July 13, 2017

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue
Washington, DC 20530

Dear Mr. Attorney General:

The proposed merger between AT&T and Time Warner would create a media and telecommunications giant with the ability to use its assets to dominate markets, hold back competition, and harm consumers by inflating prices and impeding innovative new video services. The undersigned groups urge the Department of Justice to protect consumers from the harmful effects of this merger.

Since its acquisition of DirecTV, AT&T is now the largest pay-TV operator in the United States. With its nationwide satellite service, nationwide wireless broadband footprint, and considerable wireline territory, AT&T has the reach to serve as the internet access provider and video distributor for nearly every person in the United States. Buying Time Warner would incentivize and enable AT&T to cement its dominance and benefit itself, at the expense of pro-consumer competition in the video distribution market, by raising the cost of Time Warner programming to its rivals. It would also incentivize and enable AT&T to put onerous restrictions on programming availability, such as device or windowing restrictions, which are another way of raising the costs of its rivals.

In this context, it is pertinent to note that in 2012 the Federal Communications Commission rolled back its "program access" rules, which now only apply to regional sports networks. These rules had required pay-TV distributors who also own content to make that content available to some rival distributors. This rollback unfortunately gives AT&T a freer hand to use any newly-acquired programming to discriminate against rivals. Consumers would ultimately pay these costs, both in terms of higher bills and reduced choice.

As proposed, this merger would also give AT&T the incentive and ability to discriminate in favor of Time Warner programming on its platforms, to the detriment of independent and diverse programming. As both a major programmer and a major distributor, it would be able to use information from both sides of the negotiating table to give itself better deals than its rivals can obtain—it would necessarily know, for instance, what its programming rivals are charging for their content, and what its distribution rivals are paying.

Moreover, AT&T is not limiting its plans to traditional pay-TV services. It has launched DirecTV Now, a linear, cable-like online video service. Services such as this, unlike online video services like Netflix and Time Warner's existing HBO Now, are more direct competitors to traditional pay-TV services, in that they offer a full lineup of the most popular programming networks. This sort of over-the-top multichannel competition is welcome; but AT&T unfairly leveraging its combined assets against that competition by others would not be. As it does on traditional pay-TV platforms, acquiring Time Warner would enable and incentivize AT&T to give its own service advantages in the marketplace that it does not make available to others—for example, by delaying or denying access to content, to DVR capability, and to device availability. These sorts of restrictions, in addition to simply demanding more money for Time Warner content, would enable AT&T to raise its rivals' costs and make their products less attractive to consumers.

Acquiring Time Warner would also give AT&T an incentive to discriminate against independent programmers on its online platforms, potentially shutting off programming creators from important new avenues of distribution. Consumers—and citizens—benefit from having access to diverse voices and multiple points of view. Increased media concentration threatens those values.

Anticompetitive self-favoritism in video distribution would not stop with DirecTV Now. AT&T, already the nation's second-largest wireless provider, and a major landline ISP, would be able to give all of its own video services favorable treatment that it does not make available to its rivals, including exempting its own services from data metering or prioritizing its own service's traffic, a possibility made all the more real by the threat of the FCC's reversal of its current Open Internet Order. These discriminatory actions could allow AT&T to utterly dominate this new market, depriving consumers of choice while raising costs.

Because this merger poses such grave dangers to consumers and creators in mature and emerging markets, we urge the Department to investigate the merger thoroughly, and take whatever action is warranted, based on the evidence uncovered in your investigation, to prevent harm to competition and consumers. And if you conclude, as appears to us from the available information, that conditions and piecemeal divestitures will not be sufficient, then we hope you will challenge the merger in its entirety.

Respectfully submitted,

Alliance for Community Media
Common Cause
Consumer Action
Consumer Federation of America
Consumers Union
Courage Campaign
Free Press
Media Alliance
National Hispanic Media Coalition
Open MIC (Open Media and Information Companies Initiative)
Open Technology Institute at New America
Public Knowledge
The Utility Reform Network
The Writers Guild of America West