Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
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

REPLY OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
TO OPPOSITIONS TO PETITIONS TO DENY

Pursuant to the Public Notice released on April 28, 2011 by the Federal Communications Commission ("FCC" or "Commission"),[1] the National Association of State Utility Consumer Advocates ("NASUCA")[2] files this reply to Oppositions to the Petitions to Deny the proposed takeover of T-Mobile USA Inc. ("T-Mobile") by AT&T Inc. ("AT&T"). NASUCA did not itself file a Petition to Deny in initial comments, but on June 7, 2011 NASUCA filed an ex parte letter to support the Petitions to Deny filed by NASUCA members the New Jersey Division of Rate Counsel ("NJ Rate Counsel") and Utility Consumers' Action Network ("UCAN").[3]

It appears that only one formal Opposition was filed, by the Applicants.

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[1] DA 10-993 (rel. May 28, 2010).

[2] NASUCA is a voluntary national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

[3] The UCAN Petition was filed jointly with New Media Rights and the Privacy Rights Clearinghouse.

Comments opposing the various Petitions to Deny were also filed by The Free State Foundation ("Free State"), whose comments can be aptly summarized by their support of the supposed "general rule that mergers produce procompetitive or at least benign effects…."[4] This is of course inconsistent with central tenets of both the Commission's review of mergers and the central theme of American anti-trust law, especially for mergers of this size and consequence.[5]

AT&T, of course, cites to the support of the merger from public officials and organizations from around the country.[6] But much of this support must be viewed as suspect given the millions of dollars that AT&T has plowed into inciting this support.[7]

More substantively, if not more importantly, it does not appear that AT&T's Opposition raises any new issues that were not considered in the NJ Rate Counsel and UCAN Petitions to Deny. Thus NASUCA would again refer the Commission to those Petitions.

But NASUCA would also commend to the Commission's attention the Declaration of Dr. Lee Selwyn included with the comments of the Ad Hoc Telecommunications Users Group. Dr. Selwyn correctly points out the central logical flaw in the Applicants' arguments:

> The central theme of the "public interest" showing being advanced by AT&T Mobility and T-Mobile USA ("the Applicants") in support of their merger is that by combining their networks and other assets, the two carriers will realize substantial efficiencies and associated cost savings

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[4] Free State Comments at 2.

[5] Despite the fact that this statement alludes to a presentation by the Justice Department's Chief of the Antitrust Division (id. at 8), it is clear that the general rule does not apply here.

[6] AT&T Opposition at 2-3.

[7] See http://www.politico.com/news/stories/0611/56660.html.

> that would not arise were the two firms to continue their separate existence. They claim that these efficiency gains will result in an increase in total industry output and thus produce lower prices than would otherwise prevail in the absence of the transaction. … But the Applicants – which even as separate firms are the second and fourth largest providers of wireless services in the United States with 31.5% and 11.0% of the national market, respectively – here argue that even entities of their current size, scale, and scope are not individually big enough to realize the "immense network and spectrum synergies" that would arise if permitted to join their networks and operations. But the properties being identified by the Applicants as producing significant efficiency gains for them, including the advantage that combining their operations will afford them in overcoming the many and formidable barriers to organic expansion of their separate networks, **all work to create cost and operational efficiencies that smaller rivals will be incapable of replicating**. If the various firms being portrayed by the Applicants as their "competitors" are unable, due to the considerably smaller scale and scope, to achieve comparable levels of costs and production efficiencies, they cannot provide a meaningful competitive challenge to a post-merger AT&T/T-Mobile.[8]

Thus the Applicants misstate both the current level of competition and the future capabilities of the competitors of a merged AT&T/T-Mobile.

This misstatement includes the Applicants' continual characterization that those who raise concerns about the merger are focused on "duopoly,"[9] as if only the magic number of two should raise competitive concerns. This ignores the significant current market power of AT&T, the far-more-significant market power of the combined AT&T/T-Mobile, and the fact that, in terms of national scale and scope, there will be only three carriers: AT&T/T-Mobile, Verizon and (a distant third) Sprint. While a "triopoly" may be somewhat more competitive than a duopoly, it still invokes market power that is not in the public interest.

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[8] Declaration of Lee L. Selwyn (May 31, 2011) at i (emphasis in original deleted; emphasis added).

[9] Opposition at 4, 9, 12, 16.

Finally, speaking of the public interest, the Applicants contemptuously dismiss the merger opponents' "long wish-list of non-merger-related 'conditions' designed to extract regulatory favors that they cannot persuade the Commission to grant them in rulemaking proceedings of general applicability."[10] Although NASUCA does believe that the Commission has been far more tolerant of industry mergers than it should have been, it cannot be overlooked that in every one of the major mergers approved in recent years, the Commission has imposed significant conditions that were – in the Commission's consideration – necessary in order for the merger to be viewed as benefiting the public interest. If the Commission is to approve this merger, it will take another long list of conditions to offset the likely harms of this combination.

Respectfully submitted,

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[10] Opposition at 18.