

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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
)		ULS File No. 0009450204
For Consent to Transfer)		
Licenses and Authorizations)		

COMMENTS OF RURAL MEDIA GROUP, INC.

Rural Media Group, Inc. (“RMG”) hereby submits these comments in response to the Public Notices announcing the filing of the above-captioned applications (the “Applications”) to transfer control of space station, earth station, and private land mobile radio licenses used in connection with AT&T, Inc.’s (“AT&T’s”) multichannel video programming distribution (“MVPD”) businesses, to a new entity, provisionally referred to in the Applications as “New DIRECTV.”¹

RMG encourages the FCC to condition grant of these applications on the basic requirement that AT&T and DIRECTV honor their commitment to protect agricultural news and rural content² by (1) prohibiting New DIRECTV from dropping rural content from its post-transaction programming lineup, and protecting this commitment through commonsense pro-competitive

¹ *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. SES02353, at 23 (rel. Apr. 7, 2021).

² See *The AT&T/DIRECTV Merger: The Impact on Competition and Consumers in the Video Market and Beyond*, Hearing Before the S. Subcomm. on Antitrust Competition Pol’y & Consumer Rights, 113th Cong. 29 (June 24, 2014), <https://bit.ly/3f0ZUVn> (“AT&T/DIRECTV Merger Hearing”).

conditions; and (2) requiring New DIRECTV to use at least 1% of its channel lineup for programming focused on the needs and interests of rural America.

ABOUT RURAL MEDIA GROUP

RMG's flagship network, RFD-TV, is the nation's first 24-hour television network featuring programming focused on agricultural news and rural content, including agribusiness, equine, rural lifestyle, western sports, music, and family-friendly entertainment. This is unique programming, including news programming focused on rural America, that RFD-TV viewers cannot find anywhere else. With its investment in rural and agribusiness news in particular, RFD-TV has become the news and information programming channel representing rural America. The Cowboy Channel, RFD-TV's sister station, is one of the nation's main sources of Western sports and rodeo events.

DISCUSSION

RMG echoes other commenters' concerns that the proposed merger "threatens to leave rural America behind."³ RMG urges the Commission to hold the Applicants to their word that their resulting video programming offerings will continue to serve and represent the interests of their millions of subscribers, including rural viewers.

I. RECENT MVPD MERGERS HAVE LED TO DECREASED PROGRAMMING FOR RURAL VIEWERS.

As if by design, intense media consolidation over the past decade has consistently led to a loss of meaningful and relevant programming for rural viewers, and AT&T's recent track record has only contributed to this.

³ Joint Comments of The ABC Television Affiliates Association, *et al.*, at 2 (filed May 3, 2021) ("*Joint Affiliates Comments*").

A. AT&T's History of Broken Promises and Dropping Popular Rural Programming Should Serve as a Warning of Things to Come.

Seen in the context of the Applicants' past "unfulfilled promises"⁴ to improve service to rural communities, the Applicants' failure to explain in the Applications how they will protect rural programming is a clear signal that they will repeat their history of broken promises and mistreatment of rural subscribers.

In 2014, in the leadup to the AT&T-DIRECTV merger, then-AT&T president, chairman, and CEO Randall Stephenson, and then-DIRECTV president, chairman, and CEO Michael White were pressed by the members of a Senate subcommittee on whether the companies were "still committed to rural America[.]"⁵ Despite unambiguous assurances that they would carry meaningful rural content,⁶ immediately following the merger, AT&T removed RFD-TV from its basic package on DIRECTV NOW and moved it to a higher tier, making it more expensive for subscribers to receive their only source of agricultural news and rural content. At nearly the same time, AT&T terminated its DIRECTV rural satellite dealer network.

Since then, AT&T and DIRECTV have placed The Cowboy Channel on its highest-priced tier on each of their respective systems. To add insult to injury, even if a customer subscribes to this pricey tier, The Cowboy Channel is the only network not offered in HD on U-Verse and DIRECTV. AT&T NOW does not offer The Cowboy Channel at all, much less in HD.

⁴ *Id.*

⁵ *AT&T/DIRECTV Merger Hearing*" at 29 (statement of Sen. Amy Klobuchar, Chairperson, S. Subcomm. on Antitrust Competition Pol'y & Consumer Rights).

⁶ *See, e.g., id.* (statement of Michael White) ("But rural America is very important to us. The satellite has unique advantages in rural areas where we are not competing with fiber to the home We pay a lot of attention to what our rural subscribers are interested in We have over 150 independent networks that we carry on DIRECTV. We think the diversity of that content is important to our customers, and we intend to continue to actively support those rural areas."). *See also Applications of AT&T Inc. and DIRECTV For Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 9131 ¶ 233 (2015).

