

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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CELLULAR SOUTH, INC.  
1018 Highland Colony Parkway  
Suite 300  
Ridgeland, Mississippi 39157

and

CORR WIRELESS  
COMMUNICATIONS, L.L.C.  
4717 University Drive N.W.  
Suite 102  
Huntsville, Alabama 35816

Plaintiffs,

v.

AT&T, INC.  
208 S. Akard Street  
Dallas, Texas 75202-2233,

AT&T MOBILITY LLC  
1025 Lenox Park Blvd  
Atlanta, Georgia 30319

T-MOBILE USA, INC.  
12920 SE 38<sup>th</sup> Street  
Bellevue, Washington 98006,

and

DEUTSCHE TELEKOM AG  
Friedrich-Ebert Allee 140  
53113 Bonn, Germany

Defendants.

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COMPLAINT FOR  
INJUNCTIVE RELIEF

Case No.:

Filed:

## **COMPLAINT**

Cellular South, Inc. (“Cellular South”) and Corr Wireless Communications, L.L.C. (“Corr Wireless”) (collectively referred to as “Cellular South”) bring this action for injunctive relief under the antitrust laws of the United States to enjoin the acquisition by AT&T, Inc., and its wholly owned subsidiary AT&T Mobility LLC (together, “AT&T”) of T-Mobile USA, Inc. (“T-Mobile”), a subsidiary of Deutsche Telekom AG (“Deutsche Telekom”). In support of its Complaint, Cellular South alleges the following:

### **PARTIES**

1. Cellular South, Inc. is a Mississippi corporation whose principal place of business is 1018 Highland Colony Parkway, Suite 700, Ridgeland, Mississippi 39157. Corr Wireless Communications, L.L.C. is an Alabama limited liability company and a wholly owned subsidiary of Cellular South, whose principal place of business is 4717 University Avenue N.W, Suite 102, Huntsville, Alabama 35816. For convenience, unless otherwise stated, references to Cellular South include references to both Cellular South, Inc. and Corr Wireless.

2. AT&T, Inc. is a Delaware corporation whose principal place of business is 208 S. Akard Street, Dallas, Texas 75202-2233. AT&T, Inc. has entered into an agreement with Deutsche Telekom AG to acquire T-Mobile.

3. AT&T Mobility LLC is a Delaware limited liability company whose principal place of business is 1025 Lenox Park Blvd, Atlanta, Georgia 30319. It provides mobile wireless telecommunications services in the United States. AT&T Mobility LLC’s operations would be merged with T-Mobile's as a result of the proposed transaction.

4. Defendant T-Mobile USA, Inc., is a Delaware corporation whose principal place of business is 12920 SE 38th Street, Bellevue, Washington 98006. T-Mobile is a wholly owned

subsidiary of Deutsche Telekom AG. T-Mobile USA, Inc. provides mobile wireless telecommunications services in the United States.

5. Defendant Deutsche Telekom AG is a German corporation with its principal place of business at Friedrich-Ebert Allee 140, 53113 Bonn, Germany. Deutsche Telekom AG has entered into an agreement with AT&T, Inc. for T-Mobile to be acquired from Deutsche Telekom AG for approximately \$39 billion in cash and stock.

### **JURISDICTION AND VENUE**

6. Cellular South brings this action pursuant to Section 16 of the Clayton Act, as amended, 15 U.S.C. § 26, to prevent and restrain AT&T, T-Mobile, and Deutsche Telekom from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. Such a violation threatens to substantially lessen competition and cause significant losses and damages to Cellular South.

7. AT&T and T-Mobile sell mobile wireless services to individuals and businesses, and conduct related operations, in the flow of interstate commerce in the United States, and their activities substantially affect interstate commerce. Defendant Deutsche Telekom has entered into an agreement with AT&T that would, if permitted, have adverse effects on competition and consumers in a number of relevant markets in the United States. The Court has subject matter jurisdiction over this action and jurisdiction over the parties pursuant to 15 U.S.C. § 26 and 28 U.S.C. §§ 1331 and 1337, and through Deutsche Telekom's actions in and affecting United States commerce.

8. Venue is proper in this judicial district pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391.

## NATURE OF THE ACTION

9. AT&T is a wireless telecommunications carrier operating throughout the United States. AT&T and Verizon Wireless, another nationwide telecommunications carrier, together dominate the United States wireless market. Both have grown by absorbing other carriers and other means so that they now constitute “the Big Two” – and each is far larger than any of the other wireless carriers in the United States. Over recent years, the Big Two have increased market share steadily, while other operators have struggled to maintain market share. Based on publicly available information, Cellular South believes that, in the second quarter of 2011, the major wireless carriers in the United States had approximately the following number of customers nationwide:

Verizon	106,292,000
AT&T	98,615,000
Sprint	51,843,000
T-Mobile	33,585,000
MetroPCS	9,080,000
Clearwire	7,648,000
US Cellular	5,968,000
Leap	5,746,000
Cellular South	887,000
ATN	639,000
Cincinnati Bell	487,000
NTELOS	425,000

*See* “Grading the top 10 U.S. carriers in the second quarter of 2011,” Fierce Wireless, <http://www.fiercewireless.com/special-reports/grading-top-10-us-carriers-second-quarter-2011>.

10. Thus, if the proposed merger of AT&T with T-Mobile is permitted to be consummated, AT&T will become the largest wireless carrier in the United States in terms of the number of wireless customers.

