

Congress of the United States
House of Representatives
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The Honorable Julius Genachowski
Chairman
Federal Communications Commission
Room 8B201
445 - 12th Street, SW
Washington, DC 20554

Dear Mr. Chairman:

As the Federal Communications Commission (FCC) considers whether to extend or let sunset the program access rules under the Cable Act of 1992, I am writing to strongly encourage the Commission to extend these important rules, which promote competition and provide consumers with choices in the video distribution marketplace. As the principal House author of the Cable Act, I believe that these rules continue to serve vital public interest goals and remain “necessary to preserve and protect competition and diversity”¹ in the marketplace, consistent with the intent of the Act. Sunset of the program access rules could lead to a new dawn of less choice and higher prices for consumers.

As you know, two decades ago, Congress directed the FCC to adopt rules prohibiting exclusive programming arrangements by vertically integrated cable companies in an effort to achieve the goals of the Cable Act. The Act, which was the only bill passed over a veto during the entire four years of the George H. W. Bush presidency, was a bipartisan triumph of experience over hope. Cable was deregulated in 1984 with the hope that competition would control rates but experience taught that cable had grown instead into an entrenched monopoly. The Act attacked this situation by giving competitors new legal protection in their fight to compete with cable.

The rules became a catalyst for competition in the marketplace. They enabled creation of the direct broadcast satellite industry and entry of telephone companies into the multichannel video programming distributor (MVPD) market, ushering in more choice for consumers seeking alternatives to cable company offerings. Without the program access rules – and their bar against withholding must-have, popular programming from competitors -- consumers across the country would not have considered such alternatives as compelling, diminishing the likelihood that new, competing business models would be viable.

Although some may argue that the program access rules have outlived their usefulness, the rules remain a foundation for competition, and conditions in today’s video marketplace

¹ 47 U.S.C. § 548.

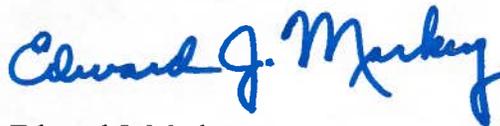
necessitate their continuance. Only through competition will consumers realize the benefits of lower prices, innovation, and improved service. Before Congress passed the Cable Act, companies seeking to enter the paid television market could not obtain HBO, MTV and similar popular programming because their competitors refused to license this programming to them. Today, if the rules are allowed to expire, a vertically integrated company could deny competitors must-have programming, such as the sporting events featuring the Los Angeles Lakers, Houston Astros and Rockets, or the Chicago Cubs and Bulls. As a result, consumers would have no choice about where to purchase the programming they want. Without competition, prices would rise. Without the rules, consumers could be left at the mercy of vertically integrated cable companies that exclusively hold the keys to the programming they want.

The largest vertically integrated cable companies remain powerful players in the marketplace, and recent mergers have deepened their programming resources. Cable today maintains a dominant share of the national market – nearly 59 percent of pay television households -- and enjoys an even greater share in key regional markets including Boston, where cable has 87 percent of pay television households. While some have advocated case-by-case adjudication in lieu of rules in instances of program access disputes, such an approach invites time-consuming litigation. This change may also compel consumers to sign up with the large cable companies because they are the only source for must-see sports or entertainment programming. By the time these disputes conclude, competitors without access to such programming will have lost potential customers, frustrating competition and harming consumers. Instead, the far better approach is to maintain the current rules that require a vertically integrated cable company to demonstrate why the public interest would be served by an exclusive arrangement before such an agreement can enter into force.

The program access rules are as necessary today as they were when Chairman Michael Powell and Chairman Kevin Martin extended them in 2002 and 2007, respectively. All consumers, no matter their current MVPD provider, would continue to benefit from the competition and choice made possible by the program access rules. Moreover, extension of the rules also would keep the programming playing field level for entrants into the MVPD marketplace that may emerge in the future, further promoting competition and choice beneficial to consumers. Accordingly, I urge the Commission to maintain the program access rules.

Thank you for your attention to this important matter.

Sincerely,



Edward J. Markey

Cc: Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai