

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

In the Matter of)
)
T-Mobile License LLC) WT Docket No. 12-21
AT&T Mobility Spectrum LLC)
New Cingular Wireless PCS LLC)
)

MEMORANDUM OPINION AND ORDER

Adopted: June 6, 2014

Released: June 6, 2014

By the Commission:

I. INTRODUCTION

1. On April 18, 2012, the Wireless Telecommunications Bureau (“Bureau”) dismissed a petition by the Diogenes Telecommunications Project (“Diogenes”) to deny assignment applications filed by AT&T and Deutsche Telekom AG (“DT”). On May 1, 2012, Diogenes filed an Application for Review seeking to overturn the Bureau’s decision. We affirm.

II. BACKGROUND

2. On March 20, 2011, AT&T and Deutsche Telekom AG entered into a Stock Purchase Agreement to sell DT’s wholly-owned subsidiary T-Mobile USA, Inc. (“T-Mobile”) and T-Mobile’s wholly-owned subsidiaries to AT&T.¹ A month later, AT&T filed applications seeking consent to the transfer of control of the licenses and authorizations held by T-Mobile USA, Inc. and its wholly-owned subsidiaries from DT to AT&T.² On May 31, 2011, Diogenes Telecommunications Project (“Diogenes”) filed a petition to deny the applications alleging that AT&T and DT did not have the necessary character qualifications to be Commission licensees.³ Diogenes premised its claim of standing on the fact that one of its members, Scott Karren, “wish[es] to stay a customer of T-Mobile” and had been “[e]xtremely dissatisfied” as a former AT&T customer.⁴

3. On November 22, 2011, the Bureau circulated an order for consideration by the Commission to designate the proposed transaction for an administrative hearing; that circulation was publicly announced.⁵ On the next day, November 23, 2011, AT&T and DT filed a letter stating that they

¹ See WT Docket No. 11-65.

² See Applications of AT&T Inc. and Deutsche Telecom AG, WT Docket No. 11-65, *Order*, 26 FCC Rcd 16184 ¶ 1 (WTB 2011) (“AT&T-T-Mobile Dismissal Order”).

³ Petition to Deny, The Diogenes Telecommunications Project, WT Docket No. 11-65 (filed May 31, 2011).

⁴ *Id.* (Declaration of Scott Karren at 1).

⁵ See AT&T-T-Mobile Dismissal Order, 26 FCC Rcd at 16184 ¶ 2. The proposed order was accompanied by a document entitled “Staff Analysis and Findings,” which detailed the staff’s evaluation of the arguments in the record. *Id.*

were withdrawing all of the pending applications regarding the transaction.⁶ On November 29, 2011, the Bureau dismissed the applications without prejudice.⁷

4. On December 27, 2011, Diogenes filed an application for review of the AT&T-T-Mobile Dismissal Order arguing that the Bureau failed to resolve character issues that had been raised in the merger proceeding.⁸ On April 16, 2012, the Commission dismissed Diogenes' First AFR because (a) Diogenes had failed to demonstrate standing based upon Mr. Karren's desire to remain a T-Mobile customer, (b) the issues it raised were rendered moot by the dismissal of the applications, and (c) the revocation of AT&T's and DT's existing licenses was beyond the scope of the merger proceeding.⁹

5. On January 20, 2012, as part of a breakup provision of the Stock Purchase Agreement, AT&T subsidiaries AT&T Mobility and New Cingular Wireless,¹⁰ and T-Mobile USA's wholly-owned subsidiary, T-Mobile License¹¹ (collectively the "Applicants"), filed applications ("Assignment Applications") seeking the Commission's consent to assign (1) 13 AWS-1 licenses and partitioned portions of 23 AWS-1 licenses from AT&T Mobility to T-Mobile License¹² and (2) seven AWS-1 licenses and partitioned portions of four AWS-1 licenses from New Cingular Wireless to T-Mobile License.¹³

6. On January 26, 2012, the Commission released a public notice seeking comment on the Assignment Applications.¹⁴ The Comment Public Notice stated that petitions to deny were due on or before February 27, 2012, oppositions were due on or before March 8, 2012, and that replies were due on or before March 19, 2012.¹⁵ The Comment Public Notice also emphasized, in bold type:

To allow the Commission to consider fully all substantive issues regarding the Applications in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies. A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.¹⁶

⁶ See Letter from Patrick J. Grant, Arnold & Porter LLP, and Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 11-65 (Nov. 23, 2011).

