

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

In the Matter of)		
)		
Applications of)	File Nos.	SAT-T/C-20210322-00037
V Opco LLC, AT&T Inc.,)		SAT-T/C-20210322-00038
and DIRECTV)		SES-T/C-20210322-00546
Enterprises, LLC)		SES-T/C-20210322-00547
)		
For Consent to Transfer)		
Licenses and Authorizations)		

**JOINT COMMENTS OF
THE ABC TELEVISION AFFILIATES ASSOCIATION,
CBS TELEVISION NETWORK AFFILIATES ASSOCIATION,
FBC TELEVISION AFFILIATES ASSOCIATION,
AND NBC TELEVISION AFFILIATES**

The ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (collectively, the “Affiliates Associations”)¹ hereby submit these comments in response to the Public Notices announcing the filing of the above-captioned applications (the “Applications”) to transfer control of direct broadcast satellite and other licenses used in the operation of AT&T, Inc.’s (“AT&T’s”) multichannel video programming distribution services to a new entity, “New DIRECTV.”²

¹ Each of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates is a non-profit trade association whose members consist of local television broadcast stations throughout the country that are each affiliated with its respective broadcast television network. Collectively, the Affiliates Associations represent more than 600 local television stations that are affiliated with the four major broadcast networks. The Affiliates Associations’ member stations provide local news, weather, sports, entertainment, and other valuable, highly desired video content to virtually every community in the country, whether large or small, urban or rural.

² Satellite Policy Branch Information Space Station Applications Accepted for Filing, *Public Notice*, Report No. SAT-01541, at 1-2 (rel. Apr. 2, 2021); Satellite Communications Services re: Satellite Radio Applications Accepted for Filing, *Public Notice*, Report No. SES-02353, at 23 (rel. Apr. 7, 2021).

I. INTRODUCTION

For the fourth time since 2003, DIRECTV comes before the Commission with a proposed merger that threatens to leave rural America behind and damage the essential public interest in localism in every market in the country. In its past requests for merger authority, DIRECTV and its various acquisition partners have at least given lip service to improving service in America's small and rural communities and made unfulfilled promises that could have promoted localism. This time, they don't even offer that. For example, the Applications are silent on the 12 markets where DIRECTV still fails to provide local-into local television services after years of promises that it would. Indeed, on the crucial issue of television viewers' access to local programming – the very essence of localism – the Applications are entirely silent.

The Commission has an obligation to examine the Applications and affirmatively conclude that the proposal will enhance competition, diversity, and localism across the country. The Applications give the Commission no basis for reaching that conclusion. Instead, the Applications describe a transaction that will accomplish AT&T's objectives of getting a financially struggling DIRECTV off its books and securing for DIRECTV a substantial cash infusion from TPG Capital ("TPG"). The perfunctory public interest statement filed with the Applications claims the transaction will advance the public's interest in access to competitive MVPD services by making New DIRECTV a better-managed, more profitable company. This asserted public benefit, even if true, is not enough to justify granting the Applications. The Commission should use this opportunity to require New DIRECTV to play a positive role in all of the local media markets it serves by adopting the condition requested below.

The Affiliates Associations' member stations serve every market in the country and maintain retransmission consent and other business relationships with DIRECTV. These relationships are regulated by Congress and the Commission and are a significant source of the

revenue that fuels their stations' service to the public through local news, emergency, weather, sports and entertainment programming. The Affiliates Associations and their members therefore have a vested interest in ensuring that New DIRECTV plays a positive role in local television markets, as Congress intended and as required by its licenses. The Affiliates Associations urge the Commission to take this opportunity to ensure that New DIRECTV does a better job of safeguarding and promoting localism than the old DIRECTV did.

