Before the
Federal Communications Commission
Washington, DC 20554

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

REPLY COMMENTS OF COMMUNICATIONS WORKERS OF AMERICA

George Kohl
Debbie Goldman
Communications Workers of America
501 Third St. NW
Washington, D.C. 20001
(202) 434-1194
dgoldman@cwa-union.org

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I. INTRODUCTION AND SUMMARY

The Communications Workers of America ("CWA") submits the following reply comments in support of the applications filed by AT&T Inc. ("AT&T") and Deutsche Telekom AG ("Deutsche Telekom" or "DT") to transfer control of the licenses and authorizations held by T-Mobile USA, Inc. ("T-Mobile") to AT&T.[1]

CWA represents more than 700,000 workers in the communications, media, airline, and manufacturing industries as well as the public sector. Most important, for purposes of the instant proceeding, CWA is the exclusive bargaining agent for approximately 43,000 AT&T wireless employees. Consequently, the AT&T/T-Mobile merger is a subject of intense interest to CWA's members.

Having carefully reviewed the petitions and comments that various parties submitted in this proceeding, CWA continues to believe that the proposed merger between AT&T and T-Mobile will result in substantial public interest benefits, and the Commission should approve the transaction in an expeditious manner. The merger will expand high-speed broadband deployment to 97 percent of Americans, help close the digital divide, improve the quality of service received by AT&T and T-Mobile customers, enhance economic growth (especially in rural America), create tens of thousands of jobs, and bolster workers' rights.[2]

A wide array of organizations representing tens of millions of Americans from labor, civil rights, environmental, disability rights, and rural constituencies agree. National labor unions representing more than 20 million working families, including the AFL-CIO, the Service

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[1] *See In the Matter of 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 (filed Apr. 21, 2011) (hereinafter, the applications and the transaction are referred to as the "AT&T/T-Mobile merger," the "merger" or the "transaction," and AT&T, Deutsche Telekom, and T-Mobile are collectedly referred to as the "Applicants").

[2] CWA Comments, *In the Matter of 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 ("CWA Comments").

Employees International Union, the Teamsters, the United Food and Commercial Workers, the International Union of Painters and Allied Trades, the United Mine Workers, the National Education Association, and the American Federation of Teachers, [3] as well as numerous state and local labor federations, local unions, and labor groups representing Latino, African-American, women, and gay constituencies[4] have joined with CWA in recognizing the benefits of the proposed merger in promoting access to good jobs at the only unionized wireless carrier in the United States, respect for workers' rights, and the expansion of high-speed wireless broadband.

Leading environmental groups such as the Sierra Club; civil rights organizations including the NAACP, the Minority Media and Telecommunications Council, the National Coalition on Black Civic Participation, the National Council of Negro Women, the Hispanic Institute, and the League of United Latin American Citizens; disability rights advocates such as the American Association for People with Disabilities and the American Federation for the Blind; and rural organizations including the National Grange, the National Black Farmers Association, and the National Rural Health Association have also concluded that the merger serves the public interest because the expansion of high-speed wireless Internet will help build sustainable communities, reduce carbon emissions, empower the disenfranchised, create jobs,

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[3] *See* Press Release, AFL-CIO, Statement by AFL-CIO President Richard Trumka on Announced Acquisition of T-Mobile USA by AT&T, Mar. 21, 2011; Press Release, International Brotherhood of Teamsters, "Teamsters Support Planned Merger of AT&T and T-Mobile: AT&T Acquisition Positive Step for T-Mobile Workers," Apr. 25, 2011; Press Release, American Federation of Teachers, Statement by Randi Weingarten, President American Federation of Teachers, "On the AT&T Merger with T-Mobile," (undated); Press Release, United Mine Workers of America, "UMWA supports AT&T, T-Mobile merger, May 23, 2011"; Press Release, United Food and Commercial Workers International Union, Statement by UFCW International Union President Joe Hansen on the AT&T Merger, Apr. 28, 2011; Press Release, "SEIU's Henry: Acquisition of T-Mobile USA by AT&T is Good News for Consumers, Workers and U.S. Economy," May 5, 2011; Press Release, Statement from James A. Williams, General President, International Union of Painters and Allied Trades, "On the Proposed AT&T and T-Mobile Merger," June 7, 2011; Press Release, National Education Association, "AT&T Acquisition of T-Mobile Is a Win for America, Students and Working Families," June 7, 2011.

[4] Statement of Karen J. See, President, Coalition of Labor Union Women (undated); Letter from William Lucy, President, Coalition of Black Trade Unionists, May 24, 2011; Statement of Jobs with Justice (undated); Letter from Labor Council for Latin America Advancement and 13 other Hispanic organizations, May 31, 2011; Letter from A. Philip Randolph Institute, May 20, 2011.

and expand access to health care and education, as well as civic and social participation.[5] These and hundreds of other public interest organizations at the national, state, and local level and thousands of individuals have urged the Commission to approve the merger.

As the Commission considers this transaction, it should recognize that T-Mobile would not remain a vibrant competitor absent the merger. T-Mobile has been losing customers and revenue for several years, and in January of this year, Deutsche Telekom, T-Mobile's German parent, announced that it would no longer fund T-Mobile's expansion. In addition, T-Mobile does not have sufficient spectrum to deploy a next-generation 4G wireless network. Without the capital and network resources for a 4G LTE future, it was apparent that T-Mobile would be sold, and the likely buyers were either AT&T or Sprint. AT&T clearly represents the better choice, with the financial, technological, and managerial resources to maximize T-Mobile's assets. Sprint, by contrast, is still recovering from its disastrous merger with Nextel and would struggle to make the capital expenditures necessary to exploit T-Mobile's assets, deal with an increased debt burden, and integrate the two companies' incompatible technologies into a single network. Moreover, Sprint outsources its network management and up to 70 percent of its customer service work, and has a history of trampling on its employees' desire for union representation.

