

## **Opening Statement: Chase Carey Pres. and CEO of DirecTV**

Written by Chase Carey  
Tuesday, 27 March 2007 03:54

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### **Chase Carey President and Chief Executive Officer, DIRECTV, Inc. Before the Senate Committee on Commerce, Science, and Transportation March 27, 2007**

Chairman Inouye, Co-Chairman Stevens, and members of the Committee, my name is Chase Carey. I am the President and CEO of DIRECTV. Thank you for inviting me to testify today regarding DIRECTV's recently announced agreement with Major League Baseball ("MLB") to continue to carry MLB's Extra Innings package of out-of-town baseball games.

I would like to address four issues today. First, I'll describe the fair, open, and arm's length negotiation for carriage of Extra Innings – a negotiation resulting directly from the pro-competitive, pro-consumer policies Congress has put in place. DIRECTV has entered into a carriage agreement with MLB, while EchoStar and a consortium of the biggest cable operators remain free to match DIRECTV's offer until Opening Day. So when our competitors complain that they don't have rights to Extra Innings, what they're really saying is that they'd like to pay less for those rights than DIRECTV – a lament common to many MVPDs in many circumstances.[1]

Second, I will address another aspect of competition at work – DIRECTV's plan to transform Extra Innings from a mere collection of games in low definition to a truly compelling, high definition experience for the most avid baseball fans. Regardless of whether our competitors step up to the plate, DIRECTV intends to make more baseball available to more fans in a more compelling format than ever before. This is a big win for baseball fans.

Third, I'll explain how the competitive marketplace Congress created will ensure that fans of our Nation's pastime will not be left behind. If EchoStar and the cable consortium step up and match DIRECTV's offer, their subscribers will continue to have access to this programming from those providers. If they don't, subscribers who want to switch to DIRECTV can do so seamlessly. The small number of subscribers who do not or cannot switch will be able to watch games over broadband – an increasingly viable alternative to traditional television.

Fourth, while DIRECTV's agreement with MLB is entirely consistent with the policies Congress established to create a competitive marketplace, Congress can always change those policies. But I would respectfully suggest that, if this Committee is concerned about competition and access issues, these issues should be examined within the broader context of communications and competition policy. Such an examination might address topics such as the tying of video and broadband access services, the "slow-rolling" of access to Internet video, tying arrangements for programming imposed by competitors with market power, and home-team sports exclusives. DIRECTV would be happy to participate in such a discussion.

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## **I. DIRECTV Negotiated a Fair and Arm's Length Agreement With MLB; Cable and EchoStar Can Have the Same Deal if they Want It.**

It is sometimes difficult to remember that, little more than a decade ago, Americans had only one choice of multichannel video provider – the cable monopoly. Today, nearly every American can choose among their cable operator, DIRECTV, and EchoStar. Verizon and AT&T now also offer service in many parts of the country.

These competitors have differentiated themselves in the marketplace. Cable, and now Verizon and AT&T, compete by offering a “triple play” of voice, video and data – a bundle that DIRECTV cannot yet offer on its own. EchoStar has carved out a niche as the low-cost provider, and offers a host of foreign language exclusives. And DIRECTV differentiates itself through an unparalleled selection of sports programming and unmatched technical innovation – including an investment of hundreds of millions of dollars on new satellites to offer consumers their local broadcast stations in HD and over 100 national HD programming services. These unique offerings helped DIRECTV to differentiate itself and begin to break the stranglehold of the cable monopolies. The cable industry, in turn, found itself forced to spend billions to innovate and become more responsive to consumers' desires – today offering a competitive, attractive package that includes its own differentiated video-on-demand and bundled Internet offerings.

Cable, to be sure, still possesses an overwhelming market share, which distorts competition to this day. But the fact remains that today there is competition where before there was none. This is the success story Congress – and this Committee, in particular – helped write.

And this is the context in which DIRECTV negotiated its agreement to carry Extra Innings. Several months ago, MLB initiated discussions with a number of MVPDs and their affiliates – including DIRECTV, EchoStar, and iN DEMAND (owned by Comcast, Time Warner, and Cox) – regarding carriage of Extra Innings. These discussions concerned both exclusive and non-exclusive carriage. Each competitor was given the opportunity to compete for Extra Innings. And each did.

