

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Applications of AT&T Inc. and)	
Deutsche Telekom AG)	WT Docket No. 11-65
)	
For Consent to Assign or Transfer Control of)	
Licenses and Authorizations)	

PETITION TO DENY OF RURAL CELLULAR ASSOCIATION

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Rural Cellular Association (“RCA”) hereby petitions to deny the above-captioned Applications. The proposal of AT&T Inc. (“AT&T”) to acquire T-Mobile USA, Inc. (“T-Mobile”) from Deutsche Telekom AG—and thereby combine two of only four nationwide wireless providers—would deal a mortal blow to competition and cause significant harm to consumers. The transaction would plainly disserve the public interest and therefore must be rejected under the applicable standard of review.

INTRODUCTION AND SUMMARY

The proposed transaction presents a stark choice: AT&T can either spend \$39 billion to eliminate a growing competitive threat (and the one with the lowest-priced service offerings among the nationwide carriers), or it can invest that capital in new broadband networks and improved service quality and deliver substantial public interest benefits in the process. The Commission’s response will have profound implications for competition, economic growth, innovation, and consumer welfare.

Absent the proposed acquisition, AT&T would be forced to respond to mounting consumer demand and competitive pressures by building out the considerable broadband

spectrum it has warehoused and by deploying new technologies to make more efficient use of the spectrum on which it currently relies. That future would entail significant infrastructure investment, job creation, and broadband deployment. And it would preserve retail and wholesale competition, as T-Mobile would remain a viable nationwide carrier that offers consumers the lowest-price plans among its peers over what T-Mobile claims to be the nation's largest 4G network.

In contrast, if AT&T were allowed to gobble up one of only three nationwide rivals, the merged entity would focus on consolidating existing networks in lieu of building out new facilities; it would shed unnecessary workers instead of creating new jobs; and it would move the national wireless marketplace from a state of already troubling concentration to outright duopoly, heralding an era of higher prices, diminished service quality, and reduced innovation. Following the transaction, AT&T and Verizon would *each* have more subscribers than all of the nation's other wireless carriers combined, and AT&T would enjoy monopoly power in the wholesale marketplace for roaming services as the only remaining nationwide GSM carrier.

RCA, an organization representing the interests of nearly 100 competitive wireless carriers, including many rural and regional carriers, opposes this unprecedented transaction because the severe harms it threatens would vastly outweigh any public interest benefits. RCA's members have a keen interest in ensuring a well-functioning wireless marketplace and preventing AT&T and Verizon from achieving market dominance and exploiting it to the detriment of competitors and consumers. Many of RCA's members also are customers of AT&T and T-Mobile in the wholesale market for GSM voice roaming, and their future viability will depend on their ability to obtain 3G GSM and 4G LTE roaming from those nationwide providers. The transaction would directly harm competition from RCA's members by, among

other things, concentrating vast amounts of scarce spectrum in AT&T's hands, creating a monopoly in 3G GSM nationwide roaming and significantly impairing 4G roaming, further impeding competitors' ability to attain cutting-edge devices, tightening the backhaul bottleneck, and driving up the cost of capital for building out high-speed wireless networks in rural areas.

RCA does not believe that the transaction can be salvaged through conditions. AT&T already occupies a dominant position in an increasingly duopolistic wireless marketplace, and allowing it to cement that dominance by getting rid of its last remaining national GSM rival would be disastrous for competition and consumers. Indeed, if the Commission's procompetitive policies are to retain any vitality, this transaction cannot be approved.

DISCUSSION

I. AT&T'S ACQUISITION OF T-MOBILE WOULD CAUSE DEVASTATING COMPETITIVE HARMS

The proposed transaction must be understood against the backdrop of two major competitive concerns that already afflict the wireless industry today. First, even apart from AT&T's proposal to acquire the nation's fourth largest carrier, the industry already was marching steadily towards a duopoly, with AT&T and Verizon together claiming the vast majority of subscribers. Second, AT&T for years has been aggregating significant amounts of scarce spectrum that will limit future competition. AT&T's dominant position has already enabled it to disadvantage competitors and harm competition, and as discussed below, the proposed transaction would only strengthen AT&T's ability to undermine the public interest—for instance, by demanding unreasonable terms for voice and data roaming and by blocking or impeding the availability of devices to smaller carriers. The prospect of vertically integrating T-Mobile's wireless business with AT&T's wireline business presents further concerns, as AT&T's special access backhaul services are critical inputs for competitive wireless carriers. And as the

transaction would further diminish competition from rural and regional carriers, those carriers would find it even more difficult to attract the capital they need to build out mobile broadband networks in unserved and underserved areas. In short, approving this massive acquisition would mean that consumers lose, competitors lose, and only AT&T wins.

A. The Wireless Industry Has Become Highly Concentrated and Is Teetering on the Brink of True Duopoly.

AT&T's proposal to acquire T-Mobile comes at a time when the level of concentration in the mobile wireless industry has never been higher. The Commission acknowledged the precarious state of competition in its latest wireless competition report, where, for the first time, it was unable to certify that the industry is characterized by effective competition.¹ The report attributed the decline in competition to "continued industry consolidation . . . over the past five years,"² with two dominant carriers, AT&T and Verizon, holding "60 percent of both subscribers and revenue" as of 2009 "and continu[ing] to gain share."³ The Commission also pointed to a steady increase in the Herfindhal-Hirschman Index (HHI), a common indicator of industry consolidation. According to the Commission's report, the mobile wireless industry's HHI value in 2008 was a staggering 2,848, which reflects a sharp increase of "32 percent since 2003 and 6.5 percent in the most recent year for which data is available."⁴ The problem of consolidation is even more pronounced in the rural areas that many of RCA's members serve, with only 30 percent of the rural population served by at least three providers capable of offering mobile

¹ See *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd 11407 ¶ 3 (2010) ("*Fourteenth Wireless Competition Report*").

² *Id.* ¶ 4.

³ *Id.*

⁴ *Id.*

broadband services.⁵ These figures paint a gloomy portrait of an industry marching steadily towards a true duopoly—even before AT&T announced its audacious plan to swallow one of its last remaining nationwide competitors.

In fact, the Commission has recently grown so concerned about the consolidation of the mobile wireless sector—and in particular with the market power already held by AT&T and Verizon—that it has imposed conditions on *third parties* restricting their ability to lease any more spectrum to AT&T and Verizon. Specifically, in its order approving the sale of SkyTerra Communications to Harbinger Capital Partners Funds, the Commission required SkyTerra (now LightSquared) to “obtain Commission approval” before “mak[ing] spectrum available to either of the two largest terrestrial providers of CMRS and broadband services”—that is, AT&T and Verizon.⁶ The Commission also required SkyTerra “to obtain Commission approval before traffic to these largest terrestrial providers accounts for more than 25 percent of SkyTerra’s total traffic on its terrestrial network in any Economic Area.”⁷ These conditions reflect a well-founded concern that any additional competitive advantage obtained by AT&T (or Verizon) would tip the industry towards duopoly, and significantly harm consumers as a result.

