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VIA ELECTRONIC FILING

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

Re: WT Docket No. 11-65, Applications of AT&T Inc. and Deutsche Telekom
AG For Consent To Assign or Transfer Control of Licenses and
Authorizations

Dear Ms. Dortch:

Public Knowledge recently urged the FCC to seek information on the plans of Deutsche Telekom (“Deutsche Telekom”) and T-Mobile USA, Inc. (“T-Mobile USA”) in the event that the proposed sale of T-Mobile USA to AT&T, Inc. (“AT&T”) is not consummated. Public Knowledge also urges the FCC to seek discovery regarding other strategic options that Deutsche Telekom and T-Mobile USA may have considered in the past.¹ As discussed below, Public Knowledge’s request is misplaced in several regards. First, the request seeks information about alternatives to the proposed transaction that are not legally relevant to the FCC’s consideration of the pending applications. Second, to the extent that Public Knowledge seeks information relative to other strategic combinations that Deutsche Telekom/T-Mobile USA may have considered in the past, such information has already been produced on the record and there is no indication that those disclosures are incomplete. Accordingly, as further detailed below, the Commission should immediately dismiss Public Knowledge’s requests as both unwarranted and moot.

**I. THE COMMUNICATIONS ACT DOES NOT PERMIT
CONSIDERATION OF ALTERNATIVES TO THE PROPOSED
TRANSACTION.**

The information sought in the Public Knowledge Letter is irrelevant to the FCC’s consideration of the proposed transaction. Section 310(d) of the

¹ See Letter from Harold Feld, Legal Director, Public Knowledge, to Rick Kaplan, Chief, Wireless Telecommunications Bureau, WT Docket No. 11-65 (Oct. 18, 2011) (the “Public Knowledge Letter”).

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Communications Act, by its terms, prohibits the Commission from “consider[ing] whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.”² The legislative history demonstrates that Congress added this language to the Communications Act explicitly to overrule the types of AVCO comparative proceedings that Public Knowledge seems to suggest applying to the pending applications.³ Rather, Congress intended for the Commission to consider a transaction “as though no other person were interested in securing such permit or license.”⁴

The FCC itself has also repeatedly, and properly, determined that its review is limited to an analysis of the transaction-specific benefits that could not be pursued but for the combination.⁵ This involves a two-part inquiry where the Commission determines: (i) whether the proposed transferee or assignee “possesses the minimum qualifications” necessary,⁶ and (ii) whether the transaction is in the “public interest, convenience, and necessity.”⁷ The Commission has specifically rejected precisely the type of inquiry Public Knowledge seeks, interpreting the last sentence of Section 310(d) to mean that the agency cannot “consider the relative merits of alternative, hypothetical transactions.”⁸

² 47 U.S.C. § 310(d).

³ S. Rep. No. 82-44, at 8 (1951) (Congress sought to annul the Commission’s use of the so-called AVCO procedure, which required comparative hearings before it would approve the transfer or assignment of a license).

⁴ H.R. Rep. No. 82-1750, at 12 (1952).

⁵ *Matter of Verizon Communications, Inc.*, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd. 6195 ¶ 34 (2000).

⁶ *MG-TV Broadcasting Co. v. FCC*, 408 F.2d 1257, 1263-64 (D.C. Cir. 1968), *rev’d on other grounds by Coal. on Hispanic Broad. v. FCC*, 931 F.2d 73, 79 (D.C. Cir. 1991).

⁷ *In the Matter of Shareholders of Tribune Co.*, Opinion, 22 FCC Rcd. 21266 ¶ 20 (2007), *amended on other grounds by* 23 FCC Rcd. 1659 (2008).

⁸ *In re Applications of Various Subsidiaries and Affiliates of Geotek Communications, Inc.*, Opinion, 15 FCC Rcd. 790 ¶ 48 (2000).



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In particular, the Commission has refused to consider whether other proposed transactions could have elicited greater benefits, stating that, “measur[ing] the proposed benefits of a pending transaction against the potential harms and benefits resulting from an alternative transaction . . . would be inconsistent with section 310 of the Act and is beyond the scope of our analytical framework for evaluating proposed transactions.”⁹ Public Knowledge’s request is based on the flawed premise that such information is necessary for the Commission to “reach an informed decision about the effect of this merger on the public interest.”¹⁰ In fact, the information does not even meet the test of relevancy, as it goes to issues beyond the scope of what the FCC may consider. Public Knowledge has provided no other justification for why it is proper for the Commission to pry into the applicants’ confidential business considerations in the manner that it suggests.

