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July 11, 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*

Dear Ms. Dortch:

On July 7, 2011, Vonya McCann, Senior Vice President, Government Affairs and Lawrence R. Krevor, Vice President – Spectrum, Government Affairs, of Sprint Nextel Corporation (“Sprint”); along with Sprint’s outside counsel Antoinette Cook Bush, Steven Sunshine and Matthew Hendrickson of Skadden, Arps, Slate, Meagher & Flom; A. Richard Metzger, Jr., and the undersigned of Lawler, Metzger, Keeney and Logan; met with Renata Hesse, Senior Counsel to Chairman Genachowski for Transactions; Rick Kaplan, Chief, (by phone), James Schlichting, Senior Deputy Chief, and Brent Skorup, Charles Mathias, Eliot Maenner, Kate Matraves, Patrick DeGraba, Paul D’Ari, Paul Murray, Thuy Tran, and Tom Petters of the Wireless Telecommunications Bureau; Jonathan Baker, Chief Economist and Paul de Sa, Chief, and Gregory Rosston and Paul LaFontaine of the Office of Strategic Planning and Policy Analysis; and Austin Schlick, General Counsel, and Jim Bird, Joel Rabinovitz, Michael Steffen, Neil Dellar, and Virginia Metallo of the Office of General Counsel.

Sprint’s representatives discussed the significant competitive and other public interest harms that would result if AT&T were permitted to acquire T-Mobile. Specifically, Sprint’s representatives distributed the attached slide deck and discussed pages 1-18, which explain that T-Mobile continues to be a significant nationwide competitor; if AT&T acquired T-Mobile, the “fringe” firms would be unable to replace T-Mobile as a competitive constraint; a post-takeover AT&T would have an increased ability and incentive to foreclose Sprint and other carriers, e.g., through control of

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handsets, special access, and roaming. Sprint's representatives also discussed that the proposed transaction would produce no cognizable public interest benefits.

In light of the competitive and other public interest harms that would result from the proposed transaction, and the Applicants' failure to demonstrate any cognizable public interest benefits, Sprint's representatives urged that the Commission not approve AT&T's proposal to acquire T-Mobile.

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: *"AT&T's Takeover of T-Mobile Would Harm Competition and Consumers & Would Produce No Public Interest Benefits"*

cc:

Renata Hesse	Greg Rosston
Austin Schlick	Jim Bird
Joel Rabinovitz	Michael Steffen
Neil Dellar	Virginia Metallo
Paul de Sa	Jon Baker
Paul LaFontaine	Rick Kaplan
Jim Schlichting	Brent Skorup
Charles Mathias	Eliot Maenner
Kate Matraves	Patrick DeGraba
Paul D'Ari	Paul Murray
Thuy Tran	Tom Peters
Kathy Harris	Stacy Ferraro
David Krech	Best Copy and Printing, Inc.

