SPIEGEL & MCDIARMID LLP

GEORGE SPIEGEL (1919-1997)
JAMES N. HORWOOD
THOMAS C. TRAUGER
CYNTHIA S. BOGORAD
SCOTT H. STRAUSS
LISA G. DOWDEN
PETER J. HOPKINS
DAVID E. POMPER
WILLIAM S. HUANG
PABLO O. NÜESCH
TILLMAN L. LAY
STEPHEN C. PEARSON

SENIOR COUNSEL
ROBERT C. McDIARMID
ROBERT A. JABLON

1875 EYE STREET, NW
SUITE 700
WASHINGTON, DC 20006

WWW.SPIEGELMCD.COM

Telephone 202.879.4000
Facsimile 202.393.2866
EMAIL INFO@SPIEGELMCD.COM

Direct Dial 202.879.4022
EMAIL TIM.LAY@SPIEGELMCD.COM

ASSOCIATES
REBECCA J. BALDWIN
KATHARINE M. MAPES
MELISSA E. BIRCHARD
ANJALI G. PATEL
JESSICA R. BELL
LATIF M. NURANI
FRANCES J. WADE*
*MASSACHUSETTS BAR ONLY

OF COUNSEL
DANIEL I. DAVIDSON
FRANCES E. FRANCIS
MARGARET A. McGOLDRICK
JEFFREY A. SCHWARZ

February 24, 2015

Via ECFS

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

Re: ***Application of AT&T and DirecTV for Consent to Assign and Transfer Control of FCC Licenses and Other Authorizations,*** **MB Docket No. 14-90*;*** ***Petition for Declaratory Ruling that AT&T's Method of Delivering Public, Educational and Government Access Channels over Its U-verse System Is Contrary to the Communications Act of 1934, as amended, and Applicable Commission Rules,*** **MB Docket No. 09-13**

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(1) of the Commission's rules, this *ex parte* notice is filed on behalf of Alliance for Community Media ("ACM"). On February 23, 2015, Michael S. Wassenaar, President of ACM, James Horwood of Spiegel & McDiarmid and ACM board member, and the undersigned counsel for ACM met with the following Commission staff members to discuss issues in the above-referenced proceedings: Kathy Berthot of the Media Bureau, Chad Guo of the Media Bureau, Ali Zayas of the Media Bureau, Soumitra Das of the Wireline Competition Bureau, Jonathan Levy of the Office of Strategic Planning and Policy, Marilyn Simon of the International Bureau, George Williams of the Media Bureau, Jamilla Ferris of the Office of General Counsel, Sarah Whitesell of the Media Bureau, Elizabeth Andrion of the

Office of Strategic Planning and Policy Analysis, Brendan Holland of the Media Bureau, Joel Rabinovitz of the Office of General Counsel, and Jim Bird of the Office of General Counsel.

We discussed the issues raised in ACM's Petition to Deny and Reply Comments filed in MB Docket No. 14-90. We also discussed the issues set forth in the attached written handout, which was distributed and discussed at the meeting.

If there are any questions, please feel free to contact the undersigned.

Sincerely,

Tillman L. Lay

Counsel for the Alliance for Community Media

TLL:vev
Attachment

cc: Kathy Berthot (kathy.berthot@fcc.gov)
Chad Guo (chad.guo@fcc.gov)
Ali Zayas (ali.zayas@fcc.gov)
Soumitra Das (soumitra.das@fcc.gov)
Jonathan Levy (jonathan.levy@fcc.gov)
Marilyn Simon (marilyn.simon@fcc.gov)
George Williams (george.williams@fcc.gov)
Jamilla Ferris (jamilla.ferris@fcc.gov)
Sarah Whitesell (sarah.whitesell@fcc.gov)
Elizabeth Andrion (elizabeth.adrien@fcc.gov)
Brendan Holland (brendan.holland@fcc.gov)
Joel Rabinovitz (joel.rabinovitz@fcc.gov)
Jim Bird (jim.bird@fcc.gov)

ALLIANCE FOR COMMUNITY MEDIA
EX PARTE PRESENTATION
IN FCC DN 14-90

I. AT&T/DirecTV merger will result in reduced competition and potential competition in the MVPD market throughout AT&T's landline footprint.

