

ATTACHMENT 1



CPUC Public Workshop

Proposed Acquisition by AT&T of T-Mobile

Workshop – Facilities Based Competition Issues

**Friday, July 8, 2011
9:30 a.m. – 4:30 p.m.**

**Hiram W. Johnson State Office Building
Milton Marks Conference Center (lower level)
455 Golden Gate Ave., San Francisco**

Draft Agenda

9:30 a.m. – 9:45 a.m.

Opening Remarks

(ALJ, Commissioners present including Assigned Commissioner Sandoval)

9:45 a.m. – 10:45 a.m.

Independent academic expert presentations

(each expert will have 10 minutes to present followed by 20 minutes of Q&A facilitated by the ALJ)

- a. antitrust standards
- b. communications law standards (Ca PU Code + FCC)
- c. backhaul provisioning and infrastructure access (including roaming)
- d. spectrum

10:45 a.m. – 10:55 a.m.

BREAK

10:55 a.m. – 12:05 p.m.

Panel analyzing the effect of the merger proposal on special access *(10 minutes each) (ALJ moderates)*

- a. Respondents present on the effect of merger proposal on special access
- b. Market Participant Parties present on the effect of merger proposal on special access
- c. Cross Talk among panel on the effect of merger proposal on special access
- d. Questions from other Parties on the effect of merger proposal on special access
- e. Commissioners questions on the effect of merger proposal on special access

12:05 p.m. – 1 p.m.

LUNCH

1:05 p.m. – 2:15 p.m.

Panel analyzing the effect of the merger proposal on spectrum access *(10 minutes each) (ALJ moderates)*

- a. Respondents present on the effect of merger proposal on spectrum access
- b. Market Participant Parties present on the effect of merger proposal on spectrum access
- c. Cross Talk among panel on the effect of merger proposal on spectrum access
- d. Questions from other Parties on the effect of merger proposal on spectrum access
- e. Commissioners questions on the effect of merger proposal on spectrum access



Draft Agenda Continued

2:15 p.m. – 2:20 p.m.

BREAK

2:20 p.m. – 3:20 p.m.

Panel analyzing the effect of the merger proposal on roaming and competition (*10 minutes each*) (*ALJ moderates*)

- a. Respondents present on the effect of the merger proposal on roaming and competition
- b. Market Participant Parties present on the effect of the merger proposal on roaming and competition
- c. Cross Talk among panel on the effect of the merger proposal on roaming and competition
- d. Questions from other Parties on the effect of the merger proposal on roaming and competition
- e. Commissioners questions on the effect of the merger proposal on roaming and competition

3:20 p.m. – 3:30 p.m.

BREAK

3:30 p.m. – 4:30 p.m.

Questions and Comments from the Public

A partial list of workshop panelists to date include:

Mark Lemley, *Stanford University*

Roger Noll, *Stanford University*

George Ford, *Phoenix Center for Advanced Legal & Economic Public Policy Studies*

Allen Hammond, *Santa Clara University*

Mike Ayers, *Sprint*

Chris Frentrup, *Sprint*

Tray Hanbury, *Sprint*

Tim Ostrowski, *Cricket Communications*

Peter Ewens, *T-Mobile*

William Hogg, *AT&T*

Parley C. Casto, *AT&T*

William W. Hague, *AT&T*

Tom Ostrowski, *Cricket Communications*

Andrew Merson, *Cricket Communications*

Bryan J. Fleming, *T-Mobile*



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CPUC PUBLIC WORKSHOP
PROPOSED ACQUISITION BY AT&T OF T-MOBILE
WORKSHOP - FACILITIES BASED COMPETITION ISSUES
FRIDAY, JULY 8, 2011
9: 30 A. M. - 4: 30 P. M.
HIRAM W. JOHNSON STATE OFFICE BUILDING
MILTON MARKS CONFERENCE CENTER
(LOWER LEVEL)
455 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA

REPORTED BY: CAROL S. NYGARD, CSR #4018
KIMBERLEE SCHROEDER, CSR #11414

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APPEARANCES:

JESSICA T. HECHT, Administrative Law Judge
CATHERINE J. K. SANDOVAL, Commissioner
MIKE FLORIO, Commissioner

1 (Opening Remarks and Independent Academic
2 Expert Presentations - 9:30 a.m. - 9:45 a.m. Panelists:
3 ALLEN HAMMOND, IV, Santa Clara University; ROGER NOLL,
4 Stanford University; MARK LEMLEY, Stanford University;
5 GEORGE FORD, Phoenix Group)

6 JUDGE HECHT: We'll be on the record.
7 The Commission will please come to order.
8 This is the time and place for the first
9 workshop in Commission Investigation 11-06-009.

10 It is about 9:30 in the morning on Friday, July
11 8th, 2011, and I am Administrative Law Judge Jessica
12 Hecht.

13 The purpose of this workshop is to discuss the
14 effects of the new Cingular Wireless or AT&T Wireless
15 purchase of T-Mobile.

16 This workshop focuses on certain facilities
17 based competition issues in California, particularly
18 special access backhaul, spectrum and roaming issues.

19 I really want to thank you all for joining us
20 today, and I'm looking forward to having a very
21 productive discussion, and I want to especially thank all
22 of our presenters and the panelists that we'll be having
23 later for making themselves available and taking the time
24 to be here.

25 The purpose of this workshop is to build a

1 record along with the written filings from parties, that
2 -- some of which have already been filed and some will be
3 as this process moves forward, and those will inform the
4 Commission's analysis of the effect of this proposed
5 merger in California.

6 Workshops enable us to gather factual
7 information from a variety of sources and give us some
8 flexibility and structure of the discussions.

9 In this case we released a draft agenda last
10 week, and we'll be following that draft agenda with some
11 minor modifications, and I'm going to go over the
12 structure of the workshop today.

13 So we're going to begin today with some brief
14 opening remarks.

15 First, for myself, some introductory ground
16 rules, and then some opening remarks from the
17 Commissioners present.

18 We have two Commissioners present, Commissioner
19 Sandoval and Commissioner Florio.

20 It seems clear, if I turn to point out
21 something to them, that I don't get picked up by the mic,
22 so I will try to manage that.

23 Commissioner Catherine Sandoval is the assigned
24 Commissioner responsible for this proceeding, and
25 Commissioner Mike Florio has agreed to be here today.

4

1 We also have representatives of some of the

2 other Commissions with us here in the audience.

3 After the introductory remarks we will proceed
4 with our first session, which is made up of independent
5 experts who have graciously agreed to provide us with
6 some background and context today.

7 These speakers are not here to make specific
8 recommendations on how the Commission addresses the
9 proposed merger. They've not been asked to do that, and
10 we don't expect it.

11 But they're here more to raise questions and
12 issues that they think are relevant to the Commission's
13 evaluation of the proposed merger.

14 Each person will have 10 minutes to speak, and
15 then we will take questions from parties in attendance.

16 For the question period we will have half
17 sheets of paper, and, if you could fill those out with
18 your questions, that will be the way that we'll get
19 questions.

20 For the convenience and simplicity of our Court
21 Reporters, I'm going to be reading the questions from the
22 audience.

23 Because our time is limited, we'll focus on
24 questions today from people who have already requested
25 and received party status in this proceeding.

5

1 If you have not requested party status and you
2 wish to do so today, you may.

3 You may also hold your questions until the last
4 hour of the day, which will be open for taking public
5 comments from nonparties.

6 Parties will have an opportunity to ask
7 questions of these speakers and the later panelists using
8 the paper sheets that our staff will provide you.

9 If you have a question, please fill out the
10 sheet and fill it out completely with your name and
11 circle which panel it is that the question was for, and
12 hand that to some of our staff people here, which will
13 probably be Stephanie and Roland in the front and maybe
14 Lisa and a couple of others.

15 We have a few Commission staff here today
16 helping to support us.

17 I will -- be asking questions based on the
18 question sheets, so please make them as legible and
19 coherent and concise as possible.

20 We will attempt to get to all questions, but,
21 if we have more questions than time, we'll find a way to
22 answer the additional questions we don't get to in the
23 record, either by asking them towards the end of the day,
24 if there is extra time, or by getting follow-up responses
25 from panelists, or placing them in the transcript and

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1 allowing the parties to comment on them.

2 And we'll figure out the best way to do that
3 later today when we have an idea what questions we don't

4 get to and whether there are very many.

5 If a question that you suggest is not asked
6 exactly as you write it, please don't take it personally.

7 It probably means that we're combining similar
8 questions to avoid duplication or we just didn't get to
9 the question and we'll find some other way to get it in
10 to the record of this workshop.

11 We'll follow this procedure for the first
12 session speakers: Each will have 10 minutes, and then
13 we'll follow a similar process for the panelists.

14 We have three panels today. The first session
15 is on backhaul, the second is spectrum, and the third is
16 roaming.

17 On those panels each panelist will get seven
18 minutes, and when I say you have 10 minutes -- or seven
19 minutes, you don't have to take the whole time. You are
20 welcome to stop short of it.

21 After that there will be 15 minutes of
22 discussion among the panelists, for the later panelists,
23 not for experts now, but we'll go directly in to
24 questions.

25 At the very end of each session I'll reserve a

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1 few minutes for the Commissioners to ask their own
2 questions.

3 I want to remind parties of a few ground rules
4 up front.

5 First, this is not an evidentiary hearing, and
6 questions are appropriate, but this is not a forum for
7 objections like you would make in a formal evidentiary
8 hearing.

9 To ensure that we have a productive day, my
10 ground rules, which I think are fairly common sense, are
11 we have Court Reporters, and they will take down
12 everything that everybody says, so it can become part of
13 the record of this proceeding and the Commission can look
14 at it when they make a decision.

15 Because of that, it's important that you speak
16 slowly and clearly and do not speak at the same time as
17 anybody else.

18 If you do, the Court Reporters can't record
19 that and we don't get a clear record.

20 If you start to speak at the same time as
21 somebody else, I will probably stop you and ask you to
22 wait for your turn.

23 If you aren't speaking clearly, or if you're
24 speaking too quickly, or if you don't state your name,
25 then the Court Reporters or I will stop you and ask you

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1 to do that.

2 These are the only ways we can get the clear
3 record that we need.

4 Please identify yourself for the record before
5 you speak, and that goes for all of the panelists and for

6 everybody who speaks today.

7 Keep your statements reasonably to the point so
8 everyone who wants to speak has an opportunity to do so.

9 Avoid repeating what others have said.

10 Be respectful of others' viewpoints.

11 We expect disagreements, but we do not expect
12 personal attacks and do not want to hear those.

13 Also for this proceeding, when you identify
14 yourself, please state your relationship, if any, to the
15 parties to the proposed transaction, including those
16 filing petitions to deny with FCC and whether the
17 organization you represent has received funding and --

18 (Inaudible due to audience participants
19 speaking next to Reporters.)

20 THE REPORTERS: Shshshshshsh

21 JUDGE HECHT: -- from AT&T and T-Mobile, or any
22 other wireless or wireline, telephone company, or other
23 foundation.

24 This request is specific to this particular
25 investigation and will help us put statements in the

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1 appropriate context.

2 We have a timekeeper, and thanks again to
3 Stephanie for doing that.

4 She will keep track of time for each speaker
5 and let the speaker know when they have two minutes, and
6 one minute, and when time is up.

7 You're welcome to end before your time is up,
8 and I'd personally appreciate it if you do not make me
9 cut you off by continuing after your time is up.

10 But there will be time for cross-talk, and
11 discussion, and questions, so hopefully we can
12 accommodate everybody.

13 And at the end of the day there will be an
14 opportunity for members of the public to speak during the
15 last hour of the workshop.

16 So, if you have a comment that is not a
17 question for a speaker on the panel and you can hold it
18 for that last hour between 3:30 and 4:30, that would be
19 ideal.

20 With that, we are going to turn to opening
21 statements from the two Commissioners who are present and
22 then we'll proceed to our first panel.

23 Commissioner Sandoval?

24 COMMISSIONER SANDOVAL: Well, thank you very
25 much, ALJ Hecht.

10

1 So I thank everyone for coming.

2 So first I wanted to start with some thanks to
3 A0J Hecht, who has been doing a tremendous job.

4 We had our first public diversification hearing
5 last night. It was wonderful.

6 We had over 200 people come and speak relevant
7 to this merger.

8 The first speaker started with a blessing for
9 our proceeding, which I thought was a beautiful way.

10 I've never had a proceeding blessed before --
11 so it was a wonderful spirit with which to begin.

12 And I wanted to thank all of my colleagues,
13 President Peevey and the members of this office who are
14 here, Commissioner Florio, Commissioner Simon, who also
15 was with us last night at the public diversification
16 hearing, and Commissioner Ferron, and, of course, their
17 staff, and all of the staff from the California Public
18 Utility Commission who has been working so hard on this.

19 So thank you all very much for your work so
20 that we can do the proper due diligence on this inquiry.

21 Special thanks to everyone for being here
22 today, to the parties, the independent parties, and extra
23 special thanks to our panel of independent expert
24 speakers who have come here at our invitation to provide
25 some analysis about the factors that we should consider

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1 in evaluating the merger.

2 So the CPC often seeks the opinion of
3 independent experts to help us develop the expert base
4 and to help us consider various factors, and it's
5 important also to establish the analysis for this merger
6 within the framework of the law.

7 So we are here in the State of California
8 because the California Public Utilities Code through

9 Section 854 requires the California Public Utilities
10 Commission to determine whether or not a proposed merger
11 of a utility, including a telephone corporation,
12 including a wireless telephone corporation, is in the
13 public interest, and that statute states a variety of
14 factors to consider.

15 So one of them is the effect of the proposed
16 merger on competition, so that's going to be the focus of
17 today's workshop, is to talk about the effect of the
18 proposed merger on competition.

19 So we'll be focusing on a few topics, in
20 particular, special access, spectrum access, and also
21 roaming, and any other competitive factors.

22 This statute also directs us to consider the
23 effect of the proposed merger on service, so how is this
24 merger going to effect service, wireless service, and
25 also to the extent it has any impact on wire line service

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1 or other services, that will be important to consider.

2 The law also directs us to consider the effect
3 of the proposed merger on California's economy, both its
4 short-term economic impact and its long-term economic
5 impact.

6 And it also directs us to consider the effects
7 of the proposed merger on the community who are served by
8 the merger applicants as well as the effect of the
9 proposed merger on the employees.

10 So there are a variety of factors that are
11 elucidated, and so I hope that the comments today will
12 help us to consider these factors, and we look forward
13 particularly to the contribution of the independent
14 experts who will help us think about the anti-trust,
15 economic, legal, telecommunications, and other factors
16 that can help us in doing our analysis under the law.

17 So I thank you all very much for your
18 participation and look forward to everyone's
19 contributions.

20 So thank you.

21 JUDGE HECHT: Mr. Florio?

22 COMMISSIONER FLORIO: Thank you.

23 I appreciate the efforts of Commissioner
24 Sandoval and ALJ Hecht to -- to put these workshops
25 together.

13

1 As many of you know, my background is in
2 energy, not so much telecommunications.

3 So I'm really here to listen and learn,
4 particularly today on some of these more technical issues
5 that I'm not well versed in.

6 But I'm -- I'm looking to determine whether, as
7 Commissioner Sandoval said, the merger is in the public
8 interest, and, if there are concerns in that regard, can
9 -- can those concerns be mitigated.

10 So I'm very much here in listen and learn mode

11 and -- and look forward to a very productive day.

12 Thank you.

13 JUDGE HECHT: Thank you very much.

14 I think that we can turn to our first group
15 now, our group of independent experts, and we have with
16 us Allen Hammond, Roger Noll, Mark Lemley, and George
17 Ford, and each one will have 10 minutes, and we will hear
18 from them in that order starting with Allen Hammond.

19 MR. HAMMOND: Thank you.

20 Good morning.

21 First of all, thank you to the CPUC and ALJ
22 Hecht, Commissioner Florio, and in particular
23 Commissioner Sandoval for the opportunity to address the
24 Commission regarding the proposed merger between AT&T and
25 T-Mobile.

14

1 I've been asked to address the standards of
2 analyzing mergers under the California Public Utilities
3 Code, and particularly Section 854 and identify some of
4 the legal and economic issues the CPUC, and the parties,
5 and the public should consider.

6 Section 854 requires the PUC to engage in an
7 inquiry that is broad and equitable in scope.

8 I would suggest taking in to account all
9 potential beneficiaries in order to determine if a
10 proposed merger with the public utility or between public
11 utilities is in the public interest.

12 It's a fairly straightforward provision in its
13 directives to the PUC and establishes the PUC's
14 jurisdiction over utility mergers, establishes the scope
15 of the economic inquiry under 854(b), and 854(c)
16 establishes the scope and the required findings of the
17 PUC with regard to interest.

18 I will focus primarily on 854(b) and (c).

19 Having to discuss the basic jurisdiction issue
20 is pretty basic.

21 Economic findings. Let's move to that.

22 Pursuant to 854(b) -- (1) and (2) require that
23 before authorizing a merger the PUC has to affirmatively
24 find that the merger provides short-term and long-term
25 economic benefits to ratepayers, or that it has those,

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1 and that the forecast of economic benefits are equitably
2 distributed between shareholders and ratepayers.

3 It requires that before authorizing a merger
4 the PUC must find that the proposed merger does not
5 adversely affect competition.

6 But let me go back to the allocation between
7 ratepayers and the discussion about short and long-term
8 benefits.

9 The Commission has on occasion indicated that
10 there are five interrelated questions to ask with regard
11 to short and long-term benefits.

12 They include allocation of the benefits, what

13 benefits are actually received from the services; the
14 short-term and long-term definition, because that can
15 change from situation-to-situation; the calculation of
16 those benefits, that is, what methods should we use to
17 determine merger savings and benefit allocation.

18 Now the statute itself indicates that benefit
19 allocations should be roughly 50/50 between shareholders
20 and ratepayers.

21 So that's something that the Commission should
22 consider.

23 On the other hand, recently the PUC has opted
24 to eschew regulatory determination of benefits for
25 market-driven ones where that's appropriate.

16

1 So one of the questions then becomes to what
2 extent is this a situation in which market-driven
3 benefits are more -- are the more appropriate measure
4 rather than a regulatory assessment.

5 Moving back now, with regard to the adverse
6 effect on competition, the PUC has interpreted 854(b)(3)
7 to require that the PUC engage in an examination of the
8 impact of the proposed merger on competition in relevant
9 markets.

10 So one of the critical issues will be to
11 determine what the relevant market is.

12 I'm sure there will be more discussion about
13 that shortly.

14 To assist in making these findings the CPUC is
15 asking for an advisory opinion from the State Attorney
16 General.

17 Now, that opinion historically has followed the
18 analytical framework set forth in the revised horizontal
19 Merger Guidelines adopted by the United States Department
20 of Justice, the FTC, and State Attorneys General.

21 In essence, the PUC seeks to determine whether
22 the proposed merger will have the effect of substantially
23 lessening the competition in the relevant market.

24 So two criteria identified here, one, the
25 relevant market, obviously, and the adverse effect of

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1 competition and whether or not that is to occur.

2 The second major inquiry that the Commission
3 has to undertake is with regard to public interest
4 findings. So --

5 REPORTER NYGARD: I'm sorry.

6 Can you speak up a little bit?

7 I couldn't hear that.

8 MR. HAMMOND: I'm sorry.

9 REPORTER NYGARD: In regard --

10 MR. HAMMOND. I can bring this closer.

11 First of all, let me apologize.

12 I'm still jet-lagged. I was in Portugal
13 yesterday, so I'm a little -- under the weather.

14 REPORTER SCHROEDER: And just be mindful when

15 you're reading, people tend to take off.

16 MR. HAMMOND: Yeah. I'm not actually reading
17 the whole thing.

18 REPORTER SCHROEDER: You're only about 320
19 words a minute.

20 MR. HAMMOND: This is what it started out
21 being.

22 We're professors. What can you do?

23 The point is that -- that the -- economic
24 analysis is not the sole PUC, which the Commission must
25 engage in. It must also engage in a public interest PUC.

18

1 And the interesting thing about that is the
2 scope of that PUC.

3 It requires that before authorizing a merger
4 the PUC must find a balance that the merger is in the
5 public interest, and to do so it has to consider eight
6 specifically enumerated criteria.

7 Now I'm suggesting these criteria can be
8 regrouped around three -- three areas, the first being
9 service -- a service relationship, if you will, that is,
10 a relationship between the utility, the ratepayers,
11 utility shareholders, and its employees.

12 The second being an economic relationship, and
13 that's between the utility, utility employees, the State
14 and local economies, and communities in the state.

15 And, lastly, the regulatory relationship

16 between the utility and PUC itself.

17 Now, the service relationship as far as the
18 statute is concerned, contemplates that the proposed
19 merger must make the service relationship between the
20 utility and the subscriber or the ratepayer, that is, the
21 utility's financing and management of the provision of
22 quality service is no worse off than it was prior to the
23 proposed merger, although it's usually asserted by those
24 applying for the merger or proposing the merger and
25 expected that the proposed merger would improve the

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1 service relationship between the utility and the
2 ratepayers.

3 The economic relationship is a little different
4 in that the PUC must consider the utility's union and
5 nonunion employees and the benefits or adverse effects
6 that the merger might have on them.

7 And it's important to recognize in that regard
8 that many of these are -- are citizen-residents of the
9 state, and the majority of the utility's affected,
10 shareholders, whether the merger would be beneficial on
11 an overall basis to the state and the local economies in
12 areas served by the utility.

13 And one of the interesting things about that
14 question is we've noted that while the digital divide has
15 lessened, and we note that in that regard in minorities,
16 especially Hispanics and African-Americans have now

17 become major users of wireless technology and use the
18 wireless technology to access the network and Internet in
19 greater numbers than others percentage-wise.

20 It becomes very important to look at the
21 merger's effects on the continued ability of the various
22 communities to have access to and afford access to the
23 Internet and to other technologies.

24 I will not really talk about the regulatory
25 relationship too much, because the Commission itself in

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1 prior decisions has pretty much noted that it expects any
2 merger between utilities or any entity that is formed
3 from those mergers to comply with California law, and
4 that means that the PUC's jurisdiction is preserved and
5 its regulatory effectiveness is not an issue.

6 Lastly, there is -- a requirement by the
7 statute to -- that the PUC also seek to mitigate any
8 adverse impact that the merger may have, and, of course,
9 that requires a balancing because at some point
10 mitigation may not be sufficient to offset certain
11 negative impacts, and, therefore, the Commission should
12 determine that, instead of finding that -- the merger is
13 in the public interest and perhaps it is not.

14 I'll stop there, which means I'm just short of
15 the 10 minutes.

16 MS. GREEN: You have a minute and three seconds
17 left.

18 MR. HAMMOND: Well, I'll have to sweep that
19 over.

20 MR. NOLL: I'll take it.

21 MR. HAMMOND: Well, you'll have to bargain for
22 it.

23 JUDGE HECHT: All right. Then we'll move on to
24 Roger Noll.

25 Thank you.

21

1 MR. NOLL: Thank you very much.

2 It's -- it's enjoyable to be back here again at
3 one of these workshops. I haven't been here for a while.

4 It's interesting to see some familiar faces
5 that are still hanging around doing as much damage as
6 possible.

7 I -- the --

8 It's very difficult for the outsider economist
9 to comment usefully on the issues that have been raised
10 in the OII.

11 Page 13 and 14 of the OII has a series of
12 questions, and I'm going to address those, but right off
13 the top, one of the fascinating features of the
14 telecommunications industry in the era of deregulation is
15 that public information is no longer collected and
16 disseminated on many of the status sources types of data
17 one needs to have in order to answer definitively
18 questions like what is the relevant market, what is the

19 likelihood of exercising market power, things like that.

20 And that, right off the top, leads me to my
21 single-most important recommendation for the Commission,
22 which is that the Commission, in my opinion, on all the
23 issues that I'm about to address should demand supporting
24 data that is extensive and disaggregated, should make
25 certain that its own staff resources, division of

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1 ratepayer advocates, has the time and resources necessary
2 independently to analyze the data, and, third, I
3 recommend that you ask some economists and engineers who
4 don't have a horse in this race to peer review the expert
5 reports that are submitted on behalf of the various
6 parties in this case.

7 I see no other way to overcome the enormous
8 information advantage that carriers on both sides of the
9 issue -- this is not just AT&T, but it would also be
10 Sprint as well, that they have an enormous information
11 advantage over the CPUC, and this can only be overcome by
12 putting significant resources in to independent
13 assessment of the quality of the submissions.

14 So that's the very first point.

15 And to close, my -- my colleague, Bruce Owen,
16 once said to me, and I agree with him, he says that "If
17 I'd known that deregulation of the telecommunications
18 industry meant that they were going to stop collecting
19 data, I'd have been against it."

20 And I think that's a useful insight.

21 The very first question that is asked is, how
22 do we differentiate California and -- from the -- from
23 the rest of the country with respect to how one proceeds
24 in a merger PUC and what the likely competitive effects
25 are of the merger?

23

1 And, indeed, this is a crucial issue that is --
2 that surprises me as having a deeper problem associated
3 with it, which is the CPUC is in an extremely difficult
4 position because it doesn't know in advance what the
5 Antitrust Division and the FCC are actually going to do.

6 Based on historical precedent we would
7 anticipate that what's going to happen is a lot of
8 conditions imposed on an approval of a merger, and that's
9 the worst possible outcome from the standpoint of the
10 CPUC, because you have to be reactive to that.

11 You can impose additional conditions in
12 California, but until you know what the conditions are
13 it's really hard to figure out what the optimal response
14 to whatever the outcome in Washington, D.C. is.

15 So, point number two, strategic planning within
16 the CPUC requires considering one of the three or four
17 most likely things that could happen in Washington, D.C.

18 It's not --

19 You know, obviously, if it's just disapproved
20 in Washington, D.C., you can all go home.

21 But, if it's approved, completely swallow it,
22 then you can just design the California market, no
23 problem.

24 The really hard part is, what do you do if
25 there are conditions?

24

1 So that's part two.

2 And you need to do that strategic planning.

3 Now, to get in to the specific issues, first of
4 all, what are the relevant markets?

5 The relevant markets is a technical issue that
6 has to do with price constraints.

7 Don't let people fool you in to believing it's
8 about something else, like advertising, and technology,
9 and the rest.

10 Yes, it's true, those are the means of
11 competition across terms, but what "relevant market"
12 definition is about is the degree to which one firm
13 constrain the price of another or a group of firms
14 constrains the price of another.

15 And, again, I'm not going to tell you what the
16 relevant markets are because I don't have the data, but I
17 can tell you what the issue is going to be.

18 The issue is going to be the degree to which
19 anything else competes with wireless, and that requires
20 detailed information about customer behavior, which isn't
21 public, which only the carriers have.

22 It's useful, I think, to break down the
23 relevant markets in a -- in a bunch of ways.
24 First of all, there basically are two --
25 there's a two dimensions of how customers divide

25

1 themselves.

2 On the one hand, there are customers for
3 wireless services that are predominantly local in
4 character, and for them, Cricket, or Metro PCs, or
5 whatever, is a really good substitute for AT&T, and
6 Verizon, and the other nationwide characters -- carriers.

7 But then there's another category of consumers,
8 of customers, who want ubiquitous use of wireless, that
9 is to say they want to be able to use it no matter where
10 they are.

11 This is especially true of corporate customers,
12 that what they want is access to a national network.

13 And from that perspective it's especially
14 important to focus on facilities-based carriers that have
15 the capability of providing nationwide service.

16 They're a different category of animal.

17 The answers to relevant market and
18 concentration differs dramatically which way you go.

19 Whereas some of the smaller carriers offer a
20 version of nationwide service, it's done through resale,
21 and it's done through resale of four nationwide carriers,
22 and in particular mostly Sprint and T-Mobile because AT&T

23 and Verizon do less of that.

24 So it's important to bear in mind that those
25 two types of customers exist and to do the PUC separately

26

1 for them.

2 The second thing that's important is there are
3 customers who use the inter -- the wireless telephony
4 largely for traditional voice communication and then
5 there are those that use it for Internet access.

6 Again, the current break is probably 60/40
7 across that, but the 40, of course, is growing extremely
8 rapidly.

9 And, again, this is extremely important because
10 the -- the really important enhanced network capabilities
11 are really the future and are much more important to us
12 than the voice communications from the standpoint of
13 what's at stake economically about the future of
14 wireless.

15 For about thirty years the visionaries, the
16 techno-geeks, who live where I live in the Silicon Valley
17 area, have been talking about the emergence of ubiquitous
18 computing.

19 Ubiquitous computing is wireless based, and it
20 means everywhere you go and everything you do has a
21 computer connected to it.

22 Your automobile now has about 30 computers in
23 it, and it has even more stuff that has a little bit of

24 intelligence.

25 Automobiles are already connected to the

27

1 Internet in several different ways built in to the
2 automobile.

3 We're not very far away from the standard
4 equipment on an automobile being able to plug in your
5 notebook computer or your Smartphone in to the device
6 that is also your radio receiver, your satellite radio
7 server, whatever.

8 We already see this happening with regard to
9 GPS.

10 We already have a winner of the Driverless Car
11 Award. Google already has one where you can drive up and
12 down 101 with a computer-driven car using Google maps
13 deciding where to go.

14 All right?

15 We are only a few years away from wireless
16 technology being unbelievably ubiquitous in our life, and
17 that is the important thing to focus us on, because the
18 way that can not happen is for it not to be in the
19 interests of companies to want to provide it simply
20 because they don't have to to make a lot of money.

21 All right?

22 Competition is driving this.

23 Most of the public information about the
24 performance of the wireless network is embodied in the

25 annual FCC reports with the most recent one which came

28

1 out just about 10 days ago, the 15th Wireless Industry
2 Report.

3 If you -- if you read that, it has a nice
4 little section of comparing the U.S. with other
5 countries.

6 We are off scale the most intensive users of
7 wireless in the world, and the reason we're off scale the
8 most intensive users of wireless in the world is that we
9 have a competitive industry with low prices and rapid
10 technological progress.

11 The average American is on the wireless
12 communications between five and seven times as much as
13 almost any other advanced industrialized country in the
14 world and is three times whoever is in second place.

