Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of T-Mobile Licensee LLC,	)	WT Docket No. 12-21
AT&T Mobility Spectrum LLC, and New	)	
Cingular Wireless PCS, LLC	)	File Nos. 0005005682, 0005005685,
	)	0005005687, 0005016840
For Consent to Assign AWS-1 Licenses	)	
	)	

JOINT OPPOSITION OF AT&T INC. AND T-MOBILE USA, INC. TO PETITION TO DENY

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SUMMARY

As the Commission is aware, the rapidly growing demands of consumers for wireless data and content services have created capacity challenges for wireless carriers. The proposed assignment of certain Advanced Wireless Service ("AWS-1") licenses from AT&T Inc. to a subsidiary of T-Mobile USA, Inc. will help T-Mobile USA address these challenges, move to next-generation LTE technology, and thus facilitate its ability to better serve consumers and effectively compete in the future.

The Diogenes Telecommunications Project—the only entity to oppose the proposed license assignments—does not dispute these public interest benefits articulated by the applicants. In fact, just last year Diogenes itself noted that the spectrum assignments would facilitate some of these same benefits. In opposing AT&T's acquisition of T-Mobile USA, Diogenes stated that the "$6 Billion break-up fee in cash, *spectrum* and roaming agreements that AT&T would have to pay would endow T-Mobile USA with a 'clear path' to LTE deployment."[i]

Nevertheless, Diogenes here asks the Commission to deny the above-captioned assignments because of alleged misrepresentations by the applicants. Its Petition, however, is procedurally and substantively defective. As an initial matter, Diogenes has failed to establish standing and thus its Petition is procedurally barred by the Communications Act and the Commission's rules. Diogenes fails to explain not only how Commission approval of the assignment of AWS spectrum to T-Mobile USA would directly harm Diogenes or its members, but also how denial of the applications would prevent or redress any cognizable injury to these entities. Nor is there any plausible basis for Diogenes making such a showing.

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[i] *See* Petition to Deny of The Diogenes Telecommunications Project, WT Docket No. 11-65, at 24 (May 31, 2011) (emphasis added).

Moreover, Diogenes' allegations about the applicants' character are plainly frivolous and lack any substantive merit. Applicants made no material misrepresentations to the Commission during the AT&T/T-Mobile USA proceeding. Accordingly, the Commission should promptly dismiss or deny the Petition and grant the above-captioned assignment applications.

TABLE OF CONTENTS

Page

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In the Matter of	)	
	)	
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In January 2012, AT&T Inc. ("AT&T") and T-Mobile USA, Inc. ("T-Mobile USA") filed applications with the Commission seeking to assign AWS-1 licenses from AT&T to T-Mobile USA pursuant to the break-up provision in the AT&T/T-Mobile USA purchase agreement.[1] As detailed in the Public Interest Statement accompanying the applications, the proposed assignments will serve the public interest and are fully consistent with the Communications Act of 1934, as amended ("Act"). Specifically, the proposed assignments will help T-Mobile USA address its spectrum needs in the subject markets to enable it to better address the growing demands of consumers for wireless data and content services and to move to next-generation mobile technology.

The applicants respectfully submit this Opposition to the Petition to Deny ("Petition") filed by The Diogenes Telecommunications Project ("Diogenes"), which was the only petition or

[1] The applications seek the Commission's approval for the assignment of various AWS-1 licenses held by two subsidiaries of AT&T to T-Mobile License LLC, a wholly owned subsidiary of T-Mobile USA. *Applications of T-Mobile License LLC, AT&T Mobility Spectrum LLC, and New Cingular Wireless PCS, LLC*, WT Docket No. 12-21, Public Notice, DA 12-92 (rel. Jan. 26, 2012) ("*Public Notice*") (noting filing of applications on January 20, 2012 and citing File Nos. 0005005685, 0005005682, 0005005687, 0005016840).

comment filed against the proposed assignments.[2] As detailed below, the Commission can dispose of the Petition on purely procedural grounds. Indeed, Diogenes has not established standing and thus its Petition is barred by the Communications Act and the Commission's rules. Further, Diogenes' allegations have no merit whatsoever—Diogenes is simply renewing groundless character claims previously raised before the Commission and unnecessarily wasting scarce agency resources.[3] Accordingly, the Commission should promptly dismiss the Petition and, in turn, grant the above-captioned assignment applications.

