PROPOSED MERGER OF AT&T AND DIRECTV

HEARING

BEFORE THE

SUBCOMMITTEE ON
REGULATORY REFORM,
COMMERCIAL AND ANTITRUST LAW

OF THE

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JUNE 24, 2014

PROPOSED MERGER OF AT&T AND DIRECTV

TUESDAY, JUNE 24, 2014

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON REGULATORY REFORM,
COMMERCIAL AND ANTITRUST LAW
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:31 a.m., in room 2141, Rayburn Office Building, the Honorable Spencer Bachus (Chairman of the Subcommittee) presiding.

Present: Representatives Bachus, Goodlatte, Farenthold, Issa, Holding, Collins, Smith of Missouri, Johnson, Conyers, Garcia, Jeffries, and Cicilline.

Staff present: (Majority) Anthony Grossi, Counsel; Austin Carson, Legislative Assistant to Mr. Farenthold; Jon Nabavi, Legislative Director to Mr. Holding; Jennifer Lackey, Legislative Director to Mr. Collins; Justin Sok, Legislative Assistant to Mr. Smith of Missouri; Ashley Lewis, Clerk; (Minority) James Park, Counsel; Slade Bond, Counsel; and Rosalind Jackson, Professional Staff.

Mr. BACHUS. Good morning. The Subcommittee on Regulatory Reform, Commercial and Antitrust Law hearing will come to order.

Without objection, the Chair is authorized to declare a recess of the Committee at any time.

I recognize myself for my opening statement.

We are here today to examine the proposed merger between AT&T and DIRECTV. As I reminded our witnesses during the recent Comcast/Time Warner merger hearing, today's proceeding will not determine whether the proposed merger will be approved. Rather, this hearing provides an open forum to discuss the potential implications of the merger and allow publicly elected representatives an opportunity to pose questions to the leaders of the respective companies and hear a variety of viewpoints on the proposed transaction. The record created by today's hearing will assist the Committee in its ongoing oversight of the antitrust enforcement agencies and our Nation's antitrust laws.

The proposed merger of AT&T and DIRECTV comes at a time when the structure of the telecommunications industry could be or is undergoing a rapid transformation in a relatively short period. The proposed merger between Comcast and Time Warner has already been announced, of course, and there have been reports of other potential mergers and acquisitions. The business of telecommunications increasingly requires significant investment to construct and update essential infrastructure and to provide innovative products and services to consumers. Merged companies may be able to achieve economies of scale and have better ability to access the large amounts of capital needed to build out systems.

However, consolidation in an industry also raises issues of market power and the possibility for abuse of a firm's dominant competitive position. These are all issues that are appropriate for consideration in a hearing like this.

For the most part, the companies before us today engage in very different businesses. AT&T is primarily a provider of voice and Internet services, while DIRECTV is almost exclusively a video service provider. AT&T recently has begun offering a video service referred to as U-verse, which is a competitor to DIRECTV in certain parts of the country. In addition to its video service, DIRECTV owns and manages a few regional sports networks in the Pittsburgh, Denver, and Seattle areas.

Today's hearing will examine, among other things, how the proposed merger may impact the future of U-verse and its ability to provide video and Internet services to consumers following the proposed merger and the potential for vertical integration issues related to DIRECTV's ownership of certain sports networks.

AT&T and Direct have submitted a public interest statement to the Federal Communications Commission arguing that this merger will allow the combined company to offer a bundled product that would enhance consumer choice by increasing competition in the market for bundled products and services. In addition, they contend that the cost savings resulting from the merger would allow additional resources to be deployed to expanding broadband access particularly in rural communities.

Again, we have the chairman and CEO of both AT&T and DIRECTV with us today to answer any questions arising from the public interest filing.

With that, I look forward to the testimony of our panel of esteemed witnesses on these and other issues related to the proposed merger.

I now turn my Ranking Member, Mr. Johnson, for his opening statement.

Mr. JOHNSON. Thank you, Mr. Chairman.

Today's hearing concerns the proposed merger of AT&T, a global telecommunications company with approximately 11 million broadband subscribers, 5.6 million video subscribers, and 246,700 employees, with DIRECTV the Nation's second largest video provider serving approximately 50 million customers.

The core question at the heart of this merger is whether creating an integrated bundle of AT&T's broadband services and infrastructure with DIRECTV's popular video programming would serve the public interest without substantially lessening competition.

According to a survey conducted by Consumer Reports last year, consumers are overwhelmingly one-stop shoppers who prefer to bundle phone, video, and broadband Internet into one package. Not only does bundling multiple services often save many consumers money at a time of increasing cable costs, but it also avoids the problems associated with multiple installation visits, service calls, and phone calls to resolve disputes.

As a new entrant in the video marketplace with only 5.6 million subscribers, there is little to suggest AT&T offers serious direct competition with DIRECTV's video services. Instead, the bulk of the evidence demonstrates that each company primarily serves different markets with different services.

Although the proposed merger represents a concerning trend toward industry consolidation, there is ample evidence that this transaction would create considerable public interest benefits. AT&T argues that the improved bundle and cost savings generated by the merger will, quote, fundamentally and permanently improve the economics of AT&T's investment in broadband. End quote.

Specifically, AT&T plans to deploy its fiber network to 2 million homes with speeds up to 1 gigabyte per second and deploy high-speed broadband Internet over a fixed wireless local loop to 13 million homes in largely rural areas with average speeds between 15 and 20 megabits per second. For millions of homes, this Internet service will be the fastest ever improving high-speed access for millions while indirectly benefiting other competitors by bringing these homes online.

As a strong advocate of digital inclusion, I commend this commitment to close the digital divide by bringing us measurably closer to the universal adoption of affordable high-speed Internet. It is critical that people of color remain competitive in the Internet economy which starts with a fast and affordable Internet connection.

Additionally, this merger would benefit the public by expanding AT&T's industry-leading standards for labor and corporate diversity to DIRECTV's employees and suppliers. Given the television industry's infamous reputation for opposing organized labor, this merger would have transformational benefit for thousands of employees in this industry, giving labor a strong foothold in the industry.

I urge the Federal Communications Commission and the Department of Justice to view this merger in light of these public benefits and to strongly hold the merged company to these commitments.

Lastly, as it eyes more than several dozen cities for deployment of its ultra-fast fiber network, I call on AT&T to deploy this advanced service in Atlanta, Georgia, which encompasses much of the district that I represent. Atlanta is swiftly becoming an innovation economy driven to create tinker and improve products and design. Deploying an all-fiber network in Atlanta would benefit many existing local startups, as well as untold entrepreneurs, app developers, and other innovators still emerging. As a former county commissioner who understands the power of big ideas, I stand ready to work with both AT&T and local government to make this happen.

I thank the Chair for holding this important oversight hearing, and I look forward to today's testimony.

And with that, I will yield back.

Mr. BACHUS. Thank you very much, Mr. Johnson.

At this time, I recognize the Chairman of the full Committee, Mr. Goodlatte of Virginia.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Robert Bork famously said the only legitimate goal of antitrust is the maximization of consumer welfare.

Depending on the actions of the antitrust enforcement agencies and the Federal Communications Commission, the telecommunications industry may experience significant change over the next year. As the Committee and the relevant government agencies examine the potential issues associated with the multiple proposed telecommunications mergers, we should be mindful that assuring the best interests of consumers is the ultimate goal. It has been demonstrated repeatedly that a free and competitive marketplace yields lower prices, greater innovation, increased investment, and better services. We should strive to ensure that proposed transactions result in enhanced competitive marketplaces so that the attendant benefits continue to run to consumers.

Today's hearing allows a public forum to discuss the potential competitive impact of the proposed merger between AT&T and DIRECTV. The leaders of both companies are before us today to explain how the proposed transaction will increase competition for the benefit of consumers. We also have witnesses who will raise potential concerns about the merger. Through a fair and objective inquiry by the Committee, a record will be produced that will provide an important measure of transparency and thoughtfulness to the review of this proposed merger.

I look forward to hearing from today's witnesses regarding their views on the proposed merger of AT&T and DIRECTV.

Thank you, Mr. Chairman. I yield back.

Mr. BACHUS. And I thank you.

At this time, I recognize the Ranking Member and former Chairman of our Committee, the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Top of the morning, Mr. Chairman and my colleagues and our witnesses and our visitors that are here covering this potential transaction.

Now, last month in May, we had a hearing that covered Time Warner and Comcast, and now this month, we are looking at DIRECTV and AT&T. And maybe even next month, depending on what happens in the intervening time, we may be looking at Sprint and T-Mobile. Question: where does this end?

I am looking at a transaction that highlights the concern that there may be too much and too rapid a consolidation in telecommunications, especially when viewed in the light of a flurry of deals either announced or rumored.

One rationale in favor of the merger is that it would create a strong competitor to large cable companies, may in fact spur further consolidation in the telecommunications industry as part of what might be viewed as a race to the bottom.

The merger proposed may result in reduced competition for paid television services in many of our Nation's largest markets. The sheer size of a combined AT&T/DIRECTV entity could raise content prices for smaller video providers potentially driving some of them maybe out of business.

And finally, there is a need to focus on whether behavioral remedies are in practice affected.

So while neither we nor the competition enforcement agencies should prejudge this deal, there are several concerns that the witnesses to address, as well as the feelings that I have already expressed. That is the fact that we are concerned that there may be too much and too rapid consolidation in the telecommunications industry, and while I fully appreciate the goal of antitrust law is to protect competition and not competitors per se, this ongoing wave of consolidation will, without question, result in fewer firms and may harm consumers by limiting choices and also raising prices. After all, it is the very threat of losing business in the face of high prices or low quality products and services that drive competitive business practices.

Now, one rationale in favor of the merger is that it would create a stronger competitor to large cable companies. Now, that may, in fact, spur further consolidation in the telecommunications industry. I do not doubt that the merged entity that is under consideration could be large enough to effectively compete against large cable companies, but what is to stop competitors from using the same argument to justify even further consolidation?

So I will be looking and listening to make sure that we are not moving in the wrong direction. And I wanted to put my feelings out in front of you so that any of you can feel free to give me any consolation that you want about the concerns that I have.

And I will put the rest of my statement in the record and thank the Chairman.

[The prepared statement of Mr. Conyers follows:]

Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary

Today, we consider the proposed merger of AT&T, the Nation's second-largest seller of high-speed Internet and wireless telephone services, with DirecTV, the Nation's second-largest paid television provider.

While neither we nor the competition enforcement agencies should pre-judge this deal, there are several concerns that I want the witnesses to address today.

To begin with, this transaction raises the concern that there may be *too* much and *too* rapid consolidation in the telecommunications industry, especially when viewed in the light of other recently announced or rumored deals.

I fear that the trend toward greater consolidation in this industry may ultimately benefit large corporations and their shareholders at the expense of consumers.

While I fully appreciate that the goal of antitrust law is to protect competition and not competitors *per se,* this ongoing wave of consolidation will, without question, result in fewer firms and may harm consumers by limiting choices and raising prices.

After all, it is the very threat of losing business in the face of high prices or low quality products and services that drives competitive business practices.

The preeminent purpose of antitrust law is to protect consumers by ensuring that no one firm achieves market power such that it no longer risks losing business because it can force consumers to pay higher prices or accept lower quality goods and services in the absence of a competitive marketplace.

I hope that the Justice Department and the Federal Communications Commission will carefully consider the overall impact of industry consolidation as they review the merits of this particular transaction.

One rationale in favor of the merger—that it would create a stronger competitor to large cable companies—may, in fact, spur further consolidation in the telecommunications industry.

I do not doubt that the merged AT&T-DirecTV entity could be large enough to effectively compete against large cable companies, but what is to stop competitors from using the same argument to justify further consolidation?

After all, cable companies could point to the merged AT&T-DirecTV to justify further consolidation among themselves, which, in turn, could justify further consolidation by competitors to cable companies.

As a result, we could have a "race to the bottom" whereby large companies seek more and more mergers and acquisitions in response to mergers and acquisitions by other companies, ultimately leaving fewer choices for all consumers.

Turning to the specifics of the proposed transaction, I am concerned about the loss of a competitor for paid television services in many of the largest markets.

As a national satellite-television provider, DirecTV is a competitor to AT&T's U-Verse video service in the 22 states where U-Verse is offered.

And, U-Verse currently competes with DirecTV in 10 of the 20 largest metropolitan markets for paid television.

The loss of a paid television competitor in those markets where AT&T and DirecTV directly compete with each other would reduce consumer choice and could have the potential to raise prices.

Although AT&T has committed to continuing to offer DirecTV as a standalone option for three years after the acquisition, there are no guarantees that consumers will continue to have a such an option after that time.

The burden remains on AT&T to show that this merger will not harm consumers.

We should also consider whether smaller video providers, in the aftermath of the sheer size of a combined AT&T-DirecTV, could face increased content prices, potentially driving some of them out of business.

In addition to being a video distributor, DirecTV is a video programmer that owns three regional sports networks and has interests in some national networks.

Small competing video distributors fear that the size of a combined AT&T-DirecTV—as both a seller and a buyer of programming—could harm smaller competitors in two ways.

First, a vertically integrated AT&T-DirecTV could discriminate against rival distributors by withholding or charging higher prices for its own programming.

Second, such a combined entity would be a large enough distributor to command discounts from other programmers, potentially forcing smaller distributors to pay higher prices for content to make up the difference.

Finally, we must consider whether imposing behavioral remedies would, in practice, be effective.

As a condition for approval of the Comcast-NBC Universal transaction, the FCC and the Justice Department required Comcast-NBCU to take affirmative steps to foster competition—including voluntary compliance with net neutrality protections—as well as steps to benefit the public interest.

AT&T has indicated that it will voluntarily commit to similar types of commitments to its proposed acquisition of DirecTV.

Some observers, however, are concerned that the behavioral remedies imposed in the Comcast-NBC transaction were ineffective and difficult to enforce.

Accordingly, we should consider whether such commitments should be strengthened and made more enforceable to better protect the public interest in this case.

I look forward to having a fruitful discussion of these issues so that all stakeholders, particularly consumers and the enforcement agencies, are better informed about this significant transaction.

Mr. BACHUS. I thank you, Mr. Conyers.

At this time, I would like to introduce our witnesses. We have a very esteemed and qualified panel of witnesses. We start by introducing Mr. Mike White, who is President, Chairman, and CEO—that pretty much covers everything, does it not—of DIRECTV, one of the world's leading providers of digital television entertainment services with more than 20 million customers in the United States and more than 15 million customers in Latin America. I am not sure that we realized that there are that many customers also in Latin America. Mr. White joined DIRECTV in January 2010 and also serves as the chairman of the company's board of directors. In addition to his position at DIRECTV, Mr. White also serves on Whirlpool Corporation's board of directors.

Before joining DIRECTV, Mr. White was the CEO and vice chairman of PepsiCo International from 2003 to 2009. Prior to that role, Mr. White served as president and CEO of Frito-Lay's Europe, Africa, and Middle East Division. And that was part of Pepsi at the time. Did they spin it out at some point? They did? He also served as CEO of Snack Ventures Europe, PepsiCo's partnership with General Mills International.

Before joining PepsiCo, Mr. White was the senior vice president and general manager for Avon Products. He also has worked as a management consultant for Bain and Company and Arthur Andersen and Company. Mr. White holds a masters degree in international relations from Johns Hopkins University and a bachelors degree from Boston College.

We also have Mr. Lieberman who is a graduate of Johns Hopkins.

Mr. White is also a Ford Foundation fellow at Leningrad State University in St. Petersburg, Russia.

And I say to Mr. White on a personal nature, many of my constituents are very loyal customers of Direct.

Our next witness is—we are glad to have you—Mr. Randall Stephenson is Chairman and CEO and President of AT&T. Mr. Stephenson—well, let me say this. AT&T is one of the world's largest telecommunications companies with nearly $129 billion in revenues last year. I note that over the past 6 years, AT&T has invested more capital into the United States' economy than any other public company and more than $140 billion invested in spectrum and wireless operations combined. That is a record to be proud of. I commend you for that.

Prior to becoming CEO, he served as AT&T's Senior Executive Vice President and Chief Financial Officer from 2001 to 2004 and then as the company's Chief Operating Officer from 2004 to 2007. Mr. Stephenson was appointed to AT&T's board of directors in 2005.

He began his long career in telecommunications in 1982 with Southwestern Bell Telephone in Oklahoma. In addition to his leadership of AT&T, Mr. Stephenson is chairman of the Business Roundtable, an association of chief executive officers of leading U.S. companies. He is also a member of the board of directors of Emerson Electric, a member of the PGA Tour Policy Board, and national executive board member of the Boy Scouts of America.

He received his B.S. in accounting from the University of Central Oklahoma and his masters of accountancy from the University of Oklahoma.

We welcome you. I think from that record, you are obviously plugged into rural consumers too with your background being in Oklahoma.

Mr. John Bergmayer, we welcome you. He is Senior Staff Attorney at Public Knowledge, specializing in telecommunications, the Internet, and intellectual property issues. He advocates for public interest before courts and policymakers and works to make sure that all stakeholders, including ordinary citizens, artists, and innovators, have a say in shaping emerging digital policies.

Mr. Bergmayer received his B.A. in English lit from Colorado State University and his J.D. from the University of Colorado Law School where he was elected to the Order of Coif.

Our final witness is Mr. Ross Lieberman. Mr. Ross Lieberman is the Senior Vice President of Governmental Affairs of the American Cable Association, which represents 850 independent cable, broadband, and phone operators serving smaller markets in rural areas. He manages the formulation and implementation of the group's strategic initiatives on Capitol Hill and at Federal agencies, including the FCC.

Prior to joining the American Cable Association, Mr. Lieberman handled government relations for EchoStar Communications Corporation where he, among other things, oversaw EchoStar's filings with the FCC for the 2004 Satellite Home Viewer Extension and Reauthorization Act.

He received his B.A. in political science from Johns Hopkins University and his J.D. from American University, Washington College of Law.

We welcome you, Mr. Lieberman.

Each of the witnesses' written statements will be entered into the record in their entirety.

At this time, we will ask each of our witnesses to summarize his testimony in 5 minutes or less. With that, now we proceed to hear from our witnesses. Mr. White, you go first. We will go from my left to right.

TESTIMONY OF MICHAEL WHITE, PRESIDENT, CHAIRMAN AND CEO, DIRECTV

Mr. WHITE. Good morning. Thank you, Chairman Bachus, Ranking Member Johnson, and Members of the Subcommittee.

My name is Mike White, and I am CEO of DIRECTV. Thank you for inviting me to testify on AT&T's proposed acquisition of DIRECTV.

For any business to succeed in the long term, it must satisfy its customers' needs better than the competition day in and day out. This transaction will help DIRECTV and AT&T do exactly that. By combining complementary assets and products, we will be able to offer new services to customers at a better value. We will help consumers watch the video they want when they want it where they want it and on the devices of their choice. And we will be well positioned to compete long into the future.

I would like to briefly describe DIRECTV's perspective on the transaction.

Historically DIRECTV is a remarkable American success story. We have competed aggressively by delivering more high definition channels, a clearer picture, more advanced equipment, and better customer service than cable. And Congress has also had a lot to do with our success, making sure, particularly in the early years, that we could acquire the programming our subscribers demanded.

In recent years, however, broadband is changing everything. If we want to continue to compete effectively in today's Internet-driven economy, we too must adapt.

First, we must provide an integrated bundle of services because consumers are increasingly demanding better bundles of both video and broadband. And in fact, broadband is now the more important element of the two for many.

Second, as we think about the future, we must serve those customers who want over-the-top video offerings. Young subscribers, in particular, want services like YouTube, Netflix, and Hulu, and we need a broadband platform if we are to meet their need.

And third, as technology changes, we must continue to optimize our own video service. Cable's two-way infrastructure lets it offer features such as remote DVR's, video-on-demand programming stored in the cloud, and so on. And soon cable will offer cloud-based features such as lookback. In fact, cable operators are increasingly leveraging the cloud to improve their service more quickly and easily. We too will need to do all of that if we want to keep up and continue to compete successfully.

And fourth and finally, we will have to continue to effectively manage content cost increases. Now, rising content costs challenge all video providers. Yet, bundled competitors can handle this somewhat better because they earn revenue from multiple sources.

Historically, DIRECTV has attempted to remain competitive by offering what we call synthetic bundles in which the video and the broadband are provided by separate companies but marketed together. Synthetic bundles, however, make frankly for a bad customer experience. I hear it from our customers all the time. Customers have to talk to two sales representatives, wait for two different installers to arrive on two different appointments, pay two separate bills, and make two calls every time they have a problem.

Synthetic bundles also tend to be more expensive for consumers because each company naturally seeks its own margin on its contribution to the bundled service.

This transaction will help us meet all of those challenges head on. It combines DIRECTV's premier video assets with AT&T's unique broadband and wireless assets. It will mean better bundles, more Internet, particularly in rural areas. It means better video. It means lower content costs because of the additional value we can offer programmers, and it means more and better broadband to 15 million new locations predominantly in rural areas. And it will mean more innovation particularly combining our expertise in video with AT&T's expertise and capabilities in wireless.

If you put it all together, you get a transaction that lets us better serve our customers, unlocks incremental job growth opportunities, and sustains our long-term competitiveness, a transaction, in other words, that opens up a new world of possibilities for DIRECTV subscribers.

Thank you for inviting me to speak today, and I very much look forward to your questions.

[The prepared statement of Mr. White follows:]

Testimony of Michael White
President, Chairman, and Chief Executive Officer
DIRECTV
before the
United States House of Representatives Judiciary Committee
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
June 24, 2014

Chairman Bachus, Ranking Member Johnson, and members of the subcommittee, my name is Mike White, and I am the President, Chairman, and Chief Executive Officer of DIRECTV. Thank you for asking me to testify on DIRECTV's proposed transaction with AT&T.

I have always passionately believed that, for a business to succeed in the long term, it must continue to satisfy its customers' needs and wants and consistently do so better than the competition. This transaction will help us do just that. It is overwhelmingly about the combination of complementary assets and products. It will create a company that will offer new services at a better value for our customers. And it will help us compete long into the future.

With AT&T, we have the opportunity to combine America's premier video company with a world-class broadband and wireless provider. Both companies rank among the best providers in terms of customer satisfaction today. Combined, we will do what neither company can do on its own. We will:

- Offer competitive bundles of services that neither company can offer today, enabling millions of consumers to watch more of what they want, when they want, and where they want.
- Provide new or faster broadband to at least fifteen million customer locations, most of which are located in rural areas.
- Compete more effectively with the cable bundle by creating a new and unique alternative for consumers.

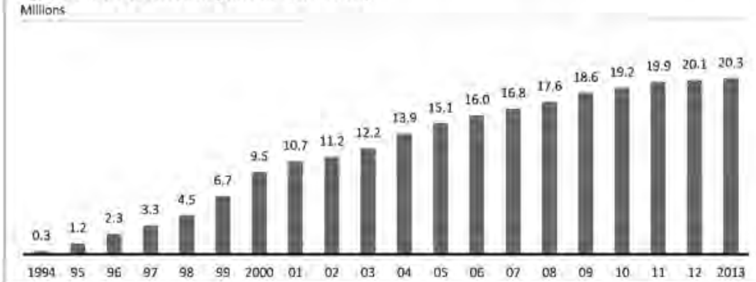
We believe that combining AT&T with DIRECTV will benefit our twenty million subscribers in the U.S. as well as the millions of additional consumers who will have a stronger competitor to choose from.

I. DIRECTV Must Adapt to Continue to Compete in the New, Internet-Driven Economy.

DIRECTV has enjoyed phenomenal growth in its U.S. business in the twenty years since we started service. One reason was early Congressional intervention to assure that the nascent satellite television industry could acquire the programming its subscribers demanded. Another is that we worked hard to deliver more channels, a clearer picture, more advanced equipment, and better customer service than incumbent cable operators.

Three years after launch, DIRECTV had already attracted over three million subscribers—the most successful launch of a consumer electronics product in U.S. history up to that point. By 2005, DIRECTV had grown to 15 million subscribers.

Figure 1. DIRECTV US subscribers (residential + commercial)
Millions

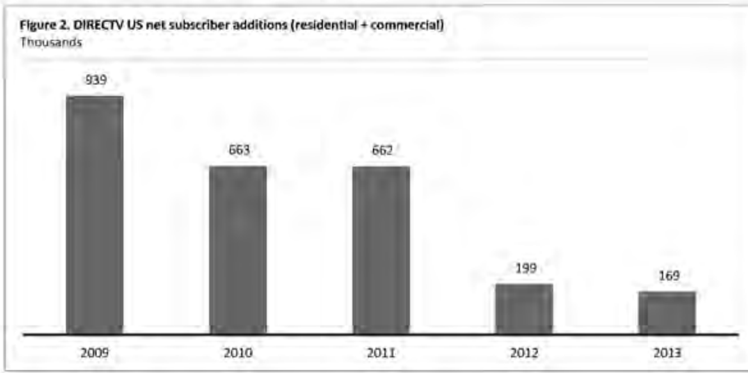


In recent years, however, the market has changed. Bundles have largely replaced pure video. Video itself has combined with the Internet to satisfy customers' demands for more video on demand, TV Everywhere, and expanded recording capabilities. Our competitors' advertising highlights our lack of an Internet offering and their speed advantages.

