

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the Commission's Own
Motion Into the Planned Purchase and Acquisition by
AT&T Inc. of T-Mobile USA, Inc., and its Effect on
California Ratepayers and the California Economy.

Investigation 11-06-009

(Filed June 9, 2011)

***EX PARTE* RESPONSE OF THE GREENLINING INSTITUTE
TO AT&T'S *EX PARTE* COMMUNICATION REGARDING JOBS**

REDACTED PUBLIC VERSION

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I. INTRODUCTION

AT&T has generally done its best to avoid answering questions about the merger's specific effects.¹ However, AT&T's consistent refusal to address the merger's effects on jobs has been particularly egregious. AT&T meets questions about this topic with general claims, half-truths, and evasions. Additionally, AT&T appears to have muddied the waters by conflating the merger's effect on jobs *generally* with the merger's effect on jobs *within the combined company*.

AT&T has failed to offer any specific, substantive proof to support its claims that the merger will increase jobs throughout the wireless industry, causing jobs to "trickle down" to the economy generally. What limited proof AT&T has offered is general, speculative, and unreliable. Based on this limited evidence, no one could reasonably conclude that the merger will result in increased jobs for Californians.

While AT&T has offered some evidence regarding the merger's effect on jobs generally, it has offered *no evidence whatsoever* regarding the effect of the proposed merger on jobs in the combined company. AT&T has consistently refused to address this issue, claiming that it involves determinations that cannot be made until after the merger is completed; in some instances, AT&T appears to have deliberately omitted data regarding employment from their submissions in order to avoid the issue. AT&T is perfectly capable of predicting the effect of the

¹ See Greenlining Opening Comments at 6.

merger on the combined company and has, in fact, made such predictions in the past.²

Additionally, in at least one instance, AT&T has the data to make predictions but has failed to do so.³

The FCC has noted AT&T's refusal to address the issue of jobs, noting that AT&T's responses to specific questions about jobs are "incomplete," and that, "AT&T to date has produced almost nothing" in response to the FCC's questions about jobs.⁴ Rather than squarely address the issue, AT&T has tried to divert attention from the issue with promises to bring jobs back from overseas, keep all of T-Mobile's customer service representatives, and attempt to offer downsized T-Mobile employees placement in different departments.⁵ None of these distractions address the issue at hand: whether the merger will result in a net increase of jobs.⁶ Like the FCC, the California Public Utilities Commission ("the Commission") should require AT&T to provide specific, reliable information about the merger's effects on jobs in California generally, and on AT&T and T-Mobile employees specifically.

II. AT&T HAS FAILED TO ADDRESS THE EFFECT OF THE PROPOSED MERGER ON JOBS WITHIN THE UNITED STATES AND CALIFORNIA.

In a recent filing with the Commission, AT&T has summarized its arguments claiming that the merger will result in increased jobs in California.⁷ AT&T's support for these arguments generally consists of broad statements and general studies about the link between infrastructure

² See Section III.C below.

³ See Section III.C.3 below.

⁴ Letter from Rick Kaplan to Richard L. Rosen (October 13, 2011), In the Matter of Application of AT&T, Inc. and Deutsche Telekom AG to Transfer Control of Licenses and Authorizations Held by T-Mobile USA, INC. and Its Subsidiaries to AT&T Inc., DA 11-799, WT Docket No. 11-65 (Fed. Comm. Comm'n June 10, 2011) (hereafter, FCC Jobs Letter).

⁵ See Letter from Robert W. Quinn, Jr. to Marlene H. Dortch 1 (October 13, 2011), In the Matter of Application of AT&T, Inc. and Deutsche Telekom AG to Transfer Control of Licenses and Authorizations Held by T-Mobile USA, INC. and Its Subsidiaries to AT&T Inc., DA 11-799, WT Docket No. 11-65 (Fed. Comm. Comm'n June 10, 2011) (hereafter, AT&T-FCC Jobs Letter).

⁶ See FCC Jobs Letter.

⁷ Letter from Rhonda J. Johnson to Lauren Saine 1 (September 22, 2011) (hereafter, AT&T-CPUC Jobs Letter).

investment and job creation. For example, AT&T cites statements that “as wireless investment grows, ‘the benefits for job creation and job improvement are likely to be substantial,’”⁸ that “investment in 4G networks could be the salve that the ailing U.S. economy is looking for,”⁹ and that an \$8 billion dollar investment “will trigger the creation of between 55,000 and 96,000 job-years nationally *and more than 8,000 job-years in California alone.*”¹⁰ As much as A&T might like, these general statements and broad studies cited by AT&T are insufficient to support its argument.

