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

In the Matter of

Applications of AT&T Inc. and DirecTV To Transfer Control of FCC Licenses and Other Authorizations	)))))	MB Docket No. 14-90

Reply Comments of ITIF

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Information Technology and Innovation Foundation
1101 K Street NW, Suite 610
Washington, DC 20005

The Information Technology and Innovation Foundation ("ITIF")[1] respectfully offers these reply comments in support of the proposed AT&T–DirecTV transaction. Broadband infrastructure is critical to continuing America's economic growth and leadership in innovation; the transaction will accelerate broadband deployment and upgrades, allowing the U.S. to continue progress in this area. The proposed merger will give the combined company the economies of scale and scope to provide rigorous competition in the services the combined company would provide. Competition in the markets for those services – video, voice, and broadband – is increasingly dynamic, with unpredictable new entrants fighting to be the platform of choice. Considering the pace of innovation and change in this sector, regulators should be cautious of chasing narrow, static efficiencies over allowing a dynamic market to innovate at an appropriate scale.

In short, this merger is largely about allowing the companies to combine complimentary assets to better compete against cable. While this transaction does represent a reduction in the number of competitors in the narrow market and geographic segments of video programming where AT&T offers its U-Verse pay TV service, ITIF argues that that reduction in competition is more than off-set by a combined company's increased competitive response to cable as well as the expansion of broadband service to underserved locations.

In considering whether this acquisition would serve the "public interest, convenience, and necessity"[2] the Commission should consider whether a more robust competitor providing both video and broadband to a larger footprint should be preferred over separate companies, one with a strong video offering, but zero broadband offering (DirecTV), and one with video offerings

[1] The Information Technology and Innovation Foundation (ITIF) is a non-partisan research and educational institute – a think tank – whose mission is to formulate and promote public policies to advance technological innovation and productivity internationally, in Washington, and in the states. Recognizing the vital role of technology in ensuring prosperity, ITIF focuses on innovation, productivity, and digital economy issues.

[2] 47 U.S.C. § 310(d).

1101 K STREET NW | SUITE 610 | WASHINGTON, DC 20005
MAIL@ITIF.ORG | (202) 449-1351 | FAX: (202) 638-4922 ITIF.ORG

limited by purchasing scale and broadband constrained by copper loops (AT&T). ITIF believes that a combined company is in the public interest for its enhanced ability to compete against cable bundle offerings, the gained efficiencies of added scale through complimentary assets, and the facilitation of both fiber and fixed-wireless broadband buildout.

There are clear dynamic and productive efficiencies to be gained by the transaction. For example, it will be easier to recoup the large capital investments needed to maintain, operate, and upgrade a large access network. It will also be easier to support more research and development into better network operation and the development of new functionalities. Other scale economies related to advertising, overall management, and network operations are likely to be accrued.

The assets of these two companies are clearly complimentary in a world where consumers demand a bundle of MVPD and broadband services. DBS providers recognize the need to offer a form of broadband.[3] AT&T has been aggressively deploying its fiber-to-the-node offerings in its more densely populated urban markets, but the company's rural and suburban networks, with relatively long copper loops, are still capacity constrained, limiting their ability to offer IPTV. Bundling DBS video with either wired or fixed wireless broadband will lessen this capacity constraint, increasing throughput for general-purpose broadband. The company will also be better able to offer a fixed wireless broadband service to areas that may not be able to be economically served with high-speed wired broadband. The consumers' home-mounted satellite dish provides a convenient, powered location for a wireless link. AT&T has the networking expertise to pursue this model, potentially improving network speeds to rural areas significantly.

Furthermore, the added scale will allow purchasing of programming at lower cost. All of these benefits will ultimately flow to consumers in the form of more attractive service offerings,

[3] Dish has made clear its interest in entering the mobile broadband space and has been actively acquiring spectrum.

potentially at lower prices, buildout of advanced broadband networks,[4] and increased network throughput.

