

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
Applications of AT&T Inc.

WT Docket No. 11-65

and
Deutsch Telekom AG,
For Consent to Assign or Transfer Control
of Licenses and Authorizations

REPLY COMMENTS

McBRIDE SPECTRUM PARTNERS, LLC

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June, 20, 2011

Executive Summary

As the Commission considers the AT&T's takeover of T-Mobile,¹ I urge the Commission to look closely at the harms this merger would cause to consumers due to the lack of competition in the wireless market. Consider that in a post-merger landscape AT&T and Verizon would control nearly 80 percent of the market for mobile telecommunications. As a result of this merger, the wireless market would be more consolidated than the markets for oil, banking, automobiles and air travel. The this level of concentration in the wireless market for a service that all Americans increasingly depend on to communicate. In 1984, when the Justice Department broke up the old Ma Bell, the prevailing consensus was that AT&T had gotten too big. But the AT&T-T-Mobile merger would create a behemoth that's substantially bigger than the old conglomerate. Humpty Dumpty, put all back together again. The merger hands two companies, AT&T and Verizon, control over nearly 80 percent of the wireless market. That translates to widespread abuses of market power, something AT&T is already known for. The results of this merger will almost certainly be higher prices, fewer choices, an inevitable loss of jobs, and serious threats to a free and open mobile Internet. AT&T and Verizon currently control nearly two-thirds of the market and have a long history of raising prices in concert, as they both did early last year by requiring

¹See AT&T Inc. and Deutsche Telekom AG Seek FCC Consent to the Transfer of Control of the License and Authorization Held by T-Mobile USA, Inc. and its Subsidiaries to AT&T Inc., Public Notice, DA 11-799 WT Docket No. 11-65 (Apr. 28, 2011). In this petition, AT&T, DT, and T-Mobile are referred to collectively as the "Applicants," and the public interest statement filed with their License transfer applications is referred to as the "Application." Sprint is a "party in interest" with standing to file this petition to deny because it competes directly with AT&T and T-Mobile and, for the reason described below, will suffer economic injury if the Commission approve the proposed transaction. See Public Interest Statement attached to Applications of AT&T Inc. and Deutsche Telekom AG for Consent to sign or Transfer Control of License and Authorization WT Docket No. 11-65, at 7 - 2 (Apr. 21, 2011)

- Application (denying Sprint as a competitor to the combined AT&T and T-Mobile);
- Application of American Mobilphone, Inc. and RAM Technologies, Inc., Order, 10 FCC Rcd

all customers on feature phones to add data plans. AT&T has a history of making handset manufacturers cripple features like on devices, and of blocking the use of certain applications like Google Voice. AT&T's takeover of T-Mobile would stifle choice and innovation in the market, harm consumers, and lead to higher prices and fewer jobs nationwide.

True Competition

Key Points:

- **INTEROPERABILITY:** AT&T and VZ agree to interoperability in the 700MHz spectrum band.
- **VOICE & DATA ROAMING:** AT&T and VZ agree to voice & data roaming at cost to their competitors.
- **OPEN NETWORK:** AT&T and VZ agree to a true open network and will not deny limit or restrict applications or devices of the customers choice.
- **SMART PHONES:** AT&T and VZ agree to pass on smart phone and mobile devices at the same cost, pricing, choice and availability to their competitors.

All of the above Key Points must be met before you have true competition in wireless market and AT&T / DT merger can be approved.

"The Emperor Has No Clothes"

AT&T's alleged spectrum constraints are contradicted by the facts that AT&T has 2,526 Mobile/Fixed Broadband licenses on record and Verizon Wireless / Vodafone (VZ) has 1,526 Mobile/Fixed Broadband licenses.² Similarly, AT&T and T-Mobile's claim that this transaction will allow for faster deployment of LTE and other next-generation technologies does not stand up to exacting scrutiny. AT&T has lagged significantly behind in network investments. VZ has been consistently ranked higher by consumers and agree that VZ has the best call quality in all

² FCC Spectrum data base. www.fcc.gov.

areas of the United States and experience fewer dropped calls than with other carriers. AT&T's customer satisfaction rating tumbled this year, ranking dead last among U.S. wireless carriers. AT&T has a vast amount of prime spectrum it can use to deploy a 4G network. VZ is operating a 4G network using spectrum it already owns.³

“Breaking-Up is Hard to Do”

