

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Applications of Cricket License Company, LLC,)	WT Docket No. 13-193
et al., Leap Wireless International, Inc., and)	
AT&T Inc. for Consent To Transfer Control of)	
Authorizations)	
)	
Application of Cricket License Company, LLC)	
and Leap Licenseco Inc. for Consent to)	
Assignment of Authorization)	

PETITION TO DENY OF THE GREENLINING INSTITUTE

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TABLE OF CONTENTS

I. GREENLINING HAS STANDING TO FILE THIS PETITION	2
II. THE PROPOSED TRANSACTION IS NOT IN THE PUBLIC INTEREST	3
B. The Proposed Transaction is Not in the Public Interest because it Will Reduce Competition.....	5
1. The Relevant Market.....	5
a. The Relevant Product Market	5
b. The Relevant Geographic Market	7
2. The Proposed Transaction Promises to Reduce Competition.....	8
a. The Proposed Transaction will Eliminate Leap as a Competitor	8
b. The Proposed Transaction Will Eliminate Aio as a Potential Competitor.	9
i. Aio is a Potential Competitor in Many Markets.	9
ii. Applicants' Claims that AT&T Cannot Enter the Prepaid/No Contract Market on its own are Dubious.	11
c. The Proposed Transaction Promises to Harm Competition.....	12
C. The Proposed Transaction is not in the Public Interest Because It Will Harm Low-Income Consumers.....	13
a. The Proposed Transaction is not in the Public Interest because it Threatens to Eliminate the Availability of Leap's Affordable, Prepaid/No-Contract Services.	13
b. The Proposed Transaction Is Not in the Public Interest Because Applicants Have Failed to Demonstrate that the New Company will Continue to Serve Leap Customers after the Proposed Transaction is Complete.....	14
D. The Proposed Transaction Is Not In the Public Interest Because It Will Result in Lost Jobs.	16
a. The Proposed Transaction Promises to Harm Direct and Indirect Employment.....	16
b. The Commission Should Require Applicants to Provide Specific Data about Projected Job Losses.	17
E. Applicants Claim Benefits that are Not Merger-Specific.	18
F. The Commission Should Deny the Applications Because the Proposed Transaction Will Harm the Public Interest	18
G. IF THE COMMISSION APPROVES THE TRANSACTION, IT SHOULD IMPOSE CONDITIONS TO PROTECT THE PUBLIC INTEREST.....	19
H. CONCLUSION	20

PETITION TO DENY

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 August 28, 2013.² The proposed transaction would seriously harm consumers from communities of color and 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

Greenlining files this petition to deny on the information that is currently available. However, Greenlining is currently investigating this transaction, and Greenlining’s current position in this proceeding may not be its ultimate position. In an effort to learn more about this transaction, Greenlining is undertaking a review of the Confidential and Highly Confidential documents that Applicants have submitted to the Commission. Additionally, Greenlining has scheduled a meeting on Sept 30th with AT&T's senior executive leadership in California to discuss this matter. Greenlining hopes to gain greater clarity about this transaction after this meeting and after a comprehensive review of the unredacted documents. Greenlining hopes that a mutual and reciprocated effort to learn about the interests involved in this matter will help open the possibility of settlement or other resolution.

¹ 47 U.S.C. § 309(d)(I) (2011).

² FCC Public Notice,, Docket No. 13-193 (August 28, 2013) (Establishing Pleading Cycle).

The proposed transaction would harm the public interest by harming competition. Additionally, the proposed transaction would also harm the public interest by potentially depriving low-income consumers of access to affordable, prepaid/no-contract mobile services. The proposed transaction promises to harm the public interest by eliminating jobs. These harms are not outweighed by the purported benefits of the proposed transaction. Accordingly, the Commission should deny the applications.

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.³ A party in interest is any party whose interests are likely to be adversely affected.⁴ 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 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 the Applicants. Moreover, members of the communities served by Greenlining Institute and employees of the Greenlining Institute are subscribers to wireless services and will be impacted by the proposed merger. As this petition will demonstrate, the

³ 47 U.S.C. §309(d) (2011).

