

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	DA 11-799
Application for Consent to Transfer of Control)	
Filed By AT&T Inc. and Deutsche Telekom AG)	WC Docket No. 11-65

**TEXALTEL'S REPLY TO AT&T, DEUTSCHE TELEKOM AND T-MOBILE'S JOINT
OPPOSITION OF REQUESTS TO DENY MERGER**

TEXALTEL

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TEXALTEL hereby submits Reply Comments to AT&T, Deutsche Telekom and T-Mobile’s Joint Opposition to Requests to Deny Merger in the above captioned proceeding addressing the applications of AT&T and Deutsche Telekom to approve AT&T’s acquisition of T-Mobile. TEXALTEL opposes the proposed merger as contrary to the public interest in a competitive telecommunications industry because of the substantial potential adverse effects on competition and consumer choice in both the wireless and wireline sector.

TEXALTEL is a trade association which represents competitive telecommunications carriers¹ that operate in Texas but provide service throughout the country, including the service territories served by AT&T as incumbent local exchange carriers (“ILECs”). TEXALTEL members provide a varying array of services to their customers including basic local telephone service, prepaid services, xDSL, wholesale and retail special access services, and other high speed data services, including cable and Voice over Internet Protocol (“VoIP”) services.

¹ TEXALTEL is a trade association of competitive telecommunications providers that do business in Texas. TEXALTEL was formed in 1982 as an association of long distance providers, but today its members have a wide array of business plans and provide a wide array of telecommunications, internet and other services. TEXALTEL’s designated representative is the undersigned.

TEXALTEL members have a vested interest in ensuring that the largest carriers cannot engage in anticompetitive conduct across the communications market that would impair competitors' ability to compete, reduce consumer choices, and/or artificially inflate the prices that consumers pay by increasing the cost of network facilities purchased by competitors to furnish the services they offer to customers. Similarly, as TEXALTEL's members participate in the telecommunications marketplace and are competitors, vendors and customers of AT&T and T-Mobile, TEXALTEL, acting on behalf of its members, is a party in interest with standing to oppose this application for transfer of control of licenses and authorizations pursuant to Section 309(d) of the Communications Act, 47 U.S.C. Furthermore, TEXALTEL advocates public policy that keeps the marketplace open to competitive carriers allowing consumers to have choices in services and providers for their communications needs. As such, our members have a substantial interest in this proceeding as our members compete predominantly in the AT&T ILEC regions.

TEXALTEL (the "Commenter") comes before the Federal Communications Commission ("Commission" or "FCC") today to submit comments on the Application for Consent to Transfer Control Filed by AT&T Inc. and Deutsche Telekom AG. We appreciate the Commission providing the opportunity to provide comment in this proceeding.

INTRODUCTION AND SUMMARY

The Commenter files these reply comments in response to AT&T, Deutsche Telekom and T-Mobile's ("Joint Filers") Joint Opposition to Requests to Deny ("Joint Opposition") the AT&T/T-Mobile proposed merger.

TEXALTEL will not repeat its' initial comments in its Request to Deny filed at the Commission on May 31, 2011 except to reiterate our earlier concern that this merger has broader

affects than just its impact on the wireless market. The Commenters will not delve into issues pertaining to the wireless market as a whole. Instead these Reply Comments will focus on wholesale services, in particular special access and market dominance issues that continue to be of concern.

Our first concern is that the post merger AT&T, if the merger is approved, will cause substantial shrinkage in the Special Access market in which competitors currently compete. The loss of potential T-Mobile business almost guarantees that competitors will not build out to new cell site areas leaving the few wireless competitors left with no choice in backhaul providers other than grossly overpriced AT&T, the affiliate of one of their two major competitors.

Our second concern is that wireless transmission is rapidly replacing copper transmission as “the last mile” component to reach consumers. Approval of the proposed merger will constitute a huge step toward a creating a “duopoly” wherein the two dominant incumbent local exchange providers are the only wireless choices that reach many consumers and may become the only choice, period. With this dominance of power, they will be in a powerful position to erect enough barriers to entry (as if obtaining spectrum isn’t an absolute barrier to entry) that they could easily engage in market pricing and consumer abuses with no risk of loss of market share.

Our third concern is that this merger is a huge step towards creating an entity that is too vast to control and too big to be allowed to fail should any market pricing or consumer abuses be recognized in the future.

