

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

In the Matter of)
)
Applications of Western Wireless Corporation and)
ALLTEL Corporation)
) WT Docket No. 05-50
For Consent to Transfer Control of Licenses and)
Authorizations)
)
File Nos. 0002016468, *et al.*)

MEMORANDUM OPINION AND ORDER

Adopted: July 11, 2005

Released: July 19, 2005

By the Commission: Commissioners Abernathy, Copps, and Adelstein issuing separate statements.

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I. INTRODUCTION

1. In this Order, we consider applications filed by Western Wireless Corporation (“WWC”) and ALLTEL Corporation (“ALLTEL”) (collectively, the “Applicants”) for consent to transfer control of all licenses and authorizations held by WWC and its subsidiaries to ALLTEL. The Applicants generally seek Commission approval of the transfer of control of WWC’s licensee subsidiaries to ALLTEL. This transfer of control would take place as a result of the proposed merger of WWC into Wigeon Acquisition LLC (“Wigeon”), a limited liability company wholly owned by ALLTEL. The applications pertain to licenses for the Part 22 Cellular Radiotelephone Service (“Cellular”), the Part 22 Paging and Radiotelephone Service, the Part 24 Personal Communications Service (“PCS”), the Part 90 Industrial/Business Pool Service, the Part 90 Private Carrier Paging Service, the Part 90 Specialized Mobile Radio Service, the Part 101 Common Carrier Fixed Point-to-Point Microwave Service, and the Part 101 Local Multipoint Distribution Service. Additionally, the Applicants are seeking consent to the assignment and transfer of control of two international section 214 authorizations from WWC to Wigeon.

2. Pursuant to sections 214(a) and 310(d) of the Communications Act of 1934, as amended (“Communications Act”),¹ we must determine whether the Applicants have demonstrated that the proposed acquisition of WWC would serve the public interest, convenience, and necessity. Based on the record before us, we find that the Applicants have generally met that burden. Competitive harm is unlikely in most mobile telephony markets, primarily because of the complementary footprints of ALLTEL and WWC. Our case-by-case analysis did, however, indicate that in sixteen markets likely

¹ 47 U.S.C. §§ 214(a), 310(d).

competitive harms exceed the likely benefits of the transaction. In these areas, we impose narrowly-tailored conditions that will effectively remedy the potential for these particular harms.

II. BACKGROUND

A. Description of the Applicants

1. ALLTEL Corporation

3. ALLTEL is a publicly-traded Delaware corporation, headquartered in Little Rock, Arkansas.² Through its subsidiaries, ALLTEL primarily provides wireless and wireline telephone services to more than 13 million customers in mid-sized cities and rural areas in 26 states throughout much of the Southeast and portions of the Northeast, Southwest, and upper Midwest United States.³ For fiscal year 2004, ALLTEL reported approximately \$8.2 billion in revenues.⁴

4. Specifically, ALLTEL provides wireless communications services to more than 8.6 million customers in 24 states.⁵ ALLTEL provides analog and digital wireless telecommunications services to its customers on 850 MHz band Cellular licenses and 1900 MHz band PCS licenses using Code Division Multiple Access (“CDMA”) technology.⁶ Furthermore, ALLTEL is deploying 1xRTT and EV-DO to provide enhanced wireless data services.⁷ Currently, ALLTEL owns a majority interest in Cellular and PCS wireless operations covering a total aggregate population (“POPs”) of approximately 62.5 million.⁸ As of December 31, 2004, ALLTEL had a penetration rate, which is the number of customers as a percentage of the total population in ALLTEL’s service area, of 13.8 percent.⁹ ALLTEL supplements its wireless service coverage area through roaming agreements with other wireless providers expanding its coverage area to approximately 95 percent of the United States population.¹⁰

² See ALLTEL Corporation, Form 10-K, at 1 (filed Feb. 10, 2005) (“ALLTEL 10-K”).

³ See *id.* at 1, 4; see also ALLTEL Corporation, Form 8-K, Exhibit 99(a), at 2 (filed Jan. 10, 2005) (“ALLTEL 8-K”). ALLTEL also provides cable television services in select markets. See ALLTEL 10-K at 4.

⁴ ALLTEL 10-K at 4; ALLTEL Corporation, 2004 Annual Review, at 11 (Jan. 24, 2005).

⁵ ALLTEL 10-K at 4. ALLTEL states that it holds a 10 percent or greater ownership interest in Cellular and PCS licenses in portions of the following 28 states – Alabama, Arkansas, Arizona, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin. Additionally, ALLTEL will soon begin providing service in a portion of Connecticut as well. See Letter from Doane F. Kiechel, Morrison & Foerster, LLP, Counsel for Western Wireless Corporation, and Kathryn A. Zachem, Wilkinson Barker Knauer, LLP, Counsel for ALLTEL Corporation, to Susan Singer, Assistant Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, at 3 (Mar. 15, 2005) (“March 15, 2005 Response to Information Request”).

⁶ ALLTEL 10-K at 8. ALLTEL is also authorized to operate paging licenses and ancillary private radio and microwave licenses. ALLTEL provides paging services in select markets to approximately 22,000 customers on a resale basis. *Id.* at 5.

⁷ See *id.* at 5, 6, 8. ALLTEL provides high-speed wireless data in Arkansas, Arizona, Florida, Georgia, Louisiana, Michigan, North Carolina, New Mexico, Ohio, South Carolina, and Virginia. See March 15, 2005 Response to Information Request at 4.

⁸ See ALLTEL 10-K at 4.

⁹ *Id.* at 4.

¹⁰ *Id.* at 5.

5. Additionally, ALLTEL provides local telephone, high-speed data, and Internet services to approximately 3 million customers in 15 states.¹¹ ALLTEL also offers long-distance services,¹² and network access and interconnection services,¹³ and provides cable television services in select markets.¹⁴

2. Western Wireless Corporation

6. WWC is a publicly-traded Washington corporation, headquartered in Bellevue, Washington.¹⁵ Through various subsidiaries and affiliates, WWC owns and operates wireless phone systems in predominantly rural areas in the Central and Western portions of the United States.¹⁶ Additionally, a WWC subsidiary, Western Wireless International Holding Corporation (“WWI”), provides service to approximately 1.8 million international mobile subscribers and is licensed to provide wireless communications to approximately 56 million people in seven foreign countries.¹⁷ For fiscal year 2004, WWC reported \$1.9 billion in revenues.¹⁸

7. Specifically, WWC provides wireless services to approximately 1.4 million subscribers in 19 states,¹⁹ and has a license and service area of 11.5 million POPs.²⁰ Using its 850 MHz band Cellular licenses and 1900 MHz band PCS licenses,²¹ WWC provides basic voice services, short messaging, multimedia messaging, and wireless internet, and has deployed 1xRTT to provide high-speed data in 18

¹¹ *See id.* at 1, 4, 12. ALLTEL provides wireline services as an incumbent local exchange carrier (ILEC) or competitive local exchange carrier (CLEC) in parts of Alabama, Arkansas, Florida, Georgia, Kentucky, Mississippi, Missouri, Nebraska, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, and Texas. March 15, 2005 Response to Information Request at 4; ALLTEL 10-K at 12.

¹² ALLTEL 10-K at 20. ALLTEL states that it provides long-distance telecommunications services on a facilities-based and resale basis in all states in which it provides local exchange services. As of December 2004, ALLTEL provided service to approximately 1.8 million customers. *See id.* Further, ALLTEL states that it provides long-distance services to its wireline and wireless customers in Alabama, Arkansas, Arizona, Colorado, Florida, Georgia, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Wisconsin, and West Virginia. March 15, 2005 Response to Information Request at 3.

¹³ *See* ALLTEL 10-K at 12, 17-19, 20.

¹⁴ *See id.* at 12 (stating that ALLTEL provides cable television services to approximately 36,000 customers in Georgia and Missouri).

¹⁵ *See* Western Wireless Corporation, Form 10-K, at 1 (filed Mar. 16, 2005) (“WWC 10-K”).

¹⁶ *See id.* at 5, 10.

¹⁷ *Id.* at 5, 17-18. These countries include: Austria, Bolivia, Georgia, Ghana, Haiti, Ireland, and Slovenia. Applicants had operations in the Ivory Coast but note that, due to political instability, operations in have been temporarily suspended. *See id.* at 5, 18; March 15, 2005 Response to Information Request at 4. In Austria, Bolivia, Ghana, Haiti, Ireland, and Slovenia, WWI holds controlling interests in the operating company. It also holds a non-controlling interest in the operating company in Georgia. *See* Western Wireless Corporation, Form 10-Q, at 6 (filed May 6, 2005) (“WWC 10-Q”). In certain markets, WWI subsidiaries also provide other telecommunications services, such as wireline services and international long distance. *See* WWC 10-K at 5.

¹⁸ ALLTEL 10-K at 4; ALLTEL Corporation, 2004 Annual Report, at 11 (Jan. 24, 2005), *available at* http://media.corporate-ir.net/media_files/irol/74/74159/2004/2004_Annual.pdf (last visited June 8, 2005).

¹⁹ WWC 10-K at 5, 10; Western Wireless Corporation, Form 8-K, Exhibit 99.1 at 4 (filed Jan. 10, 2005) (“WWC 8-K”).

²⁰ WWC 10-K at 5, 10.

²¹ *See id.* at 5, 6, 10.

states.²² Unlike many wireless providers, WWC's network supports four technology platforms, CDMA, Time Division Multiple Access ("TDMA"), Global System for Mobile Communications ("GSM"), and analog.²³ WWC uses its network not only to provide service to its subscribers but also to other companies' subscribers who roam in WWC's service area.²⁴

8. WWC provides wireless services under two different brand names – Western Wireless and Cellular One.²⁵ Although WWC wholly owns the Cellular One brand name,²⁶ it licenses the Cellular One brand name to the other wireless service carriers comprising the Cellular One Group, pursuant to a licensing agreement.²⁷ The Cellular One Group is a national coalition of over twenty wireless service carriers that owns, manages, and promotes the registered Cellular One brand.²⁸ In the aggregate, the Cellular One Group of independent carriers offers wireless communications to more than 32 million customers in 42 states, as well as Puerto Rico, Bermuda, and the Caribbean.²⁹

9. WWC is one of the two largest service providers branding their services as Cellular One; the other is Dobson Communications Corporation ("Dobson").³⁰ WWC's properties cover 41 percent of Cellular One's total POPs.³¹ Under the Cellular One brand name, WWC serves more than one million customers in nineteen states using WWC properties with a service area of more than 10 million POPs and covering more than 30 percent of the continental United States.³² Dobson provides wireless services,³³ under the Cellular One and Dobson Cellular Systems brand names,³⁴ to approximately 1.6 million

²² *See id.* at 7-8.

²³ *See id.* at 5, 7.

²⁴ *Id.* at 5, 6.

²⁵ *Id.* at 5, 10; WWC 8-K, Exhibit 99.1 at 4. WWC provides service in Arizona, Arkansas, California, Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming. *See* WWC 10-K at 10.

²⁶ *See* WWC 8-K, Exhibit 99.1 at 4; *see also* Cellular One Company Overview at 1, at <http://www.cellularone.com/AboutCellularOne.asp> (last visited June 6, 2005) ("Cellular One Overview").

²⁷ *See* WWC 10-K at 12; *see also* WWC 8-K, Exhibit 99.1 at 4 (stating that WWC "licenses the Cellular One name in 16 additional states and the Caribbean").

²⁸ Cellular One Overview at 1.

²⁹ *Id.*

³⁰ *See* Petition to Deny of Dobson Cellular Systems, Inc. and American Cellular Corporation, filed Mar. 9, 2005, at 2 ("Dobson Petition").

³¹ *Id.*

³² *See* Cellular One Frequently Asked Questions at 1, at <http://www.cellularonewest.com/CelloneFAQs.asp> (last visited June 6, 2005).

³³ Dobson, through its subsidiaries Dobson Cellular Systems, Inc. and American Cellular Corporation, offers digital voice and high-speed data services, such as wireless e-mail, internet access, and multi-media message. *See* Dobson Petition at 1 n.1; *see also* Dobson Communications Corp, Form 10-K, at 3, 8 (filed May 10, 2005) ("Dobson 10-K"); Dobson Profile at 2, at http://www.dobson.net/dp_profile.html (last visited June 3, 2005); Dobson Network Excellence at 1, at http://www.dobson.net/dp_network_excellence.html (last visited June 3, 2005). Dobson operates on 850 MHz and 1900 MHz bands, using multiple technologies including TDMA, GSM, General Packet Radio Service ("GPRS"), and Enhanced Data for GSM Evolution ("EDGE") technologies. *See* Dobson 10-K at 4; *see also* Dobson Profile at 1.

³⁴ Dobson Brands at 1, at http://www.dobson.net/dp_brands.html (last visited June 5, 2005) ("Dobson Brands"); Dobson Profile at 1.

subscribers in mostly rural and suburban markets in sixteen states.³⁵ Specifically, Dobson markets service under the Cellular One brand name in all of its markets, except for parts of Texas and Oklahoma where it markets its service under Dobson Cellular Systems.³⁶ The markets in which Dobson markets under the Cellular One brand name cover 45 percent of the total Cellular One POPs.³⁷

B. Description of Transaction

10. On January 9, 2005, ALLTEL and WWC entered into a merger agreement (“Merger Agreement”) whereby ALLTEL would purchase WWC in a stock-and-cash transaction valued at approximately \$6 billion.³⁸ According to the terms and conditions of the Merger Agreement, WWC would be merged into Wigeon Acquisition LLC, a newly formed limited liability company wholly owned by ALLTEL. Pursuant to the Merger Agreement, each share of WWC Class A Common stock and Class B Common Stock would be exchanged for \$9.25 in cash and 0.535 shares of ALLTEL common stock. WWC shareholders would have the right to make an all-cash or all-stock election, subject to proration depending on the number of shareholders making either such election.³⁹ Specifically, WWC shareholders may elect to receive either 0.7 shares of ALLTEL common stock or \$40.00 in cash for each share of WWC Common Stock; however, both of those elections would be subject to proration to preserve an overall mix of \$9.25 in cash and approximately, but not less than, 0.535 shares of ALLTEL common stock for all of the outstanding shares of WWC Common Stock taken together.⁴⁰ In the aggregate, ALLTEL would issue approximately 60 million shares of stock and pay approximately \$1.0 billion in cash. Through Wigeon, ALLTEL would assume debt of approximately \$2.2 billion, including \$1.2 billion of term notes issued under WWC’s credit facility that, as a result of the proposed merger, would become due immediately upon closing.⁴¹ The Merger Agreement also provides that licensee entities in which ALLTEL currently holds interests would remain directly and indirectly held by ALLTEL Communications, Inc., a wholly-owned subsidiary of ALLTEL that would become a sister corporation of Wigeon.⁴² ALLTEL’s existing licensee entities, therefore, would not be affected by the proposed transaction.

11. As a result of the proposed merger, ALLTEL would add approximately 1.3 million domestic wireless customers in nineteen midwestern and western states that are contiguous to the its existing wireless properties, increasing the number of wireless customers served by ALLTEL to more than 10 million in 33 states.⁴³ Furthermore, post-transaction, the combined service area of the Applicants would cover 72 million POPs, which is 25 percent of the United States population, in an area that covers 56

³⁵ See Dobson 10-K at 3, 4; see also Dobson Communications Corporation at 1, at <http://www.dobson.net/> (last visited June 3, 2005) (“Dobson Website”); Dobson Profile at 1. Dobson provides service in portions of Alaska, Arizona, Illinois, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, New York, Ohio, Oklahoma, Pennsylvania, Texas, West Virginia and Wisconsin. See Dobson 10-K at 5-7.

³⁶ See Dobson 10-K at 8; see also Dobson Website at 1; Dobson Brands at 1.

³⁷ Dobson Petition at 2.

³⁸ See ALLTEL 10-K at 2, F-3; ALLTEL 8-K at 3, Exhibit 99(a) at 1; WWC 8-K, Exhibit 99.1 at 1.

³⁹ See ALLTEL 10-K at 2; ALLTEL 8-K at 3; WWC 10-K at 5-6.

⁴⁰ WWC 10-K at 6.

⁴¹ ALLTEL 10-K at 2.

⁴² Application Transferring Control of Licenses Held by WWC Holding Co., Inc. to Wigeon Acquisition LLC, File No. 0002016468, Exhibit 1 at 2 n.5 (filed Jan. 24, 2005) (“Application”).

⁴³ See ALLTEL 10-K at 2; ALLTEL 8-K, Exhibit 99(a) at 1.

percent of the contiguous United States.⁴⁴ ALLTEL and WWC assert that they serve mostly complementary geographic regions.⁴⁵ Specifically, the Applicants state that, collectively, they are authorized to provide service in 411 Cellular Market Areas (“CMAs”) and 242 Component Economic Areas (“CEAs”).⁴⁶ The proposed transaction, however, would result in spectrum and service overlaps in only 27 CMAs and 39 CEAs, which represent less than 3 million of the 72 million POPs that would be covered by the combined company.⁴⁷

12. The Applicants assert that approval of the proposed transaction is in the public interest, stating that it would strengthen ALLTEL as a competitor by expanding its wireless footprint.⁴⁸ Specifically, the merger would allow ALLTEL to expand its existing wireless footprint into nine additional states – California, Idaho, Minnesota, Montana, Nevada, North Dakota, South Dakota, Utah, and Wyoming – and expand its existing wireless operations in Arizona, Colorado, New Mexico, and Texas.⁴⁹ The Applicants also assert that this transaction would create economies of scale and scope that would improve its ability to compete against the nationwide carriers.⁵⁰ The Applicants further claim that the combined company would have greater resources to enable it to deploy advanced wireless services in rural areas more quickly than either Applicant could do on a stand-alone basis.⁵¹ This commitment to deploying such services in rural areas, the Applicants argue, distinguishes the company from its nationwide competitors.⁵² Finally, the Applicants claim that the acquisition of WWC would provide a business base broad enough for ALLTEL to consider the deployment of additional technologies (*e.g.*, GSM) that would expand the availability of automatic roaming agreements in rural areas in the United States.⁵³

C. Applications and Review Process

1. Commission Review

13. On January 24, 2005, pursuant to section 310(d) of the Communications Act,⁵⁴ ALLTEL and WWC filed five applications seeking consent to the proposed transfer of control of licenses held by WWC and its subsidiaries to Widgeon,⁵⁵ a wholly-owned subsidiary of ALLTEL,⁵⁶ and one application

⁴⁴ See Application, Exhibit 1 at 10 n.31; *see also* ALLTEL 8-K, Exhibit 99(a) at 1; WWC 8-K, Exhibit 99.1 at 2.

⁴⁵ Application, Exhibit 1 at 10. *See also* ALLTEL 8-K, Exhibit 99b at 5.

⁴⁶ Application, Exhibit 1 at 10. For a discussion of CEAs and CMAs, see *infra* paras. 44-45.

⁴⁷ Application, Exhibit 1 at 10.

⁴⁸ *See id.* at 3-5 (stating, however, that “the transaction will not transform ALLTEL into a nationwide competitor”).

⁴⁹ *Id.* at 4.

⁵⁰ *See id.* at 4, 5-6.

⁵¹ *See id.* at 4, 6-7.

⁵² *See id.*

⁵³ *See id.* at 4, 8.

⁵⁴ 47 U.S.C. § 310(d).

⁵⁵ Application Transferring Control of Licenses Held by WWC Holding Co., Inc. to Widgeon Acquisition LLC, File No. 0002016468 (filed Jan. 24, 2005); Application Transferring Control of Licenses Held by WWC License L.L.C. to Widgeon Acquisition LLC, File No. 0002016892 (filed Jan. 24, 2005); Application Transferring Control of Licenses Held by WWC Paging Corporation to Widgeon Acquisition LLC, File No. 0002016459 (filed Jan. 24, 2005); Application Transferring Control of Licenses Held by WWC Texas RSA Limited Partnership to Widgeon (continued....)

seeking consent to the transfer of control of a *de facto* transfer lease authorization.⁵⁷ Pursuant to section 214 of the Communications Act,⁵⁸ ALLTEL and WWC also filed two international section 214 applications – an application seeking Commission approval to assign an international section 214 authorization from WWC to Widgeon and an application seeking consent to the transfer of control of an international section 214 authorization from Western Wireless International Enterprise, Inc., a subsidiary of WWC, to Widgeon.⁵⁹ On February 7, 2005, the Commission released a Public Notice seeking public comment on the proposed transaction.⁶⁰ In response to the Comment Public Notice, the Commission received three petitions to deny the applications and thirty-six comments in overall support of the grant of the applications.⁶¹

14. The Wireless Telecommunications Bureau (“Bureau”) adopted a protective order, dated February 11, 2005, under which third parties would be allowed to review confidential or proprietary documents submitted by the Applicants.⁶² On March 1, 2005, Bureau staff requested additional information from the Applicants (“Information Request”).⁶³ The Applicants’ responses to the Information Request, filed on March 15, 2005 and March 29, 2005,⁶⁴ along with additional information supplied by the Applicants,⁶⁵ are included in the record.

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Acquisition LLC, File No. 0002016476 (filed Jan. 24, 2005); Application Transferring Control of Licenses Held by Western CLEC Corporation to Widgeon Acquisition LLC, File No. 0002016889 (filed Jan. 24, 2005). File No. 0002016468 has been designated the lead Application. The other applications each contain an exhibit referring to the exhibits attached to file no. 0002016468. Thus, for convenience, we only cite to the lead Application.

⁵⁶ Application, Exhibit 1 at 2.

⁵⁷ Application Transferring Control of *De Facto* Transfer Lease Authorization Held by WWC Holding Co., Inc. to Widgeon Acquisition LLC, File No. 0002018539 (filed Jan. 24, 2005). In evaluating the competitive effects of the proposed transaction, we will treat the spectrum under the *de facto* transfer lease authorization in the same manner as the licenses to be assigned from WWC to ALLTEL.

⁵⁸ 47 C.F.R. § 214.

⁵⁹ Application to Transfer Control of International Section 214 Authorization Held by Western Wireless Corporation to Widgeon Acquisition LLC, File No. ITC-T/C-20050126-00030, at 1 (filed Jan. 24, 2005); Application to Assign International Section 214 Authorization Held by Western Wireless Corporation to Widgeon Acquisition LLC, File No. ITC-ASG-20050126-00031, at 1 (filed Jan. 24, 2005). The Applicants are both authorized to provide global facilities-based and resale international services. Application, Exhibit 1, at 18.

⁶⁰ Western Wireless Corporation and ALLTEL Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-50, *Public Notice*, 20 FCC Rcd. 2337 (2005) (“Comment Public Notice”). The Comment Public Notice set due dates of March 9, 2005 for Petitions to Deny, March 21, 2005 for Oppositions, and March 28, 2005 for Replies. *See id.* at 2337, 2339.

⁶¹ The entities that filed pleadings in this proceeding are listed in Appendix A. In addition, we have received informal comments through *ex parte* submissions. *See* Appendix A. All pleadings and comments are available on the Commission’s Electronic Comment Filing System (“ECFS”) website at www.fcc.gov/cgb/ecfs/.

⁶² Applications for the Transfer of Control of Licenses and Authorizations from Western Wireless Corporation and Its Subsidiaries to ALLTEL Corporation; Order Adopting Protective Order, WT Docket No. 05-50, *Order*, 20 FCC Rcd. 2484 (2005).

⁶³ Letter from William W. Kunze, Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Doane F. Kiechel, Morrison & Foerster, LLP, and Kathryn A. Zachem, Wilkinson Barker Knauer, LLP (Mar. 1, 2005).

⁶⁴ March 15, 2005 Response to Information Request at 1; Letter from Doane F. Kiechel, Morrison & Foerster, LLP, Counsel for Western Wireless Corporation, and Kathryn A. Zachem, Wilkinson Barker Knauer, LLP, Counsel for (continued....)

15. Prior to the filing of the applications, the Bureau released a public notice announcing the Commission's intent to provide the United States Department of Justice ("DOJ") access to information contained in the Numbering Resource Utilization and Forecast ("NRUF") reports filed by wireless telecommunications carriers as well as disaggregated, carrier-specific local number portability ("LNP") data related to wireless telecommunications carriers.⁶⁶ The Bureau also announced by public notice that the NRUF and LNP reports would be placed into the record,⁶⁷ subject to a separate protective order ("NRUF Protective Order").⁶⁸ On March 11, 2005, ALLTEL requested access to the NRUF reports for the purpose of granting employees of ALLTEL's outside counsel and economic consulting firm access to the data.⁶⁹ The Commission placed the NRUF and LNP reports into the record, pursuant to the NRUF Protective Order, and provided the NRUF report to the Applicants on March 22, 2005.

2. Department of Justice Review

16. The Antitrust Division of DOJ reviews telecommunications mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that are likely to substantially lessen competition.⁷⁰ The Antitrust Division's review is limited solely to an examination of the competitive effects of the acquisition, without reference to national security, law enforcement, or other public interest considerations. The Antitrust Division reviewed the merger between ALLTEL and WWC. As a result of its analysis, DOJ concluded that the proposed merger was likely to result in competitive harm in certain markets.⁷¹ Thus, it entered into an agreement with the Applicants that was submitted to the District Court as a proposed final judgment on July 6, 2005.⁷² In addition, DOJ and the Applicants agreed to a preservation of assets stipulation and order with the Applicants, which was entered by the District Court

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ALLTEL Corporation, to Erin McGrath, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission (Mar. 29, 2005) ("March 29, 2005 Response to Information Request").

⁶⁵ See, e.g., Letter from Kathryn A. Zachem and Kenneth D. Patrich, Wilkinson Barker Knauer, LLP, Counsel for ALLTEL Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 6, 2005); Letter from Kathryn A. Zachem and Kenneth D. Patrich, Wilkinson Barker Knauer, LLP, Counsel for ALLTEL Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 6, 2005).

⁶⁶ Notice of Request for Access to Data to Carriers Who File Numbering Resource Utilization and Forecast Reports (NRUF), *Public Notice*, 20 FCC Rcd. 1602 (2005).

⁶⁷ Western Wireless Corporation and ALLTEL Corporation Applications for Transfer of Control of Licenses and Authorizations; Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports Placed into the Record, Subject to Protective Order, WT Docket No. 05-50, *Public Notice*, 20 FCC Rcd. 4211 (2005).

⁶⁸ Applications for the Transfer of Control of Licenses and Authorizations from Western Wireless Corporation and ALLTEL Corporation; Protective Order, *Order*, WT Docket No. 05-50, *Protective Order*, 20 FCC Rcd. 4214 (2005).

⁶⁹ See Letter from Kenneth D. Patrich, Wilkinson Barker Knauer, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 11, 2005).

⁷⁰ 15 U.S.C. § 18.

⁷¹ See *United States v. ALLTEL Corporation and Western Wireless Corporation*, Complaint, No. 1:05CV01345 (filed 7/6/05); see also *United States v. ALLTEL Corporation and Western Wireless Corporation*, Competitive Impact Statement, No. 1:05CV01345 (filed 7/6/05) ("DOJ Competitive Impact Statement"). All DOJ filings regarding *United States v. ALLTEL Corporation and Western Wireless Corporation*, No. 1:05CV01345, are available at <<http://www.usdoj.gov/atr/cases/alltel.htm>>.

⁷² *United States v. ALLTEL Corporation and Western Wireless Corporation*, Proposed Final Judgment, No. 1:05CV01345 (filed 7/6/05) ("DOJ Proposed Final Judgment").

on the same day.⁷³ DOJ will allow the merger to proceed subject to the Applicants' divestiture of business units in sixteen markets and the Cellular One brand, including intellectual property, license agreements, and certain other assets relating to the Cellular One brand.⁷⁴

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

17. Pursuant to sections 214(a) and 310(d) of the Communications Act, the Commission must determine whether the Applicants have demonstrated that the proposed transfer of control of WWC's licenses and authorizations to ALLTEL would serve the public interest, convenience, and necessity.⁷⁵ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act,⁷⁶ other applicable statutes, the Commission's rules, and federal communications policy.⁷⁷ The public interest standards of sections 214(a) and 310(d) involve a balancing process that weighs the potential public interest harms of the proposed transaction against the potential

⁷³ United States v. ALLTEL Corporation and Western Wireless Corporation, Preservation of Assets Stipulation and Order, No. 1:05CV01345 (filed 7/6/05) ("DOJ Stipulation").

⁷⁴ See DOJ Proposed Final Judgment at 1-2, 3, 6; see also DOJ Competitive Impact Statement at 8, 11-14. For additional discussion of DOJ's required divestiture of the Cellular One brand name, see *infra* para. 98.

⁷⁵ 47 U.S.C. §§ 214(a), 310(d).

⁷⁶ 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 Act, 47 U.S.C. § 308. See Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, *Memorandum Opinion and Order*, 19 FCC Rcd. 21522, 21542 ¶ 40 (2004) ("*Cingular-AT&T Wireless Order*"); Applications of VoiceStream Wireless Corporation or Omnipoint Corporation, Transferors, and VoiceStream Wireless Holding Company, Cook Inlet/VS GSM II PCS, LLC, or Cook Inlet/VS GSM III PCS, LLC, Transferees, *Memorandum Opinion and Order*, 15 FCC Rcd. 3341, 3345-46 ¶ 10 (2000) ("*VoiceStream-Omnipoint Order*"); Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., CC Docket No. 97-211, *Memorandum Opinion and Order*, 13 FCC Rcd. 18025, 18030 ¶ 8 (1998) ("*WorldCom-MCI Order*"); Applications of SBC Communications Inc. and BellSouth Corporation, WT Docket No. 00-81, *Memorandum Opinion and Order*, 15 FCC Rcd. at 25459, 25464 ¶ 12 (2000) ("*SBC-BellSouth Order*"); Vodafone AirTouch, PLC, and Bell Atlantic Corporation, *Memorandum Opinion and Order*, 15 FCC Rcd. 16507, 16511-12 ¶ 12 (WTB, IB 2000) ("*Bell Atlantic-Vodafone Order*").

⁷⁷ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21542-43 ¶ 40; Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in Possession, to Subsidiaries of Cingular Wireless LLC, WT Docket 03-217, *Memorandum Opinion and Order*, 19 FCC Rcd. 2570, 2580-81 ¶ 24 (2004) ("*Cingular-NextWave Order*"); General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, MB Docket No. 03-124, *Memorandum Opinion and Order*, 19 FCC Rcd. 473, 484 ¶ 16 (2004) ("*GM-News Corp. Order*"); AT&T Corp., British Telecommunications, PLC, VLT Co. L.L.C., Violet License Co. LLC, and TNV [Bahamas] Limited Applications, IB Docket No. 98-212, *Memorandum Opinion and Order*, 14 FCC Rcd. 19140, 19150 ¶ 20 (1999) ("*AT&T Corp.-British Telecom. Order*"); Applications to Assign Wireless Licenses from WorldCom Inc. (Debtor-in-Possession) to Nextel Spectrum Acquisition Corp., WT Docket No. 03-203, *Memorandum Opinion and Order*, 19 FCC Rcd. 6232, 6241 ¶ 23 (WTB, MB 2004) ("*Nextel-WorldCom Order*"); Application of TeleCorp PCS, Inc., Tritel, Inc., and Indus, Inc. and TeleCorp Holding Corp. II, L.L.C., TeleCorp PCS, L.L.C., ABC Wireless, L.L.C., Polycell Communications, Inc., Clinton Communications, Inc., and AT&T Wireless PCS, LLC, WT Docket No. 00-130, *Memorandum Opinion and Order*, 16 FCC Rcd. 3716, 3721-22 ¶ 12 (WTB 2000) ("*TeleCorp-Tritel Order*"); GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, CC Docket No. 98-184, *Memorandum Opinion and Order*, 15 FCC Rcd. 14,032, 14,045, 14,046 ¶¶ 20, 22 (2002) ("*Bell Atlantic-GTE Order*").

public interest benefits.⁷⁸ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.⁷⁹ If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, section 309(e) of the Act requires that we designate the application for hearing.⁸⁰

18. 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.”⁸¹ Therefore, as a threshold matter, the Commission must determine whether the Applicants meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission’s rules.⁸² In making this determination, the Commission does not, as a general rule, re-evaluate the qualifications of transferors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.⁸³ As a required part of our public interest analysis, however, section 310(d)

⁷⁸ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21543 ¶ 40; *Cingular-NextWave Order*, 19 FCC Rcd. at 2580-81 ¶ 24 (2004); *GM-News Corp. Order*, 19 FCC Rcd. at 483 ¶ 15; *WorldCom, Inc. and Its Subsidiaries (Debtors-in-Possession), Transferor, and MCI, Inc., Transferee, WC Docket No. 02-215, Memorandum Opinion and Order*, 18 FCC Rcd. 26484, 26492 ¶ 12 (2003) (“*WorldCom Order*”); *VoiceStream Wireless Corporation, PowerTel, Inc., Transferors, and Deutsche Telekom AG, Transferee, IB Docket No. 00-187, Memorandum Opinion and Order*, 16 FCC Rcd. 9779, 9789 ¶ 17 (2001) (“*Deutsche Telekom-VoiceStream Order*”); *Bell Atlantic-GTE Order*, 15 FCC Rcd. at 14045, 14046 ¶¶ 20, 22; *VoiceStream-Omnipoint Order*, 15 FCC Rcd. at 3347 ¶ 12; *AT&T Corp.-British Telecom. Order*, 14 FCC Rcd. at 19150 ¶ 20; *WorldCom-MCI Order*, 13 FCC Rcd. at 18031 ¶ 10; *Nextel-WorldCom Order*, 19 FCC Rcd. at 6241-42 ¶ 23; *SBC-BellSouth Order*, 15 FCC Rcd. at 25464, 25467 ¶¶ 13, 18; *Bell Atlantic-Vodafone Order*, 15 FCC Rcd. at 16512, 16517 ¶¶ 13, 25.

⁷⁹ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21543 ¶ 40; *Cingular-NextWave Order*, 15 FCC Rcd. at 2581 ¶ 24; *GM-News Corp. Order*, 19 FCC Rcd. at 483 ¶ 15; *Bell Atlantic-GTE Order*, 15 FCC Rcd. at 14046 ¶ 22; *VoiceStream-Omnipoint Order*, 15 FCC Rcd. at 3347 ¶ 11; *SBC-BellSouth Order*, 15 FCC Rcd. at 25464 ¶ 13; *Bell Atlantic-Vodafone Order*, 15 FCC Rcd. at 16512 ¶ 13; *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee, CS Docket No. 98-178, Memorandum Opinion and Order*, 14 FCC Rcd. 3160, 3169 ¶ 15 (1999) (“*AT&T-TCI Order*”); *WorldCom-MCI Order*, 13 FCC Rcd. at 18031-32 ¶ 10.

⁸⁰ 47 U.S.C. § 309(e). See also *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21542-43 ¶ 40; *GM-News Corp. Order*, 19 FCC Rcd. at 483 n.49; *Bell Atlantic-GTE Order*, 15 FCC Rcd. at 14231 ¶ 435; *WorldCom-MCI Order*, 13 FCC Rcd. at 18139-40 ¶ 202. Section 309(e)’s requirement applies only to those applications to which Title III of the Act applies, i.e., radio station licenses. We are not required to designate for hearing applications for the transfer or assignment of Title II authorizations when we are unable to find that the public interest would be served by granting the applications, see *ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979), but of course may do so if we find that a hearing would be in the public interest.

⁸¹ See 47 U.S.C. §§ 308, 310(d); see also *Cingular-AT&T Wireless Order*, 19 FCC Rcd. 21546 ¶ 44; *GM-News Corp. Order*, 19 FCC Rcd. at 485 ¶ 18.

⁸² See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see also *Cingular-AT&T Wireless Order*, 19 FCC Rcd. 21546 ¶ 44; *Cingular-NextWave Order*, 19 FCC Rcd. at 2581 ¶ 25; *GM-News Corp. Order*, 19 FCC Rcd. at 485 ¶ 18; *WorldCom Order*, 18 FCC Rcd. at 26493 ¶ 13; *Deutsche Telekom-VoiceStream Order*, 16 FCC Rcd. at 9790 ¶ 19; *Nextel-WorldCom Order*, 19 FCC Rcd. at 6242 ¶ 24; *Global Crossing Order*, 18 FCC Rcd. at 20316 ¶ 18; *Northcoast Communications, LLC and Celco Partnership d/b/a Verizon Wireless, WT Docket No. 03-19, Memorandum Opinion and Order*, 18 FCC Rcd. 6490, 6492 ¶ 5 (CWD 2003) (“*Verizon-Northcoast Order*”).

⁸³ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21546 ¶ 44; *Cingular-NextWave Order*, 19 FCC Rcd. at 2581-82 ¶ 25; *GM-News Corp. Order*, 19 FCC Rcd. at 485 ¶ 18; *WorldCom Order*, 18 FCC Rcd. at 26493-94 ¶ 13; *Deutsche Telekom-VoiceStream Order*, 16 FCC Rcd. at 9790 ¶ 19; *SBC-BellSouth Order*, 15 FCC Rcd. at 25459, 25465 ¶ 14 (2000); *Nextel-WorldCom Order*, 19 FCC Rcd. at 6242 ¶ 24; *Global Crossing Order*, 18 FCC Rcd. at 20316 ¶ 18 (continued...)

requires the Commission to consider whether the proposed transferee is qualified to hold a Commission license.⁸⁴ When evaluating the qualifications of a potential licensee, the Commission previously has stated that it will review allegations of misconduct directly before it,⁸⁵ as well as conduct that takes place outside of the Commission.⁸⁶ In this proceeding, no issues have been raised with respect to the basic qualifications of ALLTEL and WWC. Thus, we find that, at this time, there is no reason to reevaluate the qualifications of ALLTEL and WWC.

19. Our public interest evaluation necessarily encompasses the “broad aims of the Communications Act,”⁸⁷ which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing the spectrum in the public interest.⁸⁸ Our public interest analysis may also entail assessing whether the merger will affect the quality of communications services or will result in the provision of new or additional services to consumers.⁸⁹

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Rcd. at 20316 ¶ 18; *Verizon-Northcoast Order*, 18 FCC Rcd. at 6492 ¶ 5; *TeleCorp-Tritel Order*, 16 FCC Rcd. at 3722 ¶ 5. See also Stephen F. Sewell, Assignment and Transfers of Control of FCC Authorizations under Section 310 (d) of the Communications Act of 1934, 43 FED. COMM. L. J. 277, 339-40 (1991). The policy of not approving assignments or transfers when issues regarding the licensee’s basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. See *id.*

⁸⁴ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21546 ¶ 44; *Cingular-NextWave Order*, 19 FCC Rcd. at 2582 ¶ 25; *GM-News Corp. Order*, 19 FCC Rcd. at 485 ¶ 18; *WorldCom Order*, 18 FCC Rcd. at 26494 ¶ 13; *SBC-BellSouth Order*, 15 FCC Rcd. at 25465 ¶ 14; *Bell Atlantic-GTE Order*, 15 FCC Rcd. at 14227 ¶ 429; *Nextel-WorldCom Order*, 19 FCC Rcd. at 6242 ¶ 24.

⁸⁵ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21548 ¶ 47; *WorldCom Order*, 18 FCC Rcd. at 26494 ¶ 13. The Commission will consider any violation of any provision of the Act, or of the Commission’s rules or policies, as predicative of an applicant’s future truthfulness and reliability and, thus, as having a bearing on an applicant’s character qualifications. *Bell Atlantic-GTE Order*, 15 FCC Rcd. at 14227-28 ¶ 429; Policy Regarding Character Qualifications In Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, Gen. Docket No. 81-500, *Report and Order and Policy Statement*, 100 F.C.C. 2d 1179, 1209-10 ¶ 57 (1986), *modified*, 5 FCC Rcd. 3252 (1990), *recon. granted in part*, 6 FCC Rcd. 3448 (1991), *modified in part*, 7 FCC Rcd. 6564 (1992).

⁸⁶ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21548 ¶ 47; *WorldCom Order*, 18 FCC Rcd. at 26494 ¶ 13. The Commission previously has determined that in its review of character issues, it will consider forms of adjudicated, non-Commission related misconduct that include: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition. See, e.g., *Bell Atlantic-GTE Merger Order*, 15 FCC Rcd. at 14227-28 ¶ 429.

⁸⁷ E.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21544 ¶ 41; see also *GM-News Corp. Order*, 19 FCC Rcd. at 483 ¶ 16; *VoiceStream-Omnipoint Order*, 15 FCC Rcd. at 3346-47 ¶ 11; *AT&T Corp.-British Telecom. Order*, 14 FCC Rcd. at 19146 ¶ 14; *WorldCom-MCI Order*, 13 FCC Rcd. at 18030 ¶ 9.

⁸⁸ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21544 ¶ 41; 47 U.S.C. §§ 157 nt, 254, 332(c)(7), Telecommunications Act of 1996, Preamble; see also *Cingular-NextWave Order*, 19 FCC Rcd. at 2583 ¶ 29; *GM-News Corp. Order*, 19 FCC Rcd. at 483-84 ¶ 16; *WorldCom-MCI Order*, 13 FCC Rcd. at 18030-31 ¶ 9; *Nextel-WorldCom Order*, 19 FCC Rcd. at 6244 ¶ 29; 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, *Report and Order*, 16 FCC Rcd. 22668, 22696 ¶ 55 (2001) (“*Spectrum Aggregation R&O*”) (citing 47 U.S.C. §§ 301, 303, 309(j), 310(d)); cf. 47 U.S.C. §§ 521(4), 532(a).

⁸⁹ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21544 ¶ 41; *WorldCom-MCI Order*, 13 FCC Rcd. at 18031 ¶ 9.

In conducting this analysis, the Commission may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.⁹⁰

20. In determining the competitive effects of the merger, our analysis is not limited by traditional antitrust principles.⁹¹ The Commission and DOJ each have independent authority to examine telecommunications mergers, but the standards governing the Commission's review differ from those of DOJ.⁹² DOJ reviews mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that are likely to lessen competition substantially in any line of commerce.⁹³ The Commission, on the other hand, is charged with determining whether the transfer of licenses serves the broader public interest. In the communications industry, competition is shaped not only by antitrust rules, but also by the regulatory policies that govern the interactions of industry players.⁹⁴ In addition to considering whether the merger will reduce existing competition, therefore, we also must focus on whether the merger will accelerate the decline of market power by dominant firms in the relevant communications markets and the merger's effect on future competition.⁹⁵ We also recognize that the same consequences of a proposed merger that are beneficial in one sense may be harmful in another. For instance, combining assets may allow the merged entity to reduce transaction costs and offer new products, but it may also create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.⁹⁶

21. Our public interest authority also enables us to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.⁹⁷ These conditions may include the divestiture of certain licenses along with associated facilities and customers, for example. Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions, not inconsistent with law, that may be necessary to carry out the provisions of

⁹⁰ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21544 ¶ 41; *WorldCom-MCI Order*, 13 FCC Rcd. at 18031 ¶ 9.

⁹¹ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21544 ¶ 42; *GM-News Corp. Order*, 19 FCC Rcd. at 484 ¶ 17; *Bell Atlantic-GTE Order*, 15 FCC Rcd. at 14046 ¶ 23; *AT&T-TCI Order*, 14 FCC Rcd. at 3168-69 ¶ 14; *WorldCom-MCI Order*, 13 FCC Rcd. at 18033 ¶ 13. See also *Satellite Business Systems*, 62 F.C.C.2d 997, 1088 (1977), *aff'd sub nom* United States v. FCC, 652 F.2d 72 (DC Cir. 1980) (*en banc*); *Northern Utilities Service Co. v. FERC*, 993 F.2d 937, 947-48 (1st Cir. 1993) (public interest standard does not require agencies "to analyze proposed mergers under the same standards that the Department of Justice . . . must apply").

⁹² See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21544 ¶ 42; *GM-News Corp. Order*, 19 FCC Rcd. at 484 ¶ 17; *Bell Atlantic-GTE Order*, 15 FCC Rcd. at 14046 ¶ 23; *AT&T-TCI Order*, 14 FCC Rcd. at 3169 ¶ 14; *WorldCom-MCI Order*, 13 FCC Rcd. at 18033 ¶ 12.

⁹³ 15 U.S.C. § 18.

⁹⁴ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21545 ¶ 42.

⁹⁵ See *id.*; see also *Bell Atlantic-GTE Order*, 15 FCC Rcd. at 14047 ¶ 23; *AT&T Corp.-British Telecom. Order*, 14 FCC Rcd. at 19150 ¶ 15.

⁹⁶ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21545 ¶ 42.

⁹⁷ See, e.g., *id.* at 21545 ¶ 43 (conditioning approval on the divestiture of operating units in select markets); *Bell Atlantic-GTE Order*, 15 FCC Rcd. at 14047 ¶ 24; *AT&T Corp.-British Telecom. Order*, 14 FCC Rcd. at 19150 ¶ 15. See also *WorldCom-MCI Order*, 13 FCC Rcd. at 18032 ¶ 10 (conditioning approval on the divestiture of MCI's Internet assets); *Deutsche Telekom-VoiceStream Wireless Order*, 16 FCC Rcd. 9779 (2001) (conditioning approval on compliance with agreements with Department of Justice and Federal Bureau of Investigation addressing national security, law enforcement, and public safety concerns).

the Act.⁹⁸ Similarly, section 214(c) of the Act authorizes the Commission to attach to the certificate “such terms and conditions as in its judgment the public convenience and necessity may require.”⁹⁹ Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to rely upon our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the merger will yield overall public interest benefits.¹⁰⁰ Despite our broad authority, we have held that we will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms)¹⁰¹ and that are fairly related to the Commission’s responsibilities under the Communications Act and related statutes.¹⁰² Thus, we will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.¹⁰³

IV. COMPETITIVE ANALYSIS

22. In our analysis of this transaction’s effects on mobile telephony, we consider, first, horizontal issues (those related to increased concentration within a market) and, second, vertical issues (those related to impacts across related markets). Our primary focus is on horizontal effects. Horizontal mergers lead to a loss of a competitor, and such loss can lead to a diminution in competition. Mergers raise competitive concerns when they reduce the availability of substitute choices to the point that the merged firm has the incentive and the ability, either by itself or in coordination with other firms, to raise prices.¹⁰⁴ The ability to raise prices above competitive levels is generally referred to as “market power.” Market power may also enable sellers to reduce competition on dimensions other than price, including innovation and service

⁹⁸ 47 U.S.C. § 303(r). See also *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21545 ¶ 43; *Bell Atlantic-GTE Order*, 15 FCC Rcd. at 14047 ¶ 24; *WorldCom-MCI Order*, 13 FCC Rcd. at 18032 ¶ 10 (citing *FCC v. Nat’l Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978) (upholding broadcast-newspaper cross-ownership rules adopted pursuant to section 303(r)); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (section 303(r) powers permit Commission to order cable company not to carry broadcast signal beyond station’s primary market); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989) (syndicated exclusivity rules adopted pursuant to section 303(r) authority).

⁹⁹ 47 U.S.C. § 214(c). See also *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21545 ¶ 43; *Bell Atlantic-GTE Order*, 15 FCC Rcd. at 14047 ¶ 24; *AT&T Corp.-British Telecom. Order*, 14 FCC Rcd. at 19150 ¶ 15.

¹⁰⁰ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21545 ¶ 43; *GM-News Corp. Order*, 19 FCC Rcd. at 477 ¶ 5; *Bell Atlantic-GTE Order*, 15 FCC Rcd. at 14047-48 ¶ 24; *WorldCom-MCI Order*, 13 FCC Rcd. at 18034-35 ¶ 14. See also *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043, 1049 (7th Cir. 1992) (discussing Commission’s authority to trade off reduction in competition for increase in diversity in enforcing public interest standard).

¹⁰¹ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21545-46 ¶ 43; *GM-News Corp. Order*, 19 FCC Rcd. at 534 ¶ 131.

¹⁰² See *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21546 ¶ 43.

¹⁰³ See *id.*; *GM-News Corp. Order*, 19 FCC Rcd. at 534 ¶ 131 (“An application for a transfer of control of Commission licenses is not an opportunity to correct any and all perceived imbalances in the industry. These issues are best left to broader industry-wide proceedings.”).

¹⁰⁴ See, e.g., Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, at § 0.1 (Apr. 2, 1992, revised Apr. 8, 1997) (“*DOJ/FTC Merger Guidelines*”); Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, *Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61*, 12 FCC Rcd. 15756, 15802-03 ¶ 83 (1997); Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, *Fourth Report and Order*, 95 F.C.C.2d 554, 558 ¶ 7-8 (1983), *vacated on other grounds*, *AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), *cert. denied*, *MCI Telecommunications Corp. v. AT&T*, 113 S. Ct. 3020 (1993).

quality.¹⁰⁵ A fundamental tenet of the Commission’s public interest review is that, absent significant offsetting efficiencies or other public interest benefits, a transaction that creates or enhances significant market power or facilitates its use is unlikely to serve the public interest.

23. A horizontal transaction is unlikely to create or enhance market power or facilitate its exercise unless the transaction significantly increases concentration and results in a concentrated market, properly defined and measured.¹⁰⁶ Transactions that do not significantly increase concentration or do not result in a concentrated market ordinarily require no further competitive analysis (although we separately consider the spectrum holdings that would occur post-merger). Market concentration is generally measured by the Herfindahl-Hirschman Index (“HHI”) and changes in concentration are measured by the change in HHI. However, HHI data provide only the beginning of the analysis. The Commission then examines other market factors that pertain to competitive effects, including the incentive and ability of other firms to react and of new firms to enter the market. Ultimately, the Commission must assess whether it is likely that the merged firm could exercise market power in any particular market.

24. We begin by determining the appropriate market definitions to employ for the analysis, as well as identifying relevant market participants. We then measure the degree of market concentration. Next, we consider the possible competitive harms that could occur due to a significant increase in market concentration or market power. Mergers can diminish competition and firms can exercise market power in a number of ways. A merger may create market power in a single firm and allow that firm to act on its own in raising prices, lowering quality, reducing innovation, or restricting deployment of new technologies or services. A merger may also diminish competition if it makes the firms selling in the market more likely to engage in coordinated interaction that harms consumers. This behavior includes tacit or express collusion and *may or may not* be lawful in and of itself. The effects of such coordinated behavior may include increased prices, reduced number of minutes in a given price plan, degraded output quality, or some combination of these effects. Perhaps more importantly, it may also include dynamic effects such as reduced innovation and restricted deployment of new technologies and services.

A. Market Definition

1. Product Market Definition

25. When one product is considered by consumers to be a reasonable substitute for another product, it is included in the relevant market. Thus, the relevant market includes “all products ‘that consumers consider reasonably interchangeable for the same purposes.’”¹⁰⁷ A relevant product market is the smallest group of competing products or services for which a hypothetical monopolist in a geographic

¹⁰⁵ *DOJ/FTC Merger Guidelines* § 0.1, n.6.

¹⁰⁶ *Id.* § 1.0.

¹⁰⁷ *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 395 (1956). *See also* *United States v. Microsoft*, 253 F.3d 34, 52 (D.C. Cir.), *cert. denied*, 122 S. Ct. 350 (2001) (in determining what is a reasonable substitute, the court excluded “middleware” software from the definition of the relevant product market because of its present non-interchangeability with Windows, despite its future long-term potential); *Wireless Telephone Services Antitrust Litigation*, No. 02 Civ. 2637(DLC), 2003 WL 21912603, at 9 (S.D.N.Y. Aug. 12, 2003) (relevant product market “consists of products that have reasonable interchangeability for the purposes for which they are produced – price, use and qualities considered.”).

area could profitably impose at least a “small but significant and non-transitory price increase,” presuming no change in the terms of sale of other products (the “hypothetical monopolist test”).¹⁰⁸

26. In their Application, ALLTEL and WWC assert that the Commission should adopt in this proceeding the product market definition used in the *Cingular-AT&T Wireless Order*.¹⁰⁹ In that order, the Commission found that separate markets exist for interconnected mobile voice and mobile data services, and also for residential and enterprise services.¹¹⁰ However, in performing its analysis, the Commission decided that analyzing the Cingular-AT&T Wireless transaction using a combined market for mobile telephony services was unlikely to understate potential competitive harm.¹¹¹ None of the petitioners or commenters commented on product market definition.

27. For the purposes of evaluating this transaction, we use the “hypothetical monopolist” test to determine the relevant product markets. To conduct this test, first we assume that a hypothetical monopolist within a geographic area offers one of the differentiated mobile telephony products such as stand-alone data services or a regional rate plan. Then, we assume that this monopolist imposes a small but significant and non-transitory price increase for this mobile telephony service, and finally we evaluate the likely response of consumers to this price increase. If the extent of demand substitution is such that the monopolist could profitably impose a small but significant and non-transitory increase in price (SSNIP) for a particular product, then this product may be defined as a relevant product market.

28. Using this test, we find that there are separate markets for interconnected mobile voice services¹¹² and mobile data services,¹¹³ and also for residential services and enterprise services. As we explain herein, however, we do not find it necessary to conduct our analysis in this transaction by distinguishing mobile data subscribers from mobile voice subscribers, or enterprise subscribers from residential subscribers.

29. Instead of a separate analysis of the mobile voice and mobile data markets, however, we will analyze both of them under the combined market for mobile telephony services. We do this because we conclude from our analysis that the market for stand-alone mobile data services is not sufficiently developed at this time to subject to a credible antitrust review. Accordingly, we determine that an analysis based on combined mobile telephony services will provide a reasonable assessment of any potential competitive harm to the markets for mobile voice or data services as a result of the proposed transaction.

¹⁰⁸ *DOJ/FTC Merger Guidelines* §§ 1.11, 1.12. See also Gregory Werden, *The 1982 Merger Guidelines and the Ascent of the Hypothetical Monopolist Paradigm*, 71 ANTITRUST L.J. 253 (2003).

¹⁰⁹ See Application, Exhibit 1 at 8-9.

¹¹⁰ *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21558 ¶ 74.

¹¹¹ See *id.* at 21588, 21560 ¶¶ 74, 77, 79.

¹¹² Interconnected mobile voice consists of all commercially available two-way mobile voice services providing access to the public switched telephone network via mobile communications devices employing radiowave technology to transmit calls. See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, WT Docket No. 04-111, *Ninth Report*, 19 FCC Rcd. 20597, 20611-12 ¶ 32 (2004) (“*Ninth Competition Report*”).

¹¹³ Mobile data service is considered to be the delivery of non-voice information to a mobile device. Two-way mobile data services include the ability not only to receive non-voice information on an end-user device, but also to send it from an end-user device to another mobile or landline device using wireless technology. Data services available today include, but are not limited to, short messaging service, email, and access to the internet. See *id.* at 20613 ¶ 33.

30. Turning to the enterprise and residential product markets, we note that most mobile telephony service subscribers are residential customers. Thus, an analysis based on subscriber shares for a combined mobile telephony services market will tend to provide more accurate insights into the residential market than the enterprise market. However, analyzing a combined residential and enterprise product market should provide a fair assessment of the potential competitive harm to the enterprise service market. This is because competition among carriers to attract and retain enterprise customers, who are more likely to be high-volume users of mobile voice services than residential customers, is likely to be more intense than competition for residential customers.¹¹⁴

31. The mobile telephony services product market also may be characterized by a geographic dimension. Carriers offer plans providing nationwide service (without expensive added charges) and plans providing local/regional service. For purposes of this transaction, we do not define separate nationwide and local/regional product markets, but our analysis does take into account that local/regional plans are differentiated from nationwide plans.

2. Geographic Market Definition

32. The Supreme Court defined a relevant geographic market as the area in which consumers can reasonably search for competing services.¹¹⁵ It is commonly defined in the economic literature as the geographic area in which a hypothetical monopolist could profitably impose at least a “small but significant and nontransitory” increase in the price of the relevant product, assuming that the prices of all products provided elsewhere do not change.¹¹⁶

33. In their Application, the Applicants request that the Commission adopt the geographic market definition used in the *Cingular-AT&T Wireless Order*.¹¹⁷ In that order, we held that the proper geographic market was a local one,¹¹⁸ rejecting the parties claim of a national market.¹¹⁹ None of petitioners or commenters raised the geographic market definition in their submissions.

34. For the purposes of evaluating this transaction, we use the hypothetical monopolist test to determine the relevant market by asking what is the smallest geographic area in which a hypothetical monopolist could profitably and permanently impose a small but significant price increase. In asking this question, we assume that buyers of wireless services would respond to a price increase by switching to wireless services purchased in a different location rather than, by switching to different wireless services. As discussed below, we find that the proper geographic market is local, not national.

¹¹⁴ See, e.g., Holly Wade, *Telecommunications*, 8 NAT’L SMALL BUS. POLL, Issue 8, at 4-6 (2004). See also *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21560 ¶ 79.

¹¹⁵ See *Tampa Electric Co. v. Nashville Coal Co.*, 365 U.S. 320, 327 (1961); *United States v. Philadelphia Nat’l Bank*, 374 U.S. 321, 359 (1963).

¹¹⁶ The relevant geographic market selected for analysis must also reflect “the commercial realities of the industry.” See *Arthur S. Langenderfer, Inc. v. S.E. Johnson Co.*, 917 F.2d 1413, 1421 (6th Cir. 1991) (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 336-37 (1962)); *RSR Corp. v. FTC*, 602 F.2d 1317, 1323 (9th Cir. 1979) (same).

¹¹⁷ See Application, Exhibit 1 at 9; Declaration of Robert D. Willig, Jonathan M. Orszag, and Yair Eilat at 5-6 ¶¶ 8-9 (Mar. 29, 2005) (“Declaration of Willig *et al.*”), available at March 29, 2005 Response to Information Request at Attachment 2; see also *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21561-63 ¶¶ 82-90.

¹¹⁸ *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21562-63 ¶ 89.

¹¹⁹ See *id.* at 21562 ¶ 87.

35. For the proposed transaction, the geographic market is generally the area within which a consumer is most likely to shop for mobile telephony service. For most individuals, we believe this will be a local area, as opposed to a larger regional or nationwide area. In most parts of the United States, we find that the areas within which consumers regularly shop for wireless services are larger than counties, may encompass multiple counties, and, depending on an individual's location, may even include parts of more than one state.¹²⁰

36. We recognize that local geographic markets are unique because they depend on where consumers travel to purchase wireless services. Thus, if a hypothetical monopolist were to impose a small, non-transitory price increase for mobile telephony services within a single county, it would likely be unprofitable because significant numbers of consumers would be able to circumvent the higher price by obtaining a reasonably comparable service at a lower price in a nearby county.¹²¹

3. Market Participants

37. The Applicants argue that they compete not only with facilities-based Cellular, PCS, and Specialized Mobile Radio ("SMR") providers but with other market participants as well. These other market participants include resellers, satellite providers of interconnected mobile voice services, mobile virtual network operators ("MVNOs"), and wireless Voice over Internet Protocol ("VOIP") providers.¹²²

38. We find that mobile telephony services offered by Cellular, PCS, and SMR licensees, despite employing varying technologies, provide the same basic voice and data functionality and are indistinguishable to the consumer. Generally, we limit our analysis to Cellular, PCS, and SMR facilities-based carriers and exclude satellite carriers, wireless VOIP providers, MVNOs, and resellers¹²³ from consideration when computing initial measures of market concentration. Although satellite providers offer facilities-based mobile voice and data services, the price of these services is significantly higher than for services offered by Cellular, PCS, or SMR carriers. Therefore, most consumers would not view satellite phones as substitutes for mobile telephony services.¹²⁴ We also do not consider wireless VOIP carriers as providing the same functionality as mobile telephony providers because in general the service they provide is nomadic rather than mobile. We acknowledge, however, that non-facilities based service

¹²⁰ See *Ninth Competition Report*, 19 FCC Rcd. at 20606 n.24, 20672 ¶ 185 (indicating that average person shops for mobile telephony services in markets that include place of work, place of residence, and surrounding areas that are economically related; such areas generally are larger than counties); discussion *infra* paras. 44-45 (discussing size of economically-related areas in which consumers would be expected to shop for wireless services, citing Kenneth P. Johnson & John R. Kort, *2004 Redefinition of the BEA Economic Areas*, SURV. OF CURRENT BUS., Nov. 2004, at 68-71). See also *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21562-63 ¶¶ 89-90.

¹²¹ We assume that, although the hypothetical monopolist is the only seller of service in the county, customers can still receive service in the county if they purchase their service elsewhere, because there are other carriers who serve the county but do not have stores there, or because other carriers have roaming agreements with the hypothetical monopolist at prices that are not passed on to the customer, or because the customer can purchase service from the hypothetical monopolist itself in a different county at a lower price. As to the last point, we note that wireless carriers do not charge their customers different prices for service on different portions of their own network.

¹²² See Application, Exhibit 1 at 14-15; see also Declaration of Willig *et al.* at 14, 15 ¶¶ 27, 29.

¹²³ Today, resellers are often referred to as MVNOs. MVNOs are distinguished from "traditional" resellers by a variety of factors including brand appeal, distribution channels, bundling of wireless and non-wireless products, and value-added services. See *Ninth Competition Report*, 19 FCC Rcd. at 20613 ¶ 38 n.71.

¹²⁴ See GlobalCom, Iridium Satellite Phone Service Plans, at http://www.globalcomsatphone.com/satellite/services/iridium_service_plans.html (last viewed May 20, 2005); GlobalStar, Airtime Pricing, Voice Pricing, at <http://www.globalstarusa.com/en/airtime/voicepricing/> (last viewed May 20, 2005).

options such as MVNOs and resellers have an impact in the marketplace and in some instances may provide additional constraints against anticompetitive behavior. We take account of the role of MVNOs and resellers in our discussion of likely competitive effects, below.¹²⁵

39. We conclude that all the facilities-based Cellular, PCS, and SMR carriers that provide service in a geographic area are the relevant market participants for purposes of analyzing the mobile telephony service market for that area.

B. Potential Competitive Harms

1. Market Concentration

40. In this analysis we consider whether there is a substantial likelihood that the merger will result in anticompetitive effects, such as higher prices, reduced features in a given service plan, slower rollout of advanced network capabilities, or reduced incentives to innovate. Concentration in the relevant markets is one indicator of the likely competitive effects of a proposed merger. Market concentration affects the likelihood that one firm, or a small group of firms, could successfully exercise market power.

41. Also, we find it appropriate to consider directly the input market of spectrum that is suitable for provision of mobile telephony services. Suitability is determined by the physical properties of the spectrum, the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its uses for mobile telephony.¹²⁶ The spectrum that meets the above suitability criteria includes Cellular, PCS, and SMR spectrum and currently totals approximately 200 megahertz of spectrum.¹²⁷

42. Therefore, in the following discussion, we assess the current market concentration, the post-transaction market concentration, and the increase in concentration that is likely to result from the transaction.¹²⁸ Further, spectrum is an essential input for the provision of facilities-based service, and therefore we will assess the effects of spectrum aggregation on the provision of mobile telephony services.

¹²⁵ The resale sector accounts for approximately 5 percent of all mobile telephony subscribers. See *Ninth Competition Report*, 19 FCC Rcd. at 20613 ¶ 38.

¹²⁶ *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21560-61 ¶ 80.

¹²⁷ *Id.* at 21561 ¶ 81. In the *Cingular-AT&T Wireless Order*, we noted that Advanced Wireless Service (“AWS”) and Broadband Radio Service (“BRS”) spectrum does not currently meet our criteria because it is committed to non-mobile telephony uses currently and for the near-term future. *Id.* at n.283. Subsequent to the adoption of the *Cingular-AT&T Wireless Order*, Congress adopted the Commercial Spectrum Enhancement Act, Public Law No. 108-494 (2004), enabling the Commission to announce its intent to auction AWS licenses as early as June 2006. FCC to Commence Spectrum Auction that Will Provide American Consumers New Wireless Broadband Services, *News Release* (rel. Dec. 29, 2004). Accordingly, some portion of this spectrum may well be licensed in the near-term future. Nevertheless, given the federal and non-federal encumbrance of 1710-1755 MHz and 2110-2155 MHz in many markets, we conclude that it is still premature to classify the AWS spectrum as suitable for the provision of mobile telephony services for purposes of our analysis here. The Commission will revisit the suitability of the AWS spectrum, and other spectrum potentially suitable for mobile telephony services, as events require.

¹²⁸ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21564 ¶ 95; *EchoStar-DirecTV Order*, 17 FCC Rcd. at 20603-04 ¶¶ 97-98; *WorldCom-MCI Order*, 13 FCC Rcd. at 18047-48 ¶¶ 36-37; see also *DOJ/FTC Merger Guidelines* § 1.51 (“In evaluating horizontal mergers, the Agency will consider both the post-merger market concentration and the increase in concentration resulting from the merger.”); *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 715-17, (D.C. Cir. 2001).

43. For this transaction, we use our Numbering Resource Utilization and Forecast (NRUF) database, which tracks phone number usage by all telecommunications carriers, including wireless carriers, in the United States.¹²⁹ We can use the information from this database to estimate mobile telephone subscribership levels, market shares, and penetration rates for various geographic market definitions.¹³⁰ In the Cingular-AT&T Wireless transaction, we also used billing data submitted by the nationwide carriers.¹³¹ Although we may decide to collect such billing data as part of our review of future transactions, we found that the competitive situation was such that a collection of third-party billing data was unnecessary.

44. In calculating market shares and market concentration, we analyzed carrier data by two sets of geographic areas, CEAs and CMAs. CEAs, which are defined by the Bureau of Economic Analysis, are composed of a single economic node and surrounding counties that are economically related to the node.¹³² CMAs are the regions originally used by the Commission for issuing Cellular licenses. There are 734 CMAs, made up of 305 Metropolitan Statistical Areas (“MSAs”), 428 Rural Service Areas (“RSAs”),¹³³ and a market for the Gulf of Mexico.¹³⁴

45. We chose the CEA and CMA geographic areas for our data analysis. Both are consistent with the local market definition we have adopted and each brings a different perspective to the analysis. CEAs were designed to represent consumers’ patterns of normal travel for personal and employment reasons¹³⁵ and should replicate areas within which groups of consumers would be expected to shop for wireless service.¹³⁶ In addition, CEAs generally constitute areas within which any service providers

¹²⁹ These data indicate the number of assigned phone numbers that a wireless carrier has in a particular wireline rate center. Rate centers are geographic areas used by local exchange carriers for a variety of reasons, including the determination of toll rates. See HARRY NEWTON, NEWTON’S TELECOM DICTIONARY: 19TH EXPANDED & UPDATED EDITION 660 (July 2003). All mobile wireless carriers must report to the FCC the quantity of their phone numbers that have been assigned to end users, thereby permitting the Commission to calculate the total number of mobile subscribers.

