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**A. The Vast Majority of Wireless Consumers Have a Choice Among at Least Five Facilities-Based Carriers**

7. Wireless competition comes from a wide variety of sources, and the large majority of U.S. wireless consumers—approximately seventy-four percent (74%) as reported by the FCC— have a choice among five or more facilities-based carriers in their local area.<sup>7</sup> In fact, in 23 of the top 25 markets, there are at least five facilities-based wireless service providers. In addition to AT&T, Verizon, Sprint, and T-Mobile USA, which have networks that cover most of the country, consumers can choose from other carriers who focus primarily on specific geographic markets, but also offer national service plans.<sup>8</sup>

8. A relatively new and increasingly important market dynamic is the emergence of low-cost, no-contract “all-you-can-eat” (“AYCE”)<sup>9</sup> carriers—especially MetroPCS and Leap—as significant wireless competitors that offer a “post-pay experience for pay-in-advance customers.”<sup>10</sup> These carriers have expanded rapidly, initially by providing a meaningful value proposition to their customers and more recently by moving up-market, combining their AYCE voice and data plans with broad distribution, feature-rich smartphones, industry-low device

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<sup>7</sup> See *Fourteenth Wireless Report*, 25 FCC Rcd at 11449 ¶ 45, Table 5.

<sup>8</sup> See Appendix at 10-20.

<sup>9</sup> The term AYCE refers to unlimited voice, texting, and data plans with no term contract. See Sid Gorham, *Telecom Case Study: All You Can Eat Plans Take a Bite out of Vegas*, Nielsen Wire (June 9, 2009), [http://blog.nielsen.com/nielsenwire/online\\_mobile/telecom-case-study-all-you-can-eat-plans-take-a-bite-out-of-vegas](http://blog.nielsen.com/nielsenwire/online_mobile/telecom-case-study-all-you-can-eat-plans-take-a-bite-out-of-vegas).

<sup>10</sup> See MetroPCS Bank of America Credit Conference, at 7 (Nov. 17, 2010), <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NDA3MjY1fENoaWxkSUQ9NDE2NjIzFR5cGU9MQ==&t=1>; Sid Gorham, *Telecom Case Study: All You Can Eat Plans Take a Bite out of Vegas*, Nielsen Wire (June 9, 2009), [http://blog.nielsen.com/nielsenwire/online\\_mobile/telecom-case-study-all-you-can-eat-plans-take-a-bite-out-of-vegas](http://blog.nielsen.com/nielsenwire/online_mobile/telecom-case-study-all-you-can-eat-plans-take-a-bite-out-of-vegas).

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prices and rate plans, the fact that they do not require a contract, and nationwide coverage.<sup>11</sup> In fact, because of their growing success, AT&T launched its first no-contract smartphone offer—the LG Thrive—on April 17, 2011.<sup>12</sup> AT&T also has implemented targeted advertising, new offers, and increased distribution in areas where AYCE carriers are particularly prevalent such as South Florida, Texas, and Detroit.

9. U.S. Cellular has networks in 26 states and strong brand presence and market position in numerous local markets.<sup>13</sup> Other regional and local carriers include carriers such as Cellular South and Cincinnati Bell, which focus on local and regional markets, but also offer nationwide service plans. Many of these carriers have well established competitive positions in specific regions, metropolitan areas and/or local areas, with strong networks, extensive local distribution, and powerful brand presence. Indeed, some regional carriers such as U.S. Cellular and Cincinnati Bell have larger estimated subscriber shares than AT&T and T-Mobile USA in certain areas. Importantly, these regional and local carriers offer products and services competitive with the larger carriers like AT&T, Verizon, and Sprint, even though they concentrate on local geographic areas.<sup>14</sup>

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<sup>11</sup> See, e.g., Press Release, *Cricket Announces Launch of Nationwide 3G Data Roaming* (Oct. 19, 2010) (showing nationwide data and voice coverage), <http://www.mycricket.com/press/press-release/Cricket-Announces-Launch-of-Nationwide-3G-Data-Roaming>.

<sup>12</sup> See Press Release, *AT&T and LG Mobile Phones Launch First Smartphone for GoPhone*, (Apr. 11, 2011), <http://www.att.com/gen/press-room?pid=19623&cdvn=news&newsarticleid=31797>.

<sup>13</sup> See U.S. Cellular Corp., Annual Report (2010 Form 10-K), at 1 (Feb. 26, 2011).

<sup>14</sup> See, e.g., Cellular South, *All Plans*, [https://www.cellularsouth.com/cscommerce/products/plans/category\\_plan\\_landing.jsp?id=cat320003](https://www.cellularsouth.com/cscommerce/products/plans/category_plan_landing.jsp?id=cat320003); Appendix at 14-18 (coverage maps for U.S. Cellular, Cincinnati Bell, and Cellular South).

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10. In addition, wholesale providers with significant spectrum holdings are constructing advanced wireless networks that they will make available to others for resale and in some cases on a retail basis, thus providing additional competition. As will be discussed in more detail below, examples of existing and emerging wholesale providers are Clearwire and LightSquared. Clearwire claims to be the largest spectrum holder in the nation and is owned by Sprint, Comcast, Time Warner Cable, Google, and Intel, among others.<sup>15</sup> Sprint and several cable operators resell Clearwire service under their own brands.<sup>16</sup> LightSquared claims that it is the nation's first wholesale-only integrated wireless broadband and satellite network.<sup>17</sup>

11. New non-traditional entrants to the wireless marketplace are further enhancing the competitive landscape. Cox, the third-largest U.S. cable TV company with over 6 million customers, was the first U.S. cable company to launch fully-integrated wireless phone and mobile high speed Internet services utilizing 3G CDMA technology in Hampton Roads, Virginia; Omaha, Nebraska; and Orange County, California.<sup>18</sup> Cox has since launched service in Oklahoma City and Tulsa, Oklahoma and just announced new service in Rhode Island, Connecticut, and Cleveland, Ohio.<sup>19</sup> Cox recently has stated that it will bring its wireless service

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<sup>15</sup> Other owners include Eagle River and Bright House Networks. See Clearwire Corp., Annual Report (2010 Form 10-K), at 3, 4 (Feb. 22, 2011).

<sup>16</sup> See *id.* at 12, 25.

<sup>17</sup> See Press Release, *LightSquared Delivers Notice to Inmarsat Triggering Phase 2 of Re-Banding of L-Band Spectrum in North America* (Jan. 28, 2011), <http://www.lightsquared.com/press-room/press-releases/lightsquared-delivers-notice-to-inmarsat-triggering-phase-2-of-re-banding-of-l-band-spectrum-in-north-america>.

<sup>18</sup> See Press Release, *Cox Communications Announces Hampton Roads, Omaha and Orange County as First Wireless Markets* (Dec. 9, 2009), <http://cox.mediaroom.com/index.php?s=43&item=457>.

<sup>19</sup> See Press Release, *Cox to Bring Unbelievably Fair Wireless Plans to Rhode Island, Connecticut, and Cleveland* (Apr. 4, 2011), <http://www.prnewswire.com/news-releases/cox-to-bring-unbelievably-fair-wireless-plans-to-rhode-island-connecticut-and-cleveland-119188599.html>.