A. AT&T and DirecTV compete in the MVPD market throughout AT&T's U-verse footprint.

- Note DirecTV's new "over-the-top" (OTT) video offering.

B. AT&T acknowledges that its U-verse footprint will reach 33 million—one quarter of U.S. households. Merger would remove a substantial amount of competitive MVPD capacity from that market.

C. A corporate giant like AT&T should be encouraged to compete by investing in and expanding its own broadband/MVPD network, not by acquiring a competitor's MVPD network.

D. AT&T's claims that its U-verse MVPD offering is "uneconomic" and that consumers prefer bundled broadband/MVPD services miss the mark.

1. AT&T's 5.7 million U-verse video subscriber base is far from *de minimis.*

2. There clearly is a market for standalone MVPD service. *See, e.g.*, DirecTV and DISH.

   - Consumer's ability to "mix and match" broadband and video service offerings from different competing providers will be lost.

3. Bundling issue is not unique to AT&T. Most cable operator subs bundle as well.

4. Absent the merger, cable competition would force AT&T to invest more in building out its U-verse broadband/video network, and AT&T certainly has the resources to do that.

II. The claimed public benefits of the transaction are illusory.

A. Neither AT&T not DirecTV explains how the merger is essential to achieving the supposed public benefits they claim.

1. DirecTV has already launched OTT offering.

2. AT&T and DirecTV don’t need to merge to respond to the market. AT&T is already one of the largest telecom companies in the world, and DirecTV is the second-largest MVPD.

3. Merger reduces AT&T’s incentive to invest in its U-verse broadband network.

B. AT&T’s “reduced programming costs” argument does not translate into public benefit.

1. The argument proves too much: If 26 million subs is minimum efficient scale for programming costs, that is a fact suggestive of need for more regulation, not further consolidation with no regulation.

2. That AT&T promises to use some of the programming cost savings to expand its wireless and wireline broadband network in “underserved, rural localities,” rather than passing through the cost savings to video subscribers, proves that the MVPD market is not competitive, and the merger would make it even less so.

3. For the price it is paying for DirecTV, AT&T could instead invest and expand its broadband network to reach 71 million homes with gigabit fiber.
   - And if the merger is disapproved, cable competition would likely force it to do so.

III. <u>The AT&T/DirecTV transaction would disserve the public interest by harming PEG and localism.</u>

A. AT&T had demonstrated antipathy toward PEG.

1. ACM Petition concerning AT&T’s “PEG Product”—pending over 6 years.

2. AT&T’s “bait and switch” on state cable franchising legislation: It promised more MVPD competition in return for reduced PEG obligations, but now claims U-verse video is not economic.

3. AT&T’s obvious economic incentives to migrate U-verse video subscribers to DirecTV’s DBS service.

   - AT&T’s representations on this topic, read carefully, do not dispute that.

   - <u>Result:</u> Loss of PEG.

B. The Transaction will result in more nationalized and regionalized programming, and less local programming.

1. PEG provides more local programming, and more local election-related programming, than commercial outlets.

2. Proposed merger would be a double-whammy to the public interest. Offloading AT&T’s U-verse MVPD offerings to DirecTV’s DBS would:

    - Reduce localism by reducing PEG availability (not only on AT&T/DirecTV, but potentially elsewhere, as incumbent cable operators will claim they shouldn’t have PEG obligations if the larger AT&T/DirecTV does not); and

    - Reduce MVPD capacity demands on AT&T’s landline U-verse network, thereby reducing its incentive (and also its available funds) to invest in a higher-capacity landline broadband network.