

In the Matter Of:

In Re Certain Fitness Devices and Systems Containing Same

JOHN EDWARDS

November 12, 2021



1

2

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

3

Before the Honorable David P. Shaw,
Administrative Law Judge

4

In the Matter of,

5

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

7

8

Inv. No. 337-TA-1265

9

-----X
Confidential

10

11

VIDEOTAPED DEPOSITION OF JOHN EDWARDS

12

13

14

15

DATE: November 12, 2021

16

TIME: 12:02 Eastern time

17

PLACE: ***REMOTE***

18

BEFORE: Rebecca Schaumloffel, RPR, CCR-NJ

19

JOB NO: 2021-819195

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22

23

24

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

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Appearances (continued:)

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Attorneys for iFIT Inc., formally
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Inc., NordicTrack, Inc., and Free
Motion Fitness, Inc.
300 South Grand Avenue, 14th Floor
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BY: CHARLES BARQUIST, ESQ.

ALSO PRESENT:

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

Jim Hanft, Esq., in-house counsel,
DISH

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

Kimberly Villalobos, videographer

* * *

1

J. EDWARDS

12:03PM 2

THE VIDEOGRAPHER: We are on the

12:03PM 3

record on November 12, 2021 at

12:03PM 4

10:03 a.m. Mountain Time for the

12:03PM 5

remote video deposition of Mr. John

12:03PM 6

Edwards in the matter of Certain

12:03PM 7

Fitness Devices Streaming Components

12:03PM 8

Thereof and Systems Containing Same.

12:03PM 9

My name is Kimberly Villalobos and I'm

12:03PM 10

the videographer.

12:03PM 11

All present will be noted on the

12:03PM 12

stenographic record. Will the court

12:03PM 13

reporter please swear in the witness.

14

15

16

JOHN EDWARDS, called as a witness, having

17

been first duly sworn by a Notary Public of

18

the States of New York, New Jersey, and

19

Pennsylvania was examined and testified as

20

follows:

12:03PM 21

EXAMINATION BY

12:03PM 22

MR. BARQUIST:

12:03PM 23

Q. Good morning, Mr. Edwards.

12:03PM 24

A. Good morning.

12:03PM 25

Q. My name is Charles Barquist and I

1

J. EDWARDS

12:03PM

2

represent iFIT in this matter. Thank you for

12:03PM

3

making yourself available for this deposition

12:03PM

4

today. As the videographer noted, this is a

12:03PM

5

remote deposition. Would you tell us where

12:04PM

6

you are this morning?

12:04PM

7

A. Orem, Utah.

12:04PM

8

Q. Are you at your home?

12:04PM

9

A. Yeah, yes.

12:04PM

10

Q. Can you give us the address,

12:04PM

11

please?

12:04PM

12

A. 672 East 1160, North Lehi, Utah

12:04PM

13

84097.

12:04PM

14

Q. And do you also have a business

12:04PM

15

address, sir?

12:04PM

16

A. Yes.

12:04PM

17

Q. Could you give us that, please?

12:04PM

18

A. 3000 North Triumph Boulevard,

12:04PM

19

Lehi, Utah, 84043.

12:04PM

20

Q. And the name of the company or

12:04PM

21

enterprise there?

12:04PM

22

A. Summit Brain and Spine.

12:04PM

23

Q. And what is your position with

12:04PM

24

Summit?

12:04PM

25

A. CEO.

6

1

J. EDWARDS

12:04PM 2 Q. You're represented by counsel this
12:04PM 3 morning?

12:04PM 4 A. Yes.

12:04PM 5 Q. And who is that?

12:04PM 6 A. Steve and Ira.

12:05PM 7 Q. And when did you engage counsel?

12:05PM 8 A. Oh, maybe we first talked a month
12:05PM 9 ago. It's a guess. I'm not sure --

12:05PM 10 Q. All right.

12:05PM 11 A. -- exactly.

12:05PM 12 Q. And do you have a written
12:05PM 13 engagement agreement with counsel?

12:05PM 14 A. So we have exchanged documents.
12:05PM 15 I'm not sure if it's an engagement agreement.

12:05PM 16 Q. What documents have you exchanged?

12:05PM 17 A. Just our communication by email.

12:05PM 18 But I don't recall a written engagement
12:05PM 19 agreement.

12:05PM 20 Q. Do you have any other agreement
12:05PM 21 with DISH?

12:05PM 22 A. No.

12:05PM 23 Q. Do you have any agreement with the
12:05PM 24 Baker Botts law firm?

12:06PM 25 A. No.

7

1

J. EDWARDS

12:06PM 2 Q. Are you being compensated for your
12:06PM 3 time in connection with this deposition?

12:06PM 4 A. No.

12:06PM 5 Q. Are you providing any consultation
12:06PM 6 or other similar services to DISH or its
12:06PM 7 counsel in connection with this matter?

12:06PM 8 A. No.

12:06PM 9 Q. What is your understanding of the
12:06PM 10 matter that brings us here this morning?

12:06PM 11 A. Very little, actually. I
12:06PM 12 understand that there is a suit between DISH
12:06PM 13 and various equipment providers having to do
12:06PM 14 with streaming.

12:06PM 15 Q. Okay. And how did you learn that?

12:06PM 16 A. In conversation with counsel.

12:06PM 17 Q. Have you discussed this
12:07PM 18 infringement litigation with anyone other
12:07PM 19 than counsel?

12:07PM 20 A. Yes.

12:07PM 21 Q. With whom?

12:07PM 22 A. Drew Major.

12:07PM 23 Q. I'm sorry?

12:07PM 24 A. Drew Major.

12:07PM 25 THE COURT REPORTER: Excuse me

1

J. EDWARDS

12:07PM 2

one second. Is it possible to raise

12:07PM 3

the volume on your computer?

12:07PM 4

THE WITNESS: I wouldn't know

12:07PM 5

how to do that. I can try to move it

12:07PM 6

closer. Let's see. If I use --

12:07PM 7

THE COURT REPORTER: Do you want

12:07PM 8

to go off the record for one second to

12:07PM 9

address this?

12:07PM 10

THE WITNESS: I'll just try to

12:07PM 11

speak up because I don't see a way to

12:07PM 12

adjust it.

12:07PM 13

BY MR. BARQUIST:

12:07PM 14

Q. I think when you speak up,

12:07PM 15

Mr. Edwards, we can hear you.

12:07PM 16

A. Okay.

12:07PM 17

Q. We'll let you know if you fade

12:07PM 18

again.

12:07PM 19

A. Thanks.

12:07PM 20

Q. When did you discuss this matter

12:07PM 21

with Mr. Major?

12:08PM 22

A. Probably about six weeks ago.

12:08PM 23

Q. On how many occasions did you have

12:08PM 24

such a discussion?

12:08PM 25

A. Just then.

1

J. EDWARDS

12:08PM 2 Q. And what did Mr. Major tell you at
12:08PM 3 that time?

12:08PM 4 A. That there was a lawsuit and could
12:08PM 5 he give my name to be deposed or to counsel
12:08PM 6 to be interviewed. I said sure.

12:08PM 7 Q. Did he tell you anything more
12:08PM 8 about the case?

12:08PM 9 A. No.

12:08PM 10 Q. Have you discussed this lawsuit
12:08PM 11 with anyone else other than Mr. Major and
12:08PM 12 counsel?

12:08PM 13 A. Yes.

12:08PM 14 Q. With whom?

12:08PM 15 A. My wife.

12:08PM 16 Q. Anyone else?

12:08PM 17 A. Yes. My son.

12:08PM 18 Q. Okay. Anyone else?

12:08PM 19 A. No.

12:08PM 20 Q. Do your wife or son have any
12:09PM 21 involvement with Move Networks?

12:09PM 22 A. My --

12:09PM 23 MR. DHANANI: Objection; vague.

12:09PM 24 Q. You may answer, Mr. Edwards.

12:09PM 25 A. So they watched me go through that

10

1

J. EDWARDS

12:09PM 2 **timeframe and be involved with them.**

12:09PM 3 Q. Is that the extent of it?

12:09PM 4 **A. Yeah, they are involved in my**
12:09PM 5 **life, so they're involved in Move.**

12:09PM 6 Q. Have you discussed this matter
12:09PM 7 with Mr. Smith?

12:09PM 8 **A. No.**

12:09PM 9 Q. What, if anything, did you do to
12:09PM 10 prepare for today's deposition?

12:09PM 11 **A. I attended --**

12:09PM 12 MR. DHANANI: And I'll just
12:09PM 13 caution you here not to reveal
12:09PM 14 attorney-client communications, but
12:09PM 15 you can answer that specific question
12:09PM 16 as to what you did to prepare.

12:09PM 17 **A. Visited with counsel.**

12:10PM 18 Q. Okay. When did you do that?

12:10PM 19 **A. Yesterday.**

12:10PM 20 Q. For how long?

12:10PM 21 **A. A couple of hours.**

12:10PM 22 Q. Did you do anything else besides
12:10PM 23 that meeting with counsel yesterday?

12:10PM 24 **A. Yes.**

12:10PM 25 Q. What did you do?

11

1

J. EDWARDS

12:10PM 2

A. Just tried to remember -- 15, 16,

12:10PM 3

17 years ago.

12:10PM 4

Q. Did you look at any documents in

12:10PM 5

connection with trying to remember?

12:10PM 6

A. Yes.

12:10PM 7

Q. What documents did you look at?

12:10PM 8

A. The document provided by counsel.

12:10PM 9

Q. And what document was that?

12:10PM 10

A. I'm not sure what to call it.

12:10PM 11

Just a summary of the case in terms of very

12:10PM 12

high level summary of the case.

12:10PM 13

Q. Okay. And did that document

12:10PM 14

refresh your recollection as to some of the

12:10PM 15

matters involving Move Networks and your

12:10PM 16

involvement --

12:10PM 17

A. No.

12:10PM 18

Q. -- some years ago?

12:10PM 19

A. No.

12:11PM 20

Q. Did any documents you looked at

12:11PM 21

refresh your recollection at all?

12:11PM 22

A. No.

12:11PM 23

Q. Did you do anything else to try to

12:11PM 24

refresh your recollection about the events at

12:11PM 25

Move Networks?

12

1

J. EDWARDS

12:11PM 2

A. No.

12:11PM 3

Q. Have you reviewed any other

12:11PM 4

documents besides that summary document given

12:11PM 5

to you by counsel?

12:11PM 6

A. No.

12:11PM 7

Q. Can you describe that document any

12:11PM 8

further?

12:11PM 9

A. It's a document that summarizes a

12:11PM 10

lot of other documents that I didn't get to

12:11PM 11

see that have information about the case. I

12:12PM 12

think it was largely to -- also to prep me as

12:12PM 13

a witness.

12:12PM 14

Q. Could you tell from the document

12:12PM 15

whether it was a confidential document or a

12:12PM 16

document that, perhaps, had been filed in the

12:12PM 17

court or somehow produced in the lawsuit?

12:12PM 18

A. I could not. I assume it would be

12:12PM 19

confidential but I don't know that.

12:12PM 20

Q. Okay. Were you told whether or

12:12PM 21

not it was confidential?

12:12PM 22

A. I don't recall.

12:12PM 23

Q. Did it bear any indications, words

12:12PM 24

or other indications, that it was a

12:12PM 25

confidential document?

13

1

J. EDWARDS

12:12PM

2

A. Not that I recall.

12:12PM

3

Q. Okay. One of the phrases that's

12:13PM

4

used in these -- International Trade

12:13PM

5

Commission investigations is confidential

12:13PM

6

business information. Did the document have

12:13PM

7

that phrase on it, "confidential business

12:13PM

8

information"?

12:13PM

9

A. I don't know.

12:13PM

10

Q. Do you intend to testify at the

12:13PM

11

trial of this matter?

12:13PM

12

A. I'm not sure. I don't know if I

12:13PM

13

would be called or if I would be invited.

12:13PM

14

Q. Have you been asked to this point?

12:13PM

15

A. I have been told that there is a

12:13PM

16

potential trial and would I be willing to if

12:13PM

17

my testimony is needed.

12:13PM

18

Q. And did you answer that question?

12:13PM

19

A. Yes, I would be willing.

12:13PM

20

Q. Have you prepared a written

12:13PM

21

Witness Statement in connection with

12:14PM

22

potentially testifying at the trial in this

12:14PM

23

matter?

12:14PM

24

A. No.

12:14PM

25

Q. Have you seen a draft of such a

14

1

J. EDWARDS

12:14PM 2

Witness Statement?

12:14PM 3

A. No.

12:14PM 4

Q. So, Mr. Edwards, there's a

12:14PM 5

procedure here with exhibits, where if you go

12:14PM 6

into the chat, I will put a document into the

12:14PM 7

chat and then you can open it up, we hope.

12:14PM 8

A. Okay.

12:14PM 9

Q. So I'm going to mark as Edwards

12:14PM 10

Exhibit 1 a copy of your LinkedIn profile.

12:14PM 11

Hopefully you can see that in the chat now,

12:15PM 12

sir.

12:15PM 13

A. Yes.

12:15PM 14

(Whereupon, Edwards Exhibit 1,

12:15PM 15

John Edwards LinkedIn profile was

12:15PM 16

marked for identification as of this

12:15PM 17

date by the Reporter.)

12:15PM 18

Q. You have it now?

12:15PM 19

A. I do.

12:15PM 20

Q. And do you recognize Exhibit 1 as

12:15PM 21

a copy of your LinkedIn profile?

12:15PM 22

A. I recognize it as one of two.

12:15PM 23

Okay? And the older one at that.

12:15PM 24

Q. So this one is out of date?

12:15PM 25

A. I don't know. I just somehow

1

J. EDWARDS

12:15PM 2

ended up with two addresses. I don't spend

12:15PM 3

hardly any time on LinkedIn, so...

12:15PM 4

Q. Okay. Well, this is the one I

12:15PM 5

found.

12:15PM 6

A. Great.

12:15PM 7

Q. Can you look at Exhibit 1 and tell

12:15PM 8

me if this is an accurate summary of your

12:15PM 9

employment experience?

12:16PM 10

A. So I can see one error. I'll try

12:16PM 11

to look at them all and then come back.

12:17PM 12

It does look like my LinkedIn

12:17PM 13

profile.

12:17PM 14

Q. What was the error that you noted?

12:17PM 15

A. Well, I'm -- when I was trying

12:17PM 16

mentally to put together the dates last night

12:17PM 17

from Move Networks, I think December 2000, it

12:17PM 18

might have been early 2000 -- it might have

12:17PM 19

been a little bit later than that. And

12:17PM 20

actually I wasn't actually able to remember

12:17PM 21

the exact date. I think this was put

12:17PM 22

together just to show continuity, I'm sure,

12:17PM 23

but I -- it's really an older version, but

12:17PM 24

that would be the thing that would catch me.

12:17PM 25

Q. Okay. So just to be clear, the

16

1

J. EDWARDS

12:17PM

2

date that you started with Move Networks

12:18PM

3

indicated on Exhibit 1 as December 2000 may

12:18PM

4

have been somewhat later into 2001. Is that

12:18PM

5

what you're telling us?

12:18PM

6

A. Well, yes. And when I joined that

12:18PM

7

entity, it was XLON Technologies and Move was

12:18PM

8

the name we adopted later. And so that's

12:18PM

9

all.

12:18PM

10

Q. Okay.

12:18PM

11

A. Same company. Just a different

12:18PM

12

name.

12:18PM

13

Q. Right. XLON, X-L-O-N, was the

12:18PM

14

original name of what became Move Networks;

12:18PM

15

is that correct?

12:18PM

16

A. That's correct.

12:18PM

17

Q. And when you joined XLON in or

12:18PM

18

about 2000, 2001, what was your role at the

12:18PM

19

company?

12:18PM

20

A. So just to be clear, I'm actually

12:18PM

21

not sure the date I joined and I didn't try

12:19PM

22

to recreate that. It's around that time.

12:19PM

23

And I joined as the CEO. President and CEO.

12:19PM

24

Q. And how big a company was it when

12:19PM

25

you first joined it?

17

1

J. EDWARDS

12:19PM 2

A. Well, maybe under ten.

12:19PM 3

Q. Under ten employees?

12:19PM 4

A. Yeah.

12:19PM 5

Q. Okay. Who were the other

12:19PM 6

employees at that time, to the best of your

12:19PM 7

recollection?

12:19PM 8

A. Greg Smith was there. That's the

12:19PM 9

only thing that I actually remember right

12:19PM 10

now.

12:19PM 11

Q. Was Mr. Major there at the time?

12:19PM 12

A. So Drew was the investor, but he

12:19PM 13

wasn't an employee of the company at that

12:19PM 14

time. He was providing the funding. So I

12:19PM 15

would say no, he wasn't there as an employee,

12:20PM 16

but he was definitely there as an investor.

12:20PM 17

Q. I see. Did he become an employee

12:20PM 18

at some point?

12:20PM 19

MR. DHANANI: Objection; calls

12:20PM 20

for speculation.

12:20PM 21

A. So I'm actually not sure if Drew

12:20PM 22

became an employee.

12:20PM 23

Q. Did he play a role in the company

12:20PM 24

other than as an investor?

12:20PM 25

A. Yes.

1

J. EDWARDS

12:20PM

2

Q. What did he do?

12:20PM

3

A. Drew was technical advisor. He

12:20PM

4

was the investor off and on. He participated

12:20PM

5

in the technical strategy deeply.

12:21PM

6

Q. Okay. At what point in time did

12:21PM

7

XLON become Move Networks?

12:21PM

8

A. So as I recall we started to use

12:21PM

9

the name, probably, 2003 to -- 2000 probably

12:21PM

10

2004, 2005, but I don't think it actually

12:21PM

11

became an announcement until early 2006.

12:21PM

12

That's what I remember.

12:21PM

13

Q. And what was the reason for

12:21PM

14

adopting the Move Networks name?

12:21PM

15

A. To more closely align on what the

12:21PM

16

strategy the company was doing.

12:22PM

17

Q. So according to Exhibit 1, you

12:22PM

18

were president and CEO of Move until May of

12:22PM

19

2009. Is that date correct?

12:22PM

20

A. I would say 2009. I am not sure

12:22PM

21

if April, May, June. It was right in that

12:22PM

22

timeframe.

12:22PM

23

Q. And what were the circumstances of

12:22PM

24

your departure from Move at that time?

12:22PM

25

A. I was a member of the Board of

1

J. EDWARDS

12:22PM

2

Directors and I was the CEO. And the

12:22PM

3

investors, the outside investors, asked me to

12:22PM

4

resign.

12:22PM

5

Q. And are you aware of the reason

12:22PM

6

that you were asked to resign?

12:22PM

7

A. They wanted to go a different

12:22PM

8

direction.

12:22PM

9

Q. What was the different direction

12:22PM

10

they wanted to go in?

12:22PM

11

A. They wanted to move from our

12:22PM

12

handling high-end streaming environments to a

12:23PM

13

more general market approach using licensing

12:23PM

14

of the technology. Maybe you can think of it

12:23PM

15

as going from enterprise approach to the

12:23PM

16

market to a reseller and ISP close to the

12:23PM

17

market.

12:23PM

18

THE COURT REPORTER: Sir, could

12:23PM

19

you speak up a little bit?

12:23PM

20

THE WITNESS: Sure.

12:23PM

21

THE COURT REPORTER: Thank you.

12:23PM

22

Q. And did you disagree with any

12:23PM

23

change in direction?

12:23PM

24

A. I did.

12:23PM

25

MR. DHANANI: Objection; vague.

1

J. EDWARDS

12:23PM

2

Q. Why did you disagree with it?

12:23PM

3

A. So I felt like the trajectory we

12:23PM

4

were on was a good one, and those elements

12:23PM

5

would come and it wasn't the right time.

12:23PM

6

Q. So what trajectory were you on at

12:24PM

7

that time in the spring of 2009?

12:24PM

8

A. And by that I mean our support of

12:24PM

9

media companies in using the technology to

12:24PM

10

stream Internet, television, and other

12:24PM

11

content across the Internet to one that would

12:24PM

12

have opened up the channel to have many more

12:24PM

13

approaches to the market using the same

12:24PM

14

technology.

12:24PM

15

Q. So, I'm sorry, that's the current

12:24PM

16

direction that you were on at the time?

12:24PM

17

A. The current direction was that we

12:24PM

18

were the streaming technology of choice for

12:24PM

19

most of the major media companies, and I

12:24PM

20

wanted to continue that pursuit, which is a

12:25PM

21

company to media company direct, I would call

12:25PM

22

it an enterprise sell, and allow the broader

12:25PM

23

market to appear a little later.

12:25PM

24

Q. The enterprise approach that you

12:25PM

25

were on, as you label it, was the company

1

J. EDWARDS

12:25PM

2

profitable pursuing that approach at that

12:25PM

3

time?

12:25PM

4

A. Not --

12:25PM

5

MR. DHANANI: Objection; calls

12:25PM

6

for speculation and vague.

12:25PM

7

Q. I'm sorry. Your answer was not

12:25PM

8

yet?

12:25PM

9

A. Not yet. We were close, but not

12:25PM

10

yet.

12:25PM

11

Q. And how much money had the company

12:25PM

12

lost as of the spring of 2009?

12:25PM

13

A. I don't recall.

12:25PM

14

MR. DHANANI: Objection; calls

12:25PM

15

for speculation.

12:25PM

16

A. Don't recall.

12:26PM

17

MR. DHANANI: Go ahead.

12:26PM

18

A. I don't recall.

12:26PM

19

Q. Would you characterize the board's

12:26PM

20

decision to ask you to resign as a management

12:26PM

21

shakeup?

12:26PM

22

MR. DHANANI: Objection; vague

12:26PM

23

and calls for speculation.

12:26PM

24

A. I would not have characterized it

12:26PM

25

as that.

1

J. EDWARDS

12:26PM 2

Q. Were there other members of

12:26PM 3

management at Move Networks other than

12:26PM 4

yourself asked to resign at the same time?

12:26PM 5

A. I do know that other people left

12:26PM 6

at that time, but I don't recall the ins and

12:26PM 7

outs of who else was at the same time.

12:26PM 8

Q. Who do you recall left the company

12:26PM 9

at or about the same time that you did?

12:26PM 10

A. I would just simply say that it

12:27PM 11

was about a 10, maybe 15% reduction in force

12:27PM 12

about that time, but I don't -- the time is a

12:27PM 13

little bit -- the timeframe is a little

12:27PM 14

sketchy on who else exactly and what order

12:27PM 15

they fell in. I just don't know.

12:27PM 16

Q. And I think you said that the

12:27PM 17

Board of Directors was comprised of the

12:27PM 18

investors in the company at that time; is

12:27PM 19

that right?

12:27PM 20

A. Yes. But not all investors were

12:27PM 21

board members, but some board members were

12:27PM 22

investors.

12:27PM 23

Q. And it was those investors who

12:27PM 24

made the decision to ask you to resign?

12:28PM 25

A. They are the ones that made the

1

J. EDWARDS

12:28PM

2

request.

12:28PM

3

Q. And so which investors were those

12:28PM

4

that were represented on the board and made

12:28PM

5

that request of you?

12:28PM

6

A. Hummer Winblad and Steamboat

12:28PM

7

Ventures.

12:28PM

8

Q. And what were the names of the

12:28PM

9

individual people who were representing those

12:28PM

10

companies on the board?

12:28PM

11

A. From Hummer, it was Doug. I want

12:28PM

12

to the say Pickier, I can't remember his last

12:28PM

13

name right now. And from Steamboat was Dan

12:28PM

14

Beldy. Dan Beldy made the request. It was

12:28PM

15

principally Dan.

12:28PM

16

Q. And so what did Mr. Beldy tell you

12:28PM

17

when he made that request of you?

12:29PM

18

A. Would you be willing to resign.

12:29PM

19

Q. Did you at some point move from

12:29PM

20

serving as president and CEO to becoming

12:29PM

21

Executive Chairman of Move?

12:29PM

22

A. Yes.

12:29PM

23

Q. When did that happen?

12:29PM

24

A. At the same time.

12:29PM

25

Q. So when you were asked to resign

1

J. EDWARDS

12:29PM

2

as CEO, you then moved into the Executive

12:29PM

3

Chairman position; is that correct?

12:29PM

4

A. Correct.

12:29PM

5

Q. And how long did you hold the

12:29PM

6

Executive Chairman position?

12:29PM

7

A. Oh, not long. I don't recall. A

12:29PM

8

few months.

12:29PM

9

Q. And what were the circumstances of

12:29PM

10

your leaving the position of Executive

12:29PM

11

Chairman of Move Networks?

