

JONES DAY

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April 29, 2019

BY ELECTRONIC DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington D.C. 20554

**Re: Permitted Written *Ex Parte* Letter
Petition of Charter Communications, Inc.,
For a Determination of Effective Competition in:
Massachusetts Communities and Kauai, Hawaii
MB Docket No. 18-283; CSR No. 8965-E**

Dear Ms. Dortch:

The State of Hawaii (the “State”),¹ by its attorneys, hereby submits into the record of this proceeding the attached article that was recently published in The Washington Post. The article reports that the nationwide subscriber count for AT&T’s DirecTV Now service has dropped considerably in recent months, falling from a peak of 1.85 million subscribers late last year to a current level of approximately 1.5 million subscribers. The article also explains that the reduction in subscribers is likely to continue.

Based on this data, the nationwide subscriber count for the DirecTV Now service never exceeded a 2 percent penetration level and current hovers below 1.5 percent.² This is substantially less than the 15 percent penetration level that was identified by Congress as the minimum

¹ This letter is being submitted on behalf of the State of Hawaii through its Department of Commerce and Consumer Affairs, which is the cable franchise authority for the State.

² See Communications Marketplace Report, The State of Mobile Wireless Competition, Status of Competition in the Market for the Delivery of Video Programming, Status of Competition in the Marketplace for Delivery of Audio Programming, Satellite Communications Services for Communications Marketplace Report, *Report*, FCC 18-181, Fig. B-1 (Dec. 26, 2018) (identifying a total of 93,973,000 multichannel video programming subscriber households in 2017).

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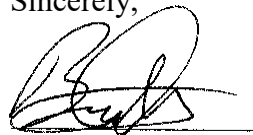
necessary to constitute effective competition.³ Thus, absent the questionable interpretation of the local exchange carrier (“LEC”) test put forth by Charter Communications, Inc. (“Charter”), no plausible basis exists to argue that the DirecTV Now service constitutes effective competition in those communities that continue to be served by only one facilities-based multichannel video programming service.

The steep reduction in the subscriber count for the DirecTV Now service also provides further evidence that Online Video Distribution (“OVD”) services, whether affiliated with a LEC or not, do not have the inherent market power that a LEC enjoys in the communities that it serves with its facilities-based infrastructure. OVD services, for example, cannot be sold on a bundled basis with broadband internet access services because OVD subscribers must have already purchased a broadband internet access service from another provider (such as Charter) in order to access OVD offerings.

Given these facts and the State’s previous filings in this proceeding, the Commission should conclude that Congress intended for its statutory LEC test to apply solely to the facilities-based video programming offerings of LECs and therefore deny Charter’s Petition for Determination of Effective Competition. At the very least, the Commission should refrain from taking any action on Charter’s petition until evidence exists that AT&T’s DirecTV Now service has become a legitimate source of competition to incumbent cable television system operators. This should be determined based on whether DirecTV Now ever achieves a nationwide market penetration level of 15 percent (the lowest threshold identified by Congress).

Please contact the undersigned if you have any questions about this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce A. Olcott", written over a horizontal line.

Bruce A. Olcott

³ Section 543(l)(1)(B) of the Telecommunications Act of 1996 indicates that effective competition exists if at least two unaffiliated multichannel video programming distributors offer services to most of a community and the smaller provider serves at least 15 percent of the households. 47 U.S.C. 543(l)(1)(B).

The Washington Post

AT&T's streaming service, DirecTV Now, has lost nearly 20 percent of its subscribers in the last 6 months

By Brian Fung
April 24 at 4:04 PM

DirecTV Now, AT&T's streaming video app, has seen sharp customer declines in recent months that all but wiped out a year's worth of subscriber growth, according to the company's latest earnings report.

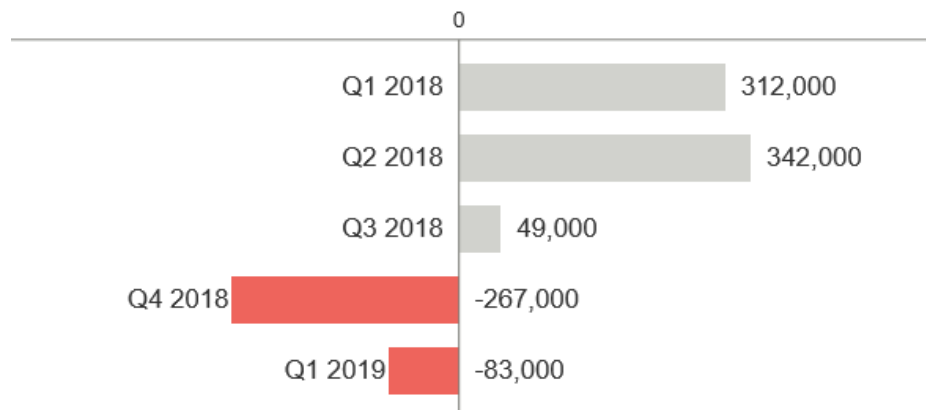
On Wednesday, the company said DirecTV Now had lost 83,000 subscribers since January, leaving the service with roughly 1.5 million customers — almost precisely the number it had this time last year. Company filings show that as many as 350,000 subscribers have abandoned DirecTV Now since October, when the service hit a peak of 1.85 million customers.

The steep losses highlight the obstacles facing AT&T as it seeks to build a viable successor to its legacy TV products, DirectTV and U-verse, which also have continued to suffer as Americans cancel traditional cable subscriptions. But, some analysts say, the slump at DirecTV Now is another sign that the holy grail of cheap, a la carte television remains as elusive as ever, and that the promise of cord-cutting has yet to materialize for consumers.

“Those expectations from day one were set wrong,” said Dan Rayburn, an independent streaming media analyst.

DirecTV Now's subscriber growth has declined sharply

The service grew quickly until the first half of 2018. But it added fewer customers last fall, and growth turned negative by the end of the year.



Source: AT&T

TOM PETERSON/THE WASHINGTON POST

AT&T blamed the DirecTV Now losses on the end of promotions that had encouraged many consumers to sign up for the app in the first place. Also last month, DirecTV Now announced that existing customers would pay \$10 more per month, the second time in nine months that prices had risen.

On AT&T's earnings call, chief executive Randall Stephenson told investors that DirecTV Now might continue shedding customers over the next several months but that he expects conditions to stabilize in the second half of the year.

In a statement, AT&T said DirecTV Now's price changes meant the company was, on average, making more money from each subscriber.

"Video volumes — both traditional and DIRECTV NOW — were affected by our focus on long-term profitability," the company said. "Our goal is to drive strong lifetime values across multiple products, so we're increasing our focus on higher-quality customers."

Analysts say AT&T's focus on profits at the expense of subscriber growth — and customers' wallets — underscores the pressure from investors to pay down company debt more quickly. The company owed as much as \$180 billion after acquiring Time Warner last year; by the end of this year, AT&T aims to reduce its debt to \$150 billion.

But the "aggressive" price hikes mean customers are headed for the exits, said Craig Moffett, an industry analyst at research firm MoffettNathanson.

"They are suffering horrific losses at DirecTV — and as bad as those already were ... what they've delivered is even worse, and that's why the stock is reacting," said Moffett.

Shares of AT&T closed Wednesday at \$30.82, down about 4 percent.