

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

In the Matters 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	)	
	)	
Application for Assignment of Lower 700 MHz	)	WT Docket No. 11-18
Band Licenses from Qualcomm Incorporated	)	DA 11-522
to AT&T Mobility Spectrum LLC	)	ULS File No. 0004566825
	)	
Applications for Assignment of Licenses from	)	ULS File Nos. 0004 544863
Whidbey Telephone Company to AT&T	)	and 0004 544869
Mobility Spectrum LLC	)	
	)	
Application for Assignment of License from	)	ULS File No. 0004621016
700 MHz, LLC to AT&T Mobility Spectrum	)	
LLC	)	
	)	
Application for Assignment of License from	)	ULS File No. 000463 5440
Knology of Kansas, Inc. to AT&T Mobility	)	
Spectrum LLC	)	
	)	
Application for Transfer of Control of	)	ULS File No. 0004643747
Redwood Wireless Corp. to AT&T Inc.	)	
	)	
Application for Assignment of License from	)	ULS File No. 0004681773
Windstream Lakedale, Inc. to AT&T	)	
Mobility Spectrum LLC	)	
	)	
Application for Assignment of Licenses from	)	ULS File No. 0004681771
Windstream Iowa Communications, Inc. to	)	
AT&T Mobility Spectrum LLC	)	
	)	
Application for Assignment of License from	)	ULS File No. 0004699707
Maxima International, LLC to AT&T	)	
Mobility Spectrum LLC	)	
	)	
Application for Assignment of Licenses from	)	ULS File No. 0004448347
D&E Investments, Inc. to New Cingular	)	
Wireless PCS, LLC	)	

**JOINT OPPOSITION OF  
AT&T MOBILITY SPECTRUM LLC AND QUALCOMM INCORPORATED  
TO SECOND JOINT MOTION TO CONSOLIDATE**

AT&T, Inc., on behalf of its wholly-owned subsidiaries AT&T Mobility Spectrum LLC and New Cingular Wireless PCS, LLC (“AT&T”) and QUALCOMM Incorporated (“Qualcomm”) hereby oppose the new motion (the “Second Motion to Consolidate”) filed by Cincinnati Bell Wireless, LLC, MetroPCS Communications, Inc., NTELOS, the Rural Cellular Association, the Rural Telecommunications Group, and Sprint Nextel Corporation (collectively, the “Joint Parties”) to consolidate the AT&T/Qualcomm, AT&T/T-Mobile, and multiple other assignment or transfer of control proceedings.

In their original motion, the Joint Parties sought to consolidate the AT&T/Qualcomm and AT&T/T-Mobile proceedings.<sup>1</sup> The Joint Parties’ Second Motion to Consolidate seeks not only to consolidate those two proceedings, but also to consolidate them with eight additional proceedings. For the reasons set forth below and as set forth in the previously filed responses of AT&T and Qualcomm to the First Motion to Consolidate,<sup>2</sup> there is no reason to consolidate any of these proceedings.

**DISCUSSION**

The eight proceedings that the Joint Parties now propose for consolidation have nothing to do with either the AT&T/Qualcomm or AT&T/T-Mobile transactions. Each of these eight proceedings involves a transaction by which AT&T would acquire Lower 700 MHz B and/or C

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<sup>1</sup> See Joint Motion to Consolidate of Cincinnati Bell Wireless, LLC, MetroPCS Communications, Inc., NTELOS, the Rural Cellular Association, the Rural Telecommunications Group, and Sprint Nextel Corporation, WT Dkt No. 11-18, 11-65 (April 27, 2011) (“First Motion to Consolidate”).

<sup>2</sup> See Joint Opposition of AT&T Mobility Spectrum LLC and Qualcomm Incorporated to Joint Motion to Consolidate (May 4, 2011); Letter dated May 20, 2011 to Marlene H. Dortch from Paul Margie and William E. Cook, Jr.

Block spectrum -- in several cases, only a single license -- from seven unrelated parties in widely scattered markets. By contrast, AT&T is not acquiring any Lower 700 MHz B or C Block spectrum in the Qualcomm or T-Mobile transactions, and neither Qualcomm nor T-Mobile has any role whatsoever in any of these additional transactions.

None of these transactions should be even mildly controversial. In fact, no actual petitions to deny were filed for any of them -- even though the Commission released separate Public Notices for each transaction which identified the amount of spectrum AT&T would have post-transaction (including the amount below 1 GHz) and discussed AT&T's assertion that the additional spectrum would enable it to increase its system capacity to enhance existing services, better accommodate growth and facilitate new products and services.<sup>3</sup>

As explained in the public interest statements submitted with those applications, none of them raise any issues under the Commission's initial "spectrum screen" or any other competitive issues.<sup>4</sup> All of them will serve the public interest by allowing AT&T to increase its spectrum capacity, thereby facilitating the deployment of advanced network technologies and the provision of new and enhanced products and services.

As set forth in the Joint Opposition to the First Motion to Consolidate (pp. 8-12), it is well established that each transaction is entitled to its own, individualized consideration.

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<sup>3</sup> One of the Joint Parties, the Rural Telecommunications Group ("RTG") filed brief comments, and another, the Rural Cellular Association, filed reply comments (both comments were unsupported by any affidavits) in the Windstream/D&E Investments proceeding, ULS File No. 0004448347, which involves six licenses in Pennsylvania. As explained in the Joint Opposition of AT&T Inc. and Windstream Corporation (Jan. 31, 2011), RTG's comments -- almost all of which are requests for relief on industry-wide issues that are not merger-specific and are the subject of other proceedings -- provide no basis for opposing or conditioning the transfer.

