

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)
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Applications of)
)
T-Mobile License LLC)
)
AT&T Mobility Spectrum LLC)
)
New Cingular Wireless PCS LLC)
)
For Consent to the Assignment of AWS-1)
Licenses)
_____)

WT Docket No. 12-21

To: The Secretary

SUPPLEMENT TO PETITION TO DENY

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April 16, 2012

The Diogenes Telecommunications Project, (DTP) by its attorneys, hereby files this Supplement to its Petition to Deny in the above referenced applications of T-Mobile License LLC, AT&T Mobility Spectrum LLC and New Cingular Wireless PCS LLC for consent to assignment of licenses. The applicants are subsidiaries of AT&T, Inc. (AT&T) and T-Mobile USA (T-Mobile), which itself is a subsidiary of Deutsche Telekom AG.

As discussed in detail in the Petition to Deny, AT&T and T-Mobile made numerous material misrepresentations to the Commission in WT Docket No. 11-65. The FCC insists on truthful and accurate statements by its licensees, a duty which AT&T and T-Mobile have breached repeatedly. 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 material misrepresentations to the agency.

Information has come to DTP’s attention which shows that AT&T has fraudulently submitted ineligible IP Relay calls to the interstate TRS Fund in order to collect tens of millions of dollars in payments. In the process, AT&T caused significant financial injury to U.S.

individuals and merchants. It also deteriorated the ability of disabled persons from using relay services to communicate with individuals and businesses. AT&T's fraudulent conduct has caused it customers, including Irene Laschuk a member of DTP, to incur additional monthly charges. Further as discussed herein, to perpetrate this fraud, AT&T became the *consigliore* and partner of the Nigerian Mafia. This conduct is further proof that AT&T is not qualified to be an FCC licensee.

EVIDENCE OF FRAUD

On March 22, 2012, the Department of Justice (DOJ) filed a complaint against AT&T under the False Claims Act for conduct related to its provision of Internet Protocol (IP) Relay services. The case is *U.S. ex rel. Lyttle v. AT&T Corp.*, No. 2:10-cv-1376 (W.D. Pa.) (Complaint). In the Complaint, the DOJ alleges that AT&T violated the False Claims Act by facilitating and seeking federal payment for IP Relay calls by international callers who were ineligible for the service and sought to use it for fraudulent purposes. The Complaint alleges that AT&T received tens of millions of dollars in federal payments from the TRS Fund, based on false data that it submitted and certified to the FCC's administrator. DOJ is suing for the return of the TRS Funds and for civil penalties. The FCC, for its part, must investigate AT&T's alleged fraud and, if proven, subject the offender to its full range of penalties. These issues are properly before the FCC and should be addressed in the context of a hearing.

Congress mandated a nationwide Telecommunications Relay Services (TRS) program in the Americans with Disabilities Act of 1990, and requires the FCC to ensure that interstate TRS services are available, to the extent possible, to persons with hearing and speech disabilities in the United States so that said impaired individuals could communicate with hearing individuals in a manner that is functionally equivalent to voice communications services.

Internet Protocol Relay Services (IP Relay) is a free service that allows people with speech or hearing disabilities to communicate with hearing individuals. An IP Relay user initiates contact by using the Internet to contact a TRS IP provider, such as AT&T. The IP Relay Provider, in turn, employs a Communications Assistant (CA) to view the IP Relay user's typed conversation and then relays that conversation verbally to the hearing person. The FCC does not allow for compensation for IP Relay calls that originate or terminate outside the United States.¹

For every legitimate interstate IP Relay call that a certified IP Relay provider, such as AT&T, receives, the FCC's interstate TRS Fund compensates the provider for the minutes that accrue. The TRS Fund which is collected by means of regulatory fee from telecommunications companies, which in turn generally pass through these their TRS Fund contributions to their customers in the form of surcharges on their bills.

In 2002, AT&T applied for and became certified to provide IP Relay TRS Service. In order to receive reimbursement from the TRS Fund for its IP Relay service, AT&T was required to submit monthly claims to the FCC or its administrative agent, the National Exchange Carrier Association, Inc., (NECA) for the minutes of legitimate IP Relay service it provided, a request for payment, and a certification that the claims were valid.² See 25 FCC Rcd 6012 (2010) The approximate per minute compensation AT&T received from 2002 to the present was \$1.30.

The Complaint alleges that the "per-minute compensation provided an inherent incentive for providers to seek ways to generate minutes of use solely for the purpose of generating compensable minutes rather than to provide legitimate services to IP Relay Users." The

¹ See Public Notice, DA 12-208, n. 37 (February 13, 2012)

² Structure and Practices of the Video Relay Services, Declaratory Ruling, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 6012 (2010), at para. 14.

Complaint alleges that AT&T employed and provided administrative overhead costs to approximately 150 IP Relay CAs working at any given time 24-hours a day, 7 days a week, 365 days a year, processing IP relay calls.

