



Written Testimony of

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Regarding

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Chairman Fitzgerald and Ranking Member Nadler, Chairman Jordan and Ranking Member Raskin, thank you for inviting Free Press Action to testify at this important hearing about competition and consumer choice in digital streaming.

While it would be gratifying to talk about that topic without needing to consider the impacts of transactions that alter the competitive landscape and threaten to erode such choice, we have no choice but to address a string of relevant mega-mergers, both past and newly proposed.

Before digging in on my testimony, however, I must pause to clear up any confusion caused by my organization's name, and its similarity to a much more recently formed newsletter with a similar moniker. Free Press Action is the 501(c)(4) nonprofit I represent. Free Press is our 501(c)(3) organization, and those two entities are separate and autonomous but interrelated. Both are completely independent of funding from business, government, or political parties. Free Press Action is a public-interest group focused on media, tech, and telecom policy. For more than 20 years, we've been analyzing communications markets, opposing harmful mergers in them, and fighting both government censorship and undue corporate control of them.

We are in no way affiliated with The Free Press, the online publication launched circa 2021, which Paramount Skydance acquired last year before making its founder editor-in-chief of CBS News. Since Paramount Skydance is at the center of the latest merger frenzy in the streaming and studio sectors, it seems especially important to make this distinction clear.

As my testimony will show, we are equally concerned about the prospects of Paramount Skydance or Netflix consummating a merger with Warner Bros. Discovery that could radically transform the streaming market and adjacent video markets, even though the deal facts and antitrust analyses may differ in key respects.

Mergers harm consumers, workers, competitors, and downstream businesses. Media mergers especially can harm our democracy, too.

Contrary to the suggestions of CEOs and shareholders salivating over merger payouts—and the bankers and merger & acquisition lawyers hired to push them through the approval process—most mergers reduce competition. Of course, many of us in the bar have been drilled by professors and textbooks on the old saw that antitrust law protects competition, not competitors. Such suggestions are not fully fanciful or trivial, and depend greatly on the facts in any one proposed combination; but they do fail many real-world tests and defy many common-sense observations.

Runaway consolidation eliminates choice, by design. There's no real chance of competition once all of the competitors are picked off, one-by-one. Companies routinely break promises and evade merger conditions designed to mitigate the harms of reduced competition. They claim merger efficiencies in the first place that are dubious at best, if they even bother to argue for public-interest benefits in the relevant “product markets,” as antitrust case law requires.

In short, mergers are a bad deal for everyone, often including the companies who make these bad bets and take on these massive debts. Look no further than the last four or five times that current acquisition-target Warner Bros. Discovery was involved in huge and often hugely disappointing tie-ups. The present company's family tree is nothing short of convoluted, tracing its roots back to the 1990 combination of Warner Bros. Studios and video businesses with the Time Magazine empire; that conglomerate's purchase of Turner Broadcasting (and its CNN) in 1996; the major flop that was the Time Warner/AOL merger, which closed in 2001; AT&T's acquisition of Time Warner in 2018, after an unsuccessful DOJ challenge; and lastly, AT&T's spin-off of those Warner Bros. properties to Discovery less than four years later, in 2022.

In 2021, the Writers' Guild of America West neatly summarized the backdrop against which these mergers took place, along with a seemingly endless string of deals in all sectors over the last half century or more:

Across the U.S. economy, lax antitrust enforcement has given a green light to rampant consolidation, leaving markets across the economy dominated by a few large firms. Federal regulators have demonstrated a deep bias toward merger approval, giving undue deference to speculative economic theories of claimed merger "efficiencies." Too often, the promised merger benefits are never realized, while post-merger companies face little or no repercussions for breaking these promises. Instead, these mergers lead to lower wages, higher consumer prices, fewer or worse consumer choices, and less innovation. Media is the poster child for the failures of antitrust enforcement. The past 12 years have seen unprecedented levels of vertical and horizontal consolidation among television distributors and film and television producers, with large mergers alone totaling over \$400 billion in deal value.¹

Free Press and Free Press Action have opposed many of these deals, and have been part of successful antitrust, FCC, and state-agency actions to block mergers like AT&T/T-Mobile in 2011, Comcast/Time Warner Cable in 2014, and Sinclair/Tribune in 2018. But even with those successes, the flood of deals has reshaped the media industry broadly, and many of the various product markets that antitrust enforcers must discern and analyze in these deal reviews.

