

TESTIMONY OF DORON GORSHEIN
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BEFORE THE
UNITED STATES SENATE
COMMITTEE ON
COMMERCE, SCIENCE & TRANSPORTATION,
HEARING CONCERNING
VIDEO CONTENT

TUESDAY, JANUARY 31, 2006
2:30 P.M.

Mr. Chairman, Mr. Co-Chairman, and Members of the Committee, thank you for the opportunity to testify.

The America Channel is a new, nonfiction programming network set to launch later this year. It will explore and celebrate America – profiling its diverse communities, local heroes, and ordinary people who accomplish the extraordinary.

The America Channel was founded after 9/11, when television no longer resonated with my sensibilities as an American consumer. Indeed, our stellar market research, and consumer and system feedback confirmed, that Americans want more relevant programming, about what makes America special, more community, more connectivity and more authenticity on television. We believe that The America Channel could be the most resonant new product to come along in quite some time.

In recent months we've secured distribution with no less than 6 telcos, close to 90 percent of the projected telco video space, including Verizon, AT&T and others. Channels that have 90 percent of the cable space, have been around for 25 years. In telco, we did it in 5 months. In contrast to our success in telco, after close to 3 years, we've had virtually no progress getting carriage from the dominant cable operators.

Without distribution on the largest cable operators, in key markets controlled by them, a channel is not viable. 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. 91 out of the 92 got both Comcast and Time Warner. John Malone said that an independent channel has no chance whatsoever if Comcast doesn't carry it.

We found that each of the top two cable operators over a 2 ½ year period, carried on a non-premium, national basis, only 1 out of 114 channels with no media affiliation – less than 1 %. In contrast, most of the channels affiliated with a cable or broadcast company got carriage on one or both of the top cable operators. Comcast carries 100% of its own channels, and almost all of them on analog. Affiliated channels are also typically given 11 times the number of homes on a median basis (more than 2x greater on a mean basis). A number of studies including one by the GAO, confirm that the top cable operators are much more likely to carry their own affiliated channels than independent channels.

Such disparities cannot be explained on the basis of free market considerations alone. Affiliation is a major factor.

Why are independent channels locked out by cable? Because independent channels are direct competitors to cable-affiliated channels on several fronts -- For viewers, ad dollars, technical capacity, and the asset value is independently owned.

Independent channels apply downward pricing pressure on affiliated channels. Cable-affiliated channels on average cost more than three times the cost of an independent. One top cable operator derives 40% of its operating income from its television networks. 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. Cable operators want to own that. So there's an inherent conflict of interest that prevents the best and cheapest products from entering the market.

The results? Cable rates have doubled in 10 years. Only one other consumable has matched this -- gasoline. Other telecom services have all gone down -- telephone, wireless, long distance, broadband. If better and cheaper content competitors are kept out of the market, consumer prices will rise. And there are adverse effects on consumer choice, competition, diversity, and decency.

What are the solutions?

On the distribution side, nothing could be more important than expeditious enactment of telco video franchise relief.

And, competitors like DIRECTV, EchoStar and RCN should have the same fair access to sports nets and other must have programming.

The other half of the problem, is on the content side. The stifling of competition and abuse of gate-keeping power requires urgent attention.

One solution is for the FCC to impose conditions on the Adelphia merger, as we and others have urged them to do. Congress might consider other solutions. For example going forward, 50% of all new channel capacity on Comcast and Time Warner, could be designated for independent networks with no cable or broadcast affiliation. After all, Comcast and Time Warner have indicated that capacity will increase if they are permitted to acquire Adelphia.

Section 25 of the Cable Act of 1992 provides sound precedent. There, Congress took steps to ensure access for a valuable type of programming that had difficulty reaching the public. Certainly, there are other creative solutions to this important public policy problem, and we look forward to working with you to craft fair remedies that balance the interests, rights and equities of everyone involved, and most importantly, the public.

Foreclosure of opportunities for independent channels is a detriment to competition, consumer choice, consumer pricing, diversity of information sources, decency and the national discourse. We must have a free market environment which permits new market entrants to compete on their merits. It is my hope that we can address these systemic problems that play out to the detriment of all Americans.

Thank you again for the opportunity to testify.