"We left satellite because they couldn't offer a really good Internet package."

"Are you missing out with satellite and slow DSL?"

Not surprisingly, DIRECTV's U.S. subscriber growth has slowed in recent years.



If we want to compete effectively in today's Internet-driven marketplace, we must adapt.

First, we must provide an integrated bundle of services. It should come as no surprise that consumers increasingly demand bundles. According to SNL Kagan, the number of bundled subscribers served by six of the nation's largest cable operators (Comcast, Time Warner Cable, Charter, Cablevision, Mediacom, and Suddenlink) doubled between the second quarters of 2008 and 2013. Today, 78 percent of basic cable subscribers take at least two products (predominantly video and broadband), and 42 percent take three (video, broadband, and telephone).[1]

Broadband has supplanted video as the most important element in a customer's service bundle. J.D. Power's 2013 Digital Lifestyle Study, for example, found that "[n]early two-thirds (61%) of consumers consider Internet service as the foundation of their future digital lifestyle

[1] *See* Tony Lenoir, *Cable's triple-play penetration of basic video subs doubled in the last 5 years*, SNL KAGAN (Sept. 12, 2013).

bundle."[2] We must offer our own integrated bundles if we hope to meet this new consumer demand. Otherwise, our subscribers must create their own bundles, generally at higher prices for standalone broadband. (As discussed below, our "synthetic" bundles are not a satisfactory option, either.)

Second, we must serve those who want over-the-top offerings as a complement to or substitute for traditional video service. This was less important five years ago, but it is enormously so today. Netflix now has *36 million* U.S. subscribers. Hulu has surpassed 6 million subscribers—more video subscribers than either AT&T or Verizon. SNL Kagan estimates that 45.2 million U.S. households subscribed to online video services as of 2013, more than double the 19.8 million that did so in 2010.[3] Unlike our competitors with broadband platforms, we cannot provide our subscribers with access to over-the-top providers. Nor can we combine our own offerings with theirs, at least not without relying on a third-party's broadband platform.

Third, we must optimize our own video service. Just as non-linear viewing has increased, so too has the use of broadband in connection with traditional video service, especially video on demand and other "non-linear" programming. Our cable rivals can, for example, offer innovative features and services such as remote digital video recorders and video on demand programming stored in the "cloud." Cable subscribers can watch thousands, perhaps even tens-of-thousands, of films and television programs whenever they want. Soon, cable subscribers will be able to engage other cloud-based features such as "lookback" and integrated Internet and

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[2] Press Release, J.D. Power & Associates, 2013 Digital Lifestyle Study (Aug. 21, 2013), http://www.jdpower.com/content/press-release/qEdZ9q3/2013-digital-lifestyle-study.htm.

[3] *See* SNL KAGAN, INTERNET VIDEO-ON-DEMAND REVENUE PROJECTIONS, 2009-2022 (Nov. 2012).

video products. All these and other innovative features will be facilitated by combining DIRECTV's video service with AT&T's broadband capabilities.

Because cable operators increasingly put their functionality in the cloud, moreover, they can improve their service much more quickly and easily. I understand, for example, that Comcast's cloud-based platform has enabled it to make 1200 system updates in the last 12 months. We will need to do the same if we want to keep up.

Fourth, we will have to manage content cost increases. Rising content costs are a challenge for *all* video providers. Yet bundled competitors are better positioned to handle the effects of such price increases because they earn revenue from multiple services, some of which have significantly higher margins than video service. Today, we absorb those price increases into our video business only, which means that we either have to raise prices or curtail investment. Nobody likes to see their bills go up, so we have tried to hold the line on these increases. We can only do so much, however, given the significant power of programmers to increase rates. The efficiencies of a multi-service bundle will help us mitigate the effects of these increases, for the benefit of our customers.

II. DIRECTV HAS HAD LIMITED SUCCESS IN ADDRESSING THESE CHALLENGES ON ITS OWN OR THROUGH CONTRACT.

DIRECTV has attempted to address its lack of a broadband network in various ways. We explored building or acquiring our own broadband network several times. In each case, however, we concluded both that the technology would not be competitive in terms of speed in much of the country and that the capital and other costs involved were so prohibitive that we could not offer consumers a competitively priced product on our own.

Since we could not build or buy our own broadband network, we instead attempted to address this challenge through the creation of synthetic bundles, in which video and broadband services are provided by separate companies but marketed together to consumers. More specifically, we have formed commercial relationships with a range of providers, including CenturyLink, AT&T, Verizon, and others. Under all of these arrangements, DIRECTV offers to a customer the services of the broadband provider to create a synthetic bundle. DIRECTV receives a commission for each broadband and voice sale it initiates.

Unfortunately, this strategy has proven largely unsuccessful in creating a competitively attractive video and broadband bundle, for two primary reasons:

First, synthetic bundles make for a bad customer experience.

- The initial sales call is difficult. Actually, I should have said "sales calls," because DIRECTV sales representatives cannot offer a one-call solution. Today, a customer interested in a bundle must first complete her video purchase and then be transferred internally to our "Bundles Desk" to speak with a bundles sales specialist for a broadband price quote and installation scheduling.
- Installation is difficult. DIRECTV is often ready to install a new subscriber's video service before the broadband provider is ready to install the corresponding broadband service. As a result, customers must arrange separate installations, which need to be scheduled through separate service calls. Then, the customer must wait at home for separate technicians to arrive during separate installation windows, usually on different days. Moreover, when the video installer arrives before the broadband installer, the first installer cannot connect our Internet-enabled set-top boxes. Either the customer or the broadband technician must do so, and they may be unfamiliar with the process or unaware that this connection even needs to be made.

- Billing is difficult. Unlike integrated bundle customers, synthetic bundle subscribers do not receive a single bill for the combined services. Rather, they receive two bills which do not arrive on the same day, and any discounts take a long time to be applied.
- Customer support is difficult. Synthetic bundle customers lack a "one-call" solution to resolve service problems. Rather, they have to deal with two separate companies, which creates a difficult customer service environment.

Second, synthetic bundles are more expensive. The difficulty arises from the fact that two companies are involved in the sale and service rather than one. In any synthetic bundle, each company will seek its own margin on its contribution to the bundled service, making it harder to price the bundle attractively. This may explain why, for example, AT&T prices the broadband and voice components substantially lower when paired with U-verse video versus paired with DIRECTV. The current introductory price for 6 Mbps broadband when paired with U-verse video is $14.95 versus $34.95 when paired with DIRECTV. Thus, when viewed in total, the cost to consumers of signing up for an integrated AT&T bundle is substantially less than the cost of signing up with DIRECTV for a synthetic bundle.

IV. THIS TRANSACTION WILL ALLOW THE COMBINED COMPANY TO BETTER SERVE CONSUMERS.

The transaction will combine DIRECTV's video assets with AT&T's broadband and wireless assets. This combination of complimentary assets will allow the new company to better serve customers and compete more robustly with the cable bundle.

- ***More and better bundles.*** The transaction will allow DIRECTV to offer its subscribers integrated bundles of video, broadband, and wireless service for the first time and at a competitive price.[4]
- ***Better video.*** The transaction will give DIRECTV all of the features and functionalities made possible by a two-way connection, such as greatly expanded video on demand. It will also provide DIRECTV subscribers access to over-the-top service, which may be why Netflix's CFO recently called this transaction a "plus for Netflix."[5]
- ***Lower content costs.*** The transaction will allow programmers to reach more subscribers on more devices than ever before, unlocking much more value for them than DIRECTV or AT&T could do on their own. This should lead to lower content costs (and, for DIRECTV in particular, the ability to spread those costs over more services).
- ***More broadband.*** Lower content costs, along with other cost savings and synergies, will permit AT&T to offer more or better broadband to fifteen million locations, many of which are in rural areas.
- ***More innovation.*** The combination of our video service (and content relationships) with AT&T's wireless subscriber base will dramatically increase innovation to provide new content offerings over the top or on wireless devices.

In short, we at DIRECTV think that combining with AT&T will enable us to meet our greatest challenge and better compete in today's marketplace. We will unlock new growth

[4] Of course, subscribers who wish to take standalone services—satellite video, fiber video, broadband, or voice—will also be able to do so.

[5] Joyce Wang, *Netflix Talks AT&T-DirecTV, Plans Programming Boost*, CABLEFAX (May 21, 2014), http://www.cablefax.com/programming/netflix-talks-att-directv-plans-programming-boost.

opportunities to provide new services to customers at a better value. As we offer subscribers better and more innovative services, cable operators and other competitors will have to respond in kind. The result will be more competition and a better video experience for all Americans.

Again, thank you for allowing me to discuss my enthusiasm for this transaction. I would be happy to take any questions you might have.

Mr. BACHUS. Thank you.
Mr. Stephenson, we welcome you.

TESTIMONY OF RANDALL STEPHENSON, CHAIRMAN, CEO AND PRESIDENT, AT&T INC.

Mr. STEPHENSON. Thank you, Chairman Bachus and Ranking Member Johnson, Members of the Committee.

I am Randall Stephenson, Chairman and CEO of AT&T, and I appreciate the opportunity to visit with you about what we think are the significant consumer and strategic benefits of this transaction.

This transaction is unlike most mergers because it primarily combines companies with complementary products and capabilities: DIRECTV's premier pay-TV service and AT&T's broadband service. And the rationale for us coming together is really simple. It is about meeting consumer demand. Customers are looking for bundles that combine pay-TV and broadband service because of the greater value and the convenience that comes with that. And that is something that they can get from the cable providers today. And as Mike said, DIRECTV has the premier pay-TV service in the U.S., but it does not have a broadband product.

To effectively compete against cable for broadband customers, AT&T markets bundles of services, most importantly, broadband and TV, and that is even though our video service is not profitable. In fact, fewer than 140,000 of our TV customers—that is less than 2 percent—purchase TV service on a standalone basis. We do not actively market standalone TV service because we do not make money on it. Today 60 cents of every video dollar that we earn goes straight to the programmers.

In addition, we can offer video in only a small portion of the country, less than a quarter of U.S. households, and we do not even cover all of our broadband footprint with video. And that is due to technology and economic limitations.

So as a result, there is no significant competitive overlap between AT&T and DIRECTV in the product that consumers are overwhelmingly demanding, and that is a broadband/video bundle.

The consumer benefits of this transaction are significant. Being able to offer DIRECTV nationwide is a game-changer in terms of the economics for deploying broadband. It will allow us to expand and to enhance broadband service to at least 15 million locations across 48 different States, and those are mostly in underserved rural areas. This is in addition to the broadband expansion plans that we have already announced, and it directly results from the synergies created by the transaction. This new broadband commitment includes 13 million locations, 85 percent of which are outside our traditional wireline footprint.

We think this is big news for rural America. We estimate that nearly 20 percent of these consumers today have no access to broadband service and that another 27 percent are hostage to only one provider. For many of these 13 million consumers, AT&T's service will be the fastest available, and for some, it is going to be their first chance for truly high-speed broadband.

The transaction also allows us to expand our 1 gigabit service to 2 million additional locations, and all told, we will now be able to serve 70 million customer locations with broadband.

This transaction will allow us to price more competitively and provide consumers a higher quality experience which will result in cable companies pricing more competitively as well and that will include all of their products and services.

Consumers will receive greater convenience with a single point of contact, as you heard Mike describe in terms of ordering, installation, billing, customer care.

We will be able to accelerate the deployment of our new over-the-top video services that are offered by AT&T as well as those offered by Netflix and Amazon and Hulu. We will be able to deliver them to any screen, whether it be a mobile phone, a computer, a tablet, a car. We are even deploying this capability for airplanes now.

We operate in a competitive environment that is only becoming more competitive. The cable companies already dominate both broadband and video today, and Google Fiber, Netflix, and ever-faster wireless services are really transforming competition daily. This transaction gives AT&T the capabilities to be a more effective competitor to cable.

And I want to assure you and I also want to assure our customers that we will do all these things while meeting or exceeding the FCC's net neutrality standards and exceeding our best in class diversity and labor practices to the employees and suppliers of the combined company.

So thank you for the opportunity. I look forward to your questions as well.

[The prepared statement of Mr. Stephenson follows:]

STATEMENT OF RANDALL STEPHENSON

Chairman, CEO, and President

AT&T Inc.

Hearing: The Proposed Merger of AT&T and DIRECTV

United States House of Representatives, Committee on the Judiciary, Subcommittee on Regulatory Reform, Commercial and Antitrust Law

June 24, 2014

Thank you, Chairman Bachus, Ranking Member Johnson, Members of the Committee.

I am Randall Stephenson, Chairman, CEO, and President of AT&T, and I appreciate this opportunity to discuss the signficant consumer benefits of AT&T's acquisition of DIRECTV.

This transaction is about meeting consumer demand. It's about providing consumers with the integrated video and broadband Internet services they want, delivered over any type of device, to nearly anywhere in the country. It's about fueling investments that bring new and faster broadband connections to millions more Americans, the vast majority of whom reside in underserved rural areas. It's about bringing new competition, new services, and new levels of customer satisfaction in ways that neither company could do on its own.

DIRECTV has the premier pay-TV service in the United States. AT&T has powerful broadband networks throughout the country. By integrating DIRECTV's video capabilities with our strength in fixed and mobile broadband delivery, we will create a new competitor with unprecedented capabilities. And, the substantial cost savings and other synergies associated with the transaction will allow us to price all of our services more competitively, which will drive cable and other competitors to lower their prices and improve their own offerings.

In addition, the transaction fundamentally improves the business case for expanding AT&T's broadband infrastructure to millions more Americans. Indeed, being able to offer DIRECTV's video product on a nationwide basis gives us the confidence to expand and enhance our high-speed broadband service to at least 15 million customer locations across 48 states, mostly in underserved rural areas, within four years after deal close. This represents a multi-billion dollar commitment of capital that AT&T simply could not make without the ability to pair DIRECTV's video products and scale with our newly-expanded broadband services.

Finally, the transaction will position AT&T to meet consumers' evolving video preferences and, in particular, to propel the development of new "over the top" video services offered by AT&T, Netflix, Hulu, Amazon and others. And, we will do all that while meeting or exceeding the FCC's net neutrality standards and extending our best-in-class diversity and labor practices to the employees and suppliers of the combined company.

I will now address each of these topics in more detail.

Combining Complementary Strengths to Meet Consumer Demand

One basic consumer preference is shaping the communications marketplace: demand for integrated video/broadband services and the new generation of emerging offerings they deliver. This transaction enables the combined companies to meet that demand and allow consumers to choose when, where and how they experience video far better than either can separately.

AT&T has world-leading networks. Our 4G LTE mobility network can deliver video quickly to nearly 300 million Americans across a broad range of devices. Upon completion of the expansion of our high-speed wireline broadband networks, we will serve 70 million customer locations and deliver instantaneous access to all the Internet has to offer. But video entertainment services are essential to success in the marketplace, and ours cannot meet the needs of enough consumers. Due to technology and economic limitations, we can offer video in only a small portion of the country – less than a quarter of American households and even in our wireline service territory, only in more densely populated areas. The cable companies, on the other hand, have a complete overlap of their broadband and video offerings.

Where we offer video, we lack the scale needed to forge strong relationships with programmers and compete effectively against the dominant cable companies. A case in point is our cost to acquire video content. Today, 60 cents of every video dollar we earn goes straight to programmers, before we spend a penny to market our service, install a set top box, send a bill, or answer a customer's call. As a result, our video product is, on its own, unprofitable. More than 97% percent of our video customers purchase video along with another AT&T product.

DIRECTV is the premier TV brand in America, and its video service is profitable. But it does not have a broadband product and cannot meet the growing demand for integrated offerings that include broadband Internet access. Nor can it offer a full range of interactive capabilities or mobility-enabled viewing. The combined company can do all those things.

The merged company will be perfectly poised to give consumers what they want. This transaction solves our challenges in video and realizes the full potential of our networks. We will combine Internet and home services with video and video interfaces. Our mobile network can become a national video distribution system. Video can be delivered everywhere to mobile phones, computers, tablets, cars, even planes. We will offer value to programmers that will lead to better traditional video services and bundles and to new over-the-top video services.

Better and More Advanced Services for Consumers

By combining complementary services and generating deep cost savings and operational synergies, the merger allows AT&T to price more competitively and to provide a higher quality experience. Customers will get a single bill and a single installation. They will have a single point of contact for placing orders, answering questions, and solving problems. Our 2,000 company-owned stores and 10,000 retail locations will show customers how home and communications products can meet their needs and ensure that we deliver what we promise.

With a combined AT&T and DIRECTV, the home experience will be better – much better. With leadership from AT&T Labs and DIRECTV's video engineering team, we will be able to innovate in set-top boxes, customer interfaces, and DVRs that will be seamlessly integrated across all of our networks and devices. Informed by the home automation expertise we have developed through our Digital Life service, we are just beginning to explore what the use of voice commands, flexible interfaces, and integrated services can mean for controlling home systems as well as video entertainment and for making sure that all citizens, whether vision or hearing impaired or having trouble moving about, can take advantage of all these services.

Bringing Better Broadband Infrastructure to Rural and Other Customers

The addition of a profitable video product to AT&T's portfolio is a game-changer in the economics of deploying broadband. This transaction will allow us to lower content costs for AT&T video subscribers by 20% or more, and we project total cost synergies to exceed $1.6 billion annually within three years after closing. These transformative effects will dramatically improve the economic case to invest in new broadband infrastructure to millions of customer locations.

With this merger, AT&T will build and enhance high-speed broadband service to at least 15 million customer locations, most of them rural, within four years of the transaction closing. This expansion is in addition to the broadband expansion plans that AT&T has already announced, and it directly results from the synergies created by the transaction.

First, AT&T will use its wireless spectrum to bring a fast, innovative broadband Internet access service to 13 million customer locations in rural areas in 48 states. Attachment A to this testimony is a map that reflects our best estimate of the coverage of this broadband expansion. More than 80% of these locations will be outside of AT&T's wireline footprint. This is a new "fixed wireless" solution that uses advanced technology, dedicated spectrum, and professional home installations to provide a consistent and reliable high-speed broadband experience at home. We expect this product to perform as well as wireline broadband services advertised today at 15-20 Mbps. Rural customers will be able to purchase this new broadband service, DIRECTV, and IP telephone service with advanced features and larger calling areas as an integrated package or, if they prefer, on a standalone basis. This is big news for rural America. We estimate that nearly 20% of these rural consumers today have no access to a high-speed wireline broadband service, and that another 27% are hostage to only one provider. In the latter case, that single option is often a slower, older generation DSL or cable service. For many, AT&T's new service will be the fastest available, and, for some, their first chance for truly high-speed broadband.

Second, AT&T will expand its "GigaPower" broadband infrastructure. GigaPower is our newest and fastest broadband. It brings fiber all the way to the home and offers speeds of up to 1 *gigabit* per second. The transaction dramatically improves the business case and will allow AT&T to upgrade at least 2 million additional customer locations to fiber. Today, most of those additional locations either have no AT&T broadband or older generation broadband that does not support video. These customer locations will therefore gain not only lightning fast Internet access but an alternative to cable for seamless bundles of broadband, video, and other services.

The Transaction Will Enhance Rather than Reduce Competition

In the vast majority of the country, AT&T and DIRECTV do not compete at all. In those areas, the transaction unambiguously enhances competition because it makes AT&T a stronger competitor and will accelerate innovation and the deployment of new broadband infrastructure.

In the limited areas where AT&T offers video, we are still first and foremost a broadband company. Fewer than 140,000 of our customers (less than 2% of our video base) purchase video on a standalone basis. DIRECTV, on the other hand, is a pure-play video provider. As a result, there is simply no significant competitive overlap between AT&T and DIRECTV in the product that consumers overwhelmingly demand—an integrated broadband/video offering.

This transaction is unlike most mergers because it primarily combines *complementary* products and capabilities. As a matter of economic theory and business reality, when complementary providers join forces, the net result is *downward* pressure on prices and *increased* incentives to invest in innovation, integration, and infrastructure. And in this transaction in particular, econometric analysis confirms that by making us more competitive, the merger will put downward pricing pressure on all cable products—cable bundles, cable video, and cable broadband—and have a positive impact on consumer welfare, *even before* one accounts for the very substantial cost savings and synergies that the merger makes possible.

AT&T operates in a competitive environment that is only becoming more competitive. The cable companies already dominate both broadband and video. Google Fiber, Netflix, ever-faster mobile wireless services and others are transforming competition on a daily basis. This transaction gives AT&T the combination of capabilities to be a more effective competitor to cable and to anticipate and lead in the fast-changing world of communications and entertainment.

Disrupting Competition and Developing Next Generation Services

One final word about how we together are moving toward a more competitive, innovative communications marketplace. The home-delivered video industry is evolving. The traditional cable companies are focused on maintaining their particular business model that has been dominant for too long, and DIRECTV lacks the broadband capabilities to capture the future. With our core businesses in mobile and fixed broadband, AT&T is positioned to pull the video market into a newly competitive world of integrated, interactive video services delivered anywhere on any device. This transaction lets us start doing that in a meaningful way.

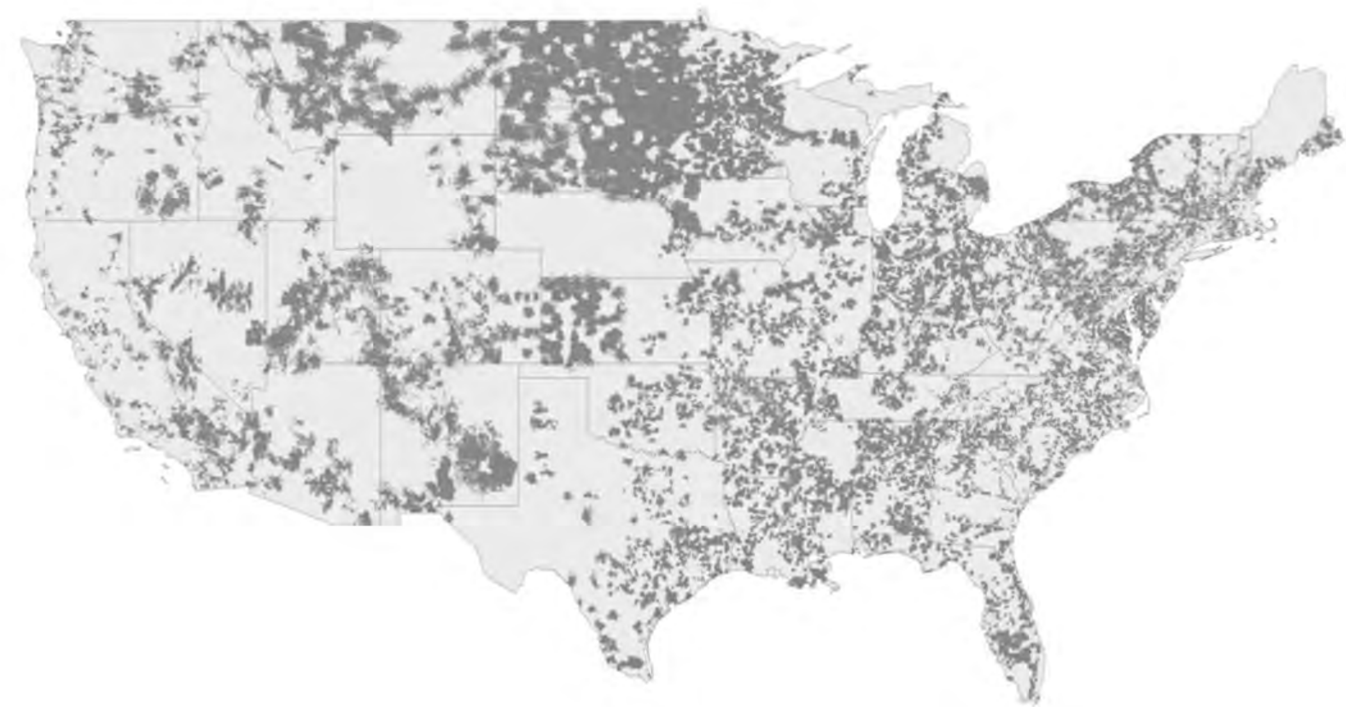
Whether a customer wants to buy broadband or video on a standalone basis or in a bundle, we can serve the customer far better with DIRECTV's products and people than without them, and when this transaction closes, we will follow a sales pattern that is time-tested and proven for us. When we deployed DSL technology, we focused our sales efforts first on our existing base of telephone customers. When we deployed IP broadband, we focused our sales efforts first on our DSL base. And when we deployed U-verse video, we focused first on our IP broadband base. This merger creates even bigger opportunities: DIRECTV has over 20 million video subscribers who will likely be interested in some or all that AT&T has to offer, and we will also offer DIRECTV to all of our existing customers, wireless and wireline, as part of bundle or, if the customer prefers, as a standalone product. At AT&T, we know how important it is to satisfy customers and preserve opportunities to introduce them to new choices and that drives us to ensure that *all* of our services remain competitively-priced and of the highest quality.