I've been in DC now for nearly a quarter century. I don't solely practice antitrust law, but since leaving corporate firms, a lot of my 16-year career at nonprofits has been opposing mergers that enrich executives, bankers, and lawyers at everyone else's expense. That's because media mergers pose a special danger to an informed and diverse democracy in the United States today, where the news produced and the narratives told by corporate conglomerates are vital to shaping our society but far too often shaped by profit motives and political motives too.

¹ WGA West, "Broken Promises: Media Mega-Mergers and the Case for Antitrust Reform," at 2 (Dec. 2021), https://www.wga.org/uploadedfiles/news_and_events/public_policy/broken-promises-merger-report.pdf.

It's not just one community or one side of the political aisle that complains about such bottlenecks. While claims of bias often originate from members of the current majority in Congress, historically underserved communities of color, LGBTQ+ communities, immigrants, religious minorities, and political dissidents of all stripes have experienced tremendous difficulty gaining access to corporate-media megaphones, or seeing themselves in the stories packaged and sold to them.

In short, reducing the number of news outlets and production companies competing for stories costs us the boldness and product differentiation needed to gain attention in a truly competitive market, to carve out niches, and to provide high-quality news and civic information that reflects the communities it serves.

And as I'll discuss at the end of this testimony, under the Trump administration especially, these deals pose a tremendous danger to free expression. The president and his appointees have repeatedly used the merger-review process to exert pressure on media companies and the reporters they employ to modify or withhold content critical of the administration. What should be a straightforward antitrust review and agency-approval process is instead part of an arsenal of pressure tactics and chilling actions to exert government influence over media coverage, with regulatory threats, private lawfare, and even law enforcement deployed to silence narratives that displease this administration.

What we know about the bids for Warner Bros. Discovery sets off alarm bells, for consumer advocates, creative industry workers, and some main-street businesses too.

On December 5, Netflix announced an \$82.7 billion merger agreement with Warner Bros. Discovery. The deal would combine the first- and third-largest streaming platforms in the United States. Netflix is the largest such service in the world, with more than 300 million subscribers.

Warner Bros. Discovery's "HBO Max" is well over 100 million, the fourth-largest streamer in the world by most accounts but third in the United States. The deal would also give erstwhile upstart and now giant Netflix a massive library of Warner Bros. content.

We've written on multiple occasions about the likely harms from these deals.² We've said that the Netflix combination would mean consumers' \$17.99 monthly bills are likely to rise, yet again, and that those consumers are unlikely to see better content or more choices either, despite the companies' claims to the contrary. Either a Netflix or Paramount Skydance deal would reduce competition in streaming and adjacent markets, with fewer choices for viewing consumers—and fewer opportunities for writers, actors, directors, and production technicians.

The post-merger company could reduce output and raise prices, if it can do so profitably. And as creative unions and movie-theater owners have consistently explained leading up to this hearing, the numbers from the relatively recent combinations are bleak. That's true whether it was the last big merger between Hollywood's "Big 5" studios, when Disney acquired 20th Century Fox in 2019, or even the change in ownership that brought Paramount Skydance into existence in 2025. Industry and union representatives cite press accounts reporting that the job losses numbered in the thousands. The post-merger entity's number of wide-release feature films in theaters dwindled, and hundreds of projects in development were shelved. Those consequences are serious not just for studio employees and creative talent, but for theaters in your districts and surrounding main-street businesses as well.

The "golden age of TV" in the early twenty-first century was the product of a more competitive media landscape. Multiple channels and streamers trying to find audiences led to

² See, e.g., Craig Aaron, "In Media MergerMania 2025, We All Lose," *Jacobin* (Dec. 15, 2025), <https://jacobin.com/2025/12/warner-bros-discovery-netflix-merger>.

more risk-taking, creativity, and opportunity for diverse voices. Either proposed deal would undermine that direction. Jobs will be lost. Stories will go untold. In a more competitive environment, HBO and Netflix took chances on new talent and different viewpoints. Documentary filmmakers, for instance, could shop their films to HBO, Netflix, and PBS, too. Between defunding public media and this proposed consolidation, there will be fewer options and less opportunity for independent content creators.