In the end, despite the fact that it has a modest nationwide market share, only DIRECTV showed an interest in carrying Extra Innings on terms acceptable to MLB, including helping to launch the MLB Channel and carrying it widely to our subscribers. So earlier this month, DIRECTV and MLB announced that they had reached agreement for carriage of Extra Innings and the MLB Channel.

That agreement gave DIRECTV's competitors – all of whom had a seat at the table during the

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first round of negotiations – yet another turn at bat. Until Opening Day, MLB will allow incumbent MVPDs willing to agree to terms equivalent to DIRECTV's carriage arrangement to offer their subscribers this programming. In other words, Comcast and Cox and Time Warner and EchoStar can provide out-of-town games to their subscribers if they want to. The agreement says only that they cannot do so on the cheap. So if they agree to pay the price DIRECTV pays, agree to carry the MLB Channel in the same manner as DIRECTV, and agree to comply with the other terms and conditions that apply to DIRECTV, they can carry Extra Innings. It's their choice. This is why Time Warner's top programming negotiator recently said she was not sure why people have criticized the deal as if it were "rigged" against competition, when the issue really boils down to the "evaluation of whether acquiring programming is too expensive or not." [2]

Now that both iN DEMAND and EchoStar have access to Extra Innings on comparable terms and conditions as DIRECTV, we expected EchoStar and the cable industry to stop complaining and start competing. But they haven't. Now they're claiming that MLB's offer to match DIRECTV's terms isn't fair.

They first contend that the agreement is unfair because DIRECTV will have an ownership interest in the MLB Channel (not in MLB or the Extra Innings package). But this isn't unfair at all. To begin with, because of DIRECTV's ownership, MLB cannot offer DIRECTV the MLB Channel on an exclusive basis. If DIRECTV's competitors think DIRECTV's ownership interest is inconsistent with this obligation, they already have an avenue for redress at the FCC. [3] Moreover, granting DIRECTV an ownership interest in exchange for its willingness to be the "first mover" in carrying this channel is a very common industry practice. The FCC reports that cable operators own dozens of channels, including many of the most important regional sports networks ("RSNs") such as those in New York, Chicago, Philadelphia, San Diego and Washington D.C. [4]

DIRECTV's rivals also complain that the distribution requirements for the MLB Channel that DIRECTV agreed to are too onerous. This is nothing but a public relations ploy. If anything, the distribution requirement actually favors cable operators. Based on the distribution formula in the agreement, DIRECTV has to distribute the MLB Channel to roughly 80 percent of its total subscribers, while cable operators would have to distribute it to approximately 40 percent of their total subscribers. The very terms for distribution cable denounces as unfair are equivalent to, or in many instances less stringent than, the requirements cable operators demand for the programming they themselves own.

DIRECTV's rivals may not like these terms. But parties who do not like terms of carriage cannot cry foul on that basis alone. This is how programming negotiations work. If an MVPD believes that programming is too expensive, it can choose not to carry the programming. This happens all the time. EchoStar, for example, doesn't carry the YES network for this very reason, so EchoStar subscribers in New York can't watch most Yankees games. MLB's insistence that other MVPDs live by the same deal DIRECTV did isn't unfair, it is simply the marketplace at work – and surely isn't a subject worthy of Congressional intervention.

## II. DIRECTV's Carriage of Extra Innings Will Be a Big Win for Fans.

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I do not know whether EchoStar and the cable industry will ultimately match DIRECTV's offer to carry Extra Innings. I do know, however, that DIRECTV has big plans for Extra Innings – which is one reason why we have (so far) been willing to pay more than anybody else for it. DIRECTV will make more baseball available to more fans in a more compelling format than ever before.

For starters, DIRECTV will add a mosaic channel and a Strike Zone channel (similar to the NFL Sunday Ticket Red Zone Channel) that will deliver live cut-ins of games throughout the country. We will also provide great entertainment to fans with real-time scores, player and team stats and other innovations that complement the sport of baseball. Most importantly, DIRECTV expects to provide most, if not all, games in high definition for the 2008 baseball season – an innovation that most cable operators cannot match.

Moreover, as part of the Extra Innings agreement, DIRECTV will also make The MLB Channel widely available when the channel launches in 2009.

