<u>Senator Durbin</u>

1. **You are the president of an independent television network trying to compete in a media marketplace dominated by six giant corporate conglomerates. You say in your testimony that further consolidation in the video programming marketplace "could be catastrophic to diverse, minority and women-owned voices." Do you think the antitrust regulators, when reviewing specific proposed mergers, should take into account the effects of overall industry consolidation on the ability of diverse voices to compete in the marketplace?**

Yes I do. Senator Durbin, I believe an in-depth review of the MVPD marketplace will show that the largest MVPDs already have the ability to threaten independent programmers and diverse voices because they lack leverage. Due to its size, AT&T can force independent networks to pay for carriage or only carry them if they provide their content for free. AT&T can deny diverse and independent programmers fair channel placement, putting us in "Siberia" as I stated in my testimony, or deny access to popular programming tiers/packages. This untenable environment gets demonstrably worse when you add the foreclosure effects of vertical integration. AT&T's purchase of Time Warner combines the ability to discriminate with the incentive to discriminate.

Cinémoi competes with Turner Classic Movies, a Time Warner owned network. As a vertically integrated MVPD, AT&T now has the incentive to protect its own content by employing the carriage tactics described above. In addition to the direct competitive harm to independent programmers, vertical integration creates a new incentive for AT&T to use Time Warner programming as a weapon against other MVPD competition. By raising the price of Time Warner content to other distributors, it can make their pay television packages more expensive and less competitive in the marketplace.

As I noted in my testimony, 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. There is no question that opportunity for diverse and independent voices is a significant public interest concern.

It is true that antitrust regulators make decisions primarily based on the competitive effects and consumer benefits of the transaction under review. Media mergers are also reviewed by the Federal Communications Commission under the public interest standard. This dual review is intended to ensure that companies that have been entrusted with a public resource utilize it in a responsible manner. It should concern both policy makers and regulators that AT&T is doing everything in its power to bypass the FCC and avoid public interest scrutiny of this transaction. To the extent that AT&T structures this transaction in such a way that allows it to circumvent the FCC, the Department of Justice has an obligation to pay special attention to how this merger will impact the ability of independent programmers to compete and for diverse voices to survive.

<u>Senator Feinstein</u>

1. **From your perspective as the owner of an independent, woman-owned network, what is your opinion on the likely impact of this merger?**

Independent networks are largely dying. The harm to independent voices is not a hypothetical future threat, it is already happening. Over the past several years, dozens of independent networks have been sold to programming conglomerates or exited the industry. The two well-known previous women owned networks, OWN, and Oxygen, founded by Oprah and Geraldine Leybourn, respectively were acquired by Discovery and Universal, media giants that are run by white males. Further, the Documentary Channel and Halogen were sold to Participant Media to become Pivot. Pivot ceased operations on October 31, 2016. Current TV was sold to Al Jazeera to form Al Jazeera America which ceased operations on April 30, 2016. BBC America joined AMC Networks, TV Guide Network was sold to CBS and Tennis Channel is now owned by Sinclair. These networks didn't survive on their own because MVPD programming dollars are consumed by the large media companies and their bundles that include unwanted programming.

It is not enough simply to have woman-centric programming. When a woman runs a network, she influences every aspect of that organization. This omnipresent influence is necessary to create a culture which is best able to produce programming that truly caters to and reflects women's interests, tastes, culture and sensibility. I cannot underestimate enough, the importance of gender diversity in media to be able to best serve and represent women. Women comprise a majority of the population and account for 85 percent of all consumer purchases. Women deserve to be far better represented in ownership of media companies.

Access for independent programmers, including women and minority channels, is already being restricted by the six media conglomerates that control the vast majority of content in the cable lineup. By forcing bundles of extemporaneous channels on distributors, it has caused the MVPDs to become overridingly cost conscious and capacity constrained. Rather than fight against the oligopolistic tactics of the media companies, MVPDs acclimatize by denying carriage opportunities to diverse and independent programmers. Independent programmers are caught in a paradox, whereby they need resources to create compelling content to effectively compete, but MVPDs refuse to broadly distribute independent programmers or pay license fees to independent networks, as they are getting squeezed by the large media companies.

This problem is magnified when MVPDs own content that competes with independent programmers. Vertically integrated MVPDs are not only concerned about their programming budgets, but advertising budgets as well. An independent programmer that matures to achieve "must have programming" status will attract viewers, market share and advertising revenue while also commanding a license fee. The impact of competition for advertising dollars as well as license fee expense gives them every economic reason to thwart the growth of new channels.

2. **How do you believe it will impact the diversity of programming available in our country?**

If the current arms race between broadcasters and MVPDs is allowed to continue unchecked, *the media marketplace will become an oligopoly where a handful of media giants control everything that is seen on TV. Diverse viewpoints will be replaced by channels of homogenized reruns. This is what has happened in Taiwan, where six media companies control what is seen on TV and programming is simply traded back and forth between the companies.*

3. **If the merger is approved with conditions, what conditions do you believe need to be placed on the merger so that it does not harm independent programmers?**

If this merger is approved, diverse and independent voices must be protected. At a minimum, these protections should include a percentage of AT&T and DIRECTV's overall capacity as a channel set aside for independent networks, including minority and women owned networks. Women networks should be among the categories included in independent or minority channels if there is any commitment to add independent channels in this merger.

