

“additional scale” as well as access to T-Mobile’s AWS spectrum in markets where AT&T claims it would face the following alleged obstacles:

- (1) Markets in which AT&T lacks any 700 MHz or AWS spectrum to deploy LTE (the Applicants assert that [begin confidential information] [redacted] [end confidential information] people, fall in this category);
- (2) Markets in which “AT&T holds an average of 10 MHz of AWS or less and/or 12 MHz of 700 MHz spectrum or less[,]” thus falling short of the 20 MHz of contiguous spectrum AT&T claims is necessary to deploy LTE (the Applicants assert that [begin confidential information] [redacted] [end confidential information] people, fall in this category); and
- (3) Markets in which AT&T predicts it will face an LTE capacity shortage at a certain point in the future.<sup>392</sup>

The Commission should dismiss these arguments. They are too vague and speculative to be verifiable. AT&T’s LTE deployment plans are also unrelated to the proposed transaction, as AT&T will have the capability and incentive to pursue a comparable LTE deployment even in the absence of the transaction.

**A. The Applicants’ Claims Regarding LTE Deployment Are Vague and Speculative**

The Applicants’ claims regarding LTE deployment are unverifiable and should be given no weight. Their claims about the percentage increase in AT&T’s LTE footprint are misleading and conflicting. They also completely fail to answer critical questions about AT&T’s LTE deployment schedule, the nature of the service AT&T would offer, and what AT&T would invest to reach its deployment target.

*Misleading and Conflicting Projections.* As an initial matter, the alleged 17 percent increase in AT&T’s LTE coverage is misleading. As explained below, it is quite likely that,

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<sup>392</sup> Application at 5; Hogg Decl. ¶ 60; Moore Decl. ¶ 14.

even without the proposed transaction, AT&T will ultimately deploy its LTE network to far more than its previously announced target of 80 percent, which only went through 2013. Aside from this problem, the Applicants' math is difficult to fathom. Although the Application provides a few examples of markets that will be covered by AT&T's new LTE deployment target, it fails to provide a complete list of the specific markets that would benefit from this deployment or that fall within the three categories of alleged obstacles described above. The Applicants' failure to provide these data makes it impossible for the Commission and interested parties to assess the accuracy of the Applicants' claims.

The Applicants' claims also seem to be internally inconsistent. On the one hand, they claim that an additional 55 million Americans would be covered by AT&T's post-transaction LTE deployment.<sup>393</sup> On the other hand, the Applicants suggest that eliminating the first two obstacles described above would extend LTE deployment to a total of **[begin confidential information]** [REDACTED] **[end confidential information]** people. Applicants offer no explanation of this apparent inconsistency in their coverage estimates. As for the alleged obstacle described in the third category above, the Applicants merely rely on conclusory and speculative assertions about LTE capacity shortages arising in the future in certain areas for a service that AT&T has yet to deploy.

*No Schedule for Achieving Claimed Benefits.* An even more serious problem is that the Applicants provide no schedule or timeline for implementing AT&T's purported new plan to

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<sup>393</sup> Applicants characterize their 55 million person estimate as an approximation, but it is a generous one. A 17.3 percent increase in AT&T's LTE deployment would cover an additional 53.4 million people (0.173 x 308.7 million). This calculation uses the 2010 U.S. Census Bureau U.S. population estimate, which does not include Puerto Rico or U.S. territories. See U.S. Census Bureau, Population Distribution and Change: 2000 to 2010, at 1 (March 2011), available at: <<http://www.census.gov/prod/cen2010/briefs/c2010br-01.pdf>>. The Applicants do not explain what national population figure they use.

deploy service to 97 percent of all Americans. AT&T’s alleged expanded LTE deployment would mostly cover rural and unpopulated areas.<sup>394</sup> There is no shortage of spectrum in rural areas; rather, carriers must tackle the challenge of investing in infrastructure that is costly on a per-subscriber basis.<sup>395</sup> The Applicants provide no schedule for addressing this challenge, and also ignore that T-Mobile has not deployed infrastructure in many rural areas and that the proposed transaction will not accelerate the build out in such markets.<sup>396</sup> Moreover, in markets where T-Mobile has deployed service, the Applicants do not explain the pace at which AT&T would migrate T-Mobile’s UMTS/HSPA+ subscribers to other bands or technologies so that its AWS spectrum can be repurposed for LTE, even though elsewhere in the Application they argue that such migrations can take years.<sup>397</sup>

The Commission has made clear that “benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present.”<sup>398</sup> Here, the Applicants do not make a prediction even about the distant future; they simply make *no* prediction about when AT&T would achieve its alleged expanded LTE deployment.<sup>399</sup>

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<sup>394</sup> Application at 55-56.

<sup>395</sup> *Id.* at 55.

