REDACTED -- FOR PUBLIC INSPECTION

DECLARATION OF DAVID CHRISTOPHER

I, David A. Christopher, hereby declare the following:

I. Introduction

1. My name is David A. Christopher. I am the Chief Marketing Officer of AT&T's Mobility and Consumer Markets business for AT&T Mobility Services LLC. I am responsible for AT&T's national portfolio of consumer communications and entertainment products and services. In this capacity, I oversee overall wireless product planning, and marketing operations, including advertising, product and service offerings, pricing and rate plans, and promotions. I am familiar with our wireless competitors, our competitors' initiatives, and industry developments in the marketplace that are important to AT&T's advertising, product and service offerings, and pricing decisions and strategies.

2. The purpose of my declaration is three-fold. First, I will describe the fiercely competitive U.S. wireless marketplace today and the ways in which the U.S. wireless marketplace is evolving and will remain extremely competitive in the future. Second, I will describe from AT&T's perspective T-Mobile USA's role in the wireless marketplace today and in the future. Finally, I will describe how network capacity is critical to new products and services and how AT&T's acquisition of T-Mobile USA will foster innovation by providing AT&T with essential spectrum and thereby create a more competitive environment.

II. Executive Summary

3. The wireless marketplace in the U.S. is highly competitive. As I will describe in detail below, it comprises (a) traditional providers like AT&T Mobility Services, LLC ("AT&T"), Cellco Partnership (Verizon Wireless) ("Verizon"), Sprint Nextel Corporation ("Sprint"), and T-Mobile USA, Inc. ("T-Mobile USA"); (b) rapidly growing, low-cost, no-contract "all-you-can-eat" ("AYCE") carriers like MetroPCS Communications Inc. ("MetroPCS") and Leap Wireless International, Inc. ("Leap"); (c) regional and local carriers like United States Cellular Corporation ("U.S. Cellular"), Cellular South, and Cincinnati Bell Wireless ("Cincinnati Bell"); (d) wholesale providers like Clearwire Corporation ("Clearwire") and LightSquared; and (e) new entrants with an embedded customer base like Cox Communications ("Cox"). All of these providers are competing for the wireless consumer's share of mind and wallet by trying to differentiate themselves primarily based on network evolution and performance, price, and availability of innovative products and services.

4. The explosive growth in wireless products and services, and wireless broadband in particular, is largely the result of innovation in the speed and capabilities of wireless networks. Wireless network evolution, in turn, supported the creation of new devices that are orders of magnitude more powerful than even five years ago along with robust new operating systems and applications to run on those devices.[1] However, as wireless consumers' insatiable demand for these devices, services, and applications has increased, the wireless industry (and AT&T in

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[1] Smartphones can generate up to 24 times the traffic as a basic-feature phone. *See Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2010-2015*, at 7 (Feb. 1, 2011), http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ ns827/white_ paper_c11-520862.pdf.

particular) is facing a shortage in spectrum necessary to address this explosive growth.[2] As I will discuss in more detail below, our forecasts of expected consumer demand and expected spectrum capacity constraints have affected our competitive decisions, including the plans we offer, the prices we charge, and the advanced features we make available on our devices. **[Begin Confidential Information]**

[End Confidential Information].[3] The proposed acquisition of T-Mobile USA will increase AT&T's ability to improve its network quality, to offer a broader range of innovative services and device features, and to aggressively compete with Verizon, Sprint, other carriers, and the highly disruptive "all you can eat" carriers and new entrants. The net result will be improved service quality, more innovation, and increased competition, all of which will benefit wireless consumers.

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[2] Remarks of FCC Chairman Julius Genachowski, The White House, at 2 (Apr. 6, 2011) ("Demand for spectrum is rapidly outstripping supply. . . . We need to tackle the looming spectrum crunch by dramatically increasing the new spectrum available for mobile broadband, and the efficiency of its use."), http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0406/DOC-305593A1.pdf.

[3] *See* Mike Dano, *New Sprint Ad Campaign Hinges on Unlimited Data*, FierceWireless (Apr. 11, 2011), http://www.fiercewireless.com/story/new-sprint-ad-campaign-hinges-unlimited-data/2011-04-11; David Goldman & Laurie Segall, *Verizon iPhone Draws Small Crowds*, CNNMoney.com (Feb. 10, 2011) ("But Verizon has a few competitive tricks up its sleeve. It's going after AT&T's customers by offering unlimited data plans for the iPhone for a limited time."), http://money.cnn.com/2011/02/10/technology/verizon_iphone; Roger Cheng, *Verizon iPhone: $30 Unlimited Data (for Now)*, WSJ Blog (Jan. 25, 2011) (regarding Verizon's $30 unlimited data plan for iPhone buyers, Verizon's COO Lowell McAdam, stated, "I'm not going to shoot myself in the foot," and that "not offering an unlimited plan would put up a barrier for customers who might otherwise switch from AT&T."), http://blogs.wsj.com/digits/2011/01/25/verizon-iphone-30-unlimited-data.

III. The U.S. Wireless Market Is Fiercely Competitive

5. The wireless marketplace today is one of the most intensely competitive of any industry in the U.S. In a wireless marketplace in which wireless subscription penetration surpassed ninety-five percent (95%) in 2010, there are a limited number of new subscribers.[4] As a result, wireless providers compete not only to retain their existing customer base, but also to attract new customers from each other—consumers we call "switchers." Wireless consumers do not hesitate to switch their service—in fact, approximately twenty-five percent (25%) of U.S. customers switch to different wireless service providers each year.[5] Indeed, it is estimated that, industry-wide, over ninety percent (90%) of new postpaid customers result from switching from one carrier to another.[6]

6. At the same time, the wireless marketplace is served by a wide variety of competitors, each of which is vying for a larger piece of the market by differentiating itself from its competitors by focusing to varying degrees on three key components—network quality, price, and new and innovative product and service offerings. The stakes are enormous for the decisions AT&T and its competitors make every day. Success depends on making the right choices in advertising and marketing strategy, product and service offerings, and pricing, in a marketplace that constantly evolves.

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[4] Strategy Analytics, *US Wireless Market Outlook (2010-2015)* (April 2011).

[5] *See* Fourteenth Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, 25 FCC Rcd 11407, 11411 ¶ 248 (2010) ("*Fourteenth Wireless Report*").

[6] Strategy Analytics, *US Wireless Market Outlook (2010-2015)* (April 2011).

A. The Vast Majority of Wireless Consumers Have a Choice Among at Least Five Facilities-Based Carriers

7. Wireless competition comes from a wide variety of sources, and the large majority of U.S. wireless consumers—approximately seventy-four percent (74%) as reported by the FCC— have a choice among five or more facilities-based carriers in their local area.[7] In fact, in 23 of the top 25 markets, there are at least five facilities-based wireless service providers. In addition to AT&T, Verizon, Sprint, and T-Mobile USA, which have networks that cover most of the country, consumers can choose from other carriers who focus primarily on specific geographic markets, but also offer national service plans.[8]

8. A relatively new and increasingly important market dynamic is the emergence of low-cost, no-contract "all-you-can-eat" ("AYCE")[9] carriers—especially MetroPCS and Leap—as significant wireless competitors that offer a "post-pay experience for pay-in-advance customers."[10] These carriers have expanded rapidly, initially by providing a meaningful value proposition to their customers and more recently by moving up-market, combining their AYCE voice and data plans with broad distribution, feature-rich smartphones, industry-low device

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7 *See Fourteenth Wireless Report*, 25 FCC Rcd at 11449 ¶ 45, Table 5.

8 *See* Appendix at 10-20.

9 The term AYCE refers to unlimited voice, texting, and data plans with no term contract. *See* Sid Gorham, *Telecom Case Study: All You Can Eat Plans Take a Bite out of Vegas*, Nielsen Wire (June 9, 2009), http://blog.nielsen.com/nielsenwire/online_mobile/telecom-case-study-all-you-can-eat-plans-take-a-bite-out-of-vegas.

10 *See* MetroPCS Bank of America Credit Conference, at 7 (Nov. 17, 2010), http://phx.corp orate-ir.net/External.File?item=UGFyZW50SUQ9NDA3MjY1fENoaWxkSU Q9NDE2NjIzf FR5cGU9MQ==&t=1; Sid Gorham, *Telecom Case Study: All You Can Eat Plans Take a Bite out of Vegas*, Nielsen Wire (June 9, 2009), http://blog.nielsen.com/nielsenwire/ online_mobile/telecom-case-study-all-you-can-eat-plans-take-a-bite-out-of-vegas.

prices and rate plans, the fact that they do not require a contract, and nationwide coverage.[11] In fact, because of their growing success, AT&T launched its first no-contract smartphone offer—the LG Thrive—on April 17, 2011.[12] AT&T also has implemented targeted advertising, new offers, and increased distribution in areas where AYCE carriers are particularly prevalent such as South Florida, Texas, and Detroit.

9. U.S. Cellular has networks in 26 states and strong brand presence and market position in numerous local markets.[13] Other regional and local carriers include carriers such as Cellular South and Cincinnati Bell, which focus on local and regional markets, but also offer nationwide service plans. Many of these carriers have well established competitive positions in specific regions, metropolitan areas and/or local areas, with strong networks, extensive local distribution, and powerful brand presence. Indeed, some regional carriers such as U.S. Cellular and Cincinnati Bell have larger estimated subscriber shares than AT&T and T-Mobile USA in certain areas. Importantly, these regional and local carriers offer products and services competitive with the larger carriers like AT&T, Verizon, and Sprint, even though they concentrate on local geographic areas.[14]

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[11] *See, e.g.*, Press Release, *Cricket Announces Launch of Nationwide 3G Data Roaming* (Oct. 19, 2010) (showing nationwide data and voice coverage), http://www.mycricket.com/press/press-release/Cricket-Announces-Launch-of-Nationwide-3G-Data-Roaming.

[12] *See* Press Release, *AT&T and LG Mobile Phones Launch First Smartphone for GoPhone*, (Apr. 11, 2011), http://www.att.com/gen/press-room?pid=19623&cdvn=news&newsarticleid=31797.

[13] *See* U.S. Cellular Corp., Annual Report (2010 Form 10-K), at 1 (Feb. 26, 2011).

[14] *See, e.g.*, Cellular South, *All Plans*, https://www.cellularsouth.com/cscommerce/products/plans/category_plan_landing.jsp?id=cat320003; Appendix at 14-18 (coverage maps for U.S. Cellular, Cincinnati Bell, and Cellular South).

10. In addition, wholesale providers with significant spectrum holdings are constructing advanced wireless networks that they will make available to others for resale and in some cases on a retail basis, thus providing additional competition. As will be discussed in more detail below, examples of existing and emerging wholesale providers are Clearwire and LightSquared. Clearwire claims to be the largest spectrum holder in the nation and is owned by Sprint, Comcast, Time Warner Cable, Google, and Intel, among others.[15] Sprint and several cable operators resell Clearwire service under their own brands.[16] LightSquared claims that it is the nation's first wholesale-only integrated wireless broadband and satellite network.[17]

11. New non-traditional entrants to the wireless marketplace are further enhancing the competitive landscape. Cox, the third-largest U.S. cable TV company with over 6 million customers, was the first U.S. cable company to launch fully-integrated wireless phone and mobile high speed Internet services utilizing 3G CDMA technology in Hampton Roads, Virginia; Omaha, Nebraska; and Orange County, California.[18] Cox has since launched service in Oklahoma City and Tulsa, Oklahoma and just announced new service in Rhode Island, Connecticut, and Cleveland, Ohio.[19] Cox recently has stated that it will bring its wireless service

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[15] Other owners include Eagle River and Bright House Networks. *See* Clearwire Corp., Annual Report (2010 Form 10-K), at 3, 4 (Feb. 22, 2011).

[16] *See id.* at 12, 25.

[17] *See* Press Release, *LightSquared Delivers Notice to Inmarsat Triggering Phase 2 of Re-Banding of L-Band Spectrum in North America* (Jan. 28, 2011), http://www.lightsquared.com /press -room/press-releases/lightsquared-delivers-notice-to-inmarsat-triggering-phase-2-of-re-banding-of-l-band-spectrum-in-north-america.

[18] *See* Press Release, *Cox Communications Announces Hampton Roads, Omaha and Orange County as First Wireless Markets* (Dec. 9, 2009), http://cox.mediaroom.com/index.php?s=43& item=457.

[19] *See* Press Release, *Cox to Bring Unbelievably Fair Wireless Plans to Rhode Island, Connecticut, and Cleveland* (Apr. 4, 2011), http://www.prnewswire.com/news-releases/cox-to-bring-unbelievably-fair-wireless-plans-to-rhode-island-connecticut-and-cleveland-119188599. html.

to "50% of the Cox footprint" later this year.[20] Currently Cox is reselling Sprint service while it builds a network using its spectrum.[21] The appendix to my Declaration contains coverage maps of competitors mentioned herein.[22]

B. AT&T Is Organized To Meet Local Competition

12. AT&T's sales organization is designed in large part to respond to the reality that consumers make their wireless purchasing decisions at the local level—where they can see the devices, speak with sales representatives about the products and services, and comparison shop among competitors. AT&T operates approximately **[Begin Confidential Information]** **[End Confidential Information]** company-owned retail ("COR") stores in local markets nationwide selling the full range of our wireless products and services. In addition, AT&T has contracts with an additional **[Begin Confidential Information]** **[End Confidential Information]** local dealer stores. The mission of these COR stores and local dealer agents, as well as the thousands of employees and representatives who live and work in the neighboring communities, is to understand our products and services, to understand the needs of the customers in their local community, and to respond to the unique competitive characteristics of each locality on a day-to-day basis. In fact, third party research demonstrates that **[Begin Confidential Information]**

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[20] Press Release, *Cox Launches Wireless in Oklahoma* (Mar. 29, 2011), http://coxenterprises.mediaroom.com/index.php?s= 43&item=1127.

[21] Kelly Riddell, *Cox Communications Takes On AT&T, Verizon With Mobile Offering*, Businessweek (Nov. 19, 2010), http://www.businessweek.com/news/2010-11-19/cox-communications-takes-on-at-t-verizon-with-mobile-offering.html.

[22] *See* Appendix.

[End Confidential Information].[23] Precisely where we invest to build and operate a COR store and which local dealer agents we choose to do business with are driven largely by competitive conditions that can vary across the metropolitan areas and smaller communities in which we compete. In addition, AT&T (like many of its competitors) has relationships with the "big box" retail stores, such as Wal-Mart, Best Buy, Costco, Radio Shack, and Target, to ensure that AT&T's products and service are available to its customers at the local level in **[Begin Confidential Information]** **[End Confidential Information]** of these locations. Without being embedded like this in the places where our customers live and work, we could not respond as nimbly and effectively as we must to keep up with the intense competition we face. It is no surprise, then, that **[Begin Confidential Information]** **[End Confidential Information]** of AT&T's gross adds in 2010 came from local retail stores (e.g., company-owned stores, local dealer agent stores, and "big box" retail stores). This percentage is essentially identical to the industry-wide figure, and some carriers, like MetroPCS at **[Begin Confidential Information]** **[End Confidential Information]**, see an even higher percentage of sales through their local outlets.

13. Our regionalized sales organization further enhances our ability to respond quickly and distinctively to local market conditions. AT&T has divided the country into twenty-seven separate geographic regions, each led by a vice president/general manager ("VP/GM") who is responsible for operations of the COR stores, our relationships with AT&T's local dealer agents at the local level, and all other sales activities within their respective markets. In fact, the

[23] **[Begin Confidential Information]**The Nielsen Company, *Q4 2010 Nielsen Mobile Retail & Customer Service Insights*, at 17 (Feb. 2011) **[End Confidential Information]**.

annual performance of these VP/GMs is evaluated, in part, by the profits and losses associated with all sales activity within their markets. They strive to meet unique local customer demand by working with our headquarters marketing team to run local advertising pointing out the advantages of AT&T service in a specific local area, by direct marketing campaigns, and by offering local promotions on handsets and peripheral devices. To further support this effort, our direct mail direct response ("DMDR") and online marketing and sales efforts are capable of making targeted offers to customers in specific local market areas. VP/GMs also engage in customer life cycle management by focusing on specific customer needs. For example, if a customer has a particular issue with coverage within her residence, she may be offered a microcell solution that is not generally made available to all customers within a locality.[24]

14. Finally, our wireless network deployment is driven, in large part, by the need to respond to local market conditions. The total number of customers, their overall usage characteristics, the mix of devices, and the unique ways in which customers in a particular city, locality, or venue tend to use their devices can have a dramatic effect on the operation of the wireless network. Our network organization closely monitors how the network is responding to customer demand and usage on the local level, and we make decisions on network investment and improvements largely aimed at improving local customer experience.

[24] AT&T, *3G MicroCell*, ("AT&T 3G MicroCell acts like a mini cellular tower in your home or small business environment. It connects to AT&T's network via your existing broadband Internet service (such as U-verse, DSL or cable) and is designed to support up to four simultaneous users in a home or small business setting."), http://www.wireless.att.com/learn/why/3gmicrocell.

C. Intense Competition Drives Wireless Carrier Behavior

15. The conduct of the competitors themselves in the marketplace further demonstrates the fiercely competitive nature of the wireless industry. Carriers are offering more for less, investing in next generation wireless networks, lowering prices, and increasing innovation to compete with one another, and they are doing it all at a breakneck pace.

16. To meet consumers' ever growing demand for more and faster wireless broadband capabilities, AT&T and others are investing billions of dollars to improve their networks and coverage. Since 2007, AT&T alone has invested approximately $21.1 billion to improve its wireless network.[25] Since 2009, Clearwire continues to increase the coverage of its WiMAX network,[26] providing a robust 4G platform for Sprint and others. Cox is in the process of deploying its 3G network and testing LTE.[27] Leap, too, is testing its LTE network with plans to begin deployment in 2011.[28] LightSquared is also planning to spend billions of dollars to roll-out combined terrestrial (LTE) and satellite-based broadband wireless services.[29]

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[25] AT&T Inc., 2010 Annual Report, at 71 (Feb. 11, 2011), http://www.att.com/Common/about_us/annual_report/pdfs/ATT2010_Full.pdf; AT&T Inc., 2009 Annual Report, at 71 (Feb. 17, 2010), http://www.att.com/Common/about_us/ annual_report/pdfs/ ATT2009_Full.pdf.

[26] *See* Clearwire Corp., Annual Report (2010 Form 10-K), at 63, 112 (Feb. 22, 2011); s*ee also* Press Release, *Clearwire Announces New 4G LTE Technology Trials Expected to Yield Unmatched Wireless Speeds in the U.S.* (Aug. 4, 2010), http://corporate.clearwire.com/releasedetail.cfm? ReleaseID=551055.

[27] Jeff Baumgartner, *Cox Wireless Is Go for Launch*, Light Reading Cable News (Nov. 19, 2010), http://www.lightreading.com/document.asp?doc_id=200677.

[28] *See* Press Release, *Cricket Enters into 4G Roaming Agreement with LightSquared* (Mar. 22, 2011), http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle&ID=1541451&highlight; Mike Dano, *Leap Acquires Denali, Plans LTE Test Market in 2011*, Fierce Wireless (Sept. 23, 2010), http://www.fiercewireless.com/story/leap-acquires-denali-plans-lte-test-market-2011/2010-09-23.

[29] LightSquared, *Nationwide LTE Broadband Network*, http://www.lightsquared.com/what-we-do/network.