**AT&T's Takeover of T-Mobile Would  
Harm Competition and Consumers &  
Produce No Public Interest Benefits**

**July 7, 2011**

# **AT&T's Takeover of T-Mobile Would Harm Competition and Consumers**

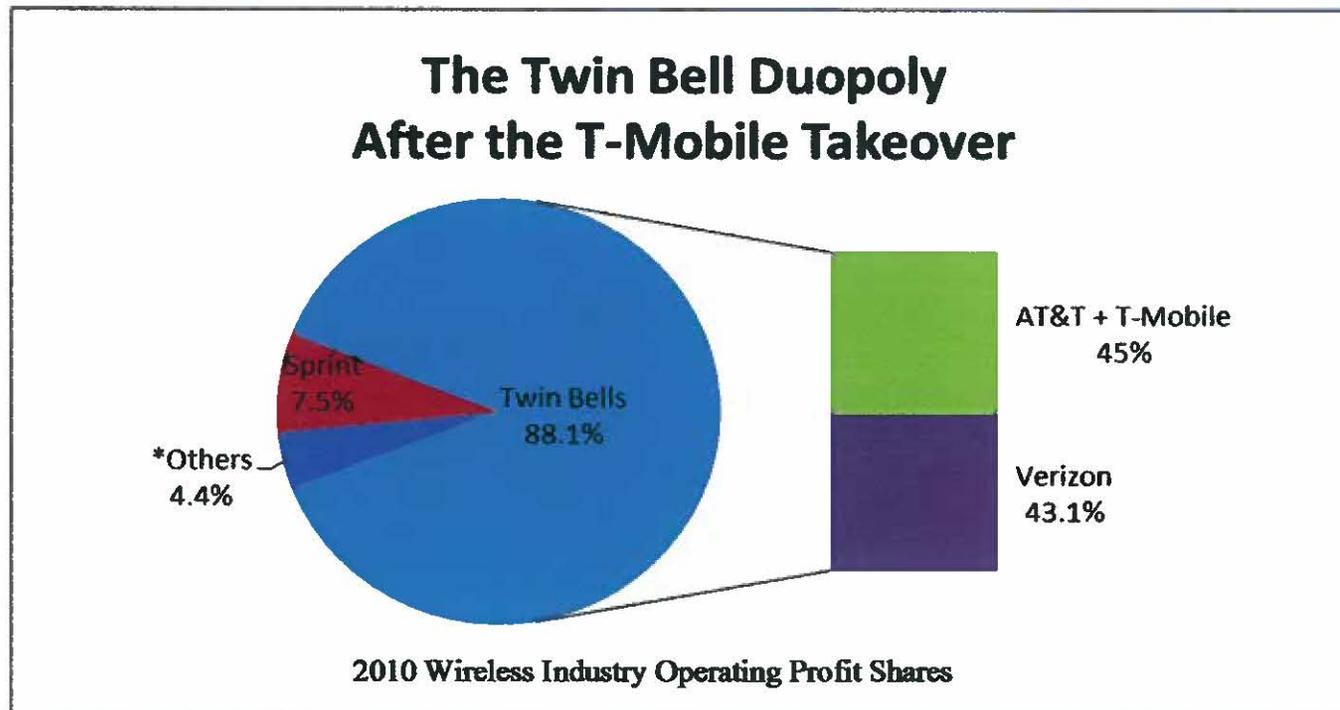
# The Evidence in the Record

- Applicants have fallen far short of carrying their burden of proving, by a preponderance of the evidence, that the transaction would serve the public interest
- Overwhelming record evidence demonstrates the AT&T's proposed takeover of T-Mobile would cause serious harm to competition and consumers
- AT&T's purported efficiency claims are illusory and not merger-specific

# The Transaction is Anti-Competitive

- Clear adverse effects from horizontal merger
  - T-Mobile is a maverick
  - Fringe firms are not meaningful competitive constraints
  - AT&T and Verizon are similarly situated, have similar incentives and control key inputs
- Record confirms takeover would tip the industry toward a Twin Bell duopoly

# Reversion to Duopoly



\*US Cellular 1.3%, MetroPCS 1.9%, Leap 0.8%, Cincinnati Bell 0.2%, and NTELOS 0.2%  
Source of Data: "U.S. Wireless 411," UBS Investment Services, March 30, 2011

# Relevant Product Markets

- The Commission should review the competitive effects of the takeover in all relevant product markets, including at least:
  - All retail wireless services
  - Postpaid wireless retail services
  - Corporate and government accounts

# Relevant Geographic Markets

- Local and national are relevant geographic markets
  - The four national carriers set uniform, national prices, with limited local promotions
  - Handset and network competition are national
  - Innovation and advertising decisions largely made on a national basis
- Transaction would have adverse effects in national and local markets

# Anti-Competitive Unilateral Effects

- Record demonstrates takeover would increase AT&T's ability to raise its rates without sacrificing profits
- “So to sum up, this is a transaction that creates substantial shareowner value. Most important, it enhances our long-term revenue and margin potential.” Ralph de la Vega, President and CEO, Mobility and Consumer Market, AT&T, March 21, 2011

# **T-Mobile: National Maverick and Close Substitute for AT&T**

- Offers lower prices for handsets and services
- Consistently beats AT&T on customer service
- Upgraded more of its network for high speed data services than AT&T
- Helped develop and launch new innovative handsets, such as the G1
- Advertises aggressively against AT&T

