

November 30, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

RE: Notice of *Ex Parte* presentation in: WT Docket No. 11-65

Dear Ms. Dortch:

On November 28, 2011, Harold Feld, Legal Director, Public Knowledge (PK), spoke by telephone to Rick Kaplan, Chief, Wireless Bureau, and Renata Hesse, Senior Counsel to the Chairman for Transactions, with regard to the above captioned proceeding. PK had substantially similar conversations, separately, by telephone, with Mark Stone, adviser to Commissioner Copps, Louis Peraertz, adviser to Commissioner Clyburn.

PK argued that the Commission had discretion to deny the request of Applicants to withdraw their Application. In particular, with regard to withdrawal of the application to transfer the Section 214 licenses, the language of Rule 1.748(a) states the Commission “may” dismiss the application without prejudice on request. The use of the word “may” clearly denotes discretion, which the Commission should exercise in light of Applicants’ explicit statements that they intend to continue with the transaction after withdrawal of the application.

Even if the Commission grants the request to withdraw the applications under Sections 310(d) and 214(a), the Commission should publish the proposed HDO. The Commission could formally vote the HDO as an advisory opinion under Section 403. Alternatively, the Bureau could release the HDO as a staff report. The Commission has the authority to publish whatever reports it chooses on matters relevant to its jurisdiction under Section 4(m) and Section 403.

Such publication, even as a staff report, would serve the public interest. Merger opponents, including PK, have collectively spent millions of dollars and thousands of hours over the last 7 months opposing the merger. The Commission has expended significant resources at the tax payer expense to prepare the HDO. After forcing parties and the government to expend such resources, Applicants have now sought to exploit a procedural loophole to avoid an adjudication on the merits. They have done so for the explicit purpose of gaming the system and to seek an advantage in their litigation with the Department of Justice by depriving the District Court of the agency’s expert opinion.

Applicants demand to withdraw just before a vote on a hearing designation is consistent with their efforts to control the national debate by designating information contrary to their public arguments as “Highly Confidential” when such designation is unwarranted – conduct PK has complained of in the past. The HDO will provide the expert agency’s advisory opinion on such

critical matters as whether AT&T's job claims and other claims of public interest benefits are supported by fact, or if substantial questions of material fact remain.

For all these reasons, even if the Commission grants the request to withdraw, the Commission should publish the HDO.

In accordance with the FCC's *ex parte* rules, this document is being electronically filed in the above-referenced dockets today.

Sincerely,

_____/s/_____
Harold Feld
Legal Director
Public Knowledge

CC: Mark Stone
Louis Peraertz
Rick Kaplan
Renata Hesse