133. As explained above, the proposed transaction will enable the merged firm to expand capacity or, equivalently, reduce the cost of expanding capacity and output by (i) expanding the number of areas in which spectrally-efficient LTE services will be deployed; (ii) increasing the amount of spectrum on which it will be deployed; (iii) creating a denser network with additional cells that increase aggregate capacity; (iv) increasing spectrum available to provide service by consolidating redundant network control functions; (v) increasing network capacity by consolidating less efficient GSM services and expanding spectrum dedicated to more efficient UMTS/HSPA/HSPA+ services; and (vi) increasing the efficiency of existing spectrum through "channel pooling" efficiencies.

134. The increase in the combined capacity of the AT&T and T-Mobile USA networks that will result from the proposed merger will lower the cost of serving additional subscribers and thus create incentives to expand output and lower prices relative to the levels expected in the absence of the transaction. Especially in light of the large projected increases in demand for data services documented above and the merged firm's business plans discussed below, it is reasonable to conclude that the merged firm would find it profitable to utilize its increased capacity to increase output above the levels expected in the absence of the proposed transactions.

135. AT&T's post-merger business plans are to expand output. David Christopher, AT&T's Chief Marketing Officer, also describes the importance of AT&T expanding capacity to enable the firm to increase sales and maintain competitive pressure against other wireless carriers through continued innovation and improved quality. As he explains, the increased quality of service resulting from the proposed transaction increases AT&T's ability to provide high quality and innovative services, which both increase network utilization by existing customers and attracting new ones.[191] Similarly, John Donovan, AT&T's Chief Technology Officer, describes in his declaration a variety of the innovations and

191. Christopher Declaration, ¶80.

services AT&T is planning on offering in the future assuming that it has the "spectrum assets necessary to meet consumers' soaring demand for mobile broadband." However, he cautions that "virtually all of the most exciting and innovative possibilities [being pursued by AT&T] over the near and medium term will require increased network capacity."[192]

136. AT&T's goals are consistent with the large investments it has made over recent years to upgrade its network. Between 2008 and 2010, AT&T invested in improving and expanding its wireless network as well as **[Begin Confidential Information]** **[End Confidential Information]** on additional spectrum purchases.[193]

B. TYPICAL "UNILATERAL EFFECTS" CONCERNS DO NOT APPLY TO THE PROPOSED TRANSACTION GIVEN THE CAPACITY CONSTRAINTS FACED BY AT&T AND T-MOBILE USA AND THE INCREASED CAPACITY RESULTING FROM THE TRANSACTION.

137. It is well recognized that mergers of firms that produce differentiated products can give rise to concerns that the merged firm will find it profitable to increase price unilaterally (e.g., without actions by any other firm).[194] However, if one misapplies standard unilateral effects models based on the assumptions that output can be readily expanded at constant cost and that there is no expansion of capacity resulting from a merger, then one can obtain misleading results about the likelihood that the proposed merger will result in higher prices in the wireless industry.

138. Concerns about "unilateral effects" of mergers are based on the observation that the producer of a differentiated good or service that raises price will lose some customers to rival firms that produce imperfect substitutes. The extent of such losses limits the amount that a firm can profitably raise price. A merger between firms that produce substitutable differentiated products implies that

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192. Donovan Declaration, ¶¶15-16.
193. AT&T Annual Reports, 2010, p. 71, 2008, p. 60 and AT&T estimates.
194. See, for example, Joseph Farrell and Carl Shapiro, "Antitrust Evaluation of Horizontal Mergers: An Economic Alternative to Market Definition," February 2010.

some customers that otherwise would be lost to rivals following a price increase will be recaptured by the merger partner's product. This increases the merging firms' incentive to raise price relative to that in the absence of the merger. The unilateral incentive to raise price is generally greater when the merging brands are closer substitutes, which implies that a larger share of sales lost as the result of a price increase is recaptured by the merged brand. The unilateral incentive to raise price is also affected by the margin earned on the recaptured sales. The incentive of a merged firm to raise price is generally greater the larger the incremental profit generated by a recaptured customer.

