

1 Let me stop right there. DTH
2 equity for distribution deals, sir. DTH
3 stands for?

4 A It's a term that refers to
5 satellite distribution.

6 Q Satellite companies being DirectTV
7 and Dish?

8 A Yes.

9 Q That's who you're referring to
10 there?

11 A Presumably, yes.

12 Q Well, these are your words.
13 There's no presumably about it. Is that who
14 you were referring to, Dish and DirectTV?

15 A Yes. I only say presumably
16 because, again, I can't say for certain what
17 I was doing, what I was talking about a month
18 after I got there. But no reason to say it
19 wasn't. It might have included any others who
20 would come along and work with us at the time.

21 Q And what you told the Board you
22 were actively working on was the potential

1 with Direct and Dish to do equity for
2 distribution deals, correct?

3 A Yes. We would have very much
4 entertained that discussion at that point in
5 time.

6 Q And did you use this language
7 yourself? These are your words. You used the
8 words "equity for distribution deal."

9 A I did.

10 Q And by that you meant you would
11 offer the satellite companies equity, and in
12 exchange you would get more distribution,
13 correct?

14 A At that point in time, I may have
15 been talking about that.

16 Q You may have been talking about
17 that. Do you remember that -- well, you
18 wouldn't want the Board not to understand what
19 you were talking about, right?

20 I mean, this is your first report
21 to the Board. Didn't you understand that your
22 Board, at least, would read this and think

1 "Yes, he's going to go out and offer equity in
2 exchange for distribution," right?

3 A Yes. Again, to be clear, equity
4 for distribution can mean a number of
5 different things. It can mean a direct trade
6 of equity for distribution. There are
7 numerous ways -- many, many ways that deals
8 like this can happen. And it certainly is
9 something that we would have entertained.

10 Q Equity for distribution, as a
11 general term, means you offer them equity,
12 they give you more distribution. Correct?

13 A It could, and it could also mean
14 other things.

15 Q That's what you meant when you put
16 it in this document in your first Board
17 report. You'll offer them equity, they'll
18 give you more distribution. Correct?

19 A I may have been -- I certainly
20 could have been talking about that, and I
21 could have been talking about the other ways
22 that equity for distribution, as a general

1 term, manifest themselves. I can't tell you
2 that I was only -- by any means -- that I was
3 only considering a direct trade of equity for
4 distribution.

5 Q You agree with me that what you
6 described here was a direct trade of equity
7 for distribution.

8 A I'm only agreeing that it wouldn't
9 exclude it in May of 2005, that we would have
10 looked at all forms of equity for distribution
11 trades.

12 Q So you now agree with me that one
13 of the things you proposed to your Board
14 shortly after getting there was a direct trade
15 of your equity for greater distribution with
16 DirecTV and Dish.

17 A Correct. I believe I said that it
18 could have included that. I didn't say that
19 that's what I was suggesting.

20 Q You don't remember, after looking
21 at all of these words on these pages, your
22 testimony is you just can't remember that. Is

1 that right?

2 A There were many, many, many
3 correspondences, both in writing and on a
4 daily basis with Board members, with members
5 of our staff, about all kinds of plans that we
6 would do -- frankly, anything that we would do
7 to attract further distribution.

8 It could mean classic equity for
9 distribution, it could mean trades and other
10 means. I do not remember at all, in May of
11 2005, in my first Board report, that what I
12 was specifically saying -- and in fact, I was
13 probably saying that we would do just about
14 anything in order -- because we needed to
15 change our course.

16 Q You were desperate you would do
17 just about anything, wouldn't you?

18 A I'm not sure desperate is the
19 right word, but I think that we were clear
20 that we needed to move forward in a more
21 positive way than we had in the past.

22 Q Now let me ask this. In your view

1 of what equity for distribution can mean, is
2 there any meaning it has that does not involve
3 your giving them equity and your getting more
4 distribution? Yes or no.

5 A Yes.

6 Q Tell me what you think equity for
7 distribution could mean that doesn't involve
8 equity in exchange for distribution.

