

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
)
)
 v.) Case Number 1:17-cv-02511-RJL
)
 AT&T INC., DIRECTV GROUP HOLDINGS,)
 LLC, and TIME WARNER INC.,)
)
 Defendants.)
)

**DEFENDANTS' OPPOSITION TO CINEMOI NORTH AMERICA'S
MOTION FOR LEAVE TO FILE AMICUS BRIEF**

May 21, 2018

Video programming company Cinemoi North America (“Cinemoi”) has moved for leave to file a brief as amicus curiae opposing the merger. The motion should be denied.

Cinemoi’s proposed brief is self-evidently improper. The brief objects to the merger on the ground that it would harm Cinemoi and other “independent” programmers. Cinemoi Prop. Br. 4. But the government here alleges no theory of harm to competition based on the merger’s potential effects on the intensely competitive programming marketplace. In other words, after almost two years of investigation and discovery, the government could not substantiate any alleged anticompetitive effects based on the theory asserted in Cinemoi’s proposed brief. Cinemoi should not be allowed to introduce—after the close of evidence—a claim the government itself declined to assert.

Relatedly, the brief seeks to supplement the trial record with a host of factual assertions that have not been tested by deposition or trial examination—assertions drawn entirely from inadmissible hearsay media reports and law journal commentary. Cinemoi’s proposed brief likewise seeks to introduce a declaration presenting opinion testimony from a law professor. Like the brief’s factual assertions, the opinions have not been subjected to cross-examination at deposition or trial. The hearsay reports of the parties’ actual experts at trial were not admitted into evidence, and there is certainly no basis for now supplementing the record with the untested opinions asserted in Cinemoi’s proffered declaration.

For the foregoing reasons, Cinemoi’s motion should be denied.

Date: May 21, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on May 21, 2018, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

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