

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Applications of AT&T Inc. and)	WT Docket No. 11-65
Deutsche Telekom AG)	DA 11-799
)	ULS File No. 0004669383
For Consent to Assign or Transfer)	
Control of Licenses and Authorizations)	

PETITION TO DENY

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SUMMARY

The Commission faces a stark choice in this proceeding. It can reject AT&T's bid to take over T-Mobile and extend the last two decades of robust competition in the wireless industry – competition that has promoted economic growth and advanced U.S. global leadership in mobile communications. Or the Commission can approve the takeover and let the wireless industry regress inexorably toward a 1980s-style duopoly. A duopoly of the two vertically-integrated Bell companies would result in less choice for consumers and higher prices. A Twin Bell duopoly would stunt investment and innovation. No divestitures or conditions can remedy these fundamental anti-consumer and anti-competitive harms. AT&T's takeover of T-Mobile must be blocked.

The Proposed Takeover Would Harm Competition and Consumers

Over the past two decades, the Commission has played a leading role in bringing competition to the communications sector. In the 1980s, the Commission assigned free cellular licenses to providers, including the Bell operating companies. To initiate competitive wireless service, the Commission assigned two cellular licenses in every geographic area. The FCC issued the licenses at no cost to the Bell Operating Companies and other providers. The resulting duopoly never generated effective competition. Consequently, in the 1990s, the Commission auctioned new spectrum licenses to break up the wireless duopoly. The Commission's spectrum auctions gave rise to Sprint, T-Mobile, and other wireless carriers, and ushered in an era of competition and growth that has greatly benefitted consumers. Wireless competition has sparked a technological revolution in broadband data services, applications, and devices. The wireless industry, including carriers, manufacturers, and application developers, has become an essential part of the nation's information economy, generating billions of dollars in new investment every

year and employing millions of Americans.

The proposed transaction would turn back the clock on competition and innovation and bring this era of unprecedented wireless expansion and technological innovation to an abrupt, but avoidable, halt. The transaction would make AT&T the nation's largest wireless carrier with 118 million subscribers in total and 43 percent of the post-paid market. Coupled with Verizon's more than 94.1 million total subscribers and 39 percent of the post-paid market, the transaction would create a Twin Bell duopoly with 82 percent of post-paid subscribers, over 78 percent of all wireless revenues, and 88 percent of all wireless operating profits. The Twin Bells' market dominance would dwarf Sprint, the sole remaining national carrier, and the rest of the wireless industry, thereby creating an entrenched, anti-competitive duopoly.

The proposed transaction would harm consumers, businesses, and competition in the telecommunications industry and the American economy at large. These harms would occur on a national level because, as AT&T has repeatedly stated in prior transactions, competition among wireless providers takes place on a national level. These anti-competitive harms would also result at the local level because much smaller carriers would have little ability or incentive to deter the Twin Bells from coordinating their behavior, increasing prices, and reducing consumer choice.

AT&T's control over assets other providers need to compete, such as backhaul, spectrum, and roaming, would exacerbate the anti-competitive effects of the takeover. As descendants of the Bell monopolies, AT&T and Verizon control key pieces of the nation's wireline infrastructure, including backhaul facilities. This control enables the Twin Bells to raise competitors' costs, reduce their network quality, and quash competitive alternatives. Permitting AT&T to amass unprecedented spectrum holdings (for example, three times as valuable as

Sprint's) would leave a diminished supply of this valuable input for other competitors. Finally, the merger would create a national GSM monopoly and reduce roaming options for GSM carriers by eliminating the only other nationwide GSM provider. Roaming is a key input for smaller carriers that do not operate national networks.

The Proposed Transaction Would Harm Innovation

If the proposed takeover were approved, the Twin Bell duopolists would be positioned as gatekeepers of the digital ecosystem. Upstream content providers and device manufacturers would have little choice but to deal with AT&T and Verizon because of their overwhelming share of wireless subscribers and revenue. Handset manufacturers, for example, would be less willing to partner with any provider other than the Twin Bells, because their control of 76 percent of all wireless subscribers and 82 percent of post-paid subscribers would give them far greater leverage to demand exclusive arrangements or rights of first refusal. Post takeover, the market share of the non-Bell carriers would fall from 36 percent of all subscribers to 24 percent. This vast difference in size between the top two providers and any other competitor would reduce the ability of Sprint or other providers to influence the pace of industry innovation. The transaction would thus stifle the development of new devices and applications, reducing consumer choice and undercutting research and development. The result of diminished competition would be less innovation and economic growth in the U.S. wireless sector, which would have serious adverse implications for the U.S. economy as a whole.

The Alleged Public Interest Benefits of the Transaction Are Illusory

AT&T claims that the proposed takeover would alleviate network capacity constraints that it will allegedly face, and allow AT&T to expand deployment of its LTE network to 97 percent of the U.S. population. Both claims rely on speculation and flawed assumptions.

Moreover, AT&T can achieve both alleged benefits without the anti-competitive elimination of the nation's fourth largest carrier and the only other national GSM competitor.

AT&T's alleged capacity constraints are contradicted by the facts. Even without the proposed transaction, AT&T has the largest licensed spectrum holdings of any wireless carrier. AT&T also is the largest holder of *unused* spectrum, with 40 MHz, on a population-weighted nationwide basis, of unused or underutilized AWS, 700 MHz, and WCS spectrum. AT&T could use this reserve of spectrum to improve service for its customers, but has chosen instead to warehouse it for future services. Moreover, AT&T has repeatedly reassured investors that it has the spectrum and network capacity it needs to meet the growing demand for data services. Yet now, in attempting to justify its takeover proposal, AT&T asserts that it is so spectrum constrained that it has no other choice but to acquire T-Mobile for its spectrum.

If AT&T has capacity constraints, they are the result of its failure to upgrade and invest in its network. AT&T has lagged significantly in network investment. Its network investment per subscriber has been below the industry average, even after its exclusive iPhone deal placed increased demands on its network. Like any other carrier, AT&T can invest in new cell sites and network technologies to maximize efficient use of its spectrum to meet consumer demand for its services. AT&T has made the business decision not to do so. That decision may mean higher dividends for its investors, but it also has resulted in the worst customer satisfaction ratings among all major wireless carriers. The Applicants gloss over these facts and seek to repackage AT&T's management decisions into a spectrum shortage problem to justify the proposed takeover. In effect, AT&T is seeking a bailout for problems of its own making, with the cost of the bailout paid by consumers in terms of higher prices, less innovation, and poor service.

The Applicants' claim that the takeover will enable AT&T to expand LTE deployment is

speculative and unrelated to the proposed transaction. The Applicants provide no timeline or schedule for implementing AT&T's purported promise to expand its LTE deployment, which makes the alleged expansion speculative and unverifiable. Nor does AT&T bother to explain what it plans to invest to reach this deployment target or substantiate how the proposed takeover would allow AT&T to expand its LTE footprint from 80 percent, its prior LTE deployment target, to 97 percent of the population.

AT&T does not need to acquire T-Mobile to expand the reach of its LTE network. AT&T's current spectrum holdings and network already reach approximately 97 percent of the population. To the extent it needs spectrum in a few isolated rural areas, it can acquire spectrum rights to fill the gap. Instead of paying Deutsche Telekom \$39 billion – which DT has said it would use to deploy broadband services in Europe, not the United States – AT&T can invest a fraction of that amount to expand its LTE deployment. In the absence of the proposed transaction, competition likely will drive AT&T to reach this target anyway. Today's competitive wireless marketplace has made either 3G or 4G mobile services available to more than 98 percent of the nation's population. The same marketplace forces will cause carriers to make 4G services, including AT&T's LTE service, available across the same coverage area within the next few years – provided the Commission turns down the instant transaction and preserves a competitive wireless marketplace.

AT&T's proposed takeover of T-Mobile would not produce any cognizable public interest benefits while giving rise to serious anti-competitive harms that cannot be remedied through divestitures or conditions. The Commission should therefore deny its consent to the transaction.

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ATTACHMENT H – Declaration of Scott Kalinoski

ATTACHMENT I – Declaration of Gregory D. Block

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PETITION TO DENY

Sprint Nextel Corporation (“Sprint”) petitions to deny the above-referenced applications filed by AT&T Inc. (“AT&T”) and Deutsche Telekom AG (“DT”) seeking consent from the Federal Communications Commission (“FCC” or “Commission”) to transfer control of the licenses and authorizations held by T-Mobile USA, Inc. and its subsidiaries (“T-Mobile”) to AT&T.¹

Sections 214(a) and 310(d) of the Communications Act of 1934, as amended, (“Communications Act” or “Act”) require the Commission to determine “whether the Applicants

¹ See *AT&T Inc. and Deutsche Telekom AG Seek FCC Consent to the Transfer of Control of the Licenses and Authorizations Held by T-Mobile USA, Inc. and its Subsidiaries to AT&T Inc.*, Public Notice, DA 11-799, WT Docket No. 11-65 (Apr. 28, 2011). In this petition, AT&T, DT, and T-Mobile are referred to collectively as the “Applicants,” and the public interest statement filed with their license transfer applications is referred to as the “Application.” Sprint is a “party in interest” with standing to file this petition to deny because it competes directly with AT&T and T-Mobile and, for the reasons described below, will suffer economic injury if the Commission approves the proposed transaction. See Public Interest Statement, attached to Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65, at 79-82 (Apr. 21, 2011) (“Application”) (describing Sprint as a competitor to the combined AT&T and T-Mobile); *Application of American Mobilphone, Inc. and RAM Technologies, Inc.*, Order, 10 FCC Rcd 12297, ¶ 8 (WTB 1995).

have demonstrated that the proposed transfer of control of licenses . . . will serve the public interest, convenience, and necessity.”² In making this determination, the Commission conducts a competitive analysis which is “informed by, but not limited to, traditional antitrust principles,” and also takes into account the “broad aims of the Communications Act.”³ The Commission employs “a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits. The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.”⁴ If the Commission is “unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial or material question of fact, Section 309(e) of the Act requires that [the Commission] designate the application for hearing.”⁵

The Applicants have failed to meet their burden of proof. The purported public interest benefits of the proposed transaction are either wholly illusory or vague, without support in theory or practice, and, in any case, limited to the shareholders of AT&T and DT. By comparison, the public interest harms are material, demonstrable, and irreversible. The Commission should deny its consent to the proposed transfer of control.

² *Applications of AT&T Inc. and Centennial Communications Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Memorandum Opinion and Order, 24 FCC Rcd 13915, ¶ 27 (2009), *citing* 47 U.S.C. §§ 214(a), 310(d) (“*AT&T-Centennial Merger Order*”).

³ *Id.* ¶¶ 28-29.

⁴ *Id.* ¶ 27.

⁵ *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp.*, Hearing Designation Order, 17 FCC Rcd 20559, ¶ 25 (2002) (“*EchoStar-DirecTV Hearing Designation Order*”).

Part A of this petition explains the serious anti-competitive and public interest harms the proposed transaction would impose, and why no divestitures or conditions can remedy these harms. Part B describes how the Applicants have fallen far short of their burden of demonstrating that the transaction would produce *any* public interest benefits, let alone benefits that could outweigh the harms that would result. The Commission’s public interest balancing test points overwhelmingly against grant of the Application. The Commission should deny its consent to AT&T’s proposed acquisition of T-Mobile and designate the Application for hearing. The evidence at hearing will confirm that the proposed transaction would be inconsistent with the public interest, convenience, and necessity.

PART A

THE PROPOSED TRANSACTION WOULD HARM CONSUMERS, COMPETITION, INNOVATION, AND THE PUBLIC INTEREST

I. OVERVIEW: AT&T’S PROPOSED TAKEOVER OF T-MOBILE WOULD HARM CONSUMERS AND COMPETITION

AT&T would have the Commission believe that its proposed takeover of T-Mobile is about consumers and, in particular, about meeting consumer demand for data services. A cursory review of the Application, however, demonstrates that the alleged consumer benefits are at best illusory and that the actual impact of the takeover would be higher prices, less choice, and less innovation. Indeed, in a presentation to investors, AT&T tipped its hand to what appears to be its true motive in seeking to acquire T-Mobile: “[T]his is a transaction that creates substantial shareowner value. *Most important, it enhances our long-term revenue and margin potential.*”⁶

⁶ Transcript of AT&T Investor Presentation, *AT&T + T-Mobile: A World-Class Platform for the Future of Mobile Broadband*, at 13 (Mar. 21, 2011), available at: <<http://www.mobilize>

The Commission must therefore decide which AT&T story is correct – the story to the Commission about benefiting consumers or the story to Wall Street about increasing AT&T’s profits through the acquisition of one of its three national competitors. The truth is not hard to discern.

AT&T’s proposed takeover of T-Mobile is in fact about the increased market power AT&T would gain by acquiring the fourth largest national wireless carrier and creating a Twin Bell duopoly that would dominate the wireless marketplace.⁷ As the Chief Executive Officer (“CEO”) of Cellular South said, “[i]f AT&T is permitted to take over T-Mobile, AT&T and Verizon Wireless would each have more subscribers than all of the nation’s other wireless carriers combined.”⁸ AT&T, along with its sister Regional Bell Operating Company (“RBOC”), Verizon,⁹ would control 82 percent of the post-paid market, putting AT&T in a position, unilaterally and through tacit coordination, to raise prices and impose other anti-competitive harms. With the proposed transaction, the vertically integrated Twin Bells would increase their already large share of the critical inputs for wireless service, including spectrum, backhaul, and roaming, and would be able to raise their competitors’ costs. The proposed transaction would undermine innovation in the development of new broadband devices and applications. In short, AT&T’s takeover of T-Mobile would fundamentally alter the structure of the wireless industry

everything.com/documents/Chat_Transcript.pdf> (emphasis added) (“Mar. 21, 2011 AT&T Investor Presentation Transcript”).

⁷ See *EchoStar-DirectTV Hearing Designation Order* ¶ 100 (“courts have generally condemned mergers that result in duopoly”).

⁸ Testimony of Victor H. “Hu” Meena, President & CEO, Cellular South Inc., Before the Senate Committee on the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, at 3 (May 11, 2011) *available at*: <<http://judiciary.senate.gov/pdf/11-5-11%20Meena%20Testimony.pdf>> (“Meena Testimony”).

⁹ For purposes of the petition, “Verizon” is used to refer to Verizon or Verizon Wireless.

and eliminate the possibility of more robust competition from a stronger third or fourth carrier. The inevitable result of this transaction would be a return to a world dominated by Ma Bell's offspring, ushering in higher prices, less innovation, and decreased quality and customer service.

Where, as here, “a merger is likely to result in a significant reduction in the number of competitors and a substantial increase in concentration, antitrust authorities generally require the parties to demonstrate that there exist countervailing, extraordinarily large, cognizable, and non-speculative efficiencies that are likely to result from the merger.”¹⁰ As explained in Part B of this Petition, the Applicants make no such demonstration. AT&T claims that the proposed transaction will provide it additional spectrum and network capacity, but AT&T, even without the transaction, holds more licensed spectrum than any other carrier. AT&T is better positioned to meet consumer demand for mobile broadband services than any of its competitors provided it undertakes the same smart network management practices and network investment the rest of the industry has pursued. AT&T's claim that the proposed takeover is necessary to extend its Long Term Evolution (“LTE”) network footprint to 97 percent of the U.S. population is also flawed and unrelated to the proposed transaction. AT&T's network already covers 97 percent of the U.S. population and it currently holds the spectrum necessary to make LTE available to its entire existing customer base without acquiring T-Mobile.¹¹

There is an *Alice in Wonderland* quality to many of the claims in the Application. To cite a few examples:

- The Applicants assert that T-Mobile does not really compete with AT&T, but at the same time AT&T's own merger website lists T-Mobile as one of the five

¹⁰ *EchoStar-DirecTV Hearing Designation Order* ¶ 102.

¹¹ See Press Release, AT&T, *AT&T Sets Record Straight on Verizon Ads*, available at: <<http://www.att.com/gen/press-room?pid=14002>>.

competitors consumers may choose from in various markets as an example of how “fiercely competitive” the market is today.¹²

- The Application argues that T-Mobile is a “struggling” asset for DT,¹³ but just a few months ago DT’s CEO told investors that “T-Mobile is a very good asset”¹⁴ which generated a net profit of \$135 million on \$5.16 billion in revenue in the first quarter of 2011 alone.¹⁵
- The Application maintains that post-merger AT&T will face strong competition from small regional carriers and companies such as LightSquared, but the small carriers serve less than 3 percent of all post-paid subscribers¹⁶ and LightSquared offers *no service* today.¹⁷ At the same time, John Stankey, President and CEO of AT&T Business Solutions questions whether wholesale players like LightSquared can compete effectively.¹⁸
- The Application asserts that AT&T’s network is facing dire capacity constraints, but in January of this year AT&T’s CEO proclaimed that “we’re really starting to feel good about the network situation” and just two years ago another AT&T executive stated that “[w]e feel very good about our spectrum position . . . [a]nd we say that with full understanding of what the data demands will be.”¹⁹
- The Applicants claim that the transaction is necessary to expand AT&T’s LTE service because AT&T does not have sufficient Advanced Wireless Service

¹² See Know the Facts, *Competitive Landscape*, AT&T Inc., available at: <<http://www.mobilizeeverything.com/competition.php>> (last visited May 27, 2011).

¹³ Application at 71, 100-01.

¹⁴ Transcript of Briefing by Deutsche Telekom and T-Mobile USA, Inc. to Analysts, at 2 (Jan. 20, 2011), available at: <<http://www.telecom.de/dtag/cms/contentblob/dt/en/979218/blobBinary/transcript+20012011.pdf>> (“Jan. 20, 2011 Deutsche Telekom Briefing”).

¹⁵ Press Release, T-Mobile USA, Inc., *T-Mobile USA Reports First Quarter 2011 Results* (May 9, 2011), available at: <<http://www.t-mobile.com/Cms/Files/Published/0000BDF20016F5DD010312E2BDE4AE9B/5657114502E70FF3012FD6A0635D5CAB/file/TMUS%20Q1%202011%20Press%20Release-Final.pdf>>.

¹⁶ See, *infra*, n.33

¹⁷ See, *infra*, Part A, Section IV.B.

¹⁸ Karl Bode, *AT&T’s Stankey Trash Talks Clearwire, LightSquared: Suggests They Have to Merge to be Viable*, BROADBAND DSL REPORTS (May 16, 2011), available at: <<http://www.dslreports.com/shownews/ATTs-Stankey-Trash-Talks-Clearwire-Lightsquared-114242>>.

¹⁹ See, *infra*, Part B, Section II.C.4.

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(“AWS”) and 700 MHz spectrum, but last year an AT&T executive made clear that, thanks to AT&T’s cellular band and Personal Communications Service (“PCS”) spectrum holdings, AT&T “will have the opportunity [to grow spectrum for] LTE in future years” beyond the AWS and 700 MHz bands.²⁰

The Applicants’ claims are belied by the facts and their own prior statements. The proposed transaction would cause serious anti-competitive harms with no countervailing public interest benefits. A few years ago, the Commission was confronted with a proposed transaction that similarly would have imposed harms that dwarfed any alleged public interest benefits. In that proceeding, the Commission denied its consent to the proposed license transfers and designated the application for hearing.²¹ The Commission should do the same here.

The remainder of Part A of this petition details the competitive harms that would result from the proposed transaction. Section II describes the relevant product markets and explains why the Commission should analyze the transaction on the basis of a *national* geographic market, but also explains how the transaction would result in unacceptably high levels of horizontal concentration even if it is viewed on a local geographic market basis. Section III describes the specific competitive harms that would result from the transaction, including higher prices and less innovation. Section IV rebuts various claims the Applicants make regarding competition. Sections V and VI describe how AT&T’s takeover of T-Mobile would harm the input market for spectrum and cause other public interest harms.

²⁰ See, *infra*, Part B, Section III.B.

²¹ See *EchoStar-DirectTV Hearing Designation Order*.

II. THE PROPOSED HORIZONTAL MERGER WOULD GREATLY INCREASE CONCENTRATION IN THE WIRELESS INDUSTRY AND HARM COMPETITION IN NATIONAL AND LOCAL MARKETS ALIKE

“Mergers raise competitive concerns when they reduce the availability of substitute choices (market concentration) to the point that the merged firm has a significant incentive and ability to engage in anticompetitive actions (such as raising prices or reducing output) either by itself, or in coordination with other firms.”²² The Commission and the Department of Justice (“DoJ”) use the Herfindahl-Hirschman Index (“HHI”) to measure market concentration and to evaluate whether a proposed merger would result in such competitive concerns. Commission precedent calls for close review of a transaction’s competitive effects when the post-transaction HHI would be greater than 2800 and the change in HHI will be 100 or greater, or the change in HHI would be 250 or greater, regardless of the level of the HHI.²³

AT&T’s proposed takeover of T-Mobile would result in a very highly concentrated wireless market and lead to serious anti-competitive harms in multiple separate product markets that are described below. For example, even in a broad product market that includes all retail wireless services, at a national level, the transaction would give AT&T and Verizon 76 percent of wireless subscribers and increase HHI levels by 696 to a post-merger HHI of 3,198.²⁴ These measures far exceed the Commission’s HHI screen and provide strong evidence that the takeover would enhance AT&T’s market power and reduce competition. Even if the Commission accepts AT&T’s argument that the only relevant geographic markets are local – an argument that

²² *Id.* ¶ 97.

²³ *AT&T-Centennial Merger Order* ¶ 46.

²⁴ Joint Declaration of Steven C. Salop, Stanley M. Besen, Stephen D. Kletter, Serge X. Moresi, and John R. Woodbury, Charles River Associates, Attachment A ¶ 74, Table 2 (“CRA Decl.”).

contradicts AT&T’s past positions, goes against the weight of the evidence, and ignores the material changes in the market – the proposed T-Mobile takeover fails the FCC’s HHI screen in Component Economic Areas (“CEAs”) accounting for [begin NRUF/LNP confidential information] ■ [end NRUF/LNP confidential information] percent of the U.S. population.²⁵

The Commission’s assessment of the competitive effects of proposed transactions begins with a determination of the relevant product and geographic markets.²⁶ Consistent with this approach, Subsection A below describes the various product markets that would be affected by AT&T’s proposed acquisition of T-Mobile. Subsection B explains why the Commission should analyze the transaction on the basis of a national geographic market given the changes in the marketplace over the past several years, and describes the very high HHI levels that would result on a national level if the Commission approved the transaction. Subsection C describes how the transaction, even if analyzed on a local geographic market basis, would lead to high concentration levels in many markets throughout the country.

A. The Proposed Takeover Would Adversely Affect Multiple Product Markets, Including All Wireless, Post-Paid Retail, and Corporate and Government Accounts

The goal of determining the relevant market is to help to identify the consumers who might be injured by a merger as well as the potential competitive constraints that might mitigate or prevent that injury.²⁷ AT&T and Sprint compete in a number of different product markets and segments, and therefore the FCC should, at a minimum, evaluate the significant reduction in competition in (1) the combined market of all retail wireless services; (2) the market for post-

²⁵ *Id.* ¶ 11.

²⁶ *AT&T-Centennial Merger Order* ¶ 34.

²⁷ CRA Decl. ¶ 26.

paid wireless retail services; and (3) the market for corporate and government accounts. As discussed in the CRA Declaration, an analysis of each of these markets, both on national as well as local levels, demonstrates that this transaction would make it easier for AT&T and Verizon to coordinate their pricing and other competitive behavior, allow AT&T to raise prices on its own, and make it easier for AT&T and Verizon to impair the ability of other wireless carriers to compete. This transaction must be rejected under an analysis of any one of these product markets.²⁸

1. All Wireless Services

Since 2008, the Commission has defined the relevant market as a combined market of “mobile telephony/broadband services” . . . which is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).²⁹ At a national level, in an “all wireless” market measured by revenues, Verizon accounts for 35 percent, AT&T 32 percent, Sprint 15 percent, and T-Mobile 12 percent.³⁰ A merger of AT&T and T-Mobile would increase AT&T’s share of the market to 44 percent, with Verizon continuing to hold 35 percent. The takeover of T-Mobile

²⁸ In addition to these specific markets, the proposed transaction would reduce competition in a number of related areas, including by raising costs of rivals who depend on the Twin Bells’ vertically integrated legacy assets for necessary inputs such as backhaul, as well as those who require access to roaming and wholesale service (for resellers). In addition, the merger would create a duopoly bottleneck between consumers and the upstream developers who use wireless for access to markets, including content providers and applications developers. These anti-competitive harms are discussed in Part A, Sections III.F, G, H below.

²⁹ See *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements, and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, ¶ 45 (2008) (“*Verizon-Atlantis Merger Order*”).

³⁰ CRA Decl. at Table 3.

would thus result in a highly concentrated market that “would far exceed even the relaxed threshold in the new Guidelines for mergers that are ‘presumed to be likely to enhance market power.’”³¹ Moreover, as explained below and in the CRA Declaration, an analysis of the competitive conditions within the market shows that the proposed transaction would lead to higher prices to consumers, less technical innovation, and higher rates for critical inputs for wireless service, such as special access and roaming.³²

2. Post-Paid Wireless Services

The all wireless services product market includes both pre-paid as well as post-paid services. Because, as we show below, there are substantial differences between post-paid and pre-paid products, the Commission must conduct a separate review of the effect of the proposed merger on the post-paid wireless market. AT&T’s proposed acquisition would cause even greater concentration in the post-paid wireless market than in the all wireless market. Post-transaction, AT&T would control 43 percent of all post-paid subscribers nationwide. Verizon and AT&T collectively would control 82 percent of the subscribers in the post-paid market.³³

A variety of factors distinguish post-paid from pre-paid wireless services. Typically, post-paid services are offered under long-term, often two-year, contracts, and are available only to customers who satisfy a credit check.³⁴ Pre-paid services, on the other hand, are offered under

³¹ *Id.* ¶ 70.

³² *Id.* ¶¶ 13-15.

³³ *Id.* at Table 4. Verizon currently accounts for 39 percent of all post-paid subscribers, AT&T accounts for 32 percent, Sprint accounts for 15 percent, and T-Mobile accounts for 11 percent. The remaining wireless firms serve less than 3 percent of all post-paid subscribers.

³⁴ Declaration of William Souder, Attachment B ¶¶ 9-10 (“Souder Decl.”).

month-to-month billing arrangements that require upfront or pay-as-you-go payments for a set number of minutes.³⁵ Because pre-paid services do not offer long-term contracts, these services do not offer the same subsidies on handsets that the post-paid services can offer.³⁶ Thus, to make their phones affordable, pre-paid carriers tend to offer cheaper phones – which tend to be older models and/or have less functionality – than those offered by the post-paid carriers. Some pre-paid handsets sell for as little as \$29.³⁷ On the higher end, the Samsung Galaxy S 4G, one of T-Mobile’s newer smartphones, retails for \$499, but with a two-year contract T-Mobile offers that phone for \$129.99.³⁸ In contrast, the most advanced handsets offered by MetroPCS (largely a pre-paid provider) include Samsung’s Craft, which retails for \$349 and the Galaxy Indulge, which retails for \$399;³⁹ MetroPCS offers each of these phones for \$299⁴⁰ – a significantly higher price than T-Mobile charges for a better phone because, for contract customers, T-Mobile can offer far larger handset subsidies.

Another distinction between post-paid service and pre-paid service is network coverage. The four national carriers offer true nationwide service. Their networks allow customers the

³⁵ *Id.* ¶ 10.

³⁶ *Id.* ¶ 11.

³⁷ *See, e.g., Phones*, MetroPCS, *available at*: <<http://www.metropcs.com/shop/phonelist.aspx>> (last visited May 20, 2011); *Shop, Cell Phones*, Cricket, *available at*: <<http://www.my cricket.com/cell-phones>> (20001 used at zip code prompt) (last visited May 25, 2011).

³⁸ *Shop, Phones, Samsung Galaxy S 4G*, T-Mobile, *available at*: <http://www.t-mobile.com/shop/phones/Cell-Phone-Detail.aspx?cell-phone=Samsung-Galaxy-S-4G&Wt.z_searchCategory=Site+Search+Summary&Wt.z_searchZone=Products&WT.z_searchTerm=Galaxy+S&WT.z_searchProduct=Galaxy+S%99+4G+>> (last visited May 11, 2011).

³⁹ *Phones*, MetroPCS, *available at*: <<http://www.metropcs.com/shop/phonelist.aspx>> (last visited May 12, 2011).

⁴⁰ *Id.*

broadest coverage and they do not charge additional fees for roaming. While some facilities-based pre-paid carriers claim to offer nationwide service, they often charge their customers extra for roaming, and service can be limited outside of the pre-paid carriers’ “home” coverage areas. For example, MetroPCS’s coverage maps indicate that its customers can use text, talk, web, and email in its “Home Areas,” but that in “Extended Home Areas,” web and email are only “available in some areas.” And, in large swaths of the country, only “TravelTalk” services are available at an additional roaming charge of 19 cents per minute.⁴¹ For an additional five dollars per month, MetroPCS also offers roaming bundles that allow only 30 minutes of roaming in TravelTalk areas.⁴² Although Leap’s Cricket claims to offer nationwide service, much of its service coverage is roaming,⁴³ which requires an add-on service upgrade or costs Cricket customers 25 cents per minute.⁴⁴ Moreover, the ability of these small players to cobble together something approximating national coverage depends on their ability to secure roaming at competitive rates – which the proposed transaction threatens.

The predominantly pre-paid carriers also offer far less high speed data coverage than the national post-paid carriers. For example, MetroPCS offers LTE coverage in only 14 cities⁴⁵ and

⁴¹ Coverage, *Coverage Map*, MetroPCS, available at: <<http://www.metropcs.com/coverage/>> (last visited May 19, 2011).

⁴² Plans, *Rate Plans*, MetroPCS, available at: <<http://www.metropcs.com/plans/default.aspx?tab=family>> (last visited May 13, 2011).

⁴³ See Coverage Maps, *Wireless Nationwide Coverage Maps*, Cricket Wireless, available at: <<http://www.mycricket.com/coverage/maps/wireless>> (last visited May 13, 2011).

⁴⁴ See, e.g., Shop, Plans, *Unlimited \$45 Plan*, Cricket Wireless, available at: <http://www.mycricket.com/cell-phone-plans/plan/45_4m5> (last visited May 13, 2011).

⁴⁵ See Coverage, *Coverage Map*, MetroPCS, available at: <<http://www.metropcs.com/coverage/>> (follow “4G” tab) (last visited May 19, 2011).

offers virtually no third generation (“3G”) coverage.⁴⁶ MetroPCS noted in its latest annual report that it may not be able to increase its fourth generation (“4G”) service offerings beyond those 14 markets.⁴⁷ Further, because of its limited spectrum capacity, MetroPCS’s LTE service offers speeds comparable to 3G service rather than the 4G speeds of Verizon’s LTE network.⁴⁸

In addition, post-paid and pre-paid wireless services cater to very different customer groups. Pre-paid subscribers tend to be younger and have lower incomes than post-paid subscribers.⁴⁹ Therefore, pre-paid wireless services are targeted at a younger and less affluent customer base. These significant differences between pre-paid and post-paid wireless services manifest themselves in the significantly lower average revenue per user (“ARPU”) for pre-paid carriers than predominantly post-paid carriers. For example, AT&T’s ARPU is close to \$63, whereas MetroPCS’s ARPU is \$40 and Leap’s is \$38.⁵⁰

In short, given the significant differences between pre-paid and post-paid wireless services, the Commission must consider the competitive effects of the proposed transaction in a separate post-paid wireless product market. Because the smaller local and regional carriers (such as MetroPCS and Leap) sell little post-paid service, approval of the transaction would give

⁴⁶ Mike Dano, *MetroPCS to skip 3G with LTE rollout?*, FIERCEWIRELESS (Aug. 3, 2010) (“MetroPCS doesn’t have much of a 3G network. The carrier said it only offers CDMA EV-DO connections in one or two markets.”), available at: <<http://www.fiercewireless.com/story/metropcs-skip-3g-lte-rollout/2010-08-03>> (“FierceWireless MetroPCS Article”).

⁴⁷ MetroPCS Communications, Inc., Annual Report (Form 10-K), at 37 (Mar. 1, 2011).

⁴⁸ See FierceWireless MetroPCS Article; Sascha Segan, *MetroPCS Launches LTE in New York, Boston*, PCMAGAZINE (Dec. 15, 2010), available at: <<http://www.pcmag.com/article2/0,2817,2374359,00.asp>>.

⁴⁹ Souder Decl. ¶ 10.

⁵⁰ CRA Decl. at Table 1.

AT&T and Verizon control of 82 percent of all post-paid subscribers.⁵¹ The competitive effects in the post-paid market would likely be even more adverse than those described above in the all wireless market.

3. Corporate and Government Accounts

The Commission also must consider the competitive effects of the proposed merger on a separate product market of corporate and government accounts because those accounts differ from retail wireless sales in a number of fundamental respects. Corporate and government customers do not buy plans and handsets in retail stores or via the Internet like many consumers. Instead, corporate and government buyers typically ask for bids, often through a formal request for proposals (“RFPs”) for services and devices for multiple lines for their employees.⁵² These customers secure pricing different than that available to retail customers, and price changes in the retail and corporate markets do not necessarily affect each other.⁵³ The carriers that serve these accounts have organizations and departments of employees dedicated to serving this distinct customer segment. At Sprint, there are about **[begin confidential information]** [REDACTED] **[end confidential information]** employees and sales agents dedicated to its Business Markets Group, which includes **[begin confidential information]** [REDACTED] **[end confidential information]** employees dedicated to Sprint’s Federal Government segment.⁵⁴

⁵¹ *Id.* at Table 4.

⁵² Declaration of John Dupree, Attachment C ¶ 12 (“Dupree Decl.”).

⁵³ CRA Decl. ¶ 45.

⁵⁴ Dupree Decl. ¶ 5.

The four national carriers dominate this segment. The smaller local and regional carriers do not often compete for or win business from large corporate and federal government accounts because they lack the size and scope that these customers typically seek.⁵⁵

Given the stark differences between retail wireless sold to individual consumers and families versus the wireless plans for corporate and government accounts, corporate and government accounts are an important separate product market in which the transaction must be evaluated. As explained below, losing T-Mobile as a competitor in the corporate and government account market would have particularly severe anti-competitive effects because: (1) T-Mobile tends to be the lowest bidder for these customers, and thus constrains the ability of AT&T and the other national carriers to raise prices;⁵⁶ and (2) T-Mobile is a particularly close competitor to AT&T for accounts with international travel needs due to its advantages in countries using the Global System for Mobile Communications (“GSM”) standard.⁵⁷

B. The Commission Should Analyze the Serious Anti-Competitive Effects of the Proposed Transaction on the Basis of a National Geographic Market

As described above, AT&T’s proposed takeover of T-Mobile would create extremely high levels of concentration on a national level in the different relevant wireless products markets. It would give AT&T and Verizon 76 percent of wireless subscribers nationwide and would increase HHI levels by 696 to a post-merger HHI of 3,198.⁵⁸ The Applicants provide no

⁵⁵ *Id.* ¶ 15.

⁵⁶ *Id.* ¶ 16.

⁵⁷ *Id.* ¶ 17; Declaration of Paul Schieber, Attachment D ¶ 9 (noting difficulties Sprint has in obtaining international roaming agreements on financially attractive terms) (“Schieber Decl.”).

⁵⁸ CRA Decl. ¶ 74, Table 2.

data or analysis to overcome the presumption that this high national concentration would cause serious harm to consumers and competition.

Moreover, in flat contradiction with previous arguments made while seeking Commission approval to acquire regional wireless carriers, AT&T now urges the Commission to consider local markets only in assessing the competitive effects of AT&T's proposed takeover of T-Mobile.⁵⁹ For example, in his declaration in support of AT&T's acquisition of Centennial Communications Corp., David Christopher (Chief Marketing Officer of AT&T's Mobility and Consumer Markets Division) could not have been clearer as to why the relevant geographic market should be national:

AT&T makes nearly all competitive decisions in response to national competition. AT&T offers national plans that give subscribers a consistent number of minutes of service for a single monthly price, with no roaming charges, and does not provide regional or local plans that vary depending on subscriber location. (A small number of customers continue to receive service on previously purchased local plans that are no longer promoted or actively sold.)

AT&T's plans are uniform for a number of reasons. Demand for wireless telephony is generally similar throughout the country, and we have found that plans that appeal to consumers in one part of the country also appeal to customers living elsewhere. Providing the same plans across the country is more cost-efficient: national plans eliminate the administrative costs that were associated with local plans, which required customized training for sales and customer service personnel, and also permit AT&T to contract more easily with national retailers to sell AT&T wireless service, an additional efficiency.⁶⁰

Tellingly, AT&T's economic team is silent on the question of geographic market definition, sidestepping this important issue without taking any position on what the appropriate

⁵⁹ Application at 72-74.

⁶⁰ Declaration of David A. Christopher, attached to Applications of AT&T Inc. and Centennial Communications Corporation for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 08-246, ¶¶ 3-4 (November 21, 2008).

geographic market(s) should be in which to evaluate the competitive effects of the merger.⁶¹ The same economic team was not silent during the Verizon-ALLTEL merger, where Professor Carlton and his colleagues urged that “competition in the wireless industry has become increasingly national in scope,”⁶² and stated that “[t]he proposed merger reflects an attempt to further realize efficiencies resulting from operating wireless networks on a *national* instead of regional scale.”⁶³

Based on the FCC’s grant of the original cellular licenses for Metropolitan Statistical Areas (“MSAs”) and Rural Service Areas (“RSAs”), and the presumption that consumers obtain their wireless service in a local area, the FCC traditionally has defined wireless geographic markets as local.⁶⁴ However, in reviewing recent wireless transactions involving local or

⁶¹ Declaration of Dennis W. Carlton, Allan Shampine and Hal Sider, attached to Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65, ¶ 8 (Apr. 21, 2011) (noting only the “usefulness of an area-by-area analysis”) (“Carlton Decl.”).

⁶² Declaration of Dennis W. Carlton, Allan Shampine and Hal Sider, attached to Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements, WT Docket No. 08-95, ¶ 36 (June 13, 2008).

⁶³ *Id.* ¶ 53.

⁶⁴ See *Applications of AT&T Inc. and Dobson Communications Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd 20295, ¶ 23 (2007) (“AT&T-Dobson Merger Order”); *Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 21 FCC Rcd 11526, ¶¶ 29-30 (2006) (“ALLTEL-Midwest Wireless Merger Order”); *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13967, ¶ 56 (2005) (“Sprint-Nextel Merger Order”); *Applications of Western Wireless Corporation and ALLTEL Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13053, ¶ 35 (2005) (“ALLTEL-Western Wireless Merger Order”); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, ¶¶ 89-90 (2004) (“AT&T-Cingular Merger Order”); *Sprint Nextel Corporation and Clearwire*

regional wireless providers, the Commission has found that the relevant local market for wireless service may encompass multiple counties and, depending on the consumer's location, even parts of more than one state.⁶⁵ In those reviews, the Commission identified two sets of geographic areas that could be used to define wireless markets: CEAs or, alternatively, Cellular Market Areas ("CMAs").⁶⁶

Industry dynamics have changed dramatically since 2006, when the Commission reviewed Sprint's acquisition of Nextel Communications, Inc. ("Nextel"),⁶⁷ the last merger between two national carriers. In its review of that transaction, the Commission analyzed the CEA/CMA geographic market. The Commission chose the CEA/CMA geographic market in large part because of "two salient features" it identified regarding the sale of mobile telephony services and handsets. First, the Commission noted that "carriers base their monthly rates on the purchaser's billing address or zip code."⁶⁸ Second, the Commission observed that "promotions and handset prices are not attached to a billing address and do vary across a region."⁶⁹ Neither of those "salient features" is true today.

Corporation; Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, Memorandum Opinion and Order, 23 FCC Rcd 17570, ¶ 52 (2008) ("Sprint Nextel-Clearwire Merger Order"); *Verizon-Atlantis Merger Order* ¶ 49; *Applications of Celco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 12463, ¶ 41 (2008) ("Verizon-RCC Merger Order").

⁶⁵ See *Verizon-RCC Merger Order* ¶ 39; *AT&T-Dobson Merger Order* ¶ 23.

⁶⁶ See, e.g., *Verizon-Atlantis Merger Order* ¶ 49.

⁶⁷ At the time of the transaction, Nextel, together with its affiliate Nextel Partners, provided service to 297 of the top 300 markets with its network covering 260 million Pops. See *Sprint-Nextel Merger Order* ¶ 7.

⁶⁸ *Sprint-Nextel Merger Order* ¶ 54.

⁶⁹ *Id.* ¶ 55.

The ability to offer nationwide service is now a critical dimension of competition. It is this nationwide service that consumers want and that wireless carriers strive to offer, either through networks, roaming and access agreements, or both. AT&T has previously acknowledged that “rate plans of national scope, offering nationwide service at a single price without roaming charges, have become the standard in the wireless industry.”⁷⁰ Victor Meena, the CEO of Cellular South, testified recently, “[t]here is no market for regional or local calling plans.”⁷¹ He added, “[t]he U.S. wireless market is national, not regional. So it is ironic that AT&T’s promotional materials regarding its takeover of T-Mobile cast carriers like Cellular South as national competitors while pressing regulators to review competition on a market-by-market basis.”⁷²

1. Other National Carriers Recognize that Retail Wireless Service Is National

Just as AT&T publicly stated that “the predominant forces driving competition among wireless carriers operate at the national level,”⁷³ Verizon argued in its application to acquire ALLTEL that “the wireless business today is increasingly national in scope with four major national providers competing vigorously through pricing plans and service offerings that are national in scope.”⁷⁴

⁷⁰ Public Interest Statement, attached to Applications of AT&T Inc. and Dobson Communications Corp. for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 07-153, at 18 (July 13, 2007) (“AT&T-Dobson Application”).

⁷¹ Meena Testimony at 6.

⁷² *Id.*

⁷³ AT&T-Dobson Application at 18.

⁷⁴ Public Interest Statement, attached to Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses,

The four large national carriers now price their services and equipment on a national basis; handsets are now developed, procured, and offered nationally; the four major carriers advertise predominantly nationally; plans are distributed through national chains; and the national carriers promote their national networks. For these reasons, assessing the effect on retail wireless service of the combination of AT&T and T-Mobile – two of only four national wireless carriers – requires the Commission to analyze competition at a national level.

(a) AT&T, Verizon, Sprint, and T-Mobile Price Post-Paid Wireless Plans Nationally

AT&T has explained its practices with respect to pricing in the following way:

AT&T establishes its rate plans and pricing on a national basis, which means that the terms of such plans are set without reference to market structure at the CMA level. Rather, AT&T develops its rate plans, features, and prices in response to competitive conditions and offerings at the regional and national level – primarily the plans offered by the other national carriers.⁷⁵

Sprint prices exclusively on a nationwide basis, meaning that it offers the same plans at the same prices throughout the United States.⁷⁶ As of April 2011, **[begin confidential information]** [REDACTED] **[end confidential information]** percent of Sprint’s new post-paid subscribers

Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements, WT Docket 08-95, at 29 (June 13, 2008) (“Verizon-Atlantis Application”).

⁷⁵ AT&T-Dobson Application at 19 (footnotes omitted). AT&T and Verizon can offer bundled options combining wireline, wireless, and/or Internet service (*e.g.*, “double play” and “triple play”) where, as a result of the Ma Bell legacy, they are the local wireline provider. These offerings are by definition not nationwide in scope because AT&T or Verizon can only offer them where they are the incumbent local exchange carrier (“LEC”).

⁷⁶ Souder Decl. ¶ 3. There are some limited circumstances in which Sprint will offer a plan or service on less than a nationwide basis. For example, a new network technology will be offered as its geographic scope is built out, or Sprint may test a promotion in a limited area to determine if it should be implemented broadly (in which case it would be offered nationwide). Importantly, however, these differences are not driven by competition in those local areas. *Id.* ¶ 4.

are on national plans that have the same pricing regardless of where the customer lives or bought the plan.⁷⁷

In its application to acquire ALLTEL, Verizon noted that “close to 100 percent of new subscribers are enrolled in plans with national pricing,”⁷⁸ and stated:

Like other national carriers, Verizon [] primarily prices – and advertises – on a national basis, leaving very little room for local (or even regional) variation in pricing. Most prices are set on a national level, and therefore local market conditions are less relevant to a carrier’s competitive strategy than are actions taken by other national carriers.⁷⁹

Similarly, T-Mobile explained in its application for approval of its merger with SunCom Wireless Holdings, Inc.: “T-Mobile’s retail rates, like some other national carriers, are set on a national level, with little or no variation by locality or region. The acquisition of SunCom would not materially change T-Mobile’s national pricing strategies or offerings in a manner that would harm consumers.”⁸⁰

To demonstrate this point empirically, Sprint’s economic consultants examined retail price data for a sample of zip codes. Their analysis reinforces the position of AT&T, Verizon, and T-Mobile that the national carriers set their prices on a nationwide basis for the various products and services they offer.⁸¹

⁷⁷ *Id.* ¶ 3.

⁷⁸ Verizon-Atlantis Application at 31, n.52.

⁷⁹ *Id.* at 31-32 (footnotes omitted).

⁸⁰ Public Interest Statement, attached to Applications of T-Mobile USA, Inc. and SunCom Wireless Holdings, Inc. for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-237, at 24 (Oct. 1, 2007).

⁸¹ CRA Decl. ¶ 56, n. 46.

(b) Handsets are an Extremely Important Factor in Consumers’ Selection of a Wireless Carrier, and They are Developed and Sold Nationally

A handset must be built with the correct chips, antennae, and transmitters to be operable on a carrier’s nationwide network, and there is a significant amount of engineering and testing involved in bringing a handset to market.⁸² The arrangements between handset manufacturers and wireless carriers to bring new handsets to market are nationwide in scope. For example, availability of AT&T’s Apple iPhone, Sprint’s HTC EVO 4G, Verizon’s HTC ThunderBolt, and T-Mobile’s Samsung Galaxy S 4G, is not dependent on where in the country the consumer lives; the same phones are available to consumers in Los Angeles, CA and in Atlanta, GA.⁸³ Indeed, AT&T’s CEO Randall Stephenson even testified before Congress that “we tend to standardize our product set and our handset selections across our various geographies.”⁸⁴

(c) The Four National Carriers Together Account for the Vast Majority of All Wireless Advertising and Advertise and Market Nationally

Advertisements for handsets, including the popular iPhone, are national, not local. The four national carriers together account for about **[begin confidential information] ■ [end confidential information]** percent of all wireless advertising and advertise and market their brands nationally.⁸⁵ Virtually all of Sprint’s advertising is done nationally, with a national

⁸² Declaration of Fared Adib, Attachment E ¶¶ 4-5 (“Adib Decl.”).

⁸³ *See id.* ¶ 3.

⁸⁴ *The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?: Hearing Before the Subcomm. on Antitrust, Competition Policy and Consumer Rights of the S. Comm. on the Judiciary, 112th Cong. (May 11, 2011) (testimony of Randall L. Stephenson, Chairman, CEO, and President, AT&T Inc.) Federal News Service Transcript at 28, available at: <<http://fednews.com/printtranscript.htm?id=20110511t3772>>.*

⁸⁵ Appendix A, Wireless Category Media Spend.

message that is the same across the country.⁸⁶ Market research shows that the vast majority of advertising spend by the four national carriers is on a national basis. For example, the percentage of advertising that was national in 2010 was [begin confidential information] [end confidential information] percent for Sprint, [begin confidential information] [end confidential information] percent for AT&T, [begin confidential information] [end confidential information] percent for T-Mobile, and [begin confidential information] [end confidential information] percent for Verizon.⁸⁷ T-Mobile’s latest advertising campaign, which touts the superiority of T-Mobile service over the offerings of AT&T and Verizon, is another example of the national focus of advertising by the four nationwide carriers.⁸⁸

The national carriers’ advertising campaigns focus on national slogans that promote their nationwide attributes, including their national footprints (*e.g.*, AT&T’s “The Nation’s Fastest Mobile Broadband Network,” Verizon’s “America’s Most Reliable Network,” Sprint’s “America’s Favorite 4G Network,” and T-Mobile’s “Step Up to America’s Largest 4G Network”).

(d) The Most Important Channels of Distribution for Wireless Plans and Handsets Are Increasingly National, Not Local

Independent nationwide retail stores such as Wal-Mart, Best Buy, and RadioShack play a pivotal role in driving wireless sales, and those stores sell national wireless plans at the same rates in every store.⁸⁹ Today, Sprint sells more of its wireless plans through these national

⁸⁶ Declaration of John Carney, Attachment F ¶¶ 4-5 (“Carney Decl.”).

⁸⁷ Appendix A, 2010 Local vs. National Advertising Spend.

⁸⁸ Carney Decl. ¶ 15; Video Release, T-Mobile, *The T-Mobile Total Package: Step Up to Nationwide 4G*, YOUTUBE (Jan. 12, 2011), available at: <<http://www.youtube.com/user/TMobile#p/u/3/6pb9-LbxFeU>>.

⁸⁹ Souder Decl. ¶ 5.

retailers than it sells through its own Sprint retail stores.⁹⁰ The fact that some wireless customers still purchase their handsets and rate plans in local stores is meaningless because the plan and handset purchased in those stores are offered on the same terms throughout the United States.⁹¹ Furthermore, all the national carriers are pushing to increase Internet sales, because they are cheaper than selling through brick and mortar locations. Sprint's combined Internet sales and telesales, for example, have increased [begin confidential information] ■ [end confidential information] percent since the first quarter of 2009.⁹²

2. The Geographic Market for Corporate and Government Accounts Is National

The Commission also should consider the market for corporate and government wireless accounts to be nationwide. These plans are not sold in local stores, but are typically awarded through formal RFPs or other bidding procedures that generally call for national (or national plus international) service.⁹³ Many businesses have multiple locations across the country, or employees who travel outside their local home base, and deem service by a nationwide carrier to be essential.⁹⁴ These enterprise businesses need one solution for all of their employees regardless of where they are located, and reliable access to a high quality nationwide network is an important factor in selecting a wireless provider.⁹⁵

90

Id.

91

See id. ¶ 3.

92

Id. ¶ 5.

93

Dupree Decl. ¶¶ 7-13.

94

Id. ¶ 7.

95

Id.

C. Even If the Retail Markets Were Local, a Significant Number Would Exceed the HHI Screen

Even if the transaction were analyzed at the local CMA or CEA level, the transaction would reduce competition in a significant number of these local areas. Calculations performed by CRA show that the proposed T-Mobile takeover exceeds the FCC’s HHI screen in [begin NRUF/LNP confidential information] [redacted] [end NRUF/LNP confidential information] CMAs and [begin NRUF/LNP confidential information] [redacted] [end NRUF/LNP confidential information] CEAs.⁹⁶ Moreover, the FCC’s HHI screen is exceeded in [begin NRUF/LNP confidential information] [redacted] [end NRUF/LNP confidential information] largest CMAs by population.⁹⁷ CMAs that fail the screen collectively account for [begin NRUF/LNP confidential information] [redacted] [end NRUF/LNP confidential information] percent of the U.S. population, and the CEAs that fail the screen collectively account for [begin NRUF/LNP confidential information] [redacted] [end NRUF/LNP confidential information] percent of the U.S. population.⁹⁸

The combined entity’s holdings would far exceed the HHI screens in many of these local areas, indicating that these markets are highly concentrated and that the transaction is presumed to enhance market power.⁹⁹ For example, [begin NRUF/LNP confidential information] [redacted]

[redacted]

[redacted]

⁹⁶ CRA Decl. ¶ 11, Tables 5b-5c.

⁹⁷ *Id.* at Table 5c.

⁹⁸ *Id.* ¶ 79.

⁹⁹ The FCC screen is exceeded when: (1) the post-merger HHI is over 2,800 and the increase is at least 100; or (2) the HHI increase is at least 250 regardless of the post-merger HHI level. *AT&T-Centennial Merger Order* ¶ 46.

[REDACTED]

[REDACTED] [end

NRUF/LNP confidential information].¹⁰⁰ Given the high concentration in these local markets, the proportionately small local and regional carriers would be unable to restore the competition that would be lost by AT&T's proposed takeover.

In sum, whether examined nationally or locally, the proposed transaction would lead to substantially greater concentration in each of the relevant wireless product markets and would have significant adverse effects on wireless consumers and competition.

III. THE PROPOSED TRANSACTION WOULD LEAD TO HIGHER PRICES, LESS INNOVATION, AND LOWER QUALITY SERVICE

AT&T's takeover of T-Mobile would lead to anti-competitive levels of horizontal concentration in retail wireless and other services as described in Part A, Section II above. AT&T's post-merger market share would raise a clear presumption of competitive harm under antitrust and Commission precedent. However, even this high degree of concentration greatly understates the competitive harm that would result, because AT&T's takeover of T-Mobile would fundamentally change the structure of the wireless markets by creating a duopoly. This change would allow AT&T to raise prices and curtail innovation while entrenching AT&T and Verizon as duopolists.

¹⁰⁰ CRA Decl. at Table 5b.

A. AT&T Would Unilaterally Increase Prices for All Wireless Retail and Post-Paid Wireless Retail as a Result of the Proposed Transaction

T-Mobile, as one of only four national carriers, provides a critical constraint on AT&T's consumer retail prices. Today, T-Mobile offers lower prices than AT&T,¹⁰¹ but those lower prices would likely be eliminated when T-Mobile's existing customer contracts expire. More importantly, by reducing competition, the transaction would allow AT&T to profitably increase prices above what they would have been absent the transaction. This is true whether the product market is all retail wireless, post-paid retail wireless, or corporate and government accounts.

AT&T argues that the transaction is not likely to result in higher prices because: (1) the transaction would increase output by alleviating capacity constraints; (2) T-Mobile is not a particularly close competitor to AT&T; and (3) the smaller carriers are sufficient to maintain competition. But as explained in Part B, Section II, AT&T's output claims are speculative at best, and there are numerous solutions to its alleged capacity problem that do not create a duopoly. Moreover, as demand continues to increase, all competitors will need to increase output and the merger will lead to less efficient use of spectrum capacity overall. Further, T-Mobile is a strong competitive force, and its impact on competition cannot be replaced by the smaller, regional carriers post-merger. Therefore, this merger would be contrary to the public interest.

¹⁰¹ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd 11407, 11472, ¶ 92 (2010) (“14th CMRS Competition Report”) (reporting that AT&T prices its post-paid service at a premium over T-Mobile's); Press Release, Consumers Union, *Consumers Union Warns Congress AT&T/T-Mobile Merger Means Higher Prices, Less Satisfied Customers* (Apr. 12, 2011) (“T-Mobile Wireless plans typically cost \$15 to \$50 less per month than comparable plans from AT&T.”), available at: <<http://www.consumersunion.org/pub/2011/04/017625print.html>>.

CRA used available data to assess the effect of the merger on price and to estimate AT&T's ability to raise prices unilaterally. As CRA explains, “[a]dverse unilateral price effects can arise when the merger gives the merged entity an incentive to raise the price of a product previously sold by one merging firm and thereby divert sales to products previously sold by the other merging firm, boosting the profits on the latter products.”¹⁰² To measure whether a merger would create such an incentive, the DoJ employs a tool called the Gross Upward Pricing Pressure Index (“GUPPI”). The GUPPI is an estimate of how much each of the merging parties’ prices are likely to increase as a result of the transaction. CRA’s initial calculations show that, post-merger, T-Mobile’s prices would likely increase by 12.2 to 24.6 percent and AT&T’s prices would likely increase by 4.9 to 11.2 percent.¹⁰³ Thus, virtually the entire range of these estimated price increases would exceed the five percent safe harbor defined by the DoJ, and reinforce the conclusion that the merger would lead to a significant adverse effect on retail prices.¹⁰⁴ And as CRA explains, these estimates are conservative because they ignore the upward pricing pressure from the merged firm’s ability to raise its rivals’ costs, pricing responses from non-merging firms, and the increased likelihood of coordinated interaction post-merger.¹⁰⁵

¹⁰² CRA Decl. ¶ 146 (quoting DoJ & Fed. Trade Comm’n, Horizontal Merger Guidelines (issued Aug. 19, 2010) *available at*: <<http://www.justice.gov/atr/public/guidelines/hmg-2010.html#foot1>>).

¹⁰³ *Id.* ¶¶ 162, 164. These increases are based on a recapture rate of 80 percent.

¹⁰⁴ *Id.* ¶¶ 148, 166.

¹⁰⁵ *Id.* ¶¶ 148, 151.

B. The Proposed Transaction Likely Would Lead to Increased Coordination Between AT&T and Verizon

As the Commission has recognized:

Both economic theory and empirical economic research have shown that firms in concentrated, oligopoly markets take their rivals' actions into account in deciding the actions they will take. When market participants' actions are interdependent, noncompetitive collusive behavior that closely resembles cartel behavior may result – that is, high and stable prices.¹⁰⁶

AT&T's proposed takeover of T-Mobile also is likely to harm competition and the public interest through tacit coordination between AT&T and Verizon, which together would control 76 percent of the market for all wireless and 82 percent of the post-paid market. The CRA Declaration explains that the transaction would increase the likelihood of coordination between AT&T and Verizon in two ways. First, AT&T and Verizon would likely accommodate each other's price increases by raising their own prices in response.¹⁰⁷ Second, as the two dominant firms in the industry, the Twin Bells, without necessarily making an express agreement, would recognize the mutual benefits of coordination.¹⁰⁸ The CRA Declaration thus concludes:

The wireless market is vulnerable to coordination by AT&T and Verizon and the merger would increase that vulnerability. The merger would eliminate one national competitor, T-Mobile, and the exclusionary effects of the merger would weaken the other national competitor, Sprint, as well as the regional fringe. The combined subscriber shares of AT&T and Verizon would increase to 76% in an all-wireless market and to 82% in a postpaid service market. Their share of wireless revenues would be even higher. In addition, AT&T and Verizon know each other's prices, buyers are small, and competitors have higher costs. Moreover, competitors are dependent on both AT&T and Verizon for essential inputs. AT&T and Verizon also are similarly situated in the market as [incumbent LECs] with high market shares, meaning that both carriers would account for wireline "cannibalization" in setting wireless prices. As a result, the

¹⁰⁶ *EchoStar-DirecTV Hearing Designation Order* ¶ 170.

¹⁰⁷ CRA Decl. ¶¶ 172-73.

¹⁰⁸ *Id.* ¶¶ 174-77.

merger raises a substantial risk of parallel accommodating conduct as well as the risk of facilitating informal coordination resulting from a common understanding by AT&T and Verizon of their mutual interdependence and the relative gains from cooperative versus non-cooperative conduct. Although the resulting coordination would not be perfect, consumers still would be harmed.¹⁰⁹

AT&T argues that the takeover poses “no prospect of anticompetitive coordination” because: (1) there are many firms with different characteristics, which would make tacit coordination difficult; (2) wireless markets are characterized by rapid changes in technology and “every provider has strong individual incentives to be an early provider of new services and to serve rapidly growing demand”; (3) wireless markets are prone to disruption by mavericks; and (4) the local nature of wireless markets precludes coordination.¹¹⁰ These arguments are unpersuasive as they grossly misconstrue marketplace realities and overstate the competitive significance of the small, “fringe” wireless players.

First, the wireless markets are not “characterized by many heterogeneous firms with many different service plans and diverse market positions” to an extent that would make coordinated interaction unlikely.¹¹¹ Post-merger, 76 percent of the all-wireless market would be dominated by two firms – AT&T and Verizon. The only coordination necessary to raise prices to the vast majority of the market would be between AT&T and Verizon – firms that offer similar service plans and handset options,¹¹² hold similar sets of competitive assets,¹¹³ and share

¹⁰⁹ *Id.* ¶ 16.

¹¹⁰ Application at 95–96.

¹¹¹ *Id.* at 95.

¹¹² *Compare Plans, Family Share Plans, Verizon Wireless, available at:* <<http://www.verizonwireless.com/b2c/store/controller?item=familyShare&action=viewFSPlanList&catId=323&sel=fam&typeId=2>> (20001 used at zip code prompt) (last visited May 28, 2011) *with Wireless, Cell Phone Plans, Family Plans, FamilyTalk Cell Phone Plans, AT&T Inc., available at:* <<http://www.wireless.att.com/cell-phone-service/cell-phone-plans/family-cell->

a common legacy Bell company lineage.¹¹⁴ They own the incumbent landline monopolies in their respective regions and would have every interest in accommodating each other while raising rivals' costs and otherwise disadvantaging them.¹¹⁵ Moreover, the Twin Bells' landline monopolies give them a common interest in discouraging to the maximum extent possible cord-cutting by their wireline customers.¹¹⁶ Whether smaller firms such as MetroPCS, U.S. Cellular, and Cincinnati Bell have different characteristics that would make coordination between them and AT&T difficult is irrelevant because those firms are so small that they do not need to participate in the coordinated interaction for industry prices to rise. Moreover, the

phone-plans.jsp> (20001 used at zip code prompt) (last visited May 28, 2011). According to their pricing literature, AT&T and Verizon offer identical Individual rates for 450-minute, 900-minute, and unlimited calling plans and both have a \$20 unlimited text messaging add-on available. AT&T offers a \$25 per month 2GB, while Verizon offers an unlimited data plan for \$29.99 per month. Both companies offer an array of advanced smartphones including the iPhone, several BlackBerry models, as well as numerous Android- and Windows-powered phones. See AT&T, *Cell Phones and Mobile Devices*, available at: <<http://www.wireless.att.com/cell-phone-service/cell-phones/cell-phones.jsp#fbid=UbML-7Zkku>> (last visited May 27, 2011); Phones and Devices, *Smartphones*, Verizon Wireless, available at: <<http://www.verizonwireless.com/b2c/index.html>> (20001 used at zip code prompt) (last visited May 27, 2011).

¹¹³ *Infra* Part A, Section III.F, G.

¹¹⁴ Verizon was formed by the merger of GTE and Bell Atlantic, which had previously merged with NYNEX. Bell Atlantic and NYNEX were two of the seven RBOCs formed at the break-up of the Bell System, which was a common name for the organizational structure of the American Telephone and Telegraph Co. prior to 1984. *Verizon Corporate History*, Verizon, available at: <<http://www22.verizon.com/investor/corporatehistory.htm>> (last visited May 27, 2011). Similarly, the current AT&T has evolved through mergers of the divested long-distance unit of the Bell System and four other RBOCs: Southwestern Bell, BellSouth, Ameritech, and Pacific Telesis. See *AT&T Inc. and BellSouth Corporation; Application for Consent to Transfer Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, ¶¶ 6-13 (2007) (“*AT&T-BellSouth Merger Order*”); *The History of AT&T*, AT&T, Inc., available at: <<http://www.corp.att.com/history/>> (last visited May 28, 2011).

¹¹⁵ CRA Decl. ¶¶ 92-101, 179.

¹¹⁶ *Id.* ¶ 179.

smaller firms would have no incentive to deter price increases because they would benefit from a higher price umbrella.

Second, AT&T and Verizon would be able to raise the costs for Sprint and other carriers through their control of backhaul circuits, landline interconnection, and roaming, thereby preventing the non-Bells from offering lower prices and thus hindering if not blocking effective retail price competition.¹¹⁷

Third, removing T-Mobile from the market would substantially reduce the likelihood of market disruption by a maverick. Among the four national carriers, T-Mobile is recognized as the low-price carrier. AT&T's strained argument that the local and regional carriers are the true industry mavericks is demonstrably false. Most of these firms focus predominantly on the pre-paid market and, even in the aggregate, they cannot provide meaningful competition to AT&T and Verizon.¹¹⁸ To suggest that the small players are disruptive while T-Mobile is not is simply disingenuous.

Fourth, there is no reason to believe that strong demand or the incentives of all carriers to be early providers of new services would prevent, or even deter, market coordination. The local and regional carriers are constrained by their smaller subscriber counts and more limited resources from partnering with handset manufacturers to develop new technologies.¹¹⁹ Innovation is led by the national carriers, and eliminating T-Mobile as a national carrier would increase AT&T and Verizon's incentives to coordinate in introducing new products because local or regional carriers would be unlikely to exercise any significant market leadership or

¹¹⁷ *Infra* Part A, Section III.F, G.

¹¹⁸ CRA Decl. ¶¶ 134-39.

¹¹⁹ Adib Decl. ¶ 7.

market discipline.¹²⁰ In addition, with a nationwide subscriber penetration rate of approximately 90 percent, subscriber growth comes mainly from attracting customers from competing firms.¹²¹ Thus, both AT&T and Verizon have the incentive to rein in competitive initiatives rather than expend their resources competing for the same shared pool of customers with little prospect for net gains.

Finally, AT&T's argument that the local nature of competition precludes post-merger coordination by the dominant Twin Bells is entirely beside the point. AT&T and Verizon would be the dominant firms post-merger, whether viewed locally or nationally, and coordination between them would reduce competition at both a national and local level.

C. AT&T Would Increase Prices for Corporate and Government Accounts as a Result of the Proposed Transaction

AT&T would have the incentive and ability to raise prices post-merger for corporate and government accounts. The local and regional carriers cannot meet the needs of most enterprise customers and are not meaningful competitors in this segment in any sense.¹²² T-Mobile is a particularly important factor in the competitive dynamics of this market segment because it is the low-price leader.¹²³ Even when T-Mobile does not win a bid, its presence as an actual or potential bidder can result in lower prices from the other national competitors.¹²⁴

In addition, T-Mobile is an even more significant competitor to AT&T for corporate and government accounts with international travel needs because they are the only two national

¹²⁰ *Infra* Part A, Section III.E.

¹²¹ *14th CMRS Competition Report* ¶ 155.

¹²² *See* Dupree Decl. ¶ 15.

¹²³ *Id.* ¶ 16.

¹²⁴ *Id.*

carriers using GSM, by far the most prevalent air interface outside the United States.¹²⁵ This commonality makes AT&T and T-Mobile particularly close substitutes for these customers. Sprint, on the other hand, is at a disadvantage when competing for customers with international roaming needs because its handsets are designed for a Code Division Multiple Access (“CDMA”) interface, and because it has difficulty negotiating with foreign carriers for GSM roaming on attractive terms.¹²⁶ Sprint holds relatively little leverage in these negotiations because it cannot offer the same volume as AT&T or Verizon and it cannot offer reciprocal service because its networks run on the CDMA and Integrated Digital Enhanced Network (“iDEN”) standards.¹²⁷ Because Sprint is not as strong a competitor for these accounts, a merged AT&T would be able to raise prices to corporate and government customers who travel internationally.

D. The Proposed Takeover Would Exacerbate the Disparity Between the Twin Bells and Other Carriers and Further Diminish Competition Over Time

The wireless industry is characterized by high fixed costs and comparatively low marginal costs as a result of the high costs of acquiring spectrum licenses, building a network, and advertising and marketing.¹²⁸ This cost structure means that the wireless industry is subject to very significant economies of scale, which give larger firms significant advantages over smaller ones. To illustrate, AT&T and Verizon are each more than twice the size of the next largest competitor, based on revenues, and are significantly more profitable than the rest of the wireless firms. In 2010, they accounted for 64 percent of wireless subscribers nationwide, but

¹²⁵ *Id.* ¶ 17.

¹²⁶ *Id.*

¹²⁷ Schieber Decl. ¶ 9.

¹²⁸ CRA Decl. ¶¶ 114, 155.

reaped 79 percent of wireless industry operating profits.¹²⁹ The disproportionate share of profits retained by the Twin Bells not only provides them with more internally-generated cash to invest, but also reduces the costs of obtaining financing from the external markets.

The financial advantages enjoyed by AT&T and Verizon allow them to entrench and expand their leading position. As CRA explains:

This combination of economies of scale plus financing advantages can create a vicious cycle that can entrench the dominance of leading firms in a high investment industry like wireless. The more profitable leading firms have the ability to invest disproportionately more than the smaller firms. As a result, the leading firms can increase their lead over time, other things equal. This, in turn, further increases their market shares and profit advantage and can thus increase the already disproportionate ability of the two ILECs to invest in exclusive handset contracts and spectrum.¹³⁰

AT&T's proposed takeover of T-Mobile would exacerbate the disparity between the Twin Bells and the rest of the industry. As a result, the merger could tip today's market – where AT&T and Verizon are constrained to a significant extent by two smaller national competitors – to one where the Bell duopoly is increasingly less constrained by the remaining smaller national competitor.¹³¹ That outcome would harm the public interest by leading to higher prices and reduced innovation.

E. The Proposed Transaction Would Stifle Innovation

The development of new products and technology is driven by competition among the four national wireless carriers.¹³² The proposed takeover would simultaneously eliminate

¹²⁹ *Id.* ¶ 115.

¹³⁰ *Id.* ¶ 118.

¹³¹ *Id.* ¶ 122.

¹³² Adib Decl. ¶¶ 13-14.

T-Mobile as a key competitive innovator and significantly reduce Sprint’s ability to compete through innovation.

T-Mobile has consistently proven itself to be a valuable source of innovation in the wireless industry. It was the first U.S. carrier to sell the BlackBerry, the precursor to the modern smartphone. More recently, T-Mobile was a pioneering member of the Open Handset Alliance, which along with Sprint, Google, and others, worked vigorously to develop and market the Android operating system.¹³³ In 2008, T-Mobile introduced the first Android smartphone, the G1, which was the product of collaboration between T-Mobile, Google, and HTC.¹³⁴ Smartphones running on the Android operating system are now the key competitors to the iPhone and account for 34 percent of smartphones in the United States.¹³⁵ AT&T’s proposed takeover of T-Mobile would eliminate this powerful innovator in the wireless marketplace.

AT&T’s increased post-merger size and scale – both independently and in combination with Verizon’s existing size and scale advantages – would also make it more difficult for Sprint to compete in the prospective Twin Bell duopoly marketplace by offering innovative new handsets or other user devices. Post-merger, AT&T and Verizon would each have a subscriber base more than twice the size of Sprint’s, the next largest competitor. The Twin Bells would be far more attractive partners than Sprint or any of the smaller carriers for manufacturers interested in developing new wireless devices and technologies.¹³⁶

¹³³ *Id.* ¶ 16.

¹³⁴ *Id.*

¹³⁵ *Id.*; Press Release, comScore, *comScore Reports March 2011 U.S. Mobile Subscriber Market Share* (May 6, 2011), available at: <http://www.comscore.com/Press_Events/Press_Releases/2011/5/comScore_Reports_March_2011_U.S._Mobile_Subscriber_Market_Share>.

¹³⁶ Adib Decl. ¶¶ 11-18.

For example, a manufacturer could build a single handset platform for the Twin Bells using their common core spectrum bands that could be marketed to 76 percent of all wireless customers. Given that reality, manufacturers would have less incentive to build devices for Sprint and smaller carriers using different (one-off) spectrum bands and, even when they did, those devices would cost more given the carriers' lack of scale relative to AT&T and Verizon.¹³⁷ With the proposed transaction, the Bells' larger number of subscribers would allow them to spread research and development ("R&D") costs over a larger group of customers and guarantee sales of a larger number of handsets.¹³⁸ These scale advantages would allow the Twin Bells to obtain exclusive access for lengthy terms to the most advanced handsets that are most in demand by consumers.¹³⁹

The proposed T-Mobile takeover would increase the size and scale differential between AT&T and the remaining wireless carriers, making Sprint a less attractive potential handset partner.¹⁴⁰ Sprint and the smaller carriers would pay more for the latest phones and consumer devices – if they could even obtain them while they are still "cutting-edge." The result: higher prices and reduced innovation in handset and other consumer devices.¹⁴¹

¹³⁷ *Id.* ¶ 12; FierceWireless MetroPCS Article (reporting that "MetroPCS likely won't benefit from the economies of scale derived from purchasing the same equipment as [AT&T and Verizon]" for LTE because its LTE buildout will sit primarily in the AWS spectrum band, not the 700 MHz bands occupied by the Twin Bells).

¹³⁸ Adib Decl. ¶¶ 6-7.

¹³⁹ *Id.* ¶¶ 11, 18.

¹⁴⁰ CRA Decl. ¶ 106.

¹⁴¹ *Id.* ¶¶ 106, 113.

F. The Proposed Takeover Would Increase the Incentive and Ability of AT&T and Verizon to Raise Backhaul Rates, Leading To Higher Prices

AT&T is vertically integrated and controls key backhaul assets necessary for other wireless carriers to compete effectively.¹⁴² AT&T's takeover of T-Mobile would increase AT&T's ability to exclude its competitors and raise their costs by increasing backhaul rates.¹⁴³ Approval of the proposed transaction would therefore harm competition in at least two ways. First, the takeover would eliminate a potential major customer of competitive services in AT&T's region, making it harder for alternative providers of special access services (such as cable companies, competitive LECs, and microwave operators) to generate sufficient business to attract investment and remain viable.¹⁴⁴ Second, because the takeover would substantially increase the likelihood that AT&T and Verizon will raise prices to their retail customers, it would also make it more likely that both companies will raise the special access rates they charge to Sprint and other carriers.¹⁴⁵

1. The Proposed Transaction Would Eliminate T-Mobile as a Potential Purchaser of Alternative Backhaul Service

Over 90 percent of special access sold to other carriers, including backhaul services, is provided by LECs, primarily AT&T and Verizon. Most of the remaining backhaul services are provided by cable companies such as Comcast, fiber owners such as tw telecom and Level3, and

¹⁴² Response of T-Mobile USA, Inc., WC Docket No. 06-74, at 3 (June 20, 2006) (explaining that T-Mobile's ability to compete effectively with the incumbent LECs "depends on its ability to obtain services and facilities from ILECs such as AT&T and BellSouth on nondiscriminatory terms and reasonable cost-based prices").

¹⁴³ CRA Decl. ¶¶ 94-98.

¹⁴⁴ *Id.* ¶ 97.

¹⁴⁵ *Id.* ¶ 98.

other providers including FiberTower.¹⁴⁶ Wireless carriers, such as Sprint and T-Mobile, rely on incumbent LEC special access services¹⁴⁷ to provide the dedicated connections they need to link their cell sites to their switches and other parts of their networks.¹⁴⁸ Where available, however, independent wireless carriers will seek to purchase special access service from competing providers as a way to keep prices somewhat competitive. T-Mobile plays a significant role in generating business opportunities for competitive providers of special access services. Just last year, for example, T-Mobile told the FCC that “T-Mobile is proud of its success in creating competition for Ethernet services in many major metropolitan areas.”¹⁴⁹ T-Mobile’s important role in stimulating competition for special access services would be vacated if it were eliminated as a purchaser of competitive special access services.¹⁵⁰

The merger would harm competition in AT&T’s territory by eliminating T-Mobile – the nation’s second largest wireless carrier unaffiliated with a Bell operating company – as a purchaser of special access with a strong interest in obtaining services from vendors with whom

¹⁴⁶ Schieber Decl. ¶ 10.

¹⁴⁷ The Commission has defined special access as a dedicated transmission link between two locations. *See, e.g., AT&T-BellSouth Merger Order*, ¶ 27 n.88.

¹⁴⁸ *See, e.g., Reply Comments of T-Mobile USA, Inc., WT Docket No. 10-133*, at 7 (Aug. 16, 2010) (“[W]ireless providers need special access services and facilities to provide backhaul to connect their base stations to mobile switching centers, as well as to link their networks to the networks of other providers.”). Business users and competitive wireline carriers also rely on special access to connect to the Internet and/or to LEC central offices. *See, e.g., Applications of SBC Communications Inc. and AT&T Corp. for Consent to Transfer Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, ¶ 24 (2005) (“*SBC-AT&T Merger Order*”).

¹⁴⁹ Letter from Kathleen O’Brien Ham, T-Mobile USA, Inc., to Marlene H. Dortch, FCC Secretary, WC Docket No. 05-25, at 2 (May 6, 2010). Even so, T-Mobile noted that it remained heavily dependent on incumbent LECs for backhaul services. *Id.* (“after years of negotiating long-term, multi-market contracts with a variety of suppliers . . . T-Mobile still purchases ILEC backhaul in most of its 3G coverage area”).

¹⁵⁰ *See Meena Testimony* at 11 (“AT&T’s takeover of T-Mobile removes a significant competitive carrier partner and advocate from America’s wireless marketplace.”).

it does not compete in providing retail wireless services. If T-Mobile no longer had an incentive to buy special access from competitive alternatives to AT&T, it would diminish the ability of such providers to remain in business and compete with AT&T's in-region wireline offerings. Indeed, third-party providers of special access may find that their businesses are no longer viable if they lose T-Mobile as a potential customer.¹⁵¹ Thus, the merger would substantially diminish any prospect that alternative backhaul providers will emerge to compete with AT&T and Verizon in their incumbent wireline service areas.¹⁵² Absent a realistic threat of competitive entry in areas where the combined demand from T-Mobile, Sprint, and other unaffiliated Commercial Mobile Radio Service ("CMRS") carriers potentially could attract new backhaul providers, marketplace forces will not constrain AT&T's (or Verizon's) ability to impose unreasonable rates, terms, and conditions on its wireless rivals in its incumbent service territory.¹⁵³

¹⁵¹ Competitive backhaul providers already are concerned that "their entire business model could face strains as a result of the merger" removing T-Mobile as a potential customer. *See* Sara Jerome, *Backhaul Industry Fears AT&T Merger*, THE HILL (May 11, 2011) (reporting that officials in the alternative backhaul industry fear that the merger could "potentially sink[] some companies . . . leaving AT&T and Verizon to dominate the backhaul market"), *available at*: <<http://thehill.com/blogs/hillicon-valley/technology/160407-backhaul-industry-fears-atat-merger>>.

¹⁵² AT&T and Verizon "historically have not engaged in vigorous wireline competition against [each other or] other ILECs." Comments of T-Mobile USA, Inc., WC Docket No. 05-25, at 11-12 (June 13, 2005); *see also, e.g.*, Declaration of Chris Sykes, attached to Comments of T-Mobile USA, Inc., WC Docket No. 05-25, ¶ 11 (June 13, 2005) ("ILECs have not competed vigorously against each other in the provision of any wireline service, including special access service.").

¹⁵³ Letter from Kathleen O'Brien Ham, T-Mobile USA, Inc., to Marlene H. Dortch, FCC Secretary, WC Docket No. 05-25, at 1 (May 6, 2010) ("in areas where ILECs continue to enjoy a monopoly, backhaul costs remain unreasonably high"); Second Declaration of Simon J. Wilkie, attached to Reply Comments of T-Mobile USA, Inc., WC Docket No. 05-25, ¶¶ 25-26 (July 29, 2005) (noting that "on routes where there is no competition," incumbent LEC special access rates can be "many times higher"); Reply Comments of T-Mobile USA, Inc., WC Docket No.