12:29PM

12

A. So I was there as a board member

12:29PM

13

largely to help with the transition. And as

12:29PM

14

soon as I wasn't needed to assist in the

12:30PM

15

transition, I had other things to do and

12:30PM

16

left.

12:30PM

17

Q. Okay. So you left the board as

12:30PM

18

well at that point?

12:30PM

19

A. I stayed on the board for a little

12:30PM

20

while, but as far as being an Executive

12:30PM

21

Chairman or having other than normal board

12:30PM

22

responsibilities, I was not needed to do

12:30PM

23

that. I was no longer needed in that

12:30PM

24

capacity.

12:30PM

25

Q. So when did you leave the board of

1

J. EDWARDS

12:30PM 2

Move?

12:30PM 3

MR. DHANANI: Objection; asked

12:30PM 4

and answered.

12:30PM 5

THE WITNESS: Do you want me to

12:30PM 6

go ahead and --

12:30PM 7

Q. Yes, you can answer.

12:30PM 8

A. Can you repeat back -- can the

12:30PM 9

reporter repeat back the previous questioning

12:30PM 10

on this topic?

12:30PM 11

Q. Well, let me -- I mean, we can do

12:30PM 12

that, but let me make a suggestion,

12:31PM 13

Mr. Edwards. I think the reason for the

12:31PM 14

objection was you -- in my opinion, you gave

12:31PM 15

kind of a vague answer about when you left

12:31PM 16

the board and I wanted to see if you could be

12:31PM 17

any more precise.

12:31PM 18

So the question is, to the best of

12:31PM 19

your recollection, when did you leave the

12:31PM 20

Board of Directors of Move Networks?

12:31PM 21

A. I don't recall.

12:31PM 22

Q. Can you give me your best estimate

12:31PM 23

as to how long it was after you resigned as

12:31PM 24

CEO of Move?

12:31PM 25

A. I honestly don't recall.

1

J. EDWARDS

12:31PM 2

Q. Was it more or less than six

12:31PM 3

months?

12:31PM 4

A. I just don't recall.

12:31PM 5

Q. More or less than a year?

12:31PM 6

A. To be honest with you, I just

12:31PM 7

don't recall. That means I can't make

12:32PM 8

something up. I just don't recall.

12:32PM 9

Q. Okay. Looking back at Exhibit 1,

12:32PM 10

the LinkedIn profile, in the descriptions

12:32PM 11

under your -- under Move Networks, it states

12:32PM 12

under the paragraph entitled "Vision,

12:32PM 13

Strategy & Leadership," it says, "Our efforts

12:32PM 14

resulted in patents for media over an IP

12:32PM 15

network."

12:32PM 16

Do you see that?

12:32PM 17

A. Yes.

12:32PM 18

Q. Are you familiar with those

12:32PM 19

patents?

12:32PM 20

A. I'm familiar that we filed

12:32PM 21

patents. I'm familiar with the technology.

12:32PM 22

Q. Okay. What do you understand

12:32PM 23

those patents cover?

12:32PM 24

A. Our --

12:32PM 25

MR. DHANANI: Before you answer,

1

J. EDWARDS

12:32PM 2

I'm just going to caution you to base

12:33PM 3

your understanding on your personal

12:33PM 4

knowledge and not with any discussions

12:33PM 5

you have had with attorneys. Go

12:33PM 6

ahead.

12:33PM 7

A. So Move had a technology which

12:33PM 8

allowed streaming to be done at a higher

12:33PM 9

quality using variable bit and variable

12:33PM 10

technology and was really revolutionary in

12:33PM 11

that sense. And those patents covered that

12:33PM 12

body of work having to do with that.

12:33PM 13

Q. And what, to your understanding,

12:33PM 14

was revolutionary about the technology?

12:33PM 15

A. Ability to stream without

12:33PM 16

buffering. The ability to start quickly.

12:33PM 17

The ability to produce higher quality in the

12:34PM 18

resulted streaming.

12:34PM 19

Q. And what about the technology

12:34PM 20

allowed those things to be achieved?

12:34PM 21

A. There was a client-side approach

12:34PM 22

to the technology that knew exactly what was

12:34PM 23

going on in the communication and could make

12:34PM 24

intelligent requests for new media to be

12:34PM 25

delivered to the client.

1

J. EDWARDS

12:34PM 2

Q. And that required a plug-in on a

12:34PM 3

-- on the client device, correct?

12:34PM 4

A. That required local --

12:34PM 5

MR. DHANANI: Objection; vague

12:34PM 6

and compound.

12:34PM 7

Go ahead.

12:34PM 8

A. That required local intelligence.

12:34PM 9

Q. Well, it required a plug-in that

12:34PM 10

had to be installed on the consumer's device,

12:35PM 11

correct?

12:35PM 12

A. The client-side intelligence.

12:35PM 13

MR. DHANANI: Objection.

12:35PM 14

Q. When you say "client-side

12:35PM 15

intelligence," what do you mean?

12:35PM 16

A. Software on the client.

12:35PM 17

Q. That the consumer had to install

12:35PM 18

on his or her computer, correct?

12:35PM 19

A. That's a way to get there.

12:35PM 20

MR. DHANANI: Objection; vague.

12:35PM 21

A. That's a way to get there. There

12:35PM 22

is multiple ways to get there.

12:35PM 23

Q. Well, isn't that the way that

12:35PM 24

Move Networks was trying to get it there at

12:35PM 25

the time?

1

J. EDWARDS

12:35PM 2

A. Move did have a plug-in that

12:35PM 3

allowed for that intelligence to exist.

12:35PM 4

Q. Okay. And getting consumers to

12:35PM 5

install that plug-in was one of the

12:35PM 6

challenges that Move was facing in

12:35PM 7

implementing its technology; isn't that

12:35PM 8

right?

12:35PM 9

MR. DHANANI: Objection;

12:35PM 10

foundation.

12:35PM 11

A. I don't think of -- I never

12:35PM 12

thought of that as a challenge.

12:35PM 13

Q. Were there challenges that Move

12:35PM 14

faced in achieving the success of its

12:36PM 15

technology?

12:36PM 16

A. Certainly.

12:36PM 17

Q. What were those?

12:36PM 18

A. The challenge that most businesses

12:36PM 19

have, the capital, the key device strategy

12:36PM 20

relative to hiring and maintaining good

12:36PM 21

talent. I mean, just normal business. Most

12:36PM 22

of the issues relative to the technology

12:36PM 23

itself had to do with the political

12:36PM 24

infrastructure in the media industry and

12:36PM 25

relationships that -- between media companies

1

J. EDWARDS

12:36PM

2

and between all new technologies and media

12:36PM

3

companies.

12:36PM

4

THE COURT REPORTER:

12:36PM

5

Mr. Edwards, I need you to speak up

12:36PM

6

again. It's hard to hear you.

12:36PM

7

THE WITNESS: Okay.

12:36PM

8

MR. BARQUIST: Did you get that

12:36PM

9

whole answer, Rebecca?

12:36PM

10

THE COURT REPORTER: I did.

12:37PM

11

BY MR. BARQUIST:

12:37PM

12

Q. So what were those challenges?

12:37PM

13

Can you explain them a little bit further?

12:37PM

14

A. So I'm describing normal business,

12:37PM

15

just making sales calls. Making

12:37PM

16

presentations about the technology. Having

12:37PM

17

people believe -- let go of previous beliefs

12:37PM

18

about the way streaming should work and catch

12:37PM

19

a new vision and -- on how streaming could

12:37PM

20

work. And that's always a challenge, to put

12:37PM

21

forth a new vision and a new way of doing

12:37PM

22

things that hadn't been done anything like it

12:37PM

23

ever before. And they were accustomed to

12:37PM

24

their way of doing things, progressive

12:37PM

25

download or service-side technologies, RTF,

J. EDWARDS

12:37PM 2 **ESP, flashes, media server, Microsoft. And**
12:38PM 3 **they weren't working well. And you were**
12:38PM 4 **trying to convince people that streaming**
12:38PM 5 **could actually work and be good. And that**
12:38PM 6 **had a lot of people not necessarily beginning**
12:38PM 7 **as believers, but the moment they saw it**
12:38PM 8 **work, they were believers. The quality was**
12:38PM 9 **better. The time to load, it didn't buffer,**
12:38PM 10 **it worked over fast networks and slow**
12:38PM 11 **networks. And, typically, people would say**
12:38PM 12 **there wasn't anything like it that they had**
12:38PM 13 **ever seen. And that led to companies like**
12:38PM 14 **ABC moving away from previous versions and**
12:38PM 15 **moving towards our solution, because they**
12:38PM 16 **believed it.**

12:38PM 17 **But that took a lot of work, a lot**
12:38PM 18 **of meetings with companies like ABC to go**
12:38PM 19 **through that cycle. So I'm just describing**
12:38PM 20 **what it takes to go from vision to**
12:38PM 21 **implementation to delivery and getting media**
12:39PM 22 **companies to adopt.**

12:39PM 23 **So when you look at this screen**
12:39PM 24 **you've got up in front of me, "Product**
12:39PM 25 **Development & Commercialization - Worked in**

J. EDWARDS

12:39PM 2 tandem with ABC, Fox, CBS, ESPN," those are
12:39PM 3 large companies. We're a small company. And
12:39PM 4 for them to give us the time of day was a
12:39PM 5 challenge. For them to take our meetings was
12:39PM 6 a challenge. And you just had to bust
12:39PM 7 through that disbelief that we could solve a
12:39PM 8 problem they knew they had and that we could
12:39PM 9 move forward with it.

12:39PM 10 Q. Were there technical reasons that
12:39PM 11 the companies you were trying to sell your
12:39PM 12 technology to were reluctant to adopt it?

12:39PM 13 A. Well, I would say it had more to
12:39PM 14 do with their belief that our solution would
12:40PM 15 work for them and their environment. So most
12:40PM 16 of the entities were doing web-based work and
12:40PM 17 they had an existing investment in current
12:40PM 18 ways of doing things, and for them to stop
12:40PM 19 and go a different direction was a big
12:40PM 20 decision for them to make. The good news is
12:40PM 21 they made it.

12:40PM 22 Q. Were there cost concerns that made
12:40PM 23 the companies you were trying to sell your
12:40PM 24 technology to reluctant to adopt it?

12:40PM 25 A. No.

1

J. EDWARDS

12:40PM 2

Q. Was the fact that a plug-in had to

12:40PM 3

be installed by the consumer a reason that

12:40PM 4

companies were reluctant to adopt your

12:40PM 5

technology?

12:40PM 6

MR. DHANANI: Objection; vague.

12:41PM 7

A. People would ask questions about

12:41PM 8

the plug-in, but it never stopped us from

12:41PM 9

moving forward with any of them. They --

12:41PM 10

nobody wants to add things that they -- until

12:41PM 11

they understand that -- the benefits of

12:41PM 12

making those changes.

12:41PM 13

So I never found that the plug-in

12:41PM 14

was a big deal, particularly when we got to

12:41PM 15

the point that tens of thousands, even in

12:41PM 16

some days 100,000 people were adopting the

12:41PM 17

plug-in per day, and we were getting to 20,

12:41PM 18

30-plus million installed users, it was

12:41PM 19

clearly not something people were reticent

12:41PM 20

about adopting.

12:41PM 21

Q. So you don't recall that very low

12:41PM 22

installation rates for the plug-in were a

12:41PM 23

problem that Move Networks faced at the time?

12:41PM 24

A. No.

12:42PM 25

Q. How about the cost of encoding

1

J. EDWARDS

12:42PM 2

equipment, was that a reason that companies

12:42PM 3

were reluctant to adopt your technology?

12:42PM 4

MR. DHANANI: Objection; vague.

12:42PM 5

A. So I would answer that question by

12:42PM 6

saying if you're not sure that the future

12:42PM 7

solves the problem you've got, you could have

12:42PM 8

concerns about making any changes. But when

12:42PM 9

you become confident that it will, these

12:42PM 10

costs are small relative to the value that

12:42PM 11

they would achieve.

12:42PM 12

When ABC undertook to stream all

12:42PM 13

of their television, Internet television,

12:42PM 14

Grey's Anatomy, Lost, others, on the net,

12:42PM 15

they had gone through that cycle. And these

12:42PM 16

were not significant costs to them relative

12:42PM 17

to the value they got through increased

12:42PM 18

exposure and meeting the user's demand, more

12:43PM 19

high quality, HD quality-type viewing within

12:43PM 20

an environment that heretofore they had not

12:43PM 21

been able to achieve successfully.

12:43PM 22

Q. Well, in connection with

12:43PM 23

discussions with companies that you were

12:43PM 24

offering your technology to, did any of them

12:43PM 25

express concern about the cost of adopting

1

J. EDWARDS

12:43PM

2

it?

12:43PM

3

A. That wasn't usually where the

12:43PM

4

conversation went. The conversation was more

12:43PM

5

along the lines of is this really accurate.

12:43PM

6

Are you showing me something that you have

12:43PM

7

served or that you have somehow -- it's

12:43PM

8

working in this demo. Will it really work

12:43PM

9

for me. And so we would tend to send them a

12:43PM

10

link of their contents and play around with

12:43PM

11

it. And when that occurred, when they saw

12:43PM

12

the vision being materialized for their

12:43PM

13

content, these costs were not -- that's not

12:43PM

14

where their head was at.

12:43PM

15

Q. Well, again, Mr. Edwards, that

12:43PM

16

wasn't the question. The question is -- is

12:43PM

17

more of a direct one.

12:44PM

18

In your discussions with companies

12:44PM

19

that you were trying to sell your technology

12:44PM

20

to, did they express concerns about the costs

12:44PM

21

of adopting it, yes or no?

12:44PM

22

MR. DHANANI: Objection; asked

12:44PM

23

and answered.

12:44PM

24

And, John, you can answer it any

12:44PM

25

way you want. You're not limited to

1

J. EDWARDS

12:44PM 2

yes or no.

12:44PM 3

A. So I think I've answered it. And

12:44PM 4

that is, in fairness, I don't believe that

12:44PM 5

costs were the fundamental -- in fact, we

12:44PM 6

were, in most of the early days, they were

12:44PM 7

looking at streaming at upwards of \$0.30 per

12:44PM 8

gig and more. And we instantly gave them a

12:44PM 9

chance to drop that to a dime a gig or less.

12:44PM 10

And so from a cost basis, these

12:44PM 11

costs that we're talking about paled in

12:44PM 12

comparison to the value they achieved by

12:44PM 13

using an ultimate technology. Not to mention

12:44PM 14

the broader reach and the greater

12:44PM 15

opportunities for advertorial revenues.

12:45PM 16

Simply, as soon as they understand what could

12:45PM 17

be done, the cost associated with these items

12:45PM 18

and technology implementation, that's not

12:45PM 19

what they were concerned about.

12:45PM 20

Q. Again, Mr. Edwards, I'd like you

12:45PM 21

to answer the question itself.

12:45PM 22

Did the companies express concern

12:45PM 23

about the cost of adopting your technology?

12:45PM 24

I understand you're telling me that the cost,

12:45PM 25

in your view, was not significant or

1 J. EDWARDS

12:45PM 2 outweighed by other factors, but I want a
12:45PM 3 direct answer to my question.

12:45PM 4 Did the companies you were trying
12:45PM 5 to sell Move Networks technology to express
12:45PM 6 concern in your discussions with them about
12:45PM 7 the cost of adopting it?

12:45PM 8 **A. I think I've answered it.**

12:45PM 9 MR. DHANANI: Objection; asked
12:45PM 10 and answered several times now.

12:45PM 11 Go ahead, John.

12:45PM 12 **A. I think I answered it. That's**
12:45PM 13 **what I have for you.**

12:45PM 14 Q. Well, I think I'm entitled to a
12:45PM 15 direct answer to the question. Did they
12:46PM 16 express concern about the cost of adopting
12:46PM 17 Move Networks; technology?

12:46PM 18 MR. DHANANI: Objection; asked
12:46PM 19 and answered.

12:46PM 20 **A. So I've answered it a couple of**
12:46PM 21 **times and that's my answer. I don't have**
12:46PM 22 **anything more to offer you.**

12:46PM 23 Q. Going back to Exhibit 1, your
12:46PM 24 LinkedIn profile. In that same paragraph we
12:46PM 25 were looking at, it says, "The product set is

1

J. EDWARDS

12:46PM

2

currently the core of EchoStar's strategy for

12:46PM

3

an over-the-top media play."

12:46PM

4

What is EchoStar's strategy for an

12:46PM

5

over-the-top media play?

12:47PM

6

A. I don't recall why that sentence

12:47PM

7

was there, nor do I remember much about

12:47PM

8

EchoStar's strategy. Over-the-top simply

12:47PM

9

meant bypassing normal table and other

12:47PM

10

methodologies for the streaming television.

12:47PM

11

And companies like EchoStar and others had a

12:47PM

12

desire to go over-the-top.

12:47PM

13

Other than that, other than them

12:47PM

14

wanting to use technologies like Move's to

12:47PM

15

stream, I don't know more about EchoStar's

12:47PM

16

strategy than that.

12:47PM

17

Q. Your profile also indicates that

12:47PM

18

you "Led all fund-raising efforts through two

12:47PM

19

successful rounds of funding prior to the

12:47PM

20

sale of the company."

12:48PM

21

How much did you raise in those

12:48PM

22

two rounds of funding for Move Networks?

12:48PM

23

A. So the context of that sentence

12:48PM

24

would have been the last two, kind of, rounds

12:48PM

25

where Hummer Winblad and Steamboat came in,

1

J. EDWARDS

12:48PM 2 if I recall, in the 30 millions and then we
12:48PM 3 added others afterwards, that -- we kind of
12:48PM 4 kept the round open and went through that
12:48PM 5 round. So that would have been one in that
12:48PM 6 kind of timeframe in 2007, '8 kind of
12:48PM 7 timeframe. The initial funding was in the
12:48PM 8 2006, '7. And, of course, that doesn't
12:48PM 9 really speak to Drew's seed funding.

12:49PM 10 Q. And the sale of the company, when
12:49PM 11 did that occur?

12:49PM 12 A. So first of all, I wasn't at the
12:49PM 13 company then. So I recall it to be in 2009,
12:49PM 14 2010, kind of that timeframe.

12:49PM 15 Q. So did you have any involvement
12:49PM 16 with the sale of Move Networks?

12:49PM 17 A. During that time, I believe I
12:49PM 18 was -- right around that time, I may have
12:49PM 19 still been on the board, but that would have
12:49PM 20 been all.

12:49PM 21 Q. And you're referring there to the
12:49PM 22 sale to EchoStar; is that correct?

12:50PM 23 A. Yeah. Yes.

12:50PM 24 Q. And how much did Move Networks
12:50PM 25 receive for the sale of the company to

40

1

J. EDWARDS

12:50PM

2

EchoStar?

12:50PM

3

A. I don't recall.

12:50PM

4

Q. Did you own stock in Move?

12:50PM

5

A. Yes; options for that, I do

12:50PM

6

believe.

12:50PM

7

Q. And did you receive any money as a

12:50PM

8

result of owning stock or options in Move?

12:50PM

9

A. I believe I did, but in trying to

12:50PM

10

put that together for myself last night, I

12:50PM

11

honestly couldn't remember that time period

12:50PM

12

at all.

12:50PM

13

Q. Do you recall the amount you

12:50PM

14

received, if any?

12:50PM

15

A. No. It wasn't significant for me.

12:50PM

16

Q. And by not significant for you,

12:50PM

17

what do you mean?

12:50PM

18

A. I didn't get multiple millions of

12:51PM

19

dollars.

12:51PM

20

Q. Did you get a million dollars?

12:51PM

21

A. No. No. It would have been small

12:51PM

22

amounts of money, tens of thousands of

12:51PM

23

dollars, if anything. And that's why I just

12:51PM

24

probably don't remember it that well.

12:51PM

25

Q. Did you invest any money into

1

J. EDWARDS

12:51PM

2

Move?

12:51PM

3

A. No.

12:51PM

4

Q. So these were options you received

12:51PM

5

as a result of your employment?

12:51PM

6

A. Correct.

12:51PM

7

Q. And when did you receive monies as

12:51PM

8

a result of owning options or stock in Move?

12:51PM

9

A. I would have to guess. I really

12:51PM

10

don't know. I don't recall.

12:51PM

11

Q. Was it in connection with the sale

12:51PM

12

to EchoStar, or at some earlier point?

12:51PM

13

A. I think it would have been in

12:51PM

14

conjunction with the sale, but I'm not

12:51PM

15

certain.

12:51PM

16

Q. Did the folks at Hummer Winblad

12:52PM

17

receive any return on their investment in

12:52PM

18

Move Networks?

12:52PM

19

A. I don't know.

12:52PM

20

Q. Did Steamboat receive any return

12:52PM

21

on its investment at Move Networks?

12:52PM

22

A. I don't know. And as far as other

12:52PM

23

entities, I really just don't recall much

12:52PM

24

about the sale or the terms or who got money

12:52PM

25

and who -- I just don't recall that much

J. EDWARDS

12:52PM 2 **about it. I was not that involved at that**
12:52PM 3 **time.**

12:52PM 4 Q. Well, did it matter to you, as the
12:52PM 5 CEO of Move, as to whether its investors were
12:52PM 6 receiving any return on their investment?

12:52PM 7 A. It mattered that the people were
12:52PM 8 good and okay. And that the vision that we
12:52PM 9 had had a chance to potentially get into the
12:52PM 10 plans and continue its life. That's what
12:52PM 11 mattered most. Because I thought that,
12:52PM 12 really, this was still a billion dollar
12:53PM 13 opportunity, in my own view. I mean, in
12:53PM 14 other words, when I say "billion," not to be
12:53PM 15 specific, but just to say it was specific.

12:53PM 16 And so my hope was that additional
12:53PM 17 funding through acquisition, through
12:53PM 18 something, would occur. So I was interested
12:53PM 19 that way. I wasn't caught up in whether or
12:53PM 20 not the BCs necessarily got some substantial
12:53PM 21 return. I don't recall a lot of thinking
12:53PM 22 that way.

12:53PM 23 Q. Isn't that the reason they invest
12:53PM 24 in a company, to --

12:53PM 25 A. Oh, for sure. And I'm sure that

1

J. EDWARDS

12:53PM 2 **they would be concerned about them getting a**
12:53PM 3 **return, for sure. And had I still been the**
12:53PM 4 **CEO and that been my fiduciary**
12:53PM 5 **responsibility, I would have been all over**
12:53PM 6 **it, but I just wasn't any longer. I wasn't**
12:53PM 7 **that involved and I didn't have the ability**
12:53PM 8 **to control that one way or another, and so**
12:53PM 9 **that wasn't my interest at that time. I was**
12:54PM 10 **no longer in the hot seat.**

12:54PM 11 Q. So are you familiar with the
12:54PM 12 circumstances when the ideas that became part
12:54PM 13 of the Move Networks; patents were first
12:54PM 14 developed?

12:54PM 15 A. Yes.

12:54PM 16 Q. When was that?

12:54PM 17 A. 2003, 2004. 2003. Probably more
12:54PM 18 in 2003.

12:54PM 19 Q. Okay. Who was involved in coming
12:54PM 20 up with the idea that -- of the technology
12:54PM 21 that became embodied in the Move patents?

12:55PM 22 A. The idea of it was Drew's,
12:55PM 23 largely. That idea got developed and made
12:55PM 24 real by Mark and by Dave Brubeck over time.
12:55PM 25 Dave later, but Mark and Drew initially.

1

J. EDWARDS

12:55PM

2

Mark Hurst, Drew Major. And Greg and I were

12:55PM

3

cheerleaders in sales and marketing, looking

12:55PM

4

to see it materialize.

12:55PM

5

Q. And Greg is Greg Smith you're

12:55PM

6

referring to?

12:55PM

7

A. Thank you, yes.

12:55PM

8

Q. Okay. And when, to the best of

12:55PM

9

your recollection, did Mr. Major come up with

12:55PM

10

the idea initially?

12:55PM

11

A. So it was in 2003. We had an

12:56PM

12

opportunity to bid on a billion impression

12:56PM

13

campaign involving EyeWonder, I think

12:56PM

14

targeted at AOL. And we flew out to Atlanta,

12:56PM

15

as I recall, where they were located. And

12:56PM

16

they had a web-based tool for spinning up ads

12:56PM

17

that they had begun working with us for the

12:56PM

18

CDN. And as Drew was at that meeting, we

12:56PM

19

were there. He went very quiet. When I came

12:56PM

20

out in the parking lot, I said, Drew, why did

12:56PM

21

you go quiet? And he said because I've got a

12:56PM

22

phenomenal idea. And I said tell me about

12:56PM

23

it.

