THE CAPITOL FORUM

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Comcast/Time Warner Cable: Conference Call Transcript with Geoffrey Manne

MODERATOR: Good day, everyone. And welcome to today's program. At this time, all participants are in a listen only mode. Please note this call is being recorded. I'll be standing by if you need any assistance. It is now my pleasure to turn the conference over to Jonathan Rubin with Capitol Forum. Please go ahead.

MR. JONATHAN RUBIN: Thank you, Sean. And thanks to everyone for joining Part 4 of the Capitol Forum's Conference Call series on the Comcast-Time Warner cable merger. I'm Jonathan Rubin, Capitol Forum Senior Correspondent. And with me today is Geoffrey A. Manne. Dr. Manne is the author of the recent pro-merger paper "Beneficence is Beside the Point: The Antitrust Realities of the Comcast/Time Warner Cable Merger". Dr. Manne will discuss why he believes the merger will not give rise to anti-competitive harm under modern theories of antitrust enforcement.

Today's call is the fourth in our series on the Comcast-Time Warner cable deal. Transcripts and an audio file of our earlier calls are available by emailing editorial@thecapitolforum.com. Before we get started, a few things to note. I'll spend the first thirty minutes or so interviewing Dr. Manne. Then we'll turn it over to the audience for questions. If you have a question for us, please email us at editorial@thecapitolforum.com.

Geoffrey Manne is the Founder and Executive Director of the International Center for Law and Economics based in Portland, Oregon and a lecturer in law at the Lewis & Clark Law School. He's also a Senior Fellow at Tech Freedom and a contributor to the Hoover Institution's Project on Commercializing Innovation. That project is in part supported by Comcast and also by Comcast's rivals and competitors.

Prior to founding ICLE, Dr. Manne was a law professor specializing in antitrust law and economics, intellectual property law, corporate governance and international economic regulation, all topics on which he's written.
And with that, let me welcome you, Dr. Manne, to the Capitol Forum.

GEOFFREY MANNE: Thanks, Jonathan. Thanks so much for having me. I'm happy to be here. I should make one quick note which is as much as I appreciate the promotion, I'm actually not a doctor, unless you consider a JD a doctorate. We can debate that on another call. But I will speak from the perspective of someone who knows a lot about economics, but not someone who has a Ph.D.

MR. JONATHAN RUBIN: We'll let you speak on the doctoral level and call you Professor Manne.

GEOFFREY MANNE: Thank you.

MR. JONATHAN RUBIN: Professor, your paper indicates kind of strongly that you don't feel that this transaction will give Comcast any increased ability or incentive to behave anti-competitively. Can you tell us in general terms what your thinking is on that? How did you reach that conclusion?

GEOFFREY MANNE: Sure. The main point I guess is that it's not that it's impossible for a merger like this to lead to anti-competitive effects. It's just that I haven't seen any evidence to suggest that this one will. As you've discussed in your previous calls in great detail, and I'm sure we'll discuss again today to some extent, this is a merger that takes Comcast from something like 20 percent of the MVPD market to under 30 percent and from something like 25 percent of broadband to 37 percent of broadband. What we're asking, the relevant question is, how does that eight percentage point change affect Comcast's ability and incentive to engage in anti-competitive conduct? Eight percentage point is what we're talking about in the MVPD market.

It seems to me if you want to know what Comcast will look like after the merger, your best indication is what it looks like now. So what does it do now with 20 percent of the cable market or so? It already doesn't own the vast majority of content it distributes, but it distributes it anyway. It already licenses all of its own content to its competitors. It makes Netflix and other OVDs freely available.

It's committed, as a function of its previous merger with NBC, to open Internet rules. It has settlement-free tiering with tier one providers, cheap interconnection agreements with CDNs and transit providers. It's raised subscription prices some over the year, but at a slower rate than programming costs have increased.

We could go on and on. But my larger point is that the kinds of things that we might worry about here, the kinds of structural issues that might give rise to potential problems already don't. And Comcast already has a pretty significant share in both of these markets.

So my first cut at this is to say you're increasing that by a little bit. And how is that going to somehow transform this company from engaging in all of this pro-competitive activity to somehow stifling it all? I don't see any evidence that that should happen here.

