

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Application of AKD Holdings, LLC, Alaska DigiTel, LLC, and GCI, Inc.)	WT Docket No. 08-10
)	
For Consent to Transfer Control of Licenses and Authorizations)	File No. 0003258714
)	

MEMORANDUM OPINION AND ORDER

Adopted: August 8, 2008

Released: August 8, 2008

By the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the application filed by GCI, Inc. (“GCI”), Alaska DigiTel, LLC (“Alaska DigiTel”), and its parent, AKD Holdings, LLC (“AKD,” and together with Alaska DigiTel and GCI, “Applicants”), pursuant to section 310(d) of the Communications Act of 1934, as amended (“Communications Act”).¹ The Applicants seek Commission approval to transfer control of the licenses held by Alaska DigiTel from AKD to GCI.² The Application pertains to licenses in the Part 22 Cellular Radiotelephone Service (“cellular”), the Part 24 Personal Communications Service (“PCS”), and the Part 101 Common Carrier Fixed Point-to-Point Microwave Service. As discussed below, we conclude, pursuant to our review under section 310(d) of the Communications Act, that approval of the Application as conditioned will serve the public interest, convenience, and necessity.

II. BACKGROUND

2. *Description of Applicants.* GCI is a wholly-owned subsidiary of General Communication, Inc. (“General”).³ General is a publicly-traded corporation incorporated under the laws of the state of Alaska and headquartered in Anchorage.⁴ GCI provides voice, video, and data communications services to residential, commercial, and governmental customers in Alaska.⁵ GCI has recently stated that it is Alaska’s largest telecommunications company, working to construct “a statewide mobile wireless network to seamlessly link urban and rural Alaska for the first time.”⁶ Specifically, GCI directly or through subsidiaries holds the following spectrum: the 30 megahertz B-block broadband PCS license covering the entire state of Alaska;⁷ a partial A-block cellular license covering portions of the

¹ 47 U.S.C. § 310(d).

² See Application to Transfer Control of Licenses Held by Alaska DigiTel, LLC to GCI, Inc., File No. 0003258714 (filed Dec. 21, 2007, amended Jan. 8, 2008) (“Application”).

³ Application, Exhibit 1, Description of Transaction and Public Interest Statement, at 1 (“Public Interest Statement”). We use the term “GCI” to include General and all of its affiliated entities.

⁴ *Id.*

⁵ *Id.*

⁶ GCI Press Release, “GCI Completes Purchase of Communications Subsidiaries of United Companies, Inc.” (Jun. 9, 2008) at 2, available at <http://www.gci.com/> (last visited July 24, 2008).

⁷ Call Sign KNLF298.

Alaska 2-Bethel market, recently acquired as a result of GCI's acquisition of Alaska Wireless;⁸ 11 cellular licenses recently acquired from the United Companies;⁹ a B-block Local Multipoint Distribution System ("LMDS") license that serves Anchorage;¹⁰ and a number of other licenses used in support of its operations.

3. GCI has been offering mobile telephony services through a resale arrangement with Dobson Cellular Systems, Inc. ("Dobson").¹¹ Following Commission approval of the GCI-Alaska DigiTel transaction in the *GCI-Alaska DigiTel I Order* in December 2006,¹² GCI obtained a 78 percent non-controlling interest (subsequently increased to approximately 82 percent non-controlling equity) in Alaska DigiTel,¹³ which is selling wireless services under its own brand name.¹⁴ Dobson and Alaska DigiTel are competitors in the provision of mobile telephony services in the state of Alaska. More recently, in December 2007, subsequent to the acquisition of Dobson by AT&T Mobility, LLC ("AT&T"), GCI entered into an agreement with AT&T that provides for a transition of GCI's wireless customers from the Dobson (now Dobson/AT&T) network in Alaska to wireless facilities to be built by GCI in 2008 and 2009.¹⁵ GCI also provides fixed wireless local access services over its own facilities, operating under its PCS and other licenses.¹⁶ In addition, through various subsidiaries, GCI provides local and long distance wireline telephone service, as well as Internet and data communication services in Alaska.¹⁷ It also owns and operates cable systems throughout Alaska,¹⁸ and has ownership interests in submarine cables used for wholesale transport of communications to the Lower 48 States.¹⁹

⁸ Call Sign WPWF379. The license covers Dutch Harbor, Unalaska, Akutan, and Sand Point on the Aleutian Islands.

⁹ Call Signs KNKR275, WPOJ688, WPOJ693, WPOJ694, WPOJ849, WPOJ850, WPOJ851, WPOJ853, WPOJ865, WPOJ867, and WPOL233. Ten of these licenses are for cellular B-block frequencies, and one of these licenses is for cellular A-block frequencies.

¹⁰ Call Sign WPLM396.