17. While wireless networks are improving in their coverage, capacity, and capabilities, the prices for wireless products and services have continued to decline substantially for years. Between 1999 and 2009, wireless prices overall have declined by fifty percent (50%).[30] As the FCC recently observed, per-minute wireless voice revenue has declined ninety percent (90%) since 1994,[31] and the average revenue per text message fell by more than seventy percent (70%) between 2005 and 2008.[32] In addition, growth in the output of wireless data services has been accompanied by a dramatic decline in prices for data services. AT&T data indicate that average revenue per megabyte (MB) for its subscribers fell almost **[Begin Confidential Information]** **[End Confidential Information]** from 2007 to 2010.

18. These market dynamics of robust network investment, coupled with lower prices, are driving unprecedented innovation throughout the wireless ecosystem. As described in the Declaration of John Donovan, there are remarkable innovations that are literally revolutionizing healthcare, education, social discourse, energy conservation and, more generally, the way Americans live, work, and play.[33] Indeed, mobile applications, which are so ubiquitous today, did not exist in any meaningful way five years ago. Today, every major operating system (e.g., Apple, Android, BlackBerry, Windows Phone 7) has its own application marketplace and

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[30] This dramatic decline occurred during a period when a number of carriers combined to achieve efficiencies, including the mergers of Bell Atlantic, GTE and Airtouch; SBC's and BellSouth's respective wireless businesses to form Cingular; Cingular and AT&T Wireless; Sprint and Nextel; and Verizon and Alltel. *See* GAO, *Telecommunications: Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry* at 12, 24 (July 2010).

[31] *See Fourteenth Wireless Report*, 25 FCC Rcd at 11530 ¶¶ 189-190, Table 19.

[32] *See Id.* at 11532 ¶ 191, Table 20.

[33] Declaration of John Donovan, Chief Technology Officer, AT&T Inc., ¶¶ 12-13, 29-33. (Apr. 20, 2011) ("Donovan Decl.").

developer ecosystem. In addition, AT&T and many of its competitors are developing their own applications and also facilitating the development of applications by others.[34] This development has resulted in the U.S. recently emerging as the world leader in smartphone applications.[35] For example, in 2010, Americans downloaded 2 billion mobile apps, up from just 745 million in 2008, nearly a three-fold increase.[36] The "apps economy," which barely existed in 2008, is expected to generate $38 billion in sales in 2015.[37] According to *The Wall Street Journal,* "[a]lmost no mobile applications were available to consumers in 2007. Today there are more than a half million, and they're growing at an annual rate of 92%."[38]

19. The bottom line is that mobile service providers are working harder than ever to offer a broad array of innovative and differentiated product and service offerings designed to provide a rich and multi-faceted user experience. For example, mobile payment via smartphones is rapidly approaching.[39] Personal healthcare also is moving to the mobile device.[40] U.S.

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[34] AT&T, *Application Development Center for Universities*, http://developer.att.com/developer/forward.jsp?passedItemId=3700008; ATT, *AT&T App Center*, https://appcenter.wireless.att.com; Monica Alleven, *GSMA Zeroes in on Apps, Backs Wholesale Model*, WirelessWeek.com (Feb. 15, 2010), http://www.wirelessweek.com/News/2010/02/GSMA-Zeroes-in-on-Apps,-Backs-Wholesale-Model; *see also* Donovan Decl. ¶¶ 21-22.

[35] Strategy Analytics, *Mobile Application Downloads and Revenue Trend* (Mar. 2011) (showing that the U.S. has the highest number of downloads in the world).

[36] *Id.*

[37] Remarks of FCC Chairman Julius Genachowski, "The Clock is Ticking," at 4 (Mar. 16, 2011), http://www.fcc.gov/Daily_Releases/Daily_Business /2011/db0316/DOC-305225A1.pdf.

[38] Opinion, *Net Neutrality Override*, Wall St. J., at 1 (Apr. 12, 2011), http://online.wsj.com/article/SB10001424052748704529204576257153583865300.html.

[39] Isis, a mobile commerce joint venture between AT&T, T-Mobile USA, and Verizon, has announced pilot programs to allow consumers to use Isis-enabled mobile phones to make point-of-sale purchases. Press Release, *AT&T, T-Mobile and Verizon Wireless Announce Joint Venture to Build National Mobile Commerce Network*, at 1 (Nov. 16, 2010), http://www.paywithisis.com/#/news/. Likewise, Google plans to start testing a mobile-point-of-sale payment service in New York and San Francisco. Olga Kharif and Serena Saitto, *Google Is Said to Test Mobile-Payment System With VeriFone*, Bloomberg (Mar. 15, 2011), http://www.

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consumers can now choose among more than 600 handsets produced by dozens of independent handset manufacturers, including Apple, Dell, HTC, Kyocera, LG, Motorola, Nokia, Palm, Pantech, RIM, Samsung, Sharp, and Sony Ericsson.[41] In addition to smartphones, new "connected devices" are emerging at a staggering rate, such as tablet computers, e-readers, netbooks, medical monitoring devices, automotive, machine-to-machine modules, and a broad array of other devices all of which have become wirelessly enabled. Most of these new connected devices do not offer traditional voice capability, but are data centric, requiring robust mobile broadband networks. Cisco predicts that by 2015, there will be over 7.1 billion mobile connected devices in the world—almost one connected device for every person—and that mobile connected tablets alone will generate as much traffic in 2015 as the entire global mobile network did in 2010.[42] While the applications and services are as diverse as their creators' imaginations, they all require one common input—ever increasing amounts of wireless broadband capacity.

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bloomberg.com/news/2011-03-15/google-is-said-to-ready-payment-test-in-new-york-san-francisco.html. Sprint is also planning tap-and-go payments, ahead of its rivals at Isis**.** Greg Bensinger, *Sprint Plans Tap-And-Go Payments in 2011, Ahead of Rivals*, Bloomberg (Apr. 4, 2011), http://www.bloomberg.com/news/2011-04-04/sprint-plans-tap-and-go-payment-service-this-year-to-get-a-jump-on-rivals.html. Finally, American Express also recently launched a digital payment and commerce platform called Serve. Maria Woehr, *AmEx's Mobile Payment Scheme to Boost Revenue: Analysts*, TheStreet.com (Mar. 29, 2011) ("The 'e-wallet' payment system allows consumers to transact through prepaid funding and is designed to be used on Apple iOS devices, Androids and through Facebook."), http://www.thestreet.com/story/11064873/1/amexs-mobile-payment-scheme-to-boost-revenue-analysts.html.

[40] Remarks of FCC Chairman Julius Genachowski, CTIA Wireless 2011, at 4-5 (Mar. 22, 2011), ("*Genachowski CTIA Remarks*"), http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0322/DOC-305309A1.pdf.

[41] CTIA, *The United States and World Wireless Markets: Competition and Innovation are Driving Wireless Value in the U.S.*, at 11 (May 2009), attached to Letter from Christopher Guttman-McCabe (CTIA) to Marlene Dortch (FCC), GN Docket No. 09-51 (May 12, 2009).

[42] *See Cisco Visual Network Index: Global Mobile Data Traffic Forecast Update, 2010-2015*, at 2 (Feb. 1, 2011).

This innovation and exponential growth will not happen without significant investment in spectrum, capacity, and next generation networks**.**[43]

IV. Today and Going Forward, AT&T Will Face Competitive Threats on Multiple and Growing Fronts

20. Among the wireless service providers with nationwide networks, Verizon is AT&T's primary competitor, followed by Sprint. However, the AYCE carriers are highly disruptive competitors with their low-cost, no-contract business model; and we face several strong regional competitors. As I describe below, while we compete with T-Mobile USA in many markets, there are fundamental reasons why it does not exert substantial competitive pressure on AT&T.

A. Verizon and Sprint

21. Verizon is AT&T's closest competitor. Verizon is the largest wireless carrier in the United States with over 102 million wireless connections,[44] and it vigorously competes with AT&T in virtually every local market. It also has the most extensive voice and broadband

[43] Remarks of FCC Chairman Julius Genachowski, "The Clock is Ticking," at 9 (Mar. 16, 2011) ("If we don't act, we won't have enough spectrum for mobile broadband, that will have real consequences for consumers, who will face declining service, including dropped calls and Internet connections, slow downloads and high prices. That will have real consequences for innovators looking to build new companies and services on the mobile platform, including life saving health applications, education programs to train our 21st Century workforce, and energy services designed to help save our planet."), http://www.fcc.gov/ Daily_Releases/Daily_Business /2011/db0316/DOC-305225A1.pdf.

[44] *See* Press Release, *Verizon Reports Strong 4Q and Year-End 2010 Results, Highlighted by Cash Flow, Wireless and FiOS Growth*, at 1 (Jan. 25, 2011), http://news.vzw.com/news/ 2011/01/pr2011-01-25.html; AT&T Inc., 2010 Annual Report, at 2 (AT&T had 95.5 million wireless connections as of December 31, 2010).

coverage of any of our competitors,[45] has outspent AT&T on advertising in three of the last four years,[46] **[Begin Confidential Information]**

[End Confidential Information].

22. Sprint is also a tough, significant, and resurgent competitor, with nearly 50 million subscribers.[47] **[Begin Confidential Information]** **[End Confidential Information]**. Sprint's competitive assets include a deep spectrum position and extensive mobile broadband and 4G services (provided over the Clearwire network),[48] which will make it an ever-increasing competitive threat today and in the future. After a period of declining subscribership, Sprint has recently made significant gains in the marketplace and appears to have the assets to continue to build on its resurgence.[49]

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45 *See* Appendix at 4-5 (Verizon coverage maps).

46 Kantar Media Strategy, *Top 4 Mobility Spending, FY 2007-2010*, at 1 (Mar. 2011).

47 *See* Press Release, *Sprint Nextel Reports Fourth Quarter and Full Year 2010 Results*, at 4 (Feb. 10, 2011), http://newsroom.sprint.com/article_display.cfm?article_id=1796.

48 Sprint's 4G network is now reportedly available in 71 markets, covering more than 110 million people. *Id*. at 2; Andrew Munchbach, *Live from CTIA 2010's Day Two Keynote with Sprint CEO Dan Hesse*, BGR, at 11 (Mar. 24, 2010) ("[w]hen you combine Sprint's spectrum position with Clearwire's spectrum position it put us in the strongest place for the future"), http://www.bgr.com/2010/03/24/live-from-ctia-2010%E2%80%99s-day-one-keynote-with-sprint%E2%80%99s-dan-hesse.

49 *See* Press Release, *Sprint Nextel Reports Fourth Quarter and Full Year 2010 Results*, at 1-4 (Feb. 10, 2011) (Sprint added 1.1 million subscribers in 4Q 2010), http://newsroom.sprint.com/ article_display.cfm?article_id =1796.

23. In contrast, unlike Verizon and Sprint, T-Mobile USA does not exert strong competitive pressure on AT&T. First, T-Mobile USA is not performing well in the market generally or against AT&T in particular. T-Mobile USA has been losing market share since 2009 and lost contract subscribers in five of the last six quarters.[50] In the fourth quarter of 2010, T-Mobile USA lost 23,000 net subscribers, and 318,000 net contract subscribers.[51] T-Mobile USA also experiences significantly higher churn than AT&T, Verizon, or Sprint.[52] In the fourth quarter of 2010, for example, AT&T's churn was 1.32%, Verizon's was 1.34%, and Sprint's was 2.44%, while T-Mobile USA had a churn rate of 3.60%.[53] **[Begin Confidential Information]**

[End Confidential Information].

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50 Press Release, *T-Mobile USA Reports Fourth Quarter 2010 Results*, at 2 (Feb. 25, 2011), http://s.tmocache.com/Cms/Files/Published/0000BDF20016F5DD010312E2BDE4AE9B/5657114502E70FF3012B5A79D454F2C8/file/TMUSQ42010PressReleaseFinalv2.pdf; Press Release, *T-Mobile USA Reports Second Quarter 2010 Results*, at 2 (Aug. 5, 2010), http://s.tmocache.com/Cms/Files/Published/0000BDF20016F5DD010312E2BDE4AE9B/5657114502E70FF3012A436A0A85BF12/file/TMUS%20Q2%202010%20Press%20Release%20FINAL.pdf; Press Release, *T-Mobile USA Reports Fourth Quarter And Full Year 2009 Results*, at 2 (Feb. 25, 2010), http://s.tmocache.com/Cms/Files/Published/0000BDF20016F5DD010312E2BDE4AE9B/5657114502E70FF301270BB668BE399A/file/TMUS%20Q4%20Press%20Release%20FINAL.pdf.

51 Press Release, *T-Mobile USA Reports Fourth Quarter 2010 Results*, at 2 (Feb. 25, 2011), http://s.tmocache.com/Cms/Files/Published/0000BDF20016F5DD010312E2BDE4AE9B/5657114502E70FF3012B5A79D454F2C8/file/TMUSQ42010PressReleaseFinalv2.pdf.

52 Current Analysis, *Company Assessment: T-Mobile USA*, at 5 (Jan. 18, 2011) (T-Mobile USA experiences significantly higher churn than national carriers such as AT&T and Verizon because its customer base is more value-oriented and now overwhelmingly skewed towards no-contract subscribers for net additions).

53 *See* AT&T Inc. 4Q 2010 Investor Briefing, at 2 (Jan. 27, 2011), http://www.att.com/Investor/Financial/Earning_Info/docs/4Q_10_IB_FINAL.pdf; Verizon Investor Quarterly Fourth Quarter 2010, at 5 (Jan. 25, 2011), http://www22.verizon.com /investor/investor-consump/groups/financial/documents/ investorrelation/2010_4q_qb.pdf; Declaration of Dennis Carlton, Allan Shampine, and Hal Sider ¶ 89, Table 2 (April 20, 2011) ("Carlton Decl.") (comparing churn rates); Press Release, *T-Mobile USA Reports Fourth Quarter 2010 Results*, at 3 (Feb. 25, 2011), http://s.tmocache.com/Cms/Files/ Published/0000BDF20016F5DD010312E2BDE4AE9B/5657114502E70FF3012B5A79D454F2C8/file/TMUSQ42010PressReleaseFinalv2.pdf.

24. Because AT&T views T-Mobile USA as a competitor of limited and declining significance, **[Begin Confidential Information]**

[End Confidential Information]. For example, T-Mobile USA began promoting its HSPA+ network as 4G in November 2010. However, Sprint already had launched a 4G network in September of 2008,[54] and Verizon already had announced its plans to launch LTE, which it began advertising as "4G LTE" in December 2010.[55] **[Begin Confidential Information]**

[End Confidential Information]. Moreover, AT&T's long-standing advertising campaign—"Nation's Fastest Mobile Broadband Network"— is based on its network speed advantage, and was in place well before T-Mobile USA began to advertise its 4G launch. AT&T began its "Getting faster with 4G speeds" advertising campaign as an addition to its overall network speed claims to emphasize its migration to 4G. Equally important, **[Begin Confidential Information]**

[End Confidential Information].

25. Finally, AT&T does not view T-Mobile USA as a major competitor for wireless enterprise customers. These are sophisticated purchasers of a broad array of wireline and

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54 Press Release, *New Sprint Campaign Links Iconic "Firsts" with America's First 4G Phone, HTC EVO 4G*, at 3 (June 3, 2010), http://newsroom.sprint.com/article_display.cfm? article_id =1533.

55 Press Release, *Blazingly Fast: Verizon Wireless Launches The World's Largest 4G LTE Wireless Network On Sunday, Dec. 5*, at 1 (Dec. 4, 2010), http://news.vzw.com/news/2010/12/ pr2010-12-03.html.

wireless telecom services. AT&T primarily competes with Verizon and Sprint when selling to businesses. **[Begin Confidential Information]**

[End Confidential Information].

26. AT&T encounters T-Mobile USA only infrequently when competing for large business accounts. T-Mobile USA's business-oriented offerings are limited compared to those of AT&T, Verizon and Sprint.[56] **[Begin Confidential Information]**

[End Confidential Information].

27. As discussed below, while T-Mobile USA has a relatively large customer base, it has been a less significant competitor to AT&T on the important dimensions of network quality, devices and innovation. From AT&T's perspective, T-Mobile USA primarily has relied on price as its differentiating factor, which causes T-Mobile USA to position itself differently from AT&T in the marketplace. As a result, T-Mobile USA does not exert material competitive pressure on AT&T. Simply put, AT&T does not generally focus its competitive energies on T-Mobile USA because in our view: 1) T-Mobile USA does not have a strong differentiating network claim; 2) it does not have a marquee device portfolio; and 3) its emphasis on lower, but not the lowest, prices has not resulted in T-Mobile USA winning customers away from AT&T on a net basis.

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[56] Gartner, *Magic Quadrant for U.S. Telecommunications Service Providers*, at 9 (Nov. 3, 2010) ("T-Mobile does not offer compelling enterprise application support or development, or strong enterprise portal capability around change management."), http://www4.sprint.com/servlet/whitepapers/dbdownload/Gartner_MQ_US_Telecom_Service_Providers_Nov2010.pdf?table=whp_item_file&blob=item_file&keyname=item_id&keyvalue=%27d4194dm%27.

1. Differentiation on the Basis of Network Quality, Both Now and In the Future

28. Network quality is one of the bases on which AT&T competes vigorously today.[57] Its primary competitors in that arena are Verizon and Sprint. **[Begin Confidential Information]**

[End Confidential Information]. Verizon has long focused a major part of its marketing efforts on the quality of its network as a key differentiator.[58] **[Begin Confidential Information]**

[End Confidential Information]. Verizon has targeted AT&T's network performance in its advertising, focusing on the perceived advantages in its network coverage and reliability.

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[57] **[Begin Confidential Information]**

[End Confidential Information]. Other carriers have attempted to exploit the perception that AT&T's network is of a lesser quality or reliability in their marketing and advertising, making AT&T's customers easier targets for competitors and AT&T service seem less attractive. *See, e.g.*, Anders Bylund, *Sprint Wants Your iPhone*, The Motley Fool (Mar. 22, 2010), http://www.fool.com/investing/general/2010/ 03/22/sprint-wants-your-iphone.aspx; Charles Starrett, *Verizon Debuts New Anti-AT&T iPhone Ad*, iLounge (Feb. 4, 2011), http://www.ilounge.com/index.php/news/comments/verizon-debuts-new-anti-att-iphone-ad. Indeed, when Verizon began selling the iPhone in February 2011, it targeted AT&T customers by pointing out AT&T's network quality issues and emphasized its one-liner—"Yes. I can hear you now."—along with its unlimited data plan. *Id*. AT&T understands the importance of winning the network quality issue in the minds of consumers and is committed to turning this situation around.

[58] *See*, *e.g.*, Theresa Howard, *'Can you hear me now?' a hit*, USA Today (Feb. 22, 2004), http://www.usatoday.com/money/advertising/adtrack/2004-02-22-track-verizon_x.htm.

29. **[Begin Confidential Information]**

[End Confidential Information]. Verizon is deploying 4G LTE aggressively, using its nationwide 700 MHz footprint.[59] It has announced plans to expand 4G LTE to 178 markets covering 200 million subscribers by mid-2012 and its entire nationwide footprint by the end of 2013.[60]

30. Likewise, Sprint has aggressively promoted its 4G service. Sprint was the first U.S. carrier to market its service as "4G" and was the first to launch a 4G-capable phone in June 2010.[61] As a result, Sprint has enjoyed a leading position with its 4G claims, which it has used to its advantage. Sprint's strong spectrum position (particularly when considered in light of Sprint's controlling interest in Clearwire) and 4G marketing **[Begin Confidential Information]**

[End Confidential Information]. At least two recent surveys suggest that **[Begin Confidential Information]**

[End Confidential Information].[62] **[Begin Confidential Information]**

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[59] Verizon, *LTE: The Future of Mobile Broadband Technology*, at 3 (2010) ("Within the Verizon Wireless Network, LTE will operate in the 700MHz spectrum…."), *http://opennetwork.verizonwireless.com/pdfs/VZW_LTE_White_Paper_12-10.pdf*.

