

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

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| <b>In the Matter of</b>   | ) |                            |
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| <b>Applications of AT&amp;T Inc. and<br/>Deutsche Telekom AG</b>                    | ) | <b>WT Docket No. 11-65</b> |
|   | ) |                            |
| <b>For Consent to Assign or Transfer Control of<br/>Licenses and Authorizations</b> | ) |                            |
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**REPLY COMMENTS OF THE MOBILE500 ALLIANCE**

In the Joint Opposition of AT&T, Inc., Deutsche Telekom AG and T-Mobile USA, Inc. to Petitions to Deny and Reply Comments,<sup>1</sup> T-Mobile USA (“T-Mobile”) and AT&T Inc. (“AT&T”) offered no rebuttal to the comments of the Mobile500 Alliance (“Mobile500”).<sup>2</sup> In its comments, Mobile500 argued that the merged firm may have the ability and incentive to foreclose Mobile500’s access to critical components of its nascent broadcast Mobile DTV service, which will compete with certain categories of video offerings from AT&T, T-Mobile and other wireless carriers. In particular, Mobile500 argued that the merged firm may have the ability to prevent the deployment of the chips necessary to facilitate Mobile DTV in handsets and other mobile devices and to prevent Mobile500 from acquiring the back channel necessary to facilitate its nation-wide, free, advertising-supported service. The exercise of market power by the merged firm could impair the roll out of broadcast Mobile DTV.

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<sup>1</sup> *In the Matter of Applications of AT&T Inc. and Deutsche Telekom AG*, WT Docket 11-65 (June 20, 2011) (the “Joint Opposition”).

<sup>2</sup> Mobile500 represents the collective effort of 46 commercial and public broadcasters, which are comprised of over 420 television stations, to bring nationwide mobile digital television (“Mobile DTV”) to market.

By failing to address Mobile500's comments, AT&T and T-Mobile have ignored a critical aspect of the public interest issues raised by their proposed transaction. The merging parties cite as the primary public interest justification for the transaction alleviating the "growing spectrum and capacity restraints" arising from growing demand for mobile broadband service, including video service.<sup>3</sup> The merging parties assert that "[t]his transaction provides the surest, fastest, and most efficient solution to applicants' capacity challenges."<sup>4</sup> But nowhere in their voluminous submissions to the Commission do the merging parties address the role of existing broadcast technology in addressing the spectrum issues they confront.

Rather than simply feeding the merged firms' insatiable desire for spectrum, the Commission should adopt conditions that will facilitate the deployment of technology that can use existing spectrum more efficiently. Because of the broadcast infrastructure's one-to-many architecture, it is the most reliable, efficient method of delivering high-demand video content. Broadcasters can deliver sports programming, breaking news and emergency alerts to mobile devices using existing technology and the broadcast infrastructure, provided that the roll out of broadcast Mobile DTV is not impaired by the exercise of market power by the merged firm. To prevent that from happening, the Mobile500 reiterates its request that the Commission grant the application only after imposing the following conditions:

- (1) Require the merged firm to reach a commercial agreement through good faith negotiations to offer and promote to consumers devices for use on the AT&T and/or T-Mobile wireless voice and data networks that carry the hardware and software necessary to receive broadcast Mobile DTV, with a goal that fifty percent of all devices sold for use on the networks by the fourth quarter of 2013 have Mobile DTV reception capability; and
- (2) Require the merged firm to facilitate the back channel of any nationwide broadcast Mobile DTV network by acknowledging the ownership of audience

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<sup>3</sup> Joint Opposition at 19, 25.

<sup>4</sup> *Id.* at 19.

measurement and consumer usage data by the distributors of the content being viewed and ensuring that data about consumers' viewership and usage be carried, with the consumers' permission, unimpeded back to the content distributor.

The Commission must evaluate the merger in the context of a nationwide spectrum policy. Broadcast technology's one-to-many architecture remains the most efficient way to deliver high-demand content--ranging from an emergency alert to the Super Bowl--to the American public. And the merging parties have failed to address the role of this technology in addressing the public interest goals they hope achieve in their transaction. The Commission's decision on the application should therefore reflect a commitment to protect consumers from potentially anti-competitive measures that would thwart the development of broadcast Mobile DTV service.

Respectfully Submitted,

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