

Responses to Questions for the Record for Jeff Bewkes  
Chairman and Chief Executive Officer  
Time Warner Inc.

United States Senate Committee on the Judiciary  
Subcommittee on Antitrust, Competition Policy, and Consumer Rights  
Hearing: "Examining the Competitive Impact of the AT&T-Time Warner Transaction"

**Questions for the Record Submitted by Senator Grassley for Jeff Bewkes**

- 1. You've testified that the AT&T-Time Warner deal will result in more choice and other benefits for consumers. I'm interested in learning more about what the impact will be for consumers in rural areas, and in particular for Iowans. How will this merger benefit consumers in rural America, and specifically my Iowa constituents?**

Response: From a content perspective, combining Time Warner's ability to create great video content with AT&T's physical distribution in satellite, broadband, and mobile, will help us bring consumers more choices in how they enjoy their favorite TV shows, films, video games, and other content from Time Warner and a vast array of other creators – and do so more quickly.

By joining forces with AT&T, Time Warner will accelerate the development and delivery of the next generation of video services delivered over satellite, broadband, and mobile to consumers in rural America, as well as elsewhere, with greater choice, convenience, value, and affordability.

- 2. Media, entertainment, information and telecommunications markets are rapidly evolving, with internet and technology firms challenging traditional telecom companies. In your opinion, how should the Justice Department be looking at this market? Do you believe traditional merger analysis methods work in the context of the AT&T-Time Warner merger?**

Response: The Department of Justice should apply established antitrust principles in reviewing this transaction, as it does in other media transactions and across numerous other sectors. We believe that, in doing so, the Department should conclude that the proposed deal would benefit competition and consumers.

As a threshold matter, the Department should recognize that the proposed transaction is a vertical merger, not a horizontal one. AT&T would acquire one of its many suppliers of TV programming, not one of its competitors. AT&T and Time Warner do not operate in the same lines of business. Time Warner produces television shows, movies and video games and owns cable (non-broadcast) networks, such as TNT, TBS, CNN and HBO. Importantly, Time Warner does not own any interest in the former Time Warner Cable, which is now owned by Charter. AT&T, in contrast, provides residential, business and government landline telephone service, wireless phone and data service, broadband Internet access, and multi-channel video distribution (e.g., DIRECTV).

Vertical mergers are widely viewed as producing pro-competitive efficiencies and only raise competitive concerns where the combined company would have a dominant market

share position at one or more levels of the supply chain that would allow it to harm rival companies' ability to compete, raise prices, or otherwise harm competition.

Neither AT&T, nor Time Warner, has a dominant market share position in any of their separate and non-overlapping lines of business. Although Time Warner produces great TV shows and movies and has popular cable networks, our share of video programming is too small to raise antitrust concerns and represents a small fraction of video watched by consumers. AT&T operates in the wireless business, which is intensely competitive, and is merely a recent insurgent in both the broadband and multi-channel video distribution markets, where incumbent cable companies generally hold stronger market positions.

Moreover, the value of Time Warner's business depends on continuing to distribute our content broadly, through a wide range of traditional and online distributors, platforms and devices. Accordingly, the combined company will have no ability or incentive to harm competition in any relevant market – at the studio, network, or distribution level in any area (wireless, broadband or multi-channel video distribution).

As suggested by your question, it will also be important for the Department of Justice to take into account the evolving marketplace, in which traditional pay television services are competing for viewers, subscribers, and advertisers with other forms of video content delivered by subscription video-on-demand (SVOD) services such as Netflix and advertising-supported video available on YouTube and Facebook.

**3. How do you respond to concerns that a merged AT&T-Time Warner will be able to use its power to discriminate against other networks or exclude diverse content?**

Response: Even apart from any regulations preventing such discrimination, AT&T-Time Warner would not be able to discriminate against other programming networks or exclude diverse content because it could not afford to alienate and lose customers by denying them the content they desire.

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**Questions for the Record Submitted by Senator Feinstein for Jeff Bewkes**

- 1. Why do you believe this merger is necessary in order for Time Warner and AT&T to compete in today’s consumer market? Please explain why, with specifics.**

Response: The combined company will be much better positioned to compete and innovate. There are a lot of uncertainties inherent in developing new offerings, relating to pricing, intellectual property rights, and product features. And sometimes distributors don’t want to launch a new service unless the programmer opens up its existing affiliate agreement with them, which can carry a high level of risk for a content company like ours. Combining programming assets with distribution helps to align interests and make it easier not only to innovate, but also to continuously experiment and improve products and services. And then those innovations can be rolled out across other distributors.

TV Everywhere is a good example. We announced that initiative with Comcast in June 2009, three months after we spun off Time Warner Cable. TV Everywhere was based on the simple idea that if you subscribe to a cable, satellite, or telco video service, you ought to be able to view programming on demand on multiple devices at no additional cost. The concept was simple, but the implementation has been difficult. It’s been difficult to get agreements with distributors on key issues like how a consumer can “authenticate” as a subscriber, what devices a consumer can use, and how much programming is available.