The Government Accountability Office (“GAO”) recently joined the Commission in recognizing the dangerously high level of consolidation in the wireless industry. The GAO’s report found that “the primary change” in the wireless industry over the last decade has been “the consolidation of wireless carriers,” and showed that in a span of only three years, from 2006 to

⁵ *Id.*

⁶ *SkyTerra Communications, Inc., Transferor and Harbinger Capital Partners Funds, Transferee, Applications for Consent to Transfer of Control of SkyTerra Subsidiary, LLC, Memorandum Opinion and Order and Declaratory Ruling, 25 FCC Rcd 3059 ¶ 72 (IB 2010).*

⁷ *Id.*

2009, AT&T and Verizon increased their subscriber market share by nearly 20 percent.”⁸ The GAO report concluded that progressive consolidation since 2000 “has made it more difficult for small and regional carriers to be competitive.”⁹ In particular, the GAO report found that, “[d]ue in part to the consolidation of carriers and spectrum, the top national carriers have increasingly dominated the acquisition of subscribers”—a dynamic that only fuels the loss of competition from small and regional carriers.¹⁰ The report also noted the difficulties that small and regional carriers face in undertaking network investments and obtaining handsets in a world where AT&T and Verizon dominate the marketplace, and explained that such difficulties only “reinforc[e]” the major national carriers’ “competitive advantage” over their small and regional counterparts.¹¹ RCA’s members already are struggling to overcome these challenges, and allowing AT&T to become an even more dominant provider would put fair competition out of reach.

Economists have likewise concluded that AT&T, along with Verizon, has “growing dominance” in the mobile wireless industry.¹² Professor Peter Cramton has noted that “the competitive landscape [in the wireless industry] has continued to deteriorate in the last several years,” as AT&T and Verizon “have increased market share steadily, while other operators struggle to maintain share.”¹³ In addition to noting the high subscriber shares of AT&T and

⁸ Government Accountability Office, *Telecommunications: Enhanced Data Collection Could Help FCC Better Competition in the Wireless Industry*, Report to Congress, GAO-10-779 at 10, 13 (July 2010) (“GAO 2010 Wireless Report”).

⁹ *Id.* at 17.

¹⁰ *Id.*

¹¹ *Id.* at 19-23.

¹² See Peter Cramton, *700 MHz Device Flexibility Promotes Competition* at 3 (Aug. 9, 2010) (“Cramton Report”), attached to *Ex Parte Letter from Rebecca Murphy Thompson, General Counsel for Rural Cellular Association, to Marlene H. Dortch, Secretary, FCC*, filed in RM-11592 (Aug. 10, 2010).

¹³ *Id.*

Verizon, Dr. Cramton estimated that the “Big Two” enjoy 89 percent of industry EBITDA (earnings before interest, taxes, depreciation, and amortization)—a staggering statistic that is particularly “troubling in an infrastructure intensive business, since as the industry matures new investment must come from these earnings.”¹⁴

Not surprisingly, this consolidation has led to higher prices than would otherwise have prevailed in a more competitive marketplace. Notably, the chart in AT&T’s application on industry pricing trends presents a grossly distorted view of the relevant data. Contrary to AT&T’s suggestion that the trend toward consolidation in the last decade has led to lower prices, the fact of the matter is that a once-rapid decline in prices has leveled off, even as prices have continued to fall sharply in other comparable industries.¹⁵ Of course, as any basic economics textbook would predict, the significant diminution in competition occasioned by AT&T’s and Verizon’s serial acquisitions has allowed those dominant players to hold the line on pricing. Moreover, the modest price decreases that have occurred in the nationwide marketplace are primarily attributable to the low-priced offerings from T-Mobile and Sprint, and AT&T’s proposed transaction thus would all but eliminate what remains of price competition among the major providers.

Given the widespread concern about industry consolidation *before* the proposed transaction, it should come as no surprise that many economists anticipate a death blow to competition should the Commission approve the deal. AT&T and Verizon’s share of total U.S.

¹⁴ *Id.* at 5.

¹⁵ See generally No Takeover Project, ‘Falling Prices’ Rebuttal: How AT&T Is Manipulating the Data, available at <http://www.notakeover.org/sites/default/files/ATT-Falling-Prices-Rebuttal.pdf> (demonstrating that, over the past decade, an increasingly concentrated wireless industry has not afforded consumers the same steady price drops seen in other comparable industries, such as personal computers, computer software and accessories, and information technology).

wireless subscriptions “will be close to 80% if AT&T is allowed to take over T-Mobile,” with “only one remaining company with double digit shares.”¹⁶ Indeed, AT&T and Verizon would *each* have more subscribers than all of the nation’s other wireless carriers combined if AT&T were allowed to acquire T-Mobile.¹⁷ Translating these market share figures into HHI values further underscores the remarkable degree of concentration that would result from the transaction. Stanford economists Roger Noll and Gregory Rosston have estimated that AT&T’s proposed acquisition of T-Mobile would push the HHI value for the nationwide mobile wireless market to roughly 3,100,¹⁸ while other post-transaction estimates have ranged from “over 3,000 HHI”¹⁹ to 3,280 HHI.²⁰ All of these estimates are well above the Commission’s trigger for exacting review,²¹ and under the DOJ’s guidelines, such HHI levels establish a presumption that

¹⁶ See Letter of Derek Turner, Research Director, Free Press, to Sens. Herb Kohl and Mike Lee, May 10, 2011, at 6-7, *available at* http://www.freepress.net/files/Free_Press_May_2011_Antitrust_Letter_ATT_TMobile.pdf (“*Turner Report*”).

¹⁷ *Id.* at 6 (using data from the FCC’s competition reports and from SNL Kagan studies to show that, post-transaction, AT&T and Verizon would have 43 percent and 34 percent market shares, respectively, both of which dwarf the 23 percent aggregate share of Sprint and all other carriers combined).

¹⁸ Roger G. Noll and Gregory L. Rosston, *Competitive Implications of the Proposed Acquisition of T-Mobile by AT&T Mobility*, SIEPR Policy Brief, Apr. 2011, at 2, *available at* siepr.stanford.edu/system/files/shared/documents/pb_04_2011.pdf (“*Noll & Rosston Report*”).

¹⁹ American Antitrust Institute, *The Acquisition of T-Mobile by AT&T Mobility: Merger Review Issues and Questions*, Mar. 2011, at 2, *available at* http://www.antitrustinstitute.org/sites/default/files/AAI_Brief%20on%20ATT-T-Mobile.pdf (“*AAI Report*”).

²⁰ Economics and Technology Inc., *And Then There Were Three: AT&T Swallows T-Mobile*, Mar. 2011, at 1, *available at* <http://econtech.com/newsletter/ETIVIEWSandNewsMarch2011.pdf> (“*ETI Report*”).

²¹ See *Fourteenth Wireless Competition Report* ¶ 52 (explaining that the Commission applies an HHI “screen” to identify service areas where “the post-transaction HHI would be both greater than 2800 and would increase by at least 100,” and then subjects those service areas to a “further case-by-case competitive analysis”).

the combination will be anticompetitive.²² Indeed, Noll and Rosston appropriately concluded that “the proposed acquisition appears to run seriously afoul of the merger policy of the antitrust enforcement agencies.”²³

AT&T cannot escape these damning indicators of industry consolidation by trying to cast the market for mobile wireless services as local in nature.²⁴ In fact, AT&T itself made the *opposite* argument in its application to take over Centennial Communications in 2008, telling the Commission that “the evidence shows that the predominant forces driving competition among wireless carriers operate at the national level.”²⁵ AT&T went on to explain that it “establishes its rate plans and pricing on a national basis, without reference to market structure at the CMA level,” and that a regional carrier’s “pricing is an *inconsequential factor* in AT&T’s competitive decision making.”²⁶ AT&T has also publicly claimed that it views pre-paid and post-paid services as separate and distinct offerings that do not compete; its CFO Richard Lindner told investors on an earnings call in 2009 that AT&T would not have offered its own pre-paid option,

²² See U.S. DEP’T OF JUSTICE AND FED. TRADE COMM’N, HORIZONTAL MERGER GUIDELINES, Sec. 5.3 (2010) (explaining that the DOJ rates markets with 2500 HHI and higher as “highly concentrated,” and “presume[s]” that “[m]ergers resulting in highly concentrated markets that involve an increase . . . of more than 200 points will . . . be likely to enhance market power”).

²³ *Noll & Rosston Report* at 1.

²⁴ See AT&T/T-Mobile Public Interest Statement at 72-75.

²⁵ AT&T/Centennial Public Interest Statement at 28, *Applications of AT&T Inc. and Centennial Communications Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, WT Docket No. 08-246 (filed Nov. 21, 2008).

²⁶ *Id.* at 28-29 (emphasis added).

the GoPhone, if it had believed the pre-paid service “would impact or cannibalize our postpaid base.”²⁷

It is simply not credible for AT&T to change its tune now that it is seeking to combine two of the four nationwide carriers, asserting that it suddenly faces robust, price-disciplining competition from rural, regional, and pre-paid wireless providers. To the contrary, as explained above, the increased consolidation in recent years has *weakened* the competitive position of rural and regional providers vis-à-vis AT&T and Verizon, which explains why the Commission was unable to characterize the wireless marketplace as subject to effective competition for the first time in 2010. AT&T meant what it said when it characterized competition from rural and regional providers as “inconsequential” at the end of 2008, and such competition would be further imperiled if this transaction were allowed to proceed.

The experience of RCA’s members further confirms that the market for mobile wireless services is national, not regional or local. At a Senate hearing earlier this month, Hu Meena, President and CEO of Cellular South and Chairman of RCA, testified that “Cellular South and other competitive carriers must be able to offer customers nationwide use of their devices,” and categorically stated that “[t]here is no market for regional and local calling plans.”²⁸ Other RCA members have faced similarly strong consumer demand for nationwide coverage and have found it difficult to attract enterprise customers, which typically insist on the true national networks

²⁷ See AT&T Q2 2009 Earnings Call Transcript, Question-and-Answer Session, Jul. 23, 2009, *available at* <http://seekingalpha.com/article/150935-at-amp-t-q2-2009-earnings-call-transcript?part=qanda>.

²⁸ Testimony of Victor H. “Hu” Meena, President & Chief Executive Officer, Cellular South, Inc., before the Senate Committee on the Judiciary, Subcommittee on Antitrust, Competition Policy and Consumer Rights, regarding “The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?”, May, 11, 2011, at 6, *available at* <http://judiciary.senate.gov/pdf/11-5-11%20Meena%20Testimony.pdf>. See also *id.*

that only the “Big Four” (AT&T, Verizon, T-Mobile, and Sprint) can provide. That reality explains why roaming rights and handset interoperability have been top priorities for RCA members and remain make-or-break issues; without such critical safeguards, smaller providers have no hope of offering the nationwide coverage required to compete with the industry behemoths. In short, AT&T cannot hide from concerns over nationwide industry consolidation by pretending that today’s market for mobile wireless services is local or regional; based on AT&T’s consistent arguments in prior proceedings, the locus of wireless competition is plainly national.²⁹

B. The Transaction Would Concentrate Vast Amounts of Scarce Spectrum in the Hands of AT&T.

As the wireless industry has grown ever more concentrated, AT&T has also amassed a vast war chest of spectrum—“an increasingly pivotal input” for wireless providers.³⁰ In the past decade, AT&T has aggregated large portions of the cellular/PCS bands through its acquisitions of Telecorp (2002), Highland Cellular and BellSouth (2006), Dobson Communications (2007), Edge Wireless and McBride Spectrum Partners I (2008), and Centennial Communications (2009), as well as former Alltel spectrum from Verizon (2010).³¹ AT&T also purchased 48

(explaining that “it is nationwide scale that determines the ability to acquire and the cost of wireless devices and network equipment”).

²⁹ See also *Turner Report* at 5 (“While the regional carriers had more consumer relevance a decade ago, it is clear that today’s market is a national market.”).

³⁰ *Fourteenth Wireless Competition Report* ¶ 4.

³¹ *GAO 2010 Wireless Report* at 12, Figure 2; *Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses*, WT Docket No. 09-104 (June 22, 2010).

AWS-1 licenses at auction in 2006 (Auction No. 66) for approximately \$1.3 billion—licenses that cover nearly 200 million POPs.³²

AT&T's appetite for spectrum has been particularly ravenous in the 700 MHz band, where it purchased spectrum from Aloha in 2007 covering 72 of the 100 largest markets in the U.S., and where, in 2008, it bid \$6.6 billion to acquire an additional 227 B Block licenses during the Commission's 700 MHz auction (Auction No. 73).³³ AT&T and Verizon collectively acquired 70 percent of the available 700 MHz spectrum in that auction.³⁴ AT&T then continued its run on beachfront 700 MHz spectrum earlier this year when it announced a deal to acquire Qualcomm's 700 MHz licenses, "including six D block licenses, which together provide a nationwide footprint, and five E block licenses in the Boston, Los Angeles, New York, Philadelphia, and San Francisco Economic Areas."³⁵ Several parties, including RCA, have filed petitions to deny the transfer of Qualcomm's 700 MHz licenses to AT&T,³⁶ and that proceeding is still pending.³⁷ And just in the past two weeks, the Commission has opened three proceedings

³² See Top 10 Bidders, FCC Advanced Wireless Services Auction No. 66, available at http://wireless.fcc.gov/auctions/66/charts/66press_3.pdf.

³³ See Stifel Nicolaus, *Special Focus: The Wireless World After 700 MHz* (March 28, 2008).

³⁴ *Id.* at 2-3.

³⁵ AT&T and Qualcomm Public Interest Statement at 2, *Applications of AT&T Mobility Spectrum LLC and Qualcomm Inc. for Consent to the Assignment of Licenses and Authorizations*, WT Docket No. 11-18 (filed Jan. 13, 2011).

³⁶ See Petition to Deny of Rural Cellular Association, *Applications of AT&T Mobility Spectrum LLC and Qualcomm Inc. for Consent to the Assignment of Licenses and Authorizations*, WT Docket No. 11-18 (filed Mar. 11, 2011).

³⁷ RCA and five other petitioners in the AT&T/Qualcomm proceeding have filed a Joint Motion to Consolidate that proceeding with the Commission's review of the AT&T/T-Mobile transaction. See Joint Motion to Consolidate, *Applications of AT&T Mobility Spectrum LLC and Qualcomm Inc. for Consent to the Assignment of Licenses and Authorizations*, WT Docket No. 11-18 (filed Apr. 27, 2011).

on new applications from AT&T to acquire a total of 27 Lower 700 MHz B and C Block licenses (along with 15 AWS licenses) from Knology, Redwood Wireless, and Windstream.³⁸

In the wake of this unprecedented spectrum aggregation, AT&T claims in the instant application that it somehow “faces network spectrum and capacity constraints more severe than those of any other wireless provider.”³⁹ But AT&T’s spectrum stockpile was already the largest of any of the four major national carriers *before* it proposed to acquire T-Mobile. A recent study by J.P. Morgan estimated that AT&T currently holds 100 MHz on average in the top 100 markets nationwide, without counting T-Mobile’s spectrum licenses towards AT&T’s total.⁴⁰ AT&T’s next closest competitor, Verizon, holds “just over 90 MHz”—10 percent less spectrum on average than AT&T.⁴¹ AT&T admits in its own application that Verizon, for its part, is “‘extremely confident’ it has the ‘spectrum position’ it needs” to roll out a nationwide 4G LTE network.⁴² And J.P. Morgan also found that “AT&T and Verizon also have the highest-quality

³⁸ See Public Notice, *AT&T Mobility Spectrum LLC and Knology of Kansas, Inc. Seek FCC Consent to the Assignment of One Lower 700 MHz Band B Block License*, DA 11-922, ULS File No. 0004635440 (rel. May 19, 2011); Public Notice, *Shareholders of Redwood 700, Inc. and AT&T Inc. Seek FCC Consent to the Transfer of Control of Lower 700 MHz Band B and C Block Licenses Held by Redwood Wireless Corp.*, DA 11-943, ULS File No. 0004643747 (rel. May 24, 2011); Public Notice, *AT&T Mobility LLC and Windstream Iowa Communications, Inc. and Windstream Lakedale, Inc. Seek FCC Consent to the Assignment of Lower 700 MHz Band B Block and Advanced Wireless Services Licenses.*, DA 11-955, ULS File Nos. 0004681771 and 0004681773 (rel. May 26, 2011).

³⁹ AT&T/T-Mobile Public Interest Statement at 1.

⁴⁰ J.P. Morgan, *Wireless Services: Overview of Carrier Spectrum Holdings*, Mar. 30, 2011, at 1, available at https://mm.jpmorgan.com/stp/t/c.do?i=62A4E-B32&u=a_p*d_569842.pdf*h_-ifi22f3 (“*J.P. Morgan Spectrum Study*”).

⁴¹ *Id.*; see also *id.* (estimating that “Sprint and T-Mobile USA each have ~50 MHz”).

⁴² AT&T/T-Mobile Public Interest Statement at 79.

spectrum . . . with large holdings below 1 GHz.”⁴³ Thus, as discussed further below, AT&T’s claim that it is facing debilitating spectrum constraints rings hollow.

By adding T-Mobile’s significant spectrum holdings to AT&T’s, the proposed transaction would only cement AT&T’s dominant spectrum position at the expense of the rest of the industry. According to J.P. Morgan, AT&T and T-Mobile would own, on a combined basis, “approximately 150 MHz on average, with the top 100 markets ranging from 85 to 180 MHz.”⁴⁴ Such a massive aggregation of an essential input like spectrum plainly has harmful effects on competition.⁴⁵ Spectrum that AT&T amasses for itself is spectrum that smaller rivals cannot use to compete. As AT&T’s spectrum portfolio swells while competitive carriers’ holdings remain constant at levels already far behind AT&T, these carriers would become less effective competitors relative to AT&T. Importantly, a merged AT&T/T-Mobile would find it easier to raise its prices by a small but significant and non-transitory amount, as RCA’s members would face significant spectrum limitations in their efforts to expand service offerings to recruit AT&T customers. And as smaller carriers become less effective competitors, they become less able to retain subscribers, less able to maintain a consistent revenue stream, and less able to attract sufficient capital to invest in infrastructure, handsets, and service quality.

C. The Transaction Would Harm Competition for Wholesale Distribution of Wireless Data Transmission Services.

AT&T’s proposed acquisition of T-Mobile would also make it significantly more difficult for competitive carriers to obtain voice and data roaming rights on national networks at reasonable rates. The Commission has recognized that voice and data roaming “can be critical to

⁴³ *J.P. Morgan Spectrum Study* at 1.

⁴⁴ *Id.* at 1. The combined spectrum of AT&T and T-Mobile would also exceed Clearwire’s spectrum holdings, which average 140 MHz across the country. *See id.* at 2.

providers remaining competitive in the mobile services marketplace,” and that “the availability of roaming capability is and will continue to be a critical component to enable consumers to have a competitive choice of facilities-based providers offering nationwide access to commercial mobile data services.”⁴⁶ Roaming is “particularly important for consumers in rural areas—where mobile data services may solely be available from small rural providers.”⁴⁷ Indeed, the everyday experience of RCA’s members confirms that small and regional carriers obtain roaming services from nationwide carriers in order to remain competitive; they simply cannot cobble together the nationwide coverage that their customers demand absent a nationwide roaming partner.

Notwithstanding that competitive carriers require roaming to survive—indeed, likely because of that reality—AT&T has consistently rebuffed attempts by competitive carriers to negotiate roaming arrangements on fair and reasonable terms. The Commission acknowledged in its recent *Data Roaming Order* that “AT&T has largely refused to negotiate domestic 3G roaming arrangements,” and noted that AT&T did not enter into a *single* 3G data roaming agreement until March 2011.⁴⁸ Indeed, the Commission’s voice and data roaming docket is full of examples of AT&T’s flat refusal to enter into 3G roaming arrangements with competitive carriers.⁴⁹ Notably, T-Mobile (before the transaction) recognized that “AT&T, the dominant

⁴⁵ See *Cramton Report* at 3-6.

⁴⁶ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Second Report and Order, FCC 11-52, ¶ 15 (rel. Apr. 7, 2011) (“*Data Roaming Order*”).

⁴⁷ *Id.*

⁴⁸ *Id.* ¶ 25.