12:56PM

24

And he started to break down a way

12:56PM

25

that we could do streaming that was different

1

J. EDWARDS

12:57PM 2 than what everybody else was trying to do,
12:57PM 3 which at the time was very server-centric,
12:57PM 4 very back side centric, logic back side, and
12:57PM 5 that we could deal with a client orientation,
12:57PM 6 because it occurred to him that, at the
12:57PM 7 client side, we would know the specific
12:57PM 8 characteristics of the transmission. Where,
12:57PM 9 at the service side, we were kind of guessing
12:57PM 10 and the latency associated with guessing, we
12:57PM 11 would always be off a little bit, which is
12:57PM 12 the reason streaming wasn't working.

12:57PM 13 And with progressive download,
12:57PM 14 because one of my comments to him was, why
12:57PM 15 not progressive download, and he said because
12:57PM 16 you can't -- you can't deal with it
12:57PM 17 intelligently enough. That was always the
12:57PM 18 knock on peer-to-peer impressive download was
12:57PM 19 that the overhead for intelligence on the
12:57PM 20 protocol was substantial.

12:57PM 21 And so that's where it started.
12:57PM 22 And all the way back and all the way the next
12:58PM 23 week, that's all Drew and I could talk about.
12:58PM 24 And we -- additionally, Drew recommended that
12:58PM 25 I move quickly to hire Mark Hurst, who he had

1

J. EDWARDS

12:58PM 2 **known from Novell. We all worked together at**
12:58PM 3 **Novell. And so we hired Mark and got him**
12:58PM 4 **going. And that's how it started.**

12:58PM 5 Q. So what exactly was the idea that
12:58PM 6 you were discussing with Mr. Major at that
12:58PM 7 point in time?

12:58PM 8 A. How was it going to be
12:58PM 9 accomplished. Well, so the idea or how was
12:58PM 10 it going to be accomplished?

12:58PM 11 Q. Let's start with the idea. Give
12:58PM 12 me more.

12:58PM 13 A. So the idea I just went over. The
12:58PM 14 idea was that, by providing client-side
12:58PM 15 intelligence, we could control the variance
12:58PM 16 of streaming more completely. The
12:59PM 17 implementation then began for what did that
12:59PM 18 mean. And it came down to cutting up the
12:59PM 19 video and treating video like any other data
12:59PM 20 type. So you treat video like you would a
12:59PM 21 gif file or like you would anything that was
12:59PM 22 shipping over a network.

12:59PM 23 But the beauty of doing it this
12:59PM 24 way was that you could use all standard
12:59PM 25 infrastructure components. You wouldn't need

1

J. EDWARDS

12:59PM

2

to have proprietary servers or proprietary

12:59PM

3

technology, and you could use off-the-shelf,

12:59PM

4

standard components, caching infrastructure.

12:59PM

5

Of course, that was Drew's background and

12:59PM

6

passion. And by leveraging the cache, we

12:59PM

7

didn't need a server.

12:59PM

8

That was breakthrough. That is

12:59PM

9

not what people were thinking at the time.

12:59PM

10

Q. And what contributions did you

12:59PM

11

make to the development of this idea?

01:00PM

12

MR. DHANANI: Objection --

01:00PM

13

A. Giving --

01:00PM

14

MR. DHANANI: -- vague and --

01:00PM

15

vague at the moment.

01:00PM

16

A. So my contribution was to get

01:00PM

17

involved in testing this idea out at a high

01:00PM

18

level, but getting in front of providers as

01:00PM

19

soon as there were evidences of it working

01:00PM

20

enough in data stages, and to hire the people

01:00PM

21

to get it done. And I hired Mark. And just

01:00PM

22

managing the company generally.

01:00PM

23

My involvement wasn't in the

01:00PM

24

specifics of the approach or the

01:00PM

25

implementation. I was a sounding board

1

J. EDWARDS

01:00PM

2

largely.

01:00PM

3

Q. So when you say getting in front

01:00PM

4

of providers --

01:00PM

5

A. I'm sorry, customers. Potential

01:00PM

6

customers.

01:01PM

7

Q. And when did you begin doing that?

01:01PM

8

A. So some of the firsts were 2004,

01:01PM

9

2005, to the best of my recollection. There

01:01PM

10

were probably demos in a very closed

01:01PM

11

environment internal to the company, but it

01:01PM

12

took a little while to get the technology

01:01PM

13

developed. I would say 2004, 2005.

01:01PM

14

Q. And who were the providers or

01:01PM

15

potential customers that you first met with?

01:01PM

16

A. So one of the first that we went

01:01PM

17

to, Drew and I belong to the Church of Jesus

01:01PM

18

Christ of Latter-day Saints, and one of the

01:01PM

19

first we went to was the LDS church, because

01:01PM

20

they had for years tried to stream their

01:01PM

21

general broadcast, and also -- and hadn't

01:02PM

22

done it very successfully using the tuition

01:02PM

23

technologies. And so we offered to run as a

01:02PM

24

test that streaming for them. And that was

01:02PM

25

one of our first.

1

J. EDWARDS

01:02PM

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01:02PM

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There were probably demos and conversations as we started to work through the various media companies. But they would have been very early stages, conceptual, PowerPoints, those kinds of things. Not a demonstration of the technology, I don't think.

01:02PM

9

01:02PM

10

Q. Okay. And when did this work with the church occur?

01:02PM

11

A. It was 2005.

01:02PM

12

01:02PM

13

Q. Okay. And can you tell me more about what happened at that time?

01:02PM

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01:02PM

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01:03PM

24

A. It was wildly successful. They were thrilled that, for the first time, there were tens of thousands of people who could watch the conference. Some of those things -- I was trying to remember the analytics of that and I couldn't remember it, but -- other than saying it was a significantly larger number than they had ever streamed before. And they were very happy with it. So it was a good initial test drive for us.

01:03PM

25

Q. And it was a test drive of what

1

J. EDWARDS

01:03PM 2 exactly?

01:03PM 3 **A. The streaming capability.**

01:03PM 4 Q. Okay. And is that essentially the
01:03PM 5 same streaming capability that you later sold
01:03PM 6 to companies like ABC?

01:03PM 7 **A. Yes.**

01:03PM 8 Q. Okay. So going back to when
01:04PM 9 Mr. Major first came up with the idea at this
01:04PM 10 meeting with EyeWonder, and the -- I think
01:04PM 11 you've said that for the next week or two,
01:04PM 12 that's all you talked about with Mr. Major.
01:04PM 13 During those early discussions what
01:04PM 14 contributions, if any, did you make to the
01:04PM 15 development of the idea?

01:04PM 16 MR. DHANANI: Objection; vague.

01:04PM 17 Go ahead.

01:04PM 18 **A. I didn't make any contributions to**
01:04PM 19 **the idea fundamentally, other than me being a**
01:04PM 20 **sounding board for Drew and asking lots of**
01:04PM 21 **questions, like, well, why would it be better**
01:04PM 22 **than this technology or why would it be**
01:04PM 23 **better than that. Or -- and then to try --**
01:04PM 24 **since it was going to be money to go off --**
01:04PM 25 **and, of course, it was Drew's money, but it**

1

J. EDWARDS

01:04PM 2

was going to be money to go off and hire

01:04PM 3

people, how strongly did he feel about it.

01:04PM 4

And Drew was over-the-top, I would

01:04PM 5

think -- over-the-top media play. He was

01:05PM 6

over-the-top on the idea. He just really

01:05PM 7

felt like there was something there.

01:05PM 8

Now, recognize, from my position,

01:05PM 9

this is a guy that's been inducted into the

01:05PM 10

international technology hall of fame. This

01:05PM 11

is the guy I worked with at Novell and I know

01:05PM 12

how good he is. He has a skill set that's

01:05PM 13

second to none when it comes to doing up

01:05PM 14

that.

01:05PM 15

And so I knew when Drew was saying

01:05PM 16

this is an idea, I took it at face value and

01:05PM 17

began to say, well, if it is, then what does

01:05PM 18

the industry look like? What do the players

01:05PM 19

look like? Who should we approach? What

01:05PM 20

marketing should we go after? How should we

01:05PM 21

sell to them? Those were my contributions

01:05PM 22

Greg Smith and I teamed up on that.

01:05PM 23

Q. Yeah. So tell me what

01:05PM 24

contributions Greg Smith made at the time of

01:05PM 25

those early discussions about the -- about

1

J. EDWARDS

01:05PM

2

Mr. Major's idea for streaming.

01:05PM

3

A. Identical to mine, really. We

01:06PM

4

were both in the sales and the marketing side

01:06PM

5

of things. We were both trying to look for

01:06PM

6

ideas that would be potential. Greg was sort

01:06PM

7

of the -- a little bit of a -- at least my

01:06PM

8

recollection of it, cruder to me, and so we

01:06PM

9

quietly plowed forward to try to get it

01:06PM

10

developed so that we could show it to him.

01:06PM

11

And -- so, but largely, Greg and I started to

01:06PM

12

form the analysis of the industry and how we

01:06PM

13

would use such a technology.

01:06PM

14

THE COURT REPORTER: You are

01:06PM

15

starting to trail off again. If you

01:06PM

16

can speak loudly.

01:06PM

17

THE WITNESS: I feel like I'm

01:06PM

18

yelling already, but I'll try.

01:06PM

19

THE COURT REPORTER: I think we

01:06PM

20

can address this at the next break.

01:06PM

21

MR. BARQUIST: Well, should we

01:06PM

22

take a break? We've been going about

01:06PM

23

an hour. Why don't we take a short

01:06PM

24

break.

01:07PM

25

THE WITNESS: Okay.

1

J. EDWARDS

01:07PM 2

THE VIDEOGRAPHER: The time is

01:07PM 3

11:07 a.m., and we are going off the

01:07PM 4

record.

01:20PM 5

(Whereupon, a recess was held.)

01:20PM 6

THE VIDEOGRAPHER: The time is

01:20PM 7

11:20 a.m., and we are back on the

01:20PM 8

record.

01:20PM 9

BY MR. BARQUIST:

01:20PM 10

Q. Mr. Edwards, did you look to see

01:20PM 11

if you still had any documents in your

01:20PM 12

possession relating to Move Networks?

01:21PM 13

A. I did not.

01:21PM 14

Q. Do you know if --

01:21PM 15

A. I do. I don't think I have any.

01:21PM 16

So I wouldn't have looked because I didn't

01:21PM 17

keep any that I'm aware of.

01:21PM 18

Q. So going back to our discussion

01:21PM 19

about the original idea that you were

01:21PM 20

describing Mr. Major coming up with in '03,

01:21PM 21

what happened next with regard to development

01:21PM 22

of that idea after those initial discussions

01:21PM 23

on the EyeWonder visit?

01:21PM 24

A. We went back to Utah. I reached

01:21PM 25

out and -- well, actually, probably Drew

1

J. EDWARDS

01:21PM

2

reached out to Mark, but I reached out to

01:21PM

3

Mark afterwards, and we negotiated and got

01:22PM

4

hired and found a place for him and have him

01:22PM

5

start to move forward and develop the idea.

01:22PM

6

Q. And at what point in time did you

01:22PM

7

all come up with a working implementation of

01:22PM

8

the idea?

01:22PM

9

A. So there is a period of time

01:22PM

10

between that 2003 and 2005 where there would

01:22PM

11

have been multiple working versions of the

01:22PM

12

technology that Mark was working on in the

01:22PM

13

lab. I kind of feel like it was 2005, at

01:22PM

14

least I felt like we had some of our first

01:22PM

15

traction account with the LDS church and then

01:23PM

16

from then on.

01:23PM

17

But knowing Mark and Drew, my

01:23PM

18

guess is it probably would have been fairly

01:23PM

19

quick, two, three months we would have had a

01:23PM

20

working kind of prototype, not for external

01:23PM

21

use, but that would have been normally the

01:23PM

22

way these kinds of things would go and we

01:23PM

23

would have multiple versions of it and

01:23PM

24

tweaking of it throughout the course of 2004.

01:23PM

25

My guess is there was probably demos in 2004,

1

J. EDWARDS

01:23PM 2 **too. I just don't recall any of them.**

01:23PM 3 Q. Okay. So if I understand your
01:23PM 4 answer, you really don't recall. You're
01:23PM 5 just, as you say, guessing, or that's how
01:23PM 6 things would normally have gone; is that
01:23PM 7 correct?

01:23PM 8 A. So it's a little bit more than a
01:23PM 9 guess, because I do know that we were
01:23PM 10 developing technology. Software is something
01:23PM 11 that develops over time and adds our way, so
01:23PM 12 there would have been multiple
01:23PM 13 substantiations of the technology throughout
01:23PM 14 the course of 2003 and 2004. The first time
01:23PM 15 I saw it used externally to that would have
01:24PM 16 been 2005. The one that I remember.

01:24PM 17 Q. And that was the LDS church usage
01:24PM 18 that you mentioned earlier?

01:24PM 19 A. Right. Yes.

01:24PM 20 Q. Did there come a time -- well,
01:24PM 21 when did you all decide to seek patent
01:24PM 22 protection for Move Networks' technology?

01:24PM 23 MR. DHANANI: Objection. I'll
01:24PM 24 just caution you not to reveal
01:24PM 25 attorney-client communication, but, on

1

J. EDWARDS

01:24PM 2

that question, you can answer.

01:24PM 3

A. So in 2004 or '5, so I don't

01:24PM 4

remember a specific time when we said, okay,

01:24PM 5

let's go get patent coverage. I do think

01:24PM 6

that most likely happened in 2004, 2005 would

01:25PM 7

be a guess of mine. But it's purely that. I

01:25PM 8

just don't recall the timing.

01:25PM 9

Q. And what role, if any, did you

01:25PM 10

play in the patenting process?

01:25PM 11

A. In the patenting process, very

01:25PM 12

little. Most of the discussion -- I was the

01:25PM 13

CEO of the company. I paid the bills to the

01:25PM 14

attorneys. I did the ancillary things, but I

01:25PM 15

wasn't involved. I probably reviewed

01:25PM 16

documents, but the real heart of the matter

01:25PM 17

was happening with the attorney and Mark and

01:25PM 18

Drew, as I recall.

01:25PM 19

Q. Do you recall reviewing patent

01:25PM 20

applications before they were filed?

01:25PM 21

MR. DHANANI: And just be

01:25PM 22

careful in your answer about not

01:25PM 23

revealing attorney-client

01:25PM 24

communications but, you can answer

01:25PM 25

that question.

1

J. EDWARDS

01:25PM

2

A. Yeah. So I don't sit here today

01:25PM

3

and remember a time when I sat down and

01:25PM

4

reviewed it. I'm sure I did, as the CEO, but

01:26PM

5

I just don't recall any more than that.

01:26PM

6

Q. Were you involved in the decision

01:26PM

7

to -- as to who would be identified as the

01:26PM

8

inventors on the patents?

01:26PM

9

MR. DHANANI: And I caution you

01:26PM

10

again not to reveal communications

01:26PM

11

with attorneys on the topic, but

01:26PM

12

outside of that, you can answer.

01:26PM

13

A. I would be involved.

01:26PM

14

Q. And, again, I'm not asking for

01:26PM

15

conversation with counsel, but since there

01:26PM

16

were conversations other than with counsel,

01:26PM

17

do you recall any discussions about who would

01:26PM

18

be named as inventors on the patents?

01:26PM

19

A. I only recall being asked, did it

01:26PM

20

make sense for Drew and Mark to be named.

01:26PM

21

And that made sense to me. And so that's

01:27PM

22

about it.

01:27PM

23

Q. Was there any discussion about

01:27PM

24

whether you or Mr. Smith should be named as a

01:27PM

25

co-inventor because of your contributions to

1

J. EDWARDS

01:27PM 2 the development of the idea?

01:27PM 3 MR. DHANANI: Objection. I'm
01:27PM 4 going to instruct the witness not to
01:27PM 5 answer that question on the basis of
01:27PM 6 attorney-client privilege. And I'm
01:27PM 7 going to give you that instruction
01:27PM 8 first. But if you have any of those
01:27PM 9 discussions that occurred outside of
01:27PM 10 attorneys, then you can answer. But I
01:27PM 11 wanted to give you that instruction
01:27PM 12 first because that's a privileged
01:27PM 13 question.

01:27PM 14 **A. Yeah, I wouldn't have any comment.**

01:27PM 15 Q. Well, I'm not asking for a
01:27PM 16 comment, sir. I'm asking for an answer to
01:27PM 17 the question.

01:27PM 18 **A. I don't have an answer for you**
01:27PM 19 **that lays outside the bounds of**
01:27PM 20 **attorney-client privilege.**

01:27PM 21 Q. So did you have discussions
01:28PM 22 including with attorneys on the subject of
01:28PM 23 naming inventors on the patent applications,
01:28PM 24 yes or no?

01:28PM 25 MR. DHANANI: That still calls

1

J. EDWARDS

01:28PM 2

for attorney-client communication as

01:28PM 3

to the topic. I'm going to instruct

01:28PM 4

the witness not to answer that

01:28PM 5

question.

01:28PM 6

A. I would give the same as my last

01:28PM 7

answer. I don't have anything to say that

01:28PM 8

would fall outside the privilege.

01:28PM 9

Q. Who are the attorneys that you had

01:28PM 10

conversations with regarding seeking patent

01:28PM 11

protection on Move Networks' technology?

01:28PM 12

A. I actually don't recall any

01:28PM 13

attorney's name. It was an attorney that

01:28PM 14

Drew knew and he recommended. And I can see

01:28PM 15

his face, can't think of his name right now.

01:28PM 16

Q. At the time that Move Networks

01:29PM 17

applied for patents on its technology, was

01:29PM 18

Move aware of others outside of Move who were

01:29PM 19

working on similar solutions to streaming?

01:29PM 20

A. I would say --

01:29PM 21

MR. DHANANI: Objection.

01:29PM 22

A. I was not aware of any.

01:29PM 23

MR. DHANANI: Go ahead.

01:29PM 24

A. Quite the opposite. I was aware

01:29PM 25

that people had a hard time believing in our

1

J. EDWARDS

01:29PM 2 **ideas. They felt like you couldn't do it**
01:29PM 3 **without a server-side logic. They didn't**
01:29PM 4 **feel like routers would support it. They**
01:29PM 5 **didn't feel like -- they just were mostly of**
01:29PM 6 **the nature of not believing that you could**
01:29PM 7 **treat video, something with such a high**
01:29PM 8 **payload, like you would any other data type**
01:29PM 9 **on the Internet. They had a hard time**
01:29PM 10 **believing that. A real hard time.**

01:30PM 11 Q. Did anyone at Move investigate
01:30PM 12 whether others were working on solutions to
01:30PM 13 do the streaming at or about the same time?

01:30PM 14 MR. DHANANI: Objection; vague,
01:30PM 15 calls for speculation. And then just
01:30PM 16 to caution, don't disclose
01:30PM 17 communications with attorneys, but you
01:30PM 18 can answer if you know.

01:30PM 19 A. So when you say did anybody
01:30PM 20 discuss, I don't know. There could have been
01:30PM 21 discussions. But what we found was that the
01:30PM 22 best place and the best source of real
01:30PM 23 information was, as you presented to the
01:30PM 24 media companies we were presenting to and
01:30PM 25 watched their jaw drop on the quality of the

61

1

J. EDWARDS

01:30PM 2 streaming and have them openly say we haven't
01:30PM 3 seen anything like this. And so that was the
01:30PM 4 best research I could have is people in the
01:30PM 5 industry that were being called upon all the
01:30PM 6 time by every vendor on the planet and they
01:31PM 7 hadn't seen it. And so, to me, that was
01:31PM 8 enough.

01:31PM 9 Did we keep apprised of press
01:31PM 10 releases as they came out in various
01:31PM 11 templates, sure. We didn't see anything that
01:31PM 12 looked anything like this and that had the
01:31PM 13 same orientation, the same context and the
01:31PM 14 same approach to the problem. It was really
01:31PM 15 a new and very unique way to solve this
01:31PM 16 problem.

01:31PM 17 Q. So tell me who it was who, in your
01:31PM 18 words, jaw-dropped and told you that they had
01:31PM 19 never seen anything like this before?

01:31PM 20 A. Well, ABC, Scarpy, Doug Parish and
01:31PM 21 the people inside that firm, or Fox. Fox
01:31PM 22 properties and the people inside that firm.
01:31PM 23 Or CW and the people associated with that
01:31PM 24 media company, etc.

01:31PM 25 So they were largely ones that

J. EDWARDS

01:31PM 2 were in the heat of the battle. ABC had
01:32PM 3 launched their television side, I think in
01:32PM 4 late 2006, at least in the beta motion, and
01:32PM 5 they were very frustrated with that. When we
01:32PM 6 went to them, they said, this is it. And
01:32PM 7 Flash was their previous solution. And they
01:32PM 8 said this does something that Flash does not
01:32PM 9 in that case.

01:32PM 10 So one company after another was
01:32PM 11 pretty significant. CBS and Major League
01:32PM 12 Baseball were struggling to get their
01:32PM 13 solutions to even work well enough to attract
01:32PM 14 an audience. So it was generally known in
01:32PM 15 the industry that streaming longer than three
01:32PM 16 or four minutes just wasn't working. And to
01:32PM 17 think about streaming for an hour in high
01:32PM 18 quality across both good and bad connections
01:32PM 19 was unheard of.

01:32PM 20 Q. So you mentioned ABC. Who are the
01:32PM 21 individuals at ABC to said this to you?

01:33PM 22 A. Scarpy. I can't remember Scarpy's
01:33PM 23 last name, but the team that we were there
01:33PM 24 with. It's 18 years ago. So it's a long
01:33PM 25 time.

1

J. EDWARDS

01:33PM 2

Scarpy and the team -- just

01:33PM 3

anybody on that development team there at

01:33PM 4

ABC. Or anybody at Fox's team. When we

01:33PM 5

would make a presentation, they would have a

01:33PM 6

jaw-dropping type response. It is different.

01:33PM 7

Q. Okay. So with regard to ABC, the

01:33PM 8

name Scarpy, is that a first name or a last

01:33PM 9

name?

01:33PM 10

A. First name.

01:33PM 11

Q. And you don't know the person's

01:33PM 12

last name?

01:33PM 13

A. I can't remember it right now.

01:33PM 14

Starts with an H. I can't remember his last

01:33PM 15

name.

01:33PM 16

Q. Okay. And when did you have this

01:33PM 17

meeting with Scarpy in which his jaw dropped

01:33PM 18

and he said he has never seen anything like

01:33PM 19

this before?

01:33PM 20

A. Many meetings through 2006 and

01:33PM 21

2007 and 2008 as they continued to use the

01:34PM 22

technology.

01:34PM 23

Q. All right. So, Mr. Edwards, did

01:34PM 24

he say that he had never seen anything like

01:34PM 25

this before in each of those meetings?

1

J. EDWARDS

01:34PM 2

A. He said -- that was the way he

01:34PM 3

generally characterized our technology to

01:34PM 4

anybody that was in the room or anybody he

01:34PM 5

talked to.

01:34PM 6

Q. So when was the first meeting at

01:34PM 7

which he said this?

01:34PM 8

A. I don't recall the first meeting.

01:34PM 9

I've given you the general dates of it.

01:34PM 10

2006, 2007 is what I recall.

01:34PM 11

Q. And in 2006, what were you

01:34PM 12

disclosing to ABC about what you had to

01:34PM 13

offer?

01:34PM 14

A. We were demonstrating the -- their

01:34PM 15

stream running, using our technology.

01:34PM 16

Q. And by your technology, what are

01:34PM 17

you referring to?

01:34PM 18

A. Our streaming solution.

01:34PM 19

Q. Okay. And that's the streaming

01:34PM 20

solution that's embodied in the Move patents?

01:35PM 21

A. Yes.

01:35PM 22

Q. And when did you first disclose

01:35PM 23

the Move streaming technology to Fox?

01:35PM 24

A. Would have been in the same --

01:35PM 25

MR. DHANANI: Objection.

1

J. EDWARDS

01:35PM 2

Go ahead.

01:35PM 3

A. Would have been in the same

01:35PM 4

timeframe, 2006, 2007 would be the first.

01:35PM 5

Probably these two are both coming up kind of

01:35PM 6

simultaneously. They were both -- we were

01:35PM 7

presenting to most of the media companies at

01:35PM 8

that time. And a general response was, pull

01:35PM 9

other people into the room, let's have so and

01:35PM 10

so see this. Let's get it out in front of

01:35PM 11

people. There wasn't anything like this.

