

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

PETITION TO DENY OF GREENLINING INSTITUTE

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PETITION TO DENY OF GREENLINING INSTITUTE

The Greenlining Institute (“Greenlining”) hereby files this Petition to Deny the applications, as proposed, in the above-captioned matter pursuant to Section 309(d)(I) of the Communications Act of 1934,¹ and the FCC’s Public Notice of April 28, 2011.² The proposed transaction would seriously harm low-income consumers; these public interest harms outweigh any potential public interest benefits. The public interest therefore requires that the Commission reject the Applications in their entirety, as proposed, or, at a minimum, impose significant conditions to ameliorate the threatened harms to low-income consumers and protect the public interest.

SUMMARY

T-Mobile USA, Inc. (hereafter, T-Mobile) is one of a handful of wireless providers who provide affordable, no-contract mobile services to the nation’s low-income consumers, many of whom cannot afford, or who are refused, mobile services from the major wireless carriers: Verizon, Sprint, and AT&T, Inc. (hereafter, AT&T). It appears

¹ 47 U.S.C. § 309(d)(1) (2011).

² FCC Public Notice, DA 11-799, Docket No. 11-65 (April 28, 2011) (Establishing Pleading Cycle).

that AT&T plans to purchase T-Mobile's network, but abandon T-Mobile's low-income subscribers. The potential public interest harms to low-income consumers and communities of color outweigh any purported public interest benefits to AT&T's subscribers and to consumers at large.

The telephony/broadband services market actually consists of two submarkets, high average revenue per user ("high ARPU") services, and value-conscious services. The proposed transaction would have significant anticompetitive effects on the value-conscious services market. Low-income, value-conscious consumers will not be able to stay with AT&T once the transaction is complete; rather, those consumers will migrate to other value-conscious providers. The value-conscious services market is already highly concentrated; most areas are served by only 2 or 3 value-conscious providers, and T-Mobile is one of those providers in a vast majority of those markets. The removal of T-Mobile as a significant competitor in this market will result in the creation of monopolies and duopolies in local markets across the United States, and will substantially lessen competition, harming low-income consumers who depend on those services.

The transaction's harm to the public interest is not limited to its anticompetitive effects. If approved by the Commission, the transaction will increase costs to low-income consumers and significantly reduce the amount of spectrum available for value-conscious services. Additionally, it will delay deployment of next-generation wireless services to low-income consumers, and further restrict diversity of license holdings, particularly amongst license holders who provide services to low-income consumers. AT&T's consolidation and "optimization" of its physical network, retail coverage, and customer support will result in many of T-Mobile's 40,000 employees losing their jobs.

These severe harms to low-income consumers are against the public interest, and outweigh AT&T's purported public interest benefits. For these reasons, Greenlining opposes the transaction and respectfully requests that the Commission deny the applications.

Should the Commission approve the applications, Greenlining asks that the Commission ensure that the public interest is protected by taking measures to protect low-income consumers and communities of color. The Commission should ensure that value-conscious providers have sufficient spectrum to provide quality service for their subscribers, as well as to deploy next-generation wireless services to those customers. Additionally, the Commission should hold AT&T to its commitments to pass the economic benefits of the transaction through to consumers, promote diversity, and bridge the digital divide.

STATEMENT OF FACTS

I. WIRELESS PROVIDERS

The major wireless phone providers in the U.S. are Verizon, AT&T, Sprint, and T-Mobile.³ Smaller providers include MetroPCS, Leap, and U.S. Cellular.⁴ Verizon, Sprint, and AT&T target high average revenue per user (ARPU) subscribers.⁵ MetroPCS, Leap, and U.S. Cellular target "value conscious" customers.⁶ T-Mobile

³ AT&T, Description of Transaction, Public Interest Showing and Related Demonstrations 11-12, 15 (April 21, 2011) (hereafter, Application).

⁴ *Id.* at 12. The Application also lists Clearwire and LightSquared as "wireless providers." *Id.* at 13. Those companies appear to provide data services, but not telephone service. See www.clear.com; <http://www.lightsquared.com/>.

⁵ Application at 101 (AT&T and Verizon); Applicants' Declaration of Dennis W. Carlton, Allan Shampine and Hal Sider ¶ 97 (hereafter, Carlton Decl.) (Sprint).

⁶ Application at 99.

straddles the two markets, offering service to both high ARPU and value conscious customers.⁷

High ARPU and value-conscious providers offer significantly different products, serve significantly different customers, and offer significantly different prices. High ARPU providers primarily offer “contract” wireless services;⁸ value-conscious providers offer primarily no contract, “all you can eat” services.⁹ High ARPU providers offer more high-end, advanced handsets.¹⁰ High ARPU and value-conscious providers have distinctly different “churn” rates—the percentage of total customers who switch providers.¹¹ Prices for value-conscious services tend to be roughly half that of prices for high ARPU services.¹²

Mobile wireless service is particularly important to low-income consumers and communities of color, as it may be their only access to broadband. The Commission’s National Broadband Plan noted that only 40% of low-income consumers adopted broadband, a much lower rate than the national average (65%).¹³ It is more likely that a low-income consumer’s wireless device is their only means of accessing the internet.¹⁴ Low-income consumers usually obtain service from value-conscious providers; this is often because of the lower prices of value-conscious services.¹⁵ Some low-income

⁷ Application at 101.

⁸ Carlton Decl. at ¶¶ 89 (AT&T), 91 (Verizon), 97 (Sprint).

⁹ Carlton Decl. at ¶ 101, Applicants’ Declaration of David A. Christopher ¶¶ 20, 45 (hereafter, Christopher Decl.).

¹⁰ Christopher Decl. at ¶ 33, *see also*, Carlton Decl. at ¶ 96.

¹¹ *See* Christopher Decl. at ¶¶ 23, 51-52.

¹² *See* Christopher Decl. at ¶¶ 45, 61-62.

¹³ *See* Federal Communications Commission, Connecting America: The National Broadband Plan 167, Exhibit 9-A (March 2010) (hereafter, “National Broadband Plan”).

¹⁴ Pew Internet and American Life Project, Mobile Access 2010 10, (2010), *available at* http://www.pewinternet.org/~media/Files/Reports/2010/PIP_Mobile_Access_2010.pdf (*hereafter*, Pew Mobile Access Report).