MR. JONATHAN RUBIN: Right. You know, the D.C. Circuit struck down the 30 percent cap on the number of subscribers, essentially finding that it wasn't really a rational limit related to anti-competitive concerns. Isn't it a bit of a red herring to say because the percentage of national subscribers is increasing by eight percent that that sort of obviates the possibility of anti-competitive effect if in fact that's not really where a problem either is or could be because of the essentially monopolistic nature of the franchise areas themselves?

GEOFFREY MANNE: [inaudible] precisely. Because the effective change in the local markets is zero. So I agree that 30 percent is sort of theoretical [inaudible] going to look for any kind of potentially relevant change here. It's going to be in the market. In the local markets nothing changes except the logo on the sides of the service vans.

MR. JONATHAN RUBIN: We're having a little technical difficulty. Can you hear us okay?

GEOFFREY MANNE: Yeah, I can hear you fine. Were you having trouble?

MR. JONATHAN RUBIN: Yes, you're breaking up a little bit. We'll push forward and see how it goes.

GEOFFREY MANNE: Sorry about that.

MR. JONATHAN RUBIN: The merging parties, of course, point to exactly this point and say they don't compete for subscribers in any market. No subscriber will lose a provider as a result of the transaction. So, in fact, the combination can't hurt competition which is essentially what you're saying.

Yet, there's significant opposition to the deal from many quarters. Zephyr Teachout and Tim Wu, two law professors, are running for Governor and Lieutenant Governor of New York on what seems like an anti-Comcast/Time Warner platform. If the merger's really so competitively benign, are these people just misinformed? Why is there such apparent broad-based consumer objection to the deal?

GEOFFREY MANNE: Well, you know, if you're a politician, I think you're going to go far playing on people's inveterate hatred for cable companies, and for that matter other utility type companies. I don't think that's really indicative of much of anything.

I think the larger point about consumer opposition here is also not indicative of all that much either. Remember, again, the relevant question here is the change in the incentive and ability to engage in anti-competitive conduct. I don't think your average consumer on the street looks at this from that perspective. They just say I hate Comcast for one reason or another and are opposed to anything Comcast might want. I don't think we should make too much of that.

We can talk again on yet another call about why some of those perceptions exist. But I don't think they have much, if anything, to do with any competitive incentives or ability. And I certainly don't think this merger actually changes those.

MR. JONATHAN RUBIN: Professor Manne, this deal is happening at the same time that significant changes in technology are happening in the industrial and regulatory environment. And I'm thinking about the authorities, the Antitrust Division and FCC, are thinking about this merger at the same time that regulators and courts are grappling with open Internet regulations and litigation over new business models like Aereo and Pandora. And even a second mega merger is in the works between AT&T and DirecTV. I'd be interested in your view, how you feel these developments in the wider industrial context are likely to impact the proposed Comcast-Time Warner merger or vice versa.

GEOFFREY MANNE: Sure. There's a lot there and the interactions are really fascinating and complex. And I think the first answer to your question is to say we don't really know. The main take away I would say for all of that is to say this is a vibrant industry or set of industries. Innovation is happening faster than we can even appreciate its consequences. And that to me is yet another indication that we should be really wary about intervening with regulatory constraints on all of that sort of activity.

But there are a couple of things that we can sort of suggest here. So one thing I think is really interesting here is the relationship with net neutrality and net neutrality regulation. I don't have a crystal ball, and tea leaf reading of politics is always a perilous exercise. But I think it's safe to say that there is some kind of behind the scenes interaction between what happens with respect to conditions on this merger, with respect to net neutrality sort of issues and interconnection issues as well which are also now sort of pending before the FCC. I think there will probably be an interaction to what happens in terms of conditions here and what happens in the absence of neutrality and interconnection proceedings.

One possibility is the FCC extracts some set of promises with respect to interconnection and net neutrality beyond what they already have from the NBC merger and this merger. And that maybe buys them some goodwill or some breathing room in terms of, as you well know, the contentious debates around net neutrality and the Internet order proceedings.

With respect to other mergers, like the AT&T/DirecTV merger, I think one of the most interesting questions there is how does this merger change the competitive landscape around both broadband and MVPD services and likewise how does that prospective merger change how we think about this merger?