15 The U.S. made a decision 20 years ago to commit
16 to a competitive market structure.

17 It's absolutely crucial to retain competitive
18 market structure for two fundamental reasons.

19 The first is the obvious one, the market
20 structure, one, keeping the prices low, but the second
21 one is it gets you out of the box of having to regulate
22 an industry where the rate of technological progress is
23 in the double digits per year.

24 It's really, really hard to go through a formal
25 legal process to make rules and have it be timely with

1 respect to the enormous rate of progress that's already
2 happened and is going to happen over the next five years
3 as ubiquitous computing takes hold.

4 JUDGE HECHT: Thank you.

5 It's time to wrap up.

6 MR. NOLL: Okay.

7 And so the -- the one -- I only have one more
8 point to make, and that -- that is the -- the very simple
9 one of if -- in analyzing the nature of the product
10 markets also be aware of what is -- is the likelihood of
11 -- of almost all of the profitability of wireless
12 communications being in content and not network in the
13 future, and there -- the network leveraging issue one
14 needs to worry about is whether it's likely or possible
15 to leverage control of a network in a -- in a small
16 industry, small firm industry, and to control the
17 content.

18 JUDGE HECHT: All right.

19 Moving on to Mark Lemley, please.

20 MR. LEMLEY: Hi. I'm from Stanford Law School.

21 I want to thank the Commission for inviting me
22 and the affiliated academics, which I'm told was a
23 controversial thing to do, but I appreciate the
24 opportunity to be here.

25 I want to pick up where Roger Noll left off and

1 start with market definition.

2 He's right to say that it depends in part on
3 why you're asking the question and who the customers are,
4 but, if you focus on the national wireless telephony
5 market, I think it's fair to characterize the market
6 today as a fairly concentrated market, and perhaps even
7 as a -- a basic duopoly with fringe competition and
8 fairly large barriers to entry in the form of spectrum
9 allocation that's controlled by the government.

10 Now economic theory is all over the map when it
11 comes to how do duopolies behave.

12 You can find stories under which duopolies act
13 just monopolies, you can find stories under which they
14 act just like purely competitive markets, and you can
15 find a variety of theories in between.

16 One of the things I think that the economic
17 learning does teach us, particularly in innovative
18 industries, is the importance of fringe competition in
19 deciding which way those duopoly markets turn.

20 The fringe competition can not only discipline
21 upon price, preventing the two leading participants from
22 either directly colluding or indirectly engaging in price
23 followership, but it can and does drive innovation.

24 And I think in this particular respect the
25 T-Mobile example is worth considering.

1 As we moved in to a world in which wireless
2 went from being about making phone calls to being about
3 having a computer with you wherever you went, the world
4 started and perhaps would have coalesced around a series
5 of handset wireless connections that were hard-wired.

6 If you wanted an iPhone, you dealt with AT&T,
7 and you can imagine in a world in which AT&T and Verizon
8 were the only players, if you wanted a Blackberry, you
9 then went to Verizon.

10 And T-Mobile broke that mold. It moved us in a
11 different direction by being the first company willing to
12 sign on to a new alternative platform, the Google Android
13 platform, and by doing so it ended up ending the phone
14 handset end of the market to, I think, the great benefit
15 of everyone, because it brought in a new platform and a
16 new provider, one that might not, in fact, have come to
17 exist at all, but for the possibility of putting that new
18 phone platform and the phones that came with it on to an
19 existing national wireless network.

20 And I guess more generally what I want to
21 suggest, as Roger Noll indicates, we're seeing an
22 explosion of new technology and new possibility in the
23 wireless space.

24 We need applications innovation. We need the
25 development of new and innovative platforms and new and

1 innovative devices, and the history of economics not only
2 in the telecommunications industry but more generally in
3 the technology industry suggests that it is competition
4 that's going to drive that new innovation, it's going to
5 be competition that's going to allow those new
6 technologies to develop.

7 A concentrated group of incumbents has little
8 incentive to invest in new technologies or to allow new
9 technologies, particularly if those new technologies
10 appear at first blush to threaten some existing market
11 share in the network.

12 Verizon Wireless wants to prevent applications
13 from being developed that allow you to tether your phone
14 signal to a computer technology.

15 Both Verizon and AT&T want to impose
16 restrictions on companies like Skype that they view as
17 competitors using data over their network.

18 And in general I think established incumbents
19 have less incentive to allow these new uses where they
20 compete with existing businesses.

21 And, in turn, without some sort of outlet
22 innovative companies have less incentive to invest in
23 these kinds of transformative new technologies if they
24 know that there's not a platform in which they can place
25 that technology.

1 So one way to think about the wireless world is
2 the traditional way to think about it, how much are
3 people paying for phone calls, what is it that people --
4 how will the competition in phones be affected.

5 But I think technology has -- is in the process
6 of transforming wireless technology -- wireless from
7 being about phone calls to being about computing.

8 Roger talks about ubiquitous computing. That
9 is going to be in the very near future the most important
10 part of the wireless network, and it requires innovation
11 from a variety of sources, cross-platform innovation
12 that's only driven by competition.

13 My fear is that allowing the merger of AT&T and
14 T-Mobile effectively means we've given up on the idea of
15 competition in the wireless marketplace, particularly if,
16 as it seems quite possible, Sprint cannot survive as an
17 effective fringe competitor in the combined AT&T/T-Mobile
18 world.

19 If that turns out to be true, we end up with a
20 duopoly without the benefits of fringe competition, and
21 we may lose innovation as a result.

22 Now, if that turns out to be true, if this
23 Commission and the folks in Washington, D.C. approve the
24 merger and we end up with only two competitors, then I
25 think we need to face a hard fact, which is we've given

1 up on the competition experiment in wireless
2 communications and it's time to start regulating again.

3 We start to -- we start to need to look at
4 things like do we need a handset neutrality regulation.

5 We had card or phone in the Federal
6 Communications Commission where AT&T had control over
7 what devices could be attached to the network.

8 Maybe we need a wireless card or phone to
9 regulate in those areas.

10 Maybe we need an applications neutrality
11 principle to prevent discrimination against particular
12 applications like Skype, or particular sets of services
13 like tethering, which existing incumbents have an
14 incentive to block even though they may turn out to be
15 innovative.

16 And those regulatory debates have been carried
17 on in the wire line world now for a long time.

18 They turn out to be extraordinarily
19 controversial in part because the regulatory decisions
20 that they require are hard ones.

21 They require us to figure out how to implement
22 a nondiscrimination rule, when there could be an access
23 fee, and what that access fee ought to be, and ways that
24 actually preserve openness and innovation.

25 And, furthermore, I think they're hard because,

2 we're necessarily focused on technologies we can
3 currently think of; right?

4 And two years from now somebody is going to
5 come up with a new technology that presents a new
6 question, a new interaction, between the parties in the
7 marketplace that we haven't thought of, and the question
8 of whether or not an incumbent can gain that new
9 technology or discriminate against it, or create
10 exclusive rights for one provider of that technology is
11 something we'll have to fight all over again.

12 So I'm not here to suggest regulation in
13 wireless network neutrality.

14 I think regulation is a second best option to
15 competition, but, if we're not going to have competition,
16 regulated is better than unregulated market power.

17 Thanks.

18 JUDGE HECHT: Thank you very much.

19 Just going to take a moment first to say that,
20 if parties have questions, that staff either has already
21 distributed or will soon distribute some question sheets
22 so you can write down what your questions are.

23 I also want to remind the speakers to please
24 speak slowly so that the Court Reporters can keep up, and
25 speak as clearly as possible.

36

1 And, with that, we'll move to George Ford.

2 MR. FORD: The slow part is pretty easy. The
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3 clear is sometimes difficult.

4 If you have any trouble with the accent, stop
5 me at any time.

6 Well, I'm sure you're all relieved to know that
7 this matter is going to be a lot easier than you thought
8 it was with the great clarifications that we've gotten
9 today.

10 Mergers are pretty complicated beasts, and we
11 pile on the complexity. I guess that's our jobs today.

12 I'm George Ford from Phoenix Center, by the
13 way.

14 I'm going to continue to launch off where Roger
15 was and pile on the complexity even more a little bit and
16 talk about some things probably you wouldn't -- you
17 wouldn't hear from -- from somebody else, although the
18 FCC is beginning increasingly to think about issues in
19 this way.

20 The wireless industry is going to be
21 concentrated. It just is. It's the nature of the
22 business.

23 It's an extremely capital intensive business.
24 The fixed costs of building networks and gathering and
25 maintaining customer bases is very hard. Economies of

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1 scale are significant. That provides an issue of
2 concentration.

3 I'm not telling you anything you don't know.

4 It's a fact of life.

5 Let's learn to deal with it, understand it, and
6 make policies in that world in all hope of being
7 competitors.

8 But it's not going to happen; right?

9 So let's understand what it is and try to study
10 it and make the best -- let's make lemon out of lemonade
11 or lemonade out of lemons -- however it goes.

12 There are a couple of issues, and these -- the
13 ideas I'll give you today are all available presented in
14 papers, formal papers on our website phoenix-center.org.

15 Many of these are published. This is standard
16 economic PUC, modern views of industrial structure.

17 The -- the standard way we look at mergers and
18 usually a lot of it in discussion of this merger, and
19 I've heard some of it today, is that concentration is a
20 bad thing.

21 Concentration is high, and concentration is
22 going to be higher as a result of this merger, that's a
23 bad thing, when, in fact, that's not true.

24 It could be true, but it's not the only
25 interpretation.

1 In an industry with high sunk costs we have
2 what we call equilibrium industry structure that's going
3 to be highly concentrated.

4 If the price competition intensifies in an

5 industry and as a result of some change in behavior or
6 attitudes of firms, or release of papers coming out in a
7 couple of weeks about the rise of the network and
8 importance of the network and content, and Roger briefly
9 mentioned this, and how that's going to shift profits out
10 of the network and in to content, commoditizing the
11 networks, reducing price cost margins in the networks,
12 reducing profitability in the networks, well, profit is
13 how fixed costs get paid.

14 If the profits go down, then fewer firms can
15 survive in equilibrium; right?

16 So there would be exit mergers, exit whatever
17 form that takes.

18 So what you may actually observe is that the
19 rise in industry concentration is not a signal of reduced
20 price competition, but a symptom of increased price
21 competition.

22 You cannot claim based on modern economic
23 analysis and industry structure that a rise in
24 hypernomics means high prices, a rise in the hypernomics
25 means a consequence of falling prices.

39

1 Okay?

2 It's a counterintuitive of standard principles,
3 economic lessons.

4 But this is -- this is where we're at, and the
5 FCC is increasingly doing this on a national broadband

6 plan, for example. It discusses that.

7 And, as we just talked about, we recently had
8 an analysis, as the devices become important, Kindles and
9 iPads, and things like that --

10 Kindles, for example, you don't even know who
11 is providing the wireless connection for the Kindle.

12 Amazon chooses.

13 Apple is in the process of -- of becoming an
14 NDMO, so when you buy an iPad, this is their plan at
15 least, that you don't know who your wireless carrier is.

16 Right?

17 This has the effect of commoditizing wireless
18 services, which makes it more competitive, and if it
19 makes it more competitive, the margins are lower, and
20 when you have high calls, what happens when the margins
21 get lower?

22 Concentration goes up.

23 The other very important part, and I don't
24 think this has been incorporated into the thinking very
25 well at all, is the notion of spectrum exhaust, and we've

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1 done two papers on this topic, one directly -- or not we,
2 but there are two papers on this topic I'll discuss.

3 One is spectrum allocation, use of spectrum
4 caps.

5 Most of these are just straight allocation.

6 Let's say you have 100 megahertz of spectrum.

7 There's a whole lot of competition, so I'm going to give
8 a hundred firms one megahertz.

9 Is this an outcome you'd like?

10 The answer is, no, it would be terrible,
11 because you have a hundred providers and you have prices
12 near zero, but nobody can do anything. Service is
13 terrible. You can't do mobile broadband, probably
14 couldn't even make a telephone call, sort of what they
15 have in India right now, and they're trying to
16 concentrate the market over there to try to resolve the
17 problem.

18 The other is, let's give the hundred to one
19 firm. Is that an outcome you'd like? And the answer is
20 probably, no, that's not an outcome I'd like.

21 So we know that it's somewhere between one and
22 a hundred, but we know that it's not as many as possible.

23 You have to address the issue that quality is a
24 function of the amount of spectrum a firm has and some
25 other issues, but spectrum is a big part of it.

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1 And there's a finite amount of spectrum, so you
2 figure out how much spectrum you have and how much they
3 need to provide a quality product, you sort of get a
4 bound on the number of firms.

5 Now, on top of that you've got to deal with the
6 cost of building the networks and rebuilding them every
7 five years, which appears to me what they have to do with

8 new technologies.

9 So the expense of the business is going to
10 limit the number of firms, and I think that -- that the
11 financial performance of T-Mobile and Sprint are
12 indicative of a market that is very difficult to survive
13 in if you can't acquire a large enough market share.

14 But wishful thinking is saying, well, we can't
15 allow this to occur. It's not going to stop those forces
16 from operating on these firms, and, you know, maybe just
17 exit, that happens as well, throw the spectrum back in to
18 the -- in to the pool.

19 The other is, is what if you have a situation
20 where you have a finite amount of spectrum, a limit,
21 okay, so that it could be exhausted, the capacity could
22 be exhausted, and you have a situation, which is the
23 standard way of thinking called Cournot competition,
24 where prices go down as the number of firms increases?

25 So we have the standard anti-trust regulatory

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1 view of the way competition works and on top of that
2 we've imposed this spectrum capacity issue, this fixed
3 amount of spectrum that the industry shares.

4 What happens when that capacity becomes
5 exhausted, when demand becomes so large that you can't
6 produce more output?

7 Well, what happens is prices go up, up, up, up,
8 up, up, up.

9 All right?
10 There is no comp -- standard competition.
11 Now, let's add the assumption which has been
12 argued in this merger, and I think engineers would
13 probably agree, I'm not an engineer, it's something that
14 warrants some attention, that there are economies of
15 scale and in the spectrum use, so that if I double the
16 amount of spectrum that I have, I more than double my
17 capacity. Okay?
18 Now, if you think that's a reasonable
19 assumption, follow me along.
20 What happens when you exhaust your spectrum use
21 in some market structure and economies of scale in the
22 spectrum exist?
23 Then a rise in concentration will lead to lower
24 prices and higher quality services -- exactly the
25 opposite of what everybody argues. Okay?

43

1 Now, in the case in this merger, I don't know.
2 I'm not going to tell you this is exactly what's going on
3 right now.
4 Okay?
5 But these are economic forces, technological
6 forces, that are relevant to this industry.
7 These are the ideas that the President of the
8 United States, that the Chairman of the FCC, that
9 virtually every carrier has argued exists, we have a

10 spectrum shortage problem.

11 Well, what is the effect of a spectrum shortage
12 problem even in the standard model that we use to talk
13 about competition?

14 And it is that we may -- we may not discourage
15 market concentration, but may encourage it, that we may
16 welcome it.

17 Okay?

18 I'm not saying that's right now, and I'm not
19 saying it will exist always and everywhere but this is a
20 possibility, and I think we must add that in to our PUC.

21 That paper is -- a paper on that by Professors
22 Randy Beard and Mike Stern entitled "Cournot Capacity --"
23 or "Cournot Competition and Capacity Constraints."

24 Finally -- I have one minute left.

25 You know, there -- it's -- telecom regulations

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1 are constantly ongoing.

2 There are many issues that have been before
3 regulatory agencies for many, many, many years, some of
4 them for a very long time.

5 Set tops box regulation, special access
6 regulation, I mean, network neutralities, an infinite --
7 an infinite size by comparison to some of these issues.

8 It is tempting that in a merger proceeding,
9 which generally gets resolved in 6 to 12 months, to try
10 to append issues that are slow to resolution and

11 regulatory issues -- lah, lah, lah, lah -- to append to
12 mergers.

13 Okay?

14 And many of these issues -- I'm not saying
15 these issues are not important. Some are very important.

16 But I would encourage this Commission to limit
17 their attention with respect to this merger to issues
18 that are relevant to this merger.

19 Okay?

20 If --

21 Ask yourself this question, was this debate
22 going on before this merger was announced?

23 Would this debate be going on if AT&T and
24 T-Mobile decided we're not going to do it?

25 Would you still be interested in that topic?

45

1 Okay?

2 If your answer is yes to these questions -- if
3 the proceeding were not ongoing right now, if your answer
4 is yes to those questions, it's probably best to take
5 those outside of the merger and deal with them
6 specifically in an industry-wide proceeding where you can
7 collect a good record and not rush to a -- merger
8 condition to try to solve it.

9 Thank you.

10 JUDGE HECHT: And your time is up.

11 Thank you.

12 Right now I'm going to say, if people have
13 questions, that they should pass them down to Roland, who
14 is here in the front walking up the stairs, and Lisa, who
15 is also here in the front.

16 These are the two people to whom you can give
17 your questions.

18 While they collect questions we're going to
19 encourage our experts to respond to one another if you
20 have anything to say, and we'll do that for about five
21 minutes before we take the questions.

22 MR. HAMMOND: Sure. Certainly the PUC --

23 THE REPORTER: I'm sorry. I can't hear you.

24 MR. HAMMOND: I'm still too soft spoken?

25 My students never say that -- maybe they don't

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1 care.

2 Certainly the PUC has to deal with some very
3 complex issues with regard to this merger and more
4 generally with other telecommunications regulations, but
5 as I think Commissioner Brown said sometime ago just
6 because it's hard doesn't mean that you shouldn't engage
7 in the effort.

8 And, in fact, if statutorily you are required
9 by law to do so, it seems throwing your hands up and
10 saying it's hard is not a reason to walk away from it.

11 I also want to say that Roger is right in terms
12 of the lack of information or the need, I should say, for

13 more information.

14 One of the things that the Government
15 Accounting Office said with regard to the FCC's PUC of
16 wireless competition is it's sorely lacking in several
17 areas, one of them being special access analysis and the
18 other being the analysis of prices, another being PUC of
19 capital expenditures, and, finally, the impact of devices
20 and equipment, all being areas where the FCC was
21 deficient, at least previously, in assessing wireless
22 competition, the impact of those aspects on competition.

23 So clearly I think the PUC is justified in its
24 inquiry and in the expanding the scope of the inquiry to
25 include these items.

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1 MR. NOLL: George mentioned the economies of
2 scale efficiency argument and I want to add a bunch of
3 other stuff to how you think about that.

4 Let me just state there has not been an
5 economics paper published in 10 years based on U.S. data
6 that has an empirical estimate of the degree of scale of
7 economies in wireless networks, and the reason is absence
8 of data.

9 You have to be somebody who works for a carrier
10 to have access to data.

11 So as a result there isn't any independent
12 assessment of that issue.

13 That's one of the hard problems.

14 The second point is the scale of economies in
15 spectrum expansion arise from theory, which is you design
16 the network so that there's some little type probability
17 of having all the circuits be busy basically, having no
18 capacity, and it's just a matter of a lot of large
19 numbers that the -- the extra capacity you have to have
20 beyond the average level of use as a fraction of the
21 average level of use goes down the bigger -- the maximum,
22 more of spectrum, you have.

23 But it is an asymptotic to zero scale economy.
24 It disappears in very large networks.

25 All right?

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1 It becomes very unimportant.

2 So the -- the nature of the efficiencies
3 defense for Los Angeles and San Francisco is extremely
4 different than the nature of efficiencies defense in a
5 rural area in the Central Valley.

6 You need to get that straight.

7 Then there are sources of diseconomies of scale
8 in the wireless networks which arise from the use of cell
9 splitting, which means more handoffs, and handoffs are
10 the single most expensive thing to deal with.

11 So if you increase the number of handoffs per
12 call, you increase the average cost per call.

13 With regard to the basic technology of building
14 -- building a cell site, again, economies of scale are

15 exhausted at very low levels of utilization.

16 So what you're going to end up with is
17 something really complicated as opposed to a simple
18 answer.

19 Whether there's economies of scales and
20 efficiencies arising from the merger is probably going to
21 depend where you are, and there's insufficient
22 information out there in the public domain to be able to
23 answer the question where is it true and where is it not
24 true.

25 MR. LEMLEY: There are a couple of quick

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1 points.

2 I thought George Ford made a number of
3 interesting points regarding sort of how the market might
4 play out in a -- in a world of limited spectrum.

5 It is absolutely the case that we allocate our
6 spectrum inefficiently in this country and we ought to do
7 better.

8 That's of course, as George suggests, well
9 beyond the scope of this inquiry, but it is something
10 that's not necessarily immutable.

11 The -- the -- questions that George raises are,
12 I think, basically static efficiency questions, is price
13 going to go up, is price going to go down, is quality of
14 service going to go up, is quality of service going to go
15 down in the existing wireless market.

16 I think, you know, there are issues over which
17 reasonable people can differ there.

18 The evidence that I've seen, which is
19 admittedly narrow, suggests that AT&T holds more reserve
20 spectrum than T-Mobile does.

21 I'm not sure this merger reviews spectrum
22 congestion in that respect.

23 But, more importantly, I think the key is the
24 sorts of effect that I was talking about in my
25 presentation are not static, they're dynamic, and you've

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1 really got to weigh both.

2 You've got to consider both how does this
3 affect prices and quality of existing service, but also
4 how does it affect the deployment and development of new
5 technologies, and I suggest, as between those two, if you
6 have to make a choice, we are far better off with
7 innovation and dynamic efficiency than static.

8 JUDGE HECHT: Thank you.

9 And a brief word from George Ford before we --

10 MR. FORD: With regard to market structure, and
11 qualities are dynamic, dynamic in nature, not static.

12 On the issue of data collection, I think it is
13 important, but, you know, you've got two federal agencies
14 with lots of resources and lots of expertise that are
15 quite data-hungry as well, collecting an enormous amount
16 of data.

17 Replicating that effort here, you have to think
18 about whether or not it's worth it.

19 It's not free to do so. None of this is free
20 to do so.

21 And in the end the consumer is going to eat the
22 bill for however much gets spent here. Consumers always
23 get the bill. Corporations are pieces of paper.

24 So I think you have to be a little careful, but
25 I think, you know, as Roger indicated, and as all the

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1 participants indicate, the details of this merger are the
2 details of this merger, they're not the details of some
3 other merger, they're not the details of the past, and
4 they're not the details of the future absent this merger.

5 And we have to think about that -- but it's
6 important to think about that.

7 And in a framework that allows you to
8 incorporate all the pieces in to a single framework
9 rather than talk about spectrum exhaust and then talk
10 about economic analysis as if the two are somehow
11 separate.

12 Okay?

13 They are linked together, and the wireless
14 networks are linked together with the devices. They're
15 linked together by applications. They're linked together
16 with games, and music, and all these things. And the
17 relationships between all these pieces of this ecosystem

18 are relevant, and they're relevant to the PUC of
19 competition in this industry, and, you know, eventually
20 that's going to impact a way to look at this merger, but
21 that's not -- I mean, I'm not talking specifically about
22 this merger today.

23 JUDGE HECHT: Thank you very much.

24 Do we have any questions from parties at this
25 point?

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1 It looks like we don't, so I'm going to turn to
2 the Commissioners and ask if either Commissioner Sandoval
3 or Commissioner Florio have any questions.

4 COMMISSIONER SANDOVAL: Well, first of all,
5 thank you very much to the panel for your insights and
6 sharing your expertise.

7 We really appreciate it.

8 So I have a couple of questions.

9 So regarding the issue of spectrum efficiency
10 and spectrum build-out at least one of the parties to the
11 merger has significant spectrum which it has not built
12 out in 700 megahertz and also AWS spectrum, and is also
13 seeking to acquire spectrum from Qualcomm in a separate
14 merger proceeding which is before The Public
15 Communications Department and the Department of Justice.

16 So, in looking at the spectrum of efficiency
17 arguments, how should this Commission take in to account
18 both the issue of this unbuilt spectrum and the

19 cumulative effect of the spectrum acquisitions in some of
20 the California markets which would result, for example,
21 as I recall, in the Bay Area AT&T would end up
22 post-merger and it would issue, the FCC would
23 post-Qualcomm merger and T-Mobile controlling over 181
24 megahertz of spectrum in the Bay Area market.

25 To put that in perspective, according to AT&T's

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1 filings FCC it currently operates its service off of 65
2 megahertz of spectrum in the Bay Area.

3 If I'm wrong, that's what your material said,
4 where it's like MetroPCS operates on 20 megahertz.

5 So I would just like your -- your feedback on
6 how do we take in to account the unbuilt spectrum aspect
7 as well as the total spectrum control in this market
8 issue.

9 MR. FORD: Me?

10 Well, I -- I guess I'm somewhat unspoken about
11 that.

12 I think the FCC and Department of Justice are
13 going to look pretty closely to those numbers and they
14 have in past required divestitures if ownership of the
15 spectrum became too high. The FCC seems quite focussed
16 upon spectrum below 1 gig.

17 So, you know, those types of issues are going
18 -- going to be addressed, but I think, when you look at
19 it, you say, well, you know, if I have spectrum, sort of

20 two reasons -- a couple of reasons why I have it, and one
21 is just to hold and keep it from somebody else.

22 That happens a lot, I think, in the satellite
23 business.

24 The other is that you plan to use it, you just
25 haven't gotten around to doing it yet, and these networks

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1 are pretty sophisticated and expensive and require
2 long-term planning.

3 And if you -- you know, if you think you want
4 to get another 10, 20 megahertz from a merger and
5 acquisition, something like that, I may postpone my -- my
6 investment a little bit or -- or wait to -- 'til some
7 better technology that I know is around the corner is
8 coming.

9 So these decisions are very temporal, long-term
10 investment decisions, but it's the job of the regulator
11 in an antitrust analysis to contemplate who owns what and
12 how much.

13 I think the Department of Justice and FCC will
14 do so, and I would encourage the Commission more so than
15 doing a pilot analysis on their own is to encourage the
16 FCC and DOJ to continue with the -- the methods of the
17 past and give this stuff a good hard scrub and look at
18 these markets on a localized basis to -- to see if there
19 needs to be divestiture.

20 MR. LEMLEY: Can I just say something right on
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21 that point.

22 You know, one of the oddities about this
23 market, and in particular based on the economics that
24 George was talking about, is divestitures is a hard
25 thing; right?

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1 I'm not sure why if we think the -- the
2 problems are -- either too much concentration, or as
3 George suggests, maybe a spectrum exhaustion, right, why
4 spectrum divestiture is going to make the world a better
5 place, particularly if we've ended up now shrinking down
6 to effectively two competitors and -- and one fringe
7 competitor.

8 It would be a bit odd to say we're going to
9 divest the spectrum from AT&T and give it to Verizon,
10 though I could suppose you could say that.

11 So I take it that the story basically has to be
12 we're going to divest spectrum in -- in the Bay Area, or
13 Kern County, or wherever we think concentration is too
14 high and give it to Sprint, and the question is whether
15 that actually really does improve things in any
16 measurable way, and I'm dubious.

17 JUDGE HECHT: It's Roger Noll's turn, and then
18 George Ford can go.

19 MR. NOLL: There's two ways to think about AT&T
20 acquiring Qualcomm spectrum.

21 Qualcomm owns what used to be Channel 55 and
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22 56, and that's a service called FiO TV, which is on AT&T
23 Wireless, and it strikes me that -- that this sort of a
24 natural integration doesn't mean you should necessarily
25 allow it, but it's in a different category.

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1 This is a spectrum that AT&T already uses in a
2 collaborative relationship, which is very different than
3 the T-Mobile spectrum, which is mostly in a different
4 part of the world, and there's -- there's integration
5 costs with T-Mobile that wouldn't exist with regard to
6 Qualcomm.

7 So if you say what's the likelihood there's an
8 efficiency justification for Qualcomm, it's much higher,
9 it doesn't mean it's true, but it means that it's --
10 there really is a distinction here.

11 And it -- I would -- I would --

12 Contrary to George's comment, which is let's
13 let the FCC do it, there's one reason not to let the FCC
14 do it, which is the very first point of the OII, which is
15 California is different.

16 It's different in two fundamental ways.

17 The first is it is the case that AT&T and
18 Verizon are more dominant in California than on average
19 in the rest of the country.

20 It's also true that, strangely enough, we are
21 the one state where both AT&T and Verizon have major
22 presence in wire line access, so there's that issue which

23 is different than the rest of the nation.

24 And then the third issue is we have the Silicon
25 Valley, so we're way ahead of everybody else in the

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1 degree to which we make use of the Internet, because we
2 have a population that does it.

3 So I think there are reasons that we are
4 different that unfortunately require you to think about
5 this in a way that is maybe a little different than the
6 FCC would think about it.

7 JUDGE HECHT: Now, if George Ford has a
8 response, and then I think we haven't heard from Allen
9 Hammond on this point.

10 MR. FORD: The Department of Justice makes its
11 rules on a market-by-market basis.

12 If AT&T and Verizon are large in the market,
13 they're going to know that. They're going to see that
14 and respond accordingly.

15 Now, if we think that there's some sort of
16 demand issue in California, I'm not sure how I would
17 handle that.

18 And I'm not discouraging the Commission from
19 participating or having this proceeding. I think it's
20 important to do so.

21 The duplication of effort, I think, should be
22 avoided if -- if -- if possible for the resource issue,
23 if anything.

24 These are complicated matters. We've already
25 got two federal agencies looking at it, and with respect

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1 to Mark's point, wouldn't it be nice if cell phones could
2 use any spectrum and we could sort of shuffle it around.
3 Unfortunately, we can't do that and it's a bit of a mess
4 the way this stuff get put together.

5 But I think as part of the Qualcomm deal AT&T
6 is investigating some technology that will allow firms to
7 combine different ranges of spectrum more relevant and
8 cheaper which should be quite helpful in the future to
9 address the spectrum allocation mess.

10 JUDGE HECHT: Thank you.

11 And Alan Hammond.

12 MR. HAMMOND: I'll try to be a little louder.

13 I guess in terms of what -- going back to the
14 Commissioner's original question of what about the
15 unbuilt spectrum, I guess the real question is why is it
16 unbuilt?

17 Is it to preclude market entry, because it's
18 too expensive to build at the time, it's not necessary,
19 or lack of competition, or is it that -- there's no
20 innovation that needs to use that spectrum at this time.