2. The Proposed Transaction Would Increase Incentives for AT&T and Verizon to Raise Their Already Inflated Special Access Rates

As CRA explains, AT&T's proposed takeover of T-Mobile would make it more likely that AT&T and Verizon will be able to raise their prices for retail services and exclude competitors by further increasing the special access rates they charge Sprint and other retail competitors and/or reducing the quality of service they provide to those carriers.¹⁵⁴ Raising the input costs of their retail rivals would enable AT&T and Verizon to capture the additional revenues generated by higher retail prices if their competitors match their price increases and, at the same time, prevent competitors from winning customers away from AT&T and Verizon by offering lower prices. As their special access costs rose, Sprint and other competitive providers would be forced to raise their own retail rates and/or reduce the investments they make to expand and upgrade their networks.¹⁵⁵ Increased rates, potentially combined with deteriorating service, would drive customers away from competitive providers, allowing AT&T and Verizon to increase their number of subscribers even as they raised retail rates.¹⁵⁶ Thus, the ultimate victims

05-25, at 13 (July 29, 2005) (explaining that prices for a special access circuit can be as much as three times lower in areas where incumbent LECs are subject to competition); *see also* Reply Comments of T-Mobile USA, Inc., WC Docket No. 05-25, at 7 (Feb. 24, 2010) (explaining that “introducing true competitive alternatives in areas served by only one supplier is far superior to relying on regulatory mandates” in ensuring that backhaul connectivity is available at reasonable rates and with reasonable terms and conditions); *id.* at 8 (“competition is much more effective than regulation to ensure the reasonableness of rates, terms, and conditions”).

¹⁵⁴ CRA Decl. ¶¶ 51, 98.

¹⁵⁵ Higher special access costs would create a vicious cycle: competitive carriers would be unable to make the investments needed to attract and retain customers; this would lead to a smaller subscriber base, which would cause competitive carriers to lose economies of scale and network effects; this, in turn, would further reduce competitors' ability to lower retail prices or invest in upgrading their networks, further hampering the competitive carriers' ability to attract and retain customers.

¹⁵⁶ *The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?: Hearing Before the Subcomm. on Antitrust, Competition Policy and Consumer Rights of the S.*

of the merger would be consumers who would face higher retail rates and be denied the prospect of innovative new services fostered by a competitive marketplace.¹⁵⁷

G. The Proposed Takeover Likely Would Raise Roaming Costs, Leading to Higher Prices

AT&T’s proposed takeover of T-Mobile would allow AT&T and Verizon to exclude competitors by raising their costs and degrading their service quality due to their control over roaming. Through previous mergers in which they acquired the largest providers of rural coverage – including Dobson, Centennial, and ALLTEL – AT&T and Verizon have assembled large wireless footprints. Post-merger, the Twin Bells would understand that they control the key assets necessary for Sprint and others to offer nationwide service through roaming, and that if they both raise prices they will earn greater returns while simultaneously raising their rivals’ costs. This would effectively set a price floor by increasing the cost structures of all other carriers. As wireless competitors and gatekeepers to essential roaming service, the Bells would

Comm. on the Judiciary, 112th Cong., at 5 (May 11, 2011) (testimony of Daniel R. Hesse, CEO, Sprint Nextel Corporation) (explaining that if the merger were approved, it “would be difficult for any company to effectively challenge the Twin Bell duopoly, even if the duopolists reduce[d] quality [or] raise[d] prices”), *available at*: <<http://judiciary.senate.gov/pdf/11-11-5%20Hesse%20Testimony.pdf>> (“Hesse Testimony”).

¹⁵⁷ See, e.g., Comments of T-Mobile USA, Inc., WC Docket No. 05-25, at 8 (Aug. 8, 2007) (explaining that “[c]onsumers ultimately suffer from the high cost of special access” and describing the investments T-Mobile and other providers would make to achieve “customer-focused improvements” if special access were available at more reasonable rates); Reply Comments of T-Mobile USA, Inc., WC Docket No. 05-25, at 2 (Feb. 24, 2010) (“Consumers will enjoy the benefits of ubiquitous mobile broadband service and choice among service providers only if . . . special access[] is available at reasonable rates, terms, and conditions. . . .”); see also Hesse Testimony at 2-3 (explaining that competition and innovation led to the deployment of 4G services); *The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?: Hearing Before the Subcomm. on Antitrust, Competition Policy and Consumer Rights of the S. Comm. on the Judiciary*, 112th Cong., at 5 (May 11, 2011) (testimony of Gigi B. Sohn, President, Public Knowledge) (providing other examples of benefits that competition has brought to the wireless marketplace), *available at*: <<http://judiciary.senate.gov/pdf/11-5-11%20Sohn%20Testimony.pdf>>.

have every incentive to deny Sprint and the smaller fringe carriers access to their networks for roaming or to increase their fees to erode the ability of Sprint and other firms to effectively compete on price.

The combination of AT&T and T-Mobile would be particularly devastating for carriers using the GSM standard because the combination of AT&T and T-Mobile would leave just one national carrier for GSM roaming. Indeed, as the President and CEO of Cellular South has warned, “[i]f AT&T is permitted to take over T-Mobile, AT&T would be the only potential nation-wide GSM roaming partner for competitive carriers.”¹⁵⁸ In its declaration, CRA points out that when the only two CDMA carriers in Mexico merged, Sprint’s roaming rates increased by more than [begin confidential information] ■ [end confidential information] percent almost immediately and have increased by more than [begin confidential information] ■ [end confidential information] percent in total since the merger.¹⁵⁹

The eventual transition of carriers from GSM and CDMA to LTE would not cure this competitive problem. First, any transition is likely to occur over many years and existing 3G technologies are likely to continue to provide an important access point for consumers for many years, just as second generation (“2G”) offerings do today. Second, the LTE configurations of both AT&T and Verizon, as presently devised, would not allow roaming on their networks without additional hardware and software. Unlike the cellular and PCS bands, where consumer devices were capable of operating across the entire bands regardless of the particular licensing block assigned to a carrier, AT&T and Verizon have obtained unique “Band Class” designations

¹⁵⁸ Meena Testimony at 10.

¹⁵⁹ CRA Decl. ¶ 100, n.92.

for their respective 700 MHz spectrum block assignments.¹⁶⁰ What this means is that the LTE equipment standards permit AT&T and Verizon to have device manufacturers build handsets and other devices that will operate only in each carrier’s Band Class (the carrier’s licensed spectrum) – even if both carriers are operating otherwise compatible LTE broadband networks.¹⁶¹

AT&T and Verizon are using their market power, size, and scale advantages to limit the devices they sell to their own spectrum blocks, thereby preventing customers from roaming or from taking their LTE devices to another carrier.¹⁶² The result is that the smaller 700 MHz licensees, and even prospective 700 MHz public safety broadband users, will not only be precluded from roaming on AT&T or Verizon’s 700 MHz LTE networks, but they will be excluded from sharing in the scale efficiencies and lower costs that a common Band Class would bestow on all Band Class members. AT&T and Verizon are thus exercising their market power to deny competitors the scale advantages they would otherwise enjoy from handsets built to operate across the 700 MHz band.

H. The Proposed Transaction Would Reduce Competition in Upstream Markets

AT&T’s acquisition of T-Mobile would create a bottleneck between downstream customers and the upstream content and product developers that need a wireless bridge to offer

¹⁶⁰ Lynette Luna, *700 MHz interoperability issue should have been on FCC’s agenda*, FIERCEBROADBANDWIRELESS (Apr. 14, 2011), *available at*: <<http://www.fiercebroadbandwireless.com/story/700-mhz-interoperability-issue-should-have-been-fccs-agenda/2011-04-14>>.

¹⁶¹ *Id.*

¹⁶² See Phil Goldstein, *AT&T, Cellular South debate 700 MHz interoperability at FCC*, FIERCEWIRELESS (Apr. 26, 2011) *available at*: <<http://www.fiercewireless.com/story/att-cellular-south-debate-700-mhz-interoperability-fcc/2011-04-26>> (“Smaller and rural carriers have claimed that Verizon and AT&T are ordering LTE equipment that will not work with the band classes of 700 MHz spectrum they own, effectively shutting them out of the growing LTE ecosystem.”).

their products to consumers. Allowing AT&T and Verizon to control the vast majority of all traffic over this wireless bridge would hamper the growth of the digital economy and the Internet.

Many companies rely on wireless services to distribute their products to consumers. For example, eBay alone expects to sell over four billion dollars of goods over mobile connections in 2011.¹⁶³ A bottleneck created by the Twin Bells would allow them to charge supra-competitive prices to the upstream technology industry, thus making those upstream businesses less attractive and leading to less investment, less innovation, and fewer jobs. Mobile applications and commerce, and the technologies that support them, are perhaps the most important growth vector of technology companies like Amazon, Apple, eBay, and thousands of others which continue to maintain U.S. leadership in the Internet. The availability of competitive mobile broadband access has allowed tech companies to invest and innovate with the belief that they could monetize their new products and services without having to pay a supra-competitive toll to a carrier controlling access to consumers. Freed of effective competitive constraint following the takeover of T-Mobile, AT&T could also exercise market power over video, music, and other content providers by, among other things:

- Raising prices;
- Charging a premium to deliver quality video content to AT&T's more than 130 million post-merger wireless customers;
- Charging a premium to place a phone application in a visible location on its customers' devices; or

¹⁶³ Rachael Metz, *EBay first-quarter profit rises 20%*, SeattlePI, Apr.30, 2011, available at: <<http://www.seattlepi.com/business/article/EBay-first-quarter-profit-rises-20-percent-1355339.php>>.

- Demanding a share of advertising revenue sold over its devices in exchange for delivering content to end users on a priority basis.

If the takeover is approved, parties could have to pay Verizon and AT&T to deliver their applications and information to consumers, and these gatekeepers could raise prices and reduce the incentives of upstream innovators to offer new and better products.

IV. AT&T’S ARGUMENTS THAT THE TAKEOVER OF T-MOBILE WILL NOT REDUCE COMPETITION ARE WITHOUT MERIT

To deflect concerns about the reduction in competition that would result from its takeover of T-Mobile, AT&T argues that T-Mobile is in terminal decline as a competitor so eliminating it is not meaningful, and smaller local and regional players will offset any loss in competition.

Neither argument withstands scrutiny.

A. AT&T’s Claims that T-Mobile Is Not Competitively Significant Are Belied by the Evidence

AT&T claims that eliminating T-Mobile would not reduce competition because “T-Mobile USA does not exert strong competitive pressure on AT&T and the two brands serve substantially different groups of subscribers.”¹⁶⁴ AT&T further argues that the merger “will not eliminate a major competitive force from the marketplace [because] T-Mobile USA is now ‘struggling for relevance’ in this increasingly competitive market.”¹⁶⁵ AT&T also claims that absent the merger T-Mobile would have “decreasing significance in the higher end of the market because T-Mobile USA has no clear path to deploy LTE” and that T-Mobile “would be subject

¹⁶⁴ Application at 98.

¹⁶⁵ *Id.* at 100-01.

to substantial spectrum limitations and capital-financing challenges.”¹⁶⁶ AT&T grossly mischaracterizes and understates T-Mobile’s competitive significance today and in the future.

1. T-Mobile Is and Will Continue to Be a Strong Competitor

T-Mobile is a strong competitor to AT&T. T-Mobile consistently out-performs AT&T on customer service, it offers lower pricing for handsets and services, it has upgraded more of its network for high speed data services than AT&T, it has constructed a national network, it has helped develop and launch new innovative handsets (such as the G1), and it engages in aggressive advertising against AT&T. Indeed, T-Mobile’s advertising mocking AT&T’s high speed data services has been the talk of the industry. The fact that T-Mobile lost post-paid subscribers in the past quarter is not evidence of a failing firm.

AT&T’s claim that T-Mobile is failing is belied by pre-merger statements of T-Mobile’s executives and the Commission’s own findings. For example, at its investor day on January 20, 2011, T-Mobile’s management team presented a clear path for renewed growth. T-Mobile described itself as a “challenger” and announced a plan to grow revenues by \$3 billion by 2014. That plan includes aggressively marketing smartphones and data on its new 4G network:

[T]he challenger strategy which will fuel all growth going forward. . . . We have five levers. The first one is we will not let our network competitive advantage go and we will therefore monetize our 4G network. . . . Second, we will focus on making the purchase and the use of smart phones affordable to all Americans. We estimate that about 150 million Americans want smart phones but do not have smart phones today. . . . Third, while we are the number one service Company in our industry having won more than ten times the J. D. Powers award which is really great, we aspire for more. We want to be one of America’s most trusted brands. . . . Part four and five of the strategy really focus on

¹⁶⁶ *Id.* at 102.

overcoming scale either on the revenue side which is a multi segment player or on the cost side which is challenger business model.¹⁶⁷

Similarly, René Obermann, the CEO of DT, said, “[w]e are convinced that T-Mobile is a very good asset. We have a 34 million customer base and in the first nine months of 2010 we generated revenues of over \$16 billion and over \$4.5 billion of EBITDA. And we are generating a positive operating free cash flow of between \$2.5 billion and \$3 billion per annum.”¹⁶⁸ The Commission also found that T-Mobile is a vigorous competitor, noting in the *14th CMRS Competition Report* that T-Mobile’s decision to lower the prices on its unlimited calling plans “appear[s] to have prompted Verizon and AT&T to narrow the price premium on unlimited service offerings.”¹⁶⁹

T-Mobile competes aggressively with AT&T on its website and in national television advertisements. T-Mobile’s advertising spend in the first half of 2010 was up over 40 percent from the first half of 2009.¹⁷⁰ T-Mobile’s advertising highlights AT&T’s slow network speeds compared to T-Mobile’s and touts T-Mobile’s cutting edge mobile broadband devices, such as the myTouch 4G.¹⁷¹ Senator Kohl, Chair of the U.S. Senate Judiciary Committee’s Subcommittee on Antitrust, Competition Policy and Consumer Rights, recently emphasized the direct competition between AT&T and T-Mobile:

Mr. Humm [of T-Mobile], on your website, you compare your prices for data service to AT&T’s and announce that your price for unlimited 4G data service is \$5 cheaper than AT&T’s price for 3G service. You also

¹⁶⁷ Jan. 20, 2011 Deutsche Telekom Briefing at 7-8.

¹⁶⁸ *Id.* at 2.

¹⁶⁹ *14th CMRS Competition Report* ¶ 92.

¹⁷⁰ Appendix A, Growth in Advertising Spend.

¹⁷¹ *See* Jan. 20, 2011 Deutsche Telekom Briefing at 23-34.

promote the fact that your unlimited voice, text and data service is \$35 cheaper than AT&T.¹⁷²

T-Mobile's head-to-head marketing of its smartphones and data services against AT&T appears to be paying off. T-Mobile's recent quarterly performance numbers show that its blended data ARPU increased more than 25 percent from the fourth quarter of 2009 to the fourth quarter of 2010.¹⁷³ As T-Mobile's CEO elaborated:

Now the good news is that if you look at the performance year over year in the last quarters, year over year revenue hit bottom at the end of 2009 and is now trending in the right direction driven mainly by data revenues as more customers adopt smart phones. . . . [O]ur blended data RPU is advancing at a rate of \$2.40 year over year or 24% over the last four quarters.¹⁷⁴

Indeed, even AT&T admits in its Application that T-Mobile has been making major advances in smartphone sales, noting that between the fourth quarter of 2009 and the end of 2010 the percentage of T-Mobile's customers using 3G/4G smartphones doubled from 12 percent to 24 percent.¹⁷⁵

2. AT&T's Claims that T-Mobile Has No Clear Path to LTE Are Misleading

AT&T's assertion that T-Mobile has no clear path for LTE misrepresents T-Mobile's ability to offer high-speed wireless broadband. While T-Mobile might be considered a

¹⁷² *The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?: Hearing Before the Subcomm. on Antitrust, Competition Policy and Consumer Rights of the S. Comm. on the Judiciary*, 112th Cong. (May 11, 2011) Federal News Service Transcript at 41, available at: <<http://fednews.com/printtranscript.htm?id=20110511t3772>>.

¹⁷³ Press Release, T-Mobile, *T-Mobile USA Reports Fourth Quarter 2010 Results* (Feb. 25, 2011), available at: <<http://s.tmocache.com/Cms/Files/Published/0000BDF20016F5DD010312E2BDE4AE9B/5657114502E70FF3012B5A79D454F2C8/file/TMUSQ42010PressReleaseFinalv2.pdf>>.

¹⁷⁴ Jan. 20, 2011 Deutsche Telekom Briefing at 5.

¹⁷⁵ Application at 30.

late-comer to 3G, it has invested in rolling out a robust nationwide network and is well-positioned to compete for high-end services. It currently has the largest HSPA+ network (far larger than AT&T's) and, according to T-Mobile, its network is the largest and fastest 4G network with speeds of up to 21 Mbps.¹⁷⁶ According to DT's CEO, René Obermann, "[i]ndependent field surveys show that real life data transmission speeds on our network are superior to most competitors and they are at least equivalent to LTE."¹⁷⁷

T-Mobile plans to double the speed of its HSPA+ network in 2011 to 42 Mbps, has explained that speeds of 84 Mbps and beyond are possible on HSPA+, and believes that the HSPA+ network will be very competitive as LTE is slowly rolled out by Verizon and AT&T.¹⁷⁸ Looking further ahead, T-Mobile has stated that its network will be in a good position to roll out LTE at the appropriate time:

At the right point in time when it's needed for us we can roll out LTE more as a capacity overlay because there are awesome benefits and the capacity delivery of LTE in the right spectrum configurations that will drive better economics and better performance for our customers. But when we do that, we don't have to go and touch the lion's share of our cell sites at all. So, you can see our expectation on investment levels around the LTE rollout for T-Mobile USA are more in the \$1 billion to \$2 billion range for that radio infrastructure upgrade depending on how far we go and how deep we go.¹⁷⁹

¹⁷⁶ Jan. 20, 2011 Deutsche Telekom Briefing at 5.

¹⁷⁷ *Id.* at 2.

¹⁷⁸ *See id.* at 13 ("LTE is coming but it is going to take time for the technology to both mature from a technology perspective, for the bugs to be worked through that technology. It's also going to take time for the handset ecosystem to develop . . . [a] [m]uch richer ecosystem [is] now growing in the HSPA+ world which we will fully leverage at T-Mobile USA."). "HSPA" stands for High Speed Packet Access.

¹⁷⁹ *Id.* at 14.

3. T-Mobile's Pre-Announcement Statements Contradict AT&T's Claims that T-Mobile Will Not Be an Effective Competitor Due to Spectrum Limitations

AT&T argues that its acquisition of T-Mobile will not reduce competition because spectrum limitations will prevent T-Mobile from being a significant competitor if it remains independent. However, these claims are contradicted by recent statements from T-Mobile's Chief Technical Officer shortly before the deal with AT&T was reached:

[O]ne of the things that we're working aggressively on as we've been migrating our customer base from 1900 where we live with our GSM services today, all of that growth that's occurring in HSPA+ in the AWS spectrum is freeing up head room for our customers and for our business in 1900. It's almost a third of our base that's moved across to AWS. So, that's freeing up 1900 spectrum in many markets which opens up this opportunity we call refarm. That spectrum presents opportunities for us to deploy more HSPA+ or LTE and we're working through those option discussions right now. But there are many markets where already today we have a lot of 1900 spectrum we could repurpose. So, we're in a good position with refarm.¹⁸⁰

In addition, T-Mobile has told its investors that it has the financial ability to purchase additional spectrum if and when needed. As explained above, T-Mobile has outlined a clear path to grow revenues by three billion dollars over the next few years. In addition, it has indicated that it will be able to raise additional capital to fund its long-term spectrum needs through external sources and the sale of non-strategic assets, particularly its cell tower portfolio.¹⁸¹ Reuters reports an analyst's estimate that the sale of T-Mobile's 7,000 cell towers could raise up to two billion dollars.¹⁸² Such a sale would certainly raise significant capital that could be used

¹⁸⁰ *Id.* at 16.

¹⁸¹ *Id.* at 4.

¹⁸² Sinead Carew & Nadia Damouni, *T-Mobile USA eyes potential \$2 bln tower sale*, REUTERS (Jan. 20, 2011) (citing a Benchmark Company analyst), available at: <<http://www.reuters.com/article/2011/01/21/tmobileusa-idUSN2025129820110121>>.

to access additional spectrum for the long term. Thus, notwithstanding AT&T’s doomsday assessment of T-Mobile’s future, T-Mobile’s own statements and objective evidence demonstrate that T-Mobile is, and would continue to be, a significant competitor in retail wireless absent its takeover by AT&T.

B. Local and Regional Firms with Only Seven Percent of the All Wireless Market Would Not Replace Competition from T-Mobile

AT&T also claims that its acquisition of T-Mobile would not significantly alter the competitive landscape because “other providers already fill – or could easily move to fill – the competitive role T-Mobile USA occupies today.”¹⁸³ According to AT&T, notwithstanding the high levels of market concentration in local markets covering **[begin NRUF/LNP confidential information] ■ [end NRUF/LNP confidential information]** percent of the U.S. population,¹⁸⁴ the presence of an assortment of smaller regional and local competitors in many of these areas will be sufficient to ensure that the market remains competitive. In particular, AT&T points to carriers such as MetroPCS (pre-paid), Leap (pre-paid), U.S. Cellular, Cellular South (which testified that if the merger is allowed, “all that will remain is the endgame, where the remaining non-Bell carriers wait their turn to be acquired or bled dry”),¹⁸⁵ Allied Wireless, Cincinnati Bell (with only about 500,000 subscribers), Cox Communications (a cable television company providing no facilities-based wireless services),¹⁸⁶ and possible future wholesalers Clearwire (with funding challenges and an evolving strategy) and LightSquared (with no end-user subscribers) as potential entrants.

¹⁸³ Application at 70.

¹⁸⁴ CRA Decl. ¶ 11.

¹⁸⁵ Meena Testimony at 5.

¹⁸⁶ Declaration of Scott Kalinoski, Attachment H at 1-2.

AT&T's arguments substantially overstate the competitive significance of a collection of firms that combined account for about seven percent of all wireless subscribers.¹⁸⁷ These local, regional, and wholesale carriers could not replace the competition that would be lost by AT&T's proposed acquisition. First, they do not and cannot constrain pricing by the national carriers to any meaningful extent.¹⁸⁸ Indeed, they would have no incentive to deter unilateral price increases by AT&T or coordination by the Twin Bells. Second, the four national players serve predominantly post-paid customers, while MetroPCS and Leap, two of the top three smaller players, serve predominately pre-paid customers.¹⁸⁹ Third, these smaller players are not attractive options for customers seeking the most recent and high performance handsets because they generally do not (and often cannot) offer them, nor do they have the customer bases or financial resources to regularly develop innovative handsets.¹⁹⁰ Indeed, Leap Wireless recently acknowledged in its Securities and Exchange Commission ("SEC") filings that "[a]s device selection and pricing become increasingly important to customers, our inability to offer customers the latest and most popular devices . . . could put us at a significant competitive disadvantage and make it more difficult for us to attract and retain customers."¹⁹¹ Fourth, the smaller carriers cannot match the cost-efficient nationwide coverage and functionality provided by the four national carriers.¹⁹² As explained above, they do not have nationwide networks, and their roaming services come with significant limitations, particularly with respect to text and

¹⁸⁷ CRA Decl. ¶ 44.

¹⁸⁸ *Id.* ¶ 131.

¹⁸⁹ *See supra* Part A, Section II.A.

¹⁹⁰ *See supra* Part A, Section III.B.

¹⁹¹ Leap Wireless International, Inc., Annual Report (Form 10-K), at 10 (Feb. 25, 2011).

¹⁹² *See supra* Section II.A.

data. Fifth, these smaller carriers cannot compete without access to backhaul and roaming, and the proposed T Mobile takeover would increase AT&T's control over these critical inputs and allow it to raise its rivals' costs. Sixth, these smaller carriers lack the brand strength to compete more widely. Seventh, these carriers are extremely small in comparison with AT&T and Verizon. While AT&T trumpets that in the fourth quarter of 2010 Leap and MetroPCS added 100,000 and 300,000 subscribers, respectively, the fact is they remain fringe players.¹⁹³ Finally, not even AT&T's own business people take potential competition from wholesalers such as LightSquared and Clearwire seriously. As John Stankey, President and CEO of AT&T Business Solutions, admits: "We have two people staking out a wholesale play in the market. It's hard in economic theory and it's hard in past practice in telecommunications to ever find a market where two wholesale players ever competed effectively."¹⁹⁴

V. THE PROPOSED TRANSACTION WOULD PROVIDE AT&T WITH UNPRECEDENTED CONTROL OVER SPECTRUM IDEALLY SUITED FOR MOBILE BROADBAND SERVICE

As part of its competitive analysis of a major transaction, the Commission must examine the effects that the transaction would have on the "input market for spectrum available for the provision of mobile telephony/broadband services."¹⁹⁵ As the Commission has pointed out, "[a]ccess to spectrum is a precondition to the provision of mobile wireless service. Ensuring that

¹⁹³ CRA Decl. ¶ 44; Press Release, AT&T, Inc., *AT&T Reports Record 2.8 Million Wireless Net Adds, Strong U-verse Sales, Continued Revenue Gains in the Fourth Quarter* (Jan. 27, 2011) available at: <<http://www.att.com/gen/pressroom?pid=18952&cdvn=news&newsarticleid=31519&mapcode=financial>>.

¹⁹⁴ Karl Bode, *AT&T's Stankey Trash Talks Clearwire, LightSquared: Suggests They Have to Merge to be Viable*, BROADBAND DSL REPORTS (May 16, 2011), available at: <<http://www.dslreports.com/shownews/ATTs-Stankey-Trash-Talks-Clearwire-Lightsquared-114242>>.

¹⁹⁵ *AT&T-Centennial Merger Order* ¶ 34.

sufficient spectrum is available for incumbent licensees, as well as for entities that need spectrum to enter the market, is critical for promoting competition, investment, and innovation.”¹⁹⁶ New entrants require access to sufficient spectrum to enter the wireless marketplace and compete with established licensees, while incumbents require additional spectrum to increase coverage or capacity as they expand their subscriber bases and work to meet increasing demand. Given the critical nature of this input, significant differences between carriers’ spectrum holdings can have a decisive impact on the provision of frequency-intensive mobile broadband services. If one carrier can hoard large volumes of this resource, other providers may have limited capacities and lack the bandwidth necessary to innovate and compete effectively for subscribers.¹⁹⁷

AT&T’s proposed acquisition of T-Mobile would transform the nation’s “input market for spectrum,” by providing AT&T with an extraordinary and unprecedented aggregation of bandwidth. The addition of T-Mobile’s population-weighted average of 50 MHz, along with Qualcomm’s 700 MHz holdings, would give AT&T a nationwide, population-weighted average of 144 MHz of spectrum for mobile telephony/broadband services – approximately 50 percent more than Verizon and almost three times Sprint’s current holdings. And, at the local market level, AT&T’s vast spectrum portfolio would exceed the Commission’s “spectrum screen” threshold in over one-quarter of all local market areas in the United States.

Beyond these megahertz counts, however, AT&T’s spectrum holdings at both the national and local levels following the transaction would be particularly formidable, because the

¹⁹⁶ 14th CMRS Competition Report ¶ 251.

¹⁹⁷ CRA Decl. ¶ 80. In addition, because there are significant scale economies in the provision of wireless services, a carrier with limited spectrum and a commensurately small subscriber share will likely have higher costs per subscriber than a carrier with large spectrum holdings and a large subscriber share. *Id.*

proposed takeover would add T-Mobile’s desirable AWS (1.7/2.1 GHz) and PCS (1.9 GHz) spectrum to AT&T’s already substantial share of “beachfront spectrum” below 1 GHz. This unprecedented aggregation of highly valuable spectrum would cause serious competitive harm in the mobile wireless marketplace. With AT&T (and Verizon) controlling the most valuable portion of the nation’s mobile telephony/broadband spectrum, Sprint and other competitors would be unable to meet their capacity needs in these core wireless spectrum bands. Without the same quantity or quality of spectrum as the Twin Bells, Sprint and other carriers would have to incur the costs associated with developing infrastructure, equipment, and ecosystems in new spectrum bands. Having shifted these development costs to its smaller competitors, AT&T could fully exploit the scale efficiencies and mature ecosystems in its own core spectrum bands. The Commission should prevent these anti-competitive harms and halt AT&T’s attempted spectrum grab by refusing to approve the Application.

A. Following the Proposed Transaction, AT&T Would Have Far More Nationwide Licensed Spectrum Suitable for Mobile Telephony/Broadband Services Than Any Other CMRS Carrier

As discussed in Part A, Section II.B., *supra*, competition among wireless service providers now takes place on a national basis, and the Commission should therefore evaluate the competitive effects of the proposed transaction at a national level. As part of this analysis, the Commission should closely examine the transaction’s impact on carriers’ *nationwide* spectrum holdings.

Today, AT&T already controls an enormous volume of nationwide spectrum suitable for mobile telephony/broadband services, given its extensive holdings in the 700 MHz, cellular, PCS, and AWS spectrum bands. This concentration of spectrum is shown in the chart below, which provides wireless carriers’ population-weighted nationwide spectrum holdings for mobile

telephony/broadband services. These carriers include the four national providers, MetroPCS, Leap, U.S. Cellular, and mobile broadband provider Clearwire (which is not a CMRS provider).¹⁹⁸ As shown, including the 700 MHz spectrum that AT&T is acquiring from Qualcomm,¹⁹⁹ AT&T has a nationwide average of 94 MHz of spectrum suitable for mobile

¹⁹⁸ This chart does not include spectrum in the 2.5 GHz band (such as Educational Broadband Service (“EBS”) spectrum) that the Commission has found unsuitable for mobile telephony/broadband services in its spectrum screen analysis. *See infra* at Part A, Section V.C.1. In addition, the chart’s attribution of 14 MHz of 800 MHz spectrum to Sprint is based not on a population-weighted nationwide spectrum calculation, but instead on a general assessment of Sprint’s current Enhanced Specialize Mobile Radio (“ESMR”) spectrum holdings in this band. Because the 800 MHz band is in the midst of a multi-year reconfiguration process, a precise, population-weighted analysis in this band is not feasible at this time. Sprint’s spectrum at 800 MHz is presently unavailable for broadband deployment due to the interleaved nature of this spectrum and its proximity to public safety receivers. In addition, it is not yet known how much 800 MHz spectrum Sprint will be able to utilize in the areas adjacent to the U.S.-Mexico border. *See, e.g., Improving Public Safety Communications in the 800 MHz Band*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, 19 FCC Rcd 14969 (2004) (“800 MHz Report and Order”), *aff’d sub nom. Mobile Relay Associates v. FCC*, 457 F.3d 1 (D.C. Cir. 2006).

¹⁹⁹ On January 13, 2011, AT&T and Qualcomm Incorporated (“Qualcomm”) submitted an application seeking the Commission’s approval for the assignment of Qualcomm’s Lower 700 MHz band licenses to AT&T. Application of Qualcomm Incorporated, Assignor, to AT&T Mobility Spectrum LLC, Assignee, File No. 0004566825, WT Docket No. 11-18 (Jan. 13, 2011) (“AT&T-Qualcomm Application”). If approved, this transaction will enable AT&T to acquire Qualcomm’s six Lower 700 MHz D Block (6 MHz) licenses, which collectively have a nationwide footprint, and five Lower 700 MHz E Block (6 MHz) licenses in five large markets.

In addition to these Qualcomm licenses, there are pending applications to assign or transfer 44 other 700 MHz band licenses to AT&T. *See* ULS File Nos. 0004544869 and 0004544863 (proposing the assignment of six Lower 700 MHz B Block licenses and three Lower 700 MHz C Block licenses from Whidbey Telephone Company to AT&T); ULS File No. 0004621016 (proposing the assignment of one Lower 700 MHz C Block license from 700 MHz, LLC to AT&T); ULS File No. 0004635440 (proposing the assignment of one Lower 700 MHz B Block license from Knology of Kansas, Inc. to AT&T); ULS File No. 0004643747 (proposing the transfer of control of five Lower 700 MHz B Block licenses and seventeen Lower 700 MHz C Block licenses from Redwood Wireless Corp. to AT&T); ULS File No. 0004681773 (proposing the assignment of one Lower 700 MHz B Block license from Windstream Lakedale, Inc. to AT&T); ULS File No. 0004681771 (proposing the assignment of three Lower 700 MHz B Block licenses from Windstream Iowa Communications, Inc. to AT&T); ULS File No. 0004699707 (proposing the assignment of one Lower 700 MHz B Block license from Maxima

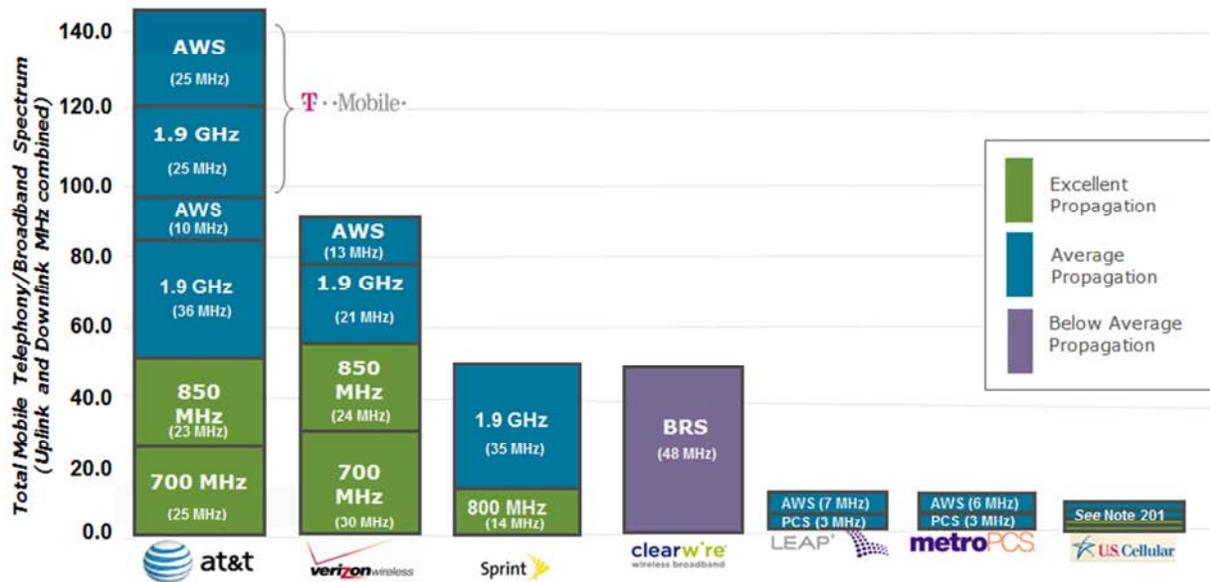
telephony/broadband services, exceeding Verizon’s total of 88 MHz.²⁰⁰ On a nationwide basis, AT&T has approximately 90 percent more spectrum than Sprint and T-Mobile each, and Verizon has approximately 75 percent more spectrum than each of those carriers. In addition, AT&T and Verizon each has more than three times the amount of spectrum held by MetroPCS, Leap, and U.S. Cellular²⁰¹ combined. As T-Mobile itself has observed, “substantial disparity has developed between the spectrum holdings of the two largest U.S. wireless carriers and the more limited spectrum resources of all of their competitors.”²⁰²

International, LLC to AT&T); ULS File No. 0004448347 (proposing the assignment of six Lower 700 MHz C Block licenses from D&E Investments, Inc. to AT&T).

²⁰⁰ AT&T also holds a nationwide average of approximately 13 MHz of Wireless Communications Service (“WCS”) spectrum in the 2.3 GHz band. Sprint does not include this WCS spectrum in the chart below, despite the Commission’s 2010 order amending its WCS rules to “enable licensees to provide mobile broadband services in 25 megahertz of the WCS band.” *Amendment of Part 27 of the Commission’s Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band*, Report and Order and Second Report and Order, 25 FCC Rcd 11710, ¶ 1 (2010) (“*WCS R&O*”). Sprint takes this conservative approach toward AT&T’s WCS holdings in light of the Commission’s previous exclusion of WCS frequencies from its spectrum screen analysis.

²⁰¹ U.S. Cellular holds approximately 2 MHz of spectrum in each of the 700 MHz, 850 MHz, 1.9 GHz (or PCS), and AWS bands, for a total of 8 MHz.

²⁰² Letter from Thomas Sugrue, Vice President, Government Affairs, T-Mobile USA, Inc., to Chairman Rick Boucher and Ranking Member Cliff Stearns, H. Subcomm. on Communications, Technology and the Internet, at 3 (Sep. 23, 2009), attached to Letter from Cheryl A. Tritt, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, FCC Secretary, WT Docket No. 06-150 (Sept. 24, 2009).



As shown in the chart, AT&T is now asking the Commission to grant it unprecedented nationwide control over spectrum used for mobile telephony/broadband services. Grant of the instant Application would increase AT&T’s concentration of spectrum in the PCS and AWS bands by approximately 50 MHz, based on T-Mobile’s current population-weighted nationwide holdings. Thus, if the Commission approves the proposed takeover, AT&T would hold a nationwide average of 144 MHz suitable for mobile telephony/broadband services, far exceeding even Verizon’s holdings. AT&T would have nearly *three times* Sprint’s nationwide spectrum holdings, and more than *five times* the *combined* holdings of MetroPCS, Leap, and U.S. Cellular.

As described *infra* at Part A, Section V.C.2, were the Commission to grant this vertically integrated Bell company unprecedented control over the wireless industry’s core spectrum bands, the resulting spectrum imbalance would cause serious competitive harm, both nationally and at the local level. The Commission should refuse to permit this outcome.

B. AT&T’s Post-Transaction Spectrum Holdings Would Exceed the Spectrum Screen Threshold in Over One-Quarter of Local Markets

Since 2004, the Commission has utilized an initial “spectrum screen” to guide its competitive analysis of major wireless transactions in local markets.²⁰³ In markets where applicants’ volume of spectrum falls below the Commission’s spectrum screen threshold, the Commission has presumed that the proposed spectrum aggregation will have no adverse competitive effects. In local markets where the applicants’ combined holdings exceed the screen threshold, the Commission conducts a further analysis of the proposed transaction’s effects on competition.²⁰⁴

In its spectrum screen analysis, the Commission has included all spectrum that it believes will be “suitable” for mobile telephony/broadband service within two years.²⁰⁵ Under the Commission’s standard, “suitability” is determined by “whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its uses for mobile telephony broadband services.”²⁰⁶ The Commission’s spectrum screen threshold is set at

²⁰³ *AT&T-Cingular Merger Order* ¶¶ 81, 109-12; *Sprint Nextel-Clearwire Merger Order* ¶¶ 54-74; *Verizon-Atlantis Merger Order* ¶¶ 54-70; *AT&T-Centennial Merger Order* ¶¶ 43-51.

²⁰⁴ *Sprint Nextel-Clearwire Order* ¶¶ 30, 79-80; *Verizon-Atlantis Merger Order* ¶¶ 41, 75; *AT&T-Centennial Merger Order* ¶¶ 34, 46. As described above, the Commission’s competitive analysis should not be limited to a further review of competitive conditions in these local markets. Because competition among wireless carriers now occurs on a national basis, the Commission should also assess the competitive impact of the proposed takeover at the national level.

²⁰⁵ *Sprint Nextel-Clearwire Order* ¶ 61; *Verizon-Atlantis Merger Order* ¶ 62.

²⁰⁶ *Sprint Nextel-Clearwire Order* ¶ 53. See also *Verizon-Atlantis Merger Order* ¶ 62; *AT&T-Centennial Merger Order* ¶ 43.

approximately one-third the volume of spectrum that is suitable for mobile telephony/broadband services.

In its most recent orders, the Commission has found that the amount of spectrum suitable for mobile telephony/broadband services varies on a market-by-market basis. The Commission has considered at least 280 MHz of spectrum to be suitable in all markets; this amount includes 50 MHz of 850 MHz cellular band spectrum, 120 MHz of PCS spectrum, 30 MHz of spectrum in the 800 MHz and 900 MHz Specialized Mobile Radio (“SMR”) bands, and 80 MHz of 700 MHz spectrum.²⁰⁷ The Commission has included an additional 90 MHz of spectrum in the AWS band in markets where that band has been cleared and is available, and an additional 55.5 MHz of Broadband Radio Service (“BRS”) spectrum in markets where the 2.5 GHz transition has been completed. Thus, in markets where both AWS and BRS spectrum are available, the Commission has found that 425.5 MHz of spectrum are suitable for mobile telephony/broadband services, and established a spectrum screen of 145 MHz.²⁰⁸

The Applicants concede that if the Commission applies this spectrum screen, “202 CMAs would be flagged by [this] screen and subject to further analysis.”²⁰⁹ This total represents over one-quarter of the 734 CMAs in the United States. Thus, if the Commission’s own spectrum

²⁰⁷ *Sprint Nextel-Clearwire Order* ¶ 54; *Verizon-Atlantis Merger Order* ¶ 54; *AT&T-Centennial Merger Order* ¶ 46.

²⁰⁸ *Sprint Nextel-Clearwire Order* ¶¶ 70, 72, 74; *Verizon-Atlantis Merger Order* ¶¶ 65-66; *AT&T-Centennial Merger Order* ¶ 46. In markets where AWS but not BRS spectrum is available, the Commission has found that 370 MHz are suitable for mobile telephony/broadband, and set the spectrum screen at 125 MHz. In markets where BRS but not AWS spectrum is available, 335.5 MHz are considered suitable for these services, and the Commission has set the spectrum screen at 115 MHz. Finally, in markets where neither AWS nor BRS spectrum is available, 280 MHz are considerable for mobile telephony/broadband, and the applicable screen has been set at 95 MHz.

²⁰⁹ Application at 76. The Applicants’ analysis presumes Commission approval of AT&T’s pending application to acquire Qualcomm’s 700 MHz spectrum.

screen calculations confirm AT&T's results, the Commission would further scrutinize the competitive effects of the proposed transaction in each of these 202 CMAs.

C. In Analyzing the Competitive Effects of the Proposed Transaction, the Commission Must Account for the High Value of AT&T's Spectrum

1. Not All Spectrum Is Created Equal

While AT&T's simple megahertz counts are alarming enough, they do not provide a true measure of AT&T's would-be dominance over the most commercially valuable segments of the radio spectrum were its Application approved. As the Commission has acknowledged, one megahertz of spectrum in a particular frequency band does not hold the same value as one megahertz in another band.²¹⁰ The wide variation in spectrum values across different bands is highlighted in the CRA Declaration, which provides an analysis of the disparate value of wireless carriers' overall spectrum holdings (based on the book values reported by the carriers in their annual filings to the SEC).²¹¹ As described *infra* at Part A. Section V.C.2, this analysis demonstrates the extraordinary size and marketplace value of AT&T's post-transaction spectrum portfolio.

As the Commission is aware, spectrum bands can differ from one another in numerous technical, operational, and regulatory aspects, including the following:

- Signal propagation characteristics;
- Availability of network equipment and consumer handsets;
- Size and contiguity of spectrum blocks;
- Availability of paired bands for uplink and downlink transmissions;
- Technical restrictions, such as guard bands or power limits, to protect other services from interference;

²¹⁰ See, e.g., *14th CMRS Competition Report* ¶¶ 268-73.

²¹¹ CRA Decl. ¶ 85, Table 6.

- Cost of clearing incumbent users, and status of band clearing;
- Population density of coverage area;
- Need for coordination or other complex negotiations with other licensees (e.g., lease negotiations between commercial operators and EBS licensees).

In particular, as described in the CRA Declaration, the relative availability of network infrastructure and equipment is one key determinant of a spectrum band’s value.²¹² “Mature” spectrum bands already in use – such as the cellular, PCS, and AWS bands – are replete with existing infrastructure and equipment, and are typically more valuable than undeveloped spectrum bands where the future availability of infrastructure and equipment is dependent on extensive research and the cost-intensive design, testing, and production of new components and facilities.²¹³ Over time, as an “ecosystem” of equipment manufacturers and technology vendors emerges in a particular band and generates the necessary equipment and infrastructure for that band, the cost of deployment declines and the spectrum in that band becomes more valuable.²¹⁴

In its *14th CMRS Competition Report*, the Commission described the particularly favorable attributes of the “beachfront” spectrum below 1 GHz, where AT&T has substantial holdings, as detailed below.²¹⁵ The Commission stated that these lower frequency bands have better intrinsic spectrum propagation than spectrum in higher bands and therefore provide signal coverage over larger geographic areas, including in adverse climate conditions and through difficult terrain. Operations in these bands also provide superior penetration of buildings, vehicles, and other physical obstacles. In contrast to higher frequency bands such as the PCS,

²¹² *Id.* ¶¶ 109-10.

²¹³ *Id.*

²¹⁴ *Id.* ¶ 110.

²¹⁵ *14th CMRS Competition Report* ¶¶ 269-71.

AWS, and 2.5 GHz bands, these “excellent” propagation characteristics make the lower bands “ideal for delivering advanced wireless services to rural areas.”²¹⁶ To achieve equivalent coverage, a licensee that holds spectrum in a higher frequency range generally must construct more cell sites at greater cost than a licensee with primary holdings in a lower frequency band.²¹⁷

T-Mobile itself has repeatedly stated that the optimal propagation characteristics of beachfront spectrum below 1 GHz provide significant advantages in the provision of mobile telephony/broadband services. Noting that “not all spectrum is created equal,” T-Mobile has pointed out that “[l]ower frequency bands can transmit more bandwidth over longer distances than higher frequencies, meaning that each cell site transmitting in the lower frequencies is capable of reaching much broader swaths of coverage.”²¹⁸ Because fewer cell sites are needed, build-out at 700 MHz and in the 850 MHz cellular band can be achieved “at less expense to the carrier and therefore lower cost to consumers.”²¹⁹

Other factors at 700 MHz also help make this spectrum *optimal* for commercial mobile broadband service (excluding the Upper 700 MHz D Block, as described *infra* at Part A, Section V.D.). The Commission adopted flexible service rules for the 700 MHz band that permit a range of fixed and mobile wireless operations, including frequency division duplex (“FDD”) technologies such as LTE that require band pairing. In addition, with the completion of the

²¹⁶ *Id.* ¶ 269.

²¹⁷ *Id.* ¶ 270. For instance, Sprint estimates that deployments in the PCS band at 1.9 GHz require approximately three times more cell sites than build-outs in the cellular band, and that deployments in the 2.5 GHz band require approximately six to seven times more cell sites than those in the 700 MHz band.

²¹⁸ Letter from Kathleen O’Brien Ham, T-Mobile USA, Inc., to Marlene H. Dortch, FCC Secretary, WT Docket No. 06-150, at 1 (Apr. 26, 2010).

²¹⁹ Letter from Russell H. Fox, Counsel for T-Mobile USA, Inc., to Marlene H. Dortch, FCC Secretary, WT Docket No. 10-133, at 1-2 (Dec. 2, 2010).

digital television (“DTV”) transition, the 700 MHz band is free of incumbents and available for commercial mobile wireless use, in contrast to other bands where new entrants must engage in the expensive and time-consuming relocation of incumbent licensees. Finally, there should be no significant interference issues affecting the provision of service in this spectrum; while some commercial wireless spectrum is adjacent to public safety frequencies in the Upper 700 MHz band, commercial operators and public safety entities are expected to deploy compatible LTE systems.

AT&T already has enormous holdings in the beachfront spectrum below 1 GHz, including in the 700 MHz band. AT&T holds a nationwide average of 48 MHz of spectrum below 1 GHz – more than three times Sprint’s ESMR holdings in the 800 MHz band, and slightly less than Verizon’s 54 MHz below 1 GHz. Even before AT&T’s acquisition of Qualcomm’s licenses, AT&T and Verizon together control *92 percent* of the paired 700 MHz spectrum suitable for commercial mobile broadband use in the top 54 most populous U.S. markets, and *100 percent* of the paired 700 MHz spectrum suitable for commercial mobile broadband use in the top 10 markets.²²⁰ The acquisition of Qualcomm’s 700 MHz spectrum increases AT&T’s 700 MHz concentration by on average an additional 8 MHz, bringing AT&T’s below-1 GHz total to 56 MHz.

In comparison, the higher-frequency spectrum bands are not as advantageous for mobile broadband development. Clearwire and other BRS licensees in the 2.5 GHz band, for instance, face technical, regulatory, and licensing issues that make their spectrum significantly less

²²⁰ See Statement, attached to Letter from Charles W. Logan, Counsel to Access Spectrum, LLC, to Marlene H. Dortch, FCC Secretary, WT Docket No. 06-150, at 1 (June 17, 2010) (submission on behalf of a coalition that included T-Mobile).

favorable for the provision of mobile broadband service.²²¹ On the technical side, in contrast to lower-frequency bands, the 2.5 GHz band has below average signal propagation in terms of distance and in-building penetration. As discussed above, because transmissions at 2.5 GHz do not travel as far as signals in the bands below 1 GHz, licensees must construct more cell sites. In addition to this natural disadvantage, the process of implementing and superimposing new rules over the Commission’s legacy licensing framework at 2.5 GHz has resulted in a complex, balkanized regulatory and licensing environment. BRS licensees who hold Basic Trading Area (“BTA”) licenses are subject to complicated geographic carve-outs in the form of thousands of incumbent BRS licensees that have idiosyncratic geographic license areas that do not conform to the Commission’s typical geographic or political boundaries. Accordingly, unlike 700 MHz and cellular band licensees, a potential 2.5 GHz broadband provider must layer irregularly shaped geographic licenses and leases across multiple channels to assemble enough spectrum to provide mobile broadband service.

In addition to the propagation and regulatory factors affecting all 2.5 GHz spectrum, other issues at 2.5 GHz make specific portions of this band unsuitable for mobile telephony/broadband services, and the Commission has excluded these band segments from its spectrum screen calculations.²²² First, 42 MHz of spectrum in the Middle Band Segment (“MBS”) at 2572-2614 MHz is used primarily by EBS licensees to transmit educational programming via high-site, high-powered systems. As the Commission has noted, “low-power,

²²¹ Sprint and Clearwire described in detail the factors diminishing the utility of the 2.5 GHz band in their joint filings in the Commission’s 2008 proceeding regarding the transfer of Sprint’s licenses in that band to Clearwire. *See, e.g.*, Joint Opposition to Petitions to Deny and Reply to Comments of Sprint Nextel Corporation and Clearwire Corporation, WT Docket No. 08-94, at 22-31 (Aug. 4, 2008) (“Sprint-Clearwire Joint Opposition & Reply Comments”).

²²² *See Sprint Nextel-Clearwire Order* ¶¶ 67-69, 71; *AT&T-Centennial Merger Order* ¶ 44.

cellularized operations in the MBS could be subject to interference from legacy high-power video operations.”²²³ In addition, neither BRS Channel 1 (“BRS-1”) at 2496-2502 MHz nor the J and K Block guard bands at 2568-2572 MHz and 2614-2618 MHz are readily usable for mobile telephony/broadband services. BRS-1 remains encumbered by other operators and services; BRS licensees must share the 2496-2500 MHz band with co-primary mobile satellite service (“MSS”), broadcast auxiliary service, and fixed microwave licensees, as well as with operators of industrial, scientific, and medical devices.²²⁴ In addition, BRS-1 is located at the bottom of the 2.5 GHz band adjacent to EBS frequencies, and this peripheral spectral position makes it more difficult for Clearwire and other licensees to incorporate that channel into their Worldwide Interoperability for Microwave Access (“WiMAX”) operations.²²⁵ The J and K guard bands, meanwhile, are assigned in small, interleaved increments and are limited to operations that are secondary to adjacent-band systems.²²⁶

Finally, with respect to the 112.5 MHz of EBS spectrum in this band, the Commission has stated that the primary purpose of EBS spectrum “is to further the educational mission of accredited public and private schools, colleges and universities”²²⁷ Only such educational entities are eligible to be licensed on these channels. Consequently, although commercial

²²³ *Sprint Nextel-Clearwire Order* ¶ 67. One of AT&T’s predecessor entities previously recognized the limited utility of this portion of the 2.5 GHz band, stating that the Commission established the MBS to “preserve existing high-power operations, including distance-learning and other educational video programming.” Comments of BellSouth Corp. and BellSouth Wireless Cable, Inc., WT Docket No. 03-66, at 8 (Sep. 8, 2003).

²²⁴ See *Sprint-Clearwire Joint Opposition & Reply Comments* at 24-25.

²²⁵ *Sprint Nextel-Clearwire Order* ¶ 68.

²²⁶ See *Sprint Nextel-Clearwire Order* ¶ 69; 47 C.F.R. § 27.5(i)(2) (establishing guard band channels with 0.33333 MHz in bandwidth); 47 C.F.R. § 27.1222 (guard band operations are secondary).

²²⁷ *Sprint Nextel-Clearwire Order* ¶ 71.

operators such as Clearwire can lease spectrum from EBS licensees, such lease arrangements are “subject to various special requirements designed to maintain the primary educational character of services provided using EBS.”²²⁸ In particular, the Commission continues to require that at least five percent of an EBS licensee’s spectrum be reserved for educational use, and some EBS licensees negotiate lease agreements that reserve a considerably greater percentage of spectrum capacity to meet their educational needs. The Commission also limits EBS leases entered into after July 2006 to thirty-year terms with a mandatory lessor “right of review” at 15 years into the term and every five years thereafter.²²⁹ These term limits and rights of review create significant business uncertainty for EBS lessees not faced by licensees of commercial spectrum. In addition, as the Commission has pointed out, EBS spectrum is licensed solely on a site-specific basis, a fact that complicates using that spectrum for commercial purposes.²³⁰

In a transparent effort to downplay its own enviable spectrum assets, both pre- and post-merger, AT&T stresses the total amount of BRS/EBS spectrum (194 MHz) available at 2.5 GHz. The Applicants assert that Clearwire (and, due to the Commission’s spectrum attribution rules, Sprint) has the largest spectrum position for wireless broadband services.²³¹ The Commission knows better, however, and includes only 55.5 MHz of BRS spectrum in its spectrum screen calculations due to the limiting factors detailed above. Even this amount greatly overstates the relative importance of the BRS spectrum when measured by value. For what matters most – the actual construction of a wireless broadband network – AT&T would have far

²²⁸ *Id.*

²²⁹ 47 C.F.R. § 27.1214(e).

²³⁰ *Sprint Nextel-Clearwire Order* ¶ 71.

²³¹ Application at 81, 92.

more broadband-optimal and broadband-useful spectrum following the T-Mobile and Qualcomm transactions than Clearwire, Sprint, or even Verizon.

The spectrum marketplace reflects this reality, as AT&T is well aware. For example, in its 2007 transaction with Clearwire, AT&T received only \$0.17 per MHz Pop in return for its 2.5 GHz holdings.²³² In contrast, AT&T paid more than eighteen times as much (\$3.15 per MHz Pop) for Lower 700 MHz B and C Block licenses at auction in 2008.²³³ On the secondary market, AT&T paid more than six times as much (\$1.06 per MHz Pop) for Aloha Partners' Lower 700 MHz spectrum in 2007,²³⁴ and is set to pay more than five times as much (\$0.87 per MHz Pop) for Qualcomm's Lower 700 MHz spectrum.²³⁵

2. The Size and Value of AT&T's Prospective Post-Transaction Spectrum Holdings Portend Substantial Competitive Harm

The CRA Declaration highlights the enormous marketplace value of AT&T's (and, together, the Twin Bells') spectrum portfolio following the proposed takeover. Based on publicly reported book values, AT&T's spectrum holdings in the 700 MHz, 850 MHz cellular, PCS, and AWS bands (including the 700 MHz holdings being acquired from Qualcomm) have a total financial value of approximately \$52 billion.²³⁶ As the CRA Declaration indicates, these holdings represent approximately 28 percent of the total financial value of all spectrum

²³² Opposition to Petitions to Deny and Reply to Comments of Intel Corp., WT Docket No. 08-94. at 4 (Aug. 4, 2008).

²³³ See *Verizon Nearly Lost Bid for National C-Block License*, COMM. DAILY (Mar. 25, 2008).

²³⁴ See Jamie Townsend, *Whether it Wins or Loses Block E, Qualcomm Suffers*, SEEKING ALPHA, (Feb. 22, 2008) available at: <<http://seekingalpha.com/article/65656-whether-it-wins-or-loses-block-e-qualcomm-suffers>>.

²³⁵ See Today's News, *AT&T to Buy 700 MHz Spectrum from Qualcomm*, COMM. DAILY, (Dec. 21, 2010).

²³⁶ CRA Decl. at Table 6.

considered by the Commission to be suitable for mobile telephony/broadband services plus additional spectrum held by Clearwire at 2.5 GHz and by LightSquared in the MSS L band.²³⁷ Following the proposed transaction, the total financial value of AT&T's post-merger spectrum holdings would increase to approximately \$67 billion, and its share of the overall value of this volume of spectrum would increase to 36 percent.²³⁸ AT&T's spectrum would be more than *three times* as valuable as Sprint's holdings. In contrast, given the lower value of the 2.5 GHz band, as discussed above, Clearwire's overall spectrum holdings at 2.5 GHz would account for just seven percent of the financial value of AT&T's spectrum holdings.²³⁹ If the proposed T-Mobile takeover and Qualcomm 700 MHz acquisition are not blocked, AT&T and Verizon collectively would hold spectrum licenses accounting for approximately 74 percent of the overall financial value of the spectrum identified above.²⁴⁰

AT&T's unprecedented aggregation of highly valuable spectrum portends serious competitive harm in the mobile wireless marketplace, both at the national and local levels. AT&T is not the only carrier experiencing dramatic increases in data usage. Sprint and other competitors also face rapidly growing bandwidth demands, and potential new entrants can expect a similar growth in their mobile data services. With the Twin Bells controlling an enormous percentage of the nation's most valuable spectrum holdings following the transaction, Sprint and other carriers would be unable to meet their capacity needs by accessing spectrum in these core wireless bands. Nor would Sprint and other carriers likely have near-term access to significant

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

new spectrum in the critical bands below 1 GHz, given the uncertain timing of Congressional legislation authorizing incentive auctions for broadcast spectrum.

To avoid operational harms resulting from limited capacity, Sprint, other incumbents, and new entrants would be forced to rely on other spectrum bands that could become suitable for wireless broadband communications in the future. Given the undeveloped nature of these bands, Sprint and other carriers would incur the higher costs of developing the infrastructure, equipment, and ecosystems necessary for commercial operations in those bands.²⁴¹ Since this spectrum is largely above 1 GHz, use of these higher-frequency bands would also likely result in greater network deployment costs for these carriers. These additional costs would weaken the competitive efforts of Sprint and other carriers and reduce their ability to act as a competitive constraint on the behavior of AT&T and Verizon.²⁴²

In contrast, rather than bear their share of the cost of developing infrastructure and equipment in these new bands, AT&T and Verizon would be able to exploit their almost complete control of the 700 MHz and AWS bands as well as their substantial holdings in the cellular and PCS bands, all of which feature mature ecosystems and advantageous scale efficiencies. By shifting these developmental costs to Sprint and other carriers, grant of the Application would have the effect of “exclud[ing] efficient competitors, reduc[ing] the quantity of service available to the public, and increas[ing] prices to the detriment of consumers.”²⁴³ By refusing to approve the proposed takeover, the Commission can prevent these merger-specific, anti-competitive harms.

²⁴¹ *Id.* ¶¶ 111-12.

²⁴² *Id.* ¶ 112.

²⁴³ *Implementation of Sections 3(n) and 332 of the Communications Act*, Third Report and Order, 9 FCC Rcd 7988 ¶ 248 (1994).

D. The Commission Should Reject the Applicants’ Call for Relaxing the Spectrum Screen

The Commission should reject Applicants’ conclusory arguments in favor of a higher, more permissive spectrum screen for its local market competition analysis. Specifically, the Applicants urge the Commission to include all 194 MHz of BRS/EBS spectrum in the 2.5 GHz band and 90 MHz of MSS ancillary terrestrial component (“ATC”) spectrum in its screen analysis, and to increase the screen threshold accordingly.²⁴⁴ In response, the Commission should affirm its most recent determinations on these bands.²⁴⁵

2.5 GHz Band. For the reasons described above, the Commission should continue to exclude MBS spectrum, BRS Channel 1, the J and K guard bands, and EBS spectrum from its spectrum screen calculations. Mobile broadband operations in the MBS would be subject to untenable interference, while the probability of interference resulting from the tri-primary allocation of BRS-1 severely constrains the mobile broadband utility of that channel. In addition, the J and K Block guard bands are not suitable for mobile broadband deployments precisely because they are needed to manage potential interference from high-power MBS operations to the BRS and EBS channel blocks. Nor have the Applicants provided any reason for the Commission to revisit its conclusions regarding the EBS portions of the band. Educational use requirements and other leasing restrictions remain in place in the EBS spectrum. In addition, as the Commission has pointed out, the inclusion of EBS spectrum in the

²⁴⁴ Application at 77-78; *see also* Public Interest Statement, attached to AT&T-Qualcomm Application at 21-28.

²⁴⁵ *See Sprint Nextel-Clearwire Order* ¶¶ 67-71. The Commission affirmed its spectrum screen analysis in a 2009 order that summarily rejected AT&T’s argument that all 2.5 GHz spectrum and MSS ATC spectrum be included in the FCC’s spectrum screen. *AT&T-Centennial Merger Order* ¶ 44. Nothing has changed to warrant a different conclusion here.

Commission’s screen analysis could disrupt the carefully tailored relationships between EBS licensees and commercial operators by potentially forcing the divestiture of EBS spectrum or by limiting the pool of potential EBS lessees.²⁴⁶

MSS ATC Spectrum. The Commission should similarly reject the Applicants’ call for the inclusion of 90 MHz of MSS ATC spectrum in its spectrum screen analysis.²⁴⁷ The Applicants’ argument for including MSS ATC spectrum in the Commission’s spectrum screen calculations focuses primarily on LightSquared, which is the U.S.-licensed MSS licensee in the L band at 1525-1559 MHz/1626.5-1660.5 MHz. The National Broadband Plan indicated that, out of that L-band spectrum, approximately 40 MHz may be at some point usable for terrestrial wireless broadband services.²⁴⁸ In January 2011, LightSquared obtained a limited waiver from the Commission’s International Bureau that, subject to key conditions, would enable it to lease spectrum to terrestrial wireless operators who, in turn, could use those frequencies to provide mobile telephony/broadband services to the public.²⁴⁹

A principal condition in the International Bureau’s *LightSquared Order*, however, may inhibit the immediate use of LightSquared’s spectrum for mobile telephony/broadband service. Numerous Global Positioning System (“GPS”) manufacturers and users strongly opposed the

²⁴⁶ See Sprint-Clearwire Joint Opposition & Reply Comments at 27.

²⁴⁷ Application at 77.

²⁴⁸ See FCC, “Connecting America: The National Broadband Plan,” at 87 (rel. March 16, 2010), available at: <<http://download.broadband.gov/plan/national-broadband-plan.pdf>> (“National Broadband Plan”).

²⁴⁹ See *LightSquared Subsidiary LLC; Request for Modification of its Authority for an Ancillary Terrestrial Component*, Order and Authorization, 26 FCC Rcd 566 (IB 2011) (“*LightSquared Modification Order*”). Although, as the Applicants point out, LightSquared is currently required to provide terrestrial wireless coverage to at least 100 million people in the U.S. by December 31, 2012, its ability to commence such service is on hold pending Commission review of certain interference concerns, as discussed below.

Bureau’s waiver on the basis that LightSquared’s terrestrial operations in the L band would cause harmful interference to adjacent-band GPS operations above 1559 MHz.²⁵⁰ In response to these interference concerns, the International Bureau required LightSquared to establish a broad-based Working Group of potentially-affected interested parties to study these interference issues, and to submit a report to the Commission by June 15, 2011.²⁵¹ LightSquared is not permitted to initiate terrestrial wireless operations in the L band until the Commission, after consultation with the National Telecommunications and Information Administration (“NTIA”), concludes that concerns regarding harmful interference to GPS devices have been resolved. Notably, based on these same interference concerns, GPS interests are seeking Commission review of the Bureau’s *LightSquared Order*.²⁵² Thus, wireless broadband services are not presently being provided using the L band, and its future terrestrial broadband availability remains subject to ongoing licensing and regulatory proceedings at the Commission. Accordingly, the Commission should affirm its previous decisions excluding this MSS spectrum from its screen calculations.²⁵³

With respect to the 2 GHz MSS band at 2000-2020 MHz/2180-2200 MHz, TerreStar Networks and DBSD North America are each in the midst of bankruptcy proceedings and are in financial and operational limbo. Given the current status of these licensees and the

²⁵⁰ See, e.g., Petition, U.S. GPS Industry Council, File No. SAT-MOD-20101118-00239 (Dec. 2, 2010).

²⁵¹ See *LightSquared Modification Order* ¶¶ 42-43.

²⁵² See Petition, U.S. GPS Industry Council, File No. SAT-MOD-20101118-00239 (Feb. 25, 2011); Application for Review of Aviation Spectrum Resources, Inc., File No. SAT-MOD-20101118-00239 (Feb. 25, 2011).

²⁵³ *Verizon-Atlantis Merger Order* ¶ 68; *AT&T-Centennial Merger Order* ¶ 44.

Commission’s pending rulemaking on terrestrial use of MSS spectrum,²⁵⁴ there is no near-term timetable for terrestrial broadband deployments in that band.

For the reasons described above, the Commission should deny the Applicants’ proposal for a higher spectrum screen threshold for its local competition analysis.²⁵⁵

VI. THE PROPOSED TRANSACTION WOULD CAUSE OTHER PUBLIC INTEREST HARMS

A. The Proposed Transaction Would Result in Significant Job Loss and Reduced Investment in America Just as the Nation is Struggling to Emerge from the Recession

AT&T’s takeover of T-Mobile would not only harm competition and reduce innovation, its planned “operational savings and cost synergies” would lead to lost jobs and reduced investment in the United States.²⁵⁶ While T-Mobile has been investing in the U.S. economy and expanding its workforce, AT&T’s “growth by acquisition” strategy has resulted in thousands of layoffs. There is every reason to expect the same result here. These merger-specific

²⁵⁴ *Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz*, Notice of Proposed Rulemaking and Notice of Inquiry, 25 FCC Rcd 9481 (2010) (“*MSS NPRM & NOP*”).

²⁵⁵ If anything, the Commission should exclude some currently-considered spectrum from its spectrum screen calculations and thereby *lower* the screen threshold, given that: (1) commercial auction of the Upper 700 D Block is uncertain; and (2) portions of the SMR spectrum in the 800 and 900 MHz bands are unable to support mobile broadband services. However, if the Commission desires to fundamentally revise its spectrum screen in this proceeding, it should develop a weighted screen based on the market values of the various spectrum bands that are currently licensed to or available to wireless carriers for mobile telephony/broadband communications. By incorporating this weighting approach into its spectrum screen analysis, the Commission would fashion a more effective mechanism for identifying local markets that should be subject to further competitive scrutiny. Applying this methodology, more than 202 CMAs would likely be subject to further competitive review, better reflecting the far-reaching anti-competitive effects of the proposed takeover. If the Commission concludes that it cannot consider this approach here, it should address this potential change to its spectrum screen methodology in a subsequent rulemaking proceeding.

²⁵⁶ *See, e.g.*, Application at 9.

anti-competitive harms contravene the public interest and provide additional reasons for the Commission to disapprove the proposed takeover.²⁵⁷

1. Loss of American Jobs

Rather than building out its spectrum, investing in new technologies, or splitting cells to improve its existing network, AT&T proposes a transaction that would reduce investment in network facilities and reduce jobs. In announcing its takeover plans to investors, AT&T highlighted the fact that, if the FCC and DoJ approve the deal, AT&T would save \$10 billion in “[a]voided purchases and investments.”²⁵⁸ Moreover, to acquire T-Mobile, AT&T has agreed to pay DT a total of \$39 billion, an amount that would “include a cash payment of \$25 billion with the balance [\$14 billion] to be paid using AT&T common stock, subject to adjustment.”²⁵⁹ This very high price tag would put great pressure on AT&T to slash costs by closing retail stores and cutting jobs. The “combined company is expected to close hundreds of retail outlets in areas where they overlap, as well as eliminate overlapping back office, technical and call center staff.”²⁶⁰ In fact, while highlighting potential profit margins to investors,²⁶¹ AT&T announced

²⁵⁷ See, e.g., *ITT World Communications Inc. Application for Consent to Transfer of Control of Press Wireless, Inc. to ITT World Communications Inc.*, Memorandum Opinion and Order, 1 FCC 2d 213 (1965) (“[I]t is incumbent upon the Commission[,] in evaluating the merits of the instant application for transfer of control, to ascertain whether the proposed treatment of the employees affected is consistent with the public interest[.]”).

²⁵⁸ AT&T Investor Presentation, *AT&T + T-Mobile: A World-Class Platform for the Future of Mobile Broadband*, at 35 (Mar. 21, 2011) (“Mar. 21, 2011 AT&T Investor Presentation”) available at: <http://www.mobilizeeverything.com/documents/AT&T_T-Mobile%20A%20World%20Class%20Platform%20for%20the%20Future%20of%20Mobile%20Broadband.pdf>.

²⁵⁹ Application at 16.

²⁶⁰ Andrew R. Sorkin, Michael J. de la Merced, & Jenna Wortham, *AT&T Makes Deal to Buy T-Mobile for \$39 Billion*, N.Y. TIMES, March 21, 2011, at A3.

²⁶¹ Mar. 21, 2011 AT&T Investor Presentation Transcript at 13-14 (statement of Richard G. Lindner, Senior Executive Vice President and Chief Financial Officer (“CFO”), AT&T Inc.).

that it would carry out force reductions, close stores, and limit retail distribution through “rationalization” if the transaction is approved.²⁶² “[E]fficiencies’ is code for an unsettling possibility: the elimination of thousands of jobs.”²⁶³

2. Reduced Investment in America

AT&T’s proposed \$25 billion cash payment to DT represents a capital outflow from the U.S. to Europe where, as the Applicants explain, it would be used to invest in broadband deployment in Germany and the rest of Europe.²⁶⁴ DT Senior Vice President Thorsten Langheim attested in his Declaration that the transaction would provide the resources necessary to modernize and upgrade Deutsche Telekom’s core businesses in Europe.²⁶⁵

²⁶² Mar. 21, 2011 AT&T Investor Presentation at 11.

²⁶³ Sara Jerome, *Groups Say AT&T Merger is Job Killer*, THE HILL, Mar. 23, 2011, available at: <<http://thehill.com/blogs/hillicon-valley/technology/151587-atat-merger-job-killer>>.

²⁶⁴ Application at 5 (admitting that a key reason for the transaction is that “Deutsche Telekom[] must dedicate significant capital resources to broadband deployment in Germany and the rest of Europe”). It is also noteworthy that Germany, where the merger proceeds would help fund investment in broadband, “has made slow progress in introducing competition to some sectors of its telecommunications market” and may not be in compliance with its General Agreement on Trade in Services (“GATS”) commitments. *See, e.g.*, 2010 National Trade Estimate Report on Foreign Trade Barriers, Office of the U.S. Trade Representative, at 139-40, available at: <http://www.ustr.gov/sites/default/files/uploads/reports/2010/NTE/NTE_COMPLETE_WITH_APPENDnonameack.pdf>; Letter from Jerry James, CEO, COMPTEL, to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, at 1 (Dec. 21, 2010).

²⁶⁵ Declaration of Thorsten Langheim, attached to Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65, at 2, 3-4 (Apr. 21, 2011) (noting that the transaction would accelerate DT’s “ability to transform the company by modernizing and upgrading its networks in Deutsche Telekom’s core businesses in Europe” and “facilitate innovation and enable Deutsche Telekom to focus on the opportunities of a modern infrastructure for new Internet products and services in Germany and Europe”) (“Langheim Decl.”).

President Obama has stated that “now is the time to invest *in America*,” because, “as a country, we have a responsibility to encourage American innovation.”²⁶⁶ As Chairman Genachowski asked, the question the Commission faces is whether we are “going to take the necessary steps to assume global leadership in broadband and fully realize these economic and social benefits here at home[,] [o]r are we going to let the lion’s share of those benefits accrue to others?”²⁶⁷ The Commission must answer by safeguarding competition in the U.S. telecommunications industry to ensure continued innovation and investment in America. Contrary to the Applicants’ claims that the proposed transaction would promote job growth and innovation in the U.S., the transaction would export jobs and billions of investment dollars overseas.²⁶⁸

²⁶⁶ President Barack Obama, Remarks by the President to the Chamber of Commerce (Feb. 07, 2011), *available at*: <<http://www.whitehouse.gov/the-press-office/2011/02/07/remarks-president-chamber-commerce>> (emphasis added). *See also* President Barack Obama, Remarks by the President on Job Creation and Economic Growth (Dec. 08, 2009) (explaining that “government can help lay the groundwork on which the private sector can better generate jobs, growth, and innovation”), *available at*: <<http://www.whitehouse.gov/the-press-office/remarks-president-job-creation-and-economic-growth>>.

²⁶⁷ FCC Chairman Julius Genachowski, *Broadband: Our Enduring Engine for Prosperity and Opportunity*, NARUC Conference, at 4 (Feb. 16, 2010), *available at*: <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296262A1.pdf>. *See also* *Consumers, Competition, and Consolidation in the Video and Broadband Market: Hearing Before the S. Comm. on Commerce, Science and Transportation*, 111th Cong. (Mar. 11, 2010) (statement of FCC Chairman Julius Genachowski) (“An important part of our responsibility at the Commission is to ensure that communications industry transaction do not enable firms to frustrate innovation ... Investment, innovation, and employment are key objectives, as is the rapid and widespread deployment of advanced communications services. These and other traditional goals and values will inform our review of transactions.”), *available at*: <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296803A1.pdf>.

²⁶⁸ Application at 54-63.

B. The Proposed Takeover Would Thwart the National Broadband Plan

AT&T’s acquisition of T-Mobile would be flatly inconsistent with the pro-competitive policies and goals of the National Broadband Plan. As the Plan emphasizes, competition is a central element of achieving the national broadband goals. “Competition is crucial for promoting consumer welfare and spurring innovation and investment in broadband access networks. Competition provides consumers the benefits of choice, better service and lower prices.”²⁶⁹ To “ensure that America has a world-leading broadband ecosystem” the National Broadband Plan recommends that the nation “maximize innovation, investment and consumer welfare, primarily through competition.”²⁷⁰

National Broadband Plan	AT&T Takeover Thwarts This Goal
Goal No. 1: At least 100 million U.S. homes should have affordable access to actual download speeds of at least 100 megabits per second and actual upload speeds of at least 50 megabits per second.	AT&T’s takeover would chill investment in broadband networks by diminishing competition, and would lead to higher prices for broadband access.
Goal No. 2: The United States should lead the world in mobile innovation, with the fastest and most extensive wireless networks of any nation.	AT&T’s takeover of T-Mobile would create a wireless duopoly for the Twin Bells, threatening innovation. Robust competition, not duopoly, drives innovation and broadband deployment.
Goal No. 3: Every American should have affordable access to robust broadband service, and the means and skills to subscribe if they so choose.	AT&T’s takeover would increase the power of the Twin Bells to raise prices, threatening affordability, particularly for the most vulnerable populations.
Goal No. 4: Every community should have affordable access to at least 1 gigabit per second broadband service to anchor institutions such as schools, hospitals, and government buildings.	AT&T’s takeover would increase the power of the Twin Bells to raise the prices of key inputs to broadband access. The National Broadband Plan emphasized the importance of these inputs to advancing the National Broadband Goals.
Goal No. 5: To ensure the safety of American communities, every first responder should have access to a nationwide, wireless, interoperable broadband public safety network.	AT&T’s takeover would set back the goal of an interoperable public safety network by reinforcing AT&T’s exclusive spectrum band classes.

²⁶⁹ National Broadband Plan at 36.

²⁷⁰ *Id.* at 11.

The merged entity would have the incentive and ability to raise prices, putting broadband access even further out of reach for tens of millions of Americans. Because “[c]ompetition is a major driver of innovation and investment,”²⁷¹ the proposed acquisition threatens to slow more than two decades of rapid innovation in wireless communications. While competition has induced providers to invest in network upgrades,²⁷² a duopoly is likely to choke off investment and sap the power of the mobile Internet as a vital growth engine for the economy. In addition, AT&T’s takeover would exacerbate the Twin Bells’ incentive to extract even more revenue from their stranglehold on broadband backhaul, a key input in providing affordable broadband access to anchor institutions and businesses of all sizes. If the National Broadband Plan presented a bold roadmap for the future of the Internet in America, then AT&T’s proposed takeover would put the car in reverse. Competition, not duopoly, will drive investment, innovation and broadband deployment. If approved, the takeover would threaten the long term goals of the National Broadband Plan.

PART B

THE APPLICANTS’ ALLEGATIONS REGARDING THE PURPORTED PUBLIC INTEREST BENEFITS OF THE TRANSACTION ARE NEITHER CREDIBLE NOR TRANSACTION SPECIFIC

I. INTRODUCTION

The Applicants bear the burden of demonstrating that the proposed transaction would result in public interest benefits that outweigh the competitive and public interest harms of their

²⁷¹ *Id.* at 29.

²⁷² *Id.* at 38.

transaction.²⁷³ The Commission examines four criteria in assessing whether a proposed transaction would benefit the public interest. First, the claimed benefit must be transaction specific, *i.e.*, “the claimed benefit ‘must be likely to be accomplished as a result of the merger but unlikely to be realized by other means that entail fewer anti-competitive effects.’”²⁷⁴ Second, the claimed benefit must be verifiable:

Because much of the information relating to the potential benefits of a merger is in the sole possession of the applicants, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude. In addition, “the magnitude of benefits must be calculated net of the cost of achieving them.” Furthermore, . . . “benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present.”²⁷⁵

Third, the Commission “will more likely find marginal cost reductions to be cognizable than reductions in fixed cost” because, “in general, reductions in marginal cost are more likely to result in lower prices for consumers.”²⁷⁶ Fourth, under the Commission’s “sliding scale approach” to evaluating benefit claims, “where potential harms appear ‘both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.’”²⁷⁷

AT&T, DT and T-Mobile fall far short of proving that the proposed transaction would result in *any* public interest benefits, let alone benefits that would outweigh the serious public interest harms described in Part A of this petition. The Applicants’ alleged public interest

²⁷³ See, e.g., *AT&T-Centennial Merger Order* ¶ 89.

