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June 20, 2011

Hon. Julius Genachowski, Chairman  
Hon. Michael Copps, Commissioner  
Hon. Robert McDowell, Commissioner  
Hon. Meredith Attwell Baker, Commissioner  
Hon. Mignon Clyburn, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Dear Chairman Genachowski and Commissioners:

RE: AT&T – T-Mobile Merger, WT Docket No. 11-65

The National Urban League (“NUL”) and the National Action Network (“NAN”) respectfully submit these Reply Comments in response to the Commission’s Public Notice.<sup>1</sup>

In NUL’s Initial Comments,<sup>2</sup> it promised to “continue [its] careful fact finding through discussions with both merger applicant AT&T and other interested parties in pursuit of comprehensive reply comments” to be filed by this date. NUL added that its reply comments would “provide a comprehensive definitive statement for the FCC’s consideration as a part of its public interest examination.”<sup>3</sup>

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<sup>1</sup> See Public Notice, AT&T Inc. and Deutsche Telekom AG Seek FCC Consent to the Transfer of Control of the Licenses and Authorizations Held By T-Mobile USA, Inc. and Its Subsidiaries to AT&T, Inc., WT Docket No. 11-65 (rel. April 28, 2011), available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0428/DA-11-799A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0428/DA-11-799A1.pdf) (last visited May 24, 2011).

<sup>2</sup> Letter to Hon. Julius Genachowski, Chairman, Federal Communications Commission, and Commissioners, from Marc H. Morial, President and Chief Executive Officer, National Urban League, May 31, 2011.

<sup>3</sup> Id., p. 3.

NUL leads the nation in promoting universal broadband adoption and in advancing policies that will deliver jobs, economic empowerment, and social justice to African Americans nationwide. NAN is one of the leading civil rights organizations in the Nation, with chapters throughout the entire U.S. Founded in 1991 by Reverend Al Sharpton, NAN works within the spirit and tradition of Dr. Martin Luther King, Jr. to promote a modern civil rights agenda that includes the fight for social justice, education, and one standard of justice and decency for all people regardless of race, religion, national origin, and gender. Thus, in our evaluation of the merger, we focused on the concerns that have driven our respective organizations: diversity and jobs. In NUL's Initial Comments, NUL set out what it has long maintained ought to be the nation's top broadband policy priority: that "the nation must close the digital divide and achieve universal broadband access, adoption and informed use. It is further in the Public Interest that workforce diversity, and supplier diversity, axioms of 21<sup>st</sup> Century Economic Growth, be enhanced by the merger.... the Public Interest is augmented by business transactions which strengthen and expand workforce and supplier diversity, and thus economic opportunity."

NUL and NAN regard the creation of quality jobs and affording all Americans an equal opportunity to secure and grow in these jobs to be the nation's Number One economic policy priority. Just this past week, the Labor Department reported that although African Americans made up 12% of the United States labor force in 2010, only about half of African Americans 16 or older had a job and, of those, 17.5% percent worked part-time. Half of African American workers employed fulltime earned \$611 or more per week in 2010 – 80% of the earnings by whites. Most troubling is that the African American unemployment rate in 2010 was 16.0%, compared to 8.7% for whites.<sup>4</sup> African Americans' staggering unemployment rate is the leading edge of the greatest jobs crisis the nation has faced since the Great Depression.

As the nation rapidly transitions from an industrial to a digital economy, what will be the prospects for curing the vast gap in employment opportunities? The signs are not promising. A San Jose Mercury News 2009 investigative report found that at Silicon Valley high tech companies – those that even reported their EEO-1 data – African Americans constituted only 1.5% of computer workers – a number actually in decline.<sup>5</sup>

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<sup>4</sup> U.S. Department of Labor, The Black Labor Force in the Recovery (June 10, 2011), available at <http://www.dol.gov/Sec/media/reports/blacklaborforce/> (last visited June 12, 2011).

<sup>5</sup> Mike Swift, Blacks, Latinos And Women Lose Ground At Silicon Valley Tech Companies, San Jose Mercury News (May 27, 2009).