I. BACKGROUND.

AT&T-T-Mobile USA Acquisition Proceeding. On April 21, 2011, AT&T and Deutsche Telekom AG ("DT"), T-Mobile USA's parent company, filed applications pursuant to Sections 214 and 310(d) of the Communications Act seeking consent to the transfer of control of licenses and authorizations held by T-Mobile USA to AT&T.[4] On November 23, 2011, AT&T and DT withdrew those applications,[5] and on November 29, 2011, the Wireless Telecommunications

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[2] Petition to Deny of The Diogenes Telecommunications Project, WT Docket No. 12-21 (filed Feb. 23, 2012) ("Petition").

[3] *See* Petition to Deny of The Diogenes Telecommunications Project, WT Docket No. 11-65, at 24 (May 31, 2011) ("Diogenes Petition to Deny Acquisition") (alleging that the applicants intentionally deceived the FCC).

[4] *In re 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, Public Notice, 26 FCC Rcd 6424 (WTB 2011).

[5] *See* Letter from Patrick J. Grant, Arnold & Porter LLP, and Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, FCC (Nov. 23, 2011). On that date, the applicants also filed notifications of withdrawal in the Universal Licensing System and International Bureau Filing System for the applications that had been filed electronically in those systems. *See* File Nos. 0004669383, 0004673673, 0004673727, 0004673730, 0004673732, 0004673735, 0004673737, 0004673739, 0004675960, 0004703157, 0004698766, ITC-T/C-20110421-00109, ITC-T/C-20110421-00110, ITC-T/C-20110421-00111, ITC-T/C-20110421-00112; *see also* Letter from Patrick J. Grant, Arnold & Porter LLP, and Nancy J. Victory, Wiley Rein LLP, to

Bureau issued an order dismissing those applications without prejudice.[6] On December 27, 2011, Diogenes filed an Application for Review of the Bureau's November 29 order, seeking a decision on claims it previously made in the AT&T/T-Mobile USA proceeding about the applicants' character qualifications.[7] AT&T and DT filed oppositions to the Application for Review on January 11, 2012.[8] Diogenes filed its reply on January 23, 2012,[9] and the matter remains pending before the Commission.

AT&T-T-Mobile USA AWS Spectrum Assignment Proceeding. As noted above, on January 20, 2012, AT&T and T-Mobile USA filed applications with the Commission seeking to assign AWS licenses from AT&T to T-Mobile USA. On January 26, 2012, the Commission released a Public Notice establishing a pleading cycle on the proposed license assignment.[10] Diogenes filed its Petition to Deny on February 23, 2012.

Marlene H. Dortch, Secretary, FCC (Nov. 25, 2011) (relating to the applications in File Nos. 6013CWSL11, 6014CWSL11, 6015ALS11, and 6016CWSL11, which had been filed manually).

6 *In re 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, Order, DA 11-1955, ¶ 10 (WTB rel. Nov. 29, 2011) ("*Withdrawal Order*"). The International Bureau subsequently dismissed the applications seeking to transfer international Section 214 authorizations. *See International Authorizations Granted*, Public Notice, Rpt. No. TEL-01531, DA 11-1960, at 6-7 (IB rel. Dec. 1, 2011).

7 Application for Review of The Diogenes Telecommunications Project, WT Docket No. 11-65 (filed Dec. 27, 2011) ("Application for Review").

8 AT&T Inc., Opposition to Application of Review of The Diogenes Telecommunications Project, WT Docket No. 11-65 (filed Jan. 11, 2012); Deutsche Telekom AG, Opposition to Application of Review of The Diogenes Telecommunications Project, WT Docket No. 11-65 (filed Jan. 11, 2012).

9 Diogenes Telecommunications Project, Reply to Oppositions to Application for Review, WT Docket No. 11-65 (filed Jan. 23, 2012).

10 *See Public Notice*.