[5] Letter from Michael Brune, Executive Director, Sierra Club, May 25, 2011; Letter from Hilary Shelton, Director, Washington Bureau and Senior Vice President for Advocacy and Policy, National Association for the Advancement of Colored People, Apr. 18, 2011; Amicus Comments of the Minority Media and Telecommunications Council in Support of the AT&T/T-Mobile Merger, WT Docket No. 11-65, May 30, 2011; Press Release, The Hispanic Institute, "The Hispanic Institute Announces Support for the AT&T/T-Mobile Merger," Mar. 21, 2011; Letter from Melanie Campbell, President and Convener, Black Women's Roundtable and National Coalition on Black Civic Participation and Dr. Avis Jones De-Weever, Executive Director, National Council of Negro Women, May 25, 2011; Letter from Jenifer Simpson, Senior Director for Government Affairs, American Association of People with Disabilities, May 31, 2011; Letter from Paul W. Schroeder, Vice President, Programs and Policy, American Foundation for the Blind, May 27, 2011; Letter from Leaders of 14 Hispanic Organizations (ASPIRA, CNC, The Hispanic Federation, League of United Latin American Citizens, MANA-A Latina National Organization, National Conference of Puerto Rican Women, National Hispanic Council on Aging, National Hispanic Medical Association, National Puerto Rican Coalition, Sers Jobs for Progress National, Inc. US Hispanic Chamber of Commerce, United States Hispanic Leadership Institute, United States – Mexico Chamber of Commerce), May 31, 2011; Letter from Ed Luttrell, President, The National Grange, May 27, 2011; Letter from John Boyd Jr., President, National Black Farmers Association, May 24, 2011; Letter from Alan Morgan, Chief Executive Officer, National Rural Health Association, May 18, 2011.

The evidence before the Commission also demonstrates that the wireless market is dynamic and constantly evolving; competition among wireless providers is vibrant and intense with approximately one-quarter of consumers switching providers each year. The wireless market will remain competitive after the merger. Moreover, in evaluating the competitive impact of the merger, the Commission should retain its longstanding local mobile telephony/broadband service market definition, and update its spectrum screen to reflect the realities of today's market.

Given the critical importance of expanding the availability of high-speed broadband throughout the United States, CWA believes that the Commission should give substantial weight to the public interest benefits of AT&T's expanded broadband coverage and should condition merger approval on the expansion of AT&T's 4G LTE network. Further, the Commission should recognize the public interest benefits of AT&T employment commitments.

In the end, CWA is confident that the Commission will conclude that the considerable public interest benefits that will accrue to workers and consumers as a result of this merger far outweigh any purported harms, and will approve the transaction in a timely manner with any merger-specific conditions necessary to protect consumers.

II. THE TRANSACTION WILL PRODUCE SUBSTANTIAL PUBLIC INTEREST BENEFITS

The AT&T/T-Mobile merger offers considerable public interest benefits. As a result of the transaction, AT&T will build its 4G LTE wireless network to 97 percent of the country, reaching more places faster than AT&T would have reached without the transaction. Combining the AT&T and T-Mobile networks will significantly increase network capacity, resulting in fewer dropped calls, faster data transmission, and a more rapid transition to an advanced wireless platform. The transaction will spur growth, innovation, and investment in the wireless industry, with the potential to create up to 96,000 jobs related to wireless expansion plus thousands more due to broadband expansion, particularly in rural areas. Finally, as the only unionized wireless company, the merger will promote access to good, middle-class jobs.

A. Opponents Are Wrong to Claim that Broadband Expansion is Not a Merger-Related Benefit

The AT&T/T-Mobile merger will significantly expand wireless high-speed broadband deployment across the United States. Prior to the merger announcement, AT&T had planned to build its next-generation 4G LTE advanced wireless network out to 80 percent of the U.S. population, but as a result of the merger, AT&T has committed to deploy its 4G network to 97 percent of the U.S. population within six years. Therefore, because of the merger, 55 million more Americans, who are mostly located in rural and underserved communities, will have access to AT&T's high-speed 4G wireless network.[6]

Clearly, the expanded 4G LTE wireless network deployment provides enormous public interest benefits, bringing high-speed Internet access to tens of millions more Americans, thus enabling improvements in health care, education, economic development, energy conservation, and civic participation. This wireless broadband expansion substantially moves our nation forward in meeting the National Broadband Plan's objective of the United States having the fastest and most extensive wireless networks of any nation, and toward achieving the goals of the Obama Administration's wireless initiative to provide at least 98 percent of Americans with

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[6] *Description of Transaction, Public Interest Showing, and Related Demonstrations*, WT Docket No. 11-65, Apr. 21, 2011, ("*Public Interest Statement*").

access to 4G high-speed wireless within five years.[7] The transaction puts the power of private capital in service of public objectives by funding what the Commission has called "*the* great infrastructure challenge of the early 21st century."[8]

Merger opponents argue that the Commission should disregard the public interest benefits of the expanded 4G LTE wireless expansion because it is not merger-related. Competitive forces, they contend, would have driven AT&T to make this investment anyway.[9] The Commission should dismiss such baseless arguments from a wireless competitor that has not provided any evidence to substantiate its assertions regarding AT&T's capital allocation decisions. In fact, AT&T convincingly demonstrates that the merger alters its prior capital allocation calculus, giving AT&T additional spectrum, greater scale economies (such as higher volume discounts on handsets and equipment), a larger customer base, and the expectation of a higher take-rate for its LTE service to support a business case for expanded 4G wireless build-out.[10] Moreover, in light of the fact that T-Mobile had no path to 4G LTE, the expansion of AT&T's 4G LTE network to T-Mobile's 34 million customers is most certainly a merger-related benefit.

