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EXAMINING THE COMPETITIVE IMPACT OF THE
AT&T-TIME WARNER TRANSACTION
FROM RETALIATORY CRIMINAL REFERRALS?

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WEDNESDAY, DECEMBER 7, 2016

United States Senate,
Subcommittee on Antitrust,
Competition Policy & Consumer Rights
Committee on the Judiciary,
Washington, D.C.

The Committee met, pursuant to notice, at 10:02 a.m.,
in room SD-226, Dirksen Senate Office Building, Hon. Mike
Lee, Chairman of the Subcommittee, presiding.

Present: Senators Grassley, Hatch, Cornyn, Lee, Flake,
Perdue, Tillis, Leahy, Durbin, Klobuchar, Franken, and
Blumenthal.

Senator Lee. Welcome to the Subcommittee on
Antitrust, Competition Policy & Consumer Rights. Before we
start, I would like to thank Ranking Member Klobuchar and
her staff for preparing for this hearing today. I would
also like to thank the Chairman of the full committee,
Senator Grassley, for his support for the hearing.

After I and Senators Klobuchar, Grassley, and Leahy
give their opening remarks about this hearing, we will hear

1 from our panel of witnesses. I will introduce those
2 witnesses shortly and then we will have seven-minute
3 question rounds from Members of the subcommittee.

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1 OPENING STATEMENT OF HON. MIKE LEE, A U.S.
2 SENATOR FROM THE STATE OF UTAH, CHAIRMAN OF THE
3 SUBCOMMITTEE

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5 Senator Lee. We are living in what some might
6 describe as sort of a "golden age of television." One tv
7 writer recently commented that for the first time I have
8 begun to feel like there may, in fact, be too much good tv
9 -- if there were possible. From Game of Thrones to House of
10 Cards and so many other programs across so many television
11 networks and so many different platforms, the quantity and
12 quality of programming content may well be greater today
13 than it ever has been in the past, or ever could have been
14 predicted.

15 The creativity, however, is not limited to content
16 creators. Networks and distributors are also innovating to
17 allow consumers new and unprecedented access to their
18 content of choice. No longer are consumers limited to
19 whatever bundle their local cable operator might have put
20 together for them.

21 DISH, Sony, and DIRECTV all offer cable bundles
22 allowing consumers to stream live television over the
23 internet. Netflix, Amazon, HBO, and CBS, among others,
24 allow consumers to purchase programming directly. And more
25 innovation is on the horizon and coming at us very quickly

1 as many industry participants expect 5G wireless technology
2 to provide even more competition to broadband and landline
3 cable, opening up even more possibilities to content
4 creators and to distributors.

5 This brings us to the very reason why we are here
6 today, to discuss the proposed acquisition of Time Warner by
7 AT&T, and ensuring this flourishing marketplace for creative
8 content retains its vibrancy, regardless of the outcome of
9 this proposed acquisition.

10 AT&T is the second largest wireless carrier in the
11 United States, and through its DIRECTV and U-verse
12 subsidiaries, the largest U.S. cable or satellite provider.
13 Time Warner is currently the world's third largest
14 television network and film tv entertainment company.

15 In late October, AT&T announced that it reached a deal
16 to purchase Time Warner for \$85 billion. The proposed
17 transaction would combine AT&T's millions of wireless and
18 paid television subscribers with Time Warner's media lineup,
19 which includes CNN, TNT, HBO, and Warner Brothers Film and
20 Television Studio.

21 Now the companies claim that this acquisition will
22 result in significant benefits for consumers. The combined
23 company will provide "stronger competitive alternative to
24 cable and other video providers" and "better value, more
25 choices, and an enhanced customer experience for over-the-

1 top and mobile viewing." Additionally, and by controlling
2 the customer experience from content creation through
3 distribution, the combined company says it will be able to
4 innovate its advertising practices and introduce customized
5 or targeted advertising, providing both an improved customer
6 experience and a significant competitor to digital
7 advertising giants like Google and Facebook.

8 This transaction involves no horizontal overlaps.
9 However, if this fact ended the antitrust analysis, then
10 this would be a very Seinfeldian hearing, a hearing about
11 nothing.

12 Although vertical deals typically raise fewer concerns
13 than do their horizontal counter parts, such deals,
14 nevertheless, may still tend to substantially lesson
15 competition. The key analysis takes place, of course, under
16 the Clayton Act. The principal concern with vertical
17 integration is foreclosure or denying access of competing
18 firms to suppliers and customers.

19 A key question, thus, becomes what will the incentives
20 and opportunities be for the combined firm after the
21 transaction takes place?

22 Many critics of the deal have posited that all sorts of
23 potential anticompetitive abuses may take place and that the
24 combination of AT&T and Time Warner could create -- AT&T
25 could increase the price of, or reduce access to Time Warner

1 content to rival television distributors, thereby not only
2 raising its rivals costs, but also making its DIRECTV
3 products appear more attractive to consumers. This risk is
4 particularly acute in the nascent online video services
5 market.

6 Over the past few years, we have seen the development
7 of products like Sling and like PlayStation Vue, which allow
8 customers to watch a live stream of cable channels via their
9 internet connection. And DIRECTV has just begun its own
10 similar service called DIRECTV Now.

11 AT&T's ownership of HBO, CNN, and the other must-have
12 television products of Time Warner could give DIRECTV Now a
13 significant competitive advantage over its competitors.
14 AT&T's ownership of these channels could also potentially
15 force DIRECTV's rivals into a Hobson's choice of higher
16 prices or limited Time Warner content, knowing that many
17 customers would migrate to DIRECTV if its rivals refuse to
18 pay the higher Time Warner prices that they would have to
19 pay in that circumstance.

20 The potential anticompetitive favoritism that the
21 combined firm could bestow on its own products is not
22 limited to price or access, but extends to quality of the
23 offerings as well. It is here that we get to the siren
24 song of zero rating, whereby a wireless or broadband
25 distributor excludes particular data from counting towards

1 its customers data consumption caps.

2 Now, on its face, zero rating appears to be customer
3 friendly. The content is free for subscribers and helps
4 them to avoid having to pay overage when they exceed the
5 applicable data caps. However, critics argue that zero
6 rating transforms internet service providers or wireless
7 carriers from "relatively neutral conduits into
8 gatekeepers."

9 The FCC recently expressed concern that AT&T zero
10 rating practices "may obstruct competition and harm
11 consumers by constraining their ability to access existing
12 and future mobile services not affiliated with AT&T."

13 Now critics say that such concerns would only be
14 exacerbated if AT&T were able to bring Time Warner content
15 under its fold and under its ownership. However, as the FCC
16 letter, itself, illustrates in regard to this merger, we
17 also have a regulatory framework that is designed, at least,
18 to minimize if not to eliminate many of the posited
19 anticompetitive concerns that have been expressed.

20 The issues raised by this deal are complicated. Like
21 most antitrust analysis, particularly most antitrust
22 analysis in a deal that is this big and this complex, they
23 are necessarily very fact intensive. The focus of the
24 analysis should remain on maximizing consumer welfare.
25 Consumer welfare is -- in turn -- maximized when we focus

1 on protecting competition, rather than protecting individual
2 competitors from the competition.

3 While the final determination regarding the competitive
4 impact of the deal will be made by the Department of
5 Justice, I believe we can make a valuable contribution to
6 the conversation today by closely examining the questions
7 raised by this unique and significant transaction.

8 I look forward to hearing from and engaging with our
9 uniquely talented and capable panel of witnesses today, and
10 covering any issues that might come up.

11 Senator Klobuchar will now give her statement.

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1 OPENING STATEMENT OF HON. AMY KLOBUCHAR, A U.S.
2 SENATOR FROM THE STATE OF MINNESOTA

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4 Senator Klobuchar. Thank you very much, Mr. chairman.
5 Thank you for holding this important hearing.

6 Like you, my initial statement here started out with
7 examples of these great new offerings. We seem to have the
8 same ideas.

9 I was going to mention Game of Thorns or as you once
10 called this hearing, Game of Phones; right? Instead I now
11 will swithc to Westworld to show how flexible I am in this
12 new era in Washington.

13 So examples of the content we are seeing from a variety
14 of sources: HBO's Westworld and the Wire, to Netflix's House
15 of Cards, to ESPN's 30-for-30 documentaries, we are seeing
16 critically acclaimed and popular content coming from a wider
17 range of networks and video on-demand services. Perhaps,
18 even more important, we see diverse voices being heard with
19 networks representing different viewpoints and interests.

20 This has been referred by both of us as the "golden age
21 of television." However, it really is actually not quite
22 accurate.

23 Increasingly, we stream shows on our computers,
24 tablets, and mobile phones rather than simply watching them
25 on televisions. And consumers are relying on their

1 broadband or wireless connections instead of their cable
2 connections to receive that content.

3 This competition has increased consumer demand for
4 video content, which has benefitted the content creators.
5 According to the Writers Guild, there were 305 comedy and
6 drama series during the 2015-2016 season, compared to 204 in
7 2010 to 2011. Earnings for the Guild's writers have grown
8 by almost 50 percent from 570 million to 854 million in the
9 same time period. But there are still problems, and we know
10 what they are because as U.S. Senators, we hear about them
11 when constituents talk to us on the street or call our
12 offices.

13 The cost of cable television continues to be a burden
14 on too many consumers. According to a report released just
15 this morning by Consumer Federation of America, the typical
16 household -- which is in America now -- two cell phones, one
17 landline, and a video internet bundle, spends about \$2,700
18 per year on these services. When you think of a middle
19 class income, that is a chunk of change.

20 We have seen this plot before. Like a tired movie
21 franchise, we can predict the ending before it begins. The
22 promise of thriving competition collapses, replaced by
23 dominate firms with monopoly power. We saw it in radio and
24 television with a development of centralized networks, and
25 finally in cable with the rise of cable distributors and

1 their local monopolies.

2 This is the central question of the hearing: Will this
3 transaction accelerate the disruptive forces what will
4 increase competition, spur innovation, improve quality, and
5 lower costs, or is this one step on the road to a few
6 dominate firms controlling content and distribution? One
7 school of thought believes that vertical transactions in
8 which a distributor of content acquires a supplier rarely,
9 if ever, undermine competition.

10 I reject that approach. Whether an acquisition will
11 harm consumers depends on factual investigation and careful
12 analysis, not ideological presumptions.

13 The Federal Communications Commission and the Antitrust
14 Division of the Department of Justice have largely followed
15 this practical approach in reviewing mergers and acquisition
16 in this industry. In the interest of American consumers, I
17 hope that the new administration continues that tradition.

18 AT&T's acquisition of Time Warner combines one of the
19 world's largest wireless cable, including satellite tv, and
20 broadband provider with one of the world's largest media and
21 entertainment companies.

22 There are three broad questions that I think we need to
23 look at. First, will the acquisition increase AT&T's
24 incentive and ability to suppress competition. Various
25 distributors of video content have raised concerns that AT&T

1 will increase the prices that competitors pay for Time
2 Warner content or deprive its competitors of access to that
3 content. Independent content providers raise similar
4 concerns. Will AT&T post-transaction favor its own content
5 over independent content.

6 If pursued, such tactics could increase the costs that
7 distributors charge consumers or undermine the development
8 of innovative distribution models. Even more troubling, the
9 merger could stifle the diversity of viewpoints and focus
10 offered by independent content providers. Independent
11 content providers are responsible for much of the innovation
12 and diversity in programs today, but they already face a
13 tough landscape having to negotiate with large distributors.

14 The second question: Will the merger produce benefits?
15 According to the parties and supporters of the transaction,
16 combining programming content with video distribution would
17 allow AT&T to develop new innovative offerings for
18 consumers, improve content creation, and allow AT&T to
19 better compete with Facebook and Google.

20 I appreciate that AT&T, just last week, launched
21 DIRECTV Now, which allows customers to access DIRECTV's
22 programming through the internet. These potential benefits
23 need to be examined. But I want to be clear, if this
24 transaction is found to be anticompetitive, the need to
25 compete with other companies is not a justification. The

1 solution for less competition is not even less competition.

2 Finally, if concerns exist, would conditions remedy
3 these problems? Conditions have been used in the Comcast-
4 NBC-Universal merger, which shares some similarities with
5 this deal. There is, however, disagreement about the
6 effectiveness of those conditions. Further there is growing
7 skepticism the conditions that attempt to limit a company's
8 conduct can never work.

9 Mr. Chairman, I received a statement from Consumer's
10 Union articulating their concerns about the transaction. I
11 move that this statement be included in the record, and this
12 is a very important transaction. I am glad that we are
13 taking a close look at it today, and I look forward to
14 hearing from the witnesses.

15 Senator Lee. Thank you. Those will be submitted into
16 the record without objection.

17 [The prepared statement of Consumer's Union follows:]

18 / COMMITTEE INSERT

19 Senator Lee. We are now going to hear opening
20 statements from the Chairman and Ranking Member,
21 respectively, of the Judiciary Committee as a whole. This
22 is, of course, a subcommittee of that committee.

23 Chairman Grassley?

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1 OPENING STATEMENT OF HON. CHUCK GRASSLEY, A U.S.
2 SENATOR FROM THE STATE OF IOWA, CHAIRMAN OF THE
3 COMMITTEE

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5 Chairman Grassley. Also, instead of saying at the
6 end, I may have questions for the record because after
7 11:00, I may not be able to be here.

8 Thank you, Mr. Chairman, for holding this hearing on
9 the biggest transaction of the year, the proposed AT&T-Time
10 Warner merger. This deal would combine one of the nation's
11 largest phone and internet provider with a media titan that,
12 among other things, owns HBO, CNN, TBS, TNT, and Warner
13 Brothers Studios.

14 By expanding into media and entertainment, AT&T
15 strengthens its existing wireless, internet and pay tv
16 business, and also becomes a premier content owner. The
17 Justice Department and possibly the Federal Communications
18 Commission will determine whether to approve or reject this
19 merger and decide whether or what conditions should be in
20 order for the parties to proceed with the transaction.
21 Nonetheless, this committee's oversight responsibilities is
22 an important one where the committee can flesh out potential
23 issues and highlight possible impacts of the merger on the
24 market and consumers.

25 It is an understatement to say that this industry is

1 undergoing tremendous change. People are constantly
2 reevaluating what, when, and where, and how they access the
3 media entertainment and content. Technologies are quickly
4 evolving, and delivery platforms are converging. Companies
5 are improving their technologies so that customers can enjoy
6 better and faster connectivity.

7 Innovation is creating more options and allowing for
8 multiple combinations. The creativity of programming
9 content and device apps is flourishing to satisfy any and
10 every consumer taste, young and old.

11 Consumers are becoming increasingly knowledgeable about
12 content offerings and their data consumption needs. No
13 doubt, this industry is going through a transformation and a
14 disruptive time, and consumers are going to enjoy and are
15 enjoying the ride.

16 So we want to make sure that this revolution in
17 technologies and content continues to thrive and evolve to
18 the benefit of all consumers all over the country, including
19 rural communities like mine in Iowa. More content choices
20 and accessibility options, better quality and affordable
21 prices make for a happy consumer.

22 AT&T and Time Warner say that this vertical merger will
23 -- in their words -- "benefit consumers, strengthen
24 competition, and encourage innovation and investment." They
25 claim that by consolidating the assets of the two companies,

1 it will be able to better compete nationwide and meet
2 expectations of consumers.

3 Now, however, critics of the merger say that this deal
4 will have a negative impact on competition and innovations.
5 There are concerns there that a combined AT&T-Time Warner
6 will block competitor access to popular Time Warner content.

7 There is concern that a combined combined company will
8 give preferential treatment, for example, favorable channel
9 placement and zero rating pricing to Time Warner's premium
10 entertainment programing, then to the disadvantage of other
11 content producers, and particularly, small independent
12 producers.

13 There is also a concern about AT&T-Time Warner's
14 ability to leverage their assets to negotiate better
15 licensing arrangements, or raise the price of their content
16 to the detriment of other distributors. There is concern
17 about the merged companies' ability to employ bullying
18 tactics to dictate rates and terms to other networks.

19 There is concern that this acquisition will concentrate
20 too much power into one conglomerate, resulting in higher
21 prices and fewer programing options for consumers. There is
22 also concern about the merger's implication for a free and
23 diverse media.

24 This is something that I recently experienced because
25 on weekends when I am at the farm, I always watch channel

1 349 on DIRECTV. I found out it was not there any more. I
2 asked why and found out what is going on is an unfair
3 contract negotiation.

4 Now, these are all serious concerns which should be
5 scrutinized carefully by antitrust regulators tasked with
6 reviewing this transaction.

