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Jon Wilkins
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Mr. Wilkins:

The video entertainment marketplace is ripe for disruptive change that benefits consumers, not incumbent cable companies. Consumers increasingly demand greater control over where, when, and how they watch video content, including the ability to stream their content on a computer or mobile device. In September 2016, DIRECTV launched Data Free TV to enable DIRECTV's subscribers watch DIRECTV content on their AT&T mobile devices without using any of their data allowances.

Consumers have enthusiastically embraced Data Free TV. In just the first four weeks after launch, nearly three million consumers used the service. The number of DTV Everywhere streams per month tripled as compared to one year earlier. And now, DIRECTV is poised to give consumers even more of what they want with DIRECTV Now. DIRECTV Now will offer customers the ability to stream more than 100 channels of DIRECTV content on any device from a smartphone to a 55 inch TV starting at \$35 a month with, no annual contract, no credit check, no installation charges, no set top box, and, for AT&T mobile customers, no data charges.

These initiatives are precisely the kind of pro-consumer challenges to cable that the Commission heralded in approving AT&T's acquisition of DIRECTV. Cable providers have

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built-in advantages as a result of which they still supply the majority of pay TV subscriptions and fully 85 percent of Internet connections that the Commission considers broadband. In fact, during the first three quarters of 2016, telcos lost 475,000 broadband subscribers while cable added 2.44 million.¹ DIRECTV's sponsorship of that content through Data Free TV allows DIRECTV to better compete against the cable incumbents by ensuring that its subscribers receive the mobile video experience they increasingly demand in the most consumer-friendly manner possible. Indeed, industry observers have observed that "[t]he pay-TV business finally looks like it's about to get seriously disrupted by the Internet." They have referred to DIRECTV Now as a "bombshell" and AT&T as the video "insurgent."²

In implementing these programs, AT&T and DIRECTV faithfully adhered to both the *2015 Open Internet Order* and settled Title II jurisprudence. In the *Order*, the Commission recognized that sponsored data programs can offer significant benefits to consumers and competition, including: increasing choice and lowering costs for consumers, enabling edge providers to distinguish themselves in the marketplace and tailor their services to consumer demands, and promoting the virtuous circle of innovation and investment. *Order* at ¶ 151. It acknowledged that some had argued that such arrangements could distort competition, and therefore cautioned that they should be non-discriminatory. And so, consistent with decades of Commission precedent, AT&T makes its sponsored data program available to all content providers on the same terms and conditions. In fact, AT&T went further in meeting the nondiscrimination requirement than traditional law would require by allowing content providers

¹ "AT&T, Verizon, CenturyLink and other telcos lost nearly 150K broadband subs in Q3, says LRG," Sean Buckley, *FierceTelecom*, Nov. 17, 2016.

² "Will Skinny Bundles Like AT&T's DirecTV Now Destroy Pay TV," Todd Spangler, NY Digital Editor, *Variety*, Nov. 15, 2016.

to specify how much data they want to sponsor, and charging them the same low per gigabyte rate regardless whether they are big or small or how much data they purchase. Meanwhile, others offer their own versions of free video streaming outside the *Open Internet* framework and without opening their services at all to third party providers of video services.

It thus is perplexing that the Wireless Bureau would raise “serious concerns” about AT&T’s – and only AT&T’s - sponsored data program. As discussed in more detail in the attached white paper, this suggestion flies in the face of well-settled competition law principles and decades of communications law precedent. In fact, since as far back as the *Computer II* regime, the Commission has allowed telecommunications carriers to provide inputs to affiliated entities so long as they offer to sell the same inputs to unaffiliated entities on the same terms, as AT&T does here.³ Any contrary position would upend decades of commercial arrangements between telecommunications carriers and their vertically integrated affiliates, as discussed in the Legal Analysis.

Such a radical departure from established law could only be attempted in a rulemaking proceeding after notice and comment. It is well beyond the authority of any Bureau since delegated authority does not extend to matters “present[ing] new or novel questions of law or policy which cannot be resolved under outstanding Commission precedents and guidelines.”⁴

Finally, I wish to correct two misconceptions reflected in the Bureau letter. First, the suggestion that AT&T incurs no real costs when making its mobile network available for Data Free TV, whereas “an unaffiliated provider’s Sponsored Data payment to AT&T Mobility is a

³ *Open Internet Order* ¶ 311 (summarizing and endorsing *Computer Inquiries* “unbundling” rule).

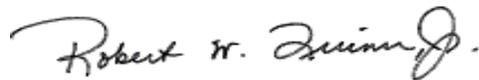
⁴ 47 C.F.R. § 0.331.

true cash cost,”⁵ is flatly incorrect. Data Free TV is certainly not free to AT&T. As more and more consumers discover the benefits of that service, AT&T will see escalating usage on its mobile network, where video already accounts for a clear majority of traffic. AT&T will need to respond to those new usage demands by making capital-intensive investments, which will add to the billions AT&T has already spent to keep up with skyrocketing mobile video usage.

Second, the suggestion that Data Free TV creates “significant disadvantages” for online video distributors who wish to reach AT&T’s wireless subscribers is likewise off-base. Any unaffiliated content provider can participate in AT&T’s Sponsored Data program on the same terms and at the same rate as DIRECTV, and the sponsored data rate is as low as the market based rates AT&T currently offers even to wireless resellers who commit to significant purchase volumes.

I am confident the attached analysis will adequately alleviate the concerns you outlined in your November 9th letter. We are extremely bullish on the pro-consumer benefits of sponsored data. Please do not hesitate to contact me if you have any further questions.

Sincerely,

A handwritten signature in cursive script that reads "Robert W. Quinn".

⁵ Bureau Letter at 2.