

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

In re Applications of	)	
	)	
In the Matter of	)	
	)	
Applications of AT&T Inc. and Deutsche Telekom AG	)	WT Docket No. 11-65
	)	
for Consent to the Transfer of Control of Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act	)	
	)	

**REPLY OF  
VITELCOM CELLULAR INC. D/B/A INNOVATIVE WIRELESS  
TO THE JOINT OPPOSITION OF AT&T INC., DEUTSCHE TELEKOM AG, AND  
T-MOBILE USA, INC. TO PETITIONS TO DENY AND REPLY TO COMMENTS**

Seth R. Davis, President and Chief Executive Officer  
Peter F. Hayden, Vice President and General Manager -  
Wireless Services  
VITELCOM CELLULAR INC. D/B/A INNOVATIVE WIRELESS  
4611 Tutu Park #200  
St. Thomas, VI 00802

Jean L. Kiddoo  
Brett P. Ferenchak  
BINGHAM McCUTCHEN LLP  
2020 K Street, N.W.  
Washington, DC 20006-1806  
Tel: (202) 373-6034  
Fax: (202) 373-6001

*Counsel for Innovative Wireless*

Dated: June 20, 2011

## SUMMARY

Innovative is a small GSM-based wireless provider in the U.S. Virgin Islands (“USVI”), an insular and isolated market. As a “regional” wireless provider, Innovative faces many of the same challenges and potential harmful impacts from the proposed combination of AT&T and T-Mobile that are discussed in great detail by every other regional carrier that submitted in this docket. In particular Cincinnati Bell Wireless LLC’s (“CBW’s”) petition is particularly pertinent since CBW, like Innovative, is a GSM carrier who, if the merger is permitted to go forward, will lose T-Mobile as a roaming partner, leaving AT&T as the only option on which to provide nationwide roaming to customers. Roaming coverage on the U.S. mainland is extremely important for Innovative’s subscribers because, as residents of a U.S. territory, many residents go back and forth between USVI and the U.S. mainland and require seamless nationwide wireless service coverage and rate plans. If it is unable to offer plans that offer nationwide roaming at rates competitive to those of AT&T, the dominant provider in the USVI, Innovative will no longer be able to continue to compete or survive.

Innovative also shares the concern raised by other carriers regarding the adverse effect of the merger on the already competitively skewed availability of the cutting-edge handsets that are essential to stay competitive. As CBW and other regional carriers explained, should the Commission permit the merger to proceed, the Commission must impose conditions with respect to roaming rates and availability of handsets to ensure that wireless competition (beyond a duopoly) continues to exist post-merger.

As described herein, the roaming rates AT&T charges to Innovative (and even T-Mobile’s existing data roaming rates, which are roughly half those of AT&T) are already anti-competitive for a small regional carrier and, as is easily seen by comparing them with AT&T’s

retail rates, are not cost-based. And with the elimination of T-Mobile as a competitor in the wholesale market for GSM roaming, AT&T will face no disincentive whatsoever to increasing its roaming rates to Innovative as much as possible, and any such increase in roaming rates would be amplified once AT&T takes away the reciprocity of roaming traffic that Innovative now has with T-Mobile.

T-Mobile does not have a network in the USVI and, therefore, T-Mobile's subscribers currently roam on Innovative's GSM network. Since Innovative's subscribers roam on T-Mobile's GSM network on the U.S. mainland, the bilateral roaming agreement between Innovative and T-Mobile is basically reciprocal. Absent the bi-directional nature of roaming traffic that currently exists with T-Mobile, Innovative must have access to nationwide roaming at cost-based wholesale rates or it will not be able to compete for the majority of USVI wireless customers. This is because with bi-directional roaming traffic a carrier like Innovative can expect to offset roaming costs with roaming revenues. If roaming becomes uni-directional once AT&T moves T-Mobile roaming traffic to its USVI network, it is essential that the Commission regulate AT&T's roaming rates to ensure that they are just and reasonable in this monopoly circumstance.

