

**“How Will the Proposed Merger Between AT&T and T-Mobile Affect Wireless  
Telecommunications Competition?”**

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before the

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Subcommittee on Intellectual Property, Competition, and the Internet

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Chairman Goodlatte, Vice Chairman Quayle, Ranking Member Watt, and members of the Subcommittee, thank you for inviting me to testify about AT&T's proposed takeover of T-Mobile. I appreciate the opportunity to testify on behalf of the RCA, the competitive carriers association. The Rural Cellular Association is the nation's leading association of competitive wireless carriers with nearly 100 carrier members, including many smaller rural and regional providers. RCA and its members are deeply concerned that AT&T's proposed takeover of T-Mobile would deal a mortal blow to competition and cause significant harm to consumers. The acquisition would further consolidate an industry already teetering on the brink of duopoly and would amass an unprecedented amount of spectrum in a single carrier's hands. For the first time, this horizontal merger would eliminate a national carrier from the competitive map. The transaction would not only diminish competition among the largest national providers, but also undermine the ability of rural and regional carriers to compete by making it more difficult – if not impossible – to secure roaming rights and to offer cutting-edge, interoperable handsets. As for the so-called “efficiencies” AT&T touts, let me quote from a recent article about the deal in the *Economist*, “Beware of habitual monopolists bearing gifts.”<sup>1</sup>

The net result of this transaction would be a far less vibrant wireless marketplace, marked by higher prices, lower service quality, and less innovation than if AT&T and T-Mobile remained separate competitors. The merger also would result in diminished infrastructure investment and fewer jobs, as AT&T would devote \$39 billion toward gobbling up a competitor and eliminating overlaps, rather than toward building out the broadband spectrum it won at auction while T-Mobile pursues its own investments and expansion. For all these reasons, we have called on the Department of Justice and the Federal Communications Commission to block

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<sup>1</sup> The Economist, “Not So Fast, Ma Bell,” (March 24, 2011).

the proposed transaction, and I hope this Subcommittee will convey its concerns as those agencies conduct their investigations.

### **RCA and Its Interest in the Proposed Transaction**

RCA is the voice of the competitive wireless industry, representing the interests of nearly 100 carriers. Nearly all of our members are rural and regional carriers, most of whom serve fewer than 500,000 customers. The vast majority of RCA's carrier members fall under the Small Business Administration's definition of a small communications business, having 1,500 or fewer employees. RCA's members are part of their communities, and are energetic, entrepreneurial contributors to the wireless industry. Their customers count on them to deliver high-quality service on popular devices at affordable prices. Just as in urban areas, rural consumers increasingly are seeking access not only to mobile phone service but to the latest smartphones, tablets, and other mobile broadband devices. RCA's members are doing all they can to give consumers choices and meet this demand, consistent with the national policy goal of making mobile broadband services ubiquitous and bridging the digital divide.

Across the country, RCA's members face challenges in competing with all of the four national wireless providers, but particularly with the two "super-carriers" – AT&T and Verizon. Our members obviously attempt to compete against AT&T and Verizon in the *retail* marketplace, where we hope to offer superior network coverage at attractive prices. But we are also forced to compete with the "Big Two" in accessing critical *wholesale* inputs, and it is there that we are the most disadvantaged. For example, small providers must contend with the "super carriers" in bidding on spectrum at auction, in purchasing devices that consumers desire, and in attempting to attract capital from investors. Obviously, these inputs are vital to our members' abilities to build out their networks and to satisfy consumers' demands.

Congress authorized and the FCC auctioned spectrum for smaller, non-national carriers to have licenses to serve particular geographic areas. Smaller carriers may build out their entire licensed areas but still not have national coverage. Congress encouraged these smaller carriers to buy spectrum and build their businesses, and RCA members have done so to great effect and benefit to consumers.

