

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC**

In the Matter of  
Applications of AT&T Inc.  
And Deutsche Telekom AG  
For Consent to Assign or Transfer  
Control of Licenses and  
Authorizations

WT Docket No. 11-65

**COMMENTS OF THE  
ASSOCIATION FOR COMPETITIVE TECHNOLOGY**

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## **I. SUMMARY AND INTRODUCTION**

The Association for Competitive Technology (ACT) hereby submits these comments in response to the Commission's Public Notice (PN), WT Docket No. 11-65.

We agree that it is incumbent upon the Commission to review the applications of AT&T Inc. and Deutsche Telekom AG for consent to assign or Transfer Control of licenses and Authorizations. Accordingly, we would like to offer our comments and views on these applications on behalf of our more than 3,000 small and medium-sized software developer members. While there are a number of issues to address in this Public Notice, we believe the Commission must consider the following four issues:

- Application developers need more spectrum to thrive: Modern mobile apps show us a mere outline of the kinds of rich multimedia apps developers can produce. In order to make the next wave of apps a reality, developers need more efficient use of spectrum, expanded wireless broadband connections, more reliable wireless broadband, and an expanded consumer base.
- Spectrum exhaust: The merger between AT&T and T-Mobile will help alleviate the spectrum shortages already evident in many key markets. Mobile carriers are currently implementing data caps not for increased profits, but to maximize efficient network management in order to ensure service quality for consumers.
- Expanded wireless broadband connections: According to AT&T, the merger will directly benefit an additional 55 million Americans, including residents of small towns and rural communities. This represents 55 million new potential mobile app users, and expands the opportunity for mobile apps built in rural communities written to serve rural communities.
- More reliable wireless broadband connections: This merger gives the combined company the spectrum necessary to make needed improvements to voice and data quality.

## **II. ABOUT THE ASSOCIATION FOR COMPETITIVE TECHNOLOGY**

ACT is an international advocacy and education organization for developers of software applications and IT services. We represent more than 3,000 small and mid-size information technology firms from around the world and advocate for public policies that help our members leverage their intellectual assets to raise capital, create jobs and innovate.

Our community leaders are not political spokesmen – they are engineers. The workings of the Federal Communications Commission are mostly foreign to software developers—but this Public Notice is a notable exception. ACT draws upon its membership's technical expertise and business concerns to inspire and inform its comments.

ACT was founded by a small group of information technology entrepreneurs who felt their interests were not being represented by government. Today, ACT is still run by entrepreneurs from industry who intimately understand how the regulatory environment affects business decision making and strategy.

### III. WIRELESS APPLICATIONS DEPEND ON ADEQUATE SPECTRUM

Many of our members have a particular focus on the market for wireless applications--already a \$5.6 billion industry--that is expected to grow to \$38 billion by 2015. Smartphones, tablet computers, and other mobile devices have spawned this new industry that is poised for exponential growth. And this is a market in which America leads the world in adoption and innovation, with over a quarter million apps for the Apple platform alone. But this market cannot reach its full potential without sufficient spectrum for wireless users.

Because expanded wireless spectrum is critical to our members' ability to reach customers, we write today in support of the AT&T/T-Mobile merger. The merger will provide direct benefits not only to applications developers such as those we represent, but to consumers who will use these apps on their smartphones. Only if the data network is strong can the applications market be strong; as the network grows stronger and more reliable, the apps market will be stronger and more innovative as well.

As described in ACT's letter to Senators Leahy and Grassley of the Senate Judiciary Committee (attached and submitted for the docket), ACT believes that this merger will allow for better utilization of spectrum that is currently assigned to each of the two companies. In that vein, our members believe the merger should be viewed as the first step in the FCC's pursuit of a solution to the looming problem of spectrum scarcity.

Much has been made of the fact that an AT&T/T-Mobile merger would reduce the number of competitors. ACT believes this is a false dichotomy. In a market where resources are scarce, focusing simply on the number of competitors is wrong-headed. The real goal is to create as many competitors as possible that can deliver the level of service demanded by consumers. Those who make this false argument also ignore the decision of T-Mobile's parent company to forgo substantial upgrades to the T-Mobile infrastructure.<sup>1</sup>

In simplest terms, Deutsche Telekom's decisions have moved T-Mobile from competitor to speed bump. Deutsche Telekom's decision not to invest in LTE, the next generation broadband architecture that will provide vast improvements in connection speed and network management, means a segment of the population will not see, or will not be able to adequately use, the mobile apps we create – translating to lost revenue, and lost opportunity to innovate.