The Affiliates Associations propose that the Commission condition approval of this transaction on a requirement that New DIRECTV play its appropriate role in all local communities – regardless of the incentives it may have to focus on high value markets. Specifically, the Affiliates Associations ask the Commission to require that New DIRECTV provide local-into-local television service to all Americans, a promise that DIRECTV has repeatedly made to rural America and repeatedly broken. Currently, DIRECTV does not offer local-into-local service in 12 of the nation's 210 Nielsen Designated Market Areas (“DMAs”). DIRECTV offers viewers in these small, overwhelmingly rural markets no opportunity to view local broadcast news and informational programming. Moreover, DIRECTV deprives television stations in these markets of crucial retransmission consent revenues that would be used to fund local programming. In this time of global pandemic and civil upheaval, localism and the critical local services that television stations provide have never been more important. It is time for DIRECTV to step up and support the local communities it serves. The Commission should eliminate this vicious circle by requiring New DIRECTV to do what every other MVPD does – provide local broadcast television signals in all markets where it operates.

That requirement would remedy harms created by the proposed transaction. AT&T's proposes to remove DIRECTV from the control structure of AT&T, Inc., a company with a

substantial employment and facilities presence in many markets across the country, and create a standalone New DIRECTV, which will have no such presence in or commitment to individual local television markets. While the old DIRECTV at least had to concern itself with how its decisions reflected on AT&T's other products in numerous markets where AT&T has wireline and wireless telephone operations and customers, New DIRECTV will be free of those concerns. This will reduce New DIRECTV's incentive to serve local communities, particularly the small rural markets that DIRECTV has historically neglected. The narrowly tailored conditions advocated herein will remedy New DIRECTV's augmented incentives to continue neglecting rural America and localism more generally.

II. THE COMMISSION SHOULD REQUIRE NEW DIRECTV TO INTRODUCE UNIVERSAL LOCAL-INTO-LOCAL TELEVISION SERVICE.

Requiring New DIRECTV to provide local-into-local service in all 210 DMAs will ensure that the proposed transaction furthers the Commission's essential goal of fostering and promoting localism. Currently, DIRECTV fails to provide local-into-local service to more than half a million television households in the following 12 DMAs:

DMA Name	DMA Rank	TV Households
Bowling Green, Kentucky	179	87,660
Grand Junction-Montrose, Colorado	187	74,740
Cheyenne, WY-Scottsbluff, NE	195	60,470
San Angelo, Texas	197	58,000
Casper-Riverton, Wyoming	198	55,770
Ottumwa, IA - Kirksville, MO	200	46,870
Victoria, Texas	204	33,490
Helena, Montana	205	31,090
Presque Isle, Maine	206	27,140
Alpena, Michigan	208	16,450
North Platte, Nebraska	209	14,630
Glendive, Montana	210	3,900
Total		510,210

Over the years, DIRECTV has provided several excuses for why it refuses to provide local television signals to these Americans. In 2003, the excuse was that there wasn't enough satellite capacity for launching local-into-local nationwide.³ DIRECTV told the Commission then that the Hughes/NewsCorp merger would solve that problem, promising that by 2008 sufficient satellite capacity would ensure local service throughout the country.⁴ In the 2007 proceeding considering the sale of DIRECTV to Liberty Media, DIRECTV's excuse for not extending local-into-local service to all markets was that it was focused on completing the DTV transition and extending HD service to the larger markets it already served.⁵ To gain FCC approval without a local-into-local condition, DIRECTV and Liberty Media also reiterated their intention to bring local service to all 210 DMAs by the end of 2008.⁶ Of course, that didn't happen. Fourteen years later, the DTV transition is long over, HD service is universally available, and yet DIRECTV still hasn't extended local service to 12 rural markets. Finally, in 2015, DIRECTV simply recycled its 2003 claims about limited and expensive satellite capacity precluding nationwide local-into-local service, and the Commission uncritically accepted those claims.⁷

The time for excuses is over. It's now time for the Commission to act to safeguard localism and promote the availability of local news, information, and emergency programming for all Americans. In previous cases, the Commission has concluded that DIRECTV's ongoing

³ General Motors Corp., *et al.*, and News Corp. Ltd., *Memorandum Opinion and Order*, 19 FCC Rcd 473, 616 para. 332 (2003) (“*Hughes/NewsCorp*”).