9 A Well, one example would be the way
10 that we ended up, to my best recollection --
11 that we finally, after many, many, many
12 iterations and many different kinds of deals,
13 of actually coming to an arrangement with both
14 Dish Network and DirectTV.

15 It turns out that it took much
16 longer than May 2005 in proffering this notion
17 for us to be able to make an arrangement.

18 Q Sir, I'm not asking -- I'm asking
19 about at this point in time --

20 MR. PHILLIPS: Objection.

21 JUDGE SIPPEL: Sustain the
22 objection. Let him finish his answer.

1 MR. CARROLL: If he's answering
2 this question, that's fine.

3 MR. PHILLIPS: He is answering
4 this question.

5 MR. CARROLL: He's talking about
6 two years later, and I want him to answer
7 about this time period, Your Honor. As long
8 as he's on this time period, that's fine.

9 MR. PHILLIPS: You shouldn't limit
10 it to a time period, Your Honor.

11 JUDGE SIPPEL: I'm not going to
12 argue it. Your objection is sustained. If
13 you run into that problem, then you ask me to
14 cut him off. But you don't do what you did.

15 MR. CARROLL: That is a fair
16 point. Yes, sir.

17 JUDGE SIPPEL: Okay.

18 THE WITNESS: So I believe that
19 the question you asked me was what other types
20 of arrangements might fall under the equity
21 for distribution concept.

22 MR. CARROLL: At this point in

1 time.

2 THE WITNESS: At this time, at any
3 time.

4 JUDGE SIPPPEL: Wait a minute, he
5 said at this time.

6 THE WITNESS: Okay. At this time.
7 I'm sorry.

8 JUDGE SIPPPEL: And this time being
9 -- what's the timeframe?

10 MR. CARROLL: May 2005, when he
11 wrote these words.

12 THE WITNESS: Okay. In May 2005,
13 we could have very well proffered a notion of
14 trading what was a standard term in our
15 agreement, which was for a free period, in
16 exchange for equity after the distributor
17 decided how deeply they were going to carry
18 us, and how widely they were going to carry
19 us.

20 So the distribution portion is
21 first set, and then theoretically a
22 distributor could decide to exchange free

1 period, which is worth cash, for equity. In
2 effect, buy back equity based on a term of
3 value, as opposed to exchanging it for
4 carriage, which is a separate part of the
5 deal.

6 Most deals have two separate
7 components, value and carriage. That would be
8 a different way of doing it. Either of the
9 two would fall under this definition as it was
10 loosely used here.

11 BY MR. CARROLL:

12 Q When you used "equity for
13 distribution deal" here, you never talked to
14 your Board at that time about this notion you
15 just advanced, that you would swap free period
16 for equity.

17 What you told the Board was you
18 would offer equity as an enticement for
19 getting greater distribution. Is that
20 correct?

21 A I don't know that. This is a
22 theoretical proffering of a potential strategy

1 that we might undertake. What I -- and I had
2 many conversations on phone and otherwise with
3 Board members.

4 So I wouldn't at all say that I
5 never told them any different -- any other
6 type of model.

7 Q Mr. Solomon, do you remember that
8 within months after using this language, you
9 sent an equity for distribution offer over to
10 DirecTV with the words "bombs away," and that
11 what you sent them was a straight equity for
12 carriage offer?

13 A I certainly may have done that.

14 Q You don't remember?

15 A Again, there were many, many
16 iterations, and many times that we tried to
17 attract the interest of DirecTV and Dish.

18 Q I'm talking --

19 A No, I don't remember that one
20 specifically.

21 Q When you started the process, when
22 you reached out to DirecTV, a few months later

1 in 2005, isn't it the case that the first
2 thing you offered them was an equity for
3 carriage deal under which you would offer them
4 equity and they would give you greater
5 distribution? Is that correct?

6 A I'm not disputing it. You asked
7 if I remembered it; I don't remember that.
8 But I'm certainly not disputing it. We very
9 well may have done that.

10 MR. CARROLL: Your Honor, may I
11 approach.

12 JUDGE SIPPEL: Yes, sir. You may.

13 MR. CARROLL: Exhibit 703.

14 (Whereupon, the document referred
15 to was marked for identification as Comcast
16 Exhibit 703.)