⁷ AT&T-T-Mobile Dismissal Order.

⁸ Diogenes Telecommunications Project Application for Review (filed Dec. 27, 2011) ("First AFR").

⁹ See Applications of AT&T Inc. and Deutsche Telecom AG, WT Docket No. 11-65, *Order*, 27 FCC Rcd 4423 (2012) ("First AFR Order").

¹⁰ 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.

¹¹ 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"). See File No. 0005005682, Public Interest Statement at 1.

¹² See File Nos. 0005005685 and 0005005682.

¹³ See File Nos. 0005005687 and 0005016840.

¹⁴ 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*, 27 FCC Rcd 435 (rel. Jan. 26, 2012) ("Comment Public Notice").

¹⁵ Comment Public Notice, 27 FCC Rcd at 435.

¹⁶ Comment Public Notice, 27 FCC Rcd at 437 (emphasis deleted) (footnotes omitted).

Diogenes filed a Petition to Deny on February 23, 2012, in which it requested that the Commission commence an evidentiary hearing on whether the Applicants had the requisite character and qualifications to hold licenses and revoke their FCC licenses if they were found to lack the basic qualifications to remain licensees.¹⁷ Although these applications proposed to assign licenses *to* T-Mobile's license subsidiary, rather than to transfer control *from* T-Mobile to AT&T, Diogenes again sought to establish standing based upon Mr. Karren's status as a T-Mobile customer. In addition, Diogenes argued that it had standing because another of its members, Irene Laschuk, who is an AT&T rather than a T-Mobile customer, might be harmed by the transaction.¹⁸ On April 16, 2012, Diogenes filed a Supplement to its Petition to Deny.¹⁹ Diogenes reported in the Supplement that on March 22, 2012, three days after the comment period closed, the Department of Justice filed a complaint against AT&T under the False Claims Act for conduct related to AT&T's provision of Internet Protocol ("IP") Relay services.²⁰ In the Supplement, Diogenes claimed that the DOJ complaint showed that AT&T had engaged in fraudulent misconduct and was "further proof that AT&T is not qualified to be an FCC licensee."²¹

7. The Bureau found that Diogenes lacked standing to contest the Assignment Applications and dismissed Diogenes' Petition to Deny.²² The Bureau held that Diogenes did not show how Mr. Karren, as a T-Mobile customer previously concerned about a potential transfer of control to AT&T, could be harmed by the new transaction to assign licenses *to* T-Mobile's licensed subsidiary, much less how any such injury would be redressed by delaying or denying the Assignment Applications. With respect to Ms. Laschuk, the Bureau held that the mere fact of her status as an AT&T customer did not establish standing either, because the Petition to Deny included no facts establishing how granting the assignments of license from AT&T would injure her or how denying them would redress any injury. While Diogenes had subsequently argued that the assignments would impair AT&T's ability to roll out LTE and thereby harm Ms. Laschuk,²³ the Bureau concluded that it need not address the question whether Diogenes could establish the injury required to establish standing because the remedy it sought – a designation for hearing and possible revocation of all of the applicants' licenses – would not provide their customers with any relief.²⁴ The Bureau further held that it would not consider the Supplement filed by Diogenes on April 16, 2012, because it did not comply with the requirements for prompt filing with respect to new or newly discovered facts set forth in the Comment Public Notice.²⁵

8. On May 1, 2012, Diogenes filed an application for review of the Diogenes Order.²⁶ Diogenes argues that the Bureau erred when it denied Diogenes standing to contest the Assignment Applications, when it found that Diogenes's Supplement was untimely filed, and when it dismissed Diogenes's Supplement.²⁷ AT&T and T-Mobile jointly argue that the Bureau properly found that

¹⁷ Petition to Deny of the Diogenes Telecommunications Project (filed Feb. 23, 2012) ("Petition to Deny") at 27.