21 I mean, why is the spectrum not being used is
22 the question I would ask.

23 I think Roger's right, and I think everybody
24 would agree that California is different for a number of

25 reasons, and if you look back to the constitutional

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1 justification for having the states having their own
2 regulatory responsibilities, it's in part to recognize
3 that states are different and that they become
4 laboratories for the development of different policies
5 and structures for dealing with things.

6 So to argue that an analysis would be
7 duplicative is to ignore, I think, in part the fact that
8 California is different and the fact that states have the
9 authority and the right to do these things and should in
10 order to properly represent their own population.

11 JUDGE HECHT: All right. We have --

12 Okay. George Ford very briefly.

13 MR. FORD: Never let it be said that George
14 Ford said California is not different.

15 JUDGE HECHT: Thank you.

16 And that was very brief.

17 I -- we have -- we're about out of time for
18 this session, but I'd like to give Commissioner Florio an
19 opportunity to ask a question if he has any or a brief
20 follow-up from Commissioner Sandoval.

21 COMMISSIONER SANDOVAL: I have one more quick
22 question, so thank you.

23 So my last question would be, so we talked
24 about users who are heavily using data and the FCC's
25 recent report on commercial global service spectrum

1 definitely shows the increase in use of data on mobile
2 platforms, and, of course, you know, here in the Silicon
3 Valley and San Francisco we have a lot of people who are
4 very heavy data-users.

5 But we also have to remember there's also
6 another population out there that still relies heavily on
7 mobile voice, for example, there's a study where they
8 looked at Latino registered voters and that top app that
9 Latino registered voters used in the state of California
10 is text.

11 So I wanted to -- to address how should we
12 consider these classes, and, you know, is that class that
13 is more heavily reliant to voice or text also going to be
14 more price sensitive and how do we figure that in to the
15 analysis?

16 JUDGE HECHT: And I'd like to give just about
17 three minutes for responses so we can keep up our
18 schedule.

19 So please go ahead.

20 MR. NOLL: You've identified a crucial issue to
21 be addressed, which is every conceivable use you can
22 think of for the wireless networks, the computer changes,
23 characteristics of the wireless network are themselves
24 different products and with different demand elasticities
25 and different income elasticities, and that's why this

1 thing is so complicated to answer.

2 Text actually is offered as a data service, not
3 as a component of voice service.

4 For the most part text is bundled with the
5 Internet access data service, which means that even if
6 you're low income you're paying for a data service.

7 Maybe you don't come anywhere near the upper
8 bound on bandwidth that's required in that service, but
9 you will -- I mean, that's -- that's the thing is that
10 one of the fascinating parts about the wireless story is
11 that we all used to think that the digital divide was
12 baked in through education and income disparities. It's
13 not.

14 And that's -- and the -- and the -- you can see
15 that with the number of wireless telephones who can
16 access the Internet is now equal to the population of the
17 United States over the age of 12.

18 MR. LEMLEY: The only other point I -- I think
19 it's an important point -- the only thing I want to add
20 is that this, too, is malleable with technology.

21 Right?

22 It used to be the case that you had a world in
23 which you had to pay by the text, and then people started
24 developing applications that got around that, and, sure
25 enough, the pricing for texting started to change, and I

1 think something similar is going to be true of voice if
2 and when you can, in fact, use a voice over internet in a
3 more ubiquitous basis.

4 It changes the economics in ways that even if
5 my only interest in the phone are making a phone call and
6 texting somebody, I have a pretty vested interest in
7 there being innovation on the data side.

8 MR. FORD: I think Roger's discussion of the
9 market would address much of that.

10 It's a demand side question, how many ways can
11 we split up what the people that consume wireless service
12 -- how many wireless services are there?

13 I think that the -- if you model the formality,
14 that the demand for text, which is a low bandwidth,
15 brought up, and voice, which is also low bandwidth, that
16 you'll -- you'll find that it's -- it's -- makes the
17 industry more competitive, because firms can enter and do
18 that without a lot of spectrum, maybe without -- with
19 much less investment in capacity, and backhaul, and those
20 sorts of things so you can have sort of a niche entrant,
21 low cost niche entrant, and I think a lot of Metro and
22 people like that are involved in that category.

23 So I think that's -- that's favorable and
24 relevant to the merger because I think it does have an
25 effect on how you look at it.

1 JUDGE HECHT: And we have a brief comment on
2 this from Allen Hammond before we take our break.

3 MR. HAMMOND: Let's break.

4 JUDGE HECHT: All right.

5 Then we're going to take our first break, and
6 it will be 10 minutes.

7 We will be back here at exactly 11:00, and the
8 panelists for the next panel should take their seats up
9 here.

10 We'll be off the record.

11 (Session adjourned at 10:51 a.m.)

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2 (Panel Analyzing the Effect of the Merger
3 Proposal on Special Access - 10:55 - 12:05 p.m.
4 Panelists: PARLEY C. CASTO, AT&T; CHRIS
5 FENTRUP, Sprint; BRYAN FLEMING, T-Mobile.)

6 ---o0o---

7 JUDGE HECHT: We'll be back on the record.

8 And we just had a 15-minute break, and we are
9 resuming with our second session and first industry
10 panel of the day. This panel is to analyze the effects
11 of the merger proposal on special access. We have three
12 panelists, and they are Brian Fleming from T-Mobile,
13 Parley Casto from AT&T and Chris Fentrup from Sprint.

14 And I think that's the order in which we'll
15 take the speakers, unless people have a preference. It
16 will be seven minutes per speaker. I will be fairly
17 strict about the timing so that we keep on track, and
18 then we'll have 15 minutes for the panelists to talk
19 amongst themselves, and then we will have questions from
20 parties to the proceeding.

21 And I already have one question from the
22 audience.

23 So beginning with Mr. Fleming.

24 MR. AYERS: Thank you.

25 Good morning. My name is Brian Fleming. I'm

1 currently the vice president of technical systems and
2 business operations for T-Mobile. In this position, I
3 am responsible for the carrier management organization
4 which is responsible for the procurement of T-Mobile's
5 backhaul and transport networks.

6 I am also responsible for supply chain
7 operations, enterprise information technology and
8 engineering procurement teams. I would like to thank
9 the Commission for giving me the opportunity to appear
10 today to speak about special access in backhaul markets
11 and address any concerns that this commission may have
12 on these issues.

13 Let me confirm at the outset, however, that
14 from T-Mobile's perspective, T-Mobile's acquisition by
15 AT&T will not affect backhaul segments. I feel strongly
16 that T-Mobile's acquisition by AT&T will not have any
17 negative impact on competition back -- in the backhaul
18 segment in California for three fundamental reasons:
19 First, T-Mobile USA does not itself sell backhaul
20 services to other wireless providers, and the
21 acquisition will thus not impact the availability of
22 backhaul provider of services or services in California
23 in any way.

24 Second, T-Mobile is not a significant enough
25 purchaser of backhaul services to negatively affect

1 competition in the wireless backhaul market. If
2 anything, in an industry where demand continues to grow
3 exponentially, existing backhaul providers will continue
4 to see substantial demand for their services.

5 Finally, T-Mobile's backhaul purchases
6 increasingly are made specifically for fiber and
7 microwave Ethernet services, and these services have
8 proven to be in great demand. If AT&T tried to engage
9 in anti-competitive behavior in the provision of
10 backhaul services, its wireless rival would simply turn
11 to a number of alternative backhaul providers to meet
12 their backhaul needs.

13 As you know, backhaul is used to transport
14 wireless traffic on a wireless network between cell
15 sites and mobile switching centers and mobile switching
16 centers to other networks. Incumbent Local Exchange
17 Carriers, better known as ILECs, historically provided
18 these services through copper-based DS1 and DS3
19 transport offered to wireless carriers through FCC
20 price-regulated inter-state special access tariffs.

21 While 2G networks relied almost exclusively on
22 these legacy backhaul options, as we and other carriers
23 have deployed third generation and fourth generation
24 networks, the industry has increasingly turned to
25 backhaul IP internet and microwave transmission.

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1 Today, T-Mobile USA contracts with a wide

2 variety of alternative providers, large cable companies,
3 telecommunication companies offering fiber and microwave
4 Ethernet backhaul. This is true across the country and
5 here in California. We have tens of thousands of cell
6 sites across the nation. Well over half of these cell
7 sites are connected or contracted to have Ethernet
8 services.

9 In California, over 75 percent or thousands of
10 cell sites are either served with Ethernet or contracted
11 to be served with Ethernet. T-Mobile USA is not alone
12 in its shift to alternative backhaul providers. Other
13 wireless companies seeking to upgrade their networks to
14 broadband are also migrating their cell sites to
15 broadband Ethernet.

16 For example, Clear Wireless said it uses
17 microwave backhaul in 90 percent of its cell sites. And
18 Leap, Metro PCS, Sprint and Verizon have all made public
19 statements about shifting from copper-based backhaul to
20 Ethernet-backhaul. Ethernet-based backhaul services
21 have an advantage of providing a more cost competitive
22 solution to meet transport demands of our wireless
23 broadband customers.

24 T-Mobile 3G and 4G networks require on average
25 at least five times greater capacity than our 2G network

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1 and are currently in the process of working with our
2 existing ILECs or with alternative providers in

3 upgrading to Ethernet backhaul. This improvement
4 generally increases our backhaul capacity by a factor of
5 10 versus the standard backhaul capacity of our 2G
6 network.

7 The tremendous increase in demand for greater
8 backhaul capacity has, in turn, substantially improved
9 the economics of deployment and competition among
10 alternative providers to supply such capacity. Indeed,
11 T-Mobile typically purchases its Ethernet services
12 through competitive bidding process involving multiple
13 Ethernet providers.

14 The following selection criteria are essential
15 in competitive bidding process: Price, addressability
16 or network reach, operational reliability, and the time
17 to deploy services. Today in California, T-Mobile has
18 internet arrangements with cable companies, Competitive
19 LECs and ILECs that meet T-Mobile's criteria.

20 As such, T-Mobile's backhaul upgrades are
21 possible because of robust competition in the backhaul
22 network and ever growing alternatives to legacy copper
23 backhaul transport. I welcome any questions you may
24 have.

25 Thank you.

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1 JUDGE HECHT: Thank you very much. Now, we
2 can hear from Parley Casto, please.

3 MR. CASTO: Thank you, Commissioner Sandoval

4 and Florio and your Honor.

5 My name is Parley Casto. I am AT&T's
6 assistant vice president for pricing. I have a
7 responsibility for AT&T's pricing of wholesale products
8 and services including Ethernet and legacy special
9 access.

10 I first want to thank you for the opportunity
11 to address the Commission and the public regarding the
12 proposed merger of AT&T and T-Mobile USA and to respond
13 to concerns that the transaction might have a negative
14 impact on the ability of wireless providers to obtain
15 special access in the Ethernet services for backhaul.

16 The short answer is that the transaction won't
17 have any impact on this service. Before I explain why
18 this is so, it is important to start by explaining a bit
19 about the services at issue. The services I'm going to
20 be discussing are known as backhaul, which is a special
21 access service purchased by wireless carriers to carry
22 voice and data traffic from their cell sites to their
23 mobile switches.

24 AT&T's ILEC affiliates provide backhaul
25 services in parts of California and throughout AT&T's

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1 22-state footprint. Backhaul services are offered using
2 legacy DS1 and DS3 technologies and also using what is
3 known as Ethernet technology, which is by far becoming
4 the prevalent --

5 JUDGE HECHT: I'm going to break in and ask
6 that you speak a little bit more slowly for the benefit
7 of our Court Reporters.

8 MR. CASTO: All right.

9 THE COURT: Thank you.

10 MR. CASTO: Also, while I'm not a lawyer or an
11 expert on the regulation of these services, it's
12 important to note that most of these services, including
13 the backhaul services, as with traditional special
14 access are generally interstate services regulated by
15 the FCC and not intrastate services.

16 Turning back to competitiveness of the market
17 and effect of the transaction on the state of
18 competition, I happen to believe that the special access
19 market as a whole is very competitive, and this
20 competition, along with the existing regulations of the
21 FCC and this Commission more -- are more than sufficient
22 to ensure that special access customers obtain
23 reasonable prices, terms and conditions.

24 Whatever your view about special access market
25 generally, I think that there can be no debate that the

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1 market for backhaul, especially Ethernet backhaul, is
2 competitive and robust. To that end, the proposed
3 merger of AT&T and T-Mobile USA will do nothing to
4 reduce the intense competition and market for backhaul.

5 Let me discuss a few reasons why that is the

6 case. First, T-Mobile itself does not provide other
7 carriers with backhaul services Brian has suggested,
8 neither California or nationally. So the merger of
9 T-Mobile with AT&T will not result in the loss of any
10 competitive provider in the market for backhaul or
11 special access.

12 Additionally, there are numerous strong
13 competitors to AT&T and the market for backhaul,
14 including cable companies like Cox, Comcast, Charter,
15 Bright House, Time Warner Cable, traditional CLECs such
16 as Excel, Level 3 and Time Warner Telecom and fixed
17 wireless and fiber providers such as Edison Carrier
18 Solutions. Carrier self-supply of Ethernet services is
19 also becoming very prevalent in the marketplace.

20 All of these providers are competing in
21 California today and will remain a significant
22 competitor for backhaul after the merger. Second,
23 because the high demand for wireless data services
24 carriers are rapidly shifting to Ethernet backhaul and
25 away from legacy copper DS1 services, alternative to

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1 Ethernet providers are on an entirely level playing
2 field with incumbents.

3 In recent years, wireless carriers demand for
4 backhaul has dramatically increased in California and
5 nationally as wireless carriers are experiencing very
6 rapid growth in data traffic driven by increased usage

7 by SmartPhones, tablets, eReaders and other devices that
8 consume more and more broadband data services.

9 As a result, wireless carriers need much
10 higher capacity backhaul to carry this traffic and to
11 meet this demand, and almost all wireless carriers are
12 transitioned away from legacy special access and
13 switching to Ethernet services which are usually
14 provided over fiber or microwave. It is also clear that
15 wireless carriers transition to Ethernet will occur on a
16 very broad scale.

17 For example, recent media reports stated that
18 Verizon Wireless is plotting an entirely Ethernet-based
19 backhaul system to support the data onslaught. And it
20 wants to migrate all its traffic from TDM to Ethernet.

21 My written comments also include other
22 examples of wireless carriers making similar statements.

23 Wireless carriers are also trying to maintain
24 as much flexibility as they can to ensure that they can
25 accomplish this transition on their own time tables.

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1 For example, wireless carriers today are typically
2 unwilling to make any substantial commitments when
3 purchasing legacy DS1 services because they want the
4 flexibility to migrate to Ethernet.

5 Third, the merger will not reduce competition
6 in the market for backhaul services because incumbents
7 like AT&T have no historical advantage in providing

8 Ethernet backhaul. Every competitor including AT&T is
9 essentially in a green field situation and is often
10 bidding for the right to construct these new fiber-based
11 connections from scratch.

12 Many of AT&T's Ethernet backhaul installations
13 involve new capital investment to construct the fiber
14 connections to the customer's cell sites, and therefore,
15 AT&T has no advantage over other competitors.

16 Generally, a provider does not need to construct new
17 facilities until after it wins the contract to provide
18 Ethernet backhaul, and then it is able to provide
19 service not only to the requesting wireless carriers,
20 but often to other wireless carriers co-located at that
21 site or any other kind of commercial customer along the
22 built route.

23 Fourth, the availability of data regarding
24 provision of Ethernet backhaul supports the view that
25 competition is intense. Industry analysts reports have

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1 confirmed that ILEC supply a minority of business
2 Ethernet ports today. In fact, with one of our large
3 wireless customers here in California, AT&T has so far
4 won much less than the national average for the Ethernet
5 sites that we bid on in California.

6 There is no reason why other wireless carriers
7 here in California do not have the same ability to
8 choose alternative suppliers. And if they have chosen

9 AT&T, it is likely because AT&T has offered attractive
10 pricing terms and conditions.

11 In addition to backhaul services today are
12 usually sold using some type of competitive bidding
13 process, as Brian has said. AT&T is usually bidding
14 against multiple alternative suppliers. In these
15 competitive bidding negotiations, we have had to lower
16 our price and often customize our product to stay
17 competitive and also offer extremely aggressive and
18 customized service delivery agreements.

19 The data showing robust competition are backed
20 up by statements from wireless carriers themselves. A
21 Verizon executive reported that a number of Ethernet
22 providers has exceeded Verizon's expectations, and I
23 quote, the marketplace has proven to be very strong.

24 Fifth, the competition exists throughout the
25 state in both rural and urban areas. To be sure, the

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1 most aggressive competition is often found in urban
2 areas because much of the backhaul demand is located in
3 these urban areas, which leads to numerous alternative
4 suppliers of backhaul targeting these areas.

5 What this often leads to during negotiations
6 is customers using their lowest and most aggressive
7 price quotes for the areas that have the most aggressive
8 facility-based competitors to get pricing applied to the
9 areas where there are fewer competing providers.

10 That said, there is also competition outside
11 these urban areas, the economics of Ethernet backhaul
12 market can make these areas highly attractive to
13 alternative suppliers --

14 JUDGE HECHT: Your time is up if you can wrap
15 up in one sentence.

16 MR. CASTO: Okay. The bottom line is there's
17 a number of significant alternatives out in the
18 marketplace. We don't believe the transaction will
19 change that bit one fact -- that fact one bit.

20 I'll be glad to take any questions.

21 JUDGE HECHT: Thank you very much. And now we
22 will hear from Chris Fentrup representing Sprint.

23 MR. FENTRUP: Thank you Commission and ALJ for
24 the opportunity to speak to you today. And thank you
25 for putting me in-between T-Mobile and AT&T. I'm sure

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1 it was a coincidence.

2 As the largest non-LEC-affiliated wireless
3 carrier, Sprint appreciates the role that competition
4 can play in ensuring that consumers get services at the
5 lowest possible price. However, this merger, by
6 removing one of the four large national wireless
7 carriers, will reduce the competition that has led to
8 declining wireless prices to consumers and will further
9 enhance the dominant position that AT&T and Verizon has
10 had in the wireless market today, and Sprint sees no

11 merger conditions that can fix this merger.

12 In the market for special access, the ILECs,
13 including AT&T, remain the major suppliers to today.
14 While there are some areas where there are alternative
15 competitive providers to special access, the ILECs
16 remain by far the largest supplier for Sprint's wireless
17 backhaul needs.

18 This is primarily for a couple of historical
19 reasons: One is initially there were few other
20 suppliers available. So the ILEC was the alternative
21 for Sprint, and we had to buy backhaul from the ILEC.
22 The other item that has caused us to have a lot of our
23 traffic remain with ILEC is there are -- to get the
24 reasonable prices for backhaul today, we have had to
25 agree to what we consider onerous terms and conditions

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1 which generally requires us to maintain existing levels
2 of backhaul purchase from these providers.

3 Without a robustly competitive special access
4 market, special access prices we believe are today well
5 above economic costs. If this merger is allowed,
6 T-Mobile, which has been able to shift some of its
7 special access purchases to competitive providers, as
8 Brian just told us, we believe will shift its purchases
9 back to AT&T because backhaul savings are one of the
10 claimed synergies from this merger.

11 So the few competitive providers that there

12 are will thus have a more difficult time achieving the
13 scale that they need to be effective competitors. And
14 if those competitive special access providers are
15 weakened, their ability to constrain the ILECs' special
16 access prices will be even more limited than it is
17 already.

18 I thank you and await your questions.

19 JUDGE HECHT: Thank you very much.

20 Now we're going to take about 15 minutes and
21 have these panelists talk amongst themselves and ask one
22 another questions. And during that time, people should
23 write down any questions that they have for this panel.
24 And if you do have a question for the panel, you should
25 get it to either Roland or Lisa in the next 15 minutes

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1 or so so that we can try to get to it before the end of
2 this panel.

3 Thank you very much. Any comments or
4 questions for one another?

5 MR. CASTO: I would like to address one point
6 made by Chris in terms of having a substantial portion
7 of their business with AT&T.

8 When we look at the data across the industry,
9 not just Sprint, we notice that there is a significant
10 amount of uncommitted legacy special access business
11 that allows carriers such as Sprint and others the
12 significant opportunity to shift business to other

13 competitors.

14 And based on my discussions and experience
15 with wireless customers, and I've had a number of
16 personal involvement in negotiations with wireless
17 customers in the industry, I find that they are
18 generally unwilling to make commitments to legacy
19 special access and want to keep their options open to
20 move to Ethernet.

21 And when we approach them about the
22 opportunity to provide Ethernet, they're even unwilling
23 to make substantial commitments on Ethernet business
24 because of number of alternatives out there. The real
25 discussion is not on the legacy special access backhaul

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1 services; their focus is on Ethernet because that is
2 going to be the technology that is going to be there for
3 the next five, seven, ten years.

4 To the extent, the limited extent that we have
5 contracts that require commitments, either volume or
6 term, it's generally because we've offered aggressive
7 pricing concessions or nonrecurring charge waivers. We
8 need to ensure that we're recouping the investment on
9 those facilities.

10 JUDGE HECHT: Any other comments or responses?

11 MR. FENTRUP: Yeah. Where to begin. Where to
12 begin.

13 JUDGE HECHT: Go ahead.

14 MR. FENTRUP: A large amount of the Sprint
15 backhaul that we have used today is the legacy DS1s that
16 we buy from primarily the ILECs, and while we have been
17 trying to move some of our traffic off of the terms and
18 conditions that tie us to the ILECs, we still have years
19 to run on those. So our ability to move traffic off of
20 the ILEC is limited by those contracts.

21 I would ask a question of both of them, I
22 suppose, since they both made the same point. You said
23 that T-Mobile is not a significant purchaser of special
24 access of backhaul; and therefore, your merger into AT&T
25 would not significantly affect the market.

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1 Do you believe that what's important is to
2 have your significance in the overall special access
3 market, or is it more important that your purchase,
4 percent purchase from the competitors is?

5 MR. FLEMING: So when we look at kind of
6 removing T-Mobile from the market, I think there's some
7 key fundamental points.

8 First, we don't supply any special access
9 services to the wireless backhaul market. The second
10 thing is that we found that there is an increasingly
11 greater number of backhaul providers that are, you know,
12 seeking certain wireless broadband cell sites because of
13 the traffic demands and so forth. So there is
14 competition in the space.

15 Like I said, most of the T-Mobile cell sites
16 over the last few years have transitioned to Ethernet
17 services. So we don't see any barriers to that and
18 moving the traffic. And quite frankly, I would love to
19 claim that I have, you know, some secret on how to do
20 it. We believe that any wireless carrier can make that
21 transition.

22 JUDGE HECHT: Go ahead.

23 MR. CASTO: The only other thing I would say
24 and add to what Brian has said, I think Brian has
25 commented on this already. In terms of T-Mobile as a

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1 purchaser of backhaul services, T-Mobile has made it
2 quite clear that they have already made a significant
3 portion of the transition to Ethernet.

4 So the real market opportunity out there is
5 going to be with carriers that have lagged behind the
6 Ethernet migration. And that's the likes of the
7 Sprints, the MetroPCS, Leap, Crickets, U.S. Cellular,
8 Revol, Cellular South and others. That's where we're
9 finding the opportunity is, and that's where we are
10 having to compete with these days, with the likes of the
11 cable companies and CLECs and the other intermodal
12 competitors.

13 MR. FENTRUP: What's the market share of those
14 other competitors?

15 MR. CASTO: I don't know what the market share

16 is for those other competitors.

17 JUDGE HECHT: Any other comments or questions
18 for one another before we start with questions that we
19 have from our parties in the audience?

20 All right. Then I'm going to start with the
21 first question that I've received. I will give the name
22 of the person who has written the question, the
23 organization that person represents or is associated
24 with and then the question. In some cases, the
25 questions have some background discussion, and I'm

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1 mostly going to skip that, unless you don't understand
2 the question and you need it, because I want to hear our
3 panelists speak and not myself read.

4 So this question is from Regina Costa of TURN
5 and the question is: Given AT&T's experience with data
6 growth, why has AT&T been slow to move to fiber
7 backhaul, and what has led to delays in moving to fiber
8 backhaul?

9 MR. CASTO: In terms of AT&T moving to
10 fiber-based backhaul, we have been moving as
11 aggressively as we can, and we've really been following
12 the customers move and shift from legacy TDM to
13 Ethernet.

14 So I would say that our path has been one of
15 which we followed our customer's needs to migrate from
16 legacy technologies to the Ethernet-based backhaul.

17 JUDGE HECHT: Thank you very much.

18 Are there any other comments on that before I
19 move to the next question? Thank you then.

20 The next question is from Michael Pierce of
21 the CPUC, and Michael Pierce writes that he was under
22 the impression that ILECs have existing fiber in the
23 ground close to most cell sites, and CLECs and other
24 competitors do not have much fiber in the ground and
25 thus gives ILECs an advantage.

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1 And this question is not specifically directed
2 to one panel member.

3 MR. FENTRUP: I'll start then.

4 I think it probably does because the problem
5 with getting special access out to towers is that our
6 towers are all over metropolitan areas. They're in the
7 business district. They're in suburban areas, and
8 they're out in the far-flung areas, and fiber needs to
9 get to all those places if we're going to have Ethernet
10 backhaul ubiquitous in our towers.

11 It's very possible that there are multiple
12 competitive providers in the downtown metropolitan area
13 with fiber. As you get further out to the suburban and
14 rural areas, less so I think.

15 JUDGE HECHT: And what other responses?

16 MR. CASTO: I have a couple of points to make
17 on this one.

18 I don't think AT&T, as I stated, has any
19 historical advantage. Like other competitors, we often
20 have to deploy fiber, especially when the cell site was
21 traditionally served by copper-based facilities. The
22 other thing that I mentioned it's not only the fiber
23 deployment; we have to deploy central office
24 electronics. We have to deploy Ethernet electronics at
25 the customer site as well.

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1 To put this into perspective, over the last
2 two to three years, we've spent hundreds, several
3 hundreds of millions of dollars deploying fiber as the
4 customers have made the migration from copper to TDM.
5 To be sure, we can utilize that facility for the second
6 customer at that site if there does happen to be a
7 second customer at that site, just like any other
8 competitor could.

9 The other thing in terms of AT&T having fiber
10 closer, it's unlikely we have any significant fiber
11 advantage when you consider the multiple modes of
12 competitors such as cable TV, CLECs, utilities, fixed
13 wireless and fiber-based providers.

14 In fact, I've heard from customers directly
15 that we may be at a disadvantage in many instances due
16 to cable providers lashing fiber airily, where we
17 traditionally deployed it in an underground or conduit
18 situation. And also they told us that we could be in a

19 distinct disadvantage when we're up against microwave
20 because of the low-cost microwave and rapid deployment
21 schemes associated with microwave.

22 MR. FENTRUP: I'll just add that the extension
23 of fiber deeper into the network has been an ongoing
24 development in networks for a long time now.

25 AT&T put fiber further out into their network

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1 so they could provide DSL in the project pronto. They
2 have said they would put fiber further out into their
3 network in order to provide U-verse services and that
4 they would extend fiber into the cell towers. It's just
5 going one little bit further along in the development of
6 fiber.

7 And as far as the amount of electronics
8 involved in Ethernet, sure, it's significant. Again,
9 you have to have electronics on your fiber to provide
10 any service, whether it's TDM or Ethernet. And I think
11 with the earnings that AT&T has managed to achieve on
12 their special access prices at the Federal level, they
13 probably have more than enough money to upgrade their
14 networks.

15 JUDGE HECHT: All right. Then we'll move on
16 to the next question.

17 This question is from Trey Hanbury of Sprint's
18 Nextel. And this question states that: You -- and I
19 believe that "you" is directed to the T-Mobile

20 speaker -- indicated that T-Mobile does not play a
21 material role in stimulating special access competition.
22 Just last year, however, T-Mobile told the FCC that
23 T-Mobile is proud of its success in creating competition
24 for Ethernet services in many major markets. And
25 there's a reference to a particular letter in an FCC

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1 docket.

2 Is T-Mobile playing a role in generating
3 alternatives or not?

4 MR. AYERS: Well, I mean, T-Mobile
5 specifically, no. I would say the demand for wireless
6 data, yes, it is creating it because the wireless
7 carriers have to be able to support their customers.

8 In doing so, we have to find the best backhaul
9 providers. Whether that is the ILECs, the cable
10 companies, utility companies, whoever, to be able to
11 provide those connections back from our cell sites to
12 our switching centers.

13 JUDGE HECHT: Thank you.

14 Moving to the next question. This question is
15 from Enrique Gallardo from the Greenlining Institute.
16 The question is: The rate of return on special access
17 services has consistently increased from 2003. In a
18 competitive market, shouldn't rates of return decrease?
19 Additionally, can't those high profits be used to
20 cross-subsidize other network elements?

21 This is not specifically directed towards any
22 particular panelist.

23 MR. CASTO: I'm not familiar with the specific
24 rate of return that's being referenced in the question.
25 I can tell you that our experience has been, and I put

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1 this on the public record, at the FCC and elsewhere that
2 prices that customers pay for special access and
3 specifically backhaul have declined over time, largely
4 due to the reaction to competitors.

5 MR. FENTRUP: And Sprint has responded to that
6 indication prices have gone down by pointing out that's
7 typically computed as an average revenue number which
8 distorts -- which gives a distorted view of how the
9 prices have changed because it also reflects changes in
10 demands for the various elements rather than reflecting
11 actual price changes themselves.

12 JUDGE HECHT: All right.

13 COMMISSIONER SANDOVAL: Could I just ask you
14 to disaggregate that a little bit more with what you
15 just said about changes in demand versus changes in the
16 element? If you could just amplify?

17 MR. FENTRUP: The -- because there are several
18 price rate elements that go into special access, there's
19 channel term, there's transport, channel mileage, and there
20 are several flavors of the channel termination
21 themselves because there are year commitments, either

22 month-to-month rate, one-year rate, two-year, five-year,
23 seven-year, whatever.

24 If the carrier were to say, okay, we --
25 instead of going with the one-year rate, we're going

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1 with a three-year rate because that will give us a lower
2 price, even if AT&T didn't change its prices at all in
3 the -- in any given year, from one year to the next, one
4 year changed from a one-year to a three-year plan, it
5 would show up as a price decrease because the average
6 revenue went down only because of what we did, not
7 because of what AT&T did.