<sup>396</sup> See e.g., Dan Jones, *Gleaning AT&T’s 4G Plans for LTE on AWS*, LIGHT READING MOBILE (Mar. 29, 2011), available at: <[http://www.lightreading.com/blog.asp?blog\\_sectionid=244&doc\\_id=206210](http://www.lightreading.com/blog.asp?blog_sectionid=244&doc_id=206210)>.

<sup>397</sup> Application at 23. See also CRA Decl. ¶ 198.

<sup>398</sup> *EchoStar-DirectTV Hearing Designation Order* ¶ 190.

<sup>399</sup> See CRA Decl. ¶ 197.

*No Information on Nature of Service.* The Application also is completely silent about the nature of the LTE service AT&T would provide in rural areas. The Applicants provide no information regarding the rates AT&T would charge for its LTE service in these areas or whether AT&T would impose data caps or other limits on service. If its current practices are any indication, potential subscribers of AT&T’s expanded LTE service will face high rates and data caps that either limit use of the service or impose extra charges for data usage above a certain level.<sup>400</sup> One observer has estimated that a rural subscriber who sought to use AT&T’s LTE service as his or her primary Internet connection would pay \$180 per month – “not exactly a great choice for rural America.”<sup>401</sup> In areas where it provides wireline service, AT&T will of course have no incentive to compete with its own wireline broadband offerings; indeed, AT&T’s LaptopConnect terms of service currently prohibit the use of an AT&T wireless connection as a substitute for wireline data connections.<sup>402</sup> These limitations prompted a recent article to conclude that AT&T’s purported plan to extend its LTE footprint “may mean a lot less to Americans than it first appears to.”<sup>403</sup>

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<sup>400</sup> See *14th CMRS Competition Report* ¶ 92 (describing Verizon’s and AT&T’s post-paid service offerings as “the most expensive in the industry”); Letter from Harold Feld, Public Knowledge, and Sascha Meinrath, New America Foundation, to Sharon Gillet, FCC Wireline Competition Bureau (May 6, 2011) (raising concerns about AT&T plan to charge wireline broadband customers additional fees for exceeding data caps), *available at*: <<http://www.publicknowledge.org/letter-to-FCC-on-ATT-Data-Caps>>; *AT&T Wireless Data Plan “Bytes,” DEADZONES* (Apr. 14, 2011) (describing AT&T data plans), *available at*: <<http://www.deadzones.com/2011/04/at-wireless-data-plan-bytes.html>>.

<sup>401</sup> Sascha Segan, *Will AT&T’s Rural Broadband Be First-Class or Second-Rate?*, PC MAGAZINE (May 16, 2011), *available at*: <<http://www.pcmag.com/article2/0,2817,2385445,00.asp>>

<sup>402</sup> *Id.*

<sup>403</sup> *Id.*

***Vague and Conflicting Statements About Network Investment.*** The Application provides no information on how much AT&T will need to invest to expand its LTE deployment or what portion of the alleged synergy savings created by the transaction would be spent on this deployment. The Application asserts that the transaction would give AT&T the “scale, scope, [and] resources” to increase its LTE deployment,<sup>404</sup> but it provides no data or analysis to support this conclusory assertion. To the contrary, AT&T has submitted a declaration stating that it would gain “synergies” from the proposed transaction resulting from, among other things, the “reduced need in the near term for expenditures on network infrastructure and spectrum.”<sup>405</sup> This statement is consistent with the frank admission by AT&T’s CFO that the “sum” and “[m]ost important” aspect of the proposed transaction is its potential for returns to shareholders: “So to sum up, this is a transaction that creates substantial shareholder value. Most important, it enhances our long-term revenue and margin potential. ... [T]he scale and the combination of operational assets provide us with a path to industry-leading wireless margins.”<sup>406</sup> Placing such a high priority on increasing margins to maximize returns to shareholders would be at odds with AT&T investing in its network to expand its LTE footprint.

***Illusory Claims Do Not Meet the Burden of Proof.*** The Applicants have the burden of demonstrating that the purported public interest benefits of the proposed transaction are real and verifiable. Their nebulous claims fall far short of meeting this burden. Their claim that the transaction would increase AT&T’s LTE deployment is built on speculation and vague assertions and should be given no weight by the Commission, particularly in light of AT&T’s poor track

<sup>404</sup> Application at 55-56.

<sup>405</sup> Moore Decl. ¶ 9 (emphasis added).

