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Many people have chimed in on the plans by Comcast, the nation's top cable and Internet provider, to merge with Time Warner Cable, the No. 2 cable operator and No. 3 ISP. Competition is the question at the heart of the matter, and consumers are not alone in asking it. Hollywood creatives fear a Comcast-TW Cable combo will lead to a cascade of consolidation. Content providers worry that the deal will give outsized leverage to a distributor.

FCC chairman Tom Wheeler, along with the Dept. of Justice tasked with reviewing the proposal, laments the lack of competition in the market for high-speed Internet service. Yet on Wall Street and among many in Hollywood, the consensus still seems to be that the combination will happen, that the recent history of media mergers points to approval with conditions that try to limit the scope of the combined company's reach. The sentiment is slightly less certain in Washington, where the battle is being played out in public and private. "If you were a betting person, I would guess that you would say that there is a good chance they will approve the merger with conditions," says former FCC commissioner Michael Copps, who was the sole vote against Comcast's merger with NBCUniversal in 2011. "But I would like to think that with the outpouring of comments on this and with the Open Internet order, that maybe there is more thinking that hey, 'Maybe this is far enough and time to say no.'"

The FCC's next deadline for comments on the merger is Sept. 23, when Comcast is expected to answer to dozens if not hundreds of critical comments from an array of groups and companies including Netflix, the Tennis Channel and Discovery Communications. Relatively few major media companies have chimed in publicly on the merger. Discovery executives met with FCC officials earlier this month, characterizing their worries as "critical issues." According to sources who have been contacted, the FCC and the Justice Dept. are reaching out to studio executives and other industry leaders to get their take on the merger in private, reflecting the concern that to air criticisms in public would risk future negotiations with Comcast.

Some media companies have inked carriage agreements that have seemingly turned their past criticism of the deal to tacit acceptance. In April, Univision CEO Randy Falco said that the merger was bad for competition. Earlier this month, Univision announced a long-term pact for Comcast to carry its Spanish-language sports network, and stayed silent when it

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Pittsburgh Post-Gazette
For state Sen. Jim Ferlo, hate crime bill is personal issue

Associated Press
Spending on state races' ads tops US Senate

came to filing official public comment to the FCC. Comcast feels it already has addressed many of the critical comments, with company exec VP David L. Cohen citing that "the number of video, broadband and phone providers in every local market in the country will remain the same post-transaction as today."

Nationally, Comcast says the combined entity still will have less than 30% of the pay-TV market and not quite 36% of the wired broadband market -- not enough to raise serious competitive concerns, it maintains. Yet privately, industry investors and studio executives express the fear that the merger marks a turning point that will tilt leverage clearly in Comcast's favor, with greater power to set pricing and carriage terms. With dominant positions in New York and Los Angeles, Comcast will hold the cards when it comes to reaching the viewers advertisers crave.

That prospect will force others to play the combination game. Lined up on the runway behind Comcast-TW Cable are AT&T and DirecTV, and the belief is that further consolidation on the distribution side will lead to mergers on the content side. A potential merger of 21st Century Fox with Time Warner never got off the ground, but that may be the shape of things to come for content players. "Although there has been a lot of activity in the media merger industry, we haven't seen much around the six major studios for some period of time, and (Comcast-TW Cable) has reignited that interest," says Lindsay Conner, co-chair of the entertainment and media practice at Manatt, Phelps & Phillips. "Whether or not it is ultimately approved, people's appetites have been whetted."

Will the government have the gumption to say no? Here are the scenarios:

- A "yes" to the merger: To satisfy the Dept. of Justice, Comcast will have to pass muster on issues of antitrust; to win approval from the FCC, it will have to prove the deal to be in the public interest. Comcast argues that the combined company's greater scale won't be so great as to give it unfair advantage, yet maintains that scale will be great enough to allow it to better roll out new technologies to its customers -- as it is doing with the interactive X1 operating platform. With Comcast's upgrades in technology, cable operators, satellite providers and startups like Google Fiber will have to respond with their own competitive investments. That's what makes the merger "pro-competitive," Comcast maintains. But to expect the DOJ and FCC would sign off on the deal as it stands now ignores the politics of the situation. From day one, scrutiny of the merger has focused on Comcast's ties in Washington, particularly to the Obama administration. Comcast is the No. 1 media company when it comes to lobbying spending and campaign contributions, according to the Center for Responsive Politics. A rubber-stamp approval would likely raise a furor.