8 The same thing can apply for transport as well
9 where there's a fixed and a per-mile charge. If we can
10 reconfigure our network so that we're actually closer to
11 the AT&T network so that we don't have as much mileage,
12 our transport cost overall will go down, and the average
13 cost per minute or per mile will go down as well, even
14 though no price would have changed in the meantime.

15 JUDGE HECHT: Any other follow-ups on that
16 question?

17 MR. CASTO: I can just say that there is no
18 doubt that partially that is true, but the other driver
19 for prices going down is just take a look at the number
20 of price LECs contract tariffs we filed or the number of
21 state agreements that we have filed that will offer
22 pricing concessions to customers.

23 JUDGE HECHT: Thank you. The next question
24 does not state who it is from, but I believe it was a
25 commission staff member. And the question is directed

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1 towards AT&T and Sprint.

2 And the question is: For what percent of your
3 backhaul is AT&T the provider for nationwide and in
4 California?

5 I am going to remind you to speak slowly and
6 clearly and into the microphone.

7 MR. FENTRUP: Let's see if I can remember. I
8 don't remember. I would have to get back with you with
9 the exact number.

10 JUDGE HECHT: Okay. Any other responses?

11 MR. CASTO: That would really be a Sprint
12 question they would have to answer.

13 JUDGE HECHT: Okay.

14 MR. FENTRUP: Actually, let me clarify one
15 thing on that.

16 Is your question how much it is overall. AT&T
17 doesn't provide backhaul throughout the country, so if
18 you're interested in what do we spend on backhaul within
19 AT&T territory -- with AT&T, then I would say that it's,
20 well, we've said that the ILECs, we spend about 90-plus
21 percent of our special access is with ILECs. So I would
22 assume that that number is true with AT&T as well.

23 COMMISSIONER SANDOVAL: I would note the CPUC

24 did ask the parties to submit data on this issue. So I
25 do have some data here, some of which is confidential.

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1 So while I can't quote it, I think I can say
2 generally that Sprint buys an overwhelming proportion of
3 its backhaul primarily from AT&T, secondarily from
4 Verizon, very little from independents.

5 T-Mobile, we would like as a follow-up to ask
6 you to disaggregate the backhaul that you buy from
7 Verizon versus any independents. T-Mobile also buys a
8 variety of its backhaul from AT&T. And AT&T purchases
9 most backhaul from itself.

10 So this is an area where we are in process of
11 gathering more data and we appreciate and thank the
12 parties for their cooperation. And we'll be asking in a
13 few cases for more disaggregated data so we can make
14 informed decisions.

15 JUDGE HECHT: Go ahead.

16 MR. CASTO: One thing I would say in terms of
17 the data, there's likely a number of reasons why it
18 might be the case in terms of a high percentage of
19 spend. One is ease of use of one's supplier. Two, we
20 might be offering in many of these instances very
21 attractive price terms and conditions.

22 The other point that I don't want to forget
23 about is that the legacy DS1, DS3 is really going away
24 extremely rapidly. We have very aggressive requests

25 from every carrier to migrate them to Ethernet, and

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1 we're competing aggressively with the cable companies
2 and a number of other providers to try and facilitate
3 that migration.

4 I think we also need to focus on are some of
5 these customers lagging behind in terms of that
6 transition, and that's what's driving those numbers.

7 JUDGE HECHT: Yes. Commissioner Florio?

8 COMMISSIONER FLORIO: Yes. Mr. Casto, you
9 indicated that going forward you see the demand moving
10 to Ethernet.

11 Can you give us a rough percentage of how much
12 of the backhaul you provide today is copper versus other
13 alternatives? Yes, to cell sites.

14 MR. CASTO: I think it varies by carrier. I
15 don't have exact percentages. I can't give you exact
16 percentages. It does vary by carrier and depends on
17 where they're at in their lifecycle in terms of making
18 the transition. But I can tell you just about every
19 carrier out there has approached us with a request for
20 Ethernet and have put out bids for Ethernet and are
21 seeking solutions for that.

22 The industry is clearly and unequivocally
23 moving that direction very rapidly due to the explosion
24 of bandwidth.

25 JUDGE HECHT: Thank you. And that actually

1 takes care of the next written question that I have.

2 So we'll move onto if long-term contracts --
3 this is from Michael Morris of the CPUC and the question
4 which does not appear to be very specifically directed,
5 is: If long-term contracts have volume requirements
6 which lock wireless companies into AT&T backhaul
7 services, would a merger condition requiring a fresh
8 look or waiver of volume requirements be an effective
9 remedy?

10 MR. CASTO: First of all, I would disagree
11 with the assertion that there's long-term contracts
12 locking in a significant amount of the wireless carriers
13 demand.

14 As I stated in my opening comments, I think
15 I've also stated again, when we look at the data,
16 there's a significant amount of uncommitted business as
17 well as carriers, when I'm in discussion with them,
18 there's an unwillingness to make long-term commitments
19 right now. There's clearly a shift away from that type
20 of arrangement as they move to Ethernet.

21 MR. FENTRUP: In such a condition -- Sprint,
22 of course, doesn't believe any condition can fix this.
23 If there were such a condition, it would only be useful
24 if there were an alternative provider that we can go to.

25 JUDGE HECHT: All right. Our next question is

1 from Michael Pierce of the CPUC. And this is for
2 Sprint. And the question is: Why does Sprint not buy
3 much backhaul from cable companies or CLECs?

4 MR. FENTRUP: We have tried to locate
5 alternative providers through the ILECs for our DS1 and
6 DS3 purchase agreements. We have not been able to
7 locate very many such providers who would be willing to
8 provide service.

9 And on the Ethernet backhaul question, we have
10 announced a network vision process which we are in the
11 middle of right now that is looking at whether there are
12 other alternatives out there and what they are, and we
13 are still assessing that.

14 JUDGE HECHT: Thank you.

15 Does anybody else have a comment on that? No.

16 And then the last question that I have right
17 now is what is the panel's assessment in comparing the
18 rate of the shift from legacy copper to Ethernet with
19 spiraling demand for backhaul? And what is the current
20 split between legacy copper and Ethernet in California
21 wireless?

22 And I think we've had variations on that
23 question asked already, but if you could address it.

24 MR. CASTO: I'm sorry. Would you repeat the
25 question for me?

1 I'm sorry. Would you mind repeating the
2 question for us?

3 JUDGE HECHT: I can try. This question is
4 from Tracy -- this question is from Tracy Rosenberg of
5 Media Alliance, and the question is: What is the
6 panel's assessment of comparing the rate of the shift
7 from legacy copper to Ethernet with spiraling demand for
8 more backhaul?

9 And as a follow-up or second part of the
10 question: What is the current split between legacy
11 copper and Ethernet in California wireless?

12 MR. CASTO: I said before, I don't know the
13 exact split between the legacy technology and the
14 Ethernet technology. But again, it's -- it's a seismic
15 shift that we're seeing going on right now. Our network
16 forces cannot keep up with the amount of construction
17 that's being asked. And that's in the face of
18 significant losses of sites as well.

19 So I think it's broad, and it's deep in terms
20 of the amount of migration that's going on. And perhaps
21 Brian would be in a position to comment based on his
22 experience, but I'm seeing it across the board.

23 MR. AYERS: From a T-Mobile perspective, as I
24 stated earlier, well over half of our cell sites
25 nationally are either contracted or already have

1 Ethernet service installed.

2 Specifically, in California, about 75 percent
3 of the thousands of sites that we do have here are
4 either contracted or already have Ethernet installed.
5 We're well down the path of that transition.

6 JUDGE HECHT: Okay. And following up on that,
7 there was a statement made earlier. This question is
8 from Chris Witteman of the Commission's legal staff.
9 And the question for T-Mobile is: The statement was
10 made earlier most of our cell sites have transitioned to
11 Ethernet. And is that true in California, and how much
12 of that is from ILECs?

13 MR. AYERS: I think I just answered that
14 question a few seconds ago. Again, that's 75 percent of
15 the thousands of cell sites that we have here.

16 Roughly a majority of our Ethernet service is
17 provided by ILECs here in the State of California. And
18 that, you know, that isn't just by happenstance. We go
19 through an competitive bid process, and the companies
20 that have won business from T-Mobile have done that by a
21 price reliability -- operational reliability network
22 reach and timeline to deploy.

23 JUDGE HECHT: Thank you.

24 Those are all the questions that I have from
25 the parties and the audience, so I'm going to turn to

1 Commissioners Sandoval and Florio. And give you the
2 opportunity to ask questions.

3 Commissioner Sandoval.

4 COMMISSIONER SANDOVAL: Thank you all very
5 much for being here and sharing your expertise.

6 So I do have a couple of questions,
7 particularly about the contracts which I understand that
8 certain contracts have required that in order to get the
9 best price, that the purchaser needs to buy a high level
10 of its requirements, in some cases 80, 90 or even a
11 hundred percent of their backhaul requirements from a
12 particular provider in order to get the best price.

13 Can you speak about the term -- by that, I
14 mean the length of those contracts, and to what extent
15 those contracts are affecting competition with other
16 independent or other non-ILEC providers of backhaul
17 services, whether Ethernet or non-Ethernet?

18 MR. CASTO: So there's two different ways that
19 we sell traditional backhaul, legacy backhaul. One is
20 via tariff. And that traditionally has a month-to-month
21 option, one-year term, three- and five-. There may even
22 be 24- and 48-months. I'm not a tariff expert.

23 There are provisions in there, the longer the
24 term, the better the price. And the reason we ask for
25 that term commitment is to ensure that we're recouping

1 the investment associated with deploying that facility.

2 There is also a provision in the tariff that
3 allows for flexibility for a carrier to churn their
4 circuits. In order to do that, we ask for a commitment
5 of 80 percent of the overall channel terminations, I
6 believe it is, to be committed. But they can go up to
7 150 percent.

8 When we look at that, most carriers that opt
9 into that have a significant amount of uncommitted
10 business. They're well above the hundred percent level
11 and could easily move business to another competitor.
12 The second method for purchasing is if they enter into a
13 custom pricing flexibility contract tariff that
14 typically overlays or overrides the underlying tariff.
15 Those are individually negotiated agreements that may or
16 may not have term or volume commitments depending on the
17 individual business-to-business negotiation.

18 COMMISSIONER SANDOVAL: Do you have any sense
19 of what percentage of customers are still in the longer
20 term contracts that might affect their ability to switch
21 to another provider of backhaul, at least for what AT&T
22 provides?

23 MR. CASTO: I don't have specific figures.
24 But in terms of what we did look at, we looked, and
25 there were -- there's a significant amount of

2 month-to-month term or a very short term that's about to
3 expire. And that gives customers significant amount of
4 flexibility.

5 These customers are very sophisticated in
6 terms of timing their transition with the expiration of
7 these terms. This isn't the first time doing it. We
8 run into this constantly in negotiation table. So
9 again, a significant amount of uncommitted today and
10 also an ever-churning amount that's coming off a
11 contract.

12 COMMISSIONER SANDOVAL: I appreciate your
13 perception it's significant. So we'll be asking for
14 data to try and get a sense of what does "significant"
15 mean.

16 So again, without trying to go into stuff that
17 is maybe confidential in the record, currently in the
18 State of California, AT&T is the overwhelming provider
19 of backhaul services for the major carriers. So we're
20 just very interested in the opportunities for
21 competition in this market.

22 And one question is about the effects of these
23 contracts, so we would be very interested in what is
24 significant. So I don't know if you have any general
25 sense or you're talking about there's 10 percent,

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1 20 percent, 30 percent, ballparkish --

2 MR. CASTO: That would be confidential
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3 information. But we can follow-up in a confidential
4 format.

5 COMMISSIONER SANDOVAL: Thank you. We'll
6 appreciate that.

7 JUDGE HECHT: Looks like we had a response
8 from Chris Fentrup from Sprint.

9 MR. FENTRUP: Yeah. I would to say one thing
10 about the term payments Mr. Casto is referring to with
11 an 80 to 124 percent chan term commitment that we have
12 to meet. Those require us to -- in order to get, as he
13 was saying, in order to be able to have the -- to meet
14 our commitment for the number of chan terms, they only
15 account the number of chan terms that we have on greater
16 than month-to-month.

17 So if we have any month-to-month chan terms,
18 they won't allow us to use those to meet our term
19 commitment. So that there disincent us to going
20 month-to-month and being able to quickly drop off of
21 them, reasonable enough for them to do, but it does keep
22 us from being able to go to competitors as we might
23 like.

24 Also, if we fall below 80 percent or go above
25 124 percent, the penalty that we have to pay for that is

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1 a \$900 monthly charge for each chan term that we are
2 either above or below that commitment level. That \$900
3 comes from the tariff, and it is the nonrecurring charge

4 for installing the term in the first place.

5 So we have to pay that every month into we
6 fall into that 80 percent to 124 percent window. That's
7 just in AT&T's tariff.

8 MR. CASTO: In terms of the month-to-month
9 aspect, the reason that is is generally by making this
10 commitment, to maintain between 80 and 124 percent of
11 your services, your entire base of services is on a
12 month-to-month basis. So there's no, in essence, term
13 commitment on any individual circuit, so they can churn
14 the circuits as-needed or move them as-needed.

15 JUDGE HECHT: Commissioner Sandoval, do you
16 have other questions?

17 COMMISSIONER SANDOVAL: I do, a couple others
18 quickly.

19 So do you have any general information on the
20 percentage of backhaul in California that is Ethernet
21 versus copper that is provided by AT&T, T-Mobile or
22 other service providers? If you don't have that data
23 now, we can seek that data, but are we talking about
24 that the majority is still copper, that the majority has
25 switched to Ethernet?

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1 I'm just trying to get a ballpark.

2 MR. CASTO: I don't have a figure right now.

3 MR. AYERS: One clarifying thing, T-Mobile
4 doesn't provide backhaul services. I just want to make

5 sure we get that correct.

6 COMMISSIONER SANDOVAL: Does T-Mobile provide
7 backhaul services to itself? I understand that T-Mobile
8 owns some Ethernet facilities.

9 MR. AYERS: No. That is not correct. We do
10 have -- let me retract that. We do have -- we do
11 install microwave where needed, but we don't provide
12 services to other providers. We don't procure dark
13 fiber for ourselves or anything of that nature.

14 COMMISSIONER SANDOVAL: So T-Mobile does have
15 some microwave backhaul that it uses for its own
16 services now?

17 MR. AYERS: A very small percentage, yes.

18 COMMISSIONER SANDOVAL: And that would be all
19 of the assets of T-Mobile are part of the acquisition,
20 is that correct, including those microwave assets to the
21 extent you have any?

22 MR. AYERS: I'm not familiar with the
23 acquisition agreement, but since the equipment is
24 attached to the cell site, I would probably say it is.

25 COMMISSIONER SANDOVAL: One would think so.

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1 We would be interested in learning more about
2 the extent to which T-Mobile has Ethernet services in
3 California regardless of whether or not you sell to
4 others. That would be the asset that would be the
5 subject of the merger. So thank you very much.

6 So yeah, I think also generally we're going to
7 be interested in looking at information about market
8 share. You've discussed competition from -- increasing
9 competition from cable providers, power providers that
10 are using dark fiber and others; yet, as we look at the
11 current data, the alternative sources, the only major
12 provider that is significantly using alternative sources
13 appears to be Verizon.

14 And the other providers, again, their
15 overwhelming provider of backhaul service is AT&T. So
16 we will be seeking some more information on the market
17 share by these alternative providers. And I think the
18 other question is, you know, to what extent would the
19 duration of these contracts affect the ability -- or the
20 terms of the contracts affect the ability of those
21 seeking backhaul services to switch over to those
22 alternatives.

23 So do you all have any comments on that?

24 MR. CASTO: The only comment is I don't have
25 any specific information on the market share for

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1 California or elsewhere in terms of what percentage is
2 with cable or utility companies or fixed wireless
3 companies.

4 COMMISSIONER SANDOVAL: That's what we'll be
5 seeking. Thank you.

6 JUDGE HECHT: I'm going to remind everybody to
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7 speak slowly and clearly for the benefit of our court
8 reporters.

9 Commissioner Sandoval, do you have other
10 questions, or does Commissioner Florio have any
11 questions?

12 COMMISSIONER SANDOVAL: I just think the one
13 last question I have is about location for the
14 providers. So that chart up there looks a little war
15 shark for those who are less familiar with it, but the
16 intricacies of backhaul, one of the questions is to what
17 extent are you finding other competitors such as cable
18 companies and utilities having cell sites in some of
19 those places, you know -- not cell sites rather, but
20 having alternative backhaul facilities available where
21 you have cell sites or you're trying to make a
22 connection to the cell site to the serving wire center.

23 Do you see any pattern on -- what I'm trying
24 to get at is are alternatives more characteristic of
25 what we call the middle mile as opposed to these areas

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1 from the cell sites to the service wire center, or does
2 that vary according to urban, suburban, rural? Can you
3 just give us some factors as we think about that
4 competitive landscape?

5 MR. AYERS: From a T-Mobile perspective, the
6 alternatives are getting out to the cell sites, and the
7 services that are being procured are end to end on their

8 own networks. So whether it's a cable provider, their
9 networks, their head ends or any alternative. So
10 they're getting out there.

11 I think in what we found is, you know, there's
12 plenty of competition in the urban and suburban markets.
13 And we expect as we continually move broadband services
14 out into the rural areas that there will be alternatives
15 there as well.

16 JUDGE HECHT: Any other responses to that
17 question?

18 MR. FENTRUP: Other than that Sprint hasn't
19 really identified a lot of alternatives available for
20 the type of backhaul that we currently need, no.

21 MR. CASTO: It's just a comment on that. Is
22 that because Sprint is lagging behind in terms of making
23 the migration to Ethernet, or is there some other
24 factor?

25 MR. FENTRUP: We are sizing our network for

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1 the traffic that we have. And we have asked other
2 carriers to provide us bids if they can come to our cell
3 sites, if they can provide service to our cell sites.

4 COMMISSIONER SANDOVAL: One last follow-up
5 question on that.

6 So we're going to be looking at the contracts
7 and some of the contract terms that are relevant to
8 special access. One question generally is: Do the

9 contracts offering volume discounts or any other
10 commitments regarding channel termination use affect the
11 migration to Ethernet, either to AT&T-provided Ethernet
12 or to other sources of Ethernet?

13 MR. FENTRUP: Well, if we are going to -- our
14 network vision plan envisions having most, if not all,
15 of our cell sites having higher capacity than they do
16 today.

17 So to the extent that we are limited by our
18 contract or tariff provisions and how quickly we can
19 move off of the ILECs, then that limits our ability to
20 move to competitive providers if we find them and if
21 they meet our needs.

22 JUDGE HECHT: Any other follow-up questions?

23 Okay. It looks like we are finished with our
24 first panel just about on time. So I want to thank our
25 panelists very much and everybody for the questions that

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1 you offered.

2 We are going to take a lunch break until
3 1:00 o'clock. And then we will be back here starting
4 with panel three. At 1:00 o'clock, I would like the
5 panelists for Panel 3 to be in their seats at the table.

6 We'll be off the record.

7 (Session adjourned at 12:02 p.m.)

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1 (Panel Analyzing the effect of the merger
2 proposal on spectrum access - 1:05 p.m. - 2:15 p.m.
3 Panelists: WILLIAM HOGG, Senior Vice President of
4 Network Planning and Engineering for AT&T Services;
5 ANDREW MERSON, President of Engineering for Cricket
6 Communications; TREY HAMBURY, Director of Spectrum
7 Proceedings for Sprint; PETER EWENS, Executive Vice
8 President and Chief Strategy Officer for T-Mobile
9 U.S.A.)
10 JUDGE HECHT: All right. We'll be back on the
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11 record. We're coming back after our lunch break at
12 about 1:05 on Friday, July 8th, and we're starting our
13 third panel of the day.

14 This panel is on spectrum and our speakers are
15 Williams Hogg, Andrew Merson, Trey Hanbury, and Peter
16 Ewens.

17 And we will be starting with Mr. Hogg. I
18 apologize. I believe I've mispronounced your name once
19 again.

20 MR. HOGG: It's okay.

21 JUDGE HECHT: Mr. Hogg followed by Mr. Ewens,
22 and then Mr. Merson and Mr. Hanbury.

23 So seven minutes per speaker and then we'll
24 have about 15 minutes for discussion amongst yourselves,
25 and then questions from the audience.

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1 Please go ahead, Mr. Hogg.

2 MR. HOGG: Well, thank you and good afternoon,
3 Commissioner, your Honor.

4 I'm Bill Hogg. I'm the Vice -- the Senior
5 Vice President of Network Planning and Engineering for
6 AT&T Services, and I want to take a few moments to
7 describe for you the network related benefits of the
8 proposed transaction with T-Mobile and AT&T.

9 In brief the proposed transaction provides by
10 far the most efficient, effective, and immediate
11 solution to address the capacity concerns and challenges

12 faced by AT&T as a result of the explosion of broadband,
13 mobile broadband usage in California and throughout the
14 country.

15 In fact, AT&T and T-Mobile have highly
16 complementary wireless technologies in GSM and UMTS.

17 They have complementary spectrum holdings in
18 PCS and AWS.

19 And network grids, the cell site locations,
20 means that the company will be able to quickly achieve a
21 number of capacity-creating synergies, all to the
22 benefit of both AT&T and T-Mobile subscribers.

23 These synergies include an increased cell
24 density, elimination of a redundant GSM control channel,
25 channel-pooling efficiencies, and utilization

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1 efficiencies.

2 These network efficiencies would not be
3 realized with any other transaction to the same extent
4 or through other methods and will push back the date of
5 expected spectrum and capacity constraints in many
6 markets, especially those in California, and allow the
7 combined company to bridge the capacity gap while
8 customers are migrating to more efficient technologies
9 and more spectrum is being allocated to the industry by
10 the FCC.

11 As you can imagine, I've spent quite a bit of
12 time analyzing this transaction and the network

13 capacity, the data usage, the cell locations, and the
14 frequency reuse plans of both companies.

15 I've applied accepted engineering principles
16 to quantify the benefits, and I think my estimates are
17 conservative and my projections, as we will discuss in a
18 moment, are conservative as well.

19 I can also tell you that I've worked on prior
20 list -- prior wireless mergers, four to be exact, and my
21 projections are based on that experience, and these
22 synergies are real. They're data driven, and they're
23 based on sound engineering principles.

24 I want to touch a moment on a few of the
25 efficiencies as we go through.

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1 First, the cell integration work. These are
2 the supplying of cells through the addition of cells as
3 we integrate the two networks together.

4 They will produce dramatic capacity gains.

5 For example, if a cell covering a certain area
6 is divided into two equally -- two cells covering that
7 same area, the total capacity and the amount of traffic
8 that can be served by that can double.

9 As I explained in my declaration, we expect to
10 integrate a very large number of T-Mobile U.S.A. sites
11 here in California and nationwide into the combined
12 company's networks resulting in tremendous capacity
13 gains, and capacity gains not here just in California

14 but across the country.

15 Expanding that capacity will also translate as
16 we roll in to LTE and deploy that technology.

17 They will also benefit from these additional
18 cell splits.

19 Although, given where we're at in the
20 transaction, the analysis is preliminary at this stage,
21 we believe that the real -- and can be properly
22 quantified and are significant in their ability to
23 increase cell density in many markets including San
24 Francisco and Los Angeles.

25 Second, we will eliminate a redundant control

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1 channel for TSM.

2 The compatible technologies that we operate
3 and the spectrum bands that both AT&T and T-Mobile
4 operate allow the combined company to free up between
5 4.8 megahertz and 10 megahertz of spectrum used in the
6 control channels which will handle signaling -- which
7 handles signaling for the two separate networks.

8 This will free up spectrum for other uses in
9 California and on a nationwide basis.

10 And note that the elimination of the redundant
11 control channel is expected to occur as we combine the
12 two GSM networks in California and throughout the
13 country.

14 Third, as mentioned earlier in the discussion
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15 in the first panel, the two companies have compatible
16 technologies and spectrum band and will create channel
17 pooling efficiencies.

18 That's the queuing efficiency that were
19 discussed earlier this morning, and those efficiencies
20 are -- are determined on a site-by-site basis.

21 And I discussed in my declaration how the
22 combined company will be able to carry more calls and
23 more data than the amount of the two companies on a
24 stand-alone basis if their GSM networks were to continue
25 to operate separately.

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1 Although the efficiency gains will vary
2 location by location, our analysis indicates that we
3 expect to achieve a 10 to 15 percent capacity increase
4 in many areas.

5 Next are utilization efficiencies, and this
6 is, very simply put, where our network is full,
7 T-Mobile's network might not be full, and vice-versa,
8 and be able to take advantage of underutilized networks
9 in each of those network -- each of those separately
10 operating networks will -- will be a benefit to more
11 efficiently use the spectrum.

12 The key point of all this is that the
13 efficiencies will benefit consumers through improved
14 service quality.

15 The network efficiencies will -- described
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16 earlier will result in a combined network with
17 significantly greater capacity than the sum of the two
18 stand-alone networks, and these efficiencies address the
19 capacity constraints that threaten to degrade the
20 quality of service both for AT&T and T-Mobile
21 subscribers in California.

22 These capacity improvements for the combined
23 networks will achieve -- in -- that we will achieve in
24 numerous markets will provide substantial capacity
25 gains, will reduce blocked and dropped calls, will

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1 improve data connections and provide better in-building
2 coverage.

3 Based on my observation of service
4 improvements from past transactions there can be little
5 doubt that the integration of the two companies
6 networked in California will bring improved service
7 quality to wireless subscribers throughout the state.

8 Finally, AT&T is in the process of deploying
9 LTE in its 700 and AWS spectrum, and by the end of the
10 year will have 70 million of the U.S. population covered
11 with LTE.

12 The spectrum efficiencies and synergies
13 inherent in this transaction allow for significant
14 additional LTE benefits in California, something that
15 AT&T couldn't provide were it not for this transaction.

16 With the additional spectrum and efficiencies
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17 generated by this transaction the combined company will
18 be able to deploy a more robust LTE service to more than
19 97 percent of Californians.

20 This expanded deployment will give
21 Californians the full promise of the best service that
22 mobile broadband can provide, whether you live in a
23 small town, rural areas, or communities of large cities.

24 This more robust LTE offering will also
25 promote investment and innovation in California and

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1 throughout the country

2 JUDGE HECHT: Your time is about up, if you
3 could wrap up in one sentence.

4 MR. HOGG: So, Commissioner, I appreciate the
5 opportunity to address the network synergies and
6 efficiencies inherent in this transaction that will
7 produce a better customer experience for California, and
8 I look forward to answering your questions.

9 Thank you.

10 JUDGE HECHT: Thank you very much.

11 We will move on to Mr. Ewens, and before we do
12 that I'll remind everybody to try to speak slowly and
13 clearly for the benefit of our Court Reporters and to
14 speak in to the microphone.

15 So, with that, please go ahead.

16 MR. EWENS: Good afternoon.

17 My name is Peter Ewens, and I'm an Executive

18 Vice President and Chief Strategy Officer for T-Mobile
19 U. S. A.

20 My group is responsible for our overall
21 spectrum strategy and acquisition, and I thank the
22 Commission for giving me the opportunity to appear today
23 to speak about spectrum efficiencies.

24 Due to consumer data demands that are growing
25 exponentially, T-Mobile U. S. A. faces capacity

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1 constraints in various key markets over the next few
2 years.

3 Moreover, separate from these capacity
4 constraints, T-Mobile U. S. A. also lacks the necessary
5 spectrum to build out a competitive next generation LTE
6 network comparable to those being built by its
7 competitors today.

8 For these reasons T-Mobile U. S. A. has
9 aggressively pursued options for securing additional
10 spectrum.

11 Despite these best efforts it has become clear
12 that sufficient spectrum to meet T-Mobile U. S. A.'s
13 immediate and future needs will not become available by
14 spectrum auctions or by other means on a time frame in
15 line with T-Mobile U. S. A.'s business needs, nor is
16 Deutsche Telecom, our corporate parent, in a position to
17 finance such spectrum acquisition even if spectrum were
18 available to be obtained.

19 The proposed transaction with AT&T gives
20 T-Mobile U.S.A. and its customers nationally and in
21 California a path to LTE and its significant benefits.

22 AT&T and T-Mobile U.S.A.'s compatible
23 technologies, spectrum, and infrastructure permit a
24 nearly seamless combination of the two networks, which
25 will create new capacity.

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1 Both companies use GSM, HSPA, HSPA+
2 technologies. Both companies hold 1900 PCS and AWS
3 spectrum.

4 Both companies have cell site grids that are
5 well matched to the other.

6 Significant new capacity will be achieved in a
7 number of ways. Numerous T-Mobile cell sites will be
8 quickly integrated in to the combined companies'
9 networks, creating greater cell site density both in
10 California and on a national basis.

11 The combined company will also increase
12 capacity by a controlled channel, channel-pooling, and
13 other utilization efficiencies.

14 Taken together, these efficiencies will have a
15 multiplier effect by enabling migration of spectrum to
16 more efficient technology such as LTE.

17 The additional capacity created through these
18 transaction-specific efficiencies will produce immediate
19 and long-term benefits for customers of both companies

20 and consumers at large.

21 The combination of AT&T and T-Mobile U.S.A.
22 will achieve extensive synergies while greatly
23 benefitting the American economy, consumers, and
24 particularly T-Mobile customers.

25 First, T-Mobile U.S.A. customers will enjoy

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1 further improvements to their coverage through access to
2 AT&T's low band 850 megahertz spectrum, which will
3 better support deep in-building coverage.

4 As T-Mobile handsets already use GSM chip sets
5 supporting 350 megahertz band, customers will be able to
6 take advantage of this spectrum shortly after the
7 transaction closes.

8 Second, the combined network will have greater
9 capabilities to serve California customers today and in
10 the future than either network standing alone.

11 Third, the transaction will give the combined
12 companies the resources and the spectrum it needs to
13 broadly deploy next generation 4G LTE services reaching
14 more than 97 percent of the population, which T-Mobile
15 would not have been able to do on its own.

16 Finally, the transaction will allow the
17 combined companies to increase capacity and
18 significantly reduce costs.

19 T-Mobile U.S.A.'s network and spectrum
20 resources will add substantial value to this highly

21 competitive marketplace when they are combined with
22 AT&T's network and spectrum resources to produce output
23 enhancing synergies.

