

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

In the Matter of)
)

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

**REPLY TO JOINT OPPOSITION OF AT&T INC. AND T-MOBILE USA, INC. TO
APPLICATIONS FOR REVIEW**

The Diogenes Telecommunications Project, (Diogenes) by its attorneys, and pursuant to Section 1.115 of the Commission's Rules¹ files this Reply to the Joint Opposition of AT&T Inc. and T-Mobile USA, Inc. to the Application for Review (Joint Opposition) of the April 18, 2012, Order in WT Docket No. 12-21, DA 12-615 (Order) of the Chief, Wireless Telecommunications Bureau (WT Bureau) dismissing Diogenes' Petition to Deny in the above captioned proceeding.

Procedural Issue

Diogenes filed its Application for Review on May 1, 2012. Oppositions to the Application for Review were due, May 16, 2012, 15 days after the Application for Review was

¹ 47 C.F.R. §1.115.

filed. 47 C.F.R. § 1.115 (d). While the Joint Opposition was filed on May 16, 2012, it was not served on Diogenes until May 17, 2012. Attached hereto is a mailing envelope in which the Joint Opposition was posted. The envelope shows May 17, 2012 as the day it was run through a postage meter. The Commission's rules are clear, where service is required, service shall be made "on or before the day on which the document is filed." 47 C.F.R. §1.47(b) Service by mail is completed upon mailing. 47 C.F.R. §1.47(f) In this case, the Joint Opposition was not mailed on or before May 16th as required by the rules, but on or after May 17th. The Joint Opposition is untimely and should be dismissed. See generally *Charter Communications, Memorandum Opinion and Order*, 14 FCC Rcd 13511, 13512 (1999); *In the Matter of Application of AT&T Wireless PCS, Inc.*, 15 FCC Rcd 12887 (2000).

Standing

Rather than address the serious character issues raised by Diogenes, the Joint Opposition focuses on the procedural question of standing. Irene Laschuk is a member of Diogenes and a customer of AT&T. AT&T claimed in WT Docket 11-65 that it is suffering from a severe spectrum crunch. In fact, AT&T has stated, under penalty of perjury, that its spectrum crunch is so severe that should the FCC not grant the AT&T/T-Mobile merger, AT&T could not fully build out its LTE network. AT&T claimed that the merger was necessary because "AT&T faces network spectrum and capacity constraints more severe than those of any other wireless provider, and this merger provides by far the surest, fastest, and most efficient solution to that challenge."² Taking AT&T at its word, to permit AT&T to divest its spectrum at this critical juncture would be disastrous for the company and highly prejudicial to its customers, including Irene Laschuk.

² AT&T/T-Mobile Public Interest Statement, WT Docket No.11-65, p.2.

The Joint Opposition does not dispute these facts, which demonstrate that Diogenes has Article III standing. Rather, the Joint Opposition contends that Diogenes “impermissibly” included a new standing argument in its Application for Review. In the Application for Review, Diogenes pointed out that the issues raised in the Supplement provide a separate and independent basis for standing. Diogenes filed the Supplement in order to introduce into the record additional evidence of AT&T’s lack of character qualifications, namely the Department of Justice’s lawsuit against AT&T for knowingly making false claims on the TRS Fund and FCC in order to receive compensation for illegitimate IP Relay calls made from overseas by hearing persons for the purpose of defrauding American citizens. AT&T’s customer’s, including Irene Laschuk, are required to reimburse AT&T for its contributions to this fund. Moreover, as the instances of AT&T’s misconduct mount, there is a growing risk that AT&T will continue to harm its customers in the future by unlawful means, yet another independent ground for standing. Where Article III standing is evident from the administrative record it need not be demonstrated. See *Sierra Club v. EPA*, 292 F.3d 895, 899-900, 352 U.S. App. D.C. 191 (D.C. Cir. 2002). Diogenes was not raising a new basis for standing, but merely pointing out an existing and additional basis for standing.

The Bureau Erred when it Dismissed Diogenes’ Supplement to Petition to Deny

If the facts contained in Diogenes’ Supplement are proven true, then AT&T will be guilty of systematically cheating millions of its customers, including Irene Laschuk, out of millions of dollars. Significantly, from the point of view of the Commission, if the facts set forth in the Supplement are proven true, AT&T will be guilty of knowingly making numerous false certifications to the FCC.

The Joint Opposition claims that Diogenes filed its Supplement 25 days after the Department of Justice's Complaint had been widely reported. However, the Commission should consider the time it took to review and analyze the DOJ Complaint. The DOJ Complaint presented a great deal of evidence. For Diogenes to review the Complaint and prepare a Supplement took time. The delay was minor, the issues raised are significant. While the Commission does not generally favor supplementary pleading, it has in the past considered the merits of supplemental pleadings because the information contained therein raises serious public interest questions. See, *In Re Applications of Key Broadcasting Corp.*, 54 F.C.C.2d 1177 (FCC 1975). In this case, the issues go directly to the FCC statutory mandate to regulate interstate communications in the public interest. No good can come from a company, like AT&T, that cheats the public it is licensed to serve, that hinders the communications of hearing and speech impaired individuals and that makes false certifications to the FCC. Diogenes has presented ample good cause for the FCC to consider its Petition to Deny and Supplement.

The FCC Should Address the Evidence of Material Misrepresentation

AT&T and T-Mobile claim that the allegations against them are without merit. Yet they do not make any effort to rebut the evidence presented. Both in the Joint Opposition and in its Opposition to the Petition to Deny, AT&T fails to address the specific material misrepresentation documented in the Petition to Deny. Instead it continues to claim generally, that its statements to the Commission "were made with complete candor." This is a conclusion not a rebuttal of the evidence presented. It is for the FCC to make findings of fact and conclusions of law. AT&T's brush off of the serious candor issues raised by Diogenes in its Petition to Deny is plainly inadequate. It is the responsibility of the Commission to set these matters for an evidentiary hearing. This will permit the FCC and the reviewing court to have a full record before it. Based

on this record, the FCC can conclude that 1) there is no need for further action, 2) there is need for remedial action short of revocation of all licenses or 3) the conduct of the parties so violates the requirements of Communication Act and the Commission's rules that it is the Commission's statutory duty to revoke AT&T's and T-Mobiles licenses and authorizations. The Commission has revoked licenses for lesser infractions than the facts set forth in the Petition to Deny and Supplement. See, e.g. *In re Application of Mid-Ohio Communications, Inc.* 104 F.C.C.2d 572 (1986). Inaction by the Commission simply reinforces AT&T's high-handed sense of immunity from the kinds of sanctions the Commission frequently imposes on smaller carriers and broadcasters for similar misconduct.

Respectfully submitted

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May 29, 2012



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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 "Reply to Joint Opposition of AT&T Inc. and T-Mobile USA, Inc., to Application for Review" was served, as specified, this 29th day of May, 2012, to the following:

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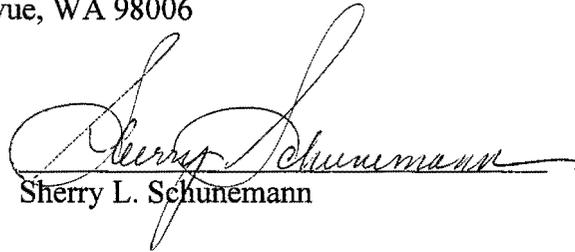
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