

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In re Applications of	)	
	)	
QUALCOMM INCORPORATED, Transferor,	)	
	)	
and	)	WT Docket No. 11-18
	)	
AT&T MOBILITY SPECTRUM, LLC,	)	File No. 0004566825
Transferee	)	
	)	
for Consent to the Assignment of Lower 700 MHz	)	
Band Licenses	)	

**REPLY TO JOINT OPPOSITION TO MOTION TO HOLD IN ABEYANCE**

The Rural Telecommunications Group, Inc. (“RTG”), by its attorneys, hereby submits its reply to the Joint Opposition<sup>1</sup> filed by AT&T Inc. (“AT&T”) and QUALCOMM Incorporated (“Qualcomm”) in response to RTG’s Motion to Hold in Abeyance (“Motion”)<sup>2</sup> the above-captioned applications pending Federal Communications Commission (“FCC” or “Commission”) review of the applications and AT&T’s proposed takeover of T-Mobile USA, Inc. (“T-Mobile”) in a coordinated manner. In light of recent developments in U.S. District Court related to the T-Mobile transaction, RTG now requests that the Commission hold the Department of Justice (“DOJ”) and the presiding judge that it will abandon all efforts to purchase T-Mobile. However, if AT&T informs DOJ and the court that it intends to proceed with a

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<sup>1</sup> *In the Matter of Application for Assignment of Lower 700 MHz Band Licenses from Qualcomm Incorporated to AT&T Mobility Spectrum LLC, et. al.*, Joint Opposition of QUALCOMM and AT&T to RTG’s Motion to Hold in Abeyance, WT Docket No. 11-18, (filed December 2, 2011) (“Joint Opposition”).

<sup>2</sup> *In the Matter of Application for Assignment of Lower 700 MHz Band Licenses from Qualcomm Incorporated to AT&T Mobility Spectrum LLC, et. al.*, Motion to Hold in Abeyance of RTG, WT Docket No. 11-18, (filed November 30, 2011) (“Motion”).

purchase of T-Mobile, RTG continues to request that the Commission return to reviewing the two proceedings in a coordinated manner.

In their Joint Opposition, AT&T and Qualcomm are requesting that the Commission deny the Motion, in part, because “the Wireless Telecommunications Bureau has dismissed without prejudice, applications for AT&T’s acquisition of T-Mobile USA, Inc. – a transaction unrelated to this proceeding.”<sup>3</sup> AT&T hits the nail on the head, perhaps unintentionally, as to why RTG is seeking this Motion: it is *precisely because* AT&T requested that the applications in the AT&T-Deutsche Telekom AG (“DT”) transaction be dismissed *without prejudice* that RTG seeks a joint review of these two large-scale transactions. Had AT&T simply withdrawn its applications with no plans to file again, then RTG would not have pursued the Motion. In fact, if AT&T was to abandon today its quixotic pursuit of T-Mobile by announcing that the transaction is no longer viable and that it has given up pursuing the takeover, then RTG would withdraw the Motion or request that the Commission treat it as moot.

Contrary to AT&T’s assertion, the Qualcomm and T-Mobile transactions are very much “related” to each other, not just because RTG says so, but rather because the Commission itself stated that the two proposed transactions “raise a number of *related* issues.”<sup>4</sup> (emphasis added) AT&T contends that RTG’s request for a motion “makes no sense”<sup>5</sup> and is “irrational,”<sup>6</sup> but what makes no sense to RTG and numerous other parties to both this proceeding and the AT&T-DT proceeding is AT&T’s unprecedented decision to withdraw applications for a transaction it has

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<sup>3</sup> Joint Opposition at p. 1.

<sup>4</sup> Letter of Rick Kaplan, Chief, Wireless Telecommunications Bureau to Michael P. Goggin, AT&T Mobility Spectrum LLC and Dean Brenner, QUALCOMM Incorporated, Applications of AT&T Mobility Spectrum LLC and QUALCOMM Incorporated for Consent to Assign Lower 700 MHz Band Licenses, WT Docket No. 11-18 (released August 8, 2011) (“FCC Letter”).

<sup>5</sup> Joint Opposition at p. 1.

<sup>6</sup> Joint Opposition at p. 2.

spent countless millions of dollars pursuing, and seemingly still intends to pursue. If the Commission, and the various parties to the two proceedings, are in uncharted procedural waters - it is solely because AT&T is using legal and administrative gamesmanship in a last ditch effort to garner some type of favorable outcome.

AT&T next argues in its Joint Opposition that the Commission cannot grant the RTG Motion because “RTG identifies no pending application.”<sup>7</sup> While it is true there are no pending applications before the Commission for the proposed AT&T-DT transaction, the Commission and AT&T have left open the possibility of the applications being reinstated or a similar transaction being filed again.<sup>8</sup> One only has to look at AT&T’s recent public statements<sup>9</sup> and its still-pending case against the United States Department of Justice in federal court<sup>10</sup> to determine that AT&T has not yet abandoned its relentless pursuit to eliminate T-Mobile as a competitor.