Likewise, because our core business will remain the wireless and wireline delivery of broadband, we will have every incentive to work with, rather than against, the new generation of over the top providers of interactive and video services like Netflix, Amazon, and Google. Our broadband and mobile Internet access services depend on creating and delivering that rich environment of cutting edge content, and that is increasingly so in this new video age.

Finally, AT&T has found that it serves consumers best when our employees and suppliers reflect the diversity of the markets we serve. We will extend our best-in-class diversity practices to the employees and suppliers of the combined company. AT&T also has the largest full-time union workforce of any company in America, and the combined company will continue AT&T's practice of working responsibly with the unions representing its workforce. We are pleased that the Communications Workers of America supports this transaction and has expressed its confidence that regulators will move forward to ensure that the merger's public interest benefits are realized.

Thank you, Mr. Chairman.

ATTACHMENT A



Mr. BACHUS. Thank you.
Mr. Bergmayer?

TESTIMONY OF JOHN BERGMAYER, SENIOR STAFF ATTORNEY, PUBLIC KNOWLEDGE

Mr. BERGMAYER. Good morning, Chairman Bachus, Ranking Member Johnson, and Members of the Subcommittee. Thank you for the opportunity to participate in today's hearing.

Today I am going to describe how AT&T's proposed merger with DIRECTV could harm the public.

The legal standard is clear. First, antitrust authorities cannot allow this merger to proceed if it may substantially reduce competition in any market. Second, the FCC cannot allow this merger to proceed unless AT&T can show that it would benefit the public. Based on the record so far, AT&T has not met its burden.

Additionally, policymakers should be aware of other dangers. As a result of this merger, AT&T may leave rural Americans behind by providing them with a wireless product that is not of the same quality as what is available in cities. Also, AT&T may plan to use the acquisition of DIRECTV to jump start an online video service. AT&T must offer any such service in a nondiscriminatory way.

This merger would reduce competition in the pay-TV market. AT&T and DIRECTV compete head to head in the pay-TV marketplace in more than 60 local TV markets. If AT&T purchases DIRECTV, TV viewers in these markets will lose a competitive choice. In many of these markets, the level of market concentration would exceed the Department of Justice's guidelines. That means higher prices and more service for millions of viewers. Antitrust law exists to prevent mergers of these kinds.

AT&T's proposal to fix this does not do enough. It only promises to keep DIRECTV prices in markets where it provides U-verse TV on par with nationwide DIRECTV prices for 3 years. This does not address the structural problems AT&T would cause if it removes a competitor from the marketplace.

AT&T's public interest commitments are less than meets the eye. In the first place, AT&T has a spotty record with regard to past merger commitments. For example, AT&T now claims that there are residences within its wireline footprint that currently have no AT&T broadband. Yet, it committed in 2006 to serve 100 percent of the residences in its footprint with broadband. Why are these people still unserved? And is it good policy to allow AT&T to make the same kind of promise this time?

AT&T also has a history of using already planned build-out as a merger promise. For instance, AT&T promised a certain level of LTE coverage of it was allowed to buy T-Mobile, but after that merger was blocked, AT&T's build-out plans did not change.

When you strip away previously announced plans, even AT&T's best case for this merger is less than it appears. For the most part, AT&T is simply stating that it will upgrade portions of its network. That is not much. For instance, adding a new kind of home wireless service to an existing wireless coverage area is not as significant an investment as an initial wireless build-out.

There are further public interest harms. Our universal service laws state that consumers in all regions of the Nation, including those in rural areas, should have access to telecommunications services that are reasonably comparable to those services provided in urban areas. AT&T has not shown that its wireless home product is comparable to what it offers in urban areas, for example, its U-verse product or DSL. Policymakers should be concerned about this seeming shift away from the principles of universal service.

Finally, AT&T plans to create a new online video service. AT&T should be free to enter this market, but it cannot take advantage of its position as an Internet service provider to favor its own services at the expense of competition. While AT&T has agreed to abide by the terms of the FCC's 2010 open Internet order, those rules provide a lesser degree of protection for wireless users.

Thank you. My written testimony contains a more detailed analysis of these points, and I look forward to your questions.

[The prepared statement of Mr. Bergmayer follows:]

Public Knowledge

Testimony of John Bergmayer
Senior Staff Attorney
Public Knowledge

Before the
U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Regulatory Reform, Commercial and Antitrust Law

Hearing on: "The Proposed Merger of AT&T and DirecTV"

June 24, 2014
Washington, DC

Good morning Chairman Bachus, Ranking Member Johnson, and members of the Subcommittee. Thank you for the opportunity to participate in today's hearing. My name is John Bergmayer, and I work for Public Knowledge, a non-profit public interest organization that seeks to ensure that the public benefits from a media marketplace that is open, competitive and affordable. Today, I will argue that AT&T's proposed purchase of DirecTV would substantially lessen competition and would harm the public interest.

Introduction.

AT&T may think it has chosen an opportune time to try to acquire DirecTV. Policymakers and the press have been paying so much attention to long-rumored deals, such as Sprint/T-Mobile, and pending ones, such as Comcast/Time Warner Cable, that merger fatigue may be setting in. But during this time of industry consolidation, policymakers must ensure they pay close attention to the specifics of each new deal as it is announced. While it is important to analyze each proposal on its individual merits, policymakers should be attuned to the risks of an ever more consolidated communications marketplace. Thus, Public Knowledge appreciates that this subcommittee recognizes the need to closely scrutinize each merger that could significantly reduce competition and harm the public interest.

AT&T is one of the nation's leading telecommunications companies. It has millions of mobile and wireline telephone customers, broadband subscribers, and pay TV viewers. DirecTV is one of the nation's largest pay TV providers, with nearly 20 million customers in the US (and nearly 10 million in Latin America). It operates a major satellite fleet and several sports networks. If AT&T buys DirecTV, it will significantly increase its scale as a communications provider. In addition to being one of the most significant telephone, broadband, and wireless providers, overnight, it will become a major pay TV provider as well, with a nationwide footprint. A merger of this scale—valued at nearly $50 billion dollars—cannot be approved unless AT&T shows both that it it will not substantially lessen competition, and that it would result in significant public interest benefits. AT&T has not done so.

AT&T has failed to make its case that this merger would not harm competition. The proposed merger would remove a pay TV competitor from many local TV markets—a direct competitive harm. Yet it offers only to do some limited price-matching for three years to ameliorate this. Temporary, limited relief such as this cannot overcome the harm to consumers.

AT&T has also failed to make its case that this merger will benefit the public interest. It makes several public interest promises that are much weaker than they first appear—and its record of following through on past public interest commitments gives good reason to be skeptical even of the limited claims it makes.

AT&T claims that cost savings on content will give it the incentive to upgrade its wireline network at a slightly faster pace. But it does not provide enough information for policymakers to fully distinguish between its existing upgrade plans from any new investment. Past experience with AT&T shows that it has a habit of "promising" its existing business plans as merger commitments. Without specific, verifiable commitments that go well beyond what AT&T has offered thus far, it would be impossible for policymakers to verify later whether AT&T was living up to its promises. AT&T claims that these cost savings will allow it to become more competitive with cable—but it does not commit to actually lowering its prices or improving its service in any specific, verifiable ways.

AT&T also claims that buying DirecTV will allow it to internalize the transaction costs associated with providing "synthetic" bundles—bundles of services provided by independent companies.[1] Currently, AT&T bundles its DSL service with DirecTV in many markets,[2] and it could easily bundle a fixed wireless product with DirecTV, as well. AT&T argues that these "synthetic" bundles are not cost-competitive with the cable broadband/video bundle.[3] It promises the claimed cost savings associated with these more efficient bundles to perform slight upgrades to its LTE network, adding a fixed LTE service to its mobile LTE coverage areas. But the evidence suggests that even without this merger, AT&T plans to go ahead with its fixed LTE plans. These fixed wireless commitments do not amount to a public interest benefit sufficient to offset this deal's competitive harms.

AT&T has simply failed to meet its burden. The burden is on AT&T to show that this merger would not harm competition. It has not done so. The burden is also on AT&T to show that this merger would have specific public interest benefits. It has not done that either. Instead, the evidence shows that this merger would hamper competition in many markets, further the digital divide, and exacerbate harmful industry trends. Based on this record, the deal must be blocked.

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[1] Description of Transaction, Public Interest Showing, & Related Demonstrations, *Public Interest Statement*, MB Docket No. 14-90, 66 (2014) [hereinafter *Public Interest Statement*].
[2] *Public Interest Statement* at 3.
[3] Some analysts dispute AT&T's cost-savings claims, and there is little reason to think that customers who buy one wire, one box cable bundles will necessarily find AT&T's promised bundles—which may require a satellite dish as well as a fixed LTE antenna to be installed on the customers premises—more appealing than purchasing standalone services. *See* Daniel Frankel, *Analyst casts doubt on AT&T's professed bundling efficiencies*, Fierce Cable (Jun. 16, 2014), http://www.fiercecable.com/story/analyst-casts-doubt-atts-professed-bundling-efficiencies/2014-06-16.

The Merger Would Result in a Significant Loss of Pay TV Competition.

AT&T, a pay TV company, wants to remove DirecTV, another pay TV company, from the marketplace. This is a classic horizontal merger, and it would harm consumers. Antitrust laws do not permit mergers that would "substantially...lessen competition."[4] But instead of addressing the anticompetitive harms its merger would cause, AT&T attempts to distract from them.

In a transaction where it seeks to buy a standalone pay TV service, AT&T argues that pay TV as a standalone product is decreasingly significant.[5] But the millions of DISH, DirecTV, and cable customers who purchase only pay TV and not a pay TV/broadband bundle demonstrate otherwise, and speak to the continuing relevance of this market. AT&T has been a broadband provider for longer than it has been a pay TV provider, so it is not surprising that it has more broadband-only than video-only customers. (Cable companies tend to have more video-only than broadband-only customers for a similar reason.) In any event, AT&T has almost 6 million pay TV customers.[6] It makes a bold attempt to define itself out of the pay TV market, hoping this will distract regulators. But its attempt fails.

Antitrust regulators must base their analyses on the here and now. They do not simply write off real competitive harms to a real market based on one company's prediction that that market will one day go away or shrink in importance relative to some other market. As the Supreme Court has explained, antitrust law "focuses on tangible economic injury," not "some abstract conception or speculative measure of harm."[7] It follows that when there is real harm, "some abstract conception or [speculation]" cannot be enough to dismiss it. The communications marketplace is indeed dynamic. Pay TV or even broadband Internet access may one day be replaced by something else. Yet antitrust laws must still apply.

By reducing the number of pay TV competitors in each market where AT&T currently offers video service, this proposed merger would reduce consumer choice and violate the law. As Free Press's Derek Turner has noted, in 64 local TV markets, the level of market concentration would exceed the Department of Justice's merger guidelines.[8] This concentration would harm consumers in numerous ways. Less competition would lead to higher prices, worse service, and reduced access to diverse content. Even AT&T admits that this merger could exert upward

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[4] 15 U.S.C. § 18 (2014).
[5] *Public Interest Statement* at 68.
[6] AT&T, *U-verse Update: 1Q14*, https://www.att.com/Common/about_us/pdf/uverse_update.pdf (last visited Jun. 20, 2104).
[7] Blue Shield of Va. v. McCready, 457 US 465, 475 n.11 (1982).
[8] S. Derek Turner, *How the AT&T–DirecTV Merger Fails the Antitrust Test*, Free Press (May 28, 2014), http://www.freepress.net/blog/2014/05/28/how-att-directv-merger-fails-antitrust-test.

pressure on "the prices of standalone video or broadband,"[9] suggesting only that this *could* be offset by cheaper bundles (though it is not *committing* to offering cheaper bundles).

To ameliorate this, AT&T is merely proposing only to offer, "for three years," "standalone DirecTV satellite video service at nationwide package prices that do not differ between customers in AT&T's wireline footprint and customers outside the footprint."[10] But AT&T does not explain why, after three years, it would be acceptable for it to charge more to consumers in some markets. Nor does it commit to actually pause price hikes or keep prices low.

This is straightforward. AT&T proposes to remove a video competitor from many local markets. This would cause real harms, and AT&T has articulated no offsetting benefits. Based on this record, antitrust authorities must block this deal.

AT&T Has Not Shown That Any Public Interest Benefits Would Flow from This Transaction.

The Federal Communications Commission (FCC) cannot approve a deal of this kind unless AT&T can show that it would benefit the public.[11] AT&T has not done this.

AT&T states that it plans to "use the merger synergies to expand its plans to build and enhance high-speed broadband service to 15 million customer locations."[12] In a number of places, it touts an even higher number, stating that "[w]ith this expansion, AT&T's high-speed fixed broadband networks will cover 70 million customer locations."[13] It requires some careful reading to figure out exactly what AT&T is promising.

The 70 million figure is not new. In fact, AT&T has already promised more. In its 2012 press release touting "Project VIP," AT&T promised to provide wireline broadband service to 57 million customer locations, and wireless broadband to 19 million additional customer locations.[14] That's a plan to serve 76 million customer locations with a broadband product—6 million more

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[9] *Public Interest Statement* at 81.
[10] *Public Interest Statement* at 55.
[11] *See* 47 U.S.C. § 310(d) (2014); Verizon/ALLTEL/AT&T Divestiture Order, 25 FCC Rcd at 8716 ¶ 22; AT&T/Centennial Order, 24 FCC Rcd. at 13,927 ¶ 27.
[12] AT&T, *AT&T to Acquire DIRECTV*, AT&T Newsroom (May 18, 2014), http://about.att.com/story/att_to_acquire_directv.html.
[13] *Public Interest Statement* at 39.
[14] AT&T, *AT&T to Invest $14 Billion to Significantly Expand Wireless and Wireline Broadband Networks, Support Future IP Data Growth and New Services*, (Nov. 7, 2012), http://www.att.com/gen/press-room?pid=23506&cdvn=news&newsarticleid=35661&mapcode= [hereinafter *Project VIP*].

than the number it is promising to serve after this deal.[15] A commitment to serve 70 million customers with broadband cannot count as a merger-specific public interest benefit when AT&T already plans to serve 76 million.

The 15 million figure, meanwhile, primarily refers only to marginal upgrades and not new build-out. 13 million of the 15 million are accounted for by AT&T's plan to offer customers fixed wireless service—what it is now calling WLL, or wireless local loop.[16] While AT&T claims that offering WLL requires "upfront investments,"[17] it never quantifies what these are. Given that WLL is merely a specialized kind of LTE service, any additional investment to offer it in markets that already have LTE is likely to be minimal. AT&T will already have made the necessary investments in towers, electronics, and other necessary infrastructure. As an AT&T executive confirmed, "this new fixed WLL technology will make use of wireless spectrum and AT&T's LTE network infrastructure."[18] AT&T's claim that 85% of WLL customer locations "are expected to be outside of AT&T's wireline footprint"[19] must be viewed in this light: If these locations are in territory that AT&T already covers with mobile LTE service, then any additional investments are likely to be marginal. Even if these marginal upgrades were considered to be a public interest benefit, their small scale is not enough to counteract the harms stemming from the loss of competition.

For the 15% of projected WLL customers that are within AT&T's wireline footprint, this is nothing new. AT&T has planned to discontinue wireline service and offer wireless service to many of its rural customers for some time.[20] It has every incentive to do this already, since fixed LTE is cheaper to deploy and maintain than copper or fiber.[21] But more fundamentally, it is difficult to see a transition from wireline service to wireless service as a benefit at all, much less a merger-specific benefit. Wireless service is less reliable than wireline service, has usage caps that limit what users can do with it,[22] and lacks many of the features that many customers (especially small businesses)

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[15] *Project VIP*.
[16] *Public Interest Statement* at 44; Declaration of John T. Stankey, Group President & Chief Strategy Officer, AT&T Inc., ¶ 53 (June 10, 2014), (*Public Interest Statement*) [hereinafter *Stankey Declaration*].
[17] *Stankey Declaration* at ¶ 40.
[18] *Stankey Declaration* at ¶ 48.
[19] *Stankey Declaration* at ¶ 54.
[20] Stacey Higginbotham, *Here's AT&T's $14B plan to kill its copper network and leave rural America behind*, Gigaom (Nov. 7, 2012, 6:57 AM), http://gigaom.com/2012/11/07/heres-atts-14b-plan-to-kill-its-copper-network-and-leave-rural-america-behind; Ryan Knutson, *AT&T's Plan For the Future: No Landlines, Less Regulation*, Wall Street Journal (Apr. 7, 2014, 10:39 PM), http://online.wsj.com/news/articles/SB10001424052702304834704579403090132882148.
[21] *The Difference Engine: Scrap the copper*, The Economist (Jan. 7, 2011, 3:16 PM), http://www.economist.com/blogs/babbage/2011/01/last_mile.
[22] WLL "will have a usage allowance that will readily satisfy most customers' needs." *Public Interest Statement* at 43.

depend on.[23] Finally, if any of the customers that AT&T plans to make WLL available to that it says currently have no terrestrial broadband[24] are within AT&T's wireline footprint, policymakers should ask whatever became of AT&T's 2006 commitment to serve 100% of the population in its footprint with broadband (wired and wireless).[25] Why have these customers gone without AT&T broadband for so long, and why should we think that promises in this merger will turn out any different than past unmet merger promises?

The remaining 2 million of AT&T's 15 million number likewise does not consist of new buildout, but instead references fiber-to-the-premises upgrades to AT&T's existing network. These upgrades are for the most part already in planning[26] (and are therefore not merger-specific). While AT&T claims these 2 million customer locations go beyond its current plans for fiber-to-the-premises ("FTTP") upgrades[27], there is no baseline for comparison, since AT&T's current FTTP plans are not public. Further, this plan's timeframe is uncertain: AT&T has "committed" to completing these upgrades in 4 years[28]—but if FTTP upgrades are already underway, does this 4-year commitment apply to the final 2 million beyond its existing plans (meaning that within 4 years, AT&T's entire FTTP rollout will be substantially complete) or only to the *next* 2 million upgrades? AT&T does not say. AT&T also states that "[of] these additional customer locations, [its] current assessment is that most have access only to AT&T's [DSL] or no AT&T wireline broadband Internet offering at all."[29] Again, without firm numbers it is impossible to weigh the public interest benefit, if any, of these claims. And there are further questions: Do any of these customer locations that have no AT&T broadband service currently have AT&T wired telephone service? Are they areas unserved by any form of wired communications technology at all? Or are they new, "greenfield" development—where one would *expect* AT&T to deploy FTTP technology instead of fiber-to-the-node or copper? The only network upgrades that policymakers can even consider in weighing this transaction are those that would not have happened but for this transaction. AT&T has not provided enough data to begin to address these questions. The data that

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[23] Public Knowledge, *Protecting Businesses and Consumers in the Phone Network Transition* (March 15, 2014), https://www.publicknowledge.org/documents/protecting-businesses-and-consumers-in-the-phone-network-transiti on.

[24] AT&T claims that about 2.6 million of the customer locations it will make WLL available to "have no access to terrestrial broadband services today." *Public Interest Statement* at 44. It bases this on NTIA data. *Stankey Declaration* at 23. It is unclear if AT&T means to say that it will expand WLL to areas that currently have no LTE service (LTE meets AT&T's and the NTIA's definition of terrestrial broadband) or whether, as seems more likely, that AT&T means to say that it will expand WLL to areas that have no access to terrestrial *fixed* broadband today.

[25] FCC Approves Merger of AT&T Inc. & BellSouth Corp., FCC (Dec. 29, 2006), https://apps.fcc.gov/edocs_public/attachmatch/DOC-269275A1.pdf [hereinafter *BellSouth Merger Press Release*].

[26] AT&T is expanding its "U-Verse with GigaPower" service, which it launched in Austin to compete with Google Fiber, to "more cities." AT&T, *AT&T U-verse with GigaPower is expanding*, http://www.att.com/att/gigapowercities/ (last visited Jun. 20, 2014).

[27] *Public Interest Statement* at 41.

[28] *Public Interest Statement* at 41.

[29] *Stankey Declaration* at ¶ 46.

are available tend to show that AT&T's promised network upgrades are already underway, and are unrelated to this proposed merger.

In any case, which version of AT&T's FTTP commitments should policymakers put stock in: the sworn declarations of AT&T executives, or the not-quite-accurate paraphrase of these statements in AT&T's FCC public interest filing? John T. Stankey, AT&T Group President and Chief Strategy Officer, stated in the record that "Our analysis confirms that this transaction ***will justify deploying*** [FTTP] to at least 2 million additional customer locations."[30] He was only willing to commit to stating his view of the economic incentives, and plans for future AT&T network financing. Yet in its filing, citing only Stankey's statement (and a similar incentives analysis by Michael Katz, an economist), AT&T claims that "AT&T ***will deploy*** its highest-speed fiber connections...to at least 2 million more customer locations."[31] Needless to say, there is a difference between whether a network upgrade, under some analysis, is "justified," versus a firm commitment to complete that upgrade. AT&T should clarify whether it will actually deploy new FTTP upgrades or whether its commitment is only that such upgrades might be "justified."

AT&T's promises in this merger proceeding should be put in the context of its previous build-out/upgrade promises from past proceedings. In 2006, pursuant to its merger with BellSouth, AT&T committed to providing broadband to 100% of the residences in its wireline footprint.[32] This commitment included a promise to provide wireline broadband to 85% of the residences, with other residences offered some form of wireless service (a precursor to its current wireless local loop ("WLL") promises).[33] Yet by 2012, promises of future broadband buildout were still on the table, as AT&T again promised to finally provide wired broadband to 75% of the "customer locations" (residences plus businesses) in its footprint.[34] AT&T's shifting terms of reference (residences, population, customer locations) can make it difficult to pin down to what extent it has even attempted to comply with its past promises, but recent documents[35] confirm longstanding customer reports[36] that there are areas within AT&T's service territory where it offers no broadband service at all, wireless or wireline, contrary to its 2006 commitment.

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[30] *Stankey Declaration* at ¶ 44 (emphasis added).
[31] *Stankey Declaration* at ¶ 44 (emphasis added).
[32] *BellSouth Merger Press Release*.
[33] *BellSouth Merger Press Release*.
[34] *Project VIP*.
[35] AT&T Proposal for Wire Center Trials, GN Docket No. 13-5, GN Docket No. 12-353, at 8 fn 9 (Feb. 27, 2014) http://connected.att.com/external/publicpolicyviewsnews/as_filed_redacted_wire_center_trial_plan.pdf.
[36] Gerry Smith, *Many Rural AT&T Customers Still Lack High-Speed Internet Despite Merger Promise*, HuffPost Tech (Nov. 18, 2012), http://www.huffingtonpost.com/2012/11/18/rural-att-customers-merger-Internet_n_1914508.html.

Again and again, AT&T makes the same arguments and the same promises when it wants to acquire a competitor.[37] Yet no merger ever seems to be quite enough for it to achieve its goals, leaving AT&T ample headroom to re-promise and re-commit to the same goals the next time around. In the T-Mobile proceeding in 2011, Consumer Watchdog made this very clear with a letter highlighting the similarities between what AT&T was claiming in that transaction to what it promised in the Cingular proceeding.[38] At some point, policymakers should simply demand that AT&T live up to its existing commitments rather than allowing it to commit to them once more.

AT&T also has a history of claiming that mergers are necessary for investments even when its own behavior proves otherwise. In 2011, AT&T committed to cover 250 million Americans with LTE by the end of 2013, "as a result" of the AT&T/T-Mobile transaction.[39] Of course, regulators rightly blocked that merger. Yet by the end of 2013, AT&T covered 270 million Americans with LTE.[40] A clear example of AT&T not only meeting, but exceeding, a past build-out commitment nevertheless shows that AT&T's claims must be taken with a grain of salt. While AT&T said at the time that the T-Mobile transaction was a necessary prerequisite to this investment its own actions prove that this was not the case. This is another reason for policymakers to be skeptical of any claims AT&T makes today.

The balance of AT&T's public interest argument is similarly thin. It is not promising any new kinds of services—just new bundles. Instead of promising lower prices for consumers, AT&T talks about cost savings for itself. It is agreeing to abide by net neutrality rules which largely exempt wireless. In short, AT&T has not provided the compelling public interest justification it needs if it is to be allowed to purchase DirecTV.

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[37] Jon Brodkin, *AT&T makes the same promises every time it buys a new company*, Ars Technica (Jun. 16, 2014, 5:20 PM) http://arstechnica.com/business/2014/06/att-makes-the-same-promises-every-time-it-buys-a-new-company/; Bruce Kushnik, *AT&T Can 'Say Anything': AT&T IP Transition Trials and the Direct TV Merger Documents Contradict Previous Broadband Commitments*, Huffpost Business (Jun. 13, 2014, 2:10 AM) http://www.huffingtonpost.com/bruce-kushnick/att-can-say-anything-att_b_5490714.html.