I think the most relevant point is to say AT&T has always been a potential and actual competitor in both of those markets and a combined AT&T/DirecTV would be a significantly stronger competitor than either of those independently, which should placate some concerns about a Comcast-Time Warner merger if immediately after this merger, you're also going to have a second or third place player in this market. It has to allay some concerns about the possibility that a merged Comcast-Time Warner is going to be able to engage in anti-competitive conduct without competitive restraints.

MR. JONATHAN RUBIN: So do I understand your answer to mean that the increased scope that a combined AT&T/DirecTV would have would be more important for maintaining competitive conditions than the independent additional players that exist now with AT&T and DirecTV as separate parties?

GEOFFREY MANNE: I think that's likely the case. I don't know for certain, and I haven't spent a lot of time looking at that merger yet. It's unfortunate that all of these things are all happening at once, time and ability to pay attention being what it is. But it does seem quite possible, in fact likely, that the combination of AT&T and DirecTV facilitates all kinds of new arrangements and new competitive alternatives to the traditional cable MVPD and broadband model that indeed will exert a very strong competitive force on Comcast. And remember, of course, that unlike Comcast and Time Warner Cable, Comcast and currently Time Warner Cable, compete with both DirecTV and AT&T -- DirecTV in all of their markets, and AT&T in many if not most of their markets. So strengthening that competition there, again, can only allay concerns about the effects of this merger.

MR. JONATHAN RUBIN: Of course, your remarks I assume are directed to the video market because DirecTV is not, at least at the moment, a broadband provider. I wonder if you could explain how the combination of two apparently incompatible modes, AT&T wire line operations and DirecTV's satellite delivery of video programming, how does that really make them a better competitor against Comcast-Time Warner?

GEOFFREY MANNE: Well, one obvious answer – and again, I haven't looked in great detail at that merger. But I do understand that DirecTV's programming, part of the intention of the merger is to make DirecTV's programming and its programming deals available over AT&T broadband.

One sort of obvious example of that is, of course, the NFL Sunday Ticket, and I know that already DirecTV is talking about finding a way to offer just the Sunday Ticket as a standalone OVD offering. So no longer not something that requires a subscription to DirecTV as an MVPD, but actually something that would be accessible over AT&T, presumably over Comcast as well, as a separate OVD offering. That strikes me as a very important source of competition here, especially for those who care a lot about sports programs.

MR. JONATHAN RUBIN: Critics of the Comcast-Time Warner deal have focused on the effect of the transaction upstream in the supply of markets for video content and internet applications and personnel and technology and the like and point out that market participants upstream will lose a separate buyer.

Our last guest, Seth Bloom, who is assisting Comcast, pointed out that SpinCo, the new Midwest based provider that will come out of the transaction if all of the parts of it are approved, will take Time Warner's place as a buyer of content and technology. Is this also your view? I thought the idea was for SpinCo that it would be managed by Charter and fall under Charter's negotiated content deals.

GEOFFREY MANNE: Well, I think it's both. I think that SpinCo does indeed represent former Time Warner Cable customers who will continue to be customers under this [inaudible] sorry, now I hear some noises. Jonathan, are you still there?

MR. JONATHAN RUBIN: Yes, and you dropped out. You said "under this" and then I'm afraid we dropped you.

GEOFFREY MANNE: Let me try that again. So my understanding is that SpinCo would consist of former Time Warner customers who would continue to be customers, but not Comcast customers. They would exist as a separate entity. And that over time, some of the management functions and negotiation functions of SpinCo would be transferred over to Charter, which I think only makes this separate entity that much stronger because they can tap into Charter's much more substantial resources in terms of negotiations with content providers and the like.

I do think that you end up with a set of customers that formerly were a part of Time Warner who are now going to be a part of sufficiently strong separate competitor. We call it SpinCo for now, but that won't be its name if I understand it. Does that answer your question? I guess the answer is I think it's both. I do think Charter – it in part helps – or in part, these customers can't be attributed really to Charter. Charter won't end up having, as I understand it, direct sort of control over them. In essence, Charter's lending and some of its management functions or more importantly its negotiation functions [inaudible].

MR. JONATHAN RUBIN: I'm afraid we're having some technical difficulty on your end and you're dropping out and otherwise getting garbled. I'm not real sure how to fix it actually. Can you hear me?