If past is prologue, the FCC and the viewing public should be highly skeptical of any guarantees from AT&T or DIRECTV pertaining to the continuity of programming for rural viewers, and should therefore demand reassurances up front.

B. Recent MVPD Mergers Has Proven Costly for Rural Viewers.

Other recent MVPD consolidation has magnified AT&T's shortcomings in serving the rural market. For example, since Comcast's merger with NBCUniversal in 2011, RFD-TV has received no major launches on Comcast systems. A few years later, in the midst of Verizon's sale to Frontier of its FiOS assets in California, Florida, and Texas, Verizon dropped RFD-TV in the markets subject to the deal prior to closure. Further, even if a MVPD technically carries independent programming like RFD-TV, other obstacles, such as service bundling, unfavorable tiering, and insurmountable most favored nation ("MFN") provisions have all led to lower viewership despite high demand in the heartland.

II. COMMISSION PRECEDENT AND THE COMMUNICATIONS ACT COMPEL THE FCC TO IMPOSE CONDITIONS TO PROTECT RURAL VIEWERS.

In its review of the Applications, the FCC not only has the opportunity, but the statutory duty⁷ to protect the interests of rural TV viewers. As has been abundantly clear over the past several years, the nation is badly and bitterly polarized between red and blue, rural and urban. While there are several contributing factors, an important disconnect is the communication divide. For rural communities, particularly those without robust broadband access, this comes in the form of a lack of relevant news, information, and lifestyle programming on cable and satellite. The refusal to carry agricultural news and rural content is a collective and intentional decision of the behemoth urban-based MVPDs.

⁷ See 47 U.S.C. § 310(d) (conditioning grant of a transfer of control application on the Commission's finding that the grant would serve the "public interest, convenience, and necessity").

To guard against a circumstance where viewers with already-limited access to communications services would have existing programming cut out from under them, the FCC should consider recent precedent. For example, in its 2016 review of the Time Warner Cable/Charter merger, the FCC conditioned its approval on, among other things, prohibiting the new entity for seven years from entering into or enforcing contractual terms that penalized or altogether prevented programmers from distributing content over the Internet.⁸ A few years prior, the FCC's approval of the NBC/Comcast merger included commitments from the MVPD to make new independent cable channels available on its D1 tier, along with other promises to carry programming responsive to the needs of underserved viewers.⁹

The Commission can therefore rely on both statutory authority and precedent to set reasonable conditions on its grant of the Applications.

III. GRANT OF THE APPLICATIONS SHOULD BE CONDITIONED ON THE TERMS OF THE APPLICANTS' OWN PROMISES, AND GUARANTEED BY COMMONSENSE PROTECTIONS.

The FCC has an important opportunity to protect the public interest by requiring AT&T to live up to the promises in its Applications by retaining the programmers of agricultural news and rural content that currently serve its millions of viewers. Due to the varying penetration levels of different cable and satellite programming tiers, this guarantee should also mean keeping such programmers on their current tier or better, rather than relegating them to a tier with lower penetration directly following the transaction.

⁸ See *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 31 FCC Rcd 6327 ¶ 459 (2016) (“*Charter/TWC Merger Order*”).

⁹ See *Applications for Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees*, 26 FCC Rcd 4238 ¶ 188 (2011) (“*NBC/Comcast Merger Order*”).

A. ‘Keeping Existing Video Service’ Should Mean Exactly That.

Just like the promise they made to a Senate subcommittee and to the FCC prior to their merger regarding rural content, AT&T and DIRECTV once again promise in their Public Interest Statement that, post-transaction, their viewers will “keep their existing video service and will receive the same services and channel lineups that they subscribe to today.”¹⁰ The FCC should hold the Applicants to their word by conditioning grant on their promises, for rural programming.

B. Prohibiting Unconditional MFNs and Unreasonable ADMs is Necessary to Keep Agricultural News and Rural Content.

The Applicants’ promise to “keep their existing video service” would effectively ring hollow without further conditions that would protect rural content providers during carriage negotiations. Therefore, for at least five years following the transaction, an AT&T-affiliated MVPD should be prohibited from including (a) unconditional MFN provisions, or (b) unreasonable alternative distribution method (“ADM”) provisions in its carriage agreement with a rural content programming vendor.¹¹

These commonsense protections for viewers of agricultural news and rural content are rooted in the FCC’s *Promoting the Availability of Diverse and Independent Sources of Video Programming* proceeding, in which the Commission noted: “[C]ertain participants in the video

¹⁰ Applications, Exhibit A at 9.