⁴⁹ See, e.g., Ex Parte Letter from Thomas J. Sugrue, T-Mobile to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed Mar. 10, 2011); Ex Parte Letter from Mosaic Telecom to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed Jan. 14, 2011); Ex Parte Letter from Rebecca Murphy Thompson, RCA General Counsel,

provider of roaming services for the GSM technology platform, now has the incentive and the ability to resist entering into reasonable data roaming agreements.”⁵⁰ T-Mobile called its inability to secure a roaming agreement from AT&T “a classic case of market failure” and proof that “roaming is increasingly becoming a monopoly service provided on a unilateral basis.”⁵¹

The proposed transaction would greatly exacerbate the difficulties faced by competitive carriers seeking roaming rights on a nationwide network, converting a situation that T-Mobile itself found dire into a genuine crisis for smaller providers. Most importantly, by eliminating a potential nationwide roaming partner in T-Mobile, and by combining the only two nationwide GSM networks, the transaction would create true monopoly in nationwide 3G GSM roaming.⁵² AT&T would thus be in a position to charge monopoly rates to the 34 RCA members offering wireless services over GSM networks, all of whom need nationwide roaming rights to remain competitive. In many cases, a strengthened AT&T would have the incentive and ability to withhold roaming arrangements altogether as a means to restrict competition. Indeed, if T-Mobile could not secure a roaming agreement from AT&T before the transaction, it is clear that RCA’s members would face nearly insurmountable obstacles to securing agreements with a combined AT&T/T-Mobile.

and Caressa D. Bennet, RTG General Counsel, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed Nov. 12, 2010).

⁵⁰ T-Mobile USA, Inc., Notice of Ex Parte, WT Docket No. 05-265, at 4 (filed March 10, 2011) (emphasis added).

⁵¹ *Id.*

⁵² The market for GSM roaming services has been identified as a separate wholesale market for antitrust purposes. See David S. Sibley, *The Existence of Regional, Technology-Specific Wholesale Antitrust Markets for Roaming Services*, at 4 (Jan. 26, 2006), attached as Attachment A to Reply Comments of Leap Wireless International, Inc., WT Docket No. 05-265 (filed Jan. 26, 2006) (“A proper application of the Merger Guidelines framework for market definition in the presence of price discrimination implies that there

Nor would the transition to 4G networks ameliorate these competitive harms, as the transaction would also remove a major potential source of 4G roaming in T-Mobile. The Commission has found that it is “unlikely” that AT&T or Verizon would be willing to offer roaming arrangements for 4G LTE networks “any time in the near future.”⁵³ That will certainly remain the case if AT&T is allowed to increase its market power by acquiring T-Mobile.

The Commission’s recently adopted rules on voice and data roaming, while a welcome and much-needed step, would not be nearly sufficient to ensure that a combined AT&T/T-Mobile would negotiate reasonable roaming deals in good faith.⁵⁴ The voice and data roaming rules require only that a host carrier like AT&T offer roaming services on “commercially reasonable” terms compared to their competitors.⁵⁵ In a truly competitive market, the benchmark rate for assessing commercial reasonableness would be the product of vigorous competition among several firms, and the standard would function as an effective bulwark against rising rates. But in a duopolistic market, where firms facing less competitive pressure can each raise rates effectively, the prevailing “commercially reasonable” rates would be substantially higher—and, most significantly, *not* the product of robust competition. Moreover, the rules would not subject AT&T to the kinds of “dominant carrier” restrictions in roaming deals—for instance,

exist relevant technology-specific regional wholesale antitrust markets for voice roaming services sold to regional carriers as a group.”).

⁵³ *Data Roaming Order* ¶ 27.

⁵⁴ Notably, Verizon recently appealed the data roaming rules in the D.C. Circuit. While RCA is optimistic that the court will reject Verizon’s challenge, the pendency of the appeal obviously creates a risk that the minimal existing safeguards could be vacated, even apart from their inability to constrain a combined AT&T-T-Mobile.

⁵⁵ *See* 47 C.F.R. § 20.12(e) (“A facilities-based provider of commercial mobile data services is required to offer roaming arrangements to other such providers on commercially reasonable terms and conditions.”); *id.* § 20.12(d) (requiring host carriers to provide automatic voice roaming “on reasonable and not unreasonably discriminatory terms”).

cost-based rates and improved dispute resolution—that would be warranted in a duopolistic market. As a result, the rules would have little effect on AT&T if it were to become the sole roaming partner for GSM carriers and if one of the few potential 4G roaming partners were to exit the already-consolidated marketplace.

D. The Transaction Would Further Stifle Efforts by Rural and Regional Carriers to Obtain Competitive and Interoperable Devices.

The transaction would also strengthen AT&T’s position as a dominant purchaser of handsets from manufacturers, and enhance AT&T’s ability to pressure handset manufacturers for exclusive rights to handsets or, just as insidiously, to design handsets to prevent interoperability on other networks.

The Commission has recognized that, although “handsets and devices are becoming increasingly central to the dynamics of the overall wireless market,”⁵⁶ many of the most popular handsets “are subject to exclusivity arrangements that restrict their distribution to a single service provider.”⁵⁷ AT&T, for its part, has already been wildly successful at securing exclusivity rights in popular handsets, most notably the iPhone. These exclusivity agreements put smaller carriers at a distinct disadvantage in the marketplace, given that a carrier’s “portfolio of handsets [is] a significant non-price factor affecting its ability to compete for customers.”⁵⁸ RCA’s members have experienced first-hand the difficulties of remaining competitive with limited handset portfolios. As RCA explained in its petition regarding handset exclusivity, “the ability of RCA member carriers to compete effectively with the products and services offered by the largest

⁵⁶ *Fourteenth Wireless Competition Report* ¶ 299.

⁵⁷ *Id.* ¶ 66.

⁵⁸ *Id.*; see also *id.* ¶ 299 (“[H]andsets play[] an increasingly important role for consumers as a basis for choosing providers.”)

carriers is significantly and unfairly diminished due to their limited handset selection.”⁵⁹ In fact, these competitive concerns led the Department of Justice to open an investigation into handset exclusivity agreements in 2009, with “[d]eals like AT&T’s pact with Apple for exclusive rights to United States iPhone sales” reportedly “at the center” of the inquiry.⁶⁰

If the proposed transaction were approved, AT&T’s already-immense buying power—along with its ability to pressure handset manufacturers to enter into exclusivity agreements—would only increase. RCA’s members and other competitive carriers would find it even more difficult to gain access to the most popular handsets, and AT&T would be able to further solidify its market dominance. The anticompetitive effects would be most pronounced in the market for GSM wireless services, where AT&T—the only nationwide GSM provider post-transaction—would be in a position to exert true monopsony power when purchasing GSM handsets and foreclose smaller GSM carriers from being able to offer these handsets.

Even in instances where AT&T does not have an express exclusivity agreement, AT&T’s post-transaction buying power would enable it to purchase the entire production run of many other popular handsets, again forcing rural and regional carriers to bring knives to a gunfight. In addition, AT&T’s ability to corner the device market may also lead to shortages for components—from touchscreens to chips—that would further undermine the ability of other carriers to offer high-quality handsets.

The proposed transaction also would strengthen AT&T’s ability to exert its monopsony power to prevent handsets from being interoperable on competitive carriers’ networks. Device

⁵⁹ Petition for Rulemaking at 3-4, *Rural Cellular Association Petition for Rulemaking Regarding Exclusivity Between Commercial Wireless Carriers and Handset Manufacturers*, ET Docket RM-11497 (filed May 20, 2008).

interoperability is a prerequisite to a well-functioning wireless marketplace; it encourages innovation, gives consumers more choices, and reduces costs to end users. Interoperability also enables smaller competitors to increase economies of scale and provide stronger competition to major carriers like AT&T. By contrast, the more leverage AT&T brings to bear to make handsets *non*-interoperable on a large scale, the harder it will be for rural and regional carriers to offer devices that can roam seamlessly and to compete against the national carriers. A lack of interoperability also compounds device-availability concerns, as manufacturers will resist producing devices that can operate only on smaller providers' networks, and not on AT&T's. A combined AT&T/T-Mobile would have even more leverage to ensure that device manufacturers continue to make non-interoperable handsets.

