

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
November 14, 2006

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Ranking Member, Judiciary Committee

"Competition in Sports Programming and Broadcasting:

Are Consumers Winning?"

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Chairman Specter decided to schedule this hearing and I look forward to hearing his concerns and point of view on this issue. As a legislative matter, the question is whether current law ensures competition and innovation in all sectors of the communications industry and what is in the best interests of the public.

That the Chairman has focused his attention on National Football League programming may be a matter of personal interest, because his state is home to the NFL world champion Pittsburgh Steelers as well as the Philadelphia Eagles, or because NFL broadcasts are routinely among the top-rated weekly programs. Channels that carry NFL games are an important part of the lineup of any video service provider that wants to compete.

At the urging of the professional sports leagues, Congress inserted itself into the sports broadcasting debate more than four decades ago. In 1961, Congress passed the Sports Broadcasting Act, creating a limited antitrust exemption for professional sports teams to pool broadcast rights through their leagues and divide the revenue. It paved the way for telecast agreements between the NFL and free, over-the-air networks; agreements that have made billions of dollars for NFL owners. Watching NFL games has become a weekly Sunday afternoon and Monday evening ritual in millions of American households every Fall.

The recent migration by the National Football League away from free, over-the-air television for transmitting NFL games to the public concerns some fans. The transfer of Monday Night Football, for instance, from free television to ESPN has cut significantly the number of viewers on Monday night. I have no doubt the switch has been lucrative for the NFL and its teams. I doubt whether it meets with universal acclaim among sports fans. I expect more fans would be concerned if there were a prospect that important games, such as the playoffs or the Super Bowl, were to be moved from free network broadcasts to pay-per-view or premium channel events.

The larger issue that the Chairman may be seeking to raise through this hearing is how exclusive deals for video content affect competition among video service providers. Competition law should facilitate new entrants into the highly concentrated video service market, but should not unduly proscribe pro-competitive agreements. The viability of a new video service provider depends on its ability to offer desirable content. In some instances, however, obtaining the exclusive right to transmit certain programming may be the best way for a new entrant into the video services market to distinguish itself and attract new subscribers.

As we move into the 110th Congress, I will consult with the Senator from Pennsylvania, the Senator from California, and the other interested members on our agenda.