

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

COMMENTS OF THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE

The Ad Hoc Telecommunications Users Committee (“Ad Hoc” or “the Committee”) hereby submits Comments in response to the Commission’s April 28, 2011 Public Notice in the above-captioned proceedings.¹

The members of the Ad Hoc Telecommunications Users Committee are business end users who collectively spend an estimated \$2-3 billion per year on communications products, including both wireless and wireline services. Committee members represent a broad cross-section of industries in the national economy, including financial services, manufacturing, automotive, insurance, package delivery, information technology, and transportation/logistics.

Since its formation more than thirty years ago, Ad Hoc has advocated the deregulation of *competitive* communications markets, because the Committee’s members -- as high-volume consumers of communications products – have historically been among the first beneficiaries of the FCC’s de-regulatory efforts where markets are

¹ *AT&T Inc. and Deutsche Telekom AG Seek FCC Consent to the Transfer of Control of the Licenses and Authorizations Held by T-Mobile USA, Inc. and Its Subsidiaries to AT&T Inc.*, WT Docket No. 11-65, Public Notice, DA 11-799 (rel. Apr. 28, 2011).

sufficiently competitive. When markets are *not* competitive, however, Ad Hoc has consistently supported regulation to ensure that dominant market participants cannot engage in anti-competitive or anti-consumer behavior. Because of the crucial and pervasive role that communications products and services play in a modern economy, communications service providers with market power can do significant damage to the economy at large if the Commission allows them to exploit their market power. Regulatory requirements that allow carriers to impose economic inefficiencies and inflated prices for communications products on businesses like Ad Hoc's members are detrimental to the national economy as a whole; they stifle innovation, retard job growth, and reduce the economic competitiveness of American firms in the global marketplace.

Accordingly, if the Commission approves the instant applications, it must establish a regulatory environment that protects customers and competition from anti-competitive behavior by the merged entity, or at least ensures that the private economic benefits of the proposed merger also serve the public interest. Doing so will require the Commission to take action on two fronts, as discussed in the declaration of Ad Hoc's economic consultant, Dr. Lee L. Selwyn of Economics and Technology, Inc., which appears as Attachment A to these comments.

First, for the reasons identified at pages 4-23 of the Declaration, the Commission would be forced to impose regulatory constraints on wireless providers' pricing and market practices in any post-merger environment. This is because the economic evidence proffered by the Applicants to justify the merger also demonstrates that the wireless market has the structural characteristics of a natural monopoly. As discussed in greater detail by Dr. Selwyn, the Applicants have justified the proposed merger by

claiming that it will produce a variety of scale and scope economies – immense “network and spectrum synergies” – that will enable them to achieve economic efficiencies and substantial cost savings as a merged entity which are impossible for smaller, separate entities to achieve. But since those “network and spectrum synergies” are, by definition, impossible for their smaller competitors to achieve, it will be equally impossible for those competitors to provide meaningful price competition for the much larger merged entity. Without competition to force the merged entity’s prices down to its newly-reduced costs, to spur innovation, to drive network expansion, and to otherwise disgorge for public benefit the merger’s efficiencies and claimed benefits, the Commission must intervene to ensure that the economic efficiencies and costs savings that justify the merger are in fact passed through to the public.

Second, the Commission must complete its reform of special access regulation in WC Docket No. 05-25. Pages 25-33 of the Declaration discuss the critical role played by special access services in wireless networks, where the vast majority of backhaul circuits connecting cell towers to cellular switching facilities are provided by incumbent local exchange carriers (“ILECs”). Backhaul costs are becoming an increasingly large component of wireless carriers’ operating costs. As one of the largest ILECs, and the dominant provider of special access connections in 22 states, AT&T has (like other ILECs with wireless affiliates) the advantage of being both a buyer and seller of special access service. In those circumstances, supra-competitive special access prices are merely left-pocket-to-right-pocket intracompany payments for AT&T, with no effect on overall profitability for the company as a whole. But for wireless competitors that do *not* have a significant ILEC affiliation, persistent and substantial overcharges for essential

special access services by ILECs affiliated with a wireless provider raise wireless competitors' operating costs to a competition-killing level, as many wireless carriers (including T-Mobile) have pointed out repeatedly and strenuously to the Commission. The Applicants' "competitive analysis" fails to address this issue as well as the increase in *monopsony* market power and leverage that the merger would produce.

In short, the wireless marketplace and market forces described by the Applicants in their justification for the merger application require substantial regulatory oversight and intervention to protect end users like the members of Ad Hoc if the Commission approves the merger application. In order to ensure that the Commission's disposition of the merger application serves not only the private economic interests of the applicants but the public interest standard in the Communications Act as well, the Commission must be prepared to change its *laissez-faire* regulatory approach to the wireless market and intervene in a comprehensive and pro-active manner in order to protect consumers.

Respectfully submitted,

THE AD HOC TELECOMMUNICATIONS
USERS COMMITTEE

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