II. DIOGENES LACKS STANDING TO FILE A PETITION TO DENY.

Under Section 309(d)(1) of the Communications Act,[11] and Section 1.939 of the Commission's rules,[12] only a "party in interest" may file a petition to deny. To qualify as a "party in interest," the petitioner must satisfy the familiar, three-part standing test used by federal courts.[13] Specifically, the petitioner must establish that: (1) a "grant of the challenged application would cause the petitioner to suffer a direct injury"; (2) "the injury can be traced to the challenged action"; and (3) it is "likely, as opposed to merely speculative, that the injury would be prevented or redressed by the relief requested."[14] The petitioner must do more than make generalized statements in support of these elements; instead, the Communications Act requires that its petition contain "specific allegations of fact…."[15] Further, because Diogenes is an organization, it can show that either Diogenes itself or its members meet these requirements.[16] Diogenes, however, has done neither.

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11 47 U.S.C. § 309(d)(1).

12 47 C.F.R. § 1.939.

13 The FCC has concluded that in "determining whether a petitioner qualifies as a 'party in interest,' we must apply judicial standing principles." *Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, 82 FCC 2d 89, ¶¶ 19-20 (1989); *see also In the Matter of Rockne Educational TV*, Memorandum Opinion and Order, 26 FCC Rcd 14402, ¶ 7 (2011) ("We disagree with [the petitioner's] claim that it need not demonstrate traditional Article III standing. In fact, in the context of wireless applications, the Bureau has used the Article III test to determine whether standing exists.").

14 *Alaska Native Wireless*, Order, 18 FCC Rcd 11640, ¶ 10 (2003).

15 47 U.S.C. § 309(d)(1); *see also* 47 C.F.R. § 1.939(d) (same). Moreover, Section 309(d)(1) requires that such factual allegations be supported by an affidavit. *See* 47 U.S.C. § 309(d)(1).

16 *See, e.g., In re Friends of the Earth, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 23622, ¶¶ 2-3 (2003).

Diogenes does not claim that granting the pending assignment applications will cause Diogenes or its members to suffer a direct injury, nor does Diogenes claim that a Commission denial of the assignment applications would redress a direct injury. Instead, Diogenes merely states:

> DTP's standing was established in WT Docket No. 11-65 and is incorporated herein by reference. Briefly, Scott Karren is a long standing customer of T-Mobile. Additionally, Irene Laschuk is also a member of DTP and a customer of AT&T Mobility.

This paragraph simply does not satisfy the FCC's standing requirements, and the Commission should therefore dismiss Diogenes' Petition.

A. Diogenes Has Not Established that Diogenes or Its Members Will Suffer a Direct Harm.

Satisfying the "direct injury" element of the standing inquiry requires "more than allegations of damage to an interest in seeing the law obeyed or a social goal furthered."[17] Diogenes "must allege that discrete programmatic concerns" would be "directly and adversely affected" by the FCC's actions.[18] Consistent with these principles, the Commission has routinely scrutinized the standing of "public interest" groups that file petitions to deny transactions between wireless providers.[19]

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17 *Am. Legal Found. v. FCC*, 808 F.2d 84, 92 (D.C. Cir. 1987).

18 *Id.*; *see also Nat'l Taxpayers Union, Inc. v. United States*, 68 F.3d 1428, 1433-34 (D.C. Cir. 1995) (association lacked standing to sue on its own behalf because it was not injured by federal estate and gift tax rates).

19 *Nextel Communications, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd. 13967, n. 335 (2005) (FCC "not convinced" that the Consumer Federation of America ("CFA") had standing because the declaration "failed to make any specific claims" that would demonstrate that the declarant "would be directly affected by the order."); *Applications of AT&T Wireless Services, Inc., Transferor, and Cingular Wireless, Corp., Transferee*, Memorandum Opinion and Order, 19 FCC Rcd 21522, n.196 (2004) (same).

Here, Diogenes erroneously asserts that it has standing to petition to deny the assignment applications based on two of its "members": Scott Karren and Irene Laschuk.[20] But Diogenes fails to specify how granting the assignment applications would directly harm either "member," let alone specify that either "member" even opposes the proposed assignments:

