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THE AT&T/T–MOBILE MERGER: IS HUMPTY DUMPTY BEING PUT BACK TOGETHER AGAIN?

HEARING

BEFORE THE

SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY AND CONSUMER RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

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THE AT&T/T-MOBILE MERGER: IS HUMPTY DUMPTY BEING PUT BACK TOGETHER AGAIN?

WEDNESDAY, MAY 11, 2011

U.S. SENATE,
SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY, AND CONSUMER RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:15 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Herb Kohl, Chairman of the Subcommittee, presiding.

Present: Senators Kohl, Leahy, Klobuchar, Franken, Blumenthal, Lee, Grassley, and Cornyn.

OPENING STATEMENT OF HON. HERB KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Chairman KOHL. Good morning. Today we meet to consider a merger that is likely to have profound implications on the way millions of Americans communicate. The proposed merger between AT&T and T-Mobile will bring together two of the four remaining national cell phone carriers to create the Nation's largest cell phone network, with an estimated 43 percent market share. Should this deal be approved, AT&T and Verizon will control close to 80 percent of the national cell phone market. A deal creating such huge national market shares in an already highly concentrated industry, make it incumbent on you, Mr. Stephenson, and you, Mr. Humm, to justify why we should allow you to do it.

An industry that began in the 1980s as luxury car phones used mainly by business people has today become the main way we communicate—outpacing wired phones with nearly 300 million subscribers. Cell phones are increasingly the main way millions of consumers connect to the wealth of information found on the Internet. As anyone knows who has ever observed people in restaurants and social events, we are fast becoming a Nation addicted to the bright screens of our mobile phones.

Just a few years ago, cell phone competition was a bright spot for American consumers. Consumers had the choice of no fewer than six major national cell phone companies. And as a result, aggressive competition led to declining prices and to the rollout of ever new services. Today the situation is quite different. This deal would leave us with only three national companies, two of whom—AT&T and Verizon—will control nearly 80 percent of the market.

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And there are real fears that the third—Sprint—will itself be sold to one of the big two and we would wind up with just a cell phone duopoly. An industry that once was a monopoly owned by AT&T in the last century is in danger of reverting to a duopoly in this new century. And so we must ask: Is putting the control of such a vital economic sector relied on daily by millions of people in just two or three companies good for our country?

Today's hearing will examine the critical questions: What will reducing the number of cell phone companies to three mean to consumers? Will they see ever higher phone bills, especially for critical services such as connections to the Internet? What will the absence from the market from the lower priced T-Mobile mean? Will AT&T and Verizon gain a stranglehold on the spectrum that competitors need?

The merging companies argue that the proper way to analyze this merger is at the local level, where the presence of regional carriers adds to the number of competitors. But we must remember that these are mobile phones, which consumers use while traveling. In order to provide this service, these regional companies must pay "roaming fees" to connect their customers to the national phone networks owned by their competitors. Does the fact that the small regional companies have to pay AT&T and Verizon millions of dollars in roaming fees seriously harm their ability to compete? Further, these regional phone companies often do not have access to the newest and most in-demand smartphones that consumers want. Can they compete with the national giants without offering the most up-to-date phones?

AT&T also asserts that this deal will enable it to serve many rural areas so that it will cover 97 percent of the Nation. But on this point, we must ask whether it is necessary for AT&T to merge with one of its three main competitors in order to do this? Could it achieve this laudable goal by spending some of the $39 billion dollars it will spend to acquire T-Mobile to expand its network instead?

In closing, the same rules of basic economics and common sense apply to this industry as in all others: Four competitors are better than three. The more competitive providers of cell phone service, the lower the price, the better the quality of service, and the more innovation that results. We must also keep in mind that the cell phone industry is a highly profitable and rapidly growing business. So the burden will squarely fall on AT&T and T–Mobile to convince us why this merger is desirable, how it will benefit consumers, and to put aside our concerns that it may very well harm competition.

Now I will turn to our Ranking Member, Senator Lee, for his opening remarks.

STATEMENT OF HON. MIKE LEE, A U.S. SENATOR FROM THE STATE OF UTAH

Senator LEE. Thank you, Mr. Chairman. Given the large number of witnesses that we have participating in this hearing and the complexity of the issues we will be confronting, I will keep my opening remarks as brief as possible so that we can have as much time as we need for questions.

The mobile phone market is a critical component of our Nation's economy. According to some recent estimates, it is directly responsible for more than 250,000 jobs. It generates over $150 billion of economic activity each year and accounts for nearly $25 billion in annual capital investment.

It is difficult to overstate the increasing importance of mobile devices in the lives of virtually all Americans. Many people rely on wireless phones as their principal means of chairman, with more than a quarter of the population having become wireless-only households. Mobile devices are also increasingly a primary means by which individuals access the Internet. Next year, smartphone sales are expected to be greater than the combined sales of both desktop and laptop computers.

This explosion in demand for wireless services has led to significant capacity constraints that have affected the entire country. Most of us are all too familiar with dropped calls throughout the industry and occasionally sluggish data speeds. The strength of available wireless networks is vital to individuals, families, schools, businesses, public safety organizations, and virtually all aspects of modern communications.

With the current capacity crunch in mind, the Obama administration announced last year in the National Broadband Plan a goal to lead the world in mobile innovation with the fastest and most extensive wireless networks of any country.

An important question before our Subcommittee today is whether the proposed merger between AT&T and T–Mobile is a positive step along the path toward a world-class wireless broadband network throughout the United States. There are a number of reasons to believe that the merger could contribute to this goal. In many respects, AT&T and T- Mobile are unique in having roughly compatible networks, complementary spectrum holdings, and a well-matched cell site system of grids. A merger between the two companies may provide significant and immediate efficiencies that will enable enhanced service quality, fewer blocked or dropped calls, and increasing data speeds.

Ultimately the entire wireless industry will require additional spectrum to address the significant growth in demand for mobile broadband services. Until such spectrum is made available, the benefits of this proposed merger will enable AT&T to roll out its 4G LTE network, and AT&T has committed to provide this more advanced wireless broadband service to 97 percent of the U.S. population.

In addition to offering better services and speeds, 4G nationwide networks create opportunities for handset innovation and the development of data-rich applications. I favor market approaches rather than Government funding and intervention to develop a nationwide mobile broadband network.

The U.S. wireless marketplace is in many ways less concentrated than in other industrialized nations. Some suggest that our National interests would not be served by restricting the American marketplace to a larger number of spectrum-starved providers ill-equipped to build the most advanced wireless networks.

At the same time, I share some of the concerns expressed by my colleague the Chairman, Senator Kohl, and I believe it is our re-

sponsibility, along with the Department of Justice's Antitrust Division and the Federal Communications Commission, to ensure that the proposed merger would not produce damaging anticompetitive effects.

The combination of AT&T and T–Mobile would create the largest wireless carrier in the Nation with roughly 42 percent of all wireless subscribers in the United States, and it would leave the market with only three rather than four major nationwide carriers that account for the vast majority of total subscribers in America.

A critical question, therefore, is whether the smaller regional carriers can effectively compete in a post-merger market, helping to discipline prices, preserve consumer choice, and promote innovation. Two potential roadblocks to robust competition deserve special attention.

First, regional carriers with limited spectrum holdings must rely on the large national carriers for data roaming access outside their own local areas. Although a recent FCC order mandates that major carriers offer commercially reasonable data roaming agreements, the terms and conditions of these agreements will largely determine whether smaller carriers can become a true competitive force in a nationwide market.

Second, regional providers are often at a competitive disadvantage in gaining access to the most popular and desirable handsets in the system. National providers with large volume and advertising budgets are better positioned to negotiate exclusive contracts for cutting-edge devices like the iPhone and lower prices for other handsets purchased in bulk.

In seeking to address these and other issues relating to the competitive position of smaller regional carriers, we would do well to remember the insight made famous by Robert Bork's seminal work, "The Antitrust Paradox": Competition must be understood as maximization of consumer welfare.

Our analysis of the proposed merger between AT&T and T–Mobile should be guided by what will be best for consumers in the form of prices, service quality, and ultimately range of choice.

Thank you, Mr. Chairman.

Chairman KOHL. Thank you, Mr. Lee.

We turn now to the Chairman of our Committee, Senator Leahy.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman Leahy. Thank you, Chairman Kohl and Senator Lee. I thank you both for holding this hearing, and I will ask consent that a number of my questions be submitted for the record.

Chairman KOHL. Without objection.

Chairman Leahy. We are also doing a hearing in the Appropriations Committee with our military, a matter of some interest these days, and I have to be there. But when we talk about the competitive impact of AT&T's proposed acquisition of T–Mobile, it would combine the Nation's second and fourth largest providers of wireless communications. It goes without saying it will have a lasting impact on the wireless industry. At present, four companies control nearly 90 percent of the national wireless market, and this acquisi-

tion would further consolidate an already concentrated market for wireless communication.

I am particularly concerned about what this acquisition may mean in rural parts of the country or a State like mine, Vermont, that is primarily rural. Too many parts of my State still have no wireless service. I live 5 miles from our State capital on a dirt road in a town adjoining Montpelier. It was only very recently I was even able to get a modest form of high-speed Internet. The two communities on either side of me, Montpelier and Waterbury, each had it. Our town did not. But we are typical of so many other places.

AT&T began providing service in Vermont just a few years ago, after the Department of Justice required Verizon to sell spectrum it was to acquire as part of another merger. The Department's scrutiny of that merger led to Vermonters having access to the iPhone for the first time. Now, if we are going to have acquisitions in this industry, they should provide similar consumer benefits.

Today wireless carriers contend that a shortage in available spectrum limits their ability to both improve and expand wireless services. I have been told that in Vermont—I will use that as an another example. In Vermont, experts tell me both AT&T and T–Mobile have large blocks of unused spectrum in rural areas, and that leads Vermonters with more dropped calls and fewer cellular options in places where emergency responders have no way of communicating.

Still, both AT&T and T–Mobile argue that their combined spectrum will enable them to provide a greater number of consumers with more advanced wireless technology than either could independently. AT&T represented to me that within 2 years this acquisition will result in 250,000 more Vermonters having access to its 4G service than would otherwise be serviced by either company on its own. That is more than a third of the population of our State. Knowing how slowly things have moved in the past, I hope you will forgive me if I am a bit skeptical, and my questions that I will have on this issue, I would urge AT&T and others to respond in writing. I look forward to hearing more details on the basis for that representation. I want assurances that if this merger goes through, AT&T is going to follow through on that kind of buildout.

Most Vermont cellular customers have never considered T–Mobile as a viable option since they have little, if any, retail presence in my home State. But at the same time, T- Mobile owns a great deal of wireless spectrum across the Green Mountains—spectrum that until the announcement of this acquisition was being built out by T–Mobile in an effort to grow its footprint in Vermont. As I said, AT&T also holds a great deal of wireless spectrum in Vermont. This is all spectrum that is not being used, I might say. While I have been impressed with their aggressive buildout to date—I will give them a compliment for that—I worry that many of the very rural areas of our State will continue to be left behind with or without this acquisition.

This is extremely important because if we are going to create jobs in many parts of our State, one of the first things we hear from companies that want to go in there is what kind of wireless do we have here.

Now, there is no doubt that AT&T and T–Mobile are at the forefront of innovation in the wireless market. Each company has a history of developing new and creative and amazing ways to enable consumers to communicate wirelessly, and I do applaud their work. But it is this history of innovation that highlights the importance of the antitrust laws. Consumers ultimately benefit through more choices of better products at lower prices. That is why I am concerned about jobs, not just in Vermont but throughout our country.

I expect the Department of Justice and the Federal Communications Commission to conduct an exhaustive and careful analysis of this acquisition and its impact on competition, and certainly the Judiciary Committee will push them to do that. But specifically the analysis should include the impact the proposed transaction will have on consumer prices and choices for cell phone and wireless data plans and whether the acquisition will stifle or promote innovation. I expect that the Justice Department is wary of creating a market where additional companies need to merge in order to survive.

So, again, I thank, Mr. Chairman and Senator Lee, both of you, for holding this hearing. I think it is extremely important.

[The questions of Chairman Leahy appear under questions and answers.]

Chairman KOHL. Thank you, Senator Leahy.

Now we turn to our Ranking Member, Senator Grassley.

STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Mr. Chairman, thank you very much for holding this hearing. Clearly this is a very important matter that is going to get more attention as time goes on. I appreciate arguments that I have read in support and arguments that oppose the merger. There is still much to learn, but I think in grassroots America that people are beginning to take notice of this because in three of my 33 town meetings that I had during the spring recess, this issue came up. People asked me what I thought of it. It was just announced at that particular time, so obviously, uncharacteristic of me, I have an answer to most of my constituents' questions, but I did not have an answer to that one. And I asked each of the people that asked that question whether they were for it or against it, and none of them ventured a guess of whether they were for it or against it. So I did not learn from them either.

[Laughter.]

Senator GRASSLEY. But, anyway, this is something that particularly in rural America I think is going to get attention. So I look forward to the testimony we will receive today on the proposed merger.

I hope that witnesses can explain the impact of a combined AT&T/T–Mobile will have on consumers through prices, competition, and access. And as you all know, there are many rural areas of the United States that are concerned about service, and particularly in my State of Iowa. So I want to hear how the proposed merger will help residents in my State gain access to faster and more dependable services, and I will have some questions along those lines. I would also have questions along the lines of whether

it will increase rates and whether it will help spur more consumer choice.

Mr. Chairman, I am going to be back and forth between this Committee and the Finance Committee because we have a hearing right now on the Colombian Free Trade Agreement, but I would like to come back and answer questions and not lose my turn, if I could.

Thank you very much for your attention on this.

Chairman KOHL. Thank you very much, Senator Grassley.

We would now like to introduce our panel of witnesses. Our first witness to testify today will be Randall Stephenson. Mr. Stephenson is the chairman of the board, president, and CEO of AT&T.

Next we will be hearing from Philipp Humm. Mr. Humm has been the president and CEO of T–Mobile since 2010 and has also served as chief regional officer and a member of the executive Committee of T–Mobile International.

Next we will be hearing from Daniel Hesse. Mr. Hesse is the CEO and president of Sprint Nextel Corporation. He is also chairman of CTIA, the wireless association.

Our fourth witness today will be Hu Meena. Mr. Meena serves as president and CEO of Cellular South and was recently elected chairman of the board with the Rural Cellular Association.

Next we will be hearing from Gigi Sohn. Ms. Sohn is president and co-founder of Public Knowledge, a public interest organization dedicated to promoting innovation and protecting consumers in the digital age.

Finally, we will be hearing from Larry Cohen. Mr. Cohen has served as president of Communications Workers of America since 2005.

We thank you all for appearing at our Subcommittee hearing to testify today, and we ask our witnesses to rise and raise their right hand as I administer the oath. Do you all affirm that the testimony you are about to give before this Committee is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. STEPHENSON. I do.

Mr. HUMM. I do.

Mr. HESSE. I do.

Mr. MEENA. I do.

Ms. SOHN. I do.

Mr. COHEN. I do.

Chairman KOHL. Thank you very much.

Mr. Stephenson, we will begin with you, and we ask that the panelists limit their comments to 5 minutes. Mr. Stephenson?

STATEMENT OF RANDALL L. STEPHENSON, CHAIRMAN, CHIEF EXECUTIVE OFFICER, AND PRESIDENT, AT&T INC., DALLAS, TEXAS

Mr. STEPHENSON. Thank you, Chairman Kohl and Ranking Member Lee and members of the Subcommittee. I am Randall Stephenson, chairman and CEO of AT&T, and I do appreciate the opportunity to talk to you about the consumer benefits of AT&T's acquisition of T–Mobile USA from Deutsche Telekom.

First and foremost, this transaction is about consumers. It is about keeping up with consumer demand specifically. It is about

having the capacity to drive innovation and competitive prices. And most important, it is about giving consumers what they expect, and that is, fewer dropped calls, faster speeds, and access to high-speed, fourth-generation mobile Internet service—whether they live in a large city, a small town, or out in the country.

Over a short period of time—in fact, just the last 4 years—we have seen a major revolution in wireless. Smartphones and mobile apps have exploded, mobile Internet usage has soared, and innovation has cycled at an amazing pace. Consumers and the economy have benefited, and our network, more than any other, has carried the load.

Over the past 4 years, data volumes on our mobile network shot up by 8000 percent.

To meet this demand, over this same 4-year period AT&T invested more in the United States than any other public company—some $75 billion in capital—and we continue to invest at a very aggressive pace, and that is because the next wave of demand is already on us, and it is on us in the form of tablets and service like mobile high-definition video.

In 2015—and that is just 4 years from now—by the middle of February in 2015, we estimate our network will have already carried as much mobile data traffic as we carried for the entire year in 2010. That is 8 to 10 times higher than where we are today. That is an indication as to how fast the mobile Internet is now growing.

Just about the only thing that we know of that can slow this cycle of innovation and growth is a lack of capacity to meet that demand. That is why there is such a focus right now on spectrum, and I do applaud the FCC and we applaud Congress for their leadership on this particular issue.

As FCC Chairman Genachowski has said, and I would like to quote him, "[i]f we do nothing in the face of the looming spectrum crunch, many consumers will face higher prices—as the market is forced to respond to supply and demand—and frustrating service." I do not think any of us wants those things. But the fact is that even with everybody's focus and efforts, it will be several years before significant amounts of new spectrum are placed into service, and that is just the reality we face.

So to meet growing consumer demand, we have to find ways to get more capacity from the existing spectrum, and that is exactly what this combination will do. Our two companies have very complementary assets, which means that combining them will create much more network capacity than if we were operating them separately. More capacity means improved service, fewer dropped calls, fewer blocked calls, and a faster, more reliable mobile Internet experience. And it is a very basic concept that in any industry greater capacity is a fundamental driver of competition and innovation. The U.S. wireless marketplace is among the most competitive in the world, and it will remain so after this transaction.

Over the past decade, U.S. wireless prices have steadily and dramatically come down, and this transaction allows that trend to continue.

With this transaction, we are also committed to providing LTE mobile Internet service to more than 97 percent of the U.S. popu-

lation. That is nearly 55 million more Americans than our premerger plans, and it is millions more than any other provider has committed to at this point.

We all understand the benefits this will bring to small towns and rural communities in areas like education, health care, and just general development. We will deliver these benefits with the only unionized wireless workforce of any major carrier in America, and current T–Mobile customers will be able to retain their existing rate plans, and they will gain access to LTE service, which is something T–Mobile had no clear path to offer to their customers.

So that is a quick overview of this transaction's logic and benefits and some of the reasons this transaction has won strong support from union, consumer, minority, and local representatives, as well as several industry experts.

Thank you very much for your time.

[The prepared statement of Mr. Stephenson appears as a submission for the record.]

Chairman KOHL. Thank you, Mr. Stephenson.

Mr. Humm.

STATEMENT OF PHILIPP HUMM, PRESIDENT AND CHIEF EXECUTIVE OFFICER, T–MOBILE USA, INC., BELLEVUE, WASHINGTON

Mr. HUMM. Yes, thank you, Chairman Kohl, Ranking Member Lee, and members of the Subcommittee. Good morning. I am Philipp Humm, CEO of T–Mobile USA. I appreciate the opportunity to testify today on behalf of T–Mobile USA.

Coming from Deutsche Telekom in Europe, I joined T–Mobile USA in July 2010 and became CEO in November 2010. T–Mobile was facing revenue declines for 2 consecutive years due mainly to a weakened brand position. The management of T–Mobile has in the meantime implemented a new strategy that is aimed at leading the company back to growth. Results so far are still mixed: While revenues have stabilized, subscriber losses remain our No. 1 concern.

Returning the business to growth, however, will not be sufficient to secure T–Mobile's strategic future. As data usage continues to explode, spectrum is becoming a constraint to our business, with T–Mobile facing spectrum exhaust over the next couple of years in a number of significant markets. Moreover, our spectrum holdings will not allow us to launch LTE. T–Mobile also lacks the low band spectrum that would enable it to offer nationwide deep in-house or deep in-building coverage, particularly to reach homes in suburbs and in rural areas. In addition to these unresolved strategic issues, T–Mobile's parent, Deutsche Telekom, is not in a position to finance the necessary large-scale investments in the U.S. for T–Mobile to really remain competitive. The combination with AT&T allows T–Mobile to address these challenges as well as to realize near-term benefits for its customers. The combination brings together two uniquely compatible companies, achieving extensive synergies, while greatly benefiting the American economy, consumers, and particularly T–Mobile customers. We have identified at least four major benefits for T–Mobile customers:

First, T–Mobile customers will enjoy improvements in their coverage through access to AT&T's low-band 850 MHz spectrum. With the acquisition by AT&T, T–Mobile will be able to offer to nearly all its customers full access to 850 MHz AT&T spectrum, which will significantly improve deep in-building coverage to its customers. As T–Mobile already uses chipsets supporting 850 MHz, customers will be able to take advantage of these improvements shortly after the transaction closes.

Second, the transaction will result in near-term network quality improvements for T–Mobile customers. As a result of AT&T's and T–Mobile's use of compatible GSM-based technologies and the companies' complementary cell site grids, the combined company will be able to quickly merge their networks and pool spectrum. Significant operating efficiencies will be achieved through channel pooling, control channel efficiencies, and cell splits. For T–Mobile customers, this will mean better coverage, fewer dropped and blocked calls, and faster and more consistent data downloads, particularly at peak times and in high-demand locations.

Third, the transaction will also give the combined company the resources and spectrum it needs to broadly deploy next generation LTE service. T–Mobile does not have sufficient spectrum to roll out a competitive LTE network while also continuing to support its existing GSM and HSPA+ networks. So by combining the spectrum of both companies, the entity will be able to support LTE and the two legacy technologies, GSM and HSPA+. It will allow LTE to reach more than 97 percent of the U.S. population, as stated by AT&T, which is something T–Mobile would not have been able to do on its own.

Fourth, the transaction will allow the combined company to increase capacity and to significantly reduce costs, which will drive prices down and enhance opportunities for innovation, making the U.S. an even more dynamic and competitive market. The U.S. wireless marketplace is very competitive. Approximately three-quarters of Americans today live in areas contested by at least five facilities-based wireless providers. Competition has been particularly fierce for value-driven customers, which are the core of T–Mobile's customer base. This highly competitive marketplace will ensure that consumers across the board benefit from the enormous cost savings and capacity increases that AT&T estimates from the transaction. We expect increased competition and lower prices for all consumers. By contrast, without the deal, a spectrally constrained AT&T and a spectrally and capital-constrained T–Mobile would be able to provide much less vigorous competition separately than would the more efficient, combined company.

To conclude, I am confident that T–Mobile customers will experience significant and tangible benefits from the proposed combination with AT&T, both immediately and longer term. The transaction will provide our combined customers and the American public improved GSM, UMTS, and LTE services faster than either company could provide on its own. And the competition that has characterized this industry will continue and be even stronger post transaction.

Thank you for your time, and I welcome any questions you might have.

[The prepared statement of Mr. Humm appears as a submission for the record.]

Chairman KOHL. Thank you, Mr. Humm.

Mr. Hesse.

STATEMENT OF DANIEL R. HESSE, CHIEF EXECUTIVE OFFICER, SPRINT NEXTEL CORPORATION, OVERLAND PARK, KANSAS

Mr. HESSE. Good morning, Chairman Kohl, Ranking Member Lee, and members of the Subcommittee. I am Dan Hesse, the CEO of Sprint Nextel. Thank you for the opportunity to address the potential negative consequences that AT&T's proposed takeover of T–Mobile could have on American consumers, innovation, and the economy.

I would like to use my time to focus on how a vertically integrated duopoly would impact the wireless industry. I am not here to ask for a special break or conditions. I am here because, like all Americans, Sprint has a stake in the impact this acquisition would have on an industry that has prospered on competition and innovation, the very elements this transaction threatens.

Sprint was born out of competition. We operate in an open, competitive environment where innovation thrives and technological advances and devices and services expand rapidly. An open, competitive environment benefits my company, but also every person who owns a wireless device.

The competitive environment has driven tremendous growth. It took a hundred years to build a billion fixed phone lines, but only 20 years to add 5 billion mobile subscribers.

At the end of 2010, there were over 302 million wireless subscriptions in the United States representing about 96 percent of the U.S. population. Robust competition is driving prices down and quality up, so much so that as of June 30, 2010, one-quarter of all adults lived in wireless-only homes.

The impact of wireless competition on our economy has been profoundly positive. In 2010, the wireless industry accounted for nearly $160 billion in revenue and approximately $25 billion in capital investment and employed, directly or indirectly, about 3.6 million Americans. If the industry remains competitive, productivity gains over the next 10 years will amount to almost $860 billion in additional GDP.

Creating an entrenched, integrated duopoly will reverse this progress and stifle the vibrancy of the wireless industry. In the mid-1990s, Congress and the FCC opened the original wireless duopoly to competition, and the firms that became Sprint and became T–Mobile entered, and competition then began to make a noticeable difference.

AT&T's acquisition of T–Mobile will turn back the clock on wireless competition. It would, as the title of this hearing suggests, put Ma Bell back together again.

Let us examine what the Twin Bells would control in a duopolistic, post acquisition world. Two companies would control over 80 percent of the U.S. contract customers and 88 percent of all wireless industry profits. Two companies would control most of our Nation's vast wireline infrastructure and the critical last mile

that Sprint and the rest of the industry need to provide affordable rates and quality service. With control of nearly 80 percent of the market, the Twin Bells could discourage device manufacturers from partnering with anyone else for the next generation of smartphones and tablets.

Two companies would largely control industry pricing. By controlling about 80 percent of the market, the Twin Bells would have significant unchecked leverage to increase prices for voice and data.

Today Sprint and T–Mobile apply downward pressure to pricing, but with this deal, that pressure will diminish. The regional providers AT&T refers to as competition have less than 5 percent of the total postpaid subscribers and cannot discipline prices. But beyond what the Bells would control, this acquisition actually does very little to provide the benefits AT&T claims.

Consider: Even without this transaction, AT&T has the largest licensed spectrum holdings of any wireless carrier in this country. But rather than building out its spectrum, AT&T is warehousing it. Verizon, which has more subscribers and less spectrum than AT&T, just weeks ago stated that it had sufficient spectrum to meet its needs until 2015.

T–Mobile, by contrast, is using its spectrum heavily in the same high-demand areas in which AT&T claims to need capacity. AT&T does not use the spectrum it has, and adding T–Mobile spectrum would not give AT&T the relief it claims to need.

AT&T already has the spectrum, reach, and resources it needs to serve rural America. Adding T–Mobile extends AT&T's reach to only 1 percent more of the U.S. population.

The wireless industry thrives on competition, which in turn drives investment, innovation, consumer choice, job creation, and U.S. global leadership in communications. If AT&T is permitted to devour one of the two remaining independent national wireless carriers while the rest of the world achieves advances in technology and innovation for the 21st century, the United States could go backwards to our last century's Ma Bell.

I respect Randall and Philipp. They are doing their jobs, maximizing value for their shareholders. Unfortunately, there are only three beneficiaries of the proposed transaction: the shareholders of AT&T, Verizon, and the sole shareholder of T–Mobile USA, Deutsche Telekom.

The fundamental problems of a duopoly cannot be fixed through divestitures or conditions. In short, this merger is unfixable. The only remedy that can preserve competition is a vibrant wireless market, and we ask you to just say no to this takeover.

Thank you for holding this hearing today. We urge the Department of Justice and the FCC to say no to the irreparable harm to competition, innovation, and the U.S. economy that could result from this merger.

I thank you for your time and am prepared to answer your questions.

[The prepared statement of Mr. Hesse appears as a submission for the record.]

Chairman KOHL. Thank you, Mr. Hesse.

Now we will turn to Mr. Meena.

STATEMENT OF VICTOR H. "HU" MEENA, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CELLULAR SOUTH, INC., RIDGELAND, MISSISSIPPI

Mr. MEENA. Good morning, Mr. Chairman and Ranking Member Lee. Thank you for inviting me to be here today.

I have been in this industry for over 23 years and, with a lot of help, have literally built our company from the ground up. The U.S. wireless industry is at a pivotal point, and policymakers will determine the fate of the industry with their decision on whether to approve AT&T's acquisition of T–Mobile.

Over the past several weeks, we have carefully reviewed this proposed takeover. We can find nothing good about it. It is bad for consumers, it is bad for jobs, it is bad for competition. If regulators approve this acquisition, all that remains is the end game, where the remaining non-Bell carriers patiently wait their turn to be acquired or bled dry by the biggest two carriers.

When I began in this business in the late 1980s, there was a local duopoly in every market. There are only two cellular licensees, which meant that consumers had just two choices for wireless service. This also meant that carriers virtually had no market incentive to innovate or improve service offerings. Therefore, this era is remembered as one of large brick phones and even larger customer bills. In a duopoly, the market can quickly reach equilibrium, and if both providers are reasonably happy with their position, that is how things will stay.

But by the end of the late 1990s, as Dan referred to earlier, the U.S. wireless industry began to awaken when a new group of competitive carriers entered this market with PCS networks and launched what we refer to as "the competitive era." Because competition was important to Congress at that time, the FCC auctioned PCS licenses to new entrants, who built networks, attracted customers, and just generally disrupted established markets. Suddenly, local duopolists were forced to respond to competitors with lower prices for service and phones, new coverage areas, better customer service, and more innovative offerings.

In order to acquire and retain customers, Cellular South had to get creative. We did several things that were groundbreaking at the time, such as free nights and weekends, free incoming calls, and then after that, unlimited calling. We had not done these things before because, quite frankly, we did not have to in the era of local duopolies. In this competitive era, it was hard work to stay ahead of competition, but those that worked the hardest and were the most innovative were the ones that were rewarded.

Unfortunately, all that started to change in the middle of the last decade. It was around that time that we began to see Humpty Dumpty being pieced together again. Through unfettered mergers and acquisitions, it was only a matter of time before the former Ma Bell reconstituted herself into two Bell sisters of the wireless industry—AT&T and Verizon. Not surprisingly, the concentration of market power has led to less choice for consumers and routine abuse of market power in an effort to prevent competition at every turn.

AT&T specifically has done just that via exclusive deals on handsets that Chairman Kohl referred to earlier, and also they

have done it by withholding roaming agreements and by leveraging its control over device and infrastructure vendors to Balkanize new spectrum. This is only possible because regulators were asleep at the wheel for much of the last decade.

So now we are at a decision point. As everyone in the industry analyzes every aspect of this acquisition, policymakers have this question before them: Are we entering the era of a nationwide duopoly? Or are we going to provide a landscape in which a second competitive era might blossom?

There is no third option. Either AT&T will be allowed to acquire T–Mobile, paving the way for Verizon to possibly acquire Sprint, cementing a national wireless duopoly in place, or it will not. If this acquisition is approved, policymakers must begin preparations to regulate every aspect of the day-to-day business of the duopolists.

In a nutshell, that is why this acquisition must be denied and why it is in consumers' best interests to chart a new course toward a new competitive era of wireless. The fate of this acquisition determines the course of our industry. It is as simple and as critical as that.

But, in closing, the very good news is that this takeover can be stopped, and you can lay the foundation for a new era of wireless competition, an era where jobs are created throughout the land, a truly competitive era when a wide variety of creative minds are stimulated to deliver affordable broadband wireless networks, high-quality, high-speed networks, with the ubiquity the people of our Nation deserve and demand.

Thank you.

[The prepared statement of Mr. Meena appears as a submission for the record.]

Chairman KOHL. Thank you very much, Mr. Meena.

Ms. Sohn.

STATEMENT OF GIGI B. SOHN, PRESIDENT, PUBLIC KNOWLEDGE, WASHINGTON, D.C.

Ms. SOHN. Chairman Kohl, Ranking Member Lee, members of the Subcommittee, thank you for the opportunity to appear before you. I would like to set the tone for my remarks with a brief video.

[Videotape played.]

[GIRL] Hi, I'm T–Mobile myTouch 4G.

[GUY] And I'm an iPhone 4.

[GIRL] Who's your friend?

[GUY] Oh, its the old AT&T network.

[GIRL] That will slow you down.

[GUY] That's the price I pay for 3G speed.

[GIRL] Bummer, 4G with T–Mobile lets me video chat practically anywhere.

[MAN] Well, iPhone 4 can face time video chat from anywhere where there's WI–FI, like say an airport.

[GUY] You know, you suddenly feel heavier!

[GIRL] The new T–Mobile myTouch 4G: video chat without needing WI–FI on America's largest 4G network, T–Mobile.

[Videotape over.]

Ms. SOHN. That commercial illustrates the situation we have today: a vibrant national market in which four companies feel free to sell consumers high-tech services while making fun of their competitors. However, if the merger of AT&T and T–Mobile comes to pass, the wireless market will be transformed into something quite different. We will go back to the days when this phone was in use. Only two companies ruled the cellular phone market, resulting in high prices for consumers and little innovation.

In 1993, a year after this phone came to market, Congress created the wireless market we now enjoy by empowering the FCC to auction spectrum and create more competition. That policy worked. Prices dropped, innovation exploded, consumers benefited. Over the years, industry consolidation has gradually eroded that competition, but if this deal goes through, that era of competition and innovation will come to an end.

Consumers know this already. Almost 5,000 individuals have written to the FCC in their own words to object to the combination of the No. 2 and No. 4 wireless carriers. T–Mobile customers are irate. A poll on tmonews, a blog for T–Mobile customers, shows that 77 percent, or about 7,300 consumers, are opposed to the deal after just a couple of days. After the deal was announced, people e-mailed and called Public Knowledge, unsolicited, asking what they can do to stop the transaction from going forward. More than 1,000 people have signed our petition. These are not astroturf campaigns. These are real Americans seeking to preserve competition in a lower-priced competitor that rates far higher than AT&T in customer satisfaction.

If this merger is approved, two vertically integrated companies will control nearly 80 percent of the market. Sprint will have just 16 percent and will instantly become a takeover target. We should not go back to the future, back to duopoly. Worse than duopoly is monopoly, which is what would happen to GSM-based wireless services in the U.S. post merger. GSM handset manufacturers would be forced to negotiate with one national company—the new AT&T and T.

Applications developers would also be subject to a limited noncompetitive market. Remember that while T–Mobile was the first carrier to sell devices using the open Android operating system, AT&T has a history of blocking innovative applications.

I cannot stress enough that each of the supposed benefits of this merger can be accomplished without removing a low-cost innovative competitor. If AT&T is concerned about its spectrum capacity, it can stop operating three different types of networks, an inefficient system which, according to one analyst, results in 70 to 90 percent of its spectrum being underused. Completely unused is one-third of its spectrum in the top 21 markets. Allowing AT&T to buy T–Mobile for the purpose of improving its inefficient networks and upgrading to 4G services would reward AT&T for failing to invest adequately.

If AT&T wants to bring service to rural areas, it is free to do so, and they could do so now without any constraint. There are no spectrum shortages in rural America. AT&T is planning to spend $39 billion on this merger, money that could instead be spent in-

vesting in its network and bringing better service to more Americans.

If AT&T wants to create jobs, it can do so without buying out a low-cost competitor. One would be hard pressed to find a merger that resulted in job growth, and this one will be no different as thousands of workers in retail stores, call centers, and sales staffs will be let go.

This transaction is a pivotal moment in U.S. antitrust law. If that law means anything, this classic merger of one company buying out a smaller competitor in the same business must be denied. There are no conditions or divestitures that can make this deal acceptable. This merger is unfixable.

I urge the members of the Subcommittee to oppose this merger after reviewing the facts. Thank you, and I look forward to your questions.

[The prepared statement of Ms. Sohn appears as a submission for the record.]

Chairman KOHL. Thank you very much, Ms. Sohn.

Mr. Cohen.

STATEMENT OF LARRY COHEN, PRESIDENT, COMMUNICATIONS WORKERS OF AMERICA, WASHINGTON, D.C.

Mr. COHEN. Good morning, Chairman Kohl and Ranking Member Lee and Members of the Subcommittee. I am Larry Cohen, President of the Communications Workers of America, representing hundreds of thousands of workers in both the network and content sides of this industry.

We look forward to this review by the Congress, the FCC, and the Department of Justice, but at the end of these inquiries, we believe there are three key points: first, this merger represents an opportunity for this country to accelerate high-speed broadband deployment; second, the transaction, with conditions, can positively impact consumers; and, third, with the right conditions, it will increase jobs, both directly in the surviving company and in the economic development that the broadband expansion can bring to rural America.

Four years ago, CWA launched our Speed Matters campaign to highlight the importance of high-speed broadband for our nation's future. High-speed Internet is essential to economic competitiveness, job creation, and the quality of our lives. Telemedicine, distance learning, and smart grids have enormous potential, but they will remain beyond the grasp of tens of millions of Americans unless we are able to accelerate the development of true high-speed wired and wireless broadband networks. The U.S. now has fallen behind 25 other countries, including Romania, in the capacity of our broadband networks. The President highlighted this in the State of the Union, but we have no path whatsoever to closing this gap.

Our view is that this merger, with conditions and with the commitments made by T–Mobile and AT&T, is a critical way to bridge the broadband gap that exists between the U.S. and the rest of the industrialized world. This is critical for rural America and critical for economic development.

As you have heard, AT&T commits to deploying next-generation wireless, which is 4G, which delivers speeds of 10 megabits per second downstream. These commitments would need to be included in merger approval conditions, that the 4G wireless network would be deployed to 97 percent of the people within the next 5 years. This is noteworthy because today only 25 percent of U.S. broadband subscribers connect to the Internet at this speed. Internet connectivity is about data speed. We saw that even today with Microsoft's announcement to spend $8.5 billion to buy Skype. We would like to compartmentalize this industry. That is not the way consumers view it. There is data over cable, data over wireless, data over wireline, WiMax at Sprint is a major investor in clearwire.

The effects of this merger are especially significant for rural Americans, most of whom are on the wrong side of the digital divide. We need maps, we need timetables, we need investment, we need speeds. Those can all be conditions of this merger.

The real question this transaction poses is not whether T–Mobile will survive as an independent competitor. As Mr. Humm said, T–Mobile cannot be forced to make the investments to build a 4G network. 4G is the global standard, and the untold story here really is whether Sprint or AT&T acquires T–Mobile. And with all due respect to my colleague and friend Mr. Hesse, this is an open-and-shut case. AT&T will commit, and conditions can be applied on the merger, that absolutely provide when investment will be made, what the speeds will be, what pricing will be within ranges, et cetera. That is an opportunity this country cannot afford to miss. We are falling woefully behind in the global economy, partially because of these infrastructure needs.

AT&T has the financial resources to deploy 4G. Sprint does not. Sprint uses three different incompatible technologies, including the Clearwire WiMax investment, and they have not yet integrated their Nextel network. In this case, as you have heard, AT&T and T–Mobile have similar and compatible technologies, both GSM. Sprint does not. They have three other technologies.

Finally, this merger is good for U.S. workers. Our experience in the mergers that formed AT&T Mobility is that workers have not lost their jobs in a single case. We believe that conditions can be applied to this merger, and the FCC did it in the AT&T BellSouth merger in which not only was there no loss of employment, there was renewed investment, and renewed commitment to the rural South in the BellSouth case. It was good for workers. It was good for those communities. We think similar conditions need to exist in this merger when it is, in fact, approved.

In the long term, the expansion of AT&T's 4G LTE network holds the potential to create thousands of new jobs both in this industry and in the rural communities.

Thank you.

[The prepared statement of Mr. Cohen appears as a submission for the record.]

Chairman KOHL. Thank you, Mr. Cohen.

We will now start rounds of questions at 7 minutes per Senator.

Mr. Stephenson, one of the major concerns arising, of course, out of this merger is what it will mean for prices that consumers pay for service. You seek to acquire one of three national cell phone

competitors, reducing consumers' choice from four to three. In addition, T–Mobile has been a price leader, in many cases undercutting prices offered by your company, Verizon, and Sprint. For example, T–Mobile right now offers an unlimited voice, text, and data plan for $35 less than the comparable plan of your company.

So why is it not logical to assume that the loss of T–Mobile from the national cell phone market will cause competition to erode and prices to increase?

Mr. STEPHENSON. I will restate just briefly what I said in my opening comments, and that is, this is unequivocally one of the most competitive industries in the U.S. today, and in terms of wireless industries around the globe, probably the most competitive around the globe. And one of the best ways to evaluate that is obviously looking at pricing, to your question. And if you look at just the last 10 years in this industry, there has been a number of consolidations. Dan's company has participated in some.

Irrespective of that, over this 10-year time horizon, voice pricing in this industry has come down by 50 percent. And if you just take a snapshot of the last 4 years, which were in the area of mobile broadband, so it is all about mobile data now, just in the last 4 years since we launched the iPhone, the pricing for a megabite of data on our network has come down by 90 percent. What is driving that? It is competition. If you look at the options for the customer today, regardless of what market you are in, 74 percent of the customers in the United States, when they go to shop for wireless, have an option of five or more wireless facility-based providers.

So this is a vibrant, active market for competition. If T–Mobile and AT&T combine, I do not see—history would suggest that that does not change the trajectory of pricing in this industry. In fact, we are at a situation now, AT&T specifically, where we are capacity constrained. T–Mobile I know is as well. We have markets where we are within literally 1 to 2 years of failing to have sufficient capacity to continue growing our 3G networks. There is only one by-product of that, and that is a pricing or rationing by-product.

Putting these two companies together unequivocally creates new capacity, and we can go into the details of that. But putting the two companies together, freeing up spectrum, allows us to continue to grow capacity. Capacity is the basis for moving prices down in this industry.

So my expectation is that putting the two companies together creates capacity. Prices continue to move down through the competitive environment.

Chairman KOHL. Mr. Hesse, in your testimony you said, "Going forward, if this happens, it would be difficult for any company to effectively challenge the Twin Bell duopoly even if the duopolists reduce quality, raise prices charged the content sellers for access to consumers or raise prices to customers..." So if this happens, what is going to—what I take your comments to mean is that you have real concern about your ability to maintain yourself as a national competitor in the market with your 17 percent of the share versus the 80 percent that the other two companies would comprise, and that, in fact, who knows what will happen to your com-

pany in terms of its necessity to maintain itself, even perhaps someday selling out to one of the two majors. Is this conceivable?

Mr. HESSE. It is conceivable, yes, Senator.

Chairman KOHL. All right.

Mr. HESSE. It clearly would make our position more challenging competitively. If you put 80 percent of the revenues in the hands of two companies, I believe they would have pricing power. Given that handsets are purchased, as was mentioned earlier, nationally and in bulk, it would give them tremendous scale advantages. They would become, if you will, a gatekeeper for new applications and OS's, so they would, if you will, build it for one of the two Bells, and they would always get it first. But because of their size and scale in terms of innovation, that would make it more difficult.

But what this hearing has not discussed and what has not been discussed enough is perhaps outside of the wireless industry, and that is the vertical integration of the two, and that is the control over the last mile. That is a huge piece of our cost structure and the cost structure of all wireless carriers.

As was mentioned, I am the Chairman of the CTIA, and one of the issues the wireless industry has had is special access. What we pay—roughly, if you will, 30 percent of the cost of putting in a new cell site goes back to a local landline carrier in the form of payments for special access, and those rates are very, very high. I believe there is a fundamental conflict of interest between—and we see this at the CTIA as AT&T and Verizon are able to, if you will, block wireless industry initiatives to get the CTIA as a wireless industry to oppose and get its weight behind reducing special access because of, if you will, the Verizon and AT&T people who are not in the rooms, if you will, the landline piece. And as prices come down for special access to us, we could make wireless service less costly. As wireless service becomes less costly for consumers, it accelerates cord-cutting of the local landline. So the two Bells do not have an interest in accelerating, if you will, this cord-cutting or substitution of wireless for wireline services.

So it does make us more of a takeover target over time as the competitive environment gets much more difficult for Sprint.

Chairman KOHL. Mr. Hesse says we go from four to three, and then we may go from three to two.

Mr. HESSE. That is correct, Senator.

Chairman KOHL. All right. And obviously that is not something I believe we want to see happen, Mr. Stephenson and Mr. Humm. Mr. Humm, I would like you to respond to that and also respond to your comment on spectrum scarcity. Your Neville Ray, who is your chief technology officer, this year stated, and I quote: "I think there has been a belief that there is spectrum shortage at T–Mobile." He goes on to say, "That is not the case in the near term or the medium term. If you look at your volume of spectrum that T–Mobile has today, our ability to grow in this wireless data space is much stronger than our competition. So we are in a good spot, and we do not have a shortage of spectrum."

Now, you said today you do have a shortage of spectrum.

Mr. HUMM. Yes, I think both things are correct. What Mr. Ray was referring to is that we have on the short term sufficient spectrum to grow our data revenues. What is not mentioned in the

quote is that we do not have today, for example, enough spectrum to launch LTE in parallel to our HSPA+ and GSM networks. So we cannot start the LTE rollout in any sense because we do not have the spectrum.

The other thing that is also important to realize is that it has historically taken us between 2 and 3 years to clear spectrum which we have acquired. We need spectrum now to be able to fulfill the demand of tomorrow. So from that point of view, we see ourselves as being spectrum constrained both because we cannot do LTE in the medium term, and the other constraint we have—and I mentioned that in my opening remark—is a capital constraint, to basically do it on our own in case spectrum would be available.

Chairman KOHL. OK. We will turn to Mr. Lee now. I just want to make the point that if we go from four to three and then we go from three to two, that is pretty serious. And we will come back to that.

Mr. Lee.

Senator LEE. Thank you, Mr. Chairman.

I would like to start with Mr. Stephenson, if that is OK. Mr. Stephenson, some of your critics have noted that AT&T has more unused spectrum than any other wireless carrier. So one question I have on that point is: Could you tell us why you have yet to fully utilize your existing spectrum holdings and you are instead seeking to acquire new spectrum through this acquisition and others?

Mr. STEPHENSON. I will be glad to. As we have discussed and as we have said publicly, we are aggressively moving to launch LTE, which is the fourth generation of mobile broadband technology. This is the technology that will begin to give us 10-, 15-meg type experiences for the consumer.

Now, in our industry, we launch technology—and this is a very fast moving, innovative industry. Five years ago, we began to move from second-generation to third-generation technology. To make the move in technology, you have to have a clear block of spectrum, nothing in it, to deploy the new technology. We began deploying 3G technology, as you know launched the iPhone, smartphones, Androids, et cetera. That business is growing dramatically, as I said, 8000-percent growth in the last 4 years.

We now need to make the move to fourth-generation LTE, for a number of reasons—the speed benefits, but also it is just more efficient with spectrum. To make that move, once again, we have to have clear blocks of spectrum.

Senator LEE. Unused spectrum.

Mr. STEPHENSON. Unused spectrum. Nothing can be in this spectrum. It has to be clear, unadulterated spectrum to make these moves. To do LTE, because of the data growth we are experiencing, we need 20 megahertz of what we will call contiguous spectrum combined. We have gone a number of places to piece together this footprint to allow this LTE conversion. We went into the Government auction. We spent considerably, $7 billion in the Government auction, to buy 700 megahertz spectrum. We call this "beachfront property" stuff. That is where we are going to put these really high performing networks now. We are building into that spectrum now.

We also acquired a company, Aloha Communications, which had a block of this spectrum that we were able to pair together with what we bought from the FCC, giving us that 20 megahertz.

We still have a number of markets where we do not have a footprint of spectrum to deploy LTE, so we have been out pursuing and buying spectrum the best we can. We do not have enough spectrum to deploy this Nationwide, but this spectrum is unused today because we are putting—building now as we speak the technology into that spectrum that we will begin launching mid-year this year.

Senator LEE. If you were unable to acquire T–Mobile, what would your options be as far as developing your 4G LTE network?

Mr. STEPHENSON. It is a long-term solution. Most of the rural communities that we are speaking to, we would not have the spectrum depth to do the conversion that we need. So this is one of the big determinants as to whether we can get to a lot of the rural communities with our LTE bill. We need spectrum in those communities.

Classic case: They have a very nice footprint in West Virginia. That would be a good case. We do not have enough spectrum to launch in West Virginia. This would allow us to cover a large portion of West Virginia.

Senator LEE. Is it your position that the Nation would be better served by a smaller number of providers with access to more spectrum than it would be by a larger number of providers each with access to smaller spectrum holdings?

Mr. STEPHENSON. You know, that is a public policy question. What I would tell you today is there are a number of companies out there are aggressively deploying fourth-generation technology, and a lot of them are deploying it quickly because they are doing leap-frog approaches. A company Dan's company owns the majority position in, Clearwire, just building all new fourth-generation technology. How can they do that? They do not have second-generation and third-generation occupying their spectrum with those customers they have to move out. MetroPCS is doing a leap-frog technology bill. So you have a number of companies—LightSquared. There was an article in the paper here this week. They are going to launch in Washington, DC., a fourth-generation LTE network.

So I do not think fewer companies is necessarily better, but I do believe if we have a public policy objective of getting to 97, 98 percent coverage of mobile broadband with these types of speeds and capabilities—that is an additional 55 million people beyond what our current plan would allow us to do—we are going to have to think differently and allow companies to make better use and utilization of the spectrum.

Senator LEE. OK. Let me ask a related follow-up question then. There are those who claim that your acquisition of T–Mobile, if it occurs, will result in a duopoly. I realize that you may disagree with that assertion, but I want to ask the question. Do you believe that further market concentration is likely to result in more regulation of your industry?

Mr. STEPHENSON. I cannot judge what happens with the regulation. From my viewpoint this is such a hyper-competitive industry that additional regulation does not seem warranted or likely. We have a history in terms of what happens to pricing in this industry.

I keep going back. The options available to the consumer in this industry are dramatic, and we keep talking about going from four to three or three to two. I mean, if you just look at the last quarter of results published in this industry, we tend to skip over MetroPCS. This is a viable large-scale competitor, a competitor that is out there saying, "We have people coming to us all the time with new handset solutions." They added over 700,000 subscribers in the last quarter; Leap added 300,000 subscribers; Sprint, a million one. This is anything but four going to three or three going to two. This is a vibrant, active competitive environment.

Senator LEE. OK. Thank you.

Mr. Hesse, some of your public comments have suggested that Sprint might not survive an AT&T/T–Mobile merger. Is that your position?

Mr. HESSE. My position is that it would make it more difficult for Sprint compete. I have never said that we would not survive. But I think in that environment, I think the real question is: If this were approved, my view is if people are fundamentally making a decision this is a duopoly and it puts us in a position, I think, to be acquire.

Senator LEE. OK. Well, Sprint is currently the third largest provider in this industry.

Mr. HESSE. Yes.

Senator LEE. It has recently and pretty substantially increased its subscriber base. It scores really well on customer service satisfaction surveys. It offers a wide array of popular products and handsets. It was the first to market with a 4G product, and it offers aggressively priced unlimited data plans. So in light of those circumstances, what obstacles stand in the way of Sprint continuing to play a role as a robust and very effective competitor in a post-merger market?

Mr. HESSE. I think one thing that I mentioned earlier in terms of continuing to improve, if you will, the disadvantages we have in areas like special access, my ally is going to be silenced here who I work with in Washington to try to, for example, get access rates reduced. I think, though, at a certain time it becomes a bridge too far. And you asked the question earlier about regulation, and we traditionally have opposed increased regulation by the FCC in the wireless industry because we think the market, if competitive, is the best form of regulation in the market.

But recently we supported the FCC's re-regulatory approach to roaming, and the reason is because the roaming alternatives—in our case, Alltel was purchased by Verizon. AT&T bought Dobson and Centennial. So we are already seeing signs of more regulation in our industry, and this is the other downside as far as, you know, I am concerned about how big the pie gets, how robust and vibrant the entire industry is, as much as what our relative share is of that industry. And I think that with more regulation and less innovation, the pie will stop growing as rapidly, and there will not be as much investment. So companies would be—you know, financial firms, investors would be less willing and interested in investing in the growth of Sprint if the wireless industry becomes more regulated and does not grow as fast.

Senator LEE. Potentially leading to less competition. Is that your position?

Mr. HESSE. Yes, it is.

Senator LEE. OK. Thank you, Mr. Chairman.

Chairman KOHL. Senator Lee, thank you so much.

Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman.

Thank you to all of you. I come at this, first of all, as someone who was in private practice for 14 years representing a number of different private phone companies and arguing that competition was really good for the market and that it would—both the local market and the long-distance market, that it bring prices down, which in many cases it has.

Second, I come at it as a Senator that also serves on the Commerce Committee, has put forward a cell phone bill of rights, and has heard time and time again from the cell phone companies that that is not necessary because there is so much competition that we do not have to worry about things like early termination fees being pro-rated because competition will bring us there.

So my first questions are of you, Mr. Stephenson. I wrote you a letter, and I know it was just a few days ago, and you are getting the answers together. But are you prepared to commit to offer your customers T–Mobile's current pricing plans?

Mr. STEPHENSON. As we have said before, the T–Mobile customers will be offered their own rate plans into the future. That is our history. We have always done that.

When you think about the AT&T customers, they have——

Senator KLOBUCHAR. Will the AT&T customers get T–Mobile's current pricing plans?

Mr. STEPHENSON. So AT&T customers, my view is if they wanted the T–Mobile pricing plans, they have had those options for a long time now. Specifically, though, the way this industry works is today we sell a $400 iPhone for $50. That means we put $350 into a product like that. We ask our customer to sign a contract—and you are actively involved; I know you are very familiar with this—generally a 2-year contract, just to establish a business relationship with that customer to ensure that the $350 investment we make, we have some opportunity of recouping that investment. So our customers, we will ask them to stay with their contracts, and just like we will honor the T–Mobile customers' contracts into the future.

Senator KLOBUCHAR. Well, how about if a T–Mobile customer needs a new phone? Let us just say I was a T–Mobile customer, I drop my phone into my husband's open coffee cup—which has happened.

[Laughter.]

Mr. STEPHENSON. That happened to me, too.

Senator KLOBUCHAR. And I need a new phone. Would then I get to keep my T–Mobile rates?

Mr. STEPHENSON. If you get a comparable phone to what you had with T–Mobile, our practice is you can stay on those T–Mobile rates.Senator KLOBUCHAR. How about the monthly customers with T–Mobile? Do they get to keep their same rates?

Mr. STEPHENSON. I am sorry. The monthly customers?

Senator KLOBUCHAR. The monthly customers, the people that are not on a longer-term plan.

Mr. STEPHENSON. OK. Yes, absolutely. What we will do is map those rates into our billing systems and allow them to remain on those rate plans.

Senator KLOBUCHAR. So can you say here under oath that this is going to lead to lower prices for consumers and a better situation for consumers, this merger?

Mr. STEPHENSON. I can tell you that history has demonstrated that these mergers have traditionally generated significant cost synergies and capacity benefits which have translated into cost savings in the consumer's pocket. Prices have consistently come down.

Senator KLOBUCHAR. In your testimony you discuss how AT&T believes regulatory officials should look at the proposed merger on a local or regional level. How many others believe the appropriate geographic market is a national one? I typically think of the wireless market as a national one, and part of my thinking is attributable to the marketing of national providers. If you look at your own website and it shows that your company likes to sell itself to consumers as a national company. I went to your website and found marketing material claiming that AT&T's "national coverage footprint is getting even faster with 4G. AT&T already delivers the Nation's fastest mobile broadband network." And yet there is another Web page claiming that AT&T is superior to MetroPCS and Cricket because they do not have national networks.

So I guess my first question is: Does AT&T sell different pricing plans for different regions of the country? Or does AT&T offer the same prices to customers regardless of where they live?

Mr. STEPHENSON. It is both. There are a number of markets specifically where we compete against—MetroPCS is a classic example where we do unique promotions, and Miami would be a classic example, where MetroPCS has more market share than T–Mobile does, according to our estimations today.

Senator KLOBUCHAR. Sells handsets on a regional or statewide basis?

Mr. STEPHENSON. Sell handsets?

Senator KLOBUCHAR. Do you sell your model handsets, different handsets, your own——

Mr. STEPHENSON. No. We tend to standardize our product set and our handset selections across our various geographies. What I would tell you is our company is set up—we have literally organized this company to compete on a localized basis. I have folks who run different regions of the U.S., and I have people who run specific cities because I need them responding, I need them promoting, I need them advertising and addressing the market on a local basis.

The Department of Justice as well as the FCC have historically required us to review these transactions based on local markets because that is the way the customer's decision is made. The customer goes into a store in Minnesota or Wisconsin and makes a decision based on the competitors in the marketplace at that time. And so each market is very unique.

Senator KLOBUCHAR. OK. We will get back to that. I just wanted to finish up.

Mr. Humm——

Mr. MEENA. Senator, could I say something on the regional real quick? Because we are a regional company, and we do not have any—we have no customers in regional plans. Every customer is interested in national plans. That is the way the market is driven today.

Senator KLOBUCHAR. Thank you for clarifying that.

Mr. Humm, as concentration in the wireless industry has increased by almost 32 percent since 2003, capital investment has decreased from $25 billion in 2005 to $8.9 billion over the first half of 2009. In other words, it appears that less competition has led to less investment in new services and equipment.

Do you expect this trend of declining capital investment to continue? And how would less competition help this if we have looked at the numbers?

Mr. HUMM. We do not expect a reduction of capital investment, particularly as the industry is getting ready for the next generation of networks, so no.

Senator KLOBUCHAR. No, what?

Mr. HUMM. Is the answer. No, we do not expect that it will lead to a reduction in capital investments.

Senator KLOBUCHAR. But would you acknowledge there has been less investment over time as competition has gone down?

Mr. HUMM. No. As we have stated, we expect that with this transaction, as we are overcoming capacity constraints and as we are realizing synergies, competition will increase. And with the increase in competition, we should also then see investments, directly and indirectly in the industry.

Senator KLOBUCHAR. Ms. Sohn, you had a different view on the spectrum issue. I just have a little bit of time left here, but could you discuss your view on the spectrum and this notion that has been discussed that this merger has to take place because of spectrum issues?

Ms. SOHN. Right. Basically, AT&T has a lot of spectrum that has not built out. One-third of its spectrum in the top 21 markets has not even built out yet.

Second, it uses the spectrum very inefficiently. It is now using three different generations of technologies, and there are technologies that they can use right now, and I want to get to that 20 megahertz contiguous spectrum that Mr. Stephenson said was necessary. That really ignores channel bonding technologies that would allow companies to aggregate non-contiguous spectrum. It also ignores other technologies that improve spectrum efficiency, like femtocells, picocells, distributed antennas. It also ignores AT&T's ability to reconfigure its networks to provide 20 megahertz contiguous for LTE. So I think the spectrum crunch, crisis, exhaust is a bit overstated.

Senator KLOBUCHAR. Thank you.

Thank you very much.

Chairman KOHL. Thank you very much, Senator Klobuchar.

Senator Grassley.

Senator GRASSLEY. As I said in my opening comment, my State is rural, and there are some parts of my State where receiving consistent telephone service is questionable. And when they do, their service is often not as fast as what someone in a larger city would receive. And since announcing the merger, AT&T has said it would be able to bring faster network to rural areas. So for Mr. Stephenson, and maybe Mr. Meena would want to comment on this as well, but for sure Mr. Stephenson, how will this merger help rural constituents like mine get faster mobile service? And, second, rural carriers have to pay fees to the national providers when customers travel outside the rural coverage area. What effect would the merger have on prices consumers in rural areas have to pay?

Mr. MEENA. I will take that one. First—I am sorry, Senator.

Senator GRASSLEY. It does not matter. Either one of you.

Mr. MEENA. OK. First, AT&T has the ideal spectrum today to serve rural areas. They have quite a significant holding of 850, which is a lower-band spectrum. Anything less than 1 gigahertz is considered low-band spectrum. They have significant holdings of 850 and significant holdings of 700 megahertz. So there is nothing in the T–Mobile deal that makes build out rural any more attractive in the future than it would be today. So that speaks to the first part.

And as far as the fees are concerned, one of the biggest challenges that we have faced is trying to get a roaming agreement with AT&T, especially a data roaming agreement at the 3G level. Even after the FCC mandated data roaming in their order back in April, we have not made any progress toward that. Now, April was just last month, but, you know, we have been told the roaming person is out of town.

So to answer your question, it is very important for carriers to be able to provide service that allows their devices to work anywhere the user goes, anywhere in the country, rural, urban. It is awfully important for the voice and the data to work wherever they go.

Senator GRASSLEY. Mr. Stephenson.

Mr. STEPHENSON. First, in response to the rural roaming, we have a number of 3G rural roaming deals around the U.S. with rural providers. The FCC rules have established how that process should work, so we are open for business on roaming for rural 3G services.

As it relates to Mr. Meena, he is on a different technology than AT&T operates on. I would be glad to talk to you after this. I will get something going. But we do not offer CDMA——

Mr. MEENA. We have a GSM property that we have been trying to talk to you about for quite a while.

Mr. STEPHENSON. How big is that——

Mr. MEENA. We have a GSM property in northern Alabama.

Senator GRASSLEY. Can you folks negotiate on your own time?

[Laughter.]

