UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. TELE-COMMUNICATIONS, INC. and LIBERTY MEDIA CORPORATION Defendants.	)	Civil Action No. 94-0948 Filed: April 28, 1994

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the Defendants named herein and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This Complaint is filed under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain the violation by the Defendants, as hereinafter alleged, of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. This Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331 and 1337.

2. Defendant Tele-Communications, Inc. transacts business and is found in the District of Columbia within the meaning of Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

3. Defendant Liberty Media Corporation transacts business and is found in the District of Columbia within the meaning of Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

II.

DEFENDANTS

4. Tele-Communications, Inc. ("TCI") is a corporation organized and existing under the laws of the State of Delaware, with its principal office in Englewood, Colorado. TCI is the largest cable multiple systems operator ("MSO") in the United States, with financial and management interests in cable systems serving more than 10.2 million subscribers in the United States. TCI also has substantial interests in direct-to-home satellite delivery of mulitchannel subscription television service, with both a substantial C-band satellite business and a partnership interest in Primestar Partners, L.P., a Ku-band satellite multichannel subscription television service. TCI also has substantial financial and management interests in video programming providers, including Turner Broadcasting System, Inc., Discovery Communications, Inc., and Reiss Media Enterprises, Inc.

5. Liberty Media Corporation ("Liberty") is a corporation organized and existing under the laws of the State of Delaware, with its principal offices in Denver, Colorado. Liberty is a large cable MSO, with financial and management interests in cable systems serving 2.9 million subscribers. Liberty also has substantial financial and management interests in numerous video programming

services, including Black Entertainment Television, Family Channel, Encore, QVC Network Inc., Home Shopping Network Inc., The Box and regional and national sports networks.

6. The activities of Defendants are within the flow of, and substantially affect, interstate commerce.

III.

TRADE AND COMMERCE

7. A multichannel subscription television distributor ("MSTD") provides to consumers multiple channels of video programming on a subscription or fee basis, as differentiated from local broadcast television stations which individually provide a single channel at no charge within their broadcast area. MSTDs deliver programming to consumers utilizing various methods, including cable, satellite master antenna television, multichannel multipoint distribution, direct-to-home satellite, or the facilities of common carrier telephone companies or their affiliates.

8. Cable television service is available in nearly all urban and suburban areas in the United States as well as many rural areas, passing more than 95% of the nation's estimated 92 million television households. Cable television systems currently serve more than 55 million subscribers in more than 11,300 cable systems located in all 50 states, or about 60% of households passed.

9. Cable television service involves installation of the cable by the distributor for a nominal charge and the transmission of a number of channels of programming over the cable to the consumer, who pays the distributor a monthly

subscription fee for a group of "basic" programs. Consumers can also pay additional subscription fees for monthly access to "premium" channels or a per-event fee for certain movies or special events ("pay-per-view"). The number of channels of programming provided by cable systems vary, with some systems offering a dozen or so and others more than 100 channels. The deployment of fiber optic cable and recently developed digital compression technology is widely expected to increase channel capacity greatly in the near future.

10. Today cable television service faces very limited competition from other types of multichannel subscription television services, including multichannel multipoint distribution service ("MMDS"), satellite master antenna television systems ("SMATV"), and direct-to-home satellite services, such as C-band, Ku-band, and the soon-to-be available direct broadcast satellite ("DBS"). Video dialtone services, a new form of delivery offered by local telephone carriers, may provide competition sometime in the future, but at present is offered only on a pilot project basis.

11. MMDS delivers programming over microwave channels received by subscribers with special antennae. There are currently fewer than 150 MMDS systems in operation, serving an estimated 600,000 subscribers. MMDS has recently obtained regulatory approval to deploy systems that are considered technologically superior, which may increase its availability and attractiveness as an alternative to cable television service.

12. SMATV is essentially a private cable system, typically used in apartment buildings or other high-density housing. SMATV is estimated to have fewer than one million subscribers.

13. Home satellite dishes are used to receive programming from communications saltellites. More than two and one-half million satellite dishes have been sold in the United States. C-band satellite service, which is provided by low-power satellites, requires consumers to install satellite receiving dishes eight to twelve feet in diameter at an installed cost of $1,500 or more. Because of its high installed cost and the size of the receiving dish required, C-band satellite is a poor alternative to cable television service for most current or potential cable subscribers. Medium-power Ku-band satellite service, provided by TCI and its partners in a joint venture called Primestar Partners, L.P., uses dishes three feet in diameter and has approximately 70,000 subscribers. Ku-band satellite service could become a substantial competitor to cable television service for some cable subscribers as developments in technology continue, the cost of equipment needed decreases and the number of deliverable services increases. High-power DBS is expected to become operational and available within a few months using a dish 18 inches in diameter, and may, by virtue of its smaller dish size, be more attractive to consumers so that it may ultimately offer greater competition to cable service than the other satellite services.

