Before the
Federal Communications Commission
Washington, DC 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

PETITION TO DENY OF PUBLIC KNOWLEDGE AND INSTITUTE FOR LOCAL SELF-RELIANCE

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I. Introduction

This merger takes place in the backdrop of an increasingly consolidated media and communications marketplace. AT&T has recently completed its purchase of Leap Wireless, giving it control of one of the most powerful brands in the prepaid wireless space. On the broadcast side, Sinclair has acquired 8 television stations from Allbritton, Gannett has acquired 23 stations from Belo, and Tribune has purchased Local TV and its 16 stations. Rumors persist about the future of Sprint, T-Mobile, and DISH. Comcast recently purchased NBC Universal, creating a vertically-integrated media powerhouse. And of course, the elephant in the room: Comcast's proposed takeover of Time Warner Cable, which would add to that company's power.

While companies that are seeking to grow larger through mergers often point to the growing power of their rivals, this is not a reason for the Commission to look more favorably on their proposed consolidation. Companies may think they need greater scale to enter new markets or keep up with their rivals. But unless they can show how this would benefit consumers, it is immaterial. If anything, the FCC should be more skeptical of mergers that come in waves, since in the aggregate consumers suffer from a more highly concentrated, centralized marketplace, with fewer choices, homogeneous offerings, and increased likelihood of coordinated effects.

For this merger to be approved, AT&T must show first that it would create no consumer harm. Then, separately, it must show that the merger would result in positive consumer benefit. AT&T's proposed purchase of DirecTV would create direct consumer harm in the pay TV and online video marketplaces, and raises questions similar to those the Commission is facing in its work on the "IP transition." The FCC cannot allow this merger to go through unless it is convinced that it can eliminate these harms. Additionally, AT&T's case for the public interest benefits of this merger relate primarily to its claim that the merger would result in it upgrading its existing networks at a faster pace (e.g., upgrading copper to fiber, and adding fixed LTE services to an existing LTE deployment). The FCC cannot recognize claims of this sort as public interest benefits unless the proposed upgrades are merger-specific and can be publicly tracked and verified.

The simplest and best course of action for the FCC to avoid the harms this merger would cause would be to deny it. But if the Commission does elect to approve this merger with conditions, it must structure them with an understanding that AT&T can expend more energy and legal resources to evade the intent of a merger condition than the FCC can spend in trying to enforce them. Conditions must therefore be structured in a way that eliminates ambiguities and allows the public to easily verify compliance.

II. The FCC Has Legal Authority to Block This Merger

AT&T must prove that removing DirecTV from the marketplace serves "the public interest, convenience, and necessity."[1] The Commission's public interest analysis embodies a "deeply rooted preference for preserving and enhancing competition in relevant markets...and ensuring a diversity of information sources

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[1] 47 U.S.C. § 310(d).

and services to the public."[2] While "[t]he FCC's actions should be informed by competition principles," its "'public interest' standard is not limited to purely economic outcomes."[3] AT&T must show that its transaction would not harm the public, frustrate the goals of the Communications Act, harm competition, or otherwise break the law, and it must demonstrate that its transaction would result in positive public interest benefits, not merely attempt to rebut claims of harms to the public interest.

AT&T has not met its burden. This merger would harm consumers and competition to such a degree that it can be blocked on both competition law and public interest grounds.

This merger violates antitrust law. Under the Clayton Act, transactions that substantially lessen competition, or tend to create a monopoly in any line of commerce, are illegal.[4] As this Petition will show, among other harms, this merger would substantially lessen competition in the video marketplace. "In order to find that a merger is in the public interest," the Commission must "be convinced that it will enhance competition."[5] This merger fails this test: it decreases competition in the pay TV markets, could limit competition in the video device market, and could

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[2] Applications of Comcast Corporation, General Electric Company and NBC Universal for Consent to Assign Licenses and Transfer Control of Licensees, *Memorandum Opinion & Order*, 26 FCC Rcd 4238, ¶ 23 (2011).

[3] Jon Sallet, *FCC Transaction Review: Competition and the Public Interest*, FCC Blog, Aug. 12, 2014, http://www.fcc.gov/blog/fcc-transaction-review-competition-and-public-interest.

[4] 15 U.S.C. § 18.

[5] Applications of NYNEX and Bell Atlantic for Consent to Transfer Control, *Memorandum Opinion & Order*, 12 FCC Rcd 19985, ¶ 2 (1997).

limit incipient competition from online video distributors. The Commission must block it.

