's got your name on it.

19          A. well, I just saw --

20          Q. Do you remember this? A complaint regarding  
21 somebody named Mr. Foard?

22          A. well, see, I never -- if you look at the  
23 signature of that, that is not how I -- it's not how  
24 I end any of my e-mails. So I know I would never --  
25 in looking at this sincerely, that's not me.



1 I never got this letter. How was it sent to  
2 me? Was it sent certified mail? How did I get  
3 this?

4 Q. Well, you see it said Mr. Richard Goodale  
5 via fax and mail. Do you see that?

6 A. Yeah, but that doesn't mean I received it.  
7 I'm unaware of this.

8 Q. So you don't think --

9 A. I have a question. If I'm not -- you know,  
10 it was Jerry Grider on the license, why are they  
11 sending Mr. Goodale.

12 Q. So you don't remember if you got this?

13 A. I don't.

14 Q. Let's look at Plaintiffs' 1096. Maybe that  
15 will help you remember this?

16 THE COURT: Mr. Bicks, how much questioning  
17 do you have? It's almost 4:30.

18 MR. RUNKLE: Your Honor, I've got at least  
19 15, 20 plus more minutes. And I'm sorry. You know,  
20 but --

21 THE COURT: Mr. Runkle, how much do you  
22 think you have?

23 MR. RUNKLE: I have very little.

24 THE WITNESS: Because I -- I have to get --  
25 well, yeah.

1 THE COURT: Let's try and move it along.  
2 I'm not sure I can stay awake much longer, to be  
3 honest.

4 BY MR. BICKS:

5 Q. The Mr. Foard complaint. Does this now help  
6 you? Attachment -- JSR, Reji Musso to you, Richard  
7 Goodale, with attachment. (As read:) I faxed it to  
8 you yesterday, and remembered you said you didn't  
9 have a fax anymore.

10 Remember this?

11 A. No.

12 Q. Well maybe -- you will see that you got this  
13 Foard complaint; right?

14 A. See, some of these things were also being  
15 answered by another partner that you -- that was  
16 involved with JSR. Her name was Amy, which was  
17 Jerry's sister.

18 Q. Yeah.

19 A. So I don't -- because even to Richard  
20 Goodale at voice@JSRSatellite, that wasn't my e-mail  
21 address. So that's -- could have come from someone  
22 else. Because I know I had a fax machine back in  
23 that day.

24 Q. And let me look -- let's look at the  
25 response, DTX753. You see it says at the bottom,

1 God Bless, Richard Goodale?

2 A. I do.

3 Q. And you're saying this isn't you or this --

4 A. I didn't say that. I'm saying I don't  
5 recall it.

6 Q. Okay. And you don't remember the Foard  
7 complaint, where you said at the end, that -- the  
8 last two paragraphs, that you researched it. You  
9 don't remember that?

10 A. No.

11 Q. You don't remember actually telling DISH on  
12 this complaint that it wasn't even your company, it  
13 was somebody else?

14 A. Well, this is when -- yes, that wasn't us,  
15 it was somebody else. Because what we did, or my  
16 partners did, is they gave out a log-in to other  
17 companies that were now starting to market on behalf  
18 of our license.

19 Q. Right.

20 A. So that's why this violation. I was unaware  
21 of.

22 Q. Right. Well, you're saying here it wasn't  
23 even a violation. Is that the truth? You're saying  
24 here it was a different company?

25 A. Well, we had other companies that -- that's

1     what I -- I could not keep up with all the -- my  
2     partners were doing behind my back. So --

3           Q. Okay. So simple question to you, sir. Was  
4     this a truth or was this a fib?

5           (As read:) With our continuing research into  
6     the matter, second paragraph, we found a  
7     telemarketing company--second from the bottom  
8     please--JR Satellite, who was a DirectTV and Hughes  
9     Net provider. We've concluded this is the company  
10    who contacted Mr. Foard and that JSR was not  
11    responsible?

12          A. Yeah, that -- okay. I remember that now  
13    reading it. Yeah. Because I know we were accused  
14    of some things that we didn't do.

15          Q. Right. So this was a truth or a fib?

16          A. That was a truth.

17          Q. All right. And do you actually remember  
18    that DISH raised certain questions with you about  
19    use of affiliates? And do you remember saying that  
20    all of your marketing was brought in-house and you  
21    severed all ties with affiliates?

22          A. That is true.

23          Q. That's true that you told DISH that --

24          A. Absolutely.

25          Q. -- could rely on you?

1           A. Absolutely.

2           Q. Because this is Plaintiff's Exhibit 1103.  
3 And let's blow up the top part there. This is an  
4 e-mail you -- did you see this before you came?

5           A. I don't know what that is. (As read:)  
6 Thanks Richard, have a great new year.

7           So what is this supposed to be?

8           Q. Yeah. This is an e-mail you sent. It's  
9 plaintiffs' 1103. I move it into evidence.

10           MR. RUNKLE: No objection, Your Honor.

11           Q. Let's blow up the FYI at the bottom, please.  
12 Customer issue came up and you said (as read:)  
13 This was part of our affiliate program of which we  
14 have severed all ties with all affiliates --

15           A. Yeah, that --

16           Q. -- we now control all of our sales  
17 internally?

18           A. Yeah, right, I can read. What that was is  
19 that that was Shaun Gazzara. He, without my  
20 knowing, was giving out licenses. This man, I  
21 remember this because he was the cause of some  
22 complaints that we got. And Sean did not severe  
23 ties with him until -- I had to step in because the  
24 man threatened his life. So I do remember this.

25           So yes. You know, things are coming to mind.

1 Now that I just read this I remember from this.  
2 Because Sean and Jerry, I was -- you know, I can  
3 only control what I was. But when you run a call  
4 center with hundreds of seats in them, and the calls  
5 are coming in, you don't know where they're coming  
6 from. I know what I was doing, and that was I was  
7 marketing, dialing millions of dials, and getting  
8 inbound calls. But they were giving out our log-in  
9 to other companies. And that's why we were now,  
10 since it was our log-in, getting more and more  
11 complaints.

12 Q. Okay. Well, let's blow that up.

13 Because you didn't put that in the e-mail, did  
14 you, that you sent? Here you say, (as read:) we  
15 now control all our sales internally, and we have  
16 severed all ties with all affiliates?

17 A. And that was at that time absolutely true.

18 Q. Right. And in fact, this e-mail is  
19 December, right? You see that?

20 A. Yes.

21 Q. And you were terminated in February 2007;  
22 right?

23 A. On the 14th. Without a kiss.

24 Q. Yeah. Plaintiffs' 260. Your company was  
25 terminated and a press release was issued announcing

1     that termination; right?

2           A. That I'm unaware of. I don't know about a  
3     press release.

4           Q. And you're familiar with this letter; right?  
5     Based upon multiple complaints received from  
6     consumers?

7           A. I never got -- after they pulled our plug  
8     I -- you know, whatever letter, this must have went  
9     to Jerry. All I knew was we lost our license  
10    because we didn't get paid.

11          Q. Right. And you're saying in your  
12    preparation to come testify you didn't look at this?  
13    The letter terminating your company?

14          A. I'm here to testify of the truth of what I  
15    know, not documentation you might have.

16          Q. Sir, did you see this document before you  
17    came to testify?

18          A. I don't know. I may have, I looked at a lot  
19    of things yesterday.

20          But not about Missouri. I was -- no, Missouri,  
21    no. I was aware of Missouri, yes. Jay Nixon  
22    himself called me, the Attorney General for the  
23    State of Missouri. He requested that we purchase  
24    the DNC CD, which we did. And then five days later  
25    he sent us an injunction.

1 Q. Did you, by the way, mention on your direct  
2 that injunction was entered against you personally  
3 in the -- there was a default judgment against you?

4 A. No.

5 Q. Did that happen?

6 A. A default judgment from Missouri?

7 Q. Yeah.

8 A. I think it was against our company, not me  
9 specifically.

10 Q. Really. Let me show you CX59 and see if  
11 this will help your memory. This is from the  
12 Missouri Circuit Court. You've never seen this  
13 before?

14 A. Not this actual document. But I do know  
15 that we got a judgment, a cease and desist. I  
16 wasn't aware of a judgment against our -- I mean a  
17 cease and desist I was aware of.

18 Q. You don't remember a specific judgment  
19 against you?

20 A. No.

21 Q. Well, let's look at page 7 and see if this  
22 helps your memory.

23 A. I don't need to review anything other than I  
24 was not aware that a judgment was against me by the  
25 State of Missouri for me specifically.



1 Q. Okay. Well --

2 A. The company JSR, I was aware of.

3 Q. Well, let's just look at it and see if it  
4 helps your memory. You see your name there?  
5 There's a lot of stuff there, but it says Richard  
6 Goodale.

7 A. Okay.

8 Q. Permanently enjoined. Then you see Richard  
9 Goodale?

10 A. I see --

11 Q. You see your name?

12 A. Goodale.

13 Q. You see that \$330,000, and your name three  
14 lines up?

15 A. I saw that. Well, I'm seeing it now. I  
16 knew -- I didn't know -- when I just saw judgment, I  
17 didn't continue to read it because the game was  
18 over.

19 Q. You didn't put that in your affidavit to the  
20 Court, did you?

21 A. I assumed that when I was contacted that  
22 they were aware of all the injunctions, because what  
23 I'm surprised is that two months earlier we had an  
24 injunction against from the Attorney General of the  
25 State of Louisiana as well. Then we stopped

1 marketing to Louisiana.

2 So these things, I was -- when I was doing my  
3 declaration, I assumed that everyone knew what was  
4 going on as far as the case goes. Because we did  
5 have two other states that gave injunctions. Do you  
6 have that information as well?

7 Q. Well, I got a lot of information, but I'd  
8 just like to get you out of here.

9 A. Okay.

10 Q. My simple question is, you're now memory is  
11 refreshed there was a judgment against you  
12 personally. Did you pay it?

13 A. No.

14 Q. And you didn't even tell the Court about it,  
15 did you?

16 A. I didn't -- to me it was -- I forgot about  
17 it until you said judgment of 330,000. All I saw  
18 was a cease and desist and we weren't supposed to do  
19 anything further.

20 So there's a judgment for me for \$330,000?  
21 Huh.

22 Q. Did I -- I guess I've got one final  
23 question. Did I hear you straight under truth  
24 today, that you forgot --

25 A. I didn't know this --

1 Q. -- there was a \$330,000 judgment against  
2 you?

3 A. I didn't know there was a judgment against  
4 me personally.

5 Q. I have no further questions for you. Thank  
6 you.

7 A. Wow.

8 REDIRECT EXAMINATION

9 BY MR. RUNKLE:

10 Q. Mr. Goodale, we're gonna be done very soon.  
11 Your entire operation was a robo operation;  
12 right?

13 A. Absolutely.

14 Q. And DISH knew that?

15 A. Yes.

16 Q. And do you have any reason to lie today?

17 A. I don't.

18 Q. In fact, you came to testify about certain  
19 things that happened that aren't that pretty; right?

20 A. I did.

21 Q. Yeah. So when you told DISH that you  
22 brought your marketing in-house, that was true;  
23 right?

24 A. It was true.

25 Q. And it was in-house robo calling; right?

1           A. It was in-house, just using our 25 dialers  
2 we had at the time.

3           Q. So let's assume for a moment that robo  
4 calling was illegal at the time that you did all  
5 that? All right?

6           A. Hm-mm.

7           Q. Let's assume that for a moment. Should DISH  
8 have let your operation even get off the ground?

9           A. No.

10           MR. BICKS: Objection, Your Honor.

11           THE COURT: The objection is overruled.

12           Q. Should DISH have let your operation get off  
13 the ground?

14           A. No.

15           Q. Was DISH the victim here?

16           A. Well, I believe DISH is a victim of their  
17 own greed.

18           MR. RUNKLE: Nothing further, Your Honor.

19           THE COURT: Anything further, Mr. Bicks?

20                        RE CROSS EXAMINATION

21           BY MR. BICKS:

22           Q. You told us that you fibbed to Ms. Musso?

23           A. Well, you're suggesting that I lied or  
24 fibbed. I'm saying that I told her facts based on  
25 the truth as I knew it.

1 Q. well, you said you fibbed; right?

2 A. I said that we weren't concerned of her --  
3 her authority.

4 Q. And you fib to somebody when you questioned  
5 their authority?

6 A. I didn't know she had any authority. We  
7 didn't think that she did, so we just didn't really  
8 pay much no never mind to her.

9 Q. So you figured Ms. Musso, who was head of  
10 compliance, because you thought she didn't have  
11 authority, you could fib?

12 A. well, no. At the time that she was  
13 introduced to us she was not the head of compliance.  
14 She basically was the -- told us that if we ever  
15 need anything, that she can help us.

16 Q. Right. And let's again be very clear. You  
17 fibbed to her, right?

18 A. well, I don't recall, in reading my own  
19 sworn testimony, the letters you showed me, those  
20 were not lies.

21 Q. well, but you have told us on direct and  
22 when I asked you that you fibbed?

23 A. When you say fibbed. I said that was the  
24 truth at the time.

25 Q. So were you fibbing or telling the truth?

1           A. In which --

2           Q. All your communications with DISH?

3           A. I only spoke to Reji maybe four times.

4       Total four. Our contact was Doug and -- you know,  
5       him, the -- that when he told us to do something, we  
6       did it.

7           Q. Right. So when you're dealing with Ms.  
8       Musso, the correspondence and everything, were you  
9       fibbing or telling the truth?

10          A. No. Those correspondence that I did, I know  
11       at the time I submitted them that was absolute  
12       truth.

13          Q. And in those communications you said you  
14       were in complete compliance with the telemarketing  
15       laws; right?

16          A. I was greatly deceived. But yes, at the  
17       time that I wrote that, I -- you know, again, not to  
18       keep the Court's time, but my partners were thieves,  
19       and they did many things I was unaware of. Many.

20          Q. So you didn't even know about it; right?

21          A. I didn't know about the other log-ins they  
22       were giving to other people from our company. I did  
23       not know that they were giving out licenses to other  
24       call centers. I did not know that they actually  
25       had, you know, another Filipino call center. There

1 was many things I was aware of. Because when you  
2 have a hundred people on the phone, you don't -- you  
3 know, your phones are ringing, you don't -- you just  
4 assume it's from what you're doing. They had other  
5 things going on.

6 Q. Right. And all that information that you  
7 didn't know, you didn't put it in any e-mail because  
8 you didn't even know about it; right?

9 A. Well, I knew that the one complaint that  
10 came in based on another man, I knew about him. And  
11 that's when I severed ties. And that's when the  
12 death threats came after that.

13 Q. Right. And DISH terminated you; right?

14 A. Not right there; no.

15 Q. They terminated you in February?

16 A. Yeah, the 14th. No kiss.

17 Q. I've got nothing further.

18 THE COURT: Anything further, Mr. Runkle?

19 MR. RUNKLE: I don't have anything further.

20 THE COURT: All right. Sir, you can put  
21 that down right there.

22 THE WITNESS: I can't take this as a  
23 souvenir.

24 MR. RUNKLE: You want to keep it as a  
25 memento?

1 THE WITNESS: Can I?

2 MR. RUNKLE: Of course.

3 THE COURT: We will go over the exhibits in  
4 the morning. Can we take care of anything else this  
5 afternoon.

6 Mr. Bicks?

7 MR. BICKS: I'm sorry?

8 THE COURT: We're gonna do the exhibits in  
9 the morning. Can we take care of anything else now?

10 MR. BICKS: Not by me. I'm worried the  
11 Court is not feeling well and we will deal with it  
12 in the morning.

13 THE COURT: All right. Thank you.

14 Court is adjourned.

15 (Court was recessed for the day.)  
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KATHY J. SULLIVAN, CSR, RPR  
OFFICIAL COURT REPORTER

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TX 102-007748

EXHIBIT 249

EXHIBIT 249

JA008487  
007334

TX 102-007749

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

1	UNITED STATES OF AMERICA and )	
2	The STATES OF CALIFORNIA, )	BENCH TRIAL
3	ILLINOIS, NORTH CAROLINA, and )	
4	OHIO, )	09-03073
5	PLAINTIFFS, )	
6	VS. )	SPRINGFIELD, ILLINOIS
7	DISH NETWORK, L.L.C., )	
8	DEFENDANT. )	VOL. 10

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE SUE MYERSCOUGH  
UNITED STATES DISTRICT JUDGE

FEBRUARY 3, 2016

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

FOR THE PLAINTIFFS:  
USA DEPT. OF JUSTICE.

LISA HSIAO  
PATRICK RUNKLE  
SANG LEE  
JINSOOK OHTA  
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JA008488  
007335

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

\* \* \* \* \*

THE COURT: Good morning. Court is reconvened.

Our next witness is Ms. Green; is that right?

MR. LEE: Yes, Your Honor.

THE COURT: Is she here?

MR. LEE: Yes, she is.

THE COURT: Why don't we go ahead and put her on, and at the lunch hour I'll do the exhibits. So we can get her started. All right?

MR. LEE: Fine, Your Honor.

(The witness was sworn.)

THE COURT: Please continue.

DEBRA GREEN

called as a witness herein, having been duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. LEE:

Q. Good morning.

A. Good morning.

Q. Could you please give us your name and spell it for the record?

A. Debra Green. D-e-b-r-a, G-r-e-e-n.

Q. And, Ms. Green, where do you currently

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1     reside?

2           A.   Geneva, Illinois.

3           Q.   And are you currently employed?

4           A.   Yes, I am.

5           Q.   Could you tell us where you work and what  
6     you do?

7           A.   I work for Alvarez and Marsal, LLC.  They  
8     are a professional services firm providing  
9     consulting services.  And I work in the Corporate  
10    Performance Improvement Business Unit.  My expertise  
11    is in the area of call centers and customer  
12    interaction.  So I work with Fortune 1000, Fortune  
13    500 companies, to help them succeed in their  
14    customer interactions.

15          Q.   When you say customer interactions, what  
16    specifically are you referring to?

17          A.   Sure.  It's mostly their -- so it starts  
18    with customer messaging and marketing, to sales and  
19    acquisition of customers, to service of customers,  
20    retention of customers, customer analytics.

21          Q.   And does that -- within those broad areas  
22    does it generally touch on telemarketing and call  
23    center?

24          A.   Yes.  Actually, call centers, both sales and  
25    customer service, are a big part of what I do.

1           Q. Could you tell us some -- talk to us about  
2 some of the clients that you work for?

3           A. Sure. I work for clients such as Time  
4 Warner Cable, Nationwide Insurance, AutoZone, REI.  
5 Kemper Insurance. Those are to name a few.

6           Q. And for these clients could you sort of go  
7 into a little bit of detail about what kind of  
8 consulting work you're doing with respect to call  
9 centers and telemarketing?

10          A. Sure. I will use Time Warner Cable. They  
11 were doing their telemarketing and sales of both new  
12 customers and upsell in all of their divisions in  
13 many different ways, shapes, and forms. And the  
14 client at Time Warner, who was at the time the head  
15 of marketing and sales, wanted to have a more  
16 consistent experience for their customers. So they  
17 contracted with us to help them re-engineer their  
18 telemarketing services.

19          And we helped them design the telemarketing  
20 that they did in a more consistent way. Which  
21 started with a deep dive into their current  
22 processes and methodologies across the various  
23 divisions. Some were using outsourced vendors; some  
24 were using insourced telemarketing groups. They had  
25 various metrics and incentives, and various quality

1 control checks. So we helped bring that all  
2 in-house and engineered a new design for them to use  
3 today.

4 Q. You mentioned a couple things. You  
5 mentioned outsource vendor and in-house groups.  
6 Could you complain for us what those things are?

7 A. Oh, sure.

8 So an inhouse group are actual employees. In  
9 this case they are actually employees of Time Warner  
10 Cable. An outsource group is a contract  
11 vendor--Service Bureau, if you will--that is  
12 contracted to perform certain services for the  
13 client, in that case Time Warner.

14 Q. Do you have experience consulting and  
15 working with both types of groups that we just  
16 discussed?

17 A. Absolutely. A lot of times our clients will  
18 ask whether they should insource or outsource. So  
19 part of what we do sometimes is help the client  
20 figure out what that strategy should be. What they  
21 should keep inhouse, what they should outsource.  
22 And then if they do decide to do some outsourcing,  
23 we will help them select a vendor that most closely  
24 meets the requirements. And then also, help them  
25 set up the contract and the governance model. And



1 define the processes, the scripts, the duties and  
2 responsibilities, the reporting, the metrics to move  
3 forward. The outsourcing company then becomes an  
4 extension of the company themselves, the seller.

5 THE COURT: When did you do the Time  
6 Warner?

7 A. I think Time Warner was in, I would say,  
8 2010.

9 Q. So how long have you been working at Alvarez  
10 and Marsal?

11 A. Since 2005.

12 Q. Okay. And so for this decade that you've  
13 been with the company have you been doing the type  
14 of -- have you been doing the type of work that you  
15 just described?

16 A. Absolutely.

17 Q. Before you were at Alvarez and Marsal where  
18 did you work?

19 A. Before that I was with a consulting firm  
20 called Business Edge out of New Jersey.

21 Q. Okay. What kind of work were you doing at  
22 Business Edge?

23 A. Same. My title was CRM, which customer  
24 relationship manager partner. And focusing on the  
25 telecommunications industry. We worked with clients

1 to help them be successful in their customer  
2 interactions.

3 One of my customers there was Disney, Disney  
4 Mobile. Very similar to -- they had an offering at  
5 ESPN, which is one of their companies. ESPN Mobile  
6 was a mobile phone that you could get scores and the  
7 like for sports. Disney Mobile was for parents with  
8 small children. Disney or Disney files, if you  
9 will.

10 And they developed this product and then we  
11 helped them develop all the customer care around the  
12 product, which included an outsource vendor to  
13 provide both the sales, the telemarketing, as well  
14 as the customer service.

15 Q. And how long were you with Business Edge?

16 A. A year.

17 Q. And prior to working at Business Edge could  
18 you tell us where you worked?

19 A. Sure. I was with Bearingpoint, but  
20 Bearingpoint was really an extension of Arthur  
21 Anderson Business Consulting. So when Arthur  
22 Anderson Business Consulting was hit by the Enron  
23 scandal, that was part of the audit, business  
24 consulting folks, over 2,000 of us, went to work for  
25 Bearingpoint in 2002. So I was with Bearingpoint

1 from 2002 until 2004.

2 Q. And for Bearingpoint and Arthur Anderson  
3 what kind of work were you doing generally?

4 A. Same. You know, focusing on customers,  
5 customer interactions, call centers. Mostly in the  
6 services industry. By services industry I mean  
7 financial services, telecommunications services,  
8 non-manufacturing. And banking, that sort of thing.  
9 Although the one that crosses over is retail. So I  
10 had a lot of experience with retail as well.

11 Q. And prior to working at Arthur Anderson  
12 where did you work?

13 (Court reporter requested clarification.)

14 A. Household International.

15 Q. And where were you -- what time period were  
16 you working at Household International?

17 A. From 1976 until 1996.

18 Q. So in your -- could you sort of --

19 A. Oh, sorry. I forgot the one in between  
20 Arthur Anderson and Household International, which  
21 was TCI. Which was a cable company out of Denver,  
22 but I ran customer operations in the city of  
23 Chicago.

24 Q. When you say ran customer operations, what  
25 do you mean by that? What is that?

1           A. So TCI recruited me away from Household  
2 International. It was an opportunity to do  
3 something in a completely new industry. And I was  
4 responsible for consolidating 30 sites within the  
5 City of Chicago where they were taking customer  
6 services calls, making sales calls, dispatching  
7 technicians. And I had to consolidate that into one  
8 centralized center in the City of Chicago.

9           So we built the processes, policies,  
10 procedures, the training, all of that, and put in  
11 all the new technology in the City of Chicago. And  
12 that was in 1996.

13          Q. Okay. How long were you with TCI to work on  
14 this project?

15          A. I was with TCI from '96 to '98, when I was  
16 recruited by Arthur Anderson. Because they were  
17 doing a similar thing in Denver, Colorado, and I got  
18 my center up and running faster than they did.

19          Q. So let's go back to that time at Household  
20 International that you mentioned.

21          A. Sure.

22          Q. So what -- could you tell us sort of your  
23 history with Household International? Actually,  
24 could you tell us what Household International was?

25          A. Household International is a financial

1 services firm providing financial services. They've  
2 been in business for over a hundred years. If you  
3 think back to the old HFC, Household Financial  
4 Corporation.

5 So I started in the branch offices as a manager  
6 trainee, then assistant manager, and then a manager.  
7 And then, you know, a manager of a small branch, a  
8 bigger branch, and a larger branch. And then was  
9 promoted to district manager and had responsibility  
10 for over 40 branches.

11 And there -- from there I was promoted and  
12 brought into home office, and ran the project where  
13 we took all of the back office processes out of the  
14 branches: Customer service, collections, telesales,  
15 all those sort of things. And built three centers  
16 across the US: One is Keswick, Virginia, one in  
17 Elmhurst, Illinois, and one in Pomona, California.  
18 And, you know, built them from the ground up.  
19 That's my first exposure to call centers actually.

20 Q. So after working to make these different  
21 sites is there a different project that you moved on  
22 to at Household International?

23 A. Yes. So after I finished that I went on to  
24 become a division general manager for the southeast  
25 division and had responsibility for 140 branches in

1 the southeast.

2 Q. After that did you move to a different  
3 section or --

4 A. I did. Then I came back to the center and  
5 was involved in the GM Card setup. Which some of  
6 you remember the GM Card was one of the first  
7 co-branded cards where, you know, General Motors and  
8 Household International worked together to provide a  
9 credit card to consumers.

10 And from there I went to Household Retail  
11 Services, Inc., and re-engineered and ran customer  
12 operations there.

13 Q. Could you tell us a little bit more about  
14 the customer operations that you were working --  
15 that you were overseeing at Household Retail  
16 Services?

17 A. Sure. At Household Retail -- Household  
18 Retail Services provides private label credit cards  
19 to retailers. Retailers that you -- retailers like  
20 Home Depot or Crate and Barrel or Carson Pirie Scott  
21 Department Store. So it's a -- it's a private label  
22 card that looks like it belongs to the retailer  
23 themselves. And I ran both the customer service and  
24 merchant services, the retailers themselves.

25 Q. So what's the difference between the

1 customer service and merchant service?

2 A. So the customer service is for the consumers  
3 themselves and their cards. They would call about  
4 questions about their bill or, you know, a charge on  
5 their account or their payment or some of the  
6 promotions that we ran. So we supported the  
7 retailers with promotions such as 90 days same as  
8 cash, six months no interest, those sorts of things,  
9 and customers would call with questions about that.

