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**Communications**

In the second part of a three-part series, independent management consultants Martyn Roetter, Alan Pearce, and Barry Goodstadt write that since a T-Mobile USA merger with AT&T is likely to be rejected, two strategic business opportunities for T-Mobile have become publicly visible: a merger with Sprint Nextel, and a network-sharing agreement with AT&T. Both are unattractive and more likely to harm T-Mobile's future business prospects or the efficient exploitation of its current assets, they add. Other alternatives and partners for T-Mobile as a stand-alone operator are much more promising and attractive.

# T-Mobile USA: A Better Future Without AT&T

BY MARTYN ROETTER, ALAN PEARCE, AND BARRY GOODSTADT

*The authors are independent management consultants. Martyn Roetter (mroetter@gmail.com) is a technology and management consultant with 30 years' experience in North and South America, Europe, and Asia in assisting public- and private-sector clients reach decisions regarding technology investments, spectrum management, business plans, and public policies. Alan Pearce (IAEpearce@aol.com) is a former chief economist of the FCC. He helped launch the FCC's investigation of Western Electric and the Bell System in 1972 that led to the DOJ's antitrust suit that broke up AT&T in 1984. In 2004, Pearce assisted Cingular Wireless in its record $41 billion all-cash acquisition of AT&T Wireless. Barry Goodstadt (bgoods@comcast.net) is a telecommunications marketing expert with 27 years of experience as a management consultant. He has worked on projects for wireless carriers in the U.S., Canada and internationally and testified before numerous state regulatory commissions.*

There is now a good-to-excellent chance that the proposed merger between AT&T and T-Mobile USA will be rejected by the U.S. District Court for the District of Columbia. Recent developments, including the lawsuit filed by the Department of Justice and almost immediately joined by seven states, including four heavyweights (California, Illinois, Massachusetts, and New York), to block this acquisition, are potential strategic game changers for both AT&T and T-Mobile.

In the first article in this series (''No Merger, No Conditions, No Way: Rejecting AT&T, T-Mobile Deal Is Only Option'') we outlined the convincing evidence already presented to the FCC and the DOJ of the inevitable harm the merger would cause to the economy, customers, innovation and employment opportunities, and to all interests, except those of AT&T (and Verizon) (182 DER B-1, 9/20/11).

## Why There Should Be Alternatives

It is now timely for Deutsche Telekom (DT) to assess alternative paths for its U.S. wireless services company, T-Mobile. Until it received an ''offer it could not refuse'' from AT&T, DT had been presenting T-Mobile USA to investors in Europe as the ''jewel in the crown'' to fuel its growth and new revenue opportunities.

Since a merger with AT&T is likely to be rejected, two strategic business opportunities for T-Mobile have become publicly visible: (1) A merger with Sprint Nextel (an option that was raised on multiple occasions before the announcement of the deal with AT&T); and (2) A network sharing agreement with AT&T. Both are unattractive alternatives and are more likely to harm, as opposed to helping T-Mobile's future business prospects or the efficient exploitation of its current assets.

In contrast, T-Mobile has other strategic business opportunities that can be pursued in its effort to seek out sources of spectrum and funding. There are also other potential business partners that make more sense for both the Germany-based parent, Deutsche Telekom, and its U.S. based T-Mobile, along all the dimensions of operations, technology, and business relationships. These potential options include: (1) Cable Multiple System Operators (MSOs); (2) Foreign-owned fixed and wireless telecommunications companies; (3) Other U.S. telecommunications-information-entertainment companies (e.g. DISH Network), other than Verizon, AT&T, and Sprint; and (4) Google. In the case of DISH, the media has recently reported[1] that DISH is in the process of seeking a wireless partner to deploy LTE services in combination with its TerreStar Networks to build a combined satellite and terrestrial mobile broadband network.

## T-Mobile Can Be an Attractive Partner

As a stand-alone entity, T-Mobile USA remains as an attractive partner for any company that wants to enter or strengthen a position in the U.S. mobile services market. By virtue of its size and coverage and the clarity of its technological portfolio, GSM/HSPA, it is a more attractive partner for other enterprises than is Sprint.

T-Mobile USA has several credible alternatives to a merger with AT&T that would give it access to additional spectrum, funding, and the ability to widely deploy LTE. T-Mobile's parent, DT, could start the process by applying the cash and other assets that it receives from AT&T as a break-up fee: $3 billion plus some AWS spectrum and a data-roaming agreement which AT&T previously refused to grant because it would have strengthened T-Mobile's competitive position.