The Commission must determine whether this merger "could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes."[6] But AT&T's burden is not merely to show a lack of public interest harms. It must demonstrate specific public interest benefits that would directly flow from this transaction. Its attempts to do so have fallen short.

The Commission is charged with providing access to advanced telecommunications and information services across the country and encouraging deployment to all Americans;[7] ensuring quality services available at just, reasonable, and affordable rates;[8] promoting the development of the Internet and preserving the competitive free market for its provision;[9] encouraging the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet;[10] and preventing unjust or unreasonable discrimination by carriers.[11] This Petition shows that the merger could frustrate all of these goals, because of its effects on the pay TV, online video, telecommunications, and other markets, and because of its potential impact on the IP transition coupled with a worsening of the urban/rural divide.

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[6] XM Satellite Radio Holdings, *Memorandum Opinion & Order & Report & Order*, 23 FCC Rcd 12348, ¶ 30 (2008).
[7] 47 U.S.C. §§ 254(b)(2), 1302(a).
[8] 47 U.S.C. §§ 254(b)(1), 201(b), 151.
[9] 47 U.S.C. §§ 230(b)(1), 230(b)(2).
[10] 47 U.S.C. § 230(b)(3).
[11] 47 U.S.C. § 202(a).

The Commission is also directed by Congress to

> promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, and to spur the development of communications technologies.[12]

This provision grants the FCC "broad and sweeping"[13] powers to promote video competition. Unless the Commission blocks this merger or addresses the harms it would cause, its ability to carry out this provision would be frustrated.

The Commission's ample legal authority gives it all the tools it needs to ensure that this merger does not harm consumers. It should use them.

III. This Merger Would Harm Video Competition

On its face, a merger that results in the loss of a pay TV competitor in more than sixty markets is contrary to the public interest. Loss of competition leads to higher prices, worse service, and a loss of diversity of content. Additionally, if AT&T, a national wireless and regional wireline broadband provider becomes a larger player in the pay TV market, its incentive to discriminate against online video services would increase. The FCC must block this transaction if it cannot be assured that it can alleviate these harms.

By reducing the number of pay TV competitors in each market where AT&T currently offers video service, this proposed merger would reduce consumer choice and violate the law. As Free Press's Derek Turner has noted, in 64 local TV markets,

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[12] 47 U.S.C. § 548.

[13] *Nat. Cable & Telecommunications Assoc. v. FCC*, 567 F. 3d 659, 664 (DC Cir. 2009).

the level of market concentration would exceed the Department of Justice's merger guidelines as a result of this merger.[14] This concentration would harm consumers in numerous ways. Less competition would lead to higher prices, worse service, and reduced access to diverse content. Even AT&T admits that this merger could exert upward pressure on "the prices of standalone video or broadband," suggesting only that this could be offset by cheaper bundles[15] (though it is not committing to offering cheaper bundles). Additionally, if AT&T becomes a larger player in the pay TV marketplace its incentive to discriminate against online video services on its Internet access products would increase.

It is odd that in a transaction where it seeks to buy a standalone pay TV service, AT&T argues that pay TV is decreasingly significant. The millions of DISH, DirecTV, and cable customers who purchase only pay TV and not a pay TV/broadband bundle demonstrate otherwise, and speak to the continuing relevance of this market. AT&T has been a broadband provider for longer than it has been a pay TV provider, so it is not surprising that it has more broadband-only than video-only customers. (Cable companies tend to have more video-only than broadband-only customers for a similar reason.) AT&T's bold attempt to define itself out of the pay TV market must be rejected.

But even giving AT&T every benefit of the doubt and accepting the decreasing relevance of standalone pay TV, the fact remains that antitrust regulators

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[14] S. Derek Turner, How the AT&T–DirecTV Merger Fails the Antitrust Test , Free Press (May 28, 2014), http://www.freepress.net/blog/2014/05/28/how--att--directv--merger--fails--antitrust--test.

[15] Public Interest Statement at 81.

must base their analyses on the here and now. They do not simply write off real competitive harms to a real market based on one company's prediction that that market will one day go away or shrink in importance relative to some other market. As the Supreme Court has explained, antitrust law "focuses on tangible economic injury," not "some abstract conception or speculative measure of harm."[16] It follows that when there is real harm, some abstract conception or speculation cannot be enough to dismiss it. More to the point, the fact that a product is primarily purchased as part of a bundle does not show that it does not exist as an independent product—at most, it shows that it is complementary to the products it is bundled with.