¹⁸ *Id.* at 2 & Declaration of Irene Laschuk.

¹⁹ Supplement to Petition to Deny (filed Apr. 16, 2012) ("Supplement").

²⁰ Supplement at 2.

²¹ Supplement at 2.

²² 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*, 27 FCC Rcd 4124, 4127 ¶ 10 (WTB 2012) ("Diogenes Order").

²³ Reply to Joint Opposition of AT&T and T-Mobile at 3-4 (filed Mar. 19, 2012).

²⁴ Diogenes Order, 27 FCC Rcd at 4126-4127 ¶¶ 8-10.

²⁵ Diogenes Order, 27 FCC Rcd at 4126 n.15.

²⁶ Application for Review, The Diogenes Telecommunications Project (filed May 1, 2012) ("Second AFR").

²⁷ Second AFR at 1.

Diogenes lacks standing, that the Bureau properly found that Diogenes's Supplement was untimely filed, and that Diogenes impermissibly raises a new argument for standing in its Second AFR.²⁸ They also argue that the mere conclusion in the Staff Analysis and Findings²⁹ of insufficient support for their claims relating to AT&T's spectrum needs provides no basis for departing from the Commission's repeated conclusion that AT&T is qualified to control Commission licensees.³⁰

III. DISCUSSION

A. Dismissal of the Supplement

9. As an initial matter, we find that Diogenes has not provided a basis for concluding that the Bureau erred in dismissing the Supplement as untimely filed. The filing of the Department of Justice complaint against AT&T was widely reported on March 22, 2012, the day it was filed.³¹ As noted above, the Comment Public Notice emphasized the importance of raising any new issues or new facts within 15 days after such facts were discovered. Diogenes did not file the Supplement until April 16, 2012 – 25 days after DOJ's complaint was filed. Moreover, the Supplement consists in large part of a summary of the allegations in the DOJ Complaint and does not provide evidence of discovery of any new facts. Diogenes made no attempt in its submissions to the Bureau to disclose when it became aware of the filing of the DOJ complaint or the period of time necessary for Diogenes to review it or prepare the Supplement; rather, Diogenes stated merely that “the Commission should consider the time [Diogenes] took to review and analyze the DOJ Complaint.”³² Diogenes' current argument simply repeats the claim that the issues in the Supplement “were new and newly discovered.”³³ We reject this characterization:

²⁸ Joint Opposition of AT&T Inc. and T-Mobile USA, Inc. to Petition to Deny (filed May 16, 2012) (“May Joint Opposition”). We reject Diogenes's argument that AT&T Inc. and T-Mobile USA, Inc. served the May Joint Opposition on Diogenes one day late. *See Reply to Joint Opposition of AT&T Inc. and T-Mobile USA, Inc. to Applications [sic] for Review at 3-4* (filed May 29, 2012) (“May Reply”) at 1-2. Diogenes correctly notes that our rules require a party to serve any document on or before the day on which the document is filed. *See* 47 C.F.R. § 1.47(b). In this case, AT&T Inc. and T-Mobile USA filed the May Joint Opposition on May 16, 2012. Thus, AT&T and T-Mobile were required to serve Diogenes on or before May 16, 2012. Pursuant to 47 C.F.R. § 1.47(g), they attached to their filing a certificate of service certifying that on that date they caused a copy of their filing to be sent by U.S. mail to counsel for Diogenes. Diogenes provides a photocopy of the envelope postmarked on May 17, 2012, as evidence that it was served a day late. Under the Commission's Rules, however, “[s]ervice by mail is complete upon mailing” and not when the envelope is postmarked. *See* 47 C.F.R. § 1.47(f); Paging Systems, Inc., *Memorandum Opinion and Order*, 25 FCC Rcd 450, 453 ¶ 6 n.32 (2010).

²⁹ *See* n.5, *supra*.