By joining forces with AT&T, Time Warner will accelerate the development and delivery of the next generation of video services that provide consumers with greater choice, convenience, value, and affordability.

- 2. What assurances can your company give this committee that the merged company will not use its substantial video content assets and transmission network to unfairly disadvantage rivals? I am particularly concerned about independent programmers, minority programmers, and other content owners.**

Response: It wouldn’t make any economic sense for the combined company to restrict access to Time Warner’s programming or AT&T’s transmission networks. The value of our programming is based on distributing it to as broad an audience as possible, on many different types of platforms. We license our cable television networks – from Turner and HBO – non-exclusively, because it would destroy their value to restrict them to AT&T’s distribution services. We could not afford to continue to attract great talent and produce compelling shows for our networks if we were to limit their distribution.

With respect to specific television programs produced by Warner Bros., our business model is based on licensing programs broadly to all distributors. Warner Bros. is a leading studio because it licenses programs not just to the CW network, in which we have a 50% interest, but to all of the broadcast networks, to basic cable networks, to premium networks (both HBO and its competitor Showtime), and to online outlets like Netflix. That broad distribution allows Warner Bros. to attract great creative talent because they know that we will find the best home for their show on any outlet.

AT&T can speak to use of its transmission networks, but we can say that AT&T-Time Warner also would not be able to discriminate against other networks or exclude diverse content because we could not afford to alienate and lose customers by denying them the content they desire.

**3. Assuming the merger goes forward, are you willing to accept conditions on the merged company to ensure it does not unfairly compete with its rivals?**

Response: We believe the proposed transaction is pro-consumer and pro-competitive, so we do not believe conditions are warranted. But we understand the Justice Department will carefully review the transaction, and we look forward to talking with the agency regarding any concerns they have and how we can address them.

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**Questions for the Record Submitted by Senator Hatch for Jeff Bewkes**

- 1. A number of prominent antitrust scholars, including Robert Bork, have argued that vertical mergers are—as a general matter—less concerning than horizontal mergers because they do not directly reduce the number of competitors in a given market. Yours would be a vertical merger. Can you explain to the committee why you believe the vertical nature of the deal means the sorts of competitive concerns we see with horizontal mergers don't apply?**

Response: You have correctly observed the AT&T-Time Warner merger is a "vertical" merger – the acquisition by AT&T of one of its many suppliers of TV programming, not one of its competitors. Time Warner produces television shows and movies, and owns non-broadcast television networks, such as TNT, TBS, CNN, and HBO. Importantly, since 2009, Time Warner has not owned any cable or internet distribution network; it does not own any interest in the former Time Warner Cable, which is now owned by Charter. AT&T provides residential, business and government landline telephone service, wireless phone and data service, broadband internet access, and multi-channel video distribution (*e.g.*, DIRECTV).

Why is this important? Vertical mergers are widely viewed as producing pro-competitive efficiencies and are disallowed only where the combined company would have a dominant market share position at one or more levels of the supply chain that would allow it to harm rival companies' ability to compete, raise prices, or otherwise harm competition.

Neither AT&T, nor Time Warner, has a dominant market share position in any of their separate and non-overlapping lines of business. Although Time Warner produces great TV shows and movies, and has popular networks, our share of video programming is too small to raise antitrust concerns and represents a small fraction of video watched by consumers. AT&T is merely a recent insurgent in both the broadband and multi-channel video distribution markets, where incumbent cable companies hold generally stronger market positions. And the wireless business is intensely competitive.

In addition, the value of Time Warner's business depends on continuing to distribute our content broadly, through a wide range of traditional and online distributors, platforms and devices. Accordingly, the combined company will have no ability or incentive to harm competition in any relevant market - at the studio, network, or distribution level in any area (wireless, broadband or multi-channel video distribution).

Finally, while it is not legally necessary for antitrust clearance, the AT&T-Time Warner merger will help expand and accelerate the introduction of pro-consumer innovations that companies have been unable to agree on separately, such as more flexible network

packages with more on-demand programming, better consumer interfaces, and the ability for consumers to watch their favorite television shows and movies seamlessly across all of their devices, wherever and whenever they choose, as well as more OTT and mobile-delivered video services. The merger will also give AT&T the economic incentive to hasten the next generation of wireless broadband technology (5G) by ensuring that AT&T will have access to some premium video content to advance the rollout of 5G. 5G, with its much higher broadband speeds, will be the most important addition of facilities-based competition to broadband in the last two decades.

2. **A number of commentators have analogized your merger to the 2011 Comcast-NBC Universal merger, which similarly brought broadband and content together under a single roof. Many of these same commentators have criticized the Comcast-NBC Universal merger on the ground that the conditions the FCC imposed on that merger were ineffective and failed to allay the merger’s anticompetitive effects. How do you respond to those critics? Is your merger like the Comcast-NBC Universal merger, or is it different? And if it is like the Comcast-NBC Universal merger, how can we be sure that conditions regulators impose will be effective?**

Response: We believe this is a different deal, with different companies, and in a much different industry landscape from the Comcast/NBCU deal.