The race for Warner Bros. Discovery isn't over, but no outcome will likely serve the public.

Netflix is not the only corporate giant chasing this merger. Paramount Skydance is aggressively pursuing Warner Bros. Discovery, too. Three days after Netflix and Warner Bros. Discovery announced their merger plans, the jilted suitor launched a hostile takeover, going straight to Warner Bros. Discovery's shareholders with an \$108.4 billion offer to buy not just the streaming business but also the cable networks like CNN and TNT.

A Paramount acquisition of Warner Bros. Discovery wouldn't just consolidate streaming options but would also further concentrate film-studio production. That would further consolidate a market where Disney recently swallowed 20th Century Fox, as noted I above, and Amazon acquired MGM, to name just a few of the swaps and combinations that have taken place during the past few decades. A Paramount/Warner Bros. Discovery combo would couple two of the remaining "Big 5" Hollywood studios, impacting the market for theatrical releases, film production, documentaries, television, and other scripted content. Paramount is also reportedly the fifth-largest U.S streamer as well.

The industry reps, unions, and creative industry workers Free Press Action has worked with and spoken to over the past few months have made their concerns clear, and voiced their

opposition to any of these scenarios. They will continue to speak for themselves far better than I could, as they develop educational materials, legal arguments, and economic analysis for the record of this hearing and future enforcement actions. Without attempting to compile here all of their research and advocacy, it's worth noting the breadth and depth of these concerns.

As the Writers Guild of America said in October when this latest bidding war began, “Merger after merger in the media industry has harmed workers, diminished competition and free speech, and wasted hundreds of billions of dollars.” As activist and actor Jane Fonda wrote recently in the influential Hollywood newsletter *The Ankler*, these mergers have resulted in “fewer jobs, fewer opportunities to sell work, fewer creative risks, fewer news sources, and far less diversity in the stories Americans get to hear.”

“Netflix or Paramount?” isn’t the only choice, and it’s the wrong question to ask.³ The path to this deal was paved with one failure after another. As I described above, let’s not forget how we got here with this company: Time Warner bought Turner Broadcasting System. Time Warner merged with AOL, then the dot-com bubble burst. AT&T bought Time Warner (and DirecTV too), had no idea what to do with any of it, and spun out Warner Bros. to Discovery. That means Warner Bros. has been at the center of several of the biggest media mergers of all time—and for what?

This complicated history should teach us to be very skeptical of claims that a hugely valuable business like Warner Bros. Discovery “needs” to be sold, and that the only viable buyers are its biggest rivals in various product markets and industry sectors.

³ See *id.*

These potential mergers are certainly concerning, and potentially devastating, but still require careful antitrust analysis and review before definitive pronouncements are made.

We hold and share many of the same concerns as other advocates and experts, as well as the artists, technical personnel, competitors, and downstream businesses that could be hurt by these potential mergers. Yet Free Press Action may take a different and more cautious tone than some of their analyses and published writing, or their statements for the record of this hearing. Like them, we have voiced concerns and even announced opposition to various Warner Bros. Discovery acquisition scenarios, on the basis of the potential harms to consumers and creatives, newsgathering and narrative-making, freedom of the press and freedom of speech.

But the streaming market, and the determination of market shares in them, require further study. The streaming business and economy continue to evolve, with market shares and profit margins more fluid than those metrics may be in some other large media, tech, and telecom product markets. That's true for at least a few reasons. For one, streaming services are not mutually exclusive, like traditional cable service or even cellphones tend to be. People can and often do subscribe to multiple streaming services—which some people and lawmakers may say leads to consumer confusion and fatigue from purchasing multiple services, and others might say leads to more consumer choice and freedom.

To say that streaming is somewhat more competitive and less concentrated for now than some other highly concentrated communications sectors like broadcasting or broadband is damning with faint praise, but it still happens to be true. Advocates—and much more importantly, antitrust enforcers actually reviewing any deal that moves ahead—still need to crunch the numbers for an array of markets and metrics measuring concentration levels.