# The Fringe Providers Could Not Constrain a Post-Takeover AT&T

- *In the aggregate*, MetroPCS, Leap and the other regional carriers have:
  - Less than 8% of all wireless subscribers
  - Less than 5% of wireless industry operating profits
  - Less than 3% of postpaid subscribers
  - *De minimis* position for corporate accounts

# **Fringe Could Not Readily Reposition To Compete with AT&T**

- Key characteristics of fringe providers differ substantially from those of national carriers
  - Footprints
  - Brand names
  - Service offerings
  - Handsets
  - Customer demographics
  - Business models

# Anti-Competitive Coordinated Effects

- Record demonstrates takeover would increase the likelihood of coordinated action by Twin Bell duopoly
- Large market share of AT&T & Verizon
- AT&T & Verizon have similar assets and incentives
- Absorption by Twin Bell of low-price maverick
- Other providers would face substantial barriers to entry and expansion

# Anti-Competitive Exclusionary Effects

- AT&T, unilaterally and in coordination with Verizon, will be able to raise rivals' costs of:
  - Handsets
  - Backhaul
  - Roaming
  - Network infrastructure
- Acquisition by AT&T would remove key non-Bell innovator

# Harm to Handset Competition

- Increased size and scale differential would make other carriers less attractive partners for handset manufacturers
- Takeover would eliminate the ability of others to ally with T-Mobile to create substantial scale
- Manufacturers would be less likely to build devices for different (one-off) spectrum bands; even if they did, those devices would cost more
- AT&T could demand longer exclusivity to foreclose rivals, not to recoup legitimate development costs
- Merger would strengthen the Twin Bells ability to exacerbate the lack of network interoperability of new components and handsets

# Harm to Backhaul Customers and Competitive Providers of Backhaul

- AT&T and Verizon have the critical assets necessary for providing backhaul to Sprint and other carriers
- T-Mobile is an important purchaser of independent backhaul and its absorption by a Twin Bell would deter competitive entry and expansion

# **Takeover Would Lead to Higher Roaming Charges**

- Takeover would eliminate the only other national provider of GSM roaming, giving AT&T the incentive and ability to raise its GSM roaming charges
- Takeover would increase Verizon's incentive and ability to raise its CDMA roaming charges

