

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matters of	)	
	)	
Applications of AT&T Inc. and	)	WT Docket No. 11-65
Deutsche Telekom AG for Consent to	)	DA 11-799
Assign or Transfer Control of Licenses	)	ULS File No. 0004669383
and Authorizations	)	
	)	
Application for Assignment of Lower 700 MHz	)	WT Docket No. 11-18
Band Licenses from Qualcomm Incorporated	)	DA 11-252
to AT&T Mobility Spectrum LLC	)	ULS File No. 0004566825
	)	
Applications for Assignment of Licenses from	)	ULS File Nos. 0004544863
Whidbey Telephone Company to AT&T	)	and 0004544869
Mobility Spectrum LLC	)	
	)	
Application for Assignment of License from	)	ULS File No. 0004621016
700 MHz, LLC to AT&T Mobility Spectrum	)	
LLC	)	
	)	
Application for Assignment of License from	)	ULS File No. 0004635440
Knology of Kansas, Inc. to AT&T Mobility	)	
Spectrum LLC	)	
	)	
Application for Transfer of Control of	)	ULS File No. 0004643747
Redwood Wireless Corp. to AT&T Inc.	)	
	)	
Application for Assignment of License from	)	ULS File No. 0004681773
Windstream Lakedale, Inc. to AT&T	)	
Mobility Spectrum LLC	)	
	)	
Application for Assignment of Licenses from	)	ULS File No. 0004681771
Windstream Iowa Communications, Inc. to	)	
AT&T Mobility Spectrum LLC	)	
	)	
Application for Assignment of License from	)	ULS File No. 0004699707
Maxima International, LLC to AT&T	)	
Mobility Spectrum LLC	)	
	)	
Application for Assignment of Licenses from	)	ULS File No. 0004448347
D&E Investments, Inc. to New Cingular	)	
Wireless PCS, LLC	)	

## **JOINT REPLY TO OPPOSITIONS TO JOINT MOTION TO CONSOLIDATE**

Cincinnati Bell Wireless, LLC, MetroPCS Communications, Inc., NTELOS, the Rural Cellular Association, the Rural Telecommunications Group, and Sprint Nextel Corporation (“Joint Parties”) hereby reply to oppositions (“Oppositions”)<sup>1</sup> to the Joint Parties’ June 9, 2011 motion (“Joint Motion”) to consolidate into a single proceeding the Commission’s review of applications by AT&T Inc. (“AT&T”) to acquire licenses from Qualcomm, Inc. (“Qualcomm”), T-Mobile USA, Inc. (“T-Mobile”), and eight other companies from which AT&T seeks to acquire even more 700 MHz spectrum than it is seeking from Qualcomm (the “Serial 700 MHz Applications”).<sup>2</sup> As the Joint Parties have previously shown, the Serial 700 MHz Applications are closely related to the Qualcomm and T-Mobile applications, and the public interest should not be assessed in an uncoordinated, sequential manner.<sup>3</sup> Rather, the Serial 700 MHz Applications should be reviewed together with the T-Mobile and Qualcomm applications to ensure that they do not result in any harm to competition or consumers.

As explained below, the arguments raised in the Oppositions are not sufficient to overcome the strong reasons for granting the Joint Motion. The Commission therefore should

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<sup>1</sup> Opposition of D&E Investments, Inc., Windstream Iowa Communications, Inc., and Windstream Lakedale, Inc. (June 22, 2011) (“D&E Opposition”); Opposition of Deutsche Telekom AG (June 22, 2011) (“Deutsche Telekom Opposition”); Opposition of 700 MHz, LLC (June 22, 2011) (“700 MHz Opposition”); Joint Opposition of AT&T, Inc. and Qualcomm Incorporated (June 22, 2011) (“AT&T/Qualcomm Opposition”); Opposition of Whidbey Telephone Co. (June 22, 2011) (“Whidbey Opposition”); Opposition of Redwood Wireless Corp. (June 20, 2011) (“Redwood Opposition”). Unless otherwise noted, all pleadings cited herein were filed in WT Docket No. 11-65.

<sup>2</sup> Joint Motion to Consolidate (Apr. 27, 2011) (seeking consolidated review of the AT&T/T-Mobile and AT&T/Qualcomm applications); Joint Motion to Consolidate (June 9, 2011) (“Joint Motion”) (seeking inclusion of the Serial 700 MHz Applications in the FCC’s consolidated review of the AT&T/T-Mobile and AT&T/Qualcomm applications).