We'll listen critically to claims about supposed merger benefits as we go. And we'll ask whether there is sufficient competition to ensure that billions saved in promised "synergies" are passed along, not pocketed by the C-Suite and shareholders of these media behemoths. That is what antitrust law and precedent require of claimed deal efficiencies.

The job for antitrust enforcers is clear: They must engage in careful product market analysis to determine if these mergers violate the law, and whether they promise any real efficiencies, not just "speculative assurances that a benefit enjoyed by the [merging parties] will also be enjoyed by the public."⁴

Either Netflix or Paramount buying Warner Bros. could be "presumptively illegal" under DOJ's merger guidelines, as members of this subcommittee and others in Congress have suggested, on a bipartisan basis.⁵ Section 7 of the Clayton Act prohibits any merger that would "substantially [] lessen competition" or "tend to create a monopoly" in "any line of commerce."⁶ That is clearly a risk here.

There is work to be done by the DOJ and other federal or state enforcers considering a Warner Bros. acquisition. And that work must be done without the taint of political influence, blatant corruption, and chilling shakedowns that have been the hallmark of regulatory oversight and merger reviews ever since the start of the second Trump administration.

⁴ *FTC v. Penn State Hershey Med. Ctr.*, 838 F.3d 327, 351 (3d Cir. 2016).

⁵ See, e.g., Letter from Rep. Darrell Issa to AG Pam Bondi, Assistant AG Gail Slater, and FTC Chair Andrew Ferguson (Nov. 13, 2025) (asserting that a Netflix/Warner Bros. Discovery merger would "reportedly push[] the combined entity above a 30 percent share of the streaming market: a threshold traditionally viewed as presumptively problematic under antitrust law"); Letter from Sens. Warren and Blumenthal to AG Pam Bondi, at 2 (Dec. 17, 2025) (citing Tim Wu, "Both Plans to Buy Warner Bros. Are Illegal," *N.Y. Times* (Dec. 9, 2025), <https://www.nytimes.com/2025/12/09/opinion/netflix-paramount-warner-bros.html>).

⁶ 15 U.S.C. § 18.

It's damaging to democracy when journalism consolidates in fewer corporations' hands. It's outright destructive when government picks winners and dictates content.

Either a Netflix or Paramount Skydance purchase of Warner Bros. Discovery is likely to place far too much power, in too few hands, over what Americans watch and also where they get their news. Admittedly, for purposes of this antitrust hearing, the numbers for that news component in any such deal would be dwarfed by the dollars thrown at the streaming side and studio catalogs. But as we all know, in addition to HBO, Warner Bros. Discovery owns CNN and other cable channels. Netflix doesn't want those; Paramount's Ellison family desperately does.

From an economic and communications policy standpoint alone, Free Press Action is all too familiar fending off claims that media giants "need" to merge to continue producing news. Their trickle-down notion is that more money for shareholders means more investment in news or content creation. Just last week, Free Press and allies filed a comprehensive petition to deny⁷ Nexstar's attempt to purchase TEGNA's broadcast stations around the country, which would put Nexstar's national reach far over the cap set by Congress in 2004 and further decimate competition for the production of original, local news.

Broadcast television product markets are separate and distinct from the broader video market, and the streaming and studio content product markets that enforcers will need to determine and assess here. This point cannot be lost: Giant communications companies seeking mergers in any sector always have a self-interested motivation in conflating product markets to depress the concentration levels their deals would cause.

⁷ See Petition to Deny of Free Press, the National Association of Broadcast Employees and Technicians - Communications Workers of America, The NewsGuild - Communications Workers of America, the United Church of Christ Media Justice Ministry, and Public Knowledge, MB Docket No. 25-331 (filed Dec. 31, 2025), <https://www.freepress.net/download/redacted-copy-nxst-tgna-petition-deney-pdf>.

Yet all of this media consolidation is still relevant and harmful to consumers and workers, even if the media properties in play are not substitutes for one another and exist in separate markets for rigorous antitrust analysis purposes. As history shows us, companies merge to save money, not spend it. Their promises of synergies and savings are better read as promises to obliterate jobs. And having fewer voices makes censorship easier, with fewer corporate gatekeepers to lean on. That's true not only in theory, but painfully obvious practice over the past 12 months since the last presidential election.