Merger opponents also claim that the Commission should disregard AT&T's commitment to deploy 4G LTE to 97 percent of the U.S. population because it is not verifiable.[11] There is a simple solution to this purported objection. As CWA noted in our initial comments, to

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[7] *President Obama Details Plan to Win the Future Through Expanded Wireless Access* (Feb. 10, 2011) (available at http://www.whitehouse.gov/the-press-office/2011/02/10/president-obama-details-plan-win-future-through-expanded-wireless-access).
[8] Omnibus Broadband Initiative (OBI), FCC, *Connecting America: The National Broadband Plan,* GN Docket No. 09-51, 2010, xi ("*National Broadband Plan*").
[9] Sprint Nextel Corporation Petition to Deny, WT Docket No. 11-65, May 31, 2011, 118-130 ("Sprint Petition"); Petition to Deny of Public Knowledge and Future of Music Coalition, WT Docket No. 11-65, May 31, 2011, 54-58 ("Public Knowledge Petition"); Petition to Deny of Free Press, WT Docket No. 11-65, May 31, 2011, 58-60 ("Free Press Petition").
[10] Joint Opposition of AT&T Inc., Deutsche Telekom AG, and T-Mobile USA, Inc. To Petitions to Deny and Reply to Comments, *In the Matter of 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, June 10, 2011, 82 ("Joint Opposition")
[11] *Id.*

ensure that AT&T does indeed meet its broadband build-out commitment, the Commission should follow past precedent and condition approval of the merger on the expansion of AT&T's 4G LTE network, including timetables, speed and quality benchmarks, data reporting requirements, and penalties for non-compliance.[12]

B. Opponents Are Wrong to Claim That The Merger Is Not Necessary to Improve Service for Consumers by Addressing Capacity Constraints and Facilitating the Transition to LTE Service

The AT&T/T-Mobile merger will improve the quality of service received by both AT&T and T-Mobile customers. AT&T's leadership in mobile broadband has been a good thing for consumers, but it has led to one negative consequence: AT&T currently faces significant network-capacity constraints. These constraints are leading to problems such as dropped calls and slow data speeds in certain major metropolitan areas. As a result, customer satisfaction surveys find that AT&T is the lowest-rated carrier in overall customer satisfaction for wireless service.[13]

The merger will alleviate AT&T's short-term network-capacity crisis, facilitate the transition to 4G LTE in more places, and thereby improve the quality of service received by AT&T customers. The merger will also bring benefits to T-Mobile's customers, giving T-Mobile's GSM and UMTS subscribers immediate access to AT&T's larger networks and better service within buildings, and, as already noted, access to AT&T's 4G LTE network as AT&T rolls out that service in the coming years.[14]

Merger opponents attempt to dismiss these substantial public interest benefits with three erroneous claims. First, they deny that AT&T faces real spectrum constraints, asserting that

[12] CWA Comments, 13.
[13] CWA Comments, 15 (citing a January 2011 Consumer Reports survey that rated Verizon Wireless 74, Sprint 73, and AT&T only 60).
[14] CWA Comments, 15-19.

AT&T is hoarding spectrum, has more spectrum than any other wireless competitor, and makes inefficient use of its spectrum. Second, they reject AT&T's detailed explanation of how the merger of AT&T's and T-Mobile's networks would result in a significant immediate and longer-term increase in network capacity. Third, they argue (contradicting their own claim that AT&T does not have capacity challenges) that AT&T's capacity problems are AT&T's own fault because the company has underinvested in its network.[15] These arguments all fall wide of the mark.

First, AT&T convincingly demonstrates that its spectrum constraint problems are real, and that they are due to heavy data traffic and the need to divide existing spectrum to support customers using three separate generations of technologies: GSM, UMTS/HSPA, and beginning this year, LTE.[16] AT&T pioneered the smartphone, with 31 million smartphone users who consume 24 times the data of traditional cell-phone users.[17] According to the most recent Nielsen survey, U.S. smartphone data usage was up 89 percent over the past year, from 230 MB to 435 MB average data usage per consumer per month.[18] This fact alone puts enormous pressure on AT&T's existing network. Moreover, AT&T must continue to support 97 million GSM and UMTS customers, and as some merger opponents know all too well, it is not as easy and as fast as merger opponents claim to get these customers to change handsets and service plans in order to move onto spectrally more efficient technologies. Sprint, for example, has been moving

[15] Sprint Petition, 89-117; Public Knowledge Petition, 49-57; Free Press Petition, 52-58; Joint Petition to Deny of Center for Media Justice, Consumers Union, Media Access Project, New America Foundation, and Writers Guild of America, West, WT Docket No. 11-65, May 31, 2011 ("CU Petition"), 32-39.
[16] Joint Opposition, 20-24.
[17] *Public Interest Statement* ,21; Joint Opposition, 20, 26.
[18] Don Kellogg, "Average U.S. Smartphone Data Usage Up 89% as Cost per MB Goes Down 46%," Nielsen Wire, June 17, 2011 (available at http://benton.org/outgoingframe/78322?utm_source=newsletter&utm_medium=email&utm_campaign=BentonsHeadlines).

customers from its 800 MHz spectrum for seven years.[19] In addition, AT&T is not "hoarding" its AWS and 700 MHz spectrum; rather, it will use that spectrum for its LTE service, which is scheduled to launch this summer. If AT&T were to use that spectrum to resolve its existing capacity constraints, it would not have the spectrum it needs for 4G LTE, which clearly would not serve the public interest in the roll-out of next-generation high-speed wireless service.[20] Finally, it is simply not true, as Sprint wrongly claims, that AT&T has the largest spectrum holdings of any wireless provider. The combined spectrum holdings of Sprint and Clearwire (of which Sprint owns a 54 percent economic share) is the strongest in the industry. As Sprint CEO Don Hesse recently told investors: "[w]hen you combine Sprint's spectrum position with Clearwire's spectrum position[,], it put[s] us in the strongest place for the future."[21]

Second, merger opponents are simply wrong in dismissing AT&T's detailed explanation of how the combination of the two networks will substantially ease network congestion. The transaction will enable AT&T essentially to double capacity in thousands of areas in which it can engage in cell-splitting due to the integration of T-Mobile's cell sites; eliminate redundant control channels, freeing up 4.8 to 10 MHz of spectrum; increase capacity 10 to 15 percent as a result of channel pooling; and make more efficient use of spectrum that is currently underutilized by one of the two companies in certain locations.[22] Merger opponents also discount the important fact that the efficiencies from freeing up GSM spectrum have multiplier effects, making spectrum currently used for GSM service available to be redeployed for more efficient UMTS technologies. Similarly, over time the transaction will enable the combined company to move T-Mobile's HSPA subscribers off its AWS spectrum and devote that spectrum to the

