

In the Matter Of:

In Re Certain Fitness Devices and Systems Containing Same

GREG SMITH

November 09, 2021



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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.
Before the Honorable David P. Shaw,
Administrative Law Judge

In the Matter of,

CERTAIN FITNESS DEVICES, STREAMING
COMPONENTS THEREOF, AND SYSTEMS CONTAINING
SAME,

Inv. No. 337-TA-1265

-----X

VIDEOTAPED DEPOSITION OF GREG SMITH

DATE: November 9, 2021

TIME: 10:07 a.m. Central Time

PLACE: ***REMOTE***

BEFORE: Rebecca Schaumloffel, RPR, CCR-NJ

JOB NO: 2021-819192

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

BAKER BOTTS L.L.P.

Attorneys for the Complainants
DISH DBS Corporation, DISH
Technologies, L.L.C., and Sling
TV, L.L.C.

1001 Page Mill Road
Building One, Suite 200
Palo Alto, California 94304
BY: ALI DHANANI, ESQ.
STEVE MAULE, ESQ.

GIBSON, DUNN & CRUTCHER LLP

Attorneys for the Respondent
Peloton Interactive, Inc.
1881 Page Mill Road
Palo Alto, California 94304
BY: RYAN IWAHASHI, ESQ.
ERNEST HSIN, ESQ.
(Afternoon session)

COOLEY LLP

Attorneys for the Respondent
Lululemon
1299 Pennsylvania Avenue NW
Suite 700
Washington, D.C. 20004
BY: NAINA SONI, ESQ.

Appearances (continued:)

MASCHOFF BRENNAN

Attorneys for iFIT Inc., formally
known as ICON Health and Fitness
Inc., NordicTrack, Inc., and Free
Motion Fitness, Inc.

300 South Grand Avenue, 14th Floor
Los Angeles, California 90071

BY: CHARLES BARQUIST, ESQ.

CHRISTINA TRINH, ESQ.

ALSO PRESENT:

Ira Jamshidi, Esq., in-house
counsel, DISH

Aaron Rauh, Esq., Office of Unfair
Import Investigations U.S.
International Trade Commission

Max S. Gratton, DISH

Kimberly Villalobos, videographer

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G. SMITH

09:07AM

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THE VIDEOGRAPHER: We are on the

09:07AM

3

record on November 9, 2021, at

09:07AM

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10:07 a.m. Central Time for the remote

09:07AM

5

video deposition of Mr. Gregory Smith

09:07AM

6

in the matter of Certain Fitness

09:07AM

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Devices Streaming Components Thereof,

09:07AM

8

and Systems Containing Same.

09:07AM

9

My name is Kimberly Villalobos

09:07AM

10

and I'm the videographer. All present

09:07AM

11

will be noted on the stenographic

09:07AM

12

record.

09:07AM

13

Will the court reporter please

09:07AM

14

swear in the witness.

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16

17

18

GREG SMITH, called as a witness, having been

19

first duly sworn by a Notary Public of the

20

States of New York, New Jersey, and

21

Pennsylvania was examined and testified as

22

follows:

23

MR. BARQUIST: Are we doing

24

appearances, or are we just getting

09:08AM

25

started?

1

G. SMITH

09:08AM 2

THE COURT REPORTER: Appearances

09:08AM 3

are noted on the record.

09:08AM 4

EXAMINATION BY

09:08AM 5

MR. BARQUIST:

09:08AM 6

Q. Mr. Smith, good morning. My name

09:08AM 7

is Charles Barquist. I'll be starting off

09:08AM 8

the questions today.

09:08AM 9

Are you represented by counsel

09:08AM 10

today?

09:08AM 11

A. Yes, I am.

09:08AM 12

Q. Who is that?

09:08AM 13

A. Ali Dhanani is on this video call.

09:08AM 14

Q. And when did you retain

09:08AM 15

Mr. Dhanani?

09:08AM 16

A. I don't recall exactly. It was a

09:08AM 17

number of months ago.

09:08AM 18

Q. Do you have a written retainer or

09:08AM 19

engagement agreement?

09:09AM 20

A. I do.

09:09AM 21

Q. Do you have that with you?

09:09AM 22

A. I do not.

09:09AM 23

Q. You don't recall when you entered

09:09AM 24

into that agreement?

09:09AM 25

A. Not the exact date, no, sir.

6

1

G. SMITH

09:09AM 2 Q. Your best recollection is what?

09:09AM 3 A. **A couple of months ago.**

09:09AM 4 Q. And who is paying the legal fees

09:09AM 5 for your counsel in connection with this

09:09AM 6 deposition?

09:09AM 7 A. **Baker Botts.**

09:09AM 8 Q. Baker Botts is paying their own

09:09AM 9 fees?

09:09AM 10 A. **Well, I really wouldn't know much**

09:09AM 11 **more than that. I don't know exactly how**

09:09AM 12 **that's working.**

09:09AM 13 Q. Okay.

09:09AM 14 A. **They are representing me. I know**

09:09AM 15 **that.**

09:09AM 16 Q. Are you paying anything for their

09:09AM 17 fees?

09:09AM 18 A. **No, sir.**

09:09AM 19 Q. Are you being compensated at all

09:09AM 20 for your time in connection with this

09:09AM 21 deposition?

09:09AM 22 A. **Yes, sir.**

09:09AM 23 Q. What compensation are you getting?

09:10AM 24 A. **\$250 an hour as a consultant.**

09:10AM 25 Q. And does that cover both your

1

G. SMITH

09:10AM

2

preparation time and your time today?

09:10AM

3

A. Yes, sir.

09:10AM

4

Q. And how many hours have you

09:10AM

5

devoted to this matter so far?

09:10AM

6

A. I have not done a tally recently.

09:10AM

7

I could estimate, if you'd like.

09:10AM

8

Q. Please do.

09:10AM

9

A. Sixty.

09:10AM

10

Q. What's the nature of your

09:10AM

11

consultation?

09:10AM

12

MR. DHANANI: I will caution the

09:10AM

13

witness not to reveal attorney-client

09:10AM

14

communications.

09:10AM

15

But you can answer that

09:10AM

16

question.

09:10AM

17

A. The nature of my consultation is

09:11AM

18

merely providing my recollections of my time

09:11AM

19

working for Move Networks.

09:11AM

20

Q. Do you have a written agreement

09:11AM

21

regarding your consultation work?

09:11AM

22

A. Yes.

09:11AM

23

Q. Is that the same agreement

09:11AM

24

retaining counsel?

09:11AM

25

A. Yes.

1

G. SMITH

09:11AM 2

MR. BARQUIST: Ali, has that

09:11AM 3

been disclosed to us?

09:11AM 4

MR. DHANANI: I don't believe

09:11AM 5

so.

09:11AM 6

MR. BARQUIST: We call for a

09:11AM 7

copy of it, please.

09:11AM 8

MR. DHANANI: Okay.

09:11AM 9

BY MR. BARQUIST:

09:11AM 10

Q. Have you rendered any bills or

09:11AM 11

invoices for your consultation work today?

09:11AM 12

A. To date, yes, I have.

09:11AM 13

Q. How many?

09:11AM 14

A. I would have to look that up. I'm

09:11AM 15

sorry. It's --

09:11AM 16

Q. Your best --

09:11AM 17

A. Maybe three or four.

09:11AM 18

MR. BARQUIST: We call for

09:12AM 19

production of those as well, Ali,

09:12AM 20

please.

09:12AM 21

MR. DHANANI: Will you be making

09:12AM 22

a reciprocal production of your

09:12AM 23

consultant agreements and your bills?

09:12AM 24

MR. BARQUIST: I'm -- I'm not

09:12AM 25

prepared to address that.

1

G. SMITH

09:12AM 2

MR. DHANANI: We'll honor the

09:12AM 3

request by writing.

09:12AM 4

MR. BARQUIST: Thank you.

09:12AM 5

BY MR. BARQUIST:

09:12AM 6

Q. Did you meet with counsel to

09:12AM 7

prepare for today's deposition, Mr. Smith?

09:12AM 8

A. Yes, I did.

09:12AM 9

Q. When did you do that?

09:12AM 10

A. I'm sorry. Could you restate?

09:12AM 11

Q. When did you do that?

09:12AM 12

A. Yesterday.

09:12AM 13

Q. Who'd you meet with?

09:12AM 14

A. Ali Dhanani.

09:12AM 15

Q. Anyone else present?

09:12AM 16

A. Steve Maul.

09:12AM 17

Q. Anyone else?

09:12AM 18

A. No, sir.

09:12AM 19

Q. Did you review any documents in

09:12AM 20

the course of preparing for this deposition?

09:12AM 21

A. Yes, I did.

09:12AM 22

Q. What did you review?

09:13AM 23

MR. DHANANI: I caution --

09:13AM 24

actually instruct the witness not to

09:13AM 25

answer that question on the basis of

10

1

G. SMITH

09:13AM 2

attorney-client and work product

09:13AM 3

privilege.

09:13AM 4

Q. Did any of the documents that you

09:13AM 5

reviewed during your preparation, Mr. Smith,

09:13AM 6

refresh your recollection about any matters?

09:13AM 7

A. No, sir.

09:13AM 8

Q. Other than with lawyers at the

09:13AM 9

baker Botts law firm, have you discussed this

09:13AM 10

International Trade Commission investigation

09:13AM 11

with anyone else?

09:13AM 12

A. Can you -- I'm not sure that I'm

09:13AM 13

aware of the nature of this being an

09:13AM 14

international trade -- I'm not even sure what

09:13AM 15

you just said.

09:13AM 16

Q. All right. You understand you are

09:14AM 17

here giving testimony in connection with a

09:14AM 18

patent dispute.

09:14AM 19

Do you understand that?

09:14AM 20

A. Yes, sir.

09:14AM 21

Q. Other than the lawyers at the

09:14AM 22

Baker Botts law firm, have you discussed this

09:14AM 23

patent dispute with anyone else?

09:14AM 24

A. Yes, sir.

09:14AM 25

Q. Who is that?

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1

G. SMITH

09:14AM

2

A. Drew Major.

09:14AM

3

Q. Anyone else?

09:14AM

4

A. No, sir.

09:14AM

5

Q. What have you discussed with

09:14AM

6

Mr. Major?

09:14AM

7

A. Drew called me and asked me if --

09:14AM

8

if he could put the Baker Botts firm in touch

09:14AM

9

with me so that I might be a witness or

09:14AM

10

provide any of my recollections in the

09:14AM

11

future.

09:14AM

12

Q. When did that conversation occur?

09:14AM

13

A. It was several months ago, prior

09:14AM

14

to meeting with Baker Botts.

09:14AM

15

Q. And have you had any subsequent

09:15AM

16

conversations with Mr. Major?

09:15AM

17

A. I have had subsequent

09:15AM

18

conversations with Mr. Major but not about

09:15AM

19

this topic.

09:15AM

20

Q. And "by this topic," what exactly

09:15AM

21

do you mean?

09:15AM

22

A. This patent litigation.

09:15AM

23

Q. In that initial call from

09:15AM

24

Mr. Major, what did he tell you about this

09:15AM

25

patent litigation?

12

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G. SMITH

09:15AM 2

A. I cannot remember his exact words.

09:15AM 3

It was something along the lines of DISH is

09:15AM 4

looking to exercise the patents or something

09:15AM 5

along those lines; I don't really remember

09:15AM 6

the exact language, and that was it.

09:15AM 7

Q. Did he discuss who it was that

09:15AM 8

DISH was thinking about suing for patent

09:15AM 9

infringement?

09:15AM 10

A. He did not.

09:15AM 11

Q. Do you have an understanding of

09:15AM 12

who has been sued in this matter for patent

09:16AM 13

infringement?

09:16AM 14

A. I do not.

09:16AM 15

Q. Did you discuss the -- any of the

09:16AM 16

particulars of the infringement claims with

09:16AM 17

Mr. Major?

09:16AM 18

A. No, I did not.

09:16AM 19

Q. So other than Baker Botts and

09:16AM 20

other than this discussion with Mr. Major

09:16AM 21

where he asked you to provide your

09:16AM 22

recollections, have you discussed this patent

09:16AM 23

suit with anyone else?

09:16AM 24

A. No, sir.

09:16AM 25

Q. Have you had any discussions with

13

1

G. SMITH

09:16AM

2

Mr. Edwards about this matter?

09:16AM

3

A. No, I have not.

09:16AM

4

Q. Are you familiar with the patents

09:16AM

5

that are involved in this litigation?

09:16AM

6

A. Yes, I am.

09:16AM

7

Q. What is your understanding of what

09:17AM

8

those patents cover?

09:17AM

9

A. Well, I'm not a patent attorney.

09:17AM

10

As a layperson and a technologist, my

09:17AM

11

understanding is those patents cover the

09:17AM

12

invention and development of adaptive bit

09:17AM

13

rate streaming by Move Networks many years

09:17AM

14

ago.

09:17AM

15

Q. You said that's your understanding

09:17AM

16

as a layperson and a technologist. What do

09:17AM

17

you mean by a "technologist"?

09:17AM

18

A. I have held many roles as a

09:17AM

19

technologist in my career.

09:17AM

20

Q. What is that -- what does it mean

09:17AM

21

to you to be a technologist?

09:17AM

22

A. Generally, it means that I'm

09:17AM

23

responsible for the development of a

09:17AM

24

company's technology and the management of

09:17AM

25

its technology teams in support of its

14

G. SMITH

1

09:17AM 2 **business goals.**

09:17AM 3 Q. So what is your understanding of
09:18AM 4 what was innovative about the Move Network's
09:18AM 5 patents?

09:18AM 6 A. Prior to the development of that
09:18AM 7 technology, the world had no ability to
09:18AM 8 deliver -- to deliver streaming media in a
09:18AM 9 way that was a compelling and contiguous
09:18AM 10 experience to the user.

09:18AM 11 Q. Okay. So what was innovative
09:18AM 12 about the Move patents, to your
09:18AM 13 understanding?

09:18AM 14 A. They solved the problems
09:18AM 15 associated with the transport of bits that
09:18AM 16 constitute a video frame over the Internet.

09:18AM 17 Q. How did they solve that problem?

09:18AM 18 A. Multiple ways. I think that they
09:19AM 19 are elucidated in the patents, but loosely
09:19AM 20 speaking or generally speaking, it is through
09:19AM 21 the ability to adapt the -- to adapt the
09:19AM 22 connection and use the protocols of that
09:19AM 23 connection to adapt it to the available --
09:19AM 24 the available resources including bandwidth
09:19AM 25 to the end user.

15

1

G. SMITH

09:19AM 2

Q. Of course, even before the Move

09:19AM 3

patents, others in the field were working on

09:19AM 4

adaptive bit rate streaming; isn't that

09:19AM 5

right?

09:19AM 6

MR. DHANANI: Objection. Calls

09:19AM 7

for speculation.

09:19AM 8

A. Not to my knowledge.

09:19AM 9

Q. Did you investigate at all what

09:19AM 10

others were doing at the time with respect to

09:20AM 11

adaptive bit rate streaming technology?

09:20AM 12

A. Yes, I did.

09:20AM 13

Q. What did you find out?

09:20AM 14

A. My recollection is the only

09:20AM 15

available technologies at that time were

09:20AM 16

referred to as RTF, RTSP and they were for

09:20AM 17

the adaptive.

09:20AM 18

Q. What does RTP stand for?

09:20AM 19

A. Realtime protocol.

09:20AM 20

Q. What does RTSP stand for?

09:20AM 21

A. Realtime streaming protocol.

09:20AM 22

Q. What is the time period you are

09:20AM 23

referring to in that answer?

09:20AM 24

A. I can't be exactly certain. 2003,

09:20AM 25

maybe.

16

1

G. SMITH

09:21AM 2 Q. Mr. Smith, I'm going to mark as an
09:21AM 3 exhibit here. Give me a moment to pull it
09:21AM 4 into the chat.

09:21AM 5 THE COURT REPORTER: Counsel, my
09:21AM 6 apologies, I have an audio issue.

09:21AM 7 MR. BARQUIST: Okay.

09:21AM 8 THE VIDEOGRAPHER: The time is
09:21AM 9 10:21 a.m. and we are going off the
09:21AM 10 record.

09:21AM 11 (Whereupon, a recess was held.)

09:24AM 12 THE VIDEOGRAPHER: The time is
09:24AM 13 10:24 a.m. and we are back on the
09:24AM 14 record.

09:24AM 15 BY MR. BARQUIST:

09:24AM 16 Q. Could we mark as Smith Exhibit 1,
09:24AM 17 a copy of Mr. Smith's LinkedIn profile, a
09:24AM 18 which -- a copy which is in the chat.

09:25AM 19 UNKNOWN SPEAKER: Chuck, I'm not
09:25AM 20 seeing the document in the chat box.

09:25AM 21 MR. BARQUIST: I just put it
09:25AM 22 there, sorry.

09:25AM 23 Try it again.

09:25AM 24 Do you see it now?

09:25AM 25 UNKNOWN SPEAKER: I don't. It

17

1

G. SMITH

2

could be because I joined Zoom through

3

the web application.

4

Go ahead and proceed.

5

(Whereupon, Smith Exhibit 1,

6

LinkedIn profile was marked for

7

identification as of this date by the

09:26AM 8

Reporter.)

09:26AM 9

Q. Mr. Smith, do you have it?

09:26AM 10

A. Yes, I have it.

09:26AM 11

Q. Mr. Smith, do you recognize

09:26AM 12

Exhibit 1 as a copy of your LinkedIn profile?

09:26AM 13

A. Let me open it up, please.

09:26AM 14

Yes. This looks like the

09:26AM 15

information from my LinkedIn page.

09:26AM 16

Q. Let me use this if I could to get

09:26AM 17

a little bit more information about your

09:27AM 18

background, sir.

09:27AM 19

Starting at the top, you are in

09:27AM 20

Austin, Texas today; is that correct?

09:27AM 21

A. Yes, I am.

09:27AM 22

Q. And you are currently the chief

09:27AM 23

technology officer for Nexstar Digital; is

09:27AM 24

that right?

09:27AM 25

A. No, sir.

18

1

G. SMITH

09:27AM 2 Q. Okay. What's the update?

09:27AM 3 A. Well, as you can see from this
09:27AM 4 information, that position was completed in
09:27AM 5 November of 2020.

09:27AM 6 Q. Okay. What's your current
09:27AM 7 position?

09:27AM 8 A. I don't believe we've made that
09:27AM 9 public yet, sir.

09:27AM 10 Q. Okay. Well, this -- well, this
09:27AM 11 deposition can be protected under the
09:27AM 12 Protective Order, so all confidential
09:27AM 13 information would be -- would remain
09:27AM 14 confidential.

09:27AM 15 What's your current position?

09:27AM 16 MR. DHANANI: Greg, if you don't
09:27AM 17 have permission to share it, we may
09:27AM 18 have to take that up on break. So we
09:27AM 19 can always come back to that if we
09:27AM 20 need.

09:28AM 21 THE WITNESS: Ali, I think I'm
09:28AM 22 okay. I think I'm okay to share it.
09:28AM 23 I started meeting some of the people,
09:28AM 24 so I think we're okay to share it, as
09:28AM 25 long as we can hold it confidential to

1

G. SMITH

09:28AM 2

these proceedings until --

09:28AM 3

MR. DHANANI: Once you answer,

09:28AM 4

I'll designate it.

09:28AM 5

THE WITNESS: Thank you.

09:28AM 6

A. I have recently joined Amobee,

09:28AM 7

A-M-O-B-E-E, as its Chief Technology Officer.

09:28AM 8

MR. DHANANI: On that basis, I'm

09:28AM 9

going to designate the entire

09:28AM 10

transcript under the Protective Order

09:28AM 11

as restricted at the highest level

09:28AM 12

under the Protective Order.

09:28AM 13

Any objections from any counsel

09:28AM 14

on record? Okay.

09:28AM 15

MR. BARQUIST: No objection, but

09:28AM 16

is Mr. Gratton allowed under the

09:28AM 17

Protective Order?

09:28AM 18

MR. DHANANI: I believe

09:28AM 19

Mr. Jamshidi is on and I believe

09:28AM 20

the -- they are both -- while they're

09:29AM 21

not receiving information from

09:29AM 22

Respondents, neither of them will

09:29AM 23

consider this a -- basically that

09:29AM 24

they're falling under the Protective

09:29AM 25

Order for the reasons that we have

20

1

G. SMITH

09:29AM 2

discussed, but if you have any

09:29AM 3

documents that are not Greg Smith or

09:29AM 4

any other confidential documents you'd

09:29AM 5

like to use, please let us know.

09:29AM 6

Mr. Gratton and Mr. Jamshidi,

09:29AM 7

can you all verbally confirm that

09:29AM 8

you'll keep the information from this

09:29AM 9

transcript confidential to you?

09:29AM 10

MR. JAMSHIDI: Confirmed.

09:29AM 11

UNIDENTIFIED SPEAKER: I believe

09:29AM 12

only Mr. Jamshidi is on.

09:29AM 13

MR. GRATTON: This is Max.

09:29AM 14

I don't think I was on.

09:29AM 15

MR. DHANANI: Oh, okay, great.

09:29AM 16

Okay. Go ahead.

09:29AM 17

BY MR. BARQUIST:

09:29AM 18

Q. Mr. Smith, what is the business of

09:29AM 19

Amobee?

09:29AM 20

A. It is a digital advertising

09:29AM 21

technology company.

09:30AM 22

Q. Going back to the beginning, you

09:30AM 23

received an engineering degree from Princeton

09:30AM 24

in 1995; is that correct?

09:30AM 25

A. Yes, sir.

21

1

G. SMITH

09:30AM 2

Q. And after graduation from

09:30AM 3

Princeton, what was your first employment?

09:30AM 4

A. My very first employment was

09:30AM 5

briefly with Anderson Consulting.

09:30AM 6

Q. How long were you there?

09:30AM 7

A. A couple of weeks.

09:30AM 8

Q. What -- what did you do after

09:30AM 9

Anderson?

09:30AM 10

A. Joined a company called Space

09:30AM 11

Systems/Loral.

09:30AM 12

Q. How long were you there?

09:30AM 13

A. Four years.

09:30AM 14

Q. What did you do at Space

09:30AM 15

Systems/Loral?

09:30AM 16

A. I built communication satellite,

09:31AM 17

low earth orbit, and geostationary orbit

09:31AM 18

spacecraft.

09:31AM 19

Q. And what was your next job after

09:31AM 20

that?

09:31AM 21

A. PanAmSat.

09:31AM 22

Q. According to your LinkedIn profile

09:31AM 23

you were at PanAmSat from 1998 to 2000. Is

09:31AM 24

that accurate?

09:31AM 25

A. Yes, sir.

22

1

G. SMITH

09:31AM 2

Q. And what did do you at PanAmSat?

09:31AM 3

A. I designed and managed a fleet of

09:31AM 4

geostationary orbit communication satellites.

09:31AM 5

Q. And what did you do after

09:31AM 6

PanAmSat?

09:31AM 7

A. Edgix.

09:31AM 8

Q. And did that overlap with

09:31AM 9

PanAmSat? According -- it did according to

09:31AM 10

your LinkedIn dates here.

09:31AM 11

A. It didn't. I'm not sure why those

09:31AM 12

dates are incorrect.

09:31AM 13

Q. Okay. Well, that sometimes

09:31AM 14

happens with LinkedIn.

09:31AM 15

How long were you at Edgix?

09:32AM 16

A. A year or two. Two years,

09:32AM 17

probably. I don't -- I don't recall.

09:32AM 18

Q. And what did you do at Edgix?

09:32AM 19

A. We -- we developed a

09:32AM 20

satellite-based server network as a content

09:32AM 21

distribution network.

09:32AM 22

Q. What is a content distribution

09:32AM 23

network?

09:32AM 24

A. It's a -- it's a distributed group

09:32AM 25

of servers that hold content that is desired

23

1

G. SMITH09:32AM 2 **by end users.**

09:32AM 3 Q. And what did you do after Edgix?

09:32AM 4 **A. After Edgix, I joined what would**
09:33AM 5 **eventually become Move Networks.**09:33AM 6 Q. And when did you -- when did you
09:33AM 7 join that company?09:33AM 8 **A. I can't recall exactly. It was**
09:33AM 9 **either -- I believe it was the spring of**
09:33AM 10 **2001.**09:33AM 11 Q. And what was the name of that
09:33AM 12 company at the time you joined it?09:33AM 13 **A. I don't recall.**

09:33AM 14 Q. Was that XLON?

09:33AM 15 **A. No, sir. It had a different name.**

09:33AM 16 Q. Were you ever at XLON?

09:33AM 17 **A. Yes, sir.**

09:33AM 18 Q. When were you at XLON?

09:33AM 19 **A. XLON is the same company that**
09:33AM 20 **becomes Move Networks.**09:33AM 21 Q. So did XLON have a different name
09:33AM 22 before it became XLON, is that what you're
09:33AM 23 telling me?09:33AM 24 **A. Yes, sir.**

09:33AM 25 Q. And you don't recall the name?

24

1

G. SMITH

09:33AM 2

A. I do not.

09:33AM 3

Q. And when did XLON become Move

09:34AM 4

Networks?

09:34AM 5

A. I don't recall the exact date.

09:34AM 6

Q. So the company that became

09:34AM 7

Move Networks, what was your initial role at

09:34AM 8

that company?

09:34AM 9

A. I don't believe we -- we ever gave

09:34AM 10

ourselves any titles at the -- at the outset.

09:34AM 11

Q. Who was the "we" you are referring

09:34AM 12

to?

09:34AM 13

A. Some of the initial folks involved

09:34AM 14

were myself, a gentleman by the name of John

09:34AM 15

Fordemwalz. Of course Drew was the founder

09:34AM 16

and leader. And Timothy Johansson.

09:34AM 17

Q. What was the business of XLON?

09:35AM 18

A. XLON was developing technologies

09:35AM 19

to -- to download very large files across the

09:35AM 20

Internet.

09:35AM 21

Q. When did XLON become Move

09:35AM 22

Networks?

09:35AM 23

A. I don't recall when we made that

09:35AM 24

name change.

09:35AM 25

Q. Why did you make the name change?

25

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G. SMITH

09:35AM

2

A. We all felt that the name XLON was

09:35AM

3

clunky.

09:35AM

4

Q. Did that reflect a change in

09:35AM

5

the -- in the business or business plan of

09:35AM

6

the company or just the name change?

09:35AM

7

A. Just the name change.

09:35AM

8

Q. Your LinkedIn profile also

09:35AM

9

indicates you were vice president of

09:35AM

10

technologies and products at something called

09:36AM

11

All Media Guide from October of 2004 to May

09:36AM

12

of 2007; is that correct?

09:36AM

13

A. Yes.

09:36AM

14

Q. What was All Media Guide?

09:36AM

15

A. All Media Guide is a metadata

09:36AM

16

company that maintains information about

09:36AM

17

music, movies, and games.

09:36AM

18

Q. Does that relate at all to the

09:36AM

19

Move Networks company, or XLON?

09:36AM

20

A. No, sir.

09:36AM

21

Q. So did you hold two positions

09:36AM

22

simultaneously during that period?

09:36AM

23

A. No, sir.

09:36AM

24

Q. Had you -- did you leave Move

09:36AM

25

during that period?

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G. SMITH

09:36AM 2

A. Yes, I did.

09:36AM 3

Q. So let me be clear then. So you

09:36AM 4

joined the company that ultimately became

09:36AM 5

Move Networks in the spring of 2001.

09:36AM 6

When did you leave it?

09:36AM 7

A. I can't be certain. I can --

09:36AM 8

it -- I can't be certain as to the exact

09:36AM 9

date. It was probably in 2004.

09:37AM 10

Q. Why did you leave the company at

09:37AM 11

that time?

09:37AM 12

A. Personal reasons.

09:37AM 13

Q. And then you rejoined Move at some

09:37AM 14

point in time; is that correct?

09:37AM 15

A. Yes, I did.

09:37AM 16

Q. And when did you rejoin Move?

09:37AM 17

A. Again, I can't be certain of the

09:37AM 18

exact dates. It would have been in --

09:37AM 19

sometime in 2006 or 2007.

09:37AM 20

Q. And what was the reason that

09:37AM 21

you -- strike that.

09:37AM 22

So did you leave All Media Guide

09:37AM 23

to rejoin Move Networks?

09:37AM 24

A. Yes, I did.

09:37AM 25

Q. And what was the reason that you

1

G. SMITH

09:37AM 2 left All Media Guide?

09:37AM 3 **A. We had packaged the company for**
09:37AM 4 **sale. I had done my job.**

09:37AM 5 Q. And what was the reason that you
09:37AM 6 went back to Move as opposed to doing
09:37AM 7 something different?

09:38AM 8 **A. I felt the opportunities of**
09:38AM 9 **Move Networks were tremendous. I never**
09:38AM 10 **really wanted to leave to begin with.**

09:38AM 11 Q. So at the time you rejoined Move,
09:38AM 12 what was the status of the company's
09:38AM 13 business?

09:38AM 14 **A. The status, could you be more**
09:38AM 15 **specific?**

09:38AM 16 Q. Well, at the time you rejoined
09:38AM 17 Move in 2006 or 2007, did it have a product?

09:38AM 18 **A. Yes, sir.**

09:38AM 19 Q. Did it have customers?

09:38AM 20 **A. Yes, sir.**

09:38AM 21 Q. Did it have revenue?

09:38AM 22 **A. Yes, sir.**

09:38AM 23 Q. So what was the product that
09:38AM 24 existed at that time?

09:38AM 25 **A. It was adaptive streaming.**

1

G. SMITH

09:38AM 2

Q. And what customers did Move have

09:38AM 3

at that time?

09:38AM 4

A. I can't be sure about which

09:39AM 5

customers signed up exactly when, just prior

09:39AM 6

to my rejoining or just after. I'm sorry, I

09:39AM 7

can't be sure about that.

09:39AM 8

Q. And what revenue did Move have at

09:39AM 9

that time?

09:39AM 10

A. Revenue from the use of the

09:39AM 11

adaptive streaming technology.

09:39AM 12

Q. How -- how did Move generate

09:39AM 13

revenues from use of its adaptive bitrate

09:39AM 14

technology?

09:39AM 15

A. Content providers would pay us for

09:39AM 16

the use of that technology so that they could

09:39AM 17

deliver video to their -- to their users, to

09:39AM 18

their viewers.

09:39AM 19

Q. And what exactly did you provide

09:39AM 20

in return for those payments?

09:39AM 21

A. Technology. Technology and

09:39AM 22

services.

