

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

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

**OPENING COMMENTS ON AT&T/T-MOBILE ACQUISITION BY:
THE BLACK ECONOMIC COUNCIL
THE LATINO BUSINESS CHAMBER OF GREATER LOS ANGELES AND
THE NATIONAL ASIAN AMERICAN COALITION**

**The Opportunities and the Dangers of the Acquisition
and the Need for Comprehensive and Expedited FCC/DOJ Review**

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These comments are filed by three California based minority business and consumer organizations on behalf of our nation's 110 million minorities and six million minority owned businesses. The three organizations are the Black Economic Council, the Latino Business Chamber of Greater Los Angeles and the National Asian American Coalition.¹

All three organizations have been active participants before the FCC on a broad range of national issues and have met with all of the Commissioners and/or their senior staff on most of the issues set forth herein. The three minority groups were among the very first to oppose the Comcast/NBC Universal acquisition and the lead groups to criticize the subsequent FCC decision and the ineffectual sweetheart agreement dictated by Comcast as it affected diversity issues.

The groups are also among the leading consumer and minority groups critical of the telecommunications industry's response to Bill Shock and the wavering position of many telecommunications companies on net neutrality and broadband spectrum access.

The three groups are also the only consumer minority organizations that have filed the equivalent of a class action protest before the FCC and the U.S. Department of Justice relating to the failure of Silicon Valley companies to invest in American small businesses and American workers, including potential AT&T competitors Google and Apple. This

¹ The Latino Business Chamber of Greater LA is the largest business chamber in California serving 500,000 small Latino-owned businesses. It is also the largest Latino chamber that advocates on behalf of the needs of all of America's 50 million Latinos. It recently was selected by Federal Reserve Chair Ben Bernanke and FDIC Chair Sheila Bair to be the sole representative of the small business community at a DC conference on the needs and aspirations of small businesses. It was also selected by President Obama to be the sole business chamber to represent the Latino community's concerns at a June 2010 conference.

The Black Economic Council has held many conferences in Washington DC as well as in Texas on issues of concern to the Black business and consumer community, is headquartered in California and is one of the more prominent intervenors before the California Public Utilities Commission, the Federal Reserve and the FCC within the Black community.

The National Asian American Coalition has a full-time regulatory office in DC, is headquartered in California with branches in Silicon Valley and San Diego. Over the last few years, it has become the leading Pan Asian American advocate before the FCC, the FTC and the California Public Utilities Commission on a broad range of Asian American consumer interests and small Asian American owned business interests.

includes failure to hire Blacks, Latinos, Southeast Asians, women of color and inappropriate preferences for H-1B visa foreign workers.

We have met on a number of occasions with the Department of Justice's Antitrust Division, including a recent meeting with Antitrust Chief Christine Varney to discuss the importance of the FCC's public interest provisions being a key consideration in the Department of Justice's final decision. We will be separately urging such in this proceeding.

INITIAL CONCERNS OF THE MINORITY BUSINESS AND CONSUMER COMMUNITY

A. The Merger Should Promote Jobs in America for Americans

One of our primary concerns is a bipartisan concern that is similar to that of the Republican and Democratic congressional leadership and the President, job creation. We will be examining this merger in the context of American jobs, union jobs and well-paying jobs for Americans rather than, for example, H-1B visa foreign workers. This will include the requirement of full transparency as to AT&T's and T-Mobile's record of hiring of American workers at every level by race, ethnicity and gender and comparing it with T-Mobile's record.

We will also be requesting that this record be compared with that of Sprint, Verizon, other traditional competitors and with what we believe could be the long-term competitors among technology companies, such as Google and Apple.²

B. The Merger Should Promote the Development of Small Minority Technology Competitors

The second major concern relates to the investments that AT&T, T-Mobile and their competitors engage in with America's 27 million small businesses, including six million minority owned businesses. These small businesses create 60% to 70% of all new jobs in America.

This data has been requested of AT&T and is being sought for T-Mobile, Sprint and other competitors, such as Google and Apple. So far AT&T has been transparent in regards to its California data which, if imposed on T-Mobile and across the nation, would make it the national leader in investing in small minority owned businesses. Sprint's California record appears to be far less robust but it has not yet responded to requests for additional information, including future investments.

² The minority parties have requested comprehensive data from AT&T and data from Sprint which will hopefully be available prior to June 15th. The parties will be requesting comparable information from other competitors, including Google and Apple, although both have previously opposed U.S. Labor Department requests to make such data available.

C. Investments, Infrastructure and Broadband

Some corporations that seek mergers, such as General Electric and Google, engage in aggressive investments overseas and little in America. We will be examining AT&T's investment policies in America over the last five years and comparing them with investments of other competitors.

Secondly, we will be examining AT&T's future investment strategy over the next five and ten years if a merger is approved and how it might compare to projections of immediate and long-term competitors.

D. Consumer Fraud and Bill Shock Should Be Eliminated

The parties are active participants in the FCC's ongoing Bill Shock investigation. The parties believe that this merger can radically transform, without intrusive FCC regulations, consumer protections against Bill Shock and other unwarranted and nontransparent services and costs.

The parties have urged the CEOs of both Verizon and AT&T to break from their industry and compete for the consumer heart by providing a product whose services and charges are fully transparent, including for immigrants and children. So far all companies, including AT&T and Verizon, have refused to set a fiduciary "gold standard" to protect vulnerable consumers. This is a key concern since T-Mobile's consumers are generally lower income and more vulnerable than AT&T's. This should be a major issue before the FCC.