AT&T most frequently relies on a report by the Economic Policy Institute. That report concluded that a one billion dollar investment in wireless infrastructure could potentially create 12,000 “job-years” of work.¹¹ However, this report did not examine the proposed merger specifically; rather, it was based on a general assumption that AT&T would invest 8 billion dollars in wireless infrastructure.¹² Even assuming, for the sake of argument, that AT&T did make that investment, the EPI report, and other reports cited by AT&T, only address one side of the equation. Even assuming that the proposed merger could allow AT&T to increase capital investment (and, therefore, increase employment), it would also *eliminate* T-Mobile’s capital expenditures, potentially leading to fewer net jobs.¹³ The drafters of the EPI study acknowledge

⁸ See Description of Transaction, Public Interest Showing and Related Demonstrations 11-12, 15, In the Matter of Application of AT&T, Inc. and Deutsche Telekom AG to Transfer Control of Licenses and Authorizations Held by T-Mobile USA, INC. and Its Subsidiaries to AT&T Inc., WT Docket No. 11-65 (Fed. Comm. Comm’n April 21, 2011) (hereafter, Application).

⁹ AT&T Reply Comments at 1, citing Roger Cheng, 4G a boon to U.S. economy and jobs, study says, CNET News (Aug. 21, 2011) *available at* http://news.cnet.com/8301-1035_3-20094588-94/4g-a-boon-to-u.s-economy-and-jobs-study-says/.

¹⁰ AT&T Reply Comments at 1, citing Ethan Pollack, The Jobs Impact of Telecom Investment (May 31, 2011) (hereafter, EPI National Memo), *available at* http://www.epi.org/publication/the_jobs_impact_of_a_telecommunications_merger/.

¹¹ EPI National Memo. A “job-year” is employment for one person for one year. *Id.*

¹² Ethan Pollack, David Neumark’s critique of EPI’s broadband report completely misses the mark (September 2, 2011), *available at* <http://www.epi.org/publication/david-neumark%E2%80%99s-critique-epi%E2%80%99s/> (hereafter, EPI Reply Memo).

¹³ David Neumark, The AT&T/T-Mobile Merger: A Recipe for Reducing Jobs for American Workers (August 2011), *available at* <http://newsroom.sprint.com/images/9004/ATT-T-Mobile-merger-jobs-study.pdf>.

that the study only examined one isolated factor, noting that “[t]here are myriad other factors that would impact jobs.”¹⁴ Thus, on its face, the EPI report is clear that it will not support any claims of net job gains resulting from the merger.

Similarly, AT&T has provided an EPI study addressing the specific effects of infrastructure investment in California.¹⁵ That report claims that AT&T’s proposed investment would create between 8,000 and 14,000 “job-years” in California over the next seven years;¹⁶ an impressive-sounding number, until one realizes that 8,000 and 14,000 job-years over seven years equates to 1,100-2,000 jobs. However, this “study,” which is one page long, is seriously flawed.

First, Pollack admits that his methodology “is not best used for breakdowns by state.”¹⁷ Additionally, the report does not explain how Pollack reached his conclusion, stating only that the source of the 8,000 to 14,000 job-years figure is the “author’s analysis.”¹⁸ Finally, much like Pollack’s report on the national impact of the merger on jobs, the report does not weigh the created job-years against the job-years that will be lost as a result of the merger.¹⁹ Pollack’s report consists solely of an unsupported conclusion; as such, it should be rejected.

III. AT&T FALSELY CLAIMS THAT IT CANNOT ESTIMATE THE EFFECT OF THE PROPOSED MERGER ON JOBS WITHIN THE COMBINED COMPANIES.

AT&T has not provided the Commission with any information regarding job losses within the combined company other than vague, general assurances.²⁰ AT&T claims that it cannot estimate job losses because it is unable to gain access to T-Mobile’s employment data; however, this claim rings false. AT&T has been able to obtain similar data regarding T-Mobile’s

¹⁴ EPI Reply Memo.

¹⁵ Ethan Pollack, Job Impact of AT&T telecom investment in California (2011), *available at* <http://w3.epi-data.org/temp2011/california%20estimate%20%283%29.pdf> (hereafter, EPI California Memo).

¹⁶ *Id.*

¹⁷ *Id.* Pollack does qualify this statement by claiming that “California is big enough to allow a defensible state job impact estimate.” *Id.*

¹⁸ *Id.*

¹⁹ *See* Neumark, *supra* note 11.