<sup>406</sup> Mar. 21, 2011 AT&T Investor Presentation Transcript at 13-14 (statements of Richard G. Lindner, Senior Executive Vice President and CFO, AT&T Inc.).

record in delivering on promises that a merger will accelerate technology upgrades. For example, in its application to acquire Centennial’s licenses, AT&T claimed that the transaction would allow it to extend 3G service to Centennial’s service areas (which, prior to the transaction, had been limited to 2G service in the U.S. mainland).<sup>407</sup> However, according to AT&T, a year after the Commission approved the transaction “only a handful of legacy Centennial cell sites in the former Centennial service areas have been upgraded to 3G.”<sup>408</sup>

**B. The Applicants’ Claims Regarding LTE Deployment Are Not Merger-Specific**

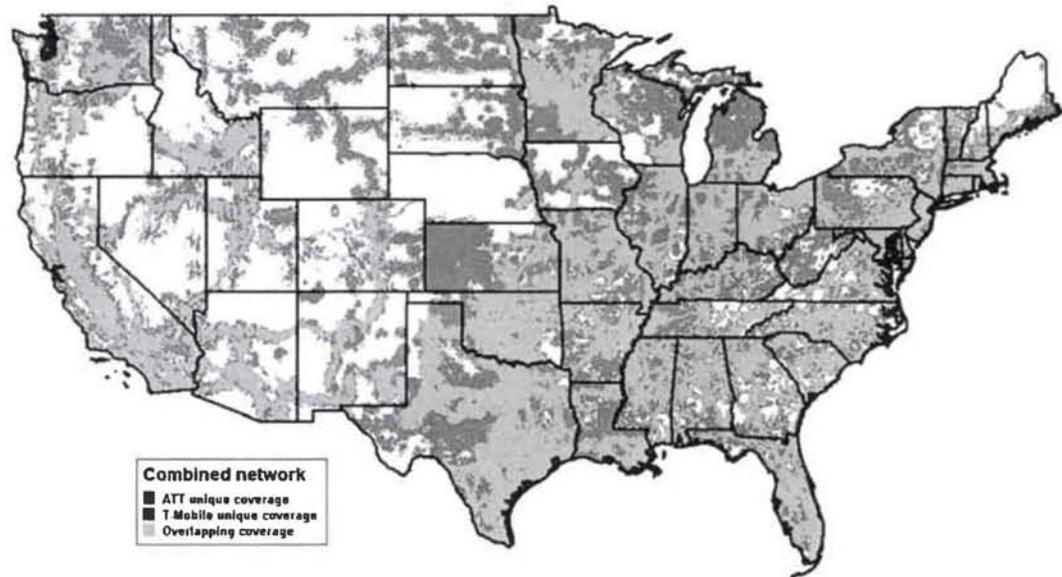
The proposed transaction is not necessary to expand AT&T’s LTE coverage to promote the Commission’s broadband goals. AT&T announced a few months ago that it already plans to deploy LTE service to 80 percent of the U.S. population, and that deployment plan only extends through 2013. Even without access to T-Mobile’s AWS spectrum, AT&T will have more than enough resources to expand its LTE network beyond 2013 and subsequently achieve a virtually nationwide LTE footprint. AT&T’s current wireless data network, counting its PCS and cellular band services, reaches 97 percent of the U.S. population.<sup>409</sup> By upgrading its existing network

<sup>407</sup> *AT&T-Centennial Merger Order* ¶ 97.

<sup>408</sup> Report, attached to Letter from Celia Nogales, AT&T Inc., to Marlene Dortch, FCC Secretary, FCC, WT Docket No. 08-246, at 3 (Dec. 17, 2010). *See also* Dave Burstein, *AT&T’s Quinn: We May Renege on 80%, 95% LTE Buildout – Is this AT&T’s Attempt at Satire?*, BROADBAND DSL REPORTS (Apr. 26, 2011) (discussing whether recent statement by AT&T senior executive that FCC’s data roaming decision will “discourage investment and build out of broadband facilities” means that AT&T will pull back on LTE deployment targets), *available at*: <<http://www.dslreports.com/shownews/ATTS-Quinn-We-May-Renege-on-80-90-LTE-Buildout-113924>>.

<sup>409</sup> *See* Press Release, AT&T, *AT&T Sets the Record Straight on Verizon Ads* (“AT&T’s wireless data coverage reaches 303 million people – or 97% of the U.S. population”), *available at*: <<http://www.att.com/gen/press-room?pid=14002>>; Transcript of AT&T Q4 2009 Earning Conference Call (Jan. 28, 2010) (“We have a broad, nationwide network. It covers 97% of the

platform, AT&T should have the capability to extend LTE service to 97 percent of the population *without* the proposed takeover.<sup>410</sup> AT&T’s existing footprint far exceeds T-Mobile’s national network, which covers 86 percent of the population.<sup>411</sup> Indeed, T-Mobile must purchase roaming services from AT&T because of the latter’s more extensive coverage. As the following map shows, the proposed transaction would give AT&T *less than one percent* of additional U.S. population coverage:



U.S. population.”), *available at*: <<http://seekingalpha.com/article/185524-at-amp-t-inc-q4-2009-earnings-call-transcript>>.

<sup>410</sup> See Stravitz Decl. ¶ 40 (“With coverage already of 97% of the U.S. population today on its combined 2G and 3G network, AT&T could achieve this level of deployment by overlaying LTE coverage on its existing network to reach 97% of U.S. population. The process of overlaying equipment on existing cell sites merely involves installation of new equipment and saves on the cost and time required to build the physical infrastructure of a new site, not to mention time required to obtain necessary legal clearances.”).

<sup>411</sup> Carlton Decl. ¶ 32.

The Applicants incorrectly assume that AT&T can only deploy LTE service using 700 MHz and AWS spectrum. AT&T could deploy LTE on any of its spectrum bands, including its PCS and 850 MHz cellular band spectrum.<sup>412</sup> In fact, notwithstanding the misleading claims in the Application, AT&T is already contemplating this very scenario. In its application to acquire Qualcomm's spectrum, filed just a few months ago and still pending before the Commission, AT&T's Senior Vice President for Architecture and Planning stated that "AT&T may take steps to clear a portion of its 850 MHz or 1900 MHz spectrum for LTE, as customers begin transitioning to LTE devices."<sup>413</sup> The same AT&T executive made the very same point last year in pointing out that AT&T and Verizon have stronger spectrum positions than Clearwire:

AT&T's [Kristin] Rinne says that AT&T can expand its LTE offering into more spectrum bands. Both Verizon and AT&T are deploying LTE in the 700 MHz band, but Rinne said AT&T could eventually push LTE into its existing 850 MHz and 1900 MHz spectrum. "We will have the opportunity [to grow spectrum for] LTE in future years, both the quality and range of it," she said. "You need to make sure you count all of our spectrum when you make these comparisons."<sup>414</sup>

These statements directly contradict the Applicants' claims that AT&T can only deploy LTE service on its 700 MHz and AWS spectrum and that it needs T-Mobile spectrum to expand its LTE footprint.

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<sup>412</sup> LTE standards approved by the 3GPP standards-setting process indicate that LTE can be deployed on PCS (LTE Band 2) and 850 MHz cellular band spectrum (LTE Band 5). See Stravitz Decl. ¶ 40. AT&T's PCS and cellular networks are not congested in rural areas and could accommodate LTE traffic in those areas.

<sup>413</sup> Declaration of Kristin S. Rinne, attached to Applications of AT&T Inc. and Qualcomm Incorporated for Consent to Assign Lower 700 MHz Band Licenses, WT Docket No. 11-18, at ¶15 (Jan. 12, 2011).

<sup>414</sup> Phil Goldstein, *AT&T, Verizon push LTE plans, advantages*, FIERCEWIRELESS (Mar. 19, 2010) (punctuation in original), available at: <<http://www.fiercewireless.com/story/t-verizon-push-lte-plans-advantages/2010-03-19>>.

The Applicants also incorrectly assume that an LTE network can only be deployed using a “contiguous 20 MHz of spectrum.”<sup>415</sup> To the contrary, an LTE network can be deployed using smaller configurations, including 5 MHz x 5 MHz paired bands.<sup>416</sup> The Commission has used precisely this sort of configuration in a number of bands, including the 5 MHz x 5 MHz Upper 700 MHz D Block. MetroPCS, in fact, is deploying LTE service based on this configuration in some markets. A 5 MHz x 5 MHz block provides more than sufficient spectrum and capacity to serve rural communities, particularly given their lower-density populations and resultant lesser capacity demands.<sup>417</sup> As described in the Stravitz Declaration, AT&T currently has sufficient (and unused) 700 MHz and AWS spectrum holdings to deploy LTE service (1) in a 10 MHz x 10 MHz configuration to 70 percent of the U.S. population and (2) in a 5 MHz x 5 MHz configuration to more than 95 percent of the population.<sup>418</sup> The reach of AT&T’s LTE network could extend even further when AT&T’s 850 MHz cellular band and PCS spectrum are taken into account.<sup>419</sup>

The Applicants’ assertions about AT&T spectrum shortages are consequently overblown. AT&T already plans to deploy LTE service to 80 percent of the U.S. population by the end of 2013 and already has the spectrum resources to deploy LTE to 97 percent of the population without the proposed anti-competitive takeover. In exurban and rural areas of the country,

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<sup>415</sup> Application at 5. The Applicants do not define the term, but Sprint assumes that “contiguous 20 MHz spectrum” means a 10 MHz x 10 MHz configuration. To the extent AT&T means a 20 MHz x 20 MHz paired block, the additional amount of such configured blocks resulting from the proposed transaction would be very limited. See Stravitz Decl. ¶¶ 36-37.

<sup>416</sup> Stravitz Decl. ¶ 38 (“LTE supports scalable carrier bandwidths of 1.4, 3, 5, 10, 15, and 20 MHz.”).

<sup>417</sup> *Id.* ¶ 39.

<sup>418</sup> *Id.* ¶¶ 38-39.

<sup>419</sup> *Id.* ¶ 40.