10 On the merchant side, that was where we  
11 interacted with the retailers themselves. The  
12 merchants would be brought into Household by the  
13 sales team. The sales team would--for example,  
14 Crate and Barrel was one of our larger  
15 accounts--would talk to Crate and Barrel. Crate and  
16 Barrel would agree to offer our credit card services  
17 with their name on the credit card. They would sign  
18 an agreement with Household International.

19 Once they signed that agreement, before they  
20 were brought onboard, we would do an investigation  
21 of that merchant. We would make sure that the -- we  
22 would get the Better Business Bureau report, Dunn  
23 and Bradstreet report, that sort of thing. Get the  
24 names of the principals of the company and make sure  
25 we did an investigation on them. Criminal

1 background, that sort of thing, credit check, to  
2 make sure that they were a business in good stead.  
3 Because, you know, it's an extension of our brand  
4 and our reputations.

5 Then those files were maintained by myself in  
6 the merchant services group, and we would actually  
7 update those once a year.

8 Q. Okay. And in terms of the credit card  
9 itself, what was the relationship between the  
10 consumer and Household Retail Services?

11 A. So the credit card, the consumer was able to  
12 buy the goods and services at the retailer's store.  
13 And then we would, in turn, buy that retail paper,  
14 so that the retailer would get their funding for the  
15 goods and services that they sold to the consumer,  
16 and then the consumer would pay us by means of that  
17 credit card.

18 And they were -- they were responsible for  
19 filling out the applications for the consumers,  
20 entering it into our system. Then we were  
21 responsible for approving the credit of that  
22 particular consumer and then on boarding them onto  
23 the system.

24 Q. You mentioned doing some investigation work  
25 on these retailers. What other interactions did you



1 have with these -- with these retailers after that  
2 sort of investigation work?

3 A. Sure, absolutely. So, you know, retailers  
4 would want to run special promotions--as I mentioned  
5 earlier, 90 days same as cash, six months no  
6 interest, those sort of things--to generate business  
7 within their retail stores. And they -- they would  
8 also promote the credit card in their stores. They  
9 would either do that by their in-store sales people,  
10 or they would use other means, either direct mail or  
11 telemarketing to their customers, to get the credit  
12 card and use it to buy more goods and services in  
13 their stores.

14 Q. And what was Household Retail Services and  
15 you and specifically your role with respect to this  
16 marketing that these retailers were doing?

17 A. Yeah. So it was our responsibility for  
18 merchant services to audit and make sure that they  
19 were in compliance and doing what they need to do.

20 So I'll give you an example. We had, in the  
21 course of taking calls from the consumers, we  
22 noticed that there was a complaint about credit  
23 insurance. And credit insurance was another product  
24 that we provided to the consumers. And we noticed  
25 that we were getting complaints. And we tracked

1 that down to -- we had records of our calls, we had  
2 recorded of all our calls. So we listened to the  
3 calls and determined it was one particular merchant  
4 where we were getting complaints about credit  
5 insurance.

6 We immediately stopped funding for that  
7 particular merchant. It was a furniture dealer, so  
8 they were rather larger purchases. And we stopped  
9 the funding. We met with the merchant themselves,  
10 we actually went out to their point of business,  
11 listened to some of the sales and how they were  
12 carrying out their business. And actually did some  
13 re-training. And didn't turn them back on until we  
14 were satisfied that they had stopped basically  
15 putting credit insurance on the accounts where it  
16 wasn't actually purchased by the consumer.

17 The merchant was also incenting their salesmen  
18 certain amount of money to put the credit insurance  
19 on there. And we stopped that practice.

20 Q. How long were you working with the Household  
21 Retail Services part of the company?

22 A. Gosh. 1993 to 1996.

23 Q. And so in your, you know, over 40 plus years  
24 working in the customer service industry, customer  
25 service and customer management industry, have you

1       been a part of any professional associations or  
2       trade groups?

3           A. Oh, sure. So I'm right now an executive  
4       member of Women in Cable and Telecommunications. I  
5       actually served on the board. It's a national  
6       organization. And I actually served as the  
7       president of the Chicago Chapter.

8           I also am a member of CTAM, which is the Cable  
9       Television Marketing Association. The National  
10      Society for Consumer Association, which is an audit  
11      and compliance group that I became associated with  
12      when I worked at Household. And then, you know,  
13      various other women's executive networking  
14      organization.

15          Q. And how does your involvement with these  
16      groups help sort of inform the work that you're  
17      doing as a consultant?

18          A. Well, it's really important to stay on top  
19      of what's happening in both the industries--whether  
20      it's financial services or insurance or retailer or  
21      telecommunications--the industries I'm working in.  
22      And also on the solution side, so telemarketing,  
23      customer service, call centers.

24          So we frequently attend and/or host roundtables  
25      where we get together with other executives within

1 the industries to talk about what's happening. I  
2 recently hosted a customer experience roundtable.  
3 We had executives from Nationwide Insurance, Time  
4 Warner, Ariss, Comcast participate in these  
5 roundtables to talk about, you know, best practices  
6 and what was happening within the industry. The  
7 results they were doing. What sort of pain points  
8 they were feeling.

9 So we do a lot of that. You know, in addition  
10 to the work that I do with my clients.

11 Q. So could you just sort of give us a recap;  
12 you've mentioned these trade groups. In addition to  
13 these trade groups, what sort of things inform how  
14 you consult with your clients and do your work?

15 A. So we also frequently do a lot of research.  
16 And, you know, I subscribe to things like Forrester  
17 and Gartner, publications like that. CTAM IQ.  
18 Today there are a lot of alerts you set up on  
19 LinkedIn or GoogleAlert for both industry and  
20 solutions.

21 So with just about every client that I work  
22 with we make sure that we research and, you know,  
23 determine what's out there. What's the best of the  
24 best, what's new, what's going on?

25 You can use vendor publications. So for

1 example, in call center world: Avaya, Cisco, Nice,  
2 Aspect, all of those. We stay abreast of, you know,  
3 what's the latest and greatest. What's going on out  
4 there? Who's using what? How it's working for  
5 them?

6 Q. So let's get into when you go and work with  
7 a client, or even when you were in-house. What sort  
8 of -- what's the -- can you just kind of walk us  
9 through what you do in terms of determining how a  
10 call center or telemarketing system is operating?

11 A. Sure, absolutely.

12 The first thing we do is make sure we  
13 understand what the client's strategic goals and  
14 objectives are for their contact center. Whether  
15 it's sales, service, collections, whatever it might  
16 be. And make sure we understand what the -- what  
17 their, you know, overall objective is for that  
18 center.

19 We usually start out by sending them what we  
20 call a document wish list. And that's because the  
21 documentation that we ask for is really a wish that  
22 they would have all of that documentation. No one  
23 actually has all of it. But it's things like  
24 management reports, reports they use to manage their  
25 contact center. Values, organizational charts, pay

1 incentives. And, you know, we look at call flows.  
2 We look at process flows. We look at the technology  
3 stacks, both from the infrastructure and application  
4 architecture, all of those things, before we even  
5 hit the ground, to get a clear picture or to start  
6 to paint the clear picture of what the operation  
7 looks like.

8 And then we follow that by doing interviews.  
9 Starting with whoever is leader of that particular  
10 area, to the managers, to the frontline supervisors,  
11 where we usually do a lot of process workshops with  
12 the frontline supervisors. And then down to sitting  
13 side by side with the agents listening to calls.

14 Q. So you mentioned this document wish list.  
15 Do you always review all of those documents, types  
16 of documents on your -- on that wish list when  
17 you're consulting with the client?

18 A. Yes, we do. You know --

19 Q. I'm sorry. Do they -- do the clients that  
20 you consult with, do they always have all of the  
21 documents ready for you?

22 A. No. That's why we call it a wish list,  
23 right. They will have, you know, some of them. A  
24 lot of them will have all of them -- not all, a lot  
25 of them will have most of them, but rarely do they

1 have absolutely all of them.

2 And the documents that they don't have tell us  
3 something too. It means that this is an area that  
4 they don't manage or that they haven't looked at.  
5 And it may be an area of opportunity for that  
6 particular organization if they -- if they don't  
7 have a certain document.

8 For example, I'm working with a client right  
9 now down in Dallas. And one of the big parts of  
10 call center is forecasting and forecasting accuracy.  
11 But they have no reports on how accurate their  
12 forecasts are. So that tells me that that's  
13 something that they're not really looking at. So  
14 that's an example of that.

15 Q. Do you feel like -- do you need to review  
16 all of these types of documents before you feel like  
17 you get a clear picture of how a telemarketing  
18 center is operating, or some of the problems that  
19 may be going on for the telemarketing center?

20 A. For myself and my team, who have done it  
21 for, you know, many, many years, we can usually get  
22 a pretty clear picture by the documents given to us.  
23 It doesn't usually take long because of the  
24 experience we have.

25 Q. Were you asked to review certain documents

1 to provide an opinion in this case?

2 A. Yes.

3 Q. And could you tell us about some of the  
4 documents that you reviewed?

5 A. Sure. I reviewed depositions from employees  
6 of DISH Network. I reviewed -- so some of those  
7 are, you know, Reji Musso, Bruce Werner, Mike Mills.

8 And then I reviewed some e-mails between the  
9 DISH Network employees and some of their retailers.

10 I reviewed, you know, contracts that were in  
11 place between DISH Network and its retailers.

12 Some call records, things like that.

13 Q. Did reviewing these things give you -- would  
14 this be the type of thing that you would do when you  
15 would be consulting a client?

16 A. Yes.

17 Q. Did it give you a clear picture of -- and  
18 were you able -- are you able to reach an opinion,  
19 or could you, based on the things that you reviewed,  
20 about DISH Network's operation with respect to its  
21 retailers?

22 A. Yes.

23 Q. At this time, Your Honor, I'd like to offer  
24 Ms. Green as an expert in this case.

25 THE COURT: Mr. Bicks?



1           MR. BICKS: Your Honor, we do not believe  
2           that she's a qualified expert. And I'm happy to  
3           bring that out on my cross-examination.

4           THE COURT: All right. Do you wish to do  
5           so now?

6           MR. BICKS: Yeah. I'm happy to voir dire  
7           her now if I can.

8           THE COURT: All right.

9           MR. BICK: Your Honor, I actually have some  
10          documents, if I could present to the witness?

11          THE COURT: You may.

12                   CROSS EXAMINATION

13          BY MR. BICKS:

14           Q. Ms. Green, while we're handing this around,  
15           can I just nail down a couple of things about your  
16           educational background. At your deposition you said  
17           that you did not receive a degree from the  
18           University of Connecticut?

19           A. That is correct.

20           Q. And you did not?

21           A. I did not.

22           Q. And do you have one today?

23           A. No, I do not.

24           Q. And did you receive a degree from the  
25           University of North Carolina?

1           A. That was the American Financial Services  
2 Program, the AFSA Program, at the University of  
3 North Carolina. I was selected to go through that  
4 program by Household International. So I have that,  
5 but it's not -- well, it is what it is.

6           Q. But at your deposition you said you did not  
7 receive a degree from the University of North  
8 Carolina?

9           A. Right. It's a completion certificate for  
10 the AFSA business administration program.

11          Q. Right. But -- and just so I'm clear, your  
12 deposition you said: (As read:) Did you receive a  
13 degree from the University of North Carolina? You  
14 said no. Was that truthful?

15          A. Yes.

16          Q. So what I'd like you to do is I have your  
17 website bio that I have pulled up.

18          Ms. Green, you would agree with me that it's  
19 important to be accurate when you describe your  
20 academic credentials?

21          A. Yes.

22          Q. That's a pretty important thing to get  
23 right?

24          A. Hm-mm.

25          Q. You see on your website that you say that

1     you've got a Bachelor's degree from University of  
2     Connecticut and an MBA from University of North  
3     Carolina?

4             A.   Hm-mm.

5             Q.   That's not true; right?

6             A.   That is not true.

7             Q.   Right.  And if we look at the text of your  
8     firm bio, and we blow that up, you go into great  
9     description there about the degrees that you've  
10    gotten.

11            Do you see that in the bottom paragraph?  (As  
12    read:)  Ms. Green earned a Bachelor's degree at the  
13    University of Connecticut --

14            A.   In the Executive and the Household  
15    International Career Development Center Executive  
16    Education Series.

17            Q.   Yes, I see that.  But it says you earned a  
18    Bachelor's degree; right?  And it says you completed  
19    your Master's degree from the University of North  
20    Carolina?

21            A.   American Financial Services AFSA Program.

22            Q.   Right.  And so could we just go back to the  
23    other indication there.  So we're very clear, what's  
24    listed there is your education.  That is inaccurate;  
25    correct?

1 A. That is inaccurate.

2 Q. And I want to ask you some questions about  
3 your report in this case. You prepared an expert  
4 report in this case?

5 A. I did.

6 Q. And so we're clear, by the way, you don't  
7 hold any professional licenses, do you?

8 A. I do not.

9 Q. All right. And remember you were deposed in  
10 this case and you testified -- this is at 163, 6 to  
11 14. This is your expert report. It's got your  
12 opinion in the case; right?

13 A. Yes.

14 Q. Remember you were asked under oath: Have  
15 you ever seen it? You said yes. You were asked:  
16 Did you write it? You said yes. Did you write all  
17 of it? And you said yes. Right?

18 A. Yes.

19 Q. Is that truthful testimony?

20 A. Yes.

21 Q. So is there any way that you've kind of  
22 cribbed and plagiarized a bunch of your expert  
23 report?

24 MR. LEE: Objection, Your Honor, this isn't  
25 going to her expertise --

1 MR. BICKS: This goes to the heart of the  
2 expertise.

3 MR. LEE: This is direct --  
4 cross-examination to go into her qualifications.

5 THE COURT: The objection is overruled.  
6 You may continue, Mr. Bicks.

7 BY MR. BICKS:

8 Q. Let me show you -- so let me just get this  
9 straight. You wrote all of your report and that's  
10 what you're telling us here today?

11 A. Wrote. Yes.

12 Q. Okay. So let me show you, it's slide 1.  
13 This is from your report. DTX967 at Paragraph 12.  
14 Maybe if we could turn the lights down.

15 This is a section from your report; right?

16 A. Yes.

17 Q. And you say you wrote all this yourself?

18 A. The report that I submitted I'm responsible  
19 for; yes.

20 Q. Okay. I'm just looking at this paragraph.  
21 We have it in front of us, Paragraph 19; right?

22 A. Hm-mm.

23 Q. You actually cut and pasted this from a  
24 wikipedia site, didn't you?

25 Let's go to slide 2.

1           A. We cited the sources that we used in the  
2 definition section. I had some of our junior staff  
3 help with the definition section. They -- we  
4 used -- we cited all of these references that we  
5 used. And I agreed with that definition.

6           Q. Yeah, so I appreciate that. You have a list  
7 of sources in the back; right?

8           A. Yes.

9           Q. You actually know you left a couple of them  
10 out; right?

11          A. We had some sources that we used that we  
12 ultimately didn't use, so --

13          Q. So I just asked you very clearly did you  
14 write your report. And the fact of the matter is  
15 this is pasted from wikipedia?

16          A. Well, we used their definition because we  
17 agreed with it. And we cited that source in the  
18 back of the report.

19          Q. Right. But so this paragraph here,  
20 Paragraph 19, is your testimony that you wrote that  
21 paragraph?

22          A. Well, wrote, put it into the report; yes.

23          Q. And let's look at slide 3, please. 967 at  
24 12. And is your testimony that you wrote this?

25          A. Put it into the report; yes.

1 Q. Yeah. And would it be surprising that it  
2 was just copied from wikipedia?

3 A. Well, copied. We agreed with the  
4 definitions that they used there. You know, one of  
5 the things that I love about my job is the  
6 stewardship in bringing our younger resources along.  
7 And they focused on the definition section of the  
8 report so I could focus on the heart of the matter  
9 and the DISH Network documentation.

10 So as we put that in the report, I agreed with  
11 those definitions, there's nothing wrong with them  
12 based on my experience.

13 Q. And --

14 A. And we -- again, we cited the sources in the  
15 report.

16 Q. But you list in the back a series of  
17 sources, but you don't actually, in the body of your  
18 report, indicate that you're lifting something  
19 directly from a source; right?

20 A. We cited the sources in the back of the  
21 report.

22 Q. Right. And I'll come to that in a moment.  
23 But do you think that experts rely on wikipedia?

24 A. No, they don't. What I said is I agreed  
25 with that definition and we used it in the

1 definition section of the report while I focused on  
2 the body of the report and the DISH Network opinion.

3 Q. Mm-hmm. And you've testified at your  
4 deposition at 223, 15 to 17, that you didn't copy  
5 anything else from wikipedia besides this. Let's  
6 look at 223, 15-17.

7 You said you didn't, right? Nothing was copied  
8 from wikipedia? That was the deposition testimony;  
9 right?

10 MR. LEE: Objection, Your Honor. This is  
11 taken out of context. It says anything else. Do we  
12 know what the anything else is in context to?

13 THE COURT: Can you answer?

14 A. I mean I didn't memorize the deposition, so  
15 I'm not sure exactly --

16 Q. Is the transcript there? I want to make  
17 sure Ms. Green has her transcript.

18 A. I see that.

19 Q. want to pull that page. The question was:  
20 (As read:) Did you copy anything else from  
21 wikipedia? And you said: (As read) I did not,  
22 right?

23 A. Right.

24 Q. But let's look at 967 at 16 to 17, Paragraph  
25 29. This is a part from your report. Do you see



1     that?

2           A.   Yes.

3           Q.   And can we look at Green Slide 6, please.

4     This is out of wikipedia?

5           A.   It's a standard definition.

6           Q.   Right, this is -- this is listed from  
7     Wikipedia; right?

8           A.   It's a standard definition.  I agreed with  
9     it, I don't see anything wrong with it.

10          Q.   And I think you testified at your  
11     deposition, let's look at 20 -- 227.  Or, Trudy,  
12     228, lines 15 to 22.

13          You said -- you're telling us it was just a  
14     coincidence that whoever wrote the wikipedia entry  
15     used the phrase --

16          (Court reporter requested clarification.)

17          Q.   You testified here at your deposition that  
18     it was a coincidence that whoever wrote the  
19     wikipedia entry uses the phrase high call volumes,  
20     reduced costs, and improved customer experiences?  
21     You said that was just a coincidence?

22          A.   I think I probably use the phrase high call  
23     volumes, reduced costs and improved customer  
24     experience probably every day in my professional  
25     life.

1           Q. And so let's just go back, please, to --  
2       Trudy, it was Slide 6, the side by side. And you  
3       see there reduced costs, improved customer  
4       experience; right? Looks like it's coming right out  
5       of wikipedia. And your testimony is that's just a  
6       coincidence?

7           A. That's standard terms that we use when we're  
8       talking about call centers. I probably -- as I  
9       said, I really probably use those terms every single  
10      day.

11          Q. So this had -- that just was in there  
12      completely independently of the fact that it was in  
13      wikipedia?

14          A. Yeah. This was in the terms and definitions  
15      section. This is the section that, you know, what  
16      is telemarketing? And these resources were cited.

17          Q. And let's look at 967 at 23, another portion  
18      of your report. Tab 2, it's 48. You see that?

19          A. Yes.

20          Q. And this you actually say that -- you talk  
21      here about, I think, a robust compliance program.  
22      The company whose product is being sold must ensure  
23      that it's properly registered. And then you go on  
24      to say (as read:) Lack of registration is an easy  
25      kill.

1 And you go on there; right?

2 A. Yes.

3 Q. And that's in your report and your testimony  
4 is that you wrote that?

5 A. That is in my report.

6 Q. And let's go back, please, Trudy, to  
7 Paragraph 23.

8 Right, 967 at 23, Paragraph 48, it's Tab 2.  
9 Are you with me, do you see this?

10 A. Yes, I do.

11 Q. And if we go to the next page it says, (as  
12 read:) Based on my own experience -- at the top.  
13 Based on my own experience and my knowledge of what  
14 others in the industries are doing the elements of a  
15 robust telemarketing compliance program.

16 Do you see that?

17 A. Yes.

18 Q. And you say this is based on your own  
19 experience?

20 A. Well, I say that these are things that I do  
21 in my own experience; yes.

22 Q. And let's take a look then at slide 7. It's  
23 DTX967 at 24, Paragraph 48A. Do you see that? And  
24 then you go on and talk about what that robust  
25 compliance program would look like?

1 A. Hm-mm.

2 Q. Did you write that yourself?

3 A. I think we have some -- this was a source  
4 that we used to help us write that, but it is what  
5 we do.

6 Q. Yeah. And so actually you lifted this from  
7 a lawyer's article; right? You didn't even cite it  
8 or list the source?

9 A. That was -- in the deposition that was  
10 brought up that that was a source that I missed that  
11 the -- that we used and it was a source that we  
12 missed citing.

13 Q. Right. But it's not just that you missed  
14 citing it, you didn't even indicate the source, but  
15 honestly, you lifted the report directly from the  
16 source with not even annotating it or indicating in  
17 the report, and not even mentioning the document  
18 that you listed it from; right?

19 A. We agreed with the -- the methodology there.  
20 It is something that we do. And it was -- it was a  
21 source that we left off the list inadvertently.

22 Q. But -- and do you know who actually wrote  
23 this article?

24 A. Yes.

25 Q. Who is it?

1           A. Well, I'd have to -- I mean I didn't  
2 memorize his name. I can't see it from here. It's  
3 too small.

4           Q. He's a lawyer. His name is, I think,  
5 Mr. Sanscrainte or something to that effect. Do you  
6 even know who he is?

7           A. Yes. He frequently -- there's an article  
8 that he wrote most recently in 2012 that -- he's  
9 somebody that comes up frequently on the alerts that  
10 I have.

11          Q. And -- but you didn't indicate the source,  
12 and so --

13          A. No. I told you that was a mistake.

14          Q. And actually, this is just lifted from this  
15 article; right? It was not a coincidence that the  
16 language between your report and this compliance  
17 center document that wasn't cited are the exact same  
18 word for word?

19          A. We agree with it.

20          Q. Because you copied it; right?

21                THE COURT: I'm sorry, did you answer?

22          A. I didn't catch it.

23          Q. And can we go back to 163, 6 to 14, please.  
24 Did you write all of the report that we just  
25 went through?

1 A. I put it into the word document; yes.

2 Q. All right. And Ms. Green --

3 A. And I was responsible for its contents;  
4 correct.

5 Q. And I will represent to you that I could go  
6 on and -- many more examples where this report that  
7 you submitted was copied basically word from word  
8 from things like wikipedia, articles written by  
9 lawyers. Did you double check that before you  
10 submitted the report?

11 A. I missed the one article. We listed all the  
12 other sources that were on there.

13 Q. But listing a source like wikipedia in the  
14 back is very different than indicating that you  
15 actually are cutting and pasting word for word from  
16 things. Would you agree with that?

17 A. Yes, I would.

18 Q. And I want to actually show you one of the  
19 sources that you did cite. You remember there's one  
20 point in your report where you actually did indicate  
21 that you were citing a particular source. Do you  
22 remember that?

23 A. Yes. "How Big is Telemarketing;" yes.

24 Q. This is the one time in your report you  
25 actually indicate there's a source. It's DTX967.

1 It's Paragraph 21 of -- Paragraph 40 of your report.  
2 Page 21, please, Trudy.

3 And this is the one point in your report where  
4 you actually annotate. And you indicate that you're  
5 lifting something, right, from -- or you're citing  
6 something; right?

7 A. In the body of the report; yes.

8 Q. Right. And do you know what that source is  
9 that you relied on there?

10 A. It was an article in Business Sales. Just  
11 to give a generally idea of how big the  
12 telemarketing is in the U.S. This is different than  
13 the others, which were standard terms and  
14 definitions.

15 Q. And this is DTX572 at tab 15. I want to  
16 show you this actual article. This is the one -- I  
17 went and actually checked it. It's  
18 articleslash.com. Here's the thing that you're  
19 citing; right?

20 A. Yes.

21 Q. You see at the top -- can you just go to the  
22 top of this, Trudy. Can you scroll up a little bit.  
23 And it's CX3. I'm sorry, I -- let's look at CX3.  
24 There's a color version of this.

25 You see this? This is the

1 articlesslash.com/page. Look at the top. Can you  
2 blow up those three boxes, Trudy.

3 This is a website which solicits visitors to  
4 submit articles for money?

5 MR. LEE: Objection, Your Honor. This  
6 looks like an ad that is part of a work page. I  
7 don't know that this is -- I don't know that there  
8 is any evidence that this is what article --

9 THE COURT: I'm not sure either, Mr. Bicks.

10 Q. If you go back to Paragraph 40 of your  
11 report, it's www.articleslash.com. It's page 21,  
12 Paragraph 40. And I went and checked  
13 articleslash.com, the front page, which is cross  
14 CX3, tab 16. This is the front page of this web.

15 And you can see at the front page that it  
16 solicits visitors to submit articles for money? Did  
17 you check that?

18 A. Again, this was an article just as an  
19 example of the telemarketing industry and the size.

20 Q. Yeah. And then DTX572. It's tab 15. This  
21 is the one we were looking at. If we can just  
22 scroll down to the bottom. Do you know anything  
23 about the person who wrote the article and what he  
24 says about himself?

25 A. No.



1           Q. Can you blow it up at the bottom, Trudy,  
2 there.

3           It says (As read:) Dwayne is an old consumer  
4 advocate who has too much time on his hands, his  
5 wife says, so he rants to his audience on Ezine  
6 Articles.

7           Did you know that when you cited this?

8           A. No.

9           Q. Is that the kind of article that an expert,  
10 who's responsible for using a reliable methodology,  
11 would rely on an article like that?

12          A. It's just an example.

13          Q. And do you feel, as an expert, that when you  
14 copy things word for word that you probably ought to  
15 put them in quotation marks so the people who look  
16 at it know that you're actually copying?

17          A. The standard definitions and terms are  
18 standard definitions and terms that I use every day,  
19 so I think as long as we cited the sources that --  
20 to be fine. It wasn't part of my DISH opinion.

21          Q. Well, but I showed you the article from the  
22 lawyer, who was more than definitions, you copied  
23 word for word without quoting it. You actually  
24 talked about a robust compliance program, the  
25 elements of which come out of an article written by

1 a lawyer?

2 A. Yes. But that, in practice, is what we do.

3 Q. In practice what you do is you copy work by  
4 others and --

5 A. No, in practice -- in practice, when we  
6 operationalize that laws that regulate  
7 telemarketing, that's exactly the type of program  
8 that we actually put together.

