



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Investigation on the Commission's Own Motion Into the Planned Purchase and Acquisition by AT&T Inc. of T Mobile USA, Inc., and its Effect on California Ratepayers and the California Economy.

1.11-06-009
(Filed June 9, 2011)

COMPLIANCE FILING OF AT&T AND T-MOBILE WEST CORPORATION d/b/a T-MOBILE (U-3056-C) IN RESPONSE TO ORDERING PARAGRAPH 1 OF ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING ADDITIONAL INFORMATION AND ADDRESSING VARIOUS PROCEDURAL ISSUES NAMELY THE JOINT WRITTEN *EX PARTE* PRESENTATION FILED AT THE FCC ON NOVEMBER 15, 2011 IN WT DOCKET 11-65 (BATES NOS. ATTITMCA010527 – ATTITMCA010597) FILED CONCURRENTLY HEREWITH

PUBLIC VERSION

J. David Tate
David P. Discher
AT&T Services
525 Market Street
San Francisco, CA 94105
(415) 778-1420

Teri Ohta
Senior Counsel, State Regulatory Affairs
T-Mobile USA
12920 SE 38th Street
Bellevue, Washington 98006
(425) 383-5532

James B. Young
Colin T. Kemp
Pillsbury Winthrop Shaw Pittman LLP
50 Fremont Street
San Francisco, CA 94105-2228
(415) 983-1000

Dave Conn
Vice-President, State Regulatory Affairs
T-Mobile USA
12920 SE 38th Street
Bellevue, Washington 98006
(425) 383-6151

Attorneys for AT&T

Attorneys for T-Mobile West Corporation
d/b/a T-Mobile

ADDITIONAL COUNSEL LISTED ON THE LAST PAGE

November 17, 2011

Pursuant to Ordering Paragraph 1 of the Administrative Law Judge's Ruling Requesting Additional Information and Addressing Various Procedural Issues, AT&T¹ and T-Mobile West Corporation d/b/a T-Mobile hereby file as Attachment A hereto a public/redacted version of the written *Ex Parte* submission by Richard Rosen and Nancy Victory to Marlene Dortch, filed on November 15, 2011 at the Federal Communications Commission in WT Docket No. 11-65 concerning Sprint's conflicting competitive assessments of the wireless market (Bates Nos. ATTITMCA010527-ATTITMCA010597).

Dated: November 17, 2011.

Respectfully submitted,

By: /S/ James B. Young

J. David Tate
David P. Discher
AT&T Services
525 Market Street
San Francisco, CA 94105
(415) 778-1420

James B. Young
Colin T. Kemp
Pillsbury Winthrop Shaw Pittman LLP
50 Fremont Street
San Francisco, CA 94105-2228
(415) 983-1638

Attorneys for AT&T

By: /S/ Teri Ohta

Dave Conn
Vice-President, State Regulatory
Affairs
T-Mobile USA
12920 SE 38th Street
Bellevue, Washington 98006
(425) 383-6151

Teri Ohta
Senior Counsel, State Regulatory
Affairs
T-Mobile USA
12920 SE 38th Street
Bellevue, Washington 98006
(425) 383-5532

*Attorneys for T-Mobile West
Corporation d/b/a T-Mobile*

¹ New Cingular Wireless PCS, LLC (U 3060 C), AT&T Mobility Wireless Operations Holdings, Inc. (U 3021 C), Santa Barbara Cellular Systems, Ltd. (U 3015 C), AT&T Mobility Wireless Operations Holdings, LLC (U 3014 C), Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C); AT&T Communications of California, Inc. (U 5002 C); TCG San Francisco (U 5454 C); TCG Los Angeles, Inc. (U 5462 C); and TCG San Diego (U 5389 C).

Of Counsel:

Arnold & Porter LLP
555 Twelfth Street, NW
Washington, DC 20004
Telephone: (202) 942-6060

Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2595
Telephone: (202) 624-2500

Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005
Telephone: (202) 736-8000

Wilmer Cutler Pickering Hale & Dorr
LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 663-6000

Attorneys for AT&T

Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
Telephone: (202) 719-7000

*Attorneys for T-Mobile West
Corporation d/b/a T-Mobile*

ATTACHMENT A

November 15, 2011

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Written *Ex Parte* Presentation: *Applications of AT&T and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 11-65

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Dear Ms. Dortch:

As outside counsel for Deutsche Telekom AG and AT&T Inc. (“Applicants”), we have reviewed Sprint’s highly confidential responses to the FCC’s information requests.¹ Our review focused in particular on internal competitive assessments, including those presented to the Sprint Board of Directors in the first quarter of 2011. According to press reports,² Sprint was then evaluating options for its own purchase of T-Mobile USA, and the Applicants’ purchase agreement had not yet been announced. These highly confidential documents provide fact-based insights into Sprint’s true view of the wireless competitive landscape, free from the taint of Sprint’s self-interested opposition to this acquisition.

On point after point, Sprint’s internal documents flatly contradict Sprint’s public advocacy before the FCC, state public utility commissions, Congress, and the media. And they confirm that, for the reasons Applicants have explained, this transaction is pro-competitive and pro-consumer, while Sprint’s opposition is anticompetitive, anti-consumer, and disingenuous.

Consider, for example, Sprint’s public claims that AT&T faces no spectrum crisis; that the acquisition would give the combined company “too much” spectrum; that it would produce few synergies; and that it would somehow imperil Sprint’s independent existence. These internal

¹ See Request for Information Concerning Applications of AT&T Inc. and Deutsche Telekom AG for Consent To Transfer Control of the Licenses and Authorizations Held by T-Mobile USA, Inc. and Its Subsidiaries, WT Docket No. 11-65 (sent to Sprint Nextel on June 6, 2011); Sprint Response to FCC Information Requests, WT Docket No. 11-65 (submitted on June 17, 2011); Sprint Supplemental Response to FCC Information Requests, WT Docket No. 11-65 (submitted on June 29, 2011); and Sprint Second Supplemental Response to FCC Information Requests, WT Docket No. 11-65 (submitted on July 27, 2011).

² See “Sprint Reportedly Holds Talks on Buying T-Mobile,” *Forbes* (Mar. 8, 2011), available at <http://www.forbes.com/sites/ericavitz/2011/03/08/sprint-reportedly-holds-talks-on-buying-t-mobile/>.

Sprint documents completely undermine those claims, confirming the Applicants' factual submissions showing that —

- Mergers between wireless operators can create immense synergies;³
- Sprint holds the strongest spectrum position of any U.S. provider and enjoys a growing strategic advantage within the wireless industry;⁴
- AT&T, by contrast, faces major spectrum constraints.⁵

These documents therefore permit only one conclusion: Sprint opposes this acquisition not because it would *harm* consumers, but precisely because it would *benefit* consumers by giving them a more efficient alternative to Sprint. In particular, the acquisition will create the network synergies AT&T needs in order to overcome its capacity constraints, increase output, and serve consumers better. Again, according to press accounts, Sprint hoped to acquire T-Mobile USA for itself. But that is not a neutral policy rationale for opposing this transaction, particularly given that Sprint's spectrum position is avowedly superior to AT&T's.

These Sprint documents further refute Sprint's advocacy on basic disputed issues in this proceeding, including market definition and T-Mobile USA's competitive prospects. For example, the Applicants have shown that—

- T-Mobile USA is not a significant competitor in Enterprise or M2M;⁶

³ Sprint estimated [BEGIN SPRINT HIGHLY CONFIDENTIAL]

[END SPRINT HIGHLY

CONFIDENTIAL] SNC-FCC-00009407.

⁴ Sprint's internal documents state that [BEGIN SPRINT HIGHLY CONFIDENTIAL]

[END SPRINT HIGHLY CONFIDENTIAL] at SNC-FCC-

00008732. Sprint has made similar claims publicly as well. See, e.g., Clearwire, *Our Network: Clearwire Has More Spectrum Than Anyone* (visited Nov. 14, 2011), <http://www.clearwire.com/company/our-network>.

⁵ For example, one Sprint document [BEGIN SPRINT HIGHLY CONFIDENTIAL]

[END SPRINT HIGHLY CONFIDENTIAL] SNC-FCC-00008751.

⁶ As to enterprise services, [BEGIN SPRINT HIGHLY CONFIDENTIAL]

[END SPRINT HIGHLY CONFIDENTIAL] SNC-FCC-00008753. And as to M2M services, [BEGIN SPRINT HIGHLY CONFIDENTIAL]

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- T-Mobile USA is a struggling competitor and has no clear path to LTE;⁷
- T-Mobile USA is not a leader in innovation;⁸
- Prepaid and postpaid customers are part of the same market because no-contract providers are successfully competing for traditional “postpaid” customers;⁹
- Sprint is not disadvantaged in access to desirable handsets,¹⁰ and
- Wireless carriers tailor their competitive strategies to local market conditions.¹¹

The documents identified here **[BEGIN SPRINT HIGHLY CONFIDENTIAL]**
[END SPRINT HIGHLY CONFIDENTIAL]

To ensure that the Commission makes its decisions in this proceeding based upon Sprint’s record evidence rather than its rhetoric, we set forth, in Attachment A, a list of relevant quotes from Sprint’s highly confidential internal documents. In Attachment B, we provide the quoted pages of Sprint’s internal confidential documents with the quoted provisions highlighted. This submission supplements Deutsche Telekom and AT&T’s prior filings in this proceeding.

⁷ **[END SPRINT HIGHLY CONFIDENTIAL]** SNC-FCC-00002958.
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⁸ **[END SPRINT HIGHLY CONFIDENTIAL]** SNC-FCC-00008753.
For example, **[BEGIN SPRINT HIGHLY CONFIDENTIAL]**

[END SPRINT HIGHLY CONFIDENTIAL] SNC-FCC-00000085.
⁹ **[BEGIN SPRINT HIGHLY CONFIDENTIAL]**

[END SPRINT HIGHLY CONFIDENTIAL] SNC-FCC-00008975.
¹⁰ **[BEGIN SPRINT HIGHLY CONFIDENTIAL]**

¹¹ **[END SPRINT HIGHLY CONFIDENTIAL]** SNC-FCC-00000648.
Sprint has **[BEGIN SPRINT HIGHLY CONFIDENTIAL]**

[END SPRINT HIGHLY CONFIDENTIAL] SNC-FCC-00002070; *see also* SNC-FCC-00011276, SNC-FCC-00004726, SNC-FCC-00004730, SNC-FCC-00002070.

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Because the contents of Attachments A and B are highly confidential in nature, a public version has not been provided.

Pursuant to the terms of the Second Protective Order, two redacted, public versions of this letter and one copy of the highly confidential version of this letter and Attachments A and B have been filed with the Office of the Secretary; two copies of the highly confidential version of this letter and Attachments A and B have also been submitted to Ms. Katherine Harris of the Wireless Communications Bureau's Mobility Division. A copy of the redacted, public version of this letter will also be filed electronically through the Commission's Electronic Comment Filing System. Should any questions arise concerning this submission, please do not hesitate to contact the undersigned immediately.

Sincerely,

/s/ Nancy J. Victory

Nancy J. Victory
Counsel for Deutsche Telekom AG

/s/ Richard L. Rosen

Richard L. Rosen
Counsel for AT&T Inc.

cc: Kathy Harris
Kate Matraves
Jim Bird
David Krech
Renata Hesse
Rick Kaplan
Best Copy and Printing, Inc.

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ATTACHMENT A

[HIGHLY CONFIDENTIAL INFORMATION – 14 PAGES
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ATTACHMENT B

Attached are the source documents cited in Attachment A, with relevant quotes highlighted in yellow.

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**[HIGHLY CONFIDENTIAL INFORMATION – 52 PAGES
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