AT&T should be able to acquire spectrum easily from licensees to the extent it needs additional spectrum in these areas. AT&T can also partner with rural carriers to extend its coverage. Verizon, for example, is actively pursuing plans to collaborate with rural companies to build and operate an LTE network in rural areas.<sup>420</sup>

Even in the absence of its proposed takeover of T-Mobile, AT&T has many options to achieve a nationwide LTE footprint and quite likely will pursue these options in order to compete with carriers who will have nationwide LTE coverage. Verizon has already launched LTE service in forty markets and has stated that it plans “to deploy LTE in virtually all of our current 3G network footprint by the end of 2013.”<sup>421</sup> As of December 31, 2009, Verizon’s 3G network covered 285 million Americans, or 92 percent of the U.S. population, and that number has almost certainly increased since 2009, as Verizon has continued to “build out, expand, and upgrade our network.”<sup>422</sup> Indeed, Verizon’s Chief Technology Officer has stated that once it completes its initial LTE rollout to 285 million people in 2013, “we expect to aggressively expand this footprint, with a goal of covering all of our 700 MHz licensed territories by 2015.”<sup>423</sup> Such a deployment would reach virtually every American. Sprint will also be competing to

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<sup>420</sup> Press Release, Verizon, *Verizon Wireless LTE in Rural America Program*, available at: <<http://aboutus.vzw.com/rural/Overview.html>> (last visited May 23, 2011). See, e.g., Press Release, Convergence Technologies, *Convergence Technologies Inc. Announces Rural LTE Partnership with Verizon Wireless* (Apr. 29, 2011), available at: <<http://www.cticonnect.com/arra/verizonrurallte>> (last visited May 23, 2011).

<sup>421</sup> Cellco Partnership, Annual Report (Form 10-K), at 3 (Mar. 12, 2010).

<sup>422</sup> *Id.* at 3-4.

<sup>423</sup> Dave Burstein, *CTO Dick Lynch on Verizon LTE Coverage*, DSL PRIME (Apr. 2, 2011), available at: <<http://www.dslprime.com/a-wireless-cloud/61-w/4214-cto-dick-lynch-on-verizon-lte-coverage>>.

deploy 4G services on a nationwide basis, and its Network Vision initiative will greatly facilitate its ability to upgrade *all* of its cell sites to 4G services throughout its footprint.

AT&T will need to respond to this competition even without the proposed transaction. Wireless carriers compete for customers based on their national network coverage areas.<sup>424</sup> In a competitive marketplace, as Verizon and Sprint expand the reach of their 4G services, AT&T will likely follow suit or face the loss of subscribers to rival providers that offer better, faster wireless services on a larger national footprint. Competition can thus promote deployment of 4G mobile services to almost the entire U.S. population, just as competition has enabled nearly the entire U.S. population to enjoy access to 3G technologies today.<sup>425</sup> The Commission has estimated that total 3G/4G mobile broadband coverage currently reaches more than 98 percent of the U.S. population.<sup>426</sup> There is no reason to doubt that 4G services alone will reach the same level of coverage within the next few years in a competitive marketplace.<sup>427</sup>

The proposed transaction thus would provide no benefits in terms of deploying 4G technologies. One analyst credits AT&T for doing “a brilliant job [in] confusing people” into believing that the transaction will expand its LTE deployment, but suggests that AT&T was planning to reach the same LTE coverage by 2015-2016 even without the T-Mobile

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<sup>424</sup> See AT&T, Annual Report (Form 10-K), Ex. 13 at 29 (Mar. 1, 2011) (“We . . . compete for customers based principally on price, service/device offerings, call quality, *coverage area*[,] and customer service.”) (emphasis added).

<sup>425</sup> One 3G technology, EV-DO, alone now covers 97.9 percent of the U.S. population. See *14th CMRS Competition Report* ¶ 122.

<sup>426</sup> *Id.* ¶ 120, Table 13.

<sup>427</sup> See Dave Burstein, *U.S. LTE 2016: 96-98% Likely*, DSL PRIME (Mar. 23, 2011) (projecting LTE deployment will reach 96 to 98 percent of the U.S. population in 2016), available at: <<http://www.dslprime.com/a-wireless-cloud/61-w/4194-us-lte-2016-96-98-likely>>.

transaction.<sup>428</sup> According to this analyst, the “net result in improved U.S. LTE coverage” stemming from the proposed transaction would be “0%-2%, probably closer to 0%.”<sup>429</sup> The Commission should see through the Applicants’ rhetoric and reject their LTE deployment claims as not merger-specific.<sup>430</sup>

### CONCLUSION

In denying its approval of the *EchoStar-DirecTV* merger, the Commission stated that “as the harms to the public interest become greater and more certain, the degree and certainty of the public benefits must also increase commensurately in order for us to find that the transaction on balance serves the public interest.”<sup>431</sup> The Applicants in the instant proceeding have not come close to showing that the serious harm to consumers, competition, innovation, and the public interest that would result from their proposed transaction would be outweighed by any public interest benefits. No conditions or divestitures would change this conclusion. The Commission should therefore refuse to grant its consent to AT&T’s proposed acquisition of T-Mobile.

