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Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *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 – Written *Ex Parte* Notice

Dear Ms. Dortch:

Over the past month, AT&T has filed numerous versions, revisions, and “re-runs” of an engineering and economic simulation model (the “Model”) concerning its proposed takeover of T-Mobile. As of today at least, the count stands at seven filings and *ex parte* presentations. As explained in an August 18, 2011 *ex parte* letter filed by Sprint Nextel Corporation (“Sprint”),¹ the Model is fatally flawed and in no way shows that AT&T’s takeover would generate efficiencies that would outweigh the serious anti-competitive harms that would result from the proposed transaction.

AT&T’s most recent effort to fix the flaws in its Model – an *ex parte* notice filed on August 18 – raises more questions than it answers.² For example, the letter asserts that aspects of AT&T’s Model are consistent with AT&T’s ordinary course engineering practices and “with internal and third party documents.” What specific “practices” were discussed? Is the Model consistent with T-Mobile’s engineering practices? Have the referenced documents been filed with the Federal Communications Commission (“Commission”)? If so, where are these documents in the record and what are the Bates numbers of the relevant documents? AT&T’s August 18 letter obliquely claims that

¹ Letter from Regina M. Keeney, Counsel for Sprint, to Marlene H. Dortch, FCC Secretary, WT Docket No. 11-65 (Aug. 18, 2011).

² Letter from Richard L. Rosen, Counsel for AT&T, and Nancy J. Victory, Counsel for Deutsche Telekom, to Marlene H. Dortch, FCC Secretary, WT Docket No. 11-65 (Aug. 18, 2011).

various data inputs to the Model “were based on actual observations of the performance of the AT&T network.” What specifically were these “actual observations?” Who made the observations? When and how often were the observations measured? Which data inputs were observed? And why should the Commission believe any of the observations are reliable? The August 18 letter further asserts that the markets included in the Model constitute a representative cross-section of markets, but how exactly did AT&T select these markets? How many of these markets are on AT&T’s list of markets that are purportedly facing “spectrum exhaust,” and wouldn’t the Model’s results be biased to the extent a large proportion of the selected markets appear on this list? AT&T’s cryptic letter offers no answers to these questions or many other flaws in the Model.

Notwithstanding its many filings on the issue, AT&T continues to hide the ball regarding the methodology and assumptions underlying its Model. It is customary for simulation models to be supported by sworn declarations from the economic and engineering experts who prepare the model. For example, in the Comcast – NBCU transaction, the results of an economic model filed in support of the transaction were supported by a detailed declaration from the applicants’ experts.³ Sprint’s economic consultants, Charles River Associates, provided detailed declarations fully explaining the simulations Sprint submitted with its Petition to Deny and Reply Comments in this proceeding. AT&T’s own economic consultants have recognized the importance of fully documenting such models. Indeed, Dennis Carlton, one of AT&T’s outside economic consultants, stated during the Commission’s July 13 economist workshop that “we fully intend to provide whatever backup you need so everyone understands what we are doing” (*see* page 13 of workshop transcript). AT&T has not delivered on that promise.

Not only do merger applicants routinely provide the necessary explanatory information for merger simulation models as a matter of course, but also the Commission expressly *required* AT&T to provide this information. In a July 20 letter, the Chief of the Wireless Telecommunications Bureau (“WTB”) directed AT&T to provide its Model “in a format and with sufficient explanation and back-up information to enable [the Commission], and third parties entitled to have access to the information, to adequately evaluate it.”⁴ AT&T has not complied with this requirement.

AT&T’s Model is not only incomplete, but also filed well past the Commission’s deadlines. Sprint’s August 16 letter points out that AT&T’s Model should have been submitted with its initial application in this proceeding or at least with its opposition as a

³ Letter from Michael H. Hammer, Counsel for Comcast, to Marlene H. Dortch, FCC Secretary, MB Docket No. 10-56 (March 5, 2010).

⁴ Letter from Rick Kaplan, Chief, Wireless Telecommunications Bureau, to Richard L. Rosen, Counsel for AT&T, WT Docket No. 11-65, at 1 (July 20, 2011).

response to Petitions to Deny. AT&T also failed to take advantage of an opportunity to have its Model considered after the pleading cycle closed. The WTB Chief's July 20 letter provided AT&T such an opportunity, but made clear that AT&T was to submit the "finalized" versions of its Model, along with all of the necessary back-up information, by July 25.⁵ Yet AT&T has continued to submit new versions of the Model well past that deadline and still has not provided the required back-up information.

AT&T's Model is beyond repair. Putting aside its tardiness and lack of documentation, the Model provides no verifiable evidence to overcome what the record in this proceeding plainly demonstrates: AT&T's takeover of T-Mobile would raise prices, discourage innovation, and drive the wireless industry toward an anti-competitive duopoly. For these reasons, as well as its procedural flaws, *the Commission should give the Model no weight*. To the extent the Commission gives any further consideration to the Model, however, it should require AT&T to comply with a process ensuring that interested parties and the Commission have a transparent, fair and timely opportunity to assess a complete and final Model. In particular, to the extent the Commission gives any additional consideration to the Model, it should require AT&T by September 1, 2011 to submit a truly *final* version of the Model along with sworn declarations from its economic and engineering experts that fully explain the assumptions and methodologies used in the Model.

Pursuant to section 1.206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), this *ex parte* notification is being filed electronically for inclusion in the public record of the above referenced proceeding.

Respectfully submitted,

/s/ Regina M. Keeney
Regina M. Keeney

cc: Renata Hesse Rick Kaplan
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⁵ *Id.*