



HANNA & HANNA PLLC
Attorneys at Law
1206 VIRGINIA STREET EAST, SUITE 201
CHARLESTON, WV 25301

MAILING ADDRESS:
P. O. BOX 3967
CHARLESTON, WV 25339

TELEPHONE (304) 342-1687
FAX (304) 342-8761
www.hannalawpllc.com

May 2, 2011

VIA HAND DELIVERY

Sandra Squire
Executive Secretary
Public Service Commission
201 Brooks Street
Charleston, WV 25301

03:09 PM MAY 02 2011 PSC EXEC SEC 01

Re: CASE NO. 11-0563-C-PC
AT&T INC. and T-MOBILE USA, INC.

Joint Petition for the consent and approval in advance
for AT&T Inc.'s acquisition of the stock of T-Mobile
USA, Inc. or, in the alternative, for a Commission
Order exempting the proposed transaction from the
provisions of *West Virginia Code* § 24-2-1 2

Dear Ms. Squire:

On behalf of Sprint Communications Company L.P., I hand you herewith for filing
the original and twelve (12) copies of Sprint's Petition to Intervene and Request for Full
Investigation and/or Contested Case Proceeding.

If you need anything further, please contact me.

Sincerely,

David B. Hanna, Esq.
WV State Bar# 8813
dhanna@hannalawpllc.com

Thomas N. Hanna, Esq.
WV State Bar# 1581
thanna@hannalawpllc.com

DBH/dh
Enclosures

cc: R. Rodecker, Esq.
W. Porth, Esq.
G. Hanly, Esq.
S. Berlin, Esq.

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

CASE NO. 11-0563-C-PC

Re: AT&T INC. and T-MOBILE USA, INC. Joint Petition for the consent and approval in advance for AT&T Inc.'s acquisition of the stock of T-Mobile USA, Inc. or, in the alternative, for a Commission Order exempting the proposed transaction from the provisions of *West Virginia Code* § 24-2-1 2

SPRINT'S PETITION TO INTERVENE
AND REQUEST FOR FULL INVESTIGATION AND/OR
CONTESTED CASE PROCEEDING

Pursuant to Rule 12.6 of the Commission's *Rules of Practice and Procedure*, Sprint Communications Company L.P. and Sprint Spectrum, L.P. d/b/a Sprint PCS ("jointly Sprint") respectfully files this Petition to intervene in the above-styled case. In support of its Petition, Sprint shows as follows:

- 1) The name and address for Sprint's counsel are as follows:

Thomas N. Hanna, Esq. (WV Bar # 1581)
David B. Hanna, Esq. (WV Bar # 8813)
Hanna & Hanna PLLC
1206 Virginia Street, East
Suite 201
Charleston, WV 25301
Tel: (304) 342-1687
Fax: (304) 342-8761

Susan J. Berlin, Esq.
William Atkinson, Esq.
Sprint
3065 Akers Mill Rd., SE
Mailstop GAATLD0704
Atlanta, GA 30339
Email: susan.berlin@sprint.com
Tel: (404) 649-8983
Fax: (404) 649-8980

2) On April 21, 2011 AT&T, Inc. ("AT&T") and T-Mobile USA Inc. ("T-Mobile") filed a joint petition ("Petition") for consent and approval in advance for AT&T's acquisition of the stock of T-Mobile or, in the alternative, for a Commission Order exempting the proposed transaction from the provisions of *West Virginia Code* § 24-2-12.

3) Sprint is a competitive local exchange carrier ("CLEC"), an interexchange carrier and a wireless carrier in West Virginia and is currently offering telecommunications services in the state. Accordingly, Sprint has a legal interest in the subject matter of this proceeding, and respectfully requests that the Commission grant Sprint's Petition to intervene in this proceeding.

4) As set forth in *West Virginia Code* § 24-2-12, "(e)very assignment, transfer, lease, sale or other disposition of the whole or any part of the franchises, licenses . . . or any other property of any public utility or any merger or consolidation thereof . . . **shall be void to the extent that the interests of the public in this state are adversely affected** . . . [emphasis added]" Clearly, the interest of the public in this state will be adversely affected by the proposed merger because it is anticompetitive and will hurt consumers by raising prices, restricting innovation and limiting choices of wireless providers. Therefore, Sprint urges the Commission to conduct a thorough investigation of this matter through the vehicle of a contested case proceeding.

5) In their Petition (para. 6), AT&T and T-Mobile emphasize T-Mobile's limited presence in West Virginia. Nonetheless AT&T alleges that this merger will allow AT&T to deploy "LTE" wireless capabilities far more broadly "across virtually all of West Virginia." Based on what has been filed publicly, nothing substantiates AT&T's claim

that the merger gives AT&T anything it does not have today that will facilitate its ability to deploy next generation wireless more broadly in West Virginia. On the other hand, loss of a vibrant competitor operating today in several West Virginia markets and with the potential to enter more will indeed harm wireless consumers in this state. By eliminating the fourth largest national competitor, AT&T would foreclose the prospect of an innovative, value-oriented competitor providing service throughout West Virginia.

6) Certain wireless industry mergers and transactions can be in the public interest because they help providers achieve greater economies of scale, which are necessary to remain an effective competitor as capacity demands on networks grow. The proposed transaction, however, is not such a pro-competitive transaction because it will enable AT&T and Verizon to emerge as a duopoly that dwarfs all other carriers. Nationally, if the merger is approved, the AT&T–Verizon duopoly will have over 76 percent of all wireless revenues.¹ This is over four and a half times Sprint’s national revenue share of 16.6 percent.² Through a contested case proceeding, the Commission can explore in more detail the exact impact on the consumers of West Virginia market.

7) The proposed transaction would limit consumer choice and undermine innovation in the development of wireless devices, applications and service plans.

¹ Percentage is as of Fourth Quarter 2008. *See* Federal Communications Commission 14th Mobile Wireless Competition Report, *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. No. 09-66, p. 31, Chart 1, released May 20, 2010. The report is available at this link: http://wireless.fcc.gov/index.htm?job=cmrs_reports.

² *Id.*

AT&T has a poor track record for innovation, and, even with its large resources and prior acquisitions, has consistently provided substandard service, quality, and pricing options for consumers. AT&T's competitor, T-Mobile, by contrast, is consistently ranked first in consumer satisfaction and was the first wireless company to offer the innovative Android wireless phone. With less competition, AT&T and Verizon will have less incentive to innovate and, due to their sheer buying power, will harm competitors' ability to develop new devices, features and functions, harming consumers.

8) Gigi Sohn, president of public interest group Public Knowledge, said of AT&T's advocacy regarding the merger: "All of that effort and all of that money cannot disguise the simple, fundamental fact that AT&T in this one transaction will fundamentally reshape the wireless industry in ways that will hurt consumers, raising prices, restricting innovation and limiting choice . . . the plain fact is that every one of the benefits AT&T promised to achieve can be accomplished without this merger."³ The Commission should have the opportunity to consider the perspective of opposing voices in its review of this Petition.

9) Likewise, Consumers Union has warned that the AT&T-T-Mobile merger means higher prices and less satisfied customers. As stated by Parul P. Desai, policy counsel for Consumers Union: "It is critical to look at the effect this merger would have on consumers' pocketbooks, choice and service and, ultimately, it does not appear to be in their favor. AT&T wireless plans typically cost consumers up to \$50 more per month than comparable plans from T-Mobile, and consumers are consistently less satisfied with the service they get from AT&T than T-Mobile," Mr. Desai further

³ Source: Public Knowledge website: <http://www.publicknowledge.org/attt-mobile>

commented “[w]e are concerned that T-Mobile’s departure from the wireless market would eliminate a relatively low-cost carrier as an option that many consumers need access to in order to afford quality wireless service.”⁴ This Commission should carefully weigh any alleged benefits of the merger against harms to West Virginia consumers and the wireless market generally.

10) Through a contested case proceeding that includes discovery, the Commission can compile a complete evidentiary record in order to base its determination regarding whether the merger will serve the public interest in West Virginia.

11) The proposed consolidation of AT&T and T-Mobile directly affects the wireless telecommunications industry as it stands to impact wireless pricing, devices, technology, networks, innovation and the ability of competitors like Sprint to compete against a much larger AT&T. Accordingly, Sprint has a legal interest in the subject matter of this proceeding, and respectfully requests that the Commission grant Sprint’s Petition to intervene in this matter. No other entity can adequately represent Sprint’s interests in this matter. Sprint will be able to provide information in this proceeding that no other entity can provide.

WHEREFORE, for the reasons stated herein, Sprint respectfully requests that the Commission grant Sprint’s Petition to intervene and such other and further relief as the Commission deems just and reasonable.

⁴ Source: Consumers Union website:
http://www.consumersunion.org/pub/core_telecom_and_utilities/017625.html

Respectfully submitted this 2nd May, 2011.



Thomas N. Hanna (WV Bar #1581)
David B. Hanna (WV Bar #8813)
Hanna & Hanna PLLC
1206 Virginia Street, East
Suite 201
Charleston, WV 25301
Tel: (304) 342-1687
Fax: (304) 342-8761

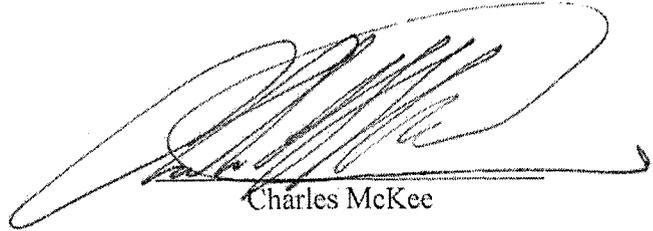
Susan J. Berlin, Esq.
William Atkinson, Esq.
Sprint Communications Company L.P.
3065 Akers Mill Rd., SE
Mailstop GAATLD0704
Atlanta, GA 30339
Tel: (404) 649-8983
Fax: (404) 649-8980

Attorneys for Sprint

VERIFICATION

WASHINGTON, DISTRICT OF COLUMBIA, To-wit:

Charles McKee, Vice President, Federal and State Regulatory for Sprint Nextel Corporation and each of its affiliates and subsidiaries, being duly sworn, says that the facts and allegations therein contained in the foregoing **Petition** are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be on information, he believes them to be true.

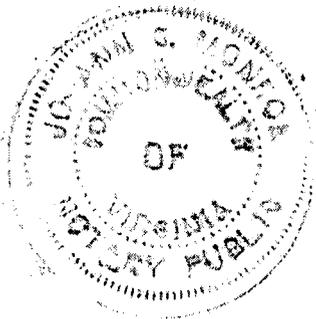

Charles McKee

Taken, sworn to and subscribed before me this 29th day of April 2011.

My commission expires on the 31 day of July, 2011


NOTARY PUBLIC

Jo-Ann G. Monroe
NOTARY PUBLIC
Commonwealth of Virginia
My Commission Expires July 31, 2011
Registration No. 7084854



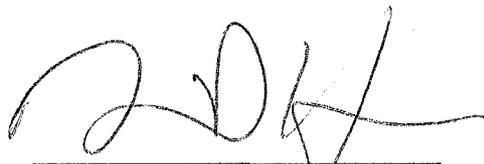
CERTIFICATE OF SERVICE

I, David B. Hanna, counsel for Sprint Communications Company L.P., hereby certify that copies of the foregoing **Petition** have been served upon the following, by United States first class mail, postage prepaid, this 2nd day of May, 2011:

Robert Rodecker, Esq.
PO Box 3713
Charleston, WV 253373713
Counsel, AT&T

William C. Porth, Jr., Esq.
Robinson & McElwee PLLC
PO Box 1791
Charleston, WV 25326
Counsel, AT&T

Ms. Garnet M. Hanly, Esq.
Sr. Corporate Counsel
T-Mobile USA, Inc.
401 9th Street, NW, Suite 550
Washington, DC 20004



DAVID B. HANNA