



**Minority Media &  
Telecom Council**

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August 31, 2011

Marlene Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12th Street S.W.  
Washington, D.C. 20554

Dear Ms. Dortch:

RE: WT Docket No. 11-65 (Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations)

Dear Ms. Dortch:

The Minority Media and Telecommunications Council (“MMTC”), which is participating in this proceeding as an *amicus curiae*,<sup>1</sup> respectfully submits this letter to raise an issue of critical importance to our constituents. In the context of the proposed merger, some parties are arguing that AT&T should rapidly shut down its 2G network and migrate all users to its 3G and 4G platforms to serve the goal of spectrum efficiency.<sup>2</sup> They suggest that 2G customers should simply write a check and buy new 3G or 4G devices. But the problem with this fast shutdown proposal is that it ignores reality, which is that a

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<sup>1</sup> See Amicus Comments of the Minority Media and Telecommunications Council in Support of the AT&T/T-Mobile Merger, *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) (“MMTC Amicus Comments”).

<sup>2</sup> See, e.g., Testimony of Gigi B. Sohn, President, Public Knowledge, Before the U.S. Senate Committee on the Judiciary, “The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?” (May 11, 2011); see also Petition to Deny of Sprint Nextel Corporation at 101-02, *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); Petition to Deny of MetroPCS at 26, *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); Petition to Deny of Rural Telecommunications Group, *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).

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disproportionate share of low-income subscribers, rural consumers, senior citizens, and minorities currently depend on low-cost 2G devices for their critical communications needs. Millions of these price-sensitive users of 2G devices take service from pre-paid wireless resellers and Lifeline providers, such as Tracfone, and 2G devices are often their only means of communication. They are not positioned to make a flash cut transition, and should not be moved out of the way as part of a hasty effort to make additional spectrum available to more privileged groups.

Therefore, this regressive proposal ought to be called what it is — “Digital Gentrification.” It would place on the backs of the “have-nots” – the poor, elderly, and minorities — the short-term costs of making more high-speed service available to the “haves.” This is not acceptable. There is a better way forward. The FCC should provide a reasonable transition period, ensure adequate mechanisms are in place to subsidize the purchase of advanced devices, and launch a comprehensive consumer information initiative. The FCC’s successful approach to the DTV transition and the sunset of analog cellular, which tracked these core principles, should serve as the roadmap for the migration from 2G.

**There Is No Doubt That Advanced 3G And 4G Offerings Must Be Available To All Americans.** Advocates of a rapid migration are not poorly intentioned. There is a looming spectrum crisis, which is why MMTC filed *amicus* comments in support of the AT&T-Mobile transaction<sup>3</sup> and enthusiastically endorsed the Commission’s efforts to reallocate broadcast spectrum for wireless broadband applications through voluntary incentive auctions.<sup>4</sup> As a nation, we must make the transformative migration from 2G platforms to advanced wireless networks. Indeed, MMTC previously noted that “[i]n today’s digital age, access to high-speed Internet is no longer a luxury—it is a necessary predicate of first-class citizenship, and thus it is a fundamental right for all Americans.”<sup>5</sup>

As the Commission noted in the National Broadband Plan, high-speed access to the Internet is key to everything from civic and political engagement to education, health care, and employment.<sup>6</sup> A ubiquitous, national broadband network will serve as the engine for

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<sup>3</sup> See MMTC *Amicus* Comments (filing in support of the merger because, by easing capacity constraints, the transaction will help avert the spectrum crunch – especially in very large majority-minority markets – and thus alleviate the pressures that could drive prices up, drive down minority adoption, and widen the digital divide).

<sup>4</sup> See Comments of the Minority Media and Telecommunications Council, *Innovation in Broadcast Television Bands, Allocations, Channel Sharing and Improvements to VHF*, ET Docket No. 10-235 (Mar. 18, 2011).

<sup>5</sup> MMTC *Amicus* Comments at 2.

<sup>6</sup> See, e.g., FCC, *Connecting America: The National Broadband Plan* (rel. Mar. 17, 2010) (“National Broadband Plan”); see also Comments of the National Organizations at 6, *Further Inquiry Into Two Under-Developed Issues In The Open Internet Proceeding*, GN Docket No. 09-191 (Oct. 12, 2010) (discussing the National Broadband Plan); see also MMTC *Amicus* Comments at 4-5.

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job-creation and economic growth, as President Obama outlined in his 2011 State of the Union Address.<sup>7</sup>

MMTC thus agrees wholeheartedly that we must transition all wireless users to advanced wireless platforms in a reasonable period of time and explore all options for making more spectrum available. But a fast 2G shutdown, which does not take into account the needs of the underserved, is not an acceptable path forward given the profoundly unacceptable unintended consequences.

