

Attachment—Additional Questions for the Record
Subcommittee on Communications and Technology
Hearing on
“Protecting Consumers and Competition: An Examination of the T-Mobile and Sprint
Merger”
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The Honorable Yvette D. Clarke (D-NY)

- 1. In order to maintain our innovation edge, it is critical that America intensify our efforts to deploy 5G. Proponents of this deal have argued the merger will enable the combined company to make these investments. But in 2011, after T-Mobile sought to merge with AT&T and the Obama Administration rejected the deal on antitrust grounds, T-Mobile soon thereafter made a multi-billion dollar network upgrade, while also lowering prices.**
 - a. Does history, and the failed AT&T deal in particular, actually support the companies’ argument that the deal is essential to increasing network investment, and 5G deployment in particular?**

Response: No. While investment is driven by many factors, a key one is competition. A merger that lessens competition reduces the inventive companies have to invest, and makes parallel behavior (e.g., under-investment) more likely.

In the failed AT&T/T-Mobile merger, AT&T made many of the same arguments T-Mobile and Sprint make now – namely that the transaction was necessary for deployment of a competitive next-generation wireless network. In 2011, AT&T and T-Mobile claimed to the Department of Justice (“DOJ”), the Federal Communications Commission (“FCC”), and policymakers that neither company had a path to deploy a nationwide 4G LTE network. AT&T and T-Mobile argued that their merger was a prerequisite for building such a network. In reality, after the transaction was denied by the DOJ and the FCC took steps to effectively block the deal, both AT&T and T-Mobile successfully built out 4G LTE networks that surpassed even the network deployment commitments in the parties’ merger advocacy.

The DOJ Complaint to block the AT&T/T-Mobile merger explained that allowing the wireless market to consolidate from four to three national carriers would likely lessen competition due to an enhanced risk of anticompetitive coordination by the three remaining firms. As a result, the reduction in competition would likely lead to higher consumer prices and “reduce the

competitive incentive to invest in wireless networks to attract and retain customers.”¹ Additionally, the DOJ found that contrary to the claims of the parties about the benefits of their complementary spectrum assets, increased scale, and network deployment plans, the merger would not produce any cognizable merger-specific benefits that would offset any of the likely harms identified by the government.²

Today, T-Mobile and Sprint make similar unverifiable and non-merger specific claims about the purported benefits of their merger. Both companies have claimed, in the context of the merger, that they will be unable to deploy standalone nationwide 5G networks without merging. However, numerous statements from executives of both T-Mobile³ and Sprint⁴ directly

¹ Complaint, United States v. AT&T, Case 1:11-cv-01560 16-18 (Aug. 31, 2011), <https://www.justice.gov/atr/case-document/file/487776/download> (“AT&T-T-Mobile Complaint”).

² *Id.* at 20.

³ See e.g., Alex Scroxton, MWC 2018: 5G Collaboration Dominates Agenda at Annual Mobile Fair, Computer Weekly.com (Feb. 28, 2018), <https://www.computerweekly.com/news/252435888/MWC-2018-5G-collaboration-dominates-agenda-at-annual-mobile-fair> (quoting T-Mobile Chief Technology Officer Neville Ray), “T-Mobile will be the first to give customers the truly transformative, nationwide 5G network they deserve[.]” Press Release, Nokia, *Nokia and T-Mobile Leading the way with Nationwide 5G Multi-band Network Rollout Across the United States*, (Feb. 27, 2017), https://www.nokia.com/en_int/news/releases/2018/02/27/nokia-and-t-mobile-leading-the-way-with-nationwide-5g-multi-band-network-rollout-across-the-united-states (comments of T-Mobile Chief Technology Officer Neville Ray), “T-Mobile customers will get 5G in more places than anyone else. Working together with Nokia, the Un-carrier will be the first to roll out a nationwide 5G network. Our customers already have the fastest LTE network, and it will work simultaneously with 5G to bring even faster speeds.” *T-Mobile Q4 2017 Earnings Call* (T-Mobile Chief Operating Officer G. Michael Sievert), “So we’re going nationwide coast-to-coast, and we’ll be the first one with a national 5G deployment because of that. Well, our competitors just simply can’t do that.” Neville Ray, *5G Reality vs 5G Hype: The Un-carrier vs the Carriers*, T-Mobile Blog (Jan. 16, 2018), <https://www.t-mobile.com/news/5g-ces-wrap-uphttps://www.t-mobile.com/content/t-mobile/corporate/news/archive.html>, “T-Mobile is **STILL** the **ONLY** wireless company committed to deploying a nationwide 5G network.” (emphasis in original).

⁴ See e.g., Transcript, *Sprint’s Management Presents at Deutsche Bank 2018 Media, Telecom & Business Services Conference* (Mar. 7, 2018), <https://seekingalpha.com/article/4154284-sprints-management-presents-deutsche-bank-2018-media-telecom-and-business-services?page=2> (comments of Sprint President and Chief Financial Officer Michel Combes), “I have never seen a company with such a rich spectrum which is a sweet spot for 5G, I guess that gives us a tremendous opportunity for the years to come. So that’s really the good timing to join Sprint, because the platform is great with this 5G spectrum.” *Id.* “[W]e will have the first national wireless 5G network in 2019.” Sprint Corp., Q3 2017 Earnings Call Transcript (Feb. 2, 2018), http://s21.q4cdn.com/487940486/files/doc_financials/transcripts/S-US-20180202-2039822-C.pdf (Sprint CEO Marcelo Claure), “Sprint is the only carrier that doesn’t have to compromise what 5G can deliver because we can deliver the superwide channels of more than 100 MHz while still delivering mid-band coverage characteristics.”

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contradict their merger advocacy and demonstrate that both firms have made commitments to deploy robust nationwide 5G networks, and that the firms have the assets necessary to do so.

The history of the abandoned AT&T/T-Mobile merger illustrates that competition, not consolidation, drives prices down, provides incentives for companies to innovate with new pricing plans and business models, and to invest in next-generation network architecture. Enforcement agencies and policymakers are correct to be skeptical of claims that consummating a merger is a necessary prerequisite for network deployments.