



October 8, 2014

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: MB Docket No. 14-90

Dear Ms. Dortch:

Introduction

Some industry observers have concluded that the current lack of a robust and healthy group of independent programmers to provide diverse information and entertainment to consumers is simply unavoidable collateral damage resulting from increased industry consolidation and rising content costs, largely driven by outdated retransmission consent rules and exorbitant sports rights fees. To be sure, these reasons contribute greatly to today's challenging environment for independent programmers that - in any given conversation between a programmer and distributor - can range from difficult at best to downright hostile.

Standing out as a bright spot, however, is AT&T. A relative latecomer to the pay-tv industry, AT&T has demonstrated - through operation of its U-Verse service - that there is a more equitable and economically viable way for distributors to manage relationships with independent programmers that truly benefits consumers, independent programmers, and the distributor itself.

In my capacity as the Chief Executive Officer of NUVOtv, an independent programmer serving the U.S. Hispanic audience, I'm pleased to outline for the Commission the reasons why NUVOtv supports the proposed merger between AT&T and DIRECTV and, more important, why we believe it bodes well for the future of independent programmers who conduct business with the combined company, in particular ones focused on the underserved, English speaking Latino audience.

The primary basis of the comments contained herein is the course of dealing between AT&T and NUVOtv since 2006, when AT&T commercially launched its U-Verse service, as well as my own 18 years of experience working as a senior executive on both sides of the distributor and independent programmer equation.

NUVOtv Background

NUVOtv (formerly Si TV) was founded in 2004 as the first cable network to provide culturally relevant entertainment programming in English for U.S. Hispanics. The network was started by Latino entrepreneur Jeff Valdez and a decade later is still controlled by independent venture capital investors. We have no guarantee of distribution from any shareholder or negotiating leverage coming from a parent company with other media assets. All distribution of NUVOtv today is the result only of the power of our network's mission, the quality of its original programming, and its relevance in the marketplace to consumers.

Our mission derives from the simple fact that the majority of Latinos in the U.S. today were born here, while another large segment of Latinos arrived in our country at a young age. Regardless of ability to *speak* Spanish, the television *viewing* preferences of both of these groups skew overwhelmingly towards English language programming. Prior to NUVOtv, our audience was faced with a poor choice between Spanish language television or mainstream cable and broadcasting shows containing few if any Latino characters, storylines or authentic representations of their community. Stepping in to fill the void, NUVOtv has been embraced by Latinos and others who have access to the network for our effort to deliver a 24/7 network dedicated to providing high quality, Latino-inspired, original entertainment programming in English that reflects Latinos in positive, non-stereotypical roles, and highlights their contributions to their communities and our country.

In 2012, global icon, artist and entrepreneur Jennifer Lopez joined forces with NUVOtv as a creative partner and shareholder to help further advance NUVOtv's mission. Today Ms. Lopez serves as NUVOtv's Chief Creative Officer, working on marketing, programming and production, in conjunction with her production company, Nuyorican Productions.

Today, NUVOtv currently reaches approximately 32 million homes, roughly 30% of U.S. pay-tv homes. Time and time again, NUVOtv has been told by distributors that we have a great proposition, but the "big guys" (e.g., CBS, Disney, Fox) have taken all the distributors' money and bandwidth, so that precious little of either remains available for independent programmers like NUVOtv. Still, NUVOtv has forged ahead as an independent programmer to build its network to the best of its abilities without the leverage to grow faster in an ecosystem where leverage is the governing principle.

Pay-TV Market Considerations

The opportunity for any advertising-supported cable network, independent or otherwise, to become a successful venture capable of competing in the marketplace to deliver valuable content to consumers (as measured by ratings) requires, among other factors, two essential ingredients that only a distributor can provide: (1) a sufficient number of homes with access to the network, and (2) a reasonable license fee per subscriber to complement the network's ancillary advertising revenues.

In the case of NUVOTv, some distributors have refused to offer one or both of these fundamental elements, without which it is impossible for any programmer to generate substantial awareness, viewership or demand. In a patently circular argument, distributors will often say “go get higher ratings and generate more demand from our subscribers, and then come back to ask for distribution”. Yet, it is this very refusal to make the channel available (or pay a reasonable rate) that deprives NUVOTv, or any independent programmer, of its ability to create broader awareness and demand for the network, much less deliver consistently strong viewership numbers.

