

**TESTIMONY OF DAPHNA E. ZIMAN FOUNDER, PRESIDENT AND CHIEF
CREATIVE OFFICER OF CINEMOI**

**BEFORE THE
U.S. SENATE COMMITTEE ON THE JUDICIARY SUBCOMMITTEE ON
ANTITRUST, COMPETITION POLICY, AND CONSUMER RIGHTS**

**“EXAMINING THE COMPETITIVE IMPACT OF THE AT&T-TIME WARNER
TRANSACTION”**

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Chairman Lee, Ranking Member Klobuchar and members of the subcommittee, thank you for the opportunity to testify today about the impact of the proposed AT&T Time Warner merger on cultural diversity, gender diversity and independent programmers.

My name is Daphna Edwards Ziman, and as many of you know, I’ve spent the last 20 years advocating on behalf of women and children. I am here today as the Founder, President and Chief Creative Officer of Cinémoi, a woman-owned, 24-hour, award winning television network dedicated to curated films, high couture, international lifestyle and green programming. Cinémoi is an independent network, that is trying to make a difference in the media industry and designed to lift the image of women. It is defined by high-quality content that reintroduces American audiences to outstanding vintage and contemporary films, and transports them to the most glamorous events and exotic destinations around the world.

Originally launched on DIRECTV on September 17, 2012, Cinémoi is available on Verizon FiOS, Frontier and over the top via the internet and reaches millions of viewers. Cinémoi is an independent programmer in every sense of the word. It is not affiliated with a broadcast station that enjoys retransmission consent, it does not control sports rights and it is not part of a bundle of fully distributed channels that would increase its leverage against MVPDs. Cinémoi is also a minority-owned channel, as it is one of only two networks owned by a woman. The Oprah Winfrey Network, which is distributed by Discovery Communications, is the other women’s network.

Diverse and Independent Voices are at Risk

Independent programmers are the entrepreneurial risk-takers that provide consumer choice by creating diverse and innovative content. The television marketplace is already a daunting environment for emerging independent networks like Cinémoi. Today, the vast majority of channels on basic cable are owned by 6 media conglomerates, ABC Disney, FOX, CBS, Viacom, Comcast, and Time Warner. Most of the remaining channels are owned by groups like AMC, Discovery and Scripps Networks. Even today it is virtually impossible to get meaningful carriage. In its current

state, the video programming marketplace has become so challenging and the market power of MVPDs (vis-à-vis independent programmers) so one-sided, that the existence of independent video programmers is at significant risk. Further consolidation could be catastrophic to diverse, minority and women owned voices.

Independent programmers are often relegated to the lowest penetrated tiers and typically receive no license fees. Most MVPDs only make channel space available when independent networks agree to pay for carriage through their advertising sales department. In contrast, Turner Classic Movies (TCM), which is owned by Time Warner and bundled with “must have” channels like CNN and TBS, receives hundreds of millions of dollars per year in license fee revenue and is carried on the most widely penetrated tier. Cinémoi must compete with TCM and other similar channels using its own resources without the benefit of such license fees. In today’s marketplace, the only way to gain meaningful carriage from the cable oligopoly is through retransmission consent, bundling, leveraging sports rights or agreeing to pay-for-play arrangements.

The AT&T Merger Will Exacerbate the Already Difficult Environment for Independent Programmers.

Contrary to the claims of AT&T, the fact that this merger is a vertical and not horizontal transaction does not diminish the harms to independent programmers or to television viewers. In fact, the transaction further threatens the viability of independent voices by exacerbating the already difficult carriage environment.

Cinémoi understands the pressure distributors face from bundling and the rising cost of retransmission consent and sports, as independent networks are always the first channels to be cut or denied a license fee because “there is no money and bandwidth” to carry them. This vertical transaction does not do anything to eliminate the challenges in the pay-TV marketplace, but it does give AT&T the means and incentive to discriminate against independent programmers like Cinémoi.

Cinémoi competes with the Time Warner owned network, Turner Classic Movies (TCM). During its time on DIRECTV, viewership data provided by DIRECTV’s analytics partner, Kantar Research, showed that 2/3 of TCM viewers also watched Cinémoi programming. An upstart channel was taking market share away from a Time Warner owned network because it offered new and compelling content.

In a non-vertically integrated market, competition between channels is in the best interest of consumers. When Time Warner owned networks face competition from independents, they must improve their content to stem the loss of viewers and revenue. If they don’t, advertising and other dollars will shift from the Time Warner channels to the competing networks. Any shift in revenue provides resources to the competitive independent to invest in more content and deliver more value to viewers. Either way, consumers win getting more content from increased investment. This is the hallmark of

a competitive and functional market. Vertical integration threatens this dynamic. When AT&T owns Time Warner, if an independent networks begins to win market share, AT&T's best recourse is not more investment in Time Warner channels, it is to eliminate the competitive threat by restricting an independent network's access to viewers.

