

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

In the Matter of)	
)	
Applications of GCI Communication Corp.,)	WT Docket No. 12-187
ACS Wireless License Sub, Inc., ACS of)	WC Docket No. 09-197
Anchorage License Sub, Inc., and Unicom, Inc.)	
For Consent To Assign Licenses to The Alaska)	
Wireless Network, LLC)	

MEMORANDUM OPINION AND ORDER AND DECLARATORY RULING

Adopted: July 12, 2013

Released: July 16, 2013

By the Commission: Acting Chairwoman Clyburn and Commissioner Pai issuing statements.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION.....	1
II. BACKGROUND.....	5
A. Description of the Applicants	5
1. GCI.....	5
2. ACS Wireless	7
B. Description of the Transaction.....	9
C. Transaction Review Process	20
III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK	23
IV. QUALIFICATIONS OF THE APPLICANTS.....	28
V. COMPETITIVE ANALYSIS.....	31
A. Background.....	31
B. Market Definition.....	34
1. Product Market.....	35
2. Geographic Market.....	36
3. Input Market for Spectrum.....	38
4. Market Participants.....	40
B. Competitive Effects of the Proposed Transaction.....	42
1. Initial Screen.....	42
2. Unilateral Effects.....	44
3. Coordinated Effects.....	65
a. Coordination in the Mobile Broadband/Telephony Market in Alaska.....	67
b. Exchanges of Competitively Sensitive Information.....	70
4. Roaming	78
5. Lansman Petition.....	82
VI. POTENTIAL PUBLIC INTEREST BENEFITS AND EFFICIENCIES	85
A. Analytical Framework	86
B. Asserted Benefits	89
1. Network Efficiencies and Coverage.....	90
2. Expanded Coverage and Improved Service to Current Subscribers.....	94

3. Increased Competitiveness 95

C. Discussion 98

D. Balancing 102

VII. THE APPLICANTS’ UNIVERSAL SERVICE SUPPORT 106

A. Background 106

B. Declaratory Ruling 112

 1. Own Facilities Under Section 214(e)(1)(A) 115

 2. Spectrum Access 121

C. Conditions Regarding Universal Service Support 129

VIII. CONCLUSION 139

IX. ORDERING CLAUSES 140

I. INTRODUCTION

1. In this Order, we consider applications by GCI and ACS Wireless, the two major Alaskan-based mobile wireless providers, to transfer substantially all of their spectrum licenses to a jointly owned subsidiary as part of a transaction in which the subsidiary also would receive substantially all of the two companies’ respective wireless infrastructures across the state of Alaska.¹ The subsidiary would use these assets to provide wholesale wireless services to GCI and ACS Wireless, each of which would continue to provide retail services to Alaskan consumers. GCI and ACS Wireless assert that this transaction would enable each of them to compete more effectively against the remaining major mobile provider currently providing service in Alaska, AT&T Mobility, as well as against Verizon Wireless, which recently has launched an LTE network in Alaska. We also consider here the subsidiary’s related application for authority to provide global international resale services,² as well as the Applicants’ request for a declaratory ruling that after the transaction, both GCI and ACS Wireless would continue to meet two specific eligibility requirements for receipt of certain types of high-cost support as “eligible telecommunications carriers.”³

2. On their face, these applications raise significant competitive and universal service issues that warrant close scrutiny. GCI and ACS Wireless are the only two major Alaskan-based mobile wireless providers, and AT&T has been the sole remaining major provider of mobile services to Alaskan consumers. The specific contractual provisions governing the relationships of GCI, ACS Wireless, and their subsidiary are key in our evaluation of the public interest of the applications and of the declaratory ruling request before us. As a result, to conduct our analysis, we have obtained significant information and documents not only from GCI and ACS Wireless regarding their arrangements and plans, but also from Verizon Wireless regarding the scope and timing of its entry into the state of Alaska.

3. In considering these Applications, we can evaluate the likely public interest impacts, particularly the competitive impacts, only with regard to the specific market conditions prevailing in Alaska. Isolated from the contiguous lower 48 states, Alaska has a statewide population of only about 710,000, is by far the largest state by area in the nation, has the lowest population density, and presents particular operating challenges for mobile networks, especially in its remote areas. As we have done in

¹ Applications of GCI Communication Corp., ACS Wireless License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. for Consent to Assign Licenses to the Alaska Wireless Network, LLC, ULS File Nos. 0005257725, 0005257737, 0005259928, and 0005260034 (filed June 18, 2012; amended Aug. 10, 2012, Nov. 16, 2012) (“Applications”). We refer to the parties to the Applications jointly as “Applicants” herein.

² See File No. ITC-214-20120618-00162 (filed June 18, 2012); 47 U.S.C. § 214(a).

