Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Transfer Control of Licenses and Authorizations	WT Docket No. 11-65

REPLY BRIEF OF CREDO MOBILE IN SUPPORT OF PETITION TO DENY

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INTRODUCTION AND SUMMARY

The proposed merger between AT&T and T-Mobile will have a deleterious effect on competition and consumers, and render it difficult to succeed with business models like that of CREDO Mobile, Inc. ("CREDO"). The *de facto* duopoly created by a post-merger AT&T and Verizon will raise prices, reduce customer choices in handsets, applications, and wireless plans, and reduce the quality of customer service throughout the industry. CREDO's customers, who rely on innovations in the wireless arena to connect them with both mobile devices and service and with sophisticated tools for charitable giving, will be hard hit.

The Opposition of AT&T, Inc., T-Mobile USA, Inc., and Deutsche Telekom AG (collectively, "Applicants") fails to address CREDO's Petition to Deny and skirts the major issues raised by consumer groups and advocates of net neutrality like the Electronic Frontier Foundation. As these groups and others have demonstrated, the proposed merger will result in significant job loss, stifle innovation, and allow AT&T to manipulate internet and wireless traffic to suit its business and political ends. AT&T fails to meet this evidence head-on, and fails to demonstrate that a merger is necessary for it to expand broadband access or accomplish the other purported goals of the merger.

The Commission should exercise its authority to deny the proposed merger.

I. DECREASED COMPETITION WILL RAISE PRICES FOR WIRELESS PLANS AND REDUCE CONSUMERS' CHOICES.

A. The National Post-Paid Wireless Market Is Not Highly Competitive, and This Merger Will Lessen Existing Competition and Create a *De Facto* Duopoly.

Any analysis of the competitive effects of a potential merger requires a determination of the relevant market for the applicants. The 2010 DOJ/FTC Merger Guidelines explain that "[i]n any merger enforcement action, the Agencies will normally identify one or more relevant markets in which the merger may substantially lessen competition."[1] If allowed to proceed, this merger will lessen competition in multiple markets, including the entire nationwide wireless market, the market for national post-paid wireless carriers, the market for pre-paid wireless carriers, and others.[2]

The Applicants' Opposition filing argues that the relevant market for wireless services is not national.[3] This assertion ignores the basic economic reality that the most significant competition in the wireless industry currently occurs at the national level for post-paid wireless contracts. For example, the four major

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[1] U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines (Aug. 19, 2010), p. 7, http://www.justice.gov/atr/public/guidelines/hmg-2010.html.

[2] Sprint Nextel Corporation Petition to Deny, Attachment A, Declaration of Charles River Associates ("CRA Decl."), ¶ 30, WT Docket No. 11-65 (May 31, 2011).

[3] Joint Opposition of AT&T/T-Mobile ("Appl. Opp."), p. 105.

carriers of national post-paid service, AT&T, Verizon, Sprint, and T-Mobile, generally charge their customers uniform prices throughout the country, have nationwide advertising campaigns, and offer exclusive contracts and handset promotions nationally.[4]

The adverse competitive effect on the post-paid national wireless market is sufficient, in and of itself, to deny this merger. If AT&T acquires T-Mobile, only AT&T, Verizon, and Sprint will remain relevant in the national market. The post-merger AT&T will control nearly 45% of the total wireless market alone, and AT&T and Verizon combined will hold nearly 80% of the wireless market.[5]

The national market for post-paid wireless services is not just relevant, but indispensable, to the competitive analysis of the merger. Specifically, Verizon accounts for 39% of the post-paid wireless subscriber market, AT&T accounts for 32%, Sprint accounts for 15%, and T-Mobile accounts for 11%.[6] Regional carriers, therefore, account for less than 3% of all post-paid subscribers. The Applicants' assertions that the national market composed of post-paid carriers is not a relevant market to this analysis strains credulity.

The Applicants also argue in their Opposition that the relevant market must include regional carriers of pre-paid wireless services, such as MetroPCS and Leap

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[4] CRA Decl., ¶ 9.

[5] Declaration of Stephen Gunn, filed herewith ("Gunn Decl."), ¶ 6.

[6] *Id*. *See also* Sprint Nextel Corporation Petition to Deny, p. 11, n. 33.

