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*Communications*

## AT&T's Bid to Acquire T-Mobile USA Beginning to Cause Ripples Overseas

As part of the review of AT&T's $39 billion bid to buy T-Mobile USA, regulators in Washington may look abroad to examine how the merger will affect the ability of U.S. consumers to make and receive calls and download data on their phones while visiting other countries. Just as crucial for the Federal Communications Commission and the Department of Justice will be to gauge the impact of the deal on foreigners visiting the United States.

The combination of AT&T and T-Mobile would effectively leave only one American carrier using what is known as GSM, the world's most common wireless communications standard.

AT&T is currently the largest provider of second- and third-generation GSM-based wireless services in the United States, followed by T-Mobile. The third largest GSM provider after T-Mobile is Cincinnati Bell Wireless, which covers only a small swath of the Midwest, mostly in Ohio, Indiana, and Kentucky. That means international GSM mobile operators would be forced to negotiate roaming agreements with just one company, AT&T.

A U.S. GSM roaming monopoly could have far-reaching implications for wireless markets internationally, and for foreign business activities in the United States.

**'Workable' Competition Needed, New Zealand Says.** ''An acquisition by Verizon Wireless of Sprint Nextel Corp. would be much less of a concern, in terms of numbers of foreign operators impacted,'' Robert Clarke, senior policy analyst of the Communications and Information Technology Group at the New Zealand Ministry of Economic Development, told BNA in an interview.

Verizon Wireless and Sprint Nextel Corp. each use the CDMA standard, short for Code Division Multiple Access. CDMA can be found in North America, as well as some Asian countries, but is virtually nonexistent in Europe.

In fact, it was the Europeans who first developed the set of technical standards for mobile handsets and networks that would become the Global System for Mobile Communications, or GSM. In 1987, 13 European phone monopolies and two corporations, BT Cellnet and Racal, which would later become Vodafone in Britain, signed an agreement to use the GSM standard in their new mobile networks.

On a global scale, nearly 80 percent of the more than 5 billion wireless connections rely on GSM, compared with 10 percent that run on CDMA. Among the 30 largest mobile network operators in the world, only three—Reliance Communications, in India; Verizon Wireless, in the United States; and China Telecom, in China—use the CDMA standard.

In an official filing with the FCC in May, New Zealand's Ministry of Economic Development urged the agency to investigate the wholesale market in which foreign mobile phone operators pay U.S. carriers for the right to roam on U.S. networks. In reviewing the AT&T/T-Mobile merger, the ministry wrote, the commission should first look to determine whether the wholesale roaming market would remain ''workably competitive'' with AT&T as the only GSM provider in the United States, and then conclude whether regulatory intervention may be necessary.

AT&T needs approval from both the Justice Department, which examines whether mergers violate antitrust law, and the FCC, which decides whether deals are in the public interest.

**Potential Roaming Monopoly Draws Comment.** New Zealand's Ministry of Economic Development is just one of a handful of international organizations and corporations—including Japan Communications Inc., the International Telecommunications Users Group (INTUG), and Vodafone—that have filed comments with the commission, taking issue with the proposed merger.

While not explicitly opposing the deal, each have raised concerns about the possibility of the United States becoming one of a very few markets in the world in which wholesale international roaming services for GSM operators—and WCDMA operators— are not subject to competition between at least two providers. WCDMA is the air interface standard found in 3G networks, which uses the same core network as 2G GSM worldwide networks. By removing a competitor in T-Mobile, AT&T could raise wholesale rates to international network operators, like Vodafone, without any competitive constraint, they say.

Vodafone, the third-largest mobile network operator in the world with 341 million subscribers, behind China Mobile and SingTel, is one company that has benefited from competition between AT&T and T-Mobile in the

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United States. The British telecommunications giant has enjoyed lower rates for voice, SMS (short message service), and data roaming, and the ability to ''dual source,'' or redirect roaming traffic to one provider's network such as AT&T's, when another's is capacity-constrained or lacks the necessary network coverage.

In a similar filing with the FCC, Vodafone warned the agency that an AT&T-dominated GSM roaming market could make the United States a ''less attractive market'' in which to conduct international business.

**U.S. Lead in 4G Compounds Problem.** What makes matters more uncertain for foreigners is the rapid expansion in the United States of mobile communications networks to fourth-generation, or 4G, technology, which promises superfast download speeds and high-quality connections for applications such as streaming video and live video chats.

Global providers, particularly in Europe, are several years behind their American counterparts in deploying or trialing long-term evolution (LTE) technology for 4G networks, which means foreigners visiting the United States will still need access to GSM-based 2G and 3G networks, because they will not be using handsets that operate on LTE anytime soon.

New Zealand's Clarke said that operators in his country—all of them using the GSM standard—probably will not roll out 4G networks until 2014.