GEOFFREY MANNE: Yeah, I can hear you fine. I'm hearing a little bit of noise that I do hear the same sort of thing and what must be when it's dropping out. And when I hear it again, I'll stop talking. It seems to last for a couple of seconds. If it continues, I'll stop talking and pick up again when I hear the noise.

MR. JONATHAN RUBIN: All right. I've been told we're going to have to do the best we can. So we're going to have to keep pushing forward, thanks. So I just want to follow-up on your last answer there. I think the point that was being made about SpinCo was that the separate negotiating sort of independent centered decision-making that was represented by Time Warner acquiring content would be taken over by SpinCo. But actually, it would fall under Charter, will it not? So there will be a loss of the purchaser upstream. Do I have it wrong?

GEOFFREY MANNE: My understanding is in the short run, SpinCo will – there will be a sort of transition period. And I don't think the details of the extent of the relationship with Charter have been completely worked out yet. But I'm not sure why that really matters. Even if it were the case that essentially the entirety of these subscribers were being spun off to Charter that makes Charter a somewhat more powerful buyer in this market.

I'm not sure why we should care whether there's three buyers with – just making up numbers – a third of the buyer power in the relevant market or two buyers, each with fifty percent. So now you have a stronger number two, but you've lost a number three. That doesn't necessarily indicate anything about the likely anti-competitive effects. If anything, it could very well generate even more pro-competitive effects.

MR. JONATHAN RUBIN: Turning to the principal argument of the parties regarding the lack of competition or overlap for subscribers, our previous guests, Maurice Stucke and Allen Grunes, who are critics of the deal, suggest that the argument that there's no overlap and therefore no competitive implications, may prove too much. They point out that if the transaction is incapable of generating anti-competitive effects because of this fact, then what's the limiting principle that antitrust would have to prevent or even counsel against a merger to a monopoly or one cable company for everyone? What's your answer to that criticism?

GEOFFREY MANNE: Well, the relevant principle is the principle of antitrust and economics that says a merger or other scrutinized conduct can and should only be stopped if it's substantially likely to lead to anti-competitive effects. Anti-competitive effects is the limiting principle. In this case at this moment, in this merger, with the general competitive dynamics of the merger right now, I don't see anti-competitive outcomes being particularly likely here. It's quite possible that at some point down the line, that would change.

So the limiting principle is, again, anti-competitive effects. And I don't know for sure. It might very well be that a monopolist cable provider covering the entire nation also doesn't lead to anti-competitive effects. That's the appropriate antitrust inquiry.

I think where Grunes and Stucke are coming from is they're sort of saying – they're regulating in reverse. They're saying, well, we know we don't want a monopoly, a single provider of cable services out there. And yet, if you accept the arguments that say this merger is okay, you have to accept arguments that potentially lead us to a single monopoly provider of cable services. And to that I would say that that's the wrong approach. It may very well be that a single monopoly provider of cable services is in fact the best thing for consumers and we shouldn't try to derive principles that will prevent that outcome because we have some aesthetic opposition to it.

But more importantly, it's also kind of a straw man. I mean, we don't have monopoly providers of these services anywhere. One of the reasons that people like me suggest that there isn't a big problem here is because not only is it the case that Comcast and Time Warner don't tend to compete head-to-head, but they're confronted with competition in different dimensions throughout the markets in which they currently operate.

So, you know, we're not really in danger of reaching this hypothetical single monopoly provider of all cable services out there. In a world in which we have DirecTV and Dish and AT&T and Verizon as well as Comcast, even if it gobbles up all of the wire line cable providers all over the country.

MR. JONATHAN RUBIN: Well, would you agree that the more franchise areas a single cable operator serves, then the more likely that there could be upstream anti-competitive effects? Aren't those in fact the anti-competitive effects that you're talking about that would be a limiting principle that would indicate say a second merger or additional mergers or more than 30, 40, 50 percent of the market would be too far?

GEOFFREY MANNE: Sure. Right. It is possible. The point here is to say, look, with respect to upstream programming, for example, this merger represents maybe something under 30 percent of the MVPD market. Which means that 70 percent of the market is still available for these programmers to get their content out. That's a really significant share, and no one would say without knowing more that there's any inherent anti-competitive problem here.

