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May 13, 2015

VIA ECFS

EX PARTE NOTICE

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

Re: Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 14-90

Dear Ms. Dortch,

On May 11, Angie Kronenberg and Mary Albert of COMPTTEL met separately with Robin Colwell, Commissioner O’Rielly’s Chief of Staff and Senior Legal Advisor, Media, and Valery Galasso, Commissioner Rosenworcel’s Policy Advisor on Media Issues, to discuss COMPTTEL’s concerns with the pending AT&T/DIRECTV merger. On May 12, Mary Albert of COMPTTEL and Markham Erickson of Steptoe & Johnson LLP met with Christopher Sova, Megan Capasso, Stacy Ferraro, Joel Rabinovitz, Jamillia Ferris, Tim Brennan (by telephone), Sean Mirzadegan (by telephone), Marilyn Simon, Brendan Holland, Bill Dever, Octavian Carare, Chad Guo, Kathy Berthot, Soumitra Das, Laura Yu, Jeffrey Neumann, William Beckwith, Chris Clark, Jim Bird, Weiren Wang and Elizabeth Andrión.

In those meetings, COMPTTEL addressed the impact the merger would have on video programming pricing. In order to be competitive in the residential market, providers must offer a triple play of broadband, video and voice services. As the largest MVPD in the country, the merged entity will enjoy substantial savings in content acquisition costs from programmers and programmers are likely to recover those lost revenues by increasing prices to smaller MVPDs.¹ Higher programming prices and programming price disparities will make it more difficult for smaller MVPDs to compete, including by expanding their broadband networks. As COMPTTEL previously stated in its Reply Comments, video already is a loss leader for many small MVPDs.² Further video cost increases to them as a result of this merger, will make it even more difficult to compete head-to-head with the merged entity for broadband and video. Approximately ten

¹ See Reply Comments of COMPTTEL, MB Docket No. 14-90, 5-6 (filed Jan. 7, 2015) (citing the Applicants’ Application touting the benefits of the increased scale it will gain that will reduce its programming costs).

² *Id.* at 6.

percent of COMPTTEL's members currently compete directly against AT&T and will be directly impacted by the merger. Nonetheless, all small and mid-sized MVPDs will likely face price increases as a result of the merger as content providers seek to make up lost revenues due to the merged entity's sizeable negotiating power as the largest MVPD in the nation.

COMPTTEL supports Cox Communications' proposed condition that would restrict the merged entity from entering into programming contracts that include unreasonable volume discounts, and the American Cable Association's ("ACA") proposal that the merged entity should not be able to interfere with rates, terms, and conditions that programmers offer competitors.³ In order to ensure that the Commission has the tools to appropriately monitor compliance with these or similar conditions, COMPTTEL proposes that the merged entity be required to report quarterly on the video programming contracts it enters into or renews. The reported information should include the rates the merged entity pays for programming and a confirmation that it has not received an unreasonable discount. The merged entity should also be prohibited from enforcing "most favored nation" ("MFN") clauses against programmers.

COMPTTEL also expressed concern with the potential harmful impact the merger may have on over the top video providers ("OVD"). Because OVD programming will compete with the merged entity's satellite video and U-verse programming, the merged entity will have the incentive and the ability raise its rivals' costs by charging edge providers terminating access fees to reach its broadband Internet customers.⁴ It is well documented in this record that AT&T has allowed for congestion in order to extract terminating access fees from other networks and edge providers.⁵ By failing to relieve congestion at interconnection ports in a timely fashion, the merged entity can degrade the viewing experience of OVD customers. It will have more reason to engage in such behavior post-merger in order to protect the MVPD revenues of DirecTV. In its *Open Internet Order*, the Commission specifically stated that it remains essential for the FCC and DOJ to carefully monitor and take action to address anti-competitive incentives in mergers and acquisitions concerning broadband Internet access service and Internet traffic exchange.⁶ As such, the Commission should prohibit the merged entity from

³ See Petition to Condition Consent of Cox Communications Inc. MB Docket No. 14-90 at 17 (Sept. 16, 2014); and Comments of American Cable Association MB Docket No. 14-90, at 17-26 (Sept. 16, 2014).

⁴ See, e.g., Letter from Markham C. Erickson, Counsel to Netflix, Inc. (filed May 4, 2015); see also Letter from Robert M. Cooper, Counsel to Cogent Communications Group, Inc. (filed April 30, 2015).

⁵ *Id.*; see also Cogent Comments, MB Docket No. 14-90, at 12-15 (filed Sep. 16, 2014); Netflix Comments, MB Docket No. 14-90, at 23-25 (filed Sep. 16, 2014); Cogent Reply Comments, MB Docket No. 14-90, 14-17 (filed Jan. 7, 2015); Netflix Reply Comments, MB Docket No. 14-90, 3-10 (filed Jan. 7, 2015).

⁶ *In re Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order*, ¶ 203 (2015).

charging terminating access fees or using broadband data caps in a manner that would be detrimental to the continued development and availability of OVD programming. COMPTTEL supports the interconnection and data cap conditions proposed by Cogent, Dish, Free Press, and Public Knowledge on May 12, 2015.⁷ Those conditions, combined with the transparency requirements, will better protect consumers and OVD competition.

In its Application, AT&T lauded the benefits it contends consumers will enjoy as a result of the merger in terms of enhanced competition in the provision of broadband service and bundled broadband and video packages. These are benefits that COMPTTEL members also bring to their customers, often using wholesale inputs obtained from AT&T. To date, AT&T has declined to interconnect with requesting carriers on an IP-to-IP basis for the exchange of VoIP traffic. All of the efficiencies that VoIP technology may offer can be significantly diluted if the traffic reaches the interconnection point in IP but must be converted to TDM at the media gateway. The Commission should make clear that the merged entity must comply with Sections 251 and 252 of the Act both during and after the transition of AT&T's wireline network to IP and that AT&T's statutory obligations to provide unbundled network elements are not affected by the conversion from TDM to IP-based transmission technology or from copper to fiber.⁸

Finally, COMPTTEL expressed its support for TIVO's request that the merged company, which will be serving 26 million video customers, be required to comply with the purpose and intent of Section 629 of the Act to promote and encourage retail device competition.⁹

Respectfully submitted,

/s/ Angie Kronenberg

cc: Robin Colwell
Valery Galasso
Christopher Sova
Megan Capasso
Stacy Ferraro
Joel Rabinovitz
Jamillia Ferris

⁷ See Letter from Robert M. Cooper, Counsel to Cogent Communications, Inc., Jeffrey Blum of DISH Network Corporation, Matt Wood of Free Press, Josh Stager of New America's Open Technology Institute, and John Bergmayer of Public Knowledge, MB Docket No. 14-90, 5-6 (filed May 12, 2015).

⁸ Petition To Deny of Public Knowledge and Institute For Local Self-Reliance MB Docket No. 14-90 at 11-16 filed September 16, 2014; Cox Petition at 21-26 Cox Reply to Opposition at 10-11 filed November 5, 2014 and Windstream Petition for Declaratory Ruling WC Docket No. 15-1, GN Docket No. 13-5 filed December 29, 2014.

⁹ Comments of TiVo MB Docket No. 14-90 filed September 16, 2014.

Tim Brennan (by telephone)
Sean Mirzadegan (by telephone)
Marilyn Simon
Brendan Holland
Bill Dever
Octavian Carare
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