

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

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

**REPLY OF CLEARWIRE CORPORATION**

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## SUMMARY

AT&T's Opposition to petitions to deny and to the comments of Clearwire and others in this proceeding has failed to demonstrate—for it cannot—that its proposed acquisition of T-Mobile, the fourth-largest wireless carrier with a market share of 12.1 percent of the nation's wireless subscribers, would not cause significant harm to competition in the U.S. wireless services marketplace. Moreover, AT&T has ignored completely the significant competitive harm that this acquisition would visit upon the wholesale sector of that marketplace. In one stroke, FCC approval of this combination would remove the foremost price-cutting competitor in the retail wireless marketplace and the largest prospective customer for wholesale wireless broadband network capacity, as well as severely diminish competition and innovation in the mobile devices market.

AT&T also fails to explain convincingly why it and T-Mobile could not alleviate or solve entirely their alleged spectrum "crises" by leasing or otherwise obtaining wholesale capacity from other carriers, including Clearwire. Moreover, its attempt to persuade the Commission to relax its spectrum screen by including all 194 MHz of BRS/EBS spectrum in the 2.5 GHz band is a transparent effort to reduce Commission scrutiny of the prospective merged entity. In sum, AT&T's Opposition does little to dispel the conclusion that the proposed transaction is less about merging spectrum assets than it is about reducing competition. It therefore is imperative that the Commission either determine that the damage to the wholesale market represented by this further concentration in the wireless market is too great to be tolerated, or address it head-on with conditions that require the merged entity to be an ongoing, meaningful customer in the wholesale marketplace.

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**REPLY OF CLEARWIRE CORPORATION**

Clearwire Corporation (“Clearwire”), pursuant to the Commission’s *Public Notice* (DA 11-799, rel. April 28, 2011), hereby submits its Reply to the “Joint Opposition of AT&T Inc., Deutsche Telecom AG, and T-Mobile USA, Inc., to Petitions to Deny and Reply to Comments” (“AT&T Opposition”) in the above-captioned matter. Clearwire filed Comments in this matter on May 31, 2011.

**I. AT&T IGNORES THE SEVERE HARM TO THE MARKET FOR WHOLESALE WIRELESS SERVICES THAT WOULD RESULT FROM ITS ACQUISITION OF T-MOBILE**

**A. AT&T’s Portrayal of a Robustly Competitive Wholesale Sector is At Odds With Its Public Pronouncements**

It is telling that, in its 663 pages of Opposition and Declarations (not including redacted material), AT&T fails almost entirely to address the wholesale market for wireless service and the impact of the proposed acquisition on wholesale competition in the wireless marketplace, notwithstanding the Commission’s long-held conviction that “[e]nsuring robust competition not only for American households but also for American business requires particular attention to the

role of wholesale markets, . . . [which] can help foster retail competition.”<sup>1</sup> Instead, AT&T summarily portrays the current wireless wholesale market as “competitive” on the basis of the presence in the market of Clearwire and (potentially) LightSquared, and Clearwire’s partnerships with retail carriers such as Leap and Cellular South, with cable operators and with MVNOs like Best Buy.<sup>2</sup>

AT&T’s contention fails on two counts: (1) it grossly exaggerates the market position and impact of these customers of wholesale services relative to T-Mobile, a national carrier that is the fourth-largest retail wireless provider with 12.1% of the market;<sup>3</sup> and (2) as Clearwire observed in its Comments, AT&T’s public statements betray a much different view of its regard for the wholesale market. Indeed, AT&T has claimed that there is not room for two wholesale broadband wireless carriers and perhaps not even for *one* wholesaler, recently proclaiming that “there really isn’t a profitable wholesale model in wireless today” and that “there would be further benefit to additional consolidation in the wireless marketplace.”<sup>4</sup> In light of these declarations, and in the absence of any showing by AT&T that the wholesale wireless market is sufficiently robust that it can easily withstand the loss of a significant prospective customer in T-Mobile, AT&T’s unsupported generalizations should be accorded no weight. It is indisputable

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<sup>1</sup> National Broadband Plan at 47. *See also, e.g.*, Declaratory Ruling in WC Docket No. 10-143, FCC 11-83 (rel. May 26, 2011) ¶ 26 (affirming the interconnection rights of wholesale carriers, stating that “a contrary decision would impede the important development of wholesale telecommunications and facilities-based VoIP competition”).