Thus, as the NUL recommended in its Jobs Rebuild America 12-Point Plan,<sup>6</sup> high tech companies should take a leadership role in creating jobs that will bring about the economic recovery the nation dearly needs:

ICT industries provide one of the most extensive job and entrepreneurship opportunities for black and urban communities. In 2002 only 42,000 minority owned businesses were in the information sector – one of the lowest levels of minority participation. Triggering minority participation in ICT industries is critical for a robust, long-term recovery. ICT industries can greatly contribute to achieving the U.S. Department of Commerce’s 2010 estimate of extra 16.1 million jobs and \$2.5 trillion in gross revenues from minority owned businesses. This requires creative and efficient solutions focused on both the skills needed to get ICT industry jobs and facilitating minority entrepreneurship – lift skills in science, technology, engineering and math, expand low-income programs of the universal service fund to broadband, reform the universal service fund to better target urban areas, adopt national policies on contracting diversity similar to those of state utilities commissions and ensure that minority intermediaries are active participants in the decision making process.

Adoption and jobs are the key benchmarks against which every major telecom merger should be evaluated.

Over the past several weeks, we have engaged in intensive discussions with AT&T representatives, and with merger opponents. In those discussions, our focus has been on the key issues of the impact of the merger on adoption and jobs.

Based on our due diligence, we have now reached the definitive view that the merger deserves to be approved. In reaching this conclusion, we recognize that the proceedings have just begun. As thoughtful public policy advocates we are prepared to modify our position should clear and convincing evidence call into doubt the basic assumptions which informed the conclusion we are setting forth in this letter today.<sup>7</sup>

First, regarding adoption, AT&T has made out a compelling case that “the transaction will enable the applicants to push out spectrum exhaust dates and bridge the gap to the time when sufficient numbers of customers have moved to more spectrally efficient LTE services, GSM service can be wound down, and the Commission has made more

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<sup>6</sup> National Urban League, Jobs Rebuild America 12 Point Plan: Putting Urban America Back to Work (June 2011), available at <http://www.nul.org/sites/default/files/12pointplancorrect.pdf> (last visited June 12, 2011), p. 5 (Recommendation 4: Boost Minority Participation in Information and Communication Technology (ICT) Industries).

<sup>7</sup> In addition, we reserve the right to address the potential conditions to the merger in the future as the record evolves in this proceeding.

spectrum available through auction.”<sup>8</sup> This is central to the FCC’s goal of universal adoption because it will preempt the potential for net spectrum scarcity in the large wireless markets that are home to the majority of African Americans. In those markets, we are already seeing what telecom analyst Craig Moffett has characterized as “the leading edge of scarcity pricing.”<sup>9</sup> African American consumers’ embrace of wireless is our community’s primary connection to the broadband economy and our primary method of closing the digital divide and securing first class digital citizenship.<sup>10</sup> The FCC cannot afford to guess wrong and risk destroying this minority wireless miracle that is our best hope to close the digital divide. Denying approval of the merger might allow the FCC the satisfaction of slowing down consolidation for a time<sup>11</sup> – but that would carry a huge and unacceptable risk: widening the digital divide for years to come.

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<sup>8</sup> See Joint Opposition of AT&T Inc., Deutsche Telekom AG, and T-Mobile USA, Inc. to Petitions to Deny and Reply to Comments,” In Re Applications of AT&T Inc. and Deutsche Telekom AG For Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65 (filed June 10, 2011) (“AT&T – T-Mobile June 10, 2011 Opposition”), pp. 56-57.

<sup>9</sup> See Craig Moffett, U.S. Wireless: Picking Winners and Losers in the Wake of the Deal,” Bernstein Research (April 5, 2011), p. 7.

<sup>10</sup> See, e.g., Jon P. Gant et al., Joint Center for Political and Economic Studies, National Minority Broadband Adoption: Comparative Trends in Adoption, Acceptance and Use (February, 2010), p. 36, available at [http://jointcenter.org/publications\\_recent\\_publications/media\\_and\\_technology/national\\_minority\\_broadband\\_adoption](http://jointcenter.org/publications_recent_publications/media_and_technology/national_minority_broadband_adoption) (last visited May 27, 2011) (finding that 50 percent of African Americans access the Internet over cell phones, compared to 30 percent of white Americans).