¹⁵ *See* Argument, § II.B.1.a.ii, below.

consumers are unable to obtain service from high-ARPU providers, because of issues of creditworthiness or prior disconnections.¹⁶

African Americans and Hispanics also adopt broadband at lower rates – 59% and 49% respectively.¹⁷ African-Americans and Latinos are also more likely to access the internet through mobile services.¹⁸ Thus, these communities are at the low points of the “Digital Divide.”

II. THE PROPOSED TRANSACTION

AT&T seeks to acquire the spectrum licenses currently held by T-Mobile as part of a merger between AT&T and T-Mobile.¹⁹ AT&T claims to be pursuing the merger because AT&T does not have sufficient spectrum to serve its customers and deploy next-generation mobile technology.²⁰

It appears that after the merger, AT&T intends to retain T-Mobile’s high ARPU customers, and expects T-Mobile’s value-conscious customers to migrate to other value-conscious providers. AT&T’s Application states that “...MetroPCS, Leap, and others can fill any gap T-Mobile USA might leave in the competition for value-conscious consumers when the transaction is completed.”²¹

¹⁶ See Catherine J. K. Sandoval, Comment, In the Matter of Framework for Broadband Internet Service 7, GN Docket No. 10-127 (2010).

¹⁷ See Pew Mobile Access Report, *supra* note 14, at 10..

¹⁸ *Id.*

¹⁹ Application at 1.

²⁰ *Id.*

²¹ Application at 99.

III. SPECTRUM HOLDINGS

AT&T has “the most cell sites and the most spectrum of any wireless network,” and has the “strongest spectrum position” of any provider.²² AT&T owns a majority of the nation's 700 MHz spectrum, considered the prime “beachfront property” of spectrum.²³ AT&T has about 284 MHz more spectrum than its closest competitor in the top 21 markets in the United States.²⁴ Of 734 Cellular Market Areas (CMAs), AT&T has met the Commission’s spectrum screen in 202 of those markets.²⁵ AT&T is actively expanding its spectrum holdings, and is seeking to purchase more spectrum from Qualcomm and other license holders.²⁶

ARGUMENT

I. GREENLINING HAS STANDING TO FILE THIS PETITION.

Any “party in interest” may petition the Commission to deny the assignment or transfer of a license.²⁷ A party in interest is any party whose interests are likely to be adversely affected.²⁸ Greenlining is a non-profit organization dedicated to empowering communities of color, low-income communities, and other disadvantaged groups. Started in 1993 by the Greenlining Coalition, Greenlining seeks to protect consumer interests while partnering with some of the largest companies in America to better serve this country’s multi-ethnic and underserved communities. Beyond ethnic diversity, the coalition represents diverse constituents that include faith-based organizations, minority

²² AT&T, Network: Robust Network and Security, <http://www.wireless.att.com/businesscenter/business-programs/small/network-security.jsp> (last accessed May 20, 2011).

²³ Marguerite Reardon, Is AT&T a Wireless Spectrum Hog? (2011), http://news.cnet.com/8301-30686_3-20058494-266.html (last accessed May 25, 2011).

²⁴ *Id.*

²⁵ Application, Appendix C.

²⁶ FCC Public Notice, DA 11-252, WT Docket No. 11-18 (Feb. 9, 2011); FCC Public Notice, DA 11-943, (May 24, 2011).

²⁷ 47 U.S.C. §309(d) (2011).

²⁸ Camden Radio, Inc., v. Federal Communications Commission, 220 F.2d 191, 194 (D.C. 1954).

business associations, community development corporations, health advocates, traditional civil rights organizations, and minority media outlets.

Members of the Greenlining Coalition subscribe to mobile telephony and broadband services provided by both T-Mobile and AT&T. Moreover, members of the communities served by Greenlining Institute and employees of the Greenlining Institute are subscribers to other value-conscious wireless service providers, who will be impacted by the proposed merger. As this petition will demonstrate, the proposed merger would directly and adversely impact the communities the Greenlining Institute represents.

Therefore, Greenlining has standing to oppose the Application.²⁹

II. THE PROPOSED TRANSACTION IS NOT IN THE PUBLIC INTEREST.

The proposed transaction is not in the public interest. Value-conscious wireless service is an important means of accessing the internet for low-income consumers and communities of color.³⁰ This transaction, as proposed, will reduce competition in the value-conscious market, and will harm low-income consumers and communities of color in the greater wireless services market. The proposed transaction promises to harm low-income consumers and communities of color by increasing the prices and decreasing the quality of low-cost wireless services, delaying private sector deployment of advanced services to low-income consumers, decreasing diversity of spectrum license holdings, and eliminating many low-income jobs.

The transaction will decrease the amount of spectrum available for value-conscious services. Spectrum is a limited resource and the loss of spectrum available for value-conscious wireless consumers is a particular concern of this transaction, as this will

²⁹ The Declaration of Samuel S. Kang is attached hereto.

³⁰ See Statement of Facts, § I, *supra*.

work to deepen the Digital Divide. The National Broadband Plan recognized the importance of spectrum availability in efforts to address the Digital Divide. One of the recommendations of the National Broadband Plan was to utilize low-cost wireless broadband in order to encourage broadband adoption among low-income consumers and others who failed to adopt broadband.³¹ The Commission recommended that spectrum be devoted to servicing low-cost wireless broadband.³²

However, the proposed transaction promises to do the exact opposite, taking spectrum currently utilized for value-conscious wireless services and re-directing it to high ARPU customers. Thus, contrary to the recommendations of the National Broadband Plan, if the transaction is approved, wireless broadband will be less available to address the Digital Divide among low-income consumers and communities of color.

In its Application, AT&T touts its best in class supplier diversity program and also notes the support of many civil rights groups in reference to its history of promoting diversity in philanthropy, promotion and hiring. However, AT&T makes no commitments regarding supplier diversity, board diversity, management diversity or philanthropy as part of the Application. Thus, there are absolutely no guarantees that the proposed transaction will have a beneficial impact in these areas.

A. AT&T Must Prove, By A Preponderance Of The Evidence, That The Proposed Transaction Is In The Public Interest.

A party seeking the acquisition or transfer of a license bears the burden of proving to the Commission, by a preponderance of the evidence, that the proposed transaction will

³¹ See National Broadband Plan, Recommendation 9.2 at 173-74.