01:35PM 12

That was just the general type of

01:35PM 13

response. And later, when folks like

01:35PM 14

Steamboat and Hummer and others came back and

01:36PM 15

looked at what we have done, I mean, that's

01:36PM 16

what gave them the confidence to move forward

01:36PM 17

with the investment, I think, in part.

01:36PM 18

Q. And can you place the meeting with

01:36PM 19

Fox in --

01:36PM 20

THE COURT REPORTER: Counsel,

01:36PM 21

you broke up. Can you start over

01:36PM 22

again?

01:36PM 23

Q. Can you place the meeting that you

01:36PM 24

described with Fox, the first meeting at

01:36PM 25

which disclosed Move technology, more

1

J. EDWARDS

01:36PM

2

precisely other than just saying generally

01:36PM

3

2006?

01:36PM

4

A. No.

01:37PM

5

Q. I'm going to show you,

01:37PM

6

Mr. Edwards, an exhibit that we marked at

01:37PM

7

Mr. Smith's deposition as Exhibit 28.

01:37PM

8

(Whereupon, Exhibit 28 was

01:37PM

9

previously marked at a prior

01:37PM

10

deposition.)

01:37PM

11

A. Am I supposed to see something

01:38PM

12

now?

01:38PM

13

Q. Just give me a second.

01:38PM

14

A. Oh, I'm sorry.

01:38PM

15

Q. I'm putting it in the chat. It

01:38PM

16

takes a moment. There we go.

01:38PM

17

Do you see what we have marked as

01:38PM

18

Smith Exhibit 28 an article from The Salt

01:38PM

19

Lake Tribune dated April 24, 2009?

01:38PM

20

A. I don't see the marking, but I do

01:38PM

21

see the article.

01:38PM

22

Q. Have you seen this article before?

01:38PM

23

A. Let me see.

01:39PM

24

So I don't have -- I don't know if

01:39PM

25

I've seen it before or not.

1

J. EDWARDS

01:39PM 2

Q. If you look in the second

01:39PM 3

paragraph of the article, it refers to -- it

01:39PM 4

says, "In the past two months, Move Networks

01:39PM 5

has laid off several senior members of

01:39PM 6

management among about 30 percent of its work

01:39PM 7

force that numbered 150 in September of last

01:39PM 8

year."

01:39PM 9

Do you see that?

01:39PM 10

A. Um-hum, I do.

01:40PM 11

Q. Does that refresh your

01:40PM 12

recollection that approximately 30% of the

01:40PM 13

Move Networks; work force was laid off in the

01:40PM 14

spring of 2009?

01:40PM 15

MR. DHANANI: Objection;

01:40PM 16

hearsay, calls for speculation.

01:40PM 17

A. So as I mentioned previously, I do

01:40PM 18

recall there being people laid off. I don't

01:40PM 19

recall the specific percentage and I don't

01:40PM 20

know the source for this information in this

01:40PM 21

article.

01:40PM 22

Q. So the question is, does this

01:40PM 23

reference to the 30% refresh your

01:40PM 24

recollection that it was in fact about 30% of

01:40PM 25

the workforce that was laid off?

1

J. EDWARDS

01:40PM 2

A. No, not necessarily because,

01:40PM 3

again, I don't know what numbers went into

01:40PM 4

there. I do know that there was a layoff of

01:40PM 5

staff, and I do know that there was a layoff

01:40PM 6

of members of the management team, but I

01:41PM 7

don't recall this article, nor do I know if

01:41PM 8

that number is accurate at this writing, at

01:41PM 9

this time. I just don't know how accurate

01:41PM 10

that may be.

01:41PM 11

Q. Okay. In the next couple of

01:41PM 12

paragraphs of this article, there is a quote

01:41PM 13

from you that says, "I was spending a

01:41PM 14

significant amount of time outside the

01:41PM 15

company."

01:41PM 16

Do you see that?

01:41PM 17

A. I do.

01:41PM 18

Q. Is that an accurate quote?

01:41PM 19

A. Well, it depends on what they

01:41PM 20

meant by outside. What I meant by outside

01:41PM 21

was I was meeting with customers and I wasn't

01:41PM 22

dealing with the internal execution that

01:41PM 23

others were, but that's what I take that to

01:41PM 24

mean. Again, I don't recall seeing this

01:41PM 25

article. I don't recall giving the quote.

1

J. EDWARDS

01:41PM 2 I'm not saying I didn't, I just don't recall.

01:42PM 3 Q. Do you recall having discussions
01:42PM 4 with Level 3 about doing business with Level
01:42PM 5 3?

01:42PM 6 A. Yes.

01:42PM 7 Q. Okay. What was the nature of the
01:42PM 8 business you were discussing with Level 3?

01:42PM 9 A. Give them a solution for streaming
01:42PM 10 that took advantage of their presence and
01:42PM 11 relationship with media companies. That
01:42PM 12 would be the answer.

01:42PM 13 Q. Did you discuss Level 3 making an
01:42PM 14 investment in Move Networks?

01:42PM 15 A. Yes.

01:42PM 16 Q. Did they ultimately make an
01:42PM 17 investment?

01:42PM 18 A. Yes.

01:42PM 19 Q. How much?

01:43PM 20 A. Don't recall. The number that
01:43PM 21 sticks out in my mind is like 5 million, but
01:43PM 22 I actually don't recall the structure of that
01:43PM 23 deal anymore. I tried to put that together
01:43PM 24 last night. I just couldn't remember all the
01:43PM 25 numbers.

70

1

J. EDWARDS

01:43PM 2

Q. And did Move Networks receive any

01:43PM 3

return on that investment in Move Networks?

01:43PM 4

MR. DHANANI: Objection; vague.

01:43PM 5

A. Can you clarify what you mean?

01:43PM 6

Q. Well, did they get any dividends?

01:43PM 7

Did they -- were they able to sell their

01:43PM 8

share?

01:43PM 9

MR. DHANANI: I think you said

01:43PM 10

Move Networks instead of Level 3 in

01:43PM 11

the question. That was the objection.

01:43PM 12

MR. BARQUIST: I'm sorry.

01:43PM 13

Q. The question is did --

01:43PM 14

A. What Move Networks got was

01:43PM 15

whatever they --

01:43PM 16

Q. I'm sorry. I misspoke. Let me --

01:43PM 17

did Level 3 receive any return on its

01:43PM 18

investment in Move Networks?

01:43PM 19

A. I'm sure we did. I just don't

01:44PM 20

recall enough about the transaction any

01:44PM 21

longer to know. And I know that they became

01:44PM 22

an investor. They became -- they began

01:44PM 23

looking at doing joint engagements together.

01:44PM 24

They had a chance to kick the tires and prove

01:44PM 25

to themselves that what we had was unique and

1

J. EDWARDS

01:44PM

2

different and not offered elsewhere, and it

01:44PM

3

was thus their desire to form a strategic

01:44PM

4

partnership.

01:44PM

5

Q. Okay. So did you form a strategic

01:44PM

6

partnership with Level 3?

01:44PM

7

A. Well, I think an investor and

01:44PM

8

having an investor in the company is pretty

01:44PM

9

strategic. We never, ever looked for dumb

01:44PM

10

money, as they -- quote, unquote, as they

01:44PM

11

say. We always looked for getting investment

01:44PM

12

from people who could add something else so

01:44PM

13

that there was a good reason for us to be

01:44PM

14

working together. Everything just for --

01:45PM

15

THE COURT REPORTER: Could you

01:45PM

16

repeat the last few words? I can't

01:45PM

17

hear.

01:45PM

18

A. I'm trying to say that we -- that

01:45PM

19

financial return is important, but not the

01:45PM

20

only reason we made decisions about who to

01:45PM

21

have invest. We wanted people who would work

01:45PM

22

strategically with us, who would come and

01:45PM

23

team with us and be a partner.

01:45PM

24

Q. And so what did you do in terms of

01:45PM

25

being a team or a partner with Level 3?

1

J. EDWARDS

01:45PM

2

A. As I said, we called on joint

01:45PM

3

accounts together. This relationship

01:45PM

4

formulated in 2008, I think. In other words,

01:45PM

5

it was a little bit later in the investment

01:45PM

6

process, if I remember right. And so their

01:46PM

7

interest was they had media companies

01:46PM

8

selecting Level 3 that they wanted a superior

01:46PM

9

or a different solution for streaming.

01:46PM

10

Q. Media companies selected Level 3

01:46PM

11

to do what?

01:46PM

12

A. To route traffic. To host

01:46PM

13

existing technologies for streaming. So if

01:46PM

14

it was CBS and they wanted to -- or any of

01:46PM

15

the -- particularly the -- if I recall the

01:46PM

16

European-based companies, if they were using

01:46PM

17

them for streaming, but it wasn't -- the

01:46PM

18

companies -- the media companies knew what

01:46PM

19

Move was providing for ABC and through other,

01:46PM

20

was not as good as what Level 3 was providing

01:46PM

21

on just pure bandwidth and bits and hosting

01:46PM

22

service.

01:46PM

23

So what they wanted -- Level 3

01:47PM

24

wanted to get into their portfolio the

01:47PM

25

ability to resell and to leverage the Move

1

J. EDWARDS

01:47PM

2

solution. And that's where this relationship

01:47PM

3

started.

01:47PM

4

Q. In connection with your

01:47PM

5

discussions with Level 3, did you provide

01:47PM

6

them information about Move patent

01:47PM

7

applications?

01:47PM

8

A. Yes, I believe we did. I think we

01:47PM

9

always did that under nondisclosure and we

01:47PM

10

always did it pursuant to terms around an

01:47PM

11

investment, but, yeah.

01:47PM

12

Q. And what did you disclose to Level

01:47PM

13

3 about the Move patents?

01:47PM

14

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

01:47PM

15

probably that process. That would have been

01:47PM

16

Greg Smith and -- who probably I would have,

01:47PM

17

as the CTO, had go and discuss that topic.

01:48PM

18

Q. I'm going to show you a document

01:48PM

19

that we marked as Exhibit 7 in the Smith

01:48PM

20

deposition.

01:48PM

21

(Whereupon, Exhibit 7 was

01:48PM

22

previously marked at a prior

01:48PM

23

deposition.)

01:48PM

24

Q. This is an email from Mr. Smith to

01:48PM

25

you dated July 17, 2007.

1

J. EDWARDS

01:48PM 2

Do you see that, sir?

01:48PM 3

A. Not yet. I'm opening it.

01:48PM 4

MR. DHANANI: Charles, just to

01:48PM 5

confirm, we're not relabeling these

01:48PM 6

for Edwards 1 or 2 or 3, we're just

01:48PM 7

keeping that same number, right?

01:48PM 8

MR. BARQUIST: Right. Just to

01:48PM 9

eliminate the amount of duplication.

01:48PM 10

MR. DHANANI: Perfect. Thank

01:48PM 11

you.

01:49PM 12

BY MR. BARQUIST:

01:49PM 13

Q. Let me know when you're done

01:49PM 14

looking at the document.

01:49PM 15

A. Okay. Yeah, I'm just trying to

01:49PM 16

familiarize myself with it.

01:49PM 17

Okay.

01:49PM 18

Q. Do you recall this email exchange

01:49PM 19

with Mr. Trainor of Level 3 and Greg Smith?

01:50PM 20

A. Not specifically. I mean, I was

01:50PM 21

obviously there and it makes sense to me what

01:50PM 22

they're saying, but I don't recall this

01:50PM 23

particular email.

01:50PM 24

Q. In the middle of the exhibit in

01:50PM 25

your email to Mr. Smith, you're talking about

1

J. EDWARDS

01:50PM 2 the relationship that Level 3 is proposing.

01:50PM 3 And you say, "It has caused me some concern."

01:50PM 4 What is the concern you had about
01:50PM 5 the proposed arrangement with Level 3?

01:50PM 6 A. Well, it's the same concern I
01:50PM 7 would have with any very large company, as it
01:50PM 8 teams up with a very small entity. And that
01:50PM 9 is what are they going to be asking and can
01:50PM 10 you deliver? Will they be reaching in their
01:51PM 11 ask? Will they be asking for some things
01:51PM 12 we're not prepared to deliver?

01:51PM 13 So I would have just told Greg, if
01:51PM 14 I'm choose -- what I would normally do, just
01:51PM 15 be super careful. Because we shouldn't be
01:51PM 16 signing things. We shouldn't move forward
01:51PM 17 with rights unless we really met -- and this
01:51PM 18 would probably be something that I might have
01:51PM 19 even said we should get some of the board
01:51PM 20 members to weigh in. But I don't recall
01:51PM 21 specifically. Just, that would be my concern
01:51PM 22 would be my guess.

01:51PM 23 Q. Mr. Smith refers to a technology
01:51PM 24 licensing as part of the proposed arrangement
01:51PM 25 with Level 3. Did you have a concern about

1

J. EDWARDS

01:51PM 2 that aspect of the proposal?

01:51PM 3 A. Yeah. I mean, I think --

01:51PM 4 technology licensing goes way beyond a

01:51PM 5 reseller agreement in my view. And we would

01:51PM 6 have to be very certain as to what we were

01:51PM 7 granting in order for us to move forward on

01:52PM 8 something like that.

01:52PM 9 Q. So why were you concerned about

01:52PM 10 technology and licensing?

01:52PM 11 A. Because they're a very big entity,

01:52PM 12 with a lot of people. And we were a very

01:52PM 13 small entity. And at the bargaining table,

01:52PM 14 they are going to push us in ways that we may

01:52PM 15 not actually want to go. And so often little

01:52PM 16 companies will jump at it, because they are a

01:52PM 17 big company before they really thought

01:52PM 18 through all the issues. And so I would

01:52PM 19 naturally be concerned about any relationship

01:52PM 20 where I'm going to be entering into -- with a

01:52PM 21 very -- with an entity -- I mean, I can

01:52PM 22 remember some of those calls on the phone

01:52PM 23 where it was Greg and I and they would have a

01:52PM 24 team full of people. And they are just

01:52PM 25 thinking more probably than we are and that

1

J. EDWARDS

01:52PM 2

would be my concern. Just, it's a natural

01:52PM 3

concern I would have with any large entity.

01:52PM 4

Q. Was there anything in particular

01:52PM 5

about the idea of licensing Move's technology

01:53PM 6

that caused you concern?

01:53PM 7

A. Not at a technology level, but at

01:53PM 8

a business level, yes. I mean, what are they

01:53PM 9

asking for? What are we getting in return?

01:53PM 10

What does that mean for the long-term impact?

01:53PM 11

Of which -- I'm concerned about the

01:53PM 12

technology. The technology worked. And

01:53PM 13

they -- this would be another company that

01:53PM 14

said it would. And that -- so I think that's

01:53PM 15

why they were spending the time to

01:53PM 16

investigate, because they knew it.

01:53PM 17

But the question would be, what

01:53PM 18

will they be asking? It's very often in

01:53PM 19

those times when a big, large player would

01:53PM 20

want us to give them everything just because

01:53PM 21

they were big and large. And you don't want

01:53PM 22

to do that.

01:53PM 23

Q. Well, speaking of big and large,

01:53PM 24

let me ask you about your interactions with

01:53PM 25

Microsoft.

1

J. EDWARDS

01:53PM

2

A. Sure.

01:54PM

3

Q. When did you first begin

01:54PM

4

interactions with Microsoft with regard to --

01:54PM

5

at Move technology -- at Move Networks.

01:54PM

6

Excuse me.

01:54PM

7

A. My guess is -- so we were for sure

01:54PM

8

engaged with them in 2006. I would say 2006,

01:54PM

9

2007, that timeframe.

01:54PM

10

Q. And what was your --

01:54PM

11

A. And beyond.

01:54PM

12

Q. What was your strategy at Move

01:54PM

13

with regard to doing business with Microsoft?

01:54PM

14

A. So I think when it began, it

01:54PM

15

wasn't so much strategic, as technical. And

01:54PM

16

this is what I mean by that. ABC and Disney

01:54PM

17

had a desire for us to bring them along with

01:54PM

18

the technology, because there were -- this is

01:54PM

19

what I said earlier. When the issue was the

01:55PM

20

political landscape and the partnership

01:55PM

21

landscape, not the technological landscape.

01:55PM

22

There was lots of pressure at ABC and Disney

01:55PM

23

to use Microsoft technologies. Not because

01:55PM

24

they were superior or better, but because of

01:55PM

25

the relationship the company had with

1

J. EDWARDS

01:55PM 2 **Microsoft.**

01:55PM 3 **And so as a result of that, they**
01:55PM 4 **would -- we went out and we would begin**
01:55PM 5 **entertaining and presenting to them. They**
01:55PM 6 **had Silverlight at the time, which was tried**
01:55PM 7 **with ABC and tried at other places. It**
01:55PM 8 **wasn't very good. And it had lots of**
01:55PM 9 **problems. And so as we began working with**
01:55PM 10 **them, what became true is we saw an**
01:55PM 11 **opportunity to maybe make Silverlight better**
01:55PM 12 **if we could come to appropriate terms.**

01:55PM 13 **Q. And what were the problems with**
01:55PM 14 **Silverlight?**

01:55PM 15 **A. So this is what I recall. I mean,**
01:56PM 16 **they didn't do digital rights management.**
01:56PM 17 **They didn't have the ability to -- they**
01:56PM 18 **didn't -- I think they had the V9 to V7**
01:56PM 19 **encoder, and I don't think it allowed for**
01:56PM 20 **variableness to occur once you started the**
01:56PM 21 **player at a particular rate, it -- that's**
01:56PM 22 **what you were in for, which was empathetical**
01:56PM 23 **to our approach, which was variableness.**

01:56PM 24 **And so we had hoped that we could**
01:56PM 25 **apply and work around that. And that's the**

J. EDWARDS

01:56PM 2 **process that we were into with Microsoft.**
01:56PM 3 **That led to numerous occasions and meetings,**
01:56PM 4 **which, in my view, ultimately led to**
01:56PM 5 **Microsoft taking their stuff and putting it**
01:56PM 6 **into their Smooth Streaming. And I think**
01:56PM 7 **that they were -- my sense of it is that they**
01:57PM 8 **would just join with us, but that's what I**
01:57PM 9 **mean by big concerns. How do you prevent**
01:57PM 10 **that from happening, for these larger**
01:57PM 11 **entities, that want to take your idea and**
01:57PM 12 **copy it.**

01:57PM 13 Q. I'm sorry. I'm not sure I heard
01:57PM 14 your answer in full. Did you say that
01:57PM 15 Microsoft did take something from you?

01:57PM 16 **THE WITNESS: So could you read**
01:57PM 17 **it back? Did you get it, court**
01:57PM 18 **reporter?**

01:57PM 19 MR. BARQUIST: Rebecca, could
01:57PM 20 you read back the last answer?

01:59PM 21 (Record read.)

01:59PM 22 **A. Okay. Now, what's your question?**

01:59PM 23 Q. Well, that was the phrase I wasn't
01:59PM 24 sure I heard correctly. So let me ask you
01:59PM 25 about that.

1

J. EDWARDS

02:00PM

2

Is it your understanding that

02:00PM

3

Microsoft took Move's technology and

02:00PM

4

incorporated it into their Smooth Stream

02:00PM

5

technology?

02:00PM

6

A. That's my belief. I think that in

02:00PM

7

terms of HLS with Apple and Smooth Stream

02:00PM

8

with Microsoft, I think that --

02:00PM

9

THE COURT REPORTER: Sorry, sir.

02:00PM

10

You're breaking up again.

02:00PM

11

A. Sorry. My guess is -- my answer

02:00PM

12

would be yes. That's my take on it. That's

02:00PM

13

my position.

02:00PM

14

Q. And what are you basing that on?

02:00PM

15

A. That when they made the

02:00PM

16

announcement of Smooth Stream, it caught us

02:00PM

17

completely off guard because they were doing

02:00PM

18

exactly what we were trying to do and we were

02:00PM

19

supposed to be a partner of theirs.

02:00PM

20

Q. Now, you mentioned a moment ago

02:01PM

21

HLS and Apple. Are you saying that Apple

02:01PM

22

also took Move's technology?

02:01PM

23

A. I'm saying that in the case of the

02:01PM

24

timing of both those announcements, it was

02:01PM

25

after we had made presentations under

1

J. EDWARDS

02:01PM

2

nondisclosure to those entities and I felt

02:01PM

3

like they were taking advantage of that and

02:01PM

4

leveraging our ideas inappropriately. That

02:01PM

5

was my belief.

02:01PM

6

Q. Did you have any discussions with

02:01PM

7

anyone else at Move, other than attorneys,

02:01PM

8

about your belief that Apple was

02:01PM

9

inappropriately leveraging your ideas?

02:01PM

10

A. I'm sure I did, but I don't

02:01PM

11

recall, like, the specific instance.

02:02PM

12

Q. Did you have any discussions with

02:02PM

13

others at Move outside of attorneys about

02:02PM

14

your belief that Microsoft was taking your

02:02PM

15

technology and incorporating it into Smooth

02:02PM

16

Streaming?

02:02PM

17

A. I don't recall.

02:02PM

18

Q. Did you have any discussions with

02:02PM

19

anyone at the company about suing either

02:02PM

20

Microsoft or Apple?

02:02PM

21

A. I don't recall.

02:02PM

22

Q. Did you ever tell Microsoft that

02:02PM

23

you believed that their Smooth Streaming was

02:02PM

24

using Move's technology?

02:02PM

25

A. I didn't, but I believe that Greg

1

J. EDWARDS

02:03PM 2 **Smith might have, because he was really**
02:03PM 3 **managing that relationship. And my**
02:03PM 4 **recollection was that we were all really**
02:03PM 5 **shocked when they made their announcement,**
02:03PM 6 **and I think sent us an email saying that this**
02:03PM 7 **is what we've done. I just remember that**
02:03PM 8 **being really not what we were planning on.**
02:03PM 9 **And so -- but Greg was managing that, and**
02:03PM 10 **it's -- he is probably the better one to ask**
02:03PM 11 **those kinds of questions to.**

02:03PM 12 **Q. Did that announcement by**
02:03PM 13 **Microsoft, about its introduction of its new**
02:03PM 14 **streaming technology, play a role in the**
02:03PM 15 **decision by Move Networks in the spring of**
02:03PM 16 **2009 to change direction and ask you to**
02:03PM 17 **resign?**

02:03PM 18 **MR. DHANANI: Objection; calls**
02:03PM 19 **for speculation and vague.**

02:03PM 20 **A. I don't think so. I don't know.**

02:04PM 21 **Q. So did the -- did Microsoft --**

02:04PM 22 **A. When you say a different way,**
02:04PM 23 **nobody ever said that to me. Nobody ever**
02:04PM 24 **said one of the reasons we'd like you to**
02:04PM 25 **resign is because of the Smooth**

1

J. EDWARDS

02:04PM

2

Stream/Microsoft situation. I don't remember

02:04PM

3

that. So I'm not sure what was going on

02:04PM

4

outside of my purview, but that -- I don't

02:04PM

5

think so.

02:04PM

6

Q. So as far as you know, the

02:04PM

7

announcement by Microsoft to come up with

02:04PM

8

this competing Smooth Streaming technology

02:04PM

9

product was not a factor in the -- in

02:04PM

10

Move Networks' decision to change direction

02:04PM

11

in the spring of 2009?

02:05PM

12

A. Oh, I don't think that in

02:05PM

13

particular would have been a driving force,

02:05PM

14

but no.

02:05PM

15

Q. When you say not in particular a

02:05PM

16

driving force --

02:05PM

17

A. I don't think that was a major

02:05PM

18

reason why. I think the bigger components to

02:05PM

19

that were that the 2008 crash, the desire for

02:05PM

20

venture capitalists to see things, they

02:05PM

21

wanted to speed all of the return and they

02:05PM

22

lost patience. And I don't think it was an

02:05PM

23

event like that that was causing it, as I

02:05PM

24

understood the situation. Our technology was

02:05PM

25

still in great shape. Still working. Our

1

J. EDWARDS

02:05PM

2

customers loved us. We simply needed to

02:05PM

3

continue to execute on our plan, in my

02:05PM

4

opinion.

02:05PM

5

We differed in that, though. They

02:05PM

6

wanted to try other strategies. So that was

02:05PM

7

fun.

02:06PM

8

Q. I'm sorry? Did you say something?

02:06PM

9

A. I didn't.

02:06PM

10

Q. I thought you were adding

02:06PM

11

something to your answer.

02:06PM

12

And did Apple's announcement of

02:06PM

13

HLS have anything to do with the company's

02:06PM

14

decision to change direction in the spring of

02:06PM

15

2009?

02:06PM

16

A. No, I don't think so. That's not

02:06PM

17

what I recall.

02:06PM

18

Q. So the fact that big companies

02:06PM

19

like Apple and Microsoft had competing

02:06PM

20

technology as to what you were offering was

02:06PM

21

not a concern for you?

02:06PM

22

MR. DHANANI: Objection; vague

02:06PM

23

and mischaracterizes testimony.

02:07PM

24

A. Could you repeat the question,

02:07PM

25

please?

1

J. EDWARDS

02:07PM 2

MR. BARQUIST: Can you read it

02:07PM 3

back, Rebecca?

02:07PM 4

(Record read.)

02:07PM 5

MR. DHANANI: Same objection.

02:07PM 6

Mischaracterizes testimony.

02:07PM 7

A. So you asked me whether or not

02:07PM 8

these were reasons we changed directions, and

02:07PM 9

my answer is, I don't think they were. If

02:07PM 10

you're asking me do you have concerns with

02:07PM 11

other competing technologies, at that stage,

02:07PM 12

that wouldn't have been my concern either,

02:07PM 13

because they were so far behind in the

02:08PM 14

implementation of something that worked in

02:08PM 15

the same way. They still had a lot to grow.

02:08PM 16

We had been through a lot of real live

02:08PM 17

experience watching these streaming

02:08PM 18

environments over real networks.

02:08PM 19

And so I think in terms of the

02:08PM 20

analysis of the market you are always worried

02:08PM 21

about larger companies with technology, but I

02:08PM 22

don't think that was what -- you don't want

02:08PM 23

to just jump and respond to those. You have

02:08PM 24

got to take your time and formulate a

02:08PM 25

strategy and see how it plays out.

1

J. EDWARDS

02:08PM

2

Q. Well, did you formulate a strategy

02:08PM

3

for how you were going to deal with competing

02:08PM

4

technologies from Apple and Microsoft?

02:08PM

5

A. To continue what we were doing,

02:08PM

6

which was to continue to stream on behalf of

02:08PM

7

ESPN and ABC and Fox, and to continue to go

02:09PM

8

after encounters by Democratic National

02:09PM

9

Convention or the Oprah campaign or whatever

02:09PM

10

it was. Just to continue to do the things we

02:09PM

11

had been doing because they were working and

02:09PM

12

entities were adopting our approach.

02:09PM

13

Q. But what you were doing was not

02:09PM

14

making a profit for the company, correct?

02:09PM

15

A. Yeah.

02:09PM

16

MR. DHANANI: Objection.

02:09PM

17

A. At this stage of any early stage

02:09PM

18

company.

02:09PM

19

Q. I'm going to show you what was

02:09PM

20

marked as Mr. Carper's deposition as Exhibit

02:09PM

21

3. Give me a moment and I'll pull it up.

02:09PM

22

(Whereupon, Exhibit 3 was

02:09PM

23

previously marked at a prior

02:10PM

24

deposition.)

02:10PM

25

Q. It should be in the chat now.

88

1

J. EDWARDS

02:10PM

2

Do you recognize Carper Exhibit 3?

02:10PM

3

A. Yeah.

02:10PM

4

Q. This is something called Input

02:10PM

5

Agreement between Move Networks and Microsoft

02:10PM

6

dated in August of 2007, correct?

02:10PM

7

A. This says July 31, 2007, so --

02:10PM

8

actually, Greg, it looks like, signed it

02:10PM

9

August 13th. I'm not seeing the date you

02:10PM

10

mentioned, but...

02:10PM

11

Q. No. I was looking at the

02:11PM

12

August 13, 2007 date for Mr. Smith.

02:11PM

13

A. Okay. Got it.

02:11PM

14

Q. You're familiar with this

02:11PM

15

agreement, Carper Exhibit 3?

02:11PM

16

A. You know, I'm generally aware of

02:11PM

17

this series with Microsoft. There is a lot I

02:11PM

18

don't remember about this agreement

02:11PM

19

specifically.

02:11PM

20

MR. DHANANI: I'll just go

02:11PM

21

ahead, given the confidential

02:11PM

22

documents that have been shown so far,

02:11PM

23

designate this transcript confidential

02:12PM

24

with this information, subject to the

02:12PM

25

Protective Order in the case. And

1

J. EDWARDS

02:12PM 2 I'll note that we do have -- I believe
02:12PM 3 Mr. Jamshidi and Gratton -- I think,
02:12PM 4 Charles, if you're going to have some
02:12PM 5 questions about these, I may have them
02:12PM 6 switch off and then come back on, just
02:12PM 7 given the -- that it's the Microsoft
02:12PM 8 version you are using.

02:12PM 9 MR. BARQUIST: Okay. I mean, I
02:12PM 10 did get clearance, because this was
02:12PM 11 produced by Microsoft, but I assume a
02:12PM 12 copy exists somewhere at DISH.

02:12PM 13 MR. DHANANI: Exactly. I
02:12PM 14 just -- I'm okay with it if you've got
02:12PM 15 clearance from Microsoft, but I'll
02:12PM 16 just note that Mr. Hanft and
02:13PM 17 Mr. Jamshidi are not. I can ask them
02:13PM 18 to step off for a few minutes and then
02:13PM 19 come back on.

02:13PM 20 MR. BARQUIST: Okay.

02:13PM 21 MR. DHANANI: Would you like
02:13PM 22 that?

02:13PM 23 MR. BARQUIST: It seems to be
02:13PM 24 unnecessary, given that it's a
02:13PM 25 produced document.

1

J. EDWARDS

02:13PM 2

MR. DHANANI: Then that's fine.

02:13PM 3

Then that's fine. Sorry about that.

02:13PM 4

MR. BARQUIST: It's a DISH

02:13PM 5

document.

02:13PM 6

MR. DHANANI: Yeah. Keep going.

02:13PM 7

BY MR. BARQUIST:

02:13PM 8

Q. So, Mr. Edwards, the paragraph 1

02:13PM 9

of the agreement says, "We intend to enter"

02:13PM 10

into "discussions in which one or both of us

02:13PM 11

may provide input in connection with

02:13PM 12

Microsoft and/or Company," referring to Move

02:13PM 13

Networks, "offerings as described below."

02:13PM 14

Are you aware that Move Networks

02:13PM 15

and/or Microsoft provided input to one

02:13PM 16

another in connection with this agreement?

02:13PM 17

MR. DHANANI: Objection; vague.

02:13PM 18

A. So in this particular

02:14PM 19

relationship, because of the technical nature

02:14PM 20

of it, the reason you see my name crossed out

02:14PM 21

and Greg's name inserted is I asked Greg to

02:14PM 22

take this one on directly, because I, first

02:14PM 23

of all, did not feel like anybody other than

02:14PM 24

somebody who is tracking the detail such as

02:14PM 25

Greg should do this, and I wasn't convinced

1

J. EDWARDS

02:14PM 2

we could come to any terms whereby we would

02:14PM 3

actually sign one of these type of

02:14PM 4

agreements.

02:14PM 5

So conversations were going on,

02:14PM 6

but to the best of my knowledge, we never

02:14PM 7

signed one of these, because we couldn't get

02:14PM 8

to terms with each other.

02:14PM 9

Q. I'm sorry. I just want to make

02:14PM 10

sure I understand your answer, because it was

02:14PM 11

a little hard to hear you.

02:14PM 12

You weren't sure you signed any of

02:14PM 13

what?

02:14PM 14

A. The input agreements. You have

02:15PM 15

got a sample agreement down here at bottom of

02:15PM 16

it, where it says form input schedule,

02:15PM 17

whereby either party will disclose something.

02:15PM 18

And then my assumption is that they would

02:15PM 19

then move forward and sign that.

02:15PM 20

The top part of it, to me, was

02:15PM 21

simply saying that, yeah, we're going to have

02:15PM 22

conversations, but any specifics we would

02:15PM 23

have to have both signed off on, and I'm not

02:15PM 24

aware that we moved forward to signing off.

02:15PM 25

The person that might know that better would

1

J. EDWARDS

02:15PM 2 **be Greg, I think. He managed this**

02:15PM 3 **relationship.**

02:15PM 4 Q. Okay. So you're referring to the
02:15PM 5 last two pages of the exhibit, which are
02:15PM 6 sample forms of input schedules, correct?

02:15PM 7 **A. Right.**

02:15PM 8 Q. And if I understand you correctly,
02:15PM 9 you're saying, to your knowledge, there never
02:15PM 10 were any input schedules completed and
02:15PM 11 signed?

02:15PM 12 **A. That's my memory. If it were**
02:16PM 13 **other than that or something else, then I**
02:16PM 14 **think Greg might be the better one to ask.**

02:16PM 15 Q. Let me show you another agreement
02:16PM 16 with Microsoft. This was marked as Carper
02:16PM 17 Exhibit 10.

02:16PM 18 (Whereupon, Exhibit 10 was
02:16PM 19 previously marked at a prior
02:16PM 20 deposition.)

02:16PM 21 Q. And I'm putting it into the chat.
02:16PM 22 It should be available now. Let me know once
02:17PM 23 you've had a chance to look at Carper
02:17PM 24 Exhibit 10.

02:18PM 25 **A. Yeah, okay. I'm there.**

1

J. EDWARDS

02:18PM 2

Q. I'm sorry?

02:18PM 3

A. Yes, go ahead.

02:18PM 4

Q. Okay. Are you familiar with the

02:18PM 5

document we've marked -- that's been marked

02:18PM 6

as Carper Exhibit 10?

02:19PM 7

A. Yes.

02:19PM 8

Q. So this is -- Carper Exhibit 10 is

02:19PM 9

described as a Term Sheet that "represents a

02:19PM 10

draft, non-binding summary of certain

02:19PM 11

proposed terms to Move Networks for the

02:19PM 12

adoption of Microsoft Silverlight."

02:19PM 13

A. Wait a second. Where does it say

02:19PM 14

that?

02:19PM 15

Q. Right at the top of the first

02:19PM 16

page.

02:19PM 17

A. Oh, oh, further -- okay.

02:19PM 18

Q. You see that?

02:19PM 19

A. Um-hum.

02:19PM 20

Q. Okay. And so to your

02:19PM 21

understanding, what does this agreement

02:19PM 22

concern?

02:19PM 23

A. Well, my recollection of this is,

02:19PM 24

as previously stated, that Silverlight was

02:19PM 25

struggling to do good streaming, but they did

1

J. EDWARDS

02:20PM

2

have a client and a certain number of

02:20PM

3

installations. And we could augment

02:20PM

4

Silverlight with our better approach and open

02:20PM

5

up doors that Microsoft heretofore hadn't

02:20PM

6

been able to open.

02:20PM

7

Q. And this agreement also provided

02:20PM

8

for an investment by Microsoft in

02:20PM

9

Move Networks, correct?

02:20PM

10

A. It discussed an investment.

02:20PM

11

Q. So, again, this document described

02:20PM

12

as a draft Term Sheet, was a final agreement

02:20PM

13

covering this subject matter ever entered

02:20PM

14

into between Move and Microsoft?

02:20PM

15

A. In terms of the investment itself,

02:20PM

16

that kind of spun off and become -- and they

02:20PM

17

joined the -- pretty much standard documents,

02:20PM

18

as I recall, of the investment vehicle in

02:20PM

19

place by the other entities around the Hummer

02:21PM

20

Winblad, etc., investment, the two different

02:21PM

21

tranches of that.

02:21PM

22

So that, kind of, let me remind

02:21PM

23

you, wasn't a part of this Term Sheet anymore

02:21PM

24

or in terms of an agreement. And that's what

02:21PM

25

I would have focused in on was the

J. EDWARDS

1

02:21PM 2 **investment.**

02:21PM 3 **I wasn't aware that a specific**

02:21PM 4 **more detailed Term Sheet was entered into**

02:21PM 5 **with Microsoft besides that investment. At**

02:21PM 6 **least I don't remember it.**

02:21PM 7 Q. So in the background section on

02:21PM 8 page 1 of Carper Exhibit 10, you see there

02:21PM 9 are five bullet points there?

02:21PM 10 **A. Um-hum.**

02:21PM 11 Q. The fourth bullet point reads as

02:21PM 12 follows, "Microsoft views a relationship with

02:21PM 13 Move Networks as being a strategic

02:22PM 14 opportunity to showcase the capabilities of

02:22PM 15 Silverlight and to encourage user adoption of

02:22PM 16 Silverlight."

02:22PM 17 **A. Right.**

02:22PM 18 Q. Is that consistent with your

02:22PM 19 understanding of Microsoft's view in entering

02:22PM 20 into this agreement?

02:22PM 21 **A. Yes, Microsoft's view, I would say**

02:22PM 22 **so.**

02:22PM 23 Q. Okay. So let me show you another

02:22PM 24 exhibit here, sir. One moment. This exhibit

02:22PM 25 was marked as Exhibit 15 in the Smith

1

J. EDWARDS

02:22PM 2 deposition. It's an email chain dated
02:23PM 3 April 14 and 15, 2018.

02:23PM 4 (Whereupon, Exhibit 15 was
02:23PM 5 previously marked at a prior
02:23PM 6 deposition.)

02:23PM 7 Q. It should be available in the
02:23PM 8 chat.

02:23PM 9 A. Okay.

02:23PM 10 Q. So may I proceed, Mr. Edwards?

02:24PM 11 A. Please.

02:24PM 12 Q. So Exhibit 15, Smith Exhibit 15
02:24PM 13 includes a copy of an announcement by
02:24PM 14 Microsoft in which, among other things, it
02:24PM 15 announces its plan to invest in
02:24PM 16 Move Networks, correct? That's on the fourth
02:24PM 17 page of the exhibit.

02:25PM 18 A. Okay.

02:25PM 19 Q. Then the emails on the first page
02:25PM 20 of Exhibit 15 discuss or state that
02:25PM 21 "Microsoft forgot take the investment mention
02:25PM 22 out of their news release."

02:25PM 23 Do you see that?

02:25PM 24 A. Yeah.

02:25PM 25 Q. Do you recall that incident?

1

J. EDWARDS

02:25PM 2

A. No.

02:25PM 3

Q. Do you have any recollection about

02:25PM 4

why Microsoft did or didn't want to announce

02:25PM 5

its investment in Move Networks at that time?

02:25PM 6

A. I don't have any recollection of

02:25PM 7

that.

02:25PM 8

Q. Did Microsoft's announcement of

02:25PM 9

its investment have any impact one way or the

02:26PM 10

other on Move Networks at that time?

02:26PM 11

A. I don't recall, to be honest with

02:26PM 12

you.

02:26PM 13

Q. Okay. So if you see the -- near

02:26PM 14

the top of the first page of Exhibit 15, you

02:26PM 15

see the email from you dated April 14, 2008

02:26PM 16

at 8:41 p.m.

02:26PM 17

Do you see that?

02:26PM 18

A. The top of -- it's at the top

02:26PM 19

of --

02:26PM 20

Q. The top of the first page.

02:26PM 21

A. I see one from Greg. Oh, to me.

02:26PM 22

Got it. "Call you in a minute."

02:26PM 23

Is that the one you're talking

02:26PM 24

about?

02:26PM 25

Q. The one right below it.

1

J. EDWARDS

02:26PM

2

A. Okay.

02:26PM

3

Q. Okay. Now, you skipped over the

02:26PM

4

one right in the middle.

02:26PM

5

A. All right. Just read it to me.

02:27PM

6

Where do you want me to be?

02:27PM

7

Q. On 4/14/08, 8:41 John Edwards

02:27PM

8

wrote. That part.

02:27PM

9

A. Great? That part? Great? Is

02:27PM

10

that what you're talking about?

02:27PM

11

Q. Yes.

02:27PM

12

A. About I'll call you in a minute?

02:27PM

13

Great. Call me. Okay. Good.

02:27PM

14

Q. What did you mean by writing

02:27PM

15

"Great!" in response to Mary Kay Evans email

02:27PM

16

pointing out that Microsoft forgot to take

02:27PM

17

the investment of mention out of its news

02:27PM

18

release?

02:27PM

19

A. I don't know. I don't recall.

02:27PM

20

Q. Was that a happy great or a

02:27PM

21

sarcastic great?

02:27PM

22

A. I don't recall.

02:27PM

23

MR. DHANANI: Objection.

02:27PM

24

A. I don't recall. I don't know. I

02:27PM

25

thought it was great, Greg's going to call me

1

J. EDWARDS

02:27PM

2

in a minute.

02:27PM

3

Q. Well, I -- if I'm reading the

02:27PM

4

sequence here right, I think he wrote that

02:28PM

5

after you wrote great.

02:28PM

6

A. Okay.

02:28PM

7

Q. So why did you think it was great

02:28PM

8

that Microsoft forgot to take the investment

02:28PM

9

out of one of their news releases?

02:28PM

10

A. I don't recall.

02:28PM

11

Q. Is there some reason that

02:28PM

12

Move Networks wanted to keep that investment

02:28PM

13

non-public at that point in time?

02:28PM

14

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

02:28PM

15

recall this exchange that much.

02:28PM

16

Q. Let me show you what was marked as

02:29PM

17

Exhibit 19 in the Smith deposition. I'll

02:29PM

18

pull it up in a moment here.

02:29PM

19

(Whereupon, Exhibit 19 was

02:29PM

20

previously marked at a prior

02:29PM

21

deposition.)

02:29PM

22

A. Okay.

02:30PM

23

Q. So Exhibit 191 is an email string

02:30PM

24

that you're not on, but if you read it, you

02:30PM

25

see that it's a discussion between Chris

100

1

J. EDWARDS

02:30PM

2

Carper at Microsoft, Greg Smith at

02:30PM

3

Move Networks, Darren Person at CBS, about

02:30PM

4

the installation of Silverlight and the

02:30PM

5

Move Networks plug-in?

02:30PM

6

A. Yes.

02:30PM

7

Q. Do you see that?

02:30PM

8

Were you made aware of the

02:30PM

9

difficulties that Move Networks and Microsoft

02:30PM

10

were experiencing in getting good

02:30PM

11

installation rates of Silverlight and the

02:30PM

12

Move Networks plug-in?

02:31PM

13

A. I was aware that Microsoft's

02:31PM

14

streaming live shell was struggling with

02:31PM

15

bringing in and adopting an intermedia

02:31PM

16

player, because of its inability to deal with

02:31PM

17

the dynamic nature of that player. And I was

02:31PM

18

aware from Greg they were working on it. I

02:31PM

19

thought that generally our work with them was

02:31PM

20

positive. But beyond that, I don't have

02:31PM

21

enough memory to support other than just

02:31PM

22

these questions.

02:31PM

23

Q. Well, all right.

02:31PM

24

THE COURT REPORTER: Counsel,

02:31PM

25

can we take a break when you can?

101

1

J. EDWARDS

02:31PM 2

MR. BARQUIST: Oh, sure. We can

02:31PM 3

take a break now if you want.

02:31PM 4

THE COURT REPORTER: Thank you.

02:31PM 5

MR. BARQUIST: Sorry. I tend to

02:31PM 6

keep going until someone calls uncle.

02:31PM 7

THE VIDEOGRAPHER: The time is

02:32PM 8

12:32 p.m., and we are going off the

02:32PM 9

record.

02:44PM 10

(Whereupon, a recess was held.)

02:44PM 11

THE VIDEOGRAPHER: The time is

02:44PM 12

12:44 p.m., and we are back on the

02:44PM 13

record.

02:44PM 14

BY MR. BARQUIST:

02:44PM 15

Q. Mr. Edwards, I've put in the chat

02:44PM 16

a document we've marked as Smith Exhibit 22,

02:44PM 17

emails -- chain dated February 19, 2009.

02:44PM 18

MR. DHANANI: February 19, 2009?

02:44PM 19

MR. BARQUIST: Correct.

02:44PM 20

MR. DHANANI: Okay.

02:44PM 21

(Whereupon, Exhibit 22 was

02:44PM 22

previously marked at a prior

02:45PM 23

deposition.)

02:45PM 24

Q. Do you see that?

02:45PM 25

A. I do.

1

J. EDWARDS

02:46PM 2

Q. Have you had a chance to look at

02:46PM 3

Smith Exhibit 22?

02:46PM 4

A. Yes.

02:46PM 5

Q. So in the middle of the first

02:46PM 6

page, there is an email from Greg Smith to

02:46PM 7

you and Dan Beldy, and David Rice.

02:46PM 8

Do you see that?

02:46PM 9

A. I do.

02:46PM 10

Q. And in paragraph 2 of Mr. Smith's

02:46PM 11

email, he talks about the problems with

02:46PM 12

installing the Move plug-in and Silverlight.

02:46PM 13

Do you see that?

02:46PM 14

A. Um-hum.

02:46PM 15

Q. And begins the paragraph by

02:46PM 16

saying, "Unified Install is the concern."

02:46PM 17

And then later on, he says, "We had a 2.6%

02:46PM 18

install rate on the CBS inauguration site

02:46PM 19

because the MOVE plus SL install experience

02:47PM 20

was poor."

02:47PM 21

Do you see that?

02:47PM 22

A. I do.

02:47PM 23

Q. Does that refresh your

02:47PM 24

recollection that in fact in 2009,

02:47PM 25

Move Networks was having a poor experience

1

J. EDWARDS

02:47PM

2

with getting its plug-in and the Microsoft

02:47PM

3

Silverlight installed on customer devices?

02:47PM

4

A. Well, the way I would characterize

02:47PM

5

it is this: Move plug-in install, simple.

02:47PM

6

Silverlight had their install and they could

02:47PM

7

get through it. The technical challenges of

02:47PM

8

trying to do something we shouldn't try to

02:47PM

9

do, which is wrap one install around another

02:47PM

10

install, was the challenge. And there wasn't

02:47PM

11

time to go out and start from scratch and do

02:47PM

12

it the right way, I don't think. I think

02:47PM

13

they were trying for a fix that would allow

02:47PM

14

them to demonstrate it working.

02:48PM

15

What I remember about this install

02:48PM

16

experience was that there was a concern, but

02:48PM

17

overcomeable, we could overcome the

02:48PM

18

challenges, it was just going to take a

02:48PM

19

little time. And because you had -- you were

02:48PM

20

dealing with two separate engineering teams

02:48PM

21

and that's pretty common with software. So I

02:48PM

22

think the experience itself, if I remember

02:48PM

23

right on this, on many of the events, was

02:48PM

24

positive, notwithstanding the install rate.

02:48PM

25

And then the Move installs were substantially

1

J. EDWARDS

02:48PM 2 **better. It was just a pure move in.**

02:48PM 3 Q. Well, you would agree that the
02:48PM 4 2.6% install rate on the CBS inauguration
02:48PM 5 site that Mr. Smith describes here was a poor
02:48PM 6 experience, wouldn't you?

02:48PM 7 A. I would suggest that it was poor,
02:48PM 8 yes, from the standpoint of trying to
02:49PM 9 leverage Silverlight, which had all kinds of
02:49PM 10 problems with our technology. Fundamentally,
02:49PM 11 the problem was with Microsoft and not with
02:49PM 12 our technology. After all, we had millions
02:49PM 13 of installs. It wasn't our technology that
02:49PM 14 was at risk, that was the problem here. It
02:49PM 15 was doing it under Microsoft's way of doing
02:49PM 16 it and Silverlight that was the challenge.
02:49PM 17 It was a Silverlight problem.

02:49PM 18 Q. And -- but it was a problem for
02:49PM 19 Move's ability to work in conjunction with
02:49PM 20 Microsoft, correct?

02:49PM 21 MR. DHANANI: Objection; vague.

02:50PM 22 A. I don't think it was any type of
02:50PM 23 permanent problem with Microsoft. I think it
02:50PM 24 was a normal technical snafu that we would
02:50PM 25 get around with the additional amount of

1

J. EDWARDS

02:50PM

2

time.

02:50PM

3

Q. Was the problem with installing

02:50PM

4

Move plus Silverlight ever fixed?

02:50PM

5

A. I don't recall.

02:50PM

6

Q. In paragraph 3 of Mr. Smith's

02:50PM

7

email to you here in Exhibit 22, he also

02:50PM

8

says, "We should also pursue" Microsoft "with

02:50PM

9

Intellectual property patents at the right

02:50PM

10

time."

02:50PM

11

Do you recall discussions with

02:50PM

12

Mr. Smith or others at Move Networks about

02:50PM

13

pursuing Microsoft with intellectual property

02:50PM

14

patents?

02:50PM

15

MR. DHANANI: Please don't

02:50PM

16

disclose those outside of

02:50PM

17

conversations with attorneys.

02:51PM

18

A. No.

02:51PM

19

Q. Let me show you what was marked as

02:51PM

20

Exhibit 23 at the Smith deposition.

