

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Applications of)
)
DEUTSCHE TELEKOM AG, Transferor)
)
and)
) WT Docket No. 11-65
)
AT&T, INC., Transferee)
)
for Consent to Assign or Transfer Control)
of Licenses and Authorizations)

To: The Commission

**RURAL TELECOMMUNICATIONS GROUP, INC.
REPLY TO JOINT OPPOSITION TO PETITIONS TO DENY**

**RURAL TELECOMMUNICATIONS
GROUP, INC.**

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Summary

Since it first announced to the world on March 20, 2011 that it intended to purchase T-Mobile USA, Inc. (“T-Mobile”), AT&T, Inc. (“AT&T”) has gone to unprecedented lengths to convince regulators and consumers that the proposed transaction is in the public interest. AT&T has spent millions of dollars on lawyers, lobbyists and a savvy marketing campaign, all in an effort to peddle the myth that somehow, some way, this deal will benefit American consumers. Nothing can be further from the truth. The immediate elimination of T-Mobile from the mobile wireless marketplace will not only remove a fierce, nationwide 4G competitor with tens of millions of customers from the marketplace, but it will create a duopoly where AT&T and Verizon Wireless will control nearly 80 percent of all American customers. Furthermore, AT&T itself will stand to control nearly 100 percent of the GSM roaming, wholesale and machine-to-machine marketplace. Additionally, the removal of T-Mobile allows AT&T to add even more spectrum to its already vast portfolio while simultaneously preventing new market entrants and existing carriers from accessing this precious resource.

In its petition to deny the merger, the Rural Telecommunications Group, Inc. (“RTG”) presented evidence showing that the claims of AT&T were unfounded, and furthermore, that the proposed deal, if consummated, would lead to numerous public interest harms. Tens of thousands of mobile carriers, vendors, community organizations, public interest groups, competition advocacy groups, and most importantly *individual consumers*, filed comments and petitions to deny in opposition to the proposed takeover. When confronted with a mountain of compelling reasons demonstrating why the proposed transaction is not in the public interest, AT&T has stubbornly pressed forward. In fact, AT&T has doubled-down on its efforts by merely echoing the same hollow claims as before and dismissing (or outright ignoring) the valid points raised in the various comments and petitions to deny.

AT&T's proposed takeover of T-Mobile will lead to the numerous public interest harms identified by RTG, none of which were refuted by AT&T. A consolidation of this scale will be harmful to customers of both companies by diminishing the quality of customer care and limiting the available number of retail pricing plans available to the full customer base. AT&T's resulting market domination will allow it to continue to engage in anticompetitive practices and stifle innovation and investment in the mobile sector, and it will lead to extensive job loss at a time of oppressively high national unemployment. There are no conditions that could make this merger acceptable or harmonious with the public interest, and therefore it should not be approved. At a minimum, the FCC must conduct an evidentiary hearing pursuant to Section 309(e) of the Communications Act to obtain additional evidence on all substantial and material issues of fact.

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**THE RURAL TELECOMMUNICATIONS GROUP, INC.
REPLY TO JOINT OPPOSITION TO PETITIONS TO DENY**

The Rural Telecommunications Group, Inc. (“RTG”)¹, by its attorneys and pursuant to Section 1.939 of the rules of the Federal Communications Commission (“FCC” or “Commission”), hereby files its reply to the Joint Opposition to Petitions to Deny (“*Joint Opposition*”)² filed by AT&T, Inc. (“AT&T”), Deutsche Telekom AG (“DT”), and T-Mobile USA, Inc. (“T-Mobile”) (together, the “Applicants”) in the above-captioned proceeding and renews its request for the Commission to designate the above-captioned applications for a hearing pursuant to Section 309(e)

¹ RTG is a 501(c)(6) trade association whose members consist of rural and small wireless carriers and licensees who serve less than 100,000 subscribers.

² *In re Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Transfer of Control of the Licenses and Authorizations Held by T-Mobile USA, Inc. and its Subsidiaries*, Joint Opposition of AT&T Inc., Deutsche Telekom AG, and T-Mobile USA, Inc. to Petitions to Deny and Reply to Comments, WT Docket No. 11-65 (filed June 10, 2011) (“*Joint Opposition*”).

of the Communications Act of 1934, as amended (“the Act”) to resolve material issues of fact and to ultimately determine whether a grant of the applications is in the public interest.³

I. INTRODUCTION

AT&T claims that approval of the transaction is in the public interest because it will allow it to be more efficient and improve its bottom line. AT&T believes that consumers will be better off by allowing AT&T to: (1) eliminate a robust competitor; (2) acquire additional spectrum to prevent new entrants and existing carriers from accessing it; (3) obtain a monopoly on Global System for Mobile Communications (“GSM”) and Universal Mobile Telecommunications System (“UMTS”) networks in the United States; (4) have a duopoly in the mobile wireless market place with nearly 30 million more subscribers than its next largest rival, Verizon Wireless; (5) obtain monopoly control of domestic and international GSM/UMTS roaming in the United States; (6) control a large share of the machine-to-machine (“M2M”) market, particularly all M2M devices that rely on the GSM network; (7) obtain a monopoly on all resale services of GSM related services in the United States; and (8) determine which applications and devices are allowed to reach 130 million consumers on the GSM, UMTS and Long Term Evolution (“LTE”) networks it operates. RTG adamantly disagrees with AT&T and set out in great detail in its *Petition to Deny*⁴ why AT&T should not be allowed to complete this transaction. AT&T chose not to address most of RTG’s concerns. RTG takes this as a sign that AT&T has either conceded these points or that AT&T does not deem the concerns of rural Americans worthy of a response. In either case, RTG finds it alarming that AT&T continues to take a stand that this merger is pro-rural, pro-consumer and in the public interest. In short, AT&T has made it clear that the only members of the public that are of concern are AT&T’s own shareholders.

³ 47 U.S.C. § 309(e).

⁴ *In re Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Transfer of Control of the Licenses and Authorizations Held by T-Mobile USA, Inc. and its Subsidiaries*, Petition to Deny of the Rural Telecommunications Group, Inc., WT Docket No. 11-65 (filed May 31, 2011) (“*Petition to Deny*”).

Having failed to pass the laugh test with its argument that improving AT&T's bottom line serves the public interest, AT&T next argues that there will be plenty of competition after the demise of T-Mobile because several small and regional carriers, all of which combined have a total of less than 30 million customers, will continue to compete against AT&T and several other companies that are on the cusp of breaking into the market will also provide robust competition. Maybe AT&T considers this to be just the right amount of competition, considering that AT&T's subscriber count will outnumber the *biggest* of these rural and regional players by a ratio of nearly fifteen-to-one, but such a level of competition is clearly inadequate from a public interest standpoint. In RTG's view, the current unlevel playing field, which has been duopolistic on many fronts (roaming, handset exclusivity and interoperability), will be a vertical cliff if this transaction is approved, leaving the "competition" that AT&T touts to consist of two players -- AT&T and Verizon Wireless. This Twin Bell duopoly will put the United States mobile market back in the 1980s when each local market had only two wireless providers. The only difference is that the local market is now a national market due to the amount of spectrum AT&T and Verizon Wireless hold across the entire United States coupled with the nearly 80 percent national market share the duopoly will hold. The unlevel playing field created from combining the number two and four players will completely stack the deck in favor of the Twin Bells. RTG has put forth a bevy of information in its *Petition to Deny* showing that the public interest will be damaged beyond repair and that no condition will salvage this transaction. AT&T's *Joint Opposition* is self-serving and fails to rebut the case made by RTG in its *Petition to Deny* and the applications should therefore be denied or designated for an evidentiary hearing pursuant to section 309(e) of the Act.

