

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

In the Matter of)
)
Applications of AT&T Inc. and Cellco Partnership) WT Docket No. 09-104
d/b/a Verizon Wireless)
)
For Consent To Assign or Transfer Control of)
Licenses and Authorizations and Modify a)
Spectrum Leasing Arrangement)

MEMORANDUM OPINION AND ORDER

Adopted: June 22, 2010

Released: June 22, 2010

By the Commission: Commissioner Copps issuing a statement.

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I. INTRODUCTION

1. In approving Verizon Wireless’s acquisition of ALLTEL Corporation (“ALLTEL”), the Commission required that Verizon Wireless divest licenses and associated business units in 105 of the affected markets in order to preserve and promote mobile competition in these markets.¹ Today, we approve the transfer to AT&T Inc. (“AT&T”) of licenses and business units in 79 of these markets.² In the great majority of these markets, which cover predominantly rural portions of the United States,³ AT&T currently provides either no mobile service or only very limited service, and our action will help ensure the availability of 3G Universal Mobile Telecommunications System (“UMTS”) offerings to consumers in rural areas. We closely scrutinized the individual markets that potentially raised competitive concerns, as well as considered other potential harms including the effect on roaming agreements and specific issues relating to service on the Pine Ridge Indian Reservation. In order to ensure that approval of this transaction serves the public interest, we adopt several conditions, including conditions relating to roaming, preservation of service on the Pine Ridge Indian Reservation, and a commitment by AT&T to divest 15 megahertz of spectrum in one Michigan market. We expect that this

¹ Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444 (2008) (“*Verizon Wireless-ALLTEL Order*”).

² The Commission has already acted to approve the transfer of licenses and business units associated with the other 26 markets pursuant to an order issued by the Wireless Telecommunications and International Bureaus earlier this year. See Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless For Consent To Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 09-119, *Memorandum Opinion and Order*, DA 10-661 (WTB/IB rel. Apr. 16, 2010) (“*ATN-Verizon Wireless Order*”).

³ Most of these markets cover portions of the western United States – including all of North Dakota and South Dakota, almost all of Montana and Wyoming, and portions of California, Arizona, Nevada, Utah, Colorado, New Mexico, Kansas, Iowa, Nebraska, and Minnesota. They also cover portions of Michigan, Tennessee, Alabama, and Virginia. See Map of Markets, Appendix A.

transaction will benefit consumers, particularly throughout much of rural America, by giving them access to an array of additional service offerings.

2. Specifically, we grant the applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless and certain of its subsidiaries (“Verizon Wireless,” and together with AT&T, the “Applicants”) to assign or transfer control of certain wireless licenses and related authorizations held by Verizon Wireless to AT&T,⁴ subject to the conditions set forth below. Our consent is given pursuant to sections 214 and 310(d) of the Communications Act, as amended,⁵ under which we must determine whether approval of the proposed transaction would serve the public interest, convenience, and necessity. As discussed more fully below, we conclude that approving the proposed transaction, with the specified conditions, will serve the public interest.

II. BACKGROUND

A. Description of Applicants

1. AT&T Inc.

3. AT&T, incorporated in Delaware and headquartered in Dallas, Texas, is a communications holding company.⁶ With its subsidiaries, affiliates, and operating companies, AT&T states that it ranks among the leading providers of telecommunications services in the United States and around the world.⁷ AT&T asserts that, as of December 31, 2009, it was a leading provider of wireless data in the U.S. wireless industry based on subscribers⁸ and the largest communications company in the world by revenue.⁹ The company reported more than \$123 billion in revenues in 2009.¹⁰

4. AT&T has four main operating segments: wireless, wireline, advertising solutions, and other.¹¹ The wireless segment consists of AT&T’s subsidiary, AT&T Mobility, which provides wireless services to both business and consumer customers.¹² This segment represents approximately 43 percent of 2009 total segment operating revenues.¹³ AT&T has more than 85.1 million wireless subscribers.¹⁴ Its

⁴ File No. 0003840313 has been designated the lead application (“Application”) for the wireless radio services. The other applications contain an exhibit referring to the exhibits attached to File No. 0003840313. Thus, for convenience, when referring to these applications, we only cite to the lead Application.

⁵ 47 U.S.C. §§ 214, 310(d).

⁶ AT&T Inc., SEC Form 10-K, at 1 (filed Feb. 25, 2010) (“AT&T 10-K”), available at <http://www.sec.gov/Archives/edgar/data/732717/000073271710000013/0000732717-10-000013-index.htm>.

⁷ *Id.* at 1.

⁸ *Id.* at 3.

⁹ AT&T, About Us, Corporate Profile, Key Facts About AT&T (“AT&T Corporate Profile Key Facts”), available at <http://www.att.com/gen/investor-relations?pid=5711> (last visited June 21, 2010).

¹⁰ AT&T Inc., AT&T Inc. 2009 Annual Report, Ex. 13 (filed Feb. 25, 2010), available at <http://www.sec.gov/Archives/edgar/data/732717/000073271710000013/0000732717-10-000013-index.htm>.

¹¹ AT&T 10-K at 3.

¹² *Id.*

¹³ *Id.*

¹⁴ AT&T Corporate Profile Key Facts.

3G network uses High Speed Downlink Packet Access/Universal Mobile Telecommunications System (“HSDPA/UMTS”) technology.¹⁵

5. AT&T’s wireline subsidiaries provide both retail and wholesale communications services (both voice and data) domestically and internationally.¹⁶ This segment represents approximately 52 percent of 2009 segment operating revenues.¹⁷ AT&T’s U.S. wired network includes 48 million access lines and more than 17.5 million high speed Internet subscribers.¹⁸

6. The advertising solutions segment includes AT&T’s directory operations, which publish Yellow and White Pages directories and sell directory advertising and Internet-based advertising and search.¹⁹ This segment represents approximately four percent of 2009 segment operating revenues.²⁰

7. The “other” segment includes operations from Sterling Commerce, AT&T’s business integration software and services subsidiary, operator services, corporate, and other operations.²¹ It represents approximately one percent of 2009 segment operating revenues.²²

2. Cellco Partnership d/b/a Verizon Wireless

8. Verizon Wireless is a joint venture between Verizon Communications Inc. (“Verizon”) and Vodafone Group Plc. (“Vodafone”).²³ Verizon owns a controlling 55 percent ownership interest in the joint venture, and thus has control of Verizon Wireless and its subsidiaries.²⁴ Verizon Wireless is a joint venture of Verizon Communications and Vodafone, headquartered in Basking Ridge, New Jersey.²⁵

¹⁵ AT&T, Wireless, Our Technology at 1 (“AT&T Wireless Technology”), available at <http://www.wireless.att.com/about/our-technology.jsp> (last visited June 21, 2010). AT&T also offers a High Speed Uplink Packet Access (“HSUPA”)-enabled network to wireless laptop users. AT&T, About Us, Corporate Profile, Networks (“AT&T Corporate Profile Networks”), available at <http://www.att.com/gen/investor-relations?pid=5711> (last visited June 21, 2010). AT&T offers customers Wi-Fi access at more than 125,000 hot spots around the world. *Id.*

¹⁶ AT&T 10-K at 4.

¹⁷ *Id.*

¹⁸ AT&T Corporate Profile Networks.

¹⁹ AT&T 10-K at 5.

²⁰ *Id.*

²¹ *Id.* AT&T has entered into an agreement to sell its Sterling Commerce subsidiary to IBM, a transaction AT&T expects will close in the second half of 2010. See AT&T Inc., SEC Form 8-K (dated May 23, 2010), available at http://www.sec.gov/Archives/edgar/data/732717/000073271710000039/sterling_8k.htm.

²² AT&T 10-K at 5.

²³ See Verizon Communications Inc., SEC Form 10-K, at 3 (for the fiscal year ended Dec. 31, 2009) (“Verizon 10-K”), available at <http://www.sec.gov/Archives/edgar/data/732712/000119312510041685/d10k.htm>; Verizon Communications, 2009 Annual Report, at 21 (“Verizon Annual Report”), available at http://investor.verizon.com/financial/quarterly/pdf/09_annual_report.pdf. While Verizon Wireless is not a reporting company under the Securities Exchange Act of 1934 and does not make Securities Exchange Commission (“SEC”) filings, information about Verizon Wireless is included in earnings announcements and SEC filings by Verizon Communications, Inc. See Verizon Wireless, Investors, available at <http://news.vzw.com/investor/index.html> (last visited June 21, 2010).

²⁴ See Verizon 10-K at 3; Verizon Annual Report at 21.

²⁵ Verizon Wireless, About Us, Facts-at-a-Glance, available at <http://aboutus.vzw.com/ata glance.html> (“Verizon Wireless Facts”) (last visited June 21, 2010); Application, Public Interest Statement at 2.

It is the industry-leading wireless company in the United States based on operating income,²⁶ and the largest wireless service provider in the U.S. based on the number of retail customers and revenues.²⁷ Verizon Wireless provides wireless voice and data products and other value-added services and equipment sales across the United States.²⁸ The company utilizes Code-Division Multiple Access (“CDMA”) technology.²⁹ Verizon states that its wireless network covers a population of approximately 290 million and provides service to nearly 91.2 million customers, as of December 31, 2009.³⁰ For 2009, Verizon states that its domestic wireless revenues were \$62 billion.³¹

9. Verizon is incorporated in Delaware and headquartered in New York.³² It provides wireline, wireless, and broadband services to mass market, business, government, and wholesale customers.³³ Verizon operates two reportable business segments – Domestic Wireless and Wireline.³⁴ For 2009, Verizon states that its wireline revenues were \$46 billion,³⁵ and Verizon, which is traded on the New York Stock Exchange,³⁶ generated consolidated revenues of approximately \$107.8 billion.³⁷

²⁶ See Verizon 10-K at 4.

²⁷ See *id.*; Verizon Wireless, About Us Overview, available at <http://aboutus.vzw.com/aboutusoverview.html> (last visited June 21, 2010).

²⁸ See Verizon Wireless, Investor Relations, Business Units, Domestic Wireless, available at <http://investor.verizon.com/business/wireless.aspx> (last visited June 21, 2010); Application, Public Interest Statement at 2.

²⁹ Verizon 10-K at 5. Verizon Wireless states that it has deployed CDMA-1xRTT technology in virtually all of its cell sites nationwide and that it had deployed Evolution-Data Optimized (“EV-DO”) technology in approximately 94 percent of its cell sites in its CDMA network as of December 31, 2009, with additional deployment ongoing. *Id.* As a result of Verizon Wireless’s acquisition of ALLTEL and Rural Cellular Corporation, Verizon Wireless also provides GSM service and fulfills GSM roaming obligations in certain markets. *Id.*

³⁰ *Id.* This figure includes the 105 markets that were required by the Commission to be divested in the *Verizon Wireless-ALLTEL Order*.

³¹ *Id.* at 3.

³² *Id.*; Verizon, Investor Relations, Company Profile, Corporate History, Current Statistics, available at <http://investor.verizon.com/profile/history/index.aspx?tabId=1> (“Verizon Current Statistics”) (last visited June 21, 2010); Verizon, Investor Relations, Company Profile, Corporate History, The History of Verizon Communications, available at <http://investor.verizon.com/profile/history/index.aspx> (“Verizon Corporate History”) (last visited June 21, 2010).

³³ Verizon, Investor Relations, Company Profile, Overview, available at <http://investor.verizon.com/profile/overview.aspx> (last visited June 21, 2010).

³⁴ See Verizon Annual Report at 21; Verizon, Investor Relations, Business Units, available at <http://investor.verizon.com/business/index.aspx> (last visited June 21, 2010).

³⁵ Verizon 10-K at 10.

³⁶ Verizon Corporate History.

³⁷ Verizon Annual Report at 17; Verizon, Investor Relations, Company Profile, Corporate History, Verizon Recent History, available at <http://investor.verizon.com/profile/history/index.aspx?tabId=1> (last visited June 21, 2010).

10. Vodafone, a public limited company incorporated in England with a registered office in Newbury, England,³⁸ holds a non-controlling 45 percent interest in Verizon Wireless.³⁹ Vodafone provides mobile voice and data, paging, and internet services in over 30 countries in Europe, Africa, Asia, the Middle East, and the United States through subsidiaries, joint ventures, and other investments.⁴⁰ Its ordinary shares are listed on the London Stock Exchange and its American Depositary Shares are listed on the NASDAQ Stock Market.⁴¹ Its revenue for the year ending March 31, 2009 was over £41 billion.⁴²

B. Description of Transaction

11. The Applicants state that this transaction implements most of the divestitures required under the Commission's order approving Verizon Wireless's acquisition of ALLTEL.⁴³ Specifically, the *Verizon Wireless-ALLTEL Order* required that Verizon Wireless divest business units and associated licenses and authorizations in 105 markets (collectively, the "Divestiture Markets").⁴⁴ The assignment and transfer of control applications involve licenses for the Part 22 Cellular Radiotelephone Service, the Part 24 Personal Communications Service, the Part 27 Advanced Wireless Service, and the Part 101 Common Carrier Fixed Point-to-Point Microwave Service,⁴⁵ as well as international Section 214 authorizations.⁴⁶

12. In these applications, the Applicants seek Commission approval of the assignment or transfer of control of certain wireless licenses and related authorizations located in 79 markets in 18

³⁸ Vodafone, About Vodafone, *available at* http://www.vodafone.com/start/investor_relations/vodafone_at_a_glance0.html ("About Vodafone") (last visited June 21, 2010).

³⁹ Verizon 10-K at 3.

⁴⁰ *See* About Vodafone; Vodafone, Fact Sheet, *available at* http://www.vodafone.com/start/investor_relations/vodafone_at_a_glance0/fact_sheet.html (last visited June 21, 2010); About Vodafone.

⁴¹ *See* About Vodafone.

⁴² Vodafone Group Plc, Annual Report For the year ended March 31, 2009, Performance, Operating Results, *available at* http://www.vodafone.com/static/annual_report09/performance/operating_results/2009_comp_2008/index.html (last visited June 21, 2010).

⁴³ Application, Public Interest Statement at i, 4, 6; *see Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17515-16 ¶¶ 157, 159.

⁴⁴ *See Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17515-16 ¶¶ 157, 159.

⁴⁵ A complete list of applications involved in this transaction is attached as Appendix A hereto. *See also* AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless Seek FCC Consent To Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104, *Public Notice*, 24 FCC Rcd 8171 (2009) ("*Comment Public Notice*"). New Cingular Wireless PCS, LLC, a wholly-owned subsidiary of AT&T, and ALLTEL Communications, LLC, a wholly-owned subsidiary of Verizon Wireless, had filed an application for a new long-term *de facto* transfer spectrum leasing arrangement in order to obtain Commission approval of a replacement leasing arrangement involving a portion of an existing leasing arrangement of Part 24 spectrum between the two applicants. That application was withdrawn on June 20, 2010, and accordingly we take no action on it.

⁴⁶ *See* File Nos. ITC-ASG-20090522-00241, ITC-ASG-20090522-00242, ITC-ASG-20090522-00243, and ITC-ASG-20090522-00244.

states⁴⁷ held by Verizon Wireless and its subsidiaries from Verizon Wireless to AT&T (the “AT&T Divestiture Markets”). To accomplish this transaction, Verizon Wireless and its subsidiaries that hold the licenses and authorizations that are the subject of these Applications will contribute those licenses and authorizations (and related assets⁴⁸) to a wholly-owned, indirect subsidiary of Verizon Wireless called Abraham Divestiture Company LLC (“ADC”). Verizon Wireless also will cause its indirect subsidiaries that collectively hold an approximate 94.9 percent interest in Las Cruces Cellular Telephone Company to contribute that interest to ADC.⁴⁹

13. The indirect Verizon Wireless subsidiary that is the parent of ADC will then transfer its interest in ADC to Garden Acquisitions Inc. (“GAI”), which will function as an exchange accommodation titleholder for AT&T.⁵⁰ A significant number of the licenses, including the ownership interest in Las Cruces Cellular Telephone Company, will immediately thereafter be transferred to an indirect subsidiary of AT&T.⁵¹ ADC, as *de jure* owned by GAI, will hold the remaining authorizations for a maximum of 180 days.⁵² For these authorizations, AT&T will manage the assets pursuant to a spectrum lease and operating agreement.⁵³ AT&T states that all the benefits and burdens associated with the assets held by GAI will flow to AT&T, and GAI will not have any discretion regarding the operation of the assets or receive any revenue or losses from them.⁵⁴ Accordingly, GAI will exercise *de jure* control over the assets, and AT&T will exercise *de facto* control.⁵⁵ Upon the completion of the like-kind exchange, or after 180 days, whichever occurs first, GAI will transfer its interest in ADC to a wholly-owned indirect subsidiary of AT&T.⁵⁶

⁴⁷ Application, Public Interest Statement at 4, 6.

⁴⁸ *Id.* at 6. These related network and operational assets include, among other things, certain employees, retail sites, and customers. *See* Application, Public Interest Statement at 6.

⁴⁹ *Id.*

⁵⁰ Letter from Maureen R. Jeffreys, Arnold & Porter LLP, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 31 (Dec. 3, 2009) (“AT&T First Partial Response”). AT&T will lend GAI the funds necessary to acquire the assets. *Id.* The use of an exchange accommodation titleholder is being pursued for tax purposes. *Id.* The Applicants disclosed the possible use of an exchange accommodation titleholder in the application. *See* Application, Public Interest Statement at 8 n.6.

⁵¹ AT&T First Partial Response at 29-30, 31 n.29. AT&T states that it will file the necessary notifications in connection with these *pro forma* assignments or transfers of control in accordance with the Commission’s rules. *Id.* at 30. The Commission has previously held that the transfer of *de jure* control of assets between the *de facto* controlling party (in this case, AT&T) and the exchange accommodation titleholder (in this case, GAI) is a *pro forma* transaction. *See* Media General Communications, Inc. (Assignor) and MG Broadcasting, LLC, as E.A.T. (Assignee) For *Pro Forma* Assignment of Licenses, *Memorandum Opinion and Order*, 21 FCC Rcd 7669, 7670 ¶ 5 (2006) (“*Media General EAT Order*”).

⁵² AT&T First Partial Response at 31. ADC will hold authorizations associated with the following CMAs: CMA181 Muskegon, MI; CMA246 Dothan, AL; CMA313 Alabama 7 - Butler; CMA322 Arizona 5 - Gila; CMA341 California 6 - Mono; CMA544 Nevada 2 - Lander; CMA547 Nevada 5 - White Pine; CMA553 New Mexico 1 - San Juan; CMA557 New Mexico 5 - Grant; CMA558 New Mexico 6 - Lincoln.

⁵³ *Id.* at 32. GAI and AT&T Mobility II LLC have filed a short-term *de facto* transfer lease application, File No. 7003ALNL10, seeking the necessary authority to permit AT&T to operate facilities on the licensed spectrum.

⁵⁴ *Id.* GAI will be paid a flat fee by AT&T. *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* AT&T will file the necessary *pro forma* notifications in connection with that transfer of interests. *Id.*

C. Transaction Review Process

1. Commission Review

14. Between May 21, 2009 and June 5, 2009, the Applicants filed a series of applications seeking Commission approval of the proposed assignment and transfer of control of certain licenses and related authorizations held by Verizon Wireless and its subsidiaries from Verizon Wireless to AT&T. The Applicants also filed applications, pursuant to section 214 of the Communications Act,⁵⁷ seeking consent to the partial assignment of four international section 214 authorizations to AT&T.⁵⁸ On June 19, 2009, the Commission released a public notice seeking comment on the proposed transaction.⁵⁹ The *Comment Public Notice* established a pleading cycle for the applications, with petitions to deny due July 20, 2009, oppositions due July 30, 2009, and replies due August 6, 2009.⁶⁰

15. In response to the *Comment Public Notice*, the Commission received five petitions to deny, filed by Cellular South, Inc. (“Cellular South”), Chatham Avalon Park Community Council (“CAPCC”), the National Association of Black Owned Broadcasters, Inc. (“NABOB”), NTELOS, Inc. (“NTELOS”), and Rural Telecommunications Group, Inc. (“RTG”),⁶¹ and comments filed by Sprint Nextel Corporation (“Sprint Nextel”).⁶² Cellular South also filed a petition for expedited reconsideration requesting that the Commission reconsider its decision, in the *Comment Public Notice*, to use permit-but-disclose *ex parte* procedures for the proceeding.⁶³ The Applicants filed a Joint Opposition on July 30, 2009.⁶⁴ The Commission received replies to the Joint Opposition from CAPCC, Cellular South, Cox

⁵⁷ 47 U.S.C. § 214.

⁵⁸ File Nos. ITC-ASG-20090522-00241 (partial assignment from Western Wireless, LLC to Abraham Divestiture Company LLC), ITC-ASG-20090522-00242 (partial assignment from Rural Cellular Corporation to Abraham Divestiture Company LLC), ITC-ASG-20090522-00243 (partial assignment from Celco Partnership to Abraham Divestiture Company LLC), and ITC-ASG-20080522-00244 (partial assignment from ALLTEL Communications, LLC to Abraham Divestiture Company LLC). ADC will provide international service pursuant to international section 214 authorization File No. ITC-214-20090522-00562. ALLTEL Communications, LLC will continue to provide international service to its remaining customers pursuant to its existing international section 214 authorization, ITC-214-19960404-00138. Celco Partnership will continue to provide international service to its remaining customers pursuant to its existing international section 214 authorization, ITC-214-20010504-00279. Rural Cellular Corporation will continue to provide international service to its remaining customers pursuant to its existing international section 214 authorizations, ITC-214-19940224-00114 and ITC-214-19980401-00220. Western Wireless LLC will continue to provide international service to its remaining customers pursuant to its existing international section 214 authorization, ITC-214-20010427-00254.

⁵⁹ *Comment Public Notice*, 24 FCC Rcd at 8175. The *Comment Public Notice* explicitly described the potential use of the reverse like-kind exchange involving an exchange accommodation titleholder. *Id.* at 8172 n.4.

⁶⁰ *See id.*

⁶¹ Petition to Deny of Cellular South, Inc., filed July 20, 2009 (“Cellular South Petition”); Petition to Deny of Chatham Avalon Park Community Council, filed July 20, 2009 (“CAPCC Petition”); Petition to Deny of the National Association of Black Owned Broadcasters, Inc., filed July 20, 2009 (“NABOB Petition”); Petition of NTELOS Inc. to Condition Consent or Deny Application, filed July 20, 2009 (“NTELOS Petition”); Petition to Deny of Rural Telecommunications Group, Inc., filed July 20, 2009 (“RTG Petition”).

⁶² Comments of Sprint Nextel Corporation, filed July 20, 2009 (“Sprint Nextel Comments”).

⁶³ Petition for Expedited Reconsideration of Cellular South, Inc., filed July 20, 2009 (“Cellular South Petition for Reconsideration”).

⁶⁴ Joint Opposition of AT&T Inc. and Verizon Wireless to Petitions to Deny or to Condition Consent and Reply to Comments, filed July 30, 2009 (“Joint Opposition”).

Communications (“Cox”), NABOB, Public Service Communications, Inc. (“PSC”), RTG, South Dakota Public Utilities Commission (“SDPUC”), and Sprint Nextel,⁶⁵ and a written *ex parte* letter from the National Telecommunications Cooperative Association (“NTCA”).⁶⁶ In addition to these pleadings, the Congressional Black Caucus (“CBC”) submitted a letter regarding Verizon Wireless’s divestiture plans.⁶⁷ Finally, Telephone USA Investments, Inc. (“Telephone USA”)⁶⁸ and the Oglala Sioux Tribe (the “Tribe” or “OST”)⁶⁹ have made a number of written *ex parte* filings.

16. *Confidential Materials.* On November 19, 2009, the Wireless Telecommunications Bureau (“Bureau”) issued a protective order to ensure that any confidential or proprietary documents submitted to the Commission would be adequately protected from public disclosure and announcing the process by which interested parties could gain access to confidential information filed in the record.⁷⁰ On December 16, 2009, the Bureau released a second protective order, requested by the Applicants,⁷¹ to provide additional protection to those documents and that information contained in AT&T’s and Verizon Wireless’s responses to the Bureau’s information request considered to be highly sensitive and

⁶⁵ Reply of Cellular South, Inc. to Joint Opposition to Petitions to Deny or to Condition Consent, filed Aug. 11, 2009 (“Cellular South Reply”); Reply to Opposition to Petition to Deny of Chatham Avalon Park Community Council, filed Aug. 11, 2009 (“CAPCC Reply”); Reply Comments of Cox Communications, filed Aug. 6, 2009 (“Cox Reply”); Reply of the National Association of Black Owned Broadcasters, Inc., filed Aug. 11, 2009 (“NABOB Reply”); Reply Comments of Public Service Communications, Inc., filed Aug. 6, 2009 (“PSC Reply”); Reply to Joint Opposition to Petitions to Deny of the Rural Telecommunications Group, Inc., filed Aug. 11, 2009 (“RTG Reply”); Reply Comments of the South Dakota Public Utilities Commission, filed Aug. 6, 2009 (“SDPUC Reply”); Reply Comments of Sprint Nextel Corporation, filed Aug. 6, 2009 (“Sprint Nextel Reply”). RTG also requested that its August 7, 2009 letter to the Honorable Jay Rockefeller and the Honorable Kay Bailey Hutchison be included in the record. Letter from Caressa D. Bennet, Counsel to RTG, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 11, 2009).

⁶⁶ *Ex Parte* Letter from Daniel Mitchell, Vice President, Legal and Industry, and Jill Canfield, Senior Regulatory Counsel, Legal and Industry, National Telecommunications Cooperative Association, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 7, 2009) (“NTCA Aug. 7, 2009 *Ex Parte*”).

⁶⁷ Letter from Members of the Congressional Black Caucus to The Honorable Michael Copps, Acting Chairman, Federal Communications Commission (May 20, 2009) (“CBC Letter”).

⁶⁸ *See, e.g., Ex Parte* Letter from John R. Feore, Jr., Dow Lohnes PLLC, counsel to Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2-4 (Jan. 25, 2010) (“Telephone USA Jan. 25, 2010 *Ex Parte*”).

⁶⁹ *See Ex Parte* Letter from Jonathan E. Canis, Arent Fox LLP, Counsel for Oglala Sioux Tribe, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 10, 2010) (“OST Mar. 10, 2010 *Ex Parte*”); *Ex Parte* Letter from Jonathan E. Canis, Arent Fox LLP, Counsel for Oglala Sioux Tribe, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 24, 2010) (“OST May 24, 2010 *Ex Parte*”).

⁷⁰ Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless For Consent To Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104, *Protective Order*, 24 FCC Rcd 13852 (WTB 2009) (“*Protective Order*”).

⁷¹ Letter from Maureen R. Jeffreys, Arnold & Porter LLP, Counsel for AT&T, and Nancy C. Victory, Wiley Rein LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 25, 2009).

confidential.⁷² The Bureau received acknowledgements pursuant to the *Protective Order* and *Second Protective Order* from fourteen individuals.⁷³

17. On January 5, 2010, the Bureau released a public notice announcing that Numbering Resource Utilization and Forecast (“NRUF”) reports and local number portability (“LNP”) data would be placed into the record and adopted a protective order pursuant to which the Applicants and third parties would be allowed to review the specific NRUF reports and LNP data placed into the record.⁷⁴ The Bureau received acknowledgements pursuant to the *NRUF Protective Order* from three individuals seeking to review the NRUF and LNP data that is in the record.⁷⁵

18. *Bureau Requests for Documents and Information.* On November 19, 2009, pursuant to section 308(b) of the Communications Act,⁷⁶ the Bureau requested a number of documents and additional

⁷² Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless For Consent To Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104, *Second Protective Order*, 24 FCC Rcd 14569 (WTB 2009) (“*Second Protective Order*”).

⁷³ Letter from John R. Feore, Jr., Dow Lohnes PLLC, Counsel for Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 4, 2009) (acknowledgements of confidentiality for John R. Feore, Jr., J.G. Harrington, John S. Logan, Joshua N. Pila, and Vicki Lynne Lyttle); Letter from John R. Feore, Jr., Dow Lohnes PLLC, Counsel for Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 18, 2009) (acknowledgements of confidentiality for John R. Feore, Jr., J.G. Harrington, John S. Logan, Joshua N. Pila, and Vicki Lynne Lyttle); Letter from Caressa D. Bennet, Bennet & Bennet, PLLC, counsel for RTG., to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 24, 2009) (acknowledgements of confidentiality for Caressa D. Bennet, Michael R. Bennet, Gregory W. Whitaker, Daryl A. Zakov, and Robert A. Silverman); Letter from John R. Feore, Jr., Dow Lohnes PLLC, Counsel for Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 29, 2009) (acknowledgements of confidentiality for Verdetta Coltrane); Letter from Michael H. Pryor, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Counsel for Cox, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 7, 2010) (acknowledgements of confidentiality for Howard H. Symons and Michael H. Pryor); Letter from James L. Winston, Rubin, Winston, Diercks, Harris & Cooke, LLP, Counsel for NABOB, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 25, 2010) (acknowledgement of confidentiality for James L. Winston); Letter from James L. Winston, Rubin, Winston, Diercks, Harris & Cooke, LLP, Counsel for NABOB, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 28, 2010) (acknowledgement of confidentiality for James L. Winston); Letter from Michael H. Pryor, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Counsel for Cox, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 28, 2010) (acknowledgements of confidentiality for Stefanie Z. Desai); Letter from James L. Winston, Rubin, Winston, Diercks, Harris & Cooke, LLP, Counsel for NABOB, to Marlene H. Dortch, Secretary, Federal Communications Commission (Feb. 2, 2010) (revised acknowledgement of confidentiality for James L. Winston). We note that, consistent with Commission policy, only counsel for parties that had filed petitions to deny were provided the opportunity to review the confidential materials submitted by the Applicants.

⁷⁴ Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless For Consent To Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement – Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports Placed Into the Record, Subject to Protective Order, WT Docket No. 09-104, CC Docket No. 99-200, *Public Notice*, 25 FCC Rcd 47 (WTB 2010); Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless For Consent To Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104, CC Docket No. 99-200, *Protective Order*, 25 FCC Rcd 41 (WTB 2010) (“*NRUF Protective Order*”).

⁷⁵ Letter from Catherine M. Hilke, Wiley Rein LLP, counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 6, 2010) (acknowledgements of confidentiality for Nancy J. Victory, Catherine M. Hilke, and M. Ethan Lucarelli).

⁷⁶ 47 U.S.C. § 308(b).

information from the Applicants by December 3, 2009.⁷⁷ Among other things, the Bureau asked the Applicants to provide further information regarding the public interest benefits of the transaction, including network integration and the transition of customers, roaming opportunities, improved disaster preparedness, service, rate plans and handsets, and the possible reverse like-kind exchange.⁷⁸ It also asked Verizon Wireless and Morgan Stanley & Co. Incorporated (“Morgan Stanley”) to provide additional information regarding the bidding process for the Divestiture Markets.⁷⁹ The Applicants provided responsive documents and information on December 3, 17, and 18, 2009, January 20, March 3, 11, and 24, April 2, 12, and 16, May 5 and 17, and June 2, 2010,⁸⁰ some of which were provided subject to the provisions of the *Protective Order* and the *Second Protective Order*.

19. *AT&T and Verizon Wireless Commitment Letters*. On May 20, 2010, AT&T filed a letter making commitments in three areas – roaming in the AT&T Divestiture Markets, divestiture of 15 megahertz of spectrum in CMA476 Michigan 5 - Manistee, and the continued provision of wireless services on the Pine Ridge Indian Reservation.⁸¹ On May 27, 2010, Verizon Wireless filed a letter making a commitment regarding its provision of CDMA roaming services in the AT&T Divestiture

⁷⁷ Letter from Ruth Milkman, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Michael P. Goggin, AT&T Mobility Inc., and Michael Samscock, Verizon Wireless (Nov. 19, 2009) (“Information Request”).

⁷⁸ *See id.* at Attachment.

⁷⁹ *See id.*

⁸⁰ AT&T First Partial Response; Letter from Maureen R. Jeffreys, Arnold & Porter LLP, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 17, 2009) (“AT&T Second Partial Response of Dec. 17, 2009”); Letter from Nancy J. Victory, Wiley Rein LLP, counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 18, 2009) (“Verizon Wireless Information Request Response”); Letter from Maureen R. Jeffreys, Arnold & Porter LLP, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 20, 2010) (“AT&T Supplemental Response of Jan. 20, 2010”); Letter from Nancy J. Victory, Wiley Rein LLP, counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 3, 2010) (“Verizon Wireless Supplemental Response of Mar. 3, 2010”); Letter from Nancy J. Victory, Wiley Rein LLP, counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 11, 2010) (“Verizon Wireless Further Supplemental Response of Mar. 11, 2010”); Letter from Maureen R. Jeffreys, Arnold & Porter LLP, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 24, 2010) (“AT&T Supplemental Response of Mar. 24, 2010”); Letter from Nancy J. Victory, Wiley Rein LLP, counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Apr. 2, 2010) (“Verizon Wireless Second Further Supplemental Response of Apr. 2, 2010”); Letter from Maureen R. Jeffreys, Arnold & Porter LLP, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (Apr. 12, 2010) (“AT&T Supplemental Response of Apr. 12, 2010”); Letter from Maureen R. Jeffreys, Arnold & Porter LLP, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (Apr. 16, 2010) (“AT&T Supplemental Response of Apr. 16, 2010”); Letter from Maureen R. Jeffreys, Arnold & Porter LLP, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 5, 2010) (“AT&T Supplemental Response of May 5, 2010”); Letter from Maureen R. Jeffreys, Arnold & Porter LLP, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 17, 2010) (“AT&T Supplemental Response of May 17, 2010”); Letter from Scott Feira, Arnold & Porter LLP, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (June 2, 2010) (“AT&T Supplemental Response of June 2, 2010”).

⁸¹ Letter from Joan Marsh, Vice President – Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 20, 2010) (“AT&T Commitment Letter”). A copy of this letter is attached as Appendix D.

Markets during the one-year term of the Transition Services Agreement between it and AT&T.⁸² The commitments contained in these letters are discussed in more detail below.

2. Department of Justice Review

20. On October 30, 2008, the Antitrust Division of the United States Department of Justice (“DOJ”) filed a series of documents, including complaints and preservation of assets stipulations and orders, with the United States District Court for the District of Columbia (“D.C. District Court”) and United States District Court for the District of Minnesota (“Minnesota District Court,” and together with the D.C. District Court, the “District Courts”) reflecting the settlement between the DOJ and Verizon Wireless and ALLTEL designed to eliminate the anticompetitive affects of the Verizon Wireless-ALLTEL merger in certain markets,⁸³ and the parties jointly filed proposed Final Judgments with the District Courts.⁸⁴ The Applicants state that this transaction will aid Verizon Wireless in fulfilling its divestiture obligations under the settlement agreement.⁸⁵

21. Under the Final Judgment issued by the D.C. District Court,⁸⁶ the DOJ must be satisfied that the divestiture of assets will be accomplished such that “these assets can and will be used by the Acquirer(s) as part of a viable, ongoing business engaged in the provision of mobile wireless telecommunications services.”⁸⁷ In addition, the divestiture of assets “shall be made to an Acquirer or Acquirers that, in plaintiff United States’s sole judgment, upon consultation with the relevant plaintiff State, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of mobile wireless telecommunications services.”⁸⁸ The Final Judgment directed that the majority of the markets be divested in clusters, each

⁸² Letter from Nancy J. Victory, Wiley Rein LLP, Counsel to Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 27, 2010) (“Verizon Wireless Commitment Letter”). A copy of this letter is attached as Appendix E.

⁸³ See generally Complaint, Proposed Final Judgment, Competitive Impact Statement, Plaintiff United States’s Explanation of Consent Decree Procedures, Statement of Plaintiff United States in Support of the Appointment of W. Stephen Cannon as Management Trustee, Preservation of Assets Stipulation and Order, United States of America et al. v. Verizon Communications Inc., and ALLTEL Corporation, No.1:08-cv-01878 (D.D.C. Oct. 30, 2008) (“DOJ Verizon Wireless-ALLTEL Stipulation and Order”); Joint Motion to Modify Final Judgment, United States of America v. Bell Atlantic Corporation, GTE Corporation, and Vodafone AirTouch PLC, No. 1:99-cv-01119 (D.D.C. Oct. 30, 2008) (“DOJ Bell Atlantic-GTE Modified Stipulation and Order”); Modified Preservation of Assets Stipulation, Certificate of Service of Motion Documents, Proposed Order Granting Motion To Modify Final Judgment, Proposed Modified Final Judgment, and Proposed Modified Preservation of Assets Order, United States of America and State of Minnesota v. ALLTEL Corporation and Midwest Wireless Holdings L.L.C., No. 06-3631 (D.Minn. Oct. 30, 2008) (“DOJ ALLTEL-Midwest Stipulation and DOJ ALLTEL-Midwest Order”).

⁸⁴ See Proposed Final Judgment, United States of America et al. v. Verizon Communications Inc., and ALLTEL Corporation, No. 1:08-cv-01878 (D.D.C. Oct. 30, 2008) (“DOJ Verizon Wireless-ALLTEL Proposed Final Judgment”); Proposed Modified Final Judgment, United States of America v. Bell Atlantic Corporation, GTE Corporation, and Vodafone AirTouch PLC, No. 1:99-cv-01119 (D.D.C. Oct. 30, 2008) (“DOJ Bell Atlantic-GTE Proposed Modified Final Judgment”); Proposed Modified Final Judgment, United States of America and State of Minnesota v. ALLTEL Corporation and Midwest Wireless Holdings L.L.C., No. 06-3631 (D.Minn. Oct. 30, 2008) (“DOJ ALLTEL-Midwest Proposed Modified Final Judgment”).

⁸⁵ Application, Public Interest Statement at 1.

⁸⁶ *United States of America v. Verizon Communications, Inc., and ALLTEL Corp.*, 607 F.Supp.2d 1 (D.D.C. 2009).

⁸⁷ *Id.* at 6-7.

⁸⁸ *Id.* at 7.

cluster to be sold to a single purchaser unless DOJ approval was obtained to break up a cluster to multiple acquirers.⁸⁹ Also, the Final Judgment provided for the provision of transition services to any acquirer of divestiture assets by Verizon Wireless for a period of up to one year.⁹⁰ The DOJ conducted its review of the proposed transaction in light of these requirements and its governing statutory authority, and in April 2010, the DOJ approved AT&T's acquisition of the wireless properties, including licenses and network assets, associated with the 79 markets.⁹¹

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

22. Pursuant to sections 214(a) and 310(d) of the Communications Act, we must determine whether the Applicants have demonstrated that the proposed assignment and transfer of control of licenses and authorizations will serve the public interest, convenience, and necessity.⁹² In making this assessment, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act,⁹³ other applicable statutes, and the Commission's rules.⁹⁴ If the transaction does not violate a statute or rule, we next consider whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.⁹⁵ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.⁹⁶ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.⁹⁷

⁸⁹ *Id.* at 7-9.

⁹⁰ *Id.* at 9.

⁹¹ AT&T Inc., SEC Form 10-Q, at 21 (for the period ending Mar. 31, 2010), available at <http://www.sec.gov/Archives/edgar/data/732717/000073271710000033/att1q10.htm>.

⁹² 47 U.S.C. §§ 214(a), 310(d).

⁹³ 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, e.g., Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements, WT Docket No. 08-246, *Memorandum Opinion and Order*, 24 FCC Rcd 13915, 13927 ¶ 27 (2009) (“*AT&T-Centennial Order*”); *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17460 ¶ 26; Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, WT Docket No. 08-94, *Memorandum Opinion and Order*, 23 FCC Rcd 17570, 17578 ¶ 19 (2008) (“*Sprint Nextel-Clearwire Order*”); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21542 ¶ 40 (2004) (“*Cingular-AT&T Wireless Order*”).

⁹⁴ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13927 ¶ 27; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17460 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17578-79 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21542-43 ¶ 40.

⁹⁵ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13927 ¶ 27; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17460 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17578-79 ¶ 19.

⁹⁶ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13927 ¶ 27; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17460 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17579 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

⁹⁷ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13927 ¶ 27; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17579 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

23. Our public interest evaluation also necessarily encompasses the “broad aims of the Communications Act,” which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest.⁹⁸ Our public interest analysis may also entail assessing whether the proposed transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.⁹⁹ In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.¹⁰⁰

24. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.¹⁰¹ The DOJ reviews communications mergers pursuant to section 7 of the Clayton Act, and if it wishes to block a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.¹⁰² Under the Commission’s review, applicants must show that the transaction will serve the public interest; otherwise the application is set for hearing. The DOJ’s review is limited solely to an examination of the competitive effects of the acquisition, without reference to various public interest considerations.¹⁰³ The Commission also considers the competitive effects of a transaction but our analysis under the public interest standard is somewhat broader; for example, it considers whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and the impact on the relevant market.¹⁰⁴

25. Our analysis recognizes that a proposed transaction may lead to both beneficial and harmful consequences.¹⁰⁵ Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to rely on our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits. Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not

⁹⁸ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 28; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

⁹⁹ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 28; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

¹⁰⁰ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 28; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

¹⁰¹ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 29; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 28; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42.

¹⁰² 15 U.S.C. § 18.

¹⁰³ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 29; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 28; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 21.

¹⁰⁴ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 29; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 28; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

¹⁰⁵ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 30; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

inconsistent with law that may be necessary to carry out the provisions of the Communications Act.¹⁰⁶ Similarly, section 214(c) of the Communications Act authorizes the Commission to impose “such terms and conditions as in its judgment the public convenience and necessity may require.”¹⁰⁷ In using this broad authority, the Commission has generally imposed conditions to remedy specific harms likely to arise from the transaction or to help ensure the realization of potential benefits promised for the transaction.¹⁰⁸

IV. QUALIFICATIONS OF APPLICANTS

26. As noted previously, when evaluating applications for consent to assign or transfer control of licenses and authorizations, sections 214(a) and 310(d) of the Communications Act require the Commission to determine whether the proposed transaction will serve “the public interest, convenience and necessity.”¹⁰⁹ 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.”¹¹⁰ Therefore, as a threshold matter, the Commission must determine whether the applicants to the proposed transaction meet the requisite qualifications requirements to hold and transfer licenses under sections 214(a) and 310(d) of the Communications Act and the Commission’s rules.¹¹¹

27. In determining whether applicants have the requisite character to be Commission licensees, we look to the Commission’s character policy initially developed in the broadcast area as guidance in resolving similar questions in common carrier license transfer proceedings.¹¹² Under this

¹⁰⁶ 47 U.S.C. § 303(r); *see also, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13939 ¶ 30; *Verizon Wireless/Alltel Order*, 23 FCC Rcd at 17463 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

¹⁰⁷ 47 U.S.C. § 214(c); *see also, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13939 ¶ 30; *Verizon Wireless/Alltel Order*, 23 FCC Rcd at 17463 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

¹⁰⁸ *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 30; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17463 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43. We consider only those harms and benefits that are related to the Commission’s responsibilities under the Communications Act and related statutes.

¹⁰⁹ 47 U.S.C. §§ 214(a), 310(d).

¹¹⁰ *Id.* §§ 308, 310(d). *See also, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13930 ¶ 31; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 31; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

¹¹¹ *See* 47 U.S.C. §§ 214(a), 310(d); 47 C.F.R. § 1.948; *see also, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13930 ¶ 31; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 31; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

¹¹² *See, e.g., 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, 26493 ¶ 13 (2003). *See also* 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, *Report, Order and Policy Statement*, 102 F.C.C.2d 1179, 1210-11 ¶¶ 60-61 (1986) (“1986 Character Policy Statement”); *Memorandum Opinion and Order*, 1 FCC Rcd 421 (1986); Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications, *Policy Statement and Order*, 5 FCC Rcd 3252 (1990) (“1990 Character Policy Statement”), *Memorandum Opinion and Order*, 6 FCC Rcd 3448 (1991), *Memorandum Opinion and Order*, 7 FCC Rcd 6564 (1992). The Commission applies its broadcast character standards to applicants and licensees in the other radio (continued....)

policy, the Commission previously has stated that it will review allegations of misconduct directly before it,¹¹³ as well as conduct that takes place outside of the Commission.¹¹⁴ With respect to Commission-related conduct, the Commission has stated that all violations of provisions of the Act, or of the Commission's rules or policies, are predictive of an applicant's future truthfulness and reliability, and thus have a bearing on an applicant's character qualifications.¹¹⁵ 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.¹¹⁶

28. When evaluating transfers of control or assignments under section 310(d), the Commission does not, as a general rule, re-evaluate the qualifications of the transferor, 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.¹¹⁷ There has been no designation for hearing of Verizon Wireless's basic qualifications nor have any issues been raised here that warrant such a hearing designation. CAPCC asserts that "neither the Commission nor Verizon Wireless has provided any reasonable basis to conclude that Verizon Wireless has complied with the foreign ownership requirements of section 310(b) of the Communications Act," and therefore "a significant question concerning the basic qualifications of Verizon Wireless to hold radio licenses remains unresolved" and "the Commission cannot grant the applications."¹¹⁸ The Commission, however, has previously considered and rejected CAPCC's arguments with respect to foreign ownership of Verizon Wireless in the *Verizon Wireless-ALLTEL Order*.¹¹⁹ Based on information Verizon Wireless submitted for the record

(Continued from previous page)

services. *See, e.g., 1990 Character Policy Statement*, 5 FCC Rcd at 3253 ¶ 10 (adopting 47 C.F.R. § 1.17 to apply prohibition against misrepresentations and material omissions to applicants, licensees, and permittees in all radio services).

¹¹³ *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13930 ¶ 32; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 32; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582-83 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

¹¹⁴ *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13930 ¶ 32; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 32; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

¹¹⁵ *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13930 ¶ 32; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 32; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47; *1986 Character Policy Statement*, 102 F.C.C.2d at 1209-10 ¶ 57.

¹¹⁶ *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13930 ¶ 32; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464-65 ¶ 32; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

¹¹⁷ *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13931 ¶ 33; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17466 ¶ 33; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44. *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.* The hearing designation is required under section 309(e) of the Communications Act, 47 U.S.C. § 309(e), only if the record presents a "substantial and material question of fact" whether grant of the application would serve the public interest, convenience, and necessity.

¹¹⁸ CAPCC Petition at ii. *See also id.* at 12, 13.

¹¹⁹ *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17543-45 ¶¶ 227-29. *See also* Applications of Celco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent to Transfer Control of Licenses, (continued....)

in that proceeding, the Commission concluded specifically that there was “no substantial or material question of fact as to whether Verizon Wireless’s foreign ownership complies with the limitations of the *Vodafone-Bell Atlantic Order*.”¹²⁰ There is no new information in the current record, and we therefore see no reason to re-evaluate Verizon Wireless’s qualifications in considering the transaction before us.

29. Conversely, section 310(d) obligates the Commission to consider whether the proposed transferee is qualified to hold Commission licenses.¹²¹ No issues have been raised with respect to the basic qualifications of the proposed transferee, AT&T, which has previously and repeatedly been found qualified, through its subsidiaries, to hold Commission licenses. We therefore find that there is no reason to re-evaluate the basic qualifications of AT&T.

V. COMPETITIVE ANALYSIS

30. Our competitive analysis of the proposed transaction considers the potential competitive effects that might result from the proposed transaction.¹²² We begin our competitive analysis by determining the appropriate market definitions for this transaction,¹²³ including a determination of the product market, geographic markets, market participants, and the input market for spectrum available for the provision of mobile telephony/broadband services.

31. We next determine whether there is a significant increase in horizontal market concentration as a result of the proposed transaction. Horizontal transactions raise competitive concerns when they reduce the availability of choices to the point that the resulting firm has the incentive and the ability, either by itself or in coordination with other firms, to raise prices. 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 quality. Absent significant offsetting efficiencies or other public interest benefits, a transaction that creates or enhances market power or facilitates its use is unlikely to serve the public interest.¹²⁴ Transactions that do not significantly increase concentration or do not result in a concentrated market ordinarily require no further analysis of their horizontal impact.

32. In analyzing concentration levels, we apply a two-part initial “screen” to identify those local markets in which no competitive harm clearly arises from the transaction. The first part of the

(Continued from previous page) _____
Authorizations, and Spectrum Manager Leases, WT Docket No. 07-208, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 12463, 12524-26 ¶¶ 147-49 (2008), recon. pending.

¹²⁰ *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17545 ¶ 229 (footnote omitted); see also Applications of Vodafone AirTouch, Plc and Bell Atlantic Corporation for Consent to Transfer of Control or Assignment of Licenses and Authorizations, *Memorandum Opinion and Order*, 15 FCC Rcd 16507 (WTB/IB 2000) (“*Vodafone-Bell Atlantic Order*”).

¹²¹ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13931 ¶ 33; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17466 ¶ 33; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

¹²² See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13931 ¶ 34; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468 ¶ 40; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68; Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, at § 0.1, n.6. (Apr. 2, 1992, revised Apr. 8, 1997) (“*DOJ/FTC Merger Guidelines*”).

¹²³ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 36; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17469 ¶ 42; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583 ¶ 25; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 70.

¹²⁴ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13931-13932 ¶ 34 n.147; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468 ¶ 40; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556-57 ¶ 68-69; *DOJ/FTC Merger Guidelines* § 0.1, n.6.

screen considers changes in market concentration in the provision of “mobile telephony/broadband services” as a result of the proposed transaction, and is based on the size of the post-transaction Herfindahl-Hirschman Index (“HHI”) of market concentration and the change in the HHI.¹²⁵ The HHI thresholds used in the screen are conservative in order for us to be confident that we give further review to any market in which the merger may cause significant change in the competitive landscape. This initial screen is intended to eliminate from further review those markets in which there is clearly no competitive harm rather than to identify conclusively markets in which there *is* competitive harm. The second part of the screen examines the input market for spectrum available on a market-by-market basis for the provision of “mobile telephony/broadband services.”¹²⁶

33. For those markets not eliminated by the initial screen, we conduct, on a market-by-market basis, an analysis of any potential competitive harms associated with horizontal concentration, including the potential for both unilateral and coordinated effects. We also examine other market factors that pertain to competitive effects, including the incentive and ability of other existing firms to react and of new firms to enter the market in response to attempted exercises of market power by the merged entity as a result of the transaction.

A. Market Definitions

34. We establish at the outset the appropriate market definitions for our evaluation of the proposed transaction. This includes establishing the product and geographic market definitions that we will apply. We also discuss the input market for spectrum and identify market participants that would compete with the proposed merged entity in the provision of mobile telephony/broadband services.

1. Product Market

35. We evaluate this proposed transaction using a combined “mobile telephony/broadband services” product market, which is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).¹²⁷ Mobile telephony/broadband services is the relevant product market because it includes not only the traditional wireless services identified in older transactions but also encompasses the recent significant advances in mobile broadband services technology that is rapidly evolving for next-generation services. The market for mobile telephony/broadband services includes mobile voice and data services provided over wireless broadband networks, as well as mobile voice and data services provided over less advanced, earlier generation (*e.g.*, 2G, 2.5G) legacy wireless networks. In addition, the market includes a wide array of mobile data services, ranging from handset-based mobile data services marketed primarily as an add-on to mobile voice services to standalone mobile Internet access services for laptop users. We find that both Verizon Wireless and AT&T provide services in the product market for mobile telephony/broadband services. No party in the proceeding challenged the mobile telephony/broadband definition, and we will apply this definition in our analysis of this transaction. Accordingly, our analysis herein focuses only on the potential competitive effects that relate to the mobile telephony/broadband services market.

¹²⁵ The HHI would be greater than 2800 and the change in HHI will be 100 or greater, or the change in HHI would be 250 or greater, regardless of the level of the HHI.

¹²⁶ See, *e.g.*, *AT&T-Centennial Order*, 24 FCC Rcd at 13935 ¶ 43; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468-69 ¶ 41 n.193; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583-17584 ¶ 26; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21552 ¶ 58.

¹²⁷ See *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 37; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17469-70 ¶ 45; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583-84 ¶ 26.

2. Geographic Market

36. In its wireless transaction orders, the Commission has consistently applied the “hypothetical monopolist test” and found that the relevant geographic markets are local, larger than counties, may encompass multiple counties, and, depending on the consumer’s location, may even include parts of more than one state.¹²⁸ The Commission in these orders identified two sets of geographic areas that effectively may be used to define local markets – Component Economic Areas (“CEAs”) and Cellular Market Areas (“CMAs”).¹²⁹ We have chosen CEAs and CMAs for our data analysis because, although CEAs and CMAs are of different sizes, each is consistent in order of magnitude with the local market definition we have adopted and because each brings a different consideration to the analysis. Because these two sets of geographic areas come from different sides of the equation – demand in one case, supply in the other – the Commission found them to be useful cross-checks on each other and, together, they help ensure that the Commission’s analysis does not overlook local areas that require more detailed analysis.¹³⁰ Consistent with other transactions, we conclude that the most appropriate geographic level for market analysis is comprised of CMAs and CEAs.

37. The Applicants argue that the market for mobile telephony/broadband services is national in scope and that analyzing the transaction in areas as small as CMAs and CEAs would not reflect the competitive forces that could constrain anticompetitive behavior by AT&T post-transaction.¹³¹ While the Applicants acknowledge that the Commission has rejected a national geographic scope in prior proceedings,¹³² they argue that national and regional wireless providers offer nationwide rate plans and set prices on a national basis.¹³³

38. We reject the Applicants’ argument that the relevant geographic market is national. We instead determine, as we have repeatedly done in numerous past decisions concerning wireless transactions, that the geographic market is the area within which a consumer is most likely to shop for

¹²⁸ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17470-71 ¶ 49; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562-63 ¶¶ 89-90.

¹²⁹ CEAs are designed to represent consumers’ patterns of normal travel for personal and employment reasons and may therefore capture areas within which groups of consumers would be expected to shop for wireless service. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURVEY OF CURRENT BUSINESS, February 1995, at 75. In addition, CEAs should be areas within which any service providers present would have an incentive to market—and actually provide—service relatively ubiquitously. Conversely, CMAs are the areas in which the Commission initially granted licenses for cellular service. Although partitioning has altered this structure in many license areas, CMAs represent the fact that the Commission’s licensing programs have to a certain degree shaped this market by defining the initial areas in which wireless providers had spectrum on which to base service offerings, and they may therefore serve as a reasonable proxy for where consumers face the same competitors. See *AT&T-Centennial Order*, 24 FCC Rcd at 13933 ¶ 38 n.151; *Verizon-Wireless ALLTEL Order*, 23 FCC Rcd at 17470-71 ¶ 49; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 51; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105.

¹³⁰ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13933 ¶ 38 n.151; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17470-71 ¶ 49; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 51; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105.

¹³¹ Application, Public Interest Statement at 22-23 n.58; Joint Opposition at 4-5.

¹³² Application, Public Interest Statement at 22.

¹³³ *Id.* at 22-23.

mobile telephony/broadband services.¹³⁴ For most individuals, this market will be a local area, as opposed to a larger regional or nationwide area.¹³⁵ This is because “in response to a small but not insignificant price increase by providers” that offer service where consumers live, work or travel, most consumers are unlikely to switch to alternative wireless providers that operate only outside of such a locality.¹³⁶ We conclude, as we have done before in wireless transaction orders, that the most appropriate geographic level for market analysis is comprised of CMAs and CEAs. The Applicants’ assertions that prices are set on a national level and that consumers shop for national plans and national rates¹³⁷ do not undercut the finding of a local geographic market.¹³⁸ We similarly conclude that their claims regarding the behavior of nationwide service providers and consumers do not establish the existence of a national market.¹³⁹ We find that the scope of a service plan is a feature of the product being offered, not an indication of where users may travel to purchase the service. Further, the Applicants have provided no evidence that many users of wireless services will travel outside their local area to purchase their wireless service. Finally, we believe that most users still prefer a telephone number for their wireless service that will result in a local call, not a toll or long-distance call, for the people who call them the most (*e.g.*, friends, family, and co-workers).

3. Input Market for Spectrum

39. In evaluating this transaction, we consider the aggregation of spectrum by AT&T. We analyze spectrum in particular bands that we determine to be “suitable” for the provision of mobile telephony/broadband services.¹⁴⁰ Consistent with our determination of a product market for mobile telephony/broadband services, we include all spectrum suitable for mobile voice and data services as well as spectrum suitable for the provision of wireless broadband over broadband networks. As previously explained by the Commission, suitability is determined by whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum

¹³⁴ See, *e.g.*, *AT&T-Centennial Order*, 24 FCC Rcd at 13934 ¶ 41; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17472 ¶ 52; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 52. See also *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 89.

¹³⁵ See, *e.g.*, *AT&T-Centennial Order*, 24 FCC Rcd at 13934 ¶ 41; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17472 ¶ 52; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 52; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 89. See also 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. 08-27, *Thirteenth Report*, 24 FCC Rcd 6185, 6285 ¶ 212 (WTB 2009) (indicating that the average person shops for mobile communications 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).

¹³⁶ *DOJ/FTC Merger Guidelines* §§ 1.11, 1.12.

¹³⁷ Application, Public Interest Statement at 22-23.

¹³⁸ See, *e.g.*, *AT&T-Centennial Order*, 24 FCC Rcd at 13934 ¶ 41; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17472 ¶ 52; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 52; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562 ¶ 88.

¹³⁹ See, *e.g.*, *AT&T-Centennial Order*, 24 FCC Rcd at 13934 ¶ 41; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17472 ¶ 52; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 52; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562 ¶ 88.

¹⁴⁰ See, *e.g.*, *AT&T-Centennial Order*, 24 FCC Rcd at 13935 ¶ 43; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17473 ¶ 53; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591-92 ¶ 53; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21560-61 ¶ 81.

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/broadband service.¹⁴¹

40. No party has argued here for a change in our spectrum aggregation screen. Thus, for purposes of evaluating spectrum aggregation issues associated with this transaction, we include in both our market-specific spectrum screen as well as our market-by-market analysis those spectrum bands designated for cellular, broadband personal communications service (“PCS”), Specialized Mobile Radio (“SMR”), and 700 MHz services, as well as AWS-1 and Broadband Radio Service (“BRS”) spectrum¹⁴² where available.¹⁴³

4. Market Participants

41. In analyzing this transaction, we find, as we have before in numerous other wireless transaction orders, that mobile telephony/broadband services offered by facilities-based providers using cellular, broadband PCS, and SMR spectrum and employing various technologies offer similar voice and data functionalities and are indistinguishable to the consumer.¹⁴⁴ Similarly, to the extent that entities provide facilities-based mobile telephony/broadband services using 700 MHz, AWS-1, and BRS spectrum, the Commission also considers them to be market participants.¹⁴⁵ The Applicants claim additional sources of competition continue to emerge, including mobile virtual network operators (“MVNOs”) and licensees in the AWS-1 and 700 MHz bands.¹⁴⁶ As in previous decisions, we exclude MVNOs and resellers from consideration when computing initial concentration measures, although we acknowledge that non-facilities-based service options have an impact in the marketplace and in some instances may provide additional constraints against anticompetitive behavior.¹⁴⁷ Accordingly, we will consider facilities-based entities providing mobile telephony/broadband services using cellular, broadband PCS, SMR, 700 MHz, AWS-1, and BRS spectrum to be market participants.

B. Initial Screen

42. *Background.* In evaluating the competitive effects of this transaction, our initial screen is intended to exclude from further review those markets in which there is clearly no competitive harm

¹⁴¹ See *AT&T-Centennial Order*, 24 FCC Rcd at 13935 ¶ 43; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17473 ¶ 53; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591-92 ¶ 53.

¹⁴² The BRS spectrum reflects 55.5 megahertz of contiguous BRS spectrum (excluding BRS spectrum associated with the Middle Band Segment (MBS) channels, BRS Channel 1, and the J and K guard bands).

¹⁴³ AWS-1 spectrum is considered available based on whether there is required relocation of government transmitters or receivers in a CMA. See National Telecommunications and Information Administration, 1710-1755 MHz Introduction, <http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm> (last visited June 21, 2010) (provides information on AWS relocation, including a relocation schedule and cost summary for AWS-1 relocation). BRS spectrum is considered available if the transition is complete. See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17478 ¶ 65; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17597 ¶ 66.

¹⁴⁴ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13936 ¶ 45; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17480-81 ¶ 71; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17600 ¶ 75; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 91.

¹⁴⁵ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13936 ¶ 45; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17480-81 ¶ 71; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17600-01 ¶ 75.

¹⁴⁶ Application, Public Interest Statement at 26-28.

¹⁴⁷ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13936 ¶ 45; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17481 ¶ 74; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92.

relative to today's generally competitive marketplace.¹⁴⁸ Our initial screen criteria identifies, for further case-by-case market analysis, those markets in which, post-transaction: (1) the HHI would be greater than 2800 and the change in HHI will be 100 or greater, or the change in HHI would be 250 or greater, regardless of the level of the HHI, and (2) the Applicants would have, on a market-by-market basis, a 10 percent or greater interest in: 95 megahertz or more of PCS, SMR, and 700 MHz spectrum, where neither BRS nor AWS-1 spectrum is available; 115 megahertz or more of spectrum, where BRS spectrum is available, but AWS-1 spectrum is not available; 125 megahertz or more of spectrum, where AWS-1 spectrum is available, but BRS spectrum is not available; or 145 megahertz or more of spectrum where both AWS-1 and BRS spectrum are available.¹⁴⁹ A subsequent section examines on a case-by-case analysis those markets identified by the screen, where potential harm is possible, to determine whether harm is likely and a remedy needed.

43. NTELOS asserts that smaller, mid-tier regional, and rural carriers must overcome differences in both the quantity and quality of spectrum to which they have access in order to be effective competitors.¹⁵⁰ NTELOS states that AT&T and Verizon Wireless have the lion's share of optimum spectrum ranges (cellular and 700 MHz) for delivering mobile wireless services.¹⁵¹ NTELOS claims that it faces greater challenges deploying its PCS and AWS band spectrum due to the technical characteristics of that spectrum.¹⁵² NTELOS argues that if the Commission approves the acquisition of these 79 markets by AT&T, the gulf between the spectrum holdings of small carriers and the nationwide providers will increase.¹⁵³

44. The Applicants argue that smaller carriers are not excluded from lower spectrum bands, and point to the presence of numerous other licensees in the three CMAs¹⁵⁴ where NTELOS holds spectrum and that are also involved in the proposed transaction.¹⁵⁵ The Applicants also claim that, on average, small, rural, and regional providers hold an average of approximately 126 megahertz in the three CMAs.¹⁵⁶

45. *Discussion.* In evaluating this transaction, we decline to analyze whether, generally, the Applicants have an unfair advantage in terms of the quantity and quality of spectrum that they hold. Instead, we apply our initial screen to identify markets where spectrum aggregation by AT&T may result in competitive harms. We thus examine markets identified by the initial spectrum screen, based on the

¹⁴⁸ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13936 ¶ 45; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17481 ¶ 75; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17601 ¶ 76; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 108.

¹⁴⁹ See discussion *supra* paras. 39-40.

¹⁵⁰ NTELOS Petition at 4.

¹⁵¹ *Id.* at 4-5.

¹⁵² *Id.*

¹⁵³ *Id.* at 5.

¹⁵⁴ The CMAs are CMA262 Danville, VA; CMA681 Virginia 1 - Lee; and CMA688 Virginia 8 - Amelia.

¹⁵⁵ See Joint Opposition at 9-10. In these three CMAs, the Applicants state that licensees of 700 MHz spectrum include US Cellular, Appalachian Wireless, Buggs Island Telephone Cooperative, Continuum 700, and Cavalier, among others. See *id.* at 10. The Applicants argue that NTELOS cannot complain about lack of access to spectrum when it did not participate in Auction 73. See *id.* The Applicants also assert that NTELOS is an example of the diversity of spectrum holding in the three referenced CMAs. See *id.* at 9.

¹⁵⁶ See *id.* at 9.

specific characteristics of those markets, to determine any potential harms and whether there is a need for any remedies.¹⁵⁷

46. The Applicants attach to their amended Application a market-by-market analysis of the 79 markets involved in this transaction and state that the combined attributable spectrum held by post-transaction AT&T would meet or exceed the spectrum aggregation screen in only one market.¹⁵⁸ Within this market, the Applicants analyzed the amount of spectrum attributable to AT&T following the transaction on a county-by-county basis.¹⁵⁹ The Applicants conclude that given the existing spectrum available to current and potential competitors, there is no concern that AT&T's post-transaction spectrum aggregation would result in less than an effective competitive market for next-generation services.¹⁶⁰

47. For purposes of determining HHIs in this transaction, we use our June 2009 NRUF database, which tracks phone number usage by all telecommunications service providers, including wireless service providers, to estimate mobile communication subscribership levels, market shares, and concentration for various geographic markets.¹⁶¹ Consistent with our discussion of the geographic market definition above, in calculating market shares and market concentration, we analyze wireless provider data using two sets of geographic areas, CMAs and CEAs.¹⁶² We also apply our spectrum screen on a county-by-county basis to determine if any markets require further competitive analysis.

48. Our initial HHI screen identifies a total of 11 CMAs¹⁶³ and 12 CEAs¹⁶⁴ that require further competitive review. The initial spectrum screen identifies one CMA and one CEA that require

¹⁵⁷ See *infra* Section V.C, Market-by-Market Analysis.

¹⁵⁸ This market is CMA476 Michigan 5 - Manistee. The Applicants state that the applicable spectrum screen will be exceeded by 5 MHz in six counties of CMA476 and reached in two others in the CMA. See Application, Public Interest Statement at 21 n.52. The Applicants initially identified two markets in which they determined that the combined attributable spectrum held by post-transaction AT&T would meet or exceed the spectrum aggregation screen. Due to the fact that BRS spectrum was cleared in an additional market, thus changing the spectrum aggregation screen applicable to that market, this market no longer triggered the spectrum screen.

¹⁵⁹ See Application, Public Interest Statement, Appendix A, Amended Spectrum Aggregation Chart.

¹⁶⁰ See *id.*, Public Interest Statement at 21-22.

¹⁶¹ 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 providers 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. 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.

¹⁶² See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13937 ¶ 47; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17482-83 ¶ 78; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 51; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 104. See discussion justifying the use of CMAs and CEAs *supra* note 129.

¹⁶³ The CMAs identified by the initial HHI screen are: CMA181 Muskegon, MI; CMA246 Dothan, AL; CMA262 Danville, VA; CMA313 Alabama 7 - Butler; CMA322 Arizona 5 - Gila; CMA341 California 6 - Mono; CMA476 Michigan 5 - Manistee; CMA478 Michigan 7 - Newaygo; CMA483 Minnesota 2 - Lake of the Woods; CMA650 Tennessee 8 - Johnson; and CMA676 Utah 4 - Beaver.

¹⁶⁴ The CEAs identified by the initial HHI screen are: CEA1950 Danville, VA; CEA2180 Dothan, AL-FL-GA; CEA2520 Fargo-Moorhead, ND-MN; CEA3000 Grand Rapids-Muskegon-Holland, MI; CEA4280 Lexington, KY-TN-VA-WV; CEA5240 Montgomery, AL; CEA6560 Pueblo, CO-NM; CEA6720 Reno, NV-CA; CEA6960 (continued....)

further competitive review.¹⁶⁵ Thus, our initial screen indicated a total of 11 CMAs and 12 CEAs that require a case-by-case competitive review.

1. Horizontal Issues

49. This section examines how the transaction could affect competitive behavior in the 11 CMAs and 12 CEAs identified by the initial screen as requiring additional analysis to determine whether the proposed transaction would result in competitive harm. As discussed in a number of the Commission's wireless transaction orders, competition may be harmed either through unilateral actions¹⁶⁶ or through coordinated interaction¹⁶⁷ among firms competing in the relevant market. We note that certain aspects of our previous analyses in wireless transaction orders are not challenged on the record.¹⁶⁸ We therefore discuss unilateral effects and coordinated interaction to the extent issues are raised by the parties to this proceeding as well as within the markets identified by our initial screen.¹⁶⁹

2. Unilateral Effects

50. *Background.* Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by "elevating price and suppressing output."¹⁷⁰ In the case of mobile telephony/broadband services, this might take the form of delaying improvements in service quality or adversely adjusting plan features without changing the plan price.¹⁷¹ Incentives for such unilateral

(Continued from previous page) _____
Saginaw-Bay City-Midland, MI; CEA7720 Sioux City, IA-NE-SD; CEA9519 Traverse City, MI; CEA9538 Hobbs, NM-TX.

¹⁶⁵ The CMA identified by the initial spectrum screen is CMA476 Michigan 5 - Manistee. The CEA identified by the initial spectrum screen is CEA9519 Traverse City, MI. CMA476 and CEA9519 were also identified by the initial HHI screen.

¹⁶⁶ Unilateral effects are those that result when a merged firm finds it profitable to alter its behavior by increasing prices or reducing output. *DOJ/FTC Horizontal Merger Guidelines* § 2.2. See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13939-41 ¶ 54-58; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17484 ¶ 82; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115 n.341.

¹⁶⁷ Coordinated interaction consists of 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. See *DOJ/FTC Horizontal Merger Guidelines* § 2.1; *AT&T-Centennial Order*, 24 FCC Rcd at 13939 ¶ 52 n.201; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17484 ¶ 82; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151.

¹⁶⁸ For unilateral effects, the unchallenged aspects include: (1) product differentiation and substitutability; (2) network effects; (3) marginal cost reductions; (4) spectrum and advanced wireless services; and (5) penetration. See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13939 ¶ 53 n.203; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17484-85 ¶ 83. For coordinated interaction, the unchallenged aspects include: (1) firm and product homogeneity; (2) existing cooperative ventures; (3) number of firms; (4) technology development; (5) response of rivals; (6) transparency of information; and (7) presence of mavericks. See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13939 ¶ 53 n.203; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17484-85 ¶ 83; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21581-85 ¶¶ 154-163.

¹⁶⁹ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13939 ¶ 53; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17484-85 ¶ 83.

¹⁷⁰ See *AT&T-Centennial Order*, 24 FCC Rcd at 13939-40 ¶ 54; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 84; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115; see also *DOJ/FTC Merger Guidelines* § 2.2.

¹⁷¹ 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 (continued....)

competitive actions vary with the nature of competition in the relevant markets. Thus, we will examine whether AT&T's acquisition of the AT&T Divestiture Markets could lead to changes in the structure of the markets in the 11 CMAs and 12 CEAs identified by our initial screen as needing further analysis.¹⁷² With regard to each of these markets, we examine in more detail the possibility that the proposed transaction may lead to competitive harm through unilateral actions by AT&T following the acquisition of these markets.¹⁷³

51. As we explain below, the market for mobile telephony/broadband service in the United States appears to be differentiated.¹⁷⁴ Wireless service providers do not offer a completely homogeneous service. Rather, the service providers compete vigorously on the basis not only of price but also of other plan features, call quality, geographic coverage, and customer service. While service providers can change some of these attributes relatively quickly, others – particularly non-price attributes such as quality and coverage – require investments in spectrum or infrastructure and are not easily modified.

52. Some petitioners raise concern over concentration in the wireless industry and the ability of AT&T to unilaterally raise prices and exercise market power as a result of this transaction.¹⁷⁵ Further, petitioners argue that the wireless industry is moving to a duopoly.¹⁷⁶ NABOB asserts that this transaction would create an oligarchy in the wireless industry,¹⁷⁷ and that the large wireless carriers should not be allowed to continue to grow and assume even larger shares of local and national markets.¹⁷⁸ Sprint Nextel argues that AT&T will be able to raise its subscribers' prices without restraint if AT&T is allowed to shut down the CDMA network because the existence of the CDMA network exerts downward

(Continued from previous page)

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. *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13939-40 ¶ 54 n.209; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 n.306; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 n.341.

¹⁷² *See supra* para. 48.

¹⁷³ *See infra* Section V.C.2, Results of Market-Specific Analysis. *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13948 ¶ 75; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 84; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115; *see also DOJ/FTC Merger Guidelines* § 2.

¹⁷⁴ *See Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 85.

¹⁷⁵ NABOB Petition at 8; NTELOS Petition at 4; RTG Petition at i; PSC Reply at 3-4; RTG Reply at 3.

¹⁷⁶ CAPCC Petition at 4; NABOB Petition at 10; RTG Petition at i, 5; NABOB Reply at 1-2; PSC Reply at 3; RTG Reply at 3, 5; NTCA Aug. 7, 2009 *Ex Parte* at 2. RTG argues that rural customers are most negatively impacted when smaller, rural commercial mobile radio service ("CMRS") operators are unable to compete in a market with two overwhelming competitors. RTG Reply at 3.

¹⁷⁷ NABOB claims that the wireless industry consists of an oligarchy of four national competitors and 145 significantly smaller companies. NABOB Petition at 8-10 (arguing that diversity of ownership must be reconciled with competitive analysis to avoid the creation of an oligarchy or a duopoly between AT&T and Verizon Wireless).

¹⁷⁸ *Id.* at 8-9 (arguing that too little emphasis is placed on creating opportunities for new entrants in the wireless industry).

pressure on prices for GSM services.¹⁷⁹ NTELOS claims that the transaction does not prevent the increase of market concentration.¹⁸⁰

53. RTG argues that there is a lack of effective competition in many of the states involved in this transaction.¹⁸¹ Specifically, RTG asserts that there is a lack of competition among wireless providers in Montana, North Dakota, South Dakota, and Wyoming, and that its members will be left to face AT&T and Verizon Wireless alone in many of the 79 AT&T Divestiture Markets because Sprint Nextel and T-Mobile focus on urban, rather than rural, markets in many of these areas.¹⁸²

54. The Applicants argue that unilateral effects are unlikely in any of the markets subject to this transaction because: there are numerous competitors in each CMA; AT&T's offerings are not close substitutes for ALLTEL's offerings; and competitors can take customers away from AT&T if it attempts to act unilaterally.¹⁸³ Also, AT&T claims that there is sufficient spectrum for other providers to compete effectively and to expand their services in the event of a unilateral price increase.¹⁸⁴ Further, the Applicants contend that the wireless industry is highly competitive and that the response of rival service providers will be sufficient to constrain any potential unilateral action by AT&T in all of the AT&T Divestiture Markets.¹⁸⁵ Specifically, the Applicants point to newly emerging competition from WiMax and cable television operators such as Cox Communications as constraints against unilateral conduct in the Divestiture markets.¹⁸⁶ In addition, the Applicants argue that there is significant churn in the wireless market and customers will leave for another wireless provider if competitive pricing, services, and features are missing,¹⁸⁷ and this motivates wireless providers to compete vigorously.¹⁸⁸ The Applicants state that this transaction involves a small number of subscribers and it will not have an impact on market structure or on competition at the national level.¹⁸⁹

¹⁷⁹ Sprint Nextel Comments at 11, 18 (arguing that the elimination of a CDMA network will decrease competition and harm customers).

¹⁸⁰ NTELOS Petition at 4 (stating that market concentration increases and customers are harmed when the larger players merely exchange spectrum and properties).

¹⁸¹ RTG Petition at i, 5. See NTCA August 7, 2009 *Ex Parte* at 2-3 (arguing that the transaction represents one more "nail in the coffin of non-nationwide wireless providers."). See also RTG Reply at 5 (stating that ALLTEL was a niche player in the market that kept AT&T and Verizon Wireless from assuming insurmountable market position).

¹⁸² RTG Petition at 7-8; RTG Reply at 4 (stating that Sprint Nextel and T-Mobile are noticeably absent in many of these 79 CMAs because, while they hold spectrum, they have little to no facilities-based networks and are dependent on roaming). NTCA asserts that AT&T is not a close substitute for ALLTEL in size, scope, or corporate philosophy. See NTCA Aug. 7, 2009 *Ex Parte* at 2, 4. PSC argues that the transaction reduces consumer choice and prevents small, rural operators from competing. PCS Reply at 2.

¹⁸³ Application, Public Interest Statement at 29-30.

¹⁸⁴ *Id.* at 30-33.

¹⁸⁵ *Id.* at 23-29.

¹⁸⁶ *Id.* at 23 (noting that Cox Communications has announced plans to build out a 3G network to compete directly against AT&T and Verizon Wireless).

¹⁸⁷ *Id.* at 32.

¹⁸⁸ *Id.* at 23.

¹⁸⁹ *Id.*

55. Further, the Applicants state that AT&T has no current presence, and thus would be a new entrant, in 49 of the 79 markets,¹⁹⁰ and has only a minor presence in the remaining markets.¹⁹¹ In particular, the Applicants argue that the transaction would not diminish competition in Montana, North Dakota, South Dakota, and Wyoming because AT&T currently offers little or no retail service in these states.¹⁹² The Applicants also assert that in the 79 AT&T Divestiture Markets, Sprint Nextel and many other licensees have sufficient spectrum to build out their facilities.¹⁹³ Further, they state that Sprint Nextel and T-Mobile provide service in all or part of 60 and 20 of these CMAs, respectively.¹⁹⁴

56. The Applicants also specifically analyze the potential for unilateral effects for the one CMA that they identified where, post-transaction, AT&T would exceed the spectrum aggregation screen.¹⁹⁵ The Applicants identify the rival service providers in this CMA and provide details of their spectrum holdings and network coverage.¹⁹⁶ The Applicants argue that there are no competitive concerns in this CMA or at the national level where there is intense competition for wireless subscribers.¹⁹⁷ Further, the Applicants argue that there is no constraint on spectrum availability in any of the CMAs subject to this transaction.¹⁹⁸

57. *Discussion.* Generally, we do not find it likely that AT&T would be able to raise prices unilaterally or otherwise behave anticompetitively as a result of this transaction. Our analysis finds that in 65 of the 79 CMAs, AT&T currently either has no market share at all or has a market share of less than [REDACTED] percent, and therefore this proposed transaction would not change the number of available service providers in these CMAs.¹⁹⁹ We note that in 22 of these 65 markets, post-transaction there will continue to be only two service providers (with AT&T effectively becoming one of these as it replaces ALLTEL),²⁰⁰ and the proposed transaction would not reduce the number of service providers

¹⁹⁰ *Id.* at 29 (noting that this transaction is not a combination of two wireless providers but a transfer of Divestiture Assets).

¹⁹¹ *Id.*

¹⁹² Joint Opposition at 8.

¹⁹³ *Id.* at 14.

¹⁹⁴ *Id.* at 9.

¹⁹⁵ Application, Public Interest Statement at 21. As noted above, the Applicants originally identified two CMAs where post-transaction AT&T would exceed the spectrum aggregation screen but later amended their application to identify only one CMA where post-transaction AT&T would exceed the spectrum aggregation screen. *See supra* note 158.

¹⁹⁶ *Id.* (stating that Verizon Wireless, Sprint Nextel, T-Mobile, and Denali Spectrum hold spectrum along with three affiliates of local exchange carriers – CenturyTel, Agri-Valley, and Nsightel – in these CMAs).

¹⁹⁷ Application, Public Interest Statement at 23.

¹⁹⁸ *Id.* at 30. The Applicants note that if there is more need for CDMA coverage in certain areas within the AT&T Divestiture Markets, Sprint Nextel and other licensees have sufficient spectrum to build out their networks. Joint Opposition at 14.

¹⁹⁹ There are 54 CMAs where AT&T's market share is [REDACTED] percent.

²⁰⁰ The 22 CMAs where there would be only two service providers with more than a [REDACTED] percent market share are: CMA289 Rapid City, SD; CMA298 Bismarck, ND; CMA299 Casper, WY; CMA351 Colorado 4 - Park; CMA354 Colorado 7 - Saguache; CMA419 Iowa 8 - Monona; CMA482 Minnesota 1 - Kittson; CMA524 Montana 2 - Toole; CMA529 Montana 7 - Fergus; CMA547 Nevada 5 - White Pine; CMA634 South Dakota 1 - Harding; CMA635 South Dakota 2 - Corson; CMA636 South Dakota 3 - McPherson; CMA638 South Dakota 5 - Custer; CMA639 South Dakota 6 - Haakon; CMA640 South Dakota 7 - Sully; CMA642 South Dakota 9 - Hanson; (continued....)

with sufficient presence, coverage, or capacity. In these CMAs, there is sufficient spectrum currently licensed to other nationwide and regional, local, and small providers that additional entry is possible.

58. We find that a number of market conditions may affect whether AT&T may be more able to unilaterally raise price or decrease service as a result of the transaction, including product differentiation and substitutability and the presence and capacity of rival providers in the market.²⁰¹ We note that there is considerable variation across local geographic markets with regard to these factors, and it is difficult to generalize whether AT&T would be able to unilaterally raise prices in specific markets. Therefore, we take the possibility of unilateral effects into account in our analysis of specific markets by carefully scrutinizing, among other variables, the presence and capacity of rival carriers. Our analysis is discussed below in Section V.C.2.

3. Coordinated Effects

59. *Background.* 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.²⁰² Accordingly, one way in which a transaction 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.²⁰³ Successful coordination depends on two key factors. 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.²⁰⁴

60. RTG claims that coordinated interaction may occur because of the increased concentration in the wireless industry.²⁰⁵ RTG argues that the Applicants will be able to tacitly coordinate on price because of the lack of viable competition from other wireless providers.²⁰⁶ RTG argues that in markets where the Applicants are the dominant providers with no third operator to offer a viable alternative, AT&T and Verizon Wireless have the incentive to adjust their prices upwards for existing and new mobile customers.²⁰⁷

61. The Applicants claim that coordinated effects are unlikely because there is no change in the number of facilities-based competitors in the majority of the AT&T Divestiture Markets, and in the remaining CMAs, the transaction will make AT&T a stronger facilities-based competitor.²⁰⁸ Also, the (Continued from previous page) _____
CMA675 Utah 3 - Juab; CMA718 Wyoming 1 - Park; CMA719 Wyoming 2 - Sheridan; CMA720 Wyoming 3 - Lincoln; and CMA722 Wyoming 5 - Converse.

²⁰¹ See *AT&T-Centennial Order*, 24 FCC Rcd at 13941 ¶ 58; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 84-85.

²⁰² See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 59; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17486 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150; *DOJ/FTC Merger Guidelines* § 0.1.

²⁰³ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 59; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17486 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150.

²⁰⁴ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 59; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17486 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151; *DOJ/FTC Merger Guidelines* § 2.11.

²⁰⁵ RTG Petition at 4-6 (stating that the CMRS industry is sliding towards a *de facto* duopoly).

²⁰⁶ *Id.* at 6-7 (arguing that in some census blocks, there is competition only between the two largest nationwide CMRS providers, AT&T and Verizon Wireless, and this may increase the risk of tacit coordination).

²⁰⁷ *Id.* at 7 (stating that mobile consumers face reduced choice when the only CMRS providers are Verizon Wireless and AT&T).

²⁰⁸ Application, Public Interest Statement at 33.

Applicants argue that coordinated interaction is unlikely due to product heterogeneity, uncertain future demand, and the difficulty of detecting and punishing any deviation from the collusive agreement.²⁰⁹

62. *Discussion.* We find that a number of market conditions may affect whether coordinated interaction is more likely as a result of the transaction, including the availability of information about market conditions, the extent of firm and product homogeneity, and the presence of maverick providers in the market.²¹⁰ We note that there is considerable variation in many of the markets with regard to the number and identity of competing carriers, firm homogeneity, and the presence of 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, we take the possibility of coordinated interaction into account in our analysis of markets identified by our initial screens by carefully scrutinizing, among other variables, the presence and capacity of rival carriers. As discussed in orders concerning previous transactions, these general findings underpin the market-by-market analysis discussed below.²¹¹

C. Market-by-Market Analysis

1. Analytical Standard

63. In this section, we examine the effects of the transaction on the 11 local markets identified by our initial screen.²¹² In undertaking this market-by-market analysis, we consider variables that are important for predicting the incentive and ability of service providers to successfully restrict competition on price or non-price terms through coordinated interaction, and the incentive and ability of the merged entity unilaterally to elevate prices or suppress output.²¹³ These include: the total number of rival service providers; the number of rival firms that can offer competitive nationwide service plans; the coverage of the firms' respective networks; the rival firms' market shares; the merged entity's post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum holdings of each of the rival service providers.²¹⁴ In reaching determinations, we balance these factors on a market-specific basis, and consider the totality of the circumstances in each market.²¹⁵ We derive market shares and HHIs from our analysis of data compiled in our NRUF database. We derive network coverage from American Roamer and U.S. Census data, and we obtain spectrum holdings from our licensing databases and the Application. In addition, we examine data from our LNP database²¹⁶

²⁰⁹ *Id.* at 33-34.

²¹⁰ See *AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 61; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487 ¶ 90; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580-86 ¶¶ 150-64.

²¹¹ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 61; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487 ¶ 90; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21649 App. D.

²¹² See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13948 ¶ 75; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487-88 ¶ 91; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17602 ¶ 79; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21649 App. D.

²¹³ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13948 ¶ 75; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487-88 ¶ 91; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17602 ¶ 79; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21593-99 ¶¶ 184-200.

²¹⁴ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487 ¶ 91.

²¹⁵ See, e.g., *id.*

²¹⁶ This information is provided to the Commission by NeuStar.

through December 30, 2008.²¹⁷ We also consider the uniformity of competitive conditions in each market. Thus, in some instances, we may find that the transaction is not harmful to competition in a market if the potential harm is confined to a small enclave in the market, and this harm is likely to be ameliorated by the more favorable competitive conditions in most of the market.²¹⁸

2. Results of Market-Specific Analysis

64. After performing a market-by-market analysis, and given AT&T's commitment to divest 15 megahertz of spectrum in one Michigan CMA, we find that, in the 11 markets identified by the initial screen, there are no competitive concerns requiring remedy. Post-transaction in each of these 11 markets, there are a sufficient number of competitors present with thoroughly built-out networks and the ability to offer competitive service. Therefore, we conclude, based on the various particular facts in each of these markets, that the proposed transaction would be unlikely to make it profitable for AT&T to raise prices and restrict output or to engage in coordinated actions with another provider. The presence and capacity of rival service providers are such in these markets that the response of rival service providers would likely be sufficient to deter any unilateral actions by AT&T.²¹⁹ Below is a more detailed analysis of the 11 markets identified by our initial screens.

65. *CMAs 322, 483, 650, and 676.* In four of the eleven markets triggered by the HHI screen – CMA322 Arizona 5 - Gila, CMA483 Minnesota 2 - Lake of the Woods, CMA650 Tennessee 8 - Johnson, and CMA676 Utah 4 - Beaver – we find it unlikely that AT&T would be able to engage in anticompetitive activity primarily because of the relatively low market share, between [REDACTED] percent and [REDACTED] percent (depending on the market), that it would have post-transaction. Generally, service providers with market shares of less than 30 percent are unlikely to be able to successfully raise price or otherwise behave unilaterally in an anticompetitive manner. Further, in two of the markets (CMA483 Minnesota 2 and CMA650 Tennessee 8), the number of competitors that cover a sufficient portion of the population would not change. Although the number of competitors that cover more than 70 percent of the population would be reduced in the other two markets, there would be five competitors in one (CMA676 Utah 4) and four in the other (CMA322 Arizona 5). In all four of these markets, there would be no change in the number of competitors covering 50 percent or more of the land area. Therefore, we conclude that other providers have sufficient presence and capacity in these markets, that it is unlikely that AT&T would behave in an anticompetitive manner.

66. *CMA262.* CMA262 Danville, VA is non-rural²²⁰ and is comprised of a single county and a city. In terms of market share and population covered, the number of competitors would be reduced from six to five,²²¹ and there would be no change in terms of land area covered. ALLTEL is by far the

²¹⁷ This information includes each instance of a customer porting a phone number from one mobile provider to another, and indicates both the origin and destination provider.

²¹⁸ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13948 ¶ 75 n.288; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17488 ¶ 92; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 175602-3 ¶ 80; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 190.

²¹⁹ See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17490-91 ¶ 98; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17603 ¶ 82. Application of the initial screen on a CEA basis does not identify any potential markets of concern that are not also identified by CMA-based application of the screen. 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 area to eliminate concerns of competitive harm would be CMAs. Therefore, we undertake our in-depth analysis on the basis of CMAs.

²²⁰ This CMA has a population of 110,000 and a population density of 108 POPs per square mile.

²²¹ This reflects service providers with market shares of [REDACTED] percent or greater.

largest provider in this CMA, with more than a [REDACTED] percent market share, while the remaining five providers' market shares are only between [REDACTED] and [REDACTED] percent. Combining ALLTEL's share with AT&T's existing [REDACTED] percent share yields a combined market share of approximately [REDACTED] percent, while Verizon Wireless, the next largest competitor, holds only an approximate [REDACTED] percent share. Although there is a significant difference between the combined entity's market share and the shares of the other service providers in the market, any attempt by the post-transaction entity to engage in anticompetitive behavior would likely be unsuccessful because customers have four other competitors with sufficient coverage in this market from which to choose. In addition to these providers, we note that another provider, U.S. Cellular, has a significant market share in all of the surrounding CMAs. Although U.S. Cellular does not currently provide facilities-based service at this time in the Danville, VA CMA, it does hold a 10 megahertz PCS license and a 12 megahertz 700 MHz license, and may serve as a further disciplinary force despite not having facilities because it could potentially enter this market as a facilities-based provider in the near term. Therefore, we find there are several providers in the market with sufficient presence and capacity, as well as a potential entrant, that could discipline the market if AT&T were to behave in an anticompetitive manner.

67. *CMA341.* The California 6 - Mono CMA is extremely rural²²² with a small population, and is comprised of two counties with extensive Federal Lands. While the transaction would reduce the number of competitors from four to three in terms of market share, there would be no change in terms of the number of providers covering at least 70 percent of the population or 50 percent or more of the land area.²²³ This transaction would combine AT&T, the [REDACTED] largest provider in terms of market share, with ALLTEL, the [REDACTED] largest, to give AT&T a market share of [REDACTED] percent and Verizon Wireless a share of [REDACTED] percent. AT&T's acquisition of the divestiture assets in this CMA would make it a stronger competitor against Verizon Wireless in this market because it would increase AT&T's population and land area coverage. Further, given the population density and size of this market, we find it unlikely that Verizon Wireless or AT&T could profitably raise prices, decrease service, or engage in any type of coordinated interaction. Even if post-transaction, AT&T were to attempt to behave in an anticompetitive manner, there would be two other providers that would cover 70 percent or more of the population, and these providers would have sufficient presence and capacity to discipline the market. We also find public interest benefits in AT&T transitioning the divested network from CDMA to GSM. The transition would result in a GSM network covering approximately 46 percent of the land area of this CMA. T-Mobile, the only other GSM service provider in this CMA, covers less than 8 percent of the land area.

68. *CMAs 246 and 313.* We evaluate the two Alabama CMAs flagged by the initial screen both individually as well as a cluster because DOJ required these markets to be sold as a cluster. CMA246 Dothan, AL is a non-rural market²²⁴ and although this transaction would reduce the number of competitors in the market, there would be five competitors, post-transaction, in terms of market share, population covered, and land area covered. Post-transaction, AT&T would hold a [REDACTED] percent market share. Therefore, we find that competitive harm is unlikely in this CMA. The other CMA in the Alabama Cluster, CMA313 Alabama 7 - Butler, is rural.²²⁵ The number of competitors in this market would be reduced from six to five in terms of market share,²²⁶ with no change in the number of providers

²²² This CMA has a population of 30,000 and a population density of 2 POPs per square mile.

²²³ There are no service providers in this market that cover 50 percent or more of the land area.

²²⁴ This CMA has a population of 138,000 and a population density of 120 POPs per square mile.

²²⁵ This CMA has a population of 172,000 and a population density of 39 POPs per square mile.

²²⁶ This reflects service providers with market shares of [REDACTED] percent or greater.

covering 70 percent of the population or 50 percent of the land area. ALLTEL is by far the largest provider in this CMA, with a [REDACTED] percent market share, with the remaining five providers' market shares between [REDACTED] and [REDACTED] percent. Combining ALLTEL's share with AT&T's existing [REDACTED] percent share yields a combined market share of approximately [REDACTED] percent, while Southern LINC and Verizon Wireless, the next two largest competitors, hold only an approximate [REDACTED] and [REDACTED] percent share, respectively.

69. When analyzing the two CMAs as a cluster, the transaction would reduce the number of competitors from six to five in terms of market share, with no change in terms of population or land area coverage. AT&T's post-transaction market share would be [REDACTED] percent, with the difference between AT&T's share and the next largest provider, Verizon Wireless, being slightly more than [REDACTED]. Therefore, we find it unlikely that competitive harm would occur in these markets individually or as a cluster, and that there are four additional competitors with sufficient presence and capacity to discipline the market in the event AT&T would behave in an anticompetitive manner.

70. *CMAs 181, 486, and 476.* CMA181 Muskegon, MI and CMA478 Michigan 7 - Newyago were flagged by the HHI screen only.²²⁷ For both of these CMAs, the number of competitors would be reduced from four to three in terms of market share,²²⁸ and post-transaction AT&T would hold an approximate [REDACTED] percent share in the Muskegon CMA and an approximate [REDACTED] percent share in the Michigan 7 CMA. For the Muskegon CMA, this transaction would result in a reduction from four to three providers with sufficient population and land area coverage, while in the Michigan 7 CMA, there is no change in the number of providers with sufficient population and land area coverage. In sum, although the number of competitors in both of these markets would be reduced as a result of this transaction, we find that, based on market share and network coverage, it is unlikely that AT&T would be able to behave in an anticompetitive manner.

71. CMA476 Michigan 5 - Manistee was identified by both the HHI and spectrum screens. This is a rural market north of the Muskegon CMA.²²⁹ The number of competitors would be reduced from four to three in terms of market share. Combining ALLTEL's [REDACTED] percent market share with AT&T's existing [REDACTED] percent share would give AT&T an approximate [REDACTED] percent market share while Verizon Wireless holds just over a [REDACTED] percent share and Sprint has a share of just under [REDACTED] percent. In terms of population and land area coverage, there is no change in the number of providers, and none of the providers cover 50 percent or more of the land area, although AT&T and Verizon Wireless cover 49 and 48 percent, respectively. In sum, we find that, based on market share and network coverage, it is unlikely that AT&T would be able to behave in an anticompetitive manner.

72. With regard to spectrum aggregation, as proposed in the Application, AT&T would hold between 130 and 145 megahertz of spectrum in this CMA on a county-by-county basis. More recently, however, AT&T has voluntarily agreed to divest 15 megahertz of licensed spectrum in this CMA.²³⁰

²²⁷ CMA181 Muskegon, MI is a non-rural market with a population of approximately 200,000 and a population density of approximately 184 POPs per square mile. CMA478 Michigan 7 - Newyago is a rural market due east of the Muskegon CMA with a population of approximately 255,000 and a population density of approximately 77 POPs per square mile.

²²⁸ In CMA181 Muskegon, MI, MetroPCS has launched service with its AWS-1 spectrum, but has a market share of less than [REDACTED] percent. Given the concentration of population in the CMA, MetroPCS covers approximately 60 percent of the population by covering 12 percent of the land area.

²²⁹ This CMA has a population of 169,000 and a population density of 42 POPs per square mile.

²³⁰ AT&T Commitment Letter at 2.

Accordingly, we do not need to determine whether AT&T's post-transaction spectrum aggregation would result in competitive harm. After the voluntary divestiture, AT&T would hold 115 to 130 megahertz on a county-by-county basis in this CMA, and its spectrum holdings would no longer be identified by the spectrum aggregation screen. As part of AT&T's commitment to divest 15 megahertz of spectrum, it will file the necessary transfer application within six months of the consummation of the transaction.²³¹ In the absence of an application being filed within six months of the closing, AT&T will surrender a license or licenses including 15 megahertz of spectrum to the Commission.²³² We condition grant of the transaction applications before us in this proceeding on AT&T's compliance with this commitment.

VI. POTENTIAL PUBLIC INTEREST BENEFITS

73. In addition to assessing the potential competitive harms of the proposed AT&T-Verizon Wireless transaction, we also consider whether the proposed assignment and transfer of control of the subject wireless licenses and related authorizations held by Verizon Wireless is likely to generate verifiable, transaction-specific public interest benefits.²³³ In doing so, we ask whether AT&T would be able, and would be likely, to pursue business strategies resulting in demonstrable and verifiable benefits to consumers that would not be pursued but for the transaction.²³⁴ As discussed below, we find that the proposed transaction is likely to result in certain transaction-specific public interest benefits. We reach this conclusion, however, recognizing that it is difficult for us to precisely quantify either the magnitude of or the time period in which these benefits will be realized.²³⁵

A. Analytical Framework

74. 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 of service, enhanced service or new products.”²³⁶ This same analysis applies to an acquisition of assets like that contemplated by the proposed transaction before us. Under Commission precedent, the Applicants bear the burden of demonstrating

²³¹ *Id.*

²³² *Id.* We find that AT&T's commitment to implement its voluntary divestiture of spectrum in six months represents a reasonable time period. Divestiture to a Management Trustee is not necessary here, where only spectrum, not a business unit, is to be divested.

²³³ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13953 ¶ 87; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 114; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17614 ¶ 113; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

²³⁴ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13953 ¶ 87; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 114; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17614 ¶ 113; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

²³⁵ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13953 ¶ 88; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 115; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12504 ¶ 92; *AT&T-Dobson Order*, 22 FCC Rcd at 20330 ¶ 74.

²³⁶ E.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13953 ¶ 89; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 116; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17614 ¶ 115; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204; see also *DOJ/FTC Merger Guidelines* § 4.

that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms.²³⁷

75. The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms. First, the claimed benefit must be transaction-specific. Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a transaction is in the sole possession of the applicants, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude.²³⁸ In addition, “the magnitude of benefits must be calculated net of the cost of achieving them.”²³⁹ Furthermore, as the Commission has explained, “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.”²⁴⁰ Third, the Commission has stated that it “will more likely find marginal cost reductions to be cognizable than reductions in fixed cost.”²⁴¹ 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.²⁴²

76. Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims.²⁴³ Under this sliding scale approach, where potential harms appear “both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”²⁴⁴ Conversely, where potential harms appear less likely and less substantial, as is the case here, we will accept a lesser showing to approve the transaction.²⁴⁵

²³⁷ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13953 ¶ 89; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 116; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 115; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204.

²³⁸ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13953 ¶ 90; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

²³⁹ E.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 90; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

²⁴⁰ E.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 90; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

²⁴¹ E.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 90; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615-16 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205. See also *DOJ/FTC Merger Guidelines* § 4.

²⁴² See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 90; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206; see also *DOJ/FTC Merger Guidelines* § 4.

²⁴³ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 91; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 118; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206.

²⁴⁴ E.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 91; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 118; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206. 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 (continued....)”).

B. Discussion

77. The Applicants assert that the proposed transaction will result in a number of public interest and consumer benefits. The Applicants state that the transaction “will make available AT&T’s 3G UMTS technology and other next-generation wireless services in rural areas, which is a key goal of the Administration’s broadband policies.”²⁴⁶ The Applicants also assert that existing AT&T customers will benefit from the transaction via the expansion of GSM network coverage and the resulting improvement of wireless calling quality.²⁴⁷

78. The Applicants state that the proposed transaction will particularly benefit rural customers, as 49 out of the 79 AT&T Divestiture Markets are located in Kansas, Montana, North Dakota, South Dakota, and Wyoming, where AT&T currently does not offer any retail wireless plans.²⁴⁸ In these 49 markets, AT&T will become an active market participant for the first time.²⁴⁹ Customers in these CMAs will gain access to a broad range of services available on AT&T’s national network, which serves more than 78 million customers in the United States.²⁵⁰ As a result, the proposed transaction will enlarge subscribers’ in-network calling community to over 81 million.²⁵¹

79. *3G Broadband Network Deployment.* AT&T plans [REDACTED].²⁵² AT&T asserts that, as a result of its planned overbuild, subscribers in the AT&T Divestiture Markets will be able to enjoy the benefits of AT&T’s 3G broadband network, which already serves nearly 350 major metropolitan areas.²⁵³ AT&T states that its 3G UMTS equipment and software delivers data speeds greater than the current Verizon Wireless and ALLTEL EVDO networks.²⁵⁴ AT&T claims that this equipment and software also enables simultaneous talking and surfing the web and using e-mail.²⁵⁵ In addition, subscribers in the divested areas will gain unlimited and free access to AT&T’s Wi-Fi network

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likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.”).

²⁴⁵ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 91; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17497 ¶ 118; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 117.

²⁴⁶ Application, Public Interest Statement at 10.

²⁴⁷ *Id.*

²⁴⁸ *Id.* at 11.

²⁴⁹ *Id.*

²⁵⁰ *Id.* at 12.

²⁵¹ AT&T First Partial Response at 23.

²⁵² AT&T Second Partial Response of Dec. 17, 2009 at 5; AT&T Supplemental Response of June 2, 2010 at 2.

²⁵³ Application, Public Interest Statement at 13.

²⁵⁴ AT&T First Partial Response at 5; AT&T Second Partial Response of Dec. 17, 2009 at 4; see also AT&T, About Us, AT&T Sets the Record Straight on Verizon Ads, available at <http://www.att.com/gen/press-room?pid=14002> (last visited June 21, 2010).

²⁵⁵ AT&T First Partial Response at 5; see also AT&T, Media News Room, Media Kit: Wireless Networks, The Nation’s Fastest 3G Network, available at <http://www.att.com/gen/press-room?pid=1941> (last visited June 21, 2010).

at more than 20,000 hotspots in the United States and more than 125,000 hotspots worldwide through its roaming agreements.²⁵⁶

80. *Post-Transaction Rate Plans.* AT&T states that once its post-paid customers in the AT&T Divestiture Markets are transitioned to its GSM network and receive a GSM-compatible wireless handset,²⁵⁷ AT&T will be able to offer them a wider variety of rate plans, including AT&T's unlimited calling rate plan (which includes roaming), a variety of prepaid options,²⁵⁸ "family plans," and data plans.²⁵⁹ Post-transaction, such customers will also be able to roll over unused minutes to the next month, a feature currently not available in the former ALLTEL and RCC Wireless systems.²⁶⁰

81. *Open Applications Policy.* AT&T contends that the transaction will allow customers in the divestiture CMAs to benefit from AT&T's Open Applications Policy.²⁶¹ This policy will afford customers in the AT&T Divestiture Markets access to more application choices, more handset options, and a more robust network on which to experience downloaded applications.²⁶² AT&T notes, however, that a customer's ability to access a specific application will be determined by a variety of factors, such as the customer's location, handset, service plan, and willingness to pay for certain applications.²⁶³

82. *Handsets with Advanced Services Capabilities.* The Applicants assert that as a result of the proposed transaction, customers in the AT&T Divestiture Markets will have access to all handset offerings and services available to AT&T customers at that time.²⁶⁴ As of November 2009, AT&T offered [REDACTED] handset models, [REDACTED] of which support UMTS technology for 3G services.²⁶⁵ The Applicants maintain that, following AT&T's conversion of ALLTEL's network in the majority of the AT&T Divestiture Markets to global GSM standards and the rollout of 3G GSM services in all of the areas to be acquired, affected customers will be able to use 3G smartphones, as well as

²⁵⁶ AT&T First Partial Response at 25; *see also* Application, Public Interest Statement at 16; AT&T, Media News Room, Media Kit: Wi-Fi, Overview, *available at* <http://www.att.com/gen/press-room?pid=17541> (last visited June 21, 2010).

²⁵⁷ AT&T First Partial Response at 18. *See infra* Section VII.C for a discussion of AT&T's plans for transitioning existing CDMA customers in the AT&T Divestiture Markets.

²⁵⁸ Application, Public Interest Statement at 15.

²⁵⁹ AT&T First Partial Response at 22.

²⁶⁰ Application, Public Interest Statement at 15; AT&T First Partial Response at 23.

²⁶¹ AT&T First Partial Response at 18-21; *see also* *AT&T-Centennial Order*, 24 FCC Rcd at 13957 ¶ 101.

²⁶² *See* Letter from Maureen R. Jeffreys, Arnold & Porter LLP, Counsel for AT&T, and Jonathan V. Cohen, Wilkinson Barker Knauer LLP, Counsel for Centennial Communications Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 08-246, at 20 (May 28, 2009) (describing AT&T's Open Applications Policy).

²⁶³ AT&T First Partial Response at 18 n.6, 19; *see also* AT&T, Explore, Wireless Data Service Terms and Conditions, *available at* <http://www.wireless.att.com/cell-phone-service/legal/plan-terms.jsp> (last visited June 21, 2010).

²⁶⁴ Application, Public Interest Statement at 16; *see also* AT&T First Partial Response at 25.

²⁶⁵ AT&T First Partial Response at 24. These numbers are based on defining an individual handset/device as a unique manufacturer and unique model designation. *Id.* at n.21. If each color of a handset/device available in given model designation were treated as a separate model, AT&T would have [REDACTED] handset models, [REDACTED] of which support UMTS technology for 3G services. *Id.* at n.21.

innovative services and applications, such as access to over 90,000 pieces of mobile content (e.g., mobile banking, social networking, and GPS services)²⁶⁶ from more than 115 content providers.²⁶⁷

83. *Reduced Roaming Costs.* The Applicants assert that the transaction will result in more on-net usage by both AT&T's current customers as well as customers in the AT&T Divestiture Markets, which in turn will reduce reliance on roaming.²⁶⁸ The elimination of the costs of administering roaming will lower the marginal cost of providing service and will translate into either a lower price or increased service to customers.²⁶⁹ AT&T estimates benefits to customers with a net present value of at least [REDACTED].²⁷⁰

84. *Improved International Roaming.* The Applicants assert that the proposed transaction will result in an increased availability of international roaming at lower rates for customers in the AT&T Divestiture Markets.²⁷¹ Currently, ALLTEL maintains roaming agreements that provide for direct interconnection for its CDMA customers with providers only in Mexico, Canada, and parts of the Caribbean.²⁷² Roaming in over 160 other countries is provided through third-party agreements, but it requires that customers purchase a SIM card and the GSM-compatible BlackBerry 8830 World Edition Smartphone.²⁷³ In contrast, AT&T claims that it has an extensive global footprint as its GSM/HSPA network is the worldwide standard for wireless communication.²⁷⁴ As a result of the proposed transaction, customers in the AT&T Divestiture Markets will have access to more than 630 international roaming agreements, will be able to use roaming voice services and roaming data services in 215 and 170 countries, respectively, and will have access to 3G GSM coverage in more than 80 markets.²⁷⁵

85. *Improved Disaster Preparedness.* The Applicants contend that the transaction will improve AT&T's ability to prepare for and respond to emergencies, such as natural disasters, acts of terrorism, and others.²⁷⁶ AT&T states that it possesses unique disaster recovery capabilities and has many emergency preparedness resources, such as two mobile command centers, mobile generators, and mobile cell sites that are connected via satellite or landline.²⁷⁷ AT&T has a National Disaster Recovery ("NDR") Team in charge of the physical recovery of AT&T's network.²⁷⁸ The NDR Team maintains a fleet of

²⁶⁶ Application, Public Interest Statement at 16.

²⁶⁷ AT&T First Partial Response at 25; *see also* Reply Comments of AT&T Inc., GN Docket No. 09-191, WC Docket No. 07-52, at 66 n.111 (filed Apr. 26, 2010).

²⁶⁸ Application, Public Interest Statement at 16; AT&T Second Partial Response of Dec. 17, 2009 at 4.

²⁶⁹ Application, Public Interest Statement at 16-17.

²⁷⁰ AT&T Second Partial Response of Dec. 17, 2009 at 17. The net present value of the avoided roaming costs for both ALLTEL's CDMA and Verizon Wireless/RCC's GSM subscribers is [REDACTED]. *Id.* at 18. Based on economic theory, at least 50 percent of these cost savings will be passed onto subscribers. *Id.*

²⁷¹ Application, Public Interest Statement at 17.

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.* at 18.

²⁷⁶ *Id.* at 12, 18.

²⁷⁷ *Id.* at 18.

²⁷⁸ AT&T First Partial Response at 15; *see also* AT&T, Program Background, Network Disaster Recovery, available at <http://www.corp.att.com/ndr> (last visited June 21, 2010).

specially designed trailers with mobile recovery equipment ready to respond to any emergency incident in the United States within 12 to 14 hours, and to recover or increase network capacity following a disaster.²⁷⁹ Cells on Light Trucks and Cells on Wheels are used to provide wireless communications equipment to support first responders, local Emergency Operation Centers, government agencies, and AT&T's customer network.²⁸⁰ As a result of this transaction, AT&T will be expanding its presence into new markets, and it states that it will be in an even stronger position to respond quickly when emergencies occur in these areas.²⁸¹

C. Conclusion

86. As noted above, the proposed transaction does not present any competitive or other harms. As a result, we require a lesser showing of public interest benefits by the Applicants. In the end, we conclude, based on the record before us and as discussed above, that this transaction is likely to result in meaningful transaction-specific public interest benefits that support the Commission approving the proposed transaction.²⁸²

VII. OTHER ISSUES

A. Roaming

87. *Background.* Roaming occurs when the subscriber of one CMRS provider travels beyond the service area of that provider and uses the facilities of another CMRS provider to place an outgoing call, to receive an incoming call, or to continue an in-progress call.²⁸³ Subscribers can roam manually by providing a credit card number to the host carrier, while automatic roaming allows mobile telephone

²⁷⁹ AT&T First Partial Response at 16; *see also* AT&T, Hurricane Readiness, *available at* http://www.business.att.com/content/productbrochures/att_hurricane_readiness.pdf (last visited June 21, 2010).

²⁸⁰ AT&T First Partial Response at 16; *see also* Robert Desiato, Director of Network Disaster Recovery, "AT&T Network Disaster Recovery: Department of Homeland Security" 15, *available at* https://luxlead.luxcg.com/LuxLEAD/DHS/docs/2_DHS_Chicago_042309.pdf (last visited June 21, 2010).

²⁸¹ Application, Public Interest Statement at 19.

²⁸² One of the conditions imposed by the *Verizon Wireless-ALLTEL Order* is that Verizon Wireless comply with its voluntary commitment to phase out its high-cost universal service support in equal 20 percent increments over a period of five years. *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17529-32 ¶¶ 192-197. The order did not address whether this condition would apply to properties Verizon Wireless acquires after the Verizon Wireless-ALLTEL transaction. We clarify that it does not apply to such after-acquired properties for three reasons. First, Verizon Wireless committed to phase out high-cost universal service support "for any properties which Verizon Wireless retains, over a five year period." Letter from John T. Scott, III, Vice President & Deputy General Counsel, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 08-95, at 1 (filed Nov. 3, 2008). We read that language as excluding properties that Verizon Wireless acquires after the Verizon Wireless-ALLTEL transaction. Second, applying the condition to after-acquired properties would not address any merger-specific harm. Third, if the condition were to apply to after-acquired properties, Verizon Wireless would have to immediately terminate high-cost universal service support for any properties it acquires more than five years after the Verizon Wireless-ALLTEL transaction, which would be inconsistent with the incremental reductions contemplated by the order.

²⁸³ *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13963 ¶ 120; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21586 ¶ 166; *see also* Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, WT Docket Nos. 05-265, 00-193, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 15047, 15048 ¶ 2 (2005).

subscribers to place calls while roaming as they do in their home coverage area, by simply entering the phone number and pressing “send.”

88. Under the Commission’s automatic roaming rules, upon a reasonable request, CMRS carriers are obligated to provide automatic roaming to any technologically compatible, facilities-based CMRS carrier on reasonable and not unreasonably discriminatory terms and conditions, pursuant to sections 201 and 202 of the Communications Act.²⁸⁴ The automatic roaming obligations extend to real time, two-way switched voice and data service that is interconnected with the public switched network.²⁸⁵ It also applies to push-to-talk and text messaging services offered by CMRS carriers.²⁸⁶ In the 2007 *Data Roaming Further Notice*, the Commission sought comment on whether it should extend the automatic roaming obligation to non-interconnected services or features, including services that have been classified as information services offered by CMRS carriers.²⁸⁷ In the 2010 *Roaming Order on Reconsideration* adopted on April 21, 2010, the Commission modified the automatic roaming obligation that the Commission adopted for voice and related services in the 2007 *Roaming Report and Order* by eliminating the home roaming exclusion adopted in that order.²⁸⁸ In the 2010 *Data Roaming Second Further Notice*, the Commission sought comment on broadening the scope of the proceeding to non-CMRS providers and whether to extend roaming obligations to data services that are provided without interconnection to the public switched network – including mobile broadband services.²⁸⁹ The data roaming proceeding is pending.

89. Some commenters claim that AT&T’s plans to transition the divestiture network from CDMA to UMTS would eliminate CDMA roaming coverage or reduce the number of roaming partners to one (Verizon Wireless) in parts of the 79 AT&T Divestiture Markets, and as a result roaming rates may increase.²⁹⁰ These commenters argue that the divested CDMA network is essential for providing

²⁸⁴ 47 C.F.R. § 20.12(d). See also Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 25 FCC Rcd 4181, 4190 ¶ 18 (2010) (“*Roaming Order on Reconsideration*” and “*Data Roaming Second Further Notice*,” respectively); Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817, 15826 ¶ 23 (2007) (“*Roaming Report and Order*” and “*Data Roaming Further Notice*,” respectively).

²⁸⁵ 47 C.F.R. § 20.12(a)(2). See also *Roaming Order on Reconsideration*.

²⁸⁶ 47 C.F.R. § 20.12(a)(2).

²⁸⁷ *Roaming Further Notice*, 22 FCC Rcd at 15845-47 ¶¶ 77-81.

²⁸⁸ *Roaming Order on Reconsideration*, 25 FCC Rcd at 4190 ¶ 18. In the *Roaming Report and Order*, the Commission established a home roaming exclusion relating to this automatic roaming obligation, stating that a would-be host CMRS carrier is not required to provide automatic roaming to a requesting CMRS carrier in the requesting carrier’s home market. See *Report and Order*, 22 FCC Rcd at 15835 ¶ 48.

²⁸⁹ *Data Roaming Second Further Notice*, 25 FCC Rcd at 4212 ¶ 62.

²⁹⁰ Sprint Nextel Comments at 2-3, Ex. A; Cox Reply at 4-5; PSC Reply at 4; RTG Reply at 5; SDPUC Reply at 6; Sprint Nextel Reply at 2-4; *Ex Parte* Letter from Caressa Bennet, General Counsel, Rural Telecommunications Group, to Marlene Dortch, Secretary, Federal Communications Commission, at 2 (Mar. 4, 2010) (“RTG Mar. 4, 2010 *Ex Parte*”). Sprint Nextel claims CDMA coverage would be eliminated in approximately 32 percent of the square mileage that ALLTEL originally covered and that competition for wholesale CDMA roaming would be reduced in 59 percent of the same square mileage. Sprint Nextel Comments at 3, 10-12; *Ex Parte* Letter from Maria Cattafesta, Senior Counsel, Sprint Nextel, to Marlene Dortch, Secretary, Federal Communications Commission, at 2 (Mar. 17, 2010) (“Sprint Nextel Mar. 17, 2010 *Ex Parte*”). Cox identifies 57 CMAs where Verizon Wireless would be the only CDMA roaming option post-transaction. Cox Reply at 4-7, Exhibit A; *Ex Parte* Letter from Michael H. (continued....)

customers CDMA roaming services in these markets.²⁹¹ Some parties claim that it is highly unlikely that Sprint Nextel or another carrier would be able to replicate the entire footprint of the divested CDMA network in the foreseeable future because it would not be economically feasible or efficient for them to do so.²⁹² Sprint Nextel claims that even if building a network was economical, the time for it to build a replacement CDMA network would be longer than the one-year transition period.²⁹³

90. The Applicants assert that Verizon Wireless will continue to be a potential CDMA roaming partner in each of the 79 markets, and there are other CDMA service providers in these markets, and that Sprint Nextel's claims are exaggerated.²⁹⁴ The Applicants argue that all spectrum holders that use CDMA technology are potential roaming partners, regardless of whether they already have built out their networks and are offering service,²⁹⁵ and that these other CDMA carriers, and not a GSM carrier like AT&T, are the logical providers of CDMA roaming services.²⁹⁶ According to the Applicants, substantial CDMA network build out will likely occur in the AT&T Divestiture Markets in the next year, including by Verizon Wireless.²⁹⁷ Also, AT&T claims that it is not [REDACTED],²⁹⁸ [REDACTED].²⁹⁹ However, AT&T and Verizon Wireless have entered into a CDMA roaming agreement in which AT&T would provide Verizon Wireless with services using the CDMA transport assets acquired through this

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Pryor, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Counsel to Cox Communications, to Marlene Dortch, Secretary, Federal Communications Commission, at 5-6 (Feb. 12, 2010) ("Cox Feb. 12, 2010 *Ex Parte*").

²⁹¹ Sprint Nextel Comments at 13; PSC Reply at 3 (stating that given the Applicants' nationwide coverage, they have little incentive to offer fair and reasonable roaming terms, particularly to rural competitors). Cox argues that new entrants must obtain reasonable roaming agreements in order not to be at a substantial competitive disadvantage. See Cox Feb. 12, 2010 *Ex Parte* at 5; see also SDPUC Reply at 6; RTG Mar. 4, 2010 *Ex Parte* at 2-3.

²⁹² Sprint Nextel Comments at 13-17; Cox Reply at 6; Sprint Nextel Reply at 3-4. The total cost to build and operate sites to serve the 79 markets would reach into the hundreds of millions of dollars and would not be offset by large government subsidies of the magnitude ALLTEL had received for its network, and given the low population densities, these markets would likely result in a modest potential revenue stream. Sprint Nextel Comments at 13-17; Sprint Nextel Reply at 3-4.

²⁹³ Sprint Nextel Reply at 4.

²⁹⁴ Joint Opposition at 13. AT&T estimates that, in the AT&T Divestiture Markets, ALLTEL was the only CDMA provider for [REDACTED]. AT&T First Partial Response at 6-12; *Ex Parte* Letter from William E. Cook Jr., Arnold & Porter LLP, Counsel to AT&T, and Nancy J. Victory, Wiley Rein LLP, Counsel to Verizon Wireless, to Marlene Dortch, Secretary, Federal Communications Commission, at 3 (Mar. 12, 2010) ("Applicants Mar. 12, 2010 *Ex Parte* Letter").

²⁹⁵ Applicants Mar. 12, 2010 *Ex Parte* at 4. AT&T provides a list, on a CMA basis, of licensees that use CDMA technology. See AT&T First Partial Response at 7-12. Mark Uhde argues that Sprint Nextel could build out its own network in Montana and would not need to rely on ALLTEL roaming. Comment of Mark Uhde, filed Mar. 25, 2010, at 1 ("Mark Uhde Comments").

²⁹⁶ Applicants Mar. 12, 2010 *Ex Parte* at 4.

²⁹⁷ AT&T Supplemental Response of May 5, 2010 at 3. Verizon Wireless is [REDACTED]. See AT&T Supplemental Response of May 5, 2010 at 3.

²⁹⁸ In the *Verizon Wireless-ALLTEL Order*, the Commission conditioned its approval of the transaction on certain roaming conditions. See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17524 ¶ 178.

²⁹⁹ AT&T Second Partial Response of Dec. 17, 2009 at 14. In order to provide [REDACTED]. See AT&T Second Partial Response of Dec. 17, 2009 at 14-15.

transaction that, when combined with services from Verizon Wireless and third parties, would enable the provision of CDMA roaming services.³⁰⁰

91. *Commenters' Proposed Conditions.* Some parties assert that the proposed transaction would cause competitive harm unless the Commission requires certain conditions with respect to AT&T's obligations pertaining to roaming.³⁰¹ Some commenters request that the Commission require the Applicants to provide home roaming and data roaming.³⁰² NTELOS requests that the Commission resolve the pending petitions for reconsideration or clarification of the *Verizon Wireless-ALLTEL Order* prior to grant of these applications.³⁰³ RTG and Sprint Nextel request that the roaming conditions adopted for that transaction be passed through to AT&T for the 79 former ALLTEL markets that AT&T is now seeking to acquire.³⁰⁴ Sprint Nextel initially requested that the Commission impose roaming conditions for a period of three years or until the Verizon Wireless-ALLTEL roaming conditions expire.³⁰⁵ However, in a recent filing, Sprint Nextel states that the elimination of the home roaming exception in the 2010 *Roaming Order on Reconsideration* significantly mitigates its concerns and it no longer requests that AT&T retain the CDMA network post-transition.³⁰⁶ Sprint Nextel, however, continues to seek a condition requiring AT&T to enter into a roaming agreement with Sprint Nextel that replicates the same rates, terms, and conditions as in the Sprint Nextel-ALLTEL roaming agreement.³⁰⁷

92. Cox contends that AT&T should be required to maintain and operate the divested CDMA network for five years or until a next generation LTE network is deployed both by Cox and by carriers in the divested areas, whichever occurs first.³⁰⁸ Further, Cox states that in areas where Verizon Wireless would be the sole CDMA roaming option, Verizon Wireless should be required to offer roaming partners

³⁰⁰ AT&T Second Partial Response of Dec. 17, 2009 at 15. [REDACTED] Verizon Wireless Supplemental Response of Mar. 3, 2010 at 00002235-2236; *see also* AT&T Commitment Letter at 2.

³⁰¹ *See, e.g.*, Cox Feb. 12, 2010 *Ex Parte* at 3-4; Sprint Nextel Comments at 3-4.

³⁰² RTG Petition at 12; PSC Reply at 5; NTCA Aug. 7, 2009 *Ex Parte* at 4-5. NTCA requests that the conditions apply to all nationwide carriers. *See id.* RTG also argues that the transaction should not be approved until the petitions seeking reconsideration of the *Roaming Report and Order* are resolved, and that if these issues are not resolved prior to grant of these applications, then the Commission should require the Applicants to provide home and data roaming. *See* RTG Petition at 13-14; RTG Reply at 7-8.

³⁰³ NTELOS Petition at 6. NTELOS also alleges that Verizon Wireless is attempting to renege on the commitments it made in the Verizon Wireless-ALLTEL transaction. *Id.*

³⁰⁴ RTG Reply at 6; Sprint Nextel Comments at 3-4.

³⁰⁵ Sprint Nextel Comments at 18-19; Sprint Nextel Reply at 5-7; Sprint Nextel Mar. 17, 2010 *Ex Parte* at 1. Sprint Nextel requested that the Commission require AT&T to: (1) honor ALLTEL roaming partners' ALLTEL CDMA roaming agreements in their entirety (rates, terms, and conditions) covering the divested CDMA network in the 79 CMAs; (2) provide ALLTEL roaming partners the option to keep the rates set forth in their roaming agreement for the full term of the agreement; (3) not adjust upward the rates in ALLTEL's agreements with ALLTEL roaming partners; and (4) continue to operate and maintain the divested CDMA network in the 79 CMAs.

³⁰⁶ *Ex Parte* Letter from Maria Cattafesta to Marlene Dortch, Secretary, Federal Communications Commission, at 2 (Apr. 29, 2010) ("Sprint Nextel Apr. 29, 2010 *Ex Parte*"). Sprint Nextel claims that the amount of time AT&T will need to transition its network should serve as a sufficient transition period for itself. *See id.*

³⁰⁷ *Id.*

³⁰⁸ Cox Reply at 3, 9; Cox Feb. 12, 2010 *Ex Parte* at 3, 6, 11; *see also Ex Parte* Letter from Michael H. Pryor, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Counsel to Cox Communications, to Marlene Dortch, Secretary, Federal Communications Commission, at 1 n.2 (Apr. 28, 2010) ("Cox Apr. 28, 2010 *Ex Parte*"). RTG supports Cox's proposed conditions. *See* RTG Mar. 4, 2010 *Ex Parte* at 1.

that do not currently have a roaming agreement with either Verizon Wireless or ALLTEL the ability to opt into any existing Verizon Wireless or ALLTEL roaming agreement for three years.³⁰⁹ Cox claims that any concerns about the confidentiality of existing roaming agreements that might arise with respect to an opt-in condition could be addressed, and this condition would not conflict with the Commission's refusal in the 2007 *Roaming Report and Order* to make roaming agreements public because the condition is limited and transaction-specific.³¹⁰ Finally, Cox and Sprint Nextel argue that conditions are warranted in this transaction because the Commission has previously imposed similar conditions, such as in the *AT&T-Centennial Order*, when there was a reduction in the number of CDMA providers in certain markets.³¹¹

93. The Applicants argue that the Commission should reject the proposed roaming conditions.³¹² The Applicants claim that the imposition of roaming conditions would dictate AT&T's choice of technology, and that it is unnecessary given that other CDMA roaming opportunities would continue to be available after the transaction.³¹³ The Applicants also argue that any conditions requiring data roaming should be rejected, and instead should be addressed in the ongoing Commission proceeding on data roaming.³¹⁴ Further, the Applicants contend that the Commission should not dictate the terms of roaming agreements with AT&T because it is not within the scope of this proceeding to determine contractual rights or responsibilities or to guarantee any carrier that it will pay a particular rate.³¹⁵

94. The Applicants argue that there is no basis for Cox's "opt-in" proposal because: (1) it is untimely and not related to the transaction; (2) Cox fails to demonstrate harm in the retail wireless market; (3) the proposal violates rights of carriers not party to the transaction by disclosing confidential terms, conditions, and rates in numerous roaming agreements; and (4) there is no evidence that a provider could not obtain reasonable roaming terms from Verizon Wireless.³¹⁶ The Applicants state that if Verizon Wireless were to refuse to negotiate automatic roaming arrangements on reasonable terms and conditions, then Cox or any other service provider could file a complaint with the Commission.³¹⁷ The Applicants also state that a requirement to maintain and operate the divested CDMA network for a certain period of

³⁰⁹ Cox Reply at 7-9; Cox Feb. 12, 2010 *Ex Parte* at 3-4; Cox Apr. 28, 2010 *Ex Parte* at 2-3; *see also* RTG Mar. 4, 2010 *Ex Parte* at 1. Cox states that these conditions are necessary to preserve reasonable opportunities to enter into automatic roaming agreements. Cox Reply at 8; *see also* Cox Feb. 12, 2010 *Ex Parte* at 3-4; Cox Apr. 28, 2010 *Ex Parte* at 2.

³¹⁰ Cox Apr. 28, 2010 *Ex Parte* at 2-3.

³¹¹ Cox and Sprint Nextel both refer to the roaming conditions the Commission imposed in Puerto Rico in the *AT&T-Centennial Order*. *See* Cox Feb 12, 2010 *Ex Parte* at 8-10; Sprint Nextel Mar. 17, 2010 *Ex Parte* at 1 n.1. Sprint Nextel also refers to the roaming conditions the Commission imposed in the *Verizon Wireless-ALLTEL Order*. *See* Sprint Nextel Comments at 17.

³¹² Joint Opposition at 10-11; Applicants Mar. 12, 2010 *Ex Parte* at 1-2; *see also* Mark Uhde Comments at 1.

³¹³ Joint Opposition at 11-12; *see also* Applicants Mar. 12, 2010 *Ex Parte* at 3-5.

³¹⁴ Joint Opposition at 17.

³¹⁵ *Id.*

³¹⁶ Applicants Mar. 12, 2010 *Ex Parte* at 7-11.

³¹⁷ *Id.* at 11.

time is inconsistent with precedent,³¹⁸ and that the circumstances in the AT&T-Centennial transaction are very different than those here.³¹⁹

95. *Discussion.* We condition our approval of this transaction on AT&T's and Verizon Wireless's commitments to provide roaming service on the ALLTEL CDMA network as set forth below.

96. AT&T commits to negotiate with CDMA roaming partners in good faith and to accommodate reasonable requests for CDMA roaming services at a cell site in accordance with the Commission's roaming rules for as long as AT&T provides CDMA retail or roaming services at that specific cell site.³²⁰ More specifically, for any period during which AT&T continues to provide any automatic CDMA roaming service to Verizon Wireless at a cell site acquired in this transaction, AT&T commits to provide the same type of automatic CDMA roaming service at that same cell site to other facilities-based CDMA carriers upon reasonable request on reasonable terms and conditions.³²¹ Moreover, nothing in AT&T's commitment shall be construed to restrict AT&T from terminating CDMA services at any cell site to all CDMA carriers at any time consistent with AT&T's rights and obligations under its roaming agreement with Verizon Wireless or otherwise to impede AT&T's offering of a HSPA or GSM service.³²² We condition our approval of this transaction on these AT&T commitments.

97. With respect to Verizon Wireless, we condition our approval on the following Verizon Wireless commitments. During the one-year transition period following the closing of this transaction, Verizon Wireless will continue to administer CDMA roaming traffic from other carriers on the divestiture market networks pursuant to its Transition Services Agreement with AT&T, and Verizon Wireless will clear that traffic at the rates, terms, and conditions set forth in its (including ALLTEL's) existing roaming agreement with each carrier.³²³

98. We note that nothing in these commitments will be construed as limiting the rights of any carrier to pursue roaming arrangements pursuant to Commission rules and the remedies they afford. We find that AT&T's and Verizon Wireless's roaming-related commitments are sufficient to provide continuity of CDMA roaming services in the markets subject to this transaction. We do not find the specific facts of the situation warrant a condition imposing an obligation on AT&T to enter into a roaming agreement with Sprint Nextel that replicates the same rates, terms, and conditions as in the Sprint Nextel-ALLTEL roaming agreement. Sprint Nextel would be able to roam either on the Verizon Wireless network under its roaming agreement with Verizon Wireless or, in the alternative, Sprint Nextel could negotiate a roaming agreement with AT&T for CDMA roaming services based on AT&T's roaming commitments above and in accordance with the Commission's roaming rules.³²⁴

99. Further, we decline to adopt the roaming condition proposed by Cox that would require that Cox, and any other new entrants using CDMA technology that do not currently have roaming agreements with Verizon Wireless or ALLTEL, be allowed to opt-in to an existing Verizon Wireless or

³¹⁸ *Id.* at 5.

³¹⁹ *Id.* Unlike in the AT&T-Centennial transaction, the Applicants state that [REDACTED]; [REDACTED]; does not have much in the way of network assets in these markets; [REDACTED]; and faces a more complex network conversion in these markets than in the AT&T-Centennial transaction. *Id.* at 5-6.

³²⁰ AT&T Commitment Letter at 2; *see also* AT&T Supplemental Response of May 5, 2010 at 3.

³²¹ AT&T Commitment Letter at 2; *see also* AT&T Supplemental Response of May 5, 2010 at 3.

³²² AT&T Commitment Letter at 2.

³²³ Verizon Wireless Commitment Letter at 1.

³²⁴ *See* AT&T Commitment Letter at 2.

ALLTEL roaming agreement or that AT&T be required to maintain the CDMA network for five years or until Cox and other providers have deployed LTE. There has been no clear demonstration of how such a requirement would serve the public interest, nor has it been shown why the duty of carriers to provide automatic roaming that the Commission recently reaffirmed and clarified in the *Roaming Order on Reconsideration* will not adequately address the concerns raised by Cox. As the Commission has noted, because the need for automatic roaming services may not always be the same, and the value of roaming services may vary across different geographic markets due to differences in population and other factors affecting the supply and demand for roaming services, it is likely that automatic roaming rates will reasonably vary.³²⁵ The opt-in proposal would also appear to require access to other parties' roaming agreements, which, as is generally the case with commercial agreements, are confidential and negotiated between specific parties.³²⁶ Further, the proposed condition by Cox is not related to a transaction-specific harm. Adopting such a condition could distort competitive market conditions, resulting in favoring some providers over others unjustly and unreasonably.³²⁷

100. Rather, our general roaming policies and rules, as recently revised and clarified, should ensure that Cox and other new entrants can obtain roaming agreements on reasonable terms and conditions. As we have underscored, roaming plays an important role in increasing competition and consumers' access to seamless nationwide mobile services wherever and whenever they choose.³²⁸ As a common carrier service, roaming is subject to the protections afforded by sections 201, 202, and 208 of the Communications Act.³²⁹ Under the Commission's automatic roaming rules, upon a reasonable request, CMRS carriers are obligated to provide automatic roaming to any technologically compatible, facilities-based CMRS carrier on reasonable and not unreasonably discriminatory terms and conditions. Our recent rule revisions and clarifications are designed to further our goal of enabling carriers to successfully negotiate reasonable roaming agreements.³³⁰ To the extent there is a disagreement between CMRS carriers regarding whether carriers have met their roaming obligations, we have provided additional guidance on factors that may be considered,³³¹ and we stand ready to address and resolve roaming disputes in an expeditious manner.³³²

101. We note that the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes.³³³ A number of parties

³²⁵ See *Roaming Report and Order*, 22 FCC Rcd at 15833-34 ¶¶ 42-45.

³²⁶ See *id.*, 22 FCC Rcd at 15839-40 ¶ 62 (the Commission declined to impose an affirmative obligation on CMRS carriers to post their roaming rates).

³²⁷ See *id.*, 22 FCC Rcd at 15834 ¶ 44. In the *Roaming Report and Order*, the Commission denied a request by RTG that Tier IV CMRS Providers be offered "most favored" roaming partner rates. See *id.*, 22 FCC Rcd at 15833-34 ¶¶ 41-45.

³²⁸ *Roaming Order on Reconsideration*, 25 FCC Rcd at 4182 ¶ 1.

³²⁹ 47 U.S.C. §§ 201, 202, 208. See also 47 C.F.R. § 20.12(d); *Roaming Order on Reconsideration*, 25 FCC Rcd at 4190 ¶ 18; *Roaming Report and Order*, 22 FCC Rcd at 15826 ¶ 23.

³³⁰ *Roaming Order on Reconsideration*, 25 FCC Rcd at 4190-91 ¶ 19.

³³¹ *Id.*, 25 FCC Rcd at 4199-4201 ¶¶ 36-40.

³³² *Id.*, 25 FCC Rcd at 4191 ¶ 20, 4199 ¶ 36.

³³³ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 30; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17463 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

raised more general concerns about home roaming and data roaming. In the 2010 *Roaming Order on Reconsideration*, we modified the automatic roaming obligation that the Commission adopted for voice and related services in 2007 by eliminating the home roaming exclusion.³³⁴ Accordingly, home roaming concerns are no longer an issue. We also conclude that concerns on data roaming would be more appropriately addressed in the 2010 *Roaming Second Further Notice* proceeding.³³⁵ In this notice, we are considering whether to extend the automatic roaming obligation to non-interconnected services or features, including services that have been classified as information services.³³⁶ Any decisions reached or rules adopted in the 2010 *Roaming Second Further Notice* proceeding will apply with equal force to AT&T and Verizon Wireless. Furthermore, we do not find that resolving the petitions for reconsideration of the *Verizon Wireless-ALLTEL Order* prior to the grant of these applications is needed to prevent any transaction-specific harm. Finally, because the Verizon Wireless-ALLTEL roaming conditions apply expressly to the ALLTEL agreements that Verizon acquired through the transaction, we decline to apply the roaming conditions imposed in the *Verizon Wireless-ALLTEL Order* to AT&T as a condition of this transaction because AT&T [REDACTED] as part of this transaction.

B. Handset Availability and Exclusive Handset Agreements

102. Certain petitioners raise concerns that the only potential competition to AT&T and Verizon Wireless after the transaction would be small and rural operators who are unable to offer the latest handsets.³³⁷ For example, Cellular South contends that if AT&T is permitted to compete with it, AT&T will be able to offer handsets with a variety of features that ALLTEL was not able to offer and Cellular South cannot offer.³³⁸ Cellular South further states that AT&T would thus have an overwhelming competitive advantage over Cellular South “since most customers primarily choose their service provider on the basis of its handset offerings.”³³⁹ PSC also argues that small and rural carriers are at a considerable marketplace disadvantage and states that small service providers have found it difficult to obtain an adequate selection of handsets compliant with hearing aid compatibility requirements in the necessary quantities.³⁴⁰ RTG claims that the inability of small and rural operators to sell their subscribers handsets that are subject to exclusive handset agreements places the smaller and rural carriers at a significant competitive disadvantage.³⁴¹ NTCA asserts that the competitive advantage that nationwide carriers have is the ability to offer the latest technology to consumers years before the small, rural carriers are able to offer such technology, and small, rural service providers will not survive if they lose their high-volume users to AT&T and Verizon Wireless.³⁴² In light of these concerns, several parties contend that the Commission should condition its approval of this transaction on AT&T and Verizon Wireless permitting all of their handsets to be available to all Tier III rural wireless carriers throughout the United

³³⁴ *Roaming Order on Reconsideration*, 25 FCC Rcd at 4190 ¶ 18.

³³⁵ See generally *Roaming Second Further Notice*.

³³⁶ *Id.*

³³⁷ Cellular South Petition at 6; RTG Petition at 8; NTCA Aug. 7, 2009 *Ex Parte* at 3.

³³⁸ Cellular South Petition at 6.

³³⁹ *Id.*

³⁴⁰ PSC Reply at 5.

³⁴¹ RTG Petition at 14.

³⁴² NTCA Aug. 7, 2009 *Ex Parte* at 3-4.

States;³⁴³ condition its approval on a commitment from AT&T not to enforce its existing exclusive handset agreements with Apple and RIM or enter into similar agreements in the future;³⁴⁴ or defer action on the transaction until the Commission resolves the separate exclusive handset proceeding.³⁴⁵

103. In response to these concerns regarding exclusive handset agreements, the Applicants state that the Commission should not consider these claims because they are not transaction-specific.³⁴⁶ The Applicants maintain that the Commission has a longstanding policy of not considering arguments in a transaction proceeding that are more appropriately addressed in other Commission proceedings.³⁴⁷ In addition, the Applicants state that the Commission does not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.³⁴⁸ The Applicants conclude that the Commission should dismiss the claims in this proceeding and consider them, if at all, in an industry-wide proceeding.³⁴⁹

104. We were presented with similar concerns and requests for relief during our recent consideration of the AT&T and Centennial merger.³⁵⁰ As we did in that proceeding, we find here that the conditions proposed regarding exclusive handset agreements are not narrowly tailored to prevent a transaction-specific harm.³⁵¹ We find that the proposed conditions instead apply broadly across the industry and are therefore more appropriate for a Commission proceeding where all interested industry parties have an opportunity to file comments.³⁵² RCA has filed a petition asking that the Commission review exclusive handset agreements on an industry-wide basis, and based on a full record in that proceeding, the Commission will be able to determine whether any action is needed in this area, and if so, to develop a comprehensive approach that addresses exclusive handset agreements.³⁵³ We therefore decline to impose any of the above proposed conditions.

C. Customer Transition Matters

105. In evaluating this transaction, we seek to ensure that AT&T's transition of customers from a CDMA network in most markets to GSM operations is as successful as possible with minimal disruption to customers. AT&T states that customers will be transitioned to AT&T's GSM network and will receive a GSM-compatible wireless handset in order to access the full range of services available on

³⁴³ RTG Petition at 14; PSC Reply at 5-6. NTCA states that the Commission should require, if it approves this transaction, the elimination of all exclusive handset agreements. NTCA Aug. 7, 2009 *Ex Parte* at 5.

³⁴⁴ Cellular South Petition at 14-15.

³⁴⁵ Cellular South Reply at 4-5. *See* Rural Cellular Association Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, RM-11497 (filed May 20, 2008); Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, *Public Notice*, 23 FCC Rcd 14873 (2008).

³⁴⁶ Joint Opposition at 27-28.

³⁴⁷ *Id.*

³⁴⁸ *Id.* at 28.

³⁴⁹ *Id.* at 29.

³⁵⁰ *See AT&T-Centennial Order*, 24 FCC Rcd at 13971-72 ¶¶ 139-41.

³⁵¹ *See id.*, 24 FCC Rcd at 13972 ¶ 141.

³⁵² *See id.*

³⁵³ *See id.*

AT&T's network.³⁵⁴ Sprint Nextel argues that there is insufficient information on the record reflecting whether AT&T will maintain the CDMA network, and that without this information, the Commission cannot perform a complete examination of whether the transaction is in the public interest.³⁵⁵ Sprint Nextel questions the impact on wireless customers, including issues such as cost, quality of service, and the length of the transition.³⁵⁶ The SDPUC shares Sprint Nextel's concern that the Applicants have not provided sufficient information regarding AT&T's planned overbuild of the existing CDMA network to GSM.³⁵⁷ Among other things, the SDPUC queries about AT&T's plans for the type of GSM technology to be deployed in South Dakota, its plans for future upgrades such as 3.5G and 4G LTE in the state, and its customer policies (e.g., replacement phones, early termination fees).³⁵⁸

106. AT&T responds that it has significant experience transitioning customers from one technology to another, in particular, transitioning CDMA properties into its existing GSM network technology.³⁵⁹ AT&T states that it will have customer policies in place to facilitate a seamless transition for customers without any interruption in service.³⁶⁰

107. *Transition Framework.* AT&T provided a copy of its Transition Services Agreement ("TSA") with Verizon Wireless and its transition plans pursuant to the Information Request.³⁶¹ The TSA addresses a wide range of functions, such as customer care, network services, collections, retail stores, sales reporting, and supply chain management.³⁶² The TSA specifies that Verizon Wireless will provide transition services for a period of 12 months, effective from the date of the Agreement.³⁶³ Following the closing of the proposed transaction, AT&T currently plans [REDACTED].³⁶⁴

108. *Length of Transition.* With respect to the length of the transition, AT&T states that [REDACTED].³⁶⁵ AT&T estimates [REDACTED],³⁶⁶ [REDACTED],³⁶⁷ [REDACTED].³⁶⁸

³⁵⁴ AT&T First Partial Response at 18; *see also* AT&T, Media Newsroom, AT&T to Acquire Divestiture Properties from Verizon Wireless, Enhance Network Coverage and Customer Service ("AT&T Press Release Regarding Acquisition from Verizon Wireless"), available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26803> (last visited June 21, 2010).

³⁵⁵ Sprint Nextel Comments at 8-9.

³⁵⁶ *Id.* at 9-10.

³⁵⁷ SDPUC Reply at 4.

³⁵⁸ *Id.* at 4-6.

³⁵⁹ Joint Opposition at 12.

³⁶⁰ *Id.*

³⁶¹ AT&T Supplemental Response of Apr. 16, 2010 at II.11.1A.

³⁶² AT&T Supplemental Response of Apr. 16, 2010.

³⁶³ *Id.* at II.11.6A.

³⁶⁴ AT&T Second Partial Response of Dec. 17, 2009 at 14-15.

³⁶⁵ *Id.* at 5; *see also* AT&T Press Release Regarding Acquisition from Verizon Wireless.

³⁶⁶ AT&T anticipates [REDACTED]. AT&T Second Partial Response of Dec. 17, 2009 at 11-12. AT&T [REDACTED]. AT&T Supplemental Response of June 2, 2010 at 2.

³⁶⁷ AT&T anticipates [REDACTED]. AT&T Second Partial Response of Dec. 17, 2009 at 11-12.

³⁶⁸ AT&T anticipates [REDACTED]. AT&T Second Partial Response of Dec. 17, 2009 at 11-12.

[REDACTED]³⁶⁹ [REDACTED]. AT&T states, however, that timing of the transition is dependent upon a number of factors that it cannot control.³⁷⁰

109. *Service.* Prior to the transition to AT&T's 3G GSM network,³⁷¹ AT&T intends [REDACTED].³⁷² AT&T states that as soon as its 3G network is ready for customers within a given area, the company plans to begin migrating customers.³⁷³ [REDACTED]³⁷⁴ According to AT&T, [REDACTED].³⁷⁵ AT&T states that [REDACTED].³⁷⁶

110. *Handsets.* AT&T states that when the CDMA divestiture customers are migrated to AT&T's GSM network, they will have full access to handset offerings and services offered to new customers by AT&T at that time.³⁷⁷ [REDACTED]³⁷⁸ AT&T states that [REDACTED].³⁷⁹ According to AT&T, its current plans [REDACTED]. [REDACTED]³⁸⁰ In particular, [REDACTED].³⁸¹ AT&T states that [REDACTED].³⁸²

111. *Pricing.* With respect to pricing, AT&T plans [REDACTED].³⁸³ AT&T [REDACTED].³⁸⁴ AT&T states that [REDACTED].³⁸⁵

112. *Early Termination Fees.* AT&T states that [REDACTED].³⁸⁶ [REDACTED]³⁸⁷

³⁶⁹ AT&T anticipates [REDACTED]. AT&T Second Partial Response of Dec. 17, 2009 at 11-12.

³⁷⁰ AT&T Second Partial Response of Dec. 17, 2009 at 5-6.

³⁷¹ *Id.* at 8; *see also* AT&T Press Release Regarding Acquisition from Verizon Wireless.

³⁷² AT&T Second Partial Response of Dec. 17, 2009 at 8. AT&T states that [REDACTED]. AT&T Supplemental Response of Mar. 24, 2010 at 3.

³⁷³ AT&T Second Partial Response of Dec. 17, 2009 at 8; *see also* South Dakota Public Utilities Commission, Frequently Asked Questions about Alltel and AT&T, *available at* <http://puc.sd.gov/alltel-att/default.aspx> (last visited June 21, 2010).

³⁷⁴ AT&T Supplemental Response of Mar. 24, 2010 at 1.

³⁷⁵ *Id.* [REDACTED] *Id.*

³⁷⁶ *Id.*

³⁷⁷ AT&T First Partial Response at 26.

³⁷⁸ AT&T Second Partial Response of Dec. 17, 2009 at 9, 11-12; AT&T Supplemental Response of Mar. 24, 2010 at 2.

³⁷⁹ AT&T Second Partial Response of Dec. 17, 2009 at 9; AT&T Supplemental Response of Mar. 24, 2010 at 1-2 ([REDACTED]).

³⁸⁰ AT&T Supplemental Response of Mar. 24, 2010 at 2.

³⁸¹ AT&T Second Partial Response of Dec. 17, 2009 at 9.

³⁸² *Id.*; *see also* AT&T Supplemental Response of Mar. 24, 2010 at 2. [REDACTED] AT&T Supplemental Response of Mar. 24, 2010 at 2.

³⁸³ AT&T Second Partial Response of Dec. 17, 2009 at 9, 19.

³⁸⁴ *Id.* at 9-10. AT&T notes that [REDACTED]. *Id.* at 9.

³⁸⁵ *Id.* at 9-10.

³⁸⁶ AT&T Supplemental Response of Mar. 24, 2010 at 2; *see also* AT&T Second Partial Response of Dec. 17, 2009 at 10, 19. AT&T states that [REDACTED]. *Id.*

113. *Prepaid Phones.* [REDACTED]³⁸⁸ AT&T states that [REDACTED].³⁸⁹ AT&T states that it will provide timely communications to as many prepaid customers as possible to enable a smooth transition.

114. *CDMA Network.* [REDACTED]³⁹⁰ AT&T will [REDACTED].³⁹¹ AT&T plans to [REDACTED].³⁹² AT&T has [REDACTED].³⁹³ Rather, AT&T plans to [REDACTED].³⁹⁴

115. *Discussion.* Based upon the record before us, we anticipate a smooth transition of the divestiture properties. AT&T has experience in transitioning customers on both CDMA and GSM networks, and we believe they have the experience and resources to ensure a smooth transition. At the same time, we will monitor the situation in the service areas to ensure that the transition is smooth and is in the public interest.

D. Divestiture Bidding Process

116. Verizon Wireless, advised by Morgan Stanley, conducted a bidding process in order to identify the buyers of the business units and authorizations that the Commission and the DOJ required be divested as a condition of approval of the proposed merger with ALLTEL.³⁹⁵ That process resulted in Verizon Wireless announcing an agreement with AT&T on May 8, 2009, regarding the sale of 79 markets and with Atlantic Tele-Network, Inc. (“ATN”) on June 9, 2009, regarding the sale of the remaining 26 markets. CAPCC, NABOB,³⁹⁶ and Telephone USA³⁹⁷ challenge the bidding process, asserting that the process did not comply with the Commission’s mandates regarding divestiture set forth in the *Verizon Wireless-ALLTEL Order*. These parties further claim that the bidding process was not fair and open, that the process did not provide adequate opportunities for businesses owned by minorities and socially disadvantaged groups to acquire any of the Divestiture Markets, and that decisions made and actions taken by Verizon Wireless and Morgan Stanley thwarted effective participation in the bidding process by minorities and socially disadvantaged groups.

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³⁸⁷ AT&T Supplemental Response of Mar. 24, 2010 at 2.

³⁸⁸ AT&T Supplemental Response of Apr. 12, 2010 at 1. According to AT&T, [REDACTED]. *Id.*

³⁸⁹ AT&T Supplemental Response of Apr. 12, 2010 at 1. [REDACTED] *Id.*

³⁹⁰ AT&T Second Partial Response of Dec. 17, 2009 at 10.

³⁹¹ *Id.*

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ *Id.*

³⁹⁵ *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17516-17 ¶ 159; *Verizon Communications*, 607 F.Supp.2d 1.

³⁹⁶ The Applicants state that CAPCC and NABOB fail to demonstrate standing to be a party to this proceeding. In particular, the Applicants state that CAPCC did not identify or offer evidence to show that its members will be harmed by the transaction, while NABOB attempts to articulate competitive or other harms to its members despite failing to identify the affected members or substantiating its claims of harm. Joint Opposition at 18 n.68. CAPCC and NABOB both dispute the Applicants’ contentions regarding standing. CAPCC Reply at 2 n.2; NABOB Reply at 2-3. We do not consider it necessary to resolve the issue of CAPCC’s and NABOB’s standing. Given the nature of the concerns they raise, we decide to address the merits of their filings.

³⁹⁷ Telephone USA did not file a petition to deny the Verizon Wireless-AT&T applications, but has filed a number of *ex partes* that address the bidding process employed by Verizon Wireless in connection with the divestiture of the 105 markets contemplated by the *Verizon Wireless-ALLTEL Order*.

117. The Applicants dispute these challenges to the bidding process. Verizon Wireless asserts that the bidding process complied with the requirements of the *Verizon Wireless-ALLTEL Order*. Verizon Wireless further states that it took steps to ensure active participation by minorities and socially disadvantaged groups, consistent with limitations imposed by the Final Judgment. In light of these competing characterizations, we have reviewed the extensive record regarding the conduct of the bidding process Verizon Wireless employed to identify proposed purchasers of the Divestiture Markets to determine whether the process complied with the requirements and language set out by the Commission in the *Verizon Wireless-ALLTEL Order*, and whether the process and the outcome thwarts achievement of the goals underlying the decisions of the Commission and the DOJ to require divestiture in 105 markets.

118. *Verizon Wireless-ALLTEL Order*. In the *Verizon Wireless-ALLTEL Order*, the Commission conditioned its approval of the proposed merger of Verizon Wireless and ALLTEL on the divestiture of operating units in five markets and upon the completion of divestitures in 100 markets that Verizon Wireless voluntarily committed to divest.³⁹⁸ Rejecting requests by some petitioners, the Commission declined to impose specific conditions on the 105 Divestiture Markets regarding how and to whom the assets should be divested, but made clear that the entire operating unit of either Verizon Wireless or ALLTEL must be divested in those markets.³⁹⁹ The Commission expressly observed that, “to provide greater assurance that the buyer will be an effective competitor, the DOJ is requiring that certain groups of CMAs be divested to a single purchaser.”⁴⁰⁰ Finally, in language that is significant to the petitioners’ concerns about the efficacy of the bidding process, the Commission declined requests for a right of first negotiation for select groups⁴⁰¹ and stated that, “[a]lthough we decline [requests by certain parties] to impose specific conditions regarding the potential acquirers of and methods for selling the Divestiture Assets, we encourage Verizon Wireless to consider and implement mechanisms to assist regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups in acquiring the Divestiture Assets and/or accessing spectrum, to the extent possible.”⁴⁰²

119. CAPCC, NABOB, and Telephone USA contend that the bidding process was not consistent with the Commission’s intentions in the *Verizon Wireless-ALLTEL Order*.⁴⁰³ In particular, CAPCC and Telephone USA state that the Commission included the language quoted above regarding minority-owned businesses in light of the agency’s well-understood concerns about diversity and a desire to encourage Verizon Wireless to act in ways that would increase the likelihood of divestiture to minority-owned entities.⁴⁰⁴ Telephone USA states Verizon Wireless tried to make it appear that it was helping minority bidders, but did not in fact improve the chances that a small, minority-owned business would be successful.⁴⁰⁵ CAPCC and Telephone USA assert that Verizon Wireless did not reach out to minority buyers and did not take the appropriate steps to encourage minority-owned businesses or members of socially disadvantaged groups that were interested in the markets to be divested.⁴⁰⁶ NABOB argues that

³⁹⁸ *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17516-17 ¶ 159.

³⁹⁹ *Id.*, 23 FCC Rcd at 17518 ¶ 162.

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*, 23 FCC Rcd at 17517 ¶ 160.

⁴⁰² *Id.*, 23 FCC Rcd at 17518 ¶ 162.

⁴⁰³ CAPCC Petition at 3-4; NABOB Petition at 6; Telephone USA Jan. 25, 2010 *Ex Parte* at 2-4.

⁴⁰⁴ CAPCC Petition at 7; Telephone USA Jan. 25, 2010 *Ex Parte* at 2.

⁴⁰⁵ Telephone USA Jan. 25, 2010 *Ex Parte* at 2-3.

⁴⁰⁶ CAPCC Petition at 7; Telephone USA Jan. 25, 2010 *Ex Parte* at 2-4.

Morgan Stanley conducted a bidding process that erected barriers to minority participation and that minority bidders were not given serious consideration as potential purchasers.⁴⁰⁷ NABOB and Telephone USA assert that instead of an open and fair process, the bidding process was merely for “show,” and the winners were predetermined.⁴⁰⁸ NABOB and Telephone USA also have alleged that Verizon Wireless and Morgan Stanley stated a preference that one entity bid and win divestiture asset packages that could have been worth billions of dollars.⁴⁰⁹ According to these parties, such a statement undermines the credibility of the efforts that Verizon Wireless and Morgan Stanley made to seek and encourage small entities to participate in the bidding process and acquire such assets.⁴¹⁰

120. Verizon Wireless responds that it conducted an open and inclusive process that provided opportunities to minority and socially disadvantaged firms.⁴¹¹ For example, early in the process, Verizon Wireless asked the Minority Media Telecommunications Council (“MMTC”) to identify minority-owned businesses that would be in a position to participate in the divestiture sale process.⁴¹² According to Verizon Wireless, Morgan Stanley made every effort to treat all bidders equally in the sale process.⁴¹³ Verizon Wireless further contends that it specifically involved and encouraged minority and socially disadvantaged businesses to participate in the bidding process, and made efforts to include such entities at each stage of the process.⁴¹⁴ Regarding the claims that it and Morgan Stanley indicated they preferred to sell all the markets to a single bidder, Verizon Wireless states that neither it nor Morgan Stanley “told bidders that Verizon Wireless favored bids that offered to purchase all of the Divested Assets.”⁴¹⁵ Rather, according to Verizon Wireless, one of the letters sent to potential bidders regarding the bidding procedures indicated that “Verizon Wireless was open to proposals for the divestiture properties in their entirety, on a multistate basis, or for individual clusters so long as they satisfied the three objectives” identified by Verizon Wireless.⁴¹⁶

121. For the reasons set forth in greater detail below, we find that Verizon Wireless conducted its bidding process in accordance with the guidance set forth in the *Verizon Wireless-ALLTEL Order*. In the *Verizon Wireless-ALLTEL Order*, the Commission expressly declined “to place any conditions on the sale of the Divestiture Assets based on (1) the size, ownership structure, or business plan of the acquirer,

⁴⁰⁷ NABOB Petition at 6-7.

⁴⁰⁸ *Id.* at 6-8; Telephone USA Jan. 25, 2010 *Ex Parte* at 2-4, Attach. 1 at 8. NABOB and Telephone USA also argue that there was a “swap” of assets between AT&T and Verizon Wireless that the petitioners allege suggests that the bidding process was for show and the winners were predetermined. NABOB Petition at 7-8; Telephone USA Jan. 25, 2010 *Ex Parte* at 2-4, Attach. 1 at 8; *Ex Parte* Letter from Vicki Iseman, Alcalde & Fay, to Marlene H. Dortch, Secretary, Federal Communications Commission, Attach. 1 at 1-2 (Mar. 16, 2010) (re meeting with David Goldman of Chairman Julius Genachowski’s office); *see also* CAPCC Petition at 3-8.

⁴⁰⁹ NABOB Petition at 6; Telephone USA Jan. 25, 2010 *Ex Parte*, Attach. 1 at 5.

⁴¹⁰ NABOB Petition at 6; Telephone USA Jan. 25, 2010 *Ex Parte*, Attach. 1 at 6.

⁴¹¹ Joint Opposition at 22-25. *See, e.g.*, Verizon Wireless Information Request Response at 00001148, 00001279.

⁴¹² Joint Opposition at 22.

⁴¹³ Verizon Wireless Information Request Response at 19.

⁴¹⁴ Joint Opposition at 22-25.

⁴¹⁵ Verizon Wireless Information Request at 17.

⁴¹⁶ Verizon Wireless Information Request at 17. These objectives were (i) to realize the highest possible value, (ii) to maximize certainty of closing given the deadlines and process requirements imposed by the Department of Justice, and (iii) to consummate any such transactions expeditiously.

or (2) the size of the geographic areas that the Divestiture Areas can be sold to an acquirer.”⁴¹⁷ Instead of imposing such conditions, the Commission chose “to encourage Verizon Wireless to consider and implement mechanisms to assist regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups in acquiring the Divestiture Assets and/or accessing spectrum, to the extent possible.”⁴¹⁸ This language includes no directive regarding the specific ways in which Verizon Wireless should assist regional, local, and rural wireless providers, new entrants, small businesses and businesses owned by minorities or socially disadvantaged groups in seeking to acquire Divestiture Markets. The record before us indicates that Verizon Wireless did implement mechanisms to assist the groups listed above during the bidding process. Verizon Wireless took several steps to reach out to small businesses and businesses owned by minorities or socially disadvantaged groups. Indeed, in some instances, Verizon Wireless and Morgan Stanley waived certain procedures at the request of Telephone USA, which was interested in becoming a new entrant in the wireless services market.⁴¹⁹

122. While it is possible that Verizon Wireless could have taken more steps to aid minority-owned entities seeking to participate in the bidding, we must evaluate these applications in accordance with the relevant language in the Commission’s *Verizon Wireless-ALLTEL Order*. We find that Verizon Wireless’s conduct and interactions with potential and actual bidders were in keeping with that language. In future transactions, the Commission may consider providing more detailed guidance about those specific steps, such as flexibility in divestiture goals and in financing commitment requirements, that divesting entities can take to encourage new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups to acquire Commission-ordered divestiture assets.

123. *Financing*. Petitioners allege that the bidding process does not meet the public interest standard because Verizon Wireless imposed strict financing rules that disadvantaged minority firms. Specifically, Verizon Wireless found it appropriate to require “committed financing” in connection with the bids submitted for any of the properties to be divested.⁴²⁰ CAPCC, NABOB, and Telephone USA contend that Verizon Wireless did not address the specific concerns that affect minority-owned businesses, such as the disadvantages that minority-owned entities face in the financing marketplace.⁴²¹ CAPCC, NABOB, and Telephone USA assert that the requirements imposed on bidders regarding financing served to discourage effective participation by minority and socially disadvantaged groups. According to CAPCC and Telephone USA, for minority-owned entities one of the most significant barriers to entry is the ability to obtain financing.⁴²² CAPCC and Telephone USA state that Verizon Wireless did not provide a period of exclusive negotiation for socially disadvantaged groups,⁴²³ which

⁴¹⁷ *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17518 ¶ 162.

⁴¹⁸ *Id.*

⁴¹⁹ *Ex Parte* Letter from Nancy J. Victory, Wiley Rein LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 09-119, at 2 (Apr. 8, 2010) (“Verizon Wireless Apr. 8, 2010 *Ex Parte*”) (“[A]lthough Telephone USA had joined the process much later than other bidders, Verizon Wireless waived the requirement that it have a Nondisclosure Agreement in place prior to gaining access to confidential data on the properties so that it could participate in an initial bidding round and not be disadvantaged by any time delay required to execute a Nondisclosure Agreement. No other bidder received this waiver.”).

⁴²⁰ Joint Opposition at 26 (discussing the “financial resources necessary to ensure that the proposed transaction would be timely consummated”); Verizon Wireless Information Request Response at 00001570, 00001418-1420.

⁴²¹ CAPCC Reply at 3; NABOB Reply at 4; Telephone USA Jan. 25, 2010 *Ex Parte* at 3.

⁴²² CAPCC Petition at 6-7; CAPCC Reply at 4-5; Telephone USA Jan. 25, 2010 *Ex Parte* at 3.

⁴²³ [REDACTED] See Verizon Wireless Information Request Response at 00001564-1565.

would be an important tool for such entities potentially to obtain financing.⁴²⁴ By accepting bids only from entities that had financing firmly in place, Telephone USA argues that Verizon Wireless limited the pool of potentially successful bidders to established companies with easy access to capital.⁴²⁵

124. The Applicants state that it was essential that a prospective buyer demonstrate it had adequate financing to complete the transaction at the time final bids were submitted.⁴²⁶ The Applicants note that the FCC and the DOJ required Verizon Wireless to dispose of the Divestiture Markets rapidly and by a firm deadline in one of the most adverse economic climates in decades.⁴²⁷ The Applicants allege that Verizon Wireless therefore needed a high degree of confidence that a buyer would be deemed acceptable to both the FCC and the DOJ, and furthermore needed certainty that the divestitures would be consummated should the necessary approvals be obtained.⁴²⁸ According to the Applicants, by the end of the bidding process, Verizon Wireless chose two entities with the financial resources necessary to ensure that the proposed transactions would be timely consummated.⁴²⁹

125. We have reviewed the record concerning the conduct of the bidding process, which includes extensive documentation produced by Verizon Wireless in response to the Bureau's Information Request. The record discloses that Verizon Wireless received a total of three bids that included a showing of firm financing – from AT&T, ATN, and [REDACTED].⁴³⁰ AT&T's proposal represented [REDACTED].⁴³¹

126. We recognize the requirement of a firm financing demonstration made participation more difficult for certain parties, but we conclude that it was within the bounds of reasonableness for Verizon Wireless to impose this condition, as well as to decline to enter into an exclusivity arrangement with any potential bidder in order to permit such bidder to negotiate financing, in order for it to meet the timing and buyer acceptability requirements of the Final Judgment. The Final Judgment directed that the divestiture “shall be made to an Acquirer or Acquirers that, in plaintiff United States's sole judgment, upon consultation with the relevant plaintiff State, has the intent and capability (including the necessary managerial, operational, technical, and *financial capability*) of competing effectively in the provision of mobile wireless telecommunications services.”⁴³² It was reasonable for Verizon Wireless to impose appropriate conditions that would help to ensure that it could identify, within the time constraints imposed by the DOJ and the Commission, a buyer or buyers that would be acceptable to both the DOJ and this

⁴²⁴ CAPCC Reply at 4; *Ex Parte* Letter from Vicki Iseman, Alcalde & Fay, to Marlene H. Dortch, Secretary Federal Communications Commission, Attach. 1 at 4 n.5 (Apr. 2, 2010) (such exclusive negotiating periods are often used to provide small independent businesses with an opportunity to obtain financing for large-scale acquisitions).

⁴²⁵ CAPCC Petition at 6-7; Telephone USA Jan. 25, 2010 *Ex Parte* at 3. NABOB states that Verizon Wireless's preference to sell to a single purchaser also limited the pool of companies with easy access to capital because it made it very unlikely that a minority purchaser, or new entrant, could finance such an acquisition. NABOB Petition at 6.

⁴²⁶ Joint Opposition at 26; *see, e.g.*, Verizon Wireless Information Request Response at 00001418, 00001431.

⁴²⁷ Joint Opposition at 26 & n.94; *see also* Verizon Wireless Information Request Response at 17.

⁴²⁸ Joint Opposition at 26; *see also* Verizon Wireless Information Request Response at 17.

⁴²⁹ Joint Opposition at 26.

⁴³⁰ *See* Verizon Wireless Information Request Response at 16.

⁴³¹ Verizon Wireless Information Request Response at 18.

⁴³² *Verizon Communications*, 607 F.Supp.2d at 7 (emphasis added).

Commission and that could close the transaction upon receipt of necessary approvals from the DOJ and the Commission.

127. *Transition Services Agreement.* Another alleged barrier to effective participation by minorities and socially disadvantaged groups stems from Verizon Wireless's stated preference for a transition services agreement with a maximum term of one year.⁴³³ Verizon Wireless stated that some small, non-operator bidders expressed a need for a multi-year operating or transition services agreement.⁴³⁴ Verizon Wireless asserted that such agreement would be contrary to the Final Judgment, which provided that Verizon Wireless may provide transition or other support services for a period of up to twelve months.⁴³⁵

128. There are tradeoffs in determining the appropriate length of transition services agreements – the term needs to be long enough to enable the acquiring entity to establish its operations and be a successful standalone competitor, but a term that is too long could potentially thwart the very purposes of requiring the divestiture. Adoption of a one-year term is required by the Final Judgment, which states that, “[a]t the option of the Acquirer(s) of the Divestiture Assets, defendants shall enter into a contract for transition services customarily provided in connection with the sale of a business providing mobile wireless telecommunications services or intellectual property licensing sufficient to meet all or part of the needs of the Acquirer(s) for a period of *up to one year*.”⁴³⁶ In recent transactions involving transition services agreements, the Commission and the DOJ have frequently authorized one-year transition services agreements. We thus conclude that it was not unreasonable for Verizon Wireless to state a preference for limiting the term of any necessary transition services agreement to one year.

129. *Conduct of the Bidding Process.* CAPCC, NABOB, and Telephone USA contend that Verizon Wireless and Morgan Stanley conducted the bidding process in a way that erected barriers to successful participation by minority-owned entities. As noted above, CAPCC and Telephone USA assert that Verizon Wireless did not reach out to minority buyers and did not take appropriate steps to encourage minority-owned businesses or members of socially disadvantaged groups that were interested in the markets to be divested.⁴³⁷ NABOB also contends that Verizon Wireless did not consistently follow its own announced bidding procedures.⁴³⁸ Specifically, NABOB states that the dates set for submission of bids changed without warning, and no information was provided to minority bidders explaining these changes.⁴³⁹ Moreover, CAPCC and NABOB argue that the bidding process was predetermined.⁴⁴⁰ CAPCC, NABOB, and Telephone USA conclude that the Commission, in light of the facts surrounding

⁴³³ Joint Opposition at 27. [REDACTED] See, e.g., Verizon Wireless Information Request Response at 00001505, 00001359.

⁴³⁴ Joint Opposition at 27. See also Verizon Wireless Information Request Response at 00001571, 00002010; see also *id.* at 15.

⁴³⁵ Joint Opposition at 27 n.99. See also Verizon Wireless Information Request Response at 00001626; see also *id.* at 00002022, 00001622.

⁴³⁶ *Verizon Communications*, 607 F.Supp.2d at 9 (emphasis added).

⁴³⁷ See CAPCC Petition at 6-7; Telephone USA Jan 25, 2010 *Ex Parte*, Attach. 1 at 5.

⁴³⁸ NABOB Petition at 7.

⁴³⁹ *Id.*

⁴⁴⁰ CAPCC Petition at 10; NABOB Petition at 7-8.

the bidding process, should initiate an investigation,⁴⁴¹ direct Verizon Wireless to conduct a “true bidding process,”⁴⁴² or designate the applications for hearing.⁴⁴³

130. Verizon Wireless and Morgan Stanley initiated the process of selling the properties by providing a preliminary overview of the markets and a non-disclosure agreement in August and September 2008 to approximately 70 prospective buyers, including national, regional, and small wireless carriers, wireline telecommunications companies, entrepreneurs, financial buyers, industry veterans, and businesses owned by minorities and socially disadvantaged groups.⁴⁴⁴ A Confidential Information Memorandum providing more detailed business and operational data was distributed to over 70 parties in November 2008.⁴⁴⁵ Letters of preliminary indications of interest were submitted to Morgan Stanley in mid-November 2008.⁴⁴⁶ Morgan Stanley, at the direction of Verizon Wireless, invited over 20 parties to participate in more detailed due diligence (including but not limited to data room access and access to company management), and of these potential bidders, four were minority-owned entities and one was a regional consortium that included a financial sponsor that typically has sought to partner with minority-owned entities.⁴⁴⁷ The first round final bid deadline was originally scheduled for February 13, 2009, but was changed to March 30, 2009,⁴⁴⁸ and interested parties were informed of this fact.⁴⁴⁹ Verizon Wireless received final bids from 14 entities, three of which were minority-owned entities.⁴⁵⁰ On May 8, 2009, AT&T finalized its purchase agreement with Verizon Wireless⁴⁵¹ and announced that it would acquire 79 of the 105 Divestiture Markets.⁴⁵² On June 9, 2009, the Purchase Agreement between ATN and Verizon Wireless for 26 CMAs was finalized.⁴⁵³

⁴⁴¹ CAPCC Petition at 8-11; NABOB Petition at 10; CAPCC Reply at 8-10; NABOB Reply at 7; Telephone USA Jan. 25, 2010 *Ex Parte*, Attach. 1 at 3.

⁴⁴² NABOB Petition at 10; NABOB Reply at 7.

⁴⁴³ NABOB Petition at 10; NABOB Reply at 7; Telephone USA Jan. 25, 2010 *Ex Parte*, Attach. 1 at 3.

⁴⁴⁴ Joint Opposition, Christopher Bartlett Declaration at ¶ 4. As a result, [REDACTED]. Verizon Wireless Information Request Response at 00000826-827; *see also id.* at 00000828-830 (list of potential bidders organized by type of bidder).

⁴⁴⁵ *Id.* at ¶ 5; *see also* Verizon Wireless Information Request Response at 0000022-228 (Confidential Information Memorandum).

⁴⁴⁶ Joint Opposition, Christopher Bartlett Declaration at ¶ 7.

⁴⁴⁷ Joint Opposition at 16; *id.*, Christopher Bartlett Declaration at ¶ 8. [REDACTED] Verizon Wireless Information Request Information at 11.

⁴⁴⁸ Joint Opposition, Christopher Bartlett Declaration at ¶ 12 (stating that the reason for the change in the final bid date was because the work being done on the audited financial statements was taking longer than had initially been communicated to prospective bidders).

⁴⁴⁹ Verizon Wireless Information Request Response at 00000231-238.

⁴⁵⁰ Joint Opposition, Christopher Bartlett Declaration at ¶ 13. [REDACTED] Verizon Wireless Information Request Response at 00001569.

⁴⁵¹ Verizon Wireless Information Request Response at 000002050-2122.

⁴⁵² *See* AT&T Press Release Regarding Acquisition from Verizon Wireless; Verizon Communications Inc., SEC Form 10-Q, at 7 (for the period ending Mar. 31, 2009) (“Verizon 10-Q”), *available at* <http://www.sec.gov/Archives/edgar/data/732712/000119312509107317/d10q.htm>.

⁴⁵³ *See* Verizon 10-Q at 7.

131. We find that Verizon Wireless took a number of steps throughout the course of the bidding process to promote participation by minority-owned businesses and socially disadvantaged groups, so long as that participation met the generally applicable ground rules (e.g., the firm financing requirement, the one-year term for a transition services agreement, and sale of the majority of the Divestiture Markets in clusters as defined in the Final Judgment). The documents and other aspects of the record show that Verizon Wireless and Morgan Stanley reached out for assistance in identifying potential minority-owned bidders⁴⁵⁴ and also took affirmative steps to encourage entities that had shown an interest in acquiring various Divestiture Markets to continue to participate in the bidding process.⁴⁵⁵ Documents submitted by Verizon Wireless show repeated contacts between Verizon Wireless and Morgan Stanley, on the one hand, and those negotiating on behalf of minority-owned entities, on the other hand.⁴⁵⁶ With respect to the first round final bid date being changed, the Applicants assert that Verizon Wireless sent a letter on January 30, 2009, to all prospective bidders still participating at that stage of the process and the letter indicated that the final bid date was being changed from February 13, 2009 to March 30, 2009⁴⁵⁷ in light of the fact that the work being done on the audited financial statements was taking longer than initially had been communicated.⁴⁵⁸ Further, regarding the allegations that the proposed transaction was predetermined, our review of the record before us that includes the numerous documents produced by Verizon Wireless with respect to the bidding process suggests that the negotiations between AT&T and Verizon Wireless evidence a lack of certainty that the parties would in fact come to an agreement.⁴⁵⁹

132. *Designation for Hearing or Investigation.* NABOB and Telephone USA contend that the Commission should designate these applications for a hearing, citing their concerns about the conduct of the bidding process.⁴⁶⁰ In addition, CAPCC urges the Commission to conduct an investigation into the circumstances of Verizon Wireless's proposed sale of the divestiture assets.⁴⁶¹ In light of the extensive record we have collected about the bidding process and the language in the *Verizon Wireless-ALLTEL*

⁴⁵⁴ For example, the Applicants describe that Verizon Wireless asked the MMTC to identify minority-owned businesses that would be in a position to participate in the divestiture sale process and one of which submitted a bid. Joint Opposition at 22. [REDACTED] Verizon Wireless Information Request Response at 11. [REDACTED] *Id.* at 12.

⁴⁵⁵ Morgan Stanley, at Verizon Wireless's direction, proactively reached out to one minority-owned entity and encouraged it to reconsider its decision to not remain in the divestiture auction process. Joint Opposition at 25; Verizon Wireless Information Request Response at 00001152. Morgan Stanley and senior Verizon Wireless staff also had a meeting with this particular bidder and provided guidance as to the geographic areas in which it could be competitive in the sale process. Joint Opposition at 25; Verizon Wireless Information Request Response at 00001152.

⁴⁵⁶ See, e.g., Verizon Wireless Information Request Response at 00001279, 00001300-1303, 00001314-1315, 00001328, 00001349, 00001361, 00001383, 00001418, 00001421, 00001438, 00001456, 00001566, 00001504, 00001527.

⁴⁵⁷ Joint Opposition at 24 n.87; *id.*, Christopher Bartlett Declaration at ¶ 12; Verizon Wireless Information Request Response at 00000235-238 (January 30, 2009 bid procedures letter changing the final bid deadline from February 13, 2009 to March 30, 2009).

⁴⁵⁸ Joint Opposition at 24 n.87; *id.*, Christopher Bartlett Declaration at ¶ 12. [REDACTED] Verizon Wireless Information Request Response at 00000235-238.

⁴⁵⁹ See, e.g., Verizon Wireless Second Supplemental Response of Mar. 11, 2010 at 00002419-00002425.

⁴⁶⁰ NABOB Petition at 8-10; NABOB Reply at 6-7; Telephone USA Jan. 25, 2010 *Ex Parte*, Attach. 1 at 8-10, Attach. 2 at 7.

⁴⁶¹ CAPCC Petition at 8-11; CAPCC Reply at 8-10.

Order, we do not find that these allegations merit an investigation or have presented a substantial and material question of fact that would warrant designating this transaction for a hearing.⁴⁶²

133. *Conclusion.* To implement the divestitures ordered by the Commission and the DOJ with respect to its merger with ALLTEL in the timely manner required by the DOJ, Verizon Wireless solicited bids for the Divestiture Markets. The conduct of this bidding process has been challenged as not including sufficient opportunities for businesses owned by minorities or socially disadvantaged groups to obtain any of the markets subject to divestiture and the parties request that the Commission investigate, direct Verizon Wireless to conduct a “true bidding process,” or designate the applications for hearing. While it is possible that another bidding process may have provided additional opportunities for businesses owned by minorities or socially disadvantaged groups, we find that the process complied with the Commission’s requirements imposed in the *Verizon Wireless-ALLTEL Order* and does not otherwise undercut the competitive objectives the Commission sought to implement by requiring divestitures in 105 markets.

E. Provision of Service to Members of the Oglala Sioux Tribe on the Pine Ridge Indian Reservation

134. *Background.* Pursuant to the *Verizon Wireless-ALLTEL Order* and Verizon Wireless’s settlement agreement with the DOJ, Verizon Wireless must divest business units serving both CMA638 and CMA639,⁴⁶³ each of which covers portions of the Pine Ridge Indian Reservation (the “Reservation”), which is home to the Oglala Sioux Tribe. The Reservation encompasses area in three counties in South Dakota – Shannon, Jackson, and Bennett. Shannon is located in CMA638 South Dakota 5 - Custer, which includes a total of three counties, while Jackson and Bennett are located in CMA639 South Dakota 6 - Haakon, which includes a total of ten counties. Wireless service on the Reservation is currently provided by Western Wireless Corporation (“Western Wireless”), which is now an indirect wholly-owned subsidiary of Verizon Wireless as a result of the *Verizon Wireless-ALLTEL* transaction.⁴⁶⁴ Western Wireless provides service on the Reservation pursuant to the 2000 Tate Woglaka Service Agreement (“TWSA”) with the Tribe.⁴⁶⁵ In 2001, the Commission designated Western Wireless as an Eligible Telecommunications Carrier (“ETC”) for tribal members on the Reservation.⁴⁶⁶

135. The Oglala Sioux Tribe requests that the Commission “withhold approval of the transfer of spectrum that covers the area of the Pine Ridge Indian Reservation from Verizon [Wireless] to AT&T until the Oglala Sioux Tribe can resolve the dispute between the Oglala Sioux Tribe and Verizon

⁴⁶² See 47 U.S.C. § 309(d)(2).

⁴⁶³ *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17518 ¶ 162, 17552, App. B.

⁴⁶⁴ ALLTEL acquired Western Wireless in 2005. See 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*, 20 FCC Rcd 13053, 13054 ¶ 1 (2005).

⁴⁶⁵ A copy of the TWSA is attached to the OST Mar. 10, 2010 *Ex Parte* as Attachment A.

⁴⁶⁶ See Western Wireless Corporation Petition For Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Memorandum Opinion and Order*, 16 FCC Rcd 18145, 18149 ¶ 11 (2001) (finding that the FCC has jurisdiction to determine whether Western Wireless is eligible to receive federal universal service support for providing telephone service to residents of the Pine Ridge Reservation); Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition For Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, CC Docket No. 96-45, *Memorandum Opinion and Order*, 16 FCC Rcd 18133, 18136 ¶ 6 (2001) (designating Western Wireless as an ETC for a service area that consists of tribal members residing on the Pine Ridge Reservation).

[Wireless].⁴⁶⁷ The Tribe states that it does not seek to delay the broader transfer of wireless assets from Verizon Wireless to AT&T.⁴⁶⁸ The Tribe also requests that the Commission impose mediation between the parties to the dispute.⁴⁶⁹ The Tribe claims jurisdiction over the wireless assets controlled by Verizon Wireless as the successor to the assets in the TWSA.⁴⁷⁰ In its submissions to the Commission, the Tribe states it “will be irreparably harmed if Verizon [Wireless] is able to transfer the spectrum and other network assets on the Pine Ridge Indian Reservation to AT&T without the Tribe’s consent, in violation of the TWSA.”⁴⁷¹

136. Verizon Wireless argues that this is a private, contractual dispute and Commission intervention is unnecessary and inappropriate.⁴⁷² Verizon Wireless asserts that the dispute with the Tribe involves claims of commercial contract law for which the Commission has no special expertise and does not raise matters germane to the agency’s authority.⁴⁷³ Verizon Wireless also argues that the Commission has repeatedly refused to defer or delay action on a license transfer or assignment, or to become involved in a private dispute, when there are other forums to resolve the disagreement.⁴⁷⁴ Verizon Wireless notes that the parties are currently litigating issues in two separate courts: Oglala Sioux Tribal Court and Federal District Court in South Dakota.⁴⁷⁵ Finally, Verizon Wireless states that the Tribe’s proposed remedy could have an impact beyond the boundaries of the Reservation because the Reservation’s exterior borders cover a relatively small portion of the 13 counties encompassed in the two CMAs at issue.⁴⁷⁶

137. On January 6, 2010, Verizon Wireless notified the Oglala Sioux Tribe of its intent to assign the TWSA to AT&T, and requested the Tribe’s consent to that assignment.⁴⁷⁷ On January 13,

⁴⁶⁷ See OST Mar. 10, 2010 *Ex Parte* at 1; see also *Ex Parte* Letter from Jonathan E. Canis, Arent Fox, Counsel for Oglala Sioux Tribe, to Marlene H. Dortch, Secretary, Federal Communications Commission, Attach. at 2, 9 (May 5, 2010) (“OST May 5, 2010 *Ex Parte*”); OST May 24, 2010 *Ex Parte* at 2, Attach. at 2.

⁴⁶⁸ OST May 5, 2010 *Ex Parte*, Attach. at 9; OST Mar. 10, 2010 *Ex Parte* at 2, 5-6; OST May 24, 2010 *Ex Parte* at 2, Attach. at 2.

⁴⁶⁹ OST May 5, 2010 *Ex Parte*, Attach. at 9.

⁴⁷⁰ OST Mar. 10, 2010 *Ex Parte* at 3.

⁴⁷¹ *Id.* at 4. The Oglala Sioux Tribe states that should Verizon Wireless obtain the ability to transfer the Pine Ridge spectrum and assets to AT&T without the Tribe’s consent it would: 1) void the Tate Woglaka Service Agreement; 2) force the Tribe to negotiate a service agreement *ab initio* with AT&T with many fundamental questions as to service and cost unaddressed; and 3) effectively remove ETC status from the Pine Ridge Reservation without a relinquishment proceeding. OST May 5, 2010 *Ex Parte*, Attach. at 8.

⁴⁷² Letter from Nancy J. Victory, Wiley Rein LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1, 4 (Mar. 19, 2010) (“Verizon Wireless Mar. 19, 2010 *Ex Parte*”). Verizon Wireless states that the Oglala Sioux Tribe mischaracterizes the terms of the underlying commercial service in dispute between the parties. Verizon Wireless Mar. 19, 2010 *Ex Parte* at 1.

⁴⁷³ Verizon Wireless Mar. 19, 2010 *Ex Parte* at 2.

⁴⁷⁴ *Id.* at 2-3.

⁴⁷⁵ Verizon Wireless Mar. 19, 2010 *Ex Parte* at 2-3 n.8. Verizon Wireless states that it sought relief in Federal District Court in South Dakota in order to protect its rights to arbitration under the TWSA. *Id.*

⁴⁷⁶ *Id.* at 2 n.3.

⁴⁷⁷ Letter from Nancy J. Victory, Wiley Rein LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 13, 2010) (“Verizon Wireless May 13, 2010 *Ex Parte*”) (attaching (continued....))

2010, the Oglala Sioux Tribe stated that it could not approve the assignment until it received answers to certain questions concerning the transaction.⁴⁷⁸ The Tribe and Verizon Wireless, either directly or through its subsidiaries, currently are engaged in two legal proceedings that relate to the interpretation of the requirements of the TWSA and their applicability to the proposed transaction between AT&T and Verizon Wireless – one case in Federal District Court in South Dakota⁴⁷⁹ and another case in Oglala Sioux Tribal Court.⁴⁸⁰ In both of these proceedings, the Courts have recognized the Commission's exclusive jurisdiction to decide the licensing and transfer of wireless spectrum.⁴⁸¹

138. *Discussion.* We note that there are significant obstacles to granting the relief requested by the Tribe – withholding action with respect to the areas making up the Reservation, effectively carving them out from the CMA-based licenses of which they are a part and that otherwise are proposed to be transferred to AT&T. Specifically, pursuant to the Final Judgment, all of the assets in South Dakota are required to be sold to a single buyer as a cluster of assets.⁴⁸² Although the Final Judgment does contemplate a process for splitting up a cluster to multiple purchasers, if the DOJ can make the requisite findings, but we are unaware that any request has been made to the DOJ to permit division of the South Dakota cluster in the manner requested by the Tribe.

139. We conclude that the disputes between the Tribe and Verizon Wireless encompass contractual matters in which the Commission ordinarily does not become involved.⁴⁸³ The Tribe and Verizon Wireless are pursuing resolution of their respective claims under the TWSA in two separate courts, and we see no reason for the Commission to inject itself into that process. Moreover, we

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Letter from Patrick F. Philbin, Kirkland & Ellis LLP, to Deborah Dubray, Gonzalez Law Firm, and Oglala Sioux Tribe (Jan. 6, 2010)).

⁴⁷⁸ Verizon Wireless May 13, 2010 *Ex Parte* (attaching Letter from Joe RedCloud, Chairman, Oglala Sioux Tribal Utilities Commission, to Patrick F. Philbin, Kirkland & Ellis LLP (Jan. 13, 2010)).

⁴⁷⁹ ALLTEL Communications LLC v. Oglala Sioux Tribe, 5:10-cv-05011-JLV (D.S.D. filed Feb. 17, 2010).

⁴⁸⁰ Oglala Sioux Tribe v. ALLTEL Communications LLC and Verizon Wireless LLC, CIV. 09-0673 (Oglala Sioux Tribal Court, filed Oct. 6, 2009).

⁴⁸¹ See *Oglala Sioux Tribe v. ALLTEL Communications LLC and Verizon Wireless LLC*, CIV. 09-0673, *Order Denying Respondent's Motion to Dismiss* at 3-4 (May 13, 2010) (holding that the Tribal Court is not predisposed to intrude into areas that are regulated exclusively by federal law and federal agencies); *ALLTEL Communications LLC v. Oglala Sioux Tribe*, 5:10-cv-05011-JLV, *Order Denying Motion to Dismiss, Denying Motion for a Preliminary Injunction, Denying Motion to Intervene, and Order Compelling Arbitration*, at 26 (D.S.D. filed May 18, 2010) (stating Congress delegated the authority, solely and exclusively, to the FCC to license the use of radio transmissions).

⁴⁸² *Verizon Communications*, 607 F. Supp.2d at 7 (stating that the “Divestiture Assets listed in each numbered subsection below shall be divested together to a single Acquirer, provided that it is demonstrated to the sole satisfaction of plaintiff United States . . . that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint”).

⁴⁸³ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17538 ¶ 214 (refusing to consider the question of whether the transaction would violate existing reseller agreements because it is a private contractual dispute); see also *id.* at ¶ 214 n.742 (citing A.L.Z. Broadcasting, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 23200, 23201 ¶ 3 (2000) (finding contractual dispute concerning payment obligations to be within the province of a court of competent jurisdiction, not the Commission) (citations omitted); Applications of Verestar, Inc. (Debtor-In-Possession) for Consent to Assignment of Licenses to SES Americom, Inc., IB Docket No. 04-174, *Memorandum Opinion, Order, and Authorization*, 19 FCC Rcd 22750, 22756 ¶ 16 (IB & WTB 2004) (declining to defer action on assignment applications pending resolution of litigation, noting it is “long-standing Commission policy not to involve itself with private contractual disputes) (citations omitted).

conclude, consistent with past practice, that the pendency of these legal proceedings should not cause us to delay our action on the pending AT&T-Verizon Wireless applications.⁴⁸⁴

140. Notwithstanding the litigation between the Tribe and Verizon Wireless, we find it essential to take steps to ensure that wireless telecommunications services continue to be provided on the Reservation. The Tribe has pointed out that prior to implementation of the TWSA, more than 50 percent of the Reservation residents had no access to basic phone service or could not afford it.⁴⁸⁵ The Tribe also states that now over 90 percent of Reservation residents have access to such service, and approximately 75 percent of households on the Reservation use the cellular service provided by Western Wireless⁴⁸⁶ as their sole or primary source of basic phone service.⁴⁸⁷ Given the economic circumstances on the Reservation, it is clear that the wireless service provided to tribal members on the Reservation at prices supported by the Commission's universal service funds is essential. In particular, we note that one of the wireless service offerings made available on the Reservation is priced at \$1 per month.⁴⁸⁸

141. On May 20, 2010, AT&T filed with the Commission a letter including voluntary commitments to ensure the continuity of service on the Reservation.⁴⁸⁹ First, AT&T commits to undertake on a going forward basis the rights and obligations of Western Wireless under the TWSA.⁴⁹⁰ At the same time, this commitment is not, according to AT&T, intended to foreclose the Tribe and AT&T from agreeing to a mutually acceptable alternative to the TWSA.⁴⁹¹ Second, AT&T commits to build a 3G HSPA broadband wireless network on the Reservation and transition the divestiture CDMA network subscribers living within the boundaries of the Reservation ("Reservation Divestiture CDMA Network Subscribers") to the 3G HSPA broadband wireless network within 12 months of the closing of the transaction between it and Verizon Wireless.⁴⁹² As part of that transition, the Reservation Divestiture CDMA Network Subscribers will be eligible to receive new handsets comparable to their existing CDMA handsets at no cost and with no contract extension.⁴⁹³ Third, AT&T commits that, until the transition to the 3G HSPA broadband wireless network is complete, AT&T will provide the Reservation Divestiture

⁴⁸⁴ See, e.g., Margaret Jackson and Ray Webb, *Memorandum Opinion and Order*, 18 FCC Rcd 26403, 26404 ¶ 6 (2003) (declining to defer action on transfer applications pending court litigation of contractual dispute); Northwest Broadcasting, Inc. and Western Pacific, Inc., *Memorandum Opinion and Order*, 12 FCC Rcd 3289, 3295-96 ¶ 14 (1997).

⁴⁸⁵ OST May 5, 2010 *Ex Parte*, Attach. at 5.

⁴⁸⁶ Under the requirements of the *Verizon Wireless-ALLTEL Order*, the Western Wireless operations on the Reservation have been conducted under the control of the Management Trustee since the closing of the Verizon Wireless-ALLTEL transaction on January 9, 2009. See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17518-19 ¶¶ 163-65.

⁴⁸⁷ OST May 5, 2010 *Ex Parte*, Attach. at 5.

⁴⁸⁸ *Id.*

⁴⁸⁹ AT&T Commitment Letter at 2-3. See also *Ex Parte* Letter from Joan Marsh, Vice President – Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 26, 2010) ("AT&T May 26, 2010 *Ex Parte*").

⁴⁹⁰ AT&T Commitment Letter at 2. AT&T's commitment does not extend to any outstanding obligations that may be owed the Tribe that predate, or arise out of facts and circumstances that predate, the closing of the transaction. *Id.* See also AT&T May 26, 2010 *Ex Parte* at 2.

⁴⁹¹ AT&T Commitment Letter at 3; see also AT&T May 26, 2010 *Ex Parte* at 2.

⁴⁹² AT&T Commitment Letter at 2.

⁴⁹³ *Id.*

CDMA Network Subscribers with the same degree of access to services on the divestiture CDMA network as they currently have.⁴⁹⁴ AT&T represents that for one year after the closing of the AT&T-Verizon Wireless transaction, it will continue to offer the post-paid rate plans currently offered to Reservation Divestiture CDMA Network Subscribers without any material changes.⁴⁹⁵ Finally, AT&T represents that it will seek ETC status from the Commission similar to the ETC status now held by Western Wireless with respect to tribal members residing on the Reservation.⁴⁹⁶ If AT&T obtains such ETC status and if ETC funding continues to be available to AT&T, it will continue to offer comparable voice rate plans.⁴⁹⁷ AT&T states that these commitments with respect to the provision of wireless service on the Reservation will expire three years after the closing of the AT&T-Verizon Wireless transaction.⁴⁹⁸ AT&T also notes that its ability to fulfill these commitments is necessarily contingent upon it being able to access and construct, operate, and maintain the facilities necessary to provide first CDMA service and later HSPA service.⁴⁹⁹ In that regard, AT&T states that it will inform the Commission promptly of any developments of which it is aware that it anticipates will materially affect its ability to fulfill this set of commitments regarding the provision of wireless service on the Reservation.⁵⁰⁰

142. We find that these commitments made by AT&T with respect to the provision of wireless service on the Reservation address our concerns about the continuity of wireless service offerings on the Reservation. Moreover, effectuation of these commitments should not, based on the information provided to us, affect the ability of the Tribe and Verizon Wireless to pursue their respective claims against one another in their forums of choice. Implementation of the AT&T commitments will ensure that current tribal members living on the Reservation will continue to have access to wireless services as a primary means of communications. We accordingly condition our consent to the proposed transaction on AT&T's fulfillment of its commitments reflected in the AT&T Commitment Letter with respect to the provision of wireless services on the Reservation.

F. Predatory Pricing

143. *Background.* RTG and NTCA argue that AT&T and Verizon Wireless have the ability to engage in a successful predatory pricing strategy.⁵⁰¹ 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.⁵⁰² Generally, when a firm adopts a predatory pricing strategy, it sets price below some measure of cost.⁵⁰³

⁴⁹⁴ *Id.*

⁴⁹⁵ *Id.* at 3. AT&T does note that, for systems reasons, it will not be able to continue the Lifeline prepaid plans that are currently offered by Western Wireless on the Reservation, but will convert those customers to Lifeline post-paid plans at the same rates. *Id.* at 3 n.1.

⁴⁹⁶ *Id.* at 3.

⁴⁹⁷ *Id.*

⁴⁹⁸ *Id.*

⁴⁹⁹ *Id.*

⁵⁰⁰ *Id.*

⁵⁰¹ RTG Petition at 7-8, NTCA Aug. 7, 2010 *Ex Parte* at 3.

⁵⁰² See DENNIS W. CARLTON & JEFFREY M. PERLOFF, MODERN INDUSTRIAL ORGANIZATION 352-357 (4th ed. 2005). See also Applications for the Assignment of Licenses from Denali PCS, L.L.C to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C to General Communications, Inc., WT Docket No. 05-114, *Memorandum Opinion and Order*, 21 FCC Rcd 14863, 14907-08 ¶ 107 (2006) (“*GCI-Alaska DigiTel Order*”); (continued....)

144. RTG argues that AT&T and Verizon Wireless have the ability to temporarily lower prices in any of the 79 AT&T Divestiture Markets where there is a third party provider to drive out competition.⁵⁰⁴ RTG further argues that Sprint Nextel and T-Mobile, the two other nationwide providers, are more urban-centric, and therefore do not provide service in many of these markets.⁵⁰⁵ As a result, the third provider in these markets is usually a small rural operator that would be unable to compete against a price reduction because it does not have the same economies of scale as AT&T and Verizon Wireless.⁵⁰⁶ RTG and NTCA claim that AT&T and Verizon Wireless have the ability to lower prices and sustain these prices because they are able to subsidize buildout and service in these areas from revenue generated in their urban markets.⁵⁰⁷ Further, these small rural providers would be unable to compete effectively in non-price dimensions as well because they are unable to obtain nationwide data roaming services and access to the latest handsets.⁵⁰⁸ RTG asserts that once AT&T and Verizon Wireless drive out competition in a market, they would be able to artificially adjust their prices upwards.⁵⁰⁹

145. The Applicants argue that a predatory pricing claim is unsupported by the record and unlikely under economic theory.⁵¹⁰ The Applicants state that it is not predatory to price below the cost of another competitor.⁵¹¹ Rather, a claim of predatory pricing requires a showing that the alleged predator's prices are below an appropriate measure of its costs and that the predator must have a reasonable

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ALLTEL-Western Wireless Order, 20 FCC Rcd at 13098-99 ¶ 126; VoiceStream Wireless Corporation, PowerTel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310 of the Communications Act, *et al.*, IB Docket No. 00-187, *Memorandum Opinion and Order*, 16 FCC Rcd 9779, 9828-30 ¶¶ 88-92 (finding it unlikely that predatory pricing would occur in the United States mobile telephony market). 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)); see also *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 224, 226-227 (1993); *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co., Inc.*, 549 U.S. 312, 323 (2007).

⁵⁰³ See CARLTON & PERLOFF, *supra* note 502, at 352-357.

⁵⁰⁴ RTG Petition at 8; RTG Reply at 3-4. RTG claims that AT&T’s and Verizon Wireless’s economies of scale and scope are a result of consolidation of the wireless industry in the last few years, and given the size of the Applicants and the nature of the wireless industry, these economies of scale and scope cannot be replicated by other market players. See RTG Reply at 3-4. See also NTCA Aug. 7, 2010 *Ex Parte* at 3 (noting that a variety of anticompetitive conditions exacerbates this problem such as the ability of nationwide providers to offer advanced technology choices years before the competition).

⁵⁰⁵ RTG Petition at 8.

⁵⁰⁶ *Id.*

⁵⁰⁷ *Id.* at 8 n.16; NTCA Aug. 7, 2010 *Ex Parte* at 3.

⁵⁰⁸ RTG Petition at 8.

⁵⁰⁹ *Id.* at 9.

⁵¹⁰ Joint Opposition at 7.

⁵¹¹ *Id.*

expectation of recovering, in the form of later monopoly profits, more than the losses suffered.⁵¹² The Applicants also argue that lower retail prices are good for consumers and therefore in the public interest.⁵¹³

146. *Discussion.* We are not persuaded that AT&T and Verizon Wireless would be able to engage in successful price predation. Post-transaction, if AT&T and Verizon Wireless were to attempt to engage in predatory pricing, it is highly unlikely that either carrier could maintain an artificially low price for a sufficient period of time, and even if they could, there is no evidence they would be able to recover any losses through monopoly profits. Neither the record nor our analysis of market conditions indicates that this transaction would likely provide AT&T or Verizon Wireless with the ability to engage in a long-term successful price predation strategy. Therefore, we do not find RTG's claims of price predation persuasive or supported by the record.

G. Trafficking Claims

147. *Background.* Section 1.948(i) of the Commission's Rules states that "[a]pplications for approval of assignment or transfer may be reviewed by the Commission to determine if the transaction is for purposes of trafficking in service authorizations."⁵¹⁴ The rule defines trafficking as "obtaining or attempting to obtain an authorization for the principal purpose of speculation or profitable resale of the authorization rather than for the provision of telecommunication services to the public or for the licensee's own private use."⁵¹⁵ The anti-trafficking rules provide that Commission review for the purposes of determining whether trafficking has occurred is discretionary.⁵¹⁶

148. Cellular South asserts that the Commission should investigate whether Verizon Wireless engaged in trafficking with respect to the authorizations in 65 of the 79 markets that are included in the instant transaction.⁵¹⁷ Because in these 65 markets Verizon Wireless seeks to divest business units and related authorizations it had acquired in its merger with ALLTEL, Cellular South argues that the Commission should inquire into whether Verizon Wireless acquired ALLTEL's licenses for the principal purpose of immediately reselling them for a profit.⁵¹⁸ Cellular South also requests that the applications be designated for a hearing.⁵¹⁹

⁵¹² *Id.* at 8 (citing Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications Inc. to AT&T Corp., CS Docket No. 98-178, *Memorandum Opinion and Order*, 14 FCC Rcd 3160, 3214 ¶ 115 n.324 (1999) and *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 222-23 (1993)).

⁵¹³ Joint Opposition at 6-7.

⁵¹⁴ 47 C.F.R. § 1.948(i).

⁵¹⁵ *Id.* at § 1.948(i)(1). The Commission may require applicants to submit an affirmative showing demonstrating that the assignor or transferor did not acquire the authorization for the principal purpose of speculation or profitable resale of the authorization. *Id.* at § 1.948(i)(2).

⁵¹⁶ *Id.* at § 1.948(i) (stating that "[a]pplications for approval of assignment or transfer *may* be reviewed by the Commission to determine if the transaction is for purposes of trafficking in service authorizations" (emphasis added)).

⁵¹⁷ Cellular South Petition at 10-11. As noted above, the Commission required Verizon Wireless to divest business units in 105 markets in connection with its acquisition of ALLTEL. *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17515-17 ¶¶ 157, 159. The instant applications include 79 of the markets. In 65 of these 79 markets, Verizon Wireless seeks to divest operating units formerly held by ALLTEL.

⁵¹⁸ Cellular South Petition at 11.

⁵¹⁹ *Id.* at 11.

149. The Applicants assert that Verizon had no choice but to acquire the subject licenses in the process of acquiring ALLTEL, and it would not seek to resell them without a specific direction from the Commission and the DOJ.⁵²⁰ In addition, they argue that the anti-trafficking rule is not aimed at “subsequent sale of *constructed facilities acquired at a market price.*”⁵²¹ Cellular South responds that some of the subject licenses are for unconstructed facilities, and, in any event, the language of section 1.948(i) broadly applies to any grant or request for a grant of service authorizations.⁵²² It also claims that the Commission’s decisions cited by the Applicants do not limit the application of the anti-trafficking rule.⁵²³ Cellular South claims that it has made a sufficient showing that Verizon Wireless (1) obtained the subject licenses knowing it could not control or operate the systems to provide telecommunications services to the public, and (2) formed its intent to resell the subject licenses prior to the Commission’s grant of the Verizon Wireless-ALLTEL merger application.⁵²⁴ Finally, it reiterates its claim that a hearing is required to determine whether Verizon Wireless sought to obtain the subject licensees with the intent to resell them at a profit.⁵²⁵

150. The 65 markets where an ALLTEL entity is the current licensee involve a total of 149 cellular and PCS licenses. Seventy of the licenses are for cellular service, and all but one of the cellular licenses were awarded pursuant to random selection (lotteries). The remaining cellular license was awarded pursuant to competitive bidding in Auction 45, which involved three cellular RSA licenses in which the original lottery-winning applicant had been disqualified.⁵²⁶ Seventy-nine of the licenses being assigned from ALLTEL entities are PCS licenses, which were all originally awarded pursuant to competitive bidding, in Auction 4, 5, 11, 22, 35, or 58.

151. *Discussion.* We find that Cellular South’s claims regarding violation of our anti-trafficking policies are based on an apparent misunderstanding of the applicable rules and policies. Former section 22.943 of the Commission’s Rules addressed limitations on assignments and transfers of cellular authorizations.⁵²⁷ This section provided that “[a]pplications for consent to transfer of control or assignment of authorization in the Cellular Radiotelephone Service are subject to the provisions of Sec.

⁵²⁰ Joint Opposition at 31.

⁵²¹ *Id.* (emphasis in original) (citing Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission’s Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services, WT Docket No. 01-108, *Report and Order*, 17 FCC Rcd 18401, 18437 ¶ 72 (2002) (“2000 Biennial Regulatory Review”), and Forbearance From Applying Provisions of the Communications Act to Wireless Telecommunications Carriers, WT Docket No. 98-100, *First Report and Order*, 15 FCC Rcd 17414, 17429 ¶ 33 (2000) (“*Forbearance Order*”). The Applicants also state that all subject licenses acquired from ALLTEL except several common carrier fixed point-to-point microwave licenses have been constructed. Joint Opposition at 31 n.112.

⁵²² See Cellular South Reply at 10.

⁵²³ See *id.* at 10-11 n.22 (stating that while the *Forbearance Order* noted that the Commission would rarely review authorizations obtained in an auction because the initial licenses are required to pay market price for licenses acquired in auction, the Applicants are not the initial licensees, nor did they acquire the subject licenses in auction).

⁵²⁴ See *id.* 12-16.

⁵²⁵ See *id.* at 11.

⁵²⁶ Auction of Cellular Licenses for Rural Service Areas Scheduled for May 29, 2002 – Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures, *Public Notice*, 17 FCC Rcd 4135, 4138 n.2 (WTB 2002).

⁵²⁷ 47 C.F.R. § 22.943 (1997).

22.139 [the then applicable rule regarding trafficking].⁵²⁸ This section, however, also exempted “[a]pplications for consent to transfer of control or assignment of a cellular authorization obtained by random selection, after commencement of service,” among others, from the application of the then anti-trafficking rule.⁵²⁹ Thus, former section 22.943 by its terms excluded from the definition of impermissible trafficking the transfer of cellular licenses awarded pursuant to random selection and where service had commenced. The Commission explained that it adopted the rule in order “to balance the public interest in liberal transferability of licenses with a means to deter insincere applicants from speculation on unbuilt facilities.”⁵³⁰ Since all but one of the cellular licenses currently held by ALLTEL entities were awarded by random selection and the necessary construction obligations were satisfied for these licenses well before they were acquired by Verizon Wireless, there can be no trafficking concern regarding these licenses.

152. The remaining cellular license and the PCS licenses formerly held by ALLTEL entities were all awarded pursuant to competitive bidding. The legislative history associated with the Congressional authorization of the use of competitive bidding to determine the award of licenses⁵³¹ indicates that Congress was not concerned with the trafficking and warehousing of licenses awarded in competitive auctions, which guarantee a price set by market forces.⁵³² Instead, Congress was confident

⁵²⁸ 47 C.F.R. § 22.943(a) (1997).

⁵²⁹ 47 C.F.R. § 22.943(a)(2) (1997).

⁵³⁰ *2000 Biennial Regulatory Review*, 17 FCC Rcd at 18436 ¶ 72. *See also* Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission’s Rules To Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services, WT Docket No. 01-108, *Notice of Proposed Rulemaking*, 16 FCC Rcd 11169, 11195 ¶ 64 (2001) (“The cellular anti-trafficking rules specifically permit the transfer of cellular licenses awarded by lottery after construction. This policy was intended to balance the public interest in efficient use of the spectrum through free transferability of licenses with a deterrent for insincere applicants to speculate in unbuilt facilities.”); Amendment of the Commission’s Rules To Allow the Selection from Among Mutually Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings, CC Docket No. 83-1096, *Report and Order*, 98 F.C.C. 2d 175, 217 ¶ 77 (1984) (“cellular licenses awarded by lottery will be transferable after construction without regard to a minimum license holding period”).

⁵³¹ The 1993 Omnibus Budget Reconciliation Act amended the Communications Act of 1934 to allow the use of competitive bidding to issue licenses and to restrict the use of lotteries. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002, 107 Stat. 312, 388-92 (1993), amended by the Balanced Budget Act of 1997, Pub. L. No. 105-33, § 3002-3, 111 Stat. 251, 258-66 (1997) (current version at 47 U.S.C. § 309(j)). It required the Commission to establish, by regulation, the methodology of the auction and eligibility to bid for those licenses. 47 U.S.C. § 309(j)(3). After setting the methodology for a particular competitive bidding system, the Commission was required to establish the requirements to participate in an auction. 47 U.S.C. § 309(j)(4). Congress set forth five factors the Commission must consider when prescribing its regulations, among them, a requirement that the Commission should “require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits[.]” In 1998, several service-specific anti-trafficking rules adopted pursuant to the congressional mandate were consolidated into the current anti-trafficking rule in Section 1.948(i). *See* Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, WT Docket No. 98-20, 13 FCC Rcd 21027, 21079 ¶ 112-13 (1998) (“*ULS Order*”). Specifically, the following service-specific rules were removed: Sections 1.924, 22.137, 22.944, 24.439, 24.839, 26.319, 26.324, 27.306, 27.324, 80.56, 87.31, 87.33, 90.153, 95.109, 95.111, 95.821, 101.53, and 101.55. *See ULS Order*, 13 FCC Rcd at Appendix F.

⁵³² H.R. REP. NO. 103-111 at 257 (1993), *reprinted in* 1993 U.S.C.C.A.N. 378, 584 (“H.R. REP. NO. 103-111”).

that “[i]n the system of open competitive bidding, trafficking in licenses should be minimal, since the winning bidder would have paid a market price for the license.”⁵³³ It has been the Commission’s position that, consistent with the Congressional mandate, “we would rarely need to exercise this discretionary authority to review assignments or transfers of authorizations that were assigned through auction because the auction process, by requiring initial licensees to pay market value for their authorizations, effectively safeguards against . . . speculation.”⁵³⁴

153. The Commission has made clear that the transfer of cellular licenses awarded pursuant to random selection and that have been constructed does not fall within proscribed trafficking in Commission licenses. The Commission has also made clear that the transfer of licenses awarded pursuant to competitive bidding will seldom raise any trafficking concerns. We therefore find that the transfer of the subject cellular and PCS licenses⁵³⁵ from Verizon Wireless to AT&T does not raise any trafficking concerns.

H. *Ex Parte* Status of Proceeding

154. *Background.* In the public notice seeking comment on the proposed transaction, the Bureau, pursuant to its authority under section 1.1200(a) of the Commission’s Rules,⁵³⁶ announced that this proceeding would be governed by permit-but-disclose *ex parte* procedures that are applicable to proceedings under section 1.1206 of the Commission’s Rules.⁵³⁷ On July 20, 2009, Cellular South filed a petition for expedited reconsideration objecting to the *ex parte* status of the proceeding, asserting that the Bureau’s decision was a violation of section 1.1208 of the Commission’s Rules and section 309(d) of the Communications Act, as well as procedural and due process rights.⁵³⁸

155. *Discussion.* The Commission has recently addressed many of the same claims made by Cellular South in the *AT&T-Centennial Order*.⁵³⁹ In that order, we concluded that, in what otherwise would be a restricted proceeding under section 1.1208, the Commission and its staff have the discretion to apply permit-but-disclose *ex parte* procedures under section 1.1206 if the agency or its staff determine that the proceeding “involves primarily issues of broadly applicable policy.”⁵⁴⁰ As it did in the earlier proceeding, Cellular South again argues that the Commission did not present the required public policy

⁵³³ *Id.* Only where the participation in any competitive bidding situation is limited by the Commission are the anti-trafficking restrictions necessary and appropriate, because “there exists a significant possibility that licenses will be issued for bids that fall short of the true market value of the license.” *Id.* None of the licenses in this transaction originally held by ALLTEL and awarded by means of competitive bidding are governed by any current transferability limitations associated with being obtained pursuant to set-asides or bidding credits.

⁵³⁴ *Forbearance Order*, 15 FCC Rcd at 17429 ¶ 33.

⁵³⁵ The subject applications also include point-to-point microwave licenses authorization under Part 101 of our rules. Section 101.55(a) of our rules, 47 C.F.R. § 101.55(a), provides that “licenses not authorized pursuant to competitive bidding procedures may not be assigned or transferred prior to the completion of construction of the facility.” Section 101.55(d) provides an exception from this limitation for transfer of Part 101 licenses that are not constructed where the transfer is incidental to a sale of other facilities or merger of interests. 47 C.F.R. § 101.55(d). *See also* Application, Public Interest Statement at 37.

⁵³⁶ 47 C.F.R. § 1.1200(a).

⁵³⁷ *Id.* at § 1.1206. *See also Comment Public Notice*, 24 FCC Rcd at 8174.

⁵³⁸ *See generally* Cellular South Petition for Reconsideration.

⁵³⁹ *See AT&T-Centennial Order*, 24 FCC Rcd at 13976-78 ¶¶ 153-57.

⁵⁴⁰ *See id.*, 24 FCC Rcd at 13976-77 ¶ 154, citing 47 C.F.R. § 1.1208 n.2.

determination.⁵⁴¹ Although the *Comment Public Notice*, which is very similar to the public notice issued in the AT&T-Centennial proceeding,⁵⁴² did not fully articulate the reasons for reclassifying the proceeding as permit-but-disclose, we find that the Bureau nonetheless appropriately exercised its discretion, just as we found in the AT&T-Centennial proceeding.⁵⁴³ The Commission has previously determined that similar transactions involving large providers of telecommunications services “involve[] broad public policy issues and we reaffirm that judgment here.”⁵⁴⁴ For example, our major transaction proceedings generally include consideration of wireless competition issues and the possible effects on actual and potential customers. We note that permit-but-disclose *ex parte* procedures have been applied in the majority of recent merger cases.⁵⁴⁵ As we concluded in the *AT&T-Centennial Order*, the public policy determination underlying the decision to use permit-but-disclose *ex parte* procedures for significant transactions is reflected in a well-established administrative practice.⁵⁴⁶ It does not imply that the *ex parte* rules have been ignored.

156. We further find, as we did in the *AT&T-Centennial Order*, that the use of permit-but-disclose procedures in this proceeding does not violate the requirement of section 309(d) of the Communications Acts that allegations of fact in petitions to deny be supported by an affidavit.⁵⁴⁷ As we have previously explained, the affidavit requirement set forth in the section requires an affidavit only for petitions to deny and the applicant’s reply to such petitions. The affidavit requirement does not apply to other filings and does not preclude the Commission from considering other filings. Moreover, the purpose in seeking public comment is to invite information from a variety of perspectives regarding broad public policy concerns, as well as to adduce potential benefits and harms the transaction may cause. We do not believe that section 309(d) precludes us from doing this.⁵⁴⁸ The requirement for a supporting affidavit relates to “specific allegations of fact sufficient to show that . . . grant of the application would be prima facie inconsistent with [the requirements of the Communications Act].”⁵⁴⁹ It does not apply to

⁵⁴¹ Compare Cellular South Petition for Reconsideration at 6 with Petition for Reconsideration of Cellular South, Inc., WT Docket No. 08-246, filed Jan. 15, 2009 (Cellular South AT&T-Centennial Petition for Reconsideration).

⁵⁴² See AT&T Inc. and Centennial Communications Corp. Seek FCC Consent to Transfer Control of Licenses, Leasing Arrangements, and Authorizations, WT Docket No. 08-246, *Public Notice*, 23 FCC Rcd 17966 (2008).

⁵⁴³ See *AT&T-Centennial Order*, 24 FCC Rcd at 13976-77 ¶ 154.

⁵⁴⁴ See, e.g., “Permit But Disclose” Ex Parte Status Accorded to Proceeding Involving Applications Filed by Voicestream Wireless Corporation, Omnipoint Corporation, Cook Inlet/VS GSM II PCS, LLC and Cook Inlet/VS GSM III PCS, LLC for Consent to Transfer of Control and Assignment of Licenses and Authorizations, *Public Notice*, 15 FCC Rcd 6939 (1999).

⁵⁴⁵ See, e.g., AT&T Inc. and Centennial Communications Corp. Seek FCC Consent to Transfer Control of Licenses, Leasing Arrangements, and Authorizations, WT Docket No. 08-246, *Public Notice*, 23 FCC Rcd 17966 (2008); Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer Licenses, Spectrum Manager and *De Facto* Transfer Leasing Arrangements, and Authorizations, and Request a Declaratory Ruling on Foreign Ownership, WT Docket No. 08-95, *Public Notice*, 23 FCC Rcd 10004 (2008); Sprint Nextel Corporation and Clearwire Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 08-94, *Public Notice*, 23 FCC Rcd 9988 (2008).

⁵⁴⁶ See *AT&T-Centennial Order*, 24 FCC Rcd at 13976-77 ¶ 154.

⁵⁴⁷ See *id.*, 24 FCC Rcd at 13977 ¶ 155.

⁵⁴⁸ See *id.*

⁵⁴⁹ 47 U.S.C. § 309(d)(1).

“matters which [the Commission] may officially notice.”⁵⁵⁰ We believe that we may take official notice of the kind of policy-related concerns raised by the *ex parte* filings.⁵⁵¹

157. We also found in the *AT&T-Centennial Order* and again find here that the use of permit-but-disclose procedures does not conflict with other procedural rules applicable to this proceeding or considerations of due process.⁵⁵² Cellular South contends that by filing a petition to deny, the company acquired procedural rights that “involve being served with copies of papers that [Verizon Wireless and AT&T] may file with the Commission.”⁵⁵³ While the rules cited by Cellular South provide for the service of some pleadings, they do not bar the Commission or its staff from soliciting additional types of pleadings to which the service requirements do not apply.⁵⁵⁴ In this regard, the use of permit-but-disclose *ex parte* procedures in lieu of service does not in itself deprive parties of basic due process. As we concluded in the *AT&T-Centennial Order*, the use of permit-but-disclose procedures serves to give the parties adequate notice of allegations concerning them and a fair opportunity to respond.⁵⁵⁵ While *ex parte* presentations need not be served on Cellular South, they are readily available on the Commission’s web site on the Electronic Comment Filing System (“ECFS”) and the Office General Counsel Transaction Team web page, and can be accessed, reviewed, and responded to in a timely manner by Cellular South. Due process does not require more.⁵⁵⁶

158. Cellular South argues in this proceeding that the harm caused by the *ex parte* status of this proceeding will be exacerbated by the issuance of a “wholly-unlawful protective order.”⁵⁵⁷ The Commission has previously determined to use protective orders in order to ensure the protection of competitively sensitive information while still permitting limited disclosure for a specific public purpose,⁵⁵⁸ and protective orders have been employed in a number of major transactions, wireless and otherwise. Notwithstanding Cellular South’s claims, the protective orders in this proceeding provide mechanisms for review by counsel and other representatives of third parties while ensuring protection from unnecessary disclosure for information and documents (provided by the Applicants as well as other entities) that are in fact confidential under the Commission’s rules and the Freedom of Information Act.

⁵⁵⁰ *Id.*, § 309(d)(2).

⁵⁵¹ See *City of Erie v. Pap’s A.M.*, 529 U.S. 277, 298 (2000) (administrative agency may take official notice of “legislative facts” within its special knowledge), citing *FCC v. National Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978) (Commission’s expertise in predicting the anticompetitive impact of broadcasting co-ownership).

⁵⁵² See *AT&T-Centennial Order*, 24 FCC Rcd at 13977-78 ¶ 156.

⁵⁵³ Cellular South Petition for Reconsideration at 13.

⁵⁵⁴ In particular, we do not construe the service requirement of 47 C.F.R. § 1.927(i) to extend beyond the context of the applicant’s duty to serve amendments to its application and related pleadings on the petitioner to deny.

⁵⁵⁵ See *AT&T-Centennial Order*, 24 FCC Rcd at 13977-78 ¶ 156, citing Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings, GC Docket No. 95-21, *Notice of Proposed Rulemaking*, 10 FCC Rcd 3240, 3243 ¶¶ 20-22 (1995).

⁵⁵⁶ See *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985) (“The essential requirements of due process . . . are notice and an opportunity to respond”).

⁵⁵⁷ Cellular South Petition for Reconsideration at 14-15.

⁵⁵⁸ Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, GC Docket No. 96-55, *Report and Order*, 13 FCC Rcd 24816, 24823-24, 24831-32, ¶¶ 9, 21 (1998).

159. Cellular South asserts that the Commission has in the past accepted *ex parte* presentations without enough time for interested parties to respond before the Commission took action.⁵⁵⁹ As we did in the *AT&T-Centennial Order*, we decline to address complaints about procedures in prior proceedings.⁵⁶⁰ Cellular South has pointed to no actions in this proceeding that deprived it or other parties of basic fairness. Nonetheless, we agree that a comprehensive reexamination of our *ex parte* practices is warranted and such an effort is underway.⁵⁶¹

VIII. CONCLUSION

160. We find that the proposed transaction, with the conditions we impose based on the commitments made by AT&T and Verizon Wireless, raises no competitive concerns and is likely to result in transaction-specific public interest benefits. Moreover, we conclude that, consistent with the Commission's intent in the *Verizon Wireless-ALLTEL Order*, the proposed transfer of the licenses and business units associated with 79 markets from Verizon Wireless to AT&T will promote competition and provide consumers with additional wireless services in a number of markets around the country. Accordingly, we conclude that the grant of the subject assignment and transfer of control applications will serve the public interest.

IX. ORDERING CLAUSES

161. Accordingly, having reviewed the applications, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), the applications for the assignment or transfer of control of licenses and partial assignment of international section 214 authorizations from Cellco Partnership d/b/a Verizon Wireless and certain of its subsidiaries to Abraham Divestiture Company LLC as owned indirectly and controlled by AT&T Inc. or as owned by Garden Acquisitions, Inc. as an exchange accommodation titleholder for AT&T Inc. are GRANTED, to the extent specified in this Memorandum Opinion and Order and subject to the conditions specified herein.

162. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.18 of the Commission's rules, 47 C.F.R. § 63.18, Abraham Divestiture Company LLC is authorized to provide facilities-based international service in accordance with section 63.18(e)(1) of the Commission's rules and resale international service in accordance with section 63.18(e)(2) of the Commission's rules, 47 C.F.R. § 63.18(e)(1), (2), pursuant to international Section 214 authorization File No. ITC-214-20090522-00562.

163. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), the Petitions to Deny the assignment and transfer of control of licenses from Verizon Wireless to AT&T are DENIED IN PART and GRANTED IN PART for the reasons stated herein.

164. 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 Petition for Expedited Reconsideration filed by Cellular South, Inc. is DENIED for the reasons stated herein.

⁵⁵⁹ Cellular South Petition for Expedited Reconsideration at 22-23. Cellular South specifically cites events related to the Verizon Wireless-ALLTEL transaction.

⁵⁶⁰ *AT&T-Centennial Order*, 24 FCC Rcd at 13978 ¶ 157.

⁵⁶¹ Amendment of the Commission's *Ex Parte* Rules and Other Procedural Rules, GC Docket No. 10-43, *Notice of Proposed Rulemaking*, 25 FCC Rcd 2403 (2010).

165. IT IS FURTHER ORDERED that the above grant shall include authority for AT&T to acquire control of: (a) any license or authorization issued to Verizon Wireless and its subsidiaries that is related to the properties to be acquired by AT&T during the Commission's consideration of the transfer of control applications or the period required for consummation of the transaction following approval; (b) any construction permits that are related to the properties to be acquired by AT&T that mature into licenses after closing; and (c) applications that are related to the properties to be acquired by AT&T that are pending at the time of consummation of the proposed transfer of control.

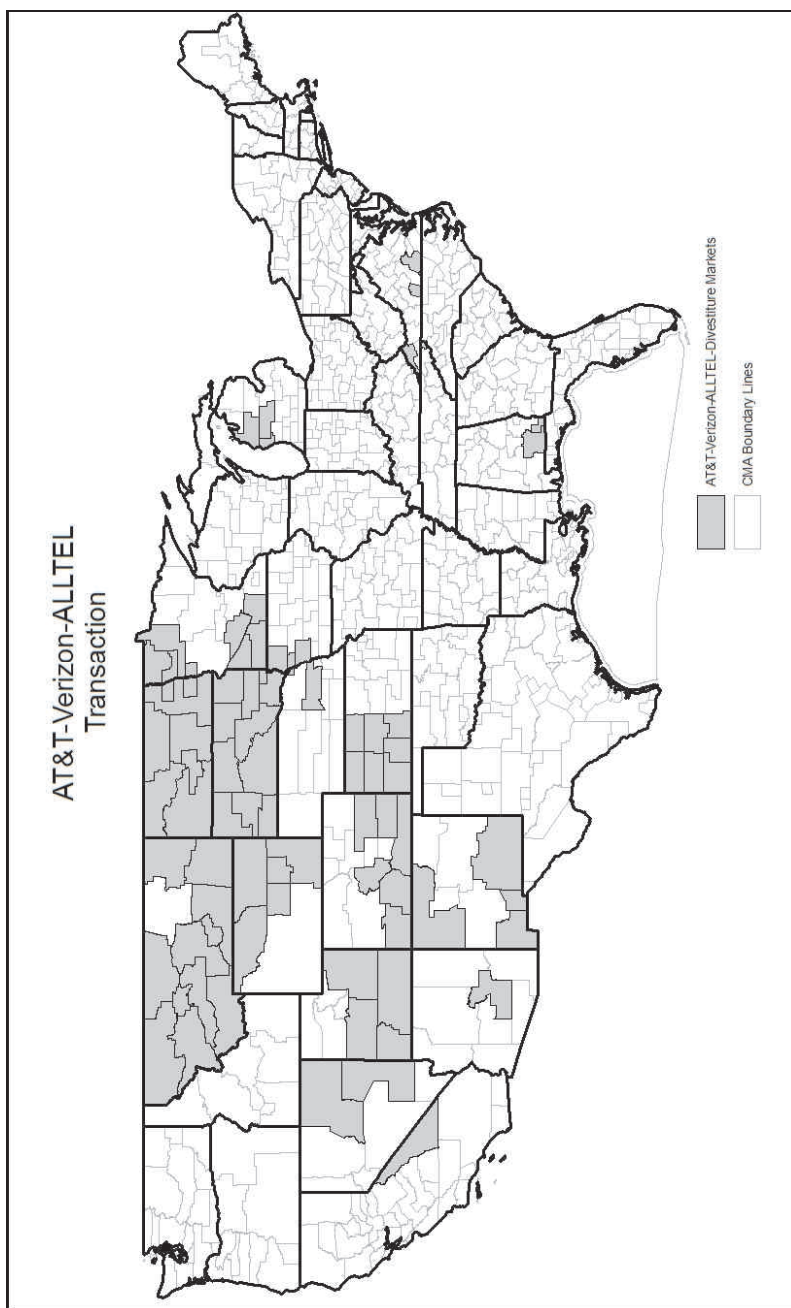
166. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon adoption. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Map of Markets



APPENDIX B

Applications Granted

Section 310(d) Applications – Parts 22, 24, 27, and 101 – Wireless Radio Services Applications

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0003840313	ALLTEL Communications, LLC	KNKA543
0003841825	ALLTEL Communications, LLC	KNLG298
0003845294	Alltel Communications, LLC	WMJ261
0003841826	ALLTEL Communications of New Mexico, Inc.	KNKN216
0003841827	ALLTEL Communications of Southern Michigan Cellular LP	KNKA506
0003841830	ALLTEL Communications of the Southwest Limited Partnership	KNKN206
0003841832	Alltel Communications of Virginia No. 1, LLC	KNKA655
0003845295	Alltel Communications of Virginia No. 1, LLC	WLV528
0003841833	Alltel New License Sub, LLC	WQIF351
0003845109	Las Cruces Cellular Telephone Company	KNKA605
0003841837	Midwest Wireless Communications L.L.C. d/b/a Alltel	KNLG882
0003841834	Midwest Wireless Communications L.L.C. d/b/a Alltel	KNLF485
0003841842	Midwest Wireless Iowa L.L.C. d/b/a Alltel	WPOM853
0003841840	Midwest Wireless Iowa L.L.C. d/b/a Alltel	KNLG863
0003841902	WWC Holding Co., Inc.	KNKA571
0003841967	WWC Holding Co., Inc.	KNLF934
0003841846	WWC License L.L.C.	KNKA573
0003841843	WWC License L.L.C.	WPYQ942
0003845283	WWC License L.L.C.	WMK901
0003841868	Cellco Partnership	WQCS434
0003845282	New Par	WQHT227
0003841849	New Par	KNLF500
0003841851	RCC Minnesota, Inc.	WQFA857
0003841854	RCC Minnesota, Inc.	KNKN282
0003841852	RCC Minnesota, Inc.	WMR721
0003841857	Verizon Wireless (VAW) LLC	KNLH260

Section 214 Authorizations

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-ASG-20090522-00241	Western Wireless, LLC	ITC-214-20010427-00254
ITC-ASG-20090522-00242	Rural Cellular Corporation	ITC-214-19940224-00114
ITC-ASG-20090522-00243	Cellco Partnership	ITC-214-19980401-00220
ITC-ASG-20090522-00244	Alltel Communications, LLC	ITC-214-20010504-00279
		ITC-214-19960404-00138

Exchange Accommodation Titleholder Spectrum Lease Application

<u>File No.</u>	<u>Lessee</u>	<u>Lead Call Sign</u>
7003ALNL10	AT&T Mobility II LLC	KNKA506

APPENDIX C

Petitioners and Commenters

Petitions:

Cellular South, Inc.
Chatham Avalon Park Community Council
National Association of Black Owned Broadcasters, Inc.
NTELOS Inc.
Rural Telecommunications Group, Inc.

Opposition:

AT&T Inc. and Verizon Wireless

Replies:

Cellular South, Inc.
Chatham Avalon Park Community Council
National Association of Black Owned Broadcasters, Inc.
NTELOS Inc.
Rural Telecommunications Group, Inc.

Comments and *Ex Parte* Filings

Cox Communications
Daniel Dufner
National Telecommunications Cooperative Association
Oglala Sioux Tribe
Public Service Communications, Inc.
South Dakota Public Utilities Commission
Sprint Nextel Corporation
Jason Stidham
Telephone USA Investments, Inc.
Mark Uhde
Jerry Fetterman

APPENDIX D

AT&T Letter of Commitment



Jean Marsh
Vice President –
Federal Regulatory

AT&T Services, Inc.
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May 20, 2010

BY ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, D.C. 20554

Re: *Applications of AT&T Inc. and Verizon Wireless for Consent To Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104*

Dear Ms. Dortch:

On May 22, 2009, applications were filed for AT&T to purchase wireless systems serving 1.5 million customers in mostly rural communities across parts of 18 states where AT&T currently has little or no presence. Verizon Wireless is selling these systems to meet divestiture obligations imposed by DOJ and the FCC from its merger with ALLTEL.

The public interest benefits of this transaction are indisputable. AT&T will invest approximately \$400 million to build out mobile broadband networks, creating new jobs and opportunities across wide swaths of rural America. Consumers in the affected communities will gain access to America's fastest 3G mobile broadband network with accelerated mobile data speeds and simultaneous voice and data capabilities, as well as access to an industry-leading WiFi network with 20,000 hotspots in the U.S. AT&T will offer a greater choice of smartphones and other devices than any other wireless carrier, with tens of thousands of applications available. Consumers will enjoy a host of improved services and features, such as free mobile-to-mobile calling to more than 80 million lines, a wide choice of pricing plans, and reduced roaming charges due to AT&T's vast home calling area. AT&T also will offer the best international coverage of any U.S. carrier, including international roaming voice service in more than 215 countries, data services in more than 170 countries, and 3G services in more than 80 countries.

Consumers living outside the areas involved in the transaction also will benefit. Expanding and deepening AT&T's network means less roaming, a more consistent look and feel to wireless service, and fewer dropped calls.

The transaction will increase competition. AT&T does not currently sell wireless service at all in a majority of the areas involved in this transaction, and in the rest of the areas, AT&T's current

presence is limited. Moreover, AT&T will hold only a fraction of the available spectrum in these areas.

Prompt approval of this pro-competitive transaction with its numerous public interest benefits will unquestionably advance the public interest. Nevertheless, in order to expedite approval of this transaction, AT&T makes the following commitments:

1. AT&T commits to negotiate with CDMA roaming partners in good faith and to accommodate reasonable requests for CDMA roaming services at a cell site in accordance with the Commission's roaming rules for as long as AT&T provides CDMA retail or roaming services at that specific cell site. More specifically, for any period during which AT&T continues to provide any automatic CDMA roaming service to Verizon Wireless at a cell site acquired in this transaction, AT&T commits to provide the same type of automatic CDMA roaming service at that same cell site to other facilities-based CDMA carriers upon reasonable request on reasonable terms and conditions, provided, however, that nothing in this commitment shall be construed to restrict AT&T from terminating CDMA services at any cell site to all CDMA carriers at any time consistent with AT&T's rights and obligations under its roaming agreement with Verizon Wireless or otherwise to impede AT&T's offering of a robust HSPA or GSM service.

2. Within six months of the date of the closing of this transaction, AT&T commits either to file with the Commission applications to divest 15 MHz of spectrum (either 700 MHz, cellular, PCS, and/or AWS-1 at AT&T's election) in CMA476 -- Michigan RSA No. 5, or else to surrender licenses for such amounts.

3. AT&T understands the importance of ensuring the continuity of high quality, affordable services on tribal lands and is committed to ensuring that AT&T has a positive and mutually beneficial relationship with the Oglala Sioux Tribe (the "Tribe") on a going forward basis. Therefore, with respect to the Pine Ridge Reservation (the "Reservation"):

a. AT&T will offer to undertake on a going forward basis the rights and obligations of WWC License LLC ("WWC") under the Tate Woglaka Service Agreement, dated August 21, 2000 (the "Service Agreement"), which prescribes the terms under which WWC currently provides service to the Reservation. Any outstanding obligations owed to the Tribe under the Service Agreement or by virtue of WWC's operations that predate or arise out of facts and circumstances that predate the closing of this transaction will remain WWC's responsibility.

b. AT&T will build a 3G HSPA broadband wireless network on the Reservation and transition the divestiture CDMA network subscribers living within the boundaries of the Reservation (the "Reservation Divestiture CDMA Network Subscribers") to the 3G HSPA broadband wireless network within 12 months of the closing of this transaction. Reservation Divestiture CDMA Network Subscribers will be eligible to receive new 3G handsets comparable to their existing CDMA handsets at no cost and with no contract extension.

c. Until the transition to the 3G HSPA broadband wireless network is complete, AT&T will provide the Reservation Divestiture CDMA Network Subscribers with the same degree of access to services on the divestiture CDMA network as they currently have.

d. To support the continued offering of high quality services and certain low cost rate plans on the Reservation, AT&T intends to request that the Commission transfer to it WWC's eligible telecommunications carrier ("ETC") designation. In any event, AT&T will continue to offer the postpaid rate plans currently offered to Reservation Divestiture CDMA Network Subscribers without any material changes for one year after the closing of this transaction.¹ Thereafter, if the FCC transfers WWC's ETC status to AT&T and if ETC funding continues to be available to AT&T, then AT&T will continue to offer comparable voice rate plans. Reservation Divestiture CDMA Network Subscribers also will have access on the 3G HSPA broadband wireless network to enhanced services-- such as enhanced voice mail, call forwarding, and three party calling-- that are similar to those currently available.

AT&T's ability to carry out this third commitment depends on AT&T being able under the Service Agreement to enter the Reservation to construct, operate and maintain the CDMA and/or HSPA networks and obtaining at the closing of the transaction and holding thereafter in peaceful and quiet enjoyment without any encumbrances the spectrum licenses, towers, and other network assets and agreements relevant to the Reservation that Verizon Wireless has agreed to convey to AT&T. Nothing in this third commitment shall prevent the Tribe and AT&T from agreeing to a mutually acceptable alternative to the Service Agreement. This third commitment shall expire three years after the closing of this transaction.

AT&T shall inform the Commission promptly of any developments of which AT&T is aware that AT&T reasonably anticipates will materially affect AT&T's ability to fulfill this third commitment. AT&T's performance of WWC's obligations under the Service Agreement on a going forward basis after the closing of this transaction is not intended to prejudice any claims that the Tribe may have against WWC arising from WWC's operations or its performance under the Service Agreement prior to the closing of this transaction.

The commitments described herein will be null and void if the transaction is not consummated.

In accordance with the Commission's rules, this letter is being filed electronically with the Secretary for inclusion in the public record.

Sincerely,



Joan Marsh

¹ For systems reasons, AT&T will not be able to continue the Lifeline prepaid plans currently offered by WWC on the Reservation, but will convert customers on such plans to Lifeline postpaid plans at the same rates.

APPENDIX E

Verizon Wireless Letter of Commitment



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Nancy J. Victory
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nvictory@wileyrein.com

May 27, 2010

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless
for Consent to Assign or Transfer Control of Licenses and Authorizations
and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104

Dear Ms Dortch:

Pursuant to the request of the Wireless Telecommunications Bureau staff, this letter confirms Verizon Wireless' commitment that, during the term of the Transition Services Agreement ("TSA"), Verizon Wireless will continue to administer CDMA roaming traffic from other carriers on the divestiture market networks pursuant to its TSA with AT&T, and Verizon Wireless will clear that traffic at the rates, terms and conditions set forth in its (including ALLTEL's) existing roaming agreement with each carrier.

Please contact the undersigned counsel for Verizon Wireless should you have any questions or require additional information.

Respectfully submitted,

/s/ Nancy J. Victory

Nancy J. Victory

cc: Nese Guendelsberger
Kathy Harris
Susan Singer

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, WT Docket No. 09-104

Today's action brings closure to the Commission's 2008 decision to allow two large wireless companies, Verizon Wireless and ALLTEL, to merge. I expressed my concerns at the time about the impact this combination would have over the affected geographic footprint—especially with regard to consumer choice. Given our finding in the recent Mobile Wireless Competition Report that concentration in U.S. wireless markets has increased dramatically in recent years, the important role that this agency must play in advancing competition and consumer well-being has never been more clear. The decision to allow this merger, though, has already been made. The Order we adopt now takes an important step to help restore at least some level of competitive balance through the implementation of Verizon Wireless' divestiture of certain licenses and associated businesses, as required by the Department of Justice, to AT&T. Absent these divestitures, consumers in large parts of the country would have inevitably experienced less competition, higher prices and lower quality of service.

While I support this Order, the record and discussions surrounding it have served to highlight the continuing unacceptable state of telecommunications in much of Indian Country. The Pine Ridge Reservation—home of the Oglala Sioux Tribe—falls within two of the markets covered by today's decision. I saw first-hand the many challenges facing the Oglala Sioux in Pine Ridge when I visited less than a year ago. While progress has been made in telecommunications there against very heavy odds, there is still so far to go. Indeed there is so very far to go across Indian Country where, for the most part, state-of-the-art communications are strangers in the land.

As we work to tackle the challenge of broadband deployment and adoption throughout America, we must not lose sight of the sad reality that even plain old telephone service, which so many of us take for granted, is at the shockingly low level of less than 70 percent of Native American households. And we don't even begin to have reliable data on the status of Internet subscribership on tribal lands, because no one has bothered to collect it. Anecdotally, we know that broadband access on tribal lands is minimal—well below 10 percent. That's not just unacceptable. It's a national disgrace. Broadband is critical technology for the economic growth—perhaps even the survival—of these communities.

I recognize that addressing all the challenges and opportunities related to bringing Twenty-first century broadband infrastructure and services to Indian Country cannot be done within the confines of the narrowly focused Order we adopt today. That requires breathing new life into the trust relationship with Native Americans, and giving the issues of Indian Country true visibility here at the FCC, day-in and day-out.

We are finally getting onto that path. Earlier today, Chairman Genachowski announced the appointment of Geoff Blackwell to lead the agency's relationship with Indian Country and to oversee the implementation of the National Broadband Plan's recommendations to increase broadband deployment and adoption on tribal lands. I have had the privilege of working closely with Geoff before, and believe his leadership will do much to restore a productive dialogue between the FCC and the sovereign tribal governments. I continue to work with the Chairman and my colleagues to ensure the timely establishment of an Office of Tribal Affairs.

As for the specific problems that the Oglala Sioux Tribe has raised in this proceeding, I fully expect the recipient of the divested licenses, AT&T, to work in good faith with the tribe to find going-forward solutions that are beneficial for all. I am encouraged by the commitments and assurances that AT&T has recently made, and we will be monitoring their implementation very carefully. And, now with Geoff onboard, we have a real conduit for the FCC to hear the voices of the Oglala Sioux and all the Tribes as we work, government-to-government, to bring the enabling power of broadband to Indian Country.