²⁷⁴ *Id.* ¶ 90 (footnotes omitted).

²⁷⁵ *Id.* (footnotes omitted).

²⁷⁶ *Id.* (footnotes omitted).

²⁷⁷ *Id.* ¶ 91 (footnotes omitted).

benefits – including alleviating purported capacity constraints and the claimed expansion of AT&T's LTE network deployment – are speculative, lack credibility, and have no demonstrated connection to the proposed transaction.²⁷⁸ The Commission should give these alleged benefits no weight.

II. THE APPLICANTS' CLAIMS REGARDING NETWORK CAPACITY CONSTRAINTS LACK CREDIBILITY AND IGNORE EFFICIENT SPECTRUM MANAGEMENT PRACTICES

The Commission should reject assertions by AT&T, DT and T-Mobile that the proposed transaction is necessary to relieve capacity constraints their networks allegedly face as the result of growing consumer demand for broadband data services. The Applicants' exaggerated claims are undermined by their own prior statements and the facts. The Applicants' claims also are premised on outdated assumptions and ignore a range of network management practices and new technologies that would maximize the efficient use of their existing spectrum holdings and permit them to meet consumer demand for their services *without* an anti-competitive merger. As Steven Stravitz, the CEO and Managing Director of Spectrum Management Consulting, concludes in his declaration,

*AT&T uses only roughly half of its licensed spectrum. Yet AT&T does not provide technically compelling reasons for idling those resources, inappropriately justifies the transaction as the cure to spectrum capacity limits, and does not provide data needed to reject many readily available spectrum and capacity management alternatives that can address Applicants' capacity challenges at a cost far below \$39 billion. ... AT&T's proposed acquisition of T-Mobile will perpetuate AT&T's inefficient spectrum use. Rather than encouraging investment in new, innovative, and more efficient technologies, the proposed T-Mobile acquisition would permit AT&T to keep subscribers tied to older and less efficient technologies, delay innovative new facilities-based investment, and continue to maintain a large inventory of unused spectrum.*²⁷⁹

²⁷⁸ See CRA Decl. ¶ 184.

²⁷⁹ Declaration of Steven Stravitz, Attachment G ¶¶ 7, 10 ("Stravitz Decl.").

A. The Applicants Provide No Evidence Demonstrating that AT&T Faces Unique Demands on Its Network

The Application claims that AT&T is facing “unique spectrum and capacity challenges” and that its “mobile data volumes . . . surged by a staggering 8000% from 2007 to 2010[.]”²⁸⁰ The Applicants, however, do not provide sufficient data to back up this claim. As the Stravitz Declaration explains, the Application provides “no baseline for comparison or amount of data transmitted per mobile user . . . to substantiate this claim or enable analysis of the relative efficiency of AT&T’s network[.]”²⁸¹ At one point the Application refers to an 8,000 percent increase in “mobile data” volumes while a declaration attached to the Application refers to an 8,000 percent increase in “mobile broadband use.”²⁸² Which is it? Are the Applicants measuring 3G data usage or are they also including 2G data services and text messaging? Does the data reflect usage by all AT&T subscribers, or just its iPhone and smartphone subscribers? The Applicants also do not provide data usage on a market-by-market basis, which would be the more relevant data to assess claims that they are facing network congestion in specific markets.²⁸³

Although there is no dispute that mobile data usage by subscribers is increasing, *all* carriers face this increased demand. As the Stravitz Declaration points out, “AT&T’s experience as a wireless data service provider appears to be wholly unremarkable” given that the wireless

²⁸⁰ Application at 2.

²⁸¹ Stravitz Decl. ¶ 11.

²⁸² Compare *id.* with Donovan Decl. ¶ 41.

²⁸³ See Stravitz Decl. ¶ 11 (“Nor did AT&T account for geographic variations between urban, rural, and suburban areas. And, of course, AT&T’s claim does not capture critical monthly, daily, weekly, or even hourly fluctuations in data traffic.”).

industry as a whole has seen substantial growth in data traffic.²⁸⁴ The Applicants provide no verifiable data to substantiate that AT&T is somehow “unique” in the network challenges it faces. Moreover, as explained in the following sections, AT&T is better equipped than most if not all carriers to handle the increased demand given its very large spectrum holdings, including its large amount of *unused* spectrum.

B. AT&T’s Failure to Properly Invest in Its Network, Not a Lack of Spectrum, Is the Cause of Any Alleged Capacity Constraints

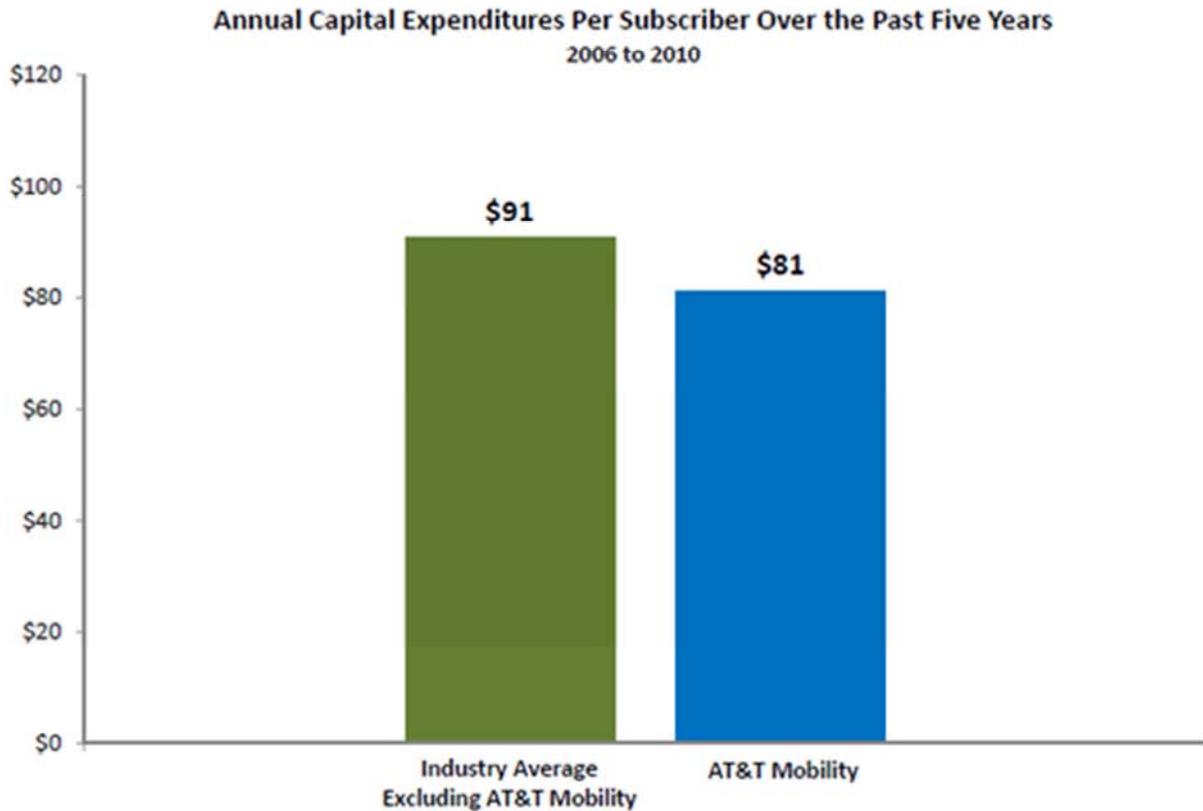
In the long term, the Commission will need to allocate additional spectrum for mobile broadband services, and Congress, the Administration, the Commission, and the wireless industry are working proactively to achieve this objective. In the meantime, every carrier – including AT&T and T-Mobile – can upgrade existing infrastructure, maximize the efficient use of its existing spectrum, and follow smart, proven network management practices to meet consumer demand. Allowing the marketplace to require competitors to address these types of constraints is the right way to spur competition and foster innovation. Indeed, according to T-Mobile’s executives, that is exactly what T-Mobile was doing before the takeover was proposed.²⁸⁵

AT&T, on the other hand, has a history of failing to take innovative risks or make the investments in its network necessary to maximize the efficiency of its spectrum and provide quality service to consumers. The following chart shows that AT&T has lagged significantly

²⁸⁴ *Id.* ¶ 14.

²⁸⁵ Jan. 20, 2011 Deutsche Telekom Briefing at 2 (“We have made huge upgrades to our network in a very short time thanks to the great efforts from the technology teams, . . . and we are now counting about 49,000 cell sites of which almost 50% are already connected with fiber backhaul.”).

behind other carriers in network investment as measured on a capital expenditure per subscriber basis over the past five years.



Source: *US Wireless 411*, UBS Investment Research, Mar. 23, 2009, at 13, 51; *US Wireless 411*, UBS Investment Research, Mar. 30, 2011, at 13, 51; Clearwire, Form 10-K, 2010 (electronic form), Tables 8, 63; Clearwire, Form 10-K 2007, at 96.²⁸⁶

According to a recent report, AT&T invested one billion dollars *less* in its network than Verizon between 2008 and 2010.²⁸⁷ The report further observes that “even though AT&T already knew that it had congestion problems on its network after the introduction of the iPhone in 2007, it still

²⁸⁶ The analyst report cited in the chart is cited only for factual statements. Sprint otherwise disclaims and does not endorse or adopt said report, including any statements, opinions, or analysis therein.

²⁸⁷ Marguerite Reardon, *Is AT&T a Wireless Spectrum Hog?*, CNET (Apr. 29, 2011), available at: <http://news.cnet.com/8301-30686_3-20058494-266.html>.

only increased wireless capital expenditures by 1 percent in 2009 compared with an increase in capital spending from Verizon [] by about 10 percent.”²⁸⁸

AT&T’s “investment shortfall,” not a lack of spectrum, has “been the major cause of AT&T’s poor network performance.”²⁸⁹ As explained in the CRA Declaration, AT&T’s alleged capacity constraints appear to be a result of its own failure to estimate accurately the data usage created by its iPhone and other devices.²⁹⁰ Skimping on network investment may maximize net revenues and thus please investors; it certainly would please DT, which makes no secret of its desire to start collecting a “significant annual dividend” as the largest single AT&T shareholder if the Commission approves the proposed takeover.²⁹¹ But what may be “great for investors (AT&T’s entire reason for holding full investment back) [is] not so great for those who’d actually like to complete a phone call while walking down Fifth Avenue.”²⁹²

AT&T’s failure to invest sufficiently in its own network has resulted in the worst customer satisfaction ratings among national carriers.²⁹³ Indeed, AT&T has previously cited its

²⁸⁸ *Id.*

²⁸⁹ Karl Bode, *Analyst: AT&T Not Spending Enough on Wireless – Network Problems Are the Company’s Own Fault*, BROADBAND DSL REPORTS (Jan. 20, 2010), available at: <<http://www.dslreports.com/shownews/Analyst-ATT-Not-Spending-Enough-On-Wireless-106493>> (“Broadband DSL Reports Jan. 2010 Article”).

²⁹⁰ CRA Decl. ¶ 195; *see also* Stravitz Decl. ¶ 42.

²⁹¹ Langheim Decl. ¶ 9.

²⁹² Broadband DSL Reports Jan. 2010 Article.

²⁹³ *See, e.g., Consumer Reports Cell-Service Ratings: AT&T is the Worst Carrier*, CONSUMER REPORTS (Dec. 6, 2010) (“AT&T is the lowest-scoring cell-phone carrier in the U.S., according to a satisfaction survey of 58,000 ConsumerReports.org readers. Of all the carriers rated, AT&T was the only one to drop significantly in overall satisfaction.”), available at: <<http://news.consumerreports.org/electronics/2010/12/consumer-reports-cell-phone-survey-att-worst.html>>. *See also AT&T-Cingular Merger Order* ¶ 207 (“[B]oth existing companies have been criticized for the quality of their service, including the number of blocked and dropped calls and calls of marginal quality.”).

own poor service as a justification for a prior merger, claiming, as it does here, that it would improve the quality of its service by combining spectrum and network assets with a competing carrier.²⁹⁴ That promise has gone unfulfilled, as AT&T continues to be ranked last among national carriers in terms of dropped calls and service quality.²⁹⁵ Rather than competing in the marketplace by appropriately investing in its network and fixing its own network management practices, AT&T once again seeks to repackage its management decisions into a spectrum shortage problem that it can use to justify an acquisition. AT&T is seeking a bailout from problems of its own making, with the cost of this bailout paid by consumers in terms of higher prices, less innovation, and poor service.

²⁹⁴ *AT&T-Cingular Merger Order* ¶ 207.

²⁹⁵ See Karl Bode, *Verizon iPhone Users See Fewer Dropped Calls, ChangeWave: AT&T Still has the Worst Dropped Call Ranking*, BROADBAND DSL REPORTS (Apr. 6, 2011) (noting that “[n]ot only does AT&T lead the industry in dropped calls, they generally rank as the very worst carrier in terms of overall customer satisfaction”), available at: <<http://www.dslreports.com/shownews/Verizon-iPhone-Users-See-Fewer-Dropped-Calls-113581>>; *ChangeWave Survey: Many AT&T iPhone Users Now Plan to Switch to Verizon*, MACDAILYNEWS (Jan. 14, 2011), available at: <http://macdailynews.com/2011/01/14/changewave_survey_many_att_iphone_users_now_plan_to_switch_to_verizon/> (“What’s behind the weakening loyalty of AT&T customers? First, better than two-in-five likely switchers from AT&T cite *Poor Reception/Coverage* (42%) as their top reason for leaving, followed by *Dropped Calls* (27%).”); Press Release, J.D. Power and Associates, *Incidence of Dropped Calls Increases Considerably among Customers Who Are Most Likely to Switch Wireless Providers* (Sept. 9, 2010) (ranking AT&T lowest for call quality in the mid-Atlantic region, southeast region, southwest region, and west region), available at: <<http://businesscenter.jdpower.com/JDPAContent/CorpComm/News/content/Releases/pdf/2010174-wcq2.pdf>>; Jason Mick, *UPDATE 2: Study Finds AT&T Last in Dropped Calls, Satisfaction; AT&T Disputes Results*, DAILYTECH (May 5, 2010), available at: <<http://www.dailytech.com/UPDATE+2+Study+Finds+ATT+Last+in+Dropped+Calls+Satisfaction+ATT+Disputes+Results/article18305.htm>>; Phillip Elmer-DeWitt, *AT&T Dropping More Calls Than Ever*, CNN MONEY (May 5, 2010), available at: <<http://tech.fortune.cnn.com/2010/05/05/att-dropping-more-calls-than-ever/>>.

C. AT&T’s Past Statements and Common Sense Contradict Its Capacity Constraint Claims

Spectrum is always in demand and no one disputes that making one of the essential inputs to delivering wireless broadband services more abundant brings substantial benefits. Yet AT&T’s hyperbole about its capacity constraints is belied by the facts and its own prior statements concerning its spectrum holdings. As noted previously and discussed in detail below, AT&T holds more licensed spectrum than any other CMRS carrier but has yet to deploy *any* service on a large portion of that spectrum (subsections 1 and 2 below). Verizon, which serves more subscribers than AT&T using a similar amount of spectrum, recently stated that it has a “very, very good spectrum position” (subsection 3 below); and AT&T itself has stated that spectrum shortages are not the cause of its network problems (subsection 4 below). Thus, AT&T’s assertions in the Application simply do not hold up to scrutiny.

1. AT&T Has More Licensed Spectrum than Any Other CMRS Provider Even Without the Proposed Transaction

One would never know it from reading the Application, but AT&T has more licensed spectrum than any other CMRS provider. Moreover, AT&T will have population-weighted nationwide spectrum holdings of 107 MHz if the Commission approves the Qualcomm transaction.²⁹⁶ That gives AT&T more spectrum than Verizon (population-weighted nationwide holdings of 88 MHz), twice as much spectrum as Sprint and T-Mobile, and three times the amount of spectrum held by MetroPCS and Leap combined. The following table shows AT&T’s leading spectrum position among national carriers:

²⁹⁶ AT&T’s 107 MHz of spectrum holdings include (on a population-weighted nationwide basis) 25 MHz of 700 MHz spectrum (including AT&T’s proposed acquisition of Qualcomm spectrum); 23 MHz of 850 MHz cellular band spectrum; 36 MHz of PCS spectrum; 10 MHz of AWS spectrum; and 13 MHz of WCS spectrum.

Popular Name	Frequency	AT&T	T-Mo	VZ	Sprint
700 MHz	700 MHz	25	0	30	0
SMR	800 MHz	0	0	0	14
Cellular	850 MHz	23	0	24	0
900 MHz	900 MHz	0	0	0	4
PCS	1.9 GHz	36	25	21	25
G Block	1.95 GHz	0	0	0	10
AWS-1	2.1 GHz	10	25	13	0
WCS	2.3 GHz	13	0	0	2
BRS	2.5 GHz	0	0	0	0
Total		107	50	88	55

AT&T’s spectrum position is the envy of the industry, particularly given the fact that AT&T has a wealth of spectrum that has excellent propagation characteristics, making AT&T and Verizon better positioned to offer 4G services than their competitors.²⁹⁷

2. AT&T Holds a Very Large Amount of *Unused* Spectrum

Not only is AT&T the largest CMRS licensed spectrum holder, it is also the largest spectrum warehouse. AT&T has yet to provide service to a single customer on its existing 700 MHz and AWS spectrum holdings, which amount to 27 MHz of highly valuable spectrum on a population-weighted nationwide basis, or 31 percent of AT&T’s total CMRS spectrum

²⁹⁷ As explained in Part A, Section V.C., Clearwire holds rights to more than 100 MHz of 2.5 GHz spectrum, but much of that spectrum is leased from EBS licensees. Moreover, Clearwire’s spectrum has below-average propagation characteristics and significant regulatory and technical burdens that make it sub-optimal for providing broadband service compared to AT&T’s spectrum holdings. Sprint sells Sprint-branded capacity from Clearwire’s network and holds an ownership stake in Clearwire, but does not control Clearwire’s board of directors or management and does not manage Clearwire’s operations.

holdings.²⁹⁸ While Verizon, Sprint, Clearwire, and MetroPCS have all deployed 4G wireless services to millions of subscribers across the U.S., AT&T has yet to provide 4G LTE service to a single subscriber. AT&T’s warehouse of unused 700 MHz and AWS spectrum is approximately the same amount as the total spectrum holdings of MetroPCS and Leap *combined* (population-weighted nationwide holdings of 29 MHz combined) and used by these two companies to serve approximately 14 million subscribers. It simply is not credible for AT&T to claim it faces a spectrum crunch when it holds so much unused (and underused) spectrum.²⁹⁹ AT&T’s credibility is further undermined by its delays in deploying service on its WCS spectrum. AT&T holds approximately 13 MHz of WCS spectrum on a population-weighted nationwide basis. Last year, the Commission amended its WCS rules to “enable licensees to provide mobile broadband services in 25 megahertz of the WCS band.”³⁰⁰ The Commission also adopted buildout requirements for the WCS spectrum, requiring those licensees to serve 40 percent of their covered population within 42 months and 75 percent within 72 months.³⁰¹ The Commission reasoned that these performance benchmarks will “promot[e] the rapid deployment of new broadband services to the American public” and “ensur[e] that underutilized spectrum

²⁹⁸ Wireless, COMM. DAILY, at 11 (Apr. 22, 2011) (“AT&T has yet to build out its AWS spectrum”); Reply to Joint Opposition of Free Press, *et al.*, WT Docket No. 11-18, at 2 (Mar. 28, 2011) (“AT&T holds substantial reserves of spectrum yet to be deployed, including its 700 MHz spectrum, AWS licenses, and others.”). The 27 MHz figure described in the text does *not* include Qualcomm’s 700 MHz spectrum that AT&T is seeking to acquire.

²⁹⁹ See CRA Decl. ¶ 185 (AT&T “provides none of the underlying data to allow the Commission to determine whether its claim of ‘spectrum exhaust’ is plausible.”).

³⁰⁰ *WCS R&O* ¶ 1.

³⁰¹ *Id.* ¶ 197.

will be used intensively in the near future.”³⁰² AT&T, however, has opposed the Commission’s buildout requirements, arguing that it needs even more time to deploy service on its WCS spectrum.³⁰³ Like its 700 MHz and AWS spectrum, AT&T’s WCS spectrum remains seriously underutilized.

As one industry observer has stated, “AT&T already has an ample supply of unused wireless spectrum that it plans to use to expand its network over the next several years.”³⁰⁴ If AT&T believes its network is close to “spectrum exhaust,” it should expedite the deployment of service on its grossly underutilized spectrum holdings.

The Applicants claim that AT&T seeks to reserve its 700 MHz and AWS spectrum for LTE, and that AT&T’s spectrum constraints are in the GSM and UMTS/HSPA services it provides on its cellular and PCS spectrum.³⁰⁵ But it is AT&T’s business choice, not a spectrum constraint, to hold in reserve 40 MHz of 700 MHz, AWS, and WCS spectrum across the nation, or 44 percent of AT&T’s total spectrum holdings.³⁰⁶ Every carrier faces tradeoffs in deciding how best to deploy spectrum for new generations of technology while continuing to provide service to an embedded base of customers using older generations of technology. As described

³⁰² *Id.* ¶ 195. See also *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Seventh Broadband Progress Report & Order on Reconsideration, GN Docket No. 10-159, FCC 11-78, at 8, n.51 (rel. May 20, 2011) (noting that the Commission has “removed technical impediments to mobile broadband in the Wireless Communications Service at 2.3 GHz, freeing up 25 MHz of spectrum”).

³⁰³ Petition for Reconsideration of AT&T, WT Docket No. 07-293 (Sept. 1, 2010).

³⁰⁴ Peter Svensson, *AT&T Talks of Spectrum Shortage, Yet It Has Plenty*, THE WASHINGTON TIMES, Mar. 21, 2011, available at: <<http://www.washingtontimes.com/news/2011/mar/21/att-talks-of-spectrum-shortage-yet-it-has-plenty/>>.

³⁰⁵ Application at 24. “UMTS” stands for Universal Mobile Telecommunications System.

³⁰⁶ See Stravitz Decl. ¶¶ 8, 22, 42.

below, carriers, including AT&T, can use a range of technologies and sound network management practices to address these tradeoffs and meet customer demands for both old and new services. In fact, given its large spectrum holdings, AT&T is in a better position than most if not all other carriers to meet these demands *without* the proposed anti-competitive T-Mobile takeover.³⁰⁷

3. Verizon, Which Serves More Subscribers than AT&T Using Less Spectrum, Has a “Very, Very Good” Spectrum Position

Verizon has less spectrum and more subscribers (94.1 million) than AT&T (86.2 million).³⁰⁸ Verizon also has faced a similar increase in customer demand for mobile broadband services and, as explained below, supports multiple generations of technologies with its current spectrum holdings.³⁰⁹ During a recent earnings call, Verizon was asked how, in light of AT&T’s proposed acquisition of T-Mobile, Verizon sees its spectrum needs evolving over the

³⁰⁷ AT&T’s claims regarding a “spectrum crunch” are further belied by the concerted lobbying effort it has launched to reallocate the 10 MHz Upper 700 MHz D Block spectrum to public safety services. The Communications Act requires the Commission to auction the D Block for commercial use, and the National Broadband Plan called on the Commission to go forward with such an auction. *See* 47 U.S.C. § 337(a)(2); National Broadband Plan at 76. AT&T, however, has opposed efforts by T-Mobile, Sprint, and other wireless carriers to expedite a D Block auction, and is devoting large lobbying resources in support of reallocation legislation. Reply Comments of AT&T Inc., WT Docket No. 06-150, at i (Nov. 12, 2008); List of Supporters of Public Safety Alliance, <<http://www.psafirst.org/supporters>> (last visited May 18, 2011). It seems unlikely that AT&T would so aggressively advocate for reallocation to public safety primary use of a highly valuable block of 700 MHz commercial spectrum if it were truly facing a spectrum crunch.

³⁰⁸ CRA Decl. ¶ 73, n. 65. T-Mobile has 31.8 million subscribers and Sprint has 48.1 million subscribers. *Id.*

³⁰⁹ Transcript of Verizon Q1 2011 Earnings Conference Call, at 4 (Apr. 21, 2011) (Verizon 2011 Investor Presentation) (reporting that total data revenue grew one billion dollars or 22.3 percent and now represents 38 percent of total service revenue), *available at*: <http://www22.verizon.com/investor/investor-consump/groups/events/documents/investorrelation/event_ucm_1_trans.pdf>.

course of the next three to five years, and what it needs to do to keep up with rapidly growing data demand. In response, Verizon stated:

As we said before, we think we are in a very good spectrum position. We think we have the spectrum we need, and are in a good position until about the year 2015 at this point. And we will continue to keep our eyes open to see where we need to buy spectrum or secure spectrum. But right now we are in a very, very good position. I'm not going to speak to the competitor [AT&T]. You can ask those questions as to why they did this and why they needed the spectrum, but I think we're in a very good position.³¹⁰

In the Application, AT&T provides no reasonable explanation as to why it faces a spectrum crunch, particularly when a very similarly situated competitor expresses strong confidence in its own spectrum position. Most likely, it is because AT&T lacks Verizon's commitment "to expand our 4G LTE footprint and invest the necessary capital in 3G to stay ahead of the data demand curve."³¹¹

AT&T's failure to invest the necessary capital in its network can be seen by comparing the two carriers' use of spectrum on a per-subscriber basis.

	Total Spectrum (nationwide pop-weighted)	Total Subscribers	Spectrum per Subscriber (MHz per million subs)
Verizon	88 MHz	94.1 million	0.94
AT&T	99 MHz ³¹²	86.2 million	1.15

³¹⁰ *Id.* at 17. Like many wireless carriers, Verizon supports the allocation of additional spectrum for mobile broadband, and recently pointed out the need for additional allocations to avoid a spectrum crunch in the future. But at the same time Verizon indicated that it currently has strong spectrum holdings and that any spectrum shortage it would face in the absence of new allocations "is five to ten years down the road." Rich Karpinski, *TIA 2011: Genachowski, Hutchison Push Hard on Spectrum*, TIA2011CONNECTED (May 20, 2011), available at: <<http://tia2011connected.com/stories/tia-2011-genachowski-hutchison-push-hard-on-spectrum-0520/>>.

³¹¹ Verizon 2011 Investor Presentation at 3.

³¹² The 99 MHz of spectrum attributed to AT&T on a nationwide, population-weighted basis

Compared to AT&T, Verizon is doing more with less due to its network investments and smarter network management practices. AT&T is not using its spectrum nearly as efficiently as its nearest rival. Most important, this analysis proves robust because, unlike a comparison with Sprint, Verizon and AT&T basically hold the same *categories* of spectrum. That is, the Twin Bells both hold high-value, low-frequency, broad-ecosystem cellular and 700 MHz spectrum as well as high-value, broad-ecosystem PCS and AWS spectrum. Therefore, the table above suffers from none of the “apples-to-oranges” comparison problems that would occur if disparate materially lower-value bands were introduced into the analysis. In short, AT&T’s poor network performance has nothing to do with spectrum and everything to do with years of ill-advised decisions to invest far below the industry average in its network infrastructure.

4. AT&T’s Own Prior Statements Undermine the Claims in Its Application

Although AT&T claims in the Application that it faces severe capacity constraints and is “using up its spectrum at an accelerating rate,”³¹³ it has told a different story to Wall Street. In its quarterly earnings calls and other forums over the past three years, it has repeatedly and consistently reassured investors that it has the network capacity to meet the exploding demand for mobile data services:

January 2011: “[W]e’re really starting to feel good about the network situation. We’re making a lot of progress here. . . . [W]e had a significant clearing of backlog from our vendors in December. We were having some serious capacity constraints in key markets, and we really saw the backlogs clear. And we spent the last 45 days literally just bringing capacity online in a rather dramatic fashion, and we’re seeing those numbers move. And so you put all this together, we actually feel like, again, with a little volatility

includes AT&T’s current 700 MHz, 850 MHz cellular band, PCS, AWS, and WCS spectrum holdings, but does not include Qualcomm’s 700 MHz spectrum or other 700 MHz licenses AT&T is seeking to acquire. *See* Stravitz Decl. ¶ 15, n.5.

³¹³ Application at 3, 25-30.

in the first part of the year, we can grow contract subscribers through the course of this year.”³¹⁴ Randall Stephenson, Chairman and CEO, AT&T (2010 Fourth Quarter Earnings Call)

October 2010: “[W]e’re really excited about our network road map. We have the nation’s fastest mobile broadband network today, and the best transition plan in the market. Because of the technology choices we have made, we will have a significant advantage for the next couple of years at least, and customers are starting to get it.”³¹⁵ Ralph de la Vega, CEO of AT&T Mobility and Consumer Markets and President of Mobility and Consumer Markets (2010 Third Quarter Earnings Call)

April 2010: “With our GSM technology foundation, a seamless path through HSPA to LTE, we’ve got a terrific technology path going forward for customers, and we believe the best path forward to capture the next wave of wireless growth.”³¹⁶ Rick Lindner, CFO, AT&T (2010 First Quarter Earnings Call)

January 2010: “The industry has seen unprecedented growth in wireless broadband volumes. . . . Customers with smartphones with advanced data capabilities are more engaged more times per day, evidenced by their usage profiles. Their expectations are higher, because the value and utility are higher. . . . To get ahead of these changes in volumes and expectations, we have executed a number of major initiatives. . . . In short, we have got an aggressive plan; we are working closely with equipment companies. Together, we are creating solutions that will benefit everyone, as usage continues to grow across the industry.”³¹⁷ John Stankey, President and CEO, AT&T Operations (2009 Fourth Quarter Earnings Call)

October 2009: “As everybody knows, we are seeing a data explosion that we have never seen, at least in my history in wireless. . . . And what all of these device manufacturers have realized is that benefit of HSPA and GSM technology that when they make a device, it can be a device that can sell anywhere in the world and that’s a unique advantage to our network, so I feel good about our network capability and reach and technology capabilities, as well as some great devices that are going to be running on that

³¹⁴ Transcript of AT&T Inc. Q4 2010 Earnings Conference Call (Jan. 27, 2011), *available at*: <<http://seekingalpha.com/article/249133-at-t-s-ceo-discusses-q4-2010-results-earnings-call-transcript?part=qanda>>.

³¹⁵ Transcript of AT&T Inc. Q3 2010 Earnings Conference Call (Oct. 21, 2010), *available at*: <<http://seekingalpha.com/article/231453-at-t-management-discusses-q3-2010-results-earnings-call-transcript?source=thetstreet>>.

³¹⁶ Transcript of AT&T Inc. Q1 2010 Earnings Conference Call (Apr. 21, 2010), *available at*: <<http://seekingalpha.com/article/200029-at-amp-t-inc-q1-2010-earnings-call-transcript>>.

³¹⁷ Transcript of AT&T Inc. Q4 2009 Earnings Conference Call (Jan. 28, 2010), *available at*: <<http://seekingalpha.com/article/185524-at-amp-t-inc-q4-2009-earnings-call-transcript>>.

network.”³¹⁸ Ralph de la Vega, CEO of AT&T Mobility and Consumer Markets and President of Mobility and Consumer Markets (2009 Third Quarter Earnings Call)

April 2009: “We feel very good about our spectrum position. . . . And we say that with full understanding of what the data demands will be.”³¹⁹ Scott McElroy, Vice President of Technology Realization, AT&T Mobility (Interview)

October 2008: “At AT&T, we have assembled a truly outstanding spectrum position. . . . We have a solid foundation in GSM and high quality spectrum and I feel very good about AT&T’s wireless technology path. In fact, when you combine the quality and depth of our spectrum[,] our clear technology path, and our premiere device lineup, I believe it is clear that we are in the best position of all U.S. carriers to drive wireless data growth.”³²⁰ Ralph de la Vega, CEO of AT&T Mobility and Consumer Markets and President of Mobility and Consumer Markets (2008 Third Quarter Earnings Call)

The Applicants’ assertions about AT&T’s purported spectrum constraints cannot be squared with what AT&T has been telling investors for three years. It is no surprise that AT&T’s sudden change in position has been greeted with skepticism, including a recent article entitled, “The Truth Could Kill the AT&T T-Mobile Deal: Nobody is Buying AT&T’s Justification for T-Mobile Acquisition.”³²¹

³¹⁸ Transcript of AT&T Inc. Q3 2009 Earnings Conference Call (Oct. 22, 2009), *available at*: <<http://seekingalpha.com/article/168288-at-amp-t-q3-2009-earnings-call-transcript?part=qanda>>.

³¹⁹ Kevin Fitchard, *AT&T Doubling 3G Capacity*, CONNECTED PLANET (Apr. 20, 2009), *available at*: <<http://connectedplanetonline.com/wireless/news/att-3g-network-capacity-increase-0420/>>.

³²⁰ Transcript of AT&T Inc. Q3 2008 Earnings Conference Call (Oct. 22, 2008), *available at*: <<http://seekingalpha.com/article/101193-at-amp-t-q3-2008-earnings-call-transcript>>.

³²¹ Dave Burstein, *The Truth Could Kill the AT&T T-Mobile Deal: Nobody is Buying AT&T’s Justification for T-Mobile Acquisition*, BROADBAND DSL REPORTS (Apr. 7, 2011) (“AT&T President John Stankey has been insisting for two years that spectrum shortages were not the cause of their network problems.”), *available at*: <<http://www.dslreports.com/shownews/The-Truth-Could-Kill-the-ATT-T-Mobile-Deal-113606>>.

D. The Applicants' Efficiency Arguments Are Not Merger-Specific Because They Can Alleviate Any Alleged Capacity Restraints Through a Range of Other Measures

AT&T currently has very substantial spectrum holdings, including a large amount of unused spectrum, available to meet consumer demand for its services. AT&T also has a range of options to use its spectrum more efficiently and increase subscriber capacity without eliminating one of its three national rivals. AT&T's predecessor companies made similar, non-merger-specific capacity constraint arguments in the *AT&T-Cingular* proceeding, prompting the Commission to discount such claims:

[The alleged] benefit is difficult to quantify in terms either of effect or time, and we are also not convinced that this benefit is fully merger-specific. We accept that Cingular will acquire spectrum more quickly via this transaction than it is likely to via auction, at least in some markets. However, while the merged entity will be able to concentrate its resources and efforts in the construction of one next-generation network, instead of two, we are not convinced that Cingular could not have achieved at least some of these same network gains by investing a portion of the \$41 billion purchase price associated with this transaction into improvements to its own network.³²²

The Applicants' capacity constraint arguments in the instant proceeding are even more tenuous and should similarly be dismissed as non-merger-specific.³²³ AT&T could achieve the same spectrum efficiencies it claims it would achieve through the proposed transaction by investing in a range of network management practices and technologies such as those described

³²² *AT&T-Cingular Merger Order* ¶ 225. In the *AT&T-Cingular* proceeding, the Commission concluded that while the transaction was likely to result in some public interest benefits, the benefits were not sufficiently large or imminent to outweigh the potential harms, which caused the Commission to impose conditions on its approval of the transaction. The instant transaction would impose far more serious public interest harms that cannot be remedied by conditions or divestitures.

³²³ See CRA Decl. ¶ 187 (AT&T “does not explain (or provide sufficient data and analysis to show) why other practical alternatives could not have provided some or all of the capacity expansion it claims for the merger.”).

below and in the Stravitz Declaration. As explained in the Stravitz Declaration, even in the absence of the proposed transaction, AT&T has three “levers” – putting to use the large amount of fallow spectrum it currently holds, upgrading its network to LTE, and deploying a heterogeneous network topology that includes both macro and small cells – that will dramatically increase its network capacity and allow it to meet consumer demand.³²⁴ Moreover, like every other wireless carrier, AT&T will have opportunities to add long-term network capacity through future FCC spectrum auctions. AT&T could also choose to pursue additional spectrum through the secondary markets.

1. Expediting Migration to New Services

AT&T claims that its capacity restraints are exacerbated by its need to support multiple generations of technology – second generation GSM technology, third generation UMTS/HSPA technology, and fourth generation LTE technology.³²⁵ But AT&T is hardly unique in this regard. Sprint, for example, provides service to subscribers using iDEN and CDMA (including both second generation CDMA and third generation EV-DO) technologies, and provides fourth generation WiMAX service through its arrangement with Clearwire. Verizon is providing second and third generation CDMA service (CDMA-1XRTT and EV-DO) nationwide, LTE service in numerous markets, and GSM service in certain areas as a result of its purchase of ALLTEL and other carriers.³²⁶ In many ways, Verizon and Sprint face a more difficult task in supporting multiple technologies with their spectrum holdings. LTE is part of the same family of technologies that have evolved from GSM, providing AT&T an easier, forward-compatible

³²⁴ Stravitz Decl. ¶ 42.

³²⁵ Application at 22-25.

³²⁶ Verizon Communications, Inc., Annual Report (Form 10-K), at 6-7 (Feb. 28, 2011). *See also* Stravitz Decl. ¶ 20.

deployment scenario for its network equipment and subscriber handsets.³²⁷ Verizon and Sprint, in contrast, must deal with the fact that their 4G and earlier generation networks are from different technology families, making the design of their devices and infrastructure more challenging.

AT&T is thus in a stronger position to take consumer-friendly steps to expedite the migration of subscribers to newer generations of technology, which in turn facilitate the repurposing of a carrier's existing spectrum for newer technologies. Existing subscribers will have an incentive to upgrade to new handsets if the new service offers faster speeds and more features and applications. Indeed, even without taking targeted steps to expedite migration and even in a bad economy, the average subscriber gets a new cell phone every eighteen months.³²⁸ As the economy improves, and as consumers learn more about the benefits of 4G technologies, the cell phone replacement rate is likely to be faster – as it had been prior to the national economic slowdown.

³²⁷ See Stravitz Decl. ¶ 21. See also W. David Gardner, InformationWeek, *AT&T Announces LTE Suppliers, Timetable* (Feb. 10, 2010) (quoting AT&T executive as stating that “AT&T has a key advantage in that LTE is an evolution of the existing GSM family of technologies that powers our network and the vast majority of the world's global wireless infrastructure today”), available at: <<http://www.informationweek.com/news/infrastructure/management/222700797>>; Transcript of AT&T Inc. Q1 2010 Earnings Conference Call (Apr. 21, 2010) (statement of Rick Lindner, Senior Executive V.P. and CFO, AT&T Inc.) (“With our GSM technology foundation, a seamless path through HSPA to LTE, we’ve got a terrific technology path going forward for customers, and we believe the best path forward to capture the next wave of wireless growth.”), available at: <<http://seekingalpha.com/article/200029-at-amp-t-inc-q1-2010-earnings-call-transcript>>.

³²⁸ Matt Richtel, *Consumers Hold On to Products Longer*, N.Y. TIMES, Feb. 25, 2011 (“Industry analysts also report that people on average upgrade their cellphones every 18 months, up from every 16 months just a few years ago.”), available at: <<http://www.nytimes.com/2011/02/26/business/26upgrade.html>>.

AT&T, which calls itself “an industry leader in smartphone and data-centric device customers,”³²⁹ can leverage its large spectrum holdings and 4G technology plans to accelerate the migration of its existing subscribers to this new technology. The Application never adequately explains why AT&T cannot step up its efforts to migrate its subscribers to more efficient LTE technology. As the Application recognizes, “LTE is . . . about 860 percent more spectrally efficient than GSM.”³³⁰ LTE technology (particularly Release 10) is evolving towards even greater spectral efficiencies.³³¹ The first step AT&T should take is to expedite deployment of LTE on its unused 700 MHz and AWS spectrum. As noted above, AT&T is well behind Verizon, Sprint, Clearwire, and MetroPCS in deploying 4G technologies. The faster it deploys LTE, the sooner its subscribers will have the ability to migrate to AT&T’s 4G service and the sooner AT&T will be able to reduce the capacity demands of its 2G and 3G networks. The subscribers who place the largest data demands on networks through their use of smartphones and other data-hungry devices will naturally be attracted to upgrading to a 4G service that offers faster speeds. AT&T can also accelerate migration to newer technologies by offering larger discounts on the newer services and devices, reducing the amount of spectrum it needs to dedicate to GSM as well as UMTS/HSPA services.³³²

³²⁹ Declaration of Rick L. Moore, attached to Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65, ¶ 7 (Apr. 21, 2011) (“Moore Decl.”)

³³⁰ Application at 24.

³³¹ Stravitz Decl. ¶ 64 (describing LTE Release 10 spectral efficiencies as “nearly equivalent to the increase that AT&T will realize in upgrading from HSPA+ to LTE”).

³³² See CRA Decl. ¶ 187 (AT&T “does not explain why it would not be practical to use incentives, promotions, or other means to achieve more rapid migration.”); Stravitz Decl. ¶ 22 (“All carriers provide deadlines for the transition of subscribers from legacy networks and offer incentives to move to new, more efficient devices, supported by the latest network technology.”)

In many ways, however, AT&T has pursued a path that has *slowed* migration to more spectrally efficient networks. For example, AT&T continues to subsidize and sell GSM phones rather than steering as many customers as possible to substantially more efficient 3G and 4G devices.³³³ In addition, AT&T has yet to deploy its flagship smartphone – the Apple iPhone 4 – to take advantage of HSPA+ technology. Instead, subscribers using AT&T’s most popular device continue to use HSPA 7.2 technology, which uses 15 percent more radio resources than a HSPA+ device.³³⁴ As a result, “the full potential of HSPA+ speed is unavailable to help relieve capacity constraints for AT&T’s most important, data-hungry customers.”³³⁵ AT&T also appears to have failed to “pre-seed” the market with LTE-ready devices that could deliver immediate network capacity gains when AT&T eventually begins providing LTE service.³³⁶ “If it were behaving as a prudent steward of its spectrum resources, AT&T would already be pre-seeding the market with LTE/HSPA+ devices as a means of ensuring the timely transition of data traffic from its older-generation networks to its far more efficient next generation systems.”³³⁷

These incentives come in the form of subsidized or free mobile devices upgrades, discounted services, and flexible contract terms.”).

³³³ Stravitz Decl. ¶ 17.

³³⁴ *Id.* ¶ 18.

³³⁵ *Id.*

³³⁶ *Id.* (“Pre-seeding, a common industry practice, is a process by which mobile network operators introduce devices capable of running on a more advanced, yet-be-launched, network, that are still compatible with existing networks. In doing so, mobile network operators establish an installed user base that is ready to take advantage of the newest network when it is launched.”).

³³⁷ *Id.* ¶ 19.

AT&T consequently can address its alleged capacity constraints by more aggressively pursuing well-established customer migration strategies to maximize the efficient use of its spectrum. AT&T should not need to continue dedicating so much spectrum to its GSM service “well into this decade” and to its UMTS/HSPA service for “even longer” and cannot reasonably claim that it has no alternative to supporting its customers other than the proposed takeover.³³⁸ AT&T may have business reasons for avoiding a faster migration schedule, but, from a spectrum efficiency and public interest perspective, its projected schedule is too conservative and demonstrates a failure to make the necessary investments to accelerate the migration of its subscribers to newer and more efficient technology.

2. Using State-of-the-Art Network Technologies

The Applicants’ spectrum constraint arguments also reflect outdated assumptions about network technologies. As the Stravitz Declaration explains, “[t]here are many economically viable and focused engineering solutions available to mobile network operators that can relieve substantial congestion on their networks. However, AT&T has not fully employed the full range of widely-available solutions to help address the significant growth in mobile data demand.”³³⁹ Although AT&T claims its network cannot handle increased data traffic while supporting three different technologies across different spectrum bands, it ignores various innovative solutions that would greatly increase its network capacity without the proposed takeover.

Software-Defined Radio. Software-defined radio is a cost-efficient technology that would allow AT&T to integrate its multiple networks into a common, multimode, multiband

³³⁸ Application at 23.

³³⁹ Stravitz Decl. ¶ 41.

platform.³⁴⁰ The enormous spectrum efficiencies and flexibility this technology provides prompted Sprint in December 2010 to announce its “Network Vision” plan to incorporate software-defined radio technology in its networks within the next few years.³⁴¹ Software-defined radio technology would similarly offer AT&T a clear, proven solution to its alleged capacity constraints. In contrast to the proposed transaction, which takes capacity out of the industry, using software-defined radio is a pro-competition, pro-innovation, capacity-additive solution that AT&T could initiate today and complete within the next few years at a fraction of the cost of its proposed merger.³⁴²

Heterogeneous Networks and Small-Cell Technologies. Wireless technology is evolving toward heterogeneous networks that provide carriers the option of using a mix of macro cells, micro cells, and femto cells to maximize the efficient use of spectrum and greatly increase

³⁴⁰ 47 C.F.R. § 2.1 (defining “software defined radio” as a “radio that includes a transmitter in which the operating parameters of frequency range, modulation type or maximum output power (either radiated or conducted), or the circumstances under which the transmitter operates in accordance with Commission rules, can be altered by making a change in software without making any changes to hardware components that affect the radio frequency emissions”).

³⁴¹ With Network Vision, Sprint will consolidate these multiple networks into one seamless infrastructure by implementing multi-mode technology to enhance service and create network flexibility. *See What Is Software-Defined Radio*, WIRELESS INNOVATION FORUM, available at: <http://www.wirelessinnovation.org/page/Introduction_to_SDR> (last visited May 5, 2011) (“Traditional hardware based radio devices limit cross-functionality and can only be modified through physical intervention. This results in higher production costs and minimal flexibility in supporting multiple waveform standards. By contrast, software defined radio technology provides an efficient and comparatively inexpensive solution to this problem, allowing multi-mode, multi-band and/or multi-functional wireless devices that can be enhanced using software upgrades.”).

³⁴² In addition to software-defined radio, vendors (including Nokia Siemens Networks, Alcatel-Lucent, Ericsson, and others) are offering equipment upgradeable to LTE with just the addition of new LTE cards in the carrier’s cell sites rather than requiring a complete infrastructure overhaul, as was the case in upgrading 2G networks to 3G. The use of this upgrade technology significantly facilitates the transition to newer generation networks and the refarming of spectrum to support the newer networks.

network capacity. UMTS/HSPA+ technology can support such heterogeneous networks, and LTE standards in particular will incorporate these new innovations. Indeed, standards to promote heterogeneous networks are expected to be defined next year in LTE Release 10.³⁴³ The use of these innovative network topologies, including small-cell technologies, allows carriers to increase the reuse of their spectrum and thereby greatly increase network capacity. The Commission’s Technical Advisory Council, which includes an AT&T representative as a member, recently recognized that accelerating deployment of small-cell technologies “would meet growing market demand for mobile broadband in dense, urban areas”³⁴⁴

The Application fails to explain why AT&T cannot address many if not all of its alleged capacity challenges through the greater use of heterogeneous networks and small-cell technology. Many of AT&T’s arguments, as well as its plans for integrating T-Mobile cell sites, seem premised on the continuation of a macro-cell based architecture. As the Stravitz Declaration states, “AT&T’s focus on increasing its macro-cell density through the [T-Mobile] acquisition is ill-conceived and against the growing trend of utilizing small-cell site-based network architectures.”³⁴⁵ The Applicants’ claims regarding the benefits of combining the AT&T and T-Mobile networks should be given no weight when the Application fails to account for the efficiency gains AT&T could generate through the use of more efficient, more innovative network topologies.

³⁴³ See Stravitz Decl. ¶ 47-48.

³⁴⁴ Memorandum from Tom Wheeler, Chairman, Technical Advisory Council, to Chairman Genachowski, FCC, at 3 (Apr. 22, 2011), *available at*: <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-306065A1.doc>.

³⁴⁵ Stravitz Decl. ¶ 50.

WiFi and In-Building Systems. Although AT&T has deployed WiFi hotspots, data in the Application indicates that only “an extremely small percentage of AT&T’s data traffic is likely being carried via the high-efficient and low-cost Wi-Fi network.”³⁴⁶ The installation of more Wi-Fi hotspots, particularly in areas of high smartphone usage, would offload a large portion of AT&T’s data traffic onto WiFi networks and free up substantial capacity on AT&T’s wireless network. For example, AT&T could increase the number of home-based WiFi systems and facilitate greater customer use of these systems.³⁴⁷ AT&T could also install more in-building wireless systems (primarily enabled by Distributed Antenna Systems) in areas of high data traffic.³⁴⁸ The Application fails to provide a sufficient explanation why these solutions cannot help AT&T address its alleged capacity constraints.

3. Cell Splitting Through the Installation of New Cell Sites

AT&T can also address its alleged capacity constraints by installing new cell sites in areas where its network is congested.³⁴⁹ By doing so, it can implement any necessary “cell splitting” to increase the utilization of its spectrum in the absence of the proposed transaction. In most areas, AT&T can install new base stations on existing towers, obviating the need to install a new tower. There are a host of tower companies that offer to lease tower space in virtually every area of the country. Many of these existing towers have capacity available for new base

³⁴⁶ *Id.* ¶ 53.

³⁴⁷ *Id.* ¶¶ 55, 58.

³⁴⁸ *Id.* ¶ 56.

³⁴⁹ *Id.* ¶¶ 44-46. The Application argues that the proposed takeover will allow AT&T to integrate T-Mobile cell sites into its network and create greater network capacity through cell-splitting, but, as explained in Part B, Section II.E., *infra.*, AT&T fails to provide verifiable facts to substantiate this argument. The proposed takeover is also unnecessary to achieve any such cell-splitting capacity gains because, as explained above, AT&T has numerous options for achieving the same objectives in the absence of the takeover.

stations.³⁵⁰ For example, a recent article reported that “AT&T and other wireless operators could double the amount of capacity they supply with current spectrum by investing more in new wireless equipment on existing cell towers,” and quoted the CEO of American Tower, one of the nation’s leading tower companies, as saying that “[o]ur tower sites are about 50 percent loaded on average.”³⁵¹ Even where towers are currently at capacity, they often can be readily modified to add additional space. American Tower has stated that “[w]e believe that of our towers that are currently at or near full structural capacity, the vast majority can be upgraded or augmented to meet future tenant demand, with relatively little capital investment.”³⁵²

Even assuming AT&T cannot find available tower space in a specific area, it can still enter into tower-sharing arrangements with other carriers or acquire existing towers from current owners. Interestingly, just a few months ago T-Mobile expressed interest in selling its cell towers to raise capital. In particular, at a January 20, 2011 investor conference, DT’s CEO stated that “[w]e are among other options . . . ready to consider a potential sale of . . . non-strategic core

³⁵⁰ See, e.g., American Tower Corp., Annual Report (Form 10-K), at 4 (Feb. 28, 2011) (“As a result of wireless industry capital spending trends in the markets we serve, we anticipate consistent demand for our communications sites because they are attractively located for wireless service providers and have capacity available for additional tenants.”) (“American Tower Corp. Annual Report”); Crown Castle International Corp., Annual Report (Form 10-K), at 1-2 (Feb. 15, 2011) (“We seek to maximize [our] site rental revenues derived from our towers by co-locating additional tenants on our towers through long-term contracts as our customers deploy and improve their wireless networks.”). See also *14th CMRS Competition Report* ¶ 288 (“Co-locating base station equipment on an existing structure is often the most efficient and economical solution for existing and new wireless service providers that need new cell sites.”).

³⁵¹ Spencer Ante and Amy Schatz, *Skepticism Greets AT&T Theory: Telecom Giant Says T-Mobile Deal Will Improve Network Quality, but Experts See Other Options*, WALL ST. J., Apr. 4, 2011, available at: <<http://online.wsj.com/article/SB10001424052748703806304576236683511907142.html>>.

³⁵² American Tower Corp. Annual Report at 4.

assets, for example the U.S. tower portfolio.”³⁵³ By acquiring access to T-Mobile’s towers, rather than eliminating T-Mobile as a competitor, AT&T would gain tower space at the same cell sites it claims are so important to enhance its network capacity. T-Mobile, in turn, could lease space on the towers to accommodate its base station equipment and also gain capital to invest in its network. Alternatively, AT&T could lease tower space from T-Mobile and install the same type of multi-band antennas and equipment it describes in the Application.³⁵⁴ Each of these alternatives would be less costly than paying \$39 billion for the proposed T-Mobile takeover, while not imposing the serious anti-competitive harms that would result from it.

AT&T also has the option of deploying new towers in the few places where it is unable to co-locate on an existing tower. CRA estimates that, for \$10 billion (about one-quarter of the \$39 billion purchase price for T-Mobile), AT&T could build 30,000 new cell sites,³⁵⁵ which would amount to more than 60 percent of T-Mobile’s total number of cell sites.³⁵⁶ AT&T could consequently achieve the same alleged capacity gains for much less money if it simply acquires new cell sites rather than acquire T-Mobile, particularly given the fact that it does not plan to use a large portion of T-Mobile’s cell sites anyway.³⁵⁷ The Commission has recently taken steps to accelerate the cell tower siting process, adopting a ruling in 2009 that, among other things,

³⁵³ Jan. 20, 2011 Deutsche Telekom Briefing at 4.

³⁵⁴ Application at 35.

³⁵⁵ CRA Decl. ¶ 192.

³⁵⁶ Jan. 20, 2011 Deutsche Telekom Briefing at 2 (stating that T-Mobile has 49,000 cell sites).

³⁵⁷ Application at 51-52 (stating that AT&T would decommission “thousands of surplus [T-Mobile] sites”).

defined presumptively reasonable time parameters for state or local zoning authorities to review cell site applications.³⁵⁸

4. Acquiring Additional Spectrum Capacity

AT&T's large existing spectrum holdings, coupled with use of network management practices and technologies such as those described above, should be more than sufficient to ensure that AT&T has the network capacity to meet consumer demand for its services well into this decade.³⁵⁹ There is also a large amount of spectrum that could be acquired or leased in the short term from existing licensees. For example, wireless carriers likely will be able to lease MSS spectrum or wholesale capacity in the L and S Bands for terrestrial services once the various issues and proceedings are resolved concerning those bands.³⁶⁰ Joint ventures with other spectrum holders are another option for addressing AT&T's alleged spectrum constraints.³⁶¹

AT&T as well as other parties will also have opportunities to acquire additional spectrum rights at FCC auctions within the next few years. As an AT&T senior executive recently

³⁵⁸ *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, 24 FCC Rcd 13994 (2009). See also CRA Decl. ¶ 192.

³⁵⁹ Stravitz Decl. ¶¶ 9, 68-69.

³⁶⁰ See, e.g., *Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.6 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz*, ET Docket No. 10-142, Report and Order, FCC 11-56 (rel. Apr. 6, 2011), as amended by Erratum (rel. Apr. 15, 2011) (“MSS Report & Order”); *LightSquared Modification Order*; *MSS NPRM & NOI*; *Globalstar Licensee LLC*; *Application for Modification of License to Extend Dates for Coming into Compliance with Ancillary Terrestrial Component Rules And Open Range*; *Request for Special Temporary Authority*, Order, 25 FCC Rcd 13114 (2010); National Broadband Plan at 84, 87-88.

³⁶¹ For example, wireless operators can dramatically increase cell site density and network capacity through multi-operator radio access network (“RAN”) sharing arrangements. RAN sharing is technically feasible and has had demonstrated success in international markets. See Stravitz Decl. ¶ 51-52.

recognized, “there is broad consensus on a bipartisan basis among the President, the Congress, the FCC and the wireless industry that we need to make additional spectrum available”³⁶²

This consensus is paving the way for the Commission to auction significant amounts of spectrum. The National Broadband Plan identified the H Block, J Block, and AWS-3 Block as well suited for mobile broadband services and identified these blocks for auction.³⁶³ NTIA has made it a top priority to evaluate the reallocation of federal government spectrum, including the 1755-1780 MHz band, for commercial use and pairing with AWS-3 spectrum in an FCC auction. In January 2011, a T-Mobile executive predicted that 50 MHz of such reallocated spectrum as well as AWS-3 spectrum would be auctioned “somewhat later” than 2012.³⁶⁴

A large amount of spectrum is thus expected to be available within the next several years from existing licensees or FCC auctions. Moreover, President Obama and the National Broadband Plan have called for the allocation of 500 MHz of additional spectrum for mobile broadband.³⁶⁵ To help meet this goal, Congress and the Commission are considering

³⁶² Transcript of Panel Regarding a Framework for Innovative Federal Spectrum Policy, The Brookings Institution, Statement of James W. Cicconi, Senior Executive Vice President, External and Legislative Affairs, AT&T Services, Inc., at 7 (Mar. 30, 2011), *available at*: <http://www.brookings.edu/~media/Files/events/2011/0330_spectrum/20110330_spectrum_transcript.pdf>.

³⁶³ National Broadband Plan at 86-87.

³⁶⁴ Jan. 20, 2011 Deutsche Telekom Briefing at 16.

³⁶⁵ “President Obama Details Plan to Win the Future through Expanded Wireless Access,” White House Press Release (Feb. 10, 2011), *available at*: <<http://www.whitehouse.gov/the-press-office/2011/02/10/president-obama-details-plan-win-future-through-expanded-wireless-access>>; National Broadband Plan at 84. *See also* Memorandum for the Heads of Executive Departments and Agencies, *Unleashing the Wireless Broadband Revolution*, (Presidential Memorandum), released June 28, 2010, 75 Fed. Reg. 38387 (July 1, 2010), *available at* <<http://www.whitehouse.gov/the-press-office/presidential-memorandum-unleashing-wireless-broadband-revolution>> (directing NTIA to collaborate with the FCC “to make available a total of 500 MHz of Federal and nonfederal spectrum over the next 10 years, suitable for both mobile and fixed wireless broadband use.”); National Telecommunications and Information

incentive-based mechanisms for repurposing up to 120 MHz of broadcast UHF spectrum to be auctioned for mobile broadband use, although the timing of incentive-auction legislation is unclear.³⁶⁶ To be sure, significant portions of the spectrum described above do not yet meet the Commission’s spectrum screen criteria, and the availability of this spectrum would not remedy the very substantial harm to the spectrum input market if the Commission approved the proposed T-Mobile takeover, given the resulting dominance AT&T and Verizon would gain over the most commercially valuable segments of spectrum. But, in the absence of the proposed takeover, a competitive marketplace, including a device and infrastructure ecosystem that is not dominated by the Twin Bells, would promote the deployment of services on the new spectrum that will be made available in the coming years for mobile broadband services.

5. Network Investment and Spectrum Efficiencies

In declining to approve the *EchoStar-DirecTV* merger, the Commission rejected arguments that are similar to the efficiency claims Applicants make in this proceeding:

An additional problem with the Applicants’ efficiency claims is that they ignore the possibility that, because the merged entity will possess more spectrum, it will use it less efficiently than would EchoStar and DirecTV individually absent the merger. In particular, the merger may affect the incentive of the merged entity to adopt new, more productive technology, which in turn could affect how efficiently the spectrum will be used. The reason that the merged entity may be less willing to invest in productivity-enhancing technology is that the marginal value of a firm’s spectrum will decline as the total amount of spectrum it controls increases. This suggests that, if as a result of the merger, New EchoStar doubles the amount of spectrum it controls, it will have a reduced incentive to invest in

Administration, U.S. Dept. of Commerce, *Plan and Timetable to Make Available 500 Megahertz of Spectrum for Wireless Broadband* (Oct. 2010), available at http://www.ntia.doc.gov/reports/2010/TenYearPlan_11152010.pdf.

³⁶⁶ See Public Safety Spectrum and Wireless Innovation Act, S.28, 112th Cong. § 204 (2011) (proposed bill to authorize FCC to conduct incentive auctions); National Broadband Plan at 88-93.

productivity-enhancing technology. . . . Thus, from a social welfare point of view, the merged entity may select a technology that is less efficient than it would select if each separate DBS competitor controlled less spectrum, resulting in a public interest harm rather than a benefit.³⁶⁷

The Commission's concern in the *EchoStar-DirecTV* proceeding applies with equal strength to Applicants' efficiency claims. Rather than paying DT \$39 billion to acquire T-Mobile, AT&T could invest a portion of that sum in pro-competitive network investments to meet its capacity needs through the new technologies and infrastructure improvements described above. Such investments promote the public interest by maximizing the efficient use of existing spectrum and promoting competition.

Wireless carriers compete with each other in upgrading and managing their networks. Indeed, every year in its mobile wireless competition report the Commission analyzes how carriers compete with each other in terms of network coverage and technology upgrades.³⁶⁸ This competition not only improves service for customers, but also creates jobs, encourages new capital investment, and promotes innovation in the United States. AT&T, however, seeks to avoid this competition and investment through its proposed anti-competitive acquisition of T-Mobile. This approach may serve AT&T's private interests, but it harms the public interest.

E. The Applicants' Alleged Efficiencies in Combining Their Two Networks Are Speculative and Unsupported

The Commission should give no weight to the Applicants' alleged network synergies not only because they are not merger-specific, but also because they are speculative, unsupported, and based on outdated technological assumptions. The Applicants argue that the transaction would create network synergies through the integration of T-Mobile's cell sites into AT&T's

³⁶⁷ *EchoStar-DirecTV Hearing Designation Order* ¶ 201 (footnotes omitted).

³⁶⁸ *See, e.g., 14th CMRS Competition Report* ¶¶ 104-17.

network, the elimination of redundant control channels, and channel pooling and utilization efficiencies.³⁶⁹ However, many of these alleged synergies appear to apply only to AT&T's voice network and therefore would not help address the increased demands on AT&T's data network.³⁷⁰ AT&T's alleged synergies also are premised on traditional macro-cell density networks, even though such system architectures are inherently sub-optimal for areas with large traffic volumes.³⁷¹ Rather than pursue the T-Mobile takeover as a means of supporting older generation services based on outmoded network technology assumptions, AT&T should focus on deploying current technologies and the small-cell site-based network architectures described in subsection D above.

The Applicants' synergy claims also never directly address a contradiction in the Application itself. On the one hand, the Applicants claim that combining their two networks would relieve AT&T's capacity constraints. On the other hand, the Application states that "T-Mobile USA faces spectrum constraints of its own, despite its substantial investments in spectrum and network facilities."³⁷² How can combining two allegedly congested networks relieve the congestion? As Gerald Faulhaber, a former FCC Chief Economist, recently stated, "[p]utting the two networks together does not create spectrum."³⁷³ Common sense suggests that combining two congested networks simply results in a bigger congested network.

³⁶⁹ Application at 33-42.

³⁷⁰ See Stravitz Decl. ¶ 33. As described in the Stravitz Declaration, while data traffic has increased, AT&T and other wireless carriers are experiencing stagnating or declining voice usage on their networks on a per-subscriber basis. *Id.* ¶ 16.

³⁷¹ *Id.* ¶ 50.

³⁷² Application at 30.

³⁷³ Spencer Ante & Amy Schatz, *Skepticism Greets AT&T Theory: Telecom Giant Says T-Mobile Deal Will Improve Network Quality, but Experts See Other Options*, WALL ST. J., Apr.

A number of the Applicants’ synergy theories ignore this common sense notion. For example, the Applicants’ “utilization efficiencies” are premised on “one or both companies’ GSM networks [being] underutilized.”³⁷⁴ Applicants offer only two examples of markets where they claim this will be the case and they provide no specific data to verify these claims.³⁷⁵ In fact, in the large majority of markets it is quite likely that where one company’s network is congested the other company’s network will also be congested, negating any potential utilization efficiencies. Specifically, congestion arises in dense population centers and will tend to afflict both the AT&T and T-Mobile networks in the same areas, especially given the fact that the Application asserts that *both* companies are facing network constraints.

The Applicants’ “channel pooling” efficiencies are similarly flawed and speculative. The Applicants provide scant concrete evidence of these efficiencies, offering only one example of a market where they claim they will see an increase in capacity from channel pooling.³⁷⁶ In addition, the Applicants recognize that the “variation in the size of the channel pooling efficiencies we expect in different areas is . . . a function of the size of the existing channel pools of each company in each area – greater channel pooling gains can typically be achieved when

4, 2011, *available at*: <<http://online.wsj.com/article/SB10001424052748703806304576236683511907142.html>>. *See also* Peter Svensson, *AT&T Talks of Spectrum Shortage, Yet It Has Plenty*, THE WASHINGTON TIMES, Mar. 21, 2011 (“[M]uch of T-Mobile’s spectrum is already in use, so the deal won’t result in fresh airwaves becoming available.”), *available at*: <<http://www.washingtontimes.com/news/2011/mar/21/att-talks-of-spectrum-shortage-yet-it-has-plenty/>>.

³⁷⁴ Application at 39.

³⁷⁵ *Id.*

³⁷⁶ *Id.* at 38.

smaller pools are combined than when larger pools are combined.”³⁷⁷ But, the Application provides no evidence regarding the extent to which the transaction would lead to the combination of smaller channel pools rather than larger channel pools. Such unsupported synergy claims are unverifiable and thus not cognizable by the Commission. It is also fair to assume that, in larger markets where there is greater demand for wireless services, the second and fourth largest carriers in the country will each have *large* channel pools to meet their existing service requirements, and that combining the two pools would therefore result in few if any efficiencies under the Applicants’ own theory.³⁷⁸

The Applicants assert that AT&T would integrate a certain number of T-Mobile cell sites into its network and thus create “cell splits” that expand the capacity of AT&T’s network.³⁷⁹ But this plan does not extend to a large portion of T-Mobile cell sites because elsewhere in the Application the Applicants state that AT&T will decommission “thousands of surplus sites.”³⁸⁰ With respect to the T-Mobile sites that are not considered “surplus,” the Application provides no empirical support to demonstrate how many are configured in a way that would address AT&T’s alleged capacity problems. To make this demonstration, AT&T would need to provide specific data concerning the location and usage patterns of the sites in question as well as other information (*e.g.*, height, orientation, gain, and radiation pattern of the site antennas).³⁸¹ The Application does not provide this information, most likely because AT&T has not performed the

³⁷⁷ Declaration of William Hogg, attached to Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65, at 27, n.20 (Apr. 21, 2011) (“Hogg Decl.”).

³⁷⁸ See Stravitz Decl. ¶ 34.

³⁷⁹ Application at 34-35.

³⁸⁰ *Id.* at 51.

³⁸¹ See Stravitz Decl. ¶¶ 27-28.

necessary analysis to back up its claims. Indeed, the Application indicates that only if and when the Application is approved would AT&T begin the process of “identifying T-Mobile USA sites that are complementary to AT&T’s cell grid”³⁸²

Even assuming that the integration of T-Mobile’s cell sites provides some of the hoped-for efficiency gains, these gains may not be achieved until so far into the future as to be speculative at this point. The Applicants claim that AT&T “expects to see service improvements in areas of various markets in as early as nine months, and it expects to complete this integration process and optimize its network architecture on a national basis within twenty-four months.”³⁸³ AT&T’s allusion to a vague set of “service improvements” within “as early as nine months” is not enough to satisfy its burden of proof in this proceeding. Precisely what type of benefits will AT&T achieve through the merger that it could not achieve through other means? If these benefits occur at all, which ones will occur nine months from now and which ones will occur two years from now? Precisely how often – and over how large a geographic area – will these benefits occur? And exactly who will enjoy the unspecified benefits that AT&T projects will occur? Only voice subscribers? The Application provides no answers to these important questions.

The Applicants have the burden of proving the validity of their efficiency claims by a preponderance of the evidence. They are the only parties to this proceeding with access to tower locations and the ability to analyze that data to identify where these ostensible benefits might occur. Yet the Application provides virtually no detail to substantiate the benefits envisioned or AT&T’s projected timeline. The integration process would first require AT&T to identify which

³⁸² Application at 35.

³⁸³ *Id.*

T-Mobile sites are even candidates for integration. AT&T would then need to “replac[e] T-Mobile USA’s antennas and equipment with multi-band antennas and AT&T’s equipment.”³⁸⁴ Implementing these infrastructure changes could require negotiations with tower and building owners and raise other potentially complicated, time-consuming issues, such as zoning approvals.³⁸⁵ The Applicants, however, do not even acknowledge these issues.

These potential complications could very well delay AT&T’s integration schedule beyond the Applicants’ projected two-year implementation schedule. These potential delays in achieving such benefits, and the lack of supporting detail, make them even more speculative. Moreover, this schedule is comparable to the time it would take AT&T to deploy new sites in the absence of the transaction.³⁸⁶ In short, the Applicants’ alleged efficiencies provide no basis for approving the proposed transaction.

F. The Proposed Transaction Is Not Necessary to Meet T-Mobile’s Network Capacity and Broadband Requirements

Most of the Applicants’ network synergy arguments focus on AT&T’s alleged network problems. The Application, however, has a short section arguing that the proposed transaction is necessary for T-Mobile to confront its own capacity constraints and provide a path to LTE. The Commission should reject these arguments. As described in Part A, Section IV.A of this petition, while the Application paints a dire outlook for T-Mobile, T-Mobile’s own statements in January show that T-Mobile is a strong competitor with sufficient spectrum capacity to compete and a range of options to strengthen its service in the long term. DT’s CEO stated that T-Mobile “currently own[s] 54 megahertz of spectrum in our major markets which for the next few years

³⁸⁴ *Id.*

³⁸⁵ *See* Stravitz Decl. ¶ 29.

³⁸⁶ *Id.* ¶¶ 25-26.

put us into a position which is actually better than most of our competitors are in.”³⁸⁷ Likewise, T-Mobile’s Chief Technology Officer stated that T-Mobile has “[s]ufficient spectrum in [the] short to medium-term,” and, like all other carriers, will explore participating in FCC spectrum auctions to address long-term needs.³⁸⁸ As explained above, T-Mobile also made clear during the January investor conference that it believes it is in a strong position to compete with 4G services, including Verizon’s and AT&T’s LTE service.

At the January 2011 conference, DT’s CEO stated that T-Mobile would consider partnership and network-sharing options.³⁸⁹ Depending on the specific circumstances, such options may very well enhance T-Mobile’s service and promote competition. AT&T’s proposed acquisition of T-Mobile, however, would not. It would harm competition and would provide no verifiable benefits to T-Mobile subscribers or the public at large.

III. AT&T’S LTE DEPLOYMENT PLANS ARE SPECULATIVE AND UNRELATED TO THE PROPOSED TRANSACTION

Prior to the proposed transaction, AT&T had announced plans to deploy LTE service on its 700 MHz and AWS spectrum to cover approximately 250 million people, or 80 percent of the U.S. population, by the end of 2013.³⁹⁰ The Applicants claim that AT&T would now increase its LTE deployment to 97 percent of the U.S. population to cover approximately an additional 55 million people at some undefined point in the future.³⁹¹ Applicants argue that the proposed transaction would help AT&T reach this new LTE deployment target by providing AT&T with

³⁸⁷ Jan. 20, 2011 Deutsche Telekom Briefing at 2.

³⁸⁸ *Id.* at 15-16.

³⁸⁹ *Id.* at 4.

³⁹⁰ Hogg Decl. ¶ 27.

³⁹¹ Application at 55-56.

“additional scale” as well as access to T-Mobile’s AWS spectrum in markets where AT&T claims it would face the following alleged obstacles:

- (1) Markets in which AT&T lacks any 700 MHz or AWS spectrum to deploy LTE (the Applicants assert that [begin confidential information] [REDACTED] [end confidential information] people, fall in this category);
- (2) Markets in which “AT&T holds an average of 10 MHz of AWS or less and/or 12 MHz of 700 MHz spectrum or less[,]” thus falling short of the 20 MHz of contiguous spectrum AT&T claims is necessary to deploy LTE (the Applicants assert that [begin confidential information] [REDACTED] [end confidential information] people, fall in this category); and
- (3) Markets in which AT&T predicts it will face an LTE capacity shortage at a certain point in the future.³⁹²

The Commission should dismiss these arguments. They are too vague and speculative to be verifiable. AT&T’s LTE deployment plans are also unrelated to the proposed transaction, as AT&T will have the capability and incentive to pursue a comparable LTE deployment even in the absence of the transaction.

A. The Applicants’ Claims Regarding LTE Deployment Are Vague and Speculative

The Applicants’ claims regarding LTE deployment are unverifiable and should be given no weight. Their claims about the percentage increase in AT&T’s LTE footprint are misleading and conflicting. They also completely fail to answer critical questions about AT&T’s LTE deployment schedule, the nature of the service AT&T would offer, and what AT&T would invest to reach its deployment target.

Misleading and Conflicting Projections. As an initial matter, the alleged 17 percent increase in AT&T’s LTE coverage is misleading. As explained below, it is quite likely that,

³⁹² Application at 5; Hogg Decl. ¶ 60; Moore Decl. ¶ 14.

even without the proposed transaction, AT&T will ultimately deploy its LTE network to far more than its previously announced target of 80 percent, which only went through 2013. Aside from this problem, the Applicants' math is difficult to fathom. Although the Application provides a few examples of markets that will be covered by AT&T's new LTE deployment target, it fails to provide a complete list of the specific markets that would benefit from this deployment or that fall within the three categories of alleged obstacles described above. The Applicants' failure to provide these data makes it impossible for the Commission and interested parties to assess the accuracy of the Applicants' claims.

The Applicants' claims also seem to be internally inconsistent. On the one hand, they claim that an additional 55 million Americans would be covered by AT&T's post-transaction LTE deployment.³⁹³ On the other hand, the Applicants suggest that eliminating the first two obstacles described above would extend LTE deployment to a total of **[begin confidential information]** [REDACTED] **[end confidential information]** people. Applicants offer no explanation of this apparent inconsistency in their coverage estimates. As for the alleged obstacle described in the third category above, the Applicants merely rely on conclusory and speculative assertions about LTE capacity shortages arising in the future in certain areas for a service that AT&T has yet to deploy.

No Schedule for Achieving Claimed Benefits. An even more serious problem is that the Applicants provide no schedule or timeline for implementing AT&T's purported new plan to

³⁹³ Applicants characterize their 55 million person estimate as an approximation, but it is a generous one. A 17.3 percent increase in AT&T's LTE deployment would cover an additional 53.4 million people (0.173 x 308.7 million). This calculation uses the 2010 U.S. Census Bureau U.S. population estimate, which does not include Puerto Rico or U.S. territories. See U.S. Census Bureau, Population Distribution and Change: 2000 to 2010, at 1 (March 2011), available at: <<http://www.census.gov/prod/cen2010/briefs/c2010br-01.pdf>>. The Applicants do not explain what national population figure they use.

deploy service to 97 percent of all Americans. AT&T’s alleged expanded LTE deployment would mostly cover rural and unpopulated areas.³⁹⁴ There is no shortage of spectrum in rural areas; rather, carriers must tackle the challenge of investing in infrastructure that is costly on a per-subscriber basis.³⁹⁵ The Applicants provide no schedule for addressing this challenge, and also ignore that T-Mobile has not deployed infrastructure in many rural areas and that the proposed transaction will not accelerate the build out in such markets.³⁹⁶ Moreover, in markets where T-Mobile has deployed service, the Applicants do not explain the pace at which AT&T would migrate T-Mobile’s UMTS/HSPA+ subscribers to other bands or technologies so that its AWS spectrum can be repurposed for LTE, even though elsewhere in the Application they argue that such migrations can take years.³⁹⁷

The Commission has made clear that “benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present.”³⁹⁸ Here, the Applicants do not make a prediction even about the distant future; they simply make *no* prediction about when AT&T would achieve its alleged expanded LTE deployment.³⁹⁹

³⁹⁴ Application at 55-56.

³⁹⁵ *Id.* at 55.

³⁹⁶ See e.g., Dan Jones, *Gleaning AT&T’s 4G Plans for LTE on AWS*, LIGHT READING MOBILE (Mar. 29, 2011), available at: <http://www.lightreading.com/blog.asp?blog_sectionid=244&doc_id=206210>.

³⁹⁷ Application at 23. See also CRA Decl. ¶ 198.

³⁹⁸ *EchoStar-DirecTV Hearing Designation Order* ¶ 190.

³⁹⁹ See CRA Decl. ¶ 197.

No Information on Nature of Service. The Application also is completely silent about the nature of the LTE service AT&T would provide in rural areas. The Applicants provide no information regarding the rates AT&T would charge for its LTE service in these areas or whether AT&T would impose data caps or other limits on service. If its current practices are any indication, potential subscribers of AT&T’s expanded LTE service will face high rates and data caps that either limit use of the service or impose extra charges for data usage above a certain level.⁴⁰⁰ One observer has estimated that a rural subscriber who sought to use AT&T’s LTE service as his or her primary Internet connection would pay \$180 per month – “not exactly a great choice for rural America.”⁴⁰¹ In areas where it provides wireline service, AT&T will of course have no incentive to compete with its own wireline broadband offerings; indeed, AT&T’s LaptopConnect terms of service currently prohibit the use of an AT&T wireless connection as a substitute for wireline data connections.⁴⁰² These limitations prompted a recent article to conclude that AT&T’s purported plan to extend its LTE footprint “may mean a lot less to Americans than it first appears to.”⁴⁰³

⁴⁰⁰ See *14th CMRS Competition Report* ¶ 92 (describing Verizon’s and AT&T’s post-paid service offerings as “the most expensive in the industry”); Letter from Harold Feld, Public Knowledge, and Sascha Meinrath, New America Foundation, to Sharon Gillet, FCC Wireline Competition Bureau (May 6, 2011) (raising concerns about AT&T plan to charge wireline broadband customers additional fees for exceeding data caps), *available at*: <<http://www.publicknowledge.org/letter-to-FCC-on-ATT-Data-Caps>>; *AT&T Wireless Data Plan “Bytes,”* DEADZONES (Apr. 14, 2011) (describing AT&T data plans), *available at*: <<http://www.deadzones.com/2011/04/at-wireless-data-plan-bytes.html>>.

⁴⁰¹ Sascha Segan, *Will AT&T’s Rural Broadband Be First-Class or Second-Rate?*, PC MAGAZINE (May 16, 2011), *available at*: <<http://www.pcmag.com/article2/0,2817,2385445,00.asp>>

⁴⁰² *Id.*

⁴⁰³ *Id.*

Vague and Conflicting Statements About Network Investment. The Application provides no information on how much AT&T will need to invest to expand its LTE deployment or what portion of the alleged synergy savings created by the transaction would be spent on this deployment. The Application asserts that the transaction would give AT&T the “scale, scope, [and] resources” to increase its LTE deployment,⁴⁰⁴ but it provides no data or analysis to support this conclusory assertion. To the contrary, AT&T has submitted a declaration stating that it would gain “synergies” from the proposed transaction resulting from, among other things, the “reduced need in the near term for expenditures on network infrastructure and spectrum.”⁴⁰⁵ This statement is consistent with the frank admission by AT&T’s CFO that the “sum” and “[m]ost important” aspect of the proposed transaction is its potential for returns to shareholders: “So to sum up, this is a transaction that creates substantial shareholder value. Most important, it enhances our long-term revenue and margin potential. ... [T]he scale and the combination of operational assets provide us with a path to industry-leading wireless margins.”⁴⁰⁶ Placing such a high priority on increasing margins to maximize returns to shareholders would be at odds with AT&T investing in its network to expand its LTE footprint.