02:51PM

21

(Whereupon, Exhibit 23 was

02:51PM

22

previously marked at a prior

02:52PM

23

deposition.)

02:52PM

24

Q. You should see it now, sir.

02:52PM

25

A. Yes, thank you.

1

J. EDWARDS

02:52PM 2 Q. So Exhibit 23 is an email from
02:52PM 3 Chris Carper at Microsoft to you and
02:52PM 4 Mr. Smith at Move dated February 23, 2009,
02:52PM 5 correct?

02:52PM 6 A. Yeah.

02:52PM 7 Q. And this is Mr. Carper giving you
02:52PM 8 a heads up that Microsoft would be announcing
02:52PM 9 its Smooth Streaming technology, correct?

02:52PM 10 A. Yes.

02:52PM 11 Q. And this is the announcement that
02:52PM 12 you said caught you off guard?

02:52PM 13 A. Yes.

02:53PM 14 Q. Did you have discussions with
02:53PM 15 members of the Move Board of Directors about
02:53PM 16 Microsoft's Smooth Streaming announcement?

02:53PM 17 A. Yes.

02:53PM 18 Q. Who did you discuss it with?

02:53PM 19 A. The board. All of them. It
02:53PM 20 was --

02:53PM 21 Q. What was --

02:53PM 22 A. It was brought up at the start of
02:53PM 23 that board meeting.

02:53PM 24 Q. And what was the substance of that
02:53PM 25 discussion?

1

J. EDWARDS

02:53PM 2

MR. DHANANI: John, I'll just

02:53PM 3

caution, I don't believe there is any

02:53PM 4

attorney-client communication there on

02:53PM 5

the board meeting, but if there is, we

02:53PM 6

can discuss separately, but you can

02:53PM 7

answer that question.

02:53PM 8

A. So I don't have a lot of detail.

02:53PM 9

It's just been too long ago. But I do

02:53PM 10

remember bringing it up to the board that we

02:53PM 11

were in the strategic relationship with

02:53PM 12

Microsoft, but we were seeking to expand our

02:54PM 13

market by allowing them to imbed our

02:54PM 14

streaming capability inside of their

02:54PM 15

technology. And that would be --

02:54PM 16

THE COURT REPORTER: I'm sorry.

02:54PM 17

That would be a?

02:54PM 18

A. The level that we would have

02:54PM 19

had -- a high level. Just general

02:54PM 20

information.

02:54PM 21

Q. Well, Microsoft's Smooth Streaming

02:54PM 22

was not something in conjunction with

02:54PM 23

Move Networks, was it?

02:54PM 24

A. Well, no, but we would have said

02:54PM 25

there would have been this relationship we

108

1

J. EDWARDS

02:54PM

2

are moving forward with Microsoft. Now

02:54PM

3

there's this announcement. And that's it. I

02:54PM

4

mean, generally, this announcement, we don't

02:54PM

5

know what it means yet because we didn't.

02:54PM

6

Q. Well, didn't Microsoft's Smooth

02:54PM

7

Streaming technology of its own mean that it

02:54PM

8

would no longer be needing Move Networks;

02:54PM

9

technology?

02:54PM

10

A. I don't know the answer to that

02:55PM

11

question.

02:55PM

12

Q. Was there any discussion at

02:55PM

13

Move Networks about whether Microsoft's

02:55PM

14

announcement of Smooth Streaming meant that

02:55PM

15

Microsoft would not longer be needing, in the

02:55PM

16

short or long run, Move Networks; technology?

02:55PM

17

A. Don't recall.

02:55PM

18

Q. You recall that Netflix chose

02:55PM

19

Microsoft to stream movies and television for

02:55PM

20

Netflix?

02:55PM

21

A. I was aware that Netflix used

02:55PM

22

Microsoft, yeah.

02:55PM

23

Q. And was that -- was the

02:55PM

24

opportunity to do streaming business with

02:55PM

25

Netflix something that Move Networks

1

J. EDWARDS

02:55PM

2

attempted to achieve?

02:55PM

3

A. Yes.

02:56PM

4

Q. And so what was the effect of

02:56PM

5

Netflix's choosing Microsoft rather than

02:56PM

6

Move Networks?

02:56PM

7

A. Well, at the time they chose

02:56PM

8

Microsoft, it wasn't, I don't think, a

02:56PM

9

juxtapose because we didn't talk to them yet.

02:56PM

10

They were well down the path with Microsoft.

02:56PM

11

Technologies, generally speaking. And when

02:56PM

12

we presented to them, their response was

02:56PM

13

typically, like others, this is great, this

02:56PM

14

is better, but we are wound up with

02:56PM

15

investments and other things for Microsoft,

02:56PM

16

investments and time, energy. I don't

02:56PM

17

remember all of what the relationship was

02:56PM

18

like with Microsoft. It's been too long.

02:56PM

19

Q. So when did you have these

02:56PM

20

discussions with Netflix?

02:56PM

21

A. So with every one of these media

02:56PM

22

companies, we began approaching them in 2006

02:56PM

23

and 2007. And I don't recall a specific

02:56PM

24

timeframe of the Netflix meetings. I just

02:56PM

25

recall that they used Microsoft and we

110

1

J. EDWARDS

02:57PM

2

continued to try to speak with them from time

02:57PM

3

to time.

02:57PM

4

Q. But Move Networks was unable to do

02:57PM

5

business with Netflix because they were

02:57PM

6

committed to Microsoft; is that correct?

02:57PM

7

MR. DHANANI: Objection; vague,

02:57PM

8

mischaracterizes.

02:57PM

9

A. I think it isn't a fact that they

02:57PM

10

are unable to. It is simply that, while they

02:57PM

11

recognize the value that we provided, which

02:57PM

12

was better, and they struggled because their

02:57PM

13

implementation at the time focused on an

02:57PM

14

alternate approach, and so it would take some

02:57PM

15

time for them to be able to convert to a new

02:57PM

16

approach at a systems level, not at a

02:57PM

17

protocol and the wire level. They could see

02:57PM

18

that was better.

02:58PM

19

Q. Who is The Horn Group?

02:58PM

20

A. Is that in that document?

02:58PM

21

Q. No.

02:58PM

22

A. Oh. I don't know.

02:58PM

23

Q. Let me show you what was marked as

02:58PM

24

the Smith deposition as Exhibit 26.

02:58PM

25

(Whereupon, Exhibit 26 was

111

1

J. EDWARDS

02:58PM 2

previously marked at a prior

02:58PM 3

deposition.)

02:58PM 4

Q. This is an email from Mary Kay

02:59PM 5

Crocker to The Horn Group team and others,

02:59PM 6

including yourself, Mr. Edwards, dated

02:59PM 7

March 17, 2009.

02:59PM 8

A. So it's just that one little

02:59PM 9

paragraph or page, one page?

02:59PM 10

Q. That's all we have, yes.

02:59PM 11

A. I don't need to scroll any more

02:59PM 12

than that.

02:59PM 13

I'm ready. What's your question?

02:59PM 14

Q. Well, my first question is, does

02:59PM 15

this email, this exhibit, Smith 26, refresh

03:00PM 16

your recollection at all as to who The Horn

03:00PM 17

Group team was?

03:00PM 18

A. No.

03:00PM 19

Q. Do you recall this announcement by

03:00PM 20

Akamai that it was beginning to use

03:00PM 21

Microsoft's Smooth Stream technology?

03:00PM 22

A. No.

03:00PM 23

Q. Did Akamai's announcement that it

03:00PM 24

was using Microsoft's Smooth Stream

03:00PM 25

technology have an impact or play a role in

112

1

J. EDWARDS

03:00PM

2

Move Networks' decision in the spring of 2009

03:00PM

3

to change direction?

03:00PM

4

A. I don't think so. Akamai used

03:00PM

5

every technology. That's the nature of their

03:00PM

6

business. They don't use one thing. Their

03:01PM

7

intent is to be an aggregator of multiple

03:01PM

8

products and services. So they could use us.

03:01PM

9

They could use Microsoft. I'm sure they used

03:01PM

10

RealPlayer. I'm sure they used lots of

03:01PM

11

stuff, Fox included. I mean, I think that

03:01PM

12

these companies provide a horizontal caching

03:01PM

13

service. So I don't think that this would

03:01PM

14

have stood out to me to be a reason to change

03:01PM

15

strategies.

03:01PM

16

Q. Did Move Networks do business with

03:01PM

17

Akamai?

03:01PM

18

A. Yeah.

03:01PM

19

Q. What business did you have with

03:01PM

20

Akamai?

03:01PM

21

A. CDN.

03:01PM

22

Q. Explain what that means, please.

03:01PM

23

A. Content distribution network.

03:01PM

24

That's their core product, being able to be

03:01PM

25

brought -- a variety, LimeWire, Akamai,

113

1

J. EDWARDS

03:01PM

2

you've got a variety of companies that

03:01PM

3

Microsoft would provide a content

03:01PM

4

distributions network. And we utilized those

03:01PM

5

technologies. That's what's beautiful about

03:02PM

6

it. You can just take them off the shelf and

03:02PM

7

use them without any special setup or without

03:02PM

8

any special agreements, because they just

03:02PM

9

work.

03:02PM

10

Q. So --

03:02PM

11

A. If you look at that last

03:02PM

12

paragraph, "Microsoft's Smoothstream is a

03:02PM

13

server-based solution that is an extension of

03:02PM

14

their Windows Media product line."

03:02PM

15

That phrase right there would say

03:02PM

16

they're not going to be very good. They're

03:02PM

17

not going to be like us. And so, a very

03:02PM

18

different approach to streaming.

03:02PM

19

Q. So, Mr. Edwards, help me

03:02PM

20

understand this. What was Move Networks'

03:02PM

21

business plan or business strategy in terms

03:02PM

22

of how it was going to earn revenues from its

03:02PM

23

technology?

03:02PM

24

A. We earned revenues by both

03:03PM

25

approaching large media companies and people

1

J. EDWARDS

03:03PM 2 **streaming television and movies and events,**
03:03PM 3 **and they paid us to stream their movies and**
03:03PM 4 **television and events. So it would not have**
03:03PM 5 **been at the layer of Akamai. Akamai would**
03:03PM 6 **have been at the layer that lots of people**
03:03PM 7 **have used in order to store and carry traffic**
03:03PM 8 **in the Internet. It's that -- kind of a**
03:03PM 9 **component of the Internet. It would be like**
03:03PM 10 **saying, what do Cisco routers provide? And**
03:03PM 11 **so we are making it at a much higher level**
03:03PM 12 **based upon delivering a full streaming**
03:03PM 13 **service.**

03:03PM 14 Q. So how did you charge for your
03:03PM 15 services?

03:03PM 16 A. So there is variety of different
03:03PM 17 ways to charge. We charged a price to bid.
03:03PM 18 We charged an event price. We charged -- it
03:03PM 19 really depended upon the engagement and --
03:04PM 20 but -- so that would have been the focus.

03:04PM 21 Q. How did you determine which
03:04PM 22 approach to use for a particular engagement?

03:04PM 23 A. Customer need.

03:04PM 24 Q. And how would the customer need
03:04PM 25 determine how you would structure a charge?

1

J. EDWARDS

03:04PM

2

A. So at the time, customers wanted

03:04PM

3

their users to watch content longer in higher

03:04PM

4

quality. They wanted it to start faster.

03:04PM

5

They wanted it to not have buffering events.

03:04PM

6

They wanted it to generally breathe with the

03:04PM

7

Internet, if I could use that term, meaning

03:04PM

8

if the connectivity and the variables

03:04PM

9

associated with connectivity change and are

03:04PM

10

different from a moment to moment, they

03:04PM

11

wanted it to act and feel like they were

03:05PM

12

watching traditional high def television.

03:05PM

13

That's the need.

03:05PM

14

And so we came together with them

03:05PM

15

and helped them price and deliver solutions

03:05PM

16

that met that need. And we met that need for

03:05PM

17

them. And so that -- that's the way.

03:05PM

18

And we met it because of the way

03:05PM

19

that the protocol worked. We met it because

03:05PM

20

of the way that the technology came together

03:05PM

21

for them. The low cost of operation relative

03:05PM

22

to anything else. The low cost of streaming

03:05PM

23

relative to anything else. Because it was

03:05PM

24

leveraging general Internet dynamics versus

03:05PM

25

proprietary server-based solutions where you

1

J. EDWARDS

03:05PM 2 **had to buy independent servers, independent**
03:05PM 3 **devices to do one type of streaming. So**
03:05PM 4 **there was no fungibility or operational**
03:05PM 5 **leverage with respect to the streaming**
03:05PM 6 **environment. But with ours, there was.**

03:05PM 7 **We had the operational leverage of**
03:05PM 8 **the Internet generally that had the ability**
03:05PM 9 **to do what people do today, which is, you**
03:06PM 10 **know, plug a device onto the WiFi and get**
03:06PM 11 **streaming to go to it generally, without**
03:06PM 12 **having to have particular things imbedded or**
03:06PM 13 **dealt with. With stuff like Smooth Stream or**
03:06PM 14 **RealPlayer or Microsoft or Flash media, they**
03:06PM 15 **all required specialized equipment and setup**
03:06PM 16 **and services. And so they were like a line**
03:06PM 17 **of business. At first we said, look, we**
03:06PM 18 **treat it like any other data type.**

03:06PM 19 **Q. Didn't --**

03:06PM 20 **A. It had never been done before.**

03:06PM 21 **Q. Didn't your technology require**
03:06PM 22 **specialized encoding to encode the content**
03:06PM 23 **into the particular streams and streamlets**
03:06PM 24 **that you needed?**

03:06PM 25 **A. It required --**

1

J. EDWARDS

03:06PM 2

MR. DHANANI: Objection.

03:06PM 3

A. -- a specialized approach, but

03:06PM 4

that was all baked into the solution. Nobody

03:06PM 5

had to go off and do anything different.

03:06PM 6

Rather than they just used the browsing

03:07PM 7

technology like it was intended, which they

03:07PM 8

could stream it over HTP, they could leverage

03:07PM 9

Cisco routers without even knowing about it,

03:07PM 10

they could leverage Akamai without even

03:07PM 11

knowing about it. There wasn't intimate

03:07PM 12

knowledge needed of those systems for it to

03:07PM 13

work as a general purpose capability.

03:07PM 14

Whereas, with these other solutions, you

03:07PM 15

would have to have that. And so the fact

03:07PM 16

that Silverlight or Smooth Stream doesn't

03:07PM 17

work is not a surprise. They come from a

03:07PM 18

different orientation.

03:07PM 19

Q. When you say Smooth Stream or

03:07PM 20

Silverlight doesn't work, Smooth Stream and

03:07PM 21

Silverlight are different aspects of

03:07PM 22

Microsoft's offerings, correct?

03:07PM 23

A. Yeah, I'm just giving you two of

03:07PM 24

Microsoft's offerings that don't work all

03:07PM 25

that well. Didn't work as well as ours. And

1

J. EDWARDS

03:07PM 2 **I could put the real media in the -- I could**
03:07PM 3 **put the media box in there, too, the**
03:07PM 4 **Microsoft Media. I mean, they all did not,**
03:07PM 5 **at the time, function and do anything like**
03:07PM 6 **what we were doing.**

03:07PM 7 **Now, Smooth Stream started to get**
03:08PM 8 **there, in my opinion, because of what we**
03:08PM 9 **provided to them under non-disclosure and**
03:08PM 10 **under briefings. And them going through.**
03:08PM 11 **But I think that that's why I said the better**
03:08PM 12 **focus point on that is probably Greg, because**
03:08PM 13 **he managed that relationship. But that would**
03:08PM 14 **be my initial, just, gut take.**

03:08PM 15 **MR. DHANANI: John, just to note**
03:08PM 16 **to slow down just a little bit for the**
03:08PM 17 **court reporter who is taking**
03:08PM 18 **everything down.**

03:08PM 19 **THE WITNESS: Oh, I'm sorry.**
03:08PM 20 **Sorry. You got me excited. Rebecca,**
03:08PM 21 **my apologies.**

03:08PM 22 **MR. DHANANI: Sorry about that.**
03:08PM 23 **BY MR. BARQUIST:**

03:08PM 24 **Q. Was the Cisco an investor in**
03:08PM 25 **Move Networks?**

1

J. EDWARDS

03:08PM 2

A. Yes.

03:08PM 3

Q. What was the nature of your

03:08PM 4

business with Cisco aside from simply an

03:08PM 5

investment, if anything?

03:08PM 6

A. So Cisco's approach at the time

03:08PM 7

was how can we tune our routers, give

03:09PM 8

prioritized -- prioritization and other

03:09PM 9

things off the box that would support

03:09PM 10

technologies like we were doing. Which would

03:09PM 11

primarily be the extension of a payload. And

03:09PM 12

so they were super excited about what we were

03:09PM 13

doing, because we meant television HD on the

03:09PM 14

Internet across their routers.

03:09PM 15

Q. So did you do business with Cisco?

03:09PM 16

A. Well, Cisco would have been an

03:09PM 17

indirect relationship. Yes, we bought Cisco

03:09PM 18

routers. But I think the bigger issue is

03:09PM 19

everybody did. But I think that Cisco would

03:09PM 20

have wanted to foster technologies like this

03:09PM 21

because of its impact, generally, on Internet

03:09PM 22

television. The more of that there is, the

03:09PM 23

more there is a demand for Cisco routers. So

03:09PM 24

Cisco benefitted by our being there.

03:09PM 25

Q. So you didn't do any business

120

1

J. EDWARDS

03:10PM

2

directly with Cisco?

03:10PM

3

A. We bought their routers. We were

03:10PM

4

a customer.

03:10PM

5

Q. Was Comcast an investor in

03:10PM

6

Move Networks?

03:10PM

7

A. Yes.

03:10PM

8

Q. What business, if any, did you do

03:10PM

9

with Comcast aside from that investment?

03:10PM

10

A. I don't recall the exact customers

03:10PM

11

that we approached together. I don't recall.

03:10PM

12

Q. Was Disney an investor in

03:10PM

13

Move Networks?

03:10PM

14

A. Steamboat Ventures was. Not

03:10PM

15

Disney per se, but Steamboat Ventures was the

03:10PM

16

investment arm of that entity.

03:10PM

17

Q. Okay. Did you do any business

03:10PM

18

with Disney?

03:10PM

19

A. Well, yes, Disney, ABC. We

03:11PM

20

streamed their content.

03:11PM

21

Q. With Disney or ABC?

03:11PM

22

A. ABC and some Disney. We did

03:11PM

23

Disney -- I forget the properties we did with

03:11PM

24

Disney, but there was work with Disney.

03:11PM

25

Q. Was Televisa an investor?

1

J. EDWARDS

03:11PM 2

A. Yes.

03:11PM 3

Q. What did they investor?

03:11PM 4

A. I don't remember the amount, but

03:11PM 5

Televisa was one of those companies that was

03:11PM 6

blown away by our technology and leveraged it

03:11PM 7

throughout their system. And it was a young

03:11PM 8

relationship at about the time I was leaving.

03:11PM 9

We were just getting going on it. But good

03:11PM 10

company. Provided us a good extension to

03:11PM 11

international territories.

03:11PM 12

Q. And so what business exactly did

03:11PM 13

you do with Televisa?

03:11PM 14

A. Streamed their video, their

03:12PM 15

television.

03:12PM 16

Q. Mr. Edwards, do you own any shares

03:12PM 17

in DISH or EchoStar?

03:12PM 18

A. No.

03:12PM 19

Q. I'm near the end of the questions

03:12PM 20

I have for you. Let me just ask you, going

03:12PM 21

back to the beginning, about your current

03:12PM 22

position. What's the company that you're

03:12PM 23

currently CEO of?

03:12PM 24

A. Summit Brain and Spine.

03:12PM 25

Q. And what business are they in?

1

J. EDWARDS

03:12PM

2

A. Neurosurgery. My two sons, my two

03:12PM

3

older sons, are surgeons. And I have

03:12PM

4

retired. And they said, dad, come help us

03:13PM

5

build a surgery practice. So I got elected

03:13PM

6

two years ago and have built up a really

03:13PM

7

strong, we are the largest neurosurgical of

03:13PM

8

the neurosurgical practice in -- probably in

03:13PM

9

the state of Utah. Although I haven't taken

03:13PM

10

specific measurements, but definitely in our

03:13PM

11

area of the world, is standard.

03:13PM

12

MR. BARQUIST: All right. I

03:13PM

13

think that's all I have for you today,

03:13PM

14

Mr. Edwards. I think one or another

03:13PM

15

of the other lawyers may have some

03:13PM

16

questions for you as well.

03:13PM

17

THE WITNESS: Okay.

03:13PM

18

MS. WHITCHER: This is Emily

03:13PM

19

Whitcher for Peloton. I will have

03:13PM

20

some questions, but it's -- I know

03:13PM

21

about a little after 1:00 your time.

03:13PM

22

Do you want to take a break for lunch

03:13PM

23

now?

03:13PM

24

THE WITNESS: I don't need it.

03:13PM

25

But if you guys want something --

1

J. EDWARDS

03:14PM 2

MS. WHITCHER: Okay. Let's do a

03:14PM 3

ten-minute break now and then we can

03:14PM 4

come back and hopefully wrap up.

03:14PM 5

THE VIDEOGRAPHER: The time is

03:14PM 6

1:14 p.m., and we are going off the

03:14PM 7

record.

03:26PM 8

(Whereupon, a recess was held.)

03:26PM 9

THE VIDEOGRAPHER: The time is

03:26PM 10

1:26 p.m., and we are back on the

03:26PM 11

record.

03:26PM 12

EXAMINATION BY

03:26PM 13

MS. WHITCHER:

03:26PM 14

Q. Hi, Mr. Edwards. So my name's

03:26PM 15

Emily and I'm going to be asking some

03:26PM 16

questions now on behalf of Peloton, one of

03:26PM 17

the other Respondents. And I apologize if we

03:26PM 18

go over something again that we might have

03:26PM 19

already talked about, but I want to go back

03:26PM 20

to a couple of things that we had -- you had

03:26PM 21

testified to earlier.

03:27PM 22

Just to get started, I was

03:27PM 23

wondering how familiar would you say you are

03:27PM 24

generally with the Move Networks' adaptive

03:27PM 25

bit rate technology?

1

J. EDWARDS

03:27PM 2

A. My knowledge of it --

03:27PM 3

THE WITNESS: Did somebody else

03:27PM 4

ask a question?

03:27PM 5

Q. Maybe someone wasn't on mute.

03:27PM 6

A. Okay. I think I'm aware of it

03:27PM 7

conceptually, what its features and benefits

03:27PM 8

are.

03:27PM 9

Q. And what would you say its key

03:27PM 10

features are?

03:27PM 11

A. Its ability to stream high quality

03:27PM 12

without buffering. Its ability to start

03:27PM 13

quickly. Its ability to adaptively shift

03:27PM 14

based upon conditions in the Internet

03:28PM 15

generally. That would be it. Those are all

03:28PM 16

the points.

03:28PM 17

Q. So in terms of how the technology

03:28PM 18

actually is functioning, how familiar are you

03:28PM 19

with how the technology is implemented?

03:28PM 20

A. Well, again, I'm familiar with it

03:28PM 21

from the standpoint that it's client-side

03:28PM 22

intelligence, and that its algorithm will

03:28PM 23

adapt to conditions in the Internet. But I'm

03:28PM 24

much more familiar with how it functions to

03:29PM 25

those who want to stream, in other words, why

1

J. EDWARDS

03:29PM

2

customers want it.

03:29PM

3

Q. So, do you understand what a

03:29PM

4

streamlet is?

03:29PM

5

A. Yes.

03:29PM

6

Q. And what's your understanding of a

03:29PM

7

streamlet?

03:29PM

8

MR. DHANANI: Objection. I'm

03:29PM

9

just going to caution you not to

03:29PM

10

reveal any attorney-client

03:29PM

11

communication and object as to vague

03:29PM

12

and as to seeking a legal conclusion.

03:29PM

13

Go ahead.

03:29PM

14

A. A streamlet is a -- an element of

03:29PM

15

the result that -- that will be reassembled

03:29PM

16

to make the video on the receiving side. So

03:29PM

17

all telecommunications, all Internet traffic

03:30PM

18

breaks things down into elements that are

03:30PM

19

both sent, based upon, and then received.

03:30PM

20

And a streamlet is doing that for video.

03:30PM

21

Q. And when you say something is

03:30PM

22

adaptive bitrate, what does adaptive bitrate

03:30PM

23

mean?

03:30PM

24

MR. DHANANI: Objection; vague.

03:30PM

25

Go ahead.