(Cricket).[7] There are significant differences between these carriers and national carriers like AT&T and T-Mobile, which rely on post-paid, contract customers for the bulk of their business.[8] However, it should be noted that both AT&T and T-Mobile have introduced pre-paid phones to compete in this market.[9] The proposed merger will allow AT&T to dominate this market as well, to the detriment of the

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[7] Appl. Opp., p. 105.

[8] Regional pre-paid carriers are localized in specific geographical markets. Their services are available to only a select subset of the population that happen to reside in the geographic areas in which they are located. AT&T and T-Mobile, on the other hand, compete in most, if not all, metropolitan areas and offer nationwide services. Any effect on the consumer as a result of the merger must be considered nationally, as opposed to regionally. Additionally, regional carriers include a subscriber base that pales in comparison to any of the national carriers. For example, as of the end of 2010, AT&T had 95.5 million wireless subscribers, while Verizon had over 93 million wireless subscribers by the third quarter of 2010. *See Update: AT&T wireless subscribers hit 95.5 M*, Matt Hamblen, http://www.computerworld.com/s/article/9206641/Update_AT_T_wireless_subscribers_hit_95.5M [last accessed 6/14/11]. MetroPCS, however, had only 8.1 million subscribers as of the fourth quarter of 2010, while Leap (Cricket) had only 5.5 million subscribers. *See Leap Wireless shares gain on merger hopes*, Mike Freeman, http://www.signonsandiego.com/news/2011/mar/21/leap-wireless-shares-gain-merger-hopes/ [last accessed 6/14/11]; *MetroPCS Releases Fourth Quarter 2010 Subscriber Results*, Press Release, http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-newsArticle&ID=1513556&highlight [last accessed 6/14/11].

[9] For the AT&T GoPhone, *see* http://www.wireless.att.com/cell-phone-service/go-phones/index.jsp#fbid=N0EbUbXGsBU [last accessed 6/14/11]. For T-Mobile pre-paid, *see* http://www.t-mobile.com/shop/plans/Prepaid-Plans-Overview.aspx [last accessed 6/14/11].

low-income and underserved populations that use pre-paid phones in greater numbers.[10]

If this merger goes forward, AT&T and Verizon will be a wireless duopoly with a combined national wireless market share that is more than double the market share of the top two companies in the Oil (24.0 percent), Airline (30.7 percent), Banking (20.2 percent), and Auto (35.3 percent) industries.[11] A 1992 Congressional study deemed a duopoly of this magnitude ineffective to promote competition. In that study, pricing of the two main cellular players was identical in two-thirds of the studied markets.[12] Additional consolidation in an already highly concentrated market will inevitably hurt consumers through increased prices, decreased choices, lack of incentives to improve customer service, and decreased innovation. In short, the proposed merger will return the marketplace to its pre-1993 state of duopoly, with all of the attendant harms to the marketplace, the consumer, and innovation.

B. Prices for Wireless Services Will Rise in a Duopoly, Harming Consumers and Business Models Like CREDO's.

The acquisition of T-Mobile will, first and foremost, subject T-Mobile's current customers to higher prices. T-Mobile customers currently pay between $15

[10] CRA Decl., ¶¶ 40-44.

[11] Gunn Decl., ¶ 6.

[12] GAO Report: Concerns About Competition in the Cellular Telephone Service Industry (June 1992), http://archive.gao.gov/d33t10/147125.pdf.

and $50 less a month for their plans than for comparable AT&T plans.[13] It is inevitable that AT&T will discontinue the T-Mobile plans. AT&T has publicly admitted that it will not retain T-Mobile's pricing structure indefinitely.[14] Moreover, in their Opposition filing, the Applicants argue that "there is no basis to require the combined company to offer T-Mobile USA's existing rate plans to new customers. . . . AT&T already offers a broad selection of service plans, and competition will ensure that the combined company continues to do so."[15] This argument ignores the fact that the wireless market has grown less competitive since at least 2004,[16] and that it will become significantly less competitive if the proposed merger is approved.

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[13] *CR Analysis: T-Mobile is cheaper than AT&T*, Jeff Blyskal (April 8, 2011), http://news.consumerreports.org/electronics/2011/04/cr-analysis-t-mobile-is-cheaper-than-att.html [last accessed 6/14/11].