⁴ Camden Radio, Inc., v. Federal Communications Commission, 220 F.2d 191, 194 (D.C. 1954).

proposed merger would directly and adversely impact the communities the Greenlining Institute represents. Therefore, Greenlining has standing to oppose the application.

II. THE PROPOSED TRANSACTION IS NOT IN THE PUBLIC INTEREST

Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction is in the public interest. The proposed transaction would harm the public interest by harming competition. The proposed transaction promises to eliminate Leap's Cricket brand in a number of markets, many of which are home to large minority populations. Additionally, the proposed transaction promises to eliminate AT&T's Aio brand as a potential competitor in an undetermined number of markets.

The proposed transaction would also harm the public interest by potentially depriving low-income consumers of access to affordable, prepaid/no-contract mobile services. Applicants have failed to provide sufficient information about their plan to migrate Leap customers to AT&T's network. Additionally, the proposed transaction promises to harm the public interest by eliminating jobs.

Applicants' claims that Leap customers will benefit from access to AT&T's services and devices is not a merger-specific benefit, and the Commission should disregard that claim when evaluating the proposed transaction. The above harms are not outweighed by the purported benefits of the proposed transaction. Accordingly, the Commission should deny the applications.

A. Applicants 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 serve the

public interest convenience, and necessity.⁶ 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.”⁷

When reviewing a transaction, the Commission considers the competitive effects of that transaction on the public interest.⁸ However, the Commission's public interest inquiry extends far beyond potential competitive effects.⁹ The Commission also considers “whether the proposed assignment and transfer of control...is likely to generate verifiable, transaction-specific public interest benefits.”¹⁰ 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.”¹¹

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.”¹² 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.”¹³ If the potential public interest harms outweigh the potential public interest benefits, the transaction is not in the public interest.¹⁴

⁶ 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).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 8717.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

B. The Proposed Transaction is Not in the Public Interest because it Will Reduce Competition.

The proposed transaction will reduce competition in the combined mobile telephony/broadband market, as well as the submarket for “value-conscious” mobile services. The elimination of Leap as a competitor will reduce competition. Additionally, the proposed transaction promises to harm competition by eliminating AT&T’s Aio brand as a potential competitor.

1. The Relevant Market

The Commission’s competitive analysis of a proposed transaction begins with determining appropriate market definitions for the transaction.¹⁵ Market definition requires defining both the product market and the geographic market.¹⁶ While the Commission should examine the effect of the proposed transaction on the market for mobile telephony/broadband services, Greenlining respectfully suggests the Commission consider examining the submarket for “value-conscious” telephony and broadband services. Greenlining supports the Commission’s established policy of examining both national and local markets.

a. The Relevant Product Market

The relevant product market consists of all goods which are "reasonably interchangeable" with a product.¹⁷ 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

¹⁵ *Id.*

¹⁶ 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).

¹⁷ United States v. E. I. Du Pont de Nemours & Co., 351 U.S. 377, 395 (U.S. 1956).

a change in price.¹⁸ In determining whether goods are reasonably interchangeable, agencies consider the price, the use, and the qualities of the respective products.¹⁹ In evaluating transactions between wireless providers, the Commission has most recently defined the relevant product market as a “combined ‘mobile telephony/broadband services’ product market that is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).”²⁰ Applicants urge the Commission to adopt this definition.²¹

In previous proceedings, Greenlining has argued the existence of a separate submarket for “value-conscious” services—typically no-contract, “unlimited use” services, with distinct handset offerings, “value-conscious” customers, and distinct (and more affordable) pricing.²² In the T-Mobile/MetroPCS proceeding, the Commission declined to consider the proposed transaction’s effects on the value-conscious services submarket.²³ The Commission stated that “T-Mobile USA and MetroPCS provide services in the combined mobile telephony/broadband services product market” and applied “the product market definition that the Commission has applied in recent transactions.”²⁴

¹⁸ Apple v. Psystar, 586 F. Supp. 2d 1190 at 1196 (N.D. Cal. 2008).

¹⁹ *Id.*

²⁰ Memorandum Opinion and Order and Declaratory Ruling, In the Matter of Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. For Consent To Transfer of Control of Licenses and Authorizations ¶ 28, WT Docket No. 12-301 (March 12, 2013).

²¹ Mark A. Israel, An Economic Analysis of Competitive Effects and Consumer Benefits from the Proposed Acquisition of Leap Wireless by AT&T at p. 6 (August 1, 2013) (hereafter, Economic Analysis)

²² The Greenlining Institute, Petition to Deny, In the Matter of Application of AT&T, Inc. and Deutsche Telekom AG to Transfer Control of Licenses and Authorizations Held by T-Mobile USA, INC. and Its Subsidiaries to AT&T Inc., DA 11-799, WT Docket No. 11-65 (June 10, 2011); Letter from The Greenlining Institute to Marlene H. Dortch, In the Matter of Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. For Consent To Transfer of Control of Licenses and Authorizations ¶ 28, WT Docket No. 12-301 (March 8, 2013) (*hereafter*, T-Mobile/MetroPCS).

²³ T-Mobile/MetroPCS at 28.

²⁴ *Id.*

Greenlining respectfully suggests that the Commission consider reviewing the effects of the proposed transaction on the value-conscious services market. As Applicants acknowledge, AT&T are not “close competitors,” because AT&T and Leap’s service offerings are distinctly different.²⁵ Similarly, recent porting data indicates that AT&T and Leap serve different sets of customers.²⁶ AT&T’s pricing for wireless service is significantly higher than Leap’s pricing for comparable service.²⁷ Distinct products, customers, and prices are all indicators of a relevant product submarket.²⁸ Accordingly, the Commission should consider the effects of the proposed transaction on the submarket for value-conscious services in this proceeding.

b. The Relevant Geographic Market

In addition to determining the product market, the Commission also determines the relevant geographic market.²⁹ 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.”³⁰ In its recent reviews of wireless transactions, the Commission has found both the national market and local markets (i.e., areas where consumers typically live, work, and travel) to be relevant geographic markets.³¹ Greenlining supports the Commission’s review of the effects of the proposed transaction on both the national and local markets in this proceeding.

²⁵ Public Interest Statement at 25.

²⁶ Public Interest Statement at 26.

²⁷ AT&T, Choose from the fairest and most flexible plans, *available at* <http://www.att.com/shop/wireless/plans-new.html#fbid=MWzQ6FyRDeB>; Cricket, Cell Phone Plans, *available at* <http://www.mycricket.com/cell-phone-plans#basic-plans>.

²⁸ *Apple v. Psystar*, 586 F. Supp. 2d 1190 at 1196 (N.D. Cal. 2008).

²⁹ Merger Guidelines at 13.

³⁰ *U.S. v. Grinnell Corp.*, 384 U.S. 563, 588 (1966).

³¹ T-Mobile/MetroPCS at ¶ 54.

2. The Proposed Transaction Promises to Reduce Competition.

The proposed transaction will eliminate Leap as a competitor in a number of local markets. Additionally, the proposed transaction will eliminate AT&T's prepaid brand, Aio, as a *potential* competitor in many markets. Applicants have failed to address the effects of the combined effect of this reduced competition.

Greenlining anticipates that Applicants will attempt to support their claims of public interest benefits using engineering and economic models similar to those AT&T submitted in the AT&T/T-Mobile proceeding.³² In that proceeding, the Commission's Staff Report determined that the models were so flawed that they could not be used to support AT&T's claims.³³ Despite numerous Commission requests, AT&T was unable to alleviate Commission concerns about the models and did not establish the probative value of the models.³⁴ Accordingly, the models were "abstract, not robust to reasonable changes in their assumptions, [and] not consistent with each other or, in many cases, the Applicants' internal documents."³⁵ Greenlining believes that the Commission should evaluate each proposed transaction on its own specific merits, and that each claim should be evaluated independently. However, given AT&T's past behavior, Greenlining is skeptical of claims of competitive benefits.

a. The Proposed Transaction Will Eliminate Leap as a Competitor

Greenlining is undertaking review of Confidential and Highly Confidential documents to determine the competitive effects of the proposed transaction. Greenlining plans to provide

³² FCC, Staff Report and Findings at ¶ 62, In the Matter of Application of AT&T, Inc. and Deutsche Telekom AG to Transfer Control of Licenses and Authorizations Held by T-Mobile USA, INC. and Its Subsidiaries to AT&T Inc., DA 11-799, WT Docket No. 11-65 (June 10, 2011) (hereafter, Staff Report).