[60] Verizon, *4G LTE: We're Ready. Are You?*, http://network4g.verizonwireless.com/#/coverage; Current Analysis, *Verizon Wireless Gets Aggressive with LTE Devices and Service Rollout*, at 1 (Jan. 6, 2011).

[61] Press Release, *New Sprint Campaign Links Iconic "Firsts" with America's First 4G Phone, HTC EVOTM 4G*, at 1 (June 3, 2010), http://newsroom.sprint.com/article_display.cfm? article_id =1533.

[62] **[Begin Confidential Information]**

[End Confidential Information].

[End Confidential Information].

31. **[Begin Confidential Information]**

[End Confidential Information]. Sprint's CEO has stated that "[w]hen you combine Sprint's spectrum position with Clearwire's spectrum position it put us in the strongest place for the future." [63] Sprint's strong spectrum resources ensure that it has the capacity needed to support continued growth in subscribers, usage, and new technology.

32. T-Mobile USA, in contrast to others, does not have a differentiated network position. T-Mobile USA has admitted that it suffered from its late transition to a 3G network,[64] and unlike Sprint, which first promoted a 4G network, T-Mobile USA's HSPA+ launch appears to have been lost among other carriers' 4G messaging, including advertising from Verizon, Sprint, AT&T and MetroPCS. Even more importantly, as set forth in the Declaration of Dr. Kim Larsen, T-Mobile USA has no clear path to delivering LTE service.[65] On the other hand,

[63] Andrew Munchbach, *Live from CTIA 2010's Day Two Keynote with Sprint CEO Dan Hesse*, BGR, at 11 (Mar. 24, 2010), http://www.bgr.com/2010/03/24/live-from-ctia-2010%E2%80%99s-day-one-keynote-with-sprint%E2%80%99s-dan-hesse/.

[64] Transcript of Briefing by Deutsche Telekom and T-Mobile to Analysts, at 3 (Jan. 20, 2011), (Deutsche Telekom CEO Rene Obermann) ("*Jan. 20, 2011 DT Analyst Briefing*") ("[P]lease remember we came late with spectrum only end of '06. We acquired spectrum and then we are able to build a network. So, we were late with 3G. No question."), http://www.telecom.de/dtag/cms/contentblob/dt/en/979218/blobBinary/ transcript_20012011.pdf.

[65] *See* Declaration of Dr. Kim Kyllesbech Larsen, Senior Vice President, Technology Service and International Network Economics, Deutsche Telekom AG, ¶¶ 9, 23-35 (April 19, 2011).

AT&T, Verizon, and MetroPCS are aggressively rolling out 4G LTE and Sprint already has a WiMAX network.[66]

2. Differentiation on the Basis of Device Portfolios

33. Another way in which AT&T differentiates itself is in its device portfolio. Here, again, AT&T's primary competitors are Verizon and Sprint. Over the past four years, AT&T has led the wireless broadband revolution, introducing new cutting-edge smartphones and other connected devices that have put the company in a leadership position, based on the number of these devices running on its network.[67] The launch of the iPhone in July 2007 and the iPhone 3G and Apple App Store in 2008 clearly prompted an explosion of innovation in smartphones and other devices, operating systems, and mobile applications, as competitors tried to find the "iPhone killer." Verizon responded in November 2009 with the introduction of the Droid smartphone based upon Google's Android operating system, and has become a leading proponent of Android devices.[68] In February 2011, Verizon became the second carrier to offer the iPhone.[69] In addition, Verizon recently introduced the HTC Thunderbolt, its first 4G LTE smartphone, and has announced that it will launch other LTE smartphones by mid-2011, including the Samsung 4G LTE, the Motorola Droid Bionic, and the LG Revolution.[70] Verizon,

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[66] *See supra* ¶¶ 29-30; *infra* ¶ 54.

[67] Carlton Decl. ¶ 20.

[68] *See* Verizon Inc., Annual Report (2010 Form 10-K), at 5 (Feb. 28, 2011); Joe Regan, *AT&T Share of Android Up Over 5x Thanks to T-Mobile*, Chitka Insights, (Mar. 22, 2011), http://insights.chitika.com/2011/att-share-of-android-up-over-5x-thanks-to-t-mobile.

[69] Press Release, *Verizon Wireless Has Record Sales On First Day Of iPhone 4* (Feb. 4, 2011), http://news.vzw.com/news/2011/02/pr2011-02-04.html.

[70] *See* Strategy Analytics, *Verizon Wireless 4G LTE at CES: It's Real, It's Here, Its Impressive* (Jan. 14, 2011); Press Release, *The ThunderBolt By HTC, The First 4G LTE Smartphone For*

Footnote continued on next page

to date, has continued to market unlimited data service on all of these devices,[71] a marketing plan which it clearly uses to differentiate its devices from AT&T's devices that require tiered data plans.[72]

34. Sprint also has competed aggressively on the basis of its device portfolio. Indeed, Sprint's success with its device portfolio has been key to its successful resurgence and will likely fuel its continued competitive growth. Sprint has been amassing and marketing a portfolio of advanced 4G smartphone devices on the Android operating system, such as the highly successful Samsung Epic 4G and the HTC EVO 4G, ranked as the # 1 and # 2 smartphones, respectively, by PC World magazine.[73] Other 4G devices offered exclusively by Sprint include the HTC EVO Shift 4G,[74] the HTC EVO 3D, which was awarded "Best Smart Phone" and "Best in Show" by Laptop Magazine, and the HTC EVO View 4G tablet, which was rated "Best of CTIA 2011" by

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Verizon Wireless Arrives March 17 (Mar. 15, 2011), http://news.vzw.com/news/2011/03/pr2011-03-14u.html.

[71] *See* Strategy Analytics, *Verizon Wireless 4G LTE at CES: It's Real, It's Here, Its Impressive*, at 2 (Jan. 14, 2011).

[72] *See, e.g.*, David Goldman & Laurie Segall, *Verizon iPhone Draws Small Crowds*, CNNMoney.com (Feb. 10, 2011) ("But Verizon has a few competitive tricks up its sleeve. It's going after AT&T's customers by offering unlimited data plans for the iPhone for a limited time."), http://money.cnn.com/2011/02/10/technology/verizon_iphone; Roger Cheng, *Verizon iPhone: $30 Unlimited Data (for Now)*, WSJ Blog (Jan. 25, 2011) (regarding Verizon's $30 unlimited data plan for iPhone buyers, Verizon's COO Lowell McAdam stated, "I'm not going to shoot myself in the foot," and that not offering an unlimited plan would put up a barrier for customers who might otherwise switch from AT&T), http://blogs.wsj.com/digits/2011/01/25/verizon-iphone-30-unlimited-data.

[73] *See* Sprint Nextel 3Q2010 Earnings Conference Call, at 7 (Oct. 27, 2010), http://phx.corporate- ir.net/External.File?item=UGFyZW50SUQ9Njc0MjR8Q2hpbGRJRD0tMXxUeXBlPTM=&t=1.

[74] *See* Michelle Ruhfass, *HTC EVO Shift 4G Android Smartphone for Sprint Revealed by Walmart*, MobileBurn.com (Jan. 3, 2011), http://www.mobileburn.com/news.jsp?Id=12266.

Phonearena.com.[75] Sprint reportedly will expand its portfolio to eighteen 4G enabled devices in 2011.[76]

35. AT&T does not believe that T-Mobile USA has a particularly compelling portfolio of smartphone offerings as compared to AT&T, Verizon, and Sprint.[77] It does offer smartphones, but its HTC MyTouch device and Android portfolio have not enjoyed the success of devices like Sprint's HTC EVO 4G,[78] and its Android and Blackberry devices are similar to those now offered by numerous other carriers, including MetroPCS and Leap.

3. Differentiation on the Basis of Innovation

36. AT&T aggressively competes against Verizon and Sprint on the basis of new and innovative products and services, and that competition is only expected to increase. As explained more fully in the Declaration of John Donovan, AT&T consistently has striven to be the leader in this space and to be the first to market new products and services, as evidenced by the RAZR, iPhone, the iPad, Windows 7 phones, and emerging devices that support everything

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75 Press Release, *Sprint Awarded Big Honors for HTC EVO 3D, HTC EVO View 4G, Kyocera Echo, MiFi 3G/4G Mobile Hotspot by Novatel Wireless and Google Voice at International CTIA Wireless 2011* (Mar. 29, 2011), http://newsroom.sprint.com/article_ display.cfm?article_id =1843.

76 *See* Press Release, *Sprint Nextel Reports Fourth Quarter and Full Year 2010 Results* (Feb. 10, 2011), http://newsroom.sprint.com/article_display.cfm?article_id=1796.

77 The Nielsen Company, *Mobile Insights Highlights Through January 2011: National View*, at 11 (Feb. 15, 2011) (customer survey showing that from Q2 2010 through Q4 2010, T-Mobile USA ranked last compared to AT&T, Verizon, and Sprint customers in "Satisfaction with Handsets").

78 *See* Press Release, *Sprint Nextel Reports Fourth Quarter and Full Year 2010 Results* (Feb. 10, 2011), http://newsroom.sprint.com/article_display.cfm?article_id=1796 ("The HTC EVO 4G's award-winning streak continued when it was selected for *Good Housekeeping's* Very Innovative Products Award, which recognizes products that are ingenious breakthroughs.").

from telematics to telemedicine.[79] AT&T invests heavily to differentiate itself from the competition with the best device line-up and superior feature capabilities. In our effort to enable third parties to create applications that run on our devices and on our network, AT&T has created the industry's leading carrier application developer program. As a result, AT&T has been voted the best carrier by application developers for the last five years.[80] It has won a Global Mobile Award (Best Embedded Mobile Product/Device (non-handset) category) at the 2011 Mobile World Congress.[81]

37. Verizon and Sprint also continue to be industry innovators. Although MetroPCS was the first to deploy LTE, Verizon now leads the U.S. industry in deploying and promoting LTE technology.[82] Verizon is already collaborating with 60 product manufacturers and 6,000 application developers to help foster an ecosystem for its new 4G LTE network and devices.[83]

38. Sprint not only has aggressively advertised its Wi-MAX network, but it also has pursued machine-to-machine technology in many areas, including healthcare, ATM and point-of-

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79 *See* Donovan Decl. ¶¶ 17-27.

80 *See* Press Release, *Mobile Developers Rate AT&T Best in North America* (Jan. 19, 2011), (AT&T ranked best in mobile application distribution, tool offerings, supported technologies, and market potential), http://www.businesswire.com/news/home/20110119005579/en/Mobile-Developers-Rate-ATT-North-America-%E2%80%93; Evans Data Corporation, *Mobile Development Survey, Volume II*, at 37 (2010); Evans Data Corporation, *Wireless Development Survey*, *Volume II*, at 125-28 (2009); Evans Data Corporation, *Wireless Development Survey, Volume II*, at 157-160 (2008); Evans Data Corporation, *Targeted Analytics*, *Volume I*, at 139-144 (2007); Evans Data Corporation, *Mobility Developer Relations Programs Competitive Analysis Report*, at 7-8 (2007).

81 *See* Press Release, *AT&T Connected Vitality GlowCaps Wins 2011 Global Mobile Award* (Feb. 16, 2011), http://www.att.com/gen/press-room?pid=19064&cdvn=news&newsarticleid=31610&mapcode=corporate|innovation-releases.

82 Verizon, *4G LTE: We're Ready. Are You?*, http://network4g.verizonwireless. com /#/4g-network-verizon-wireless.

83 *See* Susan Welsh de Grimaldo, *Verizon Wireless 4G LTE at CES: It's Real, It's Here, Its Impressive*, Strategy Analytics, at 2 (Jan. 14, 2011).

sale, vehicle fleet tracking, "smart" power grids, kiosks for retail stores, and asset tracking.[84] Its partners include Panasonic, Dell, Intel, IBM, and Qualcomm.[85]

4. Differentiation on the Basis of Price or the "Value Proposition"

39. For AT&T, the combination of network experience, superior products, and competitive pricing constitutes the "value proposition" that it offers consumers. Many competitors have chosen to compete and differentiate themselves based upon price alone, or a different value proposition.

40. Sprint is aggressively challenging AT&T's value proposition by promoting a consumer message that extols the combined value of a next generation network, innovative devices <u>and</u> aggressive pricing. Sprint's value proposition includes attractive unlimited plans at very competitive prices, which it markets aggressively against AT&T.[86] This strategy has fueled Sprint's resurgence as a successful competitor to AT&T and will continue to drive Sprint's success in the future. Sprint's combination of aggressive pricing, high-end handsets, a strong 4G network and enhanced customer service resulted in Sprint adding approximately 1.8 million net subscribers in 2010.[87]

41. In June 2010, AT&T announced that it would no longer offer an unlimited data plan to new smartphone customers. Sprint capitalized on AT&T's decision by making its

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[84] Sprint, *M2M: Machine to Machine & Emerging Solutions*, http://m2m.sprint.com.

[85] *Id.*

[86] *See*, *e.g.*, Mike Dano, *New Sprint Ad Campaign Hinges on Unlimited Data*, FierceWireless (Apr. 11, 2011), http://www.fiercewireless.com/story/new-sprint-ad-campaign-hinges-unlimited-data/2011-04-11.

[87] Press Release, *Sprint Nextel Reports Fourth Quarter and Full Year 2010 Results* (Feb. 10, 2011), http://newsroom.sprint.com/article_display.cfm?article_id=1796.

unlimited plans a cornerstone of Sprint's marketing against AT&T and other carriers.[88] For example, Sprint's advertising touted its unlimited data plans, asking "why choose limited 3G from AT&T when you can get unlimited 3G and 4G while on the Sprint Network?" Likewise, Sprint has introduced low-cost voice, data and messaging plans that have appealed to wireless subscribers, especially data-centric AT&T customers.

42. Sprint also has lured subscribers searching for faster data speeds and inexpensive, unlimited data plans. With respect to data speeds, Sprint has taken aim at AT&T smartphone users, promoting the Sprint network as "4G, not faux G."[89] On data plans, Sprint has emphasized its *Everything* unlimited data plans in its advertising.[90] In particular, Sprint has targeted iPhone users, touting its HTC EVO 4G device and the price difference between AT&T's plans and its $69.99 *Everything* unlimited data plan. Sprint recently launched a promotion to lure subscribers by giving them a $125 service credit to switch to a Sprint smartphone,[91] making it easy for customers to switch before their contract is over.

43. **[Begin Confidential Information]**

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88 *See* Press Release, *Sprint CEO Dan Hesse Defines "Unlimited" in New TV Ad* (Mar. 12, 2011), http://newsroom.sprint.com/article_display.cfm?article_id=1818.

89 Roger Cheng, *Sprint CEO Touts 4G Devices, "Not Faux G,"* WSJ Blog (Mar. 22, 2011), http://blogs.wsj.com/digits/2011/03/22/sprint-ceo-touts-4g-devices-not-faux-g/.

90 *See* Press Release, *Sprint CEO Dan Hesse Defines "Unlimited" in New TV Ad* (Mar. 12, 2011), http://newsroom.sprint.com/article_display.cfm?article_id=1818.

91 *See* Sprint, *Move Your Number to Sprint. Get a $125 Service Credit*, http://shop2.sprint.com/en/stores/popups/cl_port_in_credit_125_popup.shtml.

[End Confidential Information].

44. The success of these offerings by Sprint has required AT&T to respond to prevent further inroads on its customer base. **[Begin Confidential Information]**

[End Confidential Information].[92]

45. MetroPCS and Leap also have sought to capitalize on their value proposition of low cost, no-contract, "all-you-can-eat" bundles of services. For example, on its website MetroPCS advertises and offers a $40 per month no-contract plan that includes unlimited local and nationwide long distance calling, unlimited text, and unlimited MetroWEB.[93] For $45 per month, MetroPCS customers can add unlimited international text, unlimited caller identification, and certain widgets, among other things.[94] On its website, Leap (under the Cricket brand) advertises and offers a $45 per month no-contract plan that includes unlimited anytime and mobile to mobile minutes, long distance, domestic and international text, and mobile web access.[95]

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[92] Phil Goldstein, *AT&T Follows Sprint Into Unlimited Mobile-to-Mobile Calling*, FierceWireless (Feb. 9, 2011), http://www.fiercewireless.com/print/node/86865.

[93] MetroPCS, *MetroPCS Rate Plans*, http://www.metropcs.com/plans/default.aspx? tab= family.

[94] MetroPCS, *MetroPCS Rate Plans*, http://www.metropcs.com/plans/default.aspx? tab= family.

[95] Cricket, *Cell Phone Plans*, http://www.mycricket.com/cell-phone-plans.

46. While T-Mobile USA competes principally on price/value, it is generally more expensive than the no-contract AYCE carriers such as MetroPCS and Leap. As a result, as T-Mobile USA's CEO Philip Humm has conceded, the company has been "kind of stuck in the middle with unlimited becoming industry standard on one side and T-Mobile USA being attacked from below by the no frills players in the market."[96] Similarly, as noted by Deutsche Telekom's CEO, Rene Obermann, "[w]e also lack[ed] competitive smart phones and we had a branded distribution gap in comparison to our competitors and all of that made us suffer. It resulted in revenue stalling and valuable contract customers leaving us."[97] Accordingly, T-Mobile is not an important factor in AT&T's competitive decision-making. Our survey research indicates that **[Begin Confidential Information]**

[End Confidential Information].[98]

While MetroPCS and Leap have a marketing strategy that is similar to T-Mobile USA's, namely, affordable smartphones and data services,[99] the AYCE carriers have lower prices.[100] In

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96 *Jan. 20, 2011 DT Analyst Briefing*, at 5 (T-Mobile USA CEO Philip Humm).

97 *Jan. 20, 2011 DT Analyst Briefing*, at 3 (Deutsche Telekom CEO Rene Obermann).

98 The Nielsen Company, *Q4 2010 Mobile Insights: National Report*, at 68-69 (Jan. 2011).

99 *Jan. 20, 2011 DT Analyst Briefing*, at 7, 20 (T-Mobile USA CEO Philip Humm; T-Mobile USA CMO Cole Brodman); MetroPCS, *About MetroPCS*, http://www.metropcs.com /about/ about.aspx; Final Transcript, *Leap—Q4 2010 International Earnings Conference Call*, at 2 (Feb. 22, 2011), http://www.google.com/url?sa=t&source= web&cd=2&ved=0CCMQFjAB &url=http%3A%2F%2Fphx.corporate-ir.net%2FExternal.File %3Fitem%3DUGFyZW50SU Q9ODM1MzN8Q2hpb GRJRD0tMXxUeXBlPTM%3D%26t% 3D1&rct=j&q=LEAP%20-%20Q4%202010%20Leap %20Wireless%20International%20Earn ings%20Conf erence%20 Call%20 februar%2022%2C %202011&ei=_ZCsTbLzI8_TgQfpkenzB Q&usg =AFQjCNGc TUMha46AU5cmhy6_mE-4OyAUPg&sig2=NgSfhiGIVOnbK51iIB8Hm Q.

addition, as noted above, T-Mobile USA is experiencing higher rates of overall churn (as compared to AT&T, Verizon and Sprint), which may be related to T-Mobile USA's ineffective reliance on price as a differentiator. **[Begin Confidential Information]**

[End Confidential Information].