[14] *AT&T, T-Mobile file merger application; Q&A with James Cicconi*, Cecilia Kang (April 12, 2011) http://www.washingtonpost.com/blogs/post-tech/post/atandt-t-mobile-file-merger-application-qanda-with-james-cicconi/2011/04/11/AFhzCTQD_blog.html [last accessed 6/14/11].

[15] Appl. Opp., p. 219.

[16] Over the past five years, concentration has increased in the provision of mobile wireless services. The two largest providers, AT&T and Verizon, have 60 percent of both subscribers and revenue, and continue to gain share (accounting for 12.3 million net additions in 2008 and 14.1 million during 2009). The two next largest providers, T-Mobile and Sprint, had a combined 1.7 million net loss in subscribers during 2008 and gained 827,000 subscribers during 2009. One widely-used measure of industry concentration indicates that concentration has increased 32 percent since 2003 and 6.5 percent in the most recent year for which data is available. *See* FCC Fourteenth Report, *Annual Report and Analysis of Competitive Market*

A post-merger AT&T will wield enough market power to affect the prices of not only its own services, but of the wireless services offered by the remaining wireless players: Sprint and Verizon. While AT&T denies that a merger will result in anticompetitive coordinated actions, its denial is based on the faulty premise that the wireless marketplace is highly competitive.[17] As explained above, the consolidation of these two companies will result in an effective duopoly for national wireless services. Without T-Mobile setting the standard for lower prices and exhibiting restraint in increasing prices, there will be less incentive for the three remaining national carriers to compete on price.[18] Moreover, barriers to entry are too high to allow for any competition to underprice AT&T or Verizon in a duopoly.[19]

The cumulative effect of these changes will be to make CREDO's unique business model impracticable. CREDO relies on the network services of a major, national carrier, Sprint, to offer its carrier service to progressive, passionate consumers. Without the guarantee of sufficient competition to keep prices

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Conditions with Respect to Mobile Wireless, Including Commercial Mobile Service, 5/20/10, FCC 10-81, p. 6.

[17] Appl. Opp., p. 126.

[18] Gunn Decl., ¶ 8. *See also* Sprint Petition to Deny, p. 44.

[19] Joint Declaration of Steven C. Salop, Stanley M. Besen, Stephen D. Kletter, Serge X. Moresi, and John R. Woodbury, filed 5/31/11, ¶¶ 144 & 179(c) (merger will raise barriers to entry, which are already high).

reasonable, CREDO and similarly situated carriers may not be able to continue to offer their innovative services, and consumers will be left without options.[20]

C. Consumers Will Face an Effective Monopoly for GSM-Based Mobile Devices and Networks, Resulting in Fewer Handset Models and More Carrier Control Over Features and Network Access.

This merger should also be denied because a post-merger AT&T will hold a virtual monopoly in the GSM wireless industry. Currently, only AT&T and T-Mobile offer GSM-based mobile devices and wireless service. A post-merger AT&T will therefore be able to force all manufacturers of GSM-enabled handsets to work with it exclusively. Nothing will prevent a post-merger AT&T from making demands upon these specific manufacturers. As will be discussed in greater detail below, AT&T could demand handsets loaded with AT&T-specific features and it could demand that manufacturers block features that compete with AT&T's services and/or content that AT&T does not like.[21] Such a merger will also create a disincentive for further innovations in the GSM arena.

The Applicants argue in their Opposition that there are "dozens of manufacturers worldwide, each vying to create a better device than its competitors, and each has strong incentives to sell its devices to as many customers as

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[20] Gunn Decl., ¶ 5.

