

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter Of)	
)	
Application of AT&T, Inc. and Deutsche)	DA 11-799
Telekom AG to Transfer Control of)	WT Docket No. 11-65
Licenses and Authorizations Held by)	
T-Mobile USA, INC. and Its)	
Subsidiaries to AT&T Inc.)	

**REPLY TO JOINT OPPOSITION TO PETITIONS TO DENY AND REPLY TO
COMMENTS**

Samuel Kang
General Counsel

Enrique Gallardo
Legal Counsel

Paul S. Goodman
Consulting Counsel

Greenlining Institute
1918 University Ave
Berkeley CA, 94704
Office: 510-926-4004

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The Greenlining Institute (“Greenlining”) hereby files this Reply to Joint Opposition to Petitions to Deny and Reply to Comments in the above-captioned matter.

I. INTRODUCTION

AT&T, Inc., Deutsche Telekom AG, and T-Mobile USA, Inc.’s¹ Joint Opposition (hereafter, Opposition) fails to address any of the issues raised in Greenlining’s Petition. It is worth noting that AT&T’s failure to reply is not limited to only Greenlining’s Petition; AT&T also fails to respond to a number of other Petitioners. For example, when responding to arguments about competitive issues, AT&T’s experts apparently only addressed “the principal claims and arguments” made by “major industry participants.”² It is somewhat disturbing that AT&T views the proposed transaction as a dispute between competitors, and not a dispute about the American public’s access to its airwaves.

¹ For convenience, this Reply will refer to AT&T, Inc., Deutsche Telekom AG, and T-Mobile USA, Inc. collectively as “AT&T.”

² Applicants’ Reply Declaration of Dennis W. Carlton, Allan L. Shampine and Hal S. Sider 1-2 (hereafter, Carlton Reply Decl.).

Whatever AT&T's motivation, its Opposition repeats the same general, theoretical, and speculative public interest benefits made in its original Application.

AT&T's response is an exercise in cognitive dissonance, arguing that the relevant geographic market consists of specific local areas, and then providing general, overarching justifications for the merger. Greenlining, and many other petitioners, have rightfully asked AT&T to describe specifically *how* the proposed transaction will cause those benefits. Unfortunately, AT&T has failed to respond. This failure to address specific issues about specific markets has resulted in AT&T's failing to meet its burden of proof; at minimum, The Commission has insufficient information to approve the transaction. Accordingly, the Commission should grant the Petition or, in the alternative, postpone ruling on the Petition until it completes a meaningful and transparent review of the issues raised by Petitioner and others. Finally, if the Commission approves the proposed transaction, the Commission should impose conditions to ensure that the purported public interest benefits reach low-income consumers and communities of color, who are likely to be disproportionately harmed by the proposed transaction.

II. AT&T'S CLAIMS OF GENERAL PUBLIC INTEREST BENEFITS DO NOT ADDRESS THE LOCAL MARKETS THAT ARE THE SUBJECT OF THE PROPOSED TRANSACTION.

AT&T acknowledges that the effects of the proposed transaction will vary significantly from market to market, in terms of both the Commission's analysis of the transaction, and, if the Commission approves the transaction, AT&T's integration of T-Mobile. AT&T consistently asserts that the wireless telephone services market is "local," i.e., areas where consumers "live, work, and travel on a regular basis."³ The Opposition

³ AT&T, Description of Transaction, Public Interest Showing and Related Demonstrations 73 (April 21, 2011)(hereafter, Application) (citation omitted); *see also*, Joint Opposition of AT&T INC., Deutsche

notes that the vast majority of T-Mobile's customers purchase wireless services at local retail establishments.⁴ As Greenlining noted in its Petition, low-income consumers are more dependent on local retail establishments; low-income consumers are less likely to have an internet connection at home, and are more likely to only access the internet via cell phone.⁵

AT&T also acknowledges that if the transaction is approved, AT&T will make decisions about integration on a location-by-location basis.⁶ AT&T notes that divestiture of spectrum or business units "may vary from locality to locality."⁷ AT&T will decide which T-Mobile sites to integrate, and which to decommission, on a location-by-location basis.⁸ The actual efficiencies generated by the transaction "will depend on several key factors that vary market-by-market."⁹

However, when discussing the proposed transaction's effects, AT&T does not do so on a location-by-location basis. AT&T speculates that the transaction will promote competition and innovation, result in more efficient use of spectrum, and bridge the digital divide. AT&T does not, however, explain how those benefits will be achieved, except in the most vague and nebulous terms, citing statements about the entire wireless industry,¹⁰ general studies,¹¹ and broad economic analysis.¹² For example, AT&T argues

Telekom AG, and T-Mobile USA, Inc. to Petitions to Deny and Reply to Comments 105 (June 10, 2011) (hereafter, Opposition).

⁴ Reply Declaration of James Alling 3 (hereafter, Alling Reply Decl.).

⁵ Pew Internet and American Life Project, Mobile Access 2010 10, (2010), available at http://www.pewinternet.org/~media/Files/Reports/2010/PIP_Mobile_Access_2010.pdf (hereafter, Pew Mobile Access Report).

⁶ Applicant's Reply Declaration of William Hogg 16 (hereafter, Hogg Reply Decl.).

⁷ Opposition at 206.

