Cooley LLP

VIA ECFS

Jason E. Rademacher
T: +1 202 776 2370
jrademacher@cooley.com

November 7, 2014

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

RE: Notice of Ex Parte Communication
Cox Communications, Inc.
MB Docket No. 14-90

Dear Ms. Dortch:

On November 5, 2014, Barry Ohlson, Vice President of Regulatory Affairs of Cox Enterprises, Inc. ("CEI"), Jennifer Prime, Director of Regulatory Affairs for CEI, David Wittenstein and the undersigned of Cooley, LLP, and Christopher Harvie of Mintz Levin Cohn Ferris Glovsky and Popeo PC, met on behalf of Cox Communications, Inc. ("Cox") with the FCC staff members listed below regarding matters raised by Cox in the above-referenced docket.

Cox's representatives reiterated the company's position, described in its Petition to Condition Consent and its Reply to Joint Opposition, that the proposed merger of AT&T and DirecTV should be granted only subject to carefully crafted conditions designed to protect competition in the markets where the merged company will operate. We explained that the combination of AT&T and DirecTV will create a new company with unprecedented resources, range of service platforms, and household reach. In light of the potential threats to competition that the merged company will pose, Cox requested that the Commission adopt the following conditions:

- **Close Regulatory Gaps for a Level Playing Field**. Cox requested that the FCC adopt conditions that would remove regulatory advantages that the companies separately enjoy due to legacy rules and statutory provisions adopted at a time when the individual companies were new competitors challenging established rivals. Specifically, Cox asked that the FCC confirm that AT&T/DirecTV will be subject to the full range of restrictions under Section 628 of the Communications Act and the FCC's program access and unfair competition rules. This would include prohibiting the merged company from entering into or maintaining exclusive agreements to serve multiple dwelling unit environments ("MDUs"). Cox also asked that AT&T/DirecTV be required to comply with the same basic service tier requirements that currently apply to cable operators. As Cox explained, subjecting much smaller cable operators to these rules while permitting a company of AT&T/DirecTV's size and unmatched resources to be free of these regulations is illogical policy and a bad result for both competition and consumers.

- **No Exclusive Programming Agreements For Entity of this Scope**. Cox also explained that a company the size of the merged AT&T and DirecTV should not be permitted to enter into or maintain exclusive programming agreements for desirable national programming. The merger would give AT&T/DirecTV the incentive to enter into such agreements and use them in an anti-competitive manner against their smaller rivals. And the merged company's unmatched resources would give it the ability to monopolize programming inputs that its competitors need to compete fairly. Cox noted that historically AT&T has fiercely opposed exclusive programming arrangements entered into by other video providers and has flip-flopped only recently when valuable exclusive programming agreements appeared to be within its own grasp.

- **Curb Volume Discounts**. Cox further requested that the merged entity be prohibited from entering into programming agreements that include excessive volume discounts. As Cox explained, AT&T/DirecTV's claims that it will save 20% on its programming costs, but that smaller competitors will not face programming price increases as a result, are meritless. While AT&T's economist has claimed that the price a programmer charges one MVPD has no impact on the price it charges to another, this facile analysis ignores the fact that programming companies annually promise their shareholders that they will increase the revenue that they receive from MVPDs. If AT&T/DirecTV reduces the revenue that programmers receive by 20%, that same amount of revenue and more must be made up from other distributors. Cox also contended that there is no evidence in the record suggesting that programmers can make up the 20% of lost revenue from increased advertising revenues. Indeed, the revenue hole created by AT&T/DirecTV's promised 20% saving likely would require programmers to increase advertising revenues by 25% or more from AT&T/DirecTV programming to make up the gap, and no evidence suggests that is possible. Cox requested that the FCC limit the extent of volume discounts that AT&T/DirecTV can demand from programmers as a means of ensuring that the merged company cannot use its lower programming costs as a way to gain unfair competitive advantages against its smaller rivals.

- **Preserve Competition for Bundled Services**. Cox renewed its request that the FCC adopt conditions protecting the right of competitive telephone carriers to interconnect with AT&T's legacy wireline telephone network regardless of whether AT&T continues to employ traditional TDM technology or transitions its network to IP delivery. Such conditions are necessary, Cox explained, because the merger will give AT&T and DirecTV a unique ability to interfere with competitors' ability to offer video, voice, and data service bundles that will be able to compete with those offered by AT&T/DirecTV. AT&T and DirecTV have made their ability to deliver better bundles of video, voice, and data service a centerpiece of their merger proposal. It is only natural to ensure that AT&T and DirecTV's bundled service offerings compete on a level playing field with those offered by competitors. Since all competing carriers in AT&T's traditional service areas rely on AT&T to deliver telephone traffic as part of their bundled service offerings, the merger will give AT&T/DirecTV both the incentive and the opportunity to frustrate competitors' ability to offer competing service bundles. Cox asked the FCC to adopt conditions that would require the merged company to adhere to Sections 251 and 252 of the Communications Act regardless of whether the merged company continues to rely on its legacy TDM network or transitions to IP-protocol delivery of telephone traffic.

- **Promote MDU Broadband Competition**. In addition to its requests that AT&T/DirecTV be prohibited from entering into or maintaining exclusive arrangements to serve MDUs, Cox asked the FCC to adopt additional conditions designed to protect MDU competition in AT&T/DirecTV's service territories. In particular, Cox sought restrictions on the merged company's ability to commandeer cable wiring in MDUs and to employ technologies that preclude competitors from using that wire to provide stand-alone broadband services. Cox noted that DirecTV currently employs these practices to thwart broadband service to MDU customers that wish to receive DirecTV video service but wish to receive Cox stand-alone high speed data service. The merger would permit AT&T/DirecTV to expand those practices and force competitors to essentially subsidize the merged company's entry into MDUs. Cox asked the FCC to adopt conditions that would require AT&T/DirecTV to either employ technologies that can successfully coexist with existing inside wiring and methods of service delivery or to run their own wiring to new customer units.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. §1.1206(b)(2), a copy of this notice is being filed electronically and a copy is being provided to the office of the Commission participant in the meeting.

Please inform the undersigned if you have any questions regarding these issues.

Sincerely,

/s/

Jason E. Rademacher
Counsel for Cox

Attachment

cc: **Media Bureau**
William T. Lake
Kathryn Berthot
Chad Guo
Brendan Holland
Shabnam Javid
Alison Neplokh
Jeffrey Neumann
Julie Salovaara
Susan Singer
Alexis Zayas

Office of Strategic Planning and Policy Analysis
Elizabeth Andrion
Tim Brennan
Paul LaFontaine
Jonathan Levy

Office of the General Counsel
William Rogerson
James R. Bird
Jamillia Ferris

David Konczal
Joel Rabinovitz

Wireline Competition Bureau
Megan Capasso
Soumitra Das
Bill Dever
Chirstopher Sova

Wireless Telecommunications Bureau
Charles Mathias
Weiren Wang

Enforcement Bureau
Will Reed

International Bureau
Marilyn Simon