47. With this acquisition, T-Mobile USA consumers will be able to keep their current rate plans. AT&T will map T-Mobile USA's rate plans into AT&T's billing systems as we have done in the case of prior acquisitions, so that if a T-Mobile USA consumer wishes to change her existing smartphone to a comparable smartphone from AT&T's device portfolio, she will be able to keep her existing data plan.[101]

B. In Addition to Verizon and Sprint, AT&T Faces Significant and Fast-Growing Competitive Threats

1. No-Contract, "AYCE" Carriers

48. As I mentioned above, a growing and increasingly strong competitive threat comes from low-cost, no-contract, all-you-can-eat ("AYCE") carriers. MetroPCS and Leap Wireless are prime examples of these emerging competitors. **[Begin Confidential Information]**

[End Confidential Information].

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[100] *See* Letter from Carl Northrop (for MetroPCS) to Chairman Julius Genachowski (FCC), GN Docket No. 09-191, at 12 n.42 (Feb. 14, 2011) ("*MetroPCS Feb. 14, 2011 Letter")* (comparing MetroPCS unlimited plan prices to higher contract carrier unlimited plan prices); *see also* Cricket, *Cell Phone Plans*, http://www.mycricket. com/cell-phone-plans.

[101] There may be rate plans with few customers that might not justify mapping, in which case we will offer those customers an incentive to move to a comparable AT&T rate plan.

49. No-contract AYCE carriers are very strong, aggressive competitors. Until recently, these carriers competed on price alone. However, the AYCE carriers have enhanced their market disruptor status by moving up-market and offering competing high speed data services over mobile broadband networks, including LTE, coupled with feature-rich smartphones. The new market reality is that these companies are playing an increasingly important role in the wireless marketplace, both growing their share and expanding into new markets. As these competitors continue to compete more effectively on data services, network quality and device portfolio and not just on price, they only will become stronger competitors to AT&T.

a. AYCE Pricing Plans

50. MetroPCS's and Leap's original AYCE model changed wireless industry pricing. They pioneered the concept of unlimited voice plans, which were later adopted by other carriers, and their AYCE plans pressured contract carriers to offer their own unlimited plans at declining prices and without contracts. At the end of 2007, only two carriers offered unlimited voice plans—MetroPCS and Leap.[102] Only months later, in early 2008, Sprint, Verizon, AT&T and T-Mobile USA, all introduced unlimited plans, in that order.[103] Since then, AT&T, Verizon and T-Mobile USA have lowered the price of their contract unlimited offerings in reaction to the flat-rate plans offered by Sprint's Boost brand, MetroPCS, and Leap.

[102] Sinead Carew, *Unlimited Mobile Plans Spark Price War Concerns*, Reuters (Feb. 19, 2008), http://www.reuters.com/assets/print?aid=USN1930076320080219.

[103] *Id.*; Nicole Lee, *Verizon, AT&T, T-Mobile Implement Unlimited Calling Plans*, CNET News (Feb. 19, 2008), http://news.cnet.com/8301-17938_105-9874425-1.html?tag=mncol%3 btxt.

51. MetroPCS has achieved success in part by offering nationwide plans at industry-low prices, and aggressively competing against their higher-priced contract carrier rivals. MetroPCS markets unlimited voice, data, and text plans of $40, $50, and $60 per month.[104] As MetroPCS has pointed out to the Commission, as compared to MetroPCS's $60 product, AT&T's plan with unlimited voice and text, plus 2GB of data, would cost $114.99, while an unlimited voice, data and text plan costs $119.98 from Verizon, $109.99 from Sprint Nextel, and $99.99 from T-Mobile USA (T-Mobile USA recently introduced another unlimited plan at $79.99).[105] In September 2008, MetroPCS and Leap signed a reciprocal roaming agreement, which allowed each carrier to offer near nationwide voice service without paying incremental roaming fees to the other.[106] In November 2010, MetroPCS launched its "Metro USA" services, covering ninety percent (90%) of the U.S. population, offering customers the chance to "enjoy unlimited talk, text and Web services wherever they go in the nation;"[107] it now boasts that its footprint is even slightly larger than Sprint's network.[108] MetroPCS also has targeted AT&T in its advertising, comparing AT&T's higher contract prices and its lack of an unlimited data plan.

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[104] *MetroPCS Feb. 14, 2011 Letter*, at 9-10.

[105] *MetroPCS Feb. 14, 2011 Letter*, at 12 n.42.

[106] *See* Press Release, *Leap Wireless International, Inc. and MetroPCS Communications, Inc. Enter into National Roaming Agreement and Spectrum Exchange Agreement and Settle Litigation*, at 1-2 (Sept. 29, 2008), http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle&ID=1203113&highlight=.

[107] *See* Press Release, *MetroPCS to Launch Metro USA Nationwide Coverage* (Nov. 4, 2010), http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irolnewsArticle&ID=1491639&highlight=.

[108] Transcript of Presentation by MetroPCS Communications, Inc. at Raymond James Institutional Investors Conference, at 1 (Mar. 7, 2011) (MetroPCS Executive VP & CFO Braxton Carter).

52. Similarly, Leap offers low priced nationwide calling plans without a contract and specifically targets Verizon and AT&T in advertising those plans for example, highlighting that it offers "BlackBerry Smartphone plans for just $55/month—half the cost of AT&T and Verizon."[109] Leap also emphasizes that its low-cost unlimited plans include nationwide coverage.[110] In the third quarter of 2010, Leap announced that its network covers 277 million people, and began emphasizing that, "[j]ust like all the major cellular carriers in the U.S.," it offers a "high quality, all-digital network."[111] In October 2010, Leap introduced nationwide 3G coverage, including 3G data, through a roaming agreement with Sprint.[112] Data roaming coverage is included in certain of Leap's unlimited plans at no additional charge.[113]

53. AT&T has responded to MetroPCS and Leap **[Begin Confidential Information]**

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[109] Cricket, *Coverage Comparison*, http://www.mycricket.com/learn/compare-smartphone-providers/chart.

[110] *Id.*

[111] Cricket, *The Competitive Cricket Comparison*, http://www.mycricket.com/learn/compare-cell-phone-providers.

[112] Press Release, *Cricket Announces Launch of Nationwide 3G Data Roaming* (Oct. 19, 2010), http://www.mycricket.com/press/press-release/Cricket-Announces-Launch-of-Nationwide-3G-Data-Roaming.

[113] Cricket, *Premium Extended Coverage*, http://www.mycricket.com/coverage/premium-extended-coverage.

[End Confidential Information].

b. AYCE Network Innovation

54. MetroPCS is now deploying LTE throughout its footprint, and was the first carrier in the nation to offer commercial LTE service and an LTE-enabled handset.[114] MetroPCS already has launched LTE service in major metro areas of Tampa, Atlanta, Jacksonville, Miami, Orlando, Boston, Dallas-Fort Worth, Detroit, Las Vegas, Los Angeles, New York City, Philadelphia, Sacramento and San Francisco.[115] LTE technology has allowed MetroPCS to enjoy greater capacity and to offer higher download speeds on a platform optimized for data service.[116] Going forward, MetroPCS plans to implement Voice over LTE (VoLTE) so that it can carry its voice as well as data traffic over LTE, thus freeing up spectrum for redeployment

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[114] Press Release, *MetroPCS Launches First 4G LTE Services in the United States and Unveils World's First Commercially Available 4G LTE Phone* (Sept. 21, 2010) ("Today, MetroPCS Communications Inc. became the first mobile operator to launch commercial 4G LTE services in the United States"), http://www.metropcs.com/presscenter/articles/mpcs-news-20100921.aspx.

[115] Press Release, *MetroPCS Launches 4G LTE Service in the Tampa Metropolitan Area* (Apr. 1, 2011), http://www.metropcs.com/presscenter/newsreleasedetails.aspx?id=17.

[116] *MetroPCS Feb. 14, 2011 Letter* at 6.

that is currently tied up supporting legacy CDMA service.[117] This will increase MetroPCS's bandwidth available for LTE, driving further increases in capacity.[118]

55. Leap also is taking advantage of the latest network technology. Leap already offers nationwide 3G data coverage[119] and is preparing to launch LTE service, having conducted successful LTE tests last year.[120] Leap recently announced an agreement with LTE wholesale provider LightSquared, which will supplement its own LTE network.[121]

c. AYCE Device Portfolios

56. MetroPCS is including smartphones, including Blackberry and Android models such as the 4G Samsung Galaxy Indulge, as an increasingly large part of its device portfolio and its competitive strategy.[122] MetroPCS's CEO has referred to the coming "Tsunami of Android" smartphones and explained that traditional feature phones are "going the way of the

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[117] Sue Marek, *MetroPCS' COO on the Pros and Cons of the AT&T/T-Mobile Deal*, FierceWireless (Mar. 30, 2011), http://www.fiercewireless.com/story/metropcs-coo-pros-and-cons-attt-mobile-deal/2011-03-30.

[118] Sascha Segan, *GSMA Exec: Samsung Smartphone with Voice Over LTE Coming to MetroPCS*, PCMagazine (Feb. 10, 2011), http://www.pcmag.com/print_article2/ 0,1217,a= 260495,00.asp?hidPrint=true.

[119] Press Release, *Cricket Announces Launch of Nationwide 3G Data Roaming* (Oct. 19, 2010), http://www.mycricket.com/press/press-release/Cricket-Announces-Launch-of-Nationwide-3G-Data-Roaming.

[120] Mike Dano, *Leap Acquires Denali, Plans LTE Test Market in 2011*, FierceWireless (Sept. 23, 2010), http://www.fiercewireless.com/story/leap-acquires-denali-plans-lte-test-market-2011/2010-09-23.

[121] Press Release, *Cricket Enters into 4G Roaming Agreement with LightSquared*, at 1 (Mar. 22, 2011), http://www.lightsquared.com/press-room/in-the-news/cricket-enters-into-4g-roaming-agreement-with-lightsquared.

[122] *See* Press Release, *MetroPCS and Samsung Mobile Unveil the Samsung Galaxy Indulge, the World's First Commercially Available 4G LTE Android Smartphone*, at 1 (Feb. 9, 2011), http://investor.metropcs.com/External.File?t=2&item=g7rqBLVLuv81UAmrh20Mp9tj3fGPzw7Th9QbgJ4ulFgfATjGENyIQJOg7zJGrl5P0Oj0RwhYxIGvk14TD9Iz3A==.

dinosaurs."[123] As of March 2011, one third of MetroPCS's handset sales this year to date were of Android smartphones.[124]

57. Smartphones also are a key to the Leap device portfolio; it now offers affordable Android phones, as well as low-cost Blackberry devices.[125] Whereas only ten percent of Leap's customer base had moved to smartphones by year-end 2010, smartphones—including Android, Windows, and Blackberry devices—in December 2010 accounted for forty percent (40%) of Leap's new handset sales.[126] Leap is now "committed to the smartphone category."[127] As their CEO has stated, "We have now got the devices, the service plans, and the nationwide 3G coverage our customers want. . . .The result is a significant increase in customer lifetime value which validates that we're making the right investments in the right places."[128]

58. As mentioned above, AT&T has just announced its first no-contract smartphone offer —the LG Thrive—on April 17, 2011 in response to this competition.[129]

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[123] Transcript of MetroPCS Communications, Inc. at Credit Suisse Group Convergence Conference, at 2 (March 9, 2011) (MetroPCS CEO Roger Linquist) ("*MetroPCS at Credit Suisse Convergence Conference*"); Final Transcript, *PCS—MetroPCS Communications, Inc. at Morgan Stanley Technology, Media & Telecom Conference*, at 2 (Mar. 3, 2011) ("*MetroPCS Morgan Stanley Conference Transcript*").

[124] *Id*. at 2.

[125] Leap, *Shop Phones*, http://www.mycricket.com/cell-phones2.

[126] Final Transcript, *LEAP—Q4 2010 Leap Wireless International Earnings Conference Call*, at 6 (Feb. 22, 2011), http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQDM1MzN8Q2hpbGRJRD0tMXxUeXBlPTM=&t=1 ("*Leap Q4 2010 Earnings Call*").

[127] Mike Dano, *Leap Plans Wi-Fi-only ViewSonic Android Tablet, More Android Smartphones*, FierceWireless (Mar. 24 2011), http://www.fiercewireless.com/ctialive/story/leap-plans-wi-fi-only-viewsonic-android-tablet-more-android-smartphones/2011-03-24.

[128] *Leap Q4 2010 Earnings Call* at 2.

[129] Press Release, *AT&T and LG Launch First Smartphone for GoPhone*, at 1 (Apr. 12, 2011), http://www.att.com/gen/press-room?pid=19623&cdvn=news&newsarticleid=31797.

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d. AYCE Growth Prospects

59. The compelling value proposition of the no-contract AYCE carriers' nationwide voice and data plans, coupled with offerings of sophisticated smartphones and advanced networks, is attracting subscribers **[Begin Confidential Information]**

[End Confidential Information]. As a result, the no-contract wireless segment continues to grow, and no-contract carriers are experiencing double-digit annual subscriber growth. MetroPCS reported that one analyst predicted that the no-contract AYCE carriers will grow twenty-four percent (24%) between 2009 and 2013; in contrast, contract carrier subscribers are predicted to grow by only two percent (2%).[130] MetroPCS and Leap are expanding into a rapidly increasing number of markets, including (between them) 22 of the top 25, and their total subscribership has been increasing rapidly since mid-2008—in MetroPCS's case, by approximately seventy-six percent (76%).[131]

60. Since entering the marketplace in 2002, MetroPCS has quickly grown from roughly 500,000 subscribers to more than 8.1 million today—a sixteen-fold increase in less than ten years.[132] In just the last year, MetroPCS increased its subscriber base by almost twenty-three

[130] Presentation of MetroPCS at Bank of America Credit Conference, at 11 (November 17, 2010), http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NDA3MjY1fENoaWxkSUQ9NDE2NjIzfFR5cGU9MQ==&t=1 ("*MetroPCS Bank of America Credit Conference*").

[131] Press Release, *MetroPCS Reports Second Quarter 2008 Results* (Aug. 7, 2008), http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-newsArticle&id=1184673 (reporting that as of June 30, 2008, MetroPCS had 4,598,049 subscribers); MetroPCS Communications Inc., Annual Report (2010 Form 10-K), at 6 (March 1, 2011) ("As of December 31, 2010, we had over 8.1 million subscribers.").

[132] *MetroPCS Bank of America Credit Conference* at 13; MetroPCS Communications Inc., Annual Report (2010 Form 10-K), at 6 (March 1, 2011).

percent (23%).[133] MetroPCS added nearly 300,000 *net* subscribers in the fourth quarter of 2010 alone.[134] MetroPCS has been vocal about its intentions to attract even more contract subscribers from carriers like AT&T, stating publicly that it plans to "have a greater parity with the post pay or contract [carriers] in terms of handsets and services that we can offer."[135]

61. MetroPCS has expanded into numerous markets, including 12 of the 25 most populous DMAs, and achieved a significant market presence in many parts of the country. In Miami, for example, **[Begin Confidential Information]**

[End Confidential Information]. MetroPCS also had notable success elsewhere in Florida and in parts of Texas, Michigan, Georgia and Northern California. Indeed, MetroPCS is estimated to have achieved a double digit (or near double digit) market share in **[Begin Confidential Information]**

[End Confidential Information]. MetroPCS's share is now estimated to exceed T-Mobile USA's in **[Begin Confidential Information]**

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133 According to MetroPCS's 2009 and 2010 10-K filings, MetroPCS had 6.6 million subscribers as of December 31, 2009 and 8.1 million subscribers as of December 31, 2010; this is approximately a 22.7% y-o-y increase. MetroPCS Communications Inc., Annual Report (2010 Form 10-K), at 6 (March 1, 2011); MetroPCS Communications Inc., Annual Report (2009 Form 10-K), at 5 (March 1, 2010).

134 MetroPCS, Annual Report (2010 Form 10-K), at 71 (March 1, 2011).

135 *MetroPCS at Credit Suisse Convergence Conference* at 1.

[End Confidential Information] Indeed, MetroPCS has more retail locations in San Francisco and Boston than AT&T has. MetroPCS's churn has declined from 5.3% in the fourth quarter of 2009 to 3.5% in the last quarter of 2010. MetroPCS's fourth quarter churn rate is the lowest rate among the no-contract carriers we track, **[Begin Confidential Information]**

[End Confidential Information].

62. Likewise, Leap has reported that it is "seeing an accelerating shift from postpaid to prepaid" and has predicted that "the wireless industry will remain competitive, particularly as companies like ours continue to lead the shift from postpaid to prepaid, as consumers reexamine the value proposition and the consumer flight to value continues."[136] Leap also has grown rapidly, expanding its subscriber base from 1.47 million to 5.5 million customers in 7 years, a 379% increase.[137] Leap added 107,000 net subscribers in the fourth quarter of 2010 alone,[138] and projects to add 300,000 more subscribers in the first quarter of 2011.[139] Leap offers service,

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[136] Final Transcript, *LEAP—Q1 2010 Leap Wireless International Earnings Conference Call*, at 3, 8 (May 6, 2010), ("*Leap Q1 2010 Earnings Call*") ("we're seeing an accelerating shift from postpaid to prepaid that's garnering more and more focus at the national level by our existing and potential customers. Our experience in prepaid means we are well positioned to be a winner in this transition . . . . We expect that the wireless industry will remain competitive, particularly as companies like ours continue to lead the shift from postpaid to prepaid, as consumers reexamine the value proposition and the consumer flight to value continues.").

[137] *See* Leap Wireless International Inc., Annual Report (2010 Form 10-K) at 2; Press Release, *Leap Reports Results for Fourth Quarter and Full Year 2004; Company Provides Preliminary Results for the First Quarter of 2005 and Revised Full-Year Outlook*, at 16 (May 11, 2005), http://phx. corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle&ID=721622& highlight=.

[138] Press Release, *Leap Announces Net Customer Additions for Fourth Quarter and Full Year 2010* (Jan. 4, 2011), http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle& ID=1531478&highlight=.

[139] Press Release, *Leap to Provide Updates on Business Performance at International CTIA Wireless Conference* (Mar. 21, 2011), http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p= irol-newsArticle&ID=1541267&highlight=.

including nationwide 3G data service, in 35 states and the District of Columbia,[140] including 11 of the most populous 25 DMAs. According to our estimates, Leap has double-digit subscriber shares in **[Begin Confidential Information]**

[End Confidential Information]. Finally, Leap's, churn rate declined to 4.0% in the fourth quarter of 2010, down from 4.7% a year earlier**.**

2. Regional and Local Carriers

63. Most customers make their purchasing decisions at the local level where they live, work and shop. As a result, regional and local carriers that have established a strong brand and distribution presence are successful competitors in the areas where they sell service. Many regional carriers offer nationwide plans and nationwide coverage (via roaming agreements) similar in scope to that of AT&T, as evidenced by the maps on each carrier's website.[141] They also offer smartphones, including advanced and popular Android devices, and at least two of the larger regional carriers are developing advanced LTE networks.[142]

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140 *Id.*

141 *See* Appendix at 14-18.

142 *Id*.