⁸ AT&T, Response of AT&T to Information and Discovery Request Dated May 27, 2011 10 (June 10, 2011) (hereafter, Response to Information Request).

⁹ Hogg Reply Decl. at 13.

¹⁰ See Opposition at 75.

¹¹ See Opposition at 92, note 122.

¹² See Carlton Reply Decl. at 61-72.

that the proposed transaction will generate efficiencies claiming that these efficiencies are “well-understood and accepted throughout the wireless industry.” However, AT&T cannot actually quantify the transaction’s purported efficiency gains; those gains “will depend on several key factors that vary market-by-market.”¹³

AT&T has not, apparently, performed sufficient research to determine which T-Mobile sites they will keep, and which they will not;¹⁴ accordingly, “[f]urther quantification of these network efficiencies must await detailed engineering information for each company and full integration planning.”¹⁵ AT&T asserts that the transaction will generate over \$39 billion in cost savings,¹⁶ but admits that it will not have enough information to make an accurate determination of savings until after the transaction.¹⁷ AT&T argues that there are no concerns about competition for backhaul services, but acknowledges that “any consideration [by AT&T] regarding potential modification of terms and pricing for backhaul has not yet occurred.”¹⁸ AT&T argues that there are no concerns about competition for roaming, but conveniently does not have any specific data regarding “the possible effects of the Proposed Transaction on roaming or wholesale charges or...the Merged Company’s offering of roaming or wholesale arrangements.”¹⁹

Additionally, AT&T vigorously opposes any conditions which would ensure that the purported benefits occur in specific local markets.²⁰ For example, AT&T opposes any restrictions on divestitures, while acknowledging that those divestitures could protect

¹³ Hogg Reply Decl. at 13.

¹⁴ Hogg Reply Decl. at 16.

¹⁵ Hogg Reply Decl. at 13. The Opposition does include analysis of specific markets; however, that analysis is based on data from only 14 Cellular Market Areas. Carlton Reply Decl. at 21.

¹⁶ Opposition at 74.

¹⁷ Response to Information Request at 34.

¹⁸ Response to Information Request at 33.

¹⁹ Response to Information Request at 46, citing Fed. Comm. Comm’n, Information and Discovery Request for AT&T Inc., DA 11-799, Docket No. 11-65 (May 27, 2011).

²⁰ See Opposition at 206-226.

competition in local markets.²¹ AT&T is unable or unwilling to provide the Commission information about AT&T's specific plans regarding backhaul²² and roaming,²³ but opposes the imposition of any conditions related to backhaul and roaming that would protect consumers and the public interest.²⁴ Similarly, while AT&T states that it welcomes the addition of T-Mobile's high-ARPU customers,²⁵ AT&T asks the Commission to reject conditions to help protect those new customers, or allow T-Mobile customers who do not wish to stay with AT&T to do so; for example, AT&T opposes any waiver of termination fees or conditions to help prevent "bill shock."²⁶

III. AT&T HAS NOT ADDRESSED THE ISSUES RAISED IN GREENLINING'S PETITION.

The Opposition attempts to justify consolidation in specific markets based on claims about all of the markets as a whole, and also reject any conditions to protect specific markets. The Opposition's failure to demonstrate that the proposed transaction is in the public interest is apparent, particularly when considering the issues raised in Greenlining's Petition.

In its Petition, Greenlining repeatedly expresses concerns about the effect of the proposed transaction on low-income consumers, who rely heavily on value-conscious wireless services²⁷ and local retail establishments.²⁸ However, AT&T's Opposition does not respond to Petitioner's claims about the effects of the proposed transaction on low-

²¹ See Opposition at 206.

²² Reply to Information Request at 33.

²³ Reply to Information Request at 46.

²⁴ Opposition at 216-217.

²⁵ Opposition at 62 (citations omitted).

²⁶ See Opposition at 223.

²⁷ See Petition to Deny of Greenlining Institute 7, DA 11-799, Docket No. 11-65 (May 31, 2011) (hereafter, Greenlining Petition).

²⁸ Pew Mobile Access Report, *supra* note 5, at 10.

income consumers.²⁹ AT&T has failed to disprove or justify the negative effects that the proposed transaction will have on low-income consumers. Similarly, AT&T opposes any restrictions which would reduce these harmful effects.

a. AT&T Has Not Addressed the Effects of the Proposed Transaction On Competition in the Value-Conscious Services Market.

In its Petition, Greenlining argues that the proposed transaction will result in widespread monopolies and duopolies in the value-conscious wireless services market.³⁰

Based on AT&T's own data, of the 202 CMA's in which AT&T has reached the Commission's spectrum screen, four will have three value-conscious or regional providers, 61 will have two value-conscious or regional providers, 105 will have only one value-conscious or regional provider, and 32 will have no value-conscious or regional provider whatsoever.³¹ Of the 50 largest cities in the country, at least 6 cities will have only 2 value-conscious providers, at least 29 will have only one such provider, and one will have no value-conscious provider whatsoever.³²

Rather than responding to this issue, the Opposition repeats arguments from its Application, broadly claiming that the wireless market is currently competitive, and that the elimination of T-Mobile as a competitor will not affect the state of competition in that market.³³ However, AT&T has not addressed the effects of the proposed transaction on the relevant submarket for value-conscious services. Additionally, AT&T opposes any

²⁹ While the Opposition touches on some of the issues Greenlining's Petition raised—how the proposed transaction will affect T-Mobile's customers, allocation of spectrum, and employment—AT&T at no point addresses those issues in the context of low-income consumers.