In prior filings, the parties have suggested that instead of the lowest common denominator type of consumer protection standards proposed by the telecommunications industry, that the CEOs of the two largest companies create a far higher fiduciary "gold standard." This could force all present and future competitors to compete with this high standard.

Recently, the U.S. Supreme Court issued a controversial five-to-four decision regarding AT&T that overturned the California Supreme Court's pro-consumer decision upholding class actions. This decision cannot and should not revisit this controversial U.S. Supreme Court decision even though the joint parties oppose this decision. However, there may be many varieties of arbitration, including some of potential benefit to consumers that should be explored. In the context of protecting consumers in an era of potential declining competition, which often produces declining services, this Commission should explore the arbitration terms provided by T-Mobile, AT&T and its competitors and urge additional pro-consumer arbitration safeguards.

A number of other consumer issues, including many that will be and are being raised by other well-respected consumer groups, should also be part of the conditions imposed if they will promote efficient and effective services to underserved communities.

E. Enlarging the Broadband Spectrum

The issue of broadband spectrum has never been discussed in the context of distinguishing between what is needed and what are, for example, superfluous luxuries. There must be full broadband spectrum for emergency calls, business communication and ordinary social communication. However, the parties are concerned that the issue of broadband spectrum is being diluted by the failure of the regulatory bodies to distinguish between ordinary services and the most frivolous and unnecessary services such as so-called around the clock social banter by pre-teenagers that does not advance commerce or the well-being of Americans.

Every telecommunications company should be entitled to secure fully adequate and competitive broadband spectrum for all conventional, commercial and social purposes. This proceeding may be a good place to begin the dialogue as to whether mergers and acquisitions are necessary to ensure such essential broadband access.

F. Unrecognized but Crucial Investments in Underserved Communities

Historically, in the United States, philanthropy has been a key way to reach underserved communities without the heavy hand of government. The Bill and Melinda Gates Foundation approach is an excellent example of billions of dollars in philanthropy replacing hundreds of billions of government funding to alleviate poverty and create essential reforms. The FCC should request of all parties, including potential competitors to AT&T and T-Mobile, their philanthropic investment records. This should include, for example: the percentage of philanthropy as it relates to gross revenue and percentage as it relates to pretax income. It should also include specific purposes and categories of philanthropy, such as broadband access to underserved communities in both inner cities and rural communities. It should also contain a discussion on creative leveraged philanthropy to underserved communities that is often a hundred times more efficient than government regulatory actions or government infusions of taxpayer funds.

G. Ensuring that America is Number One in Broadband

There are differing views in America's relative standing worldwide relating to broadband. One of the goals of the FCC's review of this acquisition should be to ensure it promotes truly effective broadband and education for all of America's underserved communities. If possible, it should also promote Chairman Genachowski's goal of America being Number One in broadband access, measured by all of the key common denominators, by 2020.

H. Hearings

The three parties herein were the primary advocates in the Comcast/NBC Universal merger of expedited public hearings. Although this was opposed by Comcast, this Commission did have one public hearing which was accompanied by many congressional hearings.

We support congressional hearings. But public/consumer participation hearings conducted by the FCC are far more important in determining the public interest concerns in the

proposed merger. We therefore propose that FCC public hearings commence within sixty days in at least ten locations across the United States and that they be completed within 120 days. All hearings should be presided over by at least one or more commissioners. Many should be held in the inner city locations that are accessible to the 70% of Americans who live from paycheck to paycheck.

We will be supporting such public hearings before the California Public Utilities Commission (CPUC). The parties have previously and vigorously participated in the CPUC hearings of 2005 relating to the SBC/AT&T merger. As a result of such public hearings, AT&T: (a) doubled its philanthropy to underserved communities; (b) created a \$45 million broadband fund for underserved communities; and (c) increased its investments to small minority owned businesses by \$1.5 billion.

I. Transformation from Landlines to Cell Phones

A recent study by the parties conducted in California primarily among low-to moderate income consumers shows that if families are offered an alternative between landline and wireless, and can be assured that it will protect their family, the overwhelming majority (91%) prefer wireless communication. These proceedings should explore how the preferences of consumers for wireless services, including the clear benefits with an appropriate safety net, for the underserved rental community who are now an overwhelming majority of minorities and those who live from paycheck to paycheck. The rental community is highly mobile and cannot afford installation charges and change of phone numbers as required by landline service.

Conclusion

The parties and counsel herein have had substantial experience in promoting the public interest in major mergers, including bank, utility and telecommunication mergers. This includes more than two dozen mergers under that the Community Reinvestment Act for banks and many more under the California Public Utilities Commission pursuant to its public interest provisions.

With proper guidance from this Commission and with the possible leadership of AT&T and T-Mobile, this acquisition could be historical and of very substantial benefit to underserved communities while raising the level and quality of competition among all competitors. (See, for example, 2008 CRA commitment by Bank of America in its most recent merger, to invest \$1.5 trillion in underserved communities over the next ten years and to commit \$2 billion to philanthropy for underserved communities.)

The parties herein intend to play a positive and proactive role in protecting against the creation of a possible duopoly in order to develop crucial public interest provisions. If these provisions are approved by the FCC, they will expand the protections to consumers and underserved communities and help create future jobs and investments in America.

Respectfully Submitted,

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