Testimony of

Mr. Robert A. Perry

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My name is Robert Perry. I am Vice President, Marketing, of Mitsubishi Digital Electronics America. My professional goal is to sell large volumes of advanced digital television receivers, as quickly, inexpensively, and effectively as is possible. While I have enjoyed some success in doing this, I face a massive and frustrating competitive obstacle that also afflicts seventy percent of my customers. Despite the efforts and instructions of the Congress and the FCC, my competitors and I are still unable to offer a consumer product, of any sort, that connects directly to any digital cable system. The power to be conveyed by the merger of Comcast and AT&T Broadband can be used to make this obstacle insurmountable, or finally to clear it away. If the merger goes through, this power will all be in the hands of my colleagues at this witness table.

One out of every five HDTVs in consumers' homes today is a Mitsubishi. But even with this leadership, we are unable to make headway in offering products that connect to digital cable systems. And I see competition from others repressed as well. Although I appear today on behalf of my company, I am also the chairman of the Video Board of Directors of the Consumer Electronics Association, a Board member of the Home Recording Rights Coalition, and a Board member of HAVI, a corporation devoted to digital home networking software systems. In each capacity I have learned how and why consumers are still denied the benefits of competition mandated by the Congress six years ago.

A little history:

In 1991, Senator Leahy complained that cable systems do not adequately support the operation of TV receivers. His attention to this issue led to legislation in 1992, telling the FCC to "promote" the availability of competitive remote controls and set-top boxes.

In 1996, Section 304 of the Telecommunications Act more explicitly instructed the FCC to assure the competitive commercial availability of any product necessary to receive a service offered by a cable operator -- not just set-top boxes, but also DTV receivers and other new products that consumers want and expect, such as digital video recorders.

In 1998, FCC regulations gave the cable industry until July 1, 2000, to support the operation of competitive devices bought by consumers from independent manufacturers and retailers. CableLabs, the research consortium of the cable industry, offered to draft the necessary technical specifications, and the FCC accepted this offer.

Today, in the second quarter of 2002, there is no competitive entry on the horizon. The July 1, 2000 standards were late, inadequate, incomplete, and not sufficiently tested. Recently a competitor of ours did ask CableLabs to certify a prototype DTV receiver built to this specification, as subsequently modified and improved. But CableLabs refused to consider

certification of such a product, because it does not incorporate newer specifications that are still under development and revision.

The newer specification -- the "Open Cable Access Platform," or OCAP, is software-based and may be an improvement if and when it is complete and reliable. But it is untested, far from ready, and even farther from being relied upon. Why? Because at present we have no assurance that products built to this specification would actually work when connected to cable systems. The cable operators themselves have been unwilling to say that they will rely on this specification in the devices that they, themselves, lease to customers. Moreover, as now written, this specification enables cable operators and program suppliers to remotely and unilaterally suppress competitive features of multi-purpose products. Product features such as recording, games, program guides, telephony, and home networking, might not work or could be disabled at will if they are provided in a consumer electronics device connected to digital cable.

In 2000, a new and persistent legal barrier emerged -- a license offered by the consortium of major cable MSOs, take it or leave it. Due to copy protection considerations advanced by the motion picture industry, any competitive entrant must sign this license, offered by CableLabs. Elements of this license are not only anticompetitive, they are also profoundly anti-consumer. It includes provisions for:

turning off home network interfaces by remote control
reducing the resolution of high definition content by three-fourths on designated programs
allowing consumer home recording to be turned off via technical means on an unrestricted basis.
requiring "certification" of these products by CableLabs prior to their sale, at an unlimited per-product "certification" fee.

The only companies that have signed this license are Motorola, Scientific Atlanta, and Pace -- all entrenched suppliers of set-top boxes to cable operators themselves, who are not bound by its terms.

So, Mr. Chairman, as Comcast and AT&T Broadband appear today to defend their proposed aggregation of power in all markets, you should be aware that their industry thus far has used its concentrated power to frustrate the competitive entry legislation launched a decade ago by the chairman of your own parent committee:

Cable operators distribute about 135,000 digital set-top boxes per week; they own about 25 million proprietary set-top boxes, none of which conforms to or relies on competitive standards, or the proposed CableLabs standards for attachment to cable systems.

Not a single competitive product has been sold to any consumer, nor has any yet been manufactured or even certified by CableLabs for manufacture. The fox does not simply rule the henhouse; it is owner and sole tenant.

A merged AT&T and Comcast will be by far the biggest, most powerful, and most influential cable operator in the markets for both cable services and cable devices. Today, both companies procure their set-top boxes from the same supplier, which already dominates its market. The merged AT&T and Comcast will be CableLabs' largest owner, and Motorola's biggest customer.

Its combined intentions and single checkbook will determine whether this product market remains closed to viable competition, or finally becomes the open and competitive market that Chairman Leahy envisioned in 1992, and that the Congress demanded in 1996.

You could, of course, simply approve this aggregation, and rely on the FCC to insist on compliance through closer regulation. There are proposals pending at the FCC for it to demand compliance with existing regulations, and I support them. But in the face of the concentrated cable industry power that already exists, the FCC has been pushing a string. In my view this Committee can and should insist on a commitment, here and now, that the enormous power resulting from this merger be used to deconstruct monopoly, rather than to consolidate and perpetuate it.

Here are the minimum commitments I believe this Subcommittee should demand of my colleagues at this witness table:

As to standards and specifications: I don't see how I can ask my company to invest millions of dollars in a new product line, or my customers to invest over three thousand dollars in an HDTV receiver, if the cable operators who wrote the software and specifications governing the product's operation are unwilling to rely on them in the products that they distribute themselves. A simple and authoritative pledge, from the individual who will run the combined AT&T-Comcast, that by a date certain (preferably 2003) their devices will live by the same rules and specifications they set for competitors, and that these will not discriminate against competitive features, would go an enormous way to build confidence that those who buy products from competitive entrants will not be disappointed or abandoned in their investment.

As to product certification: I don't understand how the July 1, 2000 CableLabs specification could be adequate to satisfy FCC regulations, but not adequate for CableLabs certification of an actual product. The CableLabs certification practice is in many cases discriminatory, underfunded, overpriced, nontransparent, inefficient, and unpredictable -- at least as it is encountered by those who would compete with CableLabs' MSO owners. A pledge from the merged Comcast-AT&T to look very seriously into these complaints, and to work expeditiously toward self-certification, as we enjoy in other standards areas, would go a long way.

As to the "PHILA" license that competitive entrants must sign: The ability to license competitors is a public trust that the FCC has granted to CableLabs, albeit perhaps in error, and that CableLabs continues to abuse. How can CableLabs be shielded from antitrust scrutiny, but not public accountability, in exercising it? A reasonable license would be one that did not threaten the 2.5 million displays now owned by consumers with degraded resolution, or with interfaces being shut off and screens going dark, or with the unconstrained ability to stop home recording by technical means. Even the motion picture industry has disavowed so-called "selectable output control," by which high-definition outputs, home network connections and recordable interfaces can be shut off in this manner. But in April 8 letters to Senators Leahy and Hatch, the President of CableLabs refused to disavow selectable output control. I call upon the prospective head of the merged AT&T-Comcast, here and now, to disavow selectable output control, and to pledge to sit down and work out, expeditiously, a license that manufacturers could sign without having to apologize to their past, present, and future customers.

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Mr. Chairman, I know that this subcommittee has been looking into the competitive issues that I've discussed today for quite some time, and that it has inquired of Chairman Powell of the FCC about them on more than one occasion. I believe you have performed a great public service in doing so. We are fortunate that this merger transaction, which would further aggregate monopoly power in the distribution of devices and in the setting of technical standards for their procurement, is within the jurisdiction of this Subcommittee, as are the regulators who must rule on it. On behalf of my company, I thank you very much for having invited me today.