Testimony of

Mr. John D. Goodman

President
Coalition for Competitive Access to Content
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Good morning. I want to express my appreciation to Chairman Specter and other members of the Judiciary Committee for the opportunity to participate in this hearing. I am pleased to represent the Coalition for Competitive Access to Content, a diverse group of companies and organizations that includes direct broadcast satellite (DBS) providers, broadband service providers (BSPs), telco new entrants, trade associations, and consumer groups that are committed to expanded competition for consumers in the video market place. These member organizations disagree on many other public policy issues, but nonetheless have come to the same conclusion regarding program access reform: assured access to content, particularly regional sports programming, is essential to the development of new high capacity networks that provide video and broadband competition.

Congress has long recognized the direct linkage between access to programming and additional video competition. In 1992, Congress promulgated the original program access provisions that required that video content owned by cable operators be made available to new entrants on fair and non-discriminatory terms.

Access to content is every bit as important today as it was in 1992. The FCC reviewed the application of certain program access rules in 2002 and, concluding that they were still essential, extended their application for 5 years. More recently, Senators Kohl and DeWine have sponsored several valuable GAO studies that document both the need for more wireline video competition and the relationship between access to content and the ability to compete in the marketplace. Regulators reviewing media mergers and acquisitions have reached the same conclusion. The recent proceedings involving DirecTV/ Newscorp and the more recent Comcast/Time Warner/ Adelphia transactions were approved with program access conditions related to sports and other programming. While we applaud the FCC's vigilance in this area, the CA2C believes that a statutory mechanism - not piecemeal adjudication - is necessary and justified to assure access to content.

The current level of vertical integration continues to be significant and expanding. Incumbent cable operator ownership of professional sports franchises and sports programming has expanded since 1992. In addition, a substantial portion of current vertical integration is concentrated in programming that has the highest viewership and value. The CA2C has attempted to document the current level of vertical integration. As we submit these summary profiles, the committee should feel free to share this information with the referenced cable companies for their review, validation, correction, and expansion as appropriate.

Unfortunately, Congress's program access provisions - written in 1992 - have not kept pace with today's technology and market structure. Cable operators can control exclusive rights to programming delivered to their headends by fiber rather than satellites. This is called the "terrestrial loophole." This is why a DBS subscriber in Philadelphia cannot receive Comcast's sports network with Flyers, Phillies, and 76ers games. And this is why a DBS subscriber in San Diego cannot receive Cox's sports network with Padres' games. The FCC has looked at this issue and concluded it has no authority to deal with any terrestrially delivered content until Congress amends current legislation.

Accordingly, the CA2C provided input for the "Sports Freedom" provisions in the telecommunications legislation introduced by Senators Stevens and Inouye earlier this year. These provisions closed the terrestrial loophole and enhanced the framework related to sports programming by, among other things, applying arbitration procedures to resolve certain disputes. These provisions were similar to the conditions created for the DirecTV/Newscorp merger.

We supported new legislation because it will have equal application to all MVPDs and sustain the right market structures to promote the development of competition. We should not rely on mergers, acquisitions, or other particular market events to address these industry-wide matters. Moreover, the FTC and the FCC should be directed and empowered to deal with anti-competitive issues in the market that include competitive access to content. In short, we do not seek for Congress to establish an entirely new legal framework of economic regulation and prices controls; nor should particular players in the market be singled out. Rather, a rational and measured updating and extension of the rules is in order.

Opponents to program access legislation have publicly acknowledged that the existing rules have been effective within their jurisdictional limits. However, they now oppose program access rules. They claim these rules are not needed because current markets are fully competitive and that there are limited current examples of abuse or denied access. But the market reality of key programming, especially local and regional sports programming concentrated in the hands of a few cable operators, undermines that view.

Even incumbent cable operators have asked for conditions guaranteeing access to content. The DirecTV/NewsCorp merger was the first time that an incumbent video provider faced a potential threat of some other network operator having control of essential content. Suddenly, they were asking for merger conditions that sounded a lot like the standards CA2C members have promoted to bring video competition to the market.

I want to again thank you for this opportunity to be with you this morning and look forward to your questions.