Innovative therefore joins other regional carriers in urging that any consent for the transaction to include enforceable conditions covering roaming and handsets. Unless adequately conditioned, the proposed merger will not be in the public interest and will severely harm competition. Accordingly, the Commission should either deny the applications or impose conditions sufficient to protect competitors' access to roaming and handsets. If the Commission fails to implement these conditions, small regional carriers such as Innovative will be irreparably harmed by the merger.

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TO THE JOINT OPPOSITION OF AT&T INC., DEUTSCHE TELEKOM AG, AND  
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Vitelcom Cellular Inc. d/b/a Innovative Wireless (“Innovative”), by its undersigned counsel and pursuant to the Commission’s Public Notice in the above-referenced proceeding,<sup>1</sup> hereby replies to the Joint Opposition of AT&T Inc. (“AT&T”), Deutsche Telekom AG (“DT”) and T-Mobile USA, Inc. (“T-Mobile”) (collectively, the “Applicants”).<sup>2</sup>

**I. INTRODUCTION**

Innovative is a small “regional” wireless provider in the U.S. Virgin Islands (“USVI”), an insular and isolated market. As a “regional” GSM wireless provider, Innovative faces many of the same challenges and potential harmful impacts from the proposed combination of AT&T and

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<sup>1</sup> *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.*, WC Docket No. 11-65, Public Notice, DA 11-766 (rel. April 28, 2011).

<sup>2</sup> *Joint Opposition of AT&T Inc., Deutsche Telekom AG, and T-Mobile USA, Inc. to Petitions to Deny And Reply To Comments, 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.*, WC Docket No. 11-65 (filed June 10, 2011) (the “*Joint Opposition*”).

T-Mobile that are discussed in great detail by every regional carrier who submitted in this docket and in particular, by Cincinnati Bell Wireless LLC (“CBW”),<sup>3</sup> because both Innovative and CBW use GSM networks and must therefore use either AT&T or T-Mobile for nationwide GSM roaming coverage, and because both have difficulties obtaining the cutting-edge handsets needed to stay competitive. In addition to the adverse competitive effects that are reported by these other carriers, Innovative, currently has a reciprocal roaming arrangement with T-Mobile wherein it not only sends U.S. mainland roaming traffic to T-Mobile at rates that are far more favorable than AT&T, it receives significant roaming revenue from T-Mobile for carrying T-Mobile’s USVI roaming traffic, which reciprocity will almost certainly be lost following the merger and therefore Innovative will lose this revenue source. In contrast to T-Mobile, Innovative receives no roaming revenue from AT&T since AT&T has its own GSM network in the USVI. The combination of AT&T and T-Mobile therefore not only threatens to significantly increase Innovative’s already significantly high (and anti-competitive) nationwide roaming costs but also eliminate virtually all of Innovative’s roaming revenue as AT&T will almost certainly move the roaming of former T-Mobile customers in the USVI to AT&T’s GSM network. The

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<sup>3</sup> Petition of Cincinnati Bell Wireless LLC to Condition Consent or Deny Applications, *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.*, WC Docket No. 11-65, filed May 31, 2011 (the “*CBW Petition*”); *see also, e.g.*, Petition of MetroPCS Communications, Inc. and nTelos Inc. to Condition Consent or Deny Application, *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 (filed May 31, 2011); Petition to Deny of Leap Wireless International, Inc. and Cricket Communications, Inc., *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. 11-64 (filed May 31, 2011) (“*Leap Petition*”); Comments of U.S. Cellular Corp., *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 (filed May 31, 2011); Petition to Deny of Cellular South, Inc., *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 (filed May 31, 2011).

net effect will be that the high roaming rates being charged by AT&T will have no offset roaming revenue from AT&T, which will amplify competitively harmful effects of roaming rates that far exceed costs. This one-two punch of increased costs and lost revenues may force Innovative out of the wireless market in the USVI or at least force Innovative to cease offering nationwide roaming plans, thus reducing AT&T's competition in the insular USVI market.

