Timothy P. McKone
Executive Vice President
Federal Relations

AT&T Services, Inc.
1120 20th Street, NW
Suite 800
Washington, DC 20036

T 202.463.4144
tm3703@att.com
att.com

February 17, 2017

The Honorable Al Franken
United States Senate
Washington, DC 20510

The Honorable Edward J. Markey
United States Senate
Washington, DC 20510

The Honorable Sherrod Brown
United States Senate
Washington, DC 20510

The Honorable Bernard Sanders
United States Senate
Washington, DC 20510

The Honorable Ron Wyden
United States Senate
Washington, DC 20510

The Honorable Patrick J. Leahy
United States Senate
Washington, DC 20510

The Honorable Elizabeth Warren
United States Senate
Washington, DC 20510

The Honorable Cory A. Booker
United States Senate
Washington, DC 20510

The Honorable Patty Murray
United States Senate
Washington, DC 20510

The Honorable Richard J. Durbin
United States Senate
Washington, DC 20510

The Honorable Maria Cantwell
United States Senate
Washington, DC 20510

The Honorable Jeff Merkley
United States Senate
Washington, DC 20510

The Honorable Richard Blumenthal
United States Senate
Washington, DC 20510

Dear Senators:

Thank you for your January 25 letter to AT&T Chairman and CEO Randall Stephenson and Time Warner Chairman and CEO Jeffrey Bewkes ("*1/25 Letter*"), inviting the two companies to submit a statement explaining how their proposed merger will affect consumers. As you note, Messrs. Stephenson and Bewkes testified on that topic before the Senate Judiciary Committee in December, and our companies provided detailed responses to subsequent written questions from Committee Members. We hope you found that information helpful, and we welcome this opportunity to expound on how our merger will stimulate competition and innovation, and benefit consumers.

Put simply, this merger is about giving consumers what they want. Together, AT&T and Time Warner will create exciting new ways for consumers to enjoy video anytime, anywhere, and on any device, with unprecedented levels of customization and interactivity. The merger will allow us to offer customers more attractive bundles of broadband and video services, prodding cable companies and other competitors to respond by improving their own services. And the merger will further incentivize AT&T and other wireless carriers to deploy lightning-fast 5G wireless technology faster and deeper in their networks. As a result, this deal will increase competition and accelerate the innovation/investment cycle, all to the benefit of American consumers.

These kinds of benefits routinely flow from such "vertical mergers"—that is, mergers combining two companies that have complementary assets but do not compete with each other. In particular, mergers between video content producers and distributors affirmatively benefit consumers because they reduce "the barriers and [bargaining] friction" that otherwise impede video innovation.[1] It is also widely accepted that vertical mergers rarely, if ever, harm competition or consumers. That is why the federal government has not blocked a single vertical merger for more than four decades. Here, neither AT&T nor Time Warner has the sort of market power in any market that would raise any competitive issues. To the contrary, combining these companies' assets will stimulate greater competition throughout the video marketplace.

Of course, the Department of Justice will thoroughly scrutinize this transaction after receiving input from a vast range of market participants, government agencies, and public interest groups. Congress entrusted the Department with broad merger-review authority to protect the public's interest in competitive markets. In contrast, any additional FCC review of mergers is limited to the merits of FCC license transfers between the parties. Although our plans are subject to change, we currently anticipate that Time Warner will not need to transfer any of its FCC licenses to AT&T to maintain its business operations. Almost all of Time Warner's existing licenses are used only for internal communications anyway; they do not provide FCC-regulated services to the public. As a result, the Department of Justice will be the U.S. agency responsible for reviewing this transaction, just as it (or its sister agency the FTC) has in other transactions affecting the communications marketplace, including Comcast's acquisition of Dreamworks Animation, Verizon's acquisition of AOL, Google's acquisition of YouTube, and Facebook's acquisition of Instagram.[2] We look forward to working with the Department of Justice to answer any questions it may have about this transaction.

---

[1] Mem. Op. & Order, *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc., For Consent to Assign Licenses and Transfer of Control of Licenses*, 26 FCC Rcd 4238, 4333 ¶ 231 (2011) ("*Comcast-NBCU Merger Order*").

[2] According to former FCC Chairman Tom Wheeler, the FCC also will not review the pending Verizon/Yahoo! Transaction for the simple reason that "there aren't any licenses that transfer." Jenna Ebersole, Verizon-Yahoo Deal Negates Privacy Plan Fear, FCC Boss Says, Law360 (Aug. 4, 2016). *See also* Roger Yu, Al Jazeera Plans U.S. Expansion Amid Criticism, USA Today (Jan. 3, 2013) ("The Federal Communications Commission, which doesn't typically get involved in the politics of deals, has no plans to review the Al Jazeera acquisition because it 'doesn't have regulatory oversight of transactions relating to ownership of cable networks,' says FCC spokesman Justin Cole.").

The Consumer Benefits of This Merger.

Your letter asks a number of questions concerning how the merger will affect consumers. These same questions were addressed in the testimony by Messrs. Stephenson and Bewkes and in their subsequent responses to the Judiciary Committee Members' written questions, which explained in detail why this merger is overwhelmingly pro-consumer.[3] We provide the following additional overview.

