Consumers Union
Nonprofit Publisher of Consumer Reports

Testimony of Parul P. Desai
Policy Counsel
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Regarding

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

before the

House Committee on the Judiciary
Subcommittee on Intellectual Property, Competition, and the Internet

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Chairman Goodlatte, Ranking Member Watt, and members of Congress, thank you for this opportunity to discuss the impact on consumers if AT&T Inc. (AT&T) is permitted to purchase one of its major competitors, Deutsche Telekom's T-Mobile USA (T-Mobile). For 75 years, the mission of Consumers Union, the nonprofit publisher of *Consumer Reports*® magazine, has been to work for a fair, just, and safe marketplace for all consumers and to empower them to protect themselves. As part of that mission, Consumers Union has been working to promote a truly competitive wireless market, which will provide consumers with meaningful choice, affordable prices, quality service, and access to innovative products. However, we have grave concerns about AT&T's purchase of T-Mobile because of the negative effect it will have on consumers' pocketbooks product and service choices and innovation.

Introduction:

Wireless technology is evolving and, more and more, consumers are using mobile devices to access the Internet. For many, especially rural consumers, low-income consumers, and consumers of color, a mobile device is the first – and sometimes only – entry point to access the Internet. Vigorous competition must exist in the wireless industry in order to ensure affordable access, quality service, choice, and innovation. However, the wireless market is already a concentrated one and just last year, the Federal Communications Commission (FCC) opted not to declare it a competitive market. As discussed below, the proposed acquisition of T-Mobile by AT&T will be harmful to consumers, and the benefits promised by AT&T can be achieved without eliminating a competitor from the market. Now is not the time to approve a combination between two of the four nationwide wireless carriers in America. Instead, lawmakers and policy makers must work towards creating a wireless marketplace that allows competitors and new entrants to fairly and meaningfully compete, which will ultimately benefit consumers.

Impact on Market Concentration:

Combining the second and fourth largest wireless carriers would further consolidate market share among the top four carriers, resulting in a "highly concentrated" market as defined by the 2010 Department of Justice (DOJ) and Federal Trade Commission (FTC) *Horizontal Merger Guidelines*. The *Guidelines* use the Herfindahl-Hirschman Index (HHI) as the measure of market concentration and potential market power. As of 2008, the FCC estimated the HHI to be 2,848,[1] which already exceeds both the DOJ (2,500 HHI) and FCC (2,800 HHI) definition of a heavily concentrated market. According to the DOJ, if an acquisition creates a highly concentrated market and if the HHI is increased by over 100 points, the acquisition will raise significant competitive concerns that warrant scrutiny.[2] It has been estimated this acquisition will increase the national HHI by an additional 650-700 points, which means that scrutiny over the proposed acquisition should be increased, with a presumption that the acquisition will enhance market power.[3]

Further, there is no evidence to suggest that other providers will be able to challenge the market shares of the largest carriers. The true nationwide service networks are Verizon, AT&T, Sprint, and T-Mobile. If the acquisition is approved, AT&T, Sprint, and Verizon would control over 90% of the wireless market.[4] AT&T and Verizon alone would control close to 75% of the wireless market, essentially creating a duopoly.[5]

In fact, GAO noted that while the economies of scale of the large, national carriers "can facilitate the continued growth of the top carriers, they can also create challenges to the growth and competitiveness of small and regional carriers."[6] Furthermore, the GAO report cited the difficulty of small and regional carriers in "securing subscribers, network investments…and handsets."[7] In other words, the national providers are in a different league than the small and regional carriers.

Specifically, the GAO data show that it is the top national carriers that have been able to add the greatest number of net subscriber additions annually.[8] The GAO also notes that one of the national carriers' biggest competitive advantages their ability to retain their current customers better than their small or regional competitors. One major problem for these carriers' when it comes to gaining and retaining subscribers is that they are limited in the their ability to offer the newest and latest advanced handsets because of the exclusivity agreements device manufacturers typically enter into with top national carriers. The GAO reports that stakeholders have "consistently noted that consumers are increasingly basing their wireless decisions on the availability of particular advanced handsets."[9] According to one stakeholder, "some consumers do not consider these small and regional carriers as options because"[10] they do not have access to the newest and most advanced handsets.

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[1] *See* Report, *14th Annual Report on Mobile Wireless Competition*, 25 FCC Rcd 11407, ¶51 (2010).
[2] *See* DOJ and FTC *Horizontal Merger Guidelines*, pg. 19, Aug. 19, 2010.
[3] *See* Stacey Higginbotham, "AT&T, T-Mobile Merger: A Regulatory Quagmire?," *GigaOm*, Mar. 20, 2011, http://gigaom.com/2011/03/20/att-tmobile-regulators/. Last viewed on May 10, 2011.
[4] *See* Government Accountability Office, "Report to Congressional Requesters: Telecommunications: Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry," pg. 13, July 2010, http://www.gao.gov/new.items/d10779.pdf. Percentage derived from adding together market share from Figure 3 with the 2009 data.
[5] *See id*.
[6] Government Accountability Office, "Report to Congressional Requesters: Telecommunications: Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry," pg. 17, July 2010, http://www.gao.gov/new.items/d10779.pdf.
[7] *Id*.
[8] *Id*. at 18.
[9] *Id*. at 23.
[10] *Id*.

Additionally, small and regional carriers have fewer funds to acquire spectrum and invest in improvements and expansion of their own networks.[11] Smaller and regional carriers are already at a distinct competitive disadvantage with the larger, national carriers. Further consolidation in the market will only make it more difficult for the remaining carriers to compete with a market-dominating duopoly.

Moreover, “special access” rates continue to be a barrier to entry and growth for smaller and regional carriers.[12] Special access rates “are a significant expense for wireless carries because connections to backhaul provided by special access are an integral component of wireless networks.”[13] In most circumstances, carriers rely mainly on their competitors - AT&T and Verizon - to purchase special access, further aggravating the ability of smaller and regional carriers to effectively compete. Wireless carriers, including T-Mobile, have long sought relief on the high special access rates that have to pay to AT&T and Verizon.

Thus, while MetroPCS, US Cellular, and Cricket/Leap are all strong regional carriers, they cannot really be considered equals to the nationwide carriers. According to first quarter 2011 subscriber numbers, these three regional carriers would constitute less than seven percent of the entire wireless market, including wholesale and retail customers.[14] Even if Clearwire, a wireless data provider, is included in the mix, those four providers would still control only nine percent of the market, while LightSquared, which is attempting to be a wholesale provider, currently has no market shares and still faces obstacles before it can be cleared to enter the market.

Consequently, it remains unclear whether the regional and smaller carriers have the necessary resources to gain enough market share to truly compete with the national carriers. Acquiring spectrum is a challenge, regional and smaller carriers do not have the economies of scale or the influence of the nationwide carriers when making deals for handsets, and such carriers still rely on AT&T and Verizon to purchase key inputs to broadband service such as special access.

<u>Impact on Price:</u>

A combined AT&T and T-Mobile will likely lead to higher prices not just for T-Mobile customers but for all consumers.

T-Mobile is considered the largest low-cost competitor to AT&T, and the merger would essentially eliminate it from the marketplace. The deal would also make AT&T the only significant GSM carrier in the U.S. wireless market. Consumers who require the interoperability of GSM technology for global travel, particularly businesspeople, would be left with nothing but a monopoly carrier in the U.S.

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[11] *Id*. at 21.
[12] Government Accountability Office, “Report to Congressional Requesters: Telecommunications: Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry,” pg. 41, July 2010, http://www.gao.gov/new.items/d10779.pdf.
[13] *Id*.
[14] “Grading the top 10 U.S. carriers in the first quarter of 2011,” *Fierce Wireless*, http://www.fiercewireless.com/special-reports/grading-top-10-us-carriers-first-quarter-2011. Last viewed on May 10, 2011.

