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Lawrence J. Spiwak, President

17 August 2018

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Suite CC-5610 (Annex C)
Washington, D.C. 20580

RE: Competition and Consumer Protection in the 21st Century Hearings, Project Number P181201/Topic Number 11

To Whom it May Concern:

This June, the Federal Trade Commission announced that it plans to hold a series of hearings on "Consumer Protection and Competition in the 21st Century." In anticipation of these hearings, the Commission has asked the public to provide comment on eleven different topics. The purpose of these particular comments is to contribute to the discussion listed as Topic Number 11: *The Agency's Investigation, Enforcement and Remedial Processes*.

As we all know, one of the more contested arguments in antitrust law in 2018 is over the efficacy of behavioral remedies in vertical mergers. While the Commission has long-taken the view that behavioral conditions can be very effective in appropriate circumstances to prevent competitive harm while allowing the benefits of integration,[1] the Department of Justice appears to be moving in the opposite direction, arguing that

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[1] *See, e.g.*, FTC STAFF REPORT, THE FTC'S MERGER REMEDIES 2006-2012: A REPORT OF THE BUREAUS OF COMPETITION AND ECONOMICS (2017) (available at: https://www.ftc.gov/system/files/documents/reports/ftcs-merger-remedies-2006-2012-report-bureaus-competition-economics/p143100_ftc_merger_remedies_2006-2012.pdf).

behavioral remedies turn antitrust enforcers into *de facto* regulators and thus only structural remedies can be truly effective.[2]

However, empirical questions deserve empirical answers, and we appreciate that the Commission "is especially interested in new empirical research that indicates (or contraindicates) a causal relationship with respect to any of the topics identified for comment." To this end, we are pleased to submit the attached econometric analysis by Phoenix Center Chief Economist Dr. George S. Ford entitled *A Retrospective Analysis of Vertical Mergers in Multichannel Video Programming Distribution Markets: The Comcast-NBCU Merger*.[3]

In this paper, using data on the prices paid by multichannel video programing distributors ("MVPDs") for basic cable networks, Dr. Ford conducts a retrospective analysis of the price effects of the Comcast-NBCU merger. Estimates from both the difference-in-differences and lagged-dependent variable models indicate no systematic increase in the prices for Comcast's networks following the merger, including general interest programming, news channels, and national and regional sports networks. Programming costs, however, exert a potent influence on affiliate prices, with full pass through in many cases. The evidence suggests either that there was no net positive effect on incentives to raise prices above competitive levels following the vertical merger, or else that the behavioral remedies placed on the Comcast-NBCU merger have been effective. Accordingly, Dr. Ford finds that excessive concern about the prices of programming following a vertical merger in the MVPD market appear unwarranted, at least when addressed by behavioral remedies.

We hope you find the attached scholarly material helpful as you organize your upcoming hearings. If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

Lawrence J. Spiwak

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[2] *See, e.g.*, Assistant Attorney General Makan Delrahim Delivers Keynote Address at American Bar Association's Antitrust Fall Forum Washington, DC (November 16, 2017) (available at: https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-keynote-address-american-bar).

[3] G.S. Ford, *A Retrospective Analysis of Vertical Mergers in Multichannel Video Programming Distribution Markets: The Comcast-NBCU Merger*, PHOENIX CENTER POLICY BULLETIN NO. 43 (December 2017) (available at: http://www.phoenix-center.org/PolicyBulletin/PCPB43Final.pdf).