II. THE APPLICANTS REMAIN UNABLE TO SUBSTANTIATE THE PURPORTED PUBLIC INTEREST BENEFITS OF THE PROPOSED TRANSACTION.

AT&T dedicates the bulk of its *Joint Opposition* to rehashing the very same claims it first put forth in its *Public Interest Statement* and spends precious little time offering facts, or even plausible arguments, to counter the documented evidence submitted by RTG showing that the alleged public interest benefits are nonexistent and that AT&T's arguments are hollow and easily contradicted.

A. AT&T and T-Mobile Customers Will Be Harmed by Poor Customer Care and Fewer Options for Pricing Plans.

For many years, T-Mobile's customer care department has been trumpeted by impartial marketplace observers as being consistently head-and-shoulders above that of T-Mobile's competitors,⁵ while AT&T's customer care department conversely has been objectively rated as *below average*.⁶ In its *Petition to Deny*, RTG explained how the proposed merger will likely bring the high level of customer care currently experienced by T-Mobile's customers down to the level of AT&T, and exacerbate the poor level of customer service currently experienced by AT&T customers. RTG went into great detail explaining how an increase in the Average Handle Time ("AHT") needed to rectify a customer's particular issue decreases the overall quality of the customer care experience, and that without a corresponding increase in the number of customer care representatives ("CCRs") on staff, a company that increases its subscriber count will see a decrease in quality in overall customer care. RTG questioned whether AT&T intends to add more CCRs after purchasing T-Mobile, especially given the fact that overall AHT is increasing as mobile devices get more sophisticated. In its *Joint Opposition*, AT&T superficially addressed this important matter, stating in a brief footnote that it "will adopt the best practices of each company."⁷ Given AT&T's

⁵ *Petition to Deny* at p. 5.

⁶ *Id.*

⁷ *Joint Opposition* at p. 62.

deplorable record of customer service, it is unclear exactly what “best practices” inherent in AT&T’s customer care operations AT&T can possibly be referring to, and any suggestion that it may choose to adopt and employ wholesale T-Mobile’s superior customer care practices must be taken with a healthy dollop of salt. All other factors staying the same, and without the addition of new CCRs by AT&T, the Commission can expect AHT to increase for a post-merger AT&T which in turn will decrease the quality of customer care experienced by both AT&T and T-Mobile subscribers. When given a prime opportunity to expand upon just how it intends to improve the performance metrics of its customer care operations, AT&T kicked the can down the road by regurgitating what it initially stated in its *Public Interest Statement*. AT&T paid little attention to improving customer care in the decades it has been offering cellular and mobile wireless services to Americans having relied instead on using the iPhone and other exclusive handset devices to lure consumers. Absent a detailed plan evidencing a commitment to improve customer care, there is little likelihood it will do so after it removes T-Mobile from the competitive landscape.

All existing AT&T customers will also be harmed by AT&T’s refusal to offer T-Mobile’s existing portfolio of rate plans to AT&T customers post-merger. The rationale AT&T gives for this refusal is two-fold: (1) the Commission has heretofore not required such a merger-specific mandate⁸; and (2) AT&T believes that if AT&T customers had wanted to enjoy T-Mobile’s pricing plans in the past, they could have done so by becoming T-Mobile customers in the first place.⁹ AT&T mistakenly believes that simply because the Commission has not previously required carriers to continue to offer the rate plans of acquired competitors, denying AT&T customers the ability to

⁸ *Joint Opposition* at p. 219.

⁹ “The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?,” Testimony of AT&T Inc. CEO Randall Stephenson, Senate Subcommittee on Antitrust, Competition Policy and Consumer Rights (May 11, 2011). (When asked by Senator Klobuchar “Will AT&T customers get T-Mobile’s current pricing plans?” Mr. Stephenson responded “So AT&T customers, my view is if they wanted the T-Mobile pricing plans, they’ve had those options for a long time now.”)

access T-Mobile rate plans is somehow in the public interest. Offering all rate plans of the two companies to both customer bases is clearly in the public interest. AT&T does not offer the type of low-cost plans offered by T-Mobile and to deny AT&T customers the ability to access such rate plans is harmful to a broad class of consumers. As a common carrier, AT&T should not be allowed to offer separate pricing plans to its similarly-situated customer base. All customers of the post-merger AT&T should be treated equally and on a non-discriminatory basis. AT&T's CEO's argument that AT&T customers have already passed on the opportunity to take advantage of T-Mobile's pricing plans rests on the erroneous assumption that all AT&T customers live in markets that have T-Mobile as a facilities-based competitor. There are many rural areas in the country where AT&T provides service but where T-Mobile does not yet provide coverage or actively sell its services. At the very least consumers in those markets do not have the option to use T-Mobile as their preferred service provider, so AT&T's argument that customers have already had the ability to pick T-Mobile over AT&T is false (and yet another example of how AT&T consistently disenfranchises rural Americans). Additionally, by preventing T-Mobile and small and rural operators from offering exclusive devices, such as the iPhone, AT&T for years has prevented an untold number of both rural and urban consumers from being allowed to pair their preferred mobile device with their preferred wireless provider (and pricing plan). For AT&T to state that T-Mobile's services and pricing plans have been available to everyone is not true. Specifically denying rural AT&T consumers the attractive pricing plans of T-Mobile goes completely against the public interest.

B. T-Mobile's Mobile Broadband Offerings Are Competitive Today and Its Network Performs Better Than AT&T's Comparable Network.

Just as it did in its initial *Public Interest Statement*, AT&T dedicates considerable space in its *Joint Opposition*¹⁰ trying to convince the Commission and the general public that simply because T-Mobile is not leading the pack on LTE adoption and deployment today it is somehow behind the curve and doomed for failure tomorrow. This premise is simply not true. First and foremost, *all* of the supporting statements made by T-Mobile executives and cited by AT&T in its *Public Interest Statement* and *Joint Opposition* that paint a dire picture of T-Mobile's mobile broadband future have surfaced *after* the transaction was announced. The record provides ample evidence¹¹, at least up until mid-March 2011, of statements by both T-Mobile and DT executives expressing zero concern over when or even if LTE will be launched and supporting supreme optimism about T-Mobile's viability, financial health and competitive prowess. The post-hoc support AT&T presents on whether T-Mobile has the ability to compete in the future and whether it is prepared to support 4G (and beyond) technologies is entirely self-serving and should be disregarded.

What is important in determining whether T-Mobile is capable of competing with AT&T, Verizon Wireless, Sprint and smaller competitors is to evaluate the present and future capabilities of T-Mobile's network. In other words, if there was empirical proof that T-Mobile's network was somehow inferior to its competitors' networks *today* and T-Mobile lacked the capability to scale its network to support higher bandwidth traffic *tomorrow*, then AT&T might have a valid point. RTG presented evidence in its *Petition to Deny*, garnered from independent third parties, demonstrating that neither of these two scenarios is realistic.¹² Furthermore, immediately prior to the AT&T

¹⁰ *Joint Opposition* at pp. 39-42.

¹¹ *Petition to Deny* at pp. 10-11; *Sprint Petition to Deny* at pp. 47-53.

