



BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

JUN 20 2011

Federal Communications Commission
Office of the Secretary

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

**REPLY OF NEW NETWORKS INSTITUTE AND TELETRUTH TO JOINT
OPPOSITION OF AT&T INC., DEUTSCHE TELEKOM AG, AND T-MOBILE
USA, INC. TO PETITIONS TO DENY AND REPLY TO COMMENTS**

On May 31, 2011 the New Networks Institute and Teletruth filed a Petition to Deny AT&T's proposed acquisition of T-Mobile USA, a Deutsche Telekom AG subsidiary. On June 10, 2011 AT&T, T-Mobile and DT filed a Joint Opposition to all Petitions to Deny. (Joint Opposition) New Networks Institute and Teletruth now Reply to the Joint Opposition.

The Petition to Deny filed by New Networks Institute and Teletruth made a strong historical case against approval of this acquisition. Abuses of market power and harm to the public are sure to follow if this transaction is allowed to go forward. The Petition to Deny also demonstrated that regulators cannot be relied upon to hold in check the market power of this large, powerful and ruthless company. AT&T's own actions prove the point. AT&T minions have been canvassing the country enlisting the help of every organization it has ever infiltrated and every government official

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or media outlet it has ever tempted to mount a tidal wave of support for this deal. The 175 page “Statements of Third Parties in Support of the Applications” is an obscenity. These “Third Parties in Support,” have received cash and resources from AT&T, have AT&T officials on their boards, or have been suckered by promises of job creation and build outs of services to constituents. These “Third Parties in Support” have little understanding of or interest in the details of the transaction and are simply doing AT&T a favor in return for some past, present or future “favor” by AT&T.¹

The company’s crude but effective tactic is to buy up the opposition and overwhelm the decision maker with its army of so-called “industry” associations, so-called “public policy” groups, so-called “experts,” etc. Will the FCC be cowed once again by AT&T? When the former AT&T (prior to its acquisition by SBC) complained about Bell monopoly abuses in special access services in late 2002, the FCC responded in early 2005 with an NPRM that even proposed interim relief. At the same time SBC announced its planned acquisition of AT&T, reuniting it with the Bell System. Once the independent voice of AT&T had fallen silent, and the same lawyers at the same major law firm who had argued stridently for special access reregulation on behalf of the former AT&T now began to argue vociferously against special access reregulation on behalf of the new AT&T, the FCC let the proceeding languish for six more years without even granting the interim relief it promised in 2005. To make matters worse the FCC has brushed aside special access concerns raised by parties in every landline merger proceeding, saying that it will handle the matter in this (seemingly interminable) special access rulemaking. The public deserves better than a shell game.

The Joint Opposition makes only one reference to the New Networks Institute and Teletruth Petition to Deny on Page 39, Footnote 55:

Opponents point to prior T-Mobile USA statements indicating that it had a “long-term” strategy for evolution to LTE.⁵⁵ But, as Larsen explains, although T-Mobile USA had hoped to follow a technology path from GSM to HSPA/HSPA+ to LTE, it “is inhibited from following th[at] standards-expected path of migration to LTE due to a lack of spectrum.” Larsen Reply Decl. ¶ 25.

First, T-Mobile USA’s options for LTE with its *current* spectrum holdings are “not commercially viable.” Larsen Decl. ¶ 23. T-Mobile USA has already dedicated those holdings to UMTS/HSPA+ and GSM technologies, and **[Begin Confidential Information] [End**

¹ See for example, <http://www.techdirt.com/blog/wireless/articles/20110613/01564514667/dumb-arguments-att--t-mobile-merger-would-be-good-children.shtml>



Confidential Information] Larsen Decl. ¶ 30; Larsen Reply Decl. ¶ 19. Moreover, T-Mobile USA **[Begin Confidential Information] [End Confidential Information]** Larsen Decl. ¶ 23. And any offering it could make would be **[Begin Confidential Information] [End Confidential Information]** *Id.*

