

REDACTED – FOR PUBLIC INSPECTION

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Applications For Consent to)	WT Docket No. 11-65
Transfer Of Control Filed By AT&T, Inc.)	DA 11-799
And Deutsche Telekom AG)	File Nos. 0004669383 <i>et al.</i>
)	

ALARM.COM'S REPLY IN SUPPORT OF ITS PETITION TO DENY

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In accordance with the Commission’s April 28, 2011 Public Notice issued in this docket, Alarm.com Incorporated (“Alarm.com”) respectfully submits this reply in support of its petition to deny, or at least place certain conditions on the approval of, AT&T, Inc. and Deutsche Telekom AG’s applications for the transfer of control of T-Mobile USA’s licenses and authorizations to AT&T.

I. INTRODUCTION

As Alarm.com explained in its opening Petition, for over a decade it has been a significant nationwide wholesale consumer of machine-to-machine (M2M)-related GSM/GPRS wireless services, which it uses as a critical input for its innovative, GPRS-network-dependent security systems. There are currently hundreds of thousands of GPRS-based Alarm.com-enabled security systems deployed throughout the country protecting American homes and businesses. And as Alarm.com further explained in its Petition, its decade-plus experience as a wholesale consumer in the industry has taught it three core lessons of critical relevance to the Commission. First, without T-Mobile’s competitive presence in the GPRS-based wireless services market, Alarm.com paid substantially more to AT&T for comparable service. Second, without T-Mobile, Alarm.com found itself less able to bring innovative products to market. And, third,

Alarm.com has only secured a long-term commitment from T-Mobile, not AT&T, to serve its deployed units with the necessary GPRS service through **[Begin Highly Confidential Material]**
[End Highly Confidential Material].

In their Joint Opposition, the Applicants have *no answer* to Alarm.com's undisputed account of its experiences in the market. T-Mobile has caused significant downward pricing pressure over a sustained period of time. T-Mobile has allowed Alarm.com to innovate where AT&T had not. And, unlike AT&T, T-Mobile has made a long-term commitment to continue serving the deployed Alarm.com-enabled security systems throughout the country through **[Begin Highly Confidential Material]** **[End Highly Confidential Material]** so that those units need not be prematurely replaced at enormous expense.

Thus, Alarm.com's account corroborates the many other petitioners' claims that, in a world without T-Mobile, consumers are going to pay AT&T more for less. And the Applicants obviously have no rejoinder to Alarm.com's concerns that, if T-Mobile is acquired, AT&T will enjoy a total monopoly over GPRS-based customers like Alarm.com.

The Commission cannot, consistent with its statutory duties, knowingly grant AT&T a total monopoly in the national GPRS market. Accordingly, if the Applications are not denied, they can only be granted upon the conditions that (1) AT&T maintain its and T-Mobile's current pricing for all Alarm.com units deployed when the acquisition is consummated for as long as those units remain deployed, and (2) enforcing T-Mobile's written commitment of continued service to Alarm.com and its 2G/GPRS- based security services through **[Begin Highly Confidential Material]** **[End Highly Confidential Material]**, irrespective of which carrier currently provides the associated wireless services to a particular Alarm.com device.

II. ARGUMENT

A. The Applicants Acknowledge Alarm.com’s Concerns Over The Prospect Of Having Hundreds Of Thousands Of Deployed Alarm.com-Enabled Security Devices Stranded In AT&T’s GSM/GPRS Monopoly Network

From the start, the Applicants have admitted – even touted – their joint control over the national GSM/GPRS market: “Unlike other major U.S. wireless providers, AT&T and T-Mobile USA both use GSM...”¹ Predictably, nothing in the Applicants’ Joint Opposition attempts to hide the “uniquely complementary nature of AT&T and T-Mobile[’s]” GSM/GPRS networks.² The Applicants do not deny that AT&T would possess monopoly power over the national GSM/GPRS-dependent market if the Commission approved the proposed transaction.