''When they do, it will still take years and years for New Zealand customers to migrate to mobile devices compatible not only with the 4G standard but also with the U.S. frequency range for 4G, since the Americas [are] using a different frequency range from other parts of the world,'' he said. ''I personally still have a 2G-only handset and we've had 3G in New Zealand for a decade.''

**Roaming Cost Poses Challenges.** In Europe and most other parts of the world, cost is perhaps the greatest obstacle to seamless international roaming.

In April, the New Zealand Minister for Communications and Information Technology and the Australian Minister for Broadband, Communications, and the Digital Economy launched a formal investigation into the trans-Tasman wholesale roaming market.

After conducting an analysis of data submitted by network operators in each of their countries, New Zealand and Australian authorities concluded that the actual wholesale rates charged may be too high.

While trans-Tasman mobile roaming rates have decreased since the governments released a joint discussion paper in May 2010, prices have increased for customers of Vodafone Hutchison Australia—the No. 3 provider in Australia—for outgoing voice calls, while Telstra Mobile—the No. 1 provider in Australia—has raised prices for SMS.

**OECD Charts Disparities.** Exorbitant rates for data roaming are another problem entirely. A report released this month by the Organization for Economic Cooperation and Development found that international data roaming among member countries costs, on average, $6 to $10 per megabyte, roughly the amount needed to download a high-resolution photo.

When estimating the cost of one megabyte of data in one downloading session, Canadians pay the highest price for roaming of all OECD countries, shelling out an average of $24.61.

The next-most expensive countries as ''home'' networks were the United States, with an average rate of $22.06, and Mexico, at $19.85; the least expensive home countries for roaming were Greece ($4.17), Iceland ($4.42), and Luxembourg ($4.46).

Put another way, a Canadian smartphone user who consumes 3.5 megabytes of data over five separate sessions in a week could end up paying $71.46, compared to about $69 for a U.S. customer and about $27 for a user in the United Kingdom.

The report noted that even for the least costly home countries, the average of one megabyte of roaming data is nearly $5. When considering the price of roaming in the least expensive country, by comparison, the average price still remains as high as $5.84. These rates were the highest in Chile ($15.13) and Japan ($12.86), and the lowest in Iceland ($1.57), Sweden ($2.55) and the Netherlands ($2.57), as country of origin.

The report, which analyzed pricing plans for 68 operators in 34 OECD-member countries, suggested that the higher rates may foretell a market problem: a lack of competition among carriers offering international roaming services.

In the wake of the report, Canadian telecom company Telus decided to cut international roaming data rates by more than 60 percent. For voice service, Telus rates will now drop to $1.50 a minute in Western Europe, Mexico and Oceania, and $2.50 in other countries. For data, rates will decrease to $10 per megabyte, the company said in a formal announcement this month.

In Canada, Rogers Wireless—the No. 1 carrier, which uses the GSM standard—had at one point maintained a monopoly on international roaming deals. Bell Mobility and Telus Mobility each use CDMAone, the first CDMA-based digital cellular standard, but all three use what is known as the Universal Mobile Telecommunications System (UMTS), which is the 3G mobile cellular technology for networks based on the GSM standard. For a time, Canada had only one GSM-based operator which, according to Telus, contributed to the inordinately high roaming rates reflected in the OECD study.

**Merger Problematic for Users, Too.** It is precisely for this reason that the merger of AT&T and T-Mobile has raised concerns abroad.

''Any reduction in choice of operator is unfortunate,'' Nick White, executive vice president of the telecommunications users group INTUG, told BNA. ''In the case of roaming, it makes a bad situation worse.''

White has been a longtime critic of data roaming rates, as they have little to do, in his view, with actually transmitting a byte over a network. Unlike the international regime established for originating and terminating calls on the public-switched telephone network, for machine-to-machine communications, the internet does not recognize such borders.

But for U.S-based international businesspeople, White says, the fear is that AT&T can easily raise their roaming rates.

''There will be one less choice,'' White said. ''From a business user's point of view, there are some advantages in having trans-national operators who provide services in many countries, as long as there is competition between them.''

White also raised the concern that if AT&T ''refarms'' T-Mobile's frequencies in the Advanced Wireless Services (AWS) spectrum band from High Speed

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Packet Access (HSPA), which refers to the combination of two mobile telephony protocols that extended the existing WCDMA protocol, to 4G LTE, there would be far less capacity for these international GSM-based roamers.

**FCC and EU: A Question of Authority.** Despite these concerns, the FCC has limited authority to impose regulations on international data roaming rates. And since the merger does not involve a global turnover of at least $5 billion and with activities in at least two member states of the European Union, the European Commission's role, at least for now, may be constrained to filing comments with the FCC as a concerned party.

