

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

In re Applications of)
)
AT&T, INC. and DIRECTV) MB Docket No. 14-90
)
For Consent to Transfer Control of)
Licenses and Other Authorizations)

**COMMENTS OF THE MINORITY
CELLULAR PARTNERS COALITION**

RUSSELL D. LUKAS
LUKAS, NACE, GUTIERREZ &
SACHS, LLP
8300 Greensboro Drive, Suite 1200
McLean, Virginia 22102
(703) 584-8678

JASON A. BRAUN
DONA SZAK
AJAMIE LLP
Pennzoil Place – South Tower
711 Louisiana, Suite 2150
Houston, Texas 77002
(713) 860-1600

MICHAEL A. PULLARA
1111 Hermann Drive, Suite 21A
Houston, Texas 77004
(713) 522-0733

*Attorneys for the Minority
Cellular Partners Coalition*

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SUMMARY

By these Comments, the Minority Cellular Partners Coalition (“MCPC”) urges the Commission not to grant AT&T’s applications to acquire DIRECTV, but instead to deny or, at a minimum, to conduct a complete evidentiary hearing to assess AT&T’s qualifications. Such a hearing is merited because: 1) AT&T’s past anti-competitive behavior argues against FCC approval of these licenses without such a review; and 2) the unprecedented accumulation of additional spectrum required for approval of this transaction by an already-dominant wireless carrier should subject it to a higher level of scrutiny.

The Commission has repeatedly recognized the self-evident proposition that an entity’s past behavior is the best predictor of its future behavior. Any objective analysis of AT&T’s behavior to date demonstrates that AT&T skirts or violates Commission goals and policies in a manner that undermines competition and eliminates competitors in order to further its market position. While no one action, viewed alone, might rise to the level of the application’s denial, taken together, AT&T’s actions paint a very telling picture of the company’s willingness to engage in anti-competitive activity and should sound a warning bell for advocates of a pro-consumer, competitive wireless marketplace.

MCPC members have participated in the wireless industry for decades. They were partners of AT&T in eleven regional cellular partnerships. Their involvement was part of a licensing process the Commission adopted that was aimed at encouraging minority and small business participation in the provision of wireless services over licensed facilities.

Collectively, the individuals represented by the MCPC, as AT&T’s past partners in the wireless business, have experienced first-hand the lengths to which AT&T is willing to go to consolidate its wireless holdings, eliminate partners, and squelch competition. These actions

include:

- Violating its Fiduciary Duty to Partners. AT&T engaged in a pattern of self-dealing behavior over more than a decade in clear violation of its fiduciary duty to its partners – improperly squeezing out those partners that it could and forcibly removing those partners still remaining. Examples include:
 - Commingling funds;
 - Taking unapproved loans from the partnerships to AT&T;
 - Withholding distributions to partners, creating phantom tax liability for partners, and making unwarranted capital calls;
 - Suppressing the market value of the partnerships;
 - Allowing only itself, not other partners, to acquire defaulting partners' stakes; and
 - Refusing to act in competition with AT&T's wholly-owned wireless business.

- Engaging in Unlawful Behavior to Eliminate Partners/Competitors. Rather than managing these partnerships as separate licensees, AT&T managed them as if they were part of AT&T's own network. Furthermore, AT&T engaged in concerted, unlawful actions specifically aimed at eliminating partners from the MCPC businesses with the objective of consolidating these businesses to overtly serve AT&T's own interests, rather than maintaining even the façade of operating in the interests of the partnerships.

- Expressly Engaging in Actions Intended to Consolidate Spectrum and Eliminate Competition. The Commission sought to encourage competition and diversity of ownership when it originally prohibited dominant carriers from owning the second wireless spectrum licenses in local markets below the top 30. While the Commission did not disallow later acquisition of these competitive spectrum holdings, the Commission certainly did not endorse untoward actions on the part of dominant carriers, like AT&T, to achieve aggregation of that spectrum. Yet, a review of the facts shows that AT&T set out to eliminate its minority partners in all of these MCPC partnerships – and succeeded. A loss to competition and diversity.

- Transferring Licenses without Prior Commission Consent. In transferring the various partnerships' licenses to AT&T exclusively, AT&T mischaracterized the transactions to bolster its case for *pro forma* transfer of the licenses.

In short, when AT&T moved to force out its minority partners, it moved to reduce the very competition the Commission had sought to enhance. There is no other way to explain AT&T's actions to obtain complete control of these licenses – AT&T sought simply to boot

other participants from the industry. Further, AT&T's actions stand opposed to all the pro-diversity and pro-small business policies set forth by the Commission.

In the transaction currently before the Commission, the potential harms closely parallel those already experienced by MCPC members, and may in fact be worse. AT&T had a fiduciary duty to these individuals, whereas no such duty exists with respect to the company's customers. The DIRECTV transaction differs in that it involves two willing parties. However, if the subject applications are granted, the number of multichannel video programming distributor ("MVPD") providers will be reduced from four to three in nearly all markets now served by both AT&T's U-Verse service and DIRECTV. This material reduction in competition in the MVPD market will not serve the public interest.

In the case of the MCPC members, AT&T wrested control of formerly independent cellular partnerships, eliminating consumers' choice in those markets. In its filings related to the current FCC proceeding, AT&T affirmatively declares that it has every intention to consolidate and bundle newly available services as a result of the transaction. The company maintains that the resulting reduction in consumer choice is not really a reduction of choice, because the two services are "complementary" rather than competitive. However, it is clear from AT&T's past behavior that the company's notion of what will or will not result in anti-competitive harm is sometimes not shared even by the company's own partners, much less its competitors or the consuming public.

In view of the above, the Commission cannot properly grant the subject applications, and certainly not without adequate review of AT&T pattern of prior behavior. Therefore, the MCPC urges the Commission either to withhold approval of the applications or designate them for an evidentiary hearing to determine how best to dispose of them.

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The Minority Cellular Partners Coalition (“MCPC”), by its attorneys, and pursuant to the procedures set forth in the Commission’s Public Notice, DA 14-1129, released August 7, 2014, hereby submits its comments in opposition to the grant of the applications of AT&T, Inc. (“AT&T”), and DIRECTV for Commission consent to transfer control of the licenses held by DIRECTV and its subsidiaries to AT&T.

