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May 31, 2011

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HIGHLY CONFIDENTIAL INFORMATION –
SUBJECT TO PROTECTIVE ORDER IN WT DOCKET 11-65
before the Federal Communications Commission

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

Re: Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65; Alarm.Com Petition to Deny

Dear Ms. Dortch:

On behalf of Alarm.com Incorporated, and pursuant to the Protective Order,[1] the NRUF/LNP Protective Order,[2] and the Second Protective Order[3] adopted in the above-referenced proceeding, we respectfully submit for inclusion in the record of the above-referenced proceeding one unredacted copy of Alarm.com's Petition to Deny, which is a Stamped Highly Confidential Document, and two copies of the Petition to Deny in redacted form. Pursuant to the protective orders, two copies of the Stamped Highly Confidential Document are also being provided to Ms. Kathy Harris. Pursuant to the Commission's April 28, 2011 Public Notice, DA 11-799, electronic copies of the Alarm.com Petition to Deny in redacted form are being submitted to Ms. Matraves, Mssrs. Bird and Krech, and Best Copy & Printing.

If you have any questions, please do not hesitate to contact me.

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1 *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, Protective Order, DA 11-674 (rel. Apr. 14, 2011) ("Protective Order").

2 *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, Protective Order, DA 11-711 (rel. Apr. 18, 2011) ("NRUF/LNP Protective Order").

3 *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, Second Protective Order, DA 11-753 (rel. Apr. 27, 2011) ("Second Protective Order").

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**HIGHLY CONFIDENTIAL INFORMATION –
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before the Federal Communications Commission**

Sincerely,

Ross A. Buntrock

Arent Fox

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of May, 2011, I caused true and correct copies of the foregoing letter and attached **Alarm.com Petition to Deny** to be served as follows:

Via electronic mail* and/or hand delivery to:**

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

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REDACTED – FOR PUBLIC INSPECTION

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Applications For Consent to	)	WT Docket No. 11-65
Transfer Of Control Filed By AT&T, Inc.	)	DA 11-799
And Deutsche Telekom AG	)	File Nos. 0004669383 *et al.*
	)	

ALARM.COM'S PETITION TO DENY

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Dated: May 31, 2011

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And Deutsche Telekom AG	)	File Nos. 0004669383 *et al.*

PETITION TO DENY

In accordance with the Commission's April 28, 2011 Public Notice issued in this docket, Alarm.com Incorporated ("Alarm.com") respectfully submits this petition explaining why the Commission should not grant AT&T, Inc. and Deutsche Telekom AG's applications for transfer of control of T-Mobile USA's licenses and authorizations to AT&T.

Through its many licensed dealers, Alarm.com's innovative wireless-based security systems are deployed in hundreds of thousands of homes and businesses across America. Its innovative platform relies on the GPRS (general packet radio service) network that only AT&T and T-Mobile operate on a national scale in the United States.[1] Alarm.com and its customers utilize the networks of both wireless carriers to supply the wireless services that are an integral input to Alarm.com's security services. Indeed, after T-Mobile began focusing its efforts on

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[1] GPRS is sometimes referred to as a "2.5G" wireless network technology because it has some improvements over the basic features of the "2G," or second generation, GSM (Global Systems for Mobile Communications) standard on which the GPRS technology is based. *See, e.g.,* http://en.wikipedia.org/wiki/General_Packet_Radio_Service; http://www.fcc.gov/encyclopedia/application-emerging-wireless-broadband-technology-public-safety-communications ("LTE embraces the generic foundations of today's 2G and 3G cellular systems addressed in GSM and CDMA (2G), GPRS, EDGE and CDMA2000-1xRTT (sometimes called 2.5G), and 3G systems such as UMTS, WCDMA, CDMA2000-EVDO, HSPA, HSPA+, and so on.").

supplying companies like Alarm.com with machine-to-machine (M2M)-related wireless services, AT&T's rates to Alarm.com dropped considerably in the face of the competition from T-Mobile. If the applications are granted, Alarm.com and its customers (and every other similarly situated technology provider and user) would therefore be left with only *one* supplier of wireless services compatible with its GPRS-based radios. And that remaining supplier – AT&T – has recently acquired one of Alarm.com's competitors, giving Alarm.com even greater reason to foresee the clear and imminent competitive harm on both the horizontal and vertical levels if this proposed transaction is consummated.

I. ALARM.COM'S BUSINESS & RELATIONSHIPS WITH THE APPLICANTS

Since its founding in 2000, Alarm.com has been dedicated to the pursuit of convenience and control for home and business security systems using wireless, web and mobile technology. The company has built its innovative platform based on wireless technology, which provides greater reliability and security than traditional wireline, POTS-dependent security systems. The Alarm.com-enabled security systems that are deployed in hundreds of thousands homes and businesses across the country rely on 2G/GPRS technology, utilizing the nationwide networks of AT&T and T-Mobile. Alarm.com's systems protect homes, apartments, offices, restaurants, stores, retail chains, model homes, vacation properties, data centers, and others. Alarm.com has partnered with over 2,000 licensed security dealers to provide its security solutions nationwide.