Mr. STEPHENSON. As it relates, though, to rural, you know, we are going to build out this 4G network. The T–Mobile acquisition actually does facilitate places particularly like Iowa. I will be very specific with it. As I mentioned earlier, there are two blocks of spectrum we want to build this LTE infrastructure into. One is this

700 megahertz, the low bandwidth. The other is what we call AWS, a higher bandwidth spectrum. That is where T–Mobile operates today. That is the elegance of this transaction, because with T–Mobile we are going to be able to do a number of things—and Philipp mentioned a number of them—to free up spectrum. Freeing up that AWS spectrum will allow us to bring LTE into that spectrum band in places like Iowa. Specifically to Iowa, Senator, we will add 181 cities in Iowa to our LTE build. So that is rural broadband to 181 new cities in Iowa that would not have it otherwise. We are going to focus primarily with our original build on rather concentrated areas. This will allow us to build out highways, get into most of your rural communities and, again, another 181 cities. That number nationwide is 55 million people.

The uniqueness of this, why this is so important, we cannot get there because we do not have adequate spectrum to build out most of these rural communities. Our original build that we are focused on now, it is about 80 percent of the U.S. population, that is 14.5 percent of the land mass of the United States. To get to 97 percent, that 14.5 percent of the land mass covered has to go to 55 percent of the land mass covered. That is where this spectrum is so vital and so critical to expanding this footprint and getting to rural America. That is why we think it is so important.

Senator GRASSLEY. I think maybe you touched on this next point I want to ask, but it is specifically about one part of Iowa—Sioux City. That is western Iowa. That service is more limited there than in other areas, and T–Mobile does not even offer service in that region, which means that there would be no real change in the region. What then will the merger do to change the economics of providing service to rural America? AT&T has yet to upgrade service in these areas already, so is it there is just maybe something you cannot do anything more for Sioux City as an example?

Mr. STEPHENSON. Sioux City is going to require some effort, but I think we can do it. And for obvious reasons I looked at Sioux City before coming in here, and T–Mobile, their spectrum is held largely in a number of partnerships with companies around Iowa. I do not know exactly what those look like. We are going to have to get in and sort through those partnerships. But we need to get our hands—you know, have access through some medium, whether partnership or otherwise, to that spectrum to provide service on LTE to Sioux City. If not, we have 10 megahertz. It will take some risk in launching with 10 megahertz, but I have got a lot of homework to do on this, Senator, to know exactly what we can do with Sioux City. It is a little complex.

Senator GRASSLEY. This will have to be my last question, and for Mr. Stephenson and Mr. Hesse: In 2008, the Justice Department and the FCC approved a merger between Verizon Wireless and the rural carrier Alltel. However, approval was granted on the condition that the combining companies divest spectrum assets in the overlapping markets. What are the differences and/or similarities between the present proposed merger and the Verizon/Alltel merger? And should spectrum be divested in the markets where AT&T and T–Mobile overlap?

Mr. STEPHENSON. Dan, do you want to go first?

Mr. HESSE. First, what is different is this consolidates much more power in the hands of two than the previous merger. And, of course, the acquisition target is much larger as well.

The other thing this merger showed is it really actually did not do much for the competitive landscape because the primary beneficiary or buyer of what Verizon divested was AT&T.

Senator GRASSLEY. OK. And so you want to add to that?

Mr. STEPHENSON. Yes, those Alltel assets that we acquired, obviously it was given extensive review by Justice. What we acquired there was 850 spectrum, which is where our 3G networks do operate. And so that allowed us basically to put our own network infrastructure in place in a lot of these rural communities that go through Wyoming, Montana, the Dakotas, et cetera. So it gave us actually a footprint, network and a footprint in those markets where we did not even have a network and footprint before.

We have converted those networks to our technology, our 3G technology and our 3G spectrum, and are aggressively converting the customer bases now. But that was 3G in nature. What we are talking about here is going to facilitate going to fourth-generation networks.

If I could, it is relevant to this, but Ms. Sohn keeps making the comment about we are utilizing inefficient technology. I mentioned it before, but this industry, we launch services, and they obsolete very quickly. We launched second-generation service and by 2006 we are putting in 3G. We cannot just go in and take millions of 2G customers off the air and require them into 3G, buy new handsets. You know, Dan cannot afford to do that; we cannot afford to do that. In fact, if we were to do that, I suspect I would be having a hearing in front of you for entirely different reasons. But we have to be very elegant in how we transition technologies from 2G to 3G and to 4G, and they take time to work our customers through the various technological challenges.

Senator GRASSLEY. I am done, Mr. Chairman. Thank you.

Chairman KOHL. Thank you, Senator Grassley.

Senator Franken.

Senator FRANKEN. Thank you, Chairman Kohl, for holding this very important hearing. I am sure I am not the only one here who remembers when Ma Bell controlled how we communicated with each other. I distinctly remember when I was a kid, every Sunday at exactly 9 a.m. in Minnesota, my grandmother would call from New York and talk to my father for precisely 3 minutes.

[Laughter.]

Senator FRANKEN. And, Herr Humm, my grandmother was German, and my Dad at 9 a.m. would pick up the phone and go, "Liebchen." And at 3 minutes that operator got on the phone and told her that the 3 minutes was up and the end of the call. And that was the only time she got to talk to her son and her grandchildren, and thankfully the break-up of Ma Bell forever changed the cost of long-distance service. Now we live in a world of voice over IP and videoconferencing that would not be possible without high broadband speed.

But I fear that, if approved, the merger would take us one more step or just one step away from the monopoly market that we had under Ma Bell. It took the Department of Justice more than 35

years before they eventually broke up Ma Bell, so it is important to keep in mind the stakes of a merger of this size and scope. And I hope, Chairman Kohl, that this will be the first of several hearings on this proposed merger. We all know the merger is going to raise—or I believe it is going to raise prices for American families and may costs thousands of jobs, and I hope we will hold a second hearing on these consumer impacts once we have more solid economic data that demonstrates what this merger will mean for customers 5 or 10 or 15 years from now.

Mr. Stephenson, I want to follow up on Senator Klobuchar's comments on the national aspect of this deal, and I want to ask two questions that I want a yes or no answer to, and then after that, I promise I will let you actually respond.

Mr. Stephenson, when you were seeking to acquire Verizon wireless spectrum in 2009, didn't you state that, "Evidence shows that predominant forces driving competition among wireless carriers operates at the national level?" Yes or no.

Mr. STEPHENSON. I do not recall.

Senator FRANKEN. OK. You did.

Mr. STEPHENSON. I am sorry. I do not recall the comment.

Senator FRANKEN. OK. Well, that was not—I said yes or no.

[Laughter.]

Mr. STEPHENSON. But it is an "I do not know." I am sorry.

Senator FRANKEN. OK. Let us try this one and see if you remember this one. And isn't it true that you have seen a significant growth in new customers in large part—I mean, you do not have to remember this one—because you were able to negotiate an exclusive handset deal for the iPhone with Apple, a large national company that would not have even considered launching their new phone with a small regional player? Would that be correct?

Mr. STEPHENSON. If you are asking yes on the quote, I do not remember the quote.

Senator FRANKEN. That is not a quote. That is not a quote. I am saying, Isn't it true that you have seen a significant growth in new customers in large part because you are able to negotiate an exclusive handset deal for the iPhone with Apple, a large national company that would not have even considered launching their new phone with a small regional player?

Mr. STEPHENSON. I would say no. I mean, look at Europe. You do not want any explanation, but I cannot say yes to the whole——

Senator FRANKEN. No, no. Well, now you can explain. You do not think that Apple gave you an exclusive on this because you are—they would have given an exclusive to a regional player and not to one national player?

Mr. STEPHENSON. It is not as likely, but in Europe——

Senator FRANKEN. Not as likely.

Mr. STEPHENSON. In Europe, they did spread it around in Europe.

Senator FRANKEN. OK. Well, my point here is, one, you did say the thing that you cannot remember whether you said it. You do advertise, as Senator Klobuchar said, as a national company, talking about how national you are. So my point is that your business is a national business, and that is in large part because the wireless market is a national market where you can achieve significant

competitive advantages from a national presence. So my question really is: How can you argue this deal should be analyzed locally, as you wrote in your written testimony—that this deal should be analyzed locally, which goes against the statements that you made before and in your advertising that Senator Klobuchar pointed to?

Mr. STEPHENSON. I understand your question.

Senator FRANKEN. Good.

Mr. STEPHENSON. First of all, this is the way the Department of Justice has required these transactions to be reviewed. They have established that these buying decisions are made at the local level. Our experience is that the buying decision is made at the local level.

Is having national coverage, a national footprint important? I think it is very important. I believe that is why Mr. Meena advertises his national map off of his website. That is his national coverage map that he advertises, that he has national coverage.

Mr. MEENA. Absolutely we do. We have to, to be——

Mr. STEPHENSON. But that is——

Senator FRANKEN. But I would love to see your National map compared to his national map.

Mr. STEPHENSON. It looks very comparable to that. I mean, it looks very comparable. So we all——

Senator FRANKEN. That is not what I have seen in advertising. I have seen your map. Oh, it is a great map.

Mr. MEENA. We are in full agreement it is a national market.

Mr. STEPHENSON. It would look very similar to that map.

Mr. MEENA. It should be evaluated that way.

Senator FRANKEN. OK. Well, let us go to Mr. Meena then. I am still trying to get my head around all the technologies surrounding wireless spectrum, backhaul agreements, which I understand is using basically the Ma Bell hard infrastructure. Right?

Mr. MEENA. Yes.

Senator FRANKEN. Roaming agreements, which we had some discussion about, and interoperability. But suffice it to say, I know that carriers like AT&T and Verizon have really a tremendous advantage over everyone else in large part because they own and control the infrastructure that was built by Ma Bell. Can you explain how this deal will give AT&T an unbelievable competitive advantage over smaller companies? And have you seen the effects of this over the last 15 years as AT&T has steadily gobbled up numerous Baby Bells in an effort to return to the dominance they once had as Ma Bell?

Mr. MEENA. Yes, Senator, really to answer some of the questions that came up earlier, AT&T and Verizon—but we are here to talk more about AT&T today—have used their market power to obtain exclusive deals on handsets. There is no doubt. I think you mentioned one earlier. I think for that particular device it was about a 4-year exclusive period of time. So you have handsets. You have the special access issue that Dan talked about a minute ago, that huge advantage they have there.

You have the roaming issue, which AT&T, Verizon, all of us—all of us in this industry used roaming agreements to ensure that we had a vibrant product for our customers to use for many, many years, for decades. And when AT&T and Verizon reached a size

where it became—it was not in their favor to offer those readily, then they began to become—it became very tough to negotiate with them on that. And we do have GSM technology, like Randall's company does, and we have not been able to get a data roaming agreement in place with them. So you have special access. You have scale over devices. You have roaming issues. Also, next-generation technology, the beachfront spectrum that was referred to earlier, 700 megahertz, that has been Balkanized by AT&T and Verizon where there is no interoperability in that band of spectrum. In all spectrum before in our industry, there has been interoperability. Any cellular device that came out in the 1980s would work on any network. Any PCS device that came out in the 1990s would work on any network. But now, with the market concentration that the AT&Ts and the Verizons of the world have, they can prevent interoperability across the 700 megahertz block.

So those are just a few of our issues, and we are wanting to see this industry return to a competitive era once again.

Senator FRANKEN. Thank you.

Thank you, Mr. Chairman.

Chairman KOHL. Thank you, Senator Franken.

Senator Cornyn.

Senator CORNYN. Thank you, Senator Kohl.

I think we can all agree that broadband access has been a very positive thing in terms of our country and the world and our ability to communicate, our ability to do business, and it is just mind-boggling, really, from the days that Senator Franken was talking about, his—I guess it was his grandfather?

Senator FRANKEN. Grandmother. And I remember the days when we got all of our video communication through the three established channels, and we have come light years, obviously, there.

Ms. Sohn, I remember those telephones, and I for one do not want to ever go back to that model. But I do not think there is any danger of doing that.

I think as we approach this and we recognize this is a beginning of a process that is not really part of what Congress does, we legislate prospectively, not retroactively. We have written the law, the laws, as it is and now we have the FCC and the Department of Justice doing their job. And we look forward to this lengthy process where every side to this argument will be able to present their case, and we look forward to reviewing that.

But I think for myself I feel like Congress ought to be very humble about our ability to predict the sort of innovation that is going to be created, particularly in your sector of the economy, and in terms of what sort of structures or rules we would apply, because we have seen life change so much and so dramatically just over the last few years in terms of communications and entertainment and the like.

So I would just like to ask each of you perhaps—or let me start with Mr. Stephenson and Mr. Hesse, to comment on innovation. I know one of the concerns is that somehow innovation would be stifled or retarded by this merger, and I wonder, Mr. Stephenson and Mr. Hesse, if you would give us your views on that.

Mr. STEPHENSON. Thank you, Senator. One thing that you cannot say about this industry is that it has lacked for innovation, and the

innovation in this industry is happening at every layer of service. The infrastructure players and the carriers, like all of us up here on this dais, are seeing innovation go at an incredible pace—I have already mentioned it—from 2G to 3G to 4G in a 5-year period of time. Each of those are multi-billion-dollar investments, and that innovation is happening very, very rapidly, and we are already talking about what comes after 4G.

Now, you see this innovation playing itself out at the device level. There are 600 options for customers today to buy devices in the marketplace, and to actually think of an iPhone being launched in 2007 and today the customer can buy one for $50, that is innovation. And when the iPhone came out, what happened? You saw Google begin to deploy new, innovative devices, which Dan's company is one of the first—I think you deployed the first Android-based device on fourth-generation networks. So you are seeing that innovation run hard, and particularly at the software level.

Now you are seeing RIM and BlackBerry with new OS's. You are seeing Microsoft and new OS's. And do not forget or do not miss the importance of what you read yesterday of Microsoft buying Skype. They run a very important wireless operating system that they have developed, combining that with a voice over IP capability now.

This is going to be a very exciting and dynamic manifestation here. We are seeing applications hit the market at hundreds of thousands at a pace, being downloaded billions of times.

And so when I stop and just think about this kind of innovation cycle, by virtue of T–Mobile and AT&T combining, I suspect Mr. Jobs will not delay 1 day the launch of his iPhone 5 or 6 or whatever number comes next. I do not think it will affect his launch by 1 day of the next iPad. I do not think it will slow Google down one iota in terms of developing the new OS capabilities coming, or Microsoft. I do not think the infrastructure players are going to slow down, and Dan has done an incredible job bringing the first true 4G network to the United States. I do not see Dan slowing down as a result of T–Mobile and AT&T coming together.

This is as dynamic and exciting an industry as one could ever hope to work in. I consider it a privilege. But I do not see that changing by virtue of our combination.

Senator CORNYN. Mr. Hesse.

Mr. HESSE. Senator—thanks, Randall, for the plug on Android, anyway, but I actually have to give credit to this innovator over here. T–Mobile USA launched the first Android device, and they would be, of course, removed from the market. We followed them shortly thereafter.

A very short history of innovation in the wireless industry, because I have been in it for a long time. The U.S. led the world in 1G, first generation, which was analog. That was the first cell phone called. It was invented at Bell Labs. We had U.S. companies like Motorola, and we had this duopoly. And it was important for the U.S. Government to respond and create more competition because we fell behind Europe. Digital technology, GSM, that was European, so we fell behind because of the lack of innovation in the U.S. wireless market, really had not innovated very much at all because it was a duopoly.

They opened up the U.S. market to more competitors, PCS providers. I disagree with Larry in terms of kind of where we stand in the world from a wireless point of view, and I gave this presentation as Chairman of the CTIA, the U.S. wireless association. The U.S. is now No. 1 in the world in terms of wireless technology. We have the most 3G customers of any country in the world. We are the first with 4G. We are, by far, far ahead in 4G.

The companies that Randall talked about—Google and Apple and Microsoft, and all these innovative companies—they have developed on our shores for a reason, because this is a very vibrant market. My concern is if we go back to the duopoly, we will go back to pre-mid-1990s, and the U.S., in fact, will fall behind the world again like we once did. We will lose that edge that, you know, we have regained, if you will, over the rest of the world.

Senator CORNYN. Let me ask one—my time is running out quickly here. Just one other topic. I think, Mr. Humm, you mentioned that T–Mobile did not have the capital to do the sort of infrastructure investment, which is one of the issues that motivated your company to engage in this acquisition, this merger.

Mr. Stephenson, you talked about how much money AT&T has invested in broadband infrastructure. I remember that when the Congress passed the stimulus legislation, there was $7.9 billion included in that because of the desire of Congress to see somehow a buildout and expansion of broadband for all the reasons we understand and we have talked about here today. My personal preference would be to see the private sector make those investments, not the taxpayer have to make those investments.

How does this merger affect, either positively or negatively, the ability of companies like yours to make that sort of investment? It strikes me this is a problem, and I would like to hear your views? Mr. Stephenson first.

Mr. STEPHENSON. I will go back to the President's comment: establishing a public policy objective of 98 percent of America covered with mobile broadband capability. The elegance of this is this is a private market solution for a major public policy objective. This is all private capital that will be used to build this capability out. There will not be any universal service money, any subsidies, any taxpayer money involved in making this happen. This can become a reality purely with private capital.

If you think about getting to 97-percent coverage, that means there is 3 percent of the U.S. that we still do not have the ability to cover through private market capabilities.

If you think of the Universal Service Fund and the FCC's priority for finding a mechanism for getting broadband to America, focusing on the 3 percent is a much more manageable objective than the 20, 15, or even 10 percent that we are talking about now.

So this is just a very elegant potential to address a public policy objective with private capital.

Senator CORNYN. Mr. Chairman, with your permission, could I get Mr. Hesse to respond, please? Go ahead, sir.

Mr. HESSE. Senator, I made points earlier where we do not believe this merger facilitates this goal in any way. But even if you believed it were the case, at what cost? Is it worth eliminating a very robust, competitive, extremely important industry to the U.S.

economy in order to achieve that goal? And I think the answer is no.

Senator CORNYN. Thank you, Mr. Chairman.

Chairman KOHL. Thank you very much, Senator Cornyn.

Mr. Humm, in its filing with the FCC on this deal, AT&T states that it "does not view T–Mobile USA as a close competitor let alone as a major competitive threat." My view is that this statement is incorrect given the large amount of competition that we see every day between these two companies. What is your view of that statement, Mr. Humm? Does T–Mobile view AT&T as a competitor?

Mr. HUMM. We see overall the marketplace to be a very vigorously competitive marketplace. We define ourselves as a value competitor, meaning we compare ourselves mainly with companies like Sprint or what we call the "all you can eat" players, like Metro, Leap, and U.S. Cellular.

Chairman KOHL. Now, look, you two are competitors, right? I mean, please. You two are competitors.

Mr. HUMM. We are competing in the same markets.

Chairman KOHL. You two are competitors. Mr. Stephenson, T–Mobile is a competitor. You are competing with that man every day. Is that correct?

Mr. STEPHENSON. Yes, they are part of the competitive ecosystem in wireless technology. We are all competing.

Chairman KOHL. I appreciate that, but you two are major competitors. That is almost incontrovertible. It does not mean that you do not have other competitors. We understand that. But you two are major competitors with each other. Please.

Mr. STEPHENSON. Senator, yes, sir, we are.

Chairman KOHL. OK. Mr. Humm, on your Website you compare your prices for data service to AT&T's and announced that your price for unlimited 4G data service is $5 cheaper than AT&T's price for 3G service. You also promote the fact that your unlimited voice, text, and data service is $35 cheaper than AT&T. This is pretty good evidence that you view AT&T as a competitor. Is it not, Mr. Humm?

Mr. HUMM. We compare ourselves—in the advertising you are referring to, we show the customers the savings they can make relative to being at Sprint, and we show that there is significant——

Chairman KOHL. Well, that is what we do with competition——

Mr. HUMM. And AT&T and Verizon, because that is where the biggest savings are.

Chairman KOHL. Of course.

Mr. Stephenson, how can you say that T–Mobile is not a close competitor? You both sell the same service, cell phone service on a national basis, and T–Mobile and you are the only two of the four companies that own and operate national phone networks. Is it really credible to come up here and sit here and tell us that you and T–Mobile are not close competitors?

Mr. STEPHENSON. They are not our competitive focus. I will tell you that. If you look at just the last quarter, you can establish where our competitive focus is—Verizon adding over 900,000, Sprint adding over a million, MetroPCS adding over 700,000, Leap adding over 300,000. T–Mobile lost customers in the first quarter. They are not our competitive focus.

Chairman KOHL. Mr. Stephenson, consumer advocates like Ms. Sohn argue that one of the motivations for this deal was to remove the price competition offered by T–Mobile in the cell phone market. Do you deny that removing T–Mobile as a price competitor was not at least one element of your motivation for spending $39 million to acquire this company? Mr. Stephenson.

Mr. STEPHENSON. Yes, I do deny that, Senator. That does not factor into the equation. Again, the focus of our competition right now is at the high end of the market because, frankly, we are limited in capacity. We only have a certain amount of capacity to put customers, and so we get very focused on what customers we go after.

I will tell you, if we were to get this transaction done and we increase the capacity in the marketplace, that gives us an opportunity to move down market, and we are looking very much forward to competing against MetroPCS much more aggressively.

Chairman KOHL. All right. Mr. Stephenson, AT&T has argued that it is incorrect to consider this merger a reduction of four to three competitors in the national market. Instead you argue that we should examine this merger on a local market-by-market basis where in many cases there are other local or regional cell phone providers. I find that your claim that this merger should be analyzed on a local market basis remarkable as this is directly opposite to the position that AT&T and your predecessor companies took in prior mergers.

In its FCC filings, AT&T Wireless argued that its 2004 merger with Cingular "should be analyzed as national," and AT&T argued in its 2008 merger with Centennial that, "The evidence shows that the predominant forces driving competition along wireless national carriers operate at the national level."

Why has AT&T now changed its position? Which is true, what AT&T said in 2004 and 2008 or what you are saying now?

Mr. STEPHENSON. Senator, we have to go by how the DOJ and the FCC have evaluated these transactions consistently, and they have consistently evaluated them at the local level. And at the local level, these are intensely competitive markets. In your State, in fact, in Wisconsin specifically, one of the regional carriers, U.S. Cellular, has a greater market share than AT&T and T–Mobile. So these purchasing decisions are made at the local market level.

Chairman KOHL. You know—and I will turn this over to Mr. Lee—you would almost argue here to us today that what you are wanting to do is something in the national interest. And that is OK. I mean, you are here to run a business, and I am a businessman myself, and I appreciate it. But this is a business deal. This is a business deal to make your company more successful and more profitable. And I understand that. We all understand that. But, you know, we should discuss it in that context, not in the context of this is in the national interest. This is not your consideration. Your consideration is what is best for your company and for your company. And I appreciate that. But the discussion should be, in my opinion, handled on that level rather than try and say this is something in the national interest.

Anyway, Mr. Lee, go ahead.

Senator LEE. Thank you, Mr. Chairman. I have a few questions for Mr. Meena.

I assume that, like other regional carriers, your company, Cellular South, relies to a considerable degree on roaming arrangements with national networks and that this is part of what enables you to have the ability to offer your customers access to nationwide coverage.

In your view, what impact, if any, would this merger have on these roaming arrangements?

Mr. MEENA. Yes, sir, that is a good question. One of the major impacts it would have, it would eliminate a potential LTE roaming partner. A few months ago, prior to the announcement of AT&T and T–Mobile, T–Mobile made an announcement that I think by 2014 they would be installing an LTE network. LTE is the next generation, the worldwide standard that many carriers throughout—most carriers throughout the world will be going to. Without having a vibrant LTE roaming partner, one willing to work with us on a roaming agreement, it eliminates the ecosystem that you referred to that we must have in a roaming environment. So that is one effect of that. Also——Senator LEE. And you see that as an unavoidable consequence of this merger?

Mr. MEENA. Yes, I do. If it happens, right.

Senator LEE. Would the recent FCC order mandating commercially reasonable data roaming agreements alleviate the concerns that you have in this area?

Mr. MEENA. It would not because of what is going on with the 700 interoperability issue in our industry today, where AT&T has a proprietary band class and Verizon has a proprietary band class. So even with the roaming mandate, we are not able to have LTE devices that would work on their network in a roaming environment or work on Verizon's network in a roaming environment. That is why it would be so important to have T–Mobile or someone else out there with a 4G LTE network that we could have the ability to roam.

Senator LEE. Would any potential merger conditions alleviate the data roaming concerns you have that you have identified?

Mr. MEENA. I cannot think of any. We were hopeful that with the Alltel/Verizon merger there would be conditions that would make the market competitive for us, and that did not occur. We do have a roaming agreement with Verizon. I cannot go into the specifics of that agreement, but it is not one in which—that would allow us to be competitive over a long period of time.

Senator LEE. OK. Mr. Stephenson, would you care to respond to this point, particularly the point about the inevitability of the problem he identified?

Mr. STEPHENSON. Yes. I am confused with Hu's point that we need to keep T–Mobile in play because that will give them an option to roam on an LTE network when T–Mobile has stated they are not building an LTE network and they do not have the spectrum to build an LTE network. So it does not seem that it is a likely fix for whatever concern that Hu has.

In terms of LTE, obviously the FCC data roaming order will require us to open our networks for others to roam on them. There is nothing to preclude Hu from going out and buying a handset that works on our spectrum in our system. That is his prerogative. I think what Mr. Meena would like to do is require us to make our

handsets roam on his system, and that is a cost that I do not understand why our customer needs to incur. And at the end of the day, I understand Mr. Meena's concern with this because we are going to build out a competitive LTE network to his network. This is competition. This is what we are looking for, more competitive networks being built. And having a concern that we build ours out and that we will not roam on his network, I do not quite grasp the logic of that. But we will open our network up for Mr. Meena and all other companies to roam on ours.

Mr. MEENA. That is just not correct. We are not looking for AT&T to roam on our network, on our LTE network in the future. We would like to have the ability to roam on theirs. But because of this interoperability problem and the scale that AT&T and Verizon have, the scale that they have to control the device ecosystem, we do not have enough buying power to be able to put in place a 700 megahertz device that would roam within their band class.

The reason this has not been a problem in the past is that in the cellular spectrum and in the PCS spectrum, all devices worked across all band classes within each spectrum grouping, and that is not the case here where AT&T has their own proprietary band class and Verizon has theirs in the 700 LTE spectrum.

Senator LEE. So are you calling for us to go back to the 1990s where you had this complete interoperability? Is that——

Mr. MEENA. We have been calling for that for a couple of years. We have been wanting the FCC to act on that. We have had a petition in front of them for at least 2 years now, I believe, something close to that. So that is something that we would like to see, interoperability in the 700 megahertz among an all paired spectrum, just like it happened in cellular and just like it happened in PCS.

Senator LEE. OK. Now, in referring to this merger in your written testimony, you said, "It must be stopped," and, "The fate of this acquisition determines the course of this industry."

In contrast, there are other regional providers that view the situation with more hope than you do. U.S. Cellular has stated that it sees great opportunity for the merger, looking at its own expansion opportunity. MetroPCS has said, "We think that this is a really good time for Metro to put our head down and get down to business," noting that the company very well could get a sharper focus from its infrastructure vendors, and that there would be one less operator for them to focus on.

Help me understand why some of these regional carriers would view the merger as the end of competition or as the end of the world as we know it, the competitive Armageddon, so to speak, while others view it as an opportunity for growth.

Mr. MEENA. I am not familiar with those quotes that you said. I am not doubting you. I am just not familiar with those quotes. But I am familiar with this: Both United States Cellular and MetroPCS are active members of the RCA, of which I am the chairman of the board, and RCA has taken a position that we are against this merger.

Senator LEE. OK. Thank you, Mr. Chairman.

Chairman KOHL. Thank you, Senator Lee.

Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. Thank you, everyone.

Mr. Meena, you broke in when I was asking Mr. Stephenson about the national market issue. Do you want to elaborate a bit on that?

Mr. MEENA. Yes. It is a national market. That is why we publish a map like that that shows the roaming arrangements that we have. I cannot remember how far back it would be when the customer asked us about a regional plan. It is just a—we happen to be a regional company in a national business, and that is what makes roaming agreements, et cetera, so important. But this deal should be evaluated on a national basis. Market by market makes no sense in today's environment. And I admit, I am not an antitrust lawyer, but from a business perspective, it makes no sense. It is all about national market.

Senator KLOBUCHAR. Thank you.

Mr. Stephenson, I know when we talked in Senator Kohl's Subcommittee about the Delta/Northwest merger, I cared a lot about that because we had a lot of Northwest employees in Minnesota, and I know that there are a lot of employees out there that are concerned about how this merger will affect them. Could you comment on the employment levels, what you see how this will affect current employees of both companies?

Mr. STEPHENSON. Yes. Overall, with the CWA, Teamsters, SEIU yesterday, AFL–CIO, have all come out in support of this merger, and their track record is one of not supporting any issue that is not what I would call job creating in our industry, which it is not unique. You only hire where and when you invest. And where we are deploying and where we are investing are the areas where we are hiring. That today is mobility and it is broadband, and this particular deal, this particular transaction, we have made a public commitment and we are going to abide by this public commitment to deploy LTE. And, Senator, it is a public policy objective, but it is in our shareholders' interest to deploy this National LTE network. It is an incremental $8 billion of investment to deploy this capability and this technology.

So we view this as an incremental investment and over the long haul an incremental jobs opportunity at the go-down. These types of transactions, you do have overlaps and workforces. We are not going to need long term two finance organizations, we are not going to need two marketing organizations. We have done this a number of times. We think we have very elegant processes for making this happen.

And, in fact, Larry Cohen and I over the last 5 or 6 years have developed what we think is a very unique, very time-tested ability of dealing with these types of situations. We negotiated, literally, the two of us together, a concept we call JOG. It stands for job offer guarantees. And so if there are situations where there is overlap of jobs or a particular business is shrinking and you need to downsize, we declare those positions surplus—we declare them surplus, but we do a job offer guarantee. We find a growth area of the business or another part of the business where we need to hire, and we give those employees opportunities to take those jobs in those areas. That has allowed us to manage our workforce we think

very elegantly and very gracefully move it out of the no-growth areas into the growth areas.

Senator KLOBUCHAR. OK. Let us go back to some of the consumer issues in a different context. According to the data collected by the FCC, in 2008 and 2009 AT&T accounted for nearly half of all exclusive smartphone launches compared to their one-third share of overall smartphone launches. This data just confirms what most people already assume: that AT&T has committed itself to using exclusive phone contracts to attract customers.

If this merger is approved, not only would AT&T have 44 percent of all U.S. wireless subscribers, but AT&T would be able to demand exclusivity contracts from any phone maker seeking their business because of that enormous market share.

Do you think that is a fair reading of the situation? And are you going to make any commitments about these exclusivity agreements going forward?

Mr. STEPHENSON. When I look at 600 different options of handsets in the marketplace today, it tells me this is a vibrant marketplace. I think every carrier up here at one time or another has probably had some kind of exclusive arrangement. That is a means to get product to market faster, and when the marketplace is utilizing these capabilities, we will probably participate as well. But I think you are seeing fewer and fewer of these long-term type relationships.

Senator KLOBUCHAR. So your answer is that the relationships are going down, but that you are not going to make any commitments about the merged company, the proposed merged company with exclusivity contracts?

Mr. STEPHENSON. It is a dynamic market. I mean, this is a hyper-dynamic marketplace.

Senator KLOBUCHAR. Senator Lee mentioned this roaming agreement issue. Will AT&T commit to offering smaller wireless carriers data roaming agreements at reasonable rates?

Mr. STEPHENSON. Absolutely. Of course we will. It is the law.

Senator KLOBUCHAR. OK. Very good.

Mr. Meena, you look like you want to comment.

Mr. MEENA. Yes. Well, Randall offered earlier that we can meet outside the door and talk about that roaming agreement. I look forward to talking with him about it because we have been trying to talk with this company about a 3G GSM roaming agreement. So maybe we will be able to work that out later on.

Anyway, that is all I have to say.

Senator KLOBUCHAR. OK. Ms. Sohn, how does the concentration in this industry with this proposed merger compare to other large industries with high barriers to entry, like airlines or automobile manufacturers?

Ms. SOHN. Well, it is about half. I mean, this industry would be twice as concentrated at the top two than the airline industry, the banking industry, the oil industry. So the concentration here—and if you look at the Herfindahl-Hirschman Indexes both locally and nationally, in some places with this merger it is over 3,000. In some markets it will go six—I think in the national market it will go 600 to 750 points higher, and the Department of Justice says

that 200 is an anticompetitive increase. So when you compare it to other industries, it is off the charts.

Senator KLOBUCHAR. In Canada, only three companies dominate the wireless market. If the merger goes through, can we expect a similar situation, in your view? And what lessons can we draw from Canada's wireless market?

Ms. SOHN. I have to say I am a little bit bemused by folks looking at other countries and saying, well, those countries are more concentrated, so why shouldn't we get more concentrated? But they have to remember that many of those countries are—the telcom providers there are highly regulated. There is price regulation. There is wholesale access regulation. The carriers—does Mr. Stephenson want to go back to that? I really, really seriously doubt that.

On the whole, U.S. citizens pay more, and I do find it ironic, since every time there is a study that shows that the U.S. is 25th or 20th in broadband adoption and in value, the carriers say, Oh, no, no, those are all wrong and the countries are all different. You know, they are different, they are rural. But here they want to look internationally. I find that a supreme irony. I do not think we want to go there. I think we want to stick with competition rather than regulation.

Senator KLOBUCHAR. Just understand—you are from Minnesota—we can see Canada from our porch.

[Laughter.]

Senator KLOBUCHAR. Anyone else want to comment on the international comparison?

Mr. Cohen.

Mr. COHEN. Yes. First I want to point out that when I talked earlier about where the U.S. is in global broadband, I am talking about the totality of the industry. So what is the industry? It is not a wireless industry per se. It is wireless/wireline. It is well documented in the FCC report last year about the U.S. lagging other countries. So, again, I disagree totally with Dan on that. We are far behind. We are getting further behind every day. Countries like Korea we will not catch up to in our lifetime. It is particularly true in rural Minnesota, rural Wisconsin, or rural Utah, the kind of broadband speeds that are available are unthinkable in most of the other OECD countries.

So I think that from our point of view, No. 1 is: What is available to U.S. consumers in terms of economic development? And is there a way to have conditions on this merger that will deal with the fact that the U.S. is absolutely falling behind all the time in terms of broadband speeds, regardless of what mode we are talking about. That is a large part of the reason, the primary reason, we think the merger is that kind of an opportunity and, again, with safeguards and conditions, why we should go forward.

Senator KLOBUCHAR. And just the one thing that disturbs me there—and I am sure we can do some more discussions about this with everyone on the panel after this hearing, but it is just those numbers that show that the investment has gone down in recent years while competition has gone down. And so no one wants more than me to stop having dropped calls in Stapes, Minnesota, and stop having to carry two different kinds of phones to hope that one

of them will work when I am on the road. But I am not convinced that less competition is going to bring us there.

Ms. SOHN. Could I just add that AT&T has in 2009 invested 1 percent of Cap X in its wireless infrastructure while Verizon has invested 10 percent of Cap X. And it is interesting to note that Verizon is not complaining nearly as much about the spectrum crunch.

Senator KLOBUCHAR. And Verizon has less spectrum, is that——

Ms. SOHN. Right. And it is interesting. Craig Moffett, who is a very well respected industry analyst, has called AT&T a "serial acquirer." All right? And that is what they are. They acquire new companies. They do not invest adequately. And that is why they are having the problems they are having today.

Senator KLOBUCHAR. OK. I think Mr. Hesse wanted to add something, and if you do not mind, Mr. Chairman, I think we will let Mr. Stephenson——

Mr. HESSE. I want to respond to Larry's comments because I think we are mixing up apples and oranges.

In the wireline world, wireline broadband access, dominated by AT&T and Verizon, we are behind the rest of the world.

In wireless, we are well ahead. We are the leader. And that is a very important distinction.

Senator KLOBUCHAR. OK. Thank you.

Mr. COHEN. The issue is that for rural America there is no wireline opportunity. So as the President said in the State of the Union, this is the opportunity for rural America to catch up.

Senator KLOBUCHAR. OK. Thanks.

Mr. Stephenson, did you want to reply?

Mr. STEPHENSON. Just the investment issue. I will say it again. AT&T has invested more in the United States than any other public company, much less any other telecommunications company, $75 billion in the last 4 years. The 1 percent, I do not know where that number comes from. Last year we invested about $9 billion, $8 to $9 billion, just in the wireless business by itself. Then there is obviously what we call fixed-line investment, backhaul, and IP backbone capacity and so forth that are serving the wireless business. But the statement is inaccurate, and we have invested more in the U.S. than any other public company.

Senator KLOBUCHAR. OK. Thank you.

Chairman KOHL. Thank you very much, Senator Klobuchar.

One last question for you, Mr. Stephenson. Some say that if the merger is approved, it is likely to be approved with a number of conditions. I think that is probably undoubtable. But, Mr. Stephenson, would you accept as a condition of the merger a prohibition on AT&T from using any Universal Service Fund money for a broadband buildout?

Mr. STEPHENSON. For this LTE buildout, yes, sir.

Chairman KOHL. All right. Anybody want to make any comments before we close this hearing? Yes, Ms. Sohn.

Ms. SOHN. Can I just make a comment about the national versus local market because this was driving me crazy. Have you ever seen AT&T advertise against MetroPCS or Cricket? Have you ever seen a local pricing plan? I mean, clearly, saying that a behemoth like AT&T competes against—sorry, Cell South or U.S. Cellular or

Cricket is like saying that Walmart competes against the mom-and-pop store. Yes, you know, has the Justice Department looked locally in the past? Yes. That is the past. But we have an increasingly consolidated market. We have a maturing market. And, in fact, the FCC and the Alltel merger and Centennial mergers actually did start to look at the national market.

So, clearly, the market here is national, and I suspect that the Department of Justice and the FCC will look at that based on the facts of this case. This is an unprecedented merger.

Chairman KOHL. Mr. Hesse.

Mr. HESSE. Senator, I would like to add to this because I have not commented on the issue of national markets. I can speak for Sprint, and I do not think we are that different than the Big Four: 99.7 percent of all of our customers are on national rate plans. That is more than the Ivory soap percentage.

[Laughter.]

Mr. HESSE. 99 percent of our advertising is national. Our handset deals are all national. Business customers buy national, and they want to see the maps. If you look at national advertising, what are the key messages? We cover 97 percent of all Americans. In Verizon, it is the Map War. Those are not county and State maps. Those are national maps they are showing on television.

Also, from a retail distribution point of view, we sell more of our devices through the national retailers—Best Buy, Radio Shack, Walmart, et cetera—than we do through our own stores. So if this is not a national business, I do not know what is.

Chairman KOHL. Good. Mr. Humm.

Mr. HUMM. Maybe just also one last comment to national versus regional. At T–Mobile we were nationally oriented up to last year, and we decided to move to a regional market model because we simply noticed that the regional differences are too big for us to be successful only nationally. So we went to an organization where we now have 23 different regions to really approach the markets region by region.

Just a few facts to support that point. Just take, for example, a company like Metro, they have in Miami, the DMA of Miami, 25 percent market share; in other markets they have zero percent market share. Take Sprint. They have 49 percent in Jonestown, Pennsylvania, and in South Dakota they have zero percent market share. Take T–Mobile, we have 21 percent in Salt Lake City, and we have zero percent in West Virginia.

So that simply shows you how different we are and what kind of different competition we face from one DMA—from one market—to the other.

Chairman KOHL. Good. I want to thank you all for being here today. It took a lot of your time and effort and energy, and it is a very important issue, so your coming here does serve the national interest, and thank you for being here. Thank you all for being here.

[Whereupon, at 12:27 p.m., the Subcommittee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Larry Cohen, President
Communications Workers of America

Response to
Follow-up Questions Of Senator Patrick Leahy (D-VT)
Chairman, Senate Judiciary Committee,
Hearing on "The AT&T/T-Mobile merger: Is Humpty Dumpty Being Put Back Together Again?"
May 11, 2011

1. **Will consumers benefit from AT&T's acquisition of T-Mobile?**

Yes, consumers will benefit from AT&T's acquisition of T-Mobile, as we detail below.

2. **In what ways might AT&T's acquisition of T-Mobile benefit consumers?**

AT&T's acquisition of T-Mobile will produce a broad array of substantial consumer benefits.

First, the acquisition will dramatically expand high-speed broadband deployment. Because of the transaction, AT&T's 4G LTE high-speed broadband network will cover over 97 percent of Americans. This stands in contrast to the approximately 80 percent of Americans who would be covered if the merger is not approved. The acquisition will allow AT&T to offer 4G LTE service to 55 million more Americans than it would have reached without the merger. This dramatic expansion will substantially further the Obama Administration and the Federal Communications Commission's broadband deployment goals as well as be of particular assistance to rural America.

This expansion of broadband deployment resulting from the acquisition will also create numerous jobs. AT&T has committed after the acquisition to increase its capital expenditures by more than $8 billion over the next seven years. The Economic Policy Institute estimates this investment in network expansion will create as many as 96,000 jobs in the U.S. economy. This finding, moreover, only accounts for the effects of capital investment in wireless infrastructure and does not count the jobs that will be created as a result of increased broadband services.

Second, the acquisition will improve the quality of service received by AT&T and T-Mobile customers. Right now, both companies are suffering from capacity constraints. By facilitating the more efficient utilization of spectrum, the merger will substantially ease problems associated with network congestion and bring substantial benefits, such as fewer dropped calls and faster connections speeds, to consumers on a daily basis. T-Mobile customers, in particular, will benefit form the broader coverage and better service within buildings that will result from gaining access to AT&T's networks. Because the merger will lead to expanded output and the realization of synergies, it will also likely result in lower prices for consumers as have prior wireless mergers.

It is important to recognize that in the absence of the acquisition, T-Mobile would not remain a viable, independent competitor in the wireless marketplace. Before this transaction it was clear

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that Deutsche Telekom was going to sell T-Mobile. Deutsche Telekom was no longer willing to commit capital to T-Mobile, and T-Mobile itself lacks the resources necessary to develop the 4G LTE high-speed broadband network the company would need to remain competitive. As a result, the real question was not whether T-Mobile would remain an independent competitor, but rather, would it be acquired by AT&T or by Sprint. An AT&T acquisition of T-Mobile easily represents the better choice to enhance competition and benefit consumers. AT&T is well-equipped from a financial, technological, and managerial standpoint to maximize T-Mobile's assets. Sprint, by contrast, is still recovering from its disastrous merger with Nextel and would struggle to make the capital expenditures necessary to exploit T-Mobile's assets, deal with an increased debt burden, and integrate the two companies' incompatible technologies into a single network.

Third, the transaction will benefit workers in the industry, who are also consumers. AT&T is the only wireless company with a unionized workforce. CWA will strive to ensure, through careful planning and returning overseas work to this country, that there will be no involuntary job losses and that any workers adversely affected by the merger will be able to transition into other similar or better jobs with the company. Moreover, AT&T, because of the merger, will be in a stronger position to create jobs because it will be better able to expand and extend its business than either AT&T or T-Mobile could have done as separate entities.

The merger will also benefit T-Mobile employees. Historically, T-Mobile has been hostile to unions and opposed efforts by workers to organize and exercise their basic rights. AT&T, by contrast, has publicly committed to maintain a policy of non-interference with respect to the organizing of T-Mobile employees, leaving the decision of whether to join a union up to individual employees according to a non-confrontational process sanctioned under the National Labor Relations Act. As a result, just as workers at other companies acquired by AT&T have freely opted for union representation, CWA believes there is an excellent chance that T-Mobile employees will make this choice as well.

The real question facing T-Mobile workers going forward is whether their employer will be acquired by Sprint or AT&T, and AT&T is by far the better option for T-Mobile workers. In contrast to AT&T's strict non-interference policy with respect to union organizing and positive partnership with CWA, Sprint has a long history of hostility to union organizing and trampling workers' rights. Additionally, while AT&T has worked with CWA to return jobs to the United States, Sprint has an extensive record of outsourcing American jobs.

3. In what ways might AT&T's acquisition of T-Mobile harm consumers?

The merger-related benefits far outweigh any speculative merger-related consumer harms. The wireless industry is dynamic and constantly evolving; competition among wireless service providers is vibrant and intense with approximately one-quarter of consumers switching providers each year. Wireless prices (including data and voice) have declined 33 percent over the past 12 years. This vibrant competition will continue to be the case after the merger.

Given the critical importance of expanding the availability of high-speed broadband throughout the United States, CWA believes that regulatory authorities reviewing the merger should require AT&T to follow through on its commitment to build out a 4G LTE network to

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cover over 97 percent of Americans within six years, including timetables, speed and quality benchmarks, data reporting requirements, and penalties for non-compliance.

Further, should the FCC and/or DoJ, after extensive review, determine that there are local markets in which AT&T will have market power after the merger, it would be appropriate to condition merger approval upon divestitures in those specific markets. Finally, it would also be appropriate for the FCC and/or DoJ to require specific merger-related conditions should the reviewing agencies determine that as a result of the merger such conditions are necessary to protect consumers.

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Hearing On "The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?"
May 11, 2011

Follow-Up Questions

Responses of Daniel Hesse
CEO, Sprint Nextel Corporation

Follow-up Questions of Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee

1. **Will consumers benefit from AT&T's acquisition of T-Mobile?**

No. Consumers will not benefit if AT&T is permitted to takeover T-Mobile. The transaction would eliminate T-Mobile, the fourth largest wireless provider, and create a Twin Bell duopoly that would control 82 percent of all U.S. contract subscribers, approximately 78 percent of all wireless industry revenues, and 88 percent of wireless industry operating profits. Essentially, the U.S. wireless marketplace would return to the structure we had almost two decades ago when each cellular market had two operators and before the PCS spectrum auctions allowed multiple facilities-based carriers to create the lower prices and industry growth we have enjoyed in recent times. If the government does not block the merger, the Twin Bell dominated wireless market will revert to higher prices, less choice, and less innovation.

2. **In what ways might AT&T's acquisition of T-Mobile benefit consumers?**

Consumers will not benefit if the government allows the takeover to proceed. AT&T and T-Mobile have made a variety of unsubstantiated claims that their takeover of T-Mobile will benefit consumers, for example by allegedly allowing AT&T to deploy LTE to 97 percent of the U.S. population. However, every one of AT&T's asserted benefits can be achieved by AT&T without creating a Bell duopoly. If AT&T invested only a portion of the $39 billion takeover price tag in improving its network and putting into service its substantial fallow spectrum holdings, it would be able to upgrade its current network, which already covers 97% of the population, to LTE. In any event, AT&T's takeover of T-Mobile would cause far more consumer harm than might be offset by any possible consumer benefits.

3. **In what ways might AT&T's acquisition of T-Mobile harm consumers?**

If the government allows the U.S. wireless market to be dominated by two vertically integrated Twin Bell companies, wireless consumers would face higher prices, less choice, and less innovation. Because of their market dominance and inherited control of the nation's wireline infrastructure, the Twin Bells would have the ability and incentive to (1) raise consumer prices, (2) raise the remaining competitors' costs by increasing the

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prices on backhaul, roaming, and other inputs that competitors must purchase from AT&T and Verizon, and (3) lock-up exclusive arrangements with handset manufactures and applications innovators to ensure smaller rivals can't compete with quality or innovation. The remaining wireless competitors simply would not be able to discipline pricing or drive innovation, and consumers would pay the price.

Follow-up Questions of Senator Charles E. Grassley

At both the hearing and in your written testimony you stated the proposed merger is a bad idea and will lead to a "1980s-style duopoly." You claim that if the transaction is blocked, "wireless competition will thrive and competition . . . will continue to drive investment, innovation, consumer choice, and U.S. global leadership in wireless communications."

1. **How will the status quo lead to more innovation and competition given the concerns AT&T raise, such as spectrum challenges?**

The government should reject AT&T's bid to take over T-Mobile. Doing so would preserve and extend the nearly two decades of robust competition in the wireless industry – competition that has promoted economic growth and ensured U.S. global leadership in mobile communications. Currently, the relative shares and scale of industry players allow independent companies, like Sprint and T-Mobile, to drive down prices and compete with quality and innovation.

To be sure, meeting consumer data demands present a challenge, but all carriers face this issue. As long as the market remains competitive, carriers will have the incentive to innovate and overcome these challenges. For example, Sprint is currently investing heavily in "Network Vision" -- an innovative project where Sprint is upgrading our cell towers with state of the art multi-mode, multi-band equipment -- to squeeze even more out of Sprint's existing spectrum.

AT&T could better manage the growing traffic on its network, just as its competitors do. But AT&T has lagged the industry in network investment for years, nearly half of the spectrum it currently holds remains idle, and AT&T has avoided migrating its customers from last-generation technologies to more efficient next-generation technologies. By investing a fraction of the takeover's $39 billion price tag in innovation, network build out, and putting its warehoused spectrum to work, AT&T could overcome any network congestion challenges it may face.

2. **How will the proposed merger impact, if at all, the services Sprint provides to regional carriers as well as its agreements with regional carriers?**

Sprint will continue to provide roaming services to regional carriers that use CDMA technology. To the extent the merger further enables the Twin Bells to increase Sprint's costs of service, however, those costs will be passed along to regional carriers. Moreover, many regional carriers rely upon GSM technology Sprint does not offer.

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Allowing the merger would create a nationwide GSM monopoly in AT&T that would severely restrict roaming options for regional GSM carriers. These regional carriers are likely to face significantly increased roaming expenses with the elimination of T-Mobile as an alternative roaming partner.

Likewise, CDMA based regional carriers would be affected negatively if the merger is approved. The resulting vertically integrated Twin Bell duopoly would control more than 88 percent of wireless industry operating profits and control the nation's wireline infrastructure. Sprint is heavily dependent on the Twin Bells for special access backhaul and other inputs to Sprint's services. The Twin Bells would have both the incentive and ability to raise Sprint's costs, which in turn will mean increased costs for regional carriers that rely on Sprint for CDMA roaming coverage.

These regional carriers likely would face direct cost increases as well. Sprint and T-Mobile together provide a nascent market for alternative backhaul providers. By simultaneously gaining scale and eliminating T-Mobile as a potential purchaser of alternative backhaul, however, AT&T would increase its ability and incentive (and Verizon's ability and incentive) to raise the prices they charge the local and regional carriers for backhaul.

Finally, the impact to the handset market likely would be substantial on regional carriers. The Twin Bell duopoly would have dramatic advantages in scale and the ability to lock up handsets or maintain a "first to market" advantage over all smaller carriers, including regional carriers.

Follow-up Questions of Senator Herbert H. Kohl

1. **Is T-Mobile generally viewed as the price leader among the four largest national cell phone companies? Does Sprint often respond to T-Mobile's offers when deciding how to price and market its services? What do you think the absence of T-Mobile would mean for price competition in the cell phone industry?**

T-Mobile is unquestionably a price leader among the four national carriers, and Sprint and T-Mobile compete vigorously. Not only does Sprint respond to T-Mobile's offers, but the FCC found in their 14th Mobile Wireless Competition Report that T-Mobile's decision to lower the prices on its unlimited calling plans "appear[s] to have prompted Verizon and AT&T to narrow the price premium on unlimited service offerings."

The current industry structure permits T-Mobile to exert significant downward price pressure on the entire national market. By simultaneously gaining enormous scale and eliminating T-Mobile as a competitor, AT&T's takeover would dramatically restructure the wireless industry in a way that would undermine price competition. The Twin Bell duopoly, with control 82% of contract customers and control over the nation's wireline

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network, would be free to raise consumer prices, increase the remaining competitors' costs, and freeze competition through innovation.

2. **In its FCC filings regarding this merger, AT&T argues that T-Mobile is not a "close competitor." What's your view of this claim? From your perspective as the CEO of one the four national cell phone companies, do you think AT&T competes with T-Mobile? Why or why not?**

AT&T and T-Mobile, as the only two national carriers using GSM technology, are close competitors. T-Mobile consistently out-performs AT&T on customer service, it offers lower pricing for handsets and services, it claims to have upgraded more of its network for high speed data services than AT&T, it has helped develop and launch new innovative handsets such as the first android phone sold in the US, the T-Mobile G1, and it engages in aggressive advertising against AT&T. AT&T's proposed takeover would eliminate its sole national GSM rival and silence its biggest advertising critic.

3. **Sprint has argued that access to spectrum is a problem after this merger, and that AT&T and Verizon will have the lion's share of available spectrum. However, AT&T argues in its FCC filing that Sprint has an "exceptional spectrum position [in 4G], which is far stronger than AT&T's today." In fact AT&T quotes you as saying that "when you combine Sprint's spectrum position with Clearwire's spectrum position it puts us in the strongest place for the future." How do you reconcile this statement with your concerns about the merger?**

Sprint has a strong spectrum position, and our investment in Clearwire has allowed Sprint to be the first carrier to roll out true 4G service. Sprint expects to continue to squeeze the most out of its spectrum. But comparing Sprint's spectrum holdings with the unprecedented aggregation of choice spectrum AT&T is proposing to accumulate is like comparing prime rib to hamburger.

If AT&T were to add T-Mobile's spectrum on top of its already-pending acquisition of Qualcomm's spectrum assets, AT&T would hold a nationwide, population-weighted average of 165 MHz of spectrum – an amount nearly *double* Verizon's spectrum position and more than *triple* Sprint's spectrum position.

AT&T would also have a qualitative spectrum advantage. Virtually all the spectrum AT&T holds and plans to acquire is below 2 GHz, which makes a sound choice for providing wireless broadband; moreover, a significant portion of the spectrum AT&T already holds is prized spectrum below 1 GHz -- the prime cut.

By comparison, Clearwire's 2.5 GHz spectrum, which Sprint currently resells to provide 4G services, suffers from a multitude of technical, licensing, and regulatory issues that make it far more challenging to use for wireless broadband. In addition, a majority of Clearwire's spectrum is not licensed to Clearwire at all. Roughly 60% of Clearwire's average nationwide spectrum is licensed to schools and universities in the Educational

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Broadband Services (EBS). Clearwire leases this spectrum for limited terms from the educators, who must retain capacity to meet certain educational service requirements, among other mandates.

Perhaps the best way to understand the differences both in propagation and regulatory environment between the "beachfront" 700 MHz band that AT&T holds and Clearwire's 2.5 GHz spectrum is to look at the market price for these different spectrum bands. In its 2007 transaction with Clearwire, Sprint received only $0.17 per MHz Pop in return for its 2.5 GHz holdings. By contrast, AT&T paid more than six times as much ($1.06 per MHz-POP) for Aloha Partners' 700 MHz spectrum in 2007, paid more than thirteen times as much ($3.15 per MHz-POP) during the 2008 700 MHz band auction, and is set to pay more than five times as much ($0.87 per MHz-POP) for Qualcomm's 700 MHz spectrum.

4. **I understand that you oppose the merger and believe that it should be blocked. However, if the Justice Department and FCC do not decide to block it, are there any conditions that you think they should impose in order to approve the merger?**

There are no conditions that would fix this merger. AT&T may offer up an assortment of voluntary concessions and conditions to try to make its takeover more palatable to the government. For AT&T, the chance to gobble up its only national GSM competitor while silencing its most vocal advertising critic is far too tempting to pass. But any conditions that DoJ and the FCC might impose would simply be tinkering at the edges.

AT&T's takeover of T-Mobile will precipitate a fundamental shift in the structure of the wireless market. The post-merger market would be dominated by two vertically integrated Twin Bell companies with the power and incentive to raise consumer prices, raise the remaining competitors' costs by increasing the prices on backhaul, roaming, and other inputs, and block competitors from competing with quality or innovation. Government tinkering cannot right the structural flaws inherent in such a lopsided market.

Follow-up Questions of Senator Michael S. Lee

1. **Some of the public comments you have made in recent weeks seem to suggest that Sprint would not survive this merger. Is this your position?**

Sprint would continue to compete aggressively in any environment. However, the relative size of Verizon and AT&T, along with their control over inputs like backhaul and roaming, as well as their ability to dominate the handset market, would limit severely Sprint's ability to discipline pricing and innovate in the wireless market.

2. **Sprint is currently the third-largest mobile wireless service provider, has recently increased its subscriber base, scores well in customer satisfaction surveys, offers a wide array of popular handsets that use Google software,**

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was the first to market with a 4G product, and offers aggressively priced unlimited data plans. What obstacles stand in the way of Sprint continuing as a robust and effective competitor in a post-merger market?

Sprint has made tremendous strides in improving customer service, network performance, and device line-up, and the current competitive market has begun to reward us as consumers have started switching back to Sprint. Even in today's market, however, Sprint faces significant challenges, in part because Sprint is required to pay AT&T and Verizon for backhaul and termination on the wireline networks they inherited from Ma Bell. Sprint will continue to compete vigorously in the market even if the takeover gets government approval. In a market dominated by the Twin Bells and without T-Mobile, however, the Twin Bells would be able to simultaneously increase Sprint's costs by increasing the prices on backhaul, roaming, and other inputs and discourage handset manufactures and application innovators from partnering with Sprint. Sprint would find it increasingly difficult to discipline the Twin Bell pricing and develop industry leading handsets as it gets squeezed by the Twin Bells.

3. **Some analysts argue that, especially in light of the relationship Sprint has with Clearwire, your spectrum position and potential is the best of the major carriers. Is there anything about your spectrum holdings and opportunities that would limit Sprint's ability to continue to compete as a major nationwide wireless carrier?**

In partnership with Clearwire, Sprint became the first nationwide carrier to introduce 4G services and with the introduction of our iconic EVO 4G and Epic smartphones, Sprint has gained an edge on our competitors in attracting 4G customers. In a balanced, competitive wireless market, Sprint expects to continue to be able to compete as a major nationwide carrier. That is not to suggest that Sprint will not be required to overcome challenges to continue to be competitive.

Clearwire's 2.5 GHz spectrum, which Sprint uses to provide 4G services, suffers from a variety of technical, licensing, and regulatory problems and is far more troublesome than the prime 700 MHz spectrum Verizon uses and AT&T plans to use for 4G. If the government permits AT&T to acquire Qualcomm's 700 MHz spectrum and takeover T-Mobile's attractive PCS and AWS spectrum, which is also choice spectrum, Sprint would be at a serious spectrum disadvantage as compared to the Twin Bells. Excluding the local and regional players, the Twin Bells would have 85% of the spectrum below 1 GHz; Sprint would have 15%. The picture is not much better above 1 GHz. Again, excluding the local and regional players, the Twin Bells would have 79% of the spectrum; Sprint would have 21%, excluding spectrum held or leased by Clearwire. The competitive challenges in achieving scope and scale sufficient to compete in a market dominated by the Twin Bells would, of course, only exacerbate the spectrum disadvantage Sprint would face.

4. **Sprint is one of the primary voices opposing the merger regardless of restrictions or conditions the DOJ or FCC may require. In your view, why**

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would spectrum divestitures, data roaming requirements, or other potential conditions fail to make the merger workable and keep the wireless market competitive?

The problem with trying to address the anticompetitive effects AT&T's proposed takeover of T-Mobile would create with conditions like spectrum divestitures and roaming requirements is that conditions are not effective tools when the overall market structure is incapable of supporting competition. Divestitures can be an excellent tool for government when a merger that might otherwise enhance competition would raise competitive concerns in only a handful of locales. Other conditions can sometimes temporarily address failures in a particular product market or address other concerns in the context of a transaction that is otherwise good for competition.

AT&T's takeover of T-Mobile, however, is not good for competition. The takeover would fundamentally change the U.S. wireless market by creating a vertically integrated Twin Bell duopoly. The competitive harms this market structure would cause are enormous, pervasive, and not limited to particular communities or isolated product markets. There are no genuine enhancements to competition that might be brought about by this merger. Any conditions the government might impose on AT&T would do little more than delay the inevitable decline in competition, increase in prices, and stifling of innovation that would result from a market structure dominated by a Twin Bell duopoly.

5. **In your mind, what are the benefits of having T-Mobile as a separate competitor?**

T-Mobile and Sprint are independent competitors that bring balance and competition to the wireless market. T-Mobile, as AT&T's sole nationwide GSM competitor and a price leader and innovator, puts significant downward pressure on nationwide prices and forces its competitors to innovate to compete. As a GSM carrier, T-Mobile competes with AT&T on handsets and international roaming. T-Mobile sports highly regarded customer service, low prices for handsets and services, an upgraded HSPA+ network and aggressive advertizing. Together, as two large independent nationwide carriers, Sprint and T-Mobile provide a market for alternative backhaul providers that helps place at least some price pressure on the Twin Bells for these services. Simply put, the U.S. wireless market is more competitive with independent competitors pressing the vertically integrated Twin Bells than it would be if AT&T absorbs T-Mobile.

6. **If the outcomes that you suggest will come about as a result of this merger—relating to higher prices and diminished service offerings—are unappealing to consumers, why wouldn't that increase the likelihood that Sprint would be able to increase its market share and attract new customers?**

In the short run, Sprint might gain some customers from the ranks of the dissatisfied. But in a market dominated by vertically integrated Twin Bells, Sprint's advantages would swiftly be eliminated by the Bells. If approved, the takeover would create a vertically integrated Twin Bell duopoly that would control more than 88 percent of wireless

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industry operating profits and control the nation's wireline infrastructure. In an industry in which economies of scale are critical, the Bell companies would hold a significant advantage over Sprint.

In addition, because of their market dominance and inherited control of the nation's wireline infrastructure, the Twin Bells would have the ability and incentive to raise their own prices, and simultaneously prevent Sprint from competing on price by raising Sprint's costs. The Bells would have the ability to achieve this by increasing the prices on backhaul, roaming, and other inputs Sprint and the remaining competitors must purchase from AT&T and Verizon.

