Prepared Statement of the Federal Trade Commission
Presented by Robert Pitofsky[1], Chairman

Before
The Committee on Commerce, Science, and Transportation
United States Senate

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I. Introduction

Mr. Chairman and members of the Committee, I am pleased to appear before you today to present the testimony of the Federal Trade Commission concerning the important topic of mergers in the telecommunications industry. This is an industry experiencing rapid technological and regulatory change leading to new products and services not only in telecommunications, but also in industries that use telecommunications products as inputs, such as computers, data retrieval and transmission, and the defense industry. Anyone whose business depends on faster and more reliable data movement is benefitting from these kinds of changes in the telecommunications industry.

At the same time, we have seen a growing number of significant structural reorganizations, both in telecommunications and in other industries. Such reorganizations may be a legitimate response to economic needs, but may in other instances threaten competition and the rights of consumers. A vigilant merger policy is particularly important so that the forces pushing consolidation do not result in unilateral or collusive anticompetitive effects, which would result in a lost opportunity to strengthen competition in this vital industry and would defeat the purpose of your recent legislative efforts at deregulation.

II. The Merger Wave

Our country is clearly in the midst of an unprecedented merger wave. In fiscal year 1999, we received almost 4700 Hart-Scott-Rodino[2] filings. That number is approximately at the level of the record number of filings from the previous fiscal year, and is almost three times the number we received only four years ago. The total dollar value of mergers announced in 1998 was over $1.6 trillion, an increase by a factor of 10 since 1992.[3]

The telecommunications industry has been swept up in the merger wave. The telephone, cable, entertainment, data transmission, and other industry or market segments have recently experienced both fast growth and significant consolidation. Some flavor of the increase in telecommunications transactions can be gleaned from the number of HSR filings. The number of transactions filed under the Standard Industrial Code classification for communications has increased by almost 50 percent since 1995, while the total dollar value has increased eightfold to more than $266 billion.

The antitrust agencies have been actively monitoring these areas. Since 1995, the FTC has investigated or brought cases in video programming and cable distribution, [4] several cable and entertainment, has grown, as have the number of mergers and joint ventures among firms headquartered in different countries.

Deregulation

A significant part of the merger wave is taking place in industries that are either undergoing or anticipating deregulation. In the past few years, deregulation has occurred in the natural gas industry and the airline industry, leading to a number of mergers in each.[(14)] Deregulation is now occurring in other industries, including electricity, financial services, and telecommunications, and we are beginning to see merger activity increasing in these industries also.

Deregulation of an industry often results in structural change and increased competition. Firms can take advantage of economies of scale and scope that were previously denied them. Mergers are often a way for these firms to acquire quickly the assets and other capabilities needed to expand into new product or geographic markets. They can also facilitate market entry across traditional industry lines. Firms in deregulated industries frequently seek to provide a bundle of products and services. We see all of these factors at work in telecommunications, particularly in the technological convergence of the cable and telephone industries.

Not all mergers that occur in response to deregulation are necessarily procompetitive, however. The lessons from the airline industry teach us that merger scrutiny in industries undergoing deregulation is necessary to prevent consolidations that are harmful to consumers. In the airline industry, the Transportation Department, which, at that time, had final merger authority, approved a number of mergers over the objection of the DOJ. Some antitrust experts believe that the result was higher fares, less service, and the domination of

More recent mergers have involved strategic considerations. Firms have become more others are not. It is difficult and often unfair to try to maintain a system where direct competitors are subject to substantially different regulatory rules. For example, many believe that a principal reason truck transportation was regulated for a time in the United States was to level the competitive playing field between trucking and the heavily regulated railroad industry. But if deregulation is to succeed, the more consistent strategy is to aim to equalize treatment by reducing regulatory burdens for all rather than by increasing them for new unregulated competitors.

Third, some policy goals that can be handled comfortably in a regulatory regime are difficult to achieve through antitrust enforcement. During a transition, some regulation may continue to be necessary -- for example, caps on cable rates or mandated access to local markets - to assist during the period before full competition emerges. While antitrust agencies can employ such remedies, we have been more successful with structural remedies than with behavioral relief. For example, we almost never use rate regulation remedies, and mandatory access remedies are seldom used.

Fourth, as a result of the factors discussed above, application of the antitrust laws to newly deregulated industries often raises difficult and unconventional issues from the point of view of traditional antitrust policy. The very fact that an industrial sector was regulated suggests the possibility of some past actual or perceived market failure, or at least some competitive peculiarities, and therefore calls for a special sensitivity in applying conventional antitrust rules.

IV. Competitive Concerns in Telecommunications Industries

A number of competitive concerns may be raised by the kinds of telecommunications mergers that we are seeing. A horizontal combination of competitors through merger, joint venture or other agreement can result in a direct loss of competition. An acquisition of a potential competitor might have significant current or future competitive effects. And a vertical merger of complementary but non-competing businesses might have foreclosure or bottleneck effects. Some mergers might have several of these effects.

Several of these potential anticompetitive effects are illustrated by the Commission's enforcement action in the Time Warner/Turner Broadcasting/TCI merger.[15] This transaction involved the proposal by Time Warner to acquire Turner Broadcasting to create the world's largest media company. These were two of the leading firms sel(i)-2(t)-2((5)1(2)r)-1bp hl lw or already the second largest distributor of cable television in the United States, with about 17 percent of all cable households. Turner Broadcasting already had strong ties to TCI, the largest operator of cable television systems in the United States, with about 27 percent of all cable television households.

the distribution market, a competing video programmer would have found it difficult to achieve sufficient distribution to realize economies of scale.

compete with Turner's CNN. This provision was included because the all-news segment is the one with the fewest close substitutes, and the one for which access to Time Warner distribution is most critical.

Time Warner was a large and complex transaction. Many of the concerns we had in that case may also be present in other telecommunications mergers.(16) We see several common characteristics in many recent mergers, all of which have implications in the telecommunications industry.

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V. Conclusion

Mergers and acquisitions in the telecommunications industry are occurring at a record pace, caused by technological change, deregulation, and other market forces. Many of these transactions have been good for the economy and consumers, bringing the ferment of innovation and new efficiencies to vital industries. Some transactions, however, may be an

15. Time Warner, supra. 4.

16. For instance, cable overbuild mergers are usually defended by pointing to the efficiencies of consolidating two competing systems, as well as the necessity of preparing for impending competition from the telephone companies. However, the consolidation that creates these efficiencies simultaneously eliminates competition that may benefit consumers through lower prices, a higher number of channels, and better service. As for