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**REDACTED – FOR PUBLIC INSPECTION**

August 18, 2011

*Via Electronic Filing*

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

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

Dear Ms. Dortch:

On August 16, 2011, representatives of Sprint Nextel Corporation (“Sprint”) met with staff members of the Federal Communications Commission (“FCC” or “Commission”) and the Antitrust Division of the U.S. Department of Justice (“DOJ”) to discuss the engineering and economic simulation model (the “Model”) recently filed by AT&T and Deutsche Telekom (the “Applicants”) in the above-referenced proceeding. A list of the Commission and DOJ staff and the Sprint representatives attending the meeting is set forth in Attachment A.

Sprint’s representatives pointed out during the meeting that the Applicants filed the Model three months after filing their Application in this proceeding and six weeks after their Opposition was submitted. The Model has not only been filed very late, but also is a moving target with the Applicants presenting it in a piecemeal, evolving fashion. The Applicants’ representatives first mentioned the existence of the Model in the July 13, 2011 economist workshop sponsored by the Commission and indicated that they would be providing whatever backup was needed for parties to understand the Model. The Applicants first filed the Model in this proceeding on July 25, submitting two separate versions of the Model in that filing. AT&T then supplemented the Model with an *ex*

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*parte* filing on August 5. The following week, on August 11, the Applicants filed significant modifications to the engineering projections originally included in the Model. On August 16, just as Sprint's representatives were discussing the various pre-August 16 versions of the Model with FCC and DOJ staff, the Applicants filed a "re-run" of their economic simulation. At this point, it is unclear whether and when the Applicants, if permitted, will attempt to file yet more revisions and "re-runs" to correct their late and apparently still-changing Model. It also is unclear when the promised backup materials will be submitted on the record to the Commission and made available for comment.

As Sprint's representatives explained during the meeting, the tardy, seriatim, and incomplete nature of the Applicants' filings regarding the Model make it difficult for Sprint and other interested parties to offer timely and meaningful comments. The lateness of these filings is also contrary to the Commission's filing deadlines and efforts to conduct an efficient and fair review of AT&T's application to acquire T-Mobile. The Commission's rules required the Applicants' April Application to be "sufficiently complete" and to contain "all necessary information" required by FCC Form 603, including information to "demonstrate that the proposed transaction is in the public interest."<sup>1</sup> In addition, the Public Notice seeking comment on the Application made clear that parties should raise "all issues in their initial filings" to allow "the Commission to consider fully all substantive issues regarding the Application in as timely and efficient a manner as possible."<sup>2</sup> The Public Notice further stated that a "party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously."<sup>3</sup>

As the Sprint representatives explained in the August 16 meeting, the Applicants have not even attempted to make such a showing in seeking to introduce new arguments and issues in the form of the Model long after their Application was filed and the pleading cycle closed. That failure in itself permits the Commission to disregard the Applicants' numerous filings regarding the Model. The Applicants should not be allowed to get a "second bite at the apple" (let alone a third or more bites) after failing in their Application and Opposition to establish that the proposed transaction will promote the public interest.

During the August 16 meeting, Sprint's representatives pointed out another, independent reason the Commission should disregard the Model: contrary to the assertions made by the Applicants' representatives in the July 13 workshop, the promised backup material to the Model has not been submitted, and contrary to the Commission's instructions, the Applicants have not provided the Model "in a format and with sufficient

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<sup>1</sup> See 47 C.F.R. § 1.948(j)(1)(i); FCC Form 603 – Instructions, at 6.

<sup>2</sup> Public Notice, DA 11-799, WT Docket No. 11-65, at 3-4 (Apr. 28, 2011).

<sup>3</sup> *Id.* at 4.

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explanation and back-up information to enable [the Commission], and third parties entitled to have access to the information, to adequately evaluate it.”<sup>4</sup> Even after all of the Applicants’ various filings and *ex parte* meetings on the topic, the Model remains bereft of the documentation necessary to assess and verify the Model’s assumptions and methodology, such as:

- What is the Applicants’ justification for the methodology used in the engineering model, including the extent to which the methodology captures real-world factors that may vary within a market and across markets?
- Is the engineering model the type of analysis AT&T’s radio access network planning group or T-Mobile’s engineering group use in the normal course of business in determining the need for and cost of network expansion? To what extent does the model differ from the planning models and tools used by the Applicants in the normal course of business?
- Have the Applicants run “sensitivity” tests on the engineering model that show how the engineering model results change under various combinations of input assumptions?
- What is the basis for the network investment assumptions underlying the engineering model?
- What is the basis for the engineering model’s assumptions, for both the stand-alone and Option 1 scenarios, for subscriber base growth rate, usage per subscriber, and allocation and migration of subscribers to the various network technologies?
- What is the basis for the network capacity assumptions (*i.e.*, combinations of erlangs and bits per hertz) for each technology and timeframe used in the engineering model?
- What is the basis for the particular engineering measures (including their sequencing) used in the Model to increase network capacity and the reason other measures were not considered? What is the basis for the cost assumptions for the capacity-enhancement measures used in the Model?

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<sup>4</sup> Letter from Rick Kaplan, Chief, Wireless Telecommunications Bureau, to Richard L. Rosen, Counsel for AT&T, WT Docket No. 11-65, at 1 (July 20, 2011).

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- How does the engineering model calculate peak load demand for voice and data traffic? What “standard engineering formulas and typical relations between monthly total and busy hour demand” are used in calculating peak load demand?<sup>5</sup> According to the Applicants, **[Begin Highly Confidential Information]**

**[End Highly Confidential Information].**

- What criteria did the Applicants use in selecting the 15 markets that are the subject of the Model? Why does the Model not include any Rural Service Areas?
- What are the basis and the data sources for the **[Begin Highly Confidential Information]** **[End Highly Confidential Information]**?
- **[Begin Highly Confidential Information]** **[End Highly Confidential Information]**
- What is the basis for **[Begin Highly Confidential Information]** **[End Highly Confidential Information]**?

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<sup>5</sup> Letter from Richard L. Rosen, Counsel for AT&T, and Nancy Victory, Counsel, for Deutsche Telekom, to Marlene Dortch, FCC Secretary, WT Docket No. 11-65, at 4 (July 25, 2011).

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- **[Begin Highly Confidential Information]** [REDACTED]  
[REDACTED] **[End Highly Confidential Information]**
- Will the Applicants file in the record of this proceeding the **[Begin Highly Confidential Information]** [REDACTED]  
[REDACTED] **[End Highly Confidential Information]**

The Applicants have failed to provide declarations by their economic and engineering experts that fully explain and verify the assumptions and analyses underlying the Model. As the Sprint representatives explained in the August 16 meeting, the Applicants' claims regarding the Model are consequently unverifiable and should be given no weight.<sup>7</sup> Sprint's representatives also pointed out that the Applicants continue to ignore cost-effective capacity gains that can be achieved by expediting the migration to newer, more spectrally efficient technologies and increasing the deployment of heterogeneous networks and small cell technologies. These points are described in detail in Sprint's Petition to Deny (pages 98-112) and Reply (pages 61-68) as well as in the Declaration (Part C) and Reply Declaration (Parts B-D) of Steven Stravitz.

Sprint's representatives emphasized that the Applicants have the burden of proof in demonstrating that the proposed transaction will serve the public interest. The Model in no way makes this demonstration given the unanswered questions and unexplained assumptions underlying the model.

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<sup>7</sup> See *AT&T – Centennial Merger Order*, 24 FCC Rcd 13915, ¶ 90 (2009).

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Pursuant to section 1.206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), this *ex parte* notification is being filed electronically for inclusion in the public record of the above referenced proceeding.

Respectfully submitted,

/s/ Regina M. Keeney  
Regina M. Keeney

Attachment

cc: FCC Staff Listed in Attachment A  
Kathy Harris  
Kate Matraves  
Stacy Ferraro  
David Krech  
Best Copy and Printing, Inc.

**ATTACHMENT A**  
**August 16, 2011 Meeting - List of Attendees**

**FCC**

Renata Hesse, Office of the Chairman  
Austin Schlick, OGC  
Jim Bird, OGC  
Joel Rabinovitz, OGC\*  
Virginia Metallo, OGC  
Paul de Sa, OSP  
Jonathan Baker, OSP  
Greg Rosston, OSP  
Jack Erb, OSP  
Paul LaFontaine, OSP  
Charles Mathias, WTB  
Chris Helzer, WTB  
Jim Schlichting, WTB  
Melissa Tye, WTB  
Patrick DeGraba, WTB  
Paul Murray, WTB  
Susan Singer, WTB  
Thuy Tran, WTB  
Tom Peters, WTB  
Weiren Wang, WTB  
Ziad Sleem, WTB

**U.S. Department of Justice, Antitrust  
Div.**

Hillary Burchuk  
Ken Dintzer\*  
Wayne Dunham\*  
Larry Frankel\*  
Ken Heyer\*  
Robert Lepone  
Nate Miller\*  
Claude Scott\*  
Gloria Shey\*

**Sprint Representatives**

Steven C. Salop, Charles River Associates  
Stanley M. Besen, Charles River Associates  
David Reitman, Charles River Associates  
R. Craig Romaine, Charles River Associates  
Yianis Sarafidis, Charles River Associates  
Steven Stravitz, Spectrum Management Consulting.  
Hemant Mehta, Spectrum Management Consulting  
Antoinette Cook Bush, Skadden, Arps, Slate, Meagher & Flom, LLP  
Steven C. Sunshine, Skadden, Arps, Slate, Meagher & Flom, LLP  
Matthew P. Hendrickson, Skadden, Arps, Slate, Meagher & Flom, LLP  
Regina M. Keeney, Lawler, Metzger, Keeney & Logan, LLC  
A. Richard Metzger, Jr., Lawler, Metzger, Keeney & Logan, LLC  
Charles Logan, Lawler, Metzger, Keeney & Logan, LLC

\* Participated by telephone