Innovative therefore joins CBW's call for any consent for the transaction to include the following conditions covering roaming and handsets:

- (1) Regional carriers must have access to **roaming**, and this access must be assured in a manner that allows them to offer competitive nationwide service to their customers. This means that AT&T must charge only just and reasonable—i.e., cost-based—roaming rates rather than the rates it charges today, which are a large multiple of cost-based rates. It also means that AT&T must make *all* its voice and data services available for roaming, and that it should cease from imposing terms that, by design and actual effect, prevent regional carriers from carrying out their vital competitive functions....
- (3) Regional carriers must have access to cutting-edge, innovative **handsets** and AT&T must no longer be permitted to tie up these handsets through exclusive deals with manufacturers, or to use its buying power to cause manufacturers to focus their development on products that will serve only AT&T and not regional carrier networks.<sup>4</sup>

If the Commission fails to implement these conditions, small regional carriers, such as Innovative, will be irreparably harmed by the merger and may be forced to cease offering nationwide roaming or to exit the wireless business entirely.

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<sup>4</sup> *CBW Petition* at 5; *see id.* at 35. Innovative makes no comment on CBW's call for conditions to imposed with respect to spectrum at this time as Innovative does not currently have a shortage of 3G spectrum to support its current GSM services in the USVI. Innovative does note that should AT&T acquire 4G spectrum in USVI, Innovative would have the same concerns with respect to that spectrum that CBW raised in the *CBW Petition*. Innovative therefore reserves its right to raise such concerns if and when AT&T acquires such spectrum.

## II. STATEMENT OF INTEREST

Innovative is a small “regional” wireless provider and part of the Innovative Companies family that provide a variety of telephone, telecommunications and cable television services on the USVI. Among other companies, Innovative is affiliated with Virgin Island Telephone Corp. d/b/a Innovative Telephone, the incumbent telephone provider in USVI, and Caribbean Communications Corp. and St. Croix Cable TV, Inc. d/b/a Innovative Cable TV, the oldest cable television system in USVI. In addition to providing stand-alone wireless services, Innovative provides wireless services as part of bundled service packages with Innovative’s affiliates that may include wireline telephone service, Internet access and cable television service.

Innovative provides wireless services using its own GSM network in the USVI. Innovative offers its customers access to wireless service in Puerto Rico and continental United States pursuant to a roaming agreement with T-Mobile, and has recently signed (but not yet fully implemented) a roaming agreement with AT&T. AT&T was extremely difficult to deal with even when entering into a roaming agreement that has exorbitant rates that only favor AT&T (as discussed below), but entering a roaming agreement was a critical necessity in order to augment Innovative’s roaming coverage from T-Mobile. Innovative’s customers are able to receive and place wireless voice calls and data services throughout the Caribbean and the rest of the world through roaming agreements with facilities-based wireless carriers worldwide.

Innovative competes in the USVI with three (3) other facilities-based wireless providers—AT&T, Sprint and Choice Wireless<sup>5</sup>—to provide retail services to approximately 80,000 subscribers throughout the USVI, of which less than 3% receive service from Innovative. AT&T is by far the dominant wireless provider in USVI with over a 75% market share. AT&T’s

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<sup>5</sup> Innovative and AT&T are the only two GSM providers in USVI, while Sprint and Choice Wireless are CDMA providers.

acquisition of Centennial Wireless, which formerly competed in the USVI, increased AT&T's already dominant position in the USVI market. Sprint, which has an approximately 15% market share in USVI, is the only other wireless provider with more than a 3% market share, but Sprint is losing market share to AT&T and Innovative (and possibly Choice Wireless). In fact, Innovative's subscriber count, since it launched a new 3G service in December 2010,<sup>6</sup> has grown by approximately 150%. Innovative's growth plan is to achieve 9-10% market share by June 2012, and capture a 20-25% share over time. That trend, however, is threatened by the proposed combination of AT&T and T-Mobile.

Roaming coverage on the U.S. mainland is extremely important for Innovative's subscribers because, as residents of the U.S. territory, many residents go back and forth between USVI and the U.S. mainland and require seamless nationwide wireless service coverage and rate plans. Absent the reciprocity that currently exists with T-Mobile, it is essential that Innovative have access to nationwide roaming at cost-based wholesale rates or it will not be able to compete for USVI wireless customers.

This is because with bi-directional roaming traffic a carrier like Innovative can expect to offset roaming costs with roaming revenues (indeed, Innovative is currently a net receiver of revenue from T-Mobile even though the mutual reciprocal cost of roaming services as between T-Mobile and Innovative are above cost). Once AT&T moves T-Mobile's roaming traffic to AT&T's USVI network, roaming traffic between Innovative and AT&T/T-Mobile will become uni-direction, and in this monopoly circumstance, Innovative will no longer receive revenue for incoming roaming and rates for roaming that exceed its competitor's retail price for similar

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<sup>6</sup> Innovative, having just emerged from a protracted bankruptcy of its parent company, recently launched its new digital wireless service in December 2010 and as a result has seen an increase in subscribers and thus market share, but still does not exceed a 3% market share.

service will thereby cripple Innovative’s ability to offer competitively priced services. It is therefore essential that the Commission regulate the rates to ensure that they are just and reasonable.

**III. THE COMMISSION MUST PREVENT ADDITIONAL HARM TO THE WIRELESS MARKET BY REQUIRING THAT AT&T PROVIDE REGIONAL CARRIERS VOICE AND DATA ROAMING AT JUST AND REASONABLE RATES AND TERMS**

**A. The AT&T and Innovative roaming agreement is not reciprocal because AT&T will not roam on Innovative’s GSM network**

As a number of petitioners have shown—and even AT&T acknowledges—the ability to offer nationwide roaming at competitive rates is absolutely critical to regional carriers’ ability to compete with national carriers.<sup>7</sup> This is a matter of public interest because, as AT&T itself emphasizes,<sup>8</sup> a healthy contingent of regional carriers will be vital to assuring that competition exists following the merger.

These same petitioners have shown that AT&T has engaged in—and will, post merger, likely intensify—anticompetitive behavior in the roaming market by charging exorbitant prices and imposing onerous conditions on its roaming partners. AT&T argues in response that its behavior must be reasonable because its roaming relationships are reciprocal.<sup>9</sup> But this is clearly not the case where one of the roaming “partners” must roam on the other’s network but the other does not.

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<sup>7</sup> See e.g., *CBW Petition* at 9; see also *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, Second Report and Order and Third Notice of Proposed Rulemaking, 11 FCC Rcd 9462, ¶2 (1996) (stating that roaming capabilities are “important to the development of nationwide, ubiquitous, and competitive wireless voice telecommunications.”); *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 (2007) (recognizing that having a competitive wholesale roaming service market is essential to ensure a competitive retail market for consumers).

<sup>8</sup> See *Public Interest Statement* at 12-13.

<sup>9</sup> *Joint Opposition* at 156-158.

Innovative and AT&T have recently negotiated, but have not yet implemented, a roaming agreement that would permit Innovative's customers to roam on AT&T's 3G GSM network nationwide. Since AT&T already has a GSM network in the USVI, AT&T's customers have not, do not, and never will roam on Innovative's network. Such an arrangement can hardly be considered reciprocal. Instead, Innovative's contract with AT&T is unilateral because under it Innovative would roam on AT&T's network but *not vice versa*.