³ See Applications, ACS-GCI Petition for Declaratory Ruling (revised) (“Petition for Declaratory Ruling”); 47 U.S.C. § 214(e).

other transactions, we consider these specific and unique conditions in Alaska as an integral part of our competitive analysis.⁴ Considered together, these market conditions inform our assessment of the competitive issues, as well as the universal service issues, presented by these applications and requests.⁵

4. As discussed in detail below, we find that, to the extent that the proposed transaction may result in potential competitive harms in Alaska, these potential competitive harms—when subject to specific safeguard conditions—are outweighed by public interest benefits likely to result in Alaska from the proposed transaction. Such benefits include network efficiencies from infrastructure consolidation, expanded coverage and improved service throughout Alaska, and increased competitiveness from a timely transition to LTE. We therefore conclude that, on balance, the assignment applications, as conditioned, would serve the public interest, and, accordingly, grant those applications. We also grant the related application for authority to provide global international resale services, as well as the request for a declaratory ruling that after this transaction, GCI and ACS Wireless each would continue to provide services over their “own facilities,” as required by section 214(e) of the Communications Act, as amended, and our rules, as well as to have “access to spectrum” for purposes of section 54.1003(b) of our rules—which are both prerequisites to receiving certain kinds of high-cost universal service support.

II. BACKGROUND

A. Description of the Applicants

1. GCI

5. General Communication, Inc., which wholly owns GCI Communication Corp. (“GCI”) through various subsidiaries, is a publicly-traded corporation incorporated under the laws of the state of Alaska and headquartered in Anchorage.⁶ GCI is a wireless provider serving approximately 140,000 wireless subscribers throughout Alaska with facilities-based voice and data services, including second generation (“2G”), third generation (“3G”), and more advanced mobile broadband services using Evolved High-Speed Packet Access (“HSPA+”) and long-term evolution (“LTE”).⁷ GCI holds licenses in the cellular and Personal Communications Service (“PCS”) bands.⁸

6. GCI is a designated wireless competitive eligible telecommunications carrier (“CETC”) in certain portions of Alaska, and also provides services, either directly or through wholly-owned subsidiaries, as a competitive local exchange carrier (“CLEC”), rural incumbent local exchange carrier (“ILEC”), and long distance telecommunications service provider throughout Alaska.⁹ GCI also is the largest cable television operator in Alaska, passing 90 percent of the households in Alaska with 64

⁴ 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, 13934 ¶¶ 41-42 (2009) (“*AT&T-Centennial Order*”) (considering the unique characteristics of Puerto Rico and the U.S. Virgin Islands in part because of their limited geographic scope and isolated nature).

⁵ See, e.g., Connect America Fund et al., WC Docket No. 10-90 et al., *Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663, 17773 ¶ 507 (2011) (“*USF/ICC Transformation Order*”), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011) (“We appreciate and recognize that Alaska faces uniquely challenging operating conditions....”).

⁶ GCI 2012 Annual Report on Form 10-K at 1 (filed Mar. 8, 2013) (“GCI 10-K”).

⁷ GCI 10-K at 5; see Applications, Ex. 1, Description of the Proposed Transaction & Public Interest Statement (revised) (“Public Interest Statement”) at 6, App. C.

⁸ Public Interest Statement at 7.

⁹ GCI 10-K at 5; Public Interest Statement at 7.

percent penetration.¹⁰ GCI offers facilities-based local telephone service in 22 cities in Alaska and has a 35 percent market share in the state.¹¹ GCI also has ownership interests in submarine cables used for wholesale transport of communications to the lower 48 States.¹²

2. ACS Wireless

7. Alaska Communications Systems Group, Inc., which wholly owns ACS Wireless, Inc. (“ACS Wireless”) through a subsidiary, Alaska Communications Systems Holdings, Inc. (“ACS Holdings”), is a publicly-traded corporation incorporated under the laws of the state of Delaware and headquartered in Anchorage.¹³ ACS Wireless is a wireless provider serving approximately 118,000 subscribers in various locations in Alaska over its Code Division Multiple Access (“CDMA”) and 3G Evolution-Data Optimized (“EVDO”) network facilities.¹⁴ Through its wholly-owned subsidiary, ACS Wireless holds licenses in the cellular band, the PCS band, and the Advanced Wireless Service (“AWS-1”) band.¹⁵

8. ACS Wireless is a CETC in some parts of Alaska.¹⁶ ACS Holdings, which also wholly owns applicants ACS Wireless License Sub, Inc. and ACS of Anchorage License Sub, Inc., operates four ILECs in Alaska. In addition, ACS Holdings operates a long distance telecommunications subsidiary, an Internet subsidiary, and a fiber optic cable subsidiary, all used to provide service within Alaska and between Alaska and the lower 48 States.¹⁷

B. Description of the Transaction

9. Under the proposed transaction, GCI and ACS Wireless would transfer substantially all of their spectrum licenses to The Alaska Wireless Network, LLC (“AWN”), a jointly owned subsidiary. GCI would hold a 66 2/3 percent equity interest in the new AWN venture through a wholly-owned subsidiary, GCI Wireless Holdings, LLC. ACS Wireless would hold the remaining 33 1/3 percent interest.¹⁸ As part of the transaction, AWN also would receive substantially all of the two companies’ respective wireless infrastructures across the state of Alaska. AWN would use these assets to develop and sell wholesale wireless service plans to GCI and ACS Wireless, each of which would continue to provide retail services to Alaskan consumers.¹⁹ GCI and ACS Wireless assert that this transaction would enable each of them to compete more effectively against national providers AT&T Mobility and Verizon Wireless in the provision of mobile service in Alaska.²⁰ In seeking approval of the proposed transaction,

¹⁰ GCI 10-K at 5, 10; Public Interest Statement at 7; About GCI, *available at* <http://www.gci.com/about> (last visited June 14, 2013).

¹¹ About GCI, *available at* <http://www.gci.com/about> (last visited June 14, 2013).

¹² GCI 10-K at 5, 11.

¹³ Alaska Communications Systems Group, Inc. 2012 Annual Report on Form 10-K at 4 (filed Mar. 1, 2013). ACS Wireless, ACS Wireless License Sub, Inc. and ACS of Anchorage License Sub, Inc. all are wholly-owned subsidiaries of Alaska Communications Systems Holdings, Inc. *See* Public Interest Statement at 5.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 5 n.7. ACS Wireless plans to seek further CETC designation in other parts of Alaska after the close of the proposed transaction. *Id.*

¹⁷ *Id.* at 6.

¹⁸ *See id.* at 12, App. C.

¹⁹ *See id.* at 11.

²⁰ *See id.* at 17-23.

the Applicants ask that the Commission consider the particularly challenging factors associated with deploying, maintaining, and operating mobile wireless networks in Alaska. These factors include its extremely large geographic area, its low population density outside of the three largest communities, its isolated and highly dispersed small communities, its short construction season and extreme weather conditions, and the high costs of constructing and maintaining infrastructure.²¹

10. More specifically, the Applicants' proposed transaction would be effectuated by a series of agreements, which together they style as a joint venture.²² Under the Asset Purchase Agreement, GCI would purchase a portion of ACS Wireless's assets, including potentially some of its FCC wireless authorizations, for \$100 million.²³ GCI then would contribute those assets, in addition to its own wireless assets and a working capital loan, to AWN.²⁴ ACS Wireless would contribute its remaining wireless assets, including any FCC wireless authorizations not previously purchased by GCI, to AWN.²⁵ The Applicants propose to assign to AWN one AWS-1 license, 21 cellular licenses, eight PCS licenses, and a number of microwave and industrial radio licenses that together cover portions of Alaska's four Cellular Market Areas ("CMAs").²⁶

11. In addition to contributing all of their respective wireless assets to AWN, the Asset Purchase Agreement would require both GCI and ACS Wireless to contribute all of their respective CETC cash flow received in Alaska to AWN.²⁷ The Applicants also are required to take all commercially reasonable steps to ensure continued receipt of CETC cash flow and to work together to obtain a Declaratory Ruling from the Commission that (i) AWN's assets constitute the "own facilities" of GCI and ACS Wireless for purposes of the Act and Commission rules; (ii) GCI and ACS Wireless may remit all CETC cash flow to AWN so that it can be used to support the facilities and services for which the support is intended; and (iii) GCI's and ACS Wireless's access to AWN's facilities and services constitutes "access to spectrum" under the Act and Commission rules.²⁸

12. Pursuant to the First Amended and Restated Operating Agreement of AWN ("Joint Operating Agreement"),²⁹ AWN would be the sole facilities-based operator of the combined network and would sell wholesale wireless services plans to GCI and ACS Wireless on a non-discriminatory basis

²¹ See *id.* at 27-31.

²² In connection with the transaction, the Applicants executed a number of agreements that they describe as standalone and "not contingent upon the consummation of the network sharing arrangements" or requiring Commission approval. *Id.* at 13 & n.19. These agreements are listed as Pre-Closing Agreements in the Asset Purchase Agreement. Asset Purchase Agreement § 1.1 at 10. To the extent such agreements affect our analysis of the proposed assignment applications, however, they are relevant to our public interest determination under section 310(d) of the Act and are discussed herein. See Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses, WT Docket No. 12-4, *Memorandum Opinion and Order and Declaratory Ruling*, 27 FCC Rcd 10698, 10750, 10752 ¶¶ 139, 143 (2012) ("*Verizon Wireless-SpectrumCo Order*").

²³ Asset Purchase Agreement at § 2.1; see also Public Interest Statement at 8.

²⁴ Asset Purchase Agreement at §§ 2.3, 2.8; Public Interest Statement at 8-9.

²⁵ Asset Purchase Agreement § 2.2; Public Interest Statement at 8-9.

²⁶ See Public Interest Statement, App. A & B.

²⁷ Asset Purchase Agreement §§ 2.2-2.3.

²⁸ *Id.* §§ 5.1(b)(11), 6.1(e), 6.15. See *infra* Section VII for a discussion of the Applicants' Petition for Declaratory Ruling.

²⁹ The Joint Operating Agreement remains in effect as long as AWN continues to exist. Procedures regarding the dissolution of AWN and liquidation of its assets are outlined in Articles 12 and 13 of the Joint Operating Agreement. See also Joint Operating Agreement § 1.8.

using the contributed spectrum and infrastructure.³⁰ GCI would hold a 66 2/3 percent equity interest in AWN through a wholly-owned subsidiary, GCI Wireless Holdings, LLC, and ACS Wireless would hold the remaining 33 1/3 percent interest.³¹ The initial Chief Executive Officer (“CEO”) of AWN would be Wilson Hughes, currently Executive Vice President, Wireless, at GCI.³² AWN would be governed by a three member Executive Board consisting of the current CEO of GCI, the CEO of ACS Wireless, and the CEO of AWN.³³

13. The Joint Operating Agreement recognizes that the structure of the proposed transaction creates the possibility that GCI and ACS Wireless could engage in improper sharing of non-public, commercially sensitive information with anticompetitive effect.³⁴ To guard against this possibility, the Joint Operating Agreement provides that certain reports by AWN to AWN’s Executive Board, and thereby to GCI and ACS Wireless, would be aggregated and presented by geographic area.³⁵ In addition, all employees of GCI or ACS Wireless who are assigned to work at AWN would be required to adhere to confidentiality requirements designed to prevent anticompetitive information from flowing between GCI and ACS Wireless.³⁶

14. The Applicants maintain that notwithstanding ACS Wireless’s minority ownership interest in AWN, ACS Wireless has significant management control over AWN because a substantial number of actions require unanimous board approval.³⁷ The Joint Operating Agreement provides for numerous actions or decisions of AWN that require unanimous approval of its three-member board,³⁸ including (i) changes to AWN’s lines of business; (ii) changes to GCI’s or ACS Wireless’s equity interests in AWN; (iii) the sale of any assets of AWN if such sale would impair GCI’s or ACS Wireless’s ability to comply with the regulatory obligations applicable to local exchange carriers; (iv) the appointment of a successor CEO;³⁹ (v) AWN entering into any agreements with GCI or ACS Wireless other than those set forth in the agreements; (vi) decisions regarding technology upgrade plans for AWN; and (vii) entering into, waiving, modifying, or terminating any contract or agreement between AWN and another party that is inconsistent with existing plans for the joint venture. The Joint Operating Agreement also requires unanimous board approval for AWN’s budgets and plans under certain circumstances.⁴⁰

15. The Joint Operating Agreement provides that during the first four years of the proposed transaction, ACS Wireless would receive preferential cash distributions from AWN’s net income, and

³⁰ See Public Interest Statement at 11-12; Joint Operating Agreement § 2.1.

³¹ See Joint Operating Agreement § 1.4; Public Interest Statement at 12, App. C.

³² Joint Operating Agreement § 6.2; Public Interest Statement at 12 n.17.

³³ Joint Operating Agreement § 6.3(a).

³⁴ See Joint Operating Agreement § 16.20 & Exh. L (“Commercially Sensitive Information Policies and Procedures”). See also *infra* ¶¶ 70-71.

³⁵ Joint Operating Agreement, Exh. L § 2.

³⁶ *Id.* Exh. L § 3. See also GCI Services Agreement § 4, Exh. A, Exh. A-1; ACS Services Agreement § 1.4, Exh. D; § 4.

³⁷ Public Interest Statement at 12 & n.18 (“There are more than twenty events and activities that require the approval of both ACS Wireless and GCI, giving ACS Wireless significant minority investor protections to ensure that its interests in the network, the services and the licenses cannot be materially impaired.”).

³⁸ Joint Operating Agreement § 6.4.

³⁹ ACS Wireless agrees to approve one individual as successor CEO from a list of three or more qualified individuals provided by GCI, all of whom may be GCI employees. *Id.* § 6.4(k).

⁴⁰ *Id.* § 7.4.

GCI would receive the remainder. If ACS Wireless fails to maintain certain levels of subscribership, however, the preferential cash distribution would be reduced on a per subscriber basis.⁴¹ After the first four years of the proposed transaction, each of GCI and ACS Wireless would receive from AWN's net income (or loss) in proportion to its respective share of equity in AWN.⁴² In addition, AWN would pay GCI a quarterly senior management consulting fee based on a percentage of free cash flow.⁴³

16. Pursuant to the proposed transaction, GCI and ACS Wireless and their affiliates would exclusively use AWN to provide wireless service in Alaska and they would be given non-discriminatory and equal access to AWN services and network.⁴⁴ GCI and ACS Wireless would pay AWN for its services at wholesale rates that AWN would set at approximately 30 percent below prevailing market rates.⁴⁵ GCI and ACS Wireless propose that they would continue to market and sell standalone wireless retail services, separately branding and pricing their individual wireless offerings, and they state that no retail customers would be transferred to AWN. The Applicants' contractual arrangements require them to maintain their existing service plans at their current retail rates for a two-year period from the execution date of the Facilities and Network Use Agreement.⁴⁶

17. AWN will engineer and operate competitive wireless networks in Alaska and will design and implement competitive wireless service plans to allow GCI and ACS Wireless to compete with other wireless providers.⁴⁷ Under the Facilities and Network Use Agreement, AWN agrees **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]⁵¹

⁴¹ *Id.* §§ 5.1, 9.4.

⁴² *Id.* §§ 4.1, 5.1.

⁴³ *Id.* § 6.1(c) (providing that AWN will pay GCI a quarterly consulting fee of four percent of the free cash flow of the joint venture for the first two years of the venture, six percent for years three and four, and eight percent thereafter).

⁴⁴ Public Interest Statement at 11; Facilities and Network Use Agreement § 2.

⁴⁵ Facilities and Network Use Agreement § 5(b). The 30 percent discount is intended to cover GCI's and ACS Wireless's sales and marketing expenses. Public Interest Statement at 11; Petition for Declaratory Ruling at 4-5. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] Facilities and Network Use Agreement § 5(g).

⁴⁶ *See* Facilities and Network Use Agreement § 3(f); Public Interest Statement at 8, 11-12.

⁴⁷ Joint Operating Agreement § 2.1(a).

⁴⁸ Facilities and Network Use Agreement § 3(b), 4(j), (k).

⁴⁹ *Id.* § 3(b).

⁵⁰ *Id.*

⁵¹ *Id.* § 4.

18. The Facilities and Network Use Agreement also provides that each of GCI and ACS Wireless **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]⁵⁴ GCI and ACS Wireless agree to pay to AWN all high-cost universal service support each receives using AWN facilities and services.⁵⁵

19. Each of GCI and ACS Wireless executed Service Agreements with AWN, which generally provide for the continued provision of technical support and services on AWN's network and dedicated employees to the joint venture, as well as payment for those services.⁵⁶ The GCI Services Agreement provides that GCI **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[HIGHLY CONFIDENTIAL INFORMATION]⁶⁰

C. Transaction Review Process

20. On June 18, 2012, the Applicants filed several applications seeking Commission approval of the proposed assignment to AWN of certain spectrum licenses and related authorizations. AWN also filed an application pursuant to section 214 of the Act for authority to provide global international resale services.⁶¹ On July 3, 2012, the Bureau took steps to protect confidential information filed in this docket,⁶² and on August 22, 2012, the Commission released a public notice announcing acceptance of the

⁵² *Id.* § 2(vii).

⁵³ *Id.*

⁵⁴ *Id.* § 3(b).

⁵⁵ Asset Purchase Agreement § 6.15; Facilities and Network Use Agreement § 5(d); *see also infra* ¶ 133.

⁵⁶ The term of the ACS Services Agreement **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**
[END HIGHLY CONFIDENTIAL INFORMATION] ACS Services Agreement § 3.2. The term of the GCI Services Agreement **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**
[END HIGHLY CONFIDENTIAL INFORMATION] GCI Services Agreement § 3.1.

⁵⁷ *Id.* § 1.1, Exh. A. § 1.

⁵⁸ *Id.* Exh. A §§ 2-3; *see also id.* Exh. A-1 (Form of Personnel Secondment Letter).

⁵⁹ ACS Services Agreement, §§ 1.4, 4.2, Exh. D.

⁶⁰ *Id.* § 1.1; GCI Services Agreement § 1.2, Exh. B.

⁶¹ File No. ITC-214-20120618-00162.

⁶² Applications of GCI Communication Corp., ACS Wireless License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. For Consent To Assign Licenses to The Alaska Wireless Network, LLC, WT Docket No. 12-187, *Protective Order*, 27 FCC Rcd 7493 (WTB 2012); Applications of GCI Communication Corp., ACS Wireless (continued....)

Applications and seeking comment on the proposed transaction.⁶³ The *Comment Public Notice* established a pleading cycle for the applications, with petitions to deny due September 21, 2012, oppositions due October 1, 2012, and replies due October 12, 2012.⁶⁴ No party timely filed a petition against the proposed transaction. Fireweed Communications, LLC and Jeremy Lansman submitted a late-filed petition to deny on February 19, 2013.⁶⁵

21. On October 11, 2012, the Bureau requested additional information and documents from the Applicants relating to aspects of the proposed transaction.⁶⁶ On November 7, 2012, the Bureau suspended the 180-day time clock for review of transactions to permit the Applicants to complete their document production.⁶⁷ On November 30, 2012, the Bureau released a public notice announcing that Numbering Resource Utilization and Forecast (“NRUF”) reports and local number portability (“LNP”) data for all wireless telecommunications providers as of December 31, 2008, June 30, 2009, December 31, 2009, June 30, 2010, December 31, 2010, June 30, 2011, December 31, 2011, and June 30, 2012 (when available) would be placed into the record, and the Bureau 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.⁶⁸ The Bureau received no requests for review of the NRUF and LNP data that is in the record.

22. On December 21, 2012, with the Applicants asserting substantial compliance with the document production, the Bureau restarted the 180-day time clock.⁶⁹ Throughout the Commission’s review of the proposed transaction, the Applicants have submitted documents, some of which were provided pursuant to the *Protective Orders*.

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

23. Pursuant to section 310(d) of the Communications Act, we must determine whether applicants have demonstrated that their proposed assignment of licenses will serve the public interest, (Continued from previous page) _____
License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. For Consent To Assign Licenses to The Alaska Wireless Network, LLC, WT Docket No. 12-187, *Second Protective Order*, 27 FCC Rcd 7484 (WTB 2012) (together, the “*Protective Orders*”).

⁶³ GCI Communication Corp., ACS Wireless License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. Seek FCC Consent to the Assignment of Licenses to The Alaska Wireless Network, LLC, WT Docket No. 12-187, *Public Notice*, 27 FCC Rcd 8898 (2012) (“*Comment Public Notice*”).

⁶⁴ *See id.*

⁶⁵ Petition To Deny Pending Applications of General Communication Inc. for Transfer of Control of Licenses by and for Fireweed Communications, LLC and Jeremy Lansman (filed Feb. 19, 2013) (“Lansman Petition”).

⁶⁶ 47 U.S.C. § 308(b); *see* Letter from Ruth Milkman, Chief, WTB, FCC, to Cindy Lynch, GCI Communication Corp., *et al*, WT Docket No. 12-187, Oct. 11, 2012; Letter from Ruth Milkman, Chief, WTB, FCC, to Lisa Phillips, ACS Wireless, WT Docket No. 12-187, Oct. 11, 2012.

⁶⁷ *See* Letter from Ruth Milkman, Chief, WTB, FCC, to Karen Brinkmann and John Nakahata, WT Docket No. 12-187, Nov. 7, 2012.

⁶⁸ Applications of GCI Communication Corp., ACS Wireless License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. for Consent to Assign Licenses to the Alaska Wireless Network, LLC Numbering Resource Utilization and Forecast Reports and Local Number Portability Reports to be Placed into the Record, Subject to Protective Order, WT Docket No. 12-187, CC Docket No. 99-200, *Public Notice*, DA 12-1932 (WTB rel. Nov. 30, 2012); Applications of GCI Communication Corp., ACS Wireless License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. for Consent To Assign Licenses to the Alaska Wireless Network, LLC, WT Docket No. 12-187, *NRUF/LNP Protective Order*, DA 12-1933 (WTB rel. Nov. 30, 2012) (“*NRUF Protective Order*”).

⁶⁹ *See* Letter from Ruth Milkman, Chief, WTB, FCC, to Karen Brinkmann and John Nakahata, WT Docket No. 12-187, Dec. 21, 2012.

convenience, and necessity.⁷⁰ In making this assessment, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act,⁷¹ other applicable statutes, and the Commission's rules.⁷² If the transaction does not violate a statute or rule, we next consider whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.⁷³ We then employ a balancing test, weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.⁷⁴ The applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.⁷⁵

24. Our public interest evaluation 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, and generally managing the spectrum in the public interest.⁷⁶ Our public interest analysis also can entail assessing whether the proposed transaction will affect the quality of communications services or result in the provision of new or additional services to consumers.⁷⁷ In conducting this analysis, we may consider

⁷⁰ 47 U.S.C. § 310(d).

⁷¹ Section 310(d) requires that we consider the application as if the proposed assignee was applying for the licenses directly under Section 308 of the Act, 47 U.S.C. § 308. *See, e.g., Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710 ¶ 28.

⁷² *See, e.g., Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corporation, Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas & Electric Company For Consent To Assign And Transfer Licenses*, WT Docket No. 12-240, *Memorandum Opinion and Order*, 27 FCC Rcd 16459, 16463-64 ¶ 10 (2012) ("AT&T-WCS Order"); *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710 ¶ 28; *Application of AT&T Inc. and Qualcomm Incorporated For Consent to Assign Licenses and Authorizations*, WT Docket No. 11-18, *Order*, 26 FCC Rcd 17589, 17598 ¶ 23 (2011) ("AT&T-Qualcomm Order"); *Applications of AT&T Inc. and Cellco Partnership d/b/a/ Verizon Wireless*, WT Docket No. 09-104, *Memorandum Opinion and Order*, 25 FCC Rcd 8704, 8716 ¶ 22 (2010) ("AT&T/Verizon Wireless-ALLTEL Order").

⁷³ *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16463-64 ¶ 10; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710 ¶ 28; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17598-99 ¶ 23.

⁷⁴ *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16463-64 ¶ 10; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710 ¶ 28; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 23.

⁷⁵ *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16463-64 ¶ 10; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710 ¶ 28; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 23.

⁷⁶ *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16464 ¶ 11; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 24; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8716 ¶ 23; *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 28; *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, 17461 ¶ 27 (2008) ("Verizon Wireless-ALLTEL Order"); *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, 17580 ¶ 20 (2008) ("Sprint Nextel-Clearwire Order").

⁷⁷ *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16464 ¶ 11; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10752 ¶ 143; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 24; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8716 ¶ 23; *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 28; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27.

technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.⁷⁸

25. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.⁷⁹ The Commission and the Department of Justice (“DOJ”) each have independent authority to examine the competitive impacts of proposed communications mergers and transactions involving transfers of Commission licenses, but the standards governing the Commission’s competitive review differ somewhat from those applied by the DOJ.⁸⁰ Like the DOJ, the Commission considers how a transaction will affect competition by defining a relevant market, looking at the market power of incumbent competitors, and analyzing barriers to entry, potential competition and the efficiencies, if any, that may result from the transaction.⁸¹ The DOJ, however, reviews telecommunications mergers pursuant to Section 7 of the Clayton Act, and if it files a complaint to block a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.⁸² Under the Commission’s review, the Applicants must show that the transaction will serve the public interest; otherwise the application is set for hearing. The DOJ’s review also is limited solely to an examination of the competitive effects of the acquisition, without reference to diversity, localism, or other public interest considerations.⁸³ The Commission’s competitive analysis under the public interest standard is somewhat broader—for example, considering whether a transaction will enhance, rather than merely preserve, existing competition—and takes a more extensive view of potential and future competition and its impact on the relevant market.⁸⁴

26. Our analysis recognizes that a proposed transaction may lead to both beneficial and harmful consequences.⁸⁵ For instance, combining assets may allow a firm to reduce transaction costs and offer new products, but it may also create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.⁸⁶ Our public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.⁸⁷ Section 303(r) of the

⁷⁸ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16464 ¶ 11; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8716 ¶ 23; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 24; *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 28; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27.

⁷⁹ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16464-65 ¶ 12; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710 ¶ 29; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 25; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8717 ¶ 24.

⁸⁰ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599-17600 ¶ 25; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8717 ¶ 24.

⁸¹ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 21.

⁸² 15 U.S.C. § 18.

⁸³ 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.

⁸⁴ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599-17600 ¶ 25; *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 29; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 28.

⁸⁵ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17600 ¶ 26; *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 30; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 29. See also *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10711 ¶ 30.

⁸⁶ 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.

⁸⁷ 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.

Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.⁸⁸ Similarly, section 214(c) of the Act authorizes the Commission to attach to the certificate “such terms and conditions as in its judgment the public convenience and necessity may require.”⁸⁹ Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to rely upon our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits.⁹⁰ In using this broad authority, the Commission generally has 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.⁹¹ We generally will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.⁹²

27. If the Commission is unable to find that the proposed transaction serves the public interest for any reason or if the record presents a substantial and material question of fact, we must designate the application(s) for hearing.⁹³

IV. QUALIFICATIONS OF THE APPLICANTS

28. As noted previously, when evaluating applications for consent to assign or transfer control of licenses and authorizations, section 310(d) of the Communications Act requires the Commission to determine whether the proposed transaction will serve “the public interest, convenience and necessity.”⁹⁴ 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.”⁹⁵ 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

⁸⁸ 47 U.S.C. § 303(r). *See also, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 17600 ¶ 26; *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 30; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17463 ¶ 29.

⁸⁹ 47 U.S.C. § 214(c). *See also, 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 17581 ¶ 22.

⁹⁰ *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 17581-82 ¶ 22.

⁹¹ 47 U.S.C. § 303(r); *see, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 17600 ¶ 26; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8718 ¶ 25; *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 30. We consider only those harms and benefits that are related to the Commission’s responsibilities under the Communications Act and related statutes.

⁹² *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.

⁹³ 47 U.S.C. § 309(e); *see also* News Corp. and DIRECTV Group, Inc., Transferors, and Liberty Media Corp. Transferee, for Authority to Transfer Control, MB Docket No. 07-18, *Memorandum Opinion and Order*, 23 FCC Rcd 3265, 3277 ¶ 22 (2008); Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp. (Transferors) and EchoStar Communications Corp. (Transferee), CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559, 20574 ¶ 25 (2002).

⁹⁴ 47 U.S.C. § 310(d).

⁹⁵ *Id.* §§ 308, 310(d); *see also, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 17600 ¶ 27; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8718 ¶ 26.

licenses under section 310(d) and the Commission's rules.⁹⁶ Section 310(d) also obligates the Commission to consider whether the proposed assignee is qualified to hold Commission licenses.⁹⁷

29. As an initial matter, we note that no parties have raised issues with respect to the basic qualifications of GCI or ACS Wireless. The Commission generally does not reevaluate the qualifications of assignors unless issues related to basic qualifications have been sufficiently raised in petitions to warrant designation for hearing.⁹⁸ We find that there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Communications Act and our rules, regulations, and policies, of GCI or ACS Wireless.

30. In addition, no issues have been raised with respect to the basic qualifications of the proposed assignee, AWN. Moreover, AWN would be owned exclusively by GCI and ACS Wireless, and, as noted above, their qualifications to hold Commission licenses have not been questioned. We accordingly find that AWN is qualified to hold Commission licenses.

V. COMPETITIVE ANALYSIS

A. Background

31. As described above, under the proposed transaction GCI would acquire certain ACS Wireless infrastructure assets and would contribute them along with GCI's own wireless infrastructure assets to AWN. ACS Wireless would contribute its remaining wireless assets to AWN. Through the establishment of AWN and related contracts, GCI and ACS Wireless would effectively combine their wireless assets and network operations in Alaska.⁹⁹

32. The Applicants argue that a joint venture between the parties is necessary for the Applicants to meet Alaska's unique challenges and competition from nationwide wireless providers, including AT&T Mobility, which already has a significant presence in Alaska, and Verizon Wireless, which recently has entered the Alaska market. In seeking approval of the proposed transaction, the Applicants contend that the Commission should consider the particularly challenging factors associated with deploying, maintaining, and operating mobile wireless networks in Alaska.¹⁰⁰ The Applicants argue that the instant transaction is fundamentally different from a merger or corporate acquisition and assert that there are no competitive harms resulting from the transaction.¹⁰¹ With this transaction contemplating a complete integration at the facilities and operations level while maintaining some level of competition between GCI and ACS Wireless at the retail level, we examine the competitive effects of combining the Applicants' wireless network facilities into AWN, including the effects on the ability of GCI and ACS

⁹⁶ See 47 U.S.C. §§ 214(a), 310(d); 47 C.F.R. § 1.948; see also, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17600-01 ¶ 27; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8718 ¶ 26.

⁹⁷ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17601 ¶ 28; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8720 ¶ 29.

⁹⁸ See Applications for the Assignment of License from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communication, Inc., WT Docket No. 06-114, *Memorandum Opinion and Order*, 21 FCC Rcd 14863, 14872-73 ¶ 16 (2006).

⁹⁹ See *supra* ¶¶ 9-19. See also Public Interest Statement at 1-2. The Applicants assert that the infrastructure sharing arrangement allows both GCI and ACS Wireless to continue operating as retail competitors with the same Alaska customer bases they have prior to closing. See Petition for Declaratory Ruling at 3. The Applicants also assert that no retail customers will be transferred to the joint venture, nor will any service be discontinued. *Id.*

¹⁰⁰ Public Interest Statement at 27-31.

Wireless to compete as retail providers of AWN mobile telephony/broadband wireless services throughout the state of Alaska.¹⁰²

33. We begin our competitive analysis by determining the appropriate market definitions for this transaction, including a determination of the product/service markets, geographic markets, market participants, and the input market for spectrum available for the provision of mobile telephony/broadband services.¹⁰³ Next, we determine the likelihood of competitive harm by assessing, first, whether there is a significant increase in horizontal market concentration or spectrum holdings as a result of the proposed transaction, and second, whether these increases would indeed be expected to provide AWN with the ability to act anticompetitively, either unilaterally or in concert with other service providers.¹⁰⁴ The Commission undertakