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BEFORE:

SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY & CONSUMER RIGHTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

HEARING ON CELL PHONE TEXT MESSAGING RATE INCREASES AND THE STATE OF COMPETITION IN THE WIRELESS MARKET

June 16, 2009

This hearing is the culmination of a process that began with Senator Kohl's initial inquiry letter to our Chairman and CEO regarding the pricing for wireless text messaging services. The letter, which focused on a single pricing option for text messaging services that represents a de minimus portion of overall text messaging sales, had the unintended consequence of spawning extensive – albeit spurious – litigation. Understandably, then, we look forward to discussing with you the competition that characterizes the wireless industry generally and text messaging services in particular.

Text messaging services reflect the dynamic and competitive nature of today's wireless industry. At the same time that use of the service has grown exponentially – with texting volume increasing 600% in just the past two years – prices for text messaging have fallen dramatically – over 60% over that same time. That is, the text message segment of the marketplace is characterized by the very hallmarks of a competitive market: rapidly falling prices and increased output and demand. AT&T has, thus, made available to millions of consumers a service that is transforming, in an effective and affordable fashion, the very means by which they communicate. Families are more connected; businesses have a new tool to disseminate critical information rapidly and efficiently to employees and customers; and, all the while, the prices for this transforming service have fallen off a cliff.

To begin, pricing for text messaging should be evaluated in the context of the broader competitive dynamics of the wireless industry. Today's wireless industry is intensely competitive.[1] According to the FCC's latest statistics, more than 95 percent of the U.S. population lives in census blocks with at least three competing wireless carriers, and more than half of the population lives in census blocks with at least five competing carriers.[2] The FCC continues to make additional spectrum available, and major new providers, such as Clearwire and the cable companies, continue to enter the wireless market. As the FCC's detailed annual reports to Congress time-and-again confirm, the wireless marketplace is and will remain effectively competitive.[3] In fact, as a recent study shows, the U.S. enjoys the *least* concentrated wireless industry of any major industrial country.[4]

Because of this intense competition, output continues to soar and prices continue to fall. There are now 270 million wireless subscribers in the United States, and in 2008 they used more than 2.2 *trillion* minutes – a tenfold increase since 2000.[5] At the same time, prices have declined precipitously. Average revenue per minute has fallen 89 percent since 1994, and U.S. wireless prices are much lower than in any other major industrialized country in the world.[6]

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[1] Just this past April, former Vice President Al Gore, speaking at the annual conference of CTIA-The Wireless Association, called the U.S. mobile sector "the most competitive wireless industry of any nation in the world--because of competition, we're seeing the continued pulse of investment to expand the capacity of our networks."

[2] Thirteenth Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of competitive Market Conditions With Respect to Commercial Mobile Services,* WT Docket No. 08-27, ¶ 2 (January 15, 2009) ("*Thirteenth Report*").

[3] *Thirteenth Report*, ¶ 2.

[4] *See The United States and World Wireless Markets: Competition and Innovation are Driving Wireless Value in the U.S.*, Presentation by CTIA-The Wireless Association at 6-7 (submitted in FCC WC Docket Nos. 09-51, May 12, 2009) ("*CTIA Study*").

[5] *CTIA Study* at 4, 9.

[6] *CTIA Study* at 3, 9; *Thirteenth Report*, ¶ 192.

Consumers are also getting far more value for their wireless dollars than they did even a few years ago. Carriers, device manufacturers, and operating system and applications developers compete fiercely to provide consumers with an increasingly broad array of new features, functions and capabilities. This is especially true of wireless broadband services. Carriers have invested tens of billions of dollars in recent years to upgrade their networks to increase speeds and to support a wave of revolutionary new broadband devices and applications. Americans today do not just talk on their wireless "phones" – they surf the Internet, listen to music, send emails, edit documents, use GPS-enabled features, watch videos, play games, and much more.

The wireless industry is just beginning to tap these possibilities. Seemingly every month, a new and innovative wireless device bursts onto the scene, from the Amazon Kindle – a wireless e-reading device that does not even support voice calls – to wireless mini-laptop computers, medical monitoring devices, and specialized devices tailored to the needs of particular businesses. AT&T alone currently supports specialty devices from more than 100 manufacturers. Because of this intense competition and furious pace of innovation, wireless services are transforming American life.

Against this backdrop of white-hot competition, we can put to rest an underlying implication of the subcommittee's inquiry into this matter – that the national wireless providers may have conspired to fix prices for text messaging. As the subcommittee is likely aware, after Senator Kohl sent his initial inquiry letter, some 37 separate class action lawsuits were filed around the country against AT&T and the other national wireless carriers, specifically alleging price-fixing for text messaging services. Indeed, the first such complaint was filed the day after Senator Kohl's letter was delivered to AT&T. None of the complaints alleges any time, place, or persons involved in the supposed collusion, and all but one cites Senator Kohl's letter as a principal basis for the allegations made. Especially in light of this litigation firestorm, we want to make it perfectly clear that AT&T sets the prices for all of its products on a unilateral basis. There is no evidence to support an accusation that anyone at AT&T engaged in any inappropriate, much less illegal, behavior as alleged in these lawsuits. AT&T reached its decision to alter the prices for its text message product based on a reasoned, independent analysis of the marketplace, how these prices fit into the full suite of our product offerings, the state of competitors' prices and pricing structures, and other factors. The allegations in the complaints are patently false.

