



Federal Communications Commission
Washington, D.C. 20554

November 10, 2011

Arthur V. Belendiuk
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W.
#301
Washington, D.C. 20016

Re: Ex parte complaint in WT Docket No. 11-65

Dear Mr. Belendiuk:

This is a response to your complaint on behalf of Diogenes Telecommunications Project (DPT) alleging that AT&T, Inc. (AT&T) violated the ex parte rules. DPT states:

AT&T has engaged in an all out media campaign in the Washington, D.C. area for the purpose of influencing Federal Communications Commission decision making personnel to grant the [applications related to the proposed AT&T/T-Mobile transaction]. Its issue oriented radio, television, and newspaper advertisements constitute oral and written presentations to the FCC in a permit-but-disclose proceeding. In failing to file memoranda documenting these ex parte presentations, AT&T has violated the FCC's ex parte rules and must be made to cease and desist this unlawful practice. Furthermore, since the improper oral and written presentations were made to all Commission decision making personnel, there can be no recusal of the tainted personnel. Therefore, the only solution consistent with the FCC's rules is to dismiss the applications with prejudice.¹

The AT&T/T-Mobile transaction has been designated permit-but-disclose.² In permit-but-disclose proceedings, ex parte presentations to Commission decision making

¹ See Motion For An Order To Cease And Desist From Violations of the Commission's Ex Parte Rules And To Dismiss The Applications, filed October 24, 2011, by Diogenes Telecommunications Project at 1-2 (footnotes omitted).

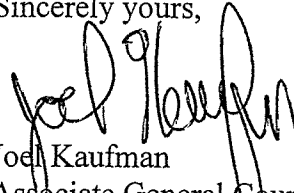
² See Commission Announces That The Applications Proposing The Transfer of Control Of The Licenses And Authorizations Held By T-Mobile USA, Inc. And Its Subsidiaries From Deutsche Telekom AG To AT&T, Inc. Have Been Filed And Permit-But-Disclose *Ex Parte* Procedures Now Apply, Public Notice DA 11-722 (Apr. 21, 2011).

personnel are permissible, but written ex parte presentations and a summary of oral presentations must be placed in the record.³

DPT has not shown that AT&T made any unreported ex parte presentations to decision-making personnel. We do not deem AT&T's radio, television, and newspaper advertisements as presentations to decision-making personnel, because they are directed to the public at large and not specifically to Commission decision-making personnel. Even though decision-making personnel may become aware of these advertisements, the public character of these communications excludes them from the coverage of the ex parte rules. As noted, the ex parte rules address communications to Commission decision-makers within the scope of pending Commission proceedings.⁴ The rules are primarily concerned with undisclosed communications that taint the fairness of the administrative process because they contain information that the parties do not have an opportunity to rebut.⁵ Here, the public character of AT&T's advertising campaign ensures that interested parties are aware of the arguments being made. In concluding that the public advertisements at issue are not presentations to the Commission for purposes of the ex parte rules, we further note that imposing sanctions based on such public speech would raise significant First Amendment concerns.

In view of the foregoing, we deny DPT's complaint.

Sincerely yours,



Joel Kaufman
Associate General Counsel and
Chief, Administrative Law Division
Office of General Counsel

³ See 47 C.F.R. § 1.1206(b).

⁴ See 47 C.F.R. § 1.1200(a).

⁵ See *Power Authority of the State of NY v. FERC*, 743 F.2d 93, 110 (2d Cir. 1984).