Independent networks should also be offered arbitration as an alternative to the ineffective, expensive and time consuming program carriage regime at the FCC.

Finally, the program access rules must be reinstated and applied to AT&T/DIRECTV to ensure that competing MVPDs have access to Time Warner content on fair and reasonable terms.

Senator Franken

1. **Can you explain how this deal might differ from past vertical mergers – including Comcast-NBCU – in light of those changes? How would this deal impact your leverage when seeking carriage by a combined AT&T-Time Warner or its pay-TV competitors? How will that, in turn, impact consumers' access to diverse programming?**

Unlike other previous cases of vertical integration, this is 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 you cited - the vertically integrated MVPD provided service in a more limited geographic territory that left significant swaths of the country controlled by other MPVDs. These distinct markets still left some economic incentive for the vertically integrated distributor to sell its owned and operated channels to other distributors at a reasonable price, because accessing every household in America still required carriage by other MVPDs.

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 to harm its competitors. Competing MVPDs would be required to pay these increases or risk denying their customers "must have" content.

An 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. This gives AT&T the ability to harm diversity and thwart competition from independent networks by forcing conditions that would deny carriage on other linear providers by simply raising the price of their own content.

<u>Chairman Grassley</u>

1. **Proponents of the AT&T-Time Warner merger argue that the transaction will result in more choice and other benefits for consumers all across the country. In your opinion, how will this merger impact consumers in rural America?**

Mr. Chairman, I would disagree with proponents who suggest this merger will result in benefits for rural America. In fact, I think this transaction has the potential to have a disproportionate harm on rural America.

As you know, telecommunication services in rural America are challenging. The large, traditional cable companies have, for the most part, ignored areas where low population density makes the cost of providing service too expensive to make a profit. Service is provided by scores of small local cable and telephone companies like Mediacom, Wave Broadband, or Dumont telephone that entered the television market to offer bundles of voice, internet and television.

The merger of AT&T and Time Warner threatens these small businesses by giving AT&T the means and incentive to raise the prices on its competitors. Time Warner content like CNN, TNT and TBS are "must have channels" that Iowans demand. If AT&T owns these channels and raises the prices for access to this content, small telephone utilities in Iowa will no longer be able to compete with DIRECTV. This sort of anticompetitive behavior could put small, rural cable and telecommunications companies out of business.

2. **Media, entertainment, information and telecommunications markets are rapidly evolving, with internet and technology firms challenging traditional telecom companies. In your opinion, how should the Justice Department be looking at this market? Do you believe traditional merger analysis methods work in the context of the AT&T-Time Warner merger?**

Mr. Chairman, I appreciate Mr. Cuban's testimony that "TV is the best alternative to boredom" and that apps are challenging TV for that title. It is a novel attempt to expand the relevant market to try and disguise the competitive harms of this transaction. However, a serious antitrust analysis cannot be conducted on how American's spend their "veg out" time. Defining the relevant market as anything that consumes our free time would be so broad as to encompass all forms of entertainment, media, sports and games. This sort of antitrust analysis would result in a determination of whether AT&T unfairly competes against Angry Birds, the New York Philharmonic, the Golden State Warriors and checkers for our free time. Even if you take a *more limited view of new apps and technologies that display video, very few showcase curated, professionally produced, long form content. The video available on Facebook, Twitter, Snap Chat and Instagram is 15-30 second clips of live events and user-generated content. This is not equivalent to the content shown on cable and satellite television.*

If regulators are inclined to look at the future opportunity from platforms like Twitter, which currently streams select Thursday Night NFL Games, it can classify these services as emerging online video distributors. An antitrust analysis of the online video distribution market will show that AT&T can and does impede the growth of streaming video and opportunities for diverse and independent programmers through tactics such as zero-rating. Zero rating creates an artificial market incentive for consumers to view video through AT&T's own streaming platform, DIRECTV Now, and allows AT&T to deny competing content access to these viewers by keeping them off the streaming platform.

Cinemoi and other independent networks are, of course, doing deals with internet and OTT companies, but OTT alone does not provide a sufficient business model for networks to survive in today's environment. We need the broad distribution cable and satellite offers, with their close to 100 million subscribers, in order to build brand awareness. Plus, we are competing with networks, including the Turner networks, which enjoy double digit license fees, some triple digit, that reap hundreds of millions of dollars in annual license fees that they are able to reinvest into their programming. Independents, like Cinemoi, are only looking for pennies per subscriber per month and even that we are currently being denied. That situation is only going to worsen with this merger.

Independent networks provide essential diversity of voices, we are the innovators and risk takers, our survival is threatened. We are too important to the American people, who want choice, to be cast aside.