¹³⁰ For purposes of geographical analysis, the rate center data can be associated with a geographic point, and all of those points that fall within a county boundary can be aggregated together and associated with much larger geographic areas based on counties.

¹³¹ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21567 ¶ 103 (stating that, in response to a staff data request, data was received from AT&T Wireless, Cingular, Nextel, T-Mobile, Sprint, and Verizon).

¹³² There are 348 CEAs in the 50 States and the District of Columbia. Of the 3,141 U.S. counties, 2,267 are non-nodal counties that are assigned to a CEA based first on county-to-county commuting flows from the 1990 Census and second on locations of the most widely read regional newspapers. Three quarters of non-nodal counties were assigned based on commuting patterns. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURV. OF CURRENT BUS., Feb. 1995, at 75-81. In November 2004, the Bureau of Economic Analysis updated definitions for CEAs. The total number of CEAs decreased from 348 to 344. Non-nodal county assignment continued to be based on county-to-county commuting flows and locations of the most widely read regional newspapers. See Johnson & Kort, *supra* note 120, at 68-71. For purposes of this transaction, we did not adopt the new CEA definitions.

¹³³ RSAs are regions defined by the Commission for the purpose of issuing spectrum licenses. See *Ninth Competition Report*, 19 FCC Rcd. at 20632 n.188.

¹³⁴ See *id.* at 20632 ¶ 87.

¹³⁵ See Johnson, *supra* note 132, at 75 (“The main factor used in determining the economic relationships among counties is commuting patterns, so each economic area includes, as far as possible, the place of work and the place of residence of its labor force.”).

¹³⁶ See *id.* (“Economic nodes are metropolitan areas or similar areas that serve as centers of economic activity”).

present would have an incentive to provide relatively ubiquitous service. CMAs, in turn, are the areas in which the Commission initially granted licenses for the Cellular service.¹³⁷ Although license partitioning has altered this initial licensing structure in many areas, CMAs continue to serve as reasonable areas for determining the number of competitors from which consumers may choose, because the Commission's licensing programs, to a large extent, have shaped the mobile telephony services market by defining the initial areas where carriers were able to provide facilities-based service. As CEAs are derived from factors related to consumer demand for mobile telephony services and CMAs reflect to some extent the initial supply of mobile telephony services, we believe that they are useful cross-checks on each other and together help ensure that our analysis identified all local areas that required more detailed analysis. In performing that analysis, we also examined smaller geographic areas in order to understand any competitive problems fully and to design targeted remedies, if necessary.

46. The degree of concentration provides insight into the competitive effects that would result from a particular transaction. Market concentration affects the likelihood that one firm, or a small group of firms, could successfully exercise market power. A widely used and accepted measure of market concentration is the HHI.¹³⁸ Market share data are the beginning, not the end, of the competitive analysis.¹³⁹ Such data provide useful information as to which markets need more in-depth, multidimensional analysis of potential competitive harms. In order to determine which areas required further examination, we calculated the HHI and the change in HHI that would result from this transaction for all CEAs and CMAs. We also examined the impact on the concentration of spectrum holdings in each market of the proposed transaction. As explained below, we examined a market further if the post-transaction HHI would be greater than 2800 and the change in HHI would be 100 or greater; or if the change in HHI would be 250 or greater regardless of the level of the HHI; or if, post-transaction, the Applicants would hold 70 megahertz or more of spectrum.

47. This analysis follows the general structure of the *DOJ/FTC Merger Guidelines*,¹⁴⁰ but we chose the concentration thresholds based on our observation and evaluation of the current mobile telephony marketplace.¹⁴¹ We chose initial thresholds of 2800 for the HHI and 100 for the change in HHI because a mobile telephony market that does not exhibit at least this combined post-merger level of concentration will be no more concentrated than at the time of the Commission's last congressionally mandated review, which concluded the market was effectively competitive.¹⁴² In addition, we judged that a market in which the merger causes a change of less than 100 in the HHI need not be examined further because, even if the post-transaction HHI for such a market would be greater than 2800, the loss of a competitor with such a small market share is not likely to cause significant, merger-related anticompetitive effects.

¹³⁷ See 47 C.F.R. § 22.909.

¹³⁸ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21564 ¶ 96, n.306.

¹³⁹ See *id.* at 21564 ¶ 96; *WorldCom-MCI Order*, 13 FCC Rcd. at 18050, 18100-01 ¶¶ 39, 135.

¹⁴⁰ See generally *DOJ/FTC Merger Guidelines*.

¹⁴¹ See generally *Ninth Competition Report*, 19 FCC Rcd. at 20597.

¹⁴² See *id.* at 20600 ¶ 2. Our analysis indicates that the current average HHI in markets across the country has increased to slightly over 3100 as a result of the Cingular-AT&T Wireless merger. Nevertheless, we have maintained an HHI score of 2800 as the trigger for the initial screen. A slightly more rigorous review is consistent with the analytical purpose of the initial screen – to eliminate from review markets where there is no competitive harm rather than identifying markets where competitive harm may exist.

48. Our initial analysis based on these thresholds was intended to eliminate from further review those markets in which there is clearly no competitive harm relative to today's generally competitive marketplace. To ensure that we identified all markets where there was the potential for competitive harm, we also adopted a conservative second criterion. If the merger caused a change in HHI of at least 250 for a given market, regardless of the HHI, we examined that market further. Although applying this criterion resulted in the review of markets in which the concentration levels are below that of the average market today, we chose to apply this criterion to be confident that we fully evaluated any market in which the merger may adversely affect competition.

49. Finally, because spectrum is a necessary resource for wireless carriers to compete effectively, we also analyzed those markets in which the Applicants would have 70 megahertz or more in at least part of the market post-transaction. 70 megahertz represents a little more than one-third of the total bandwidth available for mobile telephony today, leaving approximately 130 megahertz of capacity available for a competitive response by other carriers in a local market. Our market by market analysis in this proceeding, as well as evidence from mobile telephony markets across the country, indicates that 130 megahertz of capacity is sufficient to support at least three viable competitors.¹⁴³ Nevertheless, consistent with the conservative approach embodied in our analysis, we subjected to further review any market in which one entity controls 70 megahertz or more of the available spectrum to further review.

50. Application of the initial HHI threshold described above to data aggregated by CEA identified only 11 CEAs (out of the total of 348) for further, case-by-case analysis.¹⁴⁴ In addition, application of the same HHI threshold to data aggregated by CMA identified only 19 CMAs (out of the total of 734) for closer analysis.¹⁴⁵ We also note that the combined entity would hold 70 megahertz or more in three of these CEAs and CMAs.¹⁴⁶ For the 11 CEAs identified by the initial HHI threshold, the average post-transaction HHI is 5,719. The minimum value is 1,932 and the maximum value is 9,719. The average increase in HHI is 1,328, ranging from a minimum increase of 2 to a maximum of 4,791.¹⁴⁷ For the 19 CMAs identified by the initial HHI threshold, the average post-transaction HHI is 7,798. The minimum value is 3,144 and the maximum value is 10,000. The average increase in HHI is 2,435, ranging from a minimum change of 405 to a maximum of 4,852. By comparing these results and analyzing each of the markets identified above, we ensured that we did not overlook any local area that required a closer case-by-case analysis. Although the structure¹⁴⁸ of some markets not identified for additional analysis will change as a result of the transaction, the fact that they were not identified indicated either that the market will be no more concentrated than the average market today, or that the structural change as a result of the merger is negligible, or both. Therefore, we find that these structural changes will not alter carrier conduct in such a way as to impair competition and hence market performance.

¹⁴³ With 130 megahertz of spectrum capacity available to other carriers, there could for instance be as many as four carriers with at least 30 megahertz of spectrum for the provision of mobile telephony services. Many carriers today are competing successfully with even less bandwidth.

¹⁴⁴ These CEAs are listed in Appendix B.

¹⁴⁵ These CMAs are listed in Appendix B.

¹⁴⁶ These CEAs and CMAs are noted in Appendix B.

¹⁴⁷ Markets with a change in the HHI of less than 100 were caught by the screen when they involved spectrum aggregation of 70 megahertz or more in at least one county within the market.

¹⁴⁸ Structure is defined as factors that determine the competitiveness of a market. These factors include market concentration statistics and the level of entry barriers. See DENNIS W. CARLTON & JEFFREY M. PERLOFF, MODERN INDUSTRIAL ORGANIZATION 247-51 (3rd ed. 1999).

51. As noted above, this initial identification of markets was only the beginning of our competitive analysis. The initial screen was designed to ensure that we did not exclude from further scrutiny any geographic areas in which any potential for anticompetitive effects exist. As stated above, HHI and market share metrics provide useful information as to which markets need additional multidimensional analysis; however, these metrics are the beginning and not the end of the competitive analysis. Thus, we now turn to an examination of the other factors we consider in our case-by-case analysis when evaluating whether there would be potential competitive harms in certain geographic markets if the transaction were to be approved without conditions.

2. Horizontal Issues

52. Because the structural analysis above suggests that the acquisition by ALLTEL of WWC is likely to have adverse effects on competition in certain markets,¹⁴⁹ this section examines in more detail how the transaction could affect competitive behavior in such markets. As the *DOJ/FTC Merger Guidelines* state, competition may be harmed either through unilateral actions by the merged entity or through coordinated interaction among firms competing in the relevant market.¹⁵⁰

53. Unilateral effects occur when the merged firm finds that, as a result of the merger, it is now profitable to alter its behavior in an anticompetitive manner.¹⁵¹ Examples of unilateral effects include the ability of the merged firm to raise its price or reduce the features it includes in a given service plan it supplies. Coordinated effects occur when the remaining firms in the market, recognizing their interdependence, take actions “that are profitable for each of them only as a result of the accommodating reactions of others.”¹⁵² Examples of coordinated effects include explicit collusion, tacit collusion, and price leadership. Because coordinated effects may be more likely if there are fewer firms in a market, mergers may significantly increase the likelihood of coordinated effects by reducing the number of firms in the market.

a. Unilateral Effects

54. ALLTEL’s acquisition of WWC would lead to significant changes in the structure of the local wireless markets identified above for further analysis, and thus it is necessary to examine in detail the possibility that the merger may lead to competitive harm through unilateral actions by the merged entity.¹⁵³ Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by “elevating price and suppressing output.”¹⁵⁴ In the case of mobile telephony, this might take the form of delaying improvements in service quality or adversely adjusting plan features without

¹⁴⁹ See discussion *supra* para. 50.

¹⁵⁰ *DOJ/FTC Merger Guidelines* § 2.

¹⁵¹ *Id.* § 2.2.

¹⁵² *Id.* § 2.1. See also W. KIP VISCUSI, JOHN M. VERNON & JOSEPH E. HARRINGTON, JR., *ECONOMICS OF REGULATION AND ANTITRUST* 107 (2000); DOUGLAS GREER, *INDUSTRIAL ORGANIZATION AND PUBLIC POLICY* 269 (1992).

¹⁵³ See *Cingular-AT&T Wireless*, 19 FCC Rcd. at 21570 ¶ 115; Application of EchoStar Communications Corporation (A Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (A Delaware Corporation) (Transferee), CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd. 20559, 20620 ¶ 153 (2002) (“*EchoStar-DirecTV HDO*”); see also *DOJ/FTC Merger Guidelines* § 2.

¹⁵⁴ *DOJ/FTC Merger Guidelines* § 2.2.

changing plan price.¹⁵⁵ Incentives for such unilateral competitive actions vary with the nature of competition in the relevant markets.

55. The Applicants claim that unilateral effects are unlikely as a result of this transaction. They argue that actual competitors are not capacity constrained and would be able to attract and absorb new customers if, post-transaction, ALLTEL were to raise price.¹⁵⁶ Further, they argue that there is a high degree of substitutability between mobile telephony providers, and that any attempt by ALLTEL to raise price or suppress output would result in customers switching to a new provider.¹⁵⁷ Therefore, any such price increase would be transitory if it even occurred in the first place.¹⁵⁸

56. Also, the Applicants argue that potential competitors have the ability and incentive to enter the market if, post-transaction, ALLTEL were to raise prices, and that other sources of mobile telephony services also would provide competitive pressures.¹⁵⁹ The Applicants argue that carriers in adjacent markets could offer service by entering into roaming agreements if ALLTEL were to raise prices.¹⁶⁰ They claim that there are relatively low barriers to entry by either facilities-based carriers or roaming agreements, especially by licensed carriers and carriers operating in adjacent areas.¹⁶¹ ALLTEL estimates that a licensed carrier could provide significant facilities-based competition within seven months, assuming that zoning restrictions are minimal.¹⁶² The Applicants discuss Viaero Wireless's entry into Nebraska as an example of low barriers to entry and the disciplining force of potential competition.¹⁶³

57. Lamar challenges the Applicants' representation, arguing that this transaction would result in a lack of competition and this would be harmful to consumers. In particular, Lamar argues that the areas where ALLTEL and WWC licenses overlap would result in a loss of a competitor in a rural area, and that the elimination of a competitor would reduce pricing pressures to the detriment of consumers.¹⁶⁴

58. In order to evaluate the likelihood of unilateral effects as a result of this transaction, we examine the issues of product differentiation and substitutability. Other market conditions conducive to

¹⁵⁵ The term "unilateral" refers to the method used by firms to determine strategy, not to the fact that the merged entity would be the only firm to change its strategy. The term unilateral is used to indicate that strategies are determined unilaterally by each of the firms in the market and not by explicit or tacit collusion. Other firms in the market may find it profitable to alter their behavior as a result of the merger-induced change in market structure by, for example, repositioning their products, changing capacity, or changing their own prices. These reactions can alter the total effect on the market and must be taken into account when evaluating potential unilateral effects.

¹⁵⁶ Application, Exhibit 1 at 14; Declaration of Willig *et al.* at 14 ¶ 28.

¹⁵⁷ Application, Exhibit 1 at 15; Declaration of Willig *et al.* at 14-15 ¶ 28.

¹⁵⁸ Application, Exhibit 1 at 15; Declaration of Willig *et al.* at 14-15 ¶ 28.

¹⁵⁹ Application, Exhibit 1 at 14-15; Declaration of Willig *et al.* at 15, 18 ¶¶ 29, 35. *See also* discussion *supra* para. 37.

¹⁶⁰ Declaration of Willig *et al.* at 18-19 ¶¶ 36-37.

¹⁶¹ *Id.* at 16-17, 18-19 ¶¶ 33, 36-37.

¹⁶² A licensed carrier would need 30 days to plan its entry, 150 days to implement its entry plan, and 30 days to test its new facilities. *See id.* at 18-19 ¶ 37.

¹⁶³ In 2003, Viaero Wireless acquired Nebraska Wireless, and in 2004 it built out or converted over 60 cell sites in portions of eight Nebraska CMAs. Further, Viaero Wireless has indicated it will build out to communities that express a significant interest. *See id.* at 19-20 ¶¶ 38-39.

¹⁶⁴ Petition to Deny of Lamar County Cellular, filed Mar. 9, 2005, at 8 ("Lamar Petition").

anticompetitive unilateral effects in a differentiated market setting are a large market share by the merged firm,¹⁶⁵ and conditions such that rival sellers are unlikely to replace competition lost through the acquisition by repositioning their product offerings.¹⁶⁶ In some instances, rival sellers may be unable to reposition their product offerings because they face binding capacity constraints.¹⁶⁷ In addition, the transaction may enhance the merged firm's ability to rely on "network effects" to retain subscribers despite increasing prices or decreasing plan features.¹⁶⁸ Therefore we also examine the competitive strength of rival carriers and rivals' ability to respond to potential anticompetitive unilateral actions on the part of the merged entity, spectrum availability, network effects, and the effects of an expected increase in market penetration. While we find that harm from unilateral action by a combined ALLTEL/WWC is unlikely in most local markets, there are specific markets for which we believe the acquisition poses a significant threat to competition.

59. *Product differentiation.* We agree with the Applicants that the market for mobile telephony service can be fairly characterized as differentiated. Wireless service carriers do not offer a completely homogeneous service. Rather, carriers compete vigorously on the basis not only of price but also on numerous non-price features, such as service quality, thoroughness of geographic coverage, and plan features.¹⁶⁹ While carriers can change some of these attributes relatively quickly, other attributes such as quality and coverage require investments in spectrum and infrastructure and are not easily modified. Further, product differentiation in this market may be characterized by ongoing dynamic rivalry, with firms competing based upon research and development, and by means of investment in new infrastructure and services.

60. *Substitutability.* In a market characterized by product differentiation, a merger may lead to particularly strong increases in the merged firm's ability to affect market performance unilaterally when the merging firms' products were relatively close substitutes for one another. We have previously found that there is a high degree of substitution between the nationwide carriers.¹⁷⁰ In analyzing this transaction for unilateral effects, however, the question before us is the substitutability between ALLTEL and WWC. Accordingly, if a significant number of customers view the services offered by ALLTEL and WWC as close substitutes, the merger of the two firms can remove a strong constraint on ALLTEL's ability to raise

¹⁶⁵ *DOJ/FTC Merger Guidelines* § 2.211.

¹⁶⁶ *Id.* § 2.212.

¹⁶⁷ In this sector, for example, spectrum suitable for use in mobile telephony is an input of finite supply. It is possible that rivals to the merged entity may be unable to add subscribers so as to function as a competitive check if there is an insufficient amount of spectrum available to them. See *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21570 ¶ 118; *DOJ/FTC Merger Guidelines* § 2.22.

¹⁶⁸ Certain services become more attractive to customers as more customers use them, a phenomenon known as a "network effect." Network effects tend to be strongest in businesses whose main output or product is access to other persons, as is the case with telephone service.

¹⁶⁹ Quality includes the probability of blocked and dropped calls, and the quality of the connection. Also, customer support is a separate but important dimension of quality differentiation, and surveys indicate that customers consider this factor when they switch carriers. Coverage includes where the service is available either on the carrier's own network or on the network of one of its roaming partners. Plan features include various dimensions of subscriber usage. Usage means minutes of voice connection defined by the time at which a call is placed, the location from which it is placed, and the destination to which it is directed. See *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21572-73 ¶¶ 123-126.

¹⁷⁰ See *id.* at 21574 ¶ 132.

prices for its pre-transaction customers, for WWC's former customers, or for both.¹⁷¹ Alternatively, if most customers consider WWC and ALLTEL to be more distant substitutes for one another when evaluating the differentiated choices available, or if there are multiple choices available to customers that they view as similarly close substitutes for one another, then anticompetitive unilateral effects may be less likely to occur or may be less significant.

61. The record contains neither empirical studies nor other information that resolve conclusively the question of the closeness of substitution of the services of ALLTEL and WWC relative to other mobile telephony operators. While both ALLTEL and WWC are regional carriers that offer facilities-based mobile voice and data services with local/regional and nationwide coverage,¹⁷² these two carriers are differentiated in terms of prices, plans, and services offered.¹⁷³ Although there is product differentiation between ALLTEL and WWC, in certain markets consumers may consider these two firms to be close substitutes relative to other facilities-based carriers serving the market.

62. We also have analyzed data on wireless LNP¹⁷⁴ to gauge how consumers view the substitutability of ALLTEL and WWC. We analyzed data on porting from January 2004 through December 2004.¹⁷⁵ This information includes each instance of a customer porting a phone number from one mobile carrier to another, and indicates both the origin and destination carrier. Thus, we can determine the aggregate customer flows between ALLTEL and WWC for the markets identified by our initial screen. In our analysis of this LNP data, we have focused our review on the 11 CEAs and 19 CMAs identified by the initial screen. Since these particular markets constitute the majority of markets in which both ALLTEL and WWC provide facilities-based mobile telephony service, and are the markets

¹⁷¹ That is, ALLTEL's presence in a market may have been a constraint on WWC's prices, and WWC's presence in a market may have been a constraint on ALLTEL's prices. It is not necessary for the products to be the next best substitutes for there to be competitive harm arising from unilateral effects, although it makes the harm more likely. See Gregory Werden, *Demand Elasticities in Antitrust Analysis*, 66 ANTITRUST L.J. 408 (1998).

¹⁷² See *Ninth Competition Report*, 19 FCC Rcd. at 20613-14 ¶ 36; ALLTEL 10-K at 5-6; ALLTEL Wireless Plans, Compare Plans, at <http://www.alltel.com/personal/wireless/plans/compare.html> (last visited May 26, 2005); WWC 10-K at 7.

¹⁷³ For example, comparing national \$40-per-month plans for Lincoln, Nebraska yields several differences. First, ALLTEL's National Freedom® plan is priced at \$39.99 per month, and includes 450 anytime minutes, 1000 night and weekend minutes, and 1000 mobile-to-mobile minutes. WWC offers a \$35 and a \$45 per month national plan. The \$45 plan includes 450 anytime minutes, and unlimited night and weekend and mobile-to-mobile minutes. ALLTEL, Wireless Plans, National Freedom, at http://www.alltel.com/personal/wireless/plans/national_freedom.html (last visited May 26, 2005); Cellular One, Plans and Coverage, at <http://www.cellularonewest.com/rateplans.asp?national> (last visited May 31, 2005). Next, there are differences in the regional plans as well. ALLTEL offers a regional plan priced at \$39.99 per month, which includes 700 anytime minutes, 1000 night and weekend minutes, and 1000 mobile-to-mobile minutes. WWC offers a \$44.99 per month regional plan. The \$44.99 plan includes 1000 anytime minutes, and unlimited night and weekend and mobile-to-mobile minutes. ALLTEL Wireless Plans, Greater Freedom, at http://www.alltel.com/personal/wireless/plans/greater_freedom.html (last visited May 31, 2005); Cellular One Plans and Coverage, at <http://www.cellularonewest.com/rateplans.asp?regional> (last visited May 31, 2005). Further, ALLTEL offers a push-to-talk feature called Touch2Talk, whereas WWC does not offer this feature.

¹⁷⁴ This LNP data was provided to the Commission by NeuStar.

¹⁷⁵ Wireless LNP was required in the 100 largest markets as of November 24, 2003, and required nationwide on May 24, 2004. See 47 C.F.R. § 52.31; see also Telephone Number Portability, CC Docket No. 95-116, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7314 (1997); Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, WT Docket No. 01-184 and CC Docket No. 95-116, *Memorandum Opinion and Order*, 17 FCC Rcd. 14972, 14986 (2002).

where the likelihood of unilateral effects occurring as a result of this transaction is the greatest, we believe examining these markets will provide the most insight into issues relating to substitutability.

63. For the 11 CEAs that were identified by the initial screen, [REDACTED]. For the 19 CMAs that were identified by the initial screen [REDACTED]. The CEA and CMA figures may differ, in part, because the CEAs encompass counties in which there is no service overlap between ALLTEL and WWC, and therefore consumers are unlikely in these parts of the CEA to consider ALLTEL and WWC as close substitutes.

64. For several reasons, we conclude that this porting information is not a reliable indicator of the degree of substitutability between ALLTEL's and WWC's product offerings. While a good measure of substitutability should capture the degree to which demand for one carrier's products is affected by a change in the price of the other carrier's products, these effects related to substitutability are likely to be confounded in the porting data by the presence of a number of other factors and influences. First, consumers in different markets face different switching options, and the degree to which they leave one provider for another depends on the character and the number of alternatives they have. Some consumers may not consider ALLTEL and WWC as close substitutes but may port from one to the other simply because there are a limited number of carriers in the market.¹⁷⁶ Differences in service contracts across providers also affect consumer decisions to switch providers, and these variations unrelated to substitutability will be reflected in the porting data. In addition, because the porting data includes customers that switch providers for reasons unrelated to price changes and consumer satisfaction, its usefulness as an indicator of economic substitutability is limited. Second, porting data is an incomplete record of provider switching behavior, since it includes only those customers that choose to port their number to their new provider, and customers which choose to keep their numbers may differ in some significant respects from customers that do not port. Consequently, we do not use porting data as a measure of substitutability between the offerings of ALLTEL and WWC.

65. *Competitive responses by rivals.* In evaluating this transaction, we examine whether competitive responses by rivals to the merged entity – such as through repositioning by existing licensees or entry by a new licensee – would sufficiently counter the merged entity's exercise of market power. Should a merged entity attempt to raise prices or engage in other exercise of market power, other firms may have the incentive or ability to reposition their offerings. In particular, where a firm is already present in a market, has comparable service coverage, and has excess capacity relative to its current subscriber base, it should be able to adjust rates, plan features, handsets, advertising, etc., in the short run. Of course, there are limits to repositioning. Firms may not be able to add quickly to their operating footprints, purchase additional spectrum if needed, secure tower siting permits, improve overall quality, or deploy a new technology. Whether addition of cell sites would always be possible even in this time frame, and whether it would always be profitable, is unclear. At a minimum, however, even if a firm is present in a market and has comparable service area coverage, the possibility of competitive response is an important factor.

66. We find that, in several of the markets identified by our initial screen, there are few carriers in a particular market that are likely to be viewed as adequate substitutes to the merging parties in the short run. Although there are rival carriers that have at least some coverage in a market, the population and land area that their networks cover are significantly less than either ALLTEL's or WWC's networks.¹⁷⁷ A carrier with only partial service coverage in a geographic market may not be perceived as a close substitute for a carrier with ubiquitous local coverage. For the reasons outlined above, it is not

¹⁷⁶ See Appendix C. [REDACTED].

¹⁷⁷ See Appendix C (discussing the competitive analysis for each market identified by the initial screen).

clear how quickly carriers can move from partial to complete geographic coverage in a given market. Therefore, we find it unlikely that rival carriers in those markets would be able to reposition themselves sufficiently to be a disciplining force if the merged entity attempts to exercise market power.

67. Another potential competitive response to the merged firm exercising market power is entry by a licensee. However, in order to mitigate any anticompetitive effects, entry needs to occur in a timely and sufficient manner.¹⁷⁸ The Applicants claim that entry barriers are relatively low especially for licensees,¹⁷⁹ and therefore entry would occur in a timely and sufficient manner. Generally, however, we do not find that barriers to entry are low in the mobile telephony services market.¹⁸⁰

68. Barriers to entry in the mobile telephony services market may include the existence of first-mover advantages and large upfront costs, as well as difficulties in obtaining access to spectrum.¹⁸¹ Therefore, even if a firm holds a license in a given market area, there are three other types of entry barriers that a firm may face when entering a new market area.¹⁸² The firm must make significant advertising expenditures that, unlike tangible assets such as spectrum and network facilities, are irrecoverable or sunk. Incumbents in the market will have already incurred this sunk cost whereas the entrant has not, so the entrant has a higher incremental cost and incremental risk to entry. In addition, the mobile telephony services market may be characterized by extensive economies of scale, which implies a large minimum efficient scale¹⁸³ relative to the market. In this situation, the entrant may depress price by entering at minimum efficient scale or may need to produce at less than minimum cost. Therefore, in either scenario, expected profitability is lower and entry is deterred. Finally, a further type of entry barrier is the need for firms to obtain sufficient financing to enter a market. An entrant needs an absolute capital requirement in order to enter at a minimum efficient scale, and if a firm is unable to obtain this level of financing, then entry will be deterred.

69. The Applicants also argue that entry can occur within seven months with minimal zoning requirements. The Applicants then divide this entry process into three categories: entry planning, network implementation, and testing of facilities.¹⁸⁴ We believe that the Applicants have underestimated the time necessary for a licensee to enter a market, and establish a competitive presence sufficient to mitigate any anticompetitive behavior by the merged firm. Initially, both the entry planning and network implementation phases may take significantly longer than the estimate provided by the Applicants.¹⁸⁵ Further, the Applicants do not take into account the time to establish or enhance customer service and to market the service in the new area.¹⁸⁶ Finally, their analysis does not provide an estimate of the time

¹⁷⁸ *DOJ/FTC Merger Guidelines* § 3.

¹⁷⁹ Declaration of Willig *et al.* at 18-19 ¶ 37.

¹⁸⁰ See *Ninth Competition Report*, 19 FCC Rcd. at 20645 ¶ 106.

¹⁸¹ See *Spectrum Aggregation R&O*, 16 FCC Rcd. at 22688-91, ¶¶ 39-43.

¹⁸² See *Ninth Competition Report*, 19 FCC Rcd. at 20644-45 ¶¶ 103-105.

¹⁸³ The minimum efficient scale is measured by the quotient of the average plant size among the largest plants accounting for 50 percent of output and total industry sales. See Willaim S. Comanor & Thomas A. Wilson, *Advertising, Market Structure and Performance*, 49 REV. OF ECON. AND STATISTICS 425 (Nov. 1967).

¹⁸⁴ See Declaration of Willig *et al.* at 18-19 ¶ 37.

¹⁸⁵ Entry planning may require the carrier to establish financing as well as select a vendor and procure the necessary hardware. Network implementation requires decisions on backhauling, switching, and non-zoning issues related to cell site location.

¹⁸⁶ Marketing and customer service may include advertising, customer support and billing, and establishing sales points of presence within the market.

needed for the entrant to gain sufficient share, or any information on whether, and to what extent, a new entrant's marketing strategy may mitigate the merged firm's exercise of market power.

70. The Applicants discuss Viaero Wireless's entry into Nebraska as an example of low entry barriers and rapid deployment of service. In 2004, Viaero established over 60 cell sites in Nebraska by building new sites or converting Nebraska Wireless's cell sites. Although the Applicants acknowledge that cell site conversion is easier than building new sites, this expansion was very rapid.¹⁸⁷ We do not find this example persuasive that sufficient entry can occur in the timeframe proposed by the Applicants. Of the 60 cell sites that Viaero established, it is not clear how many were new sites and not the conversion of existing sites. Further, there was no evidence in the record about how any of the new cell sites expanded Viaero's coverage in terms of either population or land area, beyond its acquisition of Nebraska Wireless, or if consumers view Viaero as a close substitute to either ALLTEL or WWC.

71. The Applicants also argue that Viaero's business model would constrain the merged entity.¹⁸⁸ In order to constrain the merged entity from exercising market power, a carrier's entry would need to be sufficient. According to the Applicants, Viaero has expanded to four towns in southwest Nebraska, and will expand into additional communities that reach a certain threshold of interest.¹⁸⁹ However, there is no evidence in the record that supports the conclusion that Viaero has implemented this business plan farther than the four communities in southwest Nebraska, or that it will be able to expand its service area in a timely and sufficient manner to mitigate any anticompetitive concerns.

72. Therefore, in considering whether new facilities-based entry may counter the merged entity's attempts to exercise market power, we analyze on a case-by-case basis whether the entry of potential competitors is likely in a timely and sufficient manner. Finally, we do not consider entry via roaming agreements to mitigate anticompetitive effects as a result of this transaction. There is no evidence in the record that indicates that non-facilities-based service enabled through roaming agreements is cost effective. Also, as discussed in Part IV.A.3, we find that market participants for purposes of this transaction are limited to facilities-based providers using Cellular, PCS, and SMR licenses, although we recognize that in some instances other providers may provide additional constraints against anticompetitive behavior.

73. *Spectrum and advanced wireless services.* As a result of this transaction, the current spectrum holdings of ALLTEL and WWC would be combined, resulting in aggregation by one entity of as much as 70 megahertz of applicable spectrum in certain local markets.¹⁹⁰ Although we no longer have a per se limit on the amount of spectrum suitable for mobile telephony that an entity may hold in any one market, we are mindful of the unique role of spectrum as a critical input in the market for wireless services and have carefully analyzed the potential impact of this merger on that input. The mobile telephony services sector is characterized by ongoing growth as well as technological change.¹⁹¹ In

¹⁸⁷ See Declaration of Willig *et al.* at 10 ¶ 19.

¹⁸⁸ *Id.*

¹⁸⁹ This threshold of interest is 200 signatures. See Viaero, We'll Build a Tower, at <http://www.viaero.com/BuildATower/Index.cfm> (visited May 17, 2005); see also Chadron Record, Cell Phone Company Seeks Local Customers, at <http://www.southernblackhillswklygroup.com/articles/2005/03/17/chadron/brief/news72.txt> (visited May 17, 2005) (stating that "the target hadn't been reached").

¹⁹⁰ Post-transaction, ALLTEL will hold 70 megahertz of spectrum in CMA334 Arkansas 11-Hempstead (Clay, Columbia, Hempstead, and Lafayette counties), CMA431 Kansas 4-Marshall (Geary, Pottawatomie, and Riley counties), and CMA658 Texas 7-Fannin (Cass and Red River counties). See Application at Exhibit 2.

¹⁹¹ See *Ninth Competition Report*, 19 FCC Rcd. at 20667-73 ¶¶ 173-186 (growth), 20648-55 ¶¶ 124-142 (technological change).

particular, next generation technologies are being gradually rolled out by a number of carriers. Nonetheless, we believe it is speculative to predict either future spectrum requirements or when a carrier will need access to additional spectrum. The evidence we do have, however, suggests that firms generally have access to the spectrum they need to offer next-generation services now, as seen by rollout of such services by a number of carriers, including ALLTEL.¹⁹²

74. This merger does not take spectrum away from any competing carriers. Therefore, the spectrum-related harm, if any, would be that the merger could result in ALLTEL holding a large enough share of the available spectrum such that other carriers may be constrained in the deployment of next-generation services. We believe, however, that carriers' 3-G related needs for additional spectrum generally will align with the arrival of suitable spectrum in future auctions, including those for AWS, and in the upper and lower 700 MHz bands.¹⁹³ We also note that the Commission has a significant role in assuring access to spectrum, within a suitable timeframe, through auctions of licenses and clearing in these bands.