11. The dominance of the Big Two is stronger still when one looks at revenues and earnings. On information and belief, the Big Two currently share approximately 80% of industry revenues and about 90% of industry EBITDA (earnings before interest, taxes, depreciation and amortization). These disproportionate shares of revenues and earnings suggest the acquisition will further entrench the market share and market power of the Big Two in the future, as other carriers will struggle to make the necessary, new infrastructure investments, which likely must be based on revenues and earnings.

12. As a result of its size, AT&T already enjoys significant market power over all aspects of the national wireless market and, as a result, wields significant influence over the purchase of wireless devices generally (including cell phones, smartphones and tablets) as well as over the provision of roaming services required by regional carriers, such as Cellular South. The proposed merger will allow AT&T to increase this influence by eliminating T-Mobile as an independent source of demand for wireless devices and an independent roaming partner. The resulting competitive harm will be felt by regional carriers, including Cellular South, who will find it harder to secure both wireless devices at competitive prices and times and nationwide roaming.

13. The merger of AT&T and T-Mobile is anticompetitive, and will result in consumers facing higher prices, less innovation, fewer choices, and reduced competition.

14. The merger constitutes a clear and unequivocal violation of antitrust merger law, resulting in market concentration far in excess of the thresholds established both by a long and uninterrupted line of Supreme Court precedent and by the U.S. Department of Justice ("DOJ") and Federal Trade Commission ("FTC") 2010 Horizontal Merger Guidelines.

15. For that and other reasons, the Department of Justice, on behalf of the United States of America, in the first attempt to block a telecommunications merger in more than a decade, filed suit alleging that the combination “would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. §18” and seeking a permanent injunction prohibiting the merger. Complaint, *U.S. v. AT&T, Inc., et al.*, Case: 1:11-cv-01560, United States District Court for the District of Columbia, at ¶3, at 3; ¶47, at 20-21. Fearing the same harms, the states and commonwealths of California, Illinois, Massachusetts, New York, Ohio, Pennsylvania, and Washington (“the States”), have joined the Department of Justice’s suit to protect their citizens, who comprise over one third of the total U.S. population. *See* Amended Complaint, *id.* (filed Sept. 16, 2010).

16. Sprint Nextel Corporation, the nation’s third largest wireless carrier, has filed a similar antitrust suit and alleged that “the unavoidable – and intended – result of the transaction would be a substantial lessening in competition throughout the wireless industry, which would injure consumers, Sprint, and numerous other industry participants.” Complaint, *Sprint Nextel Corp. v. AT&T, Inc., et al.*, Case 1:11-cv-01600, United States District Court for the District of Columbia, ¶11, at 6. Sprint also seeks permanent injunctive relief prohibiting the merger. *Id.* at 67.

17. While the complaints of the DOJ (and the States) and Sprint accurately set forth the anticompetitive effects of the proposed merger on national competition in the wireless

industry, Cellular South and other regional wireless carriers will suffer particular harm from the proposed merger. While it is true that regional wireless carriers such as Cellular South cannot compete with AT&T or T-Mobile on a nationwide basis, it is also true that Cellular South and other carriers like it provide absolutely essential competition in rural areas -- particularly on the basis of price and in the build-out of rural markets. The proposed merger, if consummated, would lead to further consolidation of the national carriers which, in turn, would further solidify AT&T's dominant market power in the areas in which it competes with Cellular South and would cause substantial harm to competition in those areas.

18. In its annual report to Congress on the state of competition in the wireless industry in May 2010, the Federal Communications Commission, unlike the same reports it generated for the previous six years, failed to find that the wireless industry was competitive. If the proposed merger is not blocked, the already concentrated and "uncompetitive" wireless industry will be dramatically and irreparably changed – for the worse. The nation and its millions of wireless customers will be left to the mercy of the Big Two – AT&T and Verizon – and all of the harm that such a duopoly will create.

19. Cellular South joins the Department of Justice, the States, and Sprint Nextel Corporation in their condemnation of the proposed merger and generally adopts the substance of the primary arguments and authorities set forth in their respective complaints, although Cellular South views the situation from the far different perspective of a regional carrier.

**COMPETITION PROVIDED BY REGIONAL CARRIERS  
SUCH AS CELLULAR SOUTH WILL BE LESSENER,  
AND MAY BE EXTINGUISHED ALTOGETHER,  
BY THE PROPOSED MERGER**

20. Cellular South is a family-owned Mississippi company which has grown into the largest privately held wireless carrier in the United States. Cellular South launched its wireless

service on the Mississippi Gulf Coast on February 4, 1988, using the first generation of wireless technology. Since then, Cellular South has invested more than \$700 million in its wireless network, which includes more than 1,400 cell sites, a high-speed wireless broadband network, and permanent microwave rings for redundancy around its service area. Cellular South provides flat-rate, unlimited voice and data plans, nationwide digital coverage (where available through roaming on another carrier's network), and third generation, or 3G, data service using CDMA technology. In 2010, Cellular South, Inc. acquired a carrier using GSM technology, Alabama-based Corr Wireless, thereby expanding its coverage in Alabama.

21. Cellular South (including Corr Wireless) currently serves more than 887,000 customers located in Mississippi, Tennessee, Alabama, Florida, and other surrounding states, many of which are located in rural areas.