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<sup>428</sup> See Dave Burstein, *AT&T LTE Result on U.S. Coverage: ~0%*, DSL PRIME (Mar. 22, 2011), available at: <<http://www.dslprime.com/a-wireless-cloud/61-w/4192-atat-lte-result-on-us-coverage-0>>.

<sup>429</sup> *Id.*

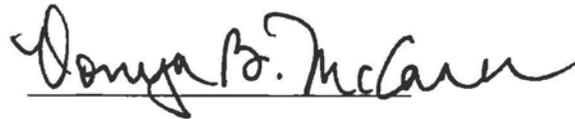
<sup>430</sup> The Applicants argue that the proposed transaction will promote broadband innovation and enhance public safety. Application at 61-63. The Applicants’ cursory arguments on these issues, however, boil down to unsupported rhetoric that fails to substantiate any verifiable public interest benefits or any connection of these claims to the proposed transaction.

<sup>431</sup> *EchoStar-DirecTV Hearing Designation Order* ¶ 192.

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### Certificate of Service

I hereby certify that on this 31st day of May, 2011, I caused true and correct copies of the foregoing Petition to Deny to be mailed by first class U.S. mail to:

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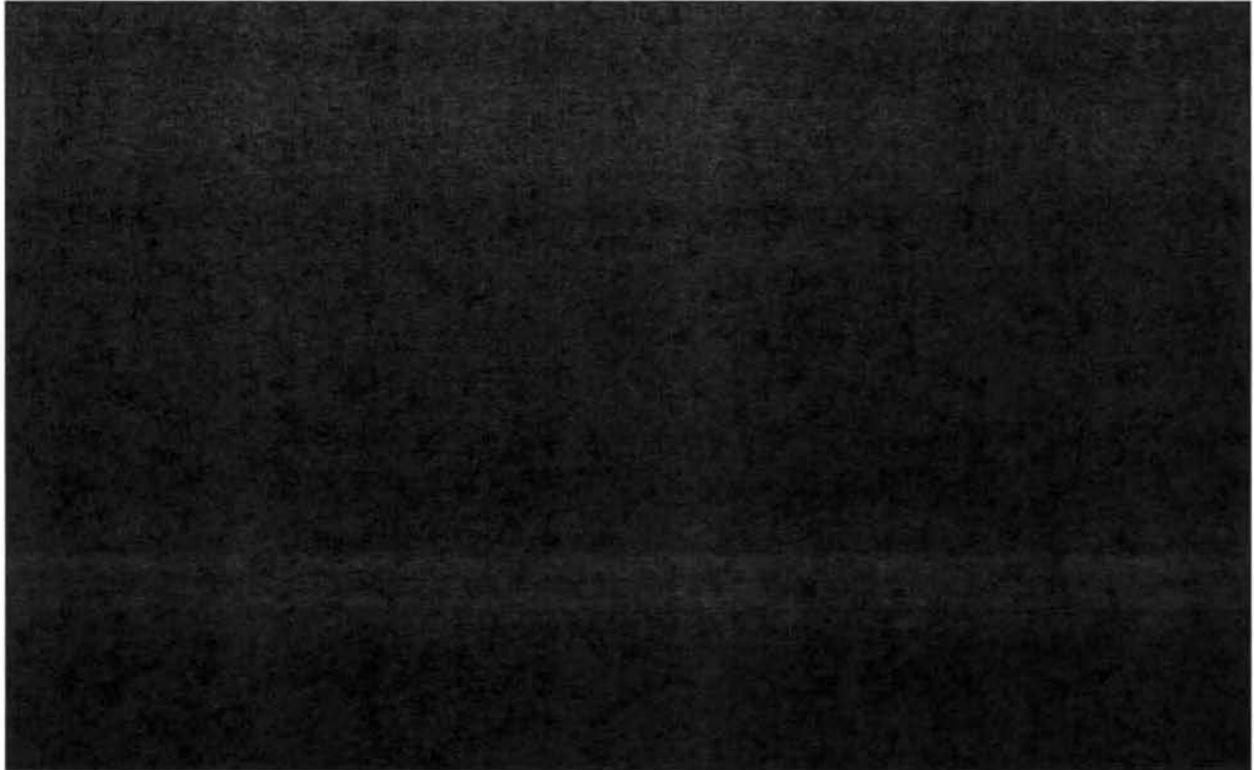
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**APPENDIX A**

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Wireless Category Media Spend