64. One of our strongest regional competitors is U.S. Cellular, which has a geographically diverse footprint, offering nationwide service to customers in such major cities as Chicago, Milwaukee, St. Louis, Oklahoma City, Des Moines, Tulsa, and Portland, Maine. US Cellular's coverage map is attached to my Declaration.[143]

65. All told, U.S. Cellular serves over 6 million customers in more than 70 markets within 26 U.S. states,[144] and its network covers 90 million POPs,[145] which is roughly thirty percent (30%) of the nation's population. According to AT&T's internal estimates, U.S. Cellular has double-digit and sometimes commanding shares of many markets in which T-Mobile USA and AT&T also compete, including **[Begin Confidential Information]**

[End Confidential Information].

66. U.S. Cellular's network coverage and device portfolio is similar to other providers. In 2010, it expanded its device portfolio to include Android operating system devices, such the LG Optimus U, the LG Apex, Samsung Galaxy Tab, Samsung Mesmerize (a Galaxy S smartphone), Acclaim, and HTC Desire.[146] U.S. Cellular plans to introduce 13 new smartphones

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[143] *See* Appendix at 14-15.

[144] U.S. Cellular Corp., Annual Report (Form 2010 10-K), at 1 (Feb. 26, 2011).

[145] Press Release, *U.S. Cellular Reports Fourth Quarter 2010 Results*, at 4 (Feb. 24 2011), http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9ODYyNTZ8Q2hpb GRJRD0tMXxUeXBlPTM=&t=1.

[146] Press Release, *U.S. Cellular to Launch the LG Optimus U, Its Latest Android-Powered Device For 2010*, at 1 (Dec. 7, 2010), http://www.uscellular.com/about/press-room/2010/ USCELLULAR-TO-LAUNCH-THE-LG-OPTIMUS-U-ITS-LATEST-ANDROID-POWERED-DEVICE-FOR-2010.html.

this year, including additional Android, Blackberry and Windows Mobile 7 devices.[147] Customers will be able to use these advanced devices with one of US Cellular's nationwide voice and 3G data plans.[148] U.S. Cellular's wireless service will become even more compelling to consumers after it launches its LTE network in 2012.[149] U.S. Cellular appears to serve its customers well. It was one of only 40 companies in twenty major industries to earn a customer service award from J.D. Power, and enjoys one of the lowest churn rates in the industry (1.5% in Q4 2010).[150]

67. Cincinnati Bell is another significant regional competitor. According to our estimates, Cincinnati Bell has a higher market share **[Begin Confidential Information]**

[End Confidential Information]. It offers nationwide service plans that are competitive with those of AT&T and other carriers.[151] One reason for Cincinnati Bell's success is its aggressive advertising and 3G network. Moreover, it offers Blackberry and Android phones, and claims that its network is faster than AT&T's network.

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[147] US Cellular Fourth Quarter 2010 Results and 2011 Guidance Slideshow Presentation, at 18 (Feb. 24, 2011), http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9ODYyNTd8Q2hpbGRJRD0tMXxUeXBlPTM=&t=1.

[148] USCellular.com, *Data and Internet*, http://www.uscellular.com/plans/data.html.

[149] The Yankee Group, *US is Fast Becoming a Key 4G Proving Ground*, at 4 (Feb. 2011).

[150] Press Release, *U.S. Cellular Reports Fourth Quarter 2010 Results*, at 1 (Feb. 24, 2011) ("Retail postpaid churn improved to 1.5 percent from 1.6 percent; postpaid customers comprised 95 percent of retail customers."), http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9ODYyNTZ8Q2hpbGRJRD0tMXxUeXBlPTM=&t=1; Press Release, *U.S. Cellular and TDS Telecom Recognized as J.D. Power 2011 Customer Service Champions* (Feb. 17, 2011), http://phx.corporate-ir.net/phoenix.zhtml?c=106793&p= irol-newsArticle&ID=1530190&highlight=.

[151] Cincinnati Bell, *Wireless Rate Plans*, http://www.cincinnatibell.com/consumer /wireless/rate_plans/.

68. Cellular South is another strong competitor in its service area, which includes Mississippi, and parts of Alabama and Tennessee. Cellular South's coverage map is attached to my Declaration. It launched a "*Nationwide Talk Unlimited*" plan for $59.99 in February[152] and has been targeting AT&T subscribers. In fact, Cellular South launched a webpage that specifically solicits AT&T customers: "From coast to coast, we've handpicked the best networks to give you better coverage in far more places than AT&T" and "Our Smartphone Unlimited Plan is a first-of-its-kind value! Get unlimited talk, text, email, and web at a price that saves you over $40/month compared to AT&T or Verizon."[153] Cellular South also has been offering to pay the early termination fees customers would pay upon leaving for Cellular South. AT&T responded to this offer in April 2010 by giving certain customers a $150 credit if they remained with AT&T.

3. New Competitors Continue To Emerge

69. In addition to the more conventional competitors described above, AT&T also competes with new, non-traditional competitors such as wholesale providers and cable companies.

70. The wholesale business model that Clearwire introduced over the last two years, and that LightSquared has announced it will pursue, has the potential to change the wireless industry. LightSquared's CEO recently predicted that wholesale wireless would be profoundly

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[152] Michelle Ruhfass, *Cellular South Introduces Nationwide Talk Unlimited Plan*, Mobile Burn (Feb. 15, 2011), http://www.mobileburn.com/pressrelease.jsp?Id=13063.

[153] Cellular South, *Discover the Cellular South Difference AT&T Customers,* http://www.cellularsouth.com/DiscoverCenter/why-cs/att.jsp.

disruptive to current wireless carriers.[154] According to LightSquared's CEO, its "wholesale-only" business model will allow new entrants such as cable companies, device manufacturers and national retailers like Best Buy to enter the market without the cost of building a network by buying 4G network service wholesale from carriers like LightSquared.[155]

71. Clearwire is deploying and operating a mobile wireless network based on WiMAX technology, and is conducting LTE technology trials.[156] Clearwire has a wholesale agreement with its investors under which they can purchase mobile broadband capacity for resale to consumers. For example, its majority-owner Sprint purchases wholesale capacity from Clearwire, which it offers to its customers who purchase its 4G smartphones.[157] Also in March 2011, pursuant to a July 2010 agreement,[158] Clearwire unveiled WiMAX-based 4G mobile broadband service[159] in connection with Best Buy's recently introduced MVNO, Best Buy

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[154] David Goldman, *LightSquared's Big Gamble: A Brand-new Wireless Network*, CNN Money, (July 21, 2010) ("'LightSquared will be a disruptive force in the U.S. wireless landscape by democratizing wireless broadband services,' LightSquared CEO Sanjiv Ahuja said in a prepared statement. 'We're not only delivering exciting opportunities for manufacturers and retailers, but also real change for consumers.'"), http://money.cnn.com/2010/07/21/technology/lightsquared_wireless_network/index.htm.

[155] Remarks of LightSquared Chairman & CEO Sanjiv Ahuja, CTIA Wireless 2011 (Mar. 23, 2011), http://daily.ctia.org/wireless2011/; *see also* Lightsquared, *A Revolutionary Approach to Mobile Broadband*, http://www.lightsquared.com/what-we-do/; Lightsquared, *Nation's First Wholesale-Only Network*, http://www.lightsquared.com/what-we-do/operating-model/.

[156] Clearwire Corp., Annual Report (2010 Form 10-K), at 3 (Feb. 22, 2011); Press Release, *4G LTE Technology Trials*, http://www.clearwire.com/company/featured-story.

[157] Clearwire Corp., Annual Report (2010 Form 10-K), at 4, 10 (Feb. 22, 2011).

[158] Press Release, *Best Buy(R) and Clearwire(R) Unveil Strategic Wholesale Relationship and Plans to Offer Newly Branded 4G Mobile Broadband Service in the U.S.*, at 1 (July 29, 2010), http://corporate.clearwire.com/releasedetail.cfm?ReleaseID=551070.

[159] Clearwire Corp., Annual Report (2010 Form 10-K), at 3, 8 (Feb. 22, 2011).

Connect.[160] Clearwire and Locus Telecommunications (Locus) also recently have announced a new 4G wholesale agreement.[161] According to the announcement, the agreement "will enable Locus to add prepaid 4G mobile broadband service, via Clearwire's 4G network, to the company's wide array of telecommunications products."[162] Clearwire also operates a retail WiMAX mobile broadband service.[163]

72. Just last month, LightSquared, the newest wholesale provider, announced that it had entered into two wholesale agreements. LightSquared entered into a long-term 4G roaming agreement with Leap to allow its operating subsidiary, Cricket, to supplement the LTE coverage that it plans to deploy across its own networks over the next few years.[164] Further, LightSquared announced that Best Buy has agreed to become a mobile virtual network operator ("MVNO") on

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160 Press Release, *Best Buy ConnectSM Launches 4G Mobile Broadband Service Via Clearwire*, at 1 (Mar. 28, 2011), http://corporate.clearwire.com/releasedetail.cfm?ReleaseID =560242.

161 Press Release, *Clearwire and Locus Telecommunications Announce New 4G Wholesale Agreement*, at 1 (Apr. 7, 2011), http://corporate.clearwire.com/releasedetail.cfm?ReleaseID =563465.

162 Press Release, *Clearwire and Locus Telecommunications Announce New 4G Wholesale Agreement*, at 1 (Apr. 7, 2011), http://corporate.clearwire.com/releasedetail.cfm?ReleaseID =563465.

163 Geoff Duncan, *Clearwire Expects "Imminent" Solution to Sprint Feud*, Digital Trends (Feb. 18, 2011), http://www.digitaltrends.com/mobile/clearwire-expects-imminent-solution-to-sprint-feud/.

164 Press Release, Cricket Enters into 4G Roaming Agreement with LightSquared, (Mar. 22, 2011), http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle&ID=1541451 &highlight=.

its network with an initial trial of the branded service expected in the first quarter of 2012.[165] LightSquared is reported to be negotiating with several other potential customers.[166]

73. Cox Communications, the third largest cable TV company in the U.S[167] entered into the wireless business in November 2010,[168] and offers "Nationwide coverage within the 50 U.S. states with no domestic roaming fees."[169] Cox currently provides service in Omaha, Nebraska; Hampton Roads, Virginia; Orange County, California; Oklahoma City, Oklahoma; and Tulsa, Oklahoma, and recently announced it will soon offer service in Cleveland, Ohio, Connecticut and Rhode Island. It has plans to bring its wireless service to more than 50 percent of the more than 6 million residences and businesses, which it already serves with cable television service.[170]

74. Cox is positioned to grow rapidly. It currently owns spectrum in several additional CMAs, including San Diego, Phoenix, and New Orleans, and is already testing LTE in

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[165] Chloe Albanesius, *LightSquared, Best Buy Ink 4G Wireless Deal*, PC Magazine (Mar. 23, 2011), http://www.pcmag.com/article2/0,2817,2382508,00.asp.

[166] Andrew Parker and Paul Taylor, *LightSquared in Contract Talks*, Financial Times (Mar. 27, 2011), http://www.ft.com/cms/s/0/807dea44-5898-11e0-9b8a-0144feab49a.html#axzz1JZeL zzdX.

[167] Press Release, *Cox Launches Wireless in Oklahoma* (March 29, 2011), http://coxenterprises.mediaroom.com/index.php?s=43&item=1127.

[168] Press Release, *Cox to Bring Unbelievably Fair Wireless Plans to Rhode Island Connecticut and Cleveland* (Apr. 4, 2011), http://www.prnewswire.com/news-releases/cox-to-bring-unbelievably-fair-wireless-plans-to-rhode-island-connecticut-and-cleveland-119188599.html.

[169] Cox Wireless, *Service Pricing*, http://ww2.cox.com/residential/omaha/wireless/terms-and-conditions.cox.

[170] Press Release, *Cox Launches Wireless in Oklahoma* (March 29, 2011), http://coxenterprises.mediaroom.com/index.php?s=43&item=1127; Press Release, *Cox to Bring Unbelievably Fair Wireless Plans to Rhode Island Connecticut and Cleveland* (Apr. 4, 2011), http://www.prnewswire.com/news-releases/cox-to-bring-unbelievably-fair-wireless-plans-to-rhode-island-connecticut-and-cleveland-119188599.html.

Arizona and San Diego.[171] Given its ability to market wireless service on a bundled basis to its cable television subscribers, it has a ready-made installed base of customers.[172] Cox also has a history of using this installed base to its advantage, as demonstrated by its success in the landline telephone business, where within ten years it went from a new entrant to capturing over forty percent (40%) market share in some markets.[173]

75. In summary, we believe that new competitors in the wireless marketplace will expand the competitive landscape beyond what we see today, resulting in aggressive marketing and distribution of new wireless products and services and offering even more choices for consumers.

V. By Providing AT&T With Needed Spectrum, This Merger Will Increase Output and Sales

76. The U.S. wireless industry has experienced an explosive growth in demand for mobile broadband services in recent years, and this trend will accelerate in the future.[174] Over the past four years, AT&T has led the wireless broadband revolution with the iPhone, iPad and other devices. As explained in the Declaration of William Hogg, due to its position at the forefront of the mobile broadband revolution and the popularity of its device portfolio, AT&T's

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[171] Jeff Baumgartner, *Cox Wireless is Go for Launch*, Light Reading Cable (Nov. 19, 2010), http://www.lightreading.com/document.asp?doc_id=200677&site=lr_cable; Spectrum Chart.

[172] Allie Winter, *Executive Interview: Cox's Stephen Bye*, (Sept. 21 2009), http://www.rcrwireless.com/ARTICLE/20081204/WIRELESS/812039973/executive-interview-cox-8217-s-stephen-bye.

[173] Allie Winter, *Executive Interview: Cox's Stephen Bye*, (Sept. 21 2009), http://www.rcrwireless.com/ARTICLE/20081204/WIRELESS/812039973/executive-interview-cox-8217-s-stephen-bye.

[174] For example, Strategic Analytics reports that the average monthly handset data traffic per user almost doubled between 2009 and 2010, and will increase more than nine-fold between 2010 and 2015. *Handset Data Traffic (2009-2015)*, Strategic Analytics (March 2011).

mobile broadband network has been strained by this exponential growth in data traffic and, as a result, faces unique impending capacity constraints, which require additional capacity.[175]

77. AT&T's lack of sufficient network capacity to meet its customers' increasing demands for wireless broadband **[Begin Confidential Information]**

[End Confidential Information].

78. AT&T's marketing strategy is focused on offering its customers devices, products and services that are at the cutting edge of technology. There are several examples of new products and services that will increase output and sales when this transaction is approved. The best example of this current limitation is video. Consumers are increasingly demanding new mobile video applications and features, like video chat. By their very nature, these applications and features are highly bandwidth intensive. **[Begin Confidential Information]**

175 Declaration of William Hogg, Senior Vice President of Network Planning and Engineering, AT&T Services Inc., ¶¶ 3-9 (April 20, 2011) ("Hogg Decl.").

[End Confidential Information]. Another example is connected devices. While AT&T has been a leader in this space,[176] new connections to the network in many cases require additional bandwidth. **[Begin Confidential Information]**

[End Confidential Information].

79. For the reasons provided in the declarations of my colleagues, Bill Hogg, John Donovan, and Rick Moore, the additional spectrum and network capacity from the acquisition of T-Mobile USA will further enable AT&T to innovate and offer consumers the new devices, products and services, applications, and features they expect and demand.[177] These offerings, in turn, will increase sales as customers seek to take advantage of the innovation and resulting new devices, product and services, and features and applications.

80. In short, the proposed transaction and the resulting network and spectrum benefits will increase our ability to compete in a fiercely competitive wireless marketplace. The transaction will enable AT&T to bring to market a broader range of products and services in a more timely, efficient, and competitive manner. This is the essential element of AT&T's marketing strategy and the basis for our ability to attract and retain customers which, in turn, challenges our competitors to compete on the quality and pricing of their service offerings.

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176 AT&T Inc. 2010 Annual Report, at 28 (Feb. 11, 2011), http://www.att.com/ Common/about_us /annual_report/pdfs/ATT2010_Full.pdf.

177 Hogg Decl. ¶¶ 10-15; Donovan Decl. ¶¶ 44-49; Declaration of Rick L. Moore, Senior Vice President of Corporate Development, AT&T Inc., ¶¶ 23, 28 (April 20, 2011).

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 19, 2011.

Signed:

David A. Christopher
Chief Marketing Officer
Mobility and Consumer Markets
AT&T Mobility Services LLC

