Choosing

WASHINGTON — By Comcast's reckoning, its deal for Time Warner Cable should pass muster in the nation's capital.

No harm, no foul, and plenty of consumer upside. It's a horizontal merger, the kind that would tend to have fewer problems in a straight antitrust review than a vertical combination, and Comcast already got one of those approved in its 2010 acquisition of NBCUniversal. Comcast and TWC executives point out that the deal will not reduce choice for a single subscriber, but will instead give the company the scale to deal with national competitors such as satellite-TV operators and over-the-top providers.

But a combined MSO will have 30 million subs and the yeoman's share of ISP customers. The Federal Communications Commission has public-interest review responsibilities that go beyond a straight-up competition call. And with broadcast mergers, chairman Tom Wheeler has signaled that not being illegal is not the same thing as being in the public interest, and that not harming or reducing competition is not the same as proactively promoting it.

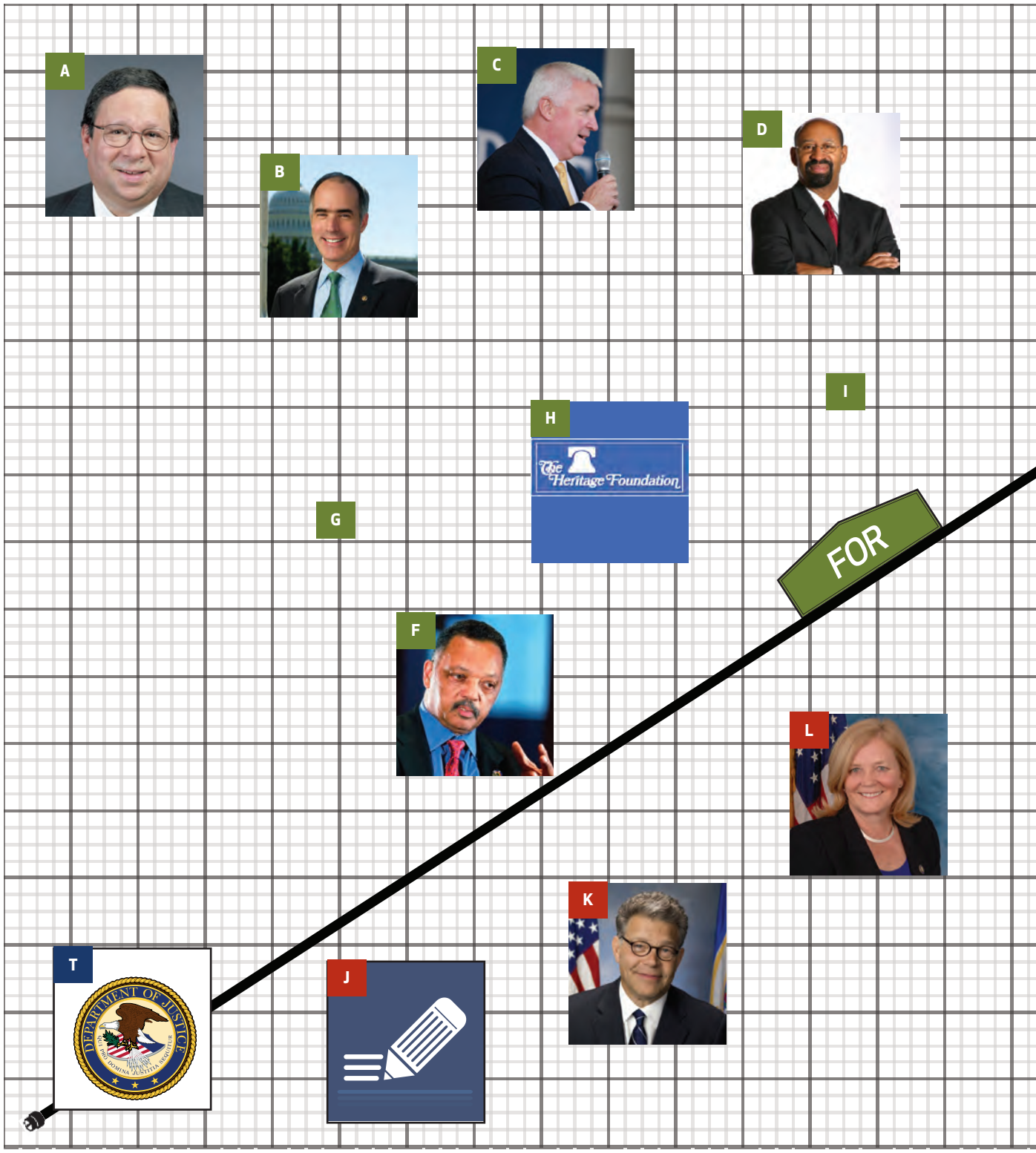
It's no slam dunk, and the broadband heavy-up could be a game changer.

If the deal is ultimately approved, will there be enough conditions to ensure fair play — or, as Wall Street worries, too many that hamper profitability?

