

1 years ago, making these decisions, they weren't looking
2 through voluminous databases of files to decide in their
3 mind what their business reasons were and business goals
4 were. And so they can come in here and testify what they
5 were thinking. And Your Honor can evaluate whether it's
6 credible.

7 And if we're going to use any documents in support
8 of any of those business reasons, we'll turn them over. And
9 I'd be happy to set up an expedited timetable. But to have
10 to go in -- as I say again, if you look at their requests,
11 and you just imagine for a moment, the type of burden
12 they're asking, and what one could possibly find from it,
13 it's a complete waste of time in my -- and it will be quite
14 expensive and time-consuming when you're talking 200-plus
15 cable systems, and you're talking dozens of services that
16 Cablevision carries. And that's not what we're going to use
17 at the hearing. It's never going to come up at the hearing.

18 They're hoping they find in someone's file in
19 Omaha something saying, "Gee, Classic Sports is a great
20 vintage sports service." You know, it's just a fishing
21 expedition for things that they're hoping are in our files
22 that aren't there.

23 MR. HORTON: Again, that's the point of discovery.
24 When someone makes a claim that they intend to assert, we're
25 entitled to see what they have that's behind it. I hear Mr.

1 Davis over and over again saying, "I'll give you the stuff
2 that supports me. I won't give you the stuff that won't
3 support me." Maybe I won't use any documents, he says.

4 Well, that may be because he doesn't have any
5 documents that support him, but he has plenty of documents
6 that harm his position. That's the whole purpose of
7 discovery.

8 MR. DAVIS: If we have any documents that say that
9 the price of the service was good, bad, high, low, et
10 cetera, we've already agreed to produce that. We've agreed
11 to produce all documents, good, bad or indifferent, that we
12 have regarding the price and quality of the service. That's
13 already been agreed to. We're not even arguing about that.

14 What we're arguing about is they want discovery of
15 the price, for example, of what Cablevision pays for every
16 other service that it has. That's the problem. If we have
17 some smoking gun in our files that somebody has the memo
18 that Mr. Horton referred to earlier, where we're going to
19 tell Classic Sports the reason that the price is too high,
20 but really it's because of financial interest -- I've
21 already agreed to produce that to them.

22 We're not even fighting about that.

23 JUDGE CHACHKIN: Well, isn't that what you want?

24 MR. HORTON: The problem is, Your Honor, these
25 things are all relative to what? If he says that our price

1 is too high, he presents oral testimony but no documents
2 that says their price was too high. And the price that
3 we're asking them turns out to be the equivalent of the
4 price paid by service after service after service that he's
5 carrying. Doesn't that bear on whether or not there's any
6 truth to their claim?

7 It's easy to get up and say the price is too high.
8 Everyone would always like to pay less for anything that
9 they get.

10 JUDGE CHACHKIN: But then you get to all kinds of
11 collateral issues. You get the questions of what you
12 anticipate the size of the audience is going to be, what you
13 think -- I mean, that's another issue, the types of
14 programming. I mean, whether it's entertainment programming
15 which you feel is going to have a larger audience than a
16 particular sports program.

17 I can understand if you want some -- if there is
18 comparable sports program carried on the station, and you
19 want to know the difference in price between what's -- what
20 they're willing to pay for one sports program and other
21 sports programming, you could argue that they're comparable
22 in some way and therefore there's a basis for comparison.
23 That's one thing.

24 But how do you compare sports to something
25 completely different, like some comedy program? I don't see

1 how anyone can make a determination and say because they're
2 willing to pay x-number of dollars for a comedy show,
3 particularly a show which maybe had some success in network
4 television, why that has any bearing on the price they're
5 willing to pay for a sports program.

6 I could understand sports and sports if there's
7 comparability. But it seems to me -- all we're going to
8 have is lots of evidence which won't prove anything.

9 MR. DAVIS: Your Honor, on that point, if I could,
10 they're owned by ESPN. They have full access to what the
11 fees are for ESPN all around the country, including
12 Cablevision. They already know that. ESPN1, ESPN2, I mean,
13 these are facts that are well within their knowledge. They
14 can put that evidence on without even any discovery from us.
15 They know from their own files what the fee arrangement is
16 between ESPN and ESPN2 and Cablevision.

