Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

REPLY COMMENT OF CENTER FOR INDIVIDUAL FREEDOM

June 20, 2011

I. Introduction

On behalf of 300,000 supporters and activists throughout the nation, the Center for Individual Freedom (CFIF) respectfully but firmly exhorts this Commission to heed its proper role within the limits of its lawful authority by affirming the fair and freely negotiated private transaction at issue in this matter.

By incorporating the parties' uniquely compatible existing asset portfolios, the proposed transaction appears to offer the promise of future consumer benefit and service improvement via reduction of looming capacity constraints. In contrast, imprudent denial by this Commission would injure consumers by rendering both parties less able to address increasingly-unsustainable network demands going forward.

Comments recently filed in opposition to the proposed transaction offer little by way of novel allegations, but betray opponents' transparent agenda: to exploit this Commission as a tool to cripple market competitors or advance a purely partisan agenda. Such tactics should not be countenanced or rewarded.

II. About the Center for Individual Freedom

CFIF is a non-profit, non-partisan organization with over 300,000 grassroots supporters and activists across America. It was founded in 1998 for the purpose of safeguarding and advancing Constitutional rights, as well as ensuring continued American innovation, leadership, economic prosperity and worldwide entrepreneurial preeminence. As a central aspect of that larger mission, CFIF advocates public policies at the federal, state and local levels that advance technological, telecommunications, Internet and broadband development most freely, effectively and efficiently.

CFIF's interest in the instant matter lies in its belief that regulatory authorities must at all times act in a disinterested, neutral manner and judge

matters before them solely upon the substantive merits. Such authorities must not allow themselves to become non-neutral actors or instruments facilitating the motives of outside interests, whether commercial or partisan. Accordingly, CFIF seeks in this Reply to address certain overarching concerns raised by opponents' comments filed in opposition.

III. Discussion

Several overarching allegations from opponents merit rebuttal within the particular context of CFIF's mission and the interests of its supporters.

First, in a free and innovative society, the burden of proof should not rightfully fall upon private, independent and informed parties to affirmatively justify an arms-length, bargained-for mutual agreement that they have reached.[1] Rather, that burden of proof should lie with any party inserting itself into the transaction and artificially seeking to block, interfere with or impose its own proposed outside conditions upon the proposed covenant. That burden of proof is particularly substantial when, as here, denial would clearly serve to benefit those outside opponents' commercial or ideological interests.

In the instant matter, opponents of the proposed transaction face precisely that burden to demonstrate by clear and convincing evidence that the agreement would harm American consumers. The exhaustive array of facts and market data submitted throughout this proceeding, however, demonstrate the contrary – that the proposed agreement would benefit consumers.

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[1] *See, e.g.*, 47 U.S.C. §§ 214, 303, 310.

Second, the available evidence indicates that the proposed merger would intensify market competition, not reduce it. Indeed, the very fact that conspicuous market competitors so desperately allege that the transaction would reduce competition suggests that it will actually increase competition.

For instance, Sprint Nextel Corporation states in its Opposition that "the proposed transaction would lead to higher prices, less innovation, and lower quality service."[2] If that allegation was accurate, however, Sprint itself would be the natural market beneficiary from any deterioration in competitors' service. If, as Sprint claims, T-Mobile's "lower prices would likely be eliminated when T-Mobile's existing customer contracts expire," then that would provide an immediate advantage for a competitor such as Sprint.[3]

Is the American public truly asked to believe that such a result, if true, would not be welcomed by commercial competitors such as Sprint?

Moreover, opponents' claims do not accord with real-world experience. As just one example, consumer prices have declined, service has improved and data usage has skyrocketed as the industry has consolidated. For example, according to analysis from Bank of America Merrill Lynch, national wireless telephony ranks among the industrialized world's lowest at $0.04 of revenue per minute.[4]

According to a United States Government Accountability Office (GAO) analysis in 2010, moreover, the inflation-adjusted average cost of wireless service

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[2] *See* Sprint Nextel Corporation Petition to Deny, WT Docket No. 11-65, at 27 (filed May 31, 2011).

[3] *Id.*

[4] Glen Campbell *et al.*, *Global Wireless Matrix 1Q10: A Modest Recovery, Asia in the Lead,* Bank of America Merrill Lynch at 2-3, (April 13, 2010) (Tables 1-2 reporting year-end 2009 data).

actually declined a remarkable fifty percent in the decade between 1999 and 2009. Notably, that decade witnessed no fewer than five significant mergers between wireless providers.[5] Notably, that GAO report stated:

> "In particular, by enabling large national carriers to exploit economies of scale, *consolidation can create greater productivity and economic efficiency*. This industry consolidation may have especially improved the efficiency of the large national carriers, *allowing them to offer more wireless services for similar or lower prices*."[6] (Emphasis added.)

Stated simply, if market competitors such as Sprint truly believed that this transaction would trigger the consequences that they allege, then it would favor, not oppose it. Such opponents transparently act in their competitive interest, not some sort of altruistic interest. That alone speaks volumes.

Third, opponents' allegation that "the proposed transaction would likely lead to increased coordination between AT&T and Verizon," is equally fallacious. That allegation rests upon speculation, not actual evidence sufficient to sustain opponents' claims. Moreover, that allegation ignores the vast array of legal remedies available to deter and, if necessary, remedy any truly anti-competitive behavior.[7]

Further, opponents can hardly claim that regulatory authorities stand unable or unwilling to prosecute any anti-competitive behavior if that eventuality somehow came to pass. In recent years, regulatory authorities have remained highly active,

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[5] United States Government Accountability Office, *Report to Congressional Requesters, Telecommunications: Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry*, GAO-10-779, July 2010 at 24.

[6] *Id.*

[7] 15 U.S.C. § 1.

to put it mildly, in pursuing real and illusory claims of the sort of anti-competitive behavior imagined by opponents.[8]

Fourth, opponents speculatively allege that the proposed transaction will create a suffocating duopoly. As demonstrated by the record, however, that is a false assertion. Despite years of robust merger activity, according to this Commission's own 2010 analysis, "approximately 259 million people, or 90.9 percent of the U.S. population, live in census blocks served by four or more competitors."[9]

Moreover, denial by this Commission of the proposed agreement would actually result in a less competitive environment. This is because a denial would force the parties to this transaction to attempt to compete with their existing asset portfolios and capabilities. Opponents employ a static analysis in making their claim, suggesting that the status quo and current market realities would somehow continue into the foreseeable future. As the parties have established, however, their respective logistical realities will not sustain ongoing competitive capabilities that they now enjoy.

Accordingly, an attempt to cement the current market in place would likely lead to calcification, lower quality of service, increased infrastructure overload and ultimately less competition.

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[8] *See, e.g.*, Fierce Wireless, *Justice Department Signs Off on AT&T-Centennial Deal*, October 13, 2009, http://www.fiercewireless.com/story/justice-department-signs-t-centennial-deal/2009-10-13.

[9] *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, including Commercial Mobile Services ("Report")*, WT Docket No. 09-66 (May 20, 2010), at 38, paragraph 44, http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-81A1.pdf.).

III. Conclusion

In light of the evidence and history set forth herein, as well as the exhaustive factual record submitted in this matter, the proper conclusion is readily apparent. Namely, that the proposed transaction in question between two informed, independent entities offers the prospect of greater continued market growth and innovation versus the alternative. Opponents' attempts to use this process as a means to undercut market competitors or advance a purely ideological agenda are also readily apparent. Accordingly, CFIF respectfully requests that this Commission exercise its authority in a manner consistent with its mission and allow the free market to function without unnecessary and counterproductive artificial interference.

Respectfully submitted,

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