How AT&T's T-Mobil Takeover Went Wrong (Or Didn't According To Them)

AT&T hasn't yet formally surrendered in its campaign to pay $39 billion for T-Mobile, and may not for a while. Its top officials are still making provocative, pugnacious pronouncements, whining about its unfair treatment at the hands of regulators, while repeating arguments that have all but been discredited and dispensing other irrelevancies.

From its recent statements and action, AT&T is just embarrassing itself now. It's a very sad and very undignified situation. Surely some of the company's biggest shareholders or Board members should be questioning management's strategy in getting into the deal in the first place and its tactics since then. Recent events are doing nothing to bolster the company's already battered reputation and may even be doing some harm.

It's obvious to most observers that AT&T's attempt to take over T-Mobile is all but dead. The post-mortems are starting and the question being asked is: what went wrong for AT&T?

There is a two-part answer: 1. nothing 2. everything. Nothing (from AT&T's point of view)

In trying to push through the takeover, AT&T did almost everything right, up until the end. They called the right plays, had the right personnel on the field and executed the game plan.

When trying to figure out whether to pursue the T-Mobile takeover, AT&T probably took a look at the regulatory and political landscape at the beginning of the year, AT&T had every reason to be optimistic that it could carry the day.

Even if there were some gung-ho staffers within the Federal Communications Commission (FCC) and at the Antitrust Division of the Justice Department (DoJ) who would oppose the takeover at some point, at the time the deal was being put together, AT&T was on a hot streak. It had the run of the FCC. Through use of the company's vast grass-roots network and political muscle, AT&T had beaten down FCC Chairman Julius Genachowski any number of times, most prominently on his efforts to set new rules for an Open Internet.

In its first big test, the Antitrust Division allowed the Live Nation merger with Ticketmaster in January, 2010 after a year of consideration -- albeit with some conditions. The Division had done nothing up until that time to show anyone that it would do anything differently from what the Division had done during the Bush years.

Both agencies, the FCC and DoJ, allowed (with conditions) Comcast to buy up NBC-Universal, obliterating the barrier between those companies that own the networks and those who own the programming. Sure, Comcast also owned some content, but nothing like what NBC-U had in its portfolio of movie studio, TV network, production facilities and cable channels.

And so AT&T proceeded on the by-the-book approach that has served it so well. They have spent more than $12 million lobbying Congress through September. They recruited an all-star team of outside lobbyists including former senators and Representatives and ex-Congressional staffers from both parties and others with close ties to key politicos.

They trotted out their paid-for legislators to sign letters endorsing the takeover. AT&T worked the states, getting state legislators and governors to support the takeover, spending who knows how

much money because that isn't uniformly reported. They got all of the trade groups and suppliers in their business ecosphere to chip in support.

They spent more than $40 million on advertising, most of that going to TV. They paid untold thousands more to economists, PR firms, pollsters and the like. And they leveraged some of the $148 million they give to charities through the AT&T foundation headed by their chief lobbyist, Jim Cicconi otherwise known as AT&T Senior Executive Vice President of External & Legislative Affairs, to get letters of support for a deal that many of those sending in letters never heard of. Even the Louisiana Ballooning Foundation got its hot air into the act.

It was (and remains) an impressive show of force, run to perfection, and usually it wins every time. But not this time. The game changed.

Everything (As many others see it)

One problem for AT&T is that this deal was like trying to play football in a swimming pool. It doesn't matter what plays you call, or what players you have. It's just not going to work as well as being on a field. This takeover was just too blatantly anticompetitive and the supporting reasoning and facts were just too thin for the normal set of plays to work correctly, no matter how well executed. AT&T wanted to take out one of its three national wireless competitors, a company which had 33 million customers and employed about 40,000 people. It was that simple and inescapable fact at the heart of the matter that made it so difficult for policymakers to swallow.

The other problem is that the Antitrust Division was starting to feel more bold, going to court to block more deals. And Genachowski was being pushed to put on his man pants both legs at a time.

This deal would have been a stretch even under a friendly Republican administration (although a very friendly Administration might have held its nose and allowed it to go through).

All the fuss and bother of letters signed by bought-off members of Congress and all of the saturation ads with cute kids and fireflies weren't enough once those insulated from all of the fuss and bother got down to looking at the facts as presented publicly and presented privately by AT&T.