17 JUDGE CHACHKIN: Well --

18 MR. HORTON: Let me raise another one if I can,
19 Your Honor. Because it's the one that I think he's objected
20 to more strenuously on his document request, which is the
21 channel capacity issue. They have a claim that apparently
22 they have nowhere to put us.

23 JUDGE CHACHKIN: Well, they've modified that.

24 MR. DAVIS: No, that's not what we've said.

25 JUDGE CHACHKIN: They've modified that somewhat,

1 it seems to me. They're not saying they don't have --
2 technically that they don't have the space. They're saying
3 they have to make choices. Particular times, whatever. And
4 they have to make a decision to carry X or Y. I mean,
5 there's dozens, hundreds of program sources out there, and
6 they make choices as to which one they're going to carry.

7 Not saying that technically they can't carry your
8 program. That's the modification as I understand it.

9 MR. DAVIS: That's correct, Your Honor.

10 MR. HORTON: If we're clear that there is a place
11 for us on all of their systems, that certainly is going to
12 advance the ball. Because that's not where we started out,
13 as I read their answer.

14 JUDGE CHACHKIN: I know, but it seems to me in
15 their supplementary answer they have modified it. Maybe I'm
16 wrong.

17 MR. HORTON: On the supplementary answer, after
18 the motion to compel, I agree. We got a little bit more on
19 that.

20 JUDGE CHACHKIN: And I think that would limit,
21 some extent, the need for you to explore the 200 cable
22 systems to find out whether there's space available, because
23 they're not denying that they could make space available if
24 they wanted to. But technically it's not possibly.

25 MR. DAVIS: I can't speak or 200 systems, that's

1 part of the problem. As a general matter, because it's just
2 such a huge question, as a general matter we're not saying
3 technically, from an engineering point of view we couldn't
4 make space available if we wanted to. We're saying, as Your
5 Honor said, you make choices. You want to keep some for
6 Internet access, or some for other services. And that's a
7 factor.

8 JUDGE CHACHKIN: All right. Well, then that
9 certainly limits the need for some of the material requested
10 in that area. Since they're not making a claim that
11 technically they only have 13 slots, and they're already
12 filled on 13 slots. They're not saying that.

13 MR. DAVIS: Well, it's also a timing factor.

14 MR. HORTON: I just want to make sure I understand
15 what I mean by technical. There's a limited number of
16 channels, so obviously they can't carry every programming
17 service that might exist if that number is larger than the
18 number of channels that can physically exist on the system.
19 There's also a question of what contractual commitments they
20 had. If they signed long-term contracts tying up every
21 single channel they have, that's different than saying that
22 they have must-carry obligations for the local broadcast
23 stations, but otherwise they could move the other ones on
24 and off fairly readily.

25 So even if all of them are carried, even if they

1 have a channel somewhere, where they could drop someone else
2 that's not doing well in a heartbeat and put us on, I'm not
3 quite clear where they stand on that. Which is one of the
4 reasons --

5 JUDGE CHACHKIN: Well, apparently they're not
6 raising the -- they're not arguing that they're not
7 technically able to carry in any of the systems your
8 programming. It's just a question of determination of
9 choice as to which programming to carry.

10 MR. DAVIS: I don't want to be misconstrued. You
11 have to -- it's difficult to say this in the abstract,
12 without looking at a particular period of time, or a
13 particular system. So I can't say right now that at every
14 time period for every system, it was technically feasible to
15 carry them. That is -- that's part of the problem. That's
16 simply too broad a question to be reasonably answered.

17 So it would help to know, to answer that
18 absolutely definitely, to look at one or two systems. But
19 given that we're not doing that, I'm just being asked as a
20 general proposition for 200 systems, I'm saying that as a
21 general matter we are not contending that technical
22 restraints was the basis for not carrying them.

23 JUDGE CHACHKIN: Are you raising -- are you going
24 to raise on any particular system that it was a technical
25 problem about carrying them?

1 MR. DAVIS: Well, I'm glad you raised it -- I
2 would love to know what systems we're arguing about in this
3 proceeding and then we could do that. Because I thought
4 initially we were arguing primarily about the New York area
5 when I read their complaint. And then you look at their
6 discovery and it was all over the country.