139. Most analyses of unilateral effects are done under the assumption that firms face no capacity constraints.[195] If this assumption does not hold and if instead the merger increases the combined capacity of the firm, then it is consistent with economic theory that the merged firm increases its profits by expanding output. To see this point, consider a simple example in which an industry consists of only two firms which are both operating at capacity (e.g., facing a vertical marginal cost curve). If demand is sufficiently strong, the merged firm will produce exactly the same industry output as was produced pre-merger. Moreover, if the merger allows an expansion of capacity, as here, then industry output can rise post-merger and prices fall.[196] Exactly the same situation can occur with rising marginal cost curves replacing the vertical marginal cost curve.[197]

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195. The FCC's Chief Economist Jonathan Baker noted in a recent paper that that "[i]n practice, unilateral effects most commonly arise from mergers among firms that sell differentiated products without binding capacity constraints." Jonathan B. Baker, "Merger Simulation in an Administrative Context," February 22, 2011, p. 5 (available at http://ssrn.com/abstract= 1790943).

196. It is also possible that when firms face capacity constraints, the incentive to restrict output as a result of a merger can outweigh the incentive to expand output that results from merger-related reductions in marginal cost. Thus, neither this example nor our analysis would provide support for the view that a merger to monopoly in this wireless industry would be desirable. In light of the structure of the wireless industry that will remain after this merger, and AT&T's incentives and plans to use the expanded capacity made possible by the transaction to improve service to subscribers and expand output, any merger-related incentive to restrict output is outweighed by the merger-related incentive to expand output due to reductions in marginal costs. As this

140. Therefore, it would be incorrect to conclude that in this industry unilateral effects analysis would predict that after the transaction prices will rise and output will fall. Concerns about unilateral effects are mitigated or eliminated when (i) firms face rising marginal costs of expanding output; (ii) firms face strong demand (so firms operate on the steep or vertical portion of the marginal cost curve); and (iii) mergers result in synergies that increase capacity or, equivalently, reduce marginal costs of expanding output. As documented in the previous sections, these are precisely the circumstances that arise in the proposed transaction: (i) both AT&T and T-Mobile USA face sharply rising marginal costs of expanding output and are operating at or near capacity; (ii) demand is projected to continue to expand rapidly, with the FCC acknowledging that the industry faces significant spectrum constraints; and (iii) the proposed merger promises to result in engineering-based synergies that will increase network capacity.

141. If one misapplies standard models based on the assumptions that output can be readily expanded at constant cost and that there is no expansion of capacity resulting from a merger, then one can obtain misleading results about the likelihood that the proposed merger will result in higher prices in the wireless industry. This is also true if one uses the Upward Pricing Pressure (UPP) framework referenced in the recent revision to the Horizontal Merger Guidelines, which is used by some as an initial approximation of a merger's unilateral effect on the incentive to raise price. The two key components of UPP are the "diversion ratio" and the "price cost margin." The diversion ratio reflects the amount of sales that would be diverted to a merger partner's brand. The price/cost margin reflects the

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suggests, the facts of each situation, including the business incentives and plans, need to be examined in analyzing any merger.

197. For example, even a monopolist that realizes an outward shift in its marginal cost curve will expand output and lower price.

incremental profitability of subscribers that would be recaptured as a result as result of a merger-related price increase.

142. There are a number of reasons that the standard UPP framework cannot be applied to this transaction. Perhaps most importantly, price/cost margins used in UPP and other merger simulations models to approximate the profitability of recaptured customers are often calculated based on accounting measures of *average variable costs*. However, the underlying economic logic of unilateral effects models depends on the *marginal* cost of serving additional subscribers, which is likely to be much higher than *average variable costs* when firms are operating at or near capacity. The marginal cost of serving additional wireless subscribers can include costs associated with deployment of new cell sites, deployment of WiFi facilities to offload traffic, acquisition of new spectrum, etc. The use of accounting data on average variable costs instead of economic data on marginal costs will overstate the profitability of diverted sales and thus overstates the "upward pricing pressure" from the proposed transaction.