Looking at the security market as a whole, the top 100 security dealers account for approximately $10 billion of revenue per year.[2] One recent survey found that, of security dealers operating in residential markets, 80% employed cellular technologies in some capacity in their

[2] Laura E. Stepanek, *Change is Good*, SDM, at 54 (May 12, 2011), http://www.sdmmag.com/articles/86547-change-is-good.

systems.[3]

A. T-Mobile's Presence In The GPRS Market Has Created Significant Downward Pricing Pressure In The GPRS M2M Applications Market

In its early years, Alarm.com originally relied on AT&T's GPRS-based network to service all of its GPRS-dependent security systems. More recently, however, Alarm.com has also developed an extensive business relationship with T-Mobile, as T-Mobile has increased its competitive focus on the 2G/GPRS-based M2M applications market. Alarm.com's experiences confirm that T-Mobile's emergence as a customer-focused competitor in the area of M2M wireless communications has resulted in significant cost savings and improved efficiencies for Alarm.com and its customers.

For example, when Alarm.com began using T-Mobile in 2008, T-Mobile won Alarm.com's business by providing comparable service to Alarm.com for **[Begin Highly Confidential Material]** **[End Highly Confidential Material]** Alarm.com on an average-cost-per-subscriber basis. As T-Mobile won still more of Alarm.com's business over the next approximately 18 months, Alarm.com's average cost per subscriber with T-Mobile fell by more than **[Begin Highly Confidential Material]** **[End Highly Confidential Material]**. It was not until then, roughly fifteen months ago, that AT&T began lowering its cost per subscriber to Alarm.com – by **[Begin Highly Confidential Material]** **[End Highly Confidential Material]** of its earlier pricing before T-Mobile had entered the market. *See* Confidential Exhibit No. 1.

And, to be clear, Alarm.com's cost-per-subscriber figures are not overstated in favor of

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[3] Parks Associates, *Home Systems: Home Security Analysis and Forecasts 2010*, (April 2010), http://www.parksassociates.com/report/home-systems--home-controls---analysis-and-forecasts.

T-Mobile because a disproportionate amount of Alarm.com's business goes to T-Mobile such that Alarm.com enjoys volume-related discounts with T-Mobile that it does not receive from AT&T. To the contrary, AT&T has always been the selected wireless carrier for more of Alarm.com's subscribers than T-Mobile, although the gap has certainly been narrowing over the last several years, as T-Mobile has consistently been willing and able to compete with AT&T on price and quality of service. By way of example, three years ago, AT&T provided the service for all of Alarm.com's GPRS subscribers; today, AT&T provides the underlying wireless services to approximately **[Begin Highly Confidential Material] [End Highly Confidential Material]** of them, with T-Mobile serving the balance. *See* Confidential Exhibit No. 2.

Alarm.com – and with it its dealers and customers – are witnesses to and beneficiaries of the significant downward price pressure that T-Mobile's presence in the GPRS market has caused. In addition, T-Mobile's presence in the GMS market has also fostered innovation in the security industry. Alarm.com provides illustrative examples below of how T-Mobile's competitive edge in terms of pricing and client service has enabled Alarm.com to provide innovative services that would not be available today but for T-Mobile's presence in the market. *See* Section III.C.

B. T-Mobile, Unlike AT&T, Has Pledged To Maintain Its GPRS Network On Which Alarm.com's Security Services Depend

Equally important as T-Mobile's competitive presence in the GPRS-based wireless security market vis-à-vis pricing, Alarm.com's relationship with T-Mobile has also provided Alarm.com with far greater certainty that a suitable GPRS network will remain available for **[Begin Highly Confidential Material] [End Highly Confidential Material]**. T-Mobile's clear assurances to Alarm.com go a long way to mitigating the financial impact for

Alarm.com, its dealers, and customers that would arise if they had to replace their current Alarm.com-enabled security systems with systems compatible with other wireless technologies in the near to medium term.

If the GPRS network became unavailable at any point in the near to medium term, the network-conversion costs to Alarm.com and its end user customers could be staggering. At today's price estimates, for example, if Alarm.com had to convert its existing customers' Alarm.com-enabled GPRS security systems to next-generation-network-compatible equipment, the cost of new equipment and associated installation efforts could reach approximately **[Begin Highly Confidential Material]** **[End Highly Confidential Material]**. *See* Confidential Exhibit No. 3. (To be clear, the carriers' GPRS networks are more than sufficient to service the needs of Alarm.com's security systems.[4])

T-Mobile's willingness to commit to the long-term availability of its GPRS network far exceeds any commitments that AT&T has been willing to offer to date. Just earlier this year, T-Mobile pledged to Alarm.com that **[Begin Highly Confidential Material]**

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[4] *See, e.g.*,Andrew Berg, *M2M Solutions Straddle 2G, 3G*, Wireless Week Magazine (Mar. 9, 2011), http://www.wirelessweek.com/Articles/2011/03/M2M-Solutions-2G-3G/ ("The high cost of 3G components is perhaps the biggest inhibitor to developing 3G M2M solutions.... Ueland says it will take real economies of scale to bring down costs before M2M will see massive deployments on 3G. 'With 3G, we're just getting to the point to where it makes sense,' Ueland says, adding that with component costs and power drain being higher across the board, it's difficult to justify 3G for something like a pettracking solution that needs minimal speed and bandwidth.").

[End Highly Confidential Material][5] With these assurances, Alarm.com and its dealers and customers can make informed decisions about when any necessary conversions would need to occur and when prospective customers should reasonably consider investing additional funds in 3G-based equipment. Alarm.com, consistent with industry averages, structures its finances around the operating assumption that the average customer will remain a customer for 10 years, such that the various costs associated with Alarm.com deployed equipment installed today can be amortized over that average length of customer relationship.[6] Accordingly, T-Mobile's assurances provide Alarm.com with a commitment that it can reasonably rely upon in managing its business affairs.

AT&T, however, has made no such commitments, reserving to itself the right to abandon its GPRS network – and all of the customers that depend on it, including Alarm.com's *security system* customers – at a time most appropriate for AT&T. In fact, AT&T has represented to Alarm.com and others in the industry that it intends to turn down its GSM network **[Begin Highly Confidential Material]**

[End Highly Confidential Material]. Indeed, the carriers have confirmed their respective positions in their Application filings. AT&T, for its part, acknowledges that it "expects to be able to address continuing capacity needs through the

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5 *See* Confidential Exhibit No. 4 (**[Begin Highly Confidential Material]**

[End Highly Confidential Material]).

6 *Cf.* Tyco International, Ltd., Annual Report (Form 10-K), p. 83-85 (Sept. 24, 2010) (noting that, in connection with its subsidiary ADT Security Services, Inc., it assumes a useful life of 15 years for its subscriber systems).

ramping down of GMS networks...."[7] By contrast, the Applicants then recite that "T-Mobile USA has 'no clear path' to LTE ... T-Mobile USA has already dedicated its current spectrum to UMTS/HSPA+ and GSM Technologies."[8]

AT&T's and T-Mobile's dramatically different approaches to customer service vis-à-vis their assurances concerning the continued availability of this critical input to Alarm.com's services (and all other 2G/GPRS-dependent M2M providers' services) are just as material and apparent as their competitive differences on the subject of price.

II. THE COMMISSION'S STANDARD OF REVIEW: APPLICANTS MUST PROVE THAT THE PROPOSED TRANSACTION SERVES THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

Pursuant to sections 214(a) and 310(d) of the Communications Act, the Commission must determine whether the proposed transfer of control to AT&T of T-Mobile's licenses and authorizations will serve the public interest, convenience, and necessity.[9] The Commission employs a balancing test weighing any potential public interest harms of the proposed transaction against the potential public interest benefits.[10] AT&T and Deutsche Telekom will

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7 *Acquisition of T-Mobile USA, Inc. by AT&T, Inc.*, Description of Transaction, Public Interest Showing and Related Demonstrations, at 9 (filed Apr. 21, 2011) (*Applicants' Public Interest Statement*).

8 *Id.* at 31 (citations omitted).

9 *See* 47 U.S.C. §§ 214(a), 310(d).

10 *See, e.g., Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, WC Docket No. 10-110, Mem. Op. & Order, FCC 11-47, 26 FCC Rcd. 4194, ¶ 7 (rel. Mar. 18, 2011) (*Qwest/CenturyTel Order*); *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees*, MB Docket No. 10-56, Mem. Op. & Order, FCC 11-4, 2011 WL 194538, ¶ 22 (rel. Jan. 20, 2011) (*Comcast/NBCU Order*); *Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon*

bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.[11]

Communications Inc. and its Subsidiaries to FairPoint Communications, Inc., WC Docket No. 07-22, Mem. Op. & Order, FCC 07-226, 23 FCC Rcd. 514, ¶ 11 (rel. Jan. 9, 2008) (*Verizon/FairPoint Order*); *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, Mem. Op. & Order, WT Docket No. 05-63, File Nos. 0002031766, et al., FCC 05-148, 20 FCC Rcd. 13967, ¶ 20 (rel. Aug. 8, 2005) (*Sprint/Nextel Order*); *Applications of Western Wireless Corp. and Alltel Corp. for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-50, Mem. Op. & Order, FCC 05-138, 20 FCC Rcd. 13053, ¶ 17 (rel. July 19, 2005) (*Alltel/Western Wireless Order*); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket 04-70, Mem. Op. & Order, 19 FCC Rcd. 21522, 21542-43, ¶ 40 (2004) (*Cingular/AT&T Wireless Order*); *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, MB Docket No. 03-124, Mem. Op. & Order, 19 FCC Rcd. 473, 483, ¶ 15 (2004) (*News Corp./Hughes Order*); *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee*, CC Docket 98-184, Mem. Op. & Order, 15 FCC Rcd. 14032, 14046, ¶¶ 20, 22 (2002) (*Bell Atlantic/GTE Order); Applications of VoiceStream Wireless Corporation and Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, IB Docket No. 00-187, Mem. Op. & Order, 16 FCC Rcd. 9779, 9789, ¶ 17 (2001) (*Deutsche Telekom/VoiceStream Order*).

[11] *See, e.g., Qwest/CenturyTel Order*, FCC 11-147, 26 FCC Rcd. 4194, ¶ 7; *Comcast/NBCU Order*, FCC 11-4, 2011 WL 194538, ¶ 22; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21542-44, ¶ 40 (citing *Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in-Possession, to subsidiaries of Cingular Wireless LLC*, WT Docket 03-217, Mem. Op. & Order, 19 FCC Rcd. 2570, 2581, ¶ 24 (2004) (*Cingular/NextWave Order*); *News Corp./Hughes Order*, 19 FCC Rcd. at 483, ¶ 15; *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70, Mem. Op. & Order, 17 FCC Rcd. 23246, 23255, ¶ 26 (2002) (*AT&T/Comcast Order*); *Application of EchoStar Communications Corporation (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporation (a Delaware Corporation) (Transferee)*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd. 20559, 20574, ¶ 25 (2002) (*EchoStar/DirecTV Order*); *Bell Atlantic/GTE Order*, 15 FCC Rcd. at 14046, ¶ 22; *Applications of SBC Communications Inc. and BellSouth Corporation*, 15 FCC Rcd. 25459, 25464, ¶ 13 (*BellSouth/SBC Order*); *Applications of Vodafone Airtouch, PLC and Bell Atlantic Corporation*, File Nos. 0000032969, *et al.*, Mem. Op. & Order, 15 FCC Rcd. 16507, 16512, ¶ 13; *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee*, CS Docket No. 98-178, Mem. Op. & Order, 14 FCC Rcd. 3160, 3169-70, ¶ 15 (1999) (*AT&T/TCI*

The Commission's public-interest evaluation necessarily encompasses the "broad aims of the Communications Act,"[12] which include, *inter alia*, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, and ensuring a diversity of license holdings.[13] The public interest analysis may also entail assessing whether the merger will affect the quality of communications services or will result in the provision of new or additional services to consumers.[14] In conducting this analysis, the Commission may consider technological and market changes, and the nature,

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Order).

[12] *See, e.g., Qwest/CenturyTel Order*, FCC 11-147, 26 FCC Rcd. 4194, ¶ 8; *Comcast/NBCU Order*, FCC 11-4, 2011 WL 194538, ¶ 23; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21544, ¶ 41 (citing *News Corp./Hughes Order*, 19 FCC Rcd. at 483-84, ¶ 16; *AT&T/Comcast Order*, 17 FCC Rcd. at 23255, ¶ 27; *EchoStar/DirecTV Order*, 17 FCC Rcd. at 20575, ¶ 26; *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, CS Docket No. 99-251, Mem. Op. & Order, 15 FCC Rcd. 9816, 9821, ¶ 11 (2000) (*AT&T/MediaOne Order*); *AT&T Corp., British Telecommunications, plc, VLT Co. L.L.C., Violet License Co. LLC. and TNV [Bahamas] Limited Applications for Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses*, IB Docket No. 98-212, Mem. Op. & Order, 14 FCC Rcd. 19140, 19146-47, ¶ 14 (1999) (*AT&T/British Telecom Order*)).

[13] *See* 47 U.S.C. §§ 157 nt. (incorporating section 706 of the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996) (1996 Act), 254, 332(c)(7)); 1996 Act, Preamble; *see also Comcast/NBCU Order*, FCC 11-4, 2011 WL 194538, ¶ 23; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21544, ¶ 41; *Cingular/NextWave Order*, 19 FCC Rcd. at 2583-84, ¶ 29.

[14] *See Comcast/NBCU Order*, FCC 11-4, 2011 WL 194538, ¶ 23; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21544, ¶ 41 (citing *AT&T/Comcast Order*, 17 FCC Rcd. at 23255, ¶ 27; *AT&T/MediaOne Order*, 15 FCC Rcd. at 9821-22, ¶ 11; *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Mem. Op. & Order, 13 FCC Rcd. 18025, 18030-31, ¶ 9 (1998) (*WorldCom/MCI Order*).

complexity, and speed of change of, as well as trends within, the communications industry.[15]

In determining the competitive effects of the merger, the standards governing the Commission's review differ from – and are broader than – those of the Department of Justice, because the Commission is charged with determining whether the transfer of control serves the broader public interest.[16] As the Commission recently observed, its "competitive analysis under the public interest standard is somewhat broader [than the Department of Justice's]. For example, the Commission considers whether a transaction will enhance, rather than merely preserve, existing competition, and often takes a more expansive view of potential and future competition in analyzing that issue."[17]

In examining the potential competitive harms of the Applicants' proposed transaction, the Commission considers both horizontal and vertical market considerations:

> With respect to competition, corporate mergers and acquisitions may give rise to concerns regarding increases in vertical integration and/or horizontal concentration, depending on the lines of business in which the firms are engaged, as well as other public interest-related concerns. A vertical transaction involves firms and their suppliers, customers, or other sellers of complements. A horizontal transaction involves firms that sell products or services that are substitutes to buyers. The same transaction can have both vertical and horizontal elements. Both types of transactions can reduce competition among the firms participating in a relevant market, potentially leading to higher prices to buyers, a reduction in product quality, or a reduced likelihood of developing new, better, or cheaper products and services.[18]

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15 *See Comcast/NBCU Order*, FCC 11-4, 2011 WL 194538, ¶ 23; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21544, ¶ 41.