75. *Network effects.* One of the most obvious consequences of this merger would be to increase the size of the merged entity in terms of subscribers on its network, as well as to increase its geographic coverage and ability to provide improved service quality and product features. Because of the nature of telecommunications and the magnitude of this increase in the merged entity's size, we consider the potential network effects of this merger.

76. Network effects arise when the value of a product increases with the number of consumers who purchase it. For this transaction, network effects can arise as a result of incentives the merged entity would offer to its own subscribers – for example, a discount or the functional equivalent when calling other ALLTEL subscribers (unlimited in-network calling), or by limiting certain desirable network features to calls that remain within its network.¹⁹⁴ These carrier-specific network effects can, potentially, result in both consumer benefits and an increased risk of competitive harms. On the one hand, discounted intra-carrier calling offers real value to consumers. On the other hand, this feature and other incentives

¹⁹² In March 2005, ALLTEL launched its EV-DO network in three markets where it holds 25 megahertz – Akron and Cleveland Ohio, and Tampa, Florida. However, ALLTEL's launch is for high-speed laptop connection only. For spectrum holdings, see the Commission's ULS database; and for EV-DO launch information, see Sascha Segan, *ALLTEL Launches EV-DO*, PC MAGAZINE, March 2005, at http://www.findarticles.com/articles/mi_zdpcm/is_200503/ai_n13476832/print (lasted visited 5/27/05). Also, Verizon Wireless has launched EV-DO service in several markets where it holds 30 megahertz of bandwidth (*i.e.*, Austin, Dallas, and Fort Worth Texas; Milwaukee and Racine, Wisconsin; and Miami, Orlando, Tampa, and West Palm Beach, Florida) and in several other locations where it has begun to offer EV-DO, it is doing so with 35 megahertz of spectrum. For spectrum holdings, see the Commission's ULS database; and for EV-DO launch information, see Verizon Wireless Expands Broadband Access 3G Network to Cover 14 Markets From Coast to Coast, at <http://news.vzw.com/news/2004/09/pr2004-09-22c.html> (lasted visited 5/27/05). Similarly, Dobson has announced launch of EDGE service throughout its 16-state territory, where it holds no more than 30 megahertz of bandwidth in over 90 percent of the applicable counties. For spectrum holdings, see the Commission's ULS database; and for EDGE launch information, see *Dobson launches EDGE services in 16-state service area*, RCR WIRELESS NEWS, October 18, 2004, at 22.

¹⁹³ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21577 ¶ 140.

¹⁹⁴ For example, telephone service to an individual subscriber becomes more valuable to that subscriber as the number of other people he or she can reach using the telephone increases. Since wireless carriers permit physical interconnection among their individually-owned networks, wireless subscribers may complete a call to subscribers on all other carriers' networks. Therefore, this merger does not have the potential to disadvantage any other carrier's subscribers with regard to access to the communications network. Nor does this merger raise the typical network effects possibility that the large network will attract customers away from smaller networks and drive out the smaller networks.

could potentially alter an ALLTEL subscriber's calculation when deciding whether to stay with ALLTEL or switch to a different carrier, and therefore could potentially reduce the ability of other carriers to act as disciplinary forces with regard to ALLTEL.

77. Although there is evidence in the record that ALLTEL (like other carriers) is attempting to market to increase network effects, we do not have evidence yet that these effects are a major influence in consumer mobile telephony choices, or that either the benefits or the harms from these effects are particularly strong at this point. On balance, we find that because all mobile networks interconnect to each other – and of course to the wireline network as well – it appears unlikely that a mobile network with more subscribers would be more attractive to additional customers simply because of its size. Network effects, therefore, do not weigh heavily in our analysis of the unilateral effects of the merger.¹⁹⁵

78. *Penetration.* Another factor we consider in determining the consequences of a unilateral attempt to exercise market power is penetration rate, both the current rate in a local market as well as the potential for growth in the market penetration. First, we believe that carriers are currently planning for and investing in anticipation of significant growth. This gives added confidence that existing operators would have the capacity to attract customers and increase output should the merged entity attempt to exercise market power. Second, were the merged firm to raise prices or adversely modify plan features, it would stand to lose not only some percentage of existing customers, but also new customers in significant numbers. And, third, since potential new customers, by definition, are not tied by contract to an existing firm, they are able immediately to avoid less attractive offerings of the merged firm and sign up with another operator. In local markets where mobile telephony penetration is lower than the U.S. average, these effects should be particularly strong. In addition, relatively under-penetrated markets may be the most attractive markets for new entrants, all other factors being equal. Entry will be particularly likely for these markets where spectrum is available on the secondary market.

79. The Applicants also argue that, since ALLTEL currently does not attempt to exercise market power, future unilateral attempts to exercise market power are unlikely. The Applicants claim that nationwide carriers are present in each of the overlap markets and provide competitive pressure through advertising and Internet sites.¹⁹⁶ Even in markets where ALLTEL does not compete directly with a national carrier, ALLTEL has introduced new products and services that the national carriers offer in other markets. These include family plans, free long distance, and in-network calling.¹⁹⁷ Also according to ALLTEL, if ALLTEL tried to raise prices in a particular CMA, it would face consumer resistance because consumers are aware of the prices and plans nationwide carriers are offering in other markets.¹⁹⁸

80. The Applicants also argue that ALLTEL sets its price on a nationwide basis and no single CMA or CEA dictates price. A nationwide pricing strategy allows ALLTEL to: (1) use common platforms and information for all of its call centers; (2) more effectively train sales staff; (3) reduce complications of billing system administration; and (4) deploy common advertising across areas.¹⁹⁹ Given these efficiencies, individual rate plans for particular CMAs or CEAs would be difficult and costly to implement.²⁰⁰ Since ALLTEL prices on a nationwide basis, this indicates that the costs of setting

¹⁹⁵ For a discussion of the benefits to a wireless provider of increased scale and scope, see *infra* Part IV.C.6.

¹⁹⁶ Application, Exhibit 1 at 14; Declaration of Willig *et al.* at 15 ¶ 30.

¹⁹⁷ Declaration of Willig *et al.* at 16 ¶ 31.

¹⁹⁸ *Id.* at 17-18 ¶ 34.

¹⁹⁹ *See id.* at 10, 11 ¶¶ 19, 21.

²⁰⁰ *Id.* at 10-11 ¶ 20.

prices on a local level are greater than the benefits of such a pricing strategy.²⁰¹ If a local pricing strategy were profitable, then ALLTEL would have had an incentive to do so in markets with three or fewer providers where it offers service.²⁰²

81. The Applicants discuss other potential ways that ALLTEL could price discriminate at the local level and refute these as likely strategies. First, ALLTEL could price discriminate by offering localized promotions; however, ALLTEL has not done so because the costs significantly outweigh the benefits.²⁰³ Second, ALLTEL could charge different prices for handsets based on local market conditions. In this context, ALLTEL has offered a special discount on selected handsets in five NFL team cities where it is attempting to increase its presence and name recognition.²⁰⁴ Aside from these five cities, ALLTEL sets the same handset prices across the rest of its coverage area.²⁰⁵ Third, ALLTEL could also discriminate by limiting the local coverage area for CMAs or CEAs where there are fewer competitors. The Applicants argue that the merger would not affect the scope of any individual CMA or CEA coverage area because it would be costly to implement.²⁰⁶ Fourth, the Applicants also discuss the possibility that, in markets with fewer competitors, service quality improvements are less likely to be made. However, ALLTEL claims to make its decisions on cell site construction and location based on a business model that is not directly dependent on the number of competitors or the degree of concentration.²⁰⁷

82. Finally, the Applicants argue that ALLTEL is unlikely to identify customers in more concentrated areas with enough accuracy to make differentiated pricing profitable. If ALLTEL were to increase its price by five percent in an area it considered “less competitive,” and some percentage of customers targeted for the price increase were able to obtain service from a carrier in an adjacent market or over the internet, a percentage of these customers would be inclined to switch, lowering the profitability of the price increase.²⁰⁸

83. We acknowledge that there is evidence that ALLTEL currently sets its price on a nationwide basis, and does not offer many localized promotions for either pricing plans or handsets. However, the Applicants do not quantify the cost savings or customer gains from using a nationwide versus a geographically differentiated strategy. Although a nationwide strategy may be cost effective at the present time, there is no evidence in the record that this situation would be unchanged post-transaction. We find it reasonable to assume that if geographically differentiated strategies became profitable in the future, ALLTEL would implement these strategies, since this is a strategy that has been used regularly in the mobile telephony market. The Commission has previously found that mobile telephony providers offer plan and handset promotions, different handsets, and varying service and technology deployment for

²⁰¹ *Id.* at 12 ¶ 23.

²⁰² *See id.* at 16-17, 18-19 ¶¶ 33, 36-37.

²⁰³ *Id.* at 12 ¶ 23.

²⁰⁴ The five NFL cities include Charlotte, Cleveland, New Orleans, Phoenix, and Tampa Bay. *Id.* at 12-13 ¶ 24.

²⁰⁵ *Id.* at 12-13 ¶ 24.

²⁰⁶ *Id.* at 13 ¶ 25, n.12.

²⁰⁷ *Id.* at 13 ¶ 25, n.13.

²⁰⁸ *Id.* at 20-21 ¶¶ 40-41.

different geographic markets, and therefore that the actual cost of mobile telephony service to the consumer is not national.²⁰⁹

84. In summary, while harm arising from unilateral effects is unlikely in most of the markets involved in this transaction, for the reasons discussed above we find that this transaction *is* likely to result in adverse unilateral effects in many of the limited number of markets identified by the initial screen. In these markets, where ALLTEL and WWC service areas currently overlap, it appears that ALLTEL and WWC are relatively close substitutes for each other in the eyes of consumers. In many of these markets, other providers generally are unable to match the price/service options offered by the applicants. In addition, other licensees in these markets have limited ability to reposition in response to any attempted exercise of market power by the merged firm. Further, entry by firms not currently providing service in these markets cannot be counted on to prevent possible exercise of market power. And, forces pushing firms away from setting differing prices across local markets cannot be counted on to prevent such differential pricing in the future. Therefore, as further described in the market-by-market analysis in Part IV.B.4.b, below, and in the Confidential Appendix, we find a number of markets in which other providers are not present or do not possess the capacity to prevent the exercise of unilateral market power.

b. Coordinated Interaction

85. 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.²¹⁰ Accordingly, one way in which a merger may create or enhance market power or facilitate its exercise is by making such coordinated interaction among firms more likely, more successful, or more complete.²¹¹ Successful coordination depends critically on two key factors.²¹² The first is the ability to reach terms that are profitable for each of the firms involved, and the second is the ability to detect and punish deviations that would undermine the coordinated interaction.

86. Significant increases in market share and high post-merger concentration levels may indicate that a merger could facilitate coordinated interaction in some mobile telephony markets identified by the structural analysis in Parts IV.A and IV.B. However, such increases in concentration and high concentration levels in the relevant markets post-transaction do not by themselves provide a sufficient basis for determining that the merger will facilitate coordinated interaction, for two related reasons. First, the ability to reach and enforce terms of coordination may also depend on many other distinctive characteristics of individual markets apart from concentration.²¹³ A number of market conditions may affect coordination, including the availability of information about market conditions, the extent of firm and product homogeneity, and the presence of maverick carriers. Second, although a high concentration level is among the factors that may make coordinated interaction easier and therefore more likely, there is no unique critical threshold of market concentration above which the exercise of market power through

²⁰⁹ See *Ninth Competition Report*, 19 FCC Rcd. at 20644, 20665-66 ¶¶ 113, 169 (pricing plan differences), 20644 ¶ 113 (handset differences), 20618, 20651-53 ¶¶ 49, 130-135 (technology and service deployment).

²¹⁰ *DOJ/FTC Merger Guidelines* § 0.1.

²¹¹ The *DOJ/FTC Merger Guidelines* define coordinated interaction as comprising actions by a group of firms that are profitable for each of the firms involved only because the other firms react by accommodating these actions rather than attempting to undercut them. *Id.* § 2.1.

²¹² See *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21580 ¶ 151; *DOJ/FTC Merger Guidelines* § 2.11.

²¹³ Barry C. Harris and David D. Smith, *The Merger Guidelines vs. Economics: A Survey of Economic Studies*, at 10-12, in *PERSPECTIVES ON FUNDAMENTAL ANTITRUST THEORY* (A.B.A., Sec. of Antitrust L. July 2001).

coordinated interaction is likely.²¹⁴ Therefore, the Commission will also consider whether conditions in the post-merger environment other than market concentration will be conducive to reaching and enforcing the terms of coordination.

87. The Applicants claim that this transaction would not increase the likelihood of coordinated interaction in the mobile telephony services market. They argue that the transaction would not change the relevant markets enough to make coordination profitable, because (1) there are a significant number of facilities-based competitors in each geographic market, and (2) the market is characterized by heterogeneity in costs, elements of service, and product offerings.²¹⁵ Also, coordination between ALLTEL and other carriers is unlikely due to the lack of geographic price discrimination by ALLTEL.²¹⁶ The Applicants also argue that any competitor that possesses excess capacity could increase its output if demand warranted, and therefore these competitors would have an incentive to deviate from the coordinated strategy.²¹⁷

88. The Applicants also argue that the merger would not create or enhance the ability of carriers to detect or punish deviations from a coordinated strategy. For example, a competitor could “cheat” by selling capacity to a reseller or via a roaming agreement, and this deviation would be difficult to detect.²¹⁸ Also, demand in the mobile telephony services market can be characterized as dynamic and uncertain, and therefore it may be difficult to determine whether a divergence from a coordinated strategy is the result of an intentional deviation from the coordinated outcome or from an exogenous shock.²¹⁹ Finally, the Applicants argue that the market can be characterized by significant product and technological innovations, and the dynamic and temporary nature of any competitive advantages realized from these innovations makes maintaining a coordinated outcome difficult.²²⁰

89. *Transparency of information.* Terms of coordination are often easier to reach, and detection and punishment of deviations is often more rapid and more effective, when key information about specific transactions or individual price or output levels is routinely available to rival firms.²²¹ There is ample evidence that the carriers regularly monitor their rivals’ pricing plans, promotions, marketing strategies, and other aspects of their rivals’ operations,²²² and further that the carriers use this information as a basis for improving their own ability to compete in attracting and retaining customers, either by matching the offers of rivals or by making more aggressive offers.²²³ However, there is nothing in the record to indicate that the transaction would alter market conditions in such a way as to increase the ability and incentive of the remaining carriers to exploit transparency of pricing plans and other features for the purpose of detecting and punishing deviations.

²¹⁴ *Id.*

²¹⁵ See Application, Exhibit 1 at 16; Declaration of Willig *et al.* at 23 ¶ 45.

²¹⁶ Declaration of Willig *et al.* at 22 ¶ 43.

²¹⁷ *Id.* at 23 ¶ 46.

²¹⁸ Application, Exhibit 1 at 16.

²¹⁹ *Id.* at 16.

²²⁰ *Id.* at 16-17.

²²¹ DOJ/FTC Merger Guidelines §§ 2.11-2.12.

²²² See *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21581-82 ¶ 154; [REDACTED].

²²³ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21581-82 ¶ 154; [REDACTED].

90. *Firm and product homogeneity.* A market condition that may facilitate the ability to reach terms of coordination is firm and product homogeneity.²²⁴ However, since the proposed merger combines two regional carriers with limited geographic overlap, it would not contribute to a decreased presence by any nationwide provider, nor would a regional provider be lost in most markets. Therefore, the evidence suggests that the existing level of competitor asymmetries that are currently present in the market would not be altered by this transaction.²²⁵ Also, we agree with the Applicants that demand and product and technical innovations in this market are dynamic, and this may contribute to difficulties in maintaining a coordinated outcome in the mobile telephony services market. Further, there is nothing in the record that indicates that this merger would reduce product heterogeneity in the mobile telephony services market. Therefore, we conclude that the current level of heterogeneity would continue to constrain the ability of competing carriers to reach terms of coordination and that the proposed merger would not narrow competitor asymmetries in such a way as to remove or undermine this constraint.

91. *Presence of mavericks.* In some circumstances, maverick firms can effectively prevent or limit coordinated interaction.²²⁶ Maverick firms are firms that have a greater economic incentive to deviate from the terms of coordination than do most of their rivals. Therefore, a merger may make coordinated interaction more likely, more successful, or more complete if it involves the acquisition of a maverick firm.²²⁷

92. We do not find that this transaction would result in the loss of a maverick carrier. No commenters have suggested this possibility, and there is nothing in the record that indicates that WWC should be considered a maverick firm.

93. *Implications.* We are persuaded by the Applicants' argument that certain characteristics of the mobile telephony market environment, including firm heterogeneity and the presence of carriers with excess spectrum or network capacity, may continue to make it difficult for carriers first to reach terms of coordination and then effectively to detect and punish deviations in specific markets. In addition, we note that there is no evidence in the record to indicate that mobile telephony carriers have successfully restricted competition on price or non-price terms through coordinated interaction in specific markets, or that this merger would make such interaction more likely as a general matter. We acknowledge, however, that there is considerable variation across local geographic markets with regard to the number and identity of competing carriers, firm homogeneity, and the presence of excess spectrum or network capacity. Because of this local variation, it is difficult to generalize about the impact of the transaction in facilitating coordinated interaction to restrict competition on price or non-price terms in specific markets. Therefore, although our analysis tends strongly to discount the possibility that the transaction would make coordinated interaction more likely, more successful, or more complete, as a precaution we take the possibility of coordinated interaction into account in our analysis of specific markets by carefully scrutinizing, among other variables, the presence and capacity of rival carriers.

²²⁴ DOJ/FTC Merger Guidelines § 2.11.

²²⁵ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21582-83 ¶ 157.

²²⁶ DOJ/FTC Merger Guidelines § 2.12.

²²⁷ *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21584 ¶ 160.

c. Cellular One Brand

94. Dobson alleges that ALLTEL's acquisition of WWC would negatively affect Dobson, because ALLTEL would thereby acquire the Cellular One brand.²²⁸ Specifically, Dobson expresses concern that ALLTEL's acquisition of WWC would result in severe harm to the Cellular One brand, which in turn would adversely affect Dobson's substantial investment in Cellular One and Dobson's ability to compete.²²⁹ Dobson requests that the Commission order WWC to divest the Cellular One brand to a buyer with the incentive to promote and develop the brand.²³⁰

95. Dobson uses the Cellular One brand name in all but three of its markets pursuant to a licensing agreement with the Cellular One Group.²³¹ Western Wireless also provides service under the Cellular One brand name, and ALLTEL has announced that it would re-brand the current Western Wireless properties operating under the Cellular One brand name to the ALLTEL brand name.²³² However, ALLTEL would retain WWC's rights in the Cellular One brand. Dobson argues that it would be harmed by ALLTEL assuming WWC's interest in the brand name Dobson uses to market service in many markets, particularly given that ALLTEL branded service and Cellular One branded service would be in competition in some markets.²³³ Dobson claims that ALLTEL, by acquiring the Cellular One brand, would have the economic incentive to destroy the Cellular One brand and promote the ALLTEL brand.²³⁴

96. Dobson further argues that, by re-branding Western Wireless's Cellular One properties, ALLTEL would eliminate the Cellular One brand from 41 percent of its covered markets.²³⁵ Thus, public awareness of the brand in those markets would decrease. Even if ALLTEL were to allow continued use of the Cellular One brand name in those markets, Dobson argues that ALLTEL could harm the brand by licensing it to weak carriers. Dobson likens the degradation of the Cellular One brand to the loss of a competitor in the market²³⁶ and argues that this effect is particularly harmful in Dobson's rural markets.²³⁷

²²⁸ See Dobson Petition at 1-2. The Applicants argue that Dobson lacks standing. The Applicants state that Dobson's license will not suffer harm, because Dobson will still enjoy its licensed use of the Cellular One brand name. The Applicants further argue that the uncertain nature of the merged entity's future actions fail to establish the requisite direct injury to Dobson to confer standing. Joint Opposition at 17-18. Dobson responds that it has proper standing to file a petition to deny. Dobson states that ALLTEL's alleged incentive and ability to destroy the brand and ALLTEL's alleged goal of increased competitor concentration confer proper standing on Dobson. See Reply of Dobson Cellular Systems, Inc. and American Cellular Corporation, filed Mar. 28, 2005, at 1-2 ("Dobson Reply"). We need not decide the standing issue because, as discussed below, this issue is moot in light of the divestiture of the Cellular One Brand ordered in the DOJ consent decree.

²²⁹ Dobson Petition at 2.

²³⁰ *Id.*

²³¹ *Id.*

²³² See *id.* at 3.

²³³ See *id.* at 3-4.

²³⁴ *Id.*

²³⁵ *Id.* at 3.

²³⁶ *Id.*

²³⁷ *Id.*

Thus, Dobson seeks divestiture of the Cellular One brand to a buyer with the incentive to promote and develop the brand.²³⁸

97. The Applicants respond that the License Agreement governs the relationship between Cellular One and Dobson,²³⁹ a fact conceded by Dobson.²⁴⁰ The Applicants cite this agreement as indicative of ALLTEL's incentive in promoting the Cellular One brand.²⁴¹ Concluding that contract law governs this matter, the Applicants argue the Commission has no jurisdiction over this issue.²⁴² Dobson replies that the existence of the license agreement does not alleviate the potential harm of the merger.²⁴³ Therefore, despite contract enforcement, the merger may nevertheless result in competitive harm.²⁴⁴ The Applicants also argue that Dobson asks the Commission to equalize competition by maintaining a specific competitive balance under the License Agreement.²⁴⁵ Dobson replies that it only seeks a standard divestiture remedy to ensure that the Cellular One brand is "sold to a party... likely to make competitive use of the asset."²⁴⁶ Furthermore, the Applicants argue that Dobson's equating the loss of the Cellular One brand with the loss of a competitor is illogical.²⁴⁷ Because the Applicants find the loss of a brand to differ from the loss of a service provider, they conclude the potential loss of a brand does not affect the number of competitors or the degree of competition in a rural, or any, market.²⁴⁸

98. Pursuant to the consent decree entered into by DOJ and the Applicants, the Cellular One brand and related assets must be divested.²⁴⁹ DOJ reiterates that, when divestitures are ordered to remedy the loss of competition as a result of the merger, it "seeks to make certain that the potential buyer acquired or has access to all assets that it may need to be a viable and substantial competitor."²⁵⁰ In its analysis of the competitive effects of this transaction, DOJ explains that "an established name is an important asset that can impact the ability of the buyer to quickly come into a market and attract customers," and that the buyer of the DOJ divestiture assets may need the Cellular One brand "to provide continuity for existing customers or attract new business."²⁵¹ Thus, DOJ concludes that, "[i]n order to ensure that the buyer has unimpaired access to the Cellular One mark and that the mark is in the hands of an owner who will

²³⁸ *Id.* at 2.

²³⁹ *See* Joint Opposition at 14.

²⁴⁰ *See* Dobson Petition at 4.

²⁴¹ Joint Opposition at 14.

²⁴² *Id.*

²⁴³ Dobson Reply at 3.

²⁴⁴ *Id.*

²⁴⁵ Joint Opposition at 14.

²⁴⁶ Dobson Reply at 3.

²⁴⁷ Joint Opposition at 15.

²⁴⁸ *Id.*

²⁴⁹ DOJ requires the divestiture of "all right, title and interest in trademarks, trade names, service marks, service names, designs, and intellectual property, all license agreements for use of the Cellular One mark, technical information, computer software and related documentation, and all records relating to the divestiture assets." DOJ Competitive Impact Statement at 3. *See also* DOJ Proposed Final Judgment at 13.

²⁵⁰ DOJ Competitive Impact Statement at 13.

²⁵¹ *Id.* DOJ further states that ALLTEL has no need for the Cellular One brand as it markets under the ALLTEL brand name. *See id.*

aggressively act to promote and preserve it,” the Applicants must sell the Cellular One brand name to “an appropriate purchaser with the intent and capability to maintain the value” of the Cellular One brand name.²⁵² Because DOJ has ordered the divestiture of the Cellular One brand, we find that this issue is moot.

3. Vertical Issues – Roaming

99. In this section, we consider the potential vertical or other non-horizontal harms of the proposed transaction. A vertical merger is one that occurs between firms at different but adjacent levels of production or distribution of a good or service.²⁵³ The only issue of this type on the record or that we identify in our independent analysis is the possible impact of the proposed transaction on roaming.

a. Background

100. Several petitioners and commenters have raised concerns regarding the impact of the proposed merger on the availability and cost of roaming arrangements. They claim that the proposed transaction could result in ALLTEL being able to engage in anticompetitive roaming practices and that such practices would be particularly harmful to small carriers which rely heavily on roaming agreements to augment their limited service areas.²⁵⁴

101. Roaming occurs when the subscriber of one commercial mobile radio services (“CMRS”) provider travels beyond the service area of that provider and utilizes the facilities of another CMRS provider to place an outgoing call, to receive an incoming call, or to continue an in-progress call.²⁵⁵ A subscriber establishes a roaming arrangement with a CMRS provider “manually” by personally entering into a contractual agreement with that provider for the right to roam on its network (*e.g.*, giving the provider a credit card number to pay for roaming charges).²⁵⁶ In contrast, “automatic” roaming involves an agreement between two carriers and allows all of the subscribers of a carrier to make calls on the network of the other without taking any action beyond the making of the call.²⁵⁷ Thus, automatic roaming is far more convenient for a subscriber than manual roaming and, as a practice, has become increasingly widespread.²⁵⁸

102. Section 20.12 of the Commission’s rules imposes on CMRS providers the obligation to provide manual roaming arrangements to the subscriber of another provider on request.²⁵⁹ Conversely, the rule does not impose on a provider any obligation to provide automatic roaming arrangements.²⁶⁰

²⁵² *Id.*

²⁵³ *See* *Brown Shoe Co. v. United States*, 370 U.S. 294 (1962) (“Economic arrangements between companies standing in a supplier-customer relationship are characterized as ‘vertical.’”).

²⁵⁴ *See* discussion of petitioners and commenters concerns, *infra* paras. 104-05, 107.

²⁵⁵ *See Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21586 ¶ 166; *see also* Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Service, WT Docket No. 00-193, *Notice of Proposed Rulemaking*, 15 FCC Rcd. 21628, 21629 ¶ 2 (2000) (“*Roaming Notice*”).

²⁵⁶ *Roaming Notice*, 15 FCC Rcd. at 21629 ¶ 3.

²⁵⁷ *Id.* at 21629-30 ¶ 4.

²⁵⁸ *Id.* at 21634 ¶ 13; *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21588 ¶ 174.

²⁵⁹ 47 C.F.R. § 20.12(c) specifically provides:

(continued....)

103. In the Application, ALLTEL and WWC address the impact of the merger on the availability of automatic roaming services. They assert that the merger, while reducing ALLTEL's need to obtain automatic roaming services for its own subscribers by expanding its network coverage, may simultaneously increase the automatic roaming services that it offers to other carriers.²⁶¹ The Applicants explain that WWC, while using CDMA to provide service to its subscribers, has deployed a GSM overlay on its network in order to provide automatic roaming services to other GSM carriers.²⁶² If the merger is approved, they assert, ALLTEL would have the benefit of WWC's expertise in this area, and would evaluate whether to establish a similar overlay on its network to provide expanded automatic roaming agreements.²⁶³ Thus, they argue, the merger may have pro-competitive benefits in the automatic roaming market.

104. Lamar and RTG assert, however, that the merger should be denied because it would create the opportunity for ALLTEL to engage in anticompetitive roaming practices.²⁶⁴ They note that roaming arrangements can only be made with a technologically compatible network, and that the proposed merger would result in a two-to-one reduction in analog carriers in many markets, leaving analog-only carriers with only one possible roaming partner in those areas.²⁶⁵ They suggest that this sort of market consolidation may lead larger carriers to favor each other with "sweetheart" roaming deals or to charge rural carriers roaming premiums.²⁶⁶ They further assert that rural carriers may lose roaming coverage previously provided by WWC if ALLTEL chooses not to honor the WWC roaming agreements, and that ALLTEL may further restrict roaming availability by not entering into any new agreements in the future.²⁶⁷ They note that because small carriers have limited service areas, the availability of automatic roaming arrangements is crucial to their ability to compete.²⁶⁸ Lamar and RTG therefore

(Continued from previous page) _____

Each carrier subject to this section must provide mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to this section, including roamers, while such subscribers are located within any portion of the licensee's licensed service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee's base stations.

²⁶⁰ *Id.*

²⁶¹ *See* Application at 4-5, 8.

²⁶² *Id.* at 8.

²⁶³ *Id.*

²⁶⁴ *See* Lamar Petition at 8-9; Comments in Opposition of Rural Telecommunications Group, Inc., filed Mar. 9, 2005, at 2, 8-9 ("RTG Petition") (filing a pleading titled "Comments in Opposition;" however, as RTG requests the denial of the applications, we will treat its pleading as if it were a petition to deny). The Applicants argue that Lamar and RTG lack standing to challenge the applications for transfer of control. *See* Joint Opposition at 15-18. The Applicants argue that none of the petitioners has demonstrated that it is a "party in interest" as required by section 309(d) of the Communications Act, as amended. Having reviewed these arguments, we have doubts regarding whether all of the petitioners have adequately demonstrated that they have standing. However, we need not decide the standing issue for any of the petitioners because we do not, in any case, find the petitioners' arguments for denial of the applications to be persuasive.

²⁶⁵ RTG Petition at 8-9.

²⁶⁶ Lamar Petition at 9; RTG Petition at 9.

²⁶⁷ Lamar Petition at 9; RTG Petition at 9.

²⁶⁸ Lamar Petition at 9; RTG Petition at 8; *see also* Comments of United States Cellular Corporation, filed Mar. 9, 2005, at 3 ("USCC Comments").

suggest that, at a minimum, the Commission should condition the proposed merger on a requirement that ALLTEL allow automatic roaming access to the merged network by all carriers at rates no less favorable than it has been charging WWC since the merger was announced.²⁶⁹

105. USCC expresses a similar concern that “national” sized-carriers, such as the proposed merged entity, could in the future refuse to sign roaming agreements with smaller carriers, and that the inability to obtain automatic roaming would put these smaller carriers out of business, reducing competitive pressures on the larger carriers even further.²⁷⁰ USCC acknowledges that, in its past negotiations with ALLTEL and WWC, it has experienced no anticompetitive conduct, particularly in connection with roaming arrangements for voice service.²⁷¹ It asserts, however, that if national carriers engage in such impermissible conduct in the future, the Commission would need to intervene.²⁷² It states that, to ensure the availability of automatic roaming and protect competition, the Commission should declare that national carriers must make available automatic roaming agreements for voice and data traffic to smaller carriers on reasonable terms, and that a general refusal to do so would be an unreasonable practice under sections 201 and 202 of the Act.²⁷³ Doing so in this merger is appropriate, USCC argues, because it will help to preserve the remaining competition and because the rapid development of the data service market makes it urgent to address data roaming now.²⁷⁴

106. In their Joint Opposition, the Applicants argue that the Petitioner and commenters are in effect seeking to modify section 20.12 to require automatic roaming in addition to manual roaming, and that this change in policy is more appropriately addressed in a rulemaking proceeding than a merger review.²⁷⁵ This is particularly true, they argue, given that the Commission already has a pending rulemaking proceeding in which it specifically sought comment on whether to require carriers to provide automatic roaming.²⁷⁶ They further assert that there is no evidence demonstrating that the merger would enable the new entity to engage in anticompetitive roaming practices, and that the Commission has already rejected the claim that a two-to-one reduction in analog carriers in a market would cause a significant adverse effect on the roaming market.²⁷⁷ They argue that, because the merged entity would still need roaming service from other carriers in many areas, it would not have any incentive to impose

²⁶⁹ Lamar Petition at 9; RTG Petition at 9.

²⁷⁰ USCC Comments at 3.

²⁷¹ *Id.* at 4. USCC states that it anticipates that it will have an agreement with ALLTEL for data roaming next year. *Id.* at 4-5 n.7.

²⁷² *Id.* at 5.

²⁷³ *Id.* at 4-5, 8. The Rural Cellular Association (RCA) similarly suggests that we adopt measures or policies in this proceeding to ensure the availability of voice and data automatic roaming services and limit the anticompetitive effects of wireless mergers in rural areas. See *Ex Parte* Letter from David L. Nace, Counsel for Rural Cellular Association, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed April 5, 2005).

²⁷⁴ USCC Comments at 9-10.

²⁷⁵ Joint Opposition at 8.

²⁷⁶ Joint Opposition at 8 n.18. See generally, *Roaming Notice*. As USCC notes, the Wireless Telecommunications Bureau has also, more recently, put out a notice that seeks comment, *inter alia*, on the availability of automatic roaming and whether an absence of automatic roaming in an area is related to the number of wireless carriers in the area. See WTB Seeks Comment on CMRS Market Competition, WT Docket No. 05-71, *Public Notice*, DA 05-487 (rel. Feb. 25, 2005); USCC Comments at 4 n.6.