Because of the substantial cost of obtaining spectrum and of building out networks, and given the massive resource advantages of the existing national carriers, RCA's members cannot realistically expect to offer nationwide coverage on their own. Rather, our members are forced to depend on AT&T and Verizon for access to other key inputs, and thus have a vertical relationship with the "super-carriers." Most significantly, RCA's members must obtain roaming rights from at least one nationwide carrier – AT&T or T-Mobile, for GSM carriers, and Verizon or Sprint, for CDMA carriers – if they are to give consumers the network coverage they demand as consumers travel outside their home networks. Just last week, FCC Chairman Julius Genachowski explained that "smaller carriers need to be able to offer national service 'to have any chance of competition in today's market.'" RCA's members must rely on and pay the largest carriers for access to their national networks. Our members must also turn to AT&T and Verizon, as the two largest *wireline* providers, to purchase backhaul or "special access" services to connect their cell towers to the public switched telephone network.

With smaller carriers literally at the mercy of the Big Two, many of our members are wary of publicly opposing AT&T's attempt to acquire T-Mobile, for fear that AT&T could retaliate in the marketplace – for instance, by denying or delaying roaming agreements, by making certain devices unavailable through exclusive deals with manufacturers, or by refusing to provide backhaul services on reasonable terms. In fact, such concerns are a major reason why I

am here today on behalf of RCA. Small carriers' fear of reprisals is emblematic of the David vs. Goliath nature of today's wireless industry – a competitive imbalance that would grow far worse if AT&T were allowed to acquire T-Mobile.

### **The Proposed Transaction Would Bring Unprecedented Levels of Consolidation to the Modern Wireless Industry**

After years of robust competition that led to falling prices and rapid network expansion, today's wireless industry is unfortunately veering toward duopoly, even without the proposed acquisition. As of 2010, AT&T and Verizon together served more than 65 percent of all subscribers, and they are continuing to gain share. A recent report from the Government Accountability Office showed that in a span of only three years, from 2006 to 2009, AT&T and Verizon increased their subscriber market share by nearly 20 percent.<sup>2</sup> Economists also warn that the industry's HHI value, a common indicator of consolidation, *already* exceeds the thresholds used by DOJ and FCC to determine whether an industry is highly concentrated.<sup>3</sup> In fact, because of these troubling signs of concentration, the FCC's 2010 Wireless Competition Report marked the first time the agency was unable to certify that the wireless industry is characterized by effective competition.<sup>4</sup>

This consolidation has, in turn, led to higher prices for consumers than would have prevailed in a more competitive marketplace. Despite everything we learned in our economics

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<sup>2</sup> Government Accountability Office, *Telecommunications: Enhanced Data Collection Could Help FCC Better Competition in the Wireless Industry*, Report to Congress, GAO-10-779 at 10, 13 (July 2010).

<sup>3</sup> Roger G. Noll and Gregory L. Rosston, *Competitive Implications of the Proposed Acquisition of T-Mobile by AT&T Mobility*, SIEPR Policy Brief, Apr. 2011, at 2, available at [siepr.stanford.edu/system/files/shared/documents/pb\\_04\\_2011.pdf](http://siepr.stanford.edu/system/files/shared/documents/pb_04_2011.pdf).

<sup>4</sup> *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd 11407 ¶ 4 (2010).

textbooks, AT&T claims that industry consolidation has driven prices down faster than competition would have. The fact of the matter is that a once-rapid decline in prices leveled off almost completely once consolidation took hold in the industry.

AT&T's proposed takeover of T-Mobile is the latest and by far the biggest example of industry consolidation run wild and is clearly a horizontal merger that exceeds all thresholds for acceptable consolidation. This time a major national competitor would be eliminated from the marketplace. It would lead to an outright duopoly, in which AT&T and Verizon would each enjoy more market share than all other carriers combined. It would also give AT&T a *monopoly* in both wholesale and retail markets for GSM wireless services by eliminating T-Mobile as the only other nationwide GSM carrier – monopoly power that would exceed even Verizon's dominance among CDMA carriers. As such, the deal presents DOJ and the FCC with two starkly different visions of the future. Rather than responding to competitive pressures by providing high-quality, low-priced services, AT&T can dramatically diminish those pressures by buying a key competitor – indeed, the rival that offers the lowest prices among the four nationwide providers. Rather than innovating to make more efficient use of the vast spectrum it already has, AT&T can gobble up T-Mobile's spectrum while continuing to warehouse its own. Rather than partnering with smaller carriers to provide vital roaming and backhaul services at reasonable rates, AT&T can steamroll smaller carriers by denying these essential facilities. And rather than creating jobs by investing in new infrastructure, AT&T can cut jobs wherever T-Mobile personnel are redundant. The choice should be clear: Our regulators should insist on competition over consolidation, as Congress as a whole and this Subcommittee have consistently championed.