16 *See Comcast/NBCU Order*, FCC 11-4, 2011 WL 194538, ¶ 24; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21544-45, ¶ 42; *AT&T/Comcast Order*, 17 FCC Rcd. at 23256, ¶ 28.

17 *Comcast/NBCU Order*, FCC 11-4, 2011 WL 194538, ¶ 24.

18 *Comcast/NBCU Order*, FCC 11-4, 2011 WL 194538, ¶ 27.

The Commission's public-interest authority also enables it to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.[19] Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.[20]

Section 214(c) of the Act authorizes the Commission to attach to the certificate "such terms and conditions as in its judgment the public convenience and necessity may require."[21] Indeed, the Commission's public interest authority enables it to impose and enforce conditions to ensure that the merger will, overall, serve the public interest.[22]

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19 *See, e.g., Alltel/Western Wireless Order*, FCC 05-138, 20 FCC Rcd. 13053, ¶ 21 (conditioning approval on the divestiture of operating units in specified markets); *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21545-46, ¶ 43 (same); *see also WorldCom/MCI Order*, 13 FCC Rcd. at 18032, ¶ 10 (conditioning approval on the divesture of MCI's Internet assets).

20 47 U.S.C. § 303(r).

21 47 U.S.C. § 214(c); *see also Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21545-46, ¶ 43; *Bell Atlantic/GTE Order*, 15 FCC Rcd. at 14047, ¶ 24; *AT&T/British Telecom Order*, 14 FCC Rcd. at 19148, ¶ 15.

22 47 U.S.C. § 303(r); *see, e.g., Alltel/Western Wireless Order*, FCC 05-138, 20 FCC Rcd. 13053, ¶ 21; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21545-46, ¶ 43; *Bell Atlantic/GTE Order*, 15 FCC Rcd. at 14047, ¶ 24; *WorldCom/MCI Order*, 13 FCC Rcd. at 18032, ¶ 10; *FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775, 814 (1978); *U.S. v. Sw. Cable Co.*, 392 U.S. 157, 178 (1968); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989).

III. THE PROPOSED MERGER *DIS*SERVES THE PUBLIC INTEREST

A. The Proposed Merger Would Eliminate All Competition In the 2G/GPRS-Based Wireless Alarm Market (And All Other 2G/GPRS-Dependent M2M-Oriented Industries)

If this transaction is consummated without appropriate conditions, AT&T will have monopoly control over the national 2G/GPRS-dependent market, including Alarm.com's wireless security alarm market. That monopoly power is reasonably likely to cause public harm, both in the form of higher prices and in the form of the premature elimination of the very wireless network that their equipment needs to operate. AT&T and T-Mobile even tout this current duopoly as a reason commending the merger, so there can be no debate. For example, they underscore in their Application filing the "uniquely complementary nature of AT&T and T-Mobile," explaining that, "[u]nlike other major U.S. wireless providers, AT&T and T-Mobile USA both use GSM...."[23]

Thus, even the Applicants admit that, if the transaction is approved, AT&T will enjoy a monopoly on GSM-dependent customers, including Alarm.com. As noted above, the Commission is charged with considering "whether a transaction will enhance, rather than merely preserve, existing competition."[24] This proposed transaction will *eliminate* – not preserve, and certainly not enhance – competition in this market. Because AT&T could raise Alarm.com's prices, the only existing protection Alarm.com has from that occurring is the competition from T-Mobile. Removing T-Mobile necessarily removes that market-based protection. Accordingly, the Commission must consider – and remedy – the likely competitive harm that will befall the public in light of this undisputed consequence of the proposed transaction.

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23 Applicants' Public Interest Statement at 7.

24 *Comcast/NBCU Order*, FCC 11-4, 2011 WL 194538, ¶ 24.

As noted above, Alarm.com has extensive experience operating with AT&T as its exclusive GPRS-network provider. It can attest to the positive consumer effects caused by T-Mobile's entry into that market, both in terms of price and more intangible customer service issues. T-Mobile's competitive presence has improved Alarm.com's experience with *both* carriers. As explained above, for comparable quality service, T-Mobile immediately began providing Alarm.com service for **[Begin Highly Confidential Material]** **[End Highly Confidential Material]** what AT&T had been charging Alarm.com for several years. To keep winning Alarm.com's business, which it did, T-Mobile's prices **[Begin Highly Confidential Material]** **[End Highly Confidential Material]** over the course of the next 18 months, while AT&T's prices remained at their **[Begin Highly Confidential Material]** **[End Highly Confidential Material]** levels. Faced with this increasing competition, AT&T responded by precipitously dropping its prices to Alarm.com **[Begin Highly Confidential Material]** **[End Highly Confidential Material]**.