**The 4G Transition Must Not Be Funded At The Expense Of Underprivileged Groups.** As the demographics show, a hasty transition away from 2G would have unintended and disproportionate impacts on rural subscribers, low-income consumers, senior citizens, and minorities – none of whom should be made to bear the costs of our nation’s 4G transition.

First, millions of users of 2G devices are customers of pre-paid wireless resellers, such as Tracfone, Consumer Cellular, and Locus Mobile. As MMTC has previously noted, many of these resellers target and serve the critical communications needs of price-sensitive, fixed- and low-income customers, allowing millions of consumers access to critical lifelines that they might otherwise lack.<sup>8</sup> As former FCC Commissioner Tate has observed, “[p]repaid plans are often available to people who otherwise face credit history challenges, ensuring connectivity for critical needs such as providing security in emergency situations, a ‘lifeline’ for the homeless, and of utmost importance: employment.”<sup>9</sup> 2G wireless service is often the only lifeline that these fixed- and low-income consumers have, as over a quarter of homes have “cut the cord,” relying solely on wireless because of its relative affordability.<sup>10</sup> A fast 2G shutdown would leave many of these consumers completely in the dark.

As the record here confirms, consumers in rural areas also continue to rely on 2G devices and networks to meet their communications needs.<sup>11</sup> Many rural providers have a

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<sup>7</sup> President Barack Obama, *State of the Union Address* (Jan. 25, 2011).

<sup>8</sup> See Comments of MMTC, at 5, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42 (Apr. 21, 2011) (“Certain providers, however, are well known for their extensive outreach to low income communities. For example, TracFone’s aggressive outreach for its wireless service, SafeLink, has resulted in three million Lifeline subscribers.”)

<sup>9</sup> Hon. Deborah Taylor Tate, *A Lifeline to Avoid Digital Divide* (MMTC Broadband & Social Justice, Apr. 21, 2011), available at <http://broadbandandsocialjustice.org/2011/04/a-lifeline-to-avoid-digital-divide/> (last visited August 30, 2011).

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

<sup>11</sup> See, e.g., Petition to Deny of Iowa Wireless Services LLC, *Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and*

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substantial, embedded base of 2G users, as they have only recently started to deploy 3G and other advanced platforms.<sup>12</sup> An unreasonably short transition would not only leave thousands of rural consumers without any wireless service, it would also harm rural providers by leaving them with stranded investments in their 2G technologies and a decreased ability to attract and retain customers.<sup>13</sup> A decrease in customers would then have a snowballing effect—depriving rural carriers of revenues, which, in turn, will negatively impact the ability of rural carriers to make the investments necessary to upgrade their 2G networks.

Senior citizens are also over-represented in terms of 2G device ownership. For example, 45% of persons over 65 own a cell phone that is not a smartphone, while only 35% of persons in the 25-34 age group own a non-smartphone.<sup>14</sup> Likewise, 58% of adults in the 25-34 age group own smartphones, but only 11% of persons over 65 own them.<sup>15</sup>

Research also shows that “[s]martphone ownership is highly correlated with household income.”<sup>16</sup> Respondents to a recent Pew survey from the highest income cohort (those with an annual household income of \$150,000 or more) are 3.5 times as likely as those in the lowest income group (those with an annual household income of \$10,000 or less) to own a smartphone.<sup>17</sup>

Roughly 3/4ths of high-income earners own smartphones, compared with 1/5th of low-income earners.<sup>18</sup> This has important consequences for minority communities due to the

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*Authorizations*, WT Docket No. 11-65 (May 31, 2011) (discussing reliance on 2G technologies) (“Iowa Wireless Petition”); *see also* Petition To Deny of Rural Cellular Association, *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) (same); Reply Comments of the Rural Telecommunications Group, *Connect America Fund*, WC Docket No. 10-90 (May 23, 2011) (discussing RTG’s current 2G and 2.5G networks).

<sup>12</sup> *See, e.g.*, Iowa Wireless Petition at 6 (stating that Iowa Wireless and many small independent telephone companies “have only recently started to deploy 3G”).

<sup>13</sup> *See, e.g., id.* at 6-7.

<sup>14</sup> Pew Internet & American Life Project, *35% of American Adults Own a Smartphone*, at 7 (July 11, 2011) (the “Pew Smartphone Survey”).

