Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Applications of AT&T Inc. and	)	MB Docket No. 14-90
DIRECTV	)	
For Consent to Assign or Transfer Licenses and Authorizations	)	

To: The Commission

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters ("NAB")[1] submits these reply comments concerning the applications of AT&T Inc. ("AT&T") and DIRECTV (collectively, the "Applicants") for consent to assign or transfer control of licenses and authorizations (the "Applications").[2] For the reasons discussed below, NAB renews its request that the Federal Communications Commission ("FCC" or "Commission") condition the proposed transaction on DIRECTV's carriage of broadcast signals on a local-into-local basis in all markets where it operates.

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[1] The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

[2] Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations (filed June 11, 2014). *See also Commission Seeks Comment on Applications of AT&T Inc. and DIRECTV to Assign and Transfer Control of FCC Licenses and Other Authorizations,* Public Notice, MB Docket No. 14-90, DA 14-1129 (rel. Aug. 7, 2014).

As we observed in our initial comments, the Applicants are proposing to combine the second and fifth largest multichannel video programming distributors ("MVPDs") in the United States, thereby eliminating head-to-head competition and consumer choice in the many markets where both AT&T and DIRECTV currently provide service and potential competition in other markets where AT&T U-verse service might have been offered in the future absent the merger.[3] Because the merger will create an entity with outsized national reach, a greater share of many local and regional markets and gatekeeper control over access to even more subscribers, the Commission should be wary of its impact on the longstanding policy goals of competition, diversity and localism.

As the telecommunications marketplace has become increasingly consolidated and moved online, the Commission has wrestled with ways to promote localism in particular. In the past ten years alone, the FCC has conducted proceedings concerning broadcast localism[4] and issued multiple notices seeking comment regarding its broadcast ownership rules (proceedings which turn, in part, on how the rules or modifications to those rules will affect localism).[5] The FCC also sought comment and

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[3] NAB Comments in MB Docket No. 14-90 at 1-3 (Sept. 16, 2014) ("NAB Comments").

[4] *See Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425 (2004); *Broadcast Localism*, Report on Broadcast Localism and Notice of Proposed Rulemaking, 23 FCC Rcd 1324 (2008).

[5] *See, e.g, 2014 Quadrennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371 (2014); *Commission Seeks Comment on Broadcast Ownership Report,* MB Docket No. 09-182, Public Notice, 27 FCC Rcd 15036 (Med. Bur. 2012); *2010 Quadrennial Regulatory Review,* Notice of Proposed Rulemaking, 26 FCC Rcd 17489 (2011); *2010 Quadrennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* MB Docket No. 09-182, Notice of Inquiry, 25 FCC Rcd 6086 (2010); *2006 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202(h) of the Telecommunications Act of 1996*, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8834 (2006).

issued a report on the *Information Needs of Communities,* which considered whether "citizens and communities [are] getting the news, information and reporting they want and need," particularly local reporting, and whether "public policy [is] in sync with the nature of modern media markets."[6]

Despite the Commission's heightened interest in expanding and enhancing localism, MVPD concentration has reached new highs while leaving local communities behind.[7] NAB's initial comments therefore stressed the challenges to local broadcast service presented by the increased consolidation that will result from the instant transaction,[8] and proposed a modest condition to promote the FCC's longstanding localism goal and mitigate the harms to competition and diversity resulting from the elimination of one MVPD in dozens of markets and the formation of a new MVPD larger than all its counterparts.[9] Specifically, we proposed that the transaction be conditioned upon DIRECTV's provision of local-into-local service in all 210 Nielsen Designated Market Areas (DMAs) where it offers Direct Broadcast Satellite ("DBS") service within the same timeframe as the Applicants' proposed broadband commitment.[10]

In their Joint Opposition, the Applicants fail to acknowledge the rising challenges to competition, diversity, and localism presented by their proposed merger. The Applicants contend that there is no basis for adopting a local-into-local condition, citing

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[6] FCC, The Information Needs of Communities: The Changing Media Landscape In a Broadband Age (2011) at 7-8 ("Information Needs of Communities"), available at http:// transition.fcc.gov/osp/inc-report/The_Information_Needs_of_Communities.pdf.

[7] *See* NAB Comments at 4-6 (if the instant transaction and other pending MVPD mergers are approved, the top *two* MVPDs alone will serve 55 percent of all MVPD subscribers, and the top four MVPDs will serve 77.3 percent of MVPD subscribers).

[8] NAB Comments at 4-6.

[9] NAB Comments at 6-8.

[10] NAB Comments at 7-8.

the Commission's previous decision not to impose such a condition in connection with the DIRECTV/Liberty transaction.[11] The Commission's decision with regard to a local-into-local condition in DIRECTV/Liberty is inapposite, however, and should not guide FCC analysis of the potential harms or mitigating conditions in the instant transaction.

First, in the DIRECTV/Liberty merger, there was only a single market where each of the merging parties was already providing MVPD service. In Puerto Rico, DIRECTV offered DBS service in competition with Liberty Cablevision of Puerto Rico, Ltd. ("LCPR"), which served 130,000 subscribers there.[12] To mitigate potential harms arising from the reduction in head-to-head competition, the Commission required the merged entity to completely divest its interest in LCPR within one year of the merger's closing date.[13] With that condition in place, there was no need for additional conditions, such as a local-into-local service requirement, that could mitigate harms arising from the loss of horizontal competition in the MVPD market.

In contrast, the Applicants' current service areas involve substantially more overlap than did the DIRECTV/Liberty transaction and thus will eliminate far more head-

[11] *See* Joint Opposition of AT&T Inc. and DIRECTV to Petitions to Deny and Condition and Reply to Comments in MB Docket No. 14-90 (Redacted Version) (Oct. 16, 2014) ("Joint Opposition") at 65, *citing News Corp. and The DIRECTV Group, Inc., Transferors, and Liberty Media Corp. Transferee; For Authority to Transfer Control,* Memorandum Opinion and Order, 23 FCC Rcd 3265, 3330 ¶ 137 (2008) *("DIRECTV/Liberty Order").*

[12] *DIRECTV/Liberty Order*, 23 FCC Rcd 3265, 3286 ¶ 44.

[13] *DIRECTV/Liberty Order*, 23 FCC Rcd 3265, 3268 ¶ 5 ("we require that within one year of the date this Order is adopted, all of the attributable interests connecting DIRECTV-Puerto Rico and Liberty Cablevision of Puerto Rico, Ltd. ("LCPR") be severed. Severing the ties between these two companies is necessary to prevent the potential competitive harms that would arise from the effective reduction of competitors from three to two in areas of the Puerto Rico MVPD market served by LCPR. It will help ensure that the firms will continue to compete vigorously throughout Puerto Rico and devote the requisite competitive resources to that market.").

to-head competition for MVPD subscribers.[14] While the Applicants' claim that the "critical fact" in analyzing the transaction is that "AT&T's broadband service and DIRECTV's video product are complements,"[15] such statements cannot make AT&T's 5.7 million video subscribers simply disappear. The Applicants' continued effort to characterize the proposed transaction as a merger of complements cannot obscure the fact that it is a merger of MVPDs who compete today and could have competed head-to-head for subscribers in additional markets in the future.[16]

Second, with the divestiture condition in place, the DIRECTV/Liberty merger did not expand or enhance the national, regional or local footprint of any MVPD. Even absent the adoption of the divestiture condition, the merger would not have created a new entity larger than any existing MVPD. Accordingly, the DIRECTV/Liberty transaction did not create a new entity with scale and scope that would afford it the distinct, extensive competitive advantages over local broadcasters that will arise from the instant transaction.

By urging the Commission to follow the approach used in DIRECTV/Liberty,[17] the Applicants presumably are not proposing that the Commission ban the merged entity from offering video via AT&T's facilities or somehow mandate its divestiture of AT&T's video service. Accordingly, proposed conditions which will mitigate potential competitive harms, such as NAB's proposed local-into-local condition, warrant careful consideration by the Commission. Access to local television broadcast stations on the

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[14] NAB Comments at 2, citing *2014 SNL Kagan Media Census Estimates,* First Quarter 2014 (AT&T is a video provider in nearly half of all television markets).

[15] Joint Opposition at 4.

[16] *See, e.g.,* Joint Opposition at 3-4; 27-32.

[17] Joint Opposition at 65-66.

merged entity's DBS platform in all 210 markets imposes very little burden and would contribute to consumers' access to critical news, information and entertainment in a manner that complements the Applicants' broadband commitment. Making available specific local news, weather, emergency information and other programming tailored to community needs and interests via local television broadcast stations promotes localism and mitigates the potential harms to competition and diversity that will result from the elimination of one MVPD in dozens of markets and creation of a yet more dominant provider.

NAB continues to urge the Commission to carefully scrutinize the consequences of the proposed transaction and consider proposals to mitigate potential harms. Expanding the available programming on DIRECTV systems to include local broadcast stations in every market would not only counterbalance potential harms to competition and diversity arising from this transaction, but would promote the Commission's localism goal and improve the public's locally-oriented television service.

Conclusion

The Applicants are required to demonstrate that the public interest benefits of the proposed transaction outweigh potential harms resulting from the transaction.[18] The Joint Opposition and the Applicants' other filings disregard significant potential harms by ignoring the reduction in head-to-head competition that would result from grant of the Applications. Refusing to acknowledge these competitive effects, the Applicants fail to identify mitigating facts or circumstances to counterbalance them. NAB urges the

[18] *See, e.g., Applications of Comcast Corp., General Elec. & NBCUniversal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, 26 FCC Rcd 4238 ¶ 2 (2011).

Commission to adopt its proposed condition, which will result in immediate public interest benefits.

Respectfully submitted,

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January 7, 2015