¹² *Petition to Deny* at Exhibits C and D. In smartphone tests, conducted by Novarum at 260 locations in 13 cities during Q1 2011, T-Mobile's average download speed was over 50 % faster than AT&T's average download speed. In a similar

takeover announcement, T-Mobile officials made numerous announcements concerning the company's migration path from High-Speed Packet Access ("HSPA") + 21 to HSPA+42, a technology migration that would eventually double the speeds of T-Mobile's already more superior 4G network.¹³ AT&T recognizes that T-Mobile has been able "to do more with less" and that this ingenuity is the sign of a true, successful maverick competitor. Rather than compete directly with T-Mobile, or offer any type of documented evidence originating *prior* to the takeover announcement that supports its self-serving assertions, AT&T has chosen to ignore RTG's (and other carriers') ample evidence demonstrating T-Mobile's network superiority today and migration path for a faster network in the future. AT&T has already conceded that it considers HSPA+ 14.4 genuine "4G" speeds¹⁴, let alone HSPA+ 21 which it actively promotes as 4G.¹⁵ For AT&T to diminish T-Mobile's ongoing deployment of HSPA+ 42, with twice the speeds, as somehow inferior in any way just because it is not LTE, is incredulous.

C. AT&T's Capacity Problems Are Grossly Overstated.

In the subject applications, AT&T stated that it "faces network spectrum and capacity constraints *more severe* than those of any other wireless provider."¹⁶ (emphasis added) RTG questioned just how AT&T can make such a definitive statement without any supporting evidence.¹⁷

test for voice calls conducted during Q1 2011 by ChangeWave, it was reported that AT&T had twice as many dropped calls as T-Mobile.

¹³ Andrew Berg, *T-Mobile Bumps 50 HSPA+ Markets to 42 Mbps*, Wireless Week (May 24, 2011), <http://www.wirelessweek.com/News/2011/05/Carriers-50-HSPA-Markets-42Mbps-T-Mobile/>. T-Mobile also announced that it would have at least 25 4G-capable devices released in 2011 and that more than 150 million Americans would be living in HSPA+42 markets.

¹⁴ Sacha Sagan, *AT&T Defines 4G as HSPA+ 14.4s*, PC Mag (May 5, 2011), <http://www.pcmag.com/article2/0,2817,2384959,00.asp>.

¹⁵ See <http://www.att.com/network/>.

¹⁶ *Public Interest Statement* at p. 1.

¹⁷ *Petition to Deny* at p. 7.

It now appears that AT&T has completely backed away from that absurd claim since it made no attempt, when given the opportunity, to present evidence that objectively shows not just AT&T's alleged network spectrum and capacity constraints, but also that any such problems are "more severe" than all the other operators in the United States.

AT&T now concedes that "the industry as a whole will have to cope with capacity shortages over time" and that to the extent AT&T does face certain types of network or spectrum capacity issues, these issues are shared by all operators and AT&T is in no way unique.¹⁸ Recognizing that it must alter its argument, AT&T now states that although capacity issues affect the entire industry, AT&T is facing these issues "sooner and on a greater scale"¹⁹ for two specific reasons: (1) "AT&T has pioneered the mobile broadband revolution"; and (2) "unlike some of its competitors, AT&T must simultaneously support tens of millions of customers and embedded handsets using three different generations of technology: GSM, UMTS/HSPA, and now LTE."²⁰ Whether or not AT&T was a "pioneer" in deploying mobile broadband services is completely irrelevant to whether AT&T faces network or spectrum capacity issues. Accordingly, AT&T's first argument that it faces capacity issues sooner and on a greater scale than other providers because it is a mobile broadband "pioneer" is incorrect.²¹

¹⁸ *Joint Opposition* at p. 20.

¹⁹ *Id.*

²⁰ *Id.* at 20-21.

²¹ Even if "pioneer" status was a plausible basis for claiming network or spectrum capacity issues, which it is not, it incorrectly assumes that AT&T was forging ahead on the leading edge of 4G by itself. Indeed, AT&T has noted MetroPCS's launching of "the nation's first commercially available LTE smartphone for its new 4G LTE network." (*Petition to Deny* at p. 12) Similarly, Clearwire, which already markets to American consumers 4G wireless broadband service using Worldwide Interoperability for Microwave Access ("WiMAX") technology is now in the midst of LTE 4G trials that deliver "mind blowing" results of "60-90 Mbps of user data rate while you're driving [at] fifty miles an hour." (*Petition to Deny* at p. 93) AT&T only wishes it could deliver such results to its customers. The fact that Clearwire and MetroPCS can support 3G and 4G services simultaneously without crying spectrum poverty clearly demonstrates that AT&T's competitors can be both leading edge or "pioneer" service providers and supporters of multiple technologies and/or generations on multiple frequency bands.

AT&T's fallback position for why it must eliminate a 4G T-Mobile from the marketplace is that it *must* support three different technologies and that "it takes years to transition customers from one technology to the next"²² and that "such transitions, particularly when they involve large numbers of customers, require significant time to accomplish in a customer-friendly way."²³ RTG pointed out in its *Petition to Deny* that operators such as Verizon Wireless are supporting just as many customers as AT&T using three generations of technologies -- Code Division Multiple Access ("CDMA")/ Evolution Data Optimized ("EV-DO")/LTE over at least four different frequency bands -- and Verizon Wireless has done so *without* experiencing any capacity problems.²⁴ AT&T has presented no evidence demonstrating that its provision of multi-mode, multi-band services to consumers causes more severe capacity issues than other mobile wireless providers operating just as complex multi-mode, multi-band networks. AT&T needs to look no further than T-Mobile to see an example of a mobile wireless service provider *not* needing to migrate to LTE to provide its customers with *faster* download speeds and *fewer* dropped calls. AT&T could have followed T-Mobile's footsteps and adopted HSPA +21 and HSPA +42 network-wide without capacity issues and its decision not to do so does not justify removal of a viable, facilities-based competitor from the retail marketplace.

D. AT&T Has Failed To Explore Alternative, Proven and Less Expensive Methods of Addressing Its Alleged Capacity Problems.

In its *Joint Opposition*, AT&T continues to claim that it has "pursued all reasonable measures at its disposal to address its spectrum and capacity constraints."²⁵ However, it fails to

²² *Joint Opposition* at p. 33.

²³ *Joint Opposition* at p. 32.

²⁴ *Petition to Deny* at p. 8.

²⁵ *Joint Opposition* at p. 63.

provide any persuasive justification for its failure to pursue the proven and less expensive alternative methods of addressing its capacity problems pointed out by RTG in its *Petition to Deny*. RTG proposed two alternative means by which AT&T could reduce capacity problems, launch LTE quickly and in more locations, and do so without incurring a \$39 billion dinner tab. Specifically, RTG proposed that AT&T first explore taking advantage of either LTE data roaming agreements with other service providers or enter into network-sharing solutions, especially in those areas where AT&T is allegedly spectrum-poor or in those locations, which are predominantly rural, where it deems LTE too expensive to deploy on its own dime.²⁶ AT&T dismisses the data roaming option with only a few sentences by returning to the oft-mentioned excuse that data roaming fails to “produce capacity-expanding efficiencies” and does not obtain “channel-pooling efficiencies and elimination of redundant control channels.”²⁷ AT&T unnecessarily narrows its list of possible solutions to just those involving “channel pooling” and removing “redundant control channels” instead of focusing on the greater, more general concern of supporting its nationwide customers with 2G, 3G and 4G coverage without taxing its capacity. With data roaming alone, AT&T could transparently provide its entire customer base with more coverage and capacity options and not remove a viable 4G competitor. For AT&T’s remaining 2G and 3G customers, which AT&T argues are taking up valuable 850 Megahertz (“MHz”) and 1900 MHz spectrum, AT&T could allow them to roam on T-Mobile’s network today because the vast majority of mobile devices in North America that support GSM, along with General Packet Radio Service (“GPRS”)/Enhanced Data Rate for GSM Evolution (“EDGE”), work on these two frequencies. And even if a small fraction of AT&T’s customers did not have access to these devices, the extra capacity AT&T would gain from offsetting their collective usage would allow the flexibility to add more customers or alternatively fast-track

²⁶ *Petition to Deny* at pp. 11-13.

