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Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

WLF Urges Seventh Circuit to Affirm Straightforward Application of Antitrust Refusal-to-Deal Legal Standard

(*Viamedia v. Comcast*)

“The trial court correctly upheld the defendant’s right to transact—and not transact—with whomever it pleases. The plaintiff is not a victim of monopolistic abuse, but a sore loser in the market.”

—Corbin K. Barthold, WLF Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation today filed an *amicus curiae* brief urging the Seventh Circuit to affirm the dismissal of an antitrust refusal-to-deal claim.

In our free-market system, a business—even an alleged monopolist—may choose with whom it will transact. Antitrust law places only one limit on this discretion: a monopolist that ends an established course of dealing must have a rational business reason for doing so. Only when the monopolist’s conduct makes *no* sense, absent monopoly power, can a competitor bring a refusal-to-deal claim under the Sherman Antitrust Act.

Although most television advertising time belongs to television networks, cable companies receive two or three minutes an hour. The cable companies sell much of this “spot-cable advertising” in clearing houses called “interconnects.” Usually the largest cable company in a region runs the region’s interconnect. Viamedia is an “advertising representative”; it acts as a broker for advertisers seeking to buy spot-cable advertising. For about ten years, Viamedia and Comcast had an agreement that enabled Viamedia to access the Comcast-run interconnects in Chicago and Detroit. In 2012 that agreement expired, and Viamedia and Comcast failed to agree to new terms.

Viamedia sued Comcast, alleging, among other things, that it had unlawfully refused to deal. The district court dismissed the refusal-to-deal claim. The court concluded that Comcast had a valid business reason for cutting ties with Viamedia: Comcast legitimately sought to create efficiency by cutting out the middleman and moving into the “ad rep” market itself. Viamedia appealed to the Seventh Circuit.

In its brief, WLF defends the refusal-to-deal legal standard. Under that standard, a plaintiff may proceed beyond the pleading stage only by showing that the defendant had *no* rational reason for doing what it did. This legal standard ensures that courts do not try to grapple with questions they are not equipped to answer—that is, complex questions about ambiguous business behavior. WLF also explains the benefits of “vertical integration”—Comcast’s effort to bundle interconnect and ad-rep services—and shows that these benefits have in fact been obtained.

Celebrating its 41st year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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