## **The Proposed Transaction Would Undermine the Competitiveness of Rural and Regional Carriers in Particular**

While AT&T's proposed acquisition of T-Mobile should be rejected based on the horizontal competitive effects in the retail marketplace, it poses equal if not greater concerns based on the harm it would cause to the rural and regional providers that depend on AT&T (and, to a lesser extent, T-Mobile) for wholesale inputs. While RCA is concerned about the transaction's overall harms, obviously my greatest worry stems from the adverse effects on my members. As I explained above, RCA's members are in the precarious position of having to compete with the large nationwide carriers, while also being at their mercy in seeking roaming agreements and in attempting to obtain the latest handsets from equipment suppliers that are forced to defer to AT&T's and Verizon's wishes.

On top of this structural concern, AT&T already has demonstrated a penchant for anticompetitive conduct. It has aggregated a vast amount of spectrum at the expense of smaller carriers; it has flatly refused to deal with small carriers that seek roaming rights on its nationwide network; and it has forced manufacturers to limit the availability of their handsets to these carriers and has consistently refused to seek interoperable solutions to encourage wireless industry coverage and new services throughout the nation. In several different respects, the proposed transaction would greatly exacerbate these competitive harms to rural and regional carriers.

### *Spectrum Aggregation*

Even before it announced the T-Mobile transaction, AT&T had spent the previous months and years engaged in a spectrum-acquisition binge. Over the past decade, AT&T has aggregated spectrum in the cellular and PCS bands through its acquisitions of Telecorp, Highland Cellular, BellSouth, Dobson, Edge Wireless, McBride Spectrum Partners, and most

recently Centennial Communications. In the AWS band, AT&T purchased 48 licenses at auction in 2006 covering nearly 200 million POPs. And in the 700 MHz band, AT&T bought spectrum from Aloha covering three-quarters of the major markets in 2007, bid billions at auction to acquire 227 more 700 MHz licenses in 2008, and just this year announced a deal with Qualcomm to acquire an entire nationwide footprint in the 700 MHz band.

As a result, AT&T's spectrum stockpile is already the largest of any of the four major national carriers. A recent study by J.P. Morgan estimated that AT&T currently holds 100 MHz on average in the top 100 markets nationwide, without counting T-Mobile's spectrum licenses towards AT&T's total.<sup>5</sup> AT&T's next closest competitor, Verizon, holds just over 90 MHz—10 percent less spectrum on average than AT&T.<sup>6</sup> All of this makes it simply impossible to credit AT&T's claim that it is facing debilitating spectrum constraints. Indeed, Verizon—with less spectrum—has said it is “extremely confident” in its spectrum position for rolling out a nationwide 4G network.

And now, AT&T wants to take over T-Mobile and raise its spectrum holdings to an average of 150 MHz in the top 100 markets. Such a move—designed to tighten AT&T's grip on an essential input for wireless services—would wreak havoc on competition from rural and regional providers. Spectrum that AT&T amasses for itself is spectrum that smaller rivals cannot use to compete. As AT&T's spectrum portfolio grows while the holdings of competitive carriers remain constant, these carriers would become less effective competitors relative to AT&T. If AT&T raises prices, RCA's members would face significant spectrum limitations when trying to expand service offerings to recruit AT&T customers. And as smaller carriers become less

