DECLARATION OF WILLIAM W. HAGUE

I, William W. Hague, declare:

1. I am the Executive Vice President – International, Alliances and Integration for AT&T Mobility and Consumer Markets for AT&T Mobility Services LLC, with responsibility for AT&T's domestic and international wireless roaming agreements and carrier relationships.

2. In this declaration, I respond to allegations that the merger with T-Mobile will give AT&T the incentive to raise roaming rates, and thereby increase both AT&T's profits and the costs of AT&T's domestic U.S. competitors. I demonstrate that these allegations are incorrect and proceed from some very basic misconceptions about the economics of roaming and the incentives of carriers negotiating roaming agreements. I also describe the many voice and data roaming agreements AT&T has today (both 2G and 3G), and refute charges that AT&T has not entered into commercially reasonable data roaming agreements with domestic U.S. carriers. Finally, I will explain that the arguments urging the Commission selectively to regulate the rates that domestic carriers charge for services provided to foreign carriers are particularly ill-founded.

I. THE MERGER WILL HAVE NO ADVERSE EFFECT ON THE AVAILABILITY OF DOMESTIC ROAMING AT COMMERCIALLY REASONABLE RATES.

3. Wholesale roaming agreements allow a carrier to offer its customers the ability to initiate and receive mobile communications in geographic areas where the carrier's own network does not provide coverage. AT&T relies on roaming agreements to provide service in many areas of the United States. AT&T has roaming agreements with more than **[Begin Confidential Information]** **[End Confidential Information]** U.S. carriers. These roaming agreements are

reciprocal in that they entitle each carrier which is a party to the agreement to obtain service for their customers on the other carrier's network, and the rates paid by each carrier for roaming on the other carrier's network are almost always the same. In the unusual situation when the domestic roaming rates are not reciprocal, they are very close to one another. Exhibit 1 lists the domestic carriers with which AT&T has roaming contracts.

4. Each of these roaming agreements is the product of bilateral arms-length negotiations between the two carriers who are parties to it. In these negotiations, the carrier which has incentives to seek a higher rate is the carrier that will sell more roaming services than it will purchase, and therefore will have a favorable "balance of trade" under the agreement. In other words, all other things being equal, carriers which will be "net sellers" of roaming services will want to increase the roaming rates, because they will realize net revenues under the agreement and the higher the rate, the greater their revenues. Conversely, a carrier which will be purchasing more roaming services than it will sell is a "net purchaser" under the roaming agreement. The "net purchaser" has incentives to reduce the roaming rates, because it will realize no net revenues under the agreement, but instead will incur expenses and the higher the roaming rate, the greater the payments it will make to its roaming partner.

5. Despite its national footprint, AT&T is a "net purchaser" of both voice and data domestic roaming services because its subscriber base and its usage per subscriber are large relative to that of its roaming partners. Thus, AT&T customers generate far more voice minutes of use and megabytes of data usage on the networks of AT&T's roaming partners than customers of the

roaming partners generate on AT&T's network. In 2010, AT&T's roaming payments to domestic carriers exceeded AT&T's domestic roaming revenues by **[Begin Confidential Information]** **[End Confidential Information]**. Accordingly, as an overall "net purchaser" of domestic roaming services, AT&T's incentive is to reduce roaming rates, and it seeks those reductions in the negotiation of individual roaming agreements in which it will have an unfavorable balance of trade. In the substantial majority **[Begin Confidential Information]** **[End Confidential Information]** of AT&T's individual domestic roaming agreements, AT&T is a "net purchaser" of roaming services.

6. However, in the minority of agreements in which it will be a "net seller" and will receive "net" roaming revenues, AT&T, unlike most "net sellers," does not seek to increase roaming rates. In those minority of agreements, AT&T determines a commercially reasonable rate for roaming services by using an approximate average of the rates it currently pays under its existing roaming agreements, and begins negotiations utilizing that average rate. Because of AT&T's overall unfavorable "balance of trade," establishing a high rate in those few agreements would be contrary to AT&T's interests. Wireless carriers generally are aware of what other carriers charge for roaming services because they have multiple roaming agreements with multiple roaming partners, and therefore know what the commercially reasonable roaming rates are in the marketplace. If AT&T were to successfully negotiate a high rate in those few instances where it is a "net seller" of roaming services, other carriers could argue that this higher rate is a commercially

reasonable market rate, and then seek this higher rate in the far more common agreements where AT&T will be a "net purchaser" of roaming services.