³⁰ May Joint Opposition at 11-14. Because we dismiss Diogenes' petition for lack of standing, we have no need to reach the merits of its claim. We note, however, that our disagreement with the applicants' arguments concerning the AT&T/T-Mobile transaction at issue in the earlier docket cannot be distilled into the simple question of whether AT&T “was facing an imminent spectrum shortage and needed T-Mobile's spectrum to meet customer demand.” Application for Review at 4. Rather, that proceeding involved, *inter alia*, a complex analysis of whether AT&T and T-Mobile had satisfied their burden of showing that the proffered benefits from meeting those needs could be “achievable through means other than the elimination of a competitor,” or were outweighed by the significant harms to competition, “primarily in the form of increased prices for consumers, reduced incentives for innovation, and decreased consumer choice.” Applications of AT&T Inc. and Deutsche Telekom AG, *Order*, 26 FCC Rcd 16184, 16298 (WTB 2011). While “[t]he integrity of the [C]ommission's processes cannot be maintained without honest dealing with the Commis[s]ion by licensees,” *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 F.C.C.2d, 1179, 1121 (1986), we would not view mere disagreements with the applicants' arguments and model inputs set forth in the Bureau's Staff Analysis and Findings, which were never resolved by the Commission, as suggesting in any way a violation of this *Policy*.

³¹ *See, e.g.*, United States Files Lawsuit Against AT&T in Telecommunications Relay Services Fraud Case, Department of Justice Office of Public Affairs, *Press Release* (Mar. 22, 2012).

³² *See* May Reply at 4.

³³ Second AFR at 9.

The issues raised in the Supplement were neither new nor newly discovered. Given Diogenes' failure to demonstrate reasonable diligence in complying with our rules designed to ensure timely Commission consideration of and action with respect to pending transactions, we find no reason to disturb the Bureau's determination to dismiss the Supplement as untimely filed.

10. Further, and as an independent ground for our decision, we determine that Diogenes's Supplement did not establish standing to challenge the grant of the Applications based on AT&T's alleged violations of the False Claims Act. The relief requested by Diogenes in the Supplement was to "immediately stop processing all AT&T applications, and designate AT&T for hearing to determine if it retains the basic qualifications to remain an FCC licensee."³⁴ As noted below, to the extent it relates to these Assignment Applications, such relief might ultimately serve to deprive Ms. Laschuk of service as an AT&T customer by putting AT&T out of the wireless business. Diogenes has not shown how this relief would address any injury to Ms. Laschuk that is cognizable under the Communications Act. Here, as in a similar claim by Diogenes that the Commission addressed in connection with the Verizon Wireless-SpectrumCo-Cox and associated applications, its "assertions of harm are wholly speculative, and its underlying premise, even if it were accepted as true, is founded on past events that have no relation to the transactions at issue here."³⁵

11. Finally, and as a further independent ground for our decision to dismiss Diogenes' Supplement, we note that the Enforcement Bureau has carefully considered the conduct of AT&T that is the subject of the allegations in the DOJ Complaint described in Diogenes' Supplement, and its effect upon AT&T's basic qualifications. On May 7, 2013, the Enforcement Bureau and AT&T entered into a Consent Decree.³⁶ That decree notes that it "does not constitute an admission or concession by either party . . . with respect to any claim, allegation, fact, or defense that has or may be asserted, or any relief that has been or may be sought, in" the DOJ Complaint.³⁷ Based on the record of its investigation, and in the absence of material new evidence, the Enforcement Bureau also issued an order in which it "conclude[d] that the . . . investigation raises no substantial or material questions of fact as to whether AT&T possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization."³⁸ The Commission will not entertain what amounts to a collateral attack against the Order and Consent Decree.³⁹ And even if Diogenes' collateral attack were not foreclosed, Diogenes has never identified any facts beyond those alleged in the DOJ Complaint or identified any other basis for revisiting the Bureau's considered decision with respect to AT&T's basic qualifications.⁴⁰

³⁴ Supplement at 10.

³⁵ Applications of Celco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent To Assign AWS-1 Licenses, *Memorandum Opinion and Order and Declaratory Ruling*, 27 FCC Rcd 10698, 10713 ¶ 38 (2012) (*Celco Partnership*).