7 At the same time, some warn that we should be careful
8 about how the AT&T-Time Warner deal should be examined
9 because of the dynamic nature of the industry, complexity of
10 the marketplace, and fast paced innovation and changing
11 consumer wants and demands.

12 They question whether the current merger analysis
13 methods are well-suited to tackle this transaction, and urge
14 caution when determining the competitive effects of mergers
15 between different complex interconnected platforms.

16 Secondly, they suggest that they may need to redefine
17 market power and reassess how to analyze it in a fast
18 shifting industry with multi-sited platforms. With Tech
19 giants like Google, Facebook, Amazon, Netflix, and others
20 changing the way consumer's access contents. It is
21 legitimate to ask whether as one AEI scholar recently said,
22 "What looks straightforwardly anti-competitive in the old
23 industrial merger models may not be so simple in the merger
24 of modern media platforms."

25 Certainly, the AT&T-Time Warner deal warrants close and

1 careful scrutiny because it raises all these complex issues
2 and concerns. We want to insure that the proposed merger
3 does not allow an unfair advantage of competitors or
4 facilitate anti-competitive practices with anti-competitive
5 effects. Yet, we also need to be thoughtful, forward-
6 looking analysis of the market that takes into account the
7 complexities of modern interconnected media content and
8 telecom platforms and relationships. Ultimately, we want to
9 ensure that competition thrives in this critical market, and
10 we do not stifle innovation or deter emergency of cutting
11 edge technologies that consumers demand.

12 Ultimately, we want to insure that our policies do not
13 lead to higher costs, fewer choices, and worse services for
14 consumers.

15 I look forward to our discussion today. Thank you.

16 Senator Lee. Thank you.

17 Senator Leahy?

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1 OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S.
2 SENATOR FROM THE STATE OF VERMONT

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4 Senator Leahy. Thank you Mr. chairman. I am glad
5 that Senator Lee and Senator Klobuchar are having this
6 hearing.

7 I will resist the temptation to go through the list of
8 what shows I like the most and which things I use the most.
9 I see too many people I know in the audience, and I am
10 afraid I will either make some happy or unhappy, depending
11 upon what I include or leave out.

12 I think it is an important hearing, because the
13 proposed -- whether you support it or oppose it, you have to
14 agree the proposed almost \$85.5 billion merger can
15 dramatically transform our nation's telecommunications and
16 media landscape. It will combine two titans of industry.

17 When you have this kind of a massive consolidation in
18 distribution and content, it raises serious questions. What
19 does it do for competition, or consumer choice, or privacy
20 across the media, or pay-tv, or wireless, broadband
21 industries? We have to look at that carefully. 130
22 million Americans depend upon AT&T for their wireless
23 internet access.

24 Last year they acquired DirecTV's satellite television
25 service, now seeking to acquire Time Warner's content.

1 These raise the question -- the obvious question about
2 whether AT&T could begin to act as a biased gatekeeper for
3 its own affiliated content services.

4 We know from the questions raised about the decision to
5 not charge its wireless customers for data used to view
6 DirecTV on their phones -- anti-competitive and anti-
7 consumer actions by internet gatekeepers can be prevented
8 under the FCC's 2015 Open Internet rules to establish clear,
9 enforceable bright-line prohibitions of blocking or
10 throttling, discriminating against lawful content on the
11 Internet.

12 A meaningful net neutrality protection to ensure the
13 Internet remains an open platform. One that fosters free
14 speech. Strong net neutrality rules help mitigate concerns
15 about a post-merger AT&T's ability to harm competitors and
16 consumers.

17 These net neutrality rules, which I believe currently
18 protect consumers, appear to be under serious threat by the
19 incoming administration. The President-elect has been
20 openly opposed to net neutrality. He has formally named
21 three staunch net neutrality opponents to oversee his FCC
22 transition.

23 I think any weakening of these rules are going to cause
24 serious harm to consumers. A harm that would only be
25 exacerbated by what we assume will be further mergers in the

1 industry.

2 That harm is not limited to this transaction. It will
3 impact all Americans who rely on the free exchange of ideas
4 and information on the internet.

5 Mr. Chairman, I am going to submit questions for the
6 record. I have some duties involving Appropriations at the
7 moment, but I am very concerned about this. I know you are.
8 I know Senator Klobuchar is.

9 Thank you.

10 Senator Lee. Thank you Senator Leahy. Your questions
11 and those to be submitted by Chairman Grassley and anyone
12 else will be admitted without objection.

13 [The prepared questions of Senators Leahy and Grassley
14 appear in appendix:]

15 / COMMITTEE INSERT

16 Senator Lee. Okay. We are now going to turn to our
17 witnesses. I am going to introduce them, then we will swear
18 them in, then we will hear from each of the witnesses. We
19 will start from my left and move to my right.

20 Randall Stephenson is the Chairman and CEO of AT&T.
21 Mr. Stephenson was named to his current position in 2007.
22 Since then, AT&T has invested to become a global leader in
23 providing integrated communication services to businesses
24 and consumers, video entertainment, high speed internet and
25 mobility to IP network services, and the internet of things.

1 Mr. Stephenson began his career with Southwestern
2 Bell's telephone company in 1992 in Oklahoma. He served as
3 the company's senior executive vice president and chief
4 financial officer from 2001 to 2004, and from 2004 to 2007,
5 he served as the company's chief operating officer. He was
6 appointed to AT&T's Board of Directors in 2005. He is a
7 member of the Board of Directors of Emerson Electric and
8 Boeing, a member of the PGA Tour Policy Board, and national
9 president of Boy Scouts of America.

10 Mr. Stephenson received his BS in accounting from the
11 University of Central Oklahoma and his master's of
12 accounting from the University of Oklahoma.

13 Jeff Bewkes is chairman and CEO of Time Warner, Inc.
14 He was elected chairman of the Board of Directors in 2009,
15 having served on the board since 2007. He was elected CEO
16 of the company in January 2008. Part of being named
17 chairman and CEO, Mr. Bewkes served as Time Warner's
18 president and COO from January 2006 to December of 2007, and
19 as chairman of the Entertainment and Network Group from July
20 2002 to December 2005. Before joining the corporate
21 management of Time Warner, Mr. Bewkes served as chairman and
22 CEO of HBO, and as president and COO of HBO.

23 Mr. Bewkes serves on the boards of Yale University and
24 the Partnership for New York City, and serves on the
25 Advisory Board for the Creative Coalition. He is also a

1 member of the Business Counsel. Mr. Bewkes has a BA from
2 Yale, and a MBA from Stanford.

3 Mark Cuban is an entrepreneur and investor. He is the
4 owner of the Dallas Mavericks, Landmark Theaters, and
5 Magnolia Pictures, and is the chairman of the HD TV cable
6 network, AXS TV. He is also one of the main shark investors
7 on the ABC reality television series, Shark Tank.

8 In 1995, Mr. Cuban and fellow Indiana University alum,
9 Todd Wagner started AudioNet, combining their mutual
10 interests in Indiana Hoosier college basketball and
11 webcasting. With a single server and ISDN line, AudioNet
12 became Broadcast.com in 1998. By 1999, Broadcast.com had
13 grown to 330 employees and \$13.5 million in revenue for the
14 second quarter. In 1999, broadcast.com was acquired by
15 Yahoo for \$5.7 billion in Yahoo stock.

16 Gene Kimmelman is the president and CEO of Public
17 Knowledge. Previously, Mr. Kimmelman served as director of
18 the Internet Freedom and Human Rights Project at the New
19 America Foundation and as Chief Counsel for the U.S.
20 Department of Justice's Anti-trust Division.

21 Prior to joining the Department of Justice, Mr.
22 Kimmelman served as Vice President for Federal and
23 International Affairs at Consumers Union. He has also
24 served as Chief Counsel and Staff Director for the Anti-
25 trust Subcommittee of the Senate Judiciary Committee and

1 Legislative Director for the Consumer Federation of America.
2 Mr. Kimmelman began his career as a consumer advocate and
3 staff attorney for Public Citizens Congress Watch.

4 Mr. Kimmelman is a graduate of Brown University and
5 holds a JD from the University of Virginia where he received
6 the Fortsman Fellowship. He was also a Fulbright Fellow.
7 He presently serves as a senior fellow at the Silicon
8 Flatirons Center for Law, Technology and Entrepreneurship
9 at the University of Colorado, and is senior associate with
10 Global Partners Digital.

11 Daphna Ziman is a filmmaker, founder of a musical
12 label, philanthropist, and author living in Beverly Hills,
13 California. She is the president and chief creative officer
14 of Cinémoi, a television network focusing on film, fashion,
15 and international style; founder of a music label, Unicorn
16 SST Records; a writer, director, and award winning author,
17 and a philanthropist.

18 Ms. Ziman works as a writer, producer, and director.
19 Her latest film, Footsteps, debuted on Showtime.

20 Ms. Ziman also serves on the Advisory Board of the
21 philanthropic arm of the State Department, IREX, as well as
22 the Board of Trustees of Children's Institute International,
23 is a chairperson of ABC Love, Adoption Brings Children Love.

24 Before we begin, I would like to swear in the
25 witnesses. So if you would all stand and raise your right

1 hands. Do you swear that the testimony that you are about
2 to provide to the subcommittee will be the truth, the whole
3 truth, and nothing but the truth?

4 Mr. Stephenson. Yes.

5 Mr. Bewkes. Yes.

6 Mr. Cuban. Yes.

7 Mr. Kimmelman. Yes.

8 Ms. Ziman. Yes

9 Senator Lee. Thank you. Mr. Stephenson, you will be
10 up first, and you may began.

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1 STATEMENT OF RANDALL STEPHENSON, CHAIRMAN AND CEO, AT&T,
2 DALLAS, TEXAS

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4 Mr. Stephenson. [Off mic.]

5 Senator Lee. If you could push the button until it
6 turns red, we can hear you better.

7 Mr. Stephenson. And the rest of the Members of the
8 committee. I appreciate the opportunity to talk about the
9 benefits of combining AT&T's distribution with the world
10 class content of Warner Brothers, HBO and Turner.

11 For your constituents, we believe that the benefits are
12 straightforward and they are substantial. They will get
13 more choices and lower priced options. That means more
14 nationwide competition against the cable companies in each
15 of your respective states.

16 What this merger is not about is consolidation, either
17 in media or in telecom. AT&T is a communications company.
18 We distribute content. Time Warner is a media and
19 entertainment company. They create content. This is a
20 classic vertical merger, and it eliminates no competitor
21 from any market. In fact, it increases competition,
22 particularly, against the cable companies.

23 Our intent is to disrupt the existing pay-TV model. We
24 want to get the most content to the most people at the
25 lowest prices, and we want consumers to pay for their

1 content once, and then watch at anywhere at any time, every
2 episode, every season on whatever device they chose.

3 But disrupting entrenched business models is hard, and
4 it generally takes bold steps. Combining skilled
5 distribution with skilled content creation is such a step.
6 It is going to allow us to accelerate innovation. Without
7 exception, when one company accelerates innovation in a
8 market, everyone accelerates innovation. Faster innovation
9 and content delivery will naturally accelerate deployment of
10 5G mobile networks with greater than one gig speeds.

11 We have seen this happen before. It is important to
12 recall that we launched the world's first iPhone at AT&T on
13 a 2G network. As demand for the iPhone and more bandwidth
14 exploded, the U.S. mobile industry accelerated deployment of
15 3G and then 4G mobile networks, and this drove two
16 multibillion dollar network upgrades in the course of five
17 years.

18 We are about to experience this again. DirectTV Now and
19 other planned innovations with Time Warner are 5G services
20 that are effectively going to be launched on 4G networks.

21 Just as we witnessed with the iPhone, we expect 5G
22 deployments to accelerate, and not just for AT&T. We think
23 it will accelerate it across the industry, creating even
24 more competitors for cable.

25 This is exactly what we believe consumers want, new,

1 lower-priced options, and the power to decide themselves. A
2 good example, as has been referenced in the earlier
3 comments, is our new DirectTV now product that we launched
4 last week. This is 100 channels, starting at \$35, streamed
5 to any device. The customer has no contract requirements,
6 no credit check, no installation, no set top box, and the
7 price includes the data charges for mobility, AT&T
8 customers.

9 During our first week in the market, the uptake of this
10 new service has exceeded all expectations. As predicted,
11 the industry has already begun responding. In fact, just
12 last week, shortly after we announced this product, CBS
13 added the NFL to its all access streaming service at no
14 cost. Innovation by one, invariably, begets innovation by
15 all.

16 I have talked a lot about what will change because of
17 this merger, and I want to really quickly talk about what
18 will not change. AT&T will continue to be a leading
19 investor in America. We have invested more in the United
20 States than any other company each of the past five years.
21 You should expect that to continue.

22 We will continue to do our part in keeping America the
23 global leader in two specific areas; innovation and
24 deployment of advance communication networks and creating
25 content people want to watch. We will encourage and support

1 independent journalism, and we will not withhold content to
2 disadvantage somebody else. Time Warner was built on a
3 platform of broad distribution of its content into every
4 home, and it would be illogical for us to change that.

5 Finally, you should expect AT&T to continue doing what
6 we have always done, that is distributing a wide array of
7 diverse high-quality content across all of our platforms.

8 So in conclusion, this merger is going to drive
9 investment. It is going to drive innovation in an industry
10 that we believe is begging for both of those.

11 So Mr. Chairman, I thank you for the opportunity and
12 look forward to the questions.

13 Senator Lee. Thank you Mr. Stephenson.

14 [The prepared statement of Mr. Stephenson follows:]

15 / COMMITTEE INSERT

16 Senator Lee. Mr. Bewkes?

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1 STATEMENT OF JEFFREY BEWKES, CHAIRMAN AND CEO, TIME WARNER,
2 NEW YORK, NEW YORK

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4 Mr. Bewkes. Thank you Chairman Lee, Ranking Member
5 Klobuchar, and Members of the subcommittee. Thank you for
6 inviting me. I am Jeff Bewkes, chairman and CEO of Time
7 Warner, Inc.

8 I appreciate the opportunity to talk to you this
9 morning about why a combination with AT&T not only makes
10 sense for Time Warner, but also is good for consumers. In
11 short, combining Time Warner's video content with AT&T's
12 distribution, will accelerate the development and delivery
13 of the next generation of video services, providing
14 consumers with greater choice, convenience, value and,
15 importantly, better affordability.

16 Before I talk more about that, let me briefly tell you
17 about Time Warner. Since 2009, we have been focused on
18 producing and distributing video content, film, television,
19 and video games at the wholesale level across a wide range
20 of outlets. We do this through three divisions: Warner
21 Brothers, Home Box Office and Turner Broadcasting. We do
22 not own any cable, satellite, telephone, broadband or
23 wireless distribution business.

24 As a video content company, our success depends on
25 achieving the broadest distribution of our content, and on

1 embracing innovative ways for consumers to enjoy what we
2 have to offer. Warner Brothers is a great example of this.
3 It is the leading television studio in Hollywood because the
4 most talented producers, directors, and writers come to us
5 to make the shows. The reason they do that is they know
6 that Warners will find the best home for their shows on any
7 network or over-the-top service. Warner supplies shows to
8 every broadcast network, while also producing for basic
9 cable networks, premium cable services -- including both HBO
10 and its competitor, Showtime -- and services like Netflix
11 and Hulu.

12 Warner has also been a leader in innovation, including
13 making it possible for viewers to watch the full season of
14 its shows on-demand on broadcast networks. Those principles
15 of broad distribution and innovation hold true at HBO whose
16 success depends on reaching and passionately engaging
17 viewers, whether they subscribe to a pay-TV service or only
18 have broadband. That is why we launched HBO Now, which
19 offers HBO's programming without without the need for a pay-
20 TV subscription.

21 The same is true at Turner. Turner must distribute its
22 networks -- which depend on subscription and advertising
23 revenue -- broadly across all platforms and devices. That
24 is why Turner has licensed its networks to new broadband
25 delivered bundles offered by DISH, Sony, DirectTV ,and Hulu.

1 We are proud of what Time Warner has accomplished, but
2 today we are competing for consumers' attention, not just
3 with other TV networks, but with everyone from Netflix and
4 Amazon to Youtube and Facebook. Great content is not
5 enough.

6 You need to deliver great consumer experiences, and
7 that is what joining with AT&T will allow us to do. We will
8 continue to work with all distributors, but combining with
9 AT&T will make it easier and faster for us to innovate for
10 consumers, including offering more choice in network bundles
11 with great interfaces, great on-demand content and
12 interactive features, more over-the-top services like HBO
13 Now and FilmStruck, more short-form content, particularly on
14 broadband and mobile.

