Responses of Hu Meena, President & CEO of Cellular South, Inc.

to

Questions for the Record

of the

Senate Committee on Judiciary, Subcommittee on Antitrust, Competition Policy and Consumer Rights May 11, 2011, hearing:

"The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?"

Responses to Questions from Senator Leahy

Question #1: Will consumers benefit from AT&T's acquisition of T-Mobile?

Response: Absolutely not. AT&T's proposed takeover of T-Mobile brings into sharp focus the negative impact that consolidation of the largest carriers is having on consumers, on job growth and on competition in the once thriving wireless industry.

Question #2: In what ways might AT&T's acquisition of T-Mobile benefit consumers?

Response: I believe AT&T's proposed takeover of T-Mobile would have no consumer benefits.

Question #3: In what ways might AT&T's acquisition of T-Mobile harm consumers?

Response: If AT&T is permitted to takeover T-Mobile, AT&T Wireless and Verizon Wireless would each have more subscribers than all of the nation's other wireless carriers combined. This AT&T-Verizon duopoly already exercises near complete control over wireless device and infrastructure vendors. AT&T and Verizon have used this control to restrict or completely prevent broad roaming opportunities for consumers, and to create technologically exclusive networks that frustrate device ecosystems and prevent roaming and slow the deployment of 4th Generation (4G) wireless services to American consumers.

If AT&T is permitted to takeover T-Mobile –eliminating one of its three nationwide competitors - consumers would suffer from the reduced competition. Post-takeover, consumers will face higher device and network subscription prices, reduced innovation, and reduced geographic coverage – particularly in America's rural areas.

Responses to Questions from Senator Kohl

Question #1(a): As Cellular South does not own its national cell phone network, how do you provide cell phone service to your customers when they travel and leave Cellular South's regional network?

Response: Cellular South provides voice and data service to its customers outside of Cellular South's home network through various voice and data roaming agreements with other carriers operating compatible networks through the nation.

Question #1(b): Are you dependent on larger carriers' willingness to negotiate reasonable rates with you so that you can provide your customers with the national service they demand?

Response: Yes. Cellular South must be able to secure voice and data roaming agreements with the large national carriers in order to assure that Cellular South's customers can utilize the features of their devices when they travel outside of Cellular South's network.

But, as we move to 4th Generation LTE ("4G LTE") wireless technology, there is a second, critical pre-requisite to providing our customers with national service: device interoperability. Currently, each device that we sell for use on our networks is built to operate across the Cellular spectrum, PCS spectrum and, for some, AWS spectrum.

Until recently, all devices built to operate in any specific part of a spectrum band were technologically capable of operating across all paired spectrum within the given band. The only difference between devices was the air interface technology (i.e. CDMA or GSM). In other words, all devices were developed to be interoperable across the entirety of a given block of spectrum (e.g., all Cellular devices are interoperable across the Cellular spectrum, all PCS devices are interoperable across the PCS spectrum, and all AWS devices are interoperable across the AWS spectrum). This is not true for the 4G LTE networks being deployed on the 700 MHz spectrum even though they use a common air interface technology.

The 700 MHz spectrum has been fragmented into distinct Band Classes and the two largest holders of 700 MHz spectrum - AT&T and Verizon - are deploying essentially proprietary LTE networks and devices that work only on their spectrum. Given the enormity of the economic scale of AT&T and Verizon, these two carriers are the de facto "market" for LTE devices and equipment that operate at 700 MHz. Outside of this "market," it is not economically feasible for any other carrier to obtain LTE equipment or devices to operate in non-AT&T or non-Verizon 700 MHz bands.

Even if it were economically feasible for carriers to obtain LTE equipment and devices in non-AT&T and non-Verizon 700 MHz bands, roaming from one carrier's network to another will not be possible without interoperable devices. The "market" is not developing these devices, and Cellular South cannot justify the added expense of developing them on our own without the assurance that our customers will have LTE roaming at just and reasonable rates. Given the failure of the market to foster interoperable LTE deployment, only an interoperability requirement – like that imposed in 1981 by the Reagan FCC – can solve this problem.

Question #1(c): Does subsidizing your competitors with these roaming and special access fees harm your ability to compete with them?

Response: No. Roaming enables competition. Cellular South's customers, like all wireless customers, expect to be able to use their devices wherever they travel. Cellular South's and other regional wireless operators' ability to offer nationwide service via roaming agreements actually enables competition in the wireless market by providing customers of both the national carriers (e.g., AT&T and Verizon) and regional carriers, like Cellular South, with an equal ability to utilize all of their wireless devices' capabilities as they move about the country.