²⁷ *Joint Opposition* at p. 72.

those bands for UMTS/HSPA or LTE use. Conventional wisdom suggests that it is more highly populated markets (*i.e.* cities) that face capacity challenges first, and quite conveniently, T-Mobile is an urban-centric provider of GSM/EDGE/HSPA coverage which had been very receptive to entering into reciprocal 2G and 3G data roaming agreements with AT&T for months before the announcement of the takeover.

Alternatively, if AT&T is more concerned about capacity issues in urban areas in order to provide LTE to its customers, it could enter into LTE roaming agreements with Verizon Wireless, MetroPCS, Leap, Lightsquared, US Cellular, and Clearwire, all of which have launched commercial LTE service or are actively preparing for imminent LTE rollouts.²⁸ With this many potential LTE roaming partners locally, regionally and nationally, AT&T has enormous flexibility to better manage its existing spectrum portfolio until it builds-out its own LTE network nationwide, whether to 80% of the country's population, 97%, or any other percentage it deems prudent. As RTG stated in its *Petition to Deny*, there are numerous small and rural member carriers who would love the opportunity to enter into reciprocal LTE roaming agreements with AT&T.²⁹ RTG's point here is that data roaming agreements are an obvious, reasonable and instantaneous means by which AT&T can gain network and spectrum capacity throughout the country, and it can do so at each and every frequency band and technology evolution level operated by AT&T. In short, it is a perfect solution, and one that is not only guaranteed under Commission rules but also one that could actually help AT&T increase wholesale revenue. AT&T glosses over roaming as an alternative solution because it knows that it is unable to adequately refute all the mutually-beneficial aspects and would cost, if anything, a fraction of the \$39 billion takeover price tag.

²⁸ *Public Interest Statement* at pp. 78-94.

²⁹ *Petition to Deny* at p. 12.

Yet another reasonable alternative that RTG suggests to AT&T is that of “network sharing.” AT&T dismisses this solution on two grounds -- first, that T-Mobile does not currently provide LTE and second, that “any close intertwining of two networks would raise complex governance and network-planning issues.”³⁰ As discussed above, there are at least a half-dozen licensed, facilities-based companies operating or soon-to-be operating LTE networks that could work with AT&T to jointly build entire cities, highway corridors or even entire regions. Additionally, there are dozens more rural Advanced Wireless Services (“AWS”) and 700 MHz licensees across the country who could add their own spectrum to a prospective joint-venture in order to help add more capacity to the jointly planned network.³¹ Finally, there might be hundreds of local telephone companies, wireless service providers and other interested parties who could provide not only the necessary spectrum, but also vital capital to finance LTE network build-outs. These network-sharing ventures are extremely common in other countries.³² However, for AT&T to claim that such network-sharing agreements are impractical because they “raise complex governance issues and network planning issues” is belied by its own experience. After Cingular Wireless, LLC and AT&T Wireless Services, Inc. completely migrated to GSM, the two companies (both of which are direct predecessors to AT&T) entered into a joint-venture that fast-tracked the build-out of GSM on highways and interstates in rural markets.³³ The “GSM Corridor” project is a classic example of two companies

³⁰ *Joint Opposition* at p. 72.

³¹ Maisie Ramsay, Ericsson, NetAmerica Work on Rural Broadband, Wireless Week (March 31, 2011), <http://www.wirelessweek.com/Articles/2011/03/shows-and-conferences-Ericsson-NetAmerica-Work-on-Rural-Broadband/>; *See also* <http://www.lightsquared.com/what-we-do/operating-model/>.

³² Australia witnessed a very long-term 3G network sharing agreement between Vodafone Hutchison and Telstra. In the United Kingdom, Hutchison 3 and T-Mobile UK entered into nationwide 3G/UMTS network-sharing agreements, as did Vodafone and O2. Much closer to home, in Canada, Bell Mobility and Telus have for years worked together in a network-sharing agreement. Sweden (Telenor/Tele2), Poland (PTK Centertel/Play) and Russia (MegaFon/MTS/Vimpelcom) are just a few of the countries where LTE network-sharing agreements are already in place.

³³ GSM Corridor, LLC Joint Venture of AT&T Wireless Services, Inc. and Cingular Wireless LLC, <http://transition.fcc.gov/transaction/att-cingular.html>.

working together to expeditiously build-out a new technology by sharing resources, whether it be capital or spectrum or personnel or all three. And the GSM Corridor project was no small feat – it consisted of approximately 4,000 miles of highway coverage. For AT&T to seriously suggest that it is unable to manage a similar project today, despite it doing so just a few years ago, is patently absurd. Just as with roaming agreements, AT&T tries to sweep network-sharing agreements under the rug because it knows full well that it is a very successful solution that AT&T has used before with much success, but does not help its case in *removing* T-Mobile as a marketplace competitor. AT&T’s inability to respond effectively to alternative solutions proposed by RTG is evidence enough for the Commission to conclude that this transaction in no way promotes the public interest. At a minimum it should compel the Commission to initiate a hearing to settle material questions of fact in order to determine whether the transaction, on balance, serves the public interest.

E. The “Public Support” For This Transaction is Manufactured and the Direct Result of AT&T’s Past Financial Contributions and Unprecedented Public Relations and Lobbying Campaign.

AT&T’s unprecedented public relations and lobbying campaign to gain support for the T-Mobile merger is staggering. According to the Center for Responsive Politics (“Center”), AT&T has spent \$6.8 million dollars in the first three months of 2011 to hire lobbyists and lawyers to garner support for the deal.³⁴ AT&T’s lobbying expenditures are the third-largest among companies and trade groups so far this year³⁵ and AT&T is on track to spend more than the \$15 million it paid lobbyists in 2010. In addition, AT&T has been donating significant money to many charities supported by key members of Congress during the pendency of the applications.³⁶ In contrast,

³⁴ See <http://www.opensecrets.org/news/2011/06/ceo-6-2-2011.html>.

³⁵ See <http://www.opensecrets.org/orgs/summary.php?id=D000000076>.

