

What the LulzSec documents also lack is any demonstrable evidence that the LTE build out will be limited to 80 percent of the U.S. population. By all indications, since about 2009, AT&T has been planning a full system LTE build out which, when completed will cover AT&T's entire footprint. This contradicts AT&T's statements in the Applications that without T-Mobile it will only be able to provide LTE to 80 percent of the U.S. population. The LulzSec documents unequivocally reference a "Nationwide Launch."²⁹ Yet AT&T knowingly continued to argue that without T-Mobile it could not fully build out its LTE network.

Finally, the opponents contend that market forces would compel AT&T to deploy LTE to a level approaching 97 percent of the population even in the absence of this transaction. In fact, however, AT&T decided to build out LTE to only 80 percent of the population after considering the costs and benefits of increased LTE deployment, including (among other factors) competitive considerations, spectrum limitations, and the disproportionately higher infrastructure costs for rural deployment.³⁰

AT&T further claims that it concluded "in January 2010, and again in January 2011" "that an LTE footprint covering more than 80 percent of the U.S. population could not be justified."³¹ Yet none of the LulzSec documents, which cover this period, support AT&T's statements. Likewise the Staff Analysis, relying on internal confidential documents AT&T produced, did not credit AT&T's claim on this point.³² DTP has not been able to find a single document, public comment, newspaper article or shred of evidence prior to March 20, 2011, that supports AT&T's claim that it was planning to limit its LTE build out to 80 percent of the population. On the

²⁹ LulzSec document release. LTE Services Issues Management.

³⁰ Joint Opposition p. 9.

³¹ Joint Opposition p. 80.

³² Staff Analysis ¶¶ 253-256.

rollout of LTE coverage, AT&T has made so many contradictory statements that it is impossible to determine what to believe.

The LulzSec documents show that AT&T has for the last two years, been intensely working on its LTE rollout. AT&T plans to accommodate new LTE devices, such as the iPad 3. It is unlikely that AT&T was planning to make such new devices available to only a portion of its existing footprint. Does it really plan to make these new and exciting devices available to only 80 percent of the population? AT&T possesses the evidence to prove or disprove its 80 percent coverage claim. In February 2010, AT&T announced that it had retained Alcatel-Lucent and Ericsson to build out its LTE network. No doubt, AT&T has executed contracts with these equipment vendors. Designating this matter for hearing would permit the parties to review these agreements as part of the discovery process. Has AT&T agreed to purchase equipment sufficient to cover 80 percent of the U.S. population or 97 percent? Also, AT&T has prepared detailed budgets. Do AT&T's budgets show that it is planning to build out only 80 percent of the U.S. population or, more likely, is it planning a full build out covering its entire footprint? The evidence clearly shows that the Applicants have lacked candor and made material misrepresentations to the FCC concerning AT&T's proposed LTE rollout.

IV. The Applicants' Claims That T-Mobile Lacks A Clear Path To LTE Are Unsubstantiated And False.

The Applicants' argued that T-Mobile is an ailing company, with declining market share and no clear path to LTE.³³ According to the Applicants, T-Mobile lacks a "compelling portfolio of smartphone offerings."³⁴ Conversely, the Applicants claim that T-Mobile is facing imminent

³³ AT&T/T-Mobile Public Interest Statement, WT Docket No.11-65, p.2; Larsen Decl. ¶ 9.