Additionally, roaming agreements are generally reciprocal: Cellular South customers are able to roam on the other carriers' network and the other carriers' customers can roam on Cellular South's network. Cellular South and the other carrier pay each other same rate for the ability of their respective customers to access the other carriers' network. In this way, roaming agreements are mutually beneficial to the carriers – they allow each carrier to "expand" the areas in which their customers have access to all of the capabilities of their wireless devices.

Question #2: How easy has it been for Cellular South to reach agreements to roam on AT&T's network? Do you have any concerns about your ability to reach roaming agreements with AT&T should their merger be approved?

Response: Within its GSM network (which utilizes the same air-interface technology as AT&T), Cellular South currently offers 2.5G service and has 2.5G roaming agreements with AT&T. A 3G GSM network has not been deployed within our GSM footprint for one basic reason: we have no ability to offer 3G roaming to our GSM customers.

We have had no success in obtaining a 3G roaming agreement for our GSM customers from AT&T. In fact, AT&T's latest roaming offer, made just weeks before the FCC announced new data roaming rules, clearly was not made in good faith as it would have increased our existing voice roaming rates and would have raised our existing data rates by many multiples.

Recent additional efforts to reach out to AT&T to negotiate a reasonable data roaming agreement have been unsuccessful. If AT&T is permitted to takeover T-Mobile, AT&T would gain a nation-wide monopoly over GSM roaming. And under those circumstances, I have no expectation that data roaming agreements would become easier to obtain from AT&T.

Question #3: Does lack of access to some of the most in-demand smartphones harm Cellular South's ability to compete with the national carriers?

Response: Yes. Customers in our coverage area want the same devices that the national carriers are selling. Customer demand is largely driven by device selection. So, in order to compete with AT&T or Verizon in our coverage area, we must be able to offer the same devices to our customers. Exclusive device agreements or other arrangements that AT&T and Verizon can force device manufacturers to enter hamper Cellular South's ability to offer our customer the latest and most iconic devices.

Question #4: Do you believe competition from smaller regional carriers such would be sufficient after the merger, so that there will be sufficient competition to the remaining three national cell phone companies should the AT&T/T-Mobile merger be approved? Why or why not?

Response: No. To compete in today's wireless market, a carrier must have access to national scale. In this national marketplace, AT&T possesses the scale to control vendors and influence competitive carriers' access to devices, roaming agreements, and infrastructure. Its consolidation with T-Mobile will further cement this anti-competitive condition.

Post-merger, AT&T and Verizon will control nearly 80% of the wireless market in the U.S. They will have the scale (over 200 million subscribers) to solidify their duopolistic control over the device and infrastructure manufacturers.

Even before this takeover was proposed, AT&T and Verizon had each leveraged their control over device and infrastructure vendors to create an essentially proprietary band-class in the 700MHz spectrum. Until the FCC's auction of 700 MHz spectrum, all devices built to operate in any specific part of a spectrum band were technologically capable of operating across all paired spectrum within the given band. The only difference between devices was the air interface technology (i.e. CDMA or GSM). In other words, all devices were developed to be interoperable across the entirety of a given block of spectrum (e.g., all Cellular devices are interoperable across the Cellular spectrum and all PCS devices are interoperable across the PCS spectrum).

This is not true for the 4G LTE networks being deployed on the 700 MHz spectrum even though they use a common air interface technology. The 700 MHz spectrum has been fragmented into distinct Band Classes and the two largest holders of 700 MHz spectrum - AT&T and Verizon - have developed and are deploying essentially proprietary LTE networks and devices that work only on their spectrum.

Given the enormity of the economic scale of each AT&T and Verizon, these two carriers are the de facto "market" for LTE devices and equipment that operate at 700 MHz. Outside of this "market," it is not economically feasible for any other carrier to obtain LTE equipment or devices to operate in non-AT&T or non-Verizon 700 MHz bands. To the extent competitive carriers can acquire LTE equipment and devices, the cost prohibits anything more than a fractional deployment and the ecosystem lags the AT&T Wireless and Verizon Wireless ecosystems by many months.

Even if it were economically feasible for carriers to obtain LTE equipment and devices in non-AT&T and non-Verizon 700 MHz bands, roaming from one carrier's network to another will not be possible without interoperable devices. The "market" is not developing these devices. Given the failure of the market to foster interoperable LTE deployment, only an interoperability requirement imposed by the FCC or Congress can solve this problem.