³³ Staff Report at ¶ 131.

³⁴ *Id.*

³⁵ *Id.*

additional input on those effects in future filings with the Commission. Greenlining is particularly concerned about the effects on competition in local markets where the Cricket brand has a strong presence, particularly San Diego and California's Central Valley. These markets are home to large minority populations.³⁶ The reduced competition as a result of the proposed transaction has the potential to harm these populations and the public interest.

b. The Proposed Transaction Will Eliminate Aio as a Potential Competitor.

AT&T has the requisite resources to expand its prepaid offerings through its Aio brand and, until recently, had stated its intent to do so. Accordingly, Aio could be a potential competitor in many markets. If the Commission approves the proposed transaction, AT&T will most likely eliminate the Aio brand. As a result, Aio's potential market entry will no longer act as a check on competition.

i. Aio is a Potential Competitor in Many Markets.

Applicants downplay the fact that the proposed transaction will not only eliminate Leap as a competitor, but will also eliminate AT&T's pre-paid brand, Aio. It appears that, if the Commission approves the transaction, AT&T will discontinue the Aio brand: "[r]esources currently allocated for Aio's rollout of retail distribution channels in those markets can be redeployed for expansion in other areas, which will further accelerate the establishment of a nationwide presence."³⁷ While this statement is unclear, it appears that AT&T intends to establish one national prepaid/no-contract brand. Greenlining urges the Commission to seek clarification on this issue.

³⁶ U.S. Department of Commerce, State & County QuickFacts, *available at* <http://quickfacts.census.gov/qfd/states/06000.html>. The California counties within the Central Valley are San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and Kern.

³⁷ Declaration of Rick L. Moore, Senior Vice President, AT&T Inc. at 5 (*hereafter*, Moore Declaration).

Greenlining is particularly concerned that the proposed transaction will eliminate Aio as a market participant where it would have served as a new (or “rapid”) market entrant. Companies that have “committed to entering the market in the near future...are also considered market participants.”³⁹ Companies that “clearly possess the necessary assets to supply into the relevant market rapidly may also be rapid entrants.”⁴⁰

AT&T is one of the two largest wireless carriers in the country.⁴¹ AT&T acknowledges that, as a result of economies of scale, it can offer superior handsets and services than Leap.⁴² Additionally, AT&T “faces borrowing costs well below Leap’s borrowing costs.”⁴³ Given these facts, AT&T has the potential to enter the prepaid/no-contract market. Additionally, given its past development of the Aio brand and its current interest in acquiring Leap, AT&T has committed to entering the market in the near future. Accordingly, AT&T, (and specifically, the Aio brand) can be considered a potential entrant.

AT&T’s failure to expand into the prepaid/no-contract is a result of choice, not ability. As AT&T’s Senior Vice President, Rick L. Moore, notes, AT&T ‘s efforts to compete the prepaid market have been minimal at best. “While AT&T has been marketing prepaid services under the ‘AT&T GoPhone’ brand for many years, it has done so primarily as a complement to its postpaid business and AT&T generally has not aimed to match the offerings of prepaid/no-contract companies such as Cricket and others, particularly in recent years.”⁴⁴ “AT&T has not

³⁹ Merger Guidelines at 15.

⁴⁰ *Id.* at 16.

⁴¹ Fierce Wireless, Grading the top 10 U.S. carriers in the first quarter of 2013, *available at* <http://www.fiercewireless.com/special-reports/grading-top-10-us-carriers-first-quarter-2013>.

⁴² Public Interest Statement at 9.

⁴³ Economic Analysis at 32.

⁴⁴ Moore Declaration at 3.

achieved nearly the same level of customer appeal as AT&T postpaid service.”⁴⁵ “GoPhone is aimed primarily at capturing incremental customers who do not qualify for, or whose wireless needs are not a good match for, AT&T’s postpaid plans.”⁴⁶ “For instance, GoPhone does not offer smartphone rate plans with large data options, as other prepaid providers offer, since AT&T prefers to address demand for such offerings through its postpaid service.”⁴⁷ AT&T has not significantly competed in the prepaid market because it has been unwilling to do so, not because of technical or competitive challenges.

ii. Applicants’ Claims that AT&T Cannot Enter the Prepaid/No Contract Market on its own are Dubious.

Applicants argue that, despite AT&T’s best efforts, AT&T has been unable to effectively enter into the market for prepaid/no-contract services. For example, AT&T states that its “recent efforts to expand its prepaid/no-contract offerings are just getting underway and face significant challenges in establishing a competitive presence in the market.”⁴⁹ Aio “still needs to establish widespread retail distribution, build brand recognition, and develop a significant customer base.”⁵⁰

Greenlining finds AT&T’s claims that its attempts to expand into the prepaid/no-contract market have failed to be highly dubious. AT&T has the necessary experience, resources, and access to capital to expand the Aio brand. AT&T’s acquisition of Leap will allow AT&T to “expedite AT&T’s establishment of a competitive nationwide presence more rapidly than AT&T’s new brand could achieve on its own.”⁵¹ While AT&T’s purchase of Leap might,

⁴⁵ Moore Declaration at 3-4.

⁴⁶ *Id.* at 4.

⁴⁷ *Id.*

⁴⁹ Public Interest Statement at ii.

⁵⁰ Moore Declaration at 4.

⁵¹ *Id.*

arguably, lead to a faster deployment of AT&T's prepaid/no-contract services, it would do so at the cost of eliminating both Leap and Aio as competitors in the combined mobile telephony/broadband services market. Leap's existing subscriber base will "enable AT&T to reach scale sooner than projected for Aio, thereby lowering certain of AT&T's operating costs on a per customer basis."⁵²

In the current proceeding, Applicants claim that AT&T's purchase of Leap is driven by AT&T's struggle to effectively enter, and compete in, the prepaid/no-contract market.⁵³ One of AT&T's primary justifications for the proposed AT&T/T-Mobile transaction was that the acquisition of T-Mobile (at a price of \$39 billion) was necessary for AT&T to be able to deploy LTE coverage to 97 percent of the American population. However, AT&T filed an improperly redacted document indicating that the actual cost to increase coverage to 97 percent of the population was \$3.8 billion.⁵⁴ The Commission's redacted Staff Analysis similarly concludes that internal AT&T documents contradicted AT&T's claims that it was not planning to increase LTE deployment in the absence of its purchase of T-Mobile.⁵⁵ It is possible that Applicants' claims that AT&T's acquisition of Leap is necessary to permit AT&T to expand into the prepaid/no-contract market is similarly exaggerated.

c. The Proposed Transaction Promises to Harm Competition.

The proposed transaction will eliminate Leap as a competitor in a number of local markets. Additionally, the proposed transaction will eliminate Aio as a potential competitor in many markets. Applicants have failed to address the combined effect of this reduced

⁵² *Id.* at 5.

⁵³ Public Interest Statement at ii.

⁵⁴ Broadband DSLReports.com, Leaked AT&T Letter Demolishes Case For T-Mobile Merger, *available at* <http://www.dslreports.com/shownews/Leaked-ATT-Letter-Demolishes-Case-For-TMobile-Merger-115652>

⁵⁵ Staff Report at ¶ 252 et. seq.

competition. Accordingly, Applicants have not met their burden of proof, and the Commission should deny the application.

C. The Proposed Transaction is not in the Public Interest Because It Will Harm Low-Income Consumers.

The proposed transaction also promises to harm low-income consumers. There is a significant risk that AT&T will “phase out” Leap’s low-cost offerings. AT&T has not made any specific commitments to continue Leap’s low-cost offerings, and has not sufficiently articulated a plan for migrating Leap’s customers to AT&T’s network.

- a. The Proposed Transaction is not in the Public Interest because it Threatens to Eliminate the Availability of Leap’s Affordable, Prepaid/No-Contract Services.

Greenlining is particularly concerned about the proposed transaction’s effects on the low-income consumers who rely on Cricket’s services. Leap notes that for many of Cricket’s customers, their wireless device is their “lifeline.”⁵⁶ Over 90 percent of Cricket customers use their Cricket phone as their primary phone, and approximately 65 percent of Cricket customers use their Cricket phone as their only phone.⁵⁷ Even if the proposed transaction benefits consumers as a whole, there is a risk that the transaction could still harm low-income consumers who depend on Cricket’s service. For example, AT&T could raise Leap’s prices post-transaction, making service unaffordable for the customers described above.

In fact, there is a substantial risk that AT&T does not intend to serve low-income customers at all. Greenlining has previously expressed concerns about AT&T’s apparent unwillingness to serve low-income consumers. AT&T’s application in the AT&T/T-Mobile proceeding indicated that AT&T intended to retain T-Mobile’s high-profit customers, while

⁵⁶ Leap, Our Customers, available at <http://www.leapwireless.com/brands/cell-phone-customers>

⁵⁷ *Id.*

“MetroPCS, Leap, and others [could] fill any gap T-Mobile USA might leave in the competition for value-conscious consumers when the transaction is completed.”⁵⁸

Applicants assert that Leap customers will not be harmed by the transaction, because those customers will be able to keep their current rate plans after the proposed transaction is complete.⁵⁹ Applicants state that “[AT&T] will honor the rates plans of existing Leap customers.”⁶⁰ Applicants do not, however, address what will happen when those plans expire, nor do they address what will happen to Leap’s “no-contract” customers.

Applicants also state that “as part of AT&T’s plan to preserve and expand the Cricket brand, low-cost devices and low-cost services will remain available to value-driven customers,”⁶¹ and that “[f]or new customers, AT&T will continue to offer competitive rate plans that appeal to value-conscious customers, including the option of choosing low-cost devices and low-cost services.”⁶² Greenlining is highly skeptical of these claims, given AT&T’s historical preference for courting more profitable, higher-income consumers.⁶³ Greenlining urges the Commission to either deny the applications or impose conditions on the proposed transaction to ensure that Applicant’s purported commitment to value-conscious customers becomes reality.

- b. The Proposed Transaction Is Not in the Public Interest Because Applicants Have Failed to Demonstrate that the New Company will Continue to Serve Leap Customers after the Proposed Transaction is Complete.

⁵⁸ Public Interest Statement at 99.

⁵⁹ Moore Declaration at 7.

⁶⁰ *Id.*

⁶¹ *Id.* at 5.

⁶² *Id.* at 7.

⁶³ See The Greenlining Institute, Petition to Deny, In the Matter of Application of AT&T, Inc. and Deutsche Telekom AG to Transfer Control of Licenses and Authorizations Held by T-Mobile USA, INC. and Its Subsidiaries to AT&T Inc., DA 11-799, WT Docket No. 11-65 (June 10, 2011) .

Applicants claim that AT&T will be able to quickly transition Leap customers to AT&T's network.⁶⁴ Greenlining is concerned that Applicants may not have sufficiently developed a plan to implement this transition. AT&T has made similar claims in support of a proposed transaction between AT&T and Atlantic Tele-Network, Inc. (ATNI).⁶⁵ On August 27, the Commission stopped the 180-day "shot clock" in that proceeding because AT&T and ATNI have not responded to Commission requests for AT&T's post-transaction plans for migrating ATNI customers to AT&T's network.⁶⁶ In stopping the clock, the Commission noted that the parties have failed to produce this information "despite several Commission staff follow-up conversations about the importance of transitioning pre-paid customers."

In this proceeding, Applicants have responded to a Commission request for more information regarding the Leap customer migration.⁶⁷ However, that response consists of a little more than a page, and, for the most part, repeats claims made in Applicants' Public Interest Statement. The response lacks any specific details about moving Leap customers to AT&T's network.

Applicants' lack of a more specific plan is disconcerting. A delayed or unsuccessful customer migration would harm consumers and the public interest. Accordingly, unless Applicants provide a substantive, comprehensive plan for migrating Leap customers to AT&T's network, the Commission should deny the application.

⁶⁴ Moore Declaration at 7.

⁶⁵ In the Matter of Applications of AT&T Inc. and Atlantic Tele-Network, Inc. For Consent To Transfer Control of and Assign Licenses and Authorizations, WT Docket No. 13-54 (March 5, 2013).

⁶⁶ August 27, 2013 Letter from Ruth Milkman, Chief, Wireless Telecommunications Bureau, to Michael P. Goggin and Douglas J. Minster, In re Applications of AT&T Inc. and Atlantic Tele-Network, Inc. for Consent to the Transfer of Control of Licenses and Authorizations Held by Atlantic Tele-Network, Inc. and Its Subsidiaries (WT Docket No. 13-54).

⁶⁷ *Id.* at 1-2.

D. The Proposed Transaction Is Not In the Public Interest Because It Will Result in Lost Jobs.

The Commission has historically included job effects as part of its merger analysis.⁶⁸

The proposed transaction will result in lost jobs, both within the two companies and as a result of the post-transaction decommissioning of cell sites. The Commission should require Applicants to provide more specific, granular data about projected job losses.

a. The Proposed Transaction Promises to Harm Direct and Indirect Employment.

The proposed transaction will undoubtedly result in lost jobs. Applicants do not refer to lost jobs specifically, but instead speak in terms of “substantial synergy opportunities in the area of customer support, equipment, and general and administrative costs.”⁷⁰ These synergies include cost savings that will result from combining and optimizing customer support functions, including call center and billing operations,⁷¹ as well as “cost savings from removing redundancy in corporate and overhead functions.”⁷²

Applicants’ “cost savings” will include lost jobs. Applicants include some nebulous commitments to preserve specific jobs, stating that “[b]ecause AT&T intends to maintain Leap’s sales and distribution systems, jobs in those areas largely will be preserved.”⁷³ Applicants similarly try to minimize the job effects by stating that “force reduction will largely occur through natural attrition across the work forces of both companies.”⁷⁴ These commitments do not change the fact that the proposed transaction will result in a loss of jobs within the new company.

⁶⁸ Staff Report at ¶ 259.

⁷⁰ Moore Declaration at 8.

⁷¹ *Id.* at 8-9.

⁷² *Id.* at 9.

⁷³ *Id.*

⁷⁴ *Id.*

Additionally, the proposed transaction will result in a loss of jobs outside of the new company. Post-transaction, AT&T will “integrate many existing Leap cell sites into its network.”⁷⁵ Applicants state that these changes “will eliminate lease, utility, maintenance, and other site-related expenses.”⁷⁶ Some of these expense reductions will no doubt come in the form of lost jobs. These consequences would seriously harm working-class families and the public interest.

b. The Commission Should Require Applicants to Provide Specific Data about Projected Job Losses.

In the current proceeding, AT&T makes a number of statements about its commitment to its employees and to job preservation.⁷⁷ In the AT&T/T-Mobile proceeding, AT&T made similar claims, including the assertion that the transaction would result in a net increase in jobs.⁷⁸ However, the Commission subsequently determined that the net impact on both direct and indirect jobs would be negative.⁷⁹ The Commission noted that, based on the information in AT&T’s filings, the proposed transaction would decrease the number of jobs within the combined company, despite AT&T’s purported commitments to repatriate jobs, offer other positions to redundant employees, and not terminate any call center employees who were employed at the time the merger closed.⁸⁰ Similarly, the Commission noted that AT&T’s filings would decrease the combined company’s total network investment and cause a significant reduction of indirect jobs, contrary to AT&T’s assertions. Applicants have not provided any indication that the proposed transaction would not produce similar effects. The Commission should require Applicants to provide more specific data about projected job losses and agree to

⁷⁵ *Id.* at 6.

⁷⁶ *Id.* at 8.

⁷⁷ *Id.* at 9.

⁷⁸ Staff Report at ¶ 261.

⁷⁹ Staff Report at ¶¶ 262, 265.

⁸⁰ Staff Report at ¶ 262.

conditions that include job protections. If Applicants do not provide this information, the Commission should deny the applications.

E. Applicants Claim Benefits that are Not Merger-Specific.

For the Commission to consider a claimed benefit in a proposed transaction, that proposed benefit must be merger-specific.⁸¹ To be merger-specific, a proposed transaction “must not only be likely to occur as a result of the proposed transaction but it must be unlikely to be realized by other practical means having fewer anticompetitive effects.”⁸² If the claimed benefit is not merger-specific, the Commission does not consider that claimed benefit when determining whether a transaction serves the public interest.⁸³

Applicants argue that Leap customers will benefit from AT&T’s “superior choice in handsets,” and a “broader array of services.”⁸⁴ However, access to “current and future rate plans and devices” is not a transaction-specific benefit.⁸⁵ As the Commission has noted in other proceedings, Leap customers could obtain AT&T devices and/or services simply by switching to AT&T.⁸⁶ Accordingly, access to AT&T’s devices and services is not a merger-specific benefit, and should not be part of the Commission’s analysis.

F. The Commission Should Deny the Applications Because the Proposed Transaction Will Harm the Public Interest.

The proposed transaction promises to eliminate competition by eliminating the competitive effects of Leap’s Cricket brand and AT&T’s Aio brand. The proposed transaction would also harm the public interest by potentially depriving low-income consumers of access to

⁸¹ Staff Report at ¶ 124.

⁸² *Id.* at ¶ 124.

⁸³ *Id.*

⁸⁴ Public Interest Statement at 9.

⁸⁵ Staff Report at ¶ 242.

⁸⁶ Staff Report at ¶ 99.

affordable, prepaid/no-contract mobile services. Additionally, the proposed transaction promises to harm the public interest by eliminating jobs. The above harms are not outweighed by the purported benefits of the proposed transaction. Accordingly, the Commission should deny the applications.

G. 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.⁸⁷ 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.”⁸⁸ Should the Commission approve the applications, Greenlining asks that the Commission take measures to ensure that the public interest is protected.

The Commission can prescribe restrictions or conditions that may be necessary to carry out the provisions of the Communications Act.⁸⁹ 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.”⁹⁰ 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 the new company continues to serve subscribers to Cricket’s services. Additionally, the Commission should hold Applicants to their commitments to pass the economic benefits of the transaction through to consumers.

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

⁸⁸ AT&T/Cellco Order at 8718.

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

⁹⁰ AT&T/Cellco Order at 8718.

H. CONCLUSION

Greenlining supports any industry measures that increase the availability of affordable wireless service to communities of color and low-income consumers. While the proposed transaction has the potential to achieve this goal, Applicants have not yet provided sufficient proof that the alleged benefits of the proposed transaction are likely to occur. Accordingly the Commission should either deny the applications or impose conditions to ensure that AT&T continues to offer Leap's affordable prepaid/no-contract services once the transaction is complete.

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%).⁹¹ Electronic mail is increasingly replacing telephone calls as a basic and necessary

⁹¹ See National Broadband Plan, p. 16, Exhibit 3-B.

means of communication. For people who use the internet, 59% send or read e-mail as part of a typical day.⁹²

As previously discussed, Greenlining is open to the possibility of settlement or other resolution that would protect low-income consumers. Greenlining's position is based on the information currently available to Greenlining, and may change as more information becomes available. However, at this juncture it appears that the public interest harms outweigh any potential public interest benefits that would result from the proposed transaction. Accordingly, Greenlining has filed this Petition to Deny.

For the above-stated reasons, Greenlining respectfully requests that the Commission deny the proposed transaction or impose conditions to protect the public interest.

Respectfully submitted,

Dated: September 27, 2013

/s/ _____
Paul Goodman
Legal Counsel

⁹² 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.

Certificate of Service

I hereby certify that on this 27th day of September, 2013, I caused true and correct copies of the foregoing Petition to Deny to be served as follows:

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