³⁴ Christopher Decl. at ¶36.

spectrum exhaust.³⁵ Thus, AT&T simultaneously argues that T-Mobile lacks smartphone offerings and is facing spectrum exhaust from its dramatic growth in smartphone usage. As of the end of 2010, T-Mobile's smartphone customers accounted for 24 percent of T-Mobile's customers, about double the 12 percent figure it had by the fourth quarter of 2009.³⁶ As a result of this "explosive growth in demand," according to AT&T, T-Mobile "faces spectrum exhaust in a number of markets."³⁷ AT&T contends, T-Mobile "does not have the spectrum needed to deploy LTE in an economically and technically sustainable fashion."³⁸ However, if the FCC permits AT&T to acquire T-Mobile and combine its spectrum with that of T-Mobile's, these problems will evaporate. According to AT&T, "the combined network will far exceed the sum of its parts (i.e. 1+1=3)."³⁹

T-Mobile USA's network and spectrum resources will add substantial value to this highly competitive marketplace when they are combined with AT&T's network and spectrum resources to produce the output-enhancing synergies discussed in this submission.⁴⁰

The Staff Analysis found that "the record does not support the bleak short-term outlook for T-Mobile that AT&T has portrayed in its submissions."⁴¹ AT&T's statements concerning T-

³⁵ AT&T/T-Mobile Public Interest Statement, WT Docket No.11-65, p.30.

³⁶ Id. Citing, *T-Mobile USA Reports Fourth Quarter 2010 Results*, at 5 (Feb. 25, 2011), http://www.tmobile.com/company/InvestorRelations.aspx?tp=Abt_Tab_InvestorRelations&ViewArchive=Yes.

³⁷ Larsen Decl. ¶ 12.

³⁸ AT&T/T-Mobile Public Interest Statement, WT Docket No.11-65, p.31.

³⁹ AT&T/T-Mobile Public Interest Statement, WT Docket No.11-65, p.34.

⁴⁰ AT&T/T-Mobile Public Interest Statement, WT Docket No.11-65, p.13.

⁴¹ Staff Analysis ¶ 22.

Mobile's imminent spectrum exhaust contradict the statements it made in the Qualcomm application. In that application AT&T unequivocally stated, "Existing Carriers Have Sufficient Spectrum to Roll Out 4G Service."⁴² In fact, AT&T claims that T-Mobile holds proportionally more spectrum than AT&T given T-Mobile's customer base.⁴³ The Staff Analysis found that "MetroPCS, Leap, U.S. Cellular, and the other regional and small firms all have substantially less spectrum than T-Mobile."⁴⁴ AT&T, in the Applications, claims that its competitors all have sufficient spectrum, except now (three months after filing the Qualcomm application) T-Mobile is facing spectrum exhaust. AT&T offers no explanation for its two divergent statements made in applications filed just months apart. Nor did AT&T amend the Qualcomm application to reflect the change in T-Mobile's status from an aggressive competitor with ample spectrum to a failed entity facing spectrum exhaust. AT&T's failure to do so is in violation of Section 1.65 of the FCC's rules.⁴⁵

Without explaining what it means, AT&T obsessively claims that T-Mobile has no clear path to LTE.⁴⁶ AT&T makes much of Deutsche Telekom's CEO, Rene Obermann's statement that T-Mobile suffered from its late transition to 3G.⁴⁷ Likewise, AT&T stresses Obermann's statement that "[w]e also lack[ed] competitive smart phones."⁴⁸ Based on these statements,

⁴² AT&T and Qualcomm WT Docket No. 11-18 , pp. 30-31. <http://transition.fcc.gov/transaction/att-qualcomm.html>

⁴³ Id.

⁴⁴ Staff Analysis ¶ 64.

⁴⁵ 47 C.F.R. § 1.65.

⁴⁶ Larsen Decl. ¶¶ 23-26; Langheim Decl. ¶ 11.

⁴⁷ Christopher Decl. at p. 22, citing Transcript of Briefing by Deutsche Telekom and T-Mobile to Analysts, (Jan. 20, 2011), p.3. http://www.telekom.com/dtag/cms/contentblob/dt/en/979218/blobBinary/transcript_20012011.pdf

David Christopher, AT&T's Chief Marketing Officer, in his declaration concludes.