1

J. EDWARDS

03:30PM

2

A. The value is that it will adjust

03:30PM

3

to conditions in the Internet such that the

03:30PM

4

best possible quality is maintained.

03:30PM

5

Q. Do you know what a virtual

03:30PM

6

timeline is?

03:30PM

7

A. A what?

03:30PM

8

Q. Virtual timeline.

03:30PM

9

A. Virtual timeline are you saying?

03:31PM

10

Q. Um-hum.

03:31PM

11

A. I don't recognize that term.

03:31PM

12

Q. You had testified earlier about a

03:31PM

13

use of Move's streaming technology that was

03:31PM

14

associated with the Mormon church. When was

03:31PM

15

that use that you were referring to?

03:31PM

16

A. It's the Church of Jesus Christ of

03:31PM

17

Latter-day Saints, just to be clear. And it

03:31PM

18

was in 2005, I believe.

03:31PM

19

Q. When in 2005?

03:31PM

20

A. I think October. It would have

03:32PM

21

been April or October.

03:32PM

22

Q. Can you think of any other

03:32PM

23

instance before this particular event that

03:32PM

24

you're thinking of where Move technology was

03:32PM

25

used publically?

1

J. EDWARDS

03:32PM

2

A. I can't. I don't -- nothing comes

03:32PM

3

to mind.

03:32PM

4

Q. And you said it was either April

03:32PM

5

or October. Is that because you know that it

03:33PM

6

was at a general conference and those occur

03:33PM

7

in those months?

03:33PM

8

A. Yep. The last 150 years or

03:33PM

9

200 years, every April, every October like

03:33PM

10

clockwork, even with COVID.

03:33PM

11

Q. So when Move technologies was

03:33PM

12

viewed at the general conference, do you

03:33PM

13

know, was that using live streaming version

03:33PM

14

of the product?

03:33PM

15

A. It was live.

03:33PM

16

MR. DHANANI: Objection.

03:33PM

17

Objection; form.

03:33PM

18

Go ahead.

03:33PM

19

A. So it's both, really, because it's

03:33PM

20

live, but there are then replays of it that

03:33PM

21

continue to get streamed, which would just be

03:33PM

22

our repository of the information we

03:34PM

23

streamed. So it's both.

03:34PM

24

Q. And how involved were you in the

03:34PM

25

planning of this streaming of the general

1

J. EDWARDS

03:34PM

2

conference in 2005?

03:34PM

3

A. At a planning level, very

03:34PM

4

involved. At implementation, not so much,

03:34PM

5

because our technical guys would have done

03:34PM

6

that.

03:34PM

7

Q. And this event was in

03:34PM

8

collaboration with BYUtv; is that right?

03:34PM

9

A. That's correct, which is a wholly

03:34PM

10

owned property of the LDS church, the Church

03:34PM

11

of Jesus Christ of Latter-day Saints.

03:35PM

12

Q. Well, how did this come to be?

03:35PM

13

Did you approach BYUtv about doing the live

03:35PM

14

stream?

03:35PM

15

A. Yes, I did.

03:35PM

16

Q. And what did you discuss with

03:35PM

17

them?

03:35PM

18

A. We think we can do a better job of

03:35PM

19

streaming and we would like to have your

03:35PM

20

permission to do so. And would you work with

03:35PM

21

us to put together -- we will provide the

03:35PM

22

technology if you give us access. We need

03:35PM

23

access to your post, your live stream. We

03:35PM

24

took the live stream and broadcast it, with I

03:35PM

25

think an initial four-second delay, maybe a

1

J. EDWARDS

03:35PM 2 **two-second delay. And then we ramped it up**
03:35PM 3 **to eight-second delay, which was pretty**
03:35PM 4 **common. But that, we would consider live.**

03:36PM 5 Q. Was this the first time you had
03:36PM 6 approached someone about doing this type of
03:36PM 7 live streaming event?

03:36PM 8 A. I don't know if it was the first
03:36PM 9 time, but it was the first installation or
03:36PM 10 the first use of it that I recall. But if I
03:36PM 11 had my old notebooks and all that, I could
03:36PM 12 maybe go back and recall more. It's just
03:36PM 13 been a long time.

03:36PM 14 Q. And do you still have those
03:36PM 15 notebooks?

03:36PM 16 A. No.

03:36PM 17 Q. What happened to them?

03:36PM 18 A. I have no idea. I moved on.

03:36PM 19 Q. Did you leave them with
03:36PM 20 Move Networks when you left?

03:36PM 21 MR. DHANANI: Objection; calls
03:36PM 22 for speculation.

03:36PM 23 A. I just don't know. And that's the
03:36PM 24 truth for months. I don't know what's -- all
03:36PM 25 of the notes from that time, the email, all

1

J. EDWARDS

03:37PM 2 **that's gone. I don't have any access. I do**
03:37PM 3 **not know.**

03:37PM 4 Q. Who at BTU were you speaking to
03:37PM 5 primarily about the live stream?

03:37PM 6 A. So it would have been the general
03:37PM 7 manager. And that would have been -- you
03:37PM 8 will ask the name and I don't recall the name
03:37PM 9 at the time. I'm sure we could go back and
03:37PM 10 look that up. It's probably part of the
03:37PM 11 history.

03:37PM 12 Q. So it would be the general manager
03:37PM 13 of BYUtv?

03:37PM 14 A. TV, um-hum. Whoever was in that
03:37PM 15 role then. And probably the operations
03:37PM 16 manager. This wasn't in and out for us. It
03:37PM 17 was, can we come in and get access, and if
03:37PM 18 so, we'll stream and see how it goes.

03:38PM 19 Q. So if it weren't for
03:38PM 20 Move Networks, BYUtv was already doing a
03:38PM 21 different version of live streaming?

03:38PM 22 A. No. They had tried to do some
03:38PM 23 streaming and, really, other than just the
03:38PM 24 fact that they are a television broadcaster,
03:38PM 25 they hadn't succeeded at their web-based

131

1

J. EDWARDS

03:38PM 2 streaming. And so they were backing away
03:38PM 3 from it. And as a member of the church, I
03:38PM 4 wanted to have it. And so it was an easy one
03:38PM 5 for us to go say, hey, I've got an idea for
03:38PM 6 you, let's try this out. We were showing
03:38PM 7 really good laboratory results on this stuff
03:38PM 8 and showing really good demos, but we'd not
03:38PM 9 taken on, as I recall it, a significant
03:38PM 10 event. This is a worldwide event. This is a
03:38PM 11 stream that's translated into 170 languages.
03:38PM 12 It goes all around the world. I mean, this
03:38PM 13 is a big deal for -- as far as streaming
03:39PM 14 goes. And so it could serve us well if it
03:39PM 15 went well. And it did.

03:39PM 16 Q. What do you mean by "serve us
03:39PM 17 well"? Who is "us"?

03:39PM 18 A. So much to learn by handling
03:39PM 19 something live versus something in a lab,
03:39PM 20 because even if you do things with the
03:39PM 21 technology to simulate live traffic, it's not
03:39PM 22 live traffic because the whole point here is
03:39PM 23 that the variables that exist in the
03:39PM 24 Internet's server-side, a protocol, client
03:39PM 25 side, everything, there's just a lot of

J. EDWARDS

03:39PM 1
03:39PM 2 **variables to tune to get right. And so we**
03:39PM 3 **believe that our approach would prove**
03:39PM 4 **superior, but we needed experimentation.**

03:39PM 5 THE COURT REPORTER:

03:39PM 6 Mr. Dhanani, can you go on mute when
03:39PM 7 you are not making objections? Thank
03:39PM 8 you.

03:39PM 9 Please continue.

03:39PM 10 BY MS. WHITCHER:

03:39PM 11 Q. Would you say that this was -- or
03:40PM 12 would you say this was a significant event in
03:40PM 13 Move Networks' history, this live stream?

03:40PM 14 A. It was an event. I believe it was
03:40PM 15 an important event. Significant, I don't
03:40PM 16 know. It was an important event. It
03:40PM 17 provided us good feedback on where we were
03:40PM 18 at.

03:40PM 19 Q. What feedback did you get?

03:40PM 20 A. That we rock and we're good and we
03:40PM 21 can handle this kind of high quality
03:40PM 22 streaming without buffering with lots of
03:40PM 23 clients in an international audience.

03:40PM 24 Q. Was Move paid anything for doing
03:40PM 25 the broadcast?

133

1

J. EDWARDS

03:40PM 2

A. No. They tried. Drew and I

03:40PM 3

elected to take it as a donation.

03:41PM 4

Q. What do you mean, "take it as a

03:41PM 5

donation"?

03:41PM 6

A. We were members of the church. We

03:41PM 7

wanted to give a donation to our church.

03:41PM 8

They were paying at the time over \$2 a gig to

03:41PM 9

stream content. It was very expensive back

03:41PM 10

then to Akamai and Line Mike and others. And

03:41PM 11

so for us to provide them two times two times

03:41PM 12

two hours worth of video and really

03:41PM 13

contribute, that was a big deal to them.

03:41PM 14

Q. When you say two times two

03:41PM 15

times --

03:41PM 16

A. So two sessions --

03:41PM 17

Q. How many hours?

03:41PM 18

A. So two hours a day, two sessions a

03:41PM 19

day, for two days. So effectively you've got

03:41PM 20

four hours a day over two, so two times two

03:41PM 21

times two is eight still. And that's how.

03:41PM 22

It's a big deal, because if you break that

03:41PM 23

down, you're dealing with approximately a

03:42PM 24

half a gig, at least, per hour, maybe more.

03:42PM 25

Roughly speaking. So you're talking, you

1

J. EDWARDS

03:42PM

2

know, significant dollars particularly when

03:42PM

3

you're going out to hit tens of thousands of

03:42PM

4

users.

03:42PM

5

Q. So there would have been a total

03:42PM

6

of six sessions?

03:42PM

7

A. So, for two days, we have two

03:42PM

8

sessions each day for two hours. So there is

03:42PM

9

four sessions, but there is eight hours.

03:42PM

10

Q. Got it.

03:42PM

11

MR. DHANANI: John, just a small

03:42PM

12

request to wait until the question is

03:42PM

13

finished so the court reporter can

03:42PM

14

take it down. Thank you so much.

03:42PM

15

THE WITNESS: Okay.

03:42PM

16

Q. And when the separate sessions

03:42PM

17

were being streamed, was there any gaps in

03:42PM

18

them or how was the playback between

03:42PM

19

sessions?

03:42PM

20

A. So the playback was good. When

03:43PM

21

you say gaps, would you describe what you

03:43PM

22

mean by that?

03:43PM

23

Q. You just said there were separate

03:43PM

24

sessions. In terms of the live stream, was

03:43PM

25

there any divisions in the stream for each

1

J. EDWARDS

03:43PM

2

session?

03:43PM

3

A. So for example, on Saturday, it

03:43PM

4

would start at 10:00 a.m. and go to noon, and

03:43PM

5

then restart again at 2:00 and go till 4:00.

03:43PM

6

And then on Sunday it would start at

03:43PM

7

10:00 a.m., go till noon, and then start

03:43PM

8

again at 2:00 and go to 4:00. So, yeah,

03:43PM

9

there were breaks in between sessions, but

03:43PM

10

during a session, they would be two hours,

03:43PM

11

approximately, front to back with no breaks.

03:43PM

12

Q. And then would -- you would be

03:43PM

13

able to go back later and rewatch some of the

03:43PM

14

earlier streaming?

03:43PM

15

A. Yes.

03:43PM

16

Q. How quickly was that available, do

03:44PM

17

you remember?

03:44PM

18

A. No. But I would have guessed next

03:44PM

19

day.

03:44PM

20

THE COURT REPORTER: Sorry. You

03:44PM

21

would have guessed?

03:44PM

22

A. Next day.

03:44PM

23

Q. Were viewers able to pause or

03:44PM

24

rewind during the live stream?

03:44PM

25

MR. DHANANI: Objection; vague

1

J. EDWARDS

03:44PM 2

and calls for speculation.

03:44PM 3

A. I don't recall one way or another

03:44PM 4

back then whether that was available.

03:45PM 5

Q. You mentioned earlier that you

03:45PM 6

took the payment you would have received from

03:45PM 7

BYUtv as a donation. Is there any written

03:45PM 8

record of that?

03:45PM 9

MR. DHANANI: Objection;

03:45PM 10

mischaracterizes the prior testimony.

03:45PM 11

A. Not really. The point was we just

03:45PM 12

never charged them.

03:45PM 13

Q. Did you ever put a value to it?

03:45PM 14

MR. DHANANI: Objection; vague,

03:45PM 15

calls for speculation.

03:45PM 16

A. I don't recall putting a value to

03:45PM 17

it.

03:45PM 18

Q. Did they offer you a specific

03:45PM 19

amount of money?

03:45PM 20

MR. DHANANI: Go ahead. You can

03:45PM 21

answer that one.

03:45PM 22

A. In their view, streaming was

03:45PM 23

really expensive, meaning two to \$3 per gig.

03:46PM 24

In our view, we couldn't believe that, how

03:46PM 25

expensive it was for them. So while they

137

1

J. EDWARDS

03:46PM 2 didn't come up and say a specific amount of
03:46PM 3 money, had we offered them anything under a
03:46PM 4 dollar, they would have gladly paid, I think.
03:46PM 5 But we just didn't. Because we intended to
03:46PM 6 offer this as a contribution to our church.
03:46PM 7 It wasn't what we were focused in on. We
03:46PM 8 wanted to learn and we wanted to experience
03:46PM 9 it and see how the technology was working
03:46PM 10 out. So I don't recall specific offering.
03:46PM 11 It could have happened. I just don't recall
03:46PM 12 that.

03:46PM 13 Q. I think you said that they had
03:46PM 14 tried to pay you but you had denied it?

03:46PM 15 A. So, tried in the following way:
03:46PM 16 Are you going to not charge us anything for
03:46PM 17 this? Are you kidding me? We will pay
03:46PM 18 something for this. But not try as in, I
03:47PM 19 have got a document and they tried to hand me
03:47PM 20 money. Just -- it's more of a conversational
03:47PM 21 tone about it, that they couldn't believe
03:47PM 22 that we were just going to offer it up.

03:47PM 23 And after that, as we continued to
03:47PM 24 stream their broadcasts, each time they would
03:47PM 25 say, now, we are willing to pay for this.

1

J. EDWARDS

03:47PM

2

Each time we felt like it was a way for us to

03:47PM

3

contribute.

03:47PM

4

Q. And by "contribute," you mean

03:47PM

5

contribute to the church?

03:47PM

6

A. Donate our offering to them.

03:47PM

7

Q. And as a general practice, do you

03:47PM

8

typically keep accounting records of your

03:47PM

9

donations to the church?

03:47PM

10

A. Yes.

03:47PM

11

MR. DHANANI: Objection;

03:47PM

12

mischaracterizes prior testimony.

03:47PM

13

Go ahead.

03:47PM

14

A. Yes, sure.

03:47PM

15

Q. And would this have been on one of

03:47PM

16

those records?

03:47PM

17

A. No.

03:47PM

18

MR. DHANANI: Objection; calls

03:47PM

19

for speculation.

03:47PM

20

Go ahead.

03:47PM

21

A. No, wouldn't have. This was us

03:47PM

22

not charging them.

03:48PM

23

Q. Did you have a written contract

03:48PM

24

with BYU?

03:48PM

25

A. No.

139

1

J. EDWARDS

03:48PM 2

Q. So everything was just informally

03:48PM 3

organized?

03:48PM 4

A. That's correct.

03:48PM 5

Q. Other than yourself, who else at

03:48PM 6

Move Networks was involved in planning the

03:48PM 7

live broadcast with BYU?

03:48PM 8

A. Drew Major. I'm guessing Greg

03:48PM 9

was, but you know what, I -- it's been

03:48PM 10

awhile.

03:48PM 11

Q. So if someone wanted to view the

03:48PM 12

BYU live broadcast, how would they do so?

03:48PM 13

MR. DHANANI: Objection; calls

03:49PM 14

for speculation and vague.

03:49PM 15

A. They would go to the conference

03:49PM 16

website and click on the link.

03:49PM 17

Q. Where did the link take them?

03:49PM 18

A. To the page that provided

03:49PM 19

television.

03:49PM 20

Q. Are you talking about a page on

03:49PM 21

Move Networks; website?

03:49PM 22

A. On the website generally speaking,

03:49PM 23

but, yeah, probably would have been -- could

03:49PM 24

have been either our website or their landing

03:49PM 25

page. Either would have worked. I'm not

1

J. EDWARDS

03:49PM 2 **sure I recall which landing page we used.**

03:49PM 3 Q. Do you recall if Mark Hurst was
03:49PM 4 involved in planning this BYU broadcast?

03:49PM 5 **A. No.**

03:49PM 6 MR. DHANANI: Objection; calls
03:49PM 7 for speculation.

03:49PM 8 **A. No, I don't.**

03:50PM 9 Q. And you don't remember anyone's
03:50PM 10 names at BYU that was working on this with
03:50PM 11 you?

03:50PM 12 **A. No. It would have been somebody**
03:50PM 13 **in their technical department and their**
03:50PM 14 **general manager, but it's just been too long.**

03:50PM 15 Q. And if you wanted to determine who
03:50PM 16 these people were, do you think you would be
03:50PM 17 able to?

03:50PM 18 MR. DHANANI: Objection; calls
03:50PM 19 for speculation.

03:50PM 20 **A. I don't know.**

03:50PM 21 Q. Would you have been exchanging
03:50PM 22 emails with these individuals?

03:50PM 23 **A. Probably.**

03:50PM 24 Q. Using a Move Networks' email
03:50PM 25 address?

1

J. EDWARDS

03:51PM 2

THE COURT REPORTER: I'm sorry.

03:51PM 3

Could you repeat the answer?

03:51PM 4

A. Could have been XLON or Move.

03:51PM 5

Q. And XLON was Move's name before it

03:51PM 6

changed to Move Networks?

03:51PM 7

A. That's correct.

03:51PM 8

Q. So you could have been using

03:51PM 9

either an XLON or Move email address; is that

03:51PM 10

right?

03:51PM 11

A. That's correct.

03:51PM 12

Q. Other than the general conference,

03:51PM 13

did Move Networks broadcast any other content

03:51PM 14

in collaboration with BYU in this timeframe?

03:52PM 15

A. Nothing comes to mind.

03:52PM 16

Q. Let's take a look at an exhibit.

03:52PM 17

I will drop it in the chat for you. One

03:52PM 18

second. This is Exhibit 63.

03:53PM 19

A. Okay.

03:53PM 20

(Whereupon, Edwards Exhibit 63,

03:53PM 21

Wayback Machine BUY Television website

03:53PM 22

printout was marked for identification

03:57PM 23

as of this date by the Reporter.)

03:53PM 24

Q. Do you have Exhibit 63 open?

03:53PM 25

A. Yes.

142

1

J. EDWARDS

03:53PM 2 Q. Does this look familiar to you at
03:53PM 3 all?

03:53PM 4 A. No. I mean, I recognize BYU
03:53PM 5 Television. I'm not very familiar with this
03:53PM 6 site.

03:53PM 7 Q. Have you heard of the Wayback
03:53PM 8 Machine or Internet Archive?

03:53PM 9 A. Yes.

03:54PM 10 Q. So if you look at the bottom left,
03:54PM 11 you can see there is a web address and it's
03:54PM 12 web.archive.org?

03:54PM 13 A. Okay.

03:54PM 14 Q. And you see how there is numbers
03:54PM 15 following the -- where it says web, it then
03:54PM 16 has 20051001 and then it continues?

03:54PM 17 A. Yeah.

03:54PM 18 Q. So I'll represent to you that the
03:54PM 19 way that the Wayback Machine works is the URL
03:54PM 20 has a date of the web page that's being
03:54PM 21 archived.

03:54PM 22 Does that make sense?

03:54PM 23 A. Um-hum.

03:54PM 24 Q. So it looks like this would have
03:54PM 25 been on October 1st of 2005.

143

1

J. EDWARDS

03:54PM

2

A. Okay.

03:54PM

3

Q. And then looking, you can see the

03:55PM

4

second part, where it says http, it has the

03:55PM

5

buytv.org web URL listed.

03:55PM

6

Do you see that?

03:55PM

7

A. Right. Um-hum.

03:55PM

8

Q. So does this refresh your

03:55PM

9

recollection about what Move software would

03:55PM

10

have been available on the BYUtv website?

03:55PM

11

MR. DHANANI: Objection; asked

03:55PM

12

and answered, vague and speculation.

03:55PM

13

Go ahead.

03:55PM

14

A. No. The only thing I know about

03:55PM

15

that link is, right before the colon, the

03:55PM

16

a-d, it's an open port using standard stuff.

03:55PM

17

It doesn't help me with that page at all.

03:55PM

18

I'm not doubting the page existed, but I just

03:55PM

19

don't recognize it.

03:55PM

20

Q. You don't recall ever --

03:56PM

21

MR. DHANANI: Sorry. What was

03:56PM

22

the question?

03:56PM

23

A. I'm sorry. Did you quit?

03:56PM

24

Q. I said, you don't recall ever

03:56PM

25

seeing this web page before?

1

J. EDWARDS

03:56PM

2

A. Not that specific page, no.

03:56PM

3

Q. So I want to look at a couple more

03:56PM

4

exhibits. We'll probably go ahead and just

03:56PM

5

drop two in at once.

03:56PM

6

A. Okay.

03:57PM

7

Q. I'm going to drop into the chat

03:57PM

8

Exhibit 64 and Exhibit 65.

03:57PM

9

MR. DHANANI: And, Emily, are

03:57PM

10

these exhibits that have previously

03:57PM

11

been provided to us?

03:57PM

12

MS. WHITCHER: No, I'm marking

03:57PM

13

them as exhibits. I'm sorry if that

03:57PM

14

wasn't clear.

03:57PM

15

MR. DHANANI: No, no. I mean in

03:57PM

16

production.

03:57PM

17

Have these ever been produced to

03:57PM

18

us before?

03:57PM

19

MS. WHITCHER: I don't believe

03:57PM

20

so.

03:57PM

21

MR. DHANANI: Not in the

03:57PM

22

contentions or anything like that?

03:57PM

23

MS. WHITCHER: No.

24

MR. DHANANI: Okay. Go ahead.

25

(Whereupon, Edwards Exhibit 64,

1 J. EDWARDS

2 Wayback Machine Move Networks website
3 was marked for identification as of
4 this date by the Reporter.)

5 (Whereupon, Edwards Exhibit 65,
6 Wayback Machine XLON Technologies
7 website was marked for identification
03:57PM 8 as of this date by the Reporter.)

03:57PM 9 Q. Do you have them open?

03:57PM 10 A. I have the -- do you want me to
03:57PM 11 open one first? I've got 64. Let me see if
03:57PM 12 it'll let me open both of them. Yeah, I have
03:57PM 13 them open.

03:58PM 14 Q. So Exhibit 64, can you take a look
03:58PM 15 at that? And you see at the top left where
03:58PM 16 it has a movenetworks.com web address?

03:58PM 17 MR. DHANANI: Okay. I'm just
03:58PM 18 going to have a running objection on
03:58PM 19 documents, because they have not been
03:58PM 20 produced, nor are they referenced
03:58PM 21 anywhere in the contentions.

03:58PM 22 But go ahead, Mr. Edwards, if
03:58PM 23 you know the answer.

03:58PM 24 A. What's the question with regard
03:58PM 25 to, do I see the support@movenetworks.com?

1

J. EDWARDS

03:58PM

2

What are you asking me?

03:58PM

3

Q. Oh, so you're looking at 64,

03:58PM

4

right?

03:58PM

5

A. Um-hum.

03:58PM

6

Q. Okay. So this is another page

03:58PM

7

from the Wayback Machine that we've just been

03:59PM

8

talking about.

03:59PM

9

A. Yeah.

03:59PM

10

Q. If you look at the top left, do

03:59PM

11

you see where the web address is a

03:59PM

12

movenetworks.com web address.

03:59PM

13

Do you see that?

03:59PM

14

A. Oh, yes. Yes. If I scroll up.

03:59PM

15

There you go.

03:59PM

16

Q. Was that Move Networks' web

03:59PM

17

address in 2005?

03:59PM

18

A. Say that again?

03:59PM

19

Q. Was that Move Networks; web

03:59PM

20

address in 2005?

03:59PM

21

MR. DHANANI: I'm just going to

03:59PM

22

object that this document has no

03:59PM

23

indication where it came from.