<sup>11</sup> Or, more likely, the industry was going to consolidate anyway, and the only issue was whether T-Mobile would be sold to AT&T or to Sprint. See, e.g., Oral Testimony of Larry Cohen, President, Communications Workers of America, “The AT&T/T-Mobile Merger,” Before the Senate Committee on the Judiciary, Subcommittee on Antitrust, Competition Policy, and Consumer Rights, May 11, 2011 (“Cohen Testimony”) (“The real question this transaction poses is not whether T-Mobile will survive as an independent competitor, but whether Sprint or AT&T will acquire T-Mobile. Deutsche Telekom has made it clear that it would no longer make the investments necessary to increase speeds on their network.”) The Commission cannot, however, “consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.” 47 U.S.C. §310(d).

It would be profoundly irresponsible for the FCC to take that risk. In its Amicus Comments, the Minority Media and Telecommunications Council laid these dynamics on the table:<sup>12</sup>

To date, wireless broadband has been a genuine success story for minority communities and has played a key role in helping to narrow the digital divide. However, this progress is threatened by the looming spectrum crunch and the potential for capacity constraints to drive up prices for consumers and drive down broadband adoption, particularly among price-sensitive minority communities. *We cannot let this happen.* As a democratic society, the nation simply cannot afford to guess wrong and see the digital divide widen – especially at a time when minorities are poised to become the nation’s majority. In today’s digital age, access to high-speed Internet is no longer a luxury—it is a necessary predicate of first-class citizenship, and thus it is a fundamental right for all Americans. By easing capacity constraints, the merger will help avert the spectrum crunch – especially in very large majority-minority markets – and thus alleviate the pressures that could drive prices up, drive down minority adoption, and widen the digital divide. In this way, the merger would buy the nation the time it needs to implement a long-term cure for the spectrum crunch through such mechanisms as spectrum incentive auctions and repurposing of some government spectrum.

Second, regarding jobs, AT&T’s plan to build out a national 4G network is exactly the kind of job creation engine the nation needs to bring about an end to the recession. The jobs devoted to the construction of the network, and the jobs created by the high tech economy to be built by the network, should vastly outweigh any short-term job loss attendant to combining redundant physical plants and cell sites between AT&T and T-Mobile.<sup>13</sup> AT&T shares our focus on job creation. AT&T will work closely with NUL in the weeks and months ahead to design job development, job training and job mentoring initiatives that will ensure that African Americans will be full partners in the national job growth to be spawned by the merger.

On the jobs and equal opportunity front, AT&T speaks with credibility. Not only is AT&T neutral as to unionization, it is the only unionized major wireless carrier, and

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<sup>12</sup> MMTC, Amicus Comments of the Minority Media and Telecommunications Council in Support of the AT&T – T-Mobile Merger, WT Docket No. 11-65 (filed May 30, 2011) (“MMTC Amicus Comments”), pp. 2-3.

<sup>13</sup> AT&T has pledged to invest \$8 billion to expand LTE deployment and integrate the AT&T and T-Mobile USA networks. See AT&T – T-Mobile June 10, 2011 Opposition, pp. 83-84. That \$8 billion investment translates into approximately 55,000 - 96,000 new jobs, including direct jobs, supplier jobs and induced jobs. See Economic Policy Institute, The Jobs Impact of Telecom Investment, Policy Memorandum #18 (May 31, 2011), available at <http://www.epi.org/publications/entry/7127/> (last visited June 12, 2011).

union leaders have warmly endorsed the merger.<sup>14</sup> Further, AT&T is a giant among American companies in job creation, equal employment opportunity, and supplier diversity, having been ranked #2 by DiversityInc. (2011) among all Fortune 500 companies in supplier diversity and #4 in diversity management. We are particularly impressed by AT&T's willingness to facilitate MWBE participation in potential DOJ-mandated asset spinoffs, and by the opportunities the merger will create for diverse business enterprises to construct AT&T's national 4G wireless network.<sup>15</sup> As stated in NUL's Initial Comments, "[t]hese commitments are important elements of the Commission's public interest calculus because they could encourage competition and inclusion among small, diverse businesses in telecommunications and digital entrepreneurship." AT&T's extraordinary diversity record adds considerable value to the compelling broadband adoption and jobs creation case for the merger.