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<sup>5</sup> J.P. Morgan, *Wireless Services: Overview of Carrier Spectrum Holdings*, Mar. 30, 2011, at 1, available at [https://mm.jpmorgan.com/stp/t/c.do?i=62A4E-B32&u=a\\_p\\*d\\_569842.pdf\\*h\\_-ifi22f3](https://mm.jpmorgan.com/stp/t/c.do?i=62A4E-B32&u=a_p*d_569842.pdf*h_-ifi22f3) (“*J.P. Morgan Spectrum Study*”).



effective competitors, they become less able to retain subscribers, less able to maintain a consistent revenue stream, and less able to attract sufficient capital to invest in infrastructure, devices, and service quality.

### *Voice and Data Roaming*

As I mentioned earlier, many of RCA's members also are customers of AT&T and T-Mobile in the wholesale market for GSM voice roaming. AT&T and T-Mobile are the only two carriers in the industry that can offer nationwide roaming to rural and regional GSM carriers. Nationwide roaming is indispensable to our members' ability to compete. As wireless customers increasingly demand nationwide service, the market for wireless services has become truly national in scope. RCA's members simply cannot cobble together the nationwide coverage that their customers demand absent a nationwide roaming partner. Their future viability depends on their ability to obtain 3G GSM and 4G LTE roaming from AT&T and T-Mobile. And yet, to date, AT&T has consistently rebuffed our members when they seek to negotiate GSM roaming arrangements on fair and reasonable terms, as the FCC recently confirmed.

The takeover of T-Mobile would make AT&T the *only* option for nationwide GSM roaming. Giving AT&T monopoly control over a key input for rural and regional carriers would have disastrous competitive consequences. A strengthened AT&T would be able to withhold roaming altogether to restrict competition from the dozens of RCA members with GSM networks. And even if the combined AT&T/T-Mobile were willing (or required) to negotiate a roaming arrangement, it could charge monopoly rents without fear of price competition. The FCC's recently adopted rules on roaming, even assuming they withstand the appeal that Verizon has filed, simply require "commercially reasonable" roaming rates based on marketplace

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<sup>6</sup> *Id.*; see also *id.* (estimating that "Sprint and T-Mobile USA each have ~50 MHz").

benchmarks, and thus would not prevent AT&T from gouging smaller carriers when there are no longer other nationwide GSM roaming providers to use as a point of comparison.

Nor would the problem go away with the passage of time; as the nation transitions to 4G networks, T-Mobile would not be available as a major source of 4G roaming, leaving small carriers at the mercy of the AT&T-Verizon duopoly. As noted, AT&T has flatly refused to enter into 3G roaming agreements, leaving no reason to believe it will change its approach with respect to 4G roaming. And Verizon's decision to appeal even the FCC's modest roaming requirements, which fail to subject AT&T or Verizon to traditional dominant carrier safeguards, likewise offers little hope that it will be a willing partner in granting 4G roaming rights on reasonable terms and condition

#### *Device Exclusivity and Interoperability*

The proposed transaction would also give AT&T monopsony power as a buyer of devices, and the leverage to force device manufacturers to accept anticompetitive terms. AT&T has a long track record of extracting agreements from manufacturers for exclusive rights to cutting-edge devices. The most notable example – but certainly not the only one – is the iPhone, which AT&T managed to tie up for nearly four years. Even following the end of exclusivity for the iPhone, it is still unavailable through over 95% of domestic carriers, as it is offered only through AT&T and Verizon Wireless. Device exclusivity severely limits the set of handsets RCA's members can offer, and puts them at a distinct disadvantage in the marketplace. If the takeover of T-Mobile goes forward, AT&T's ability to insist on device exclusivity will only increase. Indeed, as the sole nationwide provider of wireless services over a GSM network, AT&T would be able to exert tremendous leverage when dealing with GSM device manufacturers.