DIRECTV's transformation of Extra Innings should come as no surprise. This, after all, is what DIRECTV has done for other programming. For example, DIRECTV recently completely revamped supplemental coverage of NASCAR races. The cable industry had the rights to NASCAR content for years, but did little with this programming and attracted only 30,000 customers in 2006. DIRECTV obtained the rights this year to what is now NASCAR Hotpass, and debuted a service at this year's Daytona 500 that bears little resemblance to cable's bare-bones offering. DIRECTV's NASCAR Hotpass features five dedicated "Driver Channels," each focusing on an individual driver and offering multiple camera angles, real-time stats, team audio communications and dedicated announcer teams. Although the NASCAR season started only recently, DIRECTV already has more than three times the subscribers to this programming than the cable industry had in 2006.

DIRECTV expects that once it adds interactive features, high-definition service, and the MLB Channel, many new subscribers will sign up for Extra Innings with DIRECTV. This will make DIRECTV's service more attractive than our cable competitors. Those competitors, in turn, will have to improve their services to keep up. This, again, is the vibrant competitive marketplace that Congress envisioned at work.

### **III. The Competitive Marketplace Envisioned by Congress Will Provide Numerous Alternatives for Baseball Fans.**

The same competitive marketplace that permitted DIRECTV to obtain the rights to Extra Innings in a fair and open manner will also ensure that baseball fans will continue to be able to watch their favorite teams. Right now, both EchoStar and iN DEMAND have the option to continue to provide this programming to their subscribers – if they are willing to pay the fair price negotiated at arm's length between DIRECTV and MLB. Even if DIRECTV remains the only MVPD to carry Extra Innings, however, non-DIRECTV subscribers will not be harmed in any meaningful way.

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First, consumers can switch to DIRECTV with no start-up costs, no equipment to buy, and no installation charges. When they do so, they will get a better service at a better value than is offered by cable. DIRECTV, unlike cable, is 100% digital. DIRECTV offers more programming than cable. On average, DIRECTV costs significantly less per channel than cable. And DIRECTV's customer service is second to none – having surpassed the cable industry average in each of the last six years.[5] This, again, is how a competitive marketplace is supposed to work.

Unfortunately, cable operators are doing their best to prevent this. Cable, for example, penalizes customers by dramatically increasing the price of Internet service if the customer drops cable's video service. To overcome cable's barriers, DIRECTV has chosen to offer customers who want to switch no upfront costs and more compelling content.

Second, every single game carried on Extra Innings will remain available online through MLB.com. Internet video is improving dramatically,[6] and MLB announced its intent to offer upgraded picture quality this season. Thus, subscribers who choose not to (or cannot) subscribe to DIRECTV will still be able to watch the games of their choice. Here again, however, cable operators are attempting to hinder the marketplace. If cable did not prohibit a direct connection between the Internet and the set top box, MLB.com could easily be viewed on television sets.

Third, the arrangement will not disrupt competition among MVPDs. To begin with, relatively few subscribers are affected at all. Only 230,000 non-DIRECTV customers subscribed to Extra Innings last year – less than one half of one percent of all television homes.[7] DIRECTV estimates that there are relatively few viewers – no more than three percent of the cable segment (approximately 180,000 Extra Innings subscribers) – who cannot receive DIRECTV service. This translates to roughly 5,000 subscribers – each of whom can access the games over the Internet. Moreover, this agreement does not deny a single fan the right to follow his or her home team. In all of its programming arrangements, DIRECTV has been respectful of fans' rights to view their home team sports. Extra Innings is a premium package of out-of-town games – designed to serve baseball's most avid fans without adversely affecting viewership of MLB's national and local telecasts. By contrast, our cable competitors have withheld core home team sports programming from nearly half a million satellite customers in Philadelphia and San Diego.

Fourth, the marketplace will continue to provide subscribers without Extra Innings a wealth of options for watching their favorite sport. If Extra Innings were to disappear tomorrow, MLB would still offer more televised games by far than any other U.S. sport. Regardless of the MVPD to which they subscribe, fans throughout the country can watch their home team on broadcast television or RSNs – assuming that cable-affiliated RSNs continue to make their

programming available to all MVPDs at non-discriminatory rates. In addition, fans without Extra Innings can still watch an impressive number of out-of-town games. On average, more than 400 games are televised in each market – on local broadcast television, RSNs, and MLB’s national partners FOX, TBS, and ESPN.