²⁷⁷ Joint Opposition at 9-10 (citing *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21590 ¶178).

unreasonably high or discriminatory rates for roaming, and that if it did attempt to impose such rates, carriers could obtain relief through sections 201 and 202 of the Act.²⁷⁸

107. Lamar and RTG respond that raising the roaming issue in the merger review is appropriate, and that, because the rulemaking proceeding addressed to roaming has been pending for four years, the issue is therefore ripe for a decision.²⁷⁹ USCC argues that the Commission has established general policies in merger reviews before.²⁸⁰ It further argues that it does not seek a change in section 20.12, only a clarification of carriers' obligations under the provisions of sections 201 and 202 of the Act.²⁸¹ USCC urges the Commission not to accept the mere contention by the Applicants that the new entity would not engage in anticompetitive roaming practices, given that no promises were made to provide roaming services for data traffic.²⁸²

b. Discussion

108. The commenters raise important concerns about the current state of the roaming market in rural areas. Our existing rules address many of these concerns, and offer possible avenues for relief. Our manual roaming rule requires other carriers to complete calls initiated by ALLTEL's customers where ALLTEL cannot because it has neither its own signal nor an automatic roaming agreement.²⁸³ In addition, to further ensure compliance, we adopt as a condition to our grant in this Order a reciprocal duty, *i.e.*, that ALLTEL may not prevent its customers from reaching another carrier and completing their calls in these circumstances, unless specifically requested to do so by a subscriber. We also note that if a roaming partner believes that ALLTEL is charging unreasonable roaming rates, it can always file a complaint with the Commission under section 208 of the Communications Act.²⁸⁴

109. We recognize that the manual roaming requirement and the ability to file a section 208 complaint may not fully address the concerns raised by the commenters. However, given the broad scope of the concerns raised – many of which seem to call for a reevaluation of the Commission's roaming rules and policies – they are more appropriately addressed in the context of a rulemaking proceeding. In the near future, the Commission plans to initiate a proceeding to examine whether our rules regarding the roaming requirements applicable to CMRS providers should be modified to take into account current market conditions and developments in technology. This proceeding will afford interested parties an opportunity to comment on a variety of roaming issues, including manual and automatic roaming, technical considerations, and small and rural carrier roaming concerns.

²⁷⁸ *Id.* at 12.

²⁷⁹ Reply to Joint Opposition to Petitions to Deny and Comments of Lamar County Cellular, filed Mar. 28, 2005, at 4-5 (“Lamar Reply”); Comments in Response to Joint Opposition to Petitions to Deny and Comments, filed Mar. 28, 2005, at 3.

²⁸⁰ Reply of United States Cellular Corporation, filed Mar. 28, 2005, at 2-3 (“USCC Reply”).

²⁸¹ *Id.* at 3.

²⁸² *Id.*

²⁸³ See 47 C.F.R. § 20.12; see also *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21592 ¶ 182.

²⁸⁴ 47 U.S.C. § 208. See also *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21592 ¶ 182.

4. Market-by-Market Evaluation

a. Analytical Standard

110. As discussed in Part IV.B.1 above, a calculation of the HHI in a market and our spectrum analysis were only the beginning of our analysis of the competitive effects of the merger, because the purpose of that effort is to eliminate from further analysis markets in which there is no potential for competitive harm. And, in our analyses of potential unilateral effects, coordinated interaction, and vertical issues, discussed in Parts IV.B.2 and IV.B.3 above, we provided a general assessment of factors beyond concentration that are important to determining the likely competitive effects of the proposed merger. On the basis of these combined analyses, we have concluded that, as a general matter, most of the markets identified for further review by our preliminary HHI and spectrum analysis are likely to suffer anticompetitive effects as a result of the merger. Having evaluated these markets on generalized bases, we note that the actual array and combination of these factors in any one of these markets could lead to a different conclusion for that particular market. Our next step, therefore, is to apply those general analyses on a market-specific basis to determine those markets in which anticompetitive effects are likely.

111. The variables we used to conduct this analysis, which we drew from those larger analyses, can be divided into two basic categories, discussed in greater detail below. The first category consists of variables selected to take account of the responses of rival carriers to a price increase and output reduction, or an adverse change in other terms and conditions of service, by the combined entity. In addition to unilateral effects, the variables in the first category also take account of conditions affecting the likelihood of adverse coordinated effects. The second category consists of variables selected to account for distinguishing characteristics of the combined entity that may affect its incentive to raise price and suppress output, or to make an adverse change in other terms and conditions of service. Apart from the variables relating to the responses of rival carriers and the characteristics of the merged entity, we also examined whether the near-term availability of additional spectrum suitable for the provision of mobile telephony services will affect the likelihood of adverse competitive effects in specific markets.

112. *Potential Response of Rivals.* The merged entity proposed in this transaction would have little incentive to raise its price or alter other terms and conditions of service to the detriment of consumers if, after the merger, a sufficiently large number of its customers could obtain comparable services on what would now be better terms from other carriers. This ability would depend, in turn, on both the presence and the capacity of rival carriers in specific markets to provide comparable services, rather than simply on their current subscriber market shares. To take account of the presence of rival carriers, we identified the number of rival carriers that provide substantial service to customers in the relevant market.²⁸⁵

113. If rival carriers face binding capacity constraints, such as the inability to obtain access to needed spectrum in the relatively near-term, then they likely will not be able to respond to the combined carrier's price increase or other harmful conduct in a manner sufficient in the aggregate to make the action of the combined carrier unprofitable. In other words, if the rival carriers do not have the capacity to add customers (or do not have the capacity to do so without a noticeable deterioration in service quality), then they will not be attractive alternatives for customers and will not restrain the combined carrier's price increase. On the other hand, as discussed in Part IV.B.2.a, above, even rival carriers with relatively small

²⁸⁵ We used American Roamer and Census Bureau data to evaluate whether rival carriers had substantial network coverage in terms of both population and land area of the market. Although, for reasons outlined above, we were more concerned in this instance about the possibility of adverse unilateral effects than coordinated effects in specific markets, we note that this variable would also be useful for identifying specific markets in which adverse coordinated effects are likely.

market shares currently may have the ability to discipline the market in the future if they do have adequate capacity to add customers. To account for the capacity of rival carriers, we examined the amount of spectrum suitable for the provision of mobile telephony services that each rival carrier controls in the relevant market and also the geographic coverage of each rival carrier's network in the market.²⁸⁶

114. As discussed previously, the fewer the rivals in a market, the easier it may be for them to reach an understanding, either explicit or tacit, not to compete vigorously against each other.²⁸⁷ In addition, a rival carrier may have a strong incentive to deviate from the terms of coordination if it has excess spectrum and/or network capacity relative to the traffic generated by its existing customer base. Therefore, the variables selected to measure the presence and capacity of rival carriers were used to take into account coordinated effects as well as unilateral effects.

115. *Incentives of Merged Entity.* We consider two variables that affect the incentives of the merged entity to raise price and suppress output, or to make an adverse change in other terms and conditions of service. The first is the subscriber market share of the combined entity. The transaction affords the combined entity a larger base of sales on which to gain from a price increase, and eliminates a competitor to which customers otherwise might have diverted their business. However, the incentive to raise price depends on whether the gain on sales made at the higher price outweighs the loss in sales due to the price increase. A large market share may make it more likely that a price increase will be profitable by reducing the size of the output restriction needed to produce a given price increase. The second variable in this category is the amount of spectrum suitable for the provision of mobile telephony services that the combined entity would control in the relevant markets. The transaction may make a price increase particularly profitable in markets where it gives the combined carrier control of a large share of the total relevant spectrum, leaving little capacity for competing carriers to use to attract the combined carrier's customers.

116. *Access to Additional Spectrum.* Apart from the presence and current capacity of rival carriers, the response of rivals to a price increase or reduction in quality by the merged entity may also depend on their abilities to obtain access to additional spectrum suitable for the provision of mobile telephony services in the relevant market in a reasonably short period of time. Access to additional spectrum may also deter adverse unilateral effects in specific markets by making possible the entry of new carriers. However, we did not find spectrum to be dispositive in any of our divestiture markets, therefore this criteria did not factor heavily into our analysis for this transaction.

117. *Interaction of Variables.* To summarize, we relied on the following variables to identify markets where the transaction is likely to diminish competition: (1) the number of rival carriers and their market shares that offer competitive nationwide service plans as well as regional and local plans; (2) the spectrum holdings of each of the rival carriers; (3) the geographic coverage of their respective networks; (4) the combined entity's post-transaction market share; and (5) the share of spectrum suitable for the provision of mobile telephony services controlled by the combined entity. In reaching determinations on specific markets, we balanced these factors on a market-specific basis, and considered the totality of the circumstances in each market. Thus, for example, if our count of the number of rival carriers and our scrutiny of their spectrum holdings and network coverage indicated that the response of rival carriers will likely be sufficient to limit the ability and incentive of the combined entity to raise price unilaterally, we found that the transaction is not harmful to competition in a specific market even in the presence of a

²⁸⁶ We placed greater weight in this regard on the six national carriers and the three major regional carriers. We assumed that each of these carriers operating in the market already has significant name recognition and advertising presence in the market, and had sufficient access to any capital or equipment necessary to expand.

²⁸⁷ See discussion *supra* Part IV.B.2.b (discussing coordinated effects).

relatively high post-transaction market share of the combined entity. We also scrutinized, and based our determinations on, the uniformity of competitive conditions in local markets. Thus, in some instances, we found that the transaction is not harmful to competition in a particular market if the potential harm from the transaction is confined to a small enclave within the market, and this harm is likely to be ameliorated by the more favorable competitive conditions in the majority of the market.

b. Results of Analysis

118. As discussed above, there is a significant likelihood of unilateral effects or coordinated interaction as a result of this transaction, in most of the markets identified by the initial screen. Conducting further analysis on a case-by-case basis confirmed that this remained true for most markets, except for those markets in which, post-transaction, there would still be four or more genuine competitors in the market, each with a sufficiently built-out network and sufficient bandwidth to be able to attract customers away from ALLTEL should it attempt to increase price or reduce service. In these latter markets, we conclude that even a relatively high post-merger market share for ALLTEL does not indicate likely competitive harm. As for any markets in which the merger would reduce the number of competitors to two or fewer, the resulting degree of concentration presents a significant likelihood of successful unilateral effects and/or coordinated interaction even if the merged entity's market share is not especially high. In between these two scenarios were markets that presented less clear pictures with regard to the factors discussed above, and we have examined each in detail to determine whether there would be sufficient competitive forces remaining after the merger to conclude that the merger is not likely to result in competitive harm in that market.

119. Using the analytical standard outlined above, our market-specific analysis eliminated only three of the markets identified by the initial screen for further review. Based on our examination of the different variables and the interaction among them, we find that, in these eliminated markets, the transaction is unlikely to diminish competition through either unilateral action by the merged entity or coordinated interaction among competing carriers. Thus, although the structure of these eliminated markets would change as a result of the transaction, our market-specific analysis indicates that competitive pressure to attract and retain customers would still be sufficient to constrain carrier conduct with regard to pricing and other terms and conditions of service.

120. *Specific Markets in which Competitive Harm is Likely.* We list, below, the sixteen markets in which our case-by-case analysis indicated that competitive harm is likely as a result of this transaction. Detailed discussion of these markets is contained in Appendix C. As we note above, the transaction would almost certainly be harmful to competition if it resulted in a reduction in the number of rival carriers from 3 to 2 or 2 to 1. In several markets, we see just such a reduction, and in each case we find competitive harm and impose a remedy. The remaining markets are on the list based, on the totality of the circumstances, on the interaction of the variables we analyzed. In particular, these latter markets represent markets in which the post-transaction market share or spectrum holdings of the combined entity likely make it profitable for the entity to raise price and restrict output, and the presence and capacity of rival carriers, taking into account near-term opportunities to obtain access to additional spectrum, are such that the response of rival carriers is likely insufficient to deter such unilateral actions.

121. Most of these sixteen markets are smaller markets with high market shares for the merged entity and few competing carriers. In these markets, we are concerned that, post-merger, competing carriers would not be sufficiently numerous to deter anticompetitive behavior by the merged entity.²⁸⁸

CMA	Name
CMA334	Arkansas 11 - Hempstead
CMA430	Kansas 3 - Jewell
CMA431	Kansas 4 - Marshall
CMA435	Kansas 8 - Ellsworth
CMA436	Kansas 9 - Morris
CMA437	Kansas 10 - Franklin
CMA441	Kansas 14 - Reno
CMA534	Nebraska 2 - Cherry
CMA535	Nebraska 3 - Knox
CMA536	Nebraska 4 - Grant
CMA537	Nebraska 5 - Boone
CMA538	Nebraska 6 - Keith
CMA539	Nebraska 7 - Hall
CMA540	Nebraska 8 - Chase
CMA541	Nebraska 9 - Adams
CMA542	Nebraska 10 - Cass

122. *CMA658 Texas 7-Fannin*. In the markets of concern listed above, we did not include CMA658 Texas 7-Fannin. Lamar and RTG each raised concerns about this particular market. For the reasons below, we are not persuaded by these arguments, and conclude that this market should not be included in our list of markets of concern.

123. Lamar argues that there are specific competitive harms in CMA658 Texas 7-Fannin that would occur as a result of this transaction. It claims that ALLTEL would hold 70 megahertz of spectrum in this market and this would give ALLTEL many anticompetitive opportunities and incentives.²⁸⁹ By allowing ALLTEL to aggregate more than 41 percent of the available spectrum in this CMA, Lamar asserts the price of spectrum in this market would rise, preventing Lamar or another carrier from expanding their services.²⁹⁰ Further, ALLTEL would have 70 megahertz of spectrum in other markets, and this would negatively affect these other markets as well.²⁹¹ Finally, Lamar argues that the merged firm's high market share would create a potential barrier to entry.²⁹²

²⁸⁸ For convenience, we limit our discussion of the markets of concern to CMAs because, upon completing our competitive analysis, we find that the most exact divestiture area to eliminate concerns of competitive harm would be CMAs.

²⁸⁹ Lamar Petition at 7; Lamar Reply at 2.

²⁹⁰ Lamar Petition at 7; Lamar Reply at 2.

²⁹¹ Lamar Petition at 8.

²⁹² *Id.* at 7.

124. CMA658 Texas 7-Fannin was identified by our initial screen and was subject to a case-by-case review based on the analytical standards discussed above. That review did not indicate that competitive harms were likely to result from this transaction in CMA658.²⁹³ Our analysis of spectrum aggregation in this market reveals that ALLTEL would hold 70 megahertz in only 2 out of 15 counties in this CMA, and that these counties represent only 11 percent of the CMA population.²⁹⁴ Moreover, ALLTEL does not hold any spectrum in 9 counties,²⁹⁵ making it is a facilities-based carrier in only a portion of CMA658. One of the 9 counties in which ALLTEL does not hold spectrum is Lamar County, the sole county where Lamar holds spectrum and offers a facilities-based service.²⁹⁶ Therefore, the ALLTEL-WWC transaction would not result in the loss of a competitor in Lamar County.

125. We also find it unlikely that post-transaction ALLTEL would be able to deter entry into CMA658. Although ALLTEL's market share would increase as a result of the transaction to [REDACTED] percent,²⁹⁷ other carriers, including Cingular, Sprint, and Verizon, are also in the market with substantial market share and network coverage.²⁹⁸ We find that entry into this market has already occurred and further that ALLTEL's market share relative to the other providers would not give ALLTEL the ability to limit either entry or expansion of mobile telephony service in CMA658.

126. Lamar claims that ALLTEL would be able to engage in anticompetitive pricing to force Lamar and potentially other competitors out of the market.²⁹⁹ This argument implies that ALLTEL would have the incentive and ability to implement a predatory pricing strategy³⁰⁰ in CMA658 Texas 7-Fannin. Based on the record and a careful review of conditions in CMA658, we find that the merged entity would likely be unable to engage in successful price predation. Even if ALLTEL believed such a strategy was profitable in the long-run, it is unlikely that it would succeed since there are five national companies with network coverage in this CMA that have more subscribers and revenues nationwide than ALLTEL post-transaction.³⁰¹ If the merged entity were to attempt to engage in predatory pricing, it is highly unlikely

²⁹³ See Appendix D.

²⁹⁴ ALLTEL will hold 70 megahertz in Cass and Red River counties in Texas. See Application, Exhibit 3 at 5. For population statistics, see U.S. Department of Commerce, U.S. Census Bureau, Census 2000 ("Census 2000").

²⁹⁵ ALLTEL does not hold spectrum in Delta, Fannin, Hopkins, Hunt, Lamar, Marion, Rains, Upshur, and Wood counties. See Application, Exhibit 3 at 5.

²⁹⁶ See Lamar Petition at 2; Lamar Reply at 2-3; see also Application, Exhibit 1, Attachment 2 at 5.

²⁹⁷ See NRUF data, June 2004.

²⁹⁸ [REDACTED]. See American Roamer, January 2005 data; Census 2000.

²⁹⁹ Lamar Reply at 3.

³⁰⁰ Predatory pricing occurs when a firm first lowers its price to drive its rivals out of the market as well as to deter entry, and then raises its price once its rivals exit the market. Generally, when a firm adopts a predatory pricing strategy it sets price below some measure of cost. See CARLTON & PERLOFF, *supra* note 147, at 334-339, 739. The Supreme Court explained in *Matsushita Electric Industrial Co. v. Zenith Radio Corp.* that "the success of such [predatory] schemes is inherently uncertain: the short-run loss is definite, but the long-run gain depends on successfully neutralizing the competition. Moreover it is not enough simply to achieve monopoly power, as monopoly pricing may breed quick entry by new competitors eager to share in excess profits. The success of any predatory scheme depends on maintaining monopoly power for long enough both to recoup the predators' losses and to harvest some additional gain.... For this reason, there is consensus among commentators that predatory pricing schemes are rarely tried, and even more rarely successful." See *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 589 (1986) (citing ROBERT BORK, *THE ANTITRUST PARADOX* 149-155 (1978)).

³⁰¹ Based on publicly available information, each of the other major wireless carriers had a significantly greater number of subscribers and substantially greater revenues than ALLTEL. At the end of the first quarter of 2005, (continued....)

that it could maintain an artificially low price for a sufficient period of time to drive out any of these nationwide carriers in this market.

127. Lamar also argues that the loss of a potential competitor in this market would be further exacerbated by the approval of the Sprint-Nextel merger.³⁰² Both Sprint and Nextel have network coverage within this CMA, and the Sprint-Nextel transaction may affect the mobile telephony services structure and conduct in this market. However, we find it unlikely that the Sprint-Nextel transaction would result in competitive harm in the markets where both ALLTEL and WWC currently provide service, because of Sprint and Nextel's small market shares in these markets. Furthermore, we find that this argument is more appropriately considered in the ongoing Sprint-Nextel proceeding.³⁰³

128. Finally, Lamar suggests that the Commission require ALLTEL to divest 10 megahertz of spectrum in the Texas 7-Fannin market, because it would be in the public interest and would prevent harm to Lamar by making spectrum available to strengthen an incumbent competitor or to allow a new entrant into the market.³⁰⁴ As discussed above, our case-by-case analysis did not indicate that this transaction would result in competitive harms in CMA658 Texas 7-Fannin, and on balance the transaction is in the public interest. Therefore, we reject Lamar County Cellular's request for a 10 megahertz divestiture in this market.

129. Lamar and RTG claim that the Applicants have not provided sufficient information for the Commission or interested parties to conduct a case-by-case analysis of the competitive effects of this transaction. They claim that ALLTEL did not disclose spectrum aggregation in markets where ALLTEL would hold less than a 10 percent ownership interest in a license.³⁰⁵ Lamar County Cellular and RTG request that the Commission require the Applicants to provide information on licenses where they hold less than a 10 percent interest or deny the Applications.³⁰⁶ They further argue that, if the Commission requests the additional information, there should be a new Public Notice period for these Applications.³⁰⁷

130. The Commission issued an interrogatory request that both ALLTEL and WWC provide a list of entities in which they hold a 10 percent or less interest.³⁰⁸ Both ALLTEL and WWC responded to this (Continued from previous page)

Cingular had 50.4 million subs and revenues of \$8.2 billion. *See* Cingular Wireless LLC, Form 10-Q, at 1, 22 (filed May 4, 2005). Nextel had 15.5 million subs and revenues of \$3.6 billion. *See* Nextel Communications Inc., Form 10-Q, at 4, 16 (filed May 10, 2005). Sprint had 18.3 million subs and revenues of \$3.9 billion. *See* Sprint Corp., Form 10-Q, at 27-28 (filed May 9, 2005); Sprint Investor Update 1Q 2005, at 1-2 (April 20, 2005), *available at* <http://www.sprint.com/sprint/ir/fn/qe/1q05.pdf> (last visited June 2, 2005). T-Mobile had over 18 million subs and revenues of \$3.4 billion. *See* T-Mobile USA Reports First Quarter 2005 Results, Press Release, at 2, 3, *available at* http://www.t-mobile.com/company/investors/financial_releases/2005_Q1.pdf (last visited June 2, 2005). Verizon had 45.5 million subs and revenues of \$7.4 billion. *See* Cellco Partnership, Form 10-Q, at 1, 8 (filed May 9, 2005). Combining ALLTEL's and WWC's subscribers and revenues from the first quarter 2005 yields 10.2 million subscribers and revenues of \$1.9 billion. *See* ALLTEL Communications Corporation, Form 10-Q, at 19 (filed May 5, 2005); WWC 10-Q at 3, 22.

³⁰² Lamar Reply at 2.

³⁰³ Applications of Nextel Communications, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-63.

³⁰⁴ Lamar Reply at 4.

³⁰⁵ Lamar Petition at 4; RTG Petition at 4.

³⁰⁶ Lamar Petition at 5; RTG Petition at 5.

³⁰⁷ Lamar Petition at 5; RTG Petition at 5.

³⁰⁸ *See* Information Request at 4 (question II.16).

interrogatory request on March 15, 2005.³⁰⁹ Their response to the request occurred 13 days prior to the end of the pleading cycle.³¹⁰ Further, this docket is permit-but-disclose and parties to this proceeding could have gained access to this information and subsequently provided analysis of any competitive harms that may arise from ownership interest by these firms of less than 10 percent.³¹¹ Further, the interrogatory response was provided in a sufficiently timely manner that enabled staff to incorporate this information in order to determine whether on balance this transaction is in the public interest. Therefore, we deny Lamar's and RTG's request to place the Applications on a second Public Notice after receiving this ownership information.

131. Finally, Lamar and RTG claim that the Applicants' transfer Application is incomplete, based on ALLTEL's statement in the application that some licenses may have been inadvertently omitted, and argue that these licenses should be included in the Commission's approval.³¹² We find that the Applicants' statement reflects a housekeeping request related to ancillary non-CMRS licenses. If CMRS licenses were inadvertently omitted, they would be subject to a separate review. The Commission has no reason to believe there will be any such licenses.

C. Public Interest Benefits

1. Introduction

132. In addition to assessing the potential competitive harms of the proposed transaction, we also consider whether the combination of these companies' wireless operations is likely to generate verifiable, merger-specific public interest benefits.³¹³ In doing so, we ask whether the combined entity would be able, and would be likely, to pursue business strategies resulting in demonstrable and verifiable benefits to consumers that could not be pursued but for the combination.³¹⁴

133. The Applicants claim that a number of public interest benefits would result from this transaction. They contend that the proposed transaction would strengthen ALLTEL as a competitor in the wireless telecommunications marketplace. First, the Applicants note that, although post-transaction, ALLTEL would not be a nationwide provider of telecommunications services, it would expand its wireless footprint into nine states.³¹⁵ Second, the Applicants maintain that the combined entity would achieve economies of scale and scope allowing ALLTEL to more effectively compete against the nationwide carriers.³¹⁶ Third, the increased resources would enable ALLTEL to deploy advanced wireless services in rural areas more rapidly than either existing company currently has or could achieve on its own.³¹⁷ Fourth, the merger would create a business base broad enough for ALLTEL to consider the

³⁰⁹ See March 15, 2005 Response to Information Request at 1.

³¹⁰ See Comment Public Notice, 20 FCC Rcd. 2337.

³¹¹ See *id.*

³¹² Lamar Petition at 4 (citing Application, Exhibit 1 at 19); RTG Petition at 4 (same).

³¹³ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21599 ¶ 201; *Bell Atlantic-GTE Order*, 15 FCC Rcd. at 14130 ¶ 209; Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer of Control, 14 FCC Rcd. 14712, 14825 ¶ 256 (1999) ("*SBC-Ameritech Order*"); *WorldCom-MCI Order*, 13 FCC Rcd. at 18134-35 ¶ 194.

³¹⁴ *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21599 ¶ 201.

³¹⁵ See Application, Exhibit 1 at 3.

³¹⁶ *Id.* at 4.

³¹⁷ *Id.*

deployment of additional technologies that would expand the availability of automatic roaming agreements in rural areas.³¹⁸ Furthermore, commenters have raised public safety and homeland security improvements as other possible public interest benefits.³¹⁹

134. As discussed below, we find that the proposed transaction is likely to result in some merger-specific public interest benefits. We reach this conclusion recognizing that many of these benefits may be challenging to achieve in the near future because of sizable technological and financial requirements. As a result, it is difficult for us to quantify very precisely either the magnitude of or the time horizon in which these benefits will be realized.

2. Analytical Framework

135. The Commission has recognized that “[e]fficiencies generated through a merger can mitigate competitive harms if such efficiencies enhance the merged firm’s ability and incentive to compete and therefore result in lower prices, improved quality, enhanced service or new products.”³²⁰ Under Commission precedent, however, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transfer outweigh the potential public interest harms.³²¹

136. There are several criteria the Commission applies in deciding whether a claimed benefit should be considered and weighed against potential harms. First, the claimed benefit must be transaction- or merger-specific. This means that the claimed benefit “must be likely to be accomplished as a result of the merger but unlikely to be realized by other means that entail fewer anticompetitive effects.”³²² Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a merger is in the sole possession of the Applicants, they are required to provide sufficient evidence supporting each benefit claim so that the Commission can verify the likelihood and magnitude of the claimed benefit.³²³ In addition, as the Commission has noted, “the magnitude of benefits must be

³¹⁸ *Id.*

³¹⁹ See discussion *infra* Part IV.D.8.

³²⁰ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21599 ¶ 204; *EchoStar-DirecTV HDO*, 17 FCC Rcd. at 20630 ¶ 188; Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control, 12 FCC Rcd. 19885, 20063 ¶ 158 (1997) (“*Bell Atlantic-NYNEX Order*”); see also *DOJ/FTC Merger Guidelines* § 4.

³²¹ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21599 ¶ 204; *EchoStar-DirecTV HDO*, 17 FCC Rcd. at 20630 ¶ 188; see also *Bell Atlantic-NYNEX Order*, 12 FCC Rcd. at 20063 ¶ 157; *SBC-Ameritech Order*, 14 FCC Rcd. at 14825 ¶ 256.

³²² *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21599 ¶ 205; accord *EchoStar-DirecTV HDO*, 17 FCC Rcd. at 20630 ¶ 189; *Bell Atlantic-NYNEX Order*, 12 FCC Rcd. at 20063 ¶ 158 (“Pro-competitive efficiencies include only those efficiencies that are merger-specific, *i.e.*, that would not be achievable but for the proposed merger. Efficiencies that can be achieved through means less harmful to competition than the proposed merger . . . cannot be considered to be true pro-competitive benefits of the merger.”); *SBC-Ameritech Order*, 14 FCC Rcd. at 14825 ¶ 255 (“Public interest benefits also include any cost saving efficiencies arising from the merger if such efficiencies are achievable only as a result of the merger. . . .”); Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee, MB Docket No. 02-70, *Memorandum Opinion and Order*, 17 FCC Rcd. 23246, 23313 ¶ 173 (2002) (Commission considers whether benefits are “merger-specific”) (“*AT&T-Comcast Order*”). Cf. *DOJ/FTC Merger Guidelines* § 4.

³²³ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21600 ¶ 205; see also *EchoStar-DirecTV HDO*, 17 FCC Rcd. at 20630 ¶ 190; *Bell Atlantic-NYNEX Order*, 12 FCC Rcd. at 20063 ¶ 157 (“These pro-competitive benefits include any efficiencies arising from the transaction if such efficiencies . . . are sufficiently likely and verifiable. . . .”); *AT&T-Comcast Order*, 17 FCC Rcd. at 23313 ¶ 173 (Commission considers whether benefits are “verifiable”); (continued...)

calculated net of the cost of achieving them.”³²⁴ Furthermore, speculative benefits that cannot be verified will be discounted or dismissed. Thus, as the Commission explained in the *Cingular-AT&T Wireless Order*, “benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present.”³²⁵ Third, the Commission has stated that it “will more likely find marginal cost reductions to be cognizable than reductions in fixed cost.”³²⁶ The Commission has justified this criterion on the ground that, in general, reductions in marginal cost are more likely to result in lower prices for consumers.³²⁷

137. Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims. Under this sliding scale approach, where potential harms appear “both substantial and likely, the Applicants’ demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”³²⁸

3. Increased Footprint

138. The Applicants state that this transaction would expand the company’s wireless footprint into nine states.³²⁹ The Applicants and some commenters assert that this expansion would allow ALLTEL to be a more effective competitor with the nationwide CMRS providers.³³⁰ Specifically, the Applicants (Continued from previous page) _____

SBC-Ameritech Order, 14 FCC Rcd. at 14825 ¶ 255; *DOJ/FTC Merger Guidelines* § 4 (“[T]he merging firms must substantiate efficiency claims so that the Agency can verify by reasonable means the likelihood and magnitude of each asserted efficiency, how and when each would be achieved (and any costs of doing so), [and] how each would enhance the merged firm’s ability to compete. . . .”).

³²⁴ *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21600 ¶ 205; *accord EchoStar-DirecTV HDO*, 17 FCC Rcd. at 20630 ¶ 190.

³²⁵ *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21600 ¶ 205 (citing *EchoStar-DirecTV HDO*, 17 FCC Rcd. at 20630 ¶ 190).

³²⁶ *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21600 ¶ 205; *accord EchoStar-DirecTV HDO*, 17 FCC Rcd. at 20630 ¶ 190. *See also DOJ/FTC Merger Guidelines* § 4.

³²⁷ *See Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21600 ¶ 205; *EchoStar-DirecTV HDO*, 17 FCC Rcd. at 20630 ¶ 191; *see also DOJ/FTC Merger Guidelines* § 4.

³²⁸ *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21600 ¶ 205; *accord EchoStar-DirecTV HDO*, 17 FCC Rcd. at 20630 ¶ 192 (citing *SBC-Ameritech Order*, 14 FCC Rcd. at 14825). *Cf. DOJ/FTC Merger Guidelines* § 4 (“The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.”).

³²⁹ *See Application*, Exhibit 1 at 3-4; *Joint Opposition* at 5.

³³⁰ *See Application*, Exhibit 1 at 5; *see also* Letter from Mike Beebe, Attorney General, State of Arkansas, to Marlene Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) (“Arkansas Attorney General Beebe Comment”); Letter from Jay Scott Emler, State Senator, State of Kansas, to Marlene Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) (“Kansas State Senator Emler Comment”); Letter from George M. Israel, III, President and CEO, Georgia Chamber of Commerce, to Marlene Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) (“Georgia Chamber of Commerce Comment”); Letter from Jack Fleischauer, Jr., Regional CEO, Regions Financial Corp., to Marlene Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) (“Regions Financial Corp. Comment”); Letter from Tony Rogers, Director, Rosebud Sioux Tribe Utility Commission, to Marlene Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) (“Rosebud Sioux Tribe Utility Commission Comment”); Letter from Ken W. Davis, Chairman, Turtle Mountain Band of Chippewa Indians, to (continued....)

state that, by combining the two networks and infrastructure, roaming costs would be eliminated in many areas.³³¹ According to the Applicants and some commenters, the expanded footprint and subscriber base would also allow ALLTEL to provide more expansive “in-network” calling to subscribers, because the number and location of ALLTEL customers would increase. This in turn will afford ALLTEL subscribers the ability to call a greater number of ALLTEL subscribers for free.³³²

139. Currently, ALLTEL provides Cellular and PCS service to rural areas and mid-sized cities in 24 states.³³³ WWC provides similar Cellular and PCS service to rural areas and mid-sized cities in 19 states.³³⁴ Post-transaction, the footprint of the combined company would cover 33 states. Specifically, the proposed merger would allow ALLTEL to expand its existing wireless footprint into nine additional states – California, Idaho, Minnesota, Montana, Nevada, North Dakota, South Dakota, Utah, and Wyoming – and expand its existing wireless operations in Arizona, Colorado, New Mexico, and Texas.³³⁵ Furthermore, ALLTEL and WWC currently have a licensed service area encompassing approximately 62.5 and 11.5 million people, respectively,³³⁶ the combined company, however, would have a licensed service area of approximately 72 million people.³³⁷

140. The Commission has previously noted the consumer benefits that flow from expanded footprints.³³⁸ With a larger footprint, a carrier can offer competitive service to more consumers across the

(Continued from previous page) _____

John Muleta, Chief, Wireless Telecommunications Bureau, and Marlene Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) (“Turtle Mountain Band of Chippewa Indians Comment”); Letter from John R. Marks, III, Mayor, City of Tallahassee, to Marlene Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 14, 2005) (“Mayor Marks of Tallahassee Comment”); Letter from Cindy K. Johnson, President, Grand Island Area Chamber of Commerce, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 24, 2005) (“Grand Island Area Chamber of Commerce Comment”); Letter from Thomas Hastings, President, Hastings Area Chamber of Commerce, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 24, 2005) (“Hastings Area Chamber of Commerce Comment”); Letter from Doran “Dee” Haussler, Executive Director, Hastings Economic Development Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 24, 2005) (“Hastings Economic Development Corporation Comment”); Letter from Tom R. Tunnell, President, Kansas Grain & Feed Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 24, 2005) (“Kansas Grain & Feed Assoc. Comment”); Letter from Dave Heinman, Governor, State of Nebraska, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Apr. 19, 2005) (“Governor Heinman of Nebraska Comment”).

