

**TESTIMONY OF CARL VOGEL**

**President and Vice Chairman,  
Echostar Satellite 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**

Chairman Kerry, and members of the Committee, on behalf of EchoStar Satellite, I want to thank you for inviting our company to discuss the important issue of exclusive sports programming.

My name is Carl Vogel, and I am President and Vice Chairman of EchoStar. Since we began offering service 11 years ago, EchoStar's DISH Network has grown to become the 4<sup>th</sup> largest multi-channel video provider in the country serving more than 13 million subscribers.

Exclusive content distribution deals in any major sport today do not promote competition. They harm existing consumers while limiting choices in the future.

As we sit here today, the deal presented by Major League Baseball is designed to be an exclusive deal for DirecTV in substance, despite statements to the contrary regarding form and the opportunity to "opt-in".

The terms offered by Major League Baseball effectively tie the carriage of the Extra Innings package TODAY to a firm commitment to launch The MLB Channel to over 10 million of our subscribers in 2009. We find these demands inconsistent in a climate where Congress, the FCC, and the American public are asking for more a-la-carte choices.

Despite these onerous terms, we stand ready to match the current offer in its entirety to protect our consumers and remain competitive. However, in its entirety must be apples to apples, which will require EchoStar to acquire a pro-rata ownership of The MLB Channel. In a letter dated March 22<sup>nd</sup>, from Major League Baseball, they state they are not in a position to offer any equity in connection with this “opt-in” opportunity without DirecTV’s consent. It will be interesting to see whether that consent is forthcoming, and with what conditions, as DirecTV reconciles whether it wears its ownership hat for the MLB Channel or its hat as a competitive distributor. With only four short days to bring this to conclusion, it appears the negotiations for the Extra Innings package may need some extra innings themselves.

Given this set of circumstances, the deal with Major League Baseball and DirecTV regarding the Extra Innings package will likely proceed as an exclusive deal, disenfranchising over 300,000 consumers nationwide. Numerous distributors,

including EchoStar, were part of building the Extra Innings brand and consumer appeal over the past ten years. Creating exclusivity with sports content is anti-competitive; however, it is particularly problematic when that very programming has been available to a number of consumers, on a number of platforms, for a number of years

The Extra Innings package became available on DISH Network three years ago and many of our 55,000 subscribers who have chosen this season ticket live in rural areas. These consumers most likely have chosen DISH Network as a result of our low prices and flexible packaging. The incremental increase in Extra Innings subscriptions clearly represents the best example where increasing, rather than restricting access to sports content has worked in favor of consumers.

Major League Baseball now wants to limit access and has rationalized the fan displacement by stating DirecTV will provide equipment and installation free of charge. This analysis fails to recognize any price difference between EchoStar and DirecTV. In many cases, a switch to DirecTV is tantamount to a 33% rate increase just to gain access the Extra Innings package. For Major League Baseball to reach into consumers pockets and suggest this is a reasonable choice is not only disrespectful but clearly points out that Major League Baseball has in this instance, relegated themselves to a well compensated sales agent for DirecTV.

Our motives are very straightforward. We want to compete.

In conclusion, we are quite certain that consumers would far prefer a world where exclusives over regional sports, the NFL Sunday Ticket and the Extra Innings package did not exist. Such relationships do not currently promote competition, but rather limit consumer choice to one provider. This proposed Extra Innings exclusivity with DirecTV does not expand the market; it merely provides for a migration of subscribers from many providers to one. Certainly, exclusive content relationships may today be within the letter of the law, but they cannot possibly meet the spirit of Congressional intent.

Thank you, and I look forward to answering your questions.