The conclusion from these experiences is inescapable: AT&T only offered *market-based* rates after it faced competition *from T-Mobile*. Before T-Mobile began competing in Alarm.com's and others' 2G-based M2M markets, AT&T did what every economics and antitrust textbook expects monopolists to do, *viz.*, extract monopoly rents from the captive market.

Moreover, AT&T's monopoly rents are safeguarded by the extremely high substitution costs that Alarm.com and its customers would incur if forced to convert their current Alarm.com-enabled security systems and related infrastructure to operate on a different wireless technology. As noted above, Alarm.com estimates that, at current rates, that technology-conversion cost could **[Begin Highly Confidential Material]** **[End Highly**

Confidential Material] across its entire customer base. That enormous substitution cost cements AT&T's monopoly position, for it knows that captive customers like Alarm.com have highly inelastic demand curves by virtue of the prohibitive costs associated with securing a substitute supplier of the necessary wireless services. At such high conversion costs, there are no substitutes that the FCC would or should consider as an alternative to AT&T's GPRS-based network. *Cf. Verizon/Alltel Order*, 23 FCC Rcd. 17444, 17479 ¶ 68 ("although satellite providers offer facilities-based mobile voice and data services, the price of these services is, at present, significantly higher than for services offered by cellular, PCS, or SMR providers. Therefore, most consumers would not view satellite phones as substitutes for mobile telephony/broadband services.").

There is *no* reason to assume that, if the transaction is approved without necessary conditions, AT&T will not revert to its earlier monopolist pricing positions. To the contrary, there is every reason to expect that it may even increase prices to "incent" parties like Alarm.com to migrate from 2G to 3G or higher based systems. As AT&T explains in its Application papers, its "capacity challenges" are "exacerbated by AT&T's need to divide its spectrum portfolio among three generations of technology," citing first its 2G/GSM standard.[25] AT&T has also acknowledged that it "expects to be able to address continuing capacity needs through the ramping down of GSM networks...."[26]

The most obvious way for AT&T to "ramp down" its 2G customers is to price those services at an even higher level so that AT&T (a) captures the margin it would expect to receive

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25 *Id.* at 2.

26 *Id.* at 9.

had it been able to use that capacity for mobile broadband and other high-revenue pursuits, and/or (b) effectively lowers the relative substitution cost for the captive customer by hastening an earlier transition to a new generation of wireless technology because of the prohibitive pricing of the current 2G service (even though such substitution would offer Alarm.com's customers no appreciable benefit).

Finally, even if AT&T simply returned to its monopolist pricing policies vis-à-vis other GPRS-dependent M2M industries, there is even less reason to assume that will be true in light of AT&T's recent entry into the security market. In its ever-expanding efforts to both reduce customer attrition through bundled service offerings (AT&T is well attuned to customers' substitution costs) and increase additional services riding over already sunk infrastructure costs, AT&T acquired Alarm.com competitor Xanboo in December 2010.[27] As AT&T explained, "Xanboo's monitoring services are a natural extension of our high-speed Internet, video and voice offerings and a good fit for our wireless services."[28] Thus, far from expecting a customer-oriented approach from AT&T, now that AT&T will be competing directly with Alarm.com in the security market, Alarm.com could reasonably anticipate *predatory* pricing, not simply monopolist pricing, if this transaction is approved without appropriate conditions.

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[27] *See* Katie Fehrenbacher, *AT&T to Acquire Smart Home Startup Xanboo*, GigaOM (Dec. 10, 2010), http://gigaom.com/cleantech/att-to-acquire-smart-home-energy-startup-xanboo.

[28] *Id.* AT&T appears poised to integrate its acquisition to its current suite of retail offerings this summer. In a recent letter, it informed all dealers of Xanboo's services that their contracts would be terminated effective Independence Day of this year. *See* Daniel Galinas, *AT&T Terminates Xanboo Dealer Agreement*, Security Systems News (Apr. 14, 2011), http://www.securitysystemsnews.com/article/att-terminates-xanboo-dealer-agreement?page=0,0. As Xanboo has done since its founding, Alarm.com focuses its business on developing the technology, which is sold through many security dealers throughout the country, just as most consumer and business electronics developers do not have a direct retail presence.

This proposed transaction therefore presents real, foreseeable risks of anticompetitive behavior in both horizontal and vertical markets. As the Commission observed earlier in the year, both horizontal and vertical "types of transactions can reduce competition among the firms participating in a relevant market, potentially leading to higher prices to buyers, a reduction in product quality, or a reduced likelihood of developing new, better, or cheaper products and services."[29]

Thus, if the Commission were to approve this transaction without appropriate conditions, Alarm.com and other similarly situated companies can reasonably expect – at best – a prompt rise in prices to pre-competitive levels, which, again, were **[Begin Highly Confidential Material]** **[End Highly Confidential Material]** than today's prices.[30] Moreover, they can expect a far greater rise if AT&T follows through on its stated commitment to "ramp down" its 2G network users by charging even higher pricing to force the most acutely dependent either off of that capacity or to make AT&T indifferent between using it for more lucrative mobile-broadband applications or its embedded 2G-dependent customer base. Again, AT&T has already declared its intention to abandon its GSM network within **[Begin Highly Confidential Material]** **[End Highly Confidential Material]**. And Alarm.com and others in the security market are even more likely to expect that reaction now that AT&T has entered the security market too. The Commission can only discharge its statutory

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[29] *Comcast/NBCU Order*, FCC 11-4, 2011 WL 194538, ¶ 27.

