

Testimony of  
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TESTIMONY OF DORON GORSHEIN  
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OF THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY  
CONCERNING VIDEO COMPETITION  
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Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today on behalf of The America Channel. I'm here to share our perspective on the state of competition in the video space, based on our experiences as an independent channel seeking access to the consumer.

The America Channel is an independent, nonfiction programming network, set to explore and celebrate America - profiling its diverse communities, local heroes, and ordinary people who accomplish the extraordinary. It is not a channel about celebrities or the latest fashion; but about the everyday heroics and stories of real people -- their struggles, aspirations, and achievements.

The America Channel was founded in the months following 9/11, when I realized that television no longer resonated with my sensibilities as an American consumer. Indeed, our stellar market research results confirmed that many Americans share this view. We discovered that Americans want more relevant programming, about what makes America special, more community, more connectivity and more authenticity on television. This is why we believe that The America Channel could be the most powerful, most resonant new product to come along in quite some time.

We then spent 18 months and one million dollars from investors on planning, development and market research before approaching the cable operators.

As part of our efforts, I traveled to dozens of cable systems across America, which are owned by the top cable operators. The reception was overwhelmingly positive. We believe our level of diligence was as strong as any new channel's.

The key to viability is distribution to a sufficient number of households, and access to certain key markets. Because of the market power of the largest cable operators, access through them is absolutely essential. If they say no, the viability of a new channel is in peril.

Today The America Channel has distribution relationships with the majority of what will become the telco video space - including Verizon and SBC. But after nearly 2 ½ years, we've had virtually no progress getting carriage from the dominant cable operators.

Why is this? One reason is that cable operators are vertically integrated - they own channels. The telcos do not.

This is relevant because an independent channel is a direct competitor to a cable-affiliated channel on several fronts -- For viewers, ad dollars, technical capacity, and the asset value is independently owned.

New independent channels, typically free to the cable operator for several years, also create downward pricing pressure on affiliated channels. A review of Kagan's reports reveals the average fee for cable-affiliated networks is more than three times (x) the fee for the few independents. One major cable operator derives 40% of its operating income from its television networks (and only 28.6% from cable subscriptions). That operator has strong incentive to exclude less expensive and better products, to protect increased rates for its own channels.

A fully distributed channel is typically valued in the billions of dollars, and generates annual revenue in the hundreds of millions. Thus, vertically integrated cable operators must choose between owning 5% of the revenue and asset value when launching an independent network, or 100% when wholly owned. It's an easy decision, and an inherent conflict of interest that prevents the best value products from reaching the market.

The GAO confirmed that cable operators are much more likely to carry affiliated networks over independents. And we found that each of the top two cable operators over a 2 ½ year period, carried on a non-premium, wide basis, only 1 out of 114 channels with no media affiliation. Meanwhile most affiliated channels are carried.

John Malone recently said, that an independent channel has no chance whatsoever if Comcast doesn't carry it. And CableWORLD magazine reported that VC funding of entrepreneurial cable networks has died, because of the gatekeeping power of top cable operators.

Of the 92 channels that have reached the critical viability threshold of 20 million homes, not a single one did so without at least two of Comcast, Time Warner and Adelphia. 90 out of the 92 have both Comcast and Time Warner.

The Adelphia transaction with its geographical rationalization, if consummated without conditions, could mean the end of new independent networks.

Though we believe the public would embrace The America Channel, this hearing is not about any single product. It is about free competition, for content, and for services.

We believe the telcos, in contrast to the largest cable operators, are squarely focused on free market competition - with better channel selection, lower price, and higher quality customer service. Their success is critically important, and they should be helped, to deploy their services, and have fair access to content.

Foreclosure of opportunities for independent channels has adverse effect on competition, consumer choice, consumer pricing, and the diversity of ideas in the marketplace. We must have an environment which permits free competition on the merits. It is my hope that our experience will help your efforts to address these systemic problems that play out to the detriment of all Americans.

I ask leave to file additional market statistics as a supplement to the record in this hearing in aid of your efforts to address these issues.

Thank you again for the opportunity to testify.