March 24, 2016

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: Ex Parte Communication, MB Docket Nos. 15-216, 10-71

Dear Ms. Dortch:

AT&T Inc. is one of the largest companies in the world. It commands dominant positions in every facet of telecommunications– from wireless and wireline telephony, to data/broadband, and, through its recent acquisition of DirecTV, the nation's largest satellite TV provider, in digital entertainment as well. According to Forbes Magazine, it is the 12th most powerful brand name in the world,[1] a name that, in fact, was once synonymous with "monopoly" in the United States.[2] As of this week, its market value is a towering $238 billion, a nearly $70 billion increase from one year ago.[3]

Until just recently, AT&T's regulatory philosophy favored a decidedly light touch. As spelled out in hundreds of filings before government agencies, in policy blog posts and in publicly available speeches, AT&T has repeatedly argued that free markets are more effective than government intervention,[4] reliance on speculative harms to justify new rules is more harmful than no rules at all,[5] and the government should not be in the business of picking winners and losers.[6] It is thus both surprising and perhaps amusing that AT&T is now standing on the Commission's doorstep imploring it to intervene on AT&T's behalf in the retransmission consent marketplace.

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[1] *See* http://www.forbes.com/companies/att/.

[2] *See Milestones in AT&T History*, *available at* www.corp.att.com/history/milestones.html (last accessed March 23, 2016).

[3] *See* https://ycharts.com/companies/T/market_cap.

[4] *See, e.g.,* Comments of AT&T, Inc., *High-Cost Universal Service Support,* WC Docket No. 05-337, *et al.*, at 15 (Nov. 26, 2008) (Intercarrier Compensation Comments).

[5] Reply Comments of AT&T Services, Inc. *Protecting and Promoting the Open Internet*, GN Docket No. 14-28; *Framework for Broadband Internet Services*, GN Docket No. 10-127, at 2 (Sept. 15, 2014) ("[r]egulatory decisions should be based on market realities, not misleading rhetoric.") (Open Internet Comments).

[6] *See, e.g.,* Jim Cicconi, AT&T Blog Team, *AT&T's Response to Comments Made Today by Sprint's CEO, Dan Hesse*, (April 13, 2013), http://www.attpublicpolicy.com/fcc/att%E2%80%99s-response-to-comments-made-today-by-sprint%E2%80%99s-ceo-dan-hesse/ ("[I]t's not the government's job to give to any company advantages it's been unable to win from consumers in a free market.").

This shift is seismic. More than any other company – with perhaps the exception of its twin sister Verizon[7] – AT&T has steadfastly insisted that the Commission not intervene in media and telecommunications markets. AT&T's filings cover everything from special access to the accessibility of user display settings for closed captioning to the IP transition. Time after time, AT&T's message is that the government should back off AT&T's routine business dealings and simply allow the market to work. Some representative examples include:

- **Mobile spectrum holdings:** "Unfortunately . . . over the past few years numerous parties have argued for far more radical forms of 'heavy touch' regulation. . . . These proposals . . . are merely attempts to find some rationale for measures that are designed to hobble particular competitors in the marketplace for the benefit of others."[8]
- **Data roaming:** "Only market-based solutions will promote tailored industry arrangements that deliver reciprocal benefits, including preserving the ability of those providing roaming to meet the paramount needs of their own customers and enjoy the fruits of their quality-improving investments and innovation."[9]
- **Open Internet**: "Given the well-understood costs of excessive regulation, as a general rule regulatory intervention is appropriate when—and only when—there is a concrete need for such intervention *and* regulators have enough information to appropriately balance the costs against the benefits."[10]
- **Intercarrier compensation**: "In a free market . . . any determination of what consumers value and how much they value it should be left to consumers themselves. Shifting that inherently subjective inquiry to the regulatory process would add a chaotic new dimension to the regulatory uncertainty that has beset intercarrier compensation disputes since 1996."[11]
- **Exclusive handset deals:** "[T]he Commission's mandate is to protect competition and consumers, not to protect individual competitors *from* competition." And later, "the mere fact that some competitors may have developed certain marketplace advantages is not a basis for regulation, as long as competition itself is still functioning."[12]

NAB does not begrudge AT&T's prior light touch advocacy. AT&T has been remarkably consistent in its view over time that the Commission's role should be limited and regulation used only as a last resort. For decades, AT&T has rarely met a moment when it believed government intervention was appropriate.

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[7] See Verizon Ex Parte Letter, MB Docket No. 15-216 (March 21, 2016).

[8] Comments of AT&T Inc., *Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, at 7 (Nov. 28, 2012).

[9] Comments of AT&T Inc., *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, at 2-3 (June 14, 2010).

[10] Open Internet Comments at 15 (emphasis in original).

[11] Intercarrier Compensation Comments at 15 (emphasis removed).