“Accordingly, T-Mobile is not an important factor in AT&T's competitive decision-making.”⁴⁹

The Christopher declaration relies on out-of-context references to the Transcript of Briefing by Deutsche Telekom and T-Mobile to Analysts of January 20, 2011.⁵⁰ A complete reading of the transcript reveals that AT&T was not candid in its representations and quotations from the Deutsche Telekom transcript. Obermann admits that T-Mobile came late to the 3G spectrum and that it lacked smart phone. However, Obermann made those statements in the past tense. In the next paragraph, Obermann switches to the present tense:

We now have the fastest nationwide 4G network in the U.S. and the handset portfolio has vastly improved, as demonstrated by the rising number of smart phones in our base and as we show here. And we have also seen improving revenue trends.⁵¹

In fact, Obermann goes so far as to say, “Independent field surveys show that real life data transmission speeds on our network are superior to most competitors and they are at least equivalent to LTE.”⁵² Obermann is absolutely euphoric about T-Mobile's prospects, placing heavy emphasis on T-Mobile's superior 4G network.

We have the best 4G network in the US. And we have a sufficient spectrum position medium-term. And we have a variety of attractive smart phones on our shelves, including the largest lineup of Android smart phones.

....

⁴⁸ Id.

⁴⁹ Christopher Decl. at p. 30.

⁵⁰ Transcript of Briefing by Deutsche Telekom and T-Mobile to Analysts, (Jan. 20, 2011). P.3.
http://www.telekom.com/dtag/cms/contentblob/dt/en/979218/blobBinary/transcript_20012011.pdf

⁵¹ Id.

⁵² Id. at p. 2.

At the same time we will continue to improve our 3G, 4G network coverage and increase the transmission speed of our network which will increase from peak rates of 21 megabits today to 42 megabits in 2011, a significant improvement of the performance. And we expect to have this speed of 42 megabits available to 140 million POPs.⁵³

Philipp Humm, T-Mobile's CEO, in the same transcript has this to say about T-Mobile's smartphone lineup:

T-Mobile built the largest and fastest 4G network in the country with 200 million POP coverage and with data speed of 21 megabits and we're currently rolling out 42 megabits in the country. Second, T-Mobile has a superior 4G handset lineup, smart phone lineup with 25 4G devices planned for the year 2011 and 50% of our sales today are already smart phones and 39% of our base is in smart phones. That's quite a lot of potential on the smart phone side.⁵⁴

T-Mobile's Chief Technology Officer Neville Ray at the same analysts' meeting had this to say about the prospects of T-Mobile and its all too clear path to LTE:

We are on the GSM 3G path and we migrate from that to HSPA+ to LTE. It's seamless. That's how this technology path was built.

....

We'll deliver 4G services with a broad HSPA+ footprint. At the right point in time when it's needed for us we can roll out LTE more as a capacity overlay because there are awesome benefits and the capacity delivery of LTE in the right spectrum configurations that will drive better economics and better performance for our customers. But when we do that, we don't have to go and touch the lion's share of our cell sites at all. So, you can see our expectation on investment levels around the LTE rollout for T-Mobile USA are more in the \$1 billion to \$2 billion range for that radio infrastructure upgrade depending on how far we go and how deep we go.⁵⁵

⁵³ Id. at p. 3.

⁵⁴ Id at p. 5. Accord, Staff Analysis ¶ 23.

⁵⁵ Id. at p. 14. (Emphasis added).

The statements of Obermann, Humm and Ray were made on January 20, 2011, just two months before T-Mobile announced it was selling its assets and licenses to AT&T. Neither AT&T nor T-Mobile explains how such divergent statements could be made only two months apart. DTP can only draw one conclusion, the Applicants have lacked candor and made material misrepresentations to the FCC, their investors and the SEC.