¹¹ See GCI, Inc. 2007 Annual Report on Form 10-K/A (Amendment No. 1) at 16, 19 (filed June 10, 2008) ("GCI 10-K/A"), available at <http://sec.gov/Archives/edgar/data/75679/000007567908000017/inc10ka123107.htm> (last visited July 14, 2008).

¹² Applications for the Assignment of License from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communication, Inc., WT Docket No. 06-114, *Memorandum Opinion and Order*, 21 FCC Rcd 14863 (2006) ("*GCI-Alaska DigiTel I Order*").

¹³ At the time the Commission approved the transaction, GCI contemplated acquiring a 78 percent non-controlling interest. *GCI-Alaska DigiTel I Order*, 21 FCC Rcd at 14866 ¶ 5. The Applicants note that minor changes in ownership percentages have occurred over time since the initial transaction closed, resulting in GCI holding approximately 82 percent of the equity in Alaska DigiTel at this time. However, Applicants state that "[t]hese minor changes have not altered the FCC-approved control structure of [Alaska DigiTel]." Application, Public Interest Statement at 1.

¹⁴ GCI 10-K/A at 16, 19.

¹⁵ *Id.* at 10, 16, 19.

¹⁶ *Id.* at 16, 19.

¹⁷ See, e.g., *id.* at 15-16.

¹⁸ *Id.*

¹⁹ *Id.* at 17; General Communication, Inc., Application for a License to Land and Operate in the United States a Digital Submarine Cable System Extending Between the Pacific Northwest United States and Alaska, File No. SCL- (continued....)

4. Alaska DigiTel is a limited liability company organized under the laws of the state of Alaska.²⁰ The company holds the following licenses: two 15 megahertz A-block broadband PCS licenses, with a coverage area over the entire state of Alaska;²¹ a 20 megahertz cellular license with a coverage area over St. Paul Island, Alaska;²² and nine microwave licenses²³ (collectively, the “Alaska DigiTel Licenses”). Alaska DigiTel provides wireless services to more than 32,000 subscribers in and around Anchorage, Mat-Su, Girdwood, Homer, Seward, Soldotna, Fairbanks, and Juneau,²⁴ using its all-digital Code Division Multiple Access (“CDMA”) network.²⁵ It has roaming relationships with “the major U.S. CDMA wireless carriers.”²⁶ Alaska DigiTel also offers a data services bundle to its wireless telephone subscribers, which includes web browsing and access to downloadable content.²⁷

5. *GCI-Alaska DigiTel I Order*. In the 2006 *GCI-Alaska DigiTel I Order*, the Commission approved the acquisition by GCI of a 78 percent non-controlling interest in Alaska DigiTel, subject to certain conditions.²⁸ As part of GCI’s acquisition of the 78 percent interest in Alaska DigiTel, Alaska DigiTel was reorganized and is now governed by a Board of Managers. At present, GCI has the power to appoint one of these members and the original owners of Alaska DigiTel appoint the remainder of the Board.²⁹ GCI also has certain “non-controlling investor protection rights” that prevent Alaska DigiTel from taking certain major actions without GCI’s consent.³⁰

6. As noted previously, GCI has been reselling the wireless services of Dobson/AT&T, and Dobson was at the time of the *GCI-Alaska DigiTel I Order* (and still is) a competitor to Alaska DigiTel. The Commission accordingly closely examined GCI’s relationship with Dobson. The Commission concluded in the *GCI-Alaska DigiTel I Order* that the nature of GCI’s relationship with Dobson as a result of their resale arrangement combined with GCI’s representation on the Alaska DigiTel Board of Managers made coordinated interaction more likely.³¹ In particular, the Commission found that, “[d]ue to

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LIC-19980602-00008, *Cable Landing License*, 12 FCC Rcd 18292, 18293 ¶ 4, 18303 ¶ 40 (1997) (IB 1997) (“*Alaska United East Order*”), *Order on Review*, 16 FCC Rcd 4314 (2001).

²⁰ See <https://myalaska.state.ak.us/business/soskb/Corp.asp?259680> (last visited July 14, 2008).

²¹ Call Signs KNL297, WPVZ815.

²² Call Sign WPON879.

²³ Call Signs WQAP303, WQAP304, WQPA305, WQEN574, WQEN575, WQFQ763, WQFQ764, WQFQ765, and WQFQ766.

²⁴ See General Communication, Inc. News Release, “GCI Closes \$29.5 Million Investment in Alaska DigiTel, LLC” (Jan. 4, 2007) (“GCI-Alaska DigiTel News Release”), available at <http://www.gci.com/about/akdclosingpressreleasefinal1.pdf> (last visited July 14, 2008).

²⁵ See <http://www.akdignitel.com/> (last visited July 14, 2008) (“Alaska DigiTel Website”).

²⁶ GCI-Alaska DigiTel News Release.

²⁷ Alaska DigiTel Website.

