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

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=PyXyNLwTQNpJPpBY9cjWzc9lQFmBgzQlhKRnFn7zmwjzpJHnlphT!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

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

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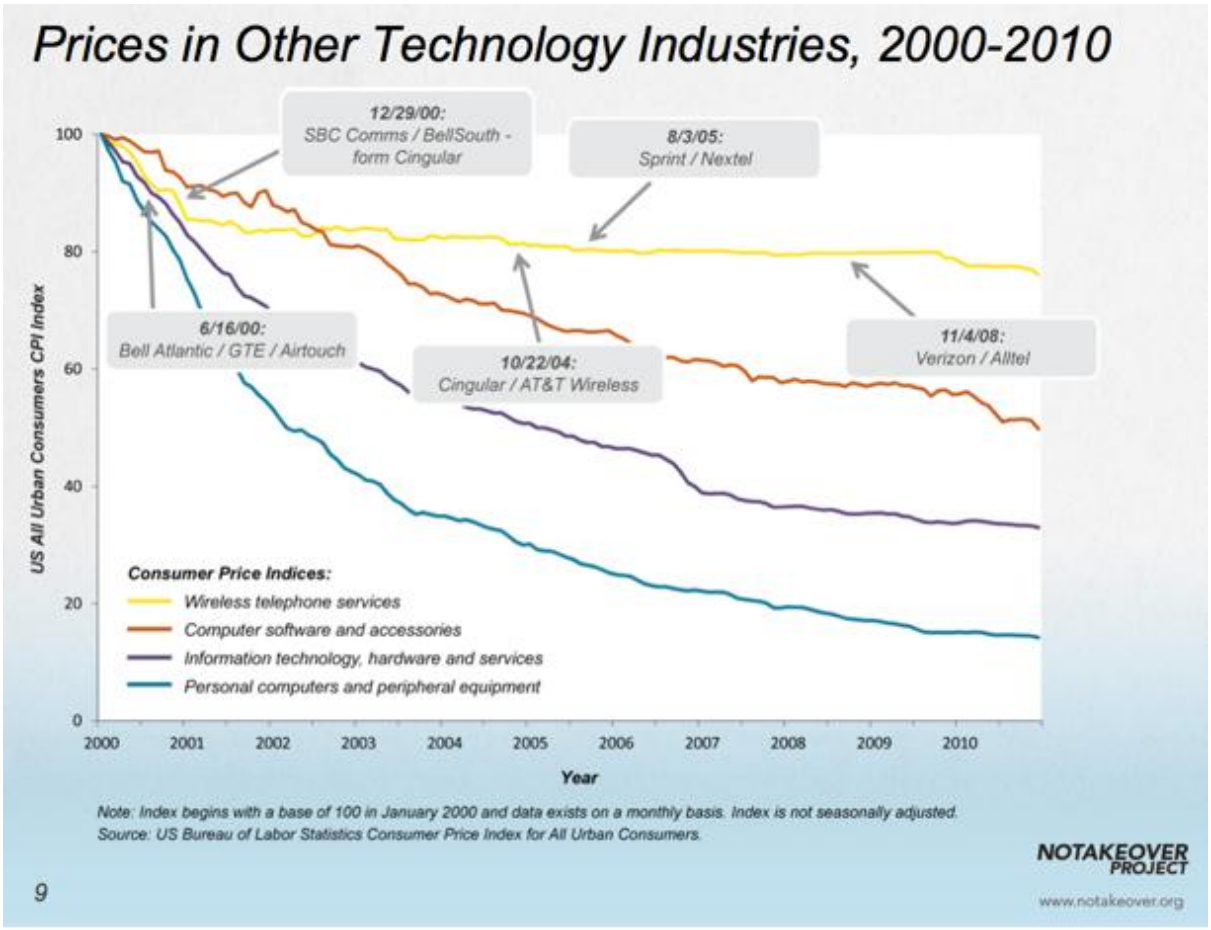
[8] Stross, Randall (2008, December 26). What Carriers Aren't Eager to Tell You About Texting. [Online] In The New York Times. Retrieved June 8, 2011 from http://www.nytimes.com/2008/12/28/business/28digi.html?_r=2&partner=rss&emc=rss

[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



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