V. The Applicants Violated The FCC Ex Parte Rules And Misrepresented The Number Of Jobs The Merger Would Create.

In a failed attempt to place pressure on FCC decision makers, the Applicants engaged in an all out media campaign aimed primarily toward the Washington, D.C. area for the purpose of influencing FCC decision making personnel to grant the Applications. Its issue oriented radio, television, and newspaper advertisements constitute oral and written presentations to the FCC in a permit-but-disclose proceeding.⁵⁶ In failing to file memoranda documenting these ex parte presentations, AT&T has violated the FCC's ex parte rules.⁵⁷ Furthermore, the improper oral and written presentations were made to all Commission decision making personnel, thus tainting the entire Commission. Should the Applicants seek to reinstate their applications and the FCC decides to designate the Applications for hearing, as it has already indicated that it would, the appointment of an untainted separated trial staff and an Administrative Law Judge would be problematic, if not impossible.

On November 29, 2011, DTP filed an application for review of the letter decision of the Office of General Counsel (OGC Letter Decision) denying DTP's "complaint...that AT&T, Inc.

⁵⁶ DA-11-722, April 21, 2011

⁵⁷ 47 C.F.R. §§1.1200-1.1216.

(AT&T) violated the ex parte rules.”⁵⁸ DTP’s application for review is pending, and the issues raised in the application for review are incorporated herein by reference.

AT&T’s issue-oriented advertising focused on the spurious claim that the proposed merger will create 96,000 new “American jobs.” The Staff Analysis concluded that “the proposed transaction would in fact be expected to result in a significant reduction of indirect jobs because of the lower total network investment by the combined entity compared to AT&T and T-Mobile operating as separate competitors.”⁵⁹ While AT&T was quick to make public claims of job creation it provided the FCC with little in the way of supporting documentation.⁶⁰

Rather than build a record before the FCC, AT&T sought to influence decision makers with information it knew or had reason to know was false. Instead of providing the FCC with documentation, AT&T purchased issue-oriented newspaper, radio and television advertising primarily in the Washington, D.C. media market.⁶¹ These issue-specific commercials were not intended to sell any of AT&T’s products or services; they were designed to sell decision makers at the FCC, the Justice Department and Congress on the false claim that the AT&T–T-Mobile merger will create jobs. The television and radio commercials hammer home to key decision makers AT&T’s message, “with the planned merger with T-Mobile, AT&T will begin bringing 5,000 jobs to America from overseas. We will invest 8 billion dollars more and deploy the next generation of wireless broadband to nearly everyone in America. This investment will create as

⁵⁸ Letter of Joel Kaufman, Associate General Counsel and Chief, Administrative Law Division, to Arthur V. Belendiuk, dated November 10, 2011, styled “Re: Ex parte complaint in WT Docket No. 11-65.”

⁵⁹ Staff Analysis ¶ 265.

⁶⁰ Id. at ¶ 260.

⁶¹ <http://www.adweek.com/adfreak/att-ads-cast-merger-t-mobile-jobs-creator-135128>. AT&T Ads Cast Merger With T-Mobile as Jobs Creator TV, print work targets D.C. By Katy Bachman September 23 2011.

many as 96,000 American jobs.”⁶² These are unsubstantiated statements that directly addressed issues pending before the FCC. These commercials were designed to put pressure on the FCC to decide the matter in AT&T’s favor.

Mergers between big companies tend to result in layoffs. For example, an independent study commissioned by Sprint estimates that the AT&T acquisition of T-Mobile will eliminate between 34,000 and 60,000 jobs. AT&T’s numbers are based on an analysis from the Economic Policy Institute (EPI) that the Communications Workers of America filed in comments on May 31, 2011. The EPI paper states that for every 1 billion dollars invested in wireless infrastructure, some 12,000 "job-years" are created -- meaning, that a billion dollars would keep 12,000 people employed for one year.⁶³ The EPI study then cites an AT&T press release promising to invest 8 billion dollars over a seven-year period in improving the joined infrastructure of AT&T and T-Mobile.