For the mobile apps world, the speed difference is simply staggering. Here are the figures reported by a journalist from GigaOm during a recent visit to the AT&T testing lab:

*The speeds provided on the download side were about 28.87 Mbps, and were about 10.4 Mbps on the upload side. This compared to speeds of 3.77 on the download side and 1.21 Mbps on the upload for an iPhone capable of maxing out on AT&T's 7.2 Mbps HSPA network. .... For comparison, Verizon has promised customers speeds of 5-12 Mbps on the download side and speeds of up 5 Mbps on the upload side.*

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<sup>1</sup> "T-Mobile's parent Deutsche Telekom is not in a position to finance the necessary large scale investments in the U.S. for T-Mobile to remain competitive." – T-Mobile CEO Phillip Humm, sworn U.S. Senate testimony, May 11, 2011

*The network engineer who ran the test explained AT&T was using MIMO antenna structure and two swaths of spectrum: the 700 MHz it purchased at auction and the AWS band of spectrum it already owns (and wants to purchase more of by buying T-Mobile)<sup>2</sup>*

While there is high demand for mobile applications, there is a risk to the rapid rate of adoption that is occurring. Unlike wired Internet service, wireless service is dependent on spectrum – a scarce resource. Broadband-intensive smartphones account for 25% of all mobile phones and this percentage is rapidly rising. Wireless ISPs cannot simply dig more trenches and pull more fiber to increase speed, quality or bandwidth. AT&T is quickly approaching the limits of its existing spectrum and T-Mobile's spectrum provides a relatively easy and efficient way to expand and improve its data services. Given the importance of the AT&T network to so many of our members, particularly those on the iOS platform, we fully support this merger.

#### **IV. EXPANDED BROADBAND CONNECTIONS HELP APPLICATION DEVELOPERS IN RURAL AREAS**

Beyond the immediate benefit of more efficient allocation of spectrum, the merger will bring faster and more reliable connections and better service to millions of users both urban and rural. It puts our members who own businesses in more rural areas on an equal footing with those in more established and larger markets. And it permits smartphones to be true, and mobile, equivalents of the desktops that many workers use today.

As the Commission knows, it all comes down to density. The United States is so spread out that any nationwide network buildout is problematic; this is one reason why broadband rankings are so low compared to countries like Korea. To make it practicable, a carrier needs lots of spectrum, in lots of places, including rural communities.

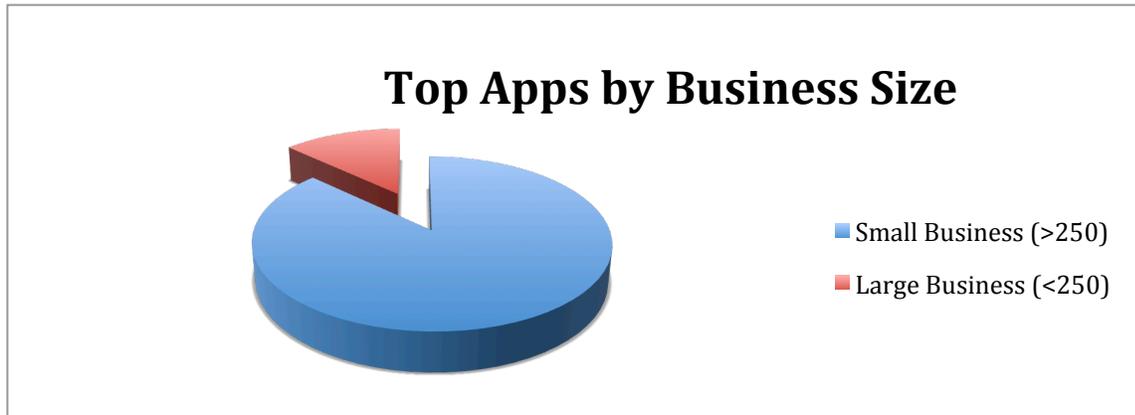
Expanding deployment of 4G LTE to more small towns and rural communities creates opportunities for rural users to take advantage of the products and services our member application providers are developing. Entertainment, eHealth, distance learning, mobile banking, and various agri-business applications will be particularly appealing to residents of small towns and rural communities where service has been non-existent or substandard for too long. AT&T plans to use this merger to expand heavily in rural markets, bringing those users up to par with the technology standards to which urban users have grown accustomed.

Beyond the benefits to consumers, mobile apps developers will also directly benefit from an increase in rural broadband connectivity. Mobile apps are overwhelmingly created by developers in small businesses, and a surprisingly large number are outside of traditional tech powerhouses in Silicon Valley or New York City. A review of the top 500 best selling applications shows that