7 So I think it would be extremely helpful to focus
8 the proceeding on one system, or maybe at most two systems.
9 And then we could tell them -- I could tell you precisely
10 whether that's an issue.

11 JUDGE CHACKIN: Why are we going into all 200
12 systems, all over the country?

13 MR. HORTON: It's our theory that we're entitled
14 to carriage everywhere, unless their reason is -- their
15 reason for not carrying us anywhere is that we won't sell
16 them. Our position -- we would like to be carried
17 everywhere. And our position is that we were not carried on
18 those systems because we refused to sell.

19 And I do have a compromise I can suggest here,
20 Your Honor, which is twofold. One is if we have an
21 understanding from Mr. Davis that while there may be a
22 system here or a system there, something -- and I don't mean
23 just one. But that in general the large bulk of Cablevision
24 systems did not either have technical or contractual --
25 because they contractually obligated themselves, however one

1 wants to define that -- restrictions so they could not carry
2 us, or couldn't carry us within some fairly reasonable
3 period of time, as opposed to "Yes, we can carry you
4 starting in the year 2010." That's going to advance the
5 ball a lot.

6 After that, I'd say let's have some specific
7 discovery on their systems in the New York Metropolitan
8 area.

9 MR. DAVIS: Well, the first point is, I have to
10 address the allegation that they're entitled to be carried
11 everywhere. That's one thing that the statute makes
12 absolutely clear, is that nobody is entitled to carriage
13 everywhere. They're not entitled to carriage. The only
14 issue is whether there was improper demands or retaliation
15 by Cablevision. They're entitled to no such thing.

16 Getting to the point of back to technical channel
17 capacity issue, I think we can reach a compromise here,
18 which is -- we cannot stipulate on the record now that we
19 had no -- that contractual obligations or engineering
20 constraints were not an issue anywhere. Because how can we
21 know that? What we can say is that that is not the crux of
22 the primary reason they weren't carried.

23 We're saying that over a period of time, certainly
24 we don't dispute that we would have had technical ability to
25 carry them on most of the systems. We're not denying that.

1 But they're asking -- you're going too far to get me to say
2 that there were no contractual or technical restraints on
3 any system. That I can't do.

4 JUDGE CHACHKIN: But what about the stipulation
5 proposed, that technically if they would have been able to
6 carry you on most of the systems?

7 MR. HORTON: Within some reasonable period of
8 time.

9 MR. DAVIS: Reasonable period of time.

10 JUDGE CHACHKIN: Some period of time.

11 MR. HORTON: Because otherwise we're faced with
12 the prospect that --

13 JUDGE CHACHKIN: No, they're willing to stipulate.

14 MR. DAVIS: We're willing to agree to that. We're
15 willing to agree to that, Your Honor.

16 MR. HORTON: I think that's going to take the
17 issue out of the case, frankly.

18 JUDGE CHACHKIN: Good.

19 MR. HORTON: And I'm happy to take --

20 MR. DAVIS: We're willing to agree to that, Your
21 Honor.

22 JUDGE CHACHKIN: Okay.

23 MR. HORTON: Because otherwise we face the
24 prospect that if he puts on witnesses to go back to where we
25 were before -- his witnesses say, "Well, we told them

1 channel capacity's a problem." You can see what was
2 motivating me to say I want to show that it's not a problem.
3 I think he's now stipulated that it's not. And that's where
4 we are.

5 MR. DAVIS: Well, I'll tell you what --

6 MR. HORTON: If that's where it is, it's a very
7 small problem.

8 MR. DAVIS: What they'll say is what I think Your
9 Honor said initially. They'll say that we have various
10 things we evaluate when we're looking at a new service. We
11 have choices among services, we don't have unlimited channel
12 capacity so we -- but that's what they're going to say.

13 JUDGE CHACHKIN: Well, that's different. So we
14 can get -- if we can get that stipulation, it eliminates, it
15 seems to me, the need for discovery, much of the discovery
16 relating to channel usage, channel availability.

17 MR. HORTON: I think that's correct, Your Honor.
18 We haven't had that before, and I think that's --

19 MR. DAVIS: I think the record will reflect what
20 the basis of the stipulation is. And we can leave it at
21 that, or we can actually write it up into a formal
22 stipulation.