Finally, because of their enormous scale, AT&T and Verizon would have the ability to lock-up exclusive arrangements with handset manufactures and applications innovators to prevent Sprint from competing on quality or innovation. At the end of the day, disenfranchised customers might like to vote with their feet, but would have nowhere to go.

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June 2, 2011

The Honorable Herb Kohl, Chairman
Subcommittee on Antitrust, Competition Policy and Consumer Rights
U.S. Senate Committee on the Judiciary
330 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Kohl:

I am writing in response to your letter of May 19, 2011 regarding the proposed acquisition of T-Mobile USA (T-Mobile) by AT&T. I appreciated the chance to testify at the hearing before the Subcommittee on Antitrust, Competition Policy and Consumer Rights to discuss the transaction and the significant public benefits that will flow from it. I also welcome this opportunity to respond to your specific questions about the proposed acquisition. Enclosed, please find T-Mobile's responses to the questions that raise issues we are able to address.

Thank you again for the opportunity to address these issues. We would be happy to answer any further questions you may have.

Sincerely,

Philipp Humm
President & CEO,
T-Mobile USA

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Follow-up Questions of Senator Herb Kohl (D-Wis.),
Chairman, Subcommittee on Antitrust, Competition Policy and Consumer Rights
U.S. Senate Committee on the Judiciary

Hearing on
"The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?"
May 11, 2011

Questions for Philipp Humm, President & CEO, T-Mobile USA:

1 (a). AT&T's FCC filing argues that T-Mobile is a very weak company, with "capacity constraints," facing "spectrum exhausts in a number of markets" and "no clear path to effective, economical deployment of LTE," the next generation of cell phone service. Reading this filing, it is not an exaggeration to say it portrays T-Mobile as on the verge of failure.

Is that really the true picture, Mr. Humm? Hasn't T-Mobile been profitable, with operating income before taxes and depreciation of over $ 5 billion dollars every year since 2007? And don't you advertise yourself as "America's Largest 4G network"?

(b) Could T-Mobile continue to exist as a viable independent competitor absent this deal?

As I noted in my testimony before the Committee, before I joined the company in 2010, T-Mobile USA (T-Mobile) had faced revenue declines for two consecutive years due mainly to a weakened brand position. As a result, T-Mobile's profitability had declined. The management of T-Mobile has in the meantime implemented a new strategy that is aimed at leading the company back to growth. Results so far are still mixed: while revenues have stabilized, subscriber losses remain our number one concern.

More importantly, though, René Obermann and I have always been clear that we did not believe a standalone plan would be sufficient, and that we would need additional solutions to secure T-Mobile's future. While we do promote our network as "America's Largest 4G network" based on our HSPA+ technology, we do not have the spectrum needed for a clear path to LTE (Long Term Evolution), which will become the de facto standard for next generation networks in the U.S. and abroad.

2. What is your estimate of the number of T-Mobile employees who are likely to lose their jobs after this merger?

This is a question best answered by AT&T.

3. Are your pricing plans generally set on a nationwide basis? And, if so, isn't this strong evidence that we should consider this to be a national market?

T-Mobile's pricing plans have historically been set on a nationwide basis. T-Mobile's experience, however, has been that consumers buy wireless services based on availability and pricing in their local area. This local buying focus of consumers is what led T-Mobile to decide

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last year to revamp and reorganize its sales and marketing organization to focus on the differing conditions in local markets so as to enable it to compete more effectively. In particular, we created locally-focused operations teams in 23 discrete local areas, each of which is tasked with tailoring their marketing and sales approaches to best compete for customers given the specific conditions of the local market. The market leaders and fastest-growing competitors vary dramatically from local market to local market, and some regional competitors are active only in certain parts of the U.S. The fundamentally local nature of demand and customer purchasing patterns in this industry are why the Justice Department and FCC have consistently analyzed the impact of mergers of wireless carriers on a local-market basis.

4. AT&T argues that cell phone prices have fallen sharply over the last ten years. But most of the data about cell phone prices over the last decade reflects the prices for voice calling. But in recent years, cell phones – especially smart phones – are increasing being used for data – that is, to connect to the Internet. Have prices for data usage fallen over the last three years? What is likely to happen to the price of data in coming years, especially if this merger is approved?

AT&T testified that there has been a 90 percent reduction in the prices for wireless data service, on a per megabyte basis, from 2006 to 2010. After the merger, we have every reason to believe that this trend will continue. As the GAO (General Accounting Office) itself has indicated, prices have declined steadily in the past decade as wireless companies merged to create efficiencies. As noted in the joint Public Interest Statement filed at the FCC by DT and AT&T, the technological benefits and synergies of the transaction will create significant network efficiencies and capacity gains, which historically have led to lower rather than higher prices. Without the transaction, the two companies face capacity constraints, which could lead to increased consumer data costs over time as the companies try to manage network congestion.

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Follow-up Questions of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee

Hearing On
"The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?"
May 11, 2011

Questions for Philipp Humm, President & CEO, T-Mobile USA:

1) One argument that both AT&T and T-Mobile use in support of this acquisition is the potential efficiencies of the deal. Principally, you have represented that the resulting allocation of the companies' combined spectrum will enable AT&T to provide 4G access to more consumers than both companies could otherwise. AT&T and T-Mobile also state that absent the acquisition, T-Mobile does not have the capability or plans to provide consumers with its own 4G service, and its current HSPA+ service is not truly 4G.

   a) Is it correct that T-Mobile is authorized by the Federal Communications Commission (FCC) to characterize its HSPA+ network as "4G"?

   b) What showing did T-Mobile make to the FCC to influence that determination?

The FCC has not played a role in defining these technology standards.

T-Mobile and other wireless providers characterize HSPA+ as "4G." The terms "2G," "3G," and "4G" are abbreviations for "Second Generation," "Third Generation," and "Fourth Generation," respectively. They refer to technology cycles in the wireless industry. GSM, UMTS, HSPA, and LTE are technologies used by the wireless industry to deliver mobile wireless services HSPA is an abbreviation for "High Speed Packet Access" whose initial implementation was a 3G service. HSPA+ (also known as Evolved HSPA) advanced the HSPA capabilities further to be considered a 4G service. LTE is an abbreviation for "Long Term Evolution." It is the latest technological standard for wireless services and is considered a more advanced 4G service.

The primary differences between these technologies are related to data speeds supported, spectral efficiency, and latency. Each new air interface typically improves upon each of these technical issues as compared to past standards.

   c) Do you believe that T-Mobile's current HSPA+ network competes with the 4G networks offered by AT&T, Verizon, or Sprint? (Please explain your rationale.)

As noted above, T-Mobile's HSPA+ network is a 4G network. HSPA+ will continue to be utilized internationally as well as domestically. However, LTE is a major advance for the mobile

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industry in terms of performance and efficiency. LTE deployment is just starting to gain momentum. T-Mobile requires a clear path to LTE because LTE offers long-term spectrum efficiencies over HSPA+. LTE will have 1.5 to 2 times faster peak data rates than HSPA+, will drive down latency, and improve and lower signaling overhead.

2) In his testimony before the Committee, Mr. Stephenson stated that AT&T has "committed to provide cutting-edge LTE mobile Internet service to more than 97 percent of the U.S. population – nearly 55 million more Americans than [AT&T's] pre-merger plans."

   What number of those 55 million additional Americans could otherwise be served by T-Mobile's current HSPA+ network, which it advertises as a "4G" network?

While both HSPA+ and LTE are 4G technologies, as explained above, LTE is a major advance for the mobile industry in terms of performance and efficiency. It is the latest technological standard for wireless services and is considered a significantly more advanced 4G service. The primary differences between these technologies are related to data speeds supported, spectral efficiency, and latency. LTE constitutes a step-change as compared to past standards. That having been said, T-Mobile's current HSPA+ network covers only approximately 65 percent of the U.S. population. AT&T's commitment in this transaction is to increase its planned LTE coverage to over 97 percent of the population.

Questions to ALL WITNESSES:

1) Will consumers benefit from AT&T's acquisition of T-Mobile?

Yes. As noted in the Public Interest Statement filed with the Federal Communications Commission, AT&T and T-Mobile face network spectrum and capacity constraints, and this merger provides by far the surest, fastest, and most efficient solution to that challenge. The network synergies of this transaction will free up new capacity—the functional equivalent of new spectrum—in the many urban, suburban, and rural wireless markets where escalating broadband usage is fast consuming existing capacity. This transaction will thus benefit consumers by reducing the number of dropped and blocked calls, increasing data speeds, and dramatically expanding deployment of next-generation mobile technology. Indeed, the transaction will give the combined company the scale, resources, and spectrum that will enable it to deploy LTE to more than 97 percent of Americans—which AT&T has indicated is approximately 55 million more Americans than under AT&T's current plans. That deployment will help fulfill the Administration's pledge to "connect every part of America to the digital age," and it will create new jobs and economic growth in the small towns and rural communities that need them most. This transaction will leave the wireless marketplace fiercely competitive; indeed, AT&T's massive LTE deployment will intensify broadband competition throughout the United States. Finally, the transaction will promote America's global leadership in mobile broadband innovation.

2) In what ways might AT&T's acquisition of T-Mobile benefit consumers?

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As I stated in my testimony before the Committee, the combination brings together two uniquely compatible companies, achieving extensive synergies, while greatly benefiting the American economy, consumers, and particularly T-Mobile customers. We have identified, at least, 4 major benefits for T-Mobile customers:

First, T-Mobile customers will enjoy improvements in their coverage through access to AT&T's low-band 850 MHz spectrum.

Second, the transaction will result in near-term network quality improvements for T-Mobile customers.

Third, the transaction will also give the combined company the resources and spectrum it needs to broadly deploy next generation 4G LTE service.

Fourth, the transaction will allow the combined company to increase capacity and to significantly reduce costs, which will drive prices down and enhance opportunities for innovation – making the US an even more dynamic and competitive market.

3) In what ways might AT&T's acquisition of T-Mobile harm consumers?

For the reasons cited above, we do not believe that the merger will have an adverse impact on consumers.

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Follow-up Questions of Senator Mike Lee (R-Utah),
Subcommittee on Antitrust, Competition Policy and Consumer Rights
U.S. Senate Committee on the Judiciary Hearing On
"The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?"
May 11, 2011

Questions for Philipp Humm, President & CEO, T-Mobile USA:

1. One much discussed aspect of this proposed merger is that T-Mobile apparently has no clear path on its own to developing a nationwide LTE network. Apart from this merger, what are your spectrum capacities and prospects for developing and deploying a high-speed network capable of meeting consumer demand for data traffic?

As discussed in the Public Interest Statement filed at the Federal Communications Commission in support of the merger, T-Mobile will face significant spectrum constraints, despite substantial investments in spectrum and network facilities. We have experienced explosive growth in mobile wireless demand over the past several years and by 2015 we expect data traffic on our network to be at least 20 times that of the 2010 level. Based on our most recent projections, T-Mobile will face spectrum exhaustion in a number of significant markets over the next three years.

Due to spectrum exhaustion, difficulty in aggressive re-farming of existing spectrum holdings, and a lack of other viable spectrum options, T-Mobile has no clear path to an effective, economical deployment of LTE. LTE is a major advance for the mobile industry in terms of performance and efficiency. LTE offers long-term spectrum efficiencies over HSPA+. LTE will have 1.5 to 2 times faster peak data rates than HSPA+, will drive down latency, and improve and lower signaling overhead. Given the burgeoning demand for mobile broadband data, there is a need for greater spectrum bandwidth to meet the capacity and data speed requirements.

2. As is often the case, a primary challenge in analyzing this merger is defining the relevant market. Some argue that AT&T and T-Mobile compete in a national market with four major carriers, while others claim that the wireless market operates at the regional level and includes many local carriers.

   a. Do you consider your main competition to be the national carriers—Sprint, AT&T, and Verizon—or regional carriers like Cell South? Where do you fall in the market?

Competition in the wireless industry really takes place on a local level. If a consumer needs a new handset or wireless service, they will shop all the carriers that offer wireless service in their area and will likely compare their service offerings across various elements—value, network strength, customer service, device availability, convenience of the nearest distributor, and other factors. This local buying focus of consumers is what led T-Mobile to decide last year to revamp and reorganize its sales and marketing strategy to focus on the differing conditions in local

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markets so as to enable it to compete more effectively. In particular, we created locally-focused sales operations teams in 23 discrete local areas, each of which is tasked with tailoring their marketing approaches to best compete for customers given the specific conditions of the local market. The market leaders and fastest-growing competitors vary dramatically from local market to local market, and some regional competitors are active only in certain parts of the U.S.

T-Mobile considers itself a value player and therefore competes primarily with Sprint and the "AYCE-players" like MetroPCS and Leap.

b. Without your low-cost unlimited plans as part of the national market, what alternatives will be available to customers looking for an affordable national provider?

As noted above, today, about three-quarters of all Americans live in areas that are served by at least five facilities-based wireless providers. Competition is particularly intense for value-driven customers, which make up the core of T-Mobile's customer base. And consumers increasingly have additional choices in the market, including new facilities-based providers, wholesalers, and mobile virtual network operators.

We believe that the U.S. wireless industry will remain fiercely competitive post-transaction. Companies such as Sprint, MetroPCS, and Leap offer low-priced unlimited plans, and they will continue to put intense competitive pressure on AT&T and the other wireless providers after the merger. By relieving capacity constraints and producing new, increased capacity and efficiencies, the merger will permit AT&T to compete even more aggressively to retain and win customers.

3. In T-Mobile's Reply Comments before the FCC in August of 2010, you described the existing market, in which Verizon and AT&T controlled 60 percent of subscribers and revenue, as including "a disturbing trend toward increasing market concentration."

a. Do you still hold that position? If not, what has changed in your analysis?

First, T-Mobile has consistently said that the U.S. wireless marketplace is highly competitive at the retail level. In fact, we made that statement in an FCC filing just days before the one from which this quote was obtained. For the reasons explained above and in the Public Interest Statement (and related documents) filed with the FCC, we believe that this transaction will enhance competition in the industry.

Second, the context the quotation cited is important. In the pleading that you referenced, T-Mobile was urging the FCC to take actions to increase the availability of inputs such as low-band spectrum to promote even more robust competition. We continue to believe that the FCC should make it a high priority to free up more spectrum, including low-band spectrum for use by the wireless industry.

b. Do you believe that two companies controlling 80 percent of the market would constitute "a disturbing trend toward increasing market concentration"?

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As discussed above, T-Mobile has believed and continues to believe that the U.S. wireless marketplace is highly competitive. We firmly believe that the U.S. wireless industry will remain highly competitive after this transaction, and that U.S. wireless consumers will reap the capacity benefits of that competition through enhanced network quality, lower prices, and speedier access to 4G LTE throughout the country. Specifically, the efficiencies and increased capacity enabled by this transaction will lower costs and increase output, which will lead to lower prices and greater innovation than would occur absent the transaction.

4. It has been suggested that T-Mobile's non-union workforce would be better off if it became unionized as part of the merger with AT&T. Do you agree?

T-Mobile treats its workers fairly and with respect. In fact, we have won several "Best Places to Work" awards, including we have achieved Fortune Magazine's list of 100 Best Places to Work in the U.S. in past years. We have also been named one of World's Most Ethical Companies for the last three years in a row, as determined by the Ethisphere Institute. AT&T's unionized workforce appears to be supportive of AT&T as an excellent employer as well.

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Responses of Hu Meena, President & CEO of Cellular South, Inc.

to

Questions for the Record

of the

Senate Committee on Judiciary, Subcommittee on Antitrust, Competition Policy and Consumer Rights May 11, 2011, hearing:

"The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?"

Responses to Questions from Senator Leahy

Question #1: Will consumers benefit from AT&T's acquisition of T-Mobile?

Response: Absolutely not. AT&T's proposed takeover of T-Mobile brings into sharp focus the negative impact that consolidation of the largest carriers is having on consumers, on job growth and on competition in the once thriving wireless industry.

Question #2: In what ways might AT&T's acquisition of T-Mobile benefit consumers?

Response: I believe AT&T's proposed takeover of T-Mobile would have no consumer benefits.

Question #3: In what ways might AT&T's acquisition of T-Mobile harm consumers?

Response: If AT&T is permitted to takeover T-Mobile, AT&T Wireless and Verizon Wireless would each have more subscribers than all of the nation's other wireless carriers combined. This AT&T-Verizon duopoly already exercises near complete control over wireless device and infrastructure vendors. AT&T and Verizon have used this control to restrict or completely prevent broad roaming opportunities for consumers, and to create technologically exclusive networks that frustrate device ecosystems and prevent roaming and slow the deployment of 4th Generation (4G) wireless services to American consumers.

If AT&T is permitted to takeover T-Mobile –eliminating one of its three nationwide competitors - consumers would suffer from the reduced competition. Post-takeover, consumers will face higher device and network subscription prices, reduced innovation, and reduced geographic coverage – particularly in America's rural areas.

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Responses to Questions from Senator Kohl

Question #1(a): As Cellular South does not own its national cell phone network, how do you provide cell phone service to your customers when they travel and leave Cellular South's regional network?

Response: Cellular South provides voice and data service to its customers outside of Cellular South's home network through various voice and data roaming agreements with other carriers operating compatible networks through the nation.

Question #1(b): Are you dependent on larger carriers' willingness to negotiate reasonable rates with you so that you can provide your customers with the national service they demand?

Response: Yes. Cellular South must be able to secure voice and data roaming agreements with the large national carriers in order to assure that Cellular South's customers can utilize the features of their devices when they travel outside of Cellular South's network.

But, as we move to 4th Generation LTE ("4G LTE") wireless technology, there is a second, critical pre-requisite to providing our customers with national service: device interoperability. Currently, each device that we sell for use on our networks is built to operate across the Cellular spectrum, PCS spectrum and, for some, AWS spectrum.

Until recently, all devices built to operate in any specific part of a spectrum band were technologically capable of operating across all paired spectrum within the given band. The only difference between devices was the air interface technology (i.e. CDMA or GSM). In other words, all devices were developed to be interoperable across the entirety of a given block of spectrum (e.g., all Cellular devices are interoperable across the Cellular spectrum, all PCS devices are interoperable across the PCS spectrum, and all AWS devices are interoperable across the AWS spectrum). This is not true for the 4G LTE networks being deployed on the 700 MHz spectrum even though they use a common air interface technology.

The 700 MHz spectrum has been fragmented into distinct Band Classes and the two largest holders of 700 MHz spectrum - AT&T and Verizon - are deploying essentially proprietary LTE networks and devices that work only on their spectrum. Given the enormity of the economic scale of AT&T and Verizon, these two carriers are the de facto "market" for LTE devices and equipment that operate at 700 MHz. Outside of this "market," it is not economically feasible for any other carrier to obtain LTE equipment or devices to operate in non-AT&T or non-Verizon 700 MHz bands.

Even if it were economically feasible for carriers to obtain LTE equipment and devices in non-AT&T and non-Verizon 700 MHz bands, roaming from one carrier's network to another will not be possible without interoperable devices. The "market" is not developing these devices, and Cellular South cannot justify the added expense of developing them on our own without the assurance that our customers will have LTE roaming at just and reasonable rates. Given the failure of the market to foster interoperable LTE deployment, only an interoperability requirement – like that imposed in 1981 by the Reagan FCC – can solve this problem.

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Question #1(c): Does subsidizing your competitors with these roaming and special access fees harm your ability to compete with them?

Response: No. Roaming enables competition. Cellular South's customers, like all wireless customers, expect to be able to use their devices wherever they travel. Cellular South's and other regional wireless operators' ability to offer nationwide service via roaming agreements actually enables competition in the wireless market by providing customers of both the national carriers (e.g., AT&T and Verizon) and regional carriers, like Cellular South, with an equal ability to utilize all of their wireless devices' capabilities as they move about the country.

Additionally, roaming agreements are generally reciprocal: Cellular South customers are able to roam on the other carriers' network and the other carriers' customers can roam on Cellular South's network. Cellular South and the other carrier pay each other same rate for the ability of their respective customers to access the other carriers' network. In this way, roaming agreements are mutually beneficial to the carriers – they allow each carrier to "expand" the areas in which their customers have access to all of the capabilities of their wireless devices.

Question #2: How easy has it been for Cellular South to reach agreements to roam on AT&T's network? Do you have any concerns about your ability to reach roaming agreements with AT&T should their merger be approved?

Response: Within its GSM network (which utilizes the same air-interface technology as AT&T), Cellular South currently offers 2.5G service and has 2.5G roaming agreements with AT&T. A 3G GSM network has not been deployed within our GSM footprint for one basic reason: we have no ability to offer 3G roaming to our GSM customers.

We have had no success in obtaining a 3G roaming agreement for our GSM customers from AT&T. In fact, AT&T's latest roaming offer, made just weeks before the FCC announced new data roaming rules, clearly was not made in good faith as it would have increased our existing voice roaming rates and would have raised our existing data rates by many multiples.

Recent additional efforts to reach out to AT&T to negotiate a reasonable data roaming agreement have been unsuccessful. If AT&T is permitted to takeover T-Mobile, AT&T would gain a nation-wide monopoly over GSM roaming. And under those circumstances, I have no expectation that data roaming agreements would become easier to obtain from AT&T.

Question #3: Does lack of access to some of the most in-demand smartphones harm Cellular South's ability to compete with the national carriers?

Response: Yes. Customers in our coverage area want the same devices that the national carriers are selling. Customer demand is largely driven by device selection. So, in order to compete with AT&T or Verizon in our coverage area, we must be able to offer the same devices to our customers. Exclusive device agreements or other arrangements that AT&T and Verizon can force device manufacturers to enter hamper Cellular South's ability to offer our customer the latest and most iconic devices.

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Question #4: Do you believe competition from smaller regional carriers such would be sufficient after the merger, so that there will be sufficient competition to the remaining three national cell phone companies should the AT&T/T-Mobile merger be approved? Why or why not?

Response: No. To compete in today's wireless market, a carrier must have access to national scale. In this national marketplace, AT&T possesses the scale to control vendors and influence competitive carriers' access to devices, roaming agreements, and infrastructure. Its consolidation with T-Mobile will further cement this anti-competitive condition.

Post-merger, AT&T and Verizon will control nearly 80% of the wireless market in the U.S. They will have the scale (over 200 million subscribers) to solidify their duopolistic control over the device and infrastructure manufacturers.

Even before this takeover was proposed, AT&T and Verizon had each leveraged their control over device and infrastructure vendors to create an essentially proprietary band-class in the 700MHz spectrum. Until the FCC's auction of 700 MHz spectrum, all devices built to operate in any specific part of a spectrum band were technologically capable of operating across all paired spectrum within the given band. The only difference between devices was the air interface technology (i.e. CDMA or GSM). In other words, all devices were developed to be interoperable across the entirety of a given block of spectrum (e.g., all Cellular devices are interoperable across the Cellular spectrum and all PCS devices are interoperable across the PCS spectrum).

This is not true for the 4G LTE networks being deployed on the 700 MHz spectrum even though they use a common air interface technology. The 700 MHz spectrum has been fragmented into distinct Band Classes and the two largest holders of 700 MHz spectrum - AT&T and Verizon - have developed and are deploying essentially proprietary LTE networks and devices that work only on their spectrum.

Given the enormity of the economic scale of each AT&T and Verizon, these two carriers are the de facto "market" for LTE devices and equipment that operate at 700 MHz. Outside of this "market," it is not economically feasible for any other carrier to obtain LTE equipment or devices to operate in non-AT&T or non-Verizon 700 MHz bands. To the extent competitive carriers can acquire LTE equipment and devices, the cost prohibits anything more than a fractional deployment and the ecosystem lags the AT&T Wireless and Verizon Wireless ecosystems by many months.

Even if it were economically feasible for carriers to obtain LTE equipment and devices in non-AT&T and non-Verizon 700 MHz bands, roaming from one carrier's network to another will not be possible without interoperable devices. The "market" is not developing these devices. Given the failure of the market to foster interoperable LTE deployment, only an interoperability requirement imposed by the FCC or Congress can solve this problem.

Problems such as this lack of interoperability at 700MHz will only become worse in a post-merger world.

Question #5: I understand that you oppose the merger and believe that it should be blocked. However, if the Justice Department and FCC do not decide to block it, are there any conditions that you think they should impose in order to approve the merger?

Response: No. I am not currently aware of any potential conditions that would resolve or mitigate the anti-competitive impact of the proposed takeover. All of the traditional wireless

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merger conditions would do nothing to mitigate the control a post-merger AT&T and Verizon duopoly would exercise over key inputs to wireless business such as devices, infrastructure equipment, roaming and special access. Additionally, while conditions have been well-intended in previous transactions, history clearly shows us that these conditions have been ineffective in promoting competition. The Bell descendants have grown so large that traditional conditions would simply be ineffective in this case.

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Responses to Questions from Senator Lee

Question #1: You are a representative of both smaller regional carriers and rural wireless providers. In referring to this merger in your written testimony, you said that "it must be stopped" and that "the fate of this acquisition determines the course of [this] industry." In contrast, other regional providers view the situation with much more hope.

Despite its membership in the RCA, US Cellular has stated that it sees "great opportunity" in the merger for its own expansion. Similarly, MetroPCS has stated: "We think this is a really good time for Metro to put our head down and get down to business," noting that the company "very well could get a . . . sharper focus from [its] infrastructure vendors. There would be one less operator for them to focus on."

a. Why would some regional carriers view the merger as the end of competition while others view it as an opportunity for growth?
b. What barriers to robust competition do you see emerging or intensifying as a result of this merger?

Response: Competitive wireless carriers are unified in their opposition to AT&T's proposed takeover of T-Mobile. In recent filings with the FCC, competitive carriers MetroPCS and nTelos stated that "[t]he proposed acquisition would be transformative and game-changing for the wireless industry, the telecommunications industry as a whole and consumers and would cement, once and for all, the consolidation of the wireless industry into a true and unequivocal duopoly comprising of AT&T on the one hand and Verizon on the other." *See*, Petition of MetroPCS Communications, Inc. and nTelos, Inc. to Condition Consent, or Deny Application, WT Docket No. 11-65 (May 31, 2011). Similarly, U.S. Cellular stated in its recent FCC filing that "U.S. Cellular does, however, have serious concerns about the proposed acquisition, which is likely the most significant and consequential in the history of the U.S. wireless industry." *See* Comments of United States Cellular Corporation, WT Docket No. 11-65 (May 31, 2011).

If AT&T's takeover of T-Mobile is approved, all that will remain is the endgame, where the remaining competitive carriers wait their turn to be acquired or bled dry by an AT&T-Verizon duopoly. AT&T Wireless and Verizon Wireless would each have more subscribers than all of the nation's other wireless carriers combined. This AT&T-Verizon duopoly already exercises near complete control over wireless device and infrastructure vendors. AT&T and Verizon have used this control to restrict or completely prevent broad roaming opportunities for consumers, and to create technologically exclusive networks that frustrate device ecosystems and prevent roaming and slow the deployment of 4th Generation (4G) wireless services to American consumers.

If AT&T is permitted to takeover T-Mobile – eliminating one of its three nationwide competitors - consumers would suffer from the reduced competition. Post-takeover, consumers will face higher device and network subscription prices, reduced innovation, and reduced geographic coverage – particularly in America's rural areas.

Without effective competition as a check on market abuses, the government will have to interject itself to ensure that consumers – the true owners of wireless spectrum – are protected. This means subjecting a future wireless communications duopoly to the same type of competition-squelching regulatory oversight that wireline telephone and electrical power utilities have operated under for decades.

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Question #2: Your company, Cellular South, relies on data roaming arrangements with the national networks for your ability to offer customers nationwide coverage.

a. In your view, what impact would this merger have on roaming arrangements?

b. Will the recent FCC order mandating "commercially reasonable" data roaming agreements alleviate the concern over pricing and availability?

c. Would any potential merger conditions further alleviate the data roaming concerns that you've identified?

Response: AT&T's takeover of T-Mobile would eliminate one of the nation's two nationwide GSM roaming partners – granting AT&T a true monopoly over GSM roaming in the U.S.

T-Mobile's website currently claims that "GSM allows users to roam freely among markets." If the takeover goes forward, this will not be the case. If AT&T is permitted to takeover T-Mobile, AT&T would be the only potential nation-wide GSM roaming partner for competitive carriers. And while the FCC has recently issued data roaming rules that take a common-sense approach to requiring that consumers have access to data roaming, it also calls for business negotiations, which inherently require more than one provider to come to the table. There is little reason to believe that AT&T – equipped with a monopoly on GSM roaming – would do so. Additionally, the FCC's new data roaming rules are, as yet, untested and under threat of legal challenge by Verizon and, perhaps, AT&T.

Most importantly, **the FCC's data roaming rules do not address the technological barriers to roaming that Verizon and AT&T have each erected around their 4G LTE deployments.**

AT&T and Verizon have each leveraged their control over device and infrastructure vendors to create an essentially proprietary band-class in the 700MHz spectrum. Until the FCC's auction of 700 MHz spectrum, all devices built to operate in any specific part of a spectrum band were technologically capable of operating across all paired spectrum within the given band. The only difference between devices was the air interface technology (i.e. CDMA or GSM). In other words, all devices were developed to be interoperable across the entirety of a given block of spectrum (e.g., all Cellular devices are interoperable across the Cellular spectrum and all PCS devices are interoperable across the PCS spectrum).

This is not true for the 4G LTE networks being deployed on the 700 MHz spectrum even though they use a common air interface technology. The 700 MHz spectrum has been fragmented into distinct Band Classes and the two largest holders of 700 MHz spectrum - AT&T and Verizon - have developed and are deploying essentially proprietary LTE networks and devices that work only on their spectrum. Given the enormity of the economic scale of each AT&T and Verizon, these two carriers are the de facto "market" for LTE devices and equipment that operate at 700 MHz. Outside of this "market," it is not economically feasible for any other carrier to obtain LTE equipment or devices to operate in non-AT&T or non-Verizon 700 MHz bands. To the extent competitive carriers can acquire LTE equipment and devices, the cost prohibits anything more than a fractional deployment and the ecosystem lags the AT&T Wireless and Verizon Wireless ecosystems by many months.

Even if it were economically feasible for carriers to obtain LTE equipment and devices in non-AT&T and non-Verizon 700 MHz bands, roaming from one carrier's network to another will not be technologically possible without interoperable devices. The FCC's new data roaming rules do

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not apply to technologically incompatible networks and devices. Therefore, the new data roaming rules will do nothing to assure consumer's ability to roam among the nation's most capable – 4G – networks.

I am not currently aware of any potential conditions that would resolve or mitigate the anti-competitive impact of the proposed takeover on roaming or other result issues. All of the traditional wireless merger conditions would do nothing to mitigate the control a post-merger AT&T and Verizon duopoly would exercise over key inputs to wireless business such as devices, infrastructure equipment, roaming and special access.

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Responses to Questions from Senator Blumenthal

Question #1: What impact do handset exclusivity agreements have on smaller carriers like Cellular South?

Response: Wireless service has evolved from a market where consumers were primarily concerned with attractive monthly plans and a provider's network, to a market where a carrier's wireless devices reign supreme.

Cellular South and other regional and rural carriers have competed with the largest carriers for years on issues such as network quality, network coverage and price. These are all issues that are within our control. If we lose a customer because we don't offer the right plan or because we drop too many calls, that blame falls squarely on our shoulders – and I can and will fix that problem. However, regional and rural carriers are often unable to compete on devices because AT&T and Verizon lock up devices in exclusivity agreements or through other arrangements which ensure the most iconic devices will not reach the subscribers of smaller carriers. Put simply, regional and rural carriers cannot gain access to the latest, cutting-edge devices which puts us in the impossible position of competing in an area that our competitors control.

Focus groups of customers who have left Cellular South for AT&T or Verizon repeatedly say that they are buying the device, not the network and certainly not the company.

Device manufacturers are forced to cater to AT&T and Verizon in order to secure any kind of market share in the U.S. market. Increasing demands for exclusive handset arrangements or other customization arrangements by the largest carriers often strain suppliers' limited resources to the point that smaller carriers are precluded from acquiring the most iconic devices.

Question #2: Would this impact be exacerbated or amplified if this merger were allowed to go through?

Response: The consolidation that would result from AT&T's takeover of Verizon would certainly work to further exacerbate the AT&T-Verizon duopoly's control over all the secondary markets that touch the wireless industry – including device manufacturers.

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QUESTIONS REGARDING SENATE JUDICIARY COMMITTEE HEARING:
"THE AT&T/T-MOBILE MERGER: IS HUMPTY DUMPTY BEING PUT BACK TOGETHER AGAIN?"
FROM SENATOR RICHARD BLUMENTHAL

Questions for Public Knowledge (Gigi Sohn):

1. Please explain why, applying traditional antitrust principles, this merger should be analyzed through the national market approach.

To begin, neither the Department of Justice nor the Federal Communications Commission are bound by any requirement to utilize previous merger market analysis in future mergers. An antitrust review must only properly identify the current geographic market that is impacted by the proposed merger. Thus, the agencies are free to determine, as Public Knowledge believes they should, that this merger should be analyzed through a national wireless market approach.

The proposed merger of AT&T and T-Mobile represents a horizontal merger between national carriers that advertise, sell, and conduct other commercial activities on a national basis and primarily compete with similarly situated national carriers. We have been unable to find evidence that AT&T engages in differentiated pricing and advertising campaigns for specific regions of the country, and even the local retailers AT&T cites in its public interest statement (Radio Shack, Best Buy, and Target) are national chains. Previous merger reviews in the telecommunications market that AT&T has cited have been different in that they were national carriers purchasing smaller regional carriers, while this merger represents a complete transformation of the wireless telecommunications industry into a duopoly market structure.

It is also worth noting that AT&T's opposition to a national market analysis is directly contradictory to AT&T's previous FCC filings (which, as with all such submissions, was made with an affidavit attesting to the truth of the matter stated) during its 2008 merger with regional provider Centennial where AT&T stated that the "*evidence shows that the predominant forces driving competition among wireless carriers operate at the national level*" and that AT&T develops "*its rate plans, features and prices in response to competitive conditions and offerings at the national levels.*"[1] AT&T articulated that the geographic market for mobile services was national in scope as far back as March 2004 during its merger with Cingular where it stated "*the geographic scope of competition in the provision of wireless calling plans should be analyzed as*

[1] Merger of AT&T Inc. and Centennial Communications Corp, Description of Transaction, Public Interest Showing and Related Demonstrations, (released November 21, 2008) https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp;ATTACHMENTS=1N6VJL5K37mPzN1G7L2XKBP7mC5jC50m96ttqVlHZr3GL1cyJSgx!-659400886!-849295342?applType=search&fileKey=843683410&attachmentKey=18355849&attachmentInd=applAttach

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national."[2] Simply put, AT&T wishes for policy makers to believe that the market has "fundamentally" changed while simultaneously arguing that federal regulators must stay the course in hopes of bypassing the substantial antitrust harms the Department of Justice has identified when four competitors become three.[3]

2. What potential is there for job loss as a result of this merger?

The chart below, based off publicly available Form 10-K filings with the U.S. Securities and Exchange Commission (SEC) shows AT&T's legacy of workforce reductions following mergers—a trend that will continue if it acquired T-Mobile. It should be noted that the end of 2010 has been AT&T's most profitable year on record with $19.8 billion for 2010.

End of Year	Employees	Companies Bought Out (Year of Purchase): # of Employees
2010	265410	
2009	281000	Centennial (Purchased in November 2009): 3,100
2008	301000	
2007	310000	Dobson Wireless (Purchased in November 2007): 2,600
2006	302000	BellSouth (Purchased in December 2006): 63,000 Cingular Wireless (Consolidated in December 2006): 64,000
2005	189000	AT&T Corp. (Purchased in November 2005): 47,600
2004 (Formerly SBC)	162000	
2003 (Formerly SBC)	168000	

To date, Public Knowledge has never found, nor has any proponent of the merger provided evidence, that a merger in the telecommunications industry did not result in job loss in the aftermath for the merged entity through job cuts, layoffs, and attrition. AT&T fully admits that there will be redundancies in the AT&T and T-Mobile workforce resulting in workforce reductions but refuses to provide a calculation for Congress. Based off of AT&T's own public interest statement, the company believes it can achieve cost savings of nearly $10 billion in eliminating redundancies in staffing and administration. Public Knowledge believes that AT&T is capable of providing an accurate estimate of intended job cuts but has decided to keep policy makers in the dark. This is a departure from past practices where the number of expected job cuts is intentionally given to shareholders months ahead of regulatory approval to demonstrate cost savings.

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[2] Cingular and AT&T Wireless Public Interest Statement (March 2004) https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp;ATTACHMENTS=PyXyNLwTQNpJPpDY9cjWzc9lQFmBgzQlhKRnFn7zmwjzpJHnlphT!600859641!425962567?attachmentKey=17917140&affn=0179171404013300694756609

[3] Notice of Ex Parte Communication: *Economic Issues in Broadband Competition A National Broadband Plan for Our Future,* GN Dkt. No. 09-51 (released January 4, 2010) http://www.justice.gov/atr/public/comments/253393.htm

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For example, during the merger of AT&T and SBC, CEOs Ed Whitacre and Dave Dorman told investors they intended to eliminate 13,000 jobs, and based off the employment numbers found within AT&T's Form 10K filings with the SEC, the estimation was mostly accurate.[4] In addition, during its merger with Bellsouth, AT&T's chief financial officer stated the company intended to cut up to 10,000 jobs, which again, judging from the Form 10K filings appears to be mostly accurate.[5] Lastly, it is worth recognizing that T-Mobile is actually the only national wireless carrier that increased its employment base over the last four years following the financial industry collapse and Great Recession.

3. Does Public Knowledge agree that pricing in the wireless market has gone down? If not, please explain.

Public Knowledge does not agree that prices for wireless services (data, text, and voice for both residential and business uses) are declining to the degree AT&T has asserted. AT&T often cites a July 2010 Government Accountability Office (GAO) report titled *"Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry"* in an attempt to demonstrate how prices have fallen, but that report only focused on the price for ***voice service*** while ironically also mentioning that *"industry consolidation has made it more difficult for small and regional carriers to be competitive."*[6] In addition, the GAO report cautions that *"industry wide data masks variations in wireless plan prices. A more detailed analysis of prices charged could help better measure competition and efficiency in the market."* In other words, the GAO recognized that mixing the lower prices of T-Mobile (potentially as much as $600 less per year than AT&T) with the higher prices of AT&T is insufficient to provide definitive data on the status of prices dropping due to competition and efficiency gains in the industry.

Furthermore, claims by AT&T on the price "per megabyte" or price "per minute" falling should be met with skepticism by policymakers on whether that truly means consumers are paying less out of pocket. To illustrate how viewing prices specifically through a "per megabyte" or "per minute" lens could actually mask price increases, policy makers should look no further than the recent changes in text message plans AT&T instituted at the beginning of this year when it eliminated its $5 for 200 texts plan and $15 for 1,500 texts plan.[7] Essentially, AT&T customers no longer have the choice to purchase a $5 or $15 plan and now must choose between a $10 for

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4 Cauley, Leslie (2005, February 1). *SBC, AT&T merger to cut 13,000 jobs*. [Online] In USA Today. Retrieved June 8, 2011 from http://www.usatoday.com/money/industries/telecom/2005-02-01-att-sbc-jobs_x.htm

5 Svennson, Peter (2006, March 7). *AT&T-BellSouth merger to disconnect 10,000 jobs*. [Online] In The Seattle Times. Retrieved June 8, 2011 from http://seattletimes.nwsource.com/html/businesstechnology/2002848846_attjobs07.html

6 *GAO Report: Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry* (July 2010) Retrieved from http://www.gao.gov/new.items/d10779.pdf

7 Weinberg, Michael. *AT&T Increases Prices on Text Messaging In the Name of Streamlining*. Retrieved June 8, 2011, from http://www.publicknowledge.org/blog/att-increases-prices-text-messaging-name-stre

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1,000 texts and $20 for unlimited text message plan. Yes, consumers can now have more texts at a reduced "per text" cost, but every subscriber and would-be subscriber of $5 text plans (and who use less than 200 texts) effectively had their costs doubled while 1,500 text message plan customers received a 33 percent increase in cost. Both of these increases are suspect given that text messaging costs the wireless carrier industry ***virtually nothing*** to provide as a service and is in fact included on an unlimited basis with all of T-Mobile's plans.[8]

Lastly, policy makers should recognize that not all price drops are the sole result of competition but rather can be related to advances in technology that lower costs. For example, the Cray 2 supercomputer of 1985 now has the same processing power as Apple's hand held tablet iPad 2.[9] As a matter of price, the Cray 2 cost about $17 million, and the iPad 2 costs $500.[10] Given that current wireless services directly benefit from reduced costs in hardware, we note that the price of current wireless services are not at all reflective of the improvements and reductions in costs that both technology gains and competition would bring to consumers. Upon further inspection, a recent analysis by NoTakeOver.org (a coalition of consumer groups and industry opposed to the merger) has shown that the price for wireless service has essentially flat lined as the telecommunications industry began to aggressively merge ten years ago while consumer costs in other high-tech sectors have dropped precipitously by comparison (chart on following page).[11]

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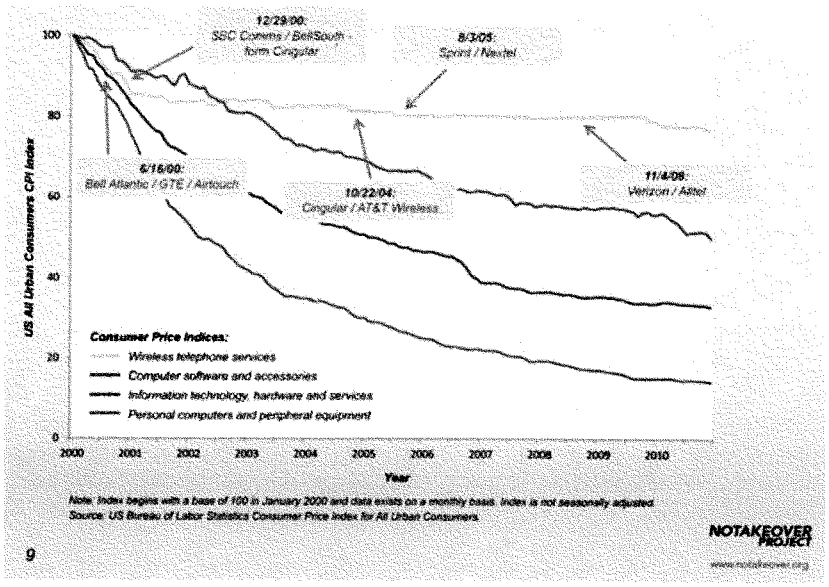
[8] Stross, Randall (2008, December 26). What Carriers Aren't Eager to Tell You About Texting. [Online] In The New York Times. Retrieved June 8, 2011 from http://www.nytimes.com/2008/12/28/business/28digi.html?_r=2&partner=rss&emc=rss

[9] Markoff, John (2011, May 9). The iPad in Your Hand: As Fast as a Supercomputer of Yore. [Online] In The New York Times. Retrieved June 7, 2011 from http://bits.blogs.nytimes.com/2011/05/09/the-ipad-in-your-hand-as-fast-as-a-supercomputer-of-yore/

[10] Professor Joel Adams' Research/Scholarly Projects - Microwulf: Cost Efficiency http://www.calvin.edu/~adams/research/microwulf/PPR/

[11] No Take Over Project. *'Falling Prices' Rebuttal How AT&T is manipulating the data.* Retrieved from http://www.notakeover.org/sites/default/files/ATT-Falling-Prices-Rebuttal.pdf

Prices in Other Technology Industries, 2000-2010



4. Some consumer groups contend that consumers are constrained from "voting with their feet" because a consumer who wishes to switch carriers is often required to pay an early termination fee in the hundreds of dollars. Do these early termination fees serve any business purpose, or are they merely a barrier that restricts consumer choice.

Carriers justify early termination fees (ETF) by claiming that they subsidize the purchase of a handset. These carriers typically run promotions, offering particular models at a specific price but requiring customers to sign a contract binding them exclusively to the company for a designated amount of time (typically two years). However, the practice is not transparent for consumers and evidence presented in a 2008 state court ruling in California demonstrated that previous ETFs were in fact illegal due to the fact that the carriers were extracting fees (up to tens of millions of dollars) that were well above the actual subsidization they provided customers.[12] Given this history, Public Knowledge believes that ETFs must undergo strict federal scrutiny as it is very likely they do not serve the business purpose carriers have asserted but rather are simply a way to reduce customer churn to stifle competition and increase profits.

[12] Reardon, Marguerite (2008, July 31). *California judge rules Sprint's early termination fees illegal.* [Online] In CNET News. Retrieved June 7, 2011 from http://news.cnet.com/8301-1035_3-10004049-94.html

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SEN. KOHL'S FOLLOW UP QUESTIONS FOR THE RECORD FOR
HEARING ON "THE ATT/T-MOBILE MERGER: IS HUMPTY DUMPTY BEING PUT BACK TOGETHER AGAIN?"
For Gigi Sohn

1. Do you believe most consumers view AT&T and T-Mobile as direct competitors? Why or why not?

Yes, Public Knowledge believes that most consumers view AT&T and T-Mobile not only as direct competitors but as viable alternatives for similar services. Both companies focus their efforts towards each other in advertising, price, and coverage on a national level. During AT&T's merger with Centennial, AT&T cited T-Mobile as its competitor a number of times throughout its public interest filing.[1]

However, an increasing number of consumers are making their choice of wireless provider based on the handset options their carrier provides, restricting their options of wireless providers and shrinking the competitive landscape. For example, only two national carriers (AT&T and Verizon) provide access to Apple's iPhone 4 handset as a result of exclusive contracts. This phone in particular is one of the few handsets with a fiercely dedicated customer base that can only choose between AT&T and Verizon through normal means. Ironically, some of the most technically sophisticated consumers go through great lengths to leave AT&T's network and bring their iPhone onto T-Mobile's network by unlocking their handset through a process known as "jailbreaking" (a practice deemed permissible by the U.S. Copyright Office).[2]

2. Should this merger be approved, should we expect consumers to pay more as the number of national cell phone competitors declines from four to three, particularly with the loss of T-Mobile as the price leader?

T-Mobile customers will pay more for their wireless service if they are acquired by AT&T, and consumers across the wireless industry will pay more with the removal of T-Mobile's low-cost plans from the marketplace. AT&T currently receives 17 percent more revenue per customer than T-Mobile and will need to act accordingly to retain its higher returns.[3] In addition, a Consumer Reports price analysis survey of voice and data plans found that today T-Mobile

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[1] Merger of AT&T Inc. and Centennial Communications Corp, Description of Transaction, Public Interest Showing and Related Demonstrations, (released November 21, 2008) https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp;ATTACHMENTS=1N6VJL5K37mPzN1G7L2XKBP7mC5jC50m96ttqVlHZr3GL1cyJSgx!-659400886!-849295342?applType=search&fileKey=843683410&attachmentKey=18355849&attachmentInd=applAttach

[2] Cohen, Adam (2010, July 28). *The iPhone Jailbreak: A Win Against Copyright Creep.* [Online] In Time. Retrieved June 6, 2011 from http://www.time.com/time/nation/article/0,8599,2006956,00.html#ixzz1On4yLO1H

[3] *AT&T and T-Mobile USA: The Future of Mobile Broadband* (2011) Retrieved from http://www.mobilizeeverything.com/documents/Factsheet.pdf

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customers pay ***between $15 to $50 less a month*** for their plans than they would with comparable plans from AT&T.[4] When questioned on the fate of the voice and data plans of T-Mobile's customers during the May 11th hearing, AT&T's CEO committed to retaining prices should customers adopt "comparable" handsets, but currently AT&T and T-Mobile mutually carry only 13 devices out of 145. Lastly, with increased market power and the elimination of T-Mobile and foreclosure on new competition with the consolidation of spectrum, we see no reason why AT&T will suddenly adopt T-Mobile's aggressive pricing structure. Instead, it would be relieved of the downward price pressure that T-Mobile provided in the wireless industry. It is for these reasons why the Department of Justice starts from the "*presumption that in highly concentrated markets consumers can be* ***significantly harmed*** *when the number of strong competitors declines from four to three, or three to two.*"[5]

3. AT&T's FCC filing argues that T-Mobile is a very weak company, with "capacity constraints", facing "spectrum exhausts in a number of markets" and "no clear path to effective, economical deployment of LTE," the next generation of cell phone service. Reading this filing, it is not an exaggeration to say it portrays T-Mobile as on the verge of failure. Do you think the situation is as dire for T-Mobile as AT&T portrays it? Could T-Mobile continue as a viable competitor without this deal?

Public Knowledge does not believe that T-Mobile is on the verge of failure or qualifies as a "failing firm" as antitrust law has been interpreted in the past. In order to qualify as a "failing firm" where leeway to anticompetitive harms would be granted, T-Mobile would have to be in imminent danger of financial failure, would have to been unable to reorganize under chapter 11 of the Bankruptcy Act, and would have to been unsuccessful in good-faith efforts to find a viable alternative that would not result in anticompetitive harms. These exceptions were created to recognize the fact that if a company was to disappear from the market in its entirety regardless of a merger, then its purchase would result in very little change in the market. That is clearly not the case here as T-Mobile has remained profitable (and is still profitable today) even through the years of the financial crisis and in fact was the only national carrier that increased its employment base. It is ironic that AT&T essentially asserts that lower profits are grounds for consolidation with T-Mobile, yet simultaneously advocates that Sprint is a competitor despite having a ***$29.5 billion loss*** in 2008 and not yet having a profitable quarter since its merger with Nextel.[6]

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[4] Blyskal, Jeff (2011, April 8). *CR analysis: T-Mobile is cheaper than AT&T.* [Online] In Consumer Reports. Retrieved April 25, 2011 from http://news.consumerreports.org/electronics/2011/04/cr-analysis-t-mobile-is-cheaper-than-att.html

[5] Notice of Ex Parte Communication: Economic Issues in Broadband Competition A National Broadband Plan for Our Future, GN Dkt. No. 09-51 (released January 4, 2010) http://www.justice.gov/atr/public/comments/253393.htm

[6] Holson, Laura (2008, February 29). *Sprint Nextel Posts $29.5 Billion Loss.* [Online] In The New York Times. Retrieved June 6, 2011 from http://www.nytimes.com/2008/02/29/technology/29sprint.html

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As for the fate of T-Mobile without this merger, we are very confident that T-Mobile will be highly sought after by a number of industry players when this merger is blocked, presuming that Deutsche Telekom will continue to seek its sale. Potential purchasers of T-Mobile could be a company within the cable industry or wireline phone industry, both of which have demonstrated high interest in gaining a foothold in wireless services. It is also possible that, much in the same way as Deutsche Telekom purchased Voicestream (which became T-Mobile), another international company can purchase a stake in T-Mobile. This confidence is not based on speculation, but rather supported by the historical actions of each of these sectors, whether it was the wireline industry's participation in the 700 MHz spectrum auctions, the launching of Clearwire (a jointly owned venture by Sprint, Comcast, Time Warner Cable, Intel, Google, and Bright House Networks), or British company Vodafone's decision to obtain a 45% stake in Verizon Wireless. It is also possible that T-Mobile will be strengthened enough from AT&T's $6 billion breakup fee ($3 billion in cash, $2 billion in spectrum assets, and $1 billion in roaming agreements) to the point where it can more effectively compete as a stand-alone company. Ultimately, Deutsche Telekom has every legal right to exit the U.S. market as long as that sale does not violate antitrust law.

4. AT&T argues that we need not worry about the T-Mobile merger because of the presence of smaller, local competitors like Cellular South. But many of the smaller, local cell phone companies do not have access to the most in-demand "smartphones," for example the Apple iPhone. If these companies do not have access to the devices consumers most demand, can they truly be considered competitors to the four large national cell phone companies?

Public Knowledge thinks that in order for regional carriers to be full-fledged competitors to the national carriers, they need the ability to compete on all levels rather than on some levels. Given that small providers are unable to gain access to the most popular devices, we believe prohibiting the practice outright while ensuring device interoperability would improve the competitive stance of regional carriers tremendously as more consumers migrate to smartphones. As the largest two national carriers continue to gain market share, their market power capacity to lock popular devices or an entire product line of devices (much like Apple) into exclusive contracts continues to grow leaving smaller regional players at a growing disadvantage to not only to retain their current customers, but more importantly to attract new customers.

Currently, nearly one out of three wireless consumers (approximately 100 million Americans) owns a smartphone. According to 2009 polling on consumer preferences conducted by Nielson (chart on following page), the number one factor for consumers when determining their choice in

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wireless carrier is price as well as a number of factors related to price, reflecting the current economic situation of high unemployment and recovery from the financial industry collapse.[7]

Factors For Choosing A Wireless Carrier		
RANK	3rd Quarter 2006	1st Quarter 2009
1	Price	Price
2	Network Quality	Family Plan
3	Reputation / Recommendation	Payment Option
4	Previous experience with the operator	Free In-Network Calling
5	Family Plan	Network Quality
6	Payment Options	Reputation / Recommendation
7	Specific Phone	Specific Phone
8	Customer Service	Previous experience with the operator
Source: The Nielsen Company		

While the specific availability of a phone is ranked seventh among primary factors that drive wireless consumer choices on an industry wide basis, further inspection into the data reveals some critical findings. Generally the percentage of consumers who factor in what specific phone is available has increased from 2.9 percent in 2006 to 6.4 percent in 2009 representing an increase of an additional 10 million wireless customers who value what specific phone is available to them. When separating AT&T from the other carriers, the data reveals that 23 percent of new AT&T customers value the specific phone as important compared to 5 percent for the remainder of the industry. It is worth noting that in 2009, AT&T still retained the exclusivity contract with Apple leading Nielson analyst Roger Entner to conclude that the iPhone was having an effect on consumer choice with carriers completely to AT&T's benefit.[8]

5(a). AT&T argues that cell phone prices have fallen sharply over the last ten years. Does falling prices in the past mean we don't have to worry about the consequences of this merger?

(b) The available statistics on cell phone pricing mainly refer to voice pricing. But consumers increasingly rely on cell phones to connect to the Internet, so the price of data plans is now critical. Are you worried that data prices might increase in the future after the merger?

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[7] Entner, Roger. *When Choosing a Carrier, Does the iPhone Really Matter?*. Retrieved June 8, 2011, from http://blog.nielsen.com/nielsenwire/consumer/when-choosing-a-carrier-does-the-iphone-really-matter/#more-14381

[8] Hansell, Saul (2009, August 10). *What Do Cellphone Users Want Most? Cheap Service*. [Online] In The New York Times. Retrieved June 7, 2011 from http://bits.blogs.nytimes.com/2009/08/10/what-do-cellphone-users-want-most-cheap-service/

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Public Knowledge does not believe that prices for wireless services (data, text, and voice for both residential and business uses) are declining to the degree AT&T has asserted. AT&T often cites a July 2010 Government Accountability Office (GAO) report titled *"Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry"* in an attempt to demonstrate how prices have fallen, but that report only focused on the price for ***voice service*** while ironically also mentioning that "*industry consolidation has made it more difficult for small and regional carriers to be competitive.*"[9] In addition, the GAO report cautions that "*industry wide data masks variations in wireless plan prices. A more detailed analysis of prices charged could help better measure competition and efficiency in the market.*" In other words, the GAO recognized that mixing the lower prices of T-Mobile (potentially as much as $600 less per year than AT&T) with the higher prices of AT&T is insufficient to provide definitive data on the status of prices dropping due to competition and efficiency gains in the industry.

Furthermore, claims by AT&T on the price "per megabyte" or price "per minute" falling should be met with skepticism by policymakers on whether that truly means consumers are paying less out of pocket. To illustrate how viewing prices specifically through a "per megabyte" or "per minute" lens could actually mask price increases, policy makers should look no further than the recent changes in text message plans AT&T instituted at the beginning of this year when it eliminated its $5 for 200 texts plan and $15 for 1,500 texts plan.[10] Essentially, AT&T customers no longer have the choice to purchase a $5 or $15 plan and now must choose between a $10 for 1,000 texts and $20 for unlimited text message plan. Yes, consumers can now have more texts at a reduced "per text" cost, but every subscriber and would-be subscriber of $5 text plans (and who use less than 200 texts) effectively had their costs doubled while 1,500 text message plan customers received a 33 percent increase in cost. Both of these increases are suspect given that text messaging, as the Chairman has noted, costs the wireless carrier industry ***virtually nothing*** to provide as a service and is in fact included on an unlimited basis with all of T-Mobile's plans.[11]

Lastly, policy makers should recognize that not all price drops are the sole result of competition but rather can be related to advances in technology that lower costs. For example, the Cray 2 supercomputer of 1985 now has the same processing power as Apple's hand held tablet iPad 2.[12]

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[9] *GAO Report: Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry* (July 2010) Retrieved from http://www.gao.gov/new.items/d10779.pdf

[10] Weinberg, Michael. *AT&T Increases Prices on Text Messaging In the Name of Streamlining.* Retrieved June 8, 2011, from http://www.publicknowledge.org/blog/att-increases-prices-text-messaging-name-stre

[11] Stross, Randall (2008, December 26). *What Carriers Aren't Eager to Tell You About Texting.* [Online] In The New York Times. Retrieved June 8, 2011 from http://www.nytimes.com/2008/12/28/business/28digi.html?_r=2&partner=rss&emc=rss

[12] Markoff, John (2011, May 9). The iPad in Your Hand: As Fast as a Supercomputer of Yore. [Online] In The New York Times. Retrieved June 7, 2011 from http://bits.blogs.nytimes.com/2011/05/09/the-ipad-in-your-hand-as-fast-as-a-supercomputer-of-yore/

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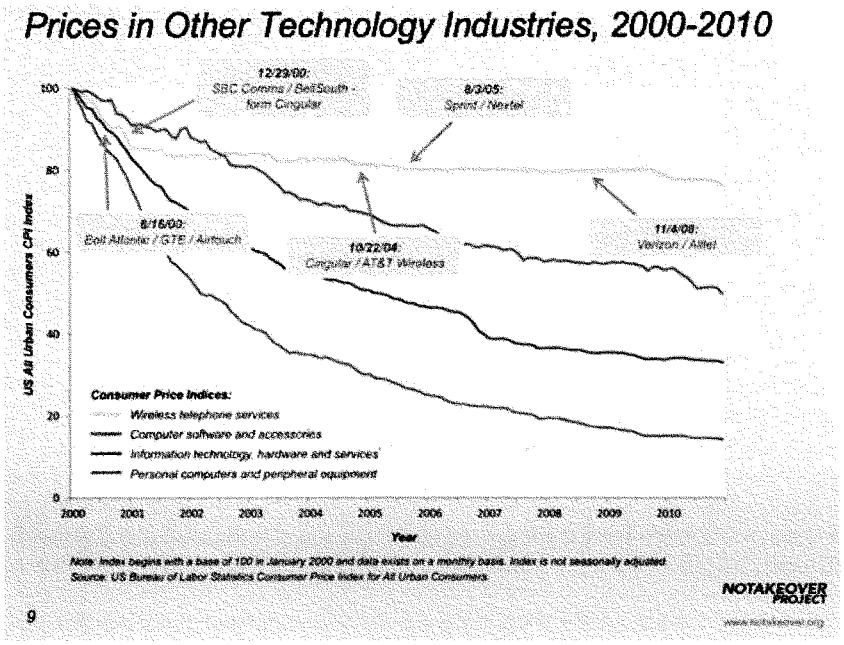
As a matter of price, the Cray 2 cost about $17 million, and the iPad 2 costs $500.[13] Given that current wireless services directly benefit from reduced costs in hardware, we note that the price of current wireless services are not at all reflective of the improvements and reductions in costs that both technology gains and competition would bring to consumers. Upon further inspection, a recent analysis by NoTakeOver.org (a coalition of consumer groups and industry opposed to the merger) has shown that the price for wireless service has essentially flat lined as the telecommunications industry began to aggressively merge ten years ago while consumer costs in other high-tech sectors have dropped precipitously by comparison (chart on following page).[14]



6. Two years ago our Antitrust Subcommittee conducted an investigation and then a hearing into price increases for text messaging on all four major national cell phone companies. The price of text messaging on a per message basis doubled in the prior two years, rising first from 10 to 15 cents per message, then from 15 to 20 cents, on all four

[13] Professor Joel Adams' Research/Scholarly Projects - Microwulf: Cost Efficiency http://www.calvin.edu/~adams/research/microwulf/PPR/

[14] No Take Over Project. *'Falling Prices' Rebuttal How AT&T is manipulating the data.* Retrieved from http://www.notakeover.org/sites/default/files/ATT-Falling-Prices-Rebuttal.pdf

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carriers at around the same time. This price rise was all the more notable because the cost of delivering text messages had not risen and indeed was negligible – less than a penny a message. While we didn't find any evidence of outright collusion, these price rises seemed to us to be a warning sign of a lack of competition in the highly concentrated cell phone market.

Does the experience of these parallel text messaging price increases hold any lessons for us today in considering this merger? If the cell phone companies engaged in parallel price increases when there were four competitors, won't it be even easier for them raise prices when there are only three?