²⁸ See generally *GCI-Alaska DigiTel I Order*, 21 FCC Rcd 14863. The Commission also consented to the assignment of the 15 megahertz PCS A-block license (covering the entire state of Alaska) held by Denali PCS, L.L.C. to Alaska DigiTel.

²⁹ *Id.* at 14866 ¶ 5.

³⁰ *Id.*

³¹ *Id.* at 14898 ¶ 82. The Commission explained that, “[a]s discussed in previous orders, in markets where only a few firms account for most of the sales of a product, those firms may be able to exercise market power by either explicitly or tacitly coordinating their actions. Accordingly, one way in which a transaction or merger may create or (continued....)

the information that GCI receives about Dobson under the *Resale Agreement*, along with its position on Alaska DigiTel's Board of Managers, it is possible for market-sensitive information to be conveyed between Alaska DigiTel, GCI, and Dobson, which could result in coordinated interaction among these service providers."³² Given its concerns about the potential flow of market-sensitive information between Dobson and Alaska DigiTel as a result of each party's relationship with GCI, the Commission adopted conditions to prevent such information sharing.³³ The Commission labeled the information about which it was concerned as "Non-Public Competitively Sensitive Information."³⁴ Among other things, these conditions imposed limitations on GCI personnel that might obtain market-sensitive information from either Dobson or Alaska DigiTel to ensure that such information would not be shared with the competing carrier, and imposed a number of specific safeguards in support of achieving this goal.

7. *Description of the Transaction.* On December 21, 2007, the Applicants filed the Application seeking consent to the proposed transfer of control of licenses and authorizations held by Alaska DigiTel from AKD to GCI; the Application was amended on January 8, 2008. The Applicants now seek to transfer the controlling membership interests in Alaska DigiTel from AKD to GCI, which would result in Alaska DigiTel becoming a 100 percent owned and controlled subsidiary of GCI.³⁵ The Applicants note that as part of the proposed transaction, the management agreement between AKD and Fire Lake Partners, under which Fire Lake Partners controlled AKD Holdings (and thus the Alaska DigiTel Licenses), will be terminated.³⁶

8. The Applicants contend that the conditions adopted by the Commission in the *GCI-Alaska DigiTel I Order* can be rendered moot.³⁷ Specifically, the Applicants propose to moot the need for the prior conditions by GCI accepting a grant of the Application subject to a new condition that GCI amend its resale arrangement with Dobson/AT&T and eliminate the entitlements GCI previously had to receive Non-Public Competitively-Sensitive Information.³⁸ The Applicants further explain that GCI already had an understanding with AT&T under which the GCI/Dobson resale arrangement would be converted into a mobile virtual network operator ("MVNO")-type arrangement. Under this MVNO-type agreement, GCI would receive bulk capacity as a customer of AT&T, which would allow GCI to serve its retail customers on a transitional basis until such customers are relocated to GCI's own facilities.³⁹ The

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enhance market power or facilitate its exercise is by making such coordinated interaction among firms more likely, more successful, or more complete." *Id.* at 14896 ¶ 77 (footnotes omitted).

³² *Id.* at 14898 ¶ 85.

³³ *Id.* at 14913 ¶¶ 122-123, 14915-14916 App. A.

³⁴ The conditions adopted by the Commission in the *GCI-Alaska DigiTel I Order* defined Non-Public Competitively-Sensitive Information as non-public information that, "if released to a competitor, would allow the competitor to gain a significant advantage in the marketplace, such as (i) customer and subscriber data, (ii) customer proprietary network information (CPNI), (iii) rate and pricing data, (iv) trade secrets, (v) information pertaining to new product and service offerings, (vi) information pertaining to network changes, system coverage, and technology selection, and (vii) information pertaining to the terms and conditions of service." *Id.*, 21 FCC Rcd at 14916 App. A.

³⁵ Application, Public Interest Statement at 1.

³⁶ *Id.* at 1 n.2. The Applicants point out that "control of AKD Holdings remained vested in minority equity holders, not GCI, in part through a Management Agreement with Fire Lake Partners, which is owned by Will Yandell and Stephen Roberts." *Id.*

³⁷ *Id.* at 5.