Even more dangerous than the notion that mergers can “save” the news is the way this President has weaponized the merger review process. In conjunction with other cajoling and threats made in plain sight, his agencies have used deal approvals to win favors. When it comes to Netflix or Paramount buying Warner Bros., Trump has been noncommittal. The message is clear though: Trump is open for business. Flattery and bribery will get you everywhere.

That's what prompted Fonda to write in *The Ankler* about more than just the industry impacts from these potential mergers. “As dangerous as the economic fallout could be, it is not what scares me most. What terrifies me—and should terrify anyone who cares about a free society—is how this administration has used anticipated mergers as tools of political pressure and censorship.” The Trump FCC has blessed mergers, virtually moments after deal proponents promised to follow the President's demands to end diversity policies, even for relatively small but meaningful deals put forward by wireless and broadband giants like AT&T, T-Mobile, and Verizon. But, as Free Press and Free Press Action have documented, that's just a small part of the parade of media and tech companies that have capitulated on chilling requests to reshape their newsrooms and coverage.

In 2025, Free Press produced two reports documenting the kinds of abuses, including this administration's threats to free speech and freedom of the press more broadly, and Donald Trump's demands of media companies seeking mergers and regulatory approvals more specifically.

In December, Free Press examined the Trump administration's hostile relationship with dissent and free expression.⁸ To compile the report, my colleague Nora Benavidez examined nearly 200 free-speech violations—including verbal threats, arrests, lawsuits, regulatory actions, and military deployments—by President Trump, White House officials, Trump-appointed federal regulators, the National Guard, law-enforcement agencies, and other branches of government during the first year of Trump's second term. She found that “while the U.S. government has made efforts throughout this nation's history to censor people's expression and association—be it the exercise of freedom of speech, religion, press, assembly, or the right to petition the government for redress—the Trump administration's incessant attacks on even the most tentatively oppositional speech are uniquely aggressive, pervasive and escalating.”

“The president has tried to cow the press,” Benavidez wrote in a recent *New York Times* op-ed. “His administration banned Associated Press reporters from certain parts of the White House and Air Force One because the outlet uses ‘Gulf of Mexico’ rather than the term Mr. Trump prefers, ‘Gulf of America.’ It tried and failed to force some of the nation's biggest news organizations to agree to restrictions on coverage of the Pentagon. He has said critical coverage of his initiatives is ‘really illegal.’”

⁸ See Nora Benavidez, Free Press, “Chokehold: Donald Trump's War on Free Speech & the Need for Systemic Resistance,” (Dec. 2025), <https://www.freepress.net/download/chokehold-donald-trumps-war-free-speech-and-need-systemic-resistance>.

As our report notes, attacking media independence is page one of the authoritarian playbook, and Trump has told domestic journalists that he will report them to the Department of Justice, foreign journalists to their home governments. Many large media corporations have caved to this administration pressure to remove content or coverage Trump dislikes, or which paints him in a negative light. Demonstrations of corporations' fealty to Trump have included million-dollar payments to bankroll the inauguration, funds for his new White House ballroom, and dubious legal settlements.

All of that is tracked in another 2025 report we produced, featuring a "Media Capitulation Index" produced by my colleague, Tim Karr.⁹ We tracked who owns our nation's 35 largest media conglomerates, and documented their response to pressure and threats by the Trump administration. We found that—to varying degrees—the owners of the largest U.S. media conglomerates are caving to the pressure. This capitulation is not unique to owners of news outlets, like Paramount Skydance (CBS), Disney (ABC) or Warner Bros. Discovery (CNN). It's a pervasive trend for nearly all commercial media, including cable, telecom, and online platforms.

We found that media owners capitulated to this White House in four principal ways:

1. **Payments to Trump in the form of legal settlements**, production contracts, campaign contributions, and other donations;
2. **Rollbacks of prior commitments to diversity, equity and inclusion** practices in hiring and community outreach;
3. **Editorial manipulation and censorship**, by pressuring their newsrooms to soften criticism of the administration, firing staff, and even pulling content that might anger the president; and
4. **Attempting to curry favor with the President** during inaugural ceremonies, private dinners at Mar-a-Lago, and meetings in the White House.