143. The standard UPP framework also does not readily account for the expansion in capacity that will result from a merger. As discussed above, the proposed transaction will expand capacity and lower the cost of serving new customers, creating incentives for the merged firm to increase output. The increase in output results in an unambiguous benefit by lowering prices to consumers relative to those that would be observed in the absence of the proposed transaction.

144. In addition, the standard UPP framework would not account for AT&T's permitting consumers on existing T-Mobile USA pricing plans to continue to obtain service under those plans. As a result, a substantial group of subscribers would have no prospect of facing a merger-related price increase.[198]

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198. New subscribers that might have selected the T-Mobile USA brand in the absence of the proposed transaction instead will continue to have access to their next best alternative as well as access to an AT&T network capable of delivering higher quality services than otherwise would

145. In addition to the role of capacity constraints and expanded capacity in mitigating concerns about unilateral effects, the substantial differences in the characteristics of AT&T and T-Mobile USA subscribers further reduce this concern. As noted above, concerns about unilateral effects are greatest when the merging firms produce products that are close substitutes. However, the differences in subscriber characteristics summarized in Table 2 above indicate that AT&T and T-Mobile USA are not especially close substitutes: (i) data services account for a substantially smaller share of data revenue for T-Mobile USA compared to AT&T; (ii) non-contract subscribers are more important for T-Mobile USA than for AT&T; (iii) T-Mobile USA customers are typically **[Begin Confidential Information]** **[End Confidential Information]** and have **[Begin Confidential Information]** **[End Confidential Information]** than AT&T customers; and (iv) enterprise customers account for a larger share of AT&T wireless revenue compared to T-Mobile USA.

C. TYPICAL "COORDINATED EFFECTS" CONCERNS DO NOT APPLY TO THE PROPOSED TRANSACTION GIVEN THE CAPACITY CONSTRAINTS FACED BY AT&T AND T-MOBILE USA, THE EXPANSION OF CAPACITY CREATED BY THE MERGER, AS WELL AS OTHER INDUSTRY CHARACTERISTICS.

146. It is well recognized that mergers give rise to the concern that the reduction in the number of firms in the industry may facilitate "coordination" in pricing and output decisions.[199] "Coordinated effects" concerns reflect the view that a reduction in the number of firms in an industry reduces the likelihood that a firm will deviate from coordinated pricing and output decisions because their actions will be detected and punished by rivals. The increased likelihood of coordination increases the likelihood of higher prices.

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be available.

199. See, for example, Dennis Carlton and Jeffrey Perloff, Modern Industrial Organization (4th Edition), Chapters 5 (cartels), 6 (oligopolies) and 19 (antitrust policy).

147. Concerns about coordinated effects are reduced when firms operate at or near capacity and face strong demand, just as these circumstances limit concerns about unilateral effects. Moreover, concerns about the impact of a merger on coordinated interactions between firms are reduced in industries in which firms vary with respect to the costs of expanding output. A merger which lowers AT&T/T-Mobile USA's cost of expanding capacity provides incentives for it to expand output. At the same time, other firms in the industry are likely to face much different costs associated with expanding output given their varying spectrum holdings and subscriber characteristics. These differences create significant differences among firms with respect to their incentive to coordinate their actions with other firms in the industry.

148. Similarly, diversity of firms and business strategies in the wireless industry further reduces concerns about the proposed transaction resulting in coordinated effects. The FCC's traditional coordination analysis concerns focus on the following industry factors: (i) the homogeneity of firms and services, with greater homogeneity leading to increased risks of coordinated effects; (ii) the transparency of pricing information, with greater transparency increasing concerns about coordinated effects; and (iii) the scope of technological change, with more rapid changes implying greater coordination difficulties among firms due to their divergent long-term interests.[200]

149. Evaluation of each of these factors highlights the difficulty of coordinated interaction in the wireless industry. *First*, as discussed in Section IV above, wireless firms today have highly diverse business strategies. Some, including AT&T and Verizon Wireless, focus principally on contract subscribers served through multi-year contracts. Others, including MetroPCS and Leap, focus almost exclusively on non-contract subscribers served on a month-to-month basis. Others, including Sprint and

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200. See, for example, FCC, Memorandum Opinion and Order and Declaratory Ruling, Verizon Wireless/ALLTEL, FCC 08-258, November 10, 2008, ¶90.

