

## The AT&T/T-Mobile Merger Must be Blocked 20 May 2011

First of all, let me state that I have no stake in the telecommunications industry. I am an entrepreneur and lawyer who is an avid fan of wireless technology. I use the technology for business business and pleasure. Having started and run many businesses that do business internationally, I keenly understand the roll communication plays. I also understand how important it is that there is real competition in the wireless industry that is growing exponentially. The United States should have the fastest, cheapest, wireless voice and data in the world covering the highest percentage of the population. But we don't.

To have the fastest, cheapest, most reliable network with the most coverage, the following competitive conditions must exist in the marketplace. In the ideal marketplace the following competitive conditions would exist:

- 1) one could use the data connection for anything he wants without interference from the carriers;
- 2) one could use the device of his choice on the carrier of his choice; and
- 3) one could jump from one carrier to another at will to get the best deal.

Verizon and AT&T are making sure that condition 1) above does not exist. They don't allow tethering of wireless devices to computers without an extra fee. They also don't allow voice calls over the internet using applications like Skype. T-Mobile has allowed tethering on their latest devices and has included a WiFi calling application which allows voice calls over WiFi (but they do charge per minute for calls). Furthermore, AT&T is blocking access to the internet for those using their capped or unlimited phone and voice SIM cards in Tablets. This makes no sense since the amount of data used would be the same if they were using a phone or a tablet.

AT&T, Verizon, and T-Mobile are also doing their best to make sure condition 2) does not exist either. None of the new high powered smartphones offered by any of these carriers will work on the high speed portion of their competitor's networks. The smartphone device manufacturers are obviously following the demands of the carriers not to put hardware (radios) in the smartphones that will work on their competitors 3G and 4G networks. For example, HTC is one of the largest manufacturers of smartphones. HTC has never put the UMTS 850/1700/1900 bands in one phone so that it could be used on both the AT&T (850/1900) and T-Mobile (1700) high speed networks. It is totally feasible to do. They don't do it because the carriers don't want their customers to be able to switch networks even after the customer's two year contract is up. By building the devices this way, they ensure exclusivity for the carriers. T-Mobile makes sure that one's SIM card (regardless of plan) does not have access to the internet when put into another compatible phone without a call to T-Mobile to activate the device. This is unacceptable. If one is paying for the services used, he should be able to use it as he pleases in the device of his choice.

Condition 3) does not exist either. Customers are being forced into two year contracts. Even if one wants to pay full price for a phone (i.e., no carrier subsidy), all the carriers fight selling you just a SIM card with month to month service. I have tried this on AT&T and T-Mobile. I was finally able to contact for one year. Why couldn't I be month to month if the carrier is not subsidizing my phone? The answer is the carriers will do everything to prevent real choice and real competition.

If we had a truly competitive environment in the US, one could buy the phone of his choice and choose the plan of his choice with the carrier of his choice. This is not possible. I'll give you an example. Two years ago, I wanted an HTC HD2 phone and wanted to run it on AT&T's network. AT&T did not offer the phone I wanted but T-Mobile did. However, the T-Mobile version of the HD2 would not work on AT&T's network because the manufacturer had left out the radio needed for AT&T's network. So I had to purchase an HTC HD2 from Australia that would work on AT&T's network. This is craziness.

The carriers argue that customers want the subsidized phones. Many customers like to pay less for their phones up front and take advantage of the carrier subsidy. The subsidies are approximately \$200 to \$300. However, the customer actually pays the amount of the subsidy over the 2 year contract period by paying higher internet connection fees. The problem is that after the 2 years are over and the subsidy has been paid, the phone will not work on a competitor's 3G or 4G network. On the other side of the coin, one who pays full price for the device is not given a discount on services.

If AT&T and T-Mobile are allowed to merge, there will be only one GSM carrier in the US. One won't be able to take their SIM card and use in in device of their choice. There will be two big, fat, cats in the industry – Verizon and AT&T. Both of these carriers have shown the proclivity to completely and unfairly control the use of their devices. As smart phones began to hit the scene, Verizon required customers to use their navigation services rather than let customers use free services that were available at the time. They also prohibit tethering without the customer paying a large additional fee. AT&T follows the same procedure.

I just had a very frustrating experience with AT&T. I bought an unsubsidized HTC Inspire which was advertised as 4G. I paid full price for the phone because I already had an AT&T SIM card with voice and data and didn't want to enter into a contract. After buying the phone, I wanted to unlock it so that I could use it outside the country on a vacation without incurring heavy roaming fees. AT&T refused to give me the unlock code even though I had paid full price. (I wanted to use a local SIM card during my vacation because I once incurred a \$1,400 roaming fee from AT&T for roaming for 8 days in France. On a later trip in Spain I bought a prepaid SIM card for a week of unlimited internet service for about \$30.)

The bottom line is that real competition is sorely lacking in the wireless industry in the US. T-Mobile has been a force in keeping AT&T's prices and policies in check by offering more competitive features like tethering, WiFi calling, and lower prices. If AT&T is allowed to buy T-Mobile USA, AT&T will continue to restrict what and how their services are used to the detriment of the public. Prices will also rise. I cannot believe that my AT&T bill is as big as a car payment!

I consider myself an Ayn Rand/Atlas Shrugged conservative who believes, in general, that government should stay out of business. However, in this case I am sure that the government needs to intervene and perhaps take a 180 degree turn with respect to the wireless industry.

I have some suggestions.

- 1) Block the AT&T/T-Mobile merger.
- 2) Force CDMA carriers such as Verizon and Sprint to adopt a SIM card type technology. This would allow customers to be able to take their devices from on CDMA carrier to another for the best deal.
- 3) End exclusive device contracts.
- 4) Force Carriers to offer prepaid and month to month contracts that have the full range of services they offer.
- 5) Force Carriers to allow uses to use their data connections any way they want. Many of the Carriers are already enforcing data caps anyway. They should not also be limiting how that data is used.

If the foregoing changes are made, there will be real competition in the wireless market. If you allow T-Mobile to be purchased by AT&T, you are creating a monopoly of the worst kind.

Sincerely,

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