

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY  
APPROVING IN PART AND CONCURRING IN PART**

**Re: *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 14-90.***

More than a year after the applicants filed the transfer applications, with our 180-day “shot clock” left in pieces on the floor like a particularly raucous alarm clock on a weekend morning, the Commission now concludes its review. Although I do not subscribe to a number of premises presented in the item (is it really the Commission’s job to make a “bet” on competition as part of its overall public interest analysis? Are bundles really the future of communications offerings in the age of the cord cutter?), on balance the combination of the two companies will produce certain benefits, and the case for a lack of competitive harm is sufficiently made. At the same time, I find the conditions being imposed, albeit less onerous than some of those extracted in past merger approvals, are unrelated to the transaction at hand, outside the scope of our proper role, and harmful to consumers. Therefore I approve in part and concur in part.

Some of the conditions imposed will sound strangely familiar to those who have followed the Commission closely over the last many years. Our duty to determine whether a proposed transaction will serve the public interest, however, should not be read as an opportunity to divert private resources toward favorite causes and theories. The economic analysis finds that the net effect of the transaction is beneficial to consumers,<sup>1</sup> that the transaction has a positive effect on the price of bundled products,<sup>2</sup> and that the loss of a video provider within AT&T’s current video footprint creates such a limited potential for competitive harm that, when balanced against the benefits of the transaction, no conditions are required.<sup>3</sup> But the Commission just can’t pass up an opportunity to push its own objectives, even if it is unrelated to the matter at hand.

For instance, the analysis suggests there will be “very little change in the price of AT&T’s standalone broadband post-transaction” and thus the applicants’ standalone broadband offering and pricing commitment was rejected as unnecessary.<sup>4</sup> But in the very next paragraph, the importance of a standalone option to the public interest is reiterated and then used as a flawed justification to impose a mandate to offer a discounted standalone broadband program to low-income consumers.<sup>5</sup> The imposition of this condition – which is clearly not merger-specific – is likely to result in price increases as the majority of AT&T customers will have to subsidize those AT&T customers that receive this offering.

As recognized in the Order, the transaction will allow the applicants to achieve certain efficiencies, freeing up resources that the applicants proposed to invest in a mix of fiber and fixed wireless broadband deployment. The Order goes to great pains to discount any potential benefits of a fixed wireless buildout to 13 million homes in largely rural areas, including many that currently have no access to any type of terrestrial broadband, while on the other hand forcing additional fiber buildout to metropolitan areas that already have a competitive broadband market, in the hope of further increasing competition there. I am skeptical that this reprioritization of metropolitan over rural areas really is in the

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<sup>1</sup> *Supra* para. 105

<sup>2</sup> *Supra* para. 111

<sup>3</sup> *Supra* para. 127

<sup>4</sup> *Supra* paras. 142, 143

<sup>5</sup> *Supra* paras. 144, 145

public interest when so many people continue to go completely unserved. Generally, we should be supportive of innovative, voluntary private sector solutions to connect unserved areas, but in this item we have rejected the opportunity. Consequently, millions of Americans will still be waiting indefinitely for a viable broadband offering while the applicants sink billions of dollars into large, competitive markets at the demand of the government, not market forces.

Additionally, the interconnection disclosure condition inches us that much closer to rate regulation, which I have said repeatedly will be the inevitable result of the Commission's recent net neutrality order, despite all protests to the contrary. Why collect all of this sensitive information, and threaten to release it publicly, if not to eventually intervene in these agreements? While the item states that the record does not contain "any evidence that would support blanket restrictions on all interconnection agreements"<sup>6</sup> between the applicants and online video providers, it is clear that the table is being set for exactly that. And then there are the inane limitations on usage based billing practices and the mandate of an independent compliance officer with questionable duties despite the lack of a Commission finding of past digressions with other mergers.

While I do not support the specific conditions being imposed, I am willing to concur because the applicants have indicated that they are willing to accede to them and they don't appear to cause direct harm to other market participants. I look forward to seeing the merged company's efforts to meet consumer demands for services in the communications landscape

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<sup>6</sup> *Supra* para. 219