T-Mobile USA, operate somewhere in between. Differences among carriers extend to pricing strategies with different firms (such as MetroPCS and Leap) focusing on plans that provide unlimited voice and data services; while carriers such as Verizon Wireless, Sprint Nextel and T-Mobile USA offer unlimited data services but a range of plans with different "buckets" of voice minutes and texts. AT&T, however, offers tiered pricing for data services for new customers along with different buckets of voice minutes and texts. There are further differences in carriers' interests due to their mix of enterprise/non-enterprise customers and the mix of subscribers with respect to data usage.

150. *Second*, the large number of multi-dimensional service plans available from each carrier means that pricing is complex, further reducing concerns about coordinated effects. Each carrier offers multiple plans that involve different numbers of minutes and texts at different price points and plans differ across carriers with respect to the availability of "free" night and weekend calling (that does not count against plan minutes); "free" on-net calling; the availability of family plans which permit additional lines at reduced rates; as well as the availability and size of handset subsidies. Firms also differ with respect to a variety of other factors including the size of termination fees, roaming coverage, international rates, service quality, etc. Coordination is further complicated by the fact that carriers do not publish information on the number of subscribers that adopt various plans, making it difficult for carriers to monitor their rivals' activities.

151. *Third*, the rapid and on-going changes in wireless technology reduce concerns that the proposed transaction will result in coordinated effects. Changes in technology and services that can be provided over wireless networks create strong incentives for firms to be early providers of new services. As mentioned above, AT&T is currently promoting its service that enables subscribers to simultaneously transmit voice and data. Customers attracted by new technologies and services can persist over time, increasing coordination difficulties across firms. At the same time, as discussed above, there are

important differences across firms with respect to their ability to roll out new technologies given differences in spectrum holdings and in the number of subscribers served with "past generation" technologies.

152. *Fourth*, differences in the geographic coverage of wireless networks create diverse interests among carriers and thus further reduce concerns about the potential for coordinated effects. Carriers' spectrum holdings differ across geographic areas, with the amount of spectrum allocated to different services (e.g., GSM, UMTS/HSPA+, LTE) differing across areas for a given carrier. At the same time there are important differences across carriers with respect to the amount of spectrum held and the utilization of the spectrum. Coordination is further complicated by the fact that there are a variety of non-national carriers serving different regions and the share of subscribers in a region accounted for by the non-national carriers varies widely. As this suggests, non-national carriers face different incentives with respect to coordinating with or deviating from actions taken by other firms.

D. THE TRANSACTION DOES NOT ELIMINATE A MAVERICK FROM THE WIRELESS INDUSTRY.

153. In previous merger reviews, the FCC has highlighted concerns about transactions that remove a "maverick" from the marketplace. The FCC defines mavericks as "firms that have a greater economic incentive to deviate from the terms of coordination than do most of their rivals (e.g., firms that are unusually disruptive and competitive influences in the market)." It further expands on the definition with specific reference to wireless providers:

> In the context of U.S. mobile telephony markets, maverick carriers may be identified by the innovative pricing plans or services they introduce. The enhanced incentive to deviate may arise because the maverick carrier controls substantially more spectrum than it needs to serve the demands of its currently limited customer base, and also because its costs of expanding sales in the relevant market are relatively low and (or) it is well positioned to attract customers currently served by its competitors. Such a carrier has a strong incentive to deviate because it receives less benefit from the higher

coordinated prices than do carriers with larger market shares and is well positioned to profit from expanding its sales.[201]

154. T-Mobile USA would not be characterized as a maverick as defined by the FCC. For example, T-Mobile USA has indicated that it is facing spectrum constraints and we are not aware of any other special cost advantage enjoyed by T-Mobile USA that would enable it to act as a maverick.[202] [203] Moreover, T-Mobile USA cannot be considered a maverick by virtue of having introduced innovative pricing plans. For example, the FCC's annual reports summarizing the state of wireless competition and merger decisions identify major pricing and service innovations since 1998. Notably, none of the pricing innovations identified by the FCC were introduced by T-Mobile USA. The pricing and service innovations identified in our review of FCC documents include:

