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November 16, 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 (“Applicants”) for  
Consent to Assign or Transfer Control of Licenses and Authorizations  
WT Docket No. 11-65 – Written Ex Parte Presentation*

Dear Ms. Dortch:

AT&T has argued in this proceeding that it does not have sufficient spectrum to meet consumer demand for mobile broadband services and that acquiring T-Mobile will remedy its purported spectrum shortfall. As numerous parties have pointed out, AT&T’s argument is flawed in a number of respects and certainly provides no justification for its proposed anti-competitive takeover of T-Mobile. Recent actions taken by AT&T, however, undermine the very premise of its “spectrum crunch” claim.

In particular, according to various public sources, AT&T has hired investment bankers to sell a significant portion of its Wireless Communications Services (WCS) spectrum.<sup>1</sup> As the attached offering memorandum shows,<sup>2</sup> AT&T and NextWave are jointly seeking to sell a nationwide 10 MHz block of spectrum in the WCS C and D Blocks, which is in the 2.3 GHz band. It appears that AT&T is contributing 4.96 MHz of WCS spectrum to this sale, based on AT&T’s current nationwide, population-weighted holdings in the WCS C and D Blocks.

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<sup>1</sup> See Keller & Heckman, LLC, *2.3 GHz Spectrum Sales Provide Acquisition Option*, TELECOM BUSINESS ALERT, June 27, 2011, *available at*: <<http://www.khlaw.com/showpublication.aspx?Show=4629>>; Yahoo Message Board Posting, July 11, 2011, *available at*: <[http://messages.finance.yahoo.com/Stocks\\_%28A\\_to\\_Z%29/Stocks\\_N/threadview?m=tm&bn=110740&tid=100&mid=100&tof=3&ftr=2](http://messages.finance.yahoo.com/Stocks_%28A_to_Z%29/Stocks_N/threadview?m=tm&bn=110740&tid=100&mid=100&tof=3&ftr=2)>.

<sup>2</sup> The offering memorandum is publicly available at: <[http://www.khlaw.com/Files/10308\\_C%20%20D%20Block%20Teaser.pdf](http://www.khlaw.com/Files/10308_C%20%20D%20Block%20Teaser.pdf)>.

In 2010, the Commission amended its WCS rules to “enable licensees to provide mobile broadband services” in the WCS band.<sup>3</sup> In the offering memorandum, AT&T and NextWave state that WCS spectrum is well suited for mobile broadband. The joint offering memorandum indicates that:

The 2.3 GHz band is being used globally for mobile broadband services. 4G equipment for the 2.3 GHz band is available today with a global ecosystem developing for both LTE and WiMAX;

The C and D block WCS spectrum in the U.S. is suited for a wide range of broadband applications including Smart Grid, supplemental downlink for mobile services, fixed commercial and residential broadband, wireless backhaul and one-way broadcast-like services.

Notwithstanding the favorable reviews AT&T has given the WCS spectrum in its joint offering memorandum, AT&T has replied to critics of its spectrum sale by contending that the WCS spectrum is flawed.<sup>4</sup> Putting aside the question of how AT&T can square the strongly favorable views of the WCS spectrum that AT&T presents to potential buyers of the WCS spectrum with the strongly negative views of the same spectrum that AT&T offers its critics, AT&T’s decision to sell its WCS spectrum prompts an obvious question: How can a company that is selling a valuable, nationwide block of broadband spectrum at the same time be telling the FCC that it faces a “spectrum crunch”? The answer is simple: AT&T does *not* face a spectrum crunch.

AT&T, in fact, has more licensed spectrum than any other CMRS provider in the country. Other wireless carriers, such as Verizon, manage to serve more customers with less spectrum resources than AT&T by using their existing spectrum licenses, deploying new technologies, and investing in infrastructure. To the extent AT&T can be said to be constrained at all, therefore, any ostensible limitations are the result of years of underinvestment by AT&T in its network and AT&T’s failure to put its existing spectrum to more efficient use – or, in the case of AT&T’s WCS spectrum, to any use at all.

While AT&T pleads spectrum poverty to the FCC as a feint to justify its anti-competitive takeover of T-Mobile, AT&T is actually spectrum rich, as demonstrated by its decision to sell a nationwide block of its broadband spectrum rather than put that spectrum to use to serve its subscribers. Like AT&T’s many other disingenuous claims in this proceeding, AT&T’s

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<sup>3</sup> *Amendment of Part 27 of the Commission’s Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band*, Report and Order and Second Report and Order, 25 FCC Rcd 11710, ¶ 1 (2010).

<sup>4</sup> Maisie Ramsay, *AT&T, Public Knowledge Spar Over WCS Spectrum Sale*. WIRELESS WEEK, Oct. 27, 2011, available at: <<http://www.wirelessweek.com/News/2011/10/AT-T-Public-Knowledge-Spar-Over-WCS-Spectrum-Sale/>>.

purported need for T-Mobile's spectrum cannot be squared with the facts. AT&T's inconsistent statements on these and many other matters well documented in the record raise "substantial and material question[s] of fact" under Section 309(e) of the Communications Act, which mandates that the Commission designate the proposed transaction for hearing.<sup>5</sup> Sprint urges the Commission to act promptly to designate AT&T's proposed takeover of T-Mobile for resolution before an administrative law judge.

Sincerely,

/s/ Charles W. Logan  
Charles W. Logan  
*Counsel for Sprint Nextel Corporation*

Attachment

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

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<sup>5</sup> 47 U.S.C. § 309(e).

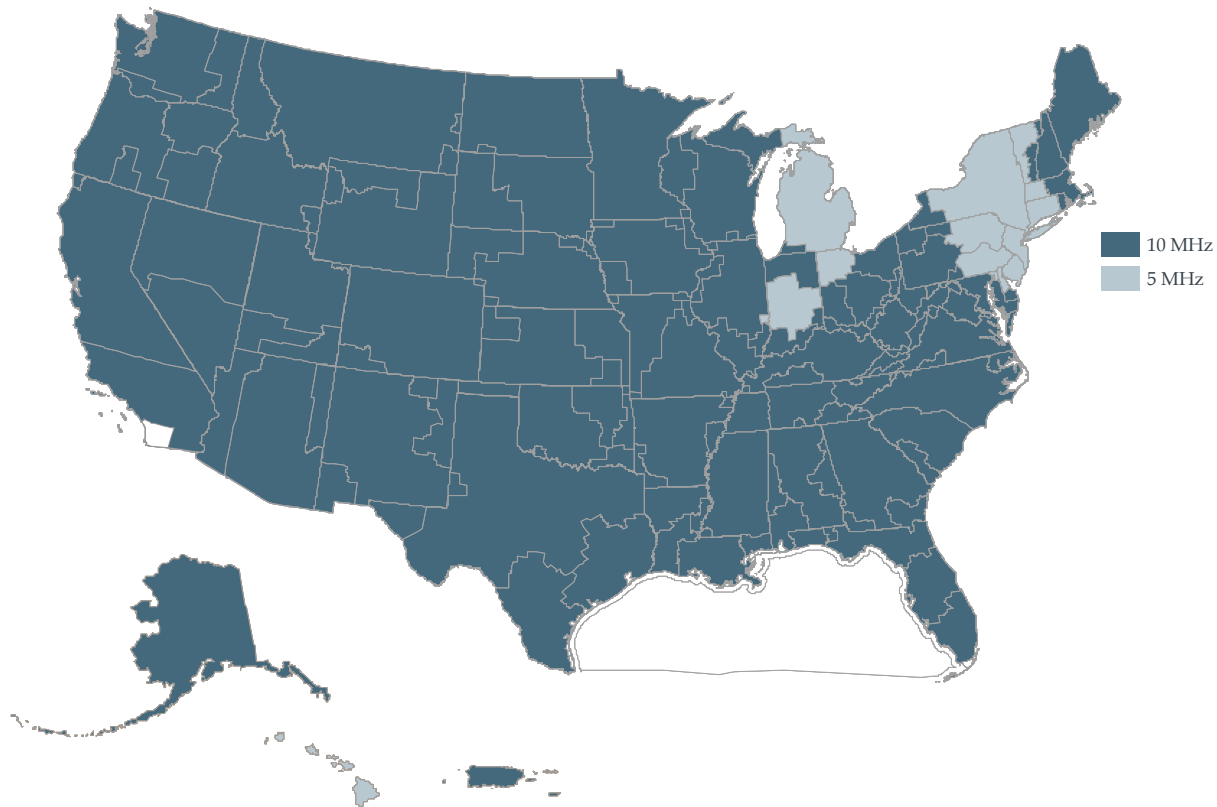


## 2.3 GHz WCS C and D Block Spectrum Licenses

### OVERVIEW OF OFFER TO SELL NATIONWIDE 2.3 GHZ FOOTPRINT

AT&T and NextWave are pursuing a joint sale of their 2.3 GHz Wireless Communications Service (“WCS”) C and D block spectrum licenses. The joint sale comprises spectrum covering the entire U.S. population - 10 MHz covering over 80% of the U.S. population and 5 MHz covering portions of the Northeast, Michigan, Indiana and Ohio. The footprint comprises 2.8 billion MHz POPs in total (based on 2010 population data).

### MHz COVERAGE



### SUMMARY INVESTMENT HIGHLIGHTS

- This offering represents an opportunity to purchase broadband spectrum covering the entire U.S. population;
- The 2.3 GHz band is being used globally for mobile broadband services. 4G equipment for the 2.3 GHz band is available today with a global ecosystem developing for both LTE and WiMAX;
- The C and D block WCS spectrum in the U.S. is suited for a wide range of broadband applications including Smart Grid, supplemental downlink for mobile services, fixed commercial and residential broadband, wireless backhaul and one-way broadcast-like services.

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