[38] Consumer Watchdog, *Re: AT&T and Deutsch Telekom AG Application Seeking FCC Consent to the Transfer of Control of the Licenses and Authorizations Held by T-Mobile Acquisition of T-Mobile USA, Inc. and its Subsidiaries to AT&T Inc., WT Docket No. 11-65* (Aug. 9, 2011), http://apps.fcc.gov/ecfs/document/view?id=7021701394.

[39] Marlene H. Dortch, *Notice of Ex Parte Presentation: In re Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Dkt No. 11-65* (Aug. 8, 2011), http://apps.fcc.gov/ecfs/document/view?id=7021701223.

[40] AT&T, *More Than 270 Million People Now Covered by the Nation's Most Reliable 4G LTE Network* (Jan. 6, 2014), http://www.att.com/gen/press-room?pid=25187&cdvn=news&newsarticleid=37370&mapcode=consumer|mk-att-wireless-networks.

If This Transaction Goes Forward, There Would Be Public Interest Harms That Go beyond Loss of Competition in the Pay TV Market.

Because AT&T and DirecTV have not shown any public interest benefits that would flow from this transaction, and because they have not made the necessary public interest showing, regulators must block this transaction. But policymakers should also consider public interest harms that may flow from this transaction. This testimony will focus on just two of these, but there are likely many more.

Second-class service for rural America

"Universal service" is the concept that all Americans should have access to adequate communications facilities, and that they should be able to use them to access whatever information and speak to whoever they wish.[41] It is not a telephone-specific concept—its origins come from the postal service, and policymakers increasingly apply universal service concepts to broadband. AT&T should be familiar with the concept. While the goal of universal service pre-dates AT&T, Theodore Vail, a seminal figure in AT&T's history, coined the term.[42] The principles of universal service for telecommunications are enshrined in law. One relevant provision states,

> Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.[43]

AT&T's plan to shift its rural wireline customer base to WLL flies in the face of this standard. To be sure, our communications policies should be technology-neutral. When analyzing whether service is "comparable" between urban and rural areas, policymakers should look to objective metrics such as bandwidth, throughput, latency, and reliability. The problem with WLL is not that it is wireless, but that it falls short under these objective and neutral metrics. While AT&T claims that WLL will be "comparable, and typically superior, to the best wireline services available in the areas in which the fixed WLL solution will be deployed,"[44] this is not the standard its service should be held to. Rural service should be comparable to that offered in urban areas. WLL is

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[41] FCC, *Universal Service*, FCC Encyclopedia http://www.fcc.gov/encyclopedia/universal-service (last updated Jun. 20, 2014).
[42] Milton Mueller, *"Universal service" and the new Telecommunications Act: Mythology Made Law*, Rutgers University SCILS, http://www.vii.org/papers/cacm.htm (last visited Jun. 20, 2014).
[43] 47 U.S.C. § 254 (2014) (emphasis added).
[44] *Stankey Declaration* at ¶ 48.

hardly comparable to AT&T's fiber-to-the-node and fiber-to-the-premises products, and even falls short of DSL (and TDM telephony) in several ways as well. Even basic copper line service can outperform WLL—by working with a wider variety of third-party equipment, for example, and by having an independent power supply.[45]

Neither are the rates comparable, With WLL, you pay more for what you get, and have to abide by a rate plan with usage caps.[46] Policymakers should be wary of any deal that furthers the urban/rural digital divide and enables AT&T to consign rural Americans with second-class service. While policymakers should welcome new competition, including from fixed wireless services, this does not mean that rural Americans should *only* have access to less-capable technology.

Discriminatory treatment of video traffic

Prior to this transaction, AT&T had plans to enter the online video market,[47] and AT&T expects that this deal would "propel the development of new [online video] products."[48] AT&T would likely be able to use DirecTV's buying power as a large content distributor to access content on more favorable terms. Of course, new competition in the video marketplace (whether online or otherwise) could benefit consumers, provided it was made available to customers of any ISP or wireless carrier. But, as a vertically integrated ISP, AT&T would have the incentive to discriminate in favor of its own services, and to make an online video product available only to its own broadband subscribers. The FCC's Open Internet policies—at least during those windows in which they are in effect—are supposed to protect consumers and competition from this sort of behavior. But because the FCC's Open Internet rules have been vacated in part, policymakers should be wary of a deal that enhances AT&T's incentive to discriminate in favor of its proprietary services. While AT&T has agreed to abide by the terms of those previous rules for a brief period of time, it should be noted that the rules in question did not offer full protection to mobile users. AT&T in particular has a history of flouting net neutrality principles when it comes to wireless,[49]

[45] *Preserving Public Safety and Network Reliability in the IP Transition: Before the Subcomm. on Communications, Technology, and the Internet of the S. Comm. on Commerce, Science, and Transportation*, 113th Cong. (2014) (*Testimony of Jodie Griffin, Senior Staff Attorney, Public Knowledge*)(*available at* https://www.publicknowledge.org/assets/uploads/documents/IPTransitionTestimony.pdf).

[46] *Public Interest Statement* at 43.

[47] *See Press Release, AT&T, The Chernin Group and AT&T Create New Venture to Acquire, Invest In and Launch Online Video Businesses* (April 22, 2014), http://about.att.com/story/the_chernin_group_and_att_create_new_venture_to_acquire_invest_in_and_launch_online_video_businesses.html.

[48] *Public Interest Statement* at 29.

[49] John Bergmayer, *AT&T Will Eventually Do the Minimum Users Expect*, Public Knowledge (May 21, 2013), https://www.publicknowledge.org/news-blog/blogs/att-will-eventually-do-minimum-users-expect; John Bergmayer, *Holding AT&T to Account for Blocking FaceTime on iPhones and iPads*, Public Knowledge (Sept. 18, 2012),

and certain behaviors that work against the open Internet (e.g., AT&T not counting its own video services against data caps, which disadvantages competitors and reduces consumer choice) would become much more likely if this merger is approved.

Conclusion.

AT&T has not shown that any public interest benefits would overcome the competitive, public interest, and other harms that would flow from this merger. On this record, it must be blocked.

https://www.publicknowledge.org/news-blog/blogs/holding-att-to-account-for-blocking-facetime-on-iphones-and-ipads.

Mr. BACHUS. Thank you, Mr. Bergmayer.

Mr. Lieberman?

TESTIMONY OF ROSS J. LIEBERMAN, SENIOR VICE PRESIDENT OF GOVERNMENT AFFAIRS, AMERICAN CABLE ASSOCIATION

Mr. LIEBERMAN. Thank you.

An unprecedented wave of consolidation is occurring within the video programming and distribution industries that will transform the competitive market and consumer experience. This is cause for concern. Congress and regulators, therefore, must not only review the pending deals. It must also examine and act to address the underlying market problems fueling them.

Focusing on AT&T's deal, it is important to realize DIRECTV is not only a nationwide provider of pay-TV service, it is also a programmer with interests in three regional sports networks and national programming. This gives DIRECTV an economic incentive and ability to charge its rivals higher fees for its programming, especially its regional sports networks.

Smaller cable operators are concerned that this deal will lead DIRECTV's programmers to hold out for even higher rates. With 26 million subscribers, AT&T and DIRECTV combined will command better programming deals than DIRECTV would alone. This means higher video profits for both DIRECTV and U-verse services. Regulators have accepted that as the per video subscriber profits of a vertically integrated pay-TV provider rise, so does its interest in boosting its rivals' costs for its programming. Accordingly, pay-TV providers will feel the pinch when negotiating for DIRECTV's programming and their customers will pay.

Regulators should not approve the merger without addressing this matter. While DIRECTV remains subject to program access rules as an FCC condition from a prior deal, it is no longer subject to an arbitration condition. However, re-adopting this arbitration condition is not enough. It had design flaws that left smaller cable operators under-protected. To shield these operators fully, these defects must be eliminated.

Congress and regulators must also look at the bigger picture by reviewing existing rules to ensure that industry-wide problems, particularly those driving consolidation, are addressed. This will ensure consumers continue to benefit from a competitive pay-TV market that includes smaller operators. ACA members have long raised alarms about large broadcasters and programmers increasing rates and carriage demands and their discriminatory pricing practices. The programming costs for a smaller provider is significantly higher than for a larger provider. The spread, thought to average about 30 percent, puts my members at a substantial disadvantage to bigger competitors like DIRECTV, DISH Network, and Comcast.

AT&T's desire to acquire DIRECTV does not surprise smaller cable operators. Even though AT&T's subscriber base nearly exceeds that of all smaller cable operators combined, its motives for buying DIRECTV point to it facing similar market problems. Like ACA's members, AT&T also understands its competitive standing is likely to worsen if the Comcast/Time Warner Cable and Comcast/Charter deals are approved. While AT&T can lower its programming costs and better compete by purchasing DIRECTV, smaller cable operators cannot because they lack AT&T's financial resources and scale. Unable to spend their way out of trouble, these video providers will struggle increasingly to remain viable.

Some critics of AT&T's deal raise concerns about the number of pay-TV providers decreasing from four to three in U-verse territories. In rural areas where three video service providers typically exist, programming cost issues have driven some smaller cable operators to close systems, leaving consumers with only two satellite TV providers.

Although the slow but steady decrease in competition in rural areas has not generated much concern from Washington, it should because it is harmful to rural America and often signals wider market problems. These trends are not irreversible. Congress and regulators can take action to prevent my members and their customers from simply being unreasonably disadvantaged compared to their larger competitors.

In conclusion, there are three areas where oversight and action would be meaningful.

First, by examining and addressing programmers' discriminatory pricing practices against smaller pay-TV providers.

Second, by modernizing program access rules by updating the FCC's definition of a buying group.

And third, by updating the FCC's outdated regulatory fee categories so all pay-TV providers, including DIRECTV and DISH, pay their fair share.

Thank you and I look forward to your questions.

[The prepared statement of Mr. Lieberman follows:]

American Cable Association

STATEMENT OF ROSS J. LIEBERMAN
SENIOR VICE PRESIDENT OF GOVERNMENT AFFAIRS
AMERICAN CABLE ASSOCIATION

BEFORE THE
SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND ANTITRUST LAW
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

OVERSIGHT HEARING ON
"THE PROPOSED MERGER OF AT&T AND DIRECTV"

JUNE 24, 2014

STATEMENT OF ROSS J. LIEBERMAN
SENIOR VICE PRESIDENT OF GOVERNMENT AFFAIRS
AMERICAN CABLE ASSOCIATION

BEFORE THE
SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND ANTITRUST LAW
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UNITED STATES HOUSE OF REPRESENTATIVES

OVERSIGHT HEARING ON
"THE PROPOSED MERGER OF AT&T AND DIRECTV"

JUNE 24, 2014

Chairman Bachus, Ranking Member Johnson, and Members of the Subcommittee, my name is Ross J. Lieberman, Senior Vice President of Government Affairs of the American Cable Association ("ACA"). Thank you for inviting me to speak about AT&T Inc.'s ("AT&T") acquisition of DIRECTV, the nation's second largest subscription television provider and owner and manager of popular video programming networks.

We are in the midst of considerable consolidation within both the multichannel video programming distributor ("MVPD") and video programming markets that will have major ramifications for consumers and competition. In 2011, Comcast, the nation's largest MVPD, acquired broadcast and cable programming giant NBCUniversal ("NBCU"). Comcast has now announced plans to grow its MVPD business even larger by acquiring Time Warner Cable ("TWC"), the nation's second-largest cable MVPD, and to divest to and swap systems with Charter Communications to create another industry giant. For the past several years, in a series of deals large television station groups in the broadcast industry have also been merging. Recent reports also indicate that large programmers are looking to get even larger by acquiring mid-sized programmers, like AMC Networks, whose AMC channel is home of the popular "Walking Dead" series, and Scripps Networks, the company behind HGTV and the Food Network. Now AT&T is acquiring DIRECTV. The cumulative impact of these transactions will transform the industry, the competitive marketplace and the consumer experience and should be cause for concern.

Congress, federal and state antitrust authorities and regulators, and local governments each have a critical role in analyzing the pending deals and addressing harms they create, either through divestitures and behavioral remedies or outright denial. In this regard, ACA is pleased that this Subcommittee, which has oversight over competition and antitrust law, is holding this hearing. But more is needed. In addition to reviewing individual transactions, Congress should review existing rules and regulations to ensure that industrywide problems are addressed so the new market order does not harm consumers by hindering the ability of firms other than the merging parties to compete effectively.

As I discuss below, the proposed AT&T/DIRECTV transaction will increase the incentive of DIRECTV-affiliated programmers to charge higher prices to their rivals, including hundreds of small and medium-sized MVPDs. ACA believes that regulators reviewing the transaction should adopt conditions to head off this potential harm. The deal also highlights existing problems in the video marketplace, such as significant price discrimination in the programming contracts of the large programmers and broadcasters, as well as rules and regulations that do not apply in a competitively and technology neutral manner. Congress and the Federal Communications

Commission ("FCC") need to ensure that consumers who reside in markets served by smaller MVPDs will not lose any competitive options or see their prices increase as the consolidation wave continues. This transaction and the others referenced above warrant prompt action by Congress and the federal agencies.

I. Introduction to the American Cable Association

In the U.S., nearly 100 million households purchase subscription TV. More than 80 million households subscribe to broadband. While big companies like Comcast, DIRECTV, DISH Network, TWC, AT&T, Verizon, and Charter serve most of the market, there are nearly 850 small and medium-sized MVPDs that provide the "triple play" of video, broadband Internet access, and voice services in local markets in all 50 states to nearly 7 million video subscribers. These are ACA's members. In some instances, these operators provide these same services in markets the big companies have ignored. In other instances, they provide competition to the big operators. ACA members are rarely household names on the national scene. But they are highly valued in the communities they serve. Their local ownership and local focus provides a unique alignment of their incentives to build robust networks and offer valuable programming with the interests and needs of the local communities they serve.

The small and medium-sized operators of ACA – which include cable operators, rural telephone companies, and municipally-owned service providers –, serve a number of important functions in the U.S. communications market and in society at large. ACA members:

Provide broadband in rural areas. As the National Broadband Plan noted in 2010, providing rural broadband is one of the great infrastructure challenges of the 21st century. Despite the high costs of building networks in more sparsely populated areas, ACA members have been building out broadband in rural areas for years. Most of them do so without any government funding, saving taxpayers billions in support for government-funded broadband networks.

Provide competition and choice in urban areas. Some of ACA's biggest members, like WOW!, RCN, Wave Broadband, and Grande Communications, are competitive providers of cable, broadband, and voice services in urban areas. These companies entered markets that are dominated by large cable companies and incumbent telephone companies, bringing choice and price competition in the process. Today, ACA members provide choice to more than five million residences in the U.S.

Provide services to community institutions and business in underserved areas. ACA members make available high-speed Internet access, private data networks and multiline voice products to tens of thousands of community institutions in small cities and rural areas. Nearly one million small businesses in rural areas have access to these advanced communications products from ACA members.

II. AT&T, DIRECTV, and the Competitive Landscape

AT&T and DIRECTV are both participants in the MVPD industry, which distributes video programming to consumers. DIRECTV also participates in the related video programming market, which provides this programming to these distributors.

AT&T is the fifth-largest MVPD. It is an IPTV MVPD operating under the U-verse brand, with about 5.7 million MVPD subscribers. U-verse video is available to between 24.5 million and 33 million TV homes in 142 markets across 22 states. Some small and medium-sized cable operators compete head-to-head against AT&T's U-verse service. The degree of competitive overlap of smaller cable operators with U-verse varies. However, where there is overlap, robust competition exists.

DIRECTV is the second-largest MVPD with approximately 20 million video subscribers in the U.S. It provides satellite MVPD service in all 50 states to nearly all 116 million TV homes. Small and medium-sized cable operators compete against DIRECTV whose service area either completely or nearly completely overlaps with all smaller operators. There is also robust competition between smaller cable operators and DIRECTV for video customers, notwithstanding the fact that most of these cable operators make available a "triple play" service and DIRECTV primarily offers only a standalone video service. DIRECTV and the other direct broadcast satellite provider ("DBS"), DISH Network, offer video service comparable to the video service of cable MVPDs at competitive prices, and existing double- and triple-play customers of smaller cable operators are willing to discontinue just their video service with a triple-play provider in order to switch to DIRECTV or DISH Network. Smaller cable operators report that offering the triple-play service is not attractive enough on its own to prevent DIRECTV and DISH from luring customers away. Price, content, and customer service still matter a lot in the MVPD market, and DIRECTV's offering of the NFL Sunday Ticket makes its service particularly attractive to a large subset of valuable customers. Even senior executives at DIRECTV seem to agree that video service offered as part of a triple play is a competitor, according to recent remarks made prior to AT&T's announced acquisition.[1]

In the video programming industry, DIRECTV owns or manages three regional sports networks (RSNs): Root Sports Pittsburgh, Root Sports Rocky Mountain, and Root Sports Northwest. It also has interests in some national programming networks, including the MLB Network and the Game Show Network. Most small and medium-sized cable operators purchase some DIRECTV-affiliated programming. ACA is aware of at least 120 smaller cable operators carrying one or more Root Sports regional sports networks. Additionally, there are more than 600 small and medium-sized MVPDs that carry the Game Show Network through these networks' agreements with their buying group, the National Cable Television Cooperative ("NCTC"). Moreover, many individual smaller MVPDs have individual contracts with the MLB network. As a vertically integrated MVPD, DIRECTV has an incentive and ability to disadvantage its MVPD rivals in the sale of this programming by charging higher prices. The harm to its rivals, which includes hundreds of smaller operators currently carrying its programming, and ultimately to consumers, is particularly significant with regard to its RSNs – its most popular programming.

III. The Proposed Transaction Will Increase DIRECTV-Affiliated Programmers' Incentive to Charge Higher Prices to AT&T/DIRECTV's Rivals

ACA's members are concerned with the combination of AT&T's distribution assets with DIRECTV's distribution assets because it will incentivize DIRECTV-affiliated programmers to charge higher rates to the merged firm's rivals above and beyond existing incentives. This conclusion is based upon economic theory and evidence relied upon by the FCC in analyzing previous transactions involving MVPDs that have interests in programming. In these reviews, the FCC found that companies that own programming have an incentive to disadvantage their rivals in the sale of their affiliated programming *in proportion to their per-video-subscriber profits*.

[1] *See* "AT&T/DIRECTV: Regulatory and Business Takeaways from AT&T's Merger Application," Bernstein Research, at Exhibit 3 (June 19, 2014).

In other words, if the profit margin per video subscriber of a vertically integrated MVPD rises, so does its incentive to harm its rivals by either withholding its programming permanently or temporarily during negotiation impasses, or simply by forcing them to pay higher prices for this programming.[2]

AT&T and DIRECTV assert their proposed deal creates efficiencies, and to the extent this is true, many of these efficiencies will increase the profit per video subscriber of both U-verse and DIRECTV. As AT&T notes in its filing, the most significant cost savings from the proposed deal will come from the merged firm's ability to negotiate better programming deals. These cost savings will be fully realized as DIRECTV's existing programming contracts expire and are renegotiated. By adding AT&T's 5.7 million MVPD subscribers to DIRECTV's 20 million MVPD subscribers, the merged entity will become a "must have" distribution outlet for programmers, enabling it to command larger volume discounts than either firm is currently able to obtain. As AT&T notes, the deal also creates other costs savings, most of which appear to be realized in the near term.[3] These cost savings in the aggregate will materially lower the cost of doing business for both the U-verse and DIRECTV service, and the U-verse and DIRECTV services will be more profitable per subscriber combined than as stand-alone entities.

Accordingly, the increased profitability per video subscriber that is realized by the proposed AT&T/DIRECTV merger will increase DIRECTV-affiliated programmers' incentive to charge higher prices to the merged firm's rivals, and the harm will be particularly significant with regard to its RSNs. If AT&T/DIRECTV acts on this incentive, the deal will harm DIRECTV's rivals in markets where its programming is available, and ultimately their customers as well.

IV. Regulators Should Adopt a Remedy to Eliminate the Ability of DIRECTV-Affiliated Programmers to Charge Higher Prices to AT&T/DIRECTV Rivals

While the Communications Act directly deals with vertically integrated cable operators, it does not have a provision preventing AT&T/DIRECTV from disadvantaging its rivals through the prices charged for affiliated programming. The existing program access rules prevent only cable operators and cable-affiliated programmers from engaging in unfair acts and practices, including imposing on other MVPDs discriminatory prices, terms, and conditions. These rules do not apply to programmers affiliated with DBS providers, like DIRECTV, or to non-cable MVPDs, like AT&T. Despite this fact, up until recently, rival MVPDs that reached an impasse in their negotiations with DIRECTV for its RSNs had a right to take DIRECTV to arbitration pursuant to a voluntary commitment with the FCC agreed to by DIRECTV when Liberty Media acquired DIRECTV. However, this condition, which was in place for more than six years, expired on February 27, 2014.

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[2] For a complete discussion on the bargaining theory framework for analyzing the competitive effects of vertical integration, *see* "Vertical Mergers in the Video Programming and Distribution Industry: The Case of Comcast-NBCU," Professor William P. Rogerson (2012), available at: http://faculty.wcas.northwestern.edu/~wpr603/Comcast-NBCU.pdf.

[3] According to AT&T's public interest statement, the proposed deal will allow AT&T and DIRECTV to consolidate broadcast centers, combine the distribution assets of AT&T's IP network and DIRECTV's satellite network, and to reduce costs associated with the operation of DIRECTV's and AT&T's super-hubs. It also will allow the merger of installation and service operations, and allow AT&T and DIRECTV to save money with respect to their customer call center operations, IT systems, and other general administrative and headquarters functions and services.

ACA believes regulators should impose a condition on AT&T/DIRECTV that prevents DIRECTV-affiliated programmers from disadvantaging the merged firm's rivals in the prices it charges. However, it would not be adequate to adopt similar arbitration conditions to those previously imposed on DIRECTV or the more recent version imposed on Comcast-NBCU. Those arbitration conditions, although well-intended, have a number of defects and problems limiting their effectiveness, particularly for small and medium-sized MVPDs. In particular, arbitration, even with one-way fee shifting, remains too expensive for individual small and medium-sized MVPDs to utilize. Smaller MVPDs also cannot precisely predict the results of an arbitrator's calculation of fair market value because they do not have precise information on the key factors that an arbitrator would likely use to make its determination, which is a problem exacerbated by the fact that much of the information is known by the programmer. Further, the manner in which a bargaining agent appointed by individual MVPDs could potentially avail itself of the arbitration conditions was poorly articulated and incompletely described in the FCC's Comcast-NBCU Order. ACA hopes to work closely with both the Subcommittee and the FCC throughout the year to explain the problems with arbitration conditions previously crafted by the agency and explore ways to fix them.

V. Congress and Policymakers Must Concurrently Address Regulatory Inconsistencies that Aggravate Existing Market Problems Facing MVPDs, Particularly Smaller MVPDs

Congress and regulators cannot limit their time and effort to looking just at deals like AT&T/DIRECTV and Comcast/TWC/Charter; they must provide enhanced oversight of the market as a whole, and update rules and regulations that work in the new market order. If all the pending MVPD deals are approved, the largest video distributors will grow even larger, creating an even greater disparity with the smallest providers with whom they compete. Moreover, the programming market is likely to respond to large video distributors getting larger by getting larger themselves, which will give these programmers even greater bargaining leverage over the smallest cable operators. Smaller cable operators need Congress to review the existing rules and regulations that govern the market to ensure that industrywide problems, which cannot effectively be dealt with through a merger review, are also addressed. This will ensure consumers that receive service from companies not growing larger through acquisition can continue to benefit from a competitive market. Given the mounting problems in the market even before the Comcast/TWC/Charter and AT&T/DIRECTV deals were announced, the public can't wait years for Congress to act. Action must be taken soon before smaller MVPDs exit the market, because once a smaller MVPD exits a market, particularly in rural areas, it is unlikely that Wall Street or Main Street will fund its return, or that government programs will help.

Although not all the marketplace problems can be easily addressed, ACA specifically urges Congress and the FCC to take action to better ensure that smaller MVPDs are not unreasonably disadvantaged compared to other industry participants, and that rules applied to smaller MVPDs are applied in a competitively and technologically neutral manner. The following are some examples where oversight and action by Congress or the FCC are appropriate at the same time that regulators decide whether to approve the AT&T/DIRECTV and Comcast/TWC/Charter deals.

Promoting Competition by Ensuring that Price Discrimination in Programming Contracts is Not Harming Consumers and Competition

For the last decade, small and medium-sized operators have been outspoken about the rising cost of programming, particularly sports programming, and the increasing demands of programmers to require their customers to receive and pay for unwanted programming. In the early years, smaller MVPDs were alone in their concerns, but now these concerns are shared by larger MVPDs as well. For most MVPDs, the single largest cost of providing video service is programming cost, and the relative cost of programming for smaller MVPDs is significantly higher than for larger MVPDs because of the discriminatory pricing practices of the large programmers. The spread between the largest and smallest is commonly thought to average about 30%. As ACA has noted in the past, this price discrimination is not justified based on the cost of delivering the service to the distributor. Given that most MVPDs have at least two large national DBS competitors, small and medium-sized MVPDs are often at a substantial competitive disadvantage against their larger competitors, who typically have many more subscribers, often tens of millions of more subscribers, because the most significant cost of providing a comparable video service is so very different. This problem is most pronounced for recent entrants in the market.