Moreover, a recent *Consumer Reports*® price analysis revealed that T-Mobile pricing plans are typically between $15 and $50 cheaper than AT&T's comparable plans.[15] Furthermore, T-Mobile customers have the option for "unlimited" data plans, whereas AT&T customers do not. That means T-Mobile subscribers who eventually migrate to AT&T plans will likely pay more for service than they would have under a T-Mobile plan.

For example, T-Mobile charges $60 per month for unlimited talk and text on an individual "Even More Talk" two-year contract plan, while AT&T charges $90 per month for the same deal "Nation" contract plan. AT&T thus costs $30 more per month or $360 more per year. Additionally, T-Mobile's two-line, unlimited "Even More Talk + Text" + 200MB data two-year contract plan for smart phones costs $120 per month. The equivalent AT&T "Family Talk Nation Unlimited" plan costs $180 per month, after adding data and messaging to the base price. This AT&T plan costs $60 more per month or $720 more per year.

The price premium charged by AT&T widens further, in two out of three cases, for a family that buys the above plan and needs the following amounts of data per phone:

Amount of data	**T-Mobile**	**AT&T**	**Annual savings with T-Mobile**	**AT&T Price Premium**
200MB	$120/mo	$180/mo	$720	50% higher
2GB	$140/mo	$200/mo	$720	43% higher
5GB	$160/mo	$260/mo	$1,200	63% higher
10GB	$220/mo	$360/mo	$1,680	64% higher

The above calculations take into account the fact that T-Mobile provides, for example, 2GB per phone for the $140 "2GB" 2-line family plan, whereas AT&T charges for data as an add-on for each phone line. So, on the T-Mobile 2GB family plan, $140 actually buys 4GB of data total, whereas with the AT&T plan, a customer must pay $25 a month per phone for 2GB x 2 = $50. Regarding the 5GB and 10GB amounts, AT&T charges $45 a month for 4GB plus $10 for each additional GB, or $60 for 6GB per phone.

It is also worth nothing that the T-Mobile metered plans are advertised as "unlimited" because the first 2GB, on the 2GB plan operates at 4-G network download speeds of up to 21 MBps, average 5-7 MBps, and if one uses more than that, there is no extra charge, but T-Mobile reduces the download speed to the level of its 3-G network: up to 15 MBps, average 2-4 MBps.

While AT&T has said it will honor T-Mobile's current contracts, those will likely end after two years, or even sooner. Presumably, those customers will either have to enter into a contract with AT&T or find a new carrier. If customers decide to stay with AT&T after their T-Mobile contract ends, they will likely need to purchase a new phone that is compatible with AT&T's network, as well as pay more per month for a similar plan.

While it is apparent this transaction will impact T-Mobile customers, it is also likely prices for all consumers would increase. There is little reason to believe that the two largest carriers –

[15] *See* Jeff Blyskal, "CR analysis: T-Mobile is cheaper than AT&T," *Consumer Reports*, Apr. 8, 2011, http://news.consumerreports.org/electronics/2011/04/cr-analysis-t-mobile-is-cheaper-than-att.html. Last viewed on May 24, 2011.

controlling over 75% of the market - would try to compete on price. The carriers with the most influence, AT&T and Verizon, already tend to set the pricing scheme for the entire industry. Further consolidation in the wireless industry indicates that prices will likely go up. As former Consumers Union Counsel Chris Murray testified in 2008, "[t]he way carriers continue to raise prices on text messaging services is a clear example of the negative ramifications of market power in this industry."[16] Murray noted that carriers have charged high rates for text messaging, yet it costs the carriers little to run. In fact, he pointed out that text messaging rates had increased 150% in a four year period solely because the major players figured out that they could inflate such prices and reap huge profit benefits.

Another example of industry closely following its competitors' moves are rates related to early termination fees for smart phones. In 2009, Verizon increased its early termination fees (ETFs) for smart phones to $350.[17] Less than a year later, AT&T followed suit and more than doubled its ETFs to $325.[18] Further concentration of the wireless industry raises serious questions about pricing, since the two largest companies already tend to steadily – in lockstep - raise prices on services.