Approving the Comcast-TWC deal would give the FCC an opportunity to renew the conditions on Comcast's acquisition of NBCUniversal and extend them to TWC, the second-largest U.S. cable operator. (Comcast is No. 1). One big result of that would be network-neutrality conditions on an ISP serving more than one-third of all wired Internet subs, not matter the outcome of the FCC's net neutrality do-over.

Comcast last week officially submitted the deal to the FCC, including its public interest fi ling of all its proposed, self-imposed conditions. There will be more proposed conditions, and more fans and foes lining up in the FCC docket as the regulator and the Justice Department undertake what is expected to about a year-long review, with some input from legislators via hearings in the House and Senate Commerce and Judiciary Committees. Once folks "show themselves" in that docket as friends or foes, that is what legally matters in terms of the opinions, and evidence, that will become part of the record for the FCC to consider.

Above is a graphical look at some of the players already lining up on both sides, as well as those who may be working behind the scenes.



FOR

A. David Cohen, Comcast EVP: This skilled lobbyist is leading the charge through the gauntlet that is the FCC and DOJ. His primary objective: to get the deal done and match his success with the NBCU meld. Comcast has said the deal is a slam dunk for consumers and represents no competitive harms.

B. Sen. Bob Casey (D-Pa.): "This has the potential to create additional jobs in [Pennsylvania] and further strengthen Pennsylvania's standing as a global-leader in media, technology and innovation."

C. Gov. Tom Corbett (R-Pa): He called the deal "testament to the quality and pro-consumer focus the Comcast brand has delivered." Happy about new jobs.

D. Philadelphia Mayor Michael Nutter: The Democrat called it the "ultimate triple play — great for consumers, great for the company and great for our city," Comcast's hometown. Enough said.

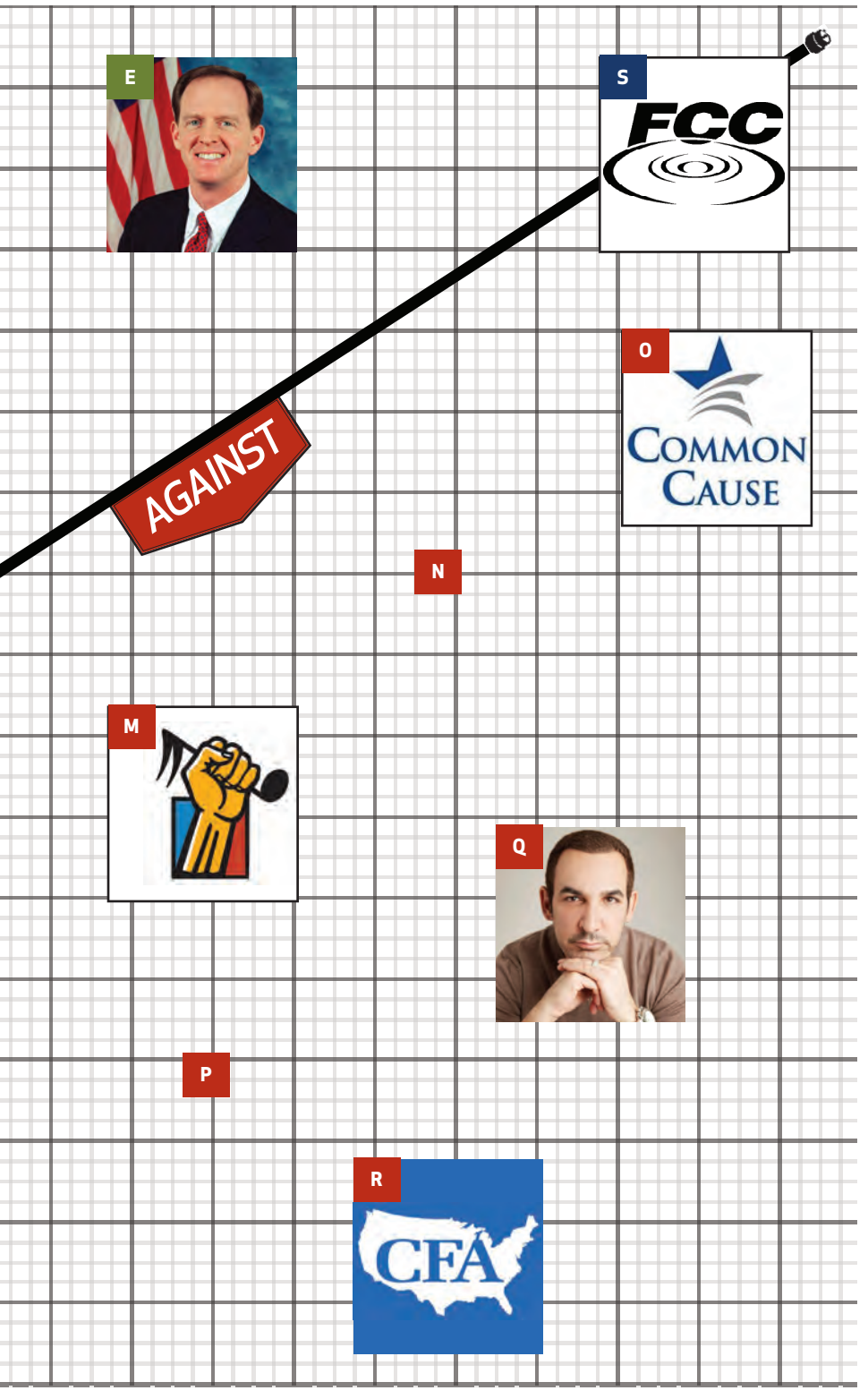
E. Sen. Pat Toomey (R-Pa.): Has said the deal is "good for the world-class workers in Philadelphia and Comcast customers around the state."