This merger responds to an ongoing sea change in the video marketplace. Consumers today want their favorite video content anytime, anywhere, and in formats designed for all of their devices—from televisions to computers, tablets, game consoles, and smartphones. Consumers are also demanding programming packages tailored to their particular interests and lifestyles. They are calling for more interactive programming that they can integrate with other content and then share on social media platforms. And they are spending more and more time consuming video content from powerful, vertically integrated providers such as Netflix, Amazon, Google, and Facebook.

Yet the very dynamism of consumer demand has intensified bargaining friction between content providers and distributors. The FCC observes: "Particularly in a time of uncertainty and change, the difficulty of accurately predicting (and therefore allocating) the risks and rewards in agreements that involve departures from standard business models can inhibit the bargaining process and slow innovation."[4] AT&T and Time Warner have both encountered such friction as they have sought to bring innovations to market. That friction has kept consumers from getting the full suite of innovative features that they want.

This transaction will help us to reduce bargaining friction and strengthen the competitive landscape. As the FCC has concluded, vertical integration between content providers and distributors "will likely reduce some of the barriers and friction that exist when unaffiliated content providers and distributors negotiate to reach agreements" on innovative video services.[5] Here, combining AT&T's nationwide broadband and distribution networks with Time Warner's high-quality content will generate additional innovative ways for consumers to experience video anywhere and anytime, with greater levels of customization and interactivity. Examples of such innovation might include:

- short-form programming optimized for presentation on mobile devices;
- interactive and personalized methods of viewing sports and other live events;

---

[3] The testimony and responses can be found on the Senate Judiciary Committee's website at: https://www.judiciary.senate.gov/meetings/examining-the-competitive-impact-of-the-atandt-time-warner-transaction.

[4] *Comcast-NBCU Merger Order* ¶ 231.

[5] *Id.*

- more relevant advertising in ad-supported video services;
- integration of professionally produced content with virtual reality or augmented reality services;
- services that encourage consumers to combine professionally produced content with their own creative content and share the results on social media; and
- greater choice, convenience, and value in programming bundles.

These are just a few examples of the innovations that the combined AT&T/Time Warner will bring to American consumers.

The transaction will also enable AT&T to compete more effectively nationwide with cable companies by offering a more compelling, differentiated video product. It is no secret that cable still leads the provision of bundled broadband and pay-TV services. According to FCC statistics, cable providers account for approximately 84 percent of residential household subscriptions to fixed broadband services.[6] Cable now accounts for more than half of all pay-TV subscriptions and more than twice the number of AT&T/DIRECTV pay-TV subscribers.[7]

This merger will only strengthen AT&T's ability to compete against cable companies by enabling it to offer more innovative video packages and services. The combined company will be able to offer customers more programming options at attractive prices. AT&T's DIRECTV NOW product is a great start, giving customers highly affordable online access to more than 120 streaming channels. But this transaction will enable us to give consumers more of what they want, and do it faster. Together AT&T and Time Warner will innovate more quickly, experiment more readily, and adjust their offerings more nimbly in light of customer response. In the end, consumers will benefit from new options, better value, and greater choice.

AT&T's post-merger video services will also include not only traditional pay-TV fare—broadcast and cable channels along with on-demand capabilities—but also the more innovative and interactive online video services that this merger makes possible. Because post-merger AT&T/Time Warner will have both content and an affiliated mobile network, it will have particularly strong incentives to offer mobile-focused video experiences. Consumers will welcome these enhanced video services, when bundled with AT&T broadband, as attractive alternatives to more traditional cable broadband-TV bundles, even if cable broadband offers speeds that traditional telephone companies cannot always match.

In the longer term, the merger will strengthen AT&T's incentives to invest in the advanced *mobile* networks needed to support these next-generation video services and compete nationwide with cable in the provision of bundled broadband and video services. Just as the iPhone accelerated the industry's move from 2G, to 3G, and then to 4G (resulting in billions of

---

[6] Industry Analysis & Tech. Div., WCB, *Internet Access Services: Status as of Dec. 31, 2015*, at 22, Fig, 24 (FCC Nov. 2016) (25/3 Mbps broadband connections).

[7] *See* 17th Report, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 31 FCC Rcd 4472, 4501-02 ¶ 73, Table III.A.5 (2016) ("*17th Video Competition Report*").

dollars in investment in a few short years), we expect that mobile/video innovations resulting from this merger will accelerate deployment of 5G networks. Those multi-billion-dollar networks will be important infrastructure for our economy, providing a powerful platform for investment, jobs, and economic growth. They will also blur the distinction between "mobile" and "fixed" broadband services and enable AT&T and encourage other mobile providers to compete head-to-head with cable in providing high-end broadband Internet access—not only within AT&T's traditional wireline territory, but throughout the United States.

No Harm to Competition.