09:40AM 23

Q. What technology did you provide?

09:40AM 24

A. The adaptive streaming technology.

09:40AM 25

Q. What form did the -- did the

29

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G. SMITH

09:40AM 2 provision of that technology take?

09:40AM 3 **A. It came in the form of software**
09:40AM 4 **and services.**

09:40AM 5 Q. And...

09:40AM 6 We'll come back to that in a
09:40AM 7 minute or two.

09:40AM 8 So did there come a time when you
09:40AM 9 left Move Networks?

09:40AM 10 **A. Yes.**

09:40AM 11 Q. And when was that?

09:40AM 12 **A. I believe it was in -- I believe**
09:40AM 13 **it was in 2009, yes.**

09:40AM 14 Q. What was the reason you left at
09:40AM 15 that time?

09:40AM 16 **A. The -- the company was hit hard by**
09:41AM 17 **the 2008 financial collapse and some**
09:41AM 18 **determinations were made to take the company**
09:41AM 19 **in a different direction.**

09:41AM 20 Q. Why did those determinations lead
09:41AM 21 to your departure?

09:41AM 22 **A. We -- we cut staff by massive**
09:41AM 23 **amounts. I don't even remember as a**
09:41AM 24 **percentage.**

09:41AM 25 Q. And you were one of the people who

30

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G. SMITH

09:41AM

2

was cut?

09:41AM

3

A. Yes, I was.

09:41AM

4

Q. What was the different direction

09:41AM

5

that the company was going to go into?

09:42AM

6

A. I wasn't part of that going

09:42AM

7

forward, so I'm not really the best person to

09:42AM

8

ask that. I don't know.

09:42AM

9

Q. But you said that the

09:42AM

10

determinations were made to take in a

09:42AM

11

different direction.

09:42AM

12

What do you know about those

09:42AM

13

determinations?

09:42AM

14

A. I know that the -- that the

09:42AM

15

primary market was no longer going to be

09:42AM

16

broadcasters like ABC, ESPN, and others.

09:42AM

17

Q. And why -- why was that no longer

09:42AM

18

going to be the primary market?

09:42AM

19

A. I don't know. I wasn't privy to

09:42AM

20

those conversations.

09:42AM

21

Q. Are you aware of any reasons why

09:42AM

22

those markets would not have been fruitful

09:42AM

23

for the company at that point in time?

09:42AM

24

A. No, I don't.

09:42AM

25

Q. Did you agree with the decision

31

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G. SMITH

09:43AM 2 that was made about changing the -- changing
09:43AM 3 the direction of the company at that point in
09:43AM 4 time?

09:43AM 5 **A. No.**

09:43AM 6 **Q. What was your view at the time?**

09:43AM 7 **A. My view was that we had a very**
09:43AM 8 **strong business that could grow, and we**
09:43AM 9 **should stick with it.**

09:43AM 10 **Q. And who was it who made these**
09:43AM 11 **determinations that you disagreed with?**

09:43AM 12 **A. I don't know. I was not privy to**
09:43AM 13 **those conversations.**

09:43AM 14 **Q. So you were the chief technology**
09:43AM 15 **officer at the time; is that correct?**

09:43AM 16 **A. Yes, sir.**

09:43AM 17 **Q. And you were left out of**
09:43AM 18 **conversations about where the company was**
09:43AM 19 **going to take that technology?**

09:43AM 20 **A. Yes, sir.**

09:43AM 21 **Q. How did you feel about that?**

09:43AM 22 **A. I believe it's the prerogative of**
09:43AM 23 **the board to make such decisions and its**
09:43AM 24 **responsibility to do so.**

09:44AM 25 **Q. So after leaving Move, what did**

32

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G. SMITH

09:44AM 2

you do then in terms of employment?

09:44AM 3

A. I joined a company called

09:44AM 4

DG FastChannel.

09:44AM 5

Q. What was DG FastChannel's

09:44AM 6

business?

09:44AM 7

A. Distribution of television

09:44AM 8

advertising.

09:44AM 9

Q. And what did you do for them?

09:44AM 10

A. Chief technology officer.

09:44AM 11

Q. And how long were you at

09:44AM 12

DG FastChannel?

09:44AM 13

A. In various capacities, I was there

09:44AM 14

for many, many years. I served as CTO during

09:44AM 15

that first piece for, roughly, a year.

09:44AM 16

Q. Okay. When did you leave

09:44AM 17

DG FastChannel?

09:44AM 18

A. That's a difficult question to

09:45AM 19

answer. We sold DG FastChannel, the name

09:45AM 20

itself and the television business, in 2014,

09:45AM 21

I believe it closed.

09:45AM 22

Q. Okay.

09:45AM 23

A. But I still stayed on with the

09:45AM 24

company.

09:45AM 25

Q. Who'd you sell it to?

33

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G. SMITH

09:45AM 2

A. I believe it was purchased by a private equity group.

09:45AM 3

09:45AM 4

Q. When did you ultimately leave DG FastChannel?

09:45AM 5

09:45AM 6

A. Parts of the company that we did not sell were renamed to Sizmek, and I left Sizmek upon the sale of that company, and I believe that was in 2016.

09:45AM 7

09:45AM 8

09:45AM 9

09:45AM 10

Q. So your LinkedIn profile also refers to something called Connected Lyfe, L-Y-F-E.

09:45AM 11

09:45AM 12

09:45AM 13

What is that?

09:46AM 14

A. Connected Lyfe was a -- was a technology company designed -- well, technology company created to address issues of -- of multicast cable systems.

09:46AM 15

09:46AM 16

09:46AM 17

09:46AM 18

Q. Was that related to DG FastChannel or Sizmek?

09:46AM 19

09:46AM 20

A. No, sir.

09:46AM 21

09:46AM 22

Q. So is your work at Connected Lyfe, is that something you did simultaneously while working at DG FastChannel and Sizmek?

09:46AM 23

09:46AM 24

A. I remained a consultant during the time, on and off, to DG FastChannel.

09:46AM 25

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G. SMITH

09:46AM 2

Q. I see.

09:46AM 3

According to your LinkedIn

09:47AM 4

profile, you then went to something called

09:47AM 5

MediaShift; is that correct?

09:47AM 6

A. That's correct.

09:47AM 7

Q. And what was MediaShift?

09:47AM 8

A. MediaShift is a technology company

09:47AM 9

that was attempting to solve some what are

09:47AM 10

known as identity problems in -- with some

09:47AM 11

major cable operators.

09:47AM 12

Q. And why did you leave MediaShift?

09:47AM 13

A. The cable operators weren't able

09:47AM 14

to move quickly enough. They weren't able to

09:47AM 15

operate quickly enough in deploying the

09:47AM 16

technology.

09:47AM 17

Q. So did that company go out of

09:47AM 18

business?

09:47AM 19

A. I don't know if it is technically

09:47AM 20

out of business today or not.

09:47AM 21

Q. Then you went to Nexstar Digital;

09:48AM 22

is that correct?

09:48AM 23

A. Yes, sir.

09:48AM 24

Q. And what -- what is or was Nexstar

09:48AM 25

Digital's business?

1

G. SMITH

09:48AM 2

A. Nexstar owns and operates over

09:48AM 3

200 local television broadcast stations in

09:48AM 4

the United States.

09:48AM 5

Q. What was your job there?

09:48AM 6

A. I was the chief technology officer

09:48AM 7

of Nexstar Digital.

09:48AM 8

Q. Now, in -- in the summary of

09:48AM 9

your -- your LinkedIn profile, you indicate

09:48AM 10

that you're skilled in streaming media. Is

09:48AM 11

that accurate?

09:48AM 12

A. I believe I am, yes.

09:48AM 13

Q. And which of the computers that

09:48AM 14

you've been at involve your work in streaming

09:48AM 15

media?

09:48AM 16

A. Move Networks would be -- would be

09:48AM 17

the most -- the most accurate example.

09:49AM 18

Q. Any others?

09:49AM 19

A. Connected Lyfe.

09:49AM 20

Q. Any others?

09:49AM 21

A. No.

09:49AM 22

Q. So at Nexstar Digital you -- you

09:49AM 23

weren't involved in streaming media

09:49AM 24

technology?

09:49AM 25

A. Primary -- the primary function

1

G. SMITH

09:49AM

2

Nexstar Digital is -- is advertising, not

09:49AM

3

nece- -- not the media along -- alongside of

09:49AM

4

which that advertising is placed.

09:49AM

5

Q. And prior to joining

09:50AM

6

Move Networks, had you had any experience in

09:50AM

7

streaming media?

09:50AM

8

A. No.

09:50AM

9

Q. So the company that was named XLON

09:50AM

10

at one point and then became Move Networks,

09:50AM

11

when did that company begin to work on

09:50AM

12

adaptive bitrate streaming?

09:50AM

13

A. I can't be certain of the exact

09:50AM

14

timeframe.

09:50AM

15

Q. What's your best recollection?

09:50AM

16

A. My guess would be around 2003.

09:51AM

17

Q. And how did it come about that the

09:51AM

18

company began to work on adaptive bitrate

09:51AM

19

streaming at that time?

09:51AM

20

A. We had secured a contract to

09:51AM

21

deliver -- to deliver some video files and in

09:51AM

22

the process of -- of executing on that

09:51AM

23

contract, we had an idea for how we could

09:51AM

24

solve a much larger problem.

09:51AM

25

Q. And what was the contract you were

37

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G. SMITH

09:51AM 2 referring to?

09:51AM 3 **A. The -- the contract was with a**
09:51AM 4 **company called EyeWonder.**

09:51AM 5 Q. What is or was EyeWonder?

09:51AM 6 **A. EyeWonder was a boutique**
09:51AM 7 **advertising agency.**

09:51AM 8 Q. And what was the contract that
09:52AM 9 Move had with EyeWonder?

09:52AM 10 **A. To deliver in-page video ads.**

09:52AM 11 Q. What do you mean by in-page video
09:52AM 12 ads?

09:52AM 13 **A. "In-page" refers to the idea that**
09:52AM 14 **when the web page loads, a portion of that**
09:52AM 15 **web page would be assigned to run a video.**

09:52AM 16 Q. You said that in connection with
09:52AM 17 work on that contract, I think you said "we,"
09:52AM 18 quote/unquote, had an -- had an idea.

09:52AM 19 Who are the "we" you're referring
09:52AM 20 to?

09:52AM 21 **A. Myself, Drew Major, Rob Bryson,**
09:52AM 22 **John Edwards.**

09:53AM 23 Q. For the court reporter's sake, it
09:53AM 24 was Bob Bryson; is that right? Can you spell
09:53AM 25 that?

38

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G. SMITH

09:53AM 2 A. Yes. His legal name is Robert.

09:53AM 3 Q. Is it B-R-Y-S-O-N?

09:53AM 4 A. Yes, sir.

09:53AM 5 Q. And what was the idea that the

09:53AM 6 group of you -- Mr. Major, Mr. Bryson,

09:53AM 7 Mr. Edwards -- had at that time?

09:53AM 8 A. Well, the general idea if we
09:53AM 9 could -- if we could download a single video
09:53AM 10 file, we could -- we could potentially extend
09:53AM 11 that communications protocol to -- to
09:53AM 12 continue going so that we would, in fact, be
09:53AM 13 streaming.

09:54AM 14 Q. And when did you come up with this
09:54AM 15 idea?

09:54AM 16 A. I -- I couldn't -- I couldn't say
09:54AM 17 exactly when.

09:54AM 18 Q. Your best recollection?

09:54AM 19 A. Again, best guess, sometime 2003.

09:54AM 20 Q. And what happened next after
09:54AM 21 coming up with this idea?

09:54AM 22 A. Drew and some other folks
09:54AM 23 started -- well, after some internal
09:54AM 24 conversations, Drew and some other folks
09:54AM 25 started working on the actual technology.

39

1

G. SMITH

09:54AM 2

Q. What were the internal

09:54AM 3

conversations you're referring to?

09:54AM 4

A. Whether or not it would be a good

09:55AM 5

market to pursue; whether or not it would be

09:55AM 6

feasible as a technology.

09:55AM 7

Q. And what did you discuss in that

09:55AM 8

regard?

09:55AM 9

A. We discussed the feasibility of

09:55AM 10

the technology, in other words, like, could

09:55AM 11

it work, and we discussed the state of the

09:55AM 12

industry as in, you know, would there be

09:55AM 13

customers for it.

09:55AM 14

Q. And, again, could you describe for

09:55AM 15

me what the technology you referred to was at

09:55AM 16

that point in time in the -- in the

09:55AM 17

discussions?

09:55AM 18

A. That's a difficult question to

09:55AM 19

answer because at the time such a technology

09:55AM 20

had no name, had no conceptual identity.

09:55AM 21

We -- we were formulating ideas.

09:55AM 22

Q. Can you describe -- describe that

09:55AM 23

as best you can.

09:55AM 24

A. Sure. We initially started --

09:56AM 25

started discussing all of the challenges

1

G. SMITH

09:56AM

2

associated with streaming video and how we

09:56AM

3

could -- we could start to bring down small

09:56AM

4

pieces of video and -- and start very, very

09:56AM

5

quickly and maintain continuity of data

09:56AM

6

streams such that the -- the viewer might not

09:56AM

7

have problems with -- with buffering and

09:56AM

8

stalling.

09:56AM

9

Q. So is -- is that the idea that is

09:56AM

10

now called "adaptive bitrate streaming"?

09:56AM

11

MR. DHANANI: Objection.

09:56AM

12

A. It is part of --

09:56AM

13

MR. DHANANI: Vague.

09:56AM

14

Go ahead.

09:56AM

15

A. It's -- it's part of the idea.

09:56AM

16

There were more things that needed to happen

09:56AM

17

before it could become -- could fully become

09:56AM

18

adaptive bitrate streaming.

09:56AM

19

Q. What additional things needed to

09:56AM

20

happen?

09:56AM

21

A. Most notably, the -- the key

09:56AM

22

ability to change bitrates on the fly while

09:56AM

23

the stream was happening.

09:57AM

24

Q. And how did that issue develop in

09:57AM

25

terms of the work that you were doing at

41

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G. SMITH

09:57AM 2 Move?

09:57AM 3 **A. I'm sorry. Could you ask that**
09:57AM 4 **again?**

09:57AM 5 Q. Well, how did -- how did the --
09:57AM 6 the work that you were doing at Move develop
09:57AM 7 to the point of being able to -- to...

09:57AM 8 **A. Ah, I understand.**

09:57AM 9 Q. -- do that all?

09:57AM 10 **A. Eventually we figured out how**
09:57AM 11 **to -- how to determine -- be deterministic**
09:57AM 12 **where our key frames would lie, and then we**
09:57AM 13 **started -- the team started working on --**
09:57AM 14 **working on how to actually render a different**
09:57AM 15 **bitrate than the one that is currently being**
09:57AM 16 **rendered. So to adjust stage size.**

09:57AM 17 Q. What is a keyframe?

09:57AM 18 **A. Keyframe is a fully defined**
09:58AM 19 **picture.**

09:58AM 20 Q. And -- so the team worked on how
09:58AM 21 to render this. Who is the team that you are
09:58AM 22 referring to at that point in time?

09:58AM 23 **A. Mark Hurst, Dave Brueck,**
09:58AM 24 **Drew Major. Those are the -- those are the**
09:58AM 25 **three key people.**

1

G. SMITH

09:58AM 2

Q. What role did you play in

09:58AM 3

developing this idea?

09:58AM 4

A. As a CTO --

09:58AM 5

MR. DHANANI: Objection --

09:58AM 6

objection; vague and mischaracterizes.

09:58AM 7

A. Sorry, could you ask the question

09:58AM 8

again, please, sir?

09:58AM 9

Q. What role did you play in the work

09:58AM 10

that you described of figuring out how to --

09:58AM 11

how to achieve this, what became known as

09:58AM 12

"adaptive bitrate streaming"?

09:58AM 13

A. As the CTO, I was the manager of

09:59AM 14

the team.

09:59AM 15

Q. And what does that mean? What

09:59AM 16

contributions did you make personally?

09:59AM 17

A. Guidance, support, direction.

09:59AM 18

Q. Did you make any contributions to

09:59AM 19

the actual solution?

09:59AM 20

A. I don't recall.

09:59AM 21

Q. What role did Mr. Hurst play in

09:59AM 22

developing the solution?

09:59AM 23

A. Mark Hurst wrote most of the code.

09:59AM 24

Q. And what role did Mr. Major play?

09:59AM 25

A. Drew wrote most of the code and

1

G. SMITH

09:59AM

2

did a lot of the architecting.

09:59AM

3

Q. And you mentioned Mr. Brueck.

09:59AM

4

A. Yes, sir.

09:59AM

5

Q. When did he join the team?

10:00AM

6

A. I don't recall.

10:00AM

7

Q. Was he there at the beginning in

10:00AM

8

2003?

10:00AM

9

A. Yes, he was there in 2003.

10:00AM

10

Q. What role did he play?

10:00AM

11

A. Mr. Brueck also wrote much of the

10:00AM

12

code.

10:00AM

13

Q. Did Mr. Bryson make contributions

10:00AM

14

to the development of the adaptive bitrate

10:00AM

15

streaming technology?

10:00AM

16

A. I'm not sure I totally understand

10:00AM

17

the definition of the word "contributions."

10:00AM

18

I would characterize it as, you know, all of

10:00AM

19

us participated in general conversations, but

10:00AM

20

Bob's primary role was -- was outward-facing.

10:00AM

21

He's sales and business development.

10:00AM

22

Q. Well, did he offer any

10:01AM

23

suggestions, ideas, proposals that -- that

10:01AM

24

became part of the adaptive bitrate streaming

10:01AM

25

technology?

1

G. SMITH

10:01AM 2

A. I don't recall.

10:01AM 3

MR. DHANANI: Objection to form.

10:01AM 4

Calls for speculation.

10:01AM 5

But go ahead.

10:01AM 6

A. I don't recall.

10:01AM 7

Q. And what role did Mr. Edwards play

10:01AM 8

in the development of the adaptive bitrate

10:01AM 9

streaming technology?

10:01AM 10

A. As the CEO, John was responsible

10:01AM 11

for the entire company.

10:01AM 12

Q. But specifically what -- what, if

10:01AM 13

anything, did he add to the development of

10:01AM 14

the technology itself?

10:01AM 15

MR. DHANANI: Objection to form.

10:01AM 16

Calls for speculation.

10:01AM 17

Go ahead.

10:01AM 18

A. I don't recall.

10:01AM 19

Q. When did Mr. Hurst join the

10:01AM 20

company?

10:02AM 21

A. I don't recall a specific date.

10:02AM 22

Q. Was Mr. Hurst at the company when

10:02AM 23

the initial idea that became adaptive bitrate

10:02AM 24

streaming was developed?

10:02AM 25

A. Don't recall when he joined.

1

G. SMITH

10:02AM 2

Q. Are you aware of a work task list

10:02AM 3

for Mr. Hurst's work on this matter?

10:02AM 4

A. No, I'm not.

10:02AM 5

Q. So are you aware of a particular

10:03AM 6

point in time when Mr. Major claimed to have

10:03AM 7

had an aha moment with regard to the idea for

10:03AM 8

adaptive bitrate streaming?

10:03AM 9

A. Sorry. Could you ask that

10:03AM 10

question again, please?

10:03AM 11

MR. BARQUIST: Could the court

10:03AM 12

reporter read it back, please.

10:03AM 13

(Record read.)

10:03AM 14

A. Yes.

10:03AM 15

Q. When was that?

10:03AM 16

A. That moment happened as a result

10:04AM 17

of a meeting between Move Networks personnel

10:04AM 18

and Eyewonder personnel.

10:04AM 19

Q. And what do you recall about that

10:04AM 20

event?

10:04AM 21

A. I recall that we were -- we were

10:04AM 22

trying to figure out how to deliver those

10:04AM 23

video ads most efficiently.

10:04AM 24

Q. Okay. And who was the "we"?

10:04AM 25

A. Myself, Bob Bryson, John Edwards,

1

G. SMITH

10:04AM

2

Drew Major.

10:04AM

3

Q. And what happened with regard to

10:04AM

4

that effort?

10:05AM

5

A. We successfully executed that

10:05AM

6

contract and delivered their -- and delivered

10:05AM

7

their ad campaign for them.

10:05AM

8

Q. How does that relate to this

10:05AM

9

so-called aha moment?

10:05AM

10

A. I believe it was during those

10:05AM

11

conversations that it occurred. It occurred

10:05AM

12

to us that we could do -- that we could

10:05AM

13

continue the communications protocol and

10:05AM

14

continue to stream -- not continue, to start

10:05AM

15

to stream video as opposed to just download

10:05AM

16

files.

10:05AM

17

Q. And who, other than Mr. Major, was

10:05AM

18

involved in -- in that realization?

10:05AM

19

A. I believe all four of us discussed

10:05AM

20

it in the car on the ride back to the

10:05AM

21

airport.

10:05AM

22

Q. And at that point in time, was the

10:06AM

23

idea for adaptive bitrate streaming complete,

10:06AM

24

or did somebody have to be added later?

10:06AM

25

A. Something had to be added later.

1

G. SMITH

10:06AM 2 Q. What was -- what was added later?

10:06AM 3 A. The ability to change bitrates on
10:06AM 4 the fly.

10:06AM 5 Q. So during that car ride, did you
10:06AM 6 have the idea of changing bitrates on the
10:06AM 7 fly?

10:06AM 8 A. I don't recall.

10:06AM 9 Q. What -- what do you recall about
10:06AM 10 what was said during that discussion?

10:06AM 11 A. That in the -- in the process of
10:06AM 12 executing on that contract, we -- we had the
10:07AM 13 idea that the end of the file didn't have to
10:07AM 14 be the end of our communications protocol,
10:07AM 15 that we could continue going and we could --
10:07AM 16 and we could actually stream video versus
10:07AM 17 download files.

10:07AM 18 Q. Are you telling me that prior to
10:07AM 19 that time, streaming video wasn't done?

10:07AM 20 A. No, I'm not telling you that.

10:07AM 21 Q. So what was -- what was new or
10:07AM 22 different about this idea that you came up
10:07AM 23 with during this car ride?

10:07AM 24 A. Prior to that -- prior to that
10:07AM 25 moment, streaming video really didn't work.

1

G. SMITH

10:07AM 2

The data flows were inconsistent and the

10:07AM 3

viewer experience was not contiguous or

10:07AM 4

continuous. It was very halting. Our

10:07AM 5

methodology could provide continuity and

10:07AM 6

smoothness to the viewer experience.

10:07AM 7

Q. And you discussed how to do that

10:07AM 8

during this car ride?

10:08AM 9

A. I wouldn't go so far to say how to

10:08AM 10

do it. We discussed that it could be

10:08AM 11

possible. We didn't know how to do it yet.

10:08AM 12

Q. At what point did the team at

10:08AM 13

Move Networks know how to do it?

10:08AM 14

MR. DHANANI: Objection; vague.

10:08AM 15

A. I -- I couldn't be certain as to

10:08AM 16

the exact date. I could only say that it

10:08AM 17

took many months of -- of research and

10:08AM 18

development.

10:08AM 19

Q. So at some point in time, Move

10:09AM 20

decided to seek patent protection for this

10:09AM 21

idea; is that correct?

10:09AM 22

A. Yes, that's correct.

10:09AM 23

Q. And what role did you play in

10:09AM 24

making that decision?

10:09AM 25

MR. DHANANI: I'll caution the

1

G. SMITH

10:09AM 2

witness --

10:09AM 3

Actually, I'm going to instruct

10:09AM 4

you not to answer that question on the

10:09AM 5

basis of attorney-client privilege

10:09AM 6

based on how that question is phrased.

10:09AM 7

Q. Did you play any role in deciding

10:09AM 8

to seek patent protection at Move Networks

10:09AM 9

for this adaptive bitrate streaming idea?

10:09AM 10

A. Yes. You can --

10:09AM 11

MR. DHANANI: Let me -- give a

10:09AM 12

chance to give cautions here, Greg.

10:09AM 13

Q. What role did you play?

10:09AM 14

MR. DHANANI: And I'll caution

10:09AM 15

you not to disclose any discussions

10:09AM 16

that you had with attorneys as to the

10:09AM 17

role, but you can answer if you had

10:09AM 18

discussions related to the role

10:10AM 19

outside of discussions with attorneys.

10:10AM 20

A. I advised that we should seek

10:10AM 21

patent protection.

10:10AM 22

Q. Who did you give that advice to?

10:10AM 23

A. Drew Major, John Edwards.

10:10AM 24

Q. Did you have discussions with

10:10AM 25

Mr. Major and Mr. Edwards about deciding to

50

1

G. SMITH

10:10AM

2

seek patent protection?

10:10AM

3

A. Yes.

10:10AM

4

Q. Did you have discussions with

10:10AM

5

Mr. Edwards and/or Mr. Major outside of the

10:10AM

6

presence of a lawyer on that subject?

10:10AM

7

A. I don't know.

10:10AM

8

Q. Did you have discussions with

10:10AM

9

Mr. Major and Mr. Edwards about patent

10:10AM

10

protection with a lawyer present?

10:10AM

11

A. Yes.

10:10AM

12

Q. Who was the lawyer?

10:10AM

13

A. I don't recall.

10:11AM

14

Q. Again, putting aside any

10:11AM

15

discussions involving a lawyer, again, not

10:11AM

16

getting into privilege, but to the extent you

10:11AM

17

had other conversations, what was the

10:11AM

18

discussion about seeking patent protection?

10:11AM

19

A. My only participation in that

10:11AM

20

discussion was to advise that we do it.

10:11AM

21

Q. Why did you give that advice?

10:11AM

22

THE COURT REPORTER: I'm sorry.

10:11AM

23

Can we address the telephone ringing?

10:11AM

24

It is hard to hear.

10:11AM

25

MR. BARQUIST: I'm sorry, I

1

G. SMITH

10:11AM 2

didn't hear a telephone, but --

10:11AM 3

MR. DHANANI: I don't either.

10:11AM 4

THE COURT REPORTER: My

10:11AM 5

apologies.

10:12AM 6

A. Sorry. Could you ask the question

10:12AM 7

again, please?

10:12AM 8

Q. Sure.

10:12AM 9

MR. BARQUIST: Could the court

10:12AM 10

reporter read it back.

10:12AM 11

(Record read.)

10:12AM 12

A. Because I felt that we had

10:12AM 13

something that would be very unique and

10:12AM 14

valuable.

10:12AM 15

Q. Were you involved in the writing

10:12AM 16

of any patent applications?

10:12AM 17

A. No.

10:12AM 18

Q. Did you review any patent

10:12AM 19

applications in draft form?

10:12AM 20

A. Yes.

10:12AM 21

MR. DHANANI: Objection; vague.

10:12AM 22

Q. Did you make any changes or

10:12AM 23

recommend any changes to any of the

10:12AM 24

applications you reviewed?

10:12AM 25

A. I don't recall.

1

G. SMITH

10:13AM 2

Q. Did you investigate whether there

10:13AM 3

was any prior art that should be disclosed to

10:13AM 4

the Patent Office?

10:13AM 5

MR. DHANANI: Before you answer,

10:13AM 6

I'm going to -- if -- if you received

10:13AM 7

instructions to do so at the direction

10:13AM 8

of attorneys, then I'm going to ask

10:13AM 9

you not to answer that question on the

10:13AM 10

basis of privilege.

10:13AM 11

Q. Can you answer the question,

10:13AM 12

Mr. Smith?

10:13AM 13

A. No, sir.

10:13AM 14

Q. You're refusing to answer the

10:13AM 15

question?

10:13AM 16

A. At the direction of my attorney,

10:13AM 17

yes, sir.

10:13AM 18

Q. So did counsel direct you to

10:13AM 19

search for prior art?

10:13AM 20

MR. DHANANI: Even on that

10:13AM 21

question, I'm going to instruct the

10:13AM 22

witness not to answer as that would

10:13AM 23

deal with an attorney-client

10:14AM 24

communication.

10:14AM 25

So I instruct the witness not to

53

1

G. SMITH

10:14AM 2

answer.

10:14AM 3

Q. Did you find any prior art related

10:14AM 4

to the streaming technology?

10:14AM 5

MR. DHANANI: Same issues. It's

10:14AM 6

getting into privileged territory. He

10:14AM 7

already testified he's done this at

10:14AM 8

the direction of counsel.

10:14AM 9

MR. BARQUIST: I'm not asking

10:14AM 10

what he discussed with counsel. I'm

10:14AM 11

asking what he was aware of, what he

10:14AM 12

found.

10:14AM 13

MR. DHANANI: What he found is

10:14AM 14

responsive to what counsel would have

10:14AM 15

asked, so I can't let him answer that

10:14AM 16

question.

10:14AM 17

BY MR. BARQUIST:

10:14AM 18

Q. As of April 2004, Mr. Smith, were

10:14AM 19

you aware of any other efforts by others in

10:14AM 20

the industry to develop adaptive bitrate

10:15AM 21

streaming technology?

10:15AM 22

MR. DHANANI: You can answer

10:15AM 23

outside of communications you had with

10:15AM 24

attorneys.

10:15AM 25

A. I was not aware of any such

G. SMITH

efforts.

Q. Did you subsequently, after April of 2004, become aware of efforts by others to develop adaptive bitrate streaming technology?

A. Anytime after 2004, so like from 2004 to 2021?

Q. Let's limit it to 2004 to 2007 for the moment.

A. I was not aware of any other efforts to develop adaptive bitrate streaming during that time.

Q. How about from the period from 2007 through 2009?

A. I'm really uncomfortable nailing these timeframes down that closely.

Q. Well, while you were still employed by Move Networks, at any time.

A. Yes.

Q. What were you aware of?

A. I had heard rumors that Microsoft was seeking to -- I apologize if this is not a right legal term, but was seeking to copy our technology.

1

G. SMITH

10:16AM 2

Q. When did you hear those rumors?

10:16AM 3

A. I don't recall exactly. That's

10:16AM 4

why I'm uncomfortable nailing down these

10:16AM 5

timeframes.

10:16AM 6

Q. Who did you hear them from?

10:17AM 7

A. I don't recall.

10:17AM 8

Q. Other than those rumors regarding

10:17AM 9

Microsoft, were you aware of any other

10:17AM 10

efforts of others at any point in time --

10:17AM 11

well, let me strike that.

10:17AM 12

Other than those rumors regarding

10:17AM 13

Microsoft and during your time at

10:17AM 14

Move Networks, did you become aware of

10:17AM 15

efforts by others, at any point in time, to

10:17AM 16

develop adaptive bitrate streaming-type

10:17AM 17

technology?

10:17AM 18

A. I'm not sure. Again, it's the

10:17AM 19

timeframes. I'm not sure.