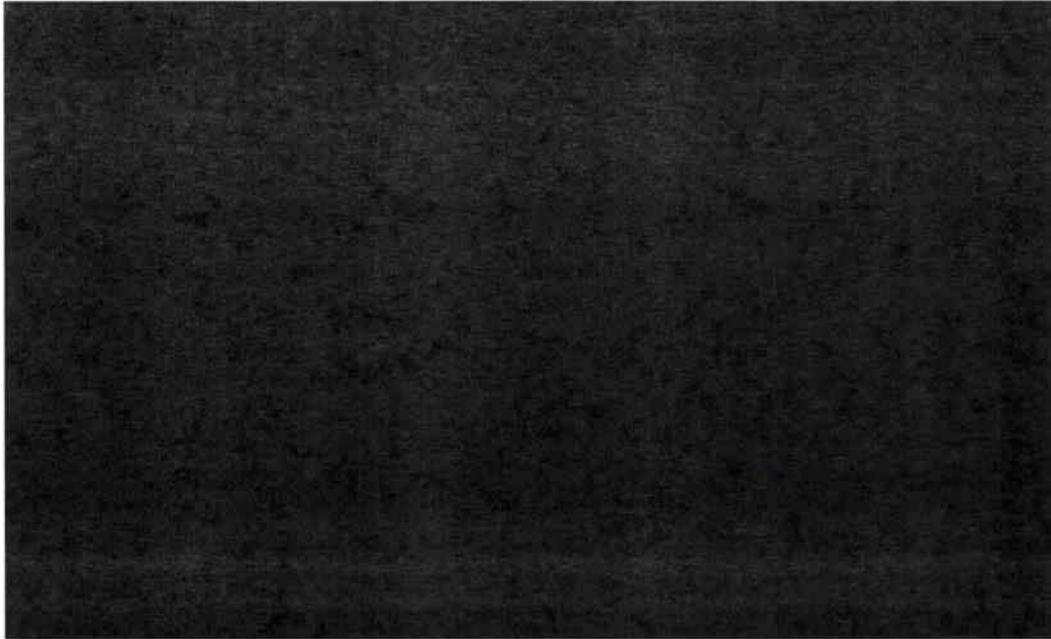
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**2010 Local vs. National Advertising Spend**

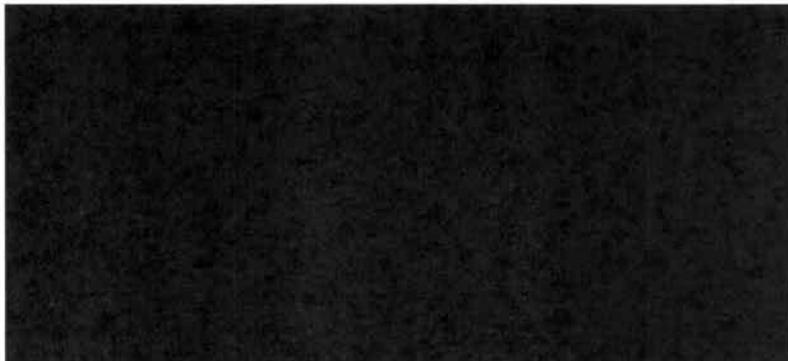
[begin confidential information]



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**Growth In Advertising Spend**

[begin confidential information]



[end confidential information]

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**ATTACHMENT A**

**ECONOMIC ANALYSIS OF THE MERGER OF AT&T AND T-MOBILE**

**JOINT DECLARATION OF**

**STEVEN C. SALOP**

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**STEPHEN D. KLETTER**

**SERGE X. MORESI**

**AND**

**JOHN R. WOODBURY**

**CHARLES RIVER ASSOCIATES**

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Applications of AT&T Inc. and	)	WT Docket No. 11-65
Deutsche Telekom AG	)	DA 11-799
	)	ULS File No. 0004669383
For Consent to Assign or Transfer	)	
Control of Licenses and Authorizations	)	

**JOINT DECLARATION OF**  
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## COMPETITIVE HARM FROM THE MERGER OF AT&T AND T-MOBILE

### I. INTRODUCTION AND EXECUTIVE SUMMARY

1. Steven C. Salop is Professor of Economics and Law at the Georgetown University Law Center in Washington, where he teaches antitrust law and economics and economic reasoning and the law. His research and consulting focuses on microeconomics, antitrust, competition, and regulation. He has written numerous articles in various areas of antitrust economics and law – mergers, joint ventures, exclusionary conduct, and tacit coordination – many of which take a “Post-Chicago” approach. Professor Salop testified at the hearings held by the United States Department of Justice (“DOJ”) and the Federal Trade Commission (“FTC”) that led to the 2010 revision of the Horizontal Merger Guidelines. Professor Salop is a senior consultant with Charles River Associates. He holds a Ph.D. in Economics from Yale University.

