AT&T finds big-money lobbying, ads don't always pay off

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AT&T Inc. is one of the biggest corporate spenders in the nation's capital. But the rejection of its proposed $39 billion purchase of T-Mobile USA showed that money can't necessarily buy you love from antitrust officials.

Despite a multimillion-dollar lobbying and advertising campaign to win over Washington, AT&T this week abandoned the deal because of strong opposition from the Justice Department and the Federal Communications Commission.

The push back from regulators showed that Obama administration officials are following through on their vow to be tougher on large corporate acquisitions than their predecessors in the George W. Bush administration, some antitrust experts said. And that might not bode well for future deals.

"If they hadn't opposed this merger, all their promises of new merger policy would have looked pretty hollow," said Harry First, director of the Competition, Innovation and Information Law Program at New York University. "This really was a litmus test of whether they were serious or not. And they were serious."

Bert Foer, president of the American Antitrust Institute, a consumer-focused advocacy group, said the decision by Justice Department officials to sue to stop AT&T's purchase of T-Mobile was "reassurance that the cop is still on the beat."

The deal would have combined the second- and fourth-largest wireless carriers in the nation and left 75 percent of the market in the hands of the top two companies, AT&T and Verizon Communications Inc. The Justice Department said the concentration would harm competition, and it filed an antitrust suit in September to stop the deal.

"Had AT&T acquired T-Mobile, consumers in the wireless marketplace would have faced higher prices and reduced innovation," said Sharis Pozen, acting head of the Justice Department's antitrust division. "We sued to protect consumers who rely on competition in this important industry. With the parties' abandonment, we achieved that result."

Pozen took over in August for Christine Varney, who stormed into office in 2009 promising to be tougher on mergers and attempts by businesses to stifle competition. She suggested that lax antitrust enforcement during the Bush administration contributed to the Great Recession and asked, "Is 'too big to fail' a failure of antitrust?"

But in AT&T's case, its bid to buy T-Mobile might have been too big to succeed under any administration and might not indicate future deals will face the same fate, said Tad Lipsky, an antitrust partner at Latham & Watkins law firm in Washington.

"It wouldn't have shocked anyone if the merger had been challenged, even in a Republican administration," he said.

The Obama administration has blocked some other deals, including H&R Block's acquisition of the creator of TaxAct tax preparation software. But it also has approved some big deals, albeit with conditions, such as Comcast Corp.'s purchase of NBC Universal and Google Inc.'s purchase of travel data company ITA Software Inc.

"The Obama administration came into office making a lot of statements about how weak the George W. Bush administration had been on merger enforcement. The fact is they really haven't done things that much differently," Lipsky said. "They might be a little more inclined to investigate and a little more inclined to stop mergers."

The high regulatory hurdle for the AT&T deal was evident in the large breakup package AT&T had to agree to pay to T-Mobile's German parent, Deutsche Telekom AG, if regulators blocked the acquisition.

AT&T now will fork over $3 billion, along with about $1 billion worth of wireless airwave rights. In addition, AT&T and Deutsche Telekom entered into a roaming agreement.

The roaming agreement maintains a connection between the companies and could pave the way for them to take another shot at the T-Mobile deal if a Republican wins the White House next fall, said Jeffrey S. Silva, a telecommunications analyst at Medley Global Advisors.

A Republican administration would find a way to approve such a deal, probably by requiring AT&T to give up some airwaves, Silva predicted.

"There would be divestitures required ... but my sense is that this would get approved in a Republican administration," he said.

AT&T has a lot of clout in Washington. The company has spent $16 million in lobbying this year, the third-most of any single company, according to the Center for Responsive Politics, which tracks political spending.

And AT&T's employees and political action committee traditionally are among the biggest corporate contributors to political campaigns.

The public interest group Public Knowledge, which strongly opposed the

AT&T deal, recently calculated that AT&T spent $40 million in advertising from May to October to try to secure regulatory approval. In those ads, AT&T said the deal would create 55,000 to 96,000 direct and indirect new jobs and expand high-speed Internet access to 95 percent of all Americans.

"They seemed to think that political clout would get their merger through, particularly if they could wrap it in a story of increased employment and spreading services throughout the country more rapidly than would otherwise occur," Foer of the American Antitrust Institute said. "Those stories didn't sell."