⁴ *See id.*

⁵ News Corp, *et al.*, and Liberty Media Corp., *Memorandum Opinion and Order*, 23 FCC Rcd 3265, 3327-28, 3329 (paras. 132, 135) (2008) (“*NewsCorp/Liberty Media*”).

⁶ *See id.* at 3330 (para. 137).

⁷ AT&T, Inc. and DIRECTV, *Memorandum Opinion and Order*, 30 FCC Rcd 9131, 9226-27 (paras. 245-48) (2015) (“*AT&T/DIRECTV*”); *see also* Joint Opposition of AT&T Inc. and DIRECTV to Petitions to Deny and Condition and Reply to Comments, MB Docket No. 14-90 at 65-66 (filed Oct. 16, 2014) (“*Joint Opposition*”).

refusal to serve large portions of rural America was irremediable because it was not a “transaction-specific harm.”⁸ The Affiliates Associations believe those cases were wrongly decided. In *Hughes/NewsCorp*, the Commission made clear that DIRECTV’s willingness to extend local-into-local service to new markets is a key part of the analysis of any DIRECTV-related transaction, stating that

[t]he Commission has long recognized the importance of local broadcast television and its contribution to the Commission's goal of fostering localism in media. To the extent that the transaction results in an increase in the amount of DBS-provided local-into-local service and/or the number of HDTV channels offered to subscribers, this should increase competition in MVPD markets and should benefit consumers through increased choice, lower prices, or both. In addition, we find that increasing the number of DMAs in which DirecTV subscribers can receive local broadcast television stations furthers the Commission's goal of promoting localism.⁹

For this reason, DIRECTV’s ongoing choices with respect to local service are always “transaction-specific.” But even if they were not, this transaction is different from the *NewsCorp/Liberty* and *AT&T/DIRECTV* cases in several important respects, and the requested condition is clearly warranted here.

First, in the *Hughes/NewsCorp*, *NewsCorp/Liberty Media*, and *AT&T* cases, control of DIRECTV was being transferred to a major media conglomerate that could claim significant contributions to local economies and media environments. That is not the case here. Unlike the transaction folding DIRECTV into AT&T, which has infrastructure, employees, and deep economic ties in local markets across the country, New DIRECTV will be a stand-alone company with very little, if any, local presence in most of the markets it serves. Providing local-into-local service is really the only contribution that New DIRECTV will make to promoting

⁸ *NewsCorp/Liberty Media*, 23 FCC Rcd at 3330 (para. 137); *AT&T/DIRECTV*, 30 FCC Rcd at 9227.

⁹ *Hughes/NewsCorp*, 19 FCC Rcd at 616-17 (para. 333).

prosperous local communities and vibrant local information ecosystems. As we've learned in the past year of global pandemic, civil strife, and political mayhem, the availability of reliable local information is more important than it has ever been.¹⁰ And more people trust and depend on local television stations to deliver local news and information than any other source.¹¹ Local news, weather, emergency, and information programming is every bit as important to television viewers in Ottumwa, Iowa and Glendive, Montana as it is in New York City or Washington – perhaps even more important. The requested condition would do no more than require New DIRECTV to make a small contribution to localism in every market it serves. That should be the bare minimum required for Commission approval of the Applications.

Second, in past cases, the Commission has presumed that the market would provide DIRECTV with any necessary incentives to provide local-into-local service in all 210 DMAs.¹² Further the Commission concluded in each case that the transaction at issue did not alter or reduce those incentives.¹³ Neither of those premises can be sustained in this transaction. Eighteen years after DIRECTV first started making excuses for refusing to provide local service to large parts of the country, it is clear that DIRECTV will never view market incentives as

¹⁰ See, e.g., Pew Research Center, Local News Is Playing an Important Role for Americans During COVID-19 Outbreak (July 2, 2020), *available at* <https://www.pewresearch.org/fact-tank/2020/07/02/local-news-is-playing-an-important-role-for-americans-during-covid-19-outbreak/>.

¹¹ *New Dynata Study Finds that Broadcast TV Is Most Trusted News Source Among All Adults, Irrespective of Age*, TVB Local Media Marketing Solutions Press Release, *available at* [https://www.globenewswire.com/news-release/2020/04/16/2017543/0/en/More-Americans-Turn-to-Local-TV-News-During-Global-Pandemic.html#:~:text=Four%20out%20of%20five%20U.S.,CNN%2C%20Fox%20News%20and%20MSNBC;AnnetteBrady,LocalNewsIs\(Still\)TheMostTrustedSourceForU.S.Adults,July23,2019,availableathttps://civicscience.com/local-news-is-still-the-most-trusted-source-for-u-s-adults/](https://www.globenewswire.com/news-release/2020/04/16/2017543/0/en/More-Americans-Turn-to-Local-TV-News-During-Global-Pandemic.html#:~:text=Four%20out%20of%20five%20U.S.,CNN%2C%20Fox%20News%20and%20MSNBC;AnnetteBrady,LocalNewsIs(Still)TheMostTrustedSourceForU.S.Adults,July23,2019,availableathttps://civicscience.com/local-news-is-still-the-most-trusted-source-for-u-s-adults/).

¹² *AT&T/DIRECTV*, 30 FCC Rcd at 9227 (para. 248); *Newscorp/Liberty Media*, 23 FCC Rcd at 3330 (para. 137).

¹³ *See id.*

sufficient to launch local-into-local service in all 210 DMAs. We know this because every other MVPD that competes with DIRECTV provides universal local television broadcast service to their subscribers, including fellow DBS provider DISH Network. If that isn't enough of a market incentive, then the market won't provide one. All agree that free markets work best to provide consumers with the highest quality service at the lowest price, and Congress in the 1996 Act directed the Commission to foster, encourage, and keep its hands off those markets.¹⁴ But here, the Commission has done all it can over two decades to let the market do its magic – and the market has failed to deliver local television service for DIRECTV customers in 12 rural markets. The proper response to this result is not to shrug and say that this transaction won't change New DIRECTV's incentives to offer local service in these markets. Instead, the Commission should act to ensure that New DIRECTV is not permitted to continue leaving these markets behind.

Third, DIRECTV's claims about insufficient satellite capacity are simply not credible anymore. DIRECTV's only DBS competitor, DISH Network, has provided local-into-local service in all 210 DMAs for more than 10 years.¹⁵ DIRECTV has had nearly 20 years to configure its satellites to provide service to its neglected markets. In *AT&T/DIRECTV*, the Commission essentially took DIRECTV's word for the claim of insufficient capacity, requiring no particular showing on that point.¹⁶ At this point, if DIRECTV wants to maintain this

¹⁴ See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (“An Act to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies”).

¹⁵ See DISH Network to Become First Pay-TV Provider to Offer Local Broadcast Channels in All 210 Local Television Markets in the United States, Press Release, May 27, 2010, available at <https://about.dish.com/news-releases?item=122889>.

¹⁶ *AT&T/DIRECTV*, 30 FCC Rcd at 9226-27 (paras. 245-48); see also Joint Opposition at 65-66.

argument, at a minimum the Commission should require a detailed technical showing for why it remains true. The great likelihood is that DIRECTV's claims cannot be substantiated.