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[19] Joint Opposition., 32-33.
[20] *Id.*, 27-28.
[21] Conference Call Transcript, Sprint Nextel Q12008 Earnings Call, May 12, 2008.
[22] CWA Comments, 16-19; Declaration of William Hogg, 42-58 (attached to *Public Interest Statement*,) Hogg Reply Declaration, 25 (attached to Joint Opposition).

deployment of LTE service that is 30 to 40 percent more spectrally efficient.[23] Nor can AT&T achieve comparable added capacity as quickly by deploying capital to build new cell sites, which can take many years to go through the engineering, permitting, and construction process. AT&T calculates that it would take eight years to add the number of cell cites it will have added by the completion of network integration in two years.[24] Moreover, these sites, in many cases, would not be in locations as optimal as those already occupied by T-Mobile.

Third, merger opponents fail to make their case that AT&T has "underinvested" in its network compared to other national wireless carriers. Sprint uses a deceptive metric to try to make this point, comparing AT&T's capital expenditures (capex) per subscriber to what Sprint calls an "industry average." Critically, Sprint includes Clearwire in the "industry average."[25] But since Clearwire as a startup has large capex but virtually no subscribers, this calculation boosts the "industry average" in a misleading way, making any incumbent company, including AT&T, look like it has underinvested. To avoid such distortions, analysts typically use a metric that compares capex to service revenues. Using this metric to analyze capex over the past five years (2006 to 2010), AT&T's 14.6 percent wireless capex as a percent of service revenues ratio is roughly comparable to Verizon's 15.4 percent, and significantly higher than Sprint's 10.6 percent.[26]

The chart below shows total wireless capital expenditures over the past five years, 2006 to 2010. During this period, AT&T invested $31.9 billion in its wireless network; during the same period, Sprint and T-Mobile each invested half that amount, $15.2 billion and $15.4 billion

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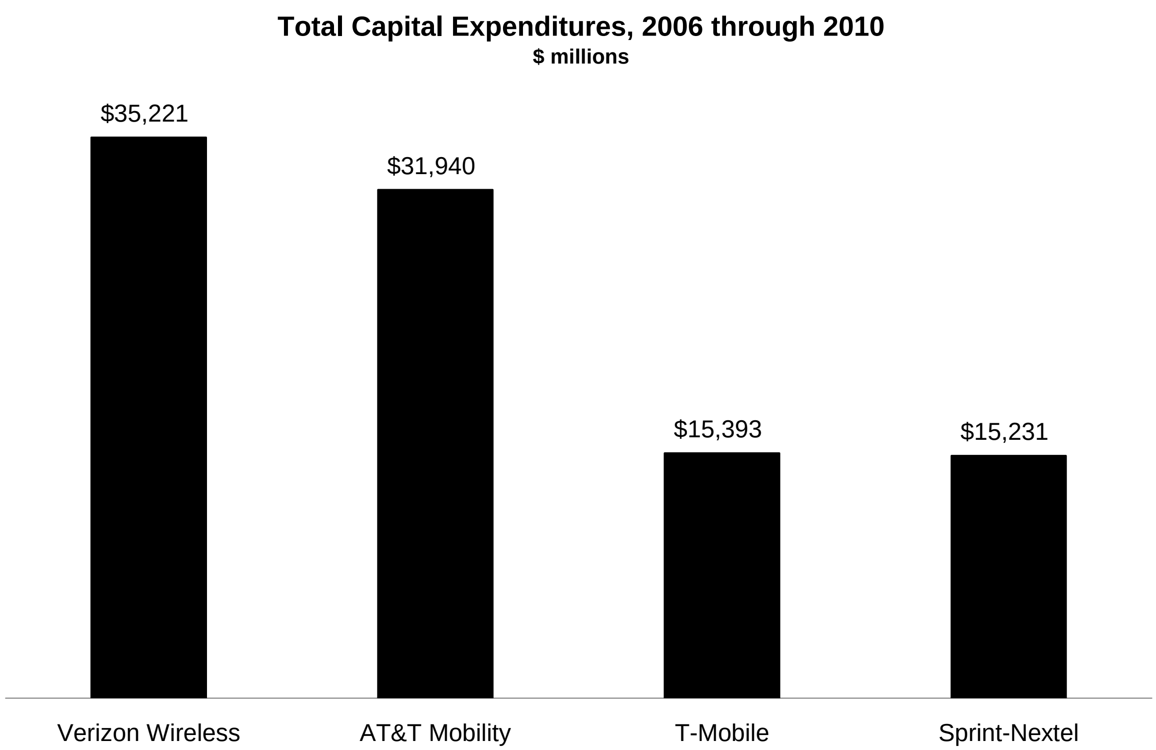
[23] Hoff Reply Declaration, 56.
[24] *Id.*, 55, 60-61.
[25] Sprint Petition, 86 (claiming average capex per subscriber from 2006 to 2010 at AT&T Mobility of $81 and "industry average" of $91. CWA's calculation of AT&T Mobility five-year (2006-2010) average capex-per-subscriber using Goldman, Sachs & Co. Wireless Industry Model (June 7, 2011) come to $92.23, substantially more than the figure of $81 that Sprint cites).
[26] CWA Calculations based on data from Goldman, Sachs & Co., Wireless Industry Model, "Market Overview" tab, June 7, 2011.

respectively. While Verizon invested slightly more, at $35.2 billion, it is important to note that the path from Verizon's 3G EVDO technology to 4G LTE deployment requires construction of an entirely new network, whereas AT&T's third generation HSPA technology belongs to the same family as 4G LTE, potentially making the transition less costly. Furthermore, in 2010, AT&T's $9.2 billion wireless capex exceeded that of Verizon ($8.4 billion), T-Mobile ($2.8 billion), and Sprint ($1.4 billion).[27]



Source: CWA Calculations based on data in Goldman, Sachs & Co., Wireless Industry Model, June 7, 2011.