- **AT&T Digital One Rate Plan (1998):** "AT&T Wireless's Digital One Rate ("DOR") plan, introduced in May 1998, is one notable example of an independent pricing action that altered the market and benefited consumers."[204]

- **AT&T Family Plans (1999):** "These plans allow a family to establish an account with a certain number of family members within the same calling area. Each family member [...] can make unlimited calls to the other wireless numbers on the account and to and from the family's home number [...] This type of family plan was first introduced by AT&T in the third quarter of 1999, and SBC Communications has since instituted its own such plan called 'FamilyTalk.'"[205]

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201. FCC, Memorandum Opinion and Order, Cingular/AT&T, FCC 04-255, October 26, 2004, ¶160.
202. Larsen Declaration, ¶10.
203. In published work, FCC Chief Economist Jonathan Baker identifies firm-specific differences in marginal costs as a key factor that enables a firm to act as a maverick: "Some factors likely affecting the market price preferred by the maverick are firm specific. For example, a firm's marginal costs may rise or fall for reasons related to the nature or location of its production processes, and in consequence may not be paralleled by cost changes affecting its rivals." Jonathan Baker, "Mavericks, Mergers, and Exclusion: Proving Coordinated Competitive Effects Under the Antitrust Laws," 135 New York University Law Review 135 (2002), at 174.
204. Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Eighth Report*, FCC 03-150, ¶94.
205. Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial

- **Sprint PCS and Verizon Wireless free on-net roaming (2002):** "Another trend in mobile telephone pricing has been the introduction of on-network, or "on net," national pricing plans. [...] Sprint PCS, which permits off-net roaming, has allowed free on-net national roaming with its pricing plans for many years. In January 2002, Verizon Wireless began to offer its own on-net national plans, under the name 'America's Choice.'"[206]

- **Cingular's free nights and weekends and rollover minutes:** "[O]ther nationwide carriers have taken the lead in introducing other innovative pricing plans or services, including [...] Cingular for free night and weekend minutes and rollover minutes..."[207]

- **Nextel push to talk (PTT) service (2003):** "... [O]ther nationwide carriers have taken the lead in introducing other innovative pricing plans or services, including [...] Nextel for PTT services."[208]

- **ALLTEL, Suncom: "Mobile to Anyone" Plans (2006):** "Recently, a few U.S. providers have introduced "mobile to anyone" calling options. The new feature, currently offered by regional operators Alltel and Suncom, allow subscribers unlimited free calling to and from any ten designated numbers in the United States, regardless of wireline or wireless carrier."[209]

- **Sprint: First national carrier to offer "Unlimited" plans (2007):** "A number of smaller and regional carriers, like Leap and MetroPCS, have been offering unlimited local calling plans for years. Now, first among the nationwide carriers, Sprint Nextel has begun offering unlimited calling plans, for a limited time, in select markets."[210]

- **Verizon Wireless: First to offer unlimited nationwide flat-rate calling plan (2008):** "Verizon Wireless made the first move by offering an unlimited nationwide flat-rate calling plan in February 2008. AT&T quickly responded with a similar offer, and T-Mobile

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Mobile Services, *Fifth Report*, FCC 00-289, p.17.

206. Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Eighth Report*, FCC 03-150, ¶95.
207. FCC, Memorandum Opinion and Order, Cingular/AT&T, FCC 04-255, October 26, 2004, ¶162.
208. FCC, Memorandum Opinion and Order, Cingular/AT&T, FCC 04-255, October 26, 2004, ¶162.
209. Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Eleventh Report*, FCC 06-142, ¶91.
210. Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Twelfth Report*, FCC 08-28, ¶113.