15 Currently, when we try to introduce innovations for
16 consumers, we often need to roll them out distributor-by-
17 distributor as part of lengthy affiliate agreement
18 negotiations that take place only every few years. TV
19 Everywhere is a pretty good example of this. We introduced
20 TV Everywhere in June of 2009. It was based on the simple
21 idea that if you subscribe to a pay-TV service, you ought to
22 be able to watch your favorite programs not just on tv and
23 on the tv set, but on any connected device of your choice at
24 no extra charge.

25 It is now seven years later, and TV Everywhere still is

1 not fully embraced by all of the cable distributors. By
2 combining with AT&T, we can accelerate the process of
3 introducing innovations on a nationwide basis, and we can
4 have more flexibility to adjust to changing consumer
5 expectations -- providing consumers with more choices and
6 better experiences at more attractive prices, while spurring
7 industry-wide competition and innovation. That is why we
8 believe this transaction is right for our company, and good
9 for consumers.

10 Thank you. I will be happy to answer questions on any
11 of these points.

12 Senator Lee. Thank you, Mr. Bewkes.

13 [The prepared statement of Jeffrey Bewkes follows:]

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15 Senator Lee. Mr. Cuban?

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1 STATEMENT OF MARK CUBAN, CHAIRMAN, AXS TV, OWNER DALLAS
2 MAVERICKS, LANDMARK THEATERS, AND MAGNOLIA PICTURES, DALLAS,
3 TEXAS

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5 Mr. Cuban. Thank you for inviting me to give my
6 testimony and speak before you today. My name is Mark
7 Cuban, and I have been an active entrepreneur in many fields
8 throughout a career spanning over three decades, having
9 started or invested in more than 200 companies, creating
10 thousands of jobs. I am also proud of the fact that a TV
11 show I am part of, Shark Tank, helps inspire millions of
12 potential entrepreneurs every week.

13 The media world has changed. Back in 1995, a partner
14 and I started a company called AudioNet, and billed
15 ourselves as "The Broadcast Network on the Internet". We
16 were one of, if not the very first, streaming content
17 aggregator and distributor on the net.

18 Back then, the biggest competitors to our online
19 streaming and consumption of our content were TV and Radio.
20 The world has changed quite a bit since then, but maybe not
21 in ways that are obvious.

22 Historically, TV had been the dominant medium. We all
23 used to wonder why we spent so much time watching TV. When
24 asked "why TV?", my answer was always the same "TV is the
25 best alternative to boredom. It is the closest we can come

1 to doing nothing while thinking we are doing something. It
2 was always our go to way to kill time". Those days are
3 gone.

4 In the past, we went to our media. We came home,
5 turned on the TV, plopped down on our favorite chair or
6 couch, and "Vegged out," pulled out a cold beverage. Today,
7 our media comes to us. How content comes to us is changing
8 almost daily, and has become an important subject in a world
9 of Anti-trust in media and distribution.

10 Today, our best alternative to boredom comes from an
11 app. Firing up an app on whatever device you happen to have
12 in your hand, no matter where in the world you are, is how
13 we kill time.

14 The idea that TV is the dominant content delivery
15 mechanism no longer is valid. Instead, we fill our time by
16 consuming content from Facebook, Instagram, Snapchat,
17 Messenger, WhatsApp and slowly from Virtual Reality
18 companies like Oculus Rift. Combined, these apps reach
19 more than 1.5 billion users a month. They can deliver any
20 kind of content, in any manner the consumer would like to
21 receive, be it message, video, VR, post, ad, you name it, to
22 populations around the world in a manner that dwarfs
23 television.

24 Facebook is without question in a dominant position, if
25 not the dominant position for content delivery. Imagine

1 what Facebook, and their respective competitive landscape,
2 would look like if they had not acquired Instagram, Oculus
3 Rift, or WhatsApp. If those were separate companies
4 competing in the marketplace, the content world would look
5 much different and be far more competitive.

6 Facebook may be the biggest player now, but they are
7 not the only major content provider. Snapchat is taking
8 over millennials as the best alternative for boredom. We
9 all have seen the never-ending stream of selfies, videos,
10 and more take over some of our kids lives.

11 For those younger than the Snapchat generation -- and
12 yes, they do exist -- there is musical.ly and live.ly with
13 tens of millions of users and growing, or MicroSoft's
14 MineCraft -- an acquired property -- with over 100 million
15 users. I can tell you from personal experience, punishment
16 for my 7-year-old is taking away his Minecraft videos. He
17 could care less if he loses TV privileges.

18 TV is experiencing a declining share of content
19 consumption. It is losing viewers to the other dominant
20 content players in Netflix, Amazon with Prime, and Twitch --
21 an acquired property -- Apple with Music -- Beats is an
22 acquired property -- and finally, Google with YouTube, also
23 an acquired property, and Google's the ultimate programming
24 guide, their Search.

25 Given our time constraints, I will pick another time to

1 discuss the impact of having only two companies, Google and
2 Apple, that act as the sole gatekeepers to the app
3 ecosystem. But you may have noticed I have not mentioned
4 AT&T or Time Warner yet, because neither is in any sort of
5 dominant position. By themselves, AT&T and Time Warner will
6 have a very difficult time controlling their own destinies,
7 let alone trying to exert influence on a market.

8 This merger is not only one of survival and
9 opportunity, but one that is needed by consumers. We need
10 more companies with the ability to compete with Apple,
11 Google, Microsoft, Amazon and Facebook. Delivering content
12 to consumers in this app driven world is not easy. It is
13 very expensive and difficult.

14 Apple, Google, Amazon, MicroSoft, and Facebook are five
15 of the seven most valuable companies by market cap in the
16 world, and all have established dominant positions. That is
17 exactly why the Time Warner acquisition is for AT&T is an
18 important strategic content acquisition.

19 Alone, it will be very difficult -- if not impossible -
20 - for either to compete with the companies I have mentioned.
21 Together it will be still be difficult, but they will have a
22 chance to battle the dominant players and increase consumer
23 choice and competition for consumer attentions.

24 I have run out of time, but I would like to also say
25 that each of the largest content companies I have mentioned

1 so far, FaceBook, Google, Amazon, MicroSoft and Apple
2 present much, if not all of their content, algorithmically.
3 At least with good old-fashioned TV, we get to pick the
4 channels we want rather than have our feed tell us what we
5 want.

6 Thank you. I look forward to answering your questions.

7 Senator Lee. Thank you.

8 [The prepared statement of Mark Cuban follows:]

9 / COMMITTEE INSERT

10 Senator Lee. Mr. Kimmelman?

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1 STATEMENT OF GENE KIMMELMAN, PRESIDENT AND CEO, PUBLIC
2 KNOWLEDGE, WASHINGTON, DC

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4 Mr. Kimmelman. Thank you, Mr. Chairman
5 Senator Klobuchar, Members of the subcommittee, on behalf of
6 Public Knowledge, and today I am joined by Consumer
7 Federation of America in our statement. I appreciate the
8 opportunity to testify.

9 Mr. Chairman, I would like to ask that the report we
10 released this morning, that Senator Klobuchar referred to,
11 with CFA be put in the record. I know it looks like great
12 bedtime reading to you by its size.

13 Senator Lee. Without objection.

14 [The prepared report of Public Knowledge and CFA
15 follows:]

16 / COMMITTEE INSERT

17 Mr. Kimmelman. But I start here because this is about
18 a description of the last 20 years of activity in this
19 industry, which I think is relevant to look at this morning,
20 as you consider the impacts of this merger. All of the
21 leadership of the committee pointed out all the potential
22 pros and significant cons of this.

23 I raise this because what it shows is that that \$2,700
24 that consumers are paying per month, there are a lot of
25 issues as to why that number is so big. During that 20

1 years, there were times when lax anti-trust oversight
2 allowed substantial mergers of cable, and telephone
3 companies, and content companies. There were times when
4 there was limited regulation. And what we conclude is,
5 looking -- comparing the prices consumers are paying with
6 the actual competitive costs, we are probably being
7 overcharged by at least about \$45 per month, your
8 constituents, for those services, because there are two few
9 players already in these markets. They are massively
10 concentrated.

11 So in that context, adding firms that have more than
12 130 wireless subscribers nationwide, 25 plus percent of all
13 TV viewers through satellite and wire, bundled services with
14 market power, and the wonderful content that Mr. Bewkes
15 described with Time Warner raises very significant questions
16 for consumers.

17 Now they have talked about all the wonderful things
18 they could do. I want to highlight they are excellent
19 companies that have begun to compete more aggressively in
20 the over-the-top market. They are doing really good things
21 for consumers. That is wonderful -- as separate companies,
22 contracting with each other and others in the marketplace.

23 The question for anti-trust review and regulatory
24 authorities is, will that continue? They have described
25 what they have done very well. And we applaud it as

1 benefits to consumers in many instances. But will that
2 really continue?

3 With these enormous assets coming together, and in a
4 market where there are very few players, just ask your
5 constituents, how many broadband providers do they have, how
6 many cable or other comparable TV providers that can give
7 them the full panoply of services? How many are there?

8 I appreciate Mr. Cuban's points, but the last time I
9 looked, Google and Facebook were not charging me more than
10 \$200 a month to get those apps, to get their content. And
11 the last time I looked -- you all may remember this, too.
12 Do you remember when you as teenagers, or your kids spent
13 more than like an hour on the phone talking to friends? Do
14 they do that anymore? No, Snapchat, apps.

15 It is voice service that has gone here, but that is not
16 the same as professional quality video that Mr. Bewkes'
17 company produces. That is something different. And every
18 one of those companies Mr. Cuban referred to relies on the
19 fundamental infrastructure, the plumbing of the Internet and
20 telecommunications system that is controlled by very few
21 companies, two dominant cable, two dominant phone, including
22 AT&T. It is that market power that concerns us.

23 And is this just hypothetical or possible? Well, the
24 Department of Justice and FCC have already found that
25 incomparable transactions, including Comcast, NBCU, when you

1 combine this kind of quality content with market power,
2 there are enormous incentives to favor yourself and harm
3 competitors, block competitors, raise prices to rivals and
4 this deal is even bigger. That was a regional cable
5 monopoly. This is nationwide satellite TV distribution,
6 nationwide wireless. The incentives will be even greater.

7 In that environment -- the bottom line is we urge law
8 enforcers to reject this merger unless they can absolutely
9 show that these competitive harms will not arise, that there
10 are actual paths to increase benefits to consumers, and
11 absolutely show that they truly have the regulatory tools in
12 an environment where it appears regulations will be
13 withdrawn and oversight will be limited.

14 This is not just about money, Mr. chairman, Members of
15 the subcommittee. It is the diversity of programming owned
16 by different people over different platforms that fuels our
17 democracy. No one has said it better than the
18 president-elect. It is in that environment we urge to you
19 look at this carefully and enforcers not to take risk with
20 the transaction that could be harmful to that democratic
21 process and consumers pocketbooks.

22 Thank you.

23 Senator Lee. Thank you.

24 [The prepared statement of Gene Kimmelman follows:]

25 / COMMITTEE INSERT

1 Senator Lee. Ms. Ziman?
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1 STATEMENT OF DAPHNA ZIMAN, PRESIDENT, CINÉMOI, LOS ANGELES,
2 CA

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4 Ms. Ziman. Chairman Lee, Ranking Member Klobuchar,
5 and Members of the subcommittee, I want to thank you for
6 inviting me to testify today about the impact of the
7 proposed AT&T Time Warner merger on minority channels,
8 cultural diversity, gender diversity, and independent
9 programmers.

10 My name is Daphna Edwards Ziman, and as many of you
11 know, I have spent the last 20 years of my life coming here
12 to advocate on behalf of women and children. I am here
13 today as the founder, president and chief creative officer
14 of Cinèmoi, a woman-owned, 24-hour, award-winning television
15 network dedicated to curated films, high fashion,
16 international lifestyle, and environmentally profound
17 programming.

18 Cinèmoi is an independent network that is trying to
19 make a difference in the media industry. It is designed to
20 lift the image of women. Cinèmoi is defined by high-quality
21 content. Originally, we launched on DirecTV on September
22 17, 2012. Cinèmoi is available on Verizon FiOS, Frontier,
23 and via the Internet and reaches millions of subscribers.

24 Cinèmoi is a true independent. We chose not to be a
25 part of a bundle because doing so would undermine what

1 Cinèmoi is, and would stifle our creativity. Cinèmoi is
2 also a minority-owned channel as it is one of the only two
3 networks majority owned by a woman. The other one is Oprah
4 Winfrey, and she is distributed by Discovery.

5 Independent programmers are the risk-takers that
6 provide innovative content. Today, 90 percent of the
7 content on TV is controlled by six conglomerates. The
8 industry is currently structured to shut out new entrants,
9 which are mostly independent programers, and keep channels
10 like Cinèmoi from making it and providing competition to
11 incumbents in the industry.

12 Independent programmers understand very well the
13 pressures that MVPDs face from giant content providers. But
14 more consolidation is not the answer.

15 In the current state of the media industry, the
16 survival of independents is at a significant risk. Further
17 consolidation would be catastrophic to diversity,
18 additionally silencing minority and women-owned voices.

19

20 AT&T claims that vertical integration is not harmful.
21 The fact is vertical consolidation gives AT&T both the means
22 and the incentive to discriminate against independents. For
23 example, Cinèmoi competes with many cable networks, Turner
24 Classic Movies being one of them which is owned by Time
25 Warner.

1 DirectTV's own Kantar Research showed that two-thirds of
2 TCM's viewers also watched Cinèmoi. In a non-vertically
3 integrated market, competition between Cinèmoi and TCM is in
4 the best interest of the public. But when AT&T owns Time
5 Warner, shutting out competitive channels like Cinèmoi is
6 not only easier, but cheaper. Such loss falls upon the
7 American people. AT&T argues that OTT distribution offers
8 sufficient opportunities for independents, but relying on
9 OTT is a one-way ticket to bankruptcy.

10 Like other independent networks, Cinèmoi is negotiating
11 deals on these new platforms. However, linear distribution,
12 because of its broad reach, remains the most effective way
13 to develop awareness, brand recognition, and consumer
14 demands. The OTT market is a maze of confusion, and lots of
15 content that is not organized.

16 Approximately 20 percent of television households are
17 cord cutters, not because of preference, but because of the
18 intolerance to the lack of curation bundles of repetitive
19 and copycat programming. The remaining 80 percent should
20 not be denied programming that meets their needs and
21 interests.

22 OTT revenue alone would never allow independent
23 networks to compete with incumbent channels that enjoy
24 multiple revenue streams. Moreover, AT&T controls the
25 distribution to more than 172 million cable, Internet, and

1 mobile subscribers and can utilize a variety of techniques
2 to favor its own content, and disadvantage independent
3 networks like Cinèmoi.

4 These concerns are real. They DirectTV and AT&T is
5 currently under investigation by the Justice Department for
6 unfair tactics against programmers. In fact, independent
7 programmers are only offered channel on AT&T if they sign a
8 pay-for-play deal with DirectTV. That is precisely what
9 happened to Cinèmoi.

10 Look at the panel testifying today. It is supposed to
11 represent a broad cross section of the industry. Yet, it is
12 dominated by white men. The idea that opportunities lacking
13 for women and minorities in media is not hypothetical. It
14 is clearly symbolized by these -- women are the majority of
15 the population, controlling \$14 trillion in wealth, two-
16 thirds of the country's wealth, and 70 to 80 percent of all
17 household spending. Yet, only two networks are owned and
18 controlled by a woman. Women deserve presence in the media.

19 The airwaves AT&T utilizes belongs to the American
20 people, bestowed upon the MVPDs by the people, for the
21 people. And AT&T has a fiduciary responsibility to utilize
22 this resource in the best public interest. That obligation
23 includes creating opportunities for cultural diversity and
24 democracy of voices. Sadly, AT&T is doing everything in its
25 power to avoid the review by the FCC, the one agency that

1 could review this merger through a public interest lense.

2 So the question for policymakers is this: Does a
3 company that will go to any length to avoid public interest
4 scrutiny really care about democracy and cultural diversity,
5 the survival of independence, risk-takers, or innovation?
6 The American consumer is ultimately the one that will be
7 worse off from further consolidation in this industry.

8 If we have learned anything from this last election, it
9 is that the American people are angry about the growing
10 divide between the haves and the have nots. Independent
11 programmers are the have nots in the media landscape.
12 Diversity of content is in the public's best interest.

