REDACTED - FOR PUBLIC INSPECTION

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

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

REDACTED EX PARTE REPLY COMMENTS OF TELECOM TRANSPORT MANAGEMENT, INC.

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June 21, 2011

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Pursuant to the Public Notice issued by the Federal Communications Commission ("Commission" or "FCC") in the above-captioned proceeding on April 28, 2011,[1] Telecom Transport Management, Inc. ("TTM"), files this Reply to the Joint Opposition of AT&T Inc. ("AT&T"), Deutsche Telekom AG ("DT"), and T-Mobile USA, Inc. (T-Mobile," and together with AT&T and DT, "Applicants") to Petitions to Deny and Reply to Comments filed in the above-captioned proceeding on June 10, 2011 ("Opposition").

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[1] FCC Public Notice, *AT&T Inc. and Deutsche Telekom AG Seek FCC Consent to the Transfer of Control of the Licensees and Authorizations Held by T-Mobile USA, Inc. and Its Subsidiaries to AT&T Inc.*, WT Docket No. 11-65, DA No. 11-799 (rel. Apr. 28, 2011) ("Public Notice"). This Petition is filed in reference to the following application File Numbers referenced in the Public Notice: 0004669383, 0004673673, 0004673727, 0004673730, 0004673732, 0004673735, 0004673737, 0004673739, 0004675960, 0004703157, 6013CWSL11, 6014CWSL11, 6015ALSL11, 6016CWSL11, 0004698766, ITC-T/C-20110421-00109, ITC-214-20020513-00251, ITC-T/C-20110421-00110, ITC-T/C-20110421-00111, ITC-214-20061004-00452, ITC-T/C-20110421-00112, and ITC-214-19960930-00473.

I. Introduction and Summary

TTM is a pioneer and leading provider of wireless backhaul and alternate access services, having been formed in 2003 to pursue the backhaul marketplace. TTM's customers include T-Mobile USA ("T-Mobile") and other U.S. wireless carriers. TTM operates its facility based fiber and microwave networks in 15 metropolitan areas across 5 Midwest and Eastern states and is continually expanding its footprint. TTM provides a fully managed end to end backhaul solution and was one of the first U.S. carriers to provide Ethernet backhaul in support of 4G wireless services. TTM's networks simultaneously provide TDM and Ethernet backhaul services, easing the wireless provider's migration path from 3G to 4G.

TTM has the same concerns about the post-merger viability of the market for backhaul raised in the comments of Sprint Nextel, MetroPCS, US Cellular, COMPTEL and others. In particular, TTM wholly agrees with the premise laid out by Sprint as well by competitive backhaul providers that AT&T's proposed acquisition of T-Mobile will lead to a loss of competition: first in the upstream special access market which includes the provision of backhaul to wireless carriers,[2] and second in the downstream retail wireless market.

As expected, the Applicants disagree with this view. Their response, in the form of the Opposition, is, however riddled with inaccuracies and invalid assumptions regarding competition in the market for backhaul. Because TTM has substantial experience in that market, it is compelled to correct the misinformation provided in the Opposition.

II. The Applicants' Claims that the Backhaul Market is Sufficiently Competitive are Misleading

A number of parties' petitions and comments stressed that the special access market for

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[2] *See* Sprint Nextel Pet. at pp. 39-43; COMPTEL Pet. at 22-26.

wireless backhaul is not competitive and that AT&T maintains a dominant position within its 22 state ILEC footprint. The merger opponents then postulate that as the result of the state of competition, the loss of T-Mobile's demand from the open market would initiate a cycle of decreasing competition in the upstream wholesale backhaul market and subsequently harm competition in the downstream wireless market.[3] TTM agrees with this analysis. The Opposition, in contrast, suggests that the backhaul market is robustly competitive and that AT&T lacks the market power to affect that competition adversely. TTM's experience in the backhaul market suggests that this claim rings hollow.

A. The ILECs Possess Built-In Advantages in the Market to Deploy Physical Infrastructure to the Cell Sites

The most astounding statement in the Opposition is the claim that "no carrier, including any ILEC, has any historical head start or advantage in providing Ethernet backhaul services."[4] There are multiple reasons why this is simply not accurate.