Finally, this year, three main players in the wireless industry – AT&T, Sprint, and Verizon – have all either raised prices or have eliminated cost saving plans or benefits.[19] For example, AT&T and Verizon both eliminated their discount programs for existing customers that provided for additional discounts on top of handset subsidies. Sprint raised the pricing for data plans. T-Mobile was the only major carrier that did not announce price increases at the beginning of the year, demonstrating that its elimination from the market will almost certainly hurt consumers' pocket books and eliminate the only low-priced carrier from the national market.

In all, T-Mobile's departure from the wireless market would remove a relatively low-cost carrier, which will likely result in higher prices for all consumers.

Impact on Service:

A combined AT&T and T-Mobile is not likely to result in improved service. AT&T is continuously rated as having the worst customer satisfaction of any major wireless carrier. A recent *Consumer Reports*® survey found that consumers considered AT&T a worse wireless carrier than T-

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[16] Chris Murray, "Competition in the Wireless Industry," *Before the* U.S. House of Representatives Subcommittee on Communications, Technology and the Internet, Committee on Energy and Commerce, pg. 2, May 7, 2010.

[17] *See* Andrew Munchbach, "Confirmed: Verizon Wireless to Charge up to $350 Early Termination on 'Advanced Devices,'" *Boy Genius Report*, Nov. 4, 2009, http://www.bgr.com/2009/11/04/confirmed-verizon-wireless-to-charge-up-to-350-early-termination-on-advanced-devices/. Last viewed on May 24, 2011.

[18] *See* Rosa Golijan, "AT&T Jacking Up Early Termination Fees To $325," *Gizmodo*, May 21, 2010, http://gizmodo.com/5544851/att-jacking-up-early-termination-fees-to-325. Last viewed on May 24, 2011.

[19] *See e.g.*, Tom Moccia, "Carriers Will Raise Rates This Year," *Techno Buffalo*, Jan. 25, 2011, http://www.technobuffalo.com/news/business/carriers-will-raise-rates-this-year/. Last viewed on May 20, 2011.

Mobile in a wide range of areas from contract service to prepaid service, from customer service to call quality.[20]

For example, while less satisfying than Verizon and Sprint, T-Mobile was still meaningfully better than AT&T at providing service with a contract plan. Indeed, AT&T got lower marks than T-Mobile on almost every attribute that was rated. It was comparable with T-Mobile only on texting problems, where both AT&T and T-Mobile rated below average. The gap between AT&T and T-Mobile was larger still for service without a contract ("prepaid" plans). There, T-Mobile was more satisfying overall than Verizon, Virgin, and AT&T (with its Go Phone prepaid brand).

The gap between the carriers in satisfaction was highest when it came to customer support, especially for service provided by phone. That is mostly because of AT&T's sub-par scores in every aspect of customer service, from support on various modes (phone, e-mail, website) to success in solving problems and staff knowledge. Additionally, when it comes to customers who are considering quitting their carrier, AT&T and T-Mobile had the most subscribers weighing such a switch. But by 10 percentage points, AT&T subscribers said they were seriously thinking about making a move.

Importantly, T-Mobile has been essentially stable in *Consumer Reports®* national reader score, reflecting overall satisfaction, and in many other attributes. AT&T, by contrast, has seen a marked slide in reader score and some other attributes between the surveys *Consumer Reports®* published in 2010 and 2011, respectively. AT&T has become significantly less satisfactory to readers in resolving issues and has prompted a startling jump (of a full 13 percentage points) in the proportion of its customers who say they want to quit the carrier.

Despite the poor rankings in service (and higher prices), AT&T's current churn rate is 1.15% while T-Mobile's is 2.50%,[21] giving AT&T no incentive to improve its service after the merger. Thus, the survey data suggests that T-Mobile customers will face poorer service and does not suggest that AT&T's purchase of its competitor will improve service for current customers of either AT&T or T-Mobile.

