

**Testimony of  
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before the

**Senate Committee on the Judiciary  
Subcommittee on Antitrust, Competition Policy and Consumer Rights**

regarding

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

**Wednesday, May 11, 2011**

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**INTRODUCTION**

Good morning Chairman Kohl, Ranking Member Lee, and members of the Subcommittee. Thank you for inviting me to testify before you today regarding AT&T’s proposed take-over of T-Mobile. This proposed acquisition 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. It must be stopped. The fate of this acquisition determines the course of our industry. It’s as simple and as critical as that.

I have been in the wireless industry for over twenty-three (23) years with Cellular South, the nation’s largest privately-owned wireless carrier serving over 875,000 subscribers in all of Mississippi and portions of four other southeastern states. I am also the current Chairman of RCA – The Competitive Carriers Association. Collectively, RCA’s nearly 100 wireless carrier members provide commercial wireless services to over 80% of the nation’s geography.

In my years in the wireless industry, I have seen the duopolistic world of the early cellular licenses, the rise in wireless competition as a result of the later spectrum auctions, and the growth and innovation throughout the industry as a result of the Telecommunications Act of 1996. But, as I sit before you today to discuss whether it is in the public's interest for one wireless company to control approximately 45% of the U.S market, I am convinced that we have reached a critical tipping point. With this transaction, policy-makers face a clear choice: either (1) allow the wireless industry to continue down a path toward a duopoly made up of MaBell's two behemoth descendants or (2) reverse course and lay the foundation for a new era of competition in this industry.

The Justice Department broke up the MaBell monopoly in 1983. Congress then set in motion an era of wireless competition that began in 1993, when spectrum auctions broke open the duopoly in wireless markets to competition. In 1996, Congress rewrote the Telecommunications Act to further promote competition in telecommunications services. Yet, over the last decade, we have watched as the largest carriers were permitted to close acquisition after acquisition – Centennial Wireless, Alltel, Rural Cellular Corporation, Dobson Communications, just to name a few – with seemingly no interest from regulators in the effects this consolidation has on the market. In fact, since at least 2009, Cellular South and other competitive carriers have been expressing to policy-makers concerns over the reconsolidation of our industry. Through a flurry of mergers and acquisitions we now find ourselves on a glide path toward Ma Bell reconstituting herself into the 2 Bell Sisters of the wireless industry: AT&T Wireless and Verizon Wireless. In the meantime, AT&T has used its enormous acquired scale to

control device and infrastructure vendors, limit or eliminate roaming, and slow the deployment of 4G LTE technology in the U.S.

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 should come as no surprise after the parade of acquisitions over the past several years. 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 prevent competitors like Cellular South from accessing devices, to restrict or completely prevent broad roaming opportunities for consumers, and to create technologically exclusive networks that frustrate device ecosystems and prevent roaming as well as slow the deployment of 4<sup>th</sup> Generation (4G) wireless services to American consumers.

At a time when the American economy is struggling to get back on its feet, our priority should be on preventing the emergence of a duopoly that would require heavy regulation. Instead, policy-makers should act to preserve competitive, innovative markets that use private capital to create jobs while providing consumers with robust choices of products and services.

Speaking for Cellular South and for the nearly 100 competitive wireless carriers of RCA, I respectfully request that you work to stop this acquisition. It's bad for consumers, it's bad for jobs, and it's bad for competition.

## **From Competition to Consolidation**

When I began in this business in the late-1980s, there was a local duopoly in every market. In that era of local-market duopolies, the FCC awarded two cellular licenses in each market area, which meant that consumers had just two choices for wireless service. Carriers had virtually no market incentive to innovate or improve service offerings. As a result, that period was marked as one of large brick phones and even larger wireless bills. In a duopoly, the market can quickly reach equilibrium and, if both providers are reasonably happy with their position, innovation stagnates and prices rise.

The industry changed for the better in the late 1990s, when the FCC, pursuant to Congressional mandate, auctioned off PCS licenses and a substantial number of competitive carriers entered markets—launching a new, healthy competitive era of wireless in the U.S.

Because Congress made competition a priority, the FCC auctioned PCS licenses to new entrants who built networks and attracted customers—disrupting established markets. Local duopolists were forced to respond to competitors with lower priced services and devices, new and larger coverage areas, better customer service and more innovative offerings. In order to acquire and retain customers, Cellular South and other existing carriers were forced to be creative. During this period, Cellular South launched several offerings that were groundbreaking at the time, including “Free Nights and Weekends,” “Free Incoming Calls,” and, later, some of the nation’s first “Unlimited” plans. Carriers competed on a level playing field and success was

measured by the number of subscribers each could attract and retain. Consumers were the primary beneficiaries.