Harm in the pay TV market could be alleviated in a few ways. For example, antitrust authorities and the FCC could ensure that the price for DirecTV pay TV service does not rise in U-Verse markets to rates beyond what it charges in markets that face more pay TV competition. The price of U-Verse TV can be similarly benchmarked and compared to the price of similar services in other markets. Measures like this, however, can only protect the public if they are enforced. Whether AT&T is in compliance with any conditions should be straightforward for anyone to verify. There should be no opportunity for "interpretive" legal issues about whether AT&T has complied.[17] However, given the challenges of enforcement and the inherent difficulty of replicating the benefits of competition through

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[16] *Blue Shield of Va. v. McCready*, 457 US 465, 475 n.11 (1982).

[17] Jon Brodkin, *Franken: Comcast Called Time Warner Cable a Competitor Until They Wanted to Merge*, April 9, 2014, Ars Technica, http://arstechnica.com/tech-policy/2014/04/franken-comcast-called-time-warner-cable-a-competitor-until-they-wanted-to-merge.

behavioral conditions, the FCC should look to more active means of promoting pay TV competition and protecting consumers. In the short term, it can protect against sudden price hikes through temporary price freezes and enhanced monitoring of rate increases. It should ensure that AT&T's bills are simple and transparent and do not hide mandatory fees below the line: the prices AT&T markets and advertises should be the same ones consumers see on their bills.

The FCC must also address AT&T's increased incentive to discriminate against online video services. It must require that AT&T operate its wireline and wireless networks in ways that are consistent with the Open Internet. Regardless of what actions the FCC takes in its industry-wide Open Internet proceeding, the increased incentive for AT&T in particular to engage in discriminatory behavior justifies additional consideration here. The FCC must therefore ensure that AT&T cannot discriminate in transmitting lawful network traffic over a consumer's Internet connection, prioritize its own video services, give its own video services preferential treatment with respect to caps, tiers, metering, or other usage-based pricing, or measure, count, or otherwise treat its own video services differently than other over-the-top video services. Nor should it be able to offer "specialized" or "managed" services that consist of video content, nor claim that any video service other than traditional linear programming is a Title VI cable service exempt from these merger conditions or FCC broadband rules.

However, even measures like the above are unlikely to be completely effective in countering the harms that would result from a loss of pay TV competition or to alleviate the potential harms to online video competition. Both

AT&T and DirecTV have indicated that they want to participate more in the online video space. The FCC should ensure that any new online video service (even if it is only complementary to pay TV, as most online video services are today) from AT&T or DirecTV is designed to enhance competition in the video space. To have truly competition-enhancing effects, online video should not merely be a means for AT&T or DirecTV to add value to their existing offerings, but a new service in its own right. To that end, the FCC should require that any new online video from AT&T or DirecTV be available at a reasonable price on a standalone basis, not tied to AT&T broadband or wireless service, or AT&T or DirecTV pay TV service. Similarly, access to online services currently associated with a DirecTV account, whether operated by one of the companies (e.g. NFL Sunday Ticket) or only tied to pay TV credentials (the TV Everywhere or authentication model) should not require a full pay TV subscription.

Relatedly, AT&T and DirecTV should be required to authenticate TV Everywhere-style apps promptly, and not leverage the authentication process as a means to control what devices and apps their customers can access. Other large pay TV operators have been accused of using the authentication process anticompetitively, and the FCC must ensure that AT&T and DirecTV do not have a similar incentive.

The FCC has found that one means to promote online video competition is to ensure that consumers can access online video services easily, directly on their television sets.[18] While streaming-only devices have found a sizable market, they remain a niche product when compared with pay TV set-top boxes. Operator-provided set-top boxes are far and away the most popular video navigation device. Control of this device gives key leverage to pay TV operators--most consumers don't know they can use another device in addition to their set-top box, and apart from CableCARD devices with some operators, most consumers do not have an alternative to the set-top box. First-party set-top boxes have a considerable advantage over their rivals merely by being set to most viewer's "default input"—switching modes on a television or A/V receiver is an added point of friction that holds back the competitive market. Control of the prime real estate of the set-top box and its on-screen interface gives an operator great control over user behavior. For instance, while third-party devices like Roku and Apple TV can access third-party content or even run third-party apps, operator-provided set-top boxes rarely provide consumers with access to competitive online video services like Netflix or Amazon Instant Video. Instead, they encourage viewers to use the operator's own services.