Second, although in theory T-Mobile USA could try to acquire additional spectrum to alleviate these problems, it has now concluded that its options for acquiring sufficient additional spectrum **[Begin Confidential Information] [End Confidential Information]** Larsen Decl. ¶ 9; Larsen Reply Decl. ¶ 17.56 And T-Mobile USA also faces obstacles to obtaining the billions of dollars in capital needed to acquire new spectrum. As Deutsche Telekom Senior Vice President Thorsten Langheim explains, “[t]he required substantial investments in LTE in the United States would significantly stretch Deutsche Telekom’s financial capability or, alternatively, force [it] to reallocate investments from our core Europe operations into T-Mobile USA, which has been shrinking for the last two years and which is lacking a clear path to ... LTE to stay competitive.” Langheim Decl. ¶ 14. Because Deutsche Telekom has decided not to divert capital from its core European business into the United States, it has directed T-Mobile USA to “fund its future itself.”⁵⁷

These statements are contradicted by statements of senior T-Mobile and Deutsche Telekom executives made only two months before the parties announced the planned acquisition. See New Networks Institute and Teletruth Petition to Deny Page 12, Footnote 11:

"Deutsche Telekom AG, which yesterday said it may sell its U.S. tower assets to fund the purchase of spectrum for its fourth-generation network, may get about \$2 billion for them, a Sanford C. Bernstein & Co. analyst said. Deutsche Telekom's T-Mobile USA unit, the fourth-largest mobile-phone operator in the U.S. after Verizon Wireless, AT&T Inc. and Sprint Nextel Corp., said yesterday it may sell non-core assets finance the building of a next-generation network using long-tenn evolution, or LTE. "We have the biggest number of those towers compared to our competitors and that's not something as an operator you run with utmost efficiency," Chief Executive Officer Rene Obermann said at a presentation yesterday in New York on the unit's strategy. "That sale could be significant," he said, without providing details except to say there's "no timeframe for selling the towers." Obermann said the U.S. unit is exploring options to acquire additional spectrum, including entering partnerships. The U.S. unit's chief technology officer, Neville Ray, said T-Mobile will need a spectrum partner by 2014 or 2015." <http://www.bloomberg.com/news/2011-01-21/deutsche-telekom-s-sale-of-tower-network-in-u-s-may-fetch-it-2-billion.html>

See also New Networks Institute and Teletruth Petition to Deny Page 11, Footnote 9:

"The executives said the U.S. unit is "generally strong enough to fund itself and will do this with regard to future investments," and could sell non-core assets, including the U.S. tower portfolio, according to the presentation. For now, the company's network is adequate to meet demand, Humm said, adding there are no announcements imminent on spectrum. Building out an LTE network may cost between \$1 billion and \$2 billion, the company said. Chief Technology



Officer Neville Ray said that T-Mobile will need a spectrum partner by 2014 or 2015. "We are not pursuing large-scale cash acquisitions," Obermann said. The company said it will introduce LTE technology "once devices are readily available and once device quality is on par" with its current HSPA+ network "although that will probably not be for a few years." It said the progression from HSPA+ to LTE is "simpler and more cost effective than for competitors who have to re-equip from other technologies." Verizon activated its LTE service last month, while AT&T expects to start selling faster LTE services this year. Humm said today T-Mobile USA's HSPA+ speeds can rival LTE and will this year reach up to 42 megabits per second, up from 21 in 2010. According to Ray, LTE will this year reach speeds of 76 mbits/s." <http://www.bloomberg.com/news/2011-01-20/t-mobile-usa-seeks-3-billion-sales-growth-mulls-partnerships.html>

AT&T's obscure explanations elsewhere in the Joint Opposition why it must acquire T-Mobile in lieu of building, leasing or buying towers are also suspect in light of the above statements by T-Mobile officials. Like the previous "public interest" filing, the Joint Opposition keeps drumming into us the now stock phrase "no clear path to LTE," implying that T-Mobile could not convert its network to LTE on its own, which is far from what T-Mobile executives were saying right up until the acquisition was in the works.