³⁶ See <http://www.opensecrets.org/news/2011/06/ceo-6-2-2011.html>.

parties opposing the proposed merger have spent \$583,000 to date which is less than one-tenth of AT&T's lobbying expenditures.³⁷

AT&T's claims of gubernatorial support for the proposed merger are undermined by the greater number of governors who do *not* support the merger and AT&T's financial ties to those governors supporting the transaction. AT&T states that governors of eighteen states support the proposed merger.³⁸ What AT&T does not state is that twice as many governors, 38 state and territory governors in all, *do not support* the proposed merger. This means that over two-thirds of the governors in the United States *do not support* the merger. AT&T also fails to disclose that it has made substantial donations to some of those governors cited as supporting the proposed merger. Governor Nathan Deal of Georgia received \$50,000 from AT&T for his inauguration and transition.³⁹ Governor Nikki Haley of South Carolina received \$3,500 from the AT&T Political Action Committee for her election campaign.⁴⁰ Meanwhile, Governor Mary Fallin of Oklahoma has also received monetary benefits from AT&T; AT&T directed \$10,000 to her campaign as a United States Representative in 2009 as well as her state gubernatorial campaign.⁴¹ In addition, AT&T is a key sponsor of Louisiana Governor Bobby Jindal's wife's charity, the Supriya Jindal Foundation.⁴²

³⁷ Cecilia Kang, *AT&T Ramps Up Lobby for Proposed T-Mobile Merger*, The Washington Post (May 31, 2011), http://www.washingtonpost.com/business/economy/atandt-ramps-up-lobby-for-proposed-t-mobile-merger/2011/05/31/AGYcGmFH_story.html.

³⁸ *Joint Opposition* at p. 1.

³⁹ Aaron Gould Sheinin, *Deal Raises More Than \$1.7 Million for Inaugural*, The Atlanta Journal-Constitution (May 27, 2011), <http://www.ajc.com/news/georgia-politics-elections/deal-raises-more-than-959408.html>.

⁴⁰ Cecilia Kang, *AT&T's Supporters and Their Complicated Financial Ties*, The Washington Post (June 1, 2011), http://www.washingtonpost.com/blogs/post-tech/post/atandts-supporters-and-their-complicated-financial-ties/2011/05/31/AGxZVAGH_blog.html.

⁴¹ *Id.*

⁴² Cecilia Kang, *AT&T's Supporters and Their Complicated Financial Ties*, The Washington Post (June 1, 2011), http://www.washingtonpost.com/blogs/post-tech/post/atandts-supporters-and-their-complicated-financial-ties/2011/05/31/AGxZVAGH_blog.html.

The political donations made to these governors and the financial support given to the charity of a governor's wife at the very least raise questions of manufactured support which should be examined in an evidentiary hearing under Section 309(e).

The Congressional Black Caucus ("CBC") Foundation and Congressional Hispanic Caucus ("CHC") Institute have also been major beneficiaries of AT&T's generosity.⁴³ Several lawmakers belonging to the two minority caucuses serve on the House Judiciary Committee, which held a hearing on the AT&T/T-Mobile deal.⁴⁴ An AT&T official, Marie Long, chairs the Corporate Advisory Council for the CBC Foundation, while another AT&T employee, Jerry Fuentes, serves on the CHC Institute's board of directors. Of additional concern is the fact that much financial support goes unreported in federal databases. AT&T's attempts to manufacture support for its T-Mobile takeover even includes organizations with central missions wholly unrelated to the provision or use of telecommunications. For example, in recent weeks, the NAACP, the Gay & Lesbian Alliance Against Defamation ("GLAAD") and the National Education Association have each issued public statements in support of the AT&T deal.⁴⁵ The NAACP received more than \$1 million from AT&T in 2009, according to the minority group's annual report.⁴⁶ Moreover, the NAACP received funding in the six figures dating back to 2006 according to the group's annual reports.⁴⁷ GLAAD received

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ John Bresnahan, *AT&T Enriches Lawmakers' Pet Charities*, Politico (June 1, 2011), <http://www.politico.com/news/stories/0511/55983.html>.

⁴⁶ Cecilia Kang, *AT&T's Supporters and Their Complicated Financial Ties*, The Washington Post (June 1, 2011), http://www.washingtonpost.com/blogs/post-tech/post/atandts-supporters-and-their-complicated-financial-ties/2011/05/31/AGxZVAGH_blog.html. See also http://naacp.3cdn.net/99f25becf37ea9364_v6m6i48q8.pdf

⁴⁷ John Bresnahan, *AT&T Enriches Lawmakers' Pet Charities*, Politico (June 1, 2011), <http://www.politico.com/news/stories/0511/55983.html>.

\$50,000 from AT&T.⁴⁸ These groups claim that their public positions have nothing to do with the money they received from AT&T, however, it is impossible to imagine that these financial contributions are not an inducement for these entities to provide support to AT&T in return. Clearly, the financial support provided by AT&T to key members of Congress and special interest groups has resulted in support for AT&T's proposed merger. Such support, however, amounts to manufactured support only.

In contrast to the support manufactured by AT&T are the concerns of several state attorneys general and public utilities commissions, evidenced by their formal inquiries and investigations. As of June 20, 2011, at least four states have begun some type of merger review. In the country's most populous state, the California Public Utilities Commission launched a formal investigation of the proposed takeover⁴⁹ and it plans to hold several public meetings beginning in July to explore the potential public interest harms.⁵⁰ The Attorneys General of New York⁵¹, Minnesota⁵² and Connecticut⁵³ have all announced formal reviews of the transaction as well. The State of New Jersey's Division of Rate Counsel has already filed a petition to deny the merger.⁵⁴ Meanwhile, the

⁴⁸ Eliza Krigman, *AT&T Gave Cash to Merger Backers*, Politico (June 10, 2011), <http://www.politico.com/news/stories/0611/56660.html>.

⁴⁹ *In the Matter of Order Instituting Investigation on the Commission's Own Motion Into the Planned Purchase and Acquisition by AT&T Inc. of T-Mobile USA, Inc. and its Effect on California Ratepayers and the California Economy*, California Public Utilities Commission, Investigation 11-06-009 (released June 15, 2011), http://docs.cpuc.ca.gov/PUBLISHED/AGENDA_DECISION/136917.htm.

⁵⁰ *CPUC To Evaluate AT&T Proposed Acquisition of T-Mobile*, California Public Utilities Commission (June 9, 2011), http://docs.cpuc.ca.gov/published/News_release/136944.htm.

⁵¹ Maisie Ramsay, *NY Attorney General 'Concerned' by AT&T, T-Mobile Merger, Plans Review*, Wireless Week (March 30, 2011), <http://www.wirelessweek.com/News/2011/03/Policy-and-Industry-NY-Attorney-General-ATT-T-Mobile-Merger-Legal/>.

⁵² Phil Goldstein, *State Attorneys General Take Aim at AT&T-T-Mobile Deal*, Fierce Wireless (March 30, 2011), <http://www.fiercewireless.com/story/state-attorneys-general-take-aim-attt-mobile-deal/2011-03-30>.

⁵³ *CTAG Vows AT&T-T-Mobile Close Scrutiny*, Hartford Business Journal (March 30, 2011), <http://www.hartfordbusiness.com/news/17678.html>.

⁵⁴ Petition to Deny of the State of New Jersey Division of Rate Counsel (filed May 31, 2011).

Louisiana Public Service Commission has opened a proceeding⁵⁵ on the takeover and Rob McKenna, Attorney General of T-Mobile's home state of Washington is also investigating the deal.⁵⁶ Additionally, the public outpouring of those opposing this transaction is overwhelming when compared to those who support it.

III. THE PROPOSED TRANSACTION WILL STIFLE INNOVATION AND INVESTMENT.

RTG's *Petition to Deny* demonstrated that the proposed takeover of T-Mobile by AT&T will stifle innovation and investment in several vertical markets within the mobile wireless industry.⁵⁷ As discussed below, AT&T's attempts to show that innovation and investment will not be harmed utterly fail.