AT&T states that one of the main reasons for this merger is the need for more spectrum to build a 4G mobile network. Why is AT&T's management so willing to take a gamble with the valuable spectrum it already owns by promising to give DT \$2 billion of its valuable spectrum as part of a record \$6 billion break-up fee. AT&T's management, lawyers and investment bankers must be fully aware that a merger request of this size has to go before the federal regulators, the Department of Justice and the Federal Communications Commission and has to answered questions of antitrust issues by Congress first before the merger can be approval. AT&T's substantial break-up fee seems very irresponsible of current management risking \$6 billion of share holders money with a roll of the dice. It would be unfathomable to think that AT&T's team of advisers true intentions of having a \$6 billion break-up fee was to convince the regulators and the general public it will be facing a mountain of political pressure and influence from the halls of Washington D.C. as well as Wall Street that the merger is to big to fail a theme

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Auction 73 generally went as planned by telecommunications analysts. In total, Auction 73 raised \$19.592 billion. Notably, Verizon Wireless and AT&T Mobility together accounted for \$16.3 billion of the total revenue. Block B – AT&T Mobility was the biggest buyer in the B block, with 227 licenses totaling \$6.6 billion. AT&T BUYS 700 MHZ SPECTRUM FROM ALOHA Nov 1, 2007 12:00 PM, By Donny Jackson AT&T announced a deal to pay \$2.5 billion in cash for 12 MHz of spectrum held by Aloha Partners. Under the agreement, AT&T will receive Aloha's paired spectrum from 710-716 MHz and from 740-746 MHz. The spectrum covers 196 million people in 281 markets, including 72 of the top 100 markets, according to AT&T.

all to common in corporate America today.⁴ At the same time spending millions of dollars more on prime time national television commercials with a subconscious impression that the AT&T / T-Mobile merger has already been approved by the regulators and how the merger is going to benefit and give the wireless consumer more choice. A very bold move I must say being that the FCC also exercises power over the television airwaves and television commercials. A move that may turn out to be premature you know what they say about the fat lady singing. The merger would create a duopoly with 80 percent of all wireless subscribers and would have dominance over Sprint, the sole remaining national carrier, and the rest of the wireless industry, creating an anti-competitive duopoly. The consumers are going to be the biggest losers of this deal. While AT&T is going to try to spin it as a good deal to combine wireless spectrum assets, the fact is we end up with a duopoly and the consumers will have no choice. T-Mobile USA has been fairly aggressive in offering cheaper voice and data plans as it has tried to compete with its larger brethren. The competition has kept the prices in the market low enough. This has worked well for U.S. consumers. With the merger of AT&T and T-Mobile, the market is now reduced to three national players: AT&T, Verizon and Sprint. U.S. consumers are going to lose. When a market has fewer than the equivalent of six equal-sized competitors, the market just doesn't function properly. The merger is a threat to free speech and openness on the wireless web. The FCC has ignored the mountains of evidence that our wireless markets are concentrated, anti-competitive,

⁴ (Reuters) - AT&T Inc ([T.N](#)) has promised to give Deutsche Telekom ([DTEGn.DE](#)) \$6 billion in assets, services and cash as a break-up fee if U.S. regulators reject its proposed \$39 billion purchase of the German company's T-Mobile USA, according to sources familiar with the matter. The \$6 billion would include \$3 billion of cash, as AT&T has previously disclosed, and about \$2 billion worth of spectrum and a roaming agreement valued at \$1 billion, according to two sources who asked not to be named as those details were not public. AT&T declined comment for the story. While the cash agreement is already unusually high at 7.7 percent of the total deal price, the addition of assets and services of a similar value would mean that the companies are breaking global records with a 15.4 percent break-up fee, according to Thomson Reuters Data. The high fee underscores AT&T's confidence that it can convince regulators to approve the deal, which is already being heavily criticized by many consumers and AT&T rivals.

and is now fundamentally broken. Let's not make AT&T the next company to big to fail.

“Rule the Air”