Another example of wholesale distortion by AT&T is its characterization of its competitors, particularly in the wholesale market. The Joint Opposition, which goes on endlessly about Clearwire and LightSquared, states at Page 131:

Finally, quite apart from those retail competitors, the Commission should further account for the new national 4G networks that *Clearwire* and *LightSquared* are building (or poised to build) and the new wholesale/retail business models they are pioneering in conjunction with retail upstarts like Best Buy. Those companies are forming partnerships not only with facilities based wireless companies (such as Sprint, Leap, and Cellular South), but also—of equal importance—with nontraditional retailers of wireless services. Pub. Int. St. at 92-94. Those nontraditional wireless providers include companies with formidable access to consumers, ranging from cable operators like Comcast and Time Warner Cable, with their extensive regional customer lists, to Best Buy, with its approximately 1000 retail stores throughout the United States.

The foregoing is directly at odds with the recent statement of a senior AT&T executive referenced by New Networks Institute and Teletruth in the Petition to Deny, Page 8, Footnote 6, which AT&T did not bother to acknowledge or reconcile with its position in these applications:



AT&T: no room for both Clearwire, LightSquared By Sinead Carew Reuters May 13,2011 (Reuters) There's not enough room for both Clearwire (CLWRO) and Harbinger Capital-backed LightSquared in the U.S. telecommunications market, according to a top AT&T Inc (T.N) executive, who said they'd be better off consolidating. Clearwire rents network space on a wholesale basis to other wireless services such as Sprint Nextel (S.N), which uses the space to sell high-speed wireless services. Sprint is a 54 percent owner of Clearwire. LightSquared wants to enter the wholesale wireless market. Both have struggled to drum up additional funding needed to either expand or begin building their wireless networks. John Stankey, the head of AT&T's enterprise business, said the best hope for U.S. mobile wholesale providers may be to get swallowed up in a merger as the U.S. market is hardly big enough for one wholesaler, let alone two. Stankey's remark comes as AT&T awaits regulatory approval for its \$39 billion deal to buy T-Mobile USA, a unit of Deutsche Telekom (DTEGn.DE). "We have two people staking out a wholesale play in the market. It's hard in economic theory and it's hard in past practice in telecommunications to ever find a market where two wholesale players ever competed effectively," Stankey told Reuters ahead of the Global Technology Summit. "There really isn't a profitable wholesale model in wireless today," he said. "Do you know one that's making money? Do you know one that's on a trajectory to make money? Do you know of one that's not in jeopardy of running out of money in the next 12 months?" If it is each companies' goal to gain a return on the massive cost of building a network, Stankey said he "could see a case that suggests there would be further benefit to additional consolidation in the wireless marketplace." Analysts have predicted that Sprint will end up buying the portion of Clearwire it does not already own. The thinly veiled dig at Clearwire comes after Clearwire's top executive John Stanton openly attacked the AT&T deal in March, saying it would make it more difficult for smaller companies to compete in the market. "If there's such a credible (wholesale) business model, is there not capital that should be attracted to it?" AT&T's Stankey said.

The list of gross exaggerations, selective omissions, misrepresentations and self-contradictions by these applicants in the filed documents and in public statements goes on and on. Viewed in the context of AT&T's history as a doggedly aggressive monopolist; its numerous unfulfilled promises to improve its network and compete fairly in return for merger approvals, deregulation and rate hikes; its chronic exploitation of small business exceptions to get spectrum on the cheap; and its use of brute political force to mow down any regulatory resistance, there is no legitimate basis for approval of this acquisition. If the FCC truly wants to decide what is in the public interest, it will not be taken in by AT&T's chicanery or intimidated by its display of arms. The applicants have fallen far short of making the public interest case for this transaction.

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