Relying Solely on OTT Distribution is a One-Way Ticket to Bankruptcy for Independent Networks

AT&T argues that internet distribution, or over the top (OTT) carriage offers sufficient opportunities for independent networks. It does not, relying solely on OTT distribution is a one-way ticket to bankruptcy. Like every other independent network, Cinémoi is negotiating deals on these new platforms. However, linear distribution remains the primary source of new content discovery by viewers and remains the most effective way to develop awareness, brand recognition and popularity. Approximately 20 percent of television households are cord cutters, but that that does not mean that the remaining 80 percent should be denied programming that interests them. OTT revenue alone will never allow independent networks to compete with incumbent channels that enjoy multiple revenue streams, including their own OTT deals. Moreover, AT&T controls the distribution pathway to more than 172 million cable, Internet and mobile subscribers and can utilize a variety of techniques to favor its own content and disadvantage Cinémoi and other independent channels in OTT distribution.

AT&T is currently fighting the FCC for the ability to exempt DIRECTV from data caps on both mobile and wireline Internet platforms. This tactic, known as "zero rating," creates an artificial incentive for consumers to stream TCM over Cinémoi because the Time Warner content carried on DIRECTV will not count against their data caps, but watching Cinémoi may result in data overages. AT&T has also been a steadfast opponent of network neutrality regulations. Network Neutrality is essential to ensuring independent networks are not coerced into a new type of pay-to-play regime. If the next administration rolls back these protections, the merged entity will have every incentive to demand payment from Cinémoi just so AT&T Internet customers receive a watchable stream.

Vertical Integration Harms Independent Programmers with all MVPDs

Unlike other previous cases of vertical integration, the AT&T Time Warner merger is uniquely concerning. In this transaction, for the first time, an MVPD with a truly national footprint is seeking to own content. In all other previous cases of vertical consolidation, (like the Comcast NBC Universal transaction) the vertically integrated MVPD provided service in a limited geographic territory that left significant swaths of the country controlled by other distributors. These distinct markets created an economic incentive for the vertically integrated distributor to sell its owned and operated channels at a market price, because access to every household in America for those channels still required carriage by other MVPDs.

Unfortunately, this dynamic does not hold true with the AT&T Time Warner transaction. Since carriage on DIRECTV alone is sufficient to ensure Time Warner content passes every home in America, AT&T can artificially raise the price of Time Warner content. Competing MVPDs would be required to pay these increases or deny their customers “must have” content. Increase in Time Warner content costs can only be offset in three ways: by increasing prices, reducing profit margins or by eliminating independent channels from the programming budget. For publically traded companies competing against AT&T for subscribers, the latter is the only easy option.

AT&T is a Trustee of the Public Airwaves and has a Public Interest Obligation to Promote Diverse Content

Look at the panel testifying today. It is supposed to represent a broad cross section of the media industry, yet it is dominated by white men. The idea that opportunity is lacking for women and minorities in media isn't hypothetical; it is very clearly symbolized by the witnesses here today. Better than 85 percent of AT&T's customer connections rely on wireless spectrum, the airwaves that belong to all Americans. AT&T has an obligation to utilize this resource responsibly, and that obligation includes creating more opportunities for diverse voices. Yet, AT&T is doing everything in its power to avoid a review by the FCC, the one agency that will review this merger through a public interest lens. So, the question for policy makers is this – does a company that will go to great lengths to avoid public interest scrutiny really care about diversity?

Mr. Chairman, When I was 6 years old my grandfather gave me a replica of the Statue of Liberty as my birthday present. He told me that the statue stands for "Give me your poor and huddled masses as long as they believe in freedom..." Freedom of choice, Freedom of speech, Freedom of beliefs and Freedom to be whatever you want to be - even president.

My grandfather escaped the Holocaust; he told me that I must go to America "the Land of the immigrants." Because of this, all I've ever wanted to be is an American.

I grew up with American television, and it represented everything that is possible here. Consumer choice and diverse viewpoints made the American media landscape the envy of the world. It is one of our strongest foreign policy assets, because it demonstrates the best of America. But the AT&T Time Warner merger moves us ever closer to an oligopoly that is bad for democracy and threatens the hope and promise American media offered me as a child.

Again, thank you for the opportunity to be here today. I look forward to your questions.