- A "no" to the merger: An outright rejection of the deal would send shockwaves through the cable and telco industries (although it wouldn't necessarily spell doom for AT&T's proposed purchase of DirecTV). Wheeler and William Baer, chief of the DOJ's Antitrust Division, publicly frowned on the possibility of Sprint and T-Mobile merging, and the two wireless firms ultimately decided against it. In 2011, the FCC and the Antitrust Division blocked the proposed merger of AT&T and T-Mobile. Comcast correctly argues that unlike those examples, its merger with Time Warner Cable doesn't remove consumer choice from the table, putting the onus on federal officials to come up with a legal rationale to reject the deal. Helpfully, Netflix has provided one, citing the 14-year-old case of AT&T and MediaOne. Like Comcast and TW Cable, they were then the two largest cable companies that didn't directly compete in any market. Nevertheless, the combined company would have controlled almost 40% of Internet service. The Justice Dept. forced AT&T to sell off MediaOne's interest in broadband on the grounds that the company would have too much leverage over content trying to go through its pipes. If the government bases its decision on those grounds, it wouldn't necessarily put the brakes on consolidation, and the effect would be greater on TW Cable than on Comcast, according to Craig Moffett of research firm MoffettNathanson. "Comcast shares dropped when the (merger) was first announced,"

he says. "The market has warmed to it since then, but I still don't think it would have an outsized impact on Comcast shares."

- A "maybe" to the merger: At the same time the FCC is considering the Comcast-TW Cable merger, it is jumping back into the minefield of net neutrality, the rules of the road for the Internet that, in essence, force ISPs to treat all traffic equally. According to the staunchest adherents of net neutrality, the rules are what keep the Internet from devolving into the tiered system of cable TV. The challenge the FCC faces is devising rules that can prevent the cable-ization of the Internet, yet survive a legal challenge. Advocates urge Wheeler that the only way to do so is to reclassify the Internet as a utility; the broadband industry sees such an approach as regulatory overreach.

Instead of relying on a set of controversial rules, the merger could allow Wheeler to instead make them a condition of the Comcast-TW Cable deal, at least for a time, and perhaps long enough for market realities to change. Comcast already has to abide by the previous net neutrality rules through 2018 as a condition of its merger with NBCUniversal, and it says it will offer those conditions to TW Cable customers. Wheeler and the FCC could extend such demands beyond 2018, or even address other simmering issues the FCC faces. Netflix is urging the FCC to do something about the fees Comcast and Verizon are charging to connect video traffic to their networks. Consumer groups fear Comcast eventually will impose widespread usage-based pricing and data caps on consumers, as are common in the mobile world, stifling the growth of video online.

The onus also will be on the FCC and DOJ to establish conditions that prohibit Comcast from withholding NBCUniversal content from other distributors, or from preventing competing channels from landing valuable placement on its cable systems. And more than likely, there will be some scrutiny of how Comcast treats regional sports networks. Wheeler already has stepped into the fray over TW Cable's impasse in Los Angeles with other distributors over pricing of its Dodgers baseball channel -- an impasse that has left most consumers in the market unable to watch games. The problem with conditions is that they can be difficult to enforce; the advantage is that they allow the government to walk away with claims of victory. One thing is certain, with the fate of a deal that has far-reaching consequences in the balance, nothing seems to get in the cross-hairs of both parties in Congress more than screwing with a winning hometown sports team. – ***Variety***

There is a whodunit dominating television as the fall season gets under way. Call it the Case of the Missing Viewer.

The amount of time that people are spending watching shows across various screens is increasing, according to Nielsen Holdings NV, yet the television ratings that programmers get paid for are sinking. In fact, prime-time ratings in the coveted demographic of adults 18 to 49 years old were down so sharply in August from the previous year—5% in broadcast and nearly 10% in cable—that MoffettNathanson analyst Michael Nathanson suggested the Nielsen measurement model might be broken.

On Monday, Nielsen will launch a long-awaited fix that promises to measure viewing on mobile devices for the first time in a way that will show up in TV networks' ratings. Programmers had been calling for such a change for years, in hopes that accounting for viewing of their shows on smartphones and tablets might reveal that the ratings declines plaguing the industry aren't as bad as they seem. But Nielsen's new mobile measurement capability is unlikely to move the ratings needle much for the broadcast season that kicks off this week. That is because, despite being announced to great fanfare a year ago with plans to take effect this fall, many TV networks and cable and satellite companies—including the biggest one, Comcast Corp. —haven't yet signed on. "While a year ago I'd have said there would be a big bang and we'd see the ratings increase straight away, what we will see now is various stages and a slow increase in those ratings," said Megan Clarken, global digital product leader of Nielsen.