Illusory Claims Do Not Meet the Burden of Proof. The Applicants have the burden of demonstrating that the purported public interest benefits of the proposed transaction are real and verifiable. Their nebulous claims fall far short of meeting this burden. Their claim that the transaction would increase AT&T’s LTE deployment is built on speculation and vague assertions and should be given no weight by the Commission, particularly in light of AT&T’s poor track

⁴⁰⁴ Application at 55-56.

⁴⁰⁵ Moore Decl. ¶ 9 (emphasis added).

⁴⁰⁶ Mar. 21, 2011 AT&T Investor Presentation Transcript at 13-14 (statements of Richard G. Lindner, Senior Executive Vice President and CFO, AT&T Inc.).

record in delivering on promises that a merger will accelerate technology upgrades. For example, in its application to acquire Centennial’s licenses, AT&T claimed that the transaction would allow it to extend 3G service to Centennial’s service areas (which, prior to the transaction, had been limited to 2G service in the U.S. mainland).⁴⁰⁷ However, according to AT&T, a year after the Commission approved the transaction “only a handful of legacy Centennial cell sites in the former Centennial service areas have been upgraded to 3G.”⁴⁰⁸

B. The Applicants’ Claims Regarding LTE Deployment Are Not Merger-Specific

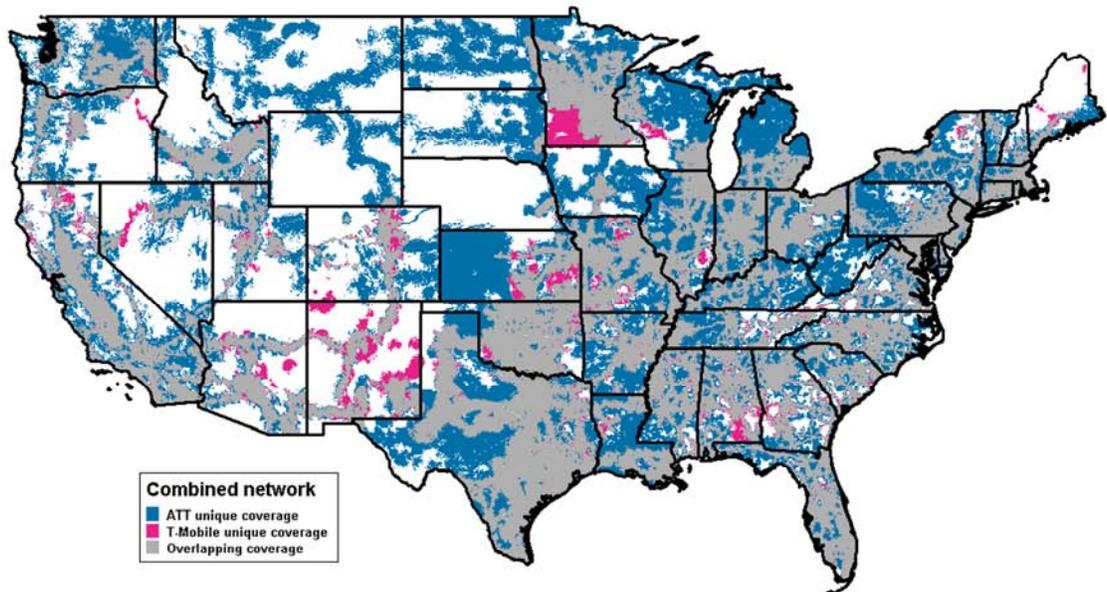
The proposed transaction is not necessary to expand AT&T’s LTE coverage to promote the Commission’s broadband goals. AT&T announced a few months ago that it already plans to deploy LTE service to 80 percent of the U.S. population, and that deployment plan only extends through 2013. Even without access to T-Mobile’s AWS spectrum, AT&T will have more than enough resources to expand its LTE network beyond 2013 and subsequently achieve a virtually nationwide LTE footprint. AT&T’s current wireless data network, counting its PCS and cellular band services, reaches 97 percent of the U.S. population.⁴⁰⁹ By upgrading its existing network

⁴⁰⁷ *AT&T-Centennial Merger Order* ¶ 97.

⁴⁰⁸ Report, attached to Letter from Celia Nogales, AT&T Inc., to Marlene Dortch, FCC Secretary, FCC, WT Docket No. 08-246, at 3 (Dec. 17, 2010). *See also* Dave Burstein, *AT&T’s Quinn: We May Renege on 80%, 95% LTE Buildout – Is this AT&T’s Attempt at Satire?*, BROADBAND DSL REPORTS (Apr. 26, 2011) (discussing whether recent statement by AT&T senior executive that FCC’s data roaming decision will “discourage investment and build out of broadband facilities” means that AT&T will pull back on LTE deployment targets), *available at*: <<http://www.dslreports.com/shownews/ATTS-Quinn-We-May-Renege-on-80-90-LTE-Buildout-113924>>.

⁴⁰⁹ *See* Press Release, AT&T, *AT&T Sets the Record Straight on Verizon Ads* (“AT&T’s wireless data coverage reaches 303 million people – or 97% of the U.S. population”), *available at*: <<http://www.att.com/gen/press-room?pid=14002>>; Transcript of AT&T Q4 2009 Earning Conference Call (Jan. 28, 2010) (“We have a broad, nationwide network. It covers 97% of the

platform, AT&T should have the capability to extend LTE service to 97 percent of the population *without* the proposed takeover.⁴¹⁰ AT&T’s existing footprint far exceeds T-Mobile’s national network, which covers 86 percent of the population.⁴¹¹ Indeed, T-Mobile must purchase roaming services from AT&T because of the latter’s more extensive coverage. As the following map shows, the proposed transaction would give AT&T *less than one percent* of additional U.S. population coverage:



U.S. population.”), *available at*: <<http://seekingalpha.com/article/185524-at-amp-t-inc-q4-2009-earnings-call-transcript>>.

⁴¹⁰ See Stravitz Decl. ¶ 40 (“With coverage already of 97% of the U.S. population today on its combined 2G and 3G network, AT&T could achieve this level of deployment by overlaying LTE coverage on its existing network to reach 97% of U.S. population. The process of overlaying equipment on existing cell sites merely involves installation of new equipment and saves on the cost and time required to build the physical infrastructure of a new site, not to mention time required to obtain necessary legal clearances.”).

⁴¹¹ Carlton Decl. ¶ 32.

The Applicants incorrectly assume that AT&T can only deploy LTE service using 700 MHz and AWS spectrum. AT&T could deploy LTE on any of its spectrum bands, including its PCS and 850 MHz cellular band spectrum.⁴¹² In fact, notwithstanding the misleading claims in the Application, AT&T is already contemplating this very scenario. In its application to acquire Qualcomm’s spectrum, filed just a few months ago and still pending before the Commission, AT&T’s Senior Vice President for Architecture and Planning stated that “AT&T may take steps to clear a portion of its 850 MHz or 1900 MHz spectrum for LTE, as customers begin transitioning to LTE devices.”⁴¹³ The same AT&T executive made the very same point last year in pointing out that AT&T and Verizon have stronger spectrum positions than Clearwire:

AT&T’s [Kristin] Rinne says that AT&T can expand its LTE offering into more spectrum bands. Both Verizon and AT&T are deploying LTE in the 700 MHz band, but Rinne said AT&T could eventually push LTE into its existing 850 MHz and 1900 MHz spectrum. “We will have the opportunity [to grow spectrum for] LTE in future years, both the quality and range of it,” she said. “You need to make sure you count all of our spectrum when you make these comparisons.”⁴¹⁴

These statements directly contradict the Applicants’ claims that AT&T can only deploy LTE service on its 700 MHz and AWS spectrum and that it needs T-Mobile spectrum to expand its LTE footprint.

⁴¹² LTE standards approved by the 3GPP standards-setting process indicate that LTE can be deployed on PCS (LTE Band 2) and 850 MHz cellular band spectrum (LTE Band 5). *See* Stravitz Decl. ¶ 40. AT&T’s PCS and cellular networks are not congested in rural areas and could accommodate LTE traffic in those areas.

⁴¹³ Declaration of Kristin S. Rinne, attached to Applications of AT&T Inc. and Qualcomm Incorporated for Consent to Assign Lower 700 MHz Band Licenses, WT Docket No. 11-18, at ¶15 (Jan. 12, 2011).

⁴¹⁴ Phil Goldstein, *AT&T, Verizon push LTE plans, advantages*, FIERCEWIRELESS (Mar. 19, 2010) (punctuation in original), *available at*: <<http://www.fiercewireless.com/story/t-verizon-push-lte-plans-advantages/2010-03-19>>.

The Applicants also incorrectly assume that an LTE network can only be deployed using a “contiguous 20 MHz of spectrum.”⁴¹⁵ To the contrary, an LTE network can be deployed using smaller configurations, including 5 MHz x 5 MHz paired bands.⁴¹⁶ The Commission has used precisely this sort of configuration in a number of bands, including the 5 MHz x 5 MHz Upper 700 MHz D Block. MetroPCS, in fact, is deploying LTE service based on this configuration in some markets. A 5 MHz x 5 MHz block provides more than sufficient spectrum and capacity to serve rural communities, particularly given their lower-density populations and resultant lesser capacity demands.⁴¹⁷ As described in the Stravitz Declaration, AT&T currently has sufficient (and unused) 700 MHz and AWS spectrum holdings to deploy LTE service (1) in a 10 MHz x 10 MHz configuration to 70 percent of the U.S. population and (2) in a 5 MHz x 5 MHz configuration to more than 95 percent of the population.⁴¹⁸ The reach of AT&T’s LTE network could extend even further when AT&T’s 850 MHz cellular band and PCS spectrum are taken into account.⁴¹⁹

The Applicants’ assertions about AT&T spectrum shortages are consequently overblown. AT&T already plans to deploy LTE service to 80 percent of the U.S. population by the end of 2013 and already has the spectrum resources to deploy LTE to 97 percent of the population without the proposed anti-competitive takeover. In exurban and rural areas of the country,

⁴¹⁵ Application at 5. The Applicants do not define the term, but Sprint assumes that “contiguous 20 MHz spectrum” means a 10 MHz x 10 MHz configuration. To the extent AT&T means a 20 MHz x 20 MHz paired block, the additional amount of such configured blocks resulting from the proposed transaction would be very limited. *See* Stravitz Decl. ¶¶ 36-37.

⁴¹⁶ Stravitz Decl. ¶ 38 (“LTE supports scalable carrier bandwidths of 1.4, 3, 5, 10, 15, and 20 MHz.”).

⁴¹⁷ *Id.* ¶ 39.

⁴¹⁸ *Id.* ¶¶ 38-39.

⁴¹⁹ *Id.* ¶ 40.

AT&T should be able to acquire spectrum easily from licensees to the extent it needs additional spectrum in these areas. AT&T can also partner with rural carriers to extend its coverage.

Verizon, for example, is actively pursuing plans to collaborate with rural companies to build and operate an LTE network in rural areas.⁴²⁰

Even in the absence of its proposed takeover of T-Mobile, AT&T has many options to achieve a nationwide LTE footprint and quite likely will pursue these options in order to compete with carriers who will have nationwide LTE coverage. Verizon has already launched LTE service in forty markets and has stated that it plans “to deploy LTE in virtually all of our current 3G network footprint by the end of 2013.”⁴²¹ As of December 31, 2009, Verizon’s 3G network covered 285 million Americans, or 92 percent of the U.S. population, and that number has almost certainly increased since 2009, as Verizon has continued to “build out, expand, and upgrade our network.”⁴²² Indeed, Verizon’s Chief Technology Officer has stated that once it completes its initial LTE rollout to 285 million people in 2013, “we expect to aggressively expand this footprint, with a goal of covering all of our 700 MHz licensed territories by 2015.”⁴²³ Such a deployment would reach virtually every American. Sprint will also be competing to

⁴²⁰ Press Release, Verizon, *Verizon Wireless LTE in Rural America Program*, available at: <<http://aboutus.vzw.com/rural/Overview.html>> (last visited May 23, 2011). See, e.g., Press Release, Convergence Technologies, *Convergence Technologies Inc. Announces Rural LTE Partnership with Verizon Wireless* (Apr. 29, 2011), available at: <<http://www.cticonnect.com/arra/verizonrurallte>> (last visited May 23, 2011).

⁴²¹ Cellco Partnership, Annual Report (Form 10-K), at 3 (Mar. 12, 2010).

⁴²² *Id.* at 3-4.

⁴²³ Dave Burstein, *CTO Dick Lynch on Verizon LTE Coverage*, DSL PRIME (Apr. 2, 2011), available at: <<http://www.dslprime.com/a-wireless-cloud/61-w/4214-cto-dick-lynch-on-verizon-lte-coverage>>.

deploy 4G services on a nationwide basis, and its Network Vision initiative will greatly facilitate its ability to upgrade *all* of its cell sites to 4G services throughout its footprint.

AT&T will need to respond to this competition even without the proposed transaction. Wireless carriers compete for customers based on their national network coverage areas.⁴²⁴ In a competitive marketplace, as Verizon and Sprint expand the reach of their 4G services, AT&T will likely follow suit or face the loss of subscribers to rival providers that offer better, faster wireless services on a larger national footprint. Competition can thus promote deployment of 4G mobile services to almost the entire U.S. population, just as competition has enabled nearly the entire U.S. population to enjoy access to 3G technologies today.⁴²⁵ The Commission has estimated that total 3G/4G mobile broadband coverage currently reaches more than 98 percent of the U.S. population.⁴²⁶ There is no reason to doubt that 4G services alone will reach the same level of coverage within the next few years in a competitive marketplace.⁴²⁷

The proposed transaction thus would provide no benefits in terms of deploying 4G technologies. One analyst credits AT&T for doing “a brilliant job [in] confusing people” into believing that the transaction will expand its LTE deployment, but suggests that AT&T was planning to reach the same LTE coverage by 2015-2016 even without the T-Mobile

⁴²⁴ See AT&T, Annual Report (Form 10-K), Ex. 13 at 29 (Mar. 1, 2011) (“We . . . compete for customers based principally on price, service/device offerings, call quality, *coverage area*[,] and customer service.”) (emphasis added).

⁴²⁵ One 3G technology, EV-DO, alone now covers 97.9 percent of the U.S. population. See *14th CMRS Competition Report* ¶ 122.

⁴²⁶ *Id.* ¶ 120, Table 13.

⁴²⁷ See Dave Burstein, *U.S. LTE 2016: 96-98% Likely*, DSL PRIME (Mar. 23, 2011) (projecting LTE deployment will reach 96 to 98 percent of the U.S. population in 2016), *available at*: <<http://www.dslprime.com/a-wireless-cloud/61-w/4194-us-lte-2016-96-98-likely>>.

transaction.⁴²⁸ According to this analyst, the “net result in improved U.S. LTE coverage” stemming from the proposed transaction would be “0%-2%, probably closer to 0%.”⁴²⁹ The Commission should see through the Applicants’ rhetoric and reject their LTE deployment claims as not merger-specific.⁴³⁰

CONCLUSION

In denying its approval of the *EchoStar-DirecTV* merger, the Commission stated that “as the harms to the public interest become greater and more certain, the degree and certainty of the public benefits must also increase commensurately in order for us to find that the transaction on balance serves the public interest.”⁴³¹ The Applicants in the instant proceeding have not come close to showing that the serious harm to consumers, competition, innovation, and the public interest that would result from their proposed transaction would be outweighed by any public interest benefits. No conditions or divestitures would change this conclusion. The Commission should therefore refuse to grant its consent to AT&T’s proposed acquisition of T-Mobile.

⁴²⁸ See Dave Burstein, *AT&T LTE Result on U.S. Coverage: ~0%*, DSL PRIME (Mar. 22, 2011), available at: <<http://www.dslprime.com/a-wireless-cloud/61-w/4192-atat-lte-result-on-us-coverage-0>>.

⁴²⁹ *Id.*

⁴³⁰ The Applicants argue that the proposed transaction will promote broadband innovation and enhance public safety. Application at 61-63. The Applicants’ cursory arguments on these issues, however, boil down to unsupported rhetoric that fails to substantiate any verifiable public interest benefits or any connection of these claims to the proposed transaction.

⁴³¹ *EchoStar-DirecTV Hearing Designation Order* ¶ 192.

Respectfully submitted,

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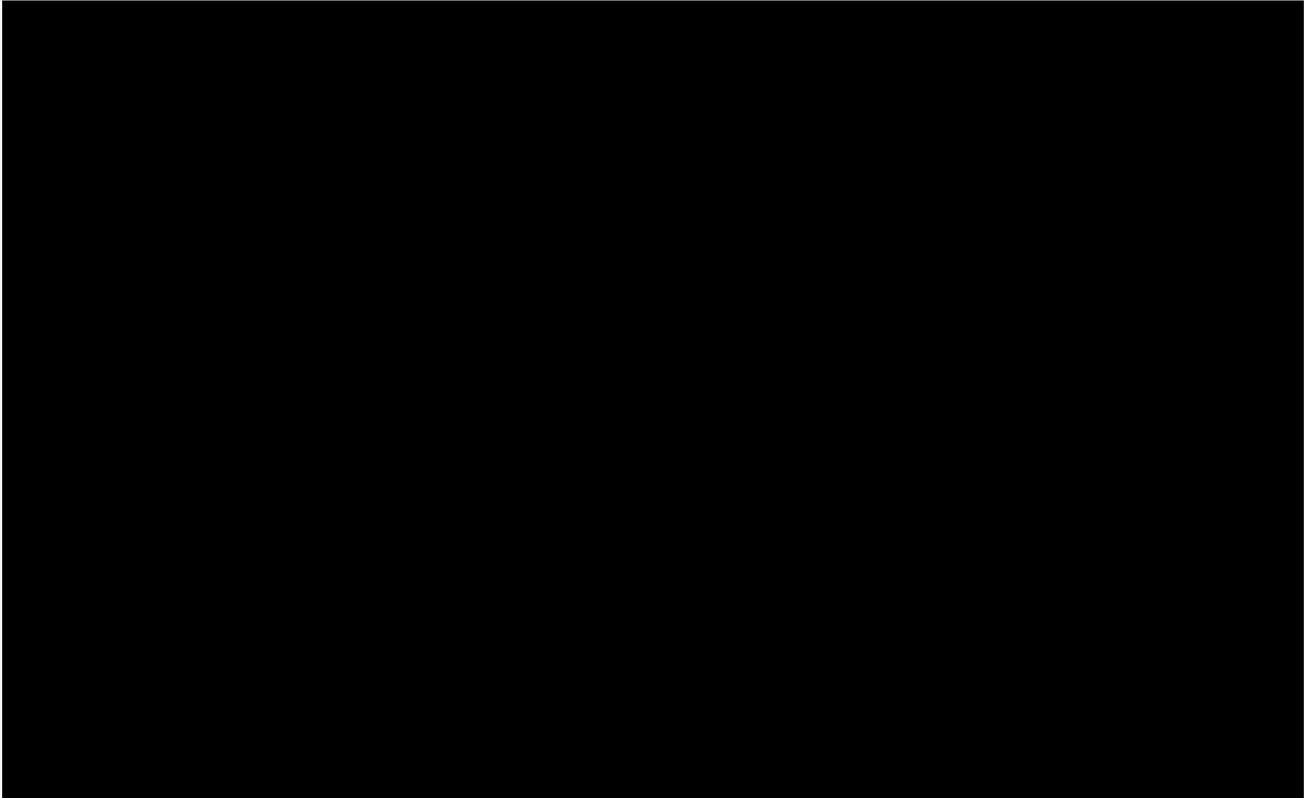
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APPENDIX A

REDACTED – FOR PUBLIC INSPECTION

Wireless Category Media Spend

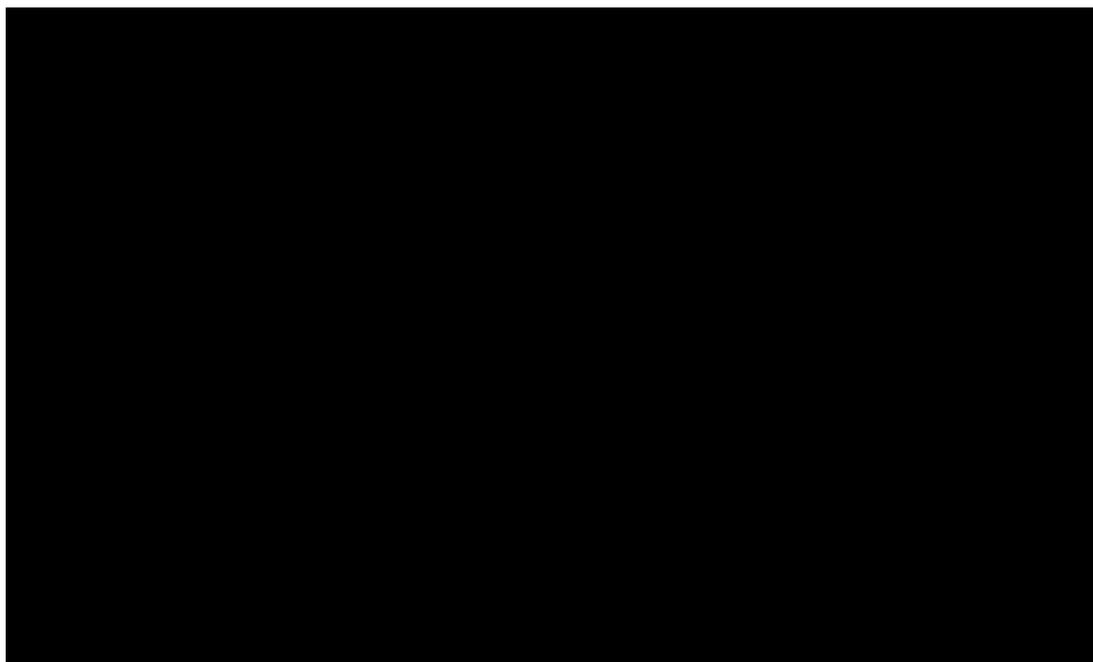
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2010 Local vs. National Advertising Spend

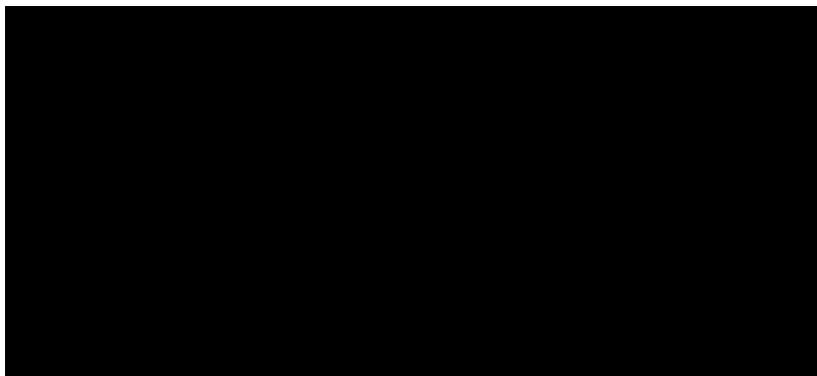
[begin confidential information]



[end confidential information]

Growth In Advertising Spend

[begin confidential information]



[end confidential information]

REDACTED – FOR PUBLIC INSPECTION

ATTACHMENT A

ECONOMIC ANALYSIS OF THE MERGER OF AT&T AND T-MOBILE

JOINT DECLARATION OF

STEVEN C. SALOP

STANLEY M. BESEN

STEPHEN D. KLETTER

SERGE X. MORESI

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Applications of AT&T Inc. and)	WT Docket No. 11-65
Deutsche Telekom AG)	DA 11-799
)	ULS File No. 0004669383
For Consent to Assign or Transfer)	
Control of Licenses and Authorizations)	

JOINT DECLARATION OF
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COMPETITIVE HARM FROM THE MERGER OF AT&T AND T-MOBILE

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. Steven C. Salop is Professor of Economics and Law at the Georgetown University Law Center in Washington, where he teaches antitrust law and economics and economic reasoning and the law. His research and consulting focuses on microeconomics, antitrust, competition, and regulation. He has written numerous articles in various areas of antitrust economics and law – mergers, joint ventures, exclusionary conduct, and tacit coordination – many of which take a “Post-Chicago” approach. Professor Salop testified at the hearings held by the United States Department of Justice (“DOJ”) and the Federal Trade Commission (“FTC”) that led to the 2010 revision of the Horizontal Merger Guidelines. Professor Salop is a senior consultant with Charles River Associates. He holds a Ph.D. in Economics from Yale University.

2. Stanley M. Besen is a Senior Consultant at Charles River Associates, Washington, D.C., where he previously served as a Vice President. Dr. Besen has served as a Brookings Economic Policy Fellow, Office of Telecommunications Policy, Executive Office of the President; Co-Director, Network Inquiry Special Staff, Federal Communications Commission; Coeditor, RAND Journal of Economics; and a Senior Economist at the RAND Corporation. Dr. Besen has taught at Rice University, where he was the Allyn R. and Gladys M. Cline Professor of Economics and Finance; Columbia University, where he was the Visiting Henley Professor of Law and Business; and the Georgetown University Law Center, where he was Visiting Professor of Law and Economics. Dr. Besen has published widely on

telecommunications economics and policy, intellectual property, and the economics of standards. He holds a Ph.D. in Economics from Yale University.

3. Stephen D. Kletter is a Principal at Charles River Associates. His consulting experience has involved mergers and acquisitions, antitrust litigation, damages assessment, class certification, patent infringement, contract disputes, and industry performance analysis. He has also assisted in all facets of preparing economic expert witnesses to testify in litigation and regulatory agency proceedings. In a previous position, Mr. Kletter supervised and coordinated the efforts of interdisciplinary teams of scientists and economists who were conducting complex environmental and economic studies. He holds a Master's degree in Economics from the University of Michigan.

4. Serge X. Moresi, the Director of Competition Modeling at Charles River Associates, is an expert in the theory of industrial organization and specializes in applied game theory, including bidding and bargaining models, search markets, network effects and two-sided markets. He is an experienced developer of theoretical models and simulation programs dealing with strategic interactions among market participants. Dr. Moresi has provided clients with expert economic consulting services in many merger cases, antitrust litigation, damages cases, and regulatory proceedings spanning a large number of industries in North America, Europe, and Australasia. Dr. Moresi is the author of publications and conference papers on a variety of topics, including market definition, merger effects analysis, optimal taxation, insider trading, and ethical behavior. Before joining Charles River Associates, he served as an Assistant Professor of Economics at Georgetown University. He holds a Ph.D. in Economics from the Massachusetts Institute of Technology.

5. John R. Woodbury is a Vice President at Charles River Associates.

Dr. Woodbury has served as a senior economist on the Federal Communications Commission's ("Commission's" or "FCC's") Network Inquiry Special Staff, Chief of the Economics Division in the FCC's Common Carrier Bureau, and Vice President of Research and Policy Analysis at the National Cable and Telecommunications Association. He has been the lead economist both on telecommunications and merger-related matters including the FCC's review of the Sprint-Nextel transaction, the Commission's ongoing review of retransmission consent, and the proposed acquisition of Dollar Thrifty by Hertz. Dr. Woodbury is currently a member of the editorial board of the Antitrust Source, an online publication sponsored by the American Bar Association, and frequently writes for that publication. He holds a Ph.D. in Economics from Washington University (St. Louis).

* * *

6. Today, the Commission is at a crossroads. The wireless industry currently consists of four national players that compete in a national market together with a "fringe" of much smaller regional players. The proposed merger of AT&T and T-Mobile is likely to significantly reduce competition in wireless services. Whereas Verizon and AT&T currently are constrained at the national level, mainly by Sprint and T-Mobile, the merger would move the market irrevocably closer to a duopoly far less constrained by other competitors. That consolidation is likely to lead to higher prices and reduced innovation. These harms would be caused by adverse unilateral conduct by AT&T, an increased likelihood of coordination between AT&T and Verizon, as well as exclusionary effects that increase the costs of Sprint and the

fringe competitors. In the end, consumers of wireless service (individuals, businesses, and governments) would be harmed.

7. In this Declaration, we discuss these issues in more detail.¹ Our report analyzes market definition, market shares and concentration, and the competitive effects of the proposed merger. Our competitive effects analysis involves an evaluation of product differentiation, unilateral effects, coordinated effects, exclusionary effects, and AT&T's efficiency claims.

8. Our analysis identifies wireless product markets and market segments where there are potential competitive concerns. In addition to an all-wireless market, we also examine postpaid retail sales, prepaid retail sales, and corporate and governmental sales. We also analyze several wholesale and input markets; service to resellers; roaming; and backhaul. We conclude that this merger would raise significant competitive concerns.

9. Our analysis indicates the existence of a national geographic market as well as local markets. Although the Commission has traditionally analyzed wireless mergers at the local market level, there are solid economic reasons for evaluating this merger at the national level as well. First, the most significant competition occurs at the national level. The national carriers now generally charge uniform prices across the country, although there may be occasional local promotions. Product positioning and advertising are now predominately national. Handset exclusives and handset competition also take place at the national level. In addition, innovation competition also is predominately national. Second, the 2010 Horizontal Merger Guidelines now recognize the importance of evaluating mergers in any relevant market in which there are

¹ We intend to refine our analysis as additional information and more data become available.

competitive concerns, not only the narrowest possible market.² Thus, analysis of a national geographic market is relevant to evaluating the competitive effects of the merger.

10. After the proposed merger, the all-wireless market and the postpaid market would be highly concentrated at the national level according to the Merger Guidelines. Concentration is in the range where the DOJ and the FTC conclude that a merger is “presumed to be likely to enhance market power.”³ The Guidelines observe that this presumption may be “rebutted by persuasive evidence showing that the merger is unlikely to enhance market power.” However, the arguments and the evidence in AT&T’s application are insufficient to rebut the presumption of increased market power.

11. Using the Commission’s NRUF subscriber data, the Commission’s local market Herfindahl-Hirschman Index (“HHI”) screen is exceeded in [begin NRUF/LNP confidential information] [REDACTED] [end NRUF/LNP confidential information] CMAs, and [begin NRUF/LNP confidential information] [REDACTED] [end NRUF/LNP confidential information] CEAs.⁴ Moreover, [begin NRUF/LNP confidential information] [REDACTED] [REDACTED] [end NRUF/LNP confidential information] of the U.S. population resides in regions that “fail” the screen. The CMAs that fail the screen collectively account for [begin NRUF/LNP confidential information] [REDACTED] [end NRUF/LNP confidential information] of

² U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines (Aug. 19, 2010), *available at*: <<http://www.justice.gov/atr/public/guidelines/hmg-2010.html>> (“Guidelines” or “Merger Guidelines”).

³ *Id.* at 19.

⁴ These counts exclude six CMAs (American Samoa, Guam, Gulf of Mexico, Northern Mariana Islands, Virgin Islands 1 - St. Thomas Island, and Virgin Islands 2 - St. Croix Island) and four CEAs (American Samoa, Guam, Northern Mariana Islands, and U.S. Virgin Islands).

the U.S. population. The CEAs that fail the screen collectively account for **[begin NRUF/LNP confidential information]** [REDACTED] **[end NRUF/LNP confidential information]** of the U.S. population.

12. Using reported book values to measure spectrum value, we find that the merged AT&T/T-Mobile and Verizon would together control almost three-quarters of all spectrum devoted to wireless service.

13. Our initial analysis indicates that the merger is likely to have harmful competitive effects for several reasons aside from the high level of industry concentration that it would engender.

- a. First, the merger would eliminate T-Mobile, which is a significant low-price national competitor with an announced business plan to become a revitalized market “challenger.” As a result, the merger would give AT&T the unilateral incentives to raise the price of its services.
- b. Second, Sprint would be unable to constrain AT&T from raising prices because Sprint would have higher costs as a result of the merger. Sprint would continue to be dependent on AT&T and Verizon for essential inputs. Over time, these exclusionary effects of the merger would lead to Sprint being marginalized.
- c. Third, the regional fringe firms also would be unable to constrain AT&T’s prices, particularly prices for postpaid service and sales to business and governmental accounts. Not only do they have many fewer subscribers and much lower revenues than do the national competitors, each of these firms is handicapped by

the lack of a national footprint. They also are not significant participants in the market for sales to corporate and government accounts. With the exception of US Cellular, these firms have focused on prepaid service, which is significantly differentiated from the postpaid service that provides the predominant revenue for the national competitors. The fringe carriers also have weaker brand names. MetroPCS has recently introduced a 4G product, but it faces impediments to rapid growth, including its low initial base, limited geographic footprint and higher costs, as do the other regional firms. Leap and US Cellular also are hampered by a limited geographic footprint. While AT&T touts the rapid growth of MetroPCS, Leap, and the other fringe carriers, the overall share of all the facilities-based fringe carriers is very small. The combined market share of MetroPCS and Leap has increased only from 3.9% to 4.7% between the first quarter of 2009 and the last quarter of 2010. At the same time, the share of US Cellular actually fell from 2.4% to 2.1%. The exclusionary effects of the merger also would weaken these carriers.

- d. Fourth, entry would be unable to deter post-merger price increases and protect consumers. LightSquared's entry has been halted until resolution of the dispute over whether its service will cause harmful interference with Global Positioning System ("GPS") transmissions. Clearwire's growth is limited by the complicated regulatory structure in the EBS/BRS band. Cox Communications has recently announced that it is decommissioning its existing network and will use the Sprint network instead to provide its branded mobile service.

- e. Finally, the merger likely would facilitate coordinated conduct between AT&T and Verizon, particularly in the postpaid and corporate and governmental account markets. This coordination could involve parallel accommodating conduct; that is, Verizon would have the incentive to accommodate AT&T by raising its own prices in parallel, and vice versa. In addition, if T-Mobile were eliminated as a competitor, coordination could involve Verizon and AT&T reaching a common understanding of their mutual interdependence and the gains from cooperative over non-cooperative conduct and then following that strategy. Coordination would be more likely to succeed after the merger by eliminating T-Mobile and by the merger's exclusionary effects of increasing the costs and otherwise disadvantaging Sprint. These exclusionary effects would lead Sprint, in effect, to involuntarily support the coordination between AT&T and Verizon.
14. The proposed merger would result in a number of harmful exclusionary effects on Sprint and the regional fringe.
- a. First, Sprint and the fringe carriers are dependent on AT&T and Verizon for essential inputs – backhaul, roaming, and switched exchange access service for terminating wireless calls. Resellers are dependent on the national carriers for wholesale service. Although rates for exchange access service for terminating wireless calls are subject to dominant carrier regulation, many special access services are subject to the FCC's Phase II pricing flexibility rules, and roaming rates are not regulated at all. When contracts come up for renewal, AT&T would have the post-merger incentive to raise roaming rates, special access rates, and the

rates that it charges to resellers in order to limit the ability of Sprint, the regional carriers, and resellers to undercut its higher prices. Verizon would have the incentive to follow in parallel. Moreover, by removing T-Mobile as a purchaser of special access from independent suppliers, any actual or potential competition provided by those suppliers would be weakened, contributing further to an increase in special access rates.

- b. Second, the merger would further disadvantage Sprint in bidding for handsets. The Commission has already noted the disadvantage that smaller carriers face in obtaining timely access to new and innovative handsets. By further increasing the size disparity between Sprint and AT&T, the merger would increase this disadvantage because AT&T would have the incentive to bid more for exclusives, partly in order to protect a higher retail price on its larger market share.
- c. Third, by removing T-Mobile from the market and reducing AT&T's need to innovate in order to compete, the merger would raise the costs or delay the development of new technologies needed by Sprint and the regional fringe carriers. After the merger, Sprint and the fringe would need to finance more of the development themselves. The collective market share of carriers other than Verizon and AT&T would fall by almost one-third, from 36% to 24%, as a result of the merger. Sprint and the fringe would have such a small market share when compared to post-merger AT&T and Verizon that mainstream developers and equipment manufacturers may conclude that Sprint and the fringe carriers do not provide critical mass sufficient to justify developing handsets and equipment for

them. In effect, the merger would disadvantage Sprint and the fringe by shifting more of the development costs to them.

- d. Finally, Sprint's higher costs caused by the merger and resulting reduction in its market share would squeeze Sprint's EBITDA and investible funds. This would magnify Sprint's existing disadvantages, which would further handicap Sprint in the race to invest and innovate, further reducing innovation competition.

15. These exclusionary effects would increase AT&T's unilateral incentives to raise price and reinforce the upward pricing pressure that would result from AT&T gaining control over T-Mobile. These exclusionary effects similarly would increase the ability and incentive of AT&T and Verizon to engage in parallel accommodating conduct and other coordinated conduct. They would thus lead to competitive effects analogous to AT&T gaining partial control over Sprint and the regional fringe.

16. The wireless market is vulnerable to coordination by AT&T and Verizon and the merger would increase that vulnerability. The merger would eliminate one national competitor, T-Mobile, and the exclusionary effects of the merger would weaken the other national competitor, Sprint, as well as the regional fringe. The combined subscriber shares of AT&T and Verizon would increase to 76% in an all-wireless market and to 82% in a postpaid service market. Their share of wireless revenues would be even higher. In addition, AT&T and Verizon know each other's prices, buyers are small, and competitors have higher costs. Moreover, competitors are dependent on both AT&T and Verizon for essential inputs. AT&T and Verizon also are similarly situated in the market as incumbent local exchange carriers ("ILECs") with high market shares, meaning that both carriers would account for wireline "cannibalization" in setting

wireless prices. As a result, the merger raises a substantial risk of parallel accommodating conduct as well as the risk of facilitating informal coordination resulting from a common understanding by AT&T and Verizon of their mutual interdependence and the relative gains from cooperative versus non-cooperative conduct. Although the resulting coordination would not be perfect, consumers still would be harmed.

17. The FCC has long recognized that wireless duopolies cannot be expected to price competitively and that the presence of additional competitors can be expected to lead to lower prices. In fact, a number of studies of the cellular industry have shown that that the entry of additional carriers did lead to significant price reductions. These studies reinforce the concern that the creation of an AT&T/Verizon wireless services duopoly would lead to significant price increases.

18. These harmful effects are unlikely to be outweighed by efficiency benefits from the merger. The likely harmful effects from the exclusionary, unilateral and coordinated effects are significant. In addition, AT&T's efficiency claims are overstated and flawed in several ways.

- a. First, most if not all of the claimed efficiency benefits could be achieved by AT&T without the merger. Those benefits would not be merger-specific and thus would not be cognizable under the Merger Guidelines or prior Commission decisions.
- b. Second, some of the claimed efficiency benefits come at the expense of T-Mobile subscribers, both current and potential future subscribers. Future subscribers who would have preferred T-Mobile service would lose that choice. AT&T also intends to move T-Mobile subscribers from T-Mobile's AWS band to AT&T's

UMTS band, a move that AT&T apparently was unwilling to undertake with its own subscribers prior to the merger. AT&T fails to take into account this negative effect in describing its efficiency claims.

- c. Third, AT&T's claims of a spectrum shortage are much overstated. In fact, AT&T made public statements in 2010 about its substantial spectrum holdings. Moreover, its Application indicates that the spectrum shortages that it claims will be overcome by the proposed merger will not be present in all CMAs and may not occur for several years even in those "affected" CMAs.
- d. Finally, as noted above, some of the claimed efficiency gains do not *reduce* social costs but instead *shift* those costs to Sprint and the fringe firms. As such, these gains should not be treated as cognizable efficiency benefits, but rather would increase the ability of AT&T to raise its prices.

19. In sum, our economic analysis indicates that the proposed merger raises serious competitive concerns. The harmful effects likely would be substantial. The cognizable efficiencies (if any) likely are relatively small and the benefits are temporary at best. The competitive harms from the merger would be larger and more long-lasting.

20. For the same reason, our analysis indicates that these harms could be avoided only by prohibiting the merger. Localized divestitures and other regulatory conditions would not be effective remedies for eliminating these harms. A package of *local* divestitures would not replace the loss of T-Mobile as a *national* competitor with a valuable brand name. Indeed, divestitures to Verizon would do nothing to prevent the development of an ILEC duopoly. Regulatory or behavioral constraints on special access and roaming rates would be difficult to

implement and enforce efficiently and would be insufficient to remedy the horizontal concerns. In the end, the market would be left with an irreversible ILEC duopoly with a marginalized third national competitor and an even weaker regional fringe.

21. Policy makers have a choice. A march to an entrenched ILEC duopoly is neither natural nor inevitable. AT&T and Verizon have achieved their dominant positions through a series of acquisitions combined with the advantages retained from being dominant wireline carriers, not as a result of superior skill, foresight and industry. Indeed, it is just the opposite. AT&T's justification for the merger amounts to a concession that it has failed to invest adequately in its network and now wants the Commission to bail it out by allowing it to merge with T-Mobile.

22. This latest step to duopoly entrenchment would be the result of yet another acquisition by an ILEC, not natural forces. The acquisition would remove a large independent competitor, raise the costs of Sprint and the regional fringe carriers, and marginalize them in other ways. The acquisition also would eliminate the possibility that Sprint and T-Mobile would have been able to overcome their mutual disadvantages, either individually or by combining forces in some way to become stronger national players.

23. In the remainder of this report, we describe our analysis in more detail. The report is organized as follows. Product and geographic market definition is analyzed in Section II. Market shares and concentration are analyzed in Section III. We then turn to our analysis of competitive effects. Exclusionary effects are analyzed in Section IV. Unilateral effects are analyzed in Section V. Coordinated Effects are analyzed in Section VI. AT&T's claimed efficiency benefits are analyzed in Section VII. Section VIII concludes.

II. MARKET DEFINITION

24. There are several relevant markets or market segments that may be affected by the proposed merger. We consider: all-wireless service; postpaid retail wireless service; prepaid retail wireless service; wireless service to corporate customers; and wholesale wireless service. The potential geographic markets that we consider are individual local markets and a national market. In this section, we analyze market definition. The calculation of market shares and market concentration in these markets is discussed in Section III.

A. General Principles

25. The centerpiece of all antitrust analysis is competitive effects. Market definition is not the goal of antitrust analysis; instead, it is a tool that is used to facilitate the goal of evaluating competitive effects. In particular, the market definition exercise helps focus the competitive effects analysis. Analysis of the markets and market segments in which the adverse conduct and competitive harm occur (which may encompass several different markets) is central to rigorous antitrust analysis.

26. These general remarks apply to horizontal merger analysis, where the overarching goal is to evaluate the competitive effects of a proposed merger between competitors. Consumer harm may result from a merger along a number of possible price and non-price dimensions, both in the short-run and the longer run. The goal of market definition is to help identify the consumers who might be injured by the merger as well as the potential competitive constraints that might mitigate or prevent that injury.

27. This approach is summarized in the Merger Guidelines. The Guidelines make the point that “the ultimate goal of market definition is to help determine whether the merger may substantially lessen competition.”⁵ The Guidelines explain that “market definition helps specify the line of commerce and section of the country in which the competitive concern arises.”⁶ It also “allows the Agencies to identify market participants and measure market shares and market concentration.”⁷ The Guidelines make the further analytic point that relevant market definition (and the measurement of market shares and concentration) is not the only analytic tool, but that “evaluation of competitive alternatives available to customers is always necessary at some point in the analysis.”⁸ The Guidelines similarly observe that “[e]vidence of competitive effects can inform market definition, just as market definition can be informative regarding competitive effects.”⁹

28. Some believe that there is only a single relevant market in which to analyze the effects of a merger. That is not correct.¹⁰ Merger analysis may involve multiple relevant markets. This is because competitive effects and consumer harm may occur in multiple markets. In addition, market definition principles often do not lead to a single, unique relevant market. For example, it is clear that, within an overall market, firms may be able to raise prices only to

⁵ Guidelines at 12.

⁶ *Id.* at 7.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 9-10.

(or by more to) certain groups of customers. As stated in the Guidelines, the Agencies “may evaluate competitive effects separately by type of customer.”¹¹

29. Merger analysis is not restricted to the narrowest possible market that satisfies the Guideline’s market definition test.¹² For example, as a general matter, it may be relevant to analyze a merger in both a national market and local geographic markets. A merger is anticompetitive if it reduces competition in *any* relevant market, not simply the narrowest possible market that satisfies the hypothetical monopolist test set out in the Guidelines.¹³

B. Product Markets

30. We focus on several product markets that may be adversely affected by the merger. These include: all-wireless service; postpaid wireless service; prepaid wireless service; and wireless service to corporate and governmental accounts. All-wireless service is the broadest category. The other markets are narrower and reflect the fact that there are, or could be, distinct prices charged to customers in different categories.

31. Wireless phone service is purchased by various types of consumers with different needs. Wireless phone service is a differentiated product and carriers differ in their offerings and

¹¹ *Id.* at 6.

¹² *Id.* at 9-10.

¹³ Jonathan B. Baker, *Stepping Out in an Old Brown Shoe: In Qualified Praise of Submarkets*, 68 ANTITRUST L.J. 203, 207 (2000) (“Although a court might often focus its concern and analysis on the smallest such market, as the Merger Guidelines ‘generally’ recommend, a court is entitled to identify a violation of the antitrust laws based on harmful effects in any market, even one that is not the smallest. Doing so does not undermine the economic point of market definition if all such markets, whether broad or narrow, are defined with reference to substitution possibilities, as through the Merger Guidelines methodology.”) (footnotes omitted).

success in various consumer segments. These differences could prevent the services of some carriers from being reasonably interchangeable with the services of other carriers for certain customers. These differences also could make some carriers not cost competitive with other carriers. As a result, these differences could lead to targeted competitive effects.

32. Some examples of the relevant points of product and price differentiation include: payment plans; contract lengths; types of handsets; data features and costs of data services; roaming costs; calling circle terms; and family plans.

33. The sale of service is also differentiated between retail plans sold to individuals and families, on the one hand, and corporate plans sold to businesses and government agencies, on the other.¹⁴ These plans can differ in several ways besides price: geographical breadth of the carrier; roaming features; and the information and databases that are available for managing the plans. Business and governmental account plans are often individually negotiated.¹⁵

34. Because carriers have the ability to set distinct prices for particular service packages, these various differences imply that the merger could be analyzed in any or all of a number of relevant product markets or sub-markets, or market segments of more broadly defined markets.

¹⁴ [begin confidential information]

[end confidential information]

¹⁵ Declaration of John Dupree, Attachment C ¶ 11 (“Dupree Decl.”). When there is price discrimination, competitive effects may be evaluated separately by type of customer. Guidelines at 6.

1. All-Wireless Service

35. The broadest market is the aggregation of all wireless service sold to both retail and corporate customers, regardless of the set of features and particular services or pricing plans that are offered.

36. There is unlikely to be any controversy over whether all-wireless service satisfies the hypothetical monopolist test for product market definition.¹⁶ Consider a uniform (across-the-board) price increase for all wireless service by a hypothetical monopolist that controlled the capacity and sales of all current wireless carriers. It seems uncontroversial that such a uniform price increase would be profitable for the monopolist.¹⁷

37. Most of our analysis in this report focuses on the all-wireless market. However, certain other markets or market segments are worthy of analysis.

¹⁶ Guidelines at 8-9 (“The Agencies use the hypothetical monopolist test to identify a set of products that are reasonably interchangeable with a product sold by one of the merging firms.”). The Guidelines go on to describe this test as follows: “The hypothetical monopolist test requires that a product market contain enough substitute products so that it could be subject to post-merger exercise of market power significantly exceeding that existing absent the merger. Specifically, the test requires that a hypothetical profit-maximizing firm, not subject to price regulation, that was the only present and future seller of those products (‘hypothetical monopolist’) likely would impose at least a small but significant and non-transitory increase in price (‘SSNIP’) on at least one product in the market, including at least one product sold by one of the merging firms.” *Id.* at 9 (footnote omitted).

¹⁷ AT&T has provided no evidence to suggest that the market is broader than all-wireless service. It is unlikely that, in response to a small price increase for wireless service, a sufficiently large number of consumers would substitute to alternatives (*i.e.*, wireline calls from home, office, or payphones, or restrict their wireless calling solely to WiFi hotspots) in order to conclude that these alternatives would render the price increase unprofitable. Of course, if they did switch to wireline, Verizon and AT&T would recapture most of the revenue. In that situation, a hypothetical cartel would find it profitable to raise the price of wireless service. *See id.* at 9, n.4 (discussing the concept of the hypothetical profit-maximizing cartel).

2. Postpaid and Prepaid Wireless Service

38. Retail wireless service is sold on a postpaid and a prepaid basis, and there are significant differences between the two plan types.¹⁸ Postpaid plans generally involve long term contracts and heavily subsidized handsets. Postpaid plans generally involve credit checks and carriers offer these plans only to credit-worthy customers. Postpaid plans are more likely to offer customers the most current high-end smartphones with data features such as email and music and video downloading and the ability to hold multi-line accounts. In contrast, prepaid plans do not require long-term contracts and, as a result, handsets are less subsidized, if at all.¹⁹ Some prepaid plans do not include roaming, or may include high roaming fees. We understand that an increasing number of prepaid customers obtain service that is subsidized through the Universal Service Low-Income Fund.²⁰ Prepaid sellers also may not offer their plans on a national basis.

39. Carriers differ in the proportion of their business that is postpaid. The four national carriers tend to specialize in postpaid plans – 91% of AT&T’s retail customers, 95% of Verizon’s, 73% of Sprint’s, and 84% of T-Mobile’s, are postpaid.²¹ The regional carriers are

¹⁸ Declaration of William Souder, Attachment B ¶¶ 9-11 (“Souder Decl.”). We use the term “prepaid” to encompass all pay-in-advance offerings, whether from facilities-based or resale carriers.

¹⁹ *Id.*

²⁰ Universal Service Administrative Company, *Low Income Program*, available at: <<http://www.usac.org/about/universal-service/fund-programs/fund-programs-li.aspx>> (last visited May 26, 2011).

²¹ Based on data compiled from wireless carrier annual reports, 10-Ks, and press releases.

more varied. Neither MetroPCS nor Leap Wireless has postpaid plans; all are prepaid.²² In contrast, 89% of US Cellular’s customers are postpaid.²³ Resellers tend to specialize in prepaid plans. TracFone, which accounts for about 75% of reseller subscribers, offers exclusively prepaid service.²⁴ TracFone acquires minutes on a wholesale basis from facilities-based carriers AT&T and Verizon.²⁵

40. Postpaid retail wireless service likely is a relevant product market under the Guidelines.²⁶ There is significant product differentiation between prepaid and postpaid wireless services. Postpaid and prepaid ARPUs are significantly different. Although the number of prepaid subscribers is growing,²⁷ the prepaid share of total subscribers is only about 24% and customer demographics differ between the services.²⁸ If the price of postpaid plans were to increase by a small but significant amount, it is unlikely that a sufficient number of users of

²² MetroPCS Communications, Inc., Annual Report (Form 10-K) at 6 (Mar. 1, 2011) (“MetroPCS 2010 10-K”). Leap Wireless International, Inc., Annual Report (Form 10-K) at 2 (Feb. 25, 2011) (“Leap Wireless 2010 10-K”).

²³ United States Cellular Corporation, Annual Report (Form 10-K), Exh. 13 at 5 (Feb. 25, 2011).

²⁴ Based on data compiled from wireless carrier annual reports, 10-Ks, and press releases.

²⁵ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd 11407, ¶ 33 (2010) (“14th CMRS Competition Report”).

²⁶ As explained in the Guidelines, “[m]arket shares of different products in narrowly defined markets are more likely to capture the relative competitive significance of these products, and often more accurately reflect competition between close substitutes. As a result, properly defined antitrust markets often exclude some substitutes to which some customers might turn in the face of a price increase even if such substitutes provide alternatives for those customers.” Guidelines at 8.

²⁷ *14th CMRS Competition Report* ¶ 163 (“[P]repaid subscribers as a percentage of total subscribers has been increasing over the past few years.”).

²⁸ Based on data compiled from wireless carrier annual reports, 10-Ks, and press releases.

postpaid plans would switch to prepaid plans or wireline service to render the price increase unprofitable. However, whether postpaid service is a relevant product market, or simply a segment in the all-wireless market, it is likely that consumers of postpaid service would be adversely affected by the merger.

41. Professor Carlton, Dr. Shampine, and Dr. Sider (collectively, “Professor Carlton”) and AT&T suggest that AT&T faces significant competition from regional fringe carriers that offer prepaid calling plans.²⁹ However, these carriers’ prepaid plans generally have much lower ARPUs than the postpaid plans of the national carriers. As shown in Table 1, the ARPUs for the prepaid plans of MetroPCS and Leap are \$39.79 and \$37.76, respectively. In contrast, the ARPUs of the postpaid plans of AT&T, Verizon, T-Mobile, and Sprint are \$62.57, \$52.92, \$52.00, and \$55.00, respectively. Professor Carlton provides no quantitative evidence of AT&T’s subscriber losses to MetroPCS, US Cellular, and Leap. If there are losses, they are likely to be disproportionately low-end subscribers, not subscribers who are looking for the latest devices and features on their wireless phone. One normally expects that similarly priced high-end brands are closer substitutes for one another than are lower priced brands that provide a somewhat different mix of attributes or features.³⁰ As stated in the Guidelines:

[i]n differentiated product industries, some products can be very close substitutes and compete strongly with each other, while other products are more distant substitutes and compete less strongly. For example, one high-end

²⁹ Declaration of Dennis W. Carlton, Allan Shampine, and Hal Sider (“Carlton Decl.”) at ¶ 9, attached to Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65 (Apr. 21, 2011) (“Application”).

³⁰ In this report, we do not analyze whether there is a separate market for wireless service using smartphones with advanced data features.

product may compete much more directly with another high-end product than with any low-end product.³¹

42. Professor Carlton makes a similar point about the product differentiation inherent in the differential business and pricing strategies of the regional fringe carriers versus those of the national carriers:

...wireless firms today have highly diverse business strategies. Some, including AT&T and Verizon Wireless, focus principally on contract subscribers served through multi-year contracts. Others, *including MetroPCS and Leap*, focus almost exclusively on non-contract subscribers served on a month-to-month basis Differences among carriers extend to pricing strategies with different firms (*such as MetroPCS and Leap*) focusing on plans that provide unlimited voice and data services; while carriers such as Verizon Wireless, Sprint Nextel and T-Mobile USA offer unlimited data services but a range of plans with different “buckets” of voice minutes and texts. AT&T, however, offers tiered pricing for data services for new customers along with different buckets of voice minutes and texts.³²

43. Prepaid and postpaid services tend to appeal to a different demographic segment. Prepaid users tend to be younger and have lower incomes.³³ Because they do not require a credit check,³⁴ prepaid plans may enable less credit-worthy consumers who do not qualify for postpaid plans to obtain wireless service. The plans often tend to have fewer features. We understand that one factor in the growth of prepaid service is that it can be partially subsidized by the Universal Service Low-Income Fund. Prepaid plans are less likely to offer expensive smartphones with extensive data features. Prepaid plans also are better suited for people who do

³¹ Guidelines at 20.

³² Carlton Decl. ¶ 149 (emphasis supplied).

³³ Souder Decl. ¶ 10. *See also* Leap Wireless 2010 10-K at 3.

³⁴ Leap Wireless 2010 10-K at 3.

limited travelling because their roaming features often are poorer than those of the postpaid plans.³⁵

44. AT&T reports that Leap Wireless added about 100,000 net subscribers in the fourth quarter of 2010 and MetroPCS added about 300,000 net subscribers in the same quarter.³⁶ However, as discussed in more detail in Section III, the combined share of the fringe carriers in an all-wireless national market is just 7%. Moreover, the combined market share of MetroPCS and Leap increased only from 3.9% in the first-quarter of 2009 to 4.7% in last quarter of 2010, while the share of US Cellular actually fell from 2.4% to 2.1%. Overall these three carriers went from a share of 6.3% to 6.7% between 2009 and 2010.

3. Wireless Service to Corporate and Governmental Accounts

45. Many corporations and government entities acquire wireless service for their employees to use.³⁷ In this way, these firms are better able to control cost and maintain information and controls on usage. Carriers bid for these corporate contracts, often as the result of RFPs.³⁸ For larger accounts the prices are individually negotiated and the prices are not tied to generally available retail prices. We understand that corporate rates are lower than retail

³⁵

[begin confidential information]

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[end confidential

information]

³⁶ Declaration of David A. Christopher, attached to Application, ¶¶ 60, 62 (“Christopher Decl.”).

³⁷ Dupree Decl. ¶¶ 3-4. These entities sometimes negotiate packages on behalf of employees who pay for the service themselves.

³⁸ *Id.* ¶¶ 12-13.

individual or family plans. Thus, corporate sales, which include sales to government agencies as well as commercial firms, likely qualify as a separate relevant market.³⁹

46. We understand that virtually all sales to these customers are made by the four national carriers, except for small, local businesses and governmental agencies.⁴⁰ These customers often require a national carrier because they have employees around the country and, because their employees travel frequently, they generally require free roaming. They also prefer the benefits of one-stop shopping. These customers are unlikely to switch to regional carriers in response to a small price increase by the various national carriers.

4. Wholesale and Input Markets

47. There also are several wholesale and input markets that warrant analysis. The merger will have exclusionary effects on Sprint and the fringe competitors in these markets that will further exacerbate the adverse unilateral and coordinated effects in the downstream wireless markets.

a. Wholesale Wireless Service to Resellers

48. The four national carriers sell wireless service to resellers on a wholesale basis. Thus, the national carriers' wholesale and retail pricing incentives are interdependent to some degree. We understand that most resellers offer prepaid service plans.

49. The merger would eliminate wholesale competition between AT&T and T-Mobile for GSM resellers. Resellers like TracFone can purchase more service at wholesale from Sprint

³⁹ Guidelines at 6.

⁴⁰ Dupree Decl. ¶ 15.

and Verizon. However, because that would involve use of CDMA handsets instead of GSM handsets, the competition afforded by Sprint and Verizon may only be feasible with respect to new subscribers, not those that already have GSM handsets.

b. Backhaul Services

50. AT&T and Verizon also provide backhaul services as an input to the other carriers. Backhaul services involve dedicated circuits (known as “special access”) that are used to carry traffic to and from a wireless carrier’s cell sites.⁴¹ In the areas in which AT&T is the ILEC, it is by far the leading provider of backhaul services, but it faces limited actual or potential competition from other providers.⁴² The situation is similar with respect to Verizon in the areas in which it is the ILEC. The backhaul provider sets the price of backhaul service. Although special access rates have been the subject of a longstanding Commission proceeding, AT&T and other ILECs have had their special access pricing largely deregulated in areas in which they have received Phase II pricing flexibility and completely deregulated nationally for Ethernet backhaul.

51. As discussed in more detail below, the merger likely would lead to higher rates for backhaul services to Sprint and the smaller regional carriers for two reasons. First, if AT&T raises its retail and corporate rates, it also would have the incentive to raise its backhaul rates as well in order to limit the ability of Sprint and, to a lesser extent the regional carriers, to gain market share at its expense. Second, because AT&T’s higher retail and corporate rates would

⁴¹ *14th CMRS Competition Report* ¶ 293.

⁴² Comments of T-Mobile USA, Inc., WC Docket No. 05-25, at 7-8 (Aug. 8, 2007) (“T-Mobile Special Access Framework Comments”).

give Verizon the incentive to raise its own retail rates, Verizon also would have the incentive to raise its backhaul rates.

c. Roaming

52. AT&T and T-Mobile both currently offer roaming service to the small rural GSM carriers. Verizon provides roaming services to CDMA carriers like Sprint.

53. As discussed in more detail in Section IV.A below, the merger would give AT&T and Verizon incentives to raise the roaming rates that they charge. One reason is that AT&T would no longer face any competition from T-Mobile in the provision of roaming to GSM carriers. AT&T also would have the incentive to raise roaming rates to raise its competitors' costs and thus support its higher retail rates. As with backhaul, Verizon would gain the incentive to raise roaming rates as it raises its own retail rates in response to higher retail rates charged by AT&T.

C. Geographic Markets

54. Today, there are four large nationwide facilities-based wireless carriers: AT&T, Verizon, Sprint, and T-Mobile. There also is a fringe of other competitors that operate facilities in more limited geographic regions. Consumers reside in different areas of the country, although many consumers make a significant number of wireless calls to other parts of the country or use their wireless phones when they travel.

55. The Commission has traditionally analyzed wireless mergers solely or primarily within local geographic markets. In the past, pricing and service offerings by each firm were less uniform across geographies. Thus, by the standard hypothetical monopoly test, there clearly

were local geographic markets. Moreover, for mergers that involved the acquisition by a national carrier of a carrier with a narrow geographic footprint, for example the acquisition of Dobson Communications by AT&T, it would not have made sense to overlook effects in local areas. Even in the proposed merger of AT&T and T-Mobile, which involves two national competitors, there may be narrowly targeted local effects. Thus, it may be relevant to consider local markets when evaluating the competitive effects of this merger.

56. Importantly, however, competition among the four national carriers is currently focused primarily on the national rather than the local level. Although Sprint in the past had priced its plans at the level of regional or even narrower geographies, that is no longer the case.⁴³ Each of the four leading wireless providers has sought to present a nationwide image. Despite potential differences in network quality, uniform national prices today appear to be the norm,⁴⁴ although there are a few exceptions that result from limited local promotions or marketing trials.⁴⁵ Carriers advertise the same messages throughout the country and appear to offer the

⁴³ Souder Decl. ¶ 3.

⁴⁴ In his Declaration in connection with AT&T's acquisition of Centennial Communications, David A. Christopher declared that: "*Very infrequently*, AT&T can lower plan prices in a local area or region to boost sales All such rate plan promotions must be approved at senior levels *and approval is rarely granted.*" Declaration of David A. Christopher, attached to Applications of AT&T Inc. and Centennial Communications Corporation for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 08-246, ¶ 6 (Nov. 21, 2008) (emphasis supplied). Similarly, in his Declaration in connection with AT&T's acquisition of Dobson Communications, Paul Roth declared that: "Local rate plan promotions are *not* offered at the discretion of local managers and must be approved at senior levels of the company. *Local rate promotions are rarely approved.*" Declaration of Paul Roth, attached to Applications of AT&T Inc. and Dobson Communications Corp. for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 07-153, ¶ 7 (July 13, 2007) (emphasis supplied) ("Roth Dobson Decl.").

⁴⁵ We do understand, for example, that Verizon is currently conducting a trial that is confined to areas in which it is not the ILEC. Similarly, according to AT&T, it has engaged in

same service plans everywhere that they offer service.⁴⁶ Handset offerings do not appear to differ regionally.⁴⁷ Significant innovation decisions of the national carriers are carried out on a national basis, although new services may not be rolled out simultaneously in all local markets.⁴⁸

57. This acquisition raises concerns about loss of price and non-price competition at the national level. It follows from the market definition principles analysis above that a national geographic market satisfying the Merger Guidelines’ test would be germane to evaluating the competitive effects. The proposed merger of AT&T and T-Mobile involves two carriers with important brand names that compete nationally, not simply overlap in a few narrow geographic

some local promotions against all-you-can-eat (“AYCE”) carriers in South Florida, Texas, and Detroit. See Christopher Decl. ¶ 8.

⁴⁶ Charles River Associates conducted a preliminary pricing survey in April and May 2011. The survey included 150 zip codes in an equal mix of rural and urban areas and across all 50 states. The survey looked at the various talk and data plan offerings and associated pricing for individual (*i.e.*, single-phone line) wireless plans offered on the respective Internet sites of the four national carriers. Although this sample was limited, the survey documented that none of the carriers varied their individual plan offerings or pricing based on geographic location of the customer – meaning that the carriers set plan offerings and pricing at the national level. We anticipate that the Commission will obtain complete data from the carriers.

⁴⁷ **[begin confidential information]** [REDACTED] **[end confidential information]** In his Declaration in this matter, David A. Christopher states that AT&T’s Vice Presidents/General Managers “strive to meet unique local customer demand . . . by offering local promotions on handsets and peripheral devices.” Christopher Decl. ¶ 13. Similarly, in his Declaration in connection with AT&T’s acquisition of Dobson Communications, Paul Roth declared that “AT&T Mobility’s regional Vice President General Managers (“VPGMs”) have discretion to lower handset pricing in order to meet sales targets.” Roth Dobson Decl. ¶ 7. However, neither provides any indication of the frequency with which local handset promotions occur and our own preliminary survey found none, as described above.

⁴⁸ **[begin confidential information]** [REDACTED] **[end confidential information]**

areas. They are not offering different products at separate local prices based on distinct local capacities. Thus, a national market is relevant for evaluating the competitive effects of this merger in addition to (or even potentially instead of) separate competitive evaluations in each local market. Moreover, if national competitive concerns are found, localized remedies are unlikely to be successful in resolving those concerns. Thus, in our view, this merger should be analyzed at the national level, in addition to the local level. Professor Carlton seems to agree.⁴⁹

58. This approach to national market definition should not be controversial. Our analysis flows from the first principles of antitrust analysis for mergers and other conduct. As noted earlier, at one time the Merger Guidelines seemed to say that only the smallest market would be analyzed, but this approach is no longer the policy of the antitrust agencies. Moreover, in recent mergers, AT&T contended that only national competition was relevant, indeed, that it was the *only* relevant consideration. For example, as it stated in its acquisition of Dobson Communications in 2007:

[T]he evidence shows that the predominant forces driving competition among wireless carriers operate at the national level. Therefore, examining market structure in areas as small as CMAs or CEAs does not accurately account for the competitive forces that will constrain the behavior of the merged firm As the Commission has recognized, rate plans of national scope, offering nationwide service at a single price without roaming charges, have become the standard in the wireless industry AT&T establishes its rate plans and pricing on a national basis, which means that the terms of such plans are set without reference to market

⁴⁹ Carlton Decl. ¶ 83 (“There are both national and local dimensions to competition in the provision of wireless service.”). In supporting Verizon’s acquisition of ALLTEL, Professor Carlton supported a national market definition. Declaration of Dennis W. Carlton, Allan Shampine and Hal Sider, attached to Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements, WT Docket 08-95, ¶¶ 36-38 (June 13, 2008) (“Carlton ALLTEL Decl.”).

structure at the CMA level. Rather, AT&T develops its rate plans, features, and prices in response to competitive conditions and offerings at the regional and national level – primarily the plans offered by the other national carriers.⁵⁰

1. Local Markets

59. In previous mergers, the Commission has defined local markets corresponding to CMAs and CEAs. Indeed, the Commission has considered only local markets in its review of past wireless mergers. For example, in its consideration of the AT&T-Dobson Communications merger, the Commission noted that, although the applicants “argue that there may be substantial similarity in the prices of national rate plans amongst nationwide service providers, they admit to adjusting prices in local markets. We conclude that these assertions regarding the nationwide service providers do not establish the existence of a national market.”⁵¹ In concluding that the relevant geographic market was local, the Commission noted that there was significant local variation in wireless prices. The Commission’s analysis also may have been motivated by the

⁵⁰ Public Interest Statement, attached to Applications of AT&T Inc. and Dobson Communications Corp. for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-153, at 18-19 (July 13, 2007) (footnotes omitted). As the Commission noted in the Verizon-ALLTEL transaction, “the Applicants argue that the market for mobile telephony/broadband services is increasingly national in scope.” *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements, and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, ¶ 50 (2008) (“Verizon-Atlantis Merger Order”).

⁵¹ *Applications of AT&T Inc. and Dobson Communications Corp. For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd 20295, ¶ 25 (2007).

smallest market principle in the earlier versions of the Merger Guidelines.⁵² However, as we have noted above, consideration of *both* local and national markets would be consistent with the new Guidelines.⁵³

60. Local markets likely also would satisfy the hypothetical monopolist test, just as would the national market. Carriers do have the ability to set distinct prices in each local area, although that clearly is not the norm for the national carriers. Arbitrage likely would be limited because subscribers need to provide address information for a credit check and billing relationship for postpaid service. We provide market concentration information at the local market level in Section III, based on our preliminary analysis of the NRUF data.

2. National Market

61. A national geographic market is relevant to the analysis of this merger because national carriers like AT&T and T-Mobile set their conduct based on a number of key competitive dimensions for all of the areas that they serve. These dimensions include pricing, service plans and product positioning, handsets, and advertising. Moreover, their innovative activities are intended to develop new products for all of the areas that they serve, not for individual geographic areas. For the four national carriers, this equates to nationwide competition, whereas for the regional carriers the scope is much narrower. It also may be relevant to analyze competition on a national basis because the quality of a carrier's product in

⁵² See, e.g., *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, ¶ 89 (2004).

⁵³ See Guidelines at 9-10 (“The Agencies may evaluate a merger in any relevant market satisfying the test, guided by the overarching principle that the purpose of defining the market and measuring market shares is to illuminate the evaluation of competitive effects.”).

one local area (*e.g.*, the quality of service that it offers) affects the perceived desirability of the carrier by consumers who reside in other areas but roam.

a. Price Competition

62. Although, in the past, Sprint sometimes set different prices for customers that resided in different areas, that no longer is the case.⁵⁴ Moreover, the other major national carriers generally have uniform national pricing.

63. The national carriers might offer geographically uniform national pricing plans for several reasons. The carriers present a national product, which they support with national advertising. National pricing is simpler for resellers and internal customer service people. Localized pricing might be perceived as inconsistent with the ubiquity they are promoting.⁵⁵

b. Product Positioning and Service Plan Competition

64. National carriers also compete nationwide with respect to fundamentally important non-price attributes that comprise the “brand equity” of each national carrier. These attributes include network quality, product positioning, and innovation. The four national carriers each make investments and position themselves in product space for the entire nation, not separately for each local area. The strength of each of the brands in any local area is based on the national attributes of the carriers, not just the attributes in that particular area. For

⁵⁴ Souder Decl. ¶ 3.

⁵⁵ This is not to say that local conditions have no bearing on pricing. In setting its uniform national price, each carrier may as an economic matter take into account local conditions and aggregate them up into an overall effect on the total national demand for its own product and the type of competitive interaction that it would expect. However, as a practical matter, Sprint would not change its national prices in response to price changes in just a few local geographies. *Id.*

example, Sprint has positioned itself as offering reliable service and strong value. Sprint’s innovations include having the first all-digital voice network, the first nationwide 3G network, the first 4G network from a national carrier, and the first unlimited 4G plan. Verizon has positioned itself as the carrier with the highest quality network. T-Mobile has positioned itself as the lowest-cost national carrier. Until recently, AT&T promoted itself as the only carrier that offered the iPhone.⁵⁶

c. Handset Competition

65. The national carriers also compete nationally in handset procurement. The four major national carriers offer the same handsets to customers throughout the entire country.⁵⁷ When carriers have exclusive handset contracts, those contracts cover the entire country.⁵⁸ Contracts for the Apple iPhone and other handsets are negotiated to cover the entire nation, not separately for each local area. Many applications for smartphones are developed for national use.

d. Advertising Competition

66. The national carriers advertise price plans, services, and handsets largely through national media. Over [begin confidential information] [redacted] [end confidential information] of

⁵⁶ Declaration of John Carney, Attachment F ¶ 4 (“Carney Decl.”).

⁵⁷ [begin confidential information] [redacted]
[redacted] [end confidential information]

⁵⁸ “[H]andset manufacturers generally employ EHAs [Exclusive Handset Agreements] with providers that have larger customer bases and extensive network penetration. For instance, all nationwide providers have some EHAs, while non-nationwide service providers typically do not have EHAs.” *14th CMRS Competition Report* ¶ 317.

the advertising by the national carriers has been through national outlets.⁵⁹

e. Innovation Competition

67. Innovation competition is a key component of dynamic wireless competition and occurs primarily on a national basis.⁶⁰ R&D applies to all regions and innovations are offered on a national basis. Although national carriers roll out 4G service sequentially around the country as the network build progresses rather than at the same time everywhere, the 4G innovation is national in scope for the four national carriers and will be offered by them throughout the nation within a few years.

68. This is not to say that all competition is solely national. Carriers' incentives may differ geographically. For example, AT&T and Verizon, unlike Sprint and T-Mobile, have incentives to discourage "cord-cutting" in areas where they are the ILECs.⁶¹ Carriers invest to expand capacity in particular areas and may have temporary promotions or geographically targeted advertising campaigns. Each carrier will have a geographic rollout plan for 4G. Nonetheless, our analysis indicates that national competition is the primary aspect of competition, so that assessing the effects of the merger on competition should not be limited to the local level.

⁵⁹ [begin confidential information] [REDACTED] [end confidential information]

⁶⁰ *14th CMRS Competition Report*, Statement of Chairman Julius Genachowski ("Competition in the wireless voice market over the past 15 years has spurred investment, innovation, and in many cases higher quality for lower prices for American consumers.").

⁶¹ American households are increasingly cutting the cord. *See e.g.*, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, *Wireless Substitution: State-level Estimates From the National Health Interview Survey, January 2007 - June 2010*, (April 20, 2011), available at: <<http://www.cdc.gov/nchs/data/nhsr/nhsr039.pdf>>.

D. Applying the Hypothetical Monopolist Test for Market Definition to the National Geographic Market

69. At the national level, a straightforward application of the hypothetical monopolist test for market definition would indicate the existence of a national market. Consider a uniform (*i.e.*, across-the-board) national price increase for all-wireless service (or postpaid service) by a hypothetical monopolist that controlled the capacity and sales of all current wireless carriers. As discussed above, it seems uncontroversial that such a uniform price increase would be profitable for a wireless monopolist.

III. MARKET SHARES AND CONCENTRATION

70. Once each of the relevant markets is defined, the market definitions can be used to calculate market shares and market concentration. Market concentration then can be compared to the safe harbor and anticompetitive presumption concentration thresholds in the 2010 Merger Guidelines. After the proposed AT&T/T-Mobile merger, concentration in the all-wireless and postpaid national markets would far exceed even the relaxed threshold in the new Guidelines for mergers that are “presumed to be likely to enhance market power.” The Merger Guidelines observe that this presumption may be “rebutted by persuasive evidence showing that the merger is unlikely to enhance market power.”⁶² However, the arguments and the evidence in AT&T’s application are insufficient to rebut the presumption. The presumption is true whether the market is defined nationally **[begin NRUF/LNP confidential information]**  **[end NRUF/LNP confidential information]**.

⁶² Guidelines at 3.

A. Market Participants and Market Shares

71. Market definition analysis in the Merger Guidelines is based on demand-side substitution. However, the Merger Guidelines explain that other firms may participate in the market as rapid entrants. Market shares are calculated for all current producers of products in the relevant market. For firms that participate as rapid entrants, the Guidelines explain that the Agencies will also calculate market shares for these other participants “if this can be done to reliably reflect their competitive significance.”⁶³

B. National Market Concentration

72. The Merger Guidelines make the general point that the higher are the post-merger HHI and the increase in the HHI, the greater are the potential competitive concerns that are raised by a merger. The Guidelines create several regions of relative concern. For a merger that leads to a post-merger HHI above 2500 in a relevant market and an HHI increase of more than 200, the Agencies conclude that the merger is “presumed to be likely to enhance market power” in that relevant market. For a merger that leads to a post-merger HHI below 1500 in a relevant market, the Agencies conclude that the merger is unlikely to have adverse competitive effects in that market. For a merger that leads to an HHI in the 1500-2500 range in a relevant market and an HHI increase of more than 100 points, the Agencies conclude that the merger would “potentially raise significant competitive concerns and often warrant scrutiny.”⁶⁴

⁶³ *Id.* at 16.

⁶⁴ *Id.* at 19.

1. All-Wireless Market

73. Table 2 provides HHIs for an all-wireless market based on the number of subscribers.⁶⁵ The left panel of Table 2 attributes subscribers to the facilities-based carrier(s) that supply resellers with minutes on a wholesale basis. This follows the Commission’s usual methodology, which attributes the subscribers of resellers to the facilities-based carriers whose services that they resell. The Commission has said that “only facilities-based competition can fully unleash competing providers’ abilities and incentives to innovate, both technologically and in service development, packaging, and pricing.”⁶⁶ The right panel of Table 2 attributes the subscribers of resellers to the resellers, treating them as fully independent competitors.⁶⁷ Both post-merger HHIs are in the highly concentrated region of the Guidelines.

74. The post-merger HHI when the resellers’ subscribers are fully attributed to the facilities-based wholesale service providers is 3198 and the increase in the HHI is 696. When the resellers’ subscribers are instead fully attributed to the resellers, the post-merger HHI is 2649

⁶⁵ The subscriber shares in Table 2 exclude connected devices and therefore differ slightly from the shares reported in paragraphs 13 and 44. The subscriber counts for the four national carriers are as follows: 86.2 million for AT&T, 31.8 million for T-Mobile, 94.1 million for Verizon, and 48.1 million for Sprint.

⁶⁶ *Promotion of Competitive Networks in Local Telecommunications Markets*, Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217 and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98, 14 FCC Rcd 12673, ¶ 4 (1999).

⁶⁷ [begin highly confidential information]

[end highly confidential information]

and the increase in the HHI is 549. In either case, the level and increase in concentration that would result from the merger would be presumed to enhance market power.⁶⁸

75. The Guidelines explain that market shares and concentration are generally measured on the basis of revenues. Revenues are particularly relevant when the products are differentiated, as they are in this market. Table 3 calculates HHIs using revenue shares, using the same two methods for attributing revenue. In the left panel, revenues are fully attributed to the facilities-based carriers. Under this method, the revenue-based HHI for an all-wireless market is 3356 and the increase in the HHI is 741. In the right panel, where the resellers' subscribers instead are fully attributed to the resellers, the revenue-based HHI is 3279 and the increase in the HHI is 727. Using either approach, the merger would be presumed to enhance market power.

2. Postpaid and Prepaid Wireless Shares

76. Postpaid service likely is a relevant market. As presented in Table 4, the subscriber-based post-merger HHI would be 3595 and the increase in the HHI would be 724, which falls into the highly concentrated region where the transaction would be presumptively anticompetitive under the Guidelines.⁶⁹

⁶⁸ If the subscribers were partially attributed to the resellers and partially to the facilities-based carriers, the resulting shares and HHI would be between those reported here.