³² See *id.*

serve the public interest convenience, and necessity.³³ In making this determination, the Commission first assesses “whether the proposed transaction complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission’s rules.”³⁴

When reviewing a transaction, the Commission considers the competitive effects of that transaction on the public interest; however, the Commission's public interest inquiry extends far beyond potential competitive effects.³⁵ The Commission also considers “whether the proposed assignment and transfer of control...is likely to generate verifiable, transaction-specific public interest benefits.”³⁶ The Commission’s public interest inquiry includes a consideration of, “among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest.”³⁷

The Commission then considers whether the acquisition “could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.”³⁸ If there is a risk of harm, the Commission employs “a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.”³⁹ If the potential

³³ Order In the Matter of Applications of AT&T Inc. and Cellco Partnership, WT Docket No. 09-104, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8716 (June 22, 2010) (hereafter, AT&T/Cellco Order).

³⁴ *Id.*

³⁵ *Id.* at 8717.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

public interest harms outweigh the potential public interest benefits, the transaction is not in the public interest.⁴⁰

B. The Proposed Transaction Is Not In The Public Interest Because It Will Harm Competition in the Value-Conscious Wireless Services Market.

If the Commission approves the transaction, most of the value-conscious wireless services market will be controlled by providers with monopoly or duopoly power, significantly increasing market concentration in an already highly-concentrated market. Additionally, the elimination of T-Mobile as a major competitor in that market will remove other competitors' incentives to keep prices low and improve quality of service. This increased concentration and loss of incentives will cause the market to become substantially less competitive.

1. The Relevant Market Is The Local Value-Conscious Wireless Services Market.

The Commission's competitive analysis of a proposed transaction begins with determining appropriate market definitions for the transaction.⁴¹ Market definition requires defining both the product market and the geographic market.⁴² While Greenlining agrees with AT&T's analysis of the geographic market,⁴³ it disputes AT&T's analysis of the product market.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, p. 7 (August 19, 2010), available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf> (hereafter, Merger Guidelines).

⁴³ See Argument, § II.B.1.b., below.

a. *The Relevant Product Market Is The "Value-Conscious" Wireless Services Market.*

The relevant market consists of all goods which are "reasonably interchangeable" with a product.⁴⁴ Products are "reasonably interchangeable" if consumers (1) view those products as substitutes for each other and (2) would switch among those products in response to a change in price.⁴⁵ In determining whether goods are reasonably interchangeable, courts consider the price, the use, and the qualities of the respective products.⁴⁶

Submarkets can themselves "constitute product markets for antitrust purposes."⁴⁷ The Department of Justice (DOJ) and the Federal Trade Commission (FTC) developed the "hypothetical monopolist" test to help determine whether submarkets are distinct product markets.⁴⁸ Under this test, the agencies assume the existence of a hypothetical firm that is the only seller of a relevant product, and ask whether that firm could profitably impose a small but significant and nontransitory increase (SSNIP) in price on that product.⁴⁹ If buyers would shift to available alternatives because of the SSNIP, the other products to which the buyers would switch are part of the "product market."⁵⁰ Applying the hypothetical monopolist test does not necessarily lead to a single relevant product market.⁵¹

The Courts have articulated a number of factors used to help define submarkets. These "practical indicia" of relevant submarkets include industry or public recognition of

⁴⁴ United States v. E. I. Du Pont de Nemours & Co., 351 U.S. 377, 395 (U.S. 1956).

⁴⁵ Apple v. Psystar, 586 F. Supp. 2d 1190 at 1196 (N.D. Cal. 2008).

⁴⁶ *Id.*

⁴⁷ Brown Shoe Co. v. United States, 370 U.S. 294, 325 (1962).

⁴⁸ Merger Guidelines, *supra* note 32, at 7; *see also*, FTC v. Whole Foods Mkt., 548 F.3d 1028, 1038 (D.C. Cir. 2008).

⁴⁹ *Id.* at 8.

⁵⁰ *Id.*

⁵¹ *Id.*

the submarket as a separate economic unit,⁵² (2) unique production facilities,⁵³ (3) distinct products,⁵⁴ (4) distinct customers,⁵⁵ (5) distinct prices,⁵⁶ (6) sensitivity to price changes,⁵⁷ and (7) specialized vendors.⁵⁸ A court or agency need not find all of these indicia to find an appropriate submarket; rather, they are intended to furnish “practical aids in identifying zones of actual or potential competition rather than with the view that their presence or absence would dispose, in talisman fashion, of the submarket issue.”⁵⁹

AT&T rather casually defines the product market as “a combined mobile telephony/broadband services market;” this definition is based on a ruling by the FCC in the Verizon/ALLTEL proceeding.⁶⁰ However, it appears that the Commission has adopted this definition in proceedings where “[no] party in the proceeding challenged the mobile telephony/broadband definition....”⁶¹ Greenlining objects to AT&T’s market definition.

The market which AT&T defines as a combined mobile telephony/broadband services market is, in fact, two separate submarkets: a more expensive, high average return per unit (ARPU) mobile wireless services market (the “high ARPU market”), and a less expensive, value-oriented mobile wireless services market (the “value-oriented

⁵² See, e.g., Brown Shoe, 370 U.S. at 325; FTC v. Warner Communs., 72 F.2d 1156 (9th Cir. 1984); Beatrice Foods Co. v. FTC, 540 F.2d 303 (7th Cir. 1976).

⁵³ See, e.g., Beatrice Foods, 540 F. 2d at 308.

⁵⁴ See, e.g., Lucas Auto Eng’g v. Bridgestone/Firestone, Inc., 275 F.3d 762 (9th Cir. 2001), RSR Corp. v. FTC, 602 F.2d 1317 (9th Cir. 1979).

⁵⁵ See, e.g., Brown Shoe, 370 U.S. at 326; Monfort of Colo., Inc. v. Cargill, Inc., 761 F.2d 570, 579 (10th Cir. 1985).

⁵⁶ See, e.g., Warner Communs., 742 F.2d at 1163; RSR Corp., 88 F.T.C. 800, *aff’d*, 602 F.2d 1317 (9th Cir. 1979).

⁵⁷ See United States v. Aluminum Co. of Am., 377 U.S. 271, 275-276 (1964).

⁵⁸ See, e.g., RSR Corp., 602 F.2d at 1317; Bendix Corp. v. FTC, 450 F.2d 534, 537 (6th Cir. 1971).

⁵⁹ International Tel. & Tel. Corp. v. General Tel. & Elec. Corp., 518 F.2d 913, 932 (9th Cir. 1975) (referring to indicia listed in Brown Shoe, 370 U.S. 294).

⁶⁰ Application at 72, citing Order re Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC, 23 FCC Rcd 17444, 17470 ¶ 47 (2008) (hereafter, Verizon/ALLTEL Order).

⁶¹ See AT&T/Cellco Order, 25 FCC Rcd at 8721 ¶ 35.

market.”⁶² AT&T draws this distinction in its own application, noting that AT&T, Verizon & Sprint offer contract-based,⁶³ higher-priced services,⁶⁴ as well as more advanced networks and devices,⁶⁵ while value-oriented providers like MetroPCS and Leap offer low-priced,⁶⁶ no-contract⁶⁷ services that appeal to value-conscious consumers.⁶⁸ AT&T further notes in its Application that these two markets can be readily distinguished by their differing products, customers, and prices.

i. High ARPU and Value Conscious Providers Offer Substantially Different Products.

High ARPU and value-conscious providers offer significantly different products. Verizon, Sprint and AT&T primarily offer “contract” wireless services;⁶⁹ MetroPCS and Leap offer primarily offer no-contract, unlimited use services.⁷⁰ High ARPU and value-conscious providers also differ in terms of the handsets and devices they offer. AT&T, Sprint and Verizon offer more high-end, advanced handsets.⁷¹ AT&T compares T-Mobile’s devices to those of MetroPCS and Leap, and describes them as inferior to those offered by AT&T, Verizon, and Sprint.⁷²

High ARPU and value-conscious providers have distinctly different “churn” rates—the percentage of total customers who switch providers. In the last quarter of 2010, AT&T’s churn was 1.32 percent, Verizon’s was 1.34 percent, and Sprint’s was 2.44

⁶² There are a number of additional relevant markets in addition to the services markets described in this Petition. For example, a compelling argument could be made that the relevant market is GSM-compliant phones, or wholesale spectrum. However, discussion of those, or other, relevant markets is beyond the scope of this Petition.

⁶³ Carlton Decl. at ¶¶ 89 (AT&T), 91 (Verizon), 97 (Sprint).

⁶⁴ Application at 78-82.

⁶⁵ *Id.*

⁶⁶ *Id.* at 12.

⁶⁷ *Id.* at 70

⁶⁸ *Id.* at 71.

⁶⁹ Carlton Decl. at ¶¶ 89 (AT&T), 91 (Verizon), 97 (Sprint).

⁷⁰ Carlton Decl. at ¶ 101; Christopher Decl. at ¶¶ 20, 45.

⁷¹ Christopher Decl. at ¶ 33; *see also*, Carlton Decl. at ¶ 96.

⁷² Christopher Decl. at ¶ 35.

percent.⁷³ Churn rates for value-conscious providers were notably higher—MetroPCS had a churn rate of 3.5 percent,⁷⁴ while Leap had a churn rate of 4.0 percent.⁷⁵ These differences in churn rates, contract or no-contract service, and devices indicate that high ARPU and value-conscious providers offer different products.

ii. High ARPU and Value Conscious Providers Serve Substantially Different Customers.

Value-conscious subscribers are, by AT&T's own admission, from a significantly different demographic than AT&T's subscribers.⁷⁶ In their petition AT&T states that, unlike the customer base for high ARPU providers, T-Mobile's customer base is more value oriented towards no-contract services.⁷⁷ AT&T notes that MetroPCS, Leap, and other value providers target these same value-conscious customers.⁷⁸ Low-income consumers tend to be value oriented and subscribe to value-conscious services. Low-income consumers tend to avoid high ARPU plans because of high costs, or because they do not meet high ARPU providers' requirements.⁷⁹

It appears that AT&T itself views high ARPU and value-conscious customers as separate groups; AT&T repeatedly asserts that it expects T-Mobile's value-conscious customers to migrate to value-conscious providers. For example, AT&T states that T-Mobile and AT&T are not "close competitors," and that value-conscious providers could

⁷³ Christopher Decl. at ¶ 23.

⁷⁴ *Id.* at ¶ 61.

⁷⁵ *Id.* at ¶ 62. T-Mobile's churn rate for that period was 3.6 percent (*Id.* at ¶ 23). In its Application, AT&T argues that T-Mobile's high churn rates are a sign that T-Mobile is not a competitive threat to AT&T. (Application at 100-101). Interestingly, this statement conflicts with AT&T's assertion in the Commission's recent net neutrality proceedings; at that time, AT&T asserted that high churn rates were a sign that a market was competitive. AT&T, Comment, In the Matter of Preserving the Open Internet Broadband Industry Practices 3, WC Docket No. 07-52 (2010).

⁷⁶ Application at 99.

⁷⁷ *Id.* at 102.

⁷⁸ *Id.* at 98.

⁷⁹ See Catherine J. K. Sandoval, Comment, In the Matter of Framework for Broadband Internet Service 7, GN Docket No. 10-127 (2010).

fill “the competitive role T-Mobile USA occupies today.”⁸⁰ AT&T further claims that, post-transaction, value-conscious providers “can quickly replace the diminished market role T-Mobile USA plays today,”⁸¹ and that “[i]n short, MetroPCS, Leap, and others can fill any gap T-Mobile USA might leave in the competition for value-conscious consumers when the transaction is completed.”⁸² By AT&T’s own admission, high ARPU and value-conscious providers target distinct groups of customers.

iii. High ARPU and Value Conscious Providers Offer Substantially Different Prices.

High-ARPU providers charge higher prices, at least in part because consumers are willing to pay more for preferred handsets and data offerings.⁸³ AT&T competes on price with Verizon and Sprint; Verizon and AT&T share “a virtually identical tiered pricing structure.”⁸⁴ AT&T has historically had to respond to Sprint on pricing.⁸⁵

There is some indication that high ARPU providers respond to price changes by value-conscious providers;⁸⁶ however, prices for value-conscious services tend to be roughly half that of prices for high ARPU services.⁸⁷ For example, MetroPCS offers unlimited voice, text, and data plans for \$40-60 per month. A comparable plan from AT&T would cost \$114.99, from Verizon, \$119.98, and from Sprint, \$109.99.⁸⁸ Similarly, Leap’s service plans cost about half the price of AT&T’s service plans.⁸⁹ As

⁸⁰ Application, *supra* note 3, at 70.

⁸¹ *Id.* at 13.

⁸² *Id.* at 99.

⁸³ Fourteenth Report, Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, 25 FCC Rcd 11407, 11472 ¶ 93 (May 20, 2010) (hereafter, Fourteenth Wireless Report).

⁸⁴ *Id.*

⁸⁵ Christopher Decl. at ¶¶ 40-44.

⁸⁶ Fourteenth Wireless Report at 92 (citations omitted).

⁸⁷ *See* Christopher Decl. at ¶¶ 45, 51-52.

⁸⁸ Christopher Decl. at ¶ 51. AT&T’s \$114.99 would include unlimited voice and text, but a cap on data use. *Id.*

⁸⁹ Christopher Decl. at ¶ 52.

discussed above, low-income consumers are drawn to value-conscious providers, no doubt because of the significantly lower cost.

iv. High ARPU and Value-Conscious Services Are Distinct Product Markets.

High ARPU and value-conscious services offer very different products with very different characteristics. Additionally, high ARPU and value-conscious providers serve very different customers and offer significantly different prices. If a value-conscious provider were to implement a SSNIP, customers who left that provider would switch to another value-conscious provider. By AT&T's own admission, a value-conscious consumer facing higher prices imposed by AT&T would switch to a value-conscious provider like MetroPCS or Leap, and not to a high ARPU provider.⁹⁰ Accordingly, the relevant product market is the value-conscious wireless services market.

b. The Relevant Geographic Market Is The Local Market.

In addition to determining the product market, the Commission also determines the relevant geographic market.⁹¹ In evaluating the geographic market, courts and agencies try to "find the area or areas to which a potential buyer may rationally look for the goods or services he seeks."⁹² Greenlining agrees with AT&T's analysis that the geographic market is "local," i.e., areas where consumers "live, work, and travel on a regular basis."⁹³ This is particularly true of low-income consumers, who are less likely to have an internet connection at home, and are more likely to only access the internet via cell phone;⁹⁴ this makes it more difficult for low-income consumers to shop online.

⁹⁰ Application at 98.

⁹¹ Merger Guidelines at 13.

⁹² U.S. v. Grinnell Corp., 384 U.S. 563, 588 (1966).

⁹³ Application at 73 (citation omitted).

⁹⁴ Pew Mobile Access Report, *supra* note 15, at 10.

Accordingly, the relevant geographic market is the local area where consumers live, work, and travel on a regular basis.

c. The Relevant Market Consists of Local, Value-Conscious Services.

While AT&T is a high ARPU provider, the proposed transaction is not removing a competitor from the high ARPU services market. Rather, the transaction is removing a competitor from the value-conscious services market, and the competitive effects of the transaction will impact the value-conscious services market. Value-conscious T-Mobile customers faced with a SSNIP would switch to another value-conscious service provider, and would not switch to a high ARPU service provider. Accordingly, the relevant market is a local, value-conscious wireless services market.

d. The Proposed Transaction Will Result in Reduced Competition in the Value Conscious Service Market.

AT&T argues that the market is currently competitive, relying on the Commission's finding that approximately three-fourths of Americans live in areas with at least five facilities-based wireless providers.⁹⁵ However, this argument relies on AT&T's incorrect definition of the relevant market which conflates the high ARPU and value-conscious markets.⁹⁶ Most cellular marketing areas (CMAs) are served by only two or three value-conscious providers; in the overwhelming majority of those CMAs, T-Mobile is one of those providers.⁹⁷ For example, AT&T lists 202 CMAs where AT&T has reached the Commission's spectrum screen.⁹⁸ T-Mobile is a competitor in 192 of those 202 CMAs. In 28 of those CMAs T-Mobile is the only value-conscious or regional

⁹⁵ See Application at 70.

⁹⁶ See section II.B.1, *supra*.

⁹⁷ See Application, Appendix B.

⁹⁸ See Application, Appendix C.

provider; in 105, there is one value-conscious or regional provider other than T-Mobile; in 55, there are two value-conscious or regional providers other than T-Mobile.⁹⁹

If the Commission approves the transaction, the vast majority of CMAs will be left with only one or two value-conscious service providers.¹⁰⁰ Based on AT&T's own data, of the 202 CMA's in which AT&T has reached the Commission's spectrum screen, four will have three value-conscious or regional providers, 61 will have two value-conscious or regional providers, 105 will have only one value-conscious or regional provider, and 32 will have no value-conscious or regional provider whatsoever.¹⁰¹ Of the 50 largest cities in the country, at least 6 cities will have only 2 value-conscious providers, at least 29 will have only one such provider, and one will have no value-conscious provider whatsoever.¹⁰² The result will be widespread monopolies and duopolies in the value-conscious service market, and substantially less competition in the value-conscious wireless services market.¹⁰³

⁹⁹ See Application, Appendix B.

¹⁰⁰ *Id.*

¹⁰¹ See Application, Appendix A.

¹⁰² *Id.* AT&T's appendix contains data for only thirty-six of those fifty cities. Based on information about cell phone providers from wirelessadvisor.com, 12 cities would have only 2 value-conscious providers, 37 cities would have only 1 value-conscious provider, and one city (Seattle, the 23rd largest city in the United States) would have no value-conscious provider whatsoever.

¹⁰³ The Herfindahl-Hirschman Index (HHI) will, of course, have to be calculated on a CMA-by-CMA basis. However, there is every indication that T-Mobile's elimination from the market will result in higher market concentration. Those areas with only one value-conscious provider remaining will, of course, have an HHI of 10,000, the highest possible.

It is difficult to predict the market concentration that will exist in areas with more than one remaining value-conscious provider, because it is difficult to predict which provider T-Mobile's former value-conscious customers will choose. Depending on this migration, market concentration in those areas could increase or decrease. For example, Las Vegas consumers can currently choose between three value-conscious providers—T-Mobile, MetroPCS, and Leap, the three largest value-conscious providers in the country. Assuming that those providers' market shares mirror their national market share, the current HHI would be $((70*70)+(18*18)+(12*12))=5323$. (This, and the following, calculations assume that all of T-Mobile's customers are value-conscious customers; Greenlining does not have access to sufficient data to calculate what percentage of T-Mobile's customers are value-conscious customers). After the proposed transaction, if all of T-Mobile's customers became MetroPCS customers, the HHI would be $((88*88)+(12*12))=7887$. If T-Mobile's customers migrated equally to MetroPCS, and Leap, the HHI would be $((53*53)+(47*47))=5020$, a slight decrease. Regardless, because AT&T bears the burden of

Additionally, the proposed transaction will significantly decrease remaining value-conscious providers' incentives to compete. According to AT&T, value-conscious providers like MetroPCS and Leap are succeeding "because they tend to offer lower prices than T-Mobile USA for value-oriented services."¹⁰⁴ Without T-Mobile as the dominant competitor, value-conscious providers will have no incentive to keep prices low or improve offerings or quality of service.¹⁰⁵ Accordingly, the proposed transaction will substantially lessen competition within the market.

The vast majority of low-income consumers, as well as consumers of color who use value-conscious services, will be forced to choose from one, or at best two, value-conscious wireless providers. Those consumers who do not have a home internet connection, or who have limited transportation, will have to obtain service from a retailer, potentially in a very limited range, which will further reduce their choice of providers. These consumers, already affected by the reduced competition from providers, could also be affected by reduced competition from providers' retail establishments, whose management knows that consumers have no other choice but to shop at that establishment.

proving, by a preponderance of the evidence, that the proposed transaction will serve the public interest, it should also bear the burden of showing that market concentration in areas with more than one remaining value-conscious provider will not increase. (It should be noted that these numbers may vary slightly because of rounding).

¹⁰⁴ Application at 99.

¹⁰⁵ Leap has objected to the proposed transaction, apparently out of concerns that the merger would eliminate Leap's ability to compete in the larger wireless services market. Sara Jerome, Leap opposes AT&T merger (May 24, 2011), available at <http://thehill.com/blogs/hillicon-valley/technology/162985-leap-opposes-atat-merger>. Leap seems particularly concerned about the proposed transaction's effects on Leap's spectrum position (*Id.*); as discussed in § II.C., below, the transaction promises to significantly increase the load on the already limited amount of spectrum that smaller providers like Leap possess.

C. The Proposed Transaction Is Not In the Public Interest Because It Would Harm Low-Income Consumers.

Even if the Commission agrees with AT&T that (1) the market is the global wireless services market and (2) that the proposed transaction would not be anticompetitive, the transaction would still not be in the public interest because of its impact on low-income consumers. AT&T claims that the proposed transaction would benefit all consumers, by lowering AT&T's cost of serving additional subscribers and therefore encouraging AT&T to expand output and lower prices.¹⁰⁶ Assuming, for the sake of argument, that the proposed transaction would result in these benefits, it would only result in those benefits to consumers of high ARPU services. The proposed transaction promises to *increase* costs and *reduce* capacity to consumers of value-conscious services, i.e. low-income consumers. As discussed above,¹⁰⁷ the proposed transaction will result in virtually no competition between value-conscious service providers, resulting in increased costs and stagnant or reduced quality of service.

Additionally, the proposed transaction threatens to significantly reduce the amount of spectrum available for value-conscious services. Promoting a diversity of license holdings is in the public interest.¹⁰⁸ Consolidating AT&T and T-Mobile's license holdings will decrease the diversity of license holdings by removing T-Mobile as a market participant. The proposed transaction will not only decrease the diversity of license holdings overall, but will particularly decrease the diversity of license among licensees that serve value-conscious consumers. The transfer of T-Mobile's licenses to

¹⁰⁶ *Id.* at 42.

¹⁰⁷ See II.B.1.d., *supra*.

¹⁰⁸ AT&T/Celco Order at 8717 ¶ 23.

AT&T will leave fewer licenses in the hands of fewer value-conscious providers-- MetroPCS, Leap, and a handful of small, regional carriers.¹⁰⁹

T-Mobile currently provides service to about 33.6 million customers.¹¹⁰ The other four major value-conscious providers (MetroPCS, Leap, U.S. Cellular, and Cellular South) together provide service to another 21.6 million customers.¹¹¹ If the Commission approves the transaction, AT&T will use T-Mobile's spectrum to enhance AT&T's high ARPU network.¹¹² If, as AT&T assumes, T-Mobile's value-conscious customers move to providers like MetroPCS and Leap, the increase in subscribers could conceivably double the concurrent load on networks serving value conscious consumers. This increased network load will result in more dropped and blocked calls, slower speeds, and unreliable and slow applications—the very problems that AT&T claims that the proposed transaction will solve.

These consequences promise to further widen the digital divide. Low-income consumers and consumers of color, who disproportionately rely on mobile-only wireless

¹⁰⁹ If history is any indication, AT&T's next move will be to absorb these smaller regional carriers. When AT&T first built its wireline network, it initially refused to provide service to smaller, rural communities. As a result, members of those communities created their own, local wireline companies. AT&T, faced with competition from these "upstarts," began absorbing the local carriers through a combination of regulatory capture and refusals to allow interconnection. AT&T argued that a monopolistic network was necessary to expand national telephone coverage to everyone in the country, and to ensure that the phone network ran efficiently--the same arguments makes in this proceeding. See Milton J. Mueller, Jr., Universal Service: Competition, Interconnection and Monopoly in the Making of the American Telephone System 59 (1998).

¹¹⁰ T-Mobile, T-Mobile USA Reports First Quarter 2011 Results, available at <http://s.tmocache.com/Cms/Files/Published/0000BDF20016F5DD010312E2BDE4AE9B/5657114502E70FF3012FD6A0635D5CAB/file/TMUS%20Q1%202011%20Press%20Release-Final.pdf> (last accessed May 25, 2011). Unfortunately, Greenlining has no access to data indicating how many of T-Mobile's customers are high ARPU customers, and how many are value-conscious customers.

¹¹¹ MetroPCS, MetroPCS Reports First Quarter 2011 Results, available at <http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-newsArticle&id=1558297> (last accessed May 25, 2011) (8.9 million); Leap, Leap Reports First Quarter 2011 Results, available at <http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle&ID=1559644&highlight=> (last accessed May 25, 2011) (5.8 million); U.S. Cellular, U.S. Cellular Reports First Quarter 2011 Results, available at <http://phx.corporate-ir.net/phoenix.zhtml?c=106793&p=irol-newsArticle&ID=1560793&highlight=> (last accessed May 25, 2011) (6 million); Application at 90 (Cellular South, .88 million).

¹¹² Application at 34-35.

service, will have less dependable phone service.¹¹³ This is of particular concern to low-income families, many of whom do not have wireline phone service.¹¹⁴ Poor and/or inconsistent download speeds will further reduce these consumers' ability to access health information,¹¹⁵ government services,¹¹⁶ and employment opportunities.¹¹⁷ Higher dropped call rates mean that consumers may not be able to contact emergency services in dangerous and life-threatening situations.¹¹⁸

The proposed transaction will seriously harm the health, safety and welfare of a large number of the nation's citizens. While the proposed transaction could theoretically result in competition and improved service for high ARPU customers, it would do so at the expense of low-income consumers and communities of color. Such a consequence would only serve to widen the Digital Divide and would be contrary to the public interest.

D. The Proposed Transaction Is Not In The Public Interest Because It Would Delay Private Sector Deployment Of Advanced Services To Low-Income Consumers.

In deciding whether a transaction is in the public interest, the Commission considers whether the transaction will accelerate private sector deployment of advanced services.¹¹⁹ AT&T claims that one of the primary benefits of the proposed transaction would be to make Long Term Evolution (LTE) broadband services available to 97% of

¹¹³ *Id.*

¹¹⁴ Janice A. Hauge, Eric P. Chiang, and Mark A. Jamison, More than a Lifeline: Low-Income Households' Telecommunications Preferences 5 (2008), available at http://warrington.ufl.edu/purc/purcdocs/papers/0804_Hauge_More_Than_A.pdf.

¹¹⁵ See The Children's Partnership, Information Technology Making a Difference in Children's Lives: An Issue Brief for Leaders for Children, Digital Opportunity for Youth Issue Brief No. 4 (2008).

¹¹⁶ See ALA Office for Research & Statistics, U.S. Public Libraries & E-Government Services 2, (2010), available at http://www.ala.org/ala/research/initiatives/plftas/issuesbriefs/brief_e-gov_june.pdf.

¹¹⁷ See William H. Leher, Carlos A. Osorio, Sharon E. Gillett, & Marvin A. Sirbu, Measuring Broadband's Economic Impact, Broadband Properties 3 (December 2005).

¹¹⁸ See E Casey Lide, Balancing the Benefits and Privacy Concerns of Municipal Broadband, 11 N.Y.U.J. Legis. & Pub. Pol'y 467, 470 (2008).

¹¹⁹ AT&T/Cellco Order at 8717 ¶ 23.

the country.¹²⁰ However, given AT&T's plan to abandon value-conscious subscribers, it would be more accurate to state that AT&T plans to make LTE services available to 97% of *high ARPU subscribers* in the country. While high-ARPU consumers may arguably benefit from AT&T's expanded coverage, low-income value-conscious consumers will not, because they will not be able to afford high ARPU services, which are typically twice that of value-conscious services.¹²¹

AT&T further claims that its deployment of LTE networks will bring more wireless broadband services to African-Americans and Latinos, thus closing the Digital Divide.¹²² However, AT&T does not provide any real commitments to achieve these results and does not in any way address the barrier of affordability, which prevents many low-income, African-American and Latino consumers from taking advantage of wireless broadband services. The proposed transaction will not result in the deployment of advanced services to low-income consumers or communities of color.

In fact, the proposed transaction could potentially *slow* deployment of LTE services to low-income consumers. MetroPCS and Leap are currently building out LTE networks.¹²³ As discussed above, AT&T expects T-Mobile's value-conscious subscribers to migrate to providers like MetroPCS and Leap, potentially doubling the number of subscribers on value-conscious networks. Value conscious providers may, therefore, have to use spectrum currently marked for LTE deployment to handle this increased demand. This need will delay, if not outright prevent, value-conscious providers from implementing LTE services to their customers.

¹²⁰ Application at 1.

¹²¹ See § II.B.1.a.iii, *supra*.

¹²² See Application at 59-61.

¹²³ Application at 85 (MetroPCS), 88 (Leap).

In a sense, AT&T is asking the Commission to help relieve AT&T's "spectrum crunch" by imposing a spectrum crunch on value-conscious providers. While this may be good news for AT&T customers and stockholders, it will seriously harm value-conscious consumers, who will face dropped calls and lower quality of service, and will have to wait even longer for next-generation services. The proposed transaction promises to delay the deployment of advanced services to those consumers, and is against the public interest.

E. The Proposed Transaction Is Not In the Public Interest Because It Would Eliminate Jobs.

T-Mobile currently employs approximately 42,000 people in the United States.¹²⁴ If the Commission approves the proposed transaction, AT&T and T-Mobile will combine their call center and billing operations, resulting in a reduction in staff.¹²⁵ Additionally, AT&T will integrate many of T-Mobile's cell sites into AT&T's network in those areas where AT&T's network is congested.¹²⁶ Other sites will be decommissioned.¹²⁷ It is fair to assume that the integration and decommissioning of cell sites will result in the integration and decommissioning of maintenance crews, resulting in more lost jobs. Similarly, AT&T will "optimize the distribution network to both enhance retail coverage and customer service while eliminating significant cost;"¹²⁸ again, it is not unreasonable to assume that this optimization will result in the closure of retail stores and subsequent job losses.

¹²⁴ T-Mobile, Company Information, available at http://www.t-mobile.com/Company/CompanyInfo.aspx?tp=Abt_Tab_CompanyOverview (last accessed May 25, 2011).

¹²⁵ Applicants' Declaration of Rick L. Moore ¶ 37.

¹²⁶ Applicant's Declaration of William Hogg ¶ 44.

¹²⁷ Moore at ¶ 34.

¹²⁸ *Id.* ¶ 35.

It is likely that these job losses will occur in areas where having multiple work crews or retail stores would be redundant. These areas will likely be (1) areas where AT&T's network is not facing capacity constraints--most likely, rural areas and smaller communities, and (2) areas where AT&T and T-Mobile's networks overlap completely--high-density, urban areas. Many of these jobs will be low-income jobs, such as entry-level retail jobs.¹²⁹

While AT&T heralds the proposed transaction as having the long-term potential to create "benefits for job creation and job improvement,"¹³⁰ AT&T does not address the thousands, if not tens of thousands, AT&T and T-Mobile employees, many of whom are members of low-income communities, who stand to lose their jobs if the Commission approves the transaction. Additionally, the closure of retail establishments will quite probably cause increased urban blight, declining property values, residential instability, and increased crime.¹³¹ These consequences would seriously harm low-income families and the public interest.

F. The Proposed Transaction Is Not In The Public Interest.

The proposed transaction promises to seriously harm low-income consumers. It will reduce competition and cause increased prices and reduced call quality in the already highly-concentrated value-conscious wireless services market; those services' low prices and no-contract terms often make them the only option for low-income consumers. The proposed transaction will further limit the spectrum available for value-conscious wireless services; low-income consumers and communities of color will have restricted

¹²⁹ Greenlining does not have access to data regarding the specific number of threatened low-income jobs.

¹³⁰ Application at 56-57.

¹³¹ See Bernard E. Harcourt & Jens Ludwig, Broken Windows: New Evidence from New York City and a Five-City Social Experiment, 73 U. Chi. L. Rev. 271, 281 (2006).

access to jobs, health information, and government services. The transaction will also delay deployment of next-generation wireless services to these consumers and eliminate many low-income jobs. These severe and serious harms to low-income consumers and communities of color, who heavily depend on value-conscious services, are against the public interest.

AT&T claims that the transaction would provide a number of potential benefits, primarily to AT&T customers; these purported benefits will supposedly “trickle down” to all consumers. Greenlining disagrees with AT&T’s claim of trickle-down benefits, but even if AT&T’s claims are true, the harm to the public interest caused by the transaction’s effects on low-income consumers and communities of color far outweighs the potential benefits to the public interest. Accordingly, the proposed transaction is not in the public interest, and the Commission should deny the Application.

III. IF THE COMMISSION APPROVES THE TRANSACTION, IT SHOULD IMPOSE CONDITIONS TO PROTECT THE PUBLIC INTEREST.

The Commission can prescribe restrictions or conditions that may be necessary to carry out the provisions of the Communications Act.¹³² The Commission can use its “...extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits.”¹³³ Should the Commission approve the applications, Greenlining asks that the Commission take measures to ensure that the public interest is protected. The Commission should ensure that there is sufficient spectrum to both (1) provide quality service for low-income consumers and communities of color and (2) ensure the deployment of next-generation

¹³² 47 U.S.C. § 303, subdivision (f); AT&T/Cellco Order at 8717-8718.

¹³³ AT&T/Cellco Order at 8718.

wireless services to those groups. Additionally, the Commission should hold AT&T to its commitments to pass the economic benefits of the transaction through to consumers, promote diversity, and bridge the digital divide.

CONCLUSION

AT&T apparently wants to ensure quality, innovative, next-generation wireless phone service to Americans—as long as those Americans generate high revenue for AT&T. AT&T's goals—to expand coverage and quality of service, deploy next-generation services, and bridge the digital divide—are laudable. However, the proposed transaction will not bring these improvements to low-income consumers, a group which already has limited access to the wireless devices, services, and applications which are crucial to success in American society. The proposed transaction promises to reduce quality of service, delay the deployment of next-generation services, and widen the Digital Divide between higher-income and lower-income citizens. Even if the proposed transaction brings about all of the benefits AT&T claims, the harms to low-income consumers far outweigh those purported benefits, and would harm the public interest as a result.

The importance of wireless broadband as a means to reduce the Digital Divide cannot be understated. The Commission itself noted that low-cost wireless broadband was a significant resource as a means of addressing the low rate of broadband adoption among low-income consumers. Low-income consumers and communities of color cannot be left further and further behind as technology advances.

The National Broadband Plan notes the central role that broadband plays in the social and economic life of Americans, listing the percentage of broadband users who

engaged in certain online activities, including: bought a product (83%), received local or community news (80%), visited a government website (79%), banking (69%), received information or applied for a job (60%), received advice from government about a health or safety issue (54%), took a class online (24%).¹³⁴ Electronic mail is increasingly replacing telephone calls as a basic and necessary means of communication. For people who use the internet, 59% send or read e-mail as part of a typical day.¹³⁵

¹³⁴ See National Broadband Plan, p. 16, Exhibit 3-B.

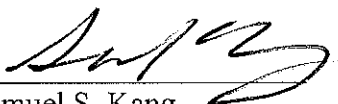
¹³⁵ See Pew Internet & American Life Project, Internet, Broadband, and Cell Phone Statistics 11, (January 5, 2010) available at http://www.pewinternet.org/~media/Files/Reports/2010/PIP_December09_update.pdf.

Thus, broadband is a resource of incredible importance for survival and advancement in this country. While AT&T promises to deploy T-Mobile's spectrum to bring more broadband access to Americans, low-income consumers cannot be further left behind.


For the above-stated reasons, Greenlining respectfully requests that the Commission deny the proposed transaction.

Respectfully submitted,


Dated: May 31, 2011



Samuel S. Kang
General Counsel
The Greenlining Institute



Enrique Gallardo
Legal Counsel
The Greenlining Institute



Paul S. Goodman
Consulting Counsel

Declaration of Samuel S. Kang

My name is Samuel S. Kang. I am the General Counsel of the Greenlining Institute.

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

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

I am familiar with the contents of the foregoing Petition to Deny. The factual assertions made in the petition are true to the best of my knowledge and belief.

I declare that the foregoing is true and correct.

Executed on May 31, 2011.



Samuel S. Kang

Certificate of Service

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

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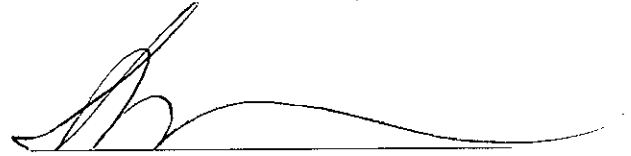
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A handwritten signature in black ink, appearing to read 'Paul S. Goodman', written over a horizontal line.

Paul S. Goodman