9 You know, I don't spend my time as an expert  
10 witness, nor writing expert reports, I spend my time  
11 working with clients, helping them succeed with what  
12 they do.

13 Q. Right. But you did submit an expert  
14 report --

15 A. I did.

16 Q. -- you told me and the Court that you wrote?

17 A. I did.

18 MR. BICKS: Your Honor, I have no further  
19 questions. I would move to have this witness not  
20 declared as an expert. And based on what I just  
21 saw -- showed here, I don't think this is testimony  
22 that should be allowed in court.

23 THE COURT: The objection is overruled.

24 Mr. Bicks, I hope you never analyze any of my  
25 opinions. The 7th Circuit, and esteemed Jurist

1 Posner, is known for citing to Wikipedia. And I  
2 believe it was this month there was a debate--I  
3 don't know if it was a debate, I didn't go--a  
4 discussion lunch between Judge Posner and Judge  
5 Hamilton about that very topic that I would have  
6 like to have overheard.

7 I'm not gonna strike the expert. But thank you  
8 for your examination.

9 All right. At this time I'm going to take what  
10 I hope is going to be a 15-minute break to do a  
11 first appearance, in another courtroom. So you  
12 don't have to leave. I will leave.

13 (A break was taken.)

14 THE COURT: My apologies, my defendant did  
15 not waive detention so we had to proceed.

16 Is Ms. Green in the courtroom? Would you  
17 please take the stand.

18 Please proceed.

19 MR. LEE: Thank you.

20 DIRECT EXAMINATION

21 BY MR. LEE

22 Q. Ms. Green, were you asked to provide an  
23 opinion in this case?

24 A. Yes.

25 Q. And were you able to reach an opinion about

1 DISH Network?

2 A. Yes.

3 Q. Could you tell us what opinion you were able  
4 to reach?

5 A. So my opinion was in regards to how they  
6 handled complaints with regard to the telemarketing  
7 activities of their retailers. And my opinion was  
8 that they did not get to the root cause of the  
9 actual complaint, and they followed a process that  
10 was not adequate.

11 Q. Did you have any other opinions that you are  
12 prepared to testify about with respect to DISH  
13 Network and its retailers?

14 A. Yes. Other opinions about whether or not  
15 they did investigations of their retailers before  
16 they did business with them; that sort of thing,  
17 yes.

18 Q. Okay. Before we go into those I'd like to  
19 talk a little bit about background.

20 Are you familiar with DISH Network and its  
21 relationship to certain OE retailers that it  
22 referred to as order-entry retailers?

23 A. Yes. I was able to review the contracts and  
24 the applications that were submitted by some of the  
25 OE retailers.

1           Q. Can you tell us what your understanding is  
2 about the OE system?

3           A. So the OE system, order entry system, is an  
4 order entry system that DISH had that allowed  
5 their -- certain retailers to enter in orders for  
6 DISH goods and services.

7           Q. And what is your understanding about how the  
8 OE system worked in terms of its --

9           A. Sure. So there was a specific log-on or  
10 user ID that was given via an IP address to the  
11 retailers once they were signed on with DISH.

12          Q. Do you have an understanding about who  
13 controlled the OE system, access to the OE system?

14          A. So I know in the documents that I read, and  
15 the deposition of Reji Musso, she actually assigned  
16 the IP address to the various retailers to use. So  
17 they had unique and individual IP addresses that  
18 they were to use to put in their orders.

19          Q. Do you have an understanding about how  
20 access -- whether or not access to the OE system  
21 could be turned off and on by DISH Network?

22          A. Several times they talked about, you know,  
23 "Is it time to turn this one off?" So yes, they had  
24 the ability to turn it on and turn it off.

25          Q. Have you had experience working with this

1 type of merchant -- excuse me, this type of  
2 relationship between two companies?

3 A. Yes.

4 Q. Could you tell us a little bit about that?

5 A. Sure. I'll go back to Household Retail  
6 Services, where we had over 600 merchants that I was  
7 responsible for. And, you know, if we had a  
8 complaint, depending on what the complaint was, we  
9 were able to stop processing any applications and/or  
10 stop funding until we resolved the issue. And it's  
11 not uncommon. I'm actually working with a retailer  
12 today on the other side, working with a retailer  
13 today who has a relationship with consumers as well  
14 as with financial services provider.

15 THE COURT: I'm sorry. Did you mean if you  
16 had one complaint that would happen?

17 A. No, it would depend. So, you know, if you  
18 were doing business with somebody for let's say the  
19 last five years and you've never had a complaint,  
20 and then a complaint comes up, you might want --  
21 might not want to suspend it right away. You might  
22 want to investigate that to see how broad or how big  
23 the complaint actually was. If there were other  
24 violations.

25 But then if you had, you know, a merchant, and

1 I remember this specifically, if you had a merchant  
2 where they just signed on, you only had maybe a  
3 month of experience with them, and you started  
4 getting complaints, yes, I would suspend that right  
5 away to figure out what's going on.

6 THE COURT: Thank you.

7 A. You're welcome.

8 Q. Let's talk about -- let's talk about the two  
9 sort of areas that you sort of mentioned in terms of  
10 your opinions.

11 what kind of due diligence work do you  
12 recommend your clients that you work with do in  
13 terms of different companies that it brings on to  
14 sell product -- sell its product or service?

15 A. Sure. If someone is going to sell your  
16 products and services they are an extension of you,  
17 an extension of your brand. So you want to make  
18 sure you have somebody who is not going to tarnish  
19 your reputation in any way, shape, or form.

20 So what I advise my clients is, as they bring  
21 on the retailer merchants or partners, they do an  
22 investigation. And that investigation includes, you  
23 know, Dunn and Bradstreet, due diligence, Better  
24 Business Bureau complaints, that sort of thing.  
25 Getting the names and address of the principals,

1     doing a criminal background check with those.  
2     Probably a credit check of those. To make sure  
3     that, you know, it's a reputable business and that  
4     it is somebody you want as an extension of your own  
5     brand.

6           Q. And why should companies do this sort of  
7     work before getting into a relationship with another  
8     company?

9           A. Well, obviously, if that company has had  
10    problems before, or if there have been complaints  
11    against that company, the likelihood of them doing  
12    it again is definitely a possibility. So you want  
13    to make sure that you assess the risk before you  
14    become involved in a relationship with another  
15    business.

16          Q. Would your advice differ if a company was  
17    bringing on what it believed was a telemarketing  
18    vendor as opposed to a retailer or something --  
19    something like that?

20          A. No. Even when we've done, you know, a  
21    telemarketing vendor, we have worked with clients to  
22    bring on a telemarketing vendor, there's quite a bit  
23    of due diligence that you do on a telemarketing  
24    vendor as well. Including talking to some of their  
25    other clients to see if there have been complaints,



1 to see how it's been resolved, to see how the  
2 governance model was set up.

3 Q. Is there other information that you would  
4 want to get from a retailer or sort of -- somebody  
5 selling your product before you would get into  
6 business with them?

7 A. Sure. You know, you'd want to understand  
8 exactly what their processes are going to be. How  
9 they're going to market your services. What the  
10 volume is going to be. You'd want to get a  
11 forecast. You want to understand, you know, who  
12 their employees are. What channels they're going to  
13 use. By channels, I mean is it call center, is it  
14 e-mail, is it direct mail, is it in store, face to  
15 face? However they're going to market your goods  
16 and services.

17 Q. And when you say understand, what kind of --  
18 sort of proactive work should a company be doing in  
19 terms of this type of due diligence?

20 A. Well, you know, what we've done with our  
21 clients is even -- so if you're signing up, for  
22 example, a telemarketing vendor, you go to their  
23 place of business, you observe calls. You, you  
24 know, observe how they do their business. You not  
25 only see the scripts, but you listen to what they're

1 actually saying and how they're conducting business.  
2 In addition to, you know, all the investigative that  
3 I said upfront.

4 Q. How long have you advised your clients or  
5 other -- advised your clients, or even in-house, how  
6 long have you advised your clients to do this sort  
7 of due diligence?

8 A. Well, gosh, I mean I did it back in my  
9 Household days, so that's going back to 1993. So I  
10 continue to do that even today. I mean it's  
11 definitely a best practice.

12 One of the clients I work with I think I  
13 mentioned earlier is Disney. You know, they were so  
14 concerned with their brand that they even dictated  
15 what color the walls would be in their outsourcing  
16 call center to make sure that the agents would have  
17 the right feeling when they were talking to  
18 customers.

19 Q. How much time would you recommend a company  
20 spend on do due diligence in a retailer or  
21 telemarketing vendor and their call center before  
22 actually sort of bringing them on?

23 A. In terms of time? Time spent on the  
24 investigation or --

25 Q. Sure. Maybe time is not the best way to say

1 it. How much digging -- you used deep dive before.  
2 How much digging would you recommend in terms of the  
3 due diligence that's necessary?

4 A. I would start -- I mean for the company  
5 itself, Dunn and Bradstreet, Better Business Bureau.  
6 You know, looking to see if there are any  
7 complaints, AG complaints. Just see if there are  
8 any complaints against the company. And then I  
9 would limit it to the principal of the company or  
10 the officers of the company. The C level  
11 executives.

12 Q. And do you need to get into sort of the  
13 nitty gritty of the operation to really understand  
14 how another company is going to be marketing your  
15 product?

16 A. I believe you do.

17 Q. Did you -- do you have an opinion as to how  
18 DISH Network conducted itself with respect to all of  
19 this due diligence that we are talking about?

20 A. I found, based on the documents that I  
21 reviewed, they did have the retailers sign a  
22 contact, a retailer contact. They did have two of  
23 the retailers that come to mind fill out or give to  
24 them a proposal, if you will, outlining how they  
25 were going to go about doing the marketing and sales

1 of DISH products.

2 But what I did not see is -- it was the  
3 retailer telling DISH what they were going to do,  
4 but I didn't see any investigative work that DISH  
5 then validated what they were telling them.

6 Q. Okay. And by DISH failing to do this  
7 validation, from at least what you saw, what did  
8 that do in terms of the risk?

9 A. Well, I think it greatly enhanced the risk.

10 Q. And in terms of risk, what do you mean by  
11 enhancing the risk? Risk for what?

12 A. Risk for complaints, compliance issues,  
13 fraud. Any of those could be a risk if you don't do  
14 your due diligence on the person you're going to do  
15 business with upfront.

16 Q. You also discussed consumer -- how a  
17 company, or how you'd recommend a company deal with  
18 consumer complaints related to its retailers or  
19 third parties marketing its services.

20 What would you sort of recommend in terms of a  
21 best practice for how to deal with those types of  
22 complaints?

23 A. So when a complaint come in it's really  
24 important to get to the root cause of that complaint  
25 to make sure it's not broader than that one

1 complaint. So, for example, in a telemarketing  
2 situation, if you had a complaint from a consumer  
3 about either the way the call was handled or that  
4 they were on the do not call list and shouldn't have  
5 been called, you know, it's important to understand  
6 where that phone number came from. And make sure  
7 that there aren't any other violations once that  
8 complaint comes in.

9 So in telemarketing, the list of phone numbers  
10 are usually associated with what's called a  
11 campaign. And so practically speaking what you  
12 would do is then look, and look at the scrub that  
13 they did between the do not call list and the actual  
14 campaign to see if there were any other numbers that  
15 could potentially be a complaint.

16 At the end of the day you want to figure out is  
17 it really just this one complaint or is this just  
18 the tip of the iceberg, if it's broader than that,  
19 before you determine, you know, what your final  
20 course of action is going to be either with the  
21 telemarketing firm or the provider that's working  
22 with the telemarketing firm.

23 Q. And how long have you counseled your clients  
24 that this is the appropriate approach to take?

25 A. I mean always. That's -- from my -- you

1 know, when clients hire me, they hire me for my  
2 practical experience, as well as, you know, my  
3 consulting background. And all of the experience  
4 comes from not only my own work, but my work with  
5 clients. And so this is something that most  
6 reputable companies would do.

7 Q. would you recommend that the -- your client,  
8 or a company, suspend funding or access to the sales  
9 tool while this investigation is going on?

10 A. Yes. You know, again, as I said earlier,  
11 you know, if you had done business with this company  
12 for a number of years and you never had a complaint  
13 before, you might not suspend right away, you might  
14 do the investigation. As I said, get the campaign  
15 list to see if there were any others or if this was  
16 just a one-off.

17 You know, if your relationship is brand new,  
18 and you really don't have a lot of experience with  
19 this particular relationship, you'd want to suspend  
20 right away to make sure it's not something that is  
21 broader than that one complaint.

22 Q. And if -- before you brought the -- brought  
23 the retailer back online, or sort of paid for their  
24 services again, what other sort of -- would you  
25 recommend putting other measures in place?

1           A. Absolutely. So you would want to make sure  
2           that these complaints don't happen again. So you  
3           would -- you know, you might look at how they're  
4           scrubbing their list to see if there's issue with  
5           that, and make changes to that. You might look at  
6           the scripts. You might look at how their IBR  
7           application software is configured. How it's  
8           dialing, how it's re -- interacting with the person  
9           on the telephone.

10          All of those things, you might want to look at  
11          them and determine if you need to make changes so  
12          that no other complaints occur.

13          Q. Did you have a chance to review -- or reach  
14          an opinion about how DISH Network dealt with  
15          complaints that it received relating to its  
16          retailers' marketing methods?

17          A. Yes. I reviewed several complaints.

18          Q. What is your opinion about how DISH dealt  
19          with those complaints?

20          A. So based on the documentation I reviewed,  
21          DISH, when they received a complaint, would send a  
22          letter to the retailer that was associated with the  
23          complaint for that order entry log-on ID.

24          They would then expect a response from the  
25          retailer. In many cases they would get the response

1 where the retailer would give an explanation for the  
2 complaint. They would then attach it to the  
3 complaint and file it. And so they were satisfied  
4 with that as the process.

5 Q. Did you believe that that was sufficient as  
6 a process?

7 A. No. As a matter of fact, I think that that  
8 process caused these complaints to escalate and  
9 snowball, meaning more and more complaints, because  
10 they never really got to the root cause.

11 Q. Did you have a chance to review DISH's  
12 approach with complaints received about JSR --

13 A. Yes.

14 Q. -- Enterprises?

15 A. Yes.

16 Q. Can you tell us a little bit about what you  
17 saw there?

18 A. So it's interesting. It looks like they  
19 signed a retailer agreement in August, and then  
20 right away, in September, they got the first  
21 complaint from a customer. I guess it was actually  
22 part of a sting. They got a complaint. And they  
23 wrote the form letter, if you will, to JSR.

24 JSR then responded and said that, I think  
25 something about a corrupted file for the do not call



1 list. And that it wouldn't happen again. And then  
2 it seemed as if they then filed the complaint and  
3 said, "Okay, it's not gonna happen again."

4 which to me, you know, if they had a corrupted  
5 file, do not call list, there may have been other  
6 numbers that were called. And, you know, with that  
7 relationship as new as it was, personally, I would  
8 have suspended the log-on ID until we got to the  
9 bottom of that corrupted file, why it was corrupted.  
10 And to make sure that the future process going  
11 forward was sufficient to scrub the list.

12 Q. Did you see other complaints that DISH  
13 received about JSR after this September one you  
14 refer to?

15 A. Yes. There were additional complaints that  
16 came up afterwards.

17 Q. And what did you think about DISH's response  
18 to those complaints?

19 A. Again, they sent a letter. They got a  
20 response. The response is -- you know, sometimes  
21 were about the consumer actually being on the list  
22 or not being on the list. And then they also talked  
23 about they, being an independent seller, would not  
24 be -- would not affect in any way DISH's reputation.

25 Q. Did you agree with that?

1           A. No, I do not.

2           Q. Would you explain why?

3           A. Because they signed a retailer agreement. I  
4 mean they were, in essence, a seller of DISH product  
5 and services. So they were an arm of DISH when they  
6 made their telemarketing calls. They talked about  
7 DISH Network. They were using DISH's order entry  
8 system. DISH was fulfilling the orders. So no, I  
9 do not agree with that.

10          Q. Do you think that DISH should have done  
11 more --

12          A. Yes.

13          Q. -- in terms of its investigation and how it  
14 dealt with these complaints?

15          A. Yes, I do.

16          Q. Would you explain what more they should have  
17 done?

18          A. Well, as I said, you know, I would have not  
19 only, like the first complaint, looked at the other  
20 numbers that were contained within that campaign to  
21 see how broad the problem was with calling customers  
22 who may have been on the do not call list, either  
23 state, federal, or internal.

24          And then -- you know, if that went okay, then  
25 when you got the second complaint really would have

1     done a deeper dive into the actual telemarketing  
2     center itself. You know, how they're doing, what  
3     they're doing. Probably made a visit to the  
4     telemarketing center to see it, feel it, touch it.  
5     And probably would have suspended the log-on ID  
6     again.

7           Q. What is your opinion about, again, the risk  
8     of problems that results because DISH did not take  
9     sort of what you believe they should have done?

10          A. Well, the result became a greater number and  
11     a greater number of complaints. Meaning in Reji  
12     Musso's deposition I believe she said, you know, "we  
13     are now have thousands of these complaints." And I  
14     think because they didn't get to the root cause,  
15     these complaints started snowballing.

16          Q. Are you -- are you recommending, or do you  
17     recommend that a company terminate a retailer after  
18     one complaint?

19          A. No. Again, it depends on how severe the  
20     complaint is and, you know, what your history has  
21     been with that particular partner.

22          Q. But to make that decision what kind of  
23     knowledge or investigation do you have to do?

24          A. You have to see how big -- how broad that  
25     complaint is. If it's just, you know, one

1 accidental phone number or call that was made, or is  
2 it -- is it broader than that. How big is the  
3 problem is what you have to determine. You have to  
4 get to that root cause.

5 Q. And would you just simply take the  
6 retailer's word for it?

7 A. No. No. No.

8 Q. Should the number of sales that a retailer  
9 is bringing in impact how you deal with a single  
10 consumer complaint?

11 A. No. Compliance and sales should be  
12 completely separate.

13 Q. And why is that?

14 A. Well, I mean sales are great, and the  
15 company wants to make sales and they want to be able  
16 to grow. However, you know, compliance is a  
17 completely different issue. And you want to make  
18 sure that the business that you're dealing with is  
19 complying with the rules and regulations and not  
20 going to become in violation of the law and have  
21 something like this happen.

22 Q. What about the number of calls that a  
23 retailer might be making, does that impact how you  
24 deal with a consumer complaint?

25 A. Doesn't matter. I mean if you're making,

1     you know, a thousand calls or ten thousand calls,  
2     they all still need to be compliant.

3           Q. Do you think -- from your review is it your  
4     opinion that the Compliance Department at DISH  
5     Network had enough information to even make that  
6     kind of analysis or call?

7           A. No.

8           Q. Have you -- do you recall reviewing a  
9     rebuttal report from a Mr. Ken Sponsler?

10          A. I do.

11          Q. And what is your -- what is your reaction to  
12     that rebuttal report?

13          A. So, Mr. Sponsler initially focused on the  
14     definitions of the various terms that were used in  
15     my report, terms like retailer and outsourcer and  
16     partner, which are the same terms that were used in  
17     many of the documents that I reviewed from DISH. So  
18     it was focused on those definitions and terms. And  
19     when it came to retailer -- sorry.

20          Q. No, go ahead.

21          A. Then when it came to the retailer  
22     definition, he talked about the retailer being an  
23     independent seller, et cetera.

24           And what struck me was he -- in his report he  
25     did not talk about the actual operation that DISH

1 had. what DISH did or did not do. I mean he didn't  
2 talk about that in his report.

3 Q. Do -- does terminology, or even sort of  
4 specific -- does terminology really impact how a  
5 company should view its relationship with retailers  
6 that are selling its products?

7 A. No.

8 Q. Could you explain that a little bit? What  
9 really should be the top consideration?

10 A. Yeah. So if you're a retailer and you're  
11 using an outsource telemarketing group, or if you're  
12 a retailer and -- or if you're a seller and using an  
13 outsource telemarketing group, or if you're a seller  
14 and you're using a retailer, or if you're, you know,  
15 using a list service where you're buying lists, all  
16 of those are partnerships of sort. And they're an  
17 extension of you and your brand. And in order to,  
18 you know, protect your business you have to make  
19 sure that they are compliant with laws and  
20 regulations and, you know, industry best practices  
21 and standards, to protect your business.

22 Q. When you say make sure that they are  
23 compliant, what does that entail?

24 A. So you put together a governance model.  
25 That's something that I advise my clients to do all

1 the time, whether they're contracting with an  
2 outsourcer, or a retailer that's doing business  
3 with, you know, a seller, you want to put together a  
4 governance model.

5 And by that governance model, it's a forum  
6 where the two parties regularly get together to talk  
7 about, you know, issues, complaints, processes. How  
8 they're gonna monitor--so how they're gonna listen  
9 to calls, how they're gonna monitor calls, how  
10 they're gonna calibrate these things together--to  
11 have that clearly defined process for issues that  
12 are going to come up between the two entities.

13 Q. Is it enough just to have a governance  
14 model?

15 A. Well, you have to execute on the governance  
16 model.

17 Q. That's all I have for now, Your Honor.

18 THE COURT: Do the states have any  
19 questions?

20 All right. Mr. Bicks.

21 MR. BICKS: Yes, Your Honor, thank you;

22 CROSS EXAMINATION

23 BY MR. BICKS:

24 Q. So can we start out, please, with CX2, which  
25 was tab 1. And could we just highlight the

1 educational background.

2 Ms. Green, you've told us that this indication  
3 here about your education on your firm's website is  
4 not accurate; right?

5 A. The explanation is on the other side of  
6 that; yes.

7 Q. All right.

8 A. I think I already answered that.

9 Q. Right. But in fact, you don't have a  
10 Bachelor's degree from the University of  
11 Connecticut, and you do not have an MBA degree from  
12 the University of North Carolina; right?

13 MR. LEE: Objection, Your Honor. Asked and  
14 answered.

15 THE COURT: The objection is sustained.

16 Q. My question is, you talk about due  
17 diligence. Remember that testimony?

18 A. Yes.

19 Q. Do you think that someone, in looking at  
20 your website and that indication that you have those  
21 degrees, should be required to go do due diligence  
22 to determine whether or not that's true or not?

23 A. I don't know.

24 Q. Now, in terms of your -- your specific  
25 qualifications. You know who Mr. Sponsler is?



1 A. I do. I met him during the depositions.

2 Q. And were you in court when his colleague,  
3 who was a plaintiffs' expert, described him as one  
4 of the foremost leading experts in telemarketing  
5 compliance?

6 A. I wasn't in court here then; no.

7 Q. You haven't seen that testimony?

8 A. No, I have not.

9 Q. Have you actually ever run into him at  
10 compliance seminars or training on TCPA compliance?

11 A. I don't think so.

12 Q. Are you -- you're not a customer engagement  
13 compliance professional who is certified by the  
14 Professional Association for Customer Engagement,  
15 are you?

16 A. No.

17 Q. And you're not a Certified American  
18 Teleservices Association Self-Regulatory  
19 Organization Auditor, are you?

20 A. No, I'm not.

21 Q. And you're also not a Certified Project  
22 Management Professional by the Project Management  
23 Institute, are you?

24 A. No, I'm not. I have managers that work for  
25 me that are.

1 Q. Right. And you've told us you don't have  
2 any professional licenses; correct?

3 A. No, I do not.

4 Q. And you never took any classes having to do  
5 with telemarketing compliance at the University of  
6 Connecticut or UNC; correct?

7 A. No. Those were not about telemarketing.

8 Q. And you've done continuing education, I  
9 think you mentioned, over 40 years?

10 A. Hm-mm.

11 Q. And did any of that course work have  
12 anything to do with compliance with the  
13 telemarketing laws?

14 A. I can't recall if it touched on it or not.  
15 A lot was spent on call centers, so -- and a lot of  
16 the additional seminars and things I went to were  
17 put on by call center vendors. So I -- we probably  
18 touched on telemarketing I'm sure.

19 Q. Well, let me just look at --

20 (Court reporter requested clarification.)

21 Q. Let's go to 27, line 19 to 28, line 12. And  
22 you see the question was what continuing education  
23 have you done?

24 A. Yeah.

25 Q. And over the 40 years you've said you've

1 done multiple things. And if we can go to the next  
2 page.

3 MR. LEE: Could I ask to give the witness a  
4 copy of her deposition.

5 MR. BICKS: We did.

6 THE COURT: Where is her deposition?

7 MR. BICKS: I think it's right there.

8 A. I'm pretty sure this is it.

9 THE COURT: Yes, it is. I think he's  
10 asking you to go to page 27.

11 A. That's what this is?

12 Q. Yes. This is your deposition, we were on  
13 27, 19, and now we're over to -- 28, 12.

14 THE COURT: Excuse me, Mr. Bicks -- do you  
15 need a break, Mr. Runkle?

16 MR. RUNKLE: I'm okay. Thank you.

17 THE COURT: Please continue.

18 Q. And my question was, you see line 10. (As  
19 read:) Did any of the course work have anything to  
20 do with compliance with the telemarketing laws? And  
21 there you said no?

22 A. Yep.

23 Q. Okay. You've never actually yourself worked  
24 in a Compliance Department, have you?

25 A. No. I was on the operations side. I work

1 with compliance departments. I ran telemarketing  
2 shops and worked with compliance departments. So my  
3 job was always to make sure that the operations  
4 itself were compliant.

5 Q. Right. But there are actually people who  
6 work in compliance departments whose job it is to  
7 determine TCPA compliance; right?

8 A. Exactly. And it's my job to operationalize  
9 it.

10 Q. Right. And my question to you is, you  
11 haven't worked in one of those departments that's  
12 responsible for TCPA compliance?

13 A. That is correct.

14 Q. And you've indicated, I think, you've  
15 published and you've had speaking engagements. At  
16 your deposition you said that none of these directly  
17 have any bearing on compliance with telemarketing  
18 laws; is that right?

19 A. They may touch on the subject of  
20 telemarketing in talking about call centers and  
21 telephony, both inbound and outbound. They're not  
22 specifically about TCPA -- about compliance issues.

23 Q. And you know there are actually companies --  
24 and let's just, for a minute, go back to your  
25 website bio, cx2. And if we just blow up the

1 description of your area of expertise and what you  
2 do. I see nothing on there about TCPA compliance.  
3 Is there anything there?

4 A. No. Again, it's about operations.

5 Q. Okay. And there are companies that actually  
6 provide services in connection with the Registry and  
7 with TCPA compliance, such as PossibleNow and  
8 Compliance Point; right?

