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## AT&T, T-Mobile Question Carriers' Standing To Challenge Merger In Court

Urging the U.S. District Court in Washington, D.C. to dismiss lawsuits filed by Sprint Nextel and C-Spire Wireless (formerly Cellular South) against AT&T's proposed \$39 billion acquisition of T-Mobile USA, AT&T and T-Mobile told the court that, because both carriers are competitors and not customers who may be harmed, they lack the standing to challenge the merger on antitrust grounds pursuant to the Clayton Act. Wayne Watts, the senior executive vice president of AT&T, characterized the Sprint and C-Spire complaints as "an obvious attempt to use the court to improve their own strategic interests," as he emphasized that his company is "working on parallel paths—seeking a solution that addresses the [Department of Justice's] concerns while simultaneously preparing for trial." Although Sprint and C-Spire have voiced expectations that the court will consolidate their respective lawsuits with the pending Justice Department complaint, U.S. District Court Judge Ellen Huvelle is said to be considering the carriers' standing to participate in the case, which is scheduled to go to trial on February 13. Declaring that Sprint "seeks to manufacture standing by arguing that the transaction will somehow impair its access to several categories of inputs it needs to provide service," AT&T and T-Mobile advised the court that "these input arguments. . . are implausible on their face and will fail the applicable pleading standards." AT&T and T-Mobile further maintained that, because "Sprint knows that competition will be enhanced, not harmed by the combination," Sprint thus "has everything to gain from the reduction in competition in wireless services that its complaint alleges." With respect to C-Spire, AT&T cited an e-mail exchange between Cellular South (now C-Spire) CEO Hu Meena and AT&T Mobility President Ralph de la Vega in which "Cellular South suggested that it would not oppose the merger if AT&T would agree not to engage in facilities-based competition in Mississippi." Although AT&T told the court that the exchange "confirms that what Cellular South fears is competition, not a lack of competition," a C-Spire official retorted that AT&T's accusations "flatly distort the record," as he denied that Cellular South ever "suggested that AT&T not compete in Mississippi or anywhere else."

## Verizon Re-Files Appeal Against Net Neutrality Rules

As anticipated, Verizon Communications resurrected its legal challenge against the FCC's open Internet order by re-filing its appeal last Friday with the D.C. Circuit Court. Last April, the D.C. Circuit dismissed Verizon's original petition (as well as a separate appeal filed by MetroPCS) on grounds that it had been filed before the net neutrality rules were published in the Federal Register. Since the text of the open Internet order appeared in the Federal Register last month, Free Press and several other parties have petitioned against the rules at various legal venues across the U.S. that include the First, Second, Fourth and Ninth Circuit courts. As it did in its original appeal, Verizon told the D.C.

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Circuit in one of two petitions submitted last Friday that the D.C. Circuit holds exclusive jurisdiction over the case because the net neutrality rules effectively alter the terms of FCC wireless licenses issued to Verizon. (Last April, however, the D.C. Circuit rejected that argument as it observed that the open Internet order “is not a licensing decision with respect to specific parties.”) However, in a second petition that was filed “out of an abundance of caution,” Verizon said it was requesting review under a statutory provision that does not require review of FCC decisions by any specific court. Asserting that the FCC exceeded its statutory authority in adopting net neutrality rules that are “contrary to constitutional right,” Verizon senior vice president Michael Glover told reporters that Verizon “is deeply concerned by the FCC’s assertion of broad authority to impose potentially sweeping and unneeded regulations on broadband networks.” Countering, however, that the FCC’s rules “are not strong enough” to protect wireless broadband consumers, Free Press Director-Policy Matt Wood described Verizon’s appeal as a request that would “leave the FCC without any authority to protect Internet users whatsoever.”

## Senate Bill Would Ban Arbitration Clauses In Cell Phone Contracts

Aiming to “remedy” a recent ruling by the Supreme Court in which the justices upheld the use of mandatory arbitration clauses in wireless service contracts, Senators Richard Blumenthal (D-CT) and Al Franken (D-MN) introduced legislation on Tuesday that would bar mobile phone operators from forcing dispute resolution through the arbitration process. Reviewing a case that pitted AT&T against a California couple who had sought class action status for their complaint over AT&T’s assessment of sales tax on wireless handsets that were advertised as free, the high court ruled by a 5-4 margin last spring that the Federal Arbitration Act preempts state regulations that prohibit bans against class action suits in wireless contracts. According to Franken, the bill, known as the Consumer Mobile Fairness Act, ensures “that any dispute resolved in arbitration is truly voluntary, and that consumers are not being forced into it.” Asserting that “the shield to accountability enjoyed by companies can lead to unfair contracts and unacceptable costs” for wireless consumers, Blumenthal proclaimed that “smart phone users deserve their day in court for legitimate complaints against abuses,” as he added that “consumers should have rights to access to appropriate avenues—enforceable in court—for recourse in order to hold cell phone companies accountable for poor service.” Calling the legislation “misguided,” a spokesman for wireless association CTIA recommended that “if the sponsors really want to help consumers, they should spend less time on stimulating the market for trial lawyers and more time working to free additional spectrum that can be used to deliver world-class wireless broadband service.”