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to “50% of the Cox footprint” later this year.<sup>20</sup> Currently Cox is reselling Sprint service while it builds a network using its spectrum.<sup>21</sup> The appendix to my Declaration contains coverage maps of competitors mentioned herein.<sup>22</sup>

**B. AT&T Is Organized To Meet Local Competition**

12. AT&T’s sales organization is designed in large part to respond to the reality that consumers make their wireless purchasing decisions at the local level—where they can see the devices, speak with sales representatives about the products and services, and comparison shop among competitors. AT&T operates approximately **[Begin Confidential Information]** **[End Confidential Information]** company-owned retail (“COR”) stores in local markets nationwide selling the full range of our wireless products and services. In addition, AT&T has contracts with an additional **[Begin Confidential Information]** **[End Confidential Information]** local dealer stores. The mission of these COR stores and local dealer agents, as well as the thousands of employees and representatives who live and work in the neighboring communities, is to understand our products and services, to understand the needs of the customers in their local community, and to respond to the unique competitive characteristics of each locality on a day-to-day basis. In fact, third party research demonstrates that **[Begin Confidential Information]**

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<sup>20</sup> Press Release, *Cox Launches Wireless in Oklahoma* (Mar. 29, 2011), <http://coxenterprises.mediaroom.com/index.php?s=43&item=1127>.

<sup>21</sup> Kelly Riddell, *Cox Communications Takes On AT&T, Verizon With Mobile Offering*, *Businessweek* (Nov. 19, 2010), <http://www.businessweek.com/news/2010-11-19/cox-communications-takes-on-at-t-verizon-with-mobile-offering.html>.

<sup>22</sup> See Appendix.

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[End Confidential Information].<sup>23</sup> Precisely where we invest to build and operate a COR store and which local dealer agents we choose to do business with are driven largely by competitive conditions that can vary across the metropolitan areas and smaller communities in which we compete. In addition, AT&T (like many of its competitors) has relationships with the “big box” retail stores, such as Wal-Mart, Best Buy, Costco, Radio Shack, and Target, to ensure that AT&T’s products and service are available to its customers at the local level in [Begin Confidential Information] [End Confidential Information] of these locations.

Without being embedded like this in the places where our customers live and work, we could not respond as nimbly and effectively as we must to keep up with the intense competition we face. It is no surprise, then, that [Begin Confidential Information] [End Confidential Information] of AT&T’s gross adds in 2010 came from local retail stores (e.g., company-owned stores, local dealer agent stores, and “big box” retail stores). This percentage is essentially identical to the industry-wide figure, and some carriers, like MetroPCS at [Begin Confidential Information] [End Confidential Information], see an even higher percentage of sales through their local outlets.

13. Our regionalized sales organization further enhances our ability to respond quickly and distinctively to local market conditions. AT&T has divided the country into twenty-seven separate geographic regions, each led by a vice president/general manager (“VP/GM”) who is responsible for operations of the COR stores, our relationships with AT&T’s local dealer agents at the local level, and all other sales activities within their respective markets. In fact, the

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<sup>23</sup> [Begin Confidential Information]The Nielsen Company, *Q4 2010 Nielsen Mobile Retail & Customer Service Insights*, at 17 (Feb. 2011) [End Confidential Information].

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annual performance of these VP/GMs is evaluated, in part, by the profits and losses associated with all sales activity within their markets. They strive to meet unique local customer demand by working with our headquarters marketing team to run local advertising pointing out the advantages of AT&T service in a specific local area, by direct marketing campaigns, and by offering local promotions on handsets and peripheral devices. To further support this effort, our direct mail direct response (“DMDR”) and online marketing and sales efforts are capable of making targeted offers to customers in specific local market areas. VP/GMs also engage in customer life cycle management by focusing on specific customer needs. For example, if a customer has a particular issue with coverage within her residence, she may be offered a microcell solution that is not generally made available to all customers within a locality.<sup>24</sup>

14. Finally, our wireless network deployment is driven, in large part, by the need to respond to local market conditions. The total number of customers, their overall usage characteristics, the mix of devices, and the unique ways in which customers in a particular city, locality, or venue tend to use their devices can have a dramatic effect on the operation of the wireless network. Our network organization closely monitors how the network is responding to customer demand and usage on the local level, and we make decisions on network investment and improvements largely aimed at improving local customer experience.

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<sup>24</sup> AT&T, *3G MicroCell*, (“AT&T 3G MicroCell acts like a mini cellular tower in your home or small business environment. It connects to AT&T’s network via your existing broadband Internet service (such as U-verse, DSL or cable) and is designed to support up to four simultaneous users in a home or small business setting.”), <http://www.wireless.att.com/learn/why/3gmicrocell>.

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**C. Intense Competition Drives Wireless Carrier Behavior**

15. The conduct of the competitors themselves in the marketplace further demonstrates the fiercely competitive nature of the wireless industry. Carriers are offering more for less, investing in next generation wireless networks, lowering prices, and increasing innovation to compete with one another, and they are doing it all at a breakneck pace.

16. To meet consumers' ever growing demand for more and faster wireless broadband capabilities, AT&T and others are investing billions of dollars to improve their networks and coverage. Since 2007, AT&T alone has invested approximately \$21.1 billion to improve its wireless network.<sup>25</sup> Since 2009, Clearwire continues to increase the coverage of its WiMAX network,<sup>26</sup> providing a robust 4G platform for Sprint and others. Cox is in the process of deploying its 3G network and testing LTE.<sup>27</sup> Leap, too, is testing its LTE network with plans to begin deployment in 2011.<sup>28</sup> LightSquared is also planning to spend billions of dollars to roll-out combined terrestrial (LTE) and satellite-based broadband wireless services.<sup>29</sup>

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<sup>25</sup> AT&T Inc., 2010 Annual Report, at 71 (Feb. 11, 2011), [http://www.att.com/Common/about\\_us/annual\\_report/pdfs/ATT2010\\_Full.pdf](http://www.att.com/Common/about_us/annual_report/pdfs/ATT2010_Full.pdf); AT&T Inc., 2009 Annual Report, at 71 (Feb. 17, 2010), [http://www.att.com/Common/about\\_us/annual\\_report/pdfs/ATT2009\\_Full.pdf](http://www.att.com/Common/about_us/annual_report/pdfs/ATT2009_Full.pdf).

<sup>26</sup> See Clearwire Corp., Annual Report (2010 Form 10-K), at 63, 112 (Feb. 22, 2011); see also Press Release, *Clearwire Announces New 4G LTE Technology Trials Expected to Yield Unmatched Wireless Speeds in the U.S.* (Aug. 4, 2010), <http://corporate.clearwire.com/releasedetail.cfm?ReleaseID=551055>.

<sup>27</sup> Jeff Baumgartner, *Cox Wireless Is Go for Launch*, Light Reading Cable News (Nov. 19, 2010), [http://www.lightreading.com/document.asp?doc\\_id=200677](http://www.lightreading.com/document.asp?doc_id=200677).

<sup>28</sup> See Press Release, *Cricket Enters into 4G Roaming Agreement with LightSquared* (Mar. 22, 2011), <http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle&ID=1541451&highlight>; Mike Dano, *Leap Acquires Denali, Plans LTE Test Market in 2011*, Fierce Wireless (Sept. 23, 2010), <http://www.fiercewireless.com/story/leap-acquires-denali-plans-lte-test-market-2011/2010-09-23>.

<sup>29</sup> LightSquared, *Nationwide LTE Broadband Network*, <http://www.lightsquared.com/what-we-do/network>.