First, in order to serve cell sites, both the ILEC and the competitor each need to deploy physical infrastructure, either fiber or microwave, all the way to the cell tower to provide Ethernet services. But the distances over which competitors have to deploy their infrastructure are typically much longer than those faced by the ILECs. Unlike competitors, the ILECs have dense ubiquitous networks and thus have a proximate presence near the cell site. Thus, the ILECs are typically required to extend their existing networks relatively short distances to serve cell sites. Competitors like TTM, in contrast, rarely have existing facilities within proximity of the cell towers and instead must deploy new fiber rings to serve the wireless carrier and to deploy extensive infrastructure to the carrier's cell sites.

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[3] *E.g.*, COMPTEL Pet. at pp. 22-24.

Second, because the ILEC's legacy of providing copper-based DS1 service to cell sites, the ILECs have already deployed network facilities, including fiber facilities, both within close proximity of the cell site and connecting to the wireless carrier mobile switching centers ("MSCs"). In many instances, when TTM wins the right to provide Ethernet services to wireless carrier cell sites, it must also build fiber facilities to the MSC in order to transport the mobile wireless traffic to the switch. The ILEC has, however, an enormous advantage competing for these customers because it has facilities in place to serve the wireless provider at its MSC and within short distance of the cell site.

Third, even where the ILEC has to pull fiber to the cell site and extend its network, it has existing right-of-way access and points of entry at the cell tower because in most cases it is already serving the cell site with copper facilities used to provide DS1 service. In contrast, competitors must negotiate with tower companies and property owners for access to the cell sites in order to deploy terminating equipment and must negotiate right-of way- issues with adjacent land owners in order to bring fiber to the cell site.

Fourth, because they are already serving wireless carriers with TDM-based backhaul at cell sites and with fiber-based transport in the core metro networks and at the MSC, the ILECs already have existing contracts in place with wireless carrier customers. AT&T and other ILECs have adopted exclusionary lock-up contracts that inevitably bind these customers to the ILEC for ever increasing shares of their total backhaul demand. These take-or-pay revenue commitments offer wireless carriers an additional incentive to rely on the ILEC for backhaul despite the willingness of alterative fiber providers to compete to build new facilities. Because the wireless providers can readily shift their revenue commitments to the ILEC from TDM-based backhaul to

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[4] Casto Decl. ¶ 11.

Ethernet-based backhaul, incumbency again works to further entrench ILEC dominance in the backhaul market even where wireless carriers are transitioning from copper-based TDM service to fiber-based Ethernet service.

Lastly, as the ILEC and as an affiliate of the nation's second largest wireless carrier, AT&T has a captive demand that will enable it to fund the fiber investment that it incurs to deploy its own fiber to serve cell sites. AT&T's ability to fund such an investment is also enhanced because of the cost advantages that AT&T retains as the incumbent. Thus, as an ILEC affiliate of an enormous wireless carrier, AT&T already possesses the economies of scale to justify fiber to cell site deployments. Those economies of scale will only increase if AT&T gains the captive demand for fiber to the tower by acquiring T-Mobile, becoming the largest wireless provider.

B. The Opposition Fails to Show the Existence of Multiple Backhaul Networks Within the Relevant Geographic Market

The Commission has already established that the appropriate geographic market for examining special access is the customer location.[5] Thus, for backhaul, each cell site is its own geographic market. The Applicants make no effort to show the existence of a competing fiber network in any relevant geographic market. The Applicants instead rely on vague national figures to support their claims that the backhaul market is competitive. These claims lack merit.

For example, the Applicants cite to a *Business Ethernet Port Share Report*,[6] to show that

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[5] *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290 ¶ 28 (2005) ("*SBC/AT&T Merger Order*").

[6] Opp. p. 165, n. 291; Casto Decl. ¶ 11 n.6. TTM further objects to the Applicants' use of non-public fee-based reports, such as the *Business Ethernet Port Report*, in the context of an administrative proceeding. Such non-public documents are not available for public comment and thus cannot be relied on in the Commission's deliberations unless the Applicants file such documents on the record here. *See Chamber of Commerce v. SEC*, 443 F.3d 890, 899 (D.C. Cir.

there is substantial competition in the Ethernet market. It is not at all clear, however, that this report even includes Ethernet services deployed to cell sites, much less that it is limited to Ethernet deployed to cell sites. Nor is it clear that the statistics about Ethernet ports served distinguish between services provided entirely over a competitor's own facilities and services that are provided in whole or in part using facilities owned by AT&T. If service is provided by a competitor using AT&T-owned facilities, especially given that the Commission has effectively deregulated the provision of Ethernet services by AT&T and other ILECs,[7] the presence of such competition, that relies on ILEC facilities, can not meaningfully discipline AT&T's ability to act anti-competitively. As long as AT&T can extract a monopoly profit from the facility that a competitor is required to use, the effect on competition is the same as if the competitor did not exist.

