

Statement of
The Honorable Herb Kohl

United States Senator
Wisconsin
May 11, 2011

Statement of U.S. Senator Herb Kohl
Chairman of the Judiciary Subcommittee on Antitrust, Competition Policy & Consumer Rights
The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?
May 11, 2011

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% market share. Should this deal be approved, AT&T and Verizon will control close to 80% 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. Stephensen and Mr. Humm, to justify why we should permit 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 - and maybe even this hearing room - 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. As a result, aggressive competition led to declining prices and the rollout of new services. Today the situation is quite different. This deal will leave us with just three national companies, two of whom - AT&T and Verizon - will control nearly 80% of the market. And there are real fears that the third - Sprint - will itself be sold to one of the big two and we will end up with 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. 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 nation?

So today's hearing will examine the critical questions - what will reducing the number of national cell phone competitors to three mean to consumers? Will they see 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 travelling. 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% 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 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 providers of cell phone service, the lower the price, the better the quality of service, and the more innovation that results. And we must also keep in mind that the cell phone industry is a highly profitable and rapidly growing business. So the burden will squarely be 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.