

United States Senate

WASHINGTON, DC 20510

February 17, 2016

The Honorable Loretta Lynch
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Attorney General Lynch and Chairman Wheeler,

As Chairman and Ranking Member of the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, we write today to raise important considerations regarding Charter Communications' proposed acquisitions of Time Warner Cable and Bright House Networks. We urge you to closely review these transactions to ensure that they do not impede new, developing options for consumers to receive video content or undermine independent programmers' ability to access consumers.

We are on the threshold of a dramatic transformation of the way consumers obtain video content that should increase competition and benefit American consumers. Until recently, consumers could receive video content only through cable or satellite television services, but broadband is challenging the competitive status quo. Now services like Netflix offer content directly to consumers. Other content providers such as HBO, which previously provided content exclusively through cable television, offer programming to consumers via a broadband internet connection. As a result, consumers can choose HBO content without having a cable subscription, which is commonly referred to as an over-the-top service. These options should increase competition, lower prices, and improve the quality of video content and service.

American consumers will benefit if we cross this threshold to increased competition, and we believe that your agencies play a role in making sure that transformation occurs. As Chairman and Ranking Member of the Antitrust Subcommittee, we have carefully examined consolidation in these industries to ensure that existing market leaders do not block or co-opt new options for receiving video content or exercise disproportionate control over the video content market. In the 112th Congress, the Judiciary Committee held a hearing on Comcast's proposed acquisition of Time Warner Cable, and the Antitrust Subcommittee held a hearing on AT&T's acquisition of DirecTV. Based on those hearings, in addition to our investigation of Charter's proposed acquisition of Time Warner Cable, we believe two issues merit particular attention.

First, some content providers have raised concerns that after the acquisition Charter and Comcast will control 70 to 90 percent of the broadband internet connections to American homes, based on the minimum speeds for broadband as outlined in the Federal Communication Commission's 2015 Broadband Progress Report. Some worry that such a dominant position would allow the two companies, without overtly colluding, to undermine the ability of online video distributors to offer a viable alternative to cable services. Charter responds that 88 percent of households have the choice of two or more broadband providers, and there is little overlap among Charter, Time Warner, and Bright House. Charter further asserts that the merger will make its broadband service a better platform for online video distributors and that it has made commitments, endorsed by some content providers, not to block or slow down internet traffic or disfavor online video distributors.

The FCC recognized that companies offering both video and broadband service have an incentive to interfere with online video distribution services. A critical issue here is whether this transaction would increase Charter's incentive and ability to interfere with online video distribution services. Relatedly, it is important that this transaction does not make it harder for regional cable companies to compete. If there are competitive concerns, you should require conditions that would alleviate the potential competitive harms.

Second, maintaining a robust marketplace of ideas, news, and entertainment relies in part on the viability of independent programmers. Their channels often provide a diversity of programming for consumers, particularly to rural markets often served exclusively by satellite. Some consumer groups, independent programmers, and content creators such as the Writers Guild worry that the increased size of Charter will allow it to pay less for content or otherwise discriminate against independent programmers. Charter responds that it does not have programming interests. Charter stated that it has no incentive to discriminate against independent programmers, and that a number of independent programmers support the transaction.

We urge you to take the above considerations into account as you conduct your respective reviews of the merger to determine whether the acquisitions will hinder or promote the development of new alternatives for consumers to receive video content. Of course, antitrust analysis is extremely fact-specific. Any decision on intervention must be based on the evidence. It depends on whether the merger would serve the public interest and whether it would substantially lessen competition to the detriment of consumers or instead enhance it through pro-consumer innovation. Thank you for your attention to these matters.

Sincerely,



Mike Lee, Chairman
Subcommittee on Antitrust,
Competition Policy and Consumer Rights



Amy Klobuchar, Ranking Member
Subcommittee on Antitrust,
Competition Policy and Consumer Rights