With this understanding, and to enhance video competition, the FCC should (1) require that first-party AT&T and DirecTV set-top boxes be compatible with third-party apps and support third-party online video services in a nondiscriminatory way, and (2) require that AT&T and DirecTV make their pay TV linear programming available to third-party video devices in an industry-standard

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[18] Connecting America: The National Broadband Plan 18 (2010).

method (e.g. DLNA), without requiring that subscribers maintain a first-party set-top box on their premises.

Finally, to ensure that viewers have access to diverse voices, it should ensure that AT&T and DirecTV give adequate access to Political, Educational, and Government (PEG) programming.

IV. This Merger Would Increase AT&T's Incentive to Shift Customers from Wireline to Wireless Service

While AT&T argues that this merger will accelerate the pace of its fixed wireless product nationwide, deployments within its wireline service territory raise special concerns. AT&T has not claimed that the DirecTV merger would accelerate the pace of any copper retirement within its service territory, and by itself, the deployment of fixed wireless service within AT&T's service area is not a problem. Fixed and mobile wireless services can be valuable complementary options in the marketplace. However, residences that have access to wired service today should not face a future where wireless is their only option, and America should not face a future with an ever-widening rural/urban divide where some households have access to connectivity options that outclass those available to others by many multiples in terms of speed, usage caps, performance, latency, and price-per-Mbps. Therefore the FCC should be wary of increasing AT&T's incentive to shift customers from copper to wireless in the midst of a broader policy debate about the IP transition, when so many questions about the adequacy of fixed wireless (and all-IP copper) technology remain unanswered and the post-transition regulatory environment is still uncertain.

In other markets where AT&T and other telecommunications companies have begun to offer fixed wireless service as an alternative to traditional telephone service, there have been customer complaints about the lack of maintenance to the copper network and reports of high-pressure sales techniques that push customers to a wireless product even though the wired product may suit their needs better.[19] It is this issue in particular—where the behavior of the provider with respect to its service offerings and not the availability of a new option *per se* is at issue—where the FCC should pay particular regard.

To alleviate these concerns, the Commission should ensure that this merger gives it the opportunity to make its IP transition process go more smoothly, and prevent AT&T from taking actions that would limit the FCC's options. Accordingly, the FCC should ensure that within AT&T's wireline service territory there is:

- An adequate process for handling complaints about the quality of service of both copper and wireless service
- Copper repair deadlines
- Public reports on complaints
- Assurance that a person who finds that a wireless product is unsuitable can get wired service back
- Public reporting on the results of IP transition trials
- Clarity about the future of wired service for businesses and the interconnection rights of competitive carriers.

By considering the ways that this merger could worsen the urban/rural divide and taking action to ensure that customers are not forced to abandon their current

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[19] *See* Letter from Public Knowledge et al. to Julie A. Veach, Chief, Wireline Competition Bureau, FCC, May 12, 2014, https://www.publicknowledge.org/assets/uploads/blog/14.05.12_Copper_Letter.pdf.

connectivity choice, the FCC can alleviate some of the harms this merger would create for AT&T's customers.

V. AT&T's Purported Public Interest Benefits Are Unverifiable

AT&T's primary case for the public interest benefits of its merger relate to increased broadband and fixed wireless expansion. AT&T argues that the merger increases its incentive to increase its deployment of fixed wireless service both inside its service territory, and nationwide. It argues that a bundle of fixed wireless and DBS television service could be a competitive alternative to cable. It also argues that the merger will give it the incentive to upgrade portions of its wireline network to all-fiber. However, the FCC cannot accept AT&T's plans to marginally upgrade its existing network deployment as a public interest benefit resulting from a merger unless it can be certain both that the deployment would not have occurred but for the merger, and that deployment promises are enforceable and verifiable. If the FCC cannot satisfy itself with respect to these factors, then AT&T's attempt to show a public interest benefit that would result from this merger fails, and the transaction must be denied.

A. Framework for Analysis of Wired Broadband Claims

AT&T claims that it would upgrade 2 million homes to fiber as a result of this merger that would otherwise not be upgraded.[20] However, the FCC must have an adequate baseline by which this commitment can be analyzed.

First, PK understands the term "upgrade" to mean just that—upgrades of existing services. This excludes deployment to newly-constructed and unserved

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[20] Public Interest Statement at 41.

residences. But which 2 million homes will be upgraded? AT&T already plans to upgrade an unspecified number of homes to fiber as part of its GigaPower program.[21] This means that AT&T's 2 million homes commitment is unverifiable. As long as AT&T provides fiber service to at least 2 million homes in the future it will be able to argue that it has complied—even though the GigaPower program, absent the merger, was already likely to provide service to at least 2 million additional homes. The FCC cannot simply accept AT&T's claims about its internal investment incentives—it must be able to empirically verify that AT&T has met its commitments. Economic models must be tested against the real world. For AT&T's broadband expansion claims to be cognizable it must provide an accurate timetable of future deployment plans, clearly distinguishing between deployments that would occur absent the merger and deployments that result from the merger.

Second, any specific broadband deployment commitments must be accompanied with an enforceable, permanent commitment to that deployment. AT&T has historically committed to broadband deployment goals in relation to mergers. In 2006, pursuant to its merger with BellSouth, AT&T committed to providing broadband to 100% of the residences in its wireline footprint. This commitment included a promise to provide wireline broadband to 85% of the residences, with other residences offered some form of wireless service (a precursor to its current wireless local loop ("WLL") promises).[22] Yet by 2012,

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[21] AT&T is expanding its "U--Verse with GigaPower" service, which it launched in Austin to compete with Google Fiber, to "more cities." AT&T, AT&T U--verse with GigaPower is expanding, http://www.att.com/att/gigapowercities.

[22] FCC Approves Merger of AT&T Inc. & BellSouth Corp., FCC (Dec. 29, 2006),

promises of future broadband buildout were still on the table, as AT&T again promised to finally provide wired broadband to 75% of the "customer locations" (residences plus businesses) in its footprint.[23] AT&T's shifting terms of reference (residences, population, customer locations) and the changing meaning of "broadband" can make it difficult to pin down the nature of AT&T's compliance, but documents confirm[24] longstanding customer reports[25] that there are areas within AT&T's service territory where it offers no broadband service at all, wireless or wireline.

The tension between AT&T's commitments and reality exists in part because the commitments are one-time events. The FCC generally has only required initial investments and not continued service and upgrades. For the most part, unserved and underserved homes in AT&T's territory have inferior connectivity options today because of AT&T's business incentives. Merger commitments relating to these areas do not change this dynamic. This means that even if AT&T complies with a service-related commitment, it lacks the necessary incentives to maintain and upgrade these areas at a pace equal to its more profitable territories. The FCC must therefore

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https://apps.fcc.gov/edocs_public/attachmatch/DOC--269275A1.pdf.

[23] AT&T to Invest $14 Billion to Significantly Expand Wireless and Wireline Broadband Networks to Support Future IP Data Growth and New Services, (Nov. 7, 2012), http://www.att.com/gen/press--room?pid=23506&cdvn=news&newsarticleid=35661&mapcode=.

[24] AT&T Proposal for Wire Center Trials, GN Docket No. 13--5, GN Docket No. 12--353, at 8 fn 9 (Feb. 27, 2014), http://connected.att.com/external/publicpolicyviewsnews/as_filed_redacted_wire_center_trial_plan.pdf.

[25] Gerry Smith, Many Rural AT&T Customers Still Lack High--Speed Internet Despite Merger Promise, HuffPost Tech (Nov. 18, 2012), http://www.huffingtonpost.com/2012/11/18/rural--att--customers--merger--lnternet_n_1914508.html.

create those incentives. If the FCC is to use merger proceedings as a means to further broadband deployment goals and if AT&T is going to cite broadband deployment as a public interest benefit, sporadic attention to marginal areas is not enough. If claims of future broadband deployment qualify as a public interest benefit at all, they must be coupled with a permanent commitment to upgrade, maintain, and invest in the network. The FCC should ensure that upgrades to buildout undertaken pursuant to a merger commitment should not only occur when those upgrades can be traded for regulatory concessions or the grant of yet another merger.

B. Framework for the Analysis of Wireless Deployment Claims

AT&T and other operators offer bundles of DBS and Internet connectivity service today. DBS service can be bundled with DSL, satellite Internet, and wireless service. AT&T claims that DBS bundled with fixed LTE from one company would be a compelling alternative to cable in a way that existing bundles are not, and that as a result of this merger, it would have an increased incentive to deploy the fixed wireless component of this bundle. It further claims that as a result of this merger it would deploy fixed wireless (and thus the wireless/DBS bundles) to 13 million homes in areas that it would otherwise not serve with fixed wireless service.[26]

AT&T has not adequately shown that a fixed LTE/DBS bundle is more competitive with cable than existing connectivity/DBS bundles, which are widely available. At most, AT&T has shown that the cost structure of an organic fixed

[26] Public Interest Statement at 44;; Declaration of John T. Stankey, Group President & Chief Strategy Officer, AT&T Inc., ¶ 53.

