

December 22, 2017

The Honorable Makan Delrahim
Assistant Attorney General, Antitrust Division
The United States Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C., 20530

Dear Assistant Attorney Delrahim:

Public Knowledge writes to express concern regarding the pending expiration of the Comcast/NBCU consent decree.¹

Last week, RCN, a multichannel video programming distributor (“MVPD”), filed a *Notice of Ex Parte* reporting its recent meetings with Federal Communications Commission (“FCC”) commissioners and staff wherein it detailed anti-competitive conduct by Comcast/NBCU.² Additionally, Senator Richard Blumenthal has recently contacted you regarding Comcast/NBCU’s long and well-documented track record of violating the conditions of its merger, and causing anti-competitive harm despite those conditions.³ Both RCN and Senator Blumenthal expressed concern that the scheduled expiration of the conditions in the Comcast/NBCU consent decree and FCC merger conditions would permit Comcast/NBCU to harm rivals and consumers.

Public Knowledge shares these concerns. We echo Senator Blumenthal’s request that the Department investigate whether Comcast complied with the conditions imposed by the consent decree, and whether they had their intended pro-competitive effect. While the Department conducts this investigation, the consent decree should remain in force.

Additionally, the dangers the consent decree was intended to remedy remain in place today. Comcast has both the incentive and ability to withhold programming from distribution rivals (or raise their costs), and the incentive and ability to favor its own programming over that of programming rivals. As the Department has recognized with its challenge of the proposed acquisition of Time Warner by AT&T,⁴ vertically-integrated media companies pose particular dangers to the development of competition, and can harm consumers through higher costs, lower quality, and reduced access to diverse programming and points of view.

¹ United States v. Comcast Corp., No. 1:11-CV-00106, 2011 WL 5402137 (D.D.C. Sept. 1, 2011).

² Notice of Ex Parte Presentation of RCN and American Cable Association, in Applications of Comcast Corporation, General Electric Company, and NBC Universal, for Consent to Assign Licenses or Transfer Control of Licenses, MB Docket No. 10-56 (Dec. 11, 2017), [https://ecfsapi.fcc.gov/file/121178903600/RCN%20Ex%20Parte%2012-11-17%20\(FINAL\).pdf](https://ecfsapi.fcc.gov/file/121178903600/RCN%20Ex%20Parte%2012-11-17%20(FINAL).pdf).

³ Letter from Senator Richard Blumenthal to The Honorable Makan Delrahim (Dec. 13, 2017), <https://www.blumenthal.senate.gov/imo/media/doc/12.13.17%20Letter%20to%20DOJ%20Antitrust%20re%20Comcast-NBCU.pdf>.

⁴ Complaint of United States, United States v. AT&T, No. 1:17-cv-02511 (D.D.C. Nov. 20, 2017).

If its investigation finds that the consent decree was effective, then it is likely that the Department can best continue to protect competition by renewing or strengthening it. Conditions designed to remedy harms that were apparent in 2011 should be renewed if those harms are still apparent in 2018, and remain in place until the harms subside. Alternatively, if the Department finds that the consent decree's behavioral remedies were not effective, it should seek to reopen the decree and pursue structural remedies, e.g., divestitures.

Respectfully submitted,

/s John Bergmayer
Senior Counsel
PUBLIC KNOWLEDGE