9 A. Yes, I do know of companies that use those;  
10 yes.

11 Q. And dnc.com. What are the leading companies  
12 in that space?

13 A. Today or --

14 Q. Today?

15 A. I'd have to research that. I don't keep  
16 those facts in my head.

17 Q. Okay. But what about, let's say, 2010?

18 A. There were, you know, companies that do  
19 that. I mean that's something that's easily  
20 researched and determined. If there's a need for a  
21 company like that you could find a company that  
22 would be a good fit. If, for example, you weren't  
23 able to scrub your own lists, you would perhaps  
24 contact with a partner to do that.

25 Q. Yes. And I'm just asking you in your

1 career, where you have been working with call  
2 centers, which of those companies have you worked  
3 with?

4 A. I don't remember the names.

5 Q. And did you know actually in this case, have  
6 you seen an audit that was done by Compliance Point  
7 of DISH?

8 A. Have I seen the actual audit documentation?

9 Q. Yes.

10 A. No, I have not.

11 Q. Were you aware that that actually happened?

12 A. I was aware that they contracted with  
13 PossibleNow and told their retailers that they  
14 should use them, but they didn't -- they didn't make  
15 it a requirement.

16 Q. But I'm actually asking, do you know in this  
17 case that Compliance Point did an audit of DISH's  
18 records? Did you know that?

19 MR. LEE: Your Honor, before the witness  
20 answers, I would like to object to this line of  
21 questioning. She didn't provide any opinion about  
22 an audit or compliance with respect to DISH's own  
23 operations. She provided an opinion about DISH and  
24 its relationship with its retailers.

25 THE COURT: The objection is overruled.

1 You may answer.

2 Q. Did you know that Compliance Point had done  
3 an audit of DISH's operation?

4 A. I know that they had done a -- they did  
5 scrub some of the lists for some of their partners.

6 Q. And were you ever -- let me just show you  
7 Plaintiffs' Exhibit 33. It's admitted. It's tab  
8 33. And ask you if you have ever seen this?

9 A. I don't remember specifically.

10 Q. And if we can go -- just take a look at it.  
11 Did you know -- you know who Compliance Point is?

12 A. Yes.

13 Q. Who are they?

14 A. They are a company that call center  
15 operators could contract with to help them with the  
16 scrubbing of their do not call lists.

17 Q. Yeah. And if you blow up Mr. Sponsler's  
18 name at the bottom. Do you see those three acronyms  
19 next to his name?

20 A. Yes.

21 Q. Do you know what CIPP and CMP stand for?

22 A. I do in general terms; yes.

23 Q. What do they stand for?

24 A. One stands for compliance, the other is  
25 project management.

1 Q. But CIPP, do you know what the other letters  
2 are for?

3 A. Not exactly.

4 Q. But I take it that you've seen this before?

5 MR. LEE: Objection, asked and answered.

6 Q. Now that you've seen the document, does it  
7 refresh your memory that you've seen it?

8 THE COURT: Thank you.

9 A. No. I don't think I saw this document.

10 Q. And let's just go to the findings at page 4.  
11 Let me ask you if you knew about these findings?

12 A. No.

13 Q. Do you see here that, up at the top, (as  
14 read:) DISH has employed sufficient policies,  
15 procedures, and processes to ensure compliance with  
16 federal and state telemarketing rules --

17 A. Was this for their own telemarketing?

18 Q. Yes.

19 A. So this was not the retailers? This is for  
20 their own telemarketing?

21 Q. Correct.

22 A. Got it.

23 Q. Had you seen this?

24 A. No. I was focused more on their  
25 relationship with the retailers.



1 Q. So you didn't know about any of the audit  
2 work that had been done on DISH's own processes?

3 A. It wasn't a focus of my attention.

4 Q. Okay. Now -- but you would consider -- I  
5 mean, do you consider Compliance Point to be experts  
6 in telemarketing compliance issues?

7 A. I don't know enough about them to know that.  
8 I would have to do some due diligence of my own.  
9 And if a client were interested in using them then  
10 we would do that sort of due diligence.

11 Q. At your deposition you said that the TSR is,  
12 in many cases, open to interpretation; is that true?

13 A. Earlier versions of it were; yes.

14 Q. And what earlier versions are you talking  
15 about?

16 A. Well, I mean there were -- there were  
17 several editions to the TSR rule after it first came  
18 out. So, for example, prerecorded messages were --  
19 the way in which they were worded were different in  
20 the two telemarketing laws. So --

21 Q. And how was the wording different?

22 A. I'd have to look at them side by side. I  
23 didn't memorize them.

24 Q. Well, just summarize the differences?

25 A. They used different terms that could be

1     interpreted differently. And there were -- they  
2     were open to interpretation as to what constituted a  
3     relationship, for example, with the particular firm  
4     using telemarketing. So I'd have to have them side  
5     by side to give you the exact wording.

6           Q. And has any client ever actually come to you  
7     to help interpret those differences that you talked  
8     about?

9           A. Oh, sure.

10          Q. So I'm just asking then tell us about how  
11     you interpret the differences?

12          A. Well, we would think through what they were  
13     doing and how they were doing it, and how to make  
14     sure that their operations worked in such a way that  
15     they were compliant with the way in which the laws  
16     were interpreted.

17          Q. So as a person with compliance expertise can  
18     you walk me through how the definitions of  
19     prerecorded calls changed over time?

20           MR. LEE: I object, Your Honor. I don't  
21     know that Ms. Green actually testified she has  
22     compliance expertise. She has been talking about  
23     operations expertise.

24           THE COURT: The objection is overruled.  
25     You may answer.

1           A. So again, in the context of their  
2 operations, we would understand what they were  
3 doing, and what, if anything, needed to be changed.  
4 And how we would put that into operations.

5           Q. No, I fully appreciate that. But your  
6 counsel just stood up and indicated you don't have  
7 compliance expertise with the prerecorded call  
8 statutes; is that true?

9           A. Well, I'm not -- no, I'm not a compliance  
10 officer, nor am I a lawyer.

11          Q. So if I asked you to walk us through here  
12 today, as somebody who has dealt with telemarketing  
13 compliance, how the definitions of prerecorded calls  
14 changed over time, could you summarize that for us?

15          A. I would -- if it were in the course of my  
16 consulting work we would do the research on that, we  
17 would walk through it, I would have that in front of  
18 me.

19          Q. Okay. But based on -- I think you've told  
20 us you worked with TCI?

21          A. TCI. It was a cable company; right.

22          Q. And Time Warner Cable?

23          A. Yes.

24          Q. So I'm just asking you, based on your  
25 experience do you have a general understanding of

1     how those statutes changed?

2             A.   Yes.

3             Q.   Can you tell us what it is?

4             A.   Well so, for example, now the -- the latest  
5     version of the law, it doesn't really matter if you  
6     have a relationship with the consumer or not, these  
7     prerecorded messages are not something that you  
8     would want to do.  It's brought too much risk --

9             Q.   And if we look at 2002, what was the rule  
10    then?

11            A.   The prerecorded messages?

12            Q.   Yeah.

13            A.   There were a number of statutes about that.  
14    There was a time limit.  There were, you know, how  
15    long before you could get to a live person.  There  
16    was an abandoned call percentage.  There were many  
17    different facets of that law that were open to  
18    interpretation.

19            Q.   So what was the big -- first big change in  
20    the law?  On prerecorded calls?  When did that occur  
21    and what was it?

22            A.   I don't remember specifically when it  
23    occurred, but it was -- I'd have to pull it up and  
24    look at it.  I mean I don't memorize all these  
25    things.

1 Q. No. Fair enough.

2 A. It's easily researched. I mean you can pull  
3 it up and look at it. And as I did my expert  
4 report, I had -- you know, some of the documents  
5 that I had were those laws specifically and the --  
6 the years in which those changed.

7 Q. And you were asked at your deposition had  
8 you done any work with clients to help determine  
9 whether or not they satisfied the safe harbor  
10 provision of the telemarketing sales rule. And you  
11 said you didn't know the answer to the question?

12 A. So in the course of my consulting work the  
13 actual safe harbor provision never actually came up.

14 Q. And you were asked at your deposition could  
15 you identify any of the elements that need to be  
16 satisfied in order to secure the protection of the  
17 safe harbor provisions in the TSR, and you could not  
18 identify any such provision. Can you today?

19 A. Sure. I could then too. But in the course  
20 of my review of the DISH Network documentation I  
21 don't remember ever seeing anything about safe  
22 harbor.

23 But I mean safe harbor is showing that you have  
24 actually done your due diligence. And you have, you  
25 know, policies and procedures in place. You have

1 policies and procedures and rule -- procedures to  
2 rule out those policies and procedures. You have  
3 monitoring in place. You have training in place.  
4 And, you know, you have a limited exposure.

5 Q. Yeah. But -- I'm gonna come back to that in  
6 a minute. But my question is, can you yourself  
7 identify any of the elements that need to be  
8 satisfied in order to secure the protection of the  
9 safe harbor provision?

10 A. Sure. I mean I'd have to -- I would pull it  
11 up to make sure I quote the law. Again, I don't  
12 have it memorized.

13 Q. Okay. At your deposition you did not even  
14 know what the safe harbor was a safe harbor from;  
15 right?

16 A. No, that's not true.

17 Q. Let me show you 143, 13 to 142, 22. Are you  
18 with me, Ms. Green?

19 A. Yep.

20 Q. (As read:) Question: Do you have an  
21 understanding of what the safe harbor provisions are  
22 intended to provide?

23 Objection.

24 well, I don't know what the legal reason was to  
25 have that in the law.

1 Do you know what they are a safe harbor from?

2 Answer: No.

3 A. Yeah. So this is the first deposition that  
4 I've ever done in my entire life. And it was  
5 stressful to say the least.

6 Well, it's true.

7 THE COURT: And it wasn't even Mr. Bicks.

8 Q. So let me just turn my attention a little  
9 bit to DISH. So is it a good practice to have a  
10 written do not call policy?

11 A. Yes.

12 Q. Did DISH have a written do not call policy?

13 A. Yes.

14 Q. Is it a good policy to update the do not  
15 call policy when the law changes?

16 A. Absolutely.

17 Q. Did the telemarketing law change between  
18 2002 and 2008?

19 A. Yes.

20 Q. Did DISH update its written do not call  
21 policy to reflect the changes in the law?

22 A. I'm not -- I don't know.

23 Q. So, for example, have you looked at DISH's  
24 various do not call policies?

25 A. Yes.

1 Q. How many did they have?

2 A. I don't remember.

3 Q. Let me just show you tab 17. It's joint  
4 Exhibit 5 at page 4. This is the 2002 do not call  
5 policy. It's JTX 50. Have you -- were up familiar  
6 with this?

7 A. No.

8 Q. Let's look at DTX6 at 3. That's 2002.  
9 Did -- you see the date there?

10 A. Hm-mm.

11 Q. You see that it's -- it was revised in 2004?

12 A. 2004; correct.

13 Q. Do you know how it was revised?

14 A. No, I do not.

15 Q. Did you see this as part of your expert  
16 opinion?

17 A. No.

18 Q. Let's look at JTX49. Did you see this as  
19 part of your opinion?

20 A. No.

21 Q. Did you know that DISH revised its policy on  
22 February 6, 2006?

23 A. No.

24 Q. Let's look at JTX48.

25 THE COURT: I'm sorry, what was that



1 number? The last one?

2 Q. JTX49.

3 JTX48, had you seen this before?

4 A. No.

5 Q. So if I told you to walk us through how  
6 DISH's policies were revised, you wouldn't know that  
7 because you haven't seen them?

8 A. Correct.

9 Q. All right. Is it a good practice, do you  
10 think, to have the written do not call policies  
11 accessible to employees on the internet?

12 A. On the internet or the intranet?

13 Q. Intranet?

14 A. Intranet?

15 Q. Yes.

16 A. Yes.

17 Q. Do you know if DISH did that?

18 A. I do not.

19 Q. Let me show you DTX14 at 12 and ask if  
20 you've seen this before.

21 Had you seen this before, by the way? Do not  
22 call requests, 52 page document?

23 A. No.

24 Q. Let's look at page 12. Did you know that  
25 DISH's do not call policy was -- could be accessed

1 over the internet?

2 A. No.

3 THE COURT: I'm sorry, I missed it. What's  
4 the date on this exhibit?

5 Q. That's a good question, Your Honor. I will  
6 check, because I don't know off the top of my head.  
7 We'll check and come back to that.

8 Did you -- do you know who Mr. DeFranco is?

9 A. No.

10 Q. Were you ever shown -- it's important,  
11 right, to communicate with retailers as a general  
12 proposition on do not call issues?

13 A. Absolutely.

14 Q. And did you know that -- do you know who  
15 Mr. DeFranco is?

16 A. I don't remember.

17 Q. Did you know that he was the co-finder of  
18 DISH?

19 A. No.

20 Q. Were you shown a retailer chat in January of  
21 2007 where he cautioned all the retailers on do not  
22 call compliance issues?

23 A. No.

24 Q. And did you see that the -- let me back up  
25 for a minute. Do you think it's a good idea for

1 senior management of a company to be involved in  
2 compliance issues?

3 A. Absolutely.

4 Q. And as part of your opinion did you look at  
5 the number of communications from DISH to retailers  
6 about telemarketing compliance?

7 A. I saw numerous form letters and e-mails that  
8 went back and forth about compliance; yes.

9 Q. What about actual communications from the  
10 chairman of the company and the co-founder of the  
11 company? Did you see any of those?

12 A. No, I did not.

13 Q. Do you know what a Charlie Chat is?

14 A. No, I do not.

15 Q. Do you know who Mr. Ergen is?

16 A. No, I do not.

17 Q. You didn't know that he is the CEO of DISH?

18 A. Not off the top of my head.

19 Q. And you weren't provided with communications  
20 from the chairman and the co-founder about retailer  
21 compliance and do not call lists?

22 A. No. I was more interested in what DISH  
23 actually did when they got a complaint and the  
24 investigation of that complaint, not necessarily  
25 what DISH told its retailers.

1           Q. But you would agree with me that  
2           communication to retailers from senior management  
3           about the importance of compliance is a good thing  
4           to do; right?

5           A. Yes.

6           Q. Okay. And you talked a little bit about  
7           DISH's OE retailer agreement; right?

8           A. Yes.

9           Q. Are you familiar with DISH's facts blasts,  
10          where they sent out to all the retailers'  
11          communications about the specifics of the  
12          telemarketing laws?

13          A. I do remember that.

14          Q. And you think it's a good thing to  
15          communicate details about telemarketing laws?

16          A. This was after they started receiving  
17          numerous complaints. So they decided this facts  
18          blast might be helpful.

19          Q. And do you know what date -- this facts  
20          blast you are talking about was?

21          A. Off the top of my head I don't remember.

22                 THE COURT: Excuse me, you didn't answer  
23          the question. He asked if the facts blast were a  
24          good idea.

25          A. Yes.

1 Q. And let me show you Defendant's 607 and ask  
2 if you've seen this before?

3 A. Yes.

4 Q. And is this an accurate and complete  
5 statement of the law as you understand it on do not  
6 call issues?

7 A. Yes.

8 Q. And do you think it's a good idea to  
9 communicate accurately issues relating to  
10 telemarketing compliance?

11 A. Yeah. As long as you enforce it.

12 Q. And let me ask you about training. Is it a  
13 good idea to train employees and independent  
14 retailers on the telemarketing laws?

15 A. Yes.

16 Q. And how often did DISH provide trainings?

17 A. I don't know.

18 Q. Do you know who attended?

19 A. Who attended the trainings at the retailers?

20 Q. Yeah.

21 A. I do not.

22 Q. And do you know what was said at the  
23 trainings?

24 A. I didn't see evidence of that, so no.

25 Q. But you looked at Mr. Bangert's testimony

1 about training employees on scrubbing procedures;  
2 right?

3 A. Yes.

4 Q. And do you recall that he said he personally  
5 trained on the PDialer. And when he transitioned it  
6 this was one of the things that he trained the  
7 person who took over him on. Did you read that  
8 testimony?

9 A. I don't remember specifically.

10 Q. Let me help you out, because you said you  
11 looked at his deposition; right?

12 A. Hm-mm.

13 Q. Okay. It's April 18, 2012, at 120, 10 to  
14 14. Mr. Bangert's testimony. Do you remember  
15 seeing this testimony?

16 A. Yep. Yes.

17 Q. And what about Ms. Dexter's deposition? Do  
18 you recall her testifying she received on-the-job  
19 training and formal do not call law training,  
20 including PowerPoint presentations by DISH personnel  
21 reviewed with the managers?

22 A. No.

23 Q. Let's look at 16, 22 to 17, 6. This was a  
24 deposition that you looked at; right?

25 (As read:) we have formal training. There was

1     some formal training that was put together for the  
2     do not call policies. Do you recall that -- who  
3     gave you that training? It was training material  
4     within the department. PowerPoint training managers  
5     put together was reviewed with my managers.

6             Does this refresh your memory on that topic?

7             A. Somewhat.

8             MR. LEE: Your Honor, I just wanted to make  
9     a note that whatever this PowerPoint presentation  
10    training material that is referenced here was not  
11    made available to the plaintiffs during discovery.

12            MR. BICKS: Your Honor, I went through  
13    multiple PowerPoints with Ms. Musso and Mr. Werner.

14            MR. LEE: But this specific one was not  
15    identified. We're not sure exactly what they're  
16    talking about here.

17            THE COURT: I thought this witness just  
18    testified that she saw it.

19            A. I saw this deposition --

20            MR. LEE: She saw the deposition, not the  
21    PowerPoint itself. We don't know what it is.

22            THE COURT: So could we get that over the  
23    lunch hour?

24            MR. BICKS: Yes, Your Honor.

25            THE COURT: Okay.

1 BY MR. BICKS:

2 Q. You also heard from Mr. Werner that there  
3 were retailer development forums, probably a dozen  
4 per year, where training was done? Did you see that  
5 testimony?

6 A. I think so.

7 Q. All right. And do you think it's good to  
8 have companies like PossibleNow come when retailers  
9 are there and provide training to them? Is that a  
10 good thing to do?

11 A. Yes.

12 Q. Do you know how many times DISH did that?

13 A. No, I don't.

14 Q. Do you know how long DISH has worked with  
15 PossibleNow?

16 A. Off the top of my head I do not remember.

17 Q. Is it a good thing to create a comprehensive  
18 database to centralize federal, state, and internal  
19 do not call lists?

20 A. As long as it's kept fresh.

21 Q. And did DISH do that?

22 A. I don't know.

23 Q. Did you see any information indicating  
24 whether or not DISH fined retailers?

25 A. Yes.



1 Q. And how many such penalties were imposed; do  
2 you know?

3 A. I know of a few. JSR being one.

4 Q. How much was JSR penalized?

5 A. \$500.

6 Q. JSR was actually terminated; right?

7 A. After multiple complaints; yes.

8 Q. Right. And you think -- are you possibly  
9 confusing another retailer when you say \$500? Are  
10 you sure it's JSR?

11 A. No, it was JSR. They had originally  
12 estimated they were going to fine him \$2500, and  
13 then Reji decided that \$500 was going to be  
14 sufficient.

15 Q. Yeah. And I'll represent to you that's not  
16 JSR, but that's fine.

17 A. Okay.

18 Q. Do you think it's a good thing to terminate  
19 retailers in certain circumstances?

20 A. Terminate or suspend in certain  
21 circumstances. I've actually talked about that  
22 earlier.

23 Q. Right. And did DISH terminate JSR?

24 A. They did.

25 Q. There's a company called Dish TV Now. Were

1     you provided any documents about them?

2             A. I'm sorry, say that again?

3             Q. Dish TV Now, were you shown any documents  
4     about them for your expert opinion?

5             A. I don't remember the name. You know, there  
6     were many volumes of many documents.

7             Q. And did you know that DISH terminated Dish  
8     TV Now?

9             A. Not off the top of my head; no.

10            Q. What about Star Satellite; did you look into  
11    that retailer?

12            A. No.

13            Q. Were you provided the testimony of  
14    Mr. Hagan, Mr. Baker, Mr. Myers? Do you know who  
15    those people are?

16            A. No.

17            Q. Is it a good thing, do you think, when you  
18    terminate a retailer, to issue a press release so  
19    all the other retailers see what you did?

20            A. I don't know.

21            Q. Did you see evidence of whether or not DISH  
22    issued press releases when it terminated retailers?

23            A. No, I did not.

24            Q. Let me show you DTX947, tab 28. Have you  
25    seen this before?

1 A. No, I have not.

2 Q. And I think if you go to the next page of  
3 it. I take it you haven't seen this before?

4 A. No.

5 THE COURT: For the record, Mr. Bicks, what  
6 is it?

7 Q. This is DTX6 -- I'm sorry, let's bring up  
8 674. It was 947.

9 You had never seen this document where DISH  
10 sent out a facts blast about using third-party lead  
11 generation?

12 THE COURT: Did you say no?

13 A. You're asking me?

14 Q. Yes.

15 A. No.

16 Q. Okay. And can we look at 674. I was asking  
17 you about publicizing and issuing press releases  
18 about terminating retailers. Had you seen this  
19 press release where DISH issued a press release that  
20 JSR had been terminated?

21 A. No.

22 Q. And you mentioned JSR as a retailer; right?

23 A. Mm-hmm.

24 Q. Let me show you Neylon 1 to see -- it's a  
25 graphic that I think will balance some of the issues

1 here.

2 Have you, as part of your expert opinion,  
3 looked at the number of violations that are at issue  
4 here, and when they actually occurred?

5 A. Not this specific document, but other  
6 documents; yes.

7 Q. Okay. Because I had asked you about Dish TV  
8 Now and Guardian. You weren't provided any  
9 documents on that topic?

10 A. Not that I remember.

11 Q. And then when we talked about Star Satellite  
12 and Guardian; you weren't provided documents on that  
13 topic?

14 A. Not that I remember.

15 Q. Okay. But the topic -- the American  
16 Satellite, did you know that there's a claim of one  
17 telemarketing violation on American Satellite here?  
18 Did you know that?

19 A. I don't remember.

20 Q. And on JSR, that is a retailer that you did  
21 provide some testimony about; right?

22 A. Yes.

23 Q. And I'm gonna come over here and put up a  
24 timeline that we have used. You would agree with me  
25 that whether or not to terminate a retailer is

1 fact-specific; right?

2 A. Yes.

3 Q. And you would agree with me that it involves  
4 judgment calls; right?

5 A. Yes.

6 Q. And you would agree with me that at the time  
7 of what was going on here, obviously, you were not  
8 there as a matter of fact; right?

9 A. No, I was not.

10 THE COURT: Mr. Bicks, excuse me for -- do  
11 we have the timeline of retailer violations? Is  
12 that what this is?

13 MR. BICKS: I was going to the JSR  
14 timeline.

15 THE COURT: The one on the screen, is  
16 that -- I just want to make sure we have a copy of  
17 what is on the screen.

18 MR. BICKS: Yes. I will get a copy. I  
19 think there's one in the binders.

20 MS. MOWER: We will print it out and send  
21 it.

22 MR. BICKS: We will get it.

23 THE COURT: Okay.

24 BY MR. BICKS:

25 Q. Can you see this?

1 A. Yes.

2 Q. Will you hold this? So this is a timeline  
3 of the complaints that DISH received on JSR; right?

4 A. Yes.

5 Q. And the first one was in September 2006. It  
6 was the Hannah Klein sting, where DISH was said --  
7 told it was a corrupted DNC download; right?

8 A. Yes.

9 Q. Have you, in your work in call centers, have  
10 you seen situations where there has been a corrupted  
11 DNC download?

12 A. Yes, that can happen.

13 Q. That can happen; right.

14 And so your testimony -- and by the way, can we  
15 bring up the JSR business plan. Naomi, what is  
16 that?

17 MS. MOWER: PX235.

18 Q. 235. You said DISH got a business plan from  
19 JSR. Is getting a business plan, is it a good idea?

20 A. It's part -- it's a good idea; yes.

21 Q. And you see in this business plan that  
22 there's an indication that there will be print,  
23 telemarketing, and also direct mail; right?

24 A. Yes.

25 Q. And then you see in the comments there,

1     there are additional comments, and then it is signed  
2     and indicates there was an office with eight phone  
3     lines, and they hired two gentlemen, and so and so  
4     forth; right?

5           A.   Mm-hmm.

6           Q.   Is that good information --

7           A.   It's good information to base your own  
8     internal investigation on them before you sign them;  
9     yes.

10          Q.   Yeah.  And when it's a new business and it's  
11     people who just formed a venture, tell me again what  
12     exactly are you going to investigate?

13          A.   Well, it's risk, so you're going to  
14     investigate the principals for sure.

15          Q.   Yeah.  And is it the case that every -- by  
16     the way, do you know if there are any restrictions  
17     on doing investigations on people's backgrounds?

18          A.   There are, definitely.  That's why you  
19     include that in your contract with them, to make  
20     sure that they understand and agree to the  
21     investigation that you're going to do.

22          Q.   And do you actually -- are you aware, have  
23     you ever come across any governmental regulations of  
24     the federal government where there are restrictions  
25     on looking into people's backgrounds?

1 A. Of course there are.

2 Q. And -- but just so we're --

3 A. I'm not a lawyer, so I would, you know, work  
4 with a legal department to make sure that those  
5 types of investigations that I wanted to do were  
6 included in the contract.

7 Q. So I just have a -- curious. So I'm at a  
8 law firm and I hire people to come work at my office  
9 for the summer, should I be doing investigations on  
10 their background?

11 A. Yes. Actually, we hire folks in my  
12 professional services firm, we have people that come  
13 in and work as interns. And we do an investigation  
14 on them. Today we investigate things like Facebook,  
15 Twitter, social media, you know, to see what type of  
16 person we're bringing on board. Absolutely.

17 Q. And you think that's what all major -- just  
18 pick out law firms, you think all law firms do those  
19 investigations on people's backgrounds?

20 A. I don't know what law firms do. When I said  
21 legal advice, when I was working, for example, at  
22 Household Retail Services, and we were going to sign  
23 a retailer to market our credit card services, we  
24 would have certain wording within the contract that  
25 allowed us to do an investigation on the principals



1 of that particular business.

2 Q. And so on these complaints here, you see  
3 that August 2006, JSR became an OE retailer --

4 A. Right.

5 Q. -- and then DISH terminated them in February  
6 2007?

7 A. Yes. But they had a complaint after one  
8 month.

9 Q. And that was the complaint where they  
10 reached out to them and the individual said that it  
11 was the result of a corrupted DNC download?

12 A. Yes.

13 Q. And these are judgment calls; right?

14 A. No. That's a fact.

15 Q. They're judgment calls about how to handle a  
16 complaint? You said that yourself; right?

17 A. You mean whether or not to suspend them or  
18 terminate them?

19 Q. Right. That's a judgment call; right?

20 A. It is.

21 Q. Right. And I think you said in response to  
22 a question from the Court that if you got a  
23 complaint, one complaint, you wouldn't necessarily  
24 terminate somebody; right? It depends on the facts?

25 A. After my investigation I would make that

1 determination.

2 Q. Right. And do you know how many people at  
3 DISH were working on this investigation at the time,  
4 and looking into it?

5 A. From the evidence that I saw?

6 Q. Yes.

7 A. They sent the letter to JSR, they got the  
8 response back about the corrupted file, they  
9 attached it to the complaint, and they filed it. I  
10 didn't see any evidence of investigation.

11 Q. What about with the Melissa Wallace  
12 complaint? Did you see the actual response from  
13 JSR --

14 A. I did.

15 Q. -- where they told DISH that they were  
16 completely compliant with the law. That it was less  
17 than 3 percent of all the calls they were making, so  
18 therefore it was covered by the safe harbor. That  
19 Melissa Wallace was actually not on the do not call  
20 list, and that therefore, the complaint was  
21 erroneous. And as a matter of fact, the letter also  
22 said that JSR is completely outside of the control  
23 of DISH. Did you see that?

24 A. I did see that.

25 Q. Okay. And when you saw that did you think

1 the person was lying or telling the truth?

2 A. What I saw was that DISH didn't make an  
3 attempt to determine if they were lying or telling  
4 the truth.

5 Q. Well, DISH reached out to them and asked for  
6 their explanation?

7 A. Right. And then they didn't validate that  
8 explanation. They didn't do their own  
9 investigation. Or at least that I saw.

10 Q. Was there something about that particular  
11 response which made you think that it was not true?

12 A. It doesn't matter whether I think it's not  
13 true or not. I need to do my own investigation to  
14 determine if she is indeed on the do not call list,  
15 what campaign she was associated with, if there are  
16 other numbers on that list. You know, a month  
17 before they had a problem with the list, so it would  
18 make sense then to look at the list again and look  
19 at their process for scrubbing the list.

20 I mean all of that due diligence needs to be  
21 done by myself, the seller. Not just relying on a  
22 merchant who I signed up only two months ago. And  
23 didn't do an investigation on.

24 Q. Do you actually know what JSR did? What  
25 investigation they did on that?

1 THE COURT: On which?

2 Q. On any of these things? For example,  
3 Melissa Wallace?

4 A. Only -- they were the ones that had the  
5 complaint.

6 Q. Right.

7 A. Therefore, they're explanation is their  
8 explanation. DISH then should have done an  
9 investigation to determine if that was true or not.

10 Q. Let me show you the John Foard complaint.  
11 Do you remember what that was?

12 A. Somewhat.

13 Q. That was one where the actual individual  
14 wrote back and said it was not even JSR, it was a  
15 different company?

16 A. Oh, yes, I do remember that.

17 Q. As you sit here today do you know as a  
18 matter of fact whether or not that actually was JSR,  
19 or whether or not when the person said it was a  
20 different company, whether or not he was right?

21 A. I saw no evidence that DISH did their own  
22 investigation of that particular complaint. So all  
23 I have is JSR's word for that, and their response to  
24 the complaint.

25 Q. But you don't know, as you're telling us

1 here today, whether or not there was something  
2 untruthful about that complaint?

3 A. No, I don't.

4 Q. Okay. And can I just ask you, as you look  
5 at this, did you look at how many different DISH  
6 people were on the e-mails exercising judgment about  
7 how to handle this -- these situations?

8 A. Yes.

9 Q. How many people? Approximately?

10 A. I couldn't remember a number.

11 Q. Senior people in the company?

12 A. Mostly Reji.

13 Q. You didn't see any senior --

14 A. Reji, Mike Mills, Bruce Werner.

15 Q. What about Mr. Neylon, did you see him?

16 A. Don't remember that.

17 Q. Do you know who he is?

18 A. No.

19 Q. And again, so we're clear, these are  
20 judgment calls; right? About how to handle  
21 information when it's in front of you; right?

22 A. Well, doing an investigation is not a  
23 judgment call.

24 Q. Well --

25 A. The action that you would take with your

1     retailer would be based on the facts of my own  
2     investigation, not just the response from the person  
3     who received the complaint.

4           Q. I was going through the things and asking  
5     you if they're good things to do. Is it a good  
6     thing to track complaints?

7           A. Yes.

8           Q. Was DISH tracking complaints when it got  
9     them?

10          A. Yes.

11          Q. And is it a good thing to have a centralized  
12     compliance group to handle telemarketing complaints?

13          A. Yes.

14          Q. And did DISH have such a group?

15          A. Yes.

16          Q. Is it a good thing to have a legal  
17     department to resolve issues associated with  
18     telemarketing compliance?

19          A. Yes.

20          Q. Did DISH have a legal department that worked  
21     to resolve issues associated with telemarketing  
22     compliance?

23          A. I don't remember.

24          Q. What about a field sales development  
25     representative? Do you know what that is?

1 A. Yes.

2 Q. Is it a good thing to have field sales  
3 development representatives visiting retailers?

4 A. Yes.

5 Q. Is it a good thing to have a quality  
6 assurance program in place to monitor calls?

7 A. Yes.

8 Q. Did DISH do that?

9 A. Yes.

10 Q. Are you aware that DISH had an Executive  
11 Resolution Team that handled customer complaints  
12 that were made to executives?

13 A. Yes.

14 Q. Is that a good thing?

15 A. Yes.

16 Q. Are you familiar with something called the  
17 Dispute Resolution Team or DRT?

18 A. Don't remember.

19 Q. Do you know that DISH had a Dispute  
20 Resolution Team that followed up on Attorney General  
21 and Better Business Bureau complaints?

22 A. I remember they had a group that did that.  
23 I didn't remember what it was called.

24 Q. Is that a good thing to do that?

25 A. would be a good thing not to have to have

1       that.

2           Q.   Well, so you mentioned the company that you  
3       worked for and you talked about, what was it, Time  
4       Warner Cable?

5           A.   Time Warner Cable.   One of my projects, yes.

6           Q.   And how -- you were working on their  
7       Compliance Department?   Their --

8           A.   No.   I was working with their sales and  
9       marketing and telemarketing group.

10          Q.   Yeah.   And how do you grade their compliance  
11       on TCPA?   Were you involved with that?

12          A.   For the group that I was with we don't give  
13       grades.

14          Q.   I thought you -- were you involved in TCPA  
15       compliance issues for Time Warner Cable?

16          A.   Well, we made sure that their  
17       operations--that we worked on and that we  
18       re-engineered--were compliant.

19          Q.   Yeah.   I want to show you Cross Exhibit 65  
20       and 66.   Did you know that they have been sued in  
21       class action complaints?   A lawsuit saying that  
22       their telemarketing compliance doesn't comply with  
23       the law?

24          A.   Was that in the Midwest group that I worked?  
25       Or where was that at?



1 Q. I'm gonna show you. So you weren't looking  
2 at Time Warner Cable overall, you just looked at  
3 part of it?

4 A. We worked with the Midwest region in  
5 Columbus, Ohio.

6 Q. So do you know whether or not the company  
7 has been sued in class actions for making  
8 unsolicited telemarketing calls to telephones of  
9 consumers nationwide to obtain redress for all  
10 persons injured? Did you know that?

11 A. No.

12 Q. Let me show you --

13 A. Where and when?

14 Q. Is it up here?

15 Well, Ms. Green, I have before you CX65. It's  
16 a lawsuit filed -- class action lawsuit filed  
17 against Time Warner Cable. Where you aware of that?

18 A. No. But this is 2015. They were my client  
19 five years before that. They have since disbanded  
20 the Midwest region, they have gone to just east  
21 coast, west coast. So yeah, no, I was not aware of  
22 this.

23 Q. So you're not up to speed on kind of the  
24 current compliance issues at Time Warner Cable?

25 A. Well, Time Warner Cable is not my client

1 currently. And this was November of 2015. So I  
2 have been working with other clients since then.

3 Q. Yeah. But is it fair to say that what you  
4 had done in 2010, whatever part of Time Warner Cable  
5 that you were involved with, did you give them kind  
6 of a clean bill of health or telemarketing --

7 A. For the Midwest Region. That's been  
8 disbanded.

9 MR. LEE: I just want to object to that  
10 line of questioning. She testified -- there's no  
11 evidence in the record about whether or not what  
12 Ms. Green did relates to this part here, this  
13 lawsuit here.

14 THE COURT: The objection is sustained.

15 Q. But you weren't aware of any of these  
16 complaints against Time Warner?

17 A. No. That's relatively new.

18 Q. Okay. On -- what is spoofing, by the way?

19 A. Spoofing is when you show a phone number on  
20 a caller ID that's really not yours.

21 Q. And you talked about investigating  
22 complaints. Can investigating telemarketing  
23 complaints be difficult?

24 A. It can be.

25 Q. And how can it be difficult?

1           A. Well, if you -- I mean the caller ID that  
2 comes up may not be associated with the actual  
3 caller, so you may have to dig a little deeper. I  
4 mean, most of what I looked at were the OE  
5 retailers, and they certainly had log-on ID's and  
6 they kept track of who was able to use those log-on  
7 ID's. So you could track that to the OE log-on.

8           THE COURT: Mr. Bicks, I apologize for  
9 interrupting again. But how physically does the  
10 false number exist?

11          A. So I don't know -- you know, technically I'm  
12 not a technical person, but what spoofers have done  
13 in the past is, let's just say you're in New York,  
14 but you want the number -- they have a way to make  
15 the number in the caller ID look like you're in  
16 Colorado, you're calling from Colorado --

17          THE COURT: I just don't understand  
18 physically how they do that.

19          A. I'm not technical. I just know that it  
20 happens.

21          THE COURT: Okay.

22          A. The good news is there's less and less of it  
23 today.

24          Q. It's tough sometimes to investigate  
25 complaints; right?

1           A. It's tough sometimes to investigate  
2       complaints; right. Sometimes you have to dig a  
3       little harder.

4           Q. And you saw DISH had a whole tracking  
5       process for complaints?

6           A. Tracking? Yes.

7           Q. And you also saw DISH had a sting operation?  
8       Do you know how many stings they did?

9           A. They did a number of strings. I didn't  
10      count them.

11          Q. How many?

12          A. I didn't count them.

13          Q. Give me your rough estimate based on your  
14      expert work?

15          A. I can't.

16          Q. 150?

17          A. I can't.

18          Q. You don't know?

19          A. I don't. I could go back through all the  
20      documents and count them I suppose.

21          Q. What about POE notices? Do you know what  
22      those are?

23          A. Place of employment notices?

24          Q. POE. Did you see that in the case?

25          A. No.

1 Q. Stands for partner order entry. Does that  
2 ring a bell?

3 A. No.

4 Q. You didn't see information where DISH  
5 distributed notices instructing retailers not to  
6 call specific consumer numbers?

7 A. They did a lot of instructing.

8 Q. Right. So I'm asking you, did you see those  
9 POE notices?

10 A. No.

11 Q. And I want to ask you about what you looked  
12 at. Remember you mentioned on direct something  
13 called a wish list?

14 A. Yes. It's something we use in our practice.

15 Q. But you didn't ask for things on a wish list  
16 in this case, did you?

17 A. No. I was given evidence to review.

18 Q. And the reason you didn't ask for documents  
19 is because you didn't think they were available;  
20 right?

21 A. No. This wasn't a normal assessment that I  
22 do. This -- a wish list is what we give to clients  
23 when they have asked us to do an assessment of their  
24 operation.

25 Q. Right. Sometimes you get involved in

1 something and you put together a list of things and  
2 say, "This is what I would like to look at." Right?

3 A. Yes.

4 Q. You didn't prepare a wish list here?

5 A. No. This wasn't that type of engagement.

6 Q. And you didn't ask for materials because you  
7 didn't know that you could ask for things; right?

8 A. I was given volumes of materials to review.  
9 And at -- reviewing those documents, I felt that I  
10 had enough to form an opinion, which is what I was  
11 asked to do.

12 Q. Well, you did say that in your normal job  
13 you come up with a list and you wish you could see  
14 X, Y, or Z documents, but you don't have them. But  
15 you didn't do that in this case; right?

16 A. No. Again, I was given volumes of materials  
17 to review and asked if I could form an opinion based  
18 on those documents. And the answer was yes. I mean  
19 that's what I do every day, especially with my  
20 numerous years of experience. I certainly can  
21 understand an operation as simple as this.

22 Q. Well, let me show you your deposition at  
23 178, lines 10 to 16.

24 (As read:) why didn't you ask for the  
25 additional documents that occurred to you might be

1 helpful to have while you were doing your work? I  
2 don't know, I didn't think there were any other  
3 available. I don't know, I don't remember.

4 Do you remember this testimony?

5 A. Yes. Again, first deposition ever.

6 Q. And I wasn't even there.

7 A. I know. You're actually nicer.

8 Q. Thank you for saying that.

9 You saw my slide there where I was comparing  
10 your report to sources that --

11 A. Yeah.

12 Q. And when you took a break from the courtroom  
13 did you take a look at that?

14 A. No.

15 Q. Okay.

16 A. I've seen it before.

17 Q. What's that?

18 A. I've seen it before. During the deposition,  
19 of course.

20 Q. Okay, okay.

21 when you talk about industry standards and  
22 practices, you would agree with me that it's  
23 actually more robust than what the law requires;  
24 right?

25 A. Oh, yes.

1 Q. Thank you very much.

2 THE COURT: Redirect?

3 MR. LEE: Thank you, Your Honor.

4 THE COURT: Let's just go ahead and break  
5 for lunch at this time. Is that acceptable?

6 MR. LEE: Excuse me, Your Honor?

7 THE COURT: Let's go ahead and break for  
8 lunch. We'll come back at 1:20. And I have to ask  
9 the courtroom, is there an attorney named Bill in  
10 the courtroom.

11 who are you with?

12 UNIDENTIFIED SPEAKER: Cassidy Shade.

13 THE COURT: Okay. I apologize for  
14 embarrassing you. I received a text from my  
15 daughter that you would be here and you were a  
16 friend of hers. I didn't know if I need to disclose  
17 that.

18 MR. BICKS: Your Honor, the rule is no  
19 talking about the testimony over lunch?

20 THE COURT: Yes.

21 (A lunch break was taken.)

22 THE COURT: Please be seated. Please  
23 continue.

24 REDIRECT EXAMINATION

25 BY MR. LEE:



1 Q. Good afternoon, Ms. Green.

2 A. Hello.

3 Q. Did you have a good lunch?

4 A. I did, thank you.

5 THE COURT: Where did you go?

6 A. They brought in lunch. It was a salad. And  
7 I went to Starbucks.

8 THE COURT: I always wonder if somebody has  
9 a good lunch in Springfield.

10 Q. I had a few follow-up questions based on  
11 what Mr. Bicks asked you about.

12 One of the things, do you recall Mr. Bicks  
13 asking you about what you referred to as a document  
14 wish list?

15 A. Yes.

16 Q. Do you typically feel like you need to  
17 review all of the documents that you identified in  
18 this wish list to know when there is an issue with  
19 an operation that you're reviewing?

20 A. No.

21 Q. Did you review enough documents in this  
22 case, in this engagement, to know whether or not  
23 there were any issues with DISH's operations?

24 A. Yes.

25 Q. Now, Mr. Bicks also asked you about some of

1 DISH's own internal policies. Is your testimony  
2 today related to DISH'S own internal policies and  
3 telemarketing operations?

4 A. No.

5 Q. Okay. So does DISH'S own calling policies  
6 with respect to its own internal operations, is that  
7 relevant to your opinion?

8 A. Yes and no. I mean they had policies and  
9 procedures, that's one step. But I looked more at  
10 what they actually did in reference to the  
11 complaints and the operations that they had.

12 Q. And this was with respect to the retailers?

13 A. Yes.

14 Q. Now, Mr. Bicks also asked you about a number  
15 of different things that he referred to as good  
16 things. For example, having policies with respect  
17 to do not call, communicating to retailers, tracking  
18 complaints. Do you recall that questioning?

19 A. Yes, I do.

20 Q. Now, are having those things enough?

21 A. No.

22 Q. What more do you need in your opinion?

23 A. Well, having the policies is step one. Then  
24 making sure that those policies are complied with  
25 and, you know, utilized within the execution of

1     their operations is step two.

2           Q.   And do you have an opinion about whether or  
3     not DISH did enough with respect to step one or step  
4     two?

5           A.   For their retailers, I would say no and no.

6           Q.   In your opinion is -- is telling retailers  
7     simply not to violate the law and providing  
8     reminders, is that sufficient in terms of mitigating  
9     risk?

10          A.   No.

11          Q.   Could you explain that?

12          A.   It's like telling a child, don't do this,  
13     and you tell them don't do this, but you never do  
14     anything about it. The child is still going to push  
15     the limits. For example, even with that JSR, if  
16     they had the first complaint, they asked what the  
17     problem was, they got an answer. They didn't  
18     investigate the answer, they didn't find out for  
19     themselves how widespread the problem was. They  
20     relied on the person that allegedly had the  
21     violation to respond. That's not enough. You have  
22     to satisfy your own -- you have to satisfy it on  
23     your own and do your own investigation.

24          Q.   Kind of going off that, Mr. Bicks also asked  
25     you about difficulty that there may be sometimes

1 with investigating consumer complaints because of  
2 things like spoofing. Do you recall that testimony?

3 A. Yes.

4 Q. Do you think that it would have been  
5 difficult for DISH to investigate the practices of  
6 its OE retailers?

7 A. No. I think that you might have to dig a  
8 little harder. You might have to call some  
9 consumers and actually talk to them and ask them  
10 what happened. You might have to go to the place of  
11 business where these calls are actually being made  
12 to see it. But I don't think hard is not -- I mean  
13 it's doable.

14 Q. And did DISH have the right to do these sort  
15 of investigative steps that you just testified  
16 about? With respect to its retailers?

17 A. Yeah. Based on the contract they had with  
18 the retailers, I would say yes.

19 Q. In terms of this -- in terms of the due  
20 diligence that you testified earlier. Do you recall  
21 that testimony?

22 A. Yes.

23 Q. Were you suggesting that you -- did you  
24 testify previously about, when you were suggesting  
25 that companies do their due diligence, were you

1     testifying that they should do investigation that  
2     was more than the law required or -- excuse me, more  
3     than the law allowed?

4           A.  No.

5           Q.  Okay.  Do you know if, in the process of  
6     doing due diligence investigation, if things like  
7     felonies and bankruptcies are public record?

8           A.  Yes.

9           Q.  And are those the types of things that you  
10    would recommend --

11          A.  Absolutely.  As part of the criminal  
12    investigation, absolutely.  And financial  
13    investigation in the case of the bankruptcy.

14          Q.  There was -- Mr. Bicks asked you about some  
15    changes in the TSR and the TCPA and different  
16    changes in the law.  Do you recall that?

17          A.  Yes.

18          Q.  Have you, in your time working as a  
19    consultant in-house, have you always counseled --  
20    excuse me, let me rephrase that.

21                Have you counseled you clients and in-house  
22    folks that voice broadcasting, robo calling, was  
23    covered and regulated by these two statutes?

24          A.  Yes.

25          Q.  Now, you mentioned JSR.  Were you able to

1 hear the testimony of Richard Goodale yesterday?

2 A. I actually did.

3 Q. And what did you think?

4 A. It was interesting.

5 Q. Now, Richard Goodale was one of the  
6 principals at JSR; do you know that?

7 A. Yeah. He was the R.

8 Q. Excuse me?

9 A. He said he was the R in JSR.

10 Q. Based on what you heard of Mr. Goodale's  
11 testimony yesterday, how would you have counseled  
12 your client as to whether or not to take his word in  
13 terms of the -- in terms of the explanations he was  
14 giving about do not call violations?

15 MR. BICKS: Your Honor, I would object to  
16 this. And only in the sense this goes beyond the  
17 scope of what Ms. Green had opined on in direct and  
18 having testified to in her report. I'm just saying  
19 if she is now going beyond that, and the Court is  
20 going to allow it, I want to request that when  
21 Mr. Sponsler is here, that he be allowed to talk  
22 about what he's seen in the courtroom. If we're  
23 going to allow this to happen.

24 THE COURT: Certainly.

25 Q. Go ahead. You can answer the question.

1           A. well, the first part, when he was talking  
2 about downloading phone numbers, essentially the  
3 white Pages, and calling everybody with his 25  
4 dialers that he would light up, didn't -- you know,  
5 was interesting and similar to -- you know, was in  
6 line with what I read in the documents provided. I  
7 mean they didn't do a lot of due diligence on those  
8 records, they were just trying to make as many sales  
9 as possible.

10           Also the -- the shared log-in was quite  
11 interesting.

12           Q. what did you think about Mr. Goodale's  
13 testimony that DISH was signing up robo call  
14 operations? would that have influenced sort of how  
15 you counseled your clients about the investigation  
16 that was necessary?

17           A. Oh, yes.

18           Q. How so?

19           A. So I mean if they -- he said they knew that  
20 they were doing robo call operations. And, you  
21 know, DISH, being a large retailer and wanting to  
22 protect their reputation, I wouldn't have signed up  
23 with them.

24           Q. From your review of -- from your review of  
25 documents you saw at JSR, did you think that the

1 compliance folks at DISH--Ms. Musso, Mr. Werner--had  
2 enough information about -- had enough information  
3 about JSR to make an informed decision about how to  
4 proceed with that company once they got complaints?

5 A. No. I did not see any evidence of their own  
6 investigation. They got the reply from JSR, but  
7 they didn't dig any deeper than that that I saw.

8 MR. LEE: That's all I have.

9 THE COURT: Mr. Bicks, anything further?

10 MR. BICKS: Yep.

11 RE CROSS EXAMINATION

12 BY MR. BICKS:

13 Q. Ms. Green, how many retailers did DISH  
14 terminate?

15 A. You want the specific number?

16 Q. Yes.

17 A. I do not know.

18 Q. How many --

19 A. Over what period of time?

20 Q. Well, you tell me. You're the expert, you  
21 looked at the record. How many --

22 A. I didn't memorize them.

23 Q. Give me your estimate?

24 A. I can't.

25 Q. Not even anywhere like 10, 15, 20, 25, 30?



1 You don't know?

2 A. No.

3 Q. How many people, when retailers get  
4 terminated, were put out of work; do you know?

5 A. I don't know that. I know reading one  
6 instance where they had 47 people and they shut down  
7 the telemarketing operations, and the 47 people were  
8 sitting there with nothing. But that has no bearing  
9 on whether or not you would shut down an operation.

10 Q. I think you said that DISH -- people should  
11 go actually visit the place of business of the  
12 retailers?

13 A. Yes.

14 Q. Did DISH do that?

15 A. I believe they did in some cases.

16 Q. And --

17 A. But it was -- in some cases that was the  
18 sales manager who owned the relationship, or the  
19 field service team, and not necessarily the folks  
20 that were involved in compliance investigation.

21 Q. But do you actually know whether compliance  
22 people visited any of the retailers?

23 A. I didn't see evidence of that.

24 Q. And did you see -- you didn't look at the  
25 evidence of the retailer communications about

1 training? And the training seminars?

2 A. Yes, I did see the training.

3 Q. And training given to OE retailers about  
4 compliance?

5 A. Yes.

6 Q. Did I hear -- was your testimony that DISH  
7 should not essentially trust and accept what  
8 Mr. Goodale said to them?

9 A. Correct.

10 Q. Well, if DISH couldn't trust what he said  
11 then how could we in court listen to him and trust  
12 what he says?

13 MR. LEE: Objection, Your Honor. He's  
14 trying to impeach Mr. Goodale's testimony with  
15 Ms. Green's.

16 THE COURT: The objection is overruled.

17 A. Well, he actually said two things yesterday,  
18 didn't he? He initially said, you know, that he  
19 told them lots of lies. And then when you were  
20 directing his responses to the complaints he said he  
21 was telling the truth. So he said both.

22 Q. Yeah. Have you seen situations you're  
23 counseling where people have actually concealed  
24 information from people?

25 A. I've seen retailers try to conceal

1 information. Try to conceal fraud. That's why it's  
2 up to the seller to do their own investigation and  
3 form their own conclusions based on the  
4 investigation that they do.

5 Q. Right. And I think you told us about on  
6 direct some investigation you did about credit card  
7 fraud; right?

8 A. Well, it's not necessarily credit card  
9 fraud, but it was sales fraud for sure.

10 Q. Right. And what, you shut the people down;  
11 is that what happened?

12 A. I suspended them until we had assurances  
13 that it would no longer happen again.

14 Q. Did you bring them back on?

15 A. Yes.

16 Q. And just so we're clear, on the -- the  
17 documents that you saw. 1376, it's an admitted --  
18 it's admitted in evidence. I'm gonna pull it up on  
19 the screen and ask if you've seen this. PX1376.  
20 Had you seen this before?

21 A. It's just -- the logo? Oh, no.

22 Q. Okay. Just go to say page 25 up on the  
23 screen. Had you seen that before?

24 A. No. But I've seen the e-mails from Reji  
25 that said almost the exact same thing.

1 Q. And I'm just asking you in your --

2 A. It's telling them -- yes, I've seen them  
3 tell them many times.

4 Q. Yeah. And I'll just ask you one final  
5 question. Do you know how many retailers were  
6 actually terminated?

7 A. No, I don't know the number.

8 MR. BICKS: Thank you very much.

9 MR. LEE: Just a couple of questions.

10 THE COURT: Yes.

11 REDIRECT EXAMINATION

12 BY MR. LEE:

13 Q. Mr. Bicks asked you about visiting the  
14 sites. Is simply visiting the sights, is that  
15 enough?

16 A. No.

17 Q. What do you need to do once you get to the  
18 sites?

19 A. Well, depending on why you're there, you  
20 know, or what you're investigating, you may pull the  
21 call records, you may pull the campaign lists. You  
22 may walk through the way in which they scrub their  
23 lists. You may listen to calls, recorded calls.  
24 You may sit side by side with the telemarketers.  
25 You may observe -- observe how they quality monitor

1     their calls. All those things. I mean, you do  
2     whatever you need to do to make sure you understand  
3     how the operation is performing.

4           Q. And should you be documenting these steps  
5     along the way?

6           A. Oh, gosh, yes.

7           Q. And should it -- who should be doing this  
8     sort of investigation? The sales folks --

9           A. No, not the sales folks. I mean the sales  
10    own the relationship. And they are incented to make  
11    sell and work with them. So compliance and sales  
12    should be completely separate.

13           And it isn't really the sales responsibility to  
14    do that. I mean, they may go and look how they're  
15    sales effectiveness is being handled, but from a  
16    compliance prospective, I mean a sales person is  
17    incented to grow revenue, so that would be a  
18    conflict of interest.

19           Q. Mr. Bicks also asked you about reviewing  
20    what Ms. Musso told -- told retailers about.  
21    That -- is that enough in your opinion?

22           Actually let me rephrase that. Even taking  
23    that to be true, and what has been provided, does  
24    that change your opinion in any way?

25           A. No. I mean actually reading through many,

1 many of Ms. Musso's e-mails and her deposition, she  
2 told people that many, many times. It's not enough  
3 just to tell somebody though, you have to verify  
4 that it's actually being followed.

5 MR. LEE: That's all I have.

6 THE COURT: Anything further, Mr. Bicks?

7 MR. BICKS: Nothing, Your Honor.

8 THE COURT: May this witness be excused?

9 MR. BICKS: Yes.

10 THE COURT: Does that go for the plaintiffs  
11 also?

12 MR. LEE: Yes. Thank you, Your Honor.

13 THE COURT: You may step down. Thank you,  
14 ma'am.

15 (The witness was excused.)

16 THE COURT: Your next witness?

17 MS. HSIAO: Your Honor, the plaintiffs  
18 don't have any more live witnesses. We have a  
19 number of housekeeping issues, including offering  
20 some additional deposition transcripts related to  
21 retailers into the record. And then also, some  
22 remaining exhibits that we would like to have  
23 admitted. And we've given DISH counsel a list of  
24 those exhibits. So we anticipate there may be some  
25 back and forth discussion with the Court about

1 those.

2 So I can proceed however you like. I can  
3 identify the deposition transcripts.

4 MR. EWALD: Your Honor, if I may, before  
5 you go into that. During Mr. Mills' testimony there  
6 were two exhibits that I didn't move in. I  
7 discussed this with Mr. Runkle.

8 I intended to move in DTX752. I don't think  
9 plaintiffs have an objection to that one. And then  
10 DTX309, which is one of the consent judgments. And  
11 I believe plaintiffs have a continuing objection to  
12 that, but the Court ruled in its motion in limine.

13 THE COURT: Did you say 752 was Mills  
14 deposition?

15 MR. EWALD: No. It was in the Mills  
16 testimony. It was an e-mail related to JSR, Bobby  
17 Fielding.

18 THE COURT: Okay. Any other objections?

19 MR. RUNKLE: No. I think we've raise the  
20 consent judgment objection in our motion in limine,  
21 so I think that stands to raise that objection.

22 THE COURT: All right. 752 and 309, DTX,  
23 are admitted.

24 MR. EWALD: Thank you, Your Honor.

25 (Defendant's Exhibit DTX752 and 309 admitted.)

1 THE COURT: So do we have live testimony  
2 here today, Mr. Bicks?

3 MR. BICKS: Well, I don't know, Your Honor.  
4 Obviously, I think for purposes of procedure, DISH  
5 intends to make a Rule 52 motion. And that would be  
6 at the close of the plaintiffs' case. I don't  
7 know -- we're prepared to make that motion now and  
8 present it to the Court.

9 THE COURT: Did you say we aren't  
10 prepared, or --

11 MR. BICKS: We are.

12 THE COURT: Okay.

13 MR. BICKS: So I think we should just, in  
14 my view, procedurally, make it clear that the  
15 plaintiffs 'case would be closed so we can make that  
16 motion.

17 So subject to dealing with, I think, these  
18 exhibits, which I know we spent a lot of time  
19 working on. I think they gave us a list of over 500  
20 exhibits that have not been commented on by any  
21 witnesses. I'm sorry, 300 not 500. And we've gone  
22 through them and, you know, made our whole list of  
23 objections and things of that nature.

24 So I just do want to alert the Court that DISH  
25 had a Rule 52 motion we're prepared to make and to



1 present to the Court.

2 THE COURT: So do you have any live  
3 witnesses?

4 MR. BICKS: Yes. Mr. Neylon is here from  
5 our case.

6 THE COURT: How long will his testimony be?

7 MR. BICKS: I think the direct is probably  
8 an hour.

9 MS. HSIAO: I don't know. It depends on  
10 what he's going to say. I would anticipate that  
11 cross would be about the same or less, but I'm not a  
12 very good gauge of that.

13 THE COURT: Lawyers are not very good  
14 gauges of that. Including the Court.

15 Well, let's do this. Do you have any objection  
16 to him reserving his right to make his motion, but  
17 we will go ahead and put Mr. Neylon on and get him  
18 out of here?

19 MR. RUNKLE: Yes. In terms of procedure  
20 that Mr. Bicks was talking about, we have to offer  
21 some deposition testimony, and we would like the  
22 exhibits to be handled before we formally close our  
23 case. But if we can reserve that until Mr. Neylon  
24 goes in and out, we --

25 MR. BOYLE: And, Your Honor, I just -- it

1 is about 300 and 350 exhibits. I'd say about 75 or  
2 so we agree upon, probably another 70 or 50 so,  
3 we -- it's the consumer complaints, so we just have  
4 the notice issue. The hearsay is admitted for  
5 notice. And then there's the balance, which is  
6 significant obviously, that contains hearsay and  
7 other substantive objections.

8 We have listed them all out as to what the  
9 objections are. I just don't know what the Court's  
10 pleasure is about how to deal with them and resolve  
11 the objections. Because there are going to be  
12 significant ones. They didn't come up with a  
13 witness, so the Court wasn't in a position to deal  
14 with it as they came up. And now there is a backlog  
15 of a significant number that the objections would  
16 have to be litigated at some point in time.

17 THE COURT: So after this next witness  
18 you'll have Sponsler, Fenili and Abernethy?

19 MR. BICKS: No. We've got Mr. Neylon, who  
20 is here. Amir Ahmed, who is also here. Then  
21 Mr. Sponsler. Then Amy Dexter. Russell Bangert.  
22 That's the lineup going forward.

23 MS. HSIAO: That will take us to the end of  
24 the week?

25 MR. BICKS: Those are the next lineup of

1 witnesses, and we'll see how long everything takes.  
2 Obviously we've got all of our witnesses here.

3 THE COURT: So then we have Myers, Baker,  
4 Hagan, Sponsler --

5 MR. BICKS: I forgot -- we have some  
6 deposition readings that you just reminded me of.  
7 The idea was we were gonna do Neylon, Mr. Neylon,  
8 Amir Ahmed. Then we've got approximately an hour  
9 worth of depositions from three people from Star  
10 Satellite, Guardian, and Dish TV Now. Those are the  
11 three readings. And we have timed it, it is a  
12 little over an hour, all three together.

13 THE COURT: Well, tell me, why could I not  
14 just read those myself?

15 MR. BICKS: Let me reflect on that. I mean  
16 we're not -- they're the only depositions that we  
17 have actually, you know, wanted to make sure that we  
18 had focused on, because frankly, I think they're so  
19 essential to this case. And the plaintiffs have put  
20 in their case, you know, a deposition. And I have  
21 told the Court that we have -- the only time that we  
22 would consider doing that is with respect to these  
23 three individuals. One of them is, for example, 10  
24 to 12 minutes. But we're willing to kind of figure  
25 out the best way to do that.

1           But frankly, I think they're so critical for  
2 the case on fundamental questions of agency and  
3 information that was concealed from DISH, that I  
4 just -- there is something that Your Honor will  
5 remember from the timelines, there's passages  
6 quoted, and I feel they are absolutely essential  
7 testimony, and that's why we talked about presenting  
8 it. But we will obviously do what the Court wants.

9           MS. HSIAO: Your Honor, for the record, one  
10 of the deposition of Walter Eric Myers, that was the  
11 principal of Star Satellite. The plaintiffs are  
12 going to offer that deposition, designated portions,  
13 for the Court to review at your leisure.

14           THE COURT: Thank you. That pleases my  
15 court reporter also.

16           All right. So let's go ahead and do  
17 Mr. Neylon. We will keep the plaintiffs' case open.  
18 You can make your motion after we deal with the  
19 exhibits.

20           Do you have in writing the objections you have,  
21 Mr. Boyle?

22           MR. BOYLE: I do.

23           THE COURT: Would the plaintiffs mind if I  
24 reviewed them prior to having the hearing?

25           MS. HSIAO: Except we don't have their --

1 is it the same objections, or the previous -- new  
2 objections?

3 MR. BOYLE: These are the ones I went  
4 through based on what you sent me. I tried to match  
5 it up to the pre-trial. I didn't have the time in  
6 all instances, but they generally match. I ruled  
7 them out as hearsay or --

8 MR. RUNKLE: I would be happy for the Court  
9 to review it at the same time that we do.

10 MR. BOYLE: May I approach?

11 THE COURT: You may.

12 I have to comment and thank Andrea and Trudy.  
13 I apologize, I don't know your last names. And  
14 counsel have referred to by your first names.

15 I don't know how much of this work you have  
16 done, but what I have seen you do in court is  
17 phenomenal. Your ability to produce documents  
18 outside of your office, to both sides, is pretty  
19 phenomenal also.

20 MR. BICKS: Your Honor, I can just say on  
21 behalf of our firm, our client, I appreciate that.  
22 Trudy has worked with me and our team since 2001,  
23 2002.

24 THE COURT: So you've lived this case? You  
25 got pretty good at that.

1           MR. RUNKLE: Your Honor, if I could just  
2 ask for one clarification?

3           THE COURT: Yes.

4           MR. RUNKLE: Did you envision filing a Rule  
5 52 motion during the trial that there would be a  
6 briefing schedule for, or is it oral motion only?

7           MR. BICKS: It's an oral motion. But tied  
8 to the evidence and some of the things that have  
9 happened in the case.

10          MR. RUNKLE: Okay.

11          THE COURT: And, Mr. Runkle, anticipating  
12 that Mr. Bicks won't be really brief on that motion,  
13 you may wish to have some time to collect your  
14 thoughts, and I'm willing to give you some time --

15          MR. RUNKLE: Thank you.

16          THE COURT: -- to do that.

17          MR. RUNKLE: Thank you.

18          MR. BICKS: So, Your Honor, Mr. Neylon is  
19 here in the courtroom.

20          THE COURT: Sir, if you would step up and  
21 be sworn, please.

22          So, Mr. Boyle, these are only your objections  
23 to the documents?

24          MR. BOYLE: I'm sorry, Your Honor. On the  
25 left is the admit without objection. In the middle

1 column is admit for notice. That's that consumer  
2 hearsay issue that we litigated on the first day.  
3 And on the right are the objections to the remainder  
4 of the exhibits.

5 THE COURT: Okay. I can read a graph,  
6 really.

7 (The witness was sworn.)

8 MR. BICKS: It wouldn't be an examination  
9 without a binder.

10 THE COURT: No. It has to be more than one  
11 binder and more than one additional exhibit.

12 MR. BICKS: May I proceed, Your Honor?

13 THE COURT: You may.

14 BRIAN NEYLON

15 called as a witness herein, having been duly sworn,  
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BICKS:

19 Q. Please introduce yourself.

20 A. My name is Brian Neylon.

21 Q. Good afternoon, Mr. Neylon. Tell us where  
22 you work?

23 A. I work at DISH Network.

24 Q. And how long have you been at DISH?

25 A. I started at DISH on September 16th of 1991.

1 Q. So math has never been my strong suit, but  
2 that's about 24, 25 years?

3 A. Close enough; yes.

4 Q. All right. Tell us, what is your position  
5 at DISH?

6 A. Today my title is executive vice-president.  
7 I have responsibility over subscriber acquisition  
8 and retention.

9 Q. And let's talk a little bit with your  
10 background. I can tell you're not from here. Where  
11 are you from?

12 A. I was born and raised in Dublin, Ireland.

13 Q. And tell us where you went to college?

14 A. I went to University of Illinois at  
15 Urbana-Champaign.

16 Q. And tell us how it was that you ended up  
17 there?

18 A. I attended U of I on a swimming scholarship.

19 Q. And did you compete internationally as an  
20 athlete?

21 A. I did, in two sports, both swimming, and my  
22 pastime was water polo.

23 Q. And was, at one point in your life, the  
24 Olympics in your sights?

25 A. It was a goal. A goal I ultimately fell



1 short of, but achieved other goals. so it helped me  
2 achieve other goals in life.

3 THE COURT: Was water polo in the Olympics  
4 when you were doing water polo?

5 A. It was, but I -- I just competed for my  
6 country is water polo. It was a break from  
7 swimming.

8 THE COURT: What years were you doing it?

9 A. I finished swimming in 1988. So I swam for  
10 probably 14 or 15 years prior to that.

11 Q. And what -- just as an interesting thing,  
12 what were your events in swimming?

13 A. I swam 100 and 200 butterfly, were my two  
14 mains events.

15 Q. And tell us what you studied in college?

16 A. I have a Bachelor's degree in urban and  
17 economic geography.

18 Q. And what year did you graduate?

19 A. I graduated in 1989.

20 Q. And tell me what you did --

21 THE COURT: I'm sorry, I have to interrupt  
22 again. What is urban and economic geography?

23 A. That's a good question. My parents asked  
24 the same thing.

25 Large organizations -- so town planning would

1 be how new towns are built or where things are  
2 placed. But large organizations such as McDonalds  
3 or Walgreens or CVS would have internal departments  
4 that would say, based on population density or  
5 traffic flows or location of competitors, where you  
6 would place stores.

7 THE COURT: You can tell Springfield did  
8 not have someone with that degree.

9 A. At least back in the old days.

10 Q. What did you do after college?

11 A. I actually attended -- I stayed on in  
12 college and went to grad school for one year. That  
13 was for the year in 1990. I had applied about two  
14 years earlier, through a lottery system, for a green  
15 card. And I actually was informed that I had won a  
16 green card in the lottery.

17 And the process there is you need to go home to  
18 your home country to avail of it. I went home and  
19 waited. And unfortunately, I was in a group of what  
20 I came later to find out was about three and a half  
21 thousand folks who were informed by the State  
22 Department that we had won green cards, and they had  
23 over-subscribed that year. Got a second letter  
24 saying I didn't win a green card in the lottery.

25 Q. How did you end up here then?

1           A. I was fortunate enough that the immigration  
2 law at the time, that hadn't been touched since I  
3 believe 1965, was being updated. And the people  
4 that -- like myself that were in this category were  
5 attached to that immigration law of 1990 that was  
6 signed, I believe right after Thanksgiving, and we  
7 were given a special inclusion in that. And I got a  
8 third letter from the State Department saying, "Just  
9 kidding, you actually do have one." I didn't know  
10 if it was real or not.

11           THE COURT: They're known for being  
12 kidders, right?

13           A. Yeah. So I ended up going through the  
14 process, getting my green card, and coming back to  
15 the United States towards the end of May of 1991.

16           Q. And how did you come to work at DISH?

17           A. I responded to a small ad in the Chicago  
18 Tribune one Sunday. And I went through an interview  
19 process and started at DISH Network in September.

20           Excuse me, Ecosphere Corporation was the name  
21 of the company then.

22           Q. This was 1991 or thereabouts?

23           A. Yeah, September of 1991.

24           Q. And walk us through the positions you've  
25 held at DISH?

1           A. Varying levels of increasing responsibility  
2 on the sales side from an entry level position to  
3 mid-level manager, senior level manager, director,  
4 vice-president, senior vice-president. Today I'm an  
5 executive vice-president.

6           Q. And Mr. DeFranco was here and -- told us he  
7 is an executive, I think a vice-president. Can you  
8 just give us a sense of where -- how many people  
9 have your title within the organization?

10          A. I believe that number is somewhere between  
11 eight -- should be between eight and ten or so.

12          Q. Okay. And I want to bring up, I'm calling  
13 it Neylon 1. It's a graphic that I showed earlier.  
14 I want to focus on where you were at specific points  
15 in time.

16          Are you aware that in this case the Court has  
17 found DISH liable for violations by retailers on  
18 summary judgment?

19          A. Yes.

20          Q. And you look at this graphic here, and it's  
21 my -- our team's efforts to put up the time frames  
22 involved just to orient ourselves. You can see we  
23 have some violations there by Dish TV Now/Guardian  
24 in 2004, and then going up to 2010-2011 to SSN  
25 violations. Are you with me in terms of this?

1           A. Yes.

2           THE COURT: Now, this is Neylon Deposition  
3 1, I think you referred to it as. Do you want to  
4 give it an exhibit number in this case?

5           Q. I will, Your Honor. I'm just so bad with  
6 exhibit numbers.

7           THE COURT: We can use that, that's just --

8           Q. I called it Neylon 1 just for Trudy so she  
9 can pull it up. And I did use it before. If there  
10 is a number I should use -- I used it as Neylon 1  
11 before.

12           MS. HSIAO: Your Honor, for the record,  
13 this wasn't a deposition exhibit, this was a  
14 demonstrative.

15           THE COURT: I was gonna correct that. It  
16 was my gross assumption.

17           Q. And did you know that these violations took  
18 place between 2004 and 2011.

19           A. Yes.

20           THE COURT: Off the record.

21           (A discussion was held off the record.)

22           Q. Mr. Neylon, just looking at this graphic,  
23 when did you first have responsibilities relating to  
24 order entry retailers?

25           A. Beginning in early 2006.

1 Q. All right. So when we're looking at this  
2 graphic, most of these violations occurred before  
3 you had any responsibility for the OE retailer  
4 situation?

5 A. Yes.

6 Q. Okay. Now -- and Star Satellite and Dish TV  
7 Now, the ones to the left there, they were removed  
8 from the order entry tool at the point that you came  
9 on the scene in the OE retailer situation?

10 A. Yes, sir.

11 Q. All right. And what was your job title at  
12 the time in the early part of 2006?

13 A. Vice-president of Sales and Distribution.

14 Q. All right. I want to ask you about JSR.  
15 Are you familiar with JSR?

16 A. Yes, I am.

17 Q. And were they an OE retailer?

18 A. Yes, they were.

19 Q. And did DISH terminate them as an OE  
20 retailer?

21 A. Yes, we did.

22 Q. And were you involved in the decision to  
23 terminate JSR as an OE retailer?

24 A. Yes, I was.

25 Q. And can you just describe generally your

1 level of involvement?

2 A. I was involved in coming to the conclusion  
3 that we ultimately decided not to continue our  
4 business relationship with them.

5 Q. And let me show you Exhibit 752, which is a  
6 December 5th, 2006, e-mail that I think has been  
7 admitted in evidence.

8 (Court reporter requested clarification.)

9 Q. Do you recall this e-mail exchange of  
10 December 5th, 2006?

11 A. Yes, I do.

12 Q. And the re line there says (as read:) NC  
13 Created Increase Breakdown.

14 Can you tell us what that's referring to?

15 A. Yeah. The NC is the acronym for new  
16 connect. These are new connect work orders. Orders  
17 that are sales orders that are awaiting  
18 installation.

19 Q. And just to be very direct about one thing.  
20 There has been a suggestion in the case by certain  
21 people that people like Ms. Musso and Mr. Werner  
22 were kind of lower or mid-level employees that were  
23 off doing things without attention of executives of  
24 the company. Is that true?

25 A. That's not my experience.

1           Q. And were you yourself actually involved in  
2 this JSR issue?

3           A. Yes, I was.

4           Q. All right. And I want to ask you, if we  
5 look at this e-mail, I want to walk through it. The  
6 way e-mails work is you have to go to the back of it  
7 and then go forward.

8           You come on the scene here in an e-mail from  
9 Jack Witt to you. Do you see that?

10          A. Yes.

11          Q. And what role did Jack Witt have in  
12 September of 2006?

13          A. At the time Jack was a vice-president in our  
14 Installation Group.

15          Q. And if you look at this information that's  
16 provided to you can you describe what it was that  
17 he's providing to you?

18          A. He's asking why orders or potential orders  
19 would increase, and the -- the interesting thing  
20 about this is it's December 5th. We would normally  
21 experience a seasonal decline in our business.  
22 After Thanksgiving and through the Christmas  
23 holidays is not one of our busiest times of the  
24 year. So for someone to have an increase in  
25 business, he's asking why.



1           He's also asking why from the prospective that  
2           their installation rates, or the percentage out of a  
3           hundred orders that get installed, these guys are  
4           less than the channel average or others. So that --  
5           that ties up a scarce resource on a smaller  
6           opportunity than someone else's larger opportunity.

7           Q. And there's reference there in the second  
8           sentence to completion percent?

9           A. Yeah.

10          Q. Can you tell us what that means?

11          A. Yeah. That's really the percentage of -- so  
12          if they give us 100 orders and we install 90, they  
13          would have a 90 percent completion rate, or if they  
14          were installing 80, it would be 80 percent  
15          completion rate. So we look at individual partners'  
16          completion rates to measure them on productivity.

17          And Jack is concerned that some of the increase  
18          in the business is from partners that had the lowest  
19          completion rates, so --

20          Q. Is this something that got your focus and  
21          something you paid attention to?

22          A. Yes.

23          Q. If we look at page 2 of 3 of this e-mail,  
24          and we see your response here. You say (as read:)  
25          What's the story with JSR Enterprises? Are they

1 taking orders for terminated retailers?

2 Can you explain that to us and why you were  
3 focusing on that?

4 A. My question or concern would be -- would be  
5 wrapped around if we had terminated a retailer,  
6 unbeknownst to us were they still actively selling  
7 our product and were they trying to run those sales  
8 through another retailer, thus circumventing our  
9 termination.

10 Q. And did you determine whether or not, in  
11 fact, that was the case here?

12 A. I -- it's not clear from this, but I believe  
13 we were comfortable that that was not the case.

14 Q. Because let's go to page 1 of 3. And look  
15 at the -- the middle there, which is the response.  
16 Who is Bobby Fielding?

17 A. Bobby at the time was a field-based or --  
18 field-based sales manager, retail sales manager.

19 Q. A diligent employee?

20 A. Bobby is a diligent employee. Still with  
21 us.

22 Q. And he's indicating to you (As read:) Based  
23 on my meeting with JSR.

24 And you weren't in here, but we just heard from  
25 an expert named Debra Green who said it's very

1 important to meet in person with clients to learn  
2 and get a handle on their telemarketing efforts.  
3 Does this indicate to you that in -- that  
4 Mr. Fielding had such a meeting?

5 A. Yes, it does.

6 Q. And is that something that from your  
7 prospective from DISH is a good thing to do?

8 A. It is, at all levels, including very senior  
9 levels.

10 Q. And tell me, when you see this information,  
11 where Mr. Fielding has this meeting, and he says (as  
12 read:) They expanded their outbound telemarketing  
13 efforts by adding a dialer and increasing the number  
14 of employees. I inquired about their calling  
15 practices and was assured that they follow all DNC  
16 guidelines cautiously. And wanted to know if I hear  
17 otherwise.

18 Can you explain to us what kind of information  
19 that's conveying to you?

20 A. It seems like it's a logical explanation  
21 that they -- they added a dialer. They admitted --  
22 or they told us that they were in compliance with  
23 the law, and that they had added additional sales  
24 capacity or employees to handle the increase in  
25 potential inquiries.

1           Q. And you see there's reference, he says that  
2 (as read:) I inquired, and they follow the  
3 guidelines cautiously, and wanted to know if I hear  
4 otherwise.

5           What does that tell you about somebody kind of  
6 keeping their ear to the ground and paying  
7 attention?

8           A. Well, over the years, and through  
9 experience, you get to -- the biggest benefit of  
10 going to a place of business is you -- you obviously  
11 get a better feel for it. You also -- you also get  
12 to hear things in the field from others. All of the  
13 information that we hear that's bad about somebody  
14 doesn't always come from that person individually,  
15 but could come from other people that -- that are  
16 willing to provide information to you.

17          Q. And if we go up to page 1 here, you ask a  
18 question, and I'd like to focus on that. You say  
19 here (as read:) Are they doing voice message  
20 broadcasting.

21          Why did you ask that?

22          A. I just wanted to make sure that we asked all  
23 of the relevant questions and left no stone unturned  
24 in understanding why the business would increase.

25          Q. And if you see what Mr. Fielding responds.

1 Can you walk us through the information that he had?

2 A. I think Bobby says that he specifically  
3 asked and was told that they don't. And then Bobby  
4 told me that they'll continue to keep an eye out and  
5 let you know if they hear otherwise. And the  
6 otherwise would be in reference to if he heard  
7 anything from other sources.

8 Q. And there's an individual there named David.  
9 Who's David?

10 A. David -- David Garcia, who I believe at the  
11 time was one of our field-based sales people.

12 Q. And I want you to -- you were not here. A  
13 fellow by the name of Mr. Goodale came in here and  
14 testified. And he said several different things,  
15 but he claimed that JSR was doing press 1 robo  
16 calling during this time period, and that DISH knew  
17 and encouraged it.

18 Did DISH know about and encourage any improper  
19 telemarketing processes by JSR?

20 MS. HSIAO: Objection, Your Honor. There  
21 is no evidence that this witness knew specifically  
22 anything about any of this. This is all what he  
23 heard about other people.

24 THE COURT: Could we get some more  
25 foundation?

1 Q. Were you involved in determining the  
2 situation with JSR?

3 A. For termination?

4 Q. Yes.

5 A. Yes.

6 Q. And were you involved on these e-mails going  
7 back and forth relating to JSR's practices?

8 A. Yes.

9 Q. All right. Your Honor, may I ask the  
10 question?

11 THE COURT: You may.

12 MS. HSIAO: Same objection.

13 THE COURT: Objection is overruled.

14 Q. Okay. The question again, sir, was did you  
15 know, or did you ever hear, that JSR was doing press  
16 1 robo calling throughout the United States?

17 A. I did not.

18 Q. And is that the kind of information, given  
19 your background and your philosophy about  
20 compliance, that you would remember?

21 A. Yes.

22 Q. Can you explain why? And share your  
23 philosophy on compliance?

24 A. Compliance, in my mind, is doing -- doing  
25 what is right and allowed. whereas -- as a

1 philosophy, our organization is focused on the end  
2 user and making sure that they have a good  
3 experience with us. We try to earn a customer's  
4 business every day.

5 We're in a competitive marketplace. And if we  
6 treat them badly, or if we do things to make them  
7 feel that they're getting treated badly, then  
8 ultimately they can -- bottom line is they can buy  
9 ESPN from somebody else. So we have to work hard  
10 every day to treat today's 14 million, almost 14  
11 million customers, very well on an everyday basis.