[21] *In AT&T & T-Mobile Merger, Everybody Loses*, Om Malik (Mar. 20, 2011), http://gigaom.com/2011/03/20/in-att-t-mobile-merger-everybody-loses/ [last accessed 6/14/11].

possible."[22] This argument fails to acknowledge that upon completion of the merger, AT&T will be the only national GSM-technology wireless provider. While companies may strive to create better devices, AT&T has no incentive to offer those better devices if it does not have to be concerned about any other GSM-based competitors.[23]

II. DECREASED COMPETITION WILL REDUCE THE QUALITY OF CUSTOMER SERVICE.

Consumers will experience a significant degradation in the quality of customer service if the Commission permits this merger to proceed. T-Mobile has consistently been ranked as best in customer service, based on its telephone, Web, and in-person interactions between customers and customer service representatives, while AT&T consistently ranks last among the four major mobile carriers.[24] A survey undertaken by the Consumer Reports National Research Center found that "[c]ustomer service is an AT&T Achilles' heel. The gap between the carriers in satisfaction was highest when it came to customer support, especially for service provided by phone. That's mostly because of AT&T's sub-

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[22] Appl. Opp., p. 143.

[23] Gunn Decl., ¶ 7. *See also* Declaration of Fared A. Adib, filed 5/31/11, ¶¶4-18.

[24] Gunn Decl., ¶ 9. *See also* Declaration of John Carney, filed 5/31/11, ¶¶4, 13, & n.1.

par scores in every aspect of customer service, from support on various modes (phone, e-mail, website) to success in solving problems . . . and staff knowledge."[25]

The proposed merger will harm consumers if the post-merger AT&T (with more than 42% of the relevant market) sets the industry standard with customer service that more closely resembles pre-merger AT&T than T-Mobile.[26] With T-Mobile out of the market, the remaining mobile carriers will have diminished incentives to improve their own customer service.

Effectively admitting this is an issue they either do not care about or have no solution to, the Applicants fail to respond to concerns about the future of customer service in their Opposition. Although numerous consumer groups and market participants such as Sprint expressed concerns about the proposed merger's effects on customer service, the Applicants offer no representation that they will adopt T-Mobile's customer service initiatives, or that they have a plan in the works to improve AT&T's consistently poor customer service. This silence speaks loudly. It demonstrates that a post-merger AT&T, without any competitive threat from T-

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[25] *T-Mobile beats AT&T in CR satisfaction survey* (Apr. 11, 2011), http://news.consumerreports.org/electronics/2011/04/t-mobile-beats-att-in-cr-satisfaction-survey.html [last accessed 6/15/11].

[26] *See Consumers Union Warns Congress AT&T/T-Mobile Merger Means Higher Prices, Less Satisfied Customers* (April 12, 2011), http://www.consumersunion.org/pub/2011/04/017625print.html [last accessed 6/15/11].

Mobile, will continue to fail in providing minimally adequate customer service both to its own existing customers and to former customers of T-Mobile.

III. THE PROPOSED MERGER WILL STIFLE INNOVATION AND RESTRICT CONSUMER ACCESS TO INFORMATION.

A. The Proposed Merger Will Stifle Innovation.

CREDO's position as a mobile carrier depends on its ability to offer consumers a selection of innovative, state-of-the-art mobile phones and plans. CREDO has successfully donated millions of dollars to progressive nonprofit organizations by offering its customers advanced technology for managing their lives and advanced tools to improve the lives of others.[27]

A post-merger AT&T will reshape the mobile phone and wireless marketplaces in ways entirely deleterious to innovation and the development of new technologies. AT&T has done a poor job of investing money into its own infrastructure to support the requirements of its enormous network of users. In the absence of competition, any incentive to invest more money will evaporate. AT&T will have no incentive to invest in research and development of new products or in processes to improve access to and use of existing cell phone towers and infrastructure.[28]

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[27] Gunn Decl., ¶¶ 3-5.

[28] Gunn Decl., ¶ 10. *See also* Sprint Petition to Deny, pp. 36-38 and evidence cited therein.

In addition, a post-merger AT&T will have every incentive to strike deals with software companies such as Microsoft which produce operating systems for smart phones, thereby extending the monopolistic features of the business. With 42% or more of the mobile phone market, a post-merger AT&T can strike an exclusive deal with a software company and then require its subscribers to purchase phones preloaded with that company's operating system. Consumers would suffer markedly from the lack of choice.