24 As a stand-alone company T-Mobile U.S.A. will
25 continue to face substantial commercial and spectrum

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1 related challenges.

2 This transaction provides the most efficient,
3 effective and timely resolution of the capacity
4 constraints facing T-Mobile U.S.A.

5 The combination of AT&T and T-Mobile U.S.A.
6 will deliver a stronger broadband future to California
7 customers of both companies.

8 Thank you.

9 JUDGE HECHT: Thank you very much.

10 Now we will continue with Mr. Merson, and you
11 should introduce yourself, and go ahead.

12 MR. MERSON: Thank you very much for having
13 me.

14 I'm -- My name is Andrew Merson. I'm the Vice
15 President of Engineering for Cricket Communications, and
16 I'm here to talk on the -- the proposed acquisitions
17 today.

18 Within Cricket Communications I'm responsible
19 for the radio frequency engineering, core network
20 engineering, the application to license engineering,
21 technology planning and product engineering functions.

22 I have responsibility for managing the
23 spectrum resources and anticipating Cricket's spectrum
24 needs.

25 I'm not going to dispute the claims about the

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1 network efficiency that we -- we just described here
2 today. I really wish I had that same opportunity.

3 I will talk a little bit about Cricket though.

4 We started in 1998. Cricket Communications
5 then built our network based upon a very limited amount
6 of spectrum, and we were the first ones to offer
7 unlimited wireless services to the community back over
8 10 years ago.

9 We chose CDMA specifically for its spectrum
10 efficiency.

11 At the time we only had 10 megahertz of
12 spectrum on which to offer services, so we -- it was
13 important for us to understand exactly how to --

14 LOUD SPEAKER: Attention. Attention.

15 There's police activity at the corner of
16 Golden Gate and Larkin.

17 Currently the loading dock and 455 entrance
18 and exit are closed until further notice.

19 Please use the 350 entrance and exit.

20 Attention. Attention.

21 There is police activity at the corner of
22 Golden Gate and Larkin.

23 Currently the loading dock and 455 entrance
24 and exit are closed until further notice.

25 Please use the 350 entrance and exit.

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1 JUDGE HECHT: That will not count against your
2 time.

3 MR. MERSON: Thank you. Thank you.

4 JUDGE HECHT: Please proceed.

5 MR. MERSON: So to manage growth for Cricket
6 with a very limited amount of spectrum in 2002 we
7 upgraded our networks to 1X CDM technology from the
8 prior IS95 technology.

9 That was done specifically to address spectrum
10 constraints.

11 We recognized early on that as a small player
12 we would need to be more efficient than the Tier 1s,
13 especially as 3G technologies were emerging, including
14 EVO.

15 We launched our EVO services in 2006 and 2007.
16 Today we offer unlimited broadband services for both USG
17 phones and also with SmartPhones.

18 Today despite the -- despite our focus on
19 efficiency and cost management to provide these services
20 Cricket's ability to compete is directly tied to the
21 amount of spectrum that we have relative to our Tier 1
22 brethren.

23 Many of our markets currently use all of the

24 available spectrum today, yet we are still looking
25 towards building out LTE.

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1 We are constantly reforming our spectrum.

2 We're constantly managing tight growth to make
3 sure that, as we move to LTE that we can offer quality
4 services for our subscribers.

5 Cricket understands and deals with spectrum
6 limitations everyday. It's a phenomena that all
7 wireless carriers are facing.

8 The principal rationale for more spectrum that
9 AT&T has put forth to justify their actions seems highly
10 questionable, especially relative to our perspective.

11 Today even without the proposed acquisition
12 AT&T holds more spectrum than any other wireless carrier
13 and it also has been on a recent spectrum acquisition
14 binge, especially of 700 megahertz assets.

15 In addition, Verizon has more subscribers than
16 AT&T yet less spectrum and has stated that it does not,
17 in fact, face any significant spectrum limitations.

18 AT&T has also not commercially deployed
19 significant amounts of spectrum asset that it already
20 currently possesses.

21 The AWS licenses purchased back in 2006 have
22 yet to be employed.

23 AT&T is sufficiently uninterested in deploying
24 its AWS spectrum that its offered significant -- offered

25 significant blocks of it to T-Mobile as a breakup fee in

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1 the acquisition, in other words, if this deal does not
2 get approved by regulators, AT&T is prepared to
3 transition to 4G without using any of the spectrum at
4 all.

5 The FCC has recognized that spectrum is an
6 increasingly pivotal input.

7 If this transaction is approved AT&T's
8 dominance in spectrum position relative to all carriers
9 will further expand.

10 In the top 10 markets that Cricket serves,
11 Cricket's spectrum holdings range from 10 megahertz to
12 30 megahertz -- 10 to 30.

13 The combined AT&T and T-mobile spectrum by
14 contrast would 122 to 171 megahertz of spectrum.

15 Put that in other terms, that's seven-fold the
16 amount of spectrum that Cricket currently maintains.

17 Cricket could plainly --

18 In the event that -- in the event of
19 disaggregation, 20, 40, 60 megahertz, Cricket would
20 still be at a significant disadvantage to AT&T and would
21 not be able to compete even if AT&T were able to
22 disaggregate.

23 Additionally, Cricket has been effectively
24 marginalized in its ability to acquire additional
25 spectrum.

1 As we heard earlier, the wireless industry is
2 an extremely capital intensive one.

3 As Verizon and AT&T control more and more of
4 the industry's earnings and cash flow, they have and
5 will have a growing advantage in acquiring any new
6 spectrum that comes on the market, as we saw with
7 Auctions 58, 66 and 73.

8 Noting the economics of spectrum in offering
9 data speeds in addition to capacity for consumers, AT&T
10 has had the incentive spectrum purely to exclude
11 competitors.

12 Our concern is that that -- not only does AT&T
13 have a tremendous spectrum advantage today, but its
14 advantage will grow significantly through this proposed
15 acquisition, and it has the ability and incentive to
16 continue to increase its advantage going forward.

17 Spectrum decides the amount of competition
18 allowed in the wireless marketplace.

19 The Commission should ask itself of whether
20 the industry is better off giving up on that competition
21 experiment we talked about this morning and allowing the
22 AT&T/T-Mobile merger or whether it's better off with
23 AT&T managing its own spectrum assets and enabling
24 competition.

25 Thank you.

1 JUDGE HECHT: Thank you very much.

2 And now we will hear from Trey Hanbury.

3 MR. HANBURY: Thank you.

4 My name is Trey Hanbury. I'm Director of
5 Spectrum Proceedings for Sprint.

6 And for us this is a fairly simple issue.

7 Competition, not spectrum, is the issue.

8 AT&T is not acquiring T-Mobile to add spectrum
9 depth.

10 AT&T already has considerable undepleted
11 spectrum and massive amounts of underused spectrum, and
12 T-Mobile, by contrast, has little undepleted spectrum.

13 AT&T is not acquiring T-Mobile to add spectrum
14 breadth. T-Mobile's network adds virtually nothing to
15 AT&T's territory. It's almost entirely subsumed within
16 AT&T's existing footprint.

17 AT&T is not acquiring T-Mobile to add
18 qualitatively superior beach front spectrum. T-Mobile
19 has none.

20 And AT&T together with its twin bell Verizon
21 already owns almost all of it.

22 This merger is about one thing and one thing
23 only, eliminating a competitor.

24 The burden, after all, rests with AT&T and
25 through their showing thus far they have failed to meet

1 that test.

2 I want to turn to a few things that Mr. Hogg
3 talked about, the benefits and efficiencies that he's
4 raised.

5 We feel that all of them are false,
6 exaggerated, or premised on a number of fictions.

7 First, AT&T has a fiction of unique explosive
8 ubiquitous demands.

9 We'll come to that in a moment.

10 AT&T, second, has a fiction about capacity,
11 claims that it faces unique spectrum constraints, that
12 it -- that result from an explosive growth and demand
13 for data services.

14 Third, it claims that it has the ability to
15 increase its coverage through requiring T-Mobile and has
16 said that it will, quote, "eventually roll out its 4G
17 service to 97 percent of the U.S. population six years
18 after consummation of this transaction," which for those
19 keeping count would be something like 2018.

20 Fourth, network. AT&T claims that it's simply
21 run out of options short of the acquisition of its
22 competitor to improve performance sufficient to meet
23 demand.

24 None of these are true.

25 First, let's address this concept of

1 ubiquitous explosive broadband demand.

2 We at Sprint have experienced the same demand
3 growth that AT&T has.

4 AT&T also has said on the record that they
5 have successfully managed an 8,000 percent increase in
6 demand from 2007 'til 2010, but somehow the wheels will
7 come off, managing an 800 to 1,000 percent increase in
8 demand from 2011 to 2015.

9 We don't believe it. We saw the same demand
10 increases coming, and we managed the demand. Every
11 other carrier managed the demand.

12 Why can't AT&T?

13 Moreover, the other troupe that AT&T likes to
14 try is that "Well, we have the iPhone and nobody else
15 did for four years."

16 That's true, but in fact, a Nielsen survey in
17 the first quarter of this year that reviewed 65,000
18 consumer bills and the data consumption for Android sets
19 versus iPhones found that iPhones use considerably less
20 data than Android handsets.

21 Now, AT&T -- about 65 percent of all their
22 Smartphones sales are iPhones, and on Sprint's network
23 there are none because AT&T and Verizon are the only
24 ones that have access to that product.

25 So, if anything, AT&T's demand is lower than

1 that of other carriers because they have iPhones, which
2 consume less data, somewhat counterintuitively, than
3 Android devices that populate T-Mobile's network or that
4 of Sprint.

5 Let's turn next to this notion of unused
6 spectrum.

7 I think it's worth pointing out, and several
8 people have said this, nationwide AT&T is sitting on 40
9 megahertz or more of unused spectrum. That's wholly
10 undeployed spectrum, and they're in multiple bands, the
11 700 megahertz, the AWS band, and the WCS band

12 When we look at T-Mobile, however, it has
13 really no bands in which it's wholly undeployed.

14 And even if AT&T were somehow constrained,
15 despite these fairly dramatic wholly unused bands, it
16 simply doesn't stand to reason that adding a
17 spectrum-constrained carrier to your ostensibly
18 constrained network will somehow generate massive
19 increases that will accommodate both T-Mobile's
20 customers and AT&T's.

21 It's also important to note, and while
22 T-Mobile has talked about incorporating T-Mobile
23 infrastructure into AT&T's network post-transaction,
24 AT&T in its efficiencies claims -- talks about basically
25 destroying a 65 to 75 percent of T-Mobile's

1 infrastructure, their towers, their facilities.

2 It's difficult to see how reducing the number
3 of towers is going to result in superior coverage and
4 superior service.

5 There's also this notion of underused
6 spectrum, and of this AT&T, I'm afraid, is especially
7 guilty.

8 AT&T continues to saddle some of its most
9 prized, highest valued spectrum with the oldest, least
10 efficient technology. That's GSM and it's about 1/12th
11 as efficient as LTE.

12 Now, AT&T still has yet to roll out commercial
13 LTE services to a single customer.

14 Verizon did it last year and now covers 110
15 million. We at Sprint did it in 2008, three years ago.

16 But if a carrier is facing capacity
17 constraints, the first thing you do is to stop deploying
18 inefficient handsets, and I think it's actually worse
19 than that, because AT&T is not only continuing to deploy
20 GSM only phones. They're actually subsidizing them to
21 the point where there are four separate GSM-only
22 products offered on AT&T's website, some of them for as
23 little as 9.99.

24 These phones, heavily subsidized, are the
25 least efficient technology and consume massive amounts

1 of bandwidth on AT&T's network.

2 First, do no harm. Get off GSM and migrate
3 your customers from -- from GSM.

4 You don't have to immediately jump to LTE, but
5 you can jump to HSPA 7.2 or HSPA.

6 At every stage of the game, however, AT&T is
7 behind the curve.

8 Also, I mentioned it earlier, but we talked a
9 little bit about the lack of an increase in geographic
10 reach.

11 AT&T only increases its network by less than
12 one percent, that's less than 3 billion people, by
13 adding T-Mobile to its footprint.

14 Again, it's difficult to see how there's any
15 nexus whatsoever between additional rural coverage and
16 the acquisition of T-Mobile.

17 JUDGE HECHT: Thank you. Your time is up.

18 If you could wrap up in one sentence or so.

19 MR HANBURY: Sure.

20 Last point: If you're spectrum constrained,
21 which -- and you have one of the world's most popular
22 handsets on a four-year exclusive, you would expect AT&T
23 to have invested more per capita, per subscriber, in its
24 network than any other carrier.

25 In fact, just the opposite is true.

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1 Had the industry average per carrier per

2 subscriber investment of \$91, AT&T actually
3 underinvested relative to the industry average by about
4 \$10.

5 So on average the industry over the last five
6 years has invested \$91 per subscriber for -- in each of
7 the last five years, and AT&T has lagged that and
8 invested only \$81.

9 This is not a sign of a capacity constrained
10 carrier, and that's why this transaction should be
11 denied.

12 JUDGE HECHT: All right.

13 First I want to acknowledge that there's been
14 some ambient noise in the room. It sounds like things
15 are moving around outside, and I apologize for that if
16 it's distracting even beyond the earlier PA
17 announcement, which was clearly distracting.

18 I also want to remind everybody at this point
19 to be respectful of others' opinions and viewpoints and
20 that we do expect disagreements here, and we welcome
21 discussion, but we will not have personal attacks, and I
22 expect all of us to maintain a courteous and
23 professional demeanor.

24 With that we have 15 minutes for the panelists
25 to have a discussion amongst themselves during which

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1 parties in the audience can fill out some of the
2 question sheets and ask any questions they may have for

3 these panelists.

4 MR. HAMBURY: I'd love to ask just, why does
5 AT&T continue to subsidize GSM handsets?

6 MR. HOGG: Well, first of all, in
7 spectrum-constrained markets we've taken a number of
8 actions to either slow or eliminate the provisioning of
9 GSM handsets.

10 The number of areas we're moving away from a
11 GSM handset at 9.99 to a prepaid handset on 3G for free.

12 So there's a combination as we shift from GSM
13 to 3G and that pricing in the marketplace is changing to
14 slow or eliminate the growth of GSM in our network.

15 Secondly, when you have as many GSM
16 subscribers in our network, it takes time to migrate
17 subscribers from one technology to another.

18 It's a personal choice thing. People like
19 their GSM handsets. They like the handset they want.

20 We provide incentives for them to move to 3G
21 technology and some choose to take advantage of that 3G
22 and some don't, and over time we continue to migrate
23 those subscribers.

24 But when you have a base as large as ours the
25 migration of subscribers has to match the spectrum that

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1 you're reallocating, and if we reallocate spectrum too
2 quickly, then the service in GSM degrades and people
3 holding GSM handsets get degraded service.

4 MR. HANBURY: Of course, this wasn't a new
5 event.

6 Surely you must have seen these increases.

7 We have charts that AT&T has presented for
8 some time showing the demand growths that all carriers
9 have experienced.

10 Why didn't AT&T start to migrate customers far
11 before now?

12 MR. HOGG: We -- we actually have been.

13 If you look at the data right now, more than
14 half of our subscribers in our network are 3G
15 subscribers.

16 So in the last five years we've gone from no
17 3G subscribers to over half of the subscriber base being
18 3G.

19 So if that isn't an indication that people are
20 moving from GSM to UMTS, then I don't know what is.

21 JUDGE HECHT: Does anybody else have a
22 question or comment on the panel?

23 MR. HOGG: I'd like to make a couple of other
24 comments, just some points that were made along the way.

25 First of all, when you look at reducing the

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1 number of towers of the combined entities, when you
2 count the number of cell sites that AT&T brings to the
3 table today and the sites that T-Mobile brings to the
4 table today, and you look at the integrated network, the

5 T-Mobile network increases by 40 percent the number of
6 towers it takes advantage post-integration.

7 The AT&T network increases its number of
8 towers by 30 percent post-integration.

9 So the notion that eliminating towers isn't
10 going to result in a network with more towers at the end
11 for both subscribers to take -- basis to take advantage
12 of is false.

13 MR. HANBURY: You base that on a -- I think
14 what you call a visual inspection analysis; right?

15 MR. HOGG: We based it on some proxies that
16 were based on the T-Mobile --

17 MR. HANBURY: But not a market specific
18 examination of actual --

19 JUDGE HECHT: And, again, one person will
20 speak at a time.

21 MR. HANBURY: Sorry.

22 But not a market specific examination of
23 actual antenna patterns, down tilts, traffic patterns,
24 topology, morphology.

25 MR. HOGG: Traffic patterns yes, down tilts and

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1 traffic patterns, no, and actual locations

2 market-by-market, yes.

3 MR. HANBURY: It seems like details matter,
4 and so does down tilts, radiation center, and these
5 other factors.

6 It's hard to see how you can actually make a
7 reasoned determination where the efficiencies would lie
8 without conducting the analysis to support it.

9 MR. HOGG: Well, I think the experience that
10 we've had integrating networks, good engineering
11 practice on where those locations are cell site density,
12 and the experience that we have in previous transactions
13 where we've used similar proxies and had significant
14 improvements in dropped calls, blocked calls and
15 performance in in-building coverage would certainly lead
16 to the same conclusion as we go through this
17 integration.

18 MR. HANBURY: But what -- what percentage of
19 efficiencies simply come from moving, you know, the 50
20 percent of the subscribers -- or subscribers, according
21 to you, from GSM to more efficient HSPA technologies and
22 what percentage come from moving or acquiring T-Mobile?

23 MR. HOGG: All the efficiencies we talked
24 about today are a direct result of the integration of
25 the two networks and not from migrating subscribers from

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1 one technology to another.

2 MR. HANBURY: Within the network.

3 MR. HOGG: Within the network.

4 Let me also address that the depth of spectrum
5 required and the notion that Android handsets use more
6 data than iPhone handsets, it's P x Q model; right?

7 You have the number of subscribers that are
8 holding those handsets times the quantity of the data
9 that they use per subscriber basis.

10 So the fact that Android subscribers use more
11 data on a personal basis, you have to multiply by the
12 number of 3G subscribers that AT&T serves on our network
13 in order to calculate the total demand that's required
14 to serve that, and that goes for the spectrum required
15 and that goes for the per subscriber usage on various
16 devices.

17 MR. HANBURY: Does the --
18 Let's see.

19 The HSPA+, sort of your -- 3G, you called it,
20 4G and RADS technology, it's more efficient than HSPA
21 7.2; correct?

22 MR. HOGG: That's right.

23 MR. HANBURY: How much more efficient, like
24 double?

25 MR. HOGG: Oh, no, no.

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1 Maybe 10 to 15 percent.

2 MR. HANBURY: 1.2 --

3 Does the iPhone 4 that you carry, does that
4 support HSPA+ or is only HSPA 7.2?

5 MR. HOGG: It supports 7.2, but why does it --

6 JUDGE HECHT: We are having one person
7 speaking at a time.

8 MR. HANBURY: Sorry.

9 JUDGE HECHT: I believe that Mr. Hogg was
10 speaking.

11 MR. HOGG: But, obviously, that's Apple's
12 choice, not AT&T's.

13 MR. HANBURY: You don't have any say in that?

14 MR. HOGG: No, we don't.

15 Perhaps you want to ring Steve Jobs up and see
16 if you will have more success than we have.

17 MR. HANBURY: Steve Jobs?
18 You've had much more success than we have.

19 MR. HOGG: There you have it. I make my case.

20 JUDGE HECHT: Yes. Go ahead.

21 MR. MERSON: So I'd like to ask Mr. Hogg, so
22 you mentioned that it's a Q versus -- P&Q, the quantity
23 of usage times the quantity of subscribers.
24 Do you feel like -- two questions.
25 One is what is the total amount of spectrum

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1 that AT&T needs?

2 And then, secondly, would 20 megahertz or 30
3 megahertz like what Cricket has be enough to compete in
4 the wireless industry?

5 MR. HOGG: Well, I can't speak for what it
6 would take for Cricket to compete, so I'll leave that to
7 you.

8 But I can say that the explosive growth that

9 we're seeing in our networks continues to grow and the
10 FCC has clearly come out in its October 2010 report and
11 said that all wireless carriers will be facing spectrum
12 exhaust in the 2014 time frame.

13 So the fact that there's not enough spectrum
14 is going to be an issue that's going to be faced by all
15 wireless carriers, not just AT&T.

16 And at some point in the future as these
17 subscriber profiles continue to grow I'm not sure that
18 the industry has enough spectrum, and I'm not sure that
19 I could tell you exactly how much spectrum is going to
20 be required in the next 10 years.

21 So -- I would suggest to you that the reports,
22 if you look at the demand side of the equation, and
23 other analysts and -- and other entities like the FCC, I
24 think they all have a general belief that there's not
25 enough spectrum allocated to the mobile industry.

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1 MR. HANBURY: Can I ask you about the AWS
2 spectrum that you have deployed?

3 MR. HOGG: Sure.

4 MR. HANBURY: As I mentioned in my opening
5 remarks, Verizon has deployed itself to networking with
6 smaller carriers and LTE networks. We're still waiting
7 for yours in 700.

8 But I've heard no one else plans to use the
9 substantial AWS holdings about 10 megahertz on average

10 nationwide, variable in certain areas.

11 When are you going to use that spectrum?

12 MR. HOGG: We plan to use those spectrum.

13 It's going to vary by market-to-market, but the delays
14 in rolling out the LTE for AT&T kind of start in three
15 areas.

16 One, in order to deploy LTE we've got to go
17 touch every tower with a new antenna that's capable of
18 both 700 and AWS spectrum.

19 That means that we have to go through leasing
20 and zoning to change those antennas out, and we have to
21 put infrastructure at the base of each one of those
22 towers that are capable of supporting the LTE technology
23 at both of these frequencies, and then we need handsets
24 that are commercially available capable of supporting
25 both 700 and AWS frequencies.

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1 We're very aggressively deploying, now that
2 those elements are available, LTE in our network.

3 I think we announced in January that we're
4 actually accelerating by one year our deployment of LTE
5 to cover 80 percent of the U.S. population by the end of
6 2013, and so, as a result of that roll-out plan you'll
7 start to see us use 700 and AWS spectrum to cover that
8 80 percent by 2013.

9 MR. HANBURY: Just a question on the
10 deployment for AT&T.

11 I think previously AT&T had had some larger
12 projections of where it would deploy 4G LTE service,
13 more than 80 percent of the U.S. population.

14 But, you know, with the merger came this
15 position that you would only deploy at 80 percent even
16 though Verizon, which faces no merger pressure to
17 increase, its full footprint is somewhere in the order
18 of 95, 96, 97 percent.

19 Why would AT&T stop at 80 percent and deny
20 that 17 percent of the U.S. population LTE?

21 MR. HOGG: Well, I think AT&T and Verizon have
22 very different starting points.

23 If you look at AT&T's position outside of the
24 80 percent footprint that we plan to deploy HSPA+
25 technology, where Verizon only has EVDO technology.

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1 That's roughly two times less in terms of the
2 speed that network is able to provide versus our HSPA+,
3 and, as a result of that, we don't have the same
4 competitive driver to go out and deploy to that last 17
5 percent.

6 The second piece of it is, as you well know,
7 I'm sure, it's twice as expensive on a cap X per cover
8 pop basis to deliver to that last 17 percent based on
9 the sparsity of the population, and so, as an economic
10 decision, we made a decision to stop at 80 percent and
11 move to HSPA+ in the remaining footprint.

12 MR. HANBURY: So it's really just a question
13 of margins, you want to the make sure that you have
14 sufficient margin to basically cross-subsidize the areas
15 that aren't as economically rolled out; right?

16 MR. HOGG: No, we have an obligation to our
17 shareholders to return --

18 MR. HANBURY: You have to return --

19 MR. HOGG: -- invested capital, yes.

20 MR. HANBURY: Sure. Yes.

21 MR. HOGG: And your point is what?

22 JUDGE HECHT: Yes.

23 I believe it was Mr. Merson's turn and then we
24 can continue.

25 MR. HOGG: Sure.

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1 MR. MERSON: So getting back to the point
2 around speed and the ability to offer a higher speed,
3 would you say that speed is a large competitive factor
4 for -- for yourself and the current wireless industry?

5 MR. HOGG: Yes.

6 MR. MERSON: Thank you.

7 So how are companies that have 10 times less
8 spectrum able to compete in a marketplace where AT&T can
9 aggregate carriers and offer over 1 gig of that speed
10 without technologies like LT advanced?

11 Do you believe that the Tier 2s will have any
12 competitive opportunity in that case?

13 MR. HOGG: Well, I think they will.

14 I think that they'll have the same access to
15 the LT technology that we will.

16 They'll have the same access to LT advance
17 that AT&T will.

18 And it's a question of their acquisition
19 strategy in terms of acquiring a spectrum to compete in
20 the marketplace.

21 So when the FCC makes additional spectrum
22 available, it will be up to your choice as to whether or
23 not you want to compete at higher speeds or not.

24 MR. HANBURY: Mr. Hogg asked me a question.

25 I'd like to respond.

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1 You said that it was basically an economic
2 decision not to go from 80 percent to 97 percent.

3 My point was simply that it's not a spectrum
4 issue. It's not, because you need T-Mobile's spectrum
5 to reach these rural areas.

6 There's no -- there's no transaction specific
7 nexus between your additional deployment and the
8 acquisition of T-Mobile.

9 It has everything to do with the economics of
10 it, I think as you said, but not about the spectrum, and
11 that's the point I wanted to make.

12 MR. HOGG: Yeah, I appreciate that.

13 I'm glad you clarified where you were going

14 with that.

15 So the decision is largely economic, but as a
16 result of the transaction we do pick up additional
17 spectrum in many markets where today we were only able
18 to deploy LTE in 10 megahertz of spectrum, and, as
19 Andrew noted here, speed is important, and having an
20 additional 10 megahertz of AWS spectrum in those markets
21 where we only had 10 allow us to deploy more competitive
22 and robust LTEU product where we would otherwise only be
23 able to provide 10.

24 MR. HANBURY: And LTE speed presumably varies
25 by density of users on the cell; right?

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1 MR. HOGG: It varies on a number of areas.

2 MR. HANBURY: Sure.

3 MR. HOGG: It varies by the amount of spectrum
4 that you allocate to it. It varies by where you are
5 relative in the cell or RF conditions, and certainly the
6 density of the network.

7 MR. HANBURY: But other things being equal,
8 one would ordinarily expect the less populated in the
9 -- somewhere in Iowa, to have the need for a less
10 spectrum than, say, a densely used cell in New York
11 City?

12 MR. HOGG: Well, I think the way you have to
13 think about it is there's a base amount of spectrum that
14 you need to deploy in order to achieve a certain speed

15 and the rest of it is a question of capacity.

16 MR. HANBURY: And LTE comes in multiple
17 different standards. I think the minimum LTE channel
18 width is 1.4 megahertz; is that right?

19 MR. HOGG: Something along those lines, yes.

20 JUDGE HECHT: We have about a
21 minute-and-a-half left in this section of discussion, so
22 I want to remind parties in the audience that if you
23 have any questions you should write them down and get
24 them to Roland, or Lisa, or somebody who can bring them
25 up to the front.

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1 I also note that we've heard a lot from
2 Mr. Hogg and Mr. Hanbury and somewhat from Mr. Merson
3 but not very much from Mr. Ewens.

4 And do you have anything to add?

5 MR. EWENS: Thank you.

6 Well, I think it was a little bit hard to
7 break in to that dialogue.

8 I had the opportunity to witness.

9 But let me just -- let me do say a couple of
10 things.

11 So -- in response to some of the comments.

12 Number one, this has been pointed out before,
13 in -- spectrum 1 plus 1 does equal 3, so I think
14 Mr. Hanbury had questioned how two companies both facing
15 spectrum constraints could -- why that combination might

16 actually make sense, and the reason it makes sense is
17 because more spectrum actually creates both specific
18 network efficiencies, but also creates opportunities for
19 migration and more efficient management of the spectrum
20 bands.

21 So really one plus one does equal three.

22 Secondly, there was a substantial discussion
23 about AT&T and perhaps by implication T-Mobile's speed
24 of transition to the customers from GSM.

25 Both AT&T and T-Mobile support both GSM and

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1 HSPA and HSPA+ customers.

2 And I can only speak from our experience that
3 we are trying to rapidly transition our customers away
4 from GSM, and, in fact, some of those handsets that are
5 \$9.999, the reason the customers like them is because
6 they're very inexpensive.

7 The GSM ecosystem for handsets is enormous,
8 fueled in part by handsets that are going to emerging
9 markets, and there are many, many consumers who are
10 quite satisfied with lower price low capability
11 handsets.

12 And so while we are trying to migrate our
13 customers over to more efficient technologies, it is a
14 long and arduous and complex process, and it's one that
15 really Sprint should know well because they have
16 struggled for years to migrate customers away from IDN,

17 which is also a relatively inefficient and outdated
18 technology.

19 So this process doesn't happen
20 instantaneously. It takes many years.

21 And I can certainly say from T-Mobile's
22 perspective we are moving as quickly as possible to --
23 to more efficient technologies.

24 So on both these considerations we
25 fundamentally believe that when you combine the

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1 companies you do create new spectrum, you create new
2 efficiencies, you create new opportunities to manage the
3 spectrum bands and the multiple generations of
4 technologies and just deliver a much superior service to
5 the joint customer base.

6 JUDGE HECHT: All right. And with that our
7 cross-talk discussion is complete, and I have some
8 questions from the audience that I'll get to now.

9 The first question is from April Mulqueen of
10 the CPUC staff, and this is primarily directed to
11 T-Mobile, but other panelists can comment as well.

12 Would the sector included in the breakup fee
13 provide T-Mobile with a patch to LTE if the merger is
14 not -- (inaudible)

15 MR. EWENS: I'm not at liberty to comment on
16 what spectrum is included in the breakup fee.

17 That's a confidential matter that needs to be

18 addressed outside this forum.

19 JUDGE HECHT: Any other comments?

20 MR. HANBURY: In addition to the spectrum that
21 T-Mobile would receive I think there's also about,
22 according to press reports, it's a billion dollars worth
23 of spectrum, 2 billion dollars worth of roaming and 3
24 billion dollars worth of cash.