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17. While wireless networks are improving in their coverage, capacity, and capabilities, the prices for wireless products and services have continued to decline substantially for years. Between 1999 and 2009, wireless prices overall have declined by fifty percent (50%).<sup>30</sup> As the FCC recently observed, per-minute wireless voice revenue has declined ninety percent (90%) since 1994,<sup>31</sup> and the average revenue per text message fell by more than seventy percent (70%) between 2005 and 2008.<sup>32</sup> In addition, growth in the output of wireless data services has been accompanied by a dramatic decline in prices for data services. AT&T data indicate that average revenue per megabyte (MB) for its subscribers fell almost **[Begin Confidential Information]** **[End Confidential Information]** from 2007 to 2010.

18. These market dynamics of robust network investment, coupled with lower prices, are driving unprecedented innovation throughout the wireless ecosystem. As described in the Declaration of John Donovan, there are remarkable innovations that are literally revolutionizing healthcare, education, social discourse, energy conservation and, more generally, the way Americans live, work, and play.<sup>33</sup> Indeed, mobile applications, which are so ubiquitous today, did not exist in any meaningful way five years ago. Today, every major operating system (e.g., Apple, Android, BlackBerry, Windows Phone 7) has its own application marketplace and

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<sup>30</sup> This dramatic decline occurred during a period when a number of carriers combined to achieve efficiencies, including the mergers of Bell Atlantic, GTE and Airtouch; SBC's and BellSouth's respective wireless businesses to form Cingular; Cingular and AT&T Wireless; Sprint and Nextel; and Verizon and Alltel. See GAO, *Telecommunications: Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry* at 12, 24 (July 2010).

<sup>31</sup> See *Fourteenth Wireless Report*, 25 FCC Rcd at 11530 ¶¶ 189-190, Table 19.

<sup>32</sup> See *Id.* at 11532 ¶ 191, Table 20.

<sup>33</sup> Declaration of John Donovan, Chief Technology Officer, AT&T Inc., ¶¶ 12-13, 29-33. (Apr. 20, 2011) ("Donovan Decl.").

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developer ecosystem. In addition, AT&T and many of its competitors are developing their own applications and also facilitating the development of applications by others.<sup>34</sup> This development has resulted in the U.S. recently emerging as the world leader in smartphone applications.<sup>35</sup> For example, in 2010, Americans downloaded 2 billion mobile apps, up from just 745 million in 2008, nearly a three-fold increase.<sup>36</sup> The “apps economy,” which barely existed in 2008, is expected to generate \$38 billion in sales in 2015.<sup>37</sup> According to *The Wall Street Journal*, “[a]most no mobile applications were available to consumers in 2007. Today there are more than a half million, and they’re growing at an annual rate of 92%.”<sup>38</sup>

19. The bottom line is that mobile service providers are working harder than ever to offer a broad array of innovative and differentiated product and service offerings designed to provide a rich and multi-faceted user experience. For example, mobile payment via smartphones is rapidly approaching.<sup>39</sup> Personal healthcare also is moving to the mobile device.<sup>40</sup> U.S.

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<sup>34</sup> AT&T, *Application Development Center for Universities*, <http://developer.att.com/developer/forward.jsp?passedItemId=3700008>; ATT, *AT&T App Center*, <https://appcenter.wireless.att.com>; Monica Allevan, *GSMA Zeroes in on Apps, Backs Wholesale Model*, *Wireless Week.com* (Feb. 15, 2010), <http://www.wirelessweek.com/News/2010/02/GSMA-Zeroes-in-on-Apps,-Backs-Wholesale-Model>; see also Donovan Decl. ¶¶ 21-22.

<sup>35</sup> Strategy Analytics, *Mobile Application Downloads and Revenue Trend* (Mar. 2011) (showing that the U.S. has the highest number of downloads in the world).

<sup>36</sup> *Id.*

<sup>37</sup> Remarks of FCC Chairman Julius Genachowski, “The Clock is Ticking,” at 4 (Mar. 16, 2011), [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0316/DOC-305225A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0316/DOC-305225A1.pdf).

<sup>38</sup> Opinion, *Net Neutrality Override*, *Wall St. J.*, at 1 (Apr. 12, 2011), <http://online.wsj.com/article/SB10001424052748704529204576257153583865300.html>.

<sup>39</sup> Isis, a mobile commerce joint venture between AT&T, T-Mobile USA, and Verizon, has announced pilot programs to allow consumers to use Isis-enabled mobile phones to make point-of-sale purchases. Press Release, *AT&T, T-Mobile and Verizon Wireless Announce Joint Venture to Build National Mobile Commerce Network*, at 1 (Nov. 16, 2010), <http://www.paywithisis.com/#/news/>. Likewise, Google plans to start testing a mobile-point-of-sale payment service in New York and San Francisco. Olga Kharif and Serena Saitto, *Google Is Said to Test Mobile-Payment System With VeriFone*, *Bloomberg* (Mar. 15, 2011), <http://www>.

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consumers can now choose among more than 600 handsets produced by dozens of independent handset manufacturers, including Apple, Dell, HTC, Kyocera, LG, Motorola, Nokia, Palm, Pantech, RIM, Samsung, Sharp, and Sony Ericsson.<sup>41</sup> In addition to smartphones, new “connected devices” are emerging at a staggering rate, such as tablet computers, e-readers, netbooks, medical monitoring devices, automotive, machine-to-machine modules, and a broad array of other devices all of which have become wirelessly enabled. Most of these new connected devices do not offer traditional voice capability, but are data centric, requiring robust mobile broadband networks. Cisco predicts that by 2015, there will be over 7.1 billion mobile connected devices in the world—almost one connected device for every person—and that mobile connected tablets alone will generate as much traffic in 2015 as the entire global mobile network did in 2010.<sup>42</sup> While the applications and services are as diverse as their creators’ imaginations, they all require one common input—ever increasing amounts of wireless broadband capacity.

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[bloomberg.com/news/2011-03-15/google-is-said-to-ready-payment-test-in-new-york-san-francisco.html](http://www.bloomberg.com/news/2011-03-15/google-is-said-to-ready-payment-test-in-new-york-san-francisco.html). Sprint is also planning tap-and-go payments, ahead of its rivals at Isis. Greg Bensinger, *Sprint Plans Tap-And-Go Payments in 2011, Ahead of Rivals*, Bloomberg (Apr. 4, 2011), <http://www.bloomberg.com/news/2011-04-04/sprint-plans-tap-and-go-payment-service-this-year-to-get-a-jump-on-rivals.html>. Finally, American Express also recently launched a digital payment and commerce platform called Serve. Maria Woehr, *AmEx’s Mobile Payment Scheme to Boost Revenue: Analysts*, TheStreet.com (Mar. 29, 2011) (“The ‘e-wallet’ payment system allows consumers to transact through prepaid funding and is designed to be used on Apple iOS devices, Androids and through Facebook.”), <http://www.thestreet.com/story/11064873/1/amexs-mobile-payment-scheme-to-boost-revenue-analysts.html>.

<sup>40</sup> Remarks of FCC Chairman Julius Genachowski, CTIA Wireless 2011, at 4-5 (Mar. 22, 2011), (“*Genachowski CTIA Remarks*”), [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0322/DOC-305309A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0322/DOC-305309A1.pdf).

<sup>41</sup> CTIA, *The United States and World Wireless Markets: Competition and Innovation are Driving Wireless Value in the U.S.*, at 11 (May 2009), attached to Letter from Christopher Guttman-McCabe (CTIA) to Marlene Dortch (FCC), GN Docket No. 09-51 (May 12, 2009).