17 JUDGE SIPPEL: This witness has
18 been on the stand for about two hours and 15
19 minutes. Are you okay to continue? I'm okay,
20 but are you okay?

21 THE WITNESS: I could go a little
22 while longer. I'll need a very brief break at

1 some point, but I can go a little while
2 longer.

3 MR. CARROLL: Your Honor, this
4 shouldn't take much longer on the equity for
5 distribution, and then maybe that would be a
6 good break point.

7 JUDGE SIPPEL: I would appreciate
8 it if you could stay with it until we have --

9 THE WITNESS: I am happy to give
10 it my best shot.

11 MR. CARROLL: This is exhibit 703.
12 Do you have it in front of you?

13 THE WITNESS: Yes.

14 MR. CARROLL: Three pages,
15 TTC00024505, 506, 07. And then the
16 attachment, 00096515 and 16.

17 Do you see the email in the middle
18 of the first page, where you say "Here it is,
19 bombs away"?

20 THE WITNESS: I do.

21 BY MR. CARROLL:

22 Q Okay. This is your first delivery

1 of your equity for distribution offer to
2 DirecTV, isn't it?

3 A Well, this is -- I now see it, and
4 it does refresh my memory. I do recall this.
5 This, I believe, was sent after a meeting that
6 I had face to face with Chase Carey, who was
7 then the head of DirecTV.

8 Q Could you answer my question?

9 A I guess I hesitate to answer only
10 because I can't say it was the first as in --
11 it was the first offer, it looks like, but I'm
12 not sure that others follows in line.

13 Q This was the first offer you sent
14 over to DirecTV, correct?

15 A It's an enticement to make an
16 offer. It's not actually an offer. Only they
17 could make an offer. But yes.

18 Q And the enticement that you
19 offered was you offered him equity in exchange
20 for him increasing distribution, correct?

21 A Yes, we did.

22 Q So this, you agree, is an equity

1 for carriage offer that you made to DirecTV?

2 A It's a proposal for them to make
3 an offer back to us.

4 Q An equity for carriage proposal?

5 A Yes.

6 Q Exactly like the ones that you
7 reported to the Board that you would be
8 making, and the ones I've been asking you
9 about for the last 30 minutes. Correct?

10 A Not necessarily, no. I mean, this
11 was the start. Again, this was the beginning
12 of a process that -- as you can see, this is
13 2005. It took a long time, and many
14 iterations and many changes.

15 I wouldn't say that in any way it
16 was exactly like -- this deal died, this deal
17 was resuscitated, this deal was changed many,
18 many, many times.

19 This was the first attempt to
20 solicit an offer from DirecTV, who is a
21 distributor.

22 Q And what you used to solicit the

1 offer for distribution was your equity,
2 correct?

3 A Yes. In this part -- in this
4 offer, it was one of the components. Or this
5 proposal.

6 Q And do you remember that you,
7 yourself, wrote notes about your offer in
8 which you, yourself, described it as an equity
9 for carriage approach, an equity for carriage
10 offer?

11 A I don't recall that, but again, I
12 don't have any reason to quibble with it. At
13 that time, we were certainly willing to
14 entertain that.

15 Q Do you remember you referred to it
16 as "extorting blood equity"? Do you remember
17 that?

18 A I don't remember that.

19 Q You don't remember using that
20 language?

21 A I don't.

22 MR. CARROLL: Your Honor, may I

1 approach?

2 JUDGE SIPPEL: Yes, sir.

3 MR. CARROLL: This is Exhibit 704,
4 Bates numbers TTC00009147, 9148.

5 (Whereupon, the document referred
6 to was marked for identification as Comcast
7 Exhibit 704.)

8 MR. CARROLL: These are your notes
9 to yourself, right?

10 THE WITNESS: Actually, I believe
11 -- I do recall this. I believe that these
12 were notes in preparation for a memo that I
13 was going to send -- or probably sent, in a
14 different version -- to someone who worked at
15 DirecTV, who -- I worked with all those
16 executives.