A. AT&T's Increased Market Power Will Allow It to Stifle Innovation in the Device, Operating System and Mobile Applications Sectors.

AT&T incorrectly contends that removing T-Mobile from the marketplace as a viable nationwide competitor will have no impact on the mobile device marketplace⁵⁸ or the mobile operating system and mobile applications marketplaces.⁵⁹ In fact, AT&T's newly acquired market power after purchasing T-Mobile will allow it to stifle innovation, and the potential of device innovations to threaten AT&T's market dominance will incentivize AT&T to do so. As RTG demonstrated in its *Petition to Deny*, the removal of T-Mobile as a market participant will hinder innovation and investment by giving AT&T the power to continue to create a "walled garden" of

⁵⁵ Maisie Ramsay, *Louisiana Opens Comments on AT&T, T-Mobile Deal*, Wireless Week (May 20, 2011), <http://www.wirelessweek.com/News/2011/05/Policy-and-Industry-Louisiana-Comments-ATT-T-Mobile-Deal-Government/>.

⁵⁶ Sara Jerome, *T-Mobile's Home State Investigating AT&T Merger*, The Hill (March 29, 2011), <http://thehill.com/blogs/hillicon-valley/technology/152457-t-mos-home-state-investigating-atat-merger>.

⁵⁷ *Petition to Deny* at pp. 26-33.

⁵⁸ *Joint Opposition* at pp. 143-155.

⁵⁹ *Joint Opposition* at pp. 178-179.

devices, operating systems and applications. The truth is that like in most industries, there is a direct correlation between market share and negotiating power. Furthermore, mobile device vendors do in fact need a “critical mass” before they develop and manufacture customized mobile devices – and not even the dozens of remaining GSM/UMTS-based rural operators in the United States working together can overcome AT&T’s market share or years of AT&T entering into numerous device exclusivity agreements with mobile device vendors. AT&T’s increased market share coupled with the inability of smaller remaining competitors to create the necessary “critical mass” of customers creates an environment where AT&T will have both the ability and incentive to deter mobile innovation.⁶⁰

AT&T argues that although it will control over 99% of the GSM subscriber base in the United States post-merger, its overwhelming market share will in no way prevent the few remaining rural GSM/UMTS-based competitors from acquiring highly sought-after mobile devices. However, in a section of the *Joint Opposition* discussing the impact of the merger on the mobile device sector entitled “GSM/UMTS”, AT&T fails to mention a single GSM/UMTS operator in the United States and instead discusses only CDMA operators. By discounting the actual predicaments faced by GSM/UMTS providers, including dozens of RTG members, AT&T does nothing to refute the fact that its monopoly power in the domestic GSM marketplace resulting from a merger with T-Mobile will diminish competition and innovation. Rural GSM/UMTS mobile wireless operators are finding it extremely difficult to survive in the status quo where mobile device vendors will not develop new, innovative GSM/UMTS devices because such operators simply are not big enough to make such device development worth the vendors’ time and the continued survival of these GSM/UMTS operators will become even more challenging if the merger is approved. Instead of focusing on the

⁶⁰ In addition to its incentive to stifle innovation from small competitors, AT&T will have no incentive to invest in device innovation on its own. The speculative benefits of investing in research and development will not outweigh the enormous cost of such investment, given AT&T’s position of market dominance.

real-life impact this transaction will have on RTG's GSM/UMTS members, AT&T discusses how its domestic CDMA-based competitors might react, or alternatively, how AT&T's smaller market share on the global level somehow offsets this monopoly power. If AT&T is allowed to swallow T-Mobile, it will become nearly impossible for rural GSM/UMTS mobile wireless operators to survive.

The stifling of mobile device innovation and investment is not restricted to just the market for GSM/UMTS devices. For several years, AT&T and Verizon Wireless have gone to great lengths to influence the international standards-development community in order to create self-serving LTE "band classes" within the 700 MHz Band.⁶¹ The band classes pushed by AT&T and Verizon Wireless strategically omit the Lower 700 MHz A Block and therefore deny full device interoperability throughout the 700 MHz Band. As discussed above, mobile device vendors have no problems fulfilling order requests for AT&T and Verizon Wireless because of their sheer size, but they will be less willing to design, develop, test and manufacture LTE devices that are intended for the small number of customers and mobile wireless service providers using 700 MHz in the U.S. Without the "critical mass" of demand which can be provided by only AT&T or Verizon Wireless, mobile device vendors will forego developing fully interoperable LTE devices, and that in turn will prevent the customers of small and rural carriers from being able to roam using LTE on AT&T and Verizon Wireless anytime in the foreseeable future. When the difficulties faced by GSM/UMTS-based operators are combined with the well-established difficulties encountered by 700 MHz licensees in dire need of devices that are interoperable across the entire band, it is plainly obvious that the proposed takeover stifles innovation and undermines competition.

⁶¹ *Petition to Deny* at p. 23; *See also* Comments of the United States Cellular Corporation at p. 5 ("Specifically, the record in RM-11592 illustrates how AT&T was able to acquire 700 MHz spectrum and then dictate changes in 3GPP standards to subdivide Band Class 12, thereby creating a unique Band Class 17 encompassing its dominant Lower 700 MHz B and C Block spectrum holdings.").

Not only will AT&T's post-transaction market share prevent small and rural carriers from gaining enough critical mass to influence the development of new, innovative and highly-sought mobile devices that are not subject to exclusivity agreements, this shrinking of the available mobile device portfolio will also cause repercussions in the mobile operating system and mobile applications marketplace. As RTG explained in detail in its *Petition to Deny*, AT&T already dictates which mobile operating system it will put on each device for one in three Americans. The larger AT&T's share of the mobile device market grows, the more control AT&T can exert on Microsoft, HP/Palm, RIM, and Google (Android) as creators of mobile operating systems, and this does not include the power AT&T will have to stymie any new mobile operating system that might otherwise get developed in the future.

B. Removing T-Mobile Will Irreparably Harm the Roaming, Wholesale and M2M Markets.

If there is one prototypical market which characterizes just how anticompetitive the proposed transaction is, it is the roaming market. The competitiveness of the roaming market, and to a somewhat lesser extent the wholesale and M2M markets, will be irreparably harmed by T-Mobile ceasing to exist.⁶² For starters, AT&T contends, with all apparent seriousness, that “there is no basis to concerns that, because the merger will eliminate one of the country’s two nationwide GSM networks, it will create a ‘GSM Monopoly’.”⁶³ The Merriam-Webster Dictionary defines monopoly as either “exclusive possession or control” or “a commodity controlled by one party.” For AT&T to even suggest that its exclusive control over nationwide access to GSM roaming is somehow not evidence of its monopoly status is laughable.

⁶² *Petition to Deny* at p. 51; See also *Petition of MetroPCS Communications, Inc. and Ntelos Inc. to Condition Consent, or Deny Application* at p. 56 (“By acquiring T-Mobile, AT&T will at one stroke eliminate its only large competitor for GSM roaming partners. Mid-tier, regional and rural carriers using GSM will not even have the limited roaming alternative to AT&T that T-Mobile has provided.”).

⁶³ *Joint Opposition* at p. 158.