⁶⁹ MetroPCS and Leap Wireless currently sell only prepaid plans. We do not view these carriers as “rapid entrants” into postpaid services. However, even if they were considered participants, our results would be unlikely to change substantially because they would be unlikely to gain substantial postpaid shares.

77. We have not yet evaluated whether prepaid service is a relevant product market or simply a market segment. Resellers sell prepaid services and subscribers to resellers might, in principle, be assigned either to facilities-based carriers or resellers. We have calculated subscriber shares both ways.⁷⁰ These shares and the associated HHIs are presented in Table 4.

- a. Prepaid Wireless Subscribers (Attribution to Facilities-Based Carriers): If the subscribers of the prepaid resellers are attributed to the facilities-based carrier that provides the wholesale minutes, the post-merger HHI would be 2496 and the increase in the HHI would be 607, which falls into the upper end of the moderately highly concentrated region. The increase in the HHI is sufficiently large that the transaction likely would warrant further scrutiny under the Guidelines.
- b. Prepaid Wireless Subscribers (Attribution to Resellers): If subscribers to prepaid services are attributed to resellers as independent competitors, the post-merger HHI would be 1609 and the increase in the HHI would be 135, which falls into the lower end of the moderately highly concentrated region. The increase in the HHI is sufficiently large that the transaction may warrant further scrutiny under the Guidelines, but it is not at the high end of the range.

3. Corporate and Governmental Accounts

78. We understand the carriers other than the four national carriers are not significant participants in this market. In fact, Professor Carlton reports shares for AT&T, T-Mobile,

⁷⁰ We currently lack data sufficient to calculate revenue shares for postpaid and prepaid services.

Verizon, and Sprint. Using the shares that he reports, the market for “business customers” has a post-merger HHI of [begin highly confidential information] [REDACTED] [end highly confidential information] and an HHI increase of [begin highly confidential information] [REDACTED] [end highly confidential information]. Professor Carlton does not provide sufficient information for us to verify his share data.⁷¹

C. Local Market Concentration

79. As discussed above, the Commission’s traditional approach is to evaluate concentration at the local market level. Based on our analysis of the NRUF data, we find that the merger violates the Commission’s HHI subscriber screens in local areas that comprise the [begin NRUF/LNP confidential information] [REDACTED] [end NRUF/LNP confidential information] of the U.S. population and subscribers.⁷² The CMAs that “fail” the screen together account for [begin NRUF/LNP confidential information] [REDACTED] [end NRUF/LNP confidential information] of the U.S. population and the CEAs that “fail” the screen together account for [begin NRUF/LNP confidential information] [REDACTED] [end NRUF/LNP confidential information] of the U.S. population.

D. Spectrum-Based Market Concentration

80. We have also analyzed concentration in an all-wireless market on the basis of spectrum ownership. Concentration in spectrum ownership has significant implications for

⁷¹ Carlton Decl. at Table 2.

⁷² See Tables 5a to 5c. The Commission screen triggers close competitive analysis when (1) the post-merger HHI would be greater than 2,800 and the change in HHI will be 100 or greater, or (2) the change in HHI would be 250 or greater, regardless of the level of the HHI. See, e.g., Verizon-Atlantis Merger Order ¶ 78.

competition in the provision of wireless service for two related reasons. First, spectrum is an essential input for wireless carriers. Carriers with limited spectrum holdings have limited capacities and are, for that reason, handicapped in competing for wireless subscribers. Second, because there are significant scale economies in the provision of wireless services, a carrier with small spectrum holdings, and a commensurately small share of subscribers, can be expected to have higher costs *per subscriber* than a carrier with large spectrum holdings and a large subscriber share. This cost disadvantage reinforces the effect of the competitive disadvantage that results directly from the carrier's smaller capacity.

81. In the Commission's *14th CMRS Competition Report* on competition in the mobile wireless industry, the Commission reported the Population-Weighted Average Megahertz Holdings by Provider for each of the major wireless carriers, some smaller carriers, and a catch-all "Other" category separately for each of the following spectrum frequency bands: (1) 700 MHz; (2) Cellular; (3) SMR; (4) PCS; (5) AWS; (6) BRS; and (7) EBS.⁷³

82. However, these figures likely understate the concerns about spectrum concentration. Because the Population-Weighted Average Megahertz Holdings reported by the Commission do not take into account differences in the values of spectrum in the various bands, they provide a misleading picture of the respective license holdings of each carrier and, thus, their respective capacities to serve subscribers. Indeed, the Commission itself has recognized the importance of differences in spectrum values:

Two licensees may hold equal quantities of bandwidth but nevertheless hold very different spectrum assets Bidders in recent auctions in the United States also appear to have recognized these differences, which helps

⁷³ *14th CMRS Competition Report* ¶ 267, Table 26.

explain the significantly different prices per MHz-POP in the AWS-1 and 700 MHz auctions.⁷⁴

83. The spectrum owned by AT&T and Verizon tends to be superior in a number of important respects to spectrum held by other carriers, particularly the spectrum holdings of Clearwire and LightSquared. AT&T and Professor Carlton do not take into account the differences in spectrum values and, as a result, they overstate the competitive significance of the spectrum licenses held by LightSquared and Clearwire.⁷⁵

84. The Commission has found that EBS spectrum and portions of BRS spectrum are not suitable for mobile telephony/broadband services and are therefore not included in the Commission's spectrum screen analysis. The Commission has also found that mobile satellite service ancillary terrestrial component ("MSS ATC") spectrum, including LightSquared's spectrum in the L band, does not meet its spectrum screen criteria. To be conservative, we nonetheless have included the Clearwire and LightSquared in our analysis.

85. To account for differences in spectrum quality, we have calculated spectrum holdings on the basis of the values carried on each carrier's balance sheet as submitted in its annual filings to the Securities and Exchange Commission.⁷⁶ As can be seen in Table 6, using

⁷⁴ *Id.* ¶ 268.

⁷⁵ Application at 92-94; Carlton Decl. ¶¶116-120.

⁷⁶ Although book values are imperfect proxies for market values, they show clearly that the spectrum holdings of Clearwire and LightSquared are dramatically overstated by the MHz-Pop measure. In their 2010 Annual Reports, several carriers make statements about the relationship between the book value and market value for spectrum. AT&T says that the fair market value of its spectrum licenses "exceeded the book value by more than 25%." *See A Network of Possibilities*, AT&T Inc. 2010 Annual Report at 46, *available at*: <http://www.att.com/Common/about_us/annual_report/pdfs/ATT2010_Full.pdf> (last visited May 26, 2011) Sprint says that fair market value is "more than 20% above" book value. *See Sprint Nextel Corporation*,

this measure, AT&T and Verizon today together account for 66% of the value of all spectrum holdings by wireless carriers.⁷⁷ With the addition of T-Mobile, AT&T and Verizon would account for 74% of the value of all spectrum held by wireless carriers. In contrast, the combined holdings of Clearwire and LightSquared account for just 4%.

86. The shares based on book values reflect the differential performance characteristics of various spectrum blocks. First, users in some spectrum bands may cause interference with the operations of other users. To limit or prevent interference, therefore, users may have to engage in protective measures, for example, by leaving some portions of the band unused, limiting power output, or restricting the directions in which signals radiate. Each of

Annual Report (Form 10-K) at 41 (Feb. 24, 2011) (“A decline in the estimated fair value of FCC licenses of approximately 20% also would not result in an impairment of the carrying [book] value.”) (“Sprint 2010 10-K”). Verizon says that fair market value “significantly exceeded” book value. *See* Verizon Communications 2010 Annual Report at 34 (“The fair value of Domestic Wireless [spectrum license holdings] significantly exceeded its carrying [book] value.”), *available at*: <http://www22.verizon.com/investor/investor-consump/groups/public/documents/investorrelation/2010_annualreport_quicklinks.pdf>. Leap says that fair market value is “39% above” book value. Leap 2010 10-K at 109 (“The aggregate fair value of the Company’s and Savary Island’s individual wireless licenses was \$2,734.7 million, which when compared to their respective aggregate carrying [book] value of \$1,920.0 million, yielded significant excess value.”). *See also* MetroPCS 2010 10-K at F-11 (“No impairment [on spectrum license holdings] was recognized as the fair value of the indefinite-lived intangible assets exceeded their carrying value as of September 30, 2010.”); Clearwire Corporation, Annual Report (Form 10-K) at 54 (Feb. 22, 2011) (“If the projected buildout to the target population coverage was delayed by one year and the buildout rate of preceding periods were to decline by 5%, the fair values of the [spectrum] licenses, while less than currently projected, would still be higher than their book values.”). LightSquared and T-Mobile make no statement. Even if the ratio of market value to book value of Clearwire and LightSquared were dramatically underestimated *relative to that of the larger carriers*, Clearwire and LightSquared are sufficiently small that the conclusions about the greater accuracy of book value rather than the MHz-Pop measure would not be altered.

⁷⁷ The AT&T spectrum holdings used in the calculation account for the AT&T’s agreement to purchase nearly \$2 billion of spectrum from Qualcomm that was announced in December 2010.

these measures makes the spectrum less valuable than if it could be used without the interference safeguards. For example, concerns have been raised about possible interference between LightSquared's proposed service and GPS and Global Navigation Satellite System ("GNSS") receivers, maritime and aeronautical emergency communication systems, and Inmarsat receivers used by governmental agencies.⁷⁸ AT&T understates the difficulties that LightSquared and other developers of new spectrum bands face in making their spectrum holdings available for use. As a recent Congressional Research Service Report notes: "If AT&T projects a long lag before the 700 MHz spectrum will be available for use, then it would seem that an even longer lag is probable before the LightSquared spectrum is available"⁷⁹

87. Second, users of some spectrum bands have greater degrees of incumbency, variable licensing areas, smaller or variable channelization schemes, use limitations, and other administratively imposed transaction costs than other bands do. For example, the Commission has long recognized that the spectrum bands employed by Clearwire for BRS/EBS services have lower values than other bands because, among other reasons, use of these bands requires complex and difficult negotiations with numerous other licensees. For that reason, as indicated above, the Commission declined to include all of the EBS channels and a large portion of the

⁷⁸ See, e.g., Letter from Lawrence E. Strickling, Assistant Secretary for Communications and Information, National Telecommunications and Information Administration, United States Dept. of Commerce, to Julius Genachowski, Chairman, Federal Communications Commission, SAT-MOD-20101118-00239 (Jan. 12, 2011).

⁷⁹ Charles B. Goldfarb, *The Proposed AT&T/T-Mobile Merger: Would It Create a Virtuous Cycle or a Vicious Cycle?*, Congressional Research Service at 15 (May 10, 2011), available at: <<http://ieeusa.org/policy/eyeonwashington/2011/documents/attmerger.pdf>>.

BRS channels employed by Clearwire in its spectrum screen as part of the Sprint/Clearwire transaction.⁸⁰

E. Economic Evidence on Wireless Concentration and Prices

88. Our competitive effects analysis suggests that the proposed merger would raise unilateral, coordinated, and exclusionary effects concerns. By eliminating T-Mobile as an independent competitor and marginalizing Sprint, the wireless market would move closer to an entrenched duopoly of AT&T and Verizon.

89. A substantial body of empirical work, including estimates from the wireless industry, indicates that high concentration – particularly duopoly – is associated with higher prices.⁸¹ These studies reinforce the concern that an AT&T/Verizon wireless services duopoly would lead to significant price increases.

90. For example, Hausman reports that “the effect of ...competition on wireless rates in the U.S. has been significant. Throughout the 1984-1995 period, real, inflation-adjusted cellular rates had fallen at a rate of 4-5% per year. Between 1995 and 1999, however, real cellular rates fell at a rate of 17% per year as [the newly-entered] PCS service providers offered

⁸⁰ *Sprint Nextel Corporation and Clearwire Corporation; Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, Memorandum Opinion and Order, 23 FCC Rcd 17570, ¶¶ 67-71 (2008).

⁸¹ *See, e.g.*, Richard Schmalensee, *Inter-Industry Studies of Structure and Performance*, HANDBOOK OF INDUSTRIAL ORGANIZATION, Vol. II, Richard Schmalensee and Robert D. Willig, eds. (1989); Timothy F. Bresnahan, *Empirical Studies of Industries with Market Power*, HANDBOOK OF INDUSTRIAL ORGANIZATION, Vol. II, op. cit.; Paul A. Pautler, *Evidence on Mergers and Acquisitions*, 48 ANTITRUST BULLETIN 119 (2003); Jonathan B. Baker, *Mavericks, Mergers, and Exclusion: Proving Coordinated Competitive Effects Under Antitrust Laws*, 77 N.Y.U. L. REV. 135, 153 (2002).

service at prices per minute in bucket plans that were more than 50% lower than existing cellular rates.”⁸²

91. The FCC also has recognized that duopolies cannot be expected to price competitively and that the entry of additional firms could be expected to lead to lower prices. For example, in the Commission’s First Report on competition in mobile telephone service, it noted:

The duopoly nature of cellular service made it less than fully competitive Therefore, in the early 1990s, the Commission allocated 143 Megahertz (“MHz”) of spectrum, almost three times the spectrum allocation for cellular service, to create Personal Communications Services (“PCS”) Already, the approach of broadband PCS appears to be influencing incumbent wireless providers to lower prices and increase features.⁸³

IV. EXCLUSIONARY EFFECTS ON THE NON-ILEC CARRIERS

92. As highlighted in Section 1 of the Guidelines, mergers may have exclusionary effects on competitors. The analysis of these exclusionary effects is germane to a full evaluation

⁸² Jerry Hausman, *Mobile Telephone*, HANDBOOK OF TELECOMMUNICATIONS ECONOMICS, Vol. I, 580, 582, Martin Cave *et al.*, eds. (2002). Similar results are reported for other countries. See, e.g., Thierry Penard, *Competition and Strategy on the Mobile Telephony Market: a Look at the GSM Business Model in France*, 45 COMMUNICATIONS AND STRATEGIES 49 (2002); Tommaso Valletti and Martin Cave, *Competition in U.K. mobile telecommunications*, 22 TELECOMMUNICATIONS POLICY 109 (1998); Mathias-W Stoetzer and Daniel Tewes, *Competition in the German cellular market?*, 20 TELECOMMUNICATIONS POLICY 303 (1996). In addition to the finding that the presence of additional competitors leads to lower prices, there is also evidence that entry affects the services that are offered and the range of price plans that are available. See Katja Seim and V. Brian Viard, *The Effect of Market Structure on Cellular Technology Adoption and Pricing*, 3 AMERICAN ECONOMIC JOURNAL: MICROECONOMICS 221 (2011).

⁸³ *Implementation of Section 6002(B) of the Omnibus Report Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Memorandum Opinion and Order, 10 FCC Rcd 8844, ¶ 4 (1995).

of competitive effects. The AT&T/T-Mobile merger raises the potential for such exclusionary effects on both Sprint and the regional carriers. These effects would reinforce AT&T's unilateral incentives to raise price and would further increase the likelihood of harmful coordinated effects.

93. If the merger were to inflict higher costs on Sprint and the regional carriers, or reduce the quality of the services that they receive from AT&T and Verizon, they would face cost or demand disadvantages in competing for subscribers. Moreover, exclusionary effects in one local area can have effects throughout the nation. For example, high roaming rates in one area raise the cost of serving subscribers from other areas who roam there. In addition, if Sprint would incur higher costs, and therefore obtain a smaller market share and receive lower profits as a result of the merger, that fact would reduce its incentives and ability to bid for favorable handset contracts or finance new infrastructure investments. As a result, Sprint and the fringe carriers would have a reduced ability and incentive to competitively constrain AT&T and Verizon, which would, as a result, be able to charge higher prices than they would otherwise.⁸⁴ There also would be adverse effects on investment and innovation competition.

A. Impact on Roaming and Special Access Costs

94. Sprint and the fringe carriers are highly dependent on AT&T and Verizon for certain essential inputs, primarily access to their wireline networks for backhaul and access to their wireless networks for roaming. In the pre-merger market, all carriers are highly dependent on AT&T and Verizon for backhaul. In addition, small GSM fringe carriers currently have the benefit of competition between T-Mobile and AT&T for wholesale roaming. Sprint is also

⁸⁴ Baker, *supra* n.81 at 137 (“Exclusionary conduct, too, may lead to changes in market structure that help create or maintain a collusive agreement.”).

dependent on Verizon for roaming. Sprint has estimated that it pays approximately **[begin confidential information]** [REDACTED] **[end confidential information]** per CDMA postpaid subscriber per month for backhaul and roaming.⁸⁵ This represents a significant cost disadvantage, relative to AT&T and Verizon, each of which pays a large fraction of these costs to itself.⁸⁶

95. The merger would result in this cost disadvantage becoming more pronounced. The GSM regional carriers would no longer have the benefit of wholesale roaming competition between AT&T and T-Mobile. With T-Mobile eliminated as a purchaser of backhaul from independent suppliers, that market would be likely to become less attractive to actual and potential competitive backhaul providers. As a result, Sprint and the regional fringe carriers would be left with even fewer alternatives to AT&T and Verizon. Verizon and AT&T would be likely to have an incentive to raise their roaming rates in parallel in order to support higher retail prices.⁸⁷

1. Backhaul

96. Independent wireless carriers, including Sprint, are highly dependent on AT&T and Verizon for an important input, the facilities that they use for backhaul, which are acquired under the terms of special access tariffs. Sprint has estimated that it pays approximately **[begin confidential information]** [REDACTED] **[end confidential information]** per wireless subscriber per

⁸⁵ Declaration of Paul Schieber, Attachment D ¶¶ 6, 11 (“Schieber Decl.”).

⁸⁶ That is, these two ILECs would charge themselves marginal cost while other carriers pay prices substantially greater than marginal cost.

⁸⁷ Guidelines at 24.

month for special access, most of it to AT&T and Verizon.⁸⁸ T-Mobile has argued that “[t]he unregulated, supra-competitive prices that T-Mobile must pay for [special access] services harm consumers as well as T-Mobile” and that “ILECs have both the ability and the incentive to discriminate against competitors in favor of their wireless affiliates.”⁸⁹

97. T-Mobile has further noted that it has “always attempted to use...the very limited number of alternative suppliers of special access that exist in a small number of urban areas”⁹⁰ Of course, that will no longer be the case if the merger of AT&T and T-Mobile is approved. By eliminating one of the two principal purchasers of special access from independent suppliers, the merger of AT&T and T-Mobile would shrink further the already highly limited market that these suppliers can serve, reducing still further competition in the supply of backhaul services. That would harm Sprint, other independent wireless carriers, and their subscribers.

98. Moreover, as discussed in more detail in Section VI, the proposed merger substantially increases the likelihood that AT&T and Verizon could coordinate to raise retail prices. Because they would be earning a higher retail margin, both would have incentives to increase the rates that they charge (or increase the provisioning difficulties) for special access to Sprint and other carriers. As their costs rise, Sprint and the regional carriers would have to raise their own retail rates, further increasing their competitive disadvantage.

⁸⁸ Schieber Decl. ¶ 11.

⁸⁹ T-Mobile Special Access Framework Comments at 2, 5. *See generally* Comments of Sprint Nextel Corporation, WC Docket No. 05-25 (Jan. 19, 2010).

⁹⁰ T-Mobile Special Access Framework Comments at 7.

2. Roaming

99. Sprint and the regional fringe carriers also may face higher roaming fees as a result of the merger. Roaming costs can be significant. For example, Sprint has estimated that it pays average per CDMA postpaid subscriber monthly roaming costs of approximately **[begin confidential information] [REDACTED] [end confidential information]**.⁹¹ The per-subscriber costs for other CDMA carriers are likely to be even higher in light of their more limited coverage. In fact, the fringe carriers typically do not offer roaming in their standard prepaid packages or offer roaming as an add-on or on a per minute charge basis.

100. Prior to the proposed merger, the small GSM fringe carriers have been able to benefit from actual or potential competition between T-Mobile and AT&T for wholesale roaming. If T-Mobile were eliminated as a competitor, however, AT&T would lose this constraint.⁹² AT&T also would have the incentive to raise its roaming rates in order to limit the ability of other carriers to constrain the higher retail rates that it would have an incentive to charge. Moreover, because the proposed merger would substantially increase the likelihood that AT&T and Verizon could coordinate to raise prices to their retail customers, that would give Verizon an incentive to increase the roaming rates that it charges Sprint and the fringe carriers, further weakening the competitive influence of these competitors.

⁹¹ Schieber Decl. ¶ 6.

⁹² Indeed, we have a natural experiment to test that prediction. We understand that after the 2007 merger of the only two CDMA carriers in Mexico, Sprint's roaming rates were almost immediately raised by more than **[begin confidential information] [REDACTED] [end confidential information]**, and have increased by more than **[begin confidential information] [REDACTED] [end confidential information]** in total since the merger.

101. The impact of higher roaming costs would have adverse effects on Sprint, fringe competitors, and competition, similar to the effects discussed above with respect to the cost of special access for backhaul services. If the increased roaming rates were passed on to Sprint's subscribers, or if Sprint responded by reducing service quality, subscribers would be less likely to select Sprint (and the fringe carriers) and that would increase the ability of AT&T and Verizon to raise their prices further, even while increasing their market shares. It also could increase the likelihood of post-merger retail price coordination between AT&T and Verizon, whether from parallel accommodating conduct or a common understanding of their mutual interdependence and the gains from cooperative over non-cooperative conduct. This is because the higher roaming costs would further reduce Sprint's ability and incentive to disrupt any coordination between AT&T and Verizon.

3. Inter-Carrier Compensation

102. Wireless carriers pay a regulated price for access to the switched wireline network. As wireline carriers, AT&T and Verizon pay a high percentage of these fees to themselves. In contrast, these fees represent a real cost for the non-ILEC wireless carriers. This cost contributes to the non-ILECs' cost disadvantage. Although this regulated price would not be increased as a result of the merger, these higher costs currently limit the ability of Sprint and the other non-ILEC carriers to constrain unilateral and coordinated price increases by AT&T and Verizon, both before and after the merger.

4. Wholesale Prices to Resellers

103. Resellers are dependent on facilities-based carriers for wholesale service. This reduces their independent role as rivals, since the facilities-based carriers provide and set the

price of the underlying wholesale services. After the merger, AT&T and Verizon would provide more than 85% of this service and each would have the incentive to raise its wholesale rates.⁹³ When resellers' contracts expire, AT&T and Verizon would gain the ability to do so. These higher prices would reduce the ability of resellers to constrain AT&T and Verizon from raising their retail rates after the merger.⁹⁴ AT&T also may be able to exercise certain influence over TracFone, the largest reseller, because two members of the Board of Directors of American Móvil, the entity that controls TracFone, are AT&T employees.⁹⁵

B. Impact on Handset Competition

104. The largest national carriers, AT&T and Verizon, often obtain earlier access to innovative new handsets and other consumer devices than do other carriers.⁹⁶ The prominent example is the iPhone. This earlier access may result from formal or informal exclusivity arrangements. As the FCC has noted, “handset manufacturers generally employ [exclusive handset arrangements] with providers that have larger customer bases and extensive network penetration.”⁹⁷

105. Because of their larger customer bases, all of the national carriers are able to offer more handset models than the regional fringe players. The Commission has reported that AT&T

⁹³ Share based on data compiled from wireless carrier annual reports, 10-Ks, and press releases.

⁹⁴ The resellers may be protected in the short run if their contracts involve fixed prices for an unlimited number of voice and data minutes.

⁹⁵ *America Móvil Board of Directors*, America Móvil, available at: <<http://www.americamovil.com/amx/en/cm/about/board.html?p=28&s=36>> (last visited May 20, 2011).

⁹⁶ Declaration of Fared Adib, Attachment E ¶ 11 (“Adib Decl.”).

⁹⁷ *14th CMRS Competition Report* ¶ 317.

and Verizon offered 25 and 17 smartphones, respectively, in December 2009.⁹⁸ Sprint offered 19 and T-Mobile offered 17 smartphones during the same period.⁹⁹ In contrast, the comparable figures for US Cellular, MetroPCS, and Leap Wireless were 11, 2, and 0.¹⁰⁰ The Commission also noted that “Recent analyst reports... identify access to handsets as an increasing challenge faced by mid-sized and small providers.”¹⁰¹

106. AT&T’s larger subscriber base also gives it an advantage in bidding for the exclusive right to distribute an innovative handset model. The per-unit cost of acquiring such exclusive rights is higher for Sprint than for AT&T because Sprint has a smaller number of customers over which to spread the total cost. This bidding disadvantage would increase if the merger were approved because it would provide AT&T with an even larger customer base. It would also reinforce AT&T’s interest in denying Sprint access to the new technology in order to protect AT&T’s larger subscriber base.¹⁰² In these circumstances, other things equal, demand for Sprint’s service would decline and AT&T and Verizon would be able to further raise their prices while increasing their market shares.

107. While exclusives are sometimes efficient, the increased bidding advantage for exclusives that AT&T would acquire as a result of the merger is not a cognizable efficiency benefit. These exclusives involve paying the handset manufacturer a premium for denying access to the handset to Sprint, not for making it available to AT&T’s customers. Exclusives

⁹⁸ *Id.* ¶ 308, Chart 43.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* ¶ 299.

¹⁰² Adib Decl. ¶ 9.

may be a way for AT&T to purchase market power by limiting the access of its competitors to new handsets.

C. Impact on the Cost and Availability of New Technologies

108. Because the merger would eliminate T-Mobile as a purchaser of new technology products that compete with those of AT&T and Verizon, the procurement costs of Sprint, the smaller carriers and entrants may rise, or the availability of new technology products may decline. This effect could apply to network infrastructure equipment, innovative new handsets, and other equipment.

109. An important factor in determining the value of a particular spectrum band is the availability of network equipment to prospective users of that band. Bazelon has noted that “[a]ny new wireless technology requires network equipment and devices. Spectrum users must find suppliers for both. The compatibility of existing infrastructure, hardware and software with the radio frequencies within a band is a critical determinant of its value because research and development is costly, time consuming and risky. Often a more mature band already has equipment available to use the spectrum.”¹⁰³

110. Part of the value of a particular spectrum band depends upon extensive development, testing, and production of network equipment, chipsets, radio devices and other components designed exclusively for that particular band. Costs fall as original equipment manufacturers, chipset vendors, handset manufacturers and other parties in the global supply

¹⁰³ Coleman Bazelon, The Brattle Group, Inc., *The Economic Basis of Spectrum Value: Pairing AWS-3 with the 1755 MHz Band is More Valuable than Pairing it with Frequencies from the 1690 MHz Band*, at 7 (Apr. 11, 2011), available at: <http://www.brattle.com/_documents/UploadLibrary/Upload938.pdf>.

chain invest in the infrastructure and operations necessary to develop radio and network technology specific to the band. This “ecosystem” of development and investment in plant, equipment, and logistical support generates positive externalities that benefit all spectrum licensees in the band.¹⁰⁴

111. Absent the merger of AT&T and T-Mobile, all of the national wireless carriers, with the possible exception of Verizon, likely would seek spectrum in “new” bands, for which the research and development costs for new network equipment have not yet been incurred. Thus, these carriers would share in the costs of developing the ecosystem. To the extent that the merger enables AT&T to reduce its needs for additional spectrum capacity, AT&T may be able to delay, or avoid entirely, the need to contribute to the costs of developing this equipment.¹⁰⁵

112. This analysis also has implications for the evaluation of AT&T’s efficiency claims. The “savings” in development costs gained by AT&T would involve cost-shifting to Sprint, not an efficient reduction in social resource costs. These costs would still need to be paid, just not by AT&T. This cost shifting would, of course, further weaken Sprint and the other carriers. If they are unable to absorb these costs, their access to new equipment would be

¹⁰⁴ Adib Decl. ¶ 12.

¹⁰⁵ Wireless network expert Steven Stravitz notes that instead of the proposed merger, “AT&T should pursue new technologies and strategies to use its vast spectrum holdings more efficiently, and thus manage the growing traffic on its network, just as its competitors do. If the proposed acquisition of T-Mobile were authorized, it would only further delay AT&T’s implementation of efficiency measures and encourage AT&T to continue to use conventional technology. . . .” Declaration of Steven Stravitz, Attachment G ¶ 69 (“Stravitz Decl.”). Stravitz further observes that “AT&T’s proposed acquisition of T-Mobile will perpetuate AT&T’s inefficient spectrum use. Rather than encouraging investment in new, innovative, and more efficient technologies, the proposed T-Mobile acquisition would permit AT&T to keep subscribers tied to older and less efficient technologies, delay innovative new facilities-based investment, and continue to maintain a large inventory of unused spectrum.” *Id.* at ¶ 10.

delayed or lower quality and less innovative equipment would be developed for them. In either case, the ability of Sprint to act as a competitive constraint on the behavior of AT&T and Verizon would be reduced. This makes it less likely that any AT&T cost-reductions would be passed on to consumers.

113. The collective market share of the carriers other than Verizon and AT&T would fall by almost one-third as a result of the merger, from 36% before the merger down to 24% after the merger. Absent the merger, there would be demand by these carriers for innovative handsets and other new equipment to compete with AT&T's offerings.¹⁰⁶ After the merger, that demand would be reduced as T-Mobile used AT&T equipment and infrastructure. Without T-Mobile as a purchaser, the manufacturers of these new models may lose critical mass and, therefore, may be less likely to offer innovative products that Sprint and others can use to compete with AT&T.

D. Impact on Network Effects and Innovation Competition

114. The wireless market is subject to very significant economies of scale in production. Provision of wireless service involves high capital costs and low marginal costs. Sprint and T-Mobile today already are competitively disadvantaged by these economies of scale. These disadvantages are particularly significant for dynamic competition and innovation.

115. AT&T and Verizon today account for a disproportionate share of wireless profits, partly as a result of the scale economies. Although Verizon and AT&T together serve about 64% of overall wireless subscribers, they account for about 79% of operating profits.¹⁰⁷ These

¹⁰⁶ Adib Decl. ¶¶ 16-17.

¹⁰⁷ Based on data compiled from wireless carrier annual reports, 10-Ks, and press releases.

higher profits provide earnings with which to invest in network infrastructure, handset exclusives, and other investments, thus limiting the need to obtain funds from the external capital market.

116. The ability to finance internally reduces a firm's effective cost of investment. As discussed in the economic literature, imperfectly informed lenders concerned about borrowers' adverse selection and adverse incentives (moral hazard) have the incentive to limit their willingness to finance investment with debt finance, either by increasing the cost of such loans or denying credit.¹⁰⁸ This leads firms to utilize more internal funds to finance new capital investment. If a firm is forced to rely too heavily on outside funds, the result is more limited borrowing capacity and/or higher costs of borrowed funds. The firm also may be forced to hold more cash to deal with potential delays in financing.

117. These financing constraints can be significant. For example, Moody's credit rating for Sprint is Ba3 versus an A2 rating for AT&T and an A3 rating for Verizon.¹⁰⁹ Sprint's ratio of EBITDA to its interest expense (4.0) is much lower than those of AT&T (13.0) and Verizon (12.3), indicating greater default risk.¹¹⁰ As a result, AT&T and Verizon have much lower interest rates on their intermediate debt, 3.8% and 3.9%, respectively, versus 6.2% for

¹⁰⁸ See, e.g., Joseph E. Stiglitz and Andrew Weiss, "Credit Rationing in Markets with Imperfect Information," 71 AMERICAN ECONOMIC REVIEW 393 (1981); see also Stewart C. Myers and N. Majluf, "Corporate Financing And Investment Decisions When Firms Have Information That Investors Do Not Have," 13 JOURNAL OF FINANCIAL ECONOMICS 187 (1984). In his Declaration, Sprint Treasurer Gregory D. Block notes that "Sprint is far more constrained than AT&T and Verizon in its ability to use internal funds because of its lower relative cash-flow generation. Since AT&T and Verizon generate a disproportionately greater amount of internal funds than Sprint, Sprint has to rely more on external financing for capital expenditures and innovation investments." Declaration of Gregory D. Block, Attachment I ¶¶ 3-4 ("Block Decl.").

¹⁰⁹ Block Decl. ¶ 4.

¹¹⁰ *Id.*

Sprint.¹¹¹ Sprint has total borrowings of about [begin confidential information] [redacted] [end confidential information].¹¹² If the merger were to increase Sprint's borrowing costs by 250 basis points, Sprint's annual interest costs would rise by over [begin confidential information] [redacted] [end confidential information] per year. This is [begin confidential information] [redacted] [end confidential information] of Sprint's wireless capital investment in 2010.¹¹³ Moreover, a low EBITDA/Interest ratio would lead lenders to be wary of lending additional funds to Sprint, except at a still higher interest rate. Finally, these figures do not account for Sprint's need for significantly greater cash holdings as reserves to repay interest and insure against financing delays.¹¹⁴

118. This combination of economies of scale plus financing advantages can create a vicious cycle that can entrench the dominance of leading firms in a high investment industry like wireless. The more profitable leading firms have the ability to invest disproportionately more than the smaller firms. As a result, the leading firms can increase their lead over time, other things equal. This, in turn, further increases their market shares and profit advantage and can

¹¹¹ Bloomberg Data, May 4, 2011. Cited only for purposes of this factual statement. Sprint disclaims and does not endorse or adopt said report, including any statements, opinions or analysis therein.

¹¹² Block Decl. ¶ 4.

¹¹³ Sprint 2010 10-K at F-33.

¹¹⁴ In this regard, Block notes that “[a] greater reliance on external funding would increase Sprint's borrowing costs Sprint would also have to hold more cash as reserves to service debt and to weather market volatility.” Block Decl. ¶ 7. Indeed, Block estimates that if Sprint had been in the same cash or cash equivalent position relative to its short term borrowings as AT&T and Verizon, it would have held \$2.5 billion less cash or cash equivalents in 2008, \$3.4 billion less in 2009, and \$3.7 billion less in 2010. *Id.*

thus increase the already disproportionate ability of the two ILECs to invest in exclusive handset contracts and spectrum.¹¹⁵

119. This dynamic process has always placed pressure on Sprint to maintain the pace of innovation and new capital investment at a rate that enables them to match or exceed AT&T's and Verizon's investment in new technologies that offer innovative wireless features and functions. Sprint has compensated for these disadvantages by maintaining a culture of innovation. Sprint's innovations include having the first all-digital voice network, the first nationwide 3G network, the first 4G network from a national carrier, and the first unlimited 4G plan, even as it has relied on more expensive external financing.

120. The impact of the financing dynamic has been very striking. The EBITDA for AT&T and Verizon was 79% of industry EBITDA in 2010, versus 52% in 2005. AT&T and Verizon's combined spending on capital expenditures and spectrum since 2008 were \$42.8 billion vs. \$14.5 billion for Sprint and T-Mobile.¹¹⁶

121. This analysis should not be interpreted to suggest that the wireless market is a natural duopoly, or even a natural monopoly. To the contrary, the primary vehicle for the growth of Verizon and AT&T, both in wireless and wireline, has been mergers. The current AT&T is a

¹¹⁵ This cycle is described in greater detail in the Block Declaration. Block notes in particular that “[a] lower market share would likely lead to decreased revenues and a decline in our internal funds for investment. This would increase Sprint's reliance on external capital sources. A greater reliance on external funding would increase Sprint's borrowing costs, expose it to deeper market volatility, and reduce its ability to finance capital expenditures and innovations to maintain its national network.” *Id.*

¹¹⁶ *US Wireless 411*, UBS Investment Research at 36, 41 (Mar. 30, 2011); *see also US Wireless 411*, UBS Investment Research at 49 (Nov. 30, 2006). Cited only for purposes of this factual statement. Sprint disclaims and does not endorse or adopt said report, including any statements, opinions or analysis therein.

result of numerous asset consolidations. It consists of the wireless assets of Comcast Cellular (1999), Ameritech (1999), the old AT&T Wireless entity (2004), the Cingular assets (2006), Dobson Communications (2007), Edge (2008), and Centennial (2009).¹¹⁷ Verizon Wireless is composed of assets from Bell Atlantic, combined with NYNEX (1995), Vodafone (2000), GTE (2000), and ALLTEL (2009).¹¹⁸

122. AT&T's acquisition of T-Mobile would exacerbate the financing asymmetries and the resulting network effects. The share of wireless industry operating profits accounted for by AT&T and Verizon would rise from 79% to 88%.¹¹⁹ When this effect is added to the impact of the higher costs and other disadvantages that the acquisition likely would impose on Sprint and the regional fringe carriers, the merger could tip today's market from one in which Verizon and AT&T are constrained to some extent by two smaller national competitors to one where an ILEC duopoly is substantially less constrained by one – now marginalized – national competitor. That outcome is likely to lead to reduced innovation as well as higher prices.

¹¹⁷ The dates for the various mergers that created the current AT&T can be found under M&A/Private Placements in CapitalIQ. Until 2005, Cingular was a joint venture between BellSouth and SBC. SBC acquired BellSouth in 2005. SBC changed its name to AT&T after acquiring the original AT&T in 2005.

¹¹⁸ Investor Relations, Company Info, Company Profile, Corporate History, *The History of Verizon Communications*, Verizon, available at: <<http://www22.verizon.com/investor/corporatehistory.htm>> (last visited May 29, 2011). Of course, several of these acquisitions also substantially expanded the local exchange footprint of AT&T and Verizon. Thus, the current AT&T grew by merger to include the local exchange assets of the one-time stand-alone LECs BellSouth, SBC, Ameritech, the old AT&T, and Centennial. Verizon's local exchange footprint grew by merger to include the local exchange assets of NYNEX, Bell Atlantic, and GTE in particular. Thus, these mergers provided by AT&T and Verizon with a broader scope to use special access and channel termination rates that now allow them to disadvantage their wireless rivals.

¹¹⁹ These figures are based on data compiled from wireless carrier annual reports, 10-Ks, and press releases.

123. In short, the increase in concentration and the reduction in competition after the merger would not be the natural result of beneficial market forces. The cause of this entrenched ILEC duopoly would be yet another ILEC acquisition, not superior skill, foresight or industry. The merger would raise Sprint's costs and lead to its marginalization. It would eliminate the possibility that Sprint and T-Mobile could overcome their disadvantages, either individually or by combining forces in some way to become stronger national players.

V. UNILATERAL EFFECTS

124. There are several reasons why the proposed merger of AT&T and T-Mobile raises unilateral effects concerns: the loss of T-Mobile as a significant competitor; a reduction in the competitive constraint imposed by Sprint; the weak constraints that have always been imposed by the regional fringe; and the fact that entry is unlikely. Below we present some preliminary quantitative analysis of measures of upward pricing pressure.

A. Loss of T-Mobile as a Significant Competitor

125. The merger would remove T-Mobile as an independent national competitor.¹²⁰ The merger also would eliminate the T-Mobile products that are preferred by new subscribers. By gaining control over T-Mobile, AT&T would gain the incentive to raise both T-Mobile's and AT&T's prices unilaterally. AT&T suggests that it would maintain the T-Mobile price plans for current T-Mobile subscribers. Nonetheless, the T-Mobile products would not be available to new subscribers. AT&T also would have the incentive to try to induce current T-Mobile subscribers to switch to more expensive AT&T plans.

¹²⁰ Carney Decl. ¶¶ 12-16 (discussing T-Mobile's competitive significance).

126. AT&T’s Application attempts to portray T-Mobile as a carrier whose elimination from the market would have little or no competitive significance. For example, AT&T claims that “[a]s a standalone company . . . T-Mobile USA would continue to face substantial commercial and spectrum-related challenges.”¹²¹

127. Although T-Mobile recently has faced a higher churn rate, it still serves more than four times the number of subscribers than the next largest carrier, MetroPCS. Moreover, it has a valuable brand name and other substantial assets, and shortly before its proposed merger with AT&T was announced, T-Mobile provided a highly optimistic picture of its prospects to investors.¹²² For example, it pointed to its large subscriber base, its substantial spectrum holdings, and its “strong and future proven technology platform.”¹²³ It also stated that it had “[e]nough spectrum for medium-term,”¹²⁴ that it was “ready to capture data market share,”¹²⁵ and that it had a plan to achieve \$1.8 billion in savings by 2013.¹²⁶ It stated that it had “America’s largest 4G network and now fastest in the Top 100 markets,”¹²⁷ and that its “HSPA+ platform provides [a] cost effective and technically flexible path to LTE.”¹²⁸ In T-Mobile’s own words, it

¹²¹ Application at 13.

¹²² See, e.g., Presentation by Deutsche Telekom and T-Mobile USA, Inc. to Analysts (Jan. 20, 2011), available at: <http://www.download-telekom.de/dt/StaticPage/97/67/90/tmo-invday11.pdf_976790.pdf>.

¹²³ *Id.* at 5.

¹²⁴ *Id.* at 7.

¹²⁵ *Id.* at 18.

¹²⁶ *Id.* at 20.

¹²⁷ *Id.* at 34.

¹²⁸ *Id.* at 39.

was on a “path for moving from challenged to challenger.”¹²⁹ T-Mobile’s heightened competitive influence resulting from these actions would be eliminated by the merger.

128. Moreover, it is important to note that T-Mobile’s current difficulties are a fairly recent development. As it noted in its investor presentation, for example, it had grown rapidly between 2001 and 2008.¹³⁰ Despite its performance in the last two years, it could hardly be said that T-Mobile was on an irreversible decline to competitive insignificance. This claim is all the more untenable in light of AT&T’s claims that MetroPCS and Cincinnati Bell are formidable competitors despite their very small market shares. Moreover, Sprint fortunes also had declined, but now even AT&T itself has noted Sprint’s “resurgence,” and it pointed to the fact that it “has reversed recent trends.”¹³¹ In contrast, the AT&T/T-Mobile merger may lead to an irreversible decline for Sprint and a less competitive wireless market.

129. There have been numerous instances where T-Mobile initiated or contributed to aggressive price movements or the introduction of innovative equipment. For example, in 2008, in response to an announcement by Verizon, T-Mobile announced flat rate plans for unlimited calls in the United States, which, according to a press report, “rais[ed] investor concerns that a price war could break out.”¹³² In 2008, T-Mobile was the first carrier to offer a mobile phone

¹²⁹ *Id.* at 28.

¹³⁰ *Id.* at 15 (“T-Mobile revenues stalled in 2008 after 7 years of rapid growth.”).

¹³¹ Application at 79-80.

¹³² Sinead Carew, *Unlimited mobile plans spark price war concerns*, REUTERS (Feb. 19, 2008), available at: <<http://www.reuters.com/assets/print?aid=USN1930076320080219>>.

that used the Android operating system.¹³³ In 2010, T-Mobile reduced the price of the Samsung Galaxy Tablet, which began a round of price cutting for the device.¹³⁴ Even more significantly, it announced the introduction of “the nation’s fastest 3G wireless network on its latest mobile broadband devices.”¹³⁵ Until the merger was announced, T-Mobile had been targeting AT&T in its advertising.¹³⁶

130. The Commission itself has noted the impact of T-Mobile’s past pricing moves.

For example, it noted:

In an effort to reduce churn, T-Mobile introduced a lower-priced version of its unlimited national voice plan in the first quarter of 2009 With the subsequent launch of its new “Even More” plans in October 2009, T-Mobile reset prices on tiered offerings at significant discounts to its legacy plans, and brought its pricing structure more closely in line with that of Sprint Nextel, the least expensive nationwide service provider.¹³⁷

¹³³ Press Release, T-Mobile USA, Inc., *T-Mobile Unveils the T-Mobile G1 – the First Phone Powered by Android* (Sept. 23, 2008), available at: <http://www.t-mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20080923&title=T-Mobile%20Unveils%20the%20T-Mobile%20G1%20%E2%80%93%20the%20First%20Phone%20Powered%20by%20Android>.

¹³⁴ Donald Melanson, *T-Mobile drops Samsung Galaxy Tab to \$350 on-contract*, ENGADGET (Dec. 15, 2010), available at: <<http://www.engadget.com/2010/12/15/t-mobile-drops-samsung-galaxy-tab-to-350-on-contract/>>. See also Chris Ziegler, *Sprint drops Galaxy Tab down to \$300, undercuts everyone but US Cellular*, ENGADGET (Jan. 12, 2011), available at: <<http://www.engadget.com/2011/01/12/sprint-drops-galaxy-tab-down-to-300-undercuts-everyone-but-us/>>; Ben Bowers, *T-Mobile expected to cut Galaxy Tab pricing to \$249.99 (update: drop is official!)*, ENGADGET (Jan. 26, 2011), available at: <<http://www.engadget.com/2011/01/26/t-mobile-expected-to-cut-galaxy-tab-pricing-again-to-249-99/>>.

¹³⁵ Press Release, T-Mobile USA, Inc., *T-Mobile to Rollout the Nation’s Fastest 3G Wireless Network with HSPA+ to More than 100 Metropolitan Areas in 2010* (Mar. 24, 2010), available at: <<http://newsroom.t-mobile.com/articles/t-mobile-HSPA-3G-network>>.

¹³⁶ Video Release, T-Mobile USA, Inc., “Step Up to Nationwide 4G with T-Mobile,” available at: <<http://www.youtube.com/watch?v=W22JccSTDtk&feature=BFa&list=SPE3D764A5AFBFB9D6&index=>>> (last visited May 25, 2011).

¹³⁷ *14th CMRS Competition Report* ¶ 91.

131. The Commission further noted: “T-Mobile’s price changes appear to have prompted Verizon Wireless and AT&T to narrow the price premium on unlimited service offerings” although it also noted that the unlimited price plans of Verizon Wireless and AT&T “remained the most expensive in the industry, even following the price changes.”¹³⁸ Based on this experience, it would hardly be reasonable for the Commission to conclude that other carriers, much less carriers from the fringe, “already fill – or could easily move to fill – the competitive role T-Mobile USA occupies today.”¹³⁹

132. There also are likely to be significant unilateral effects concerns in the corporate and governmental account market. T-Mobile is a significant player in that market and the regional fringe firms are not.¹⁴⁰ According to Sprint, T-Mobile frequently bids on corporate opportunities targeted by Sprint.¹⁴¹ The fringe firms would face significant impediments to expansion into the corporate market because they lack national coverage and have high roaming costs.

B. Insufficient Competitive Constraints from Sprint

133. Sprint would be unlikely to be able to constrain the post-merger price increases by AT&T. As discussed in Section IV, Sprint and the fringe carriers have higher costs than AT&T and Verizon and face other disadvantages. They have higher costs in part because they are dependent on Verizon or AT&T for essential inputs, such as roaming, special access, and

¹³⁸ *Id.* ¶¶ 91-92.

¹³⁹ Application at 70.

¹⁴⁰ Dupree Decl. ¶15.

¹⁴¹ *Id.*

exchange access to their switched wireline networks.¹⁴² Sprint and the fringe carriers also lack scale economies and face higher financing costs. Moreover, the merger would have various exclusionary effects on these carriers regarding roaming and backhaul costs, bidding for handsets, and purchasing infrastructure equipment and technology for new spectrum. The result of these exclusionary effects would be to entrench and expand the ILECs' current advantages. As a result, Sprint would be less likely to constrain AT&T's post-merger price increases.

C. Insufficient Competitive Constraints from the Regional Fringe Competitors

134. The regional competitors also would be unlikely to constrain the post-merger price increases by AT&T for postpaid retail service and corporate and governmental accounts.¹⁴³ Each has limited coverage and higher costs. MetroPCS and Leap focus on a significantly differentiated prepaid product rather than the postpaid service that is the focus of AT&T and T-Mobile.¹⁴⁴ Sprint does not take account of the pricing of the regional carriers in setting its own prices.¹⁴⁵ We also understand that the regional carriers rarely participate in the corporate/governmental account market. The merger also would lead to further cost increases and reduced access to new technologies for these carriers.

135. According to AT&T, the fringe firms are a major constraint on its behavior. AT&T claims that “other providers already fill – or could easily move to fill – the competitive

¹⁴² Wireline access charges are regulated, but they still place Sprint and the other carriers at a cost disadvantage. Sprint has estimated that these fees far exceed the ILECs' costs. AT&T and Verizon subscribers roam less and these carriers pay much of their own special access and wireline access costs to themselves. *See* Schieber Decl. ¶¶ 5, 10, 13.

¹⁴³ Carney Decl. ¶¶ 8-11.

¹⁴⁴ MetroPCS 2010 10-K at 6. Leap Wireless 2010 10-K at 2.

¹⁴⁵ Souder Decl. ¶ 6.

role T-Mobile USA occupies today.”¹⁴⁶ AT&T’s claims substantially overstate the competitive significance of MetroPCS, Leap, and other carriers. MetroPCS and Leap have historically offered only prepaid service and would face significant impediments to offering postpaid service. For example, entry would require development of systems for performing credit checks. Moreover, these carriers would need to obtain access to the wide range of smartphones that postpaid subscribers demand, access that they do not have currently.

136. The fringe collectively is very small. At the end of 2010, MetroPCS, US Cellular, and Leap together had only about 60% of the number of subscribers served by T-Mobile.¹⁴⁷ The regional firms also have licenses that cover a substantially smaller percentage of the U.S. population than the four national carriers and some have built facilities that cover far smaller percentages of the populations that they are licensed to serve. For example, T-Mobile has licenses that cover a population of 289 million, which is well over twice the licensed population of 124 million covered by MetroPCS, the regional carrier with the next largest coverage. Moreover, the network of MetroPCS covers only 105 million subscribers.¹⁴⁸ One implication of this is that the regional carriers are far more dependent on roaming than are the national carriers. Indeed, in his earlier Declaration for Verizon, Professor Carlton also suggested that carriers with less extensive geographic networks face market disadvantages.¹⁴⁹ The regional carriers also lack

¹⁴⁶ Application at 70.

¹⁴⁷ See Table 2.

¹⁴⁸ *US Wireless 411*, UBS Investment Research at 11-12 (Mar. 30, 2011). Cited only for purposes of this factual statement. Sprint disclaims and does not endorse or adopt said report, including any statements, opinions or analysis therein.

valuable national brand names.¹⁵⁰ Finally the fringe lacks a track record of repositioning that would provide assurance that they would become effective competitive constraints after the merger in the postpaid and corporate and governmental account markets.¹⁵¹

137. MetroPCS has recently begun to offer prepaid 4G service with smartphones. However, MetroPCS offers Long Term Evolution (“LTE”) coverage in only 14 cities.¹⁵² MetroPCS noted in its latest annual report that it may not be able to increase its 4G offerings beyond those 14 markets.¹⁵³ Further, because of its limited spectrum, MetroPCS’s LTE service offers speeds comparable to 3G service rather than true 4G service.¹⁵⁴ In addition, MetroPCS lacks nationwide coverage, which is desired by customers, and so must rely heavily on roaming relationships. Outside of its home area, its package of features is severely degraded.¹⁵⁵ Finally, its handsets are expensive and inferior to those of T-Mobile.¹⁵⁶

¹⁴⁹ Carlton ALLTEL Decl. ¶35 (“...firms with more extensive geographic networks have achieved more rapid growth than regional firms, presumably a reflection of their ability to better realize efficiencies and to provide higher quality services”).

¹⁵⁰ See Declaration of Dennis W. Carlton and Hal S. Sider, attached to Joint Applications of MCI WorldCom, Inc., and Sprint Corporation for Consent to Transfer Control, CC Docket 99-333, ¶10 (Feb. 18, 2000) (discussing the importance of brand names).

¹⁵¹ Guidelines at 28.

¹⁵² See MetroPCS Coverage Map, *available at*: <<http://www.metropcs.com/coverage/>> (last visited May 19, 2011).

¹⁵³ MetroPCS 2010 10-K at 37.

¹⁵⁴ Mike Dano, *MetroPCS to skip 3G with LTE rollout?*, FIERCEWIRELESS (Aug. 3, 2010), *available at*: <<http://www.fiercewireless.com/story/metropcs-skip-3g-lte-rollout/2010-08-03>>.

¹⁵⁵ In its “Extended Home Areas,” web surfing and email only are “available in some areas.” Coverage, *Coverage Map*, MetroPCS, *available at*: <<http://www.metropcs.com/coverage/>> (last visited May 12, 2011). In significant geographic areas, only “TravelTalk” services are available at an additional roaming charge of \$0.19 per minute. MetroPCS also offers 30-minute TravelTalk roaming bundles for an additional \$5 per month, but these allow only 30 minutes of

138. As evidence of the competitive influence of MetroPCS and Leap, AT&T points to the fact that MetroPCS charged \$60 for a plan that would cost about \$115 from AT&T and about \$120 from Verizon, and MetroPCS targets AT&T in its advertising.¹⁵⁷ It similarly observes that Leap charged a price of about half of what AT&T and Verizon charged.¹⁵⁸ Yet, despite these efforts, MetroPCS achieved a 2010 national market share of only 2.9% and Leap achieved a share of only 2.0%.¹⁵⁹ In contrast, T-Mobile’s 2010 market share was 11.3%, more than double the combined share of these two prepaid fringe players.

139. AT&T also overstates the impact of the fringe in another way. AT&T argues that the low-cost prepaid carriers such as MetroPCS and Leap “have expanded rapidly” and provide an “increasingly important market dynamic.”¹⁶⁰ In fact, the market shares of MetroPCS and Leap have not grown very much in the past two years. The market share of MetroPCS in the first quarter of 2009 was 2.3%. Despite all the growth touted by AT&T, the market share of MetroPCS grew only to 2.8% by the fourth quarter of 2010. Similarly, Leap’s market share rose

roaming in TravelTalk areas. Plans, *MetroPCS Rate Plans*, MetroPCS, available at: <<http://www.metropcs.com/plans/default.aspx?tab=family>> (last visited May 13, 2011).

¹⁵⁶ MetroPCS offers the Samsung’s Craft, which retails for \$349 and the Galaxy Indulge, which retails for \$399 with subsidies of \$50-100. The resulting price of \$299 is significantly higher than T-Mobile’s \$129 price for a superior phone, the Samsung Galaxy. *Phones*, MetroPCS, available at: <<http://www.metropcs.com/shop/phonelist.aspx>> (last visited May 12, 2011). Shop, *Phones*, *Samsung Galaxy S 4G*, T-Mobile, available at: <http://www.t-mobile.com/shop/phones/Cell-Phone-Detail.aspx?cell-phone=Samsung-Galaxy-S-4G&Wt.z_searchCategory=Site+Search+Summary&Wt.z_searchZone=Products&WT.z_searchTerm=Galaxy+S&WT.z_searchProduct=Galaxy+S%99+4G+>> (last visited May 11, 2011).

¹⁵⁷ Christopher Decl. ¶ 51.

¹⁵⁸ *Id.* ¶ 52.

¹⁵⁹ *See* Table 2.

¹⁶⁰ Christopher Decl. ¶ 8.

from 1.6% to 1.9% during the same period. Of course, it is easier for carriers to achieve double-digit growth when their initial market shares are so low. Moreover, US Cellular's market share actually fell from 2.4% to 2.1%.

140. At the same time, AT&T argues that despite T-Mobile's larger market share, AT&T does not "focus" on T-Mobile. According to AT&T, this is because T-Mobile mainly competes on price and does not have a "strong differentiating network claim," and because T-Mobile does not win customers "away from AT&T on a *net basis*."¹⁶¹ However, the fact that T-Mobile is not highly differentiated and its wins from AT&T do not exceed its losses to AT&T fails to show that T-Mobile is a more distant competitor of AT&T than the fringe carriers. Nor does a lack of wins on *net basis* show that the diversion ratio between AT&T and T-Mobile is low.

D. Insufficient Competitive Constraints from Verizon

141. It also is unlikely that competition from Verizon would prevent the exercise of market power by AT&T. Verizon would lack the incentive to constrain AT&T, and vice versa. As discussed in more detail in the section on coordinated effects, Verizon and AT&T are similarly situated wireless competitors, relative to Sprint and T-Mobile. Both firms have common interests. First, they both have very high market shares. They also have high prices and high margins that they would like to protect. Second, as ILECs, they lack the incentive to encourage consumers to "cut the cord." Third, they are dependent on one another for backhaul outside of their home regions, a mutual threat that can facilitate coordination. Thus, it likely

¹⁶¹ *Id.* ¶ 27 (emphasis supplied).

would make more economic sense for Verizon to accommodate and match AT&T's price increases, and more generally to increase its efforts to coordinate with AT&T.

E. Insufficient Competitive Constraints from Entry

142. New entry also would not be sufficient to prevent a reduction in competition and consumer welfare harm from the merger. AT&T suggests that LightSquared, Clearwire, and Cox Communications are recent entrants with substantial spectrum holdings. However, as discussed above, LightSquared's entry is subject to continuing uncertainty with respect to the effect of its operations on GPS transmissions and Clearwire's operations are complicated by the regulatory structure of the BRS-EBS band.

143. AT&T has identified Cox as an aggressive wireless competitor and claimed that Cox was "conducting trials of 4G LTE technology on its own AWS and 700 MHz spectrum" ¹⁶² However, Cox recently announced that it is abandoning plans to expand its network, is decommissioning its existing network, and will use the Sprint network to provide its branded mobile service. ¹⁶³

144. Moreover, the merger would raise barriers to entry. The higher cost of network infrastructure equipment noted earlier also would apply to entrants, as would the need for roaming and backhaul services. Some of the entrants also would suffer from the dynamic network effects already discussed. Moreover, the merger would result in the loss of T-Mobile as an advocate for more spectrum and may reduce AT&T's interest in obtaining more spectrum, as

¹⁶² Application at 92.

¹⁶³ Stephen Lawson, *Cox to Close Its Own Cell Network, Use Sprint*, IDG NEWS SERVICE (May 24, 2011), available at: <<http://www.cio.com/article/print/682885>>.

well. In either case, this would increase the likelihood that future spectrum auctions would be delayed.

F. Upward Pricing Pressure Analysis for All-Wireless Service

145. In this section, we discuss and calculate several different measures of upward pricing pressure in an all-wireless market, based on the information currently available to us. Although the results are illustrative, these measures, taken together, indicate that potentially serious unilateral effects concerns would result from the proposed merger.

146. As part of the evaluation of unilateral effect concerns, the 2010 Merger Guidelines call for analysis of upward pricing pressure (“UPP”). As stated there:

Adverse unilateral price effects can arise when the merger gives the merged entity an incentive to raise the price of a product previously sold by one merging firm and thereby divert sales to products previously sold by the other merging firm, boosting the profits on the latter products. Taking as given other prices and product offerings, that boost to profits is equal to the value to the merged firm of the sales diverted to those products. The value of sales diverted to a product is equal to the number of units diverted to that product multiplied by the margin between price and incremental cost on that product. In some cases, where sufficient information is available, the Agencies assess the value of diverted sales, which can serve as an indicator of the upward pricing pressure on the first product resulting from the merger.¹⁶⁴

147. The “value of diverted sales” is a measure of *gross* upward pricing pressure, that is, one that does not take claimed efficiency benefits into account. In an article written when he was the Deputy Assistant Attorney General for Economics in the Antitrust Division of the Department of Justice, Carl Shapiro referred to the proportional value of diverted sales measure

¹⁶⁴ Guidelines at 21.

as the Gross Upward Pricing Pressure Index (GUPPI).¹⁶⁵ There is a separate GUPPI for each of the merging firms.

148. Shapiro reports that it is the current practice of the Antitrust Division to regard GUPPI levels below 5% as normally not raising unilateral effects concerns.¹⁶⁶ However, we would not expect that “safe harbor” to apply here. First, none of our scenarios leads to T-Mobile’s and AT&T’s GUPPIs both being less than 5%. Second, and more generally, the proposed merger would lead to cost-raising exclusionary effects on Sprint and the smaller fringe competitors. Those merger-specific exclusionary effects lead to further upward pricing pressure that is not accounted for by the GUPPIs.¹⁶⁷ This means that the GUPPIs systematically underestimate the actual upward pricing pressure from the merger.

149. Professor Carlton briefly discusses upward pricing pressure but he does not present the results of any GUPPI calculations.¹⁶⁸ Moreover, neither AT&T nor Professor Carlton

¹⁶⁵ See Carl Shapiro, *The 2010 Horizontal Merger Guidelines: From Hedgehog to Fox in Forty Years*, 77 ANTITRUST LAW JOURNAL 701, 726 (2010) (“For this purpose, the value of diverted sales is measured in proportion to the lost revenues attributable to the reduction in unit sales resulting from the price increase. Those lost revenues equal the reduction in the number of units sold of that product multiplied by that product’s price.”).

¹⁶⁶ Carl Shapiro, Deputy Asst. Attorney General for Economics, Antitrust Div., U.S. Dept. of Justice, *Update from the Antitrust Division: Remarks as Prepared for the American Bar Association Section of Antitrust Law Fall Forum*, at 24 (Nov. 18, 2010) (“Current Division practice is to treat the value of diverted sales as proportionately small if it is no more than 5% of the lost revenues. Put differently, unilateral price effects for a given product are unlikely if the gross upward pricing pressure index for that product is less than 5%.”), *available at*: <http://www.justice.gov/atr/public/speeches/264295.pdf>.

¹⁶⁷ These cost-raising effects would have the same type of impact on prices as would AT&T acquiring a (partially controlling) financial interest in Sprint and the other competitors. Therefore, they can be thought of as increasing concentration further and producing additional upward pricing pressure.

¹⁶⁸ Carlton Decl. ¶¶ 137-41.

provide any of the data for the merging parties that could be used to calculate the GUPPIs or any of the other UPP measures under the assumptions that he claims are appropriate. Nonetheless, we have carried out a preliminary UPP analysis for all-wireless service to gauge the magnitude of potential unilateral effects based on the limited information that we currently have. Since we lack access to information from AT&T and T-Mobile, our analysis should be regarded as illustrative rather than definitive. We will continue to refine this analysis as more information becomes available.

150. In this report, we provide several measures of upward pricing pressure for all-wireless service.

- a. First, we estimate the all-wireless “single-price” GUPPI for each merging firm. This is the measure mentioned explicitly in the Merger Guidelines. It evaluates the gross upward pressure on the prices of one of the merging firm, holding constant the prices of all the other firms, including the merger partner. The post-merger intra-firm feedback effects between the prices of the two merging firms thus are not taken into account.¹⁶⁹
- b. Second, we estimate the “simultaneous-price” all-wireless GUPPI for each merging firm. The simultaneous-price GUPPI assumes that the merged firm

¹⁶⁹ See Carl Shapiro, *Unilateral Effects Calculations*, Unpublished Manuscript at 6 (2011) (“the equilibrium price increase for product 1 ... is larger ... because the price of product 2 will also rise (without any efficiencies) and because of feedback effects between the two prices.”). Similar feedback effects also arise with efficiencies.

would set the prices of AT&T and T-Mobile products simultaneously.¹⁷⁰ It thus takes into account the post-merger intra-firm price feedback effects between the prices of the merging firms. For example, a price increase of AT&T products would increase the incentive to raise the prices of T-Mobile products, and vice versa. However, the simultaneous-price GUPPI does not include any feedback effects from price responses by the non-merging firms.

- c. Third, we estimate the all-wireless “compensating marginal cost reduction” (CMCR) for each merging firm.¹⁷¹ Efficiencies that take the form of post-merger reductions in the merged firm’s marginal costs of serving AT&T and T-Mobile subscribers could create downward pressure on AT&T and T-Mobile prices. The GUPPIs do not take into account the downward pricing pressure from cost reductions. To address that issue with a simple index, the CMCRs measure the marginal cost reductions for each of the two merging firms that would have to occur simultaneously for the net pricing pressure to be zero for each of the merging firms’ products post-merger.

151. The GUPPIs are not the only factors that are relevant for evaluating the likelihood and magnitude of adverse unilateral effects. For example, the GUPPIs do not take into account the additional upward pricing pressure caused by the pricing responses of non-merging firms. In

¹⁷⁰ The simultaneous-price GUPPI is equal to twice the price increase for the case with linear demand derived in Jerry Hausman, Serge Moresi, and Mark Rainey, *Unilateral Effects of Mergers with General Linear Demand*, 111 *ECONOMICS LETTERS* 119 (2011).

¹⁷¹ See Gregory Werden, *A Robust Test for Consumer Welfare Enhancing Mergers Among Sellers of Differentiated Products*, 44 *JOURNAL OF INDUSTRIAL ECONOMICS* 409 (1996).

addition, the GUPPIs do not take into account entry and repositioning, efficiencies, or other factors. The CMCRs measure the magnitude of potential adverse unilateral effects in terms of the amount of cost savings that would be necessary to offset those potential adverse unilateral effects. Because they are focused on unilateral effects, the GUPPIs and CMCRs do not take into account potential parallel accommodating conduct or other forms of coordination. Significantly in this case, the GUPPIs and CMCRs also do not take into account the adverse impact of the cost-raising exclusionary conduct. However, despite these limitations, the GUPPIs and CMCRs can provide some useful information to decision makers.¹⁷²

152. The all-wireless single-price GUPPI is the product of three factors: the all-wireless diversion ratio from one merging firm to the other; the percentage price-incremental cost margin of the other merging firm; and the ratio of the two firms' prices.¹⁷³ The "simultaneous-price" GUPPI also requires estimates of the market shares of the merging firms. In addition, market shares are used to estimate what have been called "proportional" diversion ratios. The CMCR also utilizes this same set of factors. We discuss our estimates of these factors and then report the estimates of the GUPPIs and CMCRs for an all-wireless market.

¹⁷² Similarly, the HHI does not take every competitive issue into account.

¹⁷³ Formally, $GUPPI_1 = DR_{12} \times M_2 \times P_2/P_1$, where DR_{12} is the diversion ratio from the product of firm-1 to the product of firm-2, M_2 is the percentage margin of firm-2 and P_2/P_1 is the product price ratio of the two firms.

1. Diversion Ratios

153. Professor Carlton provides no empirical evidence to support his implicit claim that the diversion ratios between AT&T and T-Mobile are low.¹⁷⁴ For example, AT&T does not provide AT&T/T-Mobile win/loss data from surveys, porting data, or other quantitative indicators of diversion.¹⁷⁵ In the absence of these data, we have estimated proportional diversion ratios based on the all-wireless market shares. Under the assumption that total subscribership is not affected by the change in the price of one carrier, and thus that all the customers lost by the merging firm when they increase price would be recaptured by other carriers, the proportional diversion ratios are 34.6% from T-Mobile to AT&T and 16.3% from AT&T to T-Mobile.¹⁷⁶ If we were to assume instead that some percentage of the subscribers lost by the merging firm when it raises price would cease purchasing wireless service altogether, rather than substitute to (and be recaptured by) another carrier, the diversion ratios would be reduced by that percentage. In this initial analysis, we estimate the GUPPIs for a range of recapture rates: 100%, 80%, and 60%. The resulting proportional diversion ratios are summarized in Table 7.

¹⁷⁴ Carlton Decl. ¶ 145 (“[C]oncerns about unilateral effects are greatest when the merging firms produce products that are close substitutes. However, the differences in subscriber characteristics . . . indicate that AT&T and T-Mobile USA are not especially close substitutes . . .”).

¹⁷⁵ We expect that AT&T has such information. **[begin highly confidential information]** [REDACTED] **[end highly confidential information]** In his work for Verizon on the ALLTEL acquisition, Professor Carton engaged in diversion analysis based on porting data. Carlton ALLTEL Decl. ¶43, Table 1.

¹⁷⁶ Using the market shares of 30.7% for AT&T and 11.3% for T-Mobile, the T-Mobile diversion ratio to AT&T would be $DR = 30.7/(100-11.3) = 34.6\%$. The AT&T diversion ratio to T-Mobile would be $DR = 11.3/(100-30.7) = 16.3\%$.

154. These proportional diversion ratios assume that market shares are a proxy for the relative closeness of substitution among the carriers. We will be able to update our analysis if and when we receive additional information on subscriber substitution, particularly for the postpaid market.¹⁷⁷

2. Margins

155. Wireless service is a business characterized by high fixed costs and low marginal costs in the short and medium term. Therefore, the margin of price over variable cost is very high. However, according to Professor Carlton, AT&T and T-Mobile face congestion problems. Professor Carlton suggests that the AT&T and T-Mobile margins should take into account that the marginal cost of small incremental volume changes would be far above average variable cost.¹⁷⁸ Professor Carlton also suggests that the AT&T network is highly congested and would require significant investment to increase capacity. His assumption about the T-Mobile network is less clear.¹⁷⁹ Professor Carlton does not, however, provide any quantitative estimates of AT&T's or T-Mobile's current level of congestion or the margins that he believes would be appropriate, either on a national or local basis.

¹⁷⁷ Although porting data are not perfect measures, those data can be useful in gauging diversion ratios.

¹⁷⁸ Carlton Decl. ¶ 142 (“The use of accounting data on average variable costs instead of economic data on marginal costs will overstate the profitability of diverted sales and thus overstates the ‘upward pricing pressure’ from the proposed transaction.”).

¹⁷⁹ *Id.* ¶ 129.

156. Professor Carlton's suggestions raise several other specific questions.
- a. First, he does not indicate whether he believes that AT&T's network is highly congested throughout the country or only in certain local areas. If congestion is localized, there could be highly significant upward pricing pressure in some areas but none in others. If there is significant upward pricing pressure in a number of significant local areas, then those local pressures could lead to national upward pricing pressure.
 - b. Second, it is not clear whether Professor Carlton is referring to current levels of congestion or congestion that will occur at some point in the future. If AT&T currently has sufficient capacity but will face congestion in the future, the merger could lead to significant upward pricing pressure during the interim. Thus, it is relevant to know when the congestion constraints would become severe.
 - c. Third, the congestion claim raises questions about the actions that AT&T has undertaken, and would undertake, to relieve congestion in the absence of the merger, a factor that Professor Carlton does not consider in his analysis but which could be useful in determining the appropriate margin. The same issues would apply to T-Mobile's network, although T-Mobile suggested in its January 2011 Investor Presentation that it had sufficient spectrum for the medium term.¹⁸⁰

¹⁸⁰ Presentation by Deutsche Telekom and T-Mobile USA, Inc. to Analysts, at 7 (Jan. 20, 2011), *available at*: <http://www.download-telekom.de/dt/StaticPage/97/67/90/tmo-invday11.pdf_976790.pdf>.

157. To take account of these various possibilities, we have estimated the GUPPIs under two alternative margin assumptions. We use one margin estimate equal to the AT&T EBITDA of 40.7%, as reported in its recent investor presentation regarding the acquisition.¹⁸¹ We use another less conservative margin estimate of 70%. These margins implicitly reflect different assumptions about the average level of capacity utilization on the AT&T and T-Mobile networks and the margins earned on different categories of service.¹⁸² As with the diversion ratios, these assumptions can be refined in subsequent analysis with further information from AT&T and T-Mobile.

3. Price Ratios

158. For the all-wireless price ratio, we utilize the average prices of \$49.68 for AT&T and \$46.00 for T-Mobile, as reported in their respective 10-K reports. These ARPUs imply an AT&T/T-Mobile price ratio of approximately 1.08.

4. Subscriber-Based Market Shares

159. AT&T's all-wireless subscriber market share for 2010 was 30.7% and T-Mobile's market share was 11.3%. We follow the Commission's usual practice of attributing reseller subscribers to facilities-based carriers.

¹⁸¹ AT&T Investor Presentation, *AT&T + T-Mobile: A World-Class Platform for the Future of Mobile Broadband*, at 29 (Mar. 21, 2011), available at: <http://www.att.com/Common/about_us/pdf/INV_PRES_3-21-11_FINAL.pdf>.

¹⁸² We assume that these margins are weighted to include the margins on wholesale sales to resellers. We use the same margin for AT&T and T-Mobile. If AT&T's network was highly congested but T-Mobile's was not, then it might be more appropriate to use different margins for each, for example, 70% for T-Mobile and 40.7% for AT&T.

5. Gross Upward Pricing Pressure Indices: Results

160. We have estimated several UPP variants—single-price GUPPIs; simultaneous-price GUPPIs, and CMCRs. For each measure, we have calculated the individual values for AT&T and T-Mobile. The GUPPIs measure only the first-round price effects. They do not take into account the additional upward pricing pressure caused by the pricing responses of non-merging firms. Moreover, the GUPPIs and CMCRs do not account for the effects of the cost increases that would be experienced by Sprint and the regional carriers, nor do they account for potential coordinated effects.

161. The results for the 40.7% and 70% margins are tabulated separately in Table 7. The GUPPIs and CMCRs obviously are larger for the assumed 70% margin. Taken together, these results indicate potentially serious unilateral effects concerns from the merger.

a. 70% Margin

162. In this scenario, both the T-Mobile and the AT&T single-price GUPPIs significantly exceed 5%. For example, for the case of an 80% recapture rate, the T-Mobile single-price GUPPI is 20.9% and the AT&T GUPPI is 8.5%. The simultaneous-price GUPPIs are even larger. The T-Mobile GUPPI is 24.6% and the AT&T GUPPI is 11.2%.

163. The CMCRs also are quite large. In order to prevent price increases, the T-Mobile and AT&T marginal costs would need to be reduced by the merger by 81.1% and 38.0%, respectively.

b. 40.7% Margin

164. In this scenario, the GUPPIs are lower than in the 70% margin scenario. For example, for the case of an 80% recapture rate, the T-Mobile single-price GUPPI is 12.2%. The comparable AT&T single-price GUPPI is 4.9%. The simultaneous-price GUPPIs both exceed 5%. The T-Mobile simultaneous-price GUPPI is 14.3% and the AT&T simultaneous-price GUPPI is 6.5%.

165. The CMCRs also remain substantial even in this case. In order to prevent price increases, the T-Mobile and AT&T marginal costs would need to be reduced by the merger by 23.9% and 11.2%, respectively.

* * *

166. Although merely illustrative, these results raise concerns. They support the view from the other unilateral effects analyses that it is likely that the merger would lead to significant adverse unilateral effects. Even when the margin is only 40.7%, the GUPPIs and CMCRs are high. Only the AT&T single-price GUPPI is in the 5% range.

167. Professor Carlton asserts that the standard UPP framework does not account for certain efficiency gains that would lead to offsetting downward pricing pressures. Professor Carlton opines that “the standard UPP framework also does not readily account for the expansion in capacity that will result from a merger.”¹⁸³ He goes on to say that “the proposed transaction will expand capacity and lower the cost of serving new customers, creating incentives for the

¹⁸³ Carlton Decl. ¶ 143.

merged firm to increase output.”¹⁸⁴ In fact, Professor Carlton does not attempt to quantify the effects of upward and downward pricing pressures against one another. He simply *assumes* that costs will fall, prices will fall, and output will rise, ignoring the adverse effects of the upward pricing pressure.¹⁸⁵

168. The Guidelines evaluate any downward pricing pressure in the context of its efficiencies analysis. We do the same. We analyze AT&T’s efficiency claims regarding lower costs and increased capacity in detail in Section VII. We conclude that AT&T’s claimed efficiency benefits likely are overstated and most if not all may not even be cognizable under the Guidelines. First, AT&T does not show that the bulk of its claimed efficiency benefits are merger-specific. Second, the magnitude of the efficiencies cannot be verified with the information supplied by AT&T.

169. It is unlikely that AT&T’s remaining cognizable, merger-specific efficiencies from this transaction (if any) would outweigh the harmful competitive effects for two reasons.

¹⁸⁴ *Id.*

¹⁸⁵ Professor Carlton also is too quick to equate an increase in capacity with lower prices for another reason, even putting aside the adverse impact of the elimination of T-Mobile on price competition. Assume, as Professor Carlton does, that AT&T increases capacity in highly congested areas, and that the quality of its service rises, for example, in terms of fewer dropped calls. In that situation, AT&T might have the incentive to raise its nominal price but lower its quality-adjusted price in those areas. However, because AT&T charges a uniform national price, the analysis necessarily becomes more complicated. With a uniform price constraint, the incentive for an increase in the uniform nominal price also will translate into higher *quality-adjusted* and nominal prices in other less congested markets. Output and consumer welfare in those other markets would be reduced. As a result, it is not clear that overall output, or more importantly, that overall consumer welfare would increase. Because most areas are not capacity constrained, the likelihood that the merger harms consumer welfare is higher.

- a. First, the GUPPIs and CMCRs estimated here significantly understate the likely harmful price effects of the merger, as noted earlier. These GUPPIs and CMCRs do not take into account several reinforcing effects: (a) the additional upward pricing pressure caused by the exclusionary, cost-raising effects on Sprint and the smaller regional competitors; and (b) the increased likelihood of adverse coordinated effects caused by the merger, as analyzed in the next section of this report. The GUPPIs also do not take into account the additional upward pricing pressure caused by the pricing responses of non-merging firms. These effects will significantly exacerbate upward pricing pressure discussed above.¹⁸⁶
- b. Second, AT&T's claimed benefits can only be significant in areas that face serious congestion problems, and only if and when those congestion problems occur. In contrast, the harms from eliminating T-Mobile as an independent national competitor will apply nationally from the moment that the merger is consummated.

VI. COORDINATED EFFECTS

170. The Merger Guidelines distinguish between unilateral and coordinated effects. The Guidelines make the additional point that a merger may present both types of effects and that the line between them may be blurred.¹⁸⁷ The Guidelines also stress the breadth of the types

¹⁸⁶ As discussed earlier, repositioning by the regional fringe firms that sell prepaid service is unlikely to significantly mitigate these effects.

¹⁸⁷ In its overview discussion of unilateral and coordinated effects, the *Merger Guidelines* state that, “[i]n any given case, either or both types of effects may be present, and the distinction between them may be blurred.” Guidelines at 2.

of conduct that may lead to coordinated effects. In this regard, Professor Carlton’s discussion of coordinated effects focuses only on “the likelihood that a firm will deviate from coordinated pricing and output decisions because their actions will be detected and punished by rivals.”¹⁸⁸ This fits into the Guideline’s category of coordination by “common understanding.” Professor Carlton apparently does not consider what the Guidelines call “parallel accommodating conduct.”¹⁸⁹

171. Our preliminary analysis suggests that the merger likely would facilitate more successful coordination between AT&T and Verizon, through both parallel accommodating conduct and a common understanding. In our analysis of parallel accommodating conduct, we do not assume that AT&T and Verizon would engage in overt collusion after the merger, or even that they would coordinate perfectly. Rather, they each would better be able to set prices and other competitive instruments after the merger in anticipation of more accommodating behavior by the other.

A. Parallel Accommodating Conduct and Effects

172. As discussed earlier, unilateral price increases provide an incentive for competitors to respond by raising their own prices. However, parallel accommodating conduct goes further than these unilateral feedback effects.¹⁹⁰ The Guidelines explicitly identify these parallel accommodating effects as a form of coordination. As stated in the Guidelines,

¹⁸⁸ Carlton Decl. ¶ 146.

¹⁸⁹ Guidelines at 24.

¹⁹⁰ Pricing responses by rivals should be included in either unilateral effects analysis or coordinated effects analysis, depending on whether the rivals are responding based on their own

Coordinated interaction alternatively can involve parallel accommodating conduct not pursuant to a prior understanding. Parallel accommodating conduct includes situations in which each rival's response to competitive moves made by others is individually rational, and not motivated by retaliation or deterrence nor intended to sustain an agreed-upon market outcome, but nevertheless emboldens price increases and weakens competitive incentives to reduce prices or offer customers better terms.¹⁹¹

For example, parallel accommodating conduct could involve Verizon having the incentive to accommodate AT&T by raising its own retail and wholesale rates in parallel with AT&T price increases, and vice versa, in addition to its own unilateral incentives to raise prices.¹⁹²

173. Professor Carlton does not discuss the potential for parallel accommodating conduct and effects. However, the proposed merger raises considerable risk of parallel accommodating conduct and effects for several reasons. First, the fact that AT&T would remove the current low priced T-Mobile plans for new subscribers would increase the incentives and ability of AT&T and Verizon to coordinate their prices. Second, the elimination of T-Mobile as a low-priced national competitor challenging the leaders would enable AT&T and Verizon each to be more confident that the other would accommodate and match its price increases. Third, the barriers to expansion facing the smaller carriers, including the likelihood that the merger would

unilateral incentives or through parallel accommodating conduct. However, this distinction may be blurred in practice.

¹⁹¹ Guidelines at 24-25.

¹⁹² There can be a concern of coordinated effects through parallel accommodating conduct even in the absence of unilateral effects concerns. For example, even if claimed efficiencies were sufficient to eliminate the merged firm's incentive to raise price unilaterally, the merger could nonetheless induce AT&T or Verizon to initiate a price increase because each would anticipate that the other is now more likely to follow and match the price increase than it was pre-merger. This type of parallel accommodating conduct is formally analyzed in economics literature on dynamic oligopoly. *See, e.g., Eric Maskin and Jean Tirole, A Theory of Dynamic Oligopoly, II: Price Competition, Kinked Demand Curves, and Edgeworth Cycles*, 56 *ECONOMETRICA* 571 (1988).

raise the costs of Sprint and the regional fringe carriers, would increase the incentive and ability of AT&T and Verizon to coordinate their prices.

B. Common Understanding

174. Another type of coordinated conduct involves a common understanding by the coordinating firms of their mutual oligopolistic interdependence. Here, firms understand the mutual benefits of coordination and recognize that deviations likely will be detected and responded to. As stated in the Merger Guidelines, “[c]oordinated interaction also can involve a similar common understanding that is not explicitly negotiated but would be enforced by the detection and punishment of deviations that would undermine the coordinated interaction.”¹⁹³

175. In his discussion, Professor Carlton lists a number of factors that he suggests would make such coordinated effects less likely. These include: (1) the fact that wireless firms “have highly diverse business strategies;” (2) the complexity of wireless pricing; (3) “the rapid and on-going changes in wireless technology;” and (4) “differences in the geographic coverage of wireless networks.”¹⁹⁴

176. We disagree with Professor Carlton’s analysis. Professor Carlton seems to be focusing on coordination among all the carriers – AT&T, Verizon, Sprint, and the regional fringe firms. In contrast, we focus on coordination solely between AT&T and Verizon (accounting for 75-80% of the market) and particularly in postpaid sales. Moreover, because the merger would

¹⁹³ Guidelines at 24.

¹⁹⁴ Carlton Decl. ¶¶ 149-152.

raise Sprint's costs and so reduce Sprint's ability to compete, Sprint in effect would end up involuntarily supporting the coordination.¹⁹⁵

177. Neither Sprint nor the regional carriers would be likely to deter coordination between AT&T and Verizon. First, the regional fringe carriers face impediments to disrupting coordination for sales to postpaid retail subscribers and large corporate and governmental accounts. They lack nationwide coverage and are more dependent on higher cost roaming agreements. They also do not specialize in high-end data products or smartphones and are only slowly entering this segment. For the same reasons, as well as their business focus, they also are less well equipped to offer nationwide contracts to large corporate and governmental entities. Second, Sprint and the regional fringe carriers would face higher special access and roaming costs as a result of the merger, suffer inferior access to network infrastructure equipment, and face longer term network effects disadvantages in investment. Entry similarly is unlikely to deter coordination between AT&T and Verizon.

C. Impact of the Merger on the Likelihood of Coordination

178. The Guidelines explain that a merger may “diminish competition by enabling or encouraging post-merger coordinated interaction.”¹⁹⁶ The post-merger market would be more vulnerable to coordination, particularly in postpaid sales.

¹⁹⁵ Baker, *supra* n.81 at 190.

¹⁹⁶ Guidelines at 24.

179. The wireless service market would be vulnerable to coordination after the merger for several reasons:

- a. First, AT&T and Verizon would control more than 82% of retail postpaid service, likely a dominant fraction of corporate sales, and would account for more than 78% of revenues in the all-wireless market.
- b. Second, postpaid prices are transparent and the buyer concentration is very low. Demand is not lumpy.¹⁹⁷ Corporate/government prices are less transparent but AT&T and Verizon would face repeated competitive interactions for such customers.
- c. Third, there are barriers to entry and expansion because Sprint, the regional fringe firms, and entrants depend on AT&T and Verizon for essential inputs, have higher effective costs of backhaul, roaming, wireline access, and face scale economy disadvantages in investment and innovation competition.
- d. Fourth, AT&T and Verizon are similarly situated. Both carriers are ILECs with wireline as well as wireless service, which gives them common incentives to deter in-region consumers from “cutting the cord.” Because they provide special access to

¹⁹⁷ A reseller like TracFone potentially is a lumpy purchaser and so AT&T and Verizon may continue to have the incentive to compete for this contract. However, this is unlikely to deter parallel accommodating conduct or other coordination with respect to postpaid customers, or for corporate and governmental accounts. TracFone’s product is different and its market share is small. In addition, TracFone’s ability to play AT&T off of Verizon is limited to some extent by fact that its current subscribers already have either GSM or CDMA handsets. Finally, as noted earlier, the independence of TracFone from AT&T is unclear in light of the presence of two AT&T employees on the Board of TracFone’s parent corporation. *America Móvil Board of Directors*, America Móvil, available at: <<http://www.americamovil.com/amx/en/cm/about/board.html?p=28&s=36>> (last visited May 20, 2011).

one another, each can hold the other hostage by threatening the other with higher access rates or less timely provisioning of services.

180. The acquisition of T-Mobile by AT&T would *increase* the vulnerability of the market to successful coordination:

- a. First, the merger would increase AT&T's market share of subscribers from 30.7% to 42.0%, which would both increase its incentive to coordinate with Verizon and its vulnerability to broad based punishment.
- b. Second, the merger would eliminate T-Mobile, which is a low priced competitor and which is AT&T's only national GSM competitor. T-Mobile has been a maverick in the past and has targeted AT&T in the 4G competition.¹⁹⁸ More recently, T-Mobile has faced challenges. However, two months before the announcement of its acquisition by AT&T, T-Mobile announced its commitment to becoming a vibrant challenger in the wireless market.¹⁹⁹
- c. Third, the merger would increase the costs of Sprint and the regional carriers, and disadvantage them going-forward. By reducing the competitive constraints provided by Sprint and the regional carriers, AT&T and Verizon would have a greater incentive and ability to coordinate. Moreover, if AT&T and Verizon coordinate in

¹⁹⁸ For example, T-Mobile developed its HSPA+ network early. It also was the first carrier to offer Android phones. As the low price carrier, T-Mobile presence is likely to have reduced the prices of the other national carriers.

¹⁹⁹ Presentation by Deutsche Telekom and T-Mobile USA, Inc. to Analysts, at 7, 19, 22, 28 (Jan. 20, 2011), *available at*: <http://www.download-telekom.de/dt/StaticPage/97/67/90/tmo-invday11.pdf_976790.pdf>.

the retail market, each would gain unilateral incentives to raise roaming rates and backhaul costs to Sprint and the regional fringe. These factors also would affect potential entrants.

- d. Finally, AT&T and Verizon's mutual dependence and ability to make mutual hostages threats would increase. By combining T-Mobile with AT&T, Verizon's ability to threaten AT&T by raising the price of special access would increase. That threat could serve to cement an understanding on retail prices. Because the merger also would reduce the competitive constraints from independent providers of backhaul, the mutual interdependence of AT&T and Verizon would increase.

181. As indicated above, we are not assuming that AT&T and Verizon would engage in explicit price fixing after the merger, or even that they would coordinate perfectly. For example, we anticipate that AT&T and Verizon would still compete for handset exclusives. Instead, we are suggesting that, after the merger, each would better be able to set prices and other non-price terms in anticipation of more accommodating responses by the other than before the merger. They also may have a higher likelihood of a successful common understanding of the benefits of coordination and the likelihood of detection and punishment for deviations.

182. These coordinated effects concerns reinforce the unilateral effects and exclusionary effects concerns discussed above. Coordination through either parallel accommodating conduct or common understanding would increase the overall upward pricing pressure from the merger. As a result, cognizable and merger-specific efficiency benefits would need to be even larger to overcome this upward pricing pressure. As discussed next, AT&T's efficiency claims are unlikely to satisfy this exacting standard.

VII. AT&T’S EFFICIENCY BENEFIT CLAIMS

183. In its Application, AT&T makes two main efficiency claims. First, it claims that the merger would permit it to relieve alleged capacity constraints on its GSM and UMTS networks. Second, it claims that it would be able to deploy LTE service to 97% of the U.S. population by some unspecified date, as compared to what it represents as only 80% in 2013 absent the merger. According to AT&T, this benefit would be realized by “transition[ing] T-Mobile’s USA’s HSPA services off of its AWS spectrum in many markets and devot[ing] that spectrum to the deployment of LTE services”²⁰⁰

184. AT&T fails to establish that these claimed efficiencies are cognizable under the standards set out by the Commission and the Merger Guidelines. The fact that the merger increases AT&T’s profits does not make the merger efficient or consumer welfare enhancing. First, AT&T does not show that the bulk of its claimed efficiency benefits are merger-specific.²⁰¹ If practical alternatives would achieve some of the benefits, only the incremental benefits are merger-specific. If the merger would merely accelerate the achievement of these benefits, only

²⁰⁰ Application at 8. AT&T also claims that it can attain efficiencies associated with channel control and channel pooling. Wireless network expert, Steven Stravitz, discusses these in more detail. *See* Stravitz Decl. ¶¶ 33-35.

²⁰¹ According to the Commission, “the claimed benefit ‘must be likely to be accomplished as a result of the merger but unlikely to be realized by other means that entail fewer anticompetitive effects.’” *See Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Memorandum Opinion and Order, 24 FCC Rcd 13915, ¶ 90 (2009) (“AT&T-Centennial Merger Order”). The Guidelines similarly credit “only those efficiencies likely to be accomplished with the proposed merger and unlikely to be accomplished in the absence of either the proposed merger or another means having comparable anticompetitive effects.” Guidelines at 30.

the value of the reduced delay would be a merger-specific efficiency.²⁰² Second, based on the information submitted by AT&T, the magnitude of the claimed efficiencies cannot be verified.²⁰³ Third, a significant portion of the claimed benefits appear to occur far in the future while the competitive harms are large and more immediate.²⁰⁴ Thus, it appears that the efficiency benefits are unlikely to be sufficient to outweigh the competitive harms.²⁰⁵

A. AT&T's Capacity Constraint Claims

185. AT&T contends that it will face substantial spectrum constraints sometime in the near future. However, it provides none of the underlying data to allow the Commission to determine whether its claim of “spectrum exhaust” is plausible. Moreover, AT&T does not provide information on the breadth and timing of the claimed spectrum exhaust and its impact on

²⁰² See Guidelines at 30, n.13 (“If a merger affects not whether but only when an efficiency would be achieved, only the timing advantage is a merger-specific efficiency.”).

²⁰³ See *id.* at 30 (“[I]t is incumbent upon the merging firms to substantiate efficiency claims so that the Agencies can verify by reasonable means the likelihood and magnitude of each asserted efficiency, how and when each would be achieved (and any costs of doing so), how each would enhance the merged firm’s ability and incentive to compete, and why each would be merger-specific.”).

²⁰⁴ See AT&T-Centennial Merger Order ¶ 90 (“[B]enefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present.”); see also Guidelines at 31, n.15 (“Delayed benefits from efficiencies (due to delay in the achievement of, or the realization of customer benefits from, the efficiencies) will be given less weight because they are less proximate and more difficult to predict.”).

²⁰⁵ See AT&T-Centennial Merger Order ¶ 91 (“[W]here potential harms appear ‘both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.’”). See also Guidelines at 31 (“[T]he greater the potential adverse competitive effect of a merger, the greater must be the cognizable efficiencies, and the more they must be passed through to customers Efficiencies almost never justify a merger to monopoly or near-monopoly.”).

service quality. In addition, it seems clear that there are many geographic areas in which there is sufficient capacity, even by AT&T's own reckoning.²⁰⁶

186. Moreover, AT&T's assertions of "spectrum exhaust" seem to assume that it can do nothing absent the merger to alleviate some or much of those alleged spectrum constraints. If there are practical alternatives for relieving some or all of these constraints, only the benefits not otherwise achievable should be treated as merger-specific and cognizable.²⁰⁷

187. AT&T does not explain in detail its plans to expand capacity absent the merger and how those plans have been altered by the merger. It does not explain (or provide sufficient data and analysis to show) why other practical alternatives could not have provided some or all of the capacity expansion it claims for the merger. For example, AT&T claims that, in order to increase capacity on its current network, it must wait until its GSM subscribers migrate to the more spectrally efficient UMTS band. It does not explain why it would not be practical to use

²⁰⁶ Stravitz discusses in far more detail the shortcomings of AT&T's claimed "evidence" on its capacity constraints. He notes that there is nothing in AT&T's analysis that "explains whether capacity constraints exist anywhere on AT&T's network and, if constraints do exist, whether those constraints are national in scope or highly localized, whether they are chronic and persistent or intermittent and temporal, or whether they are large and meaningful or small and relatively inconsequential. In addition, AT&T does not provide information in the Application to indicate whether the claimed congestion in its network is in its radio access network, transmission and backhaul network, core network, or in all parts of its network." Stravitz Decl. ¶ 12; *see also id.* ¶ 14 ("Relative to its competitors, AT&T's data network is performing better in some markets and worse in others, based on a review of 151,766 empirical field tests conducted across the hundred most populous U.S. markets during approximately the last six months by an industry-leading independent, third-party competitive test provider.").

²⁰⁷ *See id.* ¶ 69 (noting that, instead of the proposed merger, "AT&T should pursue new technologies and strategies to use its vast spectrum holdings more efficiently, and thus manage the growing traffic on its network, just as its competitors do."); *see also id.* ¶ 41-67 (describing potential alternative strategies).

incentives, promotions, or other means to achieve more rapid migration.²⁰⁸ Indeed, AT&T has proposed to migrate *T-Mobile subscribers* from AWS to the UMTS spectrum.²⁰⁹

188. Moreover, AT&T does not explain why it would be impractical to use its substantial AWS and 700 MHz holdings of spectrum to alleviate the claimed capacity shortage. This spectrum is not being utilized currently. Taking into account all its spectrum holdings, it is not clear that AT&T is spectrum constrained.²¹⁰ In fact, AT&T made public statements in 2010

²⁰⁸ For example, T-Mobile’s CTO noted that it has been “aggressively” migrating its GSM customers to the more spectrally efficient AWS. Transcript of Briefing by Deutsche Telekom and T-Mobile USA, Inc. to Analysts, at 6 (Jan. 20, 2011), *available at*: <<http://www.telecom.de/dtag/cms/contentblob/dt/en/979218/blobBinary/transcript+20012011.pdf>> (“Deutsche Telekom Briefing”). *See also* Stravitz Decl. ¶ 22 (“The Application does not indicate why AT&T has been unsuccessful in migrating GSM users to newer, more efficient generations of network technology. AT&T’s business decision not to migrate subscribers from GSM to UMTS devices more actively has created an unnecessary need to reserve substantial spectrum for less efficient uses. AT&T acknowledges that its UMTS technology covers approximately 260 million people. Yet, AT&T still sells and supports handsets configured to support only less efficient 2G data capability. AT&T could improve the efficiency of network use by aggressively marketing and subsidizing more UMTS/HSPA+ handsets and by discouraging sales of additional devices that use 2G data. This material improvement in efficiency could be accomplished at a far smaller cost than the proposed transaction with T-Mobile.”).

²⁰⁹ It also is not clear that this is efficient.

²¹⁰ As recently as January of this year, AT&T stated that “[w]e were having some serious capacity constraints in key markets, and we really saw the backlogs clear. And we spent the last 45 days literally just bringing capacity online in a rather dramatic fashion” Question and Answer Session, *AT&T’s CEO Discusses Q4 2010 Results - Earnings Call Transcript*, (Jan. 27, 2011), *available at*: <<http://seekingalpha.com/article/249133-at-t-s-ceo-discusses-q4-2010-results-earnings-call-transcript?part=qanda>>. *See also* Stravitz Decl. ¶ 4 (“With extensive capital resources at its ready disposal, a wealth of largely untapped capacity-enhancing solutions and vast quantities of wholly unused spectrum, AT&T is exceptionally well-equipped to handle increases in data traffic. To the extent that AT&T has any real constraints on its ability to deploy wireless broadband operations, these constraints would appear to be the direct and proximate result of its own business and technical decisions.”).

about its substantial spectrum holdings.²¹¹

189. AT&T also could relieve its capacity limitations by creating more efficient spectrum platforms and the purchasing or leasing of new spectrum and more rapid development of that spectrum. This is a practical alternative. For example, Sprint is currently pursuing its “Network Vision” strategy that will expand the efficiency of Sprint’s spectrum use as well as exploring uses for Clearwire’s spectrum.²¹² AT&T offers no reason why such alternatives are not practical for it, particularly compared to the \$39 billion purchase price for T-Mobile.

190. AT&T claims that the merger would allow for more rapid cell splitting by utilizing T-Mobile’s cell sites.²¹³ It claims that there is insufficient room on many existing

²¹¹ See, e.g., Kevin Fitchard, *AT&T, VZW respond to Clearwire’s 4G spectrum taunts*, CONNECTED PLANET (Mar. 18, 2010) (quoting AT&T’s Senior Vice President of Architecture and Planning – Kris Rinne – as saying, “You need to make sure you count all of our spectrum when you make...comparisons.”), *available at*: <<http://connectedplanetonline.com/3g4g/news/att-vzw-respond-clearwire-spectrum-taunts-0318/>>; *see also id.* (“If AT&T fills up its 700 MHz band, it has plenty of unused Advanced Wireless Service (AWS) spectrum to fall back on. And if that band, too, were to become full, AT&T has one of the country’s largest portfolios of cellular and PCS spectrum. That spectrum is all being used right now for 2G and 3G services, but as LTE demand grows, it makes perfect sense to convert high-speed packet access (HSPA) channels and GSM channels to LTE, which can much more efficiently deliver data capacity, Rinne said.”); *id.* (“[AT&T] will have the opportunity to re-utilize this spectrum in the future,” [Rinne] said.”).

²¹² See Sprint 2010 10-K at 25 (“Consolidating and optimizing the use of Sprint’s 800 MHz, 1.9 GHz and potentially other spectrum (such as the 2.5 GHz owned by Clearwire) into multi-mode stations should allow Sprint to repurpose spectrum to enhance coverage, particularly around the in-building experience. The multi-mode technology also utilizes software-based solutions with interchangeable hardware to provide greater network flexibility, which allows for opportunities to evaluate new 4G technologies to better utilize Sprint’s available spectrum.”).

²¹³ In addition, Stravitz indicates that AT&T’s claimed cell splitting efficiencies have not been substantiated. He notes that ““without the call and data traffic information for the cell sites in areas where AT&T claims to be experiencing network congestion, neither the Commission nor other parties in this proceeding can evaluate – much less validate – whether integrating

towers for its radios. However, a number of independently operated tower companies have stated that they have capacity available for new base stations in markets throughout the country. One recent article reported that “AT&T and other wireless operators could double the amount of capacity they supply with current spectrum by investing more in new wireless equipment on existing cell towers.”²¹⁴ The article quoted the CEO of American Tower, one of the nation’s leading tower companies, as saying that “[o]ur tower sites are about 50% loaded on average.”²¹⁵ Moreover, even where towers are currently at capacity, they usually can be modified to accommodate additional equipment.²¹⁶ American Tower also has stated that “[w]e believe that of our towers that are currently at or near full structural capacity, the vast majority can be upgraded or augmented to meet future tenant demand, with relatively modest capital investment.”²¹⁷

T-Mobile’s cell sites into AT&T’s network would provide a real capacity increase during the hours when AT&T asserts that demand exceeds its network capacity.” Stravitz Decl. ¶30.

²¹⁴ Spencer Ante and Amy Schatz, *Skepticism Greets AT&T Theory: Telecom Giant Says T-Mobile Deal Will Improve Network Quality, but Experts See Other Options*, WALL ST. J. at B1 (Apr. 4, 2011), available at: <<http://online.wsj.com/article/SB10001424052748703806304576236683511907142.html>>.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ American Tower Corp., Annual Report (Form 10-K) at 4 (Feb. 28, 2011). As another alternative, AT&T could deploy software-defined radio technology in its network of base stations to permit more flexible and more efficient use of its existing spectrum. Sprint is deploying such technology at its cell sites under its “Network Vision” project, which was announced a few months ago. The project, which will cost approximately \$3-5 billion and take three to five years to complete, will allow Sprint to consolidate multiple technologies into a single platform capable of using Sprint’s entire spectrum. AT&T could deploy similar technology to address its purported capacity constraints.

191. It also may have been practical for AT&T to purchase or share T-Mobile's towers. At its January 20, 2011 investor conference, Deutsche Telekom's CEO expressed interest in tower-sharing arrangements, stating that "[w]e are among other options ... ready to consider a potential sale of ... non-strategic core assets, for example, the U.S. tower portfolio."²¹⁸

192. Another potentially practical alternative is for AT&T to build new cell sites. At a capital cost of \$300,000 per site, AT&T could build about 30,000 towers for \$10 billion, about one-quarter of what it is paying for T-Mobile.²¹⁹ AT&T claims that the approval process for cell site construction is very lengthy. However, delays in the approval process can be solved (and apparently are being solved) by Commission action.²²⁰ They cannot justify eliminating a major national competitor.²²¹

²¹⁸ Deutsche Telekom Briefing at 4. *See* Stravitz Decl. ¶¶ 46, 51-52 (discussing in greater detail the practicality of site sharing).

²¹⁹ This estimate of the capital expenditures required for the construction of a cell site is used by the Commission in a recent report. *See Mobile Broadband: The Benefits of Additional Spectrum*, OBI Technical Paper No. 6, Federal Communications Commission Omnibus Broadband Initiative, at 24-25 (Oct. 2010).

²²⁰ *See Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, 24 FCC Rcd 13994, ¶ 32 (2009) (the Commission clarifying that it is presumptively unreasonable for the local review process to exceed (1) 90 days for the review of collocation applications; and (2) 150 days for the review of siting applications other than collocations).

²²¹ On this score, Stravitz notes that the time required for integration of the AT&T and T-Mobile cell sites would be very lengthy, a further reason to discount the claimed savings. *See* Stravitz Decl. ¶¶ 25-26 ("According to AT&T, a network integration of that portion of the T-Mobile network that AT&T retains would require nine to twenty-four months following consummation, which, including merger review, would likely equal eighteen to forty-five months. Even taking AT&T's estimates of the pace of network integration at face value, integration of the T-Mobile USA network requires just as much time as AT&T's estimate of the

193. The Commission adopted this incremental approach to analyzing claims of alleged merger efficiencies in reviewing the AT&T-Cingular transaction. The Commission concluded that “while the merged entity will be able to concentrate its resources and efforts in the construction of one next-generation network, instead of two, we are not convinced that Cingular could not have achieved at least some of these same network gains by investing a portion of the \$41 billion purchase price associated with this transaction into improvements to its own network.”²²²

194. AT&T also claims that the merger would resolve any capacity constraint issues faced by T-Mobile. However, this claim of a T-Mobile near-term capacity constraint seems exaggerated. For example, Deutsche Telekom’s CEO stated that T-Mobile “currently own[s] 54 megahertz of spectrum in our major markets which for the next few years put us into a position which is actually better than most of our competitors are in.”²²³

time required to simply install new cell sites on the same towers currently occupied by T-Mobile or on towers owned by tower companies and other parties with available capacity. . . . Using more typical transmitter construction estimates means that AT&T could readily invest in new transmitter locations substantially far more quickly than it could realistically hope to acquire all of the assets and operations of T-Mobile and integrate them into its network operations.”); *see id.* ¶¶ 27-30 (explaining why the claimed efficiencies from the cell site integration are unsubstantiated).

²²² *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, ¶ 225 (2004). The Commission also noted that it “cannot confirm the total savings estimated by Applicants and do not give significant weight to them in our balancing of potential public interest harms and benefits.” *Id.* ¶ 232.

²²³ Deutsche Telekom Briefing, at 2; *see also id.* at 15-16 (T-Mobile’s Chief Technology Officer stating that T-Mobile has “[s]ufficient spectrum in [the] short to medium term,” and, like all other carriers, will explore participating in FCC spectrum auctions to address long-term needs); *id.* at 2 (Deutsche Telekom CEO stating that “[i]ndependent field surveys show that real

195. Finally, AT&T's current capacity constraints, assuming that they exist, appear to have been created partially, if not largely, by its own poor planning. In particular, AT&T appears to have underestimated the data-intensive usage of the highly popular *and exclusive* iPhone as well as the data usage created by smartphones and other devices. AT&T has held the iPhone exclusive for nearly four years.²²⁴ Even if AT&T had somehow not anticipated an upsurge in usage as a result of its exclusive access to the world's most popular smartphone, one would still have expected that the increased usage would have created strong incentives for AT&T to expand the capacity of its network more rapidly. Instead, during the first three years of its iPhone exclusive (2007-2009), AT&T invested less on a per subscriber basis than the average of the other three national carriers. In 2010, AT&T finally increased its pace of investment.²²⁵ For all these reasons, AT&T has not demonstrated that the merger-specific efficiency benefits from easing capacity constraints outweigh the likely consumer welfare harms from the merger.

life data transmission speeds on our network are superior to most competitors and they are at least equivalent to LTE.”).

²²⁴ Yukari Iwatani Kane & Ting-I Tsai, *Apple Readies Verizon iPhone*, WALL ST. J. at A1 (Oct. 7, 2010), available at: <<http://online.wsj.com/article/SB10001424052748703735804575536191649347572.html>>; Press Release, Apple Inc., *AT&T and Apple Announce Simple, Affordable Service Plans for iPhone* (June 26, 2007), available at: <<http://www.apple.com/pr/library/2007/06/26plans.html>>; Press Release, Apple Inc., *iPhone 4 on Verizon Wireless Available for Pre-Order Tomorrow* (Feb. 2, 2011), available at: <<http://www.apple.com/pr/library/2011/02/02iphone.html>>.

²²⁵ For the three-year period from 2007 to 2009, AT&T made annual capital investments equivalent to \$66 per subscriber while the weighted average for all other wireless carriers was \$87 per subscriber. In 2010, AT&T made capital investments equivalent to \$96 per subscriber while the weighted average for all other carriers was \$85. *US Wireless 411*, UBS Investment Research (Mar. 30, 2011), at 13, 41; *US Wireless 411*, UBS Investment Research (Mar. 29, 2009), at 13, 51. Cited only for purposes of this factual statement. Sprint disclaims and does not endorse or adopt said report, including any statements, opinions or analysis therein.

B. AT&T's LTE Deployment Claims

196. AT&T also claims that the combined firm will be able to deploy LTE service to more consumers. AT&T claims that: “Over time...the combined company will be able to (1) migrate T-Mobile subscribers off the AWS spectrum to AT&T's UMTS bands, which merger synergies will have made less congested, (2) upgrade them to LTE service, or (3) pursue some combination of these two. . . . [T]he transaction *eventually* will enable AT&T to free-up T-Mobile's AWS spectrum for higher performing and more spectrally efficient LTE services.”²²⁶ These efficiency benefit claims are tenuous.

197. AT&T does not demonstrate that the merger would lead to a roll out of LTE services that is more rapid than would have been the case absent the merger. AT&T compares the deployment to its owned planned deployment schedule over a planning period that ends in 2013. Moreover, AT&T claims only that it would use T-Mobile's AWS spectrum to extend the reach of its LTE network “eventually.” As noted earlier, however, efficiency benefits that are vague or occur far in the future should be given less weight in the balance in light of immediate consumer harms from eliminating an important competitor.

198. In claiming these benefits, AT&T also does not take into account the costs borne by T-Mobile subscribers. In addition to the cost imposed on T-Mobile subscribers to acquire new handsets capable of operating on the newly repurposed spectrum, T-Mobile subscribers served by T-Mobile's AWS spectrum will be moved to AT&T's UMTS service that they have chosen not to purchase, apparently because they perceived it to be inferior to their T-Mobile

²²⁶ Application at 40 (emphasis supplied).

service. It follows that the effect on these subscribers involves an efficiency *harm* that must be subtracted from any proven benefits.

199. AT&T's deployment promises also raise a merger-specificity issue. AT&T has not explained why the expanded coverage of LTE could not be obtained by other practical means. For example, AT&T argues that Sprint (and other carriers) can rely on leasing or purchasing spectrum from LightSquared or Clearwire. It does not explain why it could not do the same. Moreover, as noted previously, AT&T's participation in developing this and other new spectrum along with Sprint and an independent T-Mobile could speed the development process by spreading the costs of doing so over more carriers.

200. AT&T also does not explain why it cannot use its own spectrum to roll-out LTE more broadly. AT&T claims that, absent the merger, the coverage of its LTE network will not extend to more than 80% of the U.S. population. In contrast, Sprint – which lacks the “beachfront” spectrum available to AT&T and is not relying on a merger to obtain additional spectrum – anticipates that its LTE network will reach most if not all of the U.S. population by 2013.²²⁷ In any event, there appears to be no shortage of spectrum in the rural areas in which AT&T claims only the merger would allow it to serve.²²⁸

²²⁷ See *Sprint could deploy LTE nationwide by year-end 2013*, FIERCEWIRELESS (Mar. 2, 2011), available at: <<http://www.fiercewireless.com/story/sprint-could-deploy-lte-nationwide-year-end-2013/2011-03-02>>.

²²⁸ Stravitz concludes that AT&T already has enough spectrum to reach most of the nation's population. See Stravitz Decl. ¶ 40 (“With significant, nationwide spectrum holdings already lying fallow, AT&T can deploy LTE today in various configurations to achieve nationwide coverage without acquiring T-Mobile.”); *id.* ¶ 36 (providing additional reasons explaining the flaws in AT&T's claims of inadequate spectrum for LTE expansion).

201. AT&T has not demonstrated that merger-specific efficiency benefits from expanding or speeding LTE deployment would outweigh the likely consumer welfare harms from the merger.

VIII. CONCLUSIONS

202. Our analysis indicates that, if the AT&T/T-Mobile merger were approved, it would likely be harmful to wireless consumers and competition, whether analyzed in terms of a national market or local markets. By removing T-Mobile as an independent competitor, the merger would give AT&T the unilateral incentive to raise prices and also would facilitate anticompetitive coordination between AT&T and Verizon. In addition, unlike most mergers, this transaction would have significant exclusionary effects by raising the costs of Sprint and the smaller regional competitors. These exclusionary effects would increase the likelihood of adverse unilateral and coordinated effects on consumer welfare. These effects also make it less likely that competitors would be able to constrain the pricing of AT&T and Verizon. Innovation also may be slowed as a result of the merger. Approval of the merger would move the industry toward an entrenched duopoly in which Sprint is marginalized and additional strong national competitors are less likely to emerge.

203. The only remedy that can address these harms is to prohibit the merger. In that way, T-Mobile would remain an independent national competitor that would serve as a significant challenger to Verizon and AT&T. The competitive harms that would result from approval are neither minor nor localized and cannot be cured by localized divestitures or behavioral conditions. Important dimensions of competition take place at the national level, and there would be competitive concerns in [begin NRUF/LNP confidential information] [REDACTED]

██████████ [end NRUF/LNP confidential information] that it is highly unlikely that localized remedies could restore national competition. Spectrum and subscriber divestitures would not maintain T-Mobile as a going concern with a valuable national brand name. If spectrum or other assets were divested to Verizon as part of a merger remedy, competition would not be increased. If anything, it would facilitate coordination between AT&T and Verizon. If the merger were approved, there would just be three national competitors, including one that would be substantially weakened, and a significant risk that the wireless market would revert to a duopoly.

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TABLES

Table 1: 2010 Average Revenue Per User (ARPU) for Wireless Services

Reported in dollars per month

	ARPU
Branded Postpaid Retail	
AT&T	62.57
T-Mobile	52.00
Verizon	52.92
Sprint	55.00
Average	55.62
Prepaid Retail	
Leap	37.76
MetroPCS	39.79
Average	38.78

Notes:

Verizon ARPU is a weighted average of 1st and 4th Quarters 2010.

Sources:

Wireless carrier SEC 10-K filings, annual reports, press releases, and investor presentations.

Table 2: All Wireless Subscriber Market Shares - 2010

Carrier	Wireless Subscribers	
	Reseller Attribution Rule:	
	Facilities-Based Carriers ¹	All Carriers (including Resellers) ²
AT&T	30.7%	26.5%
T-Mobile	11.3%	10.3%
Verizon	33.5%	31.2%
Sprint	17.1%	16.2%
Leap	2.0%	2.0%
MetroPCS	2.9%	2.9%
US Cellular	2.2%	2.0%
Cincinnati Bell	0.2%	0.2%
NTELOS	0.2%	0.2%
Qwest (reseller)	0.0%	0.4%
TracFone (reseller)	0.0%	6.3%
Other (resellers)	0.0%	1.9%
Total	100.0%	100.0%
HHI	2,503	2,100
Delta HHI	696	549
Post-Merger HHI	3,198	2,649

Notes:

The reported shares exclude connected devices.

¹ Reseller (i.e., Mobile Virtual Network Operator - MVNO) subscribers are attributed to the facilities-based carriers. Qwest and TracFone are resellers.

² Reseller subscribers are attributed to the resellers.

Sources:

Wireless carrier SEC 10-K filings, annual reports, press releases, and investor presentations.

Table 3: All Wireless Revenue Market Shares - 2010

Carrier	Wireless Revenue	
	Reseller Attribution Rule:	
	Facilities-Based Carriers ¹	All Carriers (including Resellers) ²
AT&T	32.2%	31.6%
T-Mobile	11.5%	11.5%
Verizon	34.6%	34.2%
Sprint	15.4%	15.4%
Leap	1.5%	1.5%
MetroPCS	2.2%	2.2%
US Cellular	2.3%	2.3%
Cincinnati Bell	0.2%	0.2%
NTELOS	0.2%	0.2%
Qwest (reseller)	0.0%	0.1%
TracFone (reseller)	0.0%	0.9%
Other (resellers)	0.0%	0.0%
Total	100.0%	100.0%
HHI	2,615	2,551
Delta HHI	741	727
Post-Merger HHI	3,356	3,279

Notes:

¹ Reseller (i.e., Mobile Virtual Network Operator - MVNO) subscribers are attributed to the facilities-based carriers. Qwest and TracFone are resellers.

² Reseller revenues are attributed to the resellers.

Sources:

Wireless carrier SEC 10-K filings, annual reports, press releases, and investor presentations.

Table 4: Wireless Postpaid and Prepaid Subscriber Shares - 2010

Carrier	Wireless Subscribers		
	Postpaid	Prepaid	
		Reseller Attribution Rule:	
	Branded Retail	Facilities-Based Carriers ¹	All Carriers (including Resellers) ²
AT&T	31.7%	27.4%	9.8%
T-Mobile	11.4%	11.1%	6.9%
Verizon	38.6%	17.0%	7.1%
Sprint	15.4%	22.5%	18.5%
Leap	0.0%	8.3%	8.3%
MetroPCS	0.0%	12.3%	12.3%
US Cellular	2.5%	1.0%	0.5%
Cincinnati Bell	0.2%	0.2%	0.2%
NTELOS	0.1%	0.2%	0.2%
Qwest (reseller)	0.0%	0.0%	1.6%
TracFone (reseller)	0.0%	0.0%	26.7%
Other (resellers)	0.0%	0.0%	7.8%
Total	100.0%	100.0%	100.0%
HHI	2,871	1,890	1,474
Delta HHI	724	607	135
Post-Merger HHI	3,595	2,496	1,609

Notes:

The reported shares exclude connected devices.

¹ Reseller (i.e., Mobile Virtual Network Operator - MVNO) subscribers are attributed to the facilities-based carriers. Qwest and TracFone are resellers.

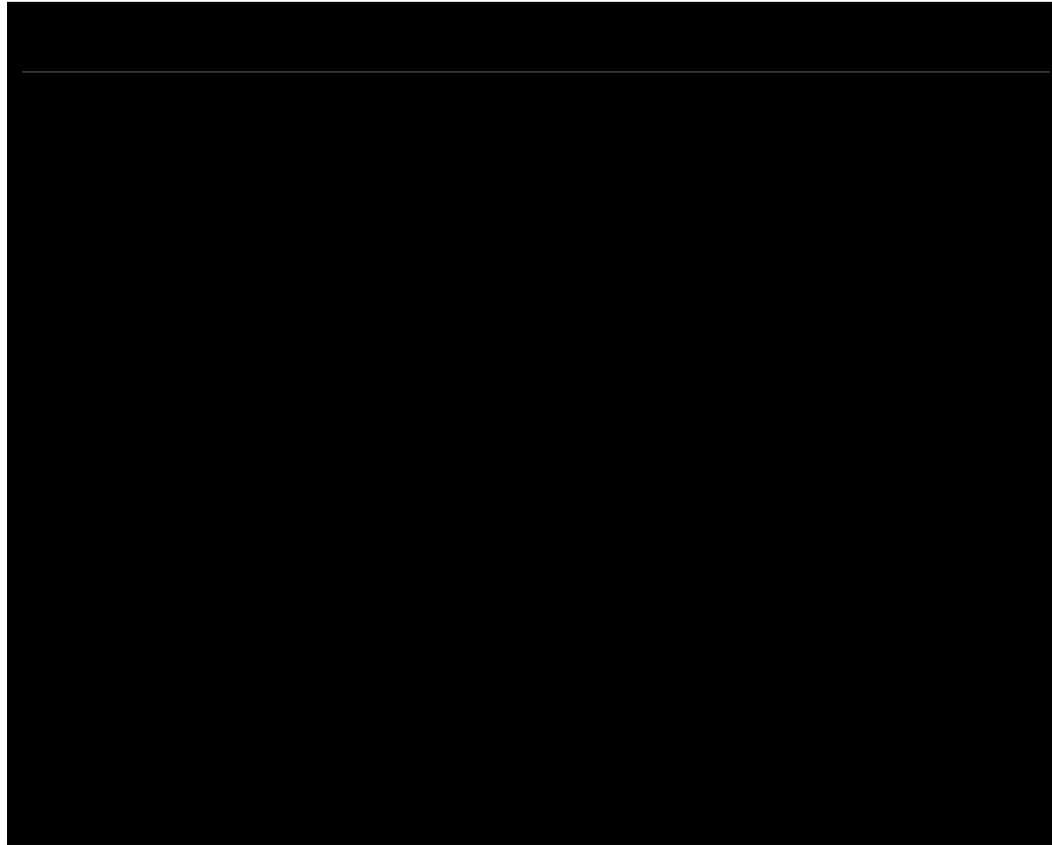
² Reseller subscribers are attributed to the resellers.

Sources:

Wireless carrier SEC 10-K filings, annual reports, press releases, and investor presentations.

Table 5a: Summary of Subscriber Screen Analysis

[begin NRUF/LNP confidential information]

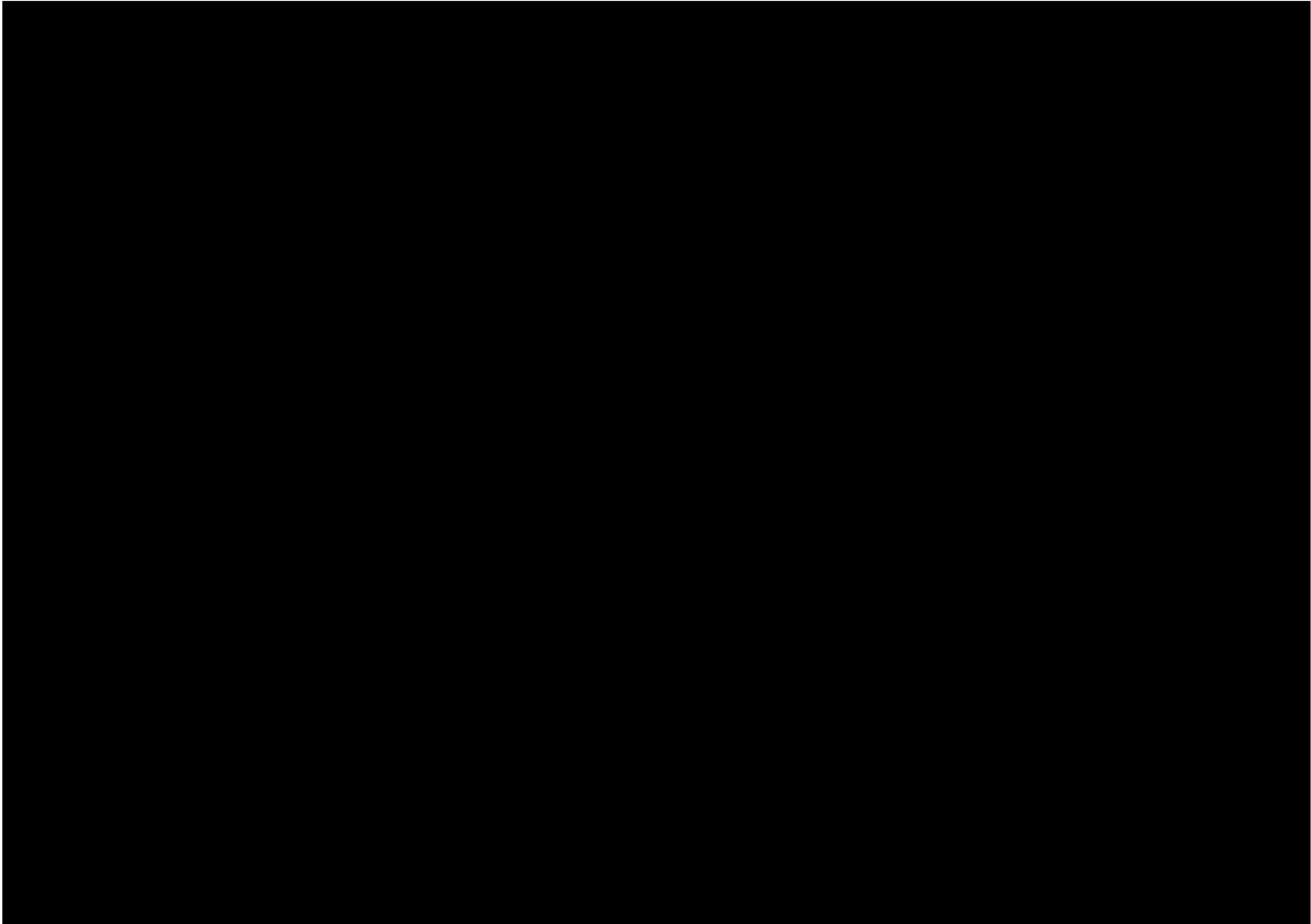


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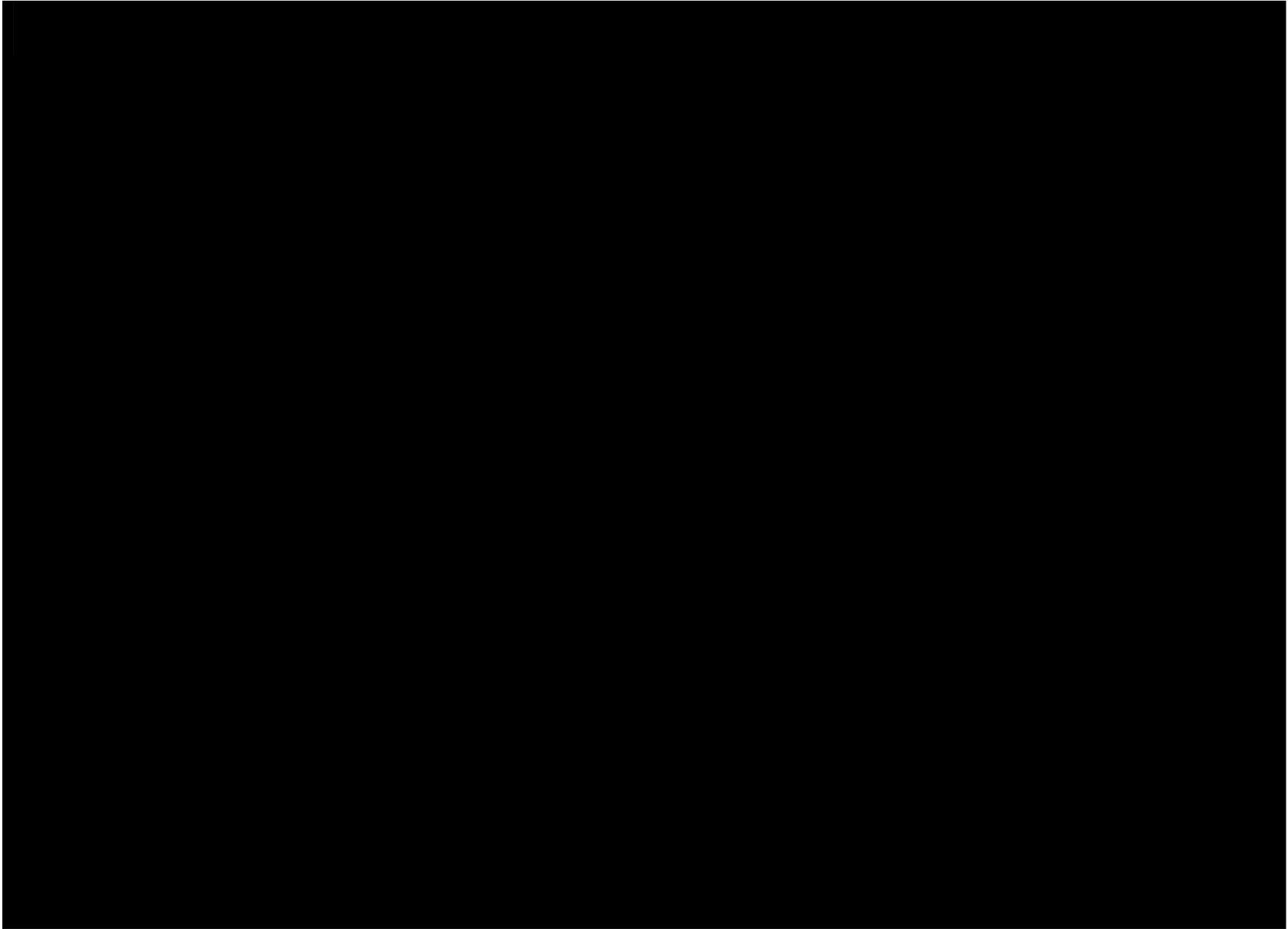
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Table 5b: Subscriber Screen Analysis by CEA

[begin NRUF/LNP confidential information]



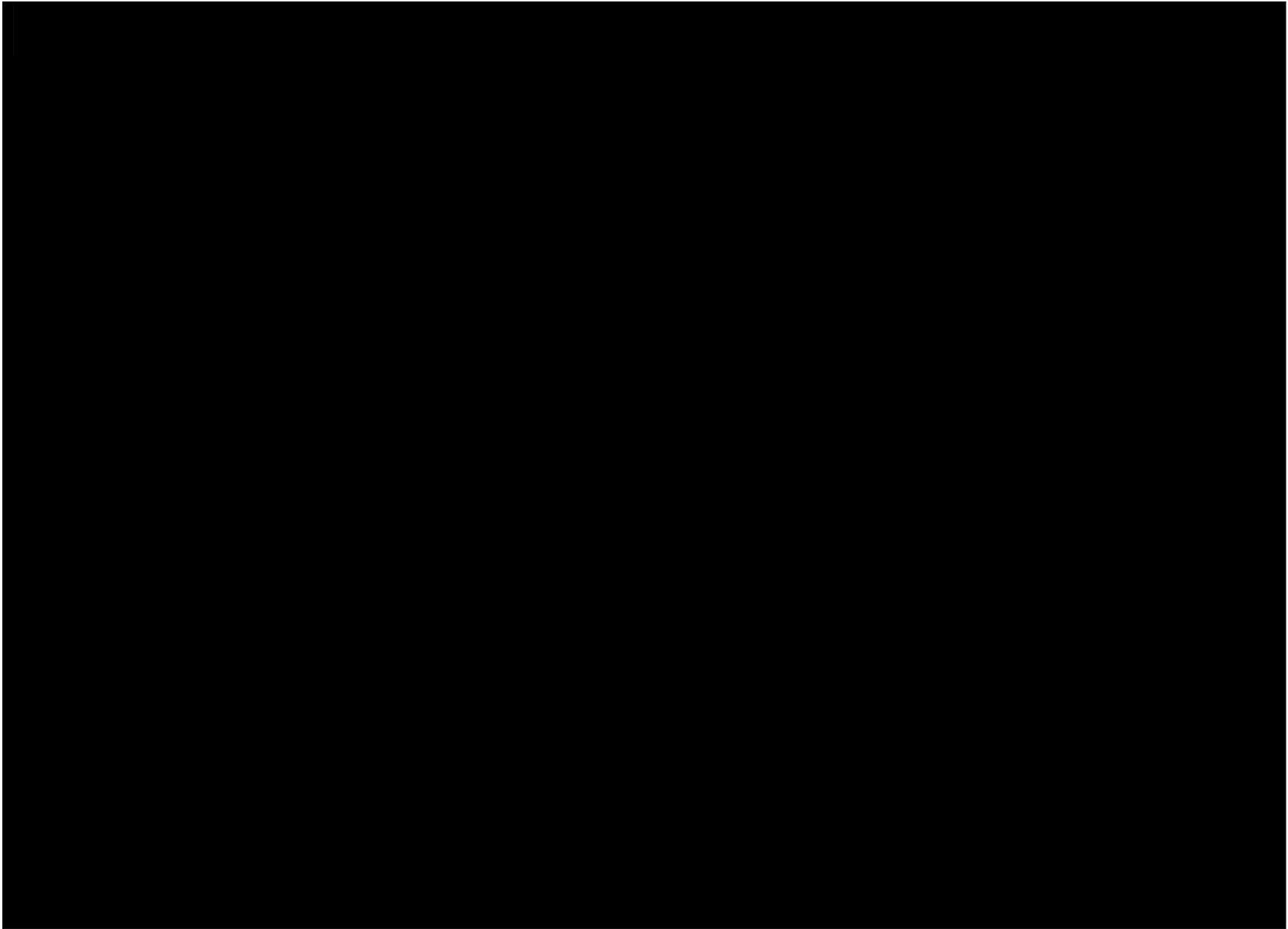
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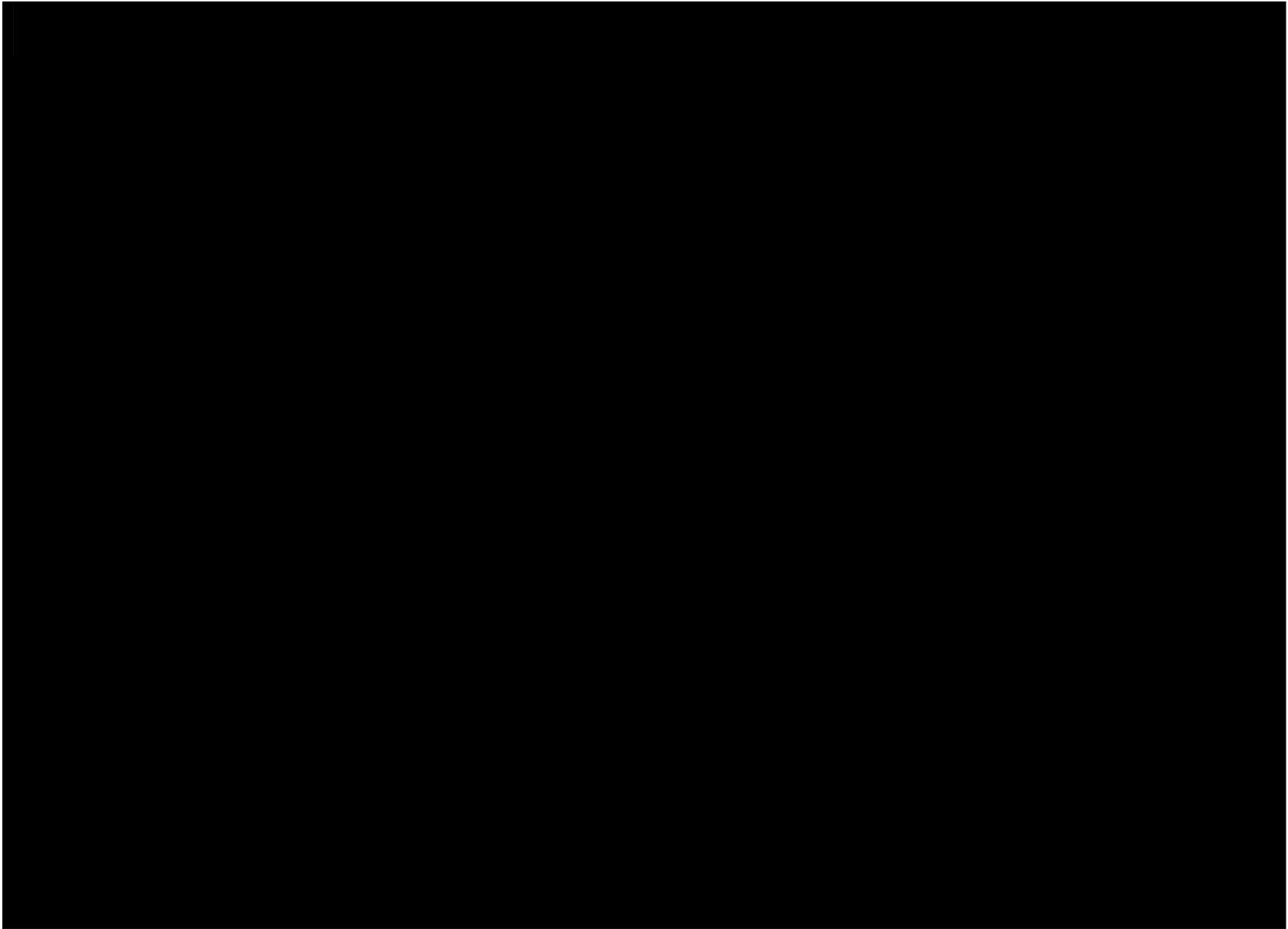
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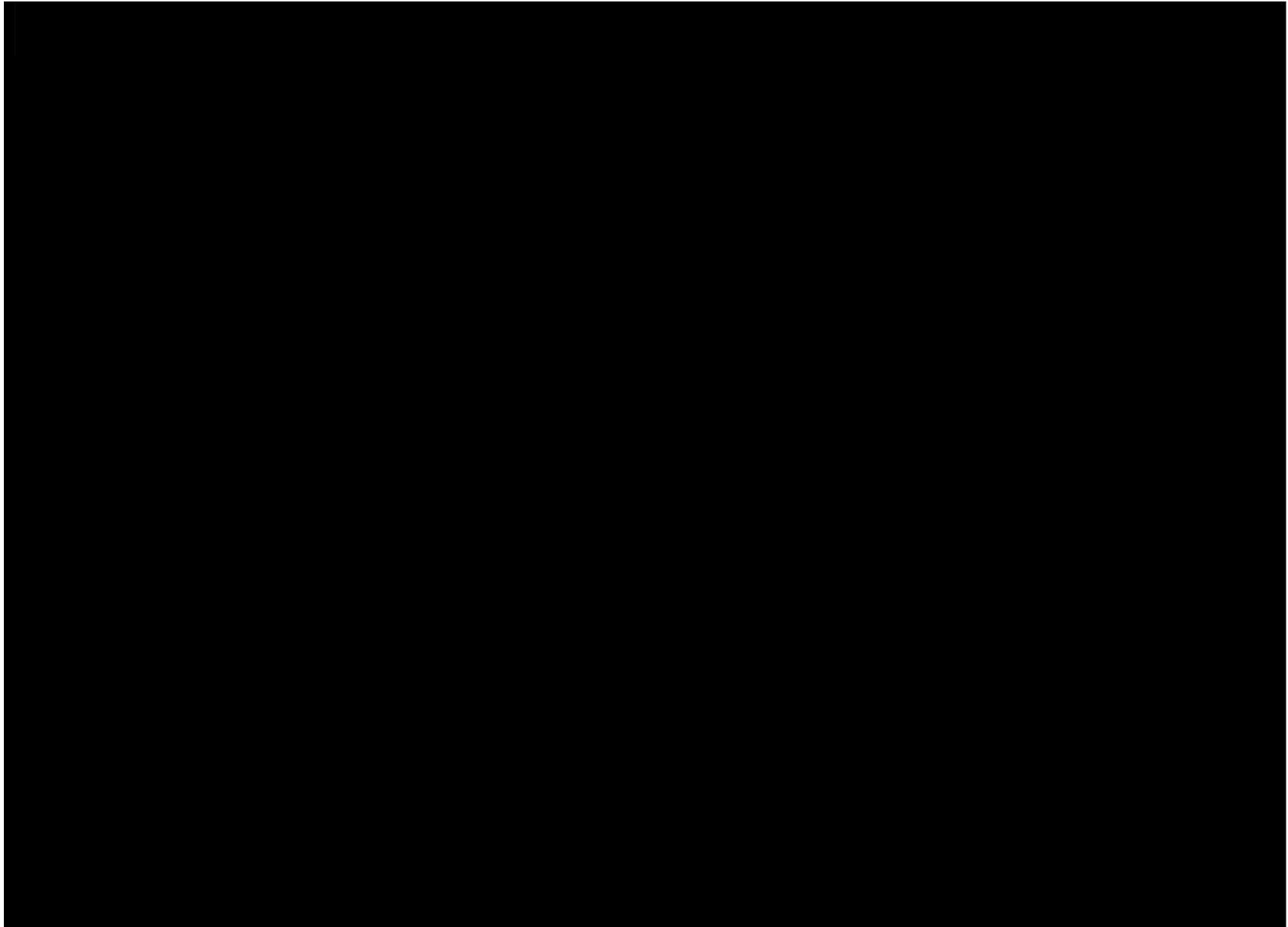
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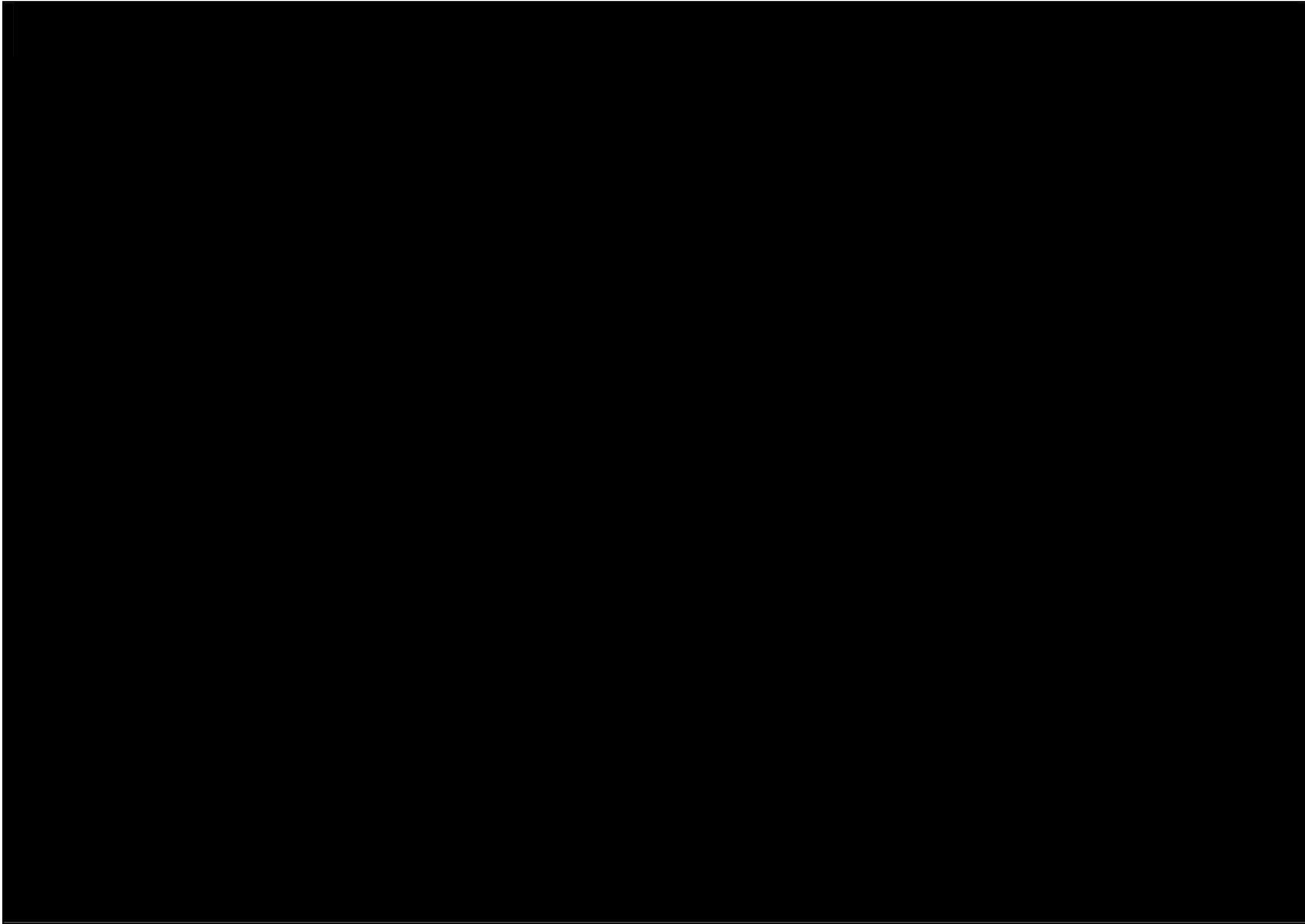


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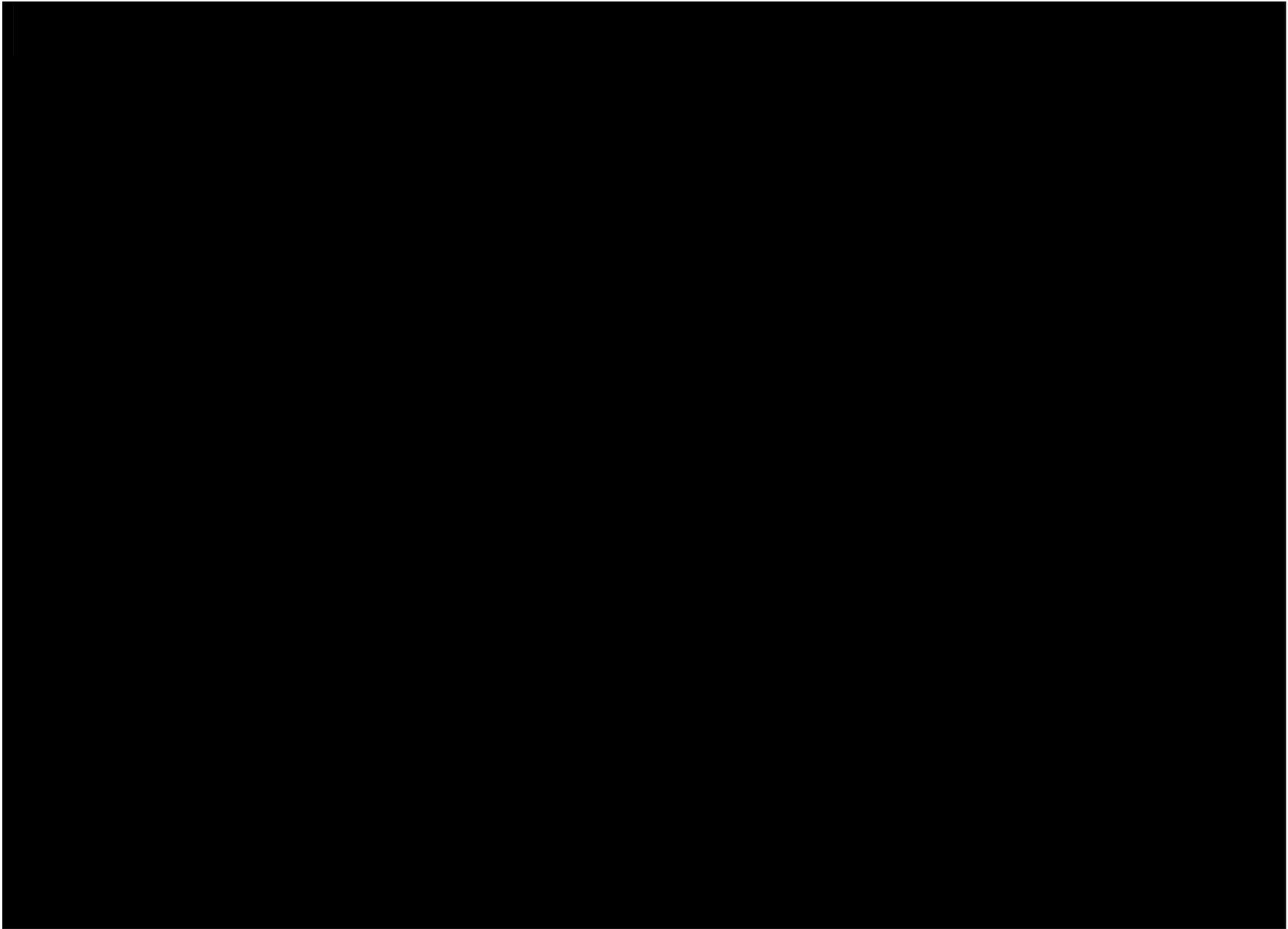
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Table 5c: Subscriber Screen Analysis by CMA

