

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

In the Matter of
Applications of T-Mobile License LLC, AT&T
Mobility Spectrum LLC and New Cingular
Wireless PCS, LLC
For Consent To Assign AWS-1 Licenses
WT Docket No. 12-21

Order

Adopted: April 18 2012

Released: April 18 2012

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we dismiss for lack of standing the Petition to Deny filed by The Diogenes Telecommunications Project ("Diogenes") against four applications (collectively, the "Applications") of T-Mobile License LLC ("T-Mobile License"), AT&T Mobility Spectrum LLC ("AT&T Mobility"), and New Cingular Wireless PCS, LLC ("New Cingular Wireless" and together with T-Mobile License and AT&T Mobility, the "Applicants") to assign Advanced Wireless Services-1 ("AWS-1") spectrum licenses from AT&T Mobility and New Cingular Wireless to T-Mobile License.

II. BACKGROUND

2. On January 20, 2012, T-Mobile License,¹ AT&T Mobility, and New Cingular Wireless² filed the Applications pursuant to section 310(d) of the Communications Act of 1934, as amended (the "Communications Act"),³ seeking approval to assign AWS-1 spectrum licenses. The Applicants request consent to assign 13 AWS-1 licenses in full and partitioned portions of 23 AWS-1 licenses from AT&T

1 T-Mobile License LLC is a wholly-owned subsidiary of T-Mobile USA, Inc. ("T-Mobile USA"). T-Mobile USA in turn is a wholly-owned subsidiary of Deutsche Telekom AG ("DT"). Through DT, foreign entities and persons hold 100 percent of the attributable ownership interests in T-Mobile USA. The Commission has previously authorized DT's interest in T-Mobile USA and its qualifications as a foreign corporation to hold indirect ownership interests in common carrier and AWS-1 licenses. See, e.g., Applications of VoiceStream Wireless Corp., Powertel, Inc. and Deutsche Telekom AG, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9799 (2001); International Authorizations Granted, File No. ISP-PDR-20060510-00013, Public Notice, 21 FCC Rcd 14062 (IB 2006); International Authorizations Granted, File No. ISP-PDR-20090826-00008, Public Notice, 24 FCC Rcd 14062 (IB 2009). The Applicants state that, since the 2009 decision, no changes have taken place with respect to T-Mobile USA's foreign ownership inconsistent with the authority granted in that decision. See T-Mobile License-AT&T Mobility Application, File No. 0005005682, Exhibit 1, Description of Transaction and Public Interest Statement ("Public Interest Statement"), at 2 n.4; Exhibit 2, Foreign Ownership Statement. The Applicants designated File No. 0005005682 as the lead application. We note that there are no comments or petitions in the instant proceeding challenging the continued validity of the existing authorization.

2 AT&T Mobility and New Cingular Wireless are subsidiaries of AT&T Inc. (collectively with its subsidiaries and affiliates, "AT&T"). See File No. 0005005682, Public Interest Statement at 1.

3 47 U.S.C. § 310(d).

Mobility to T-Mobile License.⁴ The Applicants also request consent to assign seven AWS-1 licenses in full and partitioned portions of four AWS-1 licenses from New Cingular Wireless to T-Mobile License.⁵

3. The Applicants explain that the proposed license assignments are part of the break-up provision of a Stock Purchase Agreement, dated as of March 20, 2011, between AT&T and DT for the sale of T-Mobile USA from DT to AT&T.⁶ That agreement has now been terminated, triggering the requirement for AT&T to assign in full or in part certain AWS-1 licenses held by two of its subsidiaries to T-Mobile License. The Applicants state that T-Mobile USA is not acquiring customers, facilities, or any other assets in the proposed transaction.⁷ In addition, the Applicants state that no international section 214 authorizations will be assigned through the proposed transaction.⁸

4. The Applicants assert that the proposed license assignments will serve the public interest by allowing T-Mobile USA to acquire spectrum to enable it to better address the growing demands of consumers for wireless data and content.⁹ The Applicants also assert that the proposed license assignments raise no competitive concerns. They note that AT&T will retain spectrum, and continue to serve customers, in each of the affected markets and therefore conclude that the proposed transaction will in no way reduce the number of wireless competitors or choices available to consumers in any market.¹⁰

5. On January 26, 2012, the Commission released a Public Notice seeking comment on the Applications.¹¹ In response to the *Comment Public Notice*, Diogenes filed its petition to deny, in which it requests that the Commission commence an evidentiary hearing on whether AT&T and DT have the requisite character and qualifications to hold licenses and, if they are found to lack the basic qualifications to remain licensees, revoke their FCC licenses.¹² The Applicants filed a Joint Opposition on March 8, 2012, in which they assert that the Diogenes Petition to Deny fails to explain how Commission approval of the proposed assignment of AWS-1 spectrum to T-Mobile License would directly harm Diogenes or its members or how denial of the Applications would prevent or redress any cognizable injury to these entities. The Applicants accordingly urge that the Diogenes Petition to Deny be dismissed for lack of standing.¹³ Diogenes filed a reply to the Joint Opposition on March 19, 2012.¹⁴ In its Reply, Diogenes

⁴ See File Nos. 0005005685 and 0005005682.

⁵ See File Nos. 0005005687 and 0005016840.

⁶ See *WT Docket No. 11-65* (“ATT-T-Mobile USA Merger”). In that proceeding, Diogenes filed a petition to deny on May 31, 2011 (“Diogenes Merger Petition to Deny”). The petition was dismissed, along with other the other petitions in the proceeding. See *Applications of AT&T Inc. and Deutsche Telekom AG For Consent To Assign or Transfer Control of Licenses and Authorizations*, *WT Docket No. 11-65, Order*, DA 11-1955 (WTB rel. Nov. 29, 2011). On December 27, 2011, Diogenes filed an application for review, which was dismissed. See *Applications of AT&T Inc. and Deutsche Telekom AG, Memorandum Opinion and Order*, FCC 12-40 (rel. April 17, 2012).

⁷ See File No. 0005005682, Public Interest Statement at 1.

⁸ *Id.*

⁹ See *id.* at 4-6.

¹⁰ See *id.* at 4.

¹¹ T-Mobile License LLC, AT&T Mobility Spectrum LLC, and New Cingular Wireless PCS, LLC Seek FCC Consent to the Assignment of AWS-1 Licenses, *WT Docket No. 12-21, Public Notice*, DA 12-92 (rel. Jan. 26, 2012) (“*Comment Public Notice*”) (citing File Nos. 0005005685, 0005005682, 0005005687, 0005016840).

¹² Petition to Deny of The Diogenes Telecommunications Project, filed February 23, 2012 (“Diogenes Petition to Deny”).

¹³ Joint Opposition of AT&T Inc. and T-Mobile USA, Inc. to Petition to Deny, filed March 8, 2012 (“Joint Opposition”).

¹⁴ Reply to Joint Opposition of AT&T and T-Mobile, filed March 19, 2012 (“Diogenes Reply”).

repeats its request for a hearing but names T-Mobile USA rather than its parent DT as the requested subject of the character and qualifications hearing, along with AT&T.¹⁵

III. DISCUSSION

6. The Commission's rules require that a petition to deny must contain specific allegations of fact sufficient to make a prima facie showing that the petitioner is a party in interest.¹⁶ To establish party-in-interest standing, a petitioner must allege facts sufficient to demonstrate that grant of the subject application would cause it to suffer a direct injury.¹⁷ In addition, petitioners must demonstrate a causal link between the claimed injury and the challenged action.¹⁸ To demonstrate a causal link, petitioners must establish that the injury can be traced to the challenged action and that the injury would be prevented or redressed by the relief requested.¹⁹ An organization may meet these standards in its own right or may demonstrate that one or more of its members meets them.²⁰ As discussed below, Diogenes fails to establish party-in-interest standing, and accordingly, we dismiss the Diogenes Petition to Deny.

7. The Diogenes Petition to Deny does not allege that allowing T-Mobile License to acquire the AWS-1 spectrum will cause competitive harm and makes no effort to demonstrate that Diogenes or any of its members would suffer a direct injury if the Applications are granted. Instead, Diogenes essentially repeats arguments made in its AT&T-T-Mobile USA Merger filings as to alleged misrepresentations made by the parties, especially AT&T, in that proceeding. The relief Diogenes seeks involves examination of AT&T's and T-Mobile USA's qualifications to hold *any* FCC license, not an examination of the assignment of the particular AWS-1 licenses at issue here from AT&T to T-Mobile.

8. As to standing to challenge the instant Applications, the Diogenes Petition to Deny claims that Diogenes' standing was "established" in the AT&T-T-Mobile merger proceeding and is "incorporated herein by reference."²¹ The Petition adds only that Diogenes member Scott Karren, who submitted a brief affidavit attached to the Merger Petition to Deny, is a long-standing customer of T-Mobile and that another member, Irene Laschuk, is a customer of AT&T Mobility.²² In the merger proceeding, Diogenes cited Mr. Karren's concerns about having to become an AT&T customer.²³ The Diogenes Petition to Deny here, however, does not explain how Mr. Karren, as a T-Mobile customer, might be injured by an assignment of spectrum from AT&T to T-Mobile License, much less how any such injury would be redressed by delaying or denying the Applications. Similarly, the mere fact that Ms. Lashuk is an AT&T Mobility customer does not establish that Diogenes has standing to participate in this proceeding. Her status as such a customer does not suggest injury from either misrepresentations allegedly made in the failed merger transaction or the proposed license transfers to T-Mobile License, nor does that status provide any clue as to how denying the proposed license transfers would redress any

¹⁵ See Diogenes Reply at 6. Diogenes filed a Supplement to Petition to Deny on April 16, 2012 ("Diogenes Supplement"). The Diogenes Supplement does not comply with the requirements for timely supplemental filings as set forth in the *Comment Public Notice*, at 3, and we need not address it.

¹⁶ 47 C.F.R. § 1.939(d).

¹⁷ *Wireless Co., L.P.*, Order, 10 FCC Rcd 13233, 13235 ¶ 7 (WTB 1995) ("*Wireless Co.*"), citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972).

¹⁸ *Wireless Co.*, 10 FCC Rcd at 13235 ¶ 7.

¹⁹ *Id.*

²⁰ See, e.g., *Friends of the Earth, Inc.*, 18 FCC Rcd 23622, ¶¶ 2-3 (2003).

²¹ Diogenes Petition to Deny at 2.

²² See *id.*

²³ See Diogenes Merger Petition to Deny at 2, Declaration of Scott Karren.

injury suffered by Ms. Lashuk.

9. In its Reply, Diogenes attempts to remedy its failure in the Petition to Deny to supply a factual basis for its standing claims by asserting that AT&T's "give away" of valuable spectrum will adversely affect its LTE deployment plan, impairing its ability "to rollout LTE (at least partially)" and thereby cause harm to Ms. Laschuk as an AT&T customer.²⁴ For this assertion, Diogenes relies exclusively on statements made by AT&T in the AT&T-T-Mobile USA Merger, to the effect that AT&T faces more spectrum and capacity constraints than other wireless providers and that its LTE deployment plan, without T-Mobile's spectrum, would cover only a percentage of its existing U.S. footprint.²⁵

10. We need not reach any conclusions about AT&T's LTE deployment to resolve the standing question in this matter. Even assuming, without deciding, that Diogenes could demonstrate the requisite injury to Ms. Laschuk as its member, as well as a causal link between injury and the agency action in question, dismissal of Diogenes' petition for lack of standing is required because the relief that Diogenes seeks – designation for hearing of AT&T's and T-Mobile USA's character qualifications and the possible revocation of all their licenses – would not provide Diogenes with any redress for the specific injuries that its members would allegedly sustain, *i.e.*, impairment of AT&T's ability to roll out LTE service (with respect to Ms. Laschuk) and the takeover of T-Mobile USA accounts by AT&T (with respect to Mr. Karren).²⁶ The requested hearing and potential revocation of all licenses held by AT&T and T-Mobile USA would potentially put both AT&T and T-Mobile out of the wireless business in the United States, a result that would not provide any relief for the alleged injuries to Diogenes' members. Indeed, the relief Diogenes seeks would prevent Mr. Karren from remaining a T-Mobile customer as he desires to do, and deny Ms. Laschuk any benefits from AT&T's deployment of LTE. Accordingly, we dismiss the Diogenes Petition to Deny for lack of standing.

IV. ORDERING CLAUSES

11. Accordingly, having reviewed the Applications and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petition to Deny filed by The Diogenes Telecommunications Project and the Supplement to Petition to Deny are hereby DISMISSED for the reasons stated herein.

²⁴ Diogenes Reply at 3-4.

²⁵ *Id.* at 3.

²⁶ In the brief discussion of standing in its Reply, Diogenes mentions "denial of the pending assignment application" as the requested relief that allegedly would redress Ms. Laschuk's asserted injury. Diogenes Reply at 4. Elsewhere in its pleadings, however, Diogenes' requested relief is a hearing and potential license revocation.

12. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, that the Broadband Division of the Wireless Telecommunications Bureau SHALL PROCESS the following applications in accordance with this *Order*: File Nos. 0005005682, 0005005685, 0005005687, and 0005016840.

13. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Rick Kaplan
Chief, Wireless Telecommunications Bureau