Problems such as this lack of interoperability at 700MHz will only become worse in a post-merger world.

Question #5: I understand that you oppose the merger and believe that it should be blocked. However, if the Justice Department and FCC do not decide to block it, are there any conditions that you think they should impose in order to approve the merger?

Response: No. I am not currently aware of any potential conditions that would resolve or mitigate the anti-competitive impact of the proposed takeover. All of the traditional wireless

merger conditions would do nothing to mitigate the control a post-merger AT&T and Verizon duopoly would exercise over key inputs to wireless business such as devices, infrastructure equipment, roaming and special access. Additionally, while conditions have been well-intended in previous transactions, history clearly shows us that these conditions have been ineffective in promoting competition. The Bell descendants have grown so large that traditional conditions would simply be ineffective in this case.

Responses to Questions from Senator Lee

Question #1: You are a representative of both smaller regional carriers and rural wireless providers. In referring to this merger in your written testimony, you said that "it must be stopped" and that "the fate of this acquisition determines the course of [this] industry." In contrast, other regional providers view the situation with much more hope.

Despite its membership in the RCA, US Cellular has stated that it sees "great opportunity" in the merger for its own expansion. Similarly, MetroPCS has stated: "We think this is a really good time for Metro to put our head down and get down to business," noting that the company "very well could get a . . . sharper focus from [its] infrastructure vendors. There would be one less operator for them to focus on."

a. Why would some regional carriers view the merger as the end of competition while others view it as an opportunity for growth?
b. What barriers to robust competition do you see emerging or intensifying as a result of this merger?

Response: Competitive wireless carriers are unified in their opposition to AT&T's proposed takeover of T-Mobile. In recent filings with the FCC, competitive carriers MetroPCS and nTelos stated that "[t]he proposed acquisition would be transformative and game-changing for the wireless industry, the telecommunications industry as a whole and consumers and would cement, once and for all, the consolidation of the wireless industry into a true and unequivocal duopoly comprising of AT&T on the one hand and Verizon on the other." *See*, Petition of MetroPCS Communications, Inc. and nTelos, Inc. to Condition Consent, or Deny Application, WT Docket No. 11-65 (May 31, 2011). Similarly, U.S. Cellular stated in its recent FCC filing that "U.S. Cellular does, however, have serious concerns about the proposed acquisition, which is likely the most significant and consequential in the history of the U.S. wireless industry." *See* Comments of United States Cellular Corporation, WT Docket No. 11-65 (May 31, 2011).

If AT&T's takeover of T-Mobile is approved, all that will remain is the endgame, where the remaining competitive carriers wait their turn to be acquired or bled dry by an AT&T-Verizon duopoly. AT&T Wireless and Verizon Wireless would each have more subscribers than all of the nation's other wireless carriers combined. This AT&T-Verizon duopoly already exercises near complete control over wireless device and infrastructure vendors. AT&T and Verizon have used this control to restrict or completely prevent broad roaming opportunities for consumers, and to create technologically exclusive networks that frustrate device ecosystems and prevent roaming and slow the deployment of 4th Generation (4G) wireless services to American consumers.

If AT&T is permitted to takeover T-Mobile – eliminating one of its three nationwide competitors - consumers would suffer from the reduced competition. Post-takeover, consumers will face higher device and network subscription prices, reduced innovation, and reduced geographic coverage – particularly in America's rural areas.

Without effective competition as a check on market abuses, the government will have to interject itself to ensure that consumers – the true owners of wireless spectrum – are protected. This means subjecting a future wireless communications duopoly to the same type of competition-squelching regulatory oversight that wireline telephone and electrical power utilities have operated under for decades.

Question #2: Your company, Cellular South, relies on data roaming arrangements with the national networks for your ability to offer customers nationwide coverage.

a. In your view, what impact would this merger have on roaming arrangements?

b. Will the recent FCC order mandating "commercially reasonable" data roaming agreements alleviate the concern over pricing and availability?

c. Would any potential merger conditions further alleviate the data roaming concerns that you've identified?

Response: AT&T's takeover of T-Mobile would eliminate one of the nation's two nationwide GSM roaming partners – granting AT&T a true monopoly over GSM roaming in the U.S.