It wasn't a pretty picture when the Justice Department on Aug. 31 took the AT&T takeover to court to block the transaction. Deputy Attorney General James Cole said at the time, "The combination of AT&T and T-Mobile would result in tens of millions of consumers all across the United States facing higher prices, fewer choices and lower quality products for mobile wireless services." The DoJ said this after months of talks with AT&T and others, and after intensive study.

The reasons were pretty simple as set out in the first complaint. T-Mobile was an innovative and low-cost competitor in the national cellular market, and consumers would suffer if it went away. The smaller, regional carriers don't have the spectrum or technology to compete on a national basis.

AT&T, of course, which has it in its DNA never to give up, said, "fine, we'll see you in court," and proceeded to work over the FCC. Both agencies have to approve the transaction. DoJ looks strictly at antitrust law; the FCC uses the broader "public interest" standard in the Communications Act. The FCC staff was also evaluating the AT&T application in depth. A transaction team had been assembled; outsider experts were brought in. AT&T was given multiple chances to correct or resubmit economic models or to submit data to support their fanciful theories about how the merger would

create jobs.

The FCC staff, as we now know, after exhaustive evaluation of public and private documents, basically took AT&T's case apart and left it in pieces on the floor. No King's horses or King's men for this rotten egg. The staff dismissed every claim and in excruciating detail in terms of the economic models (which AT&T submitted twice) and engineering models. The staff found that while AT&T was saying publicly that the takeover would lower prices, the models found prices would go up. There were really dubious assumptions about how the wireless market works, like AT&T saying that if one firm raised its prices, then 40 percent of its customers would drop cellular service entirely.

The FCC staff looked at the supposed efficiencies that would result from the deal, whether in terms of reuse of spectrum or reuse of employees and found AT&T's case wanting in both aspects. They found, as the DoJ did, that T-Mobile is a genuine, spunky competitor to which AT&T responded. They found severe market concentration in 99 of the top 100 markets after the takeover. They found that AT&T's claims of job creation were just so much smoke and mirrors. There was nothing in this deal that passed muster.

And yet AT&T protested that it didn't get a fair hearing. If AT&T wanted a hearing, it didn't have to withdraw its application for the transaction. AT&T did that and was quite vociferous about its right to do so. It could have fought each point in the 100+ page report issue by issue for years in a war of attrition.

AT&T pulled its application for the takeover in an attempt to make sure the staff report would never be made public. When the report did come out, AT&T attacked the Commission, saying it wasn't proper to be released and tried out the same, old, discredited arguments both the DoJ and FCC had found wanting.

Through the whole process, AT&T has acted as if it was running the show -- a reasonable assumption most of the time. AT&T officials said they were miffed that DoJ hadn't tipped them ahead of time the Antitrust Division was going to court to block the deal. They were equally miffed that FCC hadn't told them ahead of time that the staff report was going to be released and that they didn't have a chance to rebut it.

The FCC gave AT&T more than its fair share of chances to make the case for the takeover, stopping the clock and allowing the company to resubmit models and data the FCC thought were insufficient, even though the rules nominally require that the final plan be submitted at the start of the process.

For AT&T to complain that it didn't receive "careful, considered, and fair analysis" from the FCC is simply absurd. AT&T made 208 filings at the Commission, 49 of which were totally confidential. They submitted about 7,259 pages (not including confidential filings). The Commission staff read through all of that, and more. Yet AT&T still complains it didn't get a "fair hearing and objective treatment."

More on the substance of their complaints later.

Every couple of days, there is a story being floated about a new resolution of the failed takeover -- AT&T would sell spectrum to smaller companies. AT&T would do a joint venture with T-Mobile parent Deutsche Telekom. AT&T would allow T-Mobile to continue to exist using AT&T spectrum. None of those make any sense and none would solve the problems of hurting consumers, rising prices and

lessening competition.

As a result of the staff report, AT&T is throwing out the absurd claim that the it is not the job of the FCC to protect consumers, that the agency is only supposed to settle disputes among companies and keep companies from harming one another.

This is how the Communications Act starts. The law is enacted "For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges..." That's the public interest. That's consumer protection.

Time to blow the whistle and go home, guys. Work on your next plan for world domination.