Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Applications of AT&T Inc. and Deutsche	)	
Telekom AG for Consent to Transfer	)	WT Docket No. 11-65
Control of the Licenses and Authorizations	)	
Held by T-Mobile USA, Inc. and Subsidiaries	)	

REPLY COMMENTS OF THE AMERICAN CONSUMER INSTITUTE

The American Consumer Institute Center for Citizen Research hereby submits its reply in response to comments filed with the Federal Communications Commission ("the Commission") respecting the Notice of Proposed Rulemaking in the above-captioned proceeding.

The American Consumer Institute is an independent 501c3 educational and research institute with a mission to identify, analyze and project the interests of consumers in selected legislative and rulemaking proceedings in information technology, health care, energy, insurance and other matters.

SCALE AND CONSUMER WELFARE

The economic literature is absolutely clear that market structure alone is not a determinant of market power. The wireless industry, like other network and capital-intensive industries, gains tremendous efficiencies through economies of scale and scope. Scale leads to productivity improvements that reduce per unit costs. This means concentrated markets with effective competition will outperform atomistic markets in terms of lower prices and increased consumer welfare. The presence of effective competitive is evidenced by the performance of the industry.

Indeed, market prices in the wireless industry have declined steadily over the past decade even as the number of providers has fallen, yet prices for other goods in the economy have risen. The consistent, downward trajectory of prices for wireless services suggests healthy market performance. In fact, 61% of the total historical decline in average revenue per wireless subscriber took place when there were only "A" and "B licenses.[1] In terms of consumer welfare benefits, the combination of low prices and high usage puts the US wireless market in first place among its European counterparts.[2]

The industry has performed well for consumers in terms of high rates of capital formation and innovation.[3] The telecommunications industry has experienced only modest rates of return compared to other industries, as pointed out by former Federal Communications Commission Bureau Chief, Dr. Larry F. Darby:

> *Market structure in the current debate is a red herring. It provides no reasoned basis, and certainly none from consumer welfare analysis, for imposing conduct constraints on broadband network providers. Nor for that matter do factual assessments in the context of traditional economic welfare analyses of conduct and performance reveal compelling signs of market failure ... The telcos and cable companies providing broadband networks earned roughly half the return on capital over the past five years of that earned by the average of the S&P 500 companies (10.7%) and about a quarter of the return on capital earned by Google (19.7%) over the same period.*[4]

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[1] Steve Pociask, "Finding Effective Competition: A Look at the Wireless Telecommunications Market," *ConsumerGram*, American Consumer Institute Center for Citizen Research, April 2011, available at http://www.theamericanconsumer.org/wp-content/uploads/2011/04/wireless-competition.pdf.

[2] Steve Pociask, "American Consumers Pay 10 Cents per Minute Less and Use over 600 Minutes More than Their International Counterparts. *ConsumerGram*, American Consumer Institute Center for Citizen Research, July 20, 2009, Chart 1, available at http://www.theamericanconsumer.org/2009/07/20/american-consumers-pay-10-cents-per-minute-less-and-use-over-600-minutes-more-than-their-international-counterparts/.

[3] Since its initial rollout, cumulative wireless U.S. investment totals nearly one-third of a trillion dollars.

[4] Larry F. Darby, "To Regulate; or Not to Regulate: Where's the Market Failure?" *The Consequences of Net Neutrality Regulations on Broadband Investment and Consumer Welfare: A Collection of Essays*, Released by The American Consumer Institute, November 19, 2009, pp. 76-77.

Therefore, based on our assessment of market conduct and performance, we find no evidence that consumers would be harmed by the acquisition and, to date, there is no evidence of rising prices or constrained output on the part of service providers. Where the threat of supply constraint may exist, it is due to spectrum limitations. However, this problem is the result of a public policies and certainly not the result of market conduct. Furthermore, as will be explained below, there is evidence that consumers would benefit from the acquisition.

T-MOBILE IS TEETERING ON DISTRESS

While the industry continues to exhibit tremendous growth and declining prices, as would be expected in a dynamic, competitive and innovative industry, all is not well for T-Mobile. By one estimate, T-Mobile has lost roughly 1.3 million customers (pre- and post-paid) and its level of network investment has declined by over 20%.[5] While other carriers are investing in 4G technologies, Deutsche Telecom, T-Mobile's owner, appears to be satisfied with older (3G) technologies. The fact is that Deutsche Telecom does not want to invest in the U.S., and is instead opting to sell T-Mobile. With falling subscribership and investment, T-Mobile appears to be a declining competitive factor. In this regard, an acquisition would benefit consumers by better utilizing valuable and scarce spectrum, as well providing next generation wireless broadband services to consumers.

