

May 20th. 2015

VIA ECFS

Chairman Tom Wheeler
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O’Rielly
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: In the Matter of Applications of AT&T Inc. and DirecTV for Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 14-90

Dear Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai and O’Rielly:

For many reasons the best outcome of the proposed acquisition of DirecTV by AT&T would be its rejection¹. However if it is decided nevertheless that the new merged entity *might* deliver benefits to customers, and *potentially could on balance* support the public interest, then conditions must be imposed that will achieve these results.

AT&T has a long and depressing record of “bait and switch” in which it announces (*the bait*) allegedly-transaction-dependent commitments to initiatives that will benefit customers, and agrees to conditions that it will fulfill once its proposed transaction is approved. However post-transaction when it is impossible to undo the takeover (*the switch*) AT&T does not fulfill these commitments², nor does it respect the conditions that turn out to be either ineffective and/or non-enforceable in practice. Hence the desired outcome is not achieved. AT&T’s market power and potential for abuse are enhanced, and it is encouraged to try the same stratagem again... and again... and again.

Moreover AT&T is intransigent in refusing to implement, and is ingenious in finding justifications for circumventing the intent of requirements that the FCC establishes to sustain competition, most notoriously with respect to data roaming agreements. AT&T has also at times been creative in introducing new unreasonable obstacles to competition, most glaringly in its unilateral introduction of non-interoperability into the 700 MHz Lower Band.

¹ <http://apps.fcc.gov/ecfs/document/view?id=7522805201>;
<http://apps.fcc.gov/ecfs/document/view?id=7522820501>;
<http://apps.fcc.gov/ecfs/comment/view?id=6019231433>;
<http://apps.fcc.gov/ecfs/document/view?id=60001045187>

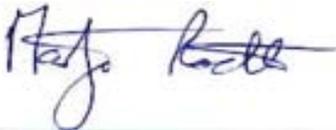
² <http://apps.fcc.gov/ecfs/document/view?id=60001047176>

AT&T has shown itself to be untrustworthy, and past transaction-related conditions have proven in practice to be meaningless. Therefore any conditions imposed on the AT&T/DirecTV transaction should meet the criterion of including one or more that must be demonstrably and irrevocably fulfilled **before**, instead of being related only to AT&T's actions and behavior **after** the transaction is consummated.

Among possible *ex ante* conditions to test AT&T's good faith and oblige it to change its behavior for the benefit of customers and to increase competition are:

- AT&T must develop and publish a reference roaming agreement that is approved by other operators such as the members of the Rural Wireless Association, and at least one operating agreement based on this reference document must be negotiated and implemented;
- AT&T must develop and publish a reference agreement for wholesale special access services (covering TDM and IP-based services) that is also approved by major customers of these services, and at least two operational agreements (one for TDM and the other for IP-based services) must be negotiated and implemented;
- AT&T must withdraw its support for the litigation against the FCC's 2015 Open Internet Order;
- AT&T must tear down its "wall of silence" in ignoring and failing to acknowledge compelling rebuttals of claims made individually by itself and by the industry associations of which it is a leading member, supported in various cases by the findings of external research it has funded, and either provide fact-based analyses or surrebuttals to support them, or if it cannot do so admit its mistake(s) and repudiate these claim(s)³.

Sincerely,



Martyn Roetter, D. Phil Physics (Oxon)

MFRConsulting, 144 Beacon St, Boston MA 02116

mroetter@gmail.com; (617) 216-1988

³ Egregious examples include the claims that: (a) *Title II reclassification of broadband will lead to a substantial (up to over 30% or even more) reduction in broadband investment*, based on an AT&T-funded analysis whose finding has been shown to rely on the misuse of statistics (<http://apps.fcc.gov/ecfs/comment/view?id=60001029755>), and (b) *The largest US mobile operators make the most efficient use of spectrum*, based on a metric that has been shown to be spurious and astonishingly ignores the cellular structure of mobile networks (See Bloomberg BNA Daily Report for Executives, May 31st, 2013, "The Mystery of the Spurious Spectrum Efficiency Metric: Why Are America's Wireless Leaders Promoting a Meaningless Measure?", and <http://apps.fcc.gov/ecfs/document/view?id=7021920798>).