In summary, with the AT&T/T-Mobile merger, customers will enjoy the benefits of a larger and more efficient network: fewer dropped and blocked calls; faster connections; and likely lower prices as a result of expanded output. Consequently, the Commission should give substantial weight to these tangible, transaction-specific public interest benefits for consumers.

[27] *Id.*

C. The Transaction Will Positively Impact Workers and Strengthen Employee Rights

In addition to accelerating broadband deployment and improving service quality for consumers, the AT&T/T-Mobile merger will create tens of thousands of jobs, improve working conditions, and bolster employee rights. This is one important reason that labor organizations representing more than 20 million working families, including the AFL-CIO, the Service Employees International Union, the Teamsters, the United Food and Commercial Workers, the International Union of Painters and Allied Trades, the United Mine Workers, the National Education Association, and the American Federation of Teachers, as well as numerous state and local labor federations, local unions, and labor groups representing Latino, African-American, women, and gay constituencies have joined with CWA to support this transaction.[28] Collectively, these labor organizations are at the forefront of the fight to protect and expand good middle-class American jobs.

Sprint and other merger opponents attempt to drown out this groundswell of support by arguing that the transaction will lead to the loss of American jobs.[29] It is particularly ironic to hear this from Sprint, which is the only wireless carrier in the United States that outsources network management; indeed, it has been reported that a "great part" of such work has been sent abroad.[30] Additionally, Sprint outsourced up to 70 percent of its customer contact workforce to places like the Philippines, India, and Mexico.[31] Moreover, Sprint has a long history of hostility to union organizing and trampling workers' rights. As CWA detailed in our initial comments, in a legendary case, Sprint closed a call center in San Francisco in which 70 percent of the largely

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[28] *See* footnotes 3 ,4 above.
[29] Sprint Petition, 77.
[30] CWA Comments, 27 (citing Gulveen Aulakh, "Ericsson To Serve US Clients Using 'Competent' Workforce in India," *The Economic Times*, Nov. 25, 2010 (available at http://articles.economictimes.indiatimes.com/2010-11-25/news/27620440_1_ericsson-s-india-global-services-mobile-network).
[31] *Id.*, *See* Alena Semuels, "Sprint Focused on Keeping Customers Happy So They Don't Leave," Los Angeles Times, Mar. 5, 2009 (available at http://latimesblogs.lattimes.com/technology/2009/03/sprint-and-cust.html).

Hispanic, immigrant workforce joined a petition to the NLRB to hold a union election rather than let that election move forward. And at three call centers in North Carolina, Sprint engaged in relentless anti-union attacks over an eight-year period.[32]

The Commission should also disregard Sprint's disingenuous and inaccurate assertion that the transaction would result in "reduced investment in America" and that AT&T's proposed cash payment to Deutsche Telekom represents a capital outflow from the U.S. to Europe.[33] In fact, AT&T has announced that it will spend an additional $8 billion on wireless infrastructure over and above what it had planned to spend before the merger announcement.[34] The Economic Policy Institute (EPI) estimates that AT&T's increased capital expenditures resulting from the merger will create between 54,834 and 95,959 jobs.[35] These figures, moreover, only account for the effects of capital investment in wireless infrastructure and do not count the jobs that will be created as a result of increased broadband services.[36]

In point of fact, the transaction likely will result in the repatriation to the United States of billions of dollars which would be available for investment here. T-Mobile USA has been "upstreaming" significant amounts of cash to Deutsche Telekom. Over the past three years alone, T-Mobile sent about $7.6 billion in "cash contribution" to its parent DT.[37] After the merger,

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[32] CWA Comments, 26-27 (citing Jon Pattee, "Sprint and the Shutdown of La Conexion Familiar: A Union-Hating Multinational Finds Nowhere to Run," *Labor Research Review*, Vol. 1, No. 23, Article 8 and *See, e.g.*, "NLRB Schedules Hearing Over Sprint Charges," Jan. 1, 2004 (available at: http://www.cwa-union.org/news/entry/nlrb_schedules_hearing_over_sprint_charges2); "Sprint Workers Squash Decertification," Dec. 1, 1998 (available at: http://www.cwa-union.org/news/entry/sprint_workers_quash_decertification).
[33] Sprint Petition,. 78-9.
[34] *See* Press Release, "AT&T to Acquire T-Mobile USA from Deutsche Telkom," Mar. 20, 2011 (available at http://investmentwatchblog.com/att-to-buy-t-mobile-us-cnbc-bulletin/) ("The acquisition will increase AT&T's infrastructure investment in the U.S. by more than $8 billion over seven years.").
[35] *See* Ethan Pollack, *The Jobs Impact of Telecom Investment*, Policy Memorandum #185, Economic Policy Institute, May 31, 2011, at 2 (attached as Exhibit A to CWA Comments). For purposes of this study, a job refers to a job-year (*i.e.*, a job held for a single year).
[36] *Id*.
[37] Deutsche Telekom Financial Overview, 2009 and 2010, available at http://www.download-telekom.de/dt/StaticPage/82/03/46/100225-presentation-backup_820346.pdf and http://www.download-telekom.de/dt/StaticPage/99/59/06/IR_Backup_Q4_2010.PDF_995906.pdf

such funds will stay in the United States. Moreover, about $20 billion of DT debt is held in dollars, and DT has said that it will use $17.7 billion of the transaction proceeds to pay down debt.[38] This could mean repatriating a large part of this debt to U.S. lenders.

CWA stands second to none in our commitment to protect the employment security of workers, and to increase the number of good, middle-class American jobs. Therefore, as the AT&T/T-Mobile merger is being implemented, CWA will strive to ensure, through careful planning and returning overseas work to this country, that there will be no involuntary job losses, and that any workers adversely affected by the transaction will be able to transition into other similar or better jobs with the company.[39] CWA takes very seriously the commitment that AT&T CEO Randall Stephenson made in testimony before the Subcommittee on Intellectual Property, Competition and the Internet of the House Judiciary Committee where he stated that AT&T would return work from overseas before it would reduce U.S. jobs at the merged company.[40] Indeed, over the longer term, increased investment and growth should spur job creation at the combined company.