So what happens in the world in which there's more and more mergers and maybe AT&T gets out of the business and who knows what? And all of a sudden, we're talking about sort of 70 percent market share or let's say post this merger, 30 percent market share somehow to 70 percent of the market.

Now, that might raise some concerns. And certainly, the DOJ will investigate that and that would be far more problematic. And that is indeed an appropriate limiting principle. If a 70 percent market share could be demonstrated to lead to anti-competitive effects in, for example, the programming market, well, then maybe there would be a basis for stopping that merger. That, of course, isn't the merger in any way that we're describing right here.

MR. JONATHAN RUBIN: Of course. So just following up on that point, if the limiting principle then is that there is a sufficiently large threat of that kind of anti-competitive effect, my question to you is how much of that kind of a threat would trigger the prohibitions against a merger that may lessen competition? In other words, how would we know when a deal creates such a likelihood of upstream effects that it should be blocked if not this deal?

GEOFFREY MANNE: Well, you know, now yet another call we could spend the entire time talking about this issue. We don't know for sure. We're dealing with crystal balls here. We're trying to predict future effects and we have some mechanisms for doing that. We have merger simulation. We have really smart economists who throw out some models and suggest what might happen if the structure looks like X, Y or Z. We have empirical data. We look at it to see what's happened in the past when there have been changes in concentration from 20 percent to the 30 percent or whatever the number is. And we try to predict what the [inaudible] And, of course, that's exactly what the –- sorry, go ahead, Jonathan.

MR. JONATHAN RUBIN: I'm going to pick at that point just a little bit because I'm trying to figure out what would be the indicia of a merger that met the limiting principle? In other words, what would be different in a deal that would deserve to be blocked because of the upstream anti-competitive effects that you don't see here?

GEOFFREY MANNE: The biggest most obvious thing would be the ability and the intent is to foreclose a sufficiently large portion of the market. And upstream providers couldn't reach minimum viable scale and would actually have to exit the market.

So, to pick a ridiculously counterfactual example, ESPN can't strike a deal with Comcast because it owns 90 percent of this hypothetical market and it goes out of business as a consequence, we would say that that's a real anti-competitive harm. We would have to see some dramatic pro-competitive justifications to outweigh that to approve this hypothetical deal, you know, taking us to Comcast with 90 percent of the market.

Of course, the mere fact that they have 90 percent of the market – and this is very relevant actually to the merger that's in front of us. The mere fact that they might have 90 percent of the market doesn't in and of itself give them necessarily the incentive to kill ESPN, for example

ESPN is an enormous important source of content. Comcast is nothing without the content that it can provide.

And NBC Universal itself only represents a relatively small fraction of the content that users consume. ESPN happens to represent a really important and significant fraction of that content.

So even in a world in which Comcast could hypothetically kill ESPN, you'd also have to demonstrate that they would have an incentive to actually do that. And that would be really hard. Because unless Comcast could – you could construct a story, right? You could say they killed ESPN and then NBC Sports or whatever the relevant competitor is takes over all of that programming and provides the content itself and charges now monopoly prices. And you can create that theory.

But in the first instance, there is a real symbiotic relationship between these upstream providers and Comcast. And this is true both in the MVPD world and the broadband world. Again, Comcast is nothing without the content that consumers demand.

MR. JONATHAN RUBIN: Let me ask you do you see any inherent value in non-overlapping, but separate networks? In other words, is there some argument that says that, gee, we need to have multiple networks even if they are not directly competing for the same subscriber base?

GEOFFREY MANNE: That's a good question. I think my answer is no. I haven't really thought about it. If you have sort of a theory as to why that might be, I'd love to hear it. I think the answer is I don't see that. But if you could construct a story that suggests that consumers would be benefitted and that the consumer welfare would be increased in fact by having multiple competitors or even not competitors, multiple entities in this market, I think it would be worth taking account of that. I don't know of one, but it's not to say it's impossible.

MR. JONATHAN RUBIN: We'd like to take questions from the audience. So if you have a question you'd like to submit for Professor Manne, just email us at editorial@thecapitolforum.com. So let's turn to the efficiencies of this transaction that might be raised in defense to a critique about potential anti-competitive effects. What do you see as the key efficiencies created by the merger that would be merger-specific and outweigh any incipient anti-competitive effect?

