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Antitrust Division
950 Pennsylvania Avenue, NW
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RE: Competition in Television and Digital Advertising Workshop

Thank you for the opportunity to provide comments on the Competition in Television and Digital Advertising Workshop.

Mergers are healthy for the marketplace, and the US Supreme Court has affirmed its legal standing as well. Mergers help eliminate inefficient producers and instead, antitrust laws may actually help protect inefficient companies, thereby harming competition. As is the case with antitrust restrictions that prevent or hinder the process of mergers and acquisitions that could more efficiently reorganize their assets and operations. This has repeatedly been the case in the content and advertising industry especially for broadcasters.

It is important that the DOJ reassess its view of competition for content and adverting – traditional media and new media, including over-the-top, digital, and social, do compete. Digital Liberty has advocated for the Federal Communications Commission to lift rules based on the 1975 media environment that include restrictions on the ability of broadcast stations and newspapers to have common owners, of stations to have joint sales agreements, and the number of stations one entity can own in a market.

As such, I urge the Department of Justice to take a modern perspective of the closely intertwined media and advertising markets. For example, in 1975, newspapers were king and there were only 3 broadcast stations – ABC, NBC, CBS. Cable television was around, but it was nowhere near as popular as today. CNN, the first cable news network didn't come on air until 1980, and FOX didn't start broadcasting until 1985. Now there are hundreds of television networks, and online content and social media are on par with television as to where advertisers choose to spend their dollars and Americans spend their limited time.

In terms of media cross ownership, newspapers are fading at the expense of local news. Decisions based on the media and advertising environment of 1975 do not foster local news in the current media environment. A broadcast station can't own a published newspaper, if a print edition comes out 4 or more times a week, but other modern outlets, like cable and online, publish 24 hours a day and are not subject to these types of ownership restrictions.

Joint sales agreements have been one of the methods for making local media ad buys more attractive in an increasingly competitive pool for advertising dollars. As websites, social networks, YouTube, podcasts, Amazon Prime and other sources to stay informed and entertained continue to grow in popularity, advertising revenue has dipped for both television and radio stations.

From my own personal experience selling radio commercials in the 2000s through local-direct sales, my locally owned and operated station group, which has since been bought by one of the larger conglomerates, was definitely competing for dollars not just against other radio stations

within our market, but also against other local broadcast stations, local magazine publications, local newspapers, and cable stations. There were times when business owners told me that magazine ads weren't working so they decided to spend their budget on radio instead or vice versa. When Groupon first entered the market, a number of my customers dropped off or reduced their budgets to test the new coupon email service.

This is to say that competition for advertising budgets exists not only between the same technologies, but among all the technologies that offer advertising as a service. Competition is based off of the service or product provided – advertising, entertainment content, internet service, groceries, clothing, etc. Competition is not necessarily based off the medium providing the service or product.

The treatment of broadcast stations and newspapers should be rectified; they should be allowed to compete on the services they provide news and entertainment, and eyeballs for advertisers. Conversely, other entities that have been able to realize the benefits of cross-ownership and economies of scale should not be considered anti-competitive or broken up. This is the silo mistake; the same mistake that the Telecommunications Act of 1996 makes.

It has long been the position of Digital Liberty that Congress should re-write the Telecommunications Act because it regulates based of technology platforms and not the service provided. As a result, there are many ongoing legislative battles over imbalances in the market that are then rebalanced with more misguided regulations.

Similarly, judging competition for advertising dollars and eyes in silos – radio, cable, magazine, search, social media, broadcast, billboard, newspaper, etc. – is not accurate. These platforms for both content and advertising consumption compete for the same advertising dollars and the same eyeballs.

Regards,

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