³⁰ Greenlining Petition at 18.

³¹ Greenlining Petition at 18.

³² Greenlining Petition at 18. Greenlining's Petition also notes that AT&T's appendix contains data for only thirty-six of those fifty cities. Based on information about cell phone providers from wirelessadvisor.com, 12 cities would have only 2 value-conscious providers, 37 cities would have only 1 value-conscious provider, and one city (Seattle, the 23rd largest city in the United States) would have no value-conscious provider whatsoever.

³³

conditions which might help preserve competition in the value-conscious services market, such as conditions on divestiture, roaming, or backhaul.³⁴

b. AT&T Has Not Addressed the Effects of the Transaction on Low-Income Consumers.

AT&T's Opposition continues to make contradictory claims about what will happen to T-Mobile customers if the proposed transaction is approved. AT&T argues both that (1) T-Mobile customers will stay with AT&T,³⁵ and that (2) T-Mobile customers will migrate to value-conscious providers.³⁶ Under either set of circumstances, low-income consumers will be harmed, and AT&T refuses to provide any assurances or agree to any conditions which would alleviate those harms.

i. Customers Who Choose to Stay with AT&T Will Be Harmed By the Transaction

AT&T asserts that T-Mobile customers will not be harmed by the transaction, because those customers will be able to keep their current rate plans after becoming AT&T customers.³⁷ AT&T does not, however, address what will happen when those plans expire, nor does it address what will happen to T-Mobile's "no-contract" customers. Additionally, AT&T fails to acknowledge that soon after AT&T and T-Mobile announced the proposed merger, T-Mobile began changing its plans to mirror those of AT&T. For example, T-Mobile has instituted data caps³⁸ and changed its pricing plans to be similar to AT&T's plans.³⁹

³⁴ See Opposition at 207 (divestiture), 216-217 (roaming and backhaul).

³⁵ Opposition at 62 (citations omitted).

³⁶ Opposition at 131.

³⁷ Opposition at 62 (citations omitted).

³⁸ Brad Wood, T-Mobile's Data Cap Embrace Leaves Sprint as Lone 'Unlimited' 4G Carrier, (May 23, 2011), available at <http://www.networkworld.com/news/2011/052311-tmobile-data-caps.html>.

³⁹ Marc Flores, T-Mobile Kills Unlimited Data Plans, Changes Up Prepaid, Post-paid plans, (May 23, 2011), available at <http://www.intomobile.com/2011/05/23/tmobile-changes-up-prepaid-and-postpaid-plans-goodbye-unlimited-data/>.

Finally, AT&T fails to acknowledge that T-Mobile's terms of service include the following:

5. Our Rights to Make Changes. This provision, which describes how changes may be made to your Agreement, is subject to requirements and limitations imposed by applicable law, and will not be enforced to the extent prohibited by law. Your Service is subject to our business policies, practices, and procedures, which we can change without notice. WE CAN CHANGE ANY TERMS IN THE AGREEMENT AT ANY TIME.⁴⁰

AT&T's claim that T-Mobile customers will be able to keep their plans is a hollow promise, because under the terms of those plans, AT&T can change them at any time. AT&T fails to address how it will make its assurances more meaningful, nor has it offered any options to T-Mobile customers who do not want to migrate to AT&T.

ii. Customers Who Migrate to Another Value-Conscious Provider Will Be Harmed By The Transaction.

As discussed in Greenlining's Petition, there are some indications that, if the transaction is approved, AT&T plans to abandon T-Mobile's value-conscious customers.⁴¹ AT&T's Opposition repeats the arguments from AT&T's original Application, indicating that AT&T intends low-income consumers to migrate to value-conscious and regional providers.⁴² AT&T has not explained how the transaction will benefit those consumers. Additionally, AT&T has failed to address the fact that this migration will increase the load on the remaining value-conscious providers' networks, potentially increasing prices and reducing quality of service. Again, AT&T also refuses to accept any conditions which might alleviate these harms.⁴³

⁴⁰ T-Mobile, T-Mobile Terms and Conditions, http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions&print=true.

⁴¹ Greenlining Petition at 14-15.

⁴² Opposition at 131.

⁴³ See Opposition at 207 (divestiture), 216-217 (roaming and backhaul).

c. The Transaction Will Reduce the Amount of Spectrum Available for Value-Conscious Wireless Services.

As discussed in Greenlining's petition, the proposed transaction promises to potentially double the number of consumers on networks owned by the remaining value-conscious providers.⁴⁴ This increased load will serve, to borrow AT&T's term, as a "functional reduction" of the amount of spectrum available to low-income consumers, driving up prices and degrading quality of service. AT&T has failed to address this issue and, in fact, opposes the imposition of restrictions of divestiture that the Commission could use to offset this increased network load.⁴⁵

d. The Transaction Promises to Eliminate Many Low-Income Jobs.