Microsoft's experience in the marketplace for PC operating systems is instructive. With monopoly power in that marketplace, Microsoft was able to set prices at revenue-maximizing levels without regard to the prices of its competitors, to charge manufacturers different prices based on "the degree to which [they] complied with Microsoft's wishes," and to impose "burdensome restrictions on its customers . . . that augment and prolong that monopoly power."[29]

Within a post-merger duopoly, a software giant such as Microsoft will be poised to replicate this experience. Exclusive agreements with AT&T and Verizon will give an operating system producer control of more than 80% of the handsets in America. That producer could then impose onerous conditions on handset manufacturers, creating costs that handset manufacturers and mobile carriers will

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[29] Findings of Fact, *United States v. Microsoft*, http://www.justice.gov/atr/cases/f3800/msjudgex.htm#iiih [last accessed 6/15/11], ¶¶ 62-66.

pass on to consumers. The current competitive environment, in which Microsoft's operating system must compete with Google Android, Blackberry, and Apple (among others), is much more favorable to consumers, and to carriers like CREDO who seek to offer their customers a wide range of choices in handsets and applications.

As explained above, the proposed merger will also give AT&T a *de facto* monopoly over all GSM phones and service. This monopoly will put an end to the current era of competition, and usher in a new era under which a single entity can unilaterally dictate GSM phone models, features, plans and applications. The new era will stand in stark contrast to the past decade, in which more robust (although still insufficient[30]) competition created the conditions under which pro-consumer wireless technologies emerged. The new market conditions will be prohibitive to something like T-Mobile's unique partnership with Google, which produced the innovative and competitive Android operating system and phones.

The Applicants' bare assurances that AT&T will continue to innovate, because that is what mobile carriers do, fall flat. AT&T selectively quotes from Chairman Genachowski's 2011 remarks to the CTIA Convention, to make the uncontroversial assertion that wireless technology has advanced rapidly since 1993, *i.e.*, in the current competitive environment. The Applicants also quote a

[30] Electronic Frontier Foundation Petition to Deny, p. 1.

joint letter by Microsoft, *et al*., which makes similarly uncontroversial points ("[a]n increasingly robust and efficient wireless network is part of a virtuous innovation cycle and a healthy wireless ecosystem is an important part of our global competitiveness"[31]). Neither of these truisms demonstrates that AT&T will drive innovation once it has control of more than 42% of the mobile phone industry and 100% of the GSM market. Both of them ignore the fact that with this merger, the Applicants seek to dismantle the current competitive environment, in favor of a return to pre-1993 duopoly. Applicants also ignore a relevant warning in Chairman Genachowski's remarks: "it's generally harder for a market leader to [respond to new technologies] in view of the dependencies, reliances and practices it has built up in the marketplace[.]"[32]

Chairman Genchowski went on to list "[e]mpowering consumers by supporting a vibrant, transparent and competitive marketplace" as an important goal of the Commission's Mobile Broadband Agenda.[33] The proposed merger will reduce vibrancy, transparency, and competition in the marketplace, thereby frustrating every component of this goal.

B. The Merger Will Allow AT&T to Further Manipulate Its Networks to Restrict Consumer Access to Certain Applications

[31] Appl. Opp., pp. 103-104 and n. 148.

[32] Genachowski CTIA Remarks, p. 3.

[33] *Id*., p. 6.

and Content, in Furtherance of Its Business and Political Strategies and Contrary to the Goals of Net Neutrality.

The Petition to Deny filed by New Media Rights, Utility Consumers' Action Network, and Privacy Rights Clearinghouse recites several examples illustrating that AT&T has used its position as an Internet Service Provider to censor speech both accessed and generated by its customers.[34] Additional examples abound, from Terms of Service that reserve AT&T's right to terminate the Internet connections of customers that criticize AT&T[35] to allegedly cooperating with illegal NSA wiretapping in violation of its customers' privacy rights.[36] AT&T has also made deals with certain gatekeepers (such as Apple) to limit and control consumers' access to third party innovative services (such as Skype and Google Voice).[37]

The applicants do not deny any of this history, nor do they respond to the contention by consumer groups that the merger will enable AT&T to further manipulate its networks to restrict the rights of content providers or consumers.

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[34] Petition to Deny filed by New Media Rights, *et al*., 5/31/11, pp. 6-8 and notes 10-15.

[35] *See* http://boingboing.net/2007/09/29/new-att-terms-of-ser.html [last accessed 6/14/11].