23 JUDGE CHACHKIN: Well, I think it might be useful
24 to write it up, but the Reporter is taking it down. So the
25 parties have agreed to it, and I expect them to be bound by

1 it.

2 MR. HORTON: I'll obtain a copy of the transcript
3 to make sure that we've got that. I'm sure I can talk to
4 Mr. Davis before the trial, if we think we need to put it in
5 written form. But we'll have the record.

6 JUDGE CHACHKIN: Well, maybe we should talking
7 about -- I think this is very useful in helping us limit the
8 areas to what is relevant, it seems to me, and the
9 determining facts in this case. Now, price is another
10 factor. Again, as I state, as far as price is concerned, it
11 seems to me it's irrelevant to compare apples and oranges.
12 And if we're talking about sports programming, another form
13 or type of programming, I don't see how that's going to mean
14 anything.

15 If there's a comparable sports program which
16 Cablevision has carried or has carried in the past, or is
17 carrying now, then it seems to me that you would have a
18 right to know what the price is for that so you can make
19 your argument that there's no reason if they're willing to
20 pay this price for x-number, which is another sports
21 program, why they shouldn't pay this.

22 But if we limit it to sports, or if you could
23 argue there's some other programming which could be treated
24 similarly, that's one thing. But all of their programming,
25 what they paid for it, it seems to me is too wide of the

1 mark.

2 MR. HORTON: Your Honor, we'll be willing to go
3 with the sports programming, subject to if I can come up
4 with something else, I'll approach Mr. Davis. But I would
5 think that would be reasonable. We'll talk about it. But at
6 the moment, let's go with sports programming.

7 MR. DAVIS: Which sports program, Your Honor, do
8 you have in mind? If there's an analogous sports service?
9 Because I don't believe there is one.

10 JUDGE CHACHKIN: Well, if there isn't, there
11 isn't.

12 MR. DAVIS: I'm willing to -- if Mr. Horton has a
13 different view, then I'm perfectly happy to entertain his
14 thoughts on it. I'm not aware of one.

15 JUDGE CHACHKIN: You're not aware of any of these
16 years that Cablevision carried a sports program which is
17 analogous or -- at least as a sports program, which you
18 bought from some provider?

19 MR. DAVIS: Truthfully, Your Honor, I'm not.
20 Because that's why Cablevision was interested in coming out,
21 and is interested in coming out with a competing service.
22 Because there's only one full-time vintage sports
23 programming service and it's Classic Sports.

24 There are other sports services, ESPN, which
25 they're a part of, and they know the numbers on. So I don't

1 understand what I could do to help them.

2 JUDGE CHACHKIN: Well, if there isn't anything
3 analogous, then we may have to just deal with the facts are
4 with respect to this particular program. What any evidence
5 there is --

6 MR. HORTON: Your Honor, it seems reasonable to me
7 that general sports programming -- you can cut the market
8 awfully fine. Our programming is -- we have described it as
9 vintage sports programming. Sort of classic, famous games,
10 documentaries, movies, interviews, that sort of a thing. It
11 seems to me that we at least ought to be able to look at the
12 prices they were paying for general sports programming.

13 It's true that there was not another vintage
14 sports programming channel on the market. That was the
15 great idea that our people came up with. But we've got to
16 have something to compare it to. And once we cut it down to
17 sports, it seems to me we've cut out an awful lot of the
18 world here. It can't be too much of a burden to talk about
19 this.

20 MR. DAVIS: There's a lot of sports programming.
21 The question is are there any analogous? And as I say, they
22 have the material on the leading sports programmers out in
23 the market, so I'm at a loss as to what --

24 JUDGE CHACHKIN: Well, we're not talking about
25 carriage, for instance, of specific games. We're talking

1 about some kind of -- well, ESPN, for instance, before ball
2 games has their show in which they have people commenting on
3 the games, and general comments. Now if Cablevision carries
4 any of that, or -- I'm not talking about the actual sports
5 events, because clearly what happened in the past has no
6 bearing on a particular sports event.