<sup>4</sup> The Joint Parties also erroneously suggest that the AT&T/Qualcomm transaction will "allow AT&T to exceed the FCC's spectrum screen in certain markets." Second Motion to Consolidate at 2. To the contrary, as made clear in the Public Interest Statement ("PIS") in that proceeding, there is no place where acquisition of the Qualcomm Spectrum would cause AT&T to exceed the Commission's current initial spectrum screen. PIS at 20.

Accordingly, the Commission has refused in numerous proceedings to consolidate transfer and assignment proceedings. For example, as the Chief of the Wireless Telecommunications Bureau stated in denying a motion to consolidate in the Nextel/OneComm proceeding,<sup>5</sup> “the Commission’s duty [is] to ascertain whether a particular transfer or assignment proposal is in the public interest, convenience, and necessity,” and the Commission should not consider, in a single proceeding, “the cumulative competitive impact of a number of proposed acquisitions by [the purchaser]”<sup>6</sup> . . . “when the business transactions involved are independent, and neither is conditioned on the consummation of the other.”<sup>7</sup> Rather, the decision stated that the Commission would “determine whether to grant each application . . . based on the facts current at the time the application is processed.”<sup>8</sup>

Similarly, there is no reason to hold the transactions that are subject to this Second Motion to Consolidate hostage to either the AT&T/Qualcomm or AT&T/T-Mobile proceedings, much less to both of them. To do so would simply delay the public interest benefits the separate transactions will bring, including the many benefits that AT&T will be able to provide, and its subscribers will be able to enjoy, with additional spectrum capacity. Any such delay would also be unfair to the sellers in these additional eight proceedings.

In addition to involving different parties, the proceedings that the Joint Parties seek to consolidate also do not involve any of the same contested issues. As shown by the fact that all but one of the eight new proceedings covered by the second motion drew no comments or oppositions whatever (despite the fact that Special Public Notices were issued for each

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<sup>5</sup> *Applications of Nextel Communications, Inc. for Transfer of Control of OneComm Corporation, N.A., and C-Call Corp.*, Order, 10 FCC Rcd. 3361 (1995).

<sup>6</sup> *Id.*, ¶19.

<sup>7</sup> *Id.*, ¶17.

<sup>8</sup> *Id.*, ¶20.

transaction), their public interest benefits and the lack of any competitive harms are clear and indisputable. Since those transactions do not involve any contested issues, they obviously lack common issues for decision with either AT&T/Qualcomm or AT&T/T-Mobile.

Indeed, this case illustrates well the need to consider individual transactions in an individual manner. Having originally sought to consolidate two proceedings, the Joint Parties now seek to add eight more proceedings. Such an open-ended consolidation process serves no purpose and will undermine the public interest by undermining well-settled precedent and expectations regarding the FCC's review process and by delaying the realization of the public interest benefits of multiple transactions.

The Joint Parties do not point to any new authority in the Second Motion to Consolidate to support such serial consolidations or the radical departure from Commission precedent that such consolidation would represent. Instead they criticize AT&T and Qualcomm's response to their original motion on the ground that they "merely insisted that the precedents cited by the Joint Applicants [sic] are 'distinguishable'"<sup>9</sup> -- suggesting that AT&T and Qualcomm failed to distinguish the Joint Parties' cases. That suggestion is not correct. The response of AT&T and Qualcomm to the original motion carefully distinguished the one case cited by that motion,<sup>10</sup> and, after the Joint Parties cited additional cases in their reply, AT&T and Qualcomm submitted a letter distinguishing those cases as well.<sup>11</sup> Tellingly, the Joint Parties' new motion does not respond to the arguments in that letter demonstrating that the precedent cited by the Joint Parties

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<sup>9</sup> Second Consolidation Motion at 6.

<sup>10</sup> *See* Joint Opposition of AT&T Mobility Spectrum LLC and Qualcomm Incorporated to Joint Motion to Consolidate at 11-12

<sup>11</sup> Letter dated May 20, 2011 to Marlene H. Dortch from Paul Margie and William E. Cook, Jr.

does not support consolidation. The Joint Parties fail to respond because, for the reasons discussed in the letter, none of the cases cited by the Joint Parties supports their position.

In sum, the Joint Parties have failed to provide any reason why the Commission should not follow its usual policy of considering individual applications separately. The Commission is fully capable of taking into account any arguable impact created by the grant of one transfer application in considering the next application, and always has done so in similar situations. Consolidation would only delay the public interest benefits of each transaction. Nothing in Commission law or policy supports such a result, and the Commission should reject the invitation to countenance such delays here.

**CONCLUSION**

For the foregoing reasons, AT&T and Qualcomm urge the Commission to deny both of the Joint Parties' Motions to Consolidate and to grant the AT&T/Qualcomm application expeditiously.

Respectfully submitted,

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June 22, 2011

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I hereby certify that on this 22d day of June, 2011, I caused true and correct copies of the foregoing Joint Opposition of AT&T and Qualcomm to Second Joint Motion to Consolidate to be served by first-class mail, postage prepaid, upon the following parties in the above captioned proceedings, and by electronic mail on the following FCC employees and Best Copy and Printing, Inc.:

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