<sup>2</sup> *See* AT&T Opposition at 131-33, 214.

<sup>3</sup> For example, Leap does not plan a commercial 4G trial until late 2011, and U.S. Cellular announced its 4G rollout in a small number of markets to be in place at the end of 2011. Smaller carriers like Cellular South only operate in a select number of markets, have a limited subscriber base and cannot compete on the national level. LightSquared must resolve its GPS interference issues before it can enter the market as a wholesale provider. *See* Clearwire Comments at 4; “Wireless Carriers Disagree on LightSquared Threat,” *Communications Daily*, June 16, 2011, p. 1. *See also* Petition to Deny of Sprint, filed May 31, 2011, at 54.

<sup>4</sup> Reuters, “AT&T: No Room for Both Clearwire, LightSquared,” May 13, 2011, available at <http://www.reuters.com/article/2011/05/13/us-summit-att-idUSTRE74C6F220110513>. *See also* “AT&T’s Stankey Trash Talks Clearwire, LightSquared,” May 16, 2011, available at <http://www.dslreports.com/shownews/ATTs-Stankey-Trash-Talks-Clearwire-LightSquared-114242?nocomment=1>.

that Clearwire's ability to compete as a competitive wholesale alternative diminishes with each contraction of the marketplace.

Clearwire also agrees with Sprint and others that Clearwire is no more likely to be able to discipline the marketplace in a post-merger environment than Metro PCS, Leap, U.S. Cellular, Cellular South or other smaller players that AT&T/T-Mobile touts as competitive powerhouses.<sup>5</sup> Where Clearwire and Sprint disagree, however, is with regard to Sprint's characterization of Clearwire's spectrum assets as "sub-optimal for providing broadband service compared to AT&T's spectrum holdings."<sup>6</sup> For example, Sprint asserts that one factor that makes 700 MHz optimal for commercial mobile broadband service is the flexible service rules that permit a range of fixed and mobile wireless operations, including frequency division duplex ("FDD") technologies such as LTE that require band pairing. But in fact, BRS/EBS spectrum at 2.5 GHz shares this "optimal" feature with 700 MHz where the rules permit FDD or Time Division Duplex ("TDD") technologies across the band.<sup>7</sup> In addition, it is true that the regulatory framework for the 2.5 GHz band includes unique complexities and requirements that, as discussed below, have caused the Commission to exclude portions of the 2.5 GHz from its spectrum screen. Despite these limitations, Clearwire has forged positive partnerships with educational licensees in the 2.5 GHz band that have maximized the educational services offered by the non-profit EBS community and optimized the use of 2.5 GHz spectrum for commercial purposes. In this manner, Clearwire has succeeded in assembling a rich spectrum portfolio at a relatively low spectrum acquisition cost that is a platform for the country's first 4G mobile

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<sup>5</sup> See Petition to Deny of Sprint at 53-55.

<sup>6</sup> *Id.* at 90 n.297. See also *id.* at 66-70.