Aside from positively impacting CWA members who work for AT&T and benefiting the economy as a whole, the merger will also prove to be a boon for T-Mobile employees. As CWA

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[38] Deutsch Telekom Press Release, "Deutsche Telekom Sells T-Mobile USA for 39 billion U.S.- Dollar to AT&T," March 20, 2011 (available at http://www.telekom.com/dtag/cms/content/dt/en/1005598).
[39] CWA Comments, p. 23.

[40] Transcript of the AT&T/T-Mobile Merger, Hearing of the Subcommittee on Intellectual Property, Competition, and the Internet of the House Judiciary Committee, May 26, 2011 (Randall Stephenson response to Cong. Ted Deutch (D-FL): "We have a long history in terms of how we address [any short-term redundancies]. In fact, [President] Larry Cohen of the CWA and I directly negotiated five years ago a concept we called JOG. It's called the job offer guarantee. And the way we manage these surplus situations is we offer each employee a job within a certain geographic area. And it's allowed us over the last few years to very effectively move employees out of declining businesses into growth businesses. It's very elegant. It doesn't happen real quickly, but we do get there. And using that through attrition, we believe we can manage through this."

"But both of us [AT&T and T-Mobile] have a large labor force that's been outsourced a lot of them out of the country. Our commitment has always been if we have to go down in redundancies, we go down there first and not in the United States."

discussed in our initial comments, T-Mobile has been hostile to unions and opposed efforts by workers to organize and exercise their basic rights. By contrast, in accordance with the CWA collective bargaining agreement with AT&T, AT&T has publicly committed to maintain a policy of non-interference with respect to the organizing of T-Mobile employees, leaving the decision of whether to join a union up to individual employees according to a non-confrontational process sanctioned under the National Labor Relations Act.[41]

There is another reason that this merger will benefit T-Mobile employees. Before this transaction was proposed, it was clear that Deutsche Telekom was going to sell T-Mobile. In January of this year, Deutsche Telekom decided that it would no longer invest capital in T-Mobile and that T-Mobile "has to develop into a self-funding platform that is able to fund its future itself."[42] Without the spectrum or capital resources to build a next-generation 4G LTE platform, the prospects for a stand-alone T-Mobile look bleak.[43] Indeed, T-Mobile has been losing market share and experienced declining revenue and profits since 2008. While its competitors added customers in 2010, T-Mobile alone lost subscribers and had by far the highest customer churn among the big four wireless carriers.[44]

Some merger opponents claim that a stand-alone T-Mobile is indeed an option.[45] They argue that T-Mobile's HSPA+ is comparable to LTE, and therefore provides a path to the future for an independent T-Mobile. However, while HSPA+ may compete today with LTE, LTE is just at the beginning of its development whereas HSPA+ is at the end of its technological

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[41] CWA Comments, 23-25.
[42] Briefing by Deutsche Telekom and T-Mobile to Analysts, January 20, 2011, http://www.telekom.com/dtag/cms/contentblob/dt/en/979218/blobBinary/transcript_20012011.pdf
[43] Hogg Reply Dec. 14, Hogg Decl. 24-26, Larsen Reply Decl. 24, 26.
[44] Goldman, Sachs & Co., Wireless Industry Model, June 7, 2010. *See* also DT Financial Overview, 2009 and 2010 available at http://www.download-telekom.de/dt/StaticPage/82/03/46/100225-presentation-backup_820346.pdf and http://www.download-telekom.de/dt/StaticPage/99/59/06/IR_Backup_Q4_2010.PDF_995906.pdf
[45] Public Knowledge Petition, 10, 56-7.

development. Moreover, even today LTE offers downlink throughput speeds that are up to two times faster than HSPA+ with dual carriers, which is important for many applications including video conferencing and telemedicine. LTE is also 30 to 40 percent more spectrally efficient, has less latency, and is better able to handle signaling load.[46]

Public Knowledge also argues that T-Mobile could go it alone with the $3 billion break-up fee, spectrum, and roaming rights it will get if the Commission or DOJ reject the merger.[47] But most analysts – including the FCC – put the cost of a fourth-generation network at upwards of $10 billion.[48] And it is far from obvious that DT would permit T-Mobile to keep the $3 billion in cash (the deal, after all, was with the parent, not the U.S. subsidiary).

Thus, the real choice before the Commission is whether T-Mobile will be acquired by AT&T or Sprint. AT&T is the far better choice. It has the financial resources, utilizes similar technology platforms, has a proven track record of successful merger integration, and, as already noted, a labor policy based on respect for workers' rights. In contrast, Sprint is still recovering from its disastrous merger with Nextel and would struggle to make the capital expenditures necessary to exploit T-Mobile's assets, deal with an increased debt burden, and integrate the two companies' incompatible technologies into a single network. Moreover, as already discussed, Sprint's employment practices which include extensive outsourcing and offshoring of jobs coupled with its disrespect for workers' rights stand in stark contrast to those of AT&T.[49]

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[46] *Id*, Sprint Petition, 50-53.
[47] Public Knowledge Petition, 10; see also Gigi Sohn, "Lots of Potential Buyers for T-Mobile if they Want to leave the US Market," June 7, 2011 and response by Debbie Goldman, June 14, 2011 (available at http://www.publicknowledge.org/blog/lots-potential-buyers-t-mobile-if-they-want-l).
[48] FCC, *A Broadband Network cost Model: A Basis for Public Funding Essential to bringing Nationwide Interoperable Communications to America's First Responders*, OBI Technical Paper No. 2, May 2010, 5 (finding that the cost of a nationwide interoperable wireless broadband public safety network at $15.7 billion).
[49] CWA Comments, 25-28.

In summary, because of T-Mobile's current financial condition and the choice that Deutsche Telekom has made to stop funding T-Mobile expansion, T-Mobile workers now face a stark choice. One path forward is the AT&T/T-Mobile merger, a transaction that will allow them to work for an employer that has the resources and strategy for growth and respects the rights of American workers. The other path forward is a merger with Sprint, a transaction that would leave them at the mercy of a company that is hostile to union organizing and has a troubling record of outsourcing.

