UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AYLO FREESITES LTD and fuboTV MEDIA INC.

Petitioner

v.

DISH TECHNOLOGIES L.L.C.

Patent Owner

Case IPR2024-00043, IPR2024-00044, IPR2024-00045,
IPR2024-00046, IPR2024-00146
U.S. Patent No. 11,6777,798 B2, 11,470,138 B2,
10,469,554 B2, 10,951,680 B2, 10,469,555 B2

REPORTED BY:
DEBRA A. DIBBLE, FAPR, RDR, CRR, CRC, Notary Public

HUDSON COURT REPORTING & VIDEO (800) 310-1769

ORAL DEPOSITION OF DAVID R. ERICSON, produced as a witness at the instance of the Petitioner and duly sworn, was taken in the above-styled and numbered cause on the above-referenced date, from 9:04 a.m. to 3:47 p.m. MDT, before Debra A. Dibble, CSR, CCR, RDR, CRR, Fellow of the Academy of Professional Reporters, Notary Public, reported by realtime stenographic means at Ray, Quinney, Nebeker, 86 N. University Avenue, Suite 430, Provo, Utah.

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VIDEOGRAPHER:
RYAN REVERMAN

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P R O C E E D I N G S

September 19, 2024, 9:04 a.m. MDT

THE VIDEOGRAPHER: We are now on the record. The time is approximately 9:04 a.m. Mountain Time. This is the video-recorded deposition of David Ericson, in the matter of Aylo Freesites LTD, et al., versus DISH Technologies, being held at the office of Ray, Quinney & Nebeker, located in Provo, Utah, on September 19, 2024.

My name is Ryan Reverman. I am a certified legal videographer, here with certified court reporter, Debbie Dibble.

At this time, counsel in the room will state their appearance for the record.

MR. ZIMMERMAN: Parker Zimmerman with Venable LLP for petitioner Aylo Freesites. With me is Philip Sheng, also with Venable.

MR. DHANANI: Ali Dhanani with Baker Botts. And with me is my colleague, Zacharias Shepard, with Baker Botts as well, and here for patent owner and for the witness.

THE VIDEOGRAPHER: Counsel appearing

on Zoom will be noted for the stenographic record.

At this time, our court reporter will swear in the witness.

DAVID R. ERICSON,
having been duly sworn,
testified as follows:

EXAMINATION

BY MR. ZIMMERMAN:

Q. Good morning, Mr. Ericson. Thank you for being here today.

A. Thank you.

Q. Could you please state your full name and address for the record.

A. David Ray Ericson, 4405 West Oxford Street, Cedar Hills, Utah 80462.

Q. You've been deposed before, correct?

A. I have.

Q. How many times have you been deposed? Around?

A. Three or four.

Q. Do you remember what matters that --

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those were involved in?
A. Yeah. I have been deposed previously for -- regarding the Move Networks patent, and I have been deposed previously and appeared in arbitration for a company called I-Link Incorporated, New York.
Q. So one of those depositions was related to the patents involved in this matter, correct?
A. Yes.
Q. Okay. So before we get started, I want to go over a few ground rules. You understand that I'll be asking you questions today and you'll be answering. Correct?
A. Yes.
Q. If you don't understand a question, please let me know. If you answer my question, I'll assume you understood that question. Fair?
A. Yes.
Q. The court reporter is writing down everything we're saying, so if we can stick to, like, verbal answers, that would be great. Yes, no, and as we mentioned earlier, sounds like uh-huh will be fairly difficult. Is that fair to stick to yes, no, answers?
A. Yes.

Q. And please speak as clearly as possible for the court reporter. That will help get a clean record for us.
And if you need to take a break at any point, let me know. I'll just ask that I can finish my line of questioning before we take a break. Is that fair?
A. Yes.
Q. You understand you're under oath today, correct?
A. Yes.
Q. Is there any reason you cannot provide full and truthful testimony today?
A. No.
Q. Do you have an understanding of what an inter partes review or IPR proceedings are?
A. Kind of. Based on what I've learned in the last 24 hours.
Q. What is your understanding of what an IPR proceeding is?
MR. DHANANI: And I'm going to caution the witness not to disclose any understanding based on attorney-client information; but if you have a separate-and-apart understanding of that, then

you can answer.
A. I don't have a separate-and-apart understanding of that.
BY MR. ZIMMERMAN:
Q. As a factual matter, do you understand that an IPR proceeding is a challenge to a patent at the USPTO; is that correct?
A. Yes.
Q. What is your understanding of why you are being deposed today?
MR. DHANANI: Again, same caution on the attorney-client communication, but separate and apart, you can answer.
A. Okay. It is to review prior testimony and deposition that I gave regarding the patent.
BY MR. ZIMMERMAN:
Q. And you said patent. You understand that you are testifying today regarding multiple IPRs involving multiple patents, specifically IPR202400043, 00044, 00045, 00046, and 00146? Do you understand all of that --
A. I understand there's multiple patents. I don't know -- I wouldn't recognize the patents by the numbers.
Q. I'll represent to you that those are the

numbers we're dealing with today. Is that fair?
A. That's fair.
Q. You sub -- mentioned you submitted a declaration in these IPRs; is that correct?
A. I did.
Q. Why did you submit a declaration in these IPRs?
A. Because I was requested to do so.
Q. Around when did that request come in? When were you requested to submit a declaration?
A. I don't know. Maybe a month or two ago.
Q. Early August, does that time frame sound reasonable?
A. I think so. I don't remember exactly.
Q. Do you know if you were requested after the patent owner response was submitted? So after the filing that you reference in your declaration?
A. I don't know the timing of it. I do know that I was contacted by the counsel here representing me to -- if I'd be willing to submit a declaration based on my previous testimony, and I said, yes, I would.
Q. Why were you willing to submit a declaration in this -- in these IPRs?
A. Because I was there and previously I'd

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been subpoenaed to do that, so I wanted to represent my testimony.

Q. Do you have an understanding of what the purpose of your declaration is?

MR. DHANANI: I'm going to caution you on attorney-client communication, but you can answer separately from that.

A. Okay. My assumption is that there is part of my declaration that you would like to question.

BY MR. ZIMMERMAN:

Q. So your understanding is the reason you were asked to submit a declaration is based on the previous testimony you've provided, correct?

A. Yeah, it was to recount some portion of that testimony in a new proceeding.

Q. Is it also because of your background?

A. Yeah. I would assume it was because of my knowledge and experience at Move Networks.

Q. Anything other than your experience at Move Networks as part of your background as -- as the reason for your declaration?

A. Well, I was also employed subsequently by EchoStar, and a JV that they had with DISH related to the development and operations of Sling TV.

Q. I want to go back to some more specifics about the petitions involved in this proceedings.

So do you understand in these IPRs, petitioner, as we talked about, Aylo, is challenging the patents owned by DISH; is that correct?

A. Yes, that's my understanding.

Q. For the record, I'm going to read out the patent numbers for each of the patents challenged in these IPRs.

So it's U.S. Patent Numbers 10469555, 10469554, 10951680, 11470138, and 11677798.

If I refer to these patents as the ABR patent or adaptive bitrate, do you understand that I'm referring to these patents?

A. I don't recognize the patent numbers, but, yes. I would -- I know that they're related to adaptive bitrate streaming of the IPR patents.

Q. And you are not an inventor on any of the ABR patents --

A. I'm not listed as an inventor.

Q. But you are familiar with the ABR patents, correct?

A. Yes.

Q. And you mentioned you were previously employed by Move Networks, and you are familiar

with --

(Clarification by Reporter)

BY MR. ZIMMERMAN:

Q. Correct? That you're --

A. Yes.

Q. And if I refer to Move Networks as Move, you'll understand I'm referring to Move Networks; is that correct?

A. Yes.

Q. And you are familiar with DISH Technologies LLC, correct?

A. Yes.

Q. And if I refer to them as DISH, will you understand I'm referring to DISH Technologies?

A. Yes.

Q. Going back to the ABR patents and the ABR technology, what is Move's adaptive bitrate streaming technology?

A. Well, first, I would reference you to the patents themselves. As a general description, it is a way of streaming over HTTP that allows for playback of video.

Q. Is it just a general -- or a way of streaming over HTTP that allows for playback video, or is there anything else specific about adaptive

bitrate?

A. Yeah. I mean, there's lots specific to the invention. Again, I'd point to the patents themselves. But I can provide general descriptions, not probably inclusive to everything in the --

Q. How would you describe adaptive bitrate to a layperson, someone not familiar with the technology?

A. Again, there's multiple components, so this is not an exclusive list, but I would say it is the ability to play back video and to adapt based on the constraints of the IP network or networks delivering that video.

Q. Can you explain in a little more detail that ability to adapt that you just mentioned?

A. Sure. So networks, especially the last mile of network to somebody's home, varies, dependent on what they pay their high speed for, as well as constraints within the general backbone of the internet.

And so the invention was to allow continuous playback given those constraints. In order to do that, a video file is separated into different segments, or, under Move's description, it would be, you know, streamlets or atoms or all sorts

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of different names that we gave it at the time. But it's basically segments of video that represent a segment of time in that video, and it would be encoded at various bit rates, both audio and video, to allow -- get request to pull those files.

And then based on what the client knew how to receive, it would request a video appropriate for delivery over that network. So it would request a file at one bitrate or at a higher bitrate or a lower bitrate based on the real-time constraints of that network and then resequence the video in time so that it allowed continuous playback without stalling or buffering, and start-up times.

Q. How would the client know the bitrate of that file in order to be able to switch to it?

A. Can you rephrase what you just said?

Q. So you stated that -- I'm going to -- the client would request a file at one bitrate or at a higher bitrate or a lower bitrate based on the time constraints of that network.

A. Sure.

Q. How would it know the bit rates of the file in order to be --

A. The technology itself was a set of code that was downloaded code as a browser plug-in or a

code extension to a browser. And the content itself would be encoded and pushed to an origin server, and referenced by a URL, like a web page.

And so somebody would select that URL to play, like going to a web page. And the logic in the Web browser at the time would be testing that connection and would know which file to pull next to achieve that continuous playback.

Q. And so it was your understanding that this technology that you just described is disclosed in the ABR patents?

A. That's my understanding.

Q. Where do you have that understanding from?

A. From my work with software developers and my role at Move Networks at the time.

Q. So your understanding is based on your familiarity with the patents and familiarity with Move Networks' technology, correct?

A. Yeah. My position and familiarity with the technology and the way the technology worked in practice.

Q. When was the last time you reviewed any of the ABR patents?

A. When I was at Move, probably.

Q. So it's been 15 years?

A. 17 years, maybe.

Q. So prior to signing your declaration, you did not review any of the ABR patents --

A. Correct.

Q. -- correct?

You stated earlier that you were not listed as an inventor on any of the ABR patents. Are you an inventor on any patents, any other patents?

A. No.

Q. But throughout your career, have you had exposure to patents? Have you read many patents?

A. I've had exposure to patents. I haven't read them. My role, throughout my career, has been the practical implementation of the technology, to make things work.

Q. And just returning to the ABR patents, do you understand that all of the ABR patents in these proceedings, the ones we discussed earlier, they are related, correct?

MR. DHANANI: Objection, form.

A. Can you repeat? Belated?

BY MR. ZIMMERMAN:

Q. Related.

A. Oh, related.

Q. Are the patents in these IPR proceedings, all the ABR patents, are they related?

A. I believe so.

Q. Do you understand what it means for patents to be related?

A. I can give you what I believe it means, is that the technology is, as it was developed or as it was defined, as new inventions were made, it was addition onto the previous ideas.

Q. Okay.

A. That would be my assumption.

Q. Do you understand that all of the ABR patents in these proceedings share a specification?

MR. DHANANI: Objection, form.

A. Can you repeat the question? Sorry.

BY MR. ZIMMERMAN:

Q. Do you understand that in a patent that has multiple parts, there is the specification, and then at the end, there are the claims?

A. Not directly, but, yes. I mean, I haven't filed a patent myself.

Q. I'm going to move on from the ABR patents and return to your declaration for a minute and today's deposition.

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In preparation for today's deposition, did you review any of the filings in these IPRs?
MR. DHANANI: Objection, form.
But you can answer that question.
A. Did I review -- restate what I think I -- you asked. Did I review any of the documents related to these proceedings?
BY MR. ZIMMERMAN:
Q. Yes.
A. The only document that I reviewed was my -- the declaration that was prepared for me based on my prior testimony.
Q. Okay.
A. Made a couple of minor modifications, and that was it.
Q. So you did not draft the declaration itself; is that correct?
A. No.
Q. You only made a few modifications to the declaration; is that correct --
MR. DHANANI: Objection --
Oh, go ahead.
Finish your question.
BY MR. ZIMMERMAN:
Q. You only made a few modifications to the

declaration; is that correct?
MR. DHANANI: Objection, form, mischaracterizes.
MR. ZIMMERMAN: What's your basis for that?
MR. DHANANI: You're summarizing his point that you only made a few modifications. You're adding the word "only" to it, which is a mischaracterization of what he did in his review in preparation of the declaration. That's the basis for the objection.
BY MR. ZIMMERMAN:
Q. Mr. Ericson, did you make any contributions to your declaration other than a couple of minor modifications?
MR. DHANANI: Objection, form.
MR. ZIMMERMAN: Sir, you can answer.
MR. DHANANI: You can answer.
A. That was it, just minor tweak to make it read better, or -- but not to change anything.
BY MR. ZIMMERMAN:
Q. So someone else drafted the declaration other than you, that is correct?
MR. DHANANI: Objection, mischaracterizes.

A. I can answer?
MR. DHANANI: Yes, sir.
A. Yeah, it was basically an excerpt of my previous deposition, and so all I did is review that, that was provided to me. And from that, I just corrected a couple of things that were kind of just part of that initial declaration, but not in substance in any way.
BY MR. ZIMMERMAN:
Q. Do you know who drafted your declaration?
A. Yeah, the attorneys here.
Q. So your attorneys drafted the declaration, and you made minor modifications to it; is that correct?
A. Correct.
MR. DHANANI: Objection, asked and answered, form.
A. Yes, that was the limit of it.
BY MR. ZIMMERMAN:
Q. Do you recall what changes you made to the declaration?
A. No. When I say minor, it was like a word or a phrase or a -- but that was it. It wasn't like a changing of the substance in any way.
Q. Sitting here today, are you able to give

me an example of a minor modification that you made?
A. No. I mean, it was -- I can't remember the word I might have changed or the -- or -- I mean, it's an excerpt from my previous. So you can compare the -- I guess you could compare the declaration against my -- the section of previous.
Q. So is it your understanding that your declaration is a summary of your testimony in the ITC investigation; is that correct?
MR. DHANANI: Objection, form, but go ahead.
A. It is a portion of what I said in my previous deposition. It's not an entire summary of what I said before.
BY MR. ZIMMERMAN:
Q. Does your declaration address anything that is not based on your ITC deposition transcript?
A. No.
Q. In preparing your declaration, did you review anything other than your ITC deposition transcript?
A. No.
MR. DHANANI: O -- oh, go ahead. No objection.
A. No.

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BY MR. ZIMMERMAN:
Q. Did you review any of the exhibits cited in your declaration?
A. Did I review any of the -- in creating the declaration? Like, what -- sorry, what are you asking?
Q. After you were sent your declaration by your attorneys --
A. Mm-hmm. (Witness nods.)
Q. -- correct?
When you were reviewing the declaration to make your minor modifications.
A. Mm-hmm. (Witness nods.)
Q. Did you review any of the exhibits --
A. No.
Q. -- cited in the declaration?
A. Not at that time.
Q. Did you review any of the exhibits prior to signing the declaration?
A. No.
Q. Did you review any of the exhibits prior to today's deposition?
A. The --
MR. DHANANI: I'll caution you on attorney-client communication.

But if you can rephrase that question, I'll let him answer.
You can answer "yes" or "no" to that question right now.
MR. ZIMMERMAN: And, Ali, can we keep the speaking objections to a minimum?
MR. DHANANI: Sure. That was only because that calls for a privileged answer.
MR. ZIMMERMAN: I understand.
MR. DHANANI: That was the only reason I had to do that.
A. Okay. So --
BY MR. ZIMMERMAN:
Q. Would you like me to repeat the question?
A. Yes. Sorry.
Q. So I'll read it: Prior to today's deposition, did you review any of the exhibits cited in your declaration?
MR. DHANANI: Please just answer "yes" or "no."
A. Yes.
MR. DHANANI: Okay.
BY MR. ZIMMERMAN:
Q. Did you review all of the exhibits cited in your declaration?

Strike that.
Prior to today's deposition, did you review all of the exhibits cited in your declaration?
A. I don't know if it was all, but, yes, I reviewed exhibits that were cited in my declaration.
Q. Do you know who Drew Major is?
A. Yes.
Q. Who is he?
A. Drew Major was the founder and financier of Move Networks.
Q. Are you aware that Drew Major was deposed in these IPRs a couple of days ago?
A. Yes.
Q. Did you speak to Mr. Major after his deposition?
A. No.
Q. Did you receive a transcript of Mr. Major's deposition?
A. No.
Q. Do you know who Dr. Kevin Jaffe is?
A. No.
Q. Returning to the IPRs, do you have any familiarity with the petitioner in these IPRs, Aylo Freesites?