Given these marketplace realities, small and medium-sized cable operators are not surprised by AT&T's interest in acquiring DIRECTV. With nearly 6 million subscribers, AT&T finds itself in competition against Time Warner Cable with 11 million subscribers, DISH Network with 14 million subscribers, DIRECTV with 20 million subscribers, and Comcast today with 22 million subscribers. After trying to compete in the MVPD market for years, AT&T learned that it is hard when its programming costs are so much higher than its competitors – allegedly at least 20% higher than DIRECTV's – and likely even greater compared to Comcast. They also understand their current competitive standing would get even worse if regulators approve the Comcast/TWC/Charter deals. With respect to addressing their programming cost issue, this deal solves that problem.

While AT&T can buy its way out of its programming cost problems by purchasing a large MVPD like DIRECTV, small and medium-sized operators, who do not have the deep pockets of AT&T, are not so fortunate. They are increasingly struggling to stay profitable, no less survive, and consumers in their service territory are paying the price. Critics of the AT&T/DIRECTV merger have raised concerns about the decrease in the number of competitors for video service from four to three in AT&T U-verse territories. In many rural areas where there are only three providers of video service, rising programming prices are now driving some smaller MVPDs to exit the market altogether, leaving consumers with only two providers, a marketplace that is far less competitive than what consumers in AT&T U-verse territories will face. Unfortunately, decreasing levels of competition in these areas, which occur on a slow but steady basis, rarely generate the same levels of concerns from policymakers in Washington, but they should because they are often leading indicators of problems soon to face the market as whole.

ACA recently reported to the FCC that between 2008 and 2013, small and medium-sized cable operators closed a total of 1,078 small and rural cable systems, the vast majority of which reflect systems that have ceased providing video service in their communities. At the time of their closing, these systems served a total of approximately 50,000 subscribers. After these systems closed, consumers in these rural areas saw a reduction in competition as their only choices for video service became DIRECTV and DISH Network. Given the rise in programming costs, we are likely to see even more system closings in the coming years. Moreover, we're also likely to see more small cable systems controlling costs by dropping programming, particularly independent programming.

Unless Congress or the FCC can find a way to put small operators on a fairer competitive playing field with their larger rivals, particularly with regard to the cost of programming, the loss of those operators and the unique competitive alternative they provide will increase and start expanding into more populous areas. In particular, Congress and the FCC should examine and find ways to address programmers' discriminatory pricing practices, which are some of the biggest threats facing smaller operators and will grow more troublesome if the Comcast/TWC/Charter and AT&T/DIRECTV deals are approved.

Promoting Competition by Ensuring Buying Groups like the NCTC Have Access to the Program Access Rules as Congress Intended

Congress sought to ensure that smaller operators were protected from discriminatory and unfair behavior by cable operators and cable-affiliated programmers by extending "program access" protections to their buying groups. However, the regulations adopted by the FCC, particularly its definition of *a* "buying group," prevent the nation's largest programming buying group, the NCTC, from availing itself of the protections Congress intended. This means that more than 900 MVPDs, who obtain most of their national programming through this organization, are effectively denied the protection of the program access rules. Moreover, it puts smaller MVPDs at a competitive disadvantage with larger MVPDs who can avail themselves of the program access rules. For nearly two years, the FCC has been considering the adoption of new rules that would allow a buying group, like the NCTC, to file program access complaints and also contain safeguards to prevent programmers from evading the protections of the rules. It is vital that the FCC act now by updating its definition of a buying group, making clear programmers must treat buying groups comparably to other MVPDs, and not arbitrarily excluding certain buying group members from joining a master agreement signed by the buying group.

Promoting Competition by Ensuring FCC Regulatory Fees tied to MVPD-related work by the FCC's Media Bureau are Assessed on all MVPDs, including DBS Companies.

Congress requires the FCC to recover the costs of its activities from entities subject to its regulatory authority. Generally speaking, industry participants that receive direct benefits of a core bureau of the FCC are assessed fees that reflect those benefits. However, this is not the case with regard to the MVPD industry where the costs of the Media Bureau's MVPD-related activities are not assessed in a competitive neutral manner. Despite the extensive regulatory, policy, rulemaking and enforcement activities that Media Bureau employees engage in that concern and benefit all MVPDs, including DBS operators, DBS MVPDs, like DIRECTV, currently pay no (zero) fees to cover these costs. In contrast, cable operators pay a fee of $1.00 per subscriber.

Last year, the FCC recognized that IPTV providers like AT&T benefited from Media Bureau MVPD regulatory activities, and should therefore be included in the same fee category as cable operators. This brought regulatory fee parity between cable and non-cable MVPDs. The FCC is still considering whether DBS operators should also pay similar regulatory fees. According to the FCC's most recent regulatory fee rulemaking notice, the per-subscriber regulatory fees for cable operators and IPTV providers would drop from $1.00 to $0.68 if DBS were included in the relevant fee category. The notice asks whether it should expand this fee category to include DBS providers and whether it should change the name of the category to "MVPD" or "subscription television fees" or another appropriate name that would treat MVPD market participants more equally than they are today.

ACA strongly supports creation of such a fee category to include DBS, as does AT&T. The fact that DBS providers do not shoulder their fair share of the fee burden is more than simply a matter of equity. This disparity in fee assessment can have market-distorting effects.

As noted above, because DBS operators do not pay fees to cover the expenses of the FCC's Media Bureau regarding MVPD-related work, these costs are shifted entirely onto cable operators and IPTV providers that do pay the fees. Moreover, because cable operators typically pass through regulatory fees to customers, the DBS exemption has the effect of raising the cost of cable service for consumers. This is especially unfair to smaller operators serving smaller and rural markets, who are the least able to bear regulatory fee burdens and for whom the two DBS operators are the primary competition. The time has come to ensure that rules governing small and medium-sized MVPDs are applied to all MVPDs in a technologically and competitively neutral manner, and Congress or the FCC should address this problem immediately.

VI. Conclusion

As the consolidation wave in the MVPD and video programming industry continues, federal decision-makers must ensure that consumers and competition are protected. This means taking seriously their duty to review pending transactions under the antitrust laws and public interest standards and adopting appropriate remedies to address identified harms, specifically those raised in this testimony. It also means taking action on existing market problems threatening the important competitive choice that small and medium-sized operators provide. The AT&T/DIRECTV transaction and others highlight these problems. The choices that Congress makes to deal with these issues are profound. ACA looks forward to working closely with both Congress and the agencies in their review of the AT&T/DIRECTV deal, and in crafting rules that make the broader industry fairer to the independent cable community.

Mr. BACHUS. I thank you, Mr. Lieberman.

At this time, I will recognize the Chairman of the full Committee, Mr. Goodlatte, for 5 minutes for the purpose of questioning the witnesses.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Thank you all for your testimony.

Mr. Stephenson, I noted you taking some notes during Mr. Bergmayer's testimony and maybe Mr. Lieberman's. I do not have a lot of time here, but are there one or two points you want to make in response to their criticisms of your merger?

Mr. STEPHENSON. Yes. Actually it was not a criticism of the merger. It was he was citing a blog that a gentleman wrote where the blogger stated that we had not fulfilled merger conditions associated with the Bell South deal. And I would just like to make sure the Committee hears that blog was patently inaccurate. The data was false. We fully complied with every single condition imposed in that merger. In fact, what that merger required was that we provide 100 percent coverage of broadband, 85 percent with the fixed line broadband services. What one has to remember is at that time——

Mr. GOODLATTE. I have very limited amount of time. So I get your response to that point.

Let me go on to my main——

Mr. BACHUS. We have all been blogged before.

Mr. GOODLATTE. We understand that.

Let me go on to my main point in my opening statement, which is this is all about what happens to the consumer. And let me talk about my consumers in my district. In my hometown of Roanoke, Virginia, the bundled package that you referred to right now is available for Verizon customers with DIRECTV. So I and others can get that package that you referred to.

What will happen to that package that I have or someone else might have with Verizon and DIRECTV under this merger?

Mr. STEPHENSON. My expectation is nothing should change.

Mr. GOODLATTE. Well, what about AT&T? Do you offer those kind of packages right now as well in other parts of the country?

Mr. STEPHENSON. Yes, we do. Mike referred to those as synthetic bundles.

Mr. GOODLATTE. Why is it necessary to acquire DIRECTV to continue to have that bundle that you are referring to that we already enjoy?

Mr. STEPHENSON. If you are okay with it, I would like for Mike to address that for doing this in the marketplace and he has some very good data.

Mr. GOODLATTE. That would be fine.

Mr. WHITE. So, Congressman, we measure customer satisfaction on everything we do, and when we measure the satisfaction of a bundle experience versus someone who is just buying DIRECTV solo, it is dramatically poorer. And it is two calls on two different days, two different installations, two bills.

Mr. GOODLATTE. So how does Verizon solve that problem? Do they acquire DISH? Is that what we are talking about here? Because I am not sure what I have available to me with AT&T, but I know what is available with Verizon. And that does not solve the complaint you just outlined there with regard to Verizon, although I am not familiar with the complaints. We like the service we get.

Mr. WHITE. Right.

Mr. GOODLATTE. But I am not sure why one of the two companies should own DIRECTV and the other should continue to have the bundle experience that was referred to.

Mr. WHITE. The only way for us to get a seamless integrated bundle—we have had discussions for many years about trying to find a way that would have a better value for customers when you have got two separate companies chasing margin as opposed to one integrated company that can spread the costs over that one install. So for us, every time we sign up a new customer, we spend $850. We can probably reduce that by 20 percent with one call, one truck roll, build the router into the set-top box——

Mr. GOODLATTE. Is that savings going to get on to the consumer?

Mr. WHITE. Yes. We have had an economist study it. The bundles would be a better value for consumers. Absolutely.

Mr. GOODLATTE. Since my time is limited, let me ask you about another issue related to this. DIRECTV does not provide local Harrisonburg, Virginia—this is the northern part of my district—ABC. It does not provide that local channel in Page County, Virginia, which is right next to Rockingham County where Harrisonburg is located, despite being legally able to do so. Rather, DIRECTV beams in content from Washington, D.C., which is many hours away from my district.

Can you explain why DIRECTV has opted to not provide this valuable local content to my constituents? And can you commit to resolving this situation so that my constituents can receive local content rather than Washington, D.C. content?

Mr. WHITE. Certainly.

Mr. GOODLATTE. Nothing against this place where we work, but my folks back home—they live in a different world than here and they want to watch that world on TV.

Mr. WHITE. We have been working on our system for many years. We now serve 99.4 percent of American households with their local channels. We still have a few gaps and you have pointed out one of them.

Mr. GOODLATTE. There are more, though, because I have heard from other Members of Congress who have other gaps in other parts of the country.

Mr. WHITE. There are and we are continuing to build out as we get satellite capacity. We have got two more satellites going up in the next 12 months. For instance, Charlottesville, Virginia is on the list for later this year. The others would be on the list as well.

In addition to that, there are orphan counties. We would certainly be happy to work with you on coverage of some of the orphan counties, provided we do not have to pay retransmission fees twice. It kind of comes back to the rules that we have to abide by relative to the broadcasters and assuming the spot beam that comes from the satellite can reach those rural areas.

Mr. GOODLATTE. Thank you.

My time has expired, Mr. Chairman. I appreciate it. I yield back.

Mr. BACHUS. Thank you.

At this time I recognize Mr. Johnson, the Ranking Member of the Subcommittee.

Mr. JOHNSON. Thank you, Mr. Chairman.

As I noted in my opening statement, this transaction presents substantial opportunities for transforming labor standards in the telecommunications industry. The Communications Workers of America noted in a letter that AT&T has the largest full-time union workforce of any company in America. And I know everybody does not agree that that is something that is worthy, but I think it is very worthwhile.

And with that, I would ask unanimous consent to make a part of the record a letter from the Communications Workers of America in support of this merger.

Mr. BACHUS. You are offering something. Right?

Mr. JOHNSON. Yes, sir.

Mr. BACHUS. Without objection. I am sorry.

[The information referred to follows:]

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August 7, 2014

The Honorable Hank Johnson
Ranking Member
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
House Judiciary Committee
The United States House of Representatives
Rayburn House Office Building #2240
Independence Ave. and S. Capitol St. SW
Washington, DC 20515

Re: House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law June 24, 2014 hearing on "The Proposed Merger of AT&T and DIRECTV."

Dear Ranking Member Johnson:

Thank you for the opportunity to participate in the Subcommittee's June 24th hearing on the proposed merger of AT&T and DIRECTV. AT&T Chairman Randall Stephenson has asked me to respond to your request for additional information regarding AT&T' initiatives related to digital literacy.

Computer and digital literacy are crucial to success in a digital economy. As Chairman Stephenson explained in his testimony before your committee, AT&T's digital literacy initiatives are focused on investing in companies who perform digital literacy training and digital curriculum development in schools With respect to our schools, AT&T is especially concerned that about one in five students does not graduate high school with his or her peers, and one in four African-American and nearly one in five Hispanic students still attend high schools where graduating is not the norm. Dropouts from the Class of 2011 alone will cost the nation more than $337 billion in lost wages over their lifetimes.

In light of this, AT&T believes that investing in a well-educated workforce may be the single most important thing we can do to help the United States remain the leader in a digital, global economy. For this reason, we are proud of our commitment to be part of the White House's ConnectED initiative to connect 99 percent of classrooms to next generation broadband by 2017. On February 4, 2014, AT&T announced a $100 million commitment to provide 50,000 middle and high school students free Internet connectivity for educational devices over wireless networks for three years. AT&T's mobile broadband service will enable students to utilize tablets and other mobile devices for educational purposes that support student learning in new and more effective ways. In addition, we will provide mobile device management to support tracking and usage of devices; security software to protect access, safety and security of students; and solution integration for schools, to support device configuration, logistics and care services, and training for teachers and administrators on effective ways to integrate this solution into classrooms and learning.

While we are justifiably enthusiastic about ConnectED and other recent initiatives, Education has been a fundamental priority for AT&T for over a century, and raising graduation rates is the focus of our signature philanthropic initiative, AT&T Aspire, which we also discussed at the hearing.

Through Aspire, we have committed to invest $350 million to education in order to help students succeed in school, in the workforce and in life. We have put our Aspire investment to work in the following ways:

- Since 2008, AT&T Aspire has provided support to more than 1,000 national and community organizations including school districts, higher education institutions and education-serving non-profits. It has done so pursuant to competitive request for proposals (RFPs), such as the 2012 AT&T Aspire Local High School Impact Initiative RFP, which focused on high school success and college- and career-readiness programs. Local programs receiving Aspire funding demonstrated that they have strong, evidence-based practices grounded in the Department of Education initiative "What Works Clearinghouse Dropout Prevention: A Practice Guide" as well as data-driven outcomes demonstrably linked to high school graduation rates. The 2014 AT&T Aspire High School Success Initiative RFP process will provide up to $10 million to eligible organizations implementing verifiable, evidenced-based interventions to improve the retention, promotion and graduation rates of students at risk of dropping out of high school.

    - In the Greater Atlanta Metro Area, the total Aspire giving for the period 2008-2013 exceeded $5.2 million. This included such support as contributions to the We Teach Science Foundation in order to support a remote tutoring and mentoring program that uses the Internet to allow AT&T employees to provide students at risk of dropping out of high school structured mentoring sessions focused on science, technology, engineering and math (STEM) disciplines; and to Communities In Schools of Atlanta Inc. to support the provision of 19 high school graduation coaches to identify students at risk of leaving school, recruit community resources, and keep students on track. Additional corporate contributions were made to such community organizations as 100 Black Men of Atlanta, 100 Black Men of South Metro and 100 Black Men of North Metro to support, respectively, the Robotics Initiative, a nationally recognized program designed to increase math and science grades of middle and high school students and ultimately create an interest in technology careers, technological support to students in South Metro high schools on the Georgia High School Graduation test,

The Honorable Hank Johnson
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and to support the Men of Tomorrow program designed to help at-risk, teenaged males to improve math and reading scores and acquire technology-related skills.

- The AT&T Aspire Mentoring Academy gives AT&T employees the opportunity to make a lasting impact on the lives of young people through mentoring by encouraging AT&T employees to share life skills, personal stories about their career path and advice to help students succeed in school. We have set out a goal to provide 1 million hours of mentoring by our employees by the end of 2016. Employees can mentor while at work, in their community and online. The AT&T Aspire Mentoring Academy works with several education and dropout prevention non-profits to provide these mentoring opportunities including Big Brothers Big Sisters, Boys & Girls Clubs of America, Communities in Schools, Jobs for America's Graduates, Junior Achievement and We Teach Science. In the Greater Metro Atlanta Area alone, AT&T has recorded 52,786 Aspire Mentoring Academy mentoring hours since the beginning of the program in fall of 2012.

- The AT&T Aspire Exponential Change & Innovation initiative seeks to enable exponential change in education, working through collaboration with innovators, the education community and national nonprofit partners to stimulate promising ideas that support high school success, focusing on game changing approaches to education: development of interactive electronic games that foster learning, creation of hands-on educational programs that enable students to do things such as clean up simulated oil spills or extract DNA from bananas, sponsorship of "hackathons" to encourage U.S. technologists to develop new educational tools, sponsorship of mobile app contests, promotion of e-mentoring and many other approaches. This initiative goes beyond traditional philanthropy – corporate charitable giving and volunteerism -- to also engage people and technology to bring different approaches, new solutions and added resources to achieve our goal of helping more students graduate high school ready for college and careers.

In addition to AT&T Aspire, we are working with Udacity to launch a unique NanoDegree program that will focus on entry-level software skills. Udacity was born out of a Stanford University experiment in which over 160,000 students in more than 190 countries enrolled in a free "Introduction to Artificial Intelligence" class. Since then, the Udacity team of educators and engineers continue to bridge the gap between real-world skills, relevant education, and employment. With respect to our new NanoDegree program, AT&T is guiding development of the curriculum, supporting the program with scholarships through qualified nonprofit organizations and has committed to offering paid internships for up to 100 NanoDegree graduates. A natural complement to our Aspire and ConnectED initiatives, the program is intended to teach anyone with a mastery of high school math the kind of basic programming skills needed to qualify for an entry-level position at AT&T as a data analyst, iOS applications designer or the like. As the New York Times reported, the program "may finally offer a

The Honorable Hank Johnson
Ranking Member
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
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reasonable shot at harnessing the web to provide effective schooling to the many young Americans for whom college has become a distant, unaffordable dream." Economy: A Smart Way to Skip College in Pursuit of a Job Udacity-AT&T 'NanoDegree' Offers an Entry-Level Approach to College, New York Times (June 17, 2014)

Together, these three complimentary initiatives: ConnectED, which will equip our schools with the digital tools our students need, AT&T Aspire, which enable students to succeed using those tools, and programs like the NanoDegree initiative, which will enable successful students to target their digital education for specific jobs in the information economy without regard to traditional educational barriers, will go a long way to addressing digital literacy. But that isn't all we do on the digital front, and students aren't our only focus. At AT&T, we understand the broad range of benefits that digital literacy provides and we are proud to support organizations like the Family Online Safety Institute (FOSI), iKeepSafe OASIS Institute and the Wireless Rehabilitation Engineering and Research Center (WRERC). These organizations interact each day with consumers across the gamut of communities and tailor digital literacy content to meet the specific needs of their constituencies. Because I know that your particular focus, like ours, is on equipping today's youth with the digital skills they need, I attach a summary of these initiatives in a separate appendix to this letter.

I appreciate the opportunity to present these very important initiatives to the Subcommittee.

Sincerely,

Jim McKone

cc: Chairman Bob Goodlatte
Ranking Member John Conyers
Chairman Spencer Bachus

Appendix

Family Online Safety Institute

- With FOSI, AT&T has supported joint research projects with Hart Research to better understand how students, parents and teachers think about online safety and privacy. AT&T also supported the development of FOSI's "A Platform for Good" website, designed to teach students, teachers and parents about how to use the internet to improve their communities.

Common Sense Media

- AT&T supports Common Sense Media and their effort to improve the lives of kids and families by providing the trustworthy information, education, and independent voice they need to thrive in a world of media and technology. The Aspire Mentoring Academy team worked with Common Sense Media to develop a Digital Life Toolkit for AT&T as part of the "Skills to Go" curriculum.

iKeepSafe

- AT&T funded the development of iKeepSafe's BEaPRO Facebook and Android app to help parents navigate online safety for their children, including a Spanish-language version of the app to be launched later this summer.

CTIA Parent's Initiative

- AT&T collaborated with CTIA, ConnectSafely, Sprint, Verizon and T-Mobile to release "A Parent's Guide to Mobile Phones" in both English and Spanish. The guide discusses mobile safety and responsibility issues to empower parents when it comes to helping kids make smart choices on cell phones.

Older Americans

- Engaging older Americans and people with disabilities on digital literacy training is very important to AT&T. The products and services we offer provide the same range of benefits that other communities receive with the bonus of accessibility and independent living. AT&T has partnered with the nationally recognized advocates within these communities that understand the challenges these consumers contend with.

- AT&T recently partnered with Senior TechRally™ and AARP to conduct the AT&T Reconnect Tour. The tour visited 77 active retirement communities and senior centers in

Older Americans (cont.)

66 U.S. cities to provide older adults with digital literacy training. Over 5,500 people attended these workshops.

- Earlier this year, AT&T contributed to The OASIS Institute to help narrow the technology skills gaps for older adults. This program offers technology trainings on a wide range of topics from cell phones to iPads, reaching more than 1,000 older Americans in 7 cities. We are also co-hosting workshops with OASIS through AT&T's oxyGEN Employee Resource Group (ERG) in cities across the country.

- Over the years, we estimate that we have reached more than 13,000 seniors with technology training events with both English and Spanish speaking seniors.

- With regards to the specific needs of consumers with disabilities, AT&T regularly reaches out to the community to make sure our products and services continue to meet the needs of those with disabilities. Through the AT&T Access and Aging Panel we engage key stakeholders and experts twice a year to provide broad guidance on corporate accessibility policy as well as specific products and services. We maintain two disability-specific call centers where our representatives are specially trained to help customers with disabilities utilize the accessibility features of AT&T's wireless and wireline products and services.

Disabilities Access

- AT&T's Corporate Accessibility Technology Office is working with the Wireless Rehabilitation Engineering Research Center (WRERC) to conduct an education and outreach seminar series, touching 7 cities in 2014, focused on training consumers with disabilities about the accessibility features of our products and services.

Mr. JOHNSON. Thank you.

Now, Mr. Stephenson, many of your employees, including workers in union positions in my district, enjoy great benefits. How would AT&T plan to extend this industry-leading respect for the rights of employees to DIRECTV as a result of the proposed merger?

Mr. STEPHENSON. As you mentioned, Congressman, we have the largest full-time union in the United States. We have a long history of working with our union members and doing collective bargaining. We have always been open to card check neutrality and we have always allowed our employees to make that choice as to whether they wanted to be represented in collective bargaining or not. And so with DIRECTV, you should assume that the DIRECTV employees will be offered that same option to collectively bargain or not. It will be their choice.

Mr. JOHNSON. Thank you.

Mr. White?

Mr. WHITE. I agree. We certainly welcome the opportunity. I think there is some fabulous talent that AT&T brings, and we think DIRECTV has some great talent as well. And I think their world-class benefit programs for our employees will be a good thing.

Mr. JOHNSON. Thank you, sir.

All right. Mr. Stephenson and Mr. White, I would like to ask you both to talk a little bit about the company's commitment to diversity, the merged company's commitment to diversity in a number of different contexts. I know everyone will agree that having a diverse group of individuals as real partners both inside and outside of the company is important. AT&T's public interest statement pledges that AT&T's diversity best practices will be applied to DIRECTV. Such action would be laudable given AT&T's history in promoting supplier diversity and inclusion.

Mr. Stephenson, please describe the best practices referenced in the public interest statement.

Mr. STEPHENSON. Yes, sir. First, I will start with employees. We have a strong belief that our employees ought to reflect the markets we serve. I frankly do not believe you can be successful in the marketplace if you do not have employees, executives, all the way up through a board that reflect the markets we serve. We think we have a very good track record in that regard, again all the way from our board down to our frontline employees in the market.

We also extend, as you pointed out, that commitment and that expectation to our supplier community, and in fact, in 2013 our supplier community, when you look at the total spend external to AT&T, over 25 percent of our spend is with diverse suppliers. That is in excess of $15 billion in AT&T spend that was invested with diverse suppliers.

I would also suggest that one of the things Mike and I have come to realize is that our cultures are very, very compatible. We look at DIRECTV. We see very comparable practices, and we are actually enthusiastic. This will be a very seamless integration in that regard.

Mr. JOHNSON. Anything to add, Mr. White?

