



**Broadband Service Providers Association (BSPA)**  
**Program Access Sunset Extension And Access To Terrestrial Programming**

- BSPA supports extension of the Sunset Provision of Section 628(c)(5) applicable to exclusive contracts.
  - Competitive access to programming is critical and requires continued protection.
  - Current industry consolidation amplifies potential issues.
- Fair and equal access to programming is critical element to effective long term MVPD competition, key policy goal of 1992 Cable Act and Telecom Act of 1996.
  - Clearly recognized for satellite-delivered programming, as reflected in Section 628(c)(2) (“minimum content of regulations”).
  - Equally important for programming delivered to MVPDs via other modes, as demonstrated by numerous parties.
- Protections afforded by Program Access provisions should be technology-neutral, and should not depend on programming’s mode of delivery to MVPDs.
  - Sections 628(a) and (b) were intended as general principle to protect competition.
  - Terrestrial delivery is a major technology shift that has occurred since the original provisions were passed.
  - Distribution and delivery technologies will continue to migrate. Emerging technologies that may need consideration may include VOD, ITV, and Streaming Video.
- Differing views exist as to whether FCC has current authority to apply the Program Access Rules to terrestrial-delivered programming, though BSPA believes that Section 628(b) can fairly be read to cover the denial of programming by cable-affiliates, regardless of delivery mode, where purpose or effect is to significantly hinder or prevent MVPD’s ability to compete.
  - The FCC has expressed concern about extending its authority.
  - Some congressional leaders feel authority already exists.
  - Both have acknowledged concern over the potential anti-competitive issues.
- FCC in its Exclusivity Sunset Report and Order should acknowledge these continuing issues and establish framework for their resolution.
  - Continuing industry consolidation and potential opportunities for companies with significant market power to limit competition through exclusive or discriminatory access to programming.
  - The need, from policy perspective, for Program Access rules to be independent of technology employed for program delivery to distributors.
  - The potential need for Congressional clarification of the broader intent of the current Section 628 provisions and the FCC’s authority to protect MVPD competition by requiring access to cable-affiliated programming, regardless of mode of delivery.
  - The continued importance of sustaining and developing competition in the MVPD market beyond the current dominant incumbent MSO’s and satellite providers.