As a general rule, dramatic increases in concentration such as those found here increase the risk of coordinated action. In addition, the risk of coordinated action is further enhanced by the similarity between the post-transaction AT&T and the second largest firm, Verizon. Like AT&T, Verizon is a vertically integrated firm, with significant market share in special access markets, residential DSL, enterprise services, and the MVPD (subscription TV) market. Like AT&T, Verizon has sought to control the handset and application market, has resisted entering into reasonable roaming agreements absent a Federal Communications Commission mandate,[15] and has insisted on freedom to manage its network in an anticompetitive fashion. Unsurprisingly, although Verizon and AT&T compete for customers, the two firms have adopted similar strategies of seeking to target high-end customers. Post-acquisition, with the maverick T-Mobile eliminated, it is logical to assume that AT&T and Verizon wireless will act in a coordinated fashion to avoid potentially disruptive competition or avoid engaging in "price wars" that would undermine their profitability. Further, the fact that AT&T and Verizon have remained in lockstep on a number of regulatory issues bearing on their future business models likewise highlights the danger of future coordinated effects.

There is evidence that AT&T and Verizon already coordinate on price increases in today's market. As was noted in a letter submitted to the Chairman and Ranking Member Lee by Free Press, "*In early 2010, Verizon implemented an effective price increase by forcing all customers of feature and smartphones to purchase a data plan. AT&T shortly followed suit. Also in 2010, AT&T eliminated its unlimited data plan for smartphones, forcing new customers in capped plans with overage charges.*"[16]

Merger critics have argued that permitting the merger of AT&T and T-Mobile will create an effective duopoly with the surviving competitors unable to exercise significant competitive pressure. As the HHI analysis shows, this concern cannot be dismissed as idle speculation. When two firms control over 80% of the market, particularly a market with significant barriers to entry, there is a significant danger of coordinated effects. Where, as here, history supports this

[15] Indeed, Verizon is challenging the validity of the FCC's data roaming rules in the US Court of Appeals for the District of Columbia Circuit

[16] (2011, May 10). *Letter to Chairman Herb Kohl and Ranking Member Mike Lee from Free Press*. Retrieved from http://www.freepress.net/files/Free_Press_May_2011_Antitrust_Letter_ATT_TMobile.pdf

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inference, policy makers must regard the likelihood of coordinated effects as approaching certainty.

7. One justification for this merger offered by AT&T is that it is running out of capacity in major cities like New York and San Francisco. It claims that the explosive growth in advanced "4G" services used by consumers to connect their smartphones to the Internet is swamping their networks. So it says it needs the T-Mobile spectrum in order to offer its customers high quality cell phone service. What is your view of that claim? Isn't it true that the use of smartphones and data heavy applications is undergoing explosive growth, and AT&T needs to keep up with this ever increasing demand for spectrum?

While there has been an explosive growth in wireless data use by consumers across the wireless industry, the problems AT&T is encountering in New York and San Francisco and other urban markets are entirely of AT&T's own doing. By comparison, Verizon has fewer spectrum holdings compared to AT&T and has more customers, but it has clearly stated that it does not envision having capacity issues until 2015 at the earliest.[17] It is also worth noting that Verizon has invested more in wireless infrastructure than AT&T both as a matter of total funding and as a percentage of the company's total revenues over the last three years. AT&T can simply utilize the $39 billion that it is committing to European investment with its proposed merger with T-Mobile and invest that funding here in America to modernize its infrastructure and improve its network.

AT&T still has significant amounts of unused spectrum capacity available and has not taken full advantage of technologies that would make more efficient use of its existing spectrum. There is a very clear difference between spectrum assets and capacity. For example, one wireless tower serving a city block must provide connections to all users within that city block. However, if a carrier built two towers for the same city block (requiring additional investment) it effectively has doubled its capacity by splitting the users while retaining the same amount of spectrum. This trend of smaller wireless sites for greater spectrum capacity is the future for the wireless industry and is already occurring. But AT&T is not making use of these "femtocells" and "picocells" to the same extent that other carriers are. Buying T-Mobile's towers simply is a means for AT&T to bypass years of underinvestment by increasing the number of available towers. That being said, Public Knowledge is skeptical that combining two congested networks would result in substantial gains in spectrum capacity at all.

Furthermore, the solution to increased mobile data demand on networks is not simply to consolidate spectrum assets into fewer hands. If this was the solution, then eventually there should be a monopoly controlling all available spectrum for wireless broadband. Rather, Public

[17] Final Transcript Q1 2011 Verizon Earnings Conference Call, Retrieved May 5, 2011, from http://www22.verizon.com/investor/investor-consump/groups/events/documents/investorrelation/event_ucm_1_trans.pdf

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Knowledge believes AT&T simply needs to increase its network investment (given that it has $39 billion available) to increase the reuse of spectrum in smaller cell sites through a combination of unlicensed and licensed spectrum. Currently, wireless carriers are aggressively "offloading" data to local Wi-Fi networks utilizing unlicensed spectrum. Ironically, unlicensed spectrum has been historically opposed by the wireless industry in favor of additional auctions and consolidation, but now serves as the wireless broadband backbone for all of the national carriers and the preferred means of providing wireless broadband access to smartphones. In fact, the most recent data shows that in the third quarter of 2010, AT&T customers made a total of 106.9 million connections on AT&T's U.S. Wi-Fi network, alleviating significant congestion on AT&T's wireless network.[18]

Separate from network capacity is whether AT&T is using its spectrum assets efficiently or at all in many cases. Currently, AT&T has not yet built out arguably the most valuable spectrum in the top 21 markets, the 700 MHz band, which is "beachfront" spectrum reclaimed from broadcasters after the transition to digital television.[19] The company also supports legacy and inefficient networks, and it has been reported that potentially ***70 percent to 90 percent of AT&T's current spectrum capacity is unused*** as a result.[20] The company "divide[s] its spectrum portfolio among three different generations of technology...."[21], but it need not do so. While the company is behind the curve on efficiency today by its own choice of under investing for greater quarterly profit (the highest among all wireless carriers), AT&T is also the most capable with its superior revenues and profits to aggressively migrate its users to modernize its network and deploy its network. Indeed, AT&T will be compelled to do so if this merger is blocked if it wishes to remain competitive.

Such a modernization process requires difficult decisions and long term planning, but every single wireless provider will be forced to confront this challenge, and Sprint has demonstrated that even with substantial hurdles it can be done. Today, Sprint is shutting down its legacy networks and focusing on a strong migration to next generation technology.[22] Sprint did not achieve this change by continually purchasing additional networks and spectrum to bring into a dysfunctional system. Instead, Sprint focused on investing in upgrading its own network and

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[18] PR Newswire (2010, October 22) *Third-Quarter Wi-Fi Connections on AT&T Network Exceed Total Connections for 2009* [Press release]. Retrieved from http://www.prnewswire.com/news-releases/third-quarter-wi-fi-connections-on-att-network-exceed-total-connections-for-2009-105520733.html

[19] Reardon, Marguerite (April 29, 2011). *Is AT&T a wireless spectrum hog?* [Online] In CNet News. Retrieved May 6, 2011 from http://news.cnet.com/8301-30686_3-20058494-266.html

[20] Burnstein, Dave (March 22, 2011). *70-90% Of AT&T Spectrum Capacity Unused* [Online] In DSLPrime.com Retrieved April 25, 2011 from http://www.dslprime.com/a-wireless-cloud/61-w/4193-70-90-of-atat-spectrum-capacity-unused

[21] AT&T Public Interest Statement at 22.

[22] Stephen Lawson, "Sprint's IDEN Finally Heading For Sign Off," PC World (December 7, 2010), available at: http://www.pcworld.com/businesscenter/article/212782/sprints_iden_finally_headed_for_signoff.html

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internal processes. Competitive pressure—of a type that would be severely reduced with the elimination of T-Mobile from the market—drove Sprint to innovate and improve. Allowing AT&T to merge with T-Mobile will do little to change the reality that AT&T's only real path forward is to focus on consolidating its network protocols, not to allow inefficient practices to spill over into larger and larger swaths of spectrum.

8. I understand that you oppose the merger and believe that it should be blocked. However, if the Justice Department and FCC do not decide to block it, are there any conditions that you think they should impose in order to approve the merger?

Public Knowledge does not see how this merger can be conditioned in a manner that addresses the antitrust harms it creates. This is because the harms come from the creation of a wireless duopoly and conditions can only apply to the merged entity, and not to the other duopoly carrier, Verizon. Should the wireless market become a duopoly, Public Knowledge as an organization will need to retool its advocacy from improved competition policy designed for a competitive wireless market to advocating regulations meant for a wireless duopoly reminiscent of the 1980s.

Moreover, not only is the government is ill-equipped to enforce the many conditions that this merger would require, AT&T has a poor history of compliance. For example, it recently entered into a $2 million civil settlement with the Department of Justice because it failed to comply with the Dobson Consent Decree.[23]

Lastly, no divestiture will permit entry by a new participant. The best divestiture would do is increase the ability of surviving competitors to compete effectively, a result that increases market concentration overall and is therefore traditionally regarded as inadequate. Indeed, existing market concentration has generally meant that the dominant players, AT&T and Verizon, have captured the divested licenses intended to promote competition.[24] And, in any event, any divestiture sufficient to mitigate the harms of increased concentration would be so significant that they would effectively eliminate any of the alleged merger benefits.

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[23] Justice Department Settles Civil Contempt Claim Against AT&T Inc., Jan. 14, 2009, http://www.justice.gov/atr/public/press_releases/2009/241435.htm

[24] Christopher Stern, Cingular to Sell Cellular Spectrum, WASHINGTON POST, May 26, 2004, http://www.washingtonpost.com/wp-dyn/articles/A55682-2004May25.html; Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of License and Authorizations, *Memorandum Opinion & Order*, 19 FCC Rcd 21,522 ¶ 141 (2004); T-Mobile USA to End Network Venture with Cingular and Acquire California/Nevada Network and Spectrum, May 25, 2004, http://newsroom.t-mobile.com/articles/t-mobile-cingular.

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Follow-up Questions Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,

Hearing On "The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?"
May 11, 2011

Questions to ALL WITNESSES:

1) Will consumers benefit from AT&T's acquisition of T-Mobile?

No, consumers will not benefit from the merger but instead will see higher prices, less innovation, and less competition in wireless telecommunications. As for the harms consumers will encounter as a result of this merger, see my response to question #3.

2) In what ways might AT&T's acquisition of T-Mobile benefit consumers?

Public Knowledge does not foresee any specific consumer benefits from the merger of AT&T and T-Mobile, because ***all*** the benefits AT&T says will result from the merger can be achieved without the merger. AT&T today has the capability to deploy wireless broadband networks in rural America; it simply has chosen not to deploy in order to seek higher profits in heavily populated urban markets. This merger does not change the fundamental reasoning national wireless carriers avoid rural deployment. AT&T is also able to improve its capacity and network quality by investing more of its profits back into its network and using new technologies that increase spectrum capacity, and it does not need T-Mobile's infrastructure to begin that process.

3) In what ways might AT&T's acquisition of T-Mobile harm consumers?

AT&T's merger with T-Mobile will harm consumers through increased prices, reduced innovation, and a substantial reduction in consumer choice as the industry consolidates into a wireless duopoly. The merged company would control about 44% of the postpaid wireless market and two companies (the post merger AT&T and Verizon) would control nearly 80% of the market. The Department of Justice already maintains a "*presumption that in highly concentrated markets consumers can be* ***significantly harmed*** *when the number of strong competitors declines from four to three, or three to two.*"[1] This would be the fate of the wireless industry if AT&T is granted approval in taking over T-Mobile, a company that consumers currently rate more satisfying than AT&T.[2].

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[1] Notice of Ex Parte Communication: Economic Issues in Broadband Competition A National Broadband Plan for Our Future, GN Dkt. No. 09-51 (released January 4, 2010) http://www.justice.gov/atr/public/comments/253393.htm

[2] Reynolds, Paul (2011, April 11). *T-Mobile beats AT&T in CR satisfaction survey.* [Online] In Consumer Reports. Retrieved April 25, 2011 from http://news.consumerreports.org/electronics/2011/04/t-mobile-beats-att-in-cr-satisfaction-survey.html

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T-Mobile currently maintains the role of a low-priced maverick in the national wireless marketplace and has kept prices in check. In a recent letter to the House Energy and Commerce Committee and the Senate Commerce Committee, Consumers Union recently stated that a Consumer Reports "price analysis survey of the voice and data plans available from AT&T and T-Mobile demonstrates that T-Mobile wireless plans typically ***cost $15 to $50 less per month than comparable plans from AT&T.***"[3] The elimination of T-Mobile will reduce the incentive for the remaining national wireless carriers to compete on lower prices. In fact, higher bills are guaranteed for T-Mobile customers who will eventually be phased out of the low cost plans they originally adopted. When questioned on the fate of the voice and data plans of T-Mobile's customers during the May 11th hearing, AT&T's CEO committed to retaining prices should customers adopt "comparable" handsets, but currently AT&T and T-Mobile mutually carry only 13 devices out of the 85 devices AT&T currently carries and the 60 devices with T-Mobile.[4]

Regional providers that compete with AT&T on price and rely on a GSM 3G networks will be forced to negotiate roaming agreements with a monopoly partner as AT&T and T-Mobile are the only two national GSM providers.[5] Such an environment will lead to higher costs for regional and local GSM providers because they will either have to pass on monopoly rates for roaming to their customers or forgo the expanded coverage their customers expect from their wireless service. The creation of a GSM monopoly has even raised international concerns from countries such as Japan[6] and New Zealand[7], and from international carriers such as Vodafone, the minority partner in Verizon Wireless.[8] While the FCC has recently mandated data roaming on a commercially reasonable basis (a definition that is difficult to judge in a monopoly situation), its decision is currently being challenged in court by Verizon and if struck down would allow AT&T to outright withhold national coverage, cutting off access to millions of Americans who reside in mostly rural areas such as Vermont.

A dramatic increase in market power for AT&T threatens innovation in the wireless handset market through its GSM monopoly and unmatched market share. Wireless carriers enjoy substantial leverage over handset manufacturers by acting as a gateway to their customer base. It has been reported that even Apple, the world's largest technology company, has had to consistently fight with AT&T over what innovative features would be allowed for consumers. Such features include how and when YouTube would function on its network, video calling (which is allowed over T-Mobile's network, but only on Wi-Fi on AT&T's network), and

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[3] Blyskal, Jeff (2011, April 8). *CR analysis: T-Mobile is cheaper than AT&T.* [Online] In Consumer Reports. Retrieved April 25, 2011 from http://news.consumerreports.org/electronics/2011/04/cr-analysis-t-mobile-is-cheaper-than-att.html

[4] Segan, Sascha (2011, May 3). *My Letter to the FCC About AT&T-Mobile: Time to Submit Yours.* [Online] In PC Magazine. Retrieved June 7, 2011 from http://www.pcmag.com/article2/0,2817,2384729,00.asp

[5] Rural Cellular Association. (2011). *RCA Opposes AT&T Acquisition of T-Mobile* [Press release]. Retrieved from http://rca-usa.org/press/rca-press-releases/rca-opposes-att-acquisition-of-t-mobile/914758

[6] *Comments of Japan Communicatians Inc. and Communications Security and Compliance Technologies, Inc.* WT Docket No. 11-65 http://fjallfoss.fcc.gov/ecfs/document/view?id=7021681768

[7] *New Zealand Ministry of Economic Development.* WT Docket No. 11-65 http://fjallfoss.fcc.gov/ecfs/document/view?id=7021675577

[8] *Vadafone Group.* WT Docket No. 11-65 http://fjallfoss.fcc.gov/ecfs/document/view?id=7021684736

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tethering the device.[9] Apple's primary leverage was its ability to offer the iPhone on other carriers, such as T-Mobile.[10] However, should the market become a duopoly, handset innovators will be forced to heed the demands of AT&T and Verizon. If Apple encountered problems innovating in a less concentrated market, the prospects of smaller technology companies who want to bring new ideas to consumers in a post–merger market are grim. The situation is even worse for GSM handset manufacturers who must contend with a monopoly.

Lastly, the elimination of T-Mobile also will substantially reduce consumer choice in wireless carriers, freeing up AT&T to increase prices and continue to under-invest in its network. With the consolidation of T-Mobile's spectrum, no company can enter the market in the same way as T-Mobile to discipline prices, representing an increase in market power for AT&T. Further compounding this problem, Public Knowledge believes that a merger between AT&T and T-Mobile will set the industry on a path where companies either merge with AT&T or Verizon or be crushed by the vertically integrated duopoly. For these reasons and more, Public Knowledge believes that this merger must be blocked.

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[9] Vogelstein, Fred (July 19, 2010). *Bad Connection: Inside the iPhone Network Meltdown* [Online] In WIRED. Retrieved April 25, 2011 from http://www.wired.com/magazine/2010/07/ff_att_fail/

[10] T-Mobile has shown itself to be a "maverick" operator—for example, by offering the unlocked Google Nexus One phone. This behavior has compelled other carriers to adopt more consumer-friendly policies. Without its presence in the maretplace, consumers could lose some of the flexibility they have come to expect from current-generation smartphones.

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Senator Mike Lee
Questions for the Record
Gigi Sohn, Public Knowledge

1. As I stated in my opening remarks, I believe that the heart of healthy competition is consumer welfare. As a consumer advocate, you are well-positioned to speak to that issue specifically.

a. What are the anticipated effects on consumer welfare as you see them?

Public Knowledge does not believe that this merger provides any benefits to consumers. Rather, it is in violation of antitrust law as it will raise prices, substantially reduce competition, reduce innovation, and transform the wireless industry into a duopoly. As discussed in my answer to b. below, every benefit that AT&T has associated with this merger (97 percent 4G coverage and greater network capacity) can be accomplished without removing a lower-cost "maverick" competitor and therefore are not merger-specific benefits. If approved, many of the competition policies Public Knowledge will be ineffective as only two companies will eventually remain. When this occurs, it will be necessary to revisit past regulations designed for a duopoly reminiscent of the 1980s.

b. Doesn't this merger provide the opportunity for consumers to experience a more robust wireless network, with better coverage and faster data speeds, than could be accomplished by either of these companies on their own?

Public Knowledge does not foresee any specific consumer benefits from the merger of AT&T and T-Mobile, because ***all*** the benefits AT&T says will result from the merger can be achieved without the merger. AT&T today has the capability to deploy wireless broadband networks in rural America; it simply has chosen not to deploy in order to seek higher profits in heavily populated urban markets. This merger does not change the fundamental reasoning national wireless carriers avoid rural deployment. AT&T is also able to improve its capacity and network quality by investing more of its profits back into its network and using new technologies that increase spectrum capacity, and it does not need T-Mobile's infrastructure to begin that process.

Improved services from wireless carriers only come from competitive pressures as publicly traded companies must constantly decide whether to retain higher profits or invest those profits into infrastructure in order to retain their competitive stance in the market. A merger generally can be beneficial if strong competition remains to force the merged entity to continue to invest the gains in efficiency and cost reductions (such as eliminating duplicative staffing). However, in this specific instance, insufficient competition will remain, and the industry will trend towards a duopoly. As demonstrated by its history, the wireless industry does not aggressively build out infrastructure for better coverage and faster speeds when only two dominant carriers exist. In fact, a motivating factor for Congress to break up the duopoly structure through the Omnibus Budget Reconciliation Act of 1993 was the recognition that Europe was deploying advanced wireless services because it had a more competitive market than the U.S. Public Knowledge does not see how the exact same scenario will not once

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again occur if the wireless industry is allowed to reconsolidate into a duopoly. It is likely that not only would quality 4G deployment suffer as a result of this merger, but that America would once again fall behind Europe and Asia for fifth generation wireless technologies and beyond.

c. Don't the great majority of consumers already have many choices when it comes to mobile providers?

A major factor that has led Public Knowledge to conclude that conditioning this merger would be ineffective is because it would create an effective wireless duopoly where AT&T and Verizon would hold nearly 80 percent market share and a GSM monopoly. While consumers currently have the choice among four national carriers that primarily compete with one another and perhaps a regional provider, we do not see how it is possible for the competitive market to survive consolidation of this magnitude. It is for this reason that an antitrust review must go beyond simply counting the number of competitors but also take into account the increased market power AT&T would obtain and substantial reduction in competition. In highly concentrated markets like the wireless industry, the Department of Justice has found that "based in large part on its extensive experience in evaluating horizontal mergers, the Department starts from the presumption that in highly concentrated markets consumers can be ***significantly harmed*** when the number of strong competitors declines from four to three, or three to two."[1]

Consumers have witnessed their choices dwindle as mergers took the place of competition over the last decade. In its May 2010 Commercial Mobile Radio Services report, the Federal Communications Commission for the first time did not find the wireless market to be competitive.[2] The agency instead found that the wireless market to be growing increasingly concentrated. Under the 2010 DoJ Horizontal Merger Guidelines, mergers in highly concentrated markets that involve an increase in the Herfindahl-Hirschman Index (HHI) of more than 100 points raise competitive concerns and more than 200 points are presumed to enhance market power.[3] Today the wireless market (FCC estimates 2,848 HHI in 2008) already exceeds both the DoJ (2,500 HHI) and FCC (2,800 HHI) definition of a heavily concentrated market. After this merger, it is estimated that the national HHI would increase by an additional 650-700 points.[4]

Even in today's market we are seeing a reduction of consumer choice depending on what factors a consumer values. For example, most if not all consumers are searching for carriers that can provide national coverage, which is provided currently by the four national carriers.

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1 Notice of Ex Parte Communication: *Economic Issues in Broadband Competition A National Broadband Plan for Our Future*, GN Dkt. No. 09-51 (released January 4, 2010) http://www.justice.gov/atr/public/comments/253393.htm

2 Federal Communications Commission, Fourteenth Report Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services (2010)

3 U.S. Department of Justice and the Federal Trade Commission Horizontal Merger Guidelines (August 19, 2010)

4 Stifel Nicolaus, Washington Telecom, Media, and Tech Insider (March 29, 2011). *AT&T/T-Mo: Data Point to Coming Brawl, Risk; Deal Still Looks Doable*

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However, if a consumer is searching for a specific smartphone such as the Apple iPhone, then their choices in the 2009 market was only AT&T and today is AT&T and Verizon. While the number one factor driving consumer choice has been price, the percentage of consumers making their choice of carriers based on device is increasing. According to data produced by Nielson, 23 percent of new customers to AT&T in the first quarter of 2009 valued obtaining a specific phone as important in their choice.[5]

2. A number of regional competitors offer unlimited voice and data plans to value-oriented customers at low rates and on a no-contract basis, and are taking away customers from AT&T, Verizon, Sprint, and T-Mobile. MetroPCS in particular now offers LTE services in a number of large markets, seeking to offer what one analyst has characterized as "the best value for data at the high-end." Although these regional carriers are tiny compared to their national competitors, some have significant market share in their regions – for example, MetroPCS is reported to have 25 percent market share in Miami.

a. In your view, will these regional carriers continue to thrive and exert a competitive force in the market for wireless broadband service?

First, Public Knowledge has not been able to confirm, nor has AT&T provided evidence to confirm, that the new customers of regional providers are in fact the old customers of the national carriers. Regional players have focused heavily on targeting price sensitive consumers in niche markets. It therefore may be the case that many new customers to regional players who are price sensitive can simply be new customers to the wireless industry as a whole. Regional carriers are not a strong competitive force against AT&T because of the numerous disadvantages they have, including high prices for backhaul services ("special access"), lack of data roaming, smartphone exclusivity arrangements, limited spectrum access, and the lack of device interoperability.

In fact, AT&T itself no longer viewed regional players as competitors in the wireless market in its 2008 merger with Centennial Wireless. The excerpts on the following page reveal that with each merger, AT&T's consideration of regional competition gradually diminished until in 2008 it no longer considered it a factor. Public Knowledge believes that AT&T's effort to reverse its position on the status of competition is simply an attempt to mask the antitrust harms inherent in its merger with T-Mobile.

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[5] Entner, Roger. *When Choosing a Carrier, Does the iPhone Really Matter?*. Retrieved June 8, 2011, from http://blog.nielsen.com/nielsenwire/consumer/when-choosing-a-carrier-does-the-iphone-really-matter/#more-14381

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AT&T and Cingular public interest filing[6]
April 2004

"*This lack of correlation between local "market" structure and pricing is key. No matter how the market is defined, whether local or national, Professor Gilbert's study demonstrates that pricing is not driven by local competitive structure. The forces of national competition, driven by vigorous competitors at the national level, plus a significant fringe of regional providers, dictate pricing throughout the country, across all cities and regions and in rural areas as well.*"

AT&T and Dobson Public Interest Statement[7]
July 13, 2007

"*AT&T establishes its rate plans and pricing on a national basis, which means that the terms of such plans are set without reference to market structure at the CMA level. Rather, AT&T develops its rate plans, features, and prices in response to competitive conditions and offerings at the regional and national level – primarily the plans offered by the other national carriers. Infrequently, AT&T will lower prices in a local area or region to boost sales. Even in such cases, its decisions are based on the actions of the major national carriers and aggressive local competitors, including Metro PCS and Leap.*"

AT&T and Centennial Public Interest Statement[8]
November 21, 2008

"*In the mainland U.S., AT&T establishes its rate plans and pricing on a national basis, without reference to market structure at the CMA level. One of AT&T's objectives is to develop its rate plans, features and prices in response to competitive conditions and offerings at the national levels – primarily the plans offered by the other national carriers. Centennial's pricing is an inconsequential factor in AT&T's competitive decision-making. Although it is a regional carrier, because it generally competes against the national carriers throughout its footprint, Centennial looks to the offerings of the national carriers when setting its prices and plans. It sets uniform plan features and prices across its mainland U.S. service areas and currently offers only national rate plans to new subscribers in the mainland U.S.*"

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6 *Cingular and AT&T Wireless Public Interest Statement* (p. 34)
https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp;ATTACHMENTS=PyXyNLwTQNpJPpBY9cjWzc9lQFmBgzQlhKRnFn7zmwjzpJHnlphT!600859641!425962567?attachmentKey=17917140&affn=01791714040133006947566 09

7 *Merger of AT&T Inc. and Dobson Communications Corporation* (p. 18)
https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp?applType=search&fileKey=432526191&attachmentKey=18223538&attachmentInd=applAttach

8 *Merger of AT&T Inc. and Centennial Communications Corp, Description of Transaction, Public Interest Showing and Related Demonstrations* (p. 28)
https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp;ATTACHMENTS=1N6VJL5K37mPzN1G7L2XKBP7mC5jC50m96ttqVlHZr3GL1cyJSgx!-659400886!-849295342?applType=search&fileKey=843683410&attachmentKey=18355849&attachmentInd=applAttach

b. What barriers to robust competition do you see emerging or intensifying as a result of this merger?

While not an exhaustive list, Public Knowledge believes that access to handsets and spectrum are the two most critical components for robust competition and most impacted by this merger. Handset manufacturers are dependent on the wireless carrier for access to customers because the FCC has not instituted *Carterfone* rules permitting consumers to attach any lawful device to the network. By comparison, in the wireline world, the FCC's *Carterfone* ruling created two separate markets of customer equipment and network providers. As the largest two carriers continue to increase their market share and market power over the wireless industry, their ability to stifle competitors' access to the most popular handsets will be cemented. They will stifle competitors' access to handsets either through exclusive contracting, preventing device hardware interoperability, or likely both.

With regard to spectrum, it is critical to recognize that access to government-issued spectrum licenses (not just spectrum itself) is extremely scarce. Removing T-Mobile's spectrum licenses from the competitive market and consolidating it with AT&T will make it impossible for a new competitor to enter the market in the same way as T-Mobile. No amount of capital investment can allow a company to become the next T-Mobile if they do not have access to the spectrum licenses T-Mobile obtained. It is worth noting that pre-merger AT&T has not only the most spectrum in the top 21 markets but also the most highly valued spectrum in these same markets where capacity and congestion issues primarily exist.[9]

3. Clearwire, which I believe is the largest holder of spectrum in the United States, not only provides retail 4G data services but also supplies wholesale inputs to retail providers such as Sprint and Best Buy. LightSquared intends to use spectrum previously assigned to satellite use to deploy a nationwide 4G LTE network in the second half of this year and has entered into a long-term 4G roaming agreement with Leap and a wholesale arrangement with Best Buy.

a. Although you may not consider these entities to be players in the current market, what competitive effects could these companies have on the market for wireless broadband services?

b. How do you think their activities will benefit consumers?

Before responding to questions 3a and 3b, I wish to address the question of spectrum holdings, as AT&T often attempts to confuse policy makers on the nature of its spectrum holdings by focusing exclusively on quantity. Not all spectrum is created equal or valued equally in the private market. The location of spectrum, whether it is in Los Angeles, California or Alta, Utah, plays directly into its value as more customers to serve per square mile increases its scarcity. Furthermore, the properties of spectrum in terms of propagation, its capacity to penetrate obstacles, and its ability for long distance communications are all directly tied to where it exist in the electromagnetic spectrum frequency range with below 1

[9] Reardon, Marguerite (April 29, 2011). *Is AT&T a wireless spectrum hog?* [Online] In CNet News. Retrieved May 6, 2011 from http://news.cnet.com/8301-30686_3-20058494-266.html

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GHz being preferred throughout the industry. It is these realities of spectrum that have led the wireless industry to lobby for additional spectrum in the 700 MHz band (known as the "beachfront" spectrum) to be relinquished from the broadcasting industry.

The chart below created by University of Tennessee College of Law Associate Professors Allen Grunes and Maurice Stucke should prove informative of current spectrum holdings of the wireless industry across all markets.[10]

Percentage Spectrum Holdings, Measured on a MHz POPs Basis by Provider, by Frequency Band*
(Providers Listed by Number of Subscribers as of 2Q 2009)

Licensee	700 MHz	Cellular (850 MHz)	SMR (800/900 MHz)	PCS (1.9 GHz)	AWS (1.7/2.1 GHz)	BRS (2.5 GHz)	EBS Leases (2.5 GHz)
Verizon Wireless	42.7%	48.5%	0.0%	18.4%	15.0%	0.0%	0.0%
AT&T	24.3%	42.3%	0.0%	25.9%	11.2%	0.0%	0.0%
Sprint Nextel	0.0%	0.0%	93.6%	26.8%	0.0%	0.0%	0.0%
T-Mobile	0.0%	0.0%	0.0%	19.7%	27.3%	0.0%	0.0%
MetroPCS	0.5%	0.0%	0.0%	2.6%	5.9%	0.0%	0.0%
U.S. Cellular	2.7%	4.3%	0.0%	1.8%	2.0%	0.0%	0.0%
Leap	0.0%	0.0%	0.0%	2.3%	8.5%	0.0%	0.0%
Other	29.8%	4.9%	7.0%	3.5%	29.6%	13.7%	38.0%
Clearwire	0.0%	0.0%	0.0%	0.0%	0.0%	86.3%	62.0%
Grand Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

With regard to Clearwire's competitive effect on the wireless market, we believe its entry has had limited benefits to consumers and that its future remains uncertain. News accounts report that Clearwire may in fact be abandoning the residential broadband market to become a pure wholesale alternative.[11] However, its success as a wholesale provider will be dependent on its capacity to continue securing new investments, which it has found increasingly challenging.[12]

As for LightSquared, Public Knowledge has long advocated for additional wholesale access opportunities within the wireless industry as a means to increase competition and consumer choice. Public Knowledge, in fact, endorsed LightSquared's petition at the Federal Communications Commission on this very premise. However, we do not think LightSquared's entry will cure all the competitive issues inherent in the mobile broadband market. We do think it will provide an opportunity for one more major competitor to enter the market to improve the current status of the market, but given that additional serious political challenges have appeared, we are concerned that this opportunity may never arrive.

Currently, the company must ensure that its service does not cause harmful interference to Global Positioning System (GPS) services (a burden that is unique to LightSquared). As

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[10] Allen P. Grunes & Maurice E. Stucke, *"Antitrust Review of the AT&T/T-Mobile Transaction,"* (2010) at 5. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1850103 ("Grunes & Stucke")

[11] Bode, Karl (2011, February 10). *Clearwire Ditching Retail, Going Wholesale Only? Multiple Sources Say An Announcement Is Coming.* [Online] In Broadband DSL Reports. Retrieved April 25, 2011 from http://www.dslreports.com/shownews/Clearwire-Ditching-Retail-Going-Wholesale-Only-112659

[12] The Street Wire. (2011, June 6). *Clearwire Stock Hits New 52-Week Low.* Retrieved from http://www.thestreet.com/story/11144036/1/clearwire-stock-hits-new-52-week-low-clwr.html

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opposed to the rosy scenario AT&T wishes for antitrust regulators to believe, so far 33 Senators and 66 House Representatives have raised concerns with the creation of LightSquared.[13] In fact, in the recently House passed National Defense Authorization Act for Fiscal year 2012 (HR 1540), the House Armed Services Committee contemplated legislative language that would have potentially ended LightSquared for the foreseeable future. While this language was modified, the House Armed Services Committee's position is that it remains "*concerned about the impact on U.S. national security resulting from potential harmful interference with GPS.*"[14] We foresee continued opposition to the creation of LightSquared, namely by the GPS industry, and until these obstacles are overcome and the company truly begins deployment, no one can truly assess the competitive effect LightSquared would bring to the market.

[13] Shields, Todd (2011, May 22). *LightSquared questioned by Senators.* [Online] In BNet. Retrieved June 7, 2011 from http://findarticles.com/p/news-articles/examiner-the-washington-dc/mi_8118/is_20110522/lightsquared-questioned-senators/ai_n57529739/?tag=content;selector-search

[14] Report of the Committee on Armed Services House of Representatives on H.R. 1540 (May 17, 2011) http://www.gpo.gov/fdsys/pkg/CRPT-112hrpt78/pdf/CRPT-112hrpt78.pdf

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June 10, 2011

The Honorable Patrick J. Leahy
Chairman
Committee of the Judiciary
United States Senate
Washington, DC 20510-6125

Re: Follow-up Questions - AT&T/T-Mobile USA Merger

Dear Chairman Leahy,

In response to your May 19, 2011 letter to Randall Stephenson, I attach hereto AT&T's responses to the Committee's Follow-Up Questions regarding AT&T's proposed acquisition of T-Mobile USA from Deutsche Telekom.

As Mr. Stephenson testified, with the scale, spectrum, and other resources generated by this transaction, the combined company will be able to offer Long Term Evolution ("LTE")—the premier next-generation wireless broadband technology—to more than 97 percent of the U.S. population. In the process it will create jobs and investment, help bridge the digital divide, and help achieve the Administration's rural broadband objectives, all without the expenditure of government funds. Since the hearing the transaction has drawn support from across the political and commercial landscape. For your convenience, I include below a listing of these supporters:

- ***The governors of fifteen states***, many with large rural populations: Arkansas, Colorado, Georgia, Idaho, Iowa, Kentucky, Louisiana, Maine, Michigan, Nevada, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. These fifteen governors support this merger because they recognize that the combined company's expanded LTE deployment will bring much-needed investment, innovation and job creation to their constituents.

- ***Labor unions representing 16.8 million workers***—including the Communications Workers of America, the AFL-CIO, the Teamsters, the Service Employees International Union, the International Union of Painters and Allied Trades, the American Federation of Teachers, the United Food and Commercial Workers, and the United Mine Workers of America. These unions support this merger because it will give more workers access to good jobs at the only major unionized wireless provider in the United States.

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- ***Minority rights advocates*** such as the NAACP, the Hispanic Institute, the Minority Media and Telecommunications Council, Pride at Work, and many others. These groups support this transaction because the combined company's higher-quality mobile broadband services and expanded LTE deployment will help bridge the digital divide and empower the disenfranchised to become full participants in our digital society.

- ***Disabilities rights organizations*** such as the World Institute on Disability, the American Foundation for the Blind, the American Association for People with Disabilities, and the United Spinal Association, which understand that, by facilitating widespread access to next-generation wireless broadband, this merger will increase access to healthcare, workforce participation, and opportunities for civic and social engagement.

- ***Rural advocacy groups*** such as the National Grange, the U.S. Cattlemen's Association, the National Black Farmers Association, the Intertribal Agricultural Council, and the National Rural Health Association, which understand the importance of expanded LTE coverage for bringing telemedicine, distance learning, e-commerce and other vital services to the citizens of rural America.

- ***Environmental groups*** such as the Sierra Club and Future 500, which recognize that the merger will enable broader deployment of smartgrid and other machine-to-machine solutions that can improve energy efficiency, reduce carbon emissions, and help protect the environment.

- ***Venture capital firms*** such as Kleiner Perkins, Sequoia Capital, Charles River Ventures, Matrix Partners, Technology Crossover Ventures, Radar Partners, and Lightspeed Ventures, which support this merger because the widely available LTE platform it makes possible will help fuel the entrepreneurship, innovation and investment that is critical to U.S. leadership in high-tech industries.

- ***Equipment and handset manufacturers*** such as Qualcomm, RIM, Pantech, Corning, Avaya, Juniper Networks, Brocade, JDS Uniphase, Amdocs, Tellabs, ADTRAN, Sierra Wireless, and many others, which understand that the combined company will be able to use spectrum more efficiently, improve service quality, and deploy an expanded LTE network, all of which will in turn drive a virtuous cycle of technology deployment, job creation, and economic growth.

- ***Providers of applications, content, and technology***, including Microsoft, Oracle, Yahoo!, and Facebook; the industry-shaping technology leaders represented by TechNet; the 340 high-tech companies represented by the Silicon Valley Leadership Group; and the more than 3000 small and mid-sized software developers and information technology providers of the Association for Competitive Technology. All of these entities recognize that the combined company's expanded LTE network will play a crucial role in supporting the innovative products and services they are developing for American consumers and businesses.

The Honorable Patrick J. Leahy
June 10, 2011
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On behalf of AT&T, I want to thank you for the time and resources you and the rest of the Committee and the Subcommitee on Antitrust, Competition Policy and Consumer Rightrs have devoted to reviewing this transaction.

Sincerely,

Jim McKone

SEN. KOHL'S FOLLOW UP QUESTIONS FOR THE RECORD FOR HEARING ON "THE ATT/T-MOBILE MERGER

1(a). During your testimony, you stated that T-Mobile customers will continue to have the benefit of lower price T-Mobile pricing plans after the merger. For how long will this be true?

Consistent with prior integrations, AT&T will map T-Mobile's rate plans into AT&T's billing systems. T-Mobile customers will have the option to renew their contracts and, if they wish, to exchange their existing handset for a comparable handset from AT&T's device portfolio, all while keeping their existing plans. We will, of course, incentivize former T-Mobile USA customers to consider AT&T's plans, pricing and options, because we believe that we have a compelling and industry-leading value proposition to offer. But, in the end, our intention is to allow T-Mobile USA consumers who choose to maintain their current rate plan on their current or comparable device to do so. We have not determined if there will be an eventual sunset of this policy.

(b) What about new customers after the merger is completed? Will they be able to the benefit of the lower priced T-Mobile plans?

It is not practical to make any guarantees about rate plans for new customers, as rates will continue to be set by the competitive marketplace that is extremely dynamic. Both DOJ and FCC have shied away from any sort of rate regulation for that reason. Thus, post-merger, new customers of the combined company will be new "AT&T" customers and will have access to AT&T's rate plans and value offerings, as they evolve from time to time in response to competitive forces.

2. On an investor call on March 21, 2011, Rick Linder, AT&T's Chief Financial Officer, said that "over time, this transaction enhances both our revenue growth and our margin potential." What did he mean? How does the deal enhance your "margin potential"? Is that the result of not having to deal with a price competitor? Or by raising prices?

It is neither of those things. In the first place, the transaction promises large cost savings that will improve AT&T's margins. Because our margin is our revenue minus our cost, reducing costs is the principal way in a highly competitive industry to create the potential for improving margins. As to revenue growth, part of the answer is that this transaction will increase AT&T's exposure to wireless, and we expect the wireless industry to continue to grow more quickly than AT&T's other lines of business. Moreover, we see an opportunity for the combined company to improve on T-Mobile's relatively low smartphone penetration, ARPU, and churn performance. And customers of both companies will benefit from expanded capacity and improved service. Thus, the transaction will allow AT&T to serve the combined customer base better and should lead to revenue growth from increased output and increased uptake of data services.

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3. AT&T argues that cell phone prices have fallen sharply over the last ten years. But most of the data about cell phone prices over the last decade reflects the prices for voice calling. But in recent years, cell phones – especially smart phones – are increasing being used for data – that is, to connect to the Internet. Have prices for data usage fallen over the last three years? Hasn't AT&T's recently imposed usage caps on data, so that consumers pay more the more data they use?

Prices for both voice and data have fallen dramatically over the years. As Mr. Stephenson stated in his testimony, the effective price of wireless data from AT&T, measured by average revenue per megabit, has plummeted by almost 90% from 2007-2010 and the average industry revenue per text message declined 70% from 2005 to 2008.[1] Moreover, AT&T has not instituted caps on its data plans. In June 2010, we introduced tiered pricing for new smartphone customers whereby customers purchase an initial tier of data capacity per month, and pay for additional data increments for usage in excess of the initial tier. We did so, in part, to help manage the incredible demand for data that we have been seeing on our network – 8,000% increase from 2007 to 2010. For the vast majority of our customers, this would result in a price reduction: the 2GB tier costs $25/month compared to the $30 unlimited plan, and well over 90% never exceed 2GBs. Moreover, a customer can check her monthly usage by dialing *data#, and customers on a tiered plan receive text message alerts when they have reached 65%, 90%, and 100% of their monthly data plan usage threshold so that they can avoid overages if they so choose.

4(a). Mr. Stephenson, this nation has a long history of dealing with market dominance over our telephone system held by AT&T. For much of the 20th century AT&T and its Bell operating system was effectively the telephone monopoly for the vast majority of the United States. It operated under the motto "ONE SYSTEM, ONE POLICY, UNIVERSAL SERVICE."

Thirty years ago, the government expended enormous effort in its antitrust suit against AT&T, believing that the Ma Bell phone monopoly suppressed competition, raised prices, and retarded innovation . It succeeded in 1984 and what had been the AT&T phone monopoly was broken up into many pieces. That break-up unleashed a huge wave of technological innovation, resulting in such innovations as the fax machine, e-mails, the Internet, and ultimately, the cell phone industry.

Are we now in danger in recreating AT&T's dominance in the wireless phone industry in this century that it once had in the landline phone market in the last century? Or, if not a monopoly of AT&T alone, a duopoly of AT&T and Verizon?

It is important to remember just how dramatically the telecommunications industry has evolved from the old Bell System. In 1983, telecommunications consisted of wireline connections, and the Bell System had monopoly control over every facet of the industry. It made and provided the phones, wires, equipment and all services, features, and functionalities provided between one subscriber and another. And it had a franchised

[1] *Fourteenth Wireless Report* at ¶192.

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monopoly over the bottleneck facilities that long-distance competitors needed to access subscribers. The marketplace today resembles nothing like this. It is characterized by vigorous intermodal and intramodal competition that is driving change at breakneck pace. Hence, whereas consumers who wished to communicate in 1983 had one option – the phone and service provided by the phone company, consumers today have multiple options – in terms of equipment, services and providers – at their disposal. Nothing about this merger can reverse that dynamic. Indeed, this merger will *increase* competition in the wireless industry by relieving AT&T of capacity constraints that would limit its ability to compete aggressively. And while T-Mobile, a provider that has been losing subscribers and has no path to LTE, will no longer be competing independently, AT&T will continue to compete with Verizon, Sprint, MetroPCS, US Cellular, Leap, cable TV entrants, and many other providers of wireless services. Ongoing innovation that is producing new devices, applications and ways of using wireless service – driven by the innovative efforts of wireless carriers – will keep competition dynamic.

(b) Your filing with the FCC, Mr. Stephenson, talks at length of the benefits from combining AT&T and T-Mobile by combining spectrum holdings, increasing efficiency of service, and eliminating redundancies and overlapping functions of the two companies. All of this, you claim, will make for better service to consumers. But isn't a natural extension of this argument that it would be better if we just had one cell phone company serving the whole country just like in the days of the AT&T phone monopoly in the last century? This would be much more efficient, wouldn't it?

No it is not. Mr. Stephenson's point is that AT&T and T-Mobile have uniquely compatible networks, technology and spectrum that drive extraordinary efficiencies. That is not true of all combinations. For example, T-Mobile and Sprint use different technologies and a combination of those two companies would not be nearly as synergistic.

5 (a). What is your estimate of the number of AT&T employees who are likely to lose their jobs after this merger?

Our industry and company have been in the midst of a radical transformation for some time. Parts of our business, most notably wired voice, are in a state of persistent decline, while others, like data and video, are growing. That transformation, which, of course, has a direct impact on employment, will continue.

This merger will ensure that our growth platforms continue to have the capacity we need to meet our customers' growing need for mobile bandwidth. It will give us the capacity we need to continue to compete aggressively for more customers, will result in an additional $8 billion in investment by the combined company, and enable us to commit to build 4G LTE to 97% of the U.S. population. All of those things are good for jobs and the economy. The LTE commitment, in particular, will help trigger a virtuous cycle of investment and jobs for rural America, which is why the Administration has made widespread deployment of mobile broadband a key priority. While the transaction allows for efficiencies that can be realized, in part, by phasing out certain duplicative functions, those reductions, just as in

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prior transactions, will be achieved mostly by natural attrition. The CWA and the AFL-CIO support the merger because they know we will be providing good paying jobs as a result of this transaction.

(b) If you contend that your build out and expansion of your network will cause you to create jobs, will you commit that this merger will create no net job loss? Will you commit to that as a condition at the Justice Department and FCC?

Due to the continuing declines in certain parts of our business, we are not in a position to make such a commitment. We nevertheless are proud of our labor record in managing our workforce in prior transactions and do not believe any commitments are necessary. As stated above, this transaction results in job creation across the country, which is why the CWA and AFL-CIO and other labor organizations support this merger. Nevertheless, we welcome the opportunity to work with FCC and DOJ to address any concerns they may have.

6 (a). One of AT&T's main justifications for this merger is that it will be able to offer the latest technology of cell phone service – known as "LTE" -- to 97% of the nation, up from around 80% of the nation you plan to serve with this technology by the end of the year. But some question whether you need to buy one of your three national competitors to do this. Couldn't you have expanded your rural cell service by spending some of the $ 39 billion you are spending to acquire [T-Mobile] to upgrade your rural service? Why is it necessary to acquire T-Mobile in order to expand your rural service?

AT&T *has* been investing in its network since long before this transaction. AT&T has been adding cell sites as quickly as it identifies suitable locations and can bring those sites online; it has deployed the nation's largest Wi-Fi network and pioneered the use of Wi-Fi hotzones to offload traffic; and it has deployed distributed antenna systems ("DAS") around the country and hundreds of thousands of femtocells. In addition, AT&T has purchased additional spectrum when available. But, as discussed below, these and other measures, while useful in various contexts, are simply not—individually or collectively—an adequate solution to AT&T's larger scale capacity and spectrum constraints, and in no way could such *ad hoc* measures replicate the undeniable benefits of this transaction. This merger, in contrast, will allow AT&T to achieve much greater capacity expansion than it could ever hope to realize through alternative strategies as a standalone company.

- **<u>Network Enhancements</u> - AT&T has deployed the largest Wi-Fi network of any carrier; pioneered the use of Wi-Fi "hotzones" in high traffic urban and campus environments; deployed DAS systems around the country; and deployed hundreds of thousands of femtocells. But these techniques also have significant limits. Some, such as WiFi and DAS, can provide only localized capacity offload. Others, such as femtocells are used primarily to improve coverage (e.g., inside buildings) and provide little or no capacity lift. These piecemeal technology "solutions" cannot solve the macro-level constraints confronting AT&T, and they cannot, alone or together, provide relief on anything approaching the scale or timeline of this transaction.**

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- **Cell Sites - AT&T could not add anywhere close to the number of cell sites it will obtain from the acquisition in a remotely comparable timetable. The reality is that in a highly developed network with an already dense grid in high-traffic areas, suitable towers or other structures must (1) meet stringent requirements for location, height, orientation, and lack of obstructions *and* (2) have space available for AT&T's equipment in addition to any other provider already using the structure. Even when AT&T is able to locate suitable locations, it faces delays, costs, and obstacles beyond its control that are inherent in any such *ad hoc* process. The process for adding cell sites to an established grid is complex. AT&T must not only find a suitable and available location, but then arrange to acquire the site through purchase or lease, comply with regulatory requirements that necessitate extensive studies and consultation, apply for and obtain building permits and zoning approvals, contract with third-party vendors to purchase the needed equipment, construct the site, obtain the necessary backhaul, and then integrate the site into the network. These steps individually and collectively take time, and AT&T cannot unilaterally accelerate many of them.**

- **Spectrum – AT&T's AWS and 700 MHz spectrum is destined for AT&T's LTE service, which it is deploying now. AT&T cannot, as a practical matter, use that spectrum instead to relieve congestion on its UMTS network because its millions of UMTS customers have handsets that will not work on that spectrum. In any event, even if AT&T could somehow redirect its AWS and 700 MHz spectrum to UMTS, that spectrum *would then be unavailable for LTE*, at least until it could be re-cleared of all UMTS users. Moreover, spectrum on the secondary market is a potential solution only when it is available in the right place, at the right time, and in the right frequency bands. Spectrum meeting these conditions is not often available. For similar reasons, spectrum leased from wholesale providers such as Clearwire or LightSquared cannot address AT&T's mounting capacity constraints. Among other limitations, AT&T has a large embedded base of subscribers whose existing handsets would not work on those providers' spectrum bands or with their technologies. As a result, while Clearwire or LightSquared spectrum may well offer reasonable solutions for carriers like MetroPCS or Leap because they do not face similar constraints, AT&T needs additional spectrum to relieve congestion on its *existing* service bands, which serve millions of current customers.**

Prior to this transaction, AT&T decided that an 80% LTE build was the limit our company could justify to our shareholders. That decision reflected not only the availability of spectrum, but the significantly higher cost and lower return of expanding to more remote locations, and the need to simultaneously make the required investments to keep up with our current network demands. This deal changes that calculus. It gives us additional spectrum, scale, and other resources to expand LTE deployment to more than 97% – 55 million more than our current plans allowed. For instance, in many areas throughout the country T-Mobile's AWS spectrum will allow us to launch LTE or enhance our LTE product. Moreover, T-Mobile's customer base, when combined with ours, can increase

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subscription for LTE-based services across the country, generating additional revenue to support the return on our investment in the rural areas to which we can build LTE as a result of this merger. Likewise, the other synergies of this transaction enable us to justify the necessary capital investments required to expand our LTE coverage from less than 20 percent of the U.S. landmass to roughly 55 percent.

(b) The merger's critics argue that AT&T already owns spectrum in rural areas that it does not use, so that it doesn't need to acquire T-Mobile to reach rural areas. What is your response?

While the spectrum from T-Mobile is part of the reason AT&T will be able to deploy LTE to 97% of the population, it takes more than spectrum to expand LTE coverage. It also takes considerable capital investment in infrastructure, the costs of which are higher in rural areas than urban areas, and the return on which is lower because of the lower population density. The T-Mobile transaction gives us the spectrum, scale and resources that enable AT&T to commit to expanding 4G LTE to 97% of the U.S. population. It is also important to bear in mind that the additional spectrum will not only permit a broader footprint, but a more robust LTE product in many areas, and will also enable AT&T to delay LTE capacity shortages that we project would otherwise occur in some markets. And, finally, the capacity gains from this transaction are not only from spectrum acquired from T-Mobile. The synergies created by this transaction – cell sites, channel pooling, etc. – effectively create new capacity that is the functional equivalent of new spectrum. Importantly, even after this merger, we will have less spectrum than Sprint/Clearwire.

(c) Regional and other carriers have long depended on device interoperability to ensure that their customers can "roam" on other carriers' networks when they are traveling. As AT&T builds out its LTE network, will it support interoperability between devices that run on its LTE network and the LTE networks of other carriers?

The FCC currently has a petition pending before it on this issue. That said, mandating a carrier to offer devices that operate in spectrum the carrier is not licensed to use would not make business sense or help consumers. In fact, such a mandate could result in derailing current LTE deployment while new standards are debated and established. Further, mandated interoperability would require adding components to the handsets, which would increase the costs of those handsets. These costs would ultimately be passed on to consumers. All of this runs contrary to what consumers want: timely access to the latest technologically through advanced devices with the most innovative features, offered at competitive prices.

Moreover, if there is a perceived benefit for carriers operating on other spectrum to enable their phones to operate on our network, there is nothing that prevents those carriers from buying dual band phones. But there is no reason why AT&T should be required to buy dual band phones that will not benefit – and in fact would negatively impact – our customers.

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(d) AT&T opposed the FCC's rules that require it to negotiate data roaming arrangements, saying that it would harm companies that are building out by giving competitors a "free pass to roam on other providers' networks in rural areas." But, as we heard at the hearing, these agreements are essential to companies like Cellular South so that they can offer consumers a competitive product of nation-wide service. Now, AT&T is asserts that it competes with companies like Cellular South. Do you agree that data roaming is essential for regional carriers to be able to compete with AT&T? And, have you changed your opinion on the FCC's data roaming requirement?

As a major investor in the US economy over the past four years, we strongly believe that carriers should be investing in their own networks – which brings with it increased capacity and jobs. That said, we recognize the importance of roaming to providers that do not have ubiquitous infrastructure. Our position in the FCC proceeding was not that roaming is unnecessary, but that roaming *rules* are unnecessary. We noted in that regard that commercially negotiated roaming arrangements are already available in the marketplace. Indeed, Cellular South, whom you reference in your question, boasts in its advertisements that "from coast to coast, we handpicked the best networks to give you better coverage in far more places than AT&T." Those are not the words of a provider that lacks roaming options. Although we believe that the FCC's roaming mandate was, thus, unnecessary, we will fully comply with it. AT&T has entered into fifteen (15) 3G data roaming agreements; twelve (12) since the FCC issued its data roaming order.

7. In 2000, the Justice Department blocked the attempt by MCI and Sprint to merge. At the time MCI and Sprint were the number 2 and 3 long distance phone companies. Unlike AT&T, which is today one the nation's largest local phone companies, both MCI and Sprint had very small local phone operations. So some might say that MCI/Sprint merger raised fewer concerns than this one.

Why is this merger different from the failed MCI/Sprint merger of a decade ago?

The main focus of the MCI WorldCom/Sprint review was the internet backbone business, where the parties were #1 and #2. In long distance, they were 2 of only 3 facilities-based competitors, unlike the 5 or more we have today in the large majority of local wireless markets. Moreover, the DOJ alleged that entry barriers were high, in part because of statutory restrictions on the regional Bell operating companies, while the recent activities of Clearwire and LightSquared make clear that there are new entrants in the wireless business today. Indeed the fact that the term 'long distance' and the concept of legal entry barriers have become such a distant memory shows how dramatically more competitive the telecommunications industry in this country has become in just over a decade.

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8. At the hearing, you said that T-Mobile was not the "focus" of your competition. What company is the focus of your competition? How can you say that you compete with regional carriers, such as Cricket, Cellular One, U.S. Cellular, and Cincinnati Bell, which in most cases hold only a fraction of the market share of T-Mobile, while maintaining that you don't compete with T-Mobile?

As we said in our FCC filing, T-Mobile does not exert material competitive pressure on AT&T. We primarily focus on Verizon, followed closely by Sprint. We are also increasingly concerned about the all-you-can eat, no contract carriers like MetroPCS and Leap – which we estimate have a greater share than T-Mobile in several markets. And in some local markets, it is US Cellular or Cellular South or another competitor that commands our attention because they have been particularly successful in those markets. If you look at what happened in the marketplace in just the last quarter you can see where our competitive focus is and has to be, which is on competitors who are taking share. In the first quarter of 2010 Verizon added over 900,000; Sprint added over 700,000 (best in five years); MetroPCS added 700,000; Leap added over 300,000. T-Mobile lost customers that quarter (as well as the prior quarter).

9. Please describe with specificity the terms and conditions AT&T has agreed to should the merger not be completed (what is commonly referred to as the "break-up fee")?

In the event this transaction does not receive regulatory approval on terms consistent with the provisions of the Stock Purchase Agreement and the transaction does not close as a result, AT&T will be required to pay a breakup fee of $3B, transfer to T-Mobile certain AWS spectrum that is not needed by AT&T for its initial LTE roll out, and provide a roaming agreement to T-Mobile on terms favorable to both parties. The "break-up fee" is described in the Stock Purchase Agreement covering this transaction. Attached hereto is a copy of the Company's 8-K, filed with the Securities Exchange Commission on March 21, 2011 which contains a copy of the Stock Purchase Agreement.

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Follow-up Questions Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On "The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?"
May 11, 2011

Questions for Randall Stephenson, President & CEO, AT&T:

1) Wireless service is limited in many areas of Vermont, in spite of the fact that both AT&T and T-Mobile currently have unused spectrum that either could arguably build out. In some places, Vermonters still have no wireless service at all -- this is simply unacceptable. I remain concerned that, with or without this acquisition, Vermonters will not have adequate access to 4G technology.

   a) Today, why has AT&T chosen not to build out its available spectrum in certain rural areas of Vermont, as well as other rural areas around the country?

   AT&T previously made a business decision to build out LTE to approximately 80% of the U.S. population. This build would cover approximately 47% of the population of Vermont. That decision was based in part on the availability of spectrum, the significantly higher cost and lower return of expanding to more remote locations and the disproportionately higher infrastructure costs for rural deployment. and the need to simultaneously make the required investments to keep up witb our current network demands. In light of the billions of dollars required for this expansion and the capacity challenges we faced with our existing network, we concluded that an 80% build was the limit our company could justify to our shareholders.

   b) How will this acquisition affect AT&T's decision of whether to invest in building out spectrum in rural areas for which it previously determined that spectrum build-out was not financially viable?

   The elegance of this transaction is that is provides the scale, scope and resources that we need to expand LTE deployment to more than 97% of the U.S. population – 55 million more than our current plans allowed. For instance, in many areas throughout the country we will use T-Mobile's AWS spectrum to launch LTE or enhance our LTE product to deliver faster speeds and enable greater spectral efficiency. Moreover, T-Mobile's customer base, when combined with ours, can increase subscription for LTE-based services across the country, generating additional revenue to support the return on our investment in the rural areas to which we can build LTE as a result of this merger.

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2) Since announcing this acquisition, your company has touted the potential benefits the transaction would bring to rural areas in the form of increased availability of 4G access. AT&T has represented to my staff that within two years, this acquisition will actually result in 250,000 more Vermonters having access to its 4G service than could otherwise be serviced by both companies independently.

   a) What methodology and assumptions were used to determine that this acquisition will provide AT&T's 4G access to an additional 250,000 Vermonters?

      We estimated our potential LTE coverage area, post-merger, based on network planning and engineering, spectrum availability, and cellular propagation characteristics. We then compared that to the potential LTE coverage area based on AT&T's pre-merger planning. We then compared those respective coverage areas to census data, at the census block level, to come up with the relative difference in population coverage.

   b) Can you guarantee to me that AT&T will serve an additional 250,000 Vermonters with 4G service?

      In a letter dated May 18, 2011, AT&T committed to meet this 4G LTE commitment, and in so doing, provide next generation mobile broadband technology and more options for rural customers in Vermont. Under AT&T's current, pre-merger plan, almost half of the state's population will have access to 4G LTE from AT&T. Because of the spectrum, scale, and resources resulting from this transaction and within six years of the merger close, AT&T will provide 4G LTE to approximately 250,000 more Vermonters and an additional 4,500 square miles. The additional 4G LTE build plan made possible by the merger covers communities such as Island Pond, St. Johnsbury, Arlington, Cabot and Manchester. In total, AT&T's 4G LTE build plan is expected to cover over 85% of Vermonters.

3) AT&T's pledge to provide 4G service to an additional 250,000 Vermonters is premised on the argument that T-Mobile does not have the capability or plans to provide consumers with its own 4G service, and that its current HSPA+ service is not truly "4G". T-Mobile, however, advertises today that its company is "America's Largest 4G Network."

   Today, does AT&T consider T-Mobile's HSPA+ technology a competitor to AT&T's 4G LTE service? (Please explain what factors you use in making this determination.)

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To clarify, today both AT&T and T-Mobile are offering HSPA+ service. HSPA+ technology offers advanced High Speed Packet Access (HSPA) capabilities, which delivers 4G speeds. This is why both companies advertise 4G today.

However, one of the significant benefits of this transaction is that, because of the scale, scope and resources resulting from the merger, AT&T is able to bring LTE mobile broadband to 97% of the U.S. populations. LTE or Long Term Evolution is the next technology cycle in the wireless industry and offers faster data speeds, less latency, and more spectrally efficiency than HSPA+. T-Mobile has stated publicly that it has no clear path to LTE.

4) One area that cellular telephone companies must improve is in their ability to identify the location of emergency 911 callers. The ability of E911 operator to locate a cellular caller during an emergency call has and will continue to save lives.

What plans does AT&T have to improve its E911 location based technologies?

AT&T is migrating to an A-GPS location system for E9-1-1. In an A-GPS location system, the network assists the handset in determining its location by providing it a list of satellites that should be visible to the handset. This speeds up satellite acquisition and location determination which in turn, in an emergency situation, increases the speed and accuracy of locating a customer using the handset.

AT&T has completed upgrades in significant portions of its network to enable A-GPS and should complete this process by the end of 2011. AT&T began deploying AGPS in its 3G Network in 2007 but there are still many handsets that do not support AGPS. AT&T will continue to support the network based solution (UTDOA) to satisfy compliance for non-AGPS handsets.