²⁰ Greenlining Opening Comments at 6-10.

networks and subscribers; there is no apparent reason that AT&T cannot obtain T-Mobile's employment data. Additionally, as discussed further below, it appears that AT&T has **[Begin Highly Confidential Information]**

[End Highly Confidential Information] AT&T is perfectly capable of predicting the effects of the merger on jobs within the combined company, but simply refuses to do so.

A. AT&T Claims That It Cannot Predict Job Losses.

AT&T has consistently claimed that it is unable to calculate job loss/store closures because AT&T does not have the necessary information. Furthermore, AT&T claims it is unable to obtain that information until after the proposed merger is approved. In response to the CPUC's data request seeking information about the net number of jobs that will be lost in California after the merger, AT&T noted that it would not make that determination until after the merger was complete: "[a]fter the transaction closes, AT&T will evaluate the combined company's staffing, store locations and network distribution facilities in order to enhance its sales operations and achieve the optimum network deployment."²¹ AT&T's filings further note that "[u]ntil the transaction closes, AT&T and T-Mobile remain independent, competing companies. As a result, at this juncture, AT&T's ability to receive certain information from T-Mobile for integration planning is limited. Where information is available, we have not conducted the required analysis to develop this information for California."²²

AT&T has maintained this position in public hearings and workshops. In a United States Senate hearing on the merger, Randall Stephenson, President of AT&T, indicated that AT&T

²¹ Compliance Filing of AT&T Inc in Response to Order Instituting Investigation Ordering Paragraph 7, Response to DR 7.b. (September 6, 2011) (hereafter, Response to DR 7.b.).

²² *Id.*

had been unable to perform a detailed analysis of projected job losses.²³ In workshops before the Commission, AT&T’s representatives stated that job losses are a “post-merger detail,”²⁴ further claiming that “[d]etailed information about T-Mobile USA’s staffing levels and employment practices is not currently available to AT&T;” accordingly, AT&T could not make any predictions about job losses.²⁵

B. AT&T Has Deliberately Omitted Jobs Data From Its Models.

Not only has AT&T failed to provide any substantive data regarding job losses, it has actively worked to avoid providing that information when specifically asked to do so. Perhaps the best example of AT&T’s active opposition to providing data about job losses is AT&T’s economic model. The economic model “...estimates only those marginal cost savings related to radio network costs...[i]t does not calculate other marginal cost savings that are expected to result from the proposed transaction.”²⁶ Accordingly, **[Begin Highly Confidential**

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By avoiding calculating the merger’s “other marginal cost savings,” AT&T has avoided calculating the cost savings that would result from network employment reductions. As a result,

²³ Hearing before Sen. Com. on the Judiciary, Subcom. on Intellectual Property, Competition, and the Internet, How Will the Proposed Merger Between AT&T Affect Wireless Telecommunications Competition? 112th Cong., 1st Sess. p. 178 (2011) (Testimony of Randall Stephenson) (hereafter, Stephenson Testimony).

²⁴ CPUC Consumer Issues Workshop (July 22, 2011), pp. 179-180 (Testimony of Steve Breheny, AT&T Associate Vice President of Radio Access Network Engineering).

²⁵ See Response to DR 7.b.

²⁶ Letter from Richard L. Rosen to Marlene H. Dortch 3, note 4(July 25, 2011), In the Matter of Application of AT&T, Inc. and Deutsche Telekom AG to Transfer Control of Licenses and Authorizations Held by T-Mobile USA, INC. and Its Subsidiaries to AT&T Inc., DA 11-799, WT Docket No. 11-65 (Fed. Comm. Comm’n June 10, 2011) (hereafter, Rosen Letter).

²⁷ **[Begin Highly Confidential Information]** **[End Highly Confidential Information]**

AT&T has avoided disclosing any estimates regarding those employment reductions. It is quite reasonable to assume that AT&T's failure to calculate other marginal cost savings is an attempt to avoid providing substantive data regarding job losses to the Commission.

C. AT&T Is Perfectly Capable Of Calculating Job Impacts.

Despite AT&T's claims to the contrary, AT&T is perfectly capable of predicting the effect of the merger on jobs within the combined company. AT&T has made predictions about other "post-merger details" in its engineering and economic models. Additionally, it appears that **[Begin Highly Confidential Information]**

[End Highly Confidential Information] Finally, in at least one instance, AT&T has the basic data necessary to predict job effects, but has simply avoided doing so.