<sup>42</sup> See *Cisco Visual Network Index: Global Mobile Data Traffic Forecast Update, 2010-2015*, at 2 (Feb. 1, 2011).

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This innovation and exponential growth will not happen without significant investment in spectrum, capacity, and next generation networks.<sup>43</sup>

**IV. Today and Going Forward, AT&T Will Face Competitive Threats on Multiple and Growing Fronts**

20. Among the wireless service providers with nationwide networks, Verizon is AT&T's primary competitor, followed by Sprint. However, the AYCE carriers are highly disruptive competitors with their low-cost, no-contract business model; and we face several strong regional competitors. As I describe below, while we compete with T-Mobile USA in many markets, there are fundamental reasons why it does not exert substantial competitive pressure on AT&T.

**A. Verizon and Sprint**

21. Verizon is AT&T's closest competitor. Verizon is the largest wireless carrier in the United States with over 102 million wireless connections,<sup>44</sup> and it vigorously competes with AT&T in virtually every local market. It also has the most extensive voice and broadband

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<sup>43</sup> Remarks of FCC Chairman Julius Genachowski, "The Clock is Ticking," at 9 (Mar. 16, 2011) ("If we don't act, we won't have enough spectrum for mobile broadband, that will have real consequences for consumers, who will face declining service, including dropped calls and Internet connections, slow downloads and high prices. That will have real consequences for innovators looking to build new companies and services on the mobile platform, including life saving health applications, education programs to train our 21st Century workforce, and energy services designed to help save our planet."), [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0316/DOC-305225A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0316/DOC-305225A1.pdf).

<sup>44</sup> See Press Release, *Verizon Reports Strong 4Q and Year-End 2010 Results, Highlighted by Cash Flow, Wireless and FiOS Growth*, at 1 (Jan. 25, 2011), <http://news.vzw.com/news/2011/01/pr2011-01-25.html>; AT&T Inc., 2010 Annual Report, at 2 (AT&T had 95.5 million wireless connections as of December 31, 2010).

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coverage of any of our competitors,<sup>45</sup> has outspent AT&T on advertising in three of the last four years,<sup>46</sup> **[Begin Confidential Information]**

**[End Confidential Information].**

22. Sprint is also a tough, significant, and resurgent competitor, with nearly 50 million subscribers.<sup>47</sup> **[Begin Confidential Information]**

**[End Confidential Information].** Sprint's competitive assets include a deep spectrum position and extensive mobile broadband and 4G services (provided over the Clearwire network),<sup>48</sup> which will make it an ever-increasing competitive threat today and in the future. After a period of declining subscribership, Sprint has recently made significant gains in the marketplace and appears to have the assets to continue to build on its resurgence.<sup>49</sup>

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<sup>45</sup> See Appendix at 4-5 (Verizon coverage maps).

<sup>46</sup> Kantar Media Strategy, *Top 4 Mobility Spending, FY 2007-2010*, at 1 (Mar. 2011).

<sup>47</sup> See Press Release, *Sprint Nextel Reports Fourth Quarter and Full Year 2010 Results*, at 4 (Feb. 10, 2011), [http://newsroom.sprint.com/article\\_display.cfm?article\\_id=1796](http://newsroom.sprint.com/article_display.cfm?article_id=1796).

<sup>48</sup> Sprint's 4G network is now reportedly available in 71 markets, covering more than 110 million people. *Id.* at 2; Andrew Munchbach, *Live from CTIA 2010's Day Two Keynote with Sprint CEO Dan Hesse*, BGR, at 11 (Mar. 24, 2010) ("[w]hen you combine Sprint's spectrum position with Clearwire's spectrum position it put us in the strongest place for the future"), <http://www.bgr.com/2010/03/24/live-from-ctia-2010%E2%80%99s-day-one-keynote-with-sprint%E2%80%99s-dan-hesse>.

<sup>49</sup> See Press Release, *Sprint Nextel Reports Fourth Quarter and Full Year 2010 Results*, at 1-4 (Feb. 10, 2011) (Sprint added 1.1 million subscribers in 4Q 2010), [http://newsroom.sprint.com/article\\_display.cfm?article\\_id=1796](http://newsroom.sprint.com/article_display.cfm?article_id=1796).

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23. In contrast, unlike Verizon and Sprint, T-Mobile USA does not exert strong competitive pressure on AT&T. First, T-Mobile USA is not performing well in the market generally or against AT&T in particular. T-Mobile USA has been losing market share since 2009 and lost contract subscribers in five of the last six quarters.<sup>50</sup> In the fourth quarter of 2010, T-Mobile USA lost 23,000 net subscribers, and 318,000 net contract subscribers.<sup>51</sup> T-Mobile USA also experiences significantly higher churn than AT&T, Verizon, or Sprint.<sup>52</sup> In the fourth quarter of 2010, for example, AT&T's churn was 1.32%, Verizon's was 1.34%, and Sprint's was 2.44%, while T-Mobile USA had a churn rate of 3.60%.<sup>53</sup> **[Begin Confidential Information]**

**[End Confidential Information].**

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<sup>50</sup> Press Release, *T-Mobile USA Reports Fourth Quarter 2010 Results*, at 2 (Feb. 25, 2011), <http://s.tmocache.com/Cms/Files/Published/0000BDF20016F5DD010312E2BDE4AE9B/5657114502E70FF3012B5A79D454F2C8/file/TMUSQ42010PressReleaseFinalv2.pdf>; Press Release, *T-Mobile USA Reports Second Quarter 2010 Results*, at 2 (Aug. 5, 2010), <http://s.tmocache.com/Cms/Files/Published/0000BDF20016F5DD010312E2BDE4AE9B/5657114502E70FF3012A436A0A85BF12/file/TMUS%20Q2%202010%20Press%20Release%20FINAL.pdf>; Press Release, *T-Mobile USA Reports Fourth Quarter And Full Year 2009 Results*, at 2 (Feb. 25, 2010), <http://s.tmocache.com/Cms/Files/Published/0000BDF20016F5DD010312E2BDE4AE9B/5657114502E70FF301270BB668BE399A/file/TMUS%20Q4%20Press%20Release%20FINAL.pdf>.

<sup>51</sup> Press Release, *T-Mobile USA Reports Fourth Quarter 2010 Results*, at 2 (Feb. 25, 2011), <http://s.tmocache.com/Cms/Files/Published/0000BDF20016F5DD010312E2BDE4AE9B/5657114502E70FF3012B5A79D454F2C8/file/TMUSQ42010PressReleaseFinalv2.pdf>.

<sup>52</sup> Current Analysis, *Company Assessment: T-Mobile USA*, at 5 (Jan. 18, 2011) (T-Mobile USA experiences significantly higher churn than national carriers such as AT&T and Verizon because its customer base is more value-oriented and now overwhelmingly skewed towards no-contract subscribers for net additions).

<sup>53</sup> See AT&T Inc. 4Q 2010 Investor Briefing, at 2 (Jan. 27, 2011), [http://www.att.com/Investor/Financial/Earning\\_Info/docs/4Q\\_10\\_IB\\_FINAL.pdf](http://www.att.com/Investor/Financial/Earning_Info/docs/4Q_10_IB_FINAL.pdf); Verizon Investor Quarterly Fourth Quarter 2010, at 5 (Jan. 25, 2011), [http://www2.verizon.com/investor/investor-consump/groups/financial/documents/investorrelation/2010\\_4q\\_qb.pdf](http://www2.verizon.com/investor/investor-consump/groups/financial/documents/investorrelation/2010_4q_qb.pdf); Declaration of Dennis Carlton, Allan Shampine, and Hal Sider ¶ 89, Table 2 (April 20, 2011) ("Carlton Decl.") (comparing churn rates); Press Release, *T-Mobile USA Reports Fourth Quarter 2010 Results*, at 3 (Feb. 25, 2011), <http://s.tmocache.com/Cms/Files/Published/0000BDF20016F5DD010312E2BDE4AE9B/5657114502E70FF3012B5A79D454F2C8/file/TMUSQ42010PressReleaseFinalv2.pdf>.