Mr. WHITE. Sure. I think from our side 40 percent of our workforce are people of color. 43 percent of our new hires were people of color. 42 percent of our summer interns were people of color. Having spent most of my career in consumer products, I passionately believe you cannot understand customers if your employee base and your management base and your board—and our board does as well—reflects that diversity. So we are proud of our commitment to diversity and inclusion at DIRECTV.

I would say I look forward to leveraging some of the supply chain work that I think AT&T has done, which is best in class in this area that we will be able to take advantage of.

Mr. JOHNSON. All right. Well, that is great to hear.

And do these best practices for diversity apply to banking and finance?

Mr. STEPHENSON. Yes, for AT&T. It is through all the disciplines, our external spend. I will not represent that it is 25 percent across all disciplines. That is something we will always work towards, but across all disciplines, we impose these diverse supply requirements.

Mr. JOHNSON. All right. Thank you.

And I yield back.

Mr. BACHUS. Thank you.

My first question is something that concerns Members on both sides, and that is how the proposed merger will affect Americans' jobs. And let me go further than that and say also the prices that constituents pay for both video and Internet. In other words, how will customers benefit and will this create jobs? And I will start with Mr. Stephenson or Mr. White, whichever.

Mr. STEPHENSON. Mike made this comment in his opening statement. It is about growth. I am very enthusiastic about this for a couple of reasons. First of all, as we both stated, these are complementary assets. You are not going to have the significant overlap of responsibilities like you do in a traditional merger because they are not overlapping. In fact, in 75 percent of the United States—we do not even compete to any degree. So that is going to mitigate a lot of the overlapping relationships.

To the extent that there are overlapping jobs that need to be taken care of, I think at AT&T we have a very good track record on very elegantly working our way through those using attrition and placing people in other assignments. So I will stand on our record in terms of what we have accomplished there.

Third, this deal has a lot of investment tied to it. Building out 15 million or enhancing 15 million homes with new broadband is a significant capital outlay in spite of some of the earlier comments. This is significant capital. These are hard-hat jobs that will be out deploying this capital. It involves fiber to cell sites. It involves putting new antenna arrays on top of cell site structures. It involves installations in the home. And so there is a lot of capital investment tied to this, and in our industry, capital investment is synonymous with jobs. And so from a jobs standpoint, I feel very good about what this will do.

Mr. BACHUS. Mr. White, do you have anything to add?

Mr. WHITE. I would only echo what Randall said. I recognize the concerns about consolidation. I think of this as more complementary combination, taking the best assets of two. And oftentimes in a merger of this size, there are significant job losses. That is not the case. This is a very different transaction. In fact, with the investments that Randall is talking about, it is going to create job growth. It is going to create significantly better broadband access for rural America, and it is a true win-win I think from both sides.

Mr. BACHUS. And I will say this. We are talking about two service calls on two different days, substituting that, having one. Obviously, customers benefit from that. And that is not the kind of job consolidation that I think any are concerned about. To have new services offered and capital outlays and new jobs created is what we are looking for, not duplication of the same job.

This has been described as a merger between a broadband provider and an Internet provider. And I think that is somewhat true. I mean a video provider—I am sorry—and a broadband provider. Except that U-verse—you do have a video offering at AT&T. It is very popular in my area. I want to know whether that is going to go forward, whether it is going to slow that deployment or increase it, exactly the effect it will have on U-verse.

Mr. STEPHENSON. Yes, sir. To answer the question directly, yes, U-verse will continue and, in fact, we will continue to expand our U-verse offering. One of the advantages of this transaction I referenced in my opening comments is that DIRECTV, because of their content and programmer relationships—we feel very good about what it will do to our overall content costs, including on the U-verse platform. And as I mentioned, we are losing money on the TV platform on U-verse. This combination will allow us to take that from a money-losing proposition to a profitable operation. And therefore, what that does is it allows us to expand U-verse because it changes the economics. And so with the change in economics, we can expand U-verse. In fact, we have an opportunity. We have committed to expanding that platform by an additional 2 million homes passed by our U-verse platform with a full 1 gigabit per second broadband capability.

Mr. BACHUS. Thank you.

My final question is this. It came up in the Comcast/Time Warner hearing. Many of our rural members were concerned. I raised issues related to rural programming and the importance to customers in really both rural and urban areas to get that rural programming because many of them have connections or farms or interest in their rural communities.

And I will ask you a similar question. Is rural America important to AT&T? I know it is to Direct, but what is your commitment to carry programming that is important and directed at rural America?

Mr. STEPHENSON. Yes, sir. Rural America is very important to us. We had opportunities in the past to sell off our rural assets. We have chosen not to. We have been working diligently to try to find a broadband solution for rural America. One of the things I am most enthusiastic about with this transaction is now when you have a profitable TV product that reaches rural America, it changes the economics for rural broadband deployment.

And what this is going to allow us to do is build out a rural broadband footprint using new wireless technology. It is called fixed wireless local loop. This is one of the more exciting technologies I have been a part of in quite some time, and we are committing to building out 13 million homes in rural America with this technology. They will get 15 to 20 megabit per second services. It is adequate for video streaming. It will be priced like a landline service, not like a traditional wireless service. So we think this transaction gives us the opportunity to really do some things exciting for rural America.

Mr. BACHUS. Thank you. For rural content.

At this time, I will recognize the full Committee Chairman, Mr. Conyers, for questions.

Mr. CONYERS. Thank you, sir.

Mr. BACHUS. Ranking Member. I am sorry. Former Chairman.

Mr. JOHNSON. Well, perhaps the gentleman has that vision for the future. [Laughter.]

Mr. CONYERS. You can leave it like that. It is all right.

I just wanted to ask Mr. Bergmayer to comment about anything that he has heard during the questioning period so far with our two distinguished witnesses.

Mr. BERGMAYER. Yes, thank you.

I think when it comes to the investment promises that AT&T is making, I would urge the Subcommittee to basically put them in context. I think it is important to distinguish upgrades from new build-out, and I think a lot of AT&T's numbers consist of upgrades, consist of adding a fixed wireless product to an existing wireless coverage area. Now, that might be some amount of investment, but it is less than an initial build-out. And I think it is important to just put it in context in that way and also put it into the context of AT&T's existing upgrade plans.

AT&T already has a fairly ambitious build-out plan. It has something called Project VIP which talks about a lot of the new build-out and coverage that AT&T plans to do. AT&T has an initiative where it wants to upgrade a number of cities to a gigabit wired broadband. However, it is not exactly clear the scope of AT&T's existing plans. We know that they are ambitious based on AT&T's statements, but it is hard to quantify them. Therefore, it is difficult to compare any new commitments that they may be making today to those existing plans.

And when it comes to broadband coverage, I will just make the point that broadband is an evolving standard. So if we expected AT&T to provide a certain level of service in 2006, you would hope that they would meet any commitment and then continue to upgrade that service as the definition of broadband continues to be reworked by the FCC and by policymakers. And that is my concern. It is not enough to simply meet a certain commitment and then stay there, but we expect a continuing level of investment.

Mr. CONYERS. Do you generally agree with those comments?

Mr. STEPHENSON. No, sir, I generally do not agree with the comments.

The commitments we have made—I think they are very well documented, and we have laid them out in public filings on our VIP project that we will build broadband to 57 million homes, that we will expand our video footprint by 8 million homes passed, and that we will pass 1 million business locations with fiber, and that we will pass 300 million people with our mobile broadband LTE service. Those are all documented. They are all in the public record. They are in our financial filings, and we are fulfilling those. The commitments that we have made here, the 15 million new or enhanced broadband connections, are all on top of that commitment that is already out in the public domain. So all of that is incremental.

And the capital requirements to do that—I mean, just 2 million households with fiber to the home is a significant capital investment. The 13 million fixed wireless local loops—that is a massive geography that we are talking about passing, and while it may be incremental to some investment that is already there, for a company that is investing $21 billion a year, it is a significant amount we are taking out of that.

Mr. CONYERS. Okay.

Well, now, do we have a consensus here, Mr. Bergmayer, of his rebuttal? Does that work out with you?

Mr. BERGMAYER. I understand that AT&T has a very ambitious build-out plan, but I mean, some of the numbers in question that are supposedly in AT&T's public filing somewhere are redacted and confidential in the FCC filings. So I have not looked at them. So it is difficult for me to see how the numbers are simultaneously public and redacted.

My overall point, however, is to put AT&T's incremental promises in context of its existing build-out plan and for the Committee to really question how merger-specific these promises are or whether, as happened in the T-Mobile merger, AT&T already has build-out plans and they are simply restating them for the purposes of getting a merger approved.

Mr. CONYERS. Mr. Stephenson, how would allowing this transaction to go forward result in putting downward pricing pressure on cable products?

Mr. STEPHENSON. It is interesting. When you heard Mike describe the process by which he sells video services and we do, it is kludgey process to try to get to the market with a bundled broadband and satellite TV service. You put the two together. You have a lot of customer efficiencies that come as a result of that. It is cheaper. The customer experience is better. And we had an economist study this. It is in our filing with the FCC. He did a very detailed econometric model, and he said before even the merger synergies, the cost synergies were incorporated, this would have not only a downward pricing bias on our prices but also the prices of cable companies who will have to respond.

Mr. CONYERS. Let me get a response in from Mr. Lieberman before we close out.

Mr. LIEBERMAN. Thank you. I just want to say Mr. Stephenson and Mr. White are very polished in talking about the benefits that will come through this deal, the commitments that they are willing to make. But we have not heard them talk about the concerns that the programming, particularly the regional sports networks that are owned by DIRECTV, are not subject to any arbitration conditions and that they will have an incentive and ability to increase the prices for that programming for smaller cable operators. If they are going to be making public interest commitments, it would be nice to hear them talk about a commitment to address that problem as well.

Mr. COLLINS [presiding]. Thank you. The distinguished Ranking Member's time has expired.

The Chair now recognizes himself for his questions.

I want to go back to something that is just off a little of my other question—statements to Mr. White. It happened to come from my friend from Georgia. But I want to make it clear. DIRECTV will not be forced to unionize. Correct?

Mr. STEPHENSON. Oh, no, sir. We leave it up to the employees to make that decision.

Mr. COLLINS. And this will be a request for them to vote to join the union, or will there be a required vote for them to go to?

Mr. STEPHENSON. The union has to go in and solicit and see if they can hold a vote.

Mr. COLLINS. Good.

Mr. Lieberman, as you may know, I have previously expressed concerns about the impact of the proposed Comcast/Time Warner merger on the ability of small businesses in my district to advertise on cable television when the Subcommittee held a hearing on that merger earlier this year. Could you give me your view on this issue in light of the merger before us today and especially any difference in the impact of the Comcast/Time Warner merger compared to the AT&T/DIRECTV proposed merger?

Mr. LIEBERMAN. Gladly. ACA is concerned that Comcast/Time Warner Cable would be able to exclude MBPD's, their agents and advertisers from regional advertising interconnects, while this would not be the case with AT&T/DIRECTV which do not control an advertising interconnect.

Mr. COLLINS. Good.

I always like to open it up. Mr. White, would you like to talk about that?

Mr. WHITE. Yes. I would just make two comments. On the advertising, we are quite a different business model. Most of our advertising is national. We are less than 1 percent of the advertising. I do not think it affects the market at all. In fact, I think it will open up opportunities for small businesses to advertise.

And as it relates to the regional sports networks, we have three of them: one in Denver, one in Seattle, and one in Pittsburgh. AT&T does not even have a footprint in those three States. So it does not have any impact on those regional sports networks. And we are subject to the program access requirements of the FCC.

Mr. COLLINS. I believe that vigorous competition helps consumers get a good deal no matter where it may be. Competitive markets as this when there is genuine choice for consumers in terms of who supplies the good services that they demand. In both AT&T and DIRECTV—your written testimony—it has been stated that this merger will increase competition. But competition is not an end, however. It should be a mechanism by which consumers realize actual benefits. I am going to open this up to everyone.

I would like to open this question and say can you say with certainty, or at least as is possible in a business world, that this merger will or will not directly result in more choice and lower cost to consumers both in the short term and the long term and to what extent. It is often portrayed in these mergers that this is what will happen. The reality is life changes. Hearings are over. Spotlights are off, and this does not happen. And I would like to hear each of you, as best you can, concise as you can, answer that question.

Mr. WHITE. I will take the pay-TV side and Randall can talk to the broadband benefits.

But from a customer standpoint, we believe in choice. We have to. We sell a pure play offering. It is going to be like vanilla, chocolate, and strawberry. We will have the pure play. We will have a bundle together with the AT&T capability, particularly with the 15 million homes they are going to build out, which will be a new benefit for consumers.

In terms of the overall value to consumers, today those bundles are not very competitively priced. When you make one company, as our modeling shows, you will see a better value bundle offering to those customers.

Mr. COLLINS. Just a quick question. Let us just say for full disclosure for folks like me who have Direct and have AT&T for two different services, is that going to become a bundle opportunity for us, or are we stuck within the packages that we currently have until they are over?

Mr. WHITE. Congressman, that will be your choice. I mean, we believe in choice. The way we have built our business, it is up to the customer to decide. So we are going to give that choice. As I said, you can choose A, B, or C or you can stay where you are.

Mr. COLLINS. Mr. Stephenson?

Mr. STEPHENSON. There is another facet to this. When you ask about consumer benefits, the over-the-top model is evolving very, very quickly. We also have 100 million wireless subscribers at AT&T who are demanding access to the types of content that Mike has on the DIRECTV product. One thing you should expect to see us do is begin to integrate those offerings and begin to deliver that content seamlessly across mobile devices. That is one benefit in accelerating the OTT model.

The second is, in terms of consumer benefits, the 15 million additional broadband homes passed is a significant consumer benefit that would not happen but for this transaction. We think that is significant.

And then obviously the pricing implications. And I will not go into the econometric model, but it is really compelling what happens to pricing not just with us but across the industry as a result of this transaction.

Mr. COLLINS. I may have made a Freudian slip and said more choice and more cost. That may be just what I have experienced in the past.

I would assume the other two disagree with that. And I will have to—because of time, I have to because I do want to go back to this issue the Chairman brought up. It is an issue for me. It is the orphan county issue. It is not just me. There are other Members. Mr. White, I have had conversations with your folks. I want to continue to make this. I am going to continue to harp on this until we get this fixed both with the broadcasters—this is just not an issue that I am going to let go of. There are some in the audience. They are going their head down. You know, when I get on something, I really do not leave it until I get an answer. So at this point, I have encouraged that.

My time has expired. We will go to the gentleman from New York, Mr. Jeffries.

Mr. JEFFRIES. Thank you, Mr. Chair.

Let me thank the witnesses for your testimony here today.

There has been some discussion about the workforce transition. I just want to go over some of that ground again.

Mr. Stephenson, AT&T has the largest unionized workforce in the country. Correct?

Mr. STEPHENSON. Full-time union.

Mr. JEFFRIES. And I commend you for that and for demonstrating that you have been able to be an incredibly successful company with that workforce composition.

Now, your employees are represented by the Communications Workers of America. Correct?

Mr. STEPHENSON. That is correct.

Mr. JEFFRIES. Mr. White, what is the percentage of unionization of your current workforce at DIRECTV?

Mr. WHITE. With DIRECTV, we have outsourced partners, but specifically as it relates to DIRECTV, in terms of owned employees, it is de minimis. It is mostly a non-union workforce. Some of our, however, installers in the Northeast and elsewhere are union.

Mr. JEFFRIES. Have there been efforts to unionize the workforce in the past?

Mr. WHITE. I think we have had a vote in one geography in California, yes.

Mr. JEFFRIES. And what was the outcome of that result?

Mr. WHITE. That result was in favor of unionizing, and I think we have had some questions from our standpoint that we are going through with the commission about challenging that. But we are waiting for the ruling from the NLRB I believe.

Mr. JEFFRIES. Thank you.

Now, Mr. Stephenson, in terms of legacy DIRECTV employees, I believe you have indicated that they will have an opportunity to join CWA. Is that correct?

Mr. STEPHENSON. We have a policy of open card check neutrality.

Mr. JEFFRIES. So the process of facilitating that potential transition will be through neutrality in terms of card checks.

Mr. STEPHENSON. Yes, we have a long track record in this regard. When we bought AT&T Wireless, for example, we opened up the workforce to card check. The union came in and held a vote, and across many of the locations, they voted to join or to become part of the collective bargaining process, some places not. But we leave that up to the employees to make that decision.

Mr. JEFFRIES. Now, you expect the merger to create jobs. I believe, both Mr. White and Mr. Stephenson, you testified in that regard. Correct?

Mr. STEPHENSON. Yes. We actually are enthusiastic about it. First and foremost, we are investing to build out 15 million additional homes with broadband. Those are hard-hat jobs to go build out these capabilities.

Mr. JEFFRIES. So both in terms of the ambitious capital build-out program and, I gather, as a result of the complementary nature of the company—and there does not seem to be much disagreement about that—there is an expectation that you would create jobs now.

Mr. Bergmayer, is there reason for you to disagree with that assertion?

Mr. BERGMAYER. I think it is usually the case that in mergers, there are job redundancies. It is not the focus of my concern here. Today I am focused more on the consumer side.

Mr. JEFFRIES. Okay.

Now, Mr. Stephenson, in terms of the potential creation of jobs, is there a specific regional distribution that you would anticipate would receive any job growth more so than other parts of the country?

Mr. STEPHENSON. Yes. The places that come to mind first are the 2 million homes that we are passing with our gigabit technology for really high-speed broadband capability. That involves taking fiber all the way to the home, putting electronics in the field. That is a very significant build. That will be within what I will call our old traditional franchise landline territory, so the 22 States where we operate today.

The rural broadband build, which is the wireless deployment, will hit 48 States. And so that is going to be a fairly broad-based deployment.

And in our company, jobs align with capital. I mean, they are perfectly correlated. As you invest, you hire more people. Now, I do not want to mislead. There will be places, to Mr. Bergmayer's comment, where there are redundancies in jobs, but we do have a very good track record on how to address those situations, and we use very extensively attrition. And I feel good about our track record in that regard.

Mr. JEFFRIES. Now, you do not currently offer video services in the New York City market. Is that right?

Mr. STEPHENSON. In what market?

Mr. JEFFRIES. In the New York City market.

Mr. STEPHENSON. We offer wireless services and we offer service to large corporate businesses.

Mr. JEFFRIES. But not video.

Mr. STEPHENSON. Not video. Not today.

Mr. JEFFRIES. Now, Mr. White, DIRECTV does offer video in the New York City market. Is that right?

Mr. WHITE. We do.

Mr. JEFFRIES. And how do you expect the potentially merged entity, AT&T/DIRECTV, to impact the nature of the services that would be offered by a combined company?

Mr. WHITE. Well, I think in urban markets like New York, there would not be any change frankly in general from a pay-TV standpoint. We will continue to compete hard for customers in those geographies. I would say we will have an opportunity to bundle with the wireless side. And that is something different that we have not done before.

Mr. JEFFRIES. So there is no current bundle offered in the New York City market.

Mr. WHITE. We might with Verizon and with slower speed Internet service, but not high-speed. FiOS is very competitive in New York.

Mr. JEFFRIES. Thank you. I yield back.

Mr. BACHUS [presiding]. Thank you, Mr. Jeffries.

At this time, I recognize the gentleman from Texas, Mr. Farenthold for 5 minutes.

Mr. FARENTHOLD. Thank you, Mr. Chairman.

Mr. BACHUS. He is the Vice-Chairman of the Subcommittee.

Mr. FARENTHOLD. Thank you.

I would like to follow up with you, Mr. White, on a question that Mr. Collins asked about local broadcasters. And as the satellite technology is adopted in homes, how does the local car dealer reach that market outside of the local broadcast station that you carry? A car dealer or whomever can go to a cable company and buy some of the local avails on those channels, and with satellite, it does not. I would assume U-verse had an ability to buy local adds on cable as well. If you did not, you should have.

Mr. WHITE. Yes, you are absolutely right. U-verse, because it is a local product, does have local advertising.

As far as DIRECTV is concerned, the nature of the satellites in the sky is they are kind of national. So our advertising business grew up as a national business competing with the large media companies who are much larger than we are.

More recently, we have got a new technology that is enabling us to do some targeted advertising. We have done a joint venture with DISH for political advertising. This is a new technology leveraging the Internet, which is enabling us to target homes, and we are hopeful to be able to grow the local advertising. But historically I think $70 million of our 600 in advertising is local advertising. It is very small.

Mr. FARENTHOLD. We may actually have a technology that is helping local broadcasters and then potentially hurting them.

I wanted to talk now, Mr. Stephenson, a little bit about your fiber build-out. Common sense to me dictates that the driving force behind broadband right now is video, and if you have got a cheap way to deliver video via satellite as opposed to broadband, there is a discouragement in rolling out your fiber network. And I read an article in the "Dallas Morning News," though, about how you are actually still rolling it out because you are competing with Google Fiber.

So how are we going to see the rollout of fiber affected in markets that Google is not entering yet? When is it going to filter down to the mid-sized cities and then eventually to the smaller towns?

Mr. STEPHENSON. That is one of the, I guess, interesting things about this transaction, and I have referenced it a couple of times now. But our video service, whether it be over fiber or over our fiber-to-the-node technology—we lose money on the video service because 60 cents of every dollar goes to the programmers. Combining with DIRECTV and creating the opportunity to make our programming costs look like DIRECTV's programming costs makes our fiber-based TV product profitable. And once the TV product becomes profitable, it fundamentally changes the economics of a fiber build.

And so when we announced the deal and that we were going to expand our fiber-to-the-home footprint by 2 million homes, it is because of the economics of a more profitable video product. In fact, in your district I think Corpus Christi, 16,000 homes will get fiber to the home as a result of this transaction. Victoria County, out and around that area, a fairly significant number will get fixed wireless local loop broadband coverage where they do not have any today. So it just changes the economics of a broadband build and actually makes a fiber deployment more compelling, not less compelling.

Mr. FARENTHOLD. All right. So you are willing to tell me under oath here that this is not going to slow down your fiber deployment.

Mr. STEPHENSON. This will what? I am sorry.

Mr. FARENTHOLD. Not slow down your fiber deployment.

Mr. STEPHENSON. This will actually cause us to do more fiber deployment.

Mr. FARENTHOLD. You talk about lowering programming cost and the buying power you get with this merger. And I see how that is a competitive advantage. What about making space available for new television networks? You see a huge growing market in Spanish language networks. You see a growing market in sports and news for these sort of things. What is going to happen with respect to if I, God forbid, do not get reelected next year and decide to start Blank TV?

Mr. WHITE. Well, as you can imagine, Congressman, we get requests for new channels all the time. I think right now we are considering 50. I do not have satellite capacity for 50, but we do have two new satellites going up over the next year. So we have a process internally where a couple times a year I sit down with all the requests. We already have 152 independent channels. We welcome that as an important part of the diversity of our offerings. So I would expect with our new satellite capacity and with things like the gigabit to the home where you can do affordably—you can do video, that we would have more diversity of independent channels.

Mr. FARENTHOLD. Thank you very much.

I see my time has expired.

Mr. BACHUS. Thank you.

At this time, Mr. Cicilline is recognized for 5 minutes.

Mr. CICILLINE. Thank you, Mr. Chairman.

Thank you to the witnesses for being here.

I would like to start with Mr. Stephenson. Mr. Bergmayer has said that AT&T has failed to demonstrate any public interest benefits from this transaction, and in large part, he argues that the build-out that you are speaking about of 15 million customers is, in fact, enhancements rather than build-outs and may have actually been something that was part of your capital investment anyway and is something that is not reflected in your public filings and not really specific to this merger.

So could you speak to that, first of all? Can you tell us of that 15 million, how many are enhancements for people who have existing service, how many are build-outs for new customers? Is it in fact something you plan to do anyway and is not specific to this merger, not to say it is not a good thing, but in evaluating this, could you respond to that?

Mr. STEPHENSON. Yes, I will be glad to.

I went through earlier specifically what commitments we have made, and they are in our public financial filings where we have committed fiber, where we have committed IP broadband to 57 million homes, a million businesses passed with fiber, 300 million people covered with LTE. All of that is just kind of baseline. We made those commitments and we are finishing that construction now.

The 15 million broadband either enhancements or additions are all incremental to that. The 15 million is split. And 13 million is a technology that we are very enthusiastic about. It is called fixed wireless local loop, a very interesting name for the technology. But what it is is taking advantage of areas where we have significant spectrum, and it tends to be rural America. In fact, it is almost all rural America where we have 20 megahertz of spectrum. We are deploying this technology and using wireless to deliver 15 to 20 megabit per second service to those homes.

Now, to Mr. Bergmayer's point, yes, we are going to use existing cell site infrastructure to put up these capabilities, but we are going to go in and put antennas into homes, a lot of installation required. That is 13 million.

There are 2 million homes where it is called "enhanced," but what we are doing is deploying fiber to the home, literally going up, digging up streets, and putting fiber into the home. That is a significant incremental commitment to what we have already made.

Mr. CICILLINE. Thank you.