GEOFFREY MANNE: So I think perhaps the most obvious is also the one that is in some ways most often neglected. When we engage in an antitrust sort of analysis, we often forget that we're also talking about corporate governance here. And that what generally motivates these mergers is not the incentive to engage in anti-competitive conduct, but it's a belief by the managers and owners of one company that they can do better managing some other company than the current managers can.

So there's two usual sort of constraints on managers of companies. There's competition in product markets. If a manager's doing a really bad job in head-to-head competition with someone else, they're not going to be earning sufficient revenue. They may get booted. They may have their salaries slashed [inaudible] incentives arising from product competition.

But the other source of constraint on managers is the market for corporate control. In these markets in large part because of local and state franchise regulations and other regulations that are serious, and for that matter, just the cost of building out a large infrastructure, as we've pointed out many times, the product market, this is a direct head-to-head competition, doesn't really operate here.

So in some ways, the only kind of constraint on bad management –- not the only, but one of the most significant constraints on bad management -- is the market for corporate control. And that's exactly what you see here is Comcast saying, you know, Time Warner is doing fine, I guess, but we could do a lot better job. We could extract more profits by operating this company. And the only way we can do that is by operating it in a way that's better for consumers, lowering costs and other better management practices.

I think you have to assume that that is -– and evidence bears this out –- this is generally the most significant source of pro-competitive benefits for mergers. We always forget it though, as I said, because we're engaged in this antitrust analysis.

So I would put that as number one on the list. I think you also have the benefits here of bringing a little bit more vertical integration into Time Warner. This is a market in which there's lots of reasons to think that more vertical integration would be good. We've actually seen a significant reduction in vertical integration over the past several decades in this market and only with the NBC merger have we seen any kind of a significant uptick in vertical integration. And I think we probably should see more.

So by bringing Time Warner into the relatively vertically integrated structure of Comcast, I think we'll see the reduction of double marginalization. We'll see a greater ability for their combined company to coordinate over programming and the use of intellectual property licensing, various forms of knowhow. There's a lot of intangible and tangible benefits that flow from the vertical relationship. And I think there would be a benefit to bringing that to a larger subscriber base.

MR. JONATHAN RUBIN: Of course, what you said about the extent of programming being -- NBC/Universal programming being fairly small compared to the total would also apply to that affect as well would it not?

GEOFFREY MANNE: Yeah, that's right. That's a very good point. I think that's a good reason to look at these sort of intangible things like knowhow. So the knowhow that comes from NBC, the Universal folks, knowing how to run their business and how to engage with [inaudible] to distribute their product and engage with distribution entities like Comcast and others, that's not necessarily – in fact, it's not very likely – to be correlated with the size or the amount of programming. You have to have that knowhow whether you're distributing one channel of programming or 150 channels of them.

So I actually think that that's probably the most significant source of benefits for an increased vertical integration, and it's not dependent on the size of the market. But indeed, things like double marginalization are dependent on the amount of programming that's available. Again, that does in fact correlate to the actual product volume. And so that would be a little bit smaller here because NBC/Universal doesn't represent a very significant percentage of the content out there.

MR. JONATHAN RUBIN: Let me ask you what is the net effect that you see this merger having on investment interest and return to investment in the video and broadband spaces?

GEOFFREY MANNE: You mean in the content markets or distribution or anywhere in the whole chain?

MR. JONATHAN RUBIN: Anywhere in the chain where you think there will be some sort of non-negligible effect on the incentives of folks to put money in the industry.

GEOFFREY MANNE: Well, I guess that's a tough question. I think those investments generally increase here. But I think they were increasing anyway. So I'm not entirely sure how much of that is attributed to this merger in particular. I don't think there's any significant disincentive. I think generally again what's really – of course, this is a simplification -- but what's really changing is the logo on the side of the service vans. You know, we're not going to change the number of subscribers. We're not going to change subscribers' incentives to get more and different types of content. We're not going to change their incentives to cut the cord, to shave the cord. We're not going to change the incentives to companies like Netflix to be offering competing products. You know, all of that is still going to continue at apace.