Greenlining's Petition notes that the proposed transaction will result in lost jobs; these job losses promise to disproportionately affect low-income workers.⁴⁶ AT&T does not dispute that the transaction will result in lost jobs, offering the rather tepid response that "where some jobs serving duplicative functions are eliminated to reduce costs, AT&T will rely mostly on natural attrition."⁴⁷ AT&T argues that the proposed transaction will have a net benefit in terms of employment, noting particularly that the transaction promises to create "high-tech, high-wage jobs."⁴⁸ However, AT&T does not address the effects of the proposed transaction on entry-level, low-wage jobs. While AT&T claims that the net effect on employment could be positive, the effect on low-income employment promises to be negative. AT&T has not addressed this issue, or offered any assurances or assistance regarding the reduction in workforce.

⁴⁴ Greenlining Petition at 20-22.

⁴⁵ Opposition at 207.

⁴⁶ Greenlining Petition at 24-25.

⁴⁷ Opposition at 93.

⁴⁸ Opposition at 86.

e. The Transaction May Leave Consumers Without Access to A Local Wireless Services Retailer.

Many of the above-discussed job losses will come as a result of store closures.⁴⁹

The vast majority of T-Mobile's customers purchase wireless services at local retail establishments.⁵⁰ AT&T is currently unable to state which stores it will close as a result of the transaction.⁵¹ The closing of redundant retail stores could lead to urban blight; additionally, it is quite possible that AT&T's closure of "less profitable" retail locations could result in low-income communities that do not have access to a local retail establishment. Greenlining's Petition asks AT&T to address these issues; however, AT&T's Opposition is silent on the issue.

**IV. AT&T HAS NOT MET ITS BURDEN OF PROOF;
ACCORDINGLY, THE COMMISSION SHOULD GRANT THE
PETITION.**

It is unclear why AT&T avoids addressing the above issues. Greenlining can only assume that AT&T either (1) does not know how the transaction will cause the purported benefits, or (2) does not want to respond because it has no explanation. Rather than addressing the issues raised by Greenlining and other petitioners, AT&T's Opposition rehashes the arguments initially proffered in the Application: arguments that consist of lofty assumptions, vague assurances, and empty promises. AT&T apparently wishes the Commission to accept that the public interest benefits of the transaction outweigh the public interest harms, *despite the fact that AT&T cannot quantify those benefits.*

AT&T apparently feels that the Commission should be satisfied with AT&T's claim that there will be "some" benefits, despite the fact that AT&T could have provided

⁴⁹ Greenlining Petition at 24-25.

⁵⁰ Alling Decl. at 3.

⁵¹ Reply to Information Request at 72.

a more specific analysis.⁵² AT&T bears the burden of proving, by a preponderance of the evidence, that the proposed transaction is in the public interest, and that any potential public interest harms are outweighed by potential public interest benefits.⁵³ AT&T's failure to address many of the issues raised by Greenlining, and other petitioners, has resulted in an incomplete record. This record is insufficient to meet AT&T's burden of proof; accordingly, the Commission should deny the Application, and grant Greenlining's Petition.⁵⁴

V. IF THE COMMISSION DOES NOT GRANT THE PETITION OUTRIGHT, IT MUST PERFORM A TRANSPARENT AND MEANINGFUL REVIEW OF THE ISSUES.

If, the Commission declines to grant the Petition outright, Petitioners urge the Commission to fully review the issues before making a decision. This review must allow sufficient time for interested parties to provide the Commission with the information

⁵² While AT&T appears to view the Commission's as a "rubber stamp" for telecommunications companies, the Commission's reputation is not entirely unearned. For example, the Comcast's hiring of one Commissioner only four months after that Commissioner approved the Comcast/NBC merger created significant public skepticism about the Commission's integrity and independence. Nate Anderson, After approving NBC buyout, FCC Commish becomes Comcast lobbyist (May 11, 2001), <http://arstechnica.com/tech-policy/news/2011/05/after-approving-comcastnbc-deal-fcc-commish-becomes-comcast-lobbyist.ars>; Cecilia Kang, House oversight chair questions FCC Baker's move to Comcast (May 20, 2011), available at http://www.washingtonpost.com/blogs/post-tech/post/house-oversight-chair-questions-fcc-bakers-move-to-comcast/2011/05/20/AFRAp37G_blog.html. The Commission is often viewed as a victim of regulatory capture, responding to the demands of industry rather than the public interest. See Richard Esguerra, The FCC and Regulatory Capture (2008), <https://www.eff.org/deeplinks/2008/08/fcc-and-regulatory-capture>.

⁵³ Order In the Matter of Applications of AT&T Inc. and Cellco Partnership, WT Docket No. 09-104, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8716 (June 22, 2010) (hereafter, AT&T/Cellco Order).

