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**Congress of the United States
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COMMITTEE ON EDUCATION AND THE
WORKFORCE

WTD
Mergers
AT&T/T-Mobile
PV
634

May 3, 2011

Mr. Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Proposed merger of AT&T and T-Mobile

Dear Chairman Genachowski:

The recent Supreme Court decision in *AT&T Mobility v. Concepcion* highlights one more area in which the proposed merger of AT&T and T-Mobile will greatly reduce, if not eliminate, competition in the wireless market.

At the present time, four companies control over 90% of the wireless market. Over the past ten years, while they have been consolidating the market, they have also achieved a "conscious parallelism" in the terms of their customer agreements. Each and every one of these companies mandates that all disputes be resolved by arbitration and requires its subscribers, as a condition of using its wireless service, to relinquish their constitutional right to a jury trial, their constitutional right to use the courts, and their procedural right to participate in a class action. The only tiny sliver of competition that remains is that T-Mobile allows its subscribers to "opt out" of the arbitration requirement within the first 30 days of service.

This is not a major concession by T-Mobile. A subscriber would have to read the 12-page agreement, find the provision, and take affirmative action to opt out separately with respect to each wireless line. And, T-Mobile still mandates that its subscribers waive their right to a jury trial and their right to participate in a class action. They can not "opt out" of those provisions. What the T-Mobile agreement demonstrates is that there is

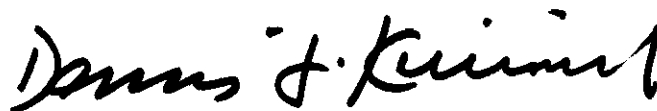
virtually no competition among the wireless companies in the terms of their subscriber agreements, and that the tiny sliver of competition that does exist will be completely eliminated if AT&T acquires T-Mobile.

A similar situation existed in the credit card industry two years ago. At the beginning of 2009, a consumer could not get a credit card without agreeing to resolve all disputes through arbitration, to waive the right to go to court, to waive the right to a jury trial and to waive the right to participate in a class action. Those provisions were mandated in the customer agreements of every major credit card issuer. This situation was highlighted in a July, 2009 hearing before the House Domestic Policy Subcommittee, of which I was the Chairman. Subsequent to that hearing, my staff followed up with 14 of the major credit card issuers. In the months that followed, seven of those banks dropped their arbitration provisions entirely, and three of those also removed the jury trial waiver and the class action prohibition from their customer agreements. Finally, there was competition among them in the terms of their customer agreements.

There are many reasons to disallow the merger of AT&T and T-Mobile. A market with only four "competitors" will be reduced to three. And the AT&T/T-Mobile merger may eventually result in a market in which only two major companies exist. The *Washington Post* reported on March 21, 2011 that, after AT&T's announcement of the merger, the stock price of "Sprint...fell nearly 14 percent, on concerns about whether it could survive on its own."

At a minimum, something should be done to create competition in the terms of wireless subscriber agreements. The people of the United States, who own the airwaves, have licensed those airwaves to wireless carriers. The wireless carriers have responded by requiring the people of the United States to give up constitutional rights as a condition of using the airwaves that the people of the United States own. If the FCC ultimately decides to allow AT&T and T-Mobile to merge, it should condition that merger on the return of those rights to the people. The merged companies should be prohibited from mandating arbitration, jury trial waivers and class action waivers in their agreements with consumers. That single action will finally create some competition in the terms of wireless subscriber agreements.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis J. Kucinich". The signature is written in a cursive, slightly slanted style.

Dennis J. Kucinich
Member of Congress