<sup>7</sup> See Clearwire Press Release, Aug. 4, 2010, available at <http://corporate.clearwire.com/releasedetail.cfm?ReleaseID=551055>

broadband network now serving more than 6 million retail and wholesale subscribers. It is also true that spectrum located at 2.5 GHz does not propagate as well as lower band spectrum. But as Sprint has noted on the record in another Commission proceeding, this characteristic is of far less importance in more densely populated areas where a service provider is building for capacity rather than coverage.<sup>8</sup> In sum, Clearwire's spectrum is ideal for providing high capacity, high speed service in densely populated urban areas. And although Sprint characterizes Clearwire as a "possible future wholesaler",<sup>9</sup> nearly 5 million subscribers of Clearwire's wholesale customers use the Clearwire network today.<sup>10</sup> The Commission, therefore, should be deeply concerned about the impact of the proposed transaction on carriers such as Clearwire that provide a wholesale alternative to national and regional carriers, and should guard against any impairment of the ability of the wholesale sector of the wireless market to thrive and compete.

**B. AT&T's Contention That T-Mobile (and AT&T Itself) Cannot Feasibly Utilize Wholesale Capacity From Other Networks is Specious**

As Clearwire's Comments noted, the withdrawal of T-Mobile from the wireless marketplace would not only deprive consumers of the most formidable price-based competitor in

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<sup>8</sup> See Joint Comments of Clearwire and Sprint Nextel Corp. in GN Docket No. 09-51 *et al.*, filed Nov. 19, 2009, at 15-16: "Clearwire and Sprint respectfully submit that no single band of spectrum is a panacea for public safety. In dense urban environments, for example, the smaller cell size inherent in a network built out at 2.5 GHz provides more efficient use of broadband spectrum, and less potential interference, than a network employing a lower frequency band. While some have touted the larger cell size of 700 MHz architecture as an advantage (because it gives a larger coverage radius per cell), in dense environments this cell size may become a liability. Network architecture is determined by capacity, not coverage. That is, cell sites are planned based on the number of users likely to be on the network in a particular area. In dense environments, there is a capacity shortfall, not a coverage shortfall. The larger cell size at 700 MHz becomes a liability because there is more overlap between cells; the additional interference created by cell overlap requires mitigation measures, which lowers efficiency and throughput."

<sup>9</sup> Petition to Deny of Sprint at 53.

<sup>10</sup> See Press Release, "Clearwire Reports Record First Quarter 2011 Results," May 4, 2011, *available at* <http://corporate.clearwire.com/releasedetail.cfm?ReleaseID=574512> (reporting that Clearwire "subscriber base consists of 1.29 million retail subscribers and 4.86 million wholesale subscribers").

the national retail wireless market;<sup>11</sup> it would also remove the largest and most significant remaining prospective customer of wholesale wireless network capacity.<sup>12</sup> In particular, an independent T-Mobile has been widely perceived as the most logical customer for wholesale 4G network capacity.<sup>13</sup> Clearwire presents an immediately available and viable solution to both AT&T's and T-Mobile's alleged spectrum "crises" and could serve as a path to 4G that does not involve an anti-competitive elimination of the nation's fourth largest carrier. AT&T, however, claims that neither T-Mobile nor AT&T itself could feasibly lease capacity on a wholesale basis. Indeed, AT&T's Opposition begins with the declaration that "[o]ne overarching imperative drives this transaction: giving AT&T and T-Mobile USA customers the network capacity they need to enjoy the full promise of the mobile broadband revolution."<sup>14</sup> AT&T claims that neither it nor T-Mobile can utilize wholesale capacity because "AT&T (like T-Mobile USA) has a large embedded base of subscribers whose existing handsets would not work on those providers' spectrum bands or with their technologies."<sup>15</sup>

This contention is demonstrably inaccurate and belied by common industry practice. As carriers like AT&T and T-Mobile transition to new technologies—as they currently plan to do with respect to LTE—they will in the near future, as they have in the past, need to retire their existing embedded base of handsets. This is a necessity and an oft-repeated practice as wireless technology has evolved over the last two decades, and it is something that carriers have done

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<sup>11</sup> Even as it is relentlessly dismissive of T-Mobile's stature as a retail competitor, AT&T acknowledges that T-Mobile "primarily has relied on price as its differentiating factor." See AT&T Application, Declaration of David Christopher at 19.