**Programming.** Comcast was acquiring programming that DOJ and FCC considered important to then-nascent online providers. Unlike Time Warner, NBCU owned a “big 4” broadcast network and 10 owned and operated NBC stations in some of the largest markets in the country, while Comcast owned several popular regional sports networks. Time Warner’s programming networks, though successful relative to other *cable* networks, are not comparable to NBCU’s more popular *broadcast* network, or the major broadcast stations it owns in several important markets.

**Distribution.** Comcast, like other cable companies, is also generally the dominant MVPD within its service areas. At the time of its merger, Comcast averaged more than 60 percent in major metropolitan areas. In contrast, the DOJ found that the two “DBS providers, DIRECTV and DISH Network, *combined*, account for an average of about one third of any given local market.”

**Marketplace.** And the market has changed significantly. In 2011, the key concern was protecting competition from start-up OVDs like Netflix, Hulu, and Amazon, which are now well-established. In fact, Netflix now has over 45 million U.S. subscribers – nearly as many as Comcast and AT&T *combined*.

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**Questions for the Record Submitted by Senator Cornyn for Jeff Bewkes**

- 1. Mr. Bewkes, some commentators have suggested that combining a leading mobile provider and a major content provider would increase incentives to invest in new ways to provide consumers access to content across devices. What effect will these innovations have on Time Warner content?**

Response: In this rapidly evolving world where we are competing for consumers’ attention with all forms of video content – not just other television networks, but subscription-based services like Netflix, Amazon, and Hulu, and ad-based video on YouTube and Facebook – it is not enough to deliver great content. You must also deliver great consumer experiences. That means providing video content, on demand, on multiple devices, with great interfaces and, increasingly, in an interactive environment. And, importantly, you need to continuously improve the experiences you’re offering consumers.

When AT&T approached us about merging, we immediately saw the strategic benefits of combining with them. The deal would provide us with greater flexibility to move rapidly in bringing new products and services to market, including: more network bundles, delivered inside and outside the traditional TV ecosystem; better consumer interfaces; more on-demand content and interactive features; more SVOD and other new services like HBO NOW; and more short-form content services, particularly on broadband and mobile.

- 2. There has been a lot of talk about “bigness as badness” since this merger was first announced. That is a departure from traditional antitrust law and policy. In your view, is big bad? What effect will the size of the combined company have on consumers?**

Response: Under antitrust laws, big is not inherently bad, but it can be bad if a company has too much market share and it abuses that power. But that is not happening here because AT&T and Time Warner are not direct competitors, and thus the deal will not expand market share. This is a vertical merger.

I don’t think the federal government should abandon established antitrust principles to conclude a proposed merger is too big without any demonstrable evidence that a company’s size is harming consumers or competition and without regard to consumer benefits like those that will result from the combination. Punishing companies just because they are big would cripple innovation, create enormous uncertainty, and ultimately threaten to punish successful American companies who are competing on a global stage. And it would be anti-consumer, particularly in industries like ours where

scale and complementarity are so critical to the most efficient delivery of services that give consumers the best quality at the best value.

We believe that combining Time Warner's ability to create great video content with AT&T's physical distribution in satellite, broadband, and mobile, will help us bring consumers more choices in how they enjoy their favorite TV shows, films, video games, and other content from Time Warner and a vast array of other creators – and do so more quickly. By joining forces with AT&T, Time Warner will accelerate the development and delivery of the next generation of video services that provide consumers with greater choice, convenience, value, and affordability.



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**Questions for the Record Submitted by Senator Blumenthal for Jeff Bewkes**

- 1. Mr. Stephenson and Mr. Bewkes, it has been reported that AT&T and Time Warner were planning to structure this merger to avoid scrutiny by the Federal Communications Commission under the Communication Act’s public interest standard. Apparently, AT&T suggested that doing so would be as simple as choosing not to transfer the FCC license of a single Atlanta television station. In reality, as I understand it, Time Warner would have to engage in some pretty advanced regulatory gymnastics to avoid the scrutiny large telecommunications mergers are intended to receive under the law. Your company would have to fail to transfer dozens of so-called “Earth station licenses” that Time Warner uses for sending video to satellites.**
  - a. Can you commit that you will not structure this deal to avoid FCC scrutiny?**
  - b. Is there any reason Time Warner would not transfer all of its FCC licenses to AT&T as part of this transaction, other than to avoid FCC scrutiny?**
  - c. Please explain why not selling the licenses would be in the interests of your shareholders?**

**Response:** The merger was not structured to avoid FCC review. The FCC’s review of the merger is triggered by the transfer of licenses from Time Warner to AT&T. Where there are no licenses being transferred to AT&T, there is no FCC review.

As is standard practice in a transaction where the parties hold FCC licenses, Time Warner conducted a review of its FCC licenses to determine which, if any, should be transferred to AT&T as part of the combination of the two companies. While subject to change, it is currently anticipated that Time Warner will not need to transfer any of its FCC licenses to AT&T in order to continue to conduct its business operations after the closing of the transaction.

We expect the Department of Justice to conduct a thorough and detailed review of all competitive issues raised by the transaction.