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].

[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

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

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.

[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.