



Public Knowledge

July 12, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Re: WT 11-65, Applications of AT&T Inc. and Deutsche Telekom AG For Consent To Assign or Transfer Control of Licenses and Authorizations

Dear Ms. Dortch:

On July 11, Harold Feld and John Bergmayer of Public Knowledge (PK) met with Louis Peraertz from Commissioner Clyburn's office. PK argued that the Commission should block the proposed AT&T/T-Mobile merger.

PK noted that Section 314 of the Communications Act presents a bar to the merger. Under that provision, it is unlawful for any entity engaged in wired or wireless communications to acquire any other such entity when “the effect thereof may be to substantially lessen competition or to restrain commerce between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or unlawfully to create monopoly in any line of commerce....” 47 USC § 314. Even as narrowly construed by the Commission, this merger triggers Section 314, as it involves a merger between an American and a foreign company, both of whom carry wired and wireless common carrier traffic internationally. As PK has argued, the merger would create a GSM roaming monopoly—leaving AT&T as the only roaming partner available for regional or international GSM customers. Foreign carriers have already submitted evidence that commerce between their countries and the US would be harmed by the proposed merger, because their customers would have to pay more to roam in the US or would not be able to roam at all. While the harms posed by the merger go far beyond this, by itself this harm to international roaming requires that the merger be blocked under Section 314.

PK reiterated its view that conditions cannot be enough to save the merger. Divestitures would have to unwind the entire transaction, and conduct remedies would be difficult to enforce and, in any event, time-limited. PK also argued that the transaction posed significant harms to minority and low-income communities, who rely on wireless phones more than other communities and thus benefit more from competitive choices—particularly those offered by independent nationwide competitors like T-Mobile today.

Respectfully submitted,

/s John Bergmayer
Senior Staff Attorney
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