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

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* 2G device ownership is also correlated with educational opportunities. While 45% of persons with a college degree own smartphones, only 18% of those without a high school diploma and just 27% of those that only graduated from high school own smartphones. *Id.* at 6

<sup>18</sup> *Id.*

deep and persistent racial wealth gap. Recent statistics show that African Americans and Latinos experience an enormous wealth gap – according to Pew it is 20:1 for African Americans and 18:1 for Latinos.<sup>19</sup> While minority groups are assiduous smartphone adopters,<sup>20</sup> it must be remembered that two-thirds of Americans still have yet to adopt smartphones,<sup>21</sup> and that for no ethnic group does smartphone adoption even reach 50%.<sup>22</sup> For minorities, a profound barrier to universal smartphone adoption is the wealth gap leaves most minorities with far less discretionary income on average than other groups.<sup>23</sup> That means that for millions of people of color, the transition from 2G to 4G cannot be financed in the short term. For many of MMTC’s constituents, it’s not a matter of simply writing a check from savings to cover the costs of a smartphone.

In contrast to the demographics of 2G device users, the Pew Research Center has found that “[s]everal groups have higher than average levels of smartphone adoption, including: The financially well-off and well-educated . . . [and] [t]hose under the age of 45.”<sup>24</sup>

Thus, when fast shutdown advocates talk about turning off 2G devices, they are talking about cutting off access for disadvantaged groups. The proposal’s inherent regressiveness is apparent because it places on the underserved the disruption and cost of making a rapid transition. The costs include, but are not limited to:

- Purchasing new 3G or 4G handsets. As indicated above, 2G phones are often the most affordable option for consumers. This is a critical consideration for the thousands of fixed- and low-income 2G subscribers. And we are not only talking about the difference between purchasing a new 2G or 3G/4G phone. There are many thousands of consumers who currently own 2G devices and they financed their purchasing decisions based on the settled expectation that they could continue to use their phones for a reasonable period of time.

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<sup>19</sup> Pew Research Center, *Wealth Gaps Rise to Record Highs Between Whites, Blacks, Hispanics* (July 26, 2011).

<sup>20</sup> Don Kellogg, *Among Mobile Phone Users, Hispanics, Asians are Most-Likely Smartphone Owners in the U.S.* (The Nielsen Company, February 1, 2011), available at <http://blog.nielsen.com/nielsenwire/?p=25901> (last visited August 30, 2011) (45% of Hispanics and Asian Americans adopted smartphones by 2010, as did 33% of African Americans and 27% of White Americans).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> See Insight Center for Community Economic Development, “Closing the Racial Wealth Gap Initiative”; see also Meizhu Lui, “The Wealth Gap Gets Wider” THE WASHINGTON POST (Mar. 23, 2009).

<sup>24</sup> Pew Smartphone Survey at 2.

- Waiting for Upgraded 2G networks. As noted, a number of rural and other wireless providers have only recently started to deploy 3G and 4G networks and infrastructure – upgrades that must be in place before 2G users can complete the migration to advanced wireless platforms. If a hasty transition from 2G were made, it would lead to substantial disruptions in service for the many thousands of consumers that currently depend on 2G networks.
- Funding new 3G or 4G service plans. It is often the case that 3G and 4G service plans are more expensive than basic 2G plans. Thus, even those consumers who own or can afford a smartphone may be unable to afford a 3G or 4G service plan, and at a minimum need time to consider service options that will not increase their monthly costs.
- Investing time to learn new functionalities. It will also take time for 2G consumers to learn the new functions and capabilities associated with smartphones. They will also need time to learn how not to use unwanted functionalities, particularly functions that may trigger additional charges. The needed skill sets include learning and establishing new privacy settings and teaching those skills to other users in the same household.

These are not costs that can or should be hastily imposed on rural, low-income, elderly, and minority groups – not without financial incentives, and not without a reasonable transition period and comprehensive consumer education campaign.

**We Cannot Afford To Repeat The Errors Of Earlier Transitions.** There is a long history in this country of government and private actors inadvertently hurting the poor and underserved when they effectuate transitions from yesterday’s assets, services, and technology to newer ones. Classic examples of this can be found in the allocation of another key resource – land:

- Urban Renewal. The plan was noble enough – tear down the slums and relocate their residents to better housing. But too often, neighborhoods were destroyed and those relocated often found themselves homeless. The primary beneficiaries usually turned out to be wealthy “yuppies” who were able to move from the suburbs back to downtown in the high-end, expensive, gentrified neighborhoods created where the former “slums” had been located. Those who understood how the scheme really worked accurately labeled urban renewal “Negro removal.”<sup>25</sup>

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<sup>25</sup> See, e.g., Dick M. Carpenter II, Ph.D. & John K. Ross, Victimizing the Vulnerable: The Demographics of Eminent Domain Abuse, at 3 (Institute for Justice, June 2007) (“[I]n the words of the time, urban renewal more often than not meant ‘Negro removal.’”); see also Kevin Gotham, A City without Slums: Urban Renewal, Public Housing, and Downtown Revitalization in Kansas City, Missouri, *American Journal of Economics and Sociology* 60(1), at 305-06 (Jan. 2001) (“In many cities, including San Francisco, Chicago, and New York, blacks bore the burden of the dislocating effects of urban renewal, as local authorities converted slum clearance into ‘Negro clearance[.]’”).