Impact on Innovation:

With a merged AT&T/T-Mobile and Verizon controlling over 75% of the market, the success of handset makers and application developers will be determined by a merged AT&T/T-Mobile and Verizon. The top two wireless providers will be more able to exert their market power when dealing with device manufacturers and application developers. Moreover, with such little competition in the market, there would be little incentive for the larger carriers to make efficient use of their own networks.

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[20] *See* Paul Reynolds, "T-Mobile beats AT&T in CR satisfaction survey," *Consumer Reports*, Apr. 11, 2011, http://news.consumerreports.org/electronics/2011/04/t-mobile-beats-att-in-cr-satisfaction-survey.html. Last viewed on May 24, 2011.

[21] *See* AT&T, "AT&T + T-Mobile: A World-Class Platform for the Future of Mobile Broadband," *Mobilize Everything*, pg. 27, http://www.mobilizeeverything.com/documents/AT&T_T-Mobile%20A%20World%20Class%20Platform%20for%20the%20Future%20of%20Mobile%20Broadband.pdf.

For example, in 2007, Verizon passed on the chance to be the exclusive distributor of the Apple iPhone because it did not approve of the financial terms Apple was seeking. Some of the terms that Verizon refused included allowing Apple to share in monthly fees, allowing Apple to determine how and where iPhones could be sold, and allowing Apple to continue a relationship with iPhone customers.[22] Apple ended up awarding exclusive carrier rights to AT&T for its iPhone, though some have suggested that AT&T retained some influence over which applications Apple would allow in its app store.[23] This demonstrates the kind of market power the two large wireless companies have over device manufacturers, even those manufacturers that are considered heavyweights like Apple.

With more market power concentration in the wireless industry, the largest carriers will be able to dictate which devices they will allow to attach to the network and will be able to dictate exactly what kind of control device manufacturers have over their own technology. This has the potential to greatly stifle innovation as device manufacturers could start developing devices aimed at meeting carrier expectations rather than trying to create the most innovative products they can. Moreover, there is a good chance AT&T will allow fewer devices to attach to its network; AT&T has stated it will improve upon T-Mobile's margins through "device portfolio rationalization"[24] which likely means limiting the number of devices available to consumers. As a result, fewer device manufacturers would have the ability to bring their product to market.

Application developers will face similar obstacles due to AT&T's and Verizon's duopoly market power. For example, RIM recently introduced its new PlayBook tablet which offers some free applications designed to interact with other RIM BlackBerry devices. However, AT&T has blocked the most anticipated application for the PlayBook, BlackBerry Bridge.[25] BlackBerry Bridge allows email, contacts, calendar, and other applications to be accessed on the PlayBook via other BlackBerry devices. This is vaguely like tethering, which AT&T offers as a paid monthly service. This very recent example shows the market power of the top national carriers to stifle application makers' ability to offer innovative tools and products.

Open-platform operating system creators, like Google's Android, will also likely be negatively impacted by the merger. Android is an operating system that allows users to access an application market where applications developers do not have to go through as burdensome of an approval process as most other application platforms require, like with Apple's iOS. However, there is a possibility that with only two major, post-merger carriers, Verizon and AT&T, both will be able

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[22] Leslie Cauley, "Verizon Rejected Apple iPhone Deal," *USA Today*, Jan. 29, 2007, http://www.usatoday.com/tech/news/2007-01-28-verizon-iphone_x.htm. Last viewed on May 10, 2011.
[23] *See e.g.,* Daniel Ionescu, "Google Voice iPhone App Rejected by Apple" *PC World*, July 28, 2009, http://www.pcworld.com/article/169151/google_voice_iphone_app_rejected_by_apple.html. Last viewed on May 24, 2011.
[24] *See* AT&T, "AT&T + T-Mobile: A World-Class Platform for the Future of Mobile Broadband," *Mobilize Everything*, pg. 29, http://www.mobilizeeverything.com/documents/AT&T_T-Mobile%20A%20World%20Class%20Platform%20for%20the%20Future%20of%20Mobile%20Broadband.pdf.
[25] *See* Chris Davies, "AT&T blocks BlackBerry Bridge app for PlayBook," *Slashgear*, Apr. 19, 2011, http://www.slashgear.com/att-blocks-blackberry-bridge-app-for-playbook-19146896/. Last viewed on May 10, 2011.

to exert pressure on Google and other open operating system developers to tailor their systems to allow only certain applications.[26]

Even if application blocking remains uncommon, there is still the possibility that the major wireless carriers will be able to utilize their market power to raise data prices or begin lowering data caps.[27] This will effectively limit the types of applications available, since consumers will be weary of downloading applications that require massive amounts of data consumption. Increased market concentration post-merger would give Verizon and AT&T even more power to raise data prices, thus squelching innovative applications.

No Impact on AT&T's Ability to Address Congestion and Deployment in Rural Areas:

AT&T claims the purchase of T-Mobile will give it the spectrum it needs to deal with increased traffic on its network and to deploy its wireless broadband network in rural areas. However, AT&T does not need to purchase T-Mobile to address these issues.

AT&T's claim that it needs more spectrum is slightly dubious. Some analysts have stated that AT&T is significantly underutilizing its current spectrum capacity.[28] Moreover, AT&T holds similar spectrum holdings as Verizon Wireless.[29] Nonetheless, while AT&T is making claims of a spectrum shortage, and its customers continually suffer from poor service, Verizon's customers are not experiencing the same problems and Verizon is not complaining about spectrum constraints.[30] In fact, a 2010 report by Validas found that Verizon's smart phone customers actually use more data than AT&T's iPhone customers.[31]

Since AT&T has similar spectrum holdings as Verizon, AT&T's current network service problems do not appear to be the result of a lack of spectrum holdings. In fact, in 2009, despite already experiencing congestion issues because of the iPhone, AT&T only increased its capital expenditures by 1%.[32] On the other hand, Verizon increased its capital expenditures by 10%, and generally, AT&T had lower capital expenditures than Verizon.[33]

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[26] *See* Om Malik, "In AT&T & T-Mobile Merger, Everybody Loses," *GigaOm*, Mar. 20, 2011, http://gigaom.com/2011/03/20/in-att-t-mobile-merger-everybody-loses/. Last viewed on May 16, 2011.
[27] *See* Om Malik, "What AT&T and T-Mobile Merger Means for Innovation," *GigaOm*, Mar. 21, 2011, http://gigaom.com/2011/03/21/what-att-and-t-mobile-merger-means-for-innovation/. Last viewed on May 16, 2011.
[28] *See e.g.*, Dave Burstein, "70-90% Of AT&T Spectrum Capacity Unused," *Fast Net News*, Mar. 21, 2011, http://www.fastnetnews.com/a-wireless-cloud/61-w/4193-70-90-of-atat-spectrum-capacity-unused. Last viewed on Apr. 1, 2011.
[29] *See* Charles B. Goldfarb, "The Proposed AT&T/T-Mobile Merger: Would It Create a Virtuous or a Vicious Cycle?" *Congressional Research Service*, May 10, 2011, pg. 14.
[30] *See id*.
[31] *See* "Validas Reports Verizon Wireless Smartphones Consume More Data Than iPhones," *PR Newswire*, July 26, 2010, http://www.prnewswire.com/news-releases/validas-reports-verizon-wireless-smartphones-consume-more-data-than-iphones-99234019.html ("Average monthly wireless data consumption for Verizon Wireless Smartphones is 421 megabytes per month, versus 338 megabytes per month for iPhones.").
[32] *See* Charles B. Goldfarb, "The Proposed AT&T/T-Mobile Merger: Would It Create a Virtuous or a Vicious Cycle?" *Congressional Research Service*, May 10, 2011, pg. 15.
[33] *See id*.

