

September 22, 2011

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

RE: Notice of *Ex Parte* presentation in: WB docket No. 11-65

Dear Ms. Dortch:

On September 20, 2011, Gigi B. Sohn, President, and Harold Feld, Legal Director, Public Knowledge (PK), met with Renata Hesse, Jim Schlichting, Pat DeGraba, Jim Bird, Tom Peters, and Austin Schlick. Greg Rosston participated by telephone.

PK urged the Commission to move swiftly to adopt a Hearing Designation Order (HDO) or to reject the applications as ungrantable on their face as violating Section 314 of the Communications Act. PK noted that the FCC, as the expert agency charged with regulation of the wireless industry, has an institutional interest in making an independent determination of the nature of the wireless market separate from the definitions under consideration in the Department of Justice antitrust action. As demonstrated by the Commission's analysis in the most recent *CMRS Competition Reports*, the analysis of the potential negative effects under the public interest standard extends to numerous markets and submarkets that a court considering antitrust may not consider. Because substantial questions of material fact will remain even in the unlikely event AT&T were to prevail, the Commission should not delay its decision.

PK repeated its previous arguments with regard to Section 314. PK stated that while the Commission has the discretion to refer the question of the application of Section 314 to an Administrative Law Judge (ALJ) as part of an HDO, the Commission could also determine that the information in the applicants own filings demonstrate that grant of the application would violate Section 314. Because the admissions relevant to the violation of Section 314 are undisputed and are found in the Applications themselves, the Commission may determine that no question of material fact exists. Further, because the applicants have not sought a waiver of Section 314, the Commission is under no obligation to consider whether it has authority to waive Section 314 despite the plain language of the statute raising an absolute bar to a transfer that violates Section 314.

In accordance with the FCC's *ex parte* rules, this document is being electronically filed in the above-referenced dockets today.

Sincerely,

/s/

Harold Feld
Legal Director
Public Knowledge

CC: Renata Hesse
Jim Schlichting
Jim Bird
Greg Rosston
Pat DeGraba
Tom Peters
Austin Schlick