<sup>12</sup> Clearwire Comments at 5-6.

<sup>13</sup> See, e.g., <http://www.businessweek.com/news/2010-12-02/sprint-pushed-for-deal-between-clearwire-t-mobile.html>

<sup>14</sup> AT&T Opposition at 1.

<sup>15</sup> *Id.* at 73.

successfully and nearly seamlessly to date.<sup>16</sup> There is absolutely no reason why T-Mobile, or AT&T, could not lease capacity from Clearwire or another wholesale carrier and serve their customers seamlessly through the adoption of interoperable handsets compatible with the wholesale carriers' networks. Indeed, AT&T's posture is ironic given that, as Clearwire observed in its Comments, it is AT&T, along with Verizon, that has thwarted the widespread development and distribution of interoperable handsets that would have alleviated AT&T's illusory spectrum "crisis."<sup>17</sup>

Accordingly, an independent T-Mobile could quite easily evolve and expand its network capacity by resorting to wholesale alternatives such as Clearwire; and the withdrawal of T-Mobile as an independent retail provider and prospective customer for such wholesale capacity would further seriously diminish the addressable market for wholesale provision of wireless services.<sup>18</sup> The Opposition does not convincingly explain why alternatives such as leasing, wholesale and secondary market transactions would not solve AT&T's and T-Mobile's spectrum needs and does little to dispel the conclusion that the proposed transaction is less about merging spectrum assets than it is about reducing competition. It therefore is imperative that the Commission either determine that the damage to the wholesale market represented by this further concentration in the wireless market is too great to be tolerated, or address it head-on with

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<sup>16</sup> See, e.g., Burstein, "The Truth Could Kill the AT&T T-Mobile Deal: Nobody is Buying AT&T's Justification for T-Mobile Acquisition," Broadband DSL Reports (Apr. 7, 2011) (if the acquisition is approved, AT&T "will have to swap millions of T-Mobile's 3G phones to efficiently use the network"), available at <http://www.dslreports.com/shownews/The-Truth-Could-Kill-the-ATT-T-Mobile-Deal-113606>. Further, wireless service consumers have repeatedly shown that they are willing and indeed enthusiastic to swap out their handsets in response to the introduction of new technologies and carrier promotions. See, e.g., *N.Y. Times*, Feb. 25, 2011 (consumers on average upgrade their cellphones every 18 months), available at [http://www.nytimes.com/2011/02/26/business/26upgrade.html?\\_r=1](http://www.nytimes.com/2011/02/26/business/26upgrade.html?_r=1).

<sup>17</sup> Clearwire Comments at 11 ("While it has been technically feasible to have phones that operate on all flavors of mobile networks for some time, U.S. carriers including AT&T have resisted this vehemently").

<sup>18</sup> See Clearwire Comments at 5-6.

conditions that require the merged entity to be an ongoing, meaningful customer in the wholesale marketplace.

## **II. AT&T'S CLAIM THAT THE ACQUISITION WOULD HAVE NO HARMFUL IMPACT ON THE MARKET FOR WIRELESS DEVICES IS UNCONVINCING**

Clearwire's initial Comments provided numerous examples of AT&T using its pre-merger size to limit choice and innovation in the handset market, tying up equipment manufacturers for its own needs, muscling WiMax out of the U.S. market, delaying handset innovation, especially in the area of dual mode phones, and even promoting standards for the 700 MHz band that virtually assured that equipment needed by smaller carriers would only be available later in time and at considerably higher prices.<sup>19</sup> As set forth in those Comments, if the merger were allowed to proceed without appropriate conditions, given the merged entity's additional scale, handset manufacturers would be even "less able or willing to partner with anyone other than [AT&T/T-Mobile and Verizon] as access to these two providers' customer bases will be at once essential and sufficient" and competition will suffer.<sup>20</sup>

