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## Sprint Challenges AT&T/T-Mobile Deal In Court

One week after the U.S. Justice Department (DOJ) filed suit against the \$39 billion merger of AT&T and T-Mobile USA, Sprint Nextel has followed with its own lawsuit that seeks to block the \$39 billion deal. On Tuesday, Sprint filed its legal challenge with the U.S. District Court of the District of Columbia with the expectation that its lawsuit will be consolidated with the DOJ antitrust complaint that is also pending before that court. Although some analysts believe that AT&T and the DOJ might eventually reach a settlement, others say that Sprint's action is significant in that it could require continuation of court review even if the DOJ were to withdraw its suit. (Meanwhile, in developments pertaining to the DOJ antitrust suit, U.S. District Court Judge Ellen Huvelle instructed the parties to appear on September 21 for the purpose of scheduling proceedings and to discuss "prospects for a settlement.") In documents filed with the court, Sprint proclaimed that the merger should be blocked under Section 7 of the Clayton Act on grounds that the proposed horizontal combination of AT&T and T-Mobile would result in "market concentration far in excess of the thresholds established both by a long and uninterrupted line of Supreme Court precedents and by the [DOJ] and Federal Trade Commission 2010 Horizontal Merger Guidelines." Sprint further argued that AT&T's takeover of T-Mobile would "eliminate one of four national competitors and marginalize a second (Sprint), pushing the market back toward a 1980s style cell phone duopoly that would force consumers to endure higher prices and be denied the fruits of vigorous innovation." Sprint further alleged that the transaction "would leave AT&T controlling in excess of 40 percent of the national markets, and would give it the ability to exercise market power both unilaterally and in coordination with Verizon." Although a Sprint spokeswoman said her company expects "to contribute . . . expertise and resources in proving that the proposed transaction is illegal," AT&T promised to "vigorously contest this matter" as "Sprint is more interested in protecting itself than it is in promoting competition that benefits consumers."

## McDowell Calls For Investigation Of Wireless Priority Service Program

Citing failures of wireless network services and equipment in the wake of Hurricane Irene and the East Coast earthquake of August 23, FCC Commissioner Robert McDowell called for an investigation of the Wireless Priority Service (WPS) program, which is designed to prioritize calls placed by public officials during weather emergencies, disasters, and other times of potential network overload. The WPS was established as part of the Department of Homeland Security's National Communications System and permits public officials to place prioritized calls through the commercial network grid by inputting a special number on their handsets. Pointing to widespread reports of temporary service outages and similar wireless network problems that were caused by a surge in calling activity in the hours after the recent Virginia earthquake, McDowell

acknowledged during a press interview that questions have arisen about the reliability of the WPS system. Stressing, “public safety and homeland security are always a priority” for the FCC, McDowell said “the recent one-two punch of an earthquake and a hurricane hitting the East Coast, the most densely populated area in the country, has heightened awareness that we need to reexamine what we’re doing in this area.” Meanwhile, in reply comments that respond to an FCC notice of inquiry on issues of network reliability, the Edison Electric Institute (EEI) reminded the FCC last Thursday that, “while carriers indicate their networks perform at 99 percent reliability, it is in the remaining fraction of downtime—which typically will occur during or immediately following natural or man-made events—when utilities are most reliant on communications in order to restore critical services.” In a separate filing, the American Petroleum Institute advised the FCC that, given the track record of commercial network reliability in the wake of such disasters, “private internal systems will be required for the foreseeable future for core mission critical communications that are used to ensure the safety of life and property.”

## Government Agencies Urge Testing Of LightSquared Lower L-Band Operations

At a hearing before the House Science, Space and Technology Committee yesterday, representatives of various federal agencies questioned LightSquared LLC’s latest plan to operate its proposed hybrid satellite-terrestrial wireless broadband network in the lower portion of its L-band spectrum assignment, as they called on the FCC to require further testing to assess the impact of LightSquared’s revised proposal on global positioning system (GPS) operations. In an attempt to lessen prospects that the LightSquared system will interfere with GPS receivers operating in adjacent spectrum bands, LightSquared filed an amended plan with the FCC in June that envisions initial network deployment in the 1526-1536 MHz band, which is farther away from GPS than the 1545-1555 MHz band where LightSquared had originally planned to commence operations. LightSquared has also offered to operate at one-tenth of its currently-authorized power level and contribute both monetary and expert resources in developing a solution for the small number of high-precision GPS receivers that the company claims could still experience harmful interference from its lower L-band operations. While stressing that federal agencies with GPS interests are “seeking a win-win solution” that would enable LightSquared to operate its network while protecting GPS operations, Anthony Russo, the director of the National Coordination Office for Space-Based Positioning, Navigation and Timing (PNT), emphasized to lawmakers that further testing is needed “to establish whether there are any mitigation strategies that can enable [LightSquared] operation in the lower 10 MHz portion of the band.” Along the same vein, witnesses from the National Aeronautics and Space Administration and from the Commerce, Transportation and Interior Departments recommended that the FCC should not approve LightSquared’s revised plan until further tests prove that the company’s long-term evolution network can operate safely in the lower L-band without interfering with GPS receivers. Concurring that further testing is necessary, committee chairman Ralph Hall (R-TX) said, “we have to find a way to open up more spectrum for broadband, but not at the expense of GPS.” Observing that each subgroup of the working group mandated by the FCC to analyze LightSquared’s GPS operations has already studied the lower L-band proposal and that 10 out of 38 GPS receivers tested by LightSquared “were resilient to our operations,” LightSquared Chairman Jeffrey Carlisle replied that issues of interference are related to technology “and can be addressed through proper design.”