Even if the Commission considers the narrow market definition of MVPD offerings in those markets where AT&T already offers its U-Verse IPTV service, it is likely that the minimal reduction in the number of competitors is outweighed by the enhanced competition in broader markets. There are stronger positive externalities in having robust broadband networks than an additional MVPD in already crowded urban markets. The Commission's focus when it comes to "competition, competition, competition" has been on broadband, especially competition for broadband offerings at higher data rates.[5] This transaction is undoubtedly a step in the direction of further competition for high-speed broadband and is aligned with the Commission's goals.

Consumers are also increasingly turning to over-the-top services for video, and the proposed transaction has raised a number of questions about a combined company's ability to affect upstream broadband services.[6] The Commission should recognize that many of the benefits of the proposed transaction assume that pay TV and broadband are largely complimentary goods – that consumers demand the bundle instead of one versus the other. This is an accurate picture of the market today, but the Commission should not preclude the possibility that a broadband connection becomes substitutable to pay TV.

The most salient issue here is that of interconnection, an area complicated by the rightly confidential nature of interconnection agreements. The Commission is right to seek information

[4] AT&T has begun building FTTP in some urban markets, and it is likely this trend will continue. The added complimentary assets and overall synergies of the transactions should accelerate the trend, and AT&T has committed to further fiber deployment in its statement. AT&T Public Interest Statement at 41.

[5] *See* Prepared Remarks of FCC Chairman Tom Wheeler, "The Facts and Future of Broadband Competition" (Sept. 4, 2014), http://www.fcc.gov/document/chairman-remarks-facts-and-future-broadband-competition.

[6] *See e.g.*, Comments of Cogent Communications Group, Comments of Netflix at 14.

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MAIL@ITIF.ORG | (202) 449-1351 | FAX: (202) 638-4922 ITIF.ORG

on these agreements, but ITIF is confident, given the economics of interconnection, that a combined company would not pose an anti-competitive threat to over-the-top services.

Take, as an example, the recent dispute Netflix had with a small number of ISPs. Netflix chooses a handful among of dozens of possible paths to deliver its traffic into last-mile networks. Soon after Netflix turned on its "Super HD" video streaming,[7] many of the interconnection ports they had relied on under a settlement-free peering arrangement became congested, affecting some consumers' streaming. Reports indicate that Netflix has negotiated multiple interconnection deals with ISPs to ensure this unprecedented amount of data can reliably be delivered onto access networks. There is good reason to believe that these sorts of paid interconnection arrangements are economically efficient given the tremendous volume of data Netflix users draw onto access networks.

Furthermore, there is little concern that access networks will be able to leverage their last-mile status to extract anti-competitive rents from interconnection arrangements because of how many paths there are into these networks. Access networks are already well interconnected with the rest of the Internet – these simply are not like the terminating monopolies of old where you had to get equipment into a central office in order to interconnect. Instead, numerous possible arrangements will allow for a great deal of flexibility for edge providers to find the most economically efficient route onto the combined company's network. There are already several CDNs that have negotiated deals to deliver large amounts of data within such access networks, and numerous transit providers compete fiercely to provide access to the Internet at large.

Indeed, it is well established that the highly-competitive transit market functions as a price ceiling for delivering data to a last-mile access network.[8] This is a key point – the transit

[7] Netflix, "Highest Quality HD Now Available to all Netflix Members," (Sept. 26, 2013), http://blog.netflix.com/2013/09/highest-quality-hd-now-available-to-all.html.

[8] *See* David Clark et al., "Interconnection in the Internet: the policy challenge," 39th Research Conference on Communication, Information and Internet Policy, (Aug. 2011).

and CDN markets will continue to provide an alternative to paid interconnection, ensuring that the sort of arrangements Netflix is seeking are very unlikely to be anti-competitive.

A Commission with the mantra of "competition, competition, competition" should ultimately welcome this transaction as in the public interest. The combined company will provide additional competition in the area of high speed broadband, as well as further broadband deployment to rural areas, and should be welcomed as in line with the Commission's stated goals and the broader public good.

Doug Brake
Telecom Policy Analyst

Information Technology and Innovation Foundation
1101 K Street NW, Suite 610
Washington, DC 20005