Even if the rates for roaming on each other's network are nominally "bilateral," the fact is that the balance of payments will not be reciprocal whatsoever because AT&T will make no payments, or at best only very occasional payments,<sup>10</sup> to Innovative for roaming under the agreement. Since the balance of payments will be entirely one-sided, AT&T did not need to engage in arms-length negotiations to come to mutually equitable terms, conditions and rates for roaming, but instead simply dictated the roaming rates which like those reported by CBW, are nearly double those of T-Mobile—which themselves are extremely high and not cost-based but have been acceptable to Innovative until now because of the offsetting roaming revenue.<sup>11</sup> Indeed, the AT&T agreement was basically "take it or leave it"—if Innovative had not agreed to the roaming rates proposed by AT&T, Innovative would simply not have access to AT&T's network for roaming, which Innovative needs to augment its roaming on T-Mobile's network—a circumstance that would become a death knell in the event that T-Mobile were to become unavailable as a roaming partner.

AT&T also relies upon the assertion that, in the aggregate, it is a net payer of roaming revenue in the U.S. to support the conclusion that it has no incentive to raise roaming rates.

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<sup>10</sup> Since AT&T already has a GSM network in USVI, at most, AT&T's customers would roam on Innovative's network only if AT&T were having network problems and AT&T needed overflow or emergency coverage for its subscribers.

<sup>11</sup> *CBW Petition* at 22.

AT&T appears to argue that since most of its agreements contain reciprocal roaming rates, and since it is a net payer of roaming charges, it will necessarily have an incentive to keep roaming rates low. In its supporting declaration from William W. Hague (“Hague Declaration”), AT&T goes so far as to state that “[i]ncreased roaming rates would result in increases in AT&T’s payments to its domestic roaming partners.” However, as stated above, AT&T pays no roaming charges to Innovative currently, and that is not expected to change in the future. Therefore, any reliance on the fact that AT&T is a net payer of roaming on a national scale, if that is in fact true, is irrelevant as to whether it can and will increase roaming rates, which are already unjust and unreasonable, where it pays no reciprocal roaming revenue. Innovative therefore faces a specter of unreasonably high roaming rates from AT&T now and even more so in the future.

Moreover, the roaming rates that Innovative pays to AT&T have no bearing on the roaming rates AT&T pays to, and the balance of payments AT&T has, with other carriers. AT&T faces no disincentive whatsoever to increasing its roaming rates to Innovative as much as possible, especially after AT&T will have eliminated its only national GSM-based roaming competitor by means of the merger. In short, AT&T can raise its already anti-competitive roaming rates to Innovative without fear of facing corresponding increases in the roaming rates that AT&T pays to other carriers. As CBW explained, AT&T’s voice roaming rates are well above the costs of providing voice service based on CBW’s costs, which are surely higher than AT&T’s cost given AT&T’s economies of scale.<sup>12</sup> Assuming *arguendo* that two cents per minute is already above AT&T’s costs as CWB asserts,<sup>13</sup> Innovative’s voice roaming rate from AT&T is punitive and many multiples above AT&T’s costs (and nearly 60% greater than Innovative’s voice roaming rate from T-Mobile, which is already well above two cents per

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<sup>12</sup> CBW Petition at 22, 24.

<sup>13</sup> CBW Petition at 24.

minute). Further, based on CBW's analysis of AT&T's retail data rate plans,<sup>14</sup> AT&T's 3G data roaming rates to Innovative are well over 75 times greater than the amount per MB that AT&T charges its retail customers for data services at full usage by those retail customers, and is many times the retail rate even at half usage. The "wholesale" roaming rates AT&T charges (and even T-Mobile's data roaming rates, which are roughly half those of AT&T) are already anti-competitive for small regional carriers and not cost-based. However, if AT&T genuinely believes that it has no incentive to raise rates and that its net payer status provides an incentive to keep rates "low," Innovative would be pleased to enter into a reciprocal agreement for roaming with AT&T at rates comparable to those set forth in the *CBW Petition*.<sup>15</sup>

**B. Unless the Commission requires AT&T's roaming rates and terms to be just and reasonable, the elimination of T-Mobile as a GSM-based roaming partner is a merger-specific harm that will directly impact Innovative.**