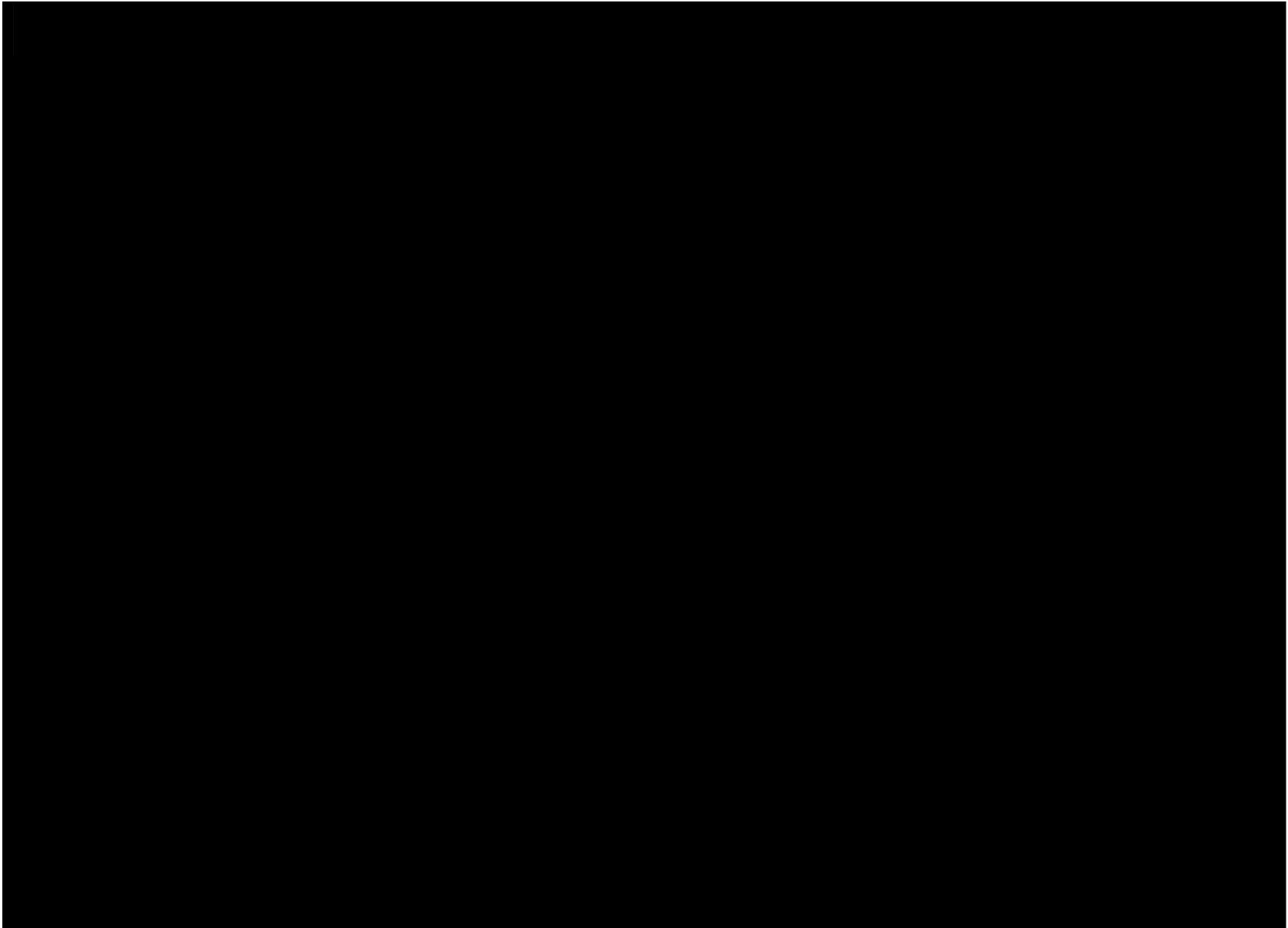
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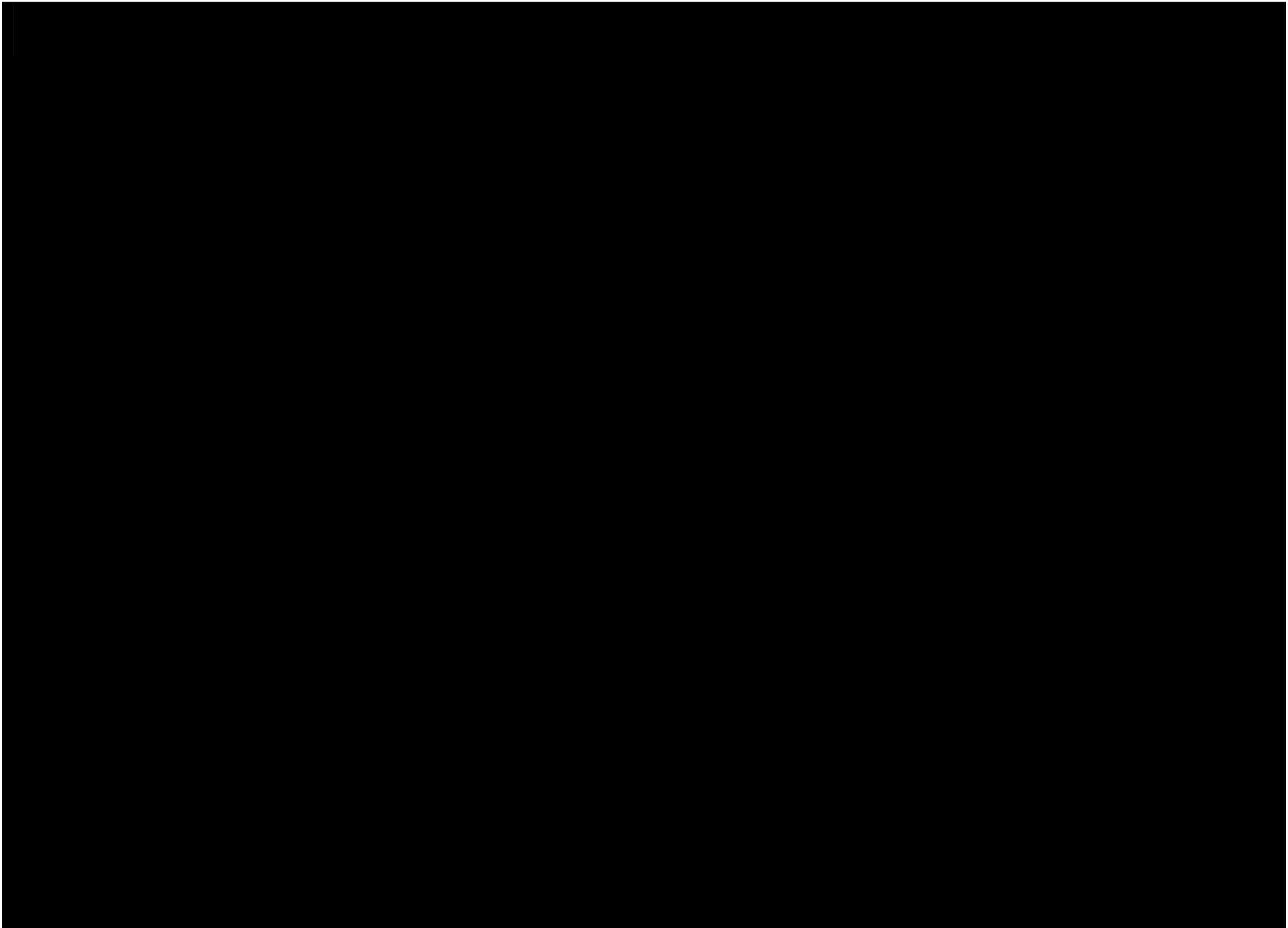
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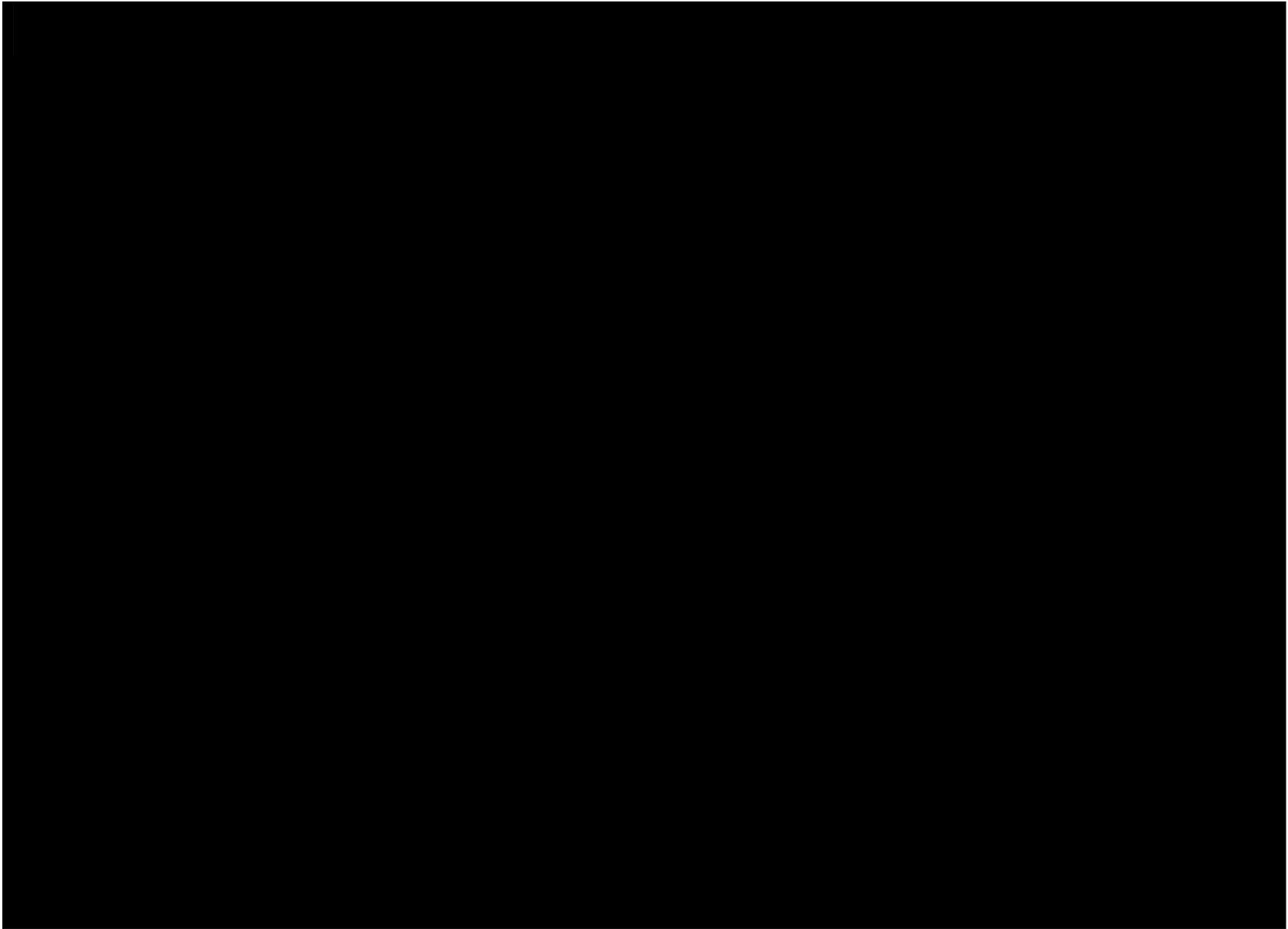
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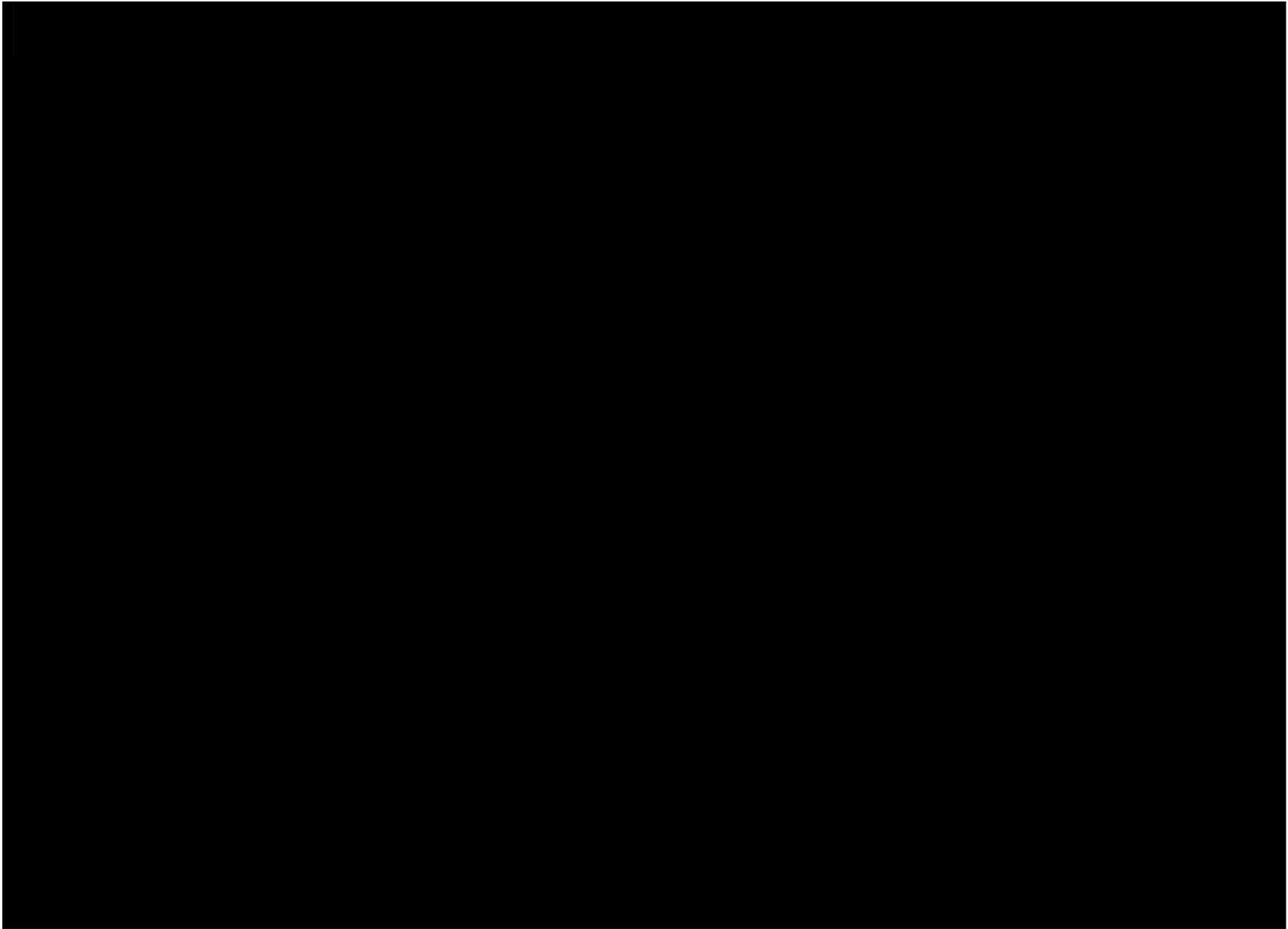
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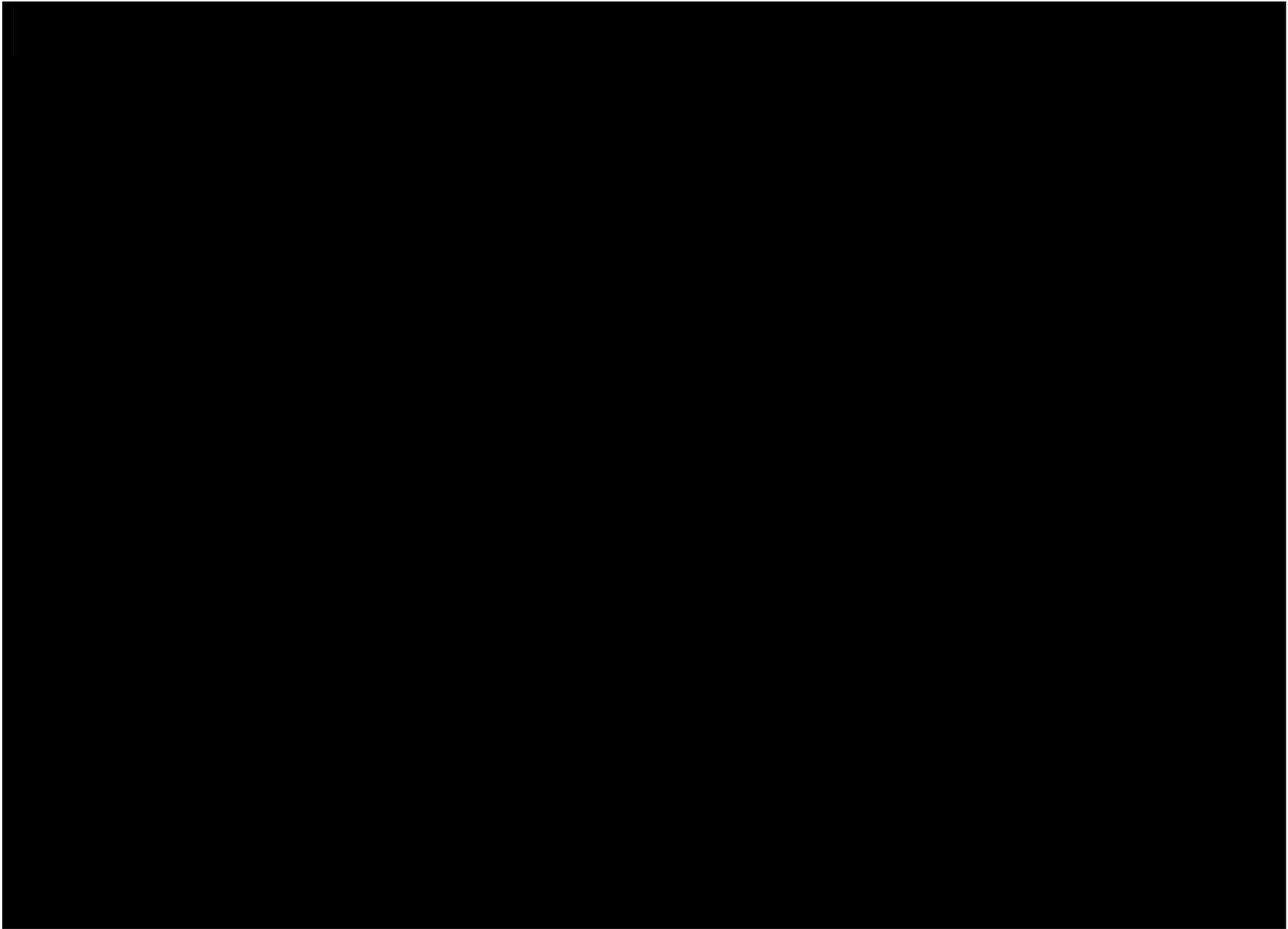
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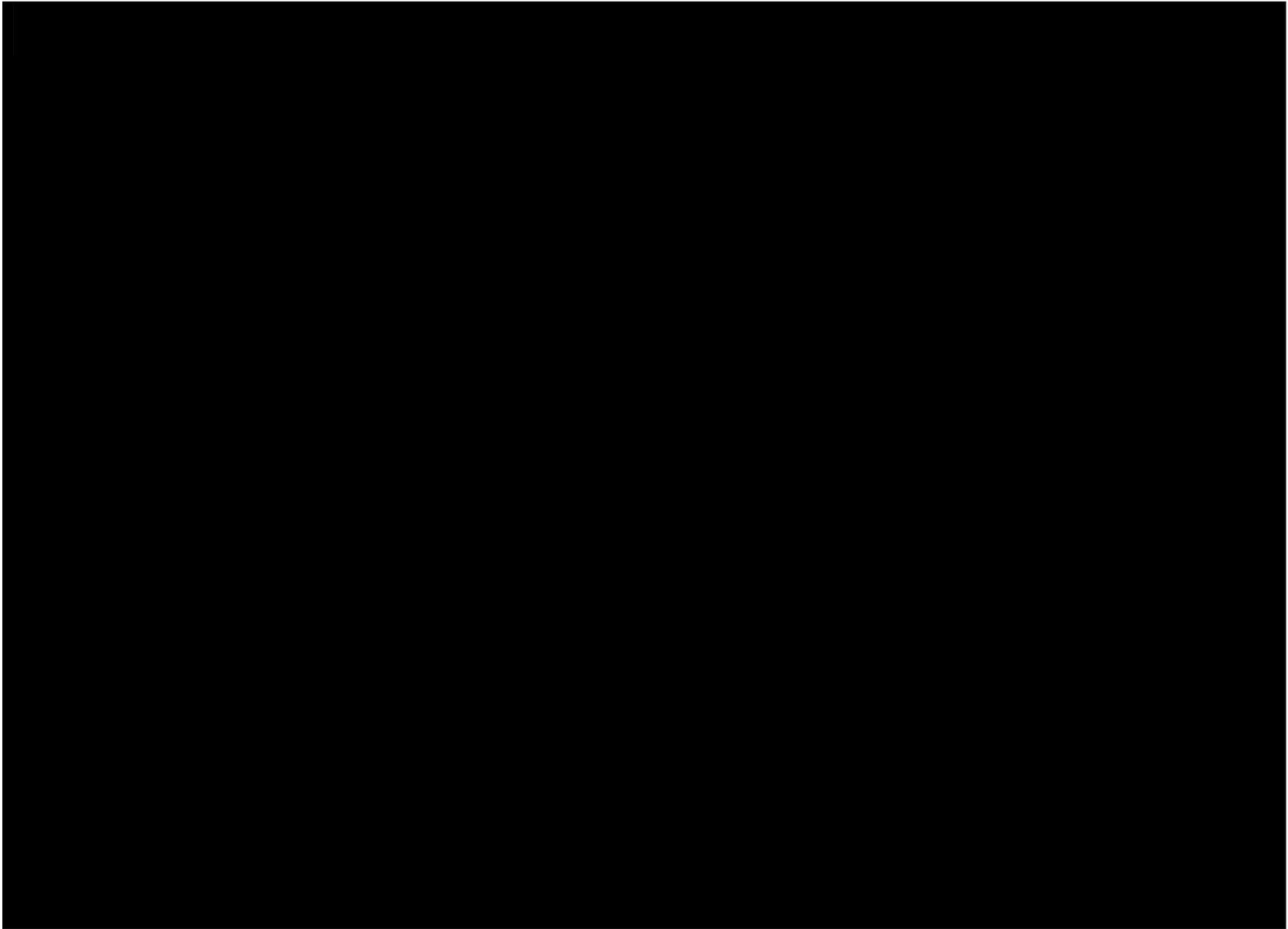
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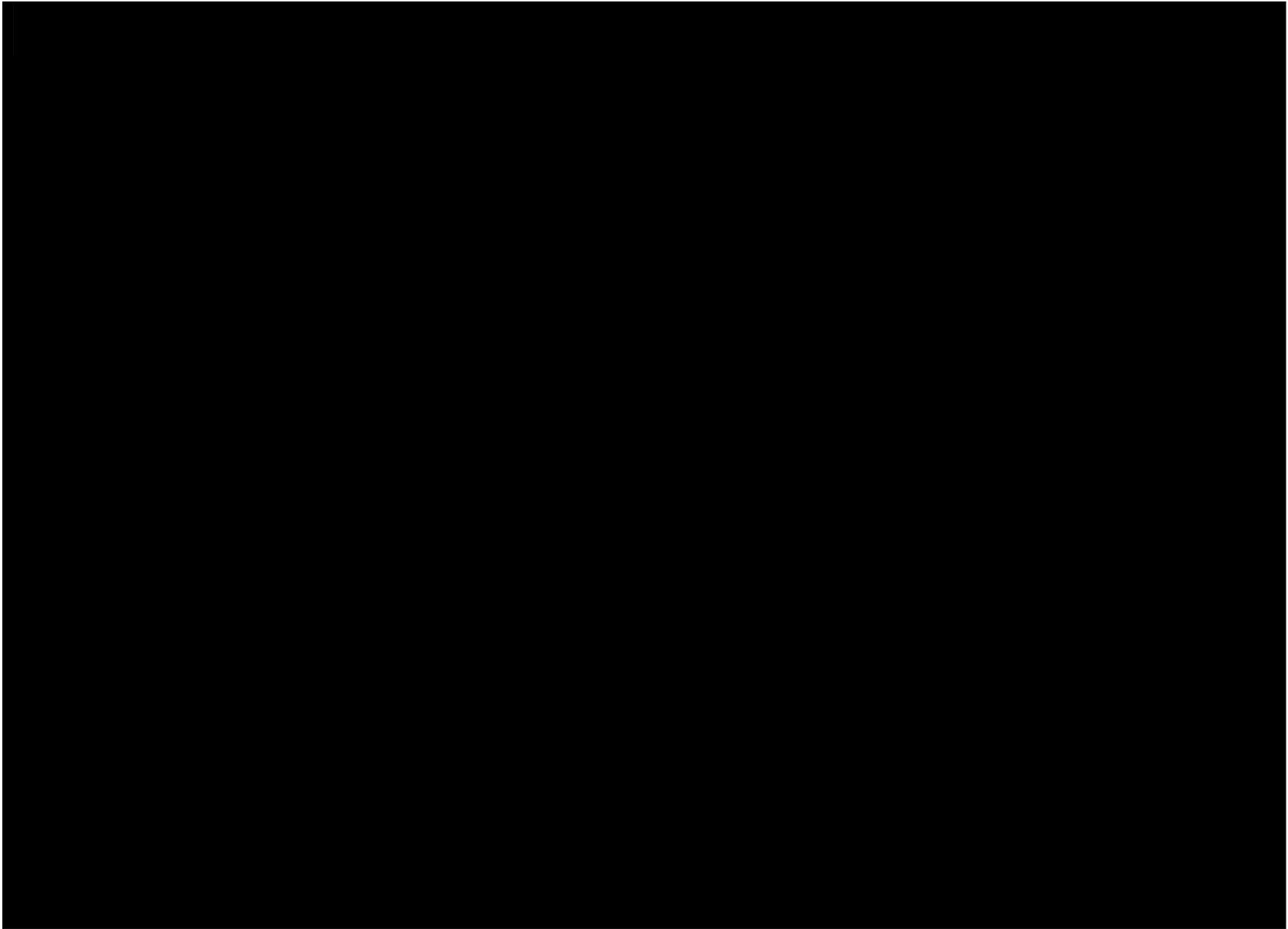
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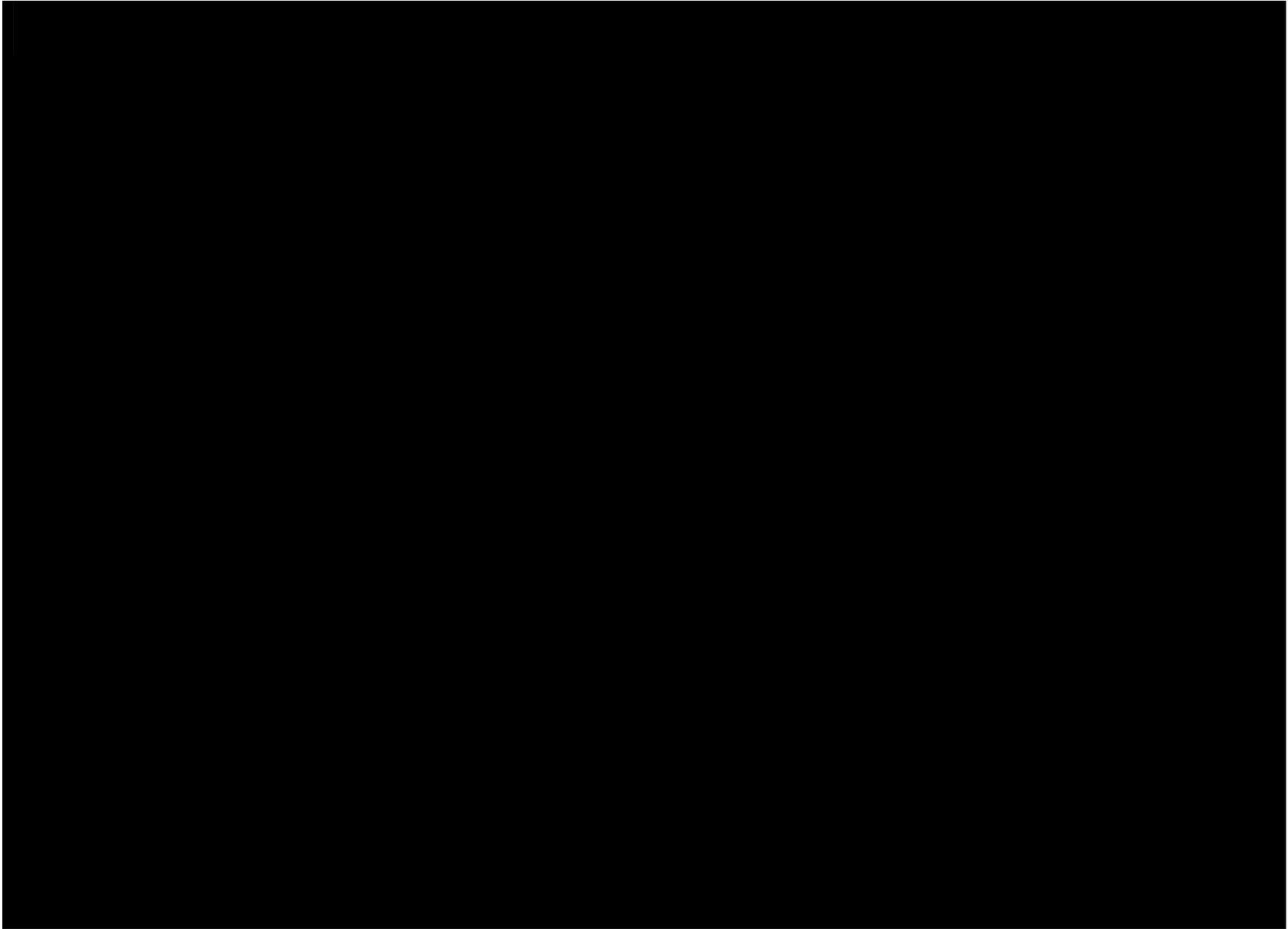
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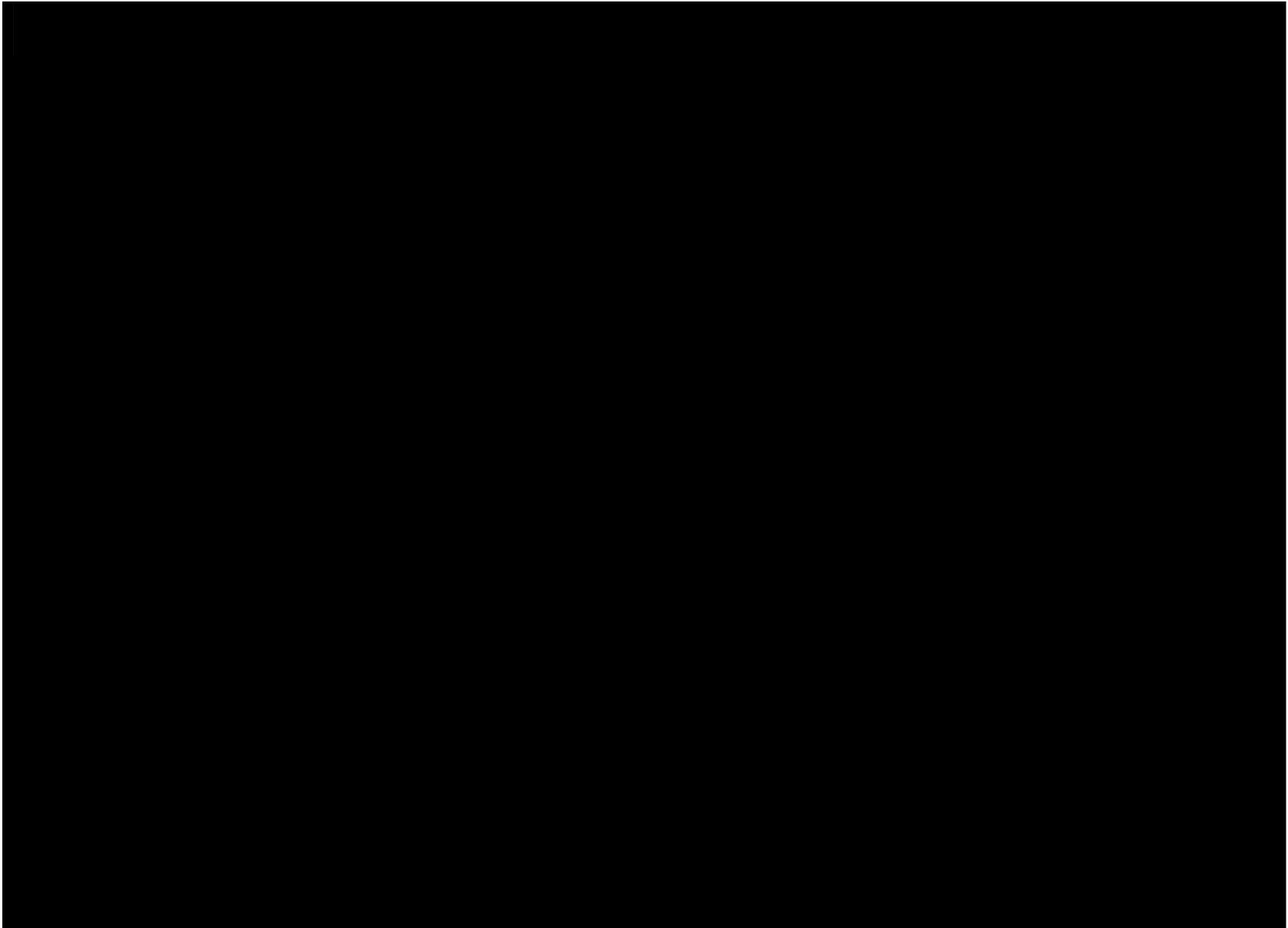
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Table 6: Book Value of Spectrum License Holdings By Carrier - 2010

	Book Value ¹		Spectrum License Holdings
	\$ in Billions	Share	
Verizon Wireless	73	39%	700MHz, Cellular, PCS, AWS
AT&T ²	52	28%	700MHz, Cellular, PCS, AWS
Sprint Nextel	20	11%	SMR, PCS
T-Mobile	15	8%	PCS, AWS
MetroPCS	3	1%	700MHz, PCS, AWS
US Cellular	1	1%	700MHz, Cellular, PCS, AWS
Leap	2	1%	PCS, AWS
Clearwire	4	2%	BRS, EBS
LightSquared ³	4	2%	MSS
Other ⁴	14	8%	All except MSS
	189	100%	
HHI		2,454	
Delta HHI		449	
Post-Merger HHI		2,902	

Notes:

¹ As reported in company annual reports and press releases.

² AT&T's reported spectrum holdings account for the AT&T's agreement to purchase nearly \$2 billion of spectrum from Qualcomm that was announced in December 2010.

³ The spectrum value reported for LightSquared was estimated based on valuations reported in the trade press.

⁴ The spectrum value reported for Other was estimated by multiplying the relevant MHz-Pop for Other (based on data reported in the FCC's 14th Report) by average Dollars Per MHz-Pop for the non-national carriers.

REDACTED – FOR PUBLIC INSPECTION

Sources:

Verizon Wireless, Annual Report, 2010, pages 34 and 43.

AT&T Wireless, Annual Report, 2010, pages 46 and 60.

Sprint Nextel, Annual Report, 2010, pages F-16 and 41.

Press Release, "T-Mobile USA Reports Third Quarter 2010 Results," November 4, 2010, page 11.

MetroPCS, Annual Report, 2010, pages F-2 and F-10.

LEAP Annual Report, 2010, pages 88 and 108-109.

Clearwire, Annual Report, 2010, pages 3, 50, and 54.

US Cellular, Annual Report, 2010, page 22.

Deutsche Telekom, Annual Report, 2010, page 143.

"LightSquared Accelerates Access to L-Band Satellite Spectrum," The Deal Advisor, February 4, 2011.

"Nokia Siemens Networks Wins \$7B Contract to Build Harbinger's LTE Network," gigaom.com, July 20, 2010.

Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, Fourteenth Report, 25 FCC Rcd 11407 (2010), Table 26.

"AT&T Agrees to Acquire Wireless Spectrum from Qualcomm," Qualcomm Press Release, December 20, 2010.

"LightSquared: Can it live up to its wholesale aspirations?" Fierce Broadband Wireless, July 28, 2010.

Table 7: GUPPI and CMCR Results Using Proportional Diversion – All Wireless Market

	Margin = 70%			Margin = 40.7%		
	60%	80%	100%	60%	80%	100%
Recapture Rate						
Diversion Ratios						
From AT&T to T-Mobile	9.8%	13.0%	16.3%	9.8%	13.0%	16.3%
From T-Mobile to AT&T	20.8%	27.7%	34.6%	20.8%	27.7%	34.6%
Single-Price GUPPIs						
AT&T	6.3%	8.5%	10.6%	3.7%	4.9%	6.1%
T-Mobile	15.7%	20.9%	26.2%	9.1%	12.2%	15.2%
Simultaneous GUPPIs						
AT&T	7.8%	11.2%	15.1%	4.5%	6.5%	8.8%
T-Mobile	17.6%	24.6%	32.3%	10.2%	14.3%	18.8%
CMCRs						
AT&T	26.4%	38.0%	51.3%	7.8%	11.2%	15.1%
T-Mobile	58.3%	81.1%	106.4%	17.1%	23.9%	31.3%

Notes:

GUPPI = Gross Upward Pricing Pressure Index.

CMCR = Compensating Marginal Cost Reduction.

The following all wireless market inputs were used for the above analysis:

Carrier	ARPU	Subscriber Share
AT&T	\$ 49.68	30.7%
T-Mobile	\$ 46.00	11.3%

Sources:

Wireless carrier SEC 10-K filings, annual reports, press releases, and investor presentations.

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

Executed on May 28, 2011

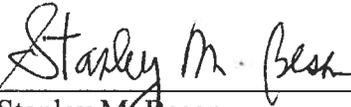
A handwritten signature in black ink, appearing to read "Salop", written over a horizontal line.

Steven C. Salop
Professor of Economics and Law
Georgetown University Law Center

REDACTED – FOR PUBLIC INSPECTION

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

Executed on May 30, 2011

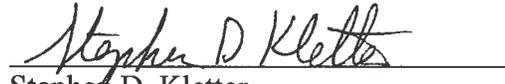
Handwritten signature of Stanley M. Besen in cursive script.

Stanley M. Besen
Senior Consultant
Charles River Associates

REDACTED – FOR PUBLIC INSPECTION

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

Executed on May 25, 2011

A handwritten signature in cursive script, reading "Stephen D. Kletter", is written over a horizontal line.

Stephen D. Kletter

Principal

Charles River Associates

REDACTED – FOR PUBLIC INSPECTION

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

Executed on May 30, 2011

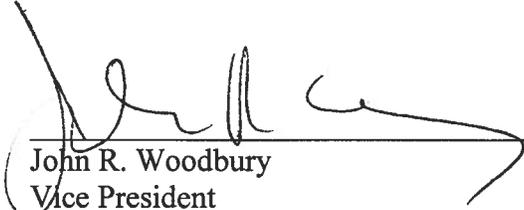
A handwritten signature in black ink, appearing to read "S. Moresi", written over a horizontal line.

Serge X. Moresi
Vice President
Charles River Associates

REDACTED – FOR PUBLIC INSPECTION

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

Executed on May 30, 2011

A handwritten signature in black ink, appearing to read 'J. Woodbury', written over a horizontal line.

John R. Woodbury
Vice President
Charles River Associates

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ATTACHMENT B

DECLARATION OF WILLIAM SOUDER

VICE PRESIDENT OF PRICING, PROFITABILITY AND OPERATIONS

SPRINT NEXTEL CORPORATION

DECLARATION OF WILLIAM SOUDER

I, Will Souder, declare as follows:

1. My name is Will Souder. I am Vice President of Pricing, Profitability and Operations for Sprint Nextel (“Sprint”). My organization creates pricing and pricing structures and makes decisions and recommendations for pricing and offers for service plans and devices, for Consumer and Business customers. Additionally, I am responsible for profitable growth and the go-to-market process.

2. I make this declaration in support of Sprint's Petition to Deny the Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations.

National Pricing For Retail Wireless Services

3. In 2007, Sprint made a decision to eliminate regional and local pricing and discounting. Sprint now sets prices and terms for its plans nationwide, without regard to conditions in local markets, and each Sprint plan has a uniform retail price throughout the country. Thus, the same plans can be purchased in New York, NY, Atlanta, GA, and Los Angeles, CA. As of April 2011, over **[begin confidential information] [REDACTED] [end confidential information]** percent of new Sprint post-paid subscribers are on a nationwide plan. Similarly, Sprint offers the same portfolio of handsets to customers throughout the country at the same prices in each sales channel.

4. Sprint will occasionally test market a different plan in select markets rather than nationwide. For example, when Sprint began offering unlimited voice, messaging, and data plans, it test-marketed the plan in San Francisco, CA, before rolling it out nationwide. However,

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where these plans are offered by Sprint, they are not offered in response to local competitive conditions. Instead, they are typically offered to test a plan on a smaller scale with the expectation that the plan will be implemented nationwide if successful. On occasion, Sprint will also offer plans in limited markets before offering the plans nationwide due to a staggered, or rolling, introduction of a new or emerging technology. In these instances, the technology is not available throughout the nation upon initial launch, therefore the plan availability tracks the staggered technology launch, without regard to local competitive conditions.

5. Sprint offers its plans and handsets through a number of distribution channels, including national retailers (Radio Shack, Best Buy, and Walmart), through telephone sales and the Internet, and through Sprint retail stores. The national distribution platforms are becoming increasingly important distribution platforms. In 2011, Sprint sold more plans through national retailers than through its own retail stores, and its telesales and internet sales increased about **[begin confidential information] ■ [end confidential information]** percent from the first quarter of 2009 through the first quarter of 2011.

6. In setting and adjusting the pricing for its service plans, Sprint closely monitors the rates offered by the other three national carriers, AT&T, Verizon, and T-Mobile. Sprint regularly tracks the service plans and pricing of the three other national wireless carriers. When changes are made by these carriers, Sprint will evaluate its own position to determine how to respond. For example, in response to AT&T's and Verizon's unlimited in-network calling plans, Sprint introduced its "Any Mobile, Anytime" plan in September 2009 as a way to stay competitive with the larger networks of AT&T and Verizon. While Sprint is aware of post-paid pricing offered by regional carriers, it does not currently use this information in the evaluation of pricing for its Sprint brand.

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7. Similarly, the other national carriers monitor and react to price changes in post-paid plans by Sprint and each other. For example, in anticipation of Sprint's "Simply Everything Plan", both AT&T and Verizon launched their own unlimited voice plans for \$99 per month in February 2008.

Pre-Paid Wireless Services

8. Sprint also provides pre-paid wireless services, which it offers through its Boost Mobile, Virgin Mobile, and Assurance Wireless brands. Pre-paid wireless services differ from post-paid services in several key respects.

9. The hallmark of pre-paid service is that customers do not have to sign a long-term contract. Pre-paid services are provided either on a pay-as-you-go basis, where subscribers purchase minutes to be used later, or through month-to-month billing arrangements, where subscribers pay a fixed fee at the beginning of the month. Post-paid services, by contrast, are offered pursuant to long-term contracts, typically two years in length.

10. Pre-paid subscribers tend to be younger and have lower incomes than post-paid subscribers. Because pre-paid services are offered without a long-term contract and the customers pay for service upfront, pre-paid carriers do not have to run credit checks on their potential subscribers.

11. Pre-paid plans also do not come with the same range of handsets as the post-paid plans offered by the four national carriers. One reason for this is that pre-paid services are sold without a long-term contract, making it economically unfeasible for pre-paid carriers to subsidize handsets to the same extent as post-paid carriers. While pre-paid providers do offer some

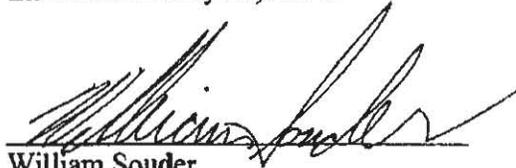
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discounts on handsets, these discounts are usually significantly smaller than the discounts offered on post-paid plans.

12. Finally, pre-paid service is less profitable for Sprint than post-paid service. For Q1 2011, the average revenue per user ("ARPU") for pre-paid service was [begin confidential information] [REDACTED] [end confidential information] whereas the post-paid ARPU was [begin confidential information] [REDACTED] [end confidential information].

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

Executed on May 27, 2011.



William Souder
Vice President of Pricing, Profitability and Operations
Sprint Nextel Corporation

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ATTACHMENT C

DECLARATION OF JOHN DUPREE

SENIOR VICE PRESIDENT OF BUSINESS SALES

SPRINT NEXTEL CORPORATION

DECLARATION OF JOHN DUPREE

I, John Dupree, declare as follows:

1. I am John Dupree. I am the Senior Vice President of Business Sales for the Business Markets Group for Sprint Nextel Corporation ("Sprint"). In this capacity, I am responsible for mobile wireless communications sales to all of Sprint's business and government customers.

2. I make this declaration in support of Sprint's Petition to Deny the Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations.

Business Markets Group Overview

3. Sprint separates its corporate and government accounts into four segments: (1) "Enterprise;" (2) "General Business;" (3) "Federal Government;" and (4) "Public Sector." "Enterprise" accounts consist of the 1,000 largest accounts (essentially Fortune 1,000 companies) plus 300 other large companies whose accounts Sprint believes have the potential to become a top 1,000 account. "General Business" captures all other private corporate accounts. "Federal Government" accounts consist of accounts with the various branches, agencies, and departments of the federal government. "Public Sector" accounts consist of accounts with state and local governments, as well as quasi-governmental organizations.

4. A Sprint corporate account can consist of both corporate-liable, where the account-holder company pays for the service, or individual-liable, where the employees get company-negotiated rates, but are responsible for paying for the service themselves.

5. Sprint's Business Markets Group has about [begin confidential information] [end confidential information] employees, with [begin confidential information] [end confidential information] employees dedicated to its Federal Government segment. Business Markets Group employees have various responsibilities within our organization from “client executives” who are responsible for the entire account relationship for very large accounts; to “account managers” who call on the account in its entirety on a national basis; to “transaction representatives” (also called account executives or remote account managers) who call on specific entities within the larger national account and sell the national contract to these local facilities; to sales people who perform outbound sales calls on smaller businesses.

6. For Enterprise accounts, Sprint uses a team-based sales approach comprised of one or more account executives to oversee the client relationship and a local representative support team to provide day-to-day support. The General Business and Mid-Market accounts usually have one account manager to handle sales, negotiations, and support for the account.

Product and Service Offering

7. In most circumstances, business customers demand nationwide service or a combination of nationwide and international service. Nationwide footprints are essential for business customers for several reasons. First, employees have to travel outside their local home base and require a dependable, reliable network that will provide coverage regardless of where they travel. Second, many businesses are national or multi-regional in scope and have multiple locations throughout the country. While there may be some exceptions for very small local businesses, such as a local sheriff's office or a small landscaping company, these accounts constitute a small percentage of corporate business.

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8. Pricing is uniform across a specific customer's account. Any given business customer is offered a set of national rate plans for all of its locations, and every line of service sold to that customer is subject to the same rate plans. For ease of convenience, business customers also require the availability of national billing.

9. Business customers also demand the newest and most innovative handsets and mobile applications. As smartphone usage grows, new applications that enhance mobile productivity are becoming increasingly important to business customers, who want to maximize their employees' efficiency. Furthermore, nationwide availability of handsets is critical, so business customers can offer a uniform selection of handsets company-wide.

Pricing

10. Sprint uses three tiers of pricing for corporate and government accounts: (1) "rack" or list rates (essentially business rate plans that are only available to tax-ID carrying businesses of any size); (2) "sales-empowered" discounts; and (3) "special pricing." Rack rates are standard, non-discounted rates that are available to business customers and are available with terms & conditions specific to business customers. Rack rates are primarily used for small accounts (accounts with less than 25 lines) and for accounts where the customer does not request any discounts. Sales-empowered pricing refers to a set list of pre-approved discounts that account managers can offer business and government customers. **[begin confidential information]** [REDACTED] **[end confidential information]** are offered discounts from the sales-empowered rates. Sales-empowered discounts range from **[begin confidential information]** [REDACTED] **[end confidential information]** percent off of rack rates and require sales manager approvals.

11. Special pricing is a customized offer that Sprint may make [begin confidential information] [REDACTED]. [end confidential information] Special pricing is very common, particularly for Enterprise accounts. The pricing assessment takes into account various factors, including the plans and prices of other bidders (if known) and the potential volume of sales. Special pricing often consists of an entirely different pricing methodology for the particular customer's needs and offers discounts ranging from [begin confidential information] [REDACTED] [end confidential information] percent off of rack rates, although some special pricing plans are [begin confidential information] [REDACTED] [REDACTED]. [end confidential information]

Request for Proposal Process

12. A substantial portion of Sprint's corporate account business comes through a formal Request for Proposal ("RFP") process or a similar competitive bidding process where a business or government agency will solicit offers for providing wireless service. This is particularly true for Enterprise accounts and Federal government accounts.

13. A competitive bidding process can be formal or not and can take the form of a full-fledged formal RFP; or it can take the place of a competitive threat/response; or it can take the form of an unsolicited bid on behalf of Sprint. The larger the account, the more customary it is to obtain mobile communications services, or to renew a mobile communications contract, through a formal RFP. Most business customers require RFPs periodically; large corporate accounts in particular, like Sprint's Enterprise accounts, tend to renegotiate their wireless services as often as every one to three years. Depending on the complexity of the requested

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services and the formality of the bidding process, an RFP process can take anywhere from one month to over a year.

14. Incumbent service providers can have an advantage in retaining a corporate or government account, but customers constantly invite competing bids to ensure their existing providers maintain competitive rates.

Competition

15. AT&T, Verizon, Sprint, and T-Mobile are by far the most important competitors for corporate and federal accounts. Sprint sees each of the other three national carriers competing at many accounts. While it is possible that a smaller carrier such as U.S. Cellular or MetroPCS will compete for an account, this is a very rare occurrence.

16. T-Mobile is usually an aggressive price leader and often forms the low-price benchmark for Sprint, AT&T and Verizon. Even where Sprint wins the account, it may need to offer a lower price to win that business as a result of competition from T-Mobile for that account.

17. T-Mobile and AT&T are the only two national wireless providers with networks using the Global System for Mobile Communication ("GSM") standard, which gives them a distinct advantage when competing for business customers with international service needs. Therefore, T-Mobile is a particularly close competitor of AT&T for such accounts.

18. In the last year, T-Mobile has been aggressively pursuing additional business from federal accounts. T-Mobile has bid for accounts that it previously did not bid for, and has recruited employees from Sprint to expand its position in this market segment.

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

Executed on May 25, 2011

A handwritten signature in black ink, appearing to read "John Dupree", written over a horizontal line.

John Dupree
Senior Vice President of Business Sales
Sprint Nextel Corporation

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ATTACHMENT D

DECLARATION OF PAUL W. SCHIEBER, JR.

SENIOR VICE PRESIDENT OF ROAMING AND ACCESS PLANNING

SPRINT NEXTEL CORPORATION

DECLARATION OF PAUL SCHIEBER

I, Paul Schieber, declare as follows:

1. I am Paul Schieber, Vice President of Roaming and Access Planning for Sprint Nextel Corporation ("Sprint").

2. I have responsibility for all of Sprint's domestic switched and special access and roaming relationships. In addition, I have responsibility for Sprint's domestic and international roaming relationships. In these roles, my team determines which providers of access and roaming service we will use at Sprint, negotiate pricing and terms associated with that service, and verify and pay the related bills.

3. I make this declaration in support of Sprint's Petition to Deny the Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations.

Network Input Costs

4. Sprint incurs substantial costs for roaming, special access services, and switched access in order to provide service to its customers. Sprint negotiates roaming agreements with other carriers that allow Sprint's wireless subscribers to use the networks of another carrier in areas that the Sprint network does not reach, ensuring that Sprint customers have broad and continuous coverage. Special access services involve the "last mile" connections and local transport links that connect two defined points on a network. For wireless carriers, special access fees result from the leasing of dedicated lines for backhaul to connect cell sites to a carrier's network switches. For 2010, Sprint's domestic roaming and special access costs totaled **[begin confidential information] [REDACTED] [end confidential information]** In 2010, Sprint

also incurred [begin confidential information] [REDACTED] [end confidential information] of switched access costs, which are regulated fees for access to the wireline network of another carrier. Because of their large network footprints and legacy as wireline telephone companies, Verizon and AT&T have substantial cost-structure advantages for these inputs and derive large revenues from providing roaming, special access, and switched access.

Roaming Costs

5. Verizon and AT&T have large wireless network footprints and maintain legacy landline incumbent local exchange carrier footprints. Because of their large networks, Verizon and AT&T have a higher percentage of in-network calls than other carriers and have less need for roaming on other carriers' networks. This gives AT&T and Verizon a substantial roaming-cost advantage over Sprint, T-Mobile, and other carriers. At the same time, these large footprints provide AT&T and Verizon the opportunity to realize revenue from other carriers who require roaming services over their networks.

6. Sprint incurs substantial roaming expenses annually to ensure that its customers have service in areas where Sprint's network does not reach. In 2010, Sprint's total domestic carrier-to-carrier payments for roaming were [begin confidential information] [REDACTED] [end confidential information]. In 2010, Sprint's per subscriber domestic roaming cost for its 27 million CDMA post-paid subscribers was [begin confidential information] [REDACTED] [end confidential information] per month, representing [begin confidential information] [REDACTED] [end confidential information] in monthly ARPU for these subscribers. Out of its total 2010 roaming costs, Sprint paid over [begin confidential information] [REDACTED] [end confidential information] to Verizon.

7. AT&T and T-Mobile are currently the only national carriers with networks operating on the Global System for Mobile Communication ("GSM") standard. Post-acquisition, AT&T will control the only national GSM network. As a consequence, any existing regional or foreign GSM carrier or new entrant wishing to secure nationwide roaming services will have to contract with AT&T.

International Roaming

8. Outside the United States, the most popular standard for wireless networks is the GSM standard. The GSM standard was originally developed by the European Telecommunications Standards Institute (ETSI) to provide a common cellular telephone system across Europe. GSM and successor technologies have been widely adopted outside the United States, particularly in Europe. Sprint's network does not employ the GSM standard or any of its successor standards. Rather, Sprint's 2G and 3G networks are based on CDMA and iDEN technology.

9. Sprint has a difficult time obtaining roaming agreements with foreign GSM carriers on financially attractive terms. Sprint holds relatively little leverage in negotiating with foreign carriers for GSM roaming because it cannot offer the same volume of roaming calls as carriers with larger subscriber bases, and it cannot offer reciprocal service in the United States because its networks run on the CDMA and iDEN standards.

Backhaul/Special Access

10. Sprint and other wireless carriers require backhaul services that involve "special access" (i.e. dedicated circuits) to link cell sites to their switches and other parts of their networks. More than 90% of special access sold to other carriers, including backhaul services, is

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provided by incumbent wireline telephone LECs, primarily AT&T and Verizon. Most of the remaining backhaul is purchased from fiber owners such as tw telecom and Level 3, cables companies such as Comcast, and other providers such as FiberTower. Sprint incurs substantial expenses annually in special access that put it at a competitive disadvantage compared to AT&T and Verizon. Because they own most of the available backhaul assets, AT&T and Verizon can obtain much of their backhaul at cost. At the same time, both companies generate billions of dollars in revenue annually from providing special access to other carriers.

11. In 2010, Sprint incurred special access expenses in connection with its wireless service of approximately **[begin confidential information]** [REDACTED] **[end confidential information]** of these payments going to Verizon or AT&T. Sprint's monthly special access cost per wireless subscriber in 2010 was **[begin confidential information]** [REDACTED] **[end confidential information]** In 2010, the special access fees incurred by Sprint accounted for about 30 percent of cell tower operating expenses.

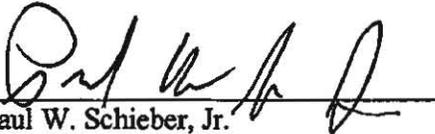
12. In some areas, fiber owners, cable companies, and others own backhaul assets and serve as alternative special access providers to AT&T and Verizon. If T-Mobile were eliminated as a purchaser of special access services from alternative providers, this would substantially reduce the alternative providers' base of business and could cause some to stop providing special access. This would likely increase the number of areas where wireless carriers would have to solely rely on AT&T and Verizon for special access services, and could lead to higher prices charged by the remaining alternative providers.

Inter-Carrier Compensation and Switched Access

13. Wireline carriers impose a regulated price on wireless traffic for access to switched wireline networks. The switched access function is necessary to connect calls originating or terminating on the wireline network. In 2010, Sprint incurred [begin confidential information] [REDACTED] [end confidential information] in switched access costs related to its wireless and wireline services. Because Verizon and AT&T own large legacy wireline networks, and because of asymmetry that does not allow wireless carriers to collect switched access charges on wireline traffic, AT&T and Verizon have more favorable switched access cost structures than Sprint.

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

Executed on May 26, 2011.



Paul W. Schieber, Jr.
Vice President of Roaming and Access Planning
Sprint Nextel Corporation

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ATTACHMENT E

DECLARATION OF FARED A. ADIB

CHIEF AND VICE PRESIDENT, PRODUCTION DEVELOPMENT AND PLATFORMS

SPRINT NEXTEL CORPORATION

DECLARATION OF FARED A. ADIB

I, Fared A. Adib, declare as follows:

1. I am Fared A. Adib. I am Chief and Vice President, Product Development and Platforms for Sprint Nextel Corporation ("Sprint"). My responsibilities include product strategy, planning and portfolio development, and vendor management.

2. I make this declaration in support of Sprint's Petition to Deny the Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations.

3. As handsets have evolved, they have become an increasingly important driver of competition and customer demand in the wireless industry. Today many customers choose a wireless carrier based on smartphone/handset selection. Sprint, T-Mobile, Verizon, and AT&T procure handsets from original equipment manufacturers ("OEMs") and offer them to consumers nationwide rather than by region. For example, Sprint's HTC EVO 4G can be purchased on the Sprint website and in Sprint stores throughout the country.

Handset Development

4. Developing new handsets requires integration of carrier and OEM technologies including hardware, operating systems, user interfaces, applications, and wireless networks. To be operable, handsets must be built with specific chipsets, transmitters, and antennas that correspond to a carrier's network and spectrum bands. In addition, handsets must be rigorously tested on a carrier's network before they are introduced. Carriers work closely with handset manufacturers to develop new features and functionality that differentiate the new devices from those already on the market, to design user interfaces unique to a carrier, to ensure that the

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handset appropriately reflects the brand, and to ensure that the services, design, and features offered by the carrier will function appropriately on the handset. Sprint deploys specific capabilities such as Sprint TV, Sprint Navigation, Sprint ID, and Sprint Zone that are integrated with its devices and differentiate Sprint's product set from others in the market.

5. Sprint typically begins working with prospective handset manufacturers about one year in advance of bringing a handset to market. The parties will work together on issues such as network compatibility, timing, and cost, as well as design and component specifications, such as specifications for chipsets, processors, displays, cameras, and memory. The development of new handset technology can be a lengthy process that requires large front-end investments. For example, Apple spent an estimated \$150 million in developing the first generation iPhone. Development of the iPhone began in 2005 and the device was not released until 2007.

6. Given the expense of developing new handsets, OEMs commonly require volume commitments from carriers in order to spread out research-and-development ("R&D") and production costs over a large volume of unit sales. For example, Sprint has made volume commitments with several handset manufacturers, including Research In Motion ("RIM") and others, that required one million unit commitments to secure an exclusive product.

7. Given these volume commitments, carriers with smaller subscriber bases are at a significant disadvantage in attracting OEMs to develop new devices or technology for their networks. Although Sprint has the third largest subscriber base in the country, it faces difficulties in attracting developers of the best handsets. For example, due likely to its smaller size relative to AT&T and Verizon, Sprint has been unable to secure the Apple iPhone. Apple launched the iPhone with AT&T under an exclusive arrangement in 2007. Apple next gave Verizon a "time-to-market" advantage for the iPhone in 2011 most likely because Verizon had

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the largest subscriber base in the U.S. and therefore, the ability to move a great volume of handsets. I believe that considerations of resource requirements and volume potential led Apple to give priority to AT&T and Verizon, the two providers who were able to offer access to the most subscribers.

8. The largest carriers are also able to secure a more consistent supply of handsets. From time to time, there are shortages of handset components, as evidenced by the shortage of displays after the recent natural disasters and aftermath in Japan. During these shortages, manufacturers will typically use available components to first build handsets for their largest customers, such as AT&T. The merger will increase AT&T's scale and thus its ability to pressure manufacturers to give it priority over other carriers because manufacturers will be unwilling to risk losing future AT&T business. This could lead to substantial supply disruptions and create customer-satisfaction issues for Sprint.

9. If AT&T acquires T-Mobile, Sprint would become even less attractive to handset manufacturers because it would be even smaller relative to AT&T. Its vast subscriber base would allow AT&T to make large volume commitments to OEMs simply to "lock up" new devices and keep them out of competing carriers' portfolios. In addition, during periods of supply shortages, AT&T would be allocated a greater percentage of the limited number of handsets being produced, leaving even less for the firms waiting behind it.

10. Many cutting edge smartphones are introduced under exclusivity arrangements or time-to-market advantages that national carriers negotiate with OEMs. During these periods of exclusivity, OEMs will provide handsets with certain unique features to only select carriers. Exclusivity arrangements benefit the wireless carriers because offering a unique, high-demand

handset (such as the iPhone) can give a carrier a significant competitive advantage over rival companies.

11. Due to their scale advantages, AT&T and Verizon are able to gain exclusive access to the latest and greatest handsets, and also achieve greater time-to-market advantages. Sprint is also able to secure exclusivity agreements with certain manufacturers, but these agreements tend to cover fewer handsets. The proposed merger would exacerbate AT&T's and Verizon's scale advantages, making it more difficult for Sprint to compete nationally on handset selection.

Technological Compatibility and Manufacturer Prioritization

12. Size and scale drive several aspects of handset production that result in time-to-market and cost advantages for the largest carriers. Different spectrum bands require different device configurations and hardware to function properly. For example RF drivers, which are necessary for a handset to send and receive signals, must be calibrated to specific spectrum bands. Components manufacturers, such as Qualcomm and Texas Instruments, often prioritize production, first manufacturing components configured to the spectrum frequency standards that apply to the most widely used bands, and then later making components for bands used by smaller carriers. Handset ecosystem support, including the provision of parts, testing equipment, and applications, is developed and offered more rapidly for the wireless standards used by carriers with the greatest volume potential. The largest carriers therefore tend to obtain early access to the handsets with the latest features. Finally, the largest carriers benefit from lower cost structures throughout the supply chain due to their scale and ability to drive greater volume. This means that AT&T and Verizon, who have the greatest scale, enjoy greater cost and time-to-

market advantages than other carriers. The proposed merger would enhance these advantages for AT&T.

National Carriers Drive Handset Innovation

13. Given the costs of new product development and the volume commitments that the handset manufacturers require, the four national carriers – AT&T, Verizon, Sprint, and T-Mobile – are the only carriers that drive handset innovation to any meaningful extent. While regional carriers now offer some smartphones, OEMs developing handsets with the latest technology tend to design them for the large national carriers because they have the ability to sell the most phones, thus enabling R&D costs to be spread over a large number of units.

14. It was AT&T, a national carrier, that first sold the iPhone, and it was the other three national carriers who directly responded by working with OEMs to develop and introduce advanced smartphones of their own. Verizon partnered with BlackBerry to introduce the exclusive touch screen Storm in 2008, and later introduced the high-end Motorola Droid in 2009. T-Mobile collaborated with Google and HTC to introduce the G1 Android phone, and Sprint launched the Samsung Instinct in 2008, as well as the Palm Pre in 2009 and HTC EVO 4G in 2010.

15. While Regional carriers are now beneficiaries of the evolution of the smartphone, they are not the catalysts of handset innovation. Regional carriers offer a smaller selection of smartphones than the national carriers. In addition, devices offered by regional carriers are typically lower-tier brands, older or lower quality models, or are later versions of devices or technology previously brought to market by national carriers. For example, Cellular South began offering the Motorola Milestone in June 2010. The device is essentially a follow-on

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version of the Motorola Droid, launched by Verizon more than a year earlier in 2009. Both Cricket and MetroPCS offer lower-tier brands of smartphones, such as smartphones manufactured by Huawei and Kyocera. While MetroPCS also offers the Samsung Galaxy Indulge, that model has less impressive hardware specifications than the Samsung models offered by national carriers, such as T-Mobile's Samsung Galaxy S 4G, or Sprint's Samsung Epic 4G. To illustrate a few differences: (i) the Epic 4G's 4-inch screen is larger than the Indulge's 3.5-inch screen and has a higher resolution; (ii) unlike the Indulge, the Epic 4G has a Super AMOLED display; and (iii) the Epic 4G sports two cameras with a 5 megapixel primary camera, while the Indulge has only one 3 megapixel camera. The high-end Epic was released in August 2010 while the Indulge was not released by MetroPCS until February 2011. Sprint also places a much greater subsidy on the Epic, with a contract price of \$149.99 compared to MetroPCS's \$299.

T-Mobile and Sprint are Drivers of Handset Innovation

16. T-Mobile and Sprint have been important drivers of handset innovation. Along with Google, HTC, and others, they were founding members of the Open Handset Alliance (the "Alliance"), the consortium responsible for the development of the Android operating system. T-Mobile worked closely with Google and HTC to introduce the first Android phone, the G1, in 2008. Sprint followed shortly thereafter with the 2009 release of its own Android phone, the HTC Hero. Since then, the Android platform has become the leading smartphone operating system, now running on over 34 percent of smartphones in the United States. T-Mobile and Sprint are the only U.S. wireless carriers that are members of the Alliance. While other carriers now sell Android handsets, including U.S. Cellular, Cellular South, Leap, and MetroPCS, none

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of them is a member of the Alliance or responsible for the introduction of the Android operating system.

17. T-Mobile has also played an important role in past innovation successes. In 2002, T-Mobile launched the Danger Sidekick, one of the first consumer-oriented email, web, and messaging phones. That same year, T-Mobile also became the first U.S. carrier to offer the BlackBerry.

18. If AT&T and T-Mobile merge, there will be fewer national carriers to drive handset innovation. Sprint's ability to partner with OEMs in the creation of new devices will be diminished because manufacturers will be drawn to the much larger subscriber bases of AT&T and Verizon. AT&T and Verizon will each have a subscriber base more than twice the size of Sprint's. Further, AT&T and Verizon will have greater ability to negotiate longer exclusivity periods and to secure better time-to-market advantages over Sprint and the regional carriers.

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

Executed on May 26, 2011.



Fared A. Adib
Chief and Vice President, Product Development and Platforms
Sprint Nextel Corporation

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ATTACHMENT F

DECLARATION OF JOHN CARNEY

SENIOR VICE PRESIDENT OF CONSUMER MARKETING

SPRINT NEXTEL CORPORATION

DECLARATION OF JOHN CARNEY

I, John Carney, declare as follows:

1. I am John Carney, Senior Vice President of Consumer Marketing for Sprint Nextel Corporation ("Sprint").

2. I am responsible for consumer marketing and strategy for all of Sprint's post-paid and pre-paid brands, which include Sprint, Nextel, Boost, Assurance, and Virgin. My primary responsibilities include acquisition marketing, customer base marketing and retention, market research, planning, strategy, and product marketing. I have 25 years of experience in telecommunications sales, sales management, marketing, and general management. I have worked in the wireless segment of telecommunications since 1996. I was employed by T-Mobile for ten years from 1996 until 2006, then Affinity Mobile from 2007 to 2009, and have worked at Sprint since 2009. I hold an undergraduate degree in marketing from the University of Illinois and an MBA from Northwestern University.

3. I make this declaration in support of Sprint's Petition to Deny the Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations.

National Retail Branding

4. Each of the national carriers—Verizon, AT&T, T-Mobile, and Sprint—compete based on, among other things, national brand attributes such as network quality, network scope, product positioning, innovation, value, and customer service. In the post-paid market, Sprint has differentiated its Sprint brand nationally as standing for fast and reliable wireless service and strong value for consumers. Verizon positions itself as the carrier with the best nationwide

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network quality, as evidenced by its "Can You Hear Me Now?" and "Rule the Air" advertising campaigns. AT&T positions itself in the national market as a product leader, distinguishing itself as the only wireless carrier to offer the iPhone until 2011, and claiming to have America's fastest broadband network. T-Mobile has differentiated itself with superior customer service, low-cost value propositions, and most recently, its HSPA+ network.

5. Sprint focuses on positioning its Sprint brand against AT&T, Verizon, and T-Mobile, the other national carriers. While Sprint is aware of some of the activities of the smaller post-paid carriers, such as U.S. Cellular and Cellular South, those carriers do not influence how the Sprint post-paid brand is managed, and the Sprint brand does not target them in its advertising. For example, U.S. Cellular, a regional carrier with operations centered around the Chicago area, was one of the first post-paid carriers to offer an unlimited voice plan. But to my knowledge, none of the national carriers responded with similar plans to compete against U.S. Cellular. The vast majority of marketing among the Big Four carriers is now conducted nationally, and Sprint's advertising and marketing, apart from occasional "test market" trials, is almost entirely national.

6. The market for post-paid wireless services is a mature market that has low absolute growth in total post-paid decisions and is close to saturation. This means that post-paid carriers gain nearly all new customers by luring them away from other carriers.

Pre-Paid Services

7. In addition to its post-paid Sprint brand, Sprint operates several pre-paid brands: Boost Mobile, Assurance Wireless, and Virgin Mobile. Pre-paid services have grown in popularity recently. Pre-paid and post-paid wireless services are distinct offerings, and pre-paid

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firms have little to no influence on how the four national carriers market their post-paid services. For instance, MetroPCS and Leap recently lowered their prices for unlimited services to \$40 and \$35 respectively, but I am unaware of any of the national carriers reacting with similar price reductions in their post-paid offerings.

8. Pre-paid providers tend to operate in only select regions of the country and do not have nationwide mobile wireless networks. Not even the two largest independent facilities-based pre-paid carriers in the United States, MetroPCS and Leap, own true nationwide footprints. They instead rely on roaming agreements to extend their coverage outside of their limited home markets. Thus, while MetroPCS claims to be rolling out LTE service, its lack of a nationwide footprint, combined with its modest spectrum holdings, will inhibit MetroPCS's ability to grow its LTE services beyond its home markets.

9. Independent pre-paid providers like MetroPCS and Leap also lack the national brand power to compete effectively with the four national carriers. In addition to having less consumer recognition for their brands, they do not market nationally and thus do not enjoy the national carriers' scale advantages in mass media purchasing. Their brand image is also hampered because they lack access to many of the most current, innovative handsets that the national carriers are able to offer by virtue of their scale.

10. While MetroPCS and Leap have had some success in their home markets, as a general matter their subscriber bases consist of younger and lower income individuals. This customer segment yields lower average revenue per user and has a much higher churn rate. Growth in prepaid with Sprint has been fueled by subsidies from the Universal Services Fund (“USF”) Low Income Program. In fact in 2010 roughly **[begin confidential information]** [REDACTED] **[end confidential information]** percent of Sprint's prepaid net additions came from Assurance

Wireless, which is the Sprint USF program. Sprint does not expect this kind of growth to continue much beyond 2011 due to the fact that it is very tied to new state launches that show high initial demand between launch and 6 months; demand then drops off precipitously over time. Assurance will complete the vast majority of its new state launches in 2011.

11. In addition, while regional pre-paid carriers' shares of gross new subscribers have increased in recent years, this growth is tempered by the higher churn rates for pre-paid services compared to post-paid services. The comparatively high churn rate in the pre-paid market is due in large part to pre-paid subscribers' lower income and the lack of long term contracts. Sprint estimates that MetroPCS and Cricket have churn rates between **[begin confidential information]**  **[end confidential information]** per month, while Sprint's post-paid churn rate is approximately **[begin confidential information]**  **[end confidential information]** percent per month, and AT&T's and Verizon's post-paid churn rates are estimated to be near **[begin confidential information]**  **[end confidential information]** percent per month.

T-Mobile is an Aggressive National Competitor

12. T-Mobile is an aggressive competitor in the wireless marketplace, and I believe it would continue to be one if it is not acquired by AT&T. T-Mobile promotes itself as a strong value proposition to consumers, touting its low prices, high quality network and handsets, and award-winning customer service. Recently, T-Mobile introduced a \$79.99 unlimited voice and data plan that is significantly cheaper than similar plans offered by AT&T and Verizon. T-Mobile advertises that its HSPA+ network is the largest "4G" network in the country. T-Mobile also has a history of innovation. In 2002, it was the first U.S. carrier to offer the BlackBerry, the precursor to the modern smartphone, with both voice and data service, and also introduced the

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Danger Sidekick, a more consumer-oriented e-mail, web, and messaging phone. More recently, it introduced the first Android phone in 2008, and has been a leader in implementing WiFi calling capabilities on its handsets. T-Mobile also introduced T-Mobile @Home, a landline replacement service that allows customers to make calls with their existing phones over a broadband connection.

13. T-Mobile has routinely earned recognition as having the best customer service among wireless carriers, winning the J.D. Powers award for the best customer service for the last two years and ten times in total. In addition, Consumers Union, the publisher of Consumer Reports, recently reported to Congress that "consumers surveyed by Consumer Reports are consistently less satisfied with the service they get from AT&T than T-Mobile."¹

14. In January of 2011, T-Mobile announced an aggressive "Challenger" strategy to gain market share and revitalize the company. T-Mobile's recent national marketing efforts demonstrate its commitment to this challenger role and highlight T-Mobile's position as a strong national competitor.

15. T-Mobile ran an aggressive advertising campaign against AT&T and Verizon, seeking to win subscribers from these firms. This campaign highlights T-Mobile's high speed "4G" HSPA+ network and states its "4G" network provides greater speeds than iPhone 4 users can achieve on AT&T's or Verizon's networks. Several T-Mobile commercials mock the speed of AT&T's network. The advertisements also promote T-Mobile's high-end smartphone offerings that compete with the iPhone, including the myTouch 4G. Thus, T-Mobile has

¹ Press Release, Consumers Union, Consumers Union Warns Congress AT&T/T-Mobile Merger Means Higher Prices, Less Satisfied Customers (Apr. 12, 2011), *available at* <http://www.consumersunion.org/pub/2011/04/017625print.html>.

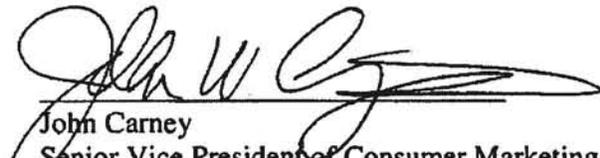
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positioned itself to take share away from Verizon and AT&T, who focus on the "high-end" consumer segment of the post-paid market.

16. AT&T and Verizon compete aggressively for T-Mobile and Sprint customers. After T-Mobile began advertising its HSPA+ network as "4G," AT&T followed suit, marketing its own HSPA+ network as having "4G speeds," and claiming that it covered 97% of Americans. Further, both Verizon and AT&T use their legacy as wireline telephone companies to market bundles of wireless, wireline, and television services, presenting a competitive advantage over Sprint and T-Mobile, who lack such integrated operations.

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

Executed on May 26, 2011.


John Carney
Senior Vice President of Consumer Marketing
Sprint Nextel Corporation

REDACTED – FOR PUBLIC INSPECTION

ATTACHMENT G

**DECLARATION OF STEVEN STRAVITZ
CHIEF EXECUTIVE OFFICER AND MANAGING DIRECTOR
SPECTRUM MANAGEMENT CONSULTING**

SPRINT NEXTEL CORPORATION

DECLARATION OF STEVEN STRAVITZ

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I. QUALIFICATIONS

I, Steven Stravitz, hereby declare the following:

1. I am Chief Executive Officer and Managing Director of Spectrum Management Consulting. In this role, I provide telecommunication technology and regulatory advice and analysis to clients around the world as an outside subject matter expert. For mobile network operators, I specialize in the analysis of issues regarding the impact of technologies as well as the economics of wireless networking and spectrum issues. With more than twenty-two years of experience in the wireless telecommunications industry, I have significant expertise in most cellular access technologies, including GSM, UMTS, CDMA, EV-DO, WiMAX, and LTE, as well as core network technologies, network- and device-centric applications, and network operations.

2. I previously served for a total of more than ten years, including as an officer for more than four years, at LCC International, an engineering services company with expertise in radio frequency mobile engineering, deployment, and outsourcing services, where I held senior management roles including Vice President of Marketing, Vice President of Strategic Planning, Vice President of Business Development, and Vice President of Outsourcing Services. I also co-founded and served in executive roles of multiple wireless startup companies, including serving as CEO of ac-Cellerate, LLC, a start-up focused on enabling spectrum transition through combined business and engineering services, and Executive Vice President of WirelessHome, a developer of technology for broadband wireless equipment. I began my telecommunications career in 1989 with Alpha Industries, currently known as Skyworks, a company that makes advanced components for telecommunications and military applications. I hold a Bachelor of

Science in Electrical Engineering from Rutgers University and a Masters in Business Administration from The George Washington University.

3. In this declaration, I outline my professional analysis and interpretation of the Application filed by AT&T Inc. (“AT&T”) and Deutsche Telekom AG (“DT”) (collectively, the “Applicants”) for the transfer of control of licenses associated with AT&T’s proposed acquisition of T-Mobile USA, Inc. (“T-Mobile”). In my professional opinion, the Application fails on multiple accounts to provide adequate data to substantiate its claims of spectrum efficiency. Indeed, AT&T has numerous measures that it could undertake that would achieve as much or more benefit, and at less cost, than acquiring one of its main rivals that has led the industry in innovation, pricing, and deployment.

4. My analysis demonstrates that AT&T has no material technical constraints on its ability to deploy wireless broadband operations at its planned scale in the United States using the many means available to it other than acquiring T-Mobile. Every wireless operator in the United States faces an increase in data traffic relative to traditional voice traffic. In this respect, however, AT&T is no different than other operators. With extensive capital resources at its ready disposal, a wealth of largely untapped capacity-enhancing solutions and vast quantities of wholly unused spectrum, AT&T is exceptionally well-equipped to handle increases in data traffic. To the extent that AT&T has any real constraints on its ability to deploy wireless broadband operations, these constraints would appear to be the direct and proximate result of its own business and technical decisions.

5. AT&T’s Application wholly ignores the many alternatives available to address what AT&T claims are its “unique” capacity challenges. My analysis is based on my review and Spectrum Management Consulting’s review of the Application that took place under my

direction. In addition to the Application, my analysis has also included review of and noted information from other sources, including AT&T's presentations to investors and analysts. Additional sources are referenced in this document wherever context requires.

II. EXECUTIVE SUMMARY

6. Mobile networks are complex, multi-dimensional operations that depend on ongoing and disciplined planning, deployment, and optimization to operate efficiently. Unlike static, point-to-point networks, mobile networks using cellular technologies are ever-changing, driven not only by the evolution of wireless technologies, but also by external factors, such as the capabilities of devices being used, the usage patterns of subscribers, the operation of nearby sites and devices, clutter such as buildings, natural topographical features, and foliage. For this reason, effective planning and operation of mobile networks is particularly challenging and requires ongoing engineering rigor and capital investment to maintain strong network performance and match capacity with end user demand.

7. The Application does not provide adequate data to substantiate its claims of purported network and spectrum challenges, much less verify its purported benefits. *AT&T uses only roughly half of its licensed spectrum.* Yet AT&T does not provide technically compelling reasons for idling these resources, inappropriately justifies the transaction as the cure to spectrum capacity limits, and does not provide data needed to reject many readily available spectrum and capacity management alternatives that can address Applicants' capacity challenges at a cost far below \$39 billion. Instead of embracing best practices in mobile network management along with the next-generation architecture of networks based on smaller cell sites, AT&T proposes to remedy its capacity challenges and prepare its network for the next generation of data services by consolidating its network with that of a competitor.

8. **Part A** of this analysis demonstrates that AT&T’s stated capacity problems are not unique to AT&T. Some of AT&T’s competitors are managing a similar volume of voice and data traffic per subscriber on their networks, with better customer satisfaction and network performance. **Part B** shows that AT&T’s claimed benefits from the proposed T-Mobile acquisition are speculative, not readily verifiable, or not specific to the acquisition. **Part C** shows that, like many of its competitors, AT&T likely faces congestion in only some parts of its network – in some cities, particularly in its data network. Rather than proposing the acquisition of another national network as a solution, AT&T needs to pursue targeted solutions to its highly localized problems supported by smart engineering and management decisions more aggressively. These solutions fall into three categories:

- ***Deploy Existing Spectrum:*** With 44% of its spectrum holdings unused or under-utilized, AT&T can significantly increase its network capacity by using its idle spectrum holdings.
- ***Deploy More Efficient Technologies:*** By introducing more spectrally efficient technologies such as LTE in its network, and migrating its data users from spectrally inefficient technologies such as GSM, AT&T can gain significant capacity within its current spectrum holdings.
- ***Deploy Dense, Heterogeneous Networks:*** AT&T can exponentially increase the reuse of its spectrum by aggressively deploying new micro cell sites such as Distributed Antenna Systems (“DAS”), femto cells, and pico / relay-cells.

9. AT&T does not need to pursue integration with another network such as T-Mobile’s as a cure for AT&T’s capacity requirements. AT&T could far more efficiently, quickly, and cost-effectively solve its purported capacity problems by investing in technologies, deployment plans, network architectures, and business strategies geared towards use of its existing spectrum holdings more efficiently. In doing so, AT&T could better manage the growing traffic on its network, just as its competitors do. This approach does not require any great technological leap. Well established techniques and sound network management practices

would allow AT&T to achieve lasting efficiency gains more rapidly and less disruptively than the proposed acquisition.

10. On the contrary, AT&T's proposed acquisition of T-Mobile will perpetuate AT&T's inefficient spectrum use. Rather than encouraging investment in new, innovative, and more efficient technologies, the proposed T-Mobile acquisition would permit AT&T to keep subscribers tied to older and less efficient technologies, delay innovative new facilities-based investment, and continue to maintain a large inventory of unused spectrum.

PART A

AT&T's stated capacity problems are not unique; some of AT&T's competitors are managing a similar volume of voice and data traffic per subscriber on their networks, with superior customer satisfaction and network performance.¹

III. AT&T'S CLAIMED CAPACITY PROBLEMS ARE SPECIFIC TO ITS DATA NETWORK AND ARE NOT UNIQUE TO AT&T

11. AT&T has claimed that it has been experiencing high growth in data traffic over the last four years. While AT&T's purported 8000% increase in data traffic from 2007-2010² appears significant at face value, no baseline for comparison or amount of data transmitted per mobile user has been provided to substantiate this claim or enable analysis of the relative efficiency of AT&T's network in supporting it. As is typical throughout its Application, AT&T offers no explanation for how it arrived at this statistic. AT&T appears to have simply summed all data traffic on its network, at any location, at an annualized level, and on a national scale. In

¹ See *ACSI: Customer Satisfaction Turns Positive Despite Drop for Information Services*, Press Release, American Customer Satisfaction Index (May 17, 2011), available at: <http://www.theacsi.org/images/stories/images/news/11may_press.pdf> (“ACSI Press Release”).

² Public Interest Statement, attached to Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65, at 2 (April 21, 2011) (“Application”).

doing so, AT&T did not account for variations in data consumption by user handset types, user profiles, or user consumption patterns. Nor did AT&T account for geographic variations between urban, rural, and suburban areas. And, of course, AT&T's claim does not capture critical monthly, daily, weekly, or even hourly fluctuations in data traffic.

12. *As a result, AT&T's statistic does not indicate to the Commission whether AT&T's network is taxed at any given point in time or at any particular location.* AT&T assigns a highly specific value to a unit of measure that is vague and without reference or context, which causes it to be devoid of meaning. Nothing in AT&T's statistic explains whether capacity constraints exist anywhere on AT&T's network and, if constraints do exist, whether those constraints are national in scope or highly localized, whether they are chronic and persistent or intermittent and temporal, or whether they are large and meaningful or small and relatively inconsequential. In addition, AT&T does not provide information in the Application to indicate whether the claimed congestion in its network is in its radio access network, transmission and backhaul network, core network, or in all parts of its network.

13. Mobile networks are designed to handle traffic during the busiest hour of the day. Traffic engineering is based on probabilistic models that predict a network's ability to handle a particular level of peak traffic with a level of certainty. Therefore, the monthly or annual traffic usage provided by AT&T in its Application is an ambiguous reference from a traffic engineering point of view. Just as mobile network operators have done for many years with voice traffic, using 'nights and weekends' plans to shape usage, data demand can also be shaped to bring down peak demand without changing the total traffic carried on the network. Using better demand shaping supported by smarter business decisions, AT&T would be able to handle more data traffic per month without changing the total capacity of its mobile network. For example,

the graph below shows representative traffic profiles of three different cell sites in a representative, hypothetical network. While all three sites have to be designed to handle different peak traffic levels, total data traffic during the 24-hour period is the same on each site.

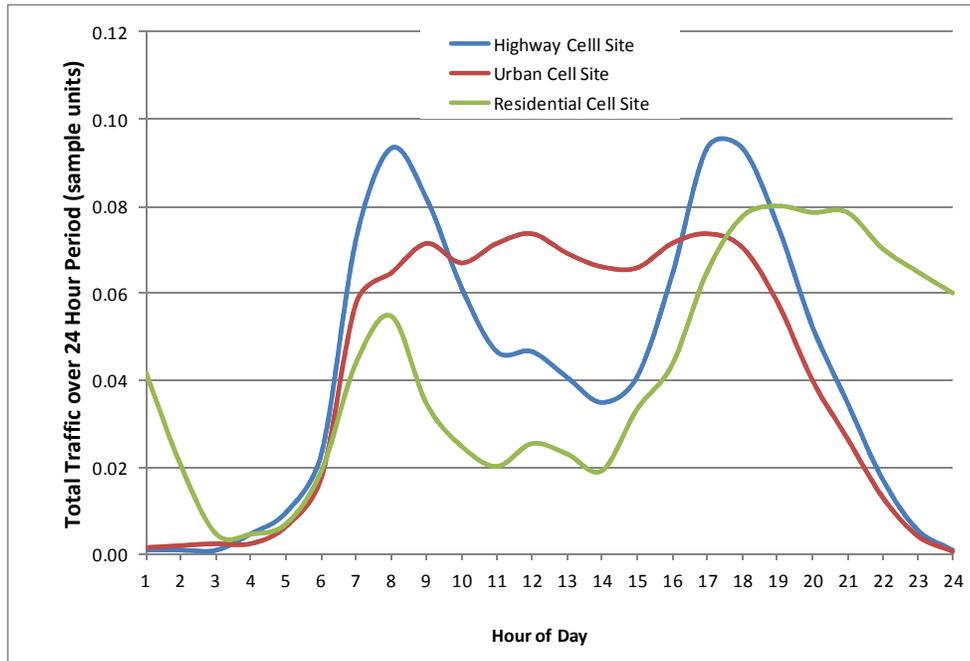


Figure 1: Representative traffic pattern of three cell sites by hour. All three cell sites are handling the same amount of total traffic during a 24-hour period, but have different traffic peaks, and hence are designed differently.

14. AT&T’s experience as a wireless data service provider appears to be wholly unremarkable. The wireless marketplace has seen widespread, substantial growth in data traffic; however, AT&T’s assertion that their network is “uniquely strained by the exponential growth in data usage” is incorrect. The demands on AT&T’s mobile data network are similar to those of its competitors. Relative to its competitors, AT&T’s data network is performing better in some markets and worse in others, based on a review of 151,766 empirical field tests conducted across the hundred most populous U.S. markets during approximately the last six months by an industry-leading independent, third-party competitive test provider. Based on over one million field test results collected during more than 900 market drive tests conducted since 2007, AT&T

– along with the overall wireless industry – has continued to improve in mobile data network speed, connection success, and connection reliability, with the last six months offering some of the most dramatic improvements. In short, the data from an industry-leading independent third-party competitive test provider does not support AT&T’s assertion that it is experiencing unique capacity demands or network-capacity problems as compared to other mobile network operators.

15. While AT&T’s competitors face similar growth in demand for and usage of their data services, they have proven able to manage that growth by investing in many innovative techniques to meet the growing demand for services. Part C elaborates on some of the methods, tools, and techniques available to a mobile network operator in order to address challenges caused by growth in mobile data usage. For example, as illustrated in the table below, Verizon Wireless has similar broadband-capable spectrum holdings to those of AT&T while Verizon Wireless supports a similarly sized subscriber base to AT&T. Verizon is also widely regarded as having superior network performance to AT&T.³ AT&T has not provided any information in its Application to support its claims that it faces data usage demands that are different from what its competitors face or that it cannot deploy network improvements and investments to meet customer data demand.

³ See ACSI Press Release (indicating that in the latest ACSI report, Verizon and Sprint tie for the highest level of customer satisfaction among the national wireless carriers, while AT&T “show[s] a large deterioration in customer satisfaction” and places last among these carriers).

	Total Spectrum (nationwide population weighted)	Total Subscribers ⁴	Spectrum per Subscriber (megahertz per million subscribers)
Verizon	88 MHz	94.1 million	0.94
AT&T	99 MHz ⁵	86.2 million	1.15

Figure 2: Comparison spectrum holdings of Verizon Wireless and AT&T Mobility on a per subscriber basis

16. While mobile *data* usage has continued to grow dramatically, all major mobile network operators, including AT&T, are experiencing stagnating or slightly declining *voice* usage on their networks on a per subscriber basis. During the period from 2007 to 2010, average monthly voice usage on a per subscriber basis for national mobile network operators has declined from 723 minutes to 635 minutes.⁶ This decrease in voice usage strongly suggests that older technologies such as GSM, which predominantly support voice customers, are not under capacity constraints. The continued shift in usage away from voice to data should allow AT&T to repurpose its GSM spectrum more aggressively so that AT&T can use some of the spectrum

⁴ The number of “total subscribers” *excludes* connected devices. In addition, while making comparisons at a local market level, population density will be taken into account; however, on the national level, given similarities in coverage of Verizon’s and AT&T’s wireless networks, comparing subscribers on a per MHz basis is a fair comparison.

