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United States Senate

WASHINGTON, DC 20510–2309

July 9, 2014

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

The Honorable William J. Baer
Assistant Attorney General, Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Chairman Wheeler and Assistant Attorney General Baer:

I urge you to carefully scrutinize AT&T's proposed acquisition of DirecTV to determine whether the deal is in consumers' best interests. The parties promise to extend broadband Internet access to millions of Americans, and they say that the deal will promote employment opportunities. On the other hand, if AT&T is permitted to acquire DirecTV, the combined entity will have enhanced power in virtually every corner of the telecommunications market – power that AT&T potentially could use to obtain an unfair advantage over consumers and competitors. As such, I have some concerns about this deal, and I would like to draw your attention to three of them here.

Standalone Broadband Marketing and Pricing. This deal could give AT&T more power to increase consumers' costs and decrease consumers' choices by forcing consumers into bundled packages that include services that consumers may not want. To mitigate this risk, AT&T has committed to offer a standalone broadband Internet plan for three years if this transaction is approved. However, AT&T did not adequately advertise its standalone plan after making a similar promise as a condition of its acquisition of BellSouth in 2006.

To protect consumer choice, I believe that AT&T must thoroughly articulate its commitment to standalone broadband pricing. At a recent Senate Judiciary Committee hearing, I asked AT&T's CEO, Randall Stephenson, if he would commit to selling a standalone broadband plan in a clear and visible manner. He responded: "Yes, sir, I will. I'll commit it directly to you … So absolutely I will make you without equivocation that commitment." I urge you and your staff to consider this statement alongside AT&T's past record while you review this transaction.

Net Neutrality and the Open Internet Order. This deal raises important questions about net neutrality, the principle that prohibits Internet service providers from discriminating among

Internet traffic on their networks. AT&T has committed to voluntarily abide by the FCC's now-vacated 2010 Open Internet Order for three years if this deal is approved. However, AT&T has a history of skirting the spirit, and perhaps the letter, of that Order. For example, AT&T allegedly has blocked applications that compete with its own voice and messaging services, including Skype, Google Voice, and Apple's FaceTime. AT&T stopped blocking FaceTime only after the FCC began investigating whether AT&T's conduct violated the Open Internet Order, the same Order the company now pledges to follow. I therefore urge the FCC to thoroughly consider this deal's impact on net neutrality.

Net Neutrality and Mobile Broadband. The FCC must take into account this deal's impact on net neutrality principles as they relate to mobile broadband services. The Open Internet Order's protections are strongest for wireline broadband – a market in which AT&T has a relatively small footprint. The Order has very limited application to the market that AT&T dominates: mobile broadband. Therefore, it is unclear whether AT&T's proposed condition would be a significant benefit for consumers. As such, AT&T must make a more substantial commitment to net neutrality, particularly in the mobile space.

The enhanced bundling power that AT&T seeks to achieve from this transaction could strengthen the company's already-dominant presence in the wireless market. The potential for AT&T to become a gatekeeper of the mobile Internet has been looming for years. Your agencies' laudable decision to challenge AT&T's proposed takeover of T-Mobile in 2011 helped forestall this potential danger, but it remains a major threat to consumers. I request that you weigh this concern heavily in your review.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact Joshua Stager of my staff at Joshua_Stager@judiciary-dem.senate.gov. I look forward to continuing to work with you as you evaluate this proposed transaction.

Sincerely,

Al Franken
United States Senator