

**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 RCN TELECOM SERVICES, LLC; GRANDE
COMMUNICATIONS NETWORK, LLC; AND WAVEDIVISION HOLDINGS, LLC'S
MOTION FOR LEAVE TO FILE AMICUS BRIEF**

May 15, 2018

RCN Telecom Services, LLC; Grande Communications Networks, LLC; and WaveDivision Holdings, LLC (collectively, “RCN”); and the American Cable Association (“ACA”), have moved for permission to file a brief as amici curiae, ostensibly in support of neither party, but functionally opposing the merger unless the Court mandates their proposed arbitration process. Defendants Time Warner, Inc., AT&T Inc., and DIRECTV, Inc., oppose the motion. There is no basis for supplementing the record of this case with RCN’s own unsworn, untested, and unmeritorious opinions.

RCN’s participation as amicus is especially unwarranted because, as the motion acknowledges, RCN’s Chief Executive Officer James Holanda already testified at trial. Called as a witness by the government, Mr. Holanda—also a member of the Board of Directors of the National Cable Television Cooperative—presented RCN’s opinions about the merger and Time Warner’s arbitration/no-blackout commitment (“the Commitment”). To the extent the proposed amicus brief merely reiterates those opinions, the brief adds nothing to the record already developed at trial. To the extent the brief asserts additional views, it is an impermissible effort to expand the factual record, while shielding its newly-stated opinions and criticisms from the clarifying scrutiny of cross-examination.

The same objection applies to the brief’s arguments for adopting a different arbitration mechanism as an appropriate “remedy,” if the Court “finds . . . a violation” of Clayton Act § 7. RCN Br. 4. The RCN filing is predicated on an “assumption” that the merger is unlawful. *Id.* at 3. But for the reasons discussed in prior filings, the government did not come close to carrying its burden of proving a violation of § 7. Nor has the government urged any remedy comparable to RCN’s proposal. It is not RCN’s proper role to fill those gaps through an extrarecord,

unsworn brief rife with factual assertions about the efficacy of a proposed remedy that will never be subjected to the crucible of cross-examination.

The Court should reject RCN's proposed submission.

Date: May 15, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on May 15, 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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