II. PUBLIC KNOWLEDGE’S REQUEST REGARDING DEUTSCHE TELEKOM’S PRIOR STRATEGIC OPTIONS FOR T-MOBILE USA IS MOOT.

The request in the Public Knowledge Letter for information regarding Deutsche Telekom’s prior strategic options for T-Mobile USA is moot because such information was already submitted in response to a prior FCC information request in this proceeding. Specifically, the Commission’s initial Information Request to Deutsche Telekom/T-Mobile USA requested:

For any relevant service or any relevant product in any relevant area, provide all plans, analyses and reports discussing: . . . any plans of, interest in, or efforts undertaken by the Company for any acquisition, divestiture, joint venture, alliance, or merger of any kind involving the provision or sale of any relevant product, or any relevant service, other than the Proposed Transaction.¹¹

⁹ *In The Matter of Applications for Consent to the Assignment and/or Transfer of Control of Licenses Adelphia Communications Corporation*, Memorandum Opinion and Order, 21 FCC Rcd. 8203 ¶ 261 (2006).

¹⁰ See Public Knowledge Letter at 3.

¹¹ Information and Discovery Request for Deutsche Telekom AG, WT 11-65 (rel. May 27, 2011), available at

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Deutsche Telekom/T-Mobile USA fully complied with the FCC's request in a series of submissions dated June 10, 2011, June 13, 2011, and June 24, 2011. These filings were confidential pursuant to the protective orders issued in WT Docket No. 11-65.¹² As a signatory to those protective orders, Public Knowledge has access to and may inspect those filings.¹³ Thus, to the extent that Public Knowledge is concerned about the Commission's ability to make an "informed decision" about whether or not the proposed transaction is in the public interest, to the extent such information is even relevant to the FCC's deliberations (which it is not), the Commission has all of the relevant information before it. The FCC also may have obtained similar information in response to requests to third parties for information regarding theoretical strategic deals with T-Mobile USA.

Public Knowledge, in fact, acknowledges that the information that it is seeking has already been adduced, stating, "Public Knowledge believes that this information is already covered by the Commission's twice-repeated information request."¹⁴ To clarify the record, however, the FCC's information request to Deutsche Telekom/T-Mobile USA has not been "twice-repeated." The Commission has sent Deutsche Telekom/T-Mobile USA a single Information Request request. While AT&T may have received a second request, it is unclear how AT&T could

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-306890A2.pdf
("Information Request").

¹² *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, Protective Order, DA 11-674 (rel. Apr. 14, 2011); *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, Second Protective Order, DA 11-753 (rel. Apr. 27, 2011) ("Second Protective Order").

¹³ See Letter from John Bergmayer, Staff Attorney, Public Knowledge to Marlene H. Dortch, Secretary, FCC (June 13, 2011), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021687630> (submitting Acknowledgements of Confidentiality for the following Public Knowledge attorneys: John Bergmayer, Harold Feld, Rashmi Rangnath, Sherwin Siy, and Michael Weinberg).

¹⁴ Public Knowledge Letter at 1.

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provide any responsive information regarding strategic alternatives considered by Deutsche Telekom/T-Mobile USA in any event.

In the absence of facts to support its position, Public Knowledge attempts to manufacture an issue out of “AT&T’s resistance” to responding to information requests, hypothesizing that the parties will “argue that they need not include this evidence.”¹⁵ However, Deutsche Telekom/T-Mobile USA did not oppose the Information Request by the FCC, and no party has suggested that the production of this information by Deutsche Telekom/T-Mobile USA was not complete and timely.

III. CONCLUSION

Deutsche Telekom and T-Mobile USA look forward to continuing to work with FCC staff to answer their questions regarding why the pending applications are in the public interest, convenience, and necessity. Rather than advancing this purpose, however, Public Knowledge’s request appears to be no more than a publicity ploy that would impose substantial burdens on Deutsche Telekom and T-Mobile USA while providing information that is duplicative and/or irrelevant to the Commission’s deliberative process. For these reasons, Deutsche Telekom and T-Mobile USA urge the FCC to dismiss expeditiously Public Knowledge’s ill-formulated request.

Sincerely,

/s/ Nancy J. Victory

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¹⁵ *Id.*