Among those distributors that do carry NUVOTv, several limit distribution to select markets or higher priced packages with fewer subscribers, such that they can claim to support independent networks through carriage of NUVOTv, but in effect relegate NUVOTv to second class status. As a general rule, only networks from large conglomerates are carried in the most broadly distributed packages, giving them the necessary economic engine to make more substantial investments in content and marketing to drive the requisite awareness, viewership and advertising revenues. This dynamic only further marginalizes NUVOTv and its audience by depriving the network of the essential benefits of broader carriage and hindering our ability to deliver the best content possible to the Latino community.

AT&T U-Verse

From its earliest days in 2006, AT&T made it clear to NUVOTv that it wanted to do business differently. First, AT&T U-Verse’s behavior evidences the understanding that: (1) the Latino community should be able to enjoy culturally relevant content in English, which previously wasn’t offered by the large media companies; (2) a network like NUVOTv providing this content should be made available to consumers in an attractively priced entry level programming package; and (3) supporting independent networks in this manner is beneficial to AT&T by broadening the base of content providers it deals with and providing a differentiated offering to consumers at a relatively modest incremental cost to AT&T. The company also seems to recognize that having an independent Latino programmer on its platform with the foundation necessary to “succeed” is more advantageous to all than having a network with such limited distribution that it is merely “viable.”

With no leverage or other persuasive force bearing upon them, AT&T entered the pay-tv business in 2006 with the NUVOTv network in its U-200 package, immediately available to more than 85% of its growing subscriber base. AT&T acted proactively and in a positive manner for the English speaking Latino community and an independent programmer with a mission to serve them. Moreover, the commitment to do so occurred at a time when AT&T U-Verse still had not launched commercially and - one can logically assume - was vulnerable to the large media conglomerates demanding carriage of all their networks in the most basic U-Verse package at the highest possible rates applicable to a newcomer. Despite such pressures, AT&T stepped forward

to recognize the importance of NUVOTv, as an independent programmer serving a significant, yet underserved audience.

This remarkable ethic lasted well into U-Verse's maturation as a major pay-TV distributor. Years after our network's U-Verse launch, when it came time to renew NUVOTv's affiliation agreement, AT&T U-Verse had obtained much greater scale but did not use it to take advantage of NUVOTv. At NUVOTv, we have very real and painful experience with distributors who have used the renewal of an agreement to demand severe and unwarranted concessions. Taking advantage of NUVOTv's total lack of leverage, distributors in this situation will often require steep price discounts or a re-positioning of the network to a lesser penetrated programming package or tier, even threatening to actually drop the network altogether if their demands are not met.

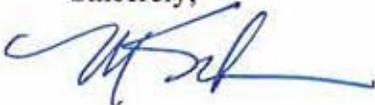
Bucking this standard practice among powerful distributors, well before the merger with DIRECTV was at hand, AT&T renewed its carriage agreement with NUVOTv on fair and equitable terms in the same widely distributed package, allowing NUVOTv to continue its momentum towards building a robust network for English speaking Latinos. AT&T grounded its behavior on the principles of fairness and open-mindedness, innovation and product differentiation, not just on who wielded the most negotiating leverage.

From an overall economic view, AT&T's behavior shows a clear understanding that, while rising programming costs are a real and serious issue, the problem will not be solved by making independent networks stand on the sidelines, without carriage or limited carriage at subpar rates. Not only do consumers lose from the lack of diverse content, but AT&T's bottom line and shareholders will not benefit from reducing the carriage of independent networks and their limited share of total content costs.

Conclusion

With the foregoing considerations in mind, NUVOTv believes that the merger of AT&T and DIRECTV, in which AT&T will retain control of the current DIRECTV business, is in the best interests of independent programmers, particularly those serving minority communities. In the spirit of the age old phrase that "actions speak louder than words," AT&T's efforts to provide full support and inclusion of NUVOTv and our target English speaking Latino audience has been remarkable, praiseworthy, and should serve as a guidepost for the Commission to predict the likely treatment of independent programmers by AT&T after the conclusion of its merger with DIRECTV.

Sincerely,



Michael Schwimmer
Chief Executive Officer