10:17AM 20

Q. In connection with seeking patent

10:17AM 21

protection at Move Networks, did you have any

10:17AM 22

discussions with others outside the presence

10:17AM 23

of lawyers about who would be identified as

10:18AM 24

the inventors on a patent application?

10:18AM 25

MR. DHANANI: Again, I caution

1

G. SMITH

10:18AM 2

you not to disclose attorney-client

10:18AM 3

communications, but that question asks

10:18AM 4

for communications outside of

10:18AM 5

attorneys.

10:18AM 6

So you can answer.

10:18AM 7

THE WITNESS: Can we have the

10:18AM 8

court reporter read the question

10:18AM 9

again, please.

10:18AM 10

(Record read.)

10:18AM 11

A. Yes, I did.

10:18AM 12

MR. DHANANI: I object as vague

10:18AM 13

and speculation.

10:18AM 14

But go ahead, if you know.

10:18AM 15

A. Yes, I did.

10:18AM 16

Q. With whom?

10:18AM 17

A. Drew, Mark, Dave. Sorry. Drew

10:18AM 18

Major, Mark Hurst, Dave Brueck.

10:19AM 19

Q. And what do you recall about those

10:19AM 20

discussions?

10:19AM 21

A. That we all agreed on who the

10:19AM 22

inventors were.

10:19AM 23

Q. Was there any discussion about

10:19AM 24

whether you should have been named as an

10:19AM 25

inventor on any of the patents?

1

G. SMITH

10:19AM 2

A. No, there was not.

10:19AM 3

MR. DHANANI: Objection.

10:19AM 4

Go ahead.

10:19AM 5

Q. Are you aware that Mr. Brueck is

10:19AM 6

named on some but not all the patent

10:19AM 7

applications?

10:19AM 8

A. Yes, I am.

10:19AM 9

Q. Do you know why that was?

10:19AM 10

MR. DHANANI: I'm going to

10:19AM 11

caution you again, if any of that came

10:19AM 12

from attorneys, then I instruct you

10:19AM 13

not to answer.

10:19AM 14

A. The -- his name appears

10:19AM 15

appropriately where it reflects his

10:19AM 16

contributions.

10:19AM 17

Q. And what were Mr. Brueck's

10:19AM 18

contributions?

10:19AM 19

A. Mr. Brueck wrote much of the code

10:20AM 20

associated with the development of adaptive

10:20AM 21

bitrate streaming.

10:20AM 22

Q. But what in particular was it

10:20AM 23

about Mr. Brueck's contributions that led you

10:20AM 24

to decide he should be named on some patents

10:20AM 25

but not others?

1

G. SMITH

10:20AM 2

MR. DHANANI: Objection;

10:20AM 3

mischaracterizes testimony.

10:20AM 4

A. I -- I really don't recall the

10:20AM 5

details of all these conversations. I'm

10:20AM 6

sorry.

10:20AM 7

Q. Do you recall anything in general

10:20AM 8

about those conversations on that subject?

10:20AM 9

MR. DHANANI: Objection;

10:20AM 10

mischaracterizes testimony to the

10:20AM 11

extent it relates back to the prior

10:20AM 12

question.

10:20AM 13

A. What I recall is that we all

10:20AM 14

agreed on whose names should be on those

10:20AM 15

patents. And where.

10:21AM 16

MR. DHANANI: Can we go ahead

10:21AM 17

and take a break anytime you are at a

10:21AM 18

stopping point?

10:21AM 19

MR. BARQUIST: Sure. I was just

10:21AM 20

pulling up an exhibit, but sure, this

10:21AM 21

would be a fine time to take a short

10:21AM 22

break.

10:21AM 23

THE VIDEOGRAPHER: The time is

10:21AM 24

11:21 a.m. and we are going off the

10:21AM 25

record.

1

G. SMITH

10:21AM 2

(Whereupon, a recess was held.)

10:33AM 3

THE VIDEOGRAPHER: The time is

10:33AM 4

11:33 a.m., and we are back on the

10:33AM 5

record.

10:33AM 6

MR. BARQUIST: I'm going to put

10:33AM 7

another document into the chat here.

10:33AM 8

Give me one second. Okay, I hope

10:33AM 9

everyone can see the document in the

10:33AM 10

chat.

10:33AM 11

I would like to mark as Smith

10:34AM 12

Exhibit 2, an email dated May 7, 2007,

10:34AM 13

from Mr. Smith to Mr. Bryson and

10:34AM 14

others.

10:34AM 15

(Whereupon, Smith Exhibit 2,

10:34AM 16

DISH_337-TA-1265-GS_'0987 through '990

10:34AM 17

was marked for identification as of

10:34AM 18

this date by the Reporter.)

10:34AM 19

BY MR. BARQUIST:

10:34AM 20

Q. Does everyone have that document?

10:34AM 21

A. I have it.

10:34AM 22

Q. Do you recognize Exhibit 2,

10:34AM 23

Mr. Smith?

10:34AM 24

A. One moment, please.

10:34AM 25

Q. Sure.

G. SMITH

10:35AM 2 **A. Yes, sir. I recognize this**
10:35AM 3 **document.**

10:35AM 4 Q. And what is it, please?

10:35AM 5 **A. This is a -- a management**
10:35AM 6 **communication from myself to others on the**
10:35AM 7 **management team providing an update on weekly**
10:35AM 8 **activities.**

10:35AM 9 Q. And is this a -- a type of weekly
10:35AM 10 update that you provided on a regular basis
10:35AM 11 while at Move?

10:35AM 12 **A. Yes, sir. Although the format**
10:35AM 13 **changed later.**

10:35AM 14 Q. Now, this one is dated May 7,
10:35AM 15 2007.

10:35AM 16 Does this refresh your
10:35AM 17 recollection at all about when you rejoined
10:35AM 18 Move?

10:35AM 19 **A. No, sir.**

10:35AM 20 Q. You don't recall if by May you had
10:35AM 21 been there a month or six months; doesn't
10:35AM 22 help?

10:35AM 23 **A. No, sir.**

10:36AM 24 Q. So the first item on Exhibit 2
10:36AM 25 talks about Turner.

61

1

G. SMITH

10:36AM 2

Is that the Turner Network?

10:36AM 3

A. One moment, please.

10:36AM 4

No, sir.

10:36AM 5

Q. What does the "Turner" refer to?

10:36AM 6

A. Turner Broadcasting.

10:36AM 7

Q. And did Turner Broadcasting ever

10:36AM 8

become a customer?

10:36AM 9

A. I do not recall.

10:36AM 10

Q. The second bullet point under

10:36AM 11

Turner says that they were "looking for

10:36AM 12

primarily a lower cost solution."

10:36AM 13

Do you see that?

10:36AM 14

A. Yes, sir.

10:36AM 15

Q. Were there lower cost solutions

10:36AM 16

available at the time?

10:37AM 17

A. No, sir.

10:37AM 18

May I -- may I change that answer?

10:37AM 19

Q. Yes.

10:37AM 20

A. Not to my knowledge.

10:37AM 21

Q. Okay. Was Move Networks a high

10:37AM 22

cost solution?

10:37AM 23

A. No, sir.

10:37AM 24

Q. Turning to page 2 of Exhibit 2,

10:37AM 25

there's a heading "Technology Partnerships."

1

G. SMITH

10:37AM 2

Do you see that?

10:37AM 3

A. One moment, please. Yes, I see

10:37AM 4

it.

10:37AM 5

Q. The first one is Akamai.

10:37AM 6

Was there a technology partnership

10:37AM 7

under discussion with Akamai?

10:37AM 8

A. I do not recall.

10:38AM 9

Q. Did Move ever have a technology

10:38AM 10

partnership with Akamai?

10:38AM 11

A. I do not recall.

10:38AM 12

Q. The next company listed is Cisco.

10:38AM 13

Was there a technology partnership

10:38AM 14

under discussion with Cisco?

10:38AM 15

A. Yes, sir.

10:38AM 16

Q. Did that ever come to fruition?

10:38AM 17

A. Could you -- could you be more

10:38AM 18

specific about "come to fruition"?

10:38AM 19

Q. Did you ever reach an agreement

10:38AM 20

with Cisco regarding any kind of a technology

10:38AM 21

partnership while at Move?

10:38AM 22

A. Yes, sir.

10:38AM 23

Q. What was the nature of the

10:38AM 24

partnership?

10:38AM 25

A. Cisco invested money into the

G. SMITH

10:38AM 2 **company. We had further discussions about**
10:38AM 3 **Cisco's caching technology.**

10:39AM 4 Q. And what happened with those
10:39AM 5 discussions?

10:39AM 6 **A. I do not recall.**

10:39AM 7 Q. When did Cisco make its
10:39AM 8 investment?

10:39AM 9 **A. I don't think I could nail down**
10:39AM 10 **the -- the specific timeframe.**

10:39AM 11 Q. How much did Cisco invest?

10:39AM 12 **A. I believe it was \$5 million.**

10:39AM 13 Q. And did Cisco ever receive any
10:39AM 14 return on that investment?

10:39AM 15 **A. I do not know.**

10:39AM 16 Q. Next company listed is Level 3.
10:39AM 17 Was there a technology partnership
10:39AM 18 under discussion with Level 3 while at Move?

10:39AM 19 **A. Yes, sir.**

10:39AM 20 Q. What was the nature of that
10:39AM 21 partnership?

10:39AM 22 **A. Level 3 had an interest in being**
10:40AM 23 **the CDN for Move Networks streaming.**

10:40AM 24 Q. Did that arrangement ever come to
10:40AM 25 pass?

1

G. SMITH

10:40AM 2

A. Yes, sir.

10:40AM 3

Q. When was that?

10:40AM 4

A. I don't think I could -- I could

10:40AM 5

nail down the exact dates.

10:40AM 6

Q. So can you describe what the

10:40AM 7

nature of the agreement between Level 3 and

10:40AM 8

Move was?

10:40AM 9

A. I could attempt to. Level 3

10:40AM 10

wanted to be an operator of the technology

10:40AM 11

and wanted to be the -- the CDN that carried

10:41AM 12

the bits associated with the -- with the

10:41AM 13

videos.

10:41AM 14

Q. And did that actually happen?

10:41AM 15

A. Yes, sir.

10:41AM 16

Q. For which content?

10:41AM 17

A. I couldn't say. I don't know. I

10:41AM 18

could -- I could characterize it as most of

10:41AM 19

it.

10:41AM 20

Q. All right. What was the financial

10:41AM 21

arrangement between Move and Level 3 for that

10:41AM 22

work?

10:41AM 23

A. Level 3 was an investor in the

10:41AM 24

company and Move Networks paid Level 3 for

10:41AM 25

transport.

1

G. SMITH

10:41AM 2

Q. So Move Networks paid Level 3 to

10:41AM 3

serve as the CDN; is that correct?

10:42AM 4

A. Yes, sir.

10:42AM 5

Q. So Level 3 didn't pay

10:42AM 6

Move Networks anything; is that right?

10:42AM 7

A. As long as the word "pay" doesn't

10:42AM 8

include that investment, then that is

10:42AM 9

correct.

10:42AM 10

Q. And how much did Level 3 invest?

10:42AM 11

A. Again, I believe it was

10:42AM 12

\$5 million.

10:42AM 13

Q. And when did that occur?

10:42AM 14

A. I could not nail down the

10:42AM 15

specifics on the dates. I'm sorry.

10:42AM 16

Q. Did Level 3 receive any return on

10:42AM 17

that investment?

10:42AM 18

A. I do not know.

10:42AM 19

Q. During the time you were at Move,

10:42AM 20

did Level 3 receive any return on that

10:42AM 21

investment?

10:42AM 22

A. I do not know.

10:42AM 23

Q. If you turn to page 3 of Exhibit 2

10:43AM 24

under the heading "Competitive Position,"

10:43AM 25

there's a reference to ABC and Microsoft.

1

G. SMITH

10:43AM 2

Do you see that?

10:43AM 3

A. One moment, please.

10:43AM 4

Yes, I do.

10:43AM 5

Q. What -- what does that refer to,

10:43AM 6

ABC and Microsoft under "Competitive

10:43AM 7

Position"?

10:43AM 8

A. I believe Microsoft was asking ABC

10:43AM 9

to run the ABC programming on the Microsoft

10:43AM 10

MCPC.

10:43AM 11

Q. What is MCPC?

10:43AM 12

A. To the best of my recollection, it

10:43AM 13

stands for media center personal computer.

10:44AM 14

Q. So the sixth bullet point under

10:44AM 15

this section of your message says,

10:44AM 16

"Recommended next step: design and architect

10:44AM 17

MCPC solution without MSFT."

10:44AM 18

Do you see that?

10:44AM 19

A. Yes, sir, I do.

10:44AM 20

Q. What does that mean?

10:44AM 21

A. Microsoft couldn't do it so we

10:44AM 22

would have to.

10:44AM 23

Q. Did you do that?

10:44AM 24

A. No, sir, I don't believe we did.

10:44AM 25

Q. Why not?

67

1

G. SMITH

10:44AM 2

A. I don't believe it was feasible.

10:44AM 3

Q. What about it made it not

10:44AM 4

feasible?

10:44AM 5

A. I -- I don't recall specifically,

10:45AM 6

but I think the fourth bullet point is the

10:45AM 7

point there.

10:45AM 8

Q. Okay. What -- can you elaborate

10:45AM 9

on what you mean by that?

10:45AM 10

A. There was -- there was no easy way

10:45AM 11

to -- to get the Move technology onto the

10:45AM 12

MCPC. It was a poorly connected device.

10:45AM 13

Q. What device are you referring to?

10:45AM 14

A. MCPC.

10:45AM 15

Q. So MCPC was an actual physical

10:45AM 16

device?

10:45AM 17

A. Yes, sir.

10:45AM 18

Q. I see.

10:45AM 19

As of May 2007, the date of

10:45AM 20

Exhibit 2, what investments had been made by

10:46AM 21

outsiders into Move Networks?

10:46AM 22

A. Could you define "outsiders"?

10:46AM 23

Q. Well, venture capitalists,

10:46AM 24

companies like Level 3 and Cisco that you

10:46AM 25

mentioned, anyone other than the founders?

68

G. SMITH

10:46AM 2 **A. I can't be certain of the answer**
10:46AM 3 **to that question because of the specifics of**
10:46AM 4 **the dates.**

10:46AM 5 Q. All right. Are you aware that
10:46AM 6 approximately \$11 million of venture capital
10:46AM 7 funding was received in 2007?

10:46AM 8 **A. I'm not aware of the accuracy of**
10:46AM 9 **that date, no, sir.**

10:46AM 10 Q. Did you make any investments in
10:46AM 11 Move Networks yourself?

10:46AM 12 **A. No, sir.**

10:46AM 13 Q. Did you own shares in
10:46AM 14 Move Networks?

10:47AM 15 **A. I don't know the answer to that**
10:47AM 16 **question.**

10:47AM 17 Q. Did you own options for shares in
10:47AM 18 Move Networks?

10:47AM 19 **A. Yes, sir, I did.**

10:47AM 20 Q. Did you ever receive anything as a
10:47AM 21 result of owning those options?

10:47AM 22 **A. I believe I did, yes.**

10:47AM 23 Q. What did you receive?

10:47AM 24 **A. As I recall, it was a few thousand**
10:47AM 25 **dollars.**

1

G. SMITH

10:47AM 2 Q. When did you receive that?

10:47AM 3 A. I don't recall.

10:47AM 4 Q. Was that in connection with the
10:47AM 5 sale of the company to EchoStar?

10:47AM 6 A. I don't recall.

10:47AM 7 Q. Was it before or after you left
10:47AM 8 Move's employment?

10:47AM 9 A. Similar timeframe, but I don't
10:47AM 10 recall if it was before or after.

10:47AM 11 Q. Other than that few thousand
10:47AM 12 dollars and your salary while an employee,
10:47AM 13 did you receive any other compensation of any
10:47AM 14 kind from Move Networks?

10:47AM 15 A. No, sir.

10:47AM 16 Q. Do you own any shares in EchoStar
10:48AM 17 or DISH?

10:48AM 18 A. No, I do not.

10:48AM 19 MR. BARQUIST: All right.

10:48AM 20 Let's -- let me mark as the next
10:48AM 21 exhibit. Give me a moment here,
10:48AM 22 please.

10:48AM 23 This is -- we will mark this
10:48AM 24 Exhibit 3, an email from Mr. Smith to
10:48AM 25 Mr. Edwards and others dated May 16,

70

1

G. SMITH

10:49AM 2

2007.

10:49AM 3

(Whereupon, Smith Exhibit 3,

10:49AM 4

DISH_337-TA-1265-GS_'1053 through

10:49AM 5

'1056 was marked for identification as

10:49AM 6

of this date by the Reporter.)

10:49AM 7

Q. Are you able to open that?

10:49AM 8

A. Yes. I have it open.

10:49AM 9

One minute, please.

10:49AM 10

Q. Do you recognize this as an email

10:49AM 11

exchange between yourself and Mark Taylor of

10:49AM 12

Level 3?

10:49AM 13

A. Just one moment, please. This one

10:49AM 14

is a little longer.

10:49AM 15

Yes, sir, I do.

10:49AM 16

Q. And what were you discussing with

10:49AM 17

Mr. Taylor, Level 3, in May of 2007?

10:50AM 18

A. We were discussing working

10:50AM 19

together to -- to deliver the -- to deliver

10:50AM 20

the video bits across the Level 3 network.

10:50AM 21

Q. There's a reference here. If you

10:50AM 22

look at page 2, you say to Mr. Taylor, "I am

10:50AM 23

getting ready to send you some docs regarding

10:50AM 24

Move patents."

10:50AM 25

Do you see that?

71

1

G. SMITH

10:50AM 2

A. Yes, sir.

10:50AM 3

Q. What was the discussion that you

10:50AM 4

were having with Level 3 about Move patents?

10:50AM 5

A. This was related to their

10:50AM 6

potential investment and their due diligence

10:50AM 7

process.

10:50AM 8

Q. What did you tell the -- Level 3

10:50AM 9

about Move patents in that connection?

10:50AM 10

A. At this time and in this thread, I

10:50AM 11

had not sent them anything yet.

10:50AM 12

Q. I'm not limiting it to just this

10:51AM 13

thread.

10:51AM 14

At any time, what did you tell

10:51AM 15

Level 3 about Move patents?

10:51AM 16

A. I sent them a zip file including

10:51AM 17

information about the Move Networks' patents

10:51AM 18

for their due diligence.

10:51AM 19

Q. And what information did you send

10:51AM 20

them?

10:51AM 21

A. I don't recall. I don't have that

10:51AM 22

in front of me right now.

10:51AM 23

Q. And when did you send that?

10:51AM 24

A. I don't recall the exact date.

10:52AM 25

MR. BARQUIST: Let's mark as the

1

G. SMITH

10:52AM 2

next, Exhibit 4, an email from

10:52AM 3

Mr. Smith to Mr. Ericson and others

10:52AM 4

dated May 20, 2007.

10:52AM 5

(Whereupon, Smith Exhibit 4,

10:52AM 6

DISH_337-TA-1265-GS_'1096 was marked

10:52AM 7

for identification as of this date by

10:52AM 8

the Reporter.)

10:52AM 9

A. I have it. One moment, please.

10:52AM 10

I have it.

10:52AM 11

Q. There's a reference here on

10:52AM 12

Exhibit 4 to "problems with some video cards

10:52AM 13

on Vista."

10:52AM 14

What does that refer to?

10:53AM 15

A. Vista was an operating system

10:53AM 16

produced by Microsoft, and my question to

10:53AM 17

Mr. Ericson, Mr. Rose, and Mr. Ericson is a

10:53AM 18

request to know if the release notes include

10:53AM 19

any mention of problems with some of the --

10:53AM 20

some of the hardware that was -- that was

10:53AM 21

distributed on laptops with Vista operating

10:53AM 22

systems.

10:53AM 23

Q. What was the nature of that

10:53AM 24

problem?

10:53AM 25

A. I do not recall.

1

G. SMITH

10:53AM 2

Q. Did that problem affect the

10:53AM 3

ability of Move Networks' streaming

10:53AM 4

technology to work on Vista?

10:53AM 5

A. I don't recall.

10:53AM 6

Q. Was that problem ever solved?

10:53AM 7

A. I don't recall it ever becoming a

10:53AM 8

major issue.

10:54AM 9

Q. Do you recall whether it was ever

10:54AM 10

solved?

10:54AM 11

A. I don't. In fact, I would go so

10:54AM 12

far as to say I'm not sure that there was a

10:54AM 13

problem. This was merely a question asking

10:54AM 14

if the release notes mentioned a problem.

10:54AM 15

MR. BARQUIST: Okay. Let's mark

10:54AM 16

as the next exhibit 5.

10:55AM 17

Sorry, I'm just having trouble

10:55AM 18

finding my exhibit. Give me a moment.

10:55AM 19

Exhibit 5 will be an email from

10:55AM 20

Mr. Smith to Mr. Edwards dated

10:55AM 21

5/29/2007.

10:55AM 22

(Whereupon, Smith Exhibit 5,

10:55AM 23

DISH_337-TA-1265-GS_'1194 through

10:55AM 24

'1199 was marked for identification as

10:56AM 25

of this date by the Reporter.)

1

G. SMITH

10:56AM 2

Q. Do you have that, Mr. Smith?

10:56AM 3

A. Yes. One moment, please.

10:57AM 4

Q. Let me know once you've had a

10:57AM 5

chance to...

10:57AM 6

A. Yes, sir. Yes, I have it.

10:57AM 7

Q. Okay. So Exhibit 5 is a string of

10:57AM 8

emails related to a meeting that

10:57AM 9

Move Networks had with Microsoft; is that

10:57AM 10

correct?

10:57AM 11

A. Yes, it is.

10:57AM 12

Q. And did you -- did that meeting

10:57AM 13

actually occur?

10:57AM 14

A. Yes, it did.

10:57AM 15

Q. Did you attend that meeting?

10:57AM 16

A. Yes, I did.

10:57AM 17

Q. And what was the purpose of that

10:57AM 18

meeting?

10:57AM 19

A. This meeting was to discuss a

10:57AM 20

potential investment by Microsoft into

10:57AM 21

Move Networks.

10:57AM 22

Q. And did that investment eventually

10:57AM 23

occur?

10:57AM 24

A. Yes, it did.

10:57AM 25

Q. When was that?

1

G. SMITH

10:57AM 2

A. I can't be certain of the dates.

10:57AM 3

Q. And how much did Microsoft

10:57AM 4

eventually invest in Move Networks?

10:57AM 5

A. I believe it was \$5 million.

10:58AM 6

Q. And did Microsoft ever receive a

10:58AM 7

return on that -- on that investment?

10:58AM 8

A. I do not know.

10:58AM 9

Q. Did they receive any return on

10:58AM 10

that investment while you were at

10:58AM 11

Move Networks?

10:58AM 12

A. I do not know.

10:58AM 13

Q. Who is Michael Montgomery?

10:58AM 14

A. Michael Montgomery is an

10:58AM 15

investment banker who was assisting us in an

10:58AM 16

investment round.

10:58AM 17

Q. Mr. Montgomery and his firm was --

10:58AM 18

was working for Move in terms of finding

10:58AM 19

investors?

10:58AM 20

A. Yes, sir.

10:58AM 21

Q. What do you recall about this

10:58AM 22

meeting with Microsoft?

10:58AM 23

A. You recall that Microsoft brought

10:58AM 24

a lot of different people to the meeting.

10:59AM 25

All of them were interested in learning about

1

G. SMITH

10:59AM

2

the Move Networks technology.

10:59AM

3

Q. Did Move eventually do any

10:59AM

4

business with Microsoft?

10:59AM

5

A. Could you define "do any

10:59AM

6

business"?

10:59AM

7

Q. Well, did you make any sales to

10:59AM

8

Microsoft or did Microsoft -- or did you pay

10:59AM

9

Microsoft for any services or technology?

10:59AM

10

MR. DHANANI: Objection, vague.

10:59AM

11

Q. Did money flow in either

10:59AM

12

direction?

10:59AM

13

MR. DHANANI: Objection; vague.

10:59AM

14

A. Microsoft made an investment, so

10:59AM

15

the money flowed in that direction with their

10:59AM

16

investment. I do not recall any monies

10:59AM

17

flowing from Move Networks to Microsoft to --

10:59AM

18

for any reasons, and I don't recall any

11:00AM

19

monies flowing from Microsoft to

11:00AM

20

Move Networks for any commercial reasons

11:00AM

21

other than the investment.

11:00AM

22

Q. Did Move Networks try to do any

11:00AM

23

business with Microsoft that would have

11:00AM

24

involved receiving revenues?

11:00AM

25

A. Not as I recall.

77

1

G. SMITH

11:00AM 2

Q. So other than the -- than the

11:00AM 3

\$5 million investment, what did Move Networks

11:00AM 4

do with Microsoft while you were there, while

11:00AM 5

you were at Move Networks?

11:00AM 6

A. We pursued clients together.

11:01AM 7

Q. What clients did you pursue

11:01AM 8

together?

11:01AM 9

A. The most notable one that comes to

11:01AM 10

mind is the Democratic National -- National

11:01AM 11

Convention Committee, the DNCC.

11:01AM 12

Q. Any others?

11:01AM 13

A. Yes, there were others. I do not

11:01AM 14

recall. One that does come to mind,

11:01AM 15

Televisa, with respect to the Olympics.

11:01AM 16

Q. And what business did you do with

11:01AM 17

Microsoft vis-à-vis the Democratic National

11:01AM 18

Convention?

11:01AM 19

A. We streamed the -- we streamed the

11:01AM 20

2008 Democratic National Convention live on

11:01AM 21

the -- with CBS and Microsoft, I believe.

11:02AM 22

Q. And did that business involve

11:02AM 23

Move Networks receiving revenue?

11:02AM 24

A. Yes.

11:02AM 25

Q. From whom?

78

1

G. SMITH

11:02AM 2

A. The Democratic National Convention

11:02AM 3

Committee.

11:02AM 4

Q. And how much did Move receive for

11:02AM 5

that work?

11:02AM 6

A. I do not know.

11:02AM 7

Q. Have any idea?

11:02AM 8

A. No, sir.

11:02AM 9

Q. Was that work profitable for Move?

11:02AM 10

A. I don't know.

11:02AM 11

Q. Who would know?

11:02AM 12

A. Maybe our chief financial officer

11:02AM 13

at the time.

11:02AM 14

Q. Who was that?

11:02AM 15

A. I don't recall.

11:02AM 16

Q. Would Mr. Edwards know?

11:02AM 17

A. I don't know.

11:02AM 18

Q. You mentioned Televisa and the

11:03AM 19

Olympics.

11:03AM 20

What was that business?

11:03AM 21

A. There was some discussion around

11:03AM 22

streaming certain events from the Olympics

11:03AM 23

that Televisa was carrying.

11:03AM 24

Q. Did that -- you said there was a

11:03AM 25

discussion around that.

1

G. SMITH

11:03AM 2

Did that work actually come to

11:03AM 3

Move Networks?

11:03AM 4

A. I don't recall.

11:03AM 5

Q. Do you recall any other customers

11:03AM 6

that you pursued together with Microsoft?

11:03AM 7

A. Not -- not right now, no.

11:03AM 8

Q. Is there any other work that you

11:03AM 9

did together with Microsoft?

11:03AM 10

A. Yes.

11:03AM 11

Q. What was that?

11:03AM 12

A. We sought to -- we sought to

11:03AM 13

implement the Move technology alongside of

11:03AM 14

the Silverlight technology, we sought to

11:04AM 15

implement the VC-1 encoder, and we sought to

11:04AM 16

implement the Playready DRM Security

11:04AM 17

technology.

11:04AM 18

Q. So you say you tried to implement

11:04AM 19

the Move technology alongside Silverlight.

11:04AM 20

Did that -- did that happen?

11:04AM 21

A. We were able to produce some --

11:04AM 22

some implementations, yes.

11:04AM 23

Q. What do you mean by "some

11:04AM 24

implementations"?

11:04AM 25

A. The Silverlight environment was

1

G. SMITH

11:05AM 2 **not capable of -- of handling some of the --**
11:05AM 3 **the rendering requirements, so we had to --**
11:05AM 4 **we had to come up with some workarounds. We**
11:05AM 5 **were eventually able to get something done.**

11:05AM 6 Q. So what was the goal or purpose of
11:05AM 7 trying to implement the Move technology
11:05AM 8 alongside Silverlight?

11:05AM 9 **A. Whose goal?**

11:05AM 10 Q. Yours, Move Networks'.

11:05AM 11 **A. Our goal? We wanted -- we wanted**
11:05AM 12 **to pursue certain content providers whom**
11:05AM 13 **Microsoft was also pursuing in -- as they**
11:05AM 14 **were rolling out Silverlight. So we**
11:05AM 15 **wanted -- we wanted to -- to work with them**
11:05AM 16 **in order to win new business.**

11:06AM 17 Q. And were you able to win new
11:06AM 18 business as a result of that work with
11:06AM 19 Silverlight?

11:06AM 20 **A. Honestly, I don't know. It's --**
11:06AM 21 **it's almost as though I -- I would have to**
11:06AM 22 **speculate as to whether or not we would have**
11:06AM 23 **won it without them, and, candidly, I think**
11:06AM 24 **we would have. So I don't know if we were**
11:06AM 25 **able to or not.**

81

1

G. SMITH

11:06AM 2

Q. You also mentioned efforts to

11:06AM 3

implement the VC-1 encoder?

11:06AM 4

A. Yes, sir.

11:06AM 5

Q. What is the VC-1 encoder?

11:06AM 6

A. It is a CODEC, which is short for

11:06AM 7

code -- encoder/decoder. It's a mathematical

11:06AM 8

compression for video.

11:06AM 9

Q. And the VC-1 encoder, was that a

11:07AM 10

Move Networks product?

11:07AM 11

A. No, sir.

11:07AM 12

Q. What was it or what is it?

11:07AM 13

A. It's a Microsoft product and

11:07AM 14

technology.

11:07AM 15

Q. Okay. And what was Move Networks

11:07AM 16

trying to do with the VC-1?

11:07AM 17

A. They had asked us to use it and we

11:07AM 18

were attempting to do so.

11:07AM 19

Q. And were you successful in using

11:07AM 20

it?

11:07AM 21

A. I don't recall.

11:07AM 22

Q. You also said that you sought to

11:07AM 23

implement the -- some DRM technology?

11:07AM 24

A. Yes, sir.

11:07AM 25

Q. What did that involve?

82

1

G. SMITH

11:07AM 2

A. DRM stands for "digital rights

11:07AM 3

management." It is encryption technology.