III. THE PUBLIC INTEREST BENEFITS PRODUCED BY THE MERGER GREATLY OUTWEIGH ANY ALLEGED TRANSACTION-SPECIFIC HARMS

Weighed against the tangible and overwhelming public interest benefits set forth above and in CWA's initial comments, opponents of the merger present speculative harms that are premised on a flawed view of the wireless marketplace. As CWA discussed at length in our comments, the wireless industry is dynamic and constantly evolving; competition among wireless service providers is vibrant and intense, with an estimated 25 percent of customers switching wireless providers each year.[50] No matter how many times merger opponents repeat the "duopoly" mantra, the basic fact is that more than 70 percent of Americans live in areas served by five or more facilities-based mobile wireless service providers.[51] Using the Commission's longstanding wireless market definition, and an updated spectrum screen that takes into account new developments in the wireless market, there are relatively few markets, if any, in which an AT&T/T-Mobile merger surpasses an initial spectrum screen that would warrant further investigation. Certainly, if the Commission finds that there are local markets in which the combined company would have too much market power, the Commission should

[50] *Id.*, 32 (citing *Fourteenth Wireless Competition Report*, 25 FCC Rcd at 11562 para 248.)
[51] *Fourteenth Wireless Competition Report*, 25 FCC Rcd at 11450 (Table 5).

require local divestitures. But at the end of the day, CWA is confident that the Commission will conclude that the overwhelming public interest benefits of the AT&T/T-Mobile merger overwhelm any purported anti-competitive concerns.

A. Merger opponents are wrong to call the wireless market a duopoly

It strains credulity for Sprint to argue that the wireless market is a "1980s-style duopoly."[52] Sprint has 50 million wireless customers, and in conjunction with Clearwire (in which it holds 54 percent economic interest), has the strongest spectrum holdings in the industry. Just this week, Sprint reached a 15-year deal with LightSquared estimated at $20 billion to operate and develop jointly a 4G network.[53] Moreover, there are now news reports that Dish Network and its sister company EchoStar may be looking to get into the wireless business through a joint venture with Sprint. If Dish succeeds in its bid to purchase the spectrum assets of bankrupt TerreStarr, it would bring valuable assets to the partnership.[54]

Nor would this merger reconstruct the "Ma Bell" monopoly. Unlike the period before the 1984 AT&T divestiture, vigorous competition among many providers using a variety of technologies to deliver voice and data services characterizes today's vibrant communications marketplace. Cable companies lead the market for Internet access services, multiple competitors (including Sprint) vie to provide long-distance backhaul services; and numerous providers offer local voice and data connectivity and special access services.[55]

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[52] Sprint Petition, 1.
[53] Greg Bensinger, "Falcone's LightSquared, Sprint Agree to 15-Year Network Accord," Bloomberg, June 18, 2011; Azam Ahmed, "Sprint in Deal with Troubled Wireless Venture," *New York Times*, June 18, 2011; Anton Troianovski and Spencer E. Ange, "LightSquared Gets OK on Sprint Spectrum Lien," *The Wall Street Journal*, June 18, 2011.
[54] Andy Vuong, "Pursuit of wireless spectrum raises possibilities for Dish Network," *The Denver Post*, June 19, 2011.
[55] *See* FCC Local Telephone Competition: Status as of June 30, 2010, March 2011, Table 3 (finding that one-third or 48.7 million of the 151.2 retail local telephone connections are provided by non-incumbent carriers); FCC

In the wireless industry, the Commission concluded in the *Fourteenth Wireless Report* that there are currently five or more facilities-based wireless competitors in 18 of the top 20 U.S. markets, including Verizon, Sprint, low-cost no-contract national carriers like MetroPCS and Leap, and regional carriers such as Cellular South, U.S. Cellular, and Cincinnati Bell.[56] Approximately 25 percent of wireless customers switch providers every year. And with numerous mergers, wireless prices (including both voice and data) have declined 33 percent from 1999 to 2011, according to the Bureau of Labor Statistics. During this same period, general inflation increased 27 percent.[57]

Merger opponents also erroneously dismiss MetroPCS and Leap as meaningful wireless competitors, claiming that these low-cost mavericks neither offer nationwide plans nor advanced data services.[58] In fact, MetroPCS has introduced 4G LTE service in all of [its] major metropolitan areas, and Android smartphones constituted approximately 30 percent of its new customers in the first quarter of 2011.[59] Furthermore, MetroPCS has claimed to have a larger nationwide footprint than Sprint. Leap also offers nationwide service and smartphone handsets.[60] MetroPCS and Leap are paradigmatic "mavericks" that have been growing rapidly, and are poised to make their larger rivals pay should they seek to engage in anti-competitive collusion.[61]

Internet Access Report: Status as of June 30, 2010 (finding that 57 percent or 42.2 million of the 73.9 million residential wired Internet access connections are provided by cable companies).
[56] Fourteenth Wireless Report, 25 FCC Rcd at 11450 (Table 5).
[57] *See* CWA Comments, 19-22 (citing U.S. Bureau of Labor Statistics, Consumer Price Index-All Items, 1999-2011 and Consumer price Index-U, Wireless Telephone Services (which includes both voice and data), 1999-2011.
[58] Sprint Petition, 53-55.
[59] MetroPCS May 3, 2011 Earnings Call Transcript; Press Release, MetroPCS to Launch Metro USA Nationwide Coverage, Nov 4, 2010.
[60] Leap May 4, 2011 Earnings Call Transcript.
[61] CWA Comments, 34-35.

B. Merger Opponents' Self-Serving Market Definitions and Outdated Spectrum Screen Are Wrong and Misrepresent the Level of Wireless Competition

The Commission has consistently evaluated wireless mergers using nearly identical product and geographic market definitions, and should continue to do so in this instant proceeding. The appropriate product market remains the combined mobile telephony/broadband service market, and the geographic market should continue to be a local market, rather than a national or regional one.