Questions to ALL WITNESSES:

1) Will consumers benefit from AT&T's acquisition of T-Mobile?

We absolutely believe that consumers will benefit from better service, expanded LTE deployment (to more than 55 million Americans), greater innovation and generally a more competitive wireless industry. And, it's a great illustration of how the private sector, with private capital, is helping to make the Administration's national broadband initiative a reality.

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2) In what ways might AT&T's acquisition of T-Mobile benefit consumers?

Consumers will experience significant and measurable consumer benefits – better, faster, higher quality wireless services, and a much broader LTE network. And, this transaction highlights how the private sector is funding investment that serves a broad public policy interest – the rollout of LTE to more than 97% of the U.S. population – to 55 million more Americans than covered by our prior plans – many in rural areas and small communities. The merger will result in increased network capacity, beyond what both companies would be able to do independently. More network capacity and bandwidth equals increased network output and capabilities. This allows the combined company to compete aggressively to retain and win new business and while also enabling companies like Apple, Google and hundreds of others to continue to innovate with devices, services, content and apps.

3) In what ways might AT&T's acquisition of T-Mobile harm consumers?

None. As discussed above and in Mr. Stephenson's testimony, we absolutely believe that this transaction is particularly good for our customers.

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"The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?"
Questions for the Record submitted by Senator Charles E. Grassley

Questions for Mr. Randall L. Stephenson

1. At the hearing, I asked you how the proposed merger would impact both rural customers and providers. In my state there are large areas with, at best, mediocre cellular service. You testified the proposed merger with T-Mobile would allow rural residents access to greater, more reliable service. Specifically, you said that a total of 181 new cities in Iowa would be added to AT&T's service area.

    a. Please explain how this transition will take effect. What specifically about the merger will give these 181 cities greater service than they have now?

    While the spectrum from T-Mobile allows AT&T to deploy LTE to 97% of the population, it takes more than spectrum to expand LTE coverage. It also takes considerable capital investment in infrastructure, the costs of which are higher in rural areas than urban areas, and the return on which is lower because of the lower population density. The T-Mobile transaction not only gives AT&T spectrum where it lacks the necessary spectrum to deploy LTE, but also provides additional scale, scope and resources that enable AT&T to commit to expanding 4G LTE to 97% of the U.S. population. The importance of those benefits cannot be overstated. To put them into perspective, as a result of this merger, AT&T will expand its planned LTE footprint from less than 20 percent of the U.S. land mass to roughly 55 percent. It is also important to bear in mind that the additional spectrum will not only permit a broader footprint, but a more robust LTE product in many areas, and will also enable AT&T to delay LTE capacity shortages that would otherwise occur in some markets. And, finally, the capacity gains from this transaction are not only from spectrum acquired from T-Mobile. The synergies created by this transaction – cell sites, channel pooling, etc. – effectively create new capacity that is the functional equivalent of new spectrum.

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b. In these areas where new service will be provided, what will be the impact on regional wireless providers, such as Iowa Wireless?

This transaction will provide more competition in these rural areas. More competition will lead to more choices for consumers and will spur innovation.[1]

2. During the hearing, I asked Mr. Meena and yourself how the proposed merger will affect the fees rural carriers pay to national providers when customers travel outside of the rural coverage area. Mr. Meena expressed the difficulty his company has faced in trying to negotiate such agreements.

a. As a follow up to the hearing, has any progress been made between AT&T and Cellular South on this particular matter?

Cellular South operates with a different technology – CDMA that is incompatible with ours. In February 2010, Cellular South acquired, Corr Wireless, a small GSM-based company that operates in parts of Alabama and Georgia. AT&T has a 2G roaming agreement in place with them. In November 2010, AT&T approached Corr Wireless and offered it 3G roaming services, but we heard nothing back from them. Later that month, AT&T contacted Cellular South and offered to discuss a 3G roaming agreement for Corr Wireless. Again, AT&T received no response. Cellular South recently inquired about a 3G/4G roaming agreement, and we are currently negotiating with them. Regarding LTE, Cellular South has announced that it already has a roaming agreement with LightSquared.

b. Is this an example of what regional carriers will face in the future, i.e., difficulty in attempting to forge new agreements with AT&T, that may face reduced incentives to work with smaller carriers?

No. There is no difficulty in carriers negotiating roaming agreements. As a major investor in the US economy over the past four years, we strongly believe that carriers should be investing in their own networks – which brings with it increased capacity and jobs. That said, we recognize the importance of roaming to providers that do not have ubiquitous

[1] We understand that T-Mobile holds a non-controlling majority stake in Iowa Wireless. In a May 31, 2011 Petition filed with the FCC, Iowa Wireless requested that the FCC require AT&T to agree to certain commitments to foster the continued provision and expansion of wireless services in rural areas, should the FCC determine that the transaction is in the public interest. AT&T does not believe Iowa Wireless will be harmed by the transaction. We will honor any contractual and legal obligations that may arise out of the transaction and, to the extent that any complications arise due to the nature of the existing obligations, AT&T is committed to working with Iowa Wireless to find a mutually acceptable alternative business solution.

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infrastructure. Our position in the FCC proceeding was not that roaming is unnecessary, but that roaming *rules* are unnecessary. We noted, in that regard, that commercially negotiated roaming arrangements are already available in the marketplace. Indeed, Cellular South, whom you reference in your question, boasts in its advertisements that "from coast to coast, we handpicked the best networks to give you better coverage in far more places than AT&T." Those are not the words of a provider that lacks roaming options. Although we believe that the FCC's roaming mandate was, thus, unnecessary, we will fully comply with it. AT&T has entered into fifteen (15) 3G data roaming agreements; twelve (12) since the FCC issued its data roaming order.

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Senate Judiciary Committee
Subcommittee on Antitrust, Competition Policy and Consumer Rights
Hearing on "The AT&T/T-Mobile Merger:
Is Humpty Dumpty Being Put Back Together Again"
May 11, 2011
Questions for the Record from U.S. Senator Al Franken
for Randall L. Stephenson, President & CEO, AT&T

1. Many critics of this deal have charged that if AT&T wanted to expand its coverage to rural areas, it could do that today. Please provide detailed information to answer the following questions:

   a. Where do you currently hold spectrum? What percentage of the country is currently covered by AT&T's network?
   AT&T's spectrum holdings are described in detail in a 567 page chart that was filed with the FCC and that is available publicly at http://fjallfoss.fcc.gov/ecfs/document/view?id=7021240430

   Please list any counties (and their estimated population) where AT&T does not have spectrum holdings.

   None.

   b. What percentage of Minnesota is covered by AT&T's network?

   Minnesota is a state in which AT&T has suffered from a particularly acute shortage of spectrum. In many markets we have had to support our combined GSM and UMTS customers on a comparatively small amount of spectrum -- for example, 35 MHz in St. Cloud, 40 MHz in Rochester, and even less in a number of other markets, especially in southern Minnesota. Our GSM coverage (no roaming) is approximately 50,151 sq. mi. or 50.59% of the land mass of the State; with roaming our GSM network covers 67,321 sq. mi. or 79.99% of the land mass of the State. Our UMTS network covers 60,531 sq. mi. or 71.92% of the land mass of the State.

   c. If you purchase T-Mobile, what percentage of your spectrum will overlap with T-Mobile's spectrum, both nationally and in Minnesota?

   Both AT&T and T-Mobile hold some spectrum everywhere in Minnesota and nationwide. Other competitors and potential competitors, including Verizon, Sprint, Clearwire, LightSquared, and DISH, also have spectrum everywhere or almost everywhere nationwide.

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d. In order to accomplish your stated goal of providing 4G coverage to 97% of America, where will you need to build out your existing spectrum, as opposed to merely acquiring T-Mobile's spectrum?

AT&T's spectrum holdings are described in detail in a 567 page chart that was filed with the FCC and that is available publicly at http://fjallfoss.fcc.gov/ecfs/document/view?id=7021240430. Expanding our LTE build from 80% of the U.S. population to 97% of the U.S. population requires expanding the geographic footprint of that build-out from less than 20% of the U.S. land mass to about 55%. In various areas around the country, we plan to use T-Mobile's AWS spectrum to launch LTE, provide a faster and more spectrally efficient LTE product, or alleviate anticipated LTE capacity concerns. We are still evaluating the optimal spectrum deployments in each of the areas that will benefit from the expansion of our LTE footprint from 80% of the U.S. population to 97% of the U.S population

What is your time frame for completing this build out, both nationally and in Minnesota?

We intend to reach 97% of the U.S. population with LTE mobile broadband within six years from the closing date of this transaction.

e. If this deal is not permitted to go through, what is AT&T's plan to continue to expand its network? What coverage do you expect the company will have nationally in 5 years and 10 years time?

AT&T's current plan is to build out LTE to 80% of the US population by the end of 2013.

2. You stated in your testimony that a build out on your existing spectrum is not possible without T-Mobile's spectrum and that you need to "free up" spectrum in order to accomplish this build out. Please list the geographic areas—both nationally and in Minnesota—where you need to free up spectrum in order to accomplish this build out. Please explain how and why you will need to migrate customers, and whether this same need applies to low population areas where there are presumably far less data demands on your network.

This transaction effectively creates new capacity which is critical to our ability to address GSM and UMTS capacity constraints and enhance network performance – as AT&T transitions to LTE. The importance of those benefits cannot be overstated. Standing alone, AT&T could not realize these network integration efficiencies that will have a multiplier effect in areas where the increased capacity permits the combined company to accelerate the migration of spectrum to more spectrally efficient technologies. These network integration efficiencies will reduce the total amount of spectrum allocated to the older, less spectrally efficient GSM network and thereby free up spectrum that can be redeployed for more spectrally

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efficient UMTS and LTE services. These network integration benefits will extend to all geographic areas in Minnesota and nationally where the two companies operate standalone networks today. Finally, capacity limitations in particular geographic markets are not defined by population density, but by the number of customers that have chosen our wireless services, their present and expected future usage patterns, the technology choices they have made, and our spectrum holdings in that particular geographic area. Accordingly, AT&T faces capacity constraints in many urban and more rural areas throughout the nation. Similarly, by enabling the combined company to redeploy T-Mobile USA's AWS spectrum from UMTS to LTE, the transaction will generate yet further efficiencies in spectrum usage.

3. You have said that in order to transition your customers from GSM to LTE, you will need more spectrum. Other wireless carriers have been able to complete similar transitions without buying out a major competitor. Please explain why you are not able to upgrade your customers' equipment to multi-band devices to enable a seamless transition.

   We are deploying LTE beginning this summer in certain markets and LTE handsets will be available this fall. But tens of millions of our existing customers have handsets that are not LTE-enabled. Experience demonstrates that even with incentives the process of transitioning customers to a new technology will take years. For example, Sprint has been transitioning 800 MHz spectrum users for seven years and appears to have several more years to go before it will be done, notwithstanding an original requirement that it complete the transition in three years.[1]

   Moreover, AT&T requires sufficient spectrum to handle the volume of mobile data traffic its customers are generating in a particular location and on a particular network technology – be it 2G, 3G or 4G LTE. We expect that by 2015 the mobile data volume on our network will be 8 to 10 times what it was in 2010. What is different about AT&T and why we are facing a spectrum crunch sooner than others is that we have been a leader in the smartphone revolution that has created soaring wireless broadband demand as we continue to support customers and businesses that are content with their 2G services. Carriers without legacy customer bases on legacy technologies – such as new entrants Clearwire and LightSquared – can make different choices, dedicating all their spectrum to a new 4G network built from scratch, leapfrogging existing providers. We do not have that option.

4. In much of rural Minnesota, you already have more than 40 MHz of unused spectrum. Why don't you take a fraction of the money you are planning to spend to buy T-Mobile and instead build out your existing spectrum in rural Minnesota?

   As an initial matter, we disagree with the premise that "in much of rural Minnesota [AT&T] already [has] more than 40 MHz of unused spectrum." Minnesota is a state in which AT&T has a particularly acute shortage of spectrum.

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[1] Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, *Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969, 15001 ¶ 57 (2004).

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This is not a simple question of building out existing spectrum. AT&T *has* been investing in its network since long before this transaction. AT&T has been adding cell sites as quickly as it identifies suitable locations and can bring those sites online; it has deployed the nation's largest Wi-Fi network and pioneered the use of Wi-Fi hotzones to offload traffic; and it has deployed about 1,800 public distributed antenna systems ("DAS") and hundreds of thousands of femtocells. In addition, AT&T has purchased additional spectrum when available. But, as discussed below, these and other measures, while useful in various contexts, are simply not — individually or collectively — an adequate solution to AT&T's systemic capacity and spectrum constraints, and in no way could such *ad hoc* measures replicate the undeniable benefits of this transaction. This merger, in contrast, will allow AT&T to achieve much greater capacity expansion than it could ever hope to realize through alternative strategies as a standalone company.

- **<u>Network Enhancements</u> - AT&T has deployed the largest Wi-Fi network of any carrier; pioneered the use of Wi-Fi "hotzones" in high traffic urban and campus environments; deployed nearly 1,800 public DAS systems; and deployed hundreds of thousands of femtocells. Each of these techniques has appropriate applications in a cellular network, and AT&T employs each of them today (and has for years). But these techniques also have significant limits. Some, such as WiFi and DAS, can provide only localized capacity offload. Others, such as femtocells are used primarily to improve coverage (e.g., inside buildings) and provide little or no capacity lift. These piecemeal technology "solutions" cannot solve the macro-level, system-wide constraints confronting AT&T, and they cannot, alone or together, provide relief on anything approaching the scale or timeline of this transaction.**

- **<u>Cell Sites</u> - AT&T could not achieve anywhere close to the number of cell sites enable by this transaction on a remotely comparable timetable. The reality is that in a highly developed network with an already dense grid in high-traffic areas, suitable towers or other structures must (1) meet stringent requirements for location, height, orientation, and lack of obstructions *and* (2) have space available for AT&T's equipment in addition to any other provider already using the structure. Even when AT&T is able to locate suitable locations, it faces delays, costs, and obstacles beyond its control that are inherent in any such *ad hoc* process. The process for adding cell sites to an established grid is complex. AT&T must not only find a suitable and available location, but then arrange to acquire the site through purchase or lease, comply with regulatory requirements that necessitate extensive studies and consultation, apply for and obtain building permits and zoning approvals, contract with third-party vendors to purchase the needed equipment, construct the site, obtain the necessary backhaul, and then integrate the site into the network. These steps individually and collectively take time, and AT&T cannot unilaterally accelerate many of them.**

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- **<u>Spectrum</u> – AT&T's AWS and 700 MHz spectrum is destined for AT&T's LTE service, which it is deploying now. AT&T cannot, as a practical matter, use that spectrum instead to relieve congestion on its UMTS network because its millions of UMTS customers have handsets that will not work on that spectrum. In any event, even if AT&T could somehow redirect its AWS and 700 MHz spectrum to UMTS, that spectrum *would then be unavailable for LTE*, at least until it could be re-cleared of all UMTS users. Moreover, spectrum on the secondary market is a potential solution only when it is available in the right place, at the right time, and in the right frequency bands. Spectrum meeting these conditions is not often available. For similar reasons, spectrum leased from wholesale providers such as Clearwire or LightSquared cannot address AT&T's mounting capacity constraints. Among other limitations, AT&T (like T-Mobile USA) has a large embedded base of subscribers whose existing handsets would not work on those providers' spectrum bands or with their technologies. As a result, while Clearwire or LightSquared spectrum may well offer reasonable solutions for carriers like MetroPCS or Leap because they do not face similar constraints, AT&T needs additional spectrum to relieve congestion on its *existing* service bands, which serve millions of current customers.**

AT&T previously made a business decision to build out LTE to approximately 80% of the U.S. population. That decision reflected not only the availability of spectrum, but the significantly higher cost and lower return of expanding to more remote locations, and the need to simultaneously make the required investments to keep up with our current network demands. In light of the billions of dollars required for this expansion and the capacity challenges we faced with our existing network, we concluded that an 80% build was the limit our company could justify to our shareholders. This deal changes that calculus. It gives us additional spectrum, scale, and other resources that we need to expand LTE deployment to more than 97% – 55 million more than our current plans allowed. For instance, in many areas throughout the country we will use T-Mobile's AWS spectrum to launch LTE or enhance our LTE product to deliver faster speeds and enable greater spectral efficiency. Moreover, T-Mobile's customer base, when combined with ours, can increase subscription for LTE-based services across the country, generating additional revenue to support the return on our investment in the rural areas to which we can build LTE as a result of this merger. Likewise, the other synergies of this transaction enable us to justify the necessary capital investments required to expand our LTE coverage from less than 20 percent of the U.S. landmass to roughly 55 percent.

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5. Verizon owns far less spectrum than AT&T, and yet it does not appear to have the same concerns about spectrum crunch as your company. Please provide a breakdown of all wireless network capital expenditures made by AT&T over the last five years, and how those capital expenditures compare to Verizon's investments. Please explain why AT&T has not chosen to invest more to improve its network, and why it has not at least kept pace with Verizon's investments, especially given the data demands of its iPhone customers.

As an initial matter, we disagree with the premise that "Verizon owns far less spectrum than AT&T." Verizon's overall spectrum holdings are comparable to AT&T's, and it holds 22 MHz of contiguous spectrum nationwide in the 700 MHz band.

Over the past four years, AT&T has invested more in the U.S. than any other public company – about $75B. In 2009, AT&T spent $6B on wireless investment; in 2010, we spent more than $9B – a 50% increase in wireless investment in a single year.

In addition to the capital outlays cited above, over the past four years, and including the pending Qualcomm transaction, AT&T spent an *additional* approximately $23 billion on spectrum auctions and acquisitions to obtain spectrum and expand its wireless network footprint and customer base. Due to the different manner in which Verizon may track its investments, we have not attempted to represent or characterize Verizon's investments and expenditures over this same time period.

6. The Federal Communications Commission (FCC) once required AT&T and other large telephone companies to file Automatic Reporting Management Information System (ARMIS) reports in order to monitor service quality and network investment. In 2008 they did away with the filing requirement, but asked that you continue to maintain the records. Please provide copies of the last three years of these reports.

The FCC's ARMIS reports contain data relevant to wireline companies. In 2008, the FCC did away with the filing requirements for ARMIS reports 43-05 and 43-06 which deal with service quality and customer satisfaction indices. AT&T's ARMIS 43-05 and 43-06 reports for the years 2007-2009 are available at the attached link http://fjallfoss.fcc.gov/eafs7/PresetMenu.cfm. The reports are listed under AT&T's wireline operating companies. The data records that would comprise AT&T's 2010 filing are contained in the attached spreadsheets.

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7. What percentage of the "special access" market does AT&T own?

It is impossible to determine what percentage of the "special access" market AT&T currently serves because AT&T's competitors are under no obligation to publicly report (and do not report) data concerning their revenues from the provision of special access services or the number of special access circuits/lines they provide.

In any event, the only special access services that even arguably could be implicated by the proposed merger of AT&T and T-Mobile are those used to provide backhaul functions – that is, carry traffic between a wireless provider's cell sites and switches. Because T-Mobile USA does not offer this service, the transaction will not reduce the number of suppliers available to other wireless carriers. Moreover, because of the explosion in demand for wireless data services, wireless providers are increasingly replacing existing copper TDM backhaul facilities with much higher capacity fiber or microwave Ethernet facilities. As a consequence, wireless backhaul is being offered not only by traditional TDM-based special access service providers, but cable companies and additional competitors such as Level 3, FiberTower, and fiber wholesalers such as Zayo.[2] Thus, it should come as no surprise that the providers of such services are fragmented and highly competitive. Indeed, according to a report by Vertical Systems Group on Year-End 2010 U.S. Business Ethernet Port Share, ILECs collectively supply less than half of business Ethernet ports today; no single provider has more than a 24 percent share of the overall business; seven companies have more than five percent; and five of the top eight providers lost port share or remained steady in 2010.[3]

Please list AT&T's special access revenues and earnings for each of the last five years.

For SEC reporting purposes, we track and report results on an operating segment basis; that is, Wireless, Wireline (of which special access is a part), Advertising and Other. We analyze and report results for those segments based on segment income before income taxes and certain other expenses, which are managed only on a total company basis and thus are reflected only in consolidated results.

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[2] *See* Comments of AT&T Inc., *Special Access Rates for Price Cap Local Exchange Carriers, AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WT Docket No. 05-25, at 15-17 (filed Jan. 19, 2010) ("*AT&T Jan. 19, 2010 Special Access Comments*"); Comments of Qwest Commc'ns Int'l Inc., *Special Access Rates for Price Cap Local Exchange Carriers, AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, at 12-17 (filed Jan. 19, 2010).

[3] Vertical Systems Group, *Year-End 2010 U.S. Business Ethernet Port Share*; *see also* Vertical Systems Group, *Mid-Year 2010 U.S. Business Ethernet Port Share* ("Continuing a trend that was identified from previous share results, Competitive Providers and Cable MSOs once again gained port share from Incumbents [ILECs]. This trend is attributed primarily to a broadening of market competition[.]").

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AT&T historically has filed with the FCC certain regulatory accounting data, which the FCC used in calculating rates of return for all jurisdictionally interstate services collectively on an enterprise basis. Some parties have improperly tried to misuse these data to calculate AT&T's and other carriers' purported service-specific earnings from providing special access services. But these data cannot be used to calculate reliable or meaningful service-specific returns, and the FCC has recognized this. That is because, as the Commission has stated, "economic theory does not provide a clear answer to the question of how joint and common and fixed costs should be allocated for costing purposes" and "[t]his is particularly problematic in the telecommunications industry due to the very high proportion of joint and common costs and fixed costs."

Making these data even more unreliable, the Commission ceased updating its rules for how costs should be allocated among services more than a decade ago. It did so for two reasons: (1) it had replaced cost-based rate regulation with price caps, so this data was no longer relevant for ratemaking; and (2) the rules could not keep pace with changes in the marketplace.[4] In light of these considerations, the Commission concluded that industry and government resources should not be wasted in a continuing and futile effort to update its allocation factors, and it instead froze the already outdated rules governing cost allocations as they existed at that time. To the extent some parties attempt to show a service-specific rate of return based on accounting data filed pursuant to those rules, they are misusing that data, and their calculations bear no relationship whatsoever to reality.

8. How much has AT&T collected in Universal Service Funds (USF) for each of the last five years? If this merger is approved, how much government support (in the form of USF funding and other government funds) does AT&T expect to collect in each of the next five years, and what percentage of those will be used to build out AT&T's network to rural areas?

To be clear, AT&T will use private funds to expand its LTE footprint to 97% of U.S. population as a result of the merger.

[4] *Jurisdictional Separations and Referral to the Fed.-State Joint Bd.*, 16 FCC Rcd. 11382, ¶ 12 (2001) ("*Separations Freeze Order*") (describing rules as "outdated regulatory mechanisms that are out of step with today's rapidly evolving telecommunications marketplace."). *See also id.* ("rapid changes in telecommunications infrastructure" will cause "cost shifts in separations results because these and other new technologies . . . as well as a competitive local exchange marketplace" have not been appropriately incorporated into the "current Part 36 rules"); Notice of Proposed Rulemaking, *Jurisdictional Separations Reform and Referral to the Fed.-State Joint Bd.*, 12 FCC Rcd. 22120, ¶¶ 9-16 & n.86 (1997) ("*Separations NPRM*").

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As you know, the federal universal service fund (USF) consists of four separate programs: high-cost, low-income, schools and libraries (known as E-rate), and rural health care (RHC). AT&T's operating affiliates (wireline and wireless) participate in some or all of the programs. To the extent the second question is intended to address both wireline and wireless networks ("what percentage of those will be used to build out AT&T's network to rural areas?"), attached please find the requested information, by universal service program, at the holding company level.

Low-income, E-rate, and RHC programs. **The FCC's low-income, E-rate, and RHC programs reimburse service providers for their participation in these programs. For example, AT&T's operating affiliates that are eligible telecommunications carriers (ETCs) provide discounted service to eligible low-income consumers through the FCC's Lifeline and Link-Up programs. The E-rate program provides discounts to eligible schools and libraries while the RHC program provides discounts to eligible rural health care providers. AT&T, like other participating service providers, subsequently obtains reimbursement from the FCC's USF administrator for having provided such discounts to eligible consumers, schools, libraries, and rural health care providers. We do not anticipate any significant change in a post-AT&T/T-Mobile merged company's disbursements for these three reimbursement programs. To be sure, the FCC is currently considering fundamental reforms to both its low-income and RHC programs; however, AT&T has no basis to believe that any resulting reforms would affect the AT&T/T-Mobile merged company differently than any other participating service provider.**

High-cost program. **The FCC also is considering long overdue reform to its high-cost program. Since early 2008, AT&T has been urging the FCC to overhaul this program by repurposing it to support broadband deployment in high-cost, unserved areas. AT&T believes this support should be competitively awarded and available both to fixed broadband network providers (*e.g.*, wireline providers) and mobile wireless providers. If the FCC adopts AT&T's reform proposal, the FCC would identify high-cost areas eligible for broadband-focused high-cost support. Broadband providers would voluntarily apply for funding and the FCC would select winning applicants based on a number of criteria (*e.g.*, lowest proposed price per unserved household). The FCC would select only one fixed broadband network provider per geographic area. Additionally, the FCC would establish an Advanced Mobility Fund within what the FCC has termed the Connect America Fund (or CAF) to provide support to selected mobile wireless applicants that commit to provide mobile wireless broadband service in currently unserved areas. The merger should enable reductions in the size of the Advanced Mobility Fund not only because AT&T will use private funds for its LTE deployment but because that deployment should reduce the number of unserved areas that will be funded.**

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In response to the question posed above, while AT&T expects that almost all, if not all, of the CAF-eligible areas that the FCC will identify will be rural, AT&T cannot forecast how much CAF support it will receive, *if any*. For example, AT&T has recommended that the FCC phase out all high-cost support to all ETCs in five years and transition that money to the CAF (and the Advanced Mobility Fund within the CAF). If the FCC adopts our proposal, it is possible that AT&T would lose all of its high-cost support in five years because AT&T's wireline operating affiliates decided *not* to seek CAF support. Under the current rules, ETCs use high-cost support to provide the FCC's supported services (i.e., voice telephony service) in their designated service areas. If the FCC makes no changes to its high-cost program, which seems unlikely, AT&T anticipates receiving an estimated $467 million/year for the next five years post-T-Mobile merger. This figure is based on AT&T's and T-Mobile's 2010 high-cost support ($464 million for AT&T plus $3 million for T-Mobile), using publicly available data. This figure is only an estimate that does not reflect anticipated line losses that AT&T's wireline affiliates will sustain, which will have the effect of lowering those affiliates' high-cost funding over the next five years. To be clear, consistent with our LTE commitment, the combined AT&T/T-Mobile company would not seek or use high-cost universal service support to defray its LTE deployment costs.

AT&T Inc.'s Operating Affiliates' Federal High-Cost Universal Service Support (2005-2010)

2005: $ 294 million
2006: $ 378 million
2007: $ 441 million
2008: $ 426 million
2009: $ 435 million
2010: $ 464 million

9. AT&T has stated that this deal contains $40 billion in synergies, including $10 billion in "support and general administration synergies." What cost savings or "synergies" does AT&T expect to obtain as a result of job cuts or layoffs?

Our industry and company have been in the midst of a radical transformation for some time. Parts of our business, most notably wired voice, are in a state of persistent decline, while others, like data and video, are growing. That transformation, which, of course, has a direct impact on employment, will continue. We have analyzed the synergies expected from this transaction using the same detailed methodology as in prior transactions. These include cost savings that will result from combining and optimizing duplicate functions. However, as with prior transaction, we expect most job reductions will occur through natural attrition.

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This merger will ensure that our growth platforms continue to have the capacity we need to meet our customers' growing need for mobile bandwidth. It will give us the capacity we need to continue to compete aggressively for more customers, will result in an additional $8 billion in investment by the combined company, and enable us to commit to build 4G LTE to 97% of the U.S. population. All of those things are good for jobs and the economy. The LTE commitment, in particular, will help trigger a virtuous cycle of investment and jobs for rural America, which is why the Administration has made widespread deployment of mobile broadband a key priority. The CWA and the AFL-CIO and other labor organizations support the merger because they know we will be providing good paying jobs as a result of this transaction.

a. Please list how many employees AT&T expects to cut in its first year, second year, and third year, if this merger is approved.

   We do not have an estimate at this time. As in past mergers, we anticipate that most job reductions will be through attrition.

b. How many of these cuts will be in Minnesota?

   We do not have an estimate at this time. As in past mergers, we anticipate that most job reductions will be through attrition.

c. Does AT&T intend to cut T-Mobile employees first, if layoffs are needed?

   It is within the Company's customers' and shareholders' best interest to employ and retain the most qualified employees from either AT&T or T-Mobile. That said, if there is a choice between retaining US-based employees versus positions that have been out-sourced overseas, we will cut out-sourced jobs.

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10. Reed Hundt, the former Chairman of the FCC, has said that if the government approves this deal in exchange for a commitment to build out broadband to rural America, it will amount to a "state-authorized bribe." Please respond to this and explain why it wouldn't be in your best interests to build out your network to cover more of rural America regardless of whether this deal is approved.

We cannot comment on what former Chairman Hundt meant by this statement. Building to rural areas is very expensive. The construction required is more costly due to the terrain and the return on investment is often limited due to the lack of population density. Moreover, expanding our LTE footprint from 80% of the population to 97% requires expanding our geographic footprint from less than 20% of the U.S. land mass to roughly 55%. Prior to this transaction, AT&T decided that an 80% LTE build was the limit our company could justify to our shareholders. That decision was based in part on the availability of spectrum, the significantly higher cost and lower return of expanding to more remote locations, and the need to simultaneously make the required investments to keep up with our current network demands. On the other hand, the T-Mobile transaction provides the scale, spectrum and resources that enable AT&T to commit to expanding 4G LTE to 97% of the U.S. population.

11. In AT&T's filings with the FCC for its Cingular and Centennial mergers, did AT&T argue that the wireless market is a national market?

We did, however, the FCC and DOJ have considered these arguments repeatedly and have concluded that wireless markets are local. Our experience is that, in today's wireless marketplace, consumers overwhelmingly make their purchasing decisions at the local level where they live, work and sleep. And this is true regardless of whether these local competitors also sell their services in other localities.

12. It is widely reported that AT&T offers some of the most expensive wireless plans, and Consumer Reports recently indicated that T-Mobile plans typically cost $15 to $50 less per month. Can you explain why AT&T pricing plans are so much higher than your competitors?

The wireless market is extremely competitive. FCC data shows that ¾ of Americans have a choice from among at least 5 wireless providers.[5] Within this context, providers compete on many different fronts, including, but not limited to, price, features, handsets, customer service, innovation, and service quality. And different carriers offer different value propositions. To the extent you imply that AT&T's prices are higher in all cases than those of our competitors, that is incorrect. AT&T offers a wide array of product and pricing options – ranging from simple voice plans, to text messaging plans, to data plans, to family plans to package plans that

[5] Fourteenth Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, 25 FCC Rcd 11407, 11621-22 ¶¶ 42-45 (May 20, 2010).

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combine multiple products – to meet the diverse needs of its customers. In some instances, the price of a given AT&T plan or package may be higher than the price of a comparable offering of one or more of our competitors. In some instances it is not.

13. If this merger is approved, will AT&T commit to continue offering T-Mobile's wireless plans at the same rates (adjusting for inflation) to both T-Mobile customers and AT&T customers for a minimum of ten years? What assurances can AT&T make that we won't see a large spike in prices at the expiration of any conditions on the merger?

Consistent with prior integrations, AT&T will map T-Mobile's rate plans into AT&T's billing systems. T-Mobile customers will have the option to renew their contracts and, if they wish, to exchange their existing handset for a comparable handset from AT&T's device portfolio, all while keeping their existing plans. We will, of course, incentivize former T-Mobile USA customers to consider AT&T's plans, pricing and options, because we believe that we have a compelling and industry-leading value proposition to offer. But, in the end, our intention is to allow T-Mobile USA consumers who choose to maintain their current rate plan on their current or comparable device to do so.

14. If this merger is permitted to go through, will AT&T commit to divesting a significant percentage of its best spectrum to competitor companies?

It is premature to be talking about divestitures and we will not speculate on the options. This transaction will produce enormous consumer benefits and it will do so without harming competition. But if any concerns remain after the FCC and DOJ have had a chance to look at all of the facts, then we will have that conversation at the appropriate time.

15. If this merger is permitted to go through, will AT&T commit to adopting net neutrality principles across its wireless networks for an unlimited period of time?

The FCC has adopted net neutrality rules for wireline broadband providers and a parallel but different set of rules for wireless broadband providers. AT&T is not one of the companies that is appealing the FCC's new rules to the courts.

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16. How much does AT&T expect to spend on lobbying and other costs related to seeking government approval of this deal over the next year? Please list the name of the lobbying firms and lobbyists you are employing in this effort, as well as the amounts you have paid to these firms and individuals and what you expect to pay in the coming year.

This transaction involves the review and approval by both the FCC and DOJ. In addition the Judiciary Committees of both the Senate and House have held hearings on the merger and it is anticipated that the Commerce Committees of both chambers also will be holding hearings. In addition to our own in-house personnel we have retained outside counsel, economists and regulatory experts. AT&T files its quarterly lobbying disclosures (LD-2) as required under the Lobbying Disclosure Act. (LDA), and the outside firms we employ are required to comply with the LDA as well, including the public filing requirements. All of these reports are available for public review at: http://soprweb.senate.gov/index.cfm?event=selectfields**].**

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QUESTIONS REGARDING SENATE JUDICIARY COMMITTEE HEARING:

"THE AT&T/T-MOBILE MERGER: IS HUMPTY DUMPTY BEING PUT BACK TOGETHER AGAIN?"

FROM SENATOR RICHARD BLUMENTHAL

Questions for AT&T (Stephenson):

There is considerable debate regarding how best to increase wireless capacity for carriers. AT&T has argued that this merger will allow it to acquire more spectrum, but others claim that AT&T is underusing its current spectrum, and could resolve its data load problems by building or better utilizing more towers. How expensive would it be to simply increase the wireless capacity of AT&T's spectrum by adding equipment to existing towers?

In looking at this question, the important consideration is not the absolute amount of spectrum we have, but whether we have sufficient spectrum to handle the volume of mobile data traffic customers are generating in a particular location and on a particular network technology – be it 2G, 3G or 4G LTE. We expect that by 2015 the mobile data volume on our network will be 8 to 10 times what it was in 2010. Moreover, different spectrum is used to support customers with different handsets – 2G, 3G and soon to be 4G LTE. Simply adding equipment to AT&T's existing cell sites will not achieve the public benefits this transaction will deliver, including the delivery of LTE mobile broadband to 97% of the U.S. population.

I can assure you AT&T is investing heavily to squeeze every bit of capacity we can out of our existing spectrum. We have instituted Wi-Fi offloads; accelerated customer shift from our 2G to 3G networks; and have been acquiring compatible spectrum from third parties where it is available. These solutions, while helpful, are insufficient to broadly address the growing spectrum challenge we face. The elegance of this transaction is that AT&T and T-Mobile have uniquely compatible networks and spectrum. Integrating the networks will free up capacity – the functional equivalent of new spectrum.

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Finally, the combined company expects to integrate thousands of T-Mobile USA cell sites, effectively splitting cell sites, thereby doubling the traffic volumes that can be carried over the same amount of spectrum in the area served by the original sites. The resulting network will be significantly denser than either company's network could be in the absence of this transaction. This integration will begin immediately after closing and continue on a rolling basis, with the combined company giving priority to areas currently suffering spectrum and capacity constraints and thus obtaining these capacity gains soonest in the areas that need them the most. The company expects to see service improvements in areas of various markets in as early as nine months.

1. If AT&T invested $39 billion in improving their existing network, instead of buying T-Mobile, couldn't the company achieve the same network capacity gains without removing one of its three biggest rivals from the marketplace?

   No. Because AT&T and T-Mobile USA have well-matched cell site grids, use the same network technologies, and have contiguous and compatible spectrum holdings, the transaction will increase capacity through more efficient use of spectrum and network resources, and the combined network will far exceed the sum of its parts. That increased capacity will be *the functional equivalent of new spectrum.* Those otherwise unavailable capacity increases will give the combined company the flexibility it needs to improve service quality for existing services and reallocate spectrum to more spectrally efficient technologies. Indeed, because these efficiencies will enable such spectrum redeployment, they will have a multiplier effect. For example, efficiencies that reduce the spectrum needed to provide GSM service and thereby free up spectrum that can be redeployed for UMTS service will trigger far greater *network-wide* efficiencies because UMTS is more spectrally efficient than GSM by an order of magnitude.

2. Before proceeding with this merger, had AT&T considered and developed a plan to free up spectrum by modernizing its legacy networks? If so, please provide a detailed timeline for implementation of this plan.

   Yes, as stated above, we not only developed but implemented significant efforts to increase Wi-Fi offloads; accelerate customer shift from our 2G to 3G and to LTE networks; and have been acquiring spectrum from third parties where it is available. These solutions, while helpful, are insufficient to broadly address the growing spectrum challenge we face.

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3. Has AT&T considered and developed a plan for moving forward if this merger is blocked? If so, please provide a detailed timeline for implementation of this plan.

Our current plans for LTE deployment are to reach 80% of the U.S. population by the end of 2013. And, absent this transaction, we will move forward with this plan as well as continuing to address spectrum and capacity constraints on a localized basis as best we can.

4. The Communication Workers of America is supportive of this merger because it believes that it will help to create more well-paying union jobs. But our experience in Connecticut with AT&T and its contract negotiations with the local CWA has raised some concerns about this merger. What guarantees has AT&T made, or can make, about allowing T-Mobile workers to organize after the merger is approved?

AT&T traditionally has remained neutral in all union organizing efforts and will do so here post transaction. In addition, AT&T and CWA have a card check neutrality agreement; thus if the T-Mobile employees decide they want to be represented by the CWA, then that process is in place.

5. In past AT&T mergers, the company has identified how many jobs it expects will be lost. AT&T estimated it would eliminate 13,000 jobs after its merger with SBC, and estimated that it would cut 10,000 jobs after its merger with BellSouth. Has AT&T calculated how many jobs it will eliminate if this merger goes through? If so, how many? If not, why not?

No. We have not conducted as granular analysis of this transaction. Obviously, there will be overlaps in corporate functions. Consistent with our prior transactions, however, we plan to handle any overlaps primarily through natural attrition.

6. How many T-Mobile retail stores does AT&T anticipate closing?

We do not know at this time.

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7. Does AT&T support device interoperability? If so, will AT&T promise that devices built to work on AT&T's future LTE networks will also be usable on other carriers' LTE networks?

Although AT&T generally supports the basic goal of device interoperability, we do not believe that it would make business sense or help consumers to mandate that a carrier offer devices that operate in spectrum the carrier is not licensed to use. In fact, such a mandate could derail current LTE deployment, as it would require new interoperability standards to be established by standards bodies which would then have to be implemented, tested and certified by handset and network equipment manufacturers.

Further, mandated interoperability would require adding components to the handsets, which would increase the costs of those handsets. These costs would ultimately be passed onto to consumers. All of this runs contrary to what consumers want: timely access to the latest technologically through advanced devices with the most innovative features, offered at competitive prices.

Moreover, if there is a perceived benefit for carriers operating on other spectrum to enable their phones to operate on our network, there is nothing that prevents those carriers from buying dual band phones. But there is no reason why AT&T should be required to buy dual band phones that will not benefit – and in fact would negatively impact – our customers.

8. As internet usage becomes more ubiquitous in our society, it is increasingly important that internet providers not be allowed to discriminate against particular types of content flowing over their networks. Market consolidation threatens the personal and consumer freedom that the internet offers by reducing the pro-consumer benefits of network competition. If this merger is allowed to go through, the wireless market will be effectively controlled by a duopoly, meaning two companies will dictate the rules for access to wireless internet. Is AT&T willing to commit to robust open internet rules if this merger is approved, in order to ensure that AT&T will not use its vastly improved market position to discriminate against internet content for the financial benefit of AT&T?

As an initial matter, we disagree with the statement that post this transaction there will be a duopoly. The wireless industry is extremely competitive today and will remain so following the merger. Approximately three-quarters of Americans can choose from at least five facilities-based wireless providers in the local areas where they live and work.[1] Thus, focusing on the national subscriber shares or revenues of Verizon and AT&T would ignore the highly dynamic, local nature of wireless

[1] Fourteenth Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, 25 FCC Rcd 11407, 11621-22 ¶¶ 42-45 (May 20, 2010) ("*Fourteenth Wireless Report*").

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competition that has been the basis of review by the DOJ and FCC in wireless mergers for many years. Indeed, as both the Justice Department and FCC have consistently found, it is at the local market level where competition is appropriately evaluated in the wireless industry. And in those local markets, competition is thriving. For example, in addition to the widely available service offerings of Verizon and Sprint, MetroPCS and Leap Wireless both offer nationwide service plans to consumers in markets covering more than 280 million Americans.

The FCC has adopted net neutrality rules for wireline broadband providers and a parallel but different set of rules for wireless broadband providers. AT&T is not one of the companies that is appealing the FCC's new rules to the courts.

9. A specific instance of net neutrality concerns that inhere in the wireless market is the recent news that T-Mobile is allowing its customers to make calls over WiFi when available, instead of using the cellular network, and will not charge its customers for the voice minutes used in these calls. This is an innovative idea that benefits the carriers by reducing data loads on their cellular network and consumers by allowing them to make calls for free. Will AT&T commit to keeping this service for the T-Mobile customers that it acquires if this merger is allowed to go through?

While we have learned about some of the basic aspects of the T-Mobile offering, AT&T does not currently have sufficient information about the network architecture of the T-Mobile USA's Wi-Fi calling service to make this commitment. Should the merger be approved, AT&T will fully evaluate the service to determine if it would offer a high-quality experience and value to our customers.

AT&T does, however, offer its customers a similar service. For customers with poor reception in their homes or businesses, the AT&T Microcell is a device that works in conjunction with the customer's home computer, and routes the customer's wireless voice and data traffic over the customer's high speed Internet connection and can be used with any AT&T 3G wireless device.

10. T-Mobile is viewed as the low-cost alternative to the other national carriers. A comparison of pricing plans finds that T-Mobile customers frequently pay less than customers of AT&T for similar features. This merger threatens those rates, and could mean that a savvy consumer who did his research, compared plans from different carriers, and signed a contract with T-Mobile could find himself, as a result of this merger and through no fault of his own, paying almost $500 per year more than he agreed to pay. Can AT&T promise that T-Mobile's customers will be able to keep their existing plans at previously agreed-upon prices, and that altering a plan by adding or removing services will not disqualify a T-Mobile customer from keeping an existing plan?

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Consistent with prior integrations, AT&T will map T-Mobile's rate plans into AT&T's billing systems. T-Mobile customers will have the option to renew their contracts and, if they wish, to exchange their existing handset for a comparable handset from AT&T's device portfolio, all while keeping their existing plans. We will, of course, incentivize former T-Mobile USA customers to consider AT&T's plans, pricing and options, because we believe that we have a compelling and industry-leading value proposition to offer. But, in the end, our intention is to allow T-Mobile USA consumers who choose to maintain their current rate plan on their current or comparable device to do so.

How long will T-Mobile customers be able to keep their existing plans—months, years, or indefinitely?

No definite time plan has been established.

If T-Mobile customers will be required to switch to AT&T plans and phones, what compensation or other incentives will they receive?

T-Mobile consumers will not be required to switch to AT&T plans.

Last month, the Supreme Court decided *AT&T v. Concepcion*, a case that effectively abolishes class action lawsuits by requiring aggrieved consumers to submit to mandatory binding arbitration of disputes. Mandatory binding arbitration clauses are anti-consumer, and these clauses are pervasive in cellphone contracts, leaving consumers holding the bag when a company defrauds or otherwise harms them. How many consumer disputes has AT&T forced to go to mandatory binding arbitration?

The Supreme Court's decision in *AT&T Mobility LLC v. Concepcion* does not mean that class actions have been or will be abolished. Many class actions arise in contexts in which the parties to the lawsuits have not entered and could not enter into agreements requiring individual arbitration. These include, for example, environmental class actions such as those brought against BP following the Gulf oil spill, and the vast majority of securities fraud class actions. Such class actions will continue. And even in contexts in which such agreements are possible, some parties will decide not to enter into arbitration agreements.

In addition, the Supreme Court's decision in *Concepcion* does not mean that every arbitration agreement will be enforced. For example, the Court's decision would not preclude courts from refusing to enforce arbitration clauses that impose high costs on consumers, require them to travel to inconvenient locations, or prohibit arbitrators from awarding consumers the individual remedies (such as statutory damages, punitive damages, and attorneys' fees) that they could receive in court.

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AT&T is proud of its arbitration program, and does not believe that its provision is "anti-consumer." To the contrary, AT&T's arbitration clause provides consumers with significant benefits. It offers AT&T customers the ability to pursue their disputes before a neutral decision maker and to receive a quick decision in a simplified process that laypersons can use without the need for a lawyer.

Here are some facts about AT&T's arbitration agreement:

- **At the outset, if a customer prefers, he or she can choose to take the dispute to small claims court instead of pursuing arbitration.**
- **If the customer chooses to arbitrate, AT&T pays all of the costs of arbitration for all consumer claims of $75,000 or less, unless an arbitrator concludes that the claim is frivolous. (Even then, a customer's fees are capped at $125 for claims of $10,000 or less, which is far less expensive for the consumer than in court.)**
- **AT&T will even pay the customer's filing fee at the outset (instead of reimbursing the customer later) if the customer states that he or she is unable to pay the fee.**
- **The process is simple; a customer can fill out a one-page form (called a "notice of dispute") that is available on AT&T's web site to inform us of their claim. AT&T has 30 days to make a settlement offer before the customer may demand arbitration before the AAA. Both because of the incentives created by the arbitration provision and because it's a good business practice to satisfy our customers, AT&T strives to resolve all customer disputes before they even reach the arbitration phase.**
- **Under AT&T's arbitration provision, a customer will receive a minimum of $10,000 if the arbitrator awards the customer more than AT&T's last written settlement offer. In addition, under such circumstances, a customer who is represented by a lawyer will receive twice the attorneys' fees that the lawyer incurred to bring the claim in arbitration, and reimbursement for any expenses (including expert witness fees and costs) that the attorney reasonably accrues for investigating, preparing, and pursuing the customer's claim.**
- **When claims are for $10,000 or less, customers have the exclusive power to decide whether the arbitration will be conducted in person, telephonically, or on the papers.**
- **AT&T waives any right it may have to recover attorneys' fees against its customers. As you may know, Texas recently expanded the range of cases in which defendants can recover their fees from unsuccessful plaintiffs, so this waiver on the part of AT&T provides a meaningful benefit to consumers who arbitrate claims.**

For these reasons, the Supreme Court recognized—quoting the lower courts—that under AT&T's arbitration provision, customers are "'essentially guarantee[d]' to be made whole" and indeed are "better off under their arbitration agreement with

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AT&T than they would have been as participants in a class action." *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 1753 (2011).

Indeed, prior to the Supreme Court's decision in Concepcion, the vast majority of courts that had considered challenges to the fairness of AT&T's arbitration provision under state law had rejected those challenges and concluded that the provision was enforceable as a matter of state law.[2] Certainly in the context of AT&T's consumer-friendly arbitration process, it cannot be said that consumers are left "holding the bag."

Your question appears to be asking about the number of disputes that are resolved in accordance with our arbitration program. It bears mention that the vast majority of customer disputes are resolved well before a customer needs to consider pursuing a claim in arbitration. AT&T customers frequently resolve their concerns by calling or e-mailing AT&T's Customer Care department. It is the Customer Care department's responsibility, among other things, to address customer concerns and to satisfy those concerns to the customer's satisfaction to the extent possible. That is why, for example, AT&T Mobility has recorded the fewest number of Better Business Bureau (BBB) complaints and received the lowest BBB complaint rate among the four largest national wireless carriers, contributing to an average national rating of A+ in 2010.

Some customers choose to proceed further by invoking the dispute-resolution process under their service agreements. Our records reflect that, between January 1, 2007—shortly after the AT&T provision at issue in *Concepcion* was introduced—and June 1, 2011, 1,343 notices of dispute were sent to AT&T. Most of those disputes were settled without the need for the customer to demand a formal arbitration. Thus, a far smaller number of customers initiated an arbitration with the American Arbitration Association ("AAA"). According to our records, during the same time frame, 151 demands for consumer arbitrations were filed with the AAA. Again, most of these demands are resolved before an arbitration award is issued. For that reason, only 10 disputes reached the stage of a final arbitral award.

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[2] AT&T's arbitration clause has been enforced under the laws of seven States. **Alabama:** *Powell v. AT&T Mobility*, 742 F. Supp. 2d 1285 (N.D. Ala. 2010). **Arkansas:** *Davidson v. Cingular Wireless LLC*, 2007 WL 896349 (E.D. Ark. Mar. 23, 2007). **Florida:** *Cruz* v. *Cingular Wireless, LLC*, 2008 WL 4279690 (M.D. Fla. Sept. 15, 2008), *appeal pending*, No. 08-16080-C (11th Cir.). **Michigan:** *Francis v. AT&T Mobility LLC*, 2009 WL 416063 (E.D. Mich. Feb. 18, 2009). **Missouri:** *Fay v. New Cingular, Wireless, PCS, LLC*, 2010 WL 4905698 (E.D. Mo. Nov. 24, 2010), *appeal pending*, No. 10-3814 (8th Cir.). **Texas:** *Johnson v. AT&T Mobility, L.L.C.*, 2010 WL 5342825 (S.D. Tex. Dec. 21, 2010). **West Virginia**: *Wince v. Easterbrooke Cellular Corp.*, 681 F. Supp. 2d 679 (N.D. W. Va. 2010); *Strawn v. Cingular Wireless LLC*, 593 F. Supp. 2d 894 (S.D. W. Va. 2009); *see also State ex rel. AT&T Mobility, LLC v. Shorts*, 703 S.E.2d 543 (W. Va. 2010). Only California and one other state had held the provision unenforceable under state law.

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14. What percentage of consumer disputes resulted in a decision in favor of the consumer (defined as a decision in which the consumer receives at least the entire amount in controversy and is either not required to pay travel, arbitrator, and other fees and costs associated with the arbitration, or receives enough money to cover such fees and costs)?

As discussed above, most consumer disputes, whether pursued through AT&T's customer service department or through the dispute-resolution process under the AT&T arbitration agreement, are resolved to our customers' satisfaction. Thus, we can say with confidence that, of the over 1300 notices of dispute mentioned in response to the prior question, the vast majority of disputes were settled in a manner that (we believe) the customer deemed to be a satisfactory resolution of his or her claim. Thousands of other consumer disputes are resolved before the formal dispute-resolution process is even invoked.

We have not undertaken a study to determine how many such disputes resulted in "a decision in which the consumer receives at least the entire amount in controversy and is either not required to pay travel, arbitrator, and other fees and costs associated with the arbitration, or receives enough money to cover such fees and costs." We can affirm that in the 10 disputes that reached the stage of a final arbitral award, there were five arbitral decisions that awarded the consumer choosing the arbitration an amount less than or equal to AT&T's last written offer, and five decisions that found that no award was due the consumer. In none of these ten decisions was the consumer required to pay out of town travel, arbitrator, and other fees and costs associated with the arbitration.

Very few consumers who bring complaints to AT&T feel the need to proceed to the next stage of the dispute resolution process—a step which simply involves the filing of a one -page form.

Indeed, the Supreme Court recognized in *Concepcion* (quoting the lower courts) that consumers may well be better off under AT&T's arbitration provision than they are in a class action. 131 S. Ct. at 1753. As noted above, customers typically are not required to pay arbitration fees to pursue their claims. Any travel costs are likely negligible; under the AT&T provision, any arbitration hearing takes place in the customer's home county, and the customer has the option of arbitrating by telephone or on the papers alone if he or she prefers.

In court, by contrast, consumers rarely win individual lawsuits to such an extent that they receive "at least the entire amount" they asked for, and it is even more rare that they recover all of the costs mentioned in the question. It is rarer still that consumers receive "the entire amount in controversy" when they are members of a class action. That is so for two reasons. First, it has long been recognized that class-

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action lawsuits almost always are resolved for no more than pennies on the dollar.[3] Second, very few customers successfully file claims and receive recoveries from class-action settlements. As one study put it, the claims filing rates are "modest to negligible"—in some cases far below one-tenth of one percent.[4]

15. How long does the arbitration of consumer disputes typically take?

As noted above, the vast majority of customer disputes under ATTM's arbitration provision are resolved quickly (often within 30 days) and informally, without the need for an arbitrator to be appointed. Therefore, relatively few disputes require a customer to file an arbitration demand. That said, based on ATTM's records, for those disputes that resulted in an arbitral award between January 1, 2007, and June 1, 2011, the average length of time between a customer's filing of an arbitral demand and issuance of the award was 5.1 months.

That time frame mirrors the AAA's broader experience. According to one study, consumer arbitrations administered by the AAA proceed to an award in an average of four to six months.[5] Litigation takes much longer: A civil case filed in a federal district court today faces, on average, a delay of over two years (25.3 months) before reaching trial.[6] Class actions may take five or more years between initiation and resolution.

16. How long did the longest arbitration of a consumer dispute take?

Based on a review of our records of consumer arbitrations conducted between January 1, 2007, and June 1, 2011, the longest consumer arbitration took approximately 10.5 months from the filing of the demand for arbitration to issuance of the award.

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[3] *See* Daniel Fisher, *St. Louis Judge Hands Lawyers $21 Million For Coupons*, Forbes.com On the Docket (June 23, 2010), *available at* http://blogs.forbes.com/docket/2010/06/23/st-louis-judge-hands-lawyers-21-million-forcoupons; Daniel Fisher, *Lawyer Appeals Judge's Award of $21 Million in Fees, $8 Coupons for Clients*, Forbes.com (Jan. 10, 2011), *available at* http://blogs.forbes.com/danielfisher/2011/01/10/lawyer-appeals-judges-award-of-21-million-in-fees-8-coupons-for-clients ("The judge didn't even see fit to inquire into the lawyers' valuation of the coupon portion of the settlement, despite strong evidence that less than 10% of coupons in such cases are ever redeemed").

[4] *See* Deborah R. Hensler, *et al.*, Class Action Dilemmas: Pursuing Public Goals for Private Gain 96 (RAND Inst. for Civ. Justice 2000), *available at* http://www.rand.org/pubs/monograph_reports/MR969/; *In re Grand Theft Auto Video Game Consumer Litig.*, 251 F.R.D. 139 (S.D.N.Y. 2008) (2,676 out of 10 million class members made claims); *Palamara v. Kings Family Rests.*, No. 07-317, 2008 WL 1818453, at *1-*3 (W.D. Pa. Apr. 22, 2008) ("approximately 165 class members" out of 291,000 "had obtained a voucher" under the settlement).

[5] *Analysis of the American Arbitration Association's Consumer Arbitration Caseload, available at* http://www.adr.org/si.asp?id=5027.

[6] *U.S. District Court—Judicial Caseload Profile* (2009), *available at* http://www.uscourts.gov/cgi-bin/cmsd2009.pl.

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17. What fees and costs are typically paid by the consumer when arbitrating a consumer dispute?

Typically, under AT&T's arbitration agreement, the consumer pays nothing. As explained above, for claims of $75,000 or less, AT&T ordinarily pays all fees and costs of arbitration. AT&T will even pay the customer's filing fee at the outset (instead of reimbursing the customer) if the customer requests that we do so.

18. AT&T claims that it offers consumers a $7,500 "bonus" if an arbitrator's award exceeds the last settlement offer presented by AT&T to the consumer before arbitration. How many times has AT&T paid such a bonus?

Under AT&T's current arbitration provision, a customer is entitled to a $10,000 minimum payment if an arbitrator awards the customer more than AT&T's last written settlement offer.[7] There is a very simple reason why AT&T has never had to make the $10,000 minimum payment. As the district court recognized in *Concepcion*, the minimum-payment provision creates a powerful incentive for AT&T to offer customers more than the value of their claims in order to resolve them before an arbitrator is selected. Indeed, as the Supreme Court noted in *Concepcion*, the District Court found that the availability of a potential substantial minimum payment and double attorneys' fees is "sufficient to provide incentive for the individual prosecution of meritorious claims that are not immediately settled," and that is why "the Ninth Circuit admitted that aggrieved customers who filed claims would be 'essentially guarantee[d]' to be made whole." 131 S. Ct. at 1753. Thus, the fact that only a few disputes wind up being arbitrated is akin to the fact that only about 1% of civil cases filed in the federal courts actually go to trial.[8]

19. Are the settlement offers referred to in the previous question required to be in writing?

While AT&T's arbitration provision does not mandate that settlement offers be in writing, any settlement offer that an arbitrator would consider in determining whether a customer is entitled to the $10,000 minimum payment must be in writing.

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[7] An earlier version of the arbitration provision offered a potential minimum payment that was the greater of $5,000 or the jurisdictional maximum of the consumer's local small claims court. For California customers, the minimum payment was $7,500. *See Concepcion*, 131 S. Ct. at 1744 & n.3.

[8] *See* United States Courts, *U.S. District Courts—Civil Cases Terminated, by Nature of Suit and Action Taken, During the 12-Month Period Ending March 31, 2010, available at* http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2010/tables/C04Mar10.pdf.

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20. One of the problems with class action bans in arbitration clauses is that they serve as barriers to resolving consumer disputes: a lawyer will not take a case involving a small amount of money, and the considerable problems with arbitration make it an unappealing forum for consumer dispute resolution. It is alleged in one of the *amicus curiae* briefs to *Concepcion* that fewer than 200 of AT&T's customers brought arbitration claims against the company in the period between January 1, 2003, and December 31, 2007. Given AT&T's millions of customers, what explanation does AT&T provide for the very low number of disputes?

AT&T's arbitration agreement does not act as a barrier to dispute resolution. Rather, it gives consumers the choice between going to small claims court or the opportunity to resolve their claims against us, at our expense, through a time-tested, fair, and efficient process subject to the Due Process Protocols of the AAA. The vast majority of consumer disputes are not the types of claims that consumers could ever bring as part of a class action. For such claims, AT&T's arbitration agreement gives the typical customer something he or she might not otherwise find through litigation – a chance for success.

As the Supreme Court noted, in an opinion joined by Justices Stevens, Breyer, Souter, and Ginsburg, without arbitration, "the typical consumer who has only a small damage claim (who seeks, say, the value of only a defective refrigerator or television set) [would be left] without any remedy but a court remedy, the costs and delays of which could eat up the value of an eventual small recovery."[9] The prospect of obtaining legal representation for such a claim is negligible, given the small amount of money at stake. And the overwhelming majority of such claims cannot be brought as class actions because they rest on facts specific to each individual consumer.

Thus, one analysis recently concluded with respect to employment claims (which are larger than most consumer claims) that "only about 5% of the individuals with an employment claim who seek help from the private bar are able to obtain counsel," meaning that for 95% of employees seeking to remedy possible wrongdoing, "it looks like arbitration—or nothing."[10]

By contrast, arbitration provides a simple and cost-free way for individuals to vindicate their claims. As part of our arbitration agreement, we have included innovative, customer-friendly premium awards that provide a very substantial economic incentive for those customers with low-value claims to assert claims against us that otherwise might not be worth their while. This approach not only

[9] *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 281 (1995).

[10] Theodore J. St. Antoine, *Mandatory Arbitration: Why It's Better Than It Looks*, 41 U. Mich. J.L. Reform 783, 792 (2008).

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allows but encourages AT&T to resolve most individual claims far more effectively, and far more quickly, than a class action would.

The question, which points to the number of arbitration proceedings that were initiated at a time before AT&T introduced the arbitration provision at issue in *Concepcion*, seems to imply that the number of arbitrations is too small given the large number of customers that AT&T has the opportunity to serve. But, as explained in response to earlier questions, the reason that relatively few formal arbitrations take place is that hundreds of thousands—if not millions—of disputes (most of them individualized) have been resolved informally, whether through the customer-service process or through the pre-arbitration dispute resolution process. Because the vast majority of consumer concerns are resolved at the outset, it is rare that a consumer will remain dissatisfied to the point that he or she needs to demand arbitration. The arbitration program AT&T has developed does not act as a barrier to dispute resolution—to the contrary, it drives resolution of customers' disputes to their satisfaction.

21. Is AT&T willing to commit to not using arbitration clauses in AT&T contracts to block its customers from exercising its rights under the law?

We are proud of the arbitration program we have developed. Arbitration agreements, if structured properly, provide consumers with a fast, fair, and relatively simple process for addressing their concerns and complaints. That is why we have strived to ensure that our arbitration agreement is the best in the country. One U.S. District Court judge described AT&T's arbitration agreement as containing "perhaps the most fair and consumer-friendly provisions this Court has ever seen."[11] Another has recognized AT&T's arbitration provision as "unusually customer-centered."[12]

Accordingly, we do not believe our customers would benefit from the elimination of the unique choices and features made available to them in our arbitration agreements.

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[11] *Makarowski v. AT&T Mobility, LLC*, 2009 WL 1765661, at *3 (C.D. Cal. June 18, 2009).