But this all began to change in the middle of the last decade. Through unfettered mergers and acquisitions, it has become clear that our industry is on a glide path toward Ma Bell reconstituting herself into the 2 Bell Sisters of the wireless industry: AT&T Wireless and Verizon Wireless. Not surprisingly, this concentration of market power has led to less choice for consumers and the routine abuse of market power in an effort to prevent competition at every turn. Specifically, AT&T has used its enormous acquired scale to (1) restrict competitive carrier and consumer access to devices, (2) withhold roaming agreements, and (3) leverage its control over device and infrastructure vendors to Balkanize new spectrum and slow the deployment of 4G LTE technology in the U.S.

To date, the most audacious example of this anti-competitive consolidation is AT&T's proposed takeover of T-Mobile. The prospect of this transaction brings us to a critical decision point for policy-makers: are we are going to continue down the path toward an era of nationwide duopoly, or are we going to lay the foundation for a second competitive era in wireless. There is no third option – either AT&T will be allowed to acquire T-Mobile (paving the way for Verizon to acquire Sprint and cementing a national wireless duopoly); or it will not.

If AT&T's takeover of T-Mobile is approved, all that will remain is the endgame, where the remaining non-Bell carriers wait their turn to be acquired or bled dry by the biggest two carriers. Likewise, if the takeover goes forward, policymakers must begin preparations to

regulate every aspect of the day-to-day business of the duopolists. 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 regulatory oversight that wireline telephone and electrical power utilities have operated under for decades.

### **National Market, National Scale**

The U.S. wireless market is national, not regional. So it is ironic that AT&T's promotional materials regarding its takeover of T-Mobile cast carriers like Cellular South as national competitors while pressing regulators to review competition on a market-by-market basis.

The AT&T service plan and device prices that Cellular South competes against in Jackson, Mississippi are exactly the same as the service plan and device prices that AT&T offers in Arlington, Virginia. With respect to operating costs, it is nationwide scale that determines the ability to acquire and the cost of wireless devices and network equipment. Additionally, Cellular South and other competitive carriers must be able to offer customers nation-wide use of their devices. There is no market for regional or local calling plans.

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.

In fact, T-Mobile's recent troubles can be linked directly to its lack of scale in the national GSM market. AT&T was able to use its acquired national scale in GSM technology to influence device manufacturers to withhold the most popular GSM devices from T-Mobile and to refuse reciprocal roaming agreements<sup>1</sup> that put T-Mobile at a substantial competitive disadvantage – unable to offer consumers desirable GSM devices and quality nationwide roaming coverage.

### **When the duopoly of AT&T and Verizon is the “market”, the market has failed**

Recently, AT&T and Verizon 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

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<sup>1</sup> See, “T-Mobile, AT&T deadlock on 3G data roaming deal,” *Fierce Wireless*, February 3, 2011 (<http://bit.ly/g7J5y4>); “AT&T, T-Mobile bicker over possible 3G data roaming agreement,” *Fierce Wireless*, November 4, 2010 (<http://bit.ly/9O1Iwb>).

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. T-Mobile, as a competitive carrier, had been supportive of a 700 MHz interoperability requirement.<sup>2</sup> AT&T, however, has dedicated significant resources to opposing this pro-competitive policy change.

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<sup>2</sup> T-Mobile, for example, was a member of the Connect Public Safety Now coalition, which identifies interoperability at 700MHz as one of its policy priorities. *See*, <http://www.connectpublicsafetynow.org/interoperable>.



## **A Monopoly on GSM Roaming**

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.

When I began in this industry, roaming agreements were a natural part of doing business. Consumers came to rely on the ability to use their device wherever they happened to be, regardless of who they chose as their service provider. Roaming agreements could be negotiated in a matter of an afternoon and usually finalized within a week. As technology has advanced in the industry, the largest carriers have begun using data roaming agreements – actually, withholding data roaming agreements – as a means to restrict competition. Today's wireless devices do so much more than just make phone calls, and new applications are being introduced every day. Consumers literally have access to the world at their fingertips with today's wireless services. However, this world is often unavailable to many consumers because the largest carriers refuse roaming agreements for high-speed data.

Competitive carriers offer network access in areas that the largest carriers have not and, likely, will never build out on their own. These smaller carriers do not seek these roaming agreements as a means to actively market outside their footprint because (1) that is not the goal in seeking roaming, and (2) even if that were the goal, roaming rates are too high to make an economic case for that type of growth. Cellular South's customers travel just like the customers of AT&T and Verizon and we believe that consumers should be able to use their devices wherever there is a compatible network available.