³⁸ *Id.*

³⁹ *Id.*

Applicants highlight the fact that under this revised arrangement with AT&T, “GCI will not continue to receive from AT&T the [Non-Public Competitively-Sensitive Information] that it is contractually entitled to receive under the prior [Dobson resale] arrangement.”⁴⁰

9. The Application was placed on Public Notice on January 22, 2008.⁴¹ Petitions to deny were due on February 21, 2008.⁴² No petitions to deny were filed. MTPCS, LLC d/b/a Chinook Wireless (“Chinook Wireless”), however, submitted a letter to “discuss the proposed interim caps on high cost universal service funding to competitive eligible telecommunications carriers (“CETCs”) and their consumers, to suggest provisions that would make any such caps more equitable, and to discuss the ‘carve out’ from such caps for [GCI], a predominantly wireline carrier in Alaska.”⁴³

10. On January 23, 2008, the Wireless Telecommunications Bureau (“Bureau”) issued a Protective Order to ensure that any confidential or proprietary documents submitted to the Commission would be adequately protected from public disclosure.⁴⁴ On April 16, 2008, the Bureau released a public notice announcing that Numbering Resource Utilization and Forecast (“NRUF”) reports and local number portability (“LNP”) data related to wireless telecommunications carriers would be placed into the record and adopted a protective order pursuant to which the Applicants and third parties would be allowed to review the specific NRUF reports and LNP data placed into the record.⁴⁵ The Bureau received no requests to review the NRUF and LNP data that is in the record.

11. *Commission Request for Documents.* On April 16, 2008, pursuant to section 308(b) of the Communications Act, 47 U.S.C. § 308(b), the Bureau requested a number of documents and additional information from the Applicants.⁴⁶ Among other things, the Bureau asked the Applicants to provide copies of any resale, wholesale, or MVNO-type agreements between GCI and Dobson/AT&T, an explanation as to why the MVNO-type arrangement between GCI and AT&T identified in the Application would render moot the conditions adopted by the Commission in the *GCI-Alaska DigiTel I Order*, and a description of the steps and timeline for transitioning from the resale arrangement between GCI and Dobson to the new GCI-AT&T MVNO-type arrangement.⁴⁷ The Applicants provided

⁴⁰ *Id.*

⁴¹ Alaska DigiTel, LLC, AKD Holdings, LLC, and GCI, Inc. Seek FCC Consent to Transfer Control of Licenses, WT Docket No. 08-10, *Public Notice*, DA 08-142, at 1 (WTB rel. Jan. 22, 2008).

⁴² *Id.*

⁴³ Letter from Jonathan D. Foxman, President and CEO, Chinook Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, WC Docket No. 05-337, and WC [sic] Docket No. 08-10, at 1 (dated Feb. 22, 2008) (“Chinook Wireless Letter”).

⁴⁴ Application of AKD Holdings, LLC, Alaska DigiTel, LLC and GCI, Inc. for Approval to Transfer Control, WT Docket No. 08-10, *Protective Order*, 23 FCC Rcd 746 (WTB 2008) (“January 23, 2008 Protective Order”).

⁴⁵ Application of AKD Holdings, LLC, Alaska DigiTel, LLC, and GCI, Inc. for Consent to Transfer Control, Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports Placed Into the Record, Subject to Protective Order, WT Docket No. 08-10, CC Docket No. 99-200, *Public Notice*, 23 FCC Rcd 6483 (WTB 2008); Application of Alaska DigiTel, LLC, AKD Holdings, LLC, and GCI, Inc. for Consent to Transfer Control of Licenses, WT Docket No. 08-10, CC Docket No. 99-200, *Protective Order*, 23 FCC Rcd 6486 (WTB 2008).

⁴⁶ Letter from Fred B. Campbell, Jr., Chief, Wireless Telecommunications Bureau, to Mr. Thomas Gutierrez and Mr. Carl W. Northrop (dated Apr. 16, 2008) (“Information Request”).

⁴⁷ Information Request, Attachment.

responsive documents and information on April 28, April 29, and June 16, 2008, some of which was provided subject to the provisions of the January 23, 2008 Protective Order.⁴⁸

III. DISCUSSION

12. *Public Interest Assessment.* Pursuant to section 310(d) of the Communications Act,⁴⁹ we must determine whether the Applicants have demonstrated that the proposed transfer of control of Alaska DigiTel's licenses and authorizations would serve the public interest, convenience, and necessity. In applying our public interest test, we must assess whether the proposed transaction complies with the specific provisions of the Communications Act,⁵⁰ other applicable statutes, and the Commission's rules.⁵¹ If a proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.⁵² The Commission then employs a balancing test weighing any potential public interest harms of a proposed transaction against any potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest.⁵³

13. Based on the record before us, we find that the proposed transaction is likely to result in certain public interest benefits. As asserted by the Applicants, the proposed transaction would make

⁴⁸ Letter from Carl W. Northrop to Marlene H. Dortch, Secretary, Federal Communications Commission (dated Apr. 28, 2008) ("GCI Apr. 28, 2008 Information Request Response"); Letter from Thomas Gutierrez to Marlene H. Dortch, Secretary, Federal Communications Commission (dated Apr. 29, 2008); Letter from Carl W. Northrop to Marlene H. Dortch, Secretary, Federal Communications Commission (dated Jun. 16, 2008) ("GCI Jun. 16, 2008 Information Request Supplemental Response").

⁴⁹ 47 U.S.C. § 310(d).