<sup>3</sup> See Joint Motion at 3, 5-6.

review in a single, consolidated proceeding the T-Mobile application, the Qualcomm application, and the Serial 700 MHz Applications.

## I. THE JOINT MOTION IS PROCEDURALLY SOUND

Although several Oppositions portray the Joint Motion as procedurally flawed, each of the alleged defects is groundless. As an initial matter, the Joint Motion is not “tantamount” to a petition to deny,<sup>4</sup> nor does it “effectively” seek relief that should have been included in a petition to deny.<sup>5</sup> Instead, as one Applicant concedes, the Joint Motion is simply a procedural request that the Serial 700 MHz Applications be reviewed in conjunction with the T-Mobile and Qualcomm applications.<sup>6</sup> Because the Joint Motion does not seek denial of any of the Serial 700 MHz Applications (or take a position on the merits of any such application),<sup>7</sup> the Commission’s rules regarding petitions to deny – including requirements regarding pleading cycles and standing – do not apply to the Joint Motion.

As a result, the Joint Motion was not “late-filed,” as some Applicants claim.<sup>8</sup> The Public Notices issued in some of the proceedings related to the Serial 700 MHz Applications, while setting pleading cycles for petitions to deny, set no deadlines for procedural motions such as the instant one.<sup>9</sup> Equally inapplicable are the default deadlines regarding petitions to deny, as set

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<sup>4</sup> Whidbey Opposition at 3.

<sup>5</sup> 700 MHz Opposition at 3.

<sup>6</sup> Redwood Opposition at 2-3 (the Joint Motion “is not a ‘petition to deny’” but instead is a “request for processing”).

<sup>7</sup> See 700 MHz Opposition at 4 (“Nowhere in the Motion is any argument presented with respect to the bona fides of Licensee’s application.”).

<sup>8</sup> 700 MHz Opposition at 3-4; *see also* Whidbey Opposition at 4-5.

<sup>9</sup> See, e.g., *Shareholders of Redwood 700, Inc. and AT&T Inc. Seek FCC Consent to the Transfer of Control of Lower 700 MHz Band B and C Block Licenses Held by Redwood Wireless Corp.*, Public Notice, DA 11-943, at 2 (rel. May 24, 2011); *AT&T Mobility Spectrum LLC and*

forth in the Commission's rules.<sup>10</sup> Applicants have identified no authority that would permit the Commission to apply these narrow requirements to a motion to consolidate, and doing so would be not only arbitrary and capricious, but administratively unworkable as well. For example, some of the Serial 700 MHz Applications were filed long before the Qualcomm and/or T-Mobile applications,<sup>11</sup> and the Joint Parties obviously could not have sought consolidation of all those applications when one or more of them had not yet even been filed. The Commission wisely has not required such clairvoyance in any rule or order of which the Joint Parties are aware, and it should not do so here.

Finally, some Applicants are mistaken in their belief that the Joint Parties lack "standing" to file the Joint Motion.<sup>12</sup> The rules cited by these Applicants pertain exclusively to the "party in interest" status that a party must demonstrate in order to file a petition to deny.<sup>13</sup> Since the Joint Motion is not a petition to deny, those rules also are inapplicable. In any event, as explained below, the Commission has broad statutory authority to consolidate proceedings, even without a motion seeking such relief. The Commission should exercise that authority here, whether *sua sponte* or in response to the Joint Motion.

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*700 MHz, LLC Seek FCC Consent to the Assignment of One Lower 700 MHz Band C Block License*, Public Notice, DA 11-921, at 2 (rel. May 19, 2011).

<sup>10</sup> See 47 C.F.R. § 1.939(a)(2); 47 C.F.R. § 1.948(j)(1)(iii).

<sup>11</sup> See ULS File No. 0004448347 (filed Nov. 15, 2010; amended Jan. 13, 2011) (seeking consent to assign 700 MHz spectrum from D&E Investments, Inc. to New Cingular Wireless PCS, LLC); ULS File Nos. 0004544863 and 0004544869 (filed Dec. 30, 2010) (seeking consent to assign 700 MHz spectrum from Whidbey Telephone Company to AT&T).

<sup>12</sup> Whidbey Opposition at 4 n.3; Redwood Opposition at 2-3 & n.3; *see also* 700 MHz Opposition at 4-5.

<sup>13</sup> See 47 U.S.C. § 309(d) (permitting "any party in interest" to file a petition to deny); 47 C.F.R. § 1.939(a) & (d) (permitting a "party in interest" to file a petition to deny).