[12] Comments of AT&T Inc., *Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, RM 11497, at 22 (Feb. 2, 2009).

NAB is thus left scratching its head when AT&T's latest filing demonstrates a sudden verve for Commission intervention. Consider this sampling of the command and control rules AT&T is seeking from the Commission in the retransmission consent proceeding:

- Stop broadcasters from offering programming bundles during negotiations (*i.e.*, force broadcasters to negotiate for only one channel at a time);
- Prevent broadcasters from controlling the use of the content in which they have heavily invested prior to times when so-called "marquee television events" occur;
- Affirmatively prohibit local broadcasters from exercising privately-negotiated third-party contractual rights to marketplace exclusivity;
- Prevent broadcasters and broadcast networks from controlling their online content during a retransmission consent dispute;
- Force all broadcasters to use different attorneys or consultants for retransmission consent negotiations (even though AT&T would be allowed to use the same attorneys/consultants for all negotiations); and
- Prohibit broadcasters from negotiating over how to measure subscribers and how to calculate payment for retransmission consent (*i.e.,* give pay TV companies the opportunity to creatively fiddle with subscriber numbers and prevent broadcasters from protesting)

The hypocrisy of some of these proposals is evident not only in light of AT&T's general anti-regulatory philosophy but also when contrasted with its prior advocacy on related issues *when applied to AT&T*. For example, AT&T asks the FCC to prohibit broadcasters from offering bundled programming to AT&T/DirecTV, yet AT&T offers bundles of all sorts to consumers on a daily basis. AT&T wants the Commission to interfere in privately-negotiated contracts between third parties for exclusivity, yet objects to the FCC questioning AT&T's ability to freely negotiate special access arrangements. AT&T actually goes so far as to request that the FCC prevent attorneys for local broadcasters from negotiating retransmission consent for multiple broadcasters. AT&T, of course, is under no such restriction. In fact, given that AT&T now owns DirecTV – surprise! – AT&T is now able to draw on one set of attorneys to negotiate agreements for a massive company that covers the entire nation. And perhaps most striking is AT&T's request that the FCC regulate broadcasters' online activities at the same time that AT&T fights vigorously to lift Open Internet rules that regulate AT&T's.

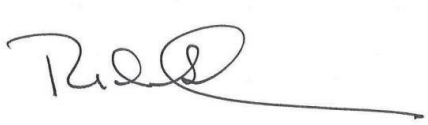
One might wonder: is AT&T making a drastic philosophical shift across the board? After all, AT&T is calling for an interventionist regulatory structure that would require the Commission to judge not only how retransmission consent negotiations are conducted, but also whether even proposing certain substantive terms – even those that are never accepted into a final contract – should be banned.[13] And while its top policy players as recently as January chastised the Commission for thinking "it's smarter than highly competitive markets" and for "pretending to

[13] *See, e.g.,* Notice of *Ex Parte* Communication from Sean A. Lev, Counsel to AT&T Services, Inc., MB Docket Nos. 15-216 and 10-71 (March 16, 2016).

favor consumers,"[14] it complains without justification that the "retransmission consent marketplace has changed dramatically"[15] and that it is "creating enormous harm for consumers."[16] In nearly every other context, AT&T would undoubtedly side with the rational economic and free market view that the increase in competition in both the distribution and programming markets benefits consumers.

AT&T is, of course, not alone among its pay TV brethren in abandoning its traditional regulatory philosophy in the lone context of retransmission consent advocacy. Huge corporations such as Verizon and Charter/Time Warner Cable/Bright House, among others, are guilty of the same. However, AT&T's role reversal is particularly noteworthy. Typically mindful that unnecessary government oversight can lead to negative consequences for the marketplace and ultimately consumers, here AT&T has unmoored itself from its longtime support of measured and smart regulation. The company that once said "the Commission should step in and take action *only* where there are market failures"[17] now says that the government should "fix" the marketplace even though no one can credibly claim a market failure. The irony of this Kafka-esque metamorphosis is worth highlighting. The nation's largest pay TV provider has abandoned its core principles in this one instance where it recognizes that it can improve its bottom line by hamstringing another industry with undesirable government regulation.

Respectfully submitted,



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[14] Jim Cicconi, AT&T Blog Team, *AT&T Statement on FCC Chairman's Set-Top Box Proposal*, (Jan. 28, 2016), http://www.attpublicpolicy.com/fcc/att-statement-on-fccchairmans-set-top-box-proposal/.

[15] AT&T Good Faith Comments at 4.

[16] *Id.* at 6.

[17] Comments of AT&T Inc. Opposing Skype Comms.'s Petition to Apply *Carterfone* Attachment Regulations to the Wireless Industry, *Skype Comms.'s Petition to Apply Carterfone Attachment Regulations to the Wireless Industry*, RM-11361, at 2 (April 30, 2007) (emphasis added).