⁵ The 99MHz of spectrum attributed to AT&T on a nationwide, population-weighted basis excludes Qualcomm’s 700 MHz spectrum that AT&T proposes to acquire as well as AT&T’s proposal to acquire nearly two dozen additional 700 MHz spectrum licenses. For information on AT&T’s latest spectrum acquisitions, *see, e.g.*, Mike Dano, *AT&T looking to buy even more 700 MHz spectrum for LTE*, FIERCE WIRELESS (May 24, 2011), *available at*: <<http://www.fiercewireless.com/story/att-looking-buy-even-more-700-mhz-spectrum-lte/2011-05-24>>.

⁶ Semi-Annual Wireless Industry Survey, CTIA- The Wireless Association (2011), *available at*: http://files.ctia.org/pdf/CTIA_Survey_Year_End_2010_Graphics.pdf (“CTIA Survey”)

currently dedicated to GSM for more spectrally efficient technologies such as UMTS/HSPA+ and LTE.

IV. AT&T HAS DEVICE PORTFOLIOS THAT LIMIT ITS ABILITY TO USE THE NETWORK EFFICIENTLY

17. AT&T continues to make strategic device introduction decisions that limit the use of new technologies, thus limiting AT&T's ability to build a ready user base for its new network and slowing the transition of spectrum it currently uses for older technologies to more efficient technologies. For instance, AT&T continues to subsidize and sell on its website GSM phones such as the Samsung SGH-A107 and ZTE R225, which use 2G data technologies such as EDGE and GPRS,⁷ thus limiting the ability to take advantage of more spectrally efficient technologies like UMTS/HSPA+ and LTE.

18. AT&T does not sufficiently promote the migration of users from legacy network technologies to higher capacity, more spectrally efficient networks. For example, AT&T has yet to develop its flagship smartphone – the Apple iPhone 4 – to take advantage of the HSPA+ technology. Instead, AT&T's most popular smartphone device – the best-selling device on AT&T's network “by far” – can only take advantage of slower, and less spectrally efficient, HSPA 7.2 technology.⁸ As a result, even the newest iPhone on AT&T's network uses 15% more radio resources than a HSPA+ device would use. For every one million subscribers AT&T moves from HSPA 7.2 to HSPA+, AT&T would have capacity to add another 150,000 customers

⁷ See Shop, Wireless, Packages & Deals, *Cell Phone Deals and Packages*, AT&T Wireless, available at: <<http://www.wireless.att.com/cell-phone-service/packages/packages-list.jsp?wtSlotClick=1-004YXE-0-1&WT.svl=title>> (last visited May 24, 2011).

⁸ See Technology News, *iPhone 4 is the best-selling device (“by far”) for both Verizon and AT&T* (May 9, 2011), TECHNOLOGY NEWS, available at: <<http://www.technologynews.com/2011/05/09/iphone-4-is-the-best-selling-device-%E2%80%9Cby-far%E2%80%9D-for-both-verizon-and-att/>>.

with similar usage profiles. As illustrated in the figure below, AT&T could provide significant capacity relief in a number of major metropolitan markets if its most popular smartphone utilized HSPA+ technology.

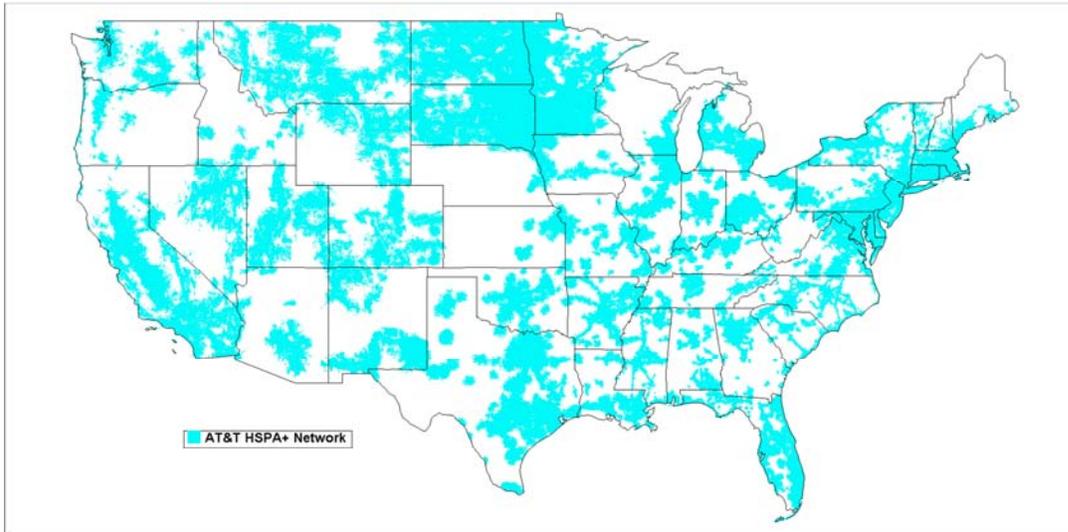


Figure 3: AT&T's HSPA+ Network Coverage. While service is available in most major metropolitan markets, AT&T's iPhone users cannot take advantage of the superior throughput of this network today. *American Roamer, LLC is the creator and copyright holder of the coverage mapping data used in this analysis.*

Stated differently, the full potential of HSPA+ speed is unavailable to help relieve capacity constraints for AT&T's most important, data-hungry customers. Moving even a fraction of AT&T's customers from HSPA 7.2 to HSPA+ would produce material efficiency gains. And moving AT&T's customers from these older technologies to current-generation LTE would produce even more meaningful gains. Unfortunately, however, not only has AT&T not taken advantage of moving more customers from HSPA 7.2 to current-generation HSPA+ technology, AT&T is currently not preparing to move customers from outdated technologies to current-generation LTE technologies that are more efficient. As AT&T moves towards its LTE launch later this year, it has yet to adequately "pre-seed" the market with LTE-ready devices that could

deliver an immediate network capacity offload when AT&T eventually deploys and activates its LTE network. Pre-seeding, a common industry practice, is a process by which mobile network operators introduce devices capable of running on a more advanced, yet-to-be-launched, network, that are still compatible with existing networks. In doing so, mobile network operators establish an installed user base that is ready to take advantage of the newest network when it is launched. As of May 27, 2011, AT&T does not offer any LTE-enabled data-connection device out of its expansive device offerings.⁹ In contrast, T-Mobile, in anticipation of its HSPA+ network launch on May 24, 2010, launched a HSPA+ capable dongle on March 14, 2010.

19. If it were behaving as a prudent steward of its spectrum resources, AT&T would already be pre-seeding the market with LTE/HSPA+ devices as a means of ensuring the timely transition of data traffic from its older-generation networks to its far more efficient next generation systems. The opportunity to pre-seed the market exists today. Qualcomm released its MDM9200 multimode 3G/4G device chipset in the fourth quarter of 2009¹⁰, and this chipset has been available in Android phones since the first quarter of 2011. Unlike the majority of devices that AT&T currently deploys, devices with Qualcomm's MDM9200 chipset will be able to take advantage of the most advanced capabilities in AT&T's network through support of UMTS, HSPA+, and LTE, thus allowing for a more efficient use of AT&T's spectrum. AT&T's practice of not providing end users with equipment capable of taking advantage of advanced technology does not support efficient spectrum management. While delaying investment in deploying

⁹ See Shop, Wireless, Cell Phones and Devices, *Cell Phones & Mobile Devices*, AT&T Wireless, available at: <<http://www.wireless.att.com/cell-phone-service/cell-phones/index.jsp>> (last visited May 27, 2011).

¹⁰ See Press Release, Qualcomm (Nov. 12, 2009), available at: <<http://www.qualcomm.com/news/releases/2009/11/12/qualcomm-now-sampling-industry-s-first-dual-carrier-hspa-and-multi-mode-3gl>>.

capacity-enhancing technologies for end-users may help AT&T maintain a low Cost per Gross Addition (“CPGA”), the decision is at odds with its purported interest in increasing network capacity as rapidly as possible.

V. AT&T’S CLAIM TO NEED MORE SPECTRUM TO SUPPORT THREE WIRELESS TECHNOLOGIES, WHILE BEING A COMMON INDUSTRY CHALLENGE FACED BY ALL MOBILE NETWORK OPERATORS, IGNORES AT&T’S DECISION NOT TO PROACTIVELY MIGRATE USERS TO NEWER TECHNOLOGIES

20. All of AT&T’s national competitors are supporting multiple generations of technologies on their networks, and many of them have launched next generation networks based on advanced, OFDM-based technologies such as WiMAX and LTE. Verizon has deployed CDMA, EV-DO, and LTE networks, and Sprint supports CDMA, iDEN, EV-DO and WiMAX subscribers on its network. AT&T, by comparison, is currently only supporting GSM, UMTS, and HSPA+ subscribers on its network, with plans to launch LTE. Unlike Verizon and Sprint, moreover, AT&T has had the added advantage of evolving its network through related technologies, which has already provided it with inherent advantages in terms of the ability to readily overlay new technology on existing sites and utilize existing core network elements and network management systems. Sprint and Verizon are managing technologies that have no backward compatibility (*e.g.*, CDMA and iDEN in the case of Sprint) and that have totally separate core network elements and network management platforms. To summarize, AT&T is managing a single Third Generation Partnership Project (“3GPP”) family of technologies that include LTE, HSPA+, UMTS/HSPA and GSM whereas many of AT&T’s competitors face far more complex network management and evolution challenges. If other operators with a more differentiated system set have managed diversity on their networks, AT&T’s can reasonably be expected to do the same in support of their 3GPP GSM, UMTS, and HSPA+ technologies.

21. As an operator with a UMTS/HSPA+ network, AT&T should have an easier path of migration to LTE compared to Verizon Wireless, an operator with a network based on CDMA technology, due to the similarities in bandwidth size and network architectures between UMTS and LTE. Both UMTS/HSPA+ and 5 MHz x 5 MHz LTE operate on a 5 MHz channel per uplink/downlink direction. Thus, it is easier to re-tune AT&T's UMTS/HSPA network to LTE, with greater spectrum utilization and relatively lower risk of incurring interference between legacy and new networks.¹¹ In addition, auxiliary equipment, such as external filters, can be reused with LTE 5x5. 3GPP standards specify the use of a Serving Gateway to allow seamless interconnections between legacy 3GPP technologies such as UMTS and HSPA. Finally, many of the Evolved Packet Core ("EPC") components are software upgradable from UMTS/HSPA+ to LTE.

22. Support for legacy generations of network technologies is a commercial decision that every operator makes based on usage patterns, network reliability, operating costs, spectral efficiency, and the customer experience. All carriers provide deadlines for the transition of subscribers from legacy networks and offer incentives to move to new, more efficient devices, supported by the latest network technology. These incentives come in the form of subsidized or free mobile device upgrades, discounted services, and flexible contract terms. The Application does not indicate why AT&T has been unsuccessful in migrating GSM users to newer, more efficient generations of network technology. AT&T's business decision not to migrate subscribers from GSM to UMTS devices more actively has created an unnecessary need to

¹¹ For the PCS bands, consecutive CDMA/EVDO frequency assignments are spaced by 50 kHz and 1.2 MHz guard bands are maintained between frequency blocks, resulting in eleven 1.25 MHz carriers in a 15 MHz x 15 MHz PCS block and three 1.25 MHz carriers in a 5 MHz x 5MHz PCS block. Implementing a 5 MHz or 10 MHz LTE carrier will have implications on the number of CDMA/EVDO carriers that will need to be vacated.

reserve substantial spectrum for less efficient uses. AT&T acknowledges that its UMTS technology covers approximately 260 million people.¹² Yet, AT&T still sells and supports handsets configured to support only less efficient 2G data capability. AT&T could improve the efficiency of network use by aggressively marketing and subsidizing more UMTS/HSPA+ handsets and by discouraging sales of additional devices that use 2G data. This material improvement in efficiency could be accomplished at a far smaller cost than the proposed transaction with T-Mobile. Even, for example, if AT&T was to upgrade the handsets of just 1% of its subscriber base, the cost would be less than \$300M – or less than seven-tenths of one percent of the cost of the proposed T-Mobile acquisition.¹³ Migrating one million HSPA 7.2 handsets to HSPA+ handsets would allow AT&T to accommodate another 150,000 subscribers with similar usage profile.¹⁴ AT&T has previously conducted such migrations, including the evolution from its former TDMA and AMPS analog networks to its GSM network in February, 2008. Similarly, AT&T no longer offers service on its PocketNet cellular digital packet data (“CDPD”), which was shut down in 2005 after more than a decade of successful operation.

23. AT&T has been very slow in deploying the latest network equipment and software to increase capacity and enable more efficient use of substantial spectrum resources. AT&T’s current, more efficient HSPA+ footprint has not yet been rolled out nationwide, and is also not uniformly supported by more efficient backhaul infrastructure, thus leaving customers

¹² AT&T’s less efficient GSM network covers more than 300 million people. *See* Declaration of William Hogg, attached to Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65, ¶¶ 18-22 (April 21, 2011) (“Hogg Decl.”).

¹³ This calculation assumes that the average cost of a smartphone handset is \$300. Data from Asymco, *available at*: <<http://www.asymco.com/>>.

¹⁴ There is a 15% spectral efficiency gain between HSPA7.2 and HSPA+. *See* ¶ 62 below for a detailed chart on spectral efficiency.

with slower data speeds even in areas covered by HSPA+ cell sites. Section XVII in Part C of this Declaration provides more details on the use of high speed backhaul network to support growing customer data traffic.

PART B

AT&T’s claimed benefits from the proposed T-Mobile acquisition are speculative, not readily verifiable, nor specific to the acquisition.

VI. AT&T’S CLAIM OF A “WELL-MATCHED CELL-GRID” WITH T-MOBILE NETWORK IS NOT SUPPORTED BY THE DATA IN THE APPLICATION

24. The Application argues that efficiencies will be gained through the integration of T-Mobile’s existing cell sites to effectively create cell splits for AT&T’s network. However, the claim that the “two network grids are remarkably complementary – T-Mobile has many sites where AT&T needs them and AT&T has many sites where T-Mobile needs them”¹⁵ is not substantiated by data. It seems highly implausible for T-Mobile to have erected sites in precisely those areas where AT&T could not physically reach despite “years of aggressive cell-splitting activities to improve capacity” by AT&T.

25. AT&T claims that it will undertake an aggressive network integration program for T-Mobile’s facilities. According to AT&T, a network integration of that portion of the T-Mobile network that AT&T retains would require nine to twenty-four months following consummation, which, including merger review, would likely equal eighteen to forty-five months. Even taking AT&T’s estimates of the pace of network integration at face value, integration of the T-Mobile network requires just as much time as AT&T’s estimate of the time required to simply install

¹⁵ Hogg Decl. at ¶ 43.

new cell sites on the same towers currently occupied by T-Mobile or on towers owned by tower companies and other parties with available capacity. AT&T has not provided significant evidence to demonstrate that it has pursued alternatives to this acquisition to establish co-location with the T-Mobile cell sites it claims it needs for cell splitting.

26. AT&T concludes that developing its own cell sites cannot possibly provide a satisfactory solution because constructing new cell sites can “literally take years” to complete.¹⁶ The process as described by AT&T – “locate a suitable and available location, arrange to acquire the site through purchase or lease, comply with regulatory requirements that necessitate extensive studies and consultation, apply for and obtain building permits and zoning approvals, contract with third-party vendors to purchase the needed equipment, construct the site and associated backhaul, and then integrate the site into the network”¹⁷ – assumes “worst case” conditions and fails to account for AT&T’s own current economies of scale. Like its competitors, AT&T relies on Master Lease Agreements with tower site and rooftop management companies that can provide ready access to portfolios of available sites locally, regionally and nationally. Studies to enable regulatory approval, which may include a NEPA Phase 1, National Historic Presentation Act screen, or radiation safety study, can often be completed in a matter of days. Furthermore, jurisdictions across the country have implemented guidelines for the zoning and permitting of wireless facilities to encourage collocation, and many now process conforming applications “over the counter” without a full zoning hearing.¹⁸ Surely AT&T also has existing

¹⁶ Application at 46.

¹⁷ *Id.*

¹⁸ AT&T further benefits from the November 2009 Declaratory Ruling in WT Docket No. 08-165 in which the Commission established a shot clock for tower-siting application review by jurisdictions. The Commission acted to accelerate “the deployment of next generation wireless

supply contracts and material logistics processes, and does not need to renegotiate these agreements on a site-by-site basis. More realistic industry averages for new site construction are from six to twelve months for tower collocations and from nine to eighteen months for rooftop installations or new tower sites. Certain site location scenarios pose challenges to operators and no doubt require more time, but, again, these scenarios are the exception, not the rule, and in any case are hardly unique to AT&T. Using more typical transmitter construction estimates means that AT&T could readily invest in new transmitter locations substantially far more quickly than it could realistically hope to acquire all of the assets and operations of T-Mobile and integrate them into its network operations.

27. If T-Mobile's cell sites do just happen to be located in precisely those areas where AT&T requires additional capacity, the Application does not provide evidence that the usage patterns and available capacity of these sites will address AT&T's capacity shortfalls. A mere visual examination of the network grids of AT&T and T-Mobile, which AT&T has not presented in its Application, does not provide sufficient data to demonstrate that the assets of the T-Mobile network are complementary and that they would serve as a natural cell split for the AT&T network. The site location and other characteristics of the site –height, orientation, gain, radiation pattern, and downtilt of the sector antennas – are the key determinants of a site's utility. AT&T has not provided evidence that it has conducted the engineering analysis necessary to draw the conclusions it has drawn in its Application. AT&T has provided no data to substantiate the claim of a good match between its networks. In any case, because the usage patterns for

networks.” *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, 24 FCC Rcd 13994 (2009).

T-Mobile sites located near AT&T sites are unlikely to be materially different, combining the two locations eliminates much of the opportunity for net availability gains in congested areas. It is, of course, plausible that a new engineering design would not select the same exact site as the prospective T-Mobile site. But unless a site location aligns with AT&T's design requirements, major modification costs for changes such as antenna height and downtilting may still be incurred. Even more so, the combination of two major macro networks does not represent the optimal solution or the most advanced forward thinking and engineering design. As discussed in greater detail below, heterogeneous networks offer a blend of macro and micro cell sites that maximize coverage and minimize interference in urban environments.

28. And yet even if T-Mobile sites were to be located in a perfectly matched grid with AT&T's cellular network, had complementary traffic patterns to provide a good match with AT&T's cell sites, and were suitable in their characteristics (height, orientation, etc.), those T-Mobile sites must have unused space for equipment and antennas and an ability to instantly increase their use of backhaul, electrical power, and HVAC. AT&T recognizes that the process of integrating T-Mobile sites into the AT&T network will require it to deploy "a multi-band (700 MHz, 850 MHz, 1900 MHz, and AWS bands) antenna to the site and place AT&T's equipment on it."¹⁹ These new multiband antennas are physically larger and weigh more. Additional feedlines and/or remote RF radio heads will be required to support the newly added frequencies at the site. As a result, many of the supposedly perfectly matched T-Mobile sites that AT&T has speculated exist may not actually be able to support AT&T's proposed antennas.

29. Although it provides no support for the proposition, AT&T nonetheless argues that the proposed use of already operational cell sites will accelerate its ability to provide cell

¹⁹ Hogg Decl. at ¶ 46.

split capacity to its network. AT&T's hoped-for acceleration is unlikely to be realized in practice. The very type of measures that AT&T hopes to avoid – including the use of sites that would otherwise be excluded from separate collocation of AT&T equipment, the complex site development tasks it intends to avoid, and expansion of leasing, zoning, and backhaul activities – would likely still be needed to integrate T-Mobile's facilities into AT&T's network. Before making claims of its ability to rapidly integrate T-Mobile cell sites into its network, AT&T should provide evidence of an audit of T-Mobile's site inventory and the detailed analysis to verify the utility of these sites. AT&T also claims that "T-Mobile USA sites that AT&T could integrate represent more than *eight years* of new sites based on AT&T's 2010 rate."²⁰ This information is not pertinent to this discussion, however. AT&T's 2010 build rate reflects only AT&T's decision to invest a limited portion of its CAPEX on cell site construction. This rate does not reflect AT&T's *ability* to build a certain number of cell sites, but simply AT&T's *willingness* to build to those sites.

30. In summary, AT&T's claims that "common use of those technologies, together with their complementary spectrum holdings and well-matched cell-site grids, will produce immense synergies" is not supported by data. AT&T's claim is essentially impossible to evaluate much less validate without having access to T-Mobile's detailed network map *and* AT&T's existing base station locations. Moreover, without the call and data traffic information for the cell sites in areas where AT&T claims to be experiencing network congestion, neither the Commission nor other parties in this proceeding can evaluate – much less validate – whether integrating T-Mobile's cell sites into AT&T's network would provide a real capacity increase during the hours when AT&T asserts that demand exceeds its network capacity. In addition, it is

²⁰ Application at 46.

not clear whether there are any significant coverage gains associated with AT&T’s proposed acquisition of T-Mobile’s network. As shown in the graph below, AT&T’s proposed transaction gives AT&T *less than one percent of* additional U.S. population coverage.

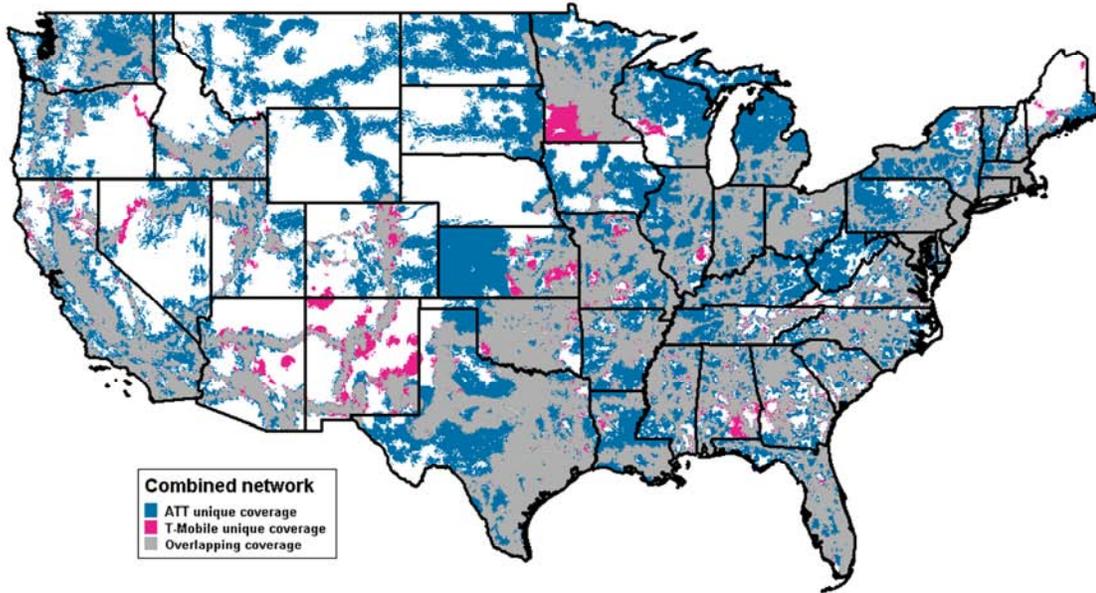


Figure 4: Combined coverage of AT&T and T-Mobile networks. *American Roamer, LLC is the creator and copyright holder of the coverage mapping data used in this analysis.*

VII. AT&T FAILS TO RECOGNIZE THE INEFFICIENCIES ASSOCIATED WITH INTEGRATING T-MOBILE CELLS SITES AND USERS

31. AT&T’s claim to “reuse radios and other equipment from decommissioned sites to enhance network coverage and performance”²¹ is not substantiated in terms of cost savings or equipment reuse. Today, T-Mobile operates 2G and 3G networks (“GSM/Edge”)²² on PCS frequencies and UMTS/HSPA on AWS frequencies. Given AT&T’s stated goals of more

²¹ Declaration of Rick L. Moore, attached to Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65, ¶ 34 (April 21, 2011).

²² Edge is considered an evolutionary 3G technology by the ITU. Most in the industry phase it as a 2.75 G technology.

extensive deployment of 3G and 4G technology, reusing outdated 2G GSM equipment will likely provide little additional value to AT&T or its shareholders and none at all to consumers who remain hungry for faster devices and applications. Further, only portions of the 3G HSPA+ equipment will be reusable because AT&T intends for all future deployments in the AWS band to utilize LTE technology. AT&T makes a broad generalization regarding the ability to redeploy existing equipment, but does not provide evidence of how much T-Mobile equipment is a current release that is easily upgradeable to the latest 3G or 4G technology. In many cases, reusing existing equipment in other locations may not prove to be the most cost effective solution because an upgrade would cost more than a replacement. Furthermore, the value derived from the reuse of existing equipment is overstated. Even if brand new HSPA+ equipment is to be deployed, it typically comprises only 30-40% of the total cost to build a new site. The cost associated with the design, development, and construction of the site, along with ancillary materials, comprises a far larger portion of the site cost. As the reuse is such a small portion of cost of cell site deployment, AT&T needs to provide more information on how it has calculated efficiencies arising from reuse of older equipment.

32. AT&T also proposes to move T-Mobile's GSM and UMTS/HSPA+ customers from the existing T-Mobile networks to the AT&T GSM and UMTS/HSPA+ networks. AT&T has provided no explanation, however, how its network will be able to handle these additional customers or the compromises that will be necessary to accommodate these millions of users. T-Mobile's existing network relies on an average 26 MHz of available PCS spectrum to support T-Mobile's GSM users and 10 to 20 MHz²³ of available AWS spectrum to support T-Mobile's

²³ SMC estimate, with assumption of one to two carriers implemented in T-Mobile's network.

UMTS/HSPA+ users. Under AT&T's proposed plan, T-Mobile's 33 million users will be moved to AT&T's existing network. AT&T would also use T-Mobile's PCS spectrum on its existing network while, T-Mobile's AWS spectrum would be held for future use in deploying AT&T's LTE network. AT&T would also eliminate most of the T-Mobile cell sites. While details are not available in AT&T's application, AT&T's plan of record will likely result in even more congestion and heavier use of the spectrally inefficient GSM and UMTS/HSPA+ technologies. AT&T's plan will also result in most customers being served by fewer cell sites. The negative consequences of these changes, including increased congestion at specific cell sites, slower data speeds, and more dropped calls, will offset many of the efficiencies that AT&T claims will result from its acquisition of T-Mobile.

VIII. AT&T'S CLAIMED UTILIZATION EFFICIENCIES ARE DIFFICULT TO EVALUATE, ARE AT BEST BASED ON ONE-TIME AND SHORT-LIVED BENEFITS, AND ARE NOT APPLICABLE TO ITS DATA NETWORK

33. It is unclear whether AT&T's claimed network utilization efficiencies of 10-15% extend to the data network that represents the future of its network operations.²⁴ It appears that these purported efficiencies are only applicable to its voice network,²⁵ and, even if these gains were documented with sufficient specificity to verify that AT&T could achieve them, they do not

²⁴ Hogg Decl. at ¶ 50.

²⁵ The relationship of offered traffic load and carried traffic load on a voice network can be engineered through an Erlang B statistical measurement. The offered traffic load is the product of the call arrival rate and the mean holding time, as each voice call occupies the channel for the duration of the conversation. In keeping with the Erlang B relationship, traffic capacity of the system increases non-linearly with the number of channels available to handle voice calls. Data traffic models, however, differ substantially from voice traffic models. Data traffic is transmitted over a "shared pipe" and the scheduler performs statistical multiplexing to ensure high utilization. Further, network protocols such as TCP/IP permit the retransmission of packets that are blocked or lost due to congestion. Given the dramatic differences between voice and data traffic engineering, AT&T has not provided the data and analysis need to substantiate how channel pooling gains would apply to data networks.

represent a substantial capacity increase when viewed as a percentage of overall traffic generated from its GSM/UMTS/HSPA+ network. By establishing a baseline of voice capacity on its archaic 2G network, AT&T has set its own bar exceptionally low. AT&T further fails to quantify these measures in the context of the spectrum harvested for its UMTS networks. In the end, these gains represent a one-time measure that is applicable to a legacy 2G network from which AT&T envisions it will migrate its users to its UMTS or LTE network as opposed to a merger-specific efficiency. AT&T is claiming to get efficiency gains from the older 2G network; it should have focused on upgrading its technology and device portfolio sooner.

34. Through the use of the airport ticket counter example, AT&T would lead us to believe that massive traffic handling efficiencies will be achieved through channel pooling; however, AT&T itself admits that the gains are modest, with only 10-15% improvements in many areas and presumably less or none at all elsewhere.²⁶ AT&T's airport ticket counter example is misleading because it illustrates the channel pooling gains that can be achieved for a low number of channels. AT&T itself has acknowledged that control channel efficiencies will only be applicable for voice traffic and not for data traffic. Since AT&T claims that its data network is congested and is experiencing high traffic, it will not gain much efficiency by acquiring T-Mobile. As already noted earlier in this declaration in paragraph 16, voice usage per subscriber has been declining for the last three years.²⁷

35. While it may be feasible for AT&T to reclaim spectrum through control channel aggregation, these benefits will neither be immediate nor lasting. While the amount of spectrum

²⁶ Hogg Decl. at ¶ 52 & fn. 20.

²⁷ CTIA Survey; SMC analysis.

that may be reclaimed sounds exciting in aggregate – 4.8 to 10 MHz²⁸ – AT&T provides no data to substantiate this claim. Nor does AT&T offer an estimate of how soon or how often this degree of reclamation would prove feasible. As a practical matter, it would appear that achieving the proposed levels of reclaimed spectrum will be a time consuming process. Much of what will initially be reclaimed will be small amounts, potentially single GSM channels, scattered over the various bands in use. Considerable frequency planning will likely be needed to reorganize the freed-up spectrum into blocks usable for 3G. Therefore, AT&T will likely put the reclaimed spectrum into immediate use for GSM voice or SMS capacity relief because the more efficient alternative of reclaiming the spectrum for data usage would require more time and money, which will perpetuate the cycle of investment in inefficient 2G GSM technology.

IX. AT&T’S CLAIM THAT IT NEEDS TO ACQUIRE T-MOBILE TO DEPLOY A NATIONWIDE LTE NETWORK IS BASED ON ERRONEOUS ASSUMPTIONS

36. In its Application, AT&T announces that it needs access to an unencumbered “contiguous 20 MHz” everywhere in the United States regardless of population density and asserts that its proposed acquisition of T-Mobile will satisfy this ostensible need. As explained below, AT&T probably does not need a “contiguous 20 MHz” anywhere, but it almost certainly does not need a “contiguous 20 MHz” everywhere. Even if AT&T needed a “contiguous 20 MHz” of spectrum everywhere regardless of population density or demand, AT&T already holds at least a “contiguous 20 MHz” of unencumbered spectrum for approximately 70% of the United States population prior to its proposed acquisition of T-Mobile. *See* Figure 6. Finally, while AT&T does not plainly define the term “contiguous 20 MHz” in its Application, I have assumed AT&T to mean one ten megahertz uplink paired with one ten megahertz downlink for a total of

²⁸ Hogg Decl. at ¶ 48.

20 MHz of “contiguous” spectrum; however, even if an unencumbered “contiguous 20 MHz” of spectrum actually means a total of 40 MHz of spectrum (*i.e.*, a 20 MHz uplink paired with a 20 MHz downlink), then AT&T’s acquisition of T-Mobile’s spectrum would not achieve that goal. As shown in Figure 5, the acquisition of T-Mobile would reach that level in only a handful of mostly rural counties. *See* Figure 5.

37. As a threshold matter, AT&T’s argument that it can only deploy the more efficient, fourth generation (“4G”) LTE technology with a minimum of 20 MHz of contiguous spectrum²⁹ is false. What remains unclear is AT&T’s usage of the term “contiguous 20MHz of spectrum.”³⁰ Industry nomenclature would define this as a 20 MHz x 20 MHz channel (*i.e.*, twenty megahertz for the base-to-mobile or downlink transmission and twenty megahertz for the mobile-to-base or uplink transmission). By industry definition, the additional amount of 20 MHz x 20 MHz contiguous spectrum gained by acquiring T-Mobile would be very limited (see below Figure 5).

²⁹ Contiguous spectrum means the ability to aggregate adjacent channels without gaps.

³⁰ Application at 5.

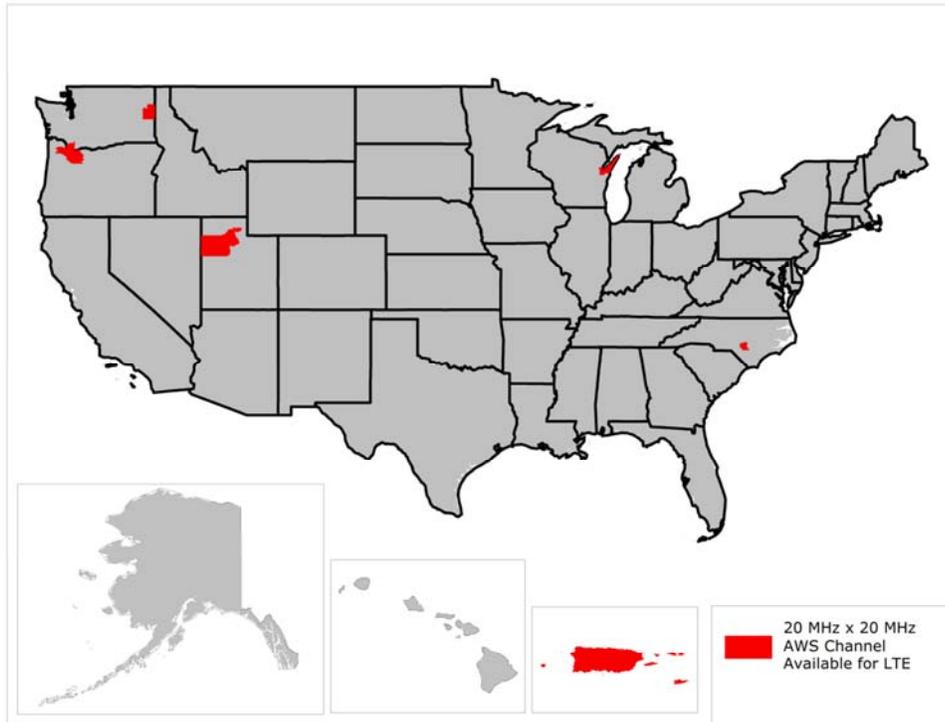


Figure 5: Additional 20 MHz x 20 MHz AWS Spectrum Obtained with T-Mobile Acquisition. *American Roamer, LLC is the creator and copyright holder of the coverage mapping data used in this analysis.*

38. AT&T’s use of term “contiguous 20MHz of spectrum”³¹ obfuscates the amount of spectrum it already holds, largely unused spectrum that provides a readily-deployable 10 MHz x 10 MHz channel. As seen in *Figure 6* below, AT&T already has capacity to cover more than 70% of the U.S. population with twenty megahertz (10 MHz + 10 MHz) of spectrum. Furthermore, LTE can be deployed on configurations smaller than 10 MHz x 10 MHz, for example on a 5 MHz x 5 MHz configuration. LTE supports scalable carrier bandwidths of 1.4, 3, 5, 10, 15, and 20 MHz.³²

³¹ *Id.*

³² LTE Release 8 Standards.

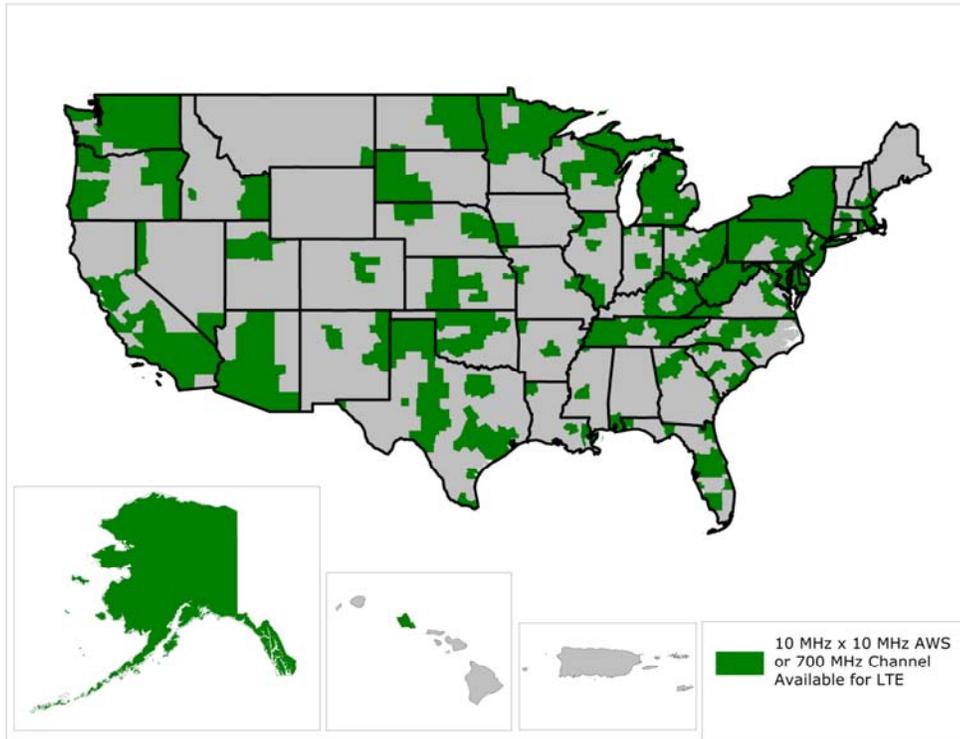


Figure 6: Current AT&T 10 MHz x 10 MHz Channel Coverage Reserved for LTE. *American Roamer, LLC is the creator and copyright holder of the coverage mapping data used in this analysis.*

39. Through the proposed acquisition, AT&T apparently seeks to gain access to additional spectrum needed to launch LTE in a 10 MHz x 10 MHz configuration for improved speed and spectral efficiency.³³ While a 10 MHz x 10 MHz configuration would certainly provide additional network capacity over alternative configurations using less spectrum, it is nonetheless possible for AT&T to initially launch service to greater than 95% of the population using its 700 MHz and AWS spectrum and through careful engineering, programmatic network expansion, and capacity management to provide a consistent user experience across the markets

³³ Application at 5.

it serves.³⁴ While a 10 MHz x 10 MHz configuration is desirable for highly-dense urban areas, other configurations can provide similar peak data speeds per user due to lower population densities in those areas. When operators deploy infrastructure, they develop deployment plans, including spectrum configurations, based on real-world conditions. To support its purported need for additional spectrum everywhere across the United States, however, AT&T essentially assumes that every area in the United States has a common level of population density and a common level of user demand. Similarly, AT&T relies upon theoretical peak user speed achievable in a test environment. Sound network engineering dictates that AT&T focus not on theoretical levels achievable in a test environment, but instead focus on designing network infrastructure for the best user experience in any particular location. In a real-world scenario, an LTE subscriber in New York City could very well experience lower average throughput while served by a 10 MHz x 10 MHz LTE network than a subscriber in rural Iowa served by 5 MHz x 5 MHz LTE network because of the lower user density in rural Iowa.

40. With significant nationwide spectrum holdings already lying fallow, AT&T can deploy LTE today in various configurations to achieve nearly nationwide coverage without acquiring T-Mobile. Although AT&T argues that it can only deploy LTE on 700 MHz and AWS spectrum, LTE standards approved by the 3GPP indicate that LTE can also be deployed on PCS (“LTE Band 2”) and cellular band spectrum (“LTE Band 5”). In fact, AT&T can deploy a 10 MHz x 10 MHz configuration to almost 70% of the most densely populated areas in the U.S. with its current 700 MHz or AWS spectrum holdings. Finally, AT&T’s claim that the acquisition of T-Mobile is necessary for AT&T to cover 97 percent of the U.S. population with

³⁴ Analysis of AT&T’s AWS and 700 MHz spectrum holdings indicates that it has sufficient spectrum to deploy one or more 5 MHz x 5 MHz carrier covering more than 295 million people.

LTE service is untrue. AT&T has already declared its intent to deploy LTE service starting in mid-2011, and is facing competitive pressures to accelerate its deployment from competitors with true 4G networks such as Verizon Wireless' LTE network and Sprint Nextel's WiMAX offering. With coverage already of 97% of the U.S. population today on its combined 2G and 3G network, AT&T could achieve this level of deployment by overlaying LTE coverage on its existing network to reach 97% of U.S. population. The process of overlaying equipment on existing cell sites merely involves installation of new equipment and saves on the cost and time required to build the physical infrastructure of a new site, not to mention time required to obtain necessary legal clearances.

PART C

Like many of its competitors, AT&T is facing congestion in some parts of its network – in some cities, particularly on its data network. More aggressively pursuing targeted, market-specific local solutions to its problems supported by smart engineering and management decisions offers a faster, more cost effective technical solution to AT&T's purported capacity constraints than acquiring another national network.

41. There are many economically viable and focused engineering solutions available to mobile network operators that can relieve substantial congestion on their networks. However, AT&T has not fully employed the full range of widely-available solutions to help address the significant growth in mobile data demand. Although AT&T claims that it has attempted to deploy some of these solutions on a limited basis, it fails to provide data to demonstrate their impact on its network performance or to explain why it cannot accelerate its use of these alternative technologies.

42. As the analysis conducted by Spectrum Management Consulting shows, in summary format in Figure 7 below, AT&T does not need to acquire T-Mobile to resolve its

claimed capacity and spectrum constraints. AT&T can meet its forecasted capacity demand using three levers, none of which require any T-Mobile assets. AT&T's demand forecast of data volume increasing by 8 to 10 times that of 2010 levels by 2015,³⁵ depicts an approximate six-fold increase in data traffic during the period from 2011-2015.³⁶ The execution of the three levers would increase AT&T's average downlink capacity in Mbps by over 600% by the year 2015, as modeled for the Los Angeles market, without the need to acquire additional spectrum or a significant national competitor. The resulting capacity gain represents only the downlink portion of traffic, widely regarded as 80% of total traffic,³⁷ hence providing ample gains to meet the demand forecast.

³⁵ Application at 4.

³⁶ *Id.*

³⁷ *Data Usage Forecast*, CISCO ARTICLES (Feb. 12, 2011), available at: <<http://www.ciscoarticles.com/3G-Wireless-Networks/Data-Usage-Forecast.html>>.

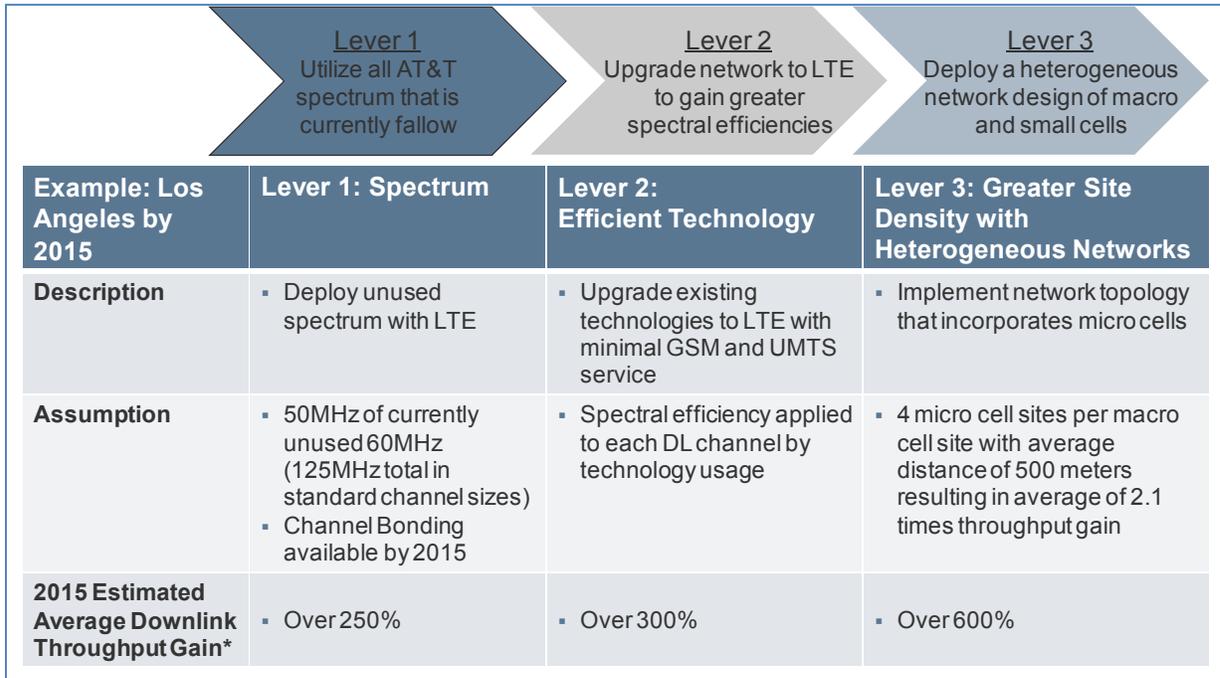


Figure 7: Calculated throughput gains in AT&T's Los Angeles market based on application of three widely recognized capacity-gain measures

* Downlink represents 80% of traffic mix / capacity demand

43. The remaining sub-sections of this Part C outline specific solutions that are available and the extent to which AT&T appears to have employed them.

X. DEPLOYMENT OF NEW CELL SITES, SPLITTING EXISTING SITES

44. One of the stated goals of AT&T's acquisition of T-Mobile is to split the traffic on one existing site across two sites. This traffic-splitting exercise can be done either by increasing the number of antennas and sectors on a single site, for example, from three sectors to six sectors, deploying a new site on an existing tower or building, or by constructing a new site altogether. For example, the benefit of increasing the number of sectors on a typical site from three to six can improve the throughput of a cell site, and therefore the effective coverage area,

by a factor of 1.7. While AT&T alludes to the ostensible difficulty of splitting a cell site,³⁸ AT&T provides no data to indicate why it has or has not been able to successfully pursue any of the cell split strategies in specific, constrained areas.

45. AT&T also claims it has installed thousands of cell sites, but its current capacity issues would indicate that it has failed to deploy sites aggressively enough to resolve the problems that AT&T's design choices and business model have created for itself. On the other hand, entities like Clearwire were able to add 10,000 sites in 2010.³⁹ AT&T, however, admits it has not been able to deploy its 2010 plan of record. A&T has not offered any clear evidence on *why* it was unable to meet its plan of record for network expansion. Also, the problems AT&T faces in the San Francisco Bay Area should not be held as a proxy to illustrate AT&T's claims of zoning difficulties, because problems in the dense, topographically diverse terrain of San Francisco are hardly typical of national site builds.⁴⁰

46. If needed, AT&T can achieve the same cell site splits it claims would result from a T-Mobile takeover by entering into a number of arrangements short of a takeover of one or more of its competitors, such as a tower-sharing agreement with T-Mobile or any other mobile network operator, or a lease agreement with one of the tower companies. Such agreements would allow AT&T to gain immediate access to thousands of sites, including both traditional towers and rooftop locations prevalent in dense, urban areas. AT&T's claim that it is unable to access these towers lacks any hard data and fails to account for the industry's vast tower

³⁸ Hogg Decl. at ¶ 69.

³⁹ Dan Meyer, *Clearwire posts strong Q4 wholesale growth, cost conservation remains intact*, RCR WIRELESS (Feb. 17, 2011), available at: <<http://www.rcrwireless.com/ARTICLE/20110217/CARRIERS/110219933/clearwire-posts-strong-q4-wholesale-growth-cost-conservation-remains>>.

⁴⁰ Hogg Decl. at ¶ 70.

inventory. Even if a tower is fully loaded, measures can be undertaken to reinforce it and open additional space on it. Total available tower capacity in the U.S. is estimated to be over 250,000⁴¹ and AT&T is estimated to utilize less than 25% of available sites. Spending \$39 billion to gain access to T-Mobile sites is a very high cost to pay for tower capacity. Even if some fraction of T-Mobile's cell site locations were uniquely matched in AT&T's areas of need, a tower-sharing arrangement with T-Mobile in congested areas such as San Francisco could address site-location issues far less intrusively and far less disruptively to competition than the proposed acquisition.

XI. DEPLOYMENT OF SMALLER CELL-SITES TO GREATLY INCREASE SPECTRUM RE-USE AND AVAILABLE CAPACITY

47. Although AT&T's Application makes references to the evolving cellular network architecture, especially the advent of heterogeneous networks, it does not explain why it is not sufficient for AT&T to evolve its network beyond today's macro cell based architecture. It is unclear whether AT&T has been unusually slow to adopt these new features on its network and is thus experiencing what it claims to be a capacity constraint.⁴² The goal of LTE is to not only improve spectral efficiency through new antenna technologies such as Multiple Input Multiple Output ("MIMO") and beamforming, as well as higher modulation and coding schemes, but also to improve the performance of wireless networks by changing the network topology. Thus, LTE aims to improve the spectral efficiency per unit area covered. Using a mix of macro cells, micro cells with smaller network footprint (sometimes called pico / relay cells), and femto cells is an

⁴¹ *Wireless Quick Facts*, CTIA, available at: <<http://www.ctia.org/advocacy/research/index.cfm/aid/10323>>.

⁴² Application at 1.

effective way to relieve capacity constraints.⁴³ These smaller cell sites are often complemented by other means of providing additional spectrum re-use and enhanced capacity in targeted areas. DAS and smaller, compact radio technologies such as Alcatel Lucent's lightRadio⁴⁴ are also very cost-effective ways to reduce capacity constraints on carriers' networks. These techniques also have an added advantage of providing better indoor coverage when compared to macro cell-sites.

48. These technologies and innovations are the fundamental philosophies and operating principles of the mobile network industry itself. The ability to increase the reuse of spectrum compared to the more inefficient broadcast approaches used for decades, leads to more capacity on a per area basis. Also having cell sites closer to users allows the system to use a higher modulation and coding scheme, improving the spectral efficiency of the network on a per channel basis. The cellular industry is defining how these heterogeneous networks will work by focusing on advanced techniques for managing and controlling interference in future releases of mobile communications standards. These standards are expected to be defined by 2012 in LTE Release 10, with certified commercial products ready for implementation the year after. *These improvements in cellular technology and standards are expected to be realized long before AT&T has claimed it will begin realizing improvements from the T-Mobile acquisition.*⁴⁵

49. Moreover, heterogeneous networks not only represent an important tool to increase network capacity, but also are likely to prove essential to achieving a consistent end-

⁴³ While LTE has been designed for supporting Heterogeneous Networks, UMTS/HSPA+ technologies also support these techniques to improve spectral efficiency and coverage of a network

⁴⁴ See Features, *lightRadio*, Alcatel-Lucent, available at: <www.alcatel-lucent.com/lightradio> (last visited May 28, 2011).

⁴⁵ Based on conservative estimates of the complete FCC and DOJ reviews of 12 months plus 9 months to begin site integration synergies.

user experience. If AT&T does not embrace the use of heterogeneous networks, then its users will continue to experience variable throughput as they are mobile. By implementing small cells within the network to complement the macro network, the user experience will become more uniform. Analysis performed by Qualcomm⁴⁶ in a mixed deployment of macro cells and pico / relay cells has demonstrated that throughput per user improves 2.5 times on both uplink and downlink for median cases while it improves 2.1 times on downlink and 1.5 times on uplink at the edge of the cell site. These improvements were made possible because some users experienced higher modulations by being closer to the smaller cells, while fewer users were on the macro network and the devices being served by the small cells are likely to be at lower power levels thereby decreasing the level of interference to others.

50. Finally, AT&T's focus on increasing its macro cell density through the acquisition is ill-conceived and against the growing trend of utilizing small cell site-based network architectures. AT&T claims that the cell splits resulting from the proposed transaction will effectively double the amount of network traffic that can be carried using existing spectrum in the areas served by those cell sites. In making this claim, AT&T ignores the diminishing returns resulting from continued cell splitting of macro cell sites, a cellular architecture inherently non-optimal for serving areas of high traffic density.⁴⁷ In the most congested markets, where capacity is needed most, the addition of new macro cells will not result in a doubling of traffic capacity unless perfect conditions exist to manage the interference among nearby cells.

⁴⁶ LTE Advanced: Heterogeneous Networks, Qualcomm, *available at*: <http://www.qualcomm.com/videos/lte-advanced-heterogeneous-networks>.

⁴⁷ Presentation by Kris Rinne, *Building the Nation's Most Advanced Mobile Broadband Experience*, AT&T Industry Analyst Conference (May 11, 2011), *available at*: http://www.att.com/Common/about_us/downloads/building_the_nations_most_advanced_mobile_broadband_experience.pdf ("Rinne Presentation").

The gains in capacity by increasing the density of cell sites are offset by losses due to interference and operational challenges when cell radii decrease below 300-400 meters.⁴⁸

Average cell radius in an urban environment is approximately 800 meters and decreasing with the growth and consolidation of mobile networks.⁴⁹ Without access to detailed capacity plans for the integrated network, the proposed “effective doubling” of capacity AT&T asserts may be more wishful thinking than reality.⁵⁰

XII. INCREASING CAPACITY AND COVERAGE USING RADIO ACCESS NETWORK (RAN) SHARING

51. AT&T can achieve its stated goal of dramatically increasing site density and traffic capacity through a multi-operator Radio Access Network (“RAN”) sharing arrangement with one or more network operators, including T-Mobile. RAN sharing is technically feasible and has had demonstrated success in international markets. ABI Research’s report on Multi-Operator RAN Sharing finds that the worldwide combined OPEX and CAPEX savings from active infrastructure sharing could amount to as much as \$60 billion over the next five year period.⁵¹ The study finds that operators could enjoy at least 40% cost savings in addition to those available from passive site sharing. Some examples of successful RAN sharing are:

- Orange and T-Mobile have created a joint venture named Everything Everywhere to enable RAN sharing in the UK market; and
- Tele2 and Telenor have also implemented RAN sharing for LTE in Sweden.

52. RAN sharing can be either passive or active. Passive sharing generally includes shared use of the site structure, *i.e.*, the tower or rooftop, cell site cabinet, power, and HVAC

⁴⁸ SMC Analysis based on study of dense urban cellular networks.

⁴⁹ *Id.*

⁵⁰ Application at 34.

⁵¹ See ABI Research Report on Multi-Operator RAN Sharing.

environmental. By comparison, active sharing achieves a tighter integration of cell site assets through shared use of the antenna system, base station equipment, and backhaul connection. In essence an active RAN sharing arrangement is similar to AT&T's proposed use of existing T-Mobile cell sites but without the anti-competitive harms resulting from the merger. Specific advantages of RAN sharing include:

- Immediately accessing existing sites for expanding coverage and/or capacity;
- Selectively accessing sites and introducing additional network capacity based on prioritized needs; and
- Achieving similar CAPEX and OPEX advantages as the proposed network integration.⁵²

XIII. OFFLOADING ADDITIONAL DATA USAGE FROM THE CELLULAR NETWORK TO ALTERNATIVE NETWORKS USING WI-FI

53. With its purchase of Wayport, AT&T increased its dominant ownership of public Wi-Fi hotspots. AT&T's Application claims ownership of 24,000 Wi-Fi hotspots. This total, however, is just one hotspot for every 4,000 AT&T subscribers, meaning that an extremely small percentage of AT&T's data traffic is likely being carried via the highly-efficient and low-cost Wi-Fi network.

54. While AT&T has trumpeted the creation of Wi-Fi "Hot Zones" in areas such as New York's Times Square and San Francisco's Embarcadero shopping complex, it has been slow to make such capabilities and capacity broadly available. Densely-used areas such as Washington, D.C.'s National Mall and New Orleans' French Quarter still lack any substantial Wi-Fi coverage.

⁵² *Id.*

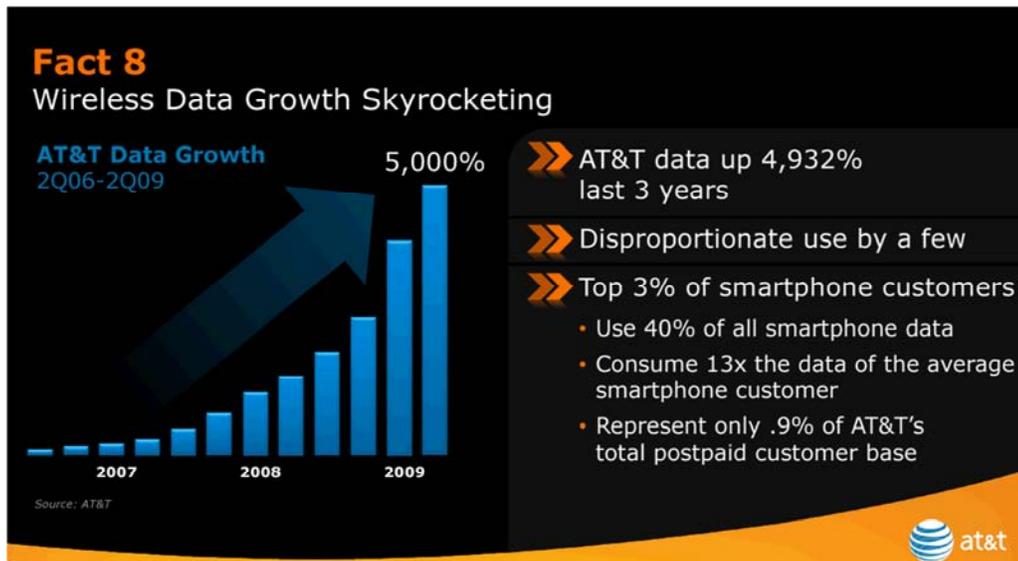


Figure 8: Slide from AT&T explaining how a small number of users on their network generate most data traffic on their network

55. The CTIA-IT September 2009 Keynote Address by AT&T highlighted the disproportionate impact of a few users on the cellular network. The top 3% of smartphone users generate 40% of all smartphone data.⁵³ These users are generating 13 times the data of an average smartphone user and represent only 0.9% of all users, voice and data combined. There are a number of techniques that can be applied to limit or create a fairer environment, including data usage policy management, improved fairness algorithms and pricing differentials. Also, offloading these high data users onto Wi-Fi networks would benefit all the users on the mobile network and would also create a better experience for the high data users.

⁵³ Mark Sullivan, *AT&T Wireless CEO Hints at 'Managing' iPhone Data Usage*, COMPUTER WORLD (Oct. 8, 2009), available at: <http://www.computerworld.com/s/article/9139151/AT_T_Wireless_CEO_Hints_at_Managing_iPhone_Data_Usage>.

XIV. USE OF IN-BUILDING WIRELESS SYSTEMS TO ENABLE IMPROVED COVERAGE AND OFFLOAD CAPACITY DEMANDS

56. In-building Wireless Systems, primarily enabled by Distributed Antenna Systems, have been widely available for more than eight years and are widely deployed in facilities ranging from stadiums and college campuses to airports and train stations. In areas of dense usage, these solutions are an effective and efficient means of offloading demand from the macro cellular network. AT&T's application does mention that it has "deployed indoor and outdoor distributed antenna systems ('DAS')...to offload traffic from AT&T's mobile broadband network and relieve congestion,"⁵⁴ but it goes no further in discussing the extent to which these systems have been deployed, or if further deployments are planned.

XV. USING CUSTOMERS' INFRASTRUCTURE TO INCREASE AVAILABLE CAPACITY AND OFFLOAD TRAFFIC FROM CARRIER'S NETWORK

57. Much of a user's total data traffic is generated in areas where alternatives exist to using AT&T network to carry that data traffic. Mobile users generate much of their data traffic from within the home or office. According to a recent Cisco study⁵⁵, the combined percentage of time, and thereby traffic, the average user devotes to using mobile Internet at home and in the office is 65%. In other words, just 35% of the total traffic generated by a user is "on the move."

⁵⁴ Application at 27.

⁵⁵ Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2010–2015 at 10 (Feb. 1, 2011), *available at*: http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.pdf ("Global Mobile Data Traffic Forecast Update"). While Cisco tends to be more aggressive with its forecasts of data growth, this forecast nonetheless illustrates that at home usage comprises a significant portion of a user's overall usage. Further, while the estimate is based on time, the data usage share is proportional to time as the types of applications a given user would utilize at home are no less bandwidth intensive than applications utilized while "on the move".

This data suggests that by utilizing techniques to “offload” user traffic to alternative technologies, enormous gains can be achieved in available network capacity and quality.

A. Home-Based Wi-Fi Networks

58. The use of Wi-Fi access points in the homes is widespread. These networks provide an efficient and secure method of traffic offload so long as users activate the Wi-Fi connection feature of their data device (*i.e.*, configure and associate with their home network). AT&T could implement network and device management features to take more advantage of home-based Wi-Fi networks.

B. Femto Cells (Personal Home-Based and Enterprise-Based Cell Sites)

59. In its filing, AT&T recognizes the benefits that very small cell architectures, including femto cells, can produce. Femto cells connect to an existing broadband connection such as DSL to improve network performance in home-based or enterprise-based environments. Femto cells reuse existing spectrum to carry both voice and data traffic. While AT&T recognizes the potential benefits of femto cells, it oddly claims that “these are designed to address in-home coverage issues more so than to increase network capacity,”⁵⁶ despite generally understood benefits of femto cells for capacity relief.⁵⁷ AT&T’s decision to categorize femto cells as a coverage solution is short sighted and is artificially limiting adoption. Instead, AT&T should substantially ramp up its efforts to deploy femto cells to meet both coverage and capacity demands.

⁵⁶ Hogg Decl. at ¶ 73.

⁵⁷ The Femto Forum, an industry organization comprised of mobile operators, telecom hardware and software vendors, and content providers, whose mission is to advance the development and adoption of small cells via femtocells, claims that a femtocell “enables capacity equivalent to a full 3G network sector at very low transmit powers.” *See* Femto Forum website, *available at*: <<http://www.femtoforum.org>>.

60. The potential benefit of femto cells to offload data traffic generated by users within the home or office is substantial. Cisco has estimated that through 2015, more than 20% of smartphone generated traffic can be offloaded through femto cells⁵⁸ and that further growth of this offloading is limited only by the availability of a broadband connection in the home.

XVI. USING NEW, ADVANCED NETWORK, AND TECHNOLOGICAL FEATURES

61. Wireless carriers have many new technologies available that can help with making their network more efficient. These technologies are very cost-effective alternatives to buying additional spectrum. However, carriers have to be proactive in upgrading their network infrastructure to support these technologies and willing to invest in their network to keep it at the forefront of technological and standards evolution. AT&T can deploy Smart Antennas / MIMO carriers and implement increased sectorization (six-sector cell sites) to increase capacity in its existing network.

62. AT&T can also ensure that both its network and devices are more up-to-date in terms of the technology versions they support. As mentioned earlier, AT&T's flagship smartphone device, the iPhone 4, only supports HSPA 7.2 and does not support HSPA+. And, as the chart below suggests, HSPA+ is a more spectrally efficient technology than legacy GSM and UMTS technologies, and its increased use would improve the overall efficiency of the AT&T network if more of AT&T's devices were compatible with the HSPA+ standard.

⁵⁸ Global Mobile Data Traffic Forecast Update at 11.

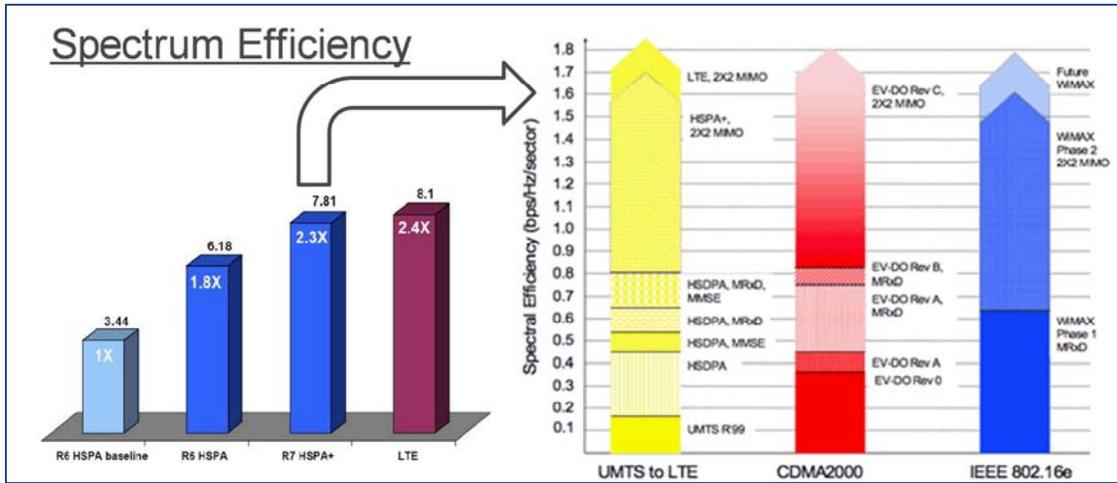


Figure 9: Spectrum efficiency of various 3G and 4G technologies.

63. There are also technologies in the LTE standards roadmap that will become available for AT&T to use well before demand on its yet-to-be-deployed LTE network increases. Carrier aggregation (also known as “channel bonding”) and related spectrum bonding techniques will be available in LTE Release 10, enabling AT&T to deploy LTE in additional spectrum bands including the 700 MHz spectrum that it has agreed to purchase from Qualcomm, subject to FCC approval.

64. The Application also does not account for the evolution of capabilities that are becoming available in LTE Advanced, also known as Release 10 or LTE-A. LTE-A will become available shortly after AT&T’s LTE network launch. These techniques include higher-order MIMO and carrier aggregation across multiple component carriers, which will further improve the spectral efficiency per link. With Release 10 and through the use of higher order MIMO configurations, AT&T could realize on the order of a *50% improvement* in spectral efficiency (e.g., a spectral efficiency of 2.4 bps/Hz for Release 10 using 2x2 MIMO, versus a spectral

efficiency of 1.6 bps/Hz for Release 8). This increase in spectral efficiency is nearly equivalent to the increase that AT&T will realize in upgrading from HSPA+ to LTE.

65. There are a number of features included in LTE Advanced that will improve overall network efficiency. The technology components being identified as Study Items include:

- MIMO up to 8x8 in DL and 4x4 in Uplink and enhanced beamforming for Downlink and Single user MIMO for UL;
- Coordinated multiple point transmission and reception (“CoMP”) to improve performance on the cell edge;
- Relay nodes in band or outer band;
- Carrier aggregation (or channel bonding) (Release 10);
- Autonomous component carrier selection for uncoordinated small cell deployment; and
- New reference signal for closed-loop spatial multiplexing.

66. AT&T is also already leading the way in 3GPP Working Items in RAN 4 with regards to carrier aggregation,⁵⁹ presumably to support its planned use of the spectrum it expects to gain from its acquisition of Qualcomm’s spectrum in the 700 MHz band. These working items will become part of the standard and enable AT&T to aggregate larger channels in separate bands and gain the performance as if they were all one continuous channel. AT&T will effectively create additional LTE capacity, independent of the proposed T-Mobile acquisition.

XVII. INCREASE AVAILABLE BANDWIDTH IN BACKHAUL/TRANSMISSION NETWORK

67. The mobile network consists of many parts and hence contains more than one point for potential congestion. While the Application has focused primarily on the challenges faced in its air interface or RAN, the transmission network connecting the cell sites to its core

⁵⁹ See *Active 3GPP Work Items for group: R4, 3GPP, available at: <<http://www.3gpp.org/ftp/Specs/html-info/TSG-WG--R4--wis.htm>>*. Currently more than 18 Work Items are related to carrier aggregation for LTE Release 10.

network and the Internet is just as important. Often, mobile network operators are able to boost their network performance simply by upgrading the capacity available in the backhaul network.⁶⁰ AT&T, with the vast transmission network assets it owns, is capable of adding more capacity to its cellular backhaul network but has not taken proactive steps in this direction. Although it is unclear how many of AT&T's cell sites have today, or will have in the future, enhanced Ethernet connections, AT&T plans to carry only two thirds of its traffic on enhanced Ethernet by the end of 2011.⁶¹

XVIII. CONCLUSION

68. The conclusion of my analysis is that the Commission should reject AT&T's argument that the proposed integration of AT&T's network with that of T-Mobile is the best and only cure for AT&T's claimed capacity crunch. AT&T claims that significant benefits such as access to new sites otherwise not available to it, more efficient use of available spectrum, increased network coverage, and enhanced ability to offer 4G services are impossible to substantiate given the limited data and analysis in AT&T's Application. My analysis and

⁶⁰ AT&T, for example, indicates in the Application that they have deployed HSPA+ to all of its UMTS sites. See Hogg Decl. at ¶ 22. However, AT&T's website acknowledges that "4G speeds require a 4G device and are delivered when HSPA+ technology is combined with enhanced backhaul. 4G speeds are available in select cities with availability increasing with ongoing backhaul deployment." See Answer Center, *Just how fast is AT&T 4G?*, AT&T Wireless, available at: <http://www.wireless.att.com/answer-center/main.jsp?t=solutionTab&ft=&ps=solutionPanels&locale=&_dyncharset=UTF-8&solutionId=KB115947> (last visited May 27, 2011). AT&T's website also indicates that "AT&T is constantly deploying upgraded backhaul to deliver 4G speeds. By the end of 2011, we expect approximately 2/3 of our mobile broadband traffic to be delivered over our enhanced network." See Answer Center, *Where and when will 4G from AT&T be available to me?*, AT&T Wireless, available at: <http://www.wireless.att.com/answer-center/main.jsp?t=solutionTab&ft=&ps=solutionPanels&locale=&_dyncharset=UTF-8&solutionId=KB115948> (last visited May 27, 2011). AT&T could increase the usability and performance of their HSPA+ network by expediting the roll-out of their enhanced backhaul network.

⁶¹ Rinne Presentation at 19.

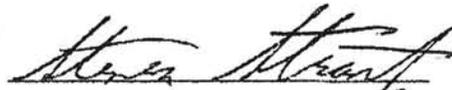
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experience suggests that these claims are highly unlikely to occur. Yet even if I were to take AT&T's claims at face value, these supposed benefits will be short term, one-time gains that will not have a material impact on AT&T's preexisting ability to meet its own capacity needs over the long term.

69. AT&T should pursue new technologies and strategies to use its vast spectrum holdings more efficiently, and thus manage the growing traffic on its network, just as its competitors do. If the proposed acquisition of T-Mobile were authorized, it would only further delay AT&T's implementation of efficiency measures and encourage AT&T to continue to use conventional technology, applied with diminishing returns, to address rapidly increasing capacity needs. Approving the merger will perpetuate the inefficient use of spectrum that AT&T has been pursuing by choosing to keep its subscribers on older technologies and retaining unused spectrum.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on May 29, 2011.



Steven Stravitz
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(703) 349-2430

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ATTACHMENT H

DECLARATION OF SCOTT KALINOSKI

WHOLESALES SALES DIRECTOR

SPRINT NEXTEL CORPORATION

DECLARATION OF SCOTT KALINOSKI

I, Scott Kalinoski, hereby declare as follows:

I. BIOGRAPHICAL INFORMATION

1. My name is Scott Kalinoski and I currently hold the position of Wholesale Sales Director at Sprint Nextel Corporation (“Sprint”), managing sales and support to customers from the cable segment of the communications industry. I am responsible for marketing and selling Sprint’s wireless and wireline network services to cable operators, enabling these operators to repackage these services and sell them to their own customer base. I have been at Sprint for over fifteen years, holding various operations and sales positions primarily within Sprint’s Wholesale organization. Prior to my time at Sprint, I worked at Cincinnati Bell Telephone as a Network Planner. I earned a Bachelor of Science degree in electrical engineering from Purdue University and a Masters of Business Administration degree from the University of Cincinnati.

II. COX COMMUNICATIONS IS A REGIONAL MOBILE VIRTUAL NETWORK OPERATOR, RELYING EXCLUSIVELY ON SPRINT’S 3G NETWORK

2. In April 2008, Sprint and Cox Communications (“Cox”), the nation’s third-largest cable operator, entered into a wholesale agreement for the provision of mobile wireless service. Pursuant to this agreement, Cox has become a “Mobile Virtual Network Operator” (“MVNO”) in areas within its cable service footprint, relying on Sprint’s 3G Code Division Multiple Access (“CDMA”) network. As an MVNO, Cox purchases wireless capacity from Sprint and resells mobile wireless service to customers under its own brand, performing all marketing, billing, collections, and customer service for those subscribers. Cox launched its mobile wireless offerings in November 2010, and today it provides this service to a number of markets within its

cable footprint. Cox currently has no facilities-based wireless operations, and is providing mobile wireless service exclusively as an MVNO under its agreement with Sprint. In addition to its MVNO operations, Cox holds licenses in certain markets using its licensed Advanced Wireless Services (“AWS”) spectrum (1710-1755 MHz/2110-2155 MHz). On May 24, 2011, Cox announced publicly that it was terminating an effort to build out this AWS spectrum.¹ According to Cox, it made this decision because the MVNO model provides a more cost-efficient means of rapidly delivering its wireless offerings to additional markets.² While Cox holds Lower 700 MHz band licenses in certain markets, it is my understanding that it has not built out this spectrum. Thus, at least for the near term and perhaps much longer, Cox will serve its wireless customers exclusively as an MVNO utilizing Sprint’s 3G mobile network.

3. As an MVNO utilizing Sprint’s 3G network, Cox in my view is not a direct competitor to Sprint. Cox’s wireless business is dependent on Sprint’s 3G network, and Sprint receives additional revenue for each additional subscriber gained by Cox. Thus, Cox has only a limited ability to compete against Sprint.³ In addition, as indicated above, Cox offers MVNO

¹ See *Cox Wireless to abandon 3G network build in favor of Sprint Nextel wholesale agreement*, RCR WIRELESS NEWS (May 24, 2011) available at: <<http://www.rcrwireless.com/article/20110524/CARRIERS/110529966/-1/cox-wireless-to-abandon-3g-network-build-in-favor-of-sprint-nextel>>.

² *Id.*

³ In its Commercial Mobile Radio Service (“CMRS”) competition reports, the Federal Communications Commission “Commission”) has stated that “because MVNOs purchase their mobile wireless services in wholesale contracts from facilities-based providers, the ability of MVNOs to compete against their host facilities-based provider is limited.” *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd 11407, ¶ 32 (2010). In these CMRS competition reports, the Commission does not count MVNOs as separate competitors from their underlying facilities-based providers in its analysis of market structure. *Id.*

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service to the public only within its cable service footprint, which passes approximately ten percent of all U.S. households. Thus, Cox is only a regional provider of mobile wireless service, rather than a national provider.

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

Executed on May 28, 2011

Scott Kalinoski

Scott Kalinoski

REDACTED – FOR PUBLIC INSPECTION

ATTACHMENT I

DECLARATION OF GREGORY D. BLOCK

TREASURER

SPRINT NEXTEL CORPORATION

DECLARATION OF GREGORY D. BLOCK

I, Gregory D. Block, declare as follows:

1. I am Gregory D. Block, Treasurer for Sprint Nextel Corporation ("Sprint").
2. I make this declaration in support of Sprint's Petition to Deny the Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations.
3. There are several advantages to funding research and development and capital expenditures through internal funds rather than external sources, such as loans and bond offerings. Sprint is far more constrained than AT&T and Verizon in its ability to use internal funds because of its lower relative cash-flow generation.
4. Since AT&T and Verizon generate a disproportionately greater amount of internal funds than Sprint, Sprint has to rely more on external financing for capital expenditures and innovation investments. Currently, Sprint has total borrowings of **[begin confidential information]** [REDACTED] **[end confidential information]**. Sprint's greater reliance on external financing means that Sprint has lower credit ratings and pays higher interest rates on its debt than AT&T and Verizon. Currently, the Moody's credit rating for Sprint is Ba3, compared to A2 for AT&T and A3 for Verizon. In addition, Sprint's ratio of earnings before interest, taxes, depreciation, and amortization ("EBITDA") to interest expense is lower than AT&T's and Verizon's. Within the capital markets, this is considered to indicate that Sprint represents a higher credit risk than AT&T or Verizon. Sprint's EBITDA-to-interest-expense ratio is 4.0, whereas AT&T's is 13.0 and Verizon's is 12.3. As a result, Sprint has higher relative borrowing costs and a more limited borrowing capacity than AT&T and Verizon.

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5. Given Sprint's lower credit rating, the company must turn to the high-yield market for its debt offerings. AT&T and Verizon, on the other hand, can turn to the investment-grade debt markets. Because Sprint borrows in the high-yield market, its borrowing costs are higher than AT&T's and Verizon's.

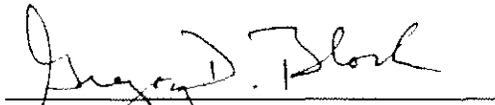
6. The high-yield markets are much more susceptible to interruption compared to investment-grade markets, especially during times of crisis when companies need the most support. During the financial crisis of 2008, while the volume of new bond issuances came down, the investment-grade market was rarely interrupted. On the other hand, both the new issuance volume and the active days of issuance dropped significantly for the high-yield bond market. For instance, there were only 77 days of market activity for issuing new high-yield bonds.

7. If AT&T acquires T-Mobile, and Sprint's costs increase and market share decreases, the above-described financing disadvantages would be exacerbated. A lower market share would likely lead to decreased revenues and a decline in our internal funds for investment. This would increase Sprint's reliance on external capital sources. A greater reliance on external funding would increase Sprint's borrowing costs, expose it to deeper market volatility, and reduce its ability to finance capital expenditures and innovations to maintain its national network. Sprint would also have to hold more cash as reserves to service debt and to weather market volatility. If Sprint had been able to hold the same cash and cash equivalents as a percentage of short-term borrowings as AT&T and Verizon, it would have held \$2.5 billion less cash and cash equivalents for 2008, \$3.4 billion less for 2009, and \$3.7 billion less for 2010.

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

Executed on May 27, 2011

A handwritten signature in black ink, appearing to read "Gregory D. Block", written over a horizontal line.

Gregory D. Block

Treasurer

Sprint Nextel Corporation