# AT&T's Unprecedented Concentration of Spectrum Would Cause Serious Competitive Harm

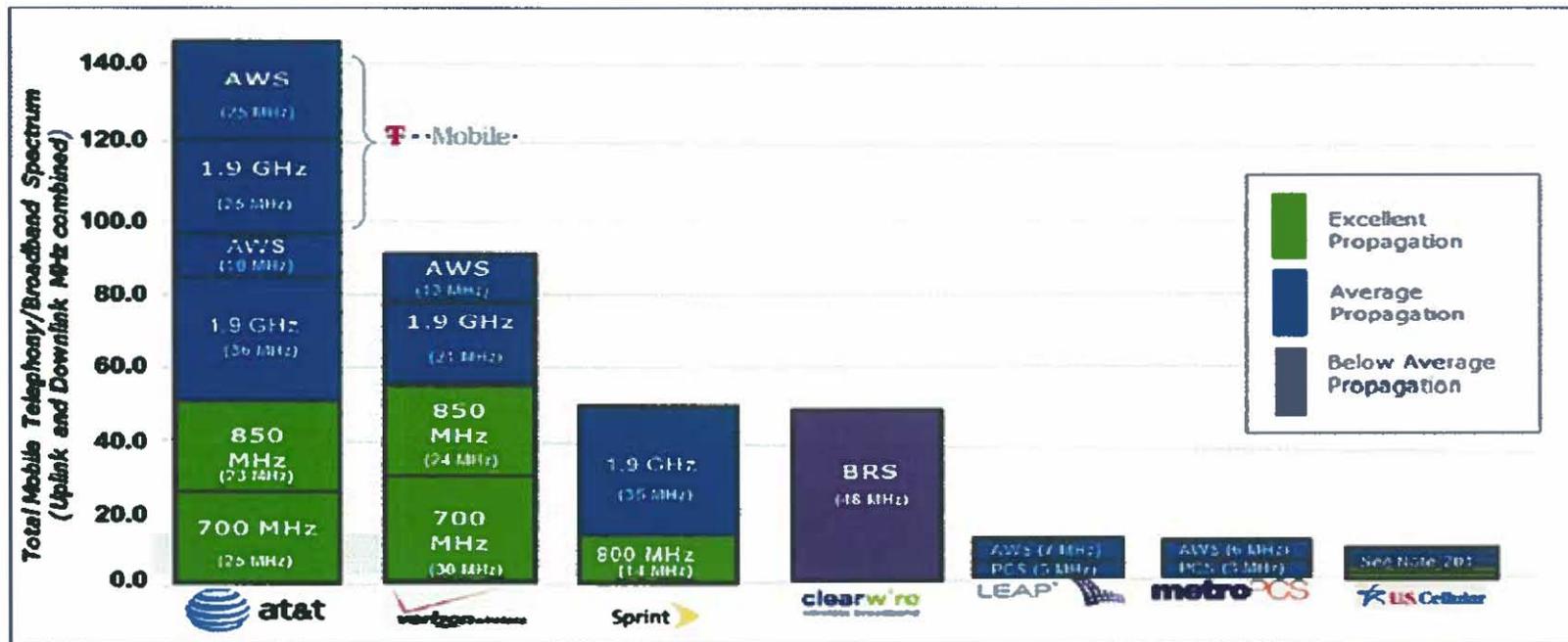


Figure: Total spectrum holdings for various wireless operators

On a population weighted basis, 44% of AT&T's current spectrum holdings remain unused

# **“Unfixable” Anti-Competitive Effects**

- AT&T proposes divestitures in its Opposition and broadly hints at conditions, like buildout schedules
- But divestitures would break T-Mobile into pieces and conditions could not compensate for the absorption of a maverick national competitor by a Twin Bell
- No remedies, short of blocking the transaction, will preserve competition and protect the public interest

# Takeover Must be Blocked

- The Commission faces a stark choice:
  - Reject AT&T's bid to take over T-Mobile and extend the last two decades of robust competition in wireless – competition that has promoted economic growth and advanced U.S. global leadership in mobile communications, *or*
  - Approve the takeover and let the wireless industry regress toward a 1980s-style duopoly
- Choose competition, economic growth and consumer benefits

# **AT&T's Takeover of T-Mobile Will Produce No Public Interest Benefits**

# AT&T Is Not Facing Unique Spectrum or Data Demands

Compare Verizon:

- Serves more customers than AT&T
- Has better service quality than AT&T
- Has higher data demand than AT&T
- Has indicated it needs no additional resources through 2015
- Yet, has less spectrum than AT&T

*Comparison of Projected Data Demand on AT&T's and Verizon Wireless' Networks*

	1Q11	2Q11	3Q11	4Q11
<b>Number of 3G and 4G Users</b>				
AT&T	44,927	46,764	49,612	51,188
Verizon Wireless	43,655	48,463	52,679	56,897
<b>Average Weighted MB Usage/User/Month</b>				
AT&T	265	296	341	378
Verizon Wireless	248	304	364	427
<b>Total Subscriber Data Demand (TB/month)</b>				
AT&T	19,479	21,792	25,233	28,463
Verizon Wireless	20,801	25,930	31,302	37,152
<b>Difference in Data demand, VZW-AT&amp;T</b>	7%	19%	24%	31%
<b>Y/Y Change</b>				
AT&T	86%	79%	69%	66%
Verizon Wireless	68%	79%	94%	106%

JP Morgan, North American Equity Research, (Feb. 4, 2011)  
 Telecom Services & Towers Report, *Breaking Down Data - Part Deux: T and VZ Network Demand Similar, but Growing Faster*

# All Carriers Face Rising Network Usage

- All nationwide operators face similar or greater capacity constraints than AT&T
- 3<sup>rd</sup> party drive tests: minimal performance differences (*e.g.*, dropped calls) among studied carriers
- iPhone users (most of AT&T smartphone users) consume 492 MB of data per month *vs.* Android users, who consume 582 MB of data per month
- AT&T:
  - References only aggregate data
  - Never accounts for variations in data consumption by user handset types, user profiles, or user consumption patterns
  - Does not account for geographic variations between urban, rural, and suburban areas
  - Does not capture monthly, daily, weekly, or hourly fluctuations in data traffic

## **AT&T Is Better Positioned Than Other Carriers Given Its Large Spectrum Holdings**

- Largest licensed spectrum holdings of any wireless carrier, even without the proposed transaction
- Largest holder of *unused* spectrum: 40 MHz on a population-weighted nationwide basis of unused or underutilized AWS, 700 MHz and WCS spectrum

# AT&T Is Not Unique in Supporting Multiple Generations of Technology

- Many carriers are transitioning to newer, more efficient technologies while supporting embedded base of subscribers
- AT&T sells and subsidizes highly-inefficient GSM-only phones
- AT&T's migration to more efficient technologies is too slow
  - Expedite deployment of faster, more efficient 4G services
  - Offer incentives: handset and service subsidies on newer services, surcharges on older technologies
  - In the past, AT&T migrated 9% of its TDMA customer base to GSM network in just one quarter



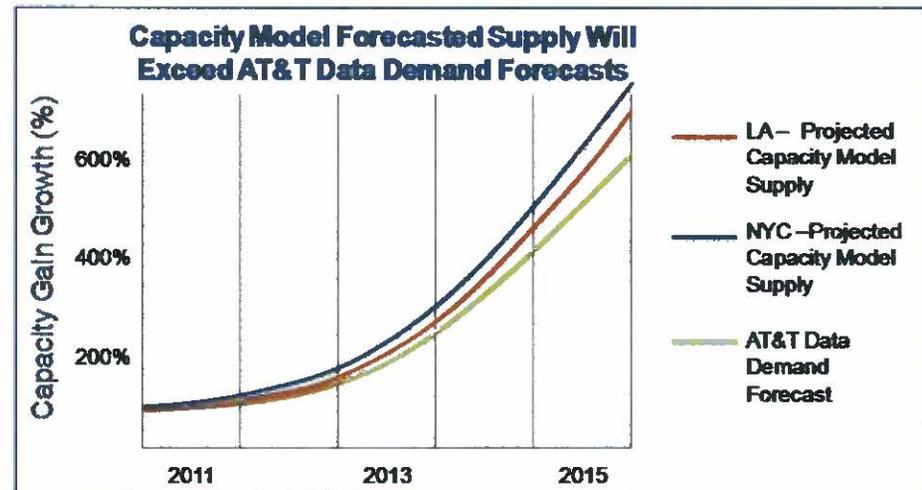
Image Source: AT&T Website  
(June 24, 2011)

# AT&T Has Told Wall Street a Very Different Story

- “[W]e’re really starting to feel good about the network situation.” AT&T’s CEO, January 2011
- Despite the significant growth in data traffic, AT&T has “learned how to deal with that type of usage on our network” which is “performing very well, really everywhere.” AT&T’s President of Emerging Devices, Nov. 2010
- “We feel very good about our spectrum position ... And we say that with full understanding of what the data demands will be.” AT&T VP of Technology Realization, April 2009

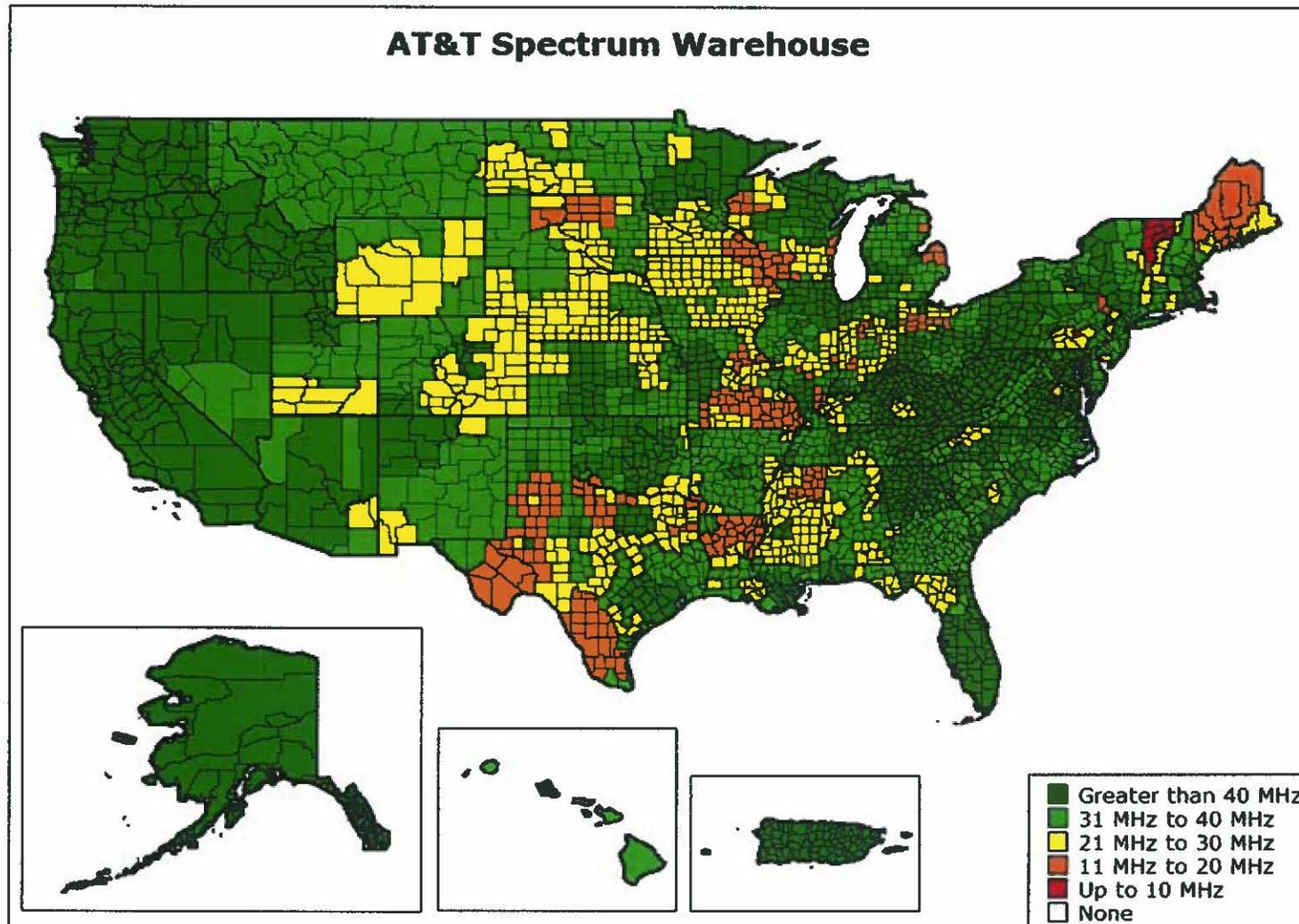
# Simple Solutions: Deploy, Use, Invest

- AT&T can greatly increase network capacity by applying three well-established “levers”:
  - **Deploy** warehoused spectrum
  - **Use** more efficient technologies
  - **Invest** in additional infrastructure and small cell technology



- Even the most conservative capacity-gain assumptions show that AT&T could more than meet its demand forecast in even its most congested markets
- None of these “levers” is new or unusual or requires any technological advance
- Indeed, much of the estimated 600% capacity increase comes from simply ending practices that encourage consumers to use highly inefficient devices that needlessly tax the network

# Deploy: Use *All* of Its Spectrum



# Use: Expedite Migration to HSPA and LTE

- LTE greatly increases capacity:
  - At least 12x more efficient than GSM
  - At least 2x more efficient than HSPA
  - Further efficiency gains with newer versions of LTE
- HSPA is far more efficient than GSM technology
- AT&T can use its spectrum much more efficiently

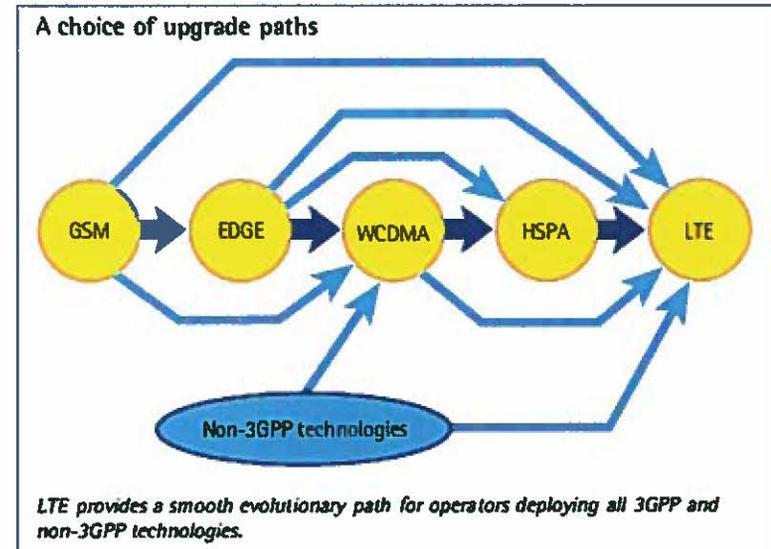


Image Source: Wireless Week (May 2, 2010)

# Invest: Build Infrastructure

- Add more sectors -- a technique immediately applicable to GSM and WCDMA networks that has been used extensively by operators worldwide for 15 years
- Build more network infrastructure; invest in a mix of macrocells, microcells, picocells, femtocells and similar technologies – a “heterogenous network” that alone promises more than 250% capacity increases
- Invest in more WiFi hotspots and in-building systems to offload a substantial amount of data traffic onto WiFi networks
- All of these infrastructure investments, along with tower- or RAN-sharing arrangements, would be less expensive, easier to implement, and less harmful to the public interest than the proposed transaction

# From Macrocell Networks to Heterogeneous Networks

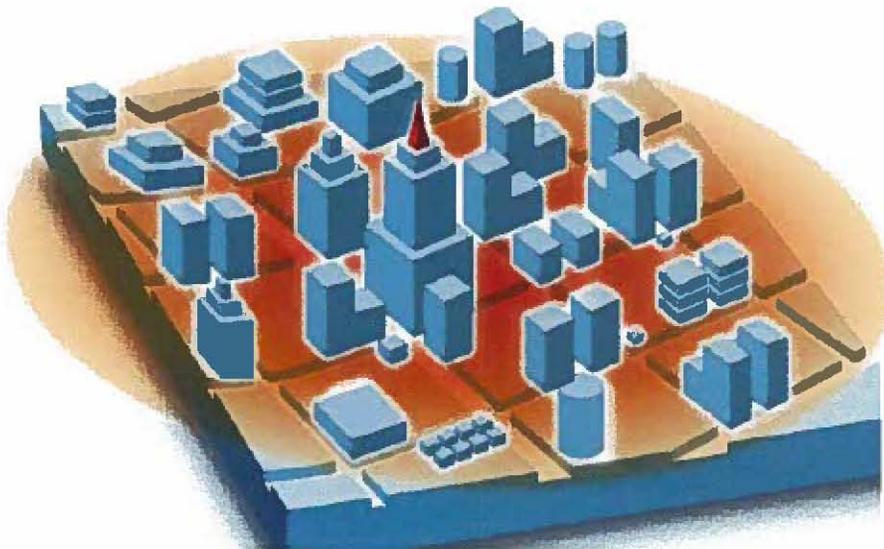
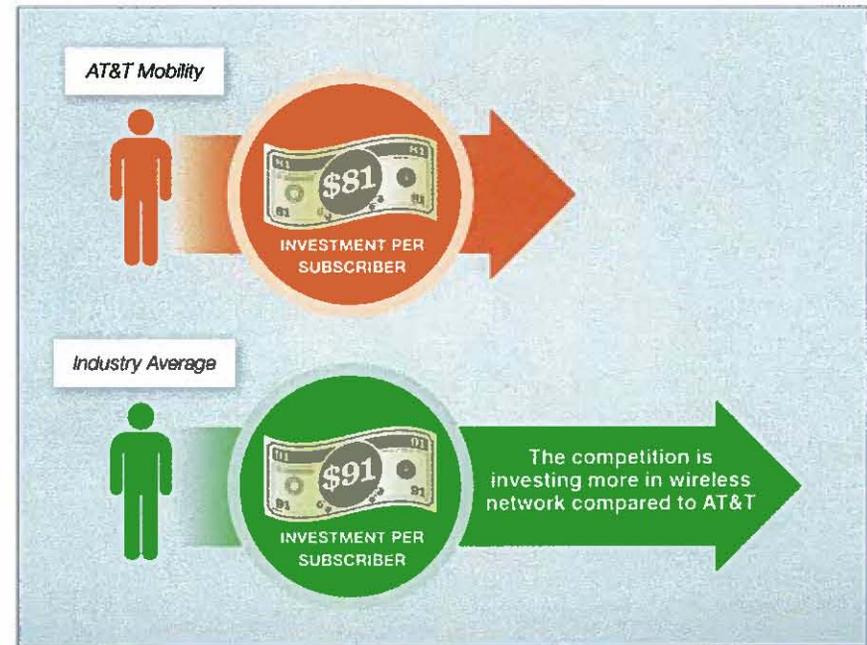


Image Source: Qualcomm Webinar, LTE Advanced (June 2010)

The Next Significant Performance Leap  
Increasing spectral efficiency per coverage area

# Years of AT&T Underinvestment

- AT&T has significantly lagged the industry in per-subscriber network investment over past five years
- Less investment means a less efficient network
- Blocking the merger will force AT&T to invest in its network



# Alleged Network Efficiency Gains are Illusory

**Combining networks yields theoretical efficiency gains, but AT&T vastly overstates actual gains :**

- **Channel Pools** - Applicants' intensive use of GSM channels produces meager pooling gains, much less than its 10-15% estimate, especially in urban areas where capacity is presumably needed most.
- **Control Channels** - Combining infrastructure and eliminating redundant control channels yields gains only if combined network's total control traffic can be carried over fewer control channels. AT&T employs a great deal of inefficient GSM and offers no analysis of actual redundancies.
- **Cell Splits** - AT&T's "visual inspection analysis" provides little insight into whether T-Mobile sites are better suited to relieve capacity than other locations in the market. Traffic is not uniform, and neither are cells. Sprint's real-world technical analysis shows 5% of T-Mobile's cell sites in DC and 0% in San Francisco meet AT&T's criteria for cell-split integration into AT&T's network

# **AT&T Will Deploy LTE Nationwide Even Without the Transaction**

- Competition will drive AT&T to match Verizon's plan to deploy LTE to virtually all U.S. population
- AT&T already plans to deploy HSPA+ to 97% of the population and will need to upgrade this footprint to LTE to match Verizon's speeds
- AT&T's threat not to deploy LTE to an additional 17% of the population is not credible

# No Takeover Needed for AT&T to Deploy LTE Nationwide

- T-Mobile adds almost nothing to AT&T's network footprint - less than 1% of the U.S. population
- AT&T has the spectrum depth to deploy LTE nationwide
  - Using its 700 MHz and AWS spectrum, AT&T can deploy LTE to: 95% of the population using a 2x5 MHz configuration, 70% of the population using a 2x10 MHz configuration
  - AT&T can deploy LTE using its cellular and PCS spectrum, which covers 97% of the country
  - AT&T can supplement its spectrum holdings through partnerships with rural carriers and acquisitions in selected markets

# **Takeover Will Produce No Public Interest Benefits**

- Applicants have not demonstrated any cognizable public interest benefits that would outweigh the harms of proposed transaction
- Network capacity claims ignore:
  - AT&T's existing large spectrum holdings, including large warehouse of unused 700 MHz and AWS spectrum
  - Alternative means of increasing capacity to meet consumer data demand
- LTE deployment claims are vague, not credible, and wholly unrelated to proposed transaction