Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	**)**	
	)	**DA 11-799**
Application for Consent to Transfer of Control	**)**	
Filed By AT&T Inc. and Deutsche Telekom AG	**)**	**WC Docket No. 11-65**

PETITION TO DENY OF TEXALTEL

TEXALTEL

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Texaltel hereby petitions the Commission to deny the above captioned applications of AT&T and Deutsche Telekom to approve AT&T's acquisition of T-Mobile. AT&T and Deutsche Telekom have failed to meet their burden of demonstrating that the proposed acquisition is in the public interest and, for this reason, the Commission must deny the application.

TEXALTEL is a trade association which represents competitive telecommunications carriers[1] that operate in Texas but provide service throughout the country, including the service territories served by AT&T as incumbent local exchange carriers ("ILECs"). TEXALTEL members provide a varying array of services to their customers including basic local telephone service, prepaid services, xDSL, wholesale and retail special access services, and other high speed data services, including cable and Voice over Internet Protocol ("VoIP") services. TEXALTEL members have a vested interest in ensuring that the largest carriers cannot engage in anticompetitive conduct across the communications market that would impair competitors'

[1] TEXALTEL is a trade association of competitive telecommunications providers that do business in Texas. TEXALTEL was formed in 1982 as an association of long distance providers, but today its members have a wide array of business plans and provide a wide array of telecommunications, internet and other services. TEXALTEL's designated representative is the undersigned.

ability to compete and/or artificially inflate the cost of network facilities purchased by competitors to finish the services they offer to customers. Similarly, as participants in the telecommunications marketplace and competitors, vendors and customers of AT&T and T-Mobile, TEXALTEL, acting on behalf of its members, is a party in interest with standing to oppose this application for transfer of control of licenses and authorizations pursuant to Section 309(d) of the Communications Act, 47 U.S.C. Furthermore, TEXALTEL advocates public policy that keeps the marketplace open to competitive carriers allowing consumers to have choices in services and providers for their communications needs. As such, our members have a substantial interest in this proceeding as our members compete predominantly in the AT&T ILEC regions.

TEXALTEL (the "Commenter") comes before the Federal Communications Commission ("Commission" or "FCC") today to submit comments on the Application for Consent to Transfer Control Filed by AT&T Inc. and Deutsche Telekom AG. We appreciate the Commission providing the opportunity to provide comment in this proceeding.

INTRODUCTION AND SUMMARY

The Commenter files these comments in response to the *Notice* regarding the AT&T/T-Mobile proposed merger. As a preliminary matter, TEXALTEL believes such a merger, on the heels of numerous previous acquisitions by AT&T and its numerous predecessor companies, including but not limited to AT&T (the long distance conglomerate), AT&T Wireless, PacBell, Nevada Bell, Ameritech, SNET, and BellSouth, thereby creating overwhelming consolidation in the wireless sector, will not act in the public interest. The Commenter believes the only available decision would be a denial of the merger as being clearly in opposition to the public interest.

In these comments the Commenter explains that the merger must be understood in the context of broader market concentration in addition to being viewed as further market consolidation within the wireless sector. Also, these comments discuss the rationale for the position that the public interest would be best served by denying the merger.

I. THE AFFECTS OF THIS MERGER IS BROADER THAN THE WIRELESS MARKET SEGMENT.

It needs to be clearly understood that the proposed merger has impacts over the entire communications industry; not just the wireless sector. This is not simply a merger between two wireless providers. AT&T is already a collection of AT&T long distance, the Regional Bell Operating Companies ("RBOCs") Bell South, Ameritech, Southwestern Bell, and PacBell, as well as Southern New England Telecommunications ("SNET"), and wireless companies Cingular Wireless, AT&T Wireless, and others.

The proposed merger would further add T-Mobile, the fourth largest and most often the more competitively priced wireless provider, into the AT&T fold; resulting in AT&T being the largest wireless provider in the United States. The communications market would then be dominated by two providers AT&T and Verizon– being comprised of a collection of RBOCs effectively covering the majority of the United States, and the historically dominant long distance company, the original AT&T. Such substantial consolidation across multiple market sectors and the removal of yet another large competitor will have ramifications for all corners of the industry, especially on the already ILEC-controlled special access market.

II. BASED ON THE RESULTING VERTICAL CONCENTRATION WITH THE WIRELINE MARKET AS WELL AS THE HORIZONTAL INTEGRATION WITHIN THE WIRELESS MARKET, THE MERGER IS NOT IN THE PUBLIC INTEREST.

The Commenter submits that the proposed merger is ultimately not in the public interest. The second largest wireless provider's acquisition of the fourth largest wireless provider in the

United States would be the next step toward creating two dominant communications providers for the nation. The days of the FCC touting the importance of maintaining multiple RBOCs as a check on best practices and reasonableness is effectively gone. This merger will effectively do the same for the wireless sector. Worse yet, this merger signals the continued consolidation of the wireline and wireless sectors into in an ever shrinking number of hands that are building ever greater levels of market power.