Anyone that wants to build a new wireless communications company and compete with AT&T by providing mobile service must first have access to usable spectrum which is a precondition to providing wireless services in any given market. Having access to spectrum is imperative to providing mobile service. Allowing AT&T to freely control most of the available spectrum will ultimately lock-out any competition in the mobile service industry. The AT&T and T-Mobile merger will kill off any competition by default because the competition will have no access to valuable and needed spectrum “the life blood” of the wireless business. When you own the spectrum you “*Rule the Air*” and you dine with the king's and queen's of the world. By owning the spectrum you control every aspect of the whole mobile ecosystems. This merger would put AT&T in a dominant position with oppressive control over the network vendors, handsets, application developers, the mobile cloud, the mobile end user, the last mobile mile and more. The fixed desktop is fast becoming a dinosaur, (Microsoft) obvious foresight tells you that our life's are becoming more and more dependent on our mobile devices, in a fast changing world of mobile communications Apple, Droid, smart phones, iPads and more. Allowing an unprecedented consolidation and control over our nations most valuable airwaves sets a very dangerous precedent and will have a chilling affect on the open and free mobile Internet of the future. The merger would stifle innovation both in devices and on the network. The combined carriers would be able to leverage an unfair amount of market power to prioritize which handsets get used, what technologies work on those handsets and which Apps you'll be able to upload from the network. According to the Wall Street Journal, handset manufacturers are remaining mum on the deal, possibly out of a "fear of angering a powerful customer" in AT&T, which can

make or break a device by simply deciding to allow it on its network.

It is up to the Commission to ensure the American people that all of the check and balances are in place. The U.S. antitrust laws in this country are alive and well and can not be manipulate or circumvent by anybody or company regardless of it's size. 3 This merger request is anti-competitive behavior at worst, a bold and aggressive attempt to form a duopoly in the mobile service industry. This meager request would negatively impact every mobile consumer far into the future.

"Entrepreneurs' C Block"

"In the long and tragic history of inequality between races and gender in America, today we are creating the greatest single opportunity ever made fairly available to small businesses, women and minorities. For the first time in our nation's history, the federal government is creating opportunities in a new industry in which all Americans will have a fair chance to compete from day one". "entrepreneurs C Block" is established, which is designed to fulfill the statutory mandate to ensure that small businesses, rural telephone companies and businesses owned by minorities and /or women." FCC Chairman Reed Hundt 1993

AT&T was not allowed to bid in FCC the C & F "entrepreneurs" blocks licenses the auction was a set aside for small business only.⁴ If the FCC allows this proposed merger request AT&T will end up owning over 90% of all the original C & F Block "entrepreneurs" blocks spectrum licenses that was set aside for by the Commission and Congress for small business only. "It's an outrage that this proposed merger request is even being considered by the commission. The AT&T / DT merger will guarantee that the FCC "entrepreneurs" designated entities auction's was a monumental failure. Approving this proposed merger request would cut off any real opportunity small business may have had to compete. Approving this merger would drain the life out of small business and nail down the coffin for good. AT&T was not allowed to bid on

the C & F "entrepreneurs" blocks licenses back in 1995 so why should the FCC allow them to own and control 90% of all the C &F small business PCS spectrum licenses . The FCC should mandate AT&T return all C & F blocks small business licenses to the FCC and hold a new "entrepreneurs" auction for true small business ensuring that entrepreneurs have an opportunity to compete in the wireless market on a level playing field. The fact of the matter is this proposed merger request be will be giving two companies AT&T and Verizon control of more then 80 % of the mobile business. The rules of the game should allow everyone to compete on a level playing field . A duopoly that will only hurt the mobile consumer and the competition. The decision the FCC must make is to deny the merger request. The Commission must deny the proposed merger between AT&T and T- Mobile.

“Lower the Bar”

AT&T has lagged significantly behind in network investments. VZW has consistently ranked higher among consumers than its major competitors, Reviewers agree that Verizon Wireless has the best call quality and service in all areas of the United States. Verizon customers say they experience fewer dropped calls and circuit overloads than with other carriers. Verizon's extensive 3G network transmits data quickly and reliably in expert tests, and its ever-expanding 4G network is the fastest around using smart-phones with Internet access. The most effective and best network coverage, fewest circuit overloads, least number of dropped calls and most effective customer service. Consumer Reports, responses from more than 58,000 subscribers. J.D. Power and Associates polls 26,000 users; and PC Mag. receives feedback from more than 7,200 readers PC World, Computer world and Laptop Magazine says VZW has the best network. AT&T's customer satisfaction rating tumbled this year, ranking dead last among U.S. wireless

carriers, according to a Consumer Reports survey. The nation's second largest wireless network received the worst possible rating in eight of the nine categories the magazine studied, including overall value, voice service, data service, phone support, staff knowledge, and resolution of issues, among others.⁵ Rewarding AT&T for very bad behavior by allowing AT&T to buy the only other national GSM competitor is a bad idea, like two garbage trucks colliding.

Interoperability

The bottom line is interoperability in the 700MHz. spectrum band is a must have. The merger can never be approved with out first having interoperability in the 700MHz. spectrum band.

AT&T is not happy about the FCC mandate of data roaming or interoperability so that small carriers can have access to new 4G network equipment, phones and devices that are able to work across all the 700MHz spectrum bands as well as having voice & data roaming at fair prices.