⁵⁰ Section 310(d), 47 U.S.C. § 310(d), requires that we consider the applications as if the proposed transferee were applying for the licenses directly under section 308 of the Communications Act, 47 U.S.C. § 308. *See, e.g.*, Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent To Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases, WT Docket No. 07-208, *Memorandum Opinion and Order and Declaratory Ruling*, FCC 08-181, at ¶ 26 (rel. Aug. 1, 2008) ("*Verizon-RCC Order*"); Applications of T-Mobile USA, Inc. and SunCom Wireless Holdings, Inc. For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-237, *Memorandum Opinion and Order*, 23 FCC Rcd 2515, 2519 ¶ 9 (2008) ("*T-Mobile-SunCom Order*"); Application of Aloha Spectrum Holdings Company LLC (Assignor) and AT&T Mobility II LLC (Assignee) Seeking FCC Consent For Assignment of Licenses and Authorizations, WT Docket No. 07-265, *Memorandum Opinion and Order*, 23 FCC Rcd 2234, 2236 ¶ 7 (2008) ("*AT&T-Aloha Order*"); Applications of AT&T Inc. and Dobson Communications Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-153, *Memorandum Opinion and Order*, 22 FCC Rcd 20295, 20301 ¶ 10 (2007) ("*AT&T-Dobson Order*"); Applications of ALLTEL Corporation, Transferor, and Atlantis Holdings LLC, Transferee, For Consent To Transfer Control of Licenses, Leases and Authorizations, WT Docket No. 07-128, *Memorandum Opinion and Order*, 22 FCC Rcd. 19517, 19519-20 ¶ 7 (2007) ("*ALLTEL-Atlantis Order*"); AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74, *Memorandum Opinion and Order*, 22 FCC Rcd 5662, 5672 ¶ 17 (2007) ("*AT&T-BellSouth Order*").

⁵¹ *See, e.g.*, *Verizon-RCC Order*, FCC 08-181, at ¶ 26; *T-Mobile-SunCom Order*, 23 FCC Rcd at 2519 ¶ 9; *AT&T-Aloha Order*, 23 FCC Rcd at 2236 ¶ 7; *AT&T-Dobson Order*, 22 FCC Rcd at 20301 ¶ 10; *ALLTEL-Atlantis Order*, 22 FCC Rcd at 19519-20 ¶ 7; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19.

⁵² *See, e.g.*, *Verizon-RCC Order*, FCC 08-181, at ¶ 26; *T-Mobile-SunCom Order*, 23 FCC Rcd at 2519 ¶ 9; *AT&T-Aloha Order*, 23 FCC Rcd at 2236 ¶ 7; *AT&T-Dobson Order*, 22 FCC Rcd at 20301 ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19.

⁵³ *See, e.g.*, *Verizon-RCC Order*, FCC 08-181, at ¶ 26; *T-Mobile-SunCom Order*, 23 FCC Rcd at 2519 ¶ 9; *AT&T-Aloha Order*, 23 FCC Rcd at 2236 ¶ 7; *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19.

greater financial resources available for the expansion and operation of Alaska DigiTel's wireless systems.⁵⁴ The Applicants further assert that these increased financial resources will allow GCI to improve service to the public and will allow the Alaska DigiTel systems to compete more effectively against other large competitors in Alaska.⁵⁵ Moreover, as Applicants state, the proposed transfer of control will enable GCI to establish itself as a facilities-based wireless provider in Alaska as it transitions its wireless customers – currently served on Dobson's systems pursuant to a resale arrangement – to systems owned and controlled by GCI, specifically including the systems owned by Alaska DigiTel.⁵⁶ In addition, Applicants state that GCI's investments in Alaska DigiTel already have permitted Alaska DigiTel to expand and improve its services, and GCI will be able to accelerate the build-out of the Alaska DigiTel systems pursuant to the proposed transfer of control.⁵⁷ Finally, no issues have been raised with respect to the basic qualifications of Alaska DigiTel or GCI, and we find no evidence that GCI lacks the requisite financial, legal, technical, or other basic qualifications under the Communications Act to be the transferee of the licenses and authorizations currently held by Alaska DigiTel.⁵⁸

14. *Competitive Assessment.* Consistent with our practice when reviewing proposed wireless transactions affecting the mobile telephony market, we next consider the potential competitive effects that might result from increased concentration.⁵⁹ When examining the effect of proposed transactions, we apply a three-part initial “screen” that identifies those local markets in which there is clearly no competitive harm arising from the transaction. Two parts of the screen utilize changes in the measures of the Herfindahl-Hirschman Index (“HHI”) of market concentration, which is calculated based on providers' subscriber market shares. The final part of this screen examines the input market for spectrum available on a nationwide basis for the provision of mobile telephony services.⁶⁰ It identifies the markets in which a proposed transaction would result in spectrum aggregation in amounts of 95 megahertz or more.⁶¹

15. In the *GCI-Alaska DigiTel I Order*, the Commission evaluated the competitive market that would result from GCI's acquisition of a 78 percent interest in Alaska DigiTel. To assess subscriber-based market concentration that would result from the transaction, the Commission calculated the HHI and the change in the HHI for relevant geographic markets.⁶² Since the Commission concluded that GCI, as a reseller only, was not an independent competitor, the Commission found that the change in HHI for

⁵⁴ Application, Public Interest Statement at 2.