Appendix

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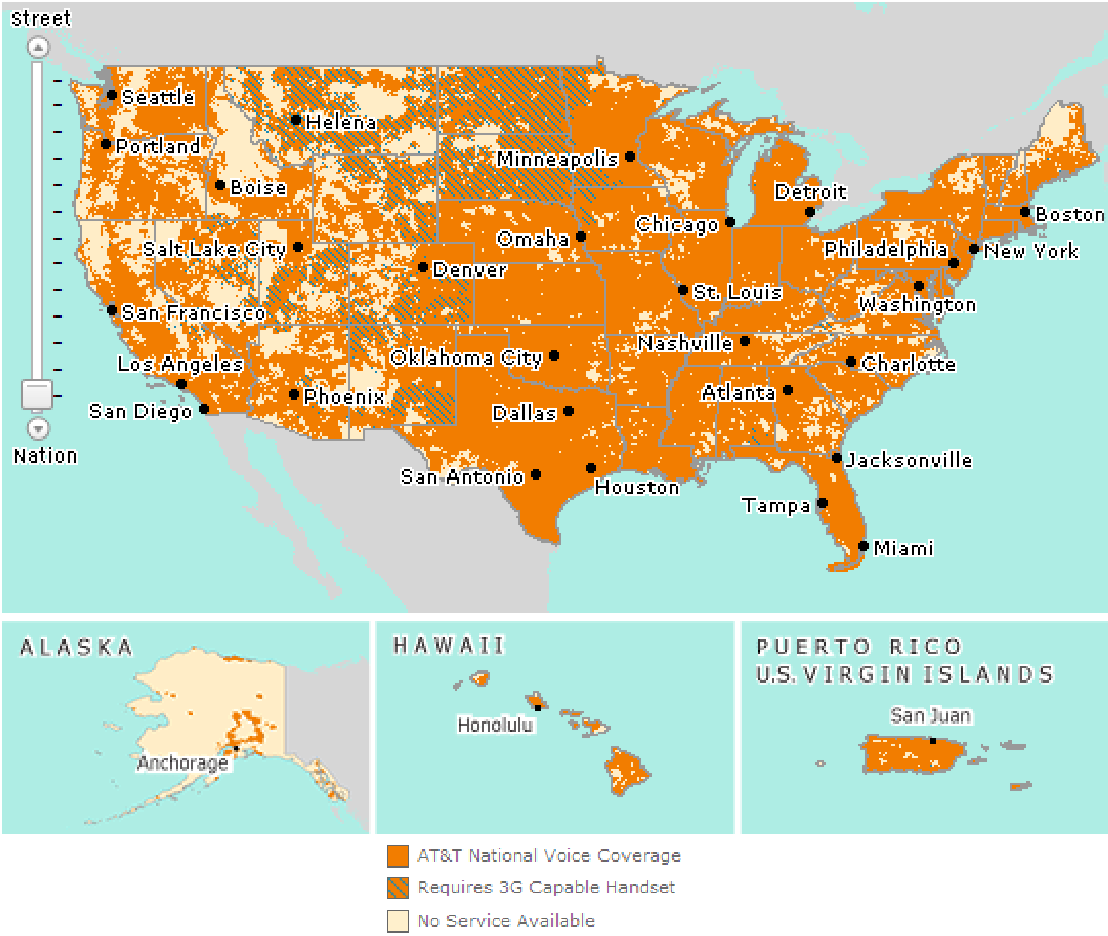
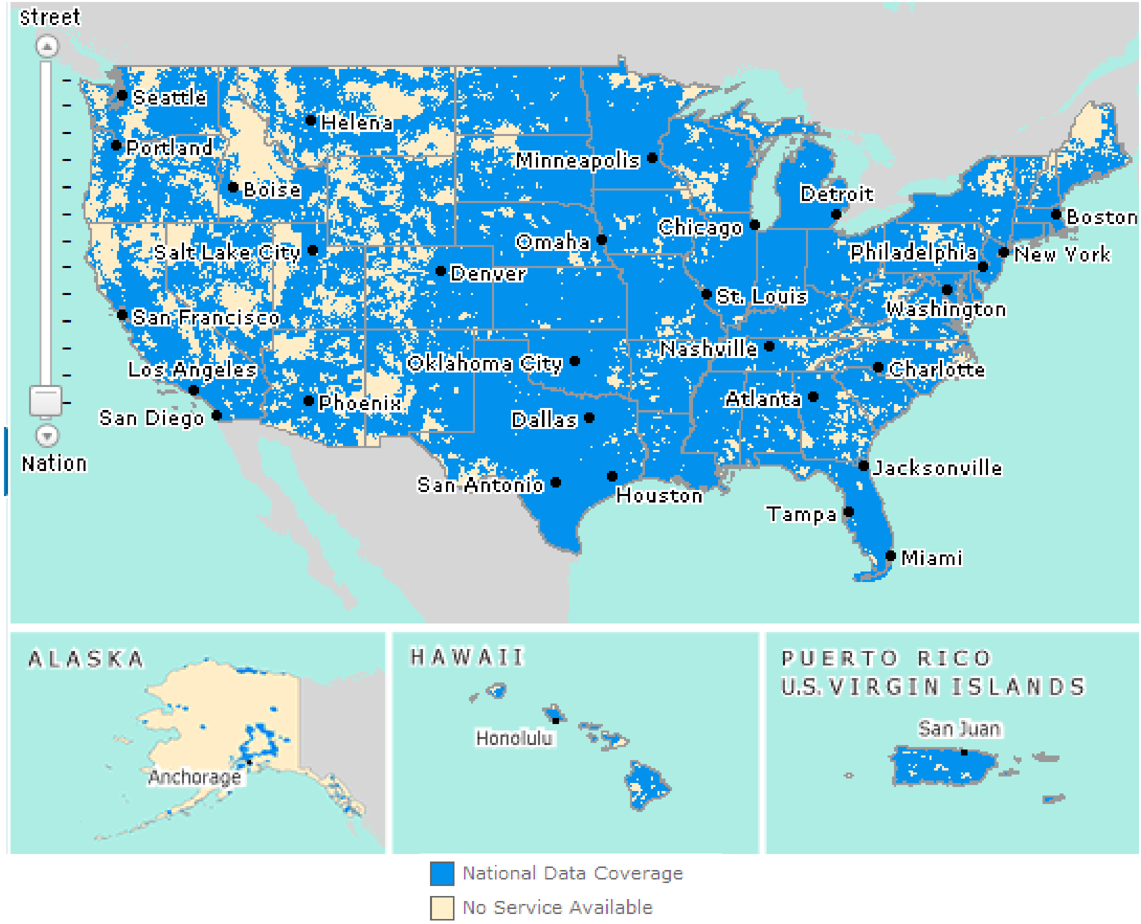
<u>AT&T Voice Coverage Map</u>[1]



[1] AT&T, *AT&T Coverage Viewer*, http://www.wireless.att.com/coverageviewer/#?type=voice.

<u>AT&T Data Coverage Map</u>[2]



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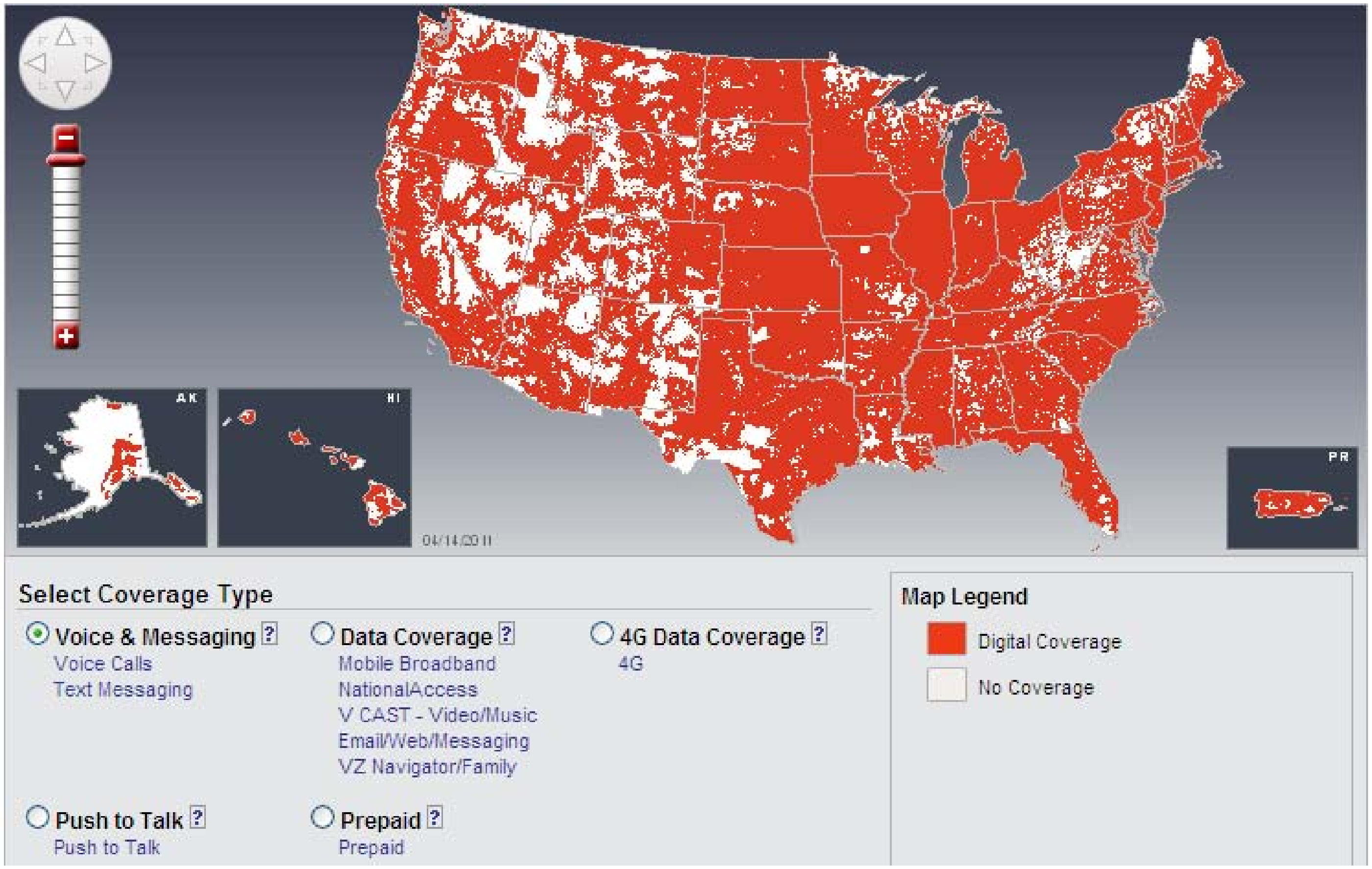
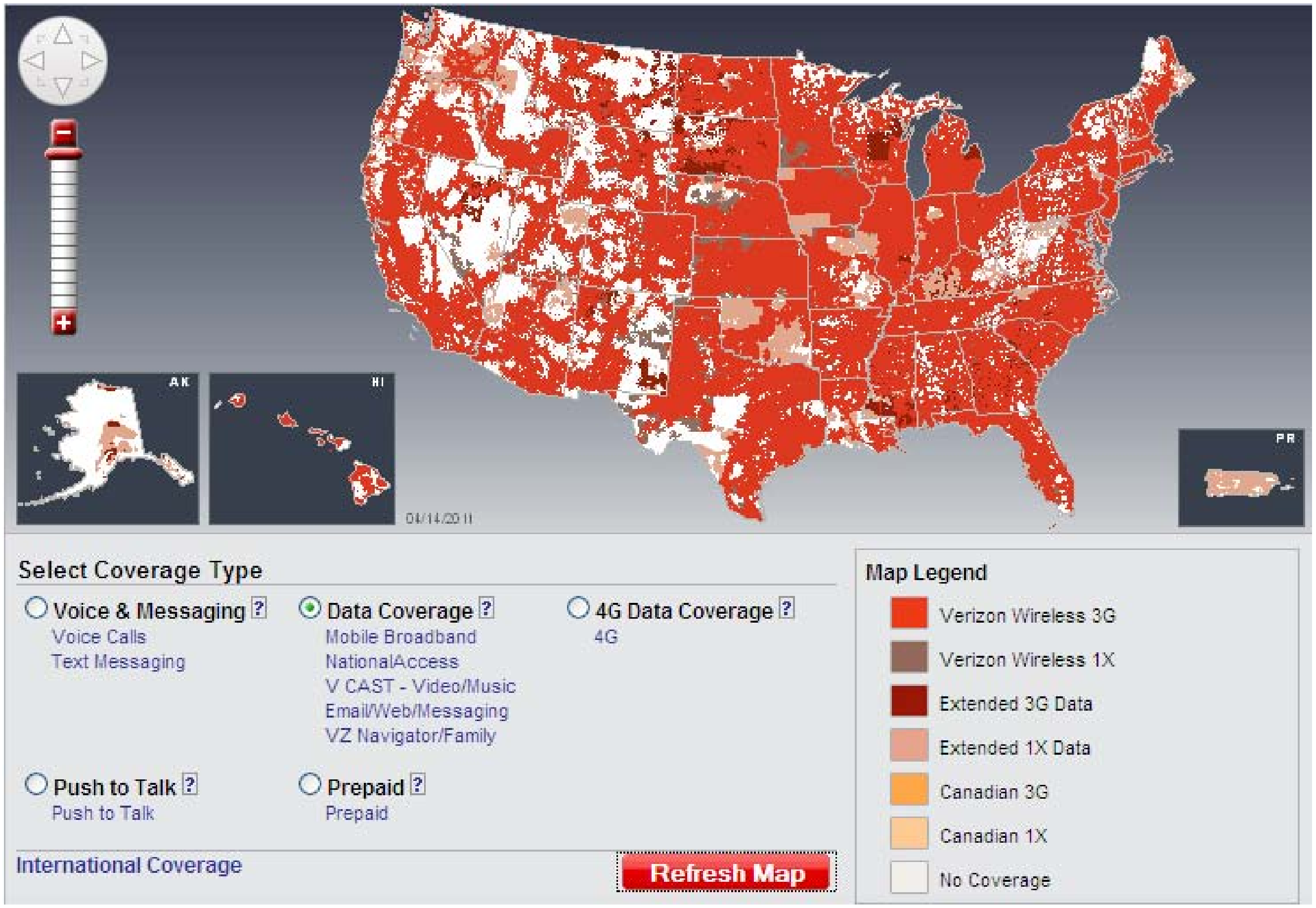
[2] AT&T, *AT&T Coverage Viewer*, http://www.wireless.att.com/coverageviewer/#?type=voice.

Verizon Voice Coverage Map[3]



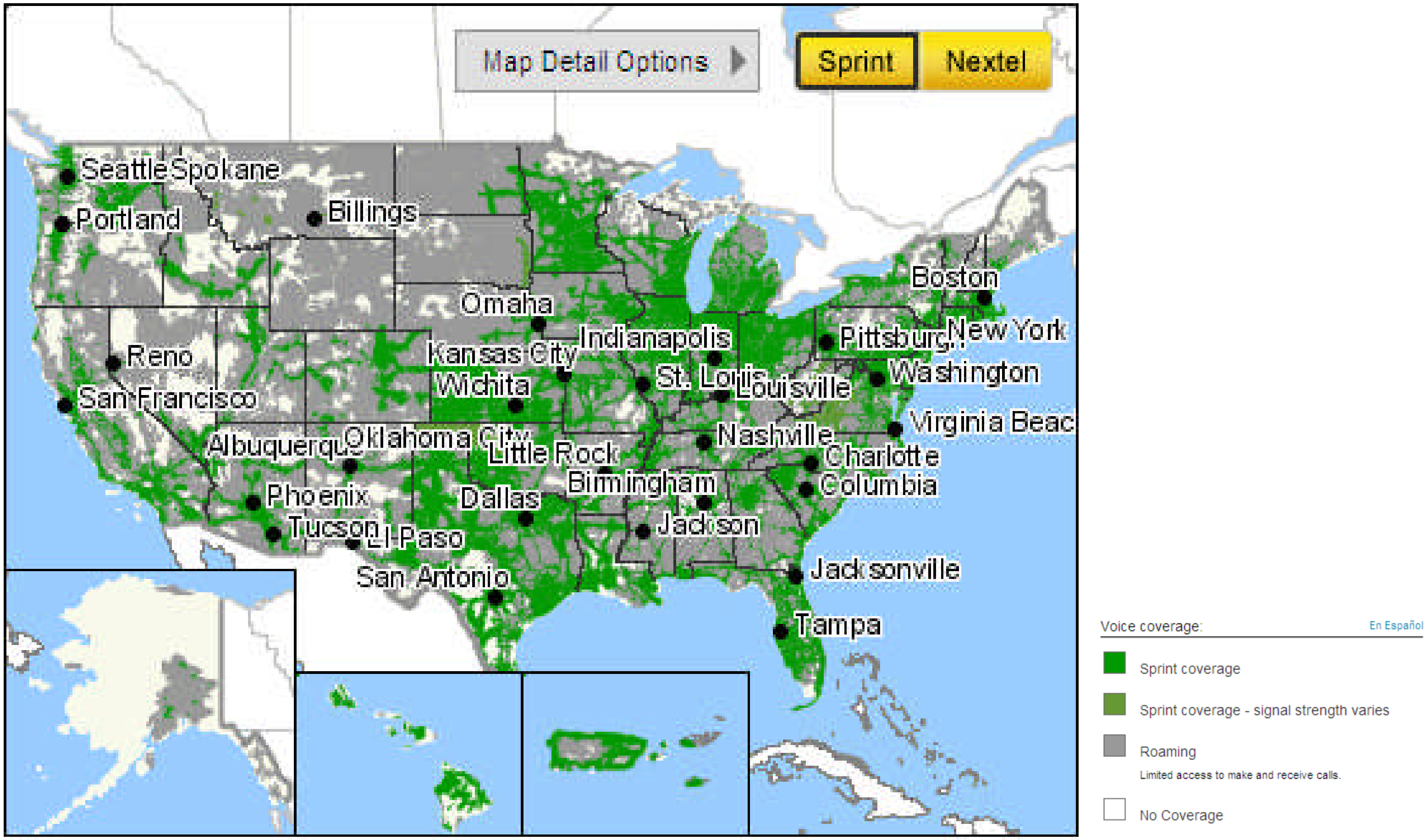
[3] Verizon, *Coverage Locator*, http://www.verizonwireless.com/b2c/CoverageLocatorController?requesttype=NEWREQUEST.

Verizon Data Coverage Map[4]



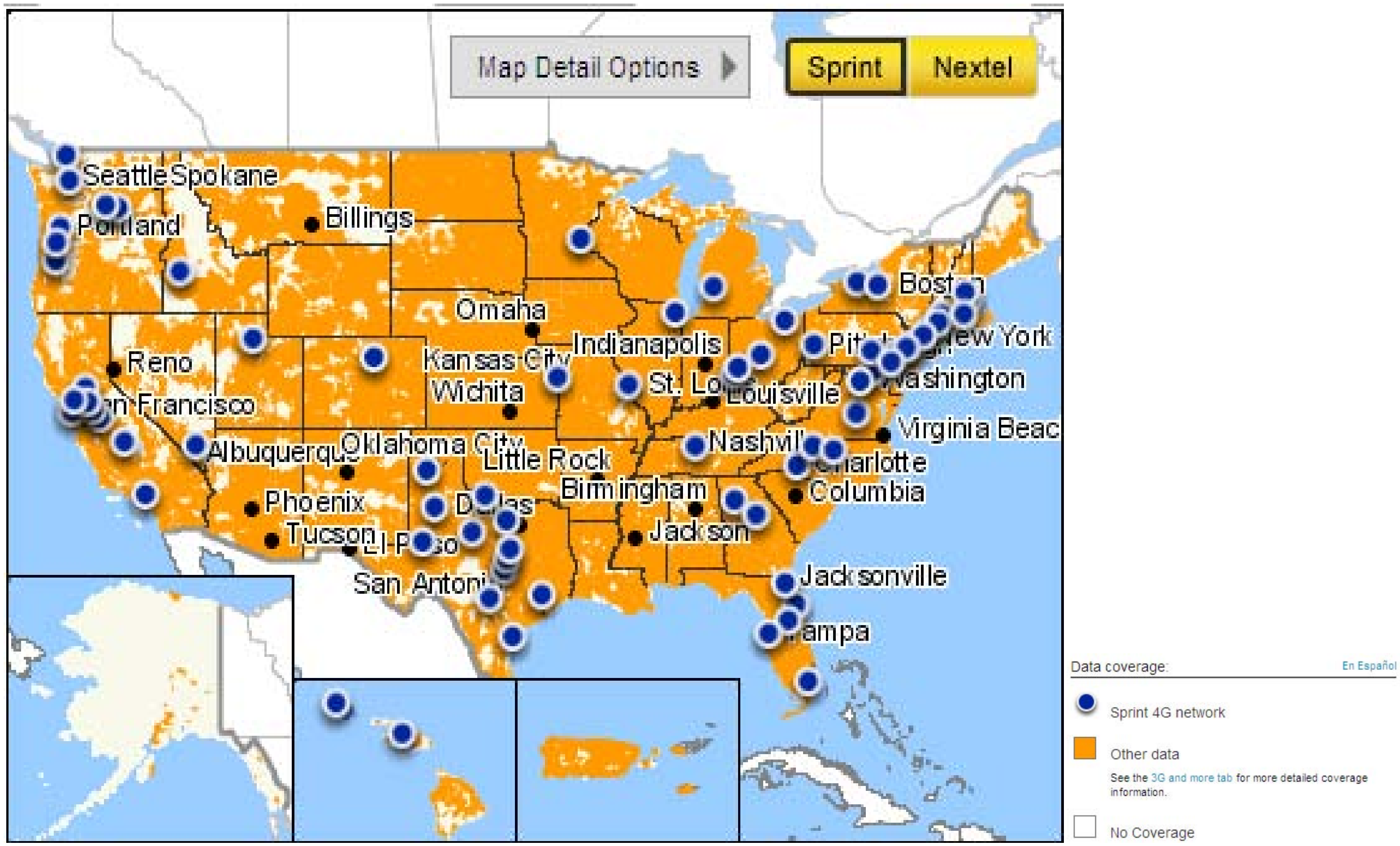
[4] Verizon, *Coverage Locator*, http://www.verizonwireless.com/b2c/CoverageLocatorController?requesttype=NEWREQUEST.