11:07AM 4

Q. And were you able to implement

11:07AM 5

that?

11:08AM 6

A. I don't recall.

11:08AM 7

Q. So in Exhibit 5, one of the

11:08AM 8

Microsoft people that's on these email chain

11:09AM 9

is Todd Graves.

11:09AM 10

Do you recognize that name?

11:09AM 11

A. I recognize the name, yes.

11:09AM 12

Q. Did you have any -- what role did

11:09AM 13

Mr. Graves play in the relationship between

11:09AM 14

Move and Microsoft?

11:09AM 15

A. I don't recall.

11:09AM 16

MR. BARQUIST: Okay. Let me

11:09AM 17

mark another exhibit, please.

11:09AM 18

I'm going to mark as Exhibit 6,

11:09AM 19

an email chain between Mr. Smith and

11:09AM 20

Mr. Honeybone of Microsoft and others

11:10AM 21

dated June 16, 2007.

11:10AM 22

(Whereupon, Smith Exhibit 6,

11:10AM 23

DISH_337-TA-1265-GS_'1292 through

11:10AM 24

'1295 was marked for identification as

11:10AM 25

of this date by the Reporter.)

1

G. SMITH

11:10AM 2

A. One moment, please.

11:10AM 3

Yes, I have it.

11:10AM 4

Q. Do you recognize this email

11:10AM 5

string?

11:10AM 6

A. Yes, I do.

11:11AM 7

Q. And if you look at the page 2 of

11:11AM 8

Exhibit 6, the email at the bottom of the

11:11AM 9

page from Mr. Bryson to Mr. Damico copied to

11:11AM 10

you and Mr. DiCasparro?

11:11AM 11

Do you see that email, June 15,

11:11AM 12

2007?

11:11AM 13

A. Yes, sir.

11:11AM 14

Q. In this email Mr. Bryson asks

11:11AM 15

Mr. Damico of Microsoft if he's "interested

11:11AM 16

in a further strategic commercial

11:11AM 17

conversation regarding the Media Center

11:11AM 18

product team interest in leveraging Move

11:11AM 19

service and technology."

11:11AM 20

Do you see that?

11:11AM 21

A. Yes, sir.

11:11AM 22

Q. Did such a further strategic

11:11AM 23

commercial conversation occur?

11:11AM 24

A. I don't recall.

11:12AM 25

Q. The next sentence in this email

1

G. SMITH

11:12AM 2

says, "As you are you aware, we are meeting

11:12AM 3

with the Silverlight team on Monday

11:12AM 4

afternoon."

11:12AM 5

Are you aware of that meeting with

11:12AM 6

the Silverlight team?

11:12AM 7

A. Yes, sir.

11:12AM 8

Q. Did you attend that meeting?

11:12AM 9

A. I don't recall if that was an

11:12AM 10

in-person meeting or a phone meeting.

11:12AM 11

Q. Did you attend it?

11:12AM 12

A. Yes, I did.

11:12AM 13

Q. And what do you recall about that

11:12AM 14

meeting?

11:12AM 15

A. It was our first introduction to

11:12AM 16

Silverlight.

11:12AM 17

Q. What else do you recall about the

11:12AM 18

discussion about Silverlight and

11:12AM 19

Move Networks at that time?

11:12AM 20

A. I don't recall conversations much

11:12AM 21

more than they were telling us about

11:12AM 22

Silverlight and how they were going to

11:12AM 23

compete with Adobe.

11:12AM 24

Q. Can you describe what Silverlight

11:13AM 25

is for us, please?

1

G. SMITH

11:13AM 2

A. Silverlight is a runtime

11:13AM 3

environment for -- for rich media.

11:13AM 4

Q. So how did Silverlight relate to

11:13AM 5

the Move Networks offerings?

11:13AM 6

A. As Microsoft was rolling out

11:13AM 7

Silverlight, they wanted to have a strong

11:13AM 8

video component. They wanted users to be

11:13AM 9

able to -- to see video inside of Silverlight

11:13AM 10

rich media environments.

11:13AM 11

Q. Okay. How did Move Networks

11:13AM 12

relate to that?

11:13AM 13

A. They asked us if we could

11:14AM 14

integrate Move Networks' technologies into

11:14AM 15

Silverlight runtime.

11:14AM 16

MR. BARQUIST: Just give me one

11:14AM 17

second here. I'm going to get another

11:14AM 18

exhibit. Okay. Sorry about that.

11:15AM 19

Takes a moment.

11:15AM 20

I will mark as the next exhibit

11:15AM 21

7, an email from Mr. Smith to

11:15AM 22

Mr. Edwards and others dated July 17,

11:15AM 23

2007.

11:15AM 24

(Whereupon, Smith Exhibit 7,

11:15AM 25

DISH_337-TA-1265-GS_'2328 through

1

G. SMITH

11:15AM 2

'2329 was marked for identification as

11:16AM 3

of this date by the Reporter.)

11:16AM 4

A. One moment, please.

11:16AM 5

Yes, I have it.

11:16AM 6

Q. This email is a discussion about

11:16AM 7

the negotiations with Level 3 about a

11:16AM 8

relationship between Level 3 and Move; is

11:16AM 9

that correct?

11:16AM 10

A. That's correct.

11:16AM 11

Q. And in the middle email from

11:16AM 12

Mr. Edwards to yourself, Mr. Edwards says he

11:16AM 13

has some concern about the proposal.

11:17AM 14

Do you see that?

11:17AM 15

A. Yes, I do.

11:17AM 16

Q. What was the concern that

11:17AM 17

Mr. Edwards had?

11:17AM 18

A. You'd have to ask him.

11:17AM 19

Q. You had no understanding at the

11:17AM 20

time?

11:17AM 21

A. My understanding is only what he

11:17AM 22

has written here.

11:17AM 23

Q. All right. In your response at

11:17AM 24

the top of the page, you say in the second

11:17AM 25

sentence, "That is, until you get to the

1

G. SMITH

11:17AM 2 technology licensing part."

11:17AM 3 What was the concern about

11:17AM 4 technology licensing?

11:17AM 5 **A. At the time, Level 3 had not**
11:17AM 6 **described what they meant by "technology**
11:17AM 7 **licensing." So I did not have an ability to**
11:17AM 8 **comment on it in favor or not in favor.**

11:17AM 9 Q. You say in the next sentence, "I
11:17AM 10 don't think we are mature enough to say yes
11:17AM 11 to that."

11:17AM 12 What did you mean by that?

11:17AM 13 **A. That the relationship between us**
11:17AM 14 **and the understanding of what they meant by**
11:18AM 15 **"technology licensings," I was advising**
11:18AM 16 **against just saying yes to it, that it needed**
11:18AM 17 **to be further fleshed out.**

11:18AM 18 Q. Well, when you said "we" -- "I
11:18AM 19 don't think we are mature enough," who's the
11:18AM 20 "we" that you're referring to?

11:18AM 21 **A. The discussion and the**
11:18AM 22 **relationship with Level 3 and -- and where**
11:18AM 23 **all of that was sitting at the time.**

11:18AM 24 Q. In the next paragraph you state,
11:18AM 25 "We need to control our technologies and

1

G. SMITH

11:18AM 2 product evolution a bit longer before we can
11:18AM 3 really even sensibly consider such a thing."

11:18AM 4 Do you see that?

11:18AM 5 A. Yes, sir.

11:18AM 6 Q. What were you referring to?

11:18AM 7 A. This is -- this is -- this is a
11:18AM 8 simple statement that up until now, we had
11:19AM 9 been the only operators of our own
11:19AM 10 technology, and we needed to do a little bit
11:19AM 11 more before we could allow someone else to
11:19AM 12 operate it.

11:19AM 13 Q. And what more would you need to
11:19AM 14 do?

11:19AM 15 A. The usual things; making it easier
11:19AM 16 to use, more ergonomic. Those things.

11:19AM 17 Q. And did you -- did you eventually
11:19AM 18 do that?

11:19AM 19 A. Yes, we did.

11:19AM 20 Q. So did you ever enter into a
11:19AM 21 reseller agreement with Level 3?

11:19AM 22 A. I don't believe the final
11:19AM 23 agreement was called a reseller agreement.

11:19AM 24 Q. What was the final agreement?

11:19AM 25 A. I don't recall the name of it.

1

G. SMITH

11:19AM 2 Q. What was the substance of it?

11:19AM 3 A. **It included the ability to resell.**

11:20AM 4 Q. Resell what exactly?

11:20AM 5 A. **The Move Networks technology.**

11:20AM 6 Q. And did Level 3 resell the

11:20AM 7 Move Networks technology?

11:20AM 8 A. **I don't recall if they ever did.**

11:20AM 9 Q. So Move Networks entered into an
11:20AM 10 agreement with Level 3 to allow it to resell
11:20AM 11 the Move Network technology but you don't
11:20AM 12 know that they ever actually did sell it; is
11:20AM 13 that correct?

11:20AM 14 A. **That's correct.**

11:20AM 15 Q. Are you aware of any reason why
11:20AM 16 you wouldn't know whether or not they
11:20AM 17 actually did it?

11:20AM 18 A. **The reason I wouldn't know, I**
11:20AM 19 **just -- I just don't recall.**

11:20AM 20 Q. You don't know whether the
11:20AM 21 agreement with Level 3 was successful or not,
11:20AM 22 for Move?

11:20AM 23 A. **I -- I do believe that agreement**
11:21AM 24 **was successful for Move.**

11:21AM 25 Q. In what respect?

90

1

G. SMITH

11:21AM 2

A. In the respect that between

11:21AM 3

Move Networks and Level 3, we were able to

11:21AM 4

provide business terms to content providers

11:21AM 5

that allowed them to go forward with their --

11:21AM 6

with their streaming -- their streaming

11:21AM 7

goals.

11:21AM 8

Q. What content providers are you

11:21AM 9

referring to?

11:21AM 10

A. ABC used Level 3. Most of the

11:21AM 11

others used Level 3, but I can't really be so

11:21AM 12

specific about which ones did and which ones

11:21AM 13

did not.

11:21AM 14

Q. And did Move Networks receive any

11:21AM 15

revenue as a result of the Level 3 agreement?

11:21AM 16

A. I don't know how to answer that.

11:21AM 17

Q. You don't know?

11:22AM 18

MR. DHANANI: Objection; vague.

11:22AM 19

A. They -- they were a critical

11:22AM 20

vendor. They were important to our business

11:22AM 21

success, but I don't know that I can say that

11:22AM 22

we received revenue "as a result of."

11:22AM 23

Q. What business success are you

11:22AM 24

referring to?

11:22AM 25

A. The ability to provide effective

1

G. SMITH

11:22AM 2 **content distribution networks plus streaming**
11:22AM 3 **technology so that our clients could**
11:22AM 4 **distribute their video online.**

11:22AM 5 Q. And you say Move was successful in
11:22AM 6 doing that?

11:22AM 7 **A. Yes, sir.**

11:22AM 8 Q. Okay. And how do you reconcile
11:22AM 9 the fact that Move changed direction in 2009
11:22AM 10 with your claim that Move had been successful
11:23AM 11 up to that point?

11:23AM 12 MR. DHANANI: Objection.

11:23AM 13 Objection; vague, compound.

11:23AM 14 **A. I can't reconcile it. I don't**
11:23AM 15 **know -- as I mentioned earlier, I don't know**
11:23AM 16 **about how those decisions were eventually**
11:23AM 17 **made.**

11:23AM 18 MR. BARQUIST: All right. I'm
11:23AM 19 going to mark as the next exhibit 8, a
11:23AM 20 email from Mr. Smith to Mr. Larsen and
11:23AM 21 others at Move dated July 27, 2007.

11:23AM 22 (Whereupon, Smith Exhibit 8,
11:23AM 23 DISH_337-TA-1265-GS_'1452 through
11:23AM 24 '1454 was marked for identification as
11:23AM 25 of this date by the Reporter.)

1

G. SMITH

11:23AM 2 A. One moment, please.

11:24AM 3 I have it.

11:24AM 4 Q. Do you recognize Exhibit 8?

11:24AM 5 A. Sorry, Exhibit 8?

11:25AM 6 Q. Yes. I think it's 8. Am I

11:25AM 7 correct on that?

11:25AM 8 A. Yes, I recognize it.

11:25AM 9 Q. In the email from Mr. Larsen in

11:25AM 10 the middle of the page, he's discussing a

11:25AM 11 request from NBC Universal for some

11:25AM 12 information; is that correct?

11:25AM 13 A. I don't know. I -- I don't know

11:25AM 14 what he's asking for here.

11:25AM 15 Q. You see in the email from

11:25AM 16 Mr. Larsen he says at the -- towards the end

11:25AM 17 of that paragraph, "The Move solution in this

11:25AM 18 scenario doesn't offer a lot of value."

11:25AM 19 A. Yes, I see it.

11:25AM 20 Q. Do you understand what he was

11:25AM 21 referring to there?

11:25AM 22 A. Yes.

11:25AM 23 Q. What was he referring to?

11:25AM 24 A. He begins the email with a

11:25AM 25 question that is probably not even what the

93

1

G. SMITH

11:26AM

2

customer was asking.

11:26AM

3

Q. Well, did the Move solution offer

11:26AM

4

a lot of value or not to what NBC was asking

11:26AM

5

about?

11:26AM

6

A. We had a live streaming solution.

11:26AM

7

This -- this email refers to a download or

11:26AM

8

offline playback of content as not the

11:26AM

9

primary intention or purpose of the Move

11:26AM

10

Networks technology.

11:26AM

11

Q. So it's -- so Mr. Larsen's comment

11:26AM

12

that Move solution didn't offer a lot of

11:26AM

13

value to NBC Universal in this scenario was

11:26AM

14

accurate; is that right?

11:26AM

15

A. If you presuppose his initial

11:26AM

16

question is correct and that's what the

11:26AM

17

customer is asking about.

11:27AM

18

MR. BARQUIST: Okay. All right.

11:27AM

19

Let me mark as another exhibit 9.

11:27AM

20

Give me a moment, please.

11:27AM

21

This is an email from Mr. Smith

11:27AM

22

to Mr. Edwards and others at Move

11:27AM

23

dated July 30, 2007.

11:27AM

24

(Whereupon, Smith Exhibit 9,

11:27AM

25

DISH_337-TA-1265-GS_'1469 through

1

G. SMITH

11:27AM 2

'1470 was marked for identification as

11:27AM 3

of this date by the Reporter.)

11:27AM 4

A. One moment, please.

11:28AM 5

Yes, I have it.

11:28AM 6

Q. This is another one of your weekly

11:28AM 7

activities updates, correct?

11:28AM 8

A. It is.

11:28AM 9

Q. And in the heading under "NBC

11:28AM 10

Olympics," your last bullet point says,

11:28AM 11

"Clearly stated that would like to work with

11:28AM 12

us, but it's a long shot due to us not being

11:28AM 13

tested and ready."

11:28AM 14

Do you see that?

11:28AM 15

A. Yes, I do.

11:28AM 16

Q. What does that refer to?

11:28AM 17

A. It refers to the fact that we had

11:28AM 18

not been tested inside of their data centers

11:28AM 19

and that -- if you refer to the first bullet

11:28AM 20

point, you see that they have concerns about

11:29AM 21

whether or not we would actually fit into

11:29AM 22

their data centers.

11:29AM 23

Q. So did you eventually get the NBC

11:29AM 24

Olympics work?

11:29AM 25

A. Don't recall.

1

G. SMITH

11:29AM 2

Q. Mr. Edwards, are you aware of a

11:29AM 3

agreement entered into between Microsoft and

11:29AM 4

Move entitled "Input Agreement"?

11:29AM 5

A. I think you may have just referred

11:29AM 6

to me as Mr. Edwards?

11:29AM 7

Q. I'm sorry, did I? I apologize.

11:29AM 8

A. That's okay.

11:29AM 9

Q. I'm looking at a document here.

11:29AM 10

A. I understand.

11:29AM 11

Q. Let me start over again.

11:29AM 12

Mr. Smith, are you familiar with a

11:29AM 13

agreement between Microsoft and Move Networks

11:30AM 14

entitled "Input Agreement"?

11:30AM 15

A. I am familiar with conversations

11:30AM 16

around such an agreement.

11:30AM 17

Q. You don't --

11:30AM 18

A. I cannot confirm for you that that

11:30AM 19

agreement was ever fully executed.

11:30AM 20

Q. Okay. You don't recall signing

11:30AM 21

such an agreement?

11:30AM 22

A. I do not.

11:30AM 23

MR. BARQUIST: Why don't we take

11:30AM 24

a short break here.

11:30AM 25

And, Ali, if I could ask you a

1

G. SMITH

11:30AM 2

question about CBI while we're off the

11:30AM 3

record, that would be helpful.

11:30AM 4

MR. DHANANI: Sure.

11:30AM 5

THE VIDEOGRAPHER: The time is

11:30AM 6

12:30 p.m. and we are going off the

11:30AM 7

record.

11:41AM 8

(Whereupon, a recess was held.)

11:41AM 9

THE VIDEOGRAPHER: The time is

11:41AM 10

12:41 p.m. and we are back on the

11:41AM 11

record.

11:41AM 12

MR. BARQUIST: All right. I'd

11:41AM 13

like to mark as the next, Exhibit 10,

11:41AM 14

I believe, an email from Mr. Smith to

11:41AM 15

Mr. Edwards dated August 17, 2007.

11:41AM 16

(Whereupon, Smith Exhibit 10,

11:41AM 17

DISH_337-TA-1265-GS_'2380 through

11:41AM 18

'2381 was marked for identification as

11:42AM 19

of this date by the Reporter.)

11:42AM 20

Q. Do you see this email chain,

11:42AM 21

Exhibit 10, Mr. Smith?

11:42AM 22

A. Yes. One moment, please.

11:42AM 23

Yes, I have it.

11:42AM 24

Q. Do you recognize this email

11:42AM 25

exchange?

1

G. SMITH

11:42AM

2

A. Yes, I do.

11:42AM

3

Q. And in your first message at the

11:42AM

4

top of the page to Mr. Edwards, you say, "I'm

11:42AM

5

concerned that he is looking for a

11:42AM

6

'materially similar relationship'. Since I

11:42AM

7

think we already provided the ability for

11:42AM

8

them to offer a 'materially similar

11:42AM

9

service'."

11:43AM

10

And this is with regard to

11:43AM

11

Level 3; is that right?

11:43AM

12

A. Yes, it is.

11:43AM

13

Q. Can you explain what your concern

11:43AM

14

here that you were referring to and the

11:43AM

15

difference between a "materially similar

11:43AM

16

relationship" and a "materially similar

11:43AM

17

service"?

11:43AM

18

A. I believe my concern was that I

11:43AM

19

did not know what that meant, "material

11:43AM

20

similar" -- "materially similar

11:43AM

21

relationship." Since I had no knowledge of

11:43AM

22

what relationships they had with other

11:43AM

23

entities, I couldn't be certain as to what it

11:43AM

24

would mean for us.

11:44AM

25

MR. BARQUIST: We will mark as

1

G. SMITH

11:44AM 2

Exhibit 11 an email from Mr. Smith to

11:44AM 3

Mr. Prestwidge at ABC dated 8/28/2007.

11:44AM 4

(Whereupon, Smith Exhibit 11,

11:44AM 5

DISH_337-TA-1265-GS_'2442 was marked

11:44AM 6

for identification as of this date by

11:44AM 7

the Reporter.)

11:44AM 8

Q. Do you recognize this document,

11:44AM 9

sir?

11:44AM 10

A. One moment, please.

11:44AM 11

Yes, I have it.

11:45AM 12

Q. Who is Mr. Prestwidge?

11:45AM 13

A. I don't recall.

11:45AM 14

Q. You're referring to an offer to

11:45AM 15

introduce you to Microsoft; is that correct?

11:45AM 16

A. I believe I am, yes.

11:45AM 17

Q. And you say, "We are working

11:45AM 18

through legal docs to get an encoding sdk so

11:45AM 19

that we may test a possible Silverlight

11:45AM 20

integration."

11:45AM 21

A. Yes.

11:45AM 22

Q. What does that refer to?

11:45AM 23

A. The encoding SDK refers to VC-1.

11:45AM 24

Q. What is SDK?

11:45AM 25

A. Software development kit.

G. SMITH

1

11:45AM 2

Q. What are the legal docs you are

11:45AM 3

referring to?

11:45AM 4

A. Microsoft asked us to -- to sign

11:46AM 5

developer agreements of some kind, as I

11:46AM 6

recall.

11:46AM 7

Q. Did you sign such agreements?

11:46AM 8

A. I believe we did.

11:46AM 9

Q. So did you get an encoding SDK?

11:46AM 10

A. I believe we did, yes.

11:46AM 11

Q. And is this the Silverlight

11:46AM 12

integration that you've testified earlier

11:46AM 13

this morning?

11:46AM 14

A. It's related to it, yes.

11:46AM 15

Q. Related in what way?

11:46AM 16

A. Related in that it -- it is

11:46AM 17

related to integrating to Silverlight.

11:46AM 18

However, as I recall, this methodology did

11:46AM 19

not work.

11:46AM 20

Q. What methodology are you referring

11:46AM 21

to?

11:46AM 22

A. Using VC-1 so that Silverlight

11:46AM 23

could handle the rendering.

11:47AM 24

Q. And what was the problem that was

11:47AM 25

incoming?

100

1

G. SMITH

11:47AM 2

A. As I recall, Silverlight couldn't

11:47AM 3

handle bitrate changes or stage size changes.

11:47AM 4

Q. So was that problem ever solved?

11:47AM 5

A. Not as I recall, no.

11:47AM 6

Q. So Silverlight was never able to

11:47AM 7

accommodate bitrate changes?

11:47AM 8

A. I don't think I could say that so

11:47AM 9

definitively. Just as I recall, we were

11:47AM 10

never able to integrate with Silverlight in

11:47AM 11

this way.

11:47AM 12

Q. Were you able to integrate with

11:47AM 13

Silverlight in some other way?

11:47AM 14

A. It's -- as you may recall from my

11:47AM 15

earlier testimony, I mentioned that we came

11:47AM 16

up with some workarounds and that we

11:47AM 17

implemented the two technologies side by

11:48AM 18

side. As a technologist, I would not call

11:48AM 19

that an integration.

11:48AM 20

Q. Were there disadvantages to doing

11:48AM 21

it side by side rather than integrated?

11:48AM 22

A. Yes.

11:48AM 23

Q. What were they?

11:48AM 24

A. The seamlessness of the user

11:48AM 25

experience.

101

1

G. SMITH

11:48AM 2

Q. And what do you mean by that?

11:48AM 3

A. For example, it would -- if I want

11:48AM 4

to put the play and pause button on top of

11:48AM 5

the video versus on the side of the video in

11:48AM 6

a separate -- in a separately-controlled

11:48AM 7

window, those would be two different -- those

11:48AM 8

would be two different implementations, one

11:48AM 9

less seamless than the other.

11:48AM 10

Q. Were there any other problems with

11:49AM 11

the Silverlight relationship besides that?

11:49AM 12

A. There were -- there were many

11:49AM 13

different issues that we talked through. I

11:49AM 14

don't know how to describe them as problems

11:49AM 15

or not problems.

11:49AM 16

Q. What other issues were there with

11:49AM 17

integrating with Silverlight?

11:49AM 18

A. Microsoft had asked us to install

11:49AM 19

Silverlight on -- on the users' machines.

11:49AM 20

That was a discussion that took quite a bit

11:49AM 21

of time.

11:49AM 22

Q. When you say "users' machines,"

11:49AM 23

what are you referring to?

11:49AM 24

A. The end viewer, the -- the

11:49AM 25

consumer of the video, the person watching

G. SMITH

1

11:49AM 2 **the show.**

11:49AM 3 Q. So it was -- Move Networks was
11:50AM 4 asked to install Microsoft Silverlight on end
11:50AM 5 user machines?

11:50AM 6 **A. Yes, we were.**

11:50AM 7 Q. Why didn't Microsoft just do that
11:50AM 8 itself?

11:50AM 9 **A. You would have to ask them.**

11:50AM 10 Q. You don't have any understanding
11:50AM 11 about why they wanted you to do it?

11:50AM 12 **A. My understanding is woefully**
11:50AM 13 **incomplete.**

11:50AM 14 Q. Well, what is your incomplete
11:50AM 15 understanding?

11:50AM 16 **A. That as a result of, you know,**
11:50AM 17 **previous decades' worth of -- of legal**
11:50AM 18 **issues, that Microsoft was reticent to do the**
11:50AM 19 **install themselves and -- and wanted --**
11:50AM 20 **wanted Move Networks to do it for them.**

11:50AM 21 Q. And did you encounter any problems
11:50AM 22 with installing Silverlight on end user
11:51AM 23 machines?

11:51AM 24 **A. Yes, we did.**

11:51AM 25 Q. What were the problems?

1

G. SMITH

11:51AM 2

A. The problem was that Microsoft

11:51AM 3

wanted us to do it in the background without

11:51AM 4

explicit user agreement and we would not do

11:51AM 5

that.

11:51AM 6

Q. How did you solve that problem?

11:51AM 7

A. I don't believe we ever did.

11:51AM 8

Q. What was the result of not solving

11:51AM 9

that problem?

11:51AM 10

A. I don't recall how many, if any,

11:51AM 11

Silverlight installations we ever did.

11:51AM 12

Q. Okay. Did you ever have any

11:51AM 13

difficulties with getting end users to

11:51AM 14

install Silverlight or the Move Networks'

11:52AM 15

plugin?

11:52AM 16

A. Two separate questions. We worked

11:52AM 17

very hard to make the user install process

11:52AM 18

seamless and easy for the Move Networks

11:52AM 19

technology. So I would -- I would answer

11:52AM 20

that question by saying we worked very hard

11:52AM 21

to avoid problems with user installs.

11:52AM 22

And when it comes to Silverlight,

11:52AM 23

the second part of your question, I don't

11:52AM 24

recall us pushing that so far or trying to do

11:52AM 25

that to the level where we would have -- we

G. SMITH

11:52AM 2 **would have encountered those problems.**

11:52AM 3 Q. What was --

11:52AM 4 THE COURT REPORTER: Sorry,
11:52AM 5 start over, please. You cut out.

11:52AM 6 Q. Sure. What was involved for a
11:52AM 7 user, an end user, to install the
11:52AM 8 Move Networks technology on their machine?

11:52AM 9 **A. When the user clicked -- clicked**
11:53AM 10 **"play" on a video from a client's website,**
11:53AM 11 **they would get one prompt that said something**
11:53AM 12 **along the lines of "You will need this --**
11:53AM 13 **this plug-in from Move -- from Move Networks**
11:53AM 14 **in order to view this video. Click here to**
11:53AM 15 **accept." And that was it.**

11:53AM 16 Q. And what was involved in having an
11:53AM 17 end user install Silverlight?

11:53AM 18 **A. I don't recall Microsoft's install**
11:53AM 19 **policies and procedures at that time. I**
11:53AM 20 **don't recall.**

11:53AM 21 Q. Well, what was involved in having
11:53AM 22 Move Networks take care of the Microsoft
11:53AM 23 Silverlight install?

11:54AM 24 **A. We -- we would have insisted that**
11:54AM 25 **either the website owner, so the client, post**

G. SMITH

a message that -- requiring user agreement or
that our installer posted a message requiring
the user's agreement. And if memory serves,
it would have been a multistep agreement
process and possibly involved administrator
level rights, privileges on the target
machine.

Q. If I understood your answer a few
minutes ago, you said you're not sure that
that ever actually happened?

A. That's correct.

MR. BARQUIST: Okay. Let me
mark as the next exhibit, 12, an email
from Mr. Smith to Mr. Parrish and
Mr. Bryson at Move dated 10/29/2007.

(Whereupon, Smith Exhibit 12,
DISH_337-TA-1265-GS_'2605 was marked
for identification as of this date by
the Reporter.)

A. One moment, please.

Yes, I have it.

Q. Do you recognize this email we
marked as Exhibit 12?

A. Yes, I do.

106

1

G. SMITH

11:56AM 2

Q. The subject is "Limelight vs. L3

11:56AM 3

pricing."

11:56AM 4

What does that refer to?

11:57AM 5

A. "L3" refers to Level 3.

11:57AM 6

Q. What was the pricing issue here?

11:57AM 7

A. I don't recall.

11:57AM 8

Q. In your email, you used the

11:57AM 9

acronym PM. What does that refer to?

11:57AM 10

A. One moment, please.

11:57AM 11

Product management.

11:57AM 12

Q. Is that a department or...

11:57AM 13

A. Yes.

11:57AM 14

Q. At Move Networks?

11:57AM 15

A. Yes, it is.

11:57AM 16

Q. Who was in charge of product

11:57AM 17

management at the time?

11:57AM 18

A. I was.

11:57AM 19

Q. And there's also the acronym DIG,

11:57AM 20

all caps.

11:57AM 21

What does that refer to?

11:57AM 22

A. The Disney Internet Group.

11:58AM 23

Q. Also as an acronym SLA, all caps,

11:58AM 24

what does that refer to?

11:58AM 25

A. Service level agreement.

107

1

G. SMITH

11:58AM 2 Q. And also a acronym LCR, all caps.

11:58AM 3 What does that refer to?

11:58AM 4 **A. Leased cost routing.**

11:58AM 5 Q. You refer here to "the risk we
11:58AM 6 have incurred for DIG."

11:58AM 7 What does that refer to?

11:58AM 8 **A. One moment, please.**

11:59AM 9 **We made commitments to Level 3 to**
11:59AM 10 **push a certain amount of traffic, and that --**
11:59AM 11 **that traffic was actually going to be the**
11:59AM 12 **video being streamed on behalf of -- of**
11:59AM 13 **Disney companies, notably ABC.**

11:59AM 14 Q. Okay. So what was the risk that
11:59AM 15 you incurred?

11:59AM 16 **A. The risk that we would have to pay**
11:59AM 17 **minimum commitments to Level 3 but not have**
11:59AM 18 **any -- any business to -- to offset those**
11:59AM 19 **costs.**

12:00PM 20 Q. In -- in the next paragraph of
12:00PM 21 your email, the last sentence says, "This
12:00PM 22 last minute panicking won't work and we will
12:00PM 23 continue to get ourselves into commitments
12:00PM 24 that we can't support."

12:00PM 25 Do you see that?

108

1

G. SMITH

12:00PM 2

A. Yes, I do.

12:00PM 3

Q. Okay. What commitments had you

12:00PM 4

gotten yourself into that you couldn't

12:00PM 5

support that you were referring to in that

12:00PM 6

sentence?

12:00PM 7

A. I think my sentence is suggesting

12:00PM 8

that that could happen, not that it had

12:00PM 9

happened.