13 I have things to say, if you would like to ask
14 questions. Thank you. Sorry.

15 Senator Lee. Thank you, Ms. Ziman.

16 [The prepared statement of Daphna Ziman follows:]

17 / COMMITTEE INSERT

18 Senator Lee. Okay. I will now kick off the
19 questioning.

20 Mr. Stephenson, I would like to start with you. I am
21 going to ask you a very simple question.

22 Will this merger -- assuming it is carried out to
23 completion -- will it result in lower prices for consumers,
24 and if so, how and why?

25 Mr. Stephenson. I was asked that exact same question

1 in front of this committee a couple of years ago when we
2 were working on the DirectTV transaction, and I represented
3 that yes, it would. By virtue of the innovation, we would
4 be able to bring lower price capabilities to the consumer,
5 and literally within a year --

6 Senator Lee. Which was not the exact same question
7 because it was a different context.

8 Mr. Stephenson. It was a very similar transaction in
9 that the lower prices would be a result of the innovation
10 that would follow. And within a year, year and a half of
11 that transaction closing, the innovation has followed. And,
12 in fact, there have been two significant innovations.

13 If you are a DirectTV customer, you can stream all of
14 that content to your mobile device, no charge. And then we
15 launched, as I said, last week DirectTV Now -- this is a
16 little over a year since we closed the transaction -- 100
17 channels at \$35. And I think that is significant innovation
18 that did result in lower prices to the consumer.

19 And \$35 includes the mobile streaming. So as you put
20 two companies together under one umbrella -- this is why it
21 is so important, Senator, if you will bear with me a
22 moment. You can speed innovation like you can never do in
23 arms-length relationships and transactions. DirectTV is a
24 classic example of how that happens.

25 What we are talking about doing by combining Time

1 Warner and AT&T is taking the innovation in DirectTV Now to a
2 whole different place and a whole different level, because
3 our ambition is to ensure that the customer pays for their
4 content only one time, because today, a customer pays for
5 their content, if they want to watch it on a mobile device
6 they probably have to pay for it again via an app. If they
7 forget to watch a show and they want to go look at it on
8 over-the-top means, they will have to pay for it again

9 Our objective is to take that out of play. Pay for it
10 one time. Give the consumer the ability to watch it any
11 time, anywhere, on any device they want. We think that will
12 result in lower prices, and lower cost to the consumer.

13 Senator Lee. Mr. Kimmelman, what is your response to
14 that? Mr. Stephenson tells us it will result in lower
15 prices. What do you say?

16 Mr. Kimmelman. Hard for me to see it for sure, Mr.
17 chairman, because in the DirectTV deal which we had concerns
18 with, but which were addressed by regulators and the
19 anti-trust officials, there were clear efficiencies of
20 putting together a bundle that a satellite company could not
21 do on its own for transmission. It could not really offer
22 both video and broadband.

23 So I am extremely pleased to see Mr. Stephenson's
24 companies responding to that and taking advantage of those
25 efficiencies to lower prices. I do not see those here in

1 this transaction. They could contract to do the same things
2 that he is talking about as wonderful innovations without
3 the risks of the merger.

4 Senator Lee. Mr. Cuban, what is your reaction to the
5 answers given by Mr. Kimmelman and Mr. Stephenson?

6 Mr. Cuban. That is not really my wheelhouse. I do
7 not have a comment on it.

8 Senator Lee. Got it

9 Mr. Bewkes, I would like to turn to you on a slightly
10 different question. You can get back to that if you would
11 like, but I first want to ask you -- so I am encouraged to
12 hear that Time Warner's business model is based on broad
13 distribution for content. Other companies, obviously, have
14 taken a different approach.

15 Netflix, for example, has been a successful company.
16 It has got a market cap at \$52.9 billion. So that is a
17 viable option to take a different approach.

18 Can you tell me how Time Warner weighs broad
19 distribution versus exclusive content? How do you balance
20 those in relative attractiveness?

21 Mr. Bewkes. Sure. We have been able to build our
22 networks, CNN, HBO, TNT, cartoon Network only because we
23 have broad distribution. And if we were to -- and we have
24 never done this. If we were to not offer our networks over
25 any of the cable satellite, telco or over-the-top platforms

1 that are now the place where increasing numbers of Americans
2 are choosing which one to get their TV service through, we
3 would be cutting off meaningful revenue for our company.

4 There is no incentive for us to do that. That is
5 first.

6 Secondly, we invest a lot of money in making these
7 brands relevant, CNN, HBO. If you all think about them, and
8 we would be doing that in a manner where we would be hurting
9 the very investment we are making in having these brands
10 mean something.

11 Third, there is a considerable amount of advertising
12 support behind the Turner Networks, including CNN. And if we
13 did not have full coverage we cannot sell advertising
14 effectively to advertisers.

15 Fourth, it is very important and it is essentially the
16 lifeblood of our company to be able to attract the best
17 talent, best directors, the newest movie idea. These come
18 from independent producers. They come to us because we have
19 the resources and the distribution reach to put their
20 product in every home. If we did not have that, we would
21 not be able to get the next hit show, the next hit movie.

22 So those are essentially the reasons why we would never
23 even think of doing this. And then a final point, which,
24 Gene, you might want to comment on. We owned Time Warner
25 Cable for 20-some odd years, either a big piece or minority

1 piece, and we managed it. It never occurred to us to do
2 anything either restrictive or different in terms of price
3 position, packaging, access to networks for that company
4 when we owned it, versus what we then did after.

5 So there is just simple no incentive for us to do it
6 and, in fact, there is really no ability for us to do it.
7 It would hurt our business.

8 Senator Lee. There's no incentive. Could those
9 incentives change over time? Could not those incentives
10 result down the road in you taking a different path?

11 Mr. Bewkes. No, Senator, I cannot see a case, and I
12 would invite anybody here to try to propose one where that
13 would make sense at all.

14 Senator Lee. I see Mr. Kimmelman shaking his head.
15 Do you want to add something to that, sir?

16 Mr. Kimmelman. I totally understand Mr. Bewkes' point
17 and his description of his business. And that is exactly
18 what NBC said when they came before you and they were being
19 combined with Comcast.

20 In a careful analysis, the Anti-trust Division did not
21 find when the companies merged that those incentives were
22 the same, and that there were opportunities. While Time
23 Warner cable was -- what -- 15 million subscribers and
24 certainly it made no sense to limit Time Warner content to
25 just 15 million.

1 Here you have 25-plus million from AT&T satellite and
2 video, and you have got more than 130 million now wireless.
3 With that customer base, you have to look at the real
4 combined incentives. This is not Time Warner entertainment,
5 Time Warner's incentive as a content company.

6 This is the merged AT&T with content, and I just think
7 the anti-trust officials are going to need to look carefully
8 at those.

9 Senator Lee. Okay. I see my time is expired, and we
10 want to stay on the clock here. We are going to go next to
11 Senator Klobuchar.

12 Senator Klobuchar. Thank you very much, Mr. Chairman.
13 I want to start with Mr. Stephenson, with your initial
14 question about the prices for consumers. I know you focused
15 on the last deal with DirecTV and what had come out of that.

16 Just to be clear, on this acquisition, do you believe
17 that it is going to lower prices for customers for DirecTV
18 broadband services and mobile services? You want to take
19 each one?

20 Mr. Stephenson. I can and intend to represent to you
21 that by virtue of innovation with Time Warner and going
22 head-to-head against the cable providers, with new products
23 and new capabilities that we will bring the consumer better-
24 priced options than what they have today.

25 To take each one of those apart, I find difficult,

1 because the consumer has gotten to a place where they are
2 not procuring each one of those independently. That is the
3 reason for the way we are pricing DirecTV Now.

4 Think about what we are trying to do. We are going
5 against a cable provider to compete.

6 You buy TV service from a cable provider today. You
7 spend \$50 to \$100 per month. Regardless of how much you
8 watch, it does not change what you pay. If you sleep with
9 the TV on all night long, it does not change what you pay.

10 To compete against a cable provider, we have to bring a
11 mobile service, and we are competing with a mobile service
12 that has the same characteristic. Can you make it where the
13 consumer does not think about how much they are leaving the
14 content on?

15 As we work with Time Warner and begin to think about
16 new forms of content, cloud-based DVRs, getting the rights
17 and putting those kinds of capabilities into our product
18 offering, bringing more value to the consumer, giving them
19 the ability to use video over their mobile device just like
20 they do when they are watching cable TV, we think that is a
21 huge value to the consumer.

22 Senator Klobuchar. Okay. Mr. Kimmelman, you have
23 your new report coming out today. What, 46 a month, you
24 say, that cable subscribers are paying that they should not
25 pay.

1 So how does that fit into what Mr. Stephenson was
2 saying when he is arguing, well this is a new kind of
3 offering that could help bring those prices down?

4 Mr. Kimmelman. It is a new kind of offering. It is
5 extremely welcome in the marketplace to see the DirecTV Now
6 offering and challenging cable, which no one, traditionally,
7 has gone out of their historical telephone region or cable
8 region to challenge each other. All good. That is all pre-
9 merger.

10 I applaud that. The question is what happens when you
11 combine all of these assets, and that is the fear. And
12 again, it may be a wonderful product.

13 Mr. Stephenson says, pay once. It sounds great to the
14 consumer, but if it is -- what happens to others who want to
15 get on that service? If it's zero rated, are they all going
16 to get on? What happens to others who want to offer a
17 different product? Are they all going to be able to get
18 Time Warner content under the same terms and conditions or
19 unbundled?

20 Senator Klobuchar. Right.

21 Mr. Kimmelman. I mean, so there are a variety of
22 competitive harms that have to be looked at in comparison to
23 what they want to offer.

24 Senator Klobuchar. And I want to end with that, but
25 before I get there, I just want to talk about this issue

1 that Mr. Cuban raised.

2 With the competition, with potentially the new
3 environment, with Facebook, and Google, and I am hoping we
4 are going to have a hearing on some of these broader
5 communications issues next year -- that was my little --
6 okay.

7 But on this, generally, how do you see this one? Mr.
8 Cuban says, well, no they need this to be able to compete in
9 this new world. But you point out that they are not paying
10 money for the Google or Facebook apps; right?

11 Mr. Kimmelman. Senator Klobuchar, I would urge the
12 committee to look at every place there is market power in
13 this sector. There could easily be that in the online
14 distribution on the platform -- among the platform
15 companies.

16 When I was at the Department of Justice, we looked at
17 transaction involving Google and a company called ITA, and
18 we were prepared to challenge it. It was airline services
19 online software that we thought would foreclose competition
20 in that market, and a consent decree was worked out.

21 There could be legitimate issues in many places, but
22 the fact that those companies are prosperous and may be
23 doing things that are harmful does not take away from the
24 fact that here we have very few ways for the consumer to get
25 to their apps, their other services, and AT&T is one of the

1 dominant gatekeepers to get there.

2 Senator Klobuchar. Okay. Mr. Cuban?

3 Mr. Cuban. Yeah. I would disagree with that just on
4 its surface. The DirecTV Now is an example.

5 If apple decided they did not want to distribute it,
6 they have nothing. If google decided they did not want to
7 distribute it, or either decided to give it such placement
8 that people would have a hard time finding it. They have no
9 business there, and so they really cannot even control their
10 own destiny, and I think it is an issue that is out of their
11 hands, despite what Mr. Kimmelman is saying.

12 Senator Klobuchar. Okay, I want to just end here on
13 the content side here with you, Ms. Ziman.

14 You described this practice you referred to as
15 pay-to-play, and talked about how it harms independent
16 programmers. Could you explain that more, and do larger
17 networks have to pay to play?

18 Ms. Ziman. Yes. Independents now barely can get on
19 at all. If they do get proposals it is usually free for a
20 period of time, or otherwise pay-for-play, which means they
21 have to pay to access the subscribers, which means that they
22 cannot survive --

23 qSenator Klobuchar. Because they are not going to be part
24 of the bundled package?

25 Ms. Ziman. But not just that, because they are not

1 given the bandwidth to be able to access. And if they are,
2 they are sent to Siberia.

3 And the reality is that the MVPDs are concerned that
4 any of the those independents may become must have content
5 because then they will have negotiating power. My friend,
6 Mr. Cuban, has negotiating power because he owns a sports
7 team.

8 the reality is that one of the highest executives at
9 DirecTV said to me point blank, we are in the male sports
10 business. So you are dealing with independents that have so
11 much other content that the public wants, and is interested
12 in, and they are not getting access to the public. And that
13 is wrong. It is wrong for democracy.

14 Senator Klobuchar. All right. Speaking of sports,
15 Mr. Stephenson, in your testimony you say that programming
16 is more valuable when distributed to as many eyes as
17 possible. However NFL Sunday Ticket is available only
18 through DirecTV.

19 During the Comcast NBC Universal merger, the parties
20 made similar arguments, yet the FCC decided the merged
21 company would have incentives to limit the distribution of
22 its content and discriminate against independent content
23 providers.

24 I want to make sure I understand your position. Are
25 you saying mergers were a content distributor -- acquires a

1 content producer, can never raise anti-trust concerns or
2 that in this that in this particular situation, there is
3 not an issue, and how you answer this fact, that there is a
4 lot of concern here about -- with AT&T owning content at the
5 same time as distribution that there would be
6 discrimination?

7 Mr. Stephenson. I will try to take the question apart
8 and make sure I answer it fully.

9 The NFL is probably a classic example of a content-
10 owner who pretty much determines and dictates how content is
11 distributed. And they are very strong. They have a great
12 product, and they parse the content up significantly, and we
13 pay them for whatever rights we can get from them.

14 So they kind of -- not kind of. They determine how the
15 content is distributed. We do not. We distribute it to our
16 customers for what we pay. It is not something that we just
17 exclusionarily put it out there. It is what the NFL has
18 contracted with us to do.

19 In terms of -- let me make sure I understood the second
20 part of your question as to a vertical merger.

21 Senator Klobuchar. Right.

22 Mr. Stephenson. Do I think that is a cookie cutter --

23 Senator Klobuchar. Right.

24 Mr. Stephenson. No, I do not think there is such a
25 thing, particularly, in the world of anti-trust. I believe

1 this particular merger, when you put it together you see
2 that before the merger and after the merger the competitive
3 market looks identical. The distribution market looks
4 identical. The content creation market looks identical.
5 There are no overlaps, and so it is a classic vertical
6 merger, but the Department of Justice will look at this and
7 to the extent there are concerns, we do believe they could
8 be remedied with conditions.

9 As it relates to the comment about independent
10 programmers, though, I would like to just quickly respond.
11 If there is concern about access of independent programmers
12 to the consumer, the one model that does not work -- and we
13 are demonstrating that -- is the present model. The present
14 model needs disruption. It needs a different model. That
15 is what we are trying to do with both this transaction and
16 the prior transaction we did, but the reality is, when we
17 acquire content from content owners, there is a medium by
18 which we -- if we want the top content they own, they say
19 take that plus the other five or six channels that you
20 possess.

21 That is what is filling up this program guide. It is
22 not anybody trying to be exclusionary. It is filling up the
23 program guide with peripheral stuff that you have to take if
24 you want to get the primary content that a content-owner
25 wants.

1 DirectTV Now is step one. Acquiring Time Warner is step
2 two. But DirectTV Now is how we are skinning down a lot of
3 the peripheral stuff, getting a smaller bundle that the
4 consumer wants, that is how you get to a \$35 price point,
5 rather than an \$80 price point. That is where we think we
6 have an opportunity to keep doing more and more of this in
7 the future.

8 Senator Klobuchar. And just last, response, Ms.
9 Ziman, very, very, quickly. But you could foresee that
10 there would be a -- some of these bundles that would not
11 involve sports?

12 Mr. Stephenson. Oh, of course. In fact, there is a
13 huge segment of our market that wants a bundle that does not
14 include sports.

15 Sports is probably the biggest driver of the content
16 cost in the bundle today, and to the extent we want to meet
17 a certain price point for a certain segment of our
18 customers, getting sports out is the way you drop the
19 content cost and get a lower price point in the market. It
20 is really important.

21 Senator Klobuchar. Except for the NBA/Dallas games.

22 [Laughter].

23 Senator Klobuchar. All right, okay, thank you.

24 Senator Lee. Senator Hatch?

25 Senator Hatch. [Out of mic.] -- is here today and I

1 am helping to host him. So I am thanking you very much for
2 allowing me to go ahead here, and my colleagues as well.

3 Now this is an important hearing and an important
4 subject we are considering today. I would like to begin by
5 quoting briefly from an op-ed published yesterday *in Forbes*
6 that I believe frames how we should approach the subject of
7 today's hearing.

