

Lawsuit: AT&T's DirecTV Now is a flop and AT&T lied to investors about it

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AT&T lied to investors in order to hide the failure of its DirecTV Now streaming TV service, a proposed class action alleges.

AT&T told investors that DirecTV Now was succeeding even as its subscriber base fell due to price increases and the discontinuance of promotional discounts, said the complaint filed Monday in US District Court for the Southern District of New York. The complaint accuses AT&T and executives including CEO Randall Stephenson of violating the US Securities Act by “knowingly or recklessly” making false statements to investors and failing to disclose problems that were affecting DirecTV Now sales.

Via quarterly and annual reports, SEC filings, press releases, and other statements and documents, AT&T and its executives made statements “to securities analysts and the media that were designed to influence the market for AT&T securities,” even though these statements “were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about AT&T’s finances

and business prospects,” the complaint said.

In June 2018, when AT&T bought Time Warner Inc., Time Warner shareholders’ stock was converted into AT&T stock. AT&T issued the shares pursuant to a registration statement that it had previously filed with the SEC, and this registration statement “touted false and misleading financial results, trends, and metrics and omitted material facts rendering those financial results, trends, and metrics materially misleading,” the complaint said. The registration statement consisted of documents filed between November 2016 and January 2017.

“Defendants conducted the acquisition with the registration statement containing untrue statements of material fact and omitting material facts both required by governing regulations and necessary to make the statements made not misleading,” the complaint said.

DirecTV Now is the online-only version of DirecTV, delivered without a satellite hookup. AT&T had 1.6 million DirecTV Now subscribers as of December 31, 2018 after losing 267,000 subscribers in the fourth quarter, an AT&T earnings report said. AT&T said that many subscribers on heavily discounted plans didn’t keep the service when they had to pay full price.

For the full year of 2018, DirecTV Now gained 436,000 subscribers but the satellite version of DirecTV lost 1.2 million subscribers, according to Leichtman Research Group.

Risks must be disclosed

AT&T’s registration statement “touted yearly and quarterly growth trends... including quarterly subscriber gains in its DirecTV Now service sufficient to offset any decrease in traditional satellite DirecTV subscribers, such that AT&T was experiencing an ongoing trend of total video subscriber ‘net additions,’” the complaint said.

But in reality, "DirecTV Now subscribers were leaving (*i.e.*, not renewing) as soon as their promotional discount periods expired, while at the same time new potential DirecTV Now customers were unwilling to pay the higher prices and therefore not subscribing at all," the complaint said. By the time AT&T bought Time Warner, "AT&T's reported 'net additions' growth trend was already reversing into a severe 'net loss.'"

Publicly traded companies are required to inform investors of risks. But the AT&T registration statement "purported to warn of numerous risks that 'if' occurring 'may' or 'could' adversely affect the company while failing to disclose that these 'risks' had already materialized at the time of the acquisition," the complaint said.

Under US law, AT&T was required to disclose "known events or uncertainties that had caused or were reasonably likely to cause AT&T's disclosed financial information not to be indicative of future operating results," the complaint said. "AT&T's undisclosed price increases and discontinuance of promotional discounts for DirecTV Now subscribers, the consequent DirecTV Now subscriber losses, and the already occurring reversal of its touted 'net additions' total subscriber growth trend were likely to (and in fact did) materially and adversely affect AT&T's future results and prospects."

AT&T's discussion of risk factors in the registration statement "did not even mention, much less adequately describe, the risk posed by AT&T's price increases and discontinuance of promotional discounts for DirecTV Now subscribers, nor the consequent DirecTV Now subscriber losses," the complaint said.

AT&T publicly revealed DirecTV Now's problems on October 24, 2018 when it reported third-quarter earnings. The complaint said:

*Traditional DirecTV satellite subscriber losses **jumped over 25%** from 286,000 to 359,000 quarterly. Meanwhile, DirecTV Now subscribers **plummeted over 85%** from 342,000 down to 49,000 quarterly. These dramatically diminished DirecTV Now subscriber gains were nowhere close to offsetting the dramatically increased traditional satellite subscriber losses. As a result, Defendant AT&T's 80,000 total video subscriber "Net Video Additions" had reversed into a 297,000 total subscriber "Net Loss."*

Negative media coverage about DirecTV Now's performance followed, and AT&T's stock price dropped nearly 12 percent, the complaint said.

Class certification

The complaint seeks certification of a class consisting of all people who acquired AT&T common stock in connection with the Time Warner acquisition, and all people who acquired AT&T stock between October 22, 2016 and October 24, 2018.

A man named Melvin Gross is the lead plaintiff, and the suit was filed by the Pomerantz LLP law firm, which announced its investigation into AT&T in February. Separately, the Klein Law Firm says it filed a similar lawsuit on behalf of shareholders against AT&T.

At least two other law firms are investigating similar claims against AT&T. AT&T told Cord Cutters News that the claims are "wholly without merit."

The Gross/Pomerantz complaint asks for damages "in an amount to be proven at trial, including interest," reimbursement for legal costs, and other relief.

We contacted AT&T about the lawsuit and will update this story if we get a response.

In March of this year, AT&T raised the price of DirecTV Now and reduced the number of channels customers receive. AT&T also raised DirecTV Now prices in July 2018, despite telling the government and a federal judge the merger would result in lower TV prices.

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