I. THE EFFECTS OF THIS MERGER ON SPECIAL ACCESS

While the Joint Filers focused the breadth of their Opposition Comments on how this merger will affect the Wireless segment, including attempts to address concerns with wireless wholesale issues, the proposed merger will impact the entire communications industry. Such substantial consolidation across multiple market sectors and the removal of yet another large competitor will have ramifications for all corners of the industry, and especially for the already ILEC-controlled special access market.

AT&T can be expected to move the substantial T-Mobile backhaul business away from present vendors onto AT&T's facilities wherever they are available, removing a substantial block of business from competitive opportunities. Having a major customer like T-Mobile is a huge incentive for many competitive backhaul providers to build out to wireless cell site locations. In many areas, multiple wireless providers share the same hilltop, and often the same tower, allowing a backhaul provider to compete efficiently for more than one customer's needs with a single build out. Removing T-Mobile from this competitive mix substantially reduces competitor incentives to build out to new wireless tower and other locations. Most competitive access providers build out facilities to wireless tower sites, to the MTSO (mobile telephone serving office, or wireless carrier central office switches), to carrier hotels where most providers have facilities in order to connect with each other and to ILEC central offices located in close geographic areas. A significant shrinkage in their transport business would be a major deterrent to further expansion of networks to serve all of these locations.

This merger will result in less business for those competitors and may cause some competitors to withdraw from some markets or to stop expansion to new markets altogether. AT&T, in those locations where it has no competition, prices Special Access at 10 or more times

cost, raising the cost of doing business to any remaining or potential competitors. Having more than one choice in the special access market is critical to the success of the competitive landscape of the entire industry. There cannot be a competitive retail market without a competitive wholesale market at all locations from which to purchase services. As the backlash of the shrinkage of competitive choices spills over into other markets, AT&T solidifies its position to have unlimited control over consumers and competitors who have no choices but to use AT&T for backhaul and connectivity.

As the Commenters stated previously, this merger signals the continued consolidation of the wireline and wireless sectors into in an ever shrinking number of hands that are building ever greater levels of market power. The Joint Filers attempt to argue that market dominance does not equal market power. However, the Commenters would point to the already ILEC dominated wireline special access sector (a service used for wireless backhaul) to refute that claim. In some cases, special access pricing from the ILEC is ten times or greater than the cost of the service that is calculated by TELRIC. For example, TELRIC, or cost based pricing of wholesale network elements, prices Loops at about \$50.00 and Interoffice Transport Termination is priced at \$38.15 plus \$.35 per mile.² The corresponding special access price for those same loops are \$205.00 for interstate and \$257.27 for intrastate. Interoffice Transport charges are \$62 fixed plus \$15.70 per mile for interstate and \$205.80 fixed plus \$43.39 per mile (over 25 miles).³

As the Commenter stated in the original Request to Deny, because AT&T is acquiring the second largest non-ILEC affiliated buyer of special access wireless backhaul, the Commission must be extremely cautious and thoroughly analyze exactly the effect a merger of this magnitude will have on the broad spectrum of special access pricing in the telecommunications market.

²CLEC Joint Petitioner Interconnection Agreement (Texas), Appendix Pricing, lines 17, 261 and 265

³ TARIFF F.C.C. NO. 73, 24th Revised Page 7-185, ACCESS SERVICE TARIFF, Section 7, Sheet 76, revision 3

II. DUOPOLY FOR WIRELESS CONNECTIVITY IS NOT IN THE PUBLIC INTEREST

When cellular service was first established in the 1980's, a duopoly was established by licensing two providers of cellular service in each Cellular Service Area and price regulation was foregone. With the merger of AT&T and T-Mobile, we are very close to returning to these roots.

But circumstances could not be more different now than in the 1980's. The cellular spectrum granted at that time allowed a maximum of 96 talk channels per cell, which could range from 5 to 15 miles in diameter. Cellular service was largely viewed as a luxury service and used by a small percentage of business users. Cellular service at that time had many characteristics of a natural monopoly; the cost of building overlapping networks was extremely high and the radio spectrum needed was a very scarce commodity. While the duopolists were fiercely competitive in the marketplace, their prices were largely the same and unchanged for at least a decade until the first new digital providers hit the street with more competition and lower prices. Prices were largely in the \$.30 per minute (plus roaming and long distance charges) compared to the \$.05 to \$.10 cents in most of today's usage plans.

Today's wireless world is indeed different. Calling capacity is many orders of magnitude greater, due to smaller cell sizes, tremendously greater spectrum offered by the FCC and by the advance of digital technology which makes more efficient use of radio spectrum. Wireless subscription has leaped from a few thousand per city to millions. Cell phones outnumber landline phones. Providers are spending billions to expand capacity and to keep up with technology advances. Because of mushrooming demand, no "natural monopoly" characteristics remain. Costs are similar regardless of whether it is one or many providers struggling to meet demand.