So I guess I would answer your question by saying I don't see any reduction in investment incentives here. And there are probably some arguments to be made that there are increases and investment incentives as a result of this. But honestly, I haven't given a huge amount of thought to that. I'm not exactly sure where those would arise from.

MR. JONATHAN RUBIN: Thanks for entertaining the question. We're getting close to the end. I do want to ask you about remedies before we wrap up however. And in particular, conditions that might be placed on the merger. Do the Comcast, NBC/Universal conditions set a baseline for the kinds of conditions that you think the agency will look at here? And do you foresee any compliance or enforcement issues if the answer is yes?

GEOFFREY MANNE: From the point of view of any press, you know, behavioral sorts of conditions, like a lot of the ones imposed in the NBC merger are disfavored. They do require some oversight and there are enforcement costs. And what you would expect to see if it were just the DOJ engaging in this analysis would be – if they thought there was a problem, you know -- a structural remedy.

But, of course, Comcast has already volunteered a structural remedy. Maybe the DOJ would decide it's not enough: they need to divest some more customers. But that's what you would expect to see and there are enforcement and compliance problems with that.

When it comes to the sorts of remedies that merger conditions that the FCC imposes, I think you have to look at those as being essentially politically motivated. Most of them have nothing to do with the merger itself. They don't remedy any logical, potentially anticompetitive harms from the merger. They're just things that the FCC can get by "voluntary agreement" from the parties that would be much harder for them to do through their regular regulatory channels.

MR. JONATHAN RUBIN: Do you think that the DOJ and the FCC are going to look at the merger sort of the way you do? Or do you expect them to be more critical of the merger and in that regard do you expect the two agencies to be on the same page? Are you there? Well, we can't hear you anymore, but we do appreciate your participation today, Professor Manne. Oh, here you're back again. Did you get the last question? We'll make this the last one given the technical problems.

GEOFFREY MANNE: I didn't. Can you repeat it for me? I apologize for that.

MR. JONATHAN RUBIN: Yes, how do you expect the FCC and the DOJ to look at this merger? Are they going to agree with you? Or are they going to agree with the critics as a starting point? And between the two agencies, are they going to be on the same page? Or do you expect some divergence in their views?

GEOFFREY MANNE: Great question. On the first part of that, I think they agree with me. From the antitrust perspective, despite the kind of consumer and political opposition, I think it's a pretty straightforward antitrust analysis. And I expect the DOJ and the antitrust analysis of the FCC to agree with me.

It's a really interesting question, of course, given what you may not have heard me answering because of the technical difficulties, about the different role of the FCC and the DOJ with respect to the merger conditions. And typically in the past where there might have been some disagreement between the two agencies, I think the DOJ's antitrust analysis has generally controlled. And then the FCC tries to kind of go beyond that and extract whatever they can through merger conditions.

And what's interesting here is that the current leadership at the FCC -- with Tom Wheeler and Phil Verveer and Tim Brennan and Jonathan Sallet -- these are all really savvy antitrust analysts. Well, I don't know about Wheeler – I don't know exactly what Wheeler's antitrust acumen looks like, but he's certainly surrounded himself with advisors who really know a lot about this.

So I would expect them to arrive at the same conclusion that the DOJ would, that they would agree that there's really no anticompetitive concerns here. And what we'll end up talking about is how much political incentive there is and how much leeway there is to again extract merger conditions. But those aren't going to be a function of a divergent antitrust analysis between the two agencies. That's just going to be a function of divergent political incentives.

MR. JONATHAN RUBIN: Geoffrey Manne, this has been a fascinating discussion and were it not for the technical issues, we'd perhaps keep going a little longer. But I think we'll wrap it up at this point. And let me thank you so much for participating in our call series on the Comcast-Time Warner merger.

And for the audience, if you'd like an audio of the call, or perhaps preferably under the circumstances the transcript, just email us at editorial@thecapitolforum.com. So thanks very much, Geoffrey Manne and to everyone who participated today. Have a good weekend and that will conclude our call.

GEOFFREY MANNE: Thanks, Jonathan. I really appreciate it. And again, I apologize for the technical difficulties. But it was fun while we could hear each other.

MR. JONATHAN RUBIN: Indeed. Thank you so much.

GEOFFREY MANNE: Thanks.

MR. JONATHAN RUBIN: Bye.

(END OF TRANSCRIPT)