One reason for the slower ramp-up is that TV programmers are still trying to figure out whether they really want to lump online and mobile device viewing into the same big ratings number they use to measure viewing on a TV set. The traditional TV rating used as currency in the roughly $70 billion U.S. TV ad market, known as "C3," counts viewership of commercials in the first three days after a show airs. For mobile viewing to count toward this number, networks have to make ads show on tablets and smartphones the same exact ones as those running on TV. Some networks prefer to run a different set of ads online, either to make commercials more targeted to their audience or to reduce the overall number of spots. Online ads typically reach younger viewers and are harder to skip than traditional television ads. "In terms of money per viewer, you are getting more for online streaming," said David Poltrack, chief research officer for CBS Corp. "So there is no incentive to try to capture that audience in the basic television audience by offering it to the advertisers who are buying your television product."

Most television programmers plan to sign up for the service by the end of the year, but are still evaluating whether they want the mobile viewing that Nielsen captures to count as online or traditional viewing. Another reason for the slow rollout is that Nielsen needs the cooperation of cable and satellite-TV providers to measure viewership on mobile apps. Some of these companies haven't yet signed on to install Nielsen's software in their apps, including Comcast. The cable giant's buy-in is important, not only because it is the biggest pay-TV distributor in the country, but also because it has one of the most robust streaming apps of the cable operators. "We are in stages of conversation with them at the moment," Ms. Clarken said of Comcast.

Comcast is waiting to see which programmers sign on to the product before it signs on, but expects to be signed on before the end of the year, according to a person familiar with the matter. It is working out terms, including how the data will be handled, the person said. It will likely be next year before mobile TV viewing is measured in a significant way, industry executives said, and it is impossible to predict how much lift, if any, it will give traditional TV ratings. "It's going to be an indicator, but it's not going to be a complete rating," said Alan Wurtzel, president of research for NBC. "For now, I don't think anybody is going to be transacting on it, because it's just too soon."

Still, he called Nielsen's new product a "critical" step toward measuring viewing that has been going unmeasured as far as the main television ratings currency is concerned. For NBC's hit show "The Blacklist," for example, 17% of viewing happens outside the sphere Nielsen measures—on smartphones, tablets, computers, streaming set-top boxes or through video-on-demand services more than seven days after air date. For the younger-skewing, niche show "Parks and Recreation," that number was 37%, he said. "That's a big number," Mr. Wurtzel said. "And it's only going to increase, because every year, use of these devices increases." – ***Wall Street Journal***

Starz has retained an investment banking firm to shop the pay-television company, people with knowledge of the matter said. On Tuesday, Starz met with 21st Century Fox to see if the entertainment company was interested in striking a deal. A person familiar with 21st Century Fox's thinking described the meeting as a courtesy and said there was no interest in buying or investing in Starz. A Starz spokeswoman said the company doesn't comment on rumors and speculation. News of the meeting was first reported by the Los Angeles Times. (Until last year, 21st Century Fox was part of the same company as News Corp, owner of The Wall Street Journal and Dow Jones Newswires.) A competitor to Time Warner Inc.'s HBO and CBS Corp.'s Showtime, Starz has struggled to create strong original programming and is also losing access to theatrical movies from Walt Disney Co. starting in 2017. Until 2013, Starz was a unit of cable mogul John Malone's Liberty Media Corp. Starz has been seen as a potential takeover target since it went public. Its stock closed at $29.58 Tuesday and it has a market capitalization of $3.13 billion. Starz is in about 22 million homes and Encore, a sister channel, is in 35 million homes. The boutique investment bank LionTree Advisors LLC has been retained by Starz, a person familiar with

the matter said. LionTree wasn't immediately available to comment. – ***Wall Street Journal***

The Pennsylvania Republican Party is attacking Democratic gubernatorial candidate Tom Wolf over his support for abortion rights and picturing him on a flier with Philadelphia abortion doctor Kermit Gosnell, who is serving life in prison for killing babies born alive. GOP spokeswoman Megan Sweeney would not say Tuesday where the fliers were mailed or how many were sent. A picture of Wolf's face appears above a photo of Gosnell's face on the flier. Gosnell was convicted last year of three counts of murder. Gov. Corbett, a Republican, opposes abortion rights and signed legislation in 2011 that imposed tougher building-safety and staffing standards on abortion clinics. A Wolf campaign spokeswoman accused Corbett of mounting baseless attacks to mislead voters. "This type of politics has no place in Pennsylvania," said Beth Melena. The flier features the images along with a photo of the former doctor's clinic and the words *house of horrors*. Prosecutors estimated that Gosnell ended hundreds of pregnancies by inducing the live births of viable babies and cutting their spinal cords with scissors. – ***philly.com***

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