⁵⁴ If the Commission approves the transaction, AT&T's failure to provide information could cause a court to find that approval unlawful. "[A]gency actions, findings, and conclusions' that are found to be 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law...[or] unsupported by substantial evidence....'" are unlawful. Prometheus Radio Project v. Fed. Comm. Comm'n, 373 F.3d 372 (3rd Cir. 2004), citing 5 U.S.C. § 706 (emphasis added). Courts will hold a Commission action invalid if the Commission "failed to consider relevant factors or made a clear error in judgment." Cellco Partnership v. Fed. Comm. Comm'n, 357 F.3d 88, 93-94 (D.C. Cir. 2004) (citations omitted). To withstand a challenge to agency action, the Commission must articulate a "rational connection between the facts found and the choice made." Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (citation omitted). If the Commission approved the transaction, a court might find that the Commission was unable to articulate a rational connection between the insufficient facts in the record and the Commission's decision.

necessary to allow a careful and thorough consideration of all of the facts and issues. In addition to ensuring that the review is thorough, the Commission must also ensure that the process is transparent, in order to avoid the appearance of regulatory capture or back-room politics.⁵⁵

The Commission's compressed filing schedule has created the impression that the Commission wishes to rush this matter to completion, in part by giving Petitioners and the public limited access to relevant materials.⁵⁶ The Commission requested additional information from AT&T and T-Mobile, requesting (and receiving) delivery of that information on June 10, ten days after the deadline for filing Petitions to Deny.⁵⁷ The Commission requested additional information from other carriers (Cellular South, Leap Wireless and Cricket Communications, MetroPCS, Sprint Nextel, U.S. Cellular, and Verizon), requesting delivery on June 20, the day that Replies to AT&T's Opposition are due.⁵⁸ This limited access deprives Petitioners of factual information which it cannot obtain by other means, and would most likely allow Petitioners to make stronger, more compelling arguments.

Additionally, this limited access creates the impression that the Commission is not interested in the public's input on this matter. In one instance, an interested party does

⁵⁵ See note 52, *supra*.

⁵⁶ The Commission has already received criticism for the extremely short timeframe in this matter. See Cellular South, Petition to Deny of Cellular South 11, 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 (May 31, 2011).

⁵⁷ See Information and Discovery Request for AT&T Inc., 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 (May 27, 2011); see also Information and Discovery Request for Deutsche Telekom AG, 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 (May 27, 2011).

⁵⁸ See Information and Discovery Request for Third Parties, 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 (June 6, 2011).

not even have enough information to determine whether to oppose the proposed transaction. Worldcall Interconnect, Inc., states that it will not be able to make the preliminary determination whether to file a petition to deny or an opposition to petitions to deny for at least 90 days, because it “will not be able to reasonably decide whether to support the merger or oppose the merger until further developments occur and additional facts are known.”⁵⁹

A number of states are reviewing the proposed transaction and its effects. For example, Louisiana is inviting public comment on the proposed transaction.⁶⁰ New York’s Attorney General is also reviewing the merger to determine its impact on low-cost plans and deployment of new technologies.⁶¹

California’s Public Utilities Commission (CPUC) recently approved a review of the proposed transaction.⁶² California has the largest economy of any state in the country, is the 8th largest economy in the world,⁶³ and has more wireless telephone subscribers than any other state.⁶⁴ Accordingly, the Commission’s approval or

⁵⁹ Worldcall Interconnect, Inc., Motion for Good Cause Exception to Submit Late-Filed Petition to Deny or Late-Filed Opposition to Petitions to Deny 2, 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 (June 10, 2011). Interestingly, Worldcall’s Motion states that it needs extra time because AT&T has not been forthcoming with relevant information. *Id.* at 3.

⁶⁰ Maisie Ramsay, Louisiana Opens Comments on AT&T, T-Mobile Deal (May 20, 2011), <http://www.wirelessweek.com/News/2011/05/Policy-and-Industry-Louisiana-Comments-ATT-T-Mobile-Deal-Government/>.

⁶¹ Press Release, Office of the Attorney General of New York, A.G. Schneiderman to Undertake Thorough Review of AT&T, T-Mobile Merger (March 29, 2011), *available at* http://www.ag.ny.gov/media_center/2011/mar/mar29a_11.html.

⁶² Press Release, Cal. Pub. Util. Comm’n, CPUC to Evaluate AT&T’s Proposed Acquisition of T-Mobile (June 9, 2011), *available at* http://docs.cpuc.ca.gov/published/News_release/136944.htm.

⁶³ See California GDP Size and Rank (Jan. 12, 2010), *available at* <http://econpost.com/californiaeconomy/california-gdp-size-rank>.

⁶⁴ See Industry Analysis and Technology Division, Wireline Competition Bureau, Trends in Telephone Service 11-5, Table 11.2 (2007), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-270407A1.pdf.

disapproval of the proposed transaction will have a significant impact on the citizens of California.

The results of the CPUC's investigation, as well as investigations by other states, will undoubtedly provide information that will be critical to the Commission's determination in the matter, especially regarding the local impacts of the proposed transaction. Accordingly, the Commission should delay its decision until those investigations are complete and the Commission has reviewed those findings.

VI. AT&T'S FAILURE TO ADDRESS THE ISSUES REQUIRES THAT THE COMMISSION IMPOSE CONDITIONS TO PROTECT THE PUBLIC INTEREST.

Greenlining acknowledges that AT&T has demonstrated significant leadership in promoting diversity⁶⁵ and providing jobs with union wages and benefits.⁶⁶ If the Commission approves the transaction, Greenlining anticipates that AT&T will use its position as the nation's largest wireless telephone services provider to ensure that other industry participants, such as handset providers, technology suppliers, and construction firms follow AT&T's lead. Furthermore, Greenlining applauds AT&T's noble goals of ensuring quality, innovative, next-generation wireless phone service, passing the economic benefits of the transaction through to consumers, promoting diversity, and bridging the digital divide. However, as discussed above, AT&T has not provided any specific assurances or plans to ensure that the proposed transaction promotes those goals. Accordingly, if the Commission approves the transaction, it should impose conditions to ensure that these general benefits have specific effects. In so doing, the Commission

⁶⁵ See AT&T, AT&T Supplier Diversity, available at http://www.attsuppliers.com/sd/Supplier_Diversity.aspx, last accessed June 20, 2011.