[30] Apropos of those similarly situated, the Applicants assert that, as of the close of 2010, AT&T had approximately **[Begin Highly Confidential Information]** **[End Highly Confidential Information]** GSM-only subscribers, while T-Mobile is said to have approximately **[Begin Highly Confidential Information]** **[End Highly Confidential Information]** GSM-only subscribers. Applicants' Public Interest Statement, Decl. of William Hogg, 10-11.

duty to protect the public interest by not knowingly giving AT&T a monopoly in the 2G/GPRS market without appropriate conditions.

B. The Commission Also Cannot Approve The Transaction Without Injuring The Public's Continued Interest In Maintaining the 2G/GPRS Market For An Extended, Predictable Period of Time

In addition to the horizontal and vertical markets that would be adversely affected by the elimination of AT&T's only competitor in the 2G/GPRS market, Alarm.com and other similarly situated parties will likewise be injured by AT&T's hasty abandonment of its 2G/GPRS-dependent customers. As noted above, T-Mobile has recently given Alarm.com a written commitment that Alarm.com and its customers can depend on the continuing availability of its nationwide 2G/GPRS network for **[Begin Highly Confidential Material] [End Highly Confidential Material]**. AT&T, for its part, has committed to nothing. To the contrary, it appears eager to repurpose the capacity used by its 2G/GPRS customers to other wireless services, **[Begin Highly Confidential Material] [End Highly Confidential Material]**. *See supra* Section I.B.

Here again, this transaction will *dis*serve the public interest because the one competitor that has committed to serving a broad swath of customers for the **[Begin Highly Confidential Material] [End Highly Confidential Material]** will be consumed by the one which has made no such commitment, and, indeed, has publicly announced its intention to "ramp[] down" its 2G/GPRS-related services as quickly as possible, **[Begin Highly Confidential Material] [End Highly Confidential Material]**.[31] Again, rather than preserving or enhancing competition, this transaction will injure this market segment

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[31] Applicants' Public Interest Statement at 9.

by *eliminating* it and forcing parties like Alarm.com and its customers to re-tool their entire set of deployed Alarm.com-enabled security systems with different systems, at tremendous expense. As noted above, the estimated costs of such a conversion could **[Begin Highly Confidential Material]** **[End Highly Confidential Material]** for Alarm.com's current customers alone. *See* Confidential Exhibit 3.

With T-Mobile's competitive commitment to Alarm.com, Alarm.com and its current and prospective customers can make informed decisions about whether or when to invest in 3G-compatible equipment. As T-Mobile's commitment to Alarm.com demonstrates, serving GPRS-based customers like Alarm.com is a viable, profitable business for at least the **[Begin Highly Confidential Material]** **[End Highly Confidential Material]**. But were AT&T alone to serve the entire 2G/GPRS market, Alarm.com and its customers would be left with the Hobson's choice of waiting until AT&T "ramped down" their service to the point of it not providing the reliability that Alarm.com's customers depend upon, or making the significant capital investment in "upgrading" to a new technology that AT&T will continue to service. It would disserve the public interest for the Commission to approve this transaction because it would knowingly commit an entire class of wireless customers to the premature elimination of their market.

C. The Public Interest Will Also Be Disserved By Alarm.com's Inability To Provide New And Innovative Products If There Is Only One GSM Carrier

In addition to the significant risks the proposed transaction presents in terms of both pricing and the long-term availability of a GSM network, Alarm.com's experiences with the carriers confirm that the competitive environment has also fostered Alarm.com's ability to provide more innovative security solutions to the public. T-Mobile's entry into the M2M market

and willingness to work with its customers to create custom services and pricing plans has allowed Alarm.com to create innovative products that never would have come into being if AT&T were the sole provider of GSM M2M services in the U.S.

For example, several years ago, Alarm.com wanted to create technology that would allow a person under duress to push a button on their security control panel, or their Personal Emergency Response System (PERS), and have an operator or care provider immediately connected via a microphone to their home. In the security and PERS industries, this capability is known as "Two-Way Voice." Two-way voice functionality had been available using traditional landline based phone systems for some time, but the presence of landline based phone systems was disappearing. Alarm.com set out to create equivalent functionality using its wholesale GPRS/GSM relationship with AT&T.