The textbook definition of perfect competition is that no one buyer or seller can influence the market price for a good or service. Now, there are at least four providers with a national footprint plus a couple of regional providers in each market area. If the AT&T/T-Mobile merger is approved, we will take a huge step backwards toward returning to the duopoly roots. The market will be left with two dominant providers with a national footprint, one other national provider far smaller than the other two, and a few local providers. One has to ask – will it be Verizon or AT&T that next seeks to acquire Sprint – which is about the last national provider with substantial spectrum left to acquire?

III. GROWING TOO BIG TO FAIL IS NOT IN THE PUBLIC INTEREST

Commenters have spent a great deal of time in the original Request to Deny and in these comments discussing the dangers of mega corporations, market dominance and market abuse. However, there is another issue the Commission should bear in mind as this merger review moves forward.

In 2008 the U.S. was almost crippled by a new phenomenon called “too big to fail”. As the economy took a tumble in 2008, it became increasingly clear that some banks and corporations had grown so large and their economies so deeply entrenched into the national economy that a failure of any of these institutions affects the entire national economy, potentially catastrophically. It then became imperative that the federal government provide bailout money on a large scale basis to ensure those institutions’ survival and prevent possibly-catastrophic effects.

The Commenter’s Request to Deny lays out the history of AT&T from divestiture to the point of this merger. But what we are seeing is the completion of a cycle, and thought should be given as to where we are going. In the 1980s, public policy makers grew concerned that AT&T

had grown too big for the federal government to be able to control, and there were discussions that AT&T's corporate size, political muscle and the growing necessity of its services were making it impossible for even the federal government to effectively control. In addition, there were the usual fears that AT&T so controlled the telecommunications market place that it could be slow to innovate, would operate inefficiently and would provide less than stellar service without fear of loss of market share. The answer to this dilemma was called divestiture. AT&T was disbanded into eight companies with the vision that those eight entities had enough corporate muscle to become national competitors and thus assure policy makers that there would never again be monopoly roadblocks to long distance competition. And then in 1995 public policy took even another step forward to open local services to competition. However, since that time, we have seen the six of the seven Bell children and the parent (legacy AT&T), plus SNET and the GTE properties merge together into two behemoths. These corporate giants have done as expected; they have loaded up on spectrum wherever possible in order to prepare for the digital age where wireless connectivity is the rage. They have amassed huge lobbying muscle such that no political issue arises that affects them that is not overwhelmed by the massive legislative influence machine that they have built. Their ability to influence television and radio programming has increased by eliminating advertising dollars that would have been spent by their foregone competitors and by replacing those dollars with their own, which certainly wouldn't be spent paying broadcasters who oppose AT&T's interests. Public policy decision makers must face the obvious question: "How much consolidation is too much?" and when will we have gone so far that another "divestiture" is the logical answer? Mergers will put AT&T squarely into the "too big to control and too big to fail" category where the company is so entrenched in the national economy that public policy makers will be obliged to protect, bail out,

or take other actions that protect an emerging monopoly either because of its intensive political muscle or in order to avoid calamitous damage to the domestic economy.

While it at first seems a stretch to suggest that a bail out to prevent calamitous failure could ever be contemplated, one just has to look at legacy AT&T's history, wherein it bought up huge cable interests only later to sell them for a fraction of the initial purchase price and which was a huge turning point taking the legacy AT&T from a vibrant market force to a crippled entity that was later eaten by its child. When one looks at some of the huge potential international ventures, and potential train wrecks, it becomes easier to conclude "this could happen". We do not need U.S. consumers, and their government, to be forced into a position where the only options are bitter. Even prominent Congressional members are expressing concerns that this merger will lead to re-regulation of a mostly deregulated market either because it will create a duopoly or because of the sheer size and scale of AT&T post-merger and its ties with the national economy, or both. But, of course, recipients of AT&T donations, political and otherwise, convey support to AT&T. And the absence of filings of numerous firms in this proceeding, firms that rarely miss opportunities to comment in such proceedings, is further evidence of the fear of retribution by AT&T, and of the effects that market dominance exerts on the entire industry and on those dependent on the industry

CONCLUSION

TEXALTEL strongly urges denial of this merger as the Commission reviews the effects of the merger on the communications industry as a whole, and considers how the merger would affect not only the wireless sector but also the wireline telecommunications industry, as well. The Commenter believes the merger is overwhelmingly not in the public interest.

Respectfully Submitted,

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