AT&T's Opposition barely addresses the numerous examples of AT&T's historic monopsony and duopsony behavior set forth in Clearwire's Comments. For example, AT&T gives the back of the hand to assertions concerning its role in the standard setting process for the 700 MHz Band mobile equipment, asserting that "they are not merger-specific."<sup>21</sup> However, AT&T's ability to influence the creation of an equipment band that excluded Block A is absolutely relevant to this proceeding because it presages similarly negative consequences for

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<sup>19</sup> *Id.* at 9-13; *see also* Petition to Deny of Leap Wireless International, Inc. and Cricket Communications, Inc., Applications of AT&T Inc. and Deutsche Telekom AG For Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65 (May 31, 2011) at 26 (including examples of AT&T demanding equipment manufacturers to produce handsets that were not interoperable with other networks).

<sup>20</sup> *Id.* at 10.

<sup>21</sup> AT&T Opposition at 153.

competition if this merger were to be approved. AT&T also dismisses as “history, not a merger-related harm” its role in steering the U.S. market away from WiMax and toward LTE.<sup>22</sup> But the fact of the matter is that when AT&T and Verizon announced plans to use the competing LTE standard for 4G, vendors announced plans to stop producing WiMAX-compatible handsets and start producing LTE phones.<sup>23</sup> AT&T and Verizon’s combined duopsony power will only increase as a result of the proposed merger, as will AT&T’s monopsony leverage in the U.S. market for GSM devices.

AT&T also seeks to downplay the significance of the combined entity’s subscriber base to handset manufacturers, claiming that the number of customers served by a carrier is “not the most important force” behind a handset manufacturer’s distribution choices.<sup>24</sup> AT&T’s argument, which is based solely on the self-supporting declaration of its hired economists, flies in the face of real marketplace dynamics.<sup>25</sup> The proposed merger would increase AT&T’s market share initially by 12.1%. Monopsony and duopsony power<sup>26</sup> concerns are predicated on the notion that purchasing power is tied up in one entity (or two dominant entities) and thus that

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<sup>22</sup> *Id.* at 152, n. 261.

<sup>23</sup> Clearwire Comments at 10.

<sup>24</sup> AT&T Opposition at 148.

<sup>25</sup> Indeed, the Commission has recognized that carriers with larger subscriber bases are better able to negotiate exclusive handset arrangements. *See, e.g., Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd 11407, ¶ 317 (2010) (“[H]andset manufacturers generally employ [exclusive handset arrangements] with providers that have larger customer bases and extensive network penetration”). *See also Wireless Handsets: Industry & Trade Summary*, U.S. International Trade Comm’n, Office of Industries, Publication ITS-05, at 41 (March 2010), available at: <[http://www.usitc.gov/publications/332/ITS\\_5.pdf](http://www.usitc.gov/publications/332/ITS_5.pdf)> (“Larger [wireless] carriers with greater scope and more market power have additional bargaining power with handset manufacturers and can negotiate better deals.”)

<sup>26</sup> The California Public Utilities Commission has determined that a regulatory concern to be addressed in its investigation of this merger is whether a combined AT&T/T-Mobile will have monopsony or duopsony power in the handset market. *See Order Instituting Investigation Filed 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*, Investigation 11-06-009 (Calif. PUC, issued June 15, 2011).

entity or entities can dictate the price paid for the relevant product (not the other way around, as AT&T suggests).<sup>27</sup> Not surprisingly, the only support given by AT&T for its novel economic argument is a lengthy quote from its own consultants' report.<sup>28</sup> Nor does AT&T's argument take into account the fact that the proposed merger would result in the loss of a significant contributor to the wireless device market: T-Mobile was first to deploy devices with the Android operating system and one of the first to deploy a "4G" network technology in the form of HSPA+. In embracing the more open Android operating system, T-Mobile encouraged other smart phone operating systems to operate in a more open manner. The bottom line, as Clearwire demonstrated in its opening Comments, is that post-merger, AT&T and Verizon would control nearly 80 percent of the U.S. carrier market, and equipment manufacturers will necessarily be beholden to these two carriers.