Sprint commissioned an independent study by University of California Irvine Professor David Neumark, who wrote:

The EPI analysis claiming that the AT&T/T-Mobile merger will create jobs because of increased capital investment is completely unfounded. It is based solely on a claim by AT&T that it will increase its capital expenditures. But it appears to ignore reductions in capital expenditures that T-Mobile would have undertaken, and the strong likelihood that net capital expenditures would decline as a result of the merger. Indeed AT&T has told the federal government and its investors that the merger would lead to reduced capital expenditures. By EPI’s own logic, the net reduction in capital expenditures would lead to fewer jobs.⁶⁴

⁶² <http://www.youtube.com/watch?v=UAKYkizAUKc>

⁶³ <http://www.readwriteweb.com/enterprise/2011/10/did-anyone-prove-att-t-mobile.php>. Did Anyone Prove AT&T + T-Mobile Would Create Jobs? By Scott M. Fulton, III / October 17, 2011

⁶⁴ Id.

Nonetheless, knowing its statements were not true, AT&T heavily lobbied its claim that the AT&T merger will create 96,000 new American jobs. Knowing that time was running out and that the true facts would be soon be exposed, AT&T purchased advertising in the hope that it could directly reach FCC decision makers and influence politicians, who in turn would put pressure on the FCC to grant the pending applications. Its fraudulent campaign met with no small amount of success. AT&T was able to get 100 House Republicans, on September 20, 2011 to write to President Obama, urging the administration to use its influence to sway government agencies to grant the AT&T - T-Mobile merger. The letter has all of AT&T's key talking points incorporated in the text and, apparently, was influenced by AT&T's lobbying. The letter claims that failure to approve the merger will "thwart job creation and growth." The letter further states that AT&T is "committed to deploy ultra-fast mobile broadband networks to 97 percent of the U.S. population", "repatriate 5000 T-Mobile call center jobs," and spend \$8 billion in building out a 4G network to 55 million Americans who currently do not have access to this network." The letter then goes so far as to chastise the president. "The Obama Administration should not be turning away offers by the private sector to bring jobs to the United States."

On October 13, 2011, the FCC wrote to AT&T attorneys asking for a fuller response to its questionnaire about the benefits of its proposed merger -- specifically for more information on whether the merger will result in a net increase in jobs in the United States. The letter states that AT&T "has produced almost nothing" in response to the FCC's previous question about jobs data. Rather than address the issues before the FCC, AT&T did everything in its power, both fair and foul, to influence the FCC's decision. For the purposes of this pleading, what is relevant is that AT&T misrepresented material facts both before the FCC and the public it is licensed to serve.

VI. STANDARD OF REVIEW

The Commission insists on truthful and accurate statements by its applicants.⁶⁵ Section 1.17 of the Commission's Rules makes a blanket admonition to all parties participating in proceedings before the Commission that they shall not make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission.⁶⁶ This duty of candor requires applicants to be fully forthcoming as to all facts and information that may be decisionally significant to their application.⁶⁷ Any false or misleading submissions can have serious implications. Penalties for such conduct may include license revocation,⁶⁸ forfeitures, and referral to the Department of Justice for violation of 18 U.S.C. § 1001.

The FCC has consistently found that certain actions by a licensee are so egregious and outside the realm of acceptable conduct that they disqualify it from remaining a FCC licensee. FCC-related misconduct raises the question of “whether the licensee will in the future be likely to be forthright in its dealings with the Commission and to operate its station consistent with the requirements of the Communications Act and the Commission’s Rules and policies.”⁶⁹ Where

⁶⁵ 47 C.F.R. § 1.17.

⁶⁶ *Id.*

⁶⁷ *Swan Creek Communications v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994).

⁶⁸ 47 U.S.C. § 312 (a) Revocation of station license or construction permit

The Commission may revoke any station license or construction permit—

(1) for false statements knowingly made either in the application or in any statement of fact which may be required pursuant to section 308 of this title; ...