25 So, if you're interested in having two mobile

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1 of this strong competitors, the best thing to do in our
2 perspective would be to deny the transaction.

3 There's 6 billion good reasons to do so.

4 JUDGE HECHT: Any other comments?

5 MR. HOGG: Well, and deny both customer bases
6 the efficiencies that are created as a result of this
7 transaction and serve as improvements that would result
8 from bringing these two companies together, yes.

9 MR. HANBURY: Well, and I guess --

10 Well, I know the cross-talk is over, but, you
11 know, replacing a customer service leader with a
12 customer service lagger is not going to enhance the
13 customer experience, and I think that some of the
14 efficiencies that you're about -- well, I don't deny for
15 a minute there are efficiencies from acquisitions.

16 I mean, AT&T has made 15 acquisitions in 15
17 years. There are efficiencies, but they're not nearly
18 as great as I think AT&T claims, and the burden is on

19 AT&T to prove it.

20 MR. HOGG: And I think we have.

21 JUDGE HECHT: Moving to the next question,
22 this question is from Dennis, I believe last name is
23 Lopes, of Capital Strategies, a consultant of Sprint,
24 and the question is how much unused spectrum does AT&T
25 have in California?

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1 MR. HANBURY: That's a great question.

2 Nationwide it's a little a bit more than 40
3 megahertz, and in California it's more than 60
4 megahertz. Oh. I'm sorry.

5 That was for you. Sorry.

6 JUDGE HECHT: Let me clarify that it was from
7 a consultant of Sprint and it was directed to --

8 MR. HANBURY: I heard "Sprint," you know.

9 Sorry.

10 JUDGE HECHT: Though I welcome other
11 panelists' comments on related issues.

12 MR. HOGG: So now I can answer the question.

13 I can tell you right now that we're in the
14 process of deploying 20 megahertz of 700 spectrum in
15 many major markets in California.

16 They're not commercially available yet, but
17 they're in use and testing, and will soon become
18 commercially available.

19 So 20 megahertz of 700 initially is -- is in

20 the process of being deployed.

21 JUDGE HECHT: And would Sprint, or Cricket, or
22 T-Mobile like to add anything?

23 Mr. Merson, go ahead.

24 MR. MERSON: Again, I would just like to say
25 that we could certainly appreciate any little bit that

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1 AT&T would be using to deploy.

2 Our 10 -- our 20 megahertz in San Diego seems
3 fairly small relative to what AT&T has yet to the
4 deploy.

5 JUDGE HECHT: Thank you.

6 Any other comments on that?

7 All right. Then this question is from Helen
8 Mickiewicz in the CPUC Legal Division, and it is
9 specifically directed to Mr. Hogg, though after that
10 others may comment on it.

11 Her question is how are Tier 2 carriers going
12 to be able to compete with a combined AT&T/T-Mobile
13 provider for spectrum when the FCC makes it available
14 given that AT&T's greater size and commensurate ability
15 to generate capital by the spectrum, and is this really
16 a level playing field?

17 MR. HOGG: Well, I think that at the end of
18 the day the spectrum will become available on market,
19 and the market forces will determine who the winners of
20 that spectrum will be.

21 I think that certainly as Tier 2 players
22 continue to increase the density of their networks they
23 can continue to improve the efficiency, and I understand
24 that that's a strategy that you've already started
25 deploying and are continuing to employ to -- to get the

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1 most out of your spectrum, and, you know, at the end of
2 the day with a -- with the market the way it is
3 structured, we'll compete vigorously, and I'm sure
4 you'll compete vigorously for assets that will provide
5 services in the marketplace.

6 So I can't really say whether or not that
7 spectrum is going to disadvantage them as a level
8 playing field.

9 JUDGE HECHT: Mr. Merson, are you waiting to
10 comment?

11 MR. MERSON: No.

12 JUDGE HECHT: All right. Anybody else?

13 No.

14 All right. Then I have a question from
15 Roxanne Scott also of the CPUC staff, and her question
16 is, what is Cricket doing now or what does it plan to do
17 to obtain more spectrum?

18 MR. MERSON: Very good question.

19 Part of the -- part of the issue right now for
20 us is that some of these spectrum auctions that we hear
21 about take two to three years once the auction concludes

22 to implement, especially as -- as we describe things
23 like lower -- AWS2, AWS3 that require entire ecosystems
24 to develop, because you have to build tip sets, you've
25 got to get OEMs behind it, and you've got to develop

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1 band plans to support.

2 And then to the extent that these spectrum are
3 purchased or accessed by the Tier 1s ecosystems develop
4 very quickly.

5 For entities like Cricket it becomes very
6 challenging to support -- to build that ecosystem
7 because of our relatively small size.

8 It's -- it's hard to develop an ecosystem when
9 the amount of devices you're purchasing every year are
10 in the single digit of millions versus competitors in
11 the hundreds of millions.

12 So I would say we welcome that. We think of
13 that as a great opportunity, but we're not sure that
14 that in the short term really solves our problem.

15 JUDGE HECHT: Are there any other comments
16 related to that question?

17 MR. EWENS: I just have one comment.

18 I would echo at least one aspect of the
19 comments from Cricket, which is that any spectrum that
20 is to become available from the FCC, first of all, the
21 time horizon under which that spectrum would come
22 available has receded, and, secondly, it takes many

23 years to operationalize that spectrum or to deploy it,
24 clearly deploy it, and to create the handsets, and to
25 get them out in to the marketplace.

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1 That's essentially specifically another reason
2 why we're pursuing this transaction today, because that
3 spectrum isn't available in the near term from the FCC,
4 and we all need to plan substantially in advance.

5 And, even if it were available, it would take
6 multiple years to deploy.

7 So another reason for this transaction really
8 is that it puts the spectrum to work quickly -- as
9 quickly as possible for the benefit of the consumers of
10 both -- of both companies.

11 JUDGE HECHT: Thank you.

12 Are there any other brief responses to that?

13 MR. HANBURY: I'll take a crack at it.

14 I think, you know, one way that carriers like
15 Cricket have historically accessed spectrum is through
16 eligibility criteria at the Commission, basically
17 reservations for smaller carriers, so that the -- SUC
18 can sort of balance the market or try to shape spectrum
19 holdings in a way that creates a more competitive
20 outcome.

21 Eligibility restrictions might, for instance,
22 prevent a carrier like AT&T or Verizon from
23 participating in a certain block, only smaller

24 capitalized can participate.

25 AT&T and Verizon, however, I have steadily

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1 opposed and consistently opposed any eligibility
2 restrictions on any spectrum, and I think that that's
3 going to create additional hurdles for fringe players
4 like Cricket, who individually and collectively occupy
5 just 3.6 percent of post-paid subscribers.

6 I mean, these are relatively inconsequential
7 players in the grand scheme of things.

8 I'm sorry.

9 But -- and most of them are prepaid, not
10 postpaid, and they have limited geographic footprints so
11 they depend on AT&T or Verizon for roaming.

12 They have weak brand names. They can't
13 advertise nationally. They don't have access to
14 handsets. They have challenges with roaming. Their
15 consumers tend to be lower income, less creditworthy,
16 younger, less mobile.

17 It's going to be a long, uphill fight, and
18 that's why this transaction in particular is so
19 important.

20 JUDGE HECHT: All right. Thank you.

21 We have two more questions from parties in the
22 audience and then we'll have a little bit of time for
23 the Commissioners to ask their own questions.

24 We have about 15 minutes left in this panel.

1 TURN, and the question states that AT&T launched the
2 iPhone in 2007 and press reports followed about growing
3 demands on AT&T's networks. Given AT&T's firsthand
4 experience with the growth of in-data demands driven by
5 Smartphones, why did Verizon beat AT&T to rolling out
6 LTE?

7 MR. HOGG: Again, I think the one piece that's
8 a different complexity for our deployment versus
9 Verizon's is that Verizon is deploying on a single 700
10 band of spectrum nationwide, and we had to develop
11 infrastructure and handsets that would be capable of
12 supporting both 700 and AWS spectrum.

13 And so that time that it takes to develop
14 infrastructure and handsets, as you've heard from the
15 other panelists, tip sets, infrastructure, antennas that
16 support multiple bands, are a big factor in the delay
17 and in deploying our LTE products versus Verizon's,
18 which is a single 700 band.

19 JUDGE HECHT: Do any other speakers have a
20 comment?

21 Yes, Mr. Merson?

22 MR. MERSON: I would tend to dispute that just
23 because the challenge in creating an ecosystem is around
24 creating the band class, in this case 700.

25 However, the AWS band class had already been

1 developed. We had launched AWS networks in 2009, and
2 just rebanding and adding a band, once it's already been
3 developed the way that it did, I would believe would
4 take less time than it would --

5 It could certainly be in the marketplace
6 today.

7 MR. HOGG: All I would say is for -- it does
8 take additional time to put two bands in.

9 I agree with you that the single AWS band was
10 available for LTE. A single 700 band was available for
11 LTE.

12 But putting both bands together in a single
13 handset was not commercially available.

14 JUDGE HECHT: All right. And with that, we
15 have our last question from a party in the audience.

16 That is from Paul Goodman of the Greenlining
17 Institute, and the question is will AT&T offer LTE
18 service at a price that value-conscious customers can
19 afford?

20 MR. HOGG: I really can't comment on the
21 pricing structure.

22 That will be rolled out with LTE.

23 JUDGE HECHT: Any other comments on that?

24 MR. HANBURY: If you look at AT&T's pricing
25 structure relative to that of other carriers, they do

1 tend to be a bit -- among the highest or the highest in
2 the industry.

3 If you -- as we've demonstrated in some of our
4 pleadings with the FCC, there's a fairly mechanical
5 application of data that the Department of Justice uses
6 call the GUPPI, the Gross Upward Pricing Pressure Index.

7 It's -- strictly a numbers based exercise, and
8 for T-Mobile subscribers, prices were likely to
9 increase, and I'm going by memory, from 19 percent to 29
10 percent, I believe, and for AT&T subscribers from 4.9
11 percent to 11.2 percent.

12 Anything above a 5 percent increase is
13 considered significant under this index.

14 So just going by traditional by-the-book
15 anti-trust analysis, I think it really does call in to
16 question the ability of subscribers to gain access to
17 this product and at what price they will do so.

18 MR. HOGG: All I can say is that's -- that's
19 what I would consider to be an outdated model, one that
20 we heard one of the panelists earlier say may not be
21 applicable given the environment that we're in, and
22 certainly until we merge the two organizations together
23 and develop the pricing plans, I think it's probably
24 best not to speculate on what might happen to pricing in
25 the future.

1 JUDGE HECHT: Any follow-up on that very
2 briefly?

3 MR. HANBURY: No.

4 JUDGE HECHT: All right. With that, we have
5 about 10 minutes left in this panel, and we're going to
6 use that for questions from Commissioners Sandoval and
7 Florio.

8 COMMISSIONER SANDOVAL: Well, thank you all
9 very much.

10 I've enjoyed this discussion and your
11 cross-talk.

12 So I have a few questions.

13 So one of the questions is about some of
14 T-Mobile's towers.

15 So, if I understood correctly, another part of
16 the argument for the merger synergies is that AT&T
17 intends to take advantage of some of T-Mobile's towers
18 to create more complementary coverage and to fill in,
19 but that there -- there was also suggestion that there
20 are some towers that perhaps you -- AT&T does not plan
21 to use.

22 Can you speak a little bit about what you plan
23 to do with those towers that AT&T does not plan to use
24 if there are any of T-Mobile's towers, you know, keeping
25 in mind, as you mentioned, that our citing requires

1 local approval, and it's a tremendous asset, and
2 wondering if that asset would be made available to
3 others as opposed to what I thought I heard something
4 about tower removal.

5 Perhaps I heard that wrong.

6 So could you just clarify that position?

7 MR. HOGG: Sure. I'm happy to.

8 First of all, about -- as a level setting
9 piece, about 90 percent of the towers that T-Mobile is
10 on today are leased by third parties, so they're owned
11 by third parties, and they're -- they have a location
12 that they've leased on -- on the tower.

13 So there are other carriers that are likely on
14 those towers as well.

15 If -- if we choose not to continue to keep one
16 of those sites, we'll take the equipment off the tower,
17 and that will now make that tower location available for
18 another entrant in the marketplace, maybe Light Square,
19 maybe Sprint, maybe Cricket, and they have now the
20 opportunity to lease that space on the tower.

21 So it actually frees up for the towers that we
22 don't choose to keep and go forward in the network
23 capacity for other wireless providers to locate on those
24 vacated locations.

25 COMMISSIONER SANDOVAL: And for that 10

1 percent where T-Mobile owns the towers, if you don't
2 need any of those towers, what would be the intention?

3 MR. HOGG: Well, typically what we've done in
4 past transactions is package them --

5 Typically there are other colocators on those
6 locations, and we package them and try to sell them to
7 other tower companies, like an American Tower, Crown
8 Castle, or others might be interested in buying those
9 assets and operating them as a third party tower.

10 COMMISSIONER SANDOVAL: So right now there's
11 not a plan for just -- just getting rid of towers --
12 taking down a tower?

13 MR. HOGG: No, no.

14 Typically what we -- we've always seemed to
15 find people that were interested in those locations.

16 Maybe a handful that we've actually fully
17 decommissioned, taken the steel down and returned the
18 site to its original condition, but it's a very rare
19 instance.

20 COMMISSIONER SANDOVAL: So you've addressed a
21 little about the issue of the build-out of AWS spectrum
22 and also 700 megahertz spectrum, so you were saying that
23 basically the plan is to have 80 percent of the
24 population covered by the end of 2013 with regard to --

25 Now, is that for both the 700 megahertz

1 spectrum that you have and AWS?

2 Can you speak a little bit more in detail
3 about that?

4 MR. HOGG: It's going to vary by
5 market-by-market, so we'll start with 700 and follow
6 with AWS.

7 In some markets we don't have any 700, so the
8 initial employment would be AWS.

9 So it's going to vary based on the spectrum
10 holdings and -- and the demand that's presented.

11 There will be many markets that will launch
12 this year that will follow on with a second deployment
13 and the AWS band within that same time period.

14 COMMISSIONER SANDOVAL: And can you speak
15 about the 700 megahertz deployment plan in California.

16 MR. HOGG: Not in a public forum.

17 COMMISSIONER SANDOVAL: Okay. We'll follow up
18 with you.

19 MR. HOGG: Please.

20 COMMISSIONER SANDOVAL: The same for AWS?

21 MR. HOGG: Same.

22 COMMISSIONER SANDOVAL: Okay. So one of the
23 questions you were asking is about -- that you mentioned
24 this -- this plan to cover 80 percent of the population
25 by the end of 2013, so then you were saying deploying to

1 the last 17 percent.

2 Somehow I missed 3 percent on there, but you
3 can fill me in on that.

4 So --

5 But you're saying that you might not build it
6 out to that last 17, 20 percent, whatever, the LTE based
7 on population and sparsity.

8 So one of the arguments that T-Mobile and AT&T
9 have put for this merger is that it would increase your
10 rural service.

11 MR. HOGG: Uh-huh.

12 COMMISSIONER SANDOVAL: So how do these two
13 things square?

14 So it in --

15 I mean, first of all, when you look at the
16 footprint between T-Mobile and AT&T there's not a lot of
17 footprint increment; right?

18 Is that -- is that correct?

19 Does everybody agree on that?

20 MR. HOGG: Yeah, that's fairly accurate. Yes.

21 COMMISSIONER SANDOVAL: So you're not actually
22 adding a lot of footprint, rural, suburban otherwise,
23 you're both more or less in the same geographic market;
24 is that correct?

25 MR. HOGG: That's correct.

1 COMMISSIONER SANDOVAL: So for this decision
2 where you're saying that you don't plan to deploy LTE to
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4 MR. EWENS: One point of clarification.

5 The 1 percent change in coverage, that is a 2G
6 figure, so the -- Bill's response is really about how
7 much of that combined 2G footprint is then built out to
8 LTE.

9 COMMISSIONER SANDOVAL: Okay. So I just want
10 to make sure I understand the implications of what you
11 just said.

12 So -- so you're making an argument again about
13 the efficiencies.

14 So -- so if you could just give me what's --
15 what's the bottom line?

16 So is the bottom line that -- that today that
17 if this --

18 The thought, if the merger were approved,
19 would you build out LTE to rural areas in California or
20 not, or does that depend on the rural area?

21 MR. HOGG: Actually, without the transaction
22 we have committed to 80 percent by 2013. With the
23 transaction we're committing within the six years after
24 close that we will cover 90 percent -- 97 percent of the
25 U.S. population including California.

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1 So that wherever we have a footprint today in
2 California would receive LTE as a result of this
3 transaction -- rural areas, small cities, large towns.

4 JUDGE HECHT: We have about two minutes left
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5 for this panel.

6 Do we have a last question or two?

7 COMMISSIONER SANDOVAL: I do.

8 JUDGE HECHT: Go ahead.

9 COMMISSIONER SANDOVAL: So we've talked a lot
10 about the efficiency arguments.

11 I think we had some good cross-talk on the
12 efficiency arguments.

13 One thing that I think we haven't talked about
14 much is the question of the -- the total amount of
15 spectrum control that would result if this merger were
16 approved.

17 So as was mentioned, currently AT&T, looking
18 at AT&T's filings operates in some major California
19 markets with approximately 65 megahertz of spectrum.

20 So when you look at AT&T's filing with the FCC
21 post-merger in the Bay Area I believe they would end up
22 with around 181 megahertz, give or take a megahertz,
23 161, as my memory serves me, in the Los Angeles area,
24 201 in the Kern area.

25 So the FCC employs what's called a spectrum

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1 screen or one of the questions that they look at is does
2 the transaction result in control of over one-third of
3 the relevant spectrum.

4 And if you look at -- there's, of course, a
5 debate about what is the relevant spectrum.

6 As the previous panels mentioned, there's some
7 consensus as to greater value in spectrum that's below
8 one gigahertz.

9 You know, as I do the rough math on this, the
10 control that you would end up with is way over 50
11 percent in several of these markets in California.

12 So I would like to hear from all the parties
13 about their view of how should we view the post-merger
14 level of spectrum control if what you're talking about
15 is markets where one party would control over 50 percent
16 of the relevant spectrum?

17 JUDGE HECHT: And let's start with Mr. Hogg
18 and then go down the row.

19 MR. HOGG: So from a spectrum perspective, the
20 FCC will apply its -- its formula in terms of what they
21 view as an appropriate amount of spectrum to allocate to
22 any one carrier.

23 That -- that number -- is, you know, through
24 their formulaic view of what should be controlled.

25 I think that the key point is if you look at

1 -- let's take a broad view.

2 If you said that there's, you know, roughly
3 650 megahertz of spectrum that's suitable to mobile
4 broadband, you know, about 144 megahertz of that or
5 about 22 percent would be in control of AT&T.

6 The second highest holder of spectrum would be
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7 Sprint Clear Wire at 14.8, almost 15 percent, and then
8 closely followed by Verizon with 88 megahertz of
9 spectrum or roughly almost 15 percent.

10 COMMISSIONER SANDOVAL: If I could just
11 interrupt real quick, at some point we have to clarify
12 650 megahertz of spectrum of mobile broadband.

13 So, you know, again, one of the things we have
14 to distinguish is there's some spectrum which is
15 suitable for broadband and data but not well suited to
16 voice, so it gets back to this market definition issue
17 that becomes critical to calculating concentration.

18 MR. HOGG: So what I included in that are
19 typically 700 AWS, the 1900, the 850, and the BRS, ERB,
20 which is basically the -- or EBR -- the spectrum that's
21 in use today for -- for -- and allocated to mobile
22 services.

23 COMMISSIONER SANDOVAL: But BRS is not used
24 for voice today; is that correct?

25 MR. HOGG: But it will be in the future when

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1 you roll out voice services; right?

2 Because when you roam out voice, VOIP, voice
3 over IP.

4 JUDGE HECHT: Now I want to move down the row
5 to Mr. Merson.

6 MR. MERSON: Thank you for the question.

7 I think you touched on a main point of the
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8 issue here, which is market concentration.

9 I think we heard two things. One is that
10 spectrum allows for additional customers, and without
11 that companies cannot compete, and, most importantly,
12 even if you have spectrum, you don't have the speed
13 capable for those consumers. That -- that is limiting
14 as well.

15 So I could cell split ad nauseam with 20
16 megahertz of spectrum, but I would not be able to offer
17 one gigabit of speed like my esteemed colleague will be
18 able to do with this proposed merger.

19 JUDGE HECHT: Thank you.

20 And go ahead, Mr. Hanbury.

21 MR. HANBURY: All right. I think by our
22 calculation premerger AT&T will have access to 99
23 megahertz of spectrum excluding Qualcomm, which they're
24 in the process of acquiring.

25 If you include Qualcomm spectrum, and these

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1 are nationwide averages, it's 107 megahertz of spectrum.

2 That's nearly double Verizon's spectrum
3 position. It's more than triple Sprint's spectrum
4 position.

5 And, again, they have more, in some cases much
6 more in certain markets.

7 And I think it's an important point -- two
8 important points to remember and -- and the Commissioner

9 addressed this issue.

10 There are qualitative differences that are
11 very, very important here between what's available below
12 one gigahertz and what's available above one gigahertz.

13 And just to give you an example, in 2008 AT&T
14 bought 700 megahertz spectrum for an average of \$3.15
15 per megahertz pop, the standard unit of measure in the
16 industry.

17 The same year Sprint sold our 2.5 gigahertz
18 spectrum in Clear Wire for an average of 24 cents per
19 megahertz.

20 That's a 13 times price differential.

21 And the reason it's priced differently, is
22 there's a different intrinsic value, so I think that's
23 -- you know, an important point.

24 And the second important point is in those
25 markets where the applicants would hold, you know, in

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1 excess of 140, 160 megahertz of spectrum there's no set
2 of divestitures, spectrum divestitures, that's going to
3 give Cricket access to the national advertising rate
4 card.

5 There's no set of spectrum divestitures that's
6 going to give them a nationwide brand.

7 There's no set of spectrum divestitures that's
8 going to transform their prepaid subs in to post-paid
9 subs, and that's really the critical issue, and really

10 brings us all back to competition, not spectrum being
11 the main issue of this transaction.

12 JUDGE HECHT: And Mr. Ewens.

13 MR. EWENS: So I had a few comments based on
14 the comments of my fellow panelists.

15 So, first of all, I think with regard to
16 spectrum I think it's also important to look at spectrum
17 with regard altered load.

18 The aggregate amount of spectrum is
19 interesting, but what matters for the services that you
20 can provide your customers is do you have the spectrum
21 in relation to your subscriber count and the data loads.

22 And on those measures many companies will be
23 more spectrum rich than the combined entity of AT&T and
24 T-Mobile, will have more spectrum head room to serve
25 customers.

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1 So that's point number one.

2 Point number two is, I think, if you look up
3 in the capital markets record, the CEO of Sprint, Dan
4 Hesse, has been consistent in his position that Sprint
5 has the most spectrum and the best spectrum position of
6 any competitor.

7 So I think Sprint's -- Sprint's complaints
8 otherwise, I think, fly in the face of what they've said
9 in the capital markets.

10 Thirdly, I think it's presumptuous to sort of

11 deny, you know, Cricket and Metro have been very
12 successful competitors.

13 Whether they have access to a national
14 branding or not, really those are decisions that they
15 want to make based on their market strategy.

16 And I think that the distinction between
17 prepaid and postpaid is increasingly a false
18 distinction.

19 Metro will tell you that the majority of their
20 new subscribers are actually coming from postpaid.

21 So to try to draw these bright lines in the
22 sand between the prepaid market and the postpaid market,
23 I think that's yesterday.

24 I think bring these hybrid products out. I
25 think those markets are moving and merging, and so I

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1 think we need to look at the market broadly.

2 And then fourth and lastly, I think maybe all
3 the panelists can agree that, regardless, the FCC does
4 need to make more spectrum available for the industry as
5 a whole, so I think this transaction is an important
6 step forward in serving our customers better, but that
7 doesn't obviate the need for the FCC to make more
8 spectrum available for all parties.

9 JUDGE HECHT: All right. So we're about out
10 of time for this panel.

11 Do we have a very last comment from one of the
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12 Commissioners or shall we go?

13 Go ahead, Commissioner Florio.

14 COMMISSIONER FLORIO: I've heard numerous times
15 this AT&T commitment to 97 percent coverages.

16 Is there any consequence attached to that?

17 I mean, is it just a promise that may or may
18 not be kept, or is -- is there something binding about
19 it?

20 MR. HOGG: Well, I think that our history and
21 track record has been that when we make a commitment
22 publicly we deliver on it, and -- and we've shown that
23 time and time again in terms of service improvements and
24 in terms of commitment.

25 So certainly I wouldn't be sitting before this

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1 Commissioner -- both of you, and making that commitment
2 without the full backing of the company and a real
3 commitment to go deliver on that promise.

4 JUDGE HECHT: Yes, Mr. Hanbury?

5 MR. HANBURY: We'd be glad to submit to the
6 record -- for the record a number of conditions that
7 AT&T has made in past transactions that, in fact,
8 weren't kept.

9 JUDGE HECHT: Mr. Hogg, do you have a brief
10 response for that and then we'll close this panel?

11 MR. HOGG: No, I don't.

12 JUDGE HECHT: All right. Commissioner
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13 Sandoval, Commissioner Florio?

14 All right. We will take a break and we will
15 come back in about seven minutes. That's at 2:30.

16 We'll be off the record.

17 (Session adjourned at 2:25 p.m.)

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1 (Panel analyzing the effect of the merger
2 proposal on roaming and competition.

3 Panelists: WILLIAM W. HAGUE, AT&T; TIM
4 OSTROWSKI, Cricket; MIKE AYERS, Sprint; PETER EWENS,
5 T-Mobile.)

6 ---o0o---

7 JUDGE HECHT: All right. We are going to get
8 started now. We are going to start our third panel.
9 We'll be back on the record.

10 Now we're back on the record with our third
11 panel. On this panel, we have William Hague of AT&T,
12 Tim Ostrowski of Cricket, Mike Ayers of Sprint and Peter
13 Ewens of T-Mobile.

14 The format will be exactly the same as the
15 last panel. Each speaker will get up to seven minutes,
16 and then there will be about 15 minutes for
17 cross-discussion. And then we will move on to
18 questions, first from the audience and then from our
19 Commissioners.

20 I do want to note before we begin the last
21 hour today or approximately an hour is going to be open
22 for public comment, and we will have a wireless
23 microphone in the front, and we have a sign-in sheet at
24 the table in the front over here.

25 So if you would like to speak for two minutes

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1 in that last hour, you may do so if you sign up. It
2 will be approximately two minutes per person, and we
3 expect to have a total of 45 minutes to an hour to do
4 that.

5 All right. Now we will begin with Mr. Hague.

6 MR. HAGUE: Judge, I thank you very much.

7 My name is Bill Hague. I'm the executive vice
8 president for roaming and international. There's a
9 couple other things I do, but for purposes of this,
10 that's good enough. And I have about six or seven
11 points I would like to make with respect to the merger
12 here today regarding roaming since that was the issue
13 brought up.

14 First, I would like to point out this merger

15 should have no effect on roaming or GSM roamers in
16 California. There are no independent GSM companies that
17 we roam on or that roam on us or that exist here in
18 California subsequent to this merger.

19 Second, AT&T -- there's approximately 45
20 members of the GSM standard family carriers in the
21 United States. And AT&T has voice and data roaming
22 agreements with every one of them. We enter into a
23 roaming agreement with anyone who comes and approaches
24 us as long as we can reach a satisfactory agreement on
25 rates, and we have with every carrier in the country.

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1 We also have well over 600 agreements with
2 carriers around the world, which is about all of the
3 carriers in the world. It's not 100 percent because new
4 ones crop up every day.

5 Third, I just would like to point out there's
6 kind of differing family standards here. We don't roam
7 with the CDMA carriers like Leap or Sprint or Verizon.
8 Our standards don't really talk to each other. There
9 are a few devices that let it happen, but those carriers
10 use those for going overseas. GSM is a worldwide
11 standard, GSM and its family.

12 Fourth, and this is probably the most
13 important point I want to make, just has to do with
14 roaming costs, both wholesale and retail have been
15 dropping every year pretty much since wireless began.

16 If you take just data for AT&T, rates for a megabyte of
17 data have dropped in the last five or six years from
18 over \$10 a megabyte to less than a dollar today.

19 In the United States, there's almost no retail
20 charges for roaming anymore. If you go back in the '80s
21 and '90s, there were significant charges, often a \$3
22 setup for a call and 1.50 a minute. Anyway, that's just
23 all included today.

24 AT&T has always been a driver in bringing the
25 wholesale costs of roaming down. We are always

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1 supportive of bringing it down, both domestically and
2 internationally, and we're incented to do so. The way
3 roaming works, it's really a balance of trade game. In
4 where you sit -- it's one of those where you sit depends
5 on where you stand kind of things.

6 If I'm purchasing 200 megabytes from you and
7 you're purchasing 100 megabytes from me, you tend to
8 like higher costs, and I like lower costs. If it's \$2 a
9 megabyte, you would make \$400 and pay me 200 for a \$200
10 profit. If it's \$1 a megabyte, you would make 200 and
11 pay me 100 for a \$100 profit. Of course I'm on the
12 other side.

13 Well, AT&T across the United States with these
14 45 carriers, all of whom we have a roaming agreement
15 with, overall, we're a net purchaser. So we like to see
16 the market rate come down. We also depend heavily on

17 roaming for our national footprint.

18 We have a very large network that covers most
19 of the country that we've built out, but there are parts
20 of the country we fill in with our roaming footprint:
21 Nebraska, Eastern Oregon, Western Wyoming, Northern
22 Maine, a lot of parts like that. So we rely on and need
23 these carriers.

24 So as a net purchaser, we always want to see
25 the rates come down. This is true even with individual

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1 carriers where we're -- where we're on the other side,
2 where we're a net seller. Like we are a net seller with
3 T-Mobile, for example. But we still like to see the
4 rates down because across the market, we want the rates
5 to drop. That benefits us. So we will continue to
6 lower roaming rate.