INTRODUCTION

The members of MCPC were minority partners in the general partnerships (“Licensee Partnerships”) that were the initial licensees of the so-called “nonwireline” cellular systems in eleven Cellular Market Areas (“CMAs”) or Metropolitan Statistical Areas (“MSAs”).¹ The Licensee Partnerships and their cellular service areas are identified in Table 1 below.

TABLE 1

CMA	MSA	CALL SIGN	LICENSEE/PARTNERSHIP
148	Salem, OR	KNKA754	Salem Cellular Telephone Company
159	Provo-Orem, UT	KNKA704	Provo Cellular Telephone Company
167	Sarasota, FL	KNKA494	Sarasota Cellular Telephone Company

¹ The members of MCPC are identified in Attachment 1 hereto. When referring to a particular Licensee Partnership, we will identify the partnership by the MSA it served (Salem Partnership, Provo Partnership, Sarasota Partnership, Galveston Partnership, Reno Partnership, Bradenton Partnership, Bremerton Partnership, Bellingham Partnership, Bloomington Partnership, Las Cruces Partnership, and Alton Partnership).

170	Galveston, TX	KNKA676	Galveston Cellular Telephone Co.
171	Reno, NV	KNKA516	Reno Cellular Telephone Company
211	Bradenton, FL	KNKA647	Bradenton Cellular Partnership
212	Bremerton, WA	KNKA679	Bremerton Cellular Telephone Company
270	Bellingham, WA	KNKA572	Bellingham Cellular Partnership
282	Bloomington, IN	KNKA654	Bloomington Cellular Telephone Co.
285	Las Cruces, NM	KNKA605	Las Cruces Cellular Telephone Company
305	Alton-Granite City, IL	KNKA611	Alton CellTelCo

Beginning in 1997, AT&T (or its predecessor entities) began acquiring indirect ownership interests in the Licensee Partnerships, and by late 2007, it was firmly in control of all eleven partnerships. Once AT&T took control, it embarked on a campaign of egregious self-dealing all the while trampling on the interests of its minority partners. Most significantly for the purposes at hand, AT&T operated and managed the Licensee Partnerships' cellular systems just as if they were part of its national network, ignoring the fact that the Licensee Partnerships were separate entities. And it did so in a manner that was anticompetitive.

Beginning in 2009, AT&T began ridding itself of its minority partners. As we will show, AT&T proceeded to "squeeze out" its partners by having the assets of the Licensee Partnerships transferred to newly-formed AT&T affiliates, thereby effectuating the dissolution of the partnerships allegedly under the terms of their partnership agreements.² By June 30, 2011, AT&T had succeeded in dissolving the eleven Licensee Partnerships that MCPC members had helped to build for over twenty years.

The Court of Chancery of Delaware ("Chancery Court") will decide whether AT&T breached the terms of its partnership agreements and its fiduciary duties to the minority

² AT&T is not the only nationwide wireless telecommunications carrier that has squeezed out its minority partners. *See Leong v. Cellco Partnership*, 2013 WL 1209094, at *1-*2 (W.D. La. 2013) (Verizon Wireless orchestrated a merger of its affiliate with the Lafayette Cellular Telephone Company which forced its minority partners to cash out their interests at a price determined by Verizon Wireless).

partners,³ which are matters that the Commission obviously need not address. Rather, it is for the Commission to determine whether AT&T is qualified to acquire the Nation's second largest multichannel video programming distributor ("MVPD").⁴ If answered in the affirmative, the Commission must then decide whether this acquisition would substantially lessen competition in the already heavily-concentrated video marketplace. *See generally AT&T Inc. and Deutsche Telekom AG*, 26 FCC Rcd 16184, 16185 (WTB 2011). Having firsthand knowledge of AT&T's Commission-related misconduct, MCPC will speak to the issue of AT&T's character qualifications and to the harms to competition portended by the proposed merger.

FACTS

A. Background

In 1984, the Commission decided to employ lotteries to select the cellular licensees for markets beyond the top 30.⁵ The Commission determined that lotteries would enable "both wireline and nonwireline carriers to initiate cellular service and compete for customers at about the same time," thereby "expedit[ing] service to the public, provid[ing] consumers with a choice

³ *See AT&T Mobility Wireless Operations Holdings LLC v. Bell*, 2013 WL 2455023 (Del. Ch. June 6, 2013); *Om Kaira v. AT&T Mobility Wireless Operations Holdings LLC*, 2013 WL 245507 (Del. Ch. June 6, 2013); *AT&T Mobility Wireless Operations Holdings LLC v. Bowers*, 2013 WL 2455029 (Del. Ch. June 6, 2013); *Delchi Corp. v. AT&T Mobility Wireless Operations Holdings LLC*, 2013 WL 2455030 (Del. Ch. June 6, 2013); *AT&T Mobility Wireless Operations Holdings LLC v. North American Cellular Telephone, Inc.*, 2013 WL 2455031 (Del. Ch. June 6, 2013); *Landau v. AT&T Mobility Wireless Operations Holdings LLC*, 2013 WL 2455032 (Del. Ch. June 6, 2013); *AT&T Mobility Wireless Operations Holdings LLC v. Carcione*, 2013 WL 2455034 (Del. Ch. June 6, 2013); *AT&T Mobility Wireless Operations Holdings LLC v. Delchi Corp.*, 2013 WL 2455037 (Del. Ch. June 6, 2013); *NNVI Investment LLC v. AT&T Mobility Wireless Operations Holdings LLC*, 2013 WL 2455026 (Del. Ch. June 6, 2013); *Barrett LHU Partnership v. AT&T Mobility Wireless Operations Holdings LLC*, 2013 WL 2455028 (Del. Ch. June 6, 2013).

⁴ *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 28 FCC Rcd 10496, 10546 (2013) ("Fifteenth Report").