⁶⁶ See Application at 10.

should ensure that those benefits accrue to low-income consumers and communities of color, as these communities will be especially impacted.

a. To Protect Low-Income Consumers and Communities of Color, The Commission Should Impose Conditions to Require Spectrum Divestiture.

AT&T suggests that if the Commission orders divestiture of assets as a condition of approval, the recipient of those divested assets should be determined by “market forces.”⁶⁷ Greenlining has no interest in seeing any of AT&T’s assets divested to a particular provider or providers.⁶⁸ However, as discussed above, the migration of value-conscious T-Mobile customers to other value-conscious providers has the potential to double the number of customers on those providers’ networks. This increased load would “functionally reduce” the spectrum available for value-conscious services. The Commission should ensure that any such divestiture (1) increases competition in the value-conscious services market, (2) ensures that there is sufficient spectrum for the provision of value-conscious services, and (3) is consistent with the Commission’s stated goal of promoting a diversity of spectrum holders. Additionally, the Commission should ensure that any divested spectrum includes spectrum with the characteristics necessary to allow low-income consumers and communities of color access to LTE services.

⁶⁷ Opposition at 207.

⁶⁸ Greenlining acknowledges the importance of value-conscious providers. However, Greenlining takes issue with some of those providers. For example, MetroPCS has aired advertising featuring negative stereotypes of people of Indian Origin. Jim Edwards, *Is MetroPCS’s New Commercial Racist? Many Say “Ranjit and Chad” Are Indian Tech-Help Stereotypes* (Feb. 10, 2010), *available at* <http://www.bnet.com/blog/advertising-business/is-metropcs-8217s-new-commercial-racist-many-say-8220ranjit-and-chad-8221-are-indian-tech-help-stereotypes/4269>.

b. To Protect Low-Income Consumers and Communities of Color, The Commission Should Impose Conditions Related to Input Access.

AT&T is opposed to the Commission's imposing conditions related to inputs, such as backhaul or roaming obligations.⁶⁹ However, as discussed above, AT&T has not shown that it has no incentive to harm access to those inputs *in specific markets*. The Commission should impose conditions to ensure that low-income consumers have access to value-conscious plans with national coverage. Additionally, the Commission should ensure that the transaction actually does help bridge the Digital Divide. AT&T claims that the transaction will allow it to provide LTE services to an additional 17 percent of Americans; the Commission should impose conditions ensuring that AT&T deploys those services to the "additional" 17 percent on the same timeframe, and at the same prices and quality that it provides those services to the rest of its customers. AT&T's failure to do so should trigger automatic provisions allowing other carriers interconnection and roaming on AT&T's LTE network *at cost*.

c. To Ensure That Low-Income Consumers and Communities of Color Receive the Benefits of the Transaction, The Commission Should Impose Conditions Requiring AT&T To "Pass Through" Its Cost Savings.

AT&T claims that the proposed transaction will result in savings exceeding \$39 billion,⁷⁰ and that these savings will be passed on to consumers.⁷¹ However, AT&T's support for this statement is that cost savings "create incentives to expand output and reduce prices to consumers."⁷² It would be more accurate for AT&T to state that the proposed transaction will result in AT&T having incentives to pass on savings to

⁶⁹ Opposition at 216-217.

⁷⁰ Opposition at 74.

⁷¹ Application at 52.

⁷² Application at 52.

consumers; AT&T has made no other assurance or commitment to ensure that consumers benefit. Additionally, AT&T opposes any conditions ensuring a reduction in prices.⁷³

As discussed in Greenlining's Petition, AT&T's purported expanded output and increased savings would not benefit value-conscious consumers, and the proposed transaction would result in reduced competition, higher prices, and lower quality of service in the value-conscious market. Many value-conscious consumers rely on wireless services to access the internet. Thus, the proposed transaction could result in a deepening of the digital divide.

The Commission should ensure that value-conscious consumers receive the benefit of AT&T's savings pass-through – not just the adverse impacts in terms of reduced competition, higher prices and degraded service quality. In order to at least partially offset the potential impacts of the proposed transaction on low-income communities, Greenlining urges the creation of a fund devoted to overcome the digital divide. Considering the vast amount of savings AT&T claims that will result from the transaction, AT&T should provide this Digital Divide Fund with \$90 million per year for five years. This Digital Divide Fund should be directed to underserved communities or to non-profit organizations whose primary mission is to serve underserved communities, communities of color and the poor. Additionally, the Digital Divide Fund should result from an increase in corporate philanthropy, not merely a redirection of existing philanthropic resources to the fund.

The Commission has recognized that the lack of affordability of broadband services contributes to the Digital Divide.⁷⁴ The National Broadband Plan also proposes

⁷³ See Opposition at 219.

free or very low cost wireless broadband as a means of addressing the affordability barrier to broadband adoption.⁷⁵ However, the proposed transaction would remove competition and spectrum in the market for wireless broadband. Thus, the Digital Divide Fund should include in its mission addressing affordability of wireless broadband.

As discussed above, the proposed transaction promises to eliminate a fair number of low-income, entry-level jobs; AT&T asserts that the transaction will result in the creation of high-income, high-tech jobs, but does not address what will happen to these displaced low-income workers. A portion of the Digital Divide Fund should be earmarked for job retraining, giving low-income workers the skills and education necessary to obtain employment in the high-income, high-tech jobs created as a result of the proposed transaction.

d. To Protect Low-Income Consumers and Communities of Color, The Commission Should Impose Conditions That Promote Diversity.

The elimination of competition and spectrum from the value-conscious wireless market disproportionately affects not only low-income consumers, but also communities of color. Communities of color are more likely to depend on the value-conscious services that could be eliminated with the transfer of T-Mobile's resources and market to AT&T's high ARPU business model. Latinos especially relied on T-Mobile's lower cost wireless services, making up about a quarter of T-Mobile's customers, compared to only

⁷⁴ See Federal Communications Commission, Connecting America: The National Broadband Plan (March 2010) ("National Broadband Plan"), at 167-68. The National Broadband Plan found that some communities adopt broadband at significantly lower levels, including 1) Hispanics, half of whom do not adopt broadband; 2) African-Americans, 41% of whom do not adopt broadband; and 3) those whose annual household income is less than \$20,000, 40% of whom do not adopt broadband. The National Broadband Plan further found that cost is the most significant reason non-adopters cite for their failure to use broadband.

⁷⁵ See *id.* at 173-74.

12% of AT&T's customers and 9-10% of Verizon's customers.⁷⁶ African-Americans and Asian/Pacific Islanders also made up a disproportionate number of T-Mobile's customer base.⁷⁷

The loss of T-Mobile as a competitor, while it affects all value-conscious consumers, will especially impact communities of color, who make up a disproportionate share of T-Mobile's customer base. However, AT&T has the ability to counteract the potentially detrimental effects of the proposed transaction on communities of color, by increasing spending with minority businesses enterprises (MBEs) through its supplier diversity program.

Many regions and communities, especially inner-city and rural communities of color, do not benefit from the economic stimulus provided by large businesses. Such communities rely most heavily on small businesses for jobs and economic development. For example, in 2008, small businesses accounted for 49.6% of private-sector employment in the United States.⁷⁸ For communities of color, the small businesses that make up MBEs are a significant source of economic development and jobs.

In 2010, AT&T states that it spent \$9.2 billion with minority, women and disabled veterans business enterprises, representing 18.8 percent of its total procurement. AT&T's goal is to procure 21.5 percent of its total procurement from diversity-owned enterprises and specifically, 15 percent with MBEs. In order to counteract the deleterious impact of

⁷⁶ See Petition to Deny of National Hispanic Media Coalition and National Institute for Latino Policy, at 4, citing Michaela Mora, T-Mobile is Popular Among Hispanics, Relevant Insights (July 1, 2010) available at <http://relevantinsights.com/hispanics-and-tmobile>; PowerPoint by Jerry Rocha, Mobile and Social in Hispanic America 2010 Slide 5, available at <http://www.slideshare.net/jerryrocha/hispanic-mobile-and-social-networking-for-ad-tech-11410> ("Nielsen PowerPoint")

⁷⁷ See Nielsen PowerPoint at Slide 5. African-Americans made up 14% of T-Mobile's customers, 8% of AT&T's customers and 6% of Verizon's customers. Asian/Pacific Islanders made up 9% of T-Mobile's customers, 5% of AT&T's customers and 3% of Verizon's customers.

⁷⁸ See U.S. Small Business Administration, Office of Advocacy, "Small Business Profile: United States (February 2011), available at <http://www.sba.gov/sites/default/files/files/us10.pdf>

the proposed transaction on communities of color – as well as to more closely represent the proportion of communities of color in its customer base – AT&T should increase its target for spending with MBEs to 20 percent.

e. To Protect Low-Income Consumers and Communities of Color, The Commission Should Impose Conditions Restricting the Closure of Retail Establishments.

As discussed above, it is quite possible that AT&T's closure of "less profitable" retail locations could result in low-income communities that do not have access to a local retail establishment. The Commission should not approve the transaction until AT&T provides the Commission with a list of stores marked for closure; additionally, the Commission should prohibit the closure of any locations that would deprive low-income consumers of access to of the merged organization's retail locations.

f. The Commission Should Impose Conditions Allowing T-Mobile Customers to Decline Services from The Merged Organization.

As discussed above, AT&T plans to "allow" current T-Mobile customers to keep their contracts from T-Mobile after the proposed transaction. However, AT&T has not addressed what will happen to customers who do not want service from AT&T. AT&T opposes any conditions which would release subscribers from their obligation to pay early termination fees (ETFs).⁷⁹ As a condition of the transaction's approval, the Commission should require that AT&T allow any T-Mobile subscriber to terminate their contract without any penalty, including the payment of an ETF.

VII. CONCLUSION

The documents filed by AT&T in this proceeding have universally been long on generalities, and short on specifics. AT&T lists a number of theoretical and speculative

⁷⁹ See Opposition at 223-224.

benefits, but fails to indicate how theory and speculation apply to the specific, local markets at issue in this matter. AT&T has failed to meet its burden of proof; accordingly, the Commission should deny AT&T's Application and grant Greenlining's Petition.