⁵⁵ *Id.*

⁵⁶ *Id.* at 3.

⁵⁷ *Id.*; *see also* GCI 10-K/A at 10.

⁵⁸ Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite “citizenship, character, financial, technical, and other qualifications.” 47 U.S.C. §§ 308, 310(d). *See, e.g., Verizon-RCC Order*, FCC 08-181, at ¶ 27; *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 11.

⁵⁹ *See, e.g., Verizon-RCC Order*, FCC 08-181, at ¶ 31; *AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 15; Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, at § 0.1, n.6. (Apr. 2, 1992, revised Apr. 8, 1997) (“*DOJ/FTC Merger Guidelines*”).

⁶⁰ *See, e.g., Verizon-RCC Order*, FCC 08-181, at ¶ 32; *AT&T-Dobson Order*, 22 FCC Rcd at 20307 ¶ 16.

⁶¹ *Verizon-RCC Order*, FCC 08-181, at ¶ 33; *AT&T-Dobson Order*, 22 FCC Rcd at 20312-14 ¶¶ 30-31. This initial spectrum aggregation screen of 95 megahertz is approximately one-third of the 280 megahertz of cellular, broadband Personal Communications Service, Specialized Mobile Radio, and 700 MHz spectrum suitable for mobile telephony. *Id.*

⁶² *GCI-Alaska DigiTel I Order*, 21 FCC Rcd at 14882 ¶ 38.

all relevant geographic markets was zero and there was no loss of an independent competitor as a result of GCI's acquisition of the 78 percent non-controlling interest in Alaska DigiTel.⁶³ The Commission also examined the spectrum aggregation that would result from the transaction then before it, and attributed to GCI its own 30 megahertz of PCS spectrum as well as the spectrum to be held by Alaska DigiTel post-transaction – 30 megahertz of PCS spectrum and 20 megahertz of cellular spectrum covering St. Paul Island.⁶⁴ Therefore, the Commission attributed 60 megahertz of spectrum to GCI throughout the state of Alaska, except for St. Paul Island, where the Commission attributed 80 megahertz of spectrum.⁶⁵ Since the attributed spectrum for St. Paul Island exceeded the then applicable 70 megahertz spectrum aggregation screen, the Commission conducted further analysis of the competitive situation, and the Commission stated that it did not find that the aggregation of 80 megahertz of spectrum would result in undue competitive harm.⁶⁶

16. Upon application of the three-part initial “screen” to this transaction, we find that it does not trigger either of our HHI screens and will not result in GCI holding 95 megahertz or more of spectrum in any market. Consequently, we find that it is unlikely that the proposed transaction would result in competitive harm based on spectrum or market concentration, and do not have to conduct a detailed market-specific competitive analysis.

17. *Modification of Conditions.* As discussed above, in approving the earlier GCI-Alaska DigiTel transaction in the *GCI-Alaska DigiTel I Order* in 2006, the Commission imposed conditions on GCI's acquisition of a 78 percent non-controlling interest in Alaska DigiTel because the Commission found that that proposed transaction posed a risk of coordinated interaction.⁶⁷ The Applicants now seek to have those conditions lifted. In particular, GCI asserts in its response to the Commission's Information Request that the revised arrangement between GCI and Dobson/AT&T will render moot any and all of the conditions from the *GCI-Alaska DigiTel I Order* pertaining to Dobson's disclosure of Non-Public Competitively-Sensitive Information because the Amended Memorandum of Agreement (“Amended MOA”) between GCI and Dobson/AT&T⁶⁸ explicitly modifies the previous GCI-Dobson reseller arrangement by eliminating GCI's contractual entitlement to receive Non-Public Competitively-Sensitive Information from Dobson/AT&T.⁶⁹ In support of this assertion, GCI cites the following provision of the Amended MOA:

As of July 1, 2008[,] . . . AT&T's obligation, as the effective successor to Dobson under the GCI/Dobson Agreements to share with GCI any Non-Public Competitively-Sensitive Information (“NPCSI”) as defined in the Distribution Agreement, including advance information on rate and plan changes, new products, and network changes, shall terminate.⁷⁰

⁶³ *Id.* at 14882 ¶ 38, 14892 ¶ 65.

⁶⁴ *Id.* at 14884 ¶ 45, 14886 ¶ 49.