T-Mobile's website currently claims that "GSM allows users to roam freely among markets." If the takeover goes forward, this will not be the case. If AT&T is permitted to takeover T-Mobile, AT&T would be the only potential nation-wide GSM roaming partner for competitive carriers. And while the FCC has recently issued data roaming rules that take a common-sense approach to requiring that consumers have access to data roaming, it also calls for business negotiations, which inherently require more than one provider to come to the table. There is little reason to believe that AT&T – equipped with a monopoly on GSM roaming – would do so. Additionally, the FCC's new data roaming rules are, as yet, untested and under threat of legal challenge by Verizon and, perhaps, AT&T.

Most importantly, **the FCC's data roaming rules do not address the technological barriers to roaming that Verizon and AT&T have each erected around their 4G LTE deployments.**

AT&T and Verizon have each leveraged their control over device and infrastructure vendors to create an essentially proprietary band-class in the 700MHz spectrum. Until the FCC's auction of 700 MHz spectrum, all devices built to operate in any specific part of a spectrum band were technologically capable of operating across all paired spectrum within the given band. The only difference between devices was the air interface technology (i.e. CDMA or GSM). In other words, all devices were developed to be interoperable across the entirety of a given block of spectrum (e.g., all Cellular devices are interoperable across the Cellular spectrum and all PCS devices are interoperable across the PCS spectrum).

This is not true for the 4G LTE networks being deployed on the 700 MHz spectrum even though they use a common air interface technology. The 700 MHz spectrum has been fragmented into distinct Band Classes and the two largest holders of 700 MHz spectrum - AT&T and Verizon - have developed and are deploying essentially proprietary LTE networks and devices that work only on their spectrum. Given the enormity of the economic scale of each AT&T and Verizon, these two carriers are the de facto "market" for LTE devices and equipment that operate at 700 MHz. Outside of this "market," it is not economically feasible for any other carrier to obtain LTE equipment or devices to operate in non-AT&T or non-Verizon 700 MHz bands. To the extent competitive carriers can acquire LTE equipment and devices, the cost prohibits anything more than a fractional deployment and the ecosystem lags the AT&T Wireless and Verizon Wireless ecosystems by many months.

Even if it were economically feasible for carriers to obtain LTE equipment and devices in non-AT&T and non-Verizon 700 MHz bands, roaming from one carrier's network to another will not be technologically possible without interoperable devices. The FCC's new data roaming rules do

not apply to technologically incompatible networks and devices. Therefore, the new data roaming rules will do nothing to assure consumer's ability to roam among the nation's most capable – 4G – networks.

I am not currently aware of any potential conditions that would resolve or mitigate the anti-competitive impact of the proposed takeover on roaming or other result issues. All of the traditional wireless merger conditions would do nothing to mitigate the control a post-merger AT&T and Verizon duopoly would exercise over key inputs to wireless business such as devices, infrastructure equipment, roaming and special access.

Responses to Questions from Senator Blumenthal

Question #1: What impact do handset exclusivity agreements have on smaller carriers like Cellular South?

Response: Wireless service has evolved from a market where consumers were primarily concerned with attractive monthly plans and a provider's network, to a market where a carrier's wireless devices reign supreme.

Cellular South and other regional and rural carriers have competed with the largest carriers for years on issues such as network quality, network coverage and price. These are all issues that are within our control. If we lose a customer because we don't offer the right plan or because we drop too many calls, that blame falls squarely on our shoulders – and I can and will fix that problem. However, regional and rural carriers are often unable to compete on devices because AT&T and Verizon lock up devices in exclusivity agreements or through other arrangements which ensure the most iconic devices will not reach the subscribers of smaller carriers. Put simply, regional and rural carriers cannot gain access to the latest, cutting-edge devices which puts us in the impossible position of competing in an area that our competitors control.

Focus groups of customers who have left Cellular South for AT&T or Verizon repeatedly say that they are buying the device, not the network and certainly not the company.

Device manufacturers are forced to cater to AT&T and Verizon in order to secure any kind of market share in the U.S. market. Increasing demands for exclusive handset arrangements or other customization arrangements by the largest carriers often strain suppliers' limited resources to the point that smaller carriers are precluded from acquiring the most iconic devices.

Question #2: Would this impact be exacerbated or amplified if this merger were allowed to go through?

Response: The consolidation that would result from AT&T's takeover of Verizon would certainly work to further exacerbate the AT&T-Verizon duopoly's control over all the secondary markets that touch the wireless industry – including device manufacturers.