Moreover, the Congressional Research Service found that with more network investment, a carrier's already obtained spectrum "can handle more traffic…and that it is possible to innovate around spectrum constraints" in order to support more traffic.[34] Indeed, the CRS warned that "throwing spectrum at a perceived shortage might relieve a short-term problem but it also might provide a disincentive for investment in efficient network facilities and for innovation that increases the productivity of existing spectrum and facilities."[35] Therefore, if AT&T invested more in its network, for example by adding more cell towers, its network would likely be able to handle more traffic without the need to purchase T-Mobile. However, allowing for further consolidation of valuable spectrum holdings could actually lead to less efficient use, continued spectrum constraints, and minimal gains for consumers.

It also does not appear that AT&T needs to purchase T-Mobile to build out broadband to rural areas. Indeed, AT&T was already expected to build out its 4G network at the same level as Verizon to compete with Verizon, which is expected to reach 96-98% of the country in the next few years.[36] Moreover, access to T-Mobile's spectrum does not necessarily help with rural build out, since there has been no demonstration that T-Mobile holds spectrum in rural areas where AT&T lacks coverage. Even if AT&T lacks its own spectrum holdings to reach certain rural areas, there is no evidence that there is a lack of available spectrum in rural areas. Indeed, AT&T could find other ways to access the spectrum it needs to fill in gaps in coverage in rural areas, such as partnering with other carriers or enter into data roaming agreements to reach rural areas where it may be lacking suitable spectrum.

Moving Forward:

There are several ways that competition within the entire industry can flourish while still expanding the reach of broadband build out. For example, lawmakers should continue to consider ways in which spectrum can be made available and distributed in equitable ways. Additionally, some carriers – including T-Mobile – have sought reforms to help ensure a marketplace that allows for more competition. For example, the FCC has pending proceedings on competition issues such as special access.[37] These inputs are generally controlled by AT&T and Verizon, and fair access to them would provide a more level-playing field for competitors.

In addition, as all carriers move towards LTE technology, the FCC has been asked to examine the issue of interoperability, which would ensure that competing wireless services have access to popular handheld devices that consumers want and ensure consumers can roam on other carriers' networks.[38] An April 2011 national poll by Consumers Union found that 73% of cell phone owners

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[34] *Id. at 11.*
[35] *Id.*
[36] *See* Dave Burstein, "AT&T LTE Result On U.S. Coverage: ~ 0%," Fast Net News, Mar. 22, 2011, http://fastnetnews.com/a-wireless-cloud/61-w/4192-atat-lte-result-on-us-coverage-0. Last viewed on Apr. 1, 2011.
[37] *See* Order and Notice of Proposed Rulemaking, *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, 20 FCC Rcd 1994 (2005).
[38] *See* Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, *In the Matter of Rural Cellular Association*,, RM-11497 (filed May 22, 2008).

said they would support a government rule that requires handsets to be compatible with all U.S. cellular services.

If phones are interoperable, consumers can easily switch networks when their contracts are up. As of now, it is nearly impossible to take that phone to another network if the customer is unsatisfied with his current network. Also, having devices available to all other carriers – rather than devices being subject to exclusive deals with one carrier - could open up an entire new market for device developers to create highly innovative products.

Carriers could also be required to eliminate or greatly reduce early termination fees. Sizing down early termination fees to directly correlate with the phone subsidies is another way to enable consumers to easily switch networks if they are unsatisfied. The ability to switch networks puts more pressure on the carriers to effectively compete for consumers based on service and price.

Overall, rather than approve AT&T's bid for T-Mobile, lawmakers and policymakers should move forward to resolve these issues in a way that will foster competition, consumer choice, innovation, and fair prices.

Conclusion:

There is a great deal of data and evidence to suggest that this transaction will lead to a highly concentrated market, which will likely lead to higher prices and less choice for consumers. While the FCC and DOJ will be reviewing this transaction in the months ahead, Consumers Union urges Congress to carefully scrutinize this proposed transaction and the effect it will have on consumers' pocketbooks, choice, service, and innovation.