The competitive industry is especially concerned of the impact this merger will have on the vertical special access market as one of the largest users of the ILEC special access services, T-Mobile, is taken off of the marketplace. Of concern is the upstream market for backhaul facilities that connect wireless calls from cell towers to the public switched telephone landline network ("PSTN"). Today, this backhaul is obtained from not only AT&T but from multiple third party carriers providing special access services. Thus, T-Mobile has a large impact on the controlling the market cost of special access services. After the merger, AT&T has made it clear that the secondary special access market will essentially be shut down for T-Mobile backhaul traffic. Because AT&T is acquiring the second largest non-ILEC affiliated buyer of special access wireless backhaul, the Commission must analyze the competitive derailment of special access pricing that this transaction is bound to create. T-Mobile's presence in the marketplace and regulatory muscle heretofore has forced the ILEC to retain some measure of competitive prices on the last mile facilities that the ILEC clearly dominates. Today the FCC has an ongoing examination of the issues surrounding special access pricing by the ILEC. The impact of the consolidation in the marketplace that this merger will have on ILEC special access services and pricing must also be taken into consideration. If this merger is granted, it will become even more difficult for competitors to achieve minimum viable scale in the marketplace as well as have a negative effect on the already small number of third-party special access providers.

Furthermore, the importance of competition in the wireless retail sector is increased by consumers' abandonment of the traditional landline alternatives. Wireless services have become a necessity to most consumers, and there are clearly many consumers who cannot afford to subscribe simultaneously to both wireless and wireline services. Fewer independent wireless providers mean fewer competitive alternatives for consumers (primarily residential) and an increased potential for market abuse. With T-Mobile added to Cingular which already absorbed AT&T Wireless, the potential for anticompetitive corporate policies and unilateral self-dealing increase exponentially as the wireless market falls increasingly in the hands of two dominant providers, which also happen to be the two dominant ILECs.

As an example, the Commenter points to unified messaging. With unified messaging, AT&T tells the customer that the customer can have one voicemail box for all of the customer's needs. For example, voice messages from wireless calls will go to the same voice mailbox as voice messages from wireline calls. This product is beneficial to the consumer as the consumer has on "one-stop-shop" to monitor voice mail. The question, however, is "What is happening from a technical and marketing perspective that allows AT&T to provide the product that is generally not offered by the competition?" The answer is that AT&T provides its own affiliates favored access to voice mail. The "wireless" AT&T is self-dealing with the "wireline" AT&T in an anticompetitive manner. Wireless carriers are generally reluctant to offer forwarding functionalities even for voice messages. This restrictive corporate policy by AT&T "wireless" blocks a customer from having its voicemail forwarded to a wireline competitor. As a result, AT&T "wireless" creates the "unified voicemail problem" by refusing to include a message forwarding service, and then "solves the problem" by providing the equivalent of voice message forwarding when a customer buys wireline service from AT&T "wireline".

This is one example of how AT&T can and does self-deal across the wireline and wireless market sectors to use its market posture to engage in monopolization of both sectors. Such tying relationships can severely distort the wireline market. With the acquisition of T-Mobile, AT&T's ability to manipulate wireline market by flexing the muscle it has built through the consolidation of the wireless sector grows substantially. In markets, like Texas, where AT&T is the dominant ILEC covers most of the state's access lines, this merger is a further invitation to distort and dominate the market at the expense of consumers and the development of a competitive market designed to extend the benefits of competition to the customers they would serve.

III. BASED ON THE EFFECTS OF OTHER HEAVILY CONSOLIDATED INDUSTRIES, THE MERGER IS NOT IN THE PUBLIC INTEREST.

Fewer choices drive up prices. Consolidation in the oil industry shows the effect of massive consolidation on consumer prices. In the 1990's the oil industry consolidated from many smaller companies to just a handful of large corporations. This industry consolidation has resulted in exponentially higher consumer prices and exponentially larger profits to oil companies like Exxon Mobil. By the end of 2010 consumer gasoline prices reached the previously unthought-of price of $3.00 a gallon. However, just half way through 2011, gasoline prices now are in excess of $3.50 per gallon. Correspondingly, Exxon Mobil, one of the largest oil companies in the nation, posted near record profits for the end of 4th quarter 2010 and in 1st

quarter 2011, posted a 69% increase over 1st quarter 2010 profits.[2] Further, the number of independent retail outlets (*i.e.*, gas stations) offering competing brands of gasoline has decreased sharply since this consolidation, and an analogous decrease in wireless retail enterprises and the competitive choices that they offer to consumers must be expected if this wireless transaction were to be permitted.

Already consumers are paying higher prices for wireless phone services than ever before even with T-Mobile as one of the few providers offering low-cost wireless plans. Smart phones have allowed carriers to nickel and dime consumers by charging a basic rate for voice, another rate for data, and another rate yet for texting abilities. On top of all of that, some carriers charge another rate just for having a smart phone. If this merger is allowed to proceed, it will consolidate the wireless market specifically, and the communications market in general, even more so than the market is today or even the oil industry. T-Mobile and its lower cost alternatives will be stripped from the market and the days of getting a simple phone with a simple plan will be over. With just two significant providers left in the communications market combined with wireless carriers' practice of locking consumers into lengthy contracts, risks for forcing customers onto smart phones and plans resulting in much higher consumer prices and widespread market abuses will be significantly increased.

[2] Exxon Mobile Profits Soar Along With Gas Prices: Steven Mufson, Washington Post, April 28, 2011.

CONCLUSION

TEXALTEL strongly urges denial of this merger as the Commission reviews the effects of the merger on the communications industry as a whole, with noted influence on how the merger would affect not only the wireless sector but the wireline telecommunications industry, as well. The Commenter believes the merger is overwhelmingly not in the public interest.

Respectfully Submitted,

TEXALTEL

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