7. The merger will not have any material effect on AT&T's reliance on roaming agreements, because it does not materially increase AT&T's geographic coverage. Moreover, **[Begin Confidential Information]**

[End Confidential Information] and because AT&T's customer base is going to increase post-closing. The merger will thus make AT&T's domestic "balance of trade" deficit for roaming services even worse than it is now. Thus, if anything, the merged company will have increased incentives to reduce its overall domestic roaming expense by reducing roaming rates.

II. THE "GSM MONOPOLY" CONCERNS ARE MISGUIDED.

8. Because AT&T and T-Mobile are the only GSM carriers that have national footprints, opponents claim that the merger will create a "GSM monopoly" and result in increased roaming rates for other GSM carriers. They are wrong on both counts.

9. The principal focus of these claims is 3G roaming, but today, each GSM carrier already has only one real choice of a national 3G roaming partner. AT&T and T-Mobile provide 3G service over different bands of spectrum, with T-Mobile using AWS spectrum and AT&T using 850 MHz and 1900 MHz spectrum. Handsets that could access both AWS and 850/1900

MHz bands of spectrum have only recently become available and have not been widely adopted. Thus, as a practical matter, GSM 3G carriers in the U.S. – of which there are now few other than AT&T, T-Mobile and Cincinnati Bell – have had only one choice of a national roaming partner. Carriers who provide service over AWS are limited to T-Mobile, and other carriers are limited to AT&T.

10. Moreover, as I explained above, even if the merger were to result in a so-called "GSM monopoly," AT&T would not have incentives to increase domestic roaming rates, for it will remain a "net purchaser" of roaming. Increased roaming rates would result in increases in AT&T's payments to its domestic roaming partners. Thus, AT&T's economic incentives will continue to be to reduce domestic roaming rates, not to increase them.

III. CLAIMS THAT AT&T WILL REFUSE TO NEGOTIATE COMMERCIALLY REASONABLE ROAMING RATES ARE UNTRUE.

11. Cincinnati Bell, Cellular South, and a few other carriers have accused AT&T of refusing to negotiate commercially reasonable voice and data roaming agreements with these carriers. These contentions are untrue.

12. AT&T has been, and remains, open to negotiation of commercially reasonable roaming arrangements. The FCC's prior rules did not require data roaming. Nonetheless, AT&T made data roaming services available to all other carriers; its 2G roaming agreements apply to data, as well as to voice services. Furthermore, both before and after the *Data Roaming Order* became effective, AT&T offered to modify its 2G agreements so that they also applied to 3G, with the same or lower rates for 3G. Prior to the *Data Roaming Order,* AT&T signed three (3) agreements

for 3G roaming, and since the *Data Roaming Order* was released, AT&T has signed twelve (12) additional 3G roaming agreements. A complete list of AT&T's domestic 3G roaming agreements is contained in Exhibit 2 to this Declaration. AT&T will negotiate and seek to enter into a 3G roaming agreement at 2G rates with any GSM carrier who requests one.

A. Cellular South's Allegations Are False.

13. Several merger opponents have cited to sworn Congressional testimony in which the CEO of Cellular South stated that his company had requested and been denied a 3G roaming agreement, claiming it is evidence that AT&T refuses to negotiate roaming agreements. Cellular South's allegations are completely without merit.

14. Cellular South generally provides wireless service over a CDMA network. In February 2010, Cellular South acquired Corr Wireless, a GSM carrier located in Alabama. AT&T has had a 2G roaming relationship with Corr Wireless, and it had never requested a 3G roaming agreement with AT&T.

15. Nonetheless, in November 2010, AT&T approached Corr Wireless and, <u>in writing</u>, offered it 3G roaming services. Corr Wireless never responded to that offer. Later in November, AT&T contacted Cellular South and, <u>in writing,</u> expressed a willingness to discuss 3G roaming for Corr Wireless. Here again, Cellular South did not pursue discussions with AT&T. We assumed that Cellular South had decided to convert the Corr Wireless network to CDMA and had no interest in GSM 3G roaming. Then, in April 2011, after the FCC's *Data Roaming Order* was released, Cellular South contacted AT&T about a new 3G roaming agreement for Corr Wireless

and a new 4G/LTE roaming agreement for Cellular South. On April 27, 2011, the parties had a meeting to discuss roaming, and the negotiations are underway. Hence, Cellular South's allegation that it had "been denied" a roaming agreement for itself or for Corr Wireless is patently false.

B. Cincinnati Bell's Charges Are Unsupported.

16. Cincinnati Bell's arguments confirm my earlier explanation that the "balance of trade" drives incentives. Before the former AT&T Wireless and other carriers acquired or built out networks to cover Cincinnati Bell's territory, they relied on roaming agreements with Cincinnati Bell.