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24. Because AT&T views T-Mobile USA as a competitor of limited and declining significance, **[Begin Confidential Information]**

**[End**

**Confidential Information]**. For example, T-Mobile USA began promoting its HSPA+ network as 4G in November 2010. However, Sprint already had launched a 4G network in September of 2008,<sup>54</sup> and Verizon already had announced its plans to launch LTE, which it began advertising as “4G LTE” in December 2010.<sup>55</sup> **[Begin Confidential Information]**

**[End Confidential Information]**. Moreover, AT&T’s long-standing advertising campaign—“Nation’s Fastest Mobile Broadband Network”—is based on its network speed advantage, and was in place well before T-Mobile USA began to advertise its 4G launch. AT&T began its “Getting faster with 4G speeds” advertising campaign as an addition to its overall network speed claims to emphasize its migration to 4G. Equally important, **[Begin Confidential Information]**

**[End Confidential Information]**.

25. Finally, AT&T does not view T-Mobile USA as a major competitor for wireless enterprise customers. These are sophisticated purchasers of a broad array of wireline and

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<sup>54</sup> Press Release, *New Sprint Campaign Links Iconic "Firsts" with America's First 4G Phone, HTC EVO 4G*, at 3 (June 3, 2010), [http://newsroom.sprint.com/article\\_display.cfm?article\\_id=1533](http://newsroom.sprint.com/article_display.cfm?article_id=1533).

<sup>55</sup> Press Release, *Blazingly Fast: Verizon Wireless Launches The World's Largest 4G LTE Wireless Network On Sunday, Dec. 5*, at 1 (Dec. 4, 2010), <http://news.vzw.com/news/2010/12/pr2010-12-03.html>.

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wireless telecom services. AT&T primarily competes with Verizon and Sprint when selling to businesses. **[Begin Confidential Information]**

**[End Confidential Information].**

26. AT&T encounters T-Mobile USA only infrequently when competing for large business accounts. T-Mobile USA's business-oriented offerings are limited compared to those of AT&T, Verizon and Sprint.<sup>56</sup> **[Begin Confidential Information]**

**[End Confidential Information].**

27. As discussed below, while T-Mobile USA has a relatively large customer base, it has been a less significant competitor to AT&T on the important dimensions of network quality, devices and innovation. From AT&T's perspective, T-Mobile USA primarily has relied on price as its differentiating factor, which causes T-Mobile USA to position itself differently from AT&T in the marketplace. As a result, T-Mobile USA does not exert material competitive pressure on AT&T. Simply put, AT&T does not generally focus its competitive energies on T-Mobile USA because in our view: 1) T-Mobile USA does not have a strong differentiating network claim; 2) it does not have a marquee device portfolio; and 3) its emphasis on lower, but not the lowest, prices has not resulted in T-Mobile USA winning customers away from AT&T on a net basis.

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<sup>56</sup> Gartner, *Magic Quadrant for U.S. Telecommunications Service Providers*, at 9 (Nov. 3, 2010) ("T-Mobile does not offer compelling enterprise application support or development, or strong enterprise portal capability around change management."), [http://www4.sprint.com/servlet/whitepapers/dbdownload/Gartner\\_MQ\\_US\\_Telecom\\_Service\\_Providers\\_Nov2010.pdf?table=whp\\_item\\_file&blob=item\\_file&keyname=item\\_id&keyvalue=%27d4194dm%27](http://www4.sprint.com/servlet/whitepapers/dbdownload/Gartner_MQ_US_Telecom_Service_Providers_Nov2010.pdf?table=whp_item_file&blob=item_file&keyname=item_id&keyvalue=%27d4194dm%27).

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**1. Differentiation on the Basis of Network Quality, Both Now and In the Future**

28. Network quality is one of the bases on which AT&T competes vigorously today.<sup>57</sup>

Its primary competitors in that arena are Verizon and Sprint. **[Begin Confidential Information]**

**[End Confidential Information].** Verizon

has long focused a major part of its marketing efforts on the quality of its network as a key differentiator.<sup>58</sup> **[Begin Confidential Information]**

**[End Confidential Information].** Verizon has

targeted AT&T's network performance in its advertising, focusing on the perceived advantages in its network coverage and reliability.

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<sup>57</sup> **[Begin Confidential Information]**

**[End Confidential Information].** Other carriers have attempted to exploit the perception that AT&T's network is of a lesser quality or reliability in their marketing and advertising, making AT&T's customers easier targets for competitors and AT&T service seem less attractive. *See, e.g.,* Anders Bylund, *Sprint Wants Your iPhone*, The Motley Fool (Mar. 22, 2010), <http://www.fool.com/investing/general/2010/03/22/sprint-wants-your-iphone.aspx>; Charles Starrett, *Verizon Debuts New Anti-AT&T iPhone Ad*, iLounge (Feb. 4, 2011), <http://www.ilounge.com/index.php/news/comments/verizon-debuts-new-anti-att-iphone-ad>. Indeed, when Verizon began selling the iPhone in February 2011, it targeted AT&T customers by pointing out AT&T's network quality issues and emphasized its one-liner—"Yes. I can hear you now."—along with its unlimited data plan. *Id.* AT&T understands the importance of winning the network quality issue in the minds of consumers and is committed to turning this situation around.

<sup>58</sup> *See, e.g.,* Theresa Howard, 'Can you hear me now?' a hit, USA Today (Feb. 22, 2004), [http://www.usatoday.com/money/advertising/adtrack/2004-02-22-track-verizon\\_x.htm](http://www.usatoday.com/money/advertising/adtrack/2004-02-22-track-verizon_x.htm).

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29. **[Begin Confidential Information]**

**[End Confidential Information]**. Verizon is deploying 4G LTE aggressively, using its nationwide 700 MHz footprint.<sup>59</sup> It has announced plans to expand 4G LTE to 178 markets covering 200 million subscribers by mid-2012 and its entire nationwide footprint by the end of 2013.<sup>60</sup>

30. Likewise, Sprint has aggressively promoted its 4G service. Sprint was the first U.S. carrier to market its service as “4G” and was the first to launch a 4G-capable phone in June 2010.<sup>61</sup> As a result, Sprint has enjoyed a leading position with its 4G claims, which it has used to its advantage. Sprint’s strong spectrum position (particularly when considered in light of Sprint’s controlling interest in Clearwire) and 4G marketing **[Begin Confidential Information]**

**[End Confidential Information]**. At least two recent surveys suggest that **[Begin Confidential Information]**

**[End Confidential Information]**.<sup>62</sup> **[Begin Confidential Information]**

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<sup>59</sup> Verizon, *LTE: The Future of Mobile Broadband Technology*, at 3 (2010) (“Within the Verizon Wireless Network, LTE will operate in the 700MHz spectrum...”), [http://opennetwork.verizonwireless.com/pdfs/VZW\\_LTE\\_White\\_Paper\\_12-10.pdf](http://opennetwork.verizonwireless.com/pdfs/VZW_LTE_White_Paper_12-10.pdf).