17 BY MR. CARROLL:

18 Q Are these your notes?

19 A Well, they're not notes. I think
20 that this is a letter, the substance of a
21 letter -- not to myself, which is what you
22 asked and why I'm trying to describe it.

1 I don't think that's what this is.
2 I think these are notes to someone at DirectTV,
3 and clearly I was taking a tongue in cheek
4 approach to it.

5 Q Are these your words?

6 A These are my words, yes.

7 Q You wrote them?

8 A Yes, I did.

9 Q On or about September 19th, 2005,
10 sir?

11 A Yes.

12 Q Okay. And they're headed "Equity
13 for Carriage Notes," correct?

14 A Yes. They're notes in preparation
15 for a letter.

16 Q And this is just before you sent
17 over -- just before -- in fact, one week
18 before that bombs away email we just looked
19 at, which you acknowledge was an equity for
20 carriage offer, this was the week before you
21 sent that bombs away offer, right?

22 A Yes.

1 Q Okay. You're describing here that
2 old equity for carriage again, where you're
3 going to offer them equity in exchange for
4 carriage. Agreed?

5 A Yes.

6 Q On the second page, at point 11,
7 you referred to this as extorting blood equity
8 for your precious beachfront real estate. Do
9 you see that?

10 A I do.

11 Q You were referring to the fact
12 that you were going to give up valuable --
13 blood equity meant your equity in your
14 company, in exchange for getting distribution,
15 right?

16 A Yes.

17 Q That was your way of describing
18 it?

19 A Yes. Again, clearly tongue in
20 cheek.

21 Q Do you still stand by the direct
22 testimony that you put in your direct

1 submission earlier today, in which you denied
2 that you negotiated equity for carriage deals
3 with DirectTV, sir?

4 A Yes.

5 Q Your Honor, this would be a good
6 time to break, if you wish.

7 JUDGE SIPPEL: That's fine. It's
8 4:00, exactly 4:00. At 20 minutes after 4:00,
9 we will resume. Is that enough time.

10 THE WITNESS: More than enough
11 time.

12 JUDGE SIPPEL: We are in recess
13 for 20 minutes.

14 (Whereupon, the above-entitled
15 hearing went off the record at 4:00 p.m., and
16 resumed at 4:25 p.m.)

17 JUDGE SIPPEL: You are still under
18 oath.

19 THE WITNESS: I am.

20 JUDGE SIPPEL: Okay. That wasn't
21 a question.

22 (Laughter.)

1 THE WITNESS: I'm just trying to
2 get with the program, Your Honor.

3 MR. CARROLL: Thank you, Your
4 Honor.

5 BY MR. CARROLL:

6 Q Mr. Solomon, we have been at the
7 equity for carriage for a while, and I don't
8 believe in beating a dead horse. So let me
9 just -- I want to ask you --

10 MR. CARROLL: Two more documents,
11 Your Honor. And then I'm going to move to
12 some different subjects here.

13 BY MR. CARROLL:

14 Q We did DirecTV before the break.
15 And I showed you the offer you made to
16 DirecTV. And you confirmed that that offer
17 was, in fact, an equity for carriage offer in
18 the sense that you offered them equity in
19 exchange for greater distribution, correct?

20 A Yes.

21 Q Good. Let me move over to the
22 Dish side.

1 A Where are we at? I didn't say it
2 was an offer. It was an invitation to make an
3 offer. But be clear.

4 MR. CARROLL: Your Honor, may I
5 approach?

6 JUDGE SIPPEL: Yes, you may. Yes,
7 sir.

8 MR. CARROLL: This is exhibit 705,
9 Your Honor.

10 JUDGE SIPPEL: Thank you.

11 (Whereupon, the aforementioned
12 document was marked for
13 identification as Exhibit Number
14 705.)

15 BY MR. CARROLL:

16 Q For the record -- great. I handed
17 out my copies. Hold on.

18 JUDGE SIPPEL: I am happy to give
19 you a copy. Here.

20 MR. CARROLL: I was too generous,
21 Your Honor. I gave out all my copies. Thanks
22 very much.

1 BY MR. CARROLL:

2 Q Do you have exhibit 705 in front
3 of you, sir?

4 A I do.

5 Q The Bates number is TTC00019139
6 and 140 dated October 12. This is your
7 writing. You authored this document, right?