Now, several witnesses, both in their testimony and in the written testimony, have raised issues with respect to net neutrality. Should part of the remedy to address some of the issues that have been raised with the transaction include extension of the net neutrality rules to wireless? Should we do that as part of this process, or should it be done, I should say?

Mr. STEPHENSON. We have been very, I believe, constructive in the net neutrality debate. The rules that went in in 2010—we worked extensively with the FCC to design those rules and make sure that they accomplished what the tech industry needed, the content people, and all. And we think those rules landed at the right place.

Those rules were very cautious to tread into the wireless area because wireless networks are not like fixed line networks. We have limited spectrum that this Congress is working aggressively to try to deal with. When you have limited spectrum and limited capacity, doing things where it constrains what you can do to deliver traffic can be very hazardous, if you will, to service quality in general. So we felt we ought to walk very cautiously and be very, very delicate in how we deal with the wireless situation.

Mr. CICILLINE. Thank you.

Mr. White, could you talk to me a little bit about what DIRECTV is either committed to doing or what will be part of the terms of this merger agreement to ensure that smaller, independent channels will be paid a fair rate, given that DIRECTV already is the second largest video distributor and will, presumably, only have its market position enhanced as a result of this merger? What commitments have you made or what terms will be part of this merger agreement that would protect that?

Mr. WHITE. So I do not think we have yet put in anything specific to the merger agreement. Clearly, every distributor of video right now is struggling with rising content costs, which are 60 percent of our costs, and they are growing at far in excess of consumer incomes, high single digits, 8 to 10 percent a year, which has put tremendous pressure on the business and our need to raise consumers' prices. I would say certainly that colors how we look at all negotiations with big and small.

And by the way, we have taken on the big guys. I think we have probably been a leader in the industry in battling to try and keep costs lower. It is a tough battle. But as it relates to independent channels, we have both our public interest obligations that we continue to live with. 4 percent of our channels would be PIO's. We have, I think, 26 of those. We have 152 independent channels. In today's world with over-the-top as an option as well with broadband, we can put things up as an application just like we have done with Pandora and YouTube so we can expand even beyond that and would certainly look to if consumers want it.

Mr. CICILLINE. Mr. Chairman, if I might just ask the final between witnesses if they would submit written answers to this question. If there are things that you suggest we could do that would allay some of the concerns you both have raised, short of an outright opposition to the merger, but actions we could take as a Congress that will respond to some of the very important issues you raised, if you could answer that in writing, I would be grateful.

And I yield back, Mr. Chairman.

Mr. BACHUS. Thank you, Mr. Cicilline.

At this time, I recognize Mr. Issa for 5 minutes.

Mr. ISSA. I thank you, Mr. Chairman.

Gentlemen, as the Chairman next door, I am used to going first so all the material is mine. When you get down this far, usually most of the good questions have been asked, and this is no exception.

But I just want to run a concept by you because I serve on this Committee. I also am a member of the Energy and Commerce Committee that often looks at the other side of your issue in the FCC.

So when I say, for example, Comcast/Time Warner/NBC, AT&T/DIRECTV, Verizon/Fox, DISH Network/CBS, Spring/T-Mobile/ABC, and Google and everyone else, are we looking at a future in which in order to be competitive, companies have to find these partnerships, these allies, these mergers in order to be able to create real viable competitors in this case AT&T/DIRECTV to some of those other hypothetical and not-so-hypothetical names that I mentioned? Mr. Stephenson, Mr. White?

Mr. WHITE. Well, certainly for anyone distributing the pay-television piece—I will let Randall speak to the broadband aspect, but I think there is a story there as well. When 60 percent of your costs are the content that you distribute—I mean, we are just a distributor—and seven companies control 75 percent of our content costs, so we are already in the world of dealing with big-scale providers of content. They are tough negotiations, big and small. In our case, we have had our battles with big ones on behalf of our customers. So I think as a reality to do the kind of investments that we are talking about in broadband—and I think Mr.

Bergmayer referred to it earlier. To me the exciting thing about this is not just the commitments we are making today, but the fact of AT&T having a profitable video business will support them to continue to invest in increasing speeds and broadband, which we know that is where the future is going for the long term.

Mr. ISSA. Randall?

Mr. STEPHENSON. I do not know where future industry moves go and what consolidation transpires. Mike and I—we view this as very different. This is not Comcast/Time Warner. This is not two cable companies getting together. It is not Sprint/T-Mobile——

Mr. ISSA. And you do not have a major content element. Some of the other names and hypothetical names I mentioned do have, and that is why I asked the question that way.

Mr. STEPHENSON. Yes, so you are exactly right because we are putting his TV product with our broadband and wireless product and creating a unique value proposition in the marketplace. But there is not a content play per se in this transaction.

Mr. ISSA. Mr. Bergmayer, in your opening statement you were very concerned, but I would presume you would have been equally or more concerned when major cable companies and content providers join. Right?

Mr. BERGMAYER. Yes, sir.

Mr. ISSA. Okay. Mr. Lieberman, the same thing.

Mr. LIEBERMAN. Yes. There is definitely a concern.

I just want to say it is not only content providers merging with distributors. It is also just distributors getting larger. When they get larger, they get more influence over programmers. That drives programmers to want to get larger as well. As a small provider who does not have the financial resources to get larger themselves, they suffer. If we want to have a market that is dominated by larger players, where consumers in rural areas do not have options, then that may be the market that we are going to look at.

Mr. ISSA. And this is the reason I started this way. On this side of the Rayburn Office Building, we deal in the antitrust question, but antitrust, since the dawn of antitrust since Teddy Roosevelt, has been about recognizing that companies naturally compete if not for a trust situation that gives them an unfair advantage. Do you all agree to that, that that is really what antitrust is about, is maintaining the opportunity for real competition?

So now I go back to my basic question which is not just for your merger, but in my mind for how this Committee deals with, if you will, the promoting of competition. In fact, do we not have a problem that if we do not create certain large entities that can deliver product and compete to my household to make sure that I have multiple choices to my household wherever I live, that in fact we will not have competition either for delivery of content or, quite frankly, we have a problem with delivery of content being at a good value? Is that not true?

Mr. WHITE. We think it is certainly true. And I think this merger creates a greater opportunity for us to combine with AT&T's broadband capability. For us, every satellite costs $400 million. On his wireless business, Randall is spending $10 billion, $15 billion, $20 billion a year in capital spending. It is expensive to rewire

America, and that is kind of what we are about collectively. And that is how we compete.

Mr. ISSA. Thank you.

Mr. Chairman, fortunately, Viasat is in my congressional district. So the good news is that those launches tend to cost a similar amount, although SpaceX is reducing the cost of the launch. But those satellites are transmitting so many more channels and so much more bandwidth that I am confident that in fact competition from space becomes one of the competitions that hopefully this Committee will realize needs to be viable to maintain an antitrust environment.

I thank you and yield back.

Mr. JOHNSON. Will the gentleman yield?

Mr. ISSA. I yield such time as the Chairman may give me.

Mr. BACHUS. I will yield you 15 seconds. Is that good?

Mr. JOHNSON. Yes.

I just want to make a statement about Government investment in infrastructure, the space program, the hundreds of millions of dollars that the Federal Government, through taxpayer money, spent to prepare to turn that industry over to the private sector, of which Mr. Issa is so proud and justifiably I think is a tribute to Government spending.

With that, I will yield back.

Mr. BACHUS. Thank you.

Mr. Holding, the gentleman from North Carolina, is recognized for 5 minutes.

Mr. HOLDING. Thank you, Mr. Chairman.

Of course, the folks that I represent back in North Carolina want to know in real terms what it means to them—the merger. We have lots of good conversation in this hearing. And so I would like for you all to succinctly boil it down and answer this question.

So 3 years from now, what are the top two things that you think that my constituents who are your customers will appreciate or dislike about this merger? And I will ask Mr. Stephenson, Mr. White, and then I will ask Mr. Bergmayer, Mr. Lieberman to hit their top two points. So starting with you, Mr. White, two things that you think my constituents will appreciate about this merger in 3 years' time.

Mr. WHITE. 15 million more rural Americans will have Internet service that do not have high-speed Internet today, and I think up to 70 million homes in America out of 115 million will have a much better bundle offer to compete with the cable companies.

Mr. HOLDING. Mr. Stephenson?

Mr. STEPHENSON. And as that plays itself out, what the econometric model will show and we firmly believe is there will be downward pricing pressure in this industry as we become a more viable competitor, as our programming costs begin to climb at a lower rate. We think it is beneficial to consumers from a pricing standpoint.

We think also more broadband is very, very good for the over-the-top content distribution models. So more broadband will help accelerate the over-the-top models and bring more choices for customers on content.

Mr. HOLDING. Mr. Lieberman, maybe the top two things that they will not appreciate in 3 years.

Mr. LIEBERMAN. Yes. I think that the rising prices that they will see. Their service providers who are not DIRECTV have to pay for DIRECTV programming. And I think the number two concern that they would have is just the increasing pressures. The decreasing competition that smaller providers can provide as a result of the increasing consolidation that is happening in the marketplace not only due to AT&T/DIRECTV, but also Comcast/Time Warner Cable.

Mr. HOLDING. Mr. Bergmayer?

Mr. BERGMAYER. If I was a rural resident, I would be wondering whether I was resigned to only having wireless choices or whether I had some future prospect of getting the same sorts of fiber and high-speed broadband options that are available to people in more densely populated areas. I agree that over-the-top video is a great benefit to consumers, and I think what people benefit from is a choice of a variety of over-the-top video providers. So I would hope that in the future, customers are not driven toward using just one or another over-the-top video provider. For example, if AT&T operates its own over-the-top video service and it does not discriminate in favor of that service and discourage people from using competing services, for example, by exempting only its own services from data caps but not those of its competitors.

Mr. HOLDING. Thank you.

Mr. Chairman, I yield back.

Mr. BACHUS. Thank you, Mr. Holding.

At this time, I will recognize the gentleman from Missouri, Mr. Smith, for 5 minutes.

Mr. SMITH OF MISSOURI. Thank you, Mr. Chairman. Thank you for holding this hearing.

My first question is for Mr. White. Mr. White, the American Cable Association states that reductions in programming costs that AT&T and DIRECTV may receive as a result of the proposed merger, which may lead to higher programming costs for their members. How do you respond to that?

Mr. WHITE. First of all, the reduction in programming costs that we have referred to is a reduction in the costs that currently AT&T pays. So we did not make any assumptions that DIRECTV's costs would go down necessarily, but it is all related to the cost of content that AT&T pays today. Our belief is that, as we look at that, frankly all of us battle in these negotiations every day. The cable operators do as we do as distributors. And there is a significant amount of leverage. But it is hard for me to see in a world where there are over $40 billion of affiliate fees that our billion dollars in savings out of the $40 billion would make that much difference over time to what they would charge the small operators.

Mr. SMITH OF MISSOURI. So do you think this merger will increase the cost of your competitors by any means?

Mr. WHITE. That has got nothing to do with our thinking on it. This was all about getting a capability to service the 75 percent of customers that leave DIRECTV because they cannot get a bundle right now and has nothing to do with that. So I do not accept that all.

Furthermore, I think some of our smaller operators—you got to remember in a local market, they are very, very powerful in terms of their coverage, and they negotiate very tough. And I do not expect them to want to see their prices increase any higher than they already are.

Mr. SMITH OF MISSOURI. Thank you.

Mr. Stephenson, I have a very rural congressional district in southeast Missouri, and it is an unserved population. AT&T and many other wireline providers, as well as cable operators, have made significant investments to reach my constituents, many of whom struggle to get dial-up. Can you explain how this transaction will result in increased broadband services for rural communities like mine?

Mr. STEPHENSON. Yes. In fact, I just am looking at a list here. In Missouri, the fixed wireless local loop deployment that this transaction will accommodate is significant. Again, we have a profitable TV product that we now pair with a broadband technology, and it makes the economics for deploying broadband look really attractive. We are going to use a wireless technology which will give 15 to 20 megabits per second, build 13 million households in rural America. In Missouri, that is 340,000 households we pass with this technology. And this is one of the areas we are most enthusiastic about. We have been looking at this technology a long time, trying to get the economics to work, and it works once you put a profitable video product, which DIRECTV brings to bear, with this technology. So that is what Missouri should see.

Mr. SMITH OF MISSOURI. Thank you.

You know, representing a very rural congressional district, with your statements there, I want to point out that the only way that I can get Internet service at my house, which is 13 miles from Rolla, Missouri, a community of 25,000 people, is through wireless or satellite. So that is extremely important for rural America.

Mr. Lieberman, larger sized competitors typically have an advantage relative to their small rivals as a result of economies of scale. Smaller sized competitors can outperform their large rivals on service and product quality. What other competitive advantages, aside from size, will the combined entity of AT&T and DIRECTV have?

Mr. LIEBERMAN. Thank you. As you know, consumers do benefit from having independent distributors in the market, companies like Boycom and NewWave are just important in their communities, and these are often in areas where larger players do not want to invest and do not want to serve.

With regard to your question, first and foremost, I cannot discount the importance of just being large when you are negotiating for programming costs. Even AT&T, DIRECTV have said that 60 percent of their costs go to programming. That is to deliver their video service. That is the same for smaller operators as well.

I think being large has other advantages of just having more financial resources whether or not it is marketing to your customers, for instance. These things give great advantages to DIRECTV in a lot of their competition with smaller operators.

Mr. SMITH OF MISSOURI. Will the ACA members that are present throughout my district be able to compete with the combined entity of AT&T and DIRECTV on the basis of better service and higher product quality?

Mr. LIEBERMAN. They will compete. They will do what they can to overcome the significant disadvantage that they face in paying programming fees that are significantly higher than DIRECTV, but that competitive ability is getting more and more difficult over time. And if your customers enjoy having a competitive choice between two satellite providers and a local cable operator, then I think we need to look at the underlying rules that are in the market that are driving these consolidations to ensure that consumers can continue to benefit from that in the future.

Mr. SMITH OF MISSOURI. Thank you, Mr. Chairman.

Mr. BACHUS. Thank you.

We are going to have a second round for Members who are here if they desire it. So, Mr. Smith, if you want a second round, you can.

Mr. Johnson, do you have other follow-up questions? I will go and then you if you have any.

Let me start. Mr. Bergmayer, Mr. Stephenson has already mentioned net neutrality and that they were committed to the FCC's—some of their guidance. I am not sure what the FCC's position on net neutrality is. It seems to me they are backing away from what was originally conceived as net neutrality.

Mr. BERGMAYER. As I understand it, AT&T has committed to follow the 2010 open Internet order. Those rules are partly vacated by the D.C. Circuit, but as part of a merger condition, certainly AT&T might promise to abide by those rules even if they are no longer in force for some of the industry.

I think there is a question about the extent of the protection they offer to wireless users. For example, while they provide less protection for wireless users than for wireline broadband users, they do not provide no protection. And one of the areas where they offer protection for wireless users is for services that the provider itself offers. There are some cases where it cannot discriminate against competing services. Now, if AT&T does offer a new over-the-top video service, those provisions of those rules might kick in where previously AT&T did not offer such a video service. So they might not. So that is sort of an interesting point with the 2010 rules.

Mr. BACHUS. I think most Americans and most Members of Congress are very concerned. The Internet has sort of been a gateway not a gatekeeper. I know as a telephone company, you are subject as a common carrier. We have seen reports of fast lane, slow lane, and if there is a reason not to have that, it is concerning.

Mr. BERGMAYER. Well, Public Knowledge is working at the FCC now for strong net neutrality rules that would apply to the entire industry not just one company. I mean, I question whether it makes a lot of sense to have rules that apply to just one company and not others. I would prefer them to be industry-wide. I would presume, if we succeed in our effort to get rules that are even better than the 2010 rules in place, if they go beyond the 2002 rules' level of protection, then AT&T would be subject to them. But if they go not as far as the 2010 rules, we would still hold AT&T to the 2010 rules.

Mr. BACHUS. I know there is some discussion about what is a common carrier. I will not get into all of that. But I think it is something the Committee ought to look at.

Mr. Lieberman, discriminatory pricing obviously is a concern. We want to preserve the competition we have. And you have talked about a differential of 30 percent in your testimony. You said the proposed transaction will increase DIRECTV affiliate programmers' incentive to charge higher prices to AT&T/DIRECTV rivals. And then you say regulators should adopt to eliminate the ability of DIRECTV affiliated programmers to charge higher prices to AT&T/ DIRECTV rivals. I think the same thing would apply to Comcast/ NBC and, you know, obviously others. It would not be just DIRECTV.

I know there was some arbitration that expired and DIRECTV had to submit to arbitration. I think Comcast still does. I think you said in your statement that you did not feel like that was sufficient. Do you want to comment further on that or on discriminatory pricing?

Mr. LIEBERMAN. Yes. Let me start with, I think, the issue that is most directly tied to the AT&T/DIRECTV deal, which is DIRECTV's incentive to charge its rivals higher prices for its programming, which will get greater as a result of this deal. Currently there is not enough protections to avoid that problem. I think Mr. White has explained that the program access rules are subject to them currently. However, those rules themselves are not enough. Even DIRECTV has suggested in cases, mergers, where program access rules already exist, that there should be heightened protections and has argued for arbitration conditions. FCC has asked for that same condition.

So DIRECTV, as part of a 2008 merger, had arbitration conditions opposed to them. Baseball style arbitrations. That was based on coming up with a rate that was based on fair market value for the programming. That has expired. And we believe that a similar condition should be adopted to address that harm. However, the one that was previously adopted had some flaws. It remained too expensive for smaller operators to use. So if you have a remedy that is too expensive for a cable operator with 1,000 subscribers to use, you pretty much have no remedy. So we need to relook at this type of remedy, put some modifications to it to make sure it works for all providers that need it.

Mr. BACHUS. Just to eliminate the ability altogether.

Mr. LIEBERMAN. Excuse me?

Mr. BACHUS. Just to eliminate the ability altogether.

Mr. LIEBERMAN. Yes. What we should do is eliminate their incentive to increase the prices for their rivals more than the price that they would charge to non-rivals.

Mr. BACHUS. And I think you all support creation of a fee category to include DBS?

Mr. LIEBERMAN. Yes.

Mr. BACHUS. An also AT&T has. So that will be interesting as you go forward there.

Let me close by saying what some Members of Congress—I guess this is the most frequent question I was asked. And I do not think anyone has asked this. One of the principal components of the proposed AT&T/DIRECTV merger is DIRECTV's continuing relationship with the NFL. What can you share with us regarding that relationship and your customers' ability to continue to get a package which they very much value?

Mr. WHITE. Well, thank you for the question, Congressman. As you can imagine, the NFL content all of our customers are very excited about each year when we kick off the new season. We have had a longstanding, actually a 20-year relationship this year with the NFL. We very much value that relationship. Our relationship is excellent. Our current deal—it was a multiyear deal—expires at the end of this coming season. So we are in active discussions with the NFL about renewing our NFL Sunday ticket product, and we are very hopeful and optimistic that that will happen. And I am confident, based on the discussions, that we will get that done before the end of the year.

Mr. BACHUS. Thank you.

Mr. Johnson will close the hearing with his questions.

Mr. JOHNSON. Thank you.

As part of its merger with NBC Universal, Comcast pledged to partner with schools to teach digital literacy and encourage adoption among low-income families. Comcast likewise committed to offering certain low-income families broadband Internet access at affordable rates. And as a result of this program, nearly 1.2 million Americans have joined the program, 86 percent of whom now use the Internet daily, 21,00 which are in my home State of Georgia, with just over 17,000 families in the City of Atlanta alone.

Will AT&T commit to a similar program to advance the public interest through affordable broadband access and digital literacy training?

Mr. STEPHENSON. I am not intimately familiar with it, Congressman, but I will commit to you we will look at it. I think it is probably not only in the communities we serve, but probably in our self-interest. We are doing a lot in terms of nano degrees trying to help with low-cost education for people to get degrees that would equip them to do things in the digital world, and we are very, very excited about it. We also have made a number of investments to ensure that we can address that end of the market and ensure that customers at that end of the market are getting really robust broadband capabilities.

Our experience, in terms of getting good penetration of broadband into lower-income communities, is not the access to broadband. It is the access to computers. And what is happening and is happening at a very quick pace are these devices. These are very low-cost computers that are wirelessly connected and giving really low cost for people in lower-income communities to gain access to the Internet and the digital economy. And so we are focused in this. But I will be glad to look at the areas you addressed and evaluate it.

Mr. JOHNSON. Thank you.

As part of its rollout of a fiber network in Kansas City, Google includes a free monthly service with basic Internet service if consumers pay a one-time construction fee to connect their home to the network. Does AT&T offer a similar service for its fiber networks?

Mr. STEPHENSON. Google did some very creative things in Kansas City, and I take my hat off to them. They then modified their approach and took it to Austin. What they received in terms of permitting to build out a fiber network in Austin from the municipalities was very interesting. And in fact, as soon as they announced it, we told the Austin community if you will make the same concessions to us, we will build a fiber network as well.

We launched our fiber network back in November. Google has yet to launch theirs in Austin. But it is a good indication of competition and the robustness of fiber deployment in these communities and different business models that are emerging like the one you mentioned in Kansas City, a different one in Austin. We have announced one in North Carolina as well.

Mr. JOHNSON. What other outreach programs does AT&T offer to unconnected homes, specifically those in low-income neighborhoods and in rural areas?

Mr. STEPHENSON. So what programs?

Mr. JOHNSON. Yes. What outreach programs does AT&T offer to unconnected homes, specifically those in low-income neighborhoods or rural areas?

Mr. STEPHENSON. I apologize. I do not know off of the top of my head, but we can get that to you.

Mr. BACHUS. You know, they do have AT&T Aspire, which I think is a very valuable program. It may not get to all. It certainly keeps students from dropping out of school. And that is a very large program. And when they do not drop out of school, they get a good job and they have the ability to use——

Mr. STEPHENSON. We have a multiple hundred million dollar commitment to the high school dropout crisis focused particularly on Hispanic, African Americans, and Native Americans. The dropout crisis was an epidemic, and so we have made a major commitment of money to address this; it has moved the needle in a lot of areas, and that has continued.

Mr. BACHUS. And was that not $300 million and something?

Mr. STEPHENSON. The first one was $200 million. The second was $250 million I think.

Mr. JOHNSON. That is commendable. But in terms of outreach to enable families, low-income and also rural folks, of what the opportunities are in terms of what you offer and how it can benefit the people. So in terms of just outreach, not so much the programming itself, but what do you do in order to make people aware of the benefits of Internet connection and the other services that you provide?

Mr. STEPHENSON. It is a good challenge, and like I said, I cannot give you specifics of what we are doing there. If nothing, I will let you know and we will take it under consideration of what we can do and do better.

Mr. JOHNSON. Thank you.

Mr. BACHUS. Of course, Aspire is an outreach program. Our biggest program in education is our dropout rate.

Mr. JOHNSON. You are to be commended for that.

Mr. STEPHENSON. I would say in that regard one of our biggest issues as a company is——

Mr. BACHUS. It is a tremendous problem. [Laughter.]

Mr. JOHNSON. You all agree?

Yes, sir?

Mr. STEPHENSON. I was just going to say one of our biggest issues as a company over the next 6 years is access to what I would call computer- and digital-literate employees. We are going to need a significant number of them, and we are doing a lot of creative things, not the least of which we are fully funding for any of our employees who can qualify a masters in computer science at Georgia Tech University purely online. It has been certified by the Governor and by the Board of Regents as a fully accredited degree, and AT&T is committing to pay anybody who can qualify and make it into that program. Those who cannot qualify to get into it—we are bringing it in house and we will do AT&T certifications to begin to build these skill sets for people.

Mr. JOHNSON. Okay. Well, that is great.

Digital literacy training. Do you have any programs that enable those without that skill to learn about it and take advantage of it? Any programs that you might have?

Mr. STEPHENSON. So we have a number of digital literacy programs. And in fact, the Aspire program that the Chairman referenced—we have actually done some things with the Aspire program where we have invested in companies who do digital literacy training and then do things in schools to develop digital curriculum and so forth. So we have made some investments in these areas. That continues to be a focus of ours. I would be glad to give you a full detailed listing of all the efforts that we have going on in that area.

Mr. JOHNSON. Okay. That would be great. And I just look forward to you all thinking outside of the box and coming up with some new attractive ways of making your services available to those who cannot afford it or who just simply do not know about it. You have already covered the fact that those without access—you are going to take care of that. But there is that other more softer component of it also.

Mr. STEPHENSON. Noted.

Mr. JOHNSON. Thank you.

I yield back.

Mr. BACHUS. I thank the gentleman.

This concludes today's hearing. I thank all of our witnesses for attending and answering the questions. I thought you all gave excellent testimony.

Without objection, all Members will have 5 legislative days to submit additional questions for witnesses or additional materials for the record.

This hearing is adjourned, and now you can go over to the Senate.

[Whereupon, at 12:59 p.m., the Subcommittee was adjourned.]

