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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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October 31, 2014

The Honorable Eric Holder
United States Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

1156

The Honorable Thomas Wheeler
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Attorney General Holder and Chairman Wheeler:

As Chairman and Ranking Member of the Senate Judiciary Committee's Subcommittee on Antitrust, Competition Policy and Consumer Rights, we write today about the proposed merger of AT&T and DIRECTV.

Earlier this year, our Subcommittee held a hearing on the proposed merger. At the hearing, some witnesses voiced concerns about the elimination of a video competitor in overlapping markets, the impact on independent programming, and DIRECTV's ownership of regional sports networks. Other witnesses, including AT&T and DIRECTV, emphasized that this merger would permit the parties to combine complimentary services, and that consumers would benefit from better bundles of video service and from AT&T's greater economic ability to build out fixed wireless broadband to 15 million locations across 48 states.

A major issue at our hearing was the effect of reducing the number of pay-television competitors—from four down to three in the 25 percent of the country where both companies offer service. At the hearing, AT&T and DIRECTV asserted that although they overlap in 25 percent of the country, even this limited overlap overstates the level of competition between them because DIRECTV cannot currently offer broadband Internet service along with television. They emphasized that the merger will enable them to offer an improved broadband/video bundle that they cannot offer individually, which in turn will create a stronger competitor to existing cable companies. Consumer advocates countered that AT&T and DIRECTV already partner to sell bundles, and that not all consumers prefer bundles. Your agencies should consider the extent to which the merger is necessary to provide bundled service, and whether the merger will improve the companies' ability to offer service that can more strongly compete with cable.

In addition, the FCC has recognized the importance of offering consumers standalone broadband services. We think you should examine whether AT&T's commitment to offer standalone service for three years is sufficient to secure customers' continued ability to choose that option.

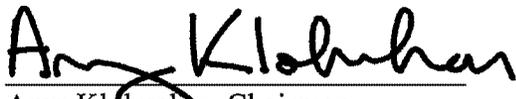
Our hearing also looked at the potential impact of the proposed merger on consumer access to independent programming. We believe that a robust marketplace of news and entertainment

products, and of free expression, relies in part on the viability of independent entrants into the content market who can provide a diversity of channels and programming for consumers to choose—particularly to rural markets often served exclusively by satellite. In considering this merger, we urge your agencies to examine whether it would have any impact on the ability of consumers to access independent programming. In that respect, we have heard extensive concerns about the use of “most favored nation” clauses (MFNs) across the multichannel video programming distributor (MVPD) industry. Such clauses can, of course, serve procompetitive functions—particularly when applied to lower prices charged by large content sellers with ample bargaining power. But we are concerned that in other circumstances certain types of MFNs can negatively affect competition for independent programming and we urge your agencies to examine this issue.

Finally, our hearing examined the interest that DIRECTV holds in three regional sports networks (RSNs). Due to the “must have” nature of sports programming, competitive cable operators are concerned that the proposed merger will lead to an incentive for the combined entity to increase its MVPDs’ costs for RSNs. As the American Cable Association noted in its testimony, while DIRECTV remains subject to program-access rules as an FCC condition from a prior deal, it is no longer subject to an arbitration condition for the enforcement of that condition. Ensuring a level playing field for all MVPDs to compete provides important benefits to consumers. We hope you will consider whether this merger raises any similar program-access issues and whether any conditions are necessary to address such concerns.

We urge you to take the above considerations into account as you conduct your respective reviews of the merger. We understand the importance of competition to our free market economy and consumer welfare; any decision on intervention should be premised on whether the merger would serve the public interest and whether it would substantially lessen competition or instead enhance it through pro-consumer innovation. Thank you for your attention to these matters.

Sincerely,



Amy Klobuchar, Chairman
Subcommittee on Antitrust,
Competition Policy and Consumer Rights



Mike Lee, Ranking Member
Subcommittee on Antitrust,
Competition Policy and Consumer Rights