17. However, in the intervening years, carriers have built out their networks to cover the Cincinnati Bell territory, so there are fewer domestic carriers who rely on roaming to serve this area, and more available roaming partners for those carriers who want to roam. Thus, at least relative to AT&T, Cincinnati Bell has changed from being a "net seller" to a "net purchaser" of roaming services, and now has the incentive to seek to obtain lower rates by proposing stringent rate regulation. In particular, Cincinnati Bell suggests that roaming rates should be set at "cost-based" rates or capped at or below actual or imputed retail rates. However, I understand that the FCC's *Data Roaming Order* rejected rate regulation, and instead concluded that a requirement for negotiation of commercially reasonable roaming terms and conditions, including rates, was preferable over "specific prescriptive regulation of rates," because this would create pro-investment incentives and counterbalance incentives to "piggy back" on another carrier's network.

18. Cincinnati Bell also complains that AT&T's roaming agreement bars it from using "roaming" to provide wireless service to businesses and employees that reside outside Cincinnati Bell's licensed service area. *See* Cincinnati Bell, at 17. For example, Cincinnati Bell wants to use "roaming" service to provide retail service to individuals who live in San Francisco and work in offices of enterprise customers that also have locations in Cincinnati. But this is not roaming; it is resale. As Cincinnati Bell acknowledges, it may provide these services as a reseller under an MVNO agreement. *Id.* at 18 n. 35.

19. Cincinnati Bell next alleges that while AT&T has no intention of roaming on Cincinnati Bell's 3G network, AT&T would require Cincinnati Bell to modify its network and make it "technically compatible with AT&T's network and handsets *just in* case AT&T should ever want to roam on it at some future time." Cincinnati Bell, at 19. That is false. At no time did AT&T request that Cincinnati Bell modify its network, and AT&T has offered to enter into an agreement for 3G roaming at 2G rates with Cincinnati Bell, regardless of the spectrum or technology that it uses to provide 3G services. Of course, to roam on AT&T's network, Cincinnati Bell's customers will need handsets that can operate on AT&T's 3G spectrum as well as on whatever spectrum Cincinnati Bell uses.

20. Cincinnati Bell also alleges that AT&T refused to enter into a 3G roaming agreement unless there was a modification in the 2G voice rates that would materially increase roaming costs. Cincinnati Bell, at 18. That is incorrect. **[Begin Confidential Information]**

[End Confidential Information]

21. Cincinnati Bell next claims that, prior to 2009, it was required to "g[i]ve AT&T's network priority for all roaming traffic." Cincinnati Bell at 16 n.30. Cincinnati Bell here refers to a term of an agreement that it had with AT&T Wireless prior to the AT&T Wireless/Cingular merger and that was part of the *quid pro quo* for roaming services that AT&T Wireless obtained. That agreement has expired, and AT&T has no exclusive domestic roaming agreements. In fact, in the vast majority of AT&T's roaming agreements, there is no obligation on either party even to put traffic on the other party's network. **[Begin Confidential Information]**

[End Confidential Information]

22. Similarly, there is no merit to claims by Cincinnati Bell that AT&T has entered into exclusive relationships with foreign carriers that have prevented smaller domestic carriers from selling roaming services to foreign carriers. Cincinnati Bell, at 15, 17. AT&T does not have a single exclusive international roaming arrangement. While the parties may have agreed to volume commitments/discounts in certain agreements, in no instance is a foreign carrier contractually obligated to use AT&T's network.

23. Finally, the Rural Telecommunications Group, Inc. ("RTG"), and MetroPCS Communications, Inc. and nTelos Inc. ("MetroPCS") argue that AT&T has refused to negotiate 3G roaming agreements in the past and imply that AT&T will not comply with the Commission's *Data Roaming Order*. RTG asserts that AT&T has "chill[ed]" broadband investment, denied RTG financing and delayed the launch of new services such as LTE by

refusing to enter into a "roaming" agreement. RTG, at 21. RTG is a trade association that has refused to disclose all of its members to AT&T. AT&T has not refused to enter into a roaming agreement with individual RTG members which wish to do so. RTG further asserts that the Commission's data roaming rules provide "no guarantee that any wireless carrier besides AT&T and Verizon can compete in the future," and MetroPCS argues that "in the past" AT&T has refused to allow 3G roaming and that we will "exploit every possible means of denying advanced roaming service even under the Commission's new data roaming order." RTG at 22; MetroPCS at 56. To assert that AT&T will not comply with a Commission order is absurd, and is belied by the fact that AT&T has entered into fifteen (15) 3G roaming agreements to date, including with three known members of RTG.

