

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
**WASHINGTON, DC 20554**

In the Matter of )  
Applications for the Consent to the Transfer )  
Of Control of Licenses )  
)  
Bauce Communications of Beaumont, Inc. )  
    Transferor )  
    To )  
AT&T, Inc. )  
    Transferee )  
)  
Centennial Michiana License Company, LLC )  
    Transferor )  
    To )  
AT&T, Inc. )  
    Transferee )  
)  
Centennial Puerto Rico License Corp, )  
    Transferor )  
    To )  
AT&T, Inc. )  
    Transferee )  
)  
Elkhart Metronet, Inc. )  
    Transferor )  
    To )  
AT&T, Inc. )  
    Transferee )  
)  
Lafayette Cellular Telephone Company )  
    Transferor )  
    To )  
AT&T, Inc. )  
    Transferee )  
)  
Centennial Communications Corp )  
    Transferor )  
    To )  
AT&T, Inc. )  
    Transferee )

WT Docket No. 08-246

## PETITION TO DENY OF NEATT WIRELESS, LLC

NEATT Wireless, LLC (NEATT) respectfully submits this *Petition to Deny* with respect to the proposed transfer of licenses held by Centennial Communications Corp. (and related entities) to AT&T, Inc. NEATT asks that the Commission dismiss the applications.

This petition is supported by the attached declaration of Percy L. Berger, Sr.

As is more fully set forth below, NEATT believes that AT&T has failed to demonstrate that the public interest will be served by allowing AT&T to increase its wireless spectrum holdings through the acquisition of the referenced properties which will allow greater concentration in these generally rural markets. AT&T has also demonstrated in its divestiture of certain properties in northeastern Arkansas to NEATT Wireless in March 2005 its disregard for minority, especially African American facilities based operators, in the rural and underserved wireless communications market. In the NEATT case, it has shown its utter disregard for the fair and equitable application of the competition rules under the Sherman, Clayton and Telecommunications Act and has, and continues to, engaged in deliberate efforts to undermine the rules and regulations of the Congress. In addition, AT&T has used its economic power, financial position, and market dominance to thwart the competitiveness of wireless operators in the rural and underserved marketplace in direct violation of the Commission's Final Orders. They have, in the NEATT WIRELESS case, used their economic power to force non-market contracts to enrich itself in markets it was required to divest by this Commission. In the NEATT WIRELESS case, it reacquired subscribers at substantial discounts to market by threaten to use its position to shutdown their operations. The totality of these intentional actions has threatened the quality and competitiveness of rural wireless operators in or near contiguous markets with AT&T. The result has been that AT&T's actions in this regard has resulted in NEATT WIRELESS, the only African American owned, managed, and operated facilities based wireless company to insolvency and near bankruptcy while they reacquired the 38,000 subscribers that was purchased from them under this Commission's Final Order. AT&T's market share in the divested market in northeastern Arkansas remains unchanged after the Commission's Final Order. At the same time its costs decreased and its profits increased under the Order. This is the exact opposite of what the Final Order was designed to achieve.

If the Commission nonetheless determines that it should Consent to Transfer Control of Licenses, Leasing Arrangements, and Authorizations, then NEATT WIELESS asks that any such grant be conditioned upon requirement that AT&T achieve the following:

1. Within 30 days of Commission Approval, reach a fair, equitable, and reasonable settlement with NEATT WIRELESS and submit such document to the Commission's General Counsel for his Approval.
2. Agree to assist minority and women owned facilities based operators in acquiring and operating divested properties from AT&T that may result from this approval.
3. Submit quarterly reports to the Commission on its efforts to comply with #2 above.
4. Agree to have all its future divestiture properties resulting from Final Orders from the Commission also subject to a similar agreement with the Department of Justice.

## **THE COMMISSION MUST DETERMINE THAT THE PROPOSED TRANSFERS ARE IN THE PUBLIC INTEREST**

The Commission's role to regulate communications by wire and radio so that it is available to all U.S. population without discrimination on the basis of race, color, religion, national origin, etc. in an efficient manner will not be advanced by AT&T acquiring the above referenced properties. AT&T has demonstrated in the NEATT WIRELESS transaction of March, 2005 in which this Commission approved their acquisition of AWS and its divestiture of certain properties in northeastern Arkansas. Since the closing of this transaction, AT&T worked to circumvent the lawful Final Order of this Commission by engaging in deliberate acts of anticompetitive behavior to render NEATT WIRELESS not competitive in the newly divestiture markets.

