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August 10, 2011

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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Written *Ex Parte* Presentation: *Applications of AT&T and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations,* WT Docket No. 11-65

Dear Ms. Dortch:

In its petition to deny[1] and several ex parte presentations[2] in this proceeding, IDT Domestic Telecom ("IDT") has alleged that T-Mobile USA, Inc. "has engaged in anticompetitive behavior against IDT and TuYo Mobile by threatening to cut off T-Mobile service to third-party retail outlets unless those outlets agree to discontinue selling TuYo Mobile services."[3] The ex parte notices also attach a letter from Congressman Dan Burton (R-IN) addressing questions to T-Mobile about its conduct toward TuYo Mobile and similar services provided by Leap Wireless.

As T-Mobile USA President & CEO, Philipp Humm, explained in his attached response to Congressman Burton:

> *T-Mobile USA filed a lawsuit against IDT in May of 2009 in King County, Washington Superior Court for breach of contract for unpaid amounts claimed under the parties' 2005 agreement. After T-Mobile USA filed suit, IDT responded with counterclaims against T-Mobile USA, which T-Mobile believes to be meritless. While we believe that the most appropriate forum for addressing issues raised by a private party in a commercial dispute is the Court, I want to nevertheless*

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[1] IDT Domestic Telecom, Petition to Deny Application, WT Dkt. No. 11-65 (June 10, 2011).

[2] *See, e.g.,* Letter from John Windhausen, Jr., President, Telepoly Consulting, to Marlene H. Dortch, Secretary, FCC, WT Dkt. No. 11-65 (Aug. 4, 2011); Letters from John Windhausen, Jr., President, Telepoly Consulting, to Marlene H. Dortch, Secretary, FCC, WT Dkt. No. 11-65 (July 12, 2011).

[3] Letter from John Windhausen, Jr., President, Telepoly Consulting, to Marlene H. Dortch, Secretary, FCC, WT Dkt. No. 11-65, at 2 (Aug. 4, 2011).

> *address your question. It is my understanding that IDT never took any step to terminate the agreement; IDT continued to operate TuYo for many years as an MVNO reseller using T-Mobile USA's network; and that TuYo's apparent business problems were not due to any improper actions of T-Mobile USA. The lawsuit remains pending, and the parties are actively litigating. T-Mobile USA believes it acted absolutely appropriately and fulfilled all of its legal obligations in its dealings with IDT, and will continue to vigorously pursue its claims against IDT and defend against the counterclaims asserted by IDT.*

This response makes clear that IDT's allegations pertain to a private dispute between the parties. The Commission has repeatedly and consistently determined that such private disputes are not relevant to FCC license proceedings.[4]

If you have any questions regarding this submission, please do not hesitate to contact the undersigned counsel for T-Mobile USA.

Respectfully,

/s/ Nancy J. Victory

Nancy J. Victory

cc: Best Copy and Printing, Inc.
Kathy Harris
Kate Matraves
Jim Bird

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[4] *See PCS 2000, L.P.*, Memorandum Opinion and Order, 12 FCC Rcd 1681, 1691 ¶23 (1997) (quoting *United Tel. Co. of Carolinas v. FCC*, 599 F.2d 720, 732 (D.C. Cir. 1977) ("the purpose of the [Communications] Act is to protect the public interest rather than provide a forum for the settlement of private disputes."); *see also Regents of University System of Georgia v. Carroll*, 338 U.S. 586, 602 (1950) (stating that the Commission is not the proper forum to litigate contract disputes between licensees and others); *Listeners' Guild v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987) (confirming "the Commission's long-standing policy of refusing to adjudicate private contract law questions").

T · ·Mobile·

12920 SE 38th Street
Bellevue, Washington 98006
425-378-4000

May 31, 2011

The Honorable Dan Burton
United States House of Representatives
2308 Rayburn House Office Building
Washington, DC 20515-2276

Dear Representative Burton:

I am writing in response to your letter of May 18, 2011 concerning the proposed acquisition of T-Mobile USA by AT&T. As you know, the Department of Justice and the Federal Communications Commission are reviewing our proposed merger with a comprehensive and detailed view into issues relating to competition and the public interest. I am confident that this very thorough process will document and confirm that the proposed acquisition will benefit consumers and competition.

Your letter requests information concerning two lawsuits (one settled many years ago and one pending) brought by private parties regarding commercial disputes that are unrelated to the merger. You also requested information concerning the merger's effects on MVNO access to the merged networks and innovation in the wireless sector. I am pleased to have the opportunity to provide responses to you. You will find below answers to each of the four questions identified in your letter.

1) Address the allegation that T-Mobile interfered with Leap's launch of its Cricket brand.

In July of 2006, Cricket filed the lawsuit against T-Mobile USA identified in your letter; T-Mobile vigorously defended against those claims and asserted counterclaims against Cricket alleging tortious interference and unfair competition. The suit was dismissed approximately 6 months later, in February of 2007, by mutual agreement of the parties. The terms of the settlement are confidential.

2) Address the allegation that T-Mobile stifled market access of IDT's TuYo brand.

T-Mobile USA filed a lawsuit against IDT in May of 2009 in King Country, Washington Superior Court for breach of contract for unpaid amounts claimed under the parties' 2005 agreement. After T-Mobile USA filed suit, IDT responded with counterclaims against T-Mobile USA, which T-Mobile USA believes to be meritless. While we believe that the most appropriate forum for addressing issues raised by a private party in a commercial dispute is the Court, I want to nevertheless address your questions. It is my understanding that IDT never took any step to

terminate the agreement; IDT continued to operate TuYo for many years as an MVNO reseller using T-Mobile USA's network; and that

TuYo's apparent business problems were not due to any improper actions of T-Mobile USA. The lawsuit remains pending, and the parties are actively litigating. T-Mobile USA believes it acted absolutely appropriately and fulfilled all of its legal obligations in its dealings with IDT, and will continue to vigorously pursue its claims against IDT and defend against the counterclaims asserted by IDT.

3) Explain how the T-Mobile/AT&T merger will facilitate MVNO and other competitive provider's access to the merger network at reasonable prices.

Both AT&T and T-Mobile USA currently serve as a platform for numerous MVNOs. We fully expect that the combined company will continue to play a similar role post-merger. Moreover, as documented in the joint Public Interest Statement filed with the FCC, both companies are facing network capacity constraints and the merger will result in increased capacity that will benefit all users of the network, including MVNOs.

4) Explain how the T-Mobile/AT&T merger will increase innovation in the wireless sector.

As detailed in the joint Public Interest Statement filed with the FCC, the merger will relieve spectrum exhaust problems for both AT&T and T-Mobile, will create significant network efficiencies and capacity gains, and will free up sufficient spectrum for the combined company to deploy LTE broadly, all of which will promote innovation. By expanding capacity, the merger will provide the combined company, its partners, and other users of its systems the opportunity to launch and grow new, higher-capacity services on the LTE network.

Simply put, the transaction will give the combined company the scale, resources, and spectrum that will enable it to deploy LTE to more than 97 percent of Americans—approximately 55 million more Americans than under AT&T's current plans. It is these consumers, and especially those in rural America, who ultimately will reap the rewards of the enhanced coverage and future innovation brought about by this merger.

I appreciate your interest in the proposed merger and your "efforts to fully understand the complexities and consequences of this deal." I look forward to providing T-Mobile USA's cooperation and assistance to you.

Sincerely,

Philipp Humm
President & CEO
T-Mobile USA