- *Scott Karren*. Diogenes' assertion that its "standing was established" in the AT&T/T-Mobile USA proceeding based on that transaction's potential impact on Mr. Karren—and that Diogenes' standing in the earlier proceeding "is incorporated herein by reference"—is unavailing. The earlier proceeding and the instant proceeding are distinct and standing cannot be "incorporated … by reference."[21] Diogenes alleged in the AT&T/T-Mobile USA proceeding that Mr. Karren was concerned that AT&T would force him to switch to an AT&T service plan post-acquisition, which would cost more than his T-Mobile USA plan but offer a "poorer quality of service."[22] Obviously, these concerns were mooted when the acquisition was terminated. Today, Mr. Karren remains a T-Mobile USA subscriber, and the FCC's grant of the above-captioned assignment applications will not interfere with Mr. Karren remaining a T-Mobile USA subscriber.[23]
- *Irene Laschuk*. Diogenes also argues that it has standing because "Irene Laschuk is … a member of DTP and a customer of AT&T Mobility."[24] And Ms. Laschuk writes in her declaration: "I reside in Colts Neck, New Jersey. I am a member of The Diogenes Telecommunications Project. I am a wireless telephone customer of AT&T Mobility." Neither statement, however, specifies if and how Ms. Laschuk will be harmed by the transaction.

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[20] As noted above, Diogenes may demonstrate standing by showing that either Diogenes itself and/or its members would suffer a direct injury. *See supra* note 17. Diogenes tried to establish standing solely on its members' behalf.

[21] Diogenes did not "establish" standing in the acquisition proceeding. In fact, the FCC never addressed Diogenes' standing.

[22] *See* Diogenes Petition to Deny Acquisition at 2 ("As a T-Mobile subscriber, Scott Karren is concerned that he will be forced to migrate to an AT&T plan, which would result in his having to pay more for what, in his opinion, is a poorer quality of service."). *Id*. at Declaration of Scott Karren (same).

[23] Further, as explained in the above-captioned applications, the quality of service Mr. Karren receives from T-Mobile USA will increase if the FCC grants T-Mobile USA authority to build out over the valuable AWS spectrum at issue.

[24] Petition at 2.

As such, Diogenes has failed to demonstrate that it meets the critical first prong of the standing test.

B. Diogenes Has Not Satisfied the Causation and Redressability Elements of the FCC's Standing Test.

Even assuming, arguendo, that Diogenes established a direct injury to itself or its members, Diogenes fails to explain if and how Diogenes or its members satisfy the causation and redressability showings needed to establish standing. Indeed, Diogenes does not claim in its Petition that an alleged injury to its members is "fairly traceable" to the assignment applications under consideration.[25] And, even if Diogenes had tried to demonstrate causation, it would have failed. Consistent with well-settled standing precedent, Diogenes cannot establish causation because the injury that Diogenes would likely allege "'occurred before, existed at the time of, and [has] continued unchanged," since the assignment applications were filed.[26] Specifically, the alleged misrepresentations that Diogenes describes—and which presumably would form the basis for any allegations of harm to Diogenes' two members—occurred in the AT&T/T-Mobile USA proceeding: well before the applicants filed the instant assignment applications.[27]

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[25] *In the Matter of Rockne Educational TV,* Memorandum Opinion and Order, 26 FCC Rcd 14402, ¶ 7 (2011).

[26] *Microwave Acquisition Corp. v. FCC*, 145 F.3d 1410, 1412 (D.C. Cir. 1998) (quoting *California Ass'n of Physically Handicapped v. FCC*, 778 F.2d 823, 827 (D.C. Cir. 1985)).

[27] At bottom, Diogenes' "real plea" would be that the assignment would furnish no cure: it would "not cause" the alleged, abstract social harms "to abate." *California*, 778 F.2d at 825. But that type of allegation is insufficient to establish causation. *Id. See also Am. W. Airlines, Inc. v. Burnley*, 838 F.2d 1343, 1345 (D.C. Cir. 1988) (per curiam) (petitioner lacked standing to challenge merger between two rival airlines because injuries were not caused by the agency's approval).

Diogenes has also failed to establish that it is "'likely' as opposed to merely 'speculative'" that any alleged injury would "be 'redressed by a favorable decision.'"[28] Even if the FCC denied the assignment applications—as Diogenes requests—Diogenes would be "no better off because it has not identified any interest" in not having AWS spectrum assigned from AT&T to T-Mobile USA.[29] In fact, Diogenes previously seemed to support assigning the AWS spectrum from AT&T to T-Mobile USA.[30] Just last year, Diogenes urged the Commission to reject the acquisition because the "$6 Billion break-up fee in cash, *spectrum* and roaming agreements that AT&T would have to pay would endow T-Mobile USA with a 'clear path' to LTE deployment."[31]

III. THE APPLICANTS MADE NO MATERIAL MISREPRESENTATIONS TO THE COMMISSION.

In addition to being procedurally deficient, Diogenes' allegations lack any substantive merit. Applicants made no material misrepresentations to the Commission during the AT&T/T-Mobile USA proceeding. Indeed, since Diogenes first raised character allegations against the applicants in that proceeding, the Commission has repeatedly concluded that T-Mobile USA and

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[28] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (quoting *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 38, 43 (1976)).