The report's rankings and market share cited by the Applicants are also meaningless because national market share has no bearing on whether competitors have deployed facilities to serve a particular cell site. As discussed above, there is no national market for Ethernet backhaul — the market is the cell site. This obviously applies to wireless carrier backhaul service, since the presence of a competitive network in Miami says nothing about whether a competitive alternative exists for a cell site in San Francisco.

Even where the Applicants attempt to show robust competition for Ethernet services to cell sites, the data on which they rely does not support their point. For example, redacted Table 1

2006) (The Commission must make available for public evaluation the "technical studies and data upon which it relied."). Such data must also be provided "in time to allow for meaningful commentary so that a genuine interchange occurs" on the issues. *American Radio Relay League v. FCC*, 524 F.3d 227, 236-7 (D.C. Cir. 2008).

[7] *See Petition of AT&T for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, 22 FCC Rcd 18705 (2007).

of the Willig et. al. Declaration,[8] provides data regarding the number of T-Mobile 3G and 4G cell sites served by AT&T, other ILECs, and various other backhaul suppliers, including TTM. No valid conclusion can be drawn from Table 1 concerning the extent of competition for wireless backhaul in AT&T's 22-State ILEC region. First, the data is limited to 3G and 4G cell sites. Thus, Table 1 provides no information at all about the backhaul that is provided at T-Mobile's other cell sites, where backhaul is predominantly provided using TDM service.

But more fundamentally, the data is not limited to AT&T's 22-state region. Thus, the Declarants indiscriminately combine data for cell sites inside and outside AT&T's ILEC footprint. For all that is shown by Table 1, it is possible that the only competitive sites are located outside of AT&T's region. In fact, the shares of AT&T, Verizon and Qwest shown on Table 1 suggest that AT&T has been much more successful than the other RBOCs in keeping T-Mobile's business away from independent backhaul providers.

The Applicants also appear to suggest that competitive backhaul networks are already deployed to a significant number of cell sites so that wireless providers can readily switch from the ILEC to a competitive alternative.[9] This is not the case at all. In most instances in which TTM is asked to bid on providing services to a cell site, it has to construct new facilities. TTM, like other infrastructure companies, can not afford to build networks on a speculative basis to any customer.[10] Except in circumstances where TTM is already serving a cell tower, TTM does not have existing facilities that can provide backhaul service to a cell site. Instead, TTM responds to

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[8] Willig et al. Decl. p. 54.

[9] *See* Mayo Decl. ¶ 5 ("T-Mobile USA has been able to choose from among backhaul options offered by various providers.").

[10] *ATT SBC Merger Order*, ¶ 39 ("carriers … are unwilling to invest in deploying their own loops unless they have a long-term retail contract that will generate sufficient revenues to allow them to recover the cost of their investment.")

RFPs from wireless carriers for Ethernet services and if and when it is awarded a contract to provide such service, TTM must deploy new infrastructure and bear the expense and delays associated with deployment.[11] In other words, while T-Mobile may get multiple responses to RFPs, the number of responses in and of itself does not show true physical facility competition. As a result, where there is a cell site served by a competitive backhaul provider, it is in almost all circumstances only one competitor, so if the backhaul business moves to the incumbent, the competitive provider will be effectively out of business at that site.

III. The Opposition's Claim that T-Mobile is a marginal special access customer is Misleading and Fails to Grasp the Significant Role T-Mobile plays in the Market

In the Petitions to Deny and filed Comments addressing the backhaul market, merger opponents argued that "T-Mobile plays a significant role in generating business opportunities for competitive providers of special access services."[12] These parties further explained that the loss of T-Mobile's demand "would substantially diminish any prospect that alternative backhaul providers will emerge to compete with AT&T and Verizon in their incumbent wireline service areas."[13] The Opposition responds with claims that T-Mobile's demand "represents only a small fraction of the total special access marketplace."[14] The Opposition also complains that in order to show harm to the special access market competitors need to allege that "the largely sunk assets …use[d] to provide backhaul would exit the market."[15] As explained below, the Applicants severely understate the significance of T-Mobile to sustained competition for fiber-based

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[11] *Id*.

[12] Sprint Nextel Comments at p. 40.

[13] *Id*.

[14] Opp. at p. 170.

[15] *Id*. at p. 170, n. 303.