Sprint Voice Coverage Map[5]



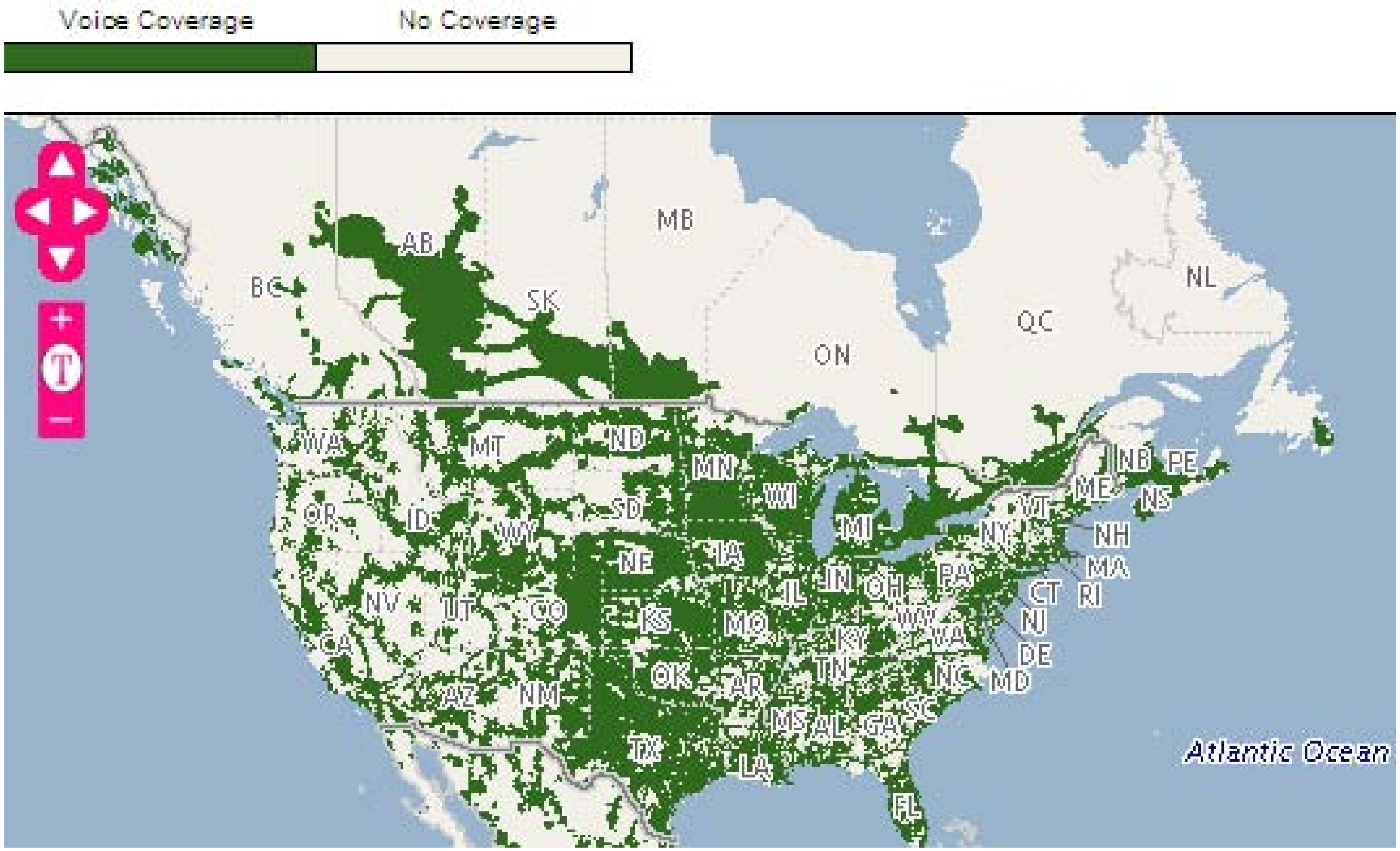
[5] Sprint, *Coverage Check*, http://coverage.sprintpcs.com/IMPACT.jsp.

Sprint Data Coverage Map[6]



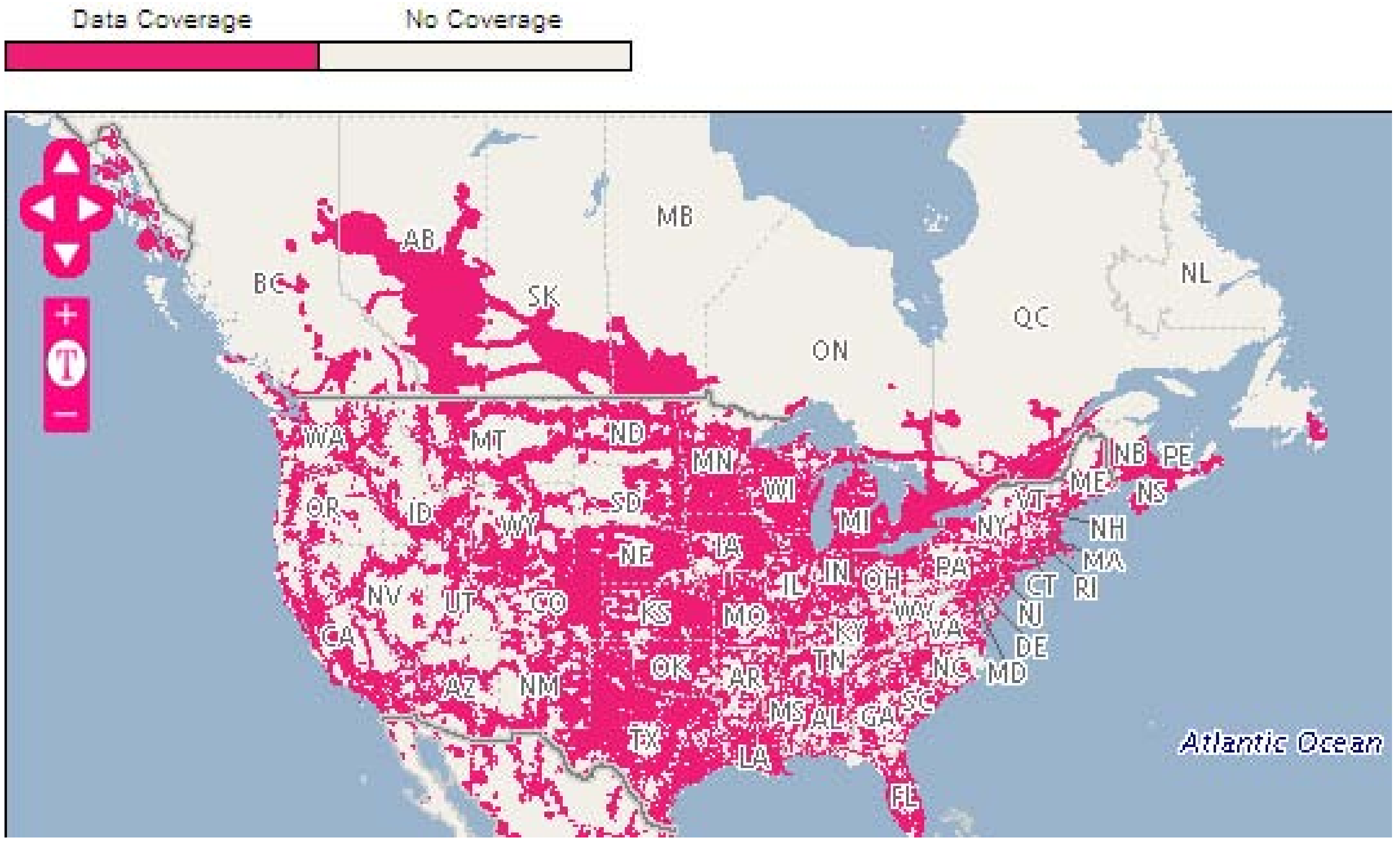
6 Sprint, *Coverage Check*, http://coverage.sprintpcs.com/IMPACT.jsp.

T-Mobile Voice Coverage Map[7]



[7] T-Mobile, *Personal Coverage Check*, http://www.t-mobile.com/coverage/pcc.aspx.

<u>T-Mobile Data Coverage Map</u>[8]



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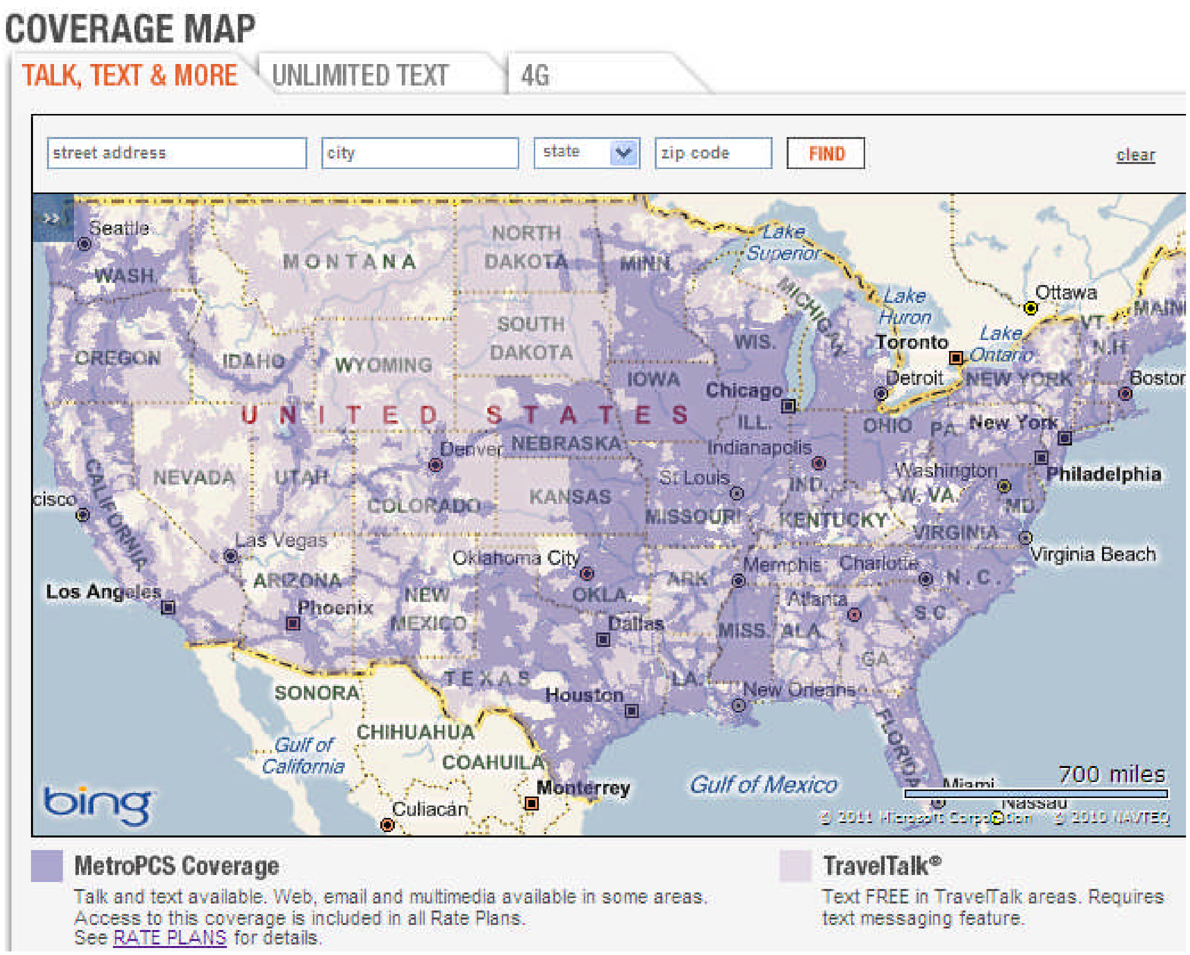
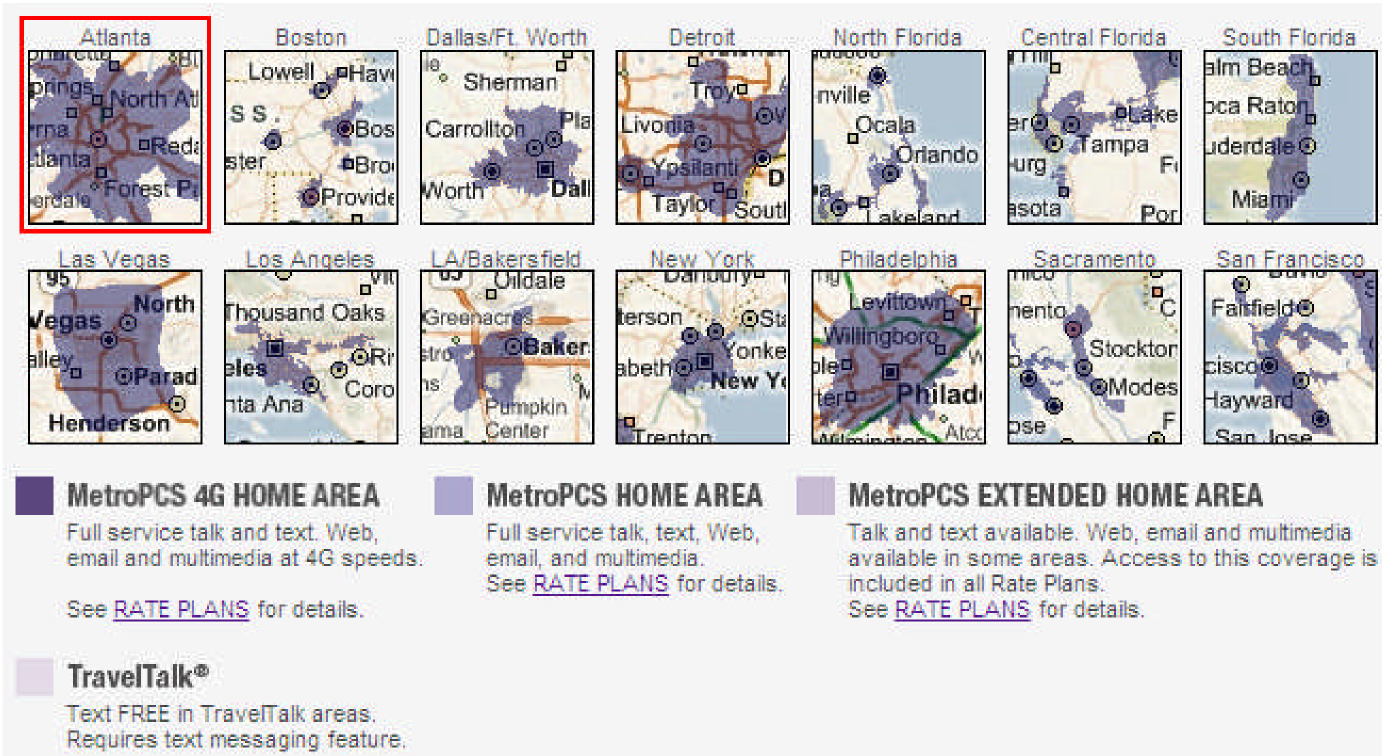
[8] T-Mobile, *Personal Coverage Check*, http://www.t-mobile.com/coverage/pcc.aspx.

MetroPCS Voice Coverage Map[9]



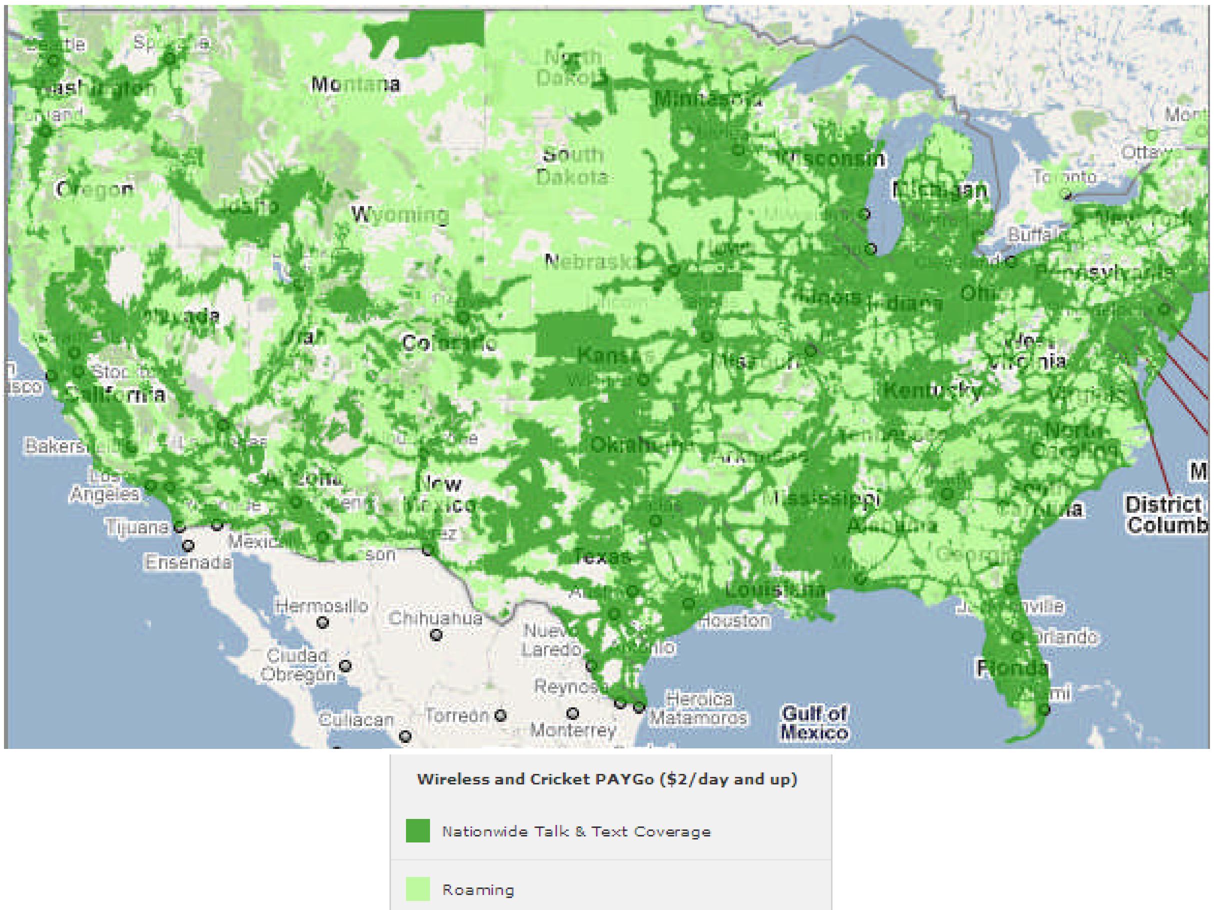
[9] MetroPCS, *Coverage Map*, http://www.metropcs.com/coverage.