## Airlines, Satellite Firms Offer Mixed Views On Terrestrial Next-Generation Air-To-Ground Service

Comments filed late last week with the FCC on a proposal to establish a terrestrial next-generation air-to-ground (ATG) broadband service in the 14 GHz band were divided into two camps, with airlines voicing strong support for the plan and representatives of the satellite industry objecting on grounds of potential interference. The comments address a petition for rulemaking, filed by Qualcomm, in which Qualcomm urges the FCC to conduct an auction of two next-generation terrestrial ATG licenses—one in the 14.00-14.25 GHz band and the other in the 14.25-14.50 GHz band. Although both licensed systems would operate in a manner that is similar to the current ATG network licensed to Gogo (formerly Aircell), each system, argued Qualcomm, would offer substantially higher connection speeds within a larger swath of spectrum (250 MHz) that would satisfy “the ever-increasing demands of mobile users who need to maintain full access while they are traveling in a plane for hours at a time.” Qualcomm further advised the FCC against restricting any one entity from acquiring both licenses so as to promote “a more robust 500 MHz system.” Voicing support for the proposal as one that “may significantly mitigate the projected future capacity shortcomings of the current [ATG] broadband allocation,” Gogo told the FCC that, while it has announced plans to add Ka-band satellite capacity for its service, such capability “may not always provide the best solution for all aircraft and all customers.” The proposal was also endorsed by American Airlines, United Airlines (UA) and Virgin America (VA), the first carrier to offer Gogo throughout its entire fleet. As UA encouraged the FCC to “favorably consider this petition,” VA said that, “to support the rapid increase in consumer wireless devices that need always-on connectivity, the FCC should proceed with a rulemaking to address the need for the next generation of [ATG] services.” Observing, however, that the 14.0-14.5 GHz band “is used intensively for a wide variety of commercial government and military applications,” the Satellite Industry Association charged that Qualcomm’s petition “does not adequately address serious interference concerns between co-frequency operations or

establish how [a] secondary ATG service would practicably co-exist with primary operations in the 14.0-14.5 GHz band.” Agreeing that the proposal “could have a material impact on service viability,” Boeing warned the FCC against initiating “a rulemaking on a proposed new service in the 14.0-14.5 GHz band until the issue of Ku-band [aeronautical mobile satellite service] regulatory status is resolved.”

## European Carriers Protest EC Proposal To Spur Broadband Investment

To encourage investment in fiber-optic networks that will form the basis of the European Commission’s agenda to expand broadband service throughout the European Union (EU) by 2020, EC digital agenda commissioner Neelie Kroes announced on Monday that she would propose changes in the regulation of legacy copper networks that would lower the wholesale price that incumbent carriers would be able to charge competitors to gain access to such networks. Although Kroes noted that incumbents would be able to exempt themselves from that rule if they invest in high-speed fiber networks, EU telecom executives criticized the proposal as unrealistic, as they warned that the plan would, in fact, discourage the investment that Kroes is seeking to stimulate. In a speech before an industry conference in Brussels, Kroes said she was “very interested to explore a new pricing model” for copper networks that is centered on “creating the conditions for the replacement of the old copper network with fiber.” Lamenting that investment in EU fiber networks is lagging and that continued delay in advancing the EC’s digital agenda goals may put the EU at a competitive disadvantage against the U.S. and Asia, Kroes said she would pursue a reduction in wholesale rates for competitors that seek access to existing copper networks, adding that incumbents would have to upgrade their copper infrastructure or invest in new fiber lines to avoid wholesale rate reductions. To further stimulate investment, Kroes also said the EU would make available €1 billion (US\$12.15 billion) in funding, starting in 2014, to subsidize broadband network construction in rural and other high-cost areas. Describing the proposal as “simply crazy,” Telecom Italia CEO Franco Bernabe warned that the new regulation would serve only to further handicap carriers that are already reeling from declining revenues and difficult economic conditions. As Bernabe countered that what incumbents really need is “lower taxes, less regulation, [and] a good operating environment,” an executive of Danish telecom operator TDC warned that the proposal “will reduce profits in the industry so there will be less money to invest.”

## Industry Mourns Loss Of Apple Co-Founder Steve Jobs

In a tragic development, Apple, Inc. confirmed on Wednesday that Steve Jobs, the company’s co-founder and icon of the personal computing and wireless telecommunications industries, had died at the age of 56. Jobs, who had battled pancreatic cancer since 2004, succumbed just six weeks after stepping down as Apple CEO. Despite his health challenges, which forced two medical leaves of absence in the past three years, Jobs—the creative genius behind the Apple Macintosh computer that set the design standard for modern PC operating systems—remained deeply engaged in product development and in Apple’s affairs until nearly the end. Declaring, “the world rarely sees someone who has had the profound impact Steve has had,” Microsoft co-founder Bill Gates marveled that “the most productive chapter in Mr. Jobs’s career occurred near the end of his life, when a nearly unbroken string of successful products like the iPod, iPhone and iPad changed the PC, electronics and digital media industries.” Walt Disney CEO Bob Iger remembered Jobs as “a great friend as well as a trusted advisor” as he predicted that Jobs’s legacy “will extend far beyond the products he created or the businesses he built.” Observing that Jobs “leaves behind a company that only he could have built, and his spirit will forever be the foundation of Apple,” Apple CEO Tim Cook vowed: “we will honor his memory by dedicating ourselves to continuing the work he loved so much.”

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