Ethernet backhaul and thus fail to appreciate that the loss of T-Mobile's demand will result in competitors, including TTM, ***** BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL *****.[16]

TTM has been providing competitive backhaul services for the last six years and has been in the vanguard in deploying Ethernet services to cell sites. Nonetheless, TTM believes that it ***** BEGIN HIGHLY CONFIDENTIAL** [redacted].[17] **END HIGHLY CONFIDENTIAL ***** Absent that level of scale, TTM will not make the investment to serve customers at new cell towers and ***** BEGIN HIGHLY CONFIDENTIAL** [redacted].[18] **END HIGHLY CONFIDENTIAL *****

The robust competition claimed by the Applicants' declarants is overstated. First, it is well understood in the industry that AT&T prefers to purchase backhaul from Verizon in Verizon's ILEC footprint and Verizon Wireless prefers to purchase backhaul from AT&T in AT&T's ILEC footprint.[19] As explained in the TTM Reply Declaration of Frank Mastrobattista ("Mastrobattista Decl."), TTM is currently serving ***** BEGIN HIGHLY CONFIDENTIAL**

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[16] Mastrobattista Decl. ¶ 8.

[17] *Id*. ¶ 7.

[18] This does not mean TTM needs ***** BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL *****. Mastrobattista Decl. ¶ 7.

[19] Mastrobattista Decl. ¶ 18.

[redacted][20] **END HIGHLY CONFIDENTIAL** *** Although TTM already has *** **BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL** *** TTM field personnel have observed *** **BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL** *** at a number of these cell sites.[21]

Under current market conditions, there are four national wireless providers. However, at each cell site in the AT&T and Verizon regions there are really only three wireless providers in the backhaul market because as stated above the ILEC-affiliated wireless provider will typically not purchase in-region backhaul from any company other than its ILEC affiliate. Similarly, while Verizon on occasion seeks alternatives to ILEC special access, the ILECs have generally refrained from competing with each other in the wireline special access market and that includes purchasing wireless backhaul in any significant volume from competitive carriers.[22] This borne out as it is *** **BEGIN HIGHLY CONFIDENTIAL** [redacted]

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[20] *Id*. ¶¶ 12-13.

[21] *Id*. ¶ 17.

[22] *See* Comments of T-Mobile USA, Inc., WC Docket No. 05-25, at 11-12 (June 13, 2005) (AT&T and Verizon "historically have not engaged in vigorous wireline competition against other ILECs."); *see* Declaration of Chris Sykes, attached to Comments of T-Mobile USA, Inc., WC Docket No. 05-25, ¶ 11 (June 13, 2005) ("ILECs have not competed vigorously against each other in the provision of any wireline service, including special access service.").

[redacted].[23] **END HIGHLY CONFIDENTIAL ***** Thus at present, in the AT&T market there are, as a practical matter, only two potential customers for any backhaul provider, T-Mobile and Sprint. After AT&T removes T-Mobile's demand from the market, the only non-BOC affiliated major wireless provider remaining will be Sprint. Similarly, in Verizon's markets, Sprint would also be the only potential customer, because AT&T and T-Mobile's demand (along with Verizon Wireless' demand) will in most cases be fulfilled by the ILEC — Verizon.

As noted above, backhaul providers need to have ***** BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL ***** in order to justify the enormous investments necessary to construct networks to provide scalable Ethernet bandwidth to cell sites.[24] In addition, operating those networks requires ongoing expenditures as well garnering a return on the capital investment. ***** BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL *****.[25]

Nor can it be expected that backhaul providers like TTM would readily be able to replace the lost demand from T-Mobile with demand from smaller niche or regional wireless providers.

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[23] Mastrobattista Decl. ¶ 17.

[24] Mastrobattista Decl. ¶ 7.

[25] *Id*. ¶ 9.

If, as the Applicants suggest, T-Mobile is too small to survive on its own, it does not instill confidence that further investments in networks to serve these niche and regional wireless providers will generate a sufficient return on capital to justify the investment. This is in part because, generally, the backhaul demand per cell site from smaller regional or niche providers is significantly lower than that of any of the four national cellular operators and thus the revenue opportunity is significantly lower.[26] In order to generate a reasonable return, TTM might have to ***** BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL ***** the niche or regional wireless provider does not survive or — like T-Mobile — is swallowed up by AT&T or Verizon.[27]

Under either of these scenarios, the absence of T-Mobile's demand causes great disruption to the backhaul market and the resulting disruption enhances AT&T's and Verizon's ability to use their market power in the special access market to harm special access competition and ultimately to harm retail wireless competition.