22. Historically, regional wireless carriers like Cellular South have provided essential competition in the areas in which they operate -- especially as to price and in providing service in rural areas that have not been as attractive to the Big Two. None of the regional carriers individually, nor all of them collectively, possess the national footprint or number of customers to mount an effective counterweight to the Big Two on a national level. These regional carriers, however, provide some essential competition in various local markets they serve.

23. Cellular South and other regional carriers have provided lower prices to consumers in the areas they service. Such price competition is particularly important in the less affluent and rural areas of the country, which have been of less interest to the Big Two.

24. Regional carriers, such as Cellular South, have been more willing to develop and provide wireless services to rural areas than the Big Two. The development of wireless services

to rural areas by regional carriers has provided much needed service in those areas and has forced AT&T and Verizon to provide at least some service in those areas themselves.

25. This merger threatens the very existence of the regional carriers and will diminish the competition they provide in two important ways.

26. First, regional carriers like Cellular South already are at a distinct disadvantage in their ability to acquire the latest wireless devices in a timely fashion and at an affordable cost. AT&T's acquisition of T-Mobile would further consolidate an already concentrated wireless industry and remove one independent customer (T-Mobile) with millions of device customers from the already short list of those wireless carriers ordering devices from device manufacturers. All of the regional carriers together account for less than T-Mobile's subscriber base. Even collectively, these regional carriers will not be able to replace T-Mobile's demand for innovative and affordable devices. Regional carriers will not be able to obtain the latest wireless devices in a timely fashion and at reasonable cost. Competition will be directly harmed as a result, and consumers will be left with fewer choices, higher prices, and reduced innovation.

27. Second, the regional carriers, including Cellular South, cannot provide nationwide roaming by themselves because they do not have the nationwide networks to do so. Currently, only the four national carriers can provide effective roaming services to Cellular South and other regional carriers. The proposed merger would immediately reduce that number from four to three, and will reduce the number of potential GSM roaming partners from two to one. Moreover, as a practical matter, the proposed merger threatens to leave the Big Two in a position of near complete control of this national roaming market, with Sprint struggling to remain competitive because of the adverse consequences of the merger. Cellular South already has experienced difficulties in securing roaming agreements. By reducing the number of potential

roaming partners, the merger threatens dramatically to increase these difficulties. Cellular South and the other regional carriers will be forced to pay higher roaming prices from the Big Two – assuming that that they are able to obtain roaming agreements at all.

28. In short, the interests of current and future competition would not be protected by reviewing the merger only from the perspective of the national carriers (Verizon, AT&T, Sprint and T-Mobile) and without regard for the competition now provided by the regional competitors and that may be lost in the future.

### **THE RELEVANT PRODUCT MARKET**

29. The provision of mobile wireless services to consumers is a line of commerce or relevant product market within the meaning of the antitrust laws.

30. Mobile wireless services provide a unique offering to consumers and no reasonably interchangeable substitutes are available. A small but significant, non-transitory increase in the fees for mobile wireless services by a hypothetical monopolist would not result in enough customers switching to other communications services, such as wireline telephone service, to make the price increase unprofitable. Therefore, under the test set forth in the case law and the DOJ and FTC Horizontal Merger Guidelines, mobile wireless services to consumers constitutes a relevant product market.

### **THE RELEVANT GEOGRAPHIC MARKET**

31. The United States is a relevant geographic market within the meaning of the antitrust laws for all mobile wireless services to consumers.

32. The effect of the proposed acquisition also can be evaluated in local markets, in addition to a national market.

33. The FCC has evaluated the competitive effect of transactions in Component Economic Areas (“CEAs”) and in Cellular Market Areas (“CMAs”). Each individual CEA or CMA in which AT&T and T-Mobile compete also constitutes a relevant geographic market within the meaning of the antitrust laws for all mobile wireless services.

34. In particular, the merger would have an anticompetitive effect in the local markets in which Cellular South now provides service, which includes most of Mississippi, and some portions of Tennessee, Alabama, the Florida panhandle, and certain portions of other surrounding states (referred to as “Cellular South’s Existing Service Area”). Cellular South’s Existing Service Area is depicted on the map attached as Exhibit A. Cellular South’s Existing Service Area is the area in which Cellular South will suffer harm and one in which customers will suffer from loss or diminution of competition as the result of the proposed merger.

35. In addition to Cellular South’s Existing Service Area, Cellular South, through its wholly owned subsidiary, Cellular South Licenses LLC, has the spectrum licenses, resources, and ability to quickly develop 4G-LTE service in the additional areas for which it has acquired 700 MHz licenses and to become a major competitor in that larger area – except to the extent that the Defendants’ merger and subsequent conduct resulting from the merger prevent it from doing so. Generally, this area, which includes Cellular South’s Existing Service Area, is coextensive with most of Mississippi, Alabama, and Tennessee and also incorporates portions of surrounding Florida, Kentucky, Arkansas, and Louisiana. This geographic area is referred to as Cellular South’s Planned 4G-LTE Service Area, and is depicted on Exhibit B. Cellular South also will suffer harm in Cellular South’s Planned 4G-LTE Service Area, and customers in that area will also suffer from loss or diminution of competition as a result of the proposed merger.

