

Testimony of

# **The Honorable Orrin Hatch**

April 23, 2002

This merger before us today follows a series of consolidation activities in the communications sector since the passage of the 1996 Telecommunications Act. Careful antitrust scrutiny is necessary where two of the five largest cable companies in the nation plan to merge, and our inquiry should include the possible effects of this merger on related businesses and markets. These include areas such as the deployment of broadband Internet service, the manufacture and design of cable set-top boxes, which could be the access point for all communications in the future, and the continued vitality of the video programming and Internet content markets.

Overall, this merger by itself does not appear to present the types of competitive concerns that have led me to be skeptical or critical of some other recent major media mergers. For example, unlike the AOL-Time Warner merger, this transaction does not involve the aggregation of the enormous ownership of content with an online service provider and the cable pipes to deliver that content, creating powerful incentives to favor one's own content over competing content. Nor does the proposed AT&T-Comcast transaction involve the elimination of a direct competitor as does the pending Echostar-DirecTV merger. It appears that this merger is largely free from these types of traditional antitrust concerns, and I would hope that this merger will not raise issues regarding content discrimination that leads to fewer choices of diverse content which I have found to be of great concern in past media mergers.

I should note that this merger does raise several broader policy questions for us to consider as policy-makers. These largely center around potential limitations on consumers' access to rich and diverse content resulting from changes in the competitive landscape as divergence of technologies continues.

By means of the 1996 Telecommunications Act, Congress succeeded in creating a shift in policy in key high-tech industries toward increased deregulation and a concomitantly increased reliance on antitrust principles and enforcement to protect competition. Now, six years later, consumers are really beginning to see some of the benefits of these actions in the form of increased competition - and increased choice. Much of this choice is the result of convergence in the types of services provided by the varied companies that form the new information economy. I believe that this convergence will continue to the point where services provided by telecommunications and cable companies will be indistinguishable to consumers. This technology-driven convergence should increase competition and, therefore - hopefully - consumer choice.

Along with convergence, however, consumers have at the same time witnessed increasing consolidation in the cable, media, and telecommunications markets. In contrast to convergence, this consolidation tends to reduce the number of competitors, and, consequently, threatens to reduce competition and choice.

As these two forces - consolidation and convergence - work to reshape the competitive landscape of the new economy, I strongly believe that we must not merely protect, but - where possible - seek choices that allow the marketplace to expand consumer choice to ensure that as many Americans as possible have full and free access to rich and diverse entertainment and information content. Accordingly, as the competitive landscape changes, we must ensure that legislation and regulation do not inadvertently hinder consumer choice. In light of these ongoing changes, it is perhaps appropriate to continue to examine existing regulations and their effects on competition in new and evolving marketplaces to protect and strengthen consumer choice.

I have frequently expressed my concerns regarding competition in digital entertainment services and the harms that may befall consumers when information "gatekeepers" limit consumers' choices or access to content and information for anticompetitive purposes. These concerns have arisen in contexts ranging from the Microsoft case to the AOL-Time Warner merger. These concerns apply equally to cable programming and broadband Internet content. Because the proposed merger would create the largest cable provider in the nation, a merged AT&T Comcast could have significant power as a major purchaser of content. A merged AT&T Comcast would have similar power in determining which and how many Internet Service Providers will have access to consumers over its cables. Any merged entity with such power must exercise carefully its powers to ensure that consumer choice and marketplace competition are not unfairly hindered.

In the digital age, a cable merger involves much more than simply what company will deliver video programming to consumers. Rather, a merger within the cable industry today is likely to affect other services, products, technology, business relationships between very large cable companies and providers of content, and communications services.

Finally, I have some basic concerns about implementation of the proposed merger. We need to take into account the practical effects of the proposed merger on consumers. More specifically, I note that AT&T currently provides cable, broadband, and telephone services in my home state of Utah. I would like to hear today and hopefully get some type of assurances regarding how the merger has been structured to avoid difficulties such as loss or disruption of these services, degradation of the quality of these services, and unexpected rate hikes.

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