

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In re Applications of )  
)  
Deutsche Telekom AG, )  
T-MOBILE USA, INC, Transferor, ) WT Docket No. 11-65  
and AT&T INC, Transferee, )  
)  
)  
)  
Applications for Transfer of Control )  
Of Licenses and Authorizations )  
)

To: The Commission

**PETITION TO DENY**

David Van Valkenburgh (petitioner) pursuant to Section 309(d) of the Communications Act of 1934, as amended (“Communications Act”), and Section 1.939 of the Commission’s rules, hereby petitions the Federal Communications Commission (“FCC” or “Commission”) to deny the above-referenced applications (“Applications”) AT&T Inc. (“AT&T”) and Deutsche Telekom AG (“Deutsche Telekom”) have filed applications pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended, seeking Commission consent to the transfer of control of the licenses and authorizations held by T-Mobile USA, Inc. (“T-Mobile USA” or “T-Mobile”) and its wholly-owned, majority-owned, and controlled subsidiaries to AT&T (AT&T, Deutsche Telekom, and T-Mobile USA are collectively referred to as the “Applicants”). Specifically, AT&T has agreed to acquire from Deutsche Telekom all of the stock of T-Mobile USA, subject to obtaining all necessary regulatory approvals. Petitioner is concerned about the likely anti-competitive affects which would occur as a direct result of the proposed transaction. Specifically, the acquisition of T-Mobile by AT&T will create a post- merger AT&T with such a large share of the market that it will result in significant harm to consumers. The proposed merger will increase the likelihood that there will be only 2 nationwide wireless carriers. This result is contrary to the spirit and stated intent of the Telecommunications act of 1996. Some consolidation of wireless companies can be beneficial to competitiveness. Excessive consolidation threatens to stamp out consumer choice altogether.

**I. BACKGROUND**

AT&T and T-Mobile provide commercial mobile radio service in numerous areas of the United States.

**II. STATEMENT OF INTEREST**

David Van Valkenburgh is a wireless consumer, specifically a customer of AT&T wireless and a citizen of the United States. Petitioner will be personally affected by the lack of sufficient competition in the wireless industry.

**III. ARGUMENTS**

**A. Customers have already chosen to not be AT&T customers.**

T-Mobile has 33 million customers, many of these customers have made a specific choice to not be an AT&T customer. It could be a result of a bad experience with AT&T or they could be choosing T-Mobile's JD Power award winning customer care.

The wirelss business has changed, once the goal was to reach consumers that were new to wireless,

growth in the wireless business now means taking customers from your competitors, this merger would short circuit this process. There is less of a need to treat your customers well if you can get a different company to get them under contract and then buy the contracts.

According to AT&T's First Quarter SEC filing, approximately 1.25 million customers left AT&T just in the first three months of 2011. A substantial number of those customers fled to T-Mobile. T-Mobile should be asked to provide the number of customers that left AT&T for T-Mobile in the last fiscal quarter and the last 2 years as a whole.

The number of customers leaving AT&T for T-Mobile should not be underestimated. T-Mobile has commercials specifically targeting AT&T. The advertisement features a shirtless actor portraying an iPhone 4, he is asked by the T-Mobile spokesperson where his shirt is, he answers that he had to give it to AT&T to pay for his data plan.

In allowing AT&T to purchase these contracts, the commission will be deciding for these customers, many of which have already decided they did not want to be an AT&T customer. In addition to reducing consumer choice as a whole, you will be undoing the choices that have already been made by customers. If I may borrow a line from the T-Mobile commercial - this makes sense, if you don't think about it.

#### **B. The Acquisition of T-Mobile by AT&T will result in lost jobs.**

Where two healthy stores exist today across the street from each other and are considered successful, one will be deemed to be unnecessary. This will similarly affect other areas of the merged company – engineering, real estate & construction to name a few.

#### **C. Early Termination fees.**

T-Mobile employs a pro-rated early termination fee schedule. The fee decreases as the remaining time on your contract decreases. This process is one of the most consumer friendly of the major cell phone carriers.

AT&T employs a flat early termination fee. There is no consideration given to the number of months remaining on your contract.

Early termination fees are a necessary evil. Carriers provide an equipment subsidy to attract new customers, contracts and early termination fees are required for the carrier to recoup its initial cost and remain profitable.

Carriers should be using the entire length of the contract to recoup their costs. It is only logical that the carrier's liability would be more in the second month of a 2-year contract than in the 20th month. If you allow the merger to go forward, you will be allowing a company with a very restrictive Early Termination policy to swallow up a company with a more consumer friendly Early Termination policy.

#### **D. Network Capacity**

In the application, AT&T makes the case that the acquisition is needed to increase network capacity. The FCC held Auction #73 in early 2009. Has this additional spectrum AT&T was awarded in that auction been built out, and to what extent? AT&T should be required to provide the current status and plans to utilize the spectrum licenses it was awarded. The licenses also contained "use or lose" provisions, will AT&T have all of the spectrum built out in accordance with the auction rules?

#### **IV. Any Grant of the Applications Should be Conditioned.**

The FCC's public interest authority enables the Commission to impose and enforce conditions to ensure that a proposed transaction will, overall, serve the public interest. In the event, the FCC does not deny the Applications, it should condition grant of the Applications on AT&T satisfying each of the conditions set forth below.

##### **A. Respect consumer choices**

All T-Mobile customers should have the option to terminate service without penalty if they do not wish to be AT&T customers. At the very least T-Mobile customers that chose to leave AT&T previously, should have the option to do so without penalty.

##### **B. Reduction in staff**

AT&T should be required to divulge how many positions it intends to eliminate as a result of the merger and provide a breakdown of the expected number of T-Mobile and AT&T employees that will be affected.

##### **C. Early Terminations**

AT&T should be required to keep the more favorable early termination policies of T-Mobile going forward.

##### **D. Capacity usage**

Any spectrum licenses from the FCC Auction #73 that AT&T does not plan to utilize should be required to be sold off or returned to the FCC before the merger is approved. "Squatting" on these licenses for an additional 2 years before deciding what to do with them is uncompetitive.

#### **V. CONCLUSION**

**Under Section 310(d) of the Communications Act, the Applicants must demonstrate to the Commission that the proposed transfer of control would serve the public interest.** The Applicants have failed to demonstrate that grant of the above-referenced Applications is warranted. A grant of the Applications would not serve the public interest and would cause harm to wireless competition and thereby wireless consumers. For the reasons stated herein, the Commission should dismiss, deny or place conditions on the Applications.

Respectfully submitted,

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