³⁶ AT&T Inc., *Order*, 28 FCC Rcd 5994, 5996 (EB 2013).

³⁷ *Id.*, 28 FCC Rcd at 6000.

³⁸ *Id.* at 5994. See also Viacom, Inc., *Order on Reconsideration*, 21 FCC Rcd 12223, 12226-12227 & nn.18-19 (2006) (citing cases holding unreviewable the Commission's "broad discretion" to settle enforcement actions). The Commission has dismissed Diogenes' application for review of that Enforcement Bureau order for lack of standing. See Application for Review of an Order and Consent Decree of the Enforcement Bureau by the Diogenes Telecommunications Project, *Order*, FCC 14-70 (rel. June 4, 2014).

³⁹ Viacom, Inc., *supra*, 21 FCC Rcd at 12226-12227 ¶¶ 6-7. See also *Celco Partnership*, *supra*, 27 FCC Rcd at 10714 ¶ 39 (rejecting similar Diogenes claim on the merits in light of Enforcement Bureau's entry into consent decree relating to Verizon Wireless data usage charges).

⁴⁰ We note that the court has also dismissed the DOJ Complaint with prejudice, "based on the terms of the settlement agreement that was recently executed between the parties to this case." *United States ex rel. Lytle v. AT&T Corp.*, Civil Action No. 2:10-cv-01376-NBF-RCM (W.D. Pa. Dec. 6, 2013).

B. Standing to Challenge the Assignment Applications

12. We agree with the Bureau that Diogenes has not met its burden of establishing standing to challenge the Assignment Applications. The Communications Act of 1934, as amended, and the Commission's rules require that a petition to deny must contain specific allegations of fact sufficient to show that the petitioner is a party in interest.⁴¹ To establish party-in-interest standing to challenge an application, a petitioner must allege facts sufficient to demonstrate that grant of the application would cause it to suffer a direct injury.⁴² In addition, petitioners must demonstrate a causal link between the claimed injury and the challenged action.⁴³ 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.⁴⁴ For these purposes, an injury must be both "concrete and particularized" and "actual or imminent, not conjectural or hypothetical."⁴⁵ There must be more than an "objectively reasonable likelihood" of threatened injury; such injury must be "certainly impending."⁴⁶ An organization may meet these standards in its own right or may demonstrate that one or more of its members meets these requirements.⁴⁷

13. At the time Diogenes filed its Petition to Deny, it asserted that it had established standing in the AT&T/DT merger proceeding in 2011 and that that demonstration should be "incorporated-by-reference" into this proceeding to establish standing here.⁴⁸ The Commission, however, ruled that Diogenes did not have standing to challenge the AT&T/DT merger proceeding.⁴⁹ Therefore there is no basis for Diogenes's claim that its filings in the AT&T/DT merger serve as a basis for establishing standing here.

14. We also find that Diogenes failed to establish standing based on injury to its members for the following reasons. First, the Bureau correctly held that Diogenes did not establish how Mr. Karren, a T-Mobile customer, would suffer a direct injury as a consequence of granting AT&T's application to

⁴¹ 47 U.S.C. § 309(d)(1); 47 C.F.R. § 1.939(d).

⁴² See, e.g., Applications of AT&T Mobility Spectrum LLC, *Memorandum Opinion and Order*, 27 FCC Rcd 16459, 16465 ¶ 16 (2012); 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). See also *New World Radio, Inc. v. FCC*, 294 F.3d 164 (D.C. Cir. 2002).

⁴³ *Wireless Co.*, 10 FCC Rcd at 13235 ¶ 7.