2. Stanley M. Besen is a Senior Consultant at Charles River Associates, Washington, D.C., where he previously served as a Vice President. Dr. Besen has served as a Brookings Economic Policy Fellow, Office of Telecommunications Policy, Executive Office of the President; Co-Director, Network Inquiry Special Staff, Federal Communications Commission; Coeditor, RAND Journal of Economics; and a Senior Economist at the RAND Corporation. Dr. Besen has taught at Rice University, where he was the Allyn R. and Gladys M. Cline Professor of Economics and Finance; Columbia University, where he was the Visiting Henley Professor of Law and Business; and the Georgetown University Law Center, where he was Visiting Professor of Law and Economics. Dr. Besen has published widely on

telecommunications economics and policy, intellectual property, and the economics of standards. He holds a Ph.D. in Economics from Yale University.

3. Stephen D. Kletter is a Principal at Charles River Associates. His consulting experience has involved mergers and acquisitions, antitrust litigation, damages assessment, class certification, patent infringement, contract disputes, and industry performance analysis. He has also assisted in all facets of preparing economic expert witnesses to testify in litigation and regulatory agency proceedings. In a previous position, Mr. Kletter supervised and coordinated the efforts of interdisciplinary teams of scientists and economists who were conducting complex environmental and economic studies. He holds a Master's degree in Economics from the University of Michigan.

4. Serge X. Moresi, the Director of Competition Modeling at Charles River Associates, is an expert in the theory of industrial organization and specializes in applied game theory, including bidding and bargaining models, search markets, network effects and two-sided markets. He is an experienced developer of theoretical models and simulation programs dealing with strategic interactions among market participants. Dr. Moresi has provided clients with expert economic consulting services in many merger cases, antitrust litigation, damages cases, and regulatory proceedings spanning a large number of industries in North America, Europe, and Australasia. Dr. Moresi is the author of publications and conference papers on a variety of topics, including market definition, merger effects analysis, optimal taxation, insider trading, and ethical behavior. Before joining Charles River Associates, he served as an Assistant Professor of Economics at Georgetown University. He holds a Ph.D. in Economics from the Massachusetts Institute of Technology.

5. John R. Woodbury is a Vice President at Charles River Associates.

Dr. Woodbury has served as a senior economist on the Federal Communications Commission's ("Commission's" or "FCC's") Network Inquiry Special Staff, Chief of the Economics Division in the FCC's Common Carrier Bureau, and Vice President of Research and Policy Analysis at the National Cable and Telecommunications Association. He has been the lead economist both on telecommunications and merger-related matters including the FCC's review of the Sprint-Nextel transaction, the Commission's ongoing review of retransmission consent, and the proposed acquisition of Dollar Thrifty by Hertz. Dr. Woodbury is currently a member of the editorial board of the Antitrust Source, an online publication sponsored by the American Bar Association, and frequently writes for that publication. He holds a Ph.D. in Economics from Washington University (St. Louis).

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6. Today, the Commission is at a crossroads. The wireless industry currently consists of four national players that compete in a national market together with a "fringe" of much smaller regional players. The proposed merger of AT&T and T-Mobile is likely to significantly reduce competition in wireless services. Whereas Verizon and AT&T currently are constrained at the national level, mainly by Sprint and T-Mobile, the merger would move the market irrevocably closer to a duopoly far less constrained by other competitors. That consolidation is likely to lead to higher prices and reduced innovation. These harms would be caused by adverse unilateral conduct by AT&T, an increased likelihood of coordination between AT&T and Verizon, as well as exclusionary effects that increase the costs of Sprint and the

fringe competitors. In the end, consumers of wireless service (individuals, businesses, and governments) would be harmed.

7. In this Declaration, we discuss these issues in more detail.<sup>1</sup> Our report analyzes market definition, market shares and concentration, and the competitive effects of the proposed merger. Our competitive effects analysis involves an evaluation of product differentiation, unilateral effects, coordinated effects, exclusionary effects, and AT&T's efficiency claims.

8. Our analysis identifies wireless product markets and market segments where there are potential competitive concerns. In addition to an all-wireless market, we also examine postpaid retail sales, prepaid retail sales, and corporate and governmental sales. We also analyze several wholesale and input markets; service to resellers; roaming; and backhaul. We conclude that this merger would raise significant competitive concerns.

9. Our analysis indicates the existence of a national geographic market as well as local markets. Although the Commission has traditionally analyzed wireless mergers at the local market level, there are solid economic reasons for evaluating this merger at the national level as well. First, the most significant competition occurs at the national level. The national carriers now generally charge uniform prices across the country, although there may be occasional local promotions. Product positioning and advertising are now predominately national. Handset exclusives and handset competition also take place at the national level. In addition, innovation competition also is predominately national. Second, the 2010 Horizontal Merger Guidelines now recognize the importance of evaluating mergers in any relevant market in which there are

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<sup>1</sup> We intend to refine our analysis as additional information and more data become available.