[29] *Am. W. Airlines, Inc.*, 838 F.2d at 1344 ("In addition, even if the merger were overturned by this Court, America West would be no better off because it has not identified any interest in serving any identified market actually affected by the merger, certainly none as to which it would have greater access without the Department's order.").

[30] Additionally, denying the proposed assignment applications would not remediate any abstract social harms that Diogenes believes were caused by the alleged misrepresentations.

[31] Diogenes Petition to Deny Acquisition at 24 (emphasis added).

AT&T have the requisite character qualifications to hold Commission licenses.[32] Diogenes' arguments to the contrary are frivolous.

A. Diogenes' Attacks on AT&T's Character Qualifications Are Unfounded and Irrelevant.

Diogenes' allegations that AT&T lacked candor in the AT&T/T-Mobile USA proceeding should not delay approval of this transaction. Diogenes' charges are baseless. And, in any event, Commission precedent provides that they are irrelevant to the review of this transaction.

Diogenes' attacks on AT&T's character qualifications wholly lack any substantive merit. Diogenes claims that the FCC Staff Analysis conclusion that AT&T had not sufficiently supported certain arguments is tantamount to a finding that AT&T made misrepresentations.[33] That is incorrect. AT&T's submissions and statements to the Commission in the AT&T/T-Mobile USA proceeding were made with complete candor and provide no basis for departing from the Commission's repeated conclusion that AT&T is qualified to control Commission licensees.[34]

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[32] Diogenes first raised character allegations against the applicants in its Petition to Deny the AT&T/T-Mobile USA transaction. *See* Diogenes Petition to Deny Acquisition at 18-24. The Commission, however, has awarded license transfers and assignments to both applicants since then. *See, e.g., In re Application of AT&T Inc. and Qualcomm Inc. for Consent to Assign Licenses and Authorizations,* Order, WT Docket No. 11-18, FCC 11-188, ¶ 28 (rel. Dec. 22, 2011) ("*AT&T/Qualcomm Order*") (concluding, a mere five days before Diogenes filed its Application for Review, that AT&T Inc. has the requisite character qualifications to hold Commission licenses); *Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, De Facto Transfer Lease Applications and Spectrum Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports Action,* Public Notice, Report No. 7366, at 3 (WTB Oct. 19, 2011) (transfer of control of call sign WNVX591 from Cricket License Company, LLC to T-Mobile License LLC; full assignment of call sign KNLF961 from Savary Island License B, LLC to T-Mobile License LLC).

[33] *See, e.g.*, Petition at 9.

[34] *See, e.g., In re Application of Aloha Spectrum Holdings Co. LLC et al.,* Memorandum Opinion and Order, 23 FCC Rcd. 2234, 2236 ¶ 8 (2008); *In re AT&T Inc. & Centennial*

Moreover, Diogenes' request for the Commission to review AT&T's qualifications in this proceeding flies in the face of Commission precedent. It is the Commission's longstanding policy that the basic qualifications (including character qualifications) of the assignor (or transferor) are not re-evaluated in reviewing transactions, unless they have been designated for a hearing or have been sufficiently raised in petitions to warrant the designation of a hearing.[35] This exception does not apply here. The FCC has not designated AT&T's character qualifications for a hearing. Nor, as discussed above, have Diogenes' petitions raised any serious question as to AT&T's qualifications. Accordingly, the Commission should deny Diogenes' request to review AT&T's character qualifications in this proceeding.

Communs. Corp., Memorandum Opinion and Order, 24 FCC Rcd. 13915, 13931 ¶ 33 (2009); *In re Applications of AT&T Inc. and Dobson Communs. Corp.*, Memorandum Opinion and Order, 22 FCC Rcd. 20295, 20303 ¶ 11 (2007); *In the Matter of AT&T Inc. and BellSouth Corp., Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd. 5662, 5758 ¶ 194 (2007). As noted above, just a short time ago, the Commission once again reached this conclusion following a full public interest review. *See AT&T/Qualcomm Order* at 13 ¶ 28.