Further, the Applicants concede that Alarm.com’s existing GPRS-dependent security devices would be *forever* stranded in that monopoly market. In other words, AT&T will have monopoly control over Alarm.com’s GPRS-based security systems *for the remainder of their service life*, which, as Alarm.com explained in its Petition, is ten years, on average.³ As Alarm.com explained in its opening Petition, the cost of replacing or retrofitting its deployed units with alternative technology would be prohibitive, to say nothing of the needless disruption and potential dissatisfaction it could cause Alarm.com’s customers.⁴ The Applicants concede as

¹ *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, Description of Transaction, Public Interest Showing and Related Demonstrations, at 7 (Apr. 21, 2011) (*Applicants’ Public Interest Statement*).

² *Id.*

³ *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, Alarm.com’s Petition to Deny, at 6 (May 31, 2011).

⁴ *Id.* at 5 & Confidential Exhibit 3.

much in their Joint Opposition: “M2M customers generally do not retrofit their installed devices, as that is too costly even within the same technology. *Competition is therefore generally for future versions of the devices*, and that is plainly broader than GSM.”⁵ Thus, the Applicants acknowledge that all of the currently deployed GSM/GPRS-based Alarm.com-enabled security devices would be stranded in a market over which AT&T has total monopoly control, and that Alarm.com and its customers have no reasonable means of extricating themselves from that uncompetitive market.

B. An Interim Monopoly Is Still A Monopoly

To deflect attention away from the GSM/GPRS-related competitive concerns presented by the proposed transaction, the Applicants’ principal response is to suggest that it is only temporary. AT&T acknowledges that it would like nothing more than to abandon its GSM network as quickly as possible⁶ (a corollary problem for Alarm.com and other similarly situated, stranded GSM customers, of course). So, the argument runs, AT&T will eventually abandon its monopoly GSM/GPRS network in favor of the LTE network technology, a platform on which, perhaps, it will have to compete with Verizon, and any remaining carriers.⁷ Thus, AT&T would

⁵ See generally *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, Joint Opposition Of AT&T Inc., Deutsche Telekom AG, And T-Mobile USA, Inc. To Petitions to Deny And Reply To Comments, at 199 & n.386 (June 10, 2011) (*Joint Opposition*) (emphasis added).

⁶ *Joint Opposition* at 35.

⁷ See *id.* at 31-35 (June 10, 2011) (describing AT&T’s “responsible and customer-friendly approach to the transition away from AT&T’s GSM service,” and noting that AT&T is “aggressively pursuing opportunities to redeploy spectrum from GSM to UMTS whenever possible without significantly reducing service quality to existing GSM customers.”); *id.* at 126-31 (describing Applicants’ view of AT&T’s prospective sources of competition).

only enjoy a temporary monopoly that it is not keen to keep (which could itself create perverse pricing incentives to force customers off GSM prematurely).

The proposed AT&T GSM monopoly will last for an extended period of years. As Alarm.com stressed in its Petition as another reason commending T-Mobile’s competitive value in the market, AT&T (unlike T-Mobile) is unclear just how long it will continue servicing its GSM customers. AT&T indicates that it is pushing consumers off GSM as quickly as possible, but that it is a lengthy process: “transitioning enough customers [off GSM] to achieve meaningful traffic offload is not nearly as easy or fast as opponents suggest.”⁸

AT&T gives no clear timeline for its GSM phase-out, offering only anecdotal accounts of how long its GSM monopoly may last. It indicates, for example, that “[i]t clearly will take far longer” than **[Begin Confidential Material]** **[End Confidential Material]**.⁹ Comparing its experience to Sprint’s, AT&T noted that Sprint has already taken seven years on its prior-generation-transition, and that it is “likely that the [Sprint] transition will take several years longer than the seven it has taken already.”¹⁰ And, finally, AT&T highlights prior Commission precedent in which it set a “five-year transition period for the sunset of analog cellular services.”¹¹ Put together, the evidence indicates that AT&T could reasonably expect to enjoy its GSM monopoly for a significant period of time.

⁸ *Id.* at 32.

⁹ *Id.* at 33.

¹⁰ *Id.* at 34.