12:00PM 10

Q. Well, you say, "We will continue

12:00PM 11

to get ourselves into commitments that we

12:00PM 12

can't support."

12:00PM 13

Were there commitments that you

12:00PM 14

couldn't support that you had gotten into?

12:00PM 15

A. I don't recall.

12:01PM 16

MR. BARQUIST: Okay. Let me

12:01PM 17

mark as the next exhibit 13.

12:01PM 18

Bear with me a minute here,

12:01PM 19

please.

12:01PM 20

This is an email from Mr. Smith

12:01PM 21

to Mr. Edwards dated January 17, 2008.

12:01PM 22

(Whereupon, Smith Exhibit 13,

12:01PM 23

DISH_337-TA-1265-GS_'2797 through

12:01PM 24

'2798 was marked for identification as

12:02PM 25

of this date by the Reporter.)

109

1

G. SMITH

12:02PM 2

A. One moment, please.

12:02PM 3

Yes, I have it.

12:02PM 4

Q. In the email at the bottom of the

12:02PM 5

first page, it's actually dated January 16,

12:02PM 6

2008, the subject is "Apple TV Streaming."

12:02PM 7

Do you see that?

12:02PM 8

A. Yes, sir.

12:02PM 9

Q. And then below that, there is an

12:03PM 10

email from Mr. Bryson on January 15th about

12:03PM 11

Apple TV streaming.

12:03PM 12

Do you see that?

12:03PM 13

A. Yes, I do.

12:03PM 14

Q. And Mr. Bryson, among other

12:03PM 15

things, describes --

12:03PM 16

MR. DHANANI: Sorry, Chuck --

12:03PM 17

Charles, did you say 1-5, 15?

12:03PM 18

MR. BARQUIST: No. January 15,

12:03PM 19

2008.

12:03PM 20

MR. DHANANI: Okay. It's coming

12:03PM 21

up the 15th. I only see the 16th.

12:03PM 22

The transcript is coming out 15.

12:03PM 23

THE COURT REPORTER: I'll have

12:03PM 24

to check it at the break. I can't

12:03PM 25

remember what he said. I'll have to

110

1

G. SMITH

12:03PM 2

listen to the audio.

12:03PM 3

MR. DHANANI: The document is

12:03PM 4

January 16th.

12:03PM 5

MR. BARQUIST: And then below

12:03PM 6

that, under the words "We are buying

12:03PM 7

one. thanks," it says, "On 1/15/08."

12:04PM 8

MR. DHANANI: I apologize. I

12:04PM 9

see it now.

12:04PM 10

BY MR. BARQUIST:

12:04PM 11

Q. Okay. Mr. Smith, back to you.

12:04PM 12

You see in Mr. Bryson's email he

12:04PM 13

talks about instant streaming with Apple TV.

12:04PM 14

Do you see that?

12:04PM 15

A. Yes, I do.

12:04PM 16

Q. And do you have an understanding

12:04PM 17

of what Apple instant streaming was in 2008?

12:04PM 18

A. No, I do not.

12:04PM 19

Q. Do you know if that involved

12:04PM 20

adaptive bitrate streaming?

12:04PM 21

A. I do not know that for -- for

12:04PM 22

certain, no. However, I would point to you

12:04PM 23

to the second bullet there where Bob has copy

12:04PM 24

and -- copied and pasted a productONE sheet

12:04PM 25

and you will see that it is defined as "to

111

1

G. SMITH

12:05PM 2 **begin streaming within about 30 seconds."**

12:05PM 3 **That would not conform to the definition of**
12:05PM 4 **instant streaming.**

12:05PM 5 Q. But you don't know whether Apple
12:05PM 6 streaming that they introduced in 2008
12:05PM 7 involved adaptive bitrate streaming?

12:05PM 8 **A. I do not know for certain, no.**
12:05PM 9 **I'm sorry.**

12:05PM 10 Q. Was there ever any discussion
12:05PM 11 about whether Apple was infringing any of the
12:05PM 12 Move Networks patents?

12:05PM 13 MR. DHANANI: I'll caution you
12:05PM 14 to only have discussions that you
12:05PM 15 didn't have with attorneys disclosed
12:05PM 16 here.

12:05PM 17 **A. I don't recall.**

12:05PM 18 Q. Excluding any discussions with
12:05PM 19 lawyers, was there any discussion at
12:06PM 20 Move Networks about whether Apple had copied
12:06PM 21 Move Networks' adaptive bitrate technology?

12:06PM 22 **A. I don't recall. Again, it comes**
12:06PM 23 **down to those timeframes.**

12:06PM 24 Q. While you were at Move Networks
12:06PM 25 and excluding any conversation with lawyers,

112

1

G. SMITH

12:06PM

2

was there any discussion about whether any

12:06PM

3

other company had copied Move's adaptive

12:06PM

4

bitrate technology?

12:06PM

5

A. I don't recall.

12:07PM

6

MR. BARQUIST: Give me a minute

12:07PM

7

to just pull up another exhibit here.

12:07PM

8

We'll mark as Exhibit 14 an

12:07PM

9

email from Mr. Smith to Mr. Carper at

12:07PM

10

Microsoft dated January 23, 2008.

12:07PM

11

(Whereupon, Smith Exhibit 14,

12:07PM

12

DISH_337-TA-1265-GS_'2832 was marked

12:07PM

13

for identification as of this date by

12:08PM

14

the Reporter.)

12:08PM

15

Q. Do you recognize this exhibit

12:08PM

16

we've marked as Exhibit 14?

12:08PM

17

A. One moment, please.

12:08PM

18

Yes, I have it.

12:08PM

19

Q. Who is Mr. Carper?

12:08PM

20

A. Mr. Carper is the director of

12:08PM

21

business development and deployment at

12:08PM

22

Microsoft.

12:08PM

23

Q. And what role did he play in the

12:08PM

24

relationship between Microsoft and Move?

12:08PM

25

A. Mr. Carper was my primary

113

1

G. SMITH

12:08PM

2

counterpoint at Microsoft with regard to

12:08PM

3

Silverlight.

12:09PM

4

Q. Were you the main point person for

12:09PM

5

Move vis-à-vis Microsoft?

12:09PM

6

A. Yes.

12:09PM

7

Q. And Mr. Carper in this email

12:09PM

8

refers to "our current solution for

12:09PM

9

integrating SL ontop of the move player."

12:09PM

10

Do you see that?

12:09PM

11

A. Yes, I do.

12:09PM

12

Q. What was the current solution at

12:09PM

13

that time?

12:09PM

14

A. It's what I was testifying to

12:09PM

15

earlier in that Silverlight could not handle

12:09PM

16

the rendering, so, therefore, we were

12:09PM

17

attempting to do this side-by-side

12:09PM

18

implementation where Silverlight would

12:09PM

19

literally run on top of the Move player, but

12:09PM

20

we were also struggling to do that.

12:09PM

21

Q. And you replied to Mr. Carper and

12:09PM

22

say, "That is correct and a mode of

12:09PM

23

integration with VC-1 that we expect to be a

12:09PM

24

fallout of our current activities."

12:09PM

25

What does that mean?

114

1

G. SMITH

12:10PM 2

A. It means that if -- that if we go

12:10PM 3

in that direction, then we might be able to

12:10PM 4

utilize their VC-1 CODEC.

12:10PM 5

Q. And what were the current

12:10PM 6

activities that you were referring to?

12:10PM 7

A. The -- we had the VC-1 SDK and we

12:10PM 8

were attempting to implement it.

12:10PM 9

Q. And that was ultimately not

12:10PM 10

successful?

12:10PM 11

A. I don't recall it becoming

12:10PM 12

successful.

12:10PM 13

Q. All right.

12:11PM 14

MR. BARQUIST: Let's mark as the

12:11PM 15

next exhibit, which is 14.

12:11PM 16

THE COURT REPORTER: Counsel, I

12:11PM 17

believe it's 15.

12:11PM 18

MR. BARQUIST: All right.

12:11PM 19

Excuse me. You're right.

12:12PM 20

An email from Mr. Smith to

12:12PM 21

Mr. Edwards and others dated April 15,

12:12PM 22

2008.

12:12PM 23

(Whereupon, Smith Exhibit 15,

12:12PM 24

DISH_337-TA-1265-GS_'1981 through

12:12PM 25

'1985 was marked for identification as

1

G. SMITH

12:12PM 2

of this date by the Reporter.)

12:12PM 3

A. One moment, please.

12:12PM 4

Yes, I have it.

12:12PM 5

Q. Do you recognize this email chain

12:12PM 6

in -- from April 2008?

12:13PM 7

A. Yes, I do.

12:13PM 8

Q. And so this relates to a press

12:13PM 9

release that Microsoft issued that disclosed

12:13PM 10

Microsoft's investment in Move and that

12:13PM 11

apparently was a mistake; is that correct?

12:13PM 12

A. I don't recall specifically, but

12:13PM 13

that is certainly what this says.

12:13PM 14

Q. Had Microsoft made an investment

12:13PM 15

by this point in time?

12:13PM 16

A. I -- I could not -- I could not be

12:13PM 17

that specific from exactly when the

12:13PM 18

investment happened versus when this press

12:13PM 19

release went out.

12:13PM 20

Q. So did the mistaken mention of the

12:13PM 21

investment cause any problems for Move?

12:13PM 22

A. Not that I recall.

12:13PM 23

Q. Well, you responded to Mr. Edwards

12:13PM 24

saying, "Call you in a minute." That

12:13PM 25

suggests that there was some urgency here,

116

1

G. SMITH

12:13PM 2

some concern?

12:14PM 3

A. Yes.

12:14PM 4

Q. Do you recall what the issue was?

12:14PM 5

A. I am -- I'm seeing the emails here

12:14PM 6

where people are concerned and Mary Kay Evans

12:14PM 7

is saying, "Greg, can you please call me?"

12:14PM 8

And so I'm responding and saying,

12:14PM 9

"I will call you in a minute."

12:14PM 10

Q. Did you have a discussion with

12:14PM 11

Ms. Evans at that time about this mistaken

12:14PM 12

disclosure?

12:14PM 13

A. I don't recall.

12:14PM 14

Q. Did you have a discussion with

12:14PM 15

Mr. Edwards about the mistaken disclosure?

12:14PM 16

A. I don't recall.

12:15PM 17

MR. BARQUIST: Sorry. Give me a

12:15PM 18

minute to find this next exhibit.

12:15PM 19

Let's mark this next exhibit,

12:15PM 20

please; an email dated June 20, 2008,

12:15PM 21

from Mr. Smith to Mr. Brueck.

12:15PM 22

(Whereupon, Smith Exhibit 16,

12:15PM 23

DISH_337-TA-1265-GS_'3470 through

12:15PM 24

'3472 was marked for identification as

12:16PM 25

of this date by the Reporter.)

1

G. SMITH

12:16PM 2

A. One moment, please.

12:16PM 3

Yes, I have it.

12:16PM 4

Q. So you recognize this email chain

12:16PM 5

from June of 2008?

12:16PM 6

A. Yes, I do.

12:16PM 7

Q. And what was the --

12:17PM 8

THE COURT REPORTER: I'm sorry,

12:17PM 9

Counsel, you broke up again.

12:17PM 10

Q. What was Phase III that is

12:17PM 11

referred to in this chain of emails?

12:17PM 12

A. I don't recall the specifics. All

12:17PM 13

I can tell you from my memory right now is

12:17PM 14

that we had -- after many, many discussions,

12:17PM 15

we had identified at least three phases of

12:17PM 16

working with Silverlight and VC-1, and so

12:17PM 17

this is referring to whatever would have been

12:17PM 18

put into that third phase.

12:17PM 19

Q. In the middle of the first page of

12:17PM 20

Exhibit 16, you write to Mr. Brueck, "Can he

12:18PM 21

speak to the larger question of: will Phase 3

12:18PM 22

be possible at all?"

12:18PM 23

Do you see that?

12:18PM 24

A. Yes, I do.

12:18PM 25

Q. And the "he" you're referring to

118

1

G. SMITH

12:18PM 2 in that question is Mr. Hurst; is that right?

12:18PM 3 A. It appears so, yes.

12:18PM 4 Q. And what was the larger question
12:18PM 5 of whether Phase III will be possible at all?

12:18PM 6 A. At this point in the discussion,
12:18PM 7 it was quite obvious that Microsoft still
12:18PM 8 could not handle any kind of adaptive bitrate
12:18PM 9 streaming and -- even to the point of -- if
12:18PM 10 the rendering of the video as it arrives in
12:18PM 11 different bitrates and different stage sizes.

12:18PM 12 Q. So what was the consequence of
12:18PM 13 that realization?

12:18PM 14 A. I don't recall. As you can see
12:18PM 15 from this email, I'm -- I'm asking -- I'm
12:19PM 16 asking my smartest guys where we think this
12:19PM 17 whole thing is going; is it ever going to
12:19PM 18 work or no.

12:19PM 19 Q. And what was the upshot? Did it
12:19PM 20 ever work?

12:19PM 21 A. Not as I recall.

12:19PM 22 Q. Then in the email at the top of
12:19PM 23 page 1, you say, "From what I can tell, there
12:19PM 24 are issues that they aren't willing or able
12:19PM 25 to budge on."

119

1

G. SMITH

12:19PM

2

What are those issues that you

12:19PM

3

recall?

12:19PM

4

A. I do not recall the specifics.

12:19PM

5

Generally what I'm referring to here is that

12:19PM

6

they had an inability to -- to render video

12:19PM

7

as that video was changing in resolution,

12:19PM

8

also known as bitrate, or stage size, or the

12:20PM

9

size of the screen that you're occupying with

12:20PM

10

the -- with the video window.

12:20PM

11

Q. So what -- what effect did those

12:20PM

12

problems have on Move's strategy for working

12:20PM

13

with Microsoft?

12:20PM

14

MR. DHANANI: Objection; vague.

12:20PM

15

A. Yeah. I guess I would just

12:20PM

16

characterize it as, over time, Microsoft

12:20PM

17

became less important or valuable to us.

12:20PM

18

Q. Well, what was the original goal

12:20PM

19

of working with Microsoft?

12:20PM

20

A. To pursue new clients together.

12:20PM

21

Q. And that goal became less

12:20PM

22

important because of the technical challenges

12:20PM

23

of working with Silverlight?

12:21PM

24

A. Yes.

12:21PM

25

Q. And those technical challenges

120

1

G. SMITH

12:21PM

2

were never actually overcome; is that right?

12:21PM

3

MR. DHANANI: Objection; vague,

12:21PM

4

calls for speculation, and calls for a

12:21PM

5

conclusion -- a legal conclusion.

12:21PM

6

A. So I don't know that I could say

12:21PM

7

never. I can just say to my recollection, we

12:21PM

8

were not successful at resolving them in a

12:21PM

9

commercially successful way.

12:21PM

10

MR. BARQUIST: Why don't we take

12:21PM

11

our break now. Let you take care of

12:21PM

12

your other commitment, Mr. Smith, and

12:21PM

13

we'll come back when you're done.

12:21PM

14

Does that make sense?

12:21PM

15

THE WITNESS: That certainly

12:21PM

16

works for me.

12:21PM

17

Do I need to stay in this Zoom

12:21PM

18

meeting?

12:21PM

19

MR. BARQUIST: I think you can

12:21PM

20

probably log out and log back in.

12:21PM

21

Is that right?

12:21PM

22

Rebecca or Kimberly, if you

12:22PM

23

know?

12:22PM

24

THE VIDEOGRAPHER: Do you want

12:22PM

25

this on the record, by the way?

121

1

G. SMITH

12:22PM

2

MR. BARQUIST: We can go off the

12:22PM

3

record. Thanks.

12:22PM

4

THE VIDEOGRAPHER: The time is

12:22PM

5

1:22 p.m. and we are going off the

6

record.

7

(Whereupon, a lunch recess was

8

held.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

122

1

G. SMITH

02:01PM 2

AFTERNOON SESSION

02:01PM 3

THE VIDEOGRAPHER: The time is

02:01PM 4

3:02 p.m. and we are back on the

02:01PM 5

record.

02:01PM 6

BY MR. BARQUIST:

02:02PM 7

Q. Good afternoon, Mr. Smith. Thanks

02:02PM 8

for coming back after the break.

02:02PM 9

A. Good afternoon.

02:02PM 10

Q. I have put in the chat a document

02:02PM 11

that had been marked as Exhibit 3 at the

02:02PM 12

Carper deposition.

02:02PM 13

Could you take a look at that,

02:02PM 14

please, Mr. Smith?

02:02PM 15

(Whereupon, Exhibit 3 was

02:02PM 16

previously marked at a prior

02:03PM 17

deposition.)

02:03PM 18

A. One moment, please.

02:03PM 19

Yes, I have it.

02:03PM 20

Q. Do you recognize Exhibit 3 as an

02:03PM 21

input agreement between Move Networks and

02:03PM 22

Microsoft?

02:03PM 23

A. Yes, I do.

02:03PM 24

Q. And is that your signature on the

02:03PM 25

first page?

1

G. SMITH

02:03PM 2

A. Yes, it is.

02:03PM 3

Q. And you signed it on or about

02:03PM 4

August 13, 2007; is that right?

02:03PM 5

A. I don't recall specifically, but,

02:03PM 6

yes, that is exactly what it says.

02:03PM 7

Q. And did Move Networks provide

02:03PM 8

input to Microsoft pursuant to this

02:04PM 9

agreement?

02:04PM 10

MR. DHANANI: Objection; vague

02:04PM 11

and speculation.

02:04PM 12

Go ahead.

02:04PM 13

A. I don't recall. It looks like the

02:04PM 14

way this is structured, there's supposed to

02:04PM 15

be a schedule, so I guess we would just have

02:04PM 16

to look to that schedule.

02:04PM 17

Q. Okay. Did Microsoft provide input

02:04PM 18

to Move Networks in connection with this

02:04PM 19

agreement?

02:04PM 20

MR. DHANANI: Same objection.

02:04PM 21

A. Again -- again, I would have to --

02:04PM 22

I would have to answer the same way. I just

02:04PM 23

have to look at the schedules. I don't

02:04PM 24

recall.

02:04PM 25

Q. Other than looking at the

1

G. SMITH

02:04PM

2

schedule, you don't recall whether any input

02:04PM

3

was conveyed between Move Networks and

02:04PM

4

Microsoft; is that right?

02:04PM

5

MR. DHANANI: Objection; vague.

02:04PM

6

A. That's correct.

02:04PM

7

Q. Okay. On page 5 and 6 of

02:05PM

8

Exhibit 3, there are sample forms of input

02:05PM

9

schedules.

02:05PM

10

Do you see that?

02:05PM

11

A. Yes, I do.

02:05PM

12

Q. To your recollection, were input

02:05PM

13

schedules of this type ever filled out in

02:05PM

14

connection with the agreement between

02:05PM

15

Microsoft and Move?

02:05PM

16

A. Not that I recall.

02:05PM

17

Q. Are you aware of any reason why

02:05PM

18

input schedules were not prepared?

02:05PM

19

A. No, I'm not.

02:05PM

20

Q. Was there someone at Move Networks

02:05PM

21

whose responsibility it was to deal with this

02:06PM

22

input agreement, Exhibit 3?

02:06PM

23

MR. DHANANI: Objection. Calls

02:06PM

24

for speculation.

02:06PM

25

A. I don't recall anybody being

1

G. SMITH

02:06PM

2

specifically responsible for the management

02:06PM

3

of this contract.

02:06PM

4

Q. Would it have fallen under your

02:06PM

5

purview as the head of the product

02:06PM

6

management?

02:06PM

7

A. I don't recall.

02:06PM

8

Q. Would it have been your purview as

02:06PM

9

the chief technology officer of Move?

02:06PM

10

A. Again, I don't recall.

02:06PM

11

Q. Are you aware of any reason why

02:06PM

12

this agreement was signed and then no input

02:06PM

13

schedules were prepared?

02:06PM

14

MR. DHANANI: Objection; calls

02:06PM

15

for speculation.

02:06PM

16

A. I am -- I am not aware of any

02:06PM

17

specific reason, no.

02:06PM

18

Q. Are you aware of any general

02:06PM

19

reason?

02:07PM

20

A. There were more agreements with

02:07PM

21

Microsoft that I think came after this.

02:07PM

22

Perhaps that has some bearing, but I don't

02:07PM

23

know.

02:07PM

24

Q. What agreements with Microsoft

02:07PM

25

came after this one, Carper Exhibit 3?

126

1

G. SMITH

02:07PM

2

A. There were -- there were several

02:07PM

3

and I don't think I could provide an accurate

02:07PM

4

accounting of all of them. They would have

02:07PM

5

included the agreement that referenced the

02:07PM

6

investment by Microsoft and some of the SDK

02:07PM

7

evaluation agreements.

02:07PM

8

MR. BARQUIST: All right. Well,

02:07PM

9

let's mark -- let me show you,

02:07PM

10

actually, what was marked as

02:07PM

11

Exhibit 10 at Mr. Carper's deposition.

02:08PM

12

And it's in the chat now in just a

02:08PM

13

moment.

02:08PM

14

(Whereupon, Exhibit 10 was

02:08PM

15

previously marked at a prior

02:08PM

16

deposition.)

02:08PM

17

Q. There. It should be in the chat

02:08PM

18

now.

02:08PM

19

Do you see a document that was

02:08PM

20

marked Exhibit 10 at the Carper deposition

02:08PM

21

entitled "Move Networks/Microsoft DRAFT Term

02:08PM

22

Sheet"?

02:08PM

23

A. I see it.

02:08PM

24

One moment, please.

02:10PM

25

Yes, I have it.

1

G. SMITH

02:10PM 2 Q. Do you recognize Carper

02:10PM 3 Exhibit 10?

02:10PM 4 A. Yes, I do.

02:10PM 5 Q. And that's your signature on the
02:10PM 6 last page on behalf of Move Networks; is that
02:10PM 7 right?

02:10PM 8 A. Yes, it is.

02:10PM 9 Q. What role did you play in the
02:10PM 10 drafting and preparation of Exhibit 10?

02:10PM 11 A. I was involved in negotiating it
02:10PM 12 and in conversations with -- with my
02:10PM 13 attorneys about the language.

02:10PM 14 Q. Who else at Move was involved in
02:10PM 15 negotiating Carper Exhibit 10?

02:10PM 16 A. John Edwards.

02:11PM 17 Q. Anyone else?

02:11PM 18 A. I'm not -- I'm not sure that I can
02:11PM 19 definitively say anybody else.

02:11PM 20 Q. Okay.

02:11PM 21 A. I don't recall.

02:11PM 22 Q. Now, this is described as a draft
02:11PM 23 Term Sheet and in the first paragraph, it
02:11PM 24 says it "represents a draft, non-binding
02:11PM 25 summary of certain proposed terms."

128

1

G. SMITH

02:11PM 2

Do you see that?

02:11PM 3

A. Yes, I do.

02:11PM 4

Q. Was a final document ever entered

02:11PM 5

into between Move and Microsoft on the

02:11PM 6

subject of what's covered by Carver

02:11PM 7

Exhibit 10?

02:11PM 8

A. There was a final contract, yes.

02:11PM 9

Q. And that -- that also provided for

02:11PM 10

the \$5 million investment by Microsoft?

02:11PM 11

A. Yes.

02:12PM 12

Q. If you look to the second page of

02:12PM 13

Carper Exhibit 10, under the heading "draft

02:12PM 14

Move Networks Deliverables," paragraph 1.

02:12PM 15

Do you see that?

02:12PM 16

A. Yes.

02:12PM 17

Q. There is a reference on the fourth

02:12PM 18

line of paragraph 1 to "Move Networks'

02:12PM 19

partner websites."

02:12PM 20

Do you see that?

02:12PM 21

A. One moment, please.

02:13PM 22

Can you point me to the language

02:13PM 23

again, please?

02:13PM 24

Q. Yeah, sure. This is in paragraph

02:13PM 25

number 1 under Draft Move Networks

1

G. SMITH

02:13PM

2

Deliverables, fourth line. It's a reference

02:13PM

3

to "Move Networks' partner websites."

02:13PM

4

Do you see that?

02:13PM

5

A. Yes, I do.

02:13PM

6

Q. What were the Move Networks'

02:13PM

7

partner websites?

02:13PM

8

A. I believe that language refers to

02:13PM

9

our commercial clients.

02:13PM

10

Q. Who were they at that time?

02:13PM

11

A. I couldn't say for sure exactly

02:13PM

12

who all of them were at that time. It would

02:13PM

13

have included ABC and others.

02:13PM

14

Q. To the best of your recollection,

02:13PM

15

what others?

02:13PM

16

A. I'm sorry. There were many. I

02:13PM

17

don't recall the specific names.

02:13PM

18

Q. On the last page of Carper

02:14PM

19

Exhibit 10, the second sentence says, "The

02:14PM

20

parties will promptly sign a Schedule to the

02:14PM

21

Input Agreement covering Silverlight and Move

02:14PM

22

Media Plugins," et cetera.

02:14PM

23

Do you see that?

02:14PM

24

A. Yes, I do.

02:14PM

25

Q. And is that a reference to the

130

1

G. SMITH

02:14PM 2

input agreement we were looking at a moment

02:14PM 3

ago, Carper Exhibit 3?

02:14PM 4

A. I would assume so, but I can't --

02:14PM 5

I can't be sure.

02:14PM 6

Q. Did the parties sign a schedule to

02:14PM 7

the input agreement as they promised to do

02:14PM 8

here in this agreement, Carper Exhibit 10?

02:14PM 9

MR. DHANANI: Objection;

02:14PM 10

mischaracterizes the document.

02:14PM 11

A. I don't recall.

02:15PM 12

Q. Are you aware of any reason why a

02:15PM 13

schedule to the input agreement was not

02:15PM 14

signed?

02:15PM 15

A. No, I'm not.

02:15PM 16

Q. Is it because the relationship

02:15PM 17

between Microsoft and Move Networks turned

02:15PM 18

out to be unsuccessful?

02:15PM 19

A. I couldn't say.

02:15PM 20

Q. Did Move Networks seek to do

02:15PM 21

business with Netflix?

02:15PM 22

A. Yes, we did.

02:15PM 23

Q. When was that?

02:15PM 24

A. I don't recall the timeframe.

02:15PM 25

Q. And were you successful in getting

131

1

G. SMITH

02:15PM 2

business from Netflix?

02:15PM 3

A. Not as I recall.

02:16PM 4

Q. Do you recall that Netflix decided

02:16PM 5

to enter into a streaming agreement with

02:16PM 6

Microsoft rather than Move Networks in 2008?

02:16PM 7

A. No, I don't recall that.

02:16PM 8

Q. You have no recollection of losing

02:16PM 9

out on Netflix business to Microsoft; is that

02:16PM 10

correct?

02:16PM 11

MR. DHANANI: Objection; asked

02:16PM 12

and answered.

02:16PM 13

A. I -- I don't know. I can't even

02:16PM 14

verify that we lost out. I just don't recall

02:16PM 15

that.

02:16PM 16

Q. You recall that you didn't win the

02:16PM 17

Netflix business; is that right?

02:16PM 18

MR. DHANANI: Objection.

02:16PM 19

Assumes facts not in evidence.

02:16PM 20

A. I don't know when exactly Netflix

02:16PM 21

started streaming, so I couldn't even --

02:17PM 22

unfortunately, I can't even say definitively

02:17PM 23

an answer to your question that we didn't win

02:17PM 24

it because I don't know what was there to win

02:17PM 25

or not win at that point in time. It was

1

G. SMITH

02:17PM 2 **still early days for Netflix.**

02:17PM 3 MR. BARQUIST: All right. Let

02:17PM 4 me put in the chat here -- I'm sorry,

02:17PM 5 this is not working. All right.

02:18PM 6 We'll come back to that.

02:18PM 7 Q. Was Akamai one of Move Networks'

02:18PM 8 biggest competitors?

02:18PM 9 **A. No.**

02:18PM 10 Q. Was Akamai a competitor?

02:18PM 11 **A. No.**

02:18PM 12 Q. What -- what was the relationship,

02:18PM 13 if any, between Microsoft -- Move Networks

02:18PM 14 and Akamai?

02:19PM 15 **A. Akamai --**

02:19PM 16 **I'm sorry.**

02:19PM 17 MR. DHANANI: Objection; vague.

02:19PM 18 But go ahead.

02:19PM 19 **A. Akamai was a content distribution**

02:19PM 20 **network similar to Level 3, and some of**

02:19PM 21 **our -- our clients probably contracted with**

02:19PM 22 **Akamai to distribute the video bits.**

02:19PM 23 MR. BARQUIST: Let me pull up in

02:19PM 24 the chat what we will mark as

02:19PM 25 Exhibit 17, an email dated

133

1

G. SMITH

02:20PM 2

January 12th between Mary Kay Crocker

02:20PM 3

to David Rice and Greg Smith.

02:20PM 4

(Whereupon, Smith Exhibit 17,

02:20PM 5

DISH-337-TA-1265-GS_'0351 through '352

02:20PM 6

was marked for identification as of

02:20PM 7

this date by the Reporter.)

02:20PM 8

A. I see it.

02:20PM 9

Q. Now, in this email, Ms. Crocker

02:20PM 10

forwards an announcement from Akamai about

02:20PM 11

providing high quality online video and she

02:20PM 12

says, "I'm telling you, Akamai is going to be

02:20PM 13

one of the biggest competitors."

02:20PM 14

Do you see that?

02:20PM 15

A. I see the part where she makes

02:20PM 16

that statement. I don't see the part about

02:20PM 17

what this is about, what that link actually

02:21PM 18

was.

02:21PM 19

Q. Okay. You see about the middle of

02:21PM 20

page 1 it says, "The availability of high-def

02:21PM 21

content along with growing broadband

02:21PM 22

penetration has created an unprecedented

02:21PM 23

demand for high-quality online video"?

02:21PM 24

A. Yes, I see that.

02:21PM 25

Q. But you disagree that Akamai was

134

1

G. SMITH

02:21PM 2

going to be one of Move Networks' biggest

02:21PM 3

competitors?

02:21PM 4

A. Yes, I do.

02:22PM 5

MR. BARQUIST: All right. I'm

02:22PM 6

going to put in the chat and mark as

02:22PM 7

Exhibit 18 an email from Chris Carper

02:22PM 8

to you dated January 13, 2009.

02:22PM 9

(Whereupon, Smith Exhibit 18,

02:22PM 10

DISH-337-TA-1265-GS_'2125 through

02:22PM 11

'2126 was marked for identification as

02:22PM 12

of this date by the Reporter.)

02:22PM 13

A. Okay. Give me a minute, please.

02:23PM 14

I have it.