8 A Yes.

9 Q We saw one of these before the
10 break for DirectTV. I think you characterized
11 it as a letter you were planning to send to
12 them. Is that right?

13 A Yes, I believe that's correct.

14 Q This is the same thing for the
15 Dish side?

16 A This appears to be a draft. I'm
17 not sure if I presented it or not.

18 Q Your words at the top "Equity for
19 Carriage Notes," correct?

20 A Yes.

21 Q These words that you wrote were in
22 preparation for a proposal that you were

1 making to Dish that was an equity for carriage
2 proposal in the sense that you were offering
3 them equity in exchange for getting greater
4 distribution, correct?

5 A I don't know that because this
6 clearly appears to be the same document that
7 I -- for most intents and purposes, it appears
8 I've just changed the words "DirectTV" for
9 "Echo." Whether or not this went I don't have
10 a recollection or if we were really proffering
11 it to them.

12 Q When you wrote it, what you were
13 planning to do with it when you wrote it was
14 to make an equity for carriage proposal of the
15 sort we just discussed for DirectTV, namely you
16 were going to offer them equity in exchange
17 for getting more distribution, correct?

18 A I don't know that to be true.

19 Q Do you see point number 1 says,
20 "Get in early and ride the value of the
21 venture on both sides, leveraging equity for
22 your precious beach-front real estate"? Do

1 you see that?

2 A I do.

3 Q That means giving them equity in
4 exchange for distribution, correct?

5 A It could.

6 Q You wrote it. Is that what it
7 meant when you wrote it, "Yes" or "No"?

8 A It appears to be that.

9 Q And then, finally, sir --

10 MR. CARROLL: This is exhibit 503,
11 Your Honor. May I approach?

12 JUDGE SIPPEL: You may.

13 BY MR. CARROLL:

14 Q -- 503 already in evidence, draft
15 of a letter from you to Mr. Vogel, the Vice
16 Chairman of Echo Star Communications. That's
17 Dish, right?

18 A Correct.

19 Q This letter is describing an
20 equity for carriage proposal in which you are
21 offering him equity in exchange for getting
22 greater distribution, correct?

1 A I haven't read it yet, but --

2 JUDGE SIPPEL: Take your time.

3 Let him know when you are ready.

4 THE WITNESS: (Perusing document.)

5 It appears, yes, that that's what we're

6 proffering in this note.

7 BY MR. CARROLL:

8 Q And that is what you proffered in

9 the note to Dish, correct?

10 A Yes.

11 Q Okay. Now, if we could, you can

12 put that aside.

13 JUDGE SIPPEL: This is already in

14 evidence?

15 MR. CARROLL: Yes, that one is,

16 Your Honor.

17 JUDGE SIPPEL: Thank you.

18 MR. CARROLL: The 7 series I will

19 clean up at the end by offering various of

20 those that are not in evidence yet.

21 JUDGE SIPPEL: Right.

22 MR. CARROLL: We're maintaining a

1 list. And I've also still got it in mind I'm
2 going to come back and cover that point with
3 the people's identity that you wanted me --

4 JUDGE SIPPEL: I thought I might
5 catch you on that, but you're --

6 MR. CARROLL: Well, my team is
7 keeping me out of trouble on that. May I
8 approach with another exhibit, Your Honor?

9 JUDGE SIPPEL: Yes, you may.

10 MR. CARROLL: Thank you.

11 JUDGE SIPPEL: Thanks.

12 MR. CARROLL: This is exhibit 659.

13 Now, since we're in public session, I'm not
14 going to recite out the numbers, but, Your
15 Honor, you will recognize this as the chart
16 that was in my opening book.

17 JUDGE SIPPEL: Yes, sir, I do.

18 BY MR. CARROLL:

19 Q Have you seen this chart, Mr.
20 Solomon?

21 A I don't recall it.

22 Q The chart has 2009 MVPD