

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Applications of AT&T Inc. and)	WT Docket No. 11-65
Deutsche Telekom AG)	
)	
For Consent To Assign or Transfer Control of)	
Licenses and Authorizations)	

**REPLY COMMENTS OF
GENERAL COMMUNICATION, INC.**

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Pursuant to the Commission’s April 28, 2011 Public Notice¹ in the above-captioned proceeding, General Communication, Inc. (“GCI”), through its undersigned counsel, hereby submits this reply to the comments and petitions to deny filed in this proceeding and the Joint Opposition² of AT&T Inc. (“AT&T”), Deutsche Telekom AG, and T-Mobile USA, Inc. (“T-Mobile”) (collectively, the “Applicants”).

I. INTRODUCTION AND SUMMARY.

GCI is an integrated communications provider that delivers voice, video, and data services through its wireless, fiber optic, satellite, and hybrid fiber coaxial facilities in urban and rural areas in Alaska. Of particular relevance to this proceeding, GCI provides mobile wireless services via GSM and CDMA networks using PCS and cellular spectrum in Alaska. Although a

¹ See *AT&T Inc. and Deutsche Telecom AG Seek FCC Consent to the Transfer of Control of the Licenses and Authorizations Held by T-Mobile USA, Inc. and its Subsidiaries to AT&T Inc.*, Public Notice, DA 11-799, 26 FCC Rcd 6424 (2011).

² See *Joint Opposition of AT&T Inc., Deutsche Telekom AG, and T-Mobile USA, Inc. to Petitions to Deny and Reply to Comments, WT Dkt. No. 11-65* (filed June 10, 2011) (“Opposition”).

relatively new entrant to the wireless market, GCI today offers mobile wireless service to almost 140,000 Alaskans, many of whom live in villages that previously lacked mobile wireless service entirely or that had access to only limited wireless capability. GCI is in the middle of rolling out modern digital wireless services to more than 170 rural Alaskan communities statewide. In most of these communities, GCI is deploying 2G wireless voice and data service for the first time, most often using cellular spectrum that had previously gone unused. GCI's rural wireless deployments forcefully demonstrate the positive effects of competition on increasing the availability of service in unserved, remote communities.

GCI is a member of the Rural Cellular Association ("RCA") and agrees with the description of the harms posed by the proposed transaction set forth in RCA's Petition to Deny filed in this proceeding. GCI files these reply comments to address the specific manner in which those concerns affect the market for mobile wireless services in Alaska and to respond to arguments raised in the Applicants' Opposition.³

As RCA explained in its Petition to Deny, regional mobile wireless carriers face several obstacles when competing with national carriers, including the high cost and sometimes limited availability of roaming rights, popular handsets, and spectrum. Smaller carriers may be unable to obtain spectrum in a combination necessary to use hardware and handsets designed specifically for the spectrum blocks held by national carriers. This could hamper their ability to meet the growing demand for 3G and 4G services. As RCA also explained, AT&T's proposed acquisition of T-Mobile will only make these obstacles more difficult to overcome.⁴

³ See Opposition at 131 ("Sprint, MetroPCS, and Leap are rapidly gaining customers while T-Mobile USA is losing customers, especially contract customers. Those providers—along with U.S. Cellular, Cellular South, and a host of others—can rapidly fill any competitive gap T-Mobile USA leaves upon the completion of this transaction.") (internal citation omitted).

⁴ RCA Petition at 6.

These concerns apply with full force to the Alaska mobile wireless market. AT&T already possesses significant competitive advantages in Alaska. AT&T is the only national GSM carrier currently providing service on its own facilities in Alaska. Like all regional carriers, GCI incurs high roaming charges, is unable to provide its customers with many of the most sought-after handsets that AT&T provides to its customers, and has fewer spectrum resources than AT&T in Alaska. Unfortunately, AT&T's proposed acquisition of T-Mobile would make this difficult situation significantly worse.

First, the proposed transaction will likely make it more difficult for GCI and other competitors in Alaska to obtain roaming agreements covering the lower 48 states on commercially viable rates, terms, and conditions. Alaska consumers value the ability to roam in the lower 48 states, and competitors cannot compete unless they offer their customers free roaming. An agreement with a national carrier is the only viable means of providing such roaming. There are currently two national GSM carriers, AT&T and T-Mobile, with which to enter into such agreements. The proposed transaction would of course eliminate T-Mobile as an independent carrier, thereby granting AT&T a monopoly over GSM roaming in the lower 48 states. Without the competitive pressure imposed by T-Mobile's nationwide GSM roaming capability, AT&T will have fewer market forces constraining the prices and service quality it offers to customers of its GSM roaming services. If AT&T were to increase the price of or reduce the quality of its GSM roaming services, it would have an even greater competitive advantage as compared to carriers like GCI that have focused solely on meeting the needs of Alaskan consumers. The FCC's new data roaming rules would not be sufficient to discipline these relationships, especially if national carriers claim that roaming agreements are impossible

due to spectrum or device incompatibility. Moreover, these rules were simply not designed for a market in which only *one* roaming partner exists.

Second, the proposed transaction will increase AT&T's incentive and ability to limit access to desirable handsets. AT&T could increase the extent to which desirable handsets are subject to exclusive distribution agreements and are incompatible with the spectrum holdings and networks of smaller and regional carriers. These practices would again increase AT&T's considerable competitive advantage over GCI and AT&T's other competitors in the Alaska market.

Third, the proposed transaction would add T-Mobile's 10 MHz of AWS spectrum to AT&T's already large—but generally under-utilized—spectrum holdings in Alaska. AT&T has failed to use much of its current spectrum to deploy services, especially in rural Alaska. In contrast, GCI has used its more limited spectrum holdings to deploy services to rural parts of the state that AT&T has been unwilling to serve on its own network. The Applicants claim that the transaction will spur network deployment to rural Americans.⁵ But based on its record, it seems unlikely that AT&T will utilize its current spectrum, let alone the additional spectrum it seeks to acquire, to provide service to rural Alaskans. At the same time, AT&T's retention of its unused spectrum prevents other providers of mobile wireless service in Alaska from obtaining the rights to spectrum combinations that are most suitable for supporting handsets desired by consumers today as well as those they will desire in the future (*e.g.*, during and after the transition to LTE).

⁵ *Id.* at 77 (“Because of the merger, consumers and businesses located in rural America will have access to the same next generation technology being deployed in major cities.”).

II. AT&T'S PROPOSED ACQUISITION OF T-MOBILE WILL HARM CONSUMER WELFARE IN THE U.S. GENERALLY AND IN ALASKA IN PARTICULAR.

The harms posed by AT&T's proposed acquisition of T-Mobile that numerous parties, including RCA and many of its members, have already described are especially significant in Alaska. These harms are likely to be most acute in the areas of roaming, access to popular wireless handsets, and in the allocation of spectrum rights.

A. The Proposed Transaction Will Deny Competitors Roaming Rights On Commercially Viable Rates, Terms, And Conditions.

Small and regional carriers like GCI whose networks cover relatively limited geographic areas are critically dependent on the ability to roam on other carriers' networks on commercially viable rates, terms, and conditions. Roaming agreements are only efficient if they can be reached with a national carrier because the transaction costs associated with relying on a combination of roaming agreements with multiple regional carriers are too high to be commercially viable.

Today, AT&T and T-Mobile are the only two national wireless carriers with GSM networks. T-Mobile has often been willing to enter into roaming agreements with small and regional mobile wireless carriers.⁶ AT&T, on the other hand, has actively resisted other carriers' right to roam on its network.⁷ In the recent *Data Roaming Order*,⁸ the Commission found that

⁶ See, e.g., Cincinnati Bell Wireless Petition at 10-11 (noting that T-Mobile has offered voice and data roaming rates nearly half those offered by AT&T).

⁷ See generally Reply Comments of AT&T, *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265 (filed July 12, 2010).

⁸ *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Second Report and Order, 26 FCC Rcd 5411 (2011) ("*Data Roaming Order*").

AT&T did not enter into a *single* 3G roaming arrangement until March 2011.⁹ As recently as May 2011, Cellular South’s CEO, Hu Meena, testified that, despite Cellular South’s efforts, it had still been unable to secure a 3G roaming agreement with AT&T.¹⁰ As T-Mobile itself has argued, AT&T “has the incentive and the ability to resist entering into reasonable data roaming agreements. It is a classic case of market failure”¹¹

The proposed transaction will harm consumer welfare by eliminating T-Mobile as an independent and competing provider of national GSM-based roaming arrangements. AT&T, which has already demonstrated itself to be less cooperative in providing roaming arrangements, will become the only GSM provider with a national network. As numerous parties to this proceeding have explained, AT&T’s control of the sole national GSM network is likely to increase AT&T’s incentive and opportunity to raise the price and/or reduce the quality of GSM roaming arrangements.¹²

This will be especially harmful to consumers in rural Alaska that are served by GCI and AT&T’s other competitors in Alaska. Those customers cannot use their mobile phones in the lower 48 states without a roaming arrangement. This consumer demand has caused GCI to

⁹ *Data Roaming Order* ¶ 25.

¹⁰ See Testimony of Victor H. “Hu” Meena, President & Chief Executive Officer, Cellular South, Inc., before the Senate Committee on the Judiciary, Subcommittee on Antitrust, Competition Policy and Consumer Rights regarding “The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?” at 10 (May 11, 2011) (“Within its GSM footprint, Cellular South does not currently offer 3G service for one basic reason: we have been unable to secure 3G roaming for our GSM customers.”).

¹¹ T-Mobile USA, Inc., Notice of Ex Parte, *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, at 4 (filed Mar. 10, 2011).

¹² See, e.g., Sprint Petition, Attach. A: Declaration of Steven C. Salop et al. ¶¶ 52-53, 99-101 (“Salop et al. Decl.”); CompTel Petition at 20; Rural Cellular Petition at 17; Leap Wireless Petition at 22; Vodafone Petition at 2-3.

feature free roaming as a key component of several of its mobile wireless service plans.¹³ But the situation would become far worse if AT&T were permitted to acquire T-Mobile. GCI and other rural GSM carriers would no longer have the option to purchase roaming from a national GSM carrier, T-Mobile, that does not provide service on its own facilities in Alaska and thus, today, has no incentive to artificially raise its rivals' costs. Instead, GCI would have no choice but to purchase GSM roaming from AT&T, likely at a price higher than AT&T could charge if T-Mobile were to remain an independent competitor. AT&T would be uniquely positioned to raise its rivals' costs and harm consumer welfare in Alaska.

In their Opposition, the Applicants argue that the merged entity will be a “net-purchaser” of roaming services and, thus, will have no interest in raising roaming rates.¹⁴ AT&T's status as a net purchaser may well be a result of AT&T's unwillingness to sell roaming to other carriers, a tactic that enables AT&T to entrench its position as a dominant firm. Moreover, its balance across all providers may differ from its balance with providers serving a particular region, like Alaska. In any event, a carrier's level of spending on roaming is not the appropriate means of determining whether a firm has market power over roaming arrangements. Roaming is simply a form of network interconnection. As the FCC has recognized, where there are two competitors, one with a network that serves a large customer base and one with a network that serves a relatively small customer base, the competitor with the larger customer base has the incentive to deny interconnection to the smaller competitor.¹⁵ This is because interconnection is more

¹³ See *GCI Alaska and Nationwide Plans*, General Communication, Inc., <http://wireless.gci.com/catalog/wireless-plans-p-73.html?osCsid=99ccdb69c24a3974cff3a5ce0f3ce98c>.

¹⁴ See Opposition at 157-58.

¹⁵ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and CMRS Providers*, First Report and Order, 11 FCC Rcd. 15499, ¶ 10 (1996).

valuable to the smaller network owner than the larger network owner. Given that AT&T has a much larger customer base than competitors like GCI, AT&T has the incentive to deny, degrade or overprice roaming arrangements with GCI. The proposed transaction would only increase that incentive because it would increase the differential in the number of customers served by the AT&T network as compared to the GCI network.

The Applicants also assert that the Commission's newly adopted data roaming rules will be "more than adequate to resolve any potential disputes should they arise."¹⁶ This is not true. The new roaming rules merely require that AT&T offer roaming on "commercially reasonable" terms and conditions,¹⁷ a standard under which the Commission would judge AT&T's conduct against the conduct of other carriers. If AT&T were to have no competitors in the provision of GSM roaming and the Commission were therefore to have no benchmark against which to measure AT&T's conduct, the commercially reasonable standard would have no meaning. More importantly, data roaming rules will not produce reasonable GSM roaming agreements if a merged AT&T/T-Mobile can claim that roaming is not possible due to spectrum or device incompatibility.

In sum, there is every reason to believe that the proposed transaction would give AT&T an increased incentive and opportunity to use its control over the only national GSM network to harm competition and consumer welfare in Alaska.

¹⁶ Opposition at 159.

¹⁷ See *Data Roaming Order* ¶ 40; see also RCA Petition at 17. RCA additionally notes that the *Data Roaming Order* is currently pending appeal, and its minimal protections could thus be vacated. *Id.* at n.54.

B. The Proposed Transaction Will Prevent Competitors From Offering Desirable Handsets To Their Customers.

As the Commission has recognized, wireless handsets “directly affect the quality of a consumer’s mobile wireless experience, and, hence, they factor into a consumer’s choice of a wireless provider.”¹⁸ The inability to provide customers with popular handsets is a significant competitive disadvantage.¹⁹ This is a critical issue to smaller carriers like GCI. Such carriers lack the economies of scale required to develop handsets with manufacturers. In contrast, larger carriers like AT&T do have the economies of scale to develop handsets with manufacturers. Such carriers are attractive partners for independent manufacturers like Apple because they can make handsets available to a vast customer base. AT&T has maximized the benefits of its relationships with device manufacturers by entering into long-term, exclusive distribution arrangements for handsets and by encouraging the development of devices that are not interoperable with other carriers’ networks.²⁰ These arrangements place competitors like GCI at a competitive disadvantage by limiting the wireless handsets that GCI can offer to its customers.

If the proposed transaction and AT&T’s proposed acquisition of Qualcomm’s 700 MHz spectrum are approved, AT&T’s incentive and ability to engage in these tactics will increase, thereby further limiting GCI’s and other regional carriers’ ability to compete with AT&T in Alaska.

¹⁸ *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd. 11407, ¶ 66 (2010) (“*Wireless Competition Report*”).

¹⁹ See, e.g., Cox Petition at 8-9 (“[T]he ability to offer state-of-the-art smartphones and other devices is critical to successful entry.”).

²⁰ See Leap Wireless Petition at 25-26 (“AT&T already has engaged in a variety of exclusionary tactics to ensure that the most attractive devices remain out of the hands of rivals, either forever or for a sufficiently long period that it can reap all of the first-mover advantages of a popular new device.”).

First, the proposed transaction will increase AT&T's incentive and ability to use exclusive handset distribution arrangements to disadvantage its competitors. AT&T has already established more exclusive distribution arrangements than any other national carrier. For example, of the 32 exclusive smartphone arrangements identified by the Commission in the 2010 *Wireless Competition Report*, nearly half were launched by AT&T.²¹ This strategy has allowed AT&T to continue to attract new subscribers despite its consistently poor customer satisfaction ratings.²² The most prominent example of the success of this strategy was AT&T's term as the exclusive service provider for the iPhone 3G, during which the Commission found that approximately 40 percent of AT&T's iPhone subscribers switched to AT&T from another carrier.²³

While T-Mobile has also entered into exclusive handset distribution arrangements, it has been more willing than AT&T to promote the development of handsets that can be used on any network. Most importantly, as many parties have explained, T-Mobile was a key promoter of the Android mobile device operating system.²⁴ That operating system has spawned the development of many handsets that are now available to customers of small and regional carriers. In fact, GCI

²¹ *Wireless Competition Report* ¶ 143, Chart 9.

²² See Clearwire Comments at 14 (“[A]ccording to [a] recent *Consumer Reports* survey, AT&T is the *lowest*-scoring wireless carrier in the U.S., and of all the providers rated, AT&T was the only one to *drop* significantly in overall satisfaction.”) (emphasis in original).

²³ *Wireless Competition Report* at ¶ 138.

²⁴ See, e.g., Sprint Petition at 46, Salop et al. Decl. ¶ 129; Cox Comments at 3; Public Knowledge and Future of Music Coalition Petition at 35-36.

currently promotes Android-based handsets as key components of its mobile wireless service offerings.²⁵

The proposed transaction would eliminate T-Mobile as a promoter of the development of devices that are available to small and regional carriers. In addition, AT&T would acquire T-Mobile's customer base, thereby increasing its economies of scale and its monopsony power in the handset market. It will therefore have an even greater ability to insist on exclusive distribution arrangements for handsets made available to its huge customer base.

In their Opposition, the Applicants suggest that exclusive handset arrangements drive competition by encouraging other device manufacturers and carriers to “redoubl[e] their own efforts to design and introduce even more innovative and attractive devices,” citing Verizon's exclusive launch of the Droid as a reaction to AT&T's exclusive offering of the iPhone.²⁶ But while Verizon was able to respond to AT&T's success with the iPhone by securing an attractive exclusive arrangement of its own, this is simply not an option for most rural and regional carriers.²⁷ Because manufacturers generally limit exclusive handset offerings to providers with larger customer bases and extensive network penetration,²⁸ rural and regional carriers are left struggling to find other grounds on which to compete. Cincinnati Bell Wireless, for instance, states that when AT&T launched its exclusive iPhone 3G offer and Verizon launched its exclusive Blackberry Storm offer, “there was a significant and corresponding increase in

²⁵ See *GSM Phones*, General Communications, Inc., http://wireless.gci.com/catalog/phones-phones-c-21_71.html (featuring several Android-based phones, including “Alaska's first GSM Android”).

²⁶ Opposition at 145.

²⁷ *Wireless Competition Report* ¶ 317 (“[A]ll nationwide providers have some EHAs, while non-nationwide providers typically do not have EHAs.”).

²⁸ *Id.*

customers leaving [Cincinnati Bell Wireless] for those carriers in order to obtain the new handsets.”²⁹ The proposed transaction will likely exacerbate this trend.

Second, even in those instances in which AT&T does not enter into exclusive distribution agreements with manufacturers, it will likely ensure that the most popular devices do not function on networks other than AT&T’s (and possibly Verizon’s). AT&T has already displayed an inclination to encourage the development of non-interoperable devices.³⁰ As U.S. Cellular explains, AT&T has attempted to ensure that devices manufactured to function on its Lower B and C Block spectrum in the 700 MHz band do not function on the Lower A Block, thereby potentially recreating “the GSM/CDMA divide in a new form, frustrating expectations that Long Term Evolution (‘LTE’) technologies would lead to important advances in commercial network interoperability.”³¹

Unfortunately, the proposed transaction, when combined with AT&T’s proposed acquisition of Qualcomm’s 700 MHz spectrum, only increases the likelihood that AT&T will encourage the development of devices that function only on AT&T’s (and possibly Verizon’s) network and specific blend of spectrum holdings. This is because the acquisition of T-Mobile’s AWS spectrum and Qualcomm’s 700 MHz spectrum will give AT&T far greater spectrum holdings in the lower bands than any carrier other than Verizon. AT&T will have the incentive and opportunity to develop handsets only for its spectrum holdings. Such non-interoperable handsets will not function on the networks of carriers like GCI that do not have licenses for

²⁹ Cincinnati Bell Wireless Petition at 31.

³⁰ *See 700 MHz Block A Good Faith Purchasers Alliance Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks*, RM 11592 (filed Sept. 29, 2009).

³¹ U.S. Cellular Comments at 4.

either AWS or 700 MHz spectrum in Alaska. Again, the result would be harm to competition and consumer welfare in Alaska.

In their Opposition, the Applicants claim that the lack of interoperable 700 MHz devices is merely the result of a neutral standards-setting process and independent decisions by handset manufacturers.³² But the behavior of the standards-setting organizations and the manufacturers is, of course, driven by the demands of the largest carriers. By increasing AT&T's market share and spectrum holdings, the proposed transaction would allow AT&T to have even more influence on the decisions of standards-setting organizations and handset manufacturers.

In sum, AT&T's proposed acquisition of T-Mobile, combined with AT&T's proposed acquisition of Qualcomm's 700 MHz spectrum, will significantly increase AT&T's incentive and opportunity to deny smaller and regional carriers like GCI access to desirable handsets. This will place GCI and other regional carriers at a significant competitive disadvantage as compared to AT&T in Alaska. Accordingly, if the Commission approves the proposed transaction, it should condition such approval on requirements that ensure that smaller and regional carriers are able to offer their customers handsets developed for or offered by AT&T.

C. The Proposed Transaction Will Harm Consumer Welfare By Transferring Valuable AWS Spectrum To AT&T Even Though AT&T Is Unlikely To Utilize That Spectrum Efficiently.

Spectrum is a key input to the provision of mobile wireless service. It is therefore critical that the Commission ensures that spectrum is placed in the hands of carriers that will use it most efficiently.

AT&T already holds the dominant spectrum position in much of Alaska, with licenses in the Cellular, PCS, AWS, 700 MHz, and WCS bands. Yet, AT&T has failed to utilize much of

³² See Opposition at 14, 152-55.

this spectrum in most rural areas, which has delayed deployment of modern wireless voice service—let alone mobile broadband—to many rural Alaskans. In contrast, GCI has used its more limited spectrum holdings to build out its network into many rural areas.³³ Thus, the Applicants’ assertions that spectrum constraints have prevented AT&T from deploying services to rural parts of the country, and that the acquisition of T-Mobile is the surest way to remedy this problem, are simply not true for Alaska.³⁴ Rather, the situation in Alaska indicates that AT&T has failed to utilize the spectrum it has today to serve rural areas.

The proposed transaction would only worsen this situation. T-Mobile has licenses to 10 MHz of AWS spectrum in Alaska. T-Mobile has not built out its network in Alaska to utilize this spectrum. Still, T-Mobile has the profit-maximizing incentive either eventually to use this spectrum to provide service or to sell the licenses to another carrier that will do so. But under the proposed merger, AT&T would acquire that spectrum. Since AT&T has shown little inclination to use the large amount of spectrum it already has in Alaska, it is unlikely that it will make good use of the T-Mobile spectrum.

In sum, the proposed transaction threatens to exacerbate the underutilization of wireless spectrum in Alaska held by AT&T (and unavailable to others). It will do so by transferring T-Mobile’s valuable AWS spectrum to AT&T, which has shown no inclination to use its substantial existing spectrum holdings to serve rural communities.

³³ See, e.g., “GCI Introduces Wireless Data and Internet in Rural Alaska,” Alaska Bus. Monthly, Sept. 30, 2010, *available at* <http://www.akbizmag.com/alaska-news-list/6469-gci-introduces-wireless-data-and-internet-in-rural-alaska-.html> (noting that, in 2010, GCI upgraded its network to provide GSM voice and data wireless services in 109 rural Alaska communities).

³⁴ See, e.g., Opposition at 19 (“This transaction provides the surest, fastest, and most efficient solution to applicants’ capacity challenges, and, again, merger opponents cannot plausibly contend otherwise.”).

III. CONCLUSION.

For the foregoing reasons, the Commission must ensure that the proposed transaction does not result in the many documented harms to consumers served by small and regional carriers.

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I, Matthew Jones, do hereby certify that on this day, June 20, 2011, I caused to be served a true and correct copy of the foregoing Reply Comments of General Communications Inc. to the following:

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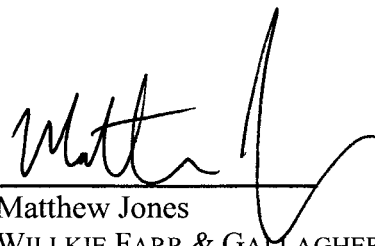
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