¹¹ *Id.* at 33 (citing Report and Order, *Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission’s Rules to Modify or Eliminate Outdated Rules Affecting Cellular Radiotelephone Service and Other Commercial Mobile Radio Services*, 17 FCC Rcd 18401, 18405, ¶ 5 (2002)).

The Applicants are therefore not asking the Commission for an ephemeral GSM monopoly over a small handful of consumers. It will span many segments of the wireless market – from stranded M2M devices like Alarm.com’s, to Applicants’ current residential and business GSM subscribers, to domestic and international carriers’ roaming and resale capabilities.¹² The

¹² Given Alarm.com’s wholesale GPRS needs for its security devices, its Petition focuses on AT&T’s proposed GSM/GPRS monopoly from the M2M perspective. While Applicants may try to brush that particular market segment under the rug, a host of petitioners have highlighted many other problems with an AT&T GSM/GPRS monopoly that, when added up, cannot conceal the mountain of anticompetitive problems raised by that aspect of the transaction, to say nothing of AT&T’s **[Begin Confidential Material]** **[End Confidential Material]** GSM subscribers. *Joint Opposition* at 32; *see also 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, Comments of Cablevision Sys. Corp., at 13 (May 31, 2011) (footnotes omitted) (highlighting competitive ills of wholesale GSM roaming monopoly); *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, Petition of Cincinnati Bell Wireless LLC to Condition Consent or Deny Applications, at 15-16 (May 31, 2011) (“Indeed, with this merger, CBW will become the second largest GSM-based carrier in the country even though it has only 509 thousand subscriber lines as compared to AT&T’s roughly 95.5 million and T-Mobile’s 33.7 million subscribers. If the merger is approved, there will be one national GSM-based carrier with over 129 million subscribers, more than 250 times the size of CBW.”) (emphasis in original) (footnotes omitted); *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, Petition of COMPTTEL to Deny, at 18-21 (May 31, 2011) (highlighting competitive problems associated with GSM monopoly vis-à-vis roaming issues); *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, Petition of Cox Communications, Inc. to Condition Consent, at 11 n.33 (May 31, 2011) (“For GSM-based providers, AT&T’s acquisition of T-Mobile, the only other national GSM carrier besides AT&T, the merger may effectively create a monopoly for the provision of nationwide GSM roaming services. Moreover, the hope that the transition to LTE would provide a unified wireless interface that would facilitate roaming has been diminished by the balkanization of the 700 MHz spectrum into an AT&T band and a Verizon band.”); *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, Comments of Japan Communications Inc. and Communications Security & Compliance Technologies, Inc., at 14 (May 31, 2011)

Applicants' only response to this acknowledged monopoly is to point to some indefinite time in the future when Alarm.com and similarly situated parties, should they survive an extended period under the yoke of an AT&T monopoly, will be able to grow around AT&T's monopoly by building devices that can operate on different bands of wireless technology.¹³

Thus, the Applicants' response is essentially that the Commission should grant AT&T an undisputed GSM monopoly over tens of millions of consumers for an undefined number of years in favor of better positioning AT&T to compete with Verizon on the LTE platform down the

(“AT&T would have a particularly dominant role in the market if the transaction is approved. Not only would it be the largest carrier in the United States, it would be the only national GSM-based carrier. GSM-based networks serve 80% of the global mobile market. Thus, AT&T would have a monopoly on most international roaming in the United States.”); *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, Petition to Deny of Leap Wireless International, Inc. & Cricket Communications, Inc., at 22 (May 31, 2011) (“This acquisition plainly would make AT&T a genuine monopoly in the provision of GSM roaming. If T-Mobile—a fellow nationwide carrier—was unable to secure a roaming agreement from AT&T prior to this transaction, it is clear that smaller carriers would face even greater impediments to securing agreements with AT&T after its market power increased significantly due to this transaction.”); *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, Petition to Deny of Rural Cellular Association, at 16 (May 31, 2011) (footnotes omitted) (“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. 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.”); *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, Comments of Vodafone Group, at 2 (May 31, 2011) (“The proposed merger would therefore mean that the United States would become one of a very few markets in the world in which wholesale international roaming services for GSM/WCDMA operators are not subject to competition between at least two network providers.”).