With an eye to the arc of history and the making of precedent, more important than what the Commission decides is the route the Commission takes to get there. For over a generation, diversity has been a central factor in the FCC's broadcast public interest analysis,<sup>16</sup> where it is applied to an industry where the content is transmitted by

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<sup>14</sup> See Cohen Testimony at 12.

<sup>15</sup> See MMTC Amicus Comments, pp. 11-16 (setting out the diversity case for the merger).

<sup>16</sup> See, e.g. Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC2d 979, 981 (1978) ("Adequate representation of minority viewpoints in programming serves not only the needs and interests of the minority community but also enriches and educates the non-minority audience. It enhances the diversified programming which is a key objective not only of the Communications Act of 1934 but also of the First Amendment."); Amendment of Section 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules, 4 FCC Rcd 1723, 1724 ¶7 (1989) ("Although one of the structural purposes underlying our multiple ownership rules is to encourage diversity in the ownership of broadcast stations, we have encouraged ownership diversity as a means of promoting diversity of program sources and viewpoints, not as an end in itself"); 2002 Biennial Regulatory Review, Report and Order, 18 FCC Rcd 13620, 13630 ¶30 (2003), aff'd in part and remanded in part, Prometheus Radio Project v. FCC, 373 F.3d 372 (3d Cir. 2004) ("[O]ur rules should encourage diverse ownership precisely because it is likely to result in the expression of a wide range of diverse and antagonistic viewpoints.") Courts have agreed and have upheld the Commission's authority to promote diversity. See, e.g., FCC v. Nat'l Citizens Comm. for Broadcasting, 436 U.S. 775, 795 (1978) ("NCCB") (affirming the Commission's authority "to conclude that the maximum benefit to the public interest would follow from allocation of broadcast licenses so as to promote diversification of the mass media as a whole.") (internal quotations omitted); Metro. Council of NAACP Branches v. FCC, 46 F.3d 1154, 1162 (D.C. Cir. 1992) (citing NCCB at 794-795, and discussing the Commission's broad authority "to determine where the public interest lies in the regulation of broadcasting to foster diversity"); Fox Television Stations v. FCC,

homogeneous or heterogeneous groups of owners. Diversity in employment and procurement are no less vital for wireless, where the content is user-generated and users' ability to fully access and utilize the technology, both as consumers and producers, is facilitated by their carrier's emphasis on diversity in procurement, employment, and adoption outreach. And universal access, adoption and informed use of broadband are key policy attributes of diversity since, as in broadcasting, service to diverse groups is a key element of their engagement in the industry and its technological wonders.

Although diversity has not yet weighted in the Commission's review of this merger,<sup>17</sup> the proceeding has just begun, and thus the Commission will have additional opportunities to develop the record on the issue of diversity. Promoting diversity should be a public interest imperative of the FCC. We are hopeful that this letter will inspire the Commission to focus on this vital element of the public interest.

Respectfully submitted,



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President and Chief Executive Officer  
National Urban League



Reverend Al Sharpton  
Chief Executive Officer  
National Action Network

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280 F.3d 1027, 1042-43 (D.C. Cir. 2002) (agreeing with the Commission that “protecting diversity is a permissible policy” objective, and noting that “[i]n the context of the regulation of broadcasting, ‘the public interest’ has historically embraced diversity”) (citation omitted); see also Grutter v. Bollinger, 539 U.S. 306, 330 (2003) (stating that the benefits of diversity “are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.”)

<sup>17</sup> The Commission's 50 initial interrogatories to AT&T were propounded to enable the Commission to, inter alia, “make the necessary public interest findings under Section 310(d) of the Communications Act[.]” Letter from Ruth Milkman, Chief, Wireless Telecommunications Bureau, to William R. Drexel, AT&T, May 27, 2011, p. 1. The 50 questions contain no references to diversity, minorities, women, MWBEs, designated entities, procurement, equal employment opportunity, broadband adoption, or closing the digital divide. See Information and Discovery Request for AT&T, Inc., WT Docket No. 11-65 (May 27, 2011). And in what must have been an unintended error, the interrogatories specifically direct AT&T not to provide information about the “human resources” aspects of the transaction. Id. at p. 2, Q. 7.