In addition, the transaction would raise the risk that AT&T would manipulate standards-setting bodies to adopt carrier-specific standards that make interoperability more difficult. A petition for rulemaking filed in 2009 warned the Commission that AT&T and Verizon have already used their considerable influence to cause the LTE Standards Group, 3GPP, to issue equipment specifications that are tied to band classes where the two carriers' spectrum holdings predominate.⁶¹ With these specifications in hand, AT&T and Verizon then issued requests for production to manufacturers for devices that operate *only* in those band classes, while “consumers and smaller carriers that acquired Lower Band 700 MHz Block A spectrum are left

⁶⁰ See Andrew Ross Sorkin, *Justice Department Said to Weigh Telecom Inquiry*, N.Y. TIMES, Jul. 7, 2009, available at <http://dealbook.nytimes.com/2009/07/07/justice-department-eyeing-telecom-probe-report-says/>.

⁶¹ See Petition for Rulemaking at ii-iii, *Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to Be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks*, RM-11592 (filed Sep. 29, 2009).

without viable and widely useful equipment options.”⁶² This transaction would give AT&T substantially greater leverage to generate standards that enable it to exclude competition.

In short, AT&T cannot claim that it has no duty to support devices that work on other carriers’ networks while simultaneously seeking approval of two major transactions—this transaction and the pending deal with Qualcomm—that facilitate its ability to manipulate standards-setting organizations and enter into restrictive agreements with device manufacturers. In essence, AT&T is saying “every carrier for itself, so long as AT&T gets to be the dominant carrier.” The Commission should not countenance such efforts.

E. The Transaction Would Further Entrench AT&T’s Market Power with Respect to Backhaul Services.

As the two largest *wireline* telecommunications providers, AT&T and Verizon also own and operate extensive backhaul networks, which link mobile providers’ cell sites to the public switched telephone network. Backhaul services are a key input for wireless services. RCA’s members, like other wireless providers, “must have access to sufficient backhaul, in terms of capacity and speed, to avoid creating a communications bottleneck.”⁶³ And as the Commission has acknowledged, “[w]ireless providers that are unaffiliated with a wireline provider often purchase special access services from the incumbent local exchange carriers against whose wireless affiliates they compete.”⁶⁴ Thus, smaller wireless providers are, by necessity, completely reliant on the backhaul facilities of much larger providers, and this reliance would furnish a clear opportunity for a strengthened post-merger AT&T to undermine its competitors.

⁶² *Id.* at ii.

⁶³ *See Fourteenth Wireless Competition Report* ¶ 293.

⁶⁴ *Id.* ¶ 295.

RCA's members are already at a distinct competitive disadvantage when purchasing backhaul services from AT&T, which has historically been willing to discriminate in favor of its own network and affiliated providers when selling backhaul capacity. In fact, industry observers have pointed out that, even before the transaction was announced, AT&T was in a position to price its backhaul services "at many multiples of cost" and to "typically generate triple-digit rates of return."⁶⁵ T-Mobile itself frequently expressed serious concerns about AT&T's abuse of its dominant position as a provider of special access services and the adverse effects on independent wireless carriers.⁶⁶ In fact, T-Mobile appropriately observed that "[i]ncreased oversight is particularly important for those suppliers of special access, including AT&T and Verizon, that compete with T-Mobile and other independent wireless carriers through their wireless affiliates. Because of their dominance in the special access marketplace, these ILECs have both the ability and the incentive to discriminate against competitors in favor of their wireless affiliates."⁶⁷ The acquisition of T-Mobile—and the resulting vertical integration of T-Mobile's wireless services and AT&T's wireline services—would only tighten AT&T's grip on the backhaul "bottleneck." In a world where AT&T discriminates in favor of T-Mobile's traffic *in addition to* its own traffic and affiliated traffic, and charges supracompetitive rates to unaffiliated carriers and new entrants

⁶⁵ *ETI Report* at 1.

⁶⁶ *See, e.g.*, Comments of T-Mobile USA, WC Docket No. 05-25, at 5 (filed Aug. 8, 2007) ("Industry consolidation and ever-decreasing regulatory safeguards make the need for effective special access regulation especially pressing.").

⁶⁷ *Id.*; *see also* Reply Comments of T-Mobile USA, WC Docket No. 05-65, at 7-11 (filed May 10, 2005) (arguing that AT&T's merger with SBC in 2005 would be a "merger to monopoly" for backhaul services in many areas and that "[t]he Commission should not approve the SBC-AT&T merger without either rigorously regulating the rates for these special access services or treating them as UNEs when provided to carriers, such as T-Mobile, that are attempting to compete with SBC and its affiliates").

for whatever backhaul capacity is left, RCA members would find it increasingly difficult to provide competitive mobile wireless services.

F. The Transaction Would Undermine Efforts by Competitive Carriers to Access Capital and Invest in Infrastructure.

By enhancing AT&T's market power and weakening competition and competitors in the wireless industry, the proposed transaction would also impair smaller carriers' access to capital. As RCA's members become less able to obtain sufficient spectrum, secure voice and data roaming rights, offer competitive and interoperable handsets, and access backhaul services, they would become less able to retain subscribers and post healthy revenues. These financial red-flags would translate into lower investor confidence in RCA's members and higher capital costs.

The Commission has already acknowledged this fact, noting in its *Data Roaming Order* that "roaming arrangements help encourage investment by ensuring that providers wanting to invest in their networks can offer subscribers a competitive level of mobile network coverage," whereas "the lack of roaming for commercial mobile wireless services may deter providers from investing in broadband at the exact time such investment is sorely needed."⁶⁸ In making this finding, the Commission relied on the comments of Cellular South, one of RCA's members, which explained that "investment banks and other sources of investment capital are likely to make the judgment that a small rural or regional carrier that cannot obtain data roaming agreements with the large national carriers will find it more difficult to attract and retain customers."⁶⁹ A separate study by the GAO confirmed the Commission's conclusion, finding that as the wireless industry grows less competitive and smaller carriers continue to lose subscribers, these carriers "can face challenges securing investments because non-negative net

⁶⁸ *Data Roaming Order* ¶ 17.

adds are indicative of a steady revenue source.”⁷⁰ Accordingly, if AT&T is allowed to diminish competition from rural and regional carriers by expanding through the proposed acquisition, these carriers would face an uphill battle in securing enough capital to invest in the broadband infrastructure they need to compete.

II. THE PURPORTED EFFICIENCY BENEFITS OF THE TRANSACTION ARE SPECULATIVE AT BEST AND UNSUPPORTED BY THE RECORD

AT&T argues that it should be permitted to acquire one of its largest rivals because it faces a dire spectrum crunch and the acquisition is purportedly the best way for AT&T to meet consumers’ needs. That whitewash is unconvincing as a general matter, and it falls far short of justifying the diminution in competition entailed by the transaction under the stringent standard of review applicable to this transaction.

AT&T “bear[s] the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.”⁷¹ Given the numerous competitive harms discussed above, AT&T’s burden is a heavy one. Indeed, “[e]fficiencies almost never justify a merger to monopoly or near-monopoly,”⁷² and in the market for GSM retail and wholesale services, the proposed transaction would be precisely that. The Commission therefore should deny the Applications even if it credits AT&T’s claims regarding efficiencies, but in any event those claims are speculative and unpersuasive.

⁶⁹ *Id.* (quoting Cellular South Comments, Declaration of Ben Pace, Chief Financial Officer, at 20, WT Docket No. 05-265).

⁷⁰ *GAO 2010 Wireless Report* at 18.

⁷¹ *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 ¶ 26 (2008) (“*Verizon/ALLTEL Order*”).

⁷² U.S. DEPT. OF JUSTICE AND FED. TRADE COMM’N, HORIZONTAL MERGER GUIDELINES § 10 (2010).

A. The Commission Must Weigh the Significant Harms to Competition from This Transaction Against Alternatives.

In light of the threat of an impending wireless duopoly, a GSM monopoly, and AT&T's already-dominant spectrum position, the Commission must compare two potential futures. Absent this transaction, AT&T would attempt to satisfy consumer demand by building out its own spectrum, deploying LTE on its own, and expanding its penetration. T-Mobile, for its part, would remain a vibrant competitor and pursue its own path to LTE. Indeed, T-Mobile currently advertises itself as a strong competitor on price and on quality of service, boasting that it has "America's largest 4G network" and stating that it will be "doubling the speed of its 4G network to be capable of delivering peak download speeds of up to 42 Mbps" in 2011.⁷³ This future will result in greater competition, increased investment in broadband deployment, and more jobs.

In stark contrast, the proposed transaction would enable AT&T to eliminate its low-price competitor, cement its market dominance, reduce pressures to innovate, withhold access to roaming and backhaul services, foreclose other carriers from offering cutting-edge handsets, and cut thousands of jobs. With the future of the wireless industry at stake, Commission must ask whether consumers and competitors would be better off as a result. Indeed, the Commission has said it will "consider[] whether a transaction will enhance, rather than merely preserve, existing competition."⁷⁴ For the reasons discussed above, this transaction clearly would do neither.

B. The Suggested Benefits of (and Need for) the Transaction Are Implausible.

AT&T's application focuses heavily on the notion that it is facing a severe spectrum shortage that compels it to acquire T-Mobile to remain competitive. But this claim is pure contrivance. As described above, the last decade has seen AT&T amass the largest spectrum

⁷³ See Fact Sheet: America's Largest 4G Network, *available at* <http://newsroom.t-mobile.com/articles/4g-fact-sheet> (last accessed May 10, 2011).

stockpile of any of the Big Four wireless carriers⁷⁵—an average of 100 MHz in the top 100 U.S. markets.⁷⁶ AT&T is currently seeking another broad swath of beachfront 700 MHz spectrum from Qualcomm. And in spite of AT&T’s acquisition of approximately \$1.3 billion of AWS spectrum in 2006, it has yet to deploy commercial operations in this band, even as many of its competitors—including T-Mobile—are doing so.⁷⁷ Indeed, AT&T apparently cares so little about this AWS spectrum that it has offered it to Deutsche Telekom as part of its breakup fee.⁷⁸ It is impossible to credit AT&T’s claims that it is spectrum-constrained when it is prepared to move to LTE without its unused AWS spectrum if the Commission denies the Applications.

If AT&T were blocked from acquiring T-Mobile, even duopolistic competition with Verizon would drive AT&T to build out a nearly nationwide LTE network. Verizon has pledged to extend LTE to its full 3G footprint—roughly 97 percent of the U.S. population⁷⁹—and has said it is “‘extremely confident’ it has the ‘spectrum position’ it needs” to roll out a nationwide 4G LTE network.⁸⁰ AT&T will have to do the same in order to keep pace with Verizon, and as discussed above, it can do so without acquiring T-Mobile’s spectrum and network assets. It is

⁷⁴ *Verizon/ALLTEL Order* ¶ 28.

⁷⁵ *See* Section I.B *supra*.

⁷⁶ *J.P. Morgan Spectrum Study* at 1.

⁷⁷ *See e.g.*, <http://www.dailywireless.org/2010/06/18/phoney-spectrum-scarcity> (noting that “T-Mobile, Cricket and MetroPCS are using their expensive AWS spectrum. Verizon and AT&T are not.”); *see also Fourteenth Wireless Competition Report* ¶ 259.

⁷⁸ *See* AT&T/T-Mobile Factsheet at 2, *available at* <http://www.mobilizeeverything.com/documents/Factsheet.pdf>.

⁷⁹ *See* Dan Jones, *Verizon Says LTE Will Match 3G Footprint in 2013*, LIGHT READING MOBILE, Jun. 15, 2010, *available at* http://www.lightreading.com/document.asp?doc_id=193226&.

⁸⁰ AT&T/T-Mobile Public Interest Statement at 79.

therefore not credible for AT&T to claim that, absent this transaction, it would deploy LTE only to 80 percent of the population,⁸¹ especially when Verizon can do far better with less spectrum.⁸²

Indeed, as a practical matter, it is far from certain that AT&T would actually use T-Mobile's spectrum to build out a LTE wireless network to rural America. T-Mobile's spectrum sits primarily in the high-frequency PCS and AWS bands,⁸³ not the low-frequency bands that, as the Commission has recognized, "possess[] superior propagation characteristics that create certain advantages in the provision of mobile wireless broadband service, especially in rural areas."⁸⁴ By contrast, AT&T already holds vast swaths of spectrum in the low-frequency bands that would be better suited to rural deployment,⁸⁵ and AT&T's pending transaction with Qualcomm would give it a new "nationwide footprint" in the 700 MHz band.⁸⁶ T-Mobile's spectrum plainly is not "necessary" for AT&T to deploy LTE to rural areas; AT&T has other and better options.⁸⁷

AT&T's other justifications for purchasing T-Mobile—that it faces a surge in data volume,⁸⁸ and that it must support legacy technologies during its transition to LTE⁸⁹—are not

⁸¹ AT&T/T-Mobile Public Interest Statement at 54.

⁸² See *J.P. Morgan Spectrum Study* at 1 (finding that, compared to AT&T's average of 100 MHz in the top 100 U.S. markets, Verizon has an average of 90 MHz in those markets).

⁸³ See *id.* at 3.

⁸⁴ See *Fourteenth Wireless Competition Report* ¶ 4 (explaining that "lower-frequency spectrum possesses superior propagation characteristics that create certain advantages in the provision of mobile wireless broadband service, especially in rural areas").

⁸⁵ See *J.P. Morgan Spectrum Study* at 3. See also *Cramton Report* at 5 (noting that AT&T and Verizon have a "duopoly position in low-frequency spectrum").