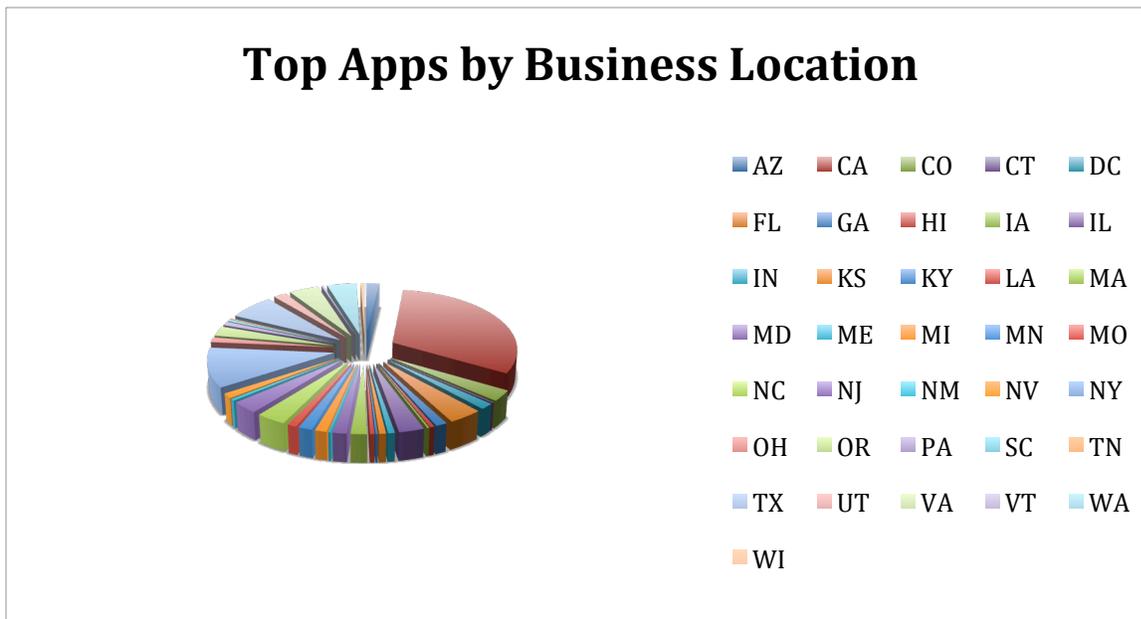
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<sup>2</sup> <http://gigaom.com/broadband/a-first-look-at-atts-lte-network/>

over 88% are written by small businesses<sup>3</sup>; in a majority of cases micro businesses with less than 10 employees.



Second, the growth of the mobile apps industry has led to job creation all across the United States. While California continues to have a large representation of apps developers, nearly 70% of the businesses are located outside of the state of California. This new burgeoning industry allows developers to live almost anywhere, including Moorhead, Minnesota and Tulsa, Oklahoma<sup>4</sup>.



<sup>3</sup> ACT analysis of top 500 selling apps, some discrepancies exist due to lack of verifiable employment data and apps created by a developer who has significant investment from a larger company. Some apps branded for a larger company are in fact developed by small firms subcontracted to build the application. Sample size of 408 applications, from "top apps" on March 25 2011

<sup>4</sup> ACT internal study of top selling apps as of March 25, 2011. ACT members Chalk LLC are in Moorhead, MN; Permafrost Software in Tulsa, OK.

**V. THIS MERGER WILL ENABLE APPLICATIONS DEVELOPERS AND THE MOBILE ECONOMY TO THRIVE**

ACT believes that the FCC should approve the merger as part of its long-term solution to the spectrum crisis. Approval of the AT&T/T-Mobile merger is the best immediate step the Commission can take to encourage more efficient and effective use of the currently available wireless spectrum; and it will have tremendous positive effects throughout the mobile apps ecosystem. Our members, the vast majority of whom are small businesses, will be able to reach more customers than ever before as the combined company embarks on its planned bold deployments of 4G LTE technology. If this merger is approved, the combined AT&T and T-Mobile will be able to set a national technological bar that Verizon and Sprint will try to beat. Additionally, wireless application developers will have a solid foundation on which to build new and innovative applications on all smartphone platforms for the benefit of wireless subscribers nationwide.

As we have mentioned in previous filings with the Commission, the Internet has been directly responsible for millions of jobs created, and billions of dollars added to the economy. The next new frontier for job creation comes from the burgeoning mobile sector. The speed at which new users are adopting mobile Internet applications dwarfs all other historical benchmarks. This is a positive for application developers who are selling to an audience with an insatiable appetite. Moreover, the infrastructure build needed to deploy 4G LTE to 55 million additional Americans will require new jobs and investment. It is likely we will see a boom of application developers coming out of places other than Silicon Valley or Boston – maybe Topeka and Sioux Falls will be the new hotbeds of mobile technology.

**VI. CONCLUSION: APPROVE THE AT&T AND T-MOBILE MERGER**

Application development and mobile IT services are key areas of the U.S. economy. In order to maintain our standing as the world leader in mobile application development the Commission must approve mergers that improve spectrum allocation, expand mobile broadband connections, enable more reliable mobile connections and create conditions where application developers can thrive.

Respectfully Submitted,

A handwritten signature in black ink that reads "Morgan Reed". The signature is written in a cursive, flowing style.

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