''We have no jurisdiction,'' Amelia Torres, European spokeswoman for EU antitrust issues, told BNA in an official statement. ''The turnover thresholds set in the EU Merger control regulation are not met. As this is about acquisition of the T-Mobile operations in the United States, there will be no material change for Europe.''

Without significant EU involvement in the review, the FCC and DOJ could, as a condition of approval of the merger, require AT&T to offer all mobile network operators—both foreign and domestic—the same or comparable rates and terms as AT&T offers today.

The danger with that, according to Sam Paltridge, an official in the OECD's directorate for science, technology and industry, is U.S. mobile network operators may not receive the same treatment in return.

''It raises an interesting question for the regulator: Are the prices charged to foreign consumers in the United States part of your remit [or authority]? Because, if you're the FCC, you're there to regulate services to Americans,'' Paltridge told BNA in an interview. ''Even if the FCC tried to regulate [international] wholesale rates in the United States, it's a very complicated matter because you can't necessarily know that you'll get a reciprocal deal from another country.''

Using a hypothetical situation in which the United States and Russia, not a World Trade Organization country, negotiated an international roaming agreement on behalf of their countries' mobile network operators, Paltridge explained that under the Most Favored Nation clause in trade deals, a WTO country could then demand that the United States offer its operators the same agreed-upon wholesale rates without offering the same rates in *their* country.

''You would be disadvantaging a carrier in your own country without getting a reciprocal deal in another country,'' said Paltridge, whose views do not necessarily represent those of the OECD.

The better approach, Paltridge said, may be for the FCC to continue promoting international discussions on how to increase competition to ultimately keep rates low.

**AT&T Not Likely to Discriminate, Some Say.** Roger Entner, an analyst at Recon Analytics, said that AT&T, even with its new dominant position in the GSM roaming market, is not likely to engage in predatory pricing or discriminate against foreign mobile network operators since the company is, after all, a ''global competitor.''

''They are in every one of these countries providing services,'' Entner said of AT&T. ''They have to face the regulator wherever there are. If AT&T were to abuse its market power, the European Commission has plenty of leeway to apply pressure, on top of anything that the FCC can do.''

If AT&T were to raise international roaming rates indiscriminately, foreign operators could, theoretically, raise their rates. Then Americans using their phones overseas would be gouged with high prices, an undesirable result for AT&T.

The company, for its part, addressed this issue in a recent filing with the FCC.

Hitting back at Vodafone, AT&T pointed out that the U.K. carrier currently has no real national alternative to AT&T for 3G GSM roaming anyway, even without the merger, as few of Vodafone's customers use devices compatible with AWS spectrum on T-Mobile's network.

To AT&T, imposing international roaming conditions as part of any FCC and DOJ merger approval would not replicate the regulatory structures applicable to Vodafone or any other foreign carrier. The EU does not regulate the rates European carriers charge U.S. carriers, and European carriers have generally raised rates charged to U.S. carriers since the EU first began regulating intra-EU roaming rates, AT&T contends.

In New Zealand, authorities do not currently regulate the roaming rates New Zealand carriers charge U.S. carriers, nor does virtually any other regulatory commission in the world regulate the rates national carriers charge for roaming services provided to U.S. operators. Such conditions would ''weigh the scales heavily in favor of foreign carriers,'' AT&T says, and deny U.S. carriers the flexibility to negotiate integrated agreements.

''Such regulatory disparity would harm, not help, U.S. consumers,'' the company said of conditions that would be applicable only to services provided to foreign carriers and used by foreign customers. ''Such conditions would be both unprecedented and outside the FCC's jurisdiction.''

**Global Stakeholders Yet to Speak Out.** So far, though, many international entities have remained silent on the issue.

Telecommunications industry economists and consultants Alan Pearce, Martyn Roetter, and Barry Goodstadt have been circulating a briefing paper titled *International Consequences of the AT&T/T-Mobile USA Merger* among selected high-level foreign mobile networks operators, regulators, and user groups, which they hope will spur more involvement.

The paper notes with caution that GSM- and HSPA-based operators would be left with one negotiating partner for new or existing roaming agreements for both broadband data and voice.

GSM and HSPA equipment and device suppliers would also have to negotiate with a ''virtual monopsony'' buyer in the United States and a GSM leader in North America that will have, according to the paper, ''immense market power to suppress innovations, which it unilaterally decides are not in its commercial or financial interest to offer, regardless of how valuable, useful and desirable they may be for United States customers and other stakeholders in America and elsewhere.''

Pearce, Roetter, and Goodstadt recently joined public-interest group Public Knowledge in urging the FCC to block the deal.

In filings with the commission, they claim the merger could actually be found illegal under Section 314 of the U.S. Communications Act (120 DER A-13, 6/22/11).

Specifically, when a ''common carrier'' that provides international service ''by any cable, wire, telegraph, or telephone line or system'' seeks to acquire a wireless common carrier that provides international service, Section 314 prohibits the transaction if it would ''substantially lessen'' competition either for international communication or in any related ''line of commerce.''

''Undoubtedly, a transaction that reduces the number of possible international roaming partners from two to one 'has the effect' of substantially lessening competition, if not creating an unlawful monopoly, between those geographic regions and 'any foreign country' in direct violation of the language of the statute,'' they wrote. ''Even in those regions where a competing GSM carrier may remain, the loss of T-Mobile will 'substantially lessen' competition for these services, both by removing an important provider of local roaming and by reducing the number of GSM-based networks able to provide national roaming agreements from two to one.''

**Scope of Possible Roaming Conditions Uncertain.** The extent to which the FCC and the DOJ will impose conditions to address AT&T's would-be GSM roaming monopoly is still unclear.

In the mid-1990s, the FCC waded into the matter of overseas telephone calling rates, and drew sharp protest from foreign regulators.

The FCC's goal at that time was to reduce the billions of dollars that American long-distance carriers were paying to terminate U.S. telephone traffic in foreign countries. According to the commission, roughly 70 percent of these so-called ''settlement'' payments represented a ''subsidy'' paid by U.S. consumers to foreign carriers.

Former FCC International Bureau chief Scott Harris once referred to this alleged subsidy as a ''settlement rate rip-off,'' while others defined it merely as ''monopoly profit'' realized by foreign carriers from termination traffic at high prices, a once-common practice in all countries, including the United States.

The FCC in 1996 ultimately decided to support American carriers in unilaterally imposing new settlement rates on foreign carriers. In one instance, when Telefonica de Argentina refused to accept AT&T's proposed rates and opted not to connect international calls, the FCC ordered all U.S. carriers to begin paying the same rate as AT&T, hamstringing the Argentinians.

**1996 Telecommunications Act.** The controversy was short-lived, as the 1996 Telecommunications Act introduced more competition to the market and drove down rates across the board, but for the FCC, it brought about an exercise of regulatory jurisdiction overseas.

The European Union has intervened in U.S. domestic matters as well. When Germany's largest telephone company, Deutsche Telekom, acquired VoiceStream Wireless Corp., which later became T-Mobile, then-Sen. Ernest ''Fritz'' Hollings (D-S.C.) pushed legislation to block the deal unless the German government sold off most of its interest in DT. It was the first acquisition of a telecommunications company in the United States by a corporation in which a foreign government held a controlling stake. (After its AT&T deal, Deutsche Telekom will still operate subsidiaries of T-Mobile International, also based on GSM and UMTS-based cellular networks, in Europe.)

The European Union's executive fired back at Hollings and merger opponents, warning the United States in its annual *Report on US Barriers to Trade and Investment* that the legislation would violate U.S. commitments on foreign investment in the World Trade Organization.

The EU, which now finds itself in a similar regulatory position to that of the FCC in the 1990s, has not yet filed comments or ex partes with the commission, nor has any other major government agency. The Canadian Radio-television and Telecommunications Commission told BNA that it has not prepared a formal analysis of the merger and declined to comment for this report. Officials from Mexico's Federal Telecommunications Commission, Cofetel, were unavailable for comment. Regulatory bodies in Asia also did not return calls for comment.

A spokeswoman for the GSM Association, which represents 800 GSM mobile phone companies worldwide, told BNA that the trade group has not taken a position on the merger, as it is still under regulatory review.

**Possible U.S. Mobile Superpower.** As global industry organizations and makers of network equipment and chip-sets compete to make their technology dominant in next and future generations of wireless networks, pitting GSM standard against CDMA standard, an AT&T/T-Mobile entity would become a mobile superpower in the United States.

AT&T will account for 99 percent of the country's GSM base and 100 percent of WCDMA and HSPA connections, providing the combined company with significant economies of scale in areas such as handset procurement, network infrastructure and distribution, noted Wireless Intelligence, a research arm of the London-based GSM Association.

And just as foreign mobile network operators fear an AT&T GSM monopoly, so do U.S. carriers. There are roughly 60 small, regional GSM-based mobile phone providers in the United States, all of which will need to roam on AT&T's nationwide network.

In April, the FCC adopted an order requiring all U.S. carriers to enter into data-roaming agreements with competitors on ''commercially reasonable terms and conditions,'' a move that agency officials say will stimulate greater competition in an industry dominated by two powerful players, AT&T and Verizon (74 DER C-1, 4/18/11; 68 DER A-11, 4/8/11).

According to legal analysts, however, the FCC's new roaming mandate is not believed to apply to foreign mobile network operators.

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