1. AT&T induced NEATT WIRELESS to enter into a very short-term transition services agreement that they knew was too short.
2. AT&T provided financial incentives to tower lessors to transfer long term leases to NEATT WIRELESS in order to eliminate financial payments due them.
3. AT&T induced NEATT WIRELESS into this transaction by indicating that equipment vendors known to them would provide switching and other equipment for transition on a timely basis. This did not occur.
4. AT&T employees in direct contravention of the Final Order target the reacquisition of NEATT WIRELESS 38,500 subscribers sold to them as part of your Final Order. During the first nine months after the divestiture to NEATT WIRELESS, more than 10,000 subscribers left and returned to AT&T.
5. AT&T provided instructions to its call center personnel that handle NEATT WIRELESS subscribers to attempt to convert those subscribers back to AT&T. Those that didn't switch were provided with poor customer service.
6. AT&T package towers and telephone equipment that was old or obsolete, all in an effort to make it difficult for NEATT WIRELESS to be competitive.
7. AT&T used its transition services agreement short termination date to force NEATT WIRELESS to sell its remaining 28,500 subscribers at less than 5% of its fair market value on threat of shutdown of the switching services they provided to NEATT WIRELESS.
  - One year later, AT&T adjusted retroactively the price paid to acquire these subscribers to \$250/subscriber or now about 17% of their fair market value.
  - AT&T used its economic power against NEATT WIRELESS to then withhold \$3.5 million of additional monies due it to pay future obligations for tower and other leases it fraudulently induced lessors to provide to NEATT WIRELESS.
  - Under the threat of financial ruin, NEATT WIRELESS was forced to enter into agreements with AT&T that were solely for the benefit of AT&T.

## **RURAL AND MINORITY COMMUNITIES HAVE SUFFERED FROM A LONG HISTORY OF NEGLECT IN WIRELESS SERVICES**

While the FCC has introduced numerous affirmative action ownership programs in an effort to narrow the gap between minority representation between the population and in the mass media. Licensees of wireless spectrum granted by the Commission are expected to help advance these initiatives in there market areas. AT&T has shown a disregard for these initiatives and has taken actions in the past that have been counterproductive to the Commission's and Congress efforts in this regard. In the case of NEATT WIRELESS, AT&T only perfunctory worked to achieve their success in the rural cell markets in northeastern Arkansas. However, their substantive actions showed a complete disregard for these initiatives. NEATT WIRELESS sole inability to be competitive in its markets were a result of the deliberate actions of AT&T to only nominally comply with the Commissions decisions which were principally based upon the objective to have a competitive operator after divestiture. AT&T made sure the NEATT WIRELESS could not achieve this objective. These actions by AT&T have resulted in inferior service, a failure to deploy the latest equipment and technology, and higher costs for the subscriber. AT&T has become monopolist with respect to GSM in these markets and has absolute discretion in deploying its services to these rural and underserved markets. They have used their economic power drive competitors like NEATT WIRELESS from the markets with impunity. It is time that the Commission and Department of Justice put a stop to these actions. This is clear and compelling evidence the AT&T is not currently worthy of additional approvals to acquire wireless facilities and spectrum until these actions are remedied.

**AT&T HAS A SIGNIFICANT RECORD OF UNDERMINING ENTITIES SEEKING TO PROVIDE SERVICES IN UNDERSERVED AND RURAL COMMUNITIES AS EVIDENCED IN THE CASE OF NEATT WIRELESS IN NORTHEASTERN ARKANSAS. A FORMAL COMPLAINT AGAINST AT&T IS PENDING BEFORE THE U.S. DEPARTMENT OF JUSTICE, ANTITRUST DIVISION. YOUR SHOULD NOT APPROVE THIS TRANSFER REQUEST UNTIL A THOROUGH INVESTIGATION OF THE NEAT WIRELESS TRANSACTION HAS BEEN COMPLETED AND THE JUSTICE DEPARTMENT HAS ENTERED ITS RULING ON THE MATTER. IF THE COMMISSION DETERMINES THAT IT WILL GRANT THE PENDING APPLICATIONS, THEN IT SHOULD CONDITION ITS APPROVAL ON THE FULL, FINAL AND DEFINITIVE RESOLUTION OF THE COMPLAINTS ENTERED BY NEATT WIRELESS WHICH SHALL BE APPROVED BY THE COMMISSION'S ATTORNEY. IT IS UNCONSCIONABLE THAT THIS COMMISSION WOULD ALLOW AT&T TO OPERATE IN COMPLETE DISREGARD OF THE OBJECTIVES OF CONGRESS AND THE COMMISSION AND BE ALLOWED TO RENDER**

**NEATT WIRELESS, THE ONLY AFRICAN AMERICAN OWNED, MANAGED, AND OPERATED FACILITIES BASED OPERATOR OF WIRELESS SERVICES IN AMERICA.**

**Respectfully submitted,**

**Percy L. Berger, Sr.  
Chairman, President and Chief Executive Officer  
NEATT WIRELESS, LLC  
101 North Wacker Dr  
Chicago, IL 60606**

**DECLARATION OF PERCY L. BERGER, SR.**

My name is Percy L. Berger, Sr. I am President and CEO of NEATT Wireless, LLC (NEATT Wireless).

NEATT Wireless is a minority-owned wireless telecommunications provider. The company served 30,000 rural customers in Northeastern Arkansas in 2005 and 2006.

I am familiar with the contents of the foregoing *Petition to Deny*. The factual assertions made in the petition are true to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on January 15, 2009.



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Percy L. Berger, Sr.

## CERTIFICATE OF SERVICE

I, Percy L. Berger, Sr., hereby certify that on the 15th day of January 2009, a copy of the foregoing *Petition to Deny* was served upon the following:

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Percy L. Berger, Sr.