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In a twist during closing arguments of a six-week trial, the Justice Department urged the judge in the AT&T Inc. merger case to consider “alternative” remedies if he decides not to block the planned acquisition of Time Warner Inc. outright. The move Monday came after months of legal maneuvering in the biggest antitrust case of recent years led some observers to believe AT&T and Time Warner had made headway in court with their argument that the merger won’t harm consumers.

A dramatic day of accusations and counter-accusations ended with the promise of more drama to come. U.S. District Judge Richard Leon, with a tinge of emotion in his voice, said he would announce his ruling at a hearing June 12—nine days before the companies’ merger agreement is set to expire. In an unexpected step, Justice Department attorney Craig Conrath used part of his argument time to lay out a fallback position for the government. Short of blocking the whole deal, the judge should consider forcing AT&T to make a “partial divestiture,” the lawyer said, meaning the company wouldn’t be able to retain all of Time Warner’s assets.

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Mr. Conrath said Judge Leon could allow AT&T to buy parts of Time Warner, but not the Turner networks, which are a focal point in the government's case. He also floated the possibility of other types of "structural" changes to soften the deal's impact on consumers. Before Monday, the department hadn't made such explicit fallback arguments to Judge Leon.

Mr. Conrath indicated from the lectern that both sides had been asked to address the issue of merger remedies in their post-trial court papers, in the event the judge finds that the transaction raises competition concerns. Judge Leon hasn't made such an order on the public court docket, and AT&T didn't offer such a fallback position in its closing argument. The Justice Department's suggestions were the same ones it made to AT&T during conversations before the government [filed its lawsuit in November](#). At the time, AT&T rejected the idea of making such changes to the deal, deeming them unnecessary.

On Monday, AT&T attorney Dan Petrocelli said the government's proposed alternatives were all "an effort to kill the deal." "There is only one just outcome here" and that is to approve the deal, Mr. Petrocelli told the judge. After a lengthy trial, the judge gave each side 90 minutes Monday to make their final pitch, and neither side pulled punches. Mr. Conrath accused AT&T of building a legal defense based on exaggeration and innuendo, and questioned whether some testimony from company Chief Executive Randall Stephenson could be believed.

The merger would cost consumers hundreds of millions of dollars and "have a massive impact on the structure of the pay-TV industry," Mr. Conrath said. Mr. Petrocelli in his closing presentation never mentioned President Donald Trump's opposition to the deal, but his arguments tiptoed near the company's previously stated concerns that the case had been spurred by politics, including Mr. Trump's criticisms of Time Warner's CNN.

The government's case was "manufactured" from the start and "vanished before our very eyes" because it had no evidence the deal would lead to higher prices, Mr. Petrocelli said, adding the lawsuit "should never have been brought in the first place." Judge Leon asked occasional questions throughout the trial that indicated skepticism of the government's claims, and that trend continued Monday.

Mr. Conrath during his presentation said the "critical fact" of the trial was that AT&T could use Time Warner's Turner networks, like TNT and CNN, as leverage to force rival pay-TV providers to pay higher prices for the channels. Otherwise, those rivals would face the prospect of a Turner blackout and possible customer defections to AT&T's DirecTV, Mr. Conrath said. Judge Leon interrupted the lawyer on this point and asked what evidence the government had to support it. He also suggested that "everybody threatens everybody" in contract negotiations, but a blackout "never ends up happening." The judge returned to the issue near the end of the day, asking, "Isn't it a bit of a kabuki dance?" "Well, but it does influence the outcome," Mr. Conrath said.

The Justice Department lawyer cited an array of industry witnesses, such as executives from Charter Communications Inc. and Dish

Network Corp., who had testified to concerns about AT&T having newfound power to use Turner as leverage. Those concerns, Mr. Conrath said, were supported by the government's chief economic witness, University of California, Berkeley professor Carl Shapiro, who ran an economic analysis showing the deal would lead to higher consumer prices.

The Justice Department also cited notes written by AT&T's Mr. Stephenson before a board presentation that asked how Time Warner could "advantage" AT&T's distribution business. The CEO testified earlier this month that his jotted-down bullet point was a reminder of what the deal couldn't do, not what it could do. Mr. Conrath said Monday that explanation "really kind of strains credibility." Mr. Petrocelli, the AT&T lawyer, spent much of his presentation attacking the economic calculations by Mr. Shapiro, describing the professor's model as "garbage in, garbage out." He also said Turner took the issue of blackouts "off the table" by offering to arbitrate any fee disputes with rivals. "This whole case is a house of cards," he added.

Judge Leon said his June 12 decision date would give the losing side several days to seek a stay of his ruling from an appeals court if it wishes. Both sides have had appellate lawyers in the courtroom watching the proceedings. The judge lamented not having more time for the trial and for his decision, but commended both sides for "a truly amazing achievement" in litigating the case on an accelerated timeline. – *Wall Street Journal*; [more in New York Times](#)

Senate Democrats are preparing to force a floor vote next month on restoring net neutrality rules repealed by President Donald Trump's Federal Communications Commission, creating a public clash they hope will help them in the midterm elections.

Democrats are planning to take the procedural step May 9 to compel the vote, a Senate Democratic aide told POLITICO. That could set up the vote as soon as the following week. Senate Democrats have 50 votes lined up — more than enough to force a vote under the Congressional Review Act, but one shy of the 51 required for passage. Sen. Susan Collins of Maine is the only Republican to have pledged support for the effort so far.

Even with Senate passage, the Democrats' proposal would be unlikely to get through the House or earn Trump's signature. But their plans for a floor fight would still add visibility to an issue that Senate Minority Leader Chuck Schumer has suggested will resonate with younger, internet-savvy voters. "We're in the homestretch in the fight to save net neutrality," Schumer said in a statement. "Soon, the American people will know which side their member of Congress is on: fighting for big corporations and ISPs or defending small business owners, entrepreneurs, middle-class families and every-day consumers."

The congressional resolution is the latest showdown in a decade-long fight over net neutrality, the concept that internet service providers like Comcast and Verizon should treat all internet traffic equally as it passes through their networks. The FCC has repeatedly tried to enact net neutrality rules, only to be thwarted in court or by changes of leadership at the commission.

FCC Republicans led by Chairman Ajit Pai repealed the latest, Obama-era net neutrality order in December, arguing the rules are burdensome and unnecessary to preserving an open internet. Democrats have 60 legislative days to force a vote to reverse the decision following publication of the FCC's repeal in the Federal Register on Feb. 22.

Democrats and pro-net neutrality groups have been searching for the elusive 51st vote for weeks, putting a special focus on Sen. John Kennedy (R-La.), who has said he's undecided on the issue. "We're only one vote away from securing a victory in the Senate," Sen. Ed Markey (D-Mass.), who introduced the resolution to undo the FCC repeal, told reporters Thursday. "Momentum continues to build in every corner of the country." Democrats are planning another net neutrality "day of action" to rally support on May 9, the Senate aide said. –

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