Likewise, AT&T's assertion that its combined post-merger girth should be measured not in comparison to other carriers in the U.S. market but rather to other carriers in the world GSM market is fatally flawed.<sup>29</sup> Its wholly unsupported claim that manufacturers develop handsets for sales on an international (as opposed to country-specific or regional basis) is belied by the facts. Handset manufacturers still design handsets – especially feature-rich smartphones – for the U.S.

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<sup>27</sup>AT&T claims that the price a carrier is willing to pay and its ability to market are equally, if not more, important as subscriber bases.

<sup>28</sup> AT&T Opposition at 148, *citing* Reply Declaration of Robert D. Willig, Jonathan M. Orzag and Jay Ezrielev.

<sup>29</sup>*Id.* at 148-49 ("there is no basis for the contention that this transaction will suddenly give AT&T monopsony power in some relevant handset market (or "duopsony" power shared with Verizon)."); 153 ("global market realities would preclude AT&T alone, or AT&T and Verizon in tandem, from attaining control over handset availability and using it to curtail retail competition.")

market.<sup>30</sup> AT&T tries to redefine the market because there is no way around the fact that in the U.S., the combined AT&T/T-Mobile will be a monopsony buyer of GSM handsets.

There is no doubt that if this merger is allowed to proceed, the scale of the combined entity will give it leverage over handset manufacturers to the detriment of competition. Post merger AT&T will have increased ability to impede the ability of other carriers to develop and market wireless devices capable of competing with AT&T. Accordingly, at the least, the Commission should condition any merger on a requirement that AT&T build 2.5 GHz chips into every handset to achieve global compatibility. Failing to do so would spell certain harm to the competitive landscape, while doing so would make the global market AT&T claims to be most relevant, more so. Moreover, in the obviously less competitive market that would result from the approval of this merger, a condition designed to foster a wholesale market would create greater opportunity for smaller providers to enter and compete in the marketplace by reselling the services of wholesale carriers.

### **III. AT&T'S CLAIM THAT T-MOBILE IS AN INSIGNIFICANT COMPETITOR WHOSE EXIT WILL NOT NEGATIVELY IMPACT COMPETITION IN THE WIRELESS MARKET IS SELF-SERVING AND FALSE**

AT&T persists in its self-serving claim that there will be no adverse consequences for competition in the U.S. wireless marketplace arising from its acquisition of the fourth-largest competitor, because T-Mobile is not much of a competitor at all—that it rather is a weak player

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<sup>30</sup> <http://www.wirelessweek.com/Articles/2008/03/The-Changing-U-S--Handset-Market/> (device “designed specifically for the U.S. market and with the input of MetroPCS to satisfy the carrier’s needs”). As characterized by CTIA, the U.S. market is “the world’s largest market for wireless devices and services, with more than 630 choices of handsets made for U.S. buyers by 32 different companies.” Advocacy, Innovation & Competition, CTIA, available at: <[http://www.ctia.org/advocacy/policy\\_topics/topic.cfm/TID/64](http://www.ctia.org/advocacy/policy_topics/topic.cfm/TID/64)> “Since Americans demand the latest in wireless technologies, more new products – and frequently the ‘hottest’ selling devices – are first launched in the U.S.” Id.; see also Vibhuti Agarwal, iPhone 4 Finally Comes to India, WSJ.com, May 27, 2011 <http://blogs.wsj.com/indiarealtime/2011/05/27/iphone-4-finally-comes-to-india/?KEYWORDS=mobile+device+us+market> (discussing significantly earlier launch of iPhone in United States versus India and China).