02:23PM 15

Q. Do you recall this email exchange

02:23PM 16

with Mr. Carper of Microsoft?

02:24PM 17

A. I do.

02:24PM 18

Q. And Mr. Carper began the exchange

02:24PM 19

by providing some feedback, some frustration

02:24PM 20

at Microsoft and concerns that Move was

02:24PM 21

dragging its feet in its work with Microsoft.

02:24PM 22

Do you see that?

02:24PM 23

A. I see it.

02:24PM 24

Q. And your response is you didn't

02:24PM 25

buy that, correct?

135

1

G. SMITH

02:24PM

2

A. That's correct.

02:24PM

3

Q. Then you complained to Mr. Carper

02:24PM

4

that Microsoft had avoided working with Move

02:24PM

5

on the proxy model, effectively pushing Move

02:24PM

6

out of contention for the SKY deal; is that

02:24PM

7

right?

02:24PM

8

A. That is what that says, yes.

02:24PM

9

Q. And were you out of contention for

02:24PM

10

the SKY deal?

02:24PM

11

A. I don't recall.

02:24PM

12

Q. Did you win the SKY deal?

02:25PM

13

A. I don't recall.

02:25PM

14

Q. Did you lose out on the SKY deal

02:25PM

15

because Microsoft had pushed you out of

02:25PM

16

contention?

02:25PM

17

MR. DHANANI: Objection; calls

02:25PM

18

for speculation, asked and answered.

02:25PM

19

A. Again, I just don't recall.

02:25PM

20

Q. You go on to say, "My guys think

02:25PM

21

that your eng team is playing dumb until you

02:25PM

22

can launch your own service this fall."

02:25PM

23

Do you see that?

02:25PM

24

A. Yes, I do.

02:25PM

25

Q. What -- what was that referring

136

1

G. SMITH

02:25PM

2

to?

02:25PM

3

A. I -- I would characterize this

02:25PM

4

back and forth as the engineering teams were

02:25PM

5

talking past each other and we were all

02:25PM

6

frustrated that we were not able to come up

02:25PM

7

with a full integration.

02:25PM

8

Q. And did Microsoft eventually

02:25PM

9

launch its own service?

02:25PM

10

A. I believe they did, yes.

02:25PM

11

Q. Just as your engineering team

02:25PM

12

suspected; is that right?

02:26PM

13

MR. DHANANI: Objection;

02:26PM

14

speculation.

02:26PM

15

A. I don't know that I could say

02:26PM

16

"just as the team suspected," but I believe

02:26PM

17

eventually Microsoft did launch a -- launch a

02:26PM

18

technology that they called "smooth

02:26PM

19

streaming," I think.

02:26PM

20

Q. In the email back from Mr. Carper

02:26PM

21

at the top of this page, he says he is very

02:26PM

22

concerned or "really concerned that we have

02:26PM

23

not been able to:

02:26PM

24

"a) get a sales and marketing

02:26PM

25

pitch together."

137

1

G. SMITH

02:26PM 2

Do you see that?

02:26PM 3

A. Yes, I do.

02:26PM 4

Q. Was that true?

02:26PM 5

A. I don't know.

02:26PM 6

Q. And, "b)" had not been able to

02:26PM 7

"get at least 1 key win in place together."

02:26PM 8

Was that true?

02:26PM 9

A. My recollection is that we had one

02:26PM 10

key win with the DNCC.

02:27PM 11

Q. Okay. Any others?

02:27PM 12

A. I don't recall. I think there

02:27PM 13

were, but I don't recall.

02:27PM 14

Q. Apparently Mr. Carper didn't think

02:27PM 15

that the DNC business was a key win, did he?

02:27PM 16

MR. DHANANI: Objection; calls

02:27PM 17

for speculation.

02:27PM 18

A. I can -- I can interpret the email

02:27PM 19

probably only as well as you can.

02:27PM 20

Q. Well, Mr. Carper knew about the

02:27PM 21

DNC deal, right?

02:27PM 22

A. I would have expected him to, yes.

02:27PM 23

Q. The third thing that Mr. Carper

02:27PM 24

says he is concerned is that you have not

02:27PM 25

been able to get your "technical teams to

138

1

G. SMITH

02:27PM

2

work close so that we can close Phase III or

02:27PM

3

2.5."

02:27PM

4

Do you see that?

02:27PM

5

A. Yes, I do.

02:28PM

6

Q. Was that true?

02:28PM

7

A. I don't think that that is

02:28PM

8

accurate the way that he has worded it.

02:28PM

9

Q. What was that -- what was the --

02:28PM

10

what would have been accurate?

02:28PM

11

A. The technical teams did work

02:28PM

12

closely together. They were not able to

02:28PM

13

resolve the issues.

02:28PM

14

Q. And the issues they were not able

02:28PM

15

to resolve were what?

02:28PM

16

A. Inabilities in the Silverlight

02:28PM

17

rendering modules to handle bitrate changes

02:28PM

18

and stage size changes.

02:28PM

19

Q. So you couldn't get Silverlight

02:28PM

20

and Move to work together effectively or

02:28PM

21

correctly; is that right?

02:28PM

22

MR. DHANANI: Objection;

02:28PM

23

mischaracterizes the testimony.

02:28PM

24

A. We -- we couldn't -- we couldn't

02:28PM

25

get Silverlight to do the things that they

1

G. SMITH

02:28PM

2

were saying it would do. In other words, the

02:28PM

3

technology didn't function as advertised.

02:28PM

4

Q. It didn't function in conjunction

02:29PM

5

with Move Networks as you wanted; is that

02:29PM

6

right?

02:29PM

7

MR. DHANANI: Objection;

02:29PM

8

mischaracterizes the testimony and

02:29PM

9

calls for speculation.

02:29PM

10

A. I would characterize that

02:29PM

11

differently. It didn't work according to the

02:29PM

12

way their own documentation indicated that it

02:29PM

13

would work.

02:29PM

14

Q. It didn't work in conjunction with

02:29PM

15

Move Networks the way the documentation

02:29PM

16

indicated it would; is that right?

02:29PM

17

MR. DHANANI: Objection; asked

02:29PM

18

and answered.

02:29PM

19

A. No, I wouldn't agree with that. I

02:29PM

20

would say that it just simply didn't do what

02:29PM

21

the documentation of the SDK said that it

02:29PM

22

would do.

02:29PM

23

Q. And as a result, it didn't

02:29PM

24

integrate as intended or expected with

02:29PM

25

Move Networks; is that right?

140

1

G. SMITH

02:29PM 2

MR. DHANANI: Objection; asked

02:29PM 3

and answered, mischaracterizes the

02:29PM 4

testimony and the document.

02:30PM 5

A. I think it's -- I think I can -- I

02:30PM 6

think I can say that we were not able to

02:30PM 7

create a successful integration as we had

02:30PM 8

originally envisioned and hoped.

02:30PM 9

MR. BARQUIST: All right. Let

02:30PM 10

me mark the next exhibit. Give me a

02:30PM 11

moment, please.

02:30PM 12

Okay. I'm putting into the chat

02:30PM 13

what we will mark as Exhibit 19, am

02:31PM 14

email from Mr. Carper to Mr. Smith

02:31PM 15

dated January 20, 2009.

02:31PM 16

(Whereupon, Smith Exhibit 19,

02:31PM 17

DISH-337-TA-1265-GS_'416 was marked

02:31PM 18

for identification as of this date by

02:31PM 19

the Reporter.)

02:31PM 20

A. Okay. One moment, please.

02:31PM 21

Yes, I have it.

02:31PM 22

Q. So Exhibit 19 is a -- a string of

02:32PM 23

emails between Microsoft and CBS that

02:32PM 24

Mr. Carper then forwarded to you, correct?

02:32PM 25

A. Yes, it is.

141

1

G. SMITH

02:32PM 2 Q. And Mr. Carper, when sending these
02:32PM 3 emails with CBS to you, wrote to you in all
02:32PM 4 caps, "WE NEED TO FIX THE INSTALL."

02:32PM 5 Correct?

02:32PM 6 A. Yes, he did.

02:32PM 7 Q. And what was he referring to there
02:32PM 8 as needing to be fixed?

02:32PM 9 A. I don't recall specifically. I
02:32PM 10 think you can look at Mr. Person --
02:32PM 11 Pearson -- Person's note to him that appears
02:32PM 12 to answer that.

02:32PM 13 Q. Well, did you investigate what the
02:32PM 14 problem was when you got this message from
02:32PM 15 Mr. Carper?

02:32PM 16 A. I don't recall.

02:32PM 17 Q. Were you concerned about
02:33PM 18 Mr. Person's comment in his email here in
02:33PM 19 Exhibit 19 to the effect, "It would have been
02:33PM 20 better if we didn't require the move plugin,
02:33PM 21 though. Saw a lot of drop offs installing
02:33PM 22 both SL2 & Move"?

02:33PM 23 A. The final sentence there, I think,
02:33PM 24 is the definitive one. "There are still a
02:33PM 25 ton of people without SL2."

142

1

G. SMITH

02:33PM 2

Q. Why is that definitive?

02:33PM 3

A. Because what the gentleman from

02:33PM 4

CBS is saying is that it's too big of a lift

02:33PM 5

to ask CBS to get Silverlight installed on

02:33PM 6

end user machines.

02:33PM 7

Q. And you think it would have been

02:33PM 8

easier if they didn't require the Move plugin

02:33PM 9

also, correct?

02:34PM 10

A. That sentence says that, yes.

02:34PM 11

Q. Okay. And does this reflect the

02:34PM 12

fact that you were not able to successfully

02:34PM 13

fully integrate Silverlight and the Move

02:34PM 14

plugin?

02:34PM 15

A. No, it does not.

02:34PM 16

Q. What problem does this reflect?

02:34PM 17

A. This -- this goes back to the

02:34PM 18

problem we discussed earlier about Microsoft

02:34PM 19

asking Move Networks to -- to do the installs

02:34PM 20

of Silverlight. That's the specific issue

02:34PM 21

being addressed here.

02:34PM 22

Q. And do you disagree that it would

02:34PM 23

have been preferable to have a unified

02:34PM 24

installer?

02:34PM 25

MR. DHANANI: Objection. Calls

1

G. SMITH

02:34PM 2

for speculation. Incomplete

02:34PM 3

hypothetical.

02:34PM 4

A. That's a very difficult question

02:34PM 5

to answer. It's -- it's -- due to the

02:35PM 6

specific technical requirements around doing

02:35PM 7

an install, it's not possible to have a

02:35PM 8

unified installer, as you phrased it.

02:35PM 9

Q. Well, it wasn't my phrasing.

02:35PM 10

Mr. Person says to Mr. Carper, "Move said

02:35PM 11

they didn't have a unified installer."

02:35PM 12

Was that true or not?

02:35PM 13

A. I see that.

02:35PM 14

Yes, it is true.

02:35PM 15

MR. BARQUIST: I'm going to mark

02:35PM 16

as the next exhibit, 20, another email

02:36PM 17

exchange between you and Mr. Carper

02:36PM 18

dated January 20, 2009.

02:36PM 19

(Whereupon, Smith Exhibit 20,

02:36PM 20

DISH-337-TA-1265-GS_'0445 through

02:36PM 21

'0448 was marked for identification as

02:36PM 22

of this date by the Reporter.)

02:36PM 23

A. One moment, please.

02:37PM 24

MR. DHANANI: What's the exhibit

02:37PM 25

number for this?

1

G. SMITH

02:37PM 2

MR. BARQUIST: I think it's 20,

02:37PM 3

please.

02:37PM 4

MR. DHANANI: Thank you.

02:37PM 5

A. Okay, I have it.

02:37PM 6

BY MR. BARQUIST:

02:37PM 7

Q. Do you recognize this email

02:37PM 8

exchange?

02:37PM 9

A. Yes, I do.

02:38PM 10

Q. Directing your attention to the

02:38PM 11

third page of Exhibit 20, this carryover from

02:38PM 12

page 2 is an email from Richard Bateman at

02:38PM 13

Move to several people at Microsoft; is that

02:38PM 14

correct?

02:38PM 15

A. I see names on the to list that

02:38PM 16

are also Move Networks names.

02:38PM 17

Q. So from Mr. Bateman to people at

02:38PM 18

both Microsoft and Move; is that correct?

02:38PM 19

A. That's correct.

02:38PM 20

Q. And then --

02:38PM 21

A. One caveat there. Some of these

02:38PM 22

names I don't know, so I can't be certain

02:38PM 23

that there isn't a third company involved

02:38PM 24

here.

02:38PM 25

Q. Okay. Thank you.

145

1

G. SMITH

02:38PM

2

So in Mr. Bateman's email, as it

02:38PM

3

carries over onto page 3 of Exhibit 20, the

02:38PM

4

third paragraph says, "The other big issue

02:39PM

5

that we are having right now is simply

02:39PM

6

performance. For whatever reason(s), in all

02:39PM

7

of our tests flash overlays are consistently

02:39PM

8

out performing Silverlight overlays on both

02:39PM

9

Mac and Windows."

02:39PM

10

Are you familiar with that

02:39PM

11

performance issue that Mr. Bateman is

02:39PM

12

describing there?

02:39PM

13

A. I don't recall the -- the

02:39PM

14

specifics of the performance issues, but yes,

02:39PM

15

I remember in general that we were having

02:39PM

16

more difficulty with Silverlight than with

02:39PM

17

flash.

02:39PM

18

Q. So what was Move Networks doing

02:39PM

19

with flash at this time?

02:39PM

20

A. Flash and Silverlight were -- are

02:39PM

21

both rich media runtime engines for the

02:39PM

22

presentation of, again, rich media, and we

02:39PM

23

were attempting to use Silverlight in ways

02:40PM

24

that we had previously used flash in order to

02:40PM

25

manage the -- the play, the pause, the fast

1

G. SMITH

02:40PM

2

forward, the jogging, in other words, the

02:40PM

3

control buttons of the video, whether

02:40PM

4

adjacent to the video window or on top of the

02:40PM

5

video window.

02:40PM

6

Q. Were the performance problems that

02:40PM

7

Mr. Bateman describes here in Exhibit 20 ever

02:40PM

8

resolved?

02:40PM

9

A. I don't recall.

02:40PM

10

Q. So turning back to page 1 of

02:40PM

11

Exhibit 20, Mr. Carper, when forwarding this

02:40PM

12

email chain to you asks, "Is Richard

02:40PM

13

stonewalling here? What's the deal with the

02:40PM

14

2 weeks and no response?"

02:40PM

15

Why was Mr. Bateman delaying in

02:41PM

16

responding to Microsoft's concerns about

02:41PM

17

performance issues?

02:41PM

18

MR. DHANANI: Objection; assumes

02:41PM

19

facts, mischaracterizes the document.

02:41PM

20

A. I can't verify that he was

02:41PM

21

delaying at all. In fact, as I read through

02:41PM

22

the rest of this document, I see that he

02:41PM

23

has -- he has, indeed, sent all of these

02:41PM

24

examples, so I can't -- I can't really verify

02:41PM

25

that -- that he was delaying or this was

1

G. SMITH

02:41PM

2

anything more than some kind of

02:41PM

3

miscommunication.

02:42PM

4

MR. BARQUIST: I'm going to mark

02:42PM

5

as the next exhibit, 21, an email.

02:42PM

6

The top email is from Mr. Person

02:42PM

7

at CBS to Mr. Carper, yourself, and

02:42PM

8

several other people dated January 22,

02:42PM

9

2009.

02:42PM

10

(Whereupon, Smith Exhibit 21,

02:42PM

11

DISH-337-TA-1265-GS_'0479 through

02:42PM

12

'0480 was marked for identification as

02:43PM

13

of this date by the Reporter.)

02:43PM

14

A. Just one moment, please.

02:43PM

15

Q. Of course.

02:43PM

16

A. Okay, I have it.

02:43PM

17

Q. Okay. This is another email chain

02:43PM

18

describing this problem that CBS was having

02:43PM

19

with installs of Silverlight and Move,

02:43PM

20

correct?

02:43PM

21

MR. DHANANI: Objection;

02:43PM

22

mischaracterizes the document.

02:43PM

23

A. This is specifically addressing

02:43PM

24

the question of whether or not you can detect

02:43PM

25

the existence of Silverlight on the local

148

1

G. SMITH

02:43PM

2

machine correctly.

02:44PM

3

Q. Well, Mr. Person at CBS provides

02:44PM

4

some specific numbers about install rates,

02:44PM

5

correct?

02:44PM

6

A. Not exactly.

02:44PM

7

Q. What are the rates that he is

02:44PM

8

providing; how would you characterize it?

02:44PM

9

A. He is describing an environment in

02:44PM

10

which there is a multitree -- multipoint

02:44PM

11

decision tree.

02:44PM

12

The user is first presented with

02:44PM

13

an option of would you like to use the

02:44PM

14

Silverlight version or would you like to use

02:44PM

15

the native version or the other version or

02:44PM

16

what have you. Then after that, there is --

02:44PM

17

if someone who has selected the Silverlight

02:44PM

18

version, there is then the question of do

02:45PM

19

they have the software necessary to do it,

02:45PM

20

and that is what he is describing.

02:45PM

21

Q. If I can direct your attention to

02:45PM

22

the bottom paragraph of that email, that's

02:45PM

23

what clarifies it.

02:45PM

24

Well, Mr. Person characterizes the

02:45PM

25

numbers as fairly weak.

1

G. SMITH

02:45PM 2

Did you -- do you agree with that

02:45PM 3

characterization?

02:45PM 4

MR. DHANANI: Objection; vague.

02:45PM 5

A. I can say that I agree that we --

02:46PM 6

for this to be successful going forward, we

02:46PM 7

needed a better install path.

02:46PM 8

Q. And did you ever achieve a better

02:46PM 9

install path?

02:46PM 10

A. I don't believe we did. And,

02:46PM 11

again, as I think I testified earlier, it's

02:46PM 12

not technically possible to do a,

02:46PM 13

quote/unquote, truly unified install.

02:46PM 14

Q. And whether or not it would be a

02:46PM 15

unified install, you didn't come up with a

02:46PM 16

better install path, correct?

02:46PM 17

A. Not as -- not as I recall.

02:47PM 18

MR. BARQUIST: Okay. Let's mark

02:47PM 19

as the next exhibit, 22, please, an

02:47PM 20

email dated February 19, 2009, from

02:47PM 21

David Rice to you, Mr. Smith, and

02:47PM 22

others at Move.

02:47PM 23

(Whereupon, Smith Exhibit 22,

02:47PM 24

DISH-337-TA-1265-GS_'0696 through

02:47PM 25

'0698 was marked for identification as

150

1

G. SMITH

02:47PM 2

of this date by the Reporter.)

02:47PM 3

Q. Let me know when you've read it,

02:47PM 4

please.

02:47PM 5

A. One moment, please.

02:50PM 6

Okay. I have it.

02:50PM 7

Q. You recall this email exchange in

02:50PM 8

February of 2009?

02:50PM 9

A. Yes, I do.

02:50PM 10

Q. So starting at the bottom of the

02:50PM 11

chain on page 2, your email states, "Just got

02:50PM 12

a call from MSFT: they want to work together

02:50PM 13

on the Masters."

02:50PM 14

Do you see that?

02:50PM 15

A. Yes, I do.

02:50PM 16

Q. And that's the golf tournament,

02:50PM 17

Masters?

02:50PM 18

A. I believe it was, yes.

02:50PM 19

Q. You asked some questions then,

02:50PM 20

one, two, three, four.

02:50PM 21

Question No. 1: "Do we want this

02:50PM 22

business?"

02:50PM 23

Is there a reason why you wouldn't

02:50PM 24

want the business?

02:50PM 25

A. I -- I think part of what I'm

151

1

G. SMITH

02:50PM 2 **missing here is to whom I was writing this**
02:51PM 3 **email. That would provide me with some**
02:51PM 4 **context to be able to better describe it.**

02:51PM 5 Q. Well, it looks like -- at least
02:51PM 6 Mr. Rice replied to you?

02:51PM 7 A. Yes. So at least it was going to
02:51PM 8 Mr. Rice, it would seem, yes.

02:51PM 9 Anyway, please go ahead with the
02:51PM 10 question again.

02:51PM 11 Q. Is there a reason why you would
02:51PM 12 not have wanted the business of doing the
02:51PM 13 Masters with Microsoft?

02:51PM 14 A. I can't -- I can't recall right
02:51PM 15 now.

02:51PM 16 Q. Question No. 4 --

02:51PM 17 A. Hang on. Hang on.

02:52PM 18 I believe -- now that I see that
02:52PM 19 it was going to David Rice, I believe what I
02:52PM 20 was asking him was: Are you involved in this
02:52PM 21 and are we pursuing this and do we want to
02:52PM 22 continue forward pursuing this at this time?
02:52PM 23 Is it -- is it commercially desirable?

02:52PM 24 Q. Right.

02:52PM 25 And my question is: Is there a

152

1

G. SMITH

02:52PM 2 reason why it would not have been

02:52PM 3 commercially desirable to --

02:52PM 4 **A. Not that I can think of right now,**
02:52PM 5 **no.**

02:52PM 6 Q. What was Mr. Rice's role at the
02:52PM 7 company at that time?

02:52PM 8 **A. Mr. Rice was in a sales capacity.**

02:52PM 9 Q. Then you also asked in the
02:52PM 10 question No. 4 in your email, "Did we capture
02:52PM 11 the requirement for a new joint installer for
02:52PM 12 this project?"

02:52PM 13 **A. Yes, I see that.**

02:52PM 14 Q. What requirement were you
02:53PM 15 referring to?

02:53PM 16 **A. I believe it's the one we have**
02:53PM 17 **been going over now for the past 10 or**
02:53PM 18 **15 minutes; that the -- that the installation**
02:53PM 19 **of Silverlight and Move together had not gone**
02:53PM 20 **as smoothly previously as we wanted to.**

02:53PM 21 Q. And was -- was someone imposing a
02:53PM 22 requirement for a joint installer?

02:53PM 23 **A. I think if we look elsewhere in**
02:53PM 24 **this email thread, we see that AT&T, in fact,**
02:53PM 25 **was requiring it.**

153

1

G. SMITH

02:53PM 2

Q. And were you able to provide a

02:53PM 3

joint installer to AT&T?

02:53PM 4

A. I don't recall.

02:53PM 5

Q. Now, at the top of the second page

02:53PM 6

of Exhibit 22 -- this is an email from you --

02:54PM 7

if you look at the bottom of page 1, you'll

02:54PM 8

see it's an email from to you Mr. Rice,

02:54PM 9

Mr. Beldy, and to Mr. Edwards.

02:54PM 10

Do you see that?

02:54PM 11

A. Yes, I do.

02:54PM 12

Q. And then, so in your -- in that

02:54PM 13

email carrying over on page 2 of the exhibit,

02:54PM 14

you say, "I want to avoid a repeat of the CBS

02:54PM 15

inauguration install rates."

02:54PM 16

Do you see that?

02:54PM 17

A. Yes, I do.

02:54PM 18

Q. Why did you want to avoid a repeat

02:54PM 19

of the CBS inauguration install rates?

02:54PM 20

A. That hearkens back to the same --

02:54PM 21

same sentence from the previous exhibit where

02:54PM 22

Mr. Person referred to them as weak.

02:54PM 23

Q. Well, why did you want to avoid

02:54PM 24

repeating them?

02:54PM 25

A. Because I -- as I said in that

G. SMITH

02:54PM 2 **testimony, the -- I also felt that the --**

02:54PM 3 **that the user experience was poor, was a bad**

02:54PM 4 **one.**

02:55PM 5 Q. All right. Then going back to the

02:55PM 6 first page of Exhibit 22, Mr. Beldy poses

02:55PM 7 three questions.

02:55PM 8 Who was Mr. Beldy at that time?

02:55PM 9 A. Mr. Beldy was the representative

02:55PM 10 of Steamboat Ventures, the venture capital

02:55PM 11 company.

02:55PM 12 Q. What was Steamboat Ventures doing

02:55PM 13 for Move at that time?

02:55PM 14 A. Steamboat Ventures was one of

02:55PM 15 the -- was one of the venture capital firms

02:55PM 16 that had invested in Move Networks.

02:55PM 17 Q. How much of an investment did

02:55PM 18 Steamboat make?

02:55PM 19 A. I do not know.

02:55PM 20 Q. Did they have a representative on

02:55PM 21 the board?

02:55PM 22 A. Yes.

02:55PM 23 Q. Was that Mr. Beldy?

02:55PM 24 A. Yes, it was.

02:55PM 25 Q. So you replied to Mr. Beldy's

155

1

G. SMITH

02:56PM 2 questions there in the email on page 1 of

02:56PM 3 Exhibit 22, correct?

02:56PM 4 **A. Yes, I did.**

02:56PM 5 Q. Then point No. 2, again you talk

02:56PM 6 this -- talk about this unified install

02:56PM 7 concern, correct?

02:56PM 8 **A. Yes.**

02:56PM 9 Q. Just to confirm, you say, again

02:56PM 10 here, that "the MOVE plus SL install

02:56PM 11 experience was poor" with regard to the CBS

02:56PM 12 inauguration, correct?

02:56PM 13 **A. Yes.**

02:56PM 14 Q. And that's what you wanted to

02:56PM 15 avoid going forward, correct?

02:56PM 16 **A. That is one -- that is one of my**

02:56PM 17 **concerns that I'm expressing here, yes.**

02:56PM 18 Q. And in paragraph -- paragraph 3 of

02:56PM 19 your email back to Mr. Beldy, you talk about

02:57PM 20 Adobe and Microsoft, correct?

02:57PM 21 **A. Yes, I do.**

02:57PM 22 Q. And you characterize Adobe as your

02:57PM 23 largest competitor?

02:57PM 24 **A. That's correct.**

02:57PM 25 Q. You state, "They have helped us in

1

G. SMITH

02:57PM 2 the past on several opportunities (we had to
02:57PM 3 turn down the one that would have lead to
02:57PM 4 real revenue)."

02:57PM 5 Who is the "they" in that
02:57PM 6 sentence?

02:57PM 7 **A. Microsoft.**

02:57PM 8 Q. And what is the opportunity that
02:57PM 9 you had to turn down would have led to real
02:57PM 10 revenue?

02:57PM 11 **A. I can't be certain right now.**

02:57PM 12 Q. What's your best recollection?

02:57PM 13 **A. I really wouldn't want to**
02:57PM 14 **speculate.**

02:58PM 15 Q. Further down in that paragraph, in
02:58PM 16 your reply to Mr. Beldy, you state, "We
02:58PM 17 should also pursue MSFT with Intellectual
02:58PM 18 property patents at the right time."

02:58PM 19 Do you see that?

02:58PM 20 **A. Yes, I do.**

02:58PM 21 Q. What were you referring to there?

02:58PM 22 **A. That Smooth HD likely needed to be**
02:58PM 23 **investigated against the Move Networks**
02:58PM 24 **patents.**

02:58PM 25 Q. By "Smooth HD," are you referring

157

1

G. SMITH

02:58PM

2

to smooth streaming?

02:58PM

3

A. I believe I am.

02:58PM

4

Q. And was -- again, putting aside

02:58PM

5

any discussion with lawyers, was there

02:58PM

6

discussion at Move Networks that Microsoft's

02:58PM

7

smooth streaming technology was infringing

02:58PM

8

Move patents?

02:58PM

9

A. I don't recall any specifics of

02:58PM

10

that.

02:59PM

11

Q. Do you recall anything in general?

02:59PM

12

A. Not outside of the conversations

02:59PM

13

with the attorneys.

02:59PM

14

Q. Who were Move's attorneys at that

02:59PM

15

point in time?

02:59PM

16

A. I don't -- I don't trust my

02:59PM

17

recollection on that right now. I'm sure we

02:59PM

18

can find it as a matter of record.

02:59PM

19

MR. BARQUIST: Let me mark as

02:59PM

20

the next exhibit, 23.

03:00PM

21

MR. DHANANI: We've been going

03:00PM

22

for about an hour. Just let us know

03:00PM

23

whenever you're at a point for a

03:00PM

24

break.

03:00PM

25

MR. BARQUIST: Oh, sure. Let's

1

G. SMITH

03:00PM

2

just talk about this exhibit and then

03:00PM

3

we can take a little break.

03:00PM

4

(Whereupon, Smith Exhibit 23,

03:00PM

5

DISH-337-TA-1265-GS_'0802 through

03:00PM

6

'0803 was marked for identification as

03:00PM

7

of this date by the Reporter.)

03:00PM

8

Q. Mr. Smith, do you see Exhibit 23,

03:00PM

9

this email from Mr. Carper to you dated

03:00PM

10

November 3, 2009?

03:00PM

11

A. Yes. One minute, please.

03:00PM

12

Yes, I have it.

03:00PM

13

Q. So this is an email in which

03:01PM

14

Mr. Carper gives you a heads up that

03:01PM

15

Microsoft would be announcing its smooth

03:01PM

16

streaming technology, correct?

03:01PM

17

A. Correct. Beta, actually.

03:01PM

18

Q. The beta version of the smooth

03:01PM

19

streaming technology, right?

03:01PM

20

A. That is what it says, yes.

03:01PM

21

Q. And is this the technology that a

03:01PM

22

moment ago you said that there was some

03:01PM

23

discussion about whether it infringed the

03:01PM

24

Move patents?

03:01PM

25

A. I think a moment ago I said that

159

G. SMITH

1
03:01PM 2 **that's what I was referencing to Mr. Beldy,**
03:01PM 3 **that we should explore that question at the**
03:01PM 4 **right time.**

03:01PM 5 Q. And while you were at Move, was
03:01PM 6 that -- the question of whether smooth
03:01PM 7 streaming infringing any of the Move patents,
03:01PM 8 was that discussed?

03:01PM 9 A. Again, I can't -- I can't recall
03:02PM 10 the specifics of any discussions outside of
03:02PM 11 the discussions with the attorneys.

03:02PM 12 Q. So what was the reaction at Move
03:02PM 13 Networks when Microsoft announced the release
03:02PM 14 of its smooth streaming technology?

03:02PM 15 A. Could you be more specific?

03:02PM 16 Q. Well, were there discussions at
03:02PM 17 Move Networks about the implications of
03:02PM 18 Microsoft's releasing smooth streaming for
03:02PM 19 Move?

03:02PM 20 A. Releasing smooth streaming for
03:02PM 21 Move?

03:02PM 22 Q. Oh, I'm sorry. Let me -- let me
03:02PM 23 rephrase that more carefully.

03:02PM 24 Were there discussions at Move
03:02PM 25 about the implications for Move of

160

1

G. SMITH

03:02PM

2

Microsoft's release of its smooth streaming

03:02PM

3

technology?

