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November 22, 2011

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 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

Dear Ms. Dortch:

In prior filings in this proceeding, AT&T has shown that:

- Its current Plan of Record is to deploy 4G LTE service in areas accounting for approximately 80% of the U.S. population.
- Senior management repeatedly has considered and rejected proposals to expand AT&T's LTE deployment to sites outside the Plan of Record.
- It did so most recently in early January, 2011 when it again rejected an "LTE everywhere" proposal by AT&T's marketing organization to expand AT&T's LTE footprint to approximately 97% of the U.S. population. Although senior management decided at that time to accelerate implementation of the Plan of Record by one year, it concluded that it could not support "LTE everywhere," **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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On November 1, Sprint filed an *ex parte* letter purporting to dispute these facts. According to Sprint, AT&T has every intention of deploying LTE to 97% of the population, with or without the merger, because it has no choice but to maintain network parity with Verizon.² It claims that AT&T has not rejected an expanded LTE deployment but merely deferred consideration of it in order to “reduce its current capital requirements and thus improve its near-term earnings.”³ As shown below, Sprint’s arguments are wrong and its characterization of the evidence is misleading.

That said, Sprint is correct about one thing: AT&T *does* view Verizon as its primary and most important competitor, and it strives not only to match, but surpass, Verizon in network quality and other attributes. That does not mean, however, as Sprint maintains, that AT&T “has no choice” but to deploy LTE to virtually the entire U.S. population. To the contrary, when AT&T senior management rejected the “LTE everywhere” option in January and prior thereto, they were fully aware of Verizon’s announced LTE deployment plans.⁴ But those plans were not their only consideration; they had to consider the full range of costs and benefits of an expanded LTE footprint. Most obviously, they had to consider the **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** capital expenditure that would be required to expand AT&T’s LTE footprint from 80 to 97% of the population.⁵ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

¹ Letter from Maureen R. Jeffreys, Counsel for AT&T Inc., to Marlene H. Dortch, Secretary, FCC, (Sept. 20, 2011) (“Sept. 20 AT&T Letter”); Letter from Richard L. Rosen, Counsel to AT&T Inc., to Marlene H. Dortch, Secretary, FCC (Aug. 8, 2011); *In re Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of License and Authorizations*, WT Dkt No. 11-65, Joint Opposition to Petitions to Deny, Reply Declaration of William Hogg, ¶ 39 (filed Jun. 10, 2011) (“Hogg Reply Decl.”).

² Letter from Regina M. Keeney, Counsel for Sprint, to Marlene H. Dortch, Secretary, FCC (Nov. 1, 2011), at 5 (“Sprint Letter”).

³ *Id.* at 3.

⁴ Notably, Verizon has never indicated that its LTE footprint will reach 97% of the population, and Verizon’s public announcements regarding its LTE plans are not tantamount to a binding commitment to deploy.

⁵ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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INFORMATION] Absent this merger, AT&T would be forced to devote extraordinary capital and engineering resources to expensive and inefficient ways of extracting more capacity from its network resources. In these circumstances, AT&T would not devote large sums of money to upgrading its HSPA+ network to LTE in the most remote parts of the country. Sprint may scoff at a **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** price tag, but that amount exceeds all of Sprint's capital expenditures for the past two years.⁶

While Sprint's insistence that AT&T will pursue an LTE everywhere strategy even without the merger is baseless, its filing is nonetheless noteworthy for reasons Sprint may have preferred go unnoticed: its premise is fundamentally inconsistent with Sprint's core argument in this proceeding. Throughout this proceeding, Sprint has claimed that T-Mobile is a critical competitor to AT&T. Sprint argues, in particular, that T-Mobile's HSPA+ deployment forced AT&T to accelerate its own HSPA+ deployment. Now, however, Sprint has conceded that it is Verizon, not T-Mobile, that drives AT&T's network deployment decisions: "AT&T competes for customers based on network coverage, and this competition will force AT&T to match Verizon's 4G coverage just as AT&T was forced to match Verizon's nationwide 3G coverage."⁷ Naturally, Sprint never explains why, if AT&T must maintain network parity with Verizon, T-Mobile, which lacks any clear path to LTE, is an important constraint on AT&T's future network deployment decisions.

Sprint's inconsistencies are not limited to its discussion of AT&T's competitive focus. Sprint also does an about-face on handsets. Until now, Sprint (along with certain other merger opponents) has touted AT&T's exclusive on the iPhone as evidence of AT&T's purported existing monopsony power in handsets. Sprint has claimed that the merger would increase that power and enable AT&T to deny its competitors the handsets they need to compete effectively – or at least obtain those handsets at reasonable cost. Now, however, Sprint argues that, without an exclusive on the iPhone, AT&T must deploy LTE everywhere because it will need to rely on network coverage and speed to attract the best ecosystem partners for devices and applications.⁸

⁶ See Sprint Nextel Corp., Annual Report (Form 10-K), at F-5 (Feb. 24, 2011).

⁷ Sprint Letter at 5. See also *id.* (Verizon's nationwide LTE deployment inevitably will force AT&T also to deploy LTE to virtually the entire U.S. population within the next several years even in the absence of its proposed takeover of T-Mobile."); and *id.* at 4 (network parity with Verizon is critical to maintain/gain share position).

⁸ *Id.* at 5.

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Again, AT&T welcomes Sprint's implicit concessions on each of these points: that T-Mobile has little, if any, impact on AT&T's network deployment decisions and that AT&T has no special advantages, let alone market power, in the procurement of handsets. As shown below, however, that does not mean that AT&T must deploy LTE everywhere even without the merger.

Finally, Sprint's argument that the Commission should not credit AT&T's LTE commitment because AT&T has not sufficiently quantified the ways in which the merger improves the business case for an LTE everywhere deployment is specious. AT&T has explained that the merger would simultaneously reduce the cost of an LTE everywhere deployment and increase the revenue that AT&T could anticipate from that investment. And more importantly, AT&T has made an enforceable commitment to implement LTE to at least 97.3% of the U.S. population if the merger is approved. The Commission has a long history of crediting binding commitments that further the public interest in the merger review process, irrespective of whether those commitments reflect efficiencies made possible by the merger.

1. AT&T's Senior Management Has Rejected LTE Everywhere

According to Sprint, AT&T senior management "at no time rejected the nationwide deployment of LTE."⁹ Claiming that AT&T "has no choice" but to match Verizon's LTE footprint, it argues that the issue before senior management in January 2011 was not "*whether* to implement the final stage of LTE Everywhere but *when* to implement it,"¹⁰ and that the decision made by senior management simply reflected their desire to reduce current capital requirements in order to improve near-term earnings.

Those arguments cannot be squared with the facts. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

⁹ *Id.* at 2.

¹⁰ *Id.* at 3.

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Notably, senior management rejected the LTE everywhere proposal and the additional design work with full knowledge of Verizon's LTE deployment announcements.¹⁴ That is because, Verizon's announcements notwithstanding, the business case for an expanded LTE deployment was upside down. That business case reflects, not only the comparative LTE footprints of AT&T and Verizon, but other considerations, **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] And, of course, senior management's analysis – then and going forward – must take into account other exigencies and priorities, including the severe capacity constraints AT&T would face in major markets without this merger and the enormous resources that would have to be devoted to mitigating those constraints.

These are all points that AT&T has made before and to which Sprint has no answer, and so Sprint attempts to bolster its argument by extracting snippets from various documents which allegedly demonstrate that AT&T has misrepresented the facts. But it is Sprint that mis-states the facts by taking these snippets out of context and/or adding its own gloss to them. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

¹² See Sept. 20 AT&T Letter at 4.

¹³ AT&T notes that, while Verizon has pursued network sharing arrangements with rural partners, those efforts have to date resulted in twelve partnerships covering only 2.6 million Americans. See Verizon Wireless, News Center, LTE Information Center, <http://news.verizonwireless.com/LTE/Overview.html> (last visited Nov. 21, 2011).

¹⁴ Hogg Reply Decl. at ¶ 47.

¹⁵ Sprint Letter at 2.

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In short, the documents cited by Sprint do not support its theory. Most of those documents relate to the importance AT&T places on competing successfully with Verizon. The others either confirm the facts as explained by AT&T or are misrepresented or taken out of context by Sprint.

¹⁶ *Id.* at 3.

¹⁷ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**
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¹⁸ *Id.* at 3.

¹⁹ *Id.*

²⁰ *Id.* at 4. Of course, Sprint goes on to add its own gloss to that statement by characterizing this as “the first stage of meeting the overall objective of LTE Everywhere.”

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2. Claims that AT&T has the Resources to Deploy LTE to 97.3% of all Americans are Irrelevant

Sprint also argues that because “AT&T has the spectrum and financial resources to deploy LTE to almost the entire U.S. population” the Commission should assume it will do so, even without the T-Mobile merger.²¹ This claim is facile. AT&T has repeatedly considered and rejected an LTE everywhere strategy. It did so because the business case was “upside down.”²² If Sprint believes that the business case for an LTE everywhere strategy is so compelling, one would assume that it would commit to such a strategy itself. To date, it has not.

3. The Commission Must Consider AT&T’s LTE Commitment in its Review of the Transaction

Lastly, Sprint argues that because AT&T has not quantified how the T-Mobile transaction would allow AT&T to expand its LTE deployment, the Commission may not consider AT&T’s LTE commitment in its review of the transaction. That argument, as well, is wrong.

As an initial matter, simply because a benefit cannot be quantified does not mean it is not real. AT&T has shown that the merger would reduce the costs of an expanded LTE footprint, while simultaneously increasing incremental revenues.²³ And it also has shown that the merger would provide relief from severe capacity constraints that would otherwise consume AT&T’s capital and engineering resources.

²¹ *Id.* at 8.

²² [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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²³ Sept. 20 AT&T Letter at 7-8. *See also In re Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of License and Authorizations*, WT Dkt No. 11-65, Joint Opposition to Petitions to Deny, 81-2 (filed Jun. 10, 2011) (explaining that the merger will give AT&T additional spectrum, scale, scope, and resources which, collectively, enabled senior management to make a business judgment that the merger with T-Mobile would allow AT&T to commit to an LTE footprint that reaches 97% of the population).

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But in all events, the extent to which the merger changes the business case for LTE everywhere should not matter to the Commission. In virtually every major merger in recent memory, the Commission has factored enforceable commitments made by the applicants into its public interest analysis. Many of these commitments were unrelated either to a merger-specific harm or a merger-specific synergy.²⁴ Nonetheless, the Commission fully credited those commitments and in many cases found that their benefits turned an otherwise objectionable merger into one that furthered the public interest. In the *Comcast/NBC Universal Merger Order*, for example, the Commission specifically found that the merger “creates potential for public interest harms – most notably to slow down or skew competition and innovation that promises substantial benefits for consumers.”²⁵ And the Commission further found that “[s]ome of the alleged benefits [of the transaction] ... are inherently difficult to quantify[.]”²⁶ But it concluded that the “Applicants’ voluntary commitments offered “the most easily measurable impacts,” and it approved the transaction based on a finding that these commitments would “neutralize” the merger’s negative impacts and “promote the public interest goals of the Act[.]” Notably, included among the commitments credited by the Commission were “enforceable commitments to increase broadband adoption and deployment[.]”²⁷ which is precisely what AT&T’s LTE commitment would do.

4. Conclusion

Contrary to Sprint’s claim, AT&T has considered and rejected an LTE everywhere deployment, **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

²⁴ For example, among the merger commitments credited by the FCC in connection with the AT&T/BellSouth merger were commitments to repatriate 3,000 jobs; promote accessibility of broadband service; and promote service to customers with disabilities, none of which were designed to address any specific merger-related harm or capture any merger-specific synergy. *In re AT&T Inc. and BellSouth Corporation*, Memorandum Opinion and Order, 22 FCC Rcd. 5662, 5807-09, Appx. F (2007).

²⁵ *In re Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, 26 FCC Rcd. 4238, 4342, ¶ 256 (2011) (“*Comcast/NBC Universal Merger Order*”). See also *id.* at 4342, ¶ 254 (noting that there was “sufficient evidence on the record ... to raise substantial material questions of fact ... [regarding] whether the transaction would allow the Applicants to obtain or exercise market power or adversely affect their incentives to promote the values of localism or diversity.”).

²⁶ *Id.* at 4342, ¶ 255.

²⁷ *Id.* at 4342, ¶ 257. The *Comcast/NBC Universal Merger Order* is, of course, one of many merger decisions in which the Commission concluded that concerns about potential public interest harms were outweighed by a combination of potential merger benefits and merger commitments. See, e.g., *In re Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee*, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14716, ¶ 2 (1999); *In re Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17515-16, ¶ 157 (2008).

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HIGHLY CONFIDENTIAL INFORMATION] Apart from the merger, no means for accomplishing this end has been identified, and the exigencies of addressing looming spectrum exhaust in the absence of this merger further reduce the likelihood of any such deployment. On the other hand, the merger changes the relative costs and benefits of an expanded LTE footprint and permits AT&T to commit to deploying LTE to at least 97.3% of all Americans if this merger is approved. Sprint, which has publicly hinted at its continued designs on T-Mobile,²⁸ may dismiss this commitment and ask that it be disregarded by the Commission, but AT&T is the only carrier in the country offering an enforceable commitment to bring a state-of-the-art mobile broadband network to 97.3% of all Americans, and that commitment will promote jobs, investment and economic growth where and when it is most needed.

Pursuant to the Second Protective Order in this proceeding,²⁹ we are submitting this letter to you on a CD-ROM. In addition, we are submitting a redacted version of this letter in ECFS. Finally, we are submitting two copies of the unredacted version of this letter to Kathy Harris of the Wireless Telecommunications Bureau staff or her designee.

Respectfully Submitted,

/s/

Gary L. Phillips

cc: Best Copy and Printing, Inc. (redacted version)
Kathy Harris, Esq. (unredacted and redacted versions)
Ms. Kate Matraves (redacted version)
Jim Bird, Esq. (redacted version)

²⁸ Shira Ovide, *Sprint CEO: Telecom Mergers Are Bad! (Except for Ours)*, WSJ Blogs, Sept. 21, 2011, <http://blogs.wsj.com/deals/2011/09/21/sprint-ceo-telecom-mergers-are-bad-except-for-ours/>.

²⁹ *In re Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, Second Protective Order (Revised), 26 FCC Rcd. 8801 (WTB 2011), *modified*, Letter, 26 FCC Rcd. 10288 (WTB 2011).