



FOR IMMEDIATE RELEASE

March 26, 2020

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

WLF Urges Seventh Circuit to Rehear Important Antitrust Refusal-to-Deal Case

(*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 rehear *en banc* an important antitrust refusal-to-deal case.

Although most television advertising time belongs to television networks, cable companies receive two or three minutes an hour. The cable companies sell most of this ad time in regional clearing houses called “interconnects.” Viamedia acts as a broker for advertisers seeking to buy the cable companies’ ad time. For about ten years, it had an agreement with Comcast that enabled it to access certain Comcast-run interconnects. When that agreement expired, however, the two firms failed to agree to new terms.

Viamedia sued Comcast, alleging, among other things, that it unlawfully refused to deal. The district court dismissed that claim. It 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, and a panel of the Seventh Circuit reversed.

WLF’s brief discusses two ways in which the panel went astray. First, the panel misapplied *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985). Properly understood, that decision enables a defendant to win dismissal of a refusal-to-deal claim by invoking a legitimate procompetitive reason for its conduct. Comcast did that here, citing the well-established procompetitive benefits of vertical integration. Second, the panel ignored *Schor v. Abbott Laboratories*, 457 F.3d 608 (7th Cir. 2006), which makes clear that Comcast had no reason to vertically integrate into a market as an anticompetitive predator, and every reason to step forth as a procompetitive low-cost producer.

Celebrating its 43rd 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.

###