<sup>60</sup> Verizon, *4G LTE: We’re Ready. Are You?*, [http://network4g.verizonwireless.com/#/coverage; Current Analysis, Verizon Wireless Gets Aggressive with LTE Devices and Service Rollout](http://network4g.verizonwireless.com/#/coverage;CurrentAnalysis,VerizonWirelessGetsAggressivewithLTEDevicesandServiceRollout), at 1 (Jan. 6, 2011).

<sup>61</sup> Press Release, *New Sprint Campaign Links Iconic “Firsts” with America’s First 4G Phone, HTC EVOTM 4G*, at 1 (June 3, 2010), [http://newsroom.sprint.com/article\\_display.cfm?article\\_id=1533](http://newsroom.sprint.com/article_display.cfm?article_id=1533).

<sup>62</sup> **[Begin Confidential Information]**

**[End Confidential Information]**.

[End Confidential Information].

31. [Begin Confidential Information]

[End Confidential Information]. Sprint's

CEO has stated that "[w]hen you combine Sprint's spectrum position with Clearwire's spectrum position it put us in the strongest place for the future."<sup>63</sup> Sprint's strong spectrum resources ensure that it has the capacity needed to support continued growth in subscribers, usage, and new technology.

32. T-Mobile USA, in contrast to others, does not have a differentiated network position. T-Mobile USA has admitted that it suffered from its late transition to a 3G network,<sup>64</sup> and unlike Sprint, which first promoted a 4G network, T-Mobile USA's HSPA+ launch appears to have been lost among other carriers' 4G messaging, including advertising from Verizon, Sprint, AT&T and MetroPCS. Even more importantly, as set forth in the Declaration of Dr. Kim Larsen, T-Mobile USA has no clear path to delivering LTE service.<sup>65</sup> On the other hand,

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<sup>63</sup> Andrew Munchbach, *Live from CTIA 2010's Day Two Keynote with Sprint CEO Dan Hesse*, BGR, at 11 (Mar. 24, 2010), <http://www.bgr.com/2010/03/24/live-from-ctia-2010%E2%80%99s-day-one-keynote-with-sprint%E2%80%99s-dan-hesse/>.

<sup>64</sup> Transcript of Briefing by Deutsche Telekom and T-Mobile to Analysts, at 3 (Jan. 20, 2011), (Deutsche Telekom CEO Rene Obermann) ("*Jan. 20, 2011 DT Analyst Briefing*") ("[P]lease remember we came late with spectrum only end of '06. We acquired spectrum and then we are able to build a network. So, we were late with 3G. No question."), [http://www.telecom.de/dtag/cms/contentblob/dt/en/979218/blobBinary/transcript\\_20012011.pdf](http://www.telecom.de/dtag/cms/contentblob/dt/en/979218/blobBinary/transcript_20012011.pdf).

<sup>65</sup> See Declaration of Dr. Kim Kyllesbech Larsen, Senior Vice President, Technology Service and International Network Economics, Deutsche Telekom AG, ¶¶ 9, 23-35 (April 19, 2011).

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AT&T, Verizon, and MetroPCS are aggressively rolling out 4G LTE and Sprint already has a WiMAX network.<sup>66</sup>

**2. Differentiation on the Basis of Device Portfolios**

33. Another way in which AT&T differentiates itself is in its device portfolio. Here, again, AT&T's primary competitors are Verizon and Sprint. Over the past four years, AT&T has led the wireless broadband revolution, introducing new cutting-edge smartphones and other connected devices that have put the company in a leadership position, based on the number of these devices running on its network.<sup>67</sup> The launch of the iPhone in July 2007 and the iPhone 3G and Apple App Store in 2008 clearly prompted an explosion of innovation in smartphones and other devices, operating systems, and mobile applications, as competitors tried to find the "iPhone killer." Verizon responded in November 2009 with the introduction of the Droid smartphone based upon Google's Android operating system, and has become a leading proponent of Android devices.<sup>68</sup> In February 2011, Verizon became the second carrier to offer the iPhone.<sup>69</sup> In addition, Verizon recently introduced the HTC Thunderbolt, its first 4G LTE smartphone, and has announced that it will launch other LTE smartphones by mid-2011, including the Samsung 4G LTE, the Motorola Droid Bionic, and the LG Revolution.<sup>70</sup> Verizon,

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<sup>66</sup> See *supra* ¶¶ 29-30; *infra* ¶ 54.

<sup>67</sup> Carlton Decl. ¶ 20.

<sup>68</sup> See Verizon Inc., Annual Report (2010 Form 10-K), at 5 (Feb. 28, 2011); Joe Regan, *AT&T Share of Android Up Over 5x Thanks to T-Mobile*, Chitka Insights, (Mar. 22, 2011), <http://insights.chitika.com/2011/att-share-of-android-up-over-5x-thanks-to-t-mobile>.

<sup>69</sup> Press Release, *Verizon Wireless Has Record Sales On First Day Of iPhone 4* (Feb. 4, 2011), <http://news.vzw.com/news/2011/02/pr2011-02-04.html>.

<sup>70</sup> See Strategy Analytics, *Verizon Wireless 4G LTE at CES: It's Real, It's Here, Its Impressive* (Jan. 14, 2011); Press Release, *The ThunderBolt By HTC, The First 4G LTE Smartphone For*

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to date, has continued to market unlimited data service on all of these devices,<sup>71</sup> a marketing plan which it clearly uses to differentiate its devices from AT&T's devices that require tiered data plans.<sup>72</sup>

34. Sprint also has competed aggressively on the basis of its device portfolio. Indeed, Sprint's success with its device portfolio has been key to its successful resurgence and will likely fuel its continued competitive growth. Sprint has been amassing and marketing a portfolio of advanced 4G smartphone devices on the Android operating system, such as the highly successful Samsung Epic 4G and the HTC EVO 4G, ranked as the # 1 and # 2 smartphones, respectively, by PC World magazine.<sup>73</sup> Other 4G devices offered exclusively by Sprint include the HTC EVO Shift 4G,<sup>74</sup> the HTC EVO 3D, which was awarded "Best Smart Phone" and "Best in Show" by Laptop Magazine, and the HTC EVO View 4G tablet, which was rated "Best of CTIA 2011" by

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*Verizon Wireless Arrives March 17* (Mar. 15, 2011), <http://news.vzw.com/news/2011/03/pr2011-03-14u.html>.

<sup>71</sup> See Strategy Analytics, *Verizon Wireless 4G LTE at CES: It's Real, It's Here, Its Impressive*, at 2 (Jan. 14, 2011).

<sup>72</sup> See, e.g., David Goldman & Laurie Segall, *Verizon iPhone Draws Small Crowds*, CNNMoney.com (Feb. 10, 2011) ("But Verizon has a few competitive tricks up its sleeve. It's going after AT&T's customers by offering unlimited data plans for the iPhone for a limited time."), [http://money.cnn.com/2011/02/10/technology/verizon\\_iphone](http://money.cnn.com/2011/02/10/technology/verizon_iphone); Roger Cheng, *Verizon iPhone: \$30 Unlimited Data (for Now)*, WSJ Blog (Jan. 25, 2011) (regarding Verizon's \$30 unlimited data plan for iPhone buyers, Verizon's COO Lowell McAdam stated, "I'm not going to shoot myself in the foot," and that not offering an unlimited plan would put up a barrier for customers who might otherwise switch from AT&T), <http://blogs.wsj.com/digits/2011/01/25/verizon-iphone-30-unlimited-data>.

<sup>73</sup> See Sprint Nextel 3Q2010 Earnings Conference Call, at 7 (Oct. 27, 2010), <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9Njc0MjR8Q2hpbGRJRD0tMXxUeXBIP TM=&t=1>.

<sup>74</sup> See Michelle Ruhfass, *HTC EVO Shift 4G Android Smartphone for Sprint Revealed by Walmart*, MobileBurn.com (Jan. 3, 2011), <http://www.mobileburn.com/news.jsp?Id=12266>.

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Phonearena.com.<sup>75</sup> Sprint reportedly will expand its portfolio to eighteen 4G enabled devices in 2011.<sup>76</sup>

35. AT&T does not believe that T-Mobile USA has a particularly compelling portfolio of smartphone offerings as compared to AT&T, Verizon, and Sprint.<sup>77</sup> It does offer smartphones, but its HTC MyTouch device and Android portfolio have not enjoyed the success of devices like Sprint's HTC EVO 4G,<sup>78</sup> and its Android and Blackberry devices are similar to those now offered by numerous other carriers, including MetroPCS and Leap.

**3. Differentiation on the Basis of Innovation**

36. AT&T aggressively competes against Verizon and Sprint on the basis of new and innovative products and services, and that competition is only expected to increase. As explained more fully in the Declaration of John Donovan, AT&T consistently has striven to be the leader in this space and to be the first to market new products and services, as evidenced by the RAZR, iPhone, the iPad, Windows 7 phones, and emerging devices that support everything

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<sup>75</sup> Press Release, *Sprint Awarded Big Honors for HTC EVO 3D, HTC EVO View 4G, Kyocera Echo, MiFi 3G/4G Mobile Hotspot by Novatel Wireless and Google Voice at International CTIA Wireless 2011* (Mar. 29, 2011), [http://newsroom.sprint.com/article\\_display.cfm?article\\_id=1843](http://newsroom.sprint.com/article_display.cfm?article_id=1843).

<sup>76</sup> See Press Release, *Sprint Nextel Reports Fourth Quarter and Full Year 2010 Results* (Feb. 10, 2011), [http://newsroom.sprint.com/article\\_display.cfm?article\\_id=1796](http://newsroom.sprint.com/article_display.cfm?article_id=1796).

<sup>77</sup> The Nielsen Company, *Mobile Insights Highlights Through January 2011: National View*, at 11 (Feb. 15, 2011) (customer survey showing that from Q2 2010 through Q4 2010, T-Mobile USA ranked last compared to AT&T, Verizon, and Sprint customers in "Satisfaction with Handsets").

<sup>78</sup> See Press Release, *Sprint Nextel Reports Fourth Quarter and Full Year 2010 Results* (Feb. 10, 2011), [http://newsroom.sprint.com/article\\_display.cfm?article\\_id=1796](http://newsroom.sprint.com/article_display.cfm?article_id=1796) ("The HTC EVO 4G's award-winning streak continued when it was selected for *Good Housekeeping's* Very Innovative Products Award, which recognizes products that are ingenious breakthroughs.").

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from telematics to telemedicine.<sup>79</sup> AT&T invests heavily to differentiate itself from the competition with the best device line-up and superior feature capabilities. In our effort to enable third parties to create applications that run on our devices and on our network, AT&T has created the industry's leading carrier application developer program. As a result, AT&T has been voted the best carrier by application developers for the last five years.<sup>80</sup> It has won a Global Mobile Award (Best Embedded Mobile Product/Device (non-handset) category) at the 2011 Mobile World Congress.<sup>81</sup>

37. Verizon and Sprint also continue to be industry innovators. Although MetroPCS was the first to deploy LTE, Verizon now leads the U.S. industry in deploying and promoting LTE technology.<sup>82</sup> Verizon is already collaborating with 60 product manufacturers and 6,000 application developers to help foster an ecosystem for its new 4G LTE network and devices.<sup>83</sup>

38. Sprint not only has aggressively advertised its Wi-MAX network, but it also has pursued machine-to-machine technology in many areas, including healthcare, ATM and point-of-

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<sup>79</sup> See Donovan Decl. ¶¶ 17-27.

<sup>80</sup> See Press Release, *Mobile Developers Rate AT&T Best in North America* (Jan. 19, 2011), (AT&T ranked best in mobile application distribution, tool offerings, supported technologies, and market potential), <http://www.businesswire.com/news/home/20110119005579/en/Mobile-Developers-Rate-ATT-North-America-%E2%80%93>; Evans Data Corporation, *Mobile Development Survey, Volume II*, at 37 (2010); Evans Data Corporation, *Wireless Development Survey, Volume II*, at 125-28 (2009); Evans Data Corporation, *Wireless Development Survey, Volume II*, at 157-160 (2008); Evans Data Corporation, *Targeted Analytics, Volume I*, at 139-144 (2007); Evans Data Corporation, *Mobility Developer Relations Programs Competitive Analysis Report*, at 7-8 (2007).

<sup>81</sup> See Press Release, *AT&T Connected Vitality GlowCaps Wins 2011 Global Mobile Award* (Feb. 16, 2011), <http://www.att.com/gen/press-room?pid=19064&cdvn=news&newsarticleid=31610&mapcode=corporate|innovation-releases>.

<sup>82</sup> Verizon, *4G LTE: We're Ready. Are You?*, <http://network4g.verizonwireless.com/#/4g-network-verizon-wireless>.

<sup>83</sup> See Susan Welsh de Grimaldo, *Verizon Wireless 4G LTE at CES: It's Real, It's Here, Its Impressive*, Strategy Analytics, at 2 (Jan. 14, 2011).

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sale, vehicle fleet tracking, “smart” power grids, kiosks for retail stores, and asset tracking.<sup>84</sup> Its partners include Panasonic, Dell, Intel, IBM, and Qualcomm.<sup>85</sup>

**4. Differentiation on the Basis of Price or the “Value Proposition”**

39. For AT&T, the combination of network experience, superior products, and competitive pricing constitutes the “value proposition” that it offers consumers. Many competitors have chosen to compete and differentiate themselves based upon price alone, or a different value proposition.

40. Sprint is aggressively challenging AT&T’s value proposition by promoting a consumer message that extols the combined value of a next generation network, innovative devices and aggressive pricing. Sprint’s value proposition includes attractive unlimited plans at very competitive prices, which it markets aggressively against AT&T.<sup>86</sup> This strategy has fueled Sprint’s resurgence as a successful competitor to AT&T and will continue to drive Sprint’s success in the future. Sprint’s combination of aggressive pricing, high-end handsets, a strong 4G network and enhanced customer service resulted in Sprint adding approximately 1.8 million net subscribers in 2010.<sup>87</sup>

41. In June 2010, AT&T announced that it would no longer offer an unlimited data plan to new smartphone customers. Sprint capitalized on AT&T’s decision by making its

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<sup>84</sup> Sprint, *M2M: Machine to Machine & Emerging Solutions*, <http://m2m.sprint.com>.

<sup>85</sup> *Id.*

<sup>86</sup> See, e.g., Mike Dano, *New Sprint Ad Campaign Hinges on Unlimited Data*, FierceWireless (Apr. 11, 2011), <http://www.fiercewireless.com/story/new-sprint-ad-campaign-hinges-unlimited-data/2011-04-11>.