As stated above, T-Mobile is Innovative's preferred roaming provider nationwide. Innovative chose T-Mobile in part because its roaming rates, while still significantly higher than cost<sup>16</sup> and therefore unjust and unreasonable, are significantly lower than AT&T's rates and partially offset by reciprocal roaming. If as a result of the merger, AT&T terminates the T-Mobile roaming agreement with Innovative, as either party is permitted to do under its terms upon a fairly short notice period, Innovative would be forced to purchase roaming at the much higher (and double for data roaming) AT&T rates and face sky-rocketing roaming costs that would make it impossible for Innovative to offer its nationwide roaming at competitive rates. These roaming costs would be exacerbated if Innovative's subscribers continue to grow in

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<sup>14</sup> *Id.* (AT&T retail customers are paying only \$0.011 to \$0.022 per MB under AT&T's current pricing plan).

<sup>15</sup> *CBW Petition* at 24 (suggesting a price cap of two cents (\$0.02) per minute for voice roaming and three cents (\$0.03) per MB for data roaming).

<sup>16</sup> *See CBW Petition* at 10.

number (which growth, of course, would soon cease without nationwide roaming plans at reasonable and competitive rates). In other words, AT&T's roaming rates are simply unsustainable for a growing, small regional provider like Innovative whose customers roam extensively and are anti-competitive especially with regard to the insular USVI market.

Further, in the interim period between a notice of termination of Innovative's roaming agreement with T-Mobile and the actual termination date, it is unclear how Innovative's customers' roaming traffic will be handled. AT&T could claim that all of Innovative's roaming traffic was on AT&T's network and subject to AT&T's higher rates rather than on T-Mobile's network and subject to T-Mobile's lower rates. This would have the practical effect of terminating Innovative's roaming agreement with T-Mobile immediately upon notice rather than upon the terms set forth in their roaming agreement.

It is noteworthy that to date T-Mobile has chosen Innovative as its roaming partner in USVI rather than AT&T, which demonstrates that AT&T's roaming rates even for its largest carrier roaming customer are uncompetitive. One can only surmise that T-Mobile faces similar price gouging from AT&T for roaming in USVI that Innovative would face on the U.S. mainland if AT&T becomes the only remaining nationwide GSM carrier.

In order to prevent providers such as Innovative from abandoning nationwide roaming, the Commission must require AT&T to provide roaming rates and terms that are just and reasonable following the merger and, given the lack of competition that will exist as a result, into the future. As stated above, Innovative concurs with CBW that the Commission should establish a price cap for roaming rates that allows AT&T a fair opportunity to recover its costs as well as a reasonable profit.<sup>17</sup> Innovative believes that the rates, recommended by CBW, of two cents

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<sup>17</sup> *CBW Petition* at 24.

(\$0.02) per minute for voice roaming and three cents (\$0.03) per MB for data roaming,<sup>18</sup> would be an appropriate benchmark for the Commission to use as a price cap. As CWB explained, these suggested rate caps are higher than AT&T's customers appear to pay for AT&T's retail services<sup>19</sup> and therefore should more than cover AT&T's costs while not gouging competitors who roam on AT&T's network. Innovative also agrees that "AT&T must be required to revisit these [price caps] as technological advances lower the cost of providing the services,"<sup>20</sup> but not so frequently to be overly burdensome on all parties (competitors, AT&T and the Commission). These conditions must be imposed so that small regional providers will remain the competitors that Applicants so heavily relies upon to support their Public Interest arguments.