8 "The central question in any merger review is how the
9 transaction will impact consumer welfare. Because AT&T and
10 Time Warner are not competitors, concerns about increased
11 market power, or a loss of competition, the sorts of
12 concerns we often see in large mergers, apparently do not
13 apply. Rather, the pertinent inquiry is whether AT&T
14 ownership of Time Warner content will lead to exclusive
15 dealing, improper favoritism or other acts that narrow
16 consumer choice and reduce service quality. At the same
17 time, we should carefully evaluate the party's claims that
18 the merger will benefit subscribers by, for example,
19 expanding the amount of available content that does not
20 count against monthly data caps."

21 Now I hope these principles can guide our discussion
22 today, and I ask unanimous consent that a copy of the op-ed
23 that I wrote be entered into the record.

24 Senator Lee. Without objection.

25 [The article appears in the appendix:]

1 / COMMITTEE INSERT

2 Senator Hatch. Now, Mr. Stephenson, you have pushed
3 back pretty strongly on claims that AT&T will have an
4 incentive to favor Time Warner content over non-affiliated
5 content, or to withhold or threaten to withhold Time Warner
6 content from competing broadband providers. Now, I would
7 like you to spell out your argument for me.

8 Why would it not make economic sense for AT&T to use
9 its ownership of Time Warner content to raise prices or
10 attempt to freeze out competitors, and why would it not it
11 make economic sense for AT&T to degrade service speeds for
12 non-affiliated content?

13 Mr. Stephenson. I will start with why we would have
14 no incentive to preference -- if I could paraphrase your
15 question -- I think I understood it correctly -- Time Warner
16 content over others, and I think it is important to
17 understand -- and I have thought a lot about this, we are
18 paying including the debt over \$100 billion for Time Warner,
19 investing a lot of our shareholder money to acquire this
20 content. It is very, very unique content. And you heard
21 Mr. Bewkes earlier explain the business model and how he
22 built a business that is worth \$100 billion, which is quite
23 a feat in and of itself.

24 The business model's fundamental premise for attracting
25 talent, for attracting investors into content -- the

1 fundamental premise of that is wide and broad distribution
2 of their content into every home, particularly in the United
3 States of America. While one could argue -- and I am sure
4 the Justice Department will look at this closely -- while
5 one could argue that it might advantage our distribution
6 business to somehow give proprietary access to Time Warner,
7 it would make no sense to a \$100 billion business we are
8 acquiring to do that. It would impair the value of that
9 business dramatically, and I have received a big education
10 from Jeff on this.

11 The Clint Eastwoods, the Steven Spielbergs will not
12 bring their talent and their capabilities to a company like
13 this that is limiting the distribution of that content. It
14 is a fundamental basis of the value of the company.

15 So I do not see, first of all, the economic rationale.
16 Nor do I see from our standpoint the customer rationale,
17 because at AT&T, if you go back to the distribution side, we
18 have built our franchise on a very open model. If there is
19 content that the consumers demand and want, we want it out
20 there. We have little value, if we start limiting access to
21 content.

22 We are what we call an open source company. We are not
23 smart enough to know everything the consumer wants, whether
24 it be an app, whether it be a smartphone device, whether it
25 be content, so we try to open our network up to all and

1 accommodate all that want to come in and let the customer
2 choose what they want. So limiting the content that our
3 customers can get in this day and age of the Internet is,
4 candidly, for a distribution company not a smart business
5 move.

6 Senator Hatch. Thank you. Let me just ask this
7 questions to Messrs. Stephenson and Bewkes.

8 I would like to zero in on the benefits to consumers
9 now. How specifically will this merger benefit consumers?
10 And I would like you to share specifics, not generalities.
11 And to give an example, Mr. Stephenson, in your testimony
12 you talk about DirectTV Now. How will this merger help you
13 deploy DirectTV Now, and how will that service benefit
14 consumers?

15 Mr. Stephenson. Thank you. DirectTV now. It took the
16 DirectTV acquisition to make that a reality, to get a
17 relationship with content players and the ability to gain
18 the content rights to distribute their content to mobile
19 devices. That is how DirectTV Now became a reality.

20 What we, essentially, acquired from the content owners
21 was only that, the ability to distribute their content. To
22 the extent that we want our customers to be able to store
23 their content, once they have paid for it, they would like
24 to store it. We call it a cloud-based DVR. But just think
25 about it, just storing the content.

1 To the extent that our customers would like to be able
2 to take that content and interact with their friends on
3 social media with that content, they would like that. We
4 gained none of those rights in these negotiations to bring
5 DirectTV Now to market.

6 As we look toward the day after this closes, and we
7 have ownership of the Time Warner content, with ownership
8 you can begin to do those kinds of things. We can give our
9 customers the ability to store Time Warner content. We can
10 give them the ability to interact socially on Game of
11 Thrones, and West World and so fourth that they cannot do
12 today.

13 We are convinced, just like with DirectTV Now, once we
14 got certain content players to come on board, others began
15 to come on board. I am convinced that model will play out
16 again. As we begin to innovate with Time Warner content,
17 giving our customers unique and different capabilities,
18 other content creators will follow.

19 Senator Hatch. Okay. Mr. Bewkes, just to finish with
20 you and your testimony. Let me just ask this question of
21 you.

22 In your testimony you say that the TV Everywhere
23 initiative you launched in 2009 has not grown the way you
24 hoped it would. How will this merger help you deliver more
25 content to more consumers more quickly? And to both of you

1 I ask, how will this merger affect the prices consumers pay?

2 You have somewhat answered that, but if you could spend
3 a little more time on it, I would appreciate it.

4 Mr. Bewkes. Thank you. I think the way that it would
5 advance that effort which is to put video on demand
6 capability on all our networks, and we hope that would drive
7 competition to have every network that you have on your
8 television dial be on-demand, so you could watch whatever
9 network you want whenever you want. You do not pay again to
10 do it. You have increasing numbers of shows, so if you find
11 a show in the middle of the season, you can go back and
12 watch the first one, and you should be able to watch it on
13 your iPad or on your mobile device without any further
14 charge.

15 We instituted that change and offered it for no charge
16 whatsoever seven years ago. We announced it with Comcast
17 back in that day, and we hoped that all the distributors,
18 cable, telcos, would pick that up and offer to consumers
19 full VOD across every channel on the dial, just the way HBO
20 had done, again, for no extra charge in the '90s, and it is
21 the way Netflix or Youtube works today.

22 Here we are seven years later, a great -- in many parts
23 of the country, if people were listening to this, they would
24 say I do not have this in my home. I am not used to going
25 to channel 4 and looking at NBC or watching FX on demand.

1 We have -- because we -- I think, if you look at the DirecTV
2 Now offering, we have been saying very publicly for five
3 years, we think that consumers need interfaces that work the
4 way Netflix, Xfinity and the way the AT&T one works, where
5 it is easy to find shows. It is easy to search across
6 networks. It is easy to do all of that, again, at no extra
7 charge.

8 And we think by putting this competitive offering into
9 the market, where you have full VOD on all these networks
10 that are in your DirecTV package, and at a price that is
11 basically -- it is either half or less than half the
12 prevailing price on average in the country. That is going
13 to force competition both at the distributor level, all the
14 other cable, and telephone, and satellite companies and it
15 is going to force competition at the network level, where
16 other networks that have held it back looking to get price
17 increases out of it realize they ought just to grant it and
18 give people a better deal.

19 Senator Hatch. Well, thank you. Thank you, Mr.
20 chairman.

21 Senator Lee. Senator Franken?

22 Senator Franken. Thank you, Mr. Chairman.

23 I am a little confused about something, this basic
24 premise that HBO, for example, attracts its talent because
25 it has the widest possible distribution. No, I do not think

1 that is why the talent went to HBO.

2 I think the talent went to HBO, as I remember, because
3 it was a very high quality and it was actually exclusive.
4 So it is the opposite. In other words, that when *The*
5 *Sopranos* was on, you had to pay to get *The Sopranos*, and
6 everybody wanted to see *The Sopranos*. So this idea, which
7 is this basic premise that everybody went to HBO because we
8 guaranteed everybody would see you ain't true. So I just do
9 not get that.

10 Now, Mr. Bewkes, you were recently quoted in a *New York*
11 *Times* article responding to my concerns about how a combined
12 AT&T Time Warner could prioritize its own content and
13 restrict other distributors access to it. You quickly
14 dismissed those fears saying that engaging in such behavior
15 would not be in the company's best interests and "it would
16 be like selling toothpaste and not putting it in Duane
17 Reade. It doesn't make any sense." That's your quote.

18 I am not sure it is your analogy that makes any sense.
19 It is not like selling toothpaste and not putting it in
20 Duane Reade. HBO is not a toothpaste. It is like CVS or
21 could be CVS manufacturing the greatest toothpaste in the
22 world, and not letting Duane Reade sell it. Or more to the
23 point, it is like selling *Game of Thrones* and not letting
24 Comcast subscribers watch it or very likely --

25 Mr. Bewkes. --

1 Senator Franken. You will get to answer the question
2 after I ask it.

3 Mr. Bewkes. I am sorry. I was eager to answer.

4 [Laughter].

5 Senator Franken. Okay -- making Comcast pay more for
6 the privilege of having *Game of Thrones* or *Veep* or the rest
7 of the line-up.

8 Now, I want to be clear what we are talking about here.
9 Should this deal be approved, nothing is preventing a
10 combined AT&T Time Warner from going to any of its
11 competitors in the pay-TV market and charging double for
12 access to *Game of Thrones* and *Veep*, et cetera, or the
13 combined company could simply restrict access to the
14 programming entirely and wait for competitors' customers to
15 flock to DirectTV or HBO streaming services.

16 I do not think these hypotheticals are outlandish at
17 all. You have every reason to do this, if you could, if
18 that would make more money, and this is also Mr. Stephenson,
19 you coul make more money for AT&T in the long run. This is
20 the incentive that is created by the merger.

21 So Mr. Bewkes? I know you are eager to answer this.
22 Do you agree that a combined AT&T Time Warner will have
23 greater leverage when negotiating program carriage with
24 other content distributors as a result of this deal, and do
25 you agree that a combined AT&T Time Warner would have a

1 financial incentive to use this leverage for its benefit?

2 Mr. Bewkes. May I? okay. I was --

3 Senator Franken. There was a long pause there.

4 Mr. Bewkes. I am sorry. I was so eager to answer.

5 no, I do not agree. I do not think it would have -- it would
6 not have the incentive, nor would it have the ability to do
7 that.

8 It may require a back and forth, but let me try to
9 answer the first part. All networks, whether it is NBC
10 putting on the show *Blind Spot* -- the show is on NBC. It is
11 exclusive to NBC. That is where you have to go to watch it.

12 If you want to watch *House of Cards*

13 Senator Franken. You did not have to pay to get NBC.

14 Mr. Bewkes. Yes, you did, sir. You had to subscribe to
15 \$80 to \$120 of network fees so that NBC could get paid that
16 way.

17 if you're talking in the case of HBO, Netflix,
18 Showtime, those are a little different --

19 Senator Franken. No. Wait a minute. There is a
20 distinction between HBO and NBC.

21 Mr. Bewkes. Yes.

22 Senator Franken. Right?

23 Mr. Bewkes. Yes.

24 Senator Franken. And HBO costs you money. You had to
25 pay for that. NBC came with -- free, with the package,

1 whatever package you have. In fact, you used to be able to
2 watch every tv show for free.

3 Mr. Bewkes. Right. I think we all remember that term
4 "pay-TV". That was HBO, Showtime, Netflix, et cetera, where
5 you have as a viewer the choice to either pay to have it in
6 your home or not pay to have it in your home, and when you
7 decide to buy that network for the month, you then get the
8 shows on that network, *House of Cards* on Netflix, *Billions*
9 on Showtime, *Game of Thrones* on HBO.

10 Those are premium services. There is no advertising.
11 If you do not like the content because of its nature, you do
12 not have to have it in your house. It is quite a different
13 business, but what I was saying -- and the analogy is right
14 on the toothpaste -- is, it would make no sense and, in
15 fact, we could go into it, to not sell HBO on the Comcast
16 cable system, on the Verizon cable system. It would make no
17 sense not to offer it.

18 Senator Franken. Would it make sense for AT&T to use
19 its leverage to charge Comcast more?

20 Mr. Bewkes. No, because we do not have the market
21 power to do something like that, either at AT&T or at HBO.
22 The market is way too competitive for that sort of thing,
23 and remember also --

24 Senator Franken. I really think Mr. Kimmelman might
25 disagree with you.

1 Mr. Bewkes. Well there is no history of anyone
2 pulling off something, and this company is certainly not big
3 enough at either end to do that.

4 Senator Franken. Mr. Kimmelman, do you have any
5 thoughts?

6 Mr. Kimmelman. Well, it's -- this very concern that,
7 again, NBC, you know, these are wonderful businessmen. I
8 understand their goal as to what they are doing with their
9 business. NBC said the exact same thing. I will just say
10 the enforcers found that there were these incentives, they
11 imposed limitations or would have blocked the transaction
12 there. This is even larger. And I will just --

13 Senator Franken. And did they live up to the
14 conditions?

15 Mr. Kimmelman. Some, but there have been a lot of
16 problems. I think companies like Ms. Ziman's company would
17 not have the resources to take even advantage of those
18 tools. I think there are significant difficulties with
19 conditions which we could get into later, but there has
20 clearly been a history of this kind of favoritism and
21 discrimination.

22 I will just remind you the bipartisan Congress in 1992,
23 stepped in and required cable to sell its products, TV
24 networks, where they were vertically integrated, to
25 satellite in order to allow satellite to get access to the

1 product. You could have made the same argument, why would
2 we not want to have more people getting it? Because it was
3 a competitor to cable.

4 I am not worried about Comcast not getting Time Warner
5 content in this instance. I am worried about the online
6 distribution that would compete with AT&T, that is growing
7 right now, not being able to get exactly what it needs to be
8 a real competitor.

9 Senator Franken. Well I am hoping there will be a
10 second round of questions. Will there be, Mr. chairman?

11 Senator Lee. Yes.

12 Senator Franken. Thank you very much. I over my
13 time, but I just want to say I remember that people flocked
14 -- talent flocked to HBO because it was a premium channel,
15 and that you people had to pay to go there.

16 Mr. Stephenson. Could I respond? I did not get a
17 chance to respond to Mr. Franken?

18 Senator Franken. It is up to the chairman.

19 Senator Lee. Go ahead.

20 Mr. Stephenson. Yes, Senator. I just want to make a
21 point that anybody, though, any household in America, and
22 today, any person with a mobile device can subscribe to HBO.
23 I think that was the point we were trying to make. It is
24 not exclusive to anybody. It is broad distribution.

25 Senator Franken. I am not talking about now. I am

1 talking about what built the franchise of HBO, and it was a
2 completely different premise than what Mr. Bewkes was
3 presenting in his opening. And I just wanted to make that
4 point, that it was not what attracted great talent to HBO.

5 It was in a different model, and what built that
6 franchise was a completely different model. We will get to
7 -- I want to get to some other questions later.

8 Senator Lee. Senator perdue?

9 Senator Perdue. Thank you, Mr. chairman.

10 You know, in my business career, it seems to me that
11 this economic miracle that we have enjoyed here over the
12 last, certainly , 70 years, 75 years was built on
13 innovation, capital formation, and the rule of law. And
14 this concept that we are talking about today, this vertical
15 integration, by the way, is not a consolidation. iI think
16 that is very plain, and we need to remember that in the
17 committee.

18 But this economic miracle was built on transactions
19 like this in other industries. Vertical integration is
20 nothing new. I, personally, have participated in it, in
21 order to compete. Not to dominate.

22 Size today does not necessarily correlate to dominance.
23 When you talk about innovation and technology changes like
24 we are talking about today in this industry particularly,
25 the consumer has benefitted from the aggregation of the

1 ability to deliver, as Mr. Stephenson said in his opening
2 comment, they want to provide the most content to the most
3 people at the lowest cost. That is called capitalism. If
4 they do not do that, they will not be able to compete.

5 Mr. Cuban, you said something earlier that really
6 resonated with me. You commented about watching TV, and
7 watching young kids today and how they consume input is
8 totally different than when we all grew up.

9 But I think sometimes being in the senate is like
10 watching TV, too. You think you are doing something, but
11 you really are not doing much.

12 [Laughter].

13 Senator Perdue. So I hope that today will be a little
14 different. I want to get your perspective because you are
15 in a unique position to have a unique perspective on this
16 transaction. I would have thought you would have been a
17 witness for an anti-position against this deal.