The faulty notion that prices for text messaging have risen derives from an unduly narrow interest in the trend of a single pricing option for text messaging services – the pay-per-use option – when the vast majority of AT&T's customers do not choose that option. "Pay per use" – or "PPU" – refers to the charge for individual text messages that customers purchase on a single-message, no-minimum-monthly-charge basis. In fact, *less than 1% of AT&T's postpaid text messaging volume is handled on a PPU basis*. Instead, the vast majority of our customers take advantage of AT&T's multiple messaging pricing plans, including those that provide a package of messages for a flat monthly rate. These plans include: 200 messages per month for $5.00, for an effective rate of 2.5 cents per message; 1500 messages per month for $15.00, for an effective rate of 1 penny per message; and unlimited messages for $20.00. For $30.00 per month, families can enjoy unlimited text messaging. With these plans, AT&T provides its customers – from the casual to the heavy user – with a number of low cost options to meet their text messaging needs. Indeed, the fact that 99% of all text messages sent or received by AT&T customers are covered by one of these packages is a testament to the value that consumers see in and derive from our monthly plans. As a result, the overall effective rate per message has plummeted, dropping from $0.043 in January 2007 to $0.014 in March 2009 – an almost 70% decline in just over two years. At the same time, the volume of text messages handled by AT&T has grown exponentially. In January 2007, AT&T processed 4.5 billion text messages. In January 2009, it processed 31.1 billion text messages. That represents nearly a 600% increase in two years.[7] Thus, the PPU price, which represents a de minimus portion of the total number of text messages, has increased, but overall rates – the rates that the vast majority of our customers pay – have plummeted.[8]

In making these package plans the core of our text messaging pricing, we are delivering maximum value to our customers. In our experience, the PPU pricing option often results in large and unpredictable swings in a customer's total bill, leading to significant customer dissatisfaction and complaints to our customer care lines. Package plans ensure extremely low prices, choice, predictability, and easy-to-understand bills, and thereby greatly improve the overall customer experience. That is, we saw that demand for text messaging was exploding; did not want our customers to suffer unexpectedly large or constantly changing monthly bills; and fixed the potential problem of unhappy customers by avoiding them in the first place. Now, the overwhelming majority of our customers purchase text message packages, and most of them pay pennies or less than a penny per message.

By contrast, the pay-per-use option is designed for the rapidly diminishing group of infrequent users of text messaging. AT&T's current price is 20 cents for each text message.

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[7] Americans as a whole sent more than one trillion wireless text messages in 2008 – triple the amount in 2007.

[8] One of the myths surrounding this issue is that the four national carriers increased their prices for their respective PPU pricing options in automatic lockstep. In fact, seven months elapsed from the time Sprint increased its PPU price from $0.10/message to $0.15/message to when T-Mobile increased its PPU price. More than ten months passed from when Sprint increased its rate from $0.15/message to $0.20/message to when T-Mobile increased its rate. But, regardless of the timing, the fact that different companies may charge similar prices under a single pricing option does not demonstrate any unlawful act. Rather, it is an established axiom of law and economics that the mere fact that companies offer similar (or even the same) prices for similar products does not establish, or even fairly suggest, a price-fixing claim.

This rate has been in effect since March of 2008. Prior to March, a rate of 15 cents per message had been in effect since January 2007, and prior to that, it stood at 10 cents per message. Because we know how valuable the package plans can be for our customers, we have designed an overall pricing structure that encourages customers to take a hard look at the packages and, in the end, our customers have benefitted from ever-decreasing effective rates.

Moreover, contrary to the false claim of collusion, the carriers are delivering value to consumers by giving them a wide range of choices. The carriers are differentiating themselves and competing fiercely on many levels, including the manner in which they offer their text message packages. Just by way of example:

- For $5/month, Verizon offers 250 messages, but T-Mobile and Sprint offer 300.
- For $20/month, AT&T offers unlimited messages, whereas T-Mobile offers unlimited messages for $15/month.
- Sprint's family text-message plan is priced at $30/month and includes extra voice minutes, whereas T-Mobile's family price is $25/month, with no extra voice minutes.
- In addition, Sprint offers an unlimited voice-and-text plan at $50/month through its Boost product.

And the list goes on. The point is that, even in the realm of text messaging services, the carriers offer customers a wealth of choices to fit their specific needs and budgets. The fact that the price for one lightly-used pricing option – PPU – is today the same across the carriers is therefore entirely meaningless.[9]

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9 Notably, pricing and product differentiation is not cost free. It requires, among other things, significant marketing effort and expense. For this reason, a carrier cannot reasonably differentiate itself from all of its competitors in connection with every possible product, price or pricing option; trying to do would stymie the carrier's efforts to compete aggressively with respect to what really matters to consumers and drives their choices. Here, given that PPU messaging is such a minute part of the overall product offering of text messaging services, AT&T has chosen, for the moment, not to differentiate itself from its competitors on the single factor of its PPU pricing option.

We trust that this more complete picture of the way that text messaging services are offered and priced puts to rest any concerns about a single pricing option and dispels any notion that AT&T's decision to offer that option resulted from any improper activity.