Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Antitrust Subcommittee Hearing:
"Examining the Competitive Impact of the AT&T-Time Warner Transaction"
December 7, 2016

Thank you Mr. Chairman for holding this hearing on the biggest transaction of the year, the proposed AT&T-Time Warner merger. This deal would combine one of the nation's largest phone and internet providers with a media entertainment titan that among other things, owns HBO, CNN, TBS, TNT and Warner Brothers studios. By expanding into media and entertainment, AT&T strengthens its existing wireless, internet and pay-TV business and also becomes a premier content owner.

The Justice Department, and possibly the Federal Communications Commission, will determine whether to approve or reject this merger, and decide whether or what conditions should be imposed in order for the parties to proceed with their transaction. Nonetheless, our oversight responsibility is an important one, where the Committee can flesh out potential issues and highlight possible impacts of the merger on the market and consumers.

It's an understatement to say that this industry is undergoing tremendous change. People are constantly reevaluating what, when, where and how they access their media entertainment and content. Technologies are quickly evolving, and delivery platforms are converging. Companies are improving their technologies so that customers can enjoy better and faster connectivity. Innovation is creating more options and allowing for multiple combinations. The creativity of programming content and device apps is flourishing to satisfy any and every consumer taste, young and old. Customers are becoming increasingly knowledgeable about content offerings and their data consumption needs.

No doubt, this industry is going through a transformative and disruptive time, and consumers are enjoying the ride. So we want to make sure that this revolution in technologies and content continues to thrive and evolve to the benefit of all consumers, all over the country, including in rural communities in Iowa. More content choices and accessibility options, better quality and affordable prices make for a happy consumer.

AT&T and Time Warner say that this vertical merger will "benefit consumers, strengthen competition, and encourage innovation and investment." They claim that by consolidating the assets of the two companies, it will be able to better compete nationwide and meet the expectations of consumers.

However, critics of the merger say that this deal will have a negative impact on competition and innovation. There's concern that a combined AT&T-Time Warner will block competitor access to popular Time Warner content.

There's concern that a combined company will give preferential treatment – for example, favorable channel placement and zero-rating pricing – to Time Warner's premium entertainment programming to the disadvantage of other content producers, in particular small independent producers. There's concern about AT&T-Time Warner's ability to leverage their assets to negotiate better licensing arrangements or raise the price of their content to the detriment of other distributors. There's concern about the merged company's ability to employ "bullying" tactics to dictate rates and terms to other networks. There's concern that this acquisition will concentrate too much power into one conglomerate, resulting in higher prices and fewer programming options for consumers. There's also concern about the merger's implications for a free and diverse press.

These are all serious concerns which should be scrutinized carefully by the antitrust regulators tasked with reviewing this transaction.

At the same time, some warn that we should be careful about how the AT&T-Time Warner deal should be examined because of the dynamic nature of the industry, complexity of the marketplace, and fast paced innovation and changing consumer wants and needs. They question whether current merger analysis methods are "well suited to tackle" this transaction, and urge caution when determining the competitive effects of mergers between different complex, interconnected platforms. They suggest that we may need to re-define market power and re-assess how to analyze it in a fast shifting industry with "multisided" platforms. With tech giants like Google, Facebook, Amazon, Netflix and others changing the way consumers access content, it's legitimate to ask whether "what looks straightforwardly anti-competitive in the old industrial-merger models might not be so simple in the merger of modern media platforms."

Certainly, the AT&T-Time Warner deal warrants close and careful scrutiny because it raises all these complex issues and concerns.

We want to ensure that the proposed merger doesn't allow for an unfair advantage over competitors or facilitate anti-competitive practices with anti-competitive effects. Yet we also need a thoughtful, forward-looking analysis of the market that takes into account the complexity of modern interconnected media, content and telecom platforms and relationships.

Ultimately, we want to ensure that competition thrives in this critical market, and we don't stifle innovation or deter the emergence of cutting-edge technologies that customers demand. Ultimately, we want to ensure that our policies don't lead to higher costs, fewer choices or worse service for consumers.

I look forward to our discussion today.