7 But if there's a sports program with some dialogue
8 of some kind, that might be a sports program.

9 MR. DAVIS: I see where Your Honor's coming from.
10 The way it works, Your Honor, is that the operator agrees to
11 carry the service basically lock, stock and barrel. And
12 then has no editorial control over the content. So when
13 Cablevision agrees to carry, let's say ESPN, Cablevision
14 doesn't negotiate to carry one show and one game, and not
15 another game. We basically just agree to carry everything
16 ESPN puts on the station, without any editorial control.

17 So that's what's difficult, is it's not really, I
18 don't believe, relevant to them to try to figure out what
19 ESPN pays for one hour of its programming content on a given
20 day. Can you help me out here?

21 MR. HORTON: Well, the problem is that their
22 position is, it still seems to me, that our price is too
23 high. And we say too high in comparison to what? In
24 comparison to a price that they just made up without point
25 of reference at all?

1 JUDGE CHACHKIN: Well, I think you can inquire,
2 certainly, as to the basis of their statement that price was
3 too high. And any information that they're relying on in
4 claiming it's too high. You're certainly entitled to that.

5 MR. HORTON: Well, that was one of the problems.
6 When we asked that question in our interrogatories, what
7 were told was "go read our answer."

8 JUDGE CHACHKIN: Well, that's another question.
9 We'll get to that. I have problems with -- certainly
10 restating your answer, which contains all kinds of
11 conclusions, is not the purpose of -- what we have here is
12 to determine the factual basis for your answers. So I have
13 problems. You say read 1 through 51, and you'll find
14 something there. That's not the -- I don't think that was
15 the way to do it. But we'll get to that.

16 But if there is analogous sports programming, or
17 any sports program, then if there is any independent source
18 where you have particular individuals -- I don't -- for
19 instance, in some stations apparently there are, I guess,
20 programming in which there are people prognosticating about
21 future games, or things of that nature. Or give their
22 general opinions, or have interviews, or interview shows, or
23 things of that nature which are not ESPN. Like on HTS, for
24 instance, they have programs of that nature.

25 Now, if they're -- I don't know what's on

1 Cablevision. I mean, I'm not -- have no idea. But I'm
2 saying if there is something independent of that nature, it
3 might provide some kind of comparison.

4 MR. DAVIS: We could agree, the analogous sports
5 programming pricing, for example -- we could give them what
6 we're paying to carry ESPN and ESPN2. If they think that
7 would be useful, we'll produce that to them. They already
8 have that.

9 MR. HORTON: If that's all they're carrying, Your
10 Honor -- this is the company that pioneered regional
11 channels, regional sports channels. I don't have their
12 line-ups, that's one of the things that they haven't been
13 willing to get me, so I can't go through the line-up and
14 say, "Here are the channels that I want." But you've made
15 it perfectly clear the sort of things we're talking about,
16 and that can't be terribly burdensome. There's only so many
17 of them, let's produce them. We're down, again, to "I don't
18 want to give them anything."

19 MR. DAVIS: I'm really not sure exactly what I'm
20 being asked to produce.

21 JUDGE CHACHKIN: You're being asked to provide
22 -- if you're carrying sports programming, you're being asked
23 to at least provide a listing of what sports program you're
24 carrying on Cablevision.

25 MR. DAVIS: We'd be happy to provide the services,

1 including any regional services that are carried on
2 Cablevision systems. I don't see where we have the need for
3 200, but if they want to pick out a couple of systems -- the
4 New York area, for example, we can give them the line-up.

5 JUDGE CHACHKIN: Well, since we're dealing
6 basically with the New York area, I think that would be
7 sufficient.

8 MR. DAVIS: That's fine.

9 JUDGE CHACHKIN: That's the biggest market.

10 MR. DAVIS: So we can tell them for our New York
11 area systems what sports channels we carry.

12 JUDGE CHACHKIN: That's right.

13 MR. DAVIS: And then what --

14 JUDGE CHACHKIN: I assume they want the prices
15 that you're paying for such programming.

16 MR. DAVIS: And they want, then, the negotiated
17 price that Cablevision pays to carry on that system? I
18 don't even know if when we negotiate the deals with a
19 company like ESPN, is there a price just on that system or
20 if it's for multiple systems. So it may be that there's not
21 even a particular agreement limited to carriage on that
22 particular system.

