

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
May 11, 2011

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On "The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together
Again?"
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Today, we examine the competitive impact of AT&T's proposed acquisition of T-Mobile. This acquisition would combine the Nation's second and fourth largest providers of wireless communications, and will have a lasting impact on the wireless industry. At present, four companies control nearly 90 percent of the national wireless market. The proposed acquisition would further consolidate an already concentrated market for wireless communication.

I am particularly concerned about what this acquisition may mean in Vermont and other rural parts of the country. Too many parts of my state still have no wireless service. AT&T began providing service in Vermont just a few years ago, after the Department of Justice required Verizon to sell spectrum it was to acquire as part of another merger. The Department's scrutiny of that merger led to Vermonters having access to the iPhone for the first time. Any acquisition in this industry should provide similar consumer benefits.

Today, wireless carriers contend that a shortage in available spectrum limits their ability to both improve and expand wireless services. But in Vermont, experts tell me both AT&T and T-Mobile have large blocks of unused spectrum in rural areas - leaving Vermonters with more dropped calls and fewer cellular options.

Still, both AT&T and T-Mobile argue that their combined spectrum will enable them to provide a greater number of consumers with more advanced wireless technology than either could independently. AT&T represented to me that within two years, this acquisition will result in 250,000 more Vermonters having access to its 4G service than would otherwise be serviced by either company on its own. I look forward to hearing more details on the basis for that representation, and would like an assurance that AT&T will follow-through with that build out.

Most Vermont cellular customers have never considered T-Mobile as a viable option - since they have little if any retail presence in my home state. But T-Mobile owns a great deal of wireless spectrum across the Green Mountains - spectrum that until the announcement of this acquisition was being built out by T-Mobile in an effort to grow its footprint in Vermont. Of course, AT&T also holds a great deal of wireless spectrum in Vermont. While I have been impressed with their

aggressive build out to date, I worry that rural areas will continue to be left behind with or without this acquisition.

I also worry about what this merger means for E911 systems across the country - and especially in Vermont. The ability of E911 operator to locate a cellular caller during an emergency call has and will continue to save lives. If this merger is approved, I hope that AT&T will continue to invest in improving the reliability of E911 locating technologies.

There is no doubt that AT&T and T-Mobile are at the forefront of innovation in the wireless market. Each company has a history of developing new and creative ways to enable consumers to communicate wirelessly. I applaud their work. But it is this history of innovation that highlights the importance of the antitrust laws. The antitrust laws promote competition, which drives this innovation. Consumers ultimately benefit through more choices of better products at lower prices. I am also concerned about jobs, in Vermont and across the country.

Any acquisition in this industry should result in better coverage and more options for rural customers in Vermont and across the country. AT&T suggests that it would, as the result of efficiencies resulting from the combined spectrum of the two companies. The merits of this argument need to be examined. The certainty of the outcome needs to be explored.

When the new administration took office two years ago, it promised vigilant enforcement of the antitrust laws. To date, the Antitrust Division has followed through and that is a basis for some confidence. At a hearing on dairy competition that I chaired in Vermont last Congress, Assistant Attorney General Christine Varney promised to take a close look at competition issues in the dairy industry. Subsequently, the Department of Justice began workshops around the country to analyze these competition issues, and then challenged the acquisition of two dairy bottling plants by the country's largest dairy distributor. Additionally, the Justice Department has carefully examined mergers in the cable and airline industries and imposed conditions. I am confident that a similar level of scrutiny will be applied to this transaction.

I expect the Department of Justice and Federal Communications Commission to conduct an exhaustive and careful analysis of this acquisition and its impact on competition. Specifically, this analysis should include the impact the proposed transaction will have on consumer prices and choices for cell phone and wireless data plans, and whether the acquisition will stifle or promote innovation. The antitrust laws, when properly applied, exist to protect competition and provide more products and lower prices for consumers. I expect that the Justice Department is wary of creating a market where additional companies need to merge in order to survive.

I thank Chairman Kohl and Senator Lee for holding this important hearing and look forward to hearing from our witnesses.

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