#### **IV. A Broader Review of Competition Policy May Be Appropriate.**

Members of this Committee are naturally concerned about consumer choice and access to content. So is DIRECTV. But Congress cannot examine these issues in a vacuum – and certainly should not start with this arm’s length, pro-competitive deal. If it truly seeks to ensure that every American has a choice among video providers and access to content, this Committee can choose among any number of issues that affect far more consumers.

If, for example, this Committee is concerned about the ability of subscribers to switch MVPDs, it might examine why cable operators dramatically increase the price for their broadband service to subscribers that switch from cable to satellite for video service. In Washington DC, for example, Comcast charges \$33.99 for Internet service when bundled with video and voice, but \$57.95 for stand-alone Internet – a 70 percent increase in price. Even though DIRECTV offers a lower price for a better video service, consumers with cable modems lose money by choosing DIRECTV. If Congress seeks to maximize consumer choice – as it should – cable’s tying of Internet and video services is worthy of review.

If this Committee is concerned that viewers might be denied access to content they wish to view, it might examine whether cable operators should be able to degrade the service their broadband subscribers receive when accessing video content from non-affiliated websites (or entities that do not pay to ensure access), or preclude such access altogether. As more and more video content migrates to the Internet, cable operators will increasingly have the incentive and ability to determine what their broadband subscribers can and cannot see. A cable operator could even, for example, prohibit a baseball fan from visiting MLB.com (or, more likely, could “slow-roll” communications to that site compared with communications from its own site).

If this Committee is concerned about bundling channels in contract negotiations, it might wish to focus more broadly on tying arrangements imposed by parties with market power. For example, Comcast recently required DIRECTV to distribute its “G4” gaming channel to 80 percent of its subscribers in order to continue to carry Comcast SportsNet Mid Atlantic at market rates. A broader examination of arrangements like this would consider the pros and cons of today’s programming marketplace and possible ideas for revising it.

And finally, if this Committee is concerned about sports programming, it should begin by examining the worst instances of sports withholding. Congress and the FCC have found repeatedly over the years that cable operators can abuse their formidable market power by arranging to withhold programming they own. And they do that today in Philadelphia and San Diego, where half a million satellite subscribers cannot watch their home teams. Surely that – and not an arm’s length, non-exclusive, pro-competitive deal such as that between DIRECTV

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and MLB for carriage of out-of-town games – is worthy of this Committee’s consideration.

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The video marketplace continues to evolve as competition takes hold under the regime Congress has put in place. DIRECTV’s arrangement with MLB is part of that process – the result of fair and open competition for programming that even today remains available to DIRECTV’s rivals. DIRECTV intends to upgrade Extra Innings significantly, giving avid baseball fans more than they have ever had from this package before. We will also make the transition of any subscriber who wants this programming from DIRECTV as seamless as possible. In the end, then, DIRECTV’s agreement with MLB is an example of how the competitive marketplace created by this Committee is working – not how it needs to be changed.

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- [1] Time Warner’s top programming negotiator recently said as much – stating that she was not sure why people have criticized the deal as if it were “rigged” against competition, when the issue really boils down to the “evaluation of whether acquiring programming is too expensive or not.” SkyReport E-News, Mar. 13, 2007.
- [2] SkyReport E-News, Mar. 13, 2007.
- [3] General Motors Corp., Hughes Electronics Corp., and The News Corporation Limited, 19 FCC Rcd. 473 (2004) (“News-Hughes”).
- [4] Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, 21 FCC Rcd. 2503 App. C (2006)
- [5] See Steve Donohue, “DirecTV Tops J.D. Power Survey,” Multichannel News, Aug. 16, 2006, available at <http://www.multichannel.com/article/CA6363083.html>.
- [6] See, e.g., Peter Grant, Plugging the Web Into the TV, Wall St. J., Aug. 4, 2006, at A11 (describing the rapid advances in online video, and stating that, with a TiVo device, one “can’t even tell whether it came from the TV or off the Internet.”).
- [7] Not to minimize the inconvenience to these customers, but it is worth noting that that tens of millions of subscribers “churn,” switching video providers every year.