23 MR. HORTON: Well, there is what there is, Your
24 Honor.

25 JUDGE CHACHKIN: That's right.

1 MR. HORTON: It seems to me that's what I ought to
2 be able to look at.

3 JUDGE CHACHKIN: Whatever there is. If it's a
4 price for the entire cable -- all of Cablevision systems, or
5 the regional area, whatever it is.

6 MR. DAVIS: It's a sports programming line-ups --

7 JUDGE CHACHKIN: Well, we're limiting ourselves to
8 sports programming, not any other kind of programming.

9 MR. DAVIS: Now, if it's a programming service
10 that Rainbow -- well, let's do this. We'll give them the
11 channel line-up for the New York areas, and we'll also give
12 them the price that we're paying for carrying the sports
13 services on their systems. I don't see why it's relevant,
14 but if that would help Your Honor to move off this issue,
15 we'll be glad to do that.

16 I have to say the prices we pay to carry competing
17 sports systems are highly confidential, as you would
18 imagine. Because if they know -- if anybody in their
19 company knows the price we pay their competitors, I don't
20 know how we're going to be able to negotiate with them for
21 future carriage. So that gets to the protective order
22 dispute.

23 JUDGE CHACHKIN: Well, we'll get to the protective
24 order.

25 MR. DAVIS: But that's a very big concern of ours.

1 Because these are obviously critical trade secrets, what you
2 paid to carry sports programming.

3 JUDGE CHACHKIN: Well, we'll deal with that
4 protective order later on, but we're talking about what
5 areas, what information should be provided, and how we can
6 limit these things, discovery requests.

7 MR. DAVIS: Okay.

8 JUDGE CHACHKIN: We might as well get to the
9 specific documents, and perhaps we can reach some more
10 agreements as to what the type of material that would be
11 provided. Well, let's deal first with the motion for
12 production of documents. And apparently there's a dispute
13 about five items, and also some general objections. The
14 first was Request 11, which deals with channel capacity.

15 Now, we've reached an understanding as to channel
16 capacity, and perhaps that limits the need for documents in
17 this area. We've reached a stipulation as to channel
18 capacity. Now in light of that stipulation, the question is
19 --

20 MR. DAVIS: I think it should moot the problem,
21 Your Honor.

22 JUDGE CHACHKIN: Does it moot the problem? I want
23 there to be a clear understanding as to what documents
24 should be supplied, so there's no need for me to come back
25 and have further conferences. We're going to have a

1 stipulation reached as to channel capacity, and I think in
2 light of that stipulation, that should limit the document
3 production in channel capacity, am I correct?

4 MR. HORTON: My only concern, Your Honor, is
5 because the stipulation was general. But I understand Mr.
6 Davis' concern about there are a lot of systems out there,
7 and he doesn't want to sit there on behalf of his client and
8 say there wasn't a problem somewhere. It occurs to me that
9 we ought to push that a little further along the same lines
10 we did for the Metropolitan area.

11 If he's going to claim there was a real problem --

12 JUDGE CHACHKIN: All right. We're going to limit
13 ourselves to the New York Metropolitan area.

14 MR. DAVIS: I still don't --

15 MR. HORTON: He doesn't have to answer now. The
16 stipulation will generally work for the New York
17 Metropolitan area that we reached. I'm not sure I need a
18 lot of discovery. If he's going to come back and say "We
19 had particular channel capacity problems on Long Island and
20 the Gold Coast of Connecticut," and what not, that are the
21 exception to the stipulation, then I think I would want some
22 discovery on that.

23 If we don't have that problem, if he can check
24 with his client and find it, then I think we can go for
25 stipulation.

1 MR. DAVIS: I'll have to inquire with my client
2 the specific engineering situation on the ground in the Long
3 Island area at a particular time, and just see what their
4 answer is. I don't know, as I sit here.

5 JUDGE CHACHKIN: Okay, but we're focusing on the
6 New York Metropolitan area. That's what we're dealing with,
7 so that's appropriate. But as I understand the stipulation,
8 in general there was no technical problem of carrying the
9 programming on the systems?

10 MR. DAVIS: Over time, right.

11 JUDGE CHACHKIN: Over time. That's the
12 stipulation. Now you're saying here there may have been --
13 and in particular we're focusing on the New York area,
14 whether there wasn't a particular system in the New York
15 area, a problem, a technical problem because of lack of
16 capacity. That's what we're dealing with here.

17 And if you make that argument that there was a
18 particular -- there was a problem of channel capacity in one
19 of the New York Metropolitan area systems, to that extent
20 counsel wants the document material dealing with what the
21 problem was, and what the basis of that problem was.

22 MR. DAVIS: Well, now that we're focusing on a
23 particular system, then I can get the answer.

24 JUDGE CHACHKIN: All right.

25 MR. DAVIS: And I can get back to them on whether

1 -- you know, precisely what the situation was there, and
2 whether it's an issue or not. And then if it's an issue,
3 we'll address it. But it may not even be an issue.

4 JUDGE CHACHKIN: Fine. It's not an issue if
5 you're not alleging that --

6 MR. HORTON: If the stipulation will cover it,
7 then I think that will be sufficient. If not, then I want
8 discovery into why not.

9 JUDGE CHACHKIN: All right. Now, the next request
10 was -- I guess this is the one which troubles me. I don't
11 know, I hope we can work out some kind of resolution to
12 this. The contention by Cablevision that they had their own
13 sports programming which they were planning on putting on,
14 the American Sports Classics. And you're willing, as I
15 understand it, Cablevision is willing to provide documents
16 as to the marketing and launching of the programming, but
17 not as to the development and financing?

18 MR. DAVIS: That's correct, Your Honor.

19 JUDGE CHACHKIN: And as I understand it, Classic
20 Sports says it needs it in order to determine whether this
21 was a -- you were really serious about putting on this
22 programming. And the only way to make that determination is
23 to see whether or not you had obtained financing, or looked
24 into financing. And also to what extent you had actually
25 developed this program, as opposed to just saying the

1 programming, without really having done anything to develop
2 the nature and content of the programming.

3 MR. HORTON: Your Honor, if I may clarify my
4 position on that. I think that one of two things is going
5 on here, and I'm not sure which, which is why I'm seeking
6 the discovery. One is the one that you've just stated. The
7 other, which was set forth at some length in our reply to
8 their answer was -- we were somewhat confused by the fact
9 that their answer made so much of their own service, because
10 we thought it proved our point that they were desperate to
11 own their own vintage sports classic programming service.

12 So the ideal and easy way to do it is to go out
13 and find one that's ready-made and buy it. And if you find
14 that you are unable to do that, after you try as hard as you
15 can, and that includes by refusing coverage or refusing to
16 sell, then maybe you move down another path.

17 So it may be that this was just a ploy, and the
18 fact that it was launched with a much, much-ballyhooed
19 launch right about the time we filed our complaint, and then
20 the launch was then canceled, told us that it looks like a
21 negotiating ploy. But on the other hand, maybe it is real.
22 But if it's real, I think that proves our point that they
23 were desperate to own such a service.

24 So we really have two reasons for wanting to find
25 out about American Sports Classics.

1 MR. DAVIS: From what we've agreed to produce, and
2 from the other oral testimony, there's going to be ample
3 evidence that it's real. It's not currently on the air, it
4 hasn't been -- the decision hasn't been made to roll it out
5 yet because of new agreements between Cablevision and new
6 partners in the sports programming area. But we've agreed
7 to give them documents that will show that this is a real
8 thing that people are working on. There's going to be no
9 dispute about that.

10 And they're entitled to argue whatever inference
11 they want to argue that that shows that we did bad things,
12 or we're interested in vintage sports. They're entitled to
13 argue all that. The question is whether we need to give the
14 creative development of a service to our direct competitor.
15 And there's no relevance of it. Whether we think we have a
16 better way to do the service, to create better programming,
17 if we have a better mousetrap. That's completely -- the
18 documents that would go to that, that are in the development
19 process have no bearing on whether it's real, whether
20 there's a real service or not.

21 That's why we're resisting giving that, but we've
22 agreed to give them the launch materials.

23 JUDGE CHACHKIN: But what about financing?

24 MR. DAVIS: I don't see what the relevance of
25 financing is. It's -- and I don't even know as I sit here