IV. THE MERGER WILL HAVE NO ADVERSE EFFECT ON FOREIGN CARRIERS' ABILITY TO OBTAIN INTERNATIONAL ROAMING IN THE U.S. AT REASONABLE RATES.

24. Some parties have suggested that the merger will result in an increase in roaming rates to foreign carriers that roam on AT&T in the U.S. and have sought conditions to mandate future reductions in these rates. New Zealand at 3; Vodafone at 2 and 6-7; RTG 29-30. Vodafone is the former GSM "monopoly" carrier in New Zealand, and it serves New Zealand and more than 18 other countries. There is no factual basis for New Zealand's and Vodafone's claims.

25. In order to provide its customers with the ability to obtain wireless service in foreign countries, AT&T has entered into bilateral international roaming agreements with over

[Begin Confidential Information] **[End Confidential Information]** foreign carriers, and is a "net purchaser" in a substantial majority of these international agreements today. AT&T's overall roaming payments to New Zealand carriers and its revenues from them are roughly **[Begin Confidential Information]** **[End Confidential Information].** International roaming agreements also are the product of bilateral negotiations, although they are considerably more complicated than domestic roaming agreements.

26. AT&T's experience is that the rates AT&T charges foreign carriers and the rates that foreign carriers charge AT&T have consistently come down overall, and there is no reason to conclude that the trend of lower international roaming rates in agreements between AT&T and foreign carriers will not continue after this merger. There are many countries with a single GSM carrier, and even more countries with a single 3G carrier. For both sets of "monopoly" GSM countries, the rates that AT&T pays for international roaming have fallen dramatically, in most cases, for both voice and data since 2008 (in a few instances data rates have remained flat in countries where data services were recently introduced).

27. Vodafone is a "net purchaser" of international roaming services from AT&T in the aggregate. Overall, the international roaming rates that AT&T charges Vodafone are **[Begin Confidential Information]**

[End Confidential Information] The data roaming rate reductions have occurred, even though, to the best of my knowledge, few of Vodafone's customers have devices that can access the AWS spectrum on T-Mobile's 3G network, and Vodafone thus has no national alternative to AT&T for 3G GSM roaming. Also, **[Begin Confidential Information]** **[End Confidential Information]** of the data roaming that Vodafone purchased from us was on our 3G network

28. Further, while Vodafone **[Begin Confidential Information]**

[End Confidential Information]. AT&T's data roaming payments to Vodafone are approximately **[Begin Confidential Information]** **[End Confidential Information]** AT&T's data roaming receipts from Vodafone. **[Begin Confidential Information]**

[End Confidential Information]

29. T-Mobile has not been a real option as a national 3G roaming partner for Vodafone because dual mode handset that operate on both AWS and European 3G spectrum have not been widely adopted. But Vodafone has long had another option for a national 3G (and 2G) roaming partner: its affiliate Verizon. For roughly the past five years, there have been dual mode handsets (*e.g.*, the Blackberry) that operate on both CDMA and European GSM spectrum, and Verizon has aggressively marketed these handsets to customers who want to roam abroad. Vodafone could do the same for its customers interested in roaming in the U.S. I believe the reason it has not done so is that AT&T has always treated Vodafone fairly, and the merger in no way alters AT&T's incentive to continue to do so.

30. Contrary to Vodafone's suggestion, the EU does not regulate rates that European carriers charge U.S. wireless carriers for roaming services that they utilize in Europe. The EU regulation applies only to intra-EU roaming rates. After it was adopted, AT&T paid higher rates to EU carriers with which it did not have a rate discount agreement, as the EU carriers raised their standard published non-discounted AA14 rates in an attempt to recoup lost revenues resulting from the regulation of intra-EU roaming rates. Likewise, New Zealand does not regulate the roaming rates that its carriers charge U.S. carriers, and I'm not aware of any other regulatory commission in the world that regulates the rates that its national carriers charge for roaming services provided to U.S carriers. The one-sided conditions that Vodafone and New

Zealand urge upon this Commission would impede future roaming negotiations by weighing the scales heavily in favor of foreign carriers and freezing features of these integrated agreements that favor those foreign carriers. That would produce no benefit for U.S consumers, but likely would have adverse consequences for them.

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

Executed on June 9, 2011.

Signed: William W. Hague

William H. Hague
Executive Vice President –
International,
Alliances and Integration for AT&T
Mobility and Consumer Markets

EXHIBIT ONE – AT&T's DOMESTIC ROAMING PARTNERS

[Begin Confidential Information]

[End Confidential Information]

EXHIBIT 2-- AT&T's 3G ROAMING AGREEMENTS (as of June 9, 2011)

[Begin Confidential Information]

[End Confidential Information]