A. No.
Q. Are you aware of a company formerly known as MindGeek?
A. No.
Q. Do you have any understanding of who Aylo Freesites is?
A. Not really. I mean -- no.
Q. Do you have any understanding of what line of business Aylo Freesites is in?
A. Yes. Just based on -- well --
MR. DHANANI: I'll instruct the witness not to answer if the information is only based on communications with attorneys.
A. Correct.
BY MR. ZIMMERMAN:
Q. As a factual matter, are you -- as a factual matter, what line of business is Aylo in?
MR. DHANANI: Same objection, instruct the witness not to answer on the basis of privilege.
If you have any separate understanding outside of communications with attorneys, then you can answer.
A. I do not.
* * *

BY MR. ZIMMERMAN:
Q. Are you familiar with any of Aylo's websites?
A. No.
Q. So you're not familiar with pornhub.com?
A. No.
Q. And you're not familiar with a website called browsers.com?
A. No.
Q. Earlier today, you gave your address. That was a Utah address, correct?
A. Correct.
Q. So you live in Utah?
A. I do.
Q. -- correct?
Are you familiar with Utah Senate Bill 287?
A. No.
Q. Are you aware that Aylo blocks Utah IP addresses from accessing any of its websites?
MR. DHANANI: Objection, form, outside of the scope, and this is getting way beyond the deposition for why he's been subpoenaed here.
You can answer, if you know.

A. No.
BY MR. ZIMMERMAN:
Q. So if someone with a Utah IP address tries to access one of Aylo's adult content websites, they wouldn't be able to --
MR. DHANANI: Objection, scope, form. Again, way beyond the scope of the deposition.
MR. ZIMMERMAN: Can I finish the question?
A. I have no -- I don't know that. I have no knowledge of what Utah does or doesn't do regarding Aylo.
BY MR. ZIMMERMAN:
Q. Are you aware that DISH and Aylo are involved in litigation other than these IPRs?
MR. DHANANI: Caution on not revealing attorney-client communication, but otherwise you can answer.
A. I'm not.
BY MR. ZIMMERMAN:
Q. So you're not aware of the lawsuits between DISH and Aylo related to these patents in Utah?
MR. DHANANI: Objection, asked and answered.

A. I'm not -- I'm only aware of the reason I've been brought here today, which is the ABR patents. That's it. That's all I'm aware of.
BY MR. ZIMMERMAN:
Q. And so you're not aware of a litigation between DISH and Aylo involving these patents in Delaware; is that correct?
MR. DHANANI: Same objections, form.
A. My assumption is it's -- it was -- it's one case, so that's my -- I don't know anything else about that.
BY MR. ZIMMERMAN:
Q. If DISH asked you to testify in these related litigations in Delaware, would you be willing to travel to Delaware?
A. I would hope not. It would be a major inconvenience for me. I have a different job and family and obligations here. Unless it was absolutely required, but I would -- I wouldn't want to do so.
Q. But you would be able to, correct?
MR. DHANANI: Objection, asked and answered, form.
A. I mean, theoretically, yes, but I wouldn't want to. I have family and a job and other

things that would be -- make it difficult. I don't benefit anything from this.
BY MR. ZIMMERMAN:
Q. So returning to this deposition, what did you do to prepare for this deposition?
A. I met briefly yesterday for an hour with attorneys that are here.
Q. So you spent an hour preparing for this deposition?
A. Yeah. Just approximately an hour, maybe two hours.
Q. Did you spend any time outside of meeting with your attorneys preparing for this deposition?
A. No.
Q. In preparing for this deposition, did you review your declaration?
A. Yes.
Q. How many times did you read your declaration cover to cover in preparation for this deposition?
A. Twice.
Well, three times if you count when I revised the very first time I saw the declaration.
Q. And then are you being compensated for your testimony today?

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A. No.
Q. Were you compensated in any way for your declaration submitted in these IPRs?
A. No.
Q. If you're not being compensated, what's your motivation for being here?
MR. DHANANI: Objection, form.
A. My only motivation was that I was previously subpoenaed from my previous deposition and I'm here representing what I said in my declaration, because I was asked to be here.
BY MR. ZIMMERMAN:
Q. When you submitted your declaration in these IPRs, were you aware that you would need to sit for a deposition?
A. No. What I was told is -- what I was hoping for is that the declaration would be sufficient.
Q. Did it surprise you when you were asked to sit for a deposition in these IPRs?
A. Yes.
Q. So did you submit your declaration out of goodwill?
A. You could say that. I mean, I was there and I -- and I don't -- I also didn't want to be

represented -- or misrepresented in any way, but it would be -- I would say it was goodwill. I mean, I spent a lot of time and effort working to make this technology viable, so it would just be goodwill.
Q. Are you under any obligation to assist DISH in these IPRs?
A. No.
Q. Did you sign any agreement when you were at Move to assist in litigation relating to these IPRs or --
A. No.
Q. -- or the ABR patents?
I'm handing you what has been marked Exhibit 2089 in these IPRs right now.
A. Okay.
Can I put on my glasses?
Q. This appears to be a printout of your LinkedIn profile; is that correct?
A. That's what it looks like, yes.
Q. And this appears to be the printout of your LinkedIn profile that was submitted as part of the ITC deposition; is that correct?
A. That's correct.
Q. If you look in the top right corner, it has a stamp saying Exhibit 2 and is dated 1-6-21.

Is that correct?
A. Yep. Yes.
Q. So this printout of your LinkedIn profile would have been accurate as of 1-6-2021; is that correct?
A. To the best of my knowledge, yes.
Q. Is this LinkedIn profile still up-to-date?
A. No. I haven't done anything subsequently to it, that I'm aware of.
Q. And so I don't have to continue referring to it as your -- the printout of your LinkedIn profile, are you okay if I just refer to it as your CV?
A. Sure.
Q. If you turn to page 10 of your CV -- that's the last page -- it says you were educated at Brigham Young University; is that correct?
A. That is.
Q. And your degree was in broadcast media management; is that correct?
A. Yes. Communications, which that's part of the communications program.
Q. What does that degree entail?
A. So it is a -- actually, a BA. It was a

combination of business classes, communications classes, and multimedia classes.
Q. So this is not a technical degree; is that correct?
A. No.
Q. Do you have any formal education in computer science?
A. No, not per se.
I have years of professional experience in computer science and technology. Practical experience, I guess I would say.
Q. So you don't claim to be an expert in video streaming, correct?
MR. DHANANI: Objection, form.
A. I -- I would -- I mean, let me phrase this in a way that makes sense.
I believe I understand video streaming exceptionally well. My career is based on, in part, my knowledge of video streaming and how to implement that and how to manage developers that have written lots of code and lots of technology around it. But I have never written a line of code regarding this. I've just -- I've implemented the code and the systems that relate to streaming.
* * *

BY MR. ZIMMERMAN:
Q. But you do not have any formal education in computer science, correct?
A. Correct.
MR. DHANANI: Objection, asked and answered, form.
BY MR. ZIMMERMAN:
Q. Can you please turn to page 9 of your CV?
A. Mm-hmm.
Q. Near the bottom, you list Brigham Young University.
A. Mm-hmm.
Q. Did you begin at Brigham Young University right after college?
A. During college, actually.
Q. So these positions listed there was overlap in your time in college; is that correct?
A. Yes. I started working in full-time technical jobs at BYU while I was doing my undergraduate education in communications.
Q. And if you turn back to page 10, it lists: Telecommunication Document Manager 1993-1995.
Is that correct?
A. Yes.

Q. What were your primary duties in that position?
A. So I was responsible for documenting the physical network and systems deployed across the university campus.
So all cable and wiring jacks, connections to the network, logical and physical paths for IP distribution.
Q. And then next it lists: Application Development Manager.
That was from 1995 to 1996, correct?
A. Yes.
Q. What were your primary duties in that position?
A. I managed the development of an INFORMIX-4GL database designed to manage the business and technical systems related to telecommunications services at BYU.
Q. And then if you turn back to page 9, you were a Telecommunications Analyst from 1996-1997, correct?
A. Yes.
Q. What were your primary duties in that position?
A. The -- sorry, which one are you looking

at?
Q. Sorry, the telecommunication analyst, what were your primary duties in that position?
A. Managing the roam digital PBX on campus, so all of the -- basically the phone system on campus. Programming the phone numbers and the technical stations related to the telephone system back then.
Q. And then from 1997 -- or in 1997 for less than a year, you were a network analyst; is that correct?
A. That's correct.
Q. What were your primary duties in that position?
A. Managing the network LAN and WAN and IP connectivity of the campus community. Routers and switches and that type of thing.
Q. Now, if you turn to page 8, it listed I-Link.
A. Mm-hmm.
Q. What is I-Link?
A. I-Link was a company that was developed around IP telephony. So the distribution of telephone calls and communications over an IP network as opposed to a time division multiplexed

network. So a traditional TDM or analog network.
Q. Did you begin an I-Link right after BYU?
A. Yes. In fact, I was recruited to I-Link from BYU.
Q. Then if you go back to page 9, you were a Senior Product Manager, Product Line Manager at I-Link from nine -- July 1997 to December 1998, correct?
A. Mm-hmm.
Q. What were your primary duties in that position?
A. I was responsible to help deploy I-Link's technology to service unified communications, things like one number and voicemail and long distance calling and conference calling that was all developed as a virtual PBX or an IP telephone system.
Q. And then from December 1998 to December of 2000, you were a VP of network engineering and operations; is that correct?
A. Right.
Q. What were your primary duties in that position?
A. It was an extension of my product management duties. Basically what they did is they

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promoted me to help build out the nationwide network, or at the time we called it an IPBX, or a soft switch, to deliver IP telephony throughout the United States.

I-Link had several original patents around IP telephony, fax over IP, voice over IP, those type of things.

Q. Were you involved in any of those patents?

A. No. Again, my primary duty was to make the technology described in those patents functional.

Q. You mentioned soft switch earlier. What is a soft switch?

A. Soft switch is a logical designed switching mechanism to connect two endpoints together to communicate. So, for instance, a traditional telephone and a SIP phone or session initiated protocol telephone or a PC, piece of phone software to a traditional telephone, or all of those type of things, unified communication. So logical defined. Voicemail, one number finding following me type services from way back when.

Q. You also me -- strike that.

You also mentioned voice over IP.

A. Yes.

Q. What is your understanding of voice over IP?

A. It is using a -- we used a 9.6 kilohertz codec to take voice and convert it to a digital signal and distribute that digital signal over the -- over an IP network.

Q. So it was streaming audio over an IP network, correct?

A. Well, there was no terminology of streaming at the time. It was -- it was somewhat related but not like -- as a fundamental technology, while it used IP, it wasn't -- it wasn't similar, if what you're trying to get at, it wasn't similar to the distribution of like Move Networks did with video. It was a different kind of underlying technology. The only thing it had in common is IP, and a codec.

Q. You distinguished streaming there. What is your understanding of streaming?

A. My understanding of streaming would be to deliver a sequence of data over a non-guaranteed network, a non-guaranteed IP network.

Q. So at I-Link, were you delivering a sequence of data over a non-guaranteed network?

A. Yes. I mean you could call it that, I guess.

Q. So would you call what I-Link was doing streaming audio data?

A. I'm trying to think in my mind how it worked.

It's -- yeah. I mean, in some ways, it would be similar to early attempts at streaming, I guess.

Q. Because you were delivering data over a non-guaranteed network at I-Link, was any of the streaming adaptive?

A. No.

Q. So you delivered a single stream of bits over the non-guaranteed network?

A. Yes. It was not adaptive. It was -- the telephony files were so small it didn't matter, and it used a totally different set of technologies.

Q. How would I-Link have handled hiccups in the network, when streaming the data?

A. It probably would have resulted in a dropped phone call.

Q. So I-Link did not do anything to address dropped phone calls due to hiccups in the network?

A. Yeah, there's no way -- there was no way

at the time to heal a -- like a phone call. Like if -- you were either connected or you were not connected. But it also was dependent upon what you were connected to, right? Because we were trying to interface with non-IP technologies as well. So there could have been all sorts of errors.

The primary purpose of the technology at the time was there was a philosophy that by using an IP network, it would reduce the cost over traditional switching infrastructure. And at the time, everyone was still paying for long distance; and so it was to reduce the cost of people being able to communicate.

Q. Are you aware of any other companies that were performing the adaptive rate audio streaming?

A. I'm not aware of any company doing adaptive rate audio streaming at that time. What I am aware of is people using small kilobit encoders to try to deliver voice over an IP network, or a fax image over an IP network.

Q. So using your definition of streaming, delivering a -- delivering data over a non-guaranteed network, was streaming audio over the internet well known by the late '90s?

A. No. Well, I -- no, it wasn't well known.

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It was still an emerging technology, I would say.
Q. But I-Link was streaming audio over the --
A. I-Link was. But again, it was an early technology and proof of concept of being able to do that.
Q. What was your role in the development of this voice over IP product?
A. Well, add two facets, as I think I explained before. One, my role was to product manager, to be -- to help what the consumer experience might be. Right?
So I cared about where people could make phone calls for, at what cost they could make phone calls for. How the system worked. The IVR system of prompts, right? That were there.
The interface of the DTMF, like on your telephone. So you push buttons, and it would do specific actions, like hit three to join the conference call, right? Or whatever. That was the state of the technology at the time.
The second part of my job was to make the technology practical. So it wasn't to just worry about the consumer experience. It was to make sure that the technology was deployed and functional such

that you could sell a service to a consumer.
Q. And then if you turn to page 8, it says you were a VP Product and Strategic Development -- VP of Product and Strategic Development from December 2000 to December 2002; is that correct?
A. Mm-hmm. (Witness nods.)
Yes.
Q. What were your primary duties under -- in that role?
A. Same thing that I just -- basically what I stated. It went from product manager to make the -- make it practical to now we're starting to potentially partner with others and connect other technologies into the network. And so I was leading some of those initiatives.
Q. And these technologies, it was all happening over the internet; is that correct?
A. Yes.
Well, not all. I'll go back and rephrase what I said before.
The I-Link technology was happening over the internet. The -- because not everybody had IP-enabled -- in fact practice nationally, nobody had IP-enabled telephones. We had to translate IP back into traditional telephony, so TDM. So we had

to turn it into PRI circuits or other types of circuits that delivered the translated IP back into analog or whatever the time division multiplex system was of that receiving switch.
Q. So referring to the I-Link technology, did that transmit the audio data using HTTP?
A. Oh, goll. Now you're making me go back.
No. Well, no. It was primarily using UDP. I mean, it was over IP, but it wasn't the same -- it wasn't like an HTTP package. It was more of a UDP continuous type of communication.
Q. You said primarily.
A. Well, that's -- that's what I recall.
Q. Okay.
A. It's not because of -- that's me just saying, as best as I can recall, that's the way it was working. There were also other technologies that we would say were a part of a telephone system. One of the things, for instance, of note here is it says ISDN and SS7. Those are traditional telephony things to handle signaling. And so that wasn't actually the IP data path or the audio files, that was signalling between switches and communication to control the way the call was set up or -- so it -- it wasn't -- it wasn't -- the IP was part of the

delivery path, but the communication of how that happened and the communication switches were code, but they weren't -- it had to translate into traditional technologies to do the signaling path right. So it wasn't in any way like 100% IP.
Q. And then, you were referring to that, I believe the second to the last and the last line on page 8. At the end of that last line, it says: Other media control protocols.
Do you recall what those other media control protocols were?
A. Yeah. As I said, there was PRI. There was SIP, there was H.232. There was SIP which is session initiated protocol of a phone. It had logic in the phone and -- logic in the phone and you could every -- could even try to communicate with two phones without the need for a switch, but that didn't scale very well. There were all sorts of things that were going on at the time.
Q. Okay. And then if you turn to page 6 of your CV. You later joined Move Networks; is that correct?
A. That is correct.
I went back to BYU for a time and then joined the Move Network.

Q. Do you recall what year you joined Move Networks?
A. It would have been in March of 2006, I believe.
Q. And so if you turn back to page 7, it says you were a VP Operations from March 2006 to December 2009; is that correct?
A. Yeah.
Q. And that was your first role at Move Networks?
A. It was.
Q. What were your primary duties in that role as VP operations?
A. In simple terms, to make the -- again, the technology practical. To -- in some ways similar to my previous roles, but to basically figure out how to deliver video to consumers over an IP network, as opposed to, you know, my previous experience with voice. There were some analogous things, there were somewhat, but not, you know, not really other than, here's IP technology, here's switchers, here's routers, here's networks, here's code, here's -- right? It was a system, and the system had to be deployed in such a way that you could do video from end to end.