Even assuming that AT&T today is a net sender of roaming traffic, this does not alleviate numerous other concerns RTG has about AT&T's control over the roaming marketplace. In an apparent effort to assuage concerns that it will impose high roaming rates for voice and data service, AT&T points to the Commission's recent *Data Roaming Order* which mandates that all mobile wireless operators offer data roaming at commercially-reasonable rates to other requesting operators.⁶⁴ The guarantees afforded to mobile wireless operators by the new data roaming rules are naturally subject to procedural and administrative delays, which can be crippling to providers already in operation. This is in addition to carrier-instituted delays based on testing, operations and of course negotiations. Accordingly, AT&T's competitors and prospective data roaming partners cannot assume that relying on data roaming rules alone will extinguish the myriad of competitive harms that will result from AT&T taking over T-Mobile.⁶⁵

As RTG discussed in its *Petition to Deny*, AT&T's monopoly control over the domestic roaming marketplace is compounded by the fact that it will exert the same control, this time *not* regulated by the Commission, over international GSM roaming. International mobile operators and foreign countries have filed comments and petitions to deny with the FCC in the present docket pleading with the Commission to take notice of this supremely anticompetitive tactic.⁶⁶ However, as

⁶⁴ *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, WT Docket No. 05-265, FCC 11-52 (released April 7, 2011) ("*Data Roaming Order*").

⁶⁵ As AT&T knows well, Verizon Wireless, its fellow Twin Bell, has filed suit *against* the Commission in an attempt to scuttle the rule by asserting that the FCC exceeded the rulemaking power granted to it by Congress. The merits of this case notwithstanding, it is premature for AT&T to pass the buck by telling current and prospective roaming partners that if they believe they have been treated unfairly they should take it up with the FCC. That said, RTG and its members would heartily welcome AT&T's active support in helping defend the Commission's data roaming rulemaking initiative.

⁶⁶ See Comments of Vodafone Group (filed May 31, 2011) at p. 2 ("The proposed merger would therefore mean that the United States would become one of a very few markets in the world in which wholesale international roaming services for GSM/WCDMA operators are not subject to competition between at least two network providers."); Comments of the New Zealand Ministry of Economic Development (filed May 31, 2011) at p. 2 ("New Zealand operators wishing to purchase [International Mobile Roaming] services enabling their customers to roam in the United States, will effectively have only one viable supplier, in the form of AT&T, Inc."); Comments of Japan Communications Inc. (filed May 31, 2011) at p. 2 ("T-Mobile is currently one of the few carriers willing to offer meaningful wholesale access and is one of

RTG has already pointed out, this monopoly power over international roaming access is not limited to just foreigners.⁶⁷ Thousands of Americans living abroad full or part time, including members of our country's armed services and diplomatic corps, will now have zero options when they roam "off-network" back in the United States and AT&T is free to jack-up roaming rates to whatever level it so desires. Previously, AT&T's market power was tempered by T-Mobile's presence, at least in urban areas. Currently, international carriers like Vodafone could threaten to send voice and data roaming traffic to T-Mobile if AT&T unilaterally imposed higher roaming rates, but post-transaction, all GSM/UMTS-based carriers throughout the world will have no other option for customers wanting to roam into the United States but to send them to AT&T and pay whatever rates AT&T wishes to charge. The international roaming market is a multi-billion dollar industry, and together AT&T and T-Mobile generate hundreds of millions of dollars *annually* on both the retail rates their customers pay for international roaming and the wholesale rates foreign carriers pay to roam in the United States. Were T-Mobile to disappear and the United States be left with only one GSM/UMTS-based nationwide carrier, AT&T could artificially inflate roaming rates on both Americans and foreigners and reap billions of dollars in profits. RTG implores the Commission to conduct a hearing on the serious anticompetitive repercussions that would befall all Americans reliant on GSM/UMTS roaming service if the merger is allowed to proceed.

While AT&T's proposed monopoly on GSM/UMTS roaming in both the domestic marketplace and international marketplace will harm consumers in those marketplaces, its stranglehold on the sole GSM/UMTS-based nationwide network will also detrimentally impact the wholesale, or mobile virtual network operator ("MVNO") marketplace and M2M marketplace. RTG

only two nationwide carriers using GSM-based technology, the standard throughout most of the rest of the world. The proposed transaction...would essentially give AT&T monopoly control of roaming agreements for carriers with international customers.").

⁶⁷ *Petition to Deny* at p. 30.

raised both of these issues in its *Petition to Deny*. In its *Joint Opposition* response, AT&T brushed off both of these matters by stating that “the departure of T-Mobile USA from the marketplace will not significantly impact wholesale competition”⁶⁸ and “T-Mobile USA has a very limited presence in M2M services.”⁶⁹ Both of these terse dismissals are misguided for the same reason as its dismissal of T-Mobile’s existence as a nationwide competitor at the retail level. According to AT&T’s logic, T-Mobile is not good at anything, yet amazingly, it has grown and remained profitable for over a dozen years and amassed over 34 million customers. The threats posed to the competitiveness of the MVNO and M2M markets by AT&T’s acquisition of T-Mobile are very real. This is so not because AT&T is a larger company or because T-Mobile is heavily involved in those markets today, but rather because the acquisition removes T-Mobile from ever becoming a carrier capable of having a “significant impact” or “greater presence” in those respective markets, and without T-Mobile there simply are no other GSM/UMTS alternatives. AT&T completely failed to respond to RTG’s argument that because it partially owns Tracfone’s parent company *and* simultaneously controls the lion’s share of the SIM-card-based M2M ecosystem, AT&T already exerts undue influence over prospective MVNO and M2M market entrants for the simple reason that there are no other alternatives using the same SIM-based GSM/UMTS technology. Once again, these facts, which AT&T declined to address in its *Joint Opposition*, are indicative of an anticompetitive marketplace, or at the very least, raise significant and material questions of fact that can only be answered in the course of a Commission hearing under Section 309(e).

IV. THE PROPOSED TRANSACTION WILL RESULT IN LOST JOBS.

RTG presented ample historical evidence in its *Petition to Deny* of AT&T’s propensity to reduce its total number of employees after major acquisitions. Between 2002 and 2010, AT&T

⁶⁸ *Joint Opposition* at p. 215.

⁶⁹ *Joint Opposition* at p. 198.

reduced the size of its workforce by over 107,000 employees after repeated acquisitions of competitors.⁷⁰ In its *Joint Opposition*, AT&T fails to refute this painful fact. Instead, AT&T spends over ten pages talking about how the proposed transaction will result in theoretical job growth, not in the hallways of a post-merger AT&T, but in the economy-at-large.⁷¹ These claims are speculative at best and have no basis in history or reality. By contrast, throughout the *Joint Opposition*, AT&T goes to great lengths to incorporate very specific financial and technical projections about network capacity improvements⁷², cash flow savings⁷³, and population percentages to be covered by LTE should this deal get approved.⁷⁴ It is interesting that a company as sophisticated and resourceful as AT&T, which is so willing to proffer exacting financial and technical details on some matters that are completely internal, is completely *unable*, or more likely unwilling, to state with any certainty whatsoever how many employees it will retain from the current staffs of AT&T and T-Mobile. This omission is noteworthy. Surely, if AT&T knew that its post-transaction employment headcount would equal or surpass the current headcount of the two separate companies it would proudly include that claim in its *Joint Opposition*. The truth is that AT&T is relying on vague promises of *non-company-specific* “job growth” (all of which is postulated by third parties) because it knows full well that this merger will result in the shedding of current AT&T and T-Mobile employees.

⁷⁰ *Petition to Deny* at p. 34.