¹³ *Joint Opposition* at 199 & n.386.

road. Needless to say, the Applicants present no support – legal or economic – for sanctioning the wait-and-hope approach. This suggestion, if followed, would make for rather perverse public policy. Whatever the bully’s other talents, a school principal would not allow a bully to keep bullying just because he will eventually graduate. Market power here would be total, so the Commission must protect the public from the foreseeable harm engendered by the Applicants’ proposal.

C. Alarm.com’s Two Proposed Conditions Are Narrowly Tailored To Prevent Immediately Foreseeable, Merger-Specific Harms

The Commission therefore is faced with an acknowledged, immediately foreseeable competitive harm if this transaction is consummated. If it does not deny the applications, it can only protect the public interest by imposing appropriate conditions. Alarm.com’s proposed condition vis-à-vis pricing – viz., that AT&T maintain its and T-Mobile’s current pricing for all Alarm.com units deployed when the acquisition is consummated for as long as those units remain deployed – is narrowly tailored and consistent with the Applicants’ own commitments in this proceeding. Alarm.com’s proposed condition vis-à-vis the assured availability of a GSM network through **[Begin Highly Confidential Material]** **[End Highly Confidential Material]** for deployed GSM-based devices is likewise consistent with the Applicants’ commitments.

In response to consumer criticism over the prospect of rising prices for T-Mobile’s retail consumers, the Applicants have already committed to maintain T-Mobile’s customers’ existing rate plans, even after renewals.¹⁴ Given the significantly longer service life of a M2M device

¹⁴ *Joint Opposition* at 62 (explaining that T-Mobile customers “will not have to make any changes to their T-Mobile USA services or devices upon the close of this transaction. Their

like Alarm.com’s security devices as compared to the average service life of a consumer’s handset, the reasons for ensuring that T-Mobile customers receive price protection are even more pronounced for more captive consumers like Alarm.com. That is true even if the M2M consumers’ pricing could contractually change more frequently than the typical two-year contracts that retail consumers enter into; as Alarm.com explained in its opening Petition, with T-Mobile’s competitive presence in the market, its prices from both AT&T and T-Mobile have been trending downward significantly over the last several years.¹⁵ And, indeed, the Applicants have repeatedly stressed the downward trend in the pricing of all wireless services, such that a condition that AT&T not *raise* Alarm.com’s prices merely ensures that AT&T will not do what it has voluntarily not done for years while it faced competition from T-Mobile.¹⁶ So if AT&T is not willing to stipulate to the same condition, *despite its recognition that prices are trending down*, the only rational assumption for why AT&T would not similarly commit to that is an

handsets will continue to work, and they will be free to remain on their current rate plans – even if they renew their contracts....); Reply Declaration of David Christopher ¶ 39.

¹⁵ Alarm.com’s Petition to Deny, at 3-4 & Confidential Exhibit 1.

¹⁶ *Joint Opposition* at 219. As Alarm.com explained in its opening Petition, AT&T only lowered its prices to Alarm.com after T-Mobile entered the M2M market and began winning substantial amounts of Alarm.com’s business, largely on the basis of T-Mobile’s substantially lower prices. AT&T confirms in the *Joint Opposition* that **[Begin Confidential Material]** **[End Confidential Material]** is the primary impetus behind AT&T lowering its prices. See Reply Christopher Decl. ¶ 36 (“AT&T has not responded to T-Mobile USA’s \$79.99 Unlimited plan **[Begin Confidential Material]** **[End Confidential Material]**.”). Thus, by virtue of the fact that, if the transaction is consummated, AT&T will enjoy a complete monopoly over all of Alarm.com’s deployed units, clearly AT&T will not suffer **[Begin Confidential Material]** **[End Confidential Material]**, and therefore cannot be expected to lower prices. The only predictable risk is that AT&T would, if left unchecked, *raise* its prices to monopoly-rent-capturing levels, such as the prices AT&T was charging Alarm.com before T-Mobile competed in the M2M market.

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intention to extract monopoly rents once it has acquired its only source of GSM competition.