1. AT&T Has Had No Problems Obtaining Data From T-Mobile On Issues That Do Not Involve Job Impacts.

While AT&T asserts that it cannot obtain T-Mobile's employment data until the merger is completed, this restriction does not appear to apply to "data on the characteristics of... T-Mobile USA networks"²⁸ or information about T-Mobile's subscriber base, growth rates, usage, and projected future demand.²⁹ AT&T has used this data in their economic and engineering models to determine a great deal of post-merger details, including:

- How many T-Mobile cell towers will be decommissioned;³⁰
- "[T]he likely impact of the proposed transaction on output and quality-adjusted price,"³¹ and

²⁸ Rosen Letter at 4.

²⁹ *Id.*

³⁰ See CPUC Innovation Workshop (July 15, 2011), p. 164 (Testimony of Steven Stravitz, CEO, Spectrum Management Consulting) (hereafter, Stravitz Testimony).

³¹ Rosen Letter at 2.

- “[T]he effects of the proposed transaction on prices and output in each of the markets through the use of simulation models.”³²

AT&T apparently feels that these projections of post-merger activity, and the data those projections are based on, are sufficiently verifiable and quantifiable to constitute competition-enhancing efficiencies; perplexingly, AT&T is unable to obtain the data and create projections regarding job effects. The self-serving argument that AT&T can obtain data about T-Mobile’s networks and subscribers to generate reliable efficiency models, but cannot obtain data about T-Mobile’s employees to generate reliable estimates of job losses beggars belief. AT&T can apparently only discuss “post-merger details” when those details are to AT&T’s advantage.

2. AT&T Has Estimated The Effect Of The Merger On Job Losses In The Past.

AT&T’s October 12, 2011 compliance filing included **[Begin Highly Confidential Information]** **[End Highly Confidential Information]**³³ **[Begin Highly Confidential Information]**

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however, AT&T had previously claimed that the document was privileged.³⁵

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³² Rosen Letter at 2-3.

³³ **[Begin Highly Confidential Information]** **[End Highly Confidential Information]**

³⁴ See AT&T, Privilege Log (July 23, 2011).

³⁵ **[Begin Highly Confidential Information]**

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[Begin Highly Confidential Information] See Commission Rules of Practice and Procedure, Rule 10.3.

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Under that scenario, AT&T anticipated **[Begin Highly Confidential Information]**

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AT&T will no doubt argue that the document is “not a detailed merger integration plan,”⁴³ and that the document “was prepared before AT&T made the various job-related commitments.”⁴⁴ Even if that specific document is **Begin Highly Confidential Information]**

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3. In At Least One Instance, AT&T Has The Ability To Estimate Job Losses But Has Failed To Do So.

While AT&T continues to plead ignorance, based on information provided at Commission workshops and in response to Commission data requests, there is sufficient data to calculate job losses in at least one area—network operations. AT&T has publicly admitted that it plans to decommission approximately 65% of T-Mobile’s towers.⁴⁵ At the Commission’s workshop on innovation, Stephen Stravitz, a consultant for Sprint, estimated that wireless providers employ one network operations employee for roughly every 35 cell sites.⁴⁶ **[Begin**

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[End Highly Confidential Information]⁴⁷ T-Mobile

currently operates **[Begin Highly Confidential Information]**

⁴² **[Begin Highly Confidential Information]** **[End Highly Confidential Information]** Greenlining has previously noted that the retail store closures promise to disproportionately impact low-income communities and communities of color. *See* Greenlining Opening Comments at 33.

⁴³ AT&T-FCC Jobs Letter at 2.

⁴⁴ *Id.* at 3.

⁴⁵ *See* note 28, *supra*.

⁴⁶ Stravitz Testimony at 208.

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[End Highly Confidential Information]⁴⁸ if AT&T decommissions **[Begin Highly Confidential Information]** **[End Highly Confidential Information]** of those towers, the result will be a reduction of between **[Begin Highly Confidential Information]** **[End Highly Confidential Information]** and **[Begin Highly Confidential Information]** **[End Highly Confidential Information]** employees.⁴⁹ It is unclear why AT&T has this information in its possession yet claims that it lacks the ability to predict job effects.

D. The Commission Should Require That AT&T Provide Meaningful Estimates of Job Effects.

There are two possibilities: first, AT&T has the ability to obtain data about T-Mobile's employees, and generate estimates of job losses based on that data, but refuses to do so. In that instance, the Commission should require AT&T to perform a good-faith, detailed analysis of job losses. Second, if AT&T cannot obtain reliable data about T-Mobile's employees until after the merger, it follows that AT&T cannot obtain reliable data about T-Mobile's networks and subscribers; accordingly, AT&T's engineering and economic models are unreliable and should be rejected by the Commission.