⁵ *See Cellular Lottery Rulemaking*, 98 FCC 2d 175, 179 (1984), *recon. granted in part*, 101 FCC 2d 577 ("Lottery Reconsideration"), *recon. granted in part*, 59 Rad. Reg. 2d (P&F) 401 (1985), *aff'd sub nom. Maxcell Telecom Plus, Inc. v. FCC*, 815 F.2d 1551 (D.C. Cir. 1987).

of service providers, and foster[ing] healthy marketplace competition from the outset.”⁶

The Commission prohibited parties from having multiple ownership interests in mutually exclusive applications for the same cellular market, except that interests of less than one percent were not considered.⁷ In an effort to encourage settlements among competing applicants in the markets below the top 90, the Commission provided for the award of cumulative lottery chances to a joint venture created by a “partial settlement” among the competing applicants.⁸ It also permitted a “post-lottery broadening” of a partial settlement reached prior to a lottery.⁹

In 1985, the Commission prohibited cumulative chances for partial settlements among nonwireline applicants in markets outside the top 120.¹⁰ By not prohibiting partial settlements entirely, the Commission allowed nonwireline applicants to “exercise their business judgment to effectuate sensible joint ventures or partnerships.”¹¹

B. The Licensee Partnerships

MPCP members (or their predecessors in interest) entered into so-called “alliance agreements” to settle markets 120-305.¹² Under that type of partial settlement agreement, each party to the alliance agreed that, if it won a particular license, it would hold at least a 50.1 percent ownership interest therein and the other parties would be minority parties holding equal

⁶ *Cellular Lottery Rulemaking*, 98 FCC 2d at 184.

⁷ *See id.* at 218. Any arrangement among fewer than all of the competing applicants in a market that provided “reciprocal interests” in the applications of the parties to the arrangement was considered a partial settlement. *Columbia Cellular Partnership*, 4 FCC Rcd 6432, 6433 n.1 (Com. Car. Bur. 1989).

⁸ *Cellular Lottery Rulemaking*, 98 FCC 2d at 201.

⁹ *BellSouth Mobility, Inc.*, 3 FCC Rcd 6902, 6903 (Com. Car. Bur. 1988).

¹⁰ *See Lottery Reconsideration*, 101 FCC 2d at 586-87.

¹¹ *Id.* at 588.

¹² *Columbia Cellular*, 4 FCC Rcd at 6433 n.1.

ownership interests of not more than .99 percent each.¹³ Thus, the Licensee Partnerships were formed with the lottery winners holding 50.1 percent majority interests and the minority parties holding less than a .99 percent interest.¹⁴

The Licensee Partnerships were governed by substantially identical partnership agreements. The agreements included, *inter alia*, four significant provisions.

- A partner's voting percentage was equal to the percentage of its ownership interest in the partnership. Consequently, the majority partner controlled the outcome of any issue requiring only a majority vote.¹⁵
- A three-member executive committee was empowered to conduct the day-to-day business affairs of the partnership. Members were to be elected by a majority vote of the partners, thus guaranteeing that the majority partner would elect a majority of the executive committee. The minority parties had the exclusive right to elect and remove one member of the committee.¹⁶
- The partnership would dissolve upon the sale of all or substantially all of the assets of the partnership.¹⁷
- The partnership's confidential information could not be used or disclosed in a manner which was adverse to the interests of the partnership or of any partner.¹⁸

C. The Transfers

AT&T was not a party to an alliance agreement, and it was not a partner in any of Licensee Partnerships when they were awarded cellular licenses. After the Licensee Partnerships

¹³ See *Columbia Cellular*, 4 FCC Rcd at 6433 n.1.

¹⁴ For example, the Galveston Partnership was formed pursuant to the "Western Cellular Settlement Agreement." *Lynn Juanes*, 2 FCC Rcd 4371, 4371 (Com. Car. Bur. 1987). See *infra* Attachment 2 at 1 (Galveston Cellular Partnership Partnership Agreement). Ms. Lynn Juanes initially held a 50.01 percent ownership interest in the Galveston Partnership. See *id.* at 2 (§ 2.1). The minority partners held the remaining 49.99 ownership interest, with no single minority partner owning more than a 0.99 percent interest. See *id.*

¹⁵ See *infra* Attachment 2 at 5 (§ 4.1); Attachment 3 at 5-6 (§ 4.1) (Bloomington Cellular Telephone Company Partnership Agreement).

¹⁶ See *infra* Attachment 2 at 6 (§ 4.3); Attachment 3 at 5-6 (§ 4.1).

¹⁷ See *infra* Attachment 2 at 12 (§ 9.1); Attachment 3 at 12 (§ 9.1).

¹⁸ See *infra* Attachment 2 at 13 (§ 10.5); Attachment 3 at 13 (§ 10.2).

had become successful cellular service providers, AT&T began gaining control of the partnerships by acquiring ownership interests in their majority partners.¹⁹ AT&T consolidated its outright control of the Licensee Partnerships in transactions with BellSouth Corporation (“BellSouth”),²⁰ Dobson Communications Corporation (“Dobson”),²¹ and Cellco Partnership d/b/a Verizon Wireless.²² Table 2 identifies the entity that transferred control of each partnership to AT&T, provides the year in which the Commission recognized that AT&T had acquired *de jure* control of the partnership, and gives the file number of the transfer of control application granted by the Commission.

TABLE 2

PARTNERSHIP	TRANSFEROR	YEAR	FILE NO.
Salem Cellular Telephone Company	BellSouth	2007	0002550412
Provo Cellular Telephone Company	BellSouth	2007	0002550390
Sarasota Cellular Telephone Company	BellSouth	2007	0002550397
Galveston Cellular Telephone Co.	BellSouth	2007	0002556120
Reno Cellular Telephone Company	BellSouth	2007	0002550396
Bradenton Cellular Partnership	BellSouth	2007	0002550345
Bremerton Cellular Telephone Company	BellSouth	2007	0002550351
Bellingham Cellular Partnership	BellSouth	2007	0002550346
Bloomington Cellular Telephone Co.	BellSouth	2007	0002550347
Alton CellTelCo	Dobson	2007	0003092368
Las Cruces Cellular Telephone Company	Verizon Wireless	2010	0003845109

D. The Self-Dealing

AT&T consistently used its position as the majority partner to oppress the minority partners, to commit material breaches of the partnership agreements, suppress competition, and

¹⁹ Subsidiaries of McCaw Communications, Inc., were the initial majority partners of the Bloomington Partnership, *see infra* Attachment 3 at 1, Salem Partnership, Provo Partnership, Sarasota Partnership, and the Bremerton Partnership.

²⁰ *See AT&T Inc. and BellSouth Corporation*, 22 FCC Rcd 5662, 5781-84 (2007).

²¹ *See AT&T Inc. and Dobson Communications Corp. Seek FCC Consent to Transfer Control of Licenses and Authorizations*, 22 FCC Rcd 13659, 13660 (2007); *AT&T Inc. and Dobson Communications Corp.*, 22 FCC Rcd 20295 (2007).

²² *See AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless*, 25 FCC Rcd 8704, 8775 (2010).

to manipulate the finances of the Licensee Partnerships for its own purposes and profit.

With respect to the Licensee Partnerships, AT&T committed the following acts:

- AT&T commingled the Licensee Partnerships' funds with its own money, using the funds as if they were AT&T's own.
- For years, AT&T secretly loaned its affiliates substantially all of the Licensee Partnerships' net income. AT&T did so by sweeping the Licensee Partnerships' cash into its operating accounts without knowledge or approval by the partnerships' executive committees.
- The secret loans were made without approval of the Licensee Partnerships' executive committees, without documentation and without any agreement regarding interest rate, due date, terms of default, or collateral.
- Having secretly loaned itself the net income of the Licensee Partnerships, AT&T was able to withhold distributions to its minority partners. At the same time it withheld these distributions, AT&T caused the Licensee Partnerships to declare taxable income. As a result, AT&T artificially suppressed the market value of the minority partners' interests and imposed on the minority partners the burden of paying tax on the phantom income.
- A number of minority partners were unwilling or unable to meet the phantom tax burden without commensurate distributions of the Licensee Partnerships' income. AT&T exploited this artificially contrived financial stress to acquire additional interests in the Licensee Partnerships for a fraction of their true value.
- In addition, AT&T made capital calls on the minority partners. Had AT&T repaid the loans of the Licensee Partnerships' income, the capital calls would have been unnecessary.
- AT&T used the occasion of these unwarranted capital calls to cause minority partners to forfeit their interests in the Licensee Partnerships. Remarkably, these forfeitures did not benefit all non-defaulting partners equally. Instead, only AT&T was allowed to cover the un-met capital calls and thereby increase its interest in the Licensee Partnerships.
- AT&T failed to disclose material information regarding these transactions and rejected requests by the minority partners for such disclosures.
- When AT&T repaid the money secretly borrowed from the Licensee Partnerships, and distributed this money to minority partners, it declared the subsequent distributions as "new income," thus causing the minority partners to pay taxes on the money twice. Although it had actual knowledge of this error, AT&T never informed the minority partners or provided them with corrected IRS Forms 1099.

Moreover, despite the express prohibition in the Galveston Partnership agreement,²³ AT&T operated PCS facilities in the Licensee Partnerships' markets in direct competition with the partnerships.²⁴ For example, AT&T deployed 700 MHz facilities in the partnerships' markets.²⁵ Table 3 shows the spectrum holdings by frequency bands that were available to AT&T to compete with the Licensee Partnerships.²⁶

TABLE 3

MSA	PCS	MHZ	AWS	MHZ	700 MHz	MHZ
Salem, OR	D	10	C, E	20	B, C, D	30
Provo-Orem, UT	C, D	25	E	10	B, C, D	30
Sarasota, FL	E	30			B, C, D	30
Galveston, TX	B, C, F	40	D	10	C, D	18
Reno, NV	B, C, D	50	E	10	B, C, D	30
Bradenton, FL	C, E	30			C, D	18
Bremerton, WA	A, C, D, F	40	E	10	B, C, D	30
Bellingham, WA	C, D, E	50	E	10	B, C, D	30
Bloomington, IN	B, D	30			C, D	18
Las Cruces, NM	F	40	D	10	D	6
Alton-Granite City, IL	A, D, E	40			C, D	18

If they were to maximize the value of their business enterprise, the Licensee Partnerships had to compete with the other service providers in their markets - including AT&T - to increase their market share. However, under AT&T's control, the Licensee Partnerships were not allowed to compete. AT&T managed the Licensee Partnerships as if they were wholly-owned AT&T affiliates, rather than a separate business entity. AT&T also operated the Licensee

²³ See *infra* Attachment 2 at 17 (§ 10.2).

²⁴ See File No. 0004669383, Appendix B (Competitor Chart) at 242 (CMA 148), 244 (CMA 159), 245 (CMAs 167, 170, 171), 250 (CMAs 211, 212), 254 (CMA 270), 255 (CMA 282), 256 (CMA 285), 257 (CMA 305).

²⁵ See *id.* at 34 (CMA 148), 35 (CMA 159), 36 (CMA 167), 37 (CMAs 170, 171), 42 (CMAs 211, 212), 47 (CMA 270), 48 (CMA 282), 49 (CMA 285), 50 (CMA 305).

²⁶ See File No. 0004669383, Appendix A (Spectrum Aggregation) at 14 (CMAs 148, 159), 14 (CMAs 167, 170, 171), 17 (CMAs 211, 212), 19 (CMAs 270, 282, 285), 20 (CMA 305).

Partnerships' cellular systems as part of its nationwide wireless network. As such, the Licensee Partnerships could not compete with AT&T on prices, terms of service, and data plans because AT&T controlled the Licensee Partnerships and set their prices, terms, and plans. In addition, having sole access to the Licensee Partnerships' books and records, AT&T completely controlled the Licensee Partnerships' finances and had free rein to sweep their cash into AT&T's operating accounts for AT&T's own use. AT&T also allocated a portion of its total costs to the partnerships. In effect, AT&T's self dealing with Licensee Partnerships' assets and revenues funded AT&T and suppressed the Licensee Partnerships' ability to compete against other cellular wireless providers, including AT&T, for the pool of available subscribers in their markets.

E. The Squeeze-Out

Beginning in or around September 2009, AT&T embarked on its plan to squeeze out all of its minority partners and to seize the assets of the Licensee Partnerships for itself. AT&T set about "selling" all the assets of the partnerships to its affiliates allegedly for "fair value," thereby causing the dissolution of the partnerships. AT&T controlled the entire valuation process with no input from its minority partners, including using and disclosing confidential partnership information contrary to the express terms of most of the partnership agreements.

Thus, in February 2010, AT&T retained PricewaterhouseCoopers, LLP ("PwC") to estimate the value of each of the Licensee Partnerships. In breach of the confidentiality provisions of the partnership agreements, AT&T provided PwC with reams of information that were confidential and proprietary to the Licensee Partnerships. PwC performed the valuations²⁷ and issued AT&T confidential valuation reports for the Licensee Partnerships from May 2010 to February 2011.

²⁷ PwC used the same valuation methodology for virtually all of the partnerships, even though market conditions and economics were different in the widely-dispersed MSAs that they served.

After receipt of PwC's valuation reports, AT&T offered to purchase each minority partner's interest in the partnerships for an amount that was five percent more than the PwC-estimated value of the interest. AT&T demanded the minority partners sign a "Partnership Interest Assignment Agreement" within thirty days of receipt of the offer in order to receive the additional five percent payment. If they did not accept AT&T's offer, the minority partners were told that AT&T would vote its majority partnership interests in favor of the sale of the partnership assets to an affiliate "in exchange for a purchase price" based on PwC's valuation. Finally, AT&T told the minority partners that, when the assets were sold, the partnerships would be "dissolved" and "liquidated."

Once its purchase offers expired, AT&T called a "Special Meeting" of each Licensee Partnership (via conference call) for the sole purpose of considering and voting on the offer of a wholly-owned AT&T limited liability company ("LLC") to purchase all the assets of the partnership for cash. Each meeting was chaired by an AT&T representative (the chairman of the respective partnership's executive committee), who stated that immediately upon acceptance of the offer the partnership would enter an asset purchase agreement with the purchaser, and that following the closing of the transaction the partnership would be automatically dissolved.

During each conference call, the AT&T chairman called for the partners to vote on resolutions authorizing him to effectuate the asset sale and the dissolution and winding up of the partnership. Every minority partner who participated in the conference call either voted against the resolution or voted "present." But the AT&T representative voted AT&T's majority partnership interest in favor of the resolutions and they were deemed approved.

F. The Commission Notifications

After obtaining authorization from the Licensee Partnerships to assign their cellular

licenses to LLCs pursuant to asset purchase agreements, AT&T made a series of filings notifying the Commission that eight of the partnerships – Provo Partnership, Bremerton Partnership, Salem Partnership, Bellingham Partnership, Alton Partnership, Sarasota Partnership, Bradenton Partnership, and Bloomington Partnership – had been *merged* into its newly-created LLCs.²⁸ AT&T represented to the Commission that all of the assets of each partnership were acquired by one of its newly-created LLCs and that each partnership was dissolved on the very same day the partners voted to approve the “asset sale.” AT&T repeatedly characterized the transactions as a “restructuring” or “reorganization,” and claimed that they were *pro forma* in nature.²⁹

AT&T notified the Commission that on December 23, 2010 – the day of the Reno Partnership conference call – the Reno Partnership’s assets were acquired by newly-created New Reno Cellular Telephone Company, LLC, a “wholly-owned indirect subsidiary of AT&T.”³⁰ The Commission was then notified that on May 31, 2011 – the day of the Las Cruces Partnership meeting – there had been a “*pro forma* assignment” of the licenses held by Las Cruces Partnership to AT&T’s indirect subsidiary, New Las Cruces Cellular Telephone Company, LLC.³¹

Finally, on July 28, 2011, AT&T notified the Commission of transfers of control that had resulted from an internal reorganization.³² AT&T buried the following disclosure in a footnote:

On June 30, 2011, [Galveston Partnership], the parent of ATT Mobility of Galveston LLC (“Mobility Galveston”), assigned all its assets and liabilities to New Galveston Cellular, LLC. As a result, indirect control of Mobility Galveston and the FCC licenses it holds was transferred from [Galveston Partnership] to

²⁸ See *infra* Attachment 4 at 8; Attachment 5 at 7; Attachment 6 at 7; Attachment 7 at 7.

²⁹ Attachment 4, *infra*, at 8; Attachment 5, *infra*, at 7; Attachment 6, *infra*, at 7; Attachment 7, *infra*, at 7.

³⁰ Attachment 8, *infra*, at 7.

³¹ Attachment 9, *infra*, at 7.

³² See *infra* Attachment 10 at 7.

New Galveston Cellular, LLC. Further, AT&T's indirect ownership interest in Mobility Galveston rose from 96.35 percent to 100 percent.³³

The Galveston Partnership was the last of the Licensee Partnerships to be dissolved by AT&T. Its dissolution occurred on June 30, 2011, the same day that AT&T voted its majority partnership interest in favor of the asset sale over the strenuous objections of the minority partners.

Table 4 identifies the AT&T LLCs that acquired the assets of the Licensee Partnerships and shows how AT&T characterized the transactions to the Commission.

TABLE 4

ACQUIRING LLC	TRANSACTION
New Provo Cellular Telephone Company LLC	Merger
New Bremerton Cellular Telephone Company LLC	Merger
New Salem Cellular Telephone Company LLC	Merger
New Bellingham Cellular LLC	Merger
New Alton CellTelCo LLC	Merger
New Sarasota Cellular Telephone Company LLC	Merger
New Bradenton Cellular LLC	Merger
New Bloomington Cellular Telephone Company LLC	Merger
New Reno Cellular Telephone Company LLC	Assignment
New Las Cruces Cellular Telephone Company LLC	Assignment
New Galveston Cellular LLC	Assignment

AT&T did not seek Commission consent to transfer the cellular licenses from the eleven general partnerships to its eleven wholly-owned LLCs. Characterizing the transactions by which the licenses changed hands as *pro forma*, AT&T notified the Commission of the transactions, pursuant to § 1.948(c) of the Commission Rules (“Rules”), between 28 and 47 days after their consummation.³⁴ Table 5 sets forth the dates on which the licenses held by the Licensee

³³ Attachment 10, *infra*, at 9 n.6.

³⁴ See *infra* Attachment 4 at 1, 8 & n.1; Attachment 5 at 1, 7 & n.1; Attachment 6 at 1, 7 & n.1; Attachment 7 at 1, 7 & n.1; Attachment 8 at 1, 7 & n.1; Attachment 9 at 1, 7 & n.1; Attachment 10 at 1, 7 & n.1, 9 n.6.

Partnerships were transferred to the AT&T LLCs and the dates on which AT&T notified the Commission that the licenses had been transferred.

TABLE 5

LICENSEE	TRANSACTION	NOTIFICATION
Provo Partnership	10/12/2010	11/12/2010
Bremerton Partnership	10/12/2010	11/12/2010
Salem Partnership	10/12/2010	11/12/2010
Bellingham Partnership	10/15/2010	11/12/2010
Alton Partnership	10/25/2010	11/22/2010
Sarasota Partnership	12/2/2010	1/18/2011
Bradenton Partnership	12/2/2010	1/3/2011
Bloomington Partnership	12/2/2010	1/3/2011
Reno Partnership	12/23/2010	1/21/2011
Las Cruces Partnership	5/31/2011	6/29/2011
Galveston Partnership	6/30/2011	7/28/2011

DISCUSSION

I. THE COMMISSION MUST REASSESS AT&T’S QUALIFICATIONS IN LIGHT OF ITS COMMISSION-RELATED MISCONDUCT

Section 310(d) of the Communications Act of 1934 (“Act”) obligates the Commission to consider whether AT&T’s acquisition of the licenses now held by DIRECTV would serve the public interest, convenience and necessity. *See* 47 U.S.C. § 310(d); *AT&T Inc. and Qualcomm Incorporated*, 26 FCC Rcd 17589, 17601 (2011) (“*AT&T-Qualcomm*”); *AT&T Inc. and Centennial Communications Corp.*, 24 FCC Rcd 13915, 13931 (2009); *AT&T Wireless Services, Inc. and Cingular Wireless Corp.*, 19 FCC Rcd 21522, 21546 (2004). To determine whether AT&T has the requisite character qualifications to acquire licenses, the Commission will review allegations of misconduct committed by AT&T directly before the agency. *See, e.g., Cellco Partnership d/b/a Verizon Wireless and AT&T, Inc.*, 25 FCC Rcd 8704, 8718-19 (2010) (“*Verizon Wireless-AT&T*”). Generally, with respect to allegations of such Commission-related misconduct the Commission has held that “all violations of provisions of the Act, or of the

Commission rules [“Rules”] or policies are predictive of an applicant’s future truthfulness and reliability, and thus have a bearing on an applicant’s character qualifications.” *Id.* at 8719.

MCPC recognizes that AT&T “has previously and repeatedly ... been found qualified” by the Commission. *AT&T-Qualcomm*, 26 FCC Rcd at 17601. Most recently, the Commission avoided revisiting AT&T’s character qualifications in large part because AT&T had settled claims that it defrauded the TRS Fund by (1) entering into a consent decree with the Enforcement Bureau (“Bureau”) under which it paid a total of \$18,250,000 to the United States Treasury,³⁵ and (2) paying \$3,500,000 under a settlement agreement with the Department of Justice.³⁶ However, the Bureau agreed to the terms of the consent decree on the condition that AT&T adhere to a Commission-supervised plan to ensure it complied with § 225 of the Act and §§ 64.605 and 64.605 of the Rules.³⁷ When it approved the consent decree that it negotiated, the Bureau opined that its investigation did not give rise to “substantial and material questions of fact” as to AT&T’s character qualifications to obtain licenses.³⁸

Evidence that AT&T defrauded the TRS Fund was sufficient to warrant a Bureau investigation and cause AT&T to refund \$7,000,000 to the fund. Here, MCPC will show that AT&T defrauded its minority partners, and engaged in serious Commission-related misconduct, in the process of divesting the Licensee Partnerships of their cellular licenses.

³⁵ See *AT&T Inc.*, 28 FCC Rcd 5994, 6004-05 (Enf. Bur. 2013). See also *Diogenes Telecommunications Project*, 29 FCC Rcd 6298 (2014) (denying an application for review of the consent decree on the grounds that the applicant lacked standing); *T-Mobile License LLC*, 29 FCC Rcd 6350, 6354 (2014) (refusing to consider a supplement to a petition to deny that alleged that AT&T was unqualified because it had defrauded the TRS Fund).

³⁶ See *Diogenes*, 29 FCC Rcd at 6292 n.26.

³⁷ See *AT&T*, 28 FCC Rcd at 6001-04.

³⁸ *AT&T*, 28 FCC Rcd at 5994. See *T-Mobile*, 29 FCC Rcd at 6354. We suspect that AT&T bargained for the Bureau’s obvious dictum.

A. AT&T Engaged In Commission-Related Misconduct
In The Process Of Squeezing Out Its Minority Partners

Section 310(d) of the Act mandates that the Commission give its prior consent before *any* license, or any rights conferred under a license, can be transferred, assigned, or disposed of. *See* 47 U.S.C. § 310(d); *Softbank Corp.*, 28 FCC Rcd 9642, 9700 (2013). The Commission has exercised its authority to forbear from enforcing the prior consent requirement of § 310(d) only with respect to six categories of transactions. *See FCBA's Petition for Forbearance from § 310(d) of the Communications Act*, 13 FCC Rcd 6293, 6298-99 (1998) (“*Forbearance Order*”). The assignment of a license from a general partnership in which AT&T is the majority partner to LLCs controlled by AT&T does not fall within any of the six categories of transactions that are eligible for *pro forma* treatment under the *Forbearance Order*. Such a transaction simply is not an:

(1) assignment from an individual or individuals (including partnerships) to a corporation owned or controlled by such individuals or partnerships without any substantial change in their relative interests; (2) assignment from a corporation to its stockholders without effecting any substantial change in the disposition of their interests; (3) assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one; (4) corporate reorganization which involves no substantial change in the beneficial ownership of the corporation; (5) assignment or transfer from a corporation to a wholly owned subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or (6) assignment of less than a controlling interest in a partnership.³⁹

The Commission treats “any general partnership interest” as a “controlling interest.” *Policies Regarding Mobile Spectrum Holdings*, 29 FCC Rcd 6133, 6248 (2014) (47 C.F.R. § 20.22(b)(1)); 47 C.F.R. §§ 1.919(c)(ii)(A), 20.6(d)(1). Thus, when AT&T put the Licensee Partnerships’ licenses in the hands of its LLC subsidiaries, the controlling interests in the

³⁹ *FCBA Forbearance Order*, 13 FCC Rcd at 6298-99.

licenses passed from the individual partners, including the minority partners, to the LLCs wholly-owned or controlled by AT&T. Consequently, the identities of the owners of the licensees and their *de jure* control changed completely, *i.e.*, there was a “substantial change” in the partners relative interests. Accordingly, the assignments of the Licensee Partnerships’ licenses were ineligible for *pro forma* treatment under § 1.948(c)(1) of the Rules and required prior Commission consent.

It appears that AT&T either misrepresented the facts or mischaracterized the transactions in order to bolster its case for *pro forma* treatment under the *Forbearance Order* and § 1.948(c)(1).⁴⁰ The Licensee Partnerships were not divested of their cellular licenses pursuant to a “merger” or a “restructuring” or “reorganization” of AT&T. Each one of the transactions involved the sale of all the assets of the partnership, which AT&T claimed would constitute a dissolution event under the partnership agreement. The dissolution of the partnership left no entity that could be merged.⁴¹

The assignment of the Licensee Partnerships’ licenses was not part of any corporate

⁴⁰ AT&T filed its notifications explicitly pursuant to § 1.948(c) of the Rules, and quoted the Commission in *Forbearance Order*, 13 FCC Rcd at 6295, when it claimed that “[t]he Commission has previously stated that in situations, such as the instant reorganization, where no substantial change of control will occur, ‘grant of the application is deemed presumptively in the public interest.’” Attachment 4, *infra*, at 8 & nn. 1, 3; Attachment 5, *infra*, at 7 & nn. 1, 4; Attachment 6, *infra*, at 7 & nn. 1, 3; Attachment 7, *infra*, at 8 & nn. 1, 4; Attachment 8, *infra*, at 7 & nn. 1, 4; Attachment 9, *infra*, at 7 & nn. 1, 4.

⁴¹ Each notification filed by AT&T under § 1.948(c) of the Rules included the implied representation that the partnership had authorized AT&T to effectuate the assignment of the authorization that had been consummated. AT&T caused each Licensee Partnership to specifically authorize it to (1) execute and deliver an asset purchase agreement, a bill of sale, an assignment and assumption agreement, and other documents necessary to effect the sale of the partnerships assets, and (2) execute, deliver and file any documents necessary to reflect the automatic dissolution and winding up of the partnership. AT&T was not authorized to merge any of the Licensee Partnerships. Thus, if there had been such a merger, AT&T would have violated § 1.17 of the Rules by misrepresenting that the transaction had been authorized by the partnership.

restructuring or reorganization insofar as AT&T's corporate structure remained unchanged after the assignments. Shortly after the transactions were consummated, the acquiring LLCs were merged into AT&T Mobility Wireless Operations Holdings LLC,⁴² which was the AT&T entity which held the majority ownership interests in the Licensee Partnerships.

When it failed to obtain prior Commission consent to the assignment of the cellular licenses held by the Licensee Partnerships, AT&T violated § 310(d) of the Act and § 1.948(a) of the Rules. It compounded what otherwise may have been technical violations by making untrue and inaccurate statements to the Commission in violation of § 1.17(a) of the Rules.⁴³ This Commission-related misconduct is predictive of AT&T's future untrustworthiness and unreliability, and thus has an adverse bearing on its character qualifications. *See, e.g., Verizon Wireless-AT&T*, 25 FCC Rcd at 8719.

B. AT&T Violated The Commission's Pro-Competitive Policies

As the Commission is well aware, as it devises spectrum allocation arrangements, it seeks to enhance competition whenever possible (without unduly degrading technical capabilities). This fundamental strategy, adhered to by both Democratic and Republican administrations, extends as far back as the onset of cellular radio itself. When it first authorized cellular service, the Commission found that "even the introduction of a marginal amount of facilities-based competition into the cellular market will foster important public benefits of diversity of technology, service and price, which should not be sacrificed absent some compelling reason." *Cellular Communications Systems*, 86 F.C.C. 2d 469, 478 (1981). The Commission also allocated PCS spectrum in a manner that would maximize competition. *See Amendment of the*

⁴² *See infra* Attachment 6 at 7; Attachment 7 at 7; Attachment 8 at 7.

⁴³ The filing of a notification pursuant to § 1.948(c) of the Rules is a licensing matter, which is an adjudicatory matter. *See* 5 U.S.C. § 551(7)-(9).

Rules to New Personal Communications Services, 9 FCC Rcd 4957, 4959 (1994). Specifically, the Commission divided the auctioned spectrum into as many separate and useful licenses as possible, and notably set aside certain licenses specifically for small businesses like the Licensee Partnerships dissolved by AT&T. *See id.* at 4969-71.

More recently, the Commission has continued to stress both its and Congress' desire to have maximum practical facilities-based competition. The Commission tailored its entire Designed Entity ("DE") program to provide for such competition. And earlier this year, even while granting limited exceptions to its DE program, the Commission reminded the industry of the importance the Commission continues to attach to such competition. *See Grain Management*, FCC 14-103, 2014 WL 3695409, at *3 (Jul. 23, 2015).

When AT&T began its efforts to squeeze out minority owners in the cellular market, as chronicled above, it first moved to reduce the very competition the Commission had sought to enhance. There is simply no other way to explain its determination, as AT&T has conceded, not to have any of the partnerships that it controlled compete in any way with AT&T licenses in the same markets.

The Commission has long battled with the problem of inappropriately low licensee participation by small businesses, including women and minorities. The Commission's licensing efforts that led to MCPC members holding small pieces of wireless licenses, including the entire selection-by-lottery process, is one of the more successful efforts in that direction. When the Commission switched from lotteries to auctions in order to award licenses, the Act expressly mandated that the Commission design its auction process to increase such licensing. *See* 47 U.S.C. § 309(j)(3)(B), (j)(4)(C).

AT&T's squeeze-out efforts directly contravene all of the pro-small business policies set

forth by the Commission and mandated by the Act. AT&T did so by utilizing its majority partner and near monopoly market power against minority partners and small business owners. The Commission should not permit AT&T to increase the sphere of such power by granting the subject applications.

II. AT&T'S ACQUISITION OF DIRECTV WILL SUBSTANTIALLY REDUCE COMPETITION

At present, most consumers in AT&T U-Verse markets have a choice of four MVPD providers: AT&T U-Verse, DIRECTV, DISH and the local cable company. If AT&T were permitted to acquire DIRECTV, consumers in these markets would see an immediate reduction to three competitors, since AT&T and DIRECTV would be part of the same company.

Notwithstanding the above, AT&T incorrectly claims that “[t]he transaction will not substantially lessen competition to provide standalone video services to the declining number of consumers who continue to favor that option.”⁴⁴ AT&T then seeks to underplay its role in providing MVPD service, maintaining, among other things, that AT&T U-verse is not available in most of the country, and that “[e]ven within the AT&T footprint, there are many areas where AT&T does not offer its U-verse video product.”⁴⁵

The simple fact, however, is that AT&T serves 5.9 million U-verse TV subscribers as of June 30, 2014, having added over 1 million customers in the past 12 months.⁴⁶ AT&T is

⁴⁴ Applications of AT&T Inc. and DirecTV for Consent to Assign or Transfer Control of Licenses and Authorizations, Description of Transaction, Public Interest Showing, and Related Demonstrations, MB Docket No. 14-90, at 68 (June 11, 2014).

⁴⁵ *Id.*

⁴⁶ U-verse Update: 2Q14, issued by AT&T, viewed at https://www.att.com/Common/-about_us/pdf/-uverse_update.pdf

currently the 5th largest facilities-based provider of MVPD service⁴⁷ behind – in order – only Comcast, DIRECTV, DISH, and Time Warner Cable. In fact, if the Comcast – Time Warner Cable transaction is approved, AT&T U-verse would move into fourth place.

In reviewing – and rejecting – AT&T’s attempt to purchase T-Mobile, both the FCC and the Justice Department found that the transaction would violate the Clayton Act.⁴⁸ The FCC also found that the transaction would not serve the public interest.⁴⁹ A central concern regarding that transaction was that one of the two largest wireless carriers would be purchasing the fourth largest wireless provider, and the result would be diminished competition.⁵⁰ In particular, the government was properly concerned that removing one of the major providers would reduce the competitive pressure on the remaining major providers.⁵¹

The proposed AT&T merger with DIRECTV is remarkably similar to the previously rejected AT&T merger with T-Mobile, with regard to customers within the U-verse market footprint, as well as customers within the planned build-out of the U-verse footprint. At the end of the day, customers will have fewer choices for providers of MVPD service. Competition among the remaining MVPD providers will be diminished as a result of eliminating a major, and

⁴⁷ Written Testimony of Matthew T. Wood, Policy Director, Free Press, before the U.S. Senate Committee on the Judiciary, Subcommittee on Antitrust, Competition Policy and Consumer Rights, at 7 (June 24, 2014).

⁴⁸ “[FCC] [s]taff thus finds, as has DOJ, that the proposed transaction would likely lead to a substantial lessening of competition in violation of the Clayton Act. A transaction that violates the Clayton Act would not be in the public interest.” *AT&T Inc. and Deutsche Telekom AG*, 26 FCC Rcd at 16190.

⁴⁹ *Id.*

⁵⁰ In rejecting AT&T’s acquisition of T-Mobile, the Department of Justice found, in relevant part, that a reduction in the number of “providers from four to three, likely will lead to lessened competition due to an enhanced risk of anticompetitive coordination.” Complaint at ¶ 36, *U.S. v AT&T Inc.*, No. 1:11-cv-01560 (D.D.C. filed Aug. 31, 2011).

⁵¹ *Id.*

active competitor – a competitor that added over 1 million subscribers in the last 12 months alone.

CONCLUSION

AT&T transferred eleven cellular licenses it undervalued at \$1.599 billion without the required prior Commission authorization. AT&T's attempt to misuse the Commission's processes for its benefit and at the expense of the Licensee Partnerships' minority partners is not unlike its attempt to defraud the TRS Fund. In that case, the Bureau found that AT&T's Commission-related misconduct called its qualifications into question. However, the Bureau agreed to the terms of the consent decree on the condition that AT&T adhere to a Commission-supervised plan to ensure it complied with § 225 of the Act and §§ 64.605 and 64.605 of the Rules.⁵² MCPC asks, at a minimum, for a similar remedy here.

MCPC requests that the Commission, through an evidentiary hearing or otherwise, elicit the facts necessary to resolve the question of whether AT&T intentionally violated § 310(d) of the Act and §§ 1.17 and 1.948 of the Rules. The Commission's findings may or may not be disqualifying, but they may work to ensure AT&T's future compliance with § 310(d) and be of substantial aid to the Chancery Court.

The Commission must also assess more generally whether granting the subject applications would serve the public interest, convenience and necessity. In so doing, the Commission must determine whether AT&T's multiple and deliberate actions that contravene clearly articulated pro-competitive policies should effectively be endorsed through grant of the subject applications.

Lastly, the Commission may grant the subject applications only if it finds that such a

⁵² See *AT&T*, 28 FCC Rcd at 6001-04.

grant would present public benefits that over-ride the diminution of competition in the MVPD market that would unquestionably arise through consummation of the here-contemplated merger.

Respectfully submitted,

/s/ Russell D. Lukas
RUSSELL D. LUKAS
LUKAS, NACE, GUTIERREZ &
SACHS, LLP
8300 Greensboro Drive, Suite 1200
McLean, Virginia 22102
(703) 584-8678

/s/ Jason A. Braun
JASON A. BRAUN
DONA SZAK
AJAMIE LLP
Pennzoil Place – South Tower
711 Louisiana, Suite 2150
Houston, Texas 77002
(713) 860-1600

/s/ Michael A. Pullara
MICHAEL A. PULLARA
1111 Hermann Drive, Suite 21A
Houston, Texas 77004
(713) 522-0733

*Attorneys for the Minority
Cellular Partners Coalition*

September 16, 2014

CERTIFICATE OF SERVICE

I, Russell D. Lukas, hereby certify that on this 16th day of September, 2014 copies of the foregoing COMMENTS OF THE MINORITY CELLULAR PARTNERS COALITION were sent by e-mail, in pdf format, to the following:

John O'Connor
AT&T Inc.
208 South Akard Street
Room 3212
Dallas, TX 75202
joconnor@att.com

Best Copy and Printing
fcc@bcpiweb.com

Vanessa Lemmé
Industry Analysis Division
Media Bureau
Vanessa.Lemme@fcc.gov

Brendan Holland
Industry Analysis Division
Media Bureau
Brendan.Holland@fcc.gov

Christopher Sova
Competition Policy Division
Wireline Competition Bureau
Christopher.Sova@fcc.gov

Daniel Ball
Spectrum and Competition Policy Division
Wireless Telecommunications Bureau
Daniel.Ball@fcc.gov

Jim Bird
Office of General Counsel
TransactionTeam@fcc.gov

/s/ Russell D. Lukas
Russell D. Lukas