July 1, 2015

VIA ECFS

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

Re: Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 14-90

Dear Ms. Dortch:

On June 29, 2015, Robert Beury, Chief Legal Officer of Cogent Communications, Inc. (“Cogent”), and I met with the Commission staff identified in Exhibit A to discuss AT&T Inc.’s (“AT&T”) proposed acquisition of DIRECTV. Specifically, our discussion focused on interconnection issues raised by the pending transaction.

Last month, Cogent and AT&T announced that they had entered into a “long-term, bilateral interconnection agreement for their [Internet Protocol] networks.” See http://www.cogentco.com/en/news/press-releases/741-cogent-and-at-t-enter-into-interconnection-agreement. While Cogent is pleased with that agreement, we explained to the Commission staff that the Cogent/AT&T agreement does not eliminate the public interest concerns that Cogent and others have raised about the pending transaction.1 To that end, we emphasized that in order for the Commission to conclude that the proposed transaction comports with the public interest it should adopt the interconnection condition proposed in our May 12, 2015 ex parte submission and reiterated in the June 25, 2015 COMPTEL ex parte submission.2

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2 We also explained the terms of the non-public Cogent/AT&T agreement to the Commission staff.
The public interest harms presented by AT&T’s putative acquisition of DIRECTV have been discussed at length in various submissions. In sum, the problem is that AT&T—a company that has engaged in interconnection practices responsible for the degradation of its own customers’ broadband Internet access—will, should the transaction be consummated, acquire a strong incentive to shield DIRECTV’s massive MVPD business from competitive encroachment by current and emerging OVD substitutes. Moreover, if AT&T delivers on its promise to expand broadband service, the impact of any future congestion-creating strategies and/or efforts to impose terminating access fees to reach its captive subscribers will be magnified. These public interest concerns are serious, grounded in recent history, and inherently merger-specific.

While the Cogent/AT&T agreement, during its effective term, provides a reprieve for congestion as between these two networks, it does not—indeed, it cannot—provide the type of systemic assurance of unimpeded broadband Internet access that the proposed condition would. Moreover, as we explained to the Commission staff, it should not be assumed that if the transaction proceeds absent such a condition that other mechanisms will exist to shield against post-merger congestion and broadband degradation.

First, Cogent has no confidence that the Cogent/AT&T agreement would have been reached absent AT&T’s obvious incentives to assuage regulatory concerns while the DIRECTV acquisition is under scrutiny by the Commission and the Department of Justice. Second, while Cogent is a vocal supporter of the Commission’s Open Internet Order, that order is under attack by various entities—led by AT&T—and may not survive judicial review (although it should). And, even if the Open Internet Order emerges intact from the Court of Appeals and, potentially, the Supreme Court, no one today knows how the case-by-case enforcement process for interconnection disputes will be implemented.

In light of the foregoing, we underscored that the interconnection condition set forth in our May 12 submission is the only durable mechanism to ameliorate the public interest harms the transaction poses to broadband Internet access. That condition is not onerous and should be of no concern to AT&T if it sincerely desires to deliver reliable and high-quality broadband Internet access to its existing and future customers. All it does is ensure that other Internet networks or edge providers of substantial scale that are willing to exchange traffic with AT&T at reasonably localized locations can do so without having to pay a fee to access AT&T’s customers, who already pay for Internet access. In addition, it obliges AT&T to ensure that once such

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3 See, e.g., n.1.

4 With respect to defining “reasonable locations” and “reasonably localized” interconnection, we emphasized that these were the type of technical arrangements that should be amenable to agreement between AT&T and any network or edge provider with whom it interconnects. We also explained that there likely were not many edge providers or other networks that have sufficient scale to interconnect with AT&T on such a basis, thus further limiting the burden the condition would impose on AT&T. However, while the number of potential peering relationships such a condition might affect is small, the number of BIAS subscribers that would be at risk absent such a condition is large.
interconnections are established they do not become congested to the point where consumers experience degraded service.\(^5\)

In sum, the Cogent/AT&T agreement will benefit customers of both networks while it remains in effect. However, because AT&T broadband customers access a vast array of Internet content which does not traverse Cogent’s network, this agreement on its own is not sufficient to protect the public interest. That is why in an environment of continuously growing Internet usage the proposed interconnection condition continues to be of paramount importance.

Please direct any questions regarding this correspondence to my attention.

Sincerely,

/s/ Robert M. Cooper

cc: Commission staff identified in Exhibit A

\(^5\) We also explained that the precise threshold for when such augmentation occurs (e.g., 70% utilization) is not important. What matters is that interconnection congestion is addressed before the problem metastasizes into one that compromises broadband Internet access.
Exhibit A

Susan Singer (Media Bureau)
Tim Brennan (Office of Strategic Planning & Policy Analysis)
Christopher Sova (Wireline Competition Bureau)
Alec T. MacDonell (Wireline Competition Bureau)
Robert Cannon (Office of Strategic Planning & Policy Analysis)
Alison Neplokh (Office of Strategic Planning & Policy Analysis)
Eric Ralph (Wireline Competition Bureau)
Jim Bird (Office of General Counsel)
Jazmine Dorsey (Media Bureau)
Chad Guo (Media Bureau)
Scott Jordan (Chief Technologist)
Charles Mathias (Wireless Telecommunications Bureau)
Elizabeth Andrion (Office of Strategic Planning & Policy Analysis)
Octavian Carare (Wireline Competition Bureau)
Omar Nayeem (Office of Strategic Planning & Policy Analysis)