⁶⁵ *Id.* at 14890 ¶ 58.

⁶⁶ *Id.* at 14890 ¶ 59.

⁶⁷ *Id.* at 14898-14899 ¶¶ 82-85, 14911-14912 ¶ 117.

⁶⁸ On December 3, 2007, GCI entered into a Memorandum of Agreement (“MOA”) with AT&T. The MOA was subsequently amended by an agreement dated as of April 25, 2008 (both the MOA and the associated amendment are referred to as the “Amended MOA”). GCI Apr. 28, 2008 Information Request Response, Attachment at 1.

⁶⁹ *Id.*, Attachment at 2.

⁷⁰ *Id.*, citing Amended MOA, § 7(b)(5)(B) (omission in original).

GCI further contends that subsequent to July 1, 2008, and during the period of time in which GCI has an MVNO-type resale arrangement with Dobson/AT&T, “AT&T has no business need (as it did under the prior plan resale arrangement) or incentive to share [Non-Public Competitively-Sensitive Information] with GCI/General in the absence of a contractual obligation to do so, meaning the conditions that were imposed by the Commission to prevent the flow of Dobson [Non-Public Competitively-Sensitive Information] through GCI/General to Alaska DigiTel are unnecessary once the GCI/General contractual entitlement to [Non-Public Competitively-Sensitive Information] is eliminated.”⁷¹

18. The documents submitted by GCI detail the transition from GCI’s resale of Dobson/AT&T wireless services to GCI’s provision of facilities-based wireless services to its customers. When the Commission reviewed the applications before it in the *GCI-Alaska DigiTel I Order*, GCI resold Dobson/AT&T wireless services under a reseller arrangement that afforded GCI access to Non-Public Competitively-Sensitive Information; this information enabled GCI to effectively resell the plan offerings available from Dobson/AT&T.⁷² [REDACTED].⁷³ [REDACTED].⁷⁴ [REDACTED].⁷⁵

19. Although we agree that the termination of the previous GCI-Dobson resale arrangement and its replacement with [REDACTED], as of July 1, 2008, does render moot the particular substantive conditions adopted by the Commission in the *GCI-Alaska DigiTel I Order*, we conclude that certain limited conditions should be placed on our approval of the currently pending transaction to continue to prevent possible coordinated interaction. First, we impose a condition applicable during [REDACTED] to ensure that there will be no sharing of Non-Public Competitively-Sensitive Information. In furtherance of the Applicants’ argument that all of the conditions adopted by the Commission in the *GCI-Alaska DigiTel I Order* can now be eliminated, GCI attaches substantial significance to the fact that under its revised agreement with AT&T, AT&T is no longer obligated to provide Non-Public Competitively-Sensitive Information to GCI as of July 1, 2008.⁷⁶ The relevant provision, quoted above, does specifically terminate AT&T’s obligation to provide Non-Public Competitively-Sensitive Information to GCI as of July 1, 2008. GCI further alleges that AT&T would have no incentive to provide GCI with Non-Public Competitively-Sensitive Information in light of the fact that the original GCI-Dobson resale arrangements have been terminated.⁷⁷ However, while the language contained in GCI’s revised agreement with AT&T removes the obligation for AT&T to provide Non-Public Competitively-Sensitive Information to GCI, nothing in that agreement prevents AT&T from providing such sensitive competitive information to GCI. Consistent with the concerns expressed in the *GCI-Alaska DigiTel I Order* about the potential for anticompetitive coordinated interaction, we are concerned that the removal of the obligation to provide Non-Public Competitively-Sensitive Information without an accompanying bar on supplying such information would provide an opening for AT&T and GCI to share competitively significant, non-public information. The sharing of this information could thereby permit them to engage in coordinated interaction that could undercut competition in the mobile telephony market to the detriment of consumers and the public. We accordingly will impose a condition that bars AT&T from sharing Non-Public

⁷¹ *Id.*, Attachment at 3.

⁷² The GCI Apr. 28, 2008 Information Request Response attached a copy of the MOA and the related amendment. *Id.*, Attachment at 1. The GCI Jun. 16, 2008 Information Request Supplemental Response provided executed copies of the final documents, including [REDACTED].

⁷³ [REDACTED].

⁷⁴ [REDACTED].

⁷⁵ [REDACTED].

⁷⁶ GCI Apr. 28, 2008 Information Request Response, Attachment at 2-3.

⁷⁷ *Id.*, Attachment at 3.

Competitively-Sensitive Information with GCI during the term of [REDACTED], and that requires AT&T and GCI to revise their agreement in order to reflect this bar.