that is not a close substitute for AT&T's wireless service, and that AT&T "has not responded to any of T-Mobile USA's significant national consumer pricing and promotions in the past two years."<sup>31</sup> While this statement is remarkable for its candid appraisal that AT&T *already* possesses such market power as to be immune from competitive pricing pressures, it is also untrue. As the Commission's most recent Wireless Competition Report found, T-Mobile has continued to exert discipline on retail wireless prices — especially those of AT&T and the other giant carrier, Verizon Wireless:

T-Mobile's price changes appear to have prompted Verizon Wireless and AT&T to narrow the price premium on unlimited service offerings. In January 2010, Verizon Wireless reduced the prices of its unlimited voice plans for both individual and shared family offerings. Later the same day, AT&T responded to Verizon Wireless's changes with matching price reductions on its unlimited voice plans.<sup>32</sup>

As Clearwire's Comments demonstrated, T-Mobile has been and continues to be the leading price-cutting competitor among the major national wireless carriers.<sup>33</sup> Its exit from the marketplace at the hands of AT&T manifestly would adversely impact price competition in retail consumer wireless products and services, as well as the competitive vitality of a still-developing wholesale wireless marketplace.<sup>34</sup>

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<sup>31</sup> AT&T Opposition at 135-36. *See id.* at 134-37.

<sup>32</sup> *See* Fourteenth Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, *supra* note 25, 25 FCC Rcd 11407, 11471 ¶ 92 (2010).

<sup>33</sup> *See* Clearwire Comments at 14-15.

<sup>34</sup> For example, Clearwire has only emerged as a primarily wholesale market participant in the last two years, *see* Press Release, "Clearwire Reports Record First Quarter 2011 Results," May 4, 2011, *available at* <http://corporate.clearwire.com/releasedetail.cfm?ReleaseID=574512>; and LightSquared still faces significant GPS interference issues that threaten Commission authorization of its proposed wholesale operations. Indeed, AT&T is among the most vociferous opponents of LightSquared's proposed service. *See, e.g.*, "Wireless Carriers Disagree on LightSquared Threat," *Communications Daily*, June 16, 2011, p. 1.

#### **IV. THE COMMISSION SHOULD REJECT THE APPLICANTS' CALL FOR RELAXING ITS SPECTRUM SCREEN**

Many commenters have made a persuasive case for why the transaction should be analyzed on the basis of a national geographic market. Clearwire agrees that the proposed merger would create extremely high levels of concentration on a national level in the relevant wireless products markets and should be highly scrutinized on that basis. If, however, the Commission instead analyzes the transaction on a local or regional basis, Clearwire agrees with those commenters urging the Commission to reject the Applicants' request that the Commission relax its spectrum screen by including all 194 MHz of BRS/EBS spectrum in the 2.5 GHz band. With regard to the 2.5 GHz band, as Sprint discusses in great detail in its comments, the Commission's rationale remains unchanged for excluding Middle Band Spectrum ("MBS"), BRS Channel 1, the J and K guard bands, and EBS spectrum from the screen. As Sprint notes, the Applicants have not provided any reason for the Commission to revisit its conclusion regarding the appropriateness of excluding these portions of the 2.5 GHz band in the screen. In particular, EBS educational use requirements and other leasing rules that initially compelled the Commission to exclude EBS spectrum from the screen remain unchanged.

The Applicants' bid to change the screen is a transparent effort to reduce Commission scrutiny of the prospective merged entity. It would, therefore, be inappropriate to use this proceeding to make a fundamental change in the characterization of the 2.5 GHz spectrum. Since tripping the screen is only a starting point for the Commission's competitive analysis, leaving the screen unchanged ensures a thorough review of the transaction while still providing the Applicants a full opportunity to address the threat of harm to competition in each particular market.

V. **CONCLUSION**

In light of the foregoing and the showings in its initial Comments in this proceeding, Clearwire urges the Commission to conduct the most searching investigation into this proposed merger, to ensure the preservation and growth of a robust and flourishing competitive marketplace in both the wholesale and retail U.S. wireless telecommunications services sectors.

Respectfully submitted,

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