12 And people that do bad things to our current or  
13 potential customers, their goals are not aligned  
14 with ours.

15 Q. And have you yourself personally been  
16 involved in decisions in terminating retailers?

17 A. Yes, I have.

18 Q. And tough decisions to make as an executive?

19 A. They are tough decisions, because you want  
20 to be -- you want to make the right decision. But  
21 when presented with facts that are overwhelmingly in  
22 favor of termination because of actions, they're  
23 actually -- those ones are the easy ones.

24 But you want to make sure, because you are  
25 putting a small business, generally, out of

1 business, and they're employees. And you want to  
2 make sure you're making the right decision with  
3 having -- having all of the facts that are all  
4 available facts at your disposal.

5 Q. And so this e-mail, and this back and forth  
6 here, there's some indication of an unexpected swing  
7 in activations. What do you do when you see that?

8 A. We try and investigate it. I think earlier  
9 in the e-mail they had told my field-based people at  
10 the time that they had added a dialer, they were in  
11 compliance with the law, and they had added sales  
12 people to deal with the increased volume. So that  
13 seemed to be a logical explanation at the time.

14 Q. And as we move forward in December, do you  
15 remember hearing about problems later in the month  
16 with JSR?

17 A. I do. There was a couple of isolated  
18 incidents.

19 Q. Let's look at 255. It's Plaintiffs' 255.  
20 You see at the bottom of this e-mail, it's an  
21 e-mail by somebody named Reji Musso. Do you know  
22 Reji?

23 A. I do know Reji; yes.

24 Q. A person, when she was in her job, came to  
25 work and gave it her all?



1 A. She did, yes.

2 Q. Honest person from your prospective?

3 A. I believe so.

4 Q. Hard worker?

5 A. She was.

6 Q. Person who took pride in her job?

7 A. She did.

8 Q. And she indicates here a discussion with  
9 Mr. Goodale. And she says (as read:) This latest  
10 allegation is probably a violation. It was done by  
11 a third-party call center.

12 what do you make of that information?

13 A. This was an incident that they admitted to.  
14 They told us where they believe it originated at a  
15 third-party call center. And they told us they had  
16 taken corrective action so this type of incident  
17 wouldn't happen again.

18 Q. Let's look at -- take a look at, I think  
19 it's 255. If we can take a look at that for a  
20 minute. And go to the second page.

21 I'm sorry, the first page. Your response there  
22 to this information. Tell us what you're focusing  
23 on, and why?

24 A. I asked for his volume for context. I asked  
25 why would I not just terminate as a statement.

1 Asked where he was located. And then I made a  
2 statement that I assumed that he was made aware when  
3 we launched him on the OE tool that violations of  
4 the telemarketing laws of the United States wouldn't  
5 be tolerated.

6 Q. And is that the approach of the company and  
7 your approach when it comes to compliance?

8 A. That's our philosophy; yes.

9 Q. And there's a question there about what is  
10 his volume. Why do you ask that?

11 A. I wanted to put it in context. I wanted to  
12 understand what his volume was and what one  
13 complaint meant.

14 Q. And are you suggesting here that if there  
15 are a high number of activations, that that means  
16 you don't focus on compliance?

17 A. No, that's not true.

18 Q. Can you explain the interplay between  
19 activations and compliance issues?

20 A. Totally disconnected. Volume -- I asked  
21 volume in this regard to get a sense for what does  
22 one complaint mean? When you get one or two  
23 complaints and the dealer is doing thousands of  
24 activations, then it could be that it was a mistake  
25 or a rouge employee or something like that.

1           If there's a lot of violations, or multiple  
2 violations, and the volume is significant, then I  
3 look to see if it's owner intent. Is their intent  
4 to cause harm or was it a genuine mistake.

5           Q. And was your immediate reaction here when  
6 you hear this to terminate them at that point in  
7 time?

8           A. I asked the question. I'm a passionate  
9 employee. I want to make sure that both our  
10 employees and our independent retailers understand  
11 that our general philosophy is that they have to  
12 abide by what they said they would, which is our  
13 retailer contract and the laws.

14          Q. And it's a little tricky on the e-mail  
15 chains, because you're getting an e-mail and then  
16 responding two separate times, but I want to go  
17 through these. Let's look at 351, tab 3.

18          And you're asking here, after you get the  
19 information from -- about Mr. Goodale, you're asking  
20 another question in the middle here. And I want you  
21 to walk us through what you are -- why you're asking  
22 this and what this is all about?

23          A. Yeah. It's in response to Reji's response  
24 that it has -- that it came from a third-party call  
25 center. My question then is, who is that person?

1 Or who is that third-party call center? Was it on  
2 their submitted list? Had they submitted this  
3 third-party call center to us to let us know about  
4 it for us to say yes to?

5 And can we -- I was asking could we track  
6 others? If we had other complaints that we weren't  
7 able to identify the offenders, could we track  
8 any -- any other offenses to this third party? And  
9 then I asked the question if a fine was warranted.  
10 And the fine from a progressive discipline  
11 prospective.

12 Q. At this point, December 21st, shortly before  
13 the Christmastime, what are you thinking here about  
14 whether they should be terminated?

15 A. I actually asked should -- was the fine  
16 warranted, because up until this time we didn't have  
17 a pattern of -- of violations. It just seemed that  
18 it wasn't -- although it seemed like a violation, I  
19 don't think that we had actually proven that it was  
20 a violation. And I was trying to understand should  
21 we put them on the track for progressive discipline  
22 to see if it was a mistake, or was it intent.

23 Q. Let's look at Plaintiffs' 735. It's tab 4.  
24 It's in evidence. And the information you get about  
25 this third-party call center.

1           Ms. Musso -- you send an e-mail 7:02 p.m. on  
2           December 21st. And she responds to you at 9:09  
3           p.m., within a little over two hours on Thursday,  
4           December 21st.

5           And just as a matter of practice, when you see  
6           these e-mails and you see all these people on them,  
7           and responses at night in within fairly quick order,  
8           is that kind of the level of communication that you  
9           had with folks that you were working with?

10          A. Yes.

11          Q. And Ms. Musso says here that -- if you look  
12          down at the bottom (as read:) Richard canceled the  
13          log-ins for this call center today. I did let him  
14          know that he was in violation of his contract. He  
15          now assures me that he has 12 people in his very own  
16          office. I will do a check on the above-named  
17          company and see what we can figure out about this  
18          company, if anything.

19          What does this tell you?

20          A. Well, it tells me that Reji had contact with  
21          Richard. He admitted that the complaint originated  
22          out of a third party. That the log -ins -- that the  
23          log-ins that the third party was using had been  
24          disabled. And it seemed to me, based on this, that  
25          they had taken corrective action.

1           Q. And you weren't here again when Ms. Green  
2 was here, but she emphasized how important it is to  
3 follow-up when you get information. You see  
4 Ms. Musso's comment (as read:) I'll do a check on  
5 the above-named company and see what we can figure  
6 out. Is that representative of the kind of  
7 follow-up that you saw from the people who worked in  
8 this area?

9           A. Yes. Sometimes we got information that  
10 helped us connect dots from previous times. And  
11 Reji was pretty diligent in always trying to connect  
12 dots. And every new piece of information we got we  
13 went back to the puzzle to see if we could fill in  
14 more pieces of the puzzle.

15           THE COURT: Mr. Bicks, is this Plaintiffs'  
16 1135?

17           Q. Yes, Plaintiffs' 1135.

18           THE COURT: Thank you.

19           Q. So here you are December 21st. Why didn't  
20 you terminate right here?

21           A. I think because at the time they -- they --  
22 they took ownership. They were forthcoming where it  
23 came from. They informed us that the log-ins had  
24 been shut down. And I think we were comfortable at  
25 the time that it wouldn't happen again.

1           Q. And so let's go to Plaintiffs' 265. Because  
2 you -- you got information and then you responded,  
3 and I want to look at your e-mail of 265. You got  
4 information here at page 1. When you said "what's  
5 the volume." Can we go to the top.

6           And you see the information here from  
7 Mr. Mills. (As read:) If what they say is correct  
8 and they're now a hundred percent in-house, I don't  
9 think we should terminate.

10          This is at 9:29 p.m. in the evening. Do you  
11 see that?

12          A. Yes.

13          Q. And is that the kind of responsiveness,  
14 frankly, that you saw -- we saw Ms. Musso responding  
15 at 9:09, now we've got Mr. Mills 9:29 p.m. at night.  
16 Is that the focus that these people brought to their  
17 jobs?

18          A. Yes, it is.

19          Q. And there's an indication here, he says in  
20 paragraph 2 -- he gives you the activation  
21 information in the first paragraph. Do you see  
22 that?

23          A. Hm-mm.

24          Q. And then he says (as read:) At the time of  
25 launch this was not discussed, nor did they disclose

1     they would be doing any marketing other than  
2     outbound of their office. I met with these guys  
3     last week. They told me they were using a center  
4     out of the Philippines. I indicated it was in their  
5     best interest to discontinue. They said they would.

6             Then he gives you his view about what should be  
7     done. Do you see that?

8             A. Yes.

9             Q. Given this information, did Mike's judgment  
10    seem reasonable to you?

11            A. I thought so, given -- given the  
12    forthrightness they were with acknowledging it.  
13    Given this information where it originated. Taking  
14    steps to turn off the log-ins for that third-party  
15    center. And committing to us that it wouldn't  
16    happen again.

17            Q. And there's also a reference down there to  
18    the bigger picture. Because I want to talk about a  
19    specific retailer and then looking at the bigger  
20    picture.

21            Can you explain to us the -- the notion of  
22    looking at the bigger picture, and why that's  
23    important?

24            A. The bigger picture was so we had clear  
25    visibility around affiliates. Affiliates would be



1 third parties of our retailers. And understanding  
2 where they were and how they were located and how  
3 they were marketing our product.

4 THE COURT: Is this a different call center  
5 than the one you were referring to earlier?

6 A. The third party one is the same one.

7 THE COURT: The Philippines?

8 A. Yes, Your Honor.

9 THE COURT: Okay.

10 Q. If we go back to 255, which again, I'm  
11 trying to go in sequence in the e-mails. You see  
12 9:24, Reji Musso responding and sharing with you --  
13 her views here. And she's saying here at the end  
14 that (as read:) I don't know about their sales,  
15 Mike's info, but from my vantage point they've been  
16 forthcoming and very concerned about this situation.

17 And she says at the top (as read:) They were  
18 very responsive and I don't think guilty.

19 She makes that call. Did her judgment as  
20 expressed to you seem reasonable in terms of what  
21 you're seeing?

22 A. I think so, yes.

23 Q. And do you remember why it was -- when and  
24 why you actually decided to terminate JSR?

25 A. Yes, I do.

1 Q. And let's look at 1083. what is this?

2 A. This is a copy of an e-mail that we were --  
3 that we became aware of that was issued by the  
4 Attorney General in the State of Missouri. I  
5 believe the issue date was December 7th. And we  
6 found out about it, I believe, on the 8th of  
7 February. And in it they listed JSR as being a  
8 significant violator. And based on this new  
9 information that I was given we made the decision to  
10 terminate the relationship with JSR.

11 Q. And you say there -- this is your e-mail to  
12 Mr. Origer. Who was Mr. Origer?

13 A. Robb was the -- was the person who was in  
14 charge of retail services at the time.

15 Q. And you say "importance high." why high?

16 A. I think it was high because it was a press  
17 release from a state Attorney General naming one of  
18 our partners.

19 Q. And to your knowledge -- that press release  
20 is December 7th, do you know whether or not anybody  
21 at JSR provided that information to DISH, or did  
22 DISH have to find it?

23 A. I believe that -- when we were made aware --  
24 or when we found it on the 8th of February is the  
25 first time we knew about it.

1           Q. And you say there (as read:) Immediate  
2 termination of American and JSR. Publicize. And  
3 don't think we'll have a chance to bring them to  
4 Denver and ask them about their business.

5           walk us through each of those things? why  
6 immediate termination? why publicize? And what is  
7 this reference to bringing them to Denver?

8           A. Immediate termination is based upon the  
9 contents that the Attorney General in Missouri knew  
10 something that we didn't. And I felt comfortable  
11 making that decision based on that.

12           The publicize was so that we could publicize to  
13 our retailer base a termination based upon their  
14 actions so it could act as a deterrent for others so  
15 they know what the consequences of bad actions are.

16           And the "don't think we'll have a chance to  
17 bring them to Denver." Bringing -- bringing the  
18 ownership of an account under an investigation, or  
19 one that we want to find out information from, it  
20 helped us -- it helped us further our investigation,  
21 or learn some things that we didn't already know  
22 when they came to Denver. Sometimes people tell you  
23 things when they feel under pressure or threat.

24           And we liked to have people in Denver so we  
25 could ask them questions, and again, try and fill in

1     some blanks in our puzzle. And it -- it sometimes  
2     was a precursor to a termination.

3           Q. And from time to time have you brought  
4     retailers into Denver to learn information and to  
5     help in investigations?

6           A. Yes, we have.

7           Q. And do you think that's a good thing to do?

8           A. I do. And I believe we'll continue to do  
9     it.

10          Q. Now, the Court has heard about the retailer  
11     agreement in this case. I want to show you 238,  
12     which is the JSR agreement, and Paragraph 11.  
13     Retailer agreement is an agreement you're familiar  
14     with?

15          A. Yes.

16          Q. And it's Page 23, Paragraph 11. You see the  
17     reference to independent contractors?

18          A. Yes, I do.

19          Q. And as a senior executive at DISH and  
20     somebody directly involved in OE retailer  
21     relationships, did you ever intend to exercise day  
22     to day control over OE retailers' marketing  
23     practices?

24          A. No, we did not.

25          Q. And I want to show you Defendant's 737,

1     which is a document I used with Mr. Goodale  
2     yesterday. And you see the failure to honor --  
3     Trudy, "in as much as JSR," can you blow that up.

4             Do you see there -- this is a document from  
5     Mr. Goodale to DISH, where he says (As read:) JSR  
6     Enterprises owns and operates its own satellite  
7     service business outside of the control of DISH  
8     Network.

9             Do you see that?

10            A. Yes, yes.

11            Q. Is that a true statement, that JSR was  
12     outside of the control of DISH Network?

13            MS. HSIAO: Objection, Your Honor. He's  
14     asking this witness to testify about what somebody  
15     else wrote in an e-mail about the truth of that  
16     statement.

17            Q. I'm asking if he agrees with it.

18            THE COURT: The objection is overruled.

19            A. I agree with it.

20            Q. Does that apply to all of the OE retailers  
21     that worked with DISH?

22            A. Yes, it does.

23            Q. And have you ever seen in any e-mail where  
24     any OE retailer told you that they were not outside  
25     of the control of DISH Network?

1 A. No, I have not.

2 Q. All right. And if we look at page 17 and  
3 Paragraph 9.1. It deals with compliance with the  
4 laws. Have you seen this before?

5 A. Yes, I have.

6 Q. And you see where it says (as read:) The  
7 retailer is solely responsible for its compliance?

8 A. Yes.

9 Q. And can you explain what your understanding  
10 of this is, and why this is the case?

11 A. Well, by signing this the retailer is  
12 acknowledging that they are responsible for  
13 complying with all laws.

14 Q. And why is this set up this way?

15 A. It's set up this way because they are an  
16 independent contractor. And by signing this they  
17 are agreeing that they will comply with all laws.

18 Q. And did any retailer ever, in your position  
19 at DISH, ever suggest otherwise? That they were not  
20 solely responsible for complying with the law?

21 A. No, sir.

22 Q. And to what extent are OE retailers  
23 entrepreneurs?

24 A. I would -- I would characterize them as  
25 entrepreneurs. The reason I would do that is that

1 they spend their money marketing our product. They  
2 take a consumer inquiry and convey it to us as a  
3 sale. We install that customer. And if that  
4 happens, then we pay the -- we pay the retailer an  
5 incentive. So -- in simple terms, so long as their  
6 incentive is greater than their cost structure--and  
7 the biggest part of their cost structure would be  
8 marketing--they will make a profit, and the  
9 definition of an entrepreneur.

10 So they're risking their money in marketing in  
11 the -- in a measured way to assume that they will  
12 get a return on that investment.

13 Q. And to what extent are OE retailers in a  
14 competitive relationship with DISH?

15 A. They're in a competitive relationship  
16 because DISH also advertises directly to prospective  
17 consumers, just like our OE partners and other --  
18 other retailers that we do business with do.

19 Q. And so as between DISH and the OE retailer,  
20 who decided how much money to invest in marketing?

21 A. From the individual ownership structure at  
22 each OE partner.

23 Q. And who decided where to invest that money?

24 A. Those people, those same people.

25 Q. And who decided how to invest the money?

1 A. They would have.

2 Q. And who had all the risks for whether or not  
3 that investment paid off?

4 A. They did.

5 Q. And I want to ask you about the affiliate  
6 question. Is -- if retailers used a third-party  
7 affiliate did they need to get DISH's consent?

8 A. Yes, they did.

9 Q. Why?

10 A. Because we wanted to know who was selling  
11 our product so we could understand how it was being  
12 represented and by who.

13 Q. And did there come a point in time when DISH  
14 identified the use of unauthorized third-party  
15 affiliates as an issue?

16 A. Yes.

17 Q. And when?

18 A. The late 2000s.

19 Q. And I want to show you Plaintiffs' 1045 to  
20 orient us in time. What is this?

21 A. This is -- this is our attempt to reach out  
22 to our large partners at the time to get -- get them  
23 to divulge to us who they were using, if in fact  
24 they were. And not all of them were, either then or  
25 now, using third parties to market and sell our



1 product.

2 Q. And why do this?

3 A. This is because we want visibility to who --  
4 to who is selling our product for whom.

5 Q. And were you yourself involved in this  
6 process?

7 A. Yes, I was.

8 Q. And let's go to page 2 of this. And you see  
9 Mike Mills saying there (as read:) Current feedback  
10 has been positive. Nobody had any problems  
11 providing the information.

12 what does that tell you?

13 A. Tells me that our partners are cooperative  
14 and this isn't information that we have to -- we had  
15 to spend a lot of energy getting from them.

16 Q. And did DISH take any proactive measures to  
17 address this potential use of affiliates by  
18 retailers?

19 A. Yes.

20 Q. And tell us about fact blasts and  
21 communications and things of that nature?

22 A. We wanted to understand who was selling us  
23 as well because it wasn't always clear to our  
24 retailers that a third-party could be a bad actor.  
25 And we wanted to -- we had identified some bad

1 actors. And we had some pieces of information and  
2 that would be either names, addresses, phone  
3 numbers, bank account numbers, those kind of pieces  
4 of information.

5 And we wanted to be as -- we wanted to  
6 distribute that information as clearly as we could  
7 to the widest audience so that people were -- were  
8 aware and could be -- beware of doing business with  
9 either unethical or unscrupulous either individuals  
10 or companies.

11 THE COURT: Mr. Bicks, I had a question  
12 about 1045 of plaintiffs that you just had up there.

13 Q. Yes.

14 THE COURT: Was there a second page? That  
15 list of retailers, are those all OE retailers?

16 A. They were at the time; yes.

17 THE COURT: Are they all now?

18 A. Some of them -- some of them we do not do  
19 business with anymore.

20 THE COURT: Okay.

21 A. At the time they were; yes.

22 THE COURT: Thank you.

23 Q. So, for example, Atlas Assets. Did DISH  
24 terminate Atlas?

25 A. Yes, we did.

1 Q. And I actually -- we see your name by some  
2 of these. You were directly involved; right?

3 A. Yes.

4 Q. And I want to show you Plaintiffs' 115.  
5 What is this?

6 A. So this would be our -- what we referred to  
7 just a moment ago as our facts blasts. This is our  
8 communication to our entire dealer base about  
9 information we have become aware of.

10 And again, it's -- it's identifiable  
11 information, either company names, people's names,  
12 phone numbers, addresses, bank account numbers.  
13 Although we didn't list full bank account numbers,  
14 we did list some digits of them.

15 This was really a beware list. These people  
16 are bad, these entities are bad, don't enter into a  
17 business relationship with these people because we  
18 know -- we've had experience of bad things  
19 happening.

20 Q. And just to -- Trudy, let's just go up to  
21 the top. Some of this is hard to read. The  
22 introductory paragraph.

23 This is something that goes out to all the  
24 retailers?

25 A. Yes, sir.

1 Q. And who is paying for all of these things to  
2 go out?

3 A. These come from us.

4 Q. Yeah. And this is a note to the retailers,  
5 says (as read:) We've become aware of business  
6 organizations, including in Pakistan.

7 Was that something that was a focus and concern  
8 for you?

9 A. Yes, it was.

10 Q. Why?

11 A. There seemed to be a -- there seemed to be a  
12 concentration of bad stuff coming out of Pakistan.

13 Q. And in this facts blast you actually  
14 identify and share information with all the retailer  
15 network about these specific organizations?

16 A. Yes.

17 Q. And for example there, I see in the third  
18 box down, and then the fourth box down, I see  
19 Pakistan addresses and names?

20 A. Hm-mm.

21 Q. Can you blow that up, Trudy, so we can see  
22 this?

23 What is this?

24 A. This is just the identical information that  
25 we have got through investigations, that we have

1 tracked back through our investigations, about bad  
2 people, bad companies. And -- and their -- their  
3 proposition to some of our retailers. This was a  
4 way to fully inform our retailers that if you're  
5 contacted or approached by people like these--these  
6 specifically, but others that act in a similar  
7 manner--then beware.

8 Q. And you also see down there at the bottom  
9 the last known bank account information, an entry.  
10 You actually had bank information in Pakistan?

11 A. Yeah. This would have been information that  
12 we had gotten through investigations of retailers  
13 who -- who had done -- who had become victims of  
14 these and were forthcoming with information.

15 So these were -- these were our dots on the  
16 board. And sometimes we connected and made  
17 pictures. And sometimes we had just individual  
18 pieces of information. But we wanted to publicize  
19 as much as we had so that our retailers were not --  
20 would not be making a bad decision.

21 Q. And --

22 THE COURT: Excuse me. So can you tie any  
23 of these names on this sheet to a specific retailer?

24 A. These would have been either individual  
25 e-mail addresses or names. Or sometimes they had

1 English names, but they weren't really English  
2 people, they were Pakistani, but they gave  
3 themselves English names. We just tried to give our  
4 retailers all of the information that we had gotten  
5 from varying sources.

6 THE COURT: So you can't tie this  
7 information to any of your retailers?

8 A. We would have gotten some of this  
9 information either through our internal  
10 investigations or from some retailers that we  
11 investigated.

12 THE COURT: But you don't know who?

13 A. I don't know specifically.

14 Q. And if we can go to the last page. It's a  
15 very helpful and useful dialogue. If you see the  
16 last paragraph, you say (as read:) If you've worked  
17 with any of these firms, or you have knowledge that  
18 you believe you may be involved in improper or  
19 unlawful activities, please let us know by sending  
20 any pertinent information.

21 Do you see that?

22 A. Yes.

23 Q. Why ask for that? Did you from time to time  
24 get helpful information from retailers on these  
25 topics?

1           A. We asked for that because generally our  
2           retailers want to be helpful. And if they were  
3           getting contacted by people presenting them with a  
4           business opportunity they would -- they -- most of  
5           them would -- some of them would contact us, give us  
6           the information, and we could continue the  
7           investigation to see where it led us.

8           We asked -- we asked our retailers even -- even  
9           to today, almost 20 years after we launched Dish  
10          Network, to provide us with information that they  
11          hear about that could help us in anything. And this  
12          could be from signal theft, people not paying for  
13          our service, or other retailers doing bad things if  
14          they believe that. And it's like Crime Stoppers for  
15          DISH I guess.

16          Q. And how much focus was this getting from  
17          senior people at the company, and how much was this  
18          on your mind, on your radar screen?

19          A. It's on my -- I would say it's on my mind  
20          every day, because I want to make sure that we're  
21          providing the right -- a good customer experience to  
22          our end customers, we're treating our retailers  
23          fairly, and we're trying to weed out bad actors that  
24          are hiding amongst the innocent.

25          Q. And I want to ask you, a retailer called LA

1 Activations, have you heard of them?

2 A. I have.

3 Q. Were you actually involved in terminating  
4 them?

5 A. Yes, I did.

6 Q. What happened?

7 A. I asked him to come to Denver. I asked him  
8 to bring with him his most recent 30 days of Yellow  
9 Page invoices. What he had told us was that his --  
10 his -- the majority of his business, the vast  
11 majority of his business, was coming through ads in  
12 the Yellow Pages. It just didn't seem right.

13 I asked him to bring his most recent invoices  
14 from varying Yellow Page publications across the  
15 United States. And we sat in a conference room and  
16 we went through an exercise where we added up all of  
17 his marketing expenditures. And when balanced  
18 against the amount of business he was doing, it  
19 didn't make sense.

20 And it didn't make sense because the cost to  
21 get a subscriber through a marketing expense was  
22 significantly and unbelievably lower than any other  
23 marketing methods that any other retailer would tell  
24 us, or we would experience ourselves. So in my mind  
25 there was activity going on in his business that was



1 unexplainable.

2 Q. What did you do?

3 A. I terminated him the next day.

4 Q. And couple wrap-up questions. Does  
5 short-term sales at DISH ever take precedents over  
6 the business's long-term plans?

7 A. No. We have -- one of our rules is "think  
8 long term."

9 Q. And in your experience, when you were  
10 involved in these compliance issues, did you ever  
11 feel a tension in being responsible for increasing  
12 activations on the one hand and compliance on the  
13 other?

14 A. No. Because we were always focused on the  
15 long term.

16 Q. And did you ever tell the Compliance Group,  
17 or ever hear anybody suggest, that you ignore or  
18 look the other way when a violation was there to get  
19 more activations?

20 A. I did not. And I didn't hear anyone else do  
21 so either.

22 Q. Is it conceivable that would happen at DISH?

23 A. I don't believe so.

24 MS. HSIAO: Objection.

25 THE COURT: I'm sorry. What's the basis of

1 the objection?

2 MS. HSIAO: It calls for speculation.

3 THE COURT: The objection is overruled. It  
4 may stand.

5 MR. BICKS: I thank you, Mr. Neylon.  
6 That's all I have.

7 THE COURT: Cross.

8 MS. HSIAO: Yes, Your Honor.

9 CROSS EXAMINATION

10 BY MS. HSIAO:

11 Q. Good afternoon, Mr. Neylon. I'm Lisa Hsiao,  
12 I'm an attorney for the Justice Department in  
13 Washington. I haven't met you before. Thank you  
14 for coming here today. I will try to keep it short,  
15 but I don't know if you heard me tell the Court, I'm  
16 not so good at predicting.

17 So July 2006 --

18 (Court reporter requested clarification.)