In sum, the elimination of T-Mobile as an independent operator in AT&T ILEC territory removes a significant source of revenue for independent backhaul providers, whether they are cable companies, CLECs, power companies or independent "pure play" backhaul companies. Providing backhaul, whether Ethernet or TDM, is capital intensive. Most of the cost relates to building facilities, whether fiber or microwave, to a cell site. As networks become more ubiquitous, the cost per site declines, but is still substantial. At the same time, the business opportunity in a given metropolitan area is usually proportional to the number of wireless

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[26] *Id*. ¶ 10.

[27] *Id*.

operator customers; the infrastructure deployed to a site or past a site can be used to serve additional customers and create economies of scale. Furthermore, pricing for Ethernet backhaul to a cell site generally has a high entry point — the first unit of capacity has a much higher marginal cost than each successive unit.

Therefore, when one purchaser of backhaul is removed from the market, the revenue impact is significant because even a smaller wireless operator — such as T-Mobile — will pay a significant price for even a small amount of bandwidth. The immediate impact is that alternative providers will be much less likely to build new facilities to cell sites to compete with AT&T's special access services. Indeed, even if they do, they will demand a much higher price since the "upside" revenue from other wireless operator customers is so limited. As a result, AT&T's inherent advantage as the ILEC is strengthened, and wireless competitors are left with no alternative other than to buy backhaul from AT&T and in essence subsidize their competitor, as has been the case for decades.

The impact of this dynamic would be magnified if AT&T and Verizon, in recognition of the alignment of their interests, were to lock out third party backhaul providers by using each other for backhaul service in a preferred or exclusive arrangement in each others' territories. The result would provide the incumbent ILEC a guaranteed approximately 70-80% of the backhaul revenue in a market. Backhaul insurgents would have little incentive to enter the market, and those already in the market that have sold to T-Mobile, AT&T or Verizon Wireless would face a decline in revenue as existing contracts reach the end of term without the opportunity to compete. Under this scenario, backhaul is again a *de facto* monopoly for the ILEC. Even if that monopoly power is not explicitly abused, it still forces all other wireless providers to subsidize AT&T or Verizon. The public benefit from competition in price, service quality and technology

innovation will be eliminated.

IV. Conclusion

TTM believes that the harms described in its reply comments as well as in the comments and Petitions to Deny filed by backhaul providers and customers, are too significant for the Commission to permit this merger to proceed without imposing conditions that would eliminate the identified harms. In particular, the Commission should require AT&T and T-Mobile to maintain at least the level of backhaul purchases from non-BOC affiliated backhaul providers as of the date the merger was announced and increase that level of purchases by the same annual percentage as the percentage of growth in backhaul usage by the Merged Company for 60 months after closing of the merger.

In order to protect the growing competition that the Applicants claim exists, AT&T and T-Mobile should be required to extend by an additional thirty-six months the spending commitments in place with non-BOC providers of backhaul service at the time the merger was announced. Where the Merged Company would have two separate antenna arrays at a cell site, including separate backhaul arrangements provisioned to each antenna array, and intends to consolidate onto one backhaul arrangement, the Merged Company, in order to avoid harm to competition in the backhaul market, should be required to maintain the competitive backhaul arrangement.

In addition, for forty-eight months from the close of the merger, the Merged Company should be prohibited from using backhaul from Verizon or CenturyLink pursuant to sole source arrangements, without allowing for bidding by others, and should be prohibited from providing backhaul to Verizon Wireless under sole source contracts, without allowing for bidding by others. Under this condition, AT&T must unwind any arrangements where service begins after January 1, 2011, in which AT&T awarded backhaul services to Verizon or CenturyLink/Qwest,

that was in any way related to reciprocal dealing arrangements between AT&T and either Verizon or Qwest/CenturyLink and must be prohibited from disconnecting any additional service pursuant to such reciprocal dealing arrangements unless the incumbent non-BOC backhaul provider is unwilling to match the ILEC pricing. Similarly, the Commission should require AT&T Wireless and Verizon Wireless to treat their ILEC affiliates as completely independent suppliers, requiring decisions to purchase service from their affiliates to be demonstrably based on superior price and terms compared to competitive offers.

Respectfully submitted,

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SERVICE LIST

I, Joshua M. Bobeck, hereby certify that on this 21st day of June 2011, I have caused a copy of the foregoing Redacted Ex Parte Reply Comments of Telecom Transport Management, Inc. to be served, as specified, upon the parties listed below:

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