[12] *Strawn v. AT&T Mobility, Inc.*, 593 F.Supp.2d 894, 900 n. 6 (S.D.W.Va. 2009).

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Senator Mike Lee
Questions for the Record
Randall Stephenson, AT&T

1. A recent *CNET* article noted that AT&T has more unused spectrum than any other wireless carrier.

   a. Can you tell us why you have yet to fully utilize your existing spectrum holdings and instead are seeking to acquire new spectrum through this and other acquisitions?

   In looking at this question, the important consideration in whether you have sufficient spectrum to handle the volume of mobile data traffic customers are generating in a particular location and on a particular network technology – be it 2G, 3G or 4G LTE. We expect that by 2015 the mobile data volume on our network will be 8 to 10 times what it was in 2010. Moreover, different spectrum is used to support customers with different handsets – 2G, 3G and soon to be 4G LTE. Many customers like the service they have or want to keep their cell pbone. We have to work with customers to migrate them to 3G, and eventually LTE, and to new handsets over a reasonable period of time. It could take years to complete that transition.

   We are actively rolling out our LTE technology using 700 MHz and AWS spectrum. We need to keep that spectrum clear for 4G LTE. Thus, we are putting that 700 MHz spectrum to very good use, and it will be important to serving our customers in the future as they migrate to LTE. A significant benefit of this transaction is the deployment of LTE mobile broadband to 97% of the U.S. population.

   b. If you are not able to take advantage of T-Mobile's spectrum holdings, what are your options for developing a nationwide 4G/LTE network?

   AT&T previously made a business decision to build out LTE to approximately 80% of the U.S. population. That decision was based in part on the availability of spectrum, the significantly higher cost and lower return of expanding to more remote locations, and the need to make the required investments to keep up with our current network demands. In light of the billions of dollars required for this expansion and the capacity challenges we face with our existing network, we concluded that an 80% build was the limit our company could justify to our shareholders. Absent this deal, and the additional spectrum, scale, and other resources that it gives us to expand LTE deployment, we would build the LTE network to the 80% of the U.S. population as planned.

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c. Do you think the national interest would be better served by a few spectrum-rich providers than by a larger number of providers each with less spectrum? Why?

The nation's interest would be best served by making spectrum available – no matter if the provider is large or small. We estimate that in 2015 we will carry the same amount of mobile data traffic by mid-February that we carried for the *entire* year in 2010. That is how fast the mobile Internet is growing. There simply is not enough spectrum available to meet the growing demand. Just about the only thing that can slow down innovation, investment and growth is lack of capacity to meet this demand – and that is why there is such a focus on spectrum. As FCC Chairman Genachowski recently cautioned, "[i]f we do nothing in the face of the looming spectrum crunch, many consumers will face higher prices – as the market is forced to respond to supply and demand – and frustrating service."[1] The fact is that even with everyone's best efforts, it will be years before significant amounts of new spectrum are made available and placed into service. That is just the reality we face. The mobile wireless industry needs more spectrum and it needs it soon.

2. In the mobile communications market, spectrum is a scarce but necessary resource. This is particularly true given the increasing demand for greater data services at higher speeds and with more consistent coverage. Unless and until additional spectrum is made available, existing spectrum must be used as efficiently and effectively as possible so that the U.S. remains a leader in mobile data technologies.

a. What specific efficiencies are created by this merger with regard to spectrum?

The T-Mobile transaction gives us the spectrum, scale, and resources that enable AT&T to commit to expanding 4G LTE to 97% of the U.S. population. It is also important to bear in mind that the additional spectrum will not only permit a broader footprint, but a more robust LTE product in many areas, and will also enable AT&T to delay LTE capacity shortages that we project would otherwise occur in some markets. And, finally, the capacity gains from this transaction are not only from spectrum acquired from T-Mobile. The synergies created by this transaction – cell sites, channel pooling, etc. – effectively create new capacity that is the functional equivalent of new spectrum. Importantly, even after this merger, we will have less spectrum than Sprint/Clearwire.

b. How will AT&T coverage and service benefit consumers in rural areas? Urban areas?

One immediate effect will be on service quality. Integrating the T-Mobile network will quickly add capacity, resulting in increased data speeds and fewer dropped calls. As explained above, however, another major benefit of the transaction will be in connection with AT&T's LTE expansion.

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[1] *Prepared Remarks of FCC Chairman Julius Genachowski,* CTIA Wireless 2011 (March 22, 2011), *available at* http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0322/DOC-305309A1.pdf.

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c. How long will it take for these positive effects to benefit consumers?

We are very experienced at integrating wireless networks quickly and efficiently. For the cell sites, on the day the merger closes, we will get to work in our most challenged markets and integrate the networks as quickly as possible. Integrating T-Mobile cell sites in our network will quickly add capacity, resulting in increased data speeds and fewer dropped calls, in areas serviced by those sites. We expect the integration to start delivering benefits in about 9 months in certain areas and be complete within 24 months. On the expanded LTE network, we expect to reach our goal - 97% of the U.S. population - within 6 years of closing.

3. With only three post-merger companies controlling a large percentage of a wireless broadband market in which smaller providers depend on their larger competitors for data roaming and other services, interoperability between networks and technologies is increasingly important to enabling robust competition.

a. If this merger is approved, what challenges would there be for interoperability?

This transaction does not affect the current debate on interoperability. The AT&T and T-Mobile networks use compatible technologies.

b. Will AT&T support device interoperability and ensure that devices built to work on AT&T's future LTE networks will be usable on the LTE networks of other carriers?

The FCC currently has a petition pending before it on this issue. That said, mandating a carrier to offer devices that operate in spectrum the carrier is not licensed to use would not make business sense or help consumers. In fact, such a mandate could result in derailing current LTE deployment while new standards are debated and established. Further, mandated interoperability would require adding components to the handsets, which would increase the costs of those handsets. These costs would ultimately be passed onto to consumers. All of this runs contrary to what consumers want: timely access to the latest technologically through advanced devices with the most innovative features, offered at competitive prices. Moreover, if there is a perceived benefit for carriers operating on other spectrum to enable their phones to operate on our network, there is nothing that prevents those carriers from buying dual band phones.

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c. Customers who want to switch networks are faced with many obstacles that complicate the process, including contract cancellation fees, handset incompatibilities, and number change charges. What will AT&T do to make the process of switching carriers as smooth as possible?

Like many other carriers, AT&T gives prospective customers a choice when they sign-up for service: purchase a handset at the standard retail price from AT&T and select a no commitment, month-to-month service plan, or choose a heavily discounted or free handset and sign-up for a two-year service plan.[2] Given this choice, the overwhelming majority of our customers voluntarily choose a discounted or free handset with a two-year service plan. AT&T offers its customers who choose this offer of a discounted or no-cost handset plus two-year service plan, two alternative forms of performance in fulfilling their contractual obligation. The customer can stay with AT&T service for the life of the service plan, or pay an Early Termination Fee (ETF) and terminate before the service plan ends. AT&T reduces the amount of the applicable ETF for each month the customer has maintained service under his or her contract. In light of the popularity of the low-cost/no-cost handset option, AT&T intends to continue offering this choice to consumers following the merger. T-Mobile USA consumers that are not presently on plans with an ETF (*e.g.*, month-to-month service) can keep their existing plans or switch to another provider following the transaction. T-Mobile USA consumers that chose T-Mobile USA plans with an ETF can likewise keep their plans following the transaction, and AT&T will honor the terms of those plans.

4. If this merger is approved, AT&T will become the only national provider on a GSM network, creating increased market power for AT&T with respect to handset providers and other GSM-based industry players, including smaller competitors who need GSM data roaming agreements. What steps will AT&T take to prevent anticompetitive abuse of the market power it will have in the GSM arena?

Device manufacturing is a global business, and the standards bodies are international. AT&T does not have the ability to control those processes. From this perspective, the merger of AT&T and T-Mobile will not change anything. This merger will not have an adverse impact on smaller carriers who need GSM data roaming. Wireless carriers enter into roaming agreements to provide their own customers wireless services in those areas of the country where they do not have a wireless network. These roaming agreements are arrived at through arms-length bargaining of terms and conditions, including commercially reasonable roaming rates, and are generally reciprocal. Today, AT&T is a "net purchaser" of roaming services, and will remain so after the merger closes, meaning that it purchases more roaming services for its customers than it sells to other carriers' customers. Accordingly, as a net payer of roaming charges, AT&T has

[2] Consumers also have a "Bring Your Own Device" option; they can bring a compatible handset of their choosing to AT&T's network and obtain a service plan from AT&T. *See Your Device, Your Way* at http://choice.att.com/flash/customersdevices.aspx.

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every incentive to keep roaming rates low. Moreover, smaller carriers in the U.S. are deploying LTE networks and are offering LTE devices. For example, MetroPCS was the first U.S. carrier to offer an LTE phone. Cellular South, which had previously complained about the standards-setting process, has since announced that it is deploying its LTE network and is planning to offer two LTE smartphones made by Samsung. As carriers – which are CDMA and GSM today and thus unable to roam on one another's networks – move to LTE, there will be more carriers available on which to roam.

5. In addition to the benefits consumers will enjoy as a result of expected spectrum efficiencies, this merger will also directly impact consumers in terms of pricing, choice among a diversity of pre-paid and post-paid plans, and customer service. In particular, T-Mobile is known for its low-price offerings and its unlimited service plans.

   a. Will AT&T offer pricing plans comparable to those currently offered by T-Mobile? Including unlimited data plans?

      It is not practical to make any guarantees about rate plans for new customers, as rates will continue to be set by the competitive marketplace. Both DOJ and FCC have shied away from any sort of rate regulation for that reason. Accordingly post-merger, new customers of the combined company will be new "AT&T" customers and thus will have access to AT&T's rate plans and packages.

      That said, consistent with prior integrations, AT&T will map T-Mobile's rate plans into AT&T's billing systems. T-Mobile customers will have the option to renew their contracts and, if they wish, to exchange their existing handset for a comparable handset from AT&T's device portfolio, all while keeping their existing plans. We will, of course, incentivize former T-Mobile USA customers to consider AT&T's plans, pricing and options, because we believe that we bave a compelling and industry-leading value proposition to offer. But, in the end, our intention is to allow T-Mobile USA consumers who choose to maintain their current rate plan on their current or comparable device to do so.

   b. Are T-Mobile customers likely to experience an increase in dropped calls as the networks are merged?

      No. In fact, one of the principal benefits of this transaction is that both AT&T and T-Mobile customers will see improved service quality, especially in constrained areas. Integrating the T-Mobile network will result in numerous network synergies that create additional capacity and will improve service resulting in increased data speeds and fewer dropped calls.

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c. How long will it take after the approval of the merger for AT&T customers to notice an improvement in their service?

We expect network integration to be complete within 24 months with certain areas experiencing capacity benefits in as little as 9 months.

d. Consumer Reports had AT&T near the bottom in most customer service categories. Will this merger improve customer service?

Yes. Among other things, we expect to identify the best practices of both AT&T and T-Mobile in tbis area, and employ tbem to create a consistent, efficient, best-in-class customer experience.

6. There are claims your acquisition of T-Mobile would result in a duopoly. Although you may disagree with that assertion, do you believe that further market concentration is likely to result in increased regulation of the wireless market?

Tbe wireless industry is extremely competitive today and will remain so following the merger. Approximately three-quarters of Americans can choose from at least five facilities-based wireless providers in the local areas where tbey live and work.[3] Thus, focusing on the national subscriber shares or revenues of Verizon and AT&T would ignore the highly dynamic, local nature of wireless competition that has been the basis of review by the DOJ and FCC in wireless mergers for many years. This reflects the purchasing habits of customers who buy at the local level. Indeed, as both the Justice Department and FCC have consistently found, it is at the local market level wbere competition is appropriately evaluated in the wireless industry.

And in those local markets, competition is thriving. For example, in addition to the widely available service offerings of Verizon and Sprint, MetroPCS and Leap Wireless both offer nationwide service plans to consumers in markets covering more than 280 million Americans. These two companies have signed a long-term mutual roaming agreement and are both growing rapidly with their no-contract, low-price, all-you-can-eat offerings. In the first quarter of 2011, MetroPCS and Leap Wireless together had more than 1 million net cusotmer additions. MetroPCS already offers LTE and Leap plans to start rolling out LTE later this year. At a recent investor conference, MetroPCS's Chief Financial Officer summed up the reasons for his company's success as follows:

[3] Fourteenth Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, 25 FCC Rcd 11407, 11621-22 ¶¶ 42-45 (May 20, 2010).

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> **We have a national footprint that is embedded in all of our rate plans for the everyday low price that we offer our customers. We were on the forefront of deploying 4G technologies, and in the prepaid space we really were the pioneer in introducing smartphones, which I think went a long ways to really leveling the playing field from a handset selection standpoint with the nationals. So we've really morphed into more of a full national type carrier with a regional facilities-based network.[4]**

But these are hardly the only choices in the competitive wireless market. US Cellular is a leading provider of nationwide service plans in 26 states and offers its customers nationwide 3G data roaming. In May 2011, the company announced that it was accelerating its LTE deployment plans and intends to initiate service LTE service in a number of markets in the fourth quarter of 2011. Cellular South sells nationwide service plans to customers in six states and recently announced arrangements with LightSquared and Samsung that will give CellSouth "a nationwide 4G-LTE footprint"[5] and its customers "a first-class LTE experience," including the choice of two new Samsung 4G LTE handsets to be introduced later this year.[6]

In addition, Clearwire is both a retailer of 4G data services (under the "Clear" brand), with more than a million retail customers, and a supplier of wholesale inputs to 4G WiMAX retail providers such as Sprint, Time Warner Cable, and Comcast. It also recently entered into a wholesale arrangement with Best Buy, under which the consumer electronics retailer will use Clearwire's spectrum to market 4G services, known as "Best Buy Connect." Similarly, new entrant LightSquared is deploying a nationwide, wholesale LTE network and has entered into a number of wholesale arrangements with retail wireless providers, including Leap, Cellular South and BestBuy. LightSquared plans to intiate LTE service in early 2012 and expects to cover 260 million people by the end of 2015. With all of these existing and new providers competing vigorously to serve American consumers, the wireless industry will remain one of the most intensely competitive industries in the nation.

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[4] Braxton Carter, CFO, MetroPCS, JPMorgan Technology, Media and Telecom Conference (May 17, 2011).

[5] Cellular South, *LightSquared and Cellular South Announce They Have Entered into a Bilateral Roaming Agreement* (Apr. 20, 20110), https://www.cellularsouth.com/ news/2011/20110419b.html.

[6] Cellular South, *Cellular South announces strategic alliance with Samsung Telecommunications to build LTE 4G high-speed wireless broadband data network infrastructure* (Nov. 17, 2010), https://www.cellularsouth.com/news/2010/20101117.html.

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SUBMISSIONS FOR THE RECORD

The American Antitrust Institute

May 16, 2011

Chairman Herb Kohl
Ranking Member Michael S. Lee
Senate Judiciary Committee
Subcommittee on Antitrust, Competition
Policy and Consumer Rights
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Hearing on the AT&T/T-Mobile Merger

Dear Senator Kohl:

We appreciate the opportunity to submit this statement on behalf of the American Antitrust Institute in connection with the hearing on the AT&T/T-Mobile merger held on May 11th before the U.S. Senate Committee on the Judiciary, Subcommittee on Antitrust, Competition Policy and Consumer Rights. The American Antitrust Institute is an independent non-profit education, research, and advocacy organization devoted to advancing the role of competition in the economy, protecting consumers, and sustaining the vitality of the antitrust laws.

We think it is time simply to call a halt to the increasing consolidation by the two dominant firms in the wireless communications market, AT&T and Verizon. Together these two firms already control approximately 65% of wireless subscribers nationwide. This latest merger will come close to replicating the original cell phone duopoly that years of public policy designed to promote wireless competition had sought to dismantle. It is likely to result in higher prices, lower quality, less innovation, and fewer choices for consumers and businesses.

Unlike other wireless mergers in recent years, which have been permitted to go forward conditioned on divestitures in certain local markets, this is the first merger that would eliminate another national facilities-based carrier, which is the low-priced carrier and an industry innovator to boot. The loss of this national competitor cannot be replaced by divesting assets in certain local markets to other wireless carriers. AT&T's promise to allow T-Mobile customers to keep their current rate plans for a while is irrelevant for antitrust purposes and does not address the loss of quality and price competition from an independent T-Mobile.

Based on the publicly available information, we see no adequate legal justification for reducing the number of national carriers from 4 to 3 (or more realistically, 2 1/2, since the merger may have the effect of marginalizing Sprint as a competitor). The argument

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that it may be cheaper or faster for AT&T to increase its network capacity by buying its competitor, rather than investing in upgrading its network, as AT&T claims, is not a sufficient justification for a merger that significantly reduces competition in an already concentrated market. It is often easier to expand capacity by buying one's competitor, but the antitrust laws insist that dominant firms, at least, expand by internal growth, not by acquiring their competitors. Insofar as there is a looming shortage of spectrum, then creating new spectrum, which is within the government's authority, rather than consolidating existing spectrum, is the correct solution. Indeed, if AT&T, which already holds the most spectrum in the industry, cannot compete effectively without additional spectrum, then surely the barriers to entry are so high that expansion by other, far-smaller carriers, will be impossible.

At its investor conference only four months ago, T-Mobile convincingly presented its new "challenger" strategy by which it planned to challenge the market leaders by combining its high quality 4G network features and value pricing to capitalize on the growing demand for affordable and easy to use smartphones. It touted its spectrum position over the short and medium term and although it saw a long-term spectrum issue, that was a problem for the entire industry, not just T-Mobile. Now, it has decided that merging is easier than challenging its rivals. Nothing of course forbids T-Mobile's parent, Deutsche Telekom, from changing its strategy and exiting the U.S. mobile market. However, the Clayton Act prevents it from selling out U.S. consumers in the bargain.

Based on the available evidence, we intend to urge the Department of Justice and the Federal Communications to block this merger.

Sincerely,

Bert Foer

Albert A. Foer
President
Richard M. Brunell
Director of Legal Advocacy

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TESTIMONY OF LARRY COHEN
PRESIDENT
COMMUNICATIONS WORKERS OF AMERICA

"The AT&T/T-Mobile Merger"

Before the Senate Committee on the Judiciary,
Subcommittee on Antitrust, Competition Policy, and Consumer Rights

May 11, 2011

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Good morning, Chairman Kohl, Ranking Member Lee, and Members of the Subcommittee. I am Larry Cohen, President of the Communications Workers of America (CWA). CWA represents more than 700,000 workers in the communications, media, airline, and manufacturing industries as well as the public sector. Most important, for purposes of today's hearing, we represent approximately 43,000 AT&T wireless employees. Therefore, the subject of this hearing – the AT&T/T-Mobile merger – is of intense interest to our members, and I very much appreciate the opportunity to share our views with you today.

We have studied this transaction carefully and reached the following conclusion: AT&T's acquisition of T-Mobile will be good for broadband deployment, good for consumers, good for jobs, good for workers' rights, and good for rural citizens. In short, we strongly believe that this merger will be good for America.

We understand that this transaction will be subject to thorough regulatory oversight, and such review is entirely appropriate. We also appreciate the role of Congress and, in particular, this Subcommittee in monitoring both the wireless marketplace in general and this specific transaction. At the end of these inquiries, however, we believe that three critical points will become apparent: (1) the AT&T/T-Mobile merger will accelerate high-speed broadband deployment; (2) the transaction will positively impact consumers; and (3) the merger will benefit workers. As a result, we believe that the merger should be expeditiously approved.

I. The AT&T/T-Mobile Merger Will Accelerate High-Speed Broadband Deployment

The title of this hearing asks whether Humpty Dumpty is being put back together again. The previous AT&T was a legal monopoly with the exclusive ability to provide every form of communications to the vast majority of Americans. Today's AT&T, by contrast, faces increasing competition in every segment of communications from an increasing plethora of providers: Rural and midsize phone companies, numerous wireless competitors, cable

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operators, and even satellite operators. The reality is that in today's competitive market no company can put together the kind of power once wielded by the prior AT&T.

What is true, however, is that the AT&T/T-Mobile merger will enable AT&T to put together a high-speed broadband network that can provide 4G LTE service (which can deliver download speeds of 10 megabits per second) to 97 percent of the population of the United States within six years. This is especially noteworthy because only 20 percent of broadband subscribers in the United States currently connect to the Internet at such speeds.

In recent years, the Obama Administration and the Congress have rightfully made broadband deployment a top national priority. Today, the United States ranks only 15th in the world in broadband adoption and 25th in average Internet connection speeds. Indeed, Romanians currently enjoy average Internet speeds that are more than six times those experienced by Americans. This situation is entirely unacceptable. Just as our world-class interstate highway system fueled our nation's economic growth in the last century, we need to accelerate our deployment of high-speed broadband networks to maintain our international competitiveness and create jobs in this century.

Four years ago, CWA launched our Speed Matters campaign to highlight the fact that high-speed broadband is necessary to enable the current wave of technological innovation to reach all Americans and improve their quality of life. Telemedicine, distance learning, and smart grids, to give just a few examples, have enormous potential to improve health care, education, and energy conservation, but they will remain out of the grasp of tens of millions of Americans unless we are able to accelerate the development of high-speed wired and wireless broadband networks.

The AT&T/T-Mobile merger marks a critical step toward the goal of bringing high-speed broadband service into all American homes. As a result of its acquisition of T-Mobile, AT&T will be able to offer 4G LTE service to 55 million more Americans than otherwise would be the case. Its 4G LTE network

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will be able to cover 97 percent of all Americans instead of just 80 percent. This increased coverage is especially important in light of the fact that T-Mobile currently has no plans (or even a clear path) to offer real 4G service to any of its 34 million subscribers. Unfortunately, T-Mobile simply lacks both the spectrum and capital to build a 4G network. By contrast, because AT&T and T-Mobile use the same technology, it will be easy to integrate the two companies' networks and for existing T-Mobile customers to enjoy the benefits of 4G service.

While consumers throughout the United States will benefit from AT&T's expanded 4G LTE broadband network, the effects will be especially pronounced in rural America. Those living in rural areas are currently on the wrong side of a digital divide. For example, a report last year by the Pew Research Center's Internet & American Life Project found that while 70 percent of Americans in non-rural areas have broadband in their homes, the figure is only 50 percent among rural Americans. And one key reason for this gap is that high-speed broadband networks cover a significantly greater percentage of urban areas than rural areas.

In order to create jobs and sustainable communities in rural America and reverse the trend of depopulation that is plaguing many small towns as younger residents move to larger cities in search of economic opportunities, it is critical that we close the digital divide. The AT&T/T-Mobile merger will help do just that. The 55 million additional people to be covered by AT&T's 4G LTE network as a result of the merger are generally located in rural America. Indeed, the additional areas that will be covered by AT&T's 4G LTE network comprise an area equivalent to more than one-third of the land mass of the 48 contiguous states.

Finally, especially in light of our nation's current fiscal condition, it is worth noting that this dramatic expansion of high-speed broadband availability in rural areas will occur at no cost to taxpayers. The federal government already spends billions of dollars a year in universal service to ensure that everyone has access to basic service. And the FCC is considering an expansion

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of this subsidy program. The AT&T/T-Mobile merger will ensure dramatically increased broadband coverage without public subsidies, thus decreasing the degree to which the program will need to grow. To be sure, government can, and should, confirm merger-related broadband and speed commitments as well as establish concrete timetables for deployments.

II. The Merger Will Benefit Consumers

Apart from the expanded 4G LTE high-speed broadband network that will result from the merger, we believe that AT&T's acquisition of T-Mobile will positively impact consumers in other ways.

In particular, the merger will improve the quality of service received by AT&T and T-Mobile customers. AT&T's acquisition of T-Mobile will result in a company with increased cell tower density, broader network infrastructure, and added spectrum. This combination of factors will bring tangible benefits to AT&T's customers on a daily basis: fewer dropped calls, decreased network congestion, and increased broadband speeds.

Integrating T-Mobile cell sites into AT&T's network, for example, will effectively double the amount of traffic that can be carried using existing spectrum in the areas covered by such sites. Furthermore, AT&T, after the transaction, will be able to eliminate redundant control channels, thus freeing up more spectrum to carry additional traffic. It will also be able to group spectrum channels into larger pools, thus making it more likely that a subscriber will be able to find an open channel and allowing the companies' integrated network to carry more traffic with the same combined spectrum than the two companies could serve independently. Finally, AT&T will be able to make more efficient use of spectrum that is currently underutilized by one of the companies in certain locations.

To be sure, some contend that the merger will increase consolidation in the wireless industry, a development they maintain will harm consumers through higher prices and an insufficient range of choices. The facts, however, do not support this argument. Over the course of the last twelve years, we

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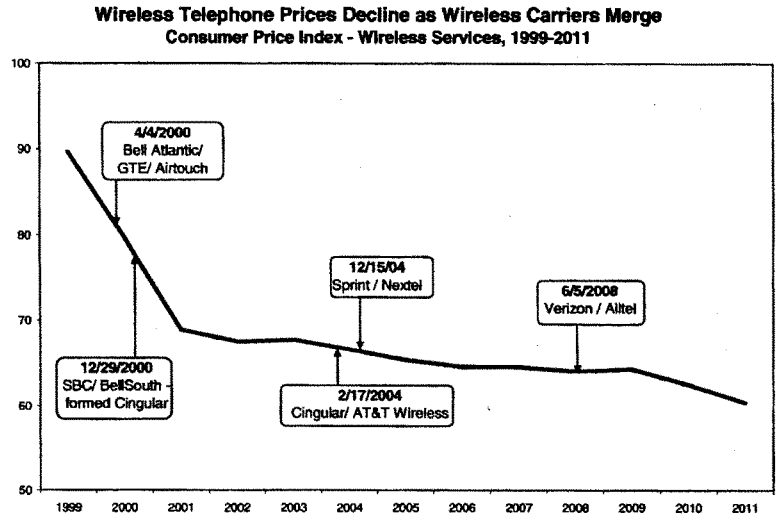
have witnessed numerous significant mergers in the wireless industry: Bell Atlantic-GTE-Airtouch in 2000; SBC Wireless-BellSouth Wireless in 2000; Cingular-AT&T Wireless in 2004; Sprint-Nextel in 2004; Verizon-Alltel in 2008; and AT&T-Centennial in 2009, just to name a few. And, how have these transactions impacted prices? As demonstrated in the following chart, prices paid by consumers for wireless service have continued to fall following such mergers.



According to the Bureau of Labor Statistics, from 1999 to 2011, inflation in the United States rose by 27 percent. Yet, over that same time period, wireless prices (including both voice and data) have actually dropped by 33 percent as shown in the following chart.

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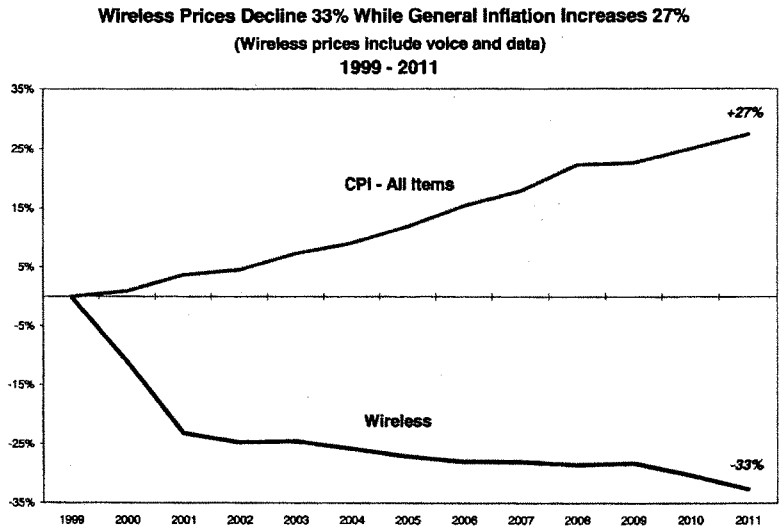

Indeed, to give just one specific example of the dramatic price declines in the wireless industry, according to the most recent figures supplied by the FCC, the average revenue per text message received by carriers decreased by more than 70 percent from 2005 to 2008.

There are a couple of reasons that mergers in the wireless industry have led to decreased rather than increased prices. First, such mergers often produce efficiencies and synergies that allow companies to compete more effectively in the marketplace. For example, if it does not acquire T-Mobile, AT&T will face increasing capacity constraints, and this spectrum shortage will decrease the company's incentive to attract new customers through reduced prices. The merger, by contrast, will increase AT&T's incentive to compete for new customers, and the network synergies resulting from the merger will give it a greater capacity to decrease prices. As one industry analyst has stated, "AT&T could use its scale and magnitude of synergy realization to further

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reduce prices against Verizon and narrow the pricing gap to Sprint, especially for emerging 4G services and rates charged to connected-device users."[1]

Second, and perhaps more important, the wireless industry is intensely competitive and will remain so after the AT&T/T-Mobile merger. In 23 of the top 25 U.S. markets, for instance, there are currently five or more facilities-based wireless competitors, including Verizon, Sprint, low-cost no-contract carriers like MetroPCS and Leap, and regional carriers such as US Cellular and Cellular South that offer nationwide service plans. Indeed, the FCC estimated just last year that more than 70 percent of Americans live in areas served by five or more facilities-based mobile wireless service providers and more than 90 percent of Americans reside in areas served by four or more such providers. There are also an increasing number Mobile Virtual Network Operators (MVNOs or resellers), and these competitors are growing rapidly. For example, one such MVNO, TracFone, has increased its subscriber base by approximately 30 percent just since the end of 2009.

Current and emerging wholesale providers that are constructing advanced wireless networks provide additional competition. Clearwire, for example, maintains that it is the largest spectrum holder in the nation, and its service is currently resold under the brands of Sprint and many cable operators. In fact, Sprint has a majority (54 percent) economic interest in Clearwire. Moreover, LightSquared expects to cover 260 million people by 2015 with its wholesale-only integrated wireless broadband and satellite network.

The intense competition that characterizes the wireless market is perhaps best illustrated by the number of consumers that change carriers. Specifically, an estimated 25 percent of customers in the United States switch to different wireless service providers each year.[2] Companies in the marketplace are therefore in a constant struggle both to retain their current

[1] Citigroup Global Markets, Telconomy 2011 – Wireless Update, March 21, 2011.

[2] FCC, In the Matter of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, WT Docket No. 09-66, May 20, 2010 (rel), para. 248.

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customers and to attract new ones, an imperative that is driving them to lower prices, offer new service plans, applications, and devices, and make tens of billions of dollars in capital investments to improve the quality of their service.

In short, competition in the wireless industry is and will remain vibrant after the merger because of the numerous competitors that will remain in the market and because the dynamics of the marketplace discourage anti-competitive coordination or collusion. The wireless industry is constantly innovating, and there is a strong incentive for a company to be the leader in rolling out a new product or service. In addition, companies do not just compete on a single variable – price – but rather distinguish themselves with respect to a number of elements, including operating platforms, speed, and devices, thus making coordination or collusion far more difficult. Moreover, major players in the industry are under constant threat by the prospect of new entrants or the rapid growth of smaller rivals. MetroPCS, for example, has increased its subscriber base by approximately 17 times over the past nine years (from about 500,000 in 2002 to approximately 8.9 million today), and Leap's subscriber base has increased by 274 percent in the last seven years, growing from about 1.47 million to 5.5 million customers. Both companies, moreover, have dramatically expanded the coverage of their networks, with MetroPCS now claiming to have a larger footprint than Sprint, and Leap announcing that its network covers 277 million people. All of these factors combine to make the wireless market one that is highly unsusceptible to anti-competitive coordination or collusion according to economic literature and the history of vibrant competition within the industry.

Apart from strong competition within the wireless industry, wireless broadband providers also face competitive pressures from a broad array of sources. Consumers have a number of options when it comes to broadband service. Apart from mobile broadband, they can choose cable, DSL, satellite, or fiber. As each of these technologies develop and improve, the competitive pressures placed on wireless broadband providers increase, thus pushing them to improve their quality of service and constraining their ability to raise prices.

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Additionally, before this transaction was proposed, it was clear that Deutsche Telekom was going to sell T-Mobile. Therefore, the real question posed by this transaction is not whether T-Mobile will survive as an independent competitor. Rather, the operative question is whether T-Mobile will be acquired by Sprint or AT&T, and the record clearly indicates that an AT&T/T-Mobile merger will be better for consumers and competition than would a merger between T-Mobile and Sprint.

To begin with, AT&T has the financial resources that are necessary to develop T-Mobile's assets fully. Its credit rating is investment grade, the company has a healthy debt-to-equity ratio, and its net profits are strong. Sprint, by contrast, likely would have significant difficulties in modernizing and growing T-Mobile's assets. The company currently has a BB- non-investment or "junk" credit rating, has a debt-to-equity ratio that is more than twice AT&T's, and has lost billions of dollars over the last three years. Sprint's cash flow and capital expenditures (cap ex) could not support the merger. In 2010, Sprint's cap ex was only 5.9 percent of revenues, compared to typical telecom cap ex in the range of 10 to 15 percent. Over the past six years (2005-2010), Sprint's cap ex declined 74 percent, from $5.6 billion in 2005 to $1.4 billion in 2010. In fact, to enter into a similar deal for T-Mobile, Sprint would have had to borrow tens of billions of dollars to fund the transaction, at least doubling its current $20 billion in long-term debt. While Sprint is currently making incremental progress in digging itself out of the hole it created with the Nextel merger and seems to be on track to becoming a healthy number three competitor, this transaction would have exposed Sprint to a significant challenge. Moreover, Sprint would have far more difficulty integrating T-Mobile assets into its network from a technical standpoint because Sprint would face the challenge of merging four different wireless operating systems that pose significant interoperability problems. AT&T and T-Mobile, by comparison, utilize similar and compatible technologies for their networks. Finally, AT&T has a proven track record of managing acquisitions smoothly and emerging from them with a strengthened company. The story of the Sprint-Nextel

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merger, on the other hand, has emerged as a cautionary tale for corporate America on the dangers of poorly conceived and managed acquisitions.

During the regulatory review process, we expect the Department of Justice (DoJ) and Federal Communications Commissions (FCC) to analyze thoroughly the competition issues raised by this merger. Consistent with past transactions, this review should focus on local market conditions, and as with recent wireless transactions, it is possible that AT&T will be required to divest assets in certain markets. We do not object to such steps and indeed expect the DoJ and FCC to take appropriate action to protect consumers and safeguard the public interest. However, at the end of the day, we believe, for the reasons outlined above, that the AT&T/T-Mobile merger will benefit consumers, who because of the transaction will enjoy greater access to 4G service, faster Internet connections, better service quality, and a marketplace where prices continue to decrease.

III. The Merger Will Be Good for U.S. Workers

In addition to accelerating broadband deployment and benefiting consumers, we also believe that the AT&T/T-Mobile merger will be good for U.S. workers. As the representative of 43,000 AT&T wireless employees, our foremost responsibility when it comes to this transaction is to ensure that this merger is in the interest of our members and workers in the industry, and we are convinced that it is.

AT&T is the only union wireless company. AT&T's management has worked in partnership with CWA to ensure that past mergers worked to the benefit of AT&T's employees, and this transaction will be no different. Over the past decade, AT&T has expanded through numerous transactions, including those involving Cingular, Dobson, and Centennial. And during that same time, the number of AT&T wireless workers represented by CWA has grown dramatically: from about 9,300 in 2001 to about 43,400 today.

During implementation of the AT&T/T-Mobile merger, CWA will work closely with AT&T to ensure that there will be no involuntary job losses and

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that any workers adversely affected by the transaction will be able to transition into other similar or better jobs with the company. Indeed, we believe in the long term that AT&T, after the merger, will be in a stronger position to create jobs because it will be better able to expand and extend its business than either AT&T or T-Mobile could have done as separate entities. To give just one example, the expansion of AT&T's 4G LTE network that will result from the merger holds the potential to create thousands of new jobs.

Aside from positively impacting our members who work for AT&T, the merger will also prove to be a boon for T-Mobile employees. When it comes to the subject of workers' rights, the difference between T-Mobile and AT&T is quite striking. While AT&T maintains a policy of true neutrality and allows workers to make their own decisions regarding union representation, T-Mobile is actively hostile to unions and strongly opposes efforts by workers to organize and exercise their basic rights.

AT&T, for example, trains managers not to influence workers' decisions regarding union representation. T-Mobile, on the other hand, ensures that managers act on the company's anti-union policy through the use of anti-union training manuals, job postings and e-mails. The atmosphere for workers at the two companies also differs dramatically. At AT&T, workers are allowed to talk freely about unions, can take union literature without fear, and are not pressured to report any contact with unions to management.

At T-Mobile, however, this is far from the case as workers are subject to widespread anti-union intimidation. T-Mobile managers advise workers not to take union literature, and training classes for employees include anti-union statements. The company also has created a climate of fear through steps such as photographing the license plates of employees seen taking union leaflets, pressuring workers to report contact with union representatives to management, and requiring workers to attend anti-union meetings. As one T-Mobile worker stated earlier this year, "In my training class, it was practically shoved down our throats that T-Mobile does not tolerate unions. . . . When the CWA reps are outside giving out flyers, I am afraid to take one for fear of being

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tagged a union supporter."[3] Simply put, T-Mobile employees currently work in an environment where they are afraid they will lose their jobs if they attempt to exercise their basic right to organize. As one worker put it, "[I]f I open my mouth and say something positive regarding CWA or organizing, I could be terminated . . . And there wouldn't be any legal protection for me. That's the other thing. If you agree with the company, you have some degree of freedom of speech while you're working. If you do not agree with the company, no, you have no protection whatsoever."[4] And a former T-Mobile employee last year recalled that when working for T-Mobile, "we were called into the manager's office for an anti-union meeting with management reps and told union organizing activities would cost us our jobs."[5]

This atmosphere of intimidation at T-Mobile is particularly effective because of workers' employment status. T-Mobile workers are "at will" employees, a fact of which they are frequently reminded, meaning that they can be legally fired so long as their dismissal would not violate any antidiscrimination laws (e.g., race, gender, age, religion, etc.). AT&T employees, by contrast, are protected by collective bargaining agreements which establish a system of "due process" and regulate the terms under which a worker may be disciplined or discharged.

Once AT&T completes its acquisition of T-Mobile, more than 20,000 T-Mobile employees will benefit from a dramatically improved working environment. In accordance with our collective bargaining agreement, AT&T has publicly committed to maintain a policy of strict neutrality with respect to the organizing of T-Mobile employees after the acquisition, leaving the decision of whether to join a union up to individual employees according to a non-confrontational process sanctioned under the National Labor Relations Act. As a result, just as workers at other companies acquired by AT&T have chosen

[3] Anonymous T-Mobile Worker, Remarks at ITUC meeting, January 20, 2011.

[4] CWA Voices of T-Mobile Workers Project, Interview 1.

[5] http://loweringthebarforus.org/news/entry/t-mobile_workers_blog_we_needed_the_option_of_joining_a_union/.

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union representation soon thereafter, we believe that in an atmosphere free from fear and intimidation, there is an excellent chance that T-Mobile employees will make this choice as well. And if they do, T-Mobile employees will for the first time have an opportunity to select union representation based on global standards of workers' right to freedom of association and representation.

Indeed, looking at the big picture from the perspective of T-Mobile employees, AT&T's acquisition of T-Mobile is clearly in their interest. Before this transaction was proposed, it was clear that Deutsche Telekom was going to sell T-Mobile. The only real question was whether T-Mobile would be acquired by Sprint or AT&T, and AT&T is by far the better option for T-Mobile employees. For example, in contrast to AT&T's strict neutrality policy with respect to union organizing and positive partnership with CWA, Sprint has a long history of hostility to union organizing and workers' rights. The organizing drive at La Conexion Familiar, a Sprint long-distance service marketed to Latinos, has become legendary. In a show of courage and solidarity, 70 percent of the call center employees joined a petition to the NLRB to hold a union election. In response, Sprint closed the call center. In subsequent proceedings, an NLRB Administrative Law Judge found Sprint guilty of more than 50 violations of the law. During this experience and others, Sprint used a handbook detailing how to maintain a union-free workplace to train managers.

Although at one time there were organized units at Sprint, most of these were organized under previous owners, local telephone carriers such as United Telephone that Sprint acquired in a string of mergers. Sprint's strategy was to isolate them and to wall them off from the long distance and wireless segments of the company so that those divisions would remain union free. Indeed, when Sprint changed its business plan in 2005, it divested these units to Embarq.

There was a successful effort to organize three call centers in North Carolina. The workers persevered in the face of Sprint's relentless anti-union attacks over an eight-year period (1986-1994). Once the unit was organized, Sprint dragged out contract negotiations for another year and a half, using a

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variety of delaying tactics while trying to decertify the unit even before the contract was signed. Together, these experiences had the effect of freezing workers' interests in forming a union. The workers knew they were likely to lose their jobs if anyone tried to organize.

Furthermore, Sprint had outsourced up to 70 percent of its customer contact workforce to places like the Philippines, India, and Mexico.[6] Sprint is the only U.S. wireless company that outsources network management, and according to one source, a "great part" of the work has been sent abroad.[7] AT&T and its unions, by comparison, recently negotiated the return of 3,000 DSL-related customer service jobs to the United States, and workers at AT&T have a seat at the table when it comes to outsourcing because the topic continues to be the subject of negotiations between management and the union.

In sum, because of T-Mobile's current condition and the choice that Deutsche Telekom made to exit the market, T-Mobile workers now face a fork in the road, and to paraphrase Yogi Berra's famous words, it is in their interest to take it. One path forward is the merger with AT&T, a transaction that will allow them both to join a strong and stable company that is positioned for future growth and to work for an employer that respects the rights of American workers. The other path forward is a merger with Sprint, a transaction that would leave them at the mercy of a less financially robust company that is hostile to union organizing and has a troubling record of outsourcing. We believe that the best choice for T-Mobile's workforce is an obvious one.

IV. Conclusion

CWA believes that AT&T's acquisition of T-Mobile is a win-win-win proposition: it will accelerate broadband deployment, benefit consumers, and

[6] Alena Semuels, "Sprint focused on keeping customers happy so they don't leave," Los Angeles Times, March 5, 2009, http://latimesblogs.lattimes.com/technology/2009/03/sprint-and-cust.html

[7] Gulveen Aulakh, "Ericsson to serve US clients using 'competent' workforce in India," *The Economic Times*, Nov. 26, 2010.

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positively impact workers. As a result of the merger, AT&T will be able to build a network that will offer 4G LTE broadband service to 97 percent of Americans, the quality of service received by current AT&T and T-Mobile customers will improve, and more than 20,000 T-Mobile employees will be able to work for a company that respects workers' rights and to enjoy improved working conditions. All of these developments, moreover, will occur within a wireless marketplace that will remain dynamic and fiercely competitive.

For all of these reasons, it is CWA's hope and expectation that, following a thorough regulatory review, the Department of Justice and the Federal Communications Commission will approve AT&T's acquisition of T-Mobile.

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Consumers Union
Nonprofit Publisher of Consumer Reports

Statement of Parul P. Desai
Policy Counsel
Consumers Union
Regarding
"The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?"
before the
Senate Committee on the Judiciary
Subcommittee on Antitrust, Competition Policy and Consumer Rights

Consumers Union, the nonprofit publisher of *Consumer Reports®* magazine, respectfully submits this written statement for the record. For 75 years, the mission of Consumers Union has been to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. Consumers Union has grave concerns over AT&T Inc.'s purchase of one of its major competitors, Deutsche Telekom's T-Mobile USA because of the effect it will have on consumers' pocketbooks, choice, service and innovation.

Introduction:

Wireless technology is evolving at rapid speeds. More and more, consumers are using smartphones to access the Internet. Vigorous competition must exist in the wireless industry in order to ensure choice and innovation. However, the wireless market is already a concentrated one and just last year, the Federal Communications Commission (FCC) opted not to declare it a competitive market. The proposed acquisition of T-Mobile by AT&T will be harmful to consumers. Now is not the time to approve a combination between two of the four nationwide wireless carriers in America.

Impact on Market Concentration:

Combining the second and fourth largest wireless carriers would further consolidate market share among the top four carriers, resulting in a "highly concentrated" market as defined by the 2010 Department of Justice (DOJ) and Federal Trade Commission (FTC) *Horizontal Merger Guidelines*. As of 2008, the FCC estimated the HHI to be 2,848,[1] which already exceeds both the DOJ (2,500 HHI) and FCC (2,800 HHI) definition of a heavily concentrated market. According to the DOJ, if an acquisition creates a highly concentrated market and if the HHI is increased by over 100 points, the acquisition will raise significant competitive concerns that warrant scrutiny.[2] It has been estimated this acquisition will increase the national HHI by an additional 650-700 points, which means that scrutiny over the proposed acquisition should be increased, with a presumption that the acquisition will enhance market power.[3]

Further, there is no evidence to suggest that other providers will be able to challenge the market shares of the largest carriers. The true nationwide service networks are Verizon, AT&T, Sprint, and T-Mobile. If the acquisition is approved, AT&T, Sprint, and Verizon would control over

[1] *See* Federal Communications Commission, 2010 Wireless Competition Report, WT Docket No. 09-66, ¶ 51.
[2] *See* DOJ and FTC *Horizontal Merger Guidelines*, pg. 19, Aug. 19, 2010.
[3] *See* Stacey Higginbotham, "AT&T, T-Mobile Merger: A Regulatory Quagmire?," *GigaOM*, Mar. 20, 2011, http://gigaom.com/2011/03/20/att-tmobile-regulators/, last visited May 10, 2011.

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91% of the wireless market. AT&T and Verizon alone would control close to 80% of the wireless market, essentially creating a duopoly.

In fact, GAO specifically noted that while the economies of scale of the large, national carriers "can facilitate the continued growth of the top carriers, they can also create challenges to the growth and competitiveness of small and regional carriers."[4] Furthermore, the GAO report cited the trouble of small and regional carriers in "securing subscribers, network investments . . . and handsets."[5] In other words, the national providers are in a different league than the small and regional carriers, who are not considered replacements for most subscribers.

Specifically, the GAO data show that it is the top national carriers that have been able to add the greatest amount of net subscriber additions annually.[6] The GAO also notes that part of the national carriers' advantage over the small and regional carriers is that small and regional carriers have a difficult time in retaining their current customers. Part of the inability to gain subscribers or retain them stems from the inability to offer the newest and latest advanced handsets because of the exclusivity agreements device manufacturers typically enter into with top national carriers. The GAO reports that stakeholders have "consistently noted that consumers are increasingly basing their wireless decisions on the availability of particular advanced handsets."[7] According to one stakeholder, "some consumers do not consider these small and regional carriers as options because"[8] the small and regional carriers do not have access to the newest advanced handsets.

Additionally, small and regional carriers have fewer funds to acquire spectrum and invest back into their own networks for improvements, making it more difficult for such carriers to expand and improve upon their networks.[9] Consequently, it already appears that smaller and regional carriers are not on equal footing with the larger, national carriers and cannot compete at the same level as them. Further consolidation in the market will only make it more difficult for the remaining carriers to compete with any emerging duopoly.

Thus, while MetroPCS, US Cellular, and Cricket/Leap are all strong regional carriers, it is unlikely they can be considered equals to the nationwide carriers. According to first quarter 2011 subscriber numbers released, these three regional carriers would constitute less than seven percent of the entire wireless market, including wholesale and retail customers.[10] Even if Clearwire, a wireless data provider, is included in the mix, those four providers still control under nine percent of the market.

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[4] Government Accountability Office, "Report to Congressional Requesters: Telecommunications: Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry," pg. 17, July 2010, http://www.gao.gov/new.items/d10779.pdf.
[5] *Id.*
[6] *Id.* at 18.
[7] *Id.* at 23.
[8] *Id.*
[9] *Id.* at 21.
[10] Fierce Wireless, "Grading the top 10 U.S. carriers in the first quarter of 2011," http://www.fiercewireless.com/special-reports/grading-top-10-us-carriers-first-quarter-2011, last viewed on May 10, 2011.

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Consequently, it remains unclear whether the regional and smaller carriers have the necessary resources to gain enough market share to truly compete with the national carriers. Acquiring spectrum is a challenge, regional and smaller carriers do not have the economies of scale or the influence of the nationwide carriers when making deals for handsets, and such carriers still rely on AT&T and Verizon to purchase key inputs to broadband infrastructure, like "special access."

Impact on Price:

A combined AT&T and T-Mobile will likely lead to higher prices not just for T-Mobile customers but for all consumers.

T-Mobile is considered the low-cost competitor to AT&T, and the merger would essentially eliminate it as a competitor to AT&T. Plus, AT&T would be the only GSM carrier in the U.S. wireless market. Those consumers, particularly businesspersons, who require the interoperability of GSM technology for global travel, would be left with only one monopoly carrier to choose from in the U.S.

Moreover, a recent *Consumer Reports®* price analysis revealed that T-Mobile pricing plans are typically between $15 and $50 cheaper than AT&T's comparable plans. Furthermore, T-Mobile customers have the option for unlimited data plans, whereas AT&T customers do not. Consequently, T-Mobile subscribers who eventually migrate to AT&T plans will likely pay more for service than they would have under a T-Mobile plan.

For example, T-Mobile charges $50 per month for its basic 1,000-minute individual "Even More Talk" two-year contract plan, while AT&T charges $60 per month for its nearest equivalent "Nation" contract plan, which includes only 900 minutes. When adjusted for the difference in voice minutes, AT&T costs $16.67 more per month or $200 more per year for a comparable monthly allocation of minutes. Additionally, T-Mobile's two-line, 3,000-minute "Even More Talk + Text" (unlimited messaging) + 200MB data two-year contract plan for smart phones costs $140 per month. The closest AT&T "Family Talk Nation" plan costs $170 per month, after you add data and messaging to the base price, but delivers only 2,100 voice minutes. Adjusted for the 900-voice-minute shortchange, this AT&T plan costs $50 more per month or $600 more per year.

Although AT&T minutes not used during one month can be used in the subsequent 12 months and subscribers can also place unlimited mobile-to-mobile voice calls free to any network when they add unlimited messaging to their individual or family plan, for $20 or $30 a month, respectively, it is worth noting that AT&T customers get less in some ways. A family can upgrade the above T-Mobile plan to include unlimited data for a total cost of $150 per month. But the closest plan from AT&T is one with a cap on data downloads (of 2GB per month) and a higher cost ($190 per month, plus $10 per additional gigabyte of data if you exceed the 2GB limit). Thus, current T-Mobile customers are not only paying less for voice, but also for data.

Although AT&T said it will honor T-Mobile's current contracts, those will likely end after two or fewer years. Presumably, those customers will either have to enter into a contract with AT&T or find a new carrier. If the customer decides to stay with AT&T after her T-Mobile contract ends, she will likely need to purchase a new phone that is compatible with AT&T's licenses, as well as pay more per month for a similar plan.

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While it is apparent this transaction would affect T-Mobile customers, it is also likely that prices for all consumers would increase. There is little reason to believe that the two largest carriers –controlling almost 80% of the market - would try to compete on price. The carriers with the most influence, AT&T and Verizon, tend to set the pricing scheme for the entire industry. Further consolidation in the wireless industry indicates that prices. As former Consumers Union Counsel Chris Murray testified in 2008, "[t]he way carriers continue to raise prices on text messaging services is a clear example of the negative ramifications of market power in this industry." Murray noted that carriers have charged high rates for text messaging, yet it costs the carriers little to run. In fact, he pointed out that text messaging rates had increased 150% in a small four year period solely because the major players figured out that they could inflate such prices and reap huge profit benefits.

Another example of industry closely following its competitors' moves is with early termination fees for smartphones. In 2009, Verizon increased its early termination fees (ETFs) for smartphones to $350. Less than a year later, AT&T followed suit and more than doubled its ETFs to $325. The two companies also charge extraordinarily high overage fees for data usage. Further concentration of the wireless industry raises alarms about pricing, since the two largest companies already tend to steadily – in lockstep - raise prices on services.

In all, T-Mobile's departure from the wireless market would eliminate a relatively low-cost carrier, which will likely result in higher prices for all consumers.

Impact on Service:

A combined AT&T and T-Mobile will not likely lead to improved service. AT&T is continuously rated as having the worst customer satisfaction of any major wireless carrier. A recent *Consumer Reports®* survey found that consumers considered AT&T a worse wireless carrier than T-Mobile in a wide range of areas from contract service to prepaid service to customer service to call quality.

For example, while less satisfying than Verizon and Sprint, T-Mobile was still meaningfully better than AT&T at providing service with a contract plan. Indeed, AT&T got lower marks than T-Mobile on almost every attribute that was rated. It was comparable with T-Mobile only on texting problems, where both AT&T and T-Mobile rated below average. The gap between AT&T and T-Mobile was larger still for service without a contract ("prepaid" plans). There, T-Mobile was more satisfying overall than Verizon, Virgin, and AT&T (with its Go Phone prepaid brand).

The gap between the carriers in satisfaction was highest when it came to customer support, especially for service provided by phone. That is mostly because of AT&T's sub-par scores in every aspect of customer service, from support on various modes (phone, e-mail, website) to success in solving problems and staff knowledge. Additionally, when it comes to customers who are considering quitting their carrier, AT&T and T-Mobile had the most subscribers weighing such a switch. But by 10 percentage points, AT&T subscribers were more likely to say they were seriously thinking about making a move.

Importantly, T-Mobile has been essentially stable in our national reader score, reflecting overall satisfaction, and in many other attributes. AT&T, by contrast, has seen a marked slide in

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reader score and some other attributes between the surveys *Consumer Reports®* published in 2010 and 2011, respectively. AT&T has become significantly less satisfactory to readers in resolving issues and has prompted a startling jump (of a full 13 percentage points) in the proportion of its customers who say they want to quit the carrier.

Overall, the survey data suggests that T-Mobile customers will face poorer service and does not suggest that AT&T's purchase of its competitor will improve service for current customers of both AT&T and T-Mobile.

Impact on Innovation:

With a merged AT&T/T-Mobile and Verizon controlling close to 80% of the market, the success of handset makers and application developers will be determined by a merged AT&T/T-Mobile and Verizon. The top two wireless providers will be more able to exert their market power when dealing with device manufacturers and application developers.

For example, in 2007, Verizon passed on the chance to be the exclusive distributor of the Apple iPhone because it did not approve of the financial terms Apple was seeking. Some of the terms that Verizon refused were allowing Apple to share in monthly fees, allowing Apple to determine how and where iPhones could be sold, and allowing Apple to continue a relationship with iPhone customers.[11] This is an example of the kind of market power the two large wireless companies have over device manufacturers, even those manufacturers that are considered heavyweights like Apple.

Apple was able to secure a better deal with AT&T, but there is still no telling how much Apple compromised its device to comply with AT&T's terms. With more market power concentration in the wireless industry, the largest carriers will be able to dictate which devices they will allow to attach to the network and will be able to dictate exactly what kind of control device manufacturers have over their own technology. This has the potential to greatly stifle innovation as device manufacturers could start developing devices that will meet carrier expectations rather than trying to create the most innovative product available.

Application developers will face similar obstacles as a result of AT&T's and Verizon's market power. For example, RIM recently introduced its new PlayBook tablet, and it offers some free applications designed to interact with other RIM BlackBerry devices. However, AT&T has blocked the most anticipated application for the PlayBook, BlackBerry Bridge.[12] BlackBerry Bridge allows email, contacts, calendar, and other applications to be accessed on the PlayBook via other BlackBerry devices. This is vaguely like tethering, which AT&T offers as a paid monthly service. This very recent example shows the market power of the top national carriers to stifle application makers' ability to offer innovative tools and products.

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[11] Leslie Cauley, "Verizon Rejected Apple iPhone Deal," *USA Today*, Jan. 29, 2007, http://www.usatoday.com/tech/news/2007-01-28-verizon-iphone_x.htm, last visited May 10, 2011.

[12] *See* Chris Davies, "AT&T blocks BlackBerry Bridge app for PlayBook," *Slashgear*, Apr. 19, 2011, http://www.slashgear.com/att-blocks-blackberry-bridge-app-for-playbook-19146896/, last visited May 10, 2011.

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Moving Forward:

There are several ways that competition in the industry can flourish while still expanding the reach of broadband build out. For example, lawmakers should continue to consider ways in which spectrum can be made available and distributed in equitable ways. Additionally, some carriers – including T-Mobile – have sought reforms to help ensure a marketplace that allows for more competition. For example, the FCC has pending proceedings on competition issues such as access to broadband infrastructure. These inputs are generally controlled by AT&T and Verizon, and fair access to them would provide a more level-playing field for competitors.

In addition, as all carriers move towards LTE technology, the FCC has been asked to examine the issue of interoperability, which would ensure that competing wireless services have access to popular handheld devices that consumers want and ensure consumers can roam on other carriers' networks. An April 2011 national poll by Consumers Union found that 73% of cell phone owners said they would support a government rule that requires handsets to be compatible with all U.S. cellular services.

If phones are interoperable, consumers can easily switch networks when their contracts are up. As of now, it is nearly impossible to take that phone to another network if the customer is unsatisfied with his current network. Also, having devices available to all other carriers – rather than devices being subject to exclusive deals with one carrier - could open up an entire new market for device developers to create highly innovative devices.

Carriers could also be required to eliminate or greatly reduce early termination fees. Sizing down early termination fees to be directly correlated with the phone subsidies is another way to enable consumers to easily switch networks if they are unsatisfied. The ability to switch networks puts more pressure on the networks to effectively compete for consumers based on service and price.

Overall, rather than approve AT&T's bid for T-Mobile, lawmakers and policymakers should move forward to resolve these issues in a way that will foster competition, consumer choice and fair prices.

Conclusion:

There is a great deal of data and evidence to suggest that this transaction will lead to a highly concentrated market, which will likely lead to higher prices and less choice for consumers. While the FCC and DOJ will be reviewing this transaction in the months ahead, Consumers Union urges Congress to carefully scrutinize this proposed transaction and the effect it will have on consumers' pocketbooks, choice, service and innovation.

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WRITTEN TESTIMONY OF
DANIEL R. HESSE
CHIEF EXECUTIVE OFFICER
SPRINT NEXTEL CORPORATION
RE: PROPOSED AT&T/T-MOBILE MERGER
BEFORE THE SENATE JUDICIARY COMMITTEE,
SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY AND CONSUMER RIGHTS
May 11, 2011

Good Morning, Chairman Kohl, Ranking Member Lee, and Members of the Subcommittee. I am Dan Hesse, the CEO of Sprint Nextel Corporation. Thank you for the opportunity to address the potential negative impacts that AT&T's proposed takeover of T-Mobile could have on the American economy, American innovation, and American consumers. The decisions to be made by the Department of Justice (DOJ) and the Federal Communications Commission (FCC) will have a profound impact on the future of the wireless industry. The choice is clear -- if the transaction is blocked, wireless competition will thrive and competition, in turn, will continue to drive investment, innovation, consumer choice, and U.S. global leadership in wireless communications.

If, on the other hand, the DOJ and FCC decide to permit the takeover, the wireless industry would regress toward a 1980s-style duopoly. AT&T would become the largest wireless carrier in the country with over 94 million subscribers and approximately 43% of the post-paid market. Coupled with Verizon's over 83 million subscribers and 38% of the post-paid market, the scope and scale of the resulting duopoly, controlling more

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than 80% of all U.S. contract customers and approximately 80% of all wireless industry revenues, percentages that would likely grow each year after that, would be prohibitive to viable competition from other carriers. Thus, the title of this hearing speaks for itself. This merger would put Humpty Dumpty back together again, and it should be stopped.

I am not here to ask for a special break or to seek any conditions in connection with this takeover. I am here because Sprint believes in competition, which goes hand-in-hand with innovation. Robust competition in the wireless industry is an essential part of our country's nearly two trillion dollar information economy that is vital to our Gross Domestic Product (GDP) and global competitiveness, and that has delivered affordable wireless communications and Internet access to virtually every American. As a result, wireless communications is a fundamental platform for our entire economy.

For example, in 2010 the wireless industry accounted for nearly $160 billion in revenue, approximately $25 billion in capital expenditures, and employed, directly or indirectly, an estimated 3.6 million Americans. If the industry remains competitive, wireless devices and services could generate productivity gains over the next 10 years amounting to almost $860 billion in additional GDP. Indeed, competition and innovation led Sprint to roll out America's first nationwide 4G network, first unlimited 4G plan, and first 4G

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phone. Sprint's innovative leadership greatly influenced Verizon's decision to accelerate its own timetable to roll out 4G services, which in turn caused AT&T and others in the industry to follow.

The fundamental problems arising from a structural transformation of the wireless industry from a competitive structure to a duopoly cannot be fixed through divestitures or conditions. The only remedy that can preserve competition and a vibrant wireless marketplace is for the Department of Justice and the Federal Communications Commission to "Just Say No" to this takeover. This industry can't afford it, consumers can't afford it, and this country can't afford it.

The Wireless Industry and America

The Mobile Age has arrived. It took 100 years to build one billion fixed phone lines, but only 20 years to add five billion mobile subscribers. At the end of 2010, over 302 million wireless subscriptions were active in the United States, a population penetration rate of almost 96%. And for the first time, the U.S. wireless industry last year carried more data traffic (e.g., email, text, and web browsing) than voice traffic. Robust competition in our industry has resulted in steadily dropping prices for higher quality wireless communications services.