⁸⁶ AT&T and Qualcomm Public Interest Statement at 2, *Applications of AT&T Mobility Spectrum LLC and Qualcomm Inc. for Consent to the Assignment of Licenses and Authorizations*, WT Docket No. 11-18 (filed Jan. 13, 2011).

⁸⁷ AT&T/T-Mobile Public Interest Statement at 55.

⁸⁸ *Id.* at 20-22.

unique to AT&T. RCA's members face these industry conditions as well; they are inherent in the nation's broader transition to more data-centric wireless usage. These conditions do not justify the diminished competition, innovation, and investment that would result from this transaction. Indeed, other carriers are actively exploring creative solutions to do more with the spectrum they have. Sprint, for instance, has invested in the installation of software-defined radios ("SDRs") in its base stations, which will allow it to overlay a 4G network using legacy 3G infrastructure.⁹⁰ Others are exploring the deployment of 4G femtocells to enable their high-frequency LTE spectrum to provide in-building coverage.⁹¹ AT&T could take these or other measures—including migrating 2G customers to 3G spectrum by delivering free or subsidized handsets—to make more efficient use of its existing spectrum without purchasing an important competitor. Under the applicable burden of proof, AT&T cannot simply assert that such strategies are infeasible or less cost-effective than spending \$39 billion to acquire a major competitor; rather, it must supply evidence to back up these key claims. Yet the application contains no such evidence. To the contrary, AT&T fails utterly to explain why the avenues being pursued by others to make more efficient use of existing spectrum and to migrate consumers off legacy technologies would not work for AT&T.

⁸⁹ AT&T/T-Mobile Public Interest Statement at 22-25.

⁹⁰ See Larry Dignan, *Sprint, T-Mobile Merger Talks Spurred by Network Sharing Needs*, ZDNet, Mar. 8, 2011, available at <http://www.zdnet.com/blog/btl/sprint-t-mobile-merger-talks-spurred-by-network-sharing-needs/45797>.

⁹¹ See *Femto Forum Outlines LTE Femtocell Architecture Options as Operator Interest in the Technology Grows*, TMC, May 17, 2011, available at <http://cable.tmcnet.com/news/2011/05/17/5515061.htm>; see also *Fourteenth Wireless Competition Report* ¶ 110 ("In addition to upgrading their networks for mobile broadband systems, . . . mobile wireless operators are also taking steps to improve indoor coverage through the use of new technologies such as distributed antenna systems (DAS) and femtocells.").

AT&T's assertion that T-Mobile lacks a clear path to LTE is similarly overblown.⁹² Indeed, T-Mobile currently holds itself out to customers as having "the nation's largest 4G network" and promises to offer speeds comparable to LTE at the end of 2011.⁹³ Indeed, if AT&T is planning to use T-Mobile assets to roll out its own LTE network, it is unclear why T-Mobile could not do so on its own. Given T-Mobile's extensive network assets (whose benefits AT&T touts) and substantial customer base, it should be able to obtain the capital it needs to finance further network investment, even assuming its corporate parent is unwilling to supply the funds. Given the far more substantial challenges that RCA's members face in accessing capital, RCA cannot accept at face value the claim that an independent T-Mobile would be too cash-strapped to migrate to LTE.

In any event, if T-Mobile truly lacked sufficient spectrum and/or capital to roll out LTE, it could reach spectrum leasing agreements with third parties, such as LightSquared or Clearwire, whose business models are premised on providing wholesale spectrum to wireless carriers. News reports make clear that T-Mobile was considering such a strategy before AT&T swept it off its feet with a \$39 billion buyout offer.⁹⁴ Such non-exclusive ventures with third-party suppliers would pose far less harm to competition than a combination with AT&T.

⁹² AT&T/T-Mobile Public Interest Statement at 31-33.

⁹³ See T-Mobile Release, Fact Sheet: America's Largest 4G Network, *available at* <http://newsroom.t-mobile.com/articles/4g-fact-sheet>.

⁹⁴ See Phil Goldstein, *Report: T-Mobile USA Nearing Deal for Clearwire Spectrum*, FIERCE WIRELESS, Feb. 4, 2011, *available at* <http://www.fiercewireless.com/story/report-t-mobile-usa-nearing-deal-clearwire-spectrum/2011-02-04> (reporting that "T-Mobile is the only potential bidder for Clearwire's spectrum and a deal could happen by the end of the first quarter"); *T-Mobile USA to Double Network Speeds*, REUTERS, Jan. 6, 2011, *available at* <http://uk.reuters.com/article/2011/01/06/us-ces-tmobileusa-idUKTRE7055T220110106> (reporting that "T-Mobile USA is also looking at the potential for a partnership where it could use the Clearwire network or one being planned by a new company Lightsquared").

Nor would this transaction generate the jobs AT&T promises. The “efficiencies” AT&T foresees from the integration of the two networks would, in all likelihood, be achieved through job cuts, not job gains. The combination of AT&T and T-Mobile’s workforces would naturally make many workers redundant—particularly those at overlapping retail stores and call centers—or at the very least expendable, given AT&T’s diminished incentive to build out new infrastructure post-transaction.

Past experience shows that AT&T would have no qualms about shedding these jobs. Over the last decade, AT&T has reportedly cut more than 200,000 jobs,⁹⁵ and has reduced employment in eight of the last nine years, with five of those years seeing job cuts of five percent or more. Meanwhile, an independent T-Mobile has managed to *add* jobs in eight of the last nine years. Thus, the transaction would mean the strengthening of a proven job-cutter at the expense of a key job-creator. When compared to the alternative—a world where both AT&T and T-Mobile would be building their workforces to roll out 4G nationwide networks in vigorous competition with one another, and where greater access to data roaming and interoperable handsets would create an estimated 117,000 jobs nationwide⁹⁶—it is clear that the transaction should not be approved even apart from the applicable standard of review. But in light of the heavy burden that AT&T must overcome to justify the diminution of competition entailed by this transaction, there can be no doubt that the public interest would be harmed, rather than advanced, if the transaction were allowed to proceed.

⁹⁵ See Free Press, *Why the AT&T-T-Mobile Deal Is Bad for America*, at 3, available at <http://www.freepress.net/files/ATT-T-Mobile.pdf> (citing data collected from AT&T’s 10-K reports).

⁹⁶ See Ex Parte Letter of Rural Cellular Association, WT Docket No. 05-265 (filed Apr. 1, 2011) (“Data roaming and interoperability means jobs for America—an estimated 117,000 jobs in the 19 states with less than 90 percent broadband penetration will be created if data roaming and interoperability are required.”).

CONCLUSION

The proposed transaction has brought the wireless industry to a crossroads. Approval of the transaction would lead the industry down the path toward a true wireless duopoly, a GSM monopoly in the hands of AT&T, greater spectrum aggregation, higher roaming and special access fees, less device availability and interoperability, less access to capital for smaller carriers, and fewer jobs. On the other hand, the asserted benefits of the transaction are over-generalized, implausible, and unsupported. Given AT&T's heavy burden to demonstrate that the transaction, on balance, advances the public interest, the Commission's decision should be an easy one; it should deny the Applications.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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