AT&T is claiming interoperability is extremely complicated and to costly. Verizon Wireless, say that mandating interoperability will be expensive and lead to thicker, bulkier devices and more costly base stations. Small carriers, such as Cellular South and U.S. Cellular are asking that the FCC mandates the interoperability so that they won't be squeezed out of roaming deals with the larger carriers. Qualcomm says supporting the right set of bands to allow roaming between AT&T, Verizon Wireless, and the smaller carriers would be incredibly complicated and take years to develop. The FCC hasn't said if or when it will make a decision regarding this issue.

Key requirements are 700 MHz interoperability and roaming. Those two pieces are not mandated in the 700 MHz band, and rural operators claim Verizon Wireless and AT&T are locking smaller players out by mandating equipment from their suppliers that only works in their particular flavors of 700 MHz. The Rural Cellular Association (RCA) has been waiting months for the

FCC to make a ruling on mandatory 700 MHz interoperability and data roaming requirements, and it is bolstering its argument with a new report that claims some 38,500 jobs could be created and another 78,500 saved in rural areas if wireless broadband were deployed in the 700 MHz band using equipment that is interoperable with all flavors of 700 MHz. band. "Roaming is very important," said Katz. The market would see an "erosion of the potential network effects" and this "would act as a barrier to entry" into the 700 MHz market, he added. The Public Safety Now Coalition supports an amendment by Sen. Roger Wicker (R-Mo.) and Sen. Mark Begich (D-Alaska) that would require any 700 MHz devices deployed one year after the bill is enacted be capable of operating on any 700 MHz network. FCC mandated that large carriers such as AT&T and Verizon had to share their data networks with smaller regional carrier they are already required to share voice networks such that roaming deals are priced reasonably. As part of this mandate, was a push for interoperability across different bands of the 700MHz network and their associated hardware so that smaller carriers can roam on the different networks of the larger carriers. AT&T and Verizon are not too pleased and cite expense and increased handset size as making this an unfavorable direction. Verizon Wireless is now suing the FCC over the new rules requiring wireless providers to offer reasonable rates on data roaming to their competitors. In its appeal, Verizon argued the agency overstepped its authority in issuing the regulations. Today, Verizon Wireless requires its LTE equipment manufacturers to only support Band 13 at 700 MHz, while AT&T Mobility's LTE network runs on Band 17. Device manufacturers can support however many bands they want, but the legislation would force interoperability with the larger operators, a move smaller operators have been trying to get approved at the FCC. Interoperability is clearly in the public interest prerequisite to competition. An interoperability requirement will ensure that AT&T, which will hold the vast majority of 700MHz. spectrum and

disproportionate influence over the vendor ecosystem, will not hold the vendor community captive, to the detriment of A Block licensees. Economies of Scale. The 700 MHz band is unique in that it does not match other international allocations, so no global economies of scale can be leveraged. This makes it more difficult for smaller providers when the biggest U.S. holders of the spectrum use the standards bodies to facilitate creating equipment that only works for their portions of the band, thus orphaning bands of smaller providers. As a result, Lower A Block holders face far higher costs than those associated with other spectrum bands. Time to Market. In first serving the needs of the unique band class that is dominated by AT&T, the Lower A Block holders are significantly disadvantaged through the lack of access to new devices and delays in the development of standards, chip sets, and equipment. For example, AT&T developed a new band class and has completed product development in the time it has taken lower A block licensees to get their band class approved. VZW had its LTE network deployed covering 100 million people before Band Class 12 was even fully ratified in the LTE standards body. An interoperability requirement is therefore needed to create a competitive marketplace and a robust ecosystem, much like a number portability requirement was needed to ensure that customers could have meaningful choices. Prerequisite to Data Roaming. Without an interoperability requirement, AT&T can easily use the standards body process to render the FCC new data roaming requirements worthless. With out interoperability in the 700MHz. spectrum band the Commission has no choice, but to say no to the AT&T / DT merger request.