> followed soon after with a nationwide flat-rate calling plan that it differentiated by including unlimited voice bundled together with unlimited text messaging. Similarly, the version of a nationwide flat-rate offering subsequently unveiled by Sprint Nextel includes unlimited voice, text messages, and various premium data services such as e-mail and Web surfing."[211]

155. As the FCC recognizes, maverick firms are "disruptive and competitive influences." A principal way that firms disrupt competition is by growing relative to their rivals, which implies that their future competitive significance is likely to be greater than reflected by their current share. Thus, regulators' heightened focus on mavericks when evaluating mergers is appropriate. However, as discussed above, T-Mobile USA's estimated share of both contract and non-contract wireless subscribers in the United States **[Begin Confidential Information]** **[End Confidential Information]** .[212] At the same time, T-Mobile USA's monthly churn rate has remained high. These data are not characteristic of a maverick firm that is disruptive to wireless competition.

156. It is not appropriate to characterize T-Mobile USA as exerting a special role in constraining price simply because its prices tend to be lower than those charged by certain rivals. As discussed above, T-Mobile USA is not generally recognized as offering the lowest industry prices. Instead, analysts and the FCC have characterized MetroPCS and Leap as pioneering unlimited/non-contract pricing models, while AT&T, Verizon Wireless and Sprint are recognized for being leaders in providing data services. T-Mobile USA, on the other hand, was recently characterized as "'stuck in the middle' between quality and value."[213]

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211. Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Thirteenth Report*, DA 09-54, ¶112.
212. See Figure 6.
213. Bank of America Merrill Lynch "T-Mobile USA under pressure – 2011 EBITDA coming into focus", November 5, 2010, p. 8.

157. Table 2 above indicates that average "yield" (defined as non-data revenue divided by minutes of use) is lower for T-Mobile USA than for AT&T and Verizon Wireless, and roughly comparable to that earned by Sprint. We have not analyzed the extent to which these differences are attributable to factors such as the mix of contract and non-contract subscribers. However, to the extent that T-Mobile USA's prices are lower than those received by AT&T and Verizon Wireless for otherwise comparable subscribers, T-Mobile USA's lower prices have not stimulated growth in its share of retail subscribers. This indicates that other aspects of T-Mobile USA's service are in some way lacking, so that their lower price reflects compensation for weaker dimensions of service other than price. They may include differences in geographic network coverage, service quality, handset availability, or other factors, and suggest that T-Mobile USA does not have a unique role in constraining prices charged by AT&T and other carriers.

CONCLUSION

158. We conclude that the proposed transaction will promote competition by enabling the merged firm to achieve engineering-based network synergies that increase network capacity beyond the levels that AT&T and T-Mobile USA could achieve if the two companies continued to operate independently. These additions to capacity will permit the merged firm to expand output beyond the sum of the output levels that would be achieved if the firms operated independently. A proper antitrust analysis of this transaction must account for the existing capacity limitations and the effect of this transaction on increasing capacity, among other factors. Given the large projected increases in demand for wireless data services, the recognized shortage of spectrum available in many areas to serve increased demand, the ongoing competitiveness of the wireless industry, the cost savings expected to result from the transaction, and the business plans for the merged firm, we conclude that the merged firm will have strong incentives to use this additional capacity to increase output compared to levels that

would be expected in the absence of the proposed transaction. These factors are central to the analysis of the proposed transaction and our conclusion that it will not result in harm to consumer welfare.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Signature: Dennis W Carlton

Dennis W. Carlton

Date: April 20, 2011

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Signature: _____
Allan L. Shampine

Date: April 20 2011

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Signature: Hal S. Sider

Hal S. Sider

Date: April 28 2011

EXECUTION VERSION

STOCK PURCHASE AGREEMENT

by and between

DEUTSCHE TELEKOM AG

and

AT&T INC.

Dated as of March 20, 2011

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STOCK PURCHASE AGREEMENT

STOCK PURCHASE AGREEMENT (this "Agreement"), dated as of March 20, 2011, by and between DEUTSCHE TELEKOM AG, an *Aktiengesellschaft* organized and existing under the laws of the Federal Republic of Germany ("Seller"), and AT&T INC., a Delaware corporation ("Purchaser").