[36] *See* http://www.eff.org/nsa/faq#39 [last accessed 6/14/11].

[37] *See* http://www.wired.com/epicenter/2009/08/apple-att-and-google-respond-to-feds-on-google-voice-rejection/ [last accessed 6/15/11]; http://www.wired.com/epicenter/2009/07/apple-rejects-google-voice/ [last accessed 6/15/11].

The applicants respond only to the narrow concern that consumers will lack access to certain smartphone applications.[38]

Even on this narrower issue, AT&T misses the point. AT&T asserts that success on one operating system or platform encourages application developers to "develop versions of the same application to be run on different operating system platforms"[39] and that AT&T has "no power to dictate what third-party applications can be made available to *other* carriers."[40] But the key point is that AT&T exercises final discretionary authority over the applications (third-party and otherwise) available to its users, and that in so doing, it controls which applications will be profitable enough to "develop for other platforms." Given its history, it is reasonable to assume that a post-merger AT&T will use its 42% of the market to further restrict users' access to applications, and to further exclude applications that do not further AT&T's political strategies. This outcome is potentially disastrous for CREDO's politically engaged customers.

AT&T does respond to the broader contention that this merger will negatively impact net neutrality, a stated goal of the Commission and the President

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[38] Appl. Opp., pp. 178-179.

[39] *Id*., p. 178.

[40] *Id*., p. 179 (emphasis in original).

of the United States.[41] Here too, AT&T's response falls short. AT&T relies heavily on the Commission's Open Internet Order, arguing that the proponents of strict net neutrality made their case in the run-up to that Order, and lost.[42] But the Open Internet Order's provisions on mobile broadband neutrality were based on certain facts about the current marketplace – facts which the proposed merger will upend. For example, in a passage AT&T itself quotes, the Commission found that more flexible net neutrality rules are appropriate in the mobile context because "most consumers have more choices for mobile broadband than for fixed (particularly fixed wireline) broadband."[43] It is the height of *chutzpah* for the Applicants to rely on the Open Internet Order as they seek to undo the competitive environment on which that Order is based.

IV. THE PROPOSED MERGER WILL RESULT IN THE LOSS OF THOUSANDS OF JOBS AS A RESULT OF "REDUNDANCIES."

The applicants concede that the proposed merger will result in "redundancies." They write that "where some jobs serving duplicative functions are eliminated to reduce costs, AT&T will rely mostly on natural attrition . . . .

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[41] *See* Chairman Genachowski CTIA Remarks, pages 6-7; *Obama praises FCC's vote on Net Neutrality, Verizon yearns for the old days of Clinton and Bush*, http://latimesblogs.latimes.com/washington/2010/12/net-neutrality-passes.html [last accessed 6/14/11].

[42] Appl. Opp., pp. 200-202.

[43] *Id*., p. 201, quoting Report and Order, *Preserving the Open Internet, Broadband Industry Practices*, 25 FCC Rcd 17905, 17957 ¶ 95 (2010) ("Open Internet Order").

[A]s employees retire or take another job, their positions will not be refilled."[44] Declining to fill "redundant" positions as employees leave them is by definition job loss.

In a time of 9% national unemployment, the applicants boast about the savings a post-merger AT&T will accomplish by eliminating jobs: "For example, AT&T expects to take advantage of scale economies in financing, marketing, and other redundancies . . . As the Commission has recognized, these types of headcount reductions and the resulting cost savings are pro-competitive efficiencies . . . ."[45] Statements such as these suggest that AT&T is relying on job loss to fund much of its purported $8 billion in post-merger investments – the very investments that the applicants claim will generate jobs.[46]

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[44] Appl. Opp., p. 93.

[45] *Id*. (emphasis added).

[46] *See* Sprint Petition to Deny, pages 77-78, citing 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 (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."); Mar. 21, 2011 AT&T Investor Presentation Transcript at 13-14 (statement of Richard G. Lindner, Senior Executive Vice President and Chief Financial Officer, AT&T), at 11 (AT&T announced that it will carry out force reductions, close stores, and limit retail distribution through "rationalization" if the transaction is approved); Sara Jerome, *Groups Say AT&T Merger is Job Killer*, THE HILL, Mar. 23, 2011, http://thehill.com/blogs/hillicon-valley/technology/151587-atat-merger-jobkiller ("'[E]fficiencies' is code for an unsettling possibility: the elimination of thousands of jobs.").

