

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

In the Matter of )  
 )  
Applications of AT&T Inc. and ) WT Docket No. 11-65  
Deutsche Telekom AG )  
 )  
For Consent To Assign or Transfer Control of )  
Licenses and Authorizations )

**OPPOSITION TO RURAL CELLULAR ASSOCIATION OBJECTION TO  
DISCLOSURE OF CONFIDENTIAL DOCUMENTS**

Pursuant to the Protective Orders for the AT&T/T-Mobile USA proceeding,<sup>1</sup> on May 27, 2011 the Rural Cellular Association (“RCA”) objected to the Acknowledgements of Confidentiality filed in the above-referenced docket on behalf of (i) Dr. Volker Stapper, Vice President of International Competition & Media Policy for Deutsche Telekom AG (“Deutsche Telekom”); (ii) Thomas Sugrue, Senior Vice President of Government Affairs for T-Mobile USA, Inc. (“T-Mobile USA”); and (iii) Kathleen O’Brien Ham, Vice President of Federal Regulatory Affairs for T-Mobile USA (collectively “the Applicants”).<sup>2</sup> As discussed below, the Applicants are not involved in “Competitive Decision-Making” as that term is defined in the Protective Order and the Applicants are eligible to review materials submitted under the Protective Order

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<sup>1</sup> *In re Applications of AT&T Inc. & Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 11-65, Protective Order, DA 11-674 (WTB rel. Apr. 14, 2011) (“*Protective Order*”).

<sup>2</sup> Rural Cellular Association, *Objection of Rural Cellular Association to Disclosure of Confidential Documents*, WT Docket No. 11-65 (filed May 27, 2011) (“*RCA Objection*”).

consistent with the Acknowledgments of Confidentiality they filed.<sup>3</sup> Accordingly, RCA's request should be promptly denied.

The Protective Order defines "Competitive Decision-Making" to mean "that a person's activities, association, or relationship with any of its clients involve advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition or with a business relationship with the Submitting Party."<sup>4</sup> Similarly, the courts have stated that the term "Competitive Decision-Making" is "shorthand for a counsel's activities, association, and relationship with a client that are such as to involve counsel's advice and participation in any or all of the client's decisions (pricing, product design, etc.) made in light of similar or corresponding information about a competitor."<sup>5</sup> As RCA acknowledges, this inquiry is fact-intensive,<sup>6</sup> and in the present situation, the facts clearly show that the Applicants are not involved in Competitive Decision-Making.

The Applicants are not involved in Competitive Decision-Making as they are not involved in business decisions regarding a competitor using confidential information about the competitor. Dr. Stapper is Vice President of International Competition & Media Policy for Deutsche Telekom. In this role, he advises Deutsche Telekom on international competition policy and advocacy issues. Given Deutsche Telekom's

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<sup>3</sup> Letter from Eric W. DeSilva, Counsel for Deutsche Telekom and T-Mobile USA, to Marlene H. Dortch, Federal Communications Commission, WT Docket No. 11-65 (May 24, 2011).

<sup>4</sup> *Protective Order* ¶ 2.

<sup>5</sup> *U.S. Steel Corp. v. United States*, 730 F.2d 1465, 1468 & n. 3 (Fed. Cir. 1984) ("*U.S. Steel*").

<sup>6</sup> RCA Opposition at 2, citing *U.S. Steel*, 730 F.2d at 1468.

international reach, competition policy issues arise in a variety of fora and Dr. Stapper is integral to ensuring the Deutsche Telekom's positions are appropriately framed and advanced. Dr. Stapper also advises the company on its media policy. He is not involved in formulating Deutsche Telekom's business decisions and strategy.

Mr. Sugrue is Senior Vice President of Government Affairs for T-Mobile USA, Inc. Mr. Sugrue supervises the principal government relations work for the company including all work before the Commission, the Congress, the state public utilities commissions, and state legislatures. Mr. Sugrue does not participate in Competitive Decision-Making. Mr. Sugrue's role on such decisions is to provide input on whether there are any regulatory or other government policy issues involved, but not to provide advice on the competitive or business aspects of the decisions.

Ms. Ham is Vice President of Federal Regulatory Affairs for T-Mobile USA. In this role, Ms. Ham is responsible for managing all federal regulatory policy work of T-Mobile USA, including all advocacy and legal pleadings before the Commission. Ms. Ham is not involved in Competitive Decision-Making. At T-Mobile USA, those type of decisions are made in entirely separate business units within the company. Mr. Sugrue and Ms. Ham's regulatory teams are only involved when there are government policies or regulations that impact the business that require advocacy before the Commission.

The Applicants do not provide advice to their respective companies about rate plans, pricing, marketing, sales, distribution or general business strategies. Nor do they provide advice on strategies for competing with other wireless carriers. Further, the Applicants' situation is distinguishable from the *Brown Bag* case, where the court found that in-house counsel's knowledge of competitor's trade secrets would place counsel in

the untenable position of having to refuse his employer legal advice on a host of “contract, employment, and competitive marketing decisions.”<sup>7</sup> In the present case, the Applicants’ are involved only with policy and advocacy roles—competitive Decision-Making is quite plainly not in the Applicants’ purview.

Finally, RCA’s fear that the Applicants’ could “inadvertently disclose” confidential information<sup>8</sup> is unfounded. Each of the Applicants have executed a written commitment appropriately to protect and safeguard any confidential information they may access in the course of this proceeding.<sup>9</sup> RCA offers no basis for challenging the Applicants’ written commitment.

For the reasons set forth above, Deutsche Telekom and T-Mobile USA respectfully request that the Commission deny RCA’s Objection and rule that Dr.

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<sup>7</sup> *Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465, 1471 (9<sup>th</sup> Cir. 1992) (“Brown Bag”).

<sup>8</sup> RCA Objection at 2-4.

<sup>9</sup> Each of the Applicants executed an Acknowledgement of Confidentiality stating, “I agree that I am bound by the Protective Order and that I shall not disclose or use Stamped Confidential Documents or Confidential Information except as allowed by the Protective Order.” Letter from Eric W. DeSilva, Counsel for Deutsche Telekom and T-Mobile USA, to Marlene H. Dortch, Federal Communications Commission, WT Docket No. 11-65 (May 24, 2011), Appendix A.

Stapper, Mr. Sugrue, and Ms. Ham are eligible to review materials submitted under the Protective Order.

Respectfully submitted,

/s/ Nancy J. Victory

Nancy J. Victory

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