F. Rev. Jesse Jackson Sr., Rainbow PUSH: "A deal of this size could generate tremendous value for the economy and citizens seeking a pathway towards eco-

SIDES

WHO'S LINING UP FOR AND AGAINST THE COMCAST-TWC DEAL

BY JOHN EGGERTON



nomic recovery," Jackson has said of the deal, according to Comcast. But he will almost certainly be looking for conditions.

G. Javier Palomarez, president, U.S. Hispanic Chamber of Commerce: The group is "pleased to endorse transactions that increase the quality of services for consumers, businesses and shareholders, while preserving the company's commitment to diversity and inclusion."

H. James Gattuso, senior research fellow, Heritage Foundation: The conservative think tank said the deal "is a sign that competition in the marketplace is growing and a signal to all to up their games."

I. Tom Giovanetti, president, Institute for Policy Innovation, a pro-growth, limited government think tank: "There are no competitive grounds to oppose the Comcast/TWC merger; again, they don't compete with each other now."

AGAINST

(This group includes 50 or so organizations who collectively asked FCC chairman Tom Wheeler to block the merger last week)

J. Writers Guild of America East: "Americans increasingly get all of their information and entertainment from a unified system of cables and cords which are controlled by a relative handful of gatekeepers," the WGAE has told the FCC. Writers don't want a smaller market for their work, and unions fear job losses from economies of scale.

K. Sen. Al Franken (D-Minn.): The NBCU deal critic opposes media consolidation in general, but has said the Comcast/TWC deal is a threat to the balance of power on the Internet, with higher prices and less choice. Franken will be the loudest Hill voice in opposition, but Congress doesn't get a vote.

L. Rep. Chellie Pingree (D-Maine): The former head of Common Cause, a political nonprofit, is using her campaign website and credomobilize.com to drum up opposition.

M. Future of Music Coalition: Musicians said the merger will sound a "bum note," potentially "disadvantaging competition or locking creators into unfair economic structures."

N. Parents Television Council: The group said it will "vehemently" oppose the merger unless the combined company offers a la carte channels to let families opt out of rigid content packages.

O. Common Cause: Michael Copps, former FCC commissioner and special adviser to Common Cause's Media and Democracy Initiative, has said merger ought to be "DOA at the FCC. The proposed deal runs roughshod over competition and consumer choice and is an affront to the public interest."

P. Public Knowledge: "Public Knowledge will fight to stop this merger," the group said in an email. But the upside is that the group is using its opposition to try and raise money. "Please consider making a contribution to help us continue to fight the good fight."

Q. Alki David: founder of FilmOn, an online video business competing with cable, has called the deal "a hostile takeover of the Internet, and ultimately a takeover of our freedom of expression. This is the honest to God arrival of Big Brother."

R. Consumer Federation of America: The CFA has said the deal will deliver a "death blow" to emerging online video competition.

REFEREES

S. FCC: The agency, headed by former cable-TV lobbyist Wheeler, could decide the resulting company has too much market power, or could apply conditions to achieve its regulatory aims of video access and increased broadband availability.

T. Justice Department: The DOJ is looking strictly at antitrust/market-power issues. One key is whether the combination of two major ISPs is a "game changer" in that market. Another key will be what DOJ considers the relevant competitive market.

UNDECIDED

- **Rep. Hank Johnson (D-Ga.):** "I encourage Comcast to maintain its commitment to the success of minorities and society through fast and affordable broadband services as part of the proposed merger." He wants to insure continued diversity initiatives, something Comcast has pledged to do.

- **Satellite-TV companies:** DirecTV and Dish Network have not weighed in pro or con, but clearly have concerns. The only upside of deal approval would be if it signaled a better chance for a DirecTV/Dish Network meld.

- **Cable operators:** A combined Comcast/TWC could be a trend-setter in terms of set-top standards or programming prices. That's a concern for other, not-so-big MSOs.

- **Programmers:** Smaller independents may come out publicly against the deal, but larger content companies will express concerns to the government about the combined company's control of 30% of eyeballs.

- **Silicon Valley:** Some here will be pointing to the combined 40% of the ISP market the combined companies will represent, perhaps even more if only high-speed is the relevant measure.

- **Telephone Companies:** Phone companies will face a growing wireless competitor in a Comcast/TWC with expanding WiFi hot spots.