## OVERVIEW OF WIRELESS SERVICES MARKET

36. There have been several generations of wireless technology in the United States. In the 1980s, mobile phones became operational using first generation analog technology (1G). In the 1990s, digital second generation technology, or 2G, emerged, and caused or coincided with an explosion in mobile phone usage. Digital 2G technology improved voice service, but did not allow significant data transmission. As the use of 2G phones became more widespread, the demand for data services (such as access to the Internet) and greater data transmission speeds grew. To accommodate these data needs, third generation technology (3G) emerged in and prevailed throughout the 2000s.

37. Cellular South currently operates a 3G wireless network in Cellular South's Existing Service Area. AT&T operates a 3G wireless network in much of Cellular South's Existing Service Area and nationally. T-Mobile also operates in portions of Cellular South's Existing Service area. T-Mobile provides wireless services in many of the most populous areas served by Cellular South, including the Memphis TN-AR-MS CMA. Indeed, the Department of Justice in its complaint has estimated that AT&T would enjoy a 49.6% post-merger market share in this CMA.

38. Although the early history of wireless communications (analog 1G services) was characterized by a single ecosystem in which all licensees had access to devices, network equipment, and roaming, AT&T and Verizon encouraged and caused the development of separate ecosystems for 2G/3G service, primarily as a result of developing unique technology platforms. AT&T operated on the GSM standard (which stands for "global system for mobile communications") for 2G/3G service, while Verizon provided 2G/3G service on CDMA standards (which stands for "code division multiple access"). During the period when 2G/3G

service has been predominant, AT&T and Verizon used their separate ecosystems to disadvantage smaller carriers.

39. Smaller competitors such as Cellular South and Corr Wireless were disadvantaged by these disparate 2G/3G ecosystems in multiple ways. Smaller carriers need standardized systems and devices, because they lack sufficient scale to purchase devices and network infrastructure systems made “just for them.” Moreover, smaller carriers need standardized systems because they must offer national roaming to remain competitive – and thus are disadvantaged if roaming options are limited by technological incompatibility. Although disadvantaged, regional carriers such as Cellular South and others have been able to survive, albeit with increasing difficulty.

40. Technology known as 4G-LTE is the latest generation of wireless technology. Unlike the 2G/3G technologies, in which there were two competing technologies, all of the wireless industry is moving toward this single, much improved technology standard. 4G-LTE service will be the “gold standard” of wireless service, offering very substantial improvements over existing 3G service for both consumers and carriers. In particular, 4G-LTE will provide very high data transmission rates – thus providing users unique features not available on 3G systems, such as high definition video and video conferencing features of mobile devices. It is anticipated that the 4G-LTE wireless system will provide a comprehensive IP solution in which multimedia applications and services can be delivered to the user on an “anytime, anywhere” basis with a satisfactorily high data rate, premium quality, and high security.

41. The use in the wireless market of smartphones, feature phones, tablet computers, and similar data-intensive devices is dramatically increasing; at the same time, the number of customers satisfied by voice-only service is steadily decreasing. For example, approximately

48% of Cellular South's current customers have smartphones or similar devices. Smartphone customers demand faster data transmission rates than can be made available using older existing technology – and thus will demand 4G-LTE service.

42. Because of the greatly increased speed that will be provided by 4G-LTE and the additional services which it will support, any wireless carrier that desires to remain competitive will be required to offer 4G-LTE service in the reasonably near future. An essential part of such 4G-LTE service will be the ability to offer appropriate 4G-LTE devices to customers.

43. The Big Two (AT&T and Verizon) are moving swiftly to implement 4G-LTE networks.

44. The advent of 4G-LTE service will require all carriers intending to offer such service to provide their customers with devices that (a) will interact with 4G-LTE service and (b) will also interact with the older 3G service so as to allow devices to operate in areas that are not yet served by the newer 4G-LTE service.

45. Without such devices, smaller carriers such as Cellular South cannot implement 4G-LTE service.

46. While Cellular South also will use other frequencies for 4G-LTE service, Cellular South has planned to implement 4G-LTE service primarily (but not solely) on the 700 MHz spectrum recently auctioned by the Federal Communications Commission ("FCC").

47. In early 2008, the FCC auctioned much of the 700 MHz spectrum in an auction known as Auction 73. Since there was no "spectrum cap" or other restrictions, AT&T and Verizon were able to purchase most of the low-frequency spectrum, winning 85% (by value) of the paired spectrum.

48. The 700 MHz spectrum will generally provide substantial technical and competitive advantages compared to higher frequencies that have been used for older wireless technologies. Lower frequency signals travel greater distances and penetrate buildings and other obstructions more effectively. Thus, lower frequencies (such as 700 MHz) will require fewer towers to serve larger geographical areas. Because of the ability of such lower frequency services to penetrate buildings and other obstructions, carriers offering such services based on 700 MHz frequencies should achieve greater consumer acceptance. This benefit of lower frequencies will be particularly important in rural areas since 700 MHz frequencies provide the ability to serve larger areas with fewer towers.

49. Because Cellular South's Existing Service Area and Cellular South's Planned 4G-LTE Service Area are primarily rural, the advantages of providing 4G-LTE service over the 700 MHz spectrum is vitally important to effective competition in rural areas because it can be built out with fewer cell sites and therefore less expensively than other spectrum used for wireless communications.

**THE ANTICOMPETITIVE IMPACT OF THE MERGER ON THE  
AVAILABILITY OF DEVICES TO CARRIERS  
OTHER THAN AT&T AND VERIZON**

50. One of the primary anticompetitive effects of the proposed merger is that eliminating T-Mobile as an independent source of demand will accelerate the development by AT&T and Verizon of their own separate "ecosystems" of compatible infrastructure, equipment, and devices that cannot be utilized by other competitors. The merger will increase their incentive and power to exclude competitors from those ecosystems, making it hard or impossible for regional carriers to compete.

51. Wireless carriers design and build their network infrastructure for specific spectrum bands. Newly allocated and assigned spectrum – such as the 700 MHz spectrum – will require considerable investment to develop compatible infrastructure, equipment, and devices. When multiple carriers build their networks and develop handsets at the same time in a newly allocated spectrum band, they and their customers all benefit from the increased innovation and shared costs of development.

52. In the 2G/3G world, T-Mobile's independent demand for devices has prompted device manufacturers to design different devices (such as the G1 device) from those offered by the Big Two. Without T-Mobile's independent demand for devices, device manufacturers will be even less willing to design or build devices for any carrier, like Cellular South, which is operating outside of the ecosystem of one or the other of the Big Two. In the absence of the merger, there will be more pressure for the creation of more interoperable components and devices, and additional ecosystems, which will encourage and foster competition. By contrast, the merger would allow AT&T and Verizon to develop separate ecosystems even further that will impair competition by depriving other carriers of the ability to deploy high end devices such as smartphones.

53. AT&T and Verizon have already exercised their power when purchasing devices to cause manufacturers of devices to sell devices only through AT&T and Verizon -- thus ensuring that only AT&T and Verizon have access to devices on a timely and economically feasible basis. AT&T and Verizon have accomplished that goal through contracts and agreements with device manufacturers that bind manufacturers not to sell current devices to other competitors. Cellular South and other carriers have often been refused access to current devices and given access only when the device is no longer the most current model. Cellular

South and other carriers receive older phones at higher prices. The proposed merger will continue and exacerbate that conduct.

54. In the past, devices were more fungible, and carriers other than AT&T and Verizon had some degree of “device parity” because the customers perceived that the differences in the various devices were not as substantial. However, as more sophisticated devices have been developed in recent years, customer preference has changed so that devices are becoming the primary driver in selection of wireless service. No longer do customers believe that “a phone is a phone is a phone.” Device preference increasingly drives customer choice of wireless carriers. Eliminating T-Mobile as a source of demand and pressure for more interoperable devices further restricts competition by increasing the control over devices by AT&T and Verizon.

55. With the advent of 4G-LTE service, the problem will become even more acute. 4G-LTE devices are far more than simply cell phones. Impaired access to 4G-LTE devices threatens the ability of the carriers other than AT&T and Verizon to continue to provide effective competition. The proposed merger will exacerbate that effect.

56. The Big Two, AT&T and Verizon, already have secured 4G-LTE devices to operate in the 700 MHz spectrum. But Cellular South has had difficulty acquiring such devices because of the concentration of the market for purchase of such devices in the hands of AT&T and Verizon. This delay in obtaining 4G-LTE devices has, in turn, forced Cellular South to delay its implementation of 4G-LTE, impairing its ability to retain consumers who come to demand the advantages of 4G-LTE services.

57. The proposed merger threatens to exacerbate this problem by removing T-Mobile as an independent source of demand for 4G-LTE devices – particularly for those operating on

frequencies other than 700 MHz. T-Mobile owns spectrum, other than 700 MHz spectrum, upon which it can be expected to deploy 4G-LTE service in the absence of the merger. Development of that spectrum by T-Mobile would facilitate the introduction of compatible devices that could be utilized by Cellular South and other regional carriers to enable them to provide 4G-LTE service on spectrum other than 700 MHz spectrum. Such devices would facilitate the entry by Cellular South into providing 4G-LTE service by utilizing other frequencies.

58. Eliminating T-Mobile as an independent source of demand for 4G-LTE devices will give the Big Two, AT&T and Verizon, even greater exclusive access to the devices that will be necessary for competition in the impending 4G-LTE world. AT&T and Verizon would have even greater power to steer manufacturers into producing devices and other components that are suitable only in their own respective ecosystems. The proposed merger also would facilitate exclusionary agreements that would limit the availability of devices to an even greater extent than in the past. The proposed merger would reduce access to the latest devices, making the other wireless carriers' offers to their customers less attractive and thus enabling AT&T further to restrict or exclude competition. Consumers will ultimately face fewer choices with higher costs.

59. The direct accretion of incremental market power over the purchase of devices that would accrue to AT&T as a result of the proposed transaction would be particularly anticompetitive as it relates to Cellular South and other regional carriers. This artificially created, enhanced market power would enable AT&T to demand more device exclusivity and increased periods of market exclusivity. AT&T's purpose and effect in coercing a post-merger increase in the length and scope of its device exclusivity periods would not be to compete on the merits and

to recoup legitimate costs of development. Rather, such efforts would be intended to foreclose its rivals from a critical input necessary to compete effectively with AT&T.

60. The removal of T-Mobile and its millions of customers from the market for devices will perpetuate the separate ecosystems for devices created and sustained by the Big Two, remove a potential customer to device manufacturers with economies of scale, and directly harm the ability of smaller, regional carriers, like Cellular South, to obtain reasonably priced devices.

61. As reflected in its complaint, Sprint, the nation's third largest wireless carrier, believes that its ability to acquire handsets and other devices will be seriously threatened by the proposed merger.

For all of these reasons, handset manufacturers would be less likely to build devices for smaller carriers using different spectrum bands and, even when they did, those devices would cost more given the carriers' lack of scale relative to AT&T and Verizon. This would result in Sprint, as well as smaller carriers, facing artificially and improperly increased costs for the latest phones and consumer devices, and lead to reduced innovation in handsets and other consumer devices. And even if Sprint eventually were able to obtain access to new devices, there likely would be substantial delays during which time AT&T and Verizon would be able to obtain a significant competitive advantage.

Complaint, *Sprint Nextel Corp. v. AT&T, Inc., et al.*, Case 1:11-cv-01600, United States District Court for the District of Columbia, ¶163, at 47. The effect on Cellular South and the other regional carriers, whose economies of scale are mere shadows of Sprint's, would be catastrophically worse.

62. Similarly, the Rural Cellular Association (RCA), an organization representing rural and regional carriers of which Cellular South is a member, has expressed the same concern:

If the proposed transaction were approved, AT&T's already immense buying power—along with its ability to pressure handset

manufacturers to enter into exclusivity agreements—would only increase. RCA's members and other competitive carriers would find it even more difficult to gain access to the most popular handsets, and AT&T would be able to further solidify its market dominance. . . . The proposed transaction also would strengthen AT&T's ability to exert its monopsony power to prevent handsets from being interoperable on competitive carriers' networks . . . . [T]he more leverage AT&T brings to bear to make handsets non-interoperable on a large scale, the harder it will be for rural and regional carriers to offer devices that can roam seamlessly and to compete against the national carriers. A lack of interoperability also compounds device-availability concerns, as manufacturers will resist producing devices that can operate only on smaller providers' networks, and not on AT&T's.

Petition to Deny of Rural Cellular Association at 19-20, *In the Matter of Applications of AT&T Inc. and Deutsche Telekom AG For Consent to Assign or Transfer Control of Licenses and Authorizations* (FCC May 31, 2011), WT Docket No. 11-65.

63. AT&T's acquisition of T-Mobile would increase its ability improperly to limit access by its smaller wireless rivals to the latest handsets and other devices, making them less effective competitors to AT&T and Verizon. This, in turn, would allow AT&T and Verizon profitably to raise prices to consumers without losing customers to its competitors and while increasing its market share. Consequently, Cellular South and other regional carriers – and competition in the geographical markets which they serve – would be directly and adversely affected by the proposed merger.

#### **THE ANTICOMPETITIVE IMPACT OF THE PROPOSED MERGER ON ROAMING**

64. The ability to access another carrier's network is called "roaming." Reasonable and affordable roaming access has always been, and continues to be, a prerequisite for any wireless operator that does not own a nationwide network.

65. No wireless carrier can survive without access to a nationwide network for voice and data transmissions when the carrier's customers are outside the carrier's service area. Thus,

any carrier other than Verizon and AT&T who wants to remain competitive in the wireless market will be required to make arrangements for existing 2G/3G roaming and prospective 4G-LTE roaming with Verizon, AT&T, Sprint and/or T-Mobile.

66. The proposed merger eliminates T-Mobile as a potential GSM roaming partner for Cellular South and other regional carriers for the existing 2G/3G environment and for the upcoming 4G-LTE environment.

67. In fact, T-Mobile has been a 2G roaming partner to Corr Wireless. Corr Wireless, a wireless carrier with approximately 25,000 subscribers in Northeastern Alabama recently acquired by Cellular South, operates using GSM technology which is compatible with the technology utilized by AT&T and T-Mobile. Corr Wireless was able to acquire a 2G roaming agreement with AT&T for its customers to roam outside of Corr Wireless' service area. AT&T unreasonably and wrongfully refused a 3G roaming agreement with Corr Wireless until very recently, and even then, offered only unreasonable terms that amount to a constructive refusal to permit 3G roaming.

68. For Corr Wireless, the removal of T-Mobile from the marketplace would leave only AT&T as a potential GSM roaming partner. GSM roaming will remain important even as the industry migrates to 4G-LTE service, since full implementation of 4G-LTE service will take several years. Customers of legacy GSM carriers such as Corr Wireless must have the ability to roam on GSM as well as 4G-LTE systems of a national carrier in the interim period.

69. Perhaps more importantly, the proposed acquisition would remove T-Mobile as a potential 4G-LTE roaming partner. Cellular South and other regional carriers will need access to roaming on a nationwide 4G-LTE network in order to survive.

70. Cellular South believes that, absent the merger, T-Mobile would move to 4G-LTE technology to satisfy consumer demand and provide competitive service. T-Mobile owns spectrum that, if developed by T-Mobile for 4G-LTE use, would likely be compatible with the roaming needs of Cellular South and other regional carriers. The proposed merger would, therefore, eliminate one of Cellular South's potential national roaming partners for 4G-LTE service.

71. Moreover, the removal of a roaming competitor will further embolden AT&T's exclusionary practices. Cellular South alleges, on information and belief, that AT&T has engaged in a pattern and practice of denying roaming agreements to smaller carriers, as part of its efforts to monopolize local markets and to injure competition. Based on prior knowledge and experience of AT&T's reluctance, refusal and delay in entering into roaming agreements with carriers competing against AT&T, Cellular South expects that AT&T will abuse its power – enhanced by the market power it acquires as a result of the proposed merger – to deny or delay or improperly condition 4G-LTE nationwide data roaming in the event the merger is approved. Such improper refusals or restrictions on 4G-LTE roaming would injure Cellular South, other regional carriers, and consumers.

72. Unless the proposed merger is prevented by this Court, AT&T will leverage its increased market power over nationwide roaming as a result of its merger with T-Mobile in order to further eliminate or marginalize Cellular South and other carriers – all with the purpose and effect of eliminating or reducing competition.

**THE PROPOSED TRANSACTION WOULD EFFECTIVELY CREATE A DUOPOLY  
OF AT&T AND VERIZON, WHO ARE MUCH MORE LIKELY TO COORDINATE  
THEIR COMPETITIVE BEHAVIOR**

73. With the elimination of T-Mobile, the alleged relevant market possesses structural characteristics that increase the likelihood of coordination between AT&T and Verizon post-acquisition. These characteristics include the large post-merger combined market share of AT&T and Verizon; elimination of T-Mobile as a low-price competitor with a business plan to be an emerging challenger; price transparency in the retail market; and barriers to entry and expansion facing other competitors that would be exacerbated by the merger.

74. After the acquisition, AT&T and Verizon would control about 80 percent of all facilities-based mobile wireless revenues. Importantly, they would possess that dominant revenue share without the competitive constraint that T-Mobile's independent presence provides in the marketplace. Post-merger, AT&T and Verizon would be able to monitor each other's prices. Their competitors, however, would face higher costs in part because they depend on AT&T and Verizon for essential inputs such as roaming.

75. If the proposed transaction were allowed to proceed, none of the remaining competitors would be able to disrupt the coordination between AT&T and Verizon that likely would result.

76. As a result of the merger, AT&T would have the ability and incentive to carry out exclusionary acts against its competitors. These carriers would either be denied access or face increased costs for many of the key inputs of wireless services, including handsets, backhaul, roaming, operating systems, applications, content, and network infrastructure. The foreclosure and increased costs caused by the merger would effectively make the offers of the other independent carriers less attractive to customers. The independent carriers would be injured in

their businesses resulting from, among other things, the combination of a substantial loss of customers, increased costs, and decreased attractiveness of their product offerings. These injuries would also translate into reduced competition, higher prices, and decreased innovation for consumers. As a result, the wireless markets would inevitably revert to a duopoly structure that would put more profits in the pockets of AT&T and Verizon, while harming consumers and independent competitors.

77. The relevant market is already highly concentrated and would become significantly more concentrated as a result of AT&T's proposed acquisition of T-Mobile.

78. The 2010 Horizontal Merger Guidelines employ the Herfindahl-Hirschman Index ("HHI") as a measure of market concentration. Market concentration is a useful indicator of the level of competitive vigor in a market and the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition. Markets in which the HHI exceeds 2,500 points are considered to be highly concentrated. Under the Horizontal Merger Guidelines, transactions that increase the HHI by more than 200 points in highly concentrated markets, "will be presumed to be likely to enhance market power."

79. There are four national facilities-based wireless carriers in the United States. As of the second quarter of 2011, Verizon accounted for about 33 percent of all mobile wireless services revenue, AT&T accounted for about 32 percent of all mobile wireless services revenues, Sprint accounted for about 15 percent of all mobile wireless services revenues, and T-Mobile accounted for 10 percent of all mobile wireless services revenues. The remainder of the market is comprised of small, local and regional carriers that in the aggregate account for less than 10 percent of the market. These carriers include regional prepaid carriers MetroPCS and Leap,

which each accounts for approximately 2 percent of U.S. mobile wireless services revenues, and regional firms such as Cellular South, U.S. Cellular and Cincinnati Bell.

80. The U.S. mobile wireless services market has a pre-merger HHI of over 2,500. Under the standards set out in the Horizontal Merger Guidelines, the market for U.S. mobile wireless services is "highly concentrated" and would become substantially more so as a result of the transaction. Indeed, the proposed transaction would result in a dramatic increase of the HHI by well over the 200 points necessary to raise a presumption that it would be likely to enhance market power.

81. In many highly populated local markets, the levels of concentration after the merger would be very high. For example, within Cellular South's Existing Service Area, AT&T's market share following the merger in the Memphis TN-AR-MS CMA will be 49%, and the HHI measure of market concentration will increase 892 (or almost 40%) to 3136. Appendix B to Complaint, *U.S. v. AT&T, Inc.*, et al, Case: 1:11-cv-01560, United States District Court for the District of Columbia. These concentration levels are far higher than those which the Horizontal Merger Guidelines identify as triggering a presumption of likely enhanced market power.

82. In fact, the combined firm would have at least a 35-percent share in 20 of the 27 most populous CMAs. Other measures yield similar statistics reflecting high market concentration and increases in market concentration that would result from AT&T's acquisition of T-Mobile. As the DOJ states in its complaint, "the transaction likely would substantially lessen competition for mobile wireless telecommunications services" in 97 out of the nation's top 100 CMAs. The DOJ's estimates of HHI increases for the top 100 CMAs confirm that the acquisition would result in impermissibly high market concentrations.

83. Substantial barriers to entry and expansion exist in the provision of mobile wireless services due to a number of factors, including the considerable time and expense of acquiring spectrum, building and supporting a network, developing handsets, building brand equity, and investing in new technology and network support. New firms are unlikely to enter the mobile wireless services market in a timely and sufficient manner to overcome the anticompetitive effects of the proposed transaction. The regional carriers such as Cellular South, independently or in the aggregate, cannot expand significantly enough in a reasonable period of time to be able to discipline the pricing of the national carriers.

**CLAIMED EFFICIENCIES OF THE PROPOSED TRANSACTION ARE  
OVERSTATED OR ILLUSORY AND ARE NOT MERGER-SPECIFIC**

84. AT&T has publicly argued that the merger would create significant network efficiencies with respect to spectrum, cell sites, and rural build-out, and that these benefits should justify the transaction.

85. These alleged efficiencies are overstated, unverifiable, and could be achieved in whole or large part without the acquisition of T-Mobile and the resulting injury to competition and Cellular South.

**INJURY TO COMPETITION AND  
ANTITRUST INJURY TO CELLULAR SOUTH**

86. Cellular South and other independent wireless carriers – and competition generally -- would be injured by the transaction.

87. First, the proposed acquisition of T-Mobile would reduce the number of companies (other than Verizon and AT&T) seeking to purchase devices which are a critical dimension of competition for any wireless carrier. That loss of scale of possible purchases outside of Verizon and AT&T would make it more difficult for smaller carriers to acquire

appropriate devices. It would also provide greater power to AT&T that would allow it to engage in exclusionary acts that would further foreclose Cellular South and other carriers from access to the newest and most innovative devices. As a result, Cellular South and other smaller carriers would be injured because they would be less able to compete on the merits against AT&T and Verizon, post-merger, than they are today with T-Mobile as an independent company. The result would be an injury to competition since it would deprive customers of choice and, particularly, price competition.

88. AT&T's proposed acquisition of T-Mobile would also remove a potential national roaming partner to Cellular South and Corr Wireless for GSM and 4G-LTE and give AT&T the power and incentive to engage in exclusionary practices related to roaming. None of these exclusionary acts by AT&T would constitute competition on the merits. As a result, Cellular South would be less able to compete on the merits against AT&T and Verizon, post-merger, than it is today with T-Mobile as an independent company.

89. The effects of AT&T's proposed acquisition would be to entrench the Big Two's control of the wireless communications markets, injuring Cellular South and other competitors, thus reducing competition on the merits and thus causing harm to consumers.

90. The injury to Cellular South's business would result from, among other things, the combination of decreased attractiveness of its product offerings, increased costs, and a substantial loss of customers.

91. The injury to customers would be higher prices and poorer service.

92. The injuries to Cellular South and the public at large would be irreparable if the merger were completed. Those injuries would not be adequately compensable by money damages.

93. The public interests, including the interests in preserving competition, weigh heavily in favor of an injunction.

94. AT&T, Deutsche Telekom, and T-Mobile have no legitimate and cognizable interest in completing an illegal acquisition.

95. Cellular South has a strong private interest in preserving its ability to compete on the merits.

96. The balance of equities weighs heavily in favor of an injunction.

### **COUNT I**

97. Cellular South repeats and re-alleges the allegations of Paragraphs 1-96 as though alleged herein.

98. AT&T, T-Mobile, and Deutsche Telekom are engaged in interstate commerce.

99. The relevant product markets include all mobile wireless services market to consumers. The relevant geographic markets for the wireless markets are the United States and each local CMA and CEA in which AT&T and T-Mobile compete, including Cellular South's Existing Service Area and Cellular South's Planned 4G-LTE Service Area.

100. The transaction would lessen competition by (a) restricting the ability of other Cellular South and carriers other than the Big Two from acquiring timely and affordable devices; and (b) removing a potential roaming partner in T-Mobile and allowing AT&T to further its exclusionary practices related to roaming.

101. Barriers to entry and expansion are high, and new entry or expansion would not be timely, likely or sufficient to replace the competition that would be lost as a result of the merger.

102. The transaction would not create efficiencies that are merger-specific, verifiable, and sufficient to overcome the loss of competition that would result from the merger.

103. The proposed transaction would result in injury to consumers and competition.

104. The proposed transaction would result in injury in fact to Cellular South.

105. Because Cellular South's injury would flow from the reduction in competition caused by the merger, as well as from anticompetitive acts made possible by the illegal transaction, the injury to Cellular South would constitute antitrust injury.

106. Cellular South would suffer irreparable injury if the merger were completed, and is entitled to injunctive relief.

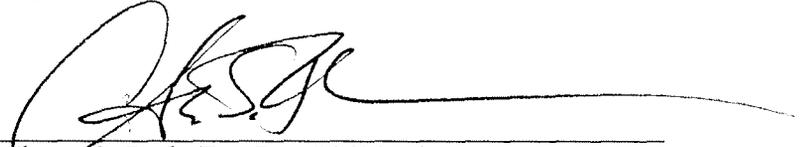
#### **PRAYER FOR RELIEF**

WHEREFORE, Cellular South respectfully requests that the Court enter a judgment in its favor and against Defendants and grant the following relief:

1. Entering a judgment that AT&T's proposed acquisition of T-Mobile violates Section 7 of the Clayton Act, 15 U.S.C. § 18;
2. Entering a judgment permanently enjoining and restraining Defendants from carrying out the Stock Purchase Agreement by and between Deutsche Telekom AG and AT&T, Inc. dated March 20, 2011, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to bring the wireless services of AT&T and T-Mobile under common ownership or control;
3. Awarding Cellular South's attorneys' fees and costs; and
4. Awarding Cellular South such further relief as the Court deems just and proper.

September 19, 2011

Respectfully submitted,



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