7 Fifth, this merger increases that incentive.
8 When T-Mobile and AT&T merge, T-Mobile, as I said
9 earlier, was a net seller with us. So we lose well over
10 a hundred million dollars in net dollars coming our way
11 out the whole overall equation, and pick up 30 million
12 customers who will be roaming.

13 As you noted earlier, Commissioner Sandoval,
14 T-Mobile's map and our map, when you lay it on top
15 doesn't really add anything geographically. Does from a
16 spectrum perspective, as my colleague Bill Hogue
17 described, but not geographically. So they roamed on

18 all the same carriers we do, and we roam on all of those
19 carriers. And we just lost our biggest partner that was
20 a net seller to us. Our incentive has even increased.

21 I would like to take a moment with you six to
22 just qualify or explain. There was comments, and both
23 Sprint and Leap referred to the FCC saying we don't --
24 we have declined to roam with carriers in the 3G market,
25 and the FCC order that. That's not exactly correct.

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1 Basically, all those 45 carriers I was just
2 referencing, if you go back to last summer, the only one
3 that had a 3G network which our subscribers could use
4 was us. T-Mobile and Cincinnati Bell had a 3G network,
5 but our customers couldn't go on it. It's in a
6 different band. And we were happy to enter into roaming
7 agreements with anyone, but no one had a 3G network.

8 We did offer to both T-Mobile and some of the
9 other carriers 3G roaming at our contracted 2G rates
10 that existed then, and they want lower rates. Like I
11 said, it's that same debate that's out there, and we're
12 in that debate discussion with both of them. It's just
13 a rate question; it's not roaming with them.

14 After the order came out, the order did say we
15 want you to enter into 3G agreements or 4G even before
16 somebody builds a network. So since then, we've entered
17 into 15, and we'll keep going.

18 The last point I want to make is we're all

19 going to eventually -- Sprint hasn't said so yet, but I
20 assume they'll get there, the LTE standard, which is the
21 fourth generation standard which Bill talked about. We
22 will enter into 4G roaming agreements. We're in
23 discussions with a number of carriers right now.

24 There's a lot of questions technically about
25 how you do it. I did this little chart just to outline

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1 things. Of course, it will be a lot more complicated
2 than that earlier. There's different bands. Some bands
3 won't roam with each other.

4 That was true with GSM in the early days, and
5 we solved that over time. We're going to that LTE,
6 which will bring lots more roaming partners. So Metro
7 and Sprint -- I shouldn't say Sprint, but Metro, Leap,
8 Verizon, AT&T. Carriers that couldn't roam on each
9 other before will be able to roam on each other. At the
10 end of the day, we're incented to keep prices down.
11 Historically we've driven prices down year over year,
12 and we'll continue to do. Thank you.

13 JUDGE HECHT: Thank you very much. We will
14 continue with the other respondent in this
15 investigation, T-Mobile. And that will be Mr. Ewens.

16 MR. EWENS: Thank you.

17 Good afternoon. As I mentioned in my prior
18 introduction, I'm Peter Ewens, executive vice president
19 and chief strategy officer for T-Mobile USA. Among

20 other duties, I manage the company's roaming business.

21 I thank the Commission for giving me an
22 opportunity to appear today to answer questions about
23 roaming.

24 So first of all, I would like to reiterate
25 that this acquisition will have no impact on the roaming

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1 market in California for three reasons: First of all,
2 the Federal Communications Commission recently adopted a
3 regulatory regime to receive roaming. These new roaming
4 rules address competitive concerns fully and
5 effectively.

6 T-Mobile USA supported the adoptions of these
7 rules, and is in fact joining the FCC in defending them
8 in court. The rules require all wireless broadband
9 providers to negotiate roaming agreements in good faith
10 and to offer rates and terms that are commercially
11 reasonable. If these obligations are not adhered to, an
12 aggrieved carrier may file a complaint with the FCC, and
13 the rates and terms offered will be reviewed by the FCC
14 under a totality of the circumstances standard, which
15 considers a wide range of factors in deciding what is
16 commercially reasonable.

17 Second, there are no independent GSM operators
18 in California. Therefore, there are no GSM carriers
19 that would seek GSM roaming from the combined firm.
20 Moreover, Sprint and a number of the opponents of the

21 acquisition do not and cannot roam on T-Mobile USA's
22 network.

23 As GSM-based carriers, AT&T and T-Mobile USA
24 cannot and as an engineering matter -- as an engineering
25 matter cannot provide roaming to CDMA-based providers

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1 such as Verizon, Sprint, Leap, Cricket, Metro, U.S.
2 Cellular and are under no regulatory obligation to do
3 so.

4 So accordingly, we believe Sprint and the
5 other CDMA-based providers actually have no real
6 interest in AT&T and T-Mobile's roaming policies.
7 Finally, most wireless carriers are converging on LTE as
8 the common standard for future mobile broadband
9 services. Over time, this transition will increase the
10 number of roaming options available to competitors of
11 the combined firm. And as discussed on the prior panel
12 in spectrum, absent this acquisition, T-Mobile USA has
13 no clear path to LTE.

14 As a result, the company -- the company has no
15 clear path to the provision of LTE-based roaming
16 services. The proposed transaction in T-Mobile USA's
17 departure from the market will have no impact on this
18 increasing competitive roaming alternatives made
19 possible by the transition to the LTE.

20 In conclusion, we do not see how this
21 transaction will impact roaming and competition in

22 California at all.

23 JUDGE HECHT: Thank you very much.

24 Next we will hear from Mr. Ostrowski.

25 MR. OSTROWSKI: Thank you, Judge.

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1 Thank you for inviting Cricket to testify
2 about AT&T's proposed acquisition of T-Mobile and in
3 particular, the impact of the proposed acquisition and
4 roaming negotiations.

5 My name is Tim Ostrowski. I am vice president
6 of business development for Cricket Communications. In
7 my capacity at Cricket, I have been and continue to be
8 directly involved in negotiating Cricket roaming
9 agreements.

10 Roaming is critically important for wireless
11 carriers for their subscribers. Consumers have come to
12 demand and increasingly rely on the ability to use their
13 wireless voice and data services across geographic
14 regions wherever they travel. Roaming also provides
15 consumer security by enabling critical public safety
16 benefits by ensuring access to emergency services
17 wherever they are located.

18 Roaming also facilitates competition. As the
19 FCC has recognized, given consumer expectations for
20 nationwide coverage, roaming is essential to preserving
21 and ensuring competition. Customers expect it.

22 Facility-based incumbents like AT&T enjoy a

23 head-start advantage. Roaming thus enables newer
24 entrants like Cricket the ability to offer a more robust
25 coverage demanded by customers -- by consumers while

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1 deploying their own networks. In doing so, become
2 vibrant competitors to the benefit of all consumers.

3 From 2005 to 2009, Cricket has spent from 29
4 percent to 60 percent of its revenue in expanding its
5 network. We have grown from 25 million covered
6 population to 96 million covered population in that time
7 period. And the industry, in the meantime, has been
8 averaging anywhere from 11 to 18 percent during that
9 time period. So we have been increasing but we need to
10 roaming to continue to expand.

11 With the rapid adoption of Smartphones and
12 other data-centric wireless devices, consumers now
13 expect that in addition to utilizing voice services,
14 they will be able to send messages, e-mails, access the
15 internet and enjoy all the other benefits of data. Data
16 roaming agreements are what makes this possible.

17 Cricket primarily depends on nationwide
18 providers to -- nationwide carriers to provide its
19 subscribers seamless nationwide coverage through roaming
20 agreements. In California, for example, Cricket has
21 spectrum license and commercial markets in the Central
22 Valley and San Diego. Thus we must be able to secure
23 roaming agreements to secure places like San Francisco

24 or Los Angeles or other parts of the state.

25 Historically, all carriers offer each other

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1 reciprocal voice roaming as a matter of course because
2 the industry was very competitive, and all carriers had
3 vast filling coverages that they needed to fill. In
4 fact, Cricket has over 35 voice-roaming agreements with
5 other carriers.

6 In today's consolidated marketplace, however,
7 it is no longer feasible for Cricket to achieve
8 nationwide coverage by cobbling together piecemeal data
9 agreements with numerous small and mid-sized carriers
10 because many of these carriers, in some instances, have
11 been acquired, and in other cases, they don't have the
12 capital because it's a very capital intensive thing to
13 move into 4G technology.

14 Just last week, the FCC issued its annual
15 report on wireless industry competition and for the
16 second year running, refused to find the industry
17 effectively competitive. Today, only the nationwide
18 carriers can provide the coverage that Cricket customers
19 expect.

20 Cricket does not have roaming arrangements
21 with AT&T or T-Mobile as explained already because of
22 the difference in technology. As we move towards LTE,
23 we will be able to use them as part of our roaming
24 partners.

25 As the industry rapidly moves to this new

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1 standard, Cricket must be able to obtain LTE roaming
2 agreements on reasonable terms and conditions in order
3 to provide its consumers the seamless nationwide
4 coverage they expect in this latest technology.

5 Of all the nationwide carriers, AT&T
6 historically has been one of the most reluctant to enter
7 into data roaming agreements. The FCC recently found
8 that AT&T has largely refused to negotiate domestic 3G
9 roaming agreements and found that, in fact, AT&T had not
10 entered into a single 3G roaming agreement until March
11 of this year.

12 The FCC also found that AT&T was unlikely to
13 be willing to offer roaming arrangements for the next
14 generation of network LTE at any time in the near
15 future. This is per the FCC. Our concern is that if
16 AT&T grows larger, it will have less incentive to deal
17 with small carriers like Cricket.

18 AT&T will need roaming only in very targeted
19 instances as it grows larger and gain through this
20 transaction an even greater ability to charge higher
21 roaming rates or impose conditions or simply withhold
22 roaming all together. In fact, ironically, because the
23 most vocal major carrier who has struggled with AT&T's
24 recalcitrance on roaming issues is T-Mobile.

25 Last year, in November 2010, T-Mobile

1 complained to the FCC that it had not been able to
2 achieve a 3G roaming agreement with AT&T despite AT&T's
3 apparent willingness to provide 3G roaming to foreign
4 carriers. When AT&T continued to stonewall, T-Mobile
5 argued that while roaming has historically been
6 competitive and reciprocal, for example, there was
7 multiple potential roaming partners and mutual need for
8 roaming, AT&T's refusal to negotiate suggests that
9 roaming has increasingly become a monopoly service
10 provided on a unilateral basis.

11 T-Mobile attributed AT&T's intransigence as
12 being a direct result of the dominant position it now
13 holds in the roaming place -- marketplace. If T-Mobile
14 has been unable to secure roaming agreements with AT&T,
15 it is clear that smaller carriers like Cricket will face
16 even greater challenges.

17 AT&T has already -- has already shown that
18 they've had difficulty getting roaming agreements in
19 place, and with this transaction, its leverage would
20 increase significantly. Each individual roaming
21 negotiation, AT&T would be dramatically larger than the
22 carrier across the table, and it will have power to
23 withhold agreements or allow them with high conditions.

24 I would also underscore that the wireless
25 industry is moving to the new LTE technology standard at

1 a time when the industry has also been moving toward a
2 duopoly. Over the past several years, Verizon and AT&T
3 have grown dramatically larger; they have more spectrum,
4 more subscribers and more cash flow than other carriers.

5 This transaction threatens to make AT&T
6 substantially bigger. Our concern is that the two super
7 carriers will use their advantage during this period of
8 transition and squeeze out smaller rivals and
9 withholding or charging high prices for roaming is key
10 weapon in their arsenal to weaken competitive carriers
11 like Cricket. We will need them far more than they will
12 need us. That means consumers may ultimately pay the
13 price.

14 Finally, I know the FCC recently implemented
15 some rules regarding data roaming but those rules do not
16 go nearly far enough. As an initial matter, Verizon is
17 seeking to overturn these rules in federal court, so it
18 remains to be seen what will happen. More importantly,
19 all that the rules require is that carriers have to
20 negotiate and offer commercially reasonable terms and
21 conditions.

22 What is commercially reasonable? It has not
23 been tested. If the industry becomes a duopoly, then
24 AT&T and Verizon will dictate what is commercially
25 reasonable. Reasonable terms set by duopolies are very

1 different than reasonable terms in a competitive
2 environment.

3 Ultimately, the real losers here will be the
4 consumers. If smaller carriers can't get roaming
5 agreements, then their subscribers will not be able to
6 use those devices that they depend on when they roam
7 around the country.

8 JUDGE HECHT: Your time is up. If you could
9 wrap up in about a sentence.

10 MR. HAGUE: Okay. Our comments are based on
11 what other customers experiences. We do not have direct
12 experience yet. We now have the opportunity as AT&T
13 moves towards LTE, and we will see how those things --
14 we have an opportunity to do that and being a
15 facilities-based carrier, we have a pretty good idea
16 what we -- what we can see as commercially reasonable
17 rates. It remains to be seen how this all works out.

18 Our concerns are based on what we've seen so
19 far in the public record.

20 JUDGE HECHT: Thank you. Now we will hear
21 from Mr. Ayers.

22 MR. AYERS: Good afternoon. I'm Mike Ayers.
23 I'm the director of the roaming services at Sprint. Our
24 group has responsibility for managing and negotiating
25 all the domestic and international roaming agreements.

1 We also make sure people get paid and people
2 pay us, and we also -- which we like. And then we also
3 write the software to help the device determine what
4 network we want it to acquire.

5 I think the panel did a pretty good job
6 already of kind of defining what roaming is. The
7 additional -- I was going to make a comment on Bill's
8 that I think today a lot of consumers don't think about
9 roaming anymore because in a lot of the plans, it's
10 either included or it's included in a bucket so it's not
11 something you're always kind of racking up. They just
12 want to make sure they can make a call. To that point,
13 it's important to them.

14 And as Tim mentioned, it's still highly
15 important to the carriers, particularly carriers who
16 aren't AT&T or Verizon who don't have the size of the
17 network. Even those guys, as Bill mentioned, still need
18 some help.

19 One thing to not forget is even though the
20 consumer doesn't care because it doesn't change what
21 comes out of their wallet, their carriers do. Even
22 though rates have gone down dramatically, as Bill
23 mentioned, are still very expensive.

24 If you're taking your kids on vacation this
25 summer and you go off the beaten path and you're in a

1 roaming environment and you're tired of listening to
2 them whine, you say, "Just download 'Despicable Me' to
3 take up some time," that right there is going to cost a
4 carrier, like us anyway, several hundred dollars for
5 that customer to download it.

6 We eat a several hundred dollar expense, and
7 the customer doesn't incur that, which puts pressure
8 then on carriers of how do you recover that. You either
9 absorb the costs and then you have got to cut elsewhere
10 or you try and pass it on to your consumers. Even
11 though there are no independent GSM providers in
12 California, as was mentioned, there are still customers
13 of other GSM providers that do come to California and
14 will have that experience or not be able to roam if the
15 rates go too high.

16 The one thing I wanted to mention a little bit
17 more on the back-and-forth of roaming is from my
18 experience, we tend to get rates we like and one of two
19 things is occurring: Either one, there's overlap of
20 coverage so you have one carrier bidding against
21 another. Or two, each party has something they want.

22 It may not always be an equal balance of
23 traffic, but it may be that a rural provider really
24 wants to provide coverage in a metropolitan city down
25 the street, and they're willing to negotiate a better

1 rate than they might if they didn't have that same
2 demand.

3 So I just want to reiterate that I think in
4 the environment of dual providers where you have
5 competition, that's when rates will continue to come
6 down. And when you end up with a single GSM provider
7 with the only national network, I think that's not going
8 to continue to put downward pressure on roaming rates.

9 JUDGE HECHT: Thank you very much.

10 Now we will take about between 10 and
11 15 minutes for the panel members to speak with one
12 another. And I will remind everybody to speak one at a
13 time and speak slowly and clearly.

14 So go ahead if you have questions for each
15 other.

16 MR. EWENS: I guess maybe I'll start it off.

17 I've heard concerns about roaming, but I
18 actually haven't heard anything how this merger will
19 affect the roaming, particularly for California
20 consumers for these two companies, for either Sprint or
21 Cricket since they don't roam on either AT&T or
22 T-Mobile, and there are no independent GSM carriers that
23 roam in California on AT&T or T-Mobile.

24 So I'm still -- I still don't understand why
25 this combination actually changes roaming dynamics in

1 California for these -- for these panelists.

2 MR. OSTROWSKI: I guess the only thing I would
3 say is as the world moves toward LTE, I would assume
4 even as two independents eventually, that would mean
5 both AT&T and T-Mobile would be separate LTE providers
6 at sometime in the future. So it would give us some
7 additional opportunity at some point down the road to
8 have additional competition in the marketplace.

9 So -- but, you know, this is also not only
10 California, but it's across the country that we're
11 talking about too in terms of opportunities that we
12 would have to roam with people.

13 MR. AYERS: The other connection I would make
14 is international. As was mentioned earlier, that GSM is
15 the biggest standard out there. For us to provide
16 service to our customers when they travel
17 internationally, let's say to Europe, we need to provide
18 them with dual handset, dual capabilities, and we have
19 agreements to use GSM service.

20 If you think it costs a lot of money to
21 download a movie in Montana, think about what it costs
22 in France. Therefore, it does cost the consumer out of
23 the pocket. As AT&T and T-Mobile, if they come together
24 and raise their rates for international folks coming in,
25 then those GSM providers may decide to raise their rates

1 as well, and as a result, we'll be forced to eat that as

2 well as forced to pass it on to our international
3 travelers, many of which would live in California.

4 JUDGE HECHT: I will remind people in the
5 audience that if you have questions for members of the
6 this panel to please write them down and get them to
7 either Roland or Lisa. We will continue with the
8 discussion.

9 Yes, Mr. Hague.

10 MR. HAGUE: Thank you. I would just like to
11 comment.

12 With respect to GSM, these -- the carriers,
13 Sprint and Leap and Verizon and others, really don't
14 care. They don't roam on us. But GSM prices have come
15 down consistently for 10 years, and the pressure remains
16 on us to want to lower rates. We are a netpayer. So
17 the marketplace asks us to continue to drive them down.

18 So you have to separate that where it's real
19 obvious prices are going to continue to drop from LTE,
20 and LTE we're moving into an area where that CDMA family
21 and that GSM family are going to start coming together
22 again, and we can all roam on each other.

23 Again, it takes time. I'm not denying any of
24 that. But you've got Leap and Metro and Verizon and
25 AT&T and Clearwire and Lightspeed, U.S. Cell, Cellular

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1 South. These are all pretty large players, and all have
2 said they're going LTE.

3 JUDGE HECHT: Any other questions or comments
4 from the panel? It doesn't look like it.

5 Then I will ask if we have any questions from
6 the audience. And it looks like we have one question
7 from April Mulqueen of the CPUC staff: Have Sprint or
8 Cricket filed any complaints with the FCC for dispute
9 resolution regarding roaming agreements? This is April
10 Mulqueen's question. If yes, has the FCC developed any
11 precedent; and if not, why not?

12 MR. OSTROWSKI: To answer your question, yes,
13 we have filed various comments to the FCC under
14 different roaming procedures. The FCC did -- we were a
15 major driver in terms of what came out of the FCC
16 recently in regards to data roaming and to provide
17 commercially reasonable terms, et cetera. That was one
18 we focused on for a long time.

19 We have also made a lot of progress in the
20 voice area. The FCC has not directly gone on that, but
21 through things we've done, we've been able to drive our
22 voice rates much lower and have worked on agreements
23 with a number of carriers on that.

24 But we have -- we have done -- the FCC has not
25 done as much as we would like. They have -- they have

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1 helped us in certain areas. But 4G is going to be a
2 particular challenge to us we think.

3 JUDGE HECHT: All right. Do we have any

4 comments on that from Sprint.

5 MR. AYERS: We've also filed plenty of
6 comments in support of the data roaming initiative. We
7 have not -- I thought the question really was have we
8 filed any complaints, and the answer is no.

9 JUDGE HECHT: That was the question. So if
10 that changes anything.

11 MR. OSTROWSKI: No. I don't think we
12 specifically filed any complaints.

13 JUDGE HECHT: All right. Thank you.

14 Any other comments on that question?

15 MR. HAGUE: Just on that topic, I'm quite
16 confident there's never been a complaint with respect to
17 roaming filed against AT&T at the FCC.

18 JUDGE HECHT: Thank you.

19 Anything else? All right. Then we have a
20 question from Paul Goodman of the Greenlining Institute.
21 And the question is: Many wireless devices, for
22 example, the Sony eReader, the Nook and some models of
23 the Kindle, use GSM technology for network connectivity.
24 Do device sellers, for example, Amazon enter into
25 roaming contracts with GSM providers? And if so, will a

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1 proposed merger leave AT&T with monopoly power in that
2 market?

3 MR. HAGUE: Could you read that question
4 again? It was kind of long.

5 JUDGE HECHT: This question is from Paul
6 Goodman of the Greenlining Institute. Many wireless
7 devices -- and the examples given are Sony eReader and
8 the Kindle and some others, use GSM technology for
9 network connectivity. Do device sellers, for example,
10 Amazon who sells the Kindle, enter into roaming
11 contracts with GSM providers?

12 And then if so, would the proposed merger
13 leave AT&T with monopoly power in that market?

14 MR. HAGUE: I'll just make some comments
15 around that. We're talking about the sort of
16 machine-to-machine or embedded mobile space. There are
17 devices out there that are CDMA devices in automobiles,
18 in hospital gear. There are GSM devices in the same
19 places.

20 Some of them are 3G; some of them are only 2G;
21 some of them use roaming; some of them use partnerships
22 with carriers in foreign countries. Verizon, for
23 example, combines with Vodafone to use CDMA here and GSM
24 overseas.

25 I think it's a pretty robust and pretty

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1 competitive market. We certainly compete in it. But we
2 by no means have a monopoly over it.

3 JUDGE HECHT: Yes, Mr. Ewens.

4 MR. EWENS: As a matter of fact, the Amazon
5 Kindle, for example, first came out on Sprint's CDMA

6 network. I think it now uses GSM. But the point is
7 that the choice, the device manufacturers have a choice
8 of which network to use and will continue to have a
9 choice of which network to use.

10 They decide what prices and network
11 characteristics make the most sense for the subscriber
12 base. So there's nothing in this merger that will
13 fundamentally change that. They still have the option
14 to go to CDMA carriers. If the price from the combined
15 AT&T, T-Mobile is too high, then they will choose other
16 alternatives.

17 There's no fundamental restriction why those
18 devices have to be GSM compatible. They can use either
19 technology. And in the long run, they'll use LTE, and
20 the device manufacturers may in fact embed the choice of
21 several wireless carriers within a single device.

22 JUDGE HECHT: Thank you.

23 Any comments on that from the representatives
24 of either Cricket or Sprint? No. Okay. We'll move on
25 to the next question.

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1 And the next question does not state who is
2 asking it, which is inconvenient. How many days before
3 its announced acquisition of T-Mobile does AT&T reach
4 its first 3G roaming agreements? And the second
5 question on the unmarked sheet from the unnamed person
6 states did AT&T support or oppose the FCC's data roaming

7 initiative?

8 MR. HAGUE: To Mr. or Ms. Unnamed,
9 domestically in the United States, I don't think we had
10 any 3G roaming agreements before the announcement. But
11 as I stated earlier, there weren't any carriers who had
12 3G networks except a couple who had networks which
13 weren't compatible for our subscribers.

14 We did oppose the data roaming order because
15 we believe the marketplace is working for data roaming.
16 Prices have been coming down since the inception and
17 continue to go down. There's no need to enter into an
18 order. So yes.

19 JUDGE HECHT: Thank you.

20 Any comments from any other panelists?

21 Mr. Ostrowski?

22 MR. OSTROWSKI: In regards to T-Mobile, up
23 until I think the last time was March of 2011 you were
24 in support of it. Is T-Mobile's position still the same
25 on data roaming, supporting the FCC role?

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1 MR. EWENS: Yes. We supported the FCC data
2 roaming order. Those comments that you mentioned
3 earlier were in the context of advocating for the data
4 roaming rule and the FCC regulations.

5 JUDGE HECHT: Any other related comments or
6 responses? All right. I'll move on to a question from
7 Chris Whittman of the Commission's legal staff. And

8 there are two questions here. First is how will roaming
9 work in an all LTE world? And the second, which I think
10 is a related question is: Will you still need different
11 handsets and chips for different frequency bands, and
12 either way, will that create advantages of scale for
13 larger carriers when they purchase handsets.

14 MR. OSTROWSKI: I'll take a shot at that.

15 I mean, when AWS, when we participated in a
16 large win in the AWS auction, we actually went and
17 worked with Qualcomm and developed a triband handset so
18 that we're able to roam on Verizon or Sprint or whoever.

19 We added AWS and PCS and Cellular. We have
20 been in discussions with Qualcomm, and they have
21 capability now of having five bands, three upper and two
22 lower on their handsets that they're working on. There
23 will be ability for multiband handsets that will be able
24 to go back and forth between different carriers if the
25 carriers choose to support that.

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1 MR. HAGUE: I think what happened in the --
2 first of all, it's way too earlier to say exactly how
3 LTE roaming is going to work. It is a new technology.
4 Mr. Ostrowski's team and my team are just engaged
5 recently. And one of things we agreed was there is a
6 lot of questions to work on and how to get networks to
7 talk to each other and what bands you're going on and so
8 forth.

9 I can say with certainty it will work. There
10 will be a lot of LTE roaming because that's what's
11 happened with every other technology we've seen. I
12 think the GSM family of technologies is a good example
13 of this in multiple bands. When it first came out, GSM
14 devices only worked at 900 megahertz. Then in Europe,
15 they launched some 1800 megahertz license, and devices
16 pretty soon worked on two bands.

17 Then the predecessor of T-Mobile, Voice Stream
18 and others launched in the United States at 1900. And
19 in the beginning, they had devices where you had to
20 attach something over the battery pack in the back to
21 work. And eventually, they got all three bands into the
22 phone. And then AT&T got into the game and added 850.

23 And now virtually every GSM device has all
24 four bands in it. It's going to go there. I can't tell
25 you exactly how the market will take it there, but I can

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1 tell you that it will.

2 JUDGE HECHT: Yes, go ahead.

3 MR. AYERS: I was just going to say some of
4 the stuff I've been reading about LTEs as well right
5 now, AT&T's probably not going to roll it out in the way
6 Verizon is or the way Cricket might, but to Bill's
7 point, it's going to take awhile for that to get all
8 ferreted out, and you can have a device that works well
9 that doesn't turn into the old cellphones that were, you

10 know, as big as your head. That's something we got to
11 figure out.

12 In the meantime, we got to watch what's going
13 to happen with the 3G roaming pricing as a result of the
14 merger and the GSM world.

15 JUDGE HECHT: Any other comments?

16 Mr. Ostrowski? No. All right.

17 Then I have another question from someone who
18 will not put their name down. So again, from an unnamed
19 person and organization, and it refers to the statement
20 made by Mr. Ewens earlier when Mr. Ewens asked about the
21 relevance of roaming to California.

22 And the question is would small GSM providers
23 and their customers be harmed along with tourists and
24 international business traveling if AT&T takes over
25 T-Mobile to create a GSM monopoly?

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1 MR. EWENS: I think I'll repeat a couple of
2 comments.

3 First of all, the combined entity will operate
4 under the same incentives for roaming and conduct of
5 roaming as they do now, and I'll have to defer to
6 Mr. Hague to explain exactly how AT&T will conduct
7 itself after -- after the acquisition.

8 But the issue of small GSM operators, there
9 aren't any in California. So I fail to see how it
10 directly applies to California, and certainly anyone

11 visiting California who's roaming, that will be based
12 on, you know, how roaming evolves after the acquisition.
13 And AT&T will be under the same incentives, presumably
14 to lower roaming rates as a net purchaser of roaming.
15 The combined entity will be net purchaser of roaming
16 after the acquisition as it is before the acquisition.

17 JUDGE HECHT: Yes, Mr. Hague.

18 MR. HAGUE: With respect to international,
19 nothing will change. Currently today with 3G roaming,
20 there really is only one carrier, AT&T, that
21 international carriers can roam on because T-Mobile has
22 been in this alternate band that there are very few
23 carriers in the world, very small one in Canada, maybe a
24 few others.

25 Internationally, just like domestically, we

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1 work to drive wholesale rates down. I can show you the
2 same graph that comes down, and we're going to continue
3 doing that. We're a little closer to a net even balance
4 internationally than domestically where it's a huge gap
5 where we're a net purchaser.

6 As far as the small carriers in the states, we
7 roam on them more than we do on us because we have more
8 subs and SmartPhones, and really, they're the ones with
9 the leverage in the negotiation. We're constantly
10 trying to drive the rates down.

11 JUDGE HECHT: Any other comments on that

12 question? It doesn't look like it.

13 Then there's one last question unless somebody
14 gets me another one. This question is from Tracy
15 Rosenberg of Media Alliance. The question is directed
16 at Mr. Hague: Can you address whether AT&T will commit
17 to providing a larger number of roaming agreements to
18 competitors in LTE when that's necessary?

19 MR. HAGUE: Would you read it again? I just
20 didn't follow the middle part.

21 JUDGE HECHT: I will.

22 Can you address whether AT&T will commit to
23 providing a larger number of roaming agreements to
24 competitors in the LTE?

25 MR. HAGUE: We absolutely intend to enter LTE

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1 agreements with everyone where we're compatible. We
2 will have rate negotiations. I am absolutely certain
3 that the pricing will be less than what we're paying
4 today in our 3G and 2G agreements.

5 JUDGE HECHT: Any other comments on that
6 question? Mr. Ostrowski.

7 MR. OSTROWSKI: As we showed with AWS, we will
8 be able to make devices that we believe will allow us to
9 roam on 700 or AWS, depending on if we've got the right
10 arrangements with the partners. If we can't get the
11 right arrangements, then it doesn't become economically
12 feasible for us to do it. That's our -- you know, what

13 we want to focus on is if we can get reasonable rates,
14 then we can develop devices that will support roaming on
15 other carrier's networks.

16 Like we have no cellular 850 spectrum, but our
17 devices roam on 850. So it's just a matter of economics
18 is what it comes down to.

19 JUDGE HECHT: Thank you. Any other comments
20 on that question?

21 Well, that was our last question from a party
22 in the audience. We're going to turn to questions from
23 Commissioners Sandoval and Florio.