03:02PM

4

A. Yes.

03:02PM

5

Q. What were those discussions?

03:02PM

6

A. I can't recall specifics of

03:03PM

7

discussions outside of the discussions with

03:03PM

8

attorneys.

03:03PM

9

Q. Do you recall discussions other

03:03PM

10

than with the lawyers in general on this

03:03PM

11

subject?

03:03PM

12

A. I don't recall. It's a tough

03:03PM

13

question. I just -- you know, every time,

03:03PM

14

probably, yes, there would have been one of

03:03PM

15

the lawyers involved. So, I'm sorry, I don't

03:03PM

16

recall.

03:03PM

17

Q. Did the announcement by Microsoft

03:03PM

18

of its smooth streaming technology lead to

03:03PM

19

the decision a month later to change the

03:03PM

20

direction of the company and terminate the

03:03PM

21

employment of you and several other people?

03:03PM

22

MR. DHANANI: Objection;

03:03PM

23

compound, calls for speculation, and

03:03PM

24

vague.

03:03PM

25

A. I can't speak directly to the

161

G. SMITH

1

03:04PM

2

machinations or process of that

03:04PM

3

decision-making. What I can correct in your

03:04PM

4

question is that I was one of the people who

03:04PM

5

structured that reduction in force and one of

03:04PM

6

the -- and I included myself in it.

03:04PM

7

Q. And was Microsoft's announcement

03:04PM

8

of its -- of its smooth streaming technology

03:04PM

9

one of the factors that went into the

03:04PM

10

decision to structure that reduction in

03:04PM

11

force?

03:04PM

12

MR. DHANANI: Objection; calls

03:04PM

13

for speculation and foundation.

03:04PM

14

A. Again, I -- I have to say that,

03:04PM

15

you know, I wasn't privy to the discussions

03:04PM

16

that led to that final decision. The event

03:05PM

17

that preceded the reduction in force was the

03:05PM

18

2008 financial collapse. And you would be

03:05PM

19

probably better served to draw a connecting

03:05PM

20

line to there versus any other announcement

03:05PM

21

of technology betas.

03:05PM

22

Q. What do you base that on?

03:05PM

23

A. It was a massive event for the

03:05PM

24

entire world.

03:05PM

25

Q. Did it cause people to stop

1

G. SMITH

03:05PM

2

watching television?

03:05PM

3

A. I don't believe it did, but I

03:05PM

4

wouldn't be the expert on that.

03:05PM

5

Q. Did it stop people from wanting to

03:05PM

6

download videos over the Internet?

03:05PM

7

A. Again, I wouldn't be the person to

03:05PM

8

ask about that.

03:05PM

9

Q. So why did the financial collapse

03:05PM

10

affect the -- the business of offering videos

03:06PM

11

over the Internet?

03:06PM

12

MR. DHANANI: Objection; asked

03:06PM

13

and answered, now calls for

03:06PM

14

speculation.

03:06PM

15

A. Right after the financial

03:06PM

16

collapse, there was a very famous document

03:06PM

17

written by Sequoia Capital that spread

03:06PM

18

through the venture capital community like

03:06PM

19

wildfire, and the advice from Sequoia Capital

03:06PM

20

to everybody else out there was to -- that

03:06PM

21

most companies were going to fail and

03:06PM

22

everybody should be looking at changing

03:06PM

23

direction.

03:06PM

24

Q. And what was the new direction

03:06PM

25

that Move decided to go into?

1

G. SMITH

03:06PM

2

A. As I said earlier, I was no longer

03:06PM

3

with the company after that, so I can't

03:06PM

4

really speak to that new direction.

03:06PM

5

Q. So you -- you have no idea, no one

03:06PM

6

told you, even before you left, what the plan

03:06PM

7

was?

03:06PM

8

A. I couldn't say it's accurate that

03:06PM

9

I have no idea, but I can say it's accurate

03:07PM

10

that I was not there and not really the best

03:07PM

11

source of information on it.

03:07PM

12

Q. Well, whether or not the best

03:07PM

13

source, you are -- you are the source we

03:07PM

14

have today.

03:07PM

15

What is your understanding of the

03:07PM

16

new direction?

03:07PM

17

A. Exploring --

03:07PM

18

MR. DHANANI: Objection; calls

03:07PM

19

for speculation.

03:07PM

20

A. Exploring the implementation of

03:07PM

21

the technology inside of IPTV networks.

03:07PM

22

Q. What's an IPTV network?

03:07PM

23

A. IP stands for Internet protocol.

03:07PM

24

TV stands for television. It is -- it is a

03:07PM

25

network for the distribution of pay TV that

1

G. SMITH

03:07PM

2

uses -- that uses IP transport rather than

03:07PM

3

the traditional methods of cable or satellite

03:07PM

4

transport.

03:07PM

5

MR. BARQUIST: All right. Why

03:07PM

6

don't we take that break that Mr. --

03:08PM

7

that Ali suggested.

03:08PM

8

MR. DHANANI: Thank you.

03:08PM

9

THE VIDEOGRAPHER: The time is

03:08PM

10

4:08 p.m. and we are going off the

03:08PM

11

record.

03:08PM

12

(Whereupon, a recess was held.)

03:22PM

13

THE VIDEOGRAPHER: The time is

03:22PM

14

4:22 p.m. and we are back on the

03:22PM

15

record.

03:22PM

16

MR. BARQUIST: Mr. Smith, I put

03:22PM

17

in the chat something we will mark as

03:22PM

18

Exhibit 24.

03:22PM

19

It's a copy of an article dated

03:22PM

20

July 14, 2008 about Microsoft and

03:23PM

21

Netflix unveiling a partnership to

03:23PM

22

instantly stream movies and TV

03:23PM

23

episodes.

03:23PM

24

A. Yes, I have it.

25

(Whereupon, Smith Exhibit 24,

1

G. SMITH

2

article titled "Microsoft and Netflix

3

Unveil Partnership to Instantly Stream

4

Movies and TV Episodes to the TV via

5

Xbox LIVE" was marked for

6

identification as of this date by the

7

Reporter.)

03:23PM 8

BY MR. BARQUIST:

03:23PM 9

Q. My question is: Does this article

03:23PM 10

refresh your recollection as to the time

03:23PM 11

period when Microsoft and Netflix announced

03:23PM 12

an arrangement for streaming of video?

03:23PM 13

MR. DHANANI: Objection;

03:23PM 14

foundation and the document speaks for

03:23PM 15

itself.

03:23PM 16

A. No, it doesn't -- it doesn't

03:23PM 17

refresh my recollection.

03:23PM 18

Q. Does it refresh your recollection

03:23PM 19

that Move was going to do business with

03:23PM 20

Netflix and lost out to Microsoft?

03:23PM 21

MR. DHANANI: Objection; asked

03:23PM 22

and answered, and foundation.

03:23PM 23

A. No, it does not.

03:24PM 24

MR. BARQUIST: I have a couple

03:24PM 25

more to do here and we will wrap up.

1

G. SMITH

03:24PM 2

I'm going to put into the chat

03:24PM 3

an email dated March 16, 2009, from

03:24PM 4

Tom Taylor at Microsoft to Mr. Smith

03:24PM 5

and others. That's Exhibit 25.

03:24PM 6

(Whereupon, Smith Exhibit 25,

03:24PM 7

DISH-337-TA-1265-GS_'0973 through

03:24PM 8

'0975 was marked for identification as

03:24PM 9

of this date by the Reporter.)

03:24PM 10

A. One moment, please.

03:26PM 11

Okay. Yes, I have it.

03:26PM 12

Q. Okay. So on pages 1 and 2 of

03:26PM 13

Exhibit 25, there's an exchange of emails

03:26PM 14

between you and Mr. Tom Taylor at Microsoft

03:26PM 15

on March 4th, 2009. Correct?

03:26PM 16

A. Yes, I see those.

03:26PM 17

Q. And on page 2, Mr. Taylor's email

03:26PM 18

identifies a number of issues he wanted to

03:26PM 19

discuss with Move Networks, correct?

03:26PM 20

A. If you're referring to the

03:26PM 21

March 4th of '09, 4:48 p.m.?

03:26PM 22

Q. Correct.

03:26PM 23

A. I see it.

03:26PM 24

Q. And then, again, on the first

03:26PM 25

page, later on March 4th, Mr. Taylor

167

1

G. SMITH

03:26PM

2

identifies three things that he felt needed

03:26PM

3

to be addressed from an immediate engineering

03:26PM

4

perspective.

03:26PM

5

Do you see that?

03:26PM

6

A. Yes.

03:26PM

7

Q. And the first item was, "Move

03:26PM

8

needs to ship an updated SDK that contains

03:27PM

9

the SL2 GDR installer & a smoother

03:27PM

10

installation experience."

03:27PM

11

Did I read that correctly?

03:27PM

12

A. Yes.

03:27PM

13

Q. Did Move ever ship an update SDK

03:27PM

14

that contains the SL2 GDR installer and a

03:27PM

15

smoother installation experience?

03:27PM

16

A. I don't recall.

03:27PM

17

Q. Item 2 on Mr. Taylor's list was,

03:27PM

18

"Move needs some bugs fixed in the hosting

03:27PM

19

APIs to approve developer and end user

03:27PM

20

experience."

03:27PM

21

Did Move do that?

03:27PM

22

A. Not only do I not recall that, I

03:27PM

23

don't -- I don't know whose bugs he's

03:27PM

24

referring to there; if he's referring to

03:27PM

25

Silverlight bugs or Move bugs.

168

1

G. SMITH

03:27PM 2

Q. And then item No. 3 on

03:27PM 3

Mr. Taylor's list was, "Move needs a way to

03:27PM 4

enable PlayReady support on Mac and PC."

03:28PM 5

Did Move enable -- ever enable

03:28PM 6

PlayReady support on Mac and PC?

03:28PM 7

A. I don't recall that we were ever

03:28PM 8

able to do that.

03:28PM 9

Q. Then the top email here on page 1

03:28PM 10

of Exhibit 25 is dated March 16, 12 days

03:28PM 11

later, and Mr. Taylor writes to you and says,

03:28PM 12

"Not sure what happened with this meeting."

03:28PM 13

What did happen in those 12 days

03:28PM 14

between March 4th and March 16th about

03:28PM 15

addressing these issues with Microsoft?

03:28PM 16

A. I don't -- I don't recall. I

03:28PM 17

don't know.

03:28PM 18

Q. Is this the period of time in

03:28PM 19

March of 2009 when the company was

03:28PM 20

reassessing its direction?

03:28PM 21

A. I don't recall. The timeline

03:28PM 22

seems to line up, but I don't recall.

03:28PM 23

Q. Is the fact that Move Networks was

03:29PM 24

reassessing the direction of the company the

03:29PM 25

reason or one of the reasons for the delay in

1

G. SMITH

03:29PM 2

getting back to Mr. Taylor on these issues?

03:29PM 3

MR. DHANANI: Objection. Calls

03:29PM 4

for speculation.

03:29PM 5

A. I can't verify that there was a

03:29PM 6

delay here versus it was conversation going

03:29PM 7

on. So I can't -- I can't verify it was

03:29PM 8

actually a delay or again, just maybe Tom and

03:29PM 9

Chris weren't talking.

03:29PM 10

Q. What happened vis-à-vis Microsoft

03:29PM 11

subsequent to March 16, 2009?

03:29PM 12

A. I don't know very much about what

03:29PM 13

happened at that time or after I left.

03:29PM 14

Q. And does -- do the dates on this

03:29PM 15

exhibit refresh your recollection any more

03:29PM 16

precisely as to when it was you left

03:29PM 17

Move Networks?

03:29PM 18

A. No, it doesn't any more than it

03:30PM 19

was the sometime in the spring of 2009.

03:30PM 20

MR. BARQUIST: Let me mark

03:30PM 21

another exhibit here. Give me a

03:30PM 22

second.

03:30PM 23

Let's mark as Exhibit 26, an

03:30PM 24

email from Mary Kay Crocker dated

03:30PM 25

March 17, 2009.

170

1

G. SMITH

03:30PM 2

(Whereupon, Smith Exhibit 26,

03:30PM 3

DISH-337-TA-1265-GS_'2275 was marked

03:30PM 4

for identification as of this date by

03:30PM 5

the Reporter.)

03:30PM 6

A. One moment, please.

03:31PM 7

All right. It looks like it was

03:31PM 8

cut off.

03:31PM 9

Q. No, this is all we have.

03:31PM 10

A. Oh, very good.

03:31PM 11

Okay. I have it.

03:31PM 12

Q. Do you recall this announcement

03:31PM 13

that Ms. Crocker forwarded that Akamai had

03:31PM 14

announced its first customers utilizing

03:31PM 15

Microsoft's Smoothstream together with

03:31PM 16

Akamai?

03:31PM 17

A. Yes, I do.

03:31PM 18

Q. And what was the reaction at

03:31PM 19

Move Networks when this announcement was

03:31PM 20

made?

03:31PM 21

A. I don't recall there being any --

03:31PM 22

any big reaction.

03:32PM 23

Q. Did this announcement by Akamai

03:32PM 24

have any connection to the decision that

03:32PM 25

Move Networks made at about this time to

171

1

G. SMITH

03:32PM 2 change the direction of the company?

03:32PM 3 MR. DHANANI: Objection;
03:32PM 4 mischaracterizes prior testimony,
03:32PM 5 calls for speculation.

03:32PM 6 A. Again, I really can't speak to
03:32PM 7 the -- to how that decision was made or what
03:32PM 8 went into it. So I couldn't -- I couldn't
03:32PM 9 say yes or no to that definitively.

03:32PM 10 Q. Did -- did Move Networks ever try
03:32PM 11 to sell its streaming solution to Akamai?

03:32PM 12 A. The -- the question implies that
03:32PM 13 Akamai is a -- is a potential customer and
03:32PM 14 they're not. Akamai is a vendor, and Akamai
03:33PM 15 certainly carried Move Networks streams, yes.

03:33PM 16 Q. So what effect did Akamai deciding
03:33PM 17 to use Microsoft's Smoothstream solution have
03:33PM 18 on its business with Move Networks?

03:33PM 19 A. Very little, if any.

03:33PM 20 Q. Why do you say that?

03:33PM 21 A. Well, Smoothstream really didn't
03:33PM 22 work very well. I almost want to refer you
03:33PM 23 back to your previous exhibit regarding the
03:33PM 24 announcement with Netflix where you still see
03:33PM 25 that they're -- that they can't -- it's still

172

1

G. SMITH

03:33PM

2

a 30-second start. So the words "instantly

03:33PM

3

stream movies" is -- is -- well, I guess

03:33PM

4

that's marketing speak. 30 seconds certainly

03:33PM

5

doesn't qualify as instantly.

03:33PM

6

And on top of that, Akamai as a

03:34PM

7

CDN, just as Level 3 is a CDN, would be

03:34PM

8

expected to -- to support many different

03:34PM

9

communications protocols over its network.

03:34PM

10

Q. What was the Horn Group Team?

03:34PM

11

A. Where do we see them?

03:34PM

12

Q. On Exhibit 26.

03:34PM

13

A. This is the most recent exhibit?

03:34PM

14

Q. Yes. It's -- Ms. Crocker's email

03:34PM

15

is addressed, about a third of the way down

03:34PM

16

the page, to Horn Group Team

03:34PM

17

<movenetworksteam@horngroup.com>?

03:34PM

18

A. I don't know. I don't remember

03:34PM

19

who that is.

03:35PM

20

MR. BARQUIST: We will mark as

03:35PM

21

next exhibit, 27, a -- an article in

03:35PM

22

the Salt Lake Tribune dated April 24,

03:35PM

23

2009, entitled "Move Networks

03:35PM

24

searching for new leadership. "

03:35PM

25

(Whereupon, Smith Exhibit 27,

173

1

G. SMITH

03:35PM 2

article in the Salt Lake Tribune dated

03:35PM 3

April 24, 2009 entitled "Move Networks

03:35PM 4

searching for new leadership" was

03:35PM 5

marked for identification as of this

03:36PM 6

date by the Reporter.)

03:36PM 7

A. Give me one moment.

03:36PM 8

Yes, I have it.

03:36PM 9

Q. Did you see this article before?

03:36PM 10

A. No. This is the first time I've

03:36PM 11

seen it.

03:36PM 12

Q. So was there a management shakeup

03:36PM 13

at Move Networks in March or April 2009?

03:36PM 14

A. All I can tell you is that this

03:36PM 15

postdates my departure.

03:36PM 16

Q. So you are not aware of whether or

03:36PM 17

not there was a management shakeup?

03:36PM 18

A. I am aware that John shifted from

03:36PM 19

CEO to executive chairman.

03:36PM 20

Q. And that's John Edwards you're

03:37PM 21

referring to?

03:37PM 22

A. Yes. Sorry, yes, John Edwards.

03:37PM 23

Q. Other than yourself, were any

03:37PM 24

other managers let go at about that time?

03:37PM 25

A. Yes.

174

1

G. SMITH

03:37PM 2

Q. What other managers?

03:37PM 3

MR. DHANANI: Objection.

03:37PM 4

Foundation and speculation.

03:37PM 5

Q. If you know.

03:37PM 6

A. To the best of my recollection, I

03:37PM 7

believe Bob Bryson stepped away at that time,

03:37PM 8

Doug Parrish stepped away at that time. I

03:37PM 9

don't recall any others. There may have been

03:37PM 10

others.

03:37PM 11

Q. And aside from management, how

03:37PM 12

many employees altogether were let go in the

03:37PM 13

reduction in force that you structured?

03:37PM 14

A. I don't recall the exact number.

03:37PM 15

It was sizable.

03:37PM 16

Q. Could you give me an approximate

03:38PM 17

number?

03:38PM 18

A. I can't. I don't even remember

03:38PM 19

how many we had, but you can think of it as a

03:38PM 20

majority.

03:38PM 21

MR. BARQUIST: I'm going to mark

03:38PM 22

one more exhibit here, please. This

03:38PM 23

is going to be Exhibit 28.

03:39PM 24

Marking as Exhibit 28,

03:39PM 25

Mr. Smith, a copy of a United States

175

1

G. SMITH

03:39PM 2

patent number 6,389,473. It's in the

03:39PM 3

chat.

03:39PM 4

A. One moment, please.

03:39PM 5

(Whereupon, Smith Exhibit 28, US

03:39PM 6

Patent 6,389,473 was marked for

03:39PM 7

identification as of this date by the

03:39PM 8

Reporter.)

03:39PM 9

A. This one is very long. I am going

03:39PM 10

to review the abstract first.

03:39PM 11

Q. That's fine. I'm not going to

03:39PM 12

have a lot of questions for you.

03:40PM 13

A. Okay.

03:40PM 14

Okay. I have it.

03:40PM 15

Q. Have you ever seen Exhibit 29, the

03:40PM 16

'473 patent, before?

03:40PM 17

A. Not that I recall.

03:40PM 18

Q. Do you have any information about

03:40PM 19

when this patent that we've marked as

03:40PM 20

Exhibit 29 first came to the attention of

03:40PM 21

anyone at Move Networks?

03:40PM 22

A. No idea. Or I do not.

03:40PM 23

MR. BARQUIST: Okay. I think

03:40PM 24

that's all the questions I have for

03:40PM 25

you, Mr. Smith.

176

1

G. SMITH

03:40PM 2

I think Mr. Hsin may have a

03:40PM 3

couple of questions. I turn it over

03:40PM 4

to him.

03:40PM 5

EXAMINATION BY

03:40PM 6

MR. HSIN:

03:41PM 7

Q. Good afternoon, Mr. Smith.

03:41PM 8

A. Good afternoon.

03:41PM 9

Q. I mentioned this earlier, but,

03:41PM 10

again, just as a reminder, I represent

03:41PM 11

Peloton in this investigation.

03:41PM 12

Are you aware of that?

03:41PM 13

A. No, sir.

03:41PM 14

Q. Are you now aware of it?

03:41PM 15

A. Yes.

03:41PM 16

Q. Are you aware of that trial in

03:41PM 17

this matter is scheduled for March of 2022?

03:41PM 18

A. I am not -- I'm not up to speed on

03:41PM 19

the details of the -- of the -- the trial

03:41PM 20

dates.

03:41PM 21

Q. Okay. Are you aware that if trial

03:41PM 22

proceeds in person, it will be in Washington,

03:41PM 23

D.C.?

03:41PM 24

A. Again, not aware of those -- those

03:41PM 25

specifics.

1

G. SMITH

03:41PM 2

Q. Will you be testifying at that

03:41PM 3

trial?

03:41PM 4

A. I don't believe that's up to me.

03:41PM 5

Q. If DISH asks you to testify, do

03:41PM 6

you intend to do so?

03:41PM 7

A. Yes. If I'm asked to testify, I

03:41PM 8

will testify.

03:42PM 9

Q. All right. I'm going to ask you

03:42PM 10

to bring back up Exhibit 1, which I believe

03:42PM 11

was your LinkedIn page?

03:42PM 12

A. Okay. I have it.

03:42PM 13

Q. And focusing again on the period

03:42PM 14

of time where you were at Move Networks, your

03:42PM 15

LinkedIn page there at the bottom of page 1

03:42PM 16

and top of page 2 lists that period of time

03:42PM 17

as March 2001 through March 2009, correct?

03:42PM 18

A. Yes, it does.

03:42PM 19

Q. And your title there listed on

03:42PM 20

this page is chief technology officer; is

03:42PM 21

that accurate?

03:42PM 22

A. Yes.

03:42PM 23

Q. Was that the title that you had

03:42PM 24

during that entire eight-year and one-month

03:42PM 25

period?

1

G. SMITH

03:42PM 2

A. No it was not.

03:42PM 3

Q. Can you tell me what titles you

03:43PM 4

had and, roughly, what -- what time periods?

03:43PM 5

A. It was the only title that I had,

03:43PM 6

but there was a time period when I first

03:43PM 7

joined the company where we did not assign

03:43PM 8

ourselves any titles.

03:43PM 9

Q. I see. Okay.

03:43PM 10

But when you had a title, that's

03:43PM 11

the only one that you had?

03:43PM 12

A. That's correct.

03:43PM 13

Q. Now, I know you testified earlier

03:43PM 14

that there was a period of time where you

03:43PM 15

were away from the company and came back to

03:43PM 16

the company. Is that accurate?

03:43PM 17

A. That is accurate.

03:43PM 18

Q. Do you recall what that time

03:43PM 19

period was?

03:43PM 20

A. You see it there --

03:43PM 21

MR. DHANANI: Objection.

03:43PM 22

THE COURT REPORTER: Sorry, I

03:43PM 23

need the answer again.

03:43PM 24

MR. DHANANI: Let me just

03:43PM 25

object. Thank you.

1

G. SMITH

03:43PM 2

Objection; asked and answered in

03:43PM 3

the earlier session by Mr. Barquist.

03:43PM 4

A. And you see it there as "All Media

03:43PM 5

Guide."

03:43PM 6

Q. Okay. And during that overlapping

03:43PM 7

period of time, were you -- is it accurate

03:43PM 8

that you were away from Move Networks, or

03:44PM 9

were you working with both companies during

03:44PM 10

that period of time?

03:44PM 11

MR. DHANANI: Objection; asked

03:44PM 12

and answered during Mr. Barquist's

03:44PM 13

questioning in the morning.

03:44PM 14

A. I was away.

03:44PM 15

Q. Okay. And are you familiar,

03:44PM 16

however, with events, milestone events, of

03:44PM 17

Move Networks that occurred during that

03:44PM 18

period of time?

03:44PM 19

A. I would say I would have been

03:44PM 20

generally made aware -- made aware of some

03:44PM 21

things when I returned, but I was not

03:44PM 22

intimately aware or involved while they were

03:44PM 23

happening.

03:44PM 24

Q. You weren't, sort of, keeping tabs

03:44PM 25

on what was going on during that period of

180

1

G. SMITH

03:44PM 2 time?

03:44PM 3 **A. No.**

03:44PM 4 MR. DHANANI: Objection;

03:44PM 5 mischaracterizes the testimony, asked

03:44PM 6 and answered.

03:44PM 7 Q. I'm sorry, what was your answer?

03:44PM 8 **A. No, sir.**

03:44PM 9 MR. DHANANI: Objection.

03:44PM 10 Q. You're familiar with someone named

03:45PM 11 Mark Hurst, correct?

03:45PM 12 **A. Yes, I am.**

03:45PM 13 Q. While you were at Move Networks,

03:45PM 14 how did your role relate to Mr. Hurst's role;

03:45PM 15 like, were you his boss, was he your boss, or

03:45PM 16 some other relationship?

03:45PM 17 MR. DHANANI: Objection;

03:45PM 18 compound, vague, and asked and

03:45PM 19 answered.

03:45PM 20 **A. I -- I suppose that, technically,**03:45PM 21 **I was his boss. We had a very small team and**03:45PM 22 **a very informal working relationship, working**03:45PM 23 **structure.**

03:45PM 24 Q. All right. And did you interact

03:45PM 25 with him on a daily basis?

181

1

G. SMITH

03:45PM 2

MR. DHANANI: Objection; vague.

03:45PM 3

A. More or less, yes. Can't say for

03:45PM 4

certain every day, but I think as a person

03:45PM 5

would characterize a daily basis, yes, we

03:45PM 6

interacted quite regularly.

03:45PM 7

Q. All right. Do you have an

03:45PM 8

understanding as to when Move's adaptive

03:46PM 9

bitrate streaming technology was first used

03:46PM 10

publicly?

03:46PM 11

A. I don't think I could pin down the

03:46PM 12

exact date.

03:46PM 13

Q. Could you pin down an approximate

03:46PM 14

date?

03:46PM 15

A. I could probably get you within

03:46PM 16

two years. Would have been sometime in 2004

03:46PM 17

or 2003. Probably 2004. And I really must

03:46PM 18

stress "probably."

03:46PM 19

Q. Understood. It sounds like you

03:46PM 20

have a particular event in mind. What is it

03:46PM 21

that you're thinking of?

03:46PM 22

A. That's not accurate. I -- I don't

03:46PM 23

have a particular event in mind.

03:46PM 24

Q. What is the basis for your, we'll

03:46PM 25

call it "estimate" that it was sometime in

1

G. SMITH

03:46PM 2 2004 or 2003, probably 2004?

03:46PM 3 **A. I'm just offering you the best of**
03:47PM 4 **my recollection and I would caution you that**
03:47PM 5 **it could be wrong.**

03:47PM 6 Q. Okay. Do you have a sense of
03:47PM 7 what -- what video was first made available
03:47PM 8 for streaming by Move?

03:47PM 9 **A. Again, I'm really starting to feel**
03:47PM 10 **uncomfortable that I'm just speculating.**

03:47PM 11 MR. DHANANI: I caution the
03:47PM 12 witness not to speculate, then.

03:47PM 13 **A. Then I probably should go with "I**
03:47PM 14 **don't recall well enough to answer."**

03:47PM 15 Q. Are you familiar with whether
03:47PM 16 there was a live broadcast of the general
03:47PM 17 conference of The Church of the Latter Day
03:47PM 18 Saints in October of 2005?

03:47PM 19 **A. I am -- I am familiar with the --**
03:47PM 20 **I'm familiar with the fact that we did -- we**
03:48PM 21 **did a live and Video on Demand technology**
03:48PM 22 **demonstration of the general conference. I**
03:48PM 23 **am not as confident of the year.**

03:48PM 24 Q. Do you recall if that happened
03:48PM 25 while you were away from the company?

1

G. SMITH

03:48PM

2

A. No, I do not.

03:48PM

3

Q. Do you recall any details about

03:48PM

4

that event such as -- in addition to what you

03:48PM

5

just said, such as if there were any -- if

03:48PM

6

Move was compensated in any way?

03:48PM

7

A. No, I'm not -- I'm not familiar

03:48PM

8

with those details.

03:48PM

9

Q. Okay. Can you think of any other

03:48PM

10

details about that event other than it was

03:48PM

11

live and on demand?

03:48PM

12

A. No.

03:49PM

13

Q. Do you recall if that event

03:49PM

14

used -- let me ask you: Are you familiar

03:49PM

15

with the term "virtual timelines"?

03:49PM

16

A. I'm familiar with the term

03:49PM

17

"virtual timelines" as it pertains to several

03:49PM

18

different fields of technology, engineering,

03:49PM

19

and science.

03:49PM

20

Q. With respect to Move's AVR

03:49PM

21

technology?

03:49PM

22

A. If you're -- yes, if you are

03:49PM

23

referring to quantum virtual timelines, I'm

03:49PM

24

familiar with the term.

03:49PM

25

Q. What is your understanding of what

1

G. SMITH

03:49PM

2

quantum virtual timelines is with respect to

03:49PM

3

Move's AVR technology?

03:49PM

4

A. Unfortunately, as I sit here

03:49PM

5

today, I cannot recall the specific

03:49PM

6

differences between the types of metadata

03:49PM

7

files that were used in the protocol.

03:49PM

8

Q. What -- what do you remember about

03:50PM

9

quantum virtual timelines?

03:50PM

10

A. They were metadata files that were

03:50PM

11

used to communicate to the player so it had

03:50PM

12

enough information in order to take control

03:50PM

13

of the streaming experience of the user.

03:50PM

14

Q. So would it include -- would that

03:50PM

15

information include, for instance, a play

03:50PM

16

list of programs to play?

03:50PM

17

MR. DHANANI: Objection. Calls

03:50PM

18

for speculation.

03:50PM

19

A. Again, if you are asking

03:50PM

20

specifically about the QVT file, I do not

03:50PM

21

recall. If you're asking generally about the

03:50PM

22

metadata files, then, yes, that information

03:50PM

23

was included in one -- at least one or some

03:50PM

24

of the metadata files that were part of the

03:50PM

25

control system.

185

1

G. SMITH

03:50PM 2

Q. Do you recall when that

03:51PM 3

information with respect to, you know, the

03:51PM 4

play list information was first included?

03:51PM 5

MR. DHANANI: Objection. Calls

03:51PM 6

for speculation.

03:51PM 7

A. Can I ask you to define with

03:51PM 8

respect to your question, the word "play

03:51PM 9

lists"?

03:51PM 10

Q. Do you have an understanding as to

03:51PM 11

what that term means with respect to Move's

03:51PM 12

AVR technology?

03:51PM 13

A. I do. And there are two possible

03:51PM 14

definitions, so I'm asking which one you're

03:51PM 15

using.

03:51PM 16

Q. What are the two that you have in

03:51PM 17

mind?