Q. So when you brought in, based on your experience, implementing these ideas?
A. Yes. So the CEO at the time of Move Networks was John Edwards, and he had been the previous CEO at I-Link, so he knew of my talents and experience.
Q. Can you explain how you came to work at Move Networks?
A. I think I just did. I mean, I had some of the colleagues that I had known at I-Link had started working for this new start-up called Move, and they were looking for somebody with broad technical know-how or implementing a product into reality. And I went to lunch with John, and he said, would you be interested in coming back to work and working with me? We have this new idea. And that's how I found out about Move Networks.
Q. So before you joined Move Networks, had Move implemented its product into reality?
A. It's hard to say. I mean, they had gotten to the point where they had deployed -- they had deployed the plug-in in the IE browser only, so Internet Explorer browser. And had done some kind of, I would say, proof of concepts. So it was kind of prototyping and proof of concepts that the

solution would work, but the technology was still very early on. They were still developing the core technology that I would refer to in the patents.
Q. So you said "they were still developing the core technology that I would refer to in the patents." What is that core technology?
A. It's what's outlined in the patents. So when I say core technology, I think in previous testimony given here today, I said that my assumption was that patents build on each other, and that was what was going on. So they were able to demonstrate some portion of the technology, and that led to another idea that developed part of the technology. And so that process was still ongoing when I joined Move.
So some facets were demonstrable; other facets were still being designed and built.
Q. So what facets would you consider to be core to the patents?
A. Again, I'd refer you to the entire patent. I can't speak to it, but basically what I described before is the ability to adapt and provide quality streaming experience over a non-guaranteed network. I mean, that's what the entire focus was.
Q. So was using HTTP a core part of the

technology?
MR. DHANANI: Objection, form.
A. Using HTTP or IP was part of the delivery mechanism. I don't know that it -- it was the practical way of doing it.
BY MR. ZIMMERMAN:
Q. Was segmenting the video into smaller chunks, streamlets, a core part of the technology?
MR. DHANANI: Objection to form.
A. I would say, again, that was part of it. It made -- it made it such that by creating multiple different bit rates, the network then had the ability to select the appropriate file for the quality of the network.
BY MR. ZIMMERMAN:
Q. Was using TCP as opposed to UDP or RDP a part of the core invention?
MR. DHANANI: Objection, form.
A. Yes. I mean, there were -- there were attempts to look at all of the delivery potential, but in general I would say, yes. It didn't exclude the ability to use UDP or something else, but it was part of it.
BY MR. ZIMMERMAN:
Q. And do you know the difference between a

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push system and a pull system for streaming?
MR. DHANANI: Objection, foundation.
A. I mean, yes. Theoretically, yes. I mean, a pull system is a get request against the server where the client initiates it; and a push server would be something that was driven by the core of the network towards clients. Broadcast is a push technology.
BY MR. ZIMMERMAN:
Q. So -- strike that.
Is the ABR technology, is that push or pull?
MR. DHANANI: Objection, form.
Go ahead.
A. It's largely a pull technology.
BY MR. ZIMMERMAN:
Q. When you say largely a pull technology, does it not have to be a pull technology?
A. Well, it depends on where you determine the video is starting from.
So the video always has to be encoded, and so, therefore, the video has to be pushed to an encoder somewhere, right? It has to be delivered to an encoder. Once the encoder has done its work to prepare it in an ABR format, then it's -- the

technology puts those streamlets or segments in the index to those files on a server, sometimes referred to as an origin server, and that origin server is connected to the internet and the client pulls, makes a get request back to that through a CDN, and that's how it scales and is done.
Q. And so was being a pull system a core part of Move's technology?
MR. DHANANI: Objection, form.
A. It was -- it was the method of requesting the video files.
BY MR. ZIMMERMAN:
Q. So would you agree that being a pulled system versus a pushed system is not a core part of Move's technology?
MR. DHANANI: Objection, form.
A. No, I would say it's -- it's integral to being able to cache -- the cache ability to files.
So an explanation, if you have -- if you and your colleague were watching the same video at the same time, over the same network, it would request -- at some point, you'd be requesting the same files, and that file wouldn't have to come all the way back to the origin. It would come to some CDN cache somewhere to request that.

BY MR. ZIMMERMAN:
Q. I want to return to a few terms you used earlier. So you stated, once the encoder has done its work to prepare it in an ABR format, then the technology puts those streamlets or segments in the index to those files on a server.
A. Mm-hmm. (Witness nods.)
Q. What is that ABR format you're describing?
A. So in general -- and there's different ways of doing this.
In general, it is taking video, and based on the GOP of video, or the segment of video, usually segmented at iframe or a point in the video where it makes sense, that video is, at some point in the process, sliced into those segments and run through a transcoder of some type to transcode it into some type of audio video codec, like MP4 or something.
And then it would be -- from there, those files, based on the profile or the bit rates that were predetermined for quality, would deliver those bits and/or actually push those bits to the origin server where the index file and those streamlets would exist such that the client could then use that

URL and that index file to know how to request those segments and in what sequence.
Q. So you just stated those -- the bit rates that were predetermined for quality.
A. Mm-hmm.
Q. What do you mean by that?
A. So because networks vary in terms of -- going back to what I said previously, your ability to receive it, let's say you're on a one megabit internet connection and your colleague is on 100 megabit internet connection. We will have had profiles that are smaller, using less audio and fewer pixels for resolution. If it's -- it can only sustain, because of other things happening on your network, a very small file to be played to you.
So to prevent from stalling and buffering, all the way up to a file that would be HD or beyond in quality, those files would be larger, because they would contain more data, from an audio standpoint and from a video standpoint.
And so you predetermine the quality that you want to scale based on what you believe a broad range of consumers could potentially request. Because you're not trying to serve just those with big internet connections, you're trying to serve

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those with bad internet connections, which is why the technology worked as an invention at the time, because most people didn't have broadband connections to their home. So you were trying to get consistent video over a potentially latent network, a -- you know, a slow network or one with a great deal of congestion or those type of things. And so in order to do that, you had to, you know, get the smaller files through, because you couldn't get the bigger files through or it would pause and buffer.

MR. DHANANI: We've been going about an hour and a half. Should we take a break?

MR. ZIMMERMAN: Mr. Ericson, would you like to take a break?

THE WITNESS: If that would be okay.

THE VIDEOGRAPHER: Going off the record. The time is approximately 10:25 a.m. Mountain Time.

(Recess taken, 10:25 a.m. to 10:39 a.m. MDT)

THE VIDEOGRAPHER: Returning on the record. The time is approximately 10:39 a.m. Mountain Time.

Counsel.

BY MR. ZIMMERMAN:

Q. So before we went off the record, you were -- we were going back through a few statements you made earlier. I want to return to one of those.

You described the process of segmenting the video.

A. Okay.

Q. And you stated: Usually segmented at an iframe or a point in the video. It makes sense that video is at some point in the process sliced into those segments and run through a transcoder of some type to transcode it into some type of audio, video codec like MP4 or something.

A. Mm-hmm. (Witness nods.)

Q. Is that process of transcoding the sliced segments a core facet of Move's technology?

MR. DHANANI: Objection, foundation, form.

A. Yeah. You have to prepare the video so that it can be adapted. It can be done on-demand or live.

BY MR. ZIMMERMAN:

Q. Is there any difference between preparing it live and on-demand?

A. Yes. There are a couple of differences.

Live, you have to be running the transcoder while you're publishing the segments to the origin server so that people can watch them in near realtime; whereas, in video on-demand, the file isn't necessarily being watched in realtime, so you can ingest a file that is, say, 60 minutes long or two hours long in advance and have it already present on the origin server before people start requesting the data. So that's one way.

The other difference is the delivery of the video itself to the encoder. So you need to have a mechanism for live to get a live video signal into the encoder. So you have to have an ability to capture that video and segment it; whereas, on a VOD asset, you can upload the video through a different mechanism. You don't have to do a realtime capture of that video.

Q. And just to clarify, by VOD, you mean video on-demand; is that correct?

A. Video on-demand, yes.

So anything that would be prerecorded video.

Q. And returning to your CV, under VP Operations on page 7. It says: Executive responsibility for designing, building, and

operating the first adaptive streaming and TV anywhere platform in the world from the ground up.

A. Mm-hmm. (Witness nods.)

Q. What does TV anywhere mean?

A. As an industry term, it meant the ability to watch TV without the constraint of a physical TV.

So to further explain, you know, most people watch TV because they, at the time, would gather in their living room or their bedroom or wherever they had a TV and would watch it because it would be connected to cable or a satellite settop box or, you know, over the air signal. And TV anywhere came to be because all of a sudden you could watch a TV signal or a live signal or an on-demand signal over your computer, or eventually your mobile device, or things that were not traditional television sets with receivers.

So you could -- you were disconnected from having to be centered around a television. You could watch it literally wherever you had internet connection.

Q. And in that sentence, when you were referring to the first adaptive streaming and TV anywhere platform, are you referring to the Move player?

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A. I'm referring to the Move -- yeah, the Move platform. The end-to-end system that made -- that made it such that Move could offer its services to Fox and ABC and ESPN and Discovery and a whole bunch of people at the time.

Q. And so is it your testimony today that the Move platform was the first ever adaptive streaming and TV anywhere platform in the world?

A. That's my belief, yes.

Q. And are you saying that the Move player was the first adaptive streaming system in the world?

A. Yes, that's my belief.

Q. And if you include both audio and video, is it your testimony today that the Move player was the first adaptive streaming system in the world?

A. I don't know what the distinction is between video and audio and video, I mean, television to me is audio and visual, so -- video, so yeah. From an AV perspective, yes.

Q. Were there any adaptive audio streaming systems prior to the Move product?

A. Not that I'm aware of.

MR. DHANANI: Objection, scope, form. Go ahead.

A. Not that I'm aware of.

BY MR. ZIMMERMAN:

Q. So in your opinion, does -- from an AV perspective, does streaming video require audio as well?

A. It doesn't necessarily have to, but audio is often used as the underlying timing mechanism for video.

Q. So video streaming does not require audio to be included as part of the same transmission; is that correct?

MR. DHANANI: Objection, form.

A. Streaming video -- well, adaptive streaming does require it because the image has both the audio and video encoded in the same object.

So it -- I mean, it would be -- I mean, I guess you could -- you could watch a silent movie, but it's -- but you would have -- you would still have to have some element of time tracking, and you would -- if you were doing it for delivery, it wouldn't make sense to have a separate audio file when the audio and video can be in the same object. It would create complications in the system.

BY MR. ZIMMERMAN:

Q. I just want to clarify, when you say

adaptive streaming earlier, then you said adaptive streaming does not require it, because the image has both the audio and video encoded in the same object, you were referring to Move's product; is that correct?

A. Yeah, I'm referring to the segment or the object that was segmented, requested.

Q. But in other streaming implementations, if the video and audio were not in the same object, the audio would not be required to be part of the video; is that correct?

MR. DHANANI: Objection, form, legal conclusion and scope.

A. I don't know. There's lots of different -- there were lots of different concepts around how to do streaming. It -- I would say that Move's technology was the first adaptive bitrate streaming technology that allowed for consistent delivery.

I mean, the first idea that was created around that.

BY MR. ZIMMERMAN:

Q. And so you mentioned a silent movie earlier. Do you agree that in a silent movie, you would not need to transmit audio along with the

video file?

MR. DHANANI: Objection, calls for speculation, form.

A. It -- again, you would have to have an alternative timing mechanism to audio, and so I'm -- I'm not aware of -- personally aware of a technology that would make -- I mean, I -- there's probably technologies, but that wasn't ever the intent, right? The intent was never to deliver silent movies. It's kind of nonsensical in today's world. So the intent was always to deliver full motion audio and video. So I -- I mean, it's -- I don't know how to answer the question because that wasn't what the invention or our purpose was about.

And when I say "our" in that scenario, talking about Move Networks or my employment at Move Networks, right?

BY MR. ZIMMERMAN:

Q. So at Move Networks, what was your role in that invention or "our purpose" that you just discussed?

A. I would -- it's what I've explained previously. It was to make the -- help make the technology practical and functional as an end-to-end service.

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Q. And --
A. That's why I use the term "platform," because you had to have all components. You had to have transcoding, you had to have a player, you had to have the technology, you had to have infrastructure or an origin server, you had to have contract with CDNs. There was a lot of things you had to do to make that practical.
Q. And you referred to each of those as components. Would you consider them separate components of the platform?
A. No. Well, I would -- ultimately, it's one system, because -- but I would -- I would say that as the industry's involved [sic], different people have specialized in different areas, but that wasn't what was needed at the time. At the time, because literally no one had this, or no one had done it, we had to effectively figure out how the system would work from beginning to end. There was no alternative technology to say, for instance, encode an adaptive bitrate for a client in adaptive bitrate. Right? We had to invent the entire system from end to end to make it work.
Q. In the second paragraph under VP Operations on page 7, you state you were:

Instrumental in helping Move become the primary provider of streaming services for hundreds of programmers including Disney (ABC, ESPN), CWTV, Discovery, Fox, Televisa, ProSieben and Comcast Xfinity and enterprise organizations like the Democratic National Committee Convention.
A. Yep.
Q. And --
A. Yep.
Q. Listed a few --
A. Et cetera. Et cetera. Yep.
Q. You say that Move is the primary provider. Were there other providers?
A. I can't speak to what they were doing prior to coming to us, but I can tell you that Move was the technology of choice, the provider of choice for their premium consumer experience. So meaning Disney didn't have -- ABC wasn't the ABC.com player, and some other ABC player using another technology. It was predicated on Move Networks technology.
Q. And earlier you had mentioned a plug-in on the internet -- for the Internet Explorer?
A. Mm-hmm. (Witness nods.)
Q. Did these programmers, do they also require that plug-in?

A. Yes. But, I mean, at the time, we also were working on plug-ins for Safari and all the known browsers at the time, right?
So I'm not sure -- you're making me go back in time. Mozilla and whatever browsers were available at the time. But it did require the Move plug-in technology for it to work.
Q. And then the next paragraph, paragraph 3 under VP Operations, you state: Directed customer on-boarding, encoding, production and distribution of thousands of live streaming events, and so on.
Are these customers you're referring to in directed customer on-boarding, is that the programmers listed in the previous paragraph?
A. It's some of them, and others.
So, for instance, the Democratic National Convention was a unique thing, right? It was a live event. The Church of Jesus Christ did certain things.
ESPN certainly did individual games, and we developed ESPN 360, which is now ESPN.com.
But there were others as well. Don King was doing boxing over at -- Oprah had a book club event that we streamed live. There were all sorts of things that are not listed here.

Q. Do you recall when those companies started using Move's streaming platform?
A. No, but I can definitely say it was after I started, so -- because I was helpful in doing that.
Prior to me starting, again, it was just a proof of concept. There was technology a few places, but it kind of exploded around the same time.
I can tell you the first core production customers were Televisa, Fox, and Disney, in no particular order. We were working on them all at the same time.
Q. Do you recall roughly relative to when you started that these companies became customers? Was it a few years --
A. Months.
Q. -- after you started?
A few months?
A. And they were already talking. I mean, at that point, Steamboat Ventures had invested in us, which was Disney, or was in the round of funding to invest in us, so it was being discussed.
And that opened some other doors. And Televisa and Fox were also around the same time. In

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fact, within two weeks of me starting, we were -- we went on a trip down to Mexico to meet with Televisa and demonstrate the live streaming.

Q. So within a few months from you starting, Move went from a proof of concept to a functioning player and brought on these customers you just listed?

A. Yes. Within -- yeah, within several months.

But it's important to note the technology was still evolving, right? So there were certain things that were practical at the time and there were certain things that were still not practical, right? But they -- because of -- the technology was so advanced compared to anything else they had seen, they were willing to ride with us, right? It was something outside of anything they had seen, and so they're like, okay, you guys are doing something different here, and that's why it kind of exploded.

Q. So before you joined Move, there was only the proof of concepts. And after you joined, Move had a functioning product. Would you consider yourself an inventor on any of the ABR patents?

MR. DHANANI: Objection, scope.

A. No.

MR. DHANANI: Form. Yeah.

A. No. I mean, my name is not listed. Other people were writing the code. Other people had ideas about it. So I wasn't -- the people who worked on the patent actually reported to me. I knew what they were working on. I knew how the system needed to be implemented, of course, because we had to have lots of discussions around what was needed and what was missing and what we could do to improve the system. And so I submitted ideas of things we needed to do from a systems standpoint, but I didn't -- I wouldn't consider myself to be the inventor of the technology.

BY MR. ZIMMERMAN:

Q. Do you recall what ideas you submitted as things you needed to do from a systems standpoint?

A. I --

MR. DHANANI: Objection, form.

A. I wouldn't say it was -- for lack of a better term, it was a team effort, which is why I didn't feel like I needed to join myself in any of the patent -- like, it wasn't -- it wasn't my thing, if that makes sense. It was the company's thing. And so we would have discussions around things we could do to improve and to scale and to do things,

and they would, like, yeah. And we'd work on it, and then I was, like, oh, that's something that's now really useful, and it's something that is working in a way that has now unlocked another door.

And so it's kind of the -- just the process of invention. And it would overcome practical hurdles as we would do that, to keep it at the forefront -- like, to keep solving the next problem that nobody knew was there, because nobody had encountered it previously, if that makes sense.

BY MR. ZIMMERMAN:

Q. So were you involved in these discussions to overcome the practical hurdles?

A. Sure. That was my job was to make it practical, right? To help run and, you know, deploy the system.

Q. And was one of those practical hurdles the scalability of the product?

A. Sure.

MR. DHANANI: Objection, form.

A. But in general, yeah. We had -- yeah, it had to scale. We wanted customers. The people we were serving were using it at large scale, so we had to make sure that in order to service our customers, we could service them in a way that a company like

Disney would expect.

BY MR. ZIMMERMAN:

Q. And what was your role in addressing the hurdle of scalability?

MR. DHANANI: Objection, mischaracterizes and scope.

A. Making sure we had enough technology resources, servers, bandwidth, network, relationships with CDNs. Systems, reporting, all sorts of elements of the system that would scale in parallel to demand, right?

So just like any service -- right? -- if more people want it, you have to grow it. And if you run into reasons why it can't grow or why all of a sudden you've reached some theoretical or practical limit, you have to design to overcome that, which was what we constantly were doing. And a lot of those solutions I believe ended up in the patent. You can reference the patent for those. I mean, you're not going to itemize those, because they're -- I can't tell you exactly what and when, but I can tell you in general, it was an evolutionary thing, just like you would expect any new invention to be.

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BY MR. ZIMMERMAN:
Q. And so these discussions on addressing the hurdles, were those with Drew Major?
A. Some. Some with other developers inside the company. Some were with my team. Some were on -- some were -- when I say my team, I managed developers, but I also managed guys helping -- be system administrators or run servers or that type of thing.
So we also had discussed around enhancing software products. So ways to help people publish content to websites more easily. Design their video websites. Make it practical. Be able to insert ads. All sorts of things that became customer ask and requirements that we were able to fulfill.
I mean, it takes a lot to keep people like Fox and Disney and -- happy, and they were happy. They loved it.
Q. When they were giving you the customer asks that you were referring to, were those customer asks going directly to you?
MR. DHANANI: Objection, vague.
A. In some respects, yes. I was on direct phone calls with the customers and I had relationships with people in charge of technology

and some of these services. So yes.
But it wasn't exclusive. We had people in the company that were responsible for business development and sales and all sorts of things, right?
BY MR. ZIMMERMAN:
Q. So what was the process of implementing these customer asks into the software, into the products?
MR. DHANANI: Objection, scope.
THE WITNESS: Do you want me to answer?
MR. DHANANI: Please.
A. Okay. So the process was -- I'll give you an example. So it was referenced previously. The Democratic National Convention.
At the time, they got wind of what we were doing. Other companies had been exposed to our technology. I know people that talked to level three and their capabilities of being a CDN. They were trying to build out their own CDN. And we were invited to participate as the core ABR technology, to allow people to stream the Democratic National Convention. In -- what has that been? July of -- when was Brock's first thing? 2008, maybe. Of July

in 2008, I guess, or June, or somewhere around there. In the Pepsi Center in Colorado.
And there was a collaboration between level three, Microsoft who had done some Silverlight kind of design or website technology they were trying to push at the time, a company that was hired to design the experience for the DNCC, and then Move, who provided the plug-in, the technology, and everything else.
And that collaboration yielded the results that they wanted, but it wouldn't have been possible without Move to either use level three's network or to let Silverlight do its thing or whatever else.
In fact, my recollection is that Microsoft was hopeful that because Move had so many plug-ins out there because of doing some of these early things with Fox and ABC, that it might have been a vehicle to help them seed Silverlight in the marketplace. Because, at the time, they hadn't even invented an iPhone, so people weren't accustomed to downloading anything, which seems really odd in today's world, because everything is an app download, and that was one of the friction points when we talked to people is will people do this?

Well, to get to the video, they were definitely willing to do the plug-in. And so it was a mechanism where people are like, oh, you figured out how to do this, could we potentially piggyback on that. So that's just an example of how it evolved. So they wanted to use other technologies to try to play into that ecosystem. Or Fox wanted us to help them design their web experience so that it could look and feel a certain way.
And so those requests would come in, and they would say, okay, what could we do? And we would then help them either directly or indirectly, build JavaScript and HTML pages and things to help satisfy what they wanted in the marketplace, because most broadcast companies aren't technology companies, and so -- and because this was such new technology, they would come to us as not only providing the technology, but also as a professional service organization to help them extend their brand to the internet, to this new idea of streaming content over the internet.
BY MR. ZIMMERMAN:
Q. You mentioned frictions earlier. What are some examples of some of those frictions?
A. Well, friction, to me, in the context I

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was using it, is where a consumer may not understand, you know, what a browser was, or why they had to download something. And they might have been cautious of that. Wait, it's asking, I don't know who this company Move Networks is. They certainly knew who ABC was, but they didn't know what we were doing. And so there was some degree of education, either on the part of Fox or ABC or us; and then ultimately people figured out that, oh, this is the thing that's making my streaming work, right? But initially, talking to those customers, it was always like, well, will people do this, right? Will they be willing to download plug-ins. If they're not, then the technology isn't going to satisfy our need.

But it became evident that people were willing to do it to get to what they wanted to see. Like, it didn't -- if I wanted to watch Prison Break at the time on Fox, I'm willing to download the plug-in. If wanted to watch -- what was the Pushing Daisies or -- I don't know, all of these other shows on ABC, they're willing to download the plug-in, or ESPN to watch a football game. So it wasn't -- it wasn't the -- friction was a concern, but it was overcome in proof of concept and the success of

streaming for these entities, for these customers.

Q. Are any of those customers still using Move's platform?

A. I don't know that. I know that Sling certainly use's Move's platform, but that was an internal thing.

I know that -- I know -- well, I would suggest that they do indirectly, because Sling offers television channels from all those companies today. So it does in that sense, that ABC has their channels on -- in fact, when I was at -- working for Sling, or for EchoStar developing Sling, we -- there was a point in time where we had to try to onboard customers because, you know, the business of DISH was being a multi video program distributor, NDPD -- right? -- a satellite distributor of content, so they were an aggregator of all of this content.

And so in order to make it work domestically, people had to say, yes, I'm willing to sell you rights to my content, and then they all had to understand how to do it.

And at that point, a lot of people still weren't even streaming their own content. Because, again, they weren't technology companies. And so we had to make them comfortable.

Disney had progressed to the point where, when Move was kind of acquired, they went down a similar path, actually with people that worked with Move, but --

So their technology guy that was still there at the time, his name was Skarpi Hedinsson.

And he had worked at ABC when they were -- in the early days of working with Move. And so he -- so when it came time, we said, Skarpi, you know who we are, you know what we're doing, we're using this. And it became a much easier discussion because he was already very familiar with the technology, he knew who we were, he knew what we were trying to accomplish, and he was very comfortable. Even though it wasn't the business that they were trying to go down, it was something they were willing to support because of their previous experience with working with me and others and having an understanding of the technology underneath the covers of Sling TV.

Q. So is your understanding of those other companies' use of Move's technology is through Sling TV?

A. Of them continuing? Yes. I don't believe, and I don't know, but to my knowledge, I

don't believe DISH, or Sling, have the business model that Move was operating under before, where we were a B2B platform as opposed to a B2C, consumer platform, right?

I think they exited that largely when they acquired the rights to the Move technology, to turn it into the business they already knew how to operate.

I know that we were winding down Move legacy customers when I was there, and I don't know that they've reentered a wholesale platform business. I don't think they have, but I don't know.

Q. So you don't believe other companies are using Move's technology since --

A. I didn't say that. I think -- I will argue the entire industry is using Move's technology, because every other technology that I'm aware of that relates to ABR had knowledge of Move's technology, and/or developed technologies around that basis, the patents that we're discussing today.

So I would say everybody today that does adaptive technology in some way is using Move's invention. Whether it's Move selling that technology to them or DISH selling that technology

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to them, I can't speak to any of that, because I'm not there and I don't know.

But what I do know is that the evolution of the industry is -- has been predicated on the same basic concepts that Move started and invented in -- with ABR.

Q. What are those basic concepts that you were just referring to, that Move started?

A. Again, it's in the patent. Like, that's what -- that's what's there. But in general, what I've described, right? The ability to transcode and create adaptive technologies, a way to index those files, a way to adapt over non-guaranteed networks. The very idea of delivering video over -- over the top is what we would call it today, right?

So video to your home that didn't have to come from your home service provider. Right? Your ISP. You know, that -- you might have had an ISP connection, but your video all of the sudden was dissociated from your telecom or your cable provider. It made all of those things -- all of those things possible in a practical world. Starting up quickly, doing live.

The irony is we were able to do live streaming as easily as VOD streaming in the early

days; but in the United States, the actual rights were encumbered by programmers. They were all locked up because they were already making money on each other in other ways. And so Televisa actually became a big proof point, because they were the third largest, I think, at the time, content creator in the world, and they actually owned their own distributions. Like Channel 2, I think, was 50% of the Mexican market.

And so they were actually able to live stream their channels in Mexico; whereas, in the United States, people weren't able to do that because the channels had encumbered rights. And so we were able to prove out that you can just deliver a channel over the internet to a broad range of people in a substandard network, because Mexico network was not nearly as good as the United States network, from the very early days.

Like I said, weeks and months after I started, we were demonstrating this in Mexico. And they're like, done. And let's put my channel on. And let's do...

And so that's kind of how it involved.

And then later, the reason Sling was actually kind of -- it was first to market,

ironically, as a virtual MVPD, but it was late to market in terms of streaming, live streaming, because they were the first ones that got the rights unencumbered, that allowed Sling TV to be a domestic product that was similar in nature to a cable or a satellite package.

Q. So when you say that Sling was actually kind of -- it was first to market, ironically as a virtual MVPD --

A. It was first to market as a virtual MVPD, but not as a -- like, it was using Move streaming technology under the covers, right?

So it just couldn't -- it couldn't be a product offering to the marketplace because the programmers didn't have clearance for all their programming. So, you know, what good is a linear channel, say, for -- from Scripps, if only 50% of their content is cleared for IP distribution. Right? You can't have a channel that's like going black or doesn't have content on it, and so they had to go through the process of licensing or clearing the content, because they didn't produce all of their content. Right? No one does. They license it from studios and all sorts of things.

So that was why it was slow to market,

not because of any technology encumbrance but because of content market encumbrance.

Q. And is overcoming that market encumbrance, is that what made Sling TV unique in the industry?

MR. DHANANI: Objection, form.

A. No. It made -- again, it made it practical. I think it won some of the awards it did because it was -- because it was kind of first to market. It was the first time somebody said, oh, yeah, this makes sense to us.

But I would argue what made it unique is that it worked and it was predicated on that technology. Like, again, nobody that I'm aware of that has created a working system today to deliver video is not using fundamental concepts and ideas that were foundational to the technology we created at Move.

BY MR. ZIMMERMAN:

Q. And continuing to talk about Sling TV's player and offerings, does Sling TV, did it just repackage Move's player? Is that how the player was implemented?

A. Did it repackage it? I don't understand what you mean by that.

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Q. Are they -- when Sling TV's player was first implemented, was that just Move's player but under Sling TV's name?

A. Well, yes, it was the underlying Move technology that was acquired by EchoStar. But the technology, you know, continued to evolve, as I explained before. So -- and now we've gone from a browser-based plug-in to be able to be a downloaded app to working on other device -- like it -- it had expanded beyond a browser plug-in, right? It had had -- it had innovations of how to put in advertising and sell advertising. And adding innovations around how to package with digital rights management.

When -- you know, in the early days, when it was just ABC and Fox, they didn't as much -- they cared about securing their content from piracy, but they -- not as much as they cared about getting the direct revenue from it, right? When it changes, where somebody is licensing the content from them, it's all about securing their contents, right? And so there was all sorts of things that had to evolve for Sling to be a viable service.

But the technology and the enhancement of the technology was all of the system that had been

created and operated and originally deployed by Move or extended with further technology.

Q. Do you know if all streaming through Sling TV is done through that enhanced version of Move's player, Move's technology?

A. I have -- I can't speak to what they're doing today. I haven't been at DISH or Sling for, you know, eight years or something like that. I'd have to go do the math, but something like that.

So I can't speak to what they're doing today. I can tell you when I was there, it was very much -- and when it went to market in 2015, it was predicated completely on Move's technology.

Q. Did Sling TV ever use the native player's own devices?

A. I don't know that. I know that -- I know that there was value in using the Move player because, from the very beginning, we had analytics that were being sent back to help understand the quality of the user's experience, their bit rates, if it buffered, how much delay it had, what they were watching, how long content was streaming for. So that was a -- kind of a core element of -- when I say a core element, again, it was we build a player, and one of the things you can do when you own the

player is to be able to get realtime or near realtime data back to help you as a service person. And that is important. Because people go, well, how many people watched? And what was their quality of experience?

And we made representations that we could provide a good quality experience, and then we could show it by data. So in that sense, I don't know if they ever -- because player -- let me just say this: Player is a very broad term. Okay? So there's the player as it looks and feels to a consumer, there's the player as it's requesting files underneath -- right? -- these index files or HLS manifest file or M3U8 or whatever. It's all those type of things.

And then -- and the data underneath that, you know, the segments that I referred to previously and everything else.

So the point of it is that player is just a loaded term, right? So when you say player, are you talking about the design of the user experience? Are you talking about the ability to push a button? Are you talking about now a commodity kind of player that's in the market using some technology that is, again, in semblance to what Move created? Or are you talking about the actual Move player with its

original components? Because it -- at this point, some of the technologies have evolved a lot closer and continue to evolve, because they do it. And so it's like Move is not selling players anymore, right?

So I would find it hard for people to be using the actual Move player today, but they are using a player that is likely completely predicated on the things that Move invented, if that makes sense.

Q. Do you have any knowledge of Sling TV, as part of its streaming, using HLS?

A. Do I have what?

Q. Any knowledge of Sling TV as part of its streaming using HLS?

A. Not to my recollection. I don't believe we were using HLS at the time. We started -- so, no. I mean, my answer is no.

Q. Would it surprise you if Sling TV was using HLS to stream content?

A. Not particularly, because it's -- again, it -- the reason for that, to be clear, is because as it's evolved, it's -- it -- and it's become a general use thing since they proposed their standard, which, in my belief is largely predicated

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on what Move had shown them in meetings. I would say, now, that the industry has grown.

There's probably value in using some standard things, using some standard components, right? Because what has now become a broader industry standard -- because Move stopped distributing that kind of a thing, and so, as you look for technologies that interface easier with others, or DRM or other things, it -- that might be -- that might be plausible today. It wasn't plausible, you know, back when it originally launched.

MR. DHANANI: We've been going for another hour. Do you want to take a break?

THE WITNESS: Sure.

MR. DHANANI: Let's do it.

THE VIDEOGRAPHER: Going off the record. The time is approximately 11:36 a.m. Mountain Time.

(Recess taken, 11:36 a.m. to 11:51 a.m. MDT)

THE VIDEOGRAPHER: Returning on the record. 11:51 a.m. Mountain Time is the time. Counsel.

* * *

BY MR. ZIMMERMAN:

Q. Mr. Ericson, did you speak with your counsel during the break?

A. Just platitudes. We didn't talk about this at all.

Q. You did not talk about your testimony here today?

A. No.

Q. So before the break, you mentioned, I think it was ABC and Fox as two of the early users of Move's player during your time there; is that correct?

A. Uh-huh. Yes.

Q. Did those two companies use Move's players the entire time you were with Move?

A. Yes.

Q. So they did not stop using Move's player at any time while you were there?

A. I can't be certain of that. And the reason for that is because, from 2007 to '9, there was, obviously the economic downturn. And at that point in time, the cost of streaming over the internet versus the revenue they were able to make, the revenue diminished greatly. And so I can't remember if they continued to move -- to use Move's

technology or if they kind of slowed down or disconnected service for a while. But I know that, to my recollection, neither of them had moved to a different technology in that time frame.

Q. But it would not surprise you if, during that 2009 to 20 -- or 2007 to 2009 time frame ABC and Fox and potentially other companies stopped using Move's player?

A. It won't. We kept several customers, but I think it was more related to the downturn; and some people, because of the way Move's business model was set up, we would make revenue on the bits streamed. They kind of referred to it as a Move tax, because it was more than just the cost of the CDN and the video. That was because the premium video experience was costing them more than the revenue they were bringing in. But I don't -- I don't remember the timing of different customers staying on or exiting.

I do know by the time Move was sold, we had several customers that had exited because we were moving a different direction.

Q. So I am handing you right now a document that I would introduce as Ericson Exhibit 1.

(Ericson Deposition Exhibit 1

marked.)

BY MR. ZIMMERMAN:

Q. This appears to be a VideoNuze article dated January 20th, 2010, correct?

A. Mm-hmm. (Witness nods.)

Q. Are you familiar with VideoNuze?

A. I don't follow it, but I'm guessing it's a -- one of the rags that track video streaming and stuff.

Q. Can you read the title of this article?

A. Sure.

Fox switches from Move to Flash; ABC Plans Transition Too.

Q. Based on your prior testimony, do you have any reason to believe that that statement was not correct as of January 20th, 2010?

A. No. In fact, it was probably correct because we were sold to EchoStar in December of 2010. So I think we were communicating to people that we were moving in a different direction.

Q. Do you recall when Fox and ABC began using Move's player?

You testified earlier that the certain companies began using it in 2006. Did Fox and ABC as well, or was that later?

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A. Fox did. Fox was doing it for Fox.com in their MySpace player in -- by October of 2006.

I know that because they preempted major league baseball. The normal shows they would show for major league baseball and directed people to Fox.com. We helped implement that page for them, and MySpace.com.

Q. And do you recall for ABC, when they started?

A. ABC was working on it, but my recollection is that ABC took longer to launch their product, not because of the technology, but because they did a lot of the in-house design work for their user experience, with our assistance. But I don't recall if it was late 2006 or early 2007 that they actually publicly launched to consumers.

Q. So just to confirm, Fox began using Move's player around October of 2006, and ABC began using Move's player late 2006, early 2007; is that correct?

A. Uh-huh. (Witness nods.)

Q. And so if I can do my math correctly, that means that the two of them only used Move's player for about three and a half years; is that correct? A little longer than three and a half

years?

A. Yeah. But again, it was -- it was not so much -- it was because of the, kind of the economic turn and that Move, I think by January, had a new -- I don't know when she came, but had a new CEO that came from DirectTV, and we had notified customers that we were moving into the -- more towards a -- being a virtual MVPD. Move had aspirations to do that itself and had started talking to content publishers before Move was acquired by EchoStar, that ended up using Move to build Sling. So it ended up in the same point.

Q. So would you agree that Fox and ABC were not using Move's player for very long?

MR. DHANANI: Objection, form, mischaracterizes.

A. I don't know what very long means. Back then, it was -- I mean, three years was kind of a relatively long period of time, meaning it took -- it took a while for anything else to even become a viable option, right?

BY MR. ZIMMERMAN:

Q. Would you agree that Fox could provide the same or similar user experience as Move's player?

Or strike that.

Would you agree that Flash could provide the same or similar user experience as Move's player?

MR. DHANANI: Objection, foundation, scope.

THE WITNESS: Can I answer?

MR. DHANANI: Sure.

MR. ZIMMERMAN: Yes.

A. So I don't want to be argumentative, but if I continue to read this paragraph that you provided me: Separately, a Disney-ABC spokesman told that ABC.com will also be transitioning from Move to Flash in the coming weeks, though both will be used temporarily.

So I think they viewed it as a substandard solution. There was a company subsequently formed by some Move Networks employees, that was called Uplink, that continued to work with Fox and Disney to provide them a similar publishing system. They tried not to, in -- you know, take trade secrets they knew, but by that time, there were alternatives like HLS in the marketplace, and so I think this was a gap move until they ultimately both decided to go with Uplink.

BY MR. ZIMMERMAN:

Q. So would you agree that Uplink could provide the same or similar user experience to the Move player?

A. Not at that time, which is why they went on to -- why they went to Flash as a quick interim, so they didn't have to shut down their service. But they ultimately did something similar to what Move had been doing for them.

Move wasn't in the B2B business anymore, and so they had to move somewhere. If they wanted to keep their services running.

Q. So if Flash was a -- I think you said substandard --

A. I think that's why they said that was why they were -- qualified they were using it temporarily. I don't know that. I'm just reading what it says here.

Q. But if Flash was a substandard player, offered a substandard user experience, why would Fox and ABC and potentially others move to Flash even temporarily?

A. Because there weren't many viable options at the time that had -- that were working close to as good as Move was working.

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And Flash was -- Flash and Smooth and HLS were all attempts to mirror the things that had become public -- or become knowledge around what Move was doing.

Q. Can you turn to page 2 of this article?

About halfway down the first paragraph, it says: Last September, Move announced that Cable & Wireless has partnered with it to roll out IP-based TV services.

Would you agree, then, that Move was seeking to continue to offer its player to other customers then?

A. No. In fact, this is what I referred to before. Move hired Roxanne Austin, former DirectTV president COO -- new CEO, in turn brought in any executives during operations strategy and business, and they announced that cable and wireless had partnered to roll out an IP-based television services.

So I think what that's saying is what I referred to before, is that Move was running down a path of creating its own virtual MVPD service as opposed to continuing to be a B -- a business-to-business technology provider. Not that -- so it changed its business model, not its

technology. Right?

So just because it wasn't selling directly to consumers anymore didn't mean that the streaming technology in some way was invalid or whatever. They just stopped -- they wanted to change business course.

In fact, it says that. Move has been -- "is now in the delicate process of shedding existing customers as it migrates to its new model."

I hadn't read that, but now I did, and I think that validates what I just said.

Q. Do you have an understanding as to why Move was migrating to a new model?

A. Yeah, I do. I'll be really brief. As I indicated, there was a market downturn in 2007 to 2009. There wasn't enough ad inventory to support the revenue to offset the cost of over-the-top streaming. There wasn't people creating a lot of creative or ad inventory in the marketplace, because it was still relatively new, so we had more consumer demand for the streaming than they could monetize. Does that make sense?

Q. Mm-hmm.

A. So business models started shifting back to subscription business models; hence, the Netflix

and the Disney Pluses in the world, right?

And so Move realized that these companies that were paying to a premium experience to recapture ad revenue that was moving to the internet wasn't going to be able to capture the ad revenue that they thought it was because there wasn't enough ad inventory being produced.

And so Move, recognizing that, and that people weren't willing to pay the same way they were paying before, said, well, we have enough experience in doing what we're doing that let's start moving towards a subscription service ourself to make use of the technology.

And that's kind of why we started shifting our business model. It didn't mean that we were completely shutting the customers, but we signaled to everybody that we were moving, to be fair to the customers.

Q. So it was an issue at the time that --

A. It was economic. To be simple.

Q. So --

A. It was economic, both for Move and for generally people that were streaming in the industry. It was an unforeseen downturn.

The whole premise of the business model

initially was to -- I mean, you can develop a technology or you can develop a technology to fit a certain niche. Right?

And the -- it wasn't developing the technology for technology's sake. We were developing the technology to offer a service. And the service we were offering was the ability for program television providers to chase the revenue that was leaving broadcast and cable television and moving to the internet. So ads, you know, whereas, it was -- where everyone saw advertising was on television. Now we're becoming, you know, images and ads and billboards and banners on websites. And broadcasters had no way to monetize that revenue, because the video wasn't working well enough on those websites for anyone to watch to any long period of time, and it was basically postage stamp video without the invention of adaptive streaming, so a buffer. And it wasn't an experience, and they couldn't monetize it because it was a cruddy user experience.

And so Move said, okay, we've invented this technology. It allows consumers to actually watch as if they were watching on television, it's that good. And we went out to the marketplace,

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which were the people that were the premium providers and said we have a solution to let you recapture ad revenue that you are losing to websites by providing them a premium experience, and you can build your own website and you can have your own advertising and you can do everything else, and that was the premise.

So when the market downturn happened, and there was more consumer demand for streaming than there was ad revenue, that model started breaking down. Because they had the cost, but they didn't have the offset in revenue.

So people had to evolve their business models, including Move and including them.

So it wasn't a technology decision. It was a business decision.

Q. So can you turn to page 1 of this article, real quick?

A. Mm-hmm. (Witness nods.)

Q. Can you read the, kind of -- one, two -- the fourth paragraph to yourself?

A. Where it says unfortunately?

Q. Yes.

A. Unfortunately the company encountered a perfect storm. First, as CDN prices fell, content

providers considered Move an increasingly expensive-looking solution.

Which I referred to previously in my own comments as the Move tax.

"Since" -- "then, since Move's customers used a free, ad-supported model, as the recession crimped ad spending their ability to afford a luxury video player deteriorated. Meanwhile, both Microsoft (with Smooth Streaming) and Adobe (with FMS 3.5) both launched their own adaptive bitrate alternatives."

Yep, they did. Predicated on what Move invented.

And "between their ultra-competitive pricing and large embedded customer bases, Move was squeezed from all sides. Compounding matters, Move also conveyed mixed messages about its strategy and rumors about its disjointed product development process were widespread."

And that was because Move was signaling that it was going to -- if the industry didn't heal itself, that Move would need to find other ways for it to get revenue. And I think it -- I think that paragraph pretty well matches what I just have been telling you.

Q. And so that -- that second sentence, the one where you after referred to the Move tax, that states: --

A. "Content providers considered Move an increasingly expensive-looking solution."

Q. And so it was part of the reason --

A. Well, actually, it says, here that "as the recession" -- which I spoke to -- "crimped ad spending their ability to afford a luxury video player deteriorated."

Luxury meaning, in my view, best of class.

Q. And so that luxury video players that it's referring to --

A. That's the Move player.

Q. Is that the Move player?

A. Yep.

Q. And so --

A. Because this article is about the transition from Move, right?

Q. Right. And so this paragraph is in part referring to that these companies were switching from, for example, Move to Flash, Move to some other company's system, because at the time Move was --

A. It was economic.

Q. -- too expensive?

A. It was economic.

Q. It was economic?

A. It was economic decision. Like I said, it wasn't a technology decision. It was an economic decision. I think I explained it pretty well, and it says it here: The recession crimped ad spending.

And so because there was more demand, as I said before, than there was the ability to recover ad revenue, then they couldn't afford a luxury experience, so they went to a cheaper experience by companies that were much bigger and had much bigger investor portfolio than Move did at the time, that had -- what did it say? "Both launched their own adaptive bitrate alternatives."

But they didn't have adaptive bitrate when Move started. No one had launched adaptive bitrate when Move started. It's predicated on Move.

Q. Okay. You can set that aside for now. I think we're going to return to your resumé, which --

A. And I hadn't even ever seen that article, so...

Q. So let's move up to page 3 of your resumé -- or your CV, okay?

A. Okay.

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Q. And just below the middle, it says: EchoStar Corporation.
A. Sorry. I'm a slow page turner. Okay. EchoStar Corporation?
Q. Did you -- after Move, you were recruited to work at EchoStar? Is that correct?
A. Yes. So as EchoStar acquired the assets of Move Networks, I was one of a couple of two or three -- I don't remember what Jason ended up doing -- three executives that moved from Move Networks into EchoStar.
The company had been downsized by the time of its sale to really just the technology and a few employees.
Q. And then if you turn back to page 6, it says: DISH Digital VP Operations, July 2012 to July 2014.
Was that your first position at EchoStar?
A. No. My first position was vice president of operations at EchoStar. It was under what was called the advanced technology group. Roger Lynch was the executive vice president of it.
What this is saying is, in July 2012, they formally created a DISH network EchoStar GV in order to focus on launching Sling TV.

So EchoStar had the Move technology, and what we were continuing to build, and DISH had its content rights. And so as it evolved, there were international channels that were put on the platform first, and that was called -- I can't even remember what it was called. DISHWorld.
And then, as rights came clear for the domestic channels, it was rebranded as Sling TV.
So I was effectively working -- my paycheck came from EchoStar the whole time. It was just a JV between the two entities for that period of time, designed to focus on creating this service.
Q. So just going back to the transition a little bit, do you recall why Move sought to sell the company?
MR. DHANANI: Objection, scope.
A. The reason for it was the initial investors, at least one of the major investors, was -- as I understand it. This is just my recollection -- was struggling with multiple investments and they wanted to recoup the revenue. They didn't have an appetite to continue to invest in Move.
And because of the downturn and because it was taking a long time for Move to secure rights

to become its own MVP at a price that made sense, Move effectively was put up for sale so that those investors could recoup their investment, because they didn't have an appetite for more money, and the economic downturn had made it look like an uncertain horizon. Right? Which is kind of what this article referred to. So that's -- that's kind of why it ended up where it did. And -- and then, with this idea that we were already moving in that direction.
So ironically, or because of it, EchoStar effectively ended up doing what Move was moving in the direction of trying to do itself, but it had obviously a lot bigger pocketbooks and could sustain investing for that period of time that it took to clear the rights. So that's kind of how it worked.
BY MR. ZIMMERMAN:
Q. You said that some of the investors did not have an appetite for further investment.
A. Putting in more money, yeah, because of the economic downturn. There was a recession from 2007 to 2009.
Q. Were there any other reasons beyond the recession that investors may not have had an appetite for further investments and Move Networks?
MR. DHANANI: Objection, speculation.

A. Again, I'm speculating. I don't know for sure. My understanding was it was because of the economy and the fact that Move was having to change its business model or get more money so that it could compete with bigger companies willing to basically give away a similar technology in hunt for customers. So -- or to keep customers, or to provide an alternative to customers.
So it was -- again, it was just an economic decision, like any small company, right? That's trying to stay alive.
MR. ZIMMERMAN: It's a little before 12:30, but now might be a good time for --
MR. DHANANI: Sure.
MR. ZIMMERMAN: Does that work for you?
MR. DHANANI: Sure. I was just going to ask if I could stand up while I was talking.
THE VIDEOGRAPHER: The time is approximately 12:22 p.m.
(Recess taken, 12:22 p.m. to 1:20 p.m. MDT)
THE VIDEOGRAPHER: We are back on the record. 1:20 p.m. is the time.

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Counsel.
BY MR. ZIMMERMAN:
Q. So, Mr. Ericson, before we went on our lunch break, you had mentioned that a few employees of Move had left to start another company. I believe it was -- was it Uplink or U Link?
A. Uplink.
Q. Can you describe what Uplink did?
MR. DHANANI: Objection, form.
MR. ZIMMERMAN: I'll rephrase that question.
BY MR. ZIMMERMAN:
Q. Can you describe the technology Uplink was implementing?
A. Yes. The -- in general, I wasn't part of it, so I couldn't tell you what they did. They were trying to fill the void left by Move, and so they provided a content management, a rudimentary content management system to store and organize video for distribution or live video. Some metadata associated with that. And a mechanism of using a -- and I believe they used HLS, I don't know, to stream content for a consumer experience.
Q. So was Uplink's product a competing product to what Move Networks had been offering?

MR. DHANANI: Objection, form.
A. It would have potentially been, but they didn't have the product to offer until after Move had decided to transition into another business. Does that make sense?
So they filled the void of being a potential B2B platform provider for companies like ABC or Fox after Move started pivoting their business model.
BY MR. ZIMMERMAN:
Q. And Uplink was, you said, started by former employees of Move, correct?
A. Mm-hmm. (Witness nods.)
Q. Were these engineers that had been working on the Move player?
A. Yes. Yeah, they were mostly engineers.
Q. Do you know if anyone at Move stayed in contact with any of these engineers when they went to Uplink?
MR. DHANANI: Objection, form.
A. I think obviously on an interpersonal basis. They were friends.
I don't believe there was a lot of professional overlap, meaning those that were left at Move were doing something and those that were

trying to start Uplink were trying to do something else. So, meaning, you know, fill this void that Move had kind of left, because they had -- they knew some of the same -- well, they were previous clients of Move, right? So...
BY MR. ZIMMERMAN:
Q. Did anyone at Move have a concern that Uplink was providing its services to former clients of Move Networks?
MR. DHANANI: Objection, scope and form.
A. I know there was a discussion about whether it was competing and how it may or may not have infringed, but we also knew that they started with things that were readily available rather than trying to rebuild Move's technology, if that makes sense.
So they didn't go to say, I think I can go build another ABR distribution platform. They went and said, I think I can provide another publishing and distribution platform but using, at -- now at that point, a different ABR protocol.
BY MR. ZIMMERMAN:
Q. What do you mean by things that were readily available?

A. Well, by that time, HLS had evolved. Smooth Streaming had evolved. Those type of things.
I mean, I think that's why this previous article that was cited mentions a couple of those alternatives.
Q. And what do you mean by a different ABR protocol?
A. What I mean is that -- so referencing back to whatever this exhibit was, the protocols that, you know, things that were mentioned in here like -- I don't know what -- exactly what was mentioned here.
They're transitioning to -- here they were transitioning to Flash. They could have as easily decided to try to use HLS or they could have just as easily tried to use Smooth, although Smooth, I think, at that point, was known to not be as good.
I mean, that's why it's not in the marketplace now.
Q. And just to confirm, by "this exhibit," you were referring to the exhibit marked --
A. This Fox, yes.
Q. The exhibit marked Ericson Exhibit 1?
A. Yes.
Q. Okay. Perfect.

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So you would agree that HLS, Flash, and Smooth are different ABR protocols, correct?

MR. DHANANI: Objection, mischaracterizes, form.

A. I would say that they are -- were introduced into the marketplace as different protocols, but I would say that the way they work is substantially similar to the way Move's invention worked.

BY MR. ZIMMERMAN:

Q. What do you mean by substantially similar?

A. Again, deciding how to break up content into segments for audio/video, being able to request that content as get requests, being able to encode the content in different roams of quality or types of quality, the ability to have a timeline index to those files, among other things. There's lots of other things that the Move -- that Move was doing that are referenced in the patent.

Patents, I guess I should say.

Q. And so is "substantially similar" not the same?

MR. DHANANI: Objection, form.