18 And I want to talk about your HD net experience and the
19 road blocks you had to innovation in getting your content
20 out there, and are you concerned about the combination and
21 the size of this deal harming your ability to be creative
22 and innovate?

23 Mr. Cuban. Let me give you some background. I own
24 AXS TV and HD Net movies. AXS TV started off as HD Net,
25 which was the first all high definition TV network. And it

1 was absolutely independent, and we continue to be
2 independent.

3 And let me also add something. Senator Klobuchar
4 suggested that because I own the Dallas Mavericks, that
5 improved my ability to get carriage for AXS TV and HD Net
6 movies. Well, Time Warner Cable is the incumbent cable
7 network in Dallas, and I have not been able to get carriage
8 there. So I have faced the challenges.

9 I also own Magnolia Pictures, which is a movie
10 distribution company; Landmark Theaters, which has 300
11 screens and is geared towards independent movies, and
12 produce movies through a company called 2929 Distribution.
13 Some of the movies were *Enron*, *The Smartest Guys in The*
14 *Room*," which got nominated for an Academy Award, and *Good*
15 *Night and Good Luck*." And *Good Night and Good Luck*, as an
16 example, we were not big enough to distribute it. So we
17 worked through Warner Brothers to get full distribution.

18 We have to compete. As an independent network, I feel
19 the pain that Ms. Ziman feels. At AXS TV, we gear ourselves
20 as a music network geared toward the 45-plus. We do not
21 like to tell our advertisers that, but that is who watches
22 more TV, and it is a challenge for to us get distribution,
23 but with the new methods of distribution like DirectTV Now,
24 and others, Sling, in particular, that has opened the door.

25 In the past, the distribution was constrained, as Ms.

1 Ziman mentioned, because of bandwidth. You could not put on
2 another high definition network particularly with standard
3 definition, which took up even more bandwidth.

4 So now with new methods of distribution, there is new
5 hope. There is more hope for independent networks like
6 ours, and I think this merger opens those doors.

7 As an example, on DirecTV Now, AXS TV is distributed in
8 their \$35 bundle. HD Net Movies is not. We have got to do
9 a better job at HD net Movies to convince them to carry us.
10 That onus is on me.

11 So, to your point earlier, it is very competitive. It
12 is a free market, still, in a lot of respects, and I think
13 this combination opens doors. I think they recognize now
14 that bandwidth is more available through online offerings.
15 They can support more independent networks, more minority
16 owned networks, and we have seen that start to happen.

17 I think the combination of them owning content -- there
18 is a lot of things when we look at online content and,
19 particularly, television distributed content. And we say,
20 why do they not do that? And it just makes perfect sense
21 for us to have remote DVRs or other features, and as a
22 content owner, it is like, I would love to offer those
23 features as a smaller content owner, but until the big guys
24 start doing it and set the precedent, us little guys do not
25 get to offer it.

1 So these new precedents that are set, I think, will
2 really push the way for better services and more consumer
3 friendly services, and really expand the ability for
4 independent networks to compete.

5 Senator Perdue. Thank you.

6 Mr. Bewkes, could you talk about what factors today add
7 friction to your ability, this is pre-deal, before the deal,
8 as you exist today, what causes friction to your ability to
9 innovate and how would this merger with AT&T help your
10 content developers provide better and quicker and cheaper
11 content for AT&T consumers?

12 Mr. Bewkes. Okay. Thank you, Senator. The main
13 friction now is that we have to put our networks through the
14 existing cable satellite distribution plant, which had a
15 certain technological ability to it.

16 Only recently did it have the ability to do video on-
17 demand. And, increasingly, we are competing against video
18 being delivered over broadband only that has full two-way
19 video on-demand and where the broadband services have the
20 direct retail data of what you are watching, who you are,
21 where you are buying your stuff.

22 So it implicates advertising and subscription. What we
23 have been trying to do is to -- and we did it with HBO
24 first, and then with Turner second, but we really have not
25 been successful in the broad 100 channels we have all got in

1 our homes.

2 We tried to make our channels all video on-demand in a
3 way where you could go as a viewer and search back and
4 forth, watch full seasons, really get the same -- because
5 there is more and more networks and content available. You
6 need to be able to search for it the way do you on a Netflix
7 or on an Apple TV, or that kind of thing.

8 Most of the distribution companies, particularly, cable
9 companies, have not uniformly offered that, and the way that
10 American consumers get a change in their habit about
11 something as important as television is it has to be
12 consistent across all the channels, and it has to be
13 national. And we think if we can get this going,
14 competition with lower prices, better smaller bundles, more
15 effective advertising, can bring more competition in all of
16 these areas.

17 We do not, obviously, and we cannot determine what all
18 the other media companies do. We do not have that big of a
19 market share, but if we could put a competitive innovation
20 in the hands of consumers, we think consumers liking it can
21 get those changes to be universally adopted. That would
22 give us a chance against these giant technology companies
23 that by their own definition have massive global scale.

24 Senator Perdue. Thank you, Mr. chairman. I have other
25 questions I would like to submit to the witnesses in

1 writing.

2 Senator Lee. Without objection, they will be
3 admitted. Thank you.

4 [The questions appear in the appendix:]

5 / COMMITTEE INSERT

6 Senator Lee. Senator Blumenthal?

7 Senator Blumenthal. Thanks Mr. chairman. Thanks for
8 having this hearing and thank you all for being here.

9 I have serious concerns about this transaction. I have
10 yet to be convinced that the benefits outweigh the harms to
11 competition, and possibly to consumers.

12 It is a vertical merger. It does not take out a
13 competitor, but it potentially has seriously negative
14 impacts on competition and on consumers, and it is different
15 from the NBC Comcast merger which, as Mr. Kimmelman points
16 out, has had problems itself and had to be modified by
17 regulators.

18 It involves wireless. It is a national platform, and
19 it involves more than one platform. But. speaking very
20 bluntly, what I think, what any of my colleagues think may
21 make no difference whatsoever, because Donald Trump has said
22 he is going to block this merger, and I take him at his
23 word.

24 Senator Franken. Why?

25 [Laughter].

1 Senator Blumenthal. We operate as an act here. I
2 know that, Mr. Stephenson, you have met with the Trump
3 Transition Team. Have you met with the Trump Transition
4 Team?

5 Mr. Stephenson. No, Senator, I have not.

6 Senator Blumenthal. Well then what remains on the
7 record is that the President of the United States, or I
8 should say the future President of the United States has
9 said he is going to block this merger and he said it
10 emphatically and unequivocally and he has said it because,
11 and I quote, "it's too much concentration of power in the
12 hands of too few." A classic antitrust analysis from the
13 President-elect.

14 Now, I am a strong supporter of antitrust enforcement,
15 and I may well agree with Donald Trump. What concerns me is
16 the reason that he gave -- an additional reason -- which is
17 that he is very unhappy with the CNN news coverage and for a
18 public official to use the blunt, heavy instrument of law
19 enforcement to try to silence or change coverage by a news
20 department of any company is for me absolutely abhorrent.

21 Would you agree?

22 Mr. Stephenson. Are you referring to me? I am sorry.

23 Senator Blumenthal. I am asking both you, Mr.
24 Stephenson and Mr. Bewkes.

25 Mr. Stephenson. Senator, I am a novice in the world

1 of politics, so I would struggle to engage at that level.
2 My expectation was when we announced this deal and is today
3 that the Department of Justice will be the one reviewing
4 this transaction and making the determination whether it is
5 competitive or not and is it competitive under the law. So
6 our expectation is to present our facts.

7 We actually believe the facts are going to be very
8 compelling and very good that this is pro-competitive and
9 pro-consumer. So I will leave it at that.

10 Senator Blumenthal. Mr. Bewkes?

11 Mr. Bewkes. Yes, and I entirely agree with what Mr.
12 Stephenson just said. In terms of the independence of our
13 journalism -- and I hope all the other journalistic outlets
14 -- we have always vigorously defended that for decades, when
15 we had Time Inc and when we have CNN, and we intend to
16 continue defending and being an independent journalistic
17 voice. Everyone that watches us may have their own opinion
18 about whether we succeed in being objective. We try hard
19 everyday, and we are going to continue to do that.

20 Senator Blumenthal. You understand that what troubles
21 me is that the President-elect has said that his Justice
22 Department will enforce a different standard of law,
23 depending on what kind of coverage his administration
24 receives. Will you commit that your news coverage will in
25 no way be influenced or impacted by what the President of

1 the United States says about this transaction?

2 Mr. Bewkes. Yes.

3 Senator Blumenthal. Mr. Stephenson?

4 Mr. Stephenson. Yes, sir, of course. Yeah.

5 Senator Blumenthal. And would you not agree with me
6 that for anyone in the Department of Justice or any law
7 enforcement agency to threaten or use more vigorous or
8 aggressive law enforcement, in effect, in retaliation for
9 news coverage that does not please that public official
10 would be an abuse of power?

11 Mr. Bewkes. I would if you are asking me.

12 Senator Blumenthal. I am asking you and I will turn
13 to other members of the panel as well, but you are the ones
14 who will be making decisions about CNN and, by the way, the
15 President has made similar kinds of remarks about NBC and
16 about the *Washington Post* in terms of the enforcement of
17 laws potentially against them, the President-elect.

18 Mr. Bewkes. May I make a comment?

19 Senator Blumenthal. Please do.

20 Mr. Bewkes. I do not think we should be selective
21 about retweeting here or restating the various comments that
22 various elected officials or those running for office made
23 upon the announcement of this merger because there were
24 comments made by candidates on all sides, including Mr.
25 Sanders, Mr. Kaine, saying that they were against the

1 merger, again, before any of them had the information.

2 And what Randall and I are saying is that we are
3 confident that once everyone -- including the questions you
4 have raised today -- hears the facts, and has the
5 appropriate competitive analysis on this that it will be
6 seen and concluded by everyone, even with the concerns you
7 have stated, that this will have pro-competitive effects
8 that will benefit both competitive structures, diversity of
9 voices and consumer price alternatives.

10 We believe it and we think we can prove it.

11 Senator Blumenthal. And I just want that -- I want to
12 make clear that my point here is not that other candidates
13 may have commented or not about this merger, it is perfectly
14 appropriate for a public official or a candidate to comment
15 on the merits of antitrust enforcement. But to threaten
16 more vigorous or adverse enforcement against a particular
17 company because he does not like the news coverage, is a
18 throat the first amendment. That is the fundamental point
19 here.

20 I am a believer in strong antitrust enforcement. I
21 welcome President-elect Trump's interest in this area. I
22 find absolutely abhorrent the threat against a news
23 organization based on its content of more vigorous or
24 adverse enforcement against it simply because of a dislike
25 of that coverage, and I welcome your commitment that his

1 statements will have absolutely no impact on the content of
2 CNN's coverage. I hope the same will be true of NBC and the
3 *Washington Post* because this kind of potential abuse of
4 power is a threat to fundamental liberties way larger than
5 the issues we are discussing right here.

6 Thank you.

7 Senator Lee. Senateor Tillis, you are up to bat.

8 Senator Tillis. Thank you, Mr. chairman. I want to
9 get back to the merger.

10 [Laughter].

11 Senator Tillis. And the potential acquisition, and
12 actually I would like to start -- Mr. Bewkes, or Mr.
13 Stephenson, if you could briefly explain to me how this
14 DirectTV Now product that you are offering and distributing
15 through AT&T network, how that -- how you may enter into
16 other relationships with other wireless providers to
17 accomplish the same thing and how would those transactions
18 look?

19 Mr. Stephenson. Yes, thank you, Senator. Actually,
20 we stole the concept for DirectTV Now with free data included
21 from prior deals that we have done. In effect, this premise
22 of free data, if you will, with DirectTV Now, it actually
23 goes back decades. The first instance of it was a 1-800
24 service when you called Sears and Roebuck, you dialed 1-800
25 and Sears and Roebuck picked up the tab for the long

1 distance service.

2 That actually drove long distance prices down over
3 time. All of a sudden, everybody started using that type
4 facility to get people to call their franchise.

5 So what happened then in 2008 is Amazon launched a
6 really ground-breaking product called the Kindle, and we did
7 a deal with Amazon where they actually -- when you delivered
8 a book to the Kindle, you paid \$10 for your book. That
9 included the data charge. Amazon paid AT&T directly that
10 data charge.

11 That is the concept that we took advantage of with
12 DirectTV Now. DirectTV is paying the charge for the data to
13 the mobility business, and by the way, that is our lowest
14 wholesale rate available in the marketplace today to
15 DirectTV, to Amazon, to any big, small, medium-sized company
16 that wants to do this same approach.

17 We are actually convinced that just like 800 service
18 drove long distance prices down, this will also drive video
19 prices down as people begin to leverage this same
20 capability.

21 Senator Tillis. I think that is right.

22 Mr. Cuban, I almost hesitate to speak with a Hoosier
23 after the devastating loss of the Tar Heels a week or so
24 ago, but I am going to anyway.

25 [Laughter].

1 Senator Tillis. In your opening comments you were
2 really talking about the disruptive nature of other content
3 providers today, and I saw you shake your head on a couple
4 of occasions when -- I think what we are trying to do --
5 your comments kind of suggested that you are trying to skate
6 to where the puck is going to be.

7 Mr. Cuban. Correct.

8 Senator Tillis. And a lot of this discussion is where
9 the puck is today.

10 Mr. Cuban. Without question.

11 Senator Tillis. And if we do not look ahead, then
12 some of these premier providers are going to be hamstrung
13 against other ones -- against other disruptive forces that
14 could ultimately, I think, create a consolidation and an
15 upward pressure on prices. Would you agree with that?

16 Mr. Cuban. Yes, sir. There is already a
17 consolidation that we do not see going on.

18 When I went through the list with Facebook, Amazon, all
19 the content, the primary content they offered came through
20 acquisitions. Their biggest content plays were
21 acquisitions.

22 What is happening now, though, is they are not
23 acquiring big companies like Time Warner. They are
24 acquiring disruptive companies that are choosing not to go
25 public for a hundred million dollars or a billion dollars

1 that flies completely under the radar. That is how they are
2 competing.

3 I will give you a perfect example of how the nature of
4 -- and it is kind of silly but how the nature of content is
5 changing. I wanted to test Facebook Live just to see what
6 kind of audience I could get.

7 No lie. I took my breakfast, empty plate, one pepper
8 on it, put up Facebook Live, and within a minute I had 1500
9 live viewers. Within 30 minutes, I had 10,000 live viewers.

10 I thought, okay, maybe that is just Facebook Live, it's
11 new. I went to a new platform called live.ly. I was with
12 my kids. Again, I try to be a geek and keep up with this.
13 My kids were going down a slide into the lake, and I just
14 put it on them. On live.ly, within 20 minutes I had 35,000
15 live viewers.

16 For an independent network, 35,000 live simultaneous
17 viewers is huge. That iss changing the nature. CNN -- a
18 great program, is 2.5 million viewers watching it at a given
19 point in time. That is nothing on Facebook Live compared to
20 other platforms.

21 It iss changing, whether we want to admit it or not and
22 it is having significant impacts. And really, the biggest
23 challenge is getting people to watch TV. That is going to
24 be -- you know, with all these things, you are hoping to
25 find new ways where people go back and say, okay, I want to

1 try watching tv again. And that will increase -- and we see
2 it with the NBA, we see it with the NFL and all forms of
3 content.

4 Senator Tillis. And I think something else that one
5 of my colleagues mentioned was -- well, first of off, if I
6 look at HBO -- HBO became a premier channel not because they
7 charge people to watch it but because they have
8 extraordinarily good content, extraordinarily good content
9 that people were willing to pay a premium for. But there
10 are a lot of times when I am channel surfing -- which
11 usually happens late at night when I am back in my -- I do
12 not get to channel surf as much when I am at home because my
13 wife can control the remote, but when I am looking I am
14 going through all of these channels. I am going why am I
15 going through all these and am I paying for them?

16 NBC is not free. ABC is not free. They are all
17 negotiating some baseline costs that go into your baseline
18 cable bill and I would like to reach a point in time where I
19 have the freedom to have options. A sportsless option seems
20 like a very sad place to me, but some option to where I do
21 not have channels that I consider extraneous based on my
22 viewing habits. And then from time, I will pay a premium if
23 I want to go and access content that may be on a channel
24 that I would not regularly want to pay for because I do not
25 have a need or desire to have that.

1 I mean, that is the model that we are getting to. And
2 I think that if we do not as a matter -- I will leave it to
3 the Antitrust Division of the Department of Justice to ask
4 you the right questions to make sure that you are not wading
5 in any antitrust areas.