<sup>87</sup> Press Release, *Sprint Nextel Reports Fourth Quarter and Full Year 2010 Results* (Feb. 10, 2011), [http://newsroom.sprint.com/article\\_display.cfm?article\\_id=1796](http://newsroom.sprint.com/article_display.cfm?article_id=1796).

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unlimited plans a cornerstone of Sprint's marketing against AT&T and other carriers.<sup>88</sup> For example, Sprint's advertising touted its unlimited data plans, asking "why choose limited 3G from AT&T when you can get unlimited 3G and 4G while on the Sprint Network?" Likewise, Sprint has introduced low-cost voice, data and messaging plans that have appealed to wireless subscribers, especially data-centric AT&T customers.

42. Sprint also has lured subscribers searching for faster data speeds and inexpensive, unlimited data plans. With respect to data speeds, Sprint has taken aim at AT&T smartphone users, promoting the Sprint network as "4G, not faux G."<sup>89</sup> On data plans, Sprint has emphasized its *Everything* unlimited data plans in its advertising.<sup>90</sup> In particular, Sprint has targeted iPhone users, touting its HTC EVO 4G device and the price difference between AT&T's plans and its \$69.99 *Everything* unlimited data plan. Sprint recently launched a promotion to lure subscribers by giving them a \$125 service credit to switch to a Sprint smartphone,<sup>91</sup> making it easy for customers to switch before their contract is over.

43. **[Begin Confidential Information]**

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<sup>88</sup> See Press Release, *Sprint CEO Dan Hesse Defines "Unlimited" in New TV Ad* (Mar. 12, 2011), [http://newsroom.sprint.com/article\\_display.cfm?article\\_id=1818](http://newsroom.sprint.com/article_display.cfm?article_id=1818).

<sup>89</sup> Roger Cheng, *Sprint CEO Touts 4G Devices, "Not Faux G,"* WSJ Blog (Mar. 22, 2011), <http://blogs.wsj.com/digits/2011/03/22/sprint-ceo-touts-4g-devices-not-faux-g/>.

<sup>90</sup> See Press Release, *Sprint CEO Dan Hesse Defines "Unlimited" in New TV Ad* (Mar. 12, 2011), [http://newsroom.sprint.com/article\\_display.cfm?article\\_id=1818](http://newsroom.sprint.com/article_display.cfm?article_id=1818).

<sup>91</sup> See Sprint, *Move Your Number to Sprint. Get a \$125 Service Credit*, [http://shop2.sprint.com/en/stores/popups/cl\\_port\\_in\\_credit\\_125\\_popup.shtml](http://shop2.sprint.com/en/stores/popups/cl_port_in_credit_125_popup.shtml).

[End Confidential Information].

44. The success of these offerings by Sprint has required AT&T to respond to prevent further inroads on its customer base. [Begin Confidential Information]

[End Confidential Information].<sup>92</sup>

45. MetroPCS and Leap also have sought to capitalize on their value proposition of low cost, no-contract, “all-you-can-eat” bundles of services. For example, on its website MetroPCS advertises and offers a \$40 per month no-contract plan that includes unlimited local and nationwide long distance calling, unlimited text, and unlimited MetroWEB.<sup>93</sup> For \$45 per month, MetroPCS customers can add unlimited international text, unlimited caller identification, and certain widgets, among other things.<sup>94</sup> On its website, Leap (under the Cricket brand) advertises and offers a \$45 per month no-contract plan that includes unlimited anytime and mobile to mobile minutes, long distance, domestic and international text, and mobile web access.<sup>95</sup>

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<sup>92</sup> Phil Goldstein, *AT&T Follows Sprint Into Unlimited Mobile-to-Mobile Calling*, FierceWireless (Feb. 9, 2011), <http://www.fiercewireless.com/print/node/86865>.

<sup>93</sup> MetroPCS, *MetroPCS Rate Plans*, <http://www.metropcs.com/plans/default.aspx?tab=family>.

<sup>94</sup> MetroPCS, *MetroPCS Rate Plans*, <http://www.metropcs.com/plans/default.aspx?tab=family>.

<sup>95</sup> Cricket, *Cell Phone Plans*, <http://www.mycricket.com/cell-phone-plans>.

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46. While T-Mobile USA competes principally on price/value, it is generally more expensive than the no-contract AYCE carriers such as MetroPCS and Leap. As a result, as T-Mobile USA's CEO Philip Humm has conceded, the company has been "kind of stuck in the middle with unlimited becoming industry standard on one side and T-Mobile USA being attacked from below by the no frills players in the market."<sup>96</sup> Similarly, as noted by Deutsche Telekom's CEO, Rene Obermann, "[w]e also lack[ed] competitive smart phones and we had a branded distribution gap in comparison to our competitors and all of that made us suffer. It resulted in revenue stalling and valuable contract customers leaving us."<sup>97</sup> Accordingly, T-Mobile is not an important factor in AT&T's competitive decision-making. Our survey research indicates that **[Begin Confidential Information]**

**[End Confidential Information].**<sup>98</sup>

While MetroPCS and Leap have a marketing strategy that is similar to T-Mobile USA's, namely, affordable smartphones and data services,<sup>99</sup> the AYCE carriers have lower prices.<sup>100</sup> In

<sup>96</sup> Jan. 20, 2011 DT Analyst Briefing, at 5 (T-Mobile USA CEO Philip Humm).

<sup>97</sup> Jan. 20, 2011 DT Analyst Briefing, at 3 (Deutsche Telekom CEO Rene Obermann).

<sup>98</sup> The Nielsen Company, *Q4 2010 Mobile Insights: National Report*, at 68-69 (Jan. 2011).

<sup>99</sup> Jan. 20, 2011 DT Analyst Briefing, at 7, 20 (T-Mobile USA CEO Philip Humm; T-Mobile USA CMO Cole Brodman); MetroPCS, *About MetroPCS*, <http://www.metropcs.com/about/about.aspx>; Final Transcript, *Leap—Q4 2010 International Earnings Conference Call*, at 2 (Feb. 22, 2011), [http://www.google.com/url?sa=t&source=web&cd=2&ved=0CCMQFjAB&url=http%3A%2F%2Fphx.corporate-ir.net%2FExternal.File%3Fitem%3DUGFyZW50SUQ9ODM1MzN8Q2hpbGRJRD0tMXxUeXBIPtM%3D%26t%3D1&rct=j&q=LEAP%20%20Q4%202010%20Leap%20Wireless%20International%20Earnings%20Conference%20Call%20februar%202011&ei=\\_ZCsTbLzI8\\_TgQfpkenzBQ&usg=AFQjCNGcTUMha46AU5cmhy6\\_mE-4OyAUPg&sig2=NgSfhiGIVOnbK51iIB8HmQ](http://www.google.com/url?sa=t&source=web&cd=2&ved=0CCMQFjAB&url=http%3A%2F%2Fphx.corporate-ir.net%2FExternal.File%3Fitem%3DUGFyZW50SUQ9ODM1MzN8Q2hpbGRJRD0tMXxUeXBIPtM%3D%26t%3D1&rct=j&q=LEAP%20%20Q4%202010%20Leap%20Wireless%20International%20Earnings%20Conference%20Call%20februar%202011&ei=_ZCsTbLzI8_TgQfpkenzBQ&usg=AFQjCNGcTUMha46AU5cmhy6_mE-4OyAUPg&sig2=NgSfhiGIVOnbK51iIB8HmQ).