

**WRITTEN TESTIMONY OF
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RE: PROPOSED AT&T/T-MOBILE MERGER
BEFORE THE SENATE JUDICIARY COMMITTEE,
SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY AND
CONSUMER RIGHTS
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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

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

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

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

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

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

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,

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

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

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

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

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

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.

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.