6 But, if we as a body resist, if we just continue to
7 focus on where the puck is, versus where the puck is going
8 to be in terms of content delivery in this industry ten
9 years from now, then I think we are going to disadvantage
10 some real innovators. There are some legitimate issues that
11 need to be addressed, but we need to be very, very careful
12 or we are going to cause some of the leading innovators in
13 the world not to be able to innovate because of constraints
14 we are putting on people using old world models to assess
15 where the new horizons are for content delivery.

16 Thank you.

17 Senator Lee. Senator Flake?

18 Senator Flake. Thank you, Mr. chairman. Thanks for
19 having this hearing. It has been enlightening.

20 I am trying to view this all through the lens of my own
21 kids. I have two married kids, newly married, who would no
22 more sign up for DirecTV, or DISH, or broadcast than they
23 would to get a landline in their home. That is just not
24 something they would consider. They might try to crib off
25 of my DirecTV, find out the password and use it, but they

1 would never think of that.

2 And that is why when I hear Mr. Kimmelman talk about
3 this -- the competitive angle, it seems like an excellent
4 argument you are giving that would have been more
5 appropriate 10 years ago or 15 years ago. But it does not
6 seem to be where the puck is or, certainly, where the puck
7 is going.

8 I think we have to consider more who the competition
9 really is, that this is not traditional antitrust
10 competition among broadcast media but among the edge
11 providers and Mr. Cuban you talked in your statement about
12 the real competition. Do you want to talk a little more
13 about that, about who the real competitors are are?

14 Mr. Cuban. I mean, apps compete for our time now. As
15 I mentioned, when we look for something to do, a way to kill
16 time, we look at our phone.

17 All you have to do is look at the rise of snapchat, the
18 rise of music.ly, the rise of live.ly, the rise of
19 Instagram. That is what consumes our attention. Kids do
20 not go to TV anymore.

21 You mention your children. I have a seven-year-old,
22 and I went to help coach his baseball team, and none of them
23 knew the rules because none of them ever watch TV and watch
24 baseball like we grew up doing. They did not know the rules
25 for football.

1 I mean I cannot even bribe my son to go to a Cowboy
2 game. That is just not how it is, but if I take away his
3 Minecraft videos, he throws a hissy fit. And sure our
4 consumption habits change as we age, but -- and I am sure
5 they will for all my kids, but at the same time on-demand,
6 in-hand viewing through streaming is how people consume
7 content, and it is going to be a challenge, and I think they
8 face additional challenges from a tech perspective.

9 Randall mentioned 5G coming along, and I think it will
10 get here sooner rather than later. There are going to be
11 people cutting the broadband cord. And just like you
12 mentioned your kids never would have thought to buy a
13 landline, I tend to believe that there will be a point in
14 time where we will not think about wired broadband as being
15 commonplace. And that is going to create a whole new list
16 of challenges for them.

17 So technology marches on whether we like it or not, and
18 I think we cannot look backwards and look at historical
19 norms in order to predict the value of this merger.

20 Senator Flake. When Senator Blumenthal talked about
21 the incoming president talking about going against this
22 merger simply because of the size of it -- how does the size
23 of the merged company, how does the size compare to the real
24 competitors we are talking about, some of the edge
25 companies? Any figure there Mr. Randall? [Sic]

1 Mr. Stephenson. Yes, senator, if you put our two
2 companies together the combined market cap depending on the
3 day you look at the market is \$300, \$350 billion. The
4 companies that Mark has referenced, whether it be Google,
5 Facebook, Apple, these companies have market caps that are
6 about two times that size. So as we talk about size and the
7 significance of size in a deal like this, I think we have to
8 recalibrate what size means in this new world, because we
9 are about half the size of most of these companies that are
10 really providing the competitive threat to our core
11 businesses today.

12 Senator Flake. All right. Mr. Kimmelman, do you have any
13 response to that in terms of where are we discussing what
14 the market is or it was a few years ago?

15 Mr. Kimmelman. Senator, I totally concur in your
16 assessment. My kids do the same thing as yours. I think we
17 should skate to where the puck is, and we should look at
18 where the market is going.

19 I will just note, on the margin, young people are doing
20 different things, 90 percent, though, plus of the revenue
21 comes from traditional sources and the companies will skate
22 to where the puck is. They will try to control as much of
23 that new distribution as possible.

24 On the online platforms, I totally agree, there is a
25 lot of attention but what we used to do on phones a lot of

1 kids are now doing on Snapchat. What we used to do in terms
2 of listening to records is now iTunes. It is not that TV
3 has disappeared, or video does not matter, it is people are
4 doing it in new forms.

5 So I am all for looking at who the other players are,
6 but none of them charge me \$200 a month to get access to
7 that online content. That iss where your kids get it, and
8 if they are mooching off of your DirecTV, that is probably
9 why -- they do not want to pay \$200 a month to get all this
10 stuff. So somebody's paying and I just want to make sure it
11 is a fair price.

12 But there is no question that the online platforms are
13 going to be big players here, but they do not control that
14 wire, wireless, whatever it is, even if it is not wired by
15 our broadband, satellite -- they do not control that into
16 our homes, and you can probably only get it from a couple
17 players.

18 That is where there is an antitrust problem. That is
19 where there is a control problem that we want the enforcers
20 to look at.

21 Senator Flake. Is that -- who is paying for content -
22 - is that really relevant to the competitive nature of these
23 kinds of mergers?

24 Mr. Cuban, do you --?

25 Mr. Cuban. Yes, I would say if you are not paying for

1 the content, you are the content. You are being sold, and
2 advertising is paying for it. And I would also say -- my
3 ten-year-old daughter does not have a cell phone account,
4 but she has a phone and she gets access to wireless through
5 wifi at various distribution points, and she knows where
6 they are and goes there. I am not just talking inside my
7 house, I am talking outside the home.

8 So the notion that a wireless provider is the only way
9 to access this content is not necessarily the case any more,
10 and those options are expanding rapidly.

11 I would also say -- to respond to Gene -- that Flurry
12 which is an app monitoring company -- just came out this
13 week and said, for non-traditional TV-type content, all
14 consumers are consuming 133 minutes, more than two hours per
15 day, of non TV-like content on their phones. The world is
16 changing, and how we consume it is changing and it is not
17 driven by pure mobile.

18 Senator Flake. Thank you, Mr. chairman.

19 Senator Lee. Thank you, Senator Flake.

20 We are going to start our second round of questions.
21 Mr. Stephenson, let us go back to you. Section 5 of the FTC
22 Act, as you are aware, permits the FTC to take action to
23 prevent "unfair or deceptive acts or practices in or
24 affecting commerce."

25 However, that provision contains a carveout. It

1 contains an exception for common carriers, and as I am sure
2 you are aware the U.S. Court of Appeals for the Ninth
3 Circuit recently extended this exception to cover even
4 aspects of AT&T and its activities that are non-carrier
5 activities.

6 Is it your position that Time Warner's business will
7 become exempt from Section 5 of the FTC Act if this
8 transaction is approved and kicks in?

9 Mr. Stephenson. I am not a lawyer so I will try to
10 address your question as best I can. Obviously, with the
11 net neutrality provisions, AT&T is -- our privacy standards
12 and so forth are under the purview of the FCC. As with Time
13 Warner, so Verizon has the same issue of buying AOL, buying
14 Yahoo. So Comcast and NBC, you have the same issue where
15 there is this confusion about a content company under the
16 purview of the FTC, a common carrier, per se, is under the
17 purview of the FCC.

18 It is confusing, and I would suggest that this is an
19 area, perhaps, where congress really should consider taking
20 up bringing some clarity because it is not that we have
21 regulation gaps in this area, it is that we have regulation
22 overlaps and it is a bit confusing as to who controls who.
23 So I would actually encourage perhaps maybe some legislative
24 effort to address this issue.

25 Senator Lee. Sure, and I get that. I get that we

1 have regulation overlap. We are not talking about
2 regulation overlap here. We are talking about a gap. We
3 are talking about a carveout, and I would imagine you would
4 have to agree that if that were the case, if the exemption
5 for Section 5 currently enjoyed by AT&T also extended to
6 Time Warner if this transaction were completed, that would
7 be cause for concern by some. I assume you would
8 acknowledge that?

9 Mr. Stephenson. Yes, I believe the law is that if
10 AT&T owned Time Warner they would come under the FCC's
11 purview in terms of regulating these issues.

12 Senator Lee. Okay. I have got another line of
13 questions that I would like to extend both to you Mr.
14 Stephenson and to Mr. Bewkes, jointly.

15 So when Comcast and NBC completed their merger back in
16 2011, you recall there were some concerns expressed by CNBC
17 and others and -- or rather concerns expressed by Bloomberg
18 and others relative to CNBC, and there were conditions put
19 in place to guarantee that Bloomberg would have access. It
20 ended up taking three years of litigation to bring that
21 about.

22 Should we not be concerned about the possibility that
23 any conditions put in place here designed to guarantee
24 access to your network might not be followed in much the
25 same way that this required three years of litigation,

1 expensive time-consuming litigation occurred in the wake of
2 this other merger.

3 Mr. Stephenson. I have been asked a lot about
4 conditions imposed on other companies in this regard, and I
5 am not knowledgeable about the ability of those companies to
6 comply with those conditions.

7 I would tell you we have had several mergers where
8 conditions have been posed on us. I think you would find
9 our track record in adhering to those has been very strong.
10 I would also suggest that the Department of Justice has not
11 seemed to have any lack of resources in pursuing areas where
12 they believe we were out of compliance with conditions, so I
13 fully expect that if any conditions are applied to this
14 particular transaction, we would comply with those just as
15 we have every other transaction.

16 Senator Lee. Did you have anything to add to that,
17 Mr. Bewkes?

18 Mr. Bewkes. Yes. I think the same is true in the
19 history of Time Warner. We had a merger with AOL where some
20 agreements on carriage of other networks were made, and they
21 were followed with no incident.

22 And then in the Turner and Time Warner merger we had
23 conditions which also were followed without incident. So
24 our record is without -- there is no instance in which we
25 did not comply with any conditions we had in our various

1 mergers.

2 Senator Lee. Right. And, of course, I am not talking
3 about your companies, in particular, but your companies, in
4 particular, are the ones that want to become one company
5 right now. And you can understand why some people would
6 express this concern when you do own some news entities, and
7 there are other news entities that have expressed concerns
8 that they might be blocked out for one reason or another,
9 either through pricing models or as a result of where you
10 locate them, what number they are assigned, what channel
11 they are assigned, whether it is puts in the same grouping
12 as other news outlets or otherwise.

13 Do you understand why people might have that concern?

14 Mr. Stephenson. Yes, sir, I do. And I do not think
15 those are terribly unique to other concerns people have
16 expressed in past mergers that we have been a party too, and
17 I do believe that that those have been adequately
18 addressable with concessions and conditions and I -- again,
19 I will repeat I think both companies have a stellar -- a
20 flawless track record in complying with those conditions.

21 Senator Lee. Ms. Ziman, you state that over-the-top
22 distribution is -- I believe you put it -- a one-way ticket
23 to bankruptcy. Can you explain why this is not what you
24 would consider a viable business model for independent
25 networks?

1 Ms. Ziman. Well, right now the OTT market does not
2 have the amount of subscribers that make it a business.
3 Number one, it is a maze of confusion, as I said before.
4 It is a search engine nightmare for a lot of people that are
5 not used to it. Mr. Cuban's children are more used to it
6 than some people that are a little older.

7 But at the same time, in order to get -- number one --
8 license fees, that is impossible. And in order to get
9 advertisers to advertise with you at such a small market it
10 would not work.

11 Plus you need to be able to use the linear service in
12 order to actually get your brand known to the public and at
13 the same time you need to be able to show the public that
14 you are delivering a network that is curated and that meets
15 their interests and their needs in order for them to then
16 also want some VODs over the OTT market.

17 We are actually distributing Cinèmoi over the OTT
18 market, but the reality is it is a very fragmented market
19 right now and confused market. And therefore, if we relied
20 on it solely, it would be a one-way ticket to bankruptcy
21 because you cannot survive.

22 You have the obligation -- we are all gatekeepers to
23 the communication media. That is a fiduciary responsibility
24 to deliver to the public content that is quality oriented,
25 that they deserve. That means that you have to spend money

1 in either licensing content or original productions.

2 I disagree with some of the people that think that HBO
3 is there because of distribution. HBO is there because of
4 quality. Many people, many stars, come to us as a small
5 company and give their services for very small amount of
6 money because of the quality of the programming that we ask
7 them to participate in.

8 The reality is we still have to spend money. We still
9 have to convince advertisers to go along with some of this.
10 That is impossible. In order to get an advertiser
11 interested, you have to have a distribution of 55 million
12 subscribers. That is almost impossible right now because
13 the MVPDs are shutting the doors on independents, on
14 innovation, on good quality, original programming.

15 Unless you are bundled, you do not have any negotiating
16 power. I mean, Mr. Cuban is partners with CBS. It is a
17 different story, and even he could not get on Time Warner.
18 It is an impossible marketplace right now and we need to
19 improve it.

20 And if we really look at what is happening here, we are
21 moving towards an oligopoly. And if you look at Taiwan, for
22 instance, with six conglomerates owning all the media, when
23 they want different content they simply trade at the cost of
24 the public, which is rising and rising and at the cost of
25 free speech.

1 Senator Lee. Thank you.

2 Senator Klobuchar?

3 Senator Klobuchar. Thank you very much. I apologize
4 for leaving briefly. Senator Mikulski was giving her
5 closing speech on her Senate career, and then we had a big
6 event on Cuba, and I carry the bill to lift the embargo.
7 So, as opposed to Mr. Cuban, I was with the Cubans.

8 I wanted to kind of go back to some of these cost
9 issues. Mr. Kimmelman, the money the typical American
10 household -- which you mentioned -- spends on these
11 services, \$2700 per year, continues to trouble me and I am
12 concerned that this transaction will not reduce that burden,
13 and I think you argue there could be a chance that it would
14 increase it. Is this a legitimate concern and why?

15 Mr. Kimmelman. Senator Klobuchar, I think that that
16 is the baseline and it is the result, if you look at a
17 20-year period, of consolidation and limited regulatory
18 oversight during periods of that that have enabled prices to
19 be inflated. There is competition on the margin, there is
20 new competition coming from new sources but it is hard to
21 squeeze that out.

22 I will say that with what is being offered now in the
23 market that includes what Time Warner is offering, and AT&T,
24 there is hope. The online platform is opening up some and
25 they are offering new products and new services and some at

1 lower prices.

2 The real fear is whether the combined company, once it
3 gets -- looks at its overall interests will favor itself and
4 potentially harm competitors. So that is where the rub
5 comes on the prices. They might offer a better price, and
6 they may offer it for some time, but in the long run will
7 the competitive process be benefitted? That is what I think
8 the enforcers need to look at.

9 Senator Klobuchar. So you see this as a, there is a
10 chance tht it could be another model, rather than just a
11 monthly cable?

12 Mr. Kimmelman. Oh, absolutely. In some ways I think
13 that is our only hope for all the reasons everyone here has
14 stated.

15 Senator Klobuchar. Okay, but you are concerned about
16 a few things. one is that the prices may be initially,
17 whatever it is, 60 bucks or something and then it goes up,
18 and then it would be \$35 for 100 channels, but then it goes
19 up so you are worried about that and you are also worried
20 that there would be less competition for, say, content and
21 things like that and eventually we have problems because of
22 that? And you think you could build some conditions into
23 that or not?

24 Mr. Kimmelman. Well, let me just say, part of the
25 reason for the longer term concern is that Comcast already

1 vertically integrated and has all the NBC use suite of
2 programming. Here you have Time Warner programming. Now,
3 will they compete aggressively against each other? I
4 certainly hope so, but in a market where there are few
5 vertically integrated companies, there is a danger that they
6 will buy more, CBS , Viacom -- who knows -- to escalate
7 against each other, but also possibly follow the same basic
8 market business structure and deal with each other, maybe
9 even at pretty high prices because they pass those on to the
10 consumer in their own market, but then charge them through
11 to every other distributor in the market.

12 Now, again, if somebody can come up with something
13 comparable to HBO, they can compete against it. It has been
14 tough. There are only a few major content providers that
15 provide that high-quality professional content, and we tend
16 to get locked into that. So yes, you buy other things on
17 the side but that just means you are paying more for other
18 things. That is why the bill is so high.

19 Senator Klobuchar. And Mr. Stephenson, I know you are
20 going to answer that, but -- so \$35 for 100 channels is a
21 good deal, but is that not an introductory price and it is
22 going to go up to 60 bucks or something like that?

23 Mr. Stephenson. These two go together, but I think it
24 is important to understand why we put a \$35 product out in
25 the marketplace, and it is because the other system, the old

1 system is just flat out broken. Content costs continue to
2 escalate. Cable bills continue to go up, and we are at a
3 \$100 average cable TV bill, and 20 million households have
4 opted out. They have left the system. They said, we do not
5 want this product anymore. It is too expensive.

6 So we brought this product to market to address those
7 20 million households, and it is proving, we found, the
8 sweet spot. So it is not as though we have pricing power
9 down here. The pricing power does not exist because the
10 customer said we opt out if you do not meet this price
11 point.

12 So we have tried to get the cost down, the content cost
13 down, the distribution cost down, no set top boxes to ensure
14 that we can get into a market and hit a price point the
15 customers will come back into the pay-TV system, and they
16 are doing it.

17 I think as soon as we think we can begin to move prices
18 up and take advantage of that, they have demonstrated they
19 will leave us again. So I think we are bound on this, and I
20 think we have reached a place with the consumer that they
21 are happy and I think they are willing to enter this
22 marketplace again.

23 Senator Klobuchar. To get at some of Ms. Ziman's
24 points, in your testimony you say, Mr. Stephenson, in short,
25 we are still going to purchase high quality content from all

1 corners of the content community and we will continue to
2 distribute Time Warner programming widely.

3 Am I understanding your position correctly, then, that
4 after the acquisition, AT&T would not discriminate against
5 independent content providers in favor of Time Warner
6 content?

7 Mr. Stephenson. I do not think we have a choice. The
8 business proposition is you better have a wide array of
9 content. There are too many alternatives. You will lose
10 customers if you do not.

11 Now I think we have pointed out an interesting dilemma
12 here. We want a broad wide range of content brought into
13 this ecosystem and everybody wants to be paid for their
14 content whether it gets broad viewership or not. At the
15 same time, we are being challenged, can you get prices down,
16 get prices down, get prices down? The two are inconsistent;
17 alright? So we have to figure out what content do the
18 customers want -- not what do we want, not what does the
19 government want, but what do the customers want?

20 Senator Klobuchar. I get it, but at the same point --
21 what I am asking about is would you discriminate against
22 non-Time Warner content because --

23 Mr. Stephenson. No. Again, there iss no advantage to
24 it, nor would we do it.

25 Senator Klobuchar. And so how do we determine at this

1 point where contract negotiations between providers and
2 distributors are long, difficult and complicated, how do we
3 determine whether AT&T has lived up to that commitment?

4 Mr. Stephenson. I think we ought to allow the
5 Department of Justice to formulate an approach for doing
6 that.

7 Senator Klobuchar. Okay. Mr. Bewkes, my last
8 question here. In your testimony, you explained that "Time
9 Warner's goal has always been to distribute our content
10 broadly across all distributors and platforms." So am I
11 understanding this correctly, that after the acquisition,
12 Time Warner will not limit the availability of Time Warner
13 content to content distributors that compete with AT&T?

14 Mr. Bewkes. Right. Correct.

15 Senator Klobuchar. Okay. And we have heard that one
16 can deny content through the offered terms and prices. How
17 would we determine that AT&T -- or that you were living up
18 to this commitment if there is some kind of discrimination
19 based on prices?

20 Mr. Bewkes. Well, again, I think the DOJ would be
21 able to easily see that. We have got fairly uniform
22 contract provisions across all distribution platforms so all
23 of the -- if you think of Verizon, AT&T, Comcast, all the
24 different companies, they have all quite vigorous in the
25 negotiation and it is a very competitive situation.

1 And so everyone would know because they would not
2 accept terms that were not equal for what they could get on
3 other -- from other content providers.

4 Senator Klobuchar. Okay. My last question, Mr.
5 Kimmelman -- just because I have had some of the incomings
6 of some of these complaints, the Comcast NBC Universal
7 merger was approved with conditions, as you know. How
8 effective do you think those conditions were in preventing
9 anti-competitive harm -- because I think it will inform the
10 Justice Department, and agencies, and this committee as we
11 go forward in terms of what conditions we think would be
12 appropriate.

13 Mr. Kimmelman. Senator, I think it is a mixed bag. I
14 think that the fact that Netflix has grown, the fact that,
15 Sling TV has been able to get Comcast NBC programming are
16 the more positive signs. Some of the big companies have
17 been able to take advantage of that. I think smaller
18 companies have come up short, even Bloomberg went through a
19 three-year excruciatingly painful dispute over that.

20 The problem with conditions is exactly the questions
21 you were just asking. Is it discrimination? Are the prices
22 the same? Here it os even more complicated than with
23 Comcast because it is nationwide distribution. It is
24 wireless which has some inherent latency problems and issues
25 where bandwidth is not enough and there is some legitimate

1 reasons why you are not getting the quality you want, but
2 then there could be some finger on the scale.

3 And I will say that as much as I firmly respect the
4 Justice Department's ability to enforce conditions, I know
5 they do not have the engineers and the network experts to
6 look at all these kind of issues. They are very aware of
7 that. So these are very difficult areas to thoroughly
8 police if there is an inclination to discriminate.

9 Senator Klobuchar. Very good. All right, thank you
10 all of you.

11 Senator Lee. Senator Franken?

12 Senator Franken. Thank you, Mr. Chairman.

13 So I Googled on my phone "Wayne Gretzky" and "where the
14 puck is going."

15 [Laughter].

16 Senator Franken. And the first entry is "in the
17 annals of overused corporate cliches --"

18 [Laughter].

19 Senator Franken. " -- few match the immortal words of
20 Walter Gretzky as passed on to the world through his son
21 Wayne skate to where the puck is going not to where it has
22 been."

23 So congratulations to several of us for using the most
24 overused corporate cliché.

25 Senator Klobuchar. I must have really missed

1 something.

2 Senator Franken. You did. You were listening to
3 Barbara Mikulski talk about -- I doubt about hockey.

4 [Laughter].

5 Senator Franken. I want to -- I will tell you where
6 the puck is going, it's going to wireless. Okay?

7 So Mr. Stephenson, I want to talk briefly about
8 data-free TV which allows AT&T customers to stream DirectTV
9 without incurring any data charges.

10 AT&T's white paper on the topic suggests that this
11 offering is not discriminatory against other programmers or
12 over-the-top competitors because they can pay the exact same
13 rate that DirectTV pays AT&T for the privilege. However, as
14 I understand it, the FCC has done the math and estimates
15 that it would cost an unaffiliated mobile video service
16 provider like Netflix or Hulu far more to participate in the
17 program than the \$35 a month that DirectTV currently charges.

18 The FCC argues, then, that participation in the program
19 would make it difficult if not infeasible for a DirectTV Now
20 competitor to offer its customers a competitively priced
21 service.

22 So my question is, Mr. Stevenson, explain again how
23 your company is not taking money out of the -- how this is
24 not anti-competitive because you would be taking money out
25 of your right pocket and putting in the your left pocket if

1 DirectTV is paying a lower price and you are basically
2 supplementing them, and as the FCC asks in its most recent
3 letter to you, how exactly does DirectTV make payments to
4 AT&T mobility for this service, and do the respective
5 entities record such payments?

6 Mr. Stephenson. I do not know what, exactly, the
7 payment mechanism is across entities.

8 Senator Franken. I think it would be good that you
9 did know it.

10 Mr. Stephenson. The results reflect -- well, I do not
11 know if we actually do a wire transfer or if there is just a
12 journal entry to record the transfer, but at the end of the
13 day the results of DirectTV do, indeed, reflect that cost
14 that is paid to our mobility business. They do.

15 And so when you look at the margins of DirectTV, they
16 reflect that cost in it. And there is a cost incurred by
17 delivering mobility. It is a variable cost business. To
18 put another megabyte --

19 Senator Franken. But how do we know that you cannot
20 be favoring something that you own, DirectTV, as opposed to
21 some entity that would like to have their data delivered
22 free to the consumer?

23 Mr. Stephenson. We are charging everybody the exact
24 same, the lowest wholesale price for data transport that we
25 have. Everybody gets the same. Big companies. Small

1 companies. Companies are buying --

2 Senator Franken. I am not sure about that assurance.
3 How do we know that?

4 Mr. Stephenson. We can provide the data. The Justice
5 Department can look at this and then get themselves
6 comfortable with the data. It is just a data question;
7 right? And we can make the data available. That is not a
8 difficult thing to

9 Senator Franken. It sounds difficult to me because we
10 do not know how much -- how do you compute that? I mean,
11 this is basic --

12 Mr. Stephenson. How do we compute what?

13 Senator Franken. This is basically unlimited data to
14 -- for your user to DirectTV, so how do you -- in other
15 words, if some other provider is parallel to DirectTV wanted
16 to get free data or wanted that service on -- delivered by
17 AT&T, to stream them, how do we know that you are not giving
18 DirectTV a deal because you own it?

19 Mr. Stephenson. This is a mechanism that has been
20 used in our industry for decades, and there is a pricing
21 mechanism, same terms and conditions. We will not
22 discriminate against others who want to provide the same
23 service so it has been going on for decades.

24 Senator Franken. Okay. Mr. Kimmelman, could you
25 speak to Mr. Stephenson's characterization of AT&T's track

1 record on complying with commitments as spotless?

2 Mr. Kimmelman. Senator, all I can say -- I think it
3 is a great company, and I think they are a very aggressive
4 competitor.

5 Sometimes aggressive competitors can step over the
6 line. There have been varieties of complaints at different
7 points in time. I do not think it is worth going into it in
8 great detail. I mean, these will be reviewed by the
9 agencies. They are a wonderful company, but everybody who
10 is competing hard sometimes competes a little too hard, and
11 that is nothing new in the marketplace.

12 The issue is --

13 Senator Franken. Well, a year ago AT&T was slapped
14 with a \$25 million fine for failing to protect its
15 subscribers' personal information. Mr. Stephenson, about a
16 year ago he and I discussed how his company lobbied to
17 prevent municipalities from building their own broadband
18 networks to meet their communities' needs. This is using
19 your competitive advantage and I would love to see that
20 data.

21 And I think that -- by the way, I would like to see the
22 FCC involved in this. When Bloomberg -- in the Bloomberg
23 dispute, that was the FCC dealing with it. That was not --
24 because you said DOJ has all these resources. That was the
25 FCC dealing with Bloomberg; right?

1 Mr. Kimmelman. That is correct, Senator

2 Senator Franken. Yeah.

3 Mr. Kimmelman. But the consent decrees in these
4 things are with the Department of Justice.

5 Mr. Kimmelman. Well, in a number of these cases,
6 Senator, there have been parallel commitments at the FCC
7 with an understanding the FCC would do the enforcement
8 because they are the regulator of the industry with
9 expertise so I will say there were -- for example, on access
10 to programming in Comcast NBCU, there were restrictions put
11 in place. The Department of Justice decided not to impose
12 those because the FCC was putting those in place.

13 There were parallels for trying to block online
14 innovation in video and the Department of Justice consent
15 decree said they would defer to the FCC for enforcement
16 action in most or nearly all instances.

17 So each one of those, at least, involved dual agency
18 action with a reliance on the FCC for the deep industry
19 expertise.

20 May I also just mention one thing? Mr. chairman, you
21 had raised the Section 5 issue. I just want to point out
22 that we believe that the court decision was horrible and it
23 needs to be appealed, but there is a gap here that I think
24 Mr. Stephenson missed which is that if they purchase Time
25 Warner and they have content, the FCC can only regulate

1 their common carriage business, regardless of how the court
2 wanted to look at it. They are restricted by Congress to
3 only looking at common carriage assets which is I do not
4 believe these assets would be, and many of their other
5 value-added services or anything that is an online service.
6 So there is a gap there that I think is significant.

7 Mr. Stephenson. I would not -- I am not smart enough,
8 knowledgeable enough of that particular area, particularly
9 as it relates to content to refute that. I just do think it
10 points out though, that there is a need to get clarity
11 around the regulations over these issues.

12 Senator Franken. Are we going to go to a third round,
13 or can I complete my questioning?

14 Senator Lee. If you have got another question, go
15 ahead.

16 Senator Franken. Sure. Mr. Stephenson, I want to
17 turn now to something you said at a *Wall Street Journal* live
18 event.

19 You shrugged off the comparison of your deal to Comcast
20 NBC Universal saying that one of the biggest regulatory
21 concerns around that deal, net neutrality, has largely been
22 resolved. Now, that event happened prior to November 8, so
23 I am going to give you another chance to address the
24 comparison.

25 Mr. Stephenson, do you still think the concern over

1 ensuring net neutrality has largely been resolved and as an
2 historic opponent of net neutrality, are you going to urge
3 President-elect Trump to enforce the open Internet order and
4 ask republicans in Congress to halt their plans for
5 legislation repealing the order in order to get the deal
6 approved?

7 Mr. Stephenson. I would like to first suggest I am
8 not a strong opponent of net neutrality. We have, I have,
9 2010 been an advocate of the net neutrality principles, no
10 blocking, no discrimination, no paid prioritization. We
11 helped craft those rules, worked with Senator Waxman to help
12 craft the rules that we hoped would become law.

13 Senator Franken. Wait, wait. Did you not go to court
14 against --

15 Mr. Stephenson. I just -- we went to court against
16 Title 2, Categorization of our Services. That is not
17 synonymous with net neutrality. Net neutrality has
18 historically been defined by this body in the Senate and
19 historically at the FCC as no blocking, no discrimination,
20 no paid prioritization. The FCC chose to take a much
21 broader approach and put all wireless and broadband services
22 under Title 2 Regulations, a 1939-based regulation for these
23 services that are moving and transitioning fast. I do --

24 Senator Franken. You went to court before they did
25 that. You went to court, which basically forced them to do

1 that.

2 Mr. Stephenson. No, sir, we did not. No we did not.
3 The 2010 rules, Verizon opposed those in court. We did not.

4 Senator Franken. Okay.

5 Mr. Stephenson. We supported them and we helped craft
6 them.

7 Senator Franken. Okay. Then I stand corrected, I
8 guess. It is not the first time.

9 [Laghter].

10 Senator Franken. So thank you.

11 I just wanted to -- I guess I am done. I would like to
12 see the FCC, by the way, have jurisdiction here.

13 Mr. Kimmelman, would you?

14 Mr. Kimmelman. Yes, senator Franken. I -- again, I
15 think that there is a legitimate role. There is a question
16 of exactly how that jurisdiction is divided and what assets
17 are involved in the transaction that is for companies and
18 FCC to work out, but at least as compared to previous
19 transactions that are similar, I think it would be
20 beneficial to the public policy process.

21 Senator Franken. But Mr. Stephenson and Mr. Bewkes,
22 you have not committed to committing your deal for review by
23 the FCC, is that correct?

24 Mr. Stephenson. We are working through that process
25 right now, Senator. The trigger for FCC review is whether

1 we assume any licenses from Time Warner. We are going
2 through -- they own access to over 100 licenses. We are
3 going through license-by-license discerning which license do
4 we need to actually transfer. So until we get through that
5 review, we cannot state whether there will be an application
6 with the FCC or not.

7 now, I would suggest to you that the DOJ, as Mr.
8 Kimmelman pointed out, looks at the FCC on a lot of these
9 matters for expertise. I have no doubt the DOJ will
10 continue to work with the FCC as they go through this
11 review. We will also keep the FCC posted on our process,
12 whether we do a formal filing or not.

13 Senator Franken. Well, it is just that there is a
14 different level that you have to meet, whether it is FCC or
15 DOJ, and FCC -- their merger review requires that any
16 proposed deal actually benefits consumers so I would think
17 that the message you are sending to us and the current and
18 potential AT&T consumers if you cannot confidently assert
19 that this deal benefits the American public, is not a great
20 message.

21 Mr. Kimmelman, do you think the FCC should review this
22 deal? Mr. Kimmelman. Yes, Senator Franken. If it is
23 within their jurisdiction at all, then I believe they
24 should. I think it would add a benefit to the overall
25 public policy analysis.

1 Senator Franken. Okay. Thank you.

2 Senator Lee. I want to thank all of you for coming
3 and participating today, for answering our questions and
4 providing your testimony.

5 We have received a statement from Mr. Patrick Gush
6 [sic], that will be admitted into the record.

7 [The prepared statement of Patrick Gush appears in the
8 appendix:]

9 / COMMITTEE INSERT

10 Senator Lee. The record will remain open for a week
11 for additional questions and submissions.

12 This hearing will be adjourned.

13 [Whereupon, at 12:43 p.m., the Committee was
14 adjourned.]

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