**C. If T-Mobile customers roam onto AT&T's USVI network post-transaction, there will be catastrophic merger-specific harm to Innovative.**

As described above, T-Mobile roams on Innovative's GSM network in USVI. As such, T-Mobile and Innovative have a reciprocal roaming arrangement wherein each carrier's customers roam on the other's network when in their service area. Indeed, T-Mobile is a net payer to Innovative for roaming because T-Mobile has a far larger number of customers that visit and use their wireless devices in the USVI than Innovative does on the U.S. mainland.<sup>21</sup>

If the roaming arrangement between Innovative and T-Mobile were to become uni-directional, the result would be devastating to Innovative even at T-Mobile's existing rates. In essence, so long as roaming is reciprocal, the rate per unit paid is of relatively little impact on

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<sup>18</sup> Id.

<sup>19</sup> *See id.*

<sup>20</sup> Id.

<sup>21</sup> Innovative notes that while T-Mobile has many more customers that roam on Innovative's network than Innovative has customer that roam on T-Mobile's network, T-Mobile's customers are usually in the USVI for only a short period of time and therefore the roaming costs per user are significantly lower for T-Mobile than for Innovative. For this reason, the average roaming costs per Innovative subscriber is about six times the revenue that Innovative receives from subscribers of other companies that roam on Innovative network.

cost. But once one of the roaming carriers becomes wholly a payer of roaming rates without any offsetting reciprocal revenue, the potential for adverse impacts on competition becomes obvious if one or more of its local competitors do not face the same costs—and this adverse effect is multiplied when one of those competitors has monopoly control over the rates. So while AT&T’s proposed roaming rates to USVI are multiples of T-Mobile’s roaming rates, even T-Mobile’s existing roaming rates are simply too high for Innovative to sustain nationwide roaming should T-Mobile no longer be a reciprocal roaming partner with Innovative post-combination with AT&T. Innovative would likely have to abandon the nationwide roaming options Innovative now offers its customers or severely limit such roaming, either of which would put Innovative at a distinct competitive disadvantage in the USVI wireless market to AT&T and Sprint.

**IV. A COMBINED AT&T AND T-MOBILE MARKET POWER WILL EXACERBATE THE HARM THAT ALREADY EXISTS WITH RESPECT TO COMPETITORS’ ACCESS TO HANDSETS AND OTHER DEVICES**

As CBW explained in its Petition, “[e]xclusive handset arrangements by AT&T and other national carriers have made it nearly impossible for [small regional] carriers like CBW [and Innovative] to obtain the latest technology and most desirable handsets for their subscribers. Only the largest national providers have the critical mass of customer base necessary to demand exclusive arrangements with handset manufacturers, thus harming competition.”<sup>22</sup> Innovative has experienced customer churn similar to that as described by CBW<sup>23</sup> when new and highly popular handsets are released. Small providers such as Innovative—whose potential customer base (assuming it were to serve every likely user in the USVI—which it will never be able to do) is only approximately 80,000—simply cannot generate the economies of scale to enter into

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<sup>22</sup> *CBW Petition* at 29.

<sup>23</sup> *CBW Petition* at 31.

similar arrangements with manufacturers that AT&T can currently command and that a combined AT&T and T-Mobile would have more power to command.

AT&T's response that small providers are not harmed by exclusivity arrangements for handsets and that small providers have a global market of handset makers simply does not hold water for the reasons described in the *CBW Petition*<sup>24</sup> and by other carriers such as Leap.<sup>25</sup> For example, CBW has seen dramatic surges in customer churn when new exclusive handsets are introduced.<sup>26</sup> As CBW explained, even when exclusivity arrangements are limited to six months, it usually takes an additional three to four months for receipt of the handsets, which by then are often obsolete.<sup>27</sup> Like CBW, Innovative suggests, at a minimum, that if the Commission approves the transaction that approval must be conditioned on "both forbidding exclusive handset arrangements outright and forbidding AT&T to enter into arrangements that encourage or require manufacturers to make and provide equipment that will work only on AT&T's network, as well as an affirmative requirements that AT&T cooperate with manufacturers and other carriers to assure the widespread availability of interoperable equipment."<sup>28</sup>

## V. CONCLUSION

For the above-stated reasons, Applicants' Joint Opposition fails to refute the showing by CBW and other parties, now including Innovative, that the merger, if granted, will cause direct and substantial harm to the public interest unless specific conditions are imposed. Accordingly,

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<sup>24</sup> *CBW Petition* at 29-34.