03:59PM

24

A. So it wouldn't have been our -- I

03:59PM

25

mean, our web address would have been

1

J. EDWARDS

03:59PM

2

movenetworks.com. The /byutv would be a sub

03:59PM

3

address. And I don't know if that's our web

04:00PM

4

address or not, but it would make sense that

04:00PM

5

it could be.

04:00PM

6

Q. Okay. Yeah, it's fine if you

04:00PM

7

don't recall. Just let me know. That's

04:00PM

8

fine.

04:00PM

9

Do you recall making

04:00PM

10

Move Networks' software available on the

04:00PM

11

network's website in 2005?

04:00PM

12

A. I'm sorry. You were breaking up

04:00PM

13

for me right when you said do I recall what?

04:00PM

14

Q. Let me put in my AirPods. One

04:00PM

15

second.

04:00PM

16

A. I don't know whether it is for

04:00PM

17

others, but you're breaking up a lot for me.

04:00PM

18

Q. Is this better now?

04:00PM

19

A. Oh, that's a little better.

04:00PM

20

Q. Great. I'll go back.

04:00PM

21

So I'm wondering if you recall in

04:00PM

22

2005 whether you made Move Networks' software

04:01PM

23

available on its website?

04:01PM

24

MR. DHANANI: Objection;

04:01PM

25

foundation and speculation and vague.

148

1

J. EDWARDS

04:01PM

2

A. So we would not have made our

04:01PM

3

software available. We may have provided the

04:01PM

4

link to stream, but, typically that would

04:01PM

5

have been for a specific event. And so the

04:01PM

6

fact that this says /byutv is indicating that

04:01PM

7

it's not a part of our normal environment.

04:01PM

8

My guess is this would be in the subdomain

04:01PM

9

for this event.

04:01PM

10

But that's a guess. I don't

04:01PM

11

recall these pages. What it does remind me

04:01PM

12

of, though, is the media player technology,

04:01PM

13

they had multiple streaming solutions on

04:02PM

14

their page, which did confuse people.

04:02PM

15

Q. Can you now take a look at

04:02PM

16

Exhibit 65, please.

04:02PM

17

A. 65. Okay.

04:02PM

18

Q. And if you look at the top left,

04:02PM

19

do you see there is a URL that starts with

04:02PM

20

http and then has X-L-O-N --

04:02PM

21

A. XLON.

04:02PM

22

Q. -- H-C-L-D?

04:02PM

23

A. Um-hum.

04:02PM

24

Q. Was this a website maintained by

04:02PM

25

Move Networks in 2005?

1

J. EDWARDS

04:02PM 2

MR. DHANANI: Objection;

04:02PM 3

speculation and vague and foundation.

04:02PM 4

A. Well, I don't know. This looks

04:02PM 5

more like it was supposed to, but it's really

04:03PM 6

hard to tell by this.

04:03PM 7

Q. Can you take a look at the content

04:03PM 8

where it starts "who created this media

04:03PM 9

presentation?" You see where it says, "This

04:03PM 10

media presentation was produced by

04:03PM 11

Move Networks. We specialize in publishing

04:03PM 12

media to the web. You can get more

04:03PM 13

information at www.movenetworks.com."

04:03PM 14

Do you see that?

04:03PM 15

A. I do.

04:03PM 16

Q. Does that remind you of anything

04:03PM 17

related to what this website might be?

04:03PM 18

MR. DHANANI: Objection; vague

04:03PM 19

and mischaracterizes the document.

04:03PM 20

A. Other than the words at face

04:03PM 21

value, no. I'm sorry. I'm just reading the

04:04PM 22

document.

04:04PM 23

Q. Yeah. Go ahead and take a look

04:04PM 24

and let me know if anything on this website

04:04PM 25

reminds you of what was being maintained on

150

1

J. EDWARDS

04:04PM

2

Move Networks' website in 2005.

04:04PM

3

MR. DHANANI: Objection;

04:04PM

4

mischaracterizes the document, calls

04:04PM

5

for speculation and lack of

04:04PM

6

foundation.

04:04PM

7

A. This document isn't doing a lot to

04:04PM

8

bring back a lot to me. It looks like

04:04PM

9

something that may have been created as, kind

04:04PM

10

of, a support-side website for the event, but

04:05PM

11

I'm not sure.

04:05PM

12

Q. And by "the event," are you

04:05PM

13

referring to the general conference live

04:05PM

14

stream?

04:05PM

15

MR. DHANANI: Objection; vague.

04:05PM

16

A. This says demos/live/byu/faq. So

04:05PM

17

my guess is, it's some part of some demo

04:05PM

18

site, probably not the live site of the event

04:05PM

19

itself, but a demo site put up for some

04:05PM

20

purpose, which I'm not sure of by just

04:05PM

21

looking at this.

04:05PM

22

Q. Do you recall Move Networks ever

04:05PM

23

maintaining a website with the xlontech.net

04:06PM

24

URL?

04:06PM

25

MR. DHANANI: Objection; vague

151

1

J. EDWARDS

04:06PM 2

and calls for speculation.

04:06PM 3

A. I don't remember that

04:06PM 4

specifically.

04:07PM 5

MS. WHITCHER: There is a lot of

04:07PM 6

sound. Does someone want to go on

04:07PM 7

mute?

04:07PM 8

Q. When was the next streaming event

04:07PM 9

after the general conference in 2005 that you

04:07PM 10

can recall with BYU?

04:07PM 11

A. I don't know. We did do

04:07PM 12

conferences after that. I mean, so -- I'm

04:08PM 13

not sure when the next one is.

04:09PM 14

Q. You had been talking earlier about

04:09PM 15

some of the challenges that Move had faced.

04:09PM 16

And I was wondering if one of those

04:09PM 17

challenges that Moved faced was attempting to

04:09PM 18

secure a patent for its technology?

04:09PM 19

MR. DHANANI: Objection. I'm

04:09PM 20

going caution the witness not to

04:09PM 21

reveal any attorney-client

04:09PM 22

communications regarding patents.

04:09PM 23

Only answer the question if you

04:09PM 24

specifically recall discussions

04:09PM 25

outside of attorneys.

1

J. EDWARDS

04:09PM 2

A. I don't have of any recollection

04:09PM 3

outside of privileged information.

04:10PM 4

Q. So let me clarify. You don't have

04:10PM 5

any -- you have a specific recollection but

04:10PM 6

it's privileged information or you don't have

04:10PM 7

a recollection at all?

04:10PM 8

A. I don't have a recollection of any

04:10PM 9

challenges.

04:10PM 10

Q. And was Move struggling in the

04:10PM 11

market at all because it didn't enforce any

04:10PM 12

patent rights?

04:10PM 13

MR. DHANANI: Objection;

04:10PM 14

foundation, speculation, vague.

04:10PM 15

Go ahead, if you know.

04:10PM 16

A. No. I mean, I never heard that

04:10PM 17

ever as a reason why somebody wouldn't want

04:10PM 18

higher quality content that didn't buffer and

04:11PM 19

started quickly. So no.

04:11PM 20

Q. You testified a bit about a

04:11PM 21

meeting with EyeWonder earlier today.

04:11PM 22

Do you recall that?

04:11PM 23

A. Yes.

04:11PM 24

Q. So I want to go back to some of

04:11PM 25

the details there. So you mentioned that

1

J. EDWARDS

04:11PM 2 Drew Major was there; is that right?

04:11PM 3 A. Correct.

04:11PM 4 Q. Do you recall who from EyeWonder
04:12PM 5 participated in the meeting?

04:12PM 6 A. I don't.

04:12PM 7 Q. Was it more than one person?

04:12PM 8 A. We had one main contact point.

04:12PM 9 I'm just not good with remembering the name
04:12PM 10 right now. They had a couple of partners and
04:12PM 11 I just don't recall -- we had one meeting,
04:12PM 12 one person in the meeting that I recall.

04:12PM 13 Q. You mentioned that after the
04:12PM 14 meeting you had discussions with fellow Move
04:13PM 15 employees in a parking lot; is that right?

04:13PM 16 A. Yeah.

04:13PM 17 Q. Why do you remember that it
04:13PM 18 happened in a parking lot?

04:13PM 19 A. Because Drew was pacing and he
04:13PM 20 often did that when he was ideated. He just
04:13PM 21 was a pacer and just walking back and forth.
04:13PM 22 And I kept wondering why aren't we getting in
04:13PM 23 the car and going away, and Drew just was
04:13PM 24 very excited about what he was thinking
04:13PM 25 about. And it just -- it's one of those

1

J. EDWARDS

04:13PM

2

snippets, I just kind of recall it. And I

04:13PM

3

couldn't say much more, but I do remember the

04:13PM

4

conversation started then. It was an

04:13PM

5

important deal for us, because it -- we were

04:13PM

6

working with EyeWonder to support a billion

04:13PM

7

impression item person campaign, and we had

04:13PM

8

some great ideas.

04:13PM

9

Q. So you mentioned something about

04:13PM

10

asking Mr. Major why he got quiet. What were

04:14PM

11

you referring to?

04:14PM

12

A. In our meeting, as we were talking

04:14PM

13

about why we felt like our CDN would work,

04:14PM

14

Drew stopped talking, which was not like

04:14PM

15

Drew. And I just asked him, what's up. You

04:14PM

16

stopped and kind of left it up to me. And

04:14PM

17

then he -- that's when he talked about the

04:14PM

18

idea that had come to him.

04:14PM

19

Q. Do you recall Mr. Major ever

04:14PM

20

having a one-on-one meeting with someone at

04:14PM

21

EyeWonder?

04:14PM

22

A. Oh, sure. He talked with their

04:14PM

23

technical guy all the time. Well, not all

04:14PM

24

the time. Several times.

04:14PM

25

MR. DHANANI: Sorry, I was on

1

J. EDWARDS

04:14PM 2

mute. Calls for speculation,

04:14PM 3

objection.

04:14PM 4

But go ahead.

04:14PM 5

A. Yeah, Drew had one-off meetings

04:14PM 6

with EyeWonder one on one, and meetings where

04:15PM 7

multiple people were together. This one for

04:15PM 8

me is one of the times that I did.

04:15PM 9

Q. How many meetings -- in-person

04:15PM 10

meetings were there with EyeWonder that

04:15PM 11

you're aware of?

04:15PM 12

MR. DHANANI: Objection; calls

04:15PM 13

for speculation.

04:15PM 14

A. I don't know how many there were.

04:15PM 15

I don't know how many.

04:15PM 16

Q. Was this the first meeting that

04:15PM 17

you're recalling?

04:15PM 18

A. It wasn't the first time we would

04:15PM 19

talk. It could have been the first time in

04:15PM 20

person, but I'm not sure of that, because

04:15PM 21

Drew would have had other meetings without

04:15PM 22

me. But it was the first one that I recall.

04:16PM 23

Q. Do you have any documents or notes

04:16PM 24

with you today?

04:16PM 25

A. No. Other than what you guys have

1

J. EDWARDS

04:16PM

2

put up here in the chat.

04:16PM

3

Q. And earlier you had testified

04:16PM

4

about a document that you had reviewed during

04:16PM

5

preparing for the deposition. When you

04:16PM

6

reviewed that document, did anything in the

04:16PM

7

document jog your memory about something that

04:16PM

8

happened in the past?

04:16PM

9

A. I don't recall anything coming to

04:16PM

10

light or refreshing my memory at all.

04:17PM

11

Q. Was there anything that you read

04:17PM

12

in the document you already remembered it

04:17PM

13

clearly?

04:17PM

14

MR. DHANANI: Objection; vague.

04:17PM

15

A. Well, first of all, the document

04:17PM

16

was kind of long and I skimmed it because I

04:17PM

17

just didn't have the time to really, really

04:17PM

18

read it. And there wasn't anything I saw

04:17PM

19

there by subject that wasn't something that

04:17PM

20

gave me some type of new memory. So I would

04:17PM

21

just say no.

04:17PM

22

Q. So everything about EyeWonder and

04:17PM

23

the parking lot and Drew getting quiet, you

04:17PM

24

had already remembered all of that?

04:17PM

25

A. Yes. If I recall, I don't think

1

J. EDWARDS

04:18PM 2 **any of that was in that letter, so...**

04:18PM 3 Q. Do you know anything about a
04:18PM 4 letter that Move Networks received from
04:18PM 5 Microsoft after Move's first patent was
04:18PM 6 allowed?

04:18PM 7 **A. No.**

04:19PM 8 MS. WHITCHER: Okay. Well, I
04:19PM 9 think that is all that I have. Unless
04:19PM 10 anyone else for Respondents or staff
04:19PM 11 would like to ask anything?

04:19PM 12 MR. VANDERWALL: This is
04:19PM 13 Cameron Vanderwall, counsel for
04:19PM 14 Respondent Lululemon and Amir. We
04:19PM 15 don't have any additional questions at
04:19PM 16 this time.

04:19PM 17 MR. RAUH: This is Aaron Rauh,
04:19PM 18 Commission of Investigative staff. I
04:19PM 19 do have some questions. I'm happy to
04:19PM 20 start now or, Mr. Edwards, if you'd
04:19PM 21 like a short break, I'm happy to take
04:19PM 22 one.

04:19PM 23 **THE WITNESS: Go for it. I will**
04:19PM 24 **say that when this was meeting was**
04:19PM 25 **first put on my calendar it said it**

1

J. EDWARDS

04:19PM 2

would go from like 8:00 to noon -- I

04:19PM 3

kind of had a rough threat of 3:00, if

04:19PM 4

it's possible to estimate, but keep

04:19PM 5

going.

04:19PM 6

MR. RAUH: I do not have many

04:20PM 7

questions.

04:20PM 8

THE WITNESS: Okay.

04:20PM 9

MR. RAUH: And I'll apologize

04:20PM 10

ahead of time. We have three

04:20PM 11

depositions going on in the

04:20PM 12

investigation today, so I have been

04:20PM 13

bouncing around those. I've spent a

04:20PM 14

lot of time in your deposition but,

04:20PM 15

Mr. Dhanani, if you have an objection

04:20PM 16

for asked and answered, I will not be

04:20PM 17

offended.

04:20PM 18

MR. DHANANI: Thank you. I

04:20PM 19

appreciate that. I think we're fine.

04:20PM 20

Please go ahead.

04:20PM 21

MR. RAUH: Okay.

04:20PM 22

EXAMINATION BY

04:20PM 23

MR. RAUH:

04:20PM 24

Q. Mr. Edwards, has your counsel,

04:20PM 25

without disclosing any privileged

159

1

J. EDWARDS

04:20PM

2

communications, explained my role in this

04:20PM

3

investigation to you?

04:20PM

4

A. No.

04:20PM

5

Q. So I am with what is called the

04:20PM

6

Office of Unfair Import Investigations, which

04:20PM

7

is an office within the International Trade

04:20PM

8

Commission where this investigation is being

04:20PM

9

conducted. My office is a party to this

04:20PM

10

proceeding. I represent the public interest

04:20PM

11

in this. I do not have a client. I'm not

04:20PM

12

working with DISH or Peloton or Amir or

04:20PM

13

anyone else.

04:21PM

14

Do you understand?

04:21PM

15

A. Okay.

04:21PM

16

Q. So just a few follow-up questions

04:21PM

17

for you. Do you recall your testimony

04:21PM

18

earlier today about the 2005 LDS general

04:21PM

19

conference streaming that Move --

04:21PM

20

A. Yes.

04:21PM

21

Q. You do. Okay.

04:21PM

22

And you testified that you

04:21PM

23

couldn't recall whether that was in October

04:21PM

24

or April, was it?

04:21PM

25

A. Correct.

160

1

J. EDWARDS

04:21PM 2 Q. Okay.

04:21PM 3 A. I lean towards October, but
04:21PM 4 that's, I think, what I said. It was one of
04:21PM 5 those two, because that's when they are held.

04:21PM 6 Q. Sure. Do you recall how far in
04:21PM 7 advance of the conference that Move
04:21PM 8 approached the church and BYUtv to handle
04:21PM 9 streaming of the conference?

04:22PM 10 A. I don't.

04:22PM 11 Q. Do you know whether it was a
04:22PM 12 matter of weeks or months or days?

04:22PM 13 A. My guess is it was probably
04:22PM 14 several weeks would be a guess. It takes
04:22PM 15 time to put those together and they would
04:22PM 16 have had to have had some level of the
04:22PM 17 people, I would guess.

04:22PM 18 Q. Okay. And, again, correct me if I
04:22PM 19 misstate your testimony here. I believe your
04:22PM 20 result or the company's view of Move's
04:22PM 21 streaming of the conference was that you rock
04:22PM 22 and, like, everything went off really well;
04:22PM 23 is that right?

04:22PM 24 A. Well, I do. I think that that's
04:22PM 25 correct, that it went well. I think overall.

161

1

J. EDWARDS

04:22PM 2 **Any time you do an event, there's going to**
04:22PM 3 **be, you know, issues that happen as a result**
04:22PM 4 **of the event, but, overall, I think it was**
04:22PM 5 **definitely a very positive event.**

04:23PM 6 Q. Do you recall Move making any
04:23PM 7 changes to its streaming technology in view
04:23PM 8 of streaming the LDS general conference?

04:23PM 9 **A. I don't recall anything specific.**

04:23PM 10 Q. As of that LSD general conference,
04:23PM 11 did Move view its technology as ready for the
04:23PM 12 general marketplace?

04:23PM 13 **A. So we would not have even**
04:23PM 14 **attempted to broadcast the conference if we**
04:23PM 15 **had not had a fair amount of confidence that**
04:23PM 16 **things would go well.**

04:24PM 17 Q. Would it be fair to say that
04:24PM 18 Move's streaming technology was complete or
04:24PM 19 nearly complete as of streaming that LDS
04:24PM 20 conference in 2005?

04:24PM 21 **A. Well, you're talking to a software**
04:24PM 22 **(inaudible) and software is never complete.**
04:24PM 23 **So it's agile. It's continuous improvements.**
04:24PM 24 **It's -- yeah. But the core fundamentals in**
04:24PM 25 **principle, yes, that -- the idea had**

1

J. EDWARDS

04:24PM

2

crystalized into a deliverable that now we

04:24PM

3

could tweak, but yeah.

04:24PM

4

Q. Okay. I believe -- switching

04:24PM

5

topics a little bit here. I believe you

04:24PM

6

testified, again, correct me if I'm wrong,

04:25PM

7

earlier today that when you left Move or when

04:25PM

8

you stepped down as CEO of the company, it

04:25PM

9

was not yet profitable.

04:25PM

10

Do you recall that?

04:25PM

11

A. That's correct.

04:25PM

12

Q. Was Move receiving revenue at that

04:25PM

13

time?

04:25PM

14

A. Oh, yeah. So -- and we were

04:25PM

15

really close to profitability, we were

04:25PM

16

doing -- you know, within 20, 30,000, \$50,000

04:25PM

17

of profitability. We were really close and

04:25PM

18

growing. And so there was significant

04:25PM

19

revenue coming in to the company.

04:25PM

20

I just lost you.

04:25PM

21

Q. Sorry.

04:25PM

22

A. There you go.

04:25PM

23

Q. So were you generally aware of

04:25PM

24

Move's sales efforts during your time at the

04:25PM

25

company?

1

J. EDWARDS

04:25PM 2

A. Yes.

04:25PM 3

Q. Are you aware of when Move made

04:25PM 4

its first sale for its streaming technology?

04:26PM 5

A. So the first substantive sales

04:26PM 6

would have been with Fox and/or ABC, that

04:26PM 7

time frame would be the -- there may have

04:26PM 8

been some smaller things leading up to that,

04:26PM 9

but the first ones that I recall that were a

04:26PM 10

part of our strategy would have been Fox and

04:26PM 11

ABC.

04:26PM 12

Q. And do you recall --

04:26PM 13

A. In that range. So that would be

04:26PM 14

2006, 2007.

04:26PM 15

Q. You referenced smaller things

04:26PM 16

leading up to the Fox and ABC sales?

04:26PM 17

A. Yes. So we were doing -- and I

04:26PM 18

didn't remember these company names. We were

04:26PM 19

doing smaller things that were -- we wanted

04:26PM 20

to do to just kind of prove out the model,

04:26PM 21

but they would have also been around that

04:26PM 22

cluster of things in 2006, 2007; end of 2005,

04:27PM 23

maybe some would have come in.

04:27PM 24

Q. Nothing sticks out in your mind as

04:27PM 25

the first sale of the company?

1

J. EDWARDS

04:27PM

2

A. No. It's just -- I'd just have to

04:27PM

3

speculate too much. I just don't have the

04:27PM

4

records. And I haven't seen them for

04:27PM

5

17 years.

04:27PM

6

Q. Sure.

04:27PM

7

A. So I just don't have specific

04:27PM

8

recollection.

04:27PM

9

Q. Do you recall when Move started

04:27PM

10

offering its streaming services for sale?

04:27PM

11

A. Again, I would think it would be

04:27PM

12

in the 2006 time frame, that's when we would

04:27PM

13

first start monetizing the product. It's

04:27PM

14

interesting because in 2003 we were with

04:27PM

15

Eyewonder and we were offering some of our

04:28PM

16

core CDN services. And then that had

04:28PM

17

migrated and now the product is being

04:28PM

18

developed in 2004, 2005 when we got these

04:28PM

19

demos going and then we are producing the

04:28PM

20

more significant sales. So that's what I was

04:28PM

21

thinking.

04:28PM

22

Q. You said demos, plural, in 2005.

04:28PM

23

Were there other demos besides the BYUtv

04:28PM

24

streaming event?

04:28PM

25

A. That's the only one that I recall

1

J. EDWARDS

04:28PM

2

specifically. I would say there probably

04:28PM

3

were others, but I don't have any specific

04:28PM

4

recollection.

04:28PM

5

Q. Do you recall whether they were

04:28PM

6

before or after the BYUtv event?

04:28PM

7

A. After.

04:28PM

8

Q. After?

04:28PM

9

A. Right.

04:28PM

10

Q. Do you recall whether Move had any

04:28PM

11

demos on its website of streaming videos or

04:28PM

12

its technology?

04:28PM

13

A. No, I don't recall.

04:29PM

14

MR. RAUH: Okay. I don't have

04:29PM

15

any further questions. Thank you.

04:29PM

16

MR. DHANANI: Thank you so much.

04:29PM

17

At this time, I do not have any

04:29PM

18

questions for Mr. Edwards. Thank you

04:29PM

19

very much for your time, Mr. Edwards.

20

21

22

(Continued on next page to include

23

jurat.)

24

25

J. EDWARDS

04:29PM 3 THE WITNESS: Thank you. Is
04:29PM 4 that it?

04:29PM 5 MR. DHANANI: Yes.

04:29PM 6 THE VIDEOGRAPHER: The time is
04:29PM 7 2:29 p.m. and that ends today's
04:29PM 8 deposition. Thank you, everyone.

9 (Whereupon, at 2:29 p.m., the
10 Examination of this Witness was
11 concluded.)

12
13
14 _____
JOHN EDWARDS

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

17 _____
NOTARY PUBLIC
18
19
20
21
22
23
24
25

E X H I B I T S

EXHIBIT	EXHIBIT	PAGE
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Exhibit 63	Wayback Machine BUY Television website printout	141
Exhibit 64	Wayback Machine Move Networks website	145
Exhibit 65	Wayback Machine XLON Technologies website	145

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EXAMINATION BY

PAGE

MR. BARQUIST

4

MS. WHITCHER

123

MR. RAUH

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INFORMATION AND/OR DOCUMENTS REQUESTED

INFORMATION AND/OR DOCUMENTS

PAGE

(NONE)

C E R T I F I C A T E

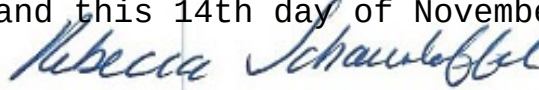
STATE OF NEW YORK)
 : SS.:
COUNTY OF NASSAU)

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 14th day of November, 2021.



REBECCA SCHAUMLOFFEL

170

1 ERRATA SHEET FOR THE TRANSCRIPT OF:

2 Case Name: In The Matter of Certain Fitness Devices

3 Dep. Date: November 12, 2021

4 Deponent: John Edwards

5 CORRECTIONS:

6	Pg.	Ln.	Now Reads	Should Read	Reason
7	—	—	_____	_____	_____
8	—	—	_____	_____	_____
9	—	—	_____	_____	_____
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15	—	—	_____	_____	_____
16	—	—	_____	_____	_____

17 _____
18 Signature of Deponent

19
20 SUBSCRIBED AND SWORN BEFORE ME

21 THIS ____ DAY OF _____, 2021.

22
23 _____

24 (Notary Public) MY COMMISSION EXPIRES: _____

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