(4) for willful or repeated violation of, or willful or repeated failure to observe any provision of this chapter or any rule or regulation of the Commission authorized by this chapter or by a treaty ratified by the United States;

⁶⁹ *Character Policy Statement*, 102 F.C.C. 2d 1179, para. 55.

the FCC has found that a licensee has intentionally deceived the FCC or recklessly disregarded the truth, it has disqualified the licensee and revoked its licenses.⁷⁰

In determining whether applicants have the requisite character to be Commission licensees, the FCC looks to the Commission's character policy, initially developed in the broadcast area, as guidance in resolving similar questions in common carrier proceedings.⁷¹ Under this policy, the Commission has stated that it will review allegations of misconduct directly before it, as well as conduct that takes place outside of the Commission.

AT&T has certainly demonstrated its willingness to intentionally deceive. In its application it claims it is facing an imminent spectrum crunch while at virtually the same time it tell another federal agency, the SEC “that the availability of additional 700 MHz spectrum could increase competition and the effectiveness of existing competition.” AT&T claims T-Mobile lacks smartphones, is facing spectrum exhaust and has no clear path to LTE. T-Mobile’s officers, in a report to analysts cited by AT&T in its application, have told investors just the opposite. AT&T has not been forthcoming or candid with its needs for spectrum, or its plans to rollout LTE. AT&T and T-Mobile have both dissembled and lacked candor with the FCC in their representations concerning T-Mobile’s LTE rollout, the availability of smartphones and generally about T-Mobile’s ability to continue serving its customer base. AT&T has made

⁷⁰ See, e.g. *WOKO v. FCC*, 329 U.S. 223, 226-227 (1946). “The fact of concealment may be more significant than the facts concealed. The willingness to deceive a regulatory body may be disclosed by immaterial and useless deceptions as well as by material and persuasive ones.”

⁷¹ See, e.g., *WorldCom, Inc.*, 18 FCC Rcd. 26484, 26493 P 13 (2003) (“*WorldCom Order*”). See also *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 F.C.C.2d 1179, 1210-11 (1986) (*Character Policy Statement*), *Memorandum Opinion and Order*, 1 FCC Rcd 421 (1986); *Policy Regarding Character Qualifications in Broadcast Licensing*, 5 FCC Rcd 3252 (1990), *Memorandum Opinion and Order*, 6 FCC Rcd 3448 (1991), *Memorandum Opinion and Order*, 7 FCC Rcd 6564 (1992). The Commission applies its broadcast character standards to applicants and licensees in the other radio services. See, e.g., *1990 Character Policy Statement*, 5 FCC Rcd at 3253 P 10 (adopting 47 C.F.R. § 1.17 to apply prohibition against misrepresentations and material omissions to applicants, licensees, and permittees in all radio services).

material misrepresentations and has withheld material information concerning its claim that the merger will create 96,000 American jobs. These are serious, material misrepresentations made by the highest officers of both companies. Such statements call into question the qualifications of AT&T and T-Mobile to remain FCC licensees.

A licensee's duty of candor to the FCC is absolute. As the United States Court of Appeals has said: "The FCC has an affirmative obligation to license more than 10,000 radio and television stations in the public interest As a result the Commission must rely heavily on the completeness and accuracy of the submissions made to it, and its applicants have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate." *RKO General, Inc. v FCC*, 670 F.2d 215, 232 (D.C. Cir. 1981). Since the adoption of *RKO General*, the FCC has issued thousands of mobile wireless licenses. See also, *SBC Communications*, 16 FCC Rcd 19091 (2001) "We consider misrepresentation to be a serious violation, as our entire regulatory scheme rests upon the assumption that applicants will supply [the Commission] with accurate information." In the past, the FCC has not hesitated to revoke the licenses of those caught making misrepresentations to the agency.