⁴⁴ *Id.* Because "a licensing proceeding before the Commission is not an Article III proceeding," the Commission may determine in the public interest to allow participation by parties pursuant to Section 309(d) of the Communications Act who would lack Article III standing. Channel 32 Hispanic Broadcasters, Ltd., *Order*, 15 FCC Rcd 22649, 22651 ¶ 7 (2000), *aff'd per curiam*, 22 Fed. Appx. 12 (2001). However, wireless applications have generally been reviewed using the foregoing Article III standard. Rockne Educational Television, Inc., *Memorandum Opinion and Order*, 26 FCC Rcd 14402, 14405 ¶ 7 (WTB BD 2011). See, e.g., *Celco Partnership*, 27 FCC Rcd at 10713 ¶ 36. For the reasons stated above, we find no public interest reason to depart from this practice here. See *Airadigm Communications, Inc. , Order on Reconsideration*, 21 FCC Rcd 3893, 3897 ¶ 14 & n.30 (WTB 2006), *review dismissed*, 26 FCC Rcd 6739 (WTB 2011).

⁴⁵ *Conference Group, LLC v. FCC*, 720 F.3d 956 (D.C. Cir. 2013), quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

⁴⁶ *Clapper v. Amnesty International USA*, 133 S. Ct. 1138, 1147-48 (2013).

⁴⁷ See, e.g., Friends of the Earth, Inc., *Memorandum Opinion and Order*, 18 FCC Rcd 23622, 23622-23623 ¶¶ 2-3 (2003).

⁴⁸ Petition to Deny at 2.

⁴⁹ First AFR Order, 27 FCC Rcd at 4425-4426 ¶¶ 8-11.

assign spectrum to T-Mobile.⁵⁰ Without a showing of direct injury, Diogenes failed to meet its burden to establish standing on Mr. Karren's behalf.⁵¹

15. Second, the Bureau also correctly found that Diogenes did not demonstrate that Ms. Laschuk would be harmed by Commission approval of the transaction merely because she is an AT&T customer.⁵² Diogenes argued in its March Reply that AT&T's "give away" of valuable spectrum would 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.⁵³ The Bureau held that, assuming that Diogenes could meet the injury-in-fact and causation prongs of the standing test under this argument, Diogenes did not demonstrate how an injury to Ms. Laschuk would be redressed by holding an evidentiary hearing to determine whether AT&T and T-Mobile possess the requisite character qualifications to remain FCC licensees.⁵⁴ The Bureau noted, "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."⁵⁵ We agree with this conclusion. Because Diogenes did not show how alleged injury to Ms. Laschuk could be redressed with the relief it sought, the Bureau correctly found that Diogenes failed to establish standing on her behalf.

16. In response, Diogenes argues that the Bureau's logic is flawed because the Bureau considered only one outcome of an evidentiary hearing – license revocation – while Diogenes argues that revocation of AT&T's and T-Mobile's licenses is not the only possible outcome of an evidentiary hearing.⁵⁶ However, where the requested relief centers on Commission action that allows third parties allegedly to injure Diogenes, it has a heightened burden to adduce facts that demonstrate the causal link, showing that its claimed injury will likely be redeemed by the relief sought.⁵⁷ Thus, the burden is on Diogenes to show why it is likely that a particular outcome of an evidentiary hearing could redress Ms. Laschuk's alleged injury relating to AT&T's future LTE deployment.⁵⁸ Diogenes does not do so. It argues only that "a variety of outcomes was possible."⁵⁹ Thus, we agree with the Bureau that revoking AT&T's and T-Mobile's licenses would not provide any redress to Mr. Karren or Ms. Laschuk, and conclude that Diogenes has failed to satisfy its burden of demonstrating that grant of some form of the relief it expressly requested would address its alleged injury.

17. The Bureau did not decide whether Diogenes showed a direct injury-in-fact.⁶⁰ After reviewing the record, we conclude that Diogenes also failed to meet its burden of demonstrating an injury-in-fact. As noted above, a petition to deny must contain specific allegations of fact sufficient to show that the petitioner is a party in interest. Those factual allegations must be supported by affidavits of a person with personal knowledge of the facts, unless official notice can be taken of the facts in

⁵⁰ Diogenes Order, 27 FCC Rcd at 4126 ¶ 8.

⁵¹ See n.42, *supra*.

⁵² Diogenes Order, 27 FCC Rcd at 4126-4127 ¶ 8.

⁵³ March Reply at 3-4.

⁵⁴ Diogenes Order, 27 FCC Rcd at 4127 ¶ 10.

⁵⁵ Diogenes Order, 27 FCC Rcd at 4127 ¶ 10.

⁵⁶ Second AFR at 6-8.

⁵⁷ *Telephone & Data Systems, Inc. v. FCC*, 19 F.3d 42, 46-47 (D.C. Cir. 1994).

⁵⁸ *Id.*

⁵⁹ Second AFR at 6.

⁶⁰ Diogenes Order, 27 FCC Rcd at 4127 ¶ 10.

question.⁶¹ As noted above, in its March Reply, Diogenes argued that Ms. Laschuk would be harmed by AT&T “giving away” valuable spectrum because this “give away” of spectrum would adversely affect AT&T’s LTE deployment plan and impair its ability to rollout LTE (at least partially).⁶² We find that these claims are insufficiently supported to demonstrate a direct injury-in-fact. In her declaration, Ms. Laschuk merely states that she lives in Colts Neck, New Jersey and that she is an AT&T subscriber.⁶³ Ms. Laschuk does not claim that she uses AT&T service in an area covered by any of the licenses in question, and she does not express any interest in obtaining LTE service from AT&T.⁶⁴ As the Bureau also noted, Diogenes’ only basis for concluding that the assignment of AT&T’s licenses might injure Ms. Laschuk was the argument that AT&T was facing a spectrum crunch that threatened to prevent it from deploying LTE throughout all of its footprint.⁶⁵ But at the same time Diogenes itself expressly repudiated that view.⁶⁶ In any event, the question of whether AT&T faced a spectrum crunch in seeking to acquire T-Mobile is a very different one from whether its subsequent agreement to assign specific AWS-1 licenses to T-Mobile’s license subsidiary would affect its LTE capability in the particular areas served by those licenses. In these circumstances, we conclude that Diogenes also failed to meet its burden of establishing a “certainly impending” injury-in-fact to Ms. Laschuk, or even an “objectively reasonable likelihood” of one.⁶⁷

IV. CONCLUSION AND ORDERING CLAUSES

18. For the reasons stated above, we affirm the Bureau’s decision to dismiss Diogenes’s Petition to Deny, and the Bureau’s decision to dismiss Diogenes’ Supplement. Accordingly, we deny the Diogenes application for review.

⁶¹ 47 U.S.C. §309(d)(1), 47 C.F.R. § 1.939(d).

⁶² March Reply at 3-4.

⁶³ Petition to Deny, Declaration of Irene Laschuk.

⁶⁴ None of the licenses that are subject to the instant transaction cover New Jersey.

⁶⁵ Reply at 3-4.

⁶⁶ *Id.* at 4 (“There is only one possible conclusion, AT&T was not facing a spectrum crunch; it was making a grab at T-Mobile customer base.”).

⁶⁷ Cf. *Clapper*, 133 S. Ct. at 1155-60 (Breyer, Ginsburg, Sotomayor, and Kagan, JJ., dissenting) (requiring more than “speculative” claim of injury, informed by motive and past behavior). In this case, Diogenes has made no effort to demonstrate why AT&T would not have had every motivation, based on its prior record, to identify AWS-1 licenses for assignment to T-Mobile under the break-up provision of the Stock Purchase Agreement so as to minimize any risk of inadequate LTE service in the area of New Jersey covering Ms. Laschuk and to acquire additional spectrum and deploy additional facilities to continue to be capable of doing so. Diogenes has advanced nothing more than a “speculative chain of possibilities” supported only by “guesswork as to how independent decisionmakers will exercise their judgment.” *Id.* at 1148-50. Such a catch-all assertion, without more, cannot establish standing. Particularly in these circumstances, “[i]t is just not possible for a litigant to prove in advance that the [licensing process] will lead to any particular result in [its] case.” See *Clapper*, 133 S. Ct. at 1150 (quoting *Whitmore v. Arkansas*, 495 U.S. 149 (1990)).

19. ACCORDINGLY, IT IS ORDERED that pursuant to Section 4(i) and 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(5), and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, the Application for Review filed by the Diogenes Telecommunications Project on May 1, 2012, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary