

**Senate Judiciary Committee, Antitrust Subcommittee Hearing**  
**“The AT&T/DIRECTV Merger:**  
**The Impact on Competition and Consumers in the Video Market and Beyond”**  
**Questions for the Record Submitted by Chairman Amy Klobuchar for Randall Stephenson**

- 1. AT&T’s U-verse video competes with DIRECTV in about 25 percent of the country covering about 30 million homes. AT&T also competes with the local cable company and DISH Network. If AT&T acquires DIRECTV, these consumers will go from having four competitors down to three. At the hearing you focused on the 75 percent of the country that will not lose a competitor. However, 30 million homes is not an insignificant number. For those consumers, how is this merger different than the merger between AT&T and T-Mobile, which also eliminated a direct competitor, that was blocked by the DOJ and FCC in 2011?**

This transaction is different because it combines complementary assets for the benefit of consumers. DIRECTV is a profitable standalone video provider with a nationwide footprint. AT&T, on the other hand, is first and foremost a broadband company, with extensive fixed broadband and wireless networks. AT&T has less than 140,000 stand-alone video subscribers sprinkled throughout its limited video footprint, and its video service is unprofitable. Thus, even the limited overlap of potential customer bases between the companies overstates the level of competition between them. The true competitive significance of the transaction is found in the creation of a stronger competitor against cable, which is the dominant provider of video and broadband, and in particular the creation of a company that can offer an improved broadband/video bundle to a much greater number of consumers.

- 2. As part of your merger announcement, AT&T committed to provide standalone broadband service and to maintain national pricing for DIRECTV for three years. After three years expires, what should consumers expect? Will you have to maintain standalone broadband and television services at reasonable market-based prices?**

After three years, consumers can expect just what they have always gotten from us – innovative products and services that meet their evolving needs and preferences. Today, consumers demand competitive, efficient bundles of video and broadband services, and we expect that demand to swell even more in the years to come. However, as long as customers desire standalone options in addition to bundles, AT&T will continue to give consumers that choice by offering standalone services at reasonable, market-based prices. AT&T operates in a highly competitive market, and we look forward to continuing to giving customers what they want.

- 3. Consumers outside of AT&T’s footprint currently have an alternative to cable bundles of phone, video and broadband through DIRECTV’s “synthetic bundles” with phone and broadband companies such as Verizon and CenturyLink. AT&T’s FCC public interest filing said that it expects to continue offering these “synthetic bundles” between DIRECTV and other broadband providers. However, with AT&T expanding its broadband footprint with fixed wireless loop technology, it may be in AT&T’s interest to end those agreements in the future and limit DIRECTV consumers’ choice of broadband and phone bundles to AT&T’s. In the alternative, AT&T could be**

**incentivized to limit competition to its own bundle by offering DIRECTV to a bundling partner at an uneconomical price that prohibits them from competing against AT&T. What incentives will you have to continue offering DIRECTV synthetic bundles with other wireline broadband companies in areas where AT&T provides fixed wireless local loop broadband? Will you commit to offering stand-alone DIRECTV video products to bundling partners at reasonable and non-discriminatory prices?**

As noted in the question, we plan to continue to offer these synthetic bundles to consumers, and indeed, these synthetic bundle offerings will be an important part of our sales efforts wherever we do not offer our own wireline broadband service. In those areas where we do offer wireline broadband service, our focus will be on offering our integrated bundle of video and broadband, which is a product that we believe consumers will find to be attractive. Additionally, as our economic analysis makes clear, our integrated bundle will further benefit consumers by putting downward pressure on cable prices. In the rest of the country, we will continue to rely on broadband partners such as Verizon and CenturyLink to meet the demand for video/broadband bundles. These partners will be an important part of our business.

**4. AT&T claims that it needs this merger so that it can justify the cost of its proposed broadband expansion. AT&T is committing to upgrade or build out fiber to 2 million households and another 13 million would get fixed wireless local loop technology. At the hearing and in your testimony, you cited \$1.6 billion in cost savings annually after three years.**

**a. How much do you estimate the broadband expansion will cost? And what percentage of AT&T's cost savings will be devoted to the broadband build out and how much will be devoted to putting downward pressure on cable prices, presumably by lowering consumer prices?**

Our broadband commitment is a four-year commitment, beginning upon close of the transaction. Between now and close and, indeed, during the build itself, we will continually refine our cost estimates of the effort. The cost estimates related to this deployment are proprietary. At this time, however, we estimate that the costs of the expansion to the additional 15 million potential customer locations will involve a multi-billion dollar investment – an investment made possible by the economics associated with the addition of DIRECTV to our company.

Our business planning does not allocate or earmark the potential cost savings arising from reductions in programming costs to particular infrastructure projects or to particular uses of the funds generally. Instead, the anticipated reductions in what we would have otherwise spent on programming are the underpinnings of our ability to enhance our infrastructure development. The transaction transforms what had been an unprofitable video business into one that generates positive margins; as a result, it improves the business case for developing infrastructure. This expansion allows us to increase both our video customer base and our broadband customer base, which then further improves the economics of both offerings. We will have greater flexibility and ability to invest and improve our integrated video offering and the customer experience, including by ensuring that our pricing of those services remains competitive in the market and provides a superior offering to consumers.

- b. In your public interest filing, you say that fixed wireless local loop service is “relatively untested technology” and “its success in the marketplace is thus unproven.” What happens if this deployment is not successful?**

Although there are uncertainties related to particular aspects of the technology and customer response to the fixed wireless local loop service, this transaction favorably alters the economics for deploying the service. By being able to integrate our broadband offering effectively with a profitable video offering, AT&T anticipates that consumers will see significant improvements in the quality and value of the offering by the combined company and more customers will purchase the offering and that a higher percentage of them will continue to find it to be a compelling value. In addition, the projected costs associated with installing fixed wireless local loop equipment at a customer’s home change dramatically when you are also installing or servicing a DIRECTV satellite dish. As a result, the AT&T/DIRECTV transaction gave AT&T the confidence to deploy the service and is committed to the investment it will require. While questions may remain, as they do with any new service, regarding the precise level of customer interest and how customers will react over time, those uncertainties will affect only the profitability of the fixed wireless local loop service; they will not affect whether it will be rolled out and offered to customers.

- c. Are you planning to use any Connect America funds for the 15 million home build out of your network that you are promising with this merger?**

No, our modeling has not taken in to account receiving any CAF funds.

- 5. We recently had a hearing on the IP transition in the Commerce Committee where we discussed the evolving IP-based communications systems and what that means for regulations, and particularly public safety. AT&T has been a significant player in the FCC’s decision to allow for IP trials to test the impacts of changes in communications technology on consumers and on the need for regulations to protect them. Is it correct that you will be testing the same wireless IP “cantennas” that you are highlighting in this merger as a new broadband option for rural consumers? How would you address the concerns that this wireless broadband connection is not adequate to provide quality, reliable connections for consumers?**

Yes, as part of our IP trials, we will be testing a fixed wireless local loop broadband offering in one of the trial wire centers. However, the trial will not be using “cantennas” but will be featuring a directional antenna.

AT&T’s fixed wireless local loop broadband offering will utilize wireless spectrum dedicated to that service and AT&T’s advanced LTE infrastructure (including professionally installed customer premises equipment) to provide a high quality, reliable broadband service at speeds and with usage allowances that are comparable to, and typically are better than, those of the best wireline broadband offerings available in those areas today.

- 6. Concerns have been raised over the years about AT&T’s implementation of its public, educational and government access (“PEG”) channel requirements. As I understand it there is one channel with a drop down menu that serves multiple**

**jurisdictions. Is AT&T making any effort to improve this? As part of your upgrades and adding more value, will you work to improve your U-verse customers' access to PEG channels?**

AT&T's PEG product is actually superior to that offered by cable operators from the perspective of subscribers, PEG producers, as well as municipalities, for several reasons. Among the most important are the following.

First, rather than providing subscribers access only to the community video programming of the municipality in which they live, AT&T's U-Verse PEG product offers subscribers access to the full range of PEG programming throughout a DMA. Consequently, AT&T's subscribers have access to far more PEG content than traditional cable system subscribers, and they can keep track of news, programming, and events in surrounding communities where they may work or family members may live. Second, and relatedly, AT&T's U-verse PEG programming is distributed to much larger audiences than cable operators' PEG programming, because distribution of PEG programming is limited only by relatively large DMA boundaries, not by relatively small municipal boundaries. This allows PEG programmers to spread their messages to audiences to which they would not otherwise have access.

AT&T's PEG programming can pass through Emergency Alert Service, closed captioning, and Secondary Audio Programming ("SAP") capabilities, and the picture quality is comparable to that of U-verse TV's standard definition commercial programs on linear channels. Of course, as with all of its video products, AT&T is committed to constantly reviewing its PEG service and implementing improvements, where appropriate.

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**Questions for the Record Submitted by Senator Al Franken for Randall Stephenson**

- 1. During the hearing, you said that you did not know whether AT&T has spent money lobbying for laws that restrict municipal broadband. Now that you have had an opportunity to consult appropriate documents and personnel, please answer the following questions: Has AT&T lobbied to restrict municipal broadband development? If so, please describe such efforts, including the amount of money spent on such efforts, the proposals for or against which AT&T has lobbied, and the states or locales in which such lobbying has taken place.**

As discussed more fully in response to Question 4, building and operating broadband networks is best left to the private sector – as it requires expertise and an ongoing investment in network operations and upgrades. AT&T’s position, therefore, is that government owned networks (GONs) should only be funded and deployed where there is no private sector alternative (and other alternatives such as the Connect America Fund (CAF) implementation have been considered). Overbuilding does nothing to further the goal of extending broadband to those Americans who have no broadband access today. If governmental entities nonetheless pursue public ownership of broadband networks in a competitive market – which AT&T does not support – then in some instances we have advocated that appropriate safeguards be put in place to protect taxpayers and ensure a “level playing field” in a competitive market. Some of the safeguards AT&T has supported include:

- Commercial service providers should be given a right of first refusal in order to limit the need for government resources.
- To the extent the government regulates competing commercial providers, regulations must be applied to commercial and government-owned networks on a non-discriminatory basis.
- Government owned systems should be subject to the same laws and rules that govern commercial competitors.
- Government-owned systems should not receive preferential tax treatment. As an alternative, tax incentives/exemptions could be provided to service providers in order to increase the availability of the desired services.
- Government-owned systems should not be given preferential access to the right-of-way.
- Government-owned systems should not be allowed to make exclusive arrangements that prohibit commercial competitors from offering services.

We do not keep records on every bill or legislative measure that the company engages upon at the State level but we have advocated concerning GON-related legislation in at least the following States/regions: Arkansas, Connecticut, Florida, Indiana, Ohio, Puerto Rico, North Carolina, South Carolina, Tennessee, and Utah. In its advocacy related to GONs, AT&T did not hire lobbyists specifically for the purpose of working only on GONs-related legislation. Any AT&T lobbying efforts on GONs-related issues would have been/are handled consistent with our lobbying on other issues, that is, through AT&T’s employee lobbyists as well as external

lobbyists under general contract with the company. In addition, while not lobbying, AT&T has supported third-party coalitions/501c4 entities that raise awareness about the risks of GONs and the importance of placing appropriate conditions and safeguards on them.

- 2. During the hearing, you stated: “I have personally advocated that where we are investing or others are investing private capital that we shouldn’t be required to compete against government taxpayer money.” According to the Institute for Local Self-Reliance, many municipal networks are financed by bonds to private investors that are repaid with revenues from the network. Do you believe municipal networks that are financed this way have a right to compete in an open marketplace?**

In the scenario you describe, whether the funding comes from a tax or from issuance of bonds, the network is still government owned, and thus AT&T’s position remains the same. As discussed in responses to Questions 3 and 4, AT&T’s position is that government owned networks (GONs) should only be considered where there is no private sector alternative (and other alternatives such as the Connect America Fund implementation have not addressed the issue). Moreover, GONs create a risk for taxpayers that should not be ignored in the current environment where many government entities are facing a challenging financial situation. That risk is not eliminated by use of government bonding authority versus taxpayer dollars.

The ability to repay the bond is based on revenue being generated by the network. If the GON does not generate sufficient revenue to repay the bond debt, taxpayers could be left with a significant burden. Local governments have a poor track record of projecting demand for their networks. As a result, GONs can and have failed to perform anywhere near the optimistic scenarios that are typically used when floating bonds to investors. The UTOPIA network in Utah offers an unfortunate example of this dynamic. Even after spending about \$500 million to deploy only a small part of this ambitious multi-city GON, the network has consistently failed to draw the number of subscribers needed to generate revenues sufficient to cover even their debt payments. A similar dynamic was evident in the downfall of GONs in Burlington, VT, Groton, CT, and Provo, UT. Municipalities that are unable to meet these obligations are oftentimes forced into uncomfortable situations. In the case of Burlington, it resulted in local officials making transfers from the city’s cash pool to cover these payments. In the case of the GON in Monticello, MN, officials have had to dip into other city funds to support this struggling network.

AT&T’s position remains that GONs should be considered only for unserved areas where a private sector business case does not exist. And even then, consideration must be given regarding the risk to taxpayers if the revenue from the GON falls short of expectations – that is the case whether funding with taxpayer dollars or using government bonding authority.

- 3. How much federal taxpayer money has AT&T requested from the Connect America Fund to subsidize its broadband network?**

The Connect America Fund (“CAF”) is not funded with federal taxpayer money. Providers of interstate telecommunications and interconnected VoIP services are required to contribute to the federal universal service fund, of which the CAF is one component; these providers in turn generally recover their federal universal service contributions from end-user customers. AT&T

has received \$100 million in CAF Incremental Support, which its price cap carrier affiliates will use to deploy broadband to unserved areas. Additionally, AT&T received approximately \$176 million in CAF Frozen Support in 2013. Under the FCC's rules, price cap carriers were required to spend at least one-third of their CAF Frozen Support to build and operate broadband-capable networks in areas substantially unserved by an unsubsidized competitor. In 2014, that percentage increases from one-third to two-thirds. The FCC has not yet finalized its CAF Phase II rules.

- 4. During the hearing you stated: “[Unserved areas] seem like a logical place for government to step in and provide a solution.” However, many restrictions on municipal broadband apply equally to all parts of a state, including unserved areas. Do you believe unserved areas should be exempt from such restrictive laws?**

Building and operating broadband networks is best left to the private sector – it requires expertise and an ongoing investment in network operations and upgrades. AT&T's position, therefore, is that government owned networks (GONs) should only be funded and deployed where there is no private sector alternative (and other alternatives such as the Connect America Fund (CAF) implementation have been considered).

As discussed in response to Question 1, if governmental entities nonetheless pursue public ownership of broadband networks in a competitive market – which AT&T does not support – then appropriate safeguards must be put in place (generally through state legislation) to protect taxpayers and ensure a “level playing field” in a competitive market. These safeguards include:

- Commercial service providers should be given a right of first refusal in order to limit the need for government resources.
  - To the extent the government regulates competing commercial providers, regulations must be applied to commercial and government-owned networks on a non-discriminatory basis.
  - Government owned systems should be subject to the same laws and rules that govern commercial competitors.
  - Government-owned systems should not receive preferential tax treatment. As an alternative, tax incentives/exemptions could be provided to service providers in order to increase the availability of the desired services.
  - Government-owned systems should not be given preferential access to the right-of-way.
  - Government-owned systems should not be allowed to make exclusive arrangements that prohibit commercial competitors from offering services.
- 5. AT&T has a history of blocking applications that compete with its own voice and messaging services, including Skype, Google Voice, and Apple's FaceTime. The FaceTime blocking ended once the FCC began investigating whether your company was violating the Open Internet Order. Do you believe these incidents contradict AT&T's stated commitment to net neutrality? Please explain why or why not.**

AT&T does not block applications that compete with its own voice and messaging services – or any other lawful applications for that matter – and it strongly disagrees with your statement that AT&T has a history of blocking such applications.

With respect to your assertions regarding Skype, Google Voice and Facetime, AT&T respectfully disagrees with your characterization. AT&T permits, and has always permitted, users of its fixed and mobile broadband Internet access services to access any lawful website of their choosing. AT&T does not block or otherwise restrict such access and has never done so, and AT&T’s customers have always been able to launch VoIP and other applications through such access. Prior to October 2009, however, AT&T and Apple agreed that Apple would not take affirmative steps to enable an iPhone to use AT&T’s wireless service to make VoIP calls. This restriction was limited to the iPhone and stemmed from the substantial and unprecedented subsidies AT&T was providing for iPhone purchases. These restrictions were lifted, first for iPhone VoIP applications using Wi-Fi connectivity, and then in October 2009, for VoIP applications that used AT&T’s wireless network. That was more than a year before the FCC adopted its Net Neutrality rules.

AT&T’s temporary limits on the use of FaceTime were fully consistent with the letter and spirit of Commission’s Net Neutrality rules, which expressly recognize the imperative of reasonable network management. FaceTime is a highly bandwidth intensive application. When Apple made available iOS6, which for the first time permitted use of FaceTime on cellular networks, FaceTime had already been preloaded on tens of millions of AT&T customer iPhones. Particularly, given Apple’s reputation for high quality design, AT&T was concerned that the launch of iOS6 could result in a flood of FaceTime usage that would adversely impact service quality for all customers. AT&T was particularly sensitive to this concern as it was widely known at the time that AT&T had experienced congestion on its network as a result of the extraordinary popularity of the iPhone and the way in which that device revolutionized mobile data usage. It is for this reason, and no other, that AT&T decided to take the prudent course of action with respect to FaceTime by phasing it in, first with our Mobile Share customers, then with our tired plan customers, and, finally, with our unlimited plan customers. This process enabled us to monitor usage of FaceTime and its impact on our network and ensure that our mobile experience was the best it can be for all of our customers. We made FaceTime available to all customers, not because of any FCC investigation (there was no formal investigation), but because we were committed to doing so as soon as we could conclude that it would not result in an adverse impact on service quality.

## **6. Do you believe the Open Internet Order allows for paid prioritization?**

The Open Internet Order by its terms did not prohibit all prioritization but it created a strong presumption against the form of paid prioritization that is of most concern to Open Internet interest groups – sometimes referred to as “pay for priority.” The Commission described this as “a commercial arrangement between a broadband provider and a third party to directly or indirectly favor some traffic over other traffic in the broadband Internet access service connection to a subscriber of the broadband provider (*i.e.*, “pay for priority”).”<sup>1</sup> The

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<sup>1</sup> *Open Internet Order*, para. 76.

Commission concluded that such arrangements “would raise significant cause for concern” and therefore “it is unlikely that pay for priority would satisfy the ‘no unreasonable discrimination’ standard.”<sup>2</sup>

Net Neutrality advocates have not called for a prohibition on all types of paid prioritization – and for good reason. Instead, Net Neutrality advocates have conceded that paid prioritization is a concern only when it is *not* directed by end users. These advocates have acknowledged that “user-driven prioritization is *unobjectionable* and should be a capability that is preserved in the course of enacting any new Internet openness rules.”<sup>3</sup> As the Center for Democracy & Technology explained in 2010, “CDT and others have repeatedly made a clear distinction between paid prioritization and user-driven prioritization”; prioritization that “would occur on the user’s last-mile facilities at *the user’s request*” should be permissible.<sup>4</sup> That is because user-driven prioritization, CDT emphasized, poses no threat to “Internet openness.”<sup>5</sup> Similarly, Free Press has explained that its “long-held position” is that “prioritization over open Internet services” that is “purely edge-driven prioritization, such as the prioritization used in many business services and protected through service level agreements,” is permissible.<sup>6</sup> In other words, Free Press has acknowledged that “user-driven method[s]” of prioritization are not objectionable.<sup>7</sup>

The FCC agreed. As the Open Internet Order concluded, “[a] strict nondiscrimination rule would be in tension with [the FCC’s] recognition that some forms of discrimination, including end-user controlled discrimination, can be beneficial.”<sup>8</sup> At the same time that it created a presumption against paid prioritization (*i.e.*, pay for priority), the Open Internet Order concluded that “[m]aximizing end-user control is a policy goal Congress recognized in Section 230(b) of the Communications Act, and end-user choice and control are touchstones in evaluating the reasonableness of discrimination.”<sup>9</sup> Moreover, fully consistent with the views of Net Neutrality advocates, the Open Internet Order appropriately excluded enterprise service offerings, which typically allow customers to designate certain traffic for prioritization.<sup>10</sup> These user-driven services have been used for years without any threat or harm to the open Internet.

## **7. Sprint is reportedly nearing an agreement to acquire T-Mobile. Sprint and its parent company, Softbank, say they need a merger to compete with AT&T and Verizon in the wireless market. What do you make of this argument?**

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<sup>2</sup> *Id.*

<sup>3</sup> CDT ex parte, GN Docket No. 09-191, at 2 (Sept. 8, 2010) (emphasis added); *see id.* (explaining that Differentiated Services architecture is different from paid prioritization that concerns Net Neutrality advocates because the former “would be a capability offered to users and would occur on the user’s last-mile facilities at the user’s request”).

<sup>4</sup> *Id.* (emphasis added).

<sup>5</sup> *Id.*

<sup>6</sup> Free Press ex parte, GN Docket Nos. 07-52, 09-191, at 1 (Oct. 6, 2010).

<sup>7</sup> Free Press ex parte, GN Docket No. 09-191, at 3 (Aug. 3, 2010).

<sup>8</sup> *Id.*, para. 77.

<sup>9</sup> *Open Internet Order*, para. 71.

<sup>10</sup> *Id.*, para. 45.

Sprint is owned by one of the largest telecom/Internet companies in the world with other telecommunications holdings and considerable resources at its disposal. If and when a Softbank/T-Mobile deal is announced, we will review the application and decide what, if any, position to take with respect to it.