The Commission clearly cannot sanction that, consistent with its public-interest mandate. Thus, if the Applications are not denied, Alarm.com's pricing condition is reasonably tailored to prevent immediately foreseeable, merger-specific and merger-caused competitive harms. The condition is also consistent with AT&T's own commitment for T-Mobile's customers', and holds Applicants to their representations that prices are trending down, not up. Keeping prices from rising until Alarm.com and other similarly situated parties can grow around a GSM monopoly is a perfectly reasonable, legitimate condition.

Finally, the condition is consistent with significant Commission precedent in which the Commission has accepted or required similar conditions to approve other proposed transactions that likewise presented unacceptable monopoly conditions. *See, e.g., In re Applications Filed by Qwest Commc'ns Int'l Inc. & CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, WC Docket No. 10-110, FCC 11-47, Mem. Op. & Order, , 26 FCC Rcd. 4194 ¶ 17 & Appendix C (Conditions) (2011) (precluding applicants from raising rates *for seven years* of any services provided to existing or new customers in certain locations whose only source of provider competition was being extinguished by the transaction); *In re AT&T Inc. & BellSouth Corp.*, WC Docket No. 06-74, FCC 06-189, Mem. Op. & Order, 22 FCC Rcd. 5662, 5807-14, Appendix F (Conditions) (2007) (precluding AT&T/BellSouth from, *inter alia*, raising special access rates for four years or raising tandem transit rates for forty-two months following that merger closing, and requiring the merged entity to offer ADSL service to at a rate no higher than \$19.95 per month); *In re Verizon Commc'ns & MCI, Inc.*, WC Docket No. 05-75, FCC 05-184, Mem. Op. & Order, 20 FCC Rcd. 18433, 18559-61, Appendix G (Conditions) (2005) (precluding MCI/Verizon from raising rates for various special access services for a period of 30

months).

Similarly, just as AT&T is willing to honor T-Mobile's retail consumer contracts, it should likewise honor T-Mobile's commitment to maintain a viable GSM network for the M2M community through **[Begin Highly Confidential Material]** **[End Highly Confidential Material]**. As noted above, AT&T expects to have to maintain its GSM network for an indefinite period of time – from five to perhaps ten years – while it transitions tens of millions of consumers to more recent technologies. Accordingly, any additional burden is modest. Applicants likewise acknowledge that Alarm.com's (and every other GSM-based M2M company's) installed devices are stranded devices. AT&T should not be able to eliminate through acquisition the GSM competition that T-Mobile committed to provide through **[Begin Highly Confidential Material]** **[End Highly Confidential Material]** without honoring that T-Mobile promise, on which Alarm.com has relied in deploying hundreds of thousands of additional GSM units.

III. CONCLUSION

Before this transaction, consumers have enjoyed a modestly competitive GSM market in which T-Mobile pushed both carriers' prices down considerably, allowed Alarm.com and others to innovate in ways that AT&T had not, and allowed Alarm.com and others to build and deploy important technologies like Alarm.com's security systems that would keep Americans' homes and businesses safe for the next decade. The Applicants' proposal to give AT&T an GSM monopoly for an indefinite but extended period of years would, at least without proper safeguards, cause foreseeable competitive harm to Alarm.com, its customers, and millions others. If the balance of harms does not cause the Commission to deny the applications, then Alarm.com's proposed conditions are reasonably tailored to mitigate the merger-caused harms to

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the GSM/GPRS market. The Commission should therefore, at a minimum, condition the grant of the applications upon (1) AT&T committing to maintaining its and T-Mobile's current pricing for all Alarm.com units deployed when the acquisition is consummated for as long as those units remain in service, and (2) enforcing T-Mobile's written commitment of continued service to Alarm.com and its 2G/GPRS- based security services through **[Begin Highly Confidential Material]** **[End Highly Confidential Material]** so that all of Alarm.com's GPRS- dependent customers may continue to receive the security provided by their Alarm.com enabled security systems through the balance of **[Begin Highly Confidential Material]** **[End Highly Confidential Material]**, irrespective of which carrier currently provides the associated wireless services to a particular device.

Respectfully submitted,



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