14. Video dialtone, a multichannel subscription television service recently authorized by Federal Communications Commission regulation, is being developed

by common carrier telephone companies. Using the telephone network, telephone companies plan to distribute programming provided by third parties. As the telephone companies improve the capabilities and capacity of their networks, it is expected that they will be able to offer greatly expanded channel capacity and services such as "video-on-demand." At present, there are a small number of pilot projects experimenting with the service. Widespread development of video dialtone services may in the future present a substantial competitor to cable systems. Common carrier telephone companies also have announced their interest in providing cable service directly to subscribers in the event that legal restrictions on their offering such services within their operating regions are removed.

15. At present, most television households in the United States can purchase multichannel subscription television service only from a single local cable distributor. Fewer than one-half of one percent of the more than 10,000 cable franchise areas have more than one cable system available to local cable subscribers. For most consumers, other means of multichannel delivery are not yet reasonable substitutes for their local cable system.

16. The combination of Defendant TCI and Defendant Liberty would result in an entity that would have interests in cable systems serving approximately 13 million subscribers, or nearly one-fourth of the country's cable subscribers.

17. Defendants, in addition to operating cable systems, have financial interests in video programming services provided to cable systems and other multichannel

subscription television providers. Defendant TCI has financial and management interests in programming services such as The Discovery Channel, The Learning Channel, E! Entertainment TV, Request Television (pay-per-view), Home Shopping Network, QVC, Starz, Rocky Mountain Prime Sports Network, and Turner Broadcasting Systems, Inc., which provides Cable news Network (CNN), Headline News, Cartoon Channel, TBS, and Turner Network Television (TNT). Liberty also has financial and management interests in a wide range of programming services, including Black Entertainment Television, The Box, Courtroom TV, Encore, Starz, The Family Channel, Home Shopping Network, QVC Networks, Prime SportsChannel Network, and more than a dozen regional sports channels.

18. Video programming provided to MSTDs is a line of commerce and a relevant product market in which to evaluate the effects of the acquisition of Liberty by TCI, and the United States is a relevant geographic market, within the meaning of Section 7 of the Clayton Act.

19. Some video programming providers not affiliated with MSOs, particularly those offering new programming services, have experienced difficulties in obtaining access to carriage by cable systems or in obtaining access on reasonable terms and conditions.

20. Increasing the degree of vertical integration between MSOs and video programing providers could lead to lessened competition because MSOs would have an increased incentive and ability to discriminate in favor of their affiliated video programming providers and against competing or potentially competing non-

affiliated video programming providers in access to carriage or the terms and conditions of access to carriage on cable systems. Preventing such conduct is necessary to maintain competition in video programming markets and to encourage development of new programming and thus enhance the diversity of available programming services for consumers.

21. Multichannel subscription television distribution is a line of commerce and a relevant product market in which to evaluate the effects of the acquisition of Liberty by TCI, and the areas of the United States in which TCI and Liberty control cable systems are relevant geographic markets, within the meaning of Section 7 of the Clayton Act.

22. Cable operators with financial interests in video programming providers may, in certain circumstances, have the ability and the incentive to deny to competing MSTDs access to such video programming services.

23. Increasing the degree of vertical integration between MSOs and video programming providers could lead to lessened competition because MSOs would have an increased incentive and ability to deny access to their affiliated video programming services to competing MSTDs, or to grant access only on discriminatory terms. Preventing such conduct is necessary to creating and maintaining competition among MSTDs.

IV.

VIOLATION ALLEGED

24. Pursuant to a merger agreement dated January 27, 1994, TCI and Liberty intend to consolidate or merge their businesses.

25. The effect of the combination of TCI and Liberty may be substantially to lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, in the following ways, among others:

a. Decreasing actual and potential competition among video programming providers, because the combined TCI-Liberty may have the increased ability and incentive to discriminate with respect to access to its cable systems, or the terms and conditions of such access, in favor of its affiliated video programming providers and against unaffiliated video programming providers.

b. Decreasing actual and potential competition among MSTDs, because the combined TCI-Liberty may have the increased ability and incentive to deny to competing MSTDs access to its affiliated video programming services, or to provide such access only on unreasonable terms.

V.

REQUEST FOR RELIEF

WHEREFORE, plaintiff prays:

1. That TCI's proposed consolidation and merger with Liberty be adjudged a violation of Section 7 of the Clayton Act.

2. That a permanent injunction be issued preventing and restraining the Defendants and all persons acting on their behalf from consummating the merger agreement alleged in Paragraph 24 or from going forward with any other plan or agreement by which TCI would merge with or acquire Liberty, its capital stock, or any of its assets.

3. That the Court impose such additional equitable relief it deems necessary and proper.

Dated: April 26, 1994

Anne K. Bingaman
Assistant Attorney General

Steven C. Sunshine
Deputy Assistant Attorney General

Constance K. Robinson
Director of Operations

Richard L. Rosen
Chief, Communications & Finance Section

Eric H. Holder, Jr.
United States Attorney for the District of Columbia

N. Scott Sacks (DC 913087)
Patricia A. Shapiro
Kevin C. Quin
Nancy Dickinson
Susannah M. Zwerling

Trial Attorneys
Antitrust Division
U.S. Department of Justice
555 4th Street, N.W.
Washington, D.C. 20001
(202) 514-5815