Although merger opponents urge the Commission to break with precedent to define the wireless market as national,[62] in fact, customers generally choose among providers that market services "where they live, work, and travel on a regular basis" and "[t]he number and identity of … providers varies among geographic areas[.]"[63] Despite nationwide *coverage*, consumers in different localities have different choices in selecting providers, and due to locally-based special offers, in pricing and service plans. The Commission should also reject merger opponents' self-serving and overly-cabined proposed product market definitions[64] and retain its longstanding "mobile telephony/broadband service market" definition. In particular, proposals to define separate "prepaid" and postpaid" markets are misguided because, as Sprint CEO Dan Hesse noted, "what's happening in the industry [is] prepaid as a whole is beginning to cannibalize post-paid."[65] The essential difference between "pre-paid" and "post-paid" is whether the customer has purchased a contract, essentially amortizing the cost of the handset over the contract terms. In this sense, the two are largely substitutes, and do not constitute separate markets.

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[62] Sprint Petition, 16-27; Free Press Petition, 8; CU Petition, 14-19.
[63] Complaint, *United States v. AT&T Inc.*, 1:09-cv-01932-JDB, para 15 (D.D.C. filed Oct. 13, 2009).
[64] Free Press Petition, 8-14 (arguing that the product market should be narrowly defined as "the nationwide, post-paid smartphone mobile service market"); Public Knowledge Petition.
[65] Conference Call Transcipt, Sprint Nextel Corp. Q1 2010 Earnings Call, Seeking Alpha, May 1, 2010.

Finally, the Commission should reject the competitive analyses provided by merger opponents because they use an outdated spectrum screen designed to overstate AT&T's spectrum holdings.[66] As CWA discussed in our initial comments, the Commission should include all spectrum that is available and suitable for mobile wireless services or soon will be. Since the last time the Commission engaged in a in-depth analysis of what spectrum should be included in its screen, the Commission, among other things, (1) has effectively required LightSquared to use its MSS spectrum in the provision of mobile broadband services within the two-year time frame typically used to evaluate whether spectrum should be included in the screen; (2) has recognized that all 194 MHz of BRS/EBS spectrum can be used for the "arrival of a wireless broadband pipe that will increase competition and consumer choice, making possible new services, and promote the availability of broadband for all Americans,"[67] and that this spectrum is currently being used by Clearwire, among others, to provide mobile broadband service; and (3) has established service rules for the provision of mobile broadband services using 25 MHz of WCS spectrum.

Once the screen is updated to reflect the realities of the wireless marketplace, there are few, if any, local markets where AT&T's spectrum holdings would exceed the screen following the merger. In our initial comments, CWA submitted a study by Dr. Leslie Marx in which she calculates that there are **zero** CMAs where AT&T's spectrum holdings would exceed the screen.[68] According to Dr. Marx, even if the Commission decides against including all 194 MHz of BRS/EBS spectrum in the screen at this time, AT&T's spectrum holdings would still only exceed the screen in at least one county in 26 or 31 (out of a possible 716 DMAs), depending on

[66] Sprint Petition, 57-76; Free Press, 47-52.
[67] *Fourteenth Wireless Competition Report*, 25 FCC Rcd at 11634 (App. A, para 23).
[68] Leslie M. Marx, Professor of Economics, Duke University, and Former Chief Economist, Federal Communications Commission, *Economic Report on the Proposed Acquisition of T-Mobile USA, Inc. by AT&T Inc.*, May 31, 2001, 25-26 (attached to *CWA Comments* as Exhibit B) ("*Marx Report*").

whether one includes AWS or BRS spectrum that is currently unavailable.[69] And even in those CMAs, there is strong reason to believe that the existence of current and potential competitors would alleviate any potential concerns regarding the merger. Dr. Marx found that the average number of spectrum holders for the CMAs identified by the screens is approximately 14, with a minimum of 12. Dr. Marx also calculated HHIs for all 31 CMAs based on spectrum shares of existing spectrum holders and found that none of the 31 CMAs in question would exceed the FCC's HHI screen.[70]

Merger opponents go to great lengths to argue that post-merger AT&T and Verizon would have the market power to stifle innovation in handsets and applications. Such assertions ignore the fact that the handset market is a global one, with at least 35 companies from all over the world designing and manufacturing handsets for sale. Leading handset manufacturers report that U.S. sales account for a minority of their handset sales, including Nokia (less than one percent), Apple (less than 30 percent of iPhones), and RIM (less than 40 percent).[71] Nor will the merger suppress innovation in applications, which are exploding across all wireless technology platforms. Most applications are sold through online applications stores that are independent of individual carriers.

In summary, merger opponents fail to make their case that the transaction will result in a "Twin Bell duopoly" with the power to raise prices and stifle innovation. However, if after careful review the Commission finds that there are local markets in which the combined company would raise anti-competitive concerns. the Commission should require local divestitures. In addition, it may be appropriate for the Commission to adopt additional conditions

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[69] CWA Comments, p. 52 fn 185 (noting that because AT&T and T-Mobile hold AWS spectrum that is currently unavailable, including unavailable AWS and BRS spectrum in the screen actually increases the number of CMAs in which AT&T would exceed the screen post-merger by five).
[70] *Marx Report*, 17-23.
[71] Joint Opposition, 155.

to protect consumers. But at the end of the day, CWA is confident that the Commission will conclude that the substantial public interest benefits of the AT&T/T-Mobile merger overwhelm any purported anti-competitive concerns.

IV. CONCLUSION

The AT&T/T-Mobile merger would result in substantial public interest benefits which far outweigh any alleged transaction-specific harms. The Commission should expeditiously conclude that this merger serves the public interest and promptly approve the pending applications with the condition that AT&T follow through on its commitment to expand its 4G LTE high-speed broadband network to cover over 97 percent of Americans within six years. Further, the Commission should recognize the public interest benefits of AT&T's employment commitments.

Respectfully Submitted,

Debbie Goldman

Debbie Goldman
George Kohl
Communications Workers of America
501 Third St. N.W.
Washington, D.C. 20001
202-434-1194
dgoldman@cwa-union.org

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