CONCLUSION

There is a growing perception that federal agencies are quick to enforce their regulations against small companies, but too often look the other way when large regulated companies break the rules. While the Commission regularly enforces its truthfulness provisions as to other, mostly small, applicants and licensees, it has not held AT&T and T-Mobile accountable for their dissembling in this proceeding. Neither the WT Bureau Order nor the Staff Analysis took the next logical step of making findings on the substantial evidence in the record that AT&T's repeated misstatements violated the Communications Act and Commission rules. Although the

Bureau Order kept the docket open, its dismissal of the petitions to deny implies that the proceeding will be inactive unless and until AT&T files another application to effectuate the transaction. Therefore, as matters stand, the substantial questions that have been raised concerning AT&T's truthfulness and its qualifications will not be resolved herein or by a separate proceeding.

Where an applicant has knowingly attempted to mislead the Commission on an underlying matter of decisional import, complete disqualification of such an untrustworthy licensee or applicant has consistently resulted.⁷² As demonstrated herein, AT&T and T-Mobile have made numerous misrepresentations concerning the state of their respective companies, their alleged spectrum shortages, the jobs that allegedly would be created and AT&T's supposed need to acquire T-Mobile. They have made one set of representations to the FCC and another set of representations to the companies' investors and the SEC. Based on the evidence provided by DTP, the other parties to this proceeding and the FCC's Staff Analysis, there is little doubt that the Applicants made numerous misrepresentations to the Commission. No doubt the Applicants believe that they are just too big to have their wireless licenses revoked. Commission case precedent says otherwise.

On review the Commission must find that the Bureau Order erred in ignoring the serious character and qualifications issues raised by DTP and other parties, and confirmed by its own Staff Analysis. This omission can be rectified by designate a hearing on whether AT&T and T-Mobile still retain the basic character qualifications to remain FCC licensees. If found to lack

⁷² See, e.g., *Contemporary Media, Inc.*, 13 FCC Rcd 14,437 (1998); *Catoctin Broadcasting Corp. of New York*, 2 FCC Rcd 2126, 2136-38 (Rev. Bd. 1987); *TeleSTAR, Inc.*, 2 FCC Rcd 5 (Rev. Bd. 1987); *Mid-Ohio Communications, Inc.*, 104 FCC 2d 572 (Rev. Bd. 1986); *Bellingham Television Associates, Ltd.*, 103 FCC 2d 222 (Rev. Bd. 1986); *Pendleton C. Waugh* 22 FCC Rcd 13363 (2007).

the basic qualifications to remain licensees, their licenses should be revoked and auctioned to parties who will take seriously their responsibility to be honest and forthcoming with the FCC.

Respectfully submitted

By: 
Arthur V. Belendiuk
Counsel to The Diogenes Telecommunications Project

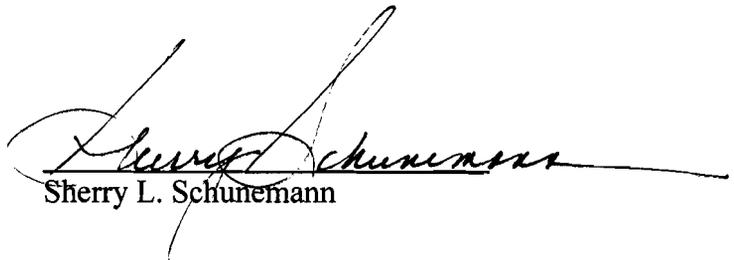
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W., # 301
Washington, D.C. 20016
(202) 363-4050
December 27, 2011

Certificate of Service

I, Sherry L. Schunemann, a secretary in the law offices of Smithwick & Belendiuk, P.C., do hereby certify that a copy of the foregoing "Application for Review" was mailed by First Class U.S. Mail, postage prepaid, this 27th day of December, 2011, to the following:

Peter Schildkraut, Esquire
Arnold & Porter LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004
Counsel for AT&T Inc.

Nancy J. Victory, Esquire
Wiley Rein, LLP
1776 K Street, N.W.
Washington, D.C. 20006
Counsel for T-Mobile


Sherry L. Schunemann