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Ruth Milkman, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: AT&T Response to Wireless Telecommunications Bureau Letter, DA 09-1737 (July 31, 2009); RM-11361; RM-11497

Dear Ms. Milkman:

On behalf of AT&T, I am writing in response to the Bureau's July 31, 2009 letter, which asks a series of questions about Google Voice and the Apple iPhone in order to inform Commission policymaking in certain pending proceedings. As discussed below, AT&T had no role in any decision by Apple to not accept the Google Voice application for inclusion in the Apple App Store. AT&T was not asked about the matter by Apple at any time, nor did it offer any view one way or the other. More broadly, AT&T does not own, operate or control the Apple App Store and is not typically consulted regarding the approval or rejection of applications for the App Store or informed when an application is approved or rejected. Furthermore, AT&T does not block consumers from accessing any lawful website on the Internet. Hence, consumers can download or launch a multitude of compatible applications directly from the Internet, including Google Voice, through any web-enabled wireless device.<sup>1</sup> As a result, any AT&T customer may access and use Google Voice on any web-enabled device operating on AT&T's network, including the iPhone, by launching the application through their web browser, without the need to use the Apple App Store.

Before providing additional detail with respect to these matters and the Commission's specific questions, AT&T respectfully offers some contextual background for the Commission's consideration. There are four fundamental and vertically interrelated components required for a consumer to make use of a wireless broadband Internet application: (1) a wireless device, such as a web-enabled handset; (2) an operating system that runs the wireless device; (3) an application compatible with the operating system; and (4) a wireless broadband Internet connection. As discussed below and on the AT&T Choice website (<http://choice.att.com>), although AT&T works with a wide range

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<sup>1</sup> See AT&T Choice website at <http://choice.att.com/customers/faq.aspx>.

of third parties to offer consumers a seamless broadband experience that brings together these four components, we primarily provide wireless broadband Internet connectivity.

*Wireless Devices.* AT&T does not manufacture any wireless devices itself. We do, however, offer consumers the choice of more than 100 wireless devices from the world's leading manufacturers, including Motorola, Nokia, Palm, LG, Samsung, Apple, RIM, Pantech and Sony Ericsson, nearly all of which are offered with Internet connectivity – as well as our “Bring Your Own Device” program which gives consumers the option of using their own compatible GSM wireless device on the AT&T network.<sup>2</sup> AT&T also offers seventeen different smartphones, which incorporate physical or touchscreen keyboards, email capability and full HTML web browsers. Even with this broad selection of devices, AT&T's offerings are just a fraction of what is available to consumers today. There are more than 630 unique wireless devices for sale in the U.S. and many providers offer a range of different smartphones, including a dozen or more different smartphone choices available from each of the top four wireless providers.<sup>3</sup>

*Operating Systems.* AT&T does not currently produce the operating system for any wireless devices. But we do offer consumers devices with operating systems from a variety of providers, including BlackBerry, Palm OS, iPhone OS, Windows Mobile, Symbian and Java.<sup>4</sup> Moreover, we are constantly evaluating new operating systems as they are introduced in order to offer an even greater range of options to our customers. And as noted above, AT&T customers also have the option of bringing their own compatible device, running on the operating system of their choice, to our network.

*Applications.* While AT&T has developed a small number of our own applications for the wireless marketplace, we also launched one of the industry's first application and content marketplaces, known as the MEdiaMall, in 2004. The MEdiaMall currently offers consumers more than 100,000 choices from over

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<sup>2</sup> See AT&T Choice website at <http://choice.att.com/flash/customersdevices.aspx>.

<sup>3</sup> See CTIA Comments, WT Docket No. 09-66, at 31-34 (June 15, 2009). See also *USA: The World's Most Important Smartphone Market*, Strategy Analytics (Aug. 3, 2009) (“North America in the past had lagged slightly behind other regions like Japan and Western Europe.” But in 2007 the U.S. “smartphone market accelerated” and is now a “high-growth, high-value, innovative market.” The “catalyst” for competition in the U.S. market “was the launch of the Apple iPhone at AT&T in 2007.” “This sparked the ‘smartphone wars’ across the U.S.” “Heavy subsidies are now commonplace on nearly all new smartphones.”).

<sup>4</sup> See AT&T Choice website at <http://choice.att.com/developers/GettingStarted.aspx>; AT&T devCentral website at <http://developer.cingular.com/developer/index.jsp;jsessionid=WP2Y0RLVPRITIFB4R0EWCPJU H0HIS0SXW?page=toolsTechOverview&id=800048>.

100 different content and application providers.<sup>5</sup> Consumers can also visit the myriad of other application stores that have sprouted-up on the Internet from operating system providers, wireless service providers, handset manufacturers and independent vendors, including Nokia, RIM, Microsoft, Palm, Samsung, Apple, Verizon Wireless, Google (Android Market), Handango, PocketGear, GetJar, Handmark and MobiHand.<sup>6</sup> And as noted above, AT&T customers can visit any lawful website on the Internet they want, and they can download or launch a multitude of compatible applications directly from the Internet through any web-enabled wireless device.<sup>7</sup>

*Internet Connectivity.* With respect to the one component for which AT&T is a primary provider – wireless broadband Internet connectivity – AT&T’s competitors include three other national providers (Verizon Wireless, Sprint, T-Mobile); numerous regional providers, including Cellular South, Leap, Metro PCS and U.S. Cellular; WiMax provider Clearwire and its partners, including Comcast and Time Warner; as well as new entrants like Cox, which is reportedly preparing to use its own spectrum to provide wireless broadband services.

In a market teeming with so many different providers of devices, operating systems, applications and broadband connectivity all competing for consumers’ pocketbooks, the relationships among providers across different segments of the market are constantly changing and evolving. Hardly a day goes by without an announcement about the launch of yet another new application store or the formation of some new strategic partnership or alliance intended to provide consumers with the latest and greatest handset, operating system, application and/or broadband service.

The diversity of business models resulting from these ever-shifting alliances produces innumerable options for consumers. Unlike the mostly one-size-fits-all customer experience in the early days of dial-up computing, which consisted mainly of fungible desktop computers running a limited set of applications on a dominant operating system, the hallmarks of today’s wireless marketplace are choice and customization.

For example, some devices support Wi-Fi, some do not; some have keyboards, while others have touch screens; some support GPS location-based social networking applications, some do not; and some support full motion video capture and play back, but others lack a camera altogether. And some special purpose devices, like the Amazon Kindle, are sold for a one-time fee with lifetime broadband connectivity, but are intended for only limited Internet use and do not even permit phone calls.<sup>8</sup> Thus, the Kindle

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<sup>5</sup> See AT&T MEdiaMall website at <http://mediamall.wireless.att.com/sf/storefront/endUserHTMLHome.jsp?pc=U&dc=>. AT&T MEdiaMall is also known as the AT&T AppCenter.

<sup>6</sup> See Jamie Lendino, *App Stores for Everyone*, PCMag.com (July 29, 2009).

<sup>7</sup> See AT&T Choice website at <http://choice.att.com/customers/faq.aspx>.

<sup>8</sup> See Amazon Kindle: License Agreement and Terms of Use § 2 at <http://www.amazon.com/gp/help/customer/display.html?nodeId=200144530&#wireless> (“You

reflects market-driven trade-offs by Amazon: the absence of a monthly charge for connectivity goes hand-in-hand with the limitations on the Kindle's use, and those limitations are part and parcel of the Kindle's unique value proposition.

To be sure, consumers seeking a more desktop-like experience have that choice as well in the wireless marketplace. In the Google/Android model, for example, the operating system is reportedly accessible to any developer with no pre-certification process, thus allowing Google and its broadband and device partners to offer a different, competing customer experience – one that may be preferred by some consumers, but that involves its own trade-offs as the consumer bears a greater risk of malware and lower quality applications.<sup>9</sup> In a similar vein, the 700 MHz C Block licensee is subject to the Commission's "any device/any application" open access requirements. As the Commission has emphasized, these open access requirements are unique to the 700 MHz C Block and go far beyond the obligations applicable to licensees of any other Commission-licensed spectrum,<sup>10</sup> thus ultimately giving consumers yet another model to choose from.

All of these options are the fruits of a vibrantly competitive, multi-faceted marketplace that is constantly evolving to offer consumers a rich and heterogeneous panoply of value propositions in new and innovative ways. With this overview of the wireless marketplace in mind, we now turn to the specific questions posed by the Bureau.<sup>11</sup>

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agree you will use the wireless connectivity provided by Amazon only in connection with Services Amazon provides for the Device. You may not use the wireless connectivity for any other purpose." "You may be charged a fee for wireless connectivity for your use of other wireless services on your Device, such as Web browsing and downloading of personal files, should you elect to use those services.")

<sup>9</sup> See Bob Tedeschi, *Cellphones Largely Immune to Viruses, for Now*, New York Times (Aug. 13, 2009) ("[M]obile software shops – like the Research in Motion App World for BlackBerrys, the Apple App Store, the Nokia Ovi Store and the application stores of the various wireless operators – test and approve programs before selling them. . . . Google, whose Android software runs the newest generation of smartphones, . . . said consumers must rely on user feedback to determine whether to trust a software maker. That leaves some risk, since newer apps in Android's 'Market' will have too little feedback for it to be of real use.").

<sup>10</sup> *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289 ¶ 202 (2007) (explaining that the Commission is not obligated to "treat all spectrum-based services identically" and need not "adopt a single regulatory model to assign spectrum rights in all bands"); *id.* ¶ 206 (applying open access requirements to "only C Block licensees"); *id.* ¶¶ 203-205 (applying open access requirements "only on a limited basis" and declining to apply such requirements to other spectrum blocks due to concerns about disruption of existing services and other "unanticipated drawbacks").

<sup>11</sup> This response is based on an internal review conducted by AT&T that was initiated upon receipt of the Bureau's letter. AT&T reserves the right to supplement this response in the event it learns of additional material information relevant to the Bureau's questions.

**1(a). What role, if any, did AT&T play in Apple's consideration of the Google Voice and related applications?**

AT&T had no role in Apple's consideration of Google Voice or related applications.

**1(b). What role, if any, does AT&T play in consideration of iPhone applications generally?**

The Apple App Store is owned, operated and controlled by Apple, not AT&T, and Apple makes the decisions regarding the specific applications that are approved for use on the iPhone or included in the Apple App Store. AT&T does not participate in Apple's day-to-day consideration of specific applications, nor does Apple typically notify AT&T prior to including applications in the App Store. Apple also does not usually advise AT&T after specific applications have been added to the App Store, which reportedly contains more than 65,000 applications. AT&T has had discussions with Apple regarding only a handful of applications that have been submitted to Apple for review where, as described below, there were concerns that the application might create significant network congestion.

During the course of our agreement, AT&T has had general discussions with Apple about optimizing the technical criteria that Apple uses to evaluate iPhone applications in order to minimize congestion on our wireless network and provide a satisfactory experience for end-user customers (*e.g.*, the bit rate used to deliver streaming audio and video applications). While these discussions usually were general in nature, a few of them focused on two specific types of applications.

First, AT&T and Apple discussed streaming audio iPhone applications proposed by Pandora and AOL and, in particular, the potential congestion that these applications may cause on AT&T's 3G network. After these applications were included in the Apple App Store, Apple upgraded the technology used to stream these services in order to further optimize usage on the network.

Second, AT&T and Apple discussed a proposed iPhone application from MobiTV and CBS that was designed to stream live video and audio from the NCAA men's basketball tournament over Wi-Fi connections and AT&T's 3G network. Specifically, AT&T and Apple discussed the likelihood that such an application could cause substantial network congestion and degradation of service for certain customers on AT&T's 3G network, especially customers accessing cell sites located near colleges involved in the tournament. Apple conveyed these concerns to MobiTV and CBS, who modified their application to deliver live video, audio and scores over Wi-Fi, while delivering live audio, still photos and scores over AT&T's 3G network.

In addition, as described in our response to question 1(c) below, AT&T and Apple have discussed whether two particular categories of applications are consistent with the agreement between AT&T and Apple and with AT&T's wireless data terms and conditions of service.

**1(c). What roles are specified in the contractual provisions between Apple and AT&T (or in any noncontractual understanding between the companies) regarding the consideration of particular iPhone applications?**

AT&T and Apple entered into their relationship regarding the iPhone before the Apple App Store was created. Hence, the Apple App Store is not discussed in the contractual provisions between AT&T and Apple, and AT&T has no specified role in Apple's consideration of particular iPhone applications. As discussed below, AT&T and Apple have an agreement regarding Voice over Internet Protocol (VoIP) functionality. Apple also is aware that AT&T's wireless data terms and conditions prohibit subscribers from redirecting television signals.

1. Voice over Internet Protocol

It is widely recognized by economists and jurists that parties to strategic alliances in competitive markets may enter into contracts to promote and protect their respective business interests and to refrain from taking actions adverse to those interests.<sup>12</sup>

Consistent with such lawful, economically efficient practices common among parties to strategic alliances, including participants in the mobile wireless marketplace,<sup>13</sup> AT&T and Apple agreed that Apple would not take affirmative steps to enable an iPhone to use AT&T's wireless service (including 2G, 3G and Wi-Fi) to make VoIP calls without first obtaining AT&T's consent. AT&T and Apple also agreed, however, that if a third party enables an iPhone to make VoIP calls using AT&T's wireless service, Apple would have no obligation to take action against that third party.

The parties' concurrence on this provision was particularly important in light of the risks the parties assumed in bringing the iPhone to market. From the beginning, both AT&T

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<sup>12</sup> See *Continental T.V. v. GTE Sylvania*, 433 U.S. 36, 54-55, 57-58 (1977) ("Vertical restrictions promote interbrand competition by allowing the manufacturer to achieve certain efficiencies in the distribution of his products. These 'redeeming virtues' are implicit in every decision sustaining vertical restrictions under the rule of reason. Economists have identified a number of ways in which manufacturers can use such restrictions to compete more effectively against other manufacturers" – such as inducing retailers to make "investment of capital and labor" or "engage in promotional activities," as well as ensuring product quality and preventing free riding. "Such restrictions, in varying forms, are widely used in our free market economy. . . . [T]here is substantial scholarly and judicial authority supporting their economic utility. There is relatively little authority to the contrary."). See also Richard J. Wegener, et al, *Restricted Distribution 2009: Thirtysomething Sylvania and the State of Non-Price Vertical Restraints*, American Law Institute – American Bar Association, SP050 ALI-ABA 43 (March 2009); William J. Kolasky, Jr., *Antitrust Enforcement Guidelines for Strategic Alliances*, Practising Law Institute (July-August 1998).

<sup>13</sup> See, e.g., Google Android Market Developer Distribution Agreement at <http://www.android.com/us/developer-distribution-agreement.html> ("Non-Compete. You may not use the Market to distribute or make available any Product whose primary purpose is to facilitate the distribution of Products outside of the Market.").

and Apple recognized that each party would need to invest substantial capital and other resources to successfully develop, market and support the iPhone – a product with unprecedented features and capabilities from a manufacturer that had never before built a wireless phone.<sup>14</sup> AT&T and Apple also recognized their mutual interest in stimulating sales in the highly competitive wireless marketplace by offering consumers the iPhone at an attractive retail price.

The parties' willingness and ability to assume the risk of their investments in the iPhone and of their pricing strategy were predicated, in significant part, on certain assumptions about the monthly service revenues that would be generated by iPhone users. In particular, both parties required assurances that the revenues from the AT&T voice plans available to iPhone customers would not be reduced by enabling VoIP calling functionality on the iPhone. Thus, AT&T and Apple agreed that Apple would not take affirmative steps to enable an iPhone to use AT&T's wireless service to make VoIP calls.

Without this arrangement, the prices consumers pay for the iPhone – particularly the broadband-enabled iPhone 3G – would likely have been higher than they are today. Indeed, AT&T offers the iPhone 3G to consumers at a price significantly below its cost as a result of the largest subsidy AT&T has ever provided on a wireless handset, on both a per-unit and aggregate basis.<sup>15</sup> That subsidy has made the iPhone accessible to millions of consumers, at prices as low as \$99 per iPhone 3G. Those consumers are taking advantage of its revolutionary features and capabilities for a wireless broadband Internet access experience that was not previously possible on any other handset. As a result, iPhone customers use their handset for broadband Internet access to a far greater degree than do customers of any other AT&T phone. As competitors roll out their own "iPhone killers," customers of other phones undoubtedly will follow suit. In this sense, the iPhone and the subsidies that were instrumental in popularizing it, helped to spawn a sea-change in the way Americans access the broadband Internet.

During the course of the agreement, AT&T indicated to Apple that it does not object to Apple enabling VoIP applications for the iPhone that use Wi-Fi connectivity (including connectivity at more than 20,000 Wi-Fi hotspots operated by AT&T that may be used by iPhone customers for no additional charge) rather than AT&T's 2G or 3G wireless data services. Although AT&T has no involvement in producing Apple's iPhone Software

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<sup>14</sup> In AT&T's only prior experience with Apple in the wireless market – a three-party alliance with Motorola to develop and market the iTunes-enabled ROKR – the end product received significant criticism. See Michael Mace, *Motorola Rokr: Instant Failure*, Mobile Opportunity (Nov. 2005) at <http://mobileopportunity.blogspot.com/2005/11/motorola-rokr-instant-failure.html>; Frank Rose, *Battle for the Soul of the MP3 Phone*, Wired (Nov. 2005) at [http://www.wired.com/wired/archive/13.11/phone.html?pg=1&topic=phone&topic\\_set=](http://www.wired.com/wired/archive/13.11/phone.html?pg=1&topic=phone&topic_set=).

<sup>15</sup> In other countries where the iPhone is offered at similarly attractive price points, some wireless providers expressly prohibit customers from using VoIP while others impose surcharges on customers that use VoIP. See Orange Mobile Terms of Service § 6.4 at [http://sites.orange.fr/ge/content/pdf/v2\\_pdf/documentation/Conditions\\_generales\\_abonnement.pdf](http://sites.orange.fr/ge/content/pdf/v2_pdf/documentation/Conditions_generales_abonnement.pdf); *DT Replaces VoIP ban with surcharge*, Telegeography (June 4, 2009) at [http://www.telegeography.com/cu/article.php?article\\_id=28749](http://www.telegeography.com/cu/article.php?article_id=28749).

Development Kit (SDK), which establishes the iPhone functionalities accessible to application developers, AT&T understands that the SDK enables application providers to develop VoIP applications that use the iPhone's Wi-Fi capabilities and that such applications are currently available in the Apple App Store.

As noted above, AT&T regularly reviews its policies regarding features and capabilities available through the devices we offer in order to provide an attractive range of options for our customers. Consistent with this approach, we plan to take a fresh look at possibly authorizing VoIP capabilities on the iPhone for use on AT&T's 3G network. AT&T will promptly update the Commission regarding any such change in its policies.

## 2. Redirected Television Signals

As AT&T previously explained to the Commission, mobile wireless broadband services rely on shared network resources at every point in the network, including shared spectrum in the "last mile."<sup>16</sup> With any shared network, some limitations on the uses individual subscribers make of their service are inherently necessary to ensure that *all* customers collectively receive an acceptable level of service. Moreover, unlike wired broadband networks where the maximum number of potential simultaneous users in a given neighborhood can be calculated with some mathematical precision, the maximum number of potential mobile wireless broadband users that may simultaneously seek to access a given cell site at any particular time – and therefore the collective service experience for all users at that site, for both data and voice services – is far less predictable due to the inherently nomadic nature of mobile wireless users.

In light of these issues, AT&T's terms and conditions for 2G and 3G mobile wireless data service prohibit "uses that cause extreme network capacity issues" and expressly identify "redirecting television signals for viewing on Personal Computers" as such a use.<sup>17</sup> In contrast to some video applications, today's television redirection applications typically do not make any attempt to minimize the frame rate of the content (and thus network usage) in order to reduce network congestion. Thus, AT&T's wireless data terms and conditions of service prohibit redirecting television signals to safeguard service quality for the benefit of all customers.

In the course of the parties' relationship, AT&T has indicated to Apple that applications designed to redirect television signals to an iPhone would violate AT&T's terms and conditions for 2G and 3G wireless data service, and Apple has indicated that it would not

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<sup>16</sup> See Letter from Robert W. Quinn, Jr., AT&T, to Commissioner Robert M. McDowell, FCC, WC Docket No. 07-52 (July 25, 2008).

<sup>17</sup> See AT&T Wireless Data Service Terms and Conditions at <http://www.wireless.att.com/cell-phone-service/legal/plan-terms.jsp>. With a central processing unit (CPU), onboard memory, operating system, high-resolution screen, built-in web browser and other features, the iPhone, like many other smartphones on the market today, contains all the elements of a personal computer. See Alex Iskold, *iPhone: The New Personal Computer*, ReadWriteWeb (July 14, 2008) at [http://www.readwriteweb.com/archives/iphone\\_personal\\_computer.php](http://www.readwriteweb.com/archives/iphone_personal_computer.php).



enable such applications for use with such data service. AT&T has also indicated it has no objection to Apple enabling television redirection applications for the iPhone that use Wi-Fi connectivity (including connectivity at more than 20,000 Wi-Fi hotspots operated by AT&T that may be used by iPhone customers for no additional charge) rather than AT&T's 2G or 3G wireless data services. Although AT&T has no involvement in producing Apple's iPhone SDK, AT&T understands that the SDK enables application providers to develop television redirection applications that use the iPhone's Wi-Fi capabilities and that such applications are currently available in the Apple App Store.

**2(a). Did Apple consult with AT&T in the process of deciding to reject the Google Voice application?**

No.

**2(b). If so, please describe any communications between AT&T and Apple or Google on this topic, including the parties involved and a summary of any meetings or discussions.**

Not applicable.

**3. Please explain AT&T's understanding of any differences between the Google Voice iPhone application and any Voice over Internet Protocol applications that are currently used on the AT&T network, either via the iPhone or via handsets other than the iPhone.**

As noted above in response to questions 1(a) and 2(a), AT&T did not participate in Apple's consideration of the Google Voice iPhone application and AT&T does not have direct knowledge of the particular features or functionalities of that application, which was not made publicly available.

Based on AT&T's review of the information available on the Google Voice website, however, it is our understanding that Google Voice is not a Voice over Internet Protocol service that enables a user to send or receive voice calls in IP format from a wireless handset.<sup>18</sup> Instead, "Google Voice" appears to be an umbrella term used to describe a collection of different services that, in the mobile wireless context, Google provides through a browser-based application available on any web-enabled handset, as well as through two applications designed for devices using the Android or BlackBerry operating systems.<sup>19</sup> These services appear to include, among other things, unified communications capabilities and a domestic/international telecommunications service

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<sup>18</sup> See Google Voice website at <http://www.google.com/support/voice/bin/answer.py?hl=en&answer=115061> ("Google Voice isn't a phone service, but it lets you manage all of your phones. Google Voice works with mobile phones, desk phones, work phones, and VoIP lines.").

<sup>19</sup> See Google Voice website at <http://www.google.com/support/voice/bin/answer.py?hl=en&answer=154724>.

that performs audio bridging.<sup>20</sup> AT&T expects that Google will provide a complete description of Google Voice in response to the letter it received from the Commission and we look forward to learning more about Google Voice based on that response – in particular, Google’s position on the regulatory classification of Google Voice and the intercarrier compensation applicable to calls made using the Google Voice platform.

**4. To AT&T’s knowledge, what other applications have been rejected for use on the iPhone? Which of these applications were designed to operate on AT&T’s 3G network? What was AT&T’s role in considering whether such applications would be approved or rejected?**

As noted above in response to question 1(b), AT&T does not participate in Apple’s day-to-day consideration of whether particular iPhone applications should or should not be rejected for use on the iPhone. Nor does Apple typically notify AT&T when it rejects a particular application for use on the iPhone.

Based on press reports, however, AT&T understands that certain applications have been rejected for use on the iPhone. In particular, AT&T is aware that Apple has, on occasion, exercised its discretion to remove certain applications from the Apple App Store, such as the “Baby Shaker” application which trivialized infanticide, and a handful of other applications such as “Murderdrome,” “Slasher,” “Peekababe” and “iBoobs” that presumably were similarly rejected for offensive content.<sup>21</sup> Upon learning of applications like these, AT&T public relations and other personnel have sometimes conferred with their Apple counterparts in order to accurately address media inquiries directed to AT&T.

In addition, on three occasions, AT&T has discovered applications in the Apple App Store (after they had been approved by Apple) that raised concerns about the potential misuse of certain AT&T services or customer information. AT&T alerted Apple to our concerns and, in two cases, Apple referred AT&T directly to the application providers to discuss whether the concerns could be resolved. In the third case, AT&T understands that Apple addressed the matter with the application provider.

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<sup>20</sup> See Google Voice website at <http://www.google.com/support/voice/bin/answer.py?hl=en&answer=115073> (unified communications capabilities); <http://www.google.com/support/voice/bin/answer.py?hl=en&answer=115079> (instructions for making calls); <http://www.google.com/support/voice/bin/answer.py?hl=en&answer=141922> (international calling features); <http://www.google.com/support/voice/bin/answer.py?hl=en&answer=141925> (international calling rates). See also *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt From Access Charges*, Order, 19 FCC Rcd 7457 (2004); *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290 (2006); *Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, Order, 23 FCC Rcd 10731 (2008).

<sup>21</sup> See, e.g., Suzanne Choney, ‘Baby Shaker’ app pulled from iPhone store, MSNBC.com (April 22, 2009).

The first case involved an iPhone application that retrieved customer usage information from the AT&T myWireless website and incorporated this information into the application. In doing so, this application violated the terms of use for the myWireless website, which treat customer usage data as proprietary to AT&T and prohibit commercial use by third parties of such data. Upon being apprised of AT&T's concerns, the provider withdrew its application from the Apple App Store.

The second case involved an iPhone application designed to facilitate a customer's ability to logon to AT&T Wi-Fi hotspots. Contrary to AT&T's procedures for enabling access to our Wi-Fi hotspots, the application allowed users to access the Wi-Fi hotspots without an opportunity to review or accept AT&T's Wi-Fi terms of service. AT&T explained to the application provider that we had concerns about ensuring our customers were properly apprised of their rights under our terms of service. In response to those concerns, the application provider modified its application and AT&T understands that the application is currently available in the Apple App Store.

The third case involved an application that enabled customers to send and receive SMS messages from an iPhone. When sending SMS messages to a non-iPhone user, the application delivered multiple, truncated or garbled copies of the same SMS message to the non-iPhone user. In addition to providing a poor service experience for non-iPhone users, each one of the multiple, truncated or garbled copies of the SMS messages counted against the monthly allotment of SMS messages provided to non-iPhone users with bulk SMS plans (*e.g.*, 200 SMS message per month) and counted as a billable message for non-iPhone users that use SMS on a pay per message basis. Upon discovering the application, AT&T alerted Apple to these concerns. We understand that Apple brought our concerns to the attention of the application developer, who modified its application to minimize incidences of multiple SMS messages.

**5. Please detail any conditions included in AT&T's agreements or contracts with Apple for the iPhone related to the certification of applications or any particular application's ability to use AT&T's 3G network.**

AT&T's agreement with Apple for the iPhone, which the parties entered into before Apple's App Store existed, does not address the certification of applications. Please see AT&T's response to question 1(b) for a discussion regarding the ability of applications to use AT&T's 3G network.

**6(a). Are there any terms in AT&T's customer agreements that limit customer usage of certain third-party applications? If so, please indicate how consumers are informed of such limitations and whether such limitations are posted on the iTunes website as well.**

Yes. The wireless data terms and conditions in AT&T's service agreement with its customers identifies permissible and impermissible uses of our wireless data service and provides examples of both types of uses. In particular, AT&T's wireless service

agreement prohibits subscribers from engaging in uses that cause extreme network capacity issues or interference with the network, which, as explained above in AT&T's response to question 1(c), can significantly harm the experience of other customers on the network. In addition, the wireless service agreement notifies customers that their use of AT&T's wireless service is subject to AT&T's acceptable use policy. The acceptable use policy prohibits the use of AT&T's network or services for unlawful purposes, activities that harm AT&T's network or services, or activities that interfere with the use and enjoyment of services received by others, including but not limited to distributing child pornography, violating intellectual property rights, and sending spam emails.

The wireless service agreement applies to all mobile wireless devices offered by AT&T, including the iPhone. The wireless service agreement, including the wireless data service terms and conditions and the acceptable use policy, is available on AT&T's website.<sup>22</sup> The agreement is also provided to the customer at the point of sale, including online and in-store sales either through AT&T or a third-party distributor, such as Apple. In addition, AT&T's wireless service agreement may be accessed via a link on Apple's iPhone website.<sup>23</sup>

**6(b). In general, what is AT&T's role in certifying applications on devices that run over AT&T's 3G network? What, if any, applications require AT&T's approval to be added to a device? Are there any differences between AT&T's treatment of the iPhone and other devices used on its 3G network?**

As explained on the AT&T Choice website, AT&T certifies applications that are distributed through the AT&T MEdiaMall in order to ensure that they are safe for the customer's device and personal information as well as our wireless network (including our 3G network).<sup>24</sup> AT&T does so by working with application developers through our devCentral program, which offers developers a variety of resources to develop applications, obtain certifications, and market their applications through the AT&T MEdiaMall. Application developers may also obtain AT&T certifications via devCentral and market their applications through other distribution channels. AT&T's devCentral program and our application certification process and associated security policies are explained in detail on the devCentral website.<sup>25</sup>

AT&T certifies applications developed through devCentral. AT&T relies on the third-parties (*i.e.*, handset manufacturers, operating system providers and application store operators) with which it has entered into commercial agreements to certify applications developed through other sources, consistent with our certification policies, for use on devices that operate on AT&T's wireless network. AT&T also has commercial

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<sup>22</sup> See AT&T website at <http://www.wireless.att.com/learn/articles-resources/wireless-terms.jsp>; <http://www.att.com/AcceptableUsePolicy>.

<sup>23</sup> See Apple website at <http://store.apple.com/us/help/iphone>.

<sup>24</sup> See AT&T Choice website at <http://choice.att.com/customers/faq.aspx>.

<sup>25</sup> See AT&T devCentral website at <http://developer.att.com/developer/index.jsp?page=why>.

arrangements with application store operators that permit the installation of a user interface on AT&T wireless devices to enable a user to directly access an application store. For economic or network utilization reasons similar to those discussed in AT&T's response to question 1(c) and to protect our customers' privacy, AT&T requires such application store operators to obtain AT&T's prior consent before certifying VoIP applications for AT&T's 3G network or applications that may violate AT&T's terms and conditions, pose network congestion issues or jeopardize our customers' privacy.<sup>26</sup>

Irrespective of whether an application may be accessed through a particular application store, AT&T does not block access to lawful Internet sites. AT&T cannot offer any guarantees, however, that non-AT&T certified applications are safe, will be compatible with any particular operating system, or will function properly on a customer's device.<sup>27</sup> As discussed in AT&T's response to question 6(a), customer use of applications is subject to AT&T's wireless service agreement.

As discussed in AT&T's response to question 5, AT&T does not participate in Apple's certification of applications for use on the iPhone.<sup>28</sup> Please see AT&T's responses to questions 1(b), 1(c) and 4 for a discussion of AT&T's treatment of the iPhone.

**7. Please list the services/applications that AT&T provides for the iPhone, and whether there [are] any similar, competing iPhone applications offered by other providers in Apple's App Store.**

AT&T provides voice, text messaging and wireless data connectivity services for the iPhone. AT&T also has developed the following applications for the iPhone, which are available in the Apple App Store. AT&T did so using the same Apple SDK available to other application providers seeking to develop applications for the Apple App Store. Each of these AT&T applications is offered free of charge, with the exception of AT&T Navigator which is offered for a monthly fee.<sup>29</sup>

- AT&T Virtual Receptionist (automated receptionist capabilities for small businesses)

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<sup>26</sup> AT&T also certifies applications for use on special purpose devices that run over AT&T's 3G network (*i.e.*, devices that have limited, specific capabilities and/or are not intended for general Internet access purposes). AT&T's commercial agreements regarding these devices contain provisions to ensure that those devices are used for their intended purposes.

<sup>27</sup> See AT&T Choice website at <http://choice.att.com/customers/faq.aspx>.

<sup>28</sup> After Apple has certified applications for use on the iPhone, AT&T separately certifies a subset of those applications for inclusion in our certified business solutions catalog, which provides a convenient guide for enterprise customers seeking applications to meet their business needs.

<sup>29</sup> See AT&T Apps for iPhone website at <http://www.wireless.att.com/cell-phone-service/specials/iPhoneApps.jsp>; Yellowpages.com "Have2" websites at <http://www.have2p.com/have2p>, <http://www.have2eat.com/have2eat>, <http://www.have2drink.com/have2drink>, <http://www.have2snack.com/have2snack>; Yellowpages.com Speak4It website at <http://www.speak4it.com/>.

- YPmobile (mobile access to yellowpages.com)
- Mobile Banking on AT&T (online banking services)
- AT&T U-verse TV Mobile Remote Access (remote control of DVR functions)<sup>30</sup>
- AT&T Navigator (GPS navigation)
- AT&T myWireless Mobile (online wireless account access)
- Have2P (restroom locator)
- Have2Eat (restaurant locator)
- Have2Drink (locator for coffee shops, bars, etc.)
- Have2Snack (convenience store locator)
- Speak4It (voice activated local search)

As discussed above in response to question 1(b), AT&T does not participate in the day-to-day consideration of whether iPhone applications should or should not be included in the Apple App Store. AT&T has not comprehensively examined the more than 65,000 applications that are reportedly available in the Apple App Store today to evaluate whether each of those applications may be similar to and compete with any of the AT&T applications in the Apple App Store. In order to respond to the Commission's question in the time allotted, however, AT&T has briefly searched the Apple App Store to locate some examples of applications that appear to be similar to and may potentially compete with certain applications offered by AT&T. The following examples, while not exhaustive, illustrate the types of similar, competing applications found in the Apple App Store:

- *GPS Navigation:* MotionX GPS; Navigon MobileNavigator; MapQuest 4 Mobile; Beacon; TomTom U.S. & Canada
- *Directory Listings:* YellowPages; AirYell; WhitePages Mobile; Google Mobile; People; Yelp
- *Mobile Banking:* Bank of America Mobile Banking; Chase Mobile; Wells Fargo Mobile; PNC Mobile Banking; Citi Mobile; IBC Mobile
- *Receptionist Functionality:* RingCentral Mobile; OmniEx; Avaya One-X mobile
- *Restroom Locator:* SitOrSquat; Toilet Finder; Central Park NYC – Classic; Imagine Central Park; Charleston City Slicker
- *Restaurant Locator:* Find a Restaurant; Zagat to Go '09; VegOut – Vegetarian Restaurant Guide; McLocator; BBQ Finder; GoodFoodNearYou; Munch; Urban Spoon
- *Beverage Locator:* Coffee Seeker; Coffee & Café Findrr; iLocate Coffee Shops; FanFinder – Sports Bar Locator; The Beer Finder; Barfly; Citysearch; AroundMe
- *Convenience Store Locator:* Convenience Store; Go-7-11; Mango
- *Voice Activated Local Search:* Google Mobile

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<sup>30</sup> The Mobile Remote Access application does not include the ability to view U-verse video programming on an iPhone.

- *VoIP*: iCall Free VoIP; WalkieTalkieVoIP; Nimbuzz; FriendCaller Instant VoIP; Vopium VoIP Caller; Barablu; Call Global App; WCell International; Skype
- *Text Messaging*: iText Free; Free Texting SMS; Freedom SMS; Textfree Unlimited; Free SMS; Blue ShortcutSMS

**8(a). Do any devices that operate on AT&T’s network allow use of the Google Voice application?**

On AT&T’s network, consumers may access and use Google Voice through the web browser on any web-enabled device, including the iPhone. As noted on the Google Voice website, “just type ‘www.google.com/voice/m’ on any web-enabled mobile phone and get started.”<sup>31</sup>

Google also offers Google Voice applications specifically for Research in Motion’s BlackBerry devices and Android-based devices, which may be downloaded from Google’s website.<sup>32</sup> Although AT&T does not currently offer an Android-based device, the Google Voice BlackBerry application may be downloaded to and runs on BlackBerry devices that operate on AT&T’s network. In addition, press reports have indicated that Google is developing a new, browser-based Google Voice application that is specifically optimized for the iPhone.<sup>33</sup>

**8(b). Do any devices that operate on AT&T’s network allow use of other applications that have been rejected for the iPhone?**

As discussed above, AT&T does not participate in Apple’s day-to-day consideration of whether particular iPhone applications should or should not be rejected for use on the iPhone, and Apple does not typically notify AT&T when particular iPhone applications are accepted or rejected. Consequently, AT&T cannot identify all applications that have been rejected for the iPhone. As discussed above and on the AT&T Choice website, however, AT&T customers are able to use a broad range of applications on their AT&T devices in a manner consistent with AT&T’s terms of use. In particular, AT&T customers can use Google Voice on any AT&T phone, including the iPhone, by accessing it through their web browser. Customers can also download compatible applications for music, social networking, photography, weather, navigation, travel,

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<sup>31</sup> Google Voice website at <http://www.google.com/support/voice/bin/answer.py?hl=en&answer=154724>; <http://google.com/support/mobile/bin/answer.py?hl=en&answer=97851>.

<sup>32</sup> Google Voice website at <http://google.com/support/mobile/bin/answer.py?hl=en&answer=154792>.

<sup>33</sup> See Martin Perez, *Google Voice Coming to iPhone as Web App*, Information Week (Aug. 10, 2009).

dining, search, shopping, auctions, news, sports, and entertainment, as well as VoIP applications, video applications and a wide variety of other applications.<sup>34</sup>

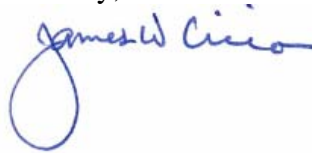
**9. Please explain whether, on AT&T's network, consumers' access to and usage of Google Voice is disabled on the iPhone but permitted on other handsets, including Research in Motion's BlackBerry devices.**

As discussed above in response to question 8(a), AT&T wireless customers may access and use Google Voice through the web browser on any web-enabled handset, including the iPhone and Research in Motion's BlackBerry devices. In addition, Google offers a Google Voice application specifically for BlackBerry devices, which AT&T customers may download from the Google Voice website. AT&T does not disable access to or use of this application.

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AT&T appreciates the opportunity to address the Commission's questions. We look forward to working with the Commission to ensure that the wireless marketplace continues to attract the substantial investment necessary to develop innovative products and services for consumers, and job-producing growth for the economy, in the years ahead.

Sincerely,

A handwritten signature in blue ink that reads "James W. Cicconi". The signature is written in a cursive style with a large loop at the end of the name.

James W. Cicconi

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<sup>34</sup> AT&T Choice website at <http://choice.att.com/flash/customersapplications.aspx>. AT&T supports and markets numerous Windows Mobile handsets produced by Samsung, LG, HTC, Pantech, and Motorola. See AT&T website at <http://www.wireless.att.com/cell-phone-service/cell-phones/index.jsp>. According to Skype, any consumer that chooses one of these handsets can download Skype's software to the handset and use it to make Skype calls over AT&T's 3G network. See Skype website at <http://www.skype.com/download/skype/windowsmobile> (describing system requirements). Consumers also may separately acquire their own GSM-compatible handsets, including those that are pre-loaded with Skype, and use those handsets on AT&T's 3G network.