AT&T would also exert this power to prevent devices from being interoperable on competitive carriers' networks. Device interoperability is a prerequisite to a well-functioning wireless marketplace; it encourages innovation, gives consumers more choices, reduces costs to end users, and enables smaller carriers to provide stronger competition to major carriers like AT&T. AT&T has succeeded in the past at preventing interoperability for certain devices, but as its buying power increases with the purchase of T-Mobile, AT&T would be able to make it even harder for rural and regional carriers to offer cutting-edge devices, or devices that can roam seamlessly. The stronger AT&T becomes, the fewer devices will be interoperable, and the harder it will be for smaller carriers to compete.

Interoperability was a fundamental principle when the FCC issued the first cellular licenses, where only two licenses were available in each market. During this early period of the industry, interoperability was mandated by the FCC. With the onset of spectrum auctions and the introduction of competition in the industry, interoperability remained the practice across the entire industry, as no carriers had the dominance to demand their own standards and non-interoperable equipment. It is only in the most recently auctioned 700 MHz band that we have returned to a point where two dominant carriers have the size and scale to insist on their own specifications, and for the first time the industry does not have interoperability within a spectrum band, to the detriment of competitive carriers and the development of a public safety broadband network alike. If AT&T is allowed to become even more dominant through this takeover, these interoperability problems will only grow more significant.

#### *Other Competitive Concerns*

Spectrum, roaming, and interoperability are not the only competitive concerns from this deal. The deal would also undermine the ability of RCA's members to get adequate and

reasonably priced “backhaul” services to connect their cell towers to the public switched telephone network. By vertically integrating T-Mobile’s wireless business with AT&T’s extensive wireline backhaul business, AT&T would be in a position to discriminate in favor of T-Mobile’s traffic *in addition to* its own traffic and affiliated traffic. While excessive special access rates have been a major concern for competitive carriers in recent years, this merger would strengthen AT&T’s ability to leverage its backhaul network by discriminating against unaffiliated traffic.

As we have mentioned, such anticompetitive conduct would increase prices and limit choices for all consumers. Many minority, low-income, and younger mobile users are the most likely to rely exclusively on mobile wireless services. These users will be the first to see the impact of fewer competitors, particularly in the “value” priced markets. T-Mobile has been a leader in this market segment, and its exit would deal a significant blow to the critical effort to make mobile broadband available to more users at lower costs.

In addition, by weakening competition from smaller carriers, the deal would impair their access to capital. As RCA’s members become less able to obtain sufficient spectrum, secure voice and data roaming rights, offer competitive and interoperable devices, and gain access to backhaul at reasonable rates, they would become less able to retain subscribers and post healthy revenues. These financial red-flags would translate into lower investor confidence in RCA’s members—and therefore higher capital costs.

We should not lose sight of the fact that competition has been good not only for the consumer, but also for the wireless industry. With a very active, competitive wireless marketplace, there has been less need for regulation. The market has been free to respond to consumer needs and to innovate to win new customers, all without the fear of one or two

dominant players restricting free market choice. But if this acquisition were approved, a light regulatory touch will no longer be possible, because the market forces that allow for less regulation will be on life support. The FCC would have to consider new regulatory policies to emulate the prices that would prevail in a genuinely competitive wireless industry and to ensure that the two dominant providers permit competitive connectivity on just and reasonable terms and conditions. Barriers to market entry for new entrants would become huge problems and would stifle innovation without the creative juices of a healthy market. In short, a merger of this magnitude would change the marketplace for decades and might forever alter the character of the competitive wireless sector that has been such a boon for consumers.

## **Conclusion**

In conclusion, if the deal is approved, consumers would lose, competition would lose, and only AT&T would win. The deal would lead the industry down the path toward a true wireless duopoly, a GSM monopoly in the hands of AT&T, greater spectrum aggregation, higher roaming and special access fees, less device availability and interoperability, less access to capital for smaller carriers, and fewer jobs. AT&T's audacious plan to eliminate a major competitor under the banner of purported "efficiencies" should be roundly rejected. Indeed, if competition policy is to continue having any meaning, this combination of two of four nationwide wireless providers cannot be allowed to occur.

Thank you again for the opportunity to be here today, and I look forward to discussing these important issues with you this morning.