19 Q. In July 2006, you owned the indirect sales  
20 channel?

21 A. The OE sales channel? I'm sorry?

22 Q. Yes. The indirect sales channel in general,  
23 including the OE retailers?

24 A. Yes.

25 Q. In DISH parlance, when you own that channel,

1 what does that mean?

2 A. You're a channel head. You have a sales  
3 team that's responsible or accountable for  
4 subscriber acquisition. Working with the people  
5 that are in that channel. We have -- we have  
6 varying channels within our indirect business.

7 Q. And one of the channels involves --

8 A. So it would be sales partner, which is what  
9 we're talking about here today, would be local  
10 retailer. These would be local mom and pop shops  
11 spread out across the country. Four, five, six  
12 thousand of those.

13 It would be relationships with national  
14 accounts. At that point in time it was with Sears  
15 and people like Radio Shack.

16 It would be our telco accounts. At that time  
17 we were doing business with AT&T.

18 And that would be it.

19 THE COURT: I'm sorry, Ms. Hsiao, when you  
20 say owned? Did you own it or did DISH own it?

21 A. I'm sorry. When I said owned -- when did I  
22 say?

23 Q. I said owned. That's the slang that's used  
24 in the company.

25 A. Owned. Oh, excuse me, I don't know own it,

1 DISH owns it. I take ownership. Sorry. Own is  
2 personal accountability, I guess.

3 Q. I'm gonna give you a binder.

4 A. Okay.

5 Q. Somebody is going to give you a binder.

6 THE COURT: If nothing else my grip  
7 strength will improve.

8 Q. So, Mr. Neylon, if you could turn to what is  
9 marked as PX1361. 1361, towards the back.

10 Have you seen PX1361 before?

11 A. Yes.

12 Q. Do you see where -- what is it? Can you  
13 describe it, please?

14 A. Leads management info.

15 Q. It's an e-mail from Tom Stingley to  
16 Marciedes Metzger and others, including yourself;  
17 correct?

18 A. Hm-mm.

19 Q. Your Honor, I would like to offer PX1361.

20 THE COURT: Any objection?

21 MR. BICKS: No objection.

22 THE COURT: It's admitted.

23 (Plaintiffs' Exhibit 1361 admitted.)

24 Q. So the Court understands, at the top it says  
25 (as read:) You need to please include Eric Carlson

1 and Brian--I assume that he meant Brian--Neylon, as  
2 they own these sales channels; right?

3 It's the very top e-mail on the first page of  
4 1361. Page 1.

5 A. I'm sorry, I think -- I apologize, I was on  
6 the wrong tab. I've got it now. Thank you.

7 Q. So do you see where I'm referring to?

8 A. Yes.

9 Q. And that e-mail is from Tom Stingley. who  
10 is Tom Stingley?

11 A. Tom at the time was running our  
12 relationships with our telco department. Excuse me,  
13 telco partners at the time, like AT&T, and national  
14 accounts.

15 Q. And the e-mail from Marciedes Metzger that  
16 is right below the part that we just read, that you  
17 need to please include Eric Carlson and Brian  
18 Neylon, it's about complaints about calls to DISH  
19 Network customers; is that right?

20 A. Yes.

21 Q. Including a complaint about Sterling  
22 Satellite?

23 A. Yes.

24 Q. Now, at this time, in July 2006, you were in  
25 sales; right? You weren't in retail services?

1 A. Correct.

2 Q. So you were the one that was managing these  
3 OE retailers?

4 A. Yes.

5 Q. And you were approving new people to be  
6 added to the OE retailer tool; is that correct?

7 A. Yes.

8 Q. So let's -- we've been talking about JSR, so  
9 let's go there first. So JSR came on the OE program  
10 in August 2006; right?

11 A. Yes.

12 Q. You approved them for the tool?

13 A. Yes.

14 Q. And you sent them the -- you had somebody  
15 send them the package of information they needed to  
16 go in to the OE tool; right?

17 A. Yes.

18 Q. Including the log-ins?

19 A. Hm-mm.

20 Q. You didn't know anything about them when you  
21 signed them up; isn't that right? Other than a  
22 business plan?

23 A. It was a business plan; yes.

24 Q. That's all you had?

25 A. Yes.

1 Q. You didn't do any internet searches to see  
2 the background of the people who were running it?

3 A. I did not.

4 Q. You don't know that anybody that was working  
5 for you did, did you?

6 A. I don't know.

7 Q. Did you know that two of the principals,  
8 Richard Goodale and Jerry Grider, they actually met  
9 working for United Satellite?

10 A. I did not.

11 Q. You know United Satellite; right?

12 A. Okay.

13 Q. That was a DISH retailer that did robo  
14 calling and was shut down by DISH?

15 A. Yes.

16 Q. And a few weeks later you got a complaint  
17 about JSR; isn't that right?

18 A. Yes.

19 Q. And you sent some letters, and Ms. Musso  
20 sent some letters, and you decided to trust what  
21 they told you; isn't that right?

22 A. Yes.

23 Q. You didn't shut them down?

24 A. We did not.

25 Q. You didn't suspend their log-ins?

1 A. We did not.

2 Q. You didn't audit them to see if they were,  
3 for example, calling people on the DNC list?

4 A. We did not.

5 Q. You didn't ask for their call records?

6 A. I did not.

7 Q. You didn't ask for their campaign lists?

8 A. Did not.

9 Q. It sounds like Bobby Fielding, is that his  
10 name? He called them?

11 A. Hm-mm.

12 Q. And they told him some explanation, and Reji  
13 sent an e-mail, and that was the end of it for them;  
14 right?

15 A. Yep.

16 Q. And then a month later they were back again  
17 with another complaint; isn't that right?

18 A. Yes.

19 Q. And the same pattern repeated itself that I  
20 just described; right?

21 A. Yes.

22 Q. And you actually had a sting, I think there  
23 were two stings, where Reji's people caught JSR  
24 making illegal calls. You remember that; right?

25 A. Yes.



1 Q. And yet again, nothing was done? Other than  
2 sending some letters and getting an e-mail back from  
3 Richard Goodale with some explanation; right?

4 A. Yep.

5 Q. Now, let's look at the -- some of the  
6 documents that Mr. Bicks was showing you. If you go  
7 back to your black binder. I'm looking at the one  
8 on tab 1, which is DTX752.

9 A. Hm-mm.

10 Q. Now, Bobby Fielding, he was in the Sales  
11 Department; right?

12 A. Yes, he was.

13 Q. He wasn't a compliance person?

14 A. No, he was not.

15 Q. So you trusted him to do some kind of  
16 compliance investigation about what was going on at  
17 JSR?

18 A. I trusted Bobby, from his field based visit  
19 there, to see what was going on and to ask -- ask  
20 questions of the ownership entity.

21 Q. Well, you suspected they were doing voice  
22 broadcasting; isn't that right?

23 A. I didn't suspect. I asked the question to  
24 see if the question was asked.

25 Q. You must have had some reason to ask it;

1 right?

2 A. I just asked the question to make sure that  
3 we were asking all questions and not leaving any  
4 stone unturned.

5 Q. And in fact, you know now, I take it, that  
6 all they were doing was voice broadcasting; isn't  
7 that right?

8 A. Now I do.

9 Q. So obviously either Bobby was told something  
10 untrue or Bobby lied to you? That's right, isn't  
11 it? He asked and they said no?

12 A. He asked and they said no. And he relayed  
13 to me that he asked and they said no.

14 Q. Now, Mr. Goodale, who was there -- was here  
15 yesterday, told us that when you actually walked  
16 into those call centers you could tell they were  
17 doing voice broadcasting from watching and listening  
18 to what was going on. Bobby Fielding was in those  
19 centers and he didn't know what was going on? Do  
20 you believe that now?

21 A. Do I believe that Bobby knew what -- I  
22 didn't hear a question.

23 Q. Yes. Did you believe he really didn't know  
24 what was going on?

25 A. I believe that Bobby didn't -- I believe

1       that Bobby didn't know what was going on.

2           Q.   And Mike Mills, he was here as well.  Did  
3   you believe that Mike Mills didn't know what was  
4   going on?

5           A.   Yes, I do believe that.

6           Q.   Now, we talked a little bit about the  
7   question of why you asked what the volume was.  And  
8   you said you wanted context; right?

9           A.   Hm-mm.

10          Q.   Basically, if you term this person, how much  
11   are you going to lose; is that the context?

12          A.   No.  The context was that I was asking  
13   because -- when I asked the question I believe it  
14   was in response to a specific allegation.  Not every  
15   allegation becomes a complaint, or a valid  
16   complaint.  And I believe in certain cases here  
17   there was allegations that did not end up being  
18   valid complaints.

19          I asked the question merely from a was it  
20   intent at a business ownership level or was it a  
21   mistake.  That's all -- that is the only reason I  
22   asked it.

23          Q.   Well, let me ask you this:  why is it better  
24   if they do it on purpose than if they do it by  
25   mistake?  Either way they're committing illegal

1 calls; isn't that right?

2 A. Well, I believe that if they did it with  
3 intent, that's intent. If they did it because it's  
4 a mistake, then I believe there's a rehabilitation  
5 path that they can take.

6 Q. Well, you know -- you knew by the time of  
7 this e-mail, December 2006, that there had been at  
8 least two stings where it had been confirmed by DISH  
9 that they had committed violations. It wasn't just  
10 a complaint, was it?

11 A. That one wasn't. And I think at that point  
12 in time two stings, two complaints, based upon their  
13 volume, it still looked to me like they -- they were  
14 contrite, they were forthright with information.  
15 And to me it seemed like they were on a path to  
16 rehabilitation.

17 Q. You looked at, I think, the retailer  
18 agreement with Mr. Bicks. You referred to that a  
19 little bit; right?

20 A. Yes.

21 Q. And I'm not gonna ask you to look at it  
22 again, I just want to ask you, you know that DISH  
23 had the right to go in and audit these retailers;  
24 right?

25 A. Yeah, we have -- we have many rights in the

1 agreement; yes.

2 Q. And in fact, DISH does go in and audit  
3 retailers from time to time when they are suspected  
4 of fraud, for example?

5 A. We do.

6 Q. But again, in this case even, you know, we  
7 started in September, we're here in December of  
8 2006, there was no audit?

9 A. There was no audit; no.

10 Q. There was no, "Okay, you've given us three,  
11 four, five excuses over the past few months, even  
12 though you just started, and we need to figure out  
13 what you're doing." DISH didn't do any of that;  
14 isn't that right?

15 A. I think that we looked at it, at least I  
16 looked at it, in the context that they were  
17 sporadic. I believe one was proven not to be a  
18 valid claim or valid complaint. They seemed to have  
19 at the time -- they were contrite, they were  
20 forthcoming with information on third parties. And  
21 they seemed to be on a path of rehabilitation.

22 Q. Well, I mean let's talk about this. Let's  
23 look at tab 4 in the binder from Mr. Bicks. The  
24 black binder. That's PX1135. That's been admitted  
25 already.

1           So you talked with Mr. Bicks about how it  
2           turned out that, you know, JSR said, "It wasn't us,  
3           it was this third-party calling center in the  
4           Philippines;" right?

5           A. Yes.

6           Q. And it turns out that JSR hadn't told  
7           anybody at DISH it was using a third-party call  
8           center; right?

9           A. Correct.

10          Q. And in fact, Ms. Musso said here on  
11          December 21st, 2006, that it was the same call  
12          center that Sterling, which was the retailer that  
13          had resulted in the complaints of calls to DISH  
14          Network customers, they were using that same call  
15          center; right?

16          A. Yes.

17          Q. And you didn't cut them off then either;  
18          correct?

19          A. Correct.

20          Q. And in fact, Reji at one point says, (as  
21          read:) I let him know that he was in violation of  
22          his contract.

23          When somebody violates a contract you just let  
24          it go? You don't do anything?

25          A. I don't think we let it go. I think that

1     there's an automatic termination clause in our  
2     contract. We chose not to recognize it. But  
3     when -- when in possession of material -- materially  
4     larger information from an Attorney General in -- in  
5     Missouri, our decision was swift.

6             Q. Two months later; right?

7             A. In early February; yes.

8             Q. So --

9             THE COURT: I'm sorry, when did DISH find  
10     out about that? I mean I know what the date on the  
11     e-mail is --

12            A. I believe the date on the release was  
13     December 7th, and I believe we found out about in  
14     early February.

15            THE COURT: What took so long? How did you  
16     finally find out about it?

17            A. I don't remember.

18            Q. Do you have any requirement that the  
19     retailers tell them if they have an injunction or  
20     court order against them, for example?

21            A. Our retailers are required to abide by the  
22     law. I'm not -- I apologize, I'm not a lawyer, so I  
23     don't know if an injunction would qualify as them  
24     having to tell us that they are under investigation  
25     or --

1 THE COURT: You don't do Google Alerts or  
2 anything on that kind of information?

3 A. I don't believe that -- I don't believe that  
4 there was Google Alerts in '06.

5 Q. I don't know.

6 THE COURT: I don't either.

7 A. I don't think so. I don't know, but I  
8 didn't have a smart phone in '06, so --

9 THE COURT: well, I know they use to --  
10 they run alerts on judges, and they were doing some  
11 kind of alert back then. But that may have been the  
12 FBI, I don't know.

13 BY MS. HSIAO:

14 Q. FBI maybe. Now, I'm not saying you have at  
15 your disposal the FBI, but certainly you have a  
16 contract that could require them to tell you if they  
17 get in trouble; correct?

18 A. Yeah. Again, I'll go back to I'm not a  
19 lawyer. I'm not sure what the demarcation between  
20 in trouble and in violation of a law.

21 Q. well, it would have been nice to know  
22 earlier that they had an injunction against them;  
23 isn't that right?

24 A. As we sit here today? Yes.

25 Q. And in fact, Mr. Goodale said yesterday that



1 the State of Louisiana also had an injunction  
2 against them in December of 2006. You're not aware  
3 of that, are you?

4 A. I am not.

5 Q. Now, Mr. Bicks asked you about DTX737, which  
6 is tab 8 in your binder. In the black binder.

7 A. Yes.

8 Q. And this is Mr. Goodale's legal analysis of  
9 the complaint sent to him by Reji Musso. And you  
10 said that you agreed with Mr. Goodale's statement  
11 that DISH was -- was not liable for what JSR was  
12 doing. Do you remember that?

13 A. Yes.

14 Q. That there was no claim that exists against  
15 DISH for JSR's violations.

16 So you know now, I take it, that a claim does  
17 exist against DISH for JSR's telemarketing  
18 violations?

19 A. I do now.

20 Q. DISH had its own lawyers in 2006? Some of  
21 them are here, right?

22 A. Yes.

23 Q. And certainly they could have advised  
24 Ms. Musso or you or the other people in sales or the  
25 other people in compliance that you could be liable

1 for what JSR Enterprises was doing; right?

2 A. I'm not sure that that's a question --

3 Q. Well, you have lawyers that could have given  
4 you advice to counter what Mr. Goodale's legal  
5 advice was; correct?

6 A. We might have.

7 Q. Well, I guess you didn't, did you? There's  
8 no evidence that this was sent to the Legal  
9 Department for their analysis, was it?

10 A. Not to my knowledge.

11 Q. And in fact, you're probably aware because  
12 of the -- preparing for this today, that Scott  
13 Novak, when he was in the Legal Department, warned  
14 DISH it could be held liable for its retailer  
15 violations because DISH knew they were going on and  
16 did nothing to stop them. Are you aware of that?

17 A. Yes.

18 Q. So let's talk a little bit about another  
19 retailer that was there before your time in sales --  
20 or indirect sales, and was there while you were in  
21 charge of the channel. And that's Satellite Systems  
22 Network.

23 I want to set the stage. In 2006, we were  
24 talking about JSR in August-September 2006. And at  
25 that time DISH was experiencing a -- Risk and Audit

1 was dealing with a lot of them; is that right?

2 (Court reporter requested clarification.)

3 Q. In August-September 2006, Dish was  
4 experiencing a crazy number of telemarketing  
5 complaints? You're aware of that?

6 A. I'm aware that we were dealing with  
7 complaints. I'm not sure the -- I'm not sure what  
8 crazy --

9 Q. Well, Bruce Werner testified that the cart  
10 fell off the wheel. And there were so many  
11 complaints that DISH hired Reji Musso to try to  
12 bring structure to the system. You remember that;  
13 right?

14 A. I remember Reji getting hired; yes.

15 Q. And people like Alex Tehranchi of Satellite  
16 Systems Network, they had been retailers for DISH  
17 before the OE system; is that right?

18 A. That's correct.

19 Q. Had you met Alex Tehranchi or Sophie  
20 Tehranchi?

21 A. Have I or had I?

22 Q. In 2006 had you?

23 A. I don't believe -- I don't -- I have met  
24 him, I'm not sure of the date that I met him. But  
25 it wouldn't -- it wouldn't have been prior to '06.

1           Q. Now, when you brought Reji Musso on, clearly  
2 we've seen she did a lot of work to investigate  
3 complaints that came in; right?

4           A. Yes.

5           Q. She did the most with what she could? You  
6 would say that; correct?

7           A. She did -- yes, she did.

8           Q. She didn't have any independent authority  
9 though, for example, to discipline a retailer;  
10 correct?

11          A. Although she -- she didn't have independent  
12 authority, but she had the responsibility to  
13 investigate.

14          Q. She investigated and she could make a  
15 recommendation?

16          A. She could, yes.

17          Q. And same with Bruce Werner. He was her  
18 boss, he could make a recommendation?

19          A. Yes.

20          Q. And you, I take it Mr. DeFranco, perhaps  
21 others, Mr. Ahmed when he came back, you could make  
22 that decision to terminate; correct?

23          A. Yes. Or others.

24          Q. Or to impose a fine, for example?

25          A. Yeah. Or others.

1 Q. Or others?

2 A. Yes.

3 Q. It was a group decision?

4 A. I wouldn't say it was a group decision, but  
5 others could make a decision; yes.

6 Q. Well, where did the buck stop?

7 A. The buck -- where did the buck stop?

8 Q. Yes. Who got to make the final decision?

9 A. I believe probably at that time Carlson,  
10 Eric.

11 Q. What was his position?

12 A. He was a senior vice-president at that time.

13 Q. At that time.

14 Now, one role of the Compliance Department --  
15 well, let me ask you this, let me back up. You were  
16 in charge of indirect sells. You had interaction  
17 with the Compliance Department; right?

18 A. Yes.

19 Q. Particularly as it affected the OE  
20 retailers?

21 A. Yes.

22 Q. Okay. Let's look at PX729 in your binder.  
23 This has also been admitted, Your Honor.

24 So let's look at PX729. Mr. Neylon, I'd like  
25 to direct your attention to the second e-mail on the

1 first page from Robb Origer to Reji Musso, and you  
2 and Bruce Werner are CC'd.

3 So Reji Musso is talking about thoughts and she  
4 says (as read:) Anything to stop some of the  
5 madness.

6 So this is about the telemarketing complaints  
7 that DISH is receiving about various OE retailers;  
8 correct?

9 A. Yes.

10 Q. And Ms. Musso, one of the things she does is  
11 suggest that -- that you send a second notice to a  
12 retailer when a consumer registers a complaint about  
13 a call they received; right?

14 A. Yes.

15 Q. But the idea behind the second notice is to  
16 show the consumer that DISH is trying, and it may  
17 not have total control over its retailers; right?

18 A. The -- the control over the retailers, I  
19 think Reji's -- obviously customers are frustrated.  
20 Reji, I think you can understand, might be a little  
21 frustrated too. Things weren't always as they  
22 appeared. There wasn't always full information,  
23 there was gaps in information.

24 And what Reji and Bruce were trying to do, what  
25 we were all trying to do at the time, was piece

1 together a puzzle with limited and intermittent  
2 pieces of information.

3 Q. So you wanted to convey, or Ms. Musso wanted  
4 to convey to the consumers there wasn't a whole lot  
5 they could do; right?

6 A. I don't think she wanted to convey there  
7 wasn't a whole lot we could do. I think she wanted  
8 to convey that we took it seriously, we were  
9 investigating. And it wasn't that the -- that the  
10 complaint wasn't in the consumer's mind gone into a  
11 corporate hole of which it would never be seen  
12 again.

13 Q. And --

14 A. We care about our customers. We care about  
15 how they get treated. We actually care about people  
16 that aren't our customers, because someday they  
17 might be our customers.

18 Q. These are frustrated consumers; right?  
19 They --

20 A. Consumers. We only have 14 million  
21 customers. There are many more people that are not  
22 our customers. And we would hope some day they are.  
23 And if they have a bad experience, they will -- they  
24 might choose not to be our customer.

25 Q. So Ms. Musso goes on to come up with some

1 other tactics for warding off the bad guys. And she  
2 includes publishing the dollar amounts that are  
3 awarded to harvesting citizens. Do you see that?

4 A. Yeah.

5 Q. That's people who are frequent TCPA  
6 complainants; right?

7 A. That's my belief; yes.

8 Q. She also advised stings, meaning you can  
9 catch the retailer if a sale is consummated; right?

10 A. Hm-mm.

11 Q. And she also recommends setting up fines for  
12 repeated confirmations of violations?

13 A. Hm-mm.

14 Q. Now, nowhere in there is anything with  
15 teeth? There's no putting them on hold; right?

16 A. There is no putting them on hold, but I  
17 disagree with your statement that there's no teeth.  
18 The fines are teeth. Fines take the profitability  
19 out of the action. And that was the intent of the  
20 fine. And it wasn't --

21 There was two intents of the fine. One was to  
22 make it an economic penalty that would cause pain to  
23 the business. And two, to broadcast that to others  
24 so that they would take the threat of a fine as a  
25 deterrence to doing bad things.



1 Q. well, so DISH would fine them \$10,000 or  
2 something; right?

3 A. For some businesses \$10,000 is a lot of  
4 money.

5 Q. For a business that's making \$10 million,  
6 it's not a lot of money, is it?

7 A. I can't answer that.

8 Q. DISH paid some of its retailers \$10 million  
9 in a given year; isn't that right?

10 A. What DISH paid the retailer is not what the  
11 retailer made. The retailer has cost structure as  
12 well. And the majority of their cost structure went  
13 to advertising. So while we were their revenue  
14 stream, they also had a cost structure that they  
15 needed to offset. And ultimately, if the revenue  
16 stream was greater than their cost structure, they  
17 made a profit. And ultimately, the fine came out of  
18 the profit.

19 Q. well, voice broadcasting, for example, is  
20 cheap, isn't it?

21 A. I believe it to be.

22 Q. So you can make, I think Mr. Goodale said, a  
23 hundred thousand calls a day. JSR brought in 6,000  
24 subscribers in 2006. If they had to pay a \$500  
25 fine, that was no big deal, was it?

1           A. I can't -- again, I can't answer that  
2 because I don't know what their cost structure is.

3           Q. Again, I mean -- and DISH kept the money for  
4 the fines; right? It didn't give them back to the  
5 customer? Or the consumer?

6           A. Correct.

7           Q. And in fact, Reji Musso, I believe, talked  
8 around this time about the fact that maybe DISH  
9 needed to start a fund because it can't be seen to  
10 be benefitting from its retailers' violations. Do  
11 you remember that?

12          A. Yes. The money went to a compliance fund.  
13 So we used it to train our retailers at events such  
14 as our annual Team Summit that we hold every year in  
15 the May time frame or so. So we have compliance  
16 people come and give educational classes on the  
17 importance of compliance and how to comply. And  
18 have.

19          Q. And another thing that DISH was doing was it  
20 was considering setting up a quality assurance  
21 monitoring program for its calls; right?

22          A. Yes.

23          Q. For the retailers?

24          A. Yes.

25          Q. DISH was gonna make the retailers upload

1     their calls. And was gonna listen to those calls?

2           A. The QA process was our program so that  
3     the -- that the customer understood what they were  
4     getting from DISH and the customer understood what  
5     they were committing to DISH.

6           For want of a better term it is the terms and  
7     conditions or the fine print of the offer. So they  
8     understand what their introductory rate would be,  
9     what their ongoing rate would be, what technology  
10    they were getting. When the technician would show  
11    up. That he would show up between 8 and 12 on  
12    Friday, not at 8:00.

13           So we would set the customer expectation  
14    correctly on the front end so we would have a long  
15    and beneficial relationship with that customer. So  
16    yes, that's why it was set up.

17           Q. So the quality assurance program though, it  
18    was for disclosures; right? It wasn't for TCPA or  
19    telemarketing violations; right? It wasn't to catch  
20    that kind of stuff?

21           A. The quality assurance was to ensure that the  
22    customer understood what they were getting and what  
23    they were committing to.

24           Q. So it was for when you were closing a sale?

25           A. Actually the -- the -- the topics that we

1 would cover would be covered throughout the call.  
2 So it wasn't closing the sale.

3 Q. But didn't they only have to upload the  
4 calls where they were completed sales calls?

5 A. They were, yes.

6 Q. Right.

7 A. Yes.

8 Q. So let's look at PX725 in your binder,  
9 please. While you're looking, when did you want to  
10 break? It's 3:09.

11 THE COURT: We will take a ten minute  
12 recess at this time.

13 (A break was taken.)

14 THE COURT: Court is reconvened.

15 Please continue, Mr. Hsiao.

16 BY MS. HSIAO:

17 Q. All right. So let's go to Exhibit 80, PX80,  
18 in your binder.

19 In 2002 what was your position at the company?

20 A. At this time I was -- at this time I was a  
21 regular director, and I was based in Baltimore,  
22 Maryland.

23 Q. And you knew in March 2002 that Satellite  
24 Systems Network was doing prerecorded calling, and  
25 leaving prerecorded voice mails; right?

1           A. So this e-mail is sent to me from my  
2 supervisor at the time, because I believe somewhere  
3 in here it lists that this is coming from New York.  
4 And I had one of my team at the time run it down.  
5 And we found out that this was -- this company was  
6 based in Colorado, so it was outside of my territory  
7 and I handed it off to my counterpart up here at the  
8 time, which was Nick.

9           Q. So Nick was also a regional manager?

10          A. He was a regional director.

11          Q. And the complaint was about prerecorded  
12 messaging that was left on the answering machine of  
13 the consumer; right?

14          A. That is correct.

15          Q. And Nick Myers, who was your counterpart,  
16 said yes, it was their account, Satellite Systems  
17 Network. And that Vector Marketing was doing the  
18 prerecorded messaging on behalf of not only them but  
19 also many DISH retailers around the country?

20          A. That's what Nick said, but I don't know  
21 that; yes.

22          Q. And if you look on PX80, page 2. Flip the  
23 page. In middle of it there's an e-mail from Scott  
24 Novak that says (as read:) Don't know New York law  
25 specifically, but in general state law frowns on