## II. THE COMMISSION'S AUTHORITY TO CONSOLIDATE THE INSTANT PROCEEDINGS IS UNDISPUTED

When the Oppositions are stripped of their flawed procedural arguments, an important omission becomes apparent: None of the Applicants disputes the Commission's statutory authority to consolidate the instant proceedings. As the Joint Parties have previously shown, section 4(j) of the Communications Act of 1934, as amended, confers broad authority on the Commission to consolidate its review of transfer-of-control or assignment applications when doing so would "conduce to the proper dispatch of business and to the ends of justice."<sup>14</sup> Section 4(j) is particularly applicable here, where consolidation will allow the Commission to assess the cumulative impact of numerous related applications on consumers and competition and, in so doing, allow for expeditious processing of these applications and otherwise serve the public interest, as explained in Section III below.

As the Joint Parties also have explained, consolidating the instant proceedings under section 4(j) would be consistent with the Commission's obligation to make individualized determinations regarding each of the consolidated applications.<sup>15</sup> The Commission is quite capable of consolidating its review of multiple applications on the one hand, and making an individualized decision for each application on the other. Any concern to the contrary is thus unfounded.<sup>16</sup>

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<sup>14</sup> 47 U.S.C. § 154(j); *see also* Joint Reply to Oppositions at 2-3 (May 16, 2011) ("Joint Reply"). Contrary to one Applicant's claim, section 1.227 of the FCC's rules does not preclude consolidation. *See* 700 MHz Opposition at 6. While that rule applies to applications that have been designated for hearing, it does not say or suggest that consolidation motions may be filed *only* in hearing proceedings. To the contrary, consolidation motions are appropriate in non-hearing proceedings, as ample precedent illustrates. *See* Joint Reply at 3 & n.4 (citing precedents).

<sup>15</sup> Joint Reply at 4-5.

<sup>16</sup> *See* AT&T/Qualcomm Opposition at 3-4; Whidbey Opposition at 4-5.

### III. THE COMMISSION SHOULD EXERCISE ITS AUTHORITY TO CONSOLIDATE THE INSTANT PROCEEDINGS

The Joint Parties previously have explained the compelling policy grounds for the Commission to include its review of the Serial 700 MHz Applications in its consolidated assessment of the T-Mobile and Qualcomm Applications.<sup>17</sup> The magnitude of the spectrum that AT&T would hold if each of these applications were approved – and the potential for harm to competition and the public interest that such spectrum holdings would present – creates a common issue spanning the multiple transactions that demands comprehensive consideration of the applications.

Although Applicants seek to distinguish prior instances in which the Commission has consolidated proceedings, they do not apply similar rigor to the analysis of cases *they* offer as precedent for denial of consolidation, making no effort to match the facts underlying decisions declining to consolidate with the facts pertinent to the Serial 700 MHz Applications.<sup>18</sup> Indeed, none of the Applicants offers an example of the Commission's refusing to consolidate multiple and contemporaneous applications which, if approved, would result in a single carrier accumulating the amount of spectrum that AT&T would hold following the proposed transactions here at issue.

Because it is the *collective* magnitude of the proposed transactions that matters (as well as the superior utility of the spectrum involved), the fact that any single transaction is relatively small misses the point.<sup>19</sup> The Serial 700 MHz Applications cover 38 licensed service areas (not

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<sup>17</sup> See Joint Motion to Consolidate at 5-6; Joint Reply to Oppositions at 8.

<sup>18</sup> See 700 MHz Opposition at 9-11; AT&T/Qualcomm Opposition at 3-5; Deutsche Telekom Opposition at 3-4; Whidbey Opposition at 6-8.

<sup>19</sup> See, e.g., 700 MHz Opposition at 7; Redwood Opposition at 4; Whidbey Opposition at 4-5, 9.

including Qualcomm's licenses). If these were approved, AT&T would acquire up to 24 MHz of additional 700 MHz spectrum in some of those service areas (and not less than 12 MHz of additional 700 MHz in any one of those service areas), not including the spectrum it would acquire through the Qualcomm and T-Mobile transactions.<sup>20</sup> AT&T's proposed acquisitions would provide AT&T with "an extraordinary and unprecedented aggregation of bandwidth."<sup>21</sup> Even if consolidation is not routinely granted, the magnitude of spectrum aggregation contemplated by the Serial 700 MHz Applications raises novel concerns that are not grounded in prior precedents and that make consolidation appropriate here.<sup>22</sup>

In addition, consolidation will not inherently disadvantage the Serial 700 MHz Applications. Although several Applicants contend that consolidation of their applications into the more complex AT&T/T-Mobile proceeding would delay Commission action on their applications,<sup>23</sup> the Commission does not always act on small wireless transactions faster than it

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<sup>20</sup> In the Qualcomm transaction, AT&T seeks to acquire Qualcomm's six Lower 700 MHz D Block (6 MHz) licenses, which collectively have a nationwide footprint, and five Lower 700 MHz E Block (6 MHz) licenses in five large markets. The proposed T-Mobile transaction includes the acquisition of an additional 50 MHz of spectrum on average in the same geographic areas covered by the contemplated Qualcomm transaction.

<sup>21</sup> Petition to Deny of Sprint Nextel Corporation at 55-60 (May 31, 2011).

<sup>22</sup> Moreover, AT&T and T-Mobile have urged the FCC to address concerns about their proposed merger's potential for anticompetitive effects by conditioning approval on local divestitures of spectrum. Joint Opposition of AT&T Inc., Deutsche Telekom AG, and T-Mobile USA, Inc. to Petitions to Deny and Reply to Comments at 206 (June 10, 2011). Without commenting on the merits of this proposal, reviewing the Serial 700 MHz Applications on a consolidated basis would avoid the possibility of approving one or more of the individual transactions only to later order divestiture of those licenses through the procedures recommended by AT&T and T-Mobile. Review, approval, and subsequent divestiture of particular 700 MHz applications would waste administrative resources, unnecessarily impose costs on the Applicants, and do nothing to expedite construction of the licenses.

<sup>23</sup> See, e.g., AT&T/Qualcomm Opposition at 4; Redwood Opposition at 4; Whidbey Opposition at 4. The Serial 700 MHz Applications have been "offline" in the FCC's Universal Licensing System and thus are not subject to automatic processing within a prescribed time period.

acts on large wireless transactions. For example, the AT&T Wireless/Cingular transaction was completed within approximately seven months of the application being filed,<sup>24</sup> whereas some substantially smaller license assignment applications have remained pending at the Commission for nearly two years.<sup>25</sup> In fact, it is quite possible that consolidation would speed, rather than delay, processing of these applications.<sup>26</sup> The Commission should grant the Joint Motion to Consolidate given the strong public interest factors favoring comprehensive consideration and the absence of any inherent harm to the Applicants.

#### IV. CONCLUSION

The Oppositions have raised no sound legal or policy obstacle to the consolidation requested by the Joint Parties. The Commission therefore should include an assessment of the Serial 700 MHz Applications in its consolidated review of the AT&T/Qualcomm and AT&T/T-Mobile proceedings. Doing so will allow the Commission to assess the proposed transactions in an efficient manner that takes notice of their combined impact on the public interest, convenience, and necessity.

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<sup>24</sup> *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, ¶ 8 n.5 (2004) (application filed March 19, 2004 and Memorandum Opinion and Order released on October 26, 2004).

<sup>25</sup> *See, e.g.*, Application for Assignment of License from MariTEL Northern Pacific Inc. to PacifiCorp, Call Sign WPOJ532, ULS File No. 0003941632 (application filed August 24, 2009 and remains pending nearly two years later). Nor is there any guarantee that the FCC would process applications in the order in which they are received. *See* D&E Opposition at 2 (describing the “Commission’s long-standing practice of processing applications in the order in which they are received”). Variations in applications (and their underlying issues) and competing demands on the Commission’s resources, among other things, preclude the Commission from acting on applications on a first-come, first-served basis.

<sup>26</sup> *See* Joint Reply to Oppositions at 9 (“[C]onsolidation often *expedites* the Commission’s review process by allowing it to take notice of all relevant facts and issues in an efficient way.”) (citation omitted) (emphasis in original). *See also* D&E Opposition at 2 (explaining that the D&E/New Cingular assignment application was filed over seven months ago).

Respectfully submitted,

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July 5, 2011

## CERTIFICATE OF SERVICE

I, Colleen von Hollen, of Bennet & Bennet, PLLC, 4350 East West Highway, Suite 201, Bethesda, MD 20814, hereby certify that a copy of the foregoing Joint Reply to Oppositions to Joint Motion to Consolidate was served on this 5<sup>th</sup> day of July 2011 on those listed below as follows:

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