Revolving Door

Will the FCC commissioners pledge not to lobby for AT&T after merger review The request follows the departure of FCC Commissioner Meredith Attwell Baker, who abandoned her position to become a lobbyist for Comcast - after voting to approve that company's merger

with NBC Universal just months earlier. The House Government Oversight Committee has launched an inquiry into the circumstances surrounding Baker's departure. Her last official day at the Commission was June 03, 2011 "If you want to know why the American people are disillusioned and disgusted with Washington, look no further than FCC Commissioner Meredith Attwell Baker's decision to leave the FCC to become a lobbyist for Comcast after rubber-stamping the media giant's takeover of NBC. We can no longer ignore the effect on public policy caused by the revolving door between the FCC and the companies it's supposed to be watching. "The proposed takeover of T-Mobile by AT&T-a \$39-billion deal that would combine the country's second- and fourth-largest wireless carriers - could be an opportunity to restore the public confidence in the FCC. This merger raises very serious and very real antitrust concerns. Will the commissioners stand up and declare that they will not seek nor accept employment from AT&T or T-Mobile directly upon leaving their present posts. We ask for assurance that the FCC commitment is to the public it serves and not to a big payday from potential future employers. "Of course, Baker is not the first government official to accept a paycheck from the industry she was once charged with regulating, and, sadly, she will not be the last. But lets hope that through this pledge, the public can at least be confident that deliberations are based not on any future job prospects, but on the agency's actual mandate: whether this deal is truly in the public interest." "If this acquisition goes through it'll take this country back to the nineteenth century before enactment of the Sherman Antitrust Act of 1890 and put us back into the hands of people like former Fed Chairman Alan Greenspan who, in his essay entitled "Antitrust," condemns the Sherman Act as stifling innovation and harming society. But such a notion has been debunked many times during the past few years alone and the Sherman Act is still good law replicated in countries all over the world. So the notion that limiting the cell phone market to

the two biggest players with the highest rates simply doesn't stand up under the US antitrust law even if AT&T can make a case that it's proposed acquisition will somehow result in lower costs and more benefits to the consumer. But as history has shown time and time again, monopolists rarely, if ever, pass their lower costs on to their customers. But I don't know how it can do that with the revolving door between industry and its members. For example, Commissioner Baker recently resigned to take a lobbying job with NBC Universal whose merger with Comcast she just approved. The resignation is effective June 3, 2011 so I suppose that Commissioner Baker is still on the Commission. But if she was talking to NBC Universal about job prospects at the time that she voted for the merger I would think that there could be criminal liability. I would think that at least a DOJ investigation is warranted into this unseemly and apparently illegal conduct on Commissioner Baker's part.

Conclusion

AT&T's acquisition of T-Mobile will create an entrenched duopoly in the market for mobile wireless service. The merger would stifle competition and innovation. It would lead to significant consumer harms and would not serve the public interest. The Commission must look at the very serious anti-competitive effects of the proposed transaction. The Commission must deny approval of the transaction.⁵ The Commission should conclude that this consolidation does not serve the public interest. The merger raises serious antitrust concerns, the merger will undoubtedly have anti-competitive effects no matter how you look at it. The merger must be denied. Allowing the AT&T and Deutsche Telekom / T-Mobile (DT) merger would create a

⁵E.g., Petition to Deny of Free Press, Public Knowledge, Media Access Project, Consumers Union, and the Open Technology Initiative of the New America Foundation, Applications of AT&T Mobility Spectrum LLC and Qualcomm Incorporated for Consent to the Assignment of Lower 700 MHz Band Licenses, WT Docket No. 11-18, Mar. 11, 2011, at

unprecedented consolidation of our nations most valuable resource.⁶ The American airwaves being controlled by a few behemoth companies. This merger is clearly not in the public interest and must be denied in any form.⁷

Concentration in U.S. Industries:

Oil 43.8%

Airline 54.5%

Banking 31.8%

Auto 60.7%

Mobile 92.5%

Respectfully submitted,

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Oil refining industry data compiled by Public Citizen's Energy Program. Airline industry data from Research and Innovative Technology Administration, Bureau of Transportation Statistics (market share based on revenue passenger miles, Jan. - Dec. 2010). Banking data from FDIC, Top 50 Commercial Banks and Savings Institutions by Total Domestic Deposits, June 2010. Auto industry data from WardsAuto.com. Wireless data from SNL Kagan, Wireless Industry Benchmarks.

⁷Cellco Partnership, doing business as Verizon Wireless, is the largest mobile telecommunications network and wireless phone provider in the United States. The network has over 104 million subscribers as of Q1 2011,[1] just ahead of the second largest carrier,Headquartered in Basking Ridge, New Jersey,[3] the company is a joint venture of U.S. telecommunications firm Verizon Communications and British multinational mobile network operator **Vodafone, with 55 and 45** percent ownership respectively. On January 9, 2009, Verizon Wireless acquired Alltel Wireless in a deal valued at \$28.1 billion. The acquisition expanded Verizon's wireless network.