20. Second, another provision of the agreement between GCI and AT&T, relating to billing and provisioning, raises the prospect of the inappropriate sharing of competitively significant information between AT&T and GCI that could lead to anticompetitive coordinated interaction. Specifically, [REDACTED].⁷⁸ [REDACTED]

21. The specific conditions are set forth in Appendix A hereto. These conditions shall be effective upon release of this Memorandum Opinion and Order. To the extent that we are requiring AT&T and GCI to amend any agreement in order to comply with the conditions, we direct that such amendments shall be completed within ten business days of the release of this Memorandum Opinion and Order. We direct GCI to submit a copy of the revised agreement(s) in WT Docket No. 08-10 within 15 business days of the release of this Memorandum Opinion and Order; this submission may be made pursuant to the provisions of the January 23, 2008 Protective Order. These conditions will only be required to remain in place until [REDACTED] March 31, 2009.

22. *Chinook Wireless Letter.* We note that we do not address in this proceeding the universal service issues raised by the Chinook Wireless Letter.⁷⁹ The letter is more appropriately considered in the context of the universal service dockets – CC Docket No. 96-45 and WC Docket No. 05-337.

IV. CONCLUSION

23. In conclusion, based on the record before us, we find that the Applicants have demonstrated that the proposed transaction would serve the public interest, convenience, and necessity; and that granting consent to the proposed transfer of control application, subject to the conditions discussed above and set forth in Appendix A hereto, would further the public interest.

V. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the above-referenced application for the transfer of control of Alaska DigiTel, LLC to GCI, Inc. is GRANTED, to the extent specified in this Memorandum Opinion and Order and subject to the conditions set forth herein and specified in Appendix A.

25. IT IS FURTHER ORDERED that the conditions set forth in Appendix A to the Commission's *GCI-Alaska Digtel I Order* are eliminated except to the extent such conditions are retained in modified form as set forth in Appendix A to this Memorandum Opinion and Order.

26. IT IS FURTHER ORDERED that the above grant shall include authority for GCI to acquire control of: (a) any license or authorization issued to Alaska DigiTel during the Commission's consideration of the transfer of control application or the period required for consummation of the transaction following approval; (b) construction permits held by Alaska DigiTel that mature into licenses after closing; and (c) applications filed by Alaska DigiTel and that are pending at the time of consummation of the proposed transfer of control.

27. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this Memorandum Opinion and Order.

⁷⁸ [REDACTED].

⁷⁹ See *supra* ¶ 9.

28. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

James D. Schlichting
Acting Chief, Wireless Telecommunications Bureau

APPENDIX A

CONDITIONS

The grant by the Commission of the above-referenced application to transfer control of Alaska DigiTel from AKD to GCI, File No. 0003258714, is subject to the following conditions, which are to be effective until March 31, 2009 or until [REDACTED] is complete, whichever is later:

1. AT&T Mobility LLC and any of its affiliates (collectively, "AT&T") may not provide any Non-Public Competitively-Sensitive Information, as defined in paragraph 3, to GCI, Inc. and any of its affiliates (collectively, "GCI") in connection with the implementation of the terms of a certain agreement executed by AT&T and GCI on May 22, 2008, and effective as of December 3, 2007. AT&T and GCI will amend said agreement within ten business days of the date of release of the foregoing Memorandum Opinion and Order to implement this condition.
2. AT&T and GCI shall take steps to ensure that GCI's and AT&T's respective access to a billing and provisioning system as contemplated in the certain agreement referenced in paragraph 1 is limited to only information concerning each entity's existing or future customers. AT&T and GCI will amend said agreement within ten business days of the date of release of the foregoing Memorandum Opinion and Order to implement this condition.
3. For the purpose of these conditions, the term "Non-Public Competitively-Sensitive Information" shall refer to any and all non-public information provided by AT&T or its predecessor-in-interest to GCI pursuant to the Agreement entered into between GCI and Dobson Cellular Systems, Inc. ("Dobson") as of July 26, 2004 ("Resale Agreement"), the concurrent letter of intent ("LOI") associated therewith, and the certain agreement referenced in paragraph 1 that, if released to a competitor, would allow the competitor to gain a significant advantage in the marketplace, such as (i) customer and subscriber data, (ii) customer proprietary network information (CPNI), (iii) rate and pricing data, (iv) trade secrets, (v) information pertaining to new product and service offerings, (vi) information pertaining to network changes, system coverage, and technology selection, and (vii) information pertaining to the terms and conditions of service.
4. GCI will appoint a compliance officer (the "Conditions Compliance Officer") to oversee GCI's compliance with the foregoing provisions. The Conditions Compliance Officer shall (i) communicate the nature and extent of the confidentiality restrictions to potentially affected GCI personnel along with the fact that GCI would consider any violation of the restrictions to be a serious matter that could result in disciplinary action or dismissal; (ii) act as a point of contact for GCI personnel who have information to report regarding a violation or possible violation of the foregoing provisions; and (iii) investigate and act upon any known or reported violations of the foregoing provisions.