A P P E N D I X

Material Submitted for the Hearing Record

Questions for the Record from
Chairman Bachus
for the Hearing on "The Proposed Merger of AT&T and DIRECTV"
June 24, 2014

<u>Questions for Mr. White</u>
President, Chairman, and CEO, DIRECTV

1. The American Cable Association states that reductions in programming costs that AT&T and DIRECTV may receive as a result of the proposed merger may lead to higher programming costs to ACA's members. How would you respond to that statement? In other words, do you think this deal will result in higher programming costs for your competitors?

The American Cable Association argues that, if our merged company succeeds in negotiating lower programming costs, programmers will seek to "recoup" lost revenue by raising costs for smaller MVPDs. This, however, assumes that programmers today charge smaller programmers less than the highest price they can negotiate. Basic economic theory suggests that this never happens. Moreover, my company has extensive experience negotiating with programmers and I can tell you categorically that programmers *always* seek the highest price they can negotiate.

2. DIRECTV has made the commitment to continue to offer a stand-alone video product for three years. What happens at the conclusion of the three years?

The three year commitment relates to standalone national pricing for DIRECTV video services. It should not be interpreted to suggest that the combined company would ever discontinue DIRECTV satellite video service. We expect the combined company will continue its satellite video service as long as it is a viable competitive alternative to cable and other means of video distribution. The combination with AT&T won't change that.

3. How does DIRECTV use "most favored nation" clauses with independent programmers and what, if any, competitive impact does the use of those clauses have?

MVPDs and programmers alike use most favored nation clauses (or MFNs as they are called) routinely in contract negotiations. They ensure that the terms they are being offered in negotiations are the best that are being offered to any competitor. I would analogize them to the guarantee that some retailers provide their customers that they will match their competitors' lowest price.

From my perspective, MFNs are necessary largely because programming contracts are subject to strict confidentiality requirements. Because contract negotiations lack any transparency, DIRECTV often seeks MFNs to assure that its subscribers are not paying higher prices than those of DIRECTV's competitors. Were programmers to agree to make contracts public, we would need MFNs far less often.

4. When testifying before the Senate Judiciary Committee, you indicated your support for rural programming and specifically noted your relationship with RFD-TV. Rural-focused programming is very important to many who live in these areas, and connecting rural and urban America is very important for our country. What steps has DIRECTV taken to ensure that rural America receives rural-focused, independent programming, such as from RFD-TV and others?

DIRECTV has deep roots in rural America. When we launched service 20 years ago, we became the first MVPD to offer rural subscribers exactly the same quality of programming and service that urban subscribers had grown accustomed to. Many of our first and most enthusiastic subscribers were rural Americans in areas with no cable at all. Rural-themed programming remains a staple of our service, and we are proud to carry RFD-TV and other rural-oriented programming.

Responses of Randall Stephenson
AT&T Inc.
To Questions for the Record from
Chairman Bachus
For the Hearing on "The Proposed Merger of AT&T and DIRECTV"
June 24, 2014

1. **There are a number of voluntary commitments contained in the public interest statement. Public Knowledge contends that AT&T has not lived up to some of its commitments in the past. Can you comment on that contention and how we can be assured that AT&T will meet the voluntary commitments made in connection with this proposed merger?**

   The concerns raised by Public Knowledge about the BellSouth commitments are unfounded and appear to be based on a failure to understand the actual commitments made by AT&T. We committed to provide broadband to 100 percent of the residential living units within our wireline footprint, by using wireline technology to serve 85 percent of those units and satellite and wireless technology to serve the remaining 15 percent. AT&T fulfilled this commitment. Public Knowledge erroneously fails to acknowledge the service provided via satellite and wireless in its assessment.

   More generally, we believe that our track record speaks for itself and that the Committee can be confident in relying on us to keep our commitments.

2. **Public Knowledge asserts that the commitments made by AT&T in connection with the proposed merger were already made in advance of the announcement of the transaction, or would have been done without the transaction. How would you respond?**

   Public Knowledge is mistaken. The commitments we have made for broadband investment with this merger are entirely new and significantly more extensive than anything we have announced before, either with Project VIP or our GigaPower fiber build-out plans.

   Further, these new build-out commitments are a direct result of the transaction. The synergies AT&T expects to achieve as a result of this transaction dramatically improve the economics of broadband employment. The ability to reduce the content costs for providing AT&T video service and to bundle DIRECTV video with AT&T's wireline and wireless broadband services will fundamentally change the economics of deploying broadband. This allows us to commit to enhance and expand our fixed broadband service to cover at least 15 million customer locations across 48 states – most of them in underserved rural areas – within four years of the transaction closing.

At least 13 million largely rural customer locations will get our Fixed Broadband service using innovative fixed Wireless Local Loop (WLL) technology. This deployment was not targeted as part of our Project VIP build-out plans and we expect that 85 percent of these 13 million locations will be outside of our 21-state footprint. Almost 20 percent of these 13 million customer locations today have no access to terrestrial broadband service. An additional 27 percent of these customer locations today have only one terrestrial option, and in most instances that single option is DSL or relatively slow cable modem service. The broadband product we will be offering these consumers is a significant upgrade over their current service options.

At least two million customer locations will be upgraded to AT&T's highest-speed broadband using AT&T U-verse® with GigaPower℠ Fiber-to-the Premises (FTTP) service.

All 15 million of these customer locations are in addition to what has been announced previously.

3. **AT&T has entered into a half-billion dollar deal with the Chernin Group to develop an online video service offering similar to "Hulu." How does the proposed merger impact the Chernin Group deal, and will the online video product compete with DIRECTV?**

AT&T's venture with The Chernin Group is part of our ongoing effort to promote the development of over-the-top (OTT) services. As a broadband company, we want to encourage the growth of OTT as much as possible because it contributes to the rich broadband environment that consumers demand.

The Chernin Group joint venture, announced in April 2014, was formed to acquire, invest in and launch OTT video services. This alliance positions AT&T and The Chernin Group to promote the rapid growth of online video and OTT video services and to invest in advertising and subscription VOD channels as well as streaming services. The Chernin Group and AT&T have committed over $500 million in funding to the venture.

The transaction with DIRECTV will further promote the development of OTT services. DIRECTV's assets and its relationships with content providers will play a crucial role in our efforts to deliver unique OTT content to customers' TVs, PCs, mobile phones, and tablets.

4. **Many Members of this Committee represent constituents who live in rural areas. Rural-focused programming is very important to many who live in these areas, and connecting rural and urban America is very important for our country. At the hearing, you indicated that rural America is very important to AT&T and described**

the work AT&T is doing to bring broadband to rural America. I remain committed to ensuring that rural America's interests are preserved by receiving programming relevant to rural lifestyle. What steps have you taken or do you intend to take to ensure that rural America receives rural-focused, independent programming?

AT&T has been and remains committed to serving consumers in rural America, and this transaction will enhance our ability to do so. In particular, the rural broadband build-out commitments made possible by this transaction will significantly expand the broadband service options available to rural consumers. The greater availability of broadband service will provide enormous consumer benefits, and as more consumers in rural America take advantage of these newly available services it will create a greater market demand for video and online content focused on rural interests. This increased demand will create additional opportunities for rural and independent content providers to reach these constituencies.

Questions for the Record from
Chairman Bachus
for the Hearing on "The Proposed Merger of AT&T and DIRECTV"
June 24, 2014

Questions for Mr. Lieberman
Senior Vice President of Government Affairs; American Cable Association

1. You argue that the merger will increase programming costs for your members. In the past, some have argued that programmers always will charge as much as possible regardless of proposed mergers. How would you respond to that argument?

   It is true that programmers will charge as much as possible for their programming regardless of proposed mergers, but it is also true that the AT&T/DIRECTV merger will result in ACA members and their customers paying higher programming fees for programming affiliated with AT&T/DIRECTV, particularly its regional sports networks. These propositions are not mutually exclusive – they can be true at the same time.

   When a programmer and MVPD negotiate the fee that the MVPD will pay the programmer, they are essentially deciding how to split the joint economic gains created from having the MVPD carry the programming. This sort of bilateral bargaining situation has been extensively modeled in the economic literature. The model assumes an MVPD will pay for programming no more than its worth (to the MVPD), and a programmer will sell programming for no less than its cost. The model further assumes that programmers always seek to charge as much as possible for their programming, and likewise, MVPDs always seek to pay as little as possible. In the absence of any particular information about the relative bargaining strength of the buyer and seller, a well-accepted and standard practice in the economics literature is to predict that the parties will split the joint gains equally. In other words, the settled upon price would be halfway between the programming's worth to the MVPD and its cost to the programmer.

   Vertical integration between a programmer and an MVPD creates an opportunity cost for the programmer when the programmer provides its programming to a rival of its affiliated MVPD. This is because some customers of rival MVPDs would switch to the programmer's affiliated-MVPD if the rival MVPD were unable to offer the programmer's programming, and the affiliated-MVPD would earn a profit on these switching customers. For the programmer, this opportunity cost is no different than a direct cost. Thus, when a vertically integrated programmer negotiates with a rival of its affiliated MVPD, its programming costs increase by an amount equal to this new opportunity cost. Employing the bilateral bargaining model described above, when the programmer's programming costs increase, the likely price paid by the MVPD increases as well.

   As described in my testimony, the combination of AT&T and DIRECTV will increase the profitability per video subscriber of both the DIRECTV and AT&T U-verse services, and this will increase a DIRECTV-affiliated programmer's opportunity cost when selling its programming to either service's rivals. As a result, ACA members and other MVPDs will pay higher programming fees for the AT&T/DIRECTV programming.

2. Do you believe that the combined AT&T and DIRECTV will charge higher rates for its owned content, such as that of its regional sports networks, to ACA's members? What remedies are available to ACA's members if the prices charged by AT&T and DIRECTV rise to an anticompetitive rate?

As discussed in the response to the previous question, the combined AT&T and DIRECTV will charge higher rates for its affiliated programming, particularly its regional sports networks. ACA members have no viable remedies to mitigate the higher rates that result from the AT&T/DIRECTV merger. Although program access rules apply to DIRECTV as a condition from a prior merger, the Federal Communications Commission has found these rules to be ineffective to prevent a vertically integrated programmer from uniformly raising the price of its programming to both its affiliated MVPD and other MVPDs when it has both economic incentive and ability to do so. In order to mitigate the incentive of vertically integrated programmers to charge supra-competitive prices to MVPDs, the FCC has consistently insisted that merging parties voluntarily accept conditions to remedy this potential harm.

Prior to Comcast/NBCU, the Federal Communications Commission conditioned approvals of license transfers involving the combination of distribution assets of a multichannel video programming distributor ("MVPD") and the programming assets of a broadcast station or regional sports network ("RSNs") on the acquiring parties' "voluntary" acceptance of the remedial condition of "final offer" or "baseball style" arbitration. These conditions were intended to mitigate the incentive and ability of the programmers affiliated with the MVPDs to charge above fair market value prices to other MVPDs. The theory behind this remedy is that a programmer's risk of losing "final offer" arbitration to an MVPD would constrain its pricing behavior. For numerous reasons, this remedy has proven to be of little to no value for small MVPDs and their customers.

The FCC attempted to make the arbitration condition more attractive to small MVPDs in its review of the license transfers associated with the Comcast/NBCU deal. For small MVPDs, one of the main problems with the previously adopted arbitration conditions is that its high fixed costs are likely to exceed any potential financial benefits of winning the arbitration. To address this concern, Comcast agreed, at the insistence of the FCC, to subject itself to a modified version of the arbitration condition, agreeing to a "one-way fee shifting" condition for arbitrations with small MVPDs. This new requirement obligated Comcast to reimburse the MVPD for its arbitration fees if an MVPD with less than 600,000 subscribers wins the arbitration. However, if Comcast wins the arbitration, each side is responsible for its own costs for the arbitration. The FCC recognized the need for "one-way fee shifting" to make a small MVPD's threat to take a programming fee dispute with Comcast to arbitration more credible in order to force Comcast in its negotiations to lower its asking price to a fee closer to fair market value.

Unfortunately, while one-way fee shifting looked attractive from an academic perspective, it alone did not make arbitration any more attractive to small MVPDs. One-way fee shifting works only if the programmer actually believes there is a credible threat that a small MVPD will both seek arbitration and win. In practice, small MVPDs were no more likely to take a programming fee dispute with Comcast to arbitration with this mechanism than without it due to remaining issues, and Comcast felt no greater threat. Since Comcast knew that smaller firms would not engage in arbitration even with one-way fee shifting, it faced no constraints on extracting higher fees from these MVPDs and their customers, consistent with predictions based on economic modeling. In the years since the Comcast/NBCU transaction was approved, despite findings that Comcast/NBCU would have an incentive and ability to charge higher prices to other MVPDs, no small MVPD has utilized the arbitration condition with one-way fee shifting.

The following explains why "one-way fee shifting" alone did not make the arbitration condition more attractive for small MVPDs, and restates the other problems with arbitration for small MVPDs that the FCC has yet to address. In order for small MVPDs to be protected from the additional harms of the AT&T/DIRECTV deals, it is imperative that all of these remaining issues be addressed.

Lack Of Critical Information: Arbitration works only when a programmer believes there is a real risk that an MVPD will utilize it and can win, and this would occur only if an MVPD can precisely predict the result of the arbitrator's calculation of fair market value. However, in reality, small MVPDs cannot precisely predict such an outcome because they do not have precise information on the key factors that an arbitrator would likely use to make its determination, including: (i) existing and previous prices a vertically integrated programmer charges other MVPDs for the disputed programming; (ii) the size of the volume discounts granted to larger MVPDs versus small MVPDs (a.k.a. "small MVPD" premium); (iii) what other programmers charge for similar programming; (iv) the costs of acquiring the content comprising the programming at issue; (v) the programmer's internal studies or discussions of the imputed value of the disputed programming as sold in bundled agreements; and (vi) the programmer's other internal evidence of the value of the programming. And even to the extent a small MVPD may know bits and pieces of this information, decisions of individual arbitrators will vary widely, leading to even greater uncertainty. Since small MVPDs cannot precisely predict the result of an arbitrator's calculation of fair-market value, their odds of losing an arbitration and not being reimbursed for its expenses remain significant factors in deterring small MVPDs from pursuing arbitration. A vertically integrated programmer would understand this, and therefore would not be deterred from seeking to extract higher fees from small MVPDs at levels predicted based on economic modeling. In other words, a small MVPD cannot assess with any degree of certainty whether it is likely to win the arbitration and have its arbitration costs reimbursed, or lose the arbitration and be forced to cover its own costs.

Small MVPDs Are Risk Averse: One million dollars, the average cost of baseball-style commercial arbitration, is a relatively large share of a small MVPD's revenue. Consequently, small MVPDs are unlikely to take the risk of arbitrating, even with the prospect of potentially being reimbursed down the line for arbitration expenses. This reality discourages small MVPDs from using the arbitration remedy, even under a one-way fee shifting. Faced with the prospect of possibly losing $1 million in arbitration costs and bearing the burden of higher programming costs, a small MVPD will choose to simply "eat" the higher programming costs. One-way fee shifting may make winning an arbitration more financially attractive, but it neither improves a small MVPD's chances of winning nor mitigates the significant cost of losing. Small MVPDs are unwilling to take on that kind of risk.

In addition, other factors exacerbate the problem with the arbitration conditions.

Information Imbalance: Although some of the relevant information is unknown to both the small MVPD and a vertically-integrated programmer, much of the information is unknown *only* to the MVPD. For example, with regard to Comcast, the company will know the prices it charges for its broadcast stations and its regional sports networks to other MVPDs, and the nature of the formulas it uses to account for price variations, such as differences in fees charged to different sized operators, or based on an MVPD's distance from a covered team's home stadium. In addition, Comcast, as the country's largest MVPD, is a purchaser of RSNs around the nation, and therefore has more information on the prices for these networks in general. This imbalance is most stark for small MVPDs, who unlike national distributors, such as DIRECTV, DISH Network, Verizon, and AT&T, typically operate in a single market and carry a single RSN and a single NBC broadcast station. Asymmetric possession of information exacerbates the small MVPD problem of lacking critical information as discussed above. Vertically integrated programmers typically have the information needed to calculate a fair market value, and so the MVPD, who lacks this information, will win only when it can accurately predict when the MVPD-affiliated programmer is bluffing. But knowing that the vertically integrated programmer is bluffing is not enough; the small MVPD will also have to put forth blindly a final offer in advance of obtaining any discovery through the arbitration process, and hope that it didn't choose a rate that is too far below the fair market value, thus risking loss of $1 million in addition to having to pay higher programming fees.

Problems Getting Started: When conditions are first introduced and there is no track record of arbitration results to consult, small MVPDs will be especially poorly informed. This means that the first few MVPDs who test the one-way fee shifting remedy will have to bear especially high risks. Accordingly, there is a particular risk that such arbitrations will never be tried because the first few will be viewed as excessively risky for any small MVPD. This continues to be a problem with regard to the conditions adopted to mitigate the harms of the Comcast/NBCU transaction, which for many of the reasons discussed in this response, have never been utilized by any small MVPDs.

A Vertically Integrated Programmer Subject To An Arbitration Condition Is Likely To Outspend Its Opponents In Arbitrations: An MVPD-affiliated programmer will find it rational and profit maximizing to outspend its opponents in the arbitration process. The programmer will have a reputational incentive to apply overwhelming force in its earliest arbitrations, particularly with risk-adverse small MVPDs, to discourage other small MVPDs from undertaking subsequent arbitrations. Moreover, since a vertically integrated programmer will be in multiple arbitrations and can reuse many aspects of its preparations in later arbitrations, it will likely be able to do more with the money it spends.

The Comcast/NBCU arbitration condition is not only flawed because of its limited utility for small MVPDs, but also because of its limited scope.

The Comcast/NBCU Conditions Do Not Apply To All Programming Affiliated With Comcast: The Comcast/NBCU merger conditions apply only to programming that is controlled or managed by Comcast, which means the following Comcast-affiliated networks are not covered by the conditions: MLB Network, NHL Network, PBS Kids Sprout, Retirement Living TV, Shop NBC, TV One, Weather Channel and Universal Sports. Even though Comcast does not directly control or manage these stations, the company is an investor with a financial interest in seeing these networks charge rivals of its MVPD systems higher fees than non-rivals. Moreover, as an investor, Comcast has an ability to influence the decision making of their affiliated networks in the fees they charge Comcast's rivals. The only protection that MVPDs have against discriminatory treatment of these Comcast-affiliated networks is the program access rules, but as ACA has argued for many years, these rules are not available to the buying group that negotiates programming deals for nearly all small and medium-sized MVPDs, due to problems in the way the FCC has implemented Congress' program access directives.

Summary: In summary, small MVPDs will not be able to precisely predict the price that will result from arbitration in order to maximize their chance of winning and having their arbitration costs reimbursed. They lack information about other prices that Comcast charges; about the "small MVPD premium" paid by other operators; about the prices other programmers charge for similar programming; and about data and information pertinent to the other factors an arbitrator is likely to consider. Moreover, decisions of arbitrators may vary. The significant risk of losing an arbitration will still generally discourage small MVPDs, who are risk-adverse due to their limited resources, from engaging in arbitration even under one-way fee shifting. Factors exacerbating this are asymmetric information; start-up problems; and the fact that Comcast/NBCU will be a long-term player and find it rational and profit maximizing to outspend its initial opponents. For these reasons, Comcast will know that small MVPDs will not engage in arbitration, and the arbitration process will place no restraint on Comcast from charging small MVPDs higher prices for "must have" programming consistent with the estimates of Professor Rogerson.

Should the FCC simply model any AT&T/DIRECTV remedial arbitration conditions on those applied to Comcast/NBCU, small MVPDs will once again be left with rights but no effective remedies, and the operators and their subscribers will bear the brunt of above-market programming price increases made possible solely by the combination of key programming and distribution assets of the Applicants.

* * * *

In the coming months, ACA looks forward to working with the FCC and Congress on conditions that would prohibit AT&T/DIRECTV from charging small MVPDs more than clear, market-based rates for "must have" programming together with a simplified enforcement mechanism that can provide certain relief when commercial negotiations fail to produce satisfactory outcomes for small MVPDs. Imposing conditions on AT&T/DIRECTV that work for small MVPDs will ameliorate transaction-related harms that otherwise would significantly and adversely affect small MVPDs and their subscribers, while having a *de minimis* impact on either AT&T/DIRECTV specifically or the programming market in general due to the small percentage of the market served by small MVPDs.

3. Do your members see any potential benefits from the proposed merger between AT&T and DIRECTV?

   ACA does not see any potential benefits from the proposed merger between AT&T and DIRECTV that would offset the likely harm to its members caused by the combined entity's vertical integration.

Questions for the Record from
Chairman Bachus
for the Hearing on "The Proposed Merger of AT&T and DIRECTV"
June 24, 2014

Questions for Mr. Bergmayer
Senior Staff Attorney; Public Knowledge

1. Do you think the proposed merger will allow AT&T and DIRECTV to compete more effectively against cable companies?

Any effect on the competitiveness of AT&T/DirecTV compared with cable would likely be balanced out by the loss of pay TV competition, and in any event, limited to AT&T's wireline footprint. DirecTV pays less for content on a per-subscriber basis than AT&T. The transaction could eventually bring these savings to the wireline footprint where AT&T offers pay TV service and a broadband/pay TV bundle. This could improve AT&T's pay TV cost structure in those markets. However, those are the very markets where pay TV competition would be reduced, through the elimination of DirecTV as a competitor. This reduces the incentive for AT&T to pass along any cost savings to subscribers.

The companies argue that many customers prefer buying a broadband/TV bundle to buying separate services from different companies. Thus, the argument goes, outside of AT&T's wireline area, a combined AT&T/DirecTV would be able to offer a satellite TV/wireless Internet bundle that customers might prefer over both a cable bundle and the "synthetic" bundles AT&T, DirecTV, and others currently offer (where satellite TV and DSL or perhaps a wireless Internet product are sold together, though offered by different companies).

However, the customer preference for the cable bundle may be driven by the simplicity of installation and the relative unobtrusiveness of the equipment. A cable/broadband bundle requires one wire to the home and one or two electronic boxes, which may be hidden away in a cabinet. By contrast, a wireless Internet/satellite TV bundle would still require a satellite dish and a separate antenna to be installed on the customer's premises. Many customers would choose a satellite/broadband bundle just as many choose the "synthetic" bundles on offer today. However it is unclear to what extent customer behavior is driven by the mere desire to buy multiple services from a single company, versus price and convenience.

As to price, AT&T makes much of the "double marginalization" problem and more broadly argues that the different participants in a synthetic bundle have misaligned incentives that reduce the overall competitiveness of the bundle. However any problem of misaligned incentives between AT&T and DirecTV can be resolved through better negotiations between the companies or alternate business structures (e.g., a joint venture).

2. AT&T submits that the proposed merger will provide greater broadband access to rural communities. Do you think this will be a positive development for those communities?

It is not clear that this transaction would have the effect of greater broadband access to rural communities.

The majority of AT&T's buildout claims center around fixed wireless LTE. But AT&T already offers LTE nationwide. Fixed wireless LTE would be at most an incremental change to an already-existing wireless infrastructure. To be clear, new kinds of Internet access are good in rural or any other community. But the difficulty of adding fixed LTE to existing LTE markets is likely so small that this transaction would not change the economics significantly.

Also, as will be addressed below, to the extent that this merger would increase AT&T's incentive to replace one kind of Internet access service with another, it is not clear that such a change would constitute either an upgrade or "greater broadband access."

3. Why do you believe that a fixed wireless broadband service is insufficient for rural communities compared to a broadband service provided over physical wires? Do you believe the proposed transaction increases or decreases the possibility of broadband service to rural communities?

First, broadband policy should be technology neutral. This means that we cannot lower our standards just to ensure that certain technologies meet them. Rural communities should have access to services that are comparable to those offered elsewhere. Wireless services do not currently meet that standard. If some future fixed wireless service is able to match fiber or cable in terms of performance, price, and usage policies, we should welcome it. But we should not base our public policies on the prospect of technologies that have not yet been invented.

The main advantage of fixed wireless services today over wired services is the cost of deployment, not the customer experience. Fixed wireless services generally perform worse than modern wired broadband services along every metric. Nor are they typically more affordable than modern wireline broadband—for example, their use is often subject to limiting usage caps. Consumers sometimes prefer wireless services to wired services because of the benefits of mobility—but this is missing with fixed wireless.

To the extent that aging or poorly maintained copper line infrastructure itself does not perform as well as the wired broadband available in many cites and suburban areas, it would be better if it was upgraded with fiber, rather than replaced. Fixed wireless services should be offered in addition to, not instead of, wired services.

Finally, it is difficult to understand how it has been economic to serve rural communities with wireline service for decades yet it is somehow uneconomic now. Most rural communities have wired telephone (and electric) service, and many have cable. The fundamental economics of providing wireline service do not change with a transition from copper to fiber. Our public policies should focus on continuing to offer rural communities comparable service to what is available elsewhere in the country, instead of encouraging short-term cost savings that relegate rural communities to second-class service, limiting their economic prospects and reducing the quality of life of their residents.