T-Mobile could develop partnerships with U.S. cable TV operators by joining with the consortium SpectrumCo, which includes Comcast-NBC-Universal, Time Warner Cable, and Brighthouse. Perhaps even Cox Cable could rejoin SpectrumCo for this purpose. This would bring 2 x10 MHz of AWS spectrum with coverage of almost 95 percent of the U.S. population. An arrangement could be structured in several ways, from a hosting and wholesale agreement, to a joint venture, or a full-fledged merger.

T-Mobile could also present itself as an attractive partner for other foreign telecommunications services companies who might be interested in developing a network footprint in the U.S. Potential partners might be America Movil (Mexico), Orange (France), Rogers Communications (Canada), SK Telecom (Korea), or Telefonica (Spain). These examples are speculative and illustrative, not necessarily exhaustive. However, SK Telecom has been active in U.S. mobile markets, so far unsuccessfully in a joint venture mobile virtual network operator (MVNO) with Earthlink. Orange already has a joint venture with the T-Mobile business in Britain, while America Movil has a sizable MVNO operation–Tracfone, with some 18 million customers–in the U.S., along with ownership of Verizon's former telecommunications business in Puerto Rico. AT&T holds a minority share in America Movil and has two seats on its board. Tracfone operates as an MVNO on T-Mobile's network, as well as AT&T's and Verizon's networks. Telefonica is America Movil's principal rival throughout Latin America. At one time, AT&T owned a significant share in Rogers Communications' mobile business in Canada. All of these companies have good reasons to review the U.S. mobile market for possible business opportunities in the event that the AT&T/T-Mobile Deal is rejected.

T-Mobile might also seek to develop a wholesale agreement for use of the TDD LTE (time-division duplexing long term evolution) systems that are planned for deployment by Clearwire in its 2.5 GHz spectrum. This is the only kind of relationship with a Sprint asset that should be considered, one that limits, although not completely excluding, T-Mobile's sensitivity to Sprint's legacy problems. Additional possibilities for T-Mobile USA include the negotiation of data roaming and-or perhaps network-sharing agreements with smaller operators that hold 850 and-or 700 MHz frequencies in order to expand T-Mobile's coverage to customers in rural areas. T-Mobile might also seek to attract interest from the third-largest fixed-line telephone operator in the U.S.–CenturyLink, which lacks a wireless sector affiliation. This would enable CenturyLink to develop a quad play to reinforce its current bundled offering of TV (DISH), Internet and phone services. Today CenturyLink's current bundle can include access to mobile service from Verizon Wireless. By combining its assets with T-Mobile, CenturyLink might displace Verizon Wireless to find a financially more attractive partner for a true Quad play (fixed and mobile voice, broadband access, and video programs) offering, over which it would have greater control.

T-Mobile was the first wireless operator to offer an Android-based smartphone, and may even therefore be able to secure some investment from Google. Google participated in one investment round in Clearwire, but not in later ones, and has an obvious interest in helping alternative mobile services providers to AT&T. Google's competitors in the mobile ecosystem arena, that include Microsoft and Research in Motion, developer of the Blackberry, have come out in support of AT&T's merger with T-Mobile. So it is possible that these Google competitors will be favored by AT&T's upgraded mobile device portfolio at the expense of Android.

These scenarios are not presented as a forecast, but as potential and possible options for T-Mobile. A comparison of their relative probabilities, and respective advantages and risks, is premature. However, their enumeration clearly demonstrates that there are multiple plausible, and potentially complementary, alternatives for T-Mobile that do not entail the same fundamental antitrust violations as a merger with AT&T does. Furthermore these alternatives can truly produce the benefits - and at much lower expense — without a transfer of $25 billion in cash to Germany which AT&T could, itself, use to invest and strengthen its own wireless net-

[1] Luna, L. DISH Network looking at partnering acquiring wireless operator. *Fierce Broadband Wireless*, September 24, 2011.

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work in the U.S. to overcome the capacity problems it has claimed as the genesis for its T-Mobile merger proposal.

## No Merger With Sprint

Sprint has been rumored, notably in investment bank circles, as a candidate for a merger with, or an acquirer of, T-Mobile on several occasions immediately prior to the announcement of the transaction with AT&T. This ''potential'' merger is again a talking point because of the possible rejection of the merger between AT&T and T-Mobile. Any transaction, no matter how harmful to its participants, benefits investment bankers, who receive large fees when it is consummated.

Sprint has a tangled and complex mix of technologies and networks that it has so far failed to coordinate operationally in an asset-sharing manner. The company is saddled with a plethora of technologies — iDEN (integrated digital enhanced network), CDMA (code division multiple access)/EV-DO , and WiMAX, the latter through its majority-owned but roguishly independent subsidiary Clearwire.[2]

Indeed, Sprint has recently announced plans to deploy its own LTE network by the beginning of 2012. The company plans initially to use currently unoccupied G Block (2 x5 MHz) 1900 MHz (personal communications services, or PCS) spectrum that it acquired as part of the rebanding process of Nextel's 800 MHz frequencies, which was initiated to avoid interference with public safety services in adjacent previously interspersed frequencies. This plan recently surfaced as part of Sprint's Network Vision plan due to be released in early October, 2011.[3] Sprint already has an investment in an unusually complex mix of technologies and assets which it rightfully is trying to consolidate and migrate towards a long term transition to LTE in its Network Vision.

It is hard to see how the addition and eventual integration of T-Mobile's GSM/HSPA (global system for mobile communications/high speed packet access) facilities that would add to and further complicate this already formidable challenge would be a reasonable option.

## Network 'Sharing' With AT&T?

AT&T's actions and behavior, for example the exclusive contract for the iPhone and a refusal to establish a mutual data-roaming agreement, seriously damaged T-Mobile USA's business in the years leading up to the announcement of the merger, as we demonstrated in our report submitted to the FCC by Public Knowledge in July (''A Preliminary Analysis of the Impacts and Consequences of the Proposed AT&T/T-Mobile Merger''). These business issues were also acknowledged by T-Mobile. AT&T is continues to hurt T-Mobile as a consequence of the uncertainty and unhappiness that the proposed merger is creating among T-Mobile's customers and its employees.[4]

If this transaction is rejected, it is hard to see why Deutsche Telekom or T-Mobile USA, from senior executives down to U.S.-based T-Mobile staff, who have already received information about their severance,[5] should believe anything AT&T might say or promise in establishing a network-sharing deal. A network-sharing arrangement has to be a win-win proposition for all participants.

Network sharing is more common outside the U.S. than within it. Indeed in DT's joint venture with Orange (Everything Everywhere) in Britain, DT has gained much more experience than AT&T in the more complex network-sharing arrangements, involving active network components which go beyond passive site or location sharing, that is suited to the world of mobile broadband. DT knows that network sharing is far from being a slam dunk in either the business or the regulatory context.

Operators in many parts of the world are being increasingly motivated to consider network sharing as an option for the following reasons:

- a need to acquire new cell sites, in the face of congestion in urban areas and a shortage of, as well as environmental objections to, new sites.

- the search for cost savings to maintain profits despite downward pressure on average revenue per user (ARPU) and revenue per bit transmitted, along with current economic difficulties in some countries, e.g., Ireland, so some customers are switching to lower price services.

- where new mobile broadband spectrum licensees are acquired, the need for these new entrants to establish national coverage rapidly.

## Potential Benefits

The potential benefits of network sharing include:

- optimization of scarce resources and positive environmental impacts, i.e., fewer cell sites;
- less duplication of investment, reducing both capital and operating expenditures;
- reduced costs to encourage network deployment in underserved and un-served areas;
- improved quality of service, particularly in congested areas;
- competition focused on service differentiation;
- increased consumer choice as market entry and expansion become easier; and

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[2] For example, John Stanton, chairman of the board at Clearwire announced at a recent Rural Cellular Association meeting (the RCA, and its members, are opposed to the proposed AT&T deal with T-Mobile) that he thought the acquisition of T-Mobile by AT&T could be OK, IF the right conditions were imposed, contradicting Sprint's unrelenting opposition to the deal under any circumstances.

[3] R. Cheng, ''Sprint to launch own 4G LTE network in early 2012,''*CNET News*, September 27, 2011.

[4] For example, in its successful attempts to acquire the regional carriers, Dobson Communications and Centennial Communications, AT&T argued that the consequences should be looked at in the context of a national market, whereas in trying to acquire a national carrier (T-Mobile) AT&T is arguing that it should be reviewed in the context of local markets.

[5] ''T-Mobile preparing possible severance packages if AT&T merger approved,'' July 27, 2011, http://www.techflash.com/seattle/2011/07/vp-t-mobile-to-offer-severance.html

- reductions in wholesale and retail mobile prices.

However, there are both regulatory and business hurdles to overcome if network sharing is to deliver these benefits.

Network sharing is usually commercially driven, rather than mandated by regulators, the exception being when incumbent operators are required to establish roaming arrangements with, and make their sites available to, new entrants as part of a policy to allow more competitors into the mobile market. Regulators have to distinguish between cases in which dominant firms act to harm competition, and situations in which they act with legitimate responses to competitive initiatives. In this context, regulators need to consider both retail and wholesale mobile markets, and to determine the relevant time frame, i.e., avoid measures to foster competition in the short term that may harm it in the longer term, for example by imposing shared access mandates on an incumbent's facilities with no ''sunset'' clause.

Regulators' analyses of proposed sharing arrangements must balance desirable increases in efficiency, decreases in costs and other benefits to customers, against the harm they may cause to healthy competition, given specific national market conditions. Sharing should not inhibit competition *at the services level* between the partners involved as well as with other operators who do not participate.

At the same time, independently of conforming to regulatory requirements, partners in sharing arrangements have to resolve significant business and operating issues, for example:

- The planning of network expansions and upgrades and the coordination of associated investments; and
- Agreements covering (i) which cell sites to shut down as consolidation of separate networks occurs and (ii) congestion management techniques, priorities, and SLAs (Service Level Agreements) for traffic from and to the two operators' customers carried over shared facilities, such as backhaul.

These issues become more complicated when they involve active and not just passive network elements. The general practice of regulators has been to give approval in most cases to radio access network (RAN) () sharing as long as operators maintain separate logical networks so the impact on network and services competition is neutral. Operators may choose to implement sharing through direct cooperation between themselves or a separate joint venture, or in an outsourcing agreement with a third party, such as, but not necessarily, an equipment manufacturer.

If AT&T and T-Mobile USA were to propose a network-sharing arrangement after rejection of their merger, AT&T's behavior and attitudes would surely lead its other competitors, and the FCC, to scrutinize any proposal very carefully to ensure that it would not have anti-competitive effects comparable to that of the merger itself.

For example, exclusivity in such an arrangement in which no other operator could also share the assets involved, or would be excluded from any data roaming arrangement, might be regarded with extreme skepticism and prohibited. The FCC might want to avoid following the example of Canada in which the three incumbent operators (Rogers, Bell Canada and TELUS) have been allowed to enter into cooperative business relationships[6] that inhibit the chances of success of new entrants despite these having been explicitly authorized as part of government policy to increase competition in the Canadian market.

However good a network-sharing agreement may look on paper, absent development of mutual trust, understanding, and respect between the partners at operational as well as executive levels, it will not deliver the desired results. Given AT&T's traditional culture and its behavior specifically towards and with T-Mobile USA prior to and since the announcement of the transaction, it is problematical whether this essential foundation for a successful network-sharing relationship could be built between these two companies if the merger is rejected.

Given the regulatory and business issues and legacy of mistrust that would have to be overcome, the obstacles to establishing a successful network-sharing agreement between AT&T and T-Mobile would be much more formidable, and probably at best involve longer delays, compared with the other alternatives for T-Mobile.

## Conclusion

As outlined here, we anticipate, that, for different reasons, neither Sprint as a partner (merger or otherwise), nor AT&T, in a network-sharing arrangement, would be a good business option for T-Mobile USA, if or when its acquisition by AT&T is rejected. Other alternatives and partners for T-Mobile as a stand-alone operator are much more promising and attractive. They would involve cooperation with entities that can bring new spectrum and/or funding, yet in several cases are not yet players, or are only minor ones, in the U.S. mobile market, e.g., DISH Network, CenturyLink, etc. These alternatives carry much less distracting and harmful baggage than either Sprint or AT&T in terms of business relationships, regulatory obstacles, and (especially in the case of Sprint) technology.

In the third—and final—article in this series we will examine what AT&T itself might do if its merger with T-Mobile is rejected. It can–and must—begin to build a better future for itself and its customers.

[6] The ''Inukshuk'' joint venture in the 2.5 GHz band between Rogers and Bell and the shared HSPA+ network deployed by Bell and TELUS, while at the same time these operators object vigorously and persistently to any sharing or roaming obligations placed on them with respect to the new entrants the regulator has been authorizing to increase competition in the Canadian market

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