<sup>25</sup> *Leap Petition* at 26 (Asserting that "[t]he proposed acquisition would make an already problematic situation dramatically worse. AT&T's dominant position after this acquisition would greatly enhance its ability to exclude competitors from obtaining the most sought-after devices.").

<sup>26</sup> *CBW Petition* at 31.

<sup>27</sup> *CBW Petition* at 32.

<sup>28</sup> *CBW Petition* at 34

the Commission must not consent to the transaction or, if it does, condition such approval as described herein.

Respectfully submitted,

/s/ Jean L. Kiddoo

Seth R. Davis, President and Chief Executive  
Officer  
Peter F. Hayden, Vice President and General  
Manager - Wireless Service  
VITELCOM CELLULAR INC. D/B/A INNOVATIVE  
WIRELESS  
4611 Tutu Park #200  
St. Thomas, VI 00802

Jean L. Kiddoo  
Brett P. Ferenchak  
BINGHAM MCCUTCHEN LLP  
2020 K Street, N.W.  
Washington, DC 20006-1806  
Tel: (202) 373-6034  
Fax: (202) 373-6001

*Counsel for Innovative Wireless*

## VERIFICATION

I, Peter F. Hayden, declare that I am the Vice President - Wireless Services of Vitelcom Cellular Inc. d/b/a Innovative Wireless (“Innovative”); that I am authorized to provide this verification on behalf of Innovative; and that the facts set forth in the Reply of Vitelcom Cellular Inc. d/b/a Innovative Wireless to the Joint Opposition of AT&T Inc., Deutsche Telekom AG, and T-Mobile USA, Inc. to Petitions to Deny and Reply to Comments, are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June<sup>20</sup>, 2011



A handwritten signature in black ink, appearing to read "Peter F. Hayden", is written over a horizontal line.

**SERVICE LIST**

I, Brett P. Ferenchak, hereby certify that on this 20th day of June 2011, I have caused a copy of the foregoing Reply of Vitelcom Cellular Inc. d/b/a Innovative Wireless to the Joint Opposition of AT&T Inc., Deutsche Telekom AG, and T-Mobile USA, Inc. to Petitions to Deny and Reply to Comments to be served, as specified, upon the parties listed below:

<p>Peter J. Schildkraut Kate Dumouchel Arnold &amp; Porter LLP 555 Twelfth Street NW Washington, DC 20004 peter.schildkraut@aporter.com kate.dumouchel@aporter.com <i>Outside Counsel to AT&amp;T Inc.</i> <b>(Via Electronic Mail)</b></p>	<p>Nancy J. Victory Wiley Rein LLP 1776 K Street NW Washington, DC 20006 nvictory@wileyrein.com <i>Outside Counsel to Deutsche Telekom AG and T-Mobile USA, Inc.</i> <b>(Via Electronic Mail)</b></p>
<p>Kathy Harris, Mobility Division Wireless Telecommunications Bureau Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554 kathy.harris@fcc.gov <b>(Via Electronic Mail)</b></p>	<p>Kate Matraves Spectrum and Competition Policy Division Wireless Telecommunications Bureau Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554 catherine.matraves@fcc.gov <b>(Via Electronic Mail)</b></p>
<p>David Krech, Policy Division International Bureau Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554 david.krech@fcc.gov <b>(Via Electronic Mail)</b></p>	<p>Jim Bird, Office of General Counsel Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554 jim.bird@fcc.gov <b>(Via Electronic Mail)</b></p>
<p>Best Copy and Printing, Inc. 445 12th St., S.W. Washington, D.C. 20554 FCC@BCPIWEB.COM <b>(Via Electronic Mail)</b></p>	

/s/ Brett P. Ferenchak  
Brett P. Ferenchak