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THE FREE STATE FOUNDATION

A Free Market Think Tank for Maryland.....Because Ideas Matter

Media Advisory

June 13, 2018

Contact: Randolph May at 201-285-9926

FSF's Randolph May and Theodore Bolema React to Comcast Announcement Regarding Fox Acquisition

Free State Foundation President Randolph J. May issued the following statement in response to Comcast's announcement regarding the acquisition of 21st Century Fox.

"On June 11, we knew the converging communications and media marketplace already was dramatically different -- and much more competitive -- than it was even four or five years ago. We really didn't need a federal judge to tell us so on June 12, in a 172-page opinion no less. But, in any event, it's nice to have Judge Leon acknowledge in his AT&T/Time Warner decision the market-altering 'tectonic changes' in the broadband distribution and video programming marketplace that have occurred."

"Any transaction the size of Comcast's proposed acquisition of the Fox assets bears careful scrutiny, and I am not rendering any final judgments here. But a few key observations that are relevant to the Department of Justice's consideration are immediately apparent:

- The proposed transaction, much like the AT&T/Time Warner transaction, is largely a vertical acquisition that will not result in the elimination of competitors or harm competition but may well result in efficiencies and cost savings that will benefit consumers.
- In the rapidly changing communications and media environment, the proposed transaction will strengthen Comcast's ability to compete with the growing market power of web giants like Google and Facebook and online powerhouses like Netflix. The old legacy market definitions and distinctions no longer make sense in today's broader digital broadband and media marketplace.
- Nearly three-fourths of the Fox assets subject to the acquisition, including the Sky and Star India businesses, are overseas and thus do not raise any domestic antitrust concerns. These assets will strengthen Comcast's ability to compete in the growing global marketplace against the likes of Netflix with 125 million worldwide subscribers and Amazon Prime with over a 100 million worldwide subscribers. Indeed, the acquisition of Fox's foreign assets will help the U.S. attempt to maintain a leadership position in the global communications and media marketplace."

"Finally, as the process of evaluating the proposed Comcast-Fox transaction begins, it is paramount to keep in mind that the ultimate aim of antitrust law is to enhance consumer welfare, not to protect competitors from competition. The reality is that the efficiencies and cost savings realized by vertical integration often make markets more competitive to the benefit of consumers."

FSF Senior Fellow Theodore Bolema issued the following statement regarding the Comcast - Fox announcement:

"The proposed acquisition of Twenty First Century Fox assets by Comcast is mostly a vertical merger, so many of the possible antitrust objections that could be raised were rejected yesterday by Judge Leon in the context of the AT&T-Time Warner transaction. While there are some horizontal overlaps between Comcast and the Fox assets, the only ones that possibly may raise any antitrust concerns at all involve the production studios and the regional sports networks."

"The ruling by Judge Leon in the AT&T-Time Warner case shows that narrow market definitions no longer can be defended in antitrust challenges involving content delivery. The focus of any merger review should not be limited to possible antitrust risk in narrow U.S. markets that no longer make sense as defined markets, but rather on how the merger will affect the competitiveness of companies like AT&T and Comcast as they take on their larger rivals in the broader content delivery market."

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Randolph J. May, President of the Free State Foundation, is a former FCC Associate General Counsel and a former Chairman of the American Bar Association's Section of Administrative Law and Regulatory Practice. Mr. May is a past Public Member and a current Senior Fellow of the Administrative Conference of the United States, and a Fellow at the National Academy of Public Administration.

Mr. May is a nationally recognized expert in communications law, Internet law and policy, and administrative law and regulatory practice. He is the author of more than 200 scholarly articles and essays on communications law and policy, administrative law, and constitutional law. Most recently, Mr. May is the co-author, with FSF Senior Fellow Seth Cooper, of the recently released [#CommActUpdate - A Communications Law Fit for the Digital Age](#) as well as [The Constitutional Foundations of Intellectual Property](#), and is the editor of the book [Communications Law and Policy in the Digital Age: The Next Five Years](#). He is the author of *A Call for a Radical New Communications Policy: Proposals for Free Market Reform*. And he is the editor of the book, *New Directions in Communications Policy* and co-editor of other two books on communications law and policy: *Net Neutrality or Net Neutering: Should Broadband Internet Services Be Regulated* and *Communications Deregulation and FCC Reform*.

Theodore Bolema is a Senior Fellow with the Free State Foundation. He previously served as Director for Policy Research Editing at the Mercatus Center at George Mason University. Previously, Dr. Bolema held positions as a Principal with Anderson Economic Group, LLC, an economics consulting firm; an attorney with the law firm of Weil, Gotshal & Manges, LLP; and a trial attorney with the Antitrust Division of the U.S. Department of Justice. He has taught at Central Michigan University and George Mason University School of Law. Dr. Bolema received his Ph.D. in Economics from Michigan State University and his J.D. from the University of Michigan Law School. He received his B.A. from Hope College. He has been cited on regulatory law and economics topics in numerous publications including *The Washington Post*, *Chicago Tribune*, *The Detroit News*, *Politico*, and the *Los Angeles Business Journal*.

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Don't forget to register for the Free State Foundation's Policy Seminar on Thursday, June 28, 2018, at the National Press Club! FCC Commissioner Michael O'Rielly provides

“An Update on FCC Process Reform Efforts: Possible Next Steps” followed by a panel on “Municipal Broadband, Net Neutrality, and the First Amendment.” A flyer with information regarding the seminar is [here](#). Registration is complimentary, but you must register to attend. Register [here](#)!

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