Fourth, the meager public interest statement accompanying the Applications provides no evidence that this transaction will even maintain the *status quo* with respect to localism, let alone enhance it. The word "localism" doesn't appear in the public interest statement a single time. Instead, the statement consists of platitudes about how TPG will provide money and expertise necessary to improve "core" services and improve the company's broadband linear OTT video service.¹⁷ Since DIRECTV has never even provided local service in the 12 neglected DMAs, there is no reason to assume that TPG will consider adding local service to the "core" of DIRECTV's business. While improving AT&T TV Now might appeal to DIRECTV's owners as a new revenue opportunity, such improvement won't mean much to most of the residents of DIRECTV's 12 neglected DMAs, because these are the very areas where the broadband facilities needed to deliver high-quality online video services are least readily and reliably available.¹⁸ Unlike DIRECTV's past transactions, there is absolutely no reason for the Commission to conclude that DIRECTV will focus on local service absent a Commission requirement.

For these reasons, requiring DIRECTV to provide universal local-into-local service would be a clear-cut public policy victory and a necessary condition for a transaction that otherwise provides no localism benefits at all. The Affiliates Associations strongly urge the

¹⁷ See Applications, Public Interest Showing at 7-10.

¹⁸ While the FCC has made heroic efforts to shrink the digital divide, the gap remains real and persistent. See, e.g., Rural Digital Opportunity Fund, *Report and Order*, 35 FCC Rcd 686 (2020). These efforts, however, will take years to complete, whereas a requirement that DIRECTV provide universal local-into-local service would lead to enhanced consumer access to local television service in a very short time period.

Commission to take this step to ensure that all Americans have access to their trusted local television stations, including viewers in the markets DIRECTV has chosen to ignore.

IV. CONCLUSION

For the foregoing reasons, the Affiliates Associations urge the Commission to condition its approval of the Applications on New DIRECTV finally making good on its commitment to provide local-into-local television service to all 210 Nielsen DMAs.

Respectfully submitted,

/s/
John Feore
Jason Rademacher

Cooley LLP
1299 Pennsylvania Avenue, N.W. Suite 700
Washington, D.C. 20004
Telephone: (202) 842-7800

*Counsel for the CBS Television Network
Affiliates Association and the FBC Television
Affiliates Association*

/s/
Mark J. Prak
David Kushner
Julia Ambrose
Timothy Nelson

Brooks, Pierce, McLendon, Humphrey &
Leonard, L.L.P.
Wells Fargo Capitol Center, Suite 1700
Raleigh, N.C. 27601
Telephone: (919) 839-0300

*Counsel for the ABC Television Affiliates
Association and the NBC Television
Affiliates*

May 3, 2021

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2021, I caused a copy of the foregoing Joint Comments of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates was filed with the Commission through the IBFS filing portal with respect to the captioned dockets.

A copy of the foregoing Joint Comments was also served on V OpCo LLC by hand delivery and by electronic mail at the following addresses:

V OpCo LLC
Attention: Brian M. Regan
1120 20th Street, NW
Suite 1000
Washington, DC 20036

br363m@att.com

A copy of the foregoing Joint Comments was also served on DIRECTV Enterprises, LLC by overnight mail and electronic mail at the following address:

DIRECTV Enterprises, LLC
Attention: Steve Dulac
2230 E. Imperial Hwy.
El Segundo, CA 90245

sd746n@att.com

A Copy of the foregoing Joint Comments was also served on the following Commissioners and Commission staff by electronic mail:

The Honorable Jessica Rosenworcel: jessica.rosenworcel@fcc.gov
The Honorable Brendan Carr: brendan.carr@fcc.gov
The Honorable Geoffrey Starks: geoffrey.starks@fcc.gov
The Honorable Nathan Simington: nathan.simington@fcc.gov
Travis Litman: travis.litman@fcc.gov
Holly Saurer: holly.saurer@fcc.gov
Benjamin Arden: benjamin.arden@fcc.gov
Daine G. Holland: diane.holland@fcc.gov
Adam Cassady: adam.cassady@fcc.gov

/s/
Jason E. Rademacher
Cooley LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004