<u>MetroPCS 4G Data Coverage Maps</u>[10]



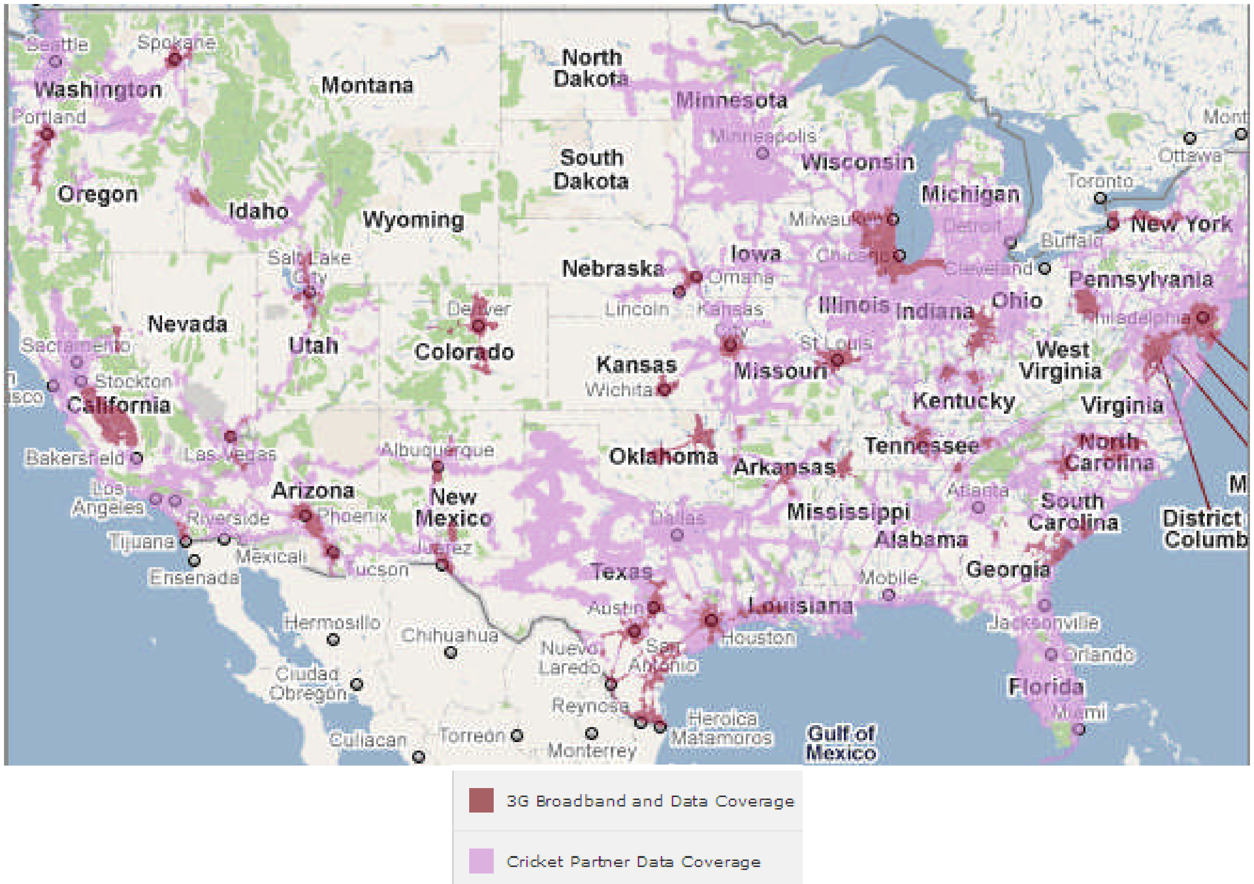
10 MetroPCS, *Coverage Map*, http://www.metropcs.com/coverage.

<u>**Cricket Voice Coverage Map**</u>[11]



[11] Cricket, *Wireless Nationwide Coverage Maps*, http://www.mycricket.com/coverage/maps/wireless.

Cricket Data Coverage Map[12]



[12] Cricket, *Wireless Nationwide Coverage Maps*, http://www.mycricket.com/coverage/maps/wireless.

<u>US Cellular Voice Coverage Map</u>[13]

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13 U.S. Cellular, *Coverage Indicator*, http://www.uscellular.com/coverage-map/coverage-indicator.html.

US Cellular Data Coverage Map[14]

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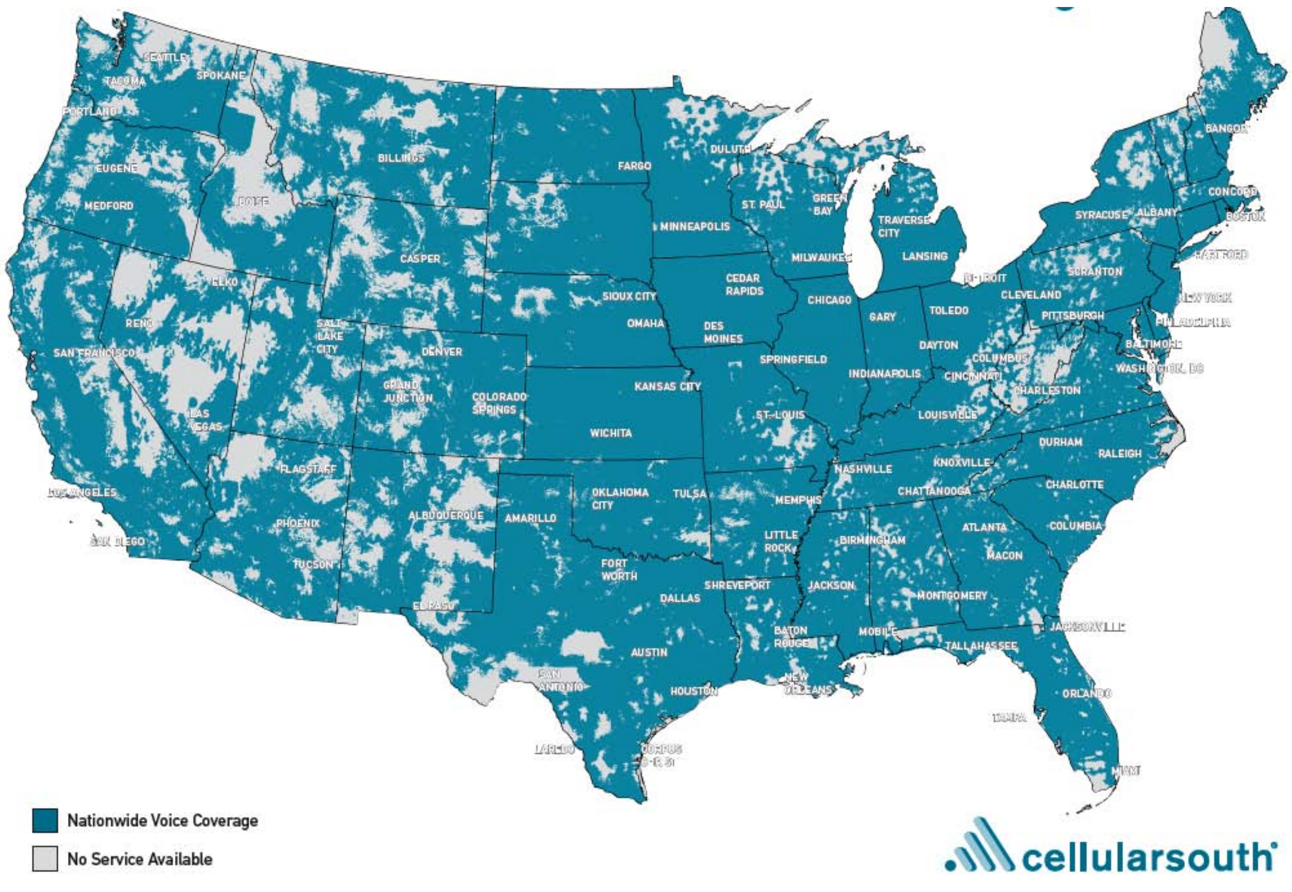
[14] U.S. Cellular, *Coverage Indicator*, http://www.uscellular.com/coverage-map/coverage-indicator.html.

Cincinnati Bell Coverage Map[15]

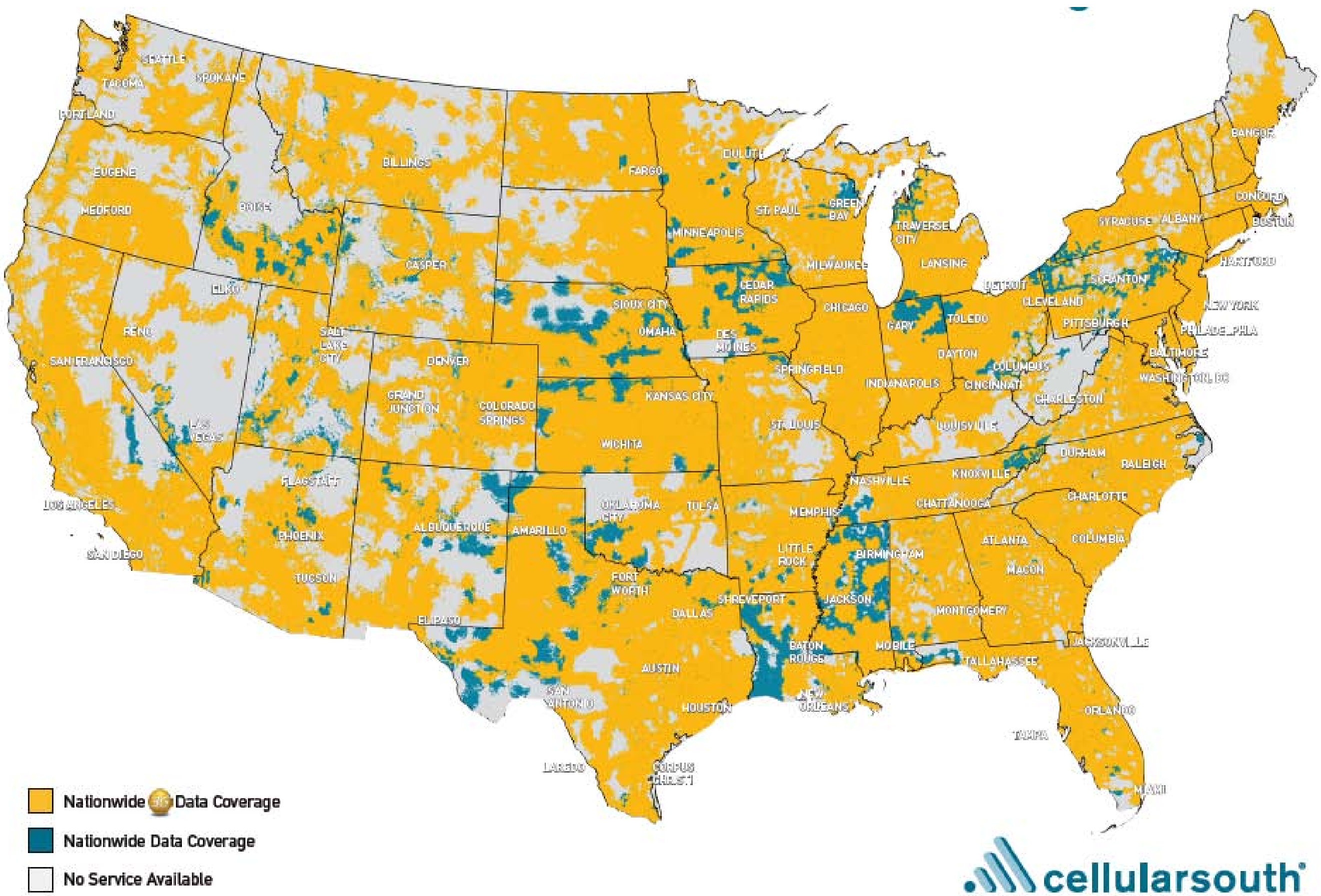
[15]Cincinnati Bell, *Wireless Coverage*, http://www.cincinnatibell.com/consumer/wireless/coverage.

<u>Cellular South Voice Coverage Map</u>[16]



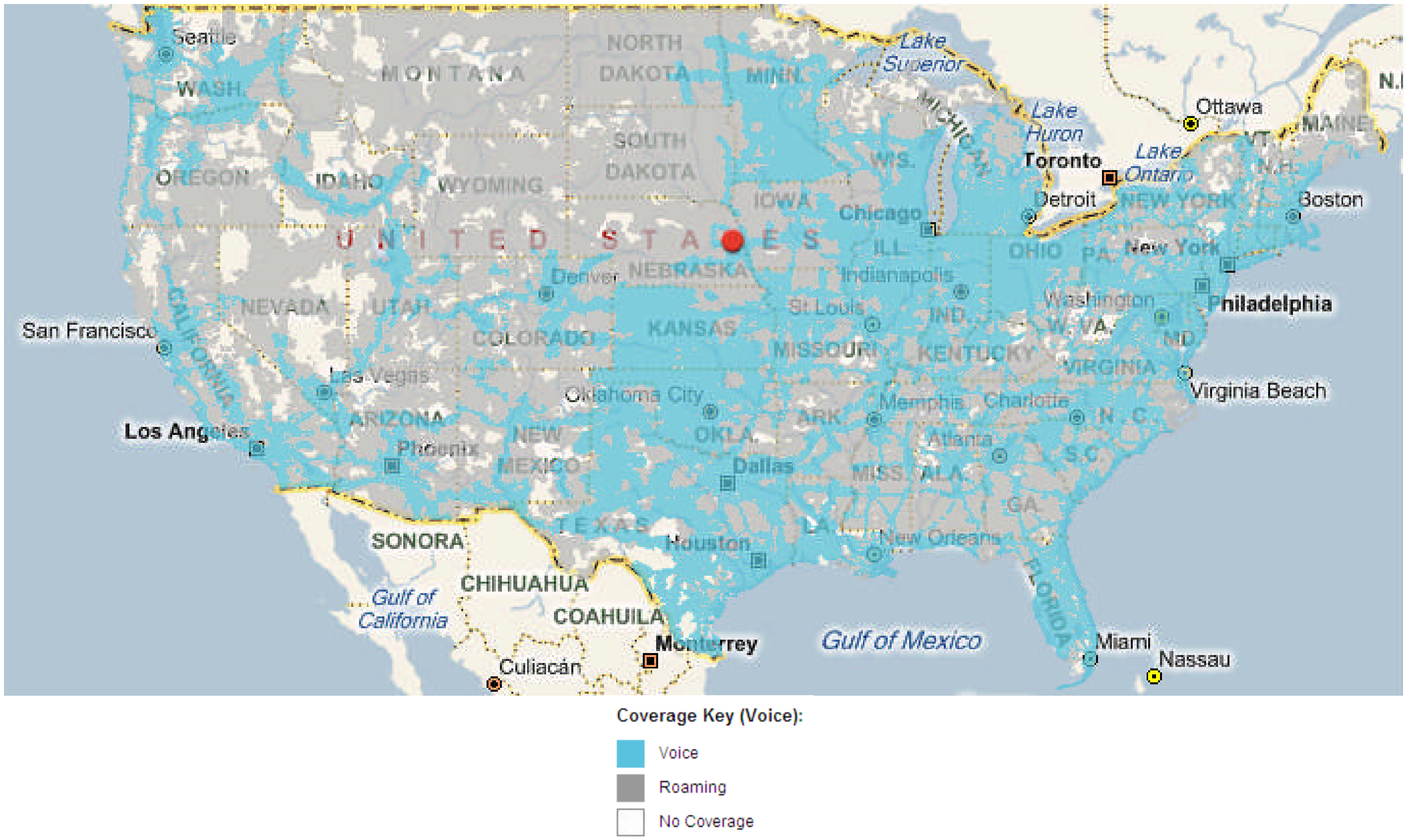
16 Cellular South, *Cellular South Nationwide Voice Coverage*, https://www.cellularsouth.com/coverage/maps/voice_coverage.pdf.

Cellular South Data Coverage Map[17]



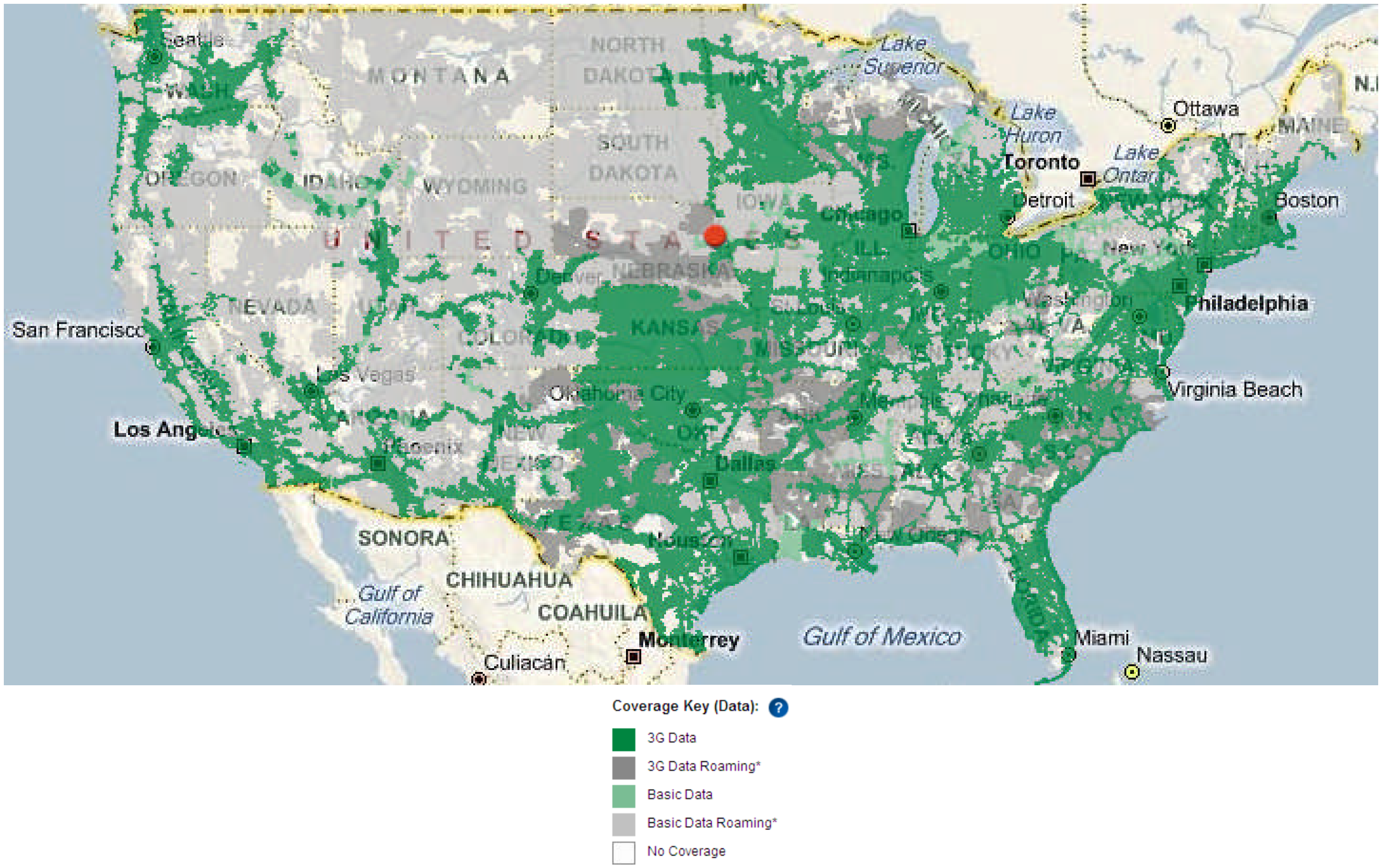
[17] Cellular South, *Cellular South Nationwide Data Coverage*, https://www.cellularsouth.com/coverage/maps/voice_coverage.pdf.

Cox Voice Coverage Map[18]



[18] Cox, *Map Search*, http://ww2.cox.com/residential/omaha/wireless/wireless-coverage-map.cox.

<u>**Cox Data Coverage Map**</u>[19]



[19] Cox, *Map Search*, http://ww2.cox.com/residential/omaha/wireless/wireless-coverage-map.cox.