A. Well, I mean, it depends on how you

determine "the same," right? Is it enough to rename manifest files? Enough to say these are segments versus chunks versus streamlets? I mean, it's -- at some point, you're defining a methodology to do something similar to allow the network to adapt to the conditions of the internet, or the last mile, or who -- you know, the consumer's experience at that time.

So in that sense, they're substantially similar. Like, that wasn't anything adapting prior to Move, and the solution that they -- that Apple proposed as HLS was, I believe, a direct relationship to discussion that is -- took place between Disney as an investor and Apple, and things that were disclosed at that time. But -- and so they decided to release it as a potential solution to the problem as opposed to trying to directly infringe on what Move had invented.

Microsoft became exposed to Move just before or prior to the Democratic National Convention and things. They recognized what Move was doing. They couldn't do it at the time, which is why it used the Move player, because they didn't have a method of doing that. And so -- but then, surprisingly, you know, I don't know what the exact

time frame was, eight, nine, ten months later, they release their own adaptive thing that's substantially similar to what they discovered about the Move protocol in relation to having a relationship with Move.

BY MR. ZIMMERMAN:

Q. So turning back to Uplink, you said that there was a discussion about whether they infringed; is that correct?

A. We were -- not -- not in particular. So let me rephrase.

We knew that they were trying to fill the void. We knew that they were trying to, you know, deliver a new solution from the ground up. We also knew that they were hypersensitive to the fact that Move had filed patents. So they wanted to not directly use code or things that they used at Move, which is why they turned to things that had been largely developed now in the industry as potential alternatives to the Move player, if you will. But not -- but because it was so close, they knew how to use those things, if that makes sense.

Q. So at that time, did you develop an opinion of whether their product infringed --

A. No.

Q. -- Move's patents?

A. No.

MR. DHANANI: Objection --

A. Sorry.

MR. DHANANI: Just give me a minute to object.

Objection, form, scope, and calls for expert opinion.

A. So in my understanding and from my perspective, we didn't develop an opinion, but we also didn't take any action. It was kind of a -- it was a concern, but it was a nonconcern, meaning if they hadn't tried to fill the void for Fox or ABC, somebody else would have come along and tried to fill that void using something similar.

So we basically said, we're not going to stop them from trying to fill a need, and we didn't have an opinion on whether or not we should help them, because we weren't -- at that point, we had made a decision not to be a competitor, right? Because we'd moved into this MVPD, try to be your own content distributor space.

BY MR. ZIMMERMAN:

Q. So is it your testimony that an MVPD is not a competitor to a product like Uplink?

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MR. DHANANI: Objection, mischaracterizes.

A. It depends on what you're talking about. If you're talking about using competitive technologies or something that is a technology that was similar foundational based on what Move had invented, then in that sense, they were potentially technological competitors, but not from a business standpoint.

The business itself was not in the business of providing B2B streaming for other providers. So if Disney wanted to continue delivering their channel, they could continue to deliver their channel directly to a consumer. And if Sling or some MVPD wanted to create a product that looked like a satellite or cable package, they could do that, which was basically taking somebody's channel and repackaging along with others.

From a marketplace standpoint, yes, a consumer might choose one channel versus many channels, but they're all using what I believe was the basis of technology that Move invented underneath, and so it depends on where you want to define what a competitor is, I guess.

* * *

BY MR. ZIMMERMAN:

Q. So at the market level, would an MVPD system be a competitor to a system like Uplink?

MR. DHANANI: Objection, asked and answered.

A. Again, I don't know all the business Uplink was in. Theoretically, the platform could have allowed somebody to create a competitive service offering similar to what Move and Sling were trying to create. But to my knowledge, Uplink was providing a platform to allow others to stream content directly, their content directly to consumers.

So Uplink wasn't the one that owned the service. Disney or Fox did. Right? Whereas, Sling was a service directed towards a consumer, to give them a different product offering.

Q. Do you have any belief as to whether HLS or Smooth infringes the ABR patents?

A. My personal opinion is they do, based on knowing -- is they do. I'll just leave it at that.

Q. Has Drew Major ever told you that HLS infringes the ABR patents?

MR. DHANANI: Hang on one second. Let me just read that question again.

[Document review.]

Objection, foundation.

A. In simplistic terms, Drew didn't need to tell me. I know how the system works. I helped make it practical, and I know how people are implementing HLS, or DASH, or Smooth, or anything else; and from my perspective, they are -- those other protocols wouldn't have been developed without the knowledge of what Move had tried to invent and did invent.

BY MR. ZIMMERMAN:

Q. I want to return to your CV for a little bit, if that's okay. Exhibit 2089.

And so at the bottom of page 5, top of page 6, it says from July 2012 to November 2015, you were a Founding Executive, VP Operations.

Is that correct?

A. Do you mean page 4 and 5?

Q. Bottom of page 5, top of page 6.

A. Mine is page 4. It says: Sling TV 4 years 10 months Founding Executive, VP...

Q. The bottom of the next page.

A. Oh, Founding Executive, VP of Operations. Okay. I've got ya. Okay. Yep.

Q. What were your duties in this role?

MR. DHANANI: Objection, asked and answered.

A. I do believe I've answered the question before, and I think it's what it states here.

But I continued to be responsible for the platform that was already in operation, to continue to make improvements to that platform, to continue to oversee the people that were operating that platform, and continuing to help release new code and inventions and things related to the platform and the service that EchoStar and Sling were attempting to develop.

BY MR. ZIMMERMAN:

Q. So I just want to clarify that earlier we were talking about your position as VP operations for DISH Digital.

A. Mm-hmm.

Q. Did your duties under this new role change at all?

A. No. Basically the -- it's -- if you see, the dates overlap. It's semantics, because I was still employed by EchoStar, even though I was working for the JV. So -- and the JV was the one responsible within EchoStar and DISH to try to pull

together a service offering that became Sling TV.
Q. And then if you turn to page 4, the bottom of page 4.
A. Mm-hmm. (Witness nods.)
Q. It says from: November 2015 to April of 2017, Founding Executive, VP Technology & Architecture.
A. Mm-hmm. (Witness nods.)
Q. What were your duties under this role?
A. So founding executive is the same role, as I was still doing the same thing; but the difference was I had moved out of just being responsible for operations of the platform and was helping to direct the implementation and some of the architecture for Sling TV specifically, right?
So enhancing the platform, releasing things that related to the future offering, user experience, those type of things of what was Sling TV.
Q. And then on page 3, just over halfway down, it lists: VP Technology Architecture & Business Development, Executive GM from November 2015 to August 2017.
A. Same role. The difference was a lot of the Sling development operation took place in

American Fork, Utah, and I became the -- basically the general manager for the office. Right? I was functioning in that role and continued to function in that role. They needed somebody. And I was largely responsible for the employees, so it just made sense that I continued to do what I was doing and kind of just run the office, if you will, making sure that employees got hired and employees got fired, and da, da, da.
Q. And below that, it lists: VP Operations, Executive GM, December 2010 to November 2015. Just to clarify, that was one of the overlapping positions?
A. It's all overlapping, yeah. It's just -- it's -- the whole reason for this is to try to delineate between EchoStar as the technology company and the work within EchoStar as part of DISH to develop and release Sling TV. Right?
So the reason I tried to delineate it is because work was sometimes associated to my larger role at EchoStar and sometimes specifically related to the nature of getting ready to launch Sling TV.
Q. Do you still hold any positions at EchoStar?
A. No. Well, let me qualify. Positions in

terms of employment position?
Q. We'll start with that, yes. Do you hold any employment position at EchoStar?
A. No, I don't.
Q. At the top of page 3, it looks to say that you are an "Executive Technology, Media, Telecom, and SaaS Consultant."
A. Mm-hmm.
Q. Is that related at all to EchoStar, Sling TV?
A. No. So -- hold on a second.
[Document review.]
A. Yes, in the line above it, it says senior Exec/VP at Sling, EchoStar, Move is just a reference to the experience below. That Telecom SaaS product consultant is the role. I was open to consult to people, but I was not consulting and have not consulted for Sling TV or EchoStar since I left.
BY MR. ZIMMERMAN:
Q. Okay. You can put your CV aside. We're going to move on.
Now I'm handing you a document that has been premarked as Exhibit 2090.
[Document review.]
* * *

BY MR. ZIMMERMAN:
Q. There is your declaration of the IPRs, correct?
A. I believe so. It looks like.
Q. And if you turn --
A. Yep. I signed it, yep.
Q. That was my next question --
A. I anticipated it, so I looked at the back page. Sorry.
Q. Just to confirm, on page 8, that is your signature, correct?
A. Yes, it is.
Q. And you signed this declaration under penalty of perjury, correct?
A. Yes.
Q. And so your signature on the last page is affirming that all statements are true and correct?
A. To the best of my knowledge, yes.
Q. We've discussed earlier that you did not personally draft this declaration; is that correct?
A. Correct.
Q. But this declaration is the declaration you provided in support of DISH's patent owner response in each of these IPR proceedings; is that correct?

A. Yes.
Q. And if you look back at the last page of this declaration on page 8, you executed your declaration on August 6, 2024; is that correct?
A. Yes.
Q. Do you recall how far in advance of executing this declaration you were first contacted about providing a declaration?
A. Not exactly, no, but it was within days. I mean, I don't know exactly.
It was basically I got a phone call that said are you willing to provide a declaration based on your prior thing, and I said, I guess. If you want -- like, if I need to, then I'll do that. And that's how I was contacted.
Q. Do you remember who contacted you?
A. Ari and Zach. Ali and Zach, I mean. Sorry.
Q. So if you look to page 2 of your declaration?
A. Mm-hmm.
Q. Paragraph 2 states: I am not being compensated for providing this declaration, and I have no financial interest in the resolution of this matter.

Previously, you testified that you were not being compensated for the declaration or your testimony today; is that correct?
A. Yes.
Q. Do you have any financial interest in any of the ABR patents?
A. No.
Q. Do you have any stock in any of the DISH companies?
A. Only that which I invested in the retirement fund while I was there.
So my own personal investment into the 401(k).
Q. And if you go down to paragraph 4, you stated: I have previously provided sworn deposition testimony regarding the development, testing, and use of MOVE's adaptive-bitrate streaming technology between 2005 and 2007 in In Re Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same, investigation No. 337-TA -1265.
That's talking about the prior investigation against Peloton, iFit, and Lululemon; is that correct?
A. I believe that was who the responses were. I don't know exactly.

Q. What was your role in that ITC investigation?
A. Just being deposed. That was it.
Q. Do you recall why you were being deposed?
A. I was being deposed so that I could testify to some of the same things that I'm being asked today.
Q. Do you remember why you were asked to testify as to those topics?
A. Presumably because I knew, based on my career experience, kind of where things -- the timeline and things that took place as part of the development of the -- Move's platform.
Q. Do you remember who won in the ITC investigation?
A. Yes. My assumption is that DISH won in that proceeding, whatever winning means in that.
Q. Do you recall when you had heard that DISH won in the ITC investigation?
A. I do not, but I did hear that.
Q. Do you remember how you felt when you heard the news that DISH had won in the ITC investigation?
A. Yeah. I felt that the hard work that we'd done -- I had done was justified. I mean, that

it was what I perceived it was, which was a technology that substantially changed the media industry.
It feels good to be part of that.
Q. And in paragraph 5 of your declaration, you state: I understand that DISH submitted an excerpt of my deposition testimony in this proceeding as Exhibit 2063. I have reviewed Exhibit 2063 and certify that it is accurate. I incorporate those statements fully into this declaration.
Do you remember how many times you have -- you reviewed Exhibit 2063?
A. That's my previous -- to clarify, that's my previous deposition?
Q. Yes, that is your -- Exhibit 2063 is your previous deposition testimony.
A. Okay. So I've -- I read it once for accuracy after the proceeding, and I've read it once subsequently.
Notwithstanding rereading this a couple of times, right? Because this is an excerpt from it.
"This" meaning, for you, the declaration.
Q. In paragraph 5, what do you mean by

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"accurate"?
MR. DHANANI: Objection to form.
A. For me, accurate means true to my recollection.
BY MR. ZIMMERMAN:
Q. So you're certifying that the transcript of what you said was accurate; is that correct?
A. Yes, that was true to my recollection.
Q. And Exhibit 2063 is a -- an excerpt of your deposition transcript. Did you review your full deposition transcript from the ITC investigation?
A. When?
Q. Did you review the full deposition transcript from the ITC investigation prior to executing this declaration?
A. No.
Q. Did you review the full transcript prior to today's deposition?
A. Yes.
I read it just to make sure I knew what I had said.
Q. And then if you turn to paragraph 6 of your declaration. You said you have 18 years of experience in video streaming.

A. Mm-hmm.
Q. And in paragraph 7 on the next page, you state: Of my decades of experience in the streaming field.
Can you clarify that?
A. Yeah. I probably misspoke. Decades meaning one plus decade, I guess. Close to two decades. 18 years is, in my mind, close to two decades.
And by this time, it's certainly that way.
Q. And then in paragraph 8, you mention an Emmy that Sling received.
A. Uh-huh.
Q. You mention the Sling Emmy, citing Exhibit 2013; is that correct?
A. Yes.
Q. Right now I am handing you an exhibit premarked Exhibit 2013.
Did you review Exhibit 2013 prior to signing your declaration?
A. I was aware of the press release. I wrapped -- prior to my declaration, that's why I included it on my CV dating back to 2021, because I had people still at Sling, and it was kind of big

news when they won the Emmy for adaptive streaming.
Q. Did you review this press release between receiving the draft of your declaration and executing your declaration?
A. Yes, I reviewed it yesterday.
Q. Yesterday was not before executing your declaration, correct?
A. Oh. Sorry. No, I did not review it before that. Sorry, I apologize.
Q. That's okay.
A. I'm getting tired.
Q. Understandable.
Do you recall when this Emmy was awarded to Sling?
A. Just what it says, in the 21st annual Emmy. So I guess this is right, 2020.
Q. And the ABR patents were first filed by Move in 2005; is that correct?
A. Yes. I took -- I believe so.
Q. And Move did not receive an Emmy related to the ABR patents; is that correct?
A. Yes. I don't recall Move ever even trying to submit for an Emmy.
Q. And Move was not awarded an Emmy when it began providing services for companies like ABC and

Fox; is that correct?
A. Move, no, we didn't -- again, I don't recall Move ever doing that.
However, I do believe -- I recall that ABC won an Emmy -- I can't remember what exactly it was for, but it was related to their product. I think it was the ABC.com that was obviously using Move's technology -- underlying technology at the time they won the Emmy. But I don't remember what the actual award was. I did see that Emmy when I was in Burbank.
Q. So Sling's Emmy that was awarded in 2020 was not awarded for the Move player; is that correct?
MR. DHANANI: Objection, form.
A. So my understanding is it was. And the reason for me saying that is Sling launched in February 2015, but...
As previously discussed, all of the technology underneath that made Sling possible was Move's technology. And so what it did is they just named it. I think it says in paragraph one, two, three, four: A pioneer in adaptive bitrate streaming, Sling TV launched February 2015 as the first streaming service to deliver live television

over the top.

I believe that is stating Sling, as a service, was the first to launch; but the pioneer in adaptive bitrate streaming came through the Move acquisition.

BY MR. ZIMMERMAN:

Q. So if that's the case, why wasn't Move awarded an Emmy in 2005?

A. Move didn't apply for an Emmy. Move didn't -- like, Move wasn't asking for an Emmy. And I -- like, we weren't -- we were a -- largely seen as a video distribution technology. We -- my understanding is we weren't -- like, we never tried to go out and do that.

In fact -- yeah, we were basically helping other people's products, but we -- I can't answer it other than I don't recall ever even trying to apply to win an Emmy.

Q. So is it your understanding that you needed to apply for an Emmy in order to get one?

A. Yeah, that's my -- my experience would be that they take consideration for content and other things, and they consider the viability of those and they provide awards. That's why things are nominated but not awarded.

So it's a nomination process. Somebody has to decide what gets nominated; and in most cases, people submit for nomination, that I understand.

Q. But another company could -- or strike that.

Another company or individual could nominate someone for an Emmy; is that correct?

MR. DHANANI: Objection, speculation.

A. I don't know that for sure. I'm not -- I'm not in that world directly.

I would -- never mind. I would be speculating, so I'm not going to say anything.

BY MR. ZIMMERMAN:

Q. Okay. I want to return to your declaration --

A. Okay.

Q. -- for a minute.

In paragraph 9 on page 3 still.

A. Mm-hmm.

Q. You state that you: Helped MOVE develop the first adaptive streaming Online Video Platform ("OVP") and OTT content distribution platform, which laid the foundation for programmers such as ABC, ESPN, FOX, CWTV, Discover -- Discovery, Televisa,

and more to be able to offer videos via streaming.

A. Mm-hmm.

Q. To clarify, by "programmers" here, do you mean the content providers, not software programmers; is that correct?

A. That's correct.

Q. And what do you mean by laid the foundation?

A. Provided the platform. They had the content. They were the programmer, right? The content owner. But they didn't have a way to stream content reliably to consumers without the Move platform and technology.

Q. By the early --

A. So that's what I mean by the foundation.

Q. By the early 2000s, there were other types of video streaming than an online video platform, correct?

MR. DHANANI: Objection, foundation.

A. There were people that were trying to figure out how to stream content and other solutions in the marketplace, yeah.

BY MR. ZIMMERMAN:

Q. So not all video streaming is online video platform or OVP; is that correct?

A. So OVP is a term that was created later that kind of meant the system of streaming. There were other people that had tried to create streaming systems, or streaming technologies, but they weren't adaptive in nature. And it's why there was so much buffering and why videos were post guard and why there was delays in starting videos, which is why they were ultimately not successful.

Q. If videos were streamed locally over, for example, a local area network, a LAN, rather than the internet, would that be an OVP streaming?

MR. DHANANI: Objection, incomplete hypothetical.

A. It's not a -- so it's -- it's -- I'm not aware of an OVP or provider that has built a localized system to run over a LAN, right?

There are other technologies that allow video to be streamed over a LAN, or to be delivered over a LAN; but, to my knowledge, none of them were doing so using adaptive technology. You know, they were -- they were using other technologies. They might have been trying to use UDP or they might have been trying to use other things, but they were not using adaptive technology within those networks.

* * *

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BY MR. ZIMMERMAN:
Q. And then moving to page 4, in paragraph 11, you state: Through my decades of experience in the field, I also have substantial familiarity with the industry, including the technical and operational features of other products services.
What do you mean by industry here?
A. I think I mean potentially two things. The first is just technological innovation. Kind just like the tech industry in general.
And then I think in this context, I was talking about kind of the evolution of video over the top, or over-the-top streaming.
Q. And how did you develop this substantial familiarity? Was it through your experience in the field? Anything else?
A. It was -- yeah, it was joining a company that was trying to -- trying to deliver video this way. Helping to figure out how that happened. Helping to figure out why other technologies had limitations. Selling the ideas of using Move's technology to potential partners like ABC and Fox, demonstrating it, explaining how it worked. All of those things led to why I could say this is better

than that, or this is why you want to do Move or this is how it's working, and then it was just demonstrable. It was easy to go in, like I said earlier, to someone like Televisa and show them, on a Mexico -- a network in Mexico, how their content was playing out live. And that's pretty awe-dropping, at the time, experience for these people, because they hadn't ever seen any technology being able to do that.
Q. And when you say the technical and operational features of other product services, what are those other product services?
A. Things that I mentioned here, like what eventually became HLS or DASH. Things that were tried before, like QuickTime and RTP delivery and other attempts at progressive download, other attempts at trying to figure out how to deliver video.
Q. During what time periods are you referring to in this sentence?
A. My practical experience with the streaming industry began when I moved from telecommunication and IP to what Move was doing, right? Then I -- like anybody, I had experience trying to watch a video over the internet, or

things, and so it naturally became apparent what was working and what wasn't working and why Move. That's one of the things that drew me to the company, right? Is that I had had the pausing, buffering, stalling experience that most consumers were having at the time, and Move provided an anecdote to that experience.
Q. Given your familiarity with the industry, were you familiar with a product developed by IBM called the Bomba Media streaming system?
A. No.
MR. DHANANI: Objection, scope.
A. I wasn't, no.
BY MR. ZIMMERMAN:
Q. And then later in that paragraph --
A. Which paragraph?
Q. Paragraph 11 still.
A. Mm-hmm. (Witness nods.)
Q. You state: For example, while I was the Vice President of Operations at EchoStar, I oversaw all of the company's technical operations and productions processes, including the encoding of content, the packaging of transport streams into formats compatible with various streaming standards (e.g., HLS, MPEG-DASH, MOVE's QVT/QMX, DRM), the

distributing of content, the changing/releasing of any software, and more.
Are you stating that each of those is a different technical operation and production process?
A. I'm saying -- I guess what I'm trying to say here, and I saw compatible and should have been comparable, but it doesn't matter.
What I...
Let me just read it again.
[Document review.]
A. So basically I was just referring to what I described previously as understanding how to deploy, make operationally -- operational end-to-end system to deliver streaming.
BY MR. ZIMMERMAN:
Q. Okay. And in this sentence, what do you mean by the encoding of content?
A. Two meanings. It probably should have said transcoding. But basically the process that I described previously, of receiving content, encoding it, using some type of encoding algorithm, compressed -- compression algorithm, AC audio or MPEG-4 or whatever.
We started out with VP6, I think.

Anyway, the point is, that wasn't as germane to it as being able to define the quality profiles, if you will, of what we wanted to deliver and the -- creating the video segments, its objects, and publishing those to the origin server. So it's largely what I described before, and packaging, creating index files. And sometimes they needed to be wrapped in digital rights management. So, because we were protecting content, those type of things.

Q. So you mentioned being able to define the quality profiles. What do you mean by defining quality profiles?

A. I think I answered that previously, but what I mean by that is determining the size of the objects that need to be requested. So defining how many -- how much data would be assigned to audio, how much data would be assigned to video, so, therefore, how large or small the files might be. In any number -- range of profiles, quality. So smallest to biggest. For a certain amount of time. That would allow the client to request files appropriate for the network that it was trying to play over.

Q. So determining the size of the objects

that needed to be requested, you said that was -- previously, you had explained that the encoding was germane. So is the determining the size of the objects that need to be requested germane?

MR. DHANANI: Objection, form.

A. Yeah. I mean, so let me -- maybe I'll try to be more coherent.

There's no limitation to the number of profiles you could create or the size of the profiles outside of being able to create new bits that don't exist, right?

So I can't create something greater than HD if all I have is HD to work with as an input. Okay?

But knowing that I'm trying to get to HD quality, I can define something as a 16-by-9 aspect ratio, and HD in terms of number of pixels, and AAC audio or AC3 audio in terms of surround, or whatever.

So you would have something that was premium experience and then you recognize that somebody in their home only has one megabit of bandwidth, and overtaxed computer, and there's ten other devices competing to bandwidth on their ISP connection, and so you create profiles that are

less -- much less defined in terms of resolution and audio quality, because the purpose -- the overarching purpose of AVR is to deliver a continuous video experience without stalling and buffering.

So even if a frame looks a little more fuzzy -- or segment than the other segment, people can still follow the audio track, they can still visually follow the video. It will adapt up and down as necessary, but they can still watch the content in its entirety.

BY MR. ZIMMERMAN:

Q. And then when you state: The packaging of transport streams into formats compatible with various streaming standards (e.g., HLS, MPEG-DASH, MOVE's QVT/QMX, DRM), why would Sling TV need to package its transport streams into formats such as those?

A. And that's, I guess -- and this is true. I don't know if I meant comparable or compatible. But either way, it doesn't matter.

When I say packaging of transport streams into formats compatible with those standards, it was to be able to potentially package to other emerging standards.

So Move had its QSS file. A TS file is analogous to a QSS file. Transport stream, segmented transport stream, and so all it -- all I was trying to speak to is the fact that they're substantially similar enough that a different player could be used in a similar way to how Sling TV and Move was using their players, if that makes sense.

I don't think it's that they have to. I think you asked me earlier -- sorry.

I think you asked me earlier if I was surprised or something to the thing of they were using HLS or something, and I think my answer was, no, it's evolved, just like the Uplink people. So why they choose to use what they chose to use, I don't know now, but I can tell you that at the time I was there, they were using Move because that was the only thing mature enough to use.

MR. DHANANI: We've been going another hour. Do you need a break? A short one?

A. I don't know. How long are we going to keep going?

MR. ZIMMERMAN: Can I finish my line of questions on this paragraph?

THE WITNESS: Sure.

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MR. ZIMMERMAN: I believe I might have just pulled off your microphone.
THE WITNESS: Okay. Sorry.
Okay. At what point do you think it -- I hope people are able to hear me.
MR. ZIMMERMAN: I think you just then pulled it off, so...
BY MR. ZIMMERMAN:
Q. And then, what do you mean by the distributing of content in that paragraph?
A. Simple. Letting people from all over watch a show, a program.
So at some point, a consumer need -- wants to be able to watch a show, and delivering that experience to them is what I mean by distribution.
Q. And at the end of that paragraph, you state "and more."
What else did you oversee other than what's listed in that paragraph?"
MR. DHANANI: Objection, form, asked and answered.
A. I mean, I think I've described what my responsibilities were from everything from general managing the office to whatever, but there's other

technology components. There was the -- managing all the mass data that came in from the clients around the quality of experience, and data, and data mining. There was -- there's just lots of things to run a service, and I was responsible for running the service.
MR. ZIMMERMAN: I think that's good time to stop for a break.
THE WITNESS: Okay.
THE VIDEOGRAPHER: Going off the record. The time is approximately 2:24 p.m.
(Recess taken, 2:24 p.m. to 2:41 p.m. MDT)
THE VIDEOGRAPHER: We are back on the record. The time is approximately 2:41 p.m. Mountain Time.
Counsel.
BY MR. ZIMMERMAN:
Q. So returning to your declaration, I want to look at paragraph 14 for a moment. That's the bottom of page 4, top of page 5.
At the top of page 5, you state: Move also sought to ensure that tens of thousands of people could pull the same files at the same time to watch the same event.

A. Mm-hmm. (Witness nods.)
Yes.
Q. Was this -- were you discussing at the time you joined Move in March of 2006?
A. Yes, that was -- yeah. March 2006. Like I said, at that same time or later. I don't exactly --
So yeah, but it was around that time.
Q. And so at the time you joined in March 2006 or a little later, Move had not yet figured out how to ensure that tens of thousands of people could pull the same files at the same time to watch the same event, correct?
MR. DHANANI: Objection, form.
A. No, I don't think it said that we hadn't designed it that way. I think what I was alluding to here was Move also sought to ensure, and we didn't have, based on the prototypes that we had been doing before that, any mechanism to test its scale, right? There wasn't -- there wasn't an event large enough, there wasn't a customer broad enough that we had as an official customer to let us test the theoretical solution at scale at that time.
BY MR. ZIMMERMAN:
Q. So was scaling to that extent of tens of

thousands of people, was that a key feature to Move?
A. Yeah. I mean, I think I said earlier that if we hadn't been able to scale, Disney and ESPN wouldn't have liked our solution.
Q. When seeking to ensure that tens of thousands of people could pull the same files at the same time to watch the same event, what problems were you facing?
A. Well, some of it was the state of the internet at the time. Some of it was the state of CDNs at the time. CDNs were largely set up to try to do -- you know, they were good at downloading files for like updating your operating system. They were good at storing and doing some, you know, other things related to payload and those type of things. And a lot of them were designed to do some caching.
But one of the things that it was challenging, and the reason why we went to people like Limelight and the Level 3 was to be able to ensure that the technology would perform the way we expected it to in their caching infrastructure, and that their caching infrastructure would not be negatively impacted by the nature of our solution.
Q. What did you mean by negatively impacted when you said: Their caching infrastructure would

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not be negatively impacted by the nature of our solution?

A. So you're requesting lots of video files. Of these small files. They would in some ways may have be optimized to deliver larger files, or they might have been able to -- they might be optimized to deliver a bunch of little files. But we're providing a spectrum of files that needed to be delivered as -- you know, as close to the request as possible. And so understanding how the caching tiers worked, making sure they had the right time to loose settings. Sometimes a TTL on the caching, so you want the video to stay propagated, right? And so it's there and available.

And scale from the solution comes because the more popular the video is, the more closely the video gets cached to the user or the consumer of that file.

So if we have a lot of the same video, let's say a football game, going to the same market, the likelihood is that that market is going to have a lot of demand for the same content at near the same time, and so it's going to be cached locally as opposed to having to transport the entire network back to some other layer of caching, and back for

some origin server.

(Audio technicalities.)

A. So I was mid sentence. What was I saying?

Oh, I know. So I was -- so the caching all the way back to the origin server. So when you have to request the file from the same server back, it's having to use bandwidth all throughout the network, right?

But if you can cache that file closer to the user for a longer period of time, then it reduces the traffic over the backbone, and it increases the ability to somebody to get that file quicker.

BY MR. ZIMMERMAN:

Q. And did you help find any solutions to these problems that Move was facing?

A. That was part of my job. So part of my job was to work with Limelight and Level 3 and talk about those things and figure out what the right TTL settings were on the caching, and to figure out how big an origin server needed to be or the optimal size for caching.

One of the things that was done initially is there had been a lot of testing around how big --

what was the optimal size for video segment. Right? Was it two seconds, four seconds, eight seconds, three seconds, whatever? And given a lot of testing, we decided there was a reasonableness in a smaller segment of time than others. It seemed to perform better than larger segments.

Because it could adapt more quickly, and it could get files more quickly.

Q. And then if you look down to paragraph 16, declaration states: MOVE's adaptive-bitrate streaming technology proved to be commercially successful as well.

Did you write that sentence?

(Sotto voce document review by the witness.)

A. I honestly don't recall. I think I -- in fact -- yeah. I mean, I can see me saying that. I don't exactly remember, but in my -- to clarify, in my estimation, Move's adapting streaming technology proved highly commercial. I mean, given who our customers were and what they were using us for, very high-profile products. The first of their type in the industry.

BY MR. ZIMMERMAN:

Q. And then do you recall in or around 2010,

Move laid off nearly its entire workforce?

A. Mm-hmm. (Witness nods.)

Q. I believe I stated earlier that you were one of a few employees left around 2010?

A. Mm-hmm. (Witness nods.)

Q. Is that correct?

So Move laid off around 150 or so of its 180 employees in 2010. Does that sound right?

MR. DHANANI: Objection, asked and answered, form.

A. The answer is there were tranches, layoffs, as Move was trying to figure out what to do; and then, ultimately, the board decided that it was going to -- its best move was to sell the assets of the company, which, if you're selling the assets of the company, we just had a skeleton crew, didn't maintain the customers that were still using the technology. But we didn't need as many people continuing to develop technology or sell technology, because we were in the -- in transition. So that would be what any normal company would do in trying to get sold, I think.

BY MR. ZIMMERMAN:

Q. Okay. And then if you turn to paragraph 18 of your declaration.

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A. Mm-hmm.
Q. At the bottom of page 5, top of page 6.
A. Okay.
Q. At the top of page 6, the end of that sentence, you state: And adapting the quality of a video stream during a presentation based upon an end user's network connection with server infrastructure.
What do you mean by "adapting the quality of a video stream during a presentation"?
A. Can I read the whole sentence here?
So give me one second.
(Sotto voce document review by the witness.)
A. So the sentence is comparing Move's solution to Smooth streaming. And so what I mean by that sentence is that they were attempting to do something similar to what Move had been doing.
BY MR. ZIMMERMAN:
Q. And so at the end of that sentence, by presentation, you mean a video presentation. Correct?
(Sotto voce document review by the witness.)
A. Yes. Of a video presentation, yep.

BY MR. ZIMMERMAN:
Q. Video presentation could be a movie, correct?
MR. DHANANI: Objection, form.
A. Video could be, as I taught before, I would characterize it as two large categories, live or linear playback, and VOD. I think the length of -- the duration with the VOD asset or the live event is not really relative to the type of input. But it could be a movie. It could be an episode. It could be a commercial. It could be a two-day conference. It could be anything.
BY MR. ZIMMERMAN:
Q. And then if you turn to -- look to the next paragraph, paragraph 19. You state: This proposed standard became known as HTTP Live Streaming or "HLS," and it reflected Apple's attempt to embrace the strong market demand for adaptive-bitrate streaming.
Have you reviewed the HLS protocol?
A. Way back, yes.
Q. And "way back," did you --
A. Meaning -- I've been around and I've seen it implemented. It's not like I go back and read the documents all the time.

Q. But when you were first exposed to it, did you read the HLS protocol, the specification cover to cover?
A. Yes, I believe I did once.
Q. Do you remember around when that was?
A. When it was first proposed. I think at the time that I read it, they were talking about recommending 10-second segments. They may have at that point moved to 8-second segments. They were talking about M3U8 index file. They were talking about things like that in the proposed standard.
And so it wasn't a solution that Apple was providing. It was a proposed standard that was largely, I believe, what they learned being exposed to Move network's technology.
Q. And, previously, you said I've been around and I've seen it implemented. By it, you're referring to HLS, correct --
A. Yeah.
Q. -- in that sentence?
And so with those implementations, do you understand that HLS can be implemented in different ways?
A. Yes. But, I mean, demonstrably, it -- yes, it has some degree of flexibility. But to

work, there has to be components that are universal.
Q. So one streaming company could implement HLS in one way and another streaming company could implement HLS in a different way?
MR. DHANANI: Objection, form.
A. So the way I would speak to that is what I tried to describe earlier. So it doesn't -- Move technology allows for variability. It always did, in adaptive streaming. So, like I said, the size of the files, the profiles, the way the content was encoded, if you wanted to use segments of two seconds, three seconds, eight seconds, whatever, those were all optional. They were variable.
But the mechanism to manage adaptive streaming remains the same. The choices you are making is how long the -- how big the file is, how long it takes to request that file, do you -- is it one file or is it many files stitched together?
Does it have one manifest file or does it have a master manifest file? In that case, it would be analogous to Move's -- how would we call it? MXF -- or now I can't even remember.
The QVT would be the same as the master QMX and QBT. The QMX would be associated with the first index file, if you will, or -- and then the

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master index would be something similar to embed multiple manifest files together, stitch them together.

So in scope, it was a very -- it was, in my mind, a very similar invention. In practice, like I said, you tuned for different environments, and people make decisions relative to costs and all sorts of things. But it doesn't change, in my estimation, the underlying technology or what you might find in the patents.

BY MR. ZIMMERMAN:

Q. So previously we had discussed your statement that -- when you stated in paragraph 11 that: The packaging of transport streams into formats compatible with various streaming standards, you had said that Move and Sling were using Move's QVT and QMX files rather than the other formats; is that correct?

A. They certainly were when we first developed Sling TV on the Move platform. I can't speak to how that's evolved since that time, but, yes.

Q. And then, in -- if you turn back to page 6. In paragraph 20, you state: In particular, my duties included ensuring that video programs

offered on customer platforms could be delivered to end users, which required us to convert video programs to conform to non-MOVE standards such as HLS.

What do you mean by that, if --

A. You mean -- one second? And let me walk this through. Okay?

(Sotto voce document review by the witness.)

A. I'm trying to remember what the basis of that comment was.

BY MR. ZIMMERMAN:

Q. So is it your sworn statement that Sling TV had to convert video programs to conform to non-Move standards such as HLS?

A. I think what I was referring to here is that we had to be able to map the protocol to HLS specifically to get on a device like iPhone. Because an iPhone didn't support a Move plug-in or playback. And so in order to -- so we created the app with the player, but we had to use the underlying rendering agent or HLS, because that's what they needed to do to render to the screen.

So it's my recollection that we were solving some of those problems as end devices

continued to hit the market, but that was simply to use -- to translate the delivery of the adaptive into the protocol that that device required to display the information, if that makes sense.

So Apple didn't come and say, hey, we're going to put Move on all of our phones. What Apple said was we're using HLS as the standard for our devices, and so, therefore, to get video to that device, it had to go through the adaptive -- it still worked, the adaptive proc -- that's why it's so close, the adaptive process to Move to then get it -- those segments as transport stream to render on that particular device in the way that that device required.

Q. Do you recall about what time period this was when Sling TV was having to convert video programs to conform?

A. It would have been -- it would have been -- it would have been around the time we launched Sling TV. Was mobile was part of it? I don't exactly remember the state -- I know that Android was kind of a mess, and we had -- and it was kinds of all over the place at the time.

I know that Apple had -- iPhone was there, and I think that's why maybe the statement,

was largely because of that. And other devices were hitting the market, like Roku and things.

And so Move had to -- in order to use what those devices chose to implement, it had to be able to map its protocol into one of the industry protocols at that time, that that device manufacturer chose to use. Because Move wasn't seeding their client into the industry like it had been doing before.

That's why if Sling had stayed in the business that it was before, probably would have gone out and said, hey, adopt our plug-in, adopt our application. But we didn't stay in that business. We chose to Move into an MVPD business, and so we needed to be able to deliver to that specific device in the way that device needed to receive that data.

Q. Was delivering content to mobile devices a large portion of Sling's streaming?

A. No.

MR. DHANANI: Objection, scope and form.

A. It -- no. A lot of people thought a lot of people were going to watch video and full-length programs over mobile. Mobile was used more for people to just catch up or in other places. They

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1 didn't use it as a proxy for their television.
2 Right? So their industry began to use terms like
3 10-foot experience or lean-back experience versus
4 mobile experience, because the consumer choice of
5 how long they want to stay and what was acceptable
6 was based on the nature of the content they were
7 choosing to watch.
8 BY MR. ZIMMERMAN:
9 Q. And then if you turn to -- or look to
10 paragraph 22 of your declaration, at the bottom of
11 page 6.
12 The end of that paragraph, you state:
13 Provides the highest supportable-quality segments of
14 the video program.
15 What do you mean by "the highest
16 supportable-quality"?
17 A. I think what I've described before. I
18 mean, here again, it's comparing like Move's
19 adaptive HLS purports to offer.
20 And so I'm just drawing a comparison that
21 they are trying to be able to provide high-quality
22 segments of video program in the same way Move was.
23 So from small objects to large objects.
24 Which is why ultimately you -- it maps in
25 so well, because it's very similar to almost --

1 very, very similar to what Move invented.
2 MR. ZIMMERMAN: We are approaching
3 the end of my outline. Do you mind if we take
4 a few minutes for me to review this and see
5 how much more we need to go through?
6 THE WITNESS: Fine.
7 MR. ZIMMERMAN: Perfect.
8 THE VIDEOGRAPHER: Going off the
9 record. The time is approximately 3:12 p.m.
10 Mountain Time.
11 (Recess taken, 3:12 p.m. to
12 3:26 p.m. MDT)
13 THE VIDEOGRAPHER: Returning on the
14 record. The time is approximately 3:26 p.m.
15 Mountain Time.
16 Counsel.
17 THE WITNESS: Can I ask a question?
18 Can I amend something I said before, slightly?
19 You asked me specifically around why
20 does -- why did Sling need to potentially use
21 these other protocols. And I think I
22 explained it, but I want to make sure.
23 Because now that I'm remembering and
24 why I did all of this, it was entirely because
25 of DRM and standards that were required on

1 those boxes.
2 So as the technology evolved and
3 there were more distribution places for people
4 to get TV, we had to package the content in a
5 way that could be distributed on those devices
6 in the way that those devices were designed.
7 Does that make sense?
8 So whether it was mobile or a
9 connected device or a smart TV, that's why.
10 Because of content protection more than
11 anything. For instance, you couldn't deliver
12 a stream to a Mac without it being HLS,
13 because of security concerns.
14 And so they had FairPlay as the DRM
15 that you had to use. To do Microsoft, you had
16 to use a specific DRM to do that. So it
17 changed what was required of Sling TV to
18 deliver their service based on the security
19 requirements on the devices we wanted to
20 distribute to.
21 So I just wanted to make sure that
22 was really clear.
23 BY MR. ZIMMERMAN:
24 Q. Alright.
25 And do you remember about the time that

1 these security measures were implemented? Was that
2 around the same time we were discussing earlier,
3 around 2015?
4 A. Yeah, it was around the same time,
5 because they all required a little bit different.
6 Some were willing to say, okay, when you get the DRM
7 in place. Some were worried about what is
8 classified as copy output protection, right? So the
9 pipeline of the video from receiving it to the
10 player within the device, and securing that.
11 So you had to kind of conform to what the
12 content owner wanted you to do. And so we spent a
13 lot of time working with Disney and Warner Brothers
14 and things and making sure they felt comfortable
15 with the video path for their content and nowhere in
16 that chain would it be compromised. So that's why
17 it made it of particular concern to use whatever
18 they felt was most secure on their device.
19 BY MR. ZIMMERMAN:
20 Q. So you listed, I believe it was Mac and
21 you said Microsoft?
22 A. Well, those are just easy ones to speak
23 to.
24 Q. Do you remember what other devices would
25 have had these DRM requirements?

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A. Any device had the requirements, because the content providers were interested in securing their content, right? Nobody wants their content pirated or stolen. Right? That's how they make money, so...

MR. ZIMMERMAN: Before my next question, I believe the Zoom may be on mute.

(Discussion off the record.)

BY MR. ZIMMERMAN:

Q. And, just going back to the examples of Mac and Microsoft, when you say Microsoft, are you meaning Windows -- Microsoft Windows devices?

A. At the time, they would have been Windows devices, or potentially -- I don't remember when IE was replaced by whatever.

But in general, Microsoft provided a DRM that was acceptable for studio use called PlayReady. And so if you used -- if they chose to use a protocol like M -- like HLS or, I guess even MPEG-DASH, there were specific DRMs that were more standard, I guess, to work with a particular protocol based on the requirements of that manufacturer and what they did. So the studios basically recommended it.

So there were -- there was Widevine,

there was PlayReady, there was FairPlay, and you had to use and package the content in the right DRM for the right target device.

Q. And so could you stream content to any of those devices that had the DRM requirements without packaging the content in their format?

A. When we used to -- yeah, you could deliver it -- we could deliver it to the devices in most cases fine; but when that became the requirement, that's what changed the requirement of what and the protocol had to be translated. So the core of the system was still working exactly the way Move was, but the content had to be packaged on-demand for the target device. So we created something called a dynamic package that allowed us to do that. And that's why I think I said convert in my previous statement. Whatever I said.

[Document review.]

A. "Formats compatible with various streaming standards" in paragraph 11. And it's that compatibility that we had to meet in order to let consumers watch on that device.

BY MR. ZIMMERMAN:

Q. So I just want to return to your time at Move quickly.

A. Okay.

Q. Do you remember a time when Netflix was deciding between using Move's technology and Microsoft's technology?

MR. DHANANI: Objection, scope, foundation.

A. I know we had talked to Netflix, and I know that they were considering Move. And I don't know what other technologies they were considering at the time.

BY MR. ZIMMERMAN:

Q. But didn't -- Netflix ultimately chose Microsoft's technology; is that correct?

MR. DHANANI: Objection, foundation, scope.

A. I don't know what they chose, to be honest with you, but I know that they didn't ultimately go with Move.

BY MR. ZIMMERMAN:

Q. And do you have a recollection that Netflix's choice to use another technology almost put Move out of business?

MR. DHANANI: Objection, foundation, scope.

A. I do not recall that was a -- one of the

driving factors of Move changing its direction or going out of business.

I do know that Microsoft -- sorry, that Microsoft, because they were trying to win the market, was essentially giving, you know, a free alternative to what we previously -- I previously mentioned as a Move tax, which gave them a competitive advantage simply because of the size of their war chest.

BY MR. ZIMMERMAN:

Q. So if Microsoft was, as you said, trying to win the market, why didn't Move sue Microsoft for patent infringement?

MR. DHANANI: Objection, speculation and privilege to the extent it calls for attorney-client communication.

If you have a separate answer outside of attorneys, you can answer.

A. I don't know what decisions other companies made and why. I mean, that would be my response.

I can only add that ultimately the market has proven that it wasn't a great solution, because it's not in high-demand use today.

* * *

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BY MR. ZIMMERMAN:
Q. Then, if you turn to paragraph 21 of your declaration, you state that: I found that HLS is, as a proposed standard, very similar to the technology MOVE had already developed and implemented.
Apart from -- separate and apart from any understanding you have from your lawyers, do you have an understanding as to why Move never sued Apple?
MR. DHANANI: Objection, scope.
A. I do not. Again, my -- well, my assumption is that had Move continued to grow and be successful as it was without the market downturn, I'm guessing it would have come to the conclusion to do so, but it's kind of hard to -- this is just my conjecture. I want to be clear on that. It's kind of hard to sue somebody with much deeper pockets than you have as a start-up company.
BY MR. ZIMMERMAN:
Q. Did you and Drew Major ever discuss suing Apple?
A. No. I never discussed suing Apple with anybody.
MR. ZIMMERMAN: I think that is it

for questions on my end, so I pass the witness.

EXAMINATION

BY MR. DHANANI:
Q. Mr. Ericson, just a few follow-ups.
In one of your answers, the question said: So if Microsoft was, as you said, trying to win the market, why didn't Move sue Microsoft for patent infringement?
And part of your response stated: I can only add that ultimately the market as proven that it wasn't a great solution, because it's not in high-demand use today.
Were you referring to Microsoft in that sentence?
A. Yes.
Q. Thank you for that. And you were also asked about Emmy awards, correct?
A. Mm-hmm. (Witness nods.)
(Ericson Deposition Exhibit 2 marked.)
BY MR. DHANANI:
Q. The court reporter is handing you,

Mr. Ericson, what has been marked as Exhibit 2. It's a printout from the Emmy's website, and reference is to the 2006 58th Emmy awards.
Do you see that?
A. Yes.
Q. Above the top, it mentions: Outstanding Achievement in Enhanced Or Interactive Television Delivery (New Delivery Platforms) from 2006. Correct?
A. Yes.
Q. And underneath, it has: ABC.com Full Episodes Streaming Player.
A. That's what I was referring to.
Q. So is this the ABC.com full episode streaming player, is that the one that incorporated the Move technology?
A. Yes. Move was --
MR. ZIMMERMAN: Objection, leading.
MR. DHANANI: Go ahead.
BY MR. DHANANI:
Q. Which player did the ABC.com full episode streaming player incorporate and use as its technology?
A. Move Networks. Absolutely unequivocally.
MR. DHANANI: All right. That's it.

No more questions.
(Off-the-record discussion.)
THE WITNESS: That's the one that Skarpi showed me in his office.

EXAMINATION

BY MR. ZIMMERMAN:
Q. Mr. Ericson, I want to clarify a few things about this --
A. Sure.
Q. -- document, if that's okay.
So you just said that's the one that Skarpi showed me in his office. Correct?
A. Mm-hmm. (Witness nods.)
Q. By "the one," you are referring to the Emmy, not this document?
A. The actual Emmy award.
Q. Have you ever seen this document before?
A. No. I said I -- I think even in my testimony today, I said I don't know exactly what it was designated for, but I know that it was related to ABC, Disney, and that's -- that would be what the award was. And the timing is also correct, in 2006, or '7.

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Q. And so this document, Ericson Exhibit 2, is not referenced in your declaration; is that correct?
A. It wasn't -- no, it wasn't referenced in my prior declaration.
Q. Is today the first time you have seen this document?
A. You saw it as soon as I did. I've never seen this.
Q. And the 2006 Emmy, that is also not discussed in your declaration; is that correct?
A. That's correct. I wasn't asked about Emmy awards until you did today.
MR. ZIMMERMAN: Okay. So given the witness's testimony that he has never seen this document, I just, for the record, want to make sure to note that we object to this document being introduced as an exhibit in these IPRs, or --
MR. DHANANI: Go ahead. Finish.
MR. ZIMMERMAN: That's it.
MR. DHANANI: Counsel, you directly asked about whether Move had received Emmys as part of the time frame, so you clearly opened the door, and you raised the issue, and this

document demonstrates that Move's technology did in fact receive an Emmy around -- right after the technology was developed and introduced in the market, so it's directly responsive.
MR. ZIMMERMAN: We disagree.
MR. DHANANI: Just waiting for him to pass the witness.
Are you done?
MR. ZIMMERMAN: I pass the witness.

EXAMINATION

BY MR. DHANANI:
Q. Mr. Ericson, can you affirm --
MR. SHENG: Sorry, Ali. Do we get the recross --
MR. DHANANI: It's one question on the accuracy of the declaration.
BY MR. DHANANI:
Q. Can you affirm that everything in your declaration is accurate?
A. Yes.
MR. DHANANI: That's it.
MR. ZIMMERMAN: Nothing for me.

That's it.
THE VIDEOGRAPHER: Before we go off the record, we've been asked to take orders on the record, so, Madam Court Reporter, would you like to start, or would you like me to start?
THE COURT REPORTER: Does anybody need a rough tonight?
MR. DHANANI: No rough tonight for us.
THE COURT REPORTER: For you, Mr. Zimmerman?
MR. ZIMMERMAN: Getting the rough would be great. But we don't need to -- in terms of like a final, I think what's the normal turnaround?
THE COURT REPORTER: I think somebody has a four-day expedited on this, so it'll be like --
MR. DHANANI: Four-day expedited is fine.
MR. ZIMMERMAN: We'll do the four-day.
MR. DHANANI: And I'm fine. We would like a rough, but I don't need it tonight is

what I mean. So send it tonight, fine, but if you send it tomorrow, that's okay as well.
MR. ZIMMERMAN: Same for us.
THE VIDEOGRAPHER: Counsel, video copy for you?
MR. ZIMMERMAN: I don't think we need the video copy for now. As long as you guys hold on to it in the future.
THE VIDEOGRAPHER: Absolutely, we can.
MR. DHANANI: Same for us, hold.
THE VIDEOGRAPHER: Thank you very much.
We are off the record. The time is approximately 3:47 p.m. Mountain Time.
(Time noted: 3:47 p.m. MDT)
--o0o--

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C E R T I F I C A T E

I, DEBRA A. DIBBLE, RDR, CRR, CRC, Notary Public, do hereby certify:

That DAVID R. ERICSON, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness;

That pursuant to FRCP Rule 30, signature of the witness was not requested by the witness or other party before the conclusion of the deposition;

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand on the 25th of September, 2024.

_____

Debra A. Dibble
Fellow of the Academy of Professional Reporters
Registered Diplomate Reporter
Certified Realtime Reporter
Notary Public 11/17/2027
UT 108869-7801

I HEREBY CERTIFY that I have read this transcript of my deposition, and that this transcript accurately states the testimony given by me, with the changes or corrections, if any, as noted.

X _____
DAVID R. ERICSON

ERRATA SHEET FOR THE TRANSCRIPT OF:
CASE NAME: Aylo v DISH
DEP DATE: September 19, 2024
DEPONENT: DAVID R. ERICSON

Pg.	Ln.	Now Reads	Should Read	Reason
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X _____
DAVID R. ERICSON

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