AMERICANS FOR
LIMITED GOVERNMENT

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Sept. 24, 2018

The Honorable Greg Walden
Chairman, House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Joe Barton
Vice Chairman, House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

Dear Representatives,

Prior to the September 26, 2018 Energy and Commerce committee hearing, Americans for Limited Government believes it is necessary to raise concern over the potential harms "vertical integration" of mass media companies can inflict on the telecommunications industry. In light of recent antitrust developments, it has come to the attention of not just Americans for Limited Government, but Americans of all political stripes and backgrounds, that we cannot merely turn a blind eye to these concerns.

When a video distributor (like AT&T) controls popular programming (like Time Warner), it has the power to harm rival distributors by withholding or threatening to withhold that programming.

It is important to bring this issue to the surface because another instance of vertical consolidation—that of Comcast and NBCU—threatens to cause the same, if not greater, harm than a consolidated AT&T and Time Warner does. When Comcast and NBCU were given the greenlight to merge, the FCC imposed conditions upon the mass media giant to keep it in check—but these conditions have since expired, leaving Comcast/NBCU unleashed to plague consumers with higher costs and harm market rivals.

It is very much the view of Americans for Limited Government that government should only intercede sparingly in our day-to-day lives, and an unconstrained Comcast/NBCU is an instance where the potential harm to the availability of diverse speech caused by an anti-competitive monopoly outweighs any benefits that monopoly might provide.. We thus urge an open investigation into the Comcast/NBCU merger and expect that such an investigation would find that Comcast/NBCU is harming consumer welfare and should either be broken up or have its FCC conditions re-imposed.

As many have argued in the past, including the Department of Justice (DOJ), vertical integration allows a programmer/distributor to increase programming prices for rivals as a result of bargaining leverage. Three factors in particular will increase the profitability of withholding programming, thus resulting in more bargaining leverage and greater competitive harm.

- The importance of the programming to consumers, which determines the number of subscribers that will depart the rivals if programming is withheld;

- The vertically integrated distributors' market share, which determines the share of disconnecting consumers that will sign up with the vertically integrated firm; and

- The profit that the vertically integrated distributor earns on each new subscriber.

In regard to each of these items, the Comcast/NBCU merger remains far more dangerous to Comcast's distribution rivals than the AT&T/Time Warner combination is to AT&T's distribution for the following reasons:

- Comcast/NBCU programming is significantly more important to consumers than is Time Warner's programming. While the national programming of both cable distributors may be similar, Comcast/NBCU owns many widely considered "must-have" television broadcast stations and regional sports networks (RSNs). Time Warner, by contrast, owns no broadcast stations or RSNs.

- In the markets where Comcast owns these local stations and RSNs, Comcast's market share is on average greater than 50%, compared to AT&T/Time Warner national market share which is about 25%.

- Comcast would profit much more from acquiring a rival's subscriber than AT&T/Time Warner because Comcast can sell all new customers video and wireline broadband. AT&T/Time Warner only has that capability in limited areas.

Similarly, because Comcast has much more to gain from NBCU's programing price increases than AT&T would from Time Warner's, the competitive harm Comcast/NBCU will inflict, has the potential to be much greater.

Of course, none of this diminishes the considerable harm that will ensue as a result of AT&T/Time Warner's consolidation. We wholeheartedly support the DOJ's efforts to block that transaction. We would also note that, due in part to recent intense antitrust scrutiny, AT&T has agreed to submit to a binding arbitration commitment similar to that of Comcast/NBCU's now expired arbitration commitment.

Now even more competitive harm is on the horizon as a result of Comcast/NBCU's expired conditions. Accordingly, it is imperative these issues are not only raised at your upcoming hearing, but discussed at length in order to open an investigation into the past practices and future operation of Comcast/NBCU. Then, upon reviewing the findings of such an investigation, conditions should be put in place that will enforce anti-competitive rules and regulations. At the very least, to protect consumers and rivals, Comcast/NBCU should be subjected to the same arbitration commitment as AT&T/Time Warner.

We hope you will take our concerns seriously, and we look forward to working alongside this committee to control Comcast/NBCU's hold on the market before it's too late.

Sincerely,

Richard M. Manning
President
Americans for Limited Government