RECITALS

WHEREAS, Seller owns all of the issued and outstanding shares of capital stock of T-Mobile Global Zwischenholding GmbH, a *Gesellschaft mit beschränkter Haftung* organized and existing under the laws of Germany ("Global"), which owns all of the issued and outstanding shares of capital stock of T-Mobile Global Holding GmbH, a *Gesellschaft mit beschränkter Haftung* organized and existing under the laws of Germany ("Holding"), which owns all of the issued and outstanding shares of capital stock of T-Mobile USA, Inc. (the "Company"), a Delaware corporation;

WHEREAS, Seller desires to cause Holding to sell to Purchaser and Purchaser desires to purchase from Holding all of the issued and outstanding shares of capital stock of the Company upon the terms and subject to the conditions set forth herein; and

WHEREAS, concurrently with the execution of this Agreement, and as a condition and inducement to Purchaser's willingness to enter into this Agreement, Seller and Purchaser are entering into a stockholder's agreement, in respect of the Purchaser Shares, dated as of the date hereof, and attached as Exhibit A (the "Stockholder's Agreement").

NOW, THEREFORE, in consideration of the premises, and of the representations, warranties, covenants and agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
Definitions and Terms

1.1. Definitions. As used in this Agreement the following terms shall have the following respective meanings:

"Affiliate" shall mean with respect to any Person, a Person that directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Person.

"Agreement" shall have the meaning set forth in the Preamble.

"Applicable Accounting Principles" shall have the meaning set forth in Section 2.3(a).

"Assumed Employees" shall have the meaning set forth in Section 4.14(a).

"Average Adjusted Closing Price" means a dollar amount equal to (i) if the Average Trading Price is greater than $26.0165 and less than $30.2354, then the Average Trading Price; (ii) if the Average Trading Price is greater than or equal to $30.2354, then $30.2354; or (iii) if the Average Trading Price is equal to or less than $26.0165, then $26.0165.

"Average Trading Price" means the volume-weighted average of the per share trading prices of Purchaser Common Stock as reported through Bloomberg (based on all trades in Purchaser Common Stock and not an average of daily averages) for the 30 consecutive full trading days ending on the third Business Day prior to the Closing.

"Beneficially Own" shall mean, with respect to any securities, (i) having "beneficial ownership" of such securities for purposes of Rule 13d-3 or 13d-5 under the Exchange Act (or any successor statute or regulation), (ii) having the right to become the Beneficial Owner of such securities (whether such right is exercisable immediately or only after the passage of time or the occurrence of conditions) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise or (iii) having an exercise or conversion privilege or a settlement payment or mechanism with respect to any option, warrant, convertible security, stock appreciation, swap agreement or other security, contract right or derivative position, whether or not currently exercisable, at a price related to the value of the securities for which Beneficial Ownership is being determined or a value determined in whole or part with reference to, or derived in whole or in part from, the value of the securities for which Beneficial Ownership is being determined that increases in value as the value of the securities for which Beneficial Ownership is being determined increases or that provides to the holder an opportunity, directly or indirectly, to profit or share in any profit derived from any increase in the value of the securities for which Beneficial Ownership is being determined (excluding any interests, rights, options or other securities set forth in Rule 16a-1(c)(1)-(5) or (7) promulgated pursuant to the Exchange Act).

"Benefit Plans" shall have the meaning set forth in Section 3.2(g)(i).

"Business" shall mean the business of marketing, selling and providing wireless telecommunication services (including voice and data services), and all services ancillary thereto, in the United States.

"Business Day" shall mean any day other than a Saturday, a Sunday, a federal holiday or a day on which banks in the City of New York or in Frankfurt, Germany are authorized or obligated by Law to close.

"Business Marks" means the Trademarks owned by or licensed to Seller or its Subsidiaries (other than the Company and its Subsidiaries) that are used by the Company or any

of its Subsidiaries in connection with the Business, including the Trademarks set forth on the list delivered pursuant to Section 4.2(a)(iii).

"Cash Consideration" shall have the meaning set forth in Section 2.2(a).

"Cash Election" shall have the meaning set forth in Section 2.2(c).

"Chosen Courts" shall have the meaning set forth in Section 8.3.