More American households are abandoning fixed phone lines and looking to wireless exclusively for voice and data communications. For

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example, on April 20, 2011, the US Department of Health and Human Services released a report indicating that, as of June 30, 2010 over one-quarter of all adults - 26.6% - lived in wireless-only homes, an eight fold increase over just six years. Ironically, because of their landline monopolies, AT&T and Verizon have the least incentive to price wireless service competitively enough to stimulate "cord cutting" of fixed phone lines.

Thus, for many Americans, wireless has become their only means of accessing information, communicating, and increasingly, conducting business. It is their lifeline. But, if the Department of Justice and the FCC allow AT&T to devour the nation's 4th largest carrier, the Twin Bells would be uniquely positioned as the gatekeepers of this lifeline. They will control access to, and the price of, the digital ecosystem and related industries. Upstream content providers and device manufacturers would have little choice but to deal with these entrenched duopolists controlling about 80% of the market.

Allowing AT&T and Verizon to control approximately 80% of the wireless industry's revenues will increase the scale and scope advantages that these companies already possess with regard to market share, spectrum holdings, infrastructure control, and ability to invest. These enormous companies would be significantly more profitable than all other wireless providers combined, which creates a formidable barrier to entry

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and expansion by other potential rivals. For example, AT&T and T-Mobile's combined 2010 EBITDA was approximately $27.2 billion and Verizon's was $26.5 billion. Sprint's 2010 EBITDA, in contrast, was only $4.5 billion. If the T-Mobile takeover is approved, AT&T and Verizon would control 88% of all wireless industry profits. Consequently, the disparity between the duopolists and all other providers is likely only to worsen. Going forward, it would be difficult for any company to effectively challenge the Twin Bell duopoly, even if the duopolists reduce quality, raise prices charged to content sellers for access to consumers or raise prices to customers for access to voice or Internet service.

Moreover, as descendants of the Bell monopoly of local wireline telephone companies, AT&T and Verizon each control a vast wireline infrastructure. Among other advantages, this allows them to obtain backhaul – a critical input of wireless service connecting towers to the larger network – at cost. This point cannot be underestimated. While we look at our handsets and the wireless towers they connect to as "wireless", from that point on, wireless traffic travels by landline, over the legacy wireline networks that are largely controlled by AT&T and Verizon. By contrast, because Sprint and other wireless carriers are not owned by large local telephone companies, we are forced to purchase backhaul service, in most cases from our largest competitors – AT&T or Verizon. Whereas

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Sprint must pay more than $2 billion a year in backhaul fees to its competitors, AT&T and Verizon earn enormous profits from their control over backhaul. By controlling the availability and price of backhaul, AT&T and Verizon are also able, to a large degree, to control their competitors' costs and quality of service.

The goal of every for-profit corporation is to maximize shareholder value – to bring the greatest return to its shareholders. I respect Randall Stephenson and Philipp Humm. They are doing their jobs, maximizing value for their shareholders. Unfortunately, there are only three beneficiaries of the proposed transaction: the shareholders of AT&T, Verizon and the sole shareholder of T-Mobile USA, Deutsche Telekom.

Competition incentivizes companies to increase shareholder value by offering superior quality, competitive prices, and constant innovation to attract more customers and thereby increase revenue. But if AT&T is allowed to takeover T-Mobile, the benefits of competition – that have driven the wireless marketplace for nearly two decades – could virtually disappear.

Nowhere would this be more apparent than in the loss of innovation. Competition drives innovation, and innovation is vital to maintaining the prosperity and leadership of this country. Innovation provides a path to productivity gains and economic growth. Because wireless communication has become a fundamental gateway to so many other related industries, it

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is imperative we advance competitive, market-driven policies that maximize this engine of innovation and economic growth.

For example, in the last several years, we have seen a tremendous increase in the variety of handsets being offered to consumers, each with different features and functionality. As of March 2010, AT&T offered 53 handsets, Verizon and Sprint each offered 44, and T-Mobile offered 37. This is competition at its best, and without it, this kind of innovation and market creativity could disappear. Handset manufacturers will be less likely to partner with anyone other than the duopolists, because access to their nearly 80% of the market's customer base will be sufficient. This could have immediate adverse effects on consumer choice and cause even more profound long-term harm by undercutting the wireless research and development ecosystem.

History Lesson: A Wireless Duopoly Disserves the Public Interest

We can predict how this movie will end. Back in the early 1980s, the FCC granted two terrestrial spectrum licenses in each geographic area, one to the local wireline company and the other to an applicant unaffiliated with any landline telephone company to provide what became known as cellular telecommunications services. The first commercial handheld cellular phone (known as "the brick") received FCC approval in 1983. It cost thousands of dollars to buy and monthly service was expensive too,

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thereby denying the availability of un-tethered communications to all but businesses and the wealthiest Americans.

In 1992, the U.S. General Accounting Office issued a report that concluded "duopoly markets are unlikely to provide a product at a competitively set price" and recommended that the FCC grant commercial wireless (Personal Communications Service) licenses to additional entrants because, "by giving consumers an additional choice, the new PCS provider could spur cellular telephone carriers to improve their services and lower their prices." (U.S. GAO, Telecommunications: Concerns About Competition in the Cellular Telephone Services Industry (July 1992) at 41-42.)

The following year, Congress authorized the FCC to auction additional spectrum for terrestrial personal communications services or PCS. Understanding the transformative principles of a competitive market economy, the FCC used these auctions to open the wireless industry to competition by restricting the amount of spectrum that could be purchased by a single company, thereby creating a competitive market with multiple players. Competition was good for consumers as prices fell and service improved. Several significant PCS competitors emerged, including Sprint and T-Mobile. According to CTIA data, the average monthly billing charge for cellular services dropped from $97 in 1987 to $39 in 1998, and voice

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revenue per minute dropped from $0.44 in 1993 to $0.05 in 2008. In this competitive environment, there was no need for the types of heavy regulation imposed on other communications industries, and the wireless industry flourished to the benefit of the entire value chain, from content providers to consumers.

For all of these reasons, the DOJ and FCC should stop this takeover and preserve a marketplace where thriving competition produces improved quality, lower prices, and ongoing innovations for wireless users. As history has amply demonstrated, we should not expect the two reconstituted Bell companies to actively compete with one another. They would effectively eliminate the robust competition that has served America so well for nearly two decades. The difference in size between the top two and any other competitor would become too great, which would marginalize the ability of Sprint and the remaining local and regional carriers to influence the level of innovation in the industry ecosystem.

AT&T's Claimed Spectrum Efficiencies Do Not Withstand Scrutiny

AT&T claims that its acquisition of T-Mobile will give AT&T the additional spectrum it needs and allow AT&T to extend wireless service to some parts of rural America that are without adequate coverage. This is a myth. Even without this transaction, with the Qualcomm spectrum it is purchasing, AT&T has the largest, licensed spectrum holdings of any

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wireless carrier. But it does not use that spectrum efficiently. Specifically, AT&T is not using on average 40 MHz of its spectrum across the nation – spectrum that could be used to improve service for its customers – but that AT&T has chosen instead to "warehouse" for future services.

AT&T could invest in its network to increase its capacity where necessary and use its spectrum more effectively. AT&T does not face a spectrum crisis, but rather a spectrum deployment problem of its own creation. Verizon has less spectrum and more subscribers than AT&T, but just weeks ago Verizon stated publicly that it has sufficient spectrum to meet its needs until 2015. Increasing demand for data-based communications, such as video and internet content, are not unique to AT&T; all carriers have to use their spectrum assignments efficiently. The most data-hungry devices are Android devices, which are more prevalent on Verizon's, Sprint's and T-Mobile's networks than they are on AT&T's as a percentage of devices on-network.

Finally, T-Mobile is already heavily using its spectrum in the same high demand areas where AT&T asserts it needs additional capacity. Thus, the proposed merger would bring little spectrum relief to AT&T where it claims to need it the most. If AT&T invested only a fraction of the $39 billion T-Mobile purchase price into its own network, AT&T could alleviate its alleged capacity concerns, upgrade its network, and deploy advanced

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wireless technologies, without harming wireless competition. In short, AT&T has several available alternatives, including buying spectrum on the market, for addressing its customer service needs without a merger that would eliminate the 4th largest nationwide carrier and the nation's only other national GSM competitor.

AT&T also has attempted to justify the T-Mobile takeover by arguing it will enable AT&T to extend wireless services to rural America.

This is a false choice. There is nothing in the proposed merger that changes the fundamental economics of rural broadband deployment. Rural areas do not suffer from any shortage of spectrum given the lower demand for services that results from lower population densities. Rather, rural expansion has been delayed because the lack of population density in rural areas simply makes build-out more expensive per subscriber. The addition of the T-Mobile network to that of AT&T would not change this fact, and would only extend the AT&T network to about 1% more of the population than are already in AT&T's network coverage.

Congress and the FCC are both considering ways to promote broadband deployment in rural areas. It is noteworthy that of all the rural proposals under consideration, some of which are supported by Sprint, none would result in a corresponding reduction in competition in the rest of the country. If AT&T's real goal was to reach more people in rural areas, it

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could invest the $39 billion it is spending to buy T-Mobile to build out service to rural areas rather than raise the prospect of rural development as a pretext to swallow a competitor.

Local and Regional Carriers Cannot Replace T-Mobile

AT&T argues that there will be adequate competition after its acquisition of T-Mobile by pointing to regional and local competitors, such as niche prepaid carriers, MetroPCS and Cricket. These smaller prepaid companies provide a viable option for a limited group of customers, principally those who want a low cost phone with fewer options and features, and whose usage is primarily in a limited geographic area. However, these smaller prepaid companies will not be able to keep the Twin Bells from raising prices for the vast majority of consumers who want robust wireless device options, a national footprint and continued innovation. Likewise, the other few remaining post-paid carriers, which represent less than 5% of total post-paid subscribers, will not have the scale that will spur the Twin Bells to innovate or risk losing significant numbers of customers.

Importantly, the smaller companies all rely on competitive access to the national carriers' networks for wholesale roaming service, the pricing of which would be controlled by the Twin Bells following the proposed transaction. And for both domestic and international companies that need

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GSM, with the elimination of T-Mobile, they would now have no alternate nationwide choice. Thus, the local and regional carriers cannot maintain either price or innovation competition in the wireless industry; they cannot individually or collectively restore the competition that would be lost by AT&T's proposed T-Mobile takeover.

Sprint Wants the Opportunity to Compete

In a competitive marketplace, on a fair playing field, Sprint can continue to be a leader in customer service, value, pricing, and innovation. We started as a small and entrepreneurial company, and we understand how to compete and succeed in the open marketplace.

Some mergers are justified, and even beneficial. They can improve industry competitiveness, health, and customer choice. This one does not. We believe that the acquisition of T-Mobile USA by AT&T is a "bridge too far" in consolidating too much market power in the hands of only two, similar companies. With the elimination of competition, we will ironically return to more government regulation, not less, as we turn the clock back to the days of Ma Bell. As Chairman Kohl noted regarding the proposed MCI WorldCom/Sprint merger in 1999: "One need not be a rocket scientist – or even an antitrust lawyer – to be wary of a merger which results in just two dominant players in an industry." AT&T's takeover of T-Mobile would entrench two dominant players, just as Chairman Kohl cautioned against.

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If this takeover is allowed, on what pretense would Verizon not be allowed to acquire remaining competitors?

I would like to thank you for holding this hearing today and taking a serious look at the proposed acquisition of T-Mobile by AT&T. We urge the Department of Justice and the FCC to take a hard look at this transaction and to weigh carefully the irreparable harm to competition, innovation, and customer choice against the purported benefits of combining two overlapping businesses. I thank you for the time and am prepared to take your questions.

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Introductory Remarks by Philipp Humm, CEO T-Mobile USA, Inc.

Thank you Chairman Kohl, Ranking Member Lee, and Members of the Subcommittee. Good morning, I am Philipp Humm, CEO of T-Mobile USA. I appreciate the opportunity to testify today on behalf of T-Mobile USA.

Coming from Deutsche Telekom in Europe, I joined T-Mobile USA in July 2010 and became CEO in November 2010. T-Mobile was facing revenue declines for two consecutive years due mainly to a weakened brand position. The management of T-Mobile has in the meantime implemented a new strategy that is aimed at leading the company back to growth. Results so far are still mixed: while revenues have stabilized, subscriber losses remain our number one concern.

Returning the business to growth, however, will not be sufficient to secure T-Mobile's strategic future. As data usage continues to explode, spectrum is becoming a constraint to our business, with T-Mobile facing spectrum exhaust over the next couple of years in a number of significant markets. Moreover, our spectrum holdings will not allow us to launch LTE. T-Mobile also lacks the low band spectrum that would enable it to offer nationwide deep in-building coverage, particularly to reach homes in suburbs and in rural areas. In addition to these unsolved strategic issues, T-Mobile's parent Deutsche Telekom is not in a position to finance the necessary large scale investments in the U.S. for T-Mobile to remain competitive. The combination with AT&T allows T-Mobile to address these challenges as well as to realize near term benefits for its customers. The combination brings together two uniquely compatible companies, achieving extensive synergies, while greatly benefiting the American economy, consumers, and

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particularly T-Mobile customers. We have identified, at least, 4 major benefits for T-Mobile customers:

- ***First, T-Mobile customers will enjoy improvements in their coverage through access to AT&T's low-band 850 MHz spectrum.*** With the acquisition by AT&T, T-Mobile will be able to offer to nearly all its customers full access to 850 MHz AT&T spectrum, which will significantly improve deep in-building coverage to its customers. As T-Mobile already uses chipsets supporting 850 MHz, customers will be able to take advantage of these improvements shortly after the transaction closes.

- ***Second, the transaction will result in near-term network quality improvements for T-Mobile customers.*** As a result of AT&T's and T-Mobile's use of compatible GSM-based technologies and the companies' complementary cell site grids, the combined company will be able to quickly merge their networks and pool spectrum. Significant operating efficiencies will be achieved through channel pooling, control channel efficiencies and cell splits. For T-Mobile customers, this will mean better coverage, fewer dropped and blocked calls, and faster and more consistent data downloads – particularly at peak times and in high-demand locations.

- ***Third, the transaction will also give the combined company the resources and spectrum it needs to broadly deploy next generation 4G-LTE service.*** T-Mobile does not have sufficient spectrum to roll out a competitive LTE network while also continuing to support its existing GSM and HSPA+ networks. By combining the spectrum of both companies, the entity will be able to support LTE and the two legacy technologies, GSM

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and HSPA+. It will allow LTE to reach more than 97% of the U.S. population, as stated by AT&T, which is something T-Mobile would not have been able to do on its own.

- ***Fourth, the transaction will allow the combined company to increase capacity and to significantly reduce costs, which will drive prices down and enhance opportunities for innovation – making the US an even more dynamic and competitive market.*** The U.S. wireless marketplace is very competitive. Approximately three-quarters of Americans today live in areas contested by at least five facilities-based wireless providers. Competition has been particularly fierce for value-driven customers, which are the core of T-Mobile's customer base. This highly competitive marketplace will ensure that consumers across-the-board benefit from the enormous cost savings and capacity increases that AT&T estimates from the transaction. We expect increased competition and lower prices for all customers. By contrast, without the deal, a spectrally constrained AT&T and a spectrally and capital constrained T-Mobile would be able to provide much less vigorous competition separately than would the more efficient, combined company.

To conclude, I am confident that T-Mobile customers will experience significant and tangible benefits from the proposed combination with AT&T – both immediately and longer term. The transaction will provide our combined customers and the American public improved GSM, UMTS and LTE services faster than either company could provide on its own. And the competition that has characterized this industry will continue and be even stronger post-transaction. Thank you for your time. I welcome any questions you may have.

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Testimony of
Victor H. "Hu" Meena
President & Chief Executive Officer
Cellular South, Inc.

before the

Senate Committee on the Judiciary
Subcommittee on Antitrust, Competition Policy and Consumer Rights

regarding

"The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?"

Wednesday, May 11, 2011

INTRODUCTION

Good morning Chairman Kohl, Ranking Member Lee, and members of the Subcommittee. Thank you for inviting me to testify before you today regarding AT&T's proposed take-over of T-Mobile. This proposed acquisition brings into sharp focus the negative impact that consolidation of the largest carriers is having on consumers, on job growth and on competition in the once thriving wireless industry. It must be stopped. The fate of this acquisition determines the course of our industry. It's as simple and as critical as that.

I have been in the wireless industry for over twenty-three (23) years with Cellular South, the nation's largest privately-owned wireless carrier serving over 875,000 subscribers in all of Mississippi and portions of four other southeastern states. I am also the current Chairman of RCA – The Competitive Carriers Association. Collectively, RCA's nearly 100 wireless carrier members provide commercial wireless services to over 80% of the nation's geography.

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In my years in the wireless industry, I have seen the duopolistic world of the early cellular licenses, the rise in wireless competition as a result of the later spectrum auctions, and the growth and innovation throughout the industry as a result of the Telecommunications Act of 1996. But, as I sit before you today to discuss whether it is in the public's interest for one wireless company to control approximately 45% of the U.S market, I am convinced that we have reached a critical tipping point. With this transaction, policy-makers face a clear choice: either (1) allow the wireless industry to continue down a path toward a duopoly made up of MaBell's two behemoth descendants or (2) reverse course and lay the foundation for a new era of competition in this industry.

The Justice Department broke up the MaBell monopoly in 1983. Congress then set in motion an era of wireless competition that began in 1993, when spectrum auctions broke open the duopoly in wireless markets to competition. In 1996, Congress rewrote the Telecommunications Act to further promote competition in telecommunications services. Yet, over the last decade, we have watched as the largest carriers were permitted to close acquisition after acquisition – Centennial Wireless, Alltel, Rural Cellular Corporation, Dobson Communications, just to name a few – with seemingly no interest from regulators in the effects this consolidation has on the market. In fact, since at least 2009, Cellular South and other competitive carriers have been expressing to policy-makers concerns over the reconsolidation of our industry. Through a flurry of mergers and acquisitions we now find ourselves on a glide path toward Ma Bell reconstituting herself into the 2 Bell Sisters of the wireless industry: AT&T Wireless and Verizon Wireless. In the meantime, AT&T has used its enormous acquired scale to

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control device and infrastructure vendors, limit or eliminate roaming, and slow the deployment of 4G LTE technology in the U.S.

If AT&T is permitted to takeover T-Mobile, AT&T Wireless and Verizon Wireless would each have more subscribers than all of the nation's other wireless carriers combined. This should come as no surprise after the parade of acquisitions over the past several years. This AT&T-Verizon duopoly already exercises near complete control over wireless device and infrastructure vendors. AT&T and Verizon have used this control to prevent competitors like Cellular South from accessing devices, to restrict or completely prevent broad roaming opportunities for consumers, and to create technologically exclusive networks that frustrate device ecosystems and prevent roaming as well as slow the deployment of 4th Generation (4G) wireless services to American consumers.

At a time when the American economy is struggling to get back on its feet, our priority should be on preventing the emergence of a duopoly that would require heavy regulation. Instead, policy-makers should act to preserve competitive, innovative markets that use private capital to create jobs while providing consumers with robust choices of products and services.

Speaking for Cellular South and for the nearly 100 competitive wireless carriers of RCA, I respectfully request that you work to stop this acquisition. It's bad for consumers, it's bad for jobs, and it's bad for competition.

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From Competition to Consolidation

When I began in this business in the late-1980s, there was a local duopoly in every market. In that era of local-market duopolies, the FCC awarded two cellular licenses in each market area, which meant that consumers had just two choices for wireless service. Carriers had virtually no market incentive to innovate or improve service offerings. As a result, that period was marked as one of large brick phones and even larger wireless bills. In a duopoly, the market can quickly reach equilibrium and, if both providers are reasonably happy with their position, innovation stagnates and prices rise.

The industry changed for the better in the late 1990s, when the FCC, pursuant to Congressional mandate, auctioned off PCS licenses and a substantial number of competitive carriers entered markets—launching a new, healthy competitive era of wireless in the U.S.

Because Congress made competition a priority, the FCC auctioned PCS licenses to new entrants who built networks and attracted customers—disrupting established markets. Local duopolists were forced to respond to competitors with lower priced services and devices, new and larger coverage areas, better customer service and more innovative offerings. In order to acquire and retain customers, Cellular South and other existing carriers were forced to be creative. During this period, Cellular South launched several offerings that were groundbreaking at the time, including "Free Nights and Weekends," "Free Incoming Calls," and, later, some of the nation's first "Unlimited" plans. Carriers competed on a level playing field and success was

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measured by the number of subscribers each could attract and retain. Consumers were the primary beneficiaries.

But this all began to change in the middle of the last decade. Through unfettered mergers and acquisitions, it has become clear that our industry is on a glide path toward Ma Bell reconstituting herself into the 2 Bell Sisters of the wireless industry: AT&T Wireless and Verizon Wireless. Not surprisingly, this concentration of market power has led to less choice for consumers and the routine abuse of market power in an effort to prevent competition at every turn. Specifically, AT&T has used its enormous acquired scale to (1) restrict competitive carrier and consumer access to devices, (2) withhold roaming agreements, and (3) leverage its control over device and infrastructure vendors to Balkanize new spectrum and slow the deployment of 4G LTE technology in the U.S.

To date, the most audacious example of this anti-competitive consolidation is AT&T's proposed takeover of T-Mobile. The prospect of this transaction brings us to a critical decision point for policy-makers: are we are going to continue down the path toward an era of nationwide duopoly, or are we going to lay the foundation for a second competitive era in wireless. There is no third option – either AT&T will be allowed to acquire T-Mobile (paving the way for Verizon to acquire Sprint and cementing a national wireless duopoly); or it will not.

If AT&T's takeover of T-Mobile is approved, all that will remain is the endgame, where the remaining non-Bell carriers wait their turn to be acquired or bled dry by the biggest two carriers. Likewise, if the takeover goes forward, policymakers must begin preparations to

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regulate every aspect of the day-to-day business of the duopolists. Without effective competition as a check on market abuses, the government will have to interject itself to ensure that consumers – the true owners of wireless spectrum – are protected. This means subjecting a future wireless communications duopoly to the same type of regulatory oversight that wireline telephone and electrical power utilities have operated under for decades.

National Market, National Scale

The U.S. wireless market is national, not regional. So it is ironic that AT&T's promotional materials regarding its takeover of T-Mobile cast carriers like Cellular South as national competitors while pressing regulators to review competition on a market-by-market basis.

The AT&T service plan and device prices that Cellular South competes against in Jackson, Mississippi are exactly the same as the service plan and device prices that AT&T offers in Arlington, Virginia. With respect to operating costs, it is nationwide scale that determines the ability to acquire and the cost of wireless devices and network equipment. Additionally, Cellular South and other competitive carriers must be able to offer customers nation-wide use of their devices. There is no market for regional or local calling plans.

In this national marketplace, AT&T possesses the scale to control vendors and influence competitive carriers' access to devices, roaming agreements, and infrastructure. Its consolidation with T-Mobile will further cement this anti-competitive condition.

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In fact, T-Mobile's recent troubles can be linked directly to its lack of scale in the national GSM market. AT&T was able to use its acquired national scale in GSM technology to influence device manufacturers to withhold the most popular GSM devices from T-Mobile and to refuse reciprocal roaming agreements[1] that put T-Mobile at a substantial competitive disadvantage – unable to offer consumers desirable GSM devices and quality nationwide roaming coverage.

When the duopoly of AT&T and Verizon is the "market", the market has failed

Recently, AT&T and Verizon each leveraged their control over device and infrastructure vendors to create an essentially proprietary band-class in the 700MHz spectrum. Until the FCC's auction of 700 MHz spectrum, all devices built to operate in any specific part of a spectrum band were technologically capable of operating across all paired spectrum within the given band. The only difference between devices was the air interface technology (i.e. CDMA or GSM). In other words, all devices were developed to be interoperable across the entirety of a given block of spectrum (e.g., all Cellular devices are interoperable across the Cellular spectrum and all PCS devices are interoperable across the PCS spectrum).

This is not true for the 4G LTE networks being deployed on the 700 MHz spectrum even though they use a common air interface technology. The 700 MHz spectrum has been

[1] *See,* "T-Mobile, AT&T deadlock on 3G data roaming deal," *Fierce Wireless*, February 3, 2011 (http://bit.ly/g7J5y4); "AT&T, T-Mobile bicker over possible 3G data roaming agreement," *Fierce Wireless,* November 4, 2010 (http://bit.ly/9O1lwb).

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fragmented into distinct Band Classes and the two largest holders of 700 MHz spectrum - AT&T and Verizon - have developed and are deploying essentially proprietary LTE networks and devices that work only on their spectrum. Given the enormity of the economic scale of each AT&T and Verizon, these two carriers are the de facto "market" for LTE devices and equipment that operate at 700 MHz. Outside of this "market," it is not economically feasible for any other carrier to obtain LTE equipment or devices to operate in non-AT&T or non-Verizon 700 MHz bands. To the extent competitive carriers can acquire LTE equipment and devices, the cost prohibits anything more than a fractional deployment and the ecosystem lags the AT&T Wireless and Verizon Wireless ecosystems by many months.

Even if it were economically feasible for carriers to obtain LTE equipment and devices in non-AT&T and non-Verizon 700 MHz bands, roaming from one carrier's network to another will not be possible without interoperable devices. The "market" is not developing these devices. Given the failure of the market to foster interoperable LTE deployment, only an interoperability requirement imposed by the FCC or Congress can solve this problem. T-Mobile, as a competitive carrier, had been supportive of a 700 MHz interoperability requirement.[2] AT&T, however, has dedicated significant resources to opposing this pro-competitive policy change.

[2] T-Mobile, for example, was a member of the Connect Public Safety Now coalition, which identifies interoperability at 700MHz as one of its policy priorities. *See*, http://www.connectpublicsafetynow.org/interoperable.

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A Monopoly on GSM Roaming

AT&T's takeover of T-Mobile would eliminate one of the nation's two nationwide GSM roaming partners – granting AT&T a true monopoly over GSM roaming in the U.S.

When I began in this industry, roaming agreements were a natural part of doing business. Consumers came to rely on the ability to use their device wherever they happened to be, regardless of who they chose as their service provider. Roaming agreements could be negotiated in a matter of an afternoon and usually finalized within a week. As technology has advanced in the industry, the largest carriers have begun using data roaming agreements – actually, withholding data roaming agreements – as a means to restrict competition. Today's wireless devices do so much more than just make phone calls, and new applications are being introduced every day. Consumers literally have access to the world at their fingertips with today's wireless services. However, this world is often unavailable to many consumers because the largest carriers refuse roaming agreements for high-speed data.

Competitive carriers offer network access in areas that the largest carriers have not and, likely, will never build out on their own. These smaller carriers do not seek these roaming agreements as a means to actively market outside their footprint because (1) that is not the goal in seeking roaming, and (2) even if that were the goal, roaming rates are too high to make an economic case for that type of growth. Cellular South's customers travel just like the customers of AT&T and Verizon and we believe that consumers should be able to use their devices wherever there is a compatible network available.

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With regard to 3G roaming, Cellular South is in a somewhat unique technological position. We currently operate both a CDMA and a GSM network. While Cellular South has historically been a CDMA carrier, we also have a GSM network covering most of rural Northeastern Alabama that was acquired with the purchase of Corr Wireless in 2010. Within its GSM footprint, Cellular South does not currently offer 3G service for one basic reason: we have been unable to secure 3G roaming for our GSM customers.

T-Mobile's website currently claims that "GSM allows users to roam freely among markets."[3] If the takeover goes forward, this will not be the case. If AT&T is permitted to takeover T-Mobile, AT&T would be the only potential nation-wide GSM roaming partner for competitive carriers. And while the FCC has recently issued data roaming rules[4] that aim to mitigate AT&T's anti-competitive abuses related to data roaming agreements, those rules are, as yet, untested, under threat of legal challenge by Verizon and, perhaps, AT&T,[5] and do not address the technological barriers to roaming that Verizon and AT&T have each erected around their 4G LTE deployments.[6]

Cellular South's experience in securing 3G roaming for our customers is not unique. During its April Open Meeting presentation, the FCC's Wireless Telecommunications Bureau (WTB) highlighted the lack of 3G roaming agreements with AT&T, stating that 3G data roaming

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[3] *See,* http://bit.ly/mdfxv7.
[4] *See, Second Report and Order, In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services* (April 7, 2011).
[5] "AT&T, Verizon attack FCC's data roaming rules," *Fierce Wireless*, April 8, 2011 (http://www.fiercewireless.com/story/att-verizon-attack-fccs-data-roaming-rules/2011-04-08).
[6] *See, above,* at pp. 7-8.

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is "often not available," and that while AT&T launched its 3G network in 2005, there were no 3G roaming agreements as of April 2010, and that the first such agreement was reached in late March 2011, after the Commission had included data roaming on the April 7th Open Meeting Agenda and literally days before the Order was approved.[7] As the WTB stated during the April 7th Open Meeting, "The availability of data roaming fosters competition among multiple facilities-based providers, ultimately providing consumers with greater choice."[8] Unfortunately, these benefits are lost when GSM data roaming agreements are only available from a monopoly provider, as will happen if AT&T takes over T-Mobile. As the data roaming Report & Order takes a common-sense approach to requiring that consumers have access to data roaming, it also calls for business negotiations, which inherently require more than one provider to come to the table. There is little reason to believe that AT&T – equipped with a monopoly on GSM roaming – would do so.

Other Effects of a World Without T-Mobile

AT&T's takeover of T-Mobile removes a significant competitive carrier partner and advocate from America's wireless marketplace. Specifically for Cellular South, T-Mobile was a sophisticated partner in policy advocacy on issues critical to overcoming the anti-competitive impact of AT&T's and Verizon's dominance over device and infrastructure vendors.

[7] *See*, http://fcc.us/itnlyJ.
[8] Id.

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This is particularly true regarding the deployment of 4G LTE. In January of this year, T-Mobile announced its intention to deploy 4G LTE technology.[9] This would have presented carriers like Cellular South with a potential 4G LTE roaming partner in many of the nation's urban markets. Additionally, T-Mobile was, until the announcement of the AT&T acquisition, a significant advocate for interoperability at 700MHz – a policy change necessary to enable 4G LTE roaming by competitive carriers' customers on the 700 MHz networks that AT&T and Verizon have technologically walled-off from roaming traffic.

Conclusion

There is much innovation left to be done in the wireless space. There are more people of all socioeconomic backgrounds and geographic locales who have yet to benefit fully from the wireless experience. And that is why we face a critical decision point in the wireless industry.

As everyone in the industry analyzes, considers and pontificates on every aspect of this proposed acquisition, policymakers have to decide: Should we continue down the path toward a nationwide wireless duopoly, or should we lay the foundation for a new era of competition in wireless?

I think the question answers itself. American business is appropriately built on the notion that healthy competition breeds innovation that fosters economic growth and benefits consumers.

[9] *See*, "T-Mobile USA Seeks Sales Growth, Mulls Partnerships," Bloomberg News, January 20, 2011 (http://www.bloomberg.com/news/2011-01-20/t-mobile-usa-seeks-3-billion-sales-growth-mulls-partnerships.html)

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That notion must certainly apply to the wireless industry, which cannot exist without the utilization of spectrum owned by and for the benefit of the American taxpayer.

Thank you again for the opportunity to be here today. I appreciate your time and your interest in these issues. I look forward to discussing them here this morning.

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May 10, 2011

The Honorable Herb Kohl
United States Senator
Chairman,
Subcommittee on Antitrust,
Competition Policy and Consumer Rights
Judiciary Committee
330 Hart Senate Office Building
Washington, DC 20510

The Honorable Mike Lee
United States Senator
Ranking Member,
Subcommittee on Antitrust,
Competition Policy and Consumer Rights
Judiciary Committee
825 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Kohl and Ranking Member Lee,

As you know, innovation within the wireless industry has greatly improved the quality life in some rural and remote areas throughout this country. From telemedicine to Internet-based rural education, wireless services are playing an ever-expanding role in our lives. Small businesses in the farthest reaches of our country are using wireless technology to compete in the global marketplace – essentially leveling the playing field. All of this, in part, is due to the availability of wireless services. Wireless technology, to be sure, is directly linked to the growth and prosperity of our rural communities.

As such, we feel compelled to voice our concern over the negative impact AT&T's proposed takeover of T-Mobile will have in rural and marginalized communities, especially when poverty rates are statistically high in rural communities. Further consolidation within the wireless industry would result in reduced services to these rural areas, less consumer choice, higher prices and diminished innovation.

Consider the following: the acquisition of T-Mobile will leave AT&T and Verizon controlling approximately 80% of all wireless industry revenue. Rural carriers will struggle to stay afloat with the affordable plans they offer their small consumer bases. Additionally, prices will likely increase for all consumers since there is little reason to believe that the two larger carriers would try to compete on price. The carriers with the most clout, AT&T and Verizon, tend to set the pricing scheme for the entire industry. For example, in 2009, Verizon increased its early termination fees for smartphones to $350. Less than a year later, AT&T also more than doubled its ETFs to $325. Rural carriers will also be largely unable to provide new technologies, as device makers will have no incentive to create the latest handsets for carriers that only cater to rural populations.

Historically rural consumers received lower pricing on roaming services from T-Mobile when they travel to urban areas. However, the fees AT&T charges to allow other carriers to roam on AT&T's network are more than five times higher than the charges levied by T-Mobile for the same roaming services. Simply put, this takeover will hit rural consumers the hardest.

As proposed, this horizontal merger would also provide fewer partnering options for smaller, rural carriers. Ultimately, the strain on rural carriers caused by this merger will put a number of

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them out of business. In the end, rural consumers could be left with only one option: AT&T, which will have little incentive to lower its prices.

By strangling the competitive environment that has enabled the wireless industry to excel even during a devastating economic recession, this acquisition would harm rural carriers, while causing prices to rise steeply for consumers.

Together, we can make sure the Federal Communications Commission and the Department of Justice understand that such ramifications for rural consumers are unacceptable. Please lend us your support by urging them to uphold the antitrust laws that were put into place for this very purpose and educating your constituency on this critical matter.

Sincerely,

Members of the **Rural Broadband Policy Group**:

Access Humboldt
Appalshop
Center for Media Justice
Center for Rural Strategies
Institute for Local Self Reliance
Main Street Project

The Rural Broadband Policy Group is a growing national coalition of rural broadband advocates with two goals: 1) to articulate national broadband policies that provide opportunities for rural communities to participate fully in the nation's democracy, economy, culture, and society, and 2) to spark and kindle collaboration among rural advocates for fast, affordable, and reliable Internet.

To learn more about the Rural Broadband Policy Group, please contact Edyael Casaperalta, Coordinator, at edyael@ruralstrategies.org or visit us at
http://www.ruralassembly.org/working-groups/broadband

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Public Knowledge

Testimony of Gigi B. Sohn, President
Public Knowledge

Before the
U.S. Senate
Committee on the Judiciary
Subcommittee on Antitrust, Competition Policy and Consumer Rights

Hearing On:
"The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?"

Washington, DC
May 11, 2011

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Before the
U.S. Senate
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Hearing On: "The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?"

May 11, 2011

Chairman Kohl, Ranking Member Lee, and Members of the Subcommittee, thank you for this opportunity to discuss the significant consumer harms the AT&T and T-Mobile merger would cause if allowed. My name is Gigi Sohn and I am the President of Public Knowledge, a nonprofit public interest organization that addresses the public's stake in a competitive and affordable telecommunications market.[1]

Introduction

In 1993, only the wealthiest Americans could afford cellular phone service. Remember super-rich Gordon Gekko in the movie *Wall Street* carrying his brick-sized handset? At that time, just two companies ruled the cellular phone market, resulting in high prices and little innovation. But that year, Congress and the Clinton Administration decided that wireless communications was the wave of the future. The result was the passage of the Omnibus Budget Reconciliation Act of 1993, which included a provision that authorized the Federal Communications Commission (FCC) to initiate spectrum auctions and create a competitive wireless market.

[1] I would like to thank my Public Knowledge colleagues Ernesto Falcon, Harold Feld, John Bergmayer, Michael Weinberg, Andrew Lomeli, and Rashmi Rangnath for assisting me with the researching and drafting of this testimony.

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The effects of this decision were extraordinarily beneficial to consumers. Competition for wireless services expanded greatly, and as a result, the service went digital. Innovation exploded, resulting in smaller handsets and new applications. Prices dropped precipitously.

The merger of AT&T and T-Mobile threatens to undo what Congress so wisely initiated in 1993 and return the United States to a duopoly market marked by higher prices and less innovation. If this merger is consummated, two vertically integrated companies will control nearly ***80 percent of the wireless market,*** and leave Sprint, with just 16 percent of the market, considerably weakened. This is a market that is already considered heavily concentrated based on the Department of Justice (DoJ) 2010 Horizontal Merger Guidelines and current Herfindahl-Hirschman Index (HHI) measurements. In this type of market environment, the DoJ has found that "based in large part on its extensive experience in evaluating horizontal mergers, the Department starts from the presumption that in highly concentrated markets consumers can be ***significantly harmed*** when the number of strong competitors declines from four to three, or three to two."[2] The DoJ guidelines also state that mergers in highly concentrated markets that involve an increase in the HHI of more than 100 points raise competitive concerns and more than 200 points are presumed to enhance market power.[3] This merger stands to increase the national HHI ***by an additional 650-700 points.***[4]

It is particularly striking that every single public interest benefit AT&T has claimed as a result of the merger can be accomplished without removing a competitor. Expansion of 4G coverage to

[2] Notice of Ex Parte Communication: Economic Issues in Broadband Competition A National Broadband Plan for Our Future, GN Dkt. No. 09-51 (released January 4, 2010) http://www.justice.gov/atr/public/comments/253393.htm

[3] U.S. Department of Justice and the Federal Trade Commission Horizontal Merger Guidelines (August 19, 2010)

[4] Stifel Nicolaus, Washington Telecom, Media, and Tech Insider (March 29, 2011). *AT&T/T-Mo: Data Point to Coming Brawl, Risk; Deal Still Looks Doable*

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overlap their current 2G and 3G network coverage of 97 percent[5] and improving their network capacity are already possible and therefore are not merger-specific benefits. I do not dispute AT&T's assertion that this merger would be an enormous benefit to AT&T's profit margins and its stockholders. However, the merger between AT&T and T-Mobile will result in higher prices, reduced competition, and less innovation in America's wireless marketplace. Antitrust law seeks to prevent these three outcomes and Public Knowledge believes that is only possible if this merger is blocked. For that reason we also believe that no remedies can alleviate the level of anticompetitive harm the merger represents.

The merger will result in jobs lost in every area where AT&T and T-Mobile have redundant staffing, competing retail stores, overlapping call centers, and other facilities at a time of 9 percent national unemployment. Such a trend would only be status quo for AT&T, which has shed approximately 28,000 jobs over the last 21 months or approximately 9.7 percent of its workforce. In all my research, I have not found one single reputable analyst in the telecommunications field that will attest that this merger will create new jobs for AT&T. Although the jobs picture is not completely bleak: on the announcement of the merger news accounts reported that this may be a boon for the IT industry…in India[6].

This merger is the ultimate test of whether antitrust law has any teeth left at all. Previous mergers have steadily increased market concentration to the point where we have a heavily concentrated market with very few competitors remaining, making this next merger the tipping

[5] AT&T (2009) AT&T Sets the Record Straight on Verizon Ads [Press release]. Retrieved from http://www.att.com/gen/press-room?pid=14002

[6] ET Bureau (2011, March 22). *AT&T, T-Mobile deal: Indian IT cos to benefit.* [Online] In The Times of India. Retrieved May 4, 2011 from http://articles.timesofindia.indiatimes.com/2011-03-22/infrastructure/29173875_1_t-mobile-at-t-outsourcing

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point back into a duopoly market. There is nothing in the merger of AT&T and T-Mobile that will benefit consumers and it will lead to less competition, higher prices and less innovation.

I urge the members of the Subcommittee to view this deal with great skepticism and then after reviewing the facts to oppose it.

Congress Decided That a Duopoly Market Was Not Competitive

The history of the wireless industry demonstrates that the entry of additional providers results in consumers paying less, increases in innovation, and better quality services. In the 1970s, the FCC initially only planned to have one cellular system operated by the local telephone companies. In 1981, to promote competition in the wireless market, the FCC issued licenses for two competing cellular systems in every area.

During the decade of duopoly market structure, competition and innovation were stagnant and high prices ensured that only wealthy Americans could afford cellular service. In 1992 the Government Accountability Office found that in two-thirds of the market, carriers not only had similar pricing but identical pricing as well.[7] After deeming the market less than fully competitive, Congress acted decisively in 1993 by enabling the FCC through legislation to auction additional spectrum to create competition and break up the duopoly market.

In the following decade consumers received the benefits of competition as prices for voice service fell to rates the general public could afford, innovation increased with the launch of new

[7] GAO Report: *Concerns About Competition in the Cellular Telephone Service Industry* (July 1992) Retrieved from http://archive.gao.gov/d33t10/147125.pdf

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technologies such as texting and mobile Internet access, and existing cellular providers invested into their facilities in order to remain competitive. The following are some examples of what competition brought to the wireless market:

- AT&T Wireless introduced the first digital one rate plan in 1998 and the first family plan in 1999.
- Sprint launched the first wireless web service in 1999
- VoiceStream (present day T-Mobile) introduced two-way text messaging in 2000
- Cingular launched the first unlimited night and weekend minutes plan in 2001.

In recent years the level of competition has begun to recede. But it is possible to bring the market back to what Congress envisioned by moving forward with new competition policies many of which T-Mobile has advocated), and by blocking this merger outright.

Consumers Will Pay More as a Direct Result of the Merger

The earliest impact on what consumers pay will be for the 33.6 million Americans who are currently T-Mobile customers. A recent Consumer Reports price analysis survey of voice and data plans found that today T-Mobile customers pay ***between $15 to $50 less a month*** for their plans than they would with comparable plans from AT&T.[8] When looking at the postpaid average revenue per user of these companies, AT&T obtains approximately 17 percent more

[8] Blyskal, Jeff (2011, April 8). *CR analysis: T-Mobile is cheaper than AT&T.* [Online] In Consumer Reports. Retrieved April 25, 2011 from http://news.consumerreports.org/electronics/2011/04/cr-analysis-t-mobile-is-cheaper-than-att.html

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revenue per customer than T-Mobile does and certainly will act to preserve its higher returns.[9] When questioned on the fate of the voice and data plans of T-Mobile's customers, AT&T has stated publicly that it does not intend to retain T-Mobile's pricing structure for newly acquired customers indefinitely.[10] Essentially this means that the month-to-month subscriber as well as the longer term contract subscriber of T-Mobile cannot keep the plans they prefer and will have to either pick the higher priced AT&T plans or simple downgrade to a less competitive alternative that does not provide them the same service as T-Mobile.

Over the long term, the disappearance of T-Mobile will result in accelerated price increases for consumers across the board. As the Chairman has recognized within the text messaging market,[11] prices have trended upwards at rates unrelated to costs even with four national competitors. With T-Mobile out of the picture and no longer competing on lower prices and applying at least some restraint on price increases, the remaining three national carriers will have fewer reasons to compete on price.

T-Mobile itself has raised concerns on its own ability to compete on price due to the fact that vertically integrated companies like AT&T are artificially charging it non-competitive rates in the Special Access market.[12] As of last year, T-Mobile claimed that it purchased backhaul support from the Incumbent Local Exchange Carriers (largely AT&T and Verizon) in most of its 3G coverage areas and has further claimed that in some markets T-Mobile must contend with a

[9] *AT&T and T-Mobile USA: The Future of Mobile Broadband* (2011) Retrieved from http://www.mobilizeeverything.com/documents/Factsheet.pdf

[10] Kang, Cecilia (2011, April 12). *AT&T, T-Mobile file merger application; Q&A with James Cicconi.* [Online] In Washington Post. Retrieved April 26, 2011 from http://www.washingtonpost.com/blogs/post-tech/post/atandt-t-mobile-file-merger-application-qanda-with-james-cicconi/2011/04/11/AFhzCTQD_blog.html

[11] Office of Senator Herb Kohl (2008) *Kohl Calls on Cell Phone Companies to Justify Skyrocketing Texting Rates* [Press release]. Retrieved from http://kohl.senate.gov/newsroom/pressrelease.cfm?customel_dataPageID_1464=1920

[12] *Notice of Ex Parte Communication: Special Access Rates for Price Cap Local Exchange Carriers*, WC Dkt. No. 05-25 (released May 6, 2010) http://fjallfoss.fcc.gov/ecfs/document/view?id=7020448643

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monopoly. Public Knowledge has long asserted that the Special Access market is in dire need of reform because it has allowed AT&T and Verizon to raise costs on T-Mobile and Sprint and directly limit their ability to compete with lower prices. Simply put, without reform in this market, it has been extraordinarily difficult for even the third and fourth largest carriers to compete with lower prices while simultaneously, as T-Mobile asserts, they are "subsidizing [their] two largest competitors."

For rural areas, prices will increase due to the creation of a new GSM roaming monopoly for regional providers who rely on a GSM network for roaming coverage. [13] They will be forced to negotiate roaming agreements with only AT&T and such an environment will lead to regional and local GSM providers paying higher than competitive rates for roaming and passing those costs onto their subscribers. A merged entity will have no GSM competitor in this market and can raise rates with impunity.

The Wireless Geographic Market is National

The wireless marketplace is national in scope and any antitrust analysis should recognize that national market forces are critical to competition and innovation when assessing this merger. The evidence of this is apparent when one looks at the advertising campaigns of AT&T, Verizon, Sprint, and T-Mobile. In every advertisement, one of the national carriers is competing for the customers of the other national carrier and not once is AT&T advertising against a regional or local carrier. If these carriers represented the competitors to AT&T, one would have to ask why AT&T never believes it is necessary to advertise for their customers as directly as it does for the

[13] Rural Cellular Association. (2011). *RCA Opposes AT&T Acquisition of T-Mobile* [Press release]. Retrieved from http://rca-usa.org/press/rca-press-releases/rca-opposes-att-acquisition-of-t-mobile/914758

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customers of its true national rival Verizon.

Furthermore, if the market is as localized as AT&T asserts (although even looking exclusively at local markets cannot hide the anticompetitive nature of this merger), why do none of the national carriers have localized pricing plans tailored for local markets? Every national carrier has only one set of plans available on a national basis for the simple reason that consumers subscribe to their services to gain national coverage. Recognizing this trend Verizon, during its merger with Alltel, stated in its FCC filings that "the Applicants have documented empirical pricing and marketing evidence showing that, increasingly, the national market forces should be predominant when assessing competition."[14]

It should be noted by this Committee that AT&T itself agreed with Verizon in its own subsequent merger with Centennial Communications Corp. where it argued that "***the evidence shows that the predominant forces driving competition among wireless carriers operate at the national level***" and that AT&T develops "its rate plans, features and prices in response to ***competitive conditions and offerings at the national levels***."[15] AT&T initially began articulating that the geographic market for mobile services was national in scope as far back as March 2004 during its merger with Cingular where it stated "the geographic scope of competition in the provision of wireless calling plans ***should be analyzed as national***."[16] AT&T recognized, until very recently,

[14] *Joint Opposition to Petitions to Deny and Comments,* WT Docket No. 08-95 (released August 19, 2008) http://fjallfoss.fcc.gov/ecfs/document/view?id=6520038630

[15] Merger of AT&T Inc. and Centennial Communications Corp, Description of Transaction, Public Interest Showing and Related Demonstrations, (released November 21, 2008) https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp;ATTACHMENTS=1N6VJL5K37mPzN1G7L2XKBP7mC5jC50m96ttqVlHZr3GL1cyJSgx!-659400886!-849295342?applType=search&fileKey=843683410&attachmentKey=18355849&attachmentInd=applAttach

[16] Cingular and AT&T Wireless Public Interest Statement (March 2004) https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp;ATTACHMENTS=PyXyNLwTQNpJPpBY9cjWzc9lQFmBgzQlhKRnFn7zmwjzpJHnlphT!600859641!425962567?attachmentKey=17917140&affn=017917140401330

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that the geographic market was becoming national as pricing plans switched from what truly were local and regional to national plans for national coverage.

Questionable Claim of Strong Competition in Every Local Market

In its April 22, 2011, public interest filing at the FCC, AT&T contends that the merged entity will face strong competition from many sources, but Members of this Committee should be wary of this claim. Such strong "competitors" range from companies that are 4/10ths of one percent the size[17] of AT&T (Cincinnati Bell), to a company reported to be exiting the retail wireless broadband market (Clearwire),[18] to a wholesale company (LightSquared) that ***does not exist*** today and may never exist as a competitor.[19] By AT&T's standard of what constitutes a competitor, I might as well qualify as a competitor given that I have zero market share like LightSquared. It is essential that an antitrust analysis simply does not stop at counting the number of companies in a market but rather looks at market share and market power, both of which AT&T holds in substantial amounts.

It is remarkable that AT&T on its website (www.mobilizeeverything.com) dedicated to taking over T-Mobile actually lists T-Mobile as one of the five competitors consumers may choose from in any market as an example of how "fiercely competitive" the market is today.[20] The claim of

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[17] Acquisition of T-Mobile USA, Inc. by AT&T Inc. WT Docket No. 11-65 (p. 91) http://fjallfoss.fcc.gov/ecfs/document/view?id=7021240421

[18] Bode, Karl (2011, February 10). *Clearwire Ditching Retail, Going Wholesale Only? Multiple Sources Say An Announcement Is Coming.* [Online] In Broadband DSL Reports. Retrieved April 25, 2011 from http://www.dslreports.com/shownews/Clearwire-Ditching-Retail-Going-Wholesale-Only-112659

[19] Goldstein, Phil (2011, April 15). *Lawmakers urge review of LightSquared GPS interference concerns.* [Online] In Fierce Wireless. Retrieved May 3, 2011 from http://www.fiercewireless.com/story/lawmakers-urge-review-lightsquared-gps-interference-concerns/2011-04-15

[20] U.S. Market is Fiercely Competitive and will Remain So (2011). Retrieved from

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strong competition becomes tortured logic when in its FCC public interest filing AT&T states that "T-Mobile USA and AT&T are not close competitors"[21] and T-Mobile is "not a significant competitive constraint on AT&T."[22] How is it possible that a company – T-Mobile -- with more market share than every single regional provider from the 5th largest to the smallest ***combined*** is not considered a competitive constraint or close competitor to AT&T yet competition remains strong with the elimination of T-Mobile?

The answer to this question is simple. The wireless market today is not fiercely competitive and in fact is becoming less competitive as consolidation takes its place. In its May 2010 Commercial Mobile Radio Services report, the FCC for the first time in its fourteen years of collecting data did ***not find the wireless market to be competitive***.[24]

While Deutsche Telekom is free to sell T-Mobile to invest more aggressively overseas, that does not absolve the DoJ from enforcing antitrust laws. T-Mobile does not constitute a "failing firm" where leeway to anticompetitive harms would be granted under antitrust law. For that to be the case, T-Mobile would have to be in imminent danger of financial failure, would have to be unable to reorganize under chapter 11 of the Bankruptcy Act, and would have to be unsuccessful in good-faith efforts to find a viable alternative that would not result in anticompetitive harms. That is clearly not the case here. While T-Mobile's profits declined in the Q1 of 2011, they still were $135 million.[25] And according to numerous industry reports, there are other willing

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http://www.mobilizeeverything.com/competition.php

[21] AT&T Public Interest Statement at 70

[22] AT&T Public Interest Statement at 71

[24] Federal Communications Commission, Fourteenth Report Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services (2010)

[25] Deutsche Telekom First Quarter Report 2011

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purchasers of T-Mobile's assets that do not raise the same competitive concerns as AT&T.[26]

A Merger Would Stifle Competitive Entry and Harm Related Markets

According to the American Antitrust Institute, if granted, this merger would give AT&T a "government-assisted competitive advantage over its rivals in providing nationwide wireless broadband service" by granting it additional public spectrum at a time when every carrier is addressing spectrum congestion as more users switch to smartphone and other mobile devices.[27] Given that additional allocations of spectrum are far off in the horizon, AT&T would receive government provided relief by obtaining a scarce public resource that its competitors could not obtain on their own by any other means. This harms the market in two ways: 1) it reduces competitive entry and 2) it raises costs on related markets through increased market power.

First, a new entrant must have access to spectrum that is of relatively equivalent quality and amount to provide an equivalent service. Access to spectrum is dependent on an FCC license and the availability of spectrum in the market. With the exception of unlicensed uses of spectrum such as Wi-Fi and White Space Devices, which must contend with interference issues that license holders do not, a vast majority of spectrum is already licensed for a variety of uses. In short, there is no substitute for T-Mobile's spectrum if removed from the market and given to AT&T, and therefore no alternative route for a new competitor to enter the market in the same way as T-Mobile. Such a foreclosure on future competitive entry raises market power concerns

[26] *E.g.*, Serena Saitto, *et al. Sprint, Deutsche Telecom Said to Discuss T-Mobile USA Deal,* retrieved from http://www.bloomberg.com/news/2011-03-08/deutsche-telekom-is-said-to-discuss-sale-of-t-mobile-usa-to-sprint-nextel.html (March 8, 2011).

[27] The American Antitrust Institute. *The Acquisition of T-Mobile by AT&T Mobility: Merger Review Issues and Questions.* [Online] Retrieved April 25, 2011 from http://www.antitrustinstitute.org/sites/default/files/AAI_Brief%20on%20ATT-T-Mobile.pdf

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according to the DoJ's Horizontal Merger Guidelines because the merged entity would be able to raise prices without fear of new competition. [28]

Second, the wireless industry is a significant input cost in a whole range of related markets outside of the traditional retail consumer market. Such markets include but are not limited to handset manufacturers, retail stores, wholesale access to voice/text and data, mobile payment transactions, and competitive wireline companies. The short code market, a market Public Knowledge has long advocated for reform[29], is one example of how far reaching, and how much a cost driver, the wireless industry can be.

Members of the Committee are probably most familiar with short codes as the five or six digit numbers that are used to text donations for disaster relief or vote for favorites on American Idol. Carriers have created an almost indescribably opaque labyrinth that anyone interested in using short codes must successfully navigate. This process is expensive both in time and money and many who have attempted to negotiate with the carriers are outright rejected and prevented from using short codes and empowering their business. Even those who have successfully obtained their short code, whether it is for political issues, local health services, or commercial products, live under a constant threat of disconnection. In addition, the pricing that carriers charge can and do change at any time, and the companies and organizations who rely on these codes have limited power to prevent increases. Further carrier consolidation will only exacerbate these problems as carrier options for small businesses dependent on short codes continues to shrink.

[28] U.S. Department of Justice and the Federal Trade Commission Horizontal Merger Guidelines (August 19, 2010) (p. 27)

[29] Public Knowledge Text Message Petition (2007) Retrieved from http://www.publicknowledge.org/issues/text-message-petition

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Increases in Market Power From this Merger Threaten Innovation

Preserving innovation is critical to economic activity and creating jobs in America. A dramatic increase in market power for AT&T threatens the status of innovation in many markets where the wireless industry acts as a gatekeeper, specifically the smartphone and applications markets. In the wireline world, the FCC's famous *Carterfone* ruling severed the customer equipment market from the network provider. In wireless, where the FCC never adopted a "wireless *Carterfone*" rule, device competition and network competition remain linked. Indeed, AT&T and T-Mobile both have argued against adopting wireless *Carterfone* rules precisely ***because*** they compete with each other to offer the most innovative devices and applications.

However, with the removal of T-Mobile and the enhancement to AT&T's market power, the type of innovation we have seen in the handset market will be reduced. Members of this Committee should look back at the status of the wireless market during the launch of Apple's iPhone, the industry catalyst for the smartphone market, and note (chart below) that it was much more competitive with no clear dominance by any one carrier.

FCC 2006 estimates

AT&T/Cingular	26.80%	60.9 million
Verizon Wireless	26%	59 million
Sprint Nextel	22.90%	52 million
T-Mobile	11%	25 million
Alltel	5%	11.8 million
US Cellular	2.60%	5.8 million

Post-merger market

AT&T	44%	135.9 million
Verizon Wireless	30.50%	94.4 million
Sprint Nextel	16%	49.6 million
MetroPCS	2.60%	8.1 million
US Cellular	1.90%	6 million
Leap Wireless	1.80%	5.5 million

Prior to the iPhone, wireless carriers dictated the entire design and functionality of devices that ran on their networks. Apple's iPhone itself was rejected by Verizon on the grounds that Apple

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wanted too much control over the fate of the device.[30] Even during negotiations with its exclusive partner, Apple had to consistently fight with AT&T over what innovative features would be allowed. Such features include how and when YouTube would function on its network, video calling (which is allowed in Europe and Asia as well as on T-Mobile, but not on AT&T), and tethering the device.[31] If Apple, the world's largest technology company, had problems in a less concentrated market, imagine the prospects of smaller technology companies who want to bring new innovative ideas to a post–merger market.

Handset manufacturers are dependent on wireless carriers for access to their customer base and the merged entity will have enough market power to dictate the entire destiny of future smartphones. Manufacturers will be forced to do business with the largest company if they are to establish a business model in the United States and should the two largest providers decline the next great innovation, then that innovation will not happen. It should be noted that AT&T and T-Mobile are also the only two national wireless carriers using the GSM standard forcing the ***entire*** smartphone manufacturing market that relies on GSM to do business with one entity. Remember, if AT&T had its way with the iPhone back in late 2006, consumers would not be able to perform the simplest of activities such as access YouTube. Likely, every new innovative service that may require additional investment by the carrier due to new data demands will simply be rejected to maximize profits.

This merger will also negatively affect innovation in the applications market. AT&T has the most restrictive data policies among the four national carriers and is the only carrier who

[30] Cauley, Leslie (January 29, 2007). *Verizon rejected Apple iPhone deal* [Online] In USA Today. Retrieved April 25, 2011 from http://www.usatoday.com/tech/news/2007-01-28-verizon-iphone_x.htm

[31] Vogelstein, Fred (July 19, 2010). *Bad Connection: Inside the iPhone Network Meltdown* [Online] In WIRED. Retrieved April 25, 2011 from http://www.wired.com/magazine/2010/07/ff_att_fail/

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punishes consumers financially for high data usage. T-Mobile[32] currently only slows down high capacity users and Sprint[33] offers completely unlimited access. However, AT&T[34] fines a consumer for using too much of their wireless data and this practice will be adopted by Verizon[35] in the coming months. With close to 80 percent of the wireless market under these more restrictive data plans in a post-merger environment, application and hardware developers will need to curtail next generation services to work in a more restricted ecosystem in order to reach their customers.

AT&T is at Fault for Capacity Issues, not Consumers

How exactly did AT&T intend to address all of the capacity and network issues they will encounter before Deutsche Telekom contacted them earlier this year to offer them T-Mobile? Was AT&T's original business plan simply to let its network deteriorate and never increase capital expenditures to keep up with network demand? Why is it that Verizon, the nation's largest wireless carrier, shares virtually none of the doomsday network scenarios that AT&T reports in its public interest statement? The answer lies within the investment choices the companies have made in preparing for the future.

In its public interest statement, AT&T touts the benefits of acquiring T-Mobile's towers to expand its infrastructure more quickly. In fact, it would gain so many towers, that it would no

[32] Perez, Marin (2010, October 13). *T-Mobile Will Throttle Your Data After 5 GB.* [Online] In IntoMobile.com. Retrieved May 5, 2011 from http://www.intomobile.com/2010/10/13/tmobile-throttle/
[33] Sprint. (2011). *Sprint CEO Dan Hesse defines "unlimited" in new TV ad* [Press release]. Retrieved from http://newsroom.sprint.com/article_display.cfm?article_id=1818
[34] AT&T data plans (2011) Retrieved from http://www.att.com/shop/wireless/plans/data-plans.jsp
[35] Hamblen, Matt (2011, March 1). *Verizon data caps coming, probably by mid-summer.* [Online] In ComputerWorld. Retrieved May 3, 2011 from http://www.computerworld.com/s/article/9212378/Verizon_data_caps_coming_probably_by_mid_summer

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longer be in the business of investing capital in building towers in America, but rather in taking thousands of towers down.[36] I do not disagree that purchasing towers directly is faster than actually investing to build the towers, but how is helping AT&T make up for its investment mistakes of not building enough towers on its own a sufficient reason to raise prices, reduce competition, and reduce innovation? Perhaps we should simply allow AT&T's competitors the opportunity to win AT&T's customers who will be disgruntled with the fact that despite paying substantial subscription fees, AT&T simply chose to invest less and profit more.