⁹ See Free Press, "Who Owns the Media" (July 2025), <https://www.freepress.net/who-owns-media>.

Thus, Trump appointees are likely to exploit any deal for Warner Bros. Discovery to exert more editorial control over the merger hopefuls. This administration has flexed its regulatory power repeatedly to coerce those results. Carr has repeatedly threatened to block mergers if media companies promoted “invidious DEI policies,” without any specific claims about their supposed violations of equal employment or civil rights laws.

Those tactics have been successfully deployed by and against Paramount Skydance, among many others, including when Carr threatened ABC and said that “we can do this the easy way or the hard way” as a form of pressure to take Jimmy Kimmel off the air. ABC parent company Disney, as well as broadcast conglomerates Sinclair and Nexstar, all succumbed to the Trump FCC’s pressures. Nexstar especially did so with an eye on its own pending merger’s approval chances. The broadcasters only reversed their decisions after widespread public protests. Trump still maintains that networks could lose their licenses if they air negative coverage about him, and shockingly, as noted above, that critical coverage is somehow illegal.¹⁰

Yet clearly most relevant to the potential merger parties in the sweepstakes for Warner Bros. Discovery is the Trump administration’s campaign against CBS News. The FCC approved Skydance’s acquisition of Paramount’s CBS licenses in a 2-1 vote last July, but only after the company paid President Trump \$16 million to settle a meritless lawsuit and agreed to appoint a former Trump ambassador as a “bias monitor” who can censor content critical of the administration. In her dissent, FCC Commissioner Anna Gomez decried the “never-before-seen forms of government control over newsroom decisions and editorial judgment—actions that violate both the First Amendment and the law.”¹¹

¹⁰ See Luke Broadwater, “Trump Says Critical Coverage of Him Is ‘Really Illegal,’” *N.Y. Times* (Sept. 19, 2025).

¹¹ Commissioner Gomez Statement on Closing of Paramount-Skydance Merger (Aug. 7, 2025).

The Paramount Skydance debacle only involved settling a lawsuit with Trump for the airing of an October 2024 interview with then-Vice President Kamala Harris, which Trump claimed *60 Minutes* deceptively edited. (Though just this November, *60 Minutes* aired another interview, this time with Trump, which the network edited heavily.) Trump-appointed FCC Chair Brendan Carr also re-launched an investigation into CBS and *60 Minutes* that his predecessor Chairwoman Jessica Rosenworcel had dismissed as an attempt “to weaponize the licensing authority of the FCC in a way that is fundamentally at odds with the First Amendment.”¹²

Award-winning *60 Minutes* producer Bill Owens stepped down, claiming he faced editorial pressure from company executives who feared that his refusal to appease Trump could jeopardize Paramount’s ambitions.¹³ This was followed by the forced resignation of former CBS News chief Wendy McMahon, and the cancellation of CBS late-night host Stephen Colbert’s program. Colbert was a frequent critic of the Paramount Skydance merger—and rightly called the settlement with Trump a “bribe.”

In sum: The merger that spawned Paramount Skydance was greased by an FCC investigation and a multimillion-dollar settlement of a specious lawsuit over editing choices in an interview with then-Vice President Harris. Now, Paramount Skydance’s CEO promises “sweeping changes” to CNN if he takes it over. Tilting a merger review process to facilitate this should be unthinkable under the First Amendment.

¹² *Preserving the First Amendment*, GN Docket No. 25-11 (Jan. 16, 2025) (Statement of Chairwoman Jessica Rosenworcel).

¹³ See Liam Reilly, “*60 Minutes* executive producer resigns, citing a loss of independence in the wake of Trump lawsuit,” CNN (Apr. 22, 2025), <https://www.cnn.com/2025/04/22/media/60-minutes-executive-producer-resigns-independence/index.html>.

Should a President use merger reviews to gain political outcomes he wants? Some may think it depends which party holds the White House. But that answer abdicates the antitrust oversight this subcommittee conducts, and the antitrust laws enforcers must apply.

Thank you, and I look forward to your questions.