

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

In the Matter of)
)
Applications of AT&T Inc. and)
Deutsche Telekom AG) WT Docket No. 11-65
)
For Consent To Assign or Transfer Control of)
Licenses and Authorizations)

**OPPOSITION TO APPLICATION OF REVIEW
OF DIOGENES TELECOMMUNICATIONS PROJECT**

AT&T Inc. (collectively with Deutsche Telekom AG, “Applicants”) requests the Commission to dismiss the Application for Review filed by The Diogenes Telecommunications Project (“DTP”).¹ DTP’s allegations have no merit whatsoever, but – rather than waste resources addressing them – the Commission can dispose of the Application for Review on purely procedural grounds. Applicants have withdrawn all their applications in this proceeding and have notified the Commission of the termination of their proposed transaction. Because there are no applications remaining in this docket, DTP’s Application for Review is moot and – consistent with precedent – should be dismissed.

Background

On April 21, 2011, Applicants filed applications pursuant to Sections 214 and 310(d) of the Communications Act seeking consent to the transfer of control of licenses and authorizations held by T-Mobile USA, Inc. to AT&T Inc.² On November 23, 2011, Applicants withdrew those

¹ See *In re Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Dkt No. 11-65, Application of Review of Diogenes Telecommunications Project (filed Dec. 27, 2011).

² *Id.*, Public Notice, 26 FCC Rcd. 6424 (WTB 2011).

applications,³ and on November 29, 2011, the Wireless Telecommunications Bureau issued an order dismissing those applications without prejudice.⁴ On December 23, 2011, AT&T notified the Commission that it was no longer pursuing the proposed acquisition of T-Mobile USA.⁵ On December 27, 2011, DTP filed an Application for Review of the Bureau's November 29 order, seeking a decision on claims about Applicants' character qualifications that DTP had made in the proceeding.

Argument

DTP's arguments are wholly lacking in any substantive merit. Applicants fully met their obligations to be candid to the Commission. Indeed, a mere five days before DTP filed its Application for Review, the Commission once again concluded that AT&T Inc. has the requisite character qualifications to hold Commission licenses.⁶ DTP's arguments to the contrary are frivolous. Moreover, they are moot, and Commission precedent dictates that, accordingly, they should be dismissed.

³ See Letter from Patrick J. Grant, Arnold & Porter LLP, and Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, FCC (Nov. 23, 2011). On that date, Applicants also filed notifications of withdrawal in the Universal Licensing System and International Bureau Filing System for the applications that had been filed electronically in those systems. See File Nos. 0004669383, 0004673673, 0004673727, 0004673730, 0004673732, 0004673735, 0004673737, 0004673739, 0004675960, 0004703157, 0004698766, ITC-T/C-20110421-00109, ITC-T/C-20110421-00110, ITC-T/C-20110421-00111, ITC-T/C-20110421-00112; see also Letter from Patrick J. Grant, Arnold & Porter LLP, and Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, FCC (Nov. 25, 2011) (relating to the applications in File Nos. 6013CWSL11, 6014CWSL11, 6015ALS11, and 6016CWSL11, which had been filed manually).

⁴ See *In re Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Dkt No. 11-65, Order, DA 11-1955, at 3 ¶ 10 (WTB 2011). The International Bureau subsequently dismissed the applications pertaining to the international Section 214 authorizations. See *International Authorizations Granted*, Public Notice, Rpt. No. TEL-01531, DA 11-1960, at 6-7 (IB rel. Dec. 1, 2011).

⁵ Letter from Joan Marsh, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC (Dec. 23, 2011).

⁶ See *In re Application of AT&T Inc. and Qualcomm Inc. for Consent to Assign Licenses and Authorizations*, WT Dkt No. 11-18, Order, FCC 11-188, at 13 ¶ 28 (rel. Dec. 22, 2011).

Where the Commission has dismissed the applications in a proceeding, it does not entertain an application for review on any issues that were left unresolved. For example, in *In re Delta Radio, Inc.*, Delta placed the winning bid at an auction for an FM broadcast station construction permit. The second highest bidder in the auction, MBN, filed a petition to deny Delta's application, which was denied. MBN filed an application for review, seeking review of the denied petition. Later, after Delta failed to make timely payments pursuant to its winning bid, the Commission dismissed Delta's application. With the underlying application dismissed, the Commission dismissed MBN's application for review as moot.⁷

Likewise, in *La Star Cellular Telephone Company*, a petitioner to deny a cellular license application argued that the applicant's principals had lacked candor in prosecuting the application – much as DTP claims here. After the Commission concluded that the applicant was ineligible to hold the license in question and dismissed the application, the Commission determined it should not reach the character issues raised by the petitioner, dismissed the petitioner's exceptions to the ALJ decision, and terminated the proceeding.⁸ The Commission should dismiss DTP's Application for Review as well.

⁷ *In re Delta Radio, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd. 16889, 16899 ¶ 26 (2003) (“Because we affirm the dismissal of Delta’s application, MBN’s June 16, 2000, application for review is now moot. Accordingly, we will dismiss that Application for Review.”); *cf. In re Litel Telecomms. Corp., Complainant*, Order, 7 FCC Rcd. 5526, 5526 ¶ 2 n. 1 (Enforcement Div., CCB 1992) (“Litel filed an application for review of an order holding the above-captioned proceeding in abeyance. . . . Because the complainant has withdrawn the complaints, the application for review is moot and will be dismissed accordingly.”).

⁸ *In re Applications of La Star Cellular Tel. Co.*, Decision, 7 FCC Rcd. 3762, 3767 ¶ 3 n. 3, 3766 ¶ 45 (1992) (“Because our conclusion . . . results in the dismissal of La Star’s application, we do not reach the question raised in [petitioner’s] exceptions of whether La Star’s principals lacked candor in their hearing testimony concerning the control of La Star. [Petitioner’s] exceptions and La Star’s motion to strike those exceptions will be dismissed as moot.”).

Conclusion

For the reasons stated herein, AT&T requests that the Commission dismiss DTP's Application for Review as moot.

Respectfully submitted,



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January 11, 2012

CERTIFICATE OF SERVICE

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