³³¹ Application, Exhibit 1 at 5; Joint Opposition at 5.

³³² See Application, Exhibit 1 at 5; see also Regions Financial Corp. Comment at 1, Rosebud Sioux Tribe Utility Commission Comment at 1; Turtle Mountain Band of Chippewa Indians Comment at 1; Grand Island Area Chamber of Commerce Comment at 1; Hastings Area Chamber of Commerce Comment at 1; Hastings Economic Development Corporation Comment at 1; Kansas Grain & Feed Assoc. Comment at 1.

³³³ ALLTEL states that they provide PCS and Cellular service in 24 states; however, they hold a 10 percent or greater interest ownership interest in PCS and Cellular licenses in 28 states. Compare Application, Exhibit 1, at 4, with March 15, 2005 Response to Information Request at 3. See also description of ALLTEL *supra* Part II.A.1.

³³⁴ Application, Exhibit 1 at 4.

³³⁵ *Id.*

³³⁶ See discussion *supra* paras. 4, 7.

³³⁷ Application, Exhibit 1 at 4-5.

³³⁸ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21604 ¶ 217; *SBC-BellSouth Order*, 15 FCC Rcd. at 25480 ¶ 48.

country. In addition, its customers may enjoy enhanced service and/or lower prices because of factors such as the wider area in which the carrier's full handset functionality is operative and the carrier's lessened reliance on roaming agreements to fill out its coverage.³³⁹

4. Improvements in Service Quality

141. The Applicants, along with some commenters, assert that improvements in the combined company's network would allow ALLTEL to offer its consumers a higher quality product and greater services.³⁴⁰ They state that, in areas where the Applicants' networks overlap, the combination of networks would reduce dead spots and improve in-market coverage.³⁴¹ Because the proposed transaction involves the integration of existing networks, the Applicants claim that improvements would occur "in the near term because of the ability to integrate established and technically compatible operating networks."³⁴² Specifically, the Applicants state that ALLTEL and WWC operate separate systems and generally do not collocate on the same facilities, so the coverage area of both systems is not identical.³⁴³ The Applicants thus conclude that the combination of the different footprints would "eliminate many of the dead spots that existed in each network on a stand-alone basis."³⁴⁴ Furthermore, the Applicants have identified areas where WWC's network provides superior coverage to ALLTEL's network.³⁴⁵ The Applicants state that all ALLTEL handsets have CDMA and analog capabilities, so customers should experience improved coverage "even if the Western Wireless network is analog only."³⁴⁶ Moreover, the Applicants note that ALLTEL sells tri-mode handsets, capable of communications on both 800 MHz and 1.9 GHz networks; therefore, customers of the combined company would be able to utilize the networks

³³⁹ *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21604 ¶ 217.

³⁴⁰ See Declaration of Jeffrey R. Gardner, Executive Vice President and Chief Financial Officer, ALLTEL Corporation, at 21 ("Declaration of Gardner"), available at Application, Exhibit 1, at Attachment 1; see also Arkansas Attorney General Beebe Comment at 1; Letter from Richard J. Hobbs, Executive Vice President, Associated General Contractors of Ohio, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) ("Associated General Contractors of Ohio Comment"); Letter from Senator Tom Baker, Chairman, Committee on Transportation & Telecommunications, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) ("Nebraska State Senator Baker Comment"); Letter from James B. Black, Speaker, North Carolina House of Representatives, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) ("Speaker Black of the North Carolina House Comment"); Kansas State Senator Emler Comment at 2; Letter from Frank P. DeTillio, President, Lorain County Chamber of Commerce, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) ("Lorain County Chamber of Commerce Comment"); Letter from Representative Danny F. McComas, North Carolina House of Representatives, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) ("North Carolina Representative McComas Comment"); Letter from Keith R. Olsen, President, Nebraska Farm Bureau Federation, to Marlene Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) ("Nebraska Farm Bureau Federation Comment"); Rosebud Sioux Tribe Utility Commission Comment at 1; Turtle Mountain Band of Chippewa Indians Comment at 1; Letter from Chris Holman, Publisher, The Greater Lansing Business Monthly, to Marlene Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 21, 2005) ("The Greater Lansing Business Monthly Comment"); Governor Heineman of Nebraska Comment at 1.

³⁴¹ Declaration of Gardner at 2.

³⁴² *Id.*

³⁴³ See March 15, 2005 Response to Information Request at 18.

³⁴⁴ *Id.*

³⁴⁵ See *id.* at 18-19.

³⁴⁶ *Id.* at 19.

of both companies, which would result in coverage advantages over ALLTEL's existing network.³⁴⁷ The Applicants maintain that these synergies would not be available to the Applicants separately, even if they were able to purchase spectrum, because new spectrum would require the acquisition of tower sites and equipment, which would significantly delay any improvements.³⁴⁸

142. Additionally, ALLTEL states that the proposed transaction would allow the combined company to increase product development beyond what each company would be able to accomplish on its own.³⁴⁹ ALLTEL notes that implementing new products, such as its Touch2Talk feature, is easier for a larger company, because the expense is applied against a larger customer base.³⁵⁰ [REDACTED].³⁵¹ [REDACTED].³⁵² ALLTEL concludes that the proposed transaction would reduce delays associated with rolling out new product offerings in the future.³⁵³

5. Promotion of Next-Generation Services

143. The Applicants argue that deployment of advanced services in rural areas generally lags behind urban areas, because larger carriers focus their attention on urban and suburban areas where the demand for such services is highest and regional carriers "lack the economies to deploy advanced services."³⁵⁴ The Applicants, along with some commenters, assert that the proposed transaction would promote the deployment of "advanced services" in rural areas more quickly than would be possible by the Applicants individually.³⁵⁵ Specifically, the Applicants state that the incentive for deployment is enhanced by the increased purchasing power and resources of the combined company.³⁵⁶ For instance, the Applicants state while the nationwide carriers already have begun rolling out advanced services, ALLTEL will commence launching EV-DO in select markets in 2005,³⁵⁷ and WWC has not announced specific deployment plans for EV-DO or UMTS.³⁵⁸ ALLTEL states that it has decided to implement EV-

³⁴⁷ See *id.* at 19.

³⁴⁸ Declaration of Gardner at 3.

³⁴⁹ March 15, 2005 Response to Information Request at 5; Joint Opposition at 5.

³⁵⁰ See March 15, 2005 Response to Information Request at 5.

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ Application, Exhibit 1 at 6-7.

³⁵⁵ See *id.*; Joint Opposition at 5; see also Kansas State Senator Emler Comment at 1; Georgia Chamber of Commerce Comment at 1; Letter from Frank Landis, Commissioner, State of Nebraska Public Service Commission, to Marlene Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) ("Nebraska Public Service Commission"); Nebraska Farm Bureau Federation Comment at 1; Rosebud Sioux Tribe Utility Commission Comment at 1; Mayor Marks of Tallahassee Comment at 1; Grand Island Area Chamber of Commerce Comment at 1; Hastings Area Chamber of Commerce Comment at 1; Hastings Economic Development Corporation Comment at 1; Kansas Grain & Feed Assoc. Comment at 1; Governor Heineman of Nebraska Comment at 1. ALLTEL states that, "[a]lthough [it] has not quantified how much faster the combined company will be able to deploy advanced services, ALLTEL expects the combined company to have the scale to deploy faster than either company could afford to individually." March 15, 2005 Response to Information Request at 5.

³⁵⁶ Application, Exhibit 1 at 7.

³⁵⁷ *Id.* ALLTEL states that it is launching EV-DO in the following metro areas within the first quarter of 2005: [REDACTED]. See March 15, 2005 Response to Information Request at 8. [REDACTED]. See *id.* at 8-9.

³⁵⁸ March 15, 2005 Response to Information Request at 5. [REDACTED]. See *id.* at 5, 9.

DO in its larger markets and anticipates incorporating similar WWC markets into this strategy.³⁵⁹ Accordingly, the Applicants claim, subscribers in some WWC markets would have access to advanced services sooner as a result of the proposed merger.³⁶⁰

6. Economies of Scale and Operating Synergies

144. The Applicants and some commenters allege that the substantial synergies produced as a result of the proposed transaction would allow ALLTEL to be a more effective competitor with the nationwide carriers.³⁶¹ The Applicants assert that the proposed transaction would “create operational synergies with a net present value of more than \$600 million.”³⁶² The Applicants state that these savings are the result of reductions in operational expenses, costs per gross additional subscriber, and maintenance/administrative costs.³⁶³ Additionally, the Applicants assert that ALLTEL’s acquisition of WWC will result in substantial interest savings.³⁶⁴ Specifically, the savings would come from a number of factors, such as the diminished need for tower additions, consolidating advertising and marketing costs, elimination of duplicative functions, and the refinancing of WWC’s debt at lower interest rates that are available to ALLTEL.³⁶⁵

145. The Applicants stress that their use of the same CDMA technology would facilitate ALLTEL’s ability to integrate the two networks expeditiously and with little disruption to subscribers.³⁶⁶ The Applicants highlight that ALLTEL is experienced with integrating newly-acquired companies into its network while achieving substantial synergies and economies of scale.³⁶⁷

146. The Applicants also allege that the proposed transaction would result in the reduction in costs associated with the purchase of network equipment, because equipment prices fluctuate based on volume.³⁶⁸ The Applicants state that the combined company would be able to purchase equipment in larger quantities than either company individually, reducing the costs associated with network

³⁵⁹ *Id.* at 5-6.

³⁶⁰ *See id.*

³⁶¹ *See* Application, Exhibit 1 at 5; Declaration of Gardner at 3; *see also* Associated General Contractors of Ohio Comment at 1; Kansas State Senator Emler at 1; Georgia Chamber of Commerce Comment at 1; Letter from L. Lynn Rex, Executive Director, League of Nebraska Municipalities to Marlene Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) (“League of Nebraska Municipalities Comment”); Nebraska Farm Bureau Federation Comment at 1; Regions Financial Corp. Comment at 1; Rosebud Sioux Tribe Utility Commission Comment at 1; Turtle Mountain Band of Chippewa Indians Comment at 1; Mayor Marks of Tallahassee Comment at 1; The Greater Lansing Business Monthly Comment at 1; Grand Island Area Chamber of Commerce Comment at 1; Hastings Area Chamber of Commerce Comment at 1; Hastings Economic Development Corporation Comment at 1; Kansas Grain & Feed Assoc. Comment at 1.

³⁶² Application, Exhibit 1 at 5 (citing Declaration of Gardner at 3).

³⁶³ *See* Declaration of Gardner at 4.

³⁶⁴ *See id.* at 5.

³⁶⁵ *Id.* at 4-5.

³⁶⁶ Application, Exhibit 1 at 5.

³⁶⁷ *Id.* at 6.

³⁶⁸ *Id.*

equipment.³⁶⁹ Some commenters also support ALLTEL's assertion that the increased bargaining power would aid its ability to obtain the latest technology.³⁷⁰

147. The Applicants and commenters further allege that the combined company would be able to provide a broader selection of customer equipment, at more competitive prices, and containing more features and services demanded by customers.³⁷¹ The Applicants state that ALLTEL, [REDACTED],³⁷² has developed relationships with six of the major CDMA mobile phone Original Equipment Manufacturers ("OEMs").³⁷³ The Applicants explain that such a direct relationship with OEMs provides a carrier the "ability to negotiate software customization, lower phone pricing and other incentives, such as volume incentive rebates, price protection on inventory, [and] product rebates."³⁷⁴ The Applicants further explain that ALLTEL [REDACTED].³⁷⁵ [REDACTED].³⁷⁶ [REDACTED].³⁷⁷ Thus, the merger would extend the benefits obtained by ALLTEL to WWC's markets and customers and increase the benefits received by the combined company.³⁷⁸

148. The Applicants argue that, not only would the combined company be able to purchase handsets with more features and services and at lower prices, the combined company's increased purchasing power would result in a greater willingness of handset manufacturers to customize handsets specific to ALLTEL's service offerings.³⁷⁹ The Applicants further state that such customizations often involve handset software enabling user authentication for data networks, more accurate roaming indicators, more efficient Mobile Web usage, and overall infrastructure integration.³⁸⁰ As an example, the Applicants discuss how ALLTEL collaborated with OEMs to develop customized handsets for its Touch2Talk product offering.³⁸¹ Specifically, ALLTEL provides documentation [REDACTED].³⁸² Likewise, ALLTEL is in the process [REDACTED].³⁸³ [REDACTED].³⁸⁴ [REDACTED].³⁸⁵ The

³⁶⁹ *Id.*

³⁷⁰ See Nebraska Public Service Commission at 1; Rosebud Sioux Tribe Utility Commission Comment at 1; Mayor Marks of Tallahassee Comment at 1; Grand Island Area Chamber of Commerce Comment at 1; Hastings Area Chamber of Commerce Comment at 1; Hastings Economic Development Corporation Comment at 1; Kansas Grain & Feed Assoc. Comment at 1.

³⁷¹ See Application, Exhibit 1 at 6; Declaration of Gardner at 3; see also Rosebud Sioux Tribe Utility Commission Comment at 1; Mayor Marks of Tallahassee Comment at 1; Grand Island Area Chamber of Commerce Comment at 1; Hastings Area Chamber of Commerce Comment at 1; Hastings Economic Development Corporation Comment at 1; Kansas Grain & Feed Assoc. Comment at 1.

³⁷² March 15, 2005 Response to Information Request at 7.

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ *Id.* [REDACTED].

³⁷⁶ March 15, 2005 Response to Information Request at 7. [REDACTED]. *Id.*

³⁷⁷ *Id.*

³⁷⁸ See *id.*

³⁷⁹ Application, Exhibit 1 at 6; March 15, 2005 Response to Information Request at 7.

³⁸⁰ March 15, 2005 Response to Information Request at 8.

³⁸¹ See *id.* at 7-8.

³⁸² [REDACTED].

³⁸³ [REDACTED]

Applicants conclude that “[t]he combination with WWC will enhance ALLTEL’s ability to continue purchasing [such] phones with customizations necessary to provide an optimum experience on ALLTEL’s networks.”³⁸⁶

149. Finally, the Applicants discuss the operating synergies achieved by combining the best practices developed by the separate companies.³⁸⁷ The Applicants state that “[a]s established regional providers, both ALLTEL and WWC have developed a series of practices to efficiently and effectively meet customer needs and comply with regulatory mandates.”³⁸⁸ As an example, the applicants cite WWC’s experience with deployment of a GSM network overlay to provide service to roamers within their service areas.³⁸⁹ The engineering experience and vendor relationships achieved by WWC in building and operating a GSM network would enable ALLTEL to determine whether to create such roaming opportunities and take advantage of WWC’s established relationships with GSM vendors.³⁹⁰ Additionally, ALLTEL asserts that it has experience, through prior acquisitions, of consolidating “various billing operations into a single scalable system that significantly reduced billing costs per subscriber.”³⁹¹ The Applicants also suggest that the proposed transaction would benefit network operations and management, purchasing, billing, customer service, and general and administrative practices.³⁹² The Applicants state that the “implementation of the best of these and other practices from each company will inure to the benefit of the combined company’s subscribers.”³⁹³

150. Based on the evidence presented by Applicants, we believe that the transaction is likely to enable the merged entity to achieve certain economies of scope and scale and operating synergies of the type asserted and that, absent the transaction, the Applicants individually could not have achieved. However, the record does not contain sufficient supporting evidence for us to verify and quantify the claimed savings or to determine the extent to which they are specific to this transaction. Thus, we cannot confirm the total savings estimated by Applicants and do not give significant weight to them in our balancing of potential public interest harms and benefits.

151. However, we do recognize one specific category of cost savings in this context. ALLTEL’s merger with WWC would reduce its roaming costs in geographic markets where ALLTEL and WWC’s service areas do not overlap, and the elimination of roaming agreements in these markets would directly benefit those of its customers who would no longer be charged to roam in those areas.³⁹⁴

(Continued from previous page) _____

³⁸⁴ [REDACTED]

³⁸⁵ [REDACTED]

³⁸⁶ March 15, 2005 Response to Information Request at 8.

³⁸⁷ See Application, Exhibit 1 at 6.

³⁸⁸ Declaration of Gardner at 2.

³⁸⁹ Application, Exhibit 1 at 6; Declaration of Gardner at 2.

³⁹⁰ Application, Exhibit 1 at 6; Declaration of Gardner at 2. Documentation provided by ALLTEL demonstrates [REDACTED].

³⁹¹ Declaration of Gardner at 2.

³⁹² See Application, Exhibit 1 at 6; see also Declaration of Gardner at 3, 4.

³⁹³ Declaration of Gardner at 3.

³⁹⁴ See Application, Exhibit 1 at 5; see also League of Nebraska Municipalities Comment at 1; Regions Financial Corp. Comment at 1; Turtle Mountain Band of Chippewa Indians Comment at 1; Grand Island Area Chamber of Commerce Comment at 1; Hastings Area Chamber of Commerce Comment at 1; Hastings Economic Development (continued....)

Specifically, ALLTEL states that currently its subscribers roam when they travel into California, Idaho, Minnesota, Montana, Nevada, North Dakota, South Dakota, Utah, and Wyoming.³⁹⁵ Post-transaction, ALLTEL would be able to provide service to its subscribers in portions of these states without having to rely on roaming arrangements.³⁹⁶ We further recognize that the cost savings generated by the elimination of roaming agreements in overlapping markets have the potential to benefit ALLTEL's customers indirectly by giving ALLTEL the ability and the incentive to compete more aggressively with regard to pricing, coverage, and the provision of advanced data services. We emphasize, however, that the realization of these indirect benefits and their magnitude will depend on whether, and the extent to which, ALLTEL passes on cost savings to its customers through lower prices or product improvements such as better voice service and advanced data services.

7. Improved Roaming in Rural Areas

152. The Applicants assert that the combined company would be a more attractive roaming partner for other carriers because of its expanded footprint, which would allow it to provide other carriers with access to a far more expansive rural network for roaming.³⁹⁷ They state that the combined company would "expand opportunities for carriers to obtain low cost roaming services and potentially justify the expansion of the scope of the free calling areas available to subscribers."³⁹⁸ Ultimately, the Applicants argue, this may result in a roaming partner choosing to offer its service at a lower price.³⁹⁹

153. The Applicants further argue that the combined company's enhanced ability to deploy advanced services makes it a more attractive roaming partner.⁴⁰⁰ The Applicants state that roaming partners may want to enter into roaming agreements to extend the geographic area in which advanced services are offered to their subscribers.⁴⁰¹

154. Additionally, the Applicants claim that the combined company would explore ways to increase roaming opportunities on their network for other carriers.⁴⁰² The Applicants assert that they have entered into hundreds of roaming agreements and that these agreements account for 10 percent of their revenues.⁴⁰³ The Applicants explain that WWC currently provides service to its subscribers on a CDMA network; however, WWC has deployed a GSM overlay solely for the purpose of serving roamers. The Applicants note that WWC's GSM overlay has been an important part of its business as it has increased WWC's revenue stream.⁴⁰⁴ The Applicants further allege that the engineering experience and vendor relationships obtained by WWC would be used by ALLTEL "to ascertain whether it would be technically and economically feasible to deploy similar overlays that would permit the company to offer roaming to

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Corporation Comment at 1; Kansas Grain & Feed Assoc. Comment at 1; Governor Heineman of Nebraska Comment at 1.

³⁹⁵ Application, Exhibit 1 at 5.

³⁹⁶ *Id.*

³⁹⁷ See Application, Exhibit 1 at 8; March 15, 2005 Response to Information Request at 10.

³⁹⁸ March 15, 2005 Response to Information Request at 10.

³⁹⁹ *Id.*

⁴⁰⁰ See *id.*

⁴⁰¹ *Id.*

⁴⁰² See Application, Exhibit 1 at 8.

⁴⁰³ *Id.* at 8.

⁴⁰⁴ See March 15, 2005 Response to Information Request at 11.

carriers regardless of the underlying technology.”⁴⁰⁵ The Applicants state that the merger would facilitate the development of a GSM overlay in ALLTEL’s territory because ALLTEL would benefit from WWC’s engineering and planning personnel responsible for rolling out WWC’s GSM overlay. The Applicants conclude that the proposed transaction has the potential to benefit not only the Applicants’ existing subscribers, but also the subscribers of other carriers who would benefit from the expanded roaming agreements and services.⁴⁰⁶

8. Support for Homeland Security and Public Safety

155. In general, many commenters believe that ALLTEL and WWC continue to make progress in their E911 deployment, and that the capabilities of each company to implement and improve 911 services would be strengthened by this merger and thus provide for better public safety and encourage competition.⁴⁰⁷ For example, E911 coordinators in many states as well as police departments support the merger, stating that ALLTEL continues to work diligently towards meeting its obligations, as reflected in the deployment of Wireless Phase II service with 367 Public Safety Answering Points (“PSAPs”) and Wireless Phase I service with 745 PSAPs.⁴⁰⁸ In particular, they commend ALLTEL’s diligent and consistent implementation efforts for wireless E911 services.⁴⁰⁹ One Commenter also notes

⁴⁰⁵ Application, Exhibit 1 at 8. *See also supra* note 388.

⁴⁰⁶ *See* Application, Exhibit 1 at 8.

⁴⁰⁷ *See, e.g.*, Letter from Lindsey Thomas, Senior Vice President Governmental Relation, AGL Resources, to Marlene Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) (“AGL Resources Comment”); Nebraska State Senator Baker Comment at 1; Letter from Steve Marzolf, Virginia PSC Coordinator, Virginia Wireless E-911 Services Board, to Marlene Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) (“Virginia Wireless E-911 Services Board Comment”).

⁴⁰⁸ *See, e.g.*, Letter from Susan Nelson, E911 Coordinator, Alachua County Combined Communications Center, to Marlene Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) (“Alachua County Combined Communications Center Comment”); Letter from Lt. Tim Webb, Searcy Police Department, to Marlene Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) (“Searcy Police Department Comment”); Letter from Carmen M. Bryant, Administrator, CMRS Emergency Telephone Services Board, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) (“CMRS Emergency Telephone Services Board Comment”); Letter from Fred Stevens, Director, Hot Spring County 911, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) (“Hot Spring County 911 Comment”); Letter from Debbie O’Neill, Office of Emergency Services Administrator Assistant, Independence County Dispatch, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) (“Independence County OES Comment”); Letter from Susan MacFarlane, Maricopa Region 911 Administrator, City of Phoenix Fire Department, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) (“Maricopa Region 911 Comment”); Letter from Wes Ashley, Director, Martinsville-Henry County Communications Center, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) (“Martinsville-Henry County 911 Communications Center Comment”); Letter from William W. Willis, Director, Wayne County E-911, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) (“Wayne County E911 Comment”); Letter from John Benson, E911 Program Manager, Iowa Homeland Security and Emergency Management Division, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 14, 2005) (“Iowa Homeland Security and Emergency Management Division Comment”).

⁴⁰⁹ *See* CMRS Emergency Telephone Services Board Comment at 1; Maricopa Region 911 Comment at 1; Martinsville-Henry County 911 Communications Center Comment at 1; Letter from Richard N. Taylor, ENP, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1-2 (filed Mar. 9, 2005) (“Taylor ENP Comment”); Virginia Wireless E-911 Services Board Comment at 1; Wayne County E911 Comment at 1; Iowa Homeland Security and Emergency Management Division Comment at 1.

that the increased coverage area of the combined company would expand the areas in which subscribers can access E911.⁴¹⁰ This commenter claims that “one of the limitations of wireless E911 service is that it is coverage dependent,” since “[e]mergency service providers need ubiquitous E911 service from both wireline and wireless providers.”⁴¹¹ Thus, this commenter concludes that the combined company’s coverage would directly benefit the public interest and promoting the Commission’s statutory public safety mandate.⁴¹²

156. Many commenters representing States and municipalities in rural areas also express their support of the pending merger, because they believe that the merger would result in better coverage, improved reliability, enhanced call quality, and better implementation of E911 services.⁴¹³ Based on ALLTEL’s good faith implementation of E911 in the past, they believe that the merger would enhance the capability of the combined company to implement and improve E911 service, providing more ubiquitous E911 services to rural areas.⁴¹⁴

157. Nevertheless, we do not consider improved E911 deployment to be a benefit of this merger, as the Applicants have indicated that they may not comply with the Commission’s E911 handset penetration deadline at the end of this year.⁴¹⁵ We confirm our commitment to the E911 rules and remind the Applicants that they, like all carriers, are obligated to comply with our E911 rules, including the requirement that carriers electing a handset-based E911 solution achieve 95 percent penetration by the end of this year.⁴¹⁶ We will not hesitate to take enforcement action if this deadline is not met.

9. Conclusion

158. We find that the proposed transaction would result in many of the transaction-specific public interest benefits discussed above. Specifically, in those markets where there are no overlaps or

⁴¹⁰ See Taylor ENP Comment at 1.

⁴¹¹ *Id.*

⁴¹² See Taylor ENP Comment at 1.

⁴¹³ See, e.g., Nebraska State Senator Baker Comment at 1; Speaker Black of the North Carolina House Comment at 1.

⁴¹⁴ See, e.g., Senator Jay Scott, Kansas State Legislature Comment at 1; League of Nebraska Municipalities Comment at 1; North Carolina Representative McComas Comment at 1; Letter from James W. Rion, Esq., Project Manager, South Carolina CMRS E911, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Mar. 9, 2005) (“South Carolina CMRS E911 Comment”).

⁴¹⁵ See ALLTEL Communications, Inc., E-911 Eleventh Quarterly Report, CC Docket No. 94-102, at 2 (filed May 2, 2005) (stating that “ALLTEL may have difficulty complying with the December 31, 2005 requirement to have [location]-capable handsets deployed to 95 [percent] of its subscribers.”); Quarterly Report of Western Wireless Corporation on its Enhanced 911 Phase II Deployment, CC Docket No. 94-102, at 6-7 (filed May 2, 2005) (explaining that WWC had not determined whether it would be capable of meeting the 95 percent objective by December 31, 2005, and that it would keep the Commission informed regarding “the status of [its] efforts.”); see also Letter from Kathryn A. Zachem, counsel for ALLTEL Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 94-102 (filed July 28, 2005) (explaining that ALLTEL “expects to reach approximately 85 [percent] penetration by the end of 2005” and “anticipates it could take until the end of 2007 to reach the 95 [percent] penetration level. . . .”); Letter from Michele C. Farquhar, counsel for Western Wireless Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 94-102 (filed May 2, 2005) (discussing that meeting the 95 percent handset penetration deadline “will be a considerable challenge. . . .”).

⁴¹⁶ See 47 C.F.R. § 20.18(g)(1)(v).

where the overlaps are unlikely to cause competitive harm, we find that this transaction results in many public interest benefits and would allow the combined entity to more effectively compete with the nationwide carriers. However, while we find that this transaction is likely to result in transaction-specific public interest benefits and result in the combined company being a more effective competitor, we are not able on the basis of this record, using the sliding scale approach described above, to conclude that they are sufficiently large or imminent to outweigh the potential harms we have identified in certain individual markets. In those markets, therefore, remedies are necessary to reduce the harms.

V. CONDITIONS/REMEDIES

159. Using the analytical standards outlined above, we found that the Applicants' proposed transaction would pose significant competitive harms in a number of local mobile telephony markets. We conclude that, in these markets, these potential harms would not be outweighed by the proposed transaction's alleged public interest benefits. Thus, if our analysis ended at this point, we would have to conclude that the Applicants have not demonstrated that the proposed transaction, on balance, would serve the public interest, convenience, and necessity.

160. In its review of transactions, the Commission is empowered to impose conditions on the transfer of control of Commission licenses to mitigate the harms the transaction would likely create. Such conditions are tailored to address the specific harms anticipated based on economic analysis, examination of documents submitted in response to our inquiry, and public comment contained in the record of this proceeding. We conclude that the conditions set forth below alter the public interest balance of the proposed transaction by mitigating the potential public interest harms. Accordingly, with the conditions that we adopt in this Order, and assuming the Applicants' compliance with these conditions, we find that the Applicants have demonstrated that the proposed transfer of licenses would serve the public interest, convenience, and necessity.

161. We received a number of additional proposals during the comment period from commenters. As we discuss more fully below, we decline to impose additional conditions proposed by various commenters that we find are not tied to merger-specific harms.

A. Operating Unit Divestitures

162. In Part IV.B.4.b, we found that the transaction, as proposed, would be likely to cause significant competitive harm in certain geographic markets. Specifically, our analysis indicated that, in certain markets, there would not be an adequate number of competing carriers remaining, post-merger, with sufficient network and spectrum assets to deter anticompetitive behavior by the merged entity. We therefore condition this grant of authority to transfer control of licenses from WWC to ALLTEL on the divestiture of WWC operating units (including spectrum associated with such operating units, with the exception of PCS spectrum and assets used solely to operate WWC's GSM roaming business, including GSM roaming contracts and equipment). Because ALLTEL's spectrum holdings are not particularly high in the markets where we find a likelihood of competitive harm – spectrum holdings are under 45 megahertz – we do not require divestiture of WWC's PCS spectrum in these markets. Divestiture of WWC's Cellular spectrum is adequate to ensure that there would be a sufficient number of competitors with the presence and capacity to respond to a price increase by the merged company in the listed markets.

CMA	Name
CMA334	Arkansas 11 - Hempstead
CMA430	Kansas 3 - Jewell
CMA431	Kansas 4 - Marshall

CMA435	Kansas 8 - Ellsworth
CMA436	Kansas 9 - Morris
CMA437	Kansas 10 - Franklin
CMA441	Kansas 14 - Reno
CMA534	Nebraska 2 - Cherry
CMA535	Nebraska 3 - Knox
CMA536	Nebraska 4 - Grant
CMA537	Nebraska 5 - Boone
CMA538	Nebraska 6 - Keith
CMA539	Nebraska 7 - Hall
CMA540	Nebraska 8 - Chase
CMA541	Nebraska 9 - Adams
CMA542	Nebraska 10 - Cass

B. Operation of Divestitures

163. Divestiture of operating units including associated spectrum, with the exception of the PCS spectrum and GSM roaming business, as set forth above (the “Divestiture Assets”), will be accomplished in the following way. A management trustee (“Management Trustee”) shall be appointed to serve as manager of the Divestiture Assets until such assets are sold to third party purchasers or transferred to a divestiture trustee (who may be the same person as the Management Trustee). During the period in which the Management Trustee is in day-to-day control of the Divestiture Assets, the Applicants shall retain *de jure* control and shall have the sole power to market and dispose of the Divestiture Assets to third party buyers, subject to the Commission’s regulatory powers and process with respect to license transfers and assignments.

164. Accordingly, we require that, within three calendar days from the date of release of this Order, the Applicants file an appropriate application with the Bureau to transfer the Divestiture Assets into the trust with the Management Trustee, which application shall also include a request to approve the identity of the Management Trustee and the terms of the trust agreement. We further require that the Divestiture Assets shall be transferred to the trust in accordance with the terms of this Order no later than upon consummation of this proposed transaction, or within three calendar days after the Bureau approves the appropriate applications transferring the Divestiture Assets to the Management Trustee, if the Bureau does not act on such applications prior to the consummation of the proposed transaction. The trust agreement shall include all reasonable and necessary rights, powers, and authorities to permit the Management Trustee to perform his duties of day-to-day management of the Divestiture Assets, in the ordinary course of business, in order to permit expeditious divestiture.⁴¹⁷ The Management Trustee will serve at the cost and expense of the Applicants.

165. From the date of release of this Order, and until the divestitures ordered herein have been consummated, both the Applicants and the Management Trustee shall preserve, maintain, and continue to support the Divestiture Assets and shall take all steps to manage them in a way as to permit prompt

⁴¹⁷ The duties and responsibilities of the Management Trustee and the terms relating to how the Divestiture Assets are to be preserved during the term of the trust are more fully set forth in the DOJ Stipulation and the DOJ Proposed Final Judgment filed in the District Court for the District of Columbia on July 6, 2005. See discussion *supra* Part II.C.2. Except to the extent that any provisions herein conflict, we require that the Applicants and the Management Trustee fully comply with such provisions as if they were set forth herein *in extenso*.

divestiture. We require that the Applicants and the Management Trustee abide by the same provisions relating to the duties of the Management Trustee and the preservation of the Divestiture Assets as those contained in the Stipulation that the Applicants have entered into with the DOJ. We also require that, to the extent the Stipulation requires that the Applicants or the Management Trustee provide the DOJ with any reports or requires that the Applicants seek any approvals from the DOJ, the Applicants will also provide such reports to, and seek such approvals from, the Commission.

166. The Applicants will be allowed 120 days from the closing of their transaction or five days after notice of entry of the Final Judgment, whichever is later (the “Management Period”), to divest the Divestiture Assets prior to the second stage of the divestiture procedures becoming operative. Upon application by the Applicants to the Bureau, the Bureau may grant one or more extensions to the Management Period not to exceed 60 days in the aggregate to allow the Applicants further time to dispose of the Divestiture Assets.⁴¹⁸

167. Upon expiration of the Management Period, any Divestiture Assets that remain owned by the Applicants shall be irrevocably transferred to a divestiture trustee (the “Divestiture Trustee”), who shall be solely responsible for accomplishing disposal of the Divestiture Assets. The Applicants will submit to the Bureau, for approval, both the name of the proposed Divestiture Trustee and a draft of the trust agreement⁴¹⁹ to be entered into with said trustee together with an appropriate application to effect such transfer no later than 30 days prior to the expiration of the Management Period.⁴²⁰ The Divestiture Trustee will serve at the cost and expense of the Applicants and shall file monthly reports with the Bureau setting forth his efforts to divest the Divestiture Assets.

168. The Divestiture Trustee shall use its best efforts to sell the Divestiture Assets within six months of his appointment, subject to the Commission’s regulatory powers and process with respect to license transfers and assignments. The expeditious disposal of the Divestiture Assets during this period is of greater importance than the price that might otherwise be obtained for such assets. If a sale of any of the Divestiture Assets that consist of operating units and associated spectrum has not been effectuated within such period, the Divestiture Trustee shall file a report with the Bureau explaining the Divestiture Trustee’s efforts to sell the Divestiture Assets, the reasons why the Divestiture Assets have not been sold, and the Divestiture Trustee’s recommendations. The Commission will consider such report and will issue such further orders as it considers appropriate.

169. To the extent that any of the Divestiture Assets are included within the Stipulation and Final Judgment, we are willing to allow the Applicants to proceed to divest such assets in accordance with the terms of the agreements that are contained in those documents. To the extent that this Order requires divestitures in any market that are more extensive than those required by the DOJ, we require that the Applicants comply with this Order and completely dispose of the Divestiture Assets included in such markets. To the extent that we are requiring divestitures in additional markets to those of the DOJ, we will require the Applicants, prior to closing their transaction, to provide the Commission with

⁴¹⁸ If the Applicants have filed an application with the Commission seeking consent to the sale of any of the Divestiture Assets to a third party within the time periods set forth above but the Commission has not acted by the end of such period, such period will be extended and shall expire five days after the Commission’s action with respect to such Divestiture Assets.

⁴¹⁹ The Bureau will consult with the Office of General Counsel on matters relating to the name of the proposed divestiture trustee and the terms of the divestiture trust.

⁴²⁰ Except to the extent that any provisions herein conflict, the duties and responsibilities of the Divestiture Trustee are more fully set forth in the Final Judgment and we require that the Applicants and the Divestiture Trustee fully comply with such provisions as if they were set forth herein *in extenso*.

documentation substantially similar to that provided to the DOJ with respect to the additional divestitures that we require herein.

VI. CONCLUSION

170. We find that competitive harm is unlikely in most mobile telephony markets as a result of this transaction. As discussed above, however, with regard to sixteen local mobile telephony markets, our case-by-case analysis shows that likely competitive harms exceed likely benefits of the transaction, and we therefore require remedies to ameliorate the expected harm. We emphasize that our judgment in this matter does not mean that our analysis would be the same if additional consolidation in this sector were to be proposed in the future. Clearly, there is a point beyond which further consolidation would not be in the public interest. As we have here, when reviewing any future applications of this nature, we will look closely at the competitive circumstances pertaining at that time in the affected markets and will make a considered judgment based on careful weighing of all the relevant circumstances.

VII. ORDERING CLAUSES

171. Accordingly, having reviewed the applications, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the applications for the transfer of control of licenses from WWC to ALLTEL are GRANTED, to the extent specified in this order and subject to the conditions specified below.

172. IT IS FURTHER ORDERED that, pursuant to section 1.9030 of the Commission's rules, 47 C.F.R. § 1.9030, the application for the transfer of control of a *de facto* transfer lease authorization from WWC to ALLTEL is GRANTED, to the extent specified in this order and subject to the conditions specified below.

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

174. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.24 of the Commission's rules, 47 C.F.R. § 63.24, the applications to (1) transfer control from WWC to Widgeon of an international section 214 authorization and (2) assign from WWC to Widgeon an international section 214 to provide global facilities-based and resold international services are GRANTED, subject to the conditions applicable to international section 214 authorizations.

175. IT IS FURTHER ORDERED that the Commission's grant of the transfer of control of licenses from WWC to ALLTEL is conditioned upon the completion of the divestitures described in Part V of this Order.

176. IT IS FURTHER ORDERED that, with respect to roaming, ALLTEL may not prevent its customers from completing calls in the manner contemplated in 47 C.F.R. § 20.12(c), unless specifically requested to do so by a subscriber.

177. IT IS FURTHER 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 Petitions to Deny the transfer of control of licenses and authorizations from WWC to ALLTEL filed by Dobson Cellular

Systems, Inc. and American Cellular Corporation, Lamar County Cellular, Inc., and Rural Telecommunications Group, Inc. are DENIED for the reasons stated herein.

178. 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 order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A
COMMENTING PARTIES AND PETITIONERS

Petitions to Deny Filed by:

Dobson Cellular Systems, Inc.
Lamar County Cellular, Inc.

Comments in Opposition Filed by:

Rural Telecommunications Group, Inc.

Comments Filed by:

AGL Resources
Alachua County Combined Communications Center
Associated General Contractors of Ohio
Baker, Senator Tom, Nebraska State Legislature
Arkansas Attorney General Mike Beebe
Speaker James B. Black, North Carolina House of Representatives
City of Searcy Police Department
CMRS Emergency Telephone Services Board
E911 Program Manager Iowa Homeland Security and Emergency Management Division
Senator Jay Scott Emler, Kansas State Legislature
Georgia Chamber of Commerce
Grand Island Area Chamber of Commerce
The Greater Lansing Business Monthly
Hastings Area Chamber of Commerce
Hastings Economic Development Corporation
Dave Heineman, Governor of Nebraska
Hot Spring County 911
Independence County Office of Emergency Services
Kansas Grain & Feed Association
Commissioner Frank E. Landis, Nebraska Public Service Commission
The League of Nebraska Municipalities
Lorain County Chamber of Commerce
Maricopa Region 911 Office
Mayor John R. Marks, III, City of Tallahassee
Martinsville-Henry County 9-1-1 Communications Center
Representative Daniel Francis McComas, North Carolina General Assembly
Nebraska Farm Bureau Federation
Regions Financial Corp.
Rosebud Sioux Tribe Utility Commission

Rural Cellular Association
SC State CMRS E9-1-1
Richard N. Taylor, ENP
Turtle Mountain Band of Chippewa Indians
United States Cellular Corporation
Virginia Wireless E-911 Services Board
Wayne County E-911

Joint Opposition to Petitions to Deny and Comments Filed by:

ALLTEL Corporation and Western Wireless Corporation

Reply Comments Filed by:

Dobson Cellular Systems Inc.
Lamar County Cellular, Inc.
Rural Telecommunications Group, Inc.
United States Cellular Corporation

APPENDIX B
LIST OF MARKETS IDENTIFIED FOR FURTHER ANALYSIS BY INITIAL SCREEN

CEAs:

CEA	Name
CEA1920*	Dallas, TX-OK
CEA3760*	Kansas City, MO-KS
CEA4360	Lincoln, NE
CEA4400*	Little Rock-North Little Rock, AR
CEA6660	Rapid City, SD-MT-NE-ND
CEA9040	Wichita, KS-OK
CEA9514	Manhattan, KS
CEA9532	Grand Island, NE
CEA9533	North Platte, NE-CO
CEA9534	Norfolk, NE
CEA9535	Scottsbluff, NE-WY

CMAs:

CMA	Name
CMA172	Lincoln, NE
CMA334*	Arkansas 11 - Hempstead
CMA430	Kansas 3 - Jewell
CMA431*	Kansas 4 - Marshall
CMA435	Kansas 8 - Ellsworth
CMA436	Kansas 9 - Morris
CMA437	Kansas 10 - Franklin
CMA441	Kansas 14 - Reno
CMA512	Missouri 9 - Bates
CMA534	Nebraska 2 - Cherry
CMA535	Nebraska 3 - Knox
CMA536	Nebraska 4 - Grant
CMA537	Nebraska 5 - Boone
CMA538	Nebraska 6 - Keith
CMA539	Nebraska 7 - Hall
CMA540	Nebraska 8 - Chase
CMA541	Nebraska 9 - Adams
CMA542	Nebraska 10 - Cass
CMA658*	Texas 7 - Fannin

* Markets in which the combined company will hold 70 megahertz or more of spectrum.

APPENDIX C
MARKET-SPECIFIC ANALYSIS OF MARKETS INVOLVING DIVESTITURE

Set forth below is a detailed examination of each of the CMA markets in which we determined that the public interest would not be served by the proposed transfer of control of Western Wireless to ALLTEL and would likely lead to anticompetitive harms that require a remedy.

The market share and HHI information appearing herein are derived from our analysis of three sets of data: geographic service provision data, Local Number Portability (LNP) data, and data compiled in our Numbering Resource Utilization / Forecast (NRUF) database. Using these different sets of data to cross-check against each other, we find that they essentially corroborate each other. When combined with the other factors in our multi-factor, market-specific analysis, we have a reliable basis for drawing competition-related conclusions based on the totality of the circumstances that are present in a given market.

Arkansas 11 - Hempstead (CMA 334)

In terms of market share in this CMA (which has a population of more than 67,000), ALLTEL has [REDACTED] percent of the wireless subscribers, while Western Wireless has [REDACTED] percent of the subscribers. If ALLTEL and Western Wireless were merged in this market, the post-merger share would rise to [REDACTED] percent. The other carriers with market share in this CMA are Sprint, with [REDACTED] percent of the subscribers, and Nextel, with [REDACTED] percent. No other service providers have market share in this CMA.

The post-merger HHI in this CMA would be [REDACTED], constituting an increase of [REDACTED] from the current figure. These numbers reflect that there would be a major change in the character of competition after the merger.

ALLTEL and Western Wireless are the two cellular licensees in this CMA. The merged entity would hold a total of 70 MHz throughout the CMA. ALLTEL and Western Wireless have launched service in all four counties of the CMA and have network coverage throughout it as well. Further, ALLTEL had a total of [REDACTED] mobile-to-mobile “ports out” in 2004 and [REDACTED] to Western Wireless (reflecting [REDACTED] percent of ALLTEL’s ports). Western Wireless had a total of [REDACTED] mobile to mobile ports out in 2004 and [REDACTED] to ALLTEL (reflecting [REDACTED] percent of Western Wireless’s ports).

Sprint and Nextel hold or control lesser amounts of spectrum in all four counties in the CMA. Four other licensees – Cingular, Leap, T-Mobile, and Verizon – hold lesser amounts of spectrum in various counties in the Hempstead CMA. Sprint has launched service in each of the four counties in the CMA, and its network covers almost two thirds of the population, however its network covers less than 25 percent of the land area. Nextel also has network coverage in the CMA and it covers less than 40 percent of the population and less than 25 percent of the land area in the CMA.

Conclusion. The proposed merger would involve merging the [REDACTED] and [REDACTED] largest providers in the CMA in terms of market share. Whereas ALLTEL now faces [REDACTED] competitors of some size in the CMA, the combined entity would face [REDACTED] with a greater than [REDACTED] percent market share. Combined with the fact that ALLTEL would have approximately

[REDACTED] percent of the subscribers, we find it highly likely that ALLTEL would be able to profitably raise prices or lower the quality of wireless service. Therefore on the basis of the record, we conclude that there is a substantial risk that the transaction, without conditions, would lead to anticompetitive harms in this CMA.

Kansas 3 – Jewell (CMA430)

In the Kansas 3 - Jewell CMA (which has a population of about 52,000), ALLTEL has [REDACTED] percent of the wireless subscribers, while Western Wireless has [REDACTED] percent in terms of market share. Thus, if combined, the market share for the merged entity would be [REDACTED] percent. No other service providers have market share in this CMA.

ALLTEL and Western Wireless are the two cellular licensees in this CMA. In seven counties the merged entity would hold a total of 60 MHz, and in the eighth county in the CMA it would hold 70 MHz. ALLTEL and Western Wireless have launched service throughout the CMA and have network coverage throughout it as well. Further, ALLTEL had a total of [REDACTED] mobile-to-mobile ports out in 2004. Western Wireless had a total of [REDACTED] mobile to mobile ports out in 2004 and [REDACTED] to ALLTEL reflecting [REDACTED] percent of Western Wireless's ports.

Cingular, Nextel, Sprint, and Poplar PCS hold spectrum in all eight counties of the CMA. Three other carriers – Kansas Personal Communications, T-Mobile, and Westlink – hold lesser spectrum in various counties in the Jewell CMA. Also, Cingular and Westlink Communications have entered into a long-term *de facto* spectrum lease, and Cingular is leasing 30 MHz of spectrum in two counties and 20 MHz of spectrum in two counties to Westlink Communications. The network coverage by the other carriers is slight. None of the other carriers has a network that covers more than eight percent of the population or six percent of the land area.

Conclusion. The proposed transaction would [REDACTED] in this CMA. No other carrier appears to have the facilities in place to respond quickly and effectively to any anticompetitive actions by the merged entity. Therefore on the basis of the record, we conclude that there is a substantial risk that the transaction, without conditions, would lead to anticompetitive harms in this CMA.

Kansas 4 – Marshall (CMA 431)

In the Kansas 4 – Marshall CMA (which has a population of over 130,000), ALLTEL has [REDACTED] percent market share of the wireless subscribers, while Western Wireless has [REDACTED] percent; merging these entities in this market would lead to a post-merger share of [REDACTED] percent. The other carriers with market share in this CMA are Sprint, with [REDACTED] percent of the subscribers, T-Mobile with [REDACTED] percent, and Nextel, with [REDACTED] percent. No other service providers have market share in this CMA.

The post-merger HHI in the Marshall CMA would be [REDACTED], an increase of [REDACTED] from the current figure. These numbers reflect that there would be a major change in the character of competition after the merger.

ALLTEL and Western Wireless are the two cellular licensees in this CMA. The merged entity would hold between 60 to 70 MHz throughout the CMA (the levels vary by area in some counties due to partitioning of PCS licenses). ALLTEL and Western Wireless are launched throughout the CMA and their network coverage includes the entire CMA. ALLTEL had a total of [REDACTED] mobile-to-

mobile ports out in 2004 and [REDACTED] to Western Wireless (reflecting [REDACTED] percent of ALLTEL's ports). Western Wireless had a total of [REDACTED] mobile to mobile ports out in 2004 and [REDACTED] to ALLTEL (reflecting [REDACTED] percent of Western Wireless's ports).

Cingular, Nextel, Poplar PCS, Sprint, and T-Mobile hold spectrum in all of the counties in the CMA. Kansas Personal Communications and Westlink Communications hold spectrum in two counties each in this CMA. Nextel, Sprint, T-Mobile, and Westlink have network coverage of between 68 and 76 percent of the population, but less than 20 percent of the land area. However, only Sprint and T-Mobile have a market share greater than [REDACTED] percent.

Conclusion. The proposed transaction would combine the [REDACTED] and [REDACTED] largest competitors in the Kansas 4 – Marshall CMA in terms of subscribers. Among carriers with a market share greater than [REDACTED] in the CMA, the merger would reduce the number of facilities-based competitors from [REDACTED] to [REDACTED]. Significantly, however, in three of the CMA's counties (Marshall, Nemaha, and Pottawatomie) the merger would reduce the number of facilities-based competitors from three to two carriers. These three counties reflect 31 percent of the population in the CMA. In light of the small percentage of land area covered by the competitors' networks and the merged entity's [REDACTED] market share, we conclude there is a substantial risk that the proposed transaction, without conditions, would lead to anticompetitive harms in the Kansas 4 – Marshall CMA.

Kansas 8 – Ellsworth (CMA 435)

In this CMA (which has a population of about 133,000), ALLTEL has a market share of [REDACTED] percent of the wireless subscribers, while Western Wireless has [REDACTED] percent; if combined, the post-merger share would be [REDACTED] percent. The other carriers with market share in this CMA are Sprint, with [REDACTED] percent of the subscribers, and T-Mobile with [REDACTED] percent. No other service providers have market share in this CMA.

The post-merger HHI in the Ellsworth CMA would be [REDACTED] and the change from the current figure would be [REDACTED]. These numbers reflect that there would be a major change in the character of competition after the merger.

ALLTEL and Western Wireless hold the cellular licenses in the CMA. The merged entity would hold between 50 and 60 MHz of spectrum throughout the CMA (the levels vary by area in some counties due to partitioning of PCS licenses). ALLTEL and Western Wireless launched service in each county and provide network coverage throughout the CMA. ALLTEL had a total of [REDACTED] mobile-to-mobile ports out in 2004 and [REDACTED] to Western Wireless ([REDACTED] percent of ALLTEL's ports). Western Wireless had a total of [REDACTED] mobile to mobile ports out in 2004 and [REDACTED] to ALLTEL ([REDACTED] percent of Western Wireless's ports).

Five other licensees hold spectrum in all six counties of this CMA – Cingular, Nextel, Poplar PCS, Sprint and T-Mobile. Five service providers hold spectrum in fewer than all counties – Kansas Personal Communications, Leap, Nex Tex, NTCH, and Westlink Communications. Also Cingular and Westlink Communications have entered into a long-term *de facto* spectrum lease and Cingular is leasing 20 MHz to Westlink Communications in two counties in this CMA. Cingular, Sprint, T-Mobile, and Westlink Communications have network coverage of more than 50 percent of the population of the CMA, however none covers more than 30 percent of the land area.

Conclusion. As proposed, the merger would combine the [REDACTED] and [REDACTED] largest providers in this particular CMA, and the resulting entity would be [REDACTED] times larger

than the next largest provider. Among carriers with a market share greater than [REDACTED] percent in the CMA, the merger would reduce the number of facilities-based competitors from [REDACTED] to [REDACTED]. In three of the CMA's counties the merger would result in three or fewer competitors with network coverage. In fact, in two counties the merged entity would be the only wireless carrier with network coverage. Therefore, because of the [REDACTED] market share that would be held by the merged entity and the small land area covered by the networks of competitors in the CMA, we conclude that there is a substantial risk that the transaction, without conditions, would lead to anticompetitive harms in the Kansas 8 – Ellsworth CMA.

Kansas 9 – Morris (CMA 436)

In the Kansas 9 – Morris CMA (which has a population of about 60,000), ALLTEL has [REDACTED] percent of the wireless subscribers, while Western Wireless has [REDACTED] percent; if combined, the merged entity would have a post-merger market share of [REDACTED] percent. The other carriers with market share in this CMA are T-Mobile, with [REDACTED] percent of the subscribers, Sprint with [REDACTED] percent, and Nextel with [REDACTED] percent. No other service providers have market share in this CMA.

The post-merger HHI in the Morris CMA would be [REDACTED] and the change from the current figure would be [REDACTED]. These numbers reflect that there would be a major change in the character of competition after the merger.

ALLTEL and Western Wireless are the two cellular licensees in the CMA. The merged entity would hold between 50 and 60 MHz of spectrum throughout the CMA (the levels vary by area in some counties due to partitioning of PCS licenses). ALLTEL and Western Wireless have launched service in all five counties and their network coverage extends throughout the CMA. ALLTEL had a total of [REDACTED] mobile-to-mobile ports out in 2004 and [REDACTED] to Western Wireless (reflecting [REDACTED] percent of ALLTEL's ports). Western Wireless had a total of [REDACTED] mobile to mobile ports out in 2004 and [REDACTED] to ALLTEL ([REDACTED] percent of Western Wireless's ports).

Five other licensees hold spectrum in all five counties of the Morris CMA – Cingular, Nextel, Poplar PCS, Sprint, and T-Mobile. Four other service providers hold spectrum in fewer than all counties – Kansas Personal Communications, Leap, NTCH, and Westlink Communications. Five providers have network coverage in some portion of the CMA, and four of these carriers (Cingular, Nextel, Sprint, and T-Mobile) cover over 55 percent of the population. However, none of these providers covers more than 50 percent of the land area. The remaining carrier, Westlink Communications, covers less than six percent of the population and five percent of the land area of this CMA.

Conclusion. The proposed merger would combine the number [REDACTED] and [REDACTED] carriers in the Kansas 9 – Morris CMA, which then would be about [REDACTED] times the size of the [REDACTED] carriers with more than [REDACTED] percent of the market. Among carriers with a market share greater than [REDACTED] percent in the CMA, the merger would reduce the number of facilities-based competitors from [REDACTED] to [REDACTED]. The other carriers in this CMA have network coverage in only three of the five counties. Thus in 2 counties (Greenwood and Morris) the only two carriers with network coverage are merging. About 23 percent of the CMA's population lives in the counties where there would be a merger to monopoly. Although there are several carriers who have network coverage, the Applicants' combined market share and lack of any current alternative in two counties in the proposed merger causes us to conclude that there is a substantial risk that the transaction, without conditions, would lead to anticompetitive harm in this particular CMA.

Kansas 10 – Franklin (CMA 437)

In this CMA (which has a population of about 113,000), ALLTEL has [REDACTED] percent of the wireless subscribers, while Western Wireless has [REDACTED] percent of the subscribers; if combined, this would lead to a post-merger share of [REDACTED] percent. The other carriers with market share in this CMA are T-Mobile with [REDACTED] percent of the subscribers, Sprint with [REDACTED] percent, Nextel with [REDACTED] percent, and Cingular with [REDACTED] percent. No other service providers have market share in this CMA.

The post-merger HHI in the Franklin CMA would be [REDACTED] and the change from the current figure would be [REDACTED]. These numbers reflect that there would be a major change in the character of competition after the merger.

ALLTEL and Western Wireless are the two cellular licensees. The merged entity would hold between 50 and 60 MHz of spectrum throughout the CMA (the levels vary by area in some counties due to partitioning of PCS licenses). ALLTEL and Western Wireless are launched and provide network coverage in all eight counties of the CMA. ALLTEL had a total of [REDACTED] mobile-to-mobile ports out in 2004, with [REDACTED] to Western Wireless (reflecting [REDACTED] percent of ALLTEL's ports). Western Wireless had a total of [REDACTED] mobile to mobile ports out in 2004, with [REDACTED] to ALLTEL (reflecting [REDACTED] percent of Western Wireless's ports).

Four other licensees hold spectrum in all eight counties of the Franklin CMA – Cingular, Nextel, Sprint, and T-Mobile. Four other service providers hold spectrum in fewer than all counties – Kansas Personal Communications, Leap, NTCH, Poplar PCS, and Verizon. Cingular, Nextel, Sprint, T-Mobile and Verizon have network coverage in this CMA. Cingular covers over 95 percent of the population and land area, T-Mobile covers two thirds of the population and less than 40 percent of the land area, Nextel and Sprint cover less than 40 percent of the population and less than 20 percent of the land area, and Verizon covers less than seven percent of the population and less than four percent of the land area. However, despite the above network coverage, only [REDACTED] and [REDACTED] have market shares greater than [REDACTED] percent.

Conclusion. The merger as proposed would combine the [REDACTED] and [REDACTED] largest carriers in the CMA. Among carriers with a market share greater than [REDACTED] in the CMA, the merger would reduce the number of facilities-based competitors from [REDACTED] to [REDACTED]. More significantly, in three of the CMA's eight counties, the merged company would be the only provider with network coverage, and in another three counties there would be only two providers. These six counties contain 53 percent of the CMA population. In five counties, containing 45 percent of the CMA population, the merger would also reduce the number of carriers with network coverage to two or fewer. As a result, we conclude that there is a substantial risk that the transaction, without conditions, would lead to anticompetitive harms in this CMA.

Kansas 14 – Reno (CMA 441)

In the Kansas 14 - Reno CMA (which has a population of about 175,000), ALLTEL has [REDACTED] percent of the wireless subscribers, while Western Wireless has [REDACTED] percent of the subscribers; if combined, this would lead to a post-merger market share of [REDACTED] percent. The other carriers with market shares in this CMA are Sprint, with [REDACTED] percent of the subscribers T-Mobile with [REDACTED] percent, Nextel with [REDACTED] percent, Leap with

[REDACTED] percent, and Cingular with [REDACTED] percent. No other service providers have market share in this CMA.

The post-merger HHI in this CMA would be [REDACTED], constituting an increase of [REDACTED] from the current figure. These numbers reflect that there would be a major change in the character of competition after the merger.

ALLTEL and Western Wireless are the two cellular licensees. The merged entity would hold between 50 and 60 MHz of spectrum throughout the CMA. ALLTEL and Western Wireless have launched service and provide network coverage in all six counties of the CMA. ALLTEL had a total of [REDACTED] mobile-to-mobile ports out in 2004 and [REDACTED] to Western Wireless (reflecting [REDACTED] percent of ALLTEL's ports). Western Wireless had a total of [REDACTED] mobile to mobile ports out in 2004 and [REDACTED] to ALLTEL ([REDACTED] percent of Western Wireless's ports).

Five other licensees hold spectrum in all six counties of Kansas 14 – Reno Cingular, Nextel, Poplar PCS, Sprint, and T-Mobile. Four other licensees hold spectrum in fewer than all counties – Kansas Personal Communications, Leap, NTCH, and Westlink Communications. Cingular, Leap, Nextel, Sprint, T-Mobile, and Westlink Communications have network coverage in this CMA. Nextel, Sprint, and T-Mobile cover between 50 and 75 percent of the population and only between 15 and 25 percent of the land area of the CMA. Cingular covers less than 45 percent of the population and less than 35 percent of the land area while Westlink covers less than 35 percent of the population and ten percent of the land area. Finally, Leap covers less than 15 percent of the population and less than two percent of the land area. However, despite the above coverage, only [REDACTED] has a market share greater than two percent.

Conclusion. The merger as proposed would combine the [REDACTED] and [REDACTED] largest providers in the Kansas 14 – Reno CMA. Among carriers with a market share greater than [REDACTED] percent in the CMA, the merger would reduce the number of facilities-based competitors from [REDACTED] to [REDACTED]. Additionally, in three counties the merger would decrease the number of carriers with network coverage to three or fewer. These three counties (Kingman, Cowley, and Harper) reflect 29 percent of the CMA population. Although there are a significant number of competitors in part of the CMA, that is not true throughout the CMA. As a result, we conclude that there is a substantial risk that the transaction, without conditions, would lead to anticompetitive harms in the Kansas 14 – Reno CMA.

Nebraska 2 – Cherry (CMA 534)

In the Nebraska 2 - Cherry CMA (which has a population of about 30,000), ALLTEL has [REDACTED] percent of the wireless subscribers, while Western Wireless has [REDACTED] percent; if combined as proposed, the merged entity would have a [REDACTED] percent market share. No other service providers have market share in this CMA.

ALLTEL and Western Wireless are the two cellular licensees. After the transaction, the merged entity would hold a total of 55 MHz of spectrum throughout the CMA. ALLTEL and Western Wireless are launched in all eight counties of the CMA and have network coverage in each county as well. Further, ALLTEL had a total of [REDACTED] mobile-to-mobile ports out in 2004 and [REDACTED] to Western Wireless ([REDACTED] percent of ALLTEL's ports). Western Wireless had a total of [REDACTED] mobile to mobile ports out in 2004.

Five carriers hold spectrum in every county in the CMA – Cingular, NE Colorado, Nextel, Sprint, and T-Mobile, although T-Mobile only holds 5 MHz of spectrum throughout the CMA. Hamilton Wireless, PinPoint Communications, and Verizon hold spectrum in fewer than all counties. Also, Cingular and NE Colorado have entered into a spectrum manager lease agreement, and Cingular is leasing 30 MHz of spectrum to NE Colorado in one county in this CMA. Only NE Colorado and Verizon have network coverage in this CMA. The NE Colorado network reaches about ten percent of the population and less than half a percent of the land area, while Verizon has coverage that reaches less than one percent of the population.

Conclusion. The transaction as proposed would effectively lead to [REDACTED] in this CMA. No other carrier appears to have the facilities in place to respond quickly and effectively to any anticompetitive actions by the merged entity. Thus, we conclude on the basis of the record that there is a substantial risk that the transaction, without conditions, would lead to anticompetitive harms in the Nebraska 2 – Cherry CMA.

Nebraska 3 – Knox (CMA 535)

In the Nebraska 3 – Knox CMA (which has a population of about 117,000), ALLTEL has [REDACTED] percent of the wireless subscribers, while Western Wireless has [REDACTED] percent of the subscribers; combining these two entities would lead to a post-merger share of [REDACTED] percent. The other carriers with market share in this CMA are Sprint, with [REDACTED] percent of the subscribers, and NE Colorado with [REDACTED] percent. No other service providers have market share in this CMA.

The post-merger HHI in the CMA would be [REDACTED] and the change from the current figure would be [REDACTED]. These numbers reflect that there would be a major change in the character of competition after the merger.

ALLTEL and Western Wireless are the two cellular licensees. After the transaction, the merged entity would hold a total of 55 to 60 MHz of spectrum throughout the CMA. ALLTEL and Western Wireless have launched service in all eleven counties of the CMA and have network coverage in each county as well. Further, ALLTEL had a total of [REDACTED] mobile-to-mobile ports out in 2004 and [REDACTED] to Western Wireless ([REDACTED] percent of ALLTEL's ports). Western Wireless had a total of [REDACTED] mobile to mobile ports out in 2004 and [REDACTED] to ALLTEL ([REDACTED] percent of Western Wireless's ports).

Four carriers hold spectrum in every county in the CMA – Cingular, Nextel, Sprint, and T-Mobile, although T-Mobile only holds 5 MHz of spectrum in 9 of the 11 counties in this CMA. Iowa Wireless, Leap, Long Lines, Midwest Wireless, NE Colorado, USCC, and Verizon hold spectrum in at least two counties in this CMA. Also, Cingular and NE Colorado have entered into a spectrum manager lease agreement, and Cingular is leasing 10 MHz of spectrum to NE Colorado in one county in this CMA. NE Colorado, Nextel, Sprint, and T-Mobile are launched in the CMA, but the network coverage of each of these four carriers is less than 46 percent of the CMA and less than 20 percent of the land area. Two additional carriers have network coverage reaching less than five percent of the population and seven percent of the land area.

Conclusion. The merger as proposed involves merging the [REDACTED] and [REDACTED] largest providers in the CMA in terms of subscribers, and would lead to a [REDACTED] in this CMA. No other carrier appears to have the facilities in place to respond quickly and effectively to any anticompetitive actions by the merged entity. Thus, we conclude on the basis of the record that there is a

substantial risk that the transaction, without conditions, would lead to anticompetitive harms in the Nebraska 3 - Knox CMA.

Nebraska 4 – Grant (CMA 536)

In the Nebraska 4 - Grant CMA (which has a population of about 34,000), ALLTEL has [REDACTED] percent of the wireless subscribers, while Western Wireless has [REDACTED] percent; combining these two entities would lead to a post-merger share of [REDACTED] percent. No other service providers have market share in this CMA.

ALLTEL and Western Wireless are the cellular licensees. After the transaction, the merged entity would hold a total of 55 to 60 MHz of spectrum throughout the CMA. ALLTEL has launched service in all thirteen counties of the CMA and has network coverage in each county as well. Western Wireless has launched service in all but one county, and has network coverage in some or all of the ten counties in the CMA. Further, ALLTEL had a total of [REDACTED] mobile-to-mobile ports out in 2004 and [REDACTED] to Western Wireless (reflecting [REDACTED] percent of ALLTEL's ports). Western Wireless had a total of [REDACTED] mobile to mobile ports out in 2004 and [REDACTED] ALLTEL ([REDACTED] percent of Western Wireless's ports).

Four service providers also hold spectrum in all of the counties in this CMA – NE Colorado, Nextel, Sprint, and T-Mobile, although T-Mobile holds only 5 MHz of spectrum throughout the CMA. Six carriers hold spectrum in less than 13 counties in this CMA – Cingular, Eezinet Corporation, Hamilton Wireless, PinPoint Communications, Tracy Corporation II, and Verizon. Also, Cingular and NE Colorado have entered into a spectrum manager lease agreement, and Cingular is leasing 30 MHz of spectrum to NE Colorado in three counties in this CMA. NE Colorado, Nextel, Sprint, and T-Mobile have network coverage in this CMA, however none covers more than 20 percent of the population or more than 6 percent of the land area. Of these carriers [REDACTED] has a market share greater than [REDACTED] percent.

Conclusion. The transaction as proposed effectively would lead to a [REDACTED] in this CMA. No other carrier appears to have the facilities in place to respond quickly and effectively to any anticompetitive actions by the merged entity. Thus, we conclude on the basis of the record that there is a substantial risk that the transaction, without conditions, would lead to anticompetitive harms in the Nebraska 4 – Grant CMA.

Nebraska 5 – Boone (CMA 537)

In the Nebraska 5 – Boone CMA (which has a population of about 150,000), ALLTEL has [REDACTED] percent of the wireless subscribers, while Western Wireless has [REDACTED] percent of the subscribers; if combined, the merged entity would have a post-merger share of [REDACTED] percent. The other carriers with market share in this CMA are Sprint, with [REDACTED] percent of the subscribers, NE Colorado with [REDACTED] percent, and Nextel with [REDACTED] percent. No other service providers have market share in this CMA.

The post-merger HHI in the Boone CMA would rise to [REDACTED], an increase of [REDACTED] from the current figure. These numbers reflect that there would be a major change in the character of competition after the merger.

ALLTEL and Western Wireless are the cellular licensees. After the transaction, the merged entity would hold a total of 55 to 60 MHz of spectrum throughout the CMA (the levels vary by area in some counties due to partitioning of PCS licenses). ALLTEL and Western Wireless have launched service in all ten counties of the CMA and have network coverage in each county as well. Further, ALLTEL had a total of [REDACTED] mobile-to-mobile ports out in 2004 and [REDACTED] to Western Wireless ([REDACTED] percent of ALLTEL's ports). Western Wireless had a total of [REDACTED] mobile to mobile ports out in 2004 and [REDACTED] to ALLTEL ([REDACTED] percent of Western Wireless's ports).

Four carriers – Cingular, Nextel, Sprint, and T-Mobile – hold spectrum in all ten counties of the CMA, although T-Mobile holds only 5 MHz in three counties. Hamilton Wireless, Leap, NE Colorado, USCC, and Verizon hold spectrum in fewer than all counties. Also, Cingular and NE Colorado have entered into a spectrum manager lease agreement, and Cingular is leasing 30 MHz of spectrum to NE Colorado in one county and 10 MHz of spectrum in another county in this CMA. Eight other carriers have network coverage in this CMA (Cingular, Leap, NE Colorado, Nextel, Sprint, T-Mobile, USCC, and Verizon), but the network coverage of most of these carriers is less than ten percent of both the population and the land area of the CMA. Sprint and Nextel both have network coverage greater than 60 percent of the CMA population, and less than 40 percent of the land area.

Conclusion. The merger as proposed would involve merging the [REDACTED] and [REDACTED] largest providers in the CMA in terms of subscribers. Furthermore, the transaction would lead to [REDACTED] carrier having an [REDACTED] market share in this CMA. Among carriers with a market share greater than [REDACTED] percent in the CMA, the merger would reduce the number of facilities-based competitors from [REDACTED] to [REDACTED]. Other carriers do not have facilities or coverage in a large percentage of the CMA. Thus, we conclude on the basis of the record that there is a substantial risk that the transaction, without conditions, would lead to anticompetitive harms in the Nebraska 5 - Boone CMA.

Nebraska 6 – Keith (CMA 538)

In the Nebraska 6 – Keith CMA (which has a population of about 113,000), ALLTEL has [REDACTED] percent of the wireless subscribers, while Western Wireless has [REDACTED] percent of the subscribers; combining these entities would lead to a post-merger share of [REDACTED]. The other carriers with market share in this CMA are NE Colorado, with [REDACTED] percent of the subscribers, and Sprint with [REDACTED] percent. No other service providers have market share in this CMA.

The post-merger HHI in this CMA would be [REDACTED], an increase of [REDACTED] from the current figure. These numbers reflect that there would be a major change in the character of competition after the merger.

ALLTEL and Western Wireless are the two cellular licensees. They hold a total of 55 MHz of spectrum throughout the CMA. ALLTEL and Western Wireless have launched and provide network coverage in all five counties of the CMA. Further, ALLTEL had a total of [REDACTED] mobile-to-mobile ports out in 2004 and [REDACTED] to Western Wireless reflecting [REDACTED] percent of ALLTEL's ports. Western Wireless had a total of [REDACTED] mobile to mobile ports out in 2004 and [REDACTED] to ALLTEL reflecting [REDACTED] percent of Western Wireless's ports.

Six service providers also hold spectrum in all of the counties in this CMA – Cingular, Hamilton Wireless, NE Colorado, Nextel, Sprint, and T-Mobile, although T-Mobile holds only 5 MHz of spectrum throughout the CMA. Pinpoint Communications and Verizon hold spectrum in less than 5 counties in this

CMA. Also, Cingular and NE Colorado have entered into a spectrum manager lease agreement, and Cingular is leasing 30 MHz of spectrum to NE Colorado in three counties in this CMA. NE Colorado, Nextel, PinPoint, Sprint, T-Mobile, and Verizon have network coverage in this CMA. However only NE Colorado, Sprint, and T-Mobile's networks cover more than 25 percent of the population and none cover more than 12 percent of the CMA land area. Of these carriers only [REDACTED] has a market share greater than [REDACTED] percent.

Conclusion. The proposed merger would involve merging the [REDACTED] and [REDACTED] largest providers in the CMA in terms of subscribers. Furthermore, the transaction would lead to one carrier having an [REDACTED] market share in this CMA. Among carriers with a market share greater than [REDACTED] percent in the CMA, the merger would reduce the number of facilities-based competitors from [REDACTED] to [REDACTED]. In three of the CMA's counties the merger would result in three or fewer competitors providing network coverage. These counties reflect 32 percent of the CMA population. Although several carriers hold spectrum and have some network coverage in this CMA, one competitor has entered the CMA sufficiently to be an effective discipline on anticompetitive activity by the merged entity. Therefore, on the basis of the record, we conclude that there is a substantial risk that the transaction, without conditions, would lead to anticompetitive harms in the Nebraska 6 - Keith CMA.

Nebraska 7 – Hall (CMA 539)

In the Nebraska 7 - Hall CMA (which has a population of about 94,000), ALLTEL has [REDACTED] percent of the wireless subscribers, and Western Wireless has [REDACTED] percent of the subscribers; combining these entities would lead to a post-merger share of [REDACTED] percent. The other carriers with market share in this CMA are Sprint, with [REDACTED] percent of the subscribers, NE Colorado with [REDACTED] percent, and Nextel with [REDACTED] percent. No other service providers have market share in this CMA.

The post-merger HHI in this CMA would be [REDACTED], an increase of [REDACTED] from the current figure. These numbers reflect that there would be a major change in the character of competition after the merger.

ALLTEL and Western Wireless are the two cellular licensees. After the transaction the merged entity would hold a total of 55 MHz of spectrum throughout the CMA. ALLTEL and Western Wireless have launched in all four counties of the CMA and they provide network coverage throughout the CMA. Further, ALLTEL had a total of [REDACTED] mobile-to-mobile ports out in 2004 and [REDACTED] to Western Wireless reflecting [REDACTED] percent of ALLTEL's ports. Western Wireless had a total of [REDACTED] mobile to mobile ports out in 2004 and [REDACTED] to ALLTEL reflecting [REDACTED] percent of Western Wireless's ports.

Six service providers also hold spectrum in all of the counties in this CMA -- Cingular, NE Colorado, Nextel, Sprint, T-Mobile, and Verizon, although T-Mobile holds 5 MHz of spectrum throughout the CMA. Hamilton Wireless, Leap, and USCC hold spectrum in two counties each. Also, Cingular and NE Colorado have entered into a spectrum manager lease agreement, and Cingular is leasing 30 MHz of spectrum to NE Colorado in two counties and 20 MHz in two counties in this CMA. NE Colorado, Nextel, and Sprint provide network coverage that reaches upward of 90 percent of the population and two-thirds of the land area in the CMA. However, the largest competitor to the Applicants, [REDACTED], has just over a [REDACTED] percent market share.

Conclusion. The proposed transaction would combine the [REDACTED] and [REDACTED] largest providers in the CMA in terms of subscribers, and the merged entity would have [REDACTED] percent of the subscribers. Among carriers with a market share greater than [REDACTED] percent in the CMA, the merger would reduce the number of facilities-based competitors from [REDACTED] to [REDACTED]. As a result of the [REDACTED] market share of the merged entity and the relative lack of competition to gain subscribers from other providers, we conclude, on the basis of the record, that there is a substantial risk that the transaction, without conditions, would lead to anticompetitive harms in the Nebraska 7 - Hall CMA.

Nebraska 8 – Chase (CMA 540)

In the Nebraska 8 - Chase CMA (which has a population of about 56,500), ALLTEL has [REDACTED] percent of the wireless subscribers, while Western Wireless has [REDACTED] percent of the subscribers; combining these entities would lead to a post-merger share of [REDACTED] percent. The only other carrier with market share in this CMA is PinPoint Communications with [REDACTED] percent of the subscribers. No other service providers have market share in this CMA.

The post-merger HHI in the Chase CMA would be [REDACTED], constituting an increase of [REDACTED] from the current figure. These numbers reflect that there would be a major change in the character of competition after the merger.

ALLTEL and Western Wireless are the two cellular licensees. They hold a total of 60 MHz of spectrum throughout the CMA. ALLTEL and Western Wireless have launched service in all 12 counties of the CMA and have network coverage throughout the CMA. Further, ALLTEL had a total of [REDACTED] mobile-to-mobile ports out in 2004 and [REDACTED] to Western Wireless (reflecting [REDACTED] percent of ALLTEL's ports). Western Wireless had a total of [REDACTED] mobile-to-mobile ports out in 2004 and [REDACTED] to ALLTEL ([REDACTED] percent of Western Wireless's ports).

Six service providers also hold lesser amounts of spectrum in all of the counties in this CMA – Cingular, NE Colorado, Nextel, PinPoint Communications, Sprint, and T-Mobile, although T-Mobile holds only 5 MHz of spectrum throughout the CMA. Also Hamilton Wireless holds spectrum in one county out of 12 in the CMA. Pinpoint Communications has a network that covers approximately 36 percent of the population and 23 percent of land area of the CMA. NE Colorado, Nextel, Sprint, and T-Mobile have networks that cover less than 20 percent of the population and 12 percent of the land area.

Conclusion. The proposed transaction would combine the [REDACTED] and [REDACTED] largest providers in the CMA in terms of subscribers. Among carriers with a market share greater than [REDACTED] percent in the CMA, the merger would reduce the number of facilities-based competitors from [REDACTED] to [REDACTED]. The merged entity would have [REDACTED] percent of the subscribers in the CMA and 11 of 12 counties, reflecting 88 percent of the population, would have three or fewer providers. Further, it does not appear that any other carrier has sufficient facilities in place to respond quickly and effectively to anticompetitive actions by the merged entity. Therefore we conclude on the basis of the record that there is a substantial risk that the transaction, without conditions, would lead to anticompetitive harms in the Nebraska 6 - Keith CMA.

Nebraska 9 – Adams (CMA 541)

In the Nebraska 9 - Adams CMA (which has a population of about 82,000), ALLTEL has [REDACTED] percent of the wireless subscribers, while Western Wireless has [REDACTED] percent of the subscribers; combining these entities would lead to a post-merger share of [REDACTED] percent. The other carriers with subscribers in this CMA are Sprint, with [REDACTED] percent of the subscribers, NE Colorado with [REDACTED] percent, and Nextel with [REDACTED] percent. No other service providers have market share in this CMA.

The post-merger HHI in the Adams CMA would be [REDACTED] and the change from the current figure would be [REDACTED]. These numbers reflect that there would be a major change in the character of competition after the merger.

ALLTEL and Western Wireless are the two cellular licensees. They hold a total of 55 MHz of spectrum throughout the CMA. ALLTEL and Western Wireless have launched service in all eight counties of the CMA and have network coverage throughout the CMA. Further, ALLTEL had a total of [REDACTED] mobile-to-mobile ports out in 2004 and [REDACTED] to Western Wireless ([REDACTED] percent of ALLTEL's ports). Western Wireless had a total of [REDACTED] mobile-to-mobile ports out in 2004 and [REDACTED] to ALLTEL ([REDACTED] percent of Western Wireless's ports).

Four service providers also hold spectrum in all of the counties in this CMA – Cingular, Nextel, Sprint, and T-Mobile, although T-Mobile holds only 5 MHz of spectrum throughout the CMA. Leap, NE Colorado, PinPoint, USCC, and Verizon hold lesser amounts of spectrum in half of the counties. Also, Cingular and NE Colorado have entered into a spectrum manager lease agreement, and Cingular is leasing 30 MHz of spectrum to NE Colorado in one county in the CMA. NE Colorado, Nextel, Sprint, and T-Mobile have network coverage in portions of the CMA, but only NE Colorado's network reaches even half of the CMA population. The other three carriers' networks reach between 35 to 40 percent of the population, and none of the other four carriers reaches more than just over 20 percent of the land of the CMA.

Conclusion. The proposed transaction would merge the [REDACTED] and [REDACTED] largest providers in the CMA in terms of subscribers. The merged entity would have [REDACTED] percent of the subscribers in the CMA, and no other carrier holds greater than a [REDACTED] percent market share. In six of the eight counties, reflecting 54 percent of the CMA population, this transaction would create a monopoly in terms of network coverage. It does not appear that any other carrier has sufficient facilities in place to respond quickly and effectively to anticompetitive actions by the merged entity. Therefore, on the basis of the record, we conclude that there is a substantial risk that the transaction, without conditions, would lead to anticompetitive harms in the Nebraska 9 – Adams CMA.

Nebraska 10 – Cass (CMA 542)

In the Nebraska 10 - Cass CMA (which has a population of about 87,000), ALLTEL has [REDACTED] percent of the wireless subscribers, while Western Wireless has [REDACTED] percent of the subscribers; combining these two entities would lead to a post-merger share of [REDACTED] percent. The other carriers with subscribers in this CMA are Sprint, with [REDACTED] percent of the subscribers, Nextel with [REDACTED] percent and Cingular with [REDACTED] percent. No other service providers have market share in this CMA.

The post-merger HHI in the Cass CMA would be [REDACTED] and the change from the current figure would be [REDACTED]. These numbers reflect that there would be a major change in the character of competition after the merger.

ALLTEL and Western Wireless are the two cellular licensees. They hold a total of 55 to 60 MHz of spectrum throughout the CMA. ALLTEL and Western Wireless have launched service in all seven counties of the CMA and have network coverage throughout the CMA. ALLTEL had a total of [REDACTED] mobile-to-mobile ports out in 2004 and [REDACTED] to Western Wireless ([REDACTED] percent of ALLTEL's ports). Western Wireless had a total of [REDACTED] mobile-to-mobile ports out in 2004 and [REDACTED] to ALLTEL ([REDACTED] percent of Western Wireless's ports).

Seven service providers also hold lesser amounts of spectrum in all seven counties in this CMA – Cingular, Leap, Nextel, Sprint, T-Mobile, and USCC, although T-Mobile holds only 5 MHz of spectrum in three of eight counties, and Verizon holds spectrum in five of the seven counties. All of the carriers holding spectrum have launched service in at least one county and have some network coverage in the CMA. Only Nextel's network reaches more than 50 percent of the CMA population, and slightly more than 40 percent of the land area although it has less than [REDACTED] percent of the subscribers. The remaining carriers' networks cover less than 35 percent of the population and less than 20 percent of the land area of this CMA.

Conclusion. The proposed transaction would involve merger of the [REDACTED] and [REDACTED] largest providers in the CMA in terms of subscribers. The merged entity would have [REDACTED] percent of the subscribers in the CMA, and no other carrier holds greater than a [REDACTED] percent market share. In six of the seven counties, reflecting 72 percent of the CMA population, this transaction would result in three or fewer carriers with network coverage. In four of those counties, the transaction would represent a merger to monopoly. It does not appear that any other carrier has sufficient facilities in place to respond quickly and effectively to anticompetitive actions by the merged entity. Therefore, on the basis of the record, we conclude that there is a substantial risk that the transaction, without conditions, would lead to anticompetitive harms in the Nebraska 10 – Cass CMA.

APPENDIX D
MARKET-SPECIFIC ANALYSIS OF MARKETS NOT INVOLVING DIVESTITURE

Lincoln, NE (CMA 172)

In the Lincoln, Nebraska, CMA (which consists of a single county and has a population of about 250,000), ALLTEL has [REDACTED] percent of the wireless subscribers while Western Wireless has [REDACTED] percent; if these two entities were combined, this would lead to a post-merger share of [REDACTED] percent. There are six other carriers in this CMA with market share greater than [REDACTED] percent. The other carriers with market share in this CMA are Sprint, with [REDACTED] percent of the subscribers, Cingular with [REDACTED] percent, Leap with [REDACTED] percent, and Nextel with [REDACTED] percent. ALLTEL's and Western Wireless's market shares have [REDACTED] from the previous six month period by approximately [REDACTED] and [REDACTED] percent respectively, and we believe that given structural changes in this and adjacent markets, that it is likely that the combined entity's market share will continue to [REDACTED] in the future.

The post-merger HHI in the CMA would be [REDACTED], with an increase of [REDACTED] from the current figure. Based on the additional analysis below, however, we conclude that the level of competition in this CMA, post-transaction, would be more robust than the HHI figures suggest for several reasons.

ALLTEL and Western Wireless are the cellular licensees. The merged entity would hold 50 MHz throughout the CMA. ALLTEL and Western Wireless have launched service and have network coverage throughout the CMA. ALLTEL had a total of [REDACTED] mobile-to-mobile ports out in 2004 and [REDACTED] to Western Wireless (reflecting [REDACTED] percent of ALLTEL's ports). Western Wireless had a total of [REDACTED] mobile to mobile ports out in 2004 and [REDACTED] to ALLTEL ([REDACTED] percent of Western Wireless's ports).

Six additional licensees hold spectrum throughout the entire CMA. Cingular holds 45 MHz throughout the CMA (almost as much as the Applicants combined), Sprint holds 30 MHz, Leap holds 15 MHz, T-Mobile holds 10 MHz, USCC holds 10 MHz, and Verizon holds 10 MHz.⁴²¹ All of the licensees in the market, with the exception of Verizon, have network coverage in this CMA. These six licensees' networks cover more than 90 percent of the population of the CMA. The four nationwide carriers (Cingular, Nextel, Sprint, and T-Mobile) have networks that cover 37 to 86 percent of the land area of the CMA. The two other carriers, Leap and USCC, cover approximately 25 percent and 45 percent of the land area, respectively. Also, USCC entered the Lincoln CMA in July 2004,⁴²² and we believe it could become an effective competitor to the merged entity in a relatively short time frame. USCC offers service in the Omaha CMA (north and east of Lincoln) and it has [REDACTED] market share and coverage in Iowa. Further, USCC is known primarily as a regional carrier that builds out and serves rural markets. For these reasons, we believe USCC's coverage and market share in the Lincoln CMA will grow over time.

⁴²¹ Throughout this analysis, we do not report spectrum holdings for Nextel. Nextel's spectrum has been licensed in a fashion different than that for the other carriers considered here, its spectrum holdings are significantly more difficult to identify for individual local areas, and its holdings may be changing in the relatively near future as a result of other regulatory proceedings. Nationwide, Nextel holds an average of almost 20 megahertz of bandwidth. For large markets, we presume that Nextel's capacity is 20 megahertz. For smaller markets, we judge Nextel's potential competitive influence by reviewing coverage maps and current market shares.

⁴²² See USCC Corporate Press Release, U.S. Cellular Enters Lincoln Market, July 13, 2004.

Despite the number of firms in this market that have networks that cover the majority of the population, ALLTEL and Western Wireless continue to hold a [REDACTED] share of the market. The persistence of the two firms' first-mover advantage may be, at least in part, explained by their [REDACTED] market shares in adjacent CMAs. Customers demand coverage over a combination of CMAs in eastern and central Nebraska,⁴²³ and customers in the Lincoln CMA subscribe to either ALLTEL or Western Wireless in order to obtain facilities-based coverage in adjacent CMAs. There are nine CMA markets in eastern and central Nebraska for which divestiture is being required, and these nine markets are to be sold to a single buyer.⁴²⁴ Given that many customers demand coverage over a combination of CMAs, and the other current licensees in the Lincoln, NE CMA have already invested in that market, we believe it is likely that one of the other current licensees will purchase these divestiture assets in the neighboring markets. If one of these other licensees from the Lincoln, NE CMA purchases these divestiture assets, it is likely that this carrier would gain market share rapidly in the Lincoln CMA because it will be able to offer extensive facilities-based coverage throughout eastern and central Nebraska.

Conclusion. Although the transaction would lead to a [REDACTED] market share for the merged entity, six other carriers, including four nationwide carriers have extensive network coverage that should enable them to respond effectively to anticompetitive actions by the merged entity. The proposed transaction, which would combine the [REDACTED] and [REDACTED] largest carriers in terms of market share, would only decrease the number of carriers with a greater than [REDACTED] percent share from [REDACTED] to [REDACTED]. Further, USCC entered the market only a year ago, and may have eroded the Applicants' market share. Also six out of seven licensees have networks that cover more than 90 percent of the CMA population. These carriers also appear to have sufficient capacity to absorb customers if the merged entity were to raise price or reduce service following the transaction. In addition, while Verizon does not have network coverage in the Lincoln CMA, it holds spectrum throughout and has already launched service in adjacent CMAs; it would have an incentive to build out its network and launch service if the Lincoln CMA became less competitive. Because several carriers have the ability to respond to anticompetitive actions by the merged entity, it appears that the transaction is not likely to result in competitive harms in the Lincoln, NE, CMA. Finally, the divestitures required in the nine Nebraska CMAs may also increase the competitiveness of the Lincoln CMA. If one of the carriers that holds a license in this CMA acquires the Nebraska divestiture markets, it may become a more effective competitor to the merged entity because it will be able to offer extensive facilities-based coverage throughout eastern and central Nebraska.

Missouri 9 – Bates (CMA 512)

In the Missouri 9 – Bates CMA (which has a population of about 82,500), Western Wireless has [REDACTED] percent of the wireless subscribers, while ALLTEL has [REDACTED] percent; if combined, these two entities would have a post-merger share of [REDACTED] percent. Even after the transaction, Cingular would continue to have the [REDACTED] market share with [REDACTED] percent of the CMA's wireless subscribers. In addition, T-Mobile has a [REDACTED] percent market share, and Sprint has a [REDACTED] percent share.

The post-merger HHI in the CMA would be [REDACTED] and the change from the current

⁴²³ DOJ Competitive Impact Statement at 12-13.

⁴²⁴ See DOJ Proposed Final Judgment at 10.

figure would be [REDACTED]. As explained below, the level of competition in this CMA, post-transaction, would be more robust than the HHI figures suggest for several reasons.

ALLTEL holds 35 MHz of spectrum in only two of the five counties in this CMA. Western Wireless holds 30 to 35 MHz of spectrum throughout the CMA. Together, the merged entity would hold 70 MHz in one county, 65 MHz in a second, and 35 MHz in the remaining three counties. ALLTEL and Western Wireless have network coverage throughout their licensed service areas. ALLTEL had a total of [REDACTED] mobile-to-mobile ports out in 2004. Western Wireless had a total of [REDACTED] mobile to mobile ports out in 2004 and [REDACTED] to ALLTEL.

Cingular holds cellular spectrum in the three counties where ALLTEL holds no spectrum and its spectrum holdings in this CMA range from 20 to 45 MHz. Sprint and T-Mobile hold spectrum in every county of the CMA, and Leap, USCC, and Verizon hold spectrum in some of the counties in the CMA.⁴²⁵ Cingular has network coverage reaching 83 percent of the population and over 75 percent of the land area of the CMA. Sprint and T-Mobile networks cover more than 50 percent of the population and 25 percent of the land area. Nextel's network covers 30 percent of the population and 14 percent of the land area, while Verizon and USCC cover less than two percent of the population and less than three percent of the land area.

Conclusion. Although the transaction would lead to a [REDACTED] market share for the merged entity in the CMA, four other competing carriers already have extensive network coverage in this CMA. Three of the carriers – [REDACTED]– have [REDACTED] subscriber share that should enable them to respond effectively to anticompetitive actions by the merged entity, and this transaction will decrease the number of carriers with a greater than [REDACTED] percent share from [REDACTED] to [REDACTED]. While this transaction would combine the number [REDACTED] and the number [REDACTED] firm in terms of market share, the other carriers in the CMA appear to have sufficient capacity to absorb customers if the merged entity were to raise prices or reduce service following the transaction. As a result, it appears that the transaction is not likely to result in competitive harms in the Missouri Bates CMA.

Texas 7 – Fannin (CMA 658)

In the Texas 7 – Fannin CMA (which has population of more than 390,000), Western Wireless has [REDACTED] percent of the wireless subscribers, while ALLTEL has [REDACTED] percent; if these entities were combined, it would lead to a post-merger share of [REDACTED] percent. The other carriers with market share in this CMA are Cingular with [REDACTED] percent of the subscribers, Sprint, with [REDACTED] percent, Verizon with [REDACTED] percent, Nextel with [REDACTED] percent, and T-Mobile with [REDACTED] percent.

The post-merger HHI in this CMA would be [REDACTED], a change of [REDACTED] from the current figure. Based on the additional analysis below, however, we conclude that the level of competition in this CMA, post-transaction, would be more robust than the HHI figures suggest for several reasons.

ALLTEL does not hold spectrum in nine of the 15 counties in Texas 7 – Fannin. In the remaining six counties it holds 35 MHz in one county and 25 MHz in five others. Western Wireless holds varying amounts of spectrum throughout the CMA. The merged entity would hold 70 MHz in two

⁴²⁵ These figures incorporate spectrum won during the recent Auction No. 58.

counties, 60 MHz in four, 45 in two, 35 MHz in six, and 30 MHz in one. ALLTEL and Western Wireless have network coverage throughout their licensed service areas, therefore the facilities-based overlap area for the merged entity is limited to the nine counties where ALLTEL holds spectrum, and these nine counties reflect only 26 percent of the CMA population. ALLTEL had a total of [REDACTED] mobile-to-mobile ports out in 2004 and [REDACTED] to Western Wireless ([REDACTED] percent of ALLTEL's ports). Western Wireless had a total of [REDACTED] mobile to mobile ports out in 2004 and [REDACTED] to ALLTEL ([REDACTED] percent of Western Wireless's ports).

In addition to the Applicants, Cingular, Sprint, and Verizon hold spectrum throughout the entire CMA. Of these, Cingular holds almost as much spectrum, ranging from 20 to 65 MHz, as the merged entity would hold. T-Mobile holds spectrum in 12 counties, although in one of these counties it only holds 5 MHz of spectrum. Three carriers – Peoples Wireless, ETEX, and Lamar Cellular – hold cellular licenses in parts of some counties in the CMA. Finally, Choice Wireless holds spectrum in one county in this CMA.

Four of the nationwide carriers (Cingular, Nextel, Sprint, and Verizon) have networks that cover over 40 percent of the population and over 25 percent of the land area of the CMA. In addition, T-Mobile's network covers slightly less than 30 percent of the population and 14 percent of the land area of the CMA. Also Lamar Cellular and Peoples have networks that cover less than 13 percent of the population and less than 12 percent of the land area of the CMA. In the overlap area Nextel and Sprint cover more than 40 percent of the population and more than 25 percent of the land area, while Cingular, Peoples, and Verizon cover more than 20 percent of the population and between 13 and 25 percent of the land area. However, there are three counties where ALLTEL offers facilities-based service where this is a three to two or a two to one deal, and these counties reflect only 14 percent of the CMA population.

Conclusion. Although the transaction would lead to a [REDACTED] market share for Applicants in the CMA, four of the nationwide carriers have extensive network coverage throughout the CMA. While this transaction, which would combine the number [REDACTED] and the number [REDACTED] firm in terms of market share, would decrease the number of carriers with a greater than [REDACTED] percent share from [REDACTED] to [REDACTED], the other carriers in the CMA appear to have sufficient capacity to absorb customers if the merged entity raises prices or reduces service following the transaction. We note that three competing carriers – [REDACTED]– have [REDACTED] subscriber share that should enable them to respond effectively to anticompetitive actions by the merged entity. These carriers appear to have sufficient capacity to absorb customers if the merged entity were to raise prices or reduce service following the transaction. As a result, it appears that the transaction is not likely to result in competitive harms in the Texas 7 - Fannin, CMA.

**STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: Applications of Western Wireless Corporation and ALLTEL Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-50, Memorandum Opinion and Order.

I fully support today's decision to allow the creation of what I believe will be a stronger wireless competitor in rural areas – a company that will be uniquely situated to help speed the deployment of advanced wireless services to an increased number of consumers throughout America. Approval of this transaction, with the conditions we have imposed, is consistent with this Commission's commitment to rural America and to ensuring that consumers everywhere have access to advanced services.

While I appreciate the concerns raised with respect to the Applicants' ability to comply with the E911 deployment rules, I do not believe that such concerns are specific to this transaction. Making sure consumers have access to E911 services remains one of my – and the Commission's – top priorities. But any concerns regarding compliance with future deadlines are more appropriately addressed in the context of either specific requests for waiver or industry-wide requests for relief of our E911 rules.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

RE: Applications of Western Wireless Corporation and ALLTEL Corporation For Consent to Transfer of Control of Licenses and Authorizations (Memorandum Opinion & Order).

The data compiled by FCC staff indicates that effectuation of this merger will likely leave an acceptable level of wireless market competition in most affected geographic areas. The applicants' networks overlap in only 27 markets nationwide. The Commission requires divestiture of nearly 60% of these markets, where the merger would have undermined competition.

In most of the remaining overlap markets four or more able competitors will continue to compete post-merger. In the rest the merger will not substantially change the competitive dynamic of the market at issue because one applicant has little or no market share. I am concerned that in a few markets, the market shares of remaining competitors are small compared with that of the merged entity. But these competitors have spectrum resources and built-out facilities that should enable them to take customers from the merged entity should the latter raise prices or reduce quality. But if we receive evidence in the future that smaller competitors cannot respond in this way because of the power of the market-share leader, the Commission will have to reconsider its reliance on this theory, which remains untested in the new wireless environment.

This market-by-market analysis is only one part of our merger review process. The FCC must also judge whether the merged entity will act in the public interest and whether the applicants have the requisite "citizenship, character, financial, technical, and other qualifications." Compliance with public safety protections is central to the public interest and to a company's qualifications. Americans increasingly rely on mobile phones for emergency calls. Therefore compliance with our 911 rules is of the utmost importance, especially at a time when homeland security must be a top priority for both our government and our companies and the threats to public safety are again so manifest. FCC Rules require that by December 31, 2005 ninety-five percent of the applicants' customers must have handsets that can locate a caller in an emergency. I am deeply troubled by the applicants' recent admission that they will likely fail to meet this responsibility and that they may, in fact, miss our public safety deadline by *two years*.

The Order states that if the company fails to meet its E-911 deployment responsibilities the Commission "will not hesitate to take enforcement action." While that is positive, I believe we should have gone beyond this assertion to *insist* that the merged company immediately get itself on a path to full public safety compliance. Because we do not, we could lose valuable time and E-911 deployment might suffer. I am disappointed that we do not do more today to ensure compliance with our public safety deadline.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Applications of Western Wireless Corporation and ALLTEL Corporation For Consent to Transfer of Control of Licenses and Authorizations; WT Docket No. 05-50

Western Wireless and ALLTEL have demonstrated a sincere commitment to providing the latest wireless technologies and services to traditionally underserved customers, particularly those in rural America. Coming from South Dakota, I am well aware of the challenges associated with providing mobile wireless services in the Great Plains and other less populated areas of the country. I fully approve this merger because I believe it will allow ALLTEL to be a stronger, more vibrant carrier capable of providing more comprehensive and advanced mobile wireless services to its customers, no matter where they live.

Of course, a merger like this requires a thorough public interest review to ensure that we do not inadvertently disadvantage the very communities we are trying to protect. An unchecked merger could harm the competitive environment in some communities in ways that the market is unlikely to overcome. I applaud the Commission staff for conducting a thorough analysis of the markets potentially affected by the merger, and I fully support our decision to require divestiture in the markets identified in our Memorandum Opinion and Order.

I do have one area of concern that is associated more with the overall trend of consolidation in the mobile wireless industry rather than the specific merger before us. During the past year, we have regularly heard from smaller mobile wireless companies that are concerned about their ability to negotiate automatic roaming contracts with the larger regional and nationwide carriers. These concerns also came up both in the record of this merger as well as in the Cingular-AT&T Wireless acquisition completed last year.

I think the time is right for the Commission to accumulate a full record on the roaming issue to determine what, if any, action may be needed. So, I am very pleased that the Chairman has agreed to initiate shortly a proceeding that will explore the issue of roaming and the effects of consolidation on the ability of smaller carriers to negotiate access to larger networks. This is a positive development, and I am pleased that we can begin a formal review of this matter in the very near term.

Finally, there has been some good discussion during the last few days of our deliberation regarding the merger and its possible impact on ALLTEL's compliance with the upcoming E911 handset penetration deadline. I appreciate the efforts of Commissioner Copps in raising this important issue. As the mobile wireless industry is well aware, the entire Commission takes E911 compliance very seriously particularly given the increasingly important role of E911 in our nation's homeland security efforts.

While I am troubled by ALLTEL's apparent difficulty in reaching the 95% penetration level by December 31, 2005, I acknowledge the recent commitment to timely address these challenges and to ensure that the merged company remains on a "path to full compliance." Also, the record contains a number of support letters on ALLTEL's behalf from public safety and governmental organizations including filings from officials leading the state government wireless E911 deployment efforts in North Carolina, South Carolina, and Virginia. Ultimately, I believe that issues regarding ALLTEL's handset compliance problem can be addressed through our existing rules and regulations, an area in which we have not hesitated to take specific enforcement action when appropriate during the past several years.