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The Honorable Greg Walden

1. Mr. Pierce, in your response to a question regarding the appropriateness of FCC merger review, you responded that “it would make a lot of sense to take the FCC completely out of this. The FCC doesn’t know much about antitrust law. The FTC and the Department of Justice know a lot about antitrust law. They have the power to impose conditions, they regularly impose conditions on mergers, those conditions are specifically tailored to address the competitive issues that are raised by a proposed merger.”

As an expert in antitrust law, could you please elaborate on why you believe the FCC should be removed from the transaction review process?

DOJ and FTC have well-developed expertise in antitrust law. Both the DOJ Antitrust Division and the FTC Bureau of Competition are staffed by economically literate lawyers and economists who have an excellent understanding of the potential effects of mergers on competition. Both also have the power to attach conditions to mergers to insure that they do not have adverse effects on competition. FCC lacks the expertise and staff required to evaluate the effects of mergers. Giving FCC concurrent power to approve and/or to condition mergers is inefficient and duplicative.

The Honorable Henry Waxman

1. At the end of the hearing, Chairman Walden and Mr. McDowell seemed to suggest that the litigation risks presented by the FCC Process Reform Act which you highlighted in your testimony would be mitigated by Chevron deference. Is that your understanding?

Chevron holds that a court must uphold a reasonable agency interpretation of an ambiguous provision in an agency-administered statute. Chevron deference does not eliminate any the problems I identified in the Bill, though it gives FCC some degree of discretion in interpreting and applying the provisions in the Bill to the extent that the provisions are ambiguous.