CLAIMS OF HARMS ARE UNFOUNDED

Hypothetical arguments made by opponents regarding the potential increased prices have no basis in fact. Special interest groups routinely oppose mergers by claiming the combination would lead to higher consumer prices, but they provide no proof of these claims and, after-the-fact, such claims have consistently been off the mark. For example, on April 19, 2005, the Consumer Union and Consumer Federal of American provided testimony stating that broadband prices would increase as a result of

[5] Roger Entner, "Points to Consider Before the AT&T and T-Mobile Merger Hearing," Congress Blog, The Hill, May 25, 2011.

two industry mergers.[6] However, once those mergers were completed, industry prices fell. Similarly, one Consumer Union official was interviewed by Jim Lehrer on May 11, 1998 about another telecommunications merger, stating that "rates will skyrocket"… "up to doubling."[7] However, since this comment, industry prices have fallen (on an inflation-adjusted basis) by 37%, 64% and 75% for telephone, Internet and wireless services, respectively, despite completion of the merger.[8] These unsupported statements should be disregarded.

Similarly, Sprint/Nextel has publicly claimed that the acquisition would lead to higher prices, but basic economic and financial principles suggest that the exact opposite would occur. Sprint/Nextel, like any publicly traded corporation, has the primary goal of increasing shareholder value. To that end, it is not clear how Sprint/Nextel would be worse off if AT&T increased its prices, since higher prices would permit Sprint/Nextel to win market share and increase profits. On the other hand, if the merger were to lead to lower consumer prices and increased competition, Sprint/Nextel may have reason to oppose it. If this latter point proves true, blocking the merger would result in lost consumer welfare. In summary, Sprint/Nextel's claims and financial motives are inconsistent with one another. Therefore, the Commission should disregard what appears to be a self-interest perspective that may limit consumer benefits from increased price competition. In fact, some suggest that Sprint will uniquely benefit from the merger.[9]

REGULATORY RESTRAINT IS NEEDED

Even if market imperfections are identified, these imperfections are not a sufficient reason to impose corrective government action. For instance, if the Commission imposes costly remedies on AT&T, these costs may well reduce the benefits to consumers resulting from the merger. In addition, the Commission should also avoid

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[6] Statement by Gene Kimmelman on Behalf of Consumers Union and the Consumer Federation of America on SBC-AT&T and Verizon-MCI mergers," Senate Judiciary Committee, April 19, 2005, p. 14.

[7] Transcript of PBS's online NewsHour available at http://www.pbs.org/newshour/bb/business/jan-june98/merger_5-11.html.

[8] Since May 1998, the consumer price index for all items has increased by 38% -- a rate much faster than for telephone (1%), internet (-26%) and wireless (-37%) services. See www.bls.gov, downloaded June 8, 2011.

[9] Roger Entner, "Sprint the Winner if AT&T Absorbs T-Mobile," CNET, June 6, 2011, available online at http://news.cnet.com/8301-1035_3-20068758-94/sprint-the-winner-if-at-t-absorbs-t-mobile/.

any preconditions may benefit to one special interest group over other consumers. While it may be appropriate for some preconditions to address potential consumer risks in a handful of local markets, we urge the Commission to be selective and use restraint when considering any merger preconditions.

SUMMARY

T-Mobile's spectrum needs to be fully and efficiently utilized, consumers should have access to 4G LTE technologies, and policymakers should encourage increased investment and jobs in the U.S. economy. If a German company won't invest in the U.S., let a U.S. company make that investment. Whether that added investment comes from AT&T is immaterial, but something must be done to rescue T-Mobile and fully utilize this valuable spectrum.

The history of declining market prices, as well as increasing demand, innovation and investment, disproves the unsupported assertion that the merger would increase consumer prices. There is no evidence that consumer would be harmed by the acquisition and hypothetical claims of rising prices should be disregarded. In summary, we have no objection to the AT&T acquisition of T-Mobile.