According to the Complaint, in order to generate an almost tenfold increase in IP reimbursement from the TRS Fund, AT&T turned to its business partners, the Nigerian Mafia. In 2002 the Nigerians learned that the United States started an IP Relay service that was a free service over the Internet for speech and hearing impaired United States interstate users. The Nigerians immediately started illegally using this free Internet service to perpetrate scams and fraudulent schemes on U.S. residents. Such schemes included buying goods with stolen or fake credit cards and offering over-payments for more than the asking price with a request for the 'mark' to send them the balance as a refund.

The Complaint alleges that 95% of all the purported TRS IP Relay calls for which AT&T hired hundreds of IP Relay CAs to service and for which AT&T sought reimbursement were for users that used the IP Relay service to scam, steal or illegally obtain goods or money from the recipients of that IP Relay call, i.e. U.S. merchants. The Nigerian callers utilized AT&T's IP Relay service for illegal purposes to violate one or more state and federal laws, including fraud and theft by deception.

The whistleblower, Constance Lyttle, worked for AT&T as an IP Relay CA from 2002 until she was wrongfully terminated in 2010 for complaining about and refusing to participate in AT&T's fraudulent practices. It was obvious to Lyttle and the other AT&T CAs, as well as AT&T management, that 95% of all IP Relay calls were originating from an international source, Nigeria, for the purpose of perpetrating a fraud. For example, some IP Relay users would state to Lyttle that they were calling from Nigeria. As the illegitimate call volume increased, AT&T

offered unlimited overtime work to its IP Relay CAs and at different times instituted mandatory overtime hours so that AT&T could continue to service all the illegitimate IP Relay user calls.

As described in the Complaint, AT&T was fully aware of the fraudulent calls, that they originated from Nigeria and that it was the Nigerian Mafia at work stealing from U.S. residents. AT&T's managers were required to sit with CAs once a month to monitor and observe their operators' quality of service. The managers witnessed an increasing call volume of ineligible IP Relay users. AT&T sent memos to its CAs that discussed the IP Relay Fraud. The Complaint states that AT&T's managers stated that "until the FCC makes AT&T stop, it would continue processing these illegitimate ineligible calls, and that if it weren't for these ineligible calls [AT&T's] IP Relay TRS center would be closed and that the CAs, including [Lyttle], would be out of a job." Complaint at para. 83. The CAs' and managers' bonuses were dependant on TRS revenues. In February 2007 AT&T required their IP Relay CAs to sign a confidentiality agreement. The agreement stated that the CAs agreed that they would process any and all suspected "Scam" and/or "Fraudulent" calls with the threat of termination for breaking protocol.

Not only did AT&T know about the Nigerian scam, but it had the technology to block it. To make it appear that their calls were originating in the United States the Nigerian Mafia started using a computer program, which allowed the Nigerians' computers to go through U.S. proxy servers which then forwarded the international IP Relay to AT&T's IP Relay server. It would then appear that the IP Relay call originated from a U.S. interstate location.

AT&T holds several patents for software programs that can detect and block IP Relay users that initiate IP Relay calls through a proxy server. These proxy blocking programs are written to scan, in real time, all proxy server addresses and then automatically block these ever changing addresses. AT&T could have installed one of the many readily available software

programs such as “The Spam and Open Relay Blocking System” which would check in real time all IP Relay calls to block IP addresses that come from a proxy server. According to the Complaint, AT&T had the technology to block virtually all proxy connections. However, this would have also meant that AT&T would have lost 95% of its revenue from the lucrative IP Relay business, so no action was taken.

It is not just that AT&T knowingly accepted the calls, but according to the Complaint, it actively encouraged and enticed the Nigerian Mafia to make IP Relay calls for the purpose of scamming or defrauding U.S. companies and U.S. residents. AT&T Global Information Solutions LTD has a location based in Lagos, Nigeria. According to the Complaint, around 2002 AT&T began to entice and encourage the Nigerian Mafia to use AT&T’s IP Relay service with the implicit promise that the Nigerians would be allowed to scam Americans by using AT&T’s IP Relay service. As discussed above, AT&T failed to install a proxy blocking system, however the Complaint further alleges that AT&T shared its “proxy *transparency* system” with the Nigerian Mafia. Thus, AT&T gave the Nigerian Mafia the technology to make calls through proxy servers. AT&T took such actions “for the sole purpose to entice Nigerians to use their IP Relay service and to generate illegitimate IP Relay minutes for which [AT&T] would submit claims to the FCC’s TRS Trust Fund.” Complaint at para. 103. It is a violation of the FCC’s financial incentive order for an IP Relay provider to encourage or entice a user to make an IP Relay call they would not otherwise have made but for the encouragement or enticement of the IP Relay provider.