¹¹ For the purposes of these Comments, RMG adopts the FCC’s proposed definition of an unconditional MFN provision as “a provision that entitles an MVPD to contractual rights or benefits that an independent video programming vendor has offered or granted to another video programming distributor, without obligating the MVPD to accept any terms and conditions that are integrally related, logically linked, or directly tied to the grant of such rights or benefits in the other video programming distributor’s agreement, and with which the MVPD can reasonably comply technologically and legally.” *Promoting the Availability of Diverse and Independent Sources of Video Programming*, Notice of Proposed Rulemaking, 31 FCC Rcd 11352 ¶ 18 (2016) (“*Independent Programming NPRM*”). For the purposes of these Comments, RMG adopts the FCC’s proposed definition of an unreasonable ADM provision as one that has “no discernibly pro-competitive justifications and [has] an adverse impact on the provision of diverse programming sources to consumers.” *Id.* ¶ 23.

marketplace, particularly independent content producers and [online video distributors], are facing significant challenges.”¹² Summarizing the record before it, the Commission highlighted that “two of the principal tools used by MVPDs that impede competition and consumers’ access ... are MFN and ADM provisions.”¹³ As a result, certain MVPDs are able to leverage their bargaining power against the smaller programmers serving rural America, including farmers, and ranchers to exact “unconditional MFN clauses and/or unreasonable ADM provisions” that hinder the ability of programmers to experiment with other distribution methods.¹⁴

i. Unconditional MFNs Hinder Rural Content Programmers’ Ability to Reach Their Underserved Audiences.

Unconditional MFNs allow MVPDs to “‘cherry pick’ provisions in an affiliation agreement between the programmer and another distributor without taking on any of the other distributor’s reciprocal obligations.”¹⁵ These provisions often require providers to offer the same terms to all distributors, effectively preventing rural content programmers from entering into deals with new distributors, and inhibiting their ability to reach new audiences.¹⁶

Due to the bargaining imbalance between MVPDs like the proposed New DIRECTV, and smaller programmers like RMG, such a provision would effectively limit the programmers to minimal-penetration tiers without the chance to expand their reach to pockets of the viewing public that would truly benefit from their content.

¹² *Id.* ¶ 6.

¹³ *Id.* ¶ 7.

¹⁴ *Id.* ¶¶ 6-7.

¹⁵ Comments of RFD-TV, at 9 (filed Jan. 26, 2017), <https://bit.ly/3xV5d1q>.

¹⁶ Reply Comments of RFD-TV, at 4 (filed Feb. 22, 2017), <https://bit.ly/2R2zFG7>.

ii. Unreasonable ADMs are Anti-Competitive and Preclude Rural Content Programmers From Distributing Outside of the MVPD's Reach.

Although Internet-based distribution is not a substitute for traditional MVPD carriage (particularly in rural areas, which are less likely to have access to consistent high-speed broadband), over-the-top distribution is still vital for programmers serving rural America to meet increasing customer demand for online video.¹⁷ Reasonable ADMs can certainly serve a pro-market and pro-consumer purpose. But, broader ADMs that prohibit programmers from distributing content online altogether are anticompetitive and distort the market in favor of the more powerful MVPD.¹⁸

This is even more pronounced in the instant case, where AT&T has a clear vested interest in the success of its own Internet-based content and services. According to the Commission, “broadband providers have incentives to interfere with and disadvantage the operation of third-party Internet-based services that compete with their own services.”¹⁹ Therefore, just as it did in the Charter/Time Warner Cable merger proceeding,²⁰ the FCC should once again prohibit unreasonable ADMs following the instant transaction.

iii. The Applicants Should Commit to Dedicating at Least 1% of their New Channel Lineup to Programming for Rural Americans.

The FCC should condition grant of the Applications on a commitment from the Applicants to make viewpoint-diverse programming available on its new channel lineup. In the NBC/Comcast merger proceeding, the FCC found that “viewpoint, program and source diversity”

¹⁷ *See id.* at 6.

¹⁸ *See id.* at 7.

¹⁹ Charter/TWC Merger Order ¶ 38 (citing *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 ¶ 140 (2015)).

²⁰ *See id.* ¶ 459.

would be promoted by, among other things, making ten new “independently owned and operated cable channels available” on Comcast’s D1 tier for eight years following closing.²¹ Here, underserved viewers in the heartland are at risk of losing important viewpoints and voices. Requiring even a mere 1% of the new lineup to serve rural America would go far to protect viewpoint diversity, and is in line with the Commission’s statutory authority and precedent.

The FCC has the authority to set these pro-consumer conditions, and has imposed similar conditions on MVPDs in the past. Now, the Commission can guard the interests of underserved rural viewers by imposing reasonable and pro-competitive conditions on the grant of the Applications.

CONCLUSION

The FCC has the opportunity to protect agricultural news and rural content and its viewers by conditioning grant of the Applications on the requirement that the Applicants truly honor their promise to legislators and the FCC to protect rural content.

Respectfully submitted,
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²¹ NBC/Comcast Merger Order at ¶ 188.