## Microsoft Phone Tracking Feature Targeted In Lawsuit

A user of wireless smart phones equipped with the Microsoft Windows Phone 7 (WP7) operating system filed suit against Microsoft in a Seattle district court, alleging that the software giant intentionally designed its operating system to collect user location data even when the software’s tracking feature has been disabled by the user. Filed last week, the lawsuit puts Microsoft at the center of a continuing controversy over wireless location tracking and wireless privacy that has involved the popular Apple iPhone and the Google Android mobile operating platform. Although Microsoft told members of the House Energy and Commerce Committee last spring that the WP7 operating system does not track the whereabouts of mobile devices “unless a user has expressly allowed an application to collect location information,” the complaint contends that Microsoft’s representations to Congress were false as evidence provided by security experts shows that the WP7 phone camera application was designed to “thwart users’ attempts to prohibit the collection of their geolocations, blatantly disregards its users’ privacy rights, and willfully violates numerous state and federal laws.” Although WP7

phone users are prompted to either “allow” or “cancel” location tracking features, the complaint alleges that, even after users have clicked on “cancel,” the phone continues to transmit location data intermittently and surreptitiously, thus forcing “unwilling users into [Microsoft’s] non-stop geo-tracking program in the interest of developing its digital marketing grid.” As such, the lawsuit charges Microsoft with violations of the Stored Communications Act, the Electronic Communications Privacy Act, and the Washington State Consumer Protection Act, and requests an “injunction and punitive damages, among other remedies.” Officials of Microsoft offered no comment.

## Telefonica To Restructure Operations

Facing stagnant revenues in Spain as well as throughout Europe, Telefonica—Europe’s second-largest telecom service provider by market value—announced a restructuring plan on Monday that calls for (1) the establishment of a new digital division that would take advantage of new opportunities online, and (2) the absorption of Telefonica’s underperforming domestic Spanish unit by the company’s European operations. In recent years, Telefonica, like many fixed-line carriers, has been challenged by difficulties affecting the global economy as well as by the migration of its wireline phone service customers to wireless and Internet-based platforms. Although Telefonica reported a healthy 12% boost in revenues for its fast-growing Latin American operations during the second quarter, revenues in Spain dropped by 6.6% as revenues for the rest of Europe fell by 3.5% during that period. To “take full advantage of the opportunities that the digital world offers with regards to new products, services and the value chain,” Telefonica said it would create a new division, known as Telefonica Digital. That division would encompass the company’s Internet portal Terra, IP-telephony provider Jajah, Tuenti, a popular Spanish social networking site, and other online businesses owned and operated by Telefonica. In turn, the company’s domestic unit, Telefonica Espana, will be rolled into Telefonica Europe. Officials also confirmed that the company will create a new “global resources” unit to be headed by Guillermo Ansaldo, the former chief of Telefonica Espana. The new unit will attempt to “unlock economies of scale” that would enable Telefonica to realize its global ambitions.

## Court Rejects Petition Against Start Of French 4G Auction, As Ofcom Hints At British Auction Delay

A two-part auction of fourth-generation (4G) wireless spectrum in France will commence as scheduled on September 15 pursuant to the decision of a French court to reject an emergency petition, filed by telecom operator Iliad, that sought an injunction to halt the auction. Late last month, Iliad, a provider of broadband services to French customers under the “Free” brand name, petitioned the Conseil d’Etat, France’s highest administrative court, to issue an injunction against the start of the auction pending a court decision on Iliad’s claim that auction terms requiring full, upfront payments unfairly favor large, entrenched carriers such as France Telecom (FT) and Vivendi’s SFR. Iliad, which had lobbied government officials unsuccessfully to adopt an installment payment system, is expected to bid alongside FT, SFR, and Bouygues for an initial tranche of 4G frequencies that are slated to support smart phone and tablet computer services and a host of other wireless broadband offerings. A second tranche of 4G licenses will be offered for sale starting on November 15. Government officials anticipate that the pair of auctions will reap at least €2.5 billion (US\$3.5 billion) in proceeds. Rejecting Iliad’s petition, the court ruled that the company had not proven that it would be irreparably harmed if the auction were to proceed as scheduled. In the United Kingdom, meanwhile, national telecom regulator Ofcom warned this week that auctions of 4G wireless broadband licenses scheduled for early next year could be delayed through the first half of 2012 or beyond. Although the spectrum to be sold is considered suitable for broadband services that would be delivered via long term evolution (LTE) technology, analysts say that a complex system of spectrum “floors” and “caps” adopted by the government will keep total auction receipts in the range of US\$3.2 billion in contrast to the \$39.9 billion that was raised during the U.K.’s auction of 3G frequencies in 2000. Citing various technical issues—such as the relocation of digital television licensees to alternative spectrum and potential interference between future 4G spectrum users and national air traffic control systems—that remain to be resolved, an Ofcom spokesman admitted, “it will not be possible for mobile operators to start rolling out 4G until . . . 2013 regardless of when the auction itself takes place.”

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