As we have previously explained, this transaction should raise no competitive concerns. The most important fact to keep in mind is that AT&T and Time Warner *do not compete with each other* in any significant respect. AT&T/DIRECTV is a video distributor with very few programming assets. Time Warner is a video producer and aggregator, it does not have cable, satellite, broadband, or mobile distribution facilities. This is a classic "vertical" merger between two companies with complementary production and distribution assets. This merger thus presents none of the standard concerns raised by mergers between competitors. Such "horizontal" mergers trigger scrutiny in concentrated markets because, under certain conditions, the elimination of a competitor can lead to higher prices. Vertical mergers present no such concern.

Federal antitrust authorities agree that "vertical mergers generally raise fewer competitive concerns than do horizontal mergers," "merit a stronger presumption of being efficient than do horizontal mergers," and therefore "should be allowed to proceed except in those few cases where convincing, fact-based evidence relating to the specific circumstances of the vertical merger indicates likely competitive harm."[8] Even in those "few cases," the government rarely seeks to block vertical mergers outright. Instead, it typically permits such mergers to proceed, imposes conditions to address any competitive risks, and narrowly tailors those conditions to avoid undermining the mergers' consumer benefits. Yet *this* merger presents no such risks at all.

In particular, the merger will not lead the combined company to "restrict other distributors' ability to offer its highly desired content" (*1/25 Letter* at 1) in the hope of harming distribution competitors and raising pay-TV prices above competitive levels. As Mr. Stephenson explained in his Senate testimony, "Time Warner's programming is more valuable when distributed to as many eyes as possible," and AT&T has every incentive to maximize that value. In contrast, restricting distribution of Time Warner content would not only sacrifice revenues, but also damage Time Warner's reputation and relationships in the entertainment industry. In Mr. Stephenson's words, "in order to have great programming, it is imperative that we attract great creative talent to develop it. The best way to attract that talent is through widespread distribution of Time Warner content." AT&T did not agree to pay $100 billion for Time Warner to sabotage that successful business model.

[8] *See* Note by the Delegation of the United States to the Organization for Economic Co-operation and Development, Competition Committee 2, 10 (Feb. 21-22, 2007), https://www.ftc.gov/sites/default/files/attachments/us-submissions-oecd-and-other-international-competition-fora/07RoundtableonVerticalMergers.pdf.

In addition, neither AT&T nor Time Warner even approaches the market dominance that both would need to hobble distribution competitors and thereafter "raise prices to consumers" (*1/25 Letter* at 1). When a programmer sells cable network programming to a pay-TV distributor, it earns revenues both from the pay-TV company and from increased advertising revenues or, in the case of premium channels, subscription fees. Thus, if the combined AT&T/Time Warner withheld programming from other pay-TV companies, it would lose many millions of dollars in revenue. For two reasons, AT&T could never make up for those massive losses through additional pay-TV revenues.

First, while Time Warner's programming is high-quality, its basic cable channels in the aggregate account for only about eight percent of viewership of all basic cable and broadcast television networks. That is only about half of the viewership of Comcast-NBC, of Disney, and of Fox—*each*. Time Warner also does not have the sort of programming that the FCC found in the past to be critical for pay-TV competitors, such as regional sports networks or owned-and-operated broadcast channels.

Second, AT&T's second- or third-place status in local pay-TV markets would make such a strategy unprofitable even if Time Warner content *were* critical to pay-TV customers. Again, AT&T lags far behind cable companies in pay-TV markets across the country.[9] If the combined company withheld programming from cable companies, which typically account for the majority of pay-TV viewers, it would suffer ruinous programming revenue losses.

In short, the post-merger AT&T-Time Warner would have much more to lose than to gain from withholding its programming from unaffiliated video distributors. In any event, the FCC's existing program access rules will provide an added safeguard to ensure that the combined AT&T-Time Warner will supply its affiliated programming to unaffiliated pay-TV providers on reasonable terms.

There is also no basis for concern that the combined company will "reduce access to independent programming" on its pay-TV platform. *1/25 Letter* at 1-2. AT&T has been and remains committed to carrying independent programming. AT&T and DIRECTV carry over 550 channels, many provided by independent programmers for diverse audiences. We carry that programming to give our consumers the greatest value and choice, and nothing about this transaction will change that incentive. Indeed, the transaction will *expand* distribution opportunities for diverse and independent voices because, as discussed, it will catalyze innovation in distribution models, especially in the mobile environment.

Finally, the competitive questions raised in your letter are precisely the issues under review by the Department of Justice, which Congress has entrusted with protecting competitive markets. As in other major mergers, the Department will receive input from competitors, customers, and suppliers of the two companies, from trade and public interest groups, and from the public more generally. The Department will take all of these views into account when evaluating the transaction.

---

[9] *See 17th Video Competition Report*, ¶¶ 17, 19-20.

* * *

This merger will unleash a new wave of innovation in the video marketplace and bring much-needed competition to cable providers. Market realities refute any concerns about anticompetitive effects. And the Justice Department will vigilantly defend the public interest in its own independent review of this merger. We look forward to working with the Department in that review.

Sincerely,

Timothy P. McKone
Executive Vice President-Federal Relations
AT&T Services, Inc.

Steve Vest
Senior Vice President, Global Public Policy
Time Warner Inc.