[35] *See, e.g., In re The Bankr. Estate of Innovative Commun. Corp. et al.*, 24 FCC Rcd. 14360, 14366 ¶ 14 (WCB/MB/WTB/IB 2009). *See also Applications of Sprint Nextel Corporation and Clearwire Corporation for Consent to Transfer Control of Licenses, Leases and Authorizations*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd. 17570, 17582-83 ¶ 23 (2008); *In re Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc., for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 21 FCC Rcd. 11526, 11536-37 ¶ 17 (2006) ("*ALLTEL/Midwest Order*"). The exception when the assignor's qualifications are reviewed "is designed to prevent licensees from evading responsibility for misdeeds committed during the license period," *ALLTEL/Midwest Order*, 21 FCC Rcd. at 11536 ¶ 17 n.73, by selling the licenses and collecting on their value before the Commission can take enforcement action. *See, e.g., In re M&M Broadcasters, Ltd.*, Opinion, 25 FCC Rcd. 4942, 4945 (2010); *In re Applications of Otis L. Hale d/b/a Mobilfone Communications et al.*, Order to Show Cause and Memorandum Opinion and Order Designating Applications for Hearing, 50 Fed. Reg. 43779, 43784 ¶ 30 (rel. Oct. 23, 1985). Here, AT&T is not assigning the licenses for value or to escape an investigation; rather, the licenses are part of the break-up fee that AT&T owes T-Mobile USA due to the abandonment of the AT&T/T-Mobile USA transaction. Thus, this transaction is not one where the public interest requires further review of the assignor's qualifications.

B. Diogenes Failed to Demonstrate that DT or T-Mobile USA Made Material Misrepresentations or Lacked Candor During the Merger Proceeding.

Contrary to Diogenes' claims,[36] DT and T-Mobile USA did not make material misrepresentations to the Commission during the AT&T/T-Mobile USA proceeding. Rather, the statements at issue were the product of well-reasoned internal discussions within DT and T-Mobile USA's engineering and business groups and reflected the companies' best understanding at that time about their existing and future service capabilities. Consistent with Commission precedent, such legitimate business and technical judgments—even when presented to the Commission—should not be subjected to the character qualifications inquiry. Indeed, the Commission has emphasized that "it is not the objective of the character qualifications inquiry to evaluate applicants' business acumen, scrutinize their business plan for safety and soundness or judge their every business decision against other alternatives."[37] Diogenes' specific allegations—that DT and T-Mobile USA misrepresented that T-Mobile USA lacked a clear path to LTE, lacked a compelling smartphone portfolio, and faced spectrum exhaust—fall apart under even casual scrutiny.

First, Diogenes erroneously claims that T-Mobile USA had an "all too clear path to LTE" by pointing to—and taking out-of-context—one prior statement by T-Mobile USA's Chief Technology Officer Neville Ray.[38] But, as the applicants explained at length in the AT&T/T-

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[36] Petition at 15-19; *see also* Diogenes Application for Review at 14-19.

[37] *In the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, 23 FCC Rcd 17444, ¶ 39 (2008) ("*Verizon/ALLTEL*") (dismissing allegations of misconduct against applicant's parent company as speculation and unfounded inference); *see also In re Matter of the Applications of Yankee Microwave, Inc.*, 7 FCC Rcd 3233, ¶ 9 (1992) (dismissing petitioner's allegation of misrepresentation because claim "appears to be no more than speculation").

[38] Petition at 18 ("T-Mobile's Chief Technology Officer Neville Ray . . . had this to say about the prospects of T-Mobile and its all too clear path to LTE . . ."). Ray's statement, made at

Mobile USA proceeding, T-Mobile USA faced considerable obstacles, including lack of access to spectrum and capital, to deploying a competitive, nationwide LTE network. Since the acquisition ended, T-Mobile USA has announced that it plans to deploy LTE in 2013. Obviously, two of the key catalysts of this launch plan are the additional spectrum and money that DT and T-Mobile USA would receive as a part of the break-up fee for the terminated acquisition.[39]