- Beachfront Development. A similar version of urban renewal occurred when African American residents of beachfront communities in Florida were displaced – supposedly for their own good — after the invention of air conditioning. The real beneficiaries of the displacement were real estate developers and speculators.<sup>26</sup>
- Highway Construction. Commuter highways snaked their way into downtowns by plowing through low and middle income – and often politically powerless minority communities — disrupting their cohesiveness and imposing noise, pollution, and inconvenience.<sup>27</sup>

**The FCC’s Own Experiences Show There Is A Non-Regressive Way To Complete The Transition From 2G.** The FCC’s own, successful experiences with the DTV transition and analog cellular sunset provide the roadmap for migrating users off of 2G platforms – not the fast shutdown advocated by some. These earlier transitions show that we can accomplish a key technological change without leaving the most vulnerable of us behind or forcing them to bear a disproportionate share of the expenses.

At its core, the path forward requires the FCC to abide three key concepts: (1) it must adopt a reasonable transition period that allows 2G users the time they need, in light of their financial circumstances and the current state of 3G and 4G deployment, to transition to more advanced wireless platforms; (2) it must ensure that adequate mechanisms are in place to help cover the cost of new equipment; and (3) it must provide comprehensive consumer information about the transition.

The FCC and NTIA followed this three-pronged approach with the DTV transition, and as a result, the transition was successful. In that case, the federal government initially provided for a nearly 10- year glide path for transitioning from analog to digital television.<sup>28</sup> Ultimately, the government recognized that the inherent challenges in any significant technological transition required an additional extension of the transition deadline to June 2009 and the issuance of billions of dollars in coupons to subsidize end-users’ purchase of the equipment needed to make the migration.<sup>29</sup> As part of the transition, the government, industry, and consumer groups launched a massive

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<sup>26</sup> See generally, Raymond A. Mohl, Shadows in the Sunshine: Race and Ethnicity in Miami (1989).

<sup>27</sup> See, e.g., *id.*; see also Thomas W. Sanchez, Rich Stolz, and Jacinta S. Ma, Moving To Equity: Addressing Inequitable Effects Of Transportation Policies On Minorities (The Civil Rights Project and Center for Community Change, 2003).

<sup>28</sup> See, e.g., 47 U.S.C. § 309(j)(14)(A).

<sup>29</sup> See, e.g., FCC, New Release, Full-Power TV Broadcasters Go All-Digital: FCC Assists Consumers to Ease Transition (June 13, 2009).

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informational campaign, designed to ensure that consumers were fully informed and aware of the transition and their options for completing the move.<sup>30</sup>

The FCC's experience with the 1G transition is also highly instructive. There, the FCC did not adopt the type of rapid transition advocated by some in this proceeding. Rather, it recognized that "eliminating the rule immediately without a reasonable transition period would be extremely disruptive to certain consumers . . . who currently continue to rely on the availability of analog service and lack digital alternatives."<sup>31</sup> Accordingly, the FCC adopted a five-year sunset for the provision of 1G offerings. The FCC also acted to ensure that the public was aware of the transition, and consumers were often given incentives to upgrade their devices.

These are the same keystones that must be in place to ensure that all Americans can transition to advanced wireless offerings and experience the benefits of first-class digital citizenship. Simply asserting that carriers should rapidly transition 2G customers to 3G and 4G technologies is not, on close inspection, an acceptable approach to dealing with the looming spectrum crunch because of the negative, unintended consequences.

The non-regressive approach to migrating 2G users to 4G is a multi-step process. The FCC should first take steps time to enable a nearly universal wireless broadband network to be built out – by means that include incentive auctions of reallocated broadcast spectrum and approval of the AT&T/T-Mobile merger, both of which would benefit minorities by allowing for increased deployment of advanced wireless networks.<sup>32</sup> Then the Commission should put the three-pronged transition plan in place: ensure that incentives are in place, provide comprehensive consumer education, and establish an adequate time for the transition. Then steadily, and at the right pace, the 2G spectrum will be cleared – and there will be plenty of need for it in years to come.

Sincerely,



David Honig  
President and Executive Director

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<sup>30</sup> See, e.g., *id.*

<sup>31</sup> *Year 2000 Biennial Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services*, 17 FCC Rcd 18401 (2002) (adopting the analog sunset rule) (the "AMPS Sunset Order") *aff'd*, 19 FCC Rcd 3239 (2004) (the "AMPS Reconsideration Order").

<sup>32</sup> See MMTC *Amicus* Comments at 2, 9.