LTE/DBS bundle would have a better internal cost structure than some synthetic bundles. But this has no public interest relevance unless it translates to more deployment or lower prices to consumers. AT&T makes no specific and verifiable pricing commitments. Without these, claims of lower prices are not cognizable public interest benefits.

More fundamentally, AT&T's proposed bundle can only be an adequate alternative to cable if it is fully substitutable for cable: that is, if it matches the prices and capabilities of cable. AT&T must demonstrate that its fixed wireless service is priced competitively with cable broadband and is capable of sustaining the same uses. If AT&T's fixed wireless service has lower data caps, lower real-world throughput, higher latency, or materially differs from the quality of service available through cable broadband in any material way, then it can at most be considered a partial substitute or complement to cable, not a substitute.

As with the wireline deployment, the FCC can only analyze AT&T's deployment claims if it has a baseline of comparison. How many new homes does AT&T plan to deploy fixed LTE to without the transaction? How are these plans affected by the availability of spectrum? Without this information the FCC has no way to verify the 13 million claim,[27] and without a way to verify and enforce a merger commitment, the FCC cannot recognize it.

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[27] Which should be discounted by the 15% of this deployment which is expected to be in AT&T's wireline footprint, because of lingering issues about the IP transition and the adequacy of wireless service as a substitute for wireline service, discussed above.

In the wireless context, the FCC has extra reason to be skeptical of AT&T's claims. First, adding fixed LTE to an existing LTE deployment is a marginal investment compared with true broadband buildout. In its public interest statement, AT&T is no more specific than claiming that these upgrades require "upfront investments."[28] Second, in its attempted takeover of T-Mobile, AT&T specifically committed to cover 250 million Americans with LTE by the end of 2013, 'as a result' of that transaction.[29] Yet AT&T not only met but exceeded that target even though that merger was blocked.[30] The FCC should therefore discount the claims here that this transaction will result in additional wireless upgrades, unless it is satisfied that any promised deployment is verifiable, enforceable, and would not have happened but for this transaction, under an economic model that takes into account AT&T's post-T-Mobile deployment history.

VI. Conclusion

For the above reasons, the FCC should take steps to alleviate the public interest harms this merger would cause and if necessary, block it

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[28] Stankey Declaration at ¶ 40.

[29] Letter to Marlene H. Dortch from AT&T, Notice of Ex Parte Presentation: In re Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Dkt No. 11--65 (Aug. 8, 2011), http://apps.fcc.gov/ecfs/document/view?id=7021701223

[30] AT&T, More Than 270 Million People Now Covered by the Nation's Most Reliable 4G LTE Network (Jan. 6, 2014), http://www.att.com/gen/press--room?pid=25187&cdvn=news&newsarticleid=37370&mapcode=consumer|mk--att--wireless--networks.

Respectfully submitted,

/s John Bergmayer
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/s Christopher Mitchell
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September 16, 2014

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DECLARATION OF JOHN BERGMAYER

I, John Bergmayer, declare under penalty of perjury that:

1. I have read the foregoing "Petition to Deny of Public Knowledge."

2. I am a Senior Staff Attorney at Public Knowledge (PK), an advocacy organization with members, including AT&T and DirecTV subscribers, who, in my best knowledge and belief, will be adversely affected if the Commission approves the merger.

3. PK members subscribe to AT&T and DirecTV broadband, television, telephone, and wireless services. They use Internet connectivity services to access online video and other edge services. PK and some of its members are video content creators.

4. In my best knowledge and belief, some of PK's members will be directly and adversely affected if the Commission allows the proposed merger of AT&T and DirecTV to proceed. They will face higher prices and reduced choice for video content.

5. The allegations of fact contained in the Petition are true to the best of my personal knowledge and belief.

/s John Bergmayer
Senior Staff Attorney
PUBLIC KNOWLEDGE

September 16, 2014

CERTIFICATE OF SERVICE

I, John Bergmayer, certify that today, September 16, 2014, I have served copies of this Petition to Deny on the following parties and staff via email:

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