IV. AT&T'S PROPOSED MITIGATION MEASURES ARE AN ATTEMPT TO DISTRACT FROM THE REAL ISSUES.

When questioned about potential job effects, AT&T provides a number of stock responses:

- While there will no doubt be job losses, those job losses will be dealt with primarily by natural attrition.⁵⁰
- While there will no doubt be job losses, AT&T has promised to bring back 5,000 jobs from overseas.⁵¹

⁴⁸ **[Begin Highly Confidential Information]** **[End Highly Confidential Information]**

⁴⁹ Interestingly, **[Begin Highly Confidential Information]** **[End Highly Confidential Information]**

⁵⁰ ATT-FCC Jobs Letter.

- While there will no doubt be job losses, AT&T has promised to offer jobs in other departments to existing T-Mobile non-management employees who lose their jobs as a result of the merger.⁵²
- AT&T has promised to retain call center employees who are on the payroll when the merger closes.⁵³

While these assurances are admirable, they are only veiled gestures. For example, AT&T states that it expects to achieve its force reductions “largely” or “primarily” through “normal attrition.”⁵⁴ However, AT&T appears to conflate “largely” or “primarily” with “solely.” The fact that AT&T expects that a large number of job losses will be achieved through natural attrition does not preclude layoffs or other forms of force reduction.

AT&T’s other assurances ring equally hollow. As a mitigation measure, AT&T promises to bring back 5,000 overseas call center jobs; however, **[Begin Highly Confidential Information]**

[End Highly Confidential Information]⁵⁵ Similarly, AT&T’s “job offer guarantee” contains no real assurances. AT&T states that “the specific details of the job offer guarantee will be finalized once AT&T has access to [information about T-Mobile employees] and the merger closes.”⁵⁶ Finally, while AT&T has promised not to terminate any of T-Mobile’s call center employees, it has provided no such assurances about AT&T’s call center employees. Given the fact that AT&T has **[Begin Highly Confidential Information]**

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Response to DR 7.b., Response 8; see also, Stephenson Testimony at 178.

⁵⁵ See **[Begin Highly Confidential Information]**

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⁵⁶ AT&T-FCC Jobs Letter.

[End Highly Confidential Information]⁵⁷ it is doubtful that any of AT&T's assurances about jobs post-merger are meaningful.

More importantly, all of these assurances serve to distract from the issue of job effects, rather than address it. None of these assurances answer the fundamental question whether, in the words of the FCC, "the merger will result in a net increase of jobs within the territorial United States."⁵⁸ The Commission should see through AT&T's attempts at distraction and demand that AT&T provide specific, substantiated answers regarding job cuts within the combined company.

V. CONCLUSION

AT&T casually rejects its opponents' claims that the proposed merger will cause job cuts.⁵⁹ However, many of those claims, such as Free Press' claim that the proposed merger would result in approximately 20,000 lost jobs, are better substantiated than AT&T's claims to the contrary.⁶⁰ The FCC has recently noted that AT&T has failed to respond to the FCC's request for information about the merger's effect on jobs; in fact, AT&T "has produced almost nothing in response" to the FCC's request.⁶¹ As discussed above, AT&T's responses to the CPUC regarding job losses have been similarly lacking, consisting primarily of unsubstantiated conclusions and statements that AT&T will not be able to determine the merger's effect on AT&T and T-Mobile employees until the merger is completed. AT&T is perfectly capable of estimating the proposed merger's job effects, but refuses to do so, presumably because AT&T knows that those estimates would not work in its favor. In order to perform a substantive review

⁵⁷ See **[Begin Highly Confidential Information**
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⁵⁸ FCC Jobs Letter.

⁵⁹ AT&T-FCC Jobs Letter at 2.

⁶⁰ Letter from S. Derek Turner to Marlene H. Dortch (September 19, 2011), In the Matter of Application of AT&T, Inc. and Deutsche Telekom AG to Transfer Control of Licenses and Authorizations Held by T-Mobile USA, INC. and Its Subsidiaries to AT&T Inc., DA 11-799, WT Docket No. 11-65 (Fed. Comm. Comm'n June 10, 2011).

⁶¹ FCC Jobs Letter.

of the proposed merger and to protect the public interest, the Commission should require that AT&T provide specific, reliable information about the merger's effects on jobs in California generally, and on AT&T and T-Mobile employees specifically.

Respectfully submitted,

Dated: November 1, 2011

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