The applicants do not estimate the number of jobs AT&T will phase out in this way, or assert that any such number is fewer than the jobs its additional investments will allegedly create. They spend three pages extolling the virtues of investment in wireless technology generally,[47] without demonstrating that the proposed merger is necessary for them to make such investments.

The applicants' claim of job creation comes from an estimate generated by the Economic Policy Institute, based on AT&T's own self-serving statement that it intends to invest $8 billion in wireless technology post-merger.[48] The Commission should disregard this self-serving study, as it accomplishes nothing more than begging the question. As discussed below, it is not at all clear that this $8 billion is truly new investment that will not be made but for the merger. In fact, given the high cost of AT&T's acquisition of T-Mobile (according to AT&T's Application the price tag is $39 billion in cash and common stock[49]), one would assume the post-merger entity will have *less* available capital to invest in infrastructure.

In sum, AT&T fails to provide convincing evidence for the proposed merger, in the form of evidence that the merger is necessary for it to spend money developing its infrastructure, or that the number of jobs created by the additional

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[47] Appl. Opp., pp. 83-85.

[48] *Id*., p. 85.

[49] Application at 16.

investment will outnumber the jobs lost through "redundancies," "efficiencies," and "natural attrition."

V. AT&T CAN EXPAND ITS NETWORK COVERAGE WITHOUT THE AID OF A MERGER WITH T-MOBILE.

The applicants ask the FCC to approve their plan to pay $39 billion to a European company, in exchange for the opportunity to eliminate American jobs (and/or transfer them overseas), based on the possibility that the post-merger AT&T might thereafter invest an additional $8 billion in infrastructure. The American public will be better served if AT&T retained its existing workforce, and spent a fraction of that $39-$47 billion improving its present infrastructure and service within the present competitive marketplace.

As Parul P. Desai of Consumers Union testified before the House Judiciary Committee, "There are several ways that competition within the entire industry can flourish while still expanding the reach of broadband build out."[50] Mr. Desai listed interoperable phones, reduction or elimination of early termination fees, and more equitable ways of making spectrum available and distributing it among providers.

AT&T admits that, with or without a merger, it will continue its own plan to increase broadband access in rural areas.[51] If AT&T spends the $8 billion it claims

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[50] Desai Testimony, page 9.

[51] *See* http://fastnetnews.com/a-wireless-cloud/61-w/4192-atat-lte-result-on-us-coverage-0 [last accessed 6/14/11].

to have earmarked for post-merger investments on developing its current infrastructure and networks, its competitors will follow suit and consumers will benefit from expanded coverage without the job loss and other drawbacks associated with a merger.

As New Media Rights *et al*. explain in their Petition to Deny, the proposed merger will have a disproportionately negative effect on minority and low income users, who often rely solely on mobile devices and wireless broadband for primary internet access.[52] Even taking the applicants' representations at face value, at best the proposed merger will benefit one group of underserved, low income customers (rural customers without mobile broadband) at the expense of another (communities of color and other low-income families that depend more heavily on T-Mobile's lower prices and are more likely to use a mobile phone as their primary internet device).

The public will be better served by improvements in infrastructure and expansion of network coverage within the present competitive environment.

CONCLUSION

A merger of AT&T and T-Mobile in any form will significantly harm consumers, the wireless marketplace, and CREDO's ability to deliver mobile

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[52] New Media Rights Petition to Deny, page 11, citing Malkia Cyril, *AT&T/T-Mobile Merger Hurts Poor*, http://www.politico.com/news/stories/0411/53408.html [last accessed 6/14/11].

service to its unique customer base. For the foregoing reasons, CREDO respectfully requests that the Commission deny the proposed merger in its entirety.

DATED: June 20, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of June, 2011, I caused true and correct copies of the foregoing Reply Brief of Credo Mobile in Support of Petition to Deny to be mailed by first class U.S. mail to:

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Additionally, I caused true and correct copies of the foregoing Petition to Deny to be mailed by electronic mail to:

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