Unfortunately, AT&T was not willing to support such innovation and enable Alarm.com to provide such services on the AT&T network. In contrast, T-Mobile was very interested in enabling such capabilities and worked with Alarm.com to create a custom service plan so that Alarm.com could create these valuable capabilities and bring them to the consumer. These services were launched with T-Mobile, and it was not until over a year later that AT&T decided it must also enable such two-way voice services on its network (certain of Alarm.com's competitors who rely exclusively on the AT&T network presumably put pressure on AT&T to offer such service so they could compete with Alarm.com). When AT&T did enable the equivalent services, AT&T's cost was **[Begin Highly Confidential Material]** **[End Highly Confidential Material]** what T-Mobile had offered. Currently, **[Begin Highly Confidential Material]** **[End Highly Confidential Material]** in the United States are installed with Alarm.com's Two-Way Voice capability. This innovation would not

have occurred if there were not a competitive GSM/GPRS market because technology providers like Alarm.com would not have been able to find a willing partner like T-Mobile, and the initial innovation would have been stifled by AT&T's reluctance to open its network in a way that supported such innovation.

More recently, Alarm.com set out to create a capability that would allow a property owner, emergency responder or care provider to see what is happening at a property when sensors or panic buttons in the home or business suggest there is an emergency situation. In the home-security arena, false alarms are a very significant problem and critical emergency responders spend a lot of time responding to alarms that prove to be false. In the tele-health arena, care providers are often remote from patients who are still at home, and when a sensor or panic button suggests that a patient may have a problem, it can be life-saving to be able to instantly see a set of pictures that portray the patient's condition.

Traditionally, the only way to acquire such images has been to install or use the broadband connection to the property. One challenge with this approach, however, is that some video cameras are difficult to install with the consumer's broadband connection, and these connections are not reliable enough for life-safety applications. When there is a power outage, for example, very few consumer broadband or commercial broadband connections continue to work. As a solution to this problem, Alarm.com funded a project to develop an "Image Sensor" device that would run on batteries and collect still-image pictures of what is happening in a property, and then transmit them via GPRS to the appropriate care providers, property caretakers, or emergency responders. At the time Alarm.com conceived this project, neither T-Mobile nor AT&T offered data transmission costs on their network that would allow the product to be viable.

But Alarm.com felt that the competitive market for GSM/GPRS services would allow the product to become viable. Alarm.com set out to request from the carriers a review of their rate structures. By the time Alarm.com had completed this new product, T-Mobile had agreed to create a new rate structure that would make the product viable. Alarm.com launched the product in April 2011 after months of testing, and has already sold **[Begin Highly Confidential Material] [End Highly Confidential Material]** of these products, with expectations to sell and install at least **[Begin Highly Confidential Material] [End Highly Confidential Material]** in 2012. Notably, this product is manufactured by Alarm.com in New York, and the engineering is performed in Virginia. The product has resulted in additional engineering and manufacturing jobs, and will likely result in additional United States exports.

This innovation would have never occurred without T-Mobile. Even today, AT&T has not created a plan that would allow Alarm.com to offer this innovative service to its customers at commercially reasonably prices. Alarm.com would not have capitalized the millions of dollars of research and development necessary to create the product if the fate of the product lay solely in the hands of AT&T. Without T-Mobile, there would be fewer innovative American products, and fewer research-and-development or manufacturing jobs in America, and Alarm.com would be a smaller, slower-growing company.

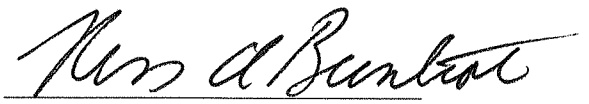
IV. CONCLUSION

With respect to pricing, the long-term availability of the network technology on which Alarm.com's security services depend, and Alarm.com's ability to provide innovative services in the security market, the elimination of T-Mobile from the market is likely to lead to significantly higher prices in the near term and then enormous, unnecessary capital costs when AT&T unilaterally discontinues service to the 2G/GPRS-dependent M2M customer base across the

country, and dampened innovation.

Under these undisputed circumstances, the Commission cannot approve the proposed transaction, at least without conditioning it upon (1) AT&T committing to maintaining its and T-Mobile's current pricing for all Alarm.com units deployed when the acquisition is consummated for as long as those units remain deployed, and (2) enforcing T-Mobile's written commitment of continued service to Alarm.com and its 2G/GPRS- based security services through **[Begin Highly Confidential Material]** **[End Highly Confidential Material]** so that all of Alarm.com's GPRS-dependent customers may continue to receive the security provided by their Alarm.com enabled security systems through the balance of **[Begin Highly Confidential Material]** **[End Highly Confidential Material]**, irrespective of which carrier currently provides the associated wireless services to a particular device.

Respectfully submitted,



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CONFIDENTIAL EXHIBIT NO. 1

ALARM.COM AVERAGE COST PER SUBSCRIBER

CONFIDENTIAL EXHIBIT NO. 2

ALARM.COM ACTIVE SUBSCRIBERS BY CARRIER

CONFIDENTIAL EXHIBIT NO. 3

ESTIMATED COSTS TO TRANSITION ACTIVE SUBSCRIBERS TO 3G-COMPATIBLE EQUIPMENT[32]

Account Type	*# of Accounts*	*Average Module Cost*	*Truck Roll Cost*	*Upgrade Cost*
Alarm.com Module				
Alarm.com Partner Module (running on Alarm.com network)				
Totals				

[32] These are good faith estimates based on information currently available to Alarm.com; actual costs may vary.

EXHIBIT 4