On December 12, 2011, Judge Ellen S. Huvelle granted a joint motion filed by the United States Department of Justice and AT&T that would stay the entire court proceeding until January 18, 2012.<sup>11</sup> Immediately after Judge Huvelle granted the joint motion, AT&T released a statement saying it was “actively considering whether and how to revise our current transaction

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<sup>7</sup> Joint Opposition at p. 2.

<sup>8</sup> *In re Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Transfer of Control of the Licenses and Authorizations Held by T-Mobile USA, Inc. and its Subsidiaries*, Order, WT Docket No. 11-65, DA-1955 (released November 29, 2011) (“Order”) at ¶ 7. (“We hereby grant the Applicants’ request to withdraw their applications without prejudice and append to this Order a redacted Staff Analysis and Findings, described above.”).

<sup>9</sup> “AT&T Updates Status of T-Mobile USA Merger”, AT&T Press Release, December 12, 2011.

<sup>10</sup> *United States of America et. al., v. AT&T Inc. et. al.*, No. 11-01560 (ESH) (D.C. Dec. 12, 2011) (order granting temporary stay).

<sup>11</sup> *United States of America et. al., v. AT&T Inc. et. al.*, No. 11-01560 (ESH) (D.C. Dec. 12, 2011) (order granting temporary stay). (“Upon agreement of the parties, it is hereby ORDERED that this action be stayed and that all pretrial and trial deadlines established under prior Orders of the Court be vacated, including the hearing in this action previously scheduled for December 15, 2011.”)

to achieve the necessary regulatory approvals so that we can deliver the capacity enhancements and improved customer service that can only be derived from combining our two companies' wireless assets.”<sup>12</sup> Clearly, these words portend that AT&T has no desire to scrap its proposed takeover of T-Mobile. Indeed, if AT&T truly had no intent to pursue its acquisition of T-Mobile, it would announce its abandonment of the deal and ask the district court to dismiss the DOJ suit as moot.

The Commission has properly ordered that the AT&T-DT docket remain open to give time to AT&T to reinstate or re-file its applications.<sup>13</sup> There would be no reason for the Commission to issue such an order unless it had a wholly rational reason to believe that AT&T and DT intended to reinstate or re-file the applications. AT&T's withdrawal of its initial FCC applications in the AT&T-DT transaction is nothing more than a desperate form of “forum shopping” and its insistence on keeping the related court case alive is proof of its intent to continue to pursue this deal.

The Commission correctly determined in its FCC Letter that the two proposed transactions are related and should be reviewed in conjunction with each other. Although the Commission decided to restart its informal 180-day shot clock, effective November 29, 2011,<sup>14</sup> it did not do so because it no longer believes that the proceedings are related, but rather because there appears to be a general consensus that AT&T will abandon its pursuit of T-Mobile and accept a DOJ decision to drop its suit. However, AT&T's statements and action contradict the

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<sup>12</sup> “AT&T Updates Status of T-Mobile USA Merger”, AT&T Press Release, December 12, 2011.

<sup>13</sup> Order at ¶ 9. (“In view of the Applicants' stated plan to continue to pursue this transaction and to seek Commission approval, we find that it best serves the public interest to keep our public docket open.”).

<sup>14</sup> Letter of Rick Kaplan, Chief, Wireless Telecommunications Bureau to Michael P. Goggin, AT&T Mobility Spectrum LLC and Dean Brenner, QUALCOMM Incorporated, Applications of AT&T Mobility Spectrum LLC and QUALCOMM Incorporated for Consent to Assign Lower 700 MHz Band Licenses, WT Docket No. 11-18 (released December 9, 2011).

assumption that the AT&T-DT deal is dead, and until AT&T has formally acknowledged as much, the Commission is urged to delay any decision on the present applications until the related transaction is terminated for good, or, is re-activated, in which case they should be viewed in tandem because of the related issues. So long as AT&T is adamant about keeping the proposed T-Mobile takeover on life-support, solely through its own actions, it should not be rewarded by trying to fast-track a review of the AT&T-Qualcomm applications in a vacuum. Accordingly, RTG respectfully requests that the Commission hold action on the above-captioned applications in abeyance until the T-Mobile transaction is formally abandoned by AT&T. If AT&T continues its push to takeover T-Mobile, then RTG again asks that the Commission hold the applications in abeyance pending parallel review of the Qualcomm and T-Mobile transactions.

Respectfully submitted,

**THE RURAL TELECOMMUNICATIONS  
GROUP, INC.**

*/s/ Caressa D. Bennet*

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