⁷¹ *Joint Opposition* at pp. 83-93.

⁷² *Joint Opposition* at p. 57. (“As described above, established engineering principles and real-world experience of the engineers running AT&T’s network demonstrate that the transaction will enable AT&T to effectively *double* the capacity in the thousands of areas in which it can engage in cell-splitting due to the integration of T-Mobile USA’s sites; free up significant capacity due to the elimination of redundant control channels that currently occupy 4.8 to 10 MHz of spectrum; increase capacity by another ten to fifteen percent as a result of channel pooling; and enable spectrum utilization efficiencies.”)

⁷³ *Joint Opposition* at p. 74. (“Using a standard discounted cash flow methodology, AT&T projects these savings will exceed \$39 billion, with an annual run rate exceeding \$3 billion starting the third year after closing.”)

⁷⁴ *Joint Opposition* at p. 75. (“AT&T commits that, consistent with those critical national priorities, it will deploy LTE within six years after closing to over 97 percent of Americans – 55 million more Americans than AT&T’s pre-merger plans.”)

Just one example of such a theoretical and distorted claim of job growth comes from the Communications Workers of America (“CWA”), which asserts that “AT&T’s incremental additional \$8 billion investment in wireless infrastructure will create as many as 96,000 jobs in the U.S. economy.”⁷⁵ To support this assertion, CWA itself relies on, and ultimately misstates, yet another separate report issued by the Economic Policy Institute (“EPI”). In its initial report, EPI optimistically projects that a “\$1 billion investment would create 12,000 job-years’ worth of employment.”⁷⁶ This subtle difference in phrasing is important because a “job” and a “job-year” are completely different things. A “job-year” simply means one person working one job for a period of one calendar year. Thus, in theory, the 96,000 “job-years” (not jobs) that AT&T and CWA project will stem from this transaction depends not only upon at least \$8 billion in investments, but also the fact that the \$8 billion investment must occur immediately for that many jobs to actually get created, which is impossible. Furthermore, a more careful reading of EPI’s report states that the 96,000 “job-years” figure is itself a ceiling value for a best-case scenario.⁷⁷ Clearly, CWA’s claims of job growth are not only misstated, they are overly-optimistic claims of misstated data.

The important point to take away from this more enlightened exposure of AT&T’s numerous claims of “job growth” is that they are at best unreliable and at worst complete fabrications. At a time when the national unemployment rate is 9.1% and rising, the Commission cannot rely upon theories and potentials downstream jobs to gauge what is in the public interest. What is known for certain is that AT&T refuses to disclose just how many jobs it will cut from the ranks of its own company or more likely T-Mobile. As RTG has already noted, in other countries which have

⁷⁵ Comments of Communications Workers of America (filed May 31, 2011) at p. 2.

⁷⁶ Ethan Pollack, *The Jobs Impact of Telecom Investment*, Economic Policy Institute, Policy Memorandum #185 (released May 31, 2011) (“*Policy Memorandum #185*”).

⁷⁷ *Id.*

recently experienced consolidation among its “national” mobile operators, there have been thousands of jobs cut immediately after a deal such as this one has closed.⁷⁸ Therefore, it is completely reasonable to assume that just as AT&T plans to shut down redundant cell sites following a merger in order to save money, it will also eliminate redundant employees as soon as it can get government approval to close this deal.

V. THE HARMS RESULTING FROM THE TRANSACTION OUTWEIGH ANY PUBLIC INTEREST BENEFITS.

AT&T has failed to meet its burden of proving that the proposed transaction, on balance, serves the public interest. As discussed above, the only public interest benefits that would result from approval of the proposed transaction would be those accruing to members of the public who own shares of AT&T stock. AT&T’s self serving promises of improved customer care are belied by its horrendous track record and failure to make any detailed commitment to improving customer care. AT&T provides no persuasive support for its assertions that a takeover of T-Mobile is necessary for AT&T to continue building out its network to provide next generation mobile services; to the contrary, AT&T has numerous options available to it *today* that do not require the consolidation of two of the four largest wireless carriers.

Balanced against the paucity of public interest benefits are the demonstrated harms to the public interest that would result from approval of the proposed merger. AT&T has failed to recognize the continued incentive it will have to stifle innovation in device, operating system and applications markets as a result of its increased market power and it fails to rebut evidence of the harms to the roaming, wholesale and machine-to-machine markets that will result from approval of the proposed transaction. AT&T’s speculations about job growth in the overall economy do nothing to counter the demonstrated history of concrete job losses resulting from similar acquisitions. On

⁷⁸ *Petition to Deny* at p. 35.

balance, there is no question that the demonstrated public interest harms that would result from approval of the proposed transaction outweigh the speculative benefits.

VI. APPLICANTS' FAILURE TO MEET THEIR BURDEN OF DEMONSTRATING THAT THE PROPOSED TRANSACTION ON BALANCE SERVES THE PUBLIC INTEREST, AND THE EXISTENCE OF MATERIAL QUESTIONS OF FACT, REQUIRE THAT THE FCC HOLD AN EVIDENTIARY HEARING UNDER SECTION 309(e).

In its *Joint Opposition*, AT&T asserts its belief that “after a close review of the facts, the Commission will agree that this merger will generate enormous benefits for consumers, workers, and the economy, with no significant harm to competition.”⁷⁹ As discussed herein, AT&T has provided no “facts” that would support such a conclusion. If the FCC is unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact, Section 309(e) of the Act requires that the applications be designated for hearing. In its Petition to Deny, RTG spelled out numerous substantial and material questions of fact that need to be addressed in an evidentiary hearing before the Commission may consider granting approval for the proposed merger. Not once in its 235 page *Joint Opposition* did AT&T dispute the need for an evidentiary hearing. Accordingly, for the reasons set forth in RTG’s Petition to Deny, the Commission must hold an evidentiary hearing pursuant to Section 309(e) to address all issues of substantial and material fact, including those specifically referenced therein.

VII. CONCLUSION.

The FCC must uphold the public interest standard when examining the above referenced applications and determine on balance whether the public interest will be served. Under AT&T’s analysis, the public interest is served if AT&T can eliminate a strong competitor and improve its bottom line. AT&T adamantly believes that if it can improve its bottom line, the public interest will be served. AT&T has been in the mobile wireless business since its infancy and only through

⁷⁹ *Joint Opposition* at p. 19.

acquisition, bullying, and the use of its market power to control the terms and conditions of roaming to thwart competition has it positioned itself to be the second largest mobile carrier in the United States. Allowing it to eliminate the fourth largest nationwide carrier in order to become the largest nationwide carrier (by nearly 30 million subscribers) will harm consumers in the United States and globally by concentrating inordinate market power in the hands of a company with a history of anticompetitive conduct. The FCC must stand up to AT&T and find that approval of the applications is not in the public interest. Accordingly, RTG respectfully requests that the above referenced applications be denied or designated for hearing.

Respectfully submitted,

RURAL TELECOMMUNICATIONS GROUP, INC.

By: */s/ Caressa D. Bennet*

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June 20, 2011

CERTIFICATE OF SERVICE

I, Colleen von Hollen, of Bennet & Bennet, PLLC, 4350 East West Highway, Suite 201, Bethesda, MD 20814, hereby certify that a copy of the foregoing Reply to Joint Opposition to Petitions to Deny of the Rural Telecommunications Group, Inc. was served on this 20th day of June, 2011, via electronic mail, unless otherwise indicated, on those listed below:

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