With regard to 3G roaming, Cellular South is in a somewhat unique technological position. We currently operate both a CDMA and a GSM network. While Cellular South has historically been a CDMA carrier, we also have a GSM network covering most of rural Northeastern Alabama that was acquired with the purchase of Corr Wireless in 2010. Within its GSM footprint, Cellular South does not currently offer 3G service for one basic reason: we have been unable to secure 3G roaming for our GSM customers.

T-Mobile's website currently claims that "GSM allows users to roam freely among markets."<sup>3</sup> 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<sup>4</sup> that aim to mitigate AT&T's anti-competitive abuses related to data roaming agreements, those rules are, as yet, untested, under threat of legal challenge by Verizon and, perhaps, AT&T,<sup>5</sup> and do not address the technological barriers to roaming that Verizon and AT&T have each erected around their 4G LTE deployments.<sup>6</sup>

Cellular South's experience in securing 3G roaming for our customers is not unique. During its April Open Meeting presentation, the FCC's Wireless Telecommunications Bureau (WTB) highlighted the lack of 3G roaming agreements with AT&T, stating that 3G data roaming

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<sup>3</sup> See, <http://bit.ly/mdfxv7>.

<sup>4</sup> See, *Second Report and Order, In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services* (April 7, 2011).

<sup>5</sup> "AT&T, Verizon attack FCC's data roaming rules," *Fierce Wireless*, April 8, 2011 (<http://www.fiercewireless.com/story/att-verizon-attack-fccs-data-roaming-rules/2011-04-08>).

<sup>6</sup> See, *above*, at pp. 7-8.

is “often not available,” and that while AT&T launched its 3G network in 2005, there were no 3G roaming agreements as of April 2010, and that the first such agreement was reached in late March 2011, after the Commission had included data roaming on the April 7<sup>th</sup> Open Meeting Agenda and literally days before the Order was approved.<sup>7</sup> As the WTB stated during the April 7<sup>th</sup> Open Meeting, “The availability of data roaming fosters competition among multiple facilities-based providers, ultimately providing consumers with greater choice.”<sup>8</sup> Unfortunately, these benefits are lost when GSM data roaming agreements are only available from a monopoly provider, as will happen if AT&T takes over T-Mobile. As the data roaming Report & Order takes 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.

### **Other Effects of a World Without T-Mobile**

AT&T’s takeover of T-Mobile removes a significant competitive carrier partner and advocate from America’s wireless marketplace. Specifically for Cellular South, T-Mobile was a sophisticated partner in policy advocacy on issues critical to overcoming the anti-competitive impact of AT&T’s and Verizon’s dominance over device and infrastructure vendors.

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<sup>7</sup> See, <http://fcc.us/itnlyJ>.

<sup>8</sup> Id.

This is particularly true regarding the deployment of 4G LTE. In January of this year, T-Mobile announced its intention to deploy 4G LTE technology.<sup>9</sup> This would have presented carriers like Cellular South with a potential 4G LTE roaming partner in many of the nation's urban markets. Additionally, T-Mobile was, until the announcement of the AT&T acquisition, a significant advocate for interoperability at 700MHz – a policy change necessary to enable 4G LTE roaming by competitive carriers' customers on the 700 MHz networks that AT&T and Verizon have technologically walled-off from roaming traffic.

## **Conclusion**

There is much innovation left to be done in the wireless space. There are more people of all socioeconomic backgrounds and geographic locales who have yet to benefit fully from the wireless experience. And that is why we face a critical decision point in the wireless industry.

As everyone in the industry analyzes, considers and pontificates on every aspect of this proposed acquisition, policymakers have to decide: Should we continue down the path toward a nationwide wireless duopoly, or should we lay the foundation for a new era of competition in wireless?

I think the question answers itself. American business is appropriately built on the notion that healthy competition breeds innovation that fosters economic growth and benefits consumers.

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<sup>9</sup> See, "T-Mobile USA Seeks Sales Growth, Mulls Partnerships," Bloomberg News, January 20, 2011 (<http://www.bloomberg.com/news/2011-01-20/t-mobile-usa-seeks-3-billion-sales-growth-mulls-partnerships.html>)

That notion must certainly apply to the wireless industry, which cannot exist without the utilization of spectrum owned by and for the benefit of the American taxpayer.

Thank you again for the opportunity to be here today. I appreciate your time and your interest in these issues. I look forward to discussing them here this morning.