Second, Diogenes suggests that statements regarding T-Mobile USA's smartphone portfolio and its potential spectrum exhaust are inherently inconsistent with one another.[40] But this claim is overly simplistic and incorrect. T-Mobile USA faced—and continues to face—increasing demands on its network due to heavy data usage by its customers. Indeed, claims about T-Mobile USA's future spectrum needs were particularized in great detail in the AT&T/T-Mobile USA proceeding.[41] But T-Mobile USA also lacked access to certain smartphones popular in the marketplace—including the exceedingly popular iPhone. Contrary to Diogenes'

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an investor conference, pertains to T-Mobile USA's chosen technology path and the need to evolve to LTE. The statement does not address the issue of whether T-Mobile USA had sufficient spectrum or capital resources to deploy LTE on a nationwide basis.

[39] *See* Press Release, T-Mobile USA, "T-Mobile USA Announces Reinvigorated Challenger Strategy" (Feb. 23, 2012), http://newsroom.t-mobile.com/articles/ReinvigoratedChallengerStrategy. Post-deal, DT has decided to provide additional capital to T-Mobile USA based on its understanding that the business must move forward in light of the government's disapproval of the acquisition.

[40] Petition at 15 ("T-Mobile, [the applicants] said, lacks a 'compelling portfolio of smartphone offerings.' Conversely, they claim that T-Mobile is facing imminent spectrum exhaust. Thus, they simultaneously argue that T-Mobile lacks smartphone offerings and is facing spectrum exhaust from its dramatic growth in smartphone usage.") (emphasis in original, citations omitted).

[41] AT&T Inc. and Deutsche Telekom AG, Public Interest Statement, WT Docket No. 11-65, at Larsen Decl., ¶¶ 11-22 (filed Apr. 21, 2011); AT&T Inc. and Deutsche Telekom AG, Joint Opposition to Petitions to Deny, WT Docket No. 11-65, at Larsen Reply Decl., ¶¶ 18-21 (filed Jun. 10, 2011).

assertion, these two facts are not mutually exclusive: a provider can lack access to certain popular handsets, but still face significant spectrum constraints. The threat of spectrum exhaust results from increasingly heavy data usage by wireless customers—a fact well-recognized by the Commission and others—and is not precluded by the fact that T-Mobile USA does not offer particular models of smartphones.

IV. CONCLUSION.

Diogenes' Petition is procedurally barred by the Communications Act and the Commission's rules because Diogenes has failed to establish standing. Moreover, Diogenes' allegations are plainly frivolous and lack any substantive merit. Accordingly, the Commission should promptly dismiss or deny the Petition and grant the above-captioned assignment applications.

Respectfully submitted,

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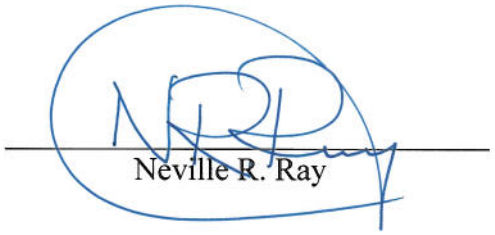
DECLARATION OF NEVILLE R. RAY

1. My name is Neville R. Ray. I am the Chief Technology Officer at T-Mobile USA, Inc. I joined the company in 2000 and have been involved in mobile radio technology for more than 20 years, including in the prior posts of Chief Network Officer and Senior Vice President for Engineering and Operations at T-Mobile USA. In my current capacity, I am responsible, among other things, for overseeing the management of the company's wireless network, which includes approximately 52,000 cell sites, as well as T-Mobile USA's WiFi HotSpot network in the United States. I oversee the continued growth of the current network along with the rollout and launch of future networks.

2. I submit this Declaration to support the Joint Opposition of AT&T Inc. and T-Mobile USA, Inc. to Petition to Deny. Specifically, I write to confirm the veracity of the factual statements in the Joint Opposition regarding T-Mobile USA's network, its capacity challenges and how the spectrum to be assigned will assist in addressing those challenges.

I, Neville R. Ray, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.



Neville R. Ray

Executed on March 8, 2012

CERTIFICATE OF SERVICE

I, May K. Chiang, do hereby certify that on this 8th of March, 2012, I caused a true copy of the foregoing "Joint Opposition of AT&T Inc. and T-Mobile USA, Inc. to Petition to Deny" to be sent by electronic mail (*) or U.S. mail (^) on:

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/s/ May K. Chiang