If the Commission does not grant the Petition outright, it should postpone ruling on this matter until (1) AT&T has provided a meaningful explanation of the public interest benefits, and (2) the States have had the opportunity to investigate the proposed transaction and release their findings. If, after that time, the Commission decides to approve the transaction, it should impose conditions to ensure that AT&T's broadly stated public interest benefits—lower prices, better quality of service, and a narrower digital divide—actually come to pass. It is particularly important that Commission ensure that these benefits accrue to low-income consumers, who promise to be disproportionately injured by the proposed transaction.

AT&T correctly notes that in considering spectrum holdings, “[u]ltimately, the relevant question is . . . whether a provider has sufficient spectrum and capacity to handle its customers’ bandwidth demands in a given market.”⁸⁰ The proposed transaction promises to reduce the number of value-conscious wireless services providers, resulting in an increased load on those providers’ networks, increasing prices, reducing prices, and widening the Digital Divide.

AT&T has consistently attempted to portray this proceeding as a fight between industry participants over the division of some private asset. AT&T appears to have forgotten that the spectrum which it claims to so desperately need belongs to the American People, and the issue at hand is whether allowing the proposed transaction to proceed would be in the public interest. In portraying this proceeding as a spat between

⁸⁰ Opposition at 27.

service providers, AT&T has failed to show how the proposed transaction would cause specific public interest benefits in specific markets that outweigh any potential public interest harms. AT&T has particularly neglected to address what public interest benefits, if any, would accrue to low-income consumers, who will be negatively affected by the proposed transaction. Accordingly, AT&T has failed to show, by a preponderance of the evidence, that the proposed transaction is in the public interest.

For the above-stated reasons, Greenlining respectfully requests that the Commission grant its Petition.

Respectfully submitted,

Dated: June 20, 2011

/s/ _____
Samuel S. Kang
General Counsel
The Greenlining Institute

/s/ _____
Enrique Gallardo
Legal Counsel
The Greenlining Institute

/s/ _____
Paul S. Goodman
Consulting Counsel

Reply Declaration of Enrique Gallardo

My name is Enrique Gallardo. I am the Legal Counsel of the Greenlining Institute.

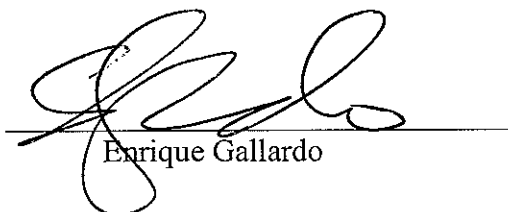
The Greenlining Institute is a national policy, organizing and leadership institute working for racial and economic justice. The Greenlining Institute's mission is to empower communities of color and other disadvantaged groups through multi-ethnic economic and leadership development, civil rights, and anti-redlining activities. We also advocate before regulatory agencies to advance these goals.

Members of the communities served by the Greenlining Institute reside in areas served by AT&T wireless services and/or T-Mobile wireless services, and many are subscribers to those wireless services. Employees of the Greenlining Institute are subscribers to T-Mobile and MetroPCS wireless services. Moreover, members of the communities served by Greenlining Institute and employees of the Greenlining Institute are subscribers to other value-conscious wireless service providers, who will be impacted by the proposed merger.

I am familiar with the contents of the foregoing Reply to Joint Opposition to Petitions to Deny and Reply to Comments. The factual assertions made in the Reply are true to the best of my knowledge and belief.

I declare that the foregoing is true and correct.

Executed on June 20, 2011.



Enrique Gallardo

Certificate of Service

I hereby certify that on this 20th day of June, 2011, I caused true and correct copies of the foregoing Petition to Deny to be served as follows:

Via electronic mail to:

Best Copy and Printing, Inc.
FCC@BCPIWEB.COM

Kathy Harris
Mobility Division
Wireless Telecommunications Bureau
Federal Communications Commission
kathy.harris@fcc.gov

Kate Matraves
Spectrum and Competition Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
catherine.matraves@fcc.gov

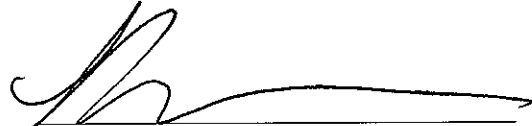
Jim Bird
Office of General Counsel
Federal Communications Commission
jim.bird@fcc.gov

David Krech
Policy Division
International Bureau
Federal Communications Commission
david.krech@fcc.gov

Peter J. Schildkraut
Arnold & Porter LLP
555 Twelfth Street NW
Washington, DC 20004
Outside Counsel to AT&T Inc.
Peter.Schildkraut@aporter.com

Kate Dumouchel
555 Twelfth Street NW
Washington, DC 20004
Outside Counsel to AT&T Inc.
Kate.Dumouchel@aporter.com

Nancy J. Victory
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006
Outside Counsel to Deutsche Telekom AG and T-Mobile USA, Inc.
nvictory@wileyrein.com

A handwritten signature in black ink, appearing to read 'P. Goodman', with a long horizontal flourish extending to the right.

Paul S. Goodman