"CMA" shall have the meaning set forth in Annex B.

"Closing" shall have the meaning set forth in Section 2.4.

"Closing Date" shall have the meaning set forth in Section 2.4.

"Closing Discharged Indebtedness" shall have the meaning set forth in Section 2.3(a).

"Closing Statement" shall have the meaning set forth in Section 2.3(b).

"Closing Statement Dispute Notice" shall have the meaning set forth in Section 2.3(c).

"Code" shall have the meaning set forth in Section 3.2(g)(ii).

"Communications Act" shall have the meaning set forth in Section 3.2(d)(i).

"Communications Licenses" shall have the meaning set forth in Section 3.2(h)(ii).

"Company" shall have the meaning set forth in the Recitals.

"Company Common Stock" shall have the meaning set forth in Section 3.2(b)(i).

"Company Contracts" shall mean agreements, leases, licenses, contracts, notes, mortgages, indentures, arrangements or other obligations binding upon the Company or any of its Subsidiaries.

"Company Material Adverse Effect" shall mean (i) an effect that would prevent the ability of Seller to consummate the Transaction or (ii) a material adverse effect on the financial condition, properties, assets, liabilities, business or results of operations of the Company and its Subsidiaries, taken as a whole, excluding any such effect to the extent resulting from (A) changes or conditions (including political and legal conditions) generally affecting (x) the U.S. or global economy or financial, debt, credit or securities markets or (y) the United States mobile wireless voice and data industry; (B) declared or undeclared acts of war, terrorism, outbreaks or escalations of hostilities, sabotage or civil strife; (C) weather-related conditions; (D) any change in GAAP or applicable Laws or regulatory or enforcement developments except to the extent such change disproportionately affects the Company and its Subsidiaries, taken as a

whole, relative to other companies in the U.S. mobile wireless voice and data industry; (E) the failure by the Company to meet any estimates of revenues or earnings for any period ending on or after the date hereof; provided, that the exception in this clause (E) shall not prevent or otherwise affect a determination that any change, effect, circumstance or development underlying such decline has resulted in or contributed to a Company Material Adverse Effect; or (F) matters that were primarily the result of the pendency, announcement, or public disclosure of this Agreement and the transactions contemplated hereby, but excluding any such effect arising through breach of this Agreement or misconduct by Seller or the Company or any of their Affiliates. Any determination of "Company Material Adverse Effect" shall exclude the effects of (i) the matters disclosed in the Seller Disclosure Letter or the Financial Statements and (ii) the effects of any restrictions, limitations or conditions that by the terms of this Agreement are taken into account in determining the existence of a Regulatory Material Adverse Condition.

"Company Shares" shall mean all of the issued and outstanding shares of capital stock or Equity Interests of the Company.

"Confidentiality Agreement" shall mean the confidentiality agreements, dated December 2010, between AT&T Services, Inc. and the Company.

"Control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Damages" shall have the meaning set forth in Section 6.2(a).

"De Minimis Amount" shall have the meaning set forth in Section 6.4(a)(ii).

"Direct Claim" shall have the meaning set forth in Section 6.3(c).

"Direct Claim Notice" shall have the meaning set forth in Section 6.3(c).

"Disputed Item" shall have the meaning set forth in Section 2.3(c).

"Divested Market Amount" shall mean an amount equal to the product of (i) the aggregate number of Subscribers for Market Divestitures as set forth with respect to each applicable Market on the Subscriber List and (ii) the amount set forth on Annex A.

"Divested Spectrum Amount" shall mean the sum of (i) all First Tier Divested Spectrum Amounts, plus (ii) all Second Tier Divested Spectrum Amounts.

"Divestiture Disputes" shall have the meaning set forth in Section 2.3(h)(i).

"Divestiture Adjustment Amount" shall mean an amount equal to (i) the Divestitures Amount minus (ii) $3,900,000,000.00; provided, that (x) if the result of (i) minus (ii) is a negative number, the Divestiture Adjustment Amount shall be deemed to be $0, and (y) in no event will the Divestiture Adjustment Amount exceed $3,900,000,000.00.