Reviewing the investment choices by the two largest carriers between 2008 and 2010, AT&T has spent $21.1 billion to upgrade its wireless network while Verizon has spent about $22.1 billion. To further highlight this difference, AT&T has been reported to have "only increased wireless capital expenditures by ***one percent in 2009*** compared with an increase in capital spending from Verizon Wireless by about 10 percent."[37] In addition, Verizon has also already committed to replacing its entire existing nationwide 3G footprint with 4G LTE by the end of 2013, which already satisfies the level of national 4G coverage AT&T commits to with this merger.[38] Lastly, when questioned by investors after hearing AT&T's doomsday scenario of a spectrum crunch, Verizon's CFO stated that they are in a "good position until about the year 2015."[39]

Put simply, AT&T has not invested aggressively enough and has instead put its capital into acquiring existing and potential competitors making the capacity issues the company will face in the near future a self-inflicted wound.[40] Eliminating T-Mobile as a competitor will hardly cure

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[36] AT&T Public Interest Statement at 51

[37] Reardon, Marguerite (April 29, 2011). *Is AT&T a wireless spectrum hog?* [Online] In CNet News. Retrieved May 6, 2011 from http://news.cnet.com/8301-30686_3-20058494-266.html

[38] Verizon Wireless 4G Coverage map. Retrieved from http://network4g.verizonwireless.com/#/coverage

[39] Final Transcript Q1 2011 Verizon Earnings Conference Call, Retrieved May 5, 2011, from http://www22.verizon.com/investor/investor-consump/groups/events/documents/investorrelation/event_ucm_1_trans.pdf

[40] Nobody questions, nor does AT&T refute, that it has the resources to upgrade its networks in the absence of a

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this lack of foresight but rather will simply reward AT&T for its failings. Raising prices, reducing competition, and reducing innovation hardly seem worthy trade-offs to help AT&T avoid the inevitable result of customers voting with their feet.

Consolidating Spectrum Assets is Not Efficient

AT&T claims it needs T-Mobile's spectrum in order to avoid "spectrum exhaust" and that combining the spectrum assets of both companies would be the most efficient approach to address this problem.[41] If you accept AT&T's argument that consolidating spectrum assets into fewer and fewer hands is the most efficient way forward then arguably the most efficient use of spectrum assets ultimately is to have a monopoly that holds all of the spectrum assets. However, given the unique properties of spectrum in that it is both scarce but infinitely renewable, we have seen time and time again that innovation can and will solve the mobile demand problems.

Overall, the public does benefit from arguably redundant uses of spectrum by multiple competing companies because it forces research and investment into more efficient and innovative uses of spectrum. The evolution from first generation to fourth generation wireless (and eventually fifth generation and beyond) has been driven both by spectrum scarcity and the need to respond to competitive pressures by offering new advance services. However, it should be noted that AT&T has yet to deploy many of its spectrum assets; for example, it has not yet

merger. The mere fact that they are willing to pay $39 Billion, including $25 Billion in cash, is evidence of that fact. Moreover, Institutional investor-ranked analyst Craig Moffett of Bernstein Research recently concluded that AT&T Wireless gets a return on capital more than 5 percentage points higher than its cost of capital, and that gap is increasing. Bernstein Research, *U.S. Telecommunications and Cable & Satellite: Capital Punishment*, at 135-148. So clearly, AT&T has the means to upgrade its network, and does not need the alleged synergies of this merger to do so.

[41] In its public interest statement, AT&T states that the merger will "push back the date of expected spectrum exhaust in many markets...." This is a remarkable admission that at best, the merger would only result in very temporary synergies for AT&T. AT&T Public Interest Statement at 9.

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built out arguably the most valuable spectrum in the top 21 markets, the 700 MHz band, which is "beachfront" spectrum reclaimed from broadcasters after the transition to digital television.[42] In fact, AT&T currently holds the most in spectrum assets in the top 21 markets out of all of the wireless carriers and as part of its $3 billion breakup fee will transfer spectrum licenses to T-Mobile.[43]

AT&T has attempted to counter this argument by its claim that it needs 20 MHz of contiguous spectrum to achieve maximum efficiency in its deployment of next generation LTE. This ignores both the development of new "channel bonding" technologies that allow companies to aggregate non-contiguous spectrum as well as other new technologies that improve spectrum efficiency generally.[44] It also ignores AT&T's ability to reconfigure its networks to provide 20 MHz contiguous for LTE.

AT&T also continues to support legacy and inefficient networks and it has been reported that potentially ***70 percent to 90 percent of AT&T's current spectrum capacity is unused*** as a result.[45] The company "divide[s] its spectrum portfolio among three different generations of technology...."[46], but it need not do so. The company can simply upgrade its customers to more efficient technologies to improve its capacity by switching out of the handsets of its legacy

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[42] Reardon, Marguerite (April 29, 2011). *Is AT&T a wireless spectrum hog?* [Online] In CNet News. Retrieved May 6, 2011 from http://news.cnet.com/8301-30686_3-20058494-266.html

[43] Saitto, Serena & McCracken, Jeffrey (March 21, 2011). *AT&T Cash, Breakup Fee Were Said to Clinch T-Mobile USA Over Sprint Nextel* [Online] In Bloomberg News Retrieved May 9, 2011 from http://www.bloomberg.com/news/2011-03-21/at-t-cash-breakup-fee-were-said-to-clinch-t-mobile-usa-over-sprint-nextel.html

[44] Higginbotham, Stacey (April 27, 2011). *7 Technologies to Solve the Spectrum Crisis*. [Online] In GigaOM Retrieved May 6, 2011 from http://gigaom.com/broadband/7-technologies-to-solve-the-spectrum-crisis/

[45] Burnstein, Dave (March 22, 2011). *70-90% Of AT&T Spectrum Capacity Unused* [Online] In DSLPrime.com Retrieved April 25, 2011 from http://www.dslprime.com/a-wireless-cloud/61-w/4193-70-90-of-atat-spectrum-capacity-unused

[46] AT&T Public Interest Statement at 22.

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customers. Such a challenge is not unique to AT&T, as eventually every wireless carrier must have a plan in place to migrate its users to new networks. Rather than eliminate a competitor, AT&T can use a portion of the $39 billion it has committed to purchasing T-Mobile back into making its own network more efficient.

As for the claim that merging with T-Mobile will allow AT&T to suddenly deploy in rural areas where it already owns vast swathes of unused spectrum, I encourage Members of this Committee to heed the advice of former FCC Chairman Reed Hundt, which was to "ignore it" as such an exchange would be the equivalent to a "state-authorized bribe."[47] Rural America has never had a spectrum congestion problem and it never will have a spectrum congestion problem. Rural America simply has an infrastructure and investment problem as a result of the business model challenges encountered by every wireless provider.

The wireless business model is dependent on customer density and the size of the coverage area, whereas the more densely populated and smaller the territory, the more profitable it is to do business. The challenge with rural areas is that they provide the exact opposite of what a wireless company needs for its business model, but many smaller rural providers still are deploying in these markets. If the federal government wants build out of wireless broadband in rural America by the largest companies who have actively neglected rural investment, it can simply establish build out rules on spectrum licensees as a requirement of holding valuable public property.

[47] Zapler, Mike & Boliek, Brooks (2011, April 22). *AT&T/T-Mobile deal offers risk, reward for Obama.* [Online] In Politico. Retrieved May 4, 2011 from http://www.politico.com/news/stories/0411/53580.html

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Divestures and Conditions Will Not Save this Merger

Former FCC Chairman Reed Hundt once called a proposed merger between SBC and AT&T "unthinkable." I call this merger between AT&T and T-Mobile "unfixable." There is no way to both allow this merger and protect competition. Only an independent T-Mobile would preserve what little competition remains in an extraordinarily concentrated national wireless market. If anything, the market needs more competitors, not fewer.

Divestitures of spectrum cannot save this merger. AT&T already commands a vast amount of spectrum and supporting properties, such as tower sites. Like its biggest competitor Verizon, it is a vertically integrated company that controls a large wired infrastructure that competitors such as Sprint must interconnect with through Special Access. Its size and multiple lines of business give it the means and motive to discriminate against competitors, block new entry, and to disadvantage other actors in the value chain. Policymakers should not allow it to increase its market power and size by the large amount likely even with aggressive divestiture. Policymakers should not allow it to increase its market power and size by even a small amount.

The metropolitan areas where AT&T wants new licenses the most are the very areas where competition is most needed. After all, AT&T has been successful in some cities in spite of the poor performance of its network. This is because its customers lack sufficient competitive options by companies with a comparable range of services. And who would buy its divested licenses? If any of the other two remaining national carriers purchased them, the market would still remain very concentrated in terms of spectrum control. Indeed, when Verizon was forced to divest spectrum as a condition of its merger with Alltel, AT&T purchased 79 of 105 licenses. If a

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regional carrier purchased them the result would be a national market with even less spectrum available. There are only so many ways that the spectrum can be divided up. As it is, if AT&T were to acquire T-Mobile it would be acquiring licenses it had actually ironically divested in its past merger with Cingular[48]. Divestiture is not a sustainable strategy in a concentrated market subject to artificial, government-created resource constraints.

It is also important to note that this merger is not just about AT&T's acquisition of more spectrum. It is also about AT&T's acquisition of nearly 33.6 million T-Mobile customers, which would result in a wireless behemoth with nearly 136 million customers. There are no merger conditions that can ameliorate that kind of market power.

No other conditions on this merger could protect the public interest. Likely conditions would attempt to ameliorate some of the worst effects of the merger, by requiring AT&T to behave fairly towards its customers and competitors. But these kinds of conditions treat the symptoms and not the disease. Policymakers should be focused on moving toward an industry structure that protects the public interest, by encouraging new entry by new competitors, and adopting industry-wide rules of the road, such as open Internet and bill shock standards. It is the Department of Justice's job to enforce the antitrust laws and take actions relating to mergers that come before it. But Congress and the FCC should not have to wait for AT&T to propose a massively anticompetitive merger to be reminded of their duty to protect the public and ensure continued innovation and competition in the wireless sector.

[48] Stern, Christopher (2004, May 26). *Cingular to Sell Cellular Spectrum.* [Online] In Washington Post. Retrieved May 8, 2011 from http://www.washingtonpost.com/wp-dyn/articles/A55682-2004May25.html

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Conclusion

I urge this subcommittee, the Department of Justice and the FCC, not to allow the wireless market to go back to 1993, back to duopoly.

Each and every benefit AT&T promises can be achieved through a competitive market and each and every challenge the company faces in meeting America's mobile data demands can be addressed through increased investment and improving, not reducing competition. If AT&T fails to provide its customers with quality service, Senators, you can rest assured that a competitor will do everything it can to pick up the slack. However, competition will not be possible if mega-mergers are continued to be allowed to be given a pass by antitrust authorities.

The AT&T and T-Mobile merger is not your run of the mill telecommunications merger like so many that have proceeded before it. What the merger represents is a cross roads for American competition policy in the telecommunications marketplace and ultimately a test of antitrust law.

Allowing this merger will reward AT&T for pursuing a path of acquisition for customers rather than a path of competing for customers. Acquiring even a handful of the 33.6 million T-Mobile customers will increase AT&T's profits substantially while denying consumer choice. It will set the market on a path back towards a duopoly market structure where prices will be high, innovation will be stagnant, and companies no longer competed. It will require monopoly era regulations, such as price controls, that were discarded after the breakup of AT&T as the only means to ensure that wireless services remains affordable to the general public.

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However, if the DoJ blocks this merger and Congress, the FCC, and the DoJ begin the hard work of reinvigorating competitive forces and enacting new forward thinking competition policy, as was done in 1993, the competitive landscape in the wireless marketplace can be improved. Public Knowledge has long advocated that proper scrutiny over issues such as handset exclusivity, special access reform, data roaming, and spectrum consolidation can vastly improve competition. But all of this is dependent on whether or not this merger is blocked and competition is given a chance.

Thank you again for inviting me to testify before the Subcommittee. I look forward to your questions.

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Written Statement of Randall Stephenson, Chairman, CEO, and President, AT&T Inc.

Senate Committee on the Judiciary, Subcommittee on Antitrust, Competition Policy and Consumer Rights: "The AT&T/T-Mobile Merger"

May 11, 2011

Thank you, Chairman Kohl, Ranking Member Lee, and Members of the Subcommittee. I'm Randall Stephenson, Chairman and CEO of AT&T, and I appreciate this opportunity to address the consumer benefits of AT&T's acquisition of T-Mobile USA from Deutsche Telekom.

This transaction is all about consumers. It's about keeping up with consumer demand. It's about having the capacity to drive innovation and competitive prices for consumers. And most important, it's about giving consumers what they expect – fewer dropped calls, faster speeds and access to state-of-the-art mobile broadband Internet service – whether they live in a large city, a small town, or out in rural areas.

This transaction will benefit consumers in many ways: improving service quality and network capacity, fostering innovation, increasing competitive pressure, and helping to ensure that America remains the global leader in mobile broadband. Consumers all across the nation will share in these benefits as the transaction will allow the combined company to build out an advanced new 4G LTE network and bring state-of-the-art mobile broadband to over 97 percent of the American population – more than any other provider and far more than AT&T alone was planning before the transaction. As a result, the transaction includes broad and strong support from union, minority, local and rural representatives, as well as industry experts.

Spectrum Capacity, Call Quality and the Provision of Advanced Services

We and Apple launched the first iPhone just four years ago. In the short time since then, smartphones and mobile apps have exploded. Mobile Internet usage and innovation have soared. A U.S. wireless marketplace that was already the world's most competitive and innovative has become more so – to the great benefit of consumers and our economy as a whole.

Because of our early leadership in smartphones and supporting mobile apps, our company and network have carried the load more than any other. In fact, over the past four years, data volumes on our mobile network have shot up by 8,000%.

To meet this demand, we've invested aggressively. Over the past four years, AT&T has invested more in the United States than any other public company – some $75 billion – to upgrade and expand our wireless and wireline networks. And we continue to invest at a torrid pace because the next wave is already on us – in the form of tablets, mobile HD video and more. We estimate that in 2015 we will carry the same amount of mobile data traffic by mid-February that we carried for the *entire* year in 2010. That's how fast the mobile Internet is growing.

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Just about the only thing that can slow down this cycle of innovation, investment and growth is lack of capacity to meet this demand – and that's why there is such a focus on spectrum. The mobile wireless industry needs more spectrum and soon. I applaud the FCC and members of Congress for their leadership on this issue.

As FCC Chairman Genachowski recently cautioned, "[i]f we do nothing in the face of the looming spectrum crunch, many consumers will face higher prices – as the market is forced to respond to supply and demand – and frustrating service."[1] None of us wants those things. But the fact is that even with everyone's best efforts, it will be years before significant amounts of new spectrum are made available and placed into service. That is just the reality we face.

So, to meet the ever increasing demand by consumers, we have to find ways to get more capacity from existing spectrum. That is exactly what the combination of AT&T and T-Mobile will do. Our two companies have very complementary assets, which means that combining them will create much more service-enhancing network capacity – the equivalent of new spectrum – than the two companies could have done operating separately. That, in turn, means more room for growth and innovation, fewer dropped and blocked calls, and a faster, more reliable mobile Internet experience.

Next Generation Services for Rural Areas

This combination also helps us address another critical issue. Many people and many communities today don't have access to the full capabilities of the mobile Internet economy.

With the scale, resources and synergies this transaction provides, we can and have committed to provide cutting-edge LTE mobile Internet service to more than *97 percent of the U.S. population* – nearly 55 million more Americans than our pre-merger plans and millions more than any other provider has committed to serve. And, you know as well as I the benefits this kind of deployment will bring to small towns and rural communities in education, health care and economic development.

In particular, LTE networks deliver higher speeds and much-reduced latency, which means that we will see many new innovative wireless services that offer real-time interaction. LTE will give businesses located in rural America the same powerful tools enjoyed by those located in major cities. And, rural consumers will particularly benefit from real-time access to a wide range of resources that would not otherwise be as readily available. This will revolutionize telemedicine, allowing doctors to have real-time interactions with patients remotely and providing much more robust, accurate and immediate assessments of information from monitoring devices and data-intensive tools like MRIs. It also will make distance learning initiatives much more effective.

[1] *Prepared Remarks of FCC Chairman Julius Genachowski,* CTIA Wireless 2011 (March 22, 2011), *available at* http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0322/DOC-305309A1.pdf.

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LTE will also support revolutionary new capabilities like cloud computing, which will give wireless consumers access to far greater computing power and data storage from handsets that are thinner, lighter and have much longer battery life. We have only started to think of the possibilities, but the transaction will allow us to bring these benefits to rural and urban areas alike, creating the information infrastructure needed to improve education, health care and public safety and to boost businesses, create jobs, and lower costs.

Widespread Recognition of the Transaction's Consumer and Economic Benefits

We will deliver these benefits with the only unionized wireless work force of any major carrier in America, which explains why the Communications Workers of America, AFL/CIO and other unions have strongly endorsed this merger.

Indeed, the benefits for consumers and especially rural Americans have led an extremely wide range of organizations and experts to immediately recognize the manifest consumer and economic benefits of this transaction. Support for the transaction is broad and deep, and includes unions, minority groups, many local representatives, and industry experts.

Continuing to Set the Pace in Wireless Services Innovation

Consumers also benefit from AT&T's continued role in promoting U.S. leadership in wireless innovation – a role this transaction ensures will continue. The wireless communications industry is one of America's great and ongoing success stories – ever faster services, powerful new handheld devices, applications that expand daily, lower prices, and the personal and professional benefits that come from consumers being able to connect to information located anywhere from virtually everywhere.

AT&T is proud to have played a leadership role in the cycle of innovation that has produced this mobile broadband revolution: our world-class research institution AT&T Labs, our industry-leading outreach to and support of developers, manufacturers and others throughout the wireless ecosystem to speed the design, testing and introduction of the best new wireless devices and applications; our unparalleled research collaborations with and support of more than 80 public and private universities across the country; and, of course, our networks upon which entire new and growing sectors of the economy depend.

But we are just getting started.

With the right resources, we can combine robust new network capabilities with the immense storage and processing power of the "cloud" to give consumers and businesses instant and seamless mobile access to everything on their home and work computers or on any other Internet-connected device or machine – applications, data, e-mail, video, *everything*. We will truly be able to "mobilize everything."

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The increased efficiency in spectrum use, which is at the heart of this transaction, is also crucial for maintaining the virtuous cycle of wireless innovation. With the spectrum and network capacity lift provided by this transaction, AT&T and its partners can continue to develop, introduce and aggressively promote innovative, but capacity-consuming services, devices and applications.

Manufacturers and software developers can be assured of access to the combined company's customer base and improved networks as they design and launch their products, spreading the cost and risk over more potential customers for their innovations. And, by continuing to improve service quality and product offerings, AT&T can keep the pressure on its competitors to innovate and introduce new and better services.

Instead of the inevitable slowing of innovation that would take place in the absence of a solution to impending spectrum exhaust, the transaction will produce a series of positive ripple effects throughout the economy as AT&T, its partners, users of its networks, and its competitors are all driven to innovate more aggressively and creatively.

Increased Competition Among Many Competitors

Some have suggested that the extraordinary consumer and economic benefits would come at the cost of reduced competition and increased prices. That is simply not true. All T-Mobile customers will have the choice of retaining their existing rate plans or switching to an AT&T rate plan, and they will thus have *more* choices than before, including a state-of-the-art LTE service that T-Mobile had no clear path to offer on a standalone basis.

The combination of AT&T and T-Mobile could not possibly derail the powerful forces of competition in one of the nation's most competitive industries. Wireless industry output is exploding and is on track to increase many times over by 2015. The pace of innovation is even more remarkable. Prices have dropped rapidly, whether measured on a revenue per voice minute or per megabyte basis. Advertising is among the most robust and aggressive of any industry. None of that will change: output will continue to rise, prices will continue to fall, new companies will continue to enter, all of these competitors will continue to wage fierce marketing campaigns to attract and retain customers, and the U.S. wireless marketplace will remain the most competitive in the world.

The vast majority of American consumers have a choice of at least five facilities-based wireless providers – and that does not even count new mobile broadband providers like Clearwire and LightSquared that are building nationwide 4G networks or the many successful wireless resellers. Certain critics may attempt to create a myth that only a few national competitors exist, but wireless competition occurs primarily on the local level.

Those local competitors often include Sprint, Verizon, and AT&T, but there are many other strong competitors in the marketplace. No-contract, "all you can eat" service providers like Leap and MetroPCS have been competing aggressively and rapidly expanding their service areas, and are poised to offer more advanced devices and services more widely. Regional carriers like U.S. Cellular, Cellular South, Allied Wireless (formerly Alltel), and nTelos compete aggressively in

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their core markets and offer nationwide service through roaming arrangements. Incumbent cable television and telephone companies such as Cox Communications and Cincinnati Bell offer wireless service to their large customer bases. And, there are new, well-financed entrants that are poised to enter the wireless marketplace.

Moreover, T-Mobile does not exert strong competitive pressure on AT&T, and other providers already fill—or could easily move to fill—whatever competitive role T-Mobile occupies today. Sprint has re-emerged with aggressive pricing plans and a successful 4G platform. Regional or locally focused carriers have achieved estimated customer shares in excess of T-Mobile's in particular markets. And MetroPCS and Leap have expanded into new markets and are offering inexpensive, no-contract service with nationwide coverage, including in 22 of the top 25 markets (between them).

Any concern that the wireless industry is or could be dominated by AT&T, Verizon and Sprint merely because they have the largest subscriber bases today should be put to rest by 1Q 2011 results recently reported by MetroPCS and Leap, which together gained more than a million net customers in the last quarter alone.

Increased Call Quality, New Services, and Competition

Let me close by underscoring a very important point. This transaction will increase overall network capacity beyond what the two companies had separately, because it allows for more efficient use of existing spectrum and network assets. Our two companies have extraordinarily complementary assets. We use the same technologies. We hold spectrum in the same bands. We have network grids and cell site locations that mesh together extremely well. As a result, the network synergies of this transaction will allow us simultaneously to improve the quality of existing services (reducing dropped calls and enhancing broadband data speeds) and to create new capacity to carry more mobile Internet traffic.

In this industry – in any industry really – it is a fundamental concept that increased capacity is the foundation for sustained, vigorous competition and innovation. The U.S. wireless marketplace is the most competitive in the world, and it will remain so following this transaction. Over the past decade, U.S. wireless prices have steadily and dramatically come down; this transaction allows that trend to continue.

So, to summarize, this merger will help us meet fast growing volumes. It will deliver the network quality and the new services that customers are demanding. It will bring more families and towns into our high-tech future. And, it will enhance competition and innovation.

That's a quick overview of this transaction's benefits. Again, I thank you for the opportunity to present our views to you this morning.

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May 10, 2011

The Honorable Herb Kohl
United States Senator
Chairman,
Subcommittee on Antitrust,
Competition Policy and Consumer Rights
Judiciary Committee
330 Hart Senate Office Building
Washington, DC 20510

The Honorable Mike Lee
United States Senator
Ranking Member,
Subcommittee on Antitrust,
Competition Policy and Consumer Rights
Judiciary Committee
825 Hart Senate Office Building
Washington, DC 20510

Re: May 11, 2011 Hearing: "The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?"

Dear Chairman Kohl and Ranking Member Lee,

Thank you for holding the very important and timely hearing on AT&T's proposed acquisition of T-Mobile USA. As the subcommittee conducts its oversight of this unprecedented transaction, Free Press[1] urges members to focus on the underlying facts and to work to ensure that consumer concerns are placed above all others.

The Department of Justice's own guidelines and past precedent make it quite clear that this merger raises such concerns about competition that it must be rejected. Just as putting Humpty Dumpty back together again in the nursery rhyme was impossible, the approval of this transaction should be unthinkable.

As we outline in this letter, the available evidence demonstrates:

- The relevant product market is the nationwide post-paid smartphone cellular service market.
- The market is already highly concentrated, and AT&T's proposed acquisition of T-Mobile would result in the re-formation of a tight duopoly in wireless service.
- This merger would result in substantial unilateral harms to consumers and competition.

[1] Free Press is a national, nonpartisan organization with more than 500,000 members working to increase informed public participation in media and communications policy debates. Our members have raised numerous concerns about this merger and its impact on the wireless Internet market.

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- The market is particularly vulnerable to coordinated conduct, and this merger would further exacerbate that harm.
- There is no prospect of competitive entry that could mitigate the unilateral harms and coordinated effects of this transaction.
- The claimed efficiencies of this merger are speculative, non-merger specific, non-cognizable, and would not outweigh the adverse competitive impact of this transaction.
- Local market divestiture would not remedy the adverse competitive impacts that this transaction will have on the nationwide product market.

We believe that the analysis conducted by the Department of Justice ("DOJ" or "Department") will affirm these conclusions. Once they do, we hope that policymakers will work to ensure that Americans finally get the benefits of meaningful competition in the wireless market. Americans need real competition *and* advanced wireless services, and should not be asked to trade one for the promise of the other.

THE RELEVANT PRODUCT MARKET IS THE NATIONWIDE POST-PAID SMARTPHONE CELLULAR SERVICE MARKET

AT&T's proposed acquisition of T-Mobile USA is a massive horizontal merger that would combine the operations of the nation's second- and fourth-largest cellular service providers. The DOJ has already taken initial steps to scrutinize this proposal, issuing further information requests to the merging parties and sending civil investigative demands to their competitors.[2] As the DOJ further considers the merger application, one of its first tasks will be to define the relevant product market, and also to define the geographic market.

While at the highest level, this merger involves the combination of two companies that operate in the broad "cellular" market, we believe that the data demonstrates that the most relevant product market that would be affected by this transaction is the nationwide, post-paid smartphone cellular service market.

First, the available evidence indicates that there is a clear market boundary between the pre-paid, no-contract cellular services offered by companies like Tracfone or Leap Wireless, and the post-paid, contract services sold by carriers like AT&T or T-Mobile. The monthly retail prices for post-paid services are substantially higher than those for pre-paid services. The available devices are far more limited with pre-paid services than with post-paid services.[3] The companies that offer both pre- and post-paid services view these offerings as non-competitive

[2] "Justice Department Said to Extend Look at AT&T T-Mobile Bid," Sara Forden and Todd Shields, *Bloomberg*, May 3, 2011.

[3] For example, AT&T's website currently lists 35 different smartphones for sale, while no-contract pre-paid carrier MetroPCS' website lists just six.

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and in separate markets.[4] And pre- and post-paid carriers target different market demographic segments, with pre-paid carriers particularly focused on younger, lower-income customers that lack a satisfactory credit history.[5] There is simply no evidence to suggest that the hypothetical monopolist test used by the Department in its analysis would show that a small but significant and non-transitory increase in price ("SSNIP") would result in a critical level of customers substituting post-paid for pre-paid services.[6] Indeed, the prices of the unlimited talk, text and data plans of the post-paid carriers are already nearly twice that of the pre-paid carriers,[7] yet post-paid subscriber gains continue to outpace pre-paid gains.[8]

Second, while the merging parties offer several cellular services (e.g. voice only or data only) in competition with other carriers, the available evidence indicates that there is a separate and distinct market for smartphone cellular service.[9] Approximately one-third of mobile subscribers currently use a smartphone,[10] but analysts estimate that by the end of the decade, smartphones will be in use by nearly the entire retail subscriber base.[11] When defining the

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[4] For example, AT&T has been explicit about viewing its own "GoPhone" pre-paid service as a separate and distinct offering that does not compete against its own post-paid services. Richard G. Lindner, AT&T's chief financial officer, told investors in 2009: "With respect to GoPhone and prepaid results for the quarter, prepaid results were weaker for the quarter. Obviously we had a net loss of customers of about 400,000. We had lower churn year over year, and we've been working to bring churn down and we're seeing some benefits there. But the impact was more on the gross sales side, and certainly we're seeing impacts from other competitive offers in the market... But one thing that I think we feel is important is we're not going to put offers in the market that we don't feel will be profitable or earn a reasonable return. And we won't do anything obviously that would impact or cannibalize our postpaid base." *See* "Transcript of AT&T Inc.'s Q2 2009 Earnings Call on 07/23/2009."

[5] For example, pre-paid carrier Leap Wireless has stated that its "target customers [are] young, ethnically diverse and in households typically making less than $50,000 a year." *See* "Leap 2008 Annual Review: CEO Letter."

[6] *See* "Horizontal Merger Guidelines," Department of Justice and Federal Trade Commission, August 19, 2010 (*Horizontal Merger Guidelines*), at 8. "The Agencies employ the hypothetical monopolist test to evaluate whether groups of products in candidate markets are sufficiently broad to constitute relevant antitrust markets... The hypothetical monopolist test requires that a product market contain enough substitute products so that it could be subject to post-merger exercise of market power significantly exceeding that existing absent the merger. Specifically, the test requires that a hypothetical profit-maximizing firm, not subject to price regulation, that was the only present and future seller of those products ('hypothetical monopolist') likely would impose at least a small but significant and non-transitory increase in price ('SSNIP') on at least one product in the market, including at least one product sold by one of the merging firms... The SSNIP is employed solely as a methodological tool for performing the hypothetical monopolist test; it is not a tolerance level for price increases resulting from a merger."

[7] Verizon Wireless offers an unlimited talk, text and data plan for $119.98 per month (plus taxes and fees) versus MetroPCS' unlimited talk, text and data offering for $60 per month.

[8] During 2010, total U.S. pre-paid subscriptions increased by 3.88 million versus an increase of 4.71 million post-paid subscriptions. *See* SNL Kagan, *Wireless Industry Benchmarks*.

[9] Smartphone service consists of a monthly plan that offers both voice and data access through a handheld device capable of traditional telephone calls and other multimedia activity including Internet access and the running web-connected applications.

[10] *See* "State of the Media, Mobile Usage Trends: Q3 and Q4 2010," *Nielsen*, April 2011.

[11] *See* Sharon Armbrust, "US carrier CapEx spend in the midst of a decade-long ramp," *SNL Kagan*, February 28, 2011. ("SNL Kagan estimates that wireless subscriptions, including connected devices, hit 97% penetration of the

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boundaries of the relevant product market, the DOJ will investigate how and to what extent consumers can and would substitute other products in response to price increases in the candidate market.[12] For smartphone consumers, there are no viable substitutes for all-in-one mobile telephony and computing. A smartphone consumer facing sustained price increases in the market controlled by the hypothetical monopolist has no choice but to pay the increased rate or exit the market to voice-only services and PC-facilitated computing via fixed telecommunications networks, and most would not. Moreover, in the post-paid smartphone market (where the bulk of smartphone subscriptions are), consumers are locked into long-term contracts with substantial early termination penalties; for these consumers, exit is a very costly option.[13] These high costs, which include not only termination fees but also the need to purchase a new device, mean that switching *within* the market to another carrier is also prohibitive. The ability for the hypothetical monopolist to target the post-paid smartphone subset of customers and impose a SSNIP means that the relevant product market definition is narrower than the broader "cellular" market.[14]

Third, the available evidence indicates that the services offered by carriers with a national footprint are now in a separate and distinct market from those offered by regional carriers, and this differentiation will only increase as smartphones utilizing so-called 4G network technologies become the dominant cellular product. In 2010, during a period when both AT&T and Verizon Wireless raised prices and reduced choice for consumers,[15] they still managed to increase their

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U.S. population as of year-end 2010. And we expect smartphones to be in use by 93% of the retail subscriber base by the end of this decade.")

[12] *See Horizontal Merger Guidelines* at 11. ("In considering customers' likely responses to higher prices, the Agencies take into account any reasonably available and reliable evidence, including, but not limited to: ...objective information about product characteristics and the costs and delays of switching products, especially switching from products in the candidate market to products outside the candidate market...").

[13] Exit from the post-paid market involves not only costs in the form of early termination penalties, but also results in lower consumer utility as consumers must substitute the convenience of all-in-one ubiquitous connectivity for other more cumbersome and expensive methods.

[14] *See Horizontal Merger Guidelines*, at 12. "If a hypothetical monopolist could profitably target a subset of customers for price increases, the Agencies may identify relevant markets defined around those targeted customers, to whom a hypothetical monopolist would profitably and separately impose at least a SSNIP. Markets to serve targeted customers are also known as price discrimination markets. In practice, the Agencies identify price discrimination markets only where they believe there is a realistic prospect of an adverse competitive effect on a group of targeted customers."

[15] In early 2010, Verizon implemented an effective price increase by forcing all customers of feature and smartphones to purchase a data plan. AT&T shortly followed suit. Also in 2010, AT&T eliminated its unlimited data plan for smartphones, forcing new customers into capped plans with overage charges. *See e.g.* Karl Bode, "Verizon Announces Wireless Pricing Changes," *DSLReports*, Jan 15, 2010. ("The biggest news of course is that Verizon's 25 megabyte for $9.99 per month plan (the one we're sure Verizon makes the most money from) is now mandatory for all of Verizon's '3G Multimedia' phones.). *See also e.g.* Marguerite Reardon, "AT&T-Verizon price war debunked (FAQ)," *CNET News*, Jan 20, 2010. ("In fact, both AT&T and Verizon Wireless are extending data plans to a whole slew of customers who formerly were not subscribing to any data plans. And it is likely these are the customers who will see a bigger phone bill when they upgrade their phones or renew their contracts."). *See also e.g.* Jeffry Bartash, "AT&T to end unlimited plans for wireless data," *MarketWatch*, June 2, 2010.

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subscriber totals while most other post-paid carriers, regional and national, lost subscribers.[16] The top four carriers (Verizon, AT&T, Sprint and T-Mobile) are the only post-paid providers offering post-3G quality data services (HSPA+, LTE or WiMax), and the depth and quality of their smartphone portfolios are far superior to those of the regional carriers. Indeed, these four carriers controlled 94 percent of all cellular market revenues in 2010, and their share of smartphone revenues is likely higher.[17] This trend is expected to continue, particularly concentrating subscribers and revenues at the very top between AT&T and Verizon. While the regional carriers had more consumer relevance a decade ago, it is clear that today's market is a national market.[18]

With the relevant product market appropriately defined as the nationwide post-paid smartphone cellular service market, the harms of this merger will be impossible to ignore.[19] The Department's analysis of the evidence will surely show that substitution for pre-paid and regional carriers will not be substantial enough to prevent abuses of market power in the national post-paid market.[20]

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[16] In 2010, Verizon Wireless added 2.6 million post-paid subscribers while AT&T added 3.4 million. However, regional carrier Cincinnati Bell lost 28,000 post-paid subscribers, and other major regional carriers NTELOS and Atlantic-TeleNetwork saw no growth or end-of-year subscriber losses. US Cellular, a post-paid carrier that uses roaming agreements to offer national coverage, lost 66,000 subscribers. In 2010, Sprint lost 855,000 subscribers, and T-Mobile lost 390,000. *See* SNL Kagan, *Wireless Industry Benchmarks*.

[17] *See* SNL Kagan, *Wireless Industry Benchmarks*.

[18] In 2001, most of the wireless market consisted of regional carriers that in some cases offered nationwide service through roaming agreements. Since then, the major national carriers have gone on a buying spree, building a nationwide footprint through mergers and acquisitions and turning the market from regional to national. In 2001, the top two cellular providers controlled 43 percent of all subscriptions, compared with 65 percent at the end of 2010.

[19] Though there is ample evidence to define the market as the nationwide post-paid smartphone cellular service market, the domination of the top four carriers of the overall cellular market is so extensive that including pre-paid carriers and all subscriptions into the antitrust analysis would not impact the conclusions about harmful unilateral effects and coordinated behavior.

[20] The question of geographic market boundaries will be important to consider, but given the fundamental shift of the wireless market from a regional to national carrier market, this consideration becomes less relevant, as the harms from the merger will be national, not local. Certainly consumers' buying decisions in this market are influenced by what services are available in the geographic area where they live and work, but supplier behavior is solely at the national level. Data plans are priced nationally regardless of the level of local competition. Smartphone devices are procured and introduced to the national market, not regionally. And there is no geographic characteristic to innovation in the wireless market; the harms to innovation from unilateral and coordinated effects will be felt nationally, regardless of what individual carrier choices a consumer has in a given local market. Indeed, the DOJ has in the past recognized the difference in local purchasing markets and the impact of mergers in broader markets: "The existence of local markets does not preclude the possibility of competitive effects in a broader geographic area, such as a regional or national area..." *See* United States, State of Alabama, State of California, State of Iowa, State of Kansas, State of Minnesota, State of North Dakota, and State of South Dakota v.Verizon Communications Inc. and Alltel Corp., *Competitive Impact Statement*, October 30, 2008.

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THE RELEVANT PRODUCT MARKET IS ALREADY HIGHLY CONCENTRATED, AND AT&T'S PROPOSED ACQUISITION OF T-MOBILE WOULD RESULT IN THE RE-FORMATION OF A TIGHT DUOPOLY IN WIRELESS SERVICE

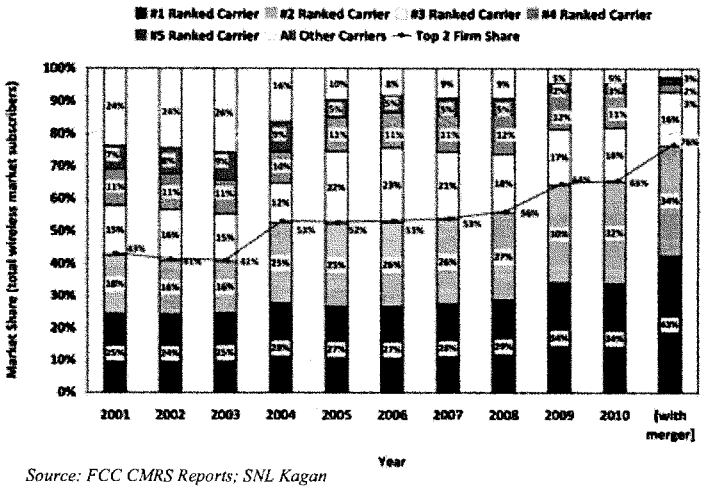
The U.S. wireless market is highly concentrated, and has over the past decade transformed from a market dominated at a regional level by a handful of carriers, to a market dominated at a national level by just two companies -- AT&T and Verizon Wireless. In 2001, the top two carriers' share of total U.S. wireless subscriptions was 43 percent. By the end of 2010, this two-firm share rose to 65 percent, and will be close to 80 percent if AT&T is allowed to take over T-Mobile (see Figure 1). During this same period, as the large national carriers began creating a true national footprint through mergers and acquisitions of smaller regional companies, the share of subscriptions outside the top five carriers shrunk from 24 percent to 5 percent (see Figure 1).

Figure 1:

The Emerging Wireless Duopoly:

U.S. Wireless Market 2001-2010

Includes all pre- and post-paid cellular subscriptions



Source: FCC CMRS Reports; SNL Kagan

This domination at the top has only been exacerbated by the trend toward data-connected smartphones and the concentration of prime spectrum, backhaul and handset-buying power between AT&T and Verizon. The top four carriers captured 94 percent of the total cellular

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market revenue in 2010.[21] Verizon and AT&T together accounted for 67 percent of the total cellular market revenue, despite controlling just 65 percent of all mobile subscriptions.[22] And while Verizon and AT&T saw substantial subscription growth in 2010, most other post-paid carriers lost customers.[23]

This concentration of customers and revenues at the top is not the result of price competition, as AT&T and Verizon both implemented effective price increases in 2010,[24] while carriers with lower-priced offerings continued to lose market share.[25] Indeed, Verizon and AT&T's wireless profit margins dwarf those earned by pre-paid and other post-paid carriers.[26]

The domination of the market at the top is a strong indicator of a broken market, one that the proposed acquisition of fourth-place carrier T-Mobile by AT&T would only exacerbate.[27] The proposed concentration of nearly 80 percent of the market between two carriers, with only one remaining company with double-digit shares, will have a particularly corrosive impact on innovation and what remains of competitive incentives.[28] The lower cost offerings from the other two major national post-paid carriers have made no impact on AT&T's or Verizon's ability to grow revenues, subscribers, margins, or market share.[29]

That AT&T and Verizon were already able to implement effective price increases relative to other carriers while still growing share, margins and subscribers is a strong indicator of the existing lack of competition. Indeed, the *Horizontal Merger Guidelines* state:

> If a firm has retained its market share even after its price has increased relative to those of its rivals, that firm already faces limited competitive

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[21] *See* SNL Kagan, *Wireless Industry Benchmarks*.

[22] *See* SNL Kagan, *Wireless Industry Benchmarks*.

[23] *Supra* note 16.

[24] *Supra* note 15.

[25] AT&T and Verizon's combined share of subscribers was 64 percent at the end of 2010 and 65 percent at the end of 2010.

[26] For example, in 2010, Verizon's average Wireless EBITDA margin was 47 percent while AT&T's was 41 percent. By contrast, Sprint's average Wireless EBITDA was 18 percent; U.S. Cellular's was 20 percent; Leap Wireless' was 21 percent; and T-Mobile's was 29 percent. *See* John Fletcher, "Verizon Wireless: The best spectrum, wireless EBITDA," *SNL Kagan*, March 16, 2011.

[27] As is noted in the *Horitontal Merger Guidelines*, "even a highly concentrated market can be very competitive if market shares fluctuate substantially over short periods of time in response to changes in competitive offerings." (p. 18). However, this is not the case in the U.S. wireless market, with Verizon and AT&T steadily growing their share through mergers, acquisitions, and capturing of customers from other carriers.

[28] *See Horizontal Merger Guidelines*, at 15. "Market shares can directly influence firms' competitive incentives. For example, if a price reduction to gain new customers would also apply to a firm's existing customers, a firm with a large market share may be more reluctant to implement a price reduction than one with a small share. Likewise, a firm with a large market share may not feel pressure to reduce price even if a smaller rival does."

[29] *Supra* notes 15 and 26.

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> constraints, making it less likely that its remaining rivals will replace the competition lost if one of that firm's important rivals is eliminated due to a merger.[30]

T-Mobile has focused on earlier rollout of higher quality HSPA+ data services at substantially lower prices than the other major national carriers. Its elimination from the marketplace would further cement the division between the pre- and post-paid markets and remove a major source of what little pricing discipline currently exists on AT&T and Verizon.

AT&T'S ACQUISITION OF T-MOBILE WOULD RESULT IN SUBSTANTIAL UNILATERAL HARMS IN THE RELEVANT PRODUCT MARKET

Though the proposed merger is not a merger to monopoly, there would nonetheless be substantial unilateral harms in the national post-paid smartphone cellular service market. These harms include relative reduced capital investment, reduced innovation, higher prices of certain specific services, and removal of certain products from the market.

First, one of the stated purposes of the transaction is AT&T's desire to reduce capital investments after it acquires T-Mobile's tower infrastructure -- capital investments it certainly would otherwise make.[31] This artificial reduction of efficient capital investment essentially means that a major motivation behind the merger is nothing more than an output suppression strategy. The Department considers any action to refrain from building or buying capacity that would have otherwise been obtained to be an output suppression strategy.[32] This unilateral output suppression strategy would be profitable for AT&T, as post-merger it would control a substantial portion of the smartphone service market;[33] its competitors would be unlikely to have a non-trivial supply response; the incremental margins earned on the capital investment would have been low; and the elasticity of demand for smartphone cellular service would be low.[34] Indeed,

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[30] *See Horizontal Merger Guidelines*, at 18.

[31] This includes the deployment of fiber optic infrastructure to towers currently served by copper circuits, the upgrading of towers to HSPA+ or LTE, cell splits, the purchasing of excess capacity from competing carriers, and most importantly, more rapid deployment utilizing AT&T's immensely valuable but unused AWS and 700 MHz spectrum.

[32] *See Horizontal Merger Guidelines*, at 22. "A firm may leave capacity idle, refrain from building or obtaining capacity that would have been obtained absent the merger, or eliminate pre-existing production capabilities."

[33] While the smartphone subscriber counts are not publicly available, other data indicates that this market is even more top-heavy than the broader mobile market. AT&T has publicly stated that it has "twice as many smartphone users… as any other U.S. carrier." Thus, given that post-merger AT&T would have a 43 percent share of the entire pre- and post-paid mobile market, it is possible that AT&T's share of the smartphone market following this merger would exceed 50 percent. *See* "AT&T to Offer iPhone 3G S on June 19," *PR Newswire*, June 8, 2009.

[34] *See Horizontal Merger Guidelines*, at 23. "A unilateral output suppression strategy is more likely to be profitable when (1) the merged firm's market share is relatively high; (2) the share of the merged firm's output already committed for sale at prices unaffected by the output suppression is relatively low; (3) the margin on the suppressed output is relatively low; (4) the supply responses of rivals are relatively small; and (5) the market elasticity of demand is relatively low."

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AT&T appears be paying a "kill off the competition" premium, as the $39 billion this transaction would cost them likely far exceeds the value of incremental capital investment that both AT&T *and* T-Mobile would need to make to deploy high-quality universal mobile data networks.

Second, while innovation in the mobile wireless industry is currently limited due to the lack of adequate competition, the elimination of T-Mobile would both remove a firm with a decent track record of product innovation and would reduce AT&T's incentive to innovate.[35] T-Mobile's ability to fully enter the market and compete effectively with AT&T and Verizon has been hampered by the Baby Bells' market power and legacy monopoly advantages, including their dominance of the special access and enterprise transit markets as well as their ability to lock in exclusive deals for the most popular handsets. But T-Mobile has taken on the role of a maverick competitor, using product innovation to differentiate and compete. T-Mobile was the first carrier to offer the now market-leading Android platform. T-Mobile also has a track record of offering its customers innovative service packages, including in-home service and discounts for customers who do not purchase subsidized handsets. T-Mobile also upgraded capacity at its towers and deployed the more robust HSPA+ cellular standard long before AT&T began its upgrades to this "3.5G" technology. The loss of this innovation competition along with the concentration of nearly 80 percent of the broader cellular market in the hands of the former Bell companies should be cause for concern at the DOJ.

Third, given that this merger is truly a merger to monopoly in the U.S. GSM-cellular standard market, it would have a substantial negative impact on handsets and service plans. AT&T would be the only U.S. buyer of GSM handsets, and the abuse of this monopsony power could result in poor quality and choice in devices. AT&T's monopoly over the GSM standard, which is used in most other foreign countries, could also result in higher international service plan prices.

Fourth, it is very likely that AT&T would reduce the total number of handsets available to customers of the combined firm.[36] Currently, AT&T's product inventory consists of 85 handsets while T-Mobile offers 60, with an overlap of just 13 devices.[37] It is highly likely that AT&T would remove many popular handset offerings, and in the future would be less likely to bring an innovative but risky GSM handset to market. This removal of popular handsets, along

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[35] *See Horizontal Merger Guidelines*, at 23. "The Agencies may consider whether a merger is likely to diminish innovation competition by encouraging the merged firm to curtail its innovative efforts below the level that would prevail in the absence of the merger. That curtailment of innovation could take the form of reduced incentive to continue with an existing product-development effort or reduced incentive to initiate development of new products."

[36] *See Horizontal Merger Guidelines*, at 24. "If the merged firm would withdraw a product that a significant number of customers strongly prefer to those products that would remain available, this can constitute a harm to customers over and above any effects on the price or quality of any given product." Example 21 in the *Horizontal Merger Guidelines* is particularly apt here.

[37] *See* Sascha Segan, "My Letter to the FCC About AT&T-Mobile: Time to Submit Yours," *PCMag.com*, May 3, 2011.

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with the removal of certain popular service plans like the "Even More Plus" offering, should raise concerns with regulators.[38]

AT&T'S ACQUISITION OF T-MOBILE WOULD FURTHER EXACERBATE HARMFUL COORDINATED EFFECTS IN THE RELEVANT PRODUCT MARKET

There is already evidence that AT&T and Verizon benefit from coordinated interaction, and this merger would only exacerbate this harmful behavior. While assessing the potential for coordinated interaction is inherently a predictive exercise for the Department, the structure of the wireless marketplace is such that it is particularly vulnerable to this behavior. First, the product market (smartphone service plans) is largely homogeneous, with prices easily observed by competing firms (carriers rarely offer new customer discounts or retention incentives unlike in the wired broadband market, and price their services nationally).[39]

Because of handset exclusivity, two-year contracts, high early-termination fees, lack of handset portability, and a switching customer's need to repurchase applications, it is unlikely that a firm exercising market power through increased prices would immediately lose a substantial portion of customers to competing carriers.[40] Indeed, as stated above, AT&T and Verizon continue to see the greatest gains in subscribers despite substantially higher prices and recent effective price increases. In most markets, the impact of coordination would be greatly reduced by smaller firms expanding output and capturing share.[41] But the smartphone cellular service market is not a typical market: Smaller firms cannot rapidly expand their sales due to handset exclusivity, other switching costs and the lack of beachfront spectrum. Thus, the structure of the wireless market makes it particularly vulnerable to coordinated interaction.

This market is also particularly vulnerable to coordinated conduct because it is so top-heavy, with much of the subscriber base and revenues already concentrated between two firms (currently two-thirds, and four-fifths post-merger). Because of this duopoly, the harms from

[38] T-Mobile's "Even More Plus" plans offer customers lower-priced, contract-free subscriptions if the customer brings their own GSM handset to the network, or purchases an un-subsidized handset from T-Mobile. None of the other major U.S. carriers offer this kind of European-style "BYOD" (bring your own device) plan.

[39] *See Horizontal Merger Guidelines*, at 26. "A market typically is more vulnerable to coordinated conduct if each competitively important firm's significant competitive initiatives can be promptly and confidently observed by that firm's rivals. This is more likely to be the case if the terms offered to customers are relatively transparent. Price transparency can be greater for relatively homogeneous products."

[40] *See Horizontal Merger Guidelines*, at 26. "A market is more apt to be vulnerable to coordinated conduct if the firm initiating a price increase will lose relatively few customers after rivals respond to the increase."

[41] *See Horizontal Merger Guidelines*, at 26. "This collective market power is diminished by the presence of other market participants with small market shares and little stake in the outcome resulting from the coordinated conduct, if these firms can rapidly expand their sales in the relevant market." But as mentioned above, the smaller regional and pre-paid firms are simply unable to rapidly expand sales, both due to supply (prime spectrum) and demand (switching costs) constraints.

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coordination would be substantial even if most firms do not engage in the behavior.[42] Further, because demand elasticity for service is relatively low, the coordinated behavior will be more profitable, increasing the likelihood of such harms post-merger.[43]

Indeed, while this merger would exacerbate pressures for the top firms to engage in coordinating behavior, it is apparent that such activity is already occurring. The high pre-merger margins earned by AT&T and Verizon relative to all other national and regional (pre- or post-paid) carriers is strong evidence of existing coordination.[44] It is an open secret (and preference) among Wall Street analysts that the top carriers are careful to avoid setting off any price wars.[45] That this merger would eliminate a maverick competitor and lead to "a more stable pricing environment" has been one of the main selling points of this transaction on Wall Street.

THERE IS NO PROSPECT OF COMPETITIVE ENTRY THAT COULD MITIGATE AGAINST THE UNILATERAL HARMS AND COORDINATED EFFECTS RESULTING FROM AT&T'S ACQUISITION OF T-MOBILE

Horizontal mergers of this size raise particular concern in markets where competitors are unable to enter sufficiently and quickly. In the wireless market, particularly the data market, sufficient new entry is impossible, and the smaller firms lack the ability to quickly and efficiently expand output at levels needed to offset the unilateral and coordinated harms.

No firm has entered the cellular telephony and data market in the past decade, and with the massive amount of consolidation, many have exited.[46] This lack of successful entry, combined with *increasing* margins[47] is a strong indicator that market entry is incredibly

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[42] *See Horizontal Merger Guidelines*, at 26. "Coordinated conduct can harm customers even if not all firms in the relevant market engage in the coordination, but significant harm normally is likely only if a substantial part of the market is subject to such conduct."

[43] *See Horizontal Merger Guidelines*, at 26. "Coordination generally is more profitable, the lower is the market elasticity of demand."

[44] *Supra* notes 15 and 26.

[45] The avoidance of price wars is an indicator of coordinated interaction. *See Horizontal Merger Guidelines*, at 24. "Coordinated interaction also can involve a similar common understanding that is not explicitly negotiated but would be enforced by the detection and punishment of deviations that would undermine the coordinated interaction."

[46] Clearwire, a firm whose majority share is controlled by Sprint, has entered the mobile data, but not cellular, market. However, it has struggled in building a retail base and is shifting focus to the wholesale market. Lightsquared, the mobile satellite spectrum firm, has stated its intention to offer nationwide wholesale LTE services (including voice-over-LTE), but the firm's prospects for timely and sufficient entry are dubious given the serious regulatory and engineering obstacles surrounding interference concerns with its technology.

[47] *Supra* note 26. The margins of the carriers at the very top, particularly Verizon, are increasing, while existing firms are seeing eroding margins and subscribers. "Only four of the 12 leading carriers were able to log sequential EBITDA gains last quarter, as smaller carriers struggle to manage costs amid shrinking or flattening subscriber bases and high smartphone handset subsidies increase equipment expenses."

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difficult.[48] New entrants would have to amass substantial spectrum assets, navigate local and federal regulations, and incur substantial fixed deployment costs prior to signing up a single customer. In addition, the high valuation of existing leading firms indicates intangible assets that a new entrant would not be able to sufficiently and quickly duplicate.[49]

Even if timely entry were possible, the existing market structure makes it such that this entry would not be sufficient to mitigate the unilateral and coordinated harms of this merger. In the smartphone cellular service market, AT&T and Verizon have used handset exclusivity to differentiate, and this practice, along with the substantial switching costs, creates insurmountable barriers to effective entry.[50]

Further, when considering the core market of nationwide smartphone cellular service, AT&T and Verizon are the *only* carriers with excess capacity in the form of unutilized beachfront spectrum. This means that sufficient output expansion by a rival firm is all but impossible.[51] Regional carriers have very little AWS and 700 MHz spectrum and rely on the national carriers for data roaming (at terms set by the national carriers). The major pre-paid carriers similarly lack prime spectrum for data services and would not be a sufficient check on the market power of the strengthened post-merger duopoly.

THE CLAIMED EFFICIENCIES OF AT&T'S ACQUISITION OF T-MOBILE ARE SPECULATIVE, NON-MERGER SPECIFIC, NON-COGNIZABLE, AND WOULD NOT OUTWEIGH THE ADVERSE COMPETITIVE IMPACT OF THIS TRANSACTION

As discussed above, AT&T's primary justification for this horizontal merger is the achievement of efficiencies through the combination of its and T-Mobile's network infrastructure. AT&T claims that it is in the midst of a "spectrum crunch" that only acquisition of T-Mobile's spectrum and infrastructure assets can solve. But this claim is misleading, and even if

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[48] AT&T's market valuation is approximately $190 billion, far in excess of the nearly $100 billion in value of its tangible assets. See *Horizontal Merger Guidelines*, at 28. "Lack of successful and effective entry in the face of non-transitory increases in the margins earned on products in the relevant market tends to suggest that successful entry is slow or difficult."

[49] *See Horizontal Merger Guidelines*, at 28. "Market values of incumbent firms greatly exceeding the replacement costs of their tangible assets may indicate that these firms have valuable intangible assets, which may be difficult or time consuming for an entrant to replicate."

[50] *See Horizontal Merger Guidelines*, at 29. "Even where timely and likely, entry may not be sufficient to deter or counteract the competitive effects of concern. For example, in a differentiated product industry, entry may be insufficient because the products offered by entrants are not close enough substitutes to the products offered by the merged firm to render a price increase by the merged firm unprofitable."

[51] *See Horizontal Merger Guidelines*, at 17. "... a firm's competitive significance may derive principally from its ability and incentive to rapidly expand production in the relevant market in response to a price increase or output reduction by others in that market. As a result, a firm's competitive significance may depend upon its level of readily available capacity to serve the relevant market if that capacity is efficient enough to make such expansion profitable."

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true, cites an efficiency that is non-merger specific,[52] non-cognizable[53] and does not outweigh the competitive harms of this transaction.

First, while there is no doubt that mobile data services are increasingly popular and growing, AT&T has offered no actual evidence that it cannot manage this predictable growth through normal means. Indeed, AT&T has been widely criticized for under-investing in its wireless network at a time when Verizon and other carriers were expending capital at higher relative rates.[54] While T-Mobile, which is in a far worse spectrum position, worked on increasing capacity by deploying more spectrally efficient technology, AT&T focused on mergers and acquisitions. But most specious of all is AT&T's claim of spectrum poverty, when it is not only the best positioned carrier in spectrum, but has not yet deployed any of its AWS or 700 MHz spectrum.[55] Thus, AT&T's efficiency claims are non-merger specific and non-cognizable,[56] as the company could achieve these same gains either through utilization of existing assets or other methods such as licensing deals that would enable it to share capacity with other carriers.

Second, even if these claimed efficiencies were merger-specific and cognizable, they would not outweigh the competitive harm of this transaction. AT&T has offered no evidence to suggest that the *net* benefit of these supposed efficiencies would be passed along to its customers. Indeed, AT&T is selling this deal to Wall Street by highlighting its much higher profit margins and plans to raise T-Mobile's.[57] If the DOJ follows its own precedent and guidelines, it will have no choice but to find that the supposed efficiencies do not offset the harms from this merger.[58]

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[52] *See Horizontal Merger Guidelines*, at 30, note 13. "The Agencies will not deem efficiencies to be merger-specific if they could be attained by practical alternatives that mitigate competitive concerns, such as divestiture or licensing."

[53] *See Horizontal Merger Guidelines*, at 30. "Cognizable efficiencies are merger-specific efficiencies that have been verified and do not arise from anticompetitive reductions in output or service."

[54] During 2006-2009, AT&T's wireless capital expenditures as a percentage of revenues were 12.6 percent, versus Verizon's 14 percent. T-Mobile led the major carriers during this period, spending 15.7 percent of its wireless revenues on network investments.

[55] It is noteworthy that AT&T is claiming spectrum poverty, while Verizon's CEO has been quoted as saying, "I don't think we have a spectrum shortage," when Verizon has *less* total spectrum than AT&T (and a nearly equivalent amount of AWS and LTE spectrum). AT&T has a total of 2,122 MHz of 3G and 4G spectrum versus 1,838 MHz for Verizon. *See* Marguerite Reardon, "Is AT&T a wireless spectrum hog?," *CNET News*, April 29, 2011. *See also* "A Conversation with Ivan Seidenberg," Council On Foreign Relations, April 6, 2010.

[56] These claimed efficiencies are non-cognizable, because they are non-merger specific and would come at the expense of AT&T reducing efficient output by reducing capital deployment. *See Horizontal Merger Guidelines*, at 30.

[57] *See* AT&T fact sheet, "AT&T and T-Mobile USA: The Future of Mobile Broadband."

[58] *See Horizontal Merger Guidelines*, at 31. "The greater the potential adverse competitive effect of a merger, the greater must be the cognizable efficiencies, and the more they must be passed through to customers, for the Agencies to conclude that the merger will not have an anticompetitive effect in the relevant market."

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LOCAL MARKET DIVESTITURE WILL NOT REMEDY THE ADVERSE COMPETITIVE IMPACTS THAT THIS TRANSACTION WOULD HAVE ON THE NATIONWIDE PRODUCT MARKET

As the Department conducts its analysis, it will have no choice but to challenge this merger.[59] The merger will significantly increase market concentration in an already highly concentrated market.[60] The market structure is such that it is extremely vulnerable to coordinated conduct, and this merger's elimination of a maverick competitor would only exacerbate that vulnerability.

Though the DOJ has never evaluated a merger of this size between two truly national cellular carriers, it has challenged similar transactions, including numerous acquisitions of smaller regional firms by large national carriers. Many of those transactions were ultimately approved with modest behavioral and structural conditions, most notably the divestiture of assets in certain local geographic markets. But these remedies came in an environment where there were still at least four viable national carriers, and where divestiture to other firms was possible without raising additional antitrust concerns. This merger is not like those past transactions. The loss of a major national carrier and the concentration of nearly 80 percent of the market between two firms with legacy monopoly wireline advantages is just too insurmountable an obstacle. It is hard to conceive how local divestiture would mitigate the market harm that this transaction would cause at the national level. Further, because of the increasing market concentration and loss of viable competitive firms, local market divestiture is unlikely to reduce market concentration to an acceptable level. The markets are concentrated to an extent that local divestiture now is simply an exercise in shuffling the deck chairs on the Titanic.

CONCLUSION

The national post-paid wireless market is already one with coordinated effects, one where the top two carriers use their market power to sustain significant non-transitory price increases. This merger would eliminate a major "maverick" nationwide competitor, exacerbating these pre-existing coordination effects, and would also result in substantial unilateral harms. The transaction would further reduce any possibility of competitive threats from the remaining regional carriers that have single-digit marketshares, and that have been unable to exert any meaningful competitive pressure on the nationwide carriers.

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[59] *See Horizontal Merger Guidelines*, at 25. "The Agencies are likely to challenge a merger if the following three conditions are all met: (1) the merger would significantly increase concentration and lead to a moderately or highly concentrated market; (2) that market shows signs of vulnerability to coordinated conduct (see Section 7.2); and (3) the Agencies have a credible basis on which to conclude that the merger may enhance that vulnerability. An acquisition eliminating a maverick firm (see Section 2.1.5) in a market vulnerable to coordinated conduct is likely to cause adverse coordinated effects."

[60] The exact HHI values will depend on how the product and geographic market is defined, whether subscribers or revenues are considered, and the available data. If the market is restricted to carriers that have a national footprint (through self-provisioning and/or roaming, including pre- and post-paid carriers), the HHI would increase from approximately 2,600 to 3,300. If it is restricted to post-paid carriers with national footprints, then the HHI would increase from 2,900 to 3,600. *See* SNL Kagan, *Wireless Industry Benchmarks*.

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In short, putting Humpty Dumpty back together is a bad idea. If antitrust law has any meaning left, the Department of Justice should follow past precedent and its own guidelines, and swiftly reject this unthinkable proposal.

Sincerely,

Derek Turner, Research Director
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Cc: Sen. Schumer
Sen. Klobuchar
Sen. Franken
Sen. Blumenthal
Sen. Grassley
Sen. Cornyn

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