24 COMMISSIONER FLORIO: Mr. Hague, just a
25 factual question. You said today AT&T is a net

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1 purchaser of roaming services. Who are the people that
2 you have the net purchases from?

3 MR. HAGUE: That's the 45 carriers in the
4 United States that we roam with. So Vi aero in Nebraska,
5 U.S. and Verizon up in Maine, they have some GSM
6 networks. Long lines, just a variety. I can give you a
7 list of the 45. Approximately 45. I'm within three
8 either way.

9 COMMISSIONER FLORIO: Okay. The other
10 question, primarily for the Sprint and Cricket
11 representatives, I get the sense from this conversation
12 that the roaming concern is more a what will happen in
13 the future in an LTE world rather than what's actually

14 happening today. Is that accurate?

15 MR. OSTROWSKI: That's a correct assessment.

16 I mean, we can only read what's in the public record and
17 what has transpired to this point, and that raises our
18 concern about what happens when we go to 4G and an LTE
19 when we have compatible technologies.

20 MR. AYERS: I was trying to raise a concern of
21 today I guess what would happen post merger in the
22 current GSM world. And you know, one thing to probably
23 look at which I'm sure that Bill can't confirm right
24 now, I bet the netpayer is not a netpayer across those
25 45 entities.

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1 So if you're one of the 45 that's lucky enough
2 to be a net receiver, you're probably getting a pretty
3 good rate. If you're one of the 45 that's wholly
4 overlapped by AT&T, you're probably not real happy with
5 the rate. Like anything, you're probably going to dig a
6 little bit more to really get a good feel for that.

7 MR. HAGUE: I actually can say something to
8 that.

9 So of the 45, about two-thirds of them are net
10 receivers. We're a netpayer. The other third is the
11 reverse. But about 90 percent of the traffic volume
12 you're talking about, we're a netpayer on. And our
13 rates are in a pretty darn tight band. Whether you're a
14 receiver or a payer, it's the same.

15 Our goal is to keep the market down; not drive
16 the price up. Our most recent offer to one of these 3G
17 carriers is 20 percent less than what we're paying on
18 average.

19 JUDGE HECHT: Commissioner Sandoval.

20 COMMISSIONER SANDOVAL: Thank you.

21 So on that issue of AT&T being a netpayer, so
22 I'm just wondering if you could say a little bit more
23 why. Do AT&T customers roam more than others, or are
24 AT&T customers roaming like the Buffalo used to?

25 MR. HAGUE: Certainly one is we have more data

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1 devices than any others. There's more data, there's
2 more data usage. Two is we have more high-end users,
3 tend to be higher travelers. Three, we have more
4 subscribers. Those three things combined cause it to
5 happen.

6 And also, we're in every major city. Some of
7 these tend to be more rural areas and not as visited.

8 COMMISSIONER SANDOVAL: Can you clarify why
9 more data usage leads to more roaming?

10 MR. HAGUE: Charges are based on usage. So in
11 voice, it's based on minute of use. Data, it's based on
12 a megabyte or a gigabyte or a kilobyte but some metric.
13 So more usage is more cost.

14 COMMISSIONER SANDOVAL: So when those AT&T
15 customers do roam, relatively more of them use data?

16 MR. HAGUE: Sure. We sell the most -- we have
17 the most SmartPhones out there, and all the SmartPhones
18 use data. So when people take their Android device or
19 their Microsoft device or their iPhone device and go
20 into one of those roaming markets and download a movie
21 or check their e-mail, that's all data usage. We have
22 more customers who do that than others.

23 COMMISSIONER SANDOVAL: What about T-Mobile?
24 Are you a netpayer of roaming?

25 MR. EWENS: Yes. We are a netpayer of

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1 roaming.

2 COMMISSIONER SANDOVAL: What drives T-Mobile
3 to be a netpayer?

4 MR. EWENS: The same thing. We generally have
5 more SmartPhones than our roaming partners. Some of
6 these providers are effectively roaming-only providers,
7 so they have very, very small subscriber bases.

8 What they have done is they have built out a
9 network in rural areas, in fact, largely to collect
10 roaming fees. That's certainly not every one of them,
11 but there are a few of those. So it's a mix of carriers
12 who are principally roaming providers, and the fact that
13 we have generally a higher concentration of smartphone
14 and usage -- SmartPhones and usage, higher usage than
15 our partners.

16 COMMISSIONER SANDOVAL: So do you have any

17 sense of -- one of the questions that we've asked and
18 were interested for all the market participants in what
19 percentage of their customers are in the postpaid market
20 versus the prepaid market.

21 For T-Mobile, do you have any sense of is
22 there more or less roaming for those who are prepaid do
23 prepaid still tend to roam as much as postpaid?

24 MR. EWENS: I don't have those exact figures
25 here. We would be happy to get those to you in a

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1 different forum.

2 COMMISSIONER SANDOVAL: Does anybody have any
3 comment on that?

4 MR. HAGUE: At AT&T, prepaid customers roam
5 less than postpaid.

6 MR. OSTROWSKI: I would probably echo that
7 because our customers tend to work and play where they
8 live. They don't travel as much as business travelers,
9 et cetera, which is typically postpaid customers.

10 MR. AYERS: Just one other comment.

11 At Sprint, most of our postpaid subs don't
12 roam. With the lower ARPU, it's compressed all the
13 margin, and it's more expensive cost proposition to
14 offer that.

15 COMMISSIONER SANDOVAL: Let me make sure I got
16 that right. You said most of your postpaid --

17 MR. AYERS: I'm sorry. I meant to say

18 prepaid. Thank you.

19 COMMISSIONER SANDOVAL: Most of your prepaid
20 subscribers do not roam?

21 MR. AYERS: Right.

22 COMMISSIONER SANDOVAL: They're at home.
23 Okay. That's useful. All right.

24 So getting back to the question that
25 Commissioner Florio asked, so we don't have in

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1 California right now other independent GSM providers who
2 are offering service here in California, although you do
3 have GSM people coming into California who are roaming.

4 So again, we've discussed a little bit about
5 the effect of this merger short-term on GSM roaming.
6 But then there's the question of the merger long-term as
7 we move to LTE. So I would just like a little bit more
8 amplification on both of those issues.

9 So if there wouldn't be independent providers
10 of GSM roaming post the merger, so you're saying right
11 now TSM doesn't provide roaming to these independents
12 who are coming over from tourists and those who are
13 coming from outside.

14 MR. HAGUE: No. What I was saying, there are
15 no independent GSM providers in California. The last
16 one I'm aware of was down in San Luis Obispo, had a
17 market, really didn't build it out very well. AT&T
18 acquired that market and built it out very deeply in the

19 last couple of years.

20 There are no independents here. So there are
21 still independent GSM providers like Viaero in Nebraska,
22 and when his customers come to California, they will
23 roam on our network. And on the GSM side that you
24 referred to, it's those players that we're a net
25 purchaser with, and we're constantly trying to bring the

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1 rates down. They hold the cards. The rates are kind of
2 where we can drag them to.

3 And with respect to LTE and that's in the
4 future and I think Tim explained things pretty well
5 about all what has to come together, but there will be
6 several providers in California of LTE. There will be
7 AT&T and going off on of press releases now, AT&T and
8 Verizon and Leap.

9 I don't know if Metro has a presence here or
10 not. Clearwire probably. LightSquared most certainly.
11 There will be certainly more than there ever was before
12 with the one technology.

13 COMMISSIONER SANDOVAL: Are many of these
14 tourists and business people, et cetera, coming from out
15 of state roaming on the T-Mobile network, are you
16 selling to others roaming services currently?

17 MR. EWENS: Yeah. We sell roaming services to
18 others in the same way that AT&T does.

19 COMMISSIONER SANDOVAL: So would there be any

20 -- so at post merger, you would be selling those roaming
21 services together. So once again, I just want to ask
22 you to amplify the assertion that since you would move
23 from two sellers of roaming services, at least those
24 that were coming from out of state to roam, would there
25 be any effect on roaming competition?

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1 MR. HAGUE: Yes. Well, first of all, their
2 roaming will improve because the network is going to
3 improve. That's one thing.

4 And two, we roam with every carrier in the
5 United States, every GSM carrier. I'm sure T-Mobile
6 does as well. All those carriers, you take the
7 example -- I use the example of Vi aero in Nebraska. We
8 each have roaming agreements with him.

9 His customers come, and it depends on how the
10 phone is programmed and where they turn it on and what
11 cell site they're next to as to which carrier they go on
12 today. In the future, after the merger, they will roam
13 on AT&T. Between now and then, the difference is the
14 net position our incentive to lower rates increases
15 because our net purchasing position gets larger.

16 JUDGE HECHT: We have about four more minutes
17 for questions for this panel. Okay.

18 Commissioner Florio, do you have anymore
19 questions? All right. I think that that's all the
20 questions for this panel then.

21 Are there any last words from anybody on the
22 panel before we take our last break?

23 MR. HAGUE: Just thank you.

24 JUDGE HECHT: All right. Then thank you all
25 very much. And we're going to take a break. When we

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1 come back, we're going to hear from any public speakers
2 who would like to speak. So please sign up during the
3 break if you would like to, and we'll be off the record.

4 (Session adjourned at 3:28 p.m.)

5 ---o0o --

6 (Questions from the Public.)

7 ---o0o---

8 JUDGE HECHT: All right. We will be back on
9 the record. This is our last segment of today's
10 workshop, and I want to start by thanking everybody for
11 your participation, and it's been a great and
12 informative discussion today.

13 Now we have an opportunity for members of the
14 public to make comments and to speak for a few minutes.
15 We have about six people who have asked to speak. I am
16 going to give each person three minutes because we have
17 enough time to do three minutes rather than two, which
18 is what I had intended.

19 And then we'll just close things up with some
20 statements from the assigned Commissioner and
21 Commissioner Florio, and we'll move on from there.

22 First, I want to address two procedural
23 questions that were raised by people during the break,
24 and those are do the witnesses need to stay for this
25 portion or can they catch their planes? They may catch

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1 their planes or at least they shouldn't miss their
2 planes on account of our finishing up here.

3 The second question is a question about
4 providing more guidance for next week's workshop. And
5 for next week's workshop, we'll be providing more
6 guidance early next week. So we don't really have
7 anything about that today. But you should expect to
8 hear some more about it next week.

9 And with that, we're going to take our first
10 public speaker. The speaker should go and get the
11 wireless microphone from Roland here in the front. And
12 the first speaker is Scott Peterson, and the second
13 speaker who can get ready is Matt Reegan. As always,
14 correct me when I mispronounce your names.

15 Can you make sure the mike is on. Speak
16 slowly and clearly into the microphone for our Court
17 Reporters.

18 SCOTT PETERSON: Hi Commissioners and ALJ.
19 Scott Peterson with the East Bay Economic Development
20 Alliance. We're a public private partnership in Alameda
21 and Contra Costa Counties, local governments,
22 businesses, educational institutions and community

23 organizations working to grow business and create
24 quality jobs in the East Bay.

25 And I've spoken at a prior Commission hearing

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1 on this matter, and I want to reiterate our support for
2 bringing the approval of this application to conclusion
3 and want to just emphasize some of the reasons for our
4 support.

5 We are in the final stages of completing a
6 broadband expansion strategy for Alameda, Contra Costa
7 and Solano Counties. We've been working on that for
8 most of this year as one of our projects to expand
9 access in the urban, suburban and rural communities in
10 those counties, both to promote efficiencies for
11 business applications and processes, but also to reduce
12 the consequences of the digital divide.

13 For the city members of the East Bay EDA,
14 bringing the two companies together allows some relief
15 to local government planning processes which are
16 currently burdened by neighborhood concerns about siting
17 new transmission facilities.

18 We believe that combining the infrastructure
19 of the two networks may reduce the need for new towers
20 and thus alleviate controversy in some jurisdictions
21 where residents have strong objections to those new
22 facilities.

23 For the East Bay EDA members in organized

24 labor, expanding AT&T's union work force is seen as a
25 welcome opportunity to provide quality jobs in our

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1 region. And for businesses and education members who
2 increasingly depend on broadband access and speed to
3 power their operations, increasing speed, improving
4 service, reducing cost helps those companies grow,
5 employ more people, and focus on service their companies
6 -- excuse me -- serving their customers.

7 This has been an informative afternoon for me.
8 And I appreciate the questions that you've brought
9 forward, and I hope as the process continues, you'll
10 expedite approval of this application.

11 JUDGE HECHT: Thank you very much.

12 Our second speaker will be Matt Reegan from
13 the Bay Area Council. I will remind the speakers to
14 identify themselves and identify whether you have a
15 connection to one of the parties to this proceeding and
16 all of the things that I mentioned at the beginning of
17 the workshop as well.

18 Thank you.

19 MATT REEGAN: Good afternoon Commissioners.

20 My name is Matt Reegan. I'm here representing
21 the Bay Area Council. The Bay Area Council is a
22 business-sponsored public policy and advocacy
23 organization. Our focus of work is to maintain the
24 Bay Area as the best place in the world to live and

25 work. We focus on economic equality of life issues.

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1 Both AT&T and T-Mobile are dues-paying members
2 of the Bay Area Council. And if my CFO was here and
3 testifying instead of myself, he would say do not
4 approve this application. We will lose a dues-paying
5 member if one takes over the other.

6 Because I work on the policy side of things, I
7 am here to ask that you do approve the application. Our
8 organization believes that this merger will help with
9 building our infrastructure, our communications
10 infrastructure in this region. We spend a lot of time
11 working on competitiveness issues with our peer regions
12 around the world from Shanghai to London.

13 And the communications infrastructure that we
14 have here in this region is crucial and vital to
15 maintaining the economic competitive edge that we
16 currently have. We believe that this merger will help
17 given the commitments that AT&T has made to expand and
18 improve upon and invest in the infrastructure that we
19 have here in the Bay Area and in California and will
20 help with our competitiveness and will bring more jobs
21 to this region.

22 We would ask this application be approved as
23 swiftly as possible. Thank you.

24 JUDGE HECHT: Thank you our next speaker Leon
25 Beauchman. Or well, I may not pronouncing that in

1 correctly.

2 LEON BEAUCHMAN: You did wonderfully.

3 JUDGE HECHT: Okay. Great. After that, it is
4 Alex Braunstein, I believe.

5 LEON BEAUCHMAN: My name is Leon Beauchman. I
6 am the director of the Wireless Communications
7 Initiative which is part of Joint Venture Silicon
8 Valley. And we are a collaborative that includes
9 cities, carriers, and both T-Mobile and AT&T are members
10 of our collaborative.

11 I just have a statement that I will read very
12 briefly, if it's okay. Let me just start by saying the
13 wireless communications initiative of Joint Venture
14 Silicon Valley want to express this concern regarding
15 potential regulatory actions by the California Public
16 Utilities Commission related to the AT&T and T-Mobile
17 merger.

18 The wireless communications initiative is not
19 taking a position on the merger itself. Our goal is to
20 collaborate with all carriers, local, government, and
21 community organizations in improving the coverage and
22 performance of our wireless infrastructure. We believe
23 there will be substantial risk -- there is substantial
24 risk when regulatory bodies interfere with the natural
25 evolution of a dynamic marketplace.

1 The Wireless Communications Initiative has 200
2 -- in 2008 study done by Joint Venture Silicon Valley
3 that indicated inadequate wireless coverage in the
4 region. Though we have made meaningful progress in
5 creating collaboration between carriers in local
6 jurisdictions, the dynamic for marketplace have caused
7 an even greater demand on the local network.

8 The wireless traffic has grown in some cases
9 to over 8,000 percent over the last four years. As you
10 know, Silicon Valley is significantly responsible for
11 some of this increase through the demand generated by
12 the development innovative products and applications,
13 even though I'm not here to apologize for that on the
14 behalf of Silicon Valley.

15 There are over 300,000 phones in the
16 United States -- 300 million, I should say. Many of
17 these are SmartPhones. Collectively Google, Apple and
18 HP operating systems dominant the operating systems of
19 the SmartPhones. Facebook is a leading social
20 networking platform and approximately 25 percent of all
21 SmartPhones have -- use access to their social
22 networking over their mobile devices.

23 The Federal Communications Commission
24 estimates that wireless applications will grow from 6
25 billion in 2010 to over 38 billion by 2015. There are

1 over 450,000 people developing mobile applications, and
2 many of these people live in Silicon Valley. All of
3 this translates into thousands of jobs, no region in
4 this country will be more affected by the growth of
5 wireless -- the wireless marketplace or to the
6 development of a robust wireless infrastructure than
7 Silicon Valley. And the success of Silicon Valley will
8 significantly benefit the State of California and our
9 nation.

10 I am finishing up. Thank you.

11 The mobile communication industry at times may
12 appear to be chaotic, but the results have produced
13 thousands of new jobs.

14 JUDGE HECHT: I'm afraid your time is up. If
15 you can wrap up in a sentence or so, that's great.

16 LEON BEAUCHMAN: I will.

17 JUDGE HECHT: You can also provide your
18 statement to the Court Reporter in the back.

19 LEON BEAUCHMAN: I will do that too.

20 I would like to say that it is common
21 knowledge that the success of the internet can be partly
22 attributed to regulatory agencies taking -- not
23 interfering with the evolution of the internet.

24 Consequently, fewer technologies have so
25 rapidly benefited our nation in the world. We hope that

1 the Commission remembers the lessons from recent history
2 and the thousands of jobs impacted by its decisions.

3 Thank you very much.

4 JUDGE HECHT: Thank you very much.

5 Our next speaker is Alex Braunstein. And
6 again, you can --

7 ALEX BRAUNSTEIN: Alex Braunstein.

8 JUDGE HECHT: Alex Braunstein, followed by
9 Larry Downes.

10 ALEX BRAUNSTEIN: Thank you. I'm with the
11 School of Information at U.C. Berkeley. I've also
12 coauthored a paper that was sponsored by AT&T.

13 I actually have a question about spectrum, if
14 there are remaining witnesses who could address it or
15 someone else in the room.

16 According to the National Broadband Plan, past
17 delays in making new spectrum available for mobile have
18 ranged from six to 13 years. Is there any reason to
19 expect that additional spectrum will become available
20 for mobile use in a short time frame? Thank you.

21 JUDGE HECHT: Thank you. I don't believe that
22 we still have our spectrum witnesses here for today. I
23 believe that they aren't.

24 But this is all being reported and
25 transcribed. So it becomes a part of the record, and we

1 will see if we can get a response to that question.

2 ALEX BRAUNSTEIN: Thank you.

3 JUDGE HECHT: Our next speaker is Larry Downes
4 followed by our last speaker Greg Fawcett.

5 LARRY DOWNES: Thank you very much.

6 I'm Larry Downes with Tech Freedom which is a
7 nonpartisan technology think tank. I want to thank the
8 Commission for organizing this very informative workshop
9 today.

10 As I did yesterday with colleague Professor
11 Manny and the San Jose Mercury News, I want to mention
12 to the Commission as part of the investigation to take a
13 close look at the data in the just released 15 Annual
14 Wireless Competition Report from the FCC.

15 Although the commission for the second year in
16 a row did not reach a conclusion about whether the
17 industry is effectively competitive, it did so, it said,
18 because of the increasingly complexity of the industry.
19 But despite that lack the conclusion, there is a
20 mountain of incredibly useful and very impressive data I
21 think the Commission would find very useful in its
22 analysis.

23 I just want to highlight a couple of quick
24 things and offer if the Commission would like my cliff
25 notes on the report. This is the report. It's 300 some

1 pages. My cliff notes are only 20 pages.

2 COMMISSIONER SANDOVAL: I've read it.

3 LARRY DOWNES: Okay. One thing that the
4 Commission does is continue from last year the emphasis
5 of taking away some of the static models of competition
6 that it used to use, including HHI and spectrum screen.
7 Both of those has given considerable de-emphasis this
8 year.

9 And in replacement, they are now including
10 other factors including, you know, things that consumers
11 understand are really driving how the wireless market
12 evolves, including operating systems, devices,
13 applications and so on. There's also increased emphasis
14 on using local basis for competition analysis which
15 makes sense.

16 And I think this is somewhat in contradiction
17 to Professor Lemley's comments this morning.
18 Competition really is at the local level, and the
19 Commission offers considerable amount of data on
20 competitiveness at the local level across 172 different
21 local markets that it analyzed, obviously many of them
22 in California.

23 The Commission also talks about intermodal
24 competition. This is increasingly, especially as we
25 move to 4G LTE, competition between wireless and wire

2 essentially in this marketplace, that's I think
3 something that will become even -- certainly it's true
4 for voice. It will become increasingly so for data as
5 well. That's something, again, that I think the
6 Commission should look to in its analysis.

7 And finally, the FCC emphasizes that probably
8 the leading cause of competitive constraint in the
9 wireless market today are regulatory constraints. Those
10 being obviously as we heard today, lack of spectrum as
11 well as increasingly long delays by local authorities in
12 making decisions about cell tower siting decisions.

13 They list I think over 3,300 applications for
14 cell tower siting changes or buildings that are more
15 than a year old, some of them more than three years old
16 even though the FCC's rules require decisions within
17 150 days.

18 So whatever we can do to ease those regulatory
19 constraints at the local level and at the national level
20 and working with Congress on the spectrum issue. But
21 those, as we know, are very long-term fixes and the
22 short-term of what we can do to improve the speed of the
23 cell tower decisions will be greatly helped.

24 Thanks very much.

25 JUDGE HECHT: Thank you. Our last public

1 speaker is Greg Fawcett.

2 GREG FAWCETT: Hello. My name is Greg
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3 Fawcett, and I'm the CEO of Politics 360. I'm a partner
4 in election year.

5 Politics 360 develops mobile applications for
6 membership organizations and for companies that do work
7 in the public interest. And we've developed
8 applications for SEIU, which is one of the largest
9 unions in the U.S. We also developed an application for
10 AT&T. That was an application for voters that allowed
11 voters to register through the app and find their poll
12 location.

13 I am here to support the application, and my
14 perspective on this starts with, you know, how I begin
15 any of the engagements I have with clients where I begin
16 by looking at the problem that we're trying to solve.
17 The opportunity for the merger is that it can address a
18 problem that's connected: Limited access to bandwidth
19 and to spectrum.

20 My perspective there comes from current client
21 engagements where we're in the field on a political
22 application where data files must be shared, multimedia
23 files must be shared. So the opportunity for increased
24 access for 4G LTE down the road gives us greater
25 opportunities in terms of the applications that we can

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1 develop.

2 I've been in this business since early 2008.

3 I was involved in the Associated Press application that

4 was launched when Apple launched the app store. That
5 application had a range of multimedia content and having
6 increased bandwidth in new networks, such as LTE, allows
7 us to generate increased revenues from our products by
8 having expanded capabilities within those products.

9 Finally, I would like to say that I always pay
10 attention when labor and industry agree on an issue.
11 And I appreciated Scott Peterson's comments that the
12 CWA, IBW, NEA and a range of Silicon Valley companies
13 and venture capitalists are in support of this
14 application. And I think in the current political
15 climate, to have an agreement of that sort is something
16 that we should all pay attention to and see the
17 collaborative opportunities from that.

18 Thank you very much.

19 JUDGE HECHT: Thank you very much.

20 I noticed that we have a request from one
21 other person to speak. This time was reserved for
22 nonparties to speak because parties got to ask questions
23 earlier. The person who wishes to speak is Tracy
24 Rosenberg, a representative of Media Alliance who has
25 become a party.

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1 Because we have a little bit of extra time and
2 we're not going to run out, I'm going to accommodate
3 that request. Three minutes.

4 TRACY ROSENBERG: Thank you very much, Judge,
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5 for that accommodation. I appreciate it.

6 I am speaking in opposition to the merger, but
7 I just sort of want to reiterate a couple of the points
8 we've heard today because I think they're somewhat
9 important.

10 In our first panel, the economists -- I
11 believe it was Roger Noll -- forgive me if I've
12 misstated the name -- pointed to a couple of ways that
13 duopolies can operate in an economy. And he made a
14 distinction between duopolies with sort of effective
15 fringe competition and duopolies where that fringe
16 competition is either nonexistent or so weak that it
17 doesn't really pose significant, shall we say,
18 competitive pressure within the marketplace.

19 As we've gone through discussions of backhaul
20 and spectrum and roaming charges, it has been repeatedly
21 pointed out there are a number of anti competitive
22 practices in the market in which AT&T has participated
23 to some degree.

24 That included long-term contracts for legacy
25 copper ILEC backhaul. That included the unwillingness

1 to issue 3G data roaming agreements to the extent that
2 T-Mobile went to the FCC and complained. And it also
3 involved sort of hoarding spectrum and basically
4 opposing eligibility requirements that made it easier
5 for some of those fringe competitors to compete on a

6 level playing field to purchase spectrum when the
7 opportunity was presented.

8 So it seems to me that some of the conclusions
9 that we need to draw from this hearing that we've had
10 today is that the kind of duopoly that we'll be facing
11 is one where fringe competition will not be as -- will
12 not be a significant player in the market. I think
13 that's what is being presented because of the
14 anti competitive business practices that are prevalent in
15 this overly concentrated market.

16 We also heard the figure 97 percent thrown
17 around quite a bit. That 97 percent figure doesn't
18 really come out of the air; it comes out of the national
19 broadband client, which the FCC spent a hundred million
20 years putting together. And it's a goal for this
21 country.

22 Verizon has stated that they will be able to
23 meet that goal. My understanding was that AT&T had also
24 stated that they will be able to meet that goal prior to
25 their intention to acquire T-Mobile. It seems that now

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1 that figure has sort of scaled itself back down to
2 80 percent.

3 So I guess the question that I kind of want to
4 present here is: Is the role of regulators to base
5 decisions on how effectively AT&T will be able to
6 compete with Verizon, and --

7 JUDGE HECHT: And --
8 TRACY ROSENBERG: -- is the role of regulation
9 to --
10 JUDGE HECHT: With that, your time is up.
11 Thank you very much.
12 TRACY ROSENBERG: It is.
13 JUDGE HECHT: It is.
14 TRACY ROSENBERG: I can't even finish the
15 sentence?
16 JUDGE HECHT: You may finish the sentence.
17 TRACY ROSENBERG: Okay. What's the
18 one-sentence version of this?
19 Is it -- is the public interest represented by
20 AT&T's ability to better compete with Verizon, or is the
21 public interest best represented to the detriment of the
22 other competitors in the market? I think that's the
23 question that we need to take pretty seriously.
24 The end.
25 JUDGE HECHT: Thank you very much.

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1 This is the last call for any public speakers.
2 Okay. I don't see any.
3 We're going to have some closing remarks from
4 Commissioners Sandoval and Florio. And then I will make
5 a few concluding statements, and we will be done for the
6 day.
7 Who would like to begin?

8 COMMISSIONER FLORIO: I certainly appreciate
9 all the participation today. I learned a lot. I have a
10 lot more to learn still, and I think this has been a
11 very good forum. Thanks to everyone who worked to put
12 it together. And I look forward to more exchange in the
13 future.

14 COMMISSIONER SANDOVAL: I want to reiterate
15 the thanks to everyone. Excuse me. That is empty, I
16 hope.

17 I want to thank everyone for their
18 participation today. Thank Administrative Law Judge
19 Hecht for her most gentle moderation and guidance, and
20 to thank my fellow Commissioner Florio for being here
21 with us today and thank all of you. I know this has
22 been a substantial commitment of time and energy from
23 the parties, from the public, and we really do
24 appreciate this opportunity for the public to consider
25 the factors in these important mergers.

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1 I think part of what we learned is a lot of
2 facts about the evolution in this marketplace. We
3 really appreciate that. I really wanted to give special
4 thanks to all of the staff members of the CPUC who made
5 this come together. To all of the offices who worked on
6 this, so including the staff members from my office,
7 Commissioner Florio's office, Commissioner Ferron's
8 office, Commissioner Simons' office, President Peevey's

9 office -- please forgive me if I forget a division --
10 the legal division, the Administrative Law Judge
11 division, the Communications Division, the Public
12 Division, Marzia (phonetic), what division are you in
13 here? Any other division, please help me out here. The
14 Court Reporters who have been working all day.

15 Did I forget anybody else? Help me out here.
16 So I got it all? But to everybody who has really worked
17 hard to put this together, I just really wanted to say a
18 special thank you. And also just to remind you that
19 this dialogue will continue next week.

20 We are going to be meeting in the Silicon
21 Valley. So the next workshop is going to be on
22 July 15th at Santa Clara University in the Locatelli
23 Building, which is a sustainable, a new sustainable
24 building. The time frame will be similar, from 9:30 to
25 4:30.

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1 That merger -- that merger? That workshop
2 will analyze the effect of the proposed merger on
3 innovation including a variety of issues, including the
4 digital divide and how it might affect innovative
5 services and provision of service.

6 And then our last workshop will be on
7 July 22nd in Los Angeles. And that workshop will focus
8 on the effect of the merger on service as well as
9 employees and, you know, the variety of customers in

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1 REPORTER' S CERTI F I C A T E

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3 I, CAROL S. NYGARD, a Certi f i e d Shorthand
4 Reporter of the State of Cal i f o r n i a, duly authori z e d to
5 admi n i s t e r o a t h s, do hereby certi f y:

6 That I am a di s i n t e r e s t e d person herei n; that
7 the foregoi ng proceedi n g s, pages 1 through 64 and pages
8 108 through 173 were reported i n shorthand by me, CAROL
9 S. NYGARD, a Certi f i e d Shorthand Reporter of the State
10 of Cal i f o r n i a, and thereafter transcri b e d i n t o
11 typewri t i n g.

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DATED _____

CAROL S. NYGARD, CSR #4018

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REPORTER' S CERTI F I C A T E

I, KIMBERLEE SCHROEDER, a Certi f i ed Shorthand Reporter of the State of Cal i f o r n i a, duly authorized to administer oaths, do hereby certi fy:

That I am a di si n t e r e s t e d person herein; that the foregoing proceedings, pages 65 through 107 and pages 174 through 234 were reported i n shorthand by me, KIMBERLEE SCHROEDER, a Certi f i ed Shorthand Reporter of the State of Cal i f o r n i a, and thereafter transcribed into typewri ti ng.

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DATED

KIMBERLEE SCHROEDER, CSR, RPR, CCRR
Li cense No. 11414

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