

# Dealmakers of the Week: Wm. Randolph Smith of Crowell & Moring and Richard Rosen of Arnold & Porter

Posted by Jennifer Henderson  
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## THE DEALMAKERS

Wm. Randolph “Randy” Smith, 63, chair of Crowell & Moring’s antitrust group, and Richard “Rich” Rosen, 65, an antitrust partner with Arnold & Porter. Both lawyers are based in Washington, D.C.

## THE CLIENT

Dallas-based telecommunications titan AT&T.

## THE DEAL

In May 2014, AT&T announced plans to purchase satellite television operator DirecTV for a whopping \$48.5 billion in cash and stock. Following a pair of highly anticipated approvals from the U.S. Department of Justice, which announced Tuesday that it would not challenge a tie-up between AT&T and DirecTV, and the Federal Communications Commission, which followed suit with a few conditions Friday, the megadeal finally closed.

## THE DETAILS

Of the deal’s success, Rosen told The Am Law Daily shortly after its completion: “[What we had was] a strong evidentiary case in favor of the deal ... we were able to demonstrate to the agencies that were skeptical that the transaction was going to benefit the public and would not harm competition.”

The combination of AT&T’s Internet services with the television offerings of its target represents an opportunity for complementary products to be better bundled for customers, added Rosen. AT&T’s video services are currently limited to regional reach, while DirecTV lacks broadband offerings altogether, AT&T noted in a filing with the U.S. Securities and Exchange Commission, along with the argument that a tie-up would yield an enhanced



*Crowell & Moring’s Wm. Randolph Smith and Arnold & Porter’s Richard Rosen*

competitor to cable operators and other entities.

Rosen said that while that an initial FCC information request may sound “modest,” it’s actually a much more “massive” undertaking, particularly when a response is required within a roughly two-week time period. He added that the most grueling legal work played out from the deal’s announcement in May through December of last year, noting that there were “spikes of activity from time to time” thereafter, often related to additional questions from regulators that needed timely and thoughtful responses.

Besides other corporate legwork, Smith said his client invested up front in a “groundbreaking economic analysis” that allowed the company and its representatives to “explain to regulators why this deal would be so positive for consumers.”

After the deal passed Justice Department inspection earlier in the week, it was widely reported that waiting for official FCC approval was merely a formality. The FCC did, however, call for several conditions the combined entity

must meet for a period of four years post-completion, one of which includes increasing Fiber to the Premises (FTTP) services to 12.5 million customers in areas where the video services of AT&T and DirecTV previously competed. According to a statement issued by the FCC Friday, this component is aimed at encouraging competition from broadband video services.

Crowell & Moring's Smith noted a "feeling of pride [in bringing] the transaction to conclusion," a sentiment he added that will be particularly poignant when he "starts to see the benefits in the real world."

As for legal roles on the deal, AT&T tapped Smith and a Crowell & Moring team to head off potential challenges from the Justice Department. The acquirer turned to Rosen and his Arnold & Porter colleagues for counsel on FCC-related matters. Both Smith and Rosen noted, however, that their teams worked closely and somewhat interchangeably on both aspects of the transaction.

In addition to Smith, the Washington, D.C.-based Crowell team included antitrust partners Jeane Thomas and Ryan Tisch. Arnold & Porter antitrust partners Maureen Jeffreys and Wilson Mudge in Washington, D.C., of Arnold & Porter, along with London-based partners Susan Hinchliffe and Michael Ryan, joined Rosen on the deal.

Akin Gump Strauss Hauer & Feld antitrust partner A. Michael Warnecke in Dallas served as lead antitrust counsel for the premerger integration planning effort at AT&T. Sullivan & Cromwell served as lead counsel to AT&T in the transaction, while Sidley Austin, Gibson, Dunn & Crutcher and Washington, D.C.-based Kellogg, Huber, Hansen, Todd, Evans & Figel also advised the acquirer on other regulatory matters.

Joe Sims and J. Bruce McDonald, two top antitrust lawyers at Jones Day inside the Beltway, handled regulatory work on behalf of El Segundo, California-based DirecTV. Weil, Gotshal & Manges served as lead deal counsel to DirecTV, and Simpson Thacher & Bartlett represented the compensation committee of the company's board of directors.

Additionally, Debevoise & Plimpton represented Lazard as financial adviser to AT&T, while Cleary Gottlieb Steen & Hamilton and Shearman & Sterling advised Goldman Sachs and Bank of America/Merrill Lynch, respectively, as financial advisers to DirecTV.

## THE BACKSTORY

Smith and Rosen are no strangers to working together, even though they hail from rival firms.

"We work as close to being one firm that you can, given our separate competitor firms," said Rosen, adding that he hopes to continue the working relationship well into the future with Smith.

Both lawyers have a history of doing big deals for AT&T. As noted last week by sibling publication the Litigation Daily, the two antitrust partners were hired by the company in 2011 to advise on its proposed \$39 billion buy of T-Mobile USA. That deal, however, ended up costing AT&T a \$4 billion breakup fee after it was abandoned in the face of regulatory opposition.

Roughly three years later, the lawyers saw themselves back at the helm of another major AT&T acquisition. Smith and Rosen declined to comment when asked whether hourly billing rates or a contingency fee applied to their work on the current deal.

Both lawyers said they didn't take a different advisory approach to their client this time around, but they acknowledged that they learn something from every deal on which they work.

Rosen noted "articulating themes in the best way possible" as one necessary component of antitrust-related work. As for AT&T after T-Mobile USA, Smith said he "gives [his client] credit for being able to take on the next deal to build the company."

The antitrust arena, after all, can prevent landmark transactions from ever closing.

Closely preceding AT&T's green light, cable giant Comcast was not so lucky. After regulators raised concern over Comcast's \$45 billion buy of Time Warner Cable, the would-be acquirer back-pedaled out of the agreement in April.

"I can honestly say there was not a time that I thought that this deal was not going to go through," said Rosen, while noting that there were many vocal opponents. "From the outset, we felt very comfortable we had the right arguments and facts to back them up."