

Opening Statement: Robert Jacobson of iN Demand

Written by Robert D. Jacobson
Tuesday, 27 March 2007 07:28

TESTIMONY OF ROBERT D. JACOBSON, PRESIDENT AND CEO iN DEMAND L.L.C. before the U.S. Senate Commerce, Science, and Transportation Committee

Hearing on Exclusive Sports Programming: Examining Competition and Consumer Choice March 27, 2007

Mr. Chairman and Members of the Committee, my name is Rob Jacobson, and I am President and CEO of iN DEMAND.

iN DEMAND is a programming company owned by Comcast, Time Warner Cable, and Cox Cable. We provide sports, movies, and other entertainment programming through our INHD high-definition channel, pay-per-view, subscription video-on-demand, and out-of-market sports packages. We sell these services to a variety of distributors, including cable, overbuilders, telcos, and DBS. Our sports packages include NHL Center Ice, NBA League Pass, MLS Direct Kick, and until this season, MLB Extra Innings. We have been effectively frozen out of negotiations with the NFL Sunday Ticket by the NFL.

There has been a lot of controversy about DIRECTV's attempt to get exclusivity for MLB's "Extra Innings" package. MLB recently said it would offer that package to us, but for reasons I'll explain, that offer was unreasonable -- and clearly designed to protect the exclusive arrangement that had been previously been agreed to by DIRECTV and MLB.

In order to break the logjam and ensure customers across American have access to the games, last week we made a counter-offer. We agreed to carry Extra Innings and The Baseball Channel, a new MLB channel not projected to launch until sometime in 2009, on the same terms as DIRECTV -- which is what MLB publicly said they were looking for. Our offer was NOT exclusive. We're ready to execute an agreement by Opening Day. MLB immediately rejected that offer.

Even now, we would enter into a deal for carriage of Extra Innings on the same terms of DIRECTV. If The Baseball Channel launches in 2009, we would give MLB the right to cancel the Extra Innings deal if it cannot reach a satisfactory agreement for carriage of the new channel with our owners. This would put off the issue of The Baseball Channel until it actually launches and ensure that for the next two years at least, all baseball fans will have access to the Extra Innings package. We think this is a fair compromise.

Let me give you a little history and tell you why our offer is in the best interest of sports fans everywhere.

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We have offered Extra Innings on a non-exclusive basis since 2001. Our most recent agreement with MLB expired at the end of last season.

We began discussions with MLB almost a year ago to renew our non-exclusive deal. Last summer, MLB asked whether we would be interested in offering Extra Innings on an exclusive basis. We said we would not be in the best interest of baseball fans and would not be viable for us given the program access rules, which prohibit exclusive contracts for cable-affiliated programmers, like iN-DEMAND. We expressed a strong desire to continue to license Extra Innings on a non-exclusive basis. We even offered a substantial increase in guaranteed fees – an increase of nearly 400 percent – to no avail.

A major sticking point in the negotiations was MLB's insistence that cable could only carry Extra Innings if it also agreed to deliver The Baseball Channel to millions of customers, regardless of whether they wanted to view and pay for the channel.

In late February, we made a proposal to MLB that ensured MLB would be guaranteed \$100 million annually for Extra Innings and committed that iN DEMAND's owners would distribute The Baseball Channel to 15 million homes at MLB's requested price per subscriber -- all on a non-exclusive basis. MLB never called us back.

Eventually, MLB decided to pursue an exclusive agreement with DIRECTV. The public reaction was overwhelmingly negative.

In response, MLB and DIRECTV decided to dress up their exclusive deal to make it LOOK like it wasn't exclusive. MLB said it would give iN DEMAND the opportunity to "match" the DIRECTV deal, but we had to do so by the end of this month or games would be unavailable to cable subscribers for the next seven years. The problem is that MLB is not really interested in a non-exclusive deal with cable and DIRECTV. Its proposal to cable is, in fact, dramatically more expensive for cable than it is for DIRECTV and is unreasonable and unfair.

In order to get Extra Innings, MLB is insisting that iN DEMAND's owners agree to assume a disproportionate share of the \$100 million annual cost of Extra Innings and agree to carry The Baseball Channel on terms significantly onerous than DIRECTV. In addition, MLB gave DIRECTV a 20% ownership interest in The Baseball Channel and said it will not offer iN DEMAND a similar interest or comparable economics. MLB's claim that it is merely asking iN DEMAND and EchoStar to match the DIRECTV deal is wrong. In fact, taking into account all of the elements of MLB's offer to us, including the fact that it gave an ownership interest to DIRECTV but refused to give an ownership interest to us, the amount MLB is insisting that iN DEMAND pay is many times greater than what was asked DIRECTV to pay.

MLB has claimed that we previously made an exclusive offer for Extra Innings. That is not true. At one point, MLB became concerned that if it did a deal with us, DIRECTV would walk away from Extra Innings. MLB insisted that if that happened we would have to make up the money it

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lost because DIRECTV walked away. We agreed to do that, but we never bid for exclusive rights for Extra Innings, nor did we want exclusive rights.

Last year, Extra Innings was available to almost 100 million homes. Under an exclusive DIRECTV deal, it would only be available to DIRECTV's 16 million customers. Over 80 million cable and EchoStar customers would be denied access to the games. This would be especially unfair to many baseball fans who previously purchased and enjoyed those games.

DIRECTV says there would be no harm because these are only out-of-market games, not "home" games. But if you're a Red Sox fan living in Washington, D.C., the Nationals are not your "home" team. If an exclusive deal were allowed to stand, hundreds of thousands of fans across America would no longer be able to watch their favorite teams.

And, we're not talking about just baseball. DIRECTV has out-of-market NFL games and early rounds of the NCAA basketball tournament exclusively. We used to have a NASCAR package which allowed us to show races inside the cars. Now DIRECTV has that NASCAR package exclusively. DIRECTV's strategy is to capture exclusivity for high-profile sports across-the-board. That is not fair to consumers.

MLB has a choice. It can offer the game to 100 million homes or 16 million homes. Either way it is guaranteed \$100 million per year. We think that the right choice is obvious. On behalf of baseball fans everywhere, we appreciate the Committee's willingness to hold this hearing and we look forward to working with you to find effective solutions to this growing problem.

Thank you for the opportunity to testify today.