ARGUMENT

The Complaint raises substantial questions of AT&T’s character qualifications which the FCC is bound to investigate. The Complaint alleges that AT&T management knew for years that its IP Relay business was founded on ineligible international calls. The company took some \$70

million from the TRS Fund by falsely certifying the data it submitted to the FCC or NECA. It muzzled its Communications Assistants and never told the FCC that it was processing a large number of “scam” and “fraudulent” IP Relay calls.³

AT&T has violated the FCC’s rules, made knowingly false certifications and made material misrepresentations to the Commission. In aiding and partnering with the Nigerian Mafia, it created a long trail of financial injury to the American people. It is unworthy to hold in trust the licenses that belong to the people it defrauded. There are multiple victims in this case, including but not limited to the following:

- a. U. S. merchants are defrauded of millions of dollars in goods;
- b. Banks are liable for bad checks they cleared;
- c. Persons and businesses are financially harmed through theft and fraud;
- d. Legitimate IP Relay users may find the system busy because of all the illegitimate use;
- e. Because of all the fraud, many businesses no longer accept IP Relay service calls.

Legitimate IP Relay users are blacklisted from receiving commercial services;

- f. The Federal Government is harmed because the Federal Government loses money; and
- g. U.S. residents, like Irene Laschuk, are harmed because they are billed higher TRS fees.

As anyone who is, knows, or has a family member who is handicapped can attest, for a handicapped person, functioning in the everyday world can be extremely challenging. Congress, in its wisdom, set up a system where hearing and speech impaired individuals can communicate with their friends and conduct business. AT&T betrayed the hopes of hearing and speech

³ See eg. AT&T’s Comments in the Further Notice of Proposed Rulemaking in CG Docket No. 03-123 <http://apps.fcc.gov/ecfs/document/view?id=6518388709> In its comments AT&T is largely concerned with insulating TRS providers from responsibility for fraudulent use of the service and preventing Communications Assistants from taking any actions in response to calls they suspect are fraudulent.

impaired individuals by making it difficult for them to communicate with their friends and family, and especially difficult for them to purchase goods from U.S. merchants. To add insult to injury, AT&T provided guidance and technical support to the very people who were committing the fraud, the Nigerian Mafia. In perpetrating this fraud, AT&T falsely certified before the FCC that it was seeking reimbursement only for eligible IP Relay service calls. It made regular certifications, knowing that these certifications were false. It made the certifications, knowing the real harm it was causing to handicapped individuals, to the government and to U.S. individuals and businesses.

The Commission insists on truthful and accurate statements by its applicants.⁴ 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.⁵ This duty of candor requires applicants to be fully forthcoming as to all facts and information that may be of decisional significance to their applications.⁶ Any false or misleading submissions can have serious implications. Penalties for such conduct may include license revocation,⁷ and forfeitures.

⁴ 47 C.F.R. § 1.17

⁵ *Id.*

⁶ *Swan Creek Communications v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994)

⁷ 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;

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.”⁸ Where 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.⁹

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.¹⁰ 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. In this case, the conduct is FCC related.

CONCLUSION

AT&T has certainly demonstrated a willingness to deceive, both in WT Docket No. 11-65 and with its willful filing of false certified reports for its IP Relay services in order to defraud the public of tens of millions of dollars. To satisfy its greed AT&T has caused real injury to

⁸ *Character Policy Statement* 102 F.C.C. 2d 1179, para. 55 (1986).

⁹ 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.”

¹⁰ 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).

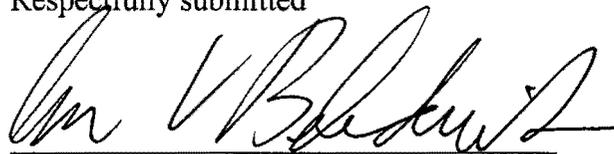
numerous individuals and businesses. It has lied, cheated and partnered with the Nigerian Mafia. It has deprived hearing and speech impaired individuals of access to friends and, more importantly, to businesses that provide goods and services. It has done so to enrich itself, in complete disregard for the public interest and the public trust that was placed in AT&T when the FCC awarded it licenses to provide communications services.

Where a licensee has knowingly made material misrepresentations to the Commission, the Commission is duty bound to disqualify the untrustworthy licensee, and in the past it has not hesitated to do so. In this case, since 2002 until the present, AT&T has knowingly filed false reports with the FCC or its agent NECA. The damage is done and cannot be undone. There is only one possible solution; the FCC must revoke each and every one of AT&T's licenses. These licenses can then be re-auctioned and perhaps some of the money can be used to compensate the victims of AT&T's fraud.

Accordingly, DTP asks that the FCC immediately stop processing all AT&T applications, and designate AT&T for hearing to determine if it retains the basic qualifications to remain an FCC licensee.

Respectfully submitted

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April 16, 2012

CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, a secretary with the law firm of Smithwick & Belendiuk, P.C., do hereby certify that a copy of the foregoing “Supplement to Petition to Deny” was served, as specified, this 16th day of April, 2012, to the following:

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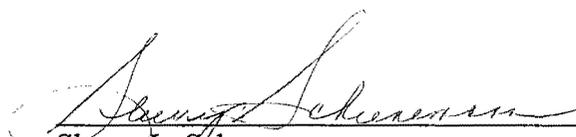
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