03:51PM 18

A. One term with respect to play list

03:51PM 19

can mean what a layperson would assume it to

03:51PM 20

mean, meaning that I'm going to see this

03:51PM 21

video and then that's going to end and then

03:51PM 22

I'm going to see this other video about a

03:51PM 23

different subject, a different -- different

03:51PM 24

context. That would be one definition.

03:51PM 25

The other definition would be

1

G. SMITH

03:51PM

2

reassembly of the stream that's themselves

03:52PM

3

run from almost as a -- as someone might

03:52PM

4

consider a play list and set up.

03:52PM

5

Q. I'll ask for that first

03:52PM

6

understanding, of a layperson. When -- do

03:52PM

7

you have a recollection as to when that was

03:52PM

8

first incorporated into Move's AVR streaming

03:52PM

9

technology?

03:52PM

10

MR. DHANANI: Objection; calls

03:52PM

11

for speculation.

03:52PM

12

A. I do not.

03:52PM

13

Q. And do you recall when it was

03:52PM

14

first publicly used in conjunction with

03:52PM

15

Move's AVR streaming technology?

03:52PM

16

A. I do not.

03:52PM

17

Q. I'll ask you the same questions

03:52PM

18

with respect to your second understanding of

03:52PM

19

"play list." Under that second

03:52PM

20

understanding, the reassembly of the stream

03:52PM

21

lines, do you recall when that was first

03:52PM

22

incorporated into Move's AVR streaming

03:52PM

23

technology?

03:53PM

24

MR. DHANANI: Objection; calls

03:53PM

25

for speculation.

187

1

G. SMITH

03:53PM

2

A. I would refer you to my earlier

03:53PM

3

answer as the first commercial -- regarding

03:53PM

4

the first commercial use of AVR technology,

03:53PM

5

and my answer would stand as I -- it's -- I

03:53PM

6

would have to project sometime in 2004, but I

03:53PM

7

certainly might not have that information

03:53PM

8

correct.

03:53PM

9

Q. Okay. But it sounds like your --

03:53PM

10

is it correct that whenever that first public

03:53PM

11

use occurred, your recollection is that it

03:53PM

12

incorporated that second understanding of

03:53PM

13

"play list"?

03:53PM

14

A. That's correct.

03:53PM

15

MR. DHANANI: Objection;

03:53PM

16

mischaracterizes and calls for

03:53PM

17

speculation.

03:53PM

18

Go ahead.

03:53PM

19

A. That's correct.

03:53PM

20

Q. And what is your basis for that

03:53PM

21

understanding?

03:53PM

22

A. That's just the best of my

03:54PM

23

recollection.

03:54PM

24

Q. Do you have an understanding as to

03:54PM

25

whether there was a public use of Move's AVR

1

G. SMITH

03:54PM

2

streaming technology prior to the -- the

03:54PM

3

general conference that we were referring to

03:54PM

4

earlier?

03:54PM

5

A. Sorry. Could the court reporter

03:54PM

6

state the question again?

03:54PM

7

THE COURT REPORTER: Sure. Give

03:54PM

8

me one moment.

03:54PM

9

(Record read.)

03:55PM

10

A. What does "public use" mean?

03:55PM

11

Q. Any use, you know, publicly, in

03:55PM

12

other words, not under NDA, that someone in

03:55PM

13

the public would have access to?

03:55PM

14

A. Okay. I'm going to have to answer

03:55PM

15

that by saying, since I don't really have a

03:55PM

16

lot of confidence in my memory of when

03:55PM

17

general conference was, I can't really answer

03:55PM

18

as to whether that was the first use or there

03:55PM

19

was a previous use.

03:55PM

20

Q. Do you recall any other public

03:55PM

21

uses around that same time period?

03:55PM

22

A. I recall working with a company

03:55PM

23

out of Mexico called Esmas, and, again, I

03:55PM

24

can't exactly nail down the timeframe for

03:55PM

25

you.

1

G. SMITH

03:55PM

2

Q. Could you spell that for the court

03:55PM

3

reporter, please?

03:55PM

4

A. I believe that this is an English

03:55PM

5

translation. So, therefore, it may not be

03:55PM

6

absolutely correct, but I believe it was

03:56PM

7

E-S-M-A-S.

03:56PM

8

Q. Do you recall the nature of that

03:56PM

9

collaboration?

03:56PM

10

A. I do not recall anything about it

03:56PM

11

other than a use of Move's network for

03:56PM

12

streaming video -- streaming media.

03:56PM

13

Q. Any other projects, collaborations

03:56PM

14

that come to mind?

03:56PM

15

A. Not right now.

03:56PM

16

MR. HSIN: I am going to try to

03:56PM

17

drop an exhibit into the chat. This

03:56PM

18

will be my first maiden effort, so I'm

03:57PM

19

going to keep my fingers crossed.

03:57PM

20

THE COURT REPORTER: Do you want

03:57PM

21

this marked contiguously, Exhibit 29?

03:57PM

22

MR. HSIN: No. Just to keep

03:57PM

23

everyone on -- on their toes, I'm

03:57PM

24

going to, unfortunately, mark this

03:57PM

25

Exhibit 73.

1

G. SMITH

03:57PM 2

(Whereupon, Smith Exhibit 73,

03:57PM 3

document from The Wayback Machine was

03:57PM 4

marked for identification as of this

03:57PM 5

date by the Reporter.)

03:57PM 6

Q. I believe I dropped Exhibit 73

03:57PM 7

into the chat, Mr. Smith.

03:57PM 8

A. Please --

03:57PM 9

Q. If you could download that and let

03:57PM 10

me know when you're ready.

03:58PM 11

A. Yes, I have it.

03:58PM 12

Q. Okay. You chuckled there.

03:58PM 13

A. Thank you for a fun memory.

03:58PM 14

Q. Okay. So it sounds like you

03:58PM 15

recall this?

03:58PM 16

A. Yes, I do.

03:58PM 17

Q. What do you recognize this

03:58PM 18

document to be?

03:58PM 19

A. Oh, I remember being very, very

03:58PM 20

fond of the PBS "Commanding Heights" video

03:58PM 21

series. In fact, I -- I think I -- I

03:58PM 22

subsequently asked my children to read the

03:58PM 23

books.

03:58PM 24

Q. All right. What was the PBS

03:58PM 25

"Commanding Heights" video series?

191

1

G. SMITH

03:58PM

2

A. It was a -- it was a multimedia

03:58PM

3

presentation of a book by the same name. The

03:58PM

4

commanding heights of the -- of the western

03:59PM

5

economy, discussing the back and forth

03:59PM

6

between two preeminent economists during

03:59PM

7

the -- during the early 20th century.

03:59PM

8

Q. All right. Now, if you look at

03:59PM

9

towards the bottom of this exhibit, you will

03:59PM

10

see, it says, "Contact Greg Smith if you need

03:59PM

11

user name and password info."

03:59PM

12

Do you see that?

03:59PM

13

A. Yes, I do.

03:59PM

14

Q. And that would be you, correct?

03:59PM

15

A. That would be me.

03:59PM

16

Q. Okay. And are you familiar with

03:59PM

17

something called the "Wayback Machine"?

03:59PM

18

A. Yes, I am.

03:59PM

19

Q. Okay. All right. For Internet

03:59PM

20

archives.

03:59PM

21

So I'll represent to you that we

03:59PM

22

located this page from the Wayback Machine,

03:59PM

23

and if you look towards the top, in the URL

03:59PM

24

there, just above the red bar, you'll see

03:59PM

25

what appears to be a date, 20030124.

1

G. SMITH

03:59PM 2

Do you see that?

03:59PM 3

A. I do.

04:00PM 4

Q. Okay. Does that suggest to you

04:00PM 5

that this page existed in January of 2003?

04:00PM 6

MR. DHANANI: Objection; calls

04:00PM 7

for speculation, and they -- and lack

04:00PM 8

of foundation.

04:00PM 9

Go ahead, if you know.

04:00PM 10

A. That string of characters does

04:00PM 11

suggest that to me.

04:00PM 12

Q. Does that sort of comport with

04:00PM 13

your general recollection of when this

04:00PM 14

project was going on?

04:00PM 15

MR. DHANANI: Objection; calls

04:00PM 16

for speculation.

04:00PM 17

A. If you can be specific about what

04:00PM 18

you mean by "this project," I can probably

04:00PM 19

answer you.

04:00PM 20

Q. Okay. Is this document reflective

04:00PM 21

of a particular project that Move was working

04:00PM 22

on in 2003?

04:00PM 23

MR. DHANANI: Objection; vague

04:00PM 24

and calls for speculation.

04:00PM 25

A. Yes. This is a set of

1

G. SMITH

04:01PM 2

instructions for -- for technology that

04:01PM 3

predates adaptive bitrate streaming.

04:01PM 4

Q. I'm sorry, for technology that

04:01PM 5

what?

04:01PM 6

A. Predates adaptive bitrate

04:01PM 7

streaming.

04:01PM 8

Q. What do you mean it predates

04:01PM 9

adaptive bitrate streaming?

04:01PM 10

A. This is not -- this is not

04:01PM 11

streaming and it is not AVR.

04:01PM 12

Q. How do you know that?

04:01PM 13

A. Because I wrote this.

04:01PM 14

Q. And what technology did this

04:01PM 15

employ?

04:01PM 16

A. This was the earlier technologies

04:01PM 17

for XLON/Move Networks where we were bringing

04:01PM 18

to market technologies that enabled the

04:01PM 19

download of very large files across the

04:01PM 20

Internet.

04:01PM 21

Q. I see. Okay. Understood.

04:01PM 22

You can put this document aside

04:01PM 23

for now.

04:02PM 24

Earlier, Mr. Barquist asked you

04:02PM 25

about an email on which you referred to IP

1

G. SMITH

04:02PM 2

patents related to Move.

04:02PM 3

Do you recall that?

04:02PM 4

A. No, I'm not sure. Can you be more

04:02PM 5

specific?

04:02PM 6

Q. Well, let me ask a different

04:02PM 7

question. Did you have any involvement in

04:02PM 8

Move's obtaining patents or filing patent

04:02PM 9

applications?

04:02PM 10

A. Yes, I did.

04:02PM 11

MR. DHANANI: Objection.

04:02PM 12

Hang on one second.

04:02PM 13

Objection; asked and answered.

04:02PM 14

And I'll just caution you,

04:02PM 15

Mr. Smith, to pause on these in case

04:02PM 16

Mr. Hsin gets into any privileged

04:02PM 17

territory.

04:02PM 18

THE WITNESS: Thank you, Ali.

04:02PM 19

Q. What was your involvement?

04:02PM 20

A. My involvement --

04:02PM 21

MR. DHANANI: Objection. Asked

04:02PM 22

and answered.

04:02PM 23

And I'm going to instruct you

04:02PM 24

not to answer that question on the

04:03PM 25

basis of attorney-client privilege.

1

G. SMITH

04:03PM 2

Q. Are you familiar -- and I assume

04:03PM 3

you're going to follow Mr. Dhanani's

04:03PM 4

instruction?

04:03PM 5

A. Yes, I am.

04:03PM 6

Q. All right. Are you familiar with

04:03PM 7

someone named Brian Kunzler?

04:03PM 8

A. Yes, although at the moment I

04:03PM 9

can't recall as to why.

04:03PM 10

Q. Well, I'll represent to you that

04:03PM 11

he is a patent prosecuting attorney. Does

04:03PM 12

that ring a bell?

04:03PM 13

A. Yes.

04:03PM 14

Q. Do you recall whether -- sorry.

04:03PM 15

Do you recall interacting with

04:03PM 16

Mr. Kunzler directly?

04:03PM 17

A. Yes.

04:03PM 18

Q. In what way?

04:03PM 19

MR. DHANANI: Objection; calls

04:03PM 20

for attorney-client communication.

04:03PM 21

Instruct the witness not to

04:03PM 22

answer.

04:04PM 23

Q. When did you interact with

04:04PM 24

Mr. Kunzler?

04:04PM 25

A. I cannot get you into a --

1

G. SMITH

04:04PM 2 **remotely an exact date or set of dates on**

04:04PM 3 **that. I'm sorry. It's been too long.**

04:04PM 4 Q. Was it part of your job
04:04PM 5 responsibility to interact with patent
04:04PM 6 prosecution counsel?

04:04PM 7 **A. I -- if needed, as needed, yes.**

04:04PM 8 Q. And how would you -- how would you
04:04PM 9 do so?

04:04PM 10 MR. DHANANI: I caution the
04:04PM 11 witness not to reveal any
04:04PM 12 attorney-client communications. That
04:05PM 13 question is specific to procedure.

04:05PM 14 But I'll also object as to vague
04:05PM 15 on that question.

04:05PM 16 **A. Part of my responsibilities as a**
04:05PM 17 **chief technology officer is to manage the**
04:05PM 18 **intellectual property assets of the company,**
04:05PM 19 **to encourage such efforts, and participate as**
04:05PM 20 **needed.**

04:05PM 21 Q. And this is a procedural question.
04:05PM 22 I'm not -- and I'm not interested in the
04:05PM 23 substance of any attorney-client
04:06PM 24 communications. But was part of your role
04:06PM 25 also identifying potential prior art or --

197

1

G. SMITH

04:06PM 2

sorry, providing potential prior art to

04:06PM 3

prosecuting attorneys?

04:06PM 4

MR. DHANANI: Hang on.

04:06PM 5

Objection; asked and answered.

04:06PM 6

And I instruct the witness not

04:06PM 7

to answer on the basis of

04:06PM 8

attorney-client communication and

04:06PM 9

previously asked during Mr. Barquist's

04:06PM 10

questioning.

04:06PM 11

Q. Mr. Smith, are you going to

04:06PM 12

decline to answer my question?

04:06PM 13

A. Yes, sir.

04:06PM 14

MR. HSIN: If you give me just a

04:06PM 15

minute.

04:06PM 16

I have no other questions for

04:06PM 17

you, Mr. Smith. Thank you very much.

04:06PM 18

THE WITNESS: Welcome.

04:07PM 19

MR. DHANANI: Can we take a

04:07PM 20

short break here?

04:07PM 21

MR. BARQUIST: Of course.

04:07PM 22

THE VIDEOGRAPHER: The time is

04:07PM 23

5:07 p.m. and we are going off the

04:07PM 24

record.

04:07PM 25

(Whereupon, a recess was held.)

198

1

G. SMITH

04:16PM 2

THE VIDEOGRAPHER: The time is

04:16PM 3

5:16 p.m. and we are back on the

04:16PM 4

record.

04:16PM 5

MR. DHANANI: Do any other

04:16PM 6

Respondents or Mr. Rauh have questions

04:16PM 7

for Mr. Smith?

04:16PM 8

MS. SONI: This is Naina Soni

04:16PM 9

with Cooley on behalf of Respondents,

04:16PM 10

Lululemon. I don't have any

04:16PM 11

questions.

04:16PM 12

MR. RAUH: This is Aaron Rauh,

04:16PM 13

Commission of Investigative Staffs.

04:16PM 14

I have no questions for

04:16PM 15

Mr. Smith at this time. Thank you.

04:16PM 16

MR. DHANANI: I have a few

04:16PM 17

follow-up questions for you,

04:16PM 18

Mr. Smith.

04:16PM 19

EXAMINATION BY

04:16PM 20

MR. DHANANI:

04:16PM 21

Q. This is Ali Dhanani for

04:16PM 22

complainants, DISH.

04:16PM 23

Could you turn back to Exhibit 19?

04:16PM 24

Do you still have access to that, are able to

04:16PM 25

pull that up?

199

1

G. SMITH

04:16PM 2

A. I have access to them; however,

04:16PM 3

they are not labeled in numbers in the way

04:16PM 4

they have come through to me. If you

04:16PM 5

could --

04:16PM 6

Q. I'm going to drop it in the chat

04:17PM 7

again.

04:17PM 8

A. That would be great, thank you.

04:17PM 9

Yes, I have it.

04:17PM 10

Q. Could you -- could the HD feed

04:17PM 11

from CBS have been delivered without the Move

04:17PM 12

plugin there?

04:17PM 13

A. No.

04:17PM 14

Q. And is that because Silverlight

04:17PM 15

couldn't handle the HD delivery without Move

04:17PM 16

at that time?

04:17PM 17

A. That's correct.

04:17PM 18

Q. There were also --

04:17PM 19

MR. HSIN: Sorry. I just want

04:17PM 20

to get an objection in there.

04:17PM 21

Objection; leading.

04:17PM 22

Q. There were also emails shown to

04:17PM 23

you regarding Microsoft and CBS regarding

04:17PM 24

installation issues.

04:18PM 25

Do you recall that?

200

1

G. SMITH

04:18PM 2

A. Yes, I do.

04:18PM 3

Q. Did any of the emails you looked

04:18PM 4

at today concern issues with Move's adaptive

04:18PM 5

bitrate streaming technology?

04:18PM 6

A. No, they did not.

04:18PM 7

MR. HSIN: Objection, vague.

04:18PM 8

Q. They dealt with install issues

04:18PM 9

related to multi-install paths.

04:18PM 10

MR. HSIN: Objection.

04:18PM 11

Q. Correct?

04:18PM 12

MR. HSIN: Sorry. Objection;

04:18PM 13

leading.

04:18PM 14

A. The answer is yes. That is what

04:18PM 15

they dealt with.

04:18PM 16

Q. Earlier, you also testified that,

04:18PM 17

to your knowledge, Move was not successful in

04:18PM 18

resolving the technical challenge --

04:18PM 19

technical challenges posed by Microsoft

04:18PM 20

Silverlight.

04:18PM 21

Do you recall that?

04:18PM 22

A. Yes, I do. I think there were

04:18PM 23

several different parts of today's discussion

04:18PM 24

that circled around different aspects, but,

04:18PM 25

yes, I do.

201

1

G. SMITH

04:18PM 2

Q. Were those technical challenges

04:18PM 3

due to Move's technology or Microsoft

04:19PM 4

Silverlight technology?

04:19PM 5

MR. BARQUIST: Objection.

04:19PM 6

A. I'm sorry, can I answer? Do I

04:19PM 7

answer?

04:19PM 8

Q. Yes.

04:19PM 9

MR. HSIN: I think Mr. Barquist

04:19PM 10

was about to make an objection.

04:19PM 11

MR. BARQUIST: Object to the

04:19PM 12

form of the question. Leading.

04:19PM 13

A. The issues were -- the issues were

04:19PM 14

the result of the fact that Silverlight was

04:19PM 15

still a very new technology, a very new

04:19PM 16

product for Microsoft. It could not

04:19PM 17

handle -- it could not handle many different

04:19PM 18

things including stage size changes, bitrate

04:19PM 19

changes, and event monitoring where you would

04:19PM 20

sense that a user had clicked "play" or

04:19PM 21

"pause" or "fast forward" or, you know, what

04:19PM 22

we -- what we refer in the video industry as

04:19PM 23

"scrubbing," dragging the -- the bar back and

04:19PM 24

forth to see where you are in the video.

04:20PM 25

So I think the answer to your

202

1

G. SMITH

04:20PM

2

question is that the challenges were with the

04:20PM

3

immaturity of the Silverlight product.

04:20PM

4

Q. Do you recall a discussion

04:20PM

5

regarding the Democratic National Convention

04:20PM

6

and the collaboration between Move and

04:20PM

7

Microsoft?

04:20PM

8

A. I recall several conversations

04:20PM

9

around those, yes.

04:20PM

10

Q. Would you characterize that

04:20PM

11

collaboration to stream the DNC a successful

04:20PM

12

collaboration?

04:20PM

13

A. That's difficult for me to say,

04:20PM

14

that the collaboration was successful. The

04:20PM

15

event was very successful for Move Networks.

04:20PM

16

The collaboration itself exposed some of the

04:20PM

17

challenges that we have reviewed today.

04:21PM

18

Q. Did you view the event of

04:21PM

19

streaming the DNC as a successful event for

04:21PM

20

Move?

04:21PM

21

MR. BARQUIST: Objection;

04:21PM

22

leading.

04:21PM

23

A. Yes, I did.

04:21PM

24

Q. And did Microsoft continue working

04:21PM

25

with Move to try to integrate Silverlight

203

1

G. SMITH

04:21PM 2

after the DNCC event?

04:21PM 3

A. Yes, they did.

04:21PM 4

Q. Do you know whether Microsoft had

04:21PM 5

ever requested to bundle Silverlight with its

04:21PM 6

proprietary server software as a solution?

04:21PM 7

MR. BARQUIST: Objection; vague,

04:21PM 8

lacks foundation.

04:21PM 9

A. I'm not sure what you mean by

04:21PM 10

their -- by bundling it with their

04:21PM 11

proprietary server software.

04:21PM 12

Q. Do you know whether Microsoft had

04:21PM 13

ever requested that it -- it approached to

04:22PM 14

customers that Microsoft servers should be

04:22PM 15

used as part of the product delivery?

04:22PM 16

MR. BARQUIST: Objection; vague,

04:22PM 17

lacks foundation.

04:22PM 18

A. Yes, I do.

04:22PM 19

Q. Did Microsoft's insistence on

04:22PM 20

using Microsoft's server software contribute

04:22PM 21

to the technical challenges at all?

04:22PM 22

MR. BARQUIST: Objection; vague,

04:22PM 23

lacks foundation.

04:22PM 24

A. Microsoft's insistence on using

04:22PM 25

its server-side software led to significant

1

G. SMITH

04:22PM

2

problems with the potential integration

04:22PM

3

between the two technologies.

04:22PM

4

Q. And Microsoft made money when it

04:22PM

5

sold its proprietary server software to

04:22PM

6

customers, right?

04:22PM

7

A. That is my understanding of

04:22PM

8

Microsoft's business model and I think it's

04:22PM

9

common understanding of Microsoft's business

04:22PM

10

model.

04:22PM

11

Q. Were there any specialized

04:23PM

12

requirements to use any particular company's

04:23PM

13

server software, such as Microsoft, when it

04:23PM

14

came to Move's client?

04:23PM

15

MR. BARQUIST: Objection; vague.

04:23PM

16

A. No. One of the -- one of the key

04:23PM

17

capabilities, advantages of the Microsoft

04:23PM

18

technology -- I'm sorry, guys, it's been a

04:23PM

19

long day -- of the Move technology, one of

04:23PM

20

the key technological advantages and

04:23PM

21

capabilities of the Move technology was that

04:23PM

22

we, in fact, required no -- no explicit or

04:23PM

23

proprietary server-side technology.

04:23PM

24

Everything could be run off of an open source

04:23PM

25

web server.

1

G. SMITH

04:23PM 2

Q. Do you have an understanding on

04:23PM 3

whether Silverlight worked or retained,

04:23PM 4

basically, server control on Microsoft?

04:24PM 5

MR. BARQUIST: Objection; vague,

04:24PM 6

lacks foundation.

04:24PM 7

A. Silverlight is primarily a

04:24PM 8

client-side runtime environment, and

04:24PM 9

Silverlight has to understand that or answer

04:24PM 10

that question. And it's to be understood

04:24PM 11

that Silverlight in and of itself is not a

04:24PM 12

streaming environment or a streaming

04:24PM 13

technology. The streaming technology that

04:24PM 14

Microsoft wanted -- scratch that.

04:24PM 15

The technology that they had in

04:24PM 16

market at that time required server-side

04:24PM 17

control. You could create a Silverlight

04:24PM 18

environment running only on a local device or

04:24PM 19

local machine that did not have any video in

04:24PM 20

it or use another video technology like the

04:24PM 21

networks without any Microsoft server-side

04:24PM 22

control.

04:24PM 23

Q. Do you have any views on whether

04:25PM 24

the use of that server-side control for

04:25PM 25

Microsoft on Silverlight influenced

206

1

G. SMITH

04:25PM

2

Silverlight's integration?

04:25PM

3

MR. BARQUIST: Objection; lacks

04:25PM

4

foundation, vague.

04:25PM

5

A. My view is that -- my view is that

04:25PM

6

in Microsoft's approach to not only asking us

04:25PM

7

to integrate Silverlight but also the VC-1

04:25PM

8

CODEC and the PlayReady DRM made the

04:25PM

9

integration much more difficult and

04:25PM

10

problematic.

04:25PM

11

Q. Did the PlayReady DRM and the

04:25PM

12

VC-1 encoder that was bundled with

04:25PM

13

Silverlight contribute to any of the

04:25PM

14

installation issues?

04:25PM

15

MR. BARQUIST: Objection; lacks

04:25PM

16

foundation, vague.

04:25PM

17

A. I wouldn't characterize them as

04:25PM

18

having bundled -- been bundled with because

04:26PM

19

the term "bundled" to me implies that they

04:26PM

20

all have to be installed at the same time,

04:26PM

21

and I would answer saying, no, the install

04:26PM

22

issues are far more obvious and the unified

04:26PM

23

installer, as I mentioned earlier in my

04:26PM

24

testimony, is simply not technically

04:26PM

25

feasible. We were only trying to get to as

207

1

G. SMITH

04:26PM

2

smooth as possible, as clean as possible. It

04:26PM

3

was never going to be unified.

04:26PM

4

Q. Was Move's technology --

04:26PM

5

independent of Microsoft, was Move's

04:26PM

6

technology viewed as successful in the

04:26PM

7

marketplace in your view?

04:26PM

8

MR. BARQUIST: Objection; lacks

04:26PM

9

foundation, vague.

04:26PM

10

Q. Go ahead.

04:26PM

11

A. Thank you.

04:26PM

12

Yes. It was tremendously

04:26PM

13

successfully -- widely acclaimed. I consider

04:26PM

14

myself fortunate to have been a part of the

04:26PM

15

development and creation of that technology

04:27PM

16

and how it changed -- how it changed

04:27PM

17

everything, how it changed media.

04:27PM

18

Q. Do you also recall any press

04:27PM

19

around Move's technology, the adaptive

04:27PM

20

bitrate technology, at the time that you were

04:27PM

21

at Move?

04:27PM

22

A. I recall a tremendous amount of

04:27PM

23

press. I may be hard-pressed to remember

04:27PM

24

specific examples, but, yes, we were

04:27PM

25

constantly in the news and being -- being

208

1

G. SMITH

04:27PM

2

asked for interviews and things like that.

04:27PM

3

Q. You personally worked on some of

04:27PM

4

the press around Move technology as well; is

04:27PM

5

that right?

04:27PM

6

A. Yes, I did.

04:27PM

7

MR. DHANANI: We reserve the

04:27PM

8

right to further present testimony

04:27PM

9

from Mr. Smith, but at this time I

04:27PM

10

don't have any further questions.

04:28PM

11

MR. BARQUIST: I just have one

04:28PM

12

or two followups, Mr. Smith.

04:28PM

13

CONTINUED EXAMINATION BY

04:28PM

14

MR. BARQUIST:

04:28PM

15

Q. One of Mr. Dhanani's early

04:28PM

16

questions, you pointed out that Silverlight

04:28PM

17

did not have various functionalities that

04:28PM

18

were actually provided by the Move Networks

04:28PM

19

technology, correct?

04:28PM

20

A. Correct.

04:28PM

21

Q. And that was the whole idea of

04:28PM

22

installing both Silverlight and the Move

04:28PM

23

plugin on the same machine, so that the Move

04:28PM

24

technology would be available with

04:28PM

25

Silverlight, correct?

209

1

G. SMITH

04:28PM

2

A. That's correct.

04:28PM

3

Q. So pointing out that Silverlight

04:28PM

4

by itself didn't have the Move technology

04:28PM

5

functionality doesn't really tell us anything

04:28PM

6

about whether Silverlight by itself was

04:29PM

7

valuable or not, correct?

04:29PM

8

A. I -- I'm not sure what you mean by

04:29PM

9

that. I...

04:29PM

10

Q. I'll ask a better question.

04:29PM

11

So the whole idea of working with

04:29PM

12

Microsoft and Silverlight was to put

04:29PM

13

Silverlight and the Move Networks plugin

04:29PM

14

together on a user's computer, right?

04:29PM

15

A. Yes.

04:29PM

16

Q. So you needed both, right?

04:29PM

17

If you wanted to use Silverlight,

04:29PM

18

you needed both Silverlight and

04:29PM

19

Move Networks, correct?

04:29PM

20

A. Thank you for rephrasing that way.

04:29PM

21

Yes. Look. You can get -- sorry.

04:29PM

22

Q. And that's why, when we were

04:29PM

23

talking about install issues, it was

04:29PM

24

important to have both Silverlight and the

04:29PM

25

Move Networks plugin installed on a user's

210

1

G. SMITH

04:29PM

2

computer, right?

04:30PM

3

A. If -- if that was the -- if that

04:30PM

4

was the selected environment by the content

04:30PM

5

provider, then yes.

04:30PM

6

MR. BARQUIST: Thanks.

04:30PM

7

I don't have anything further.

04:30PM

8

MR. DHANANI: I don't have

04:30PM

9

anything else.

04:30PM

10

THE VIDEOGRAPHER: The time is

04:30PM

11

5:30 p.m. and that ends today's

04:30PM

12

deposition.

04:30PM

13

Thank you, everyone.

14

(Whereupon, at 5:30 p.m. Central

15

Time, the Examination of this Witness

16

was concluded.)

17

18

19

GREG SMITH

20

Subscribed and sworn to before me
this ____ day of _____, 2021.

22

NOTARY PUBLIC

23

24

25

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E X H I B I T S

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7

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INFORMATION AND/OR DOCUMENTS

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C E R T I F I C A T E

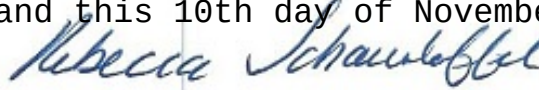
STATE OF New York)
 : SS.:
COUNTY OF NASSAU)

I, REBECCA SCHAUMLOFFEL, a Notary
Public for and within the State of New York,
do hereby certify:

That the witness whose examination
is hereinbefore set forth was duly sworn and
that such examination is a true record of the
testimony given by that witness.

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 10th day of November, 2021.



REBECCA SCHAUMLOFFEL

217

1 ERRATA SHEET FOR THE TRANSCRIPT OF:

2 Case Name: In the Matter of Certain Fitness Devices,
3 Streaming Components Thereof, and Systems
4 Containing Same

5 Dep. Date: November 9, 2021

6 Deponent: Greg Smith

7 CORRECTIONS:

8	Pg.	Ln.	Now Reads	Should Read	Reason
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10	—	—	_____	_____	_____
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15	—	—	_____	_____	_____
16	—	—	_____	_____	_____
17	—	—	_____	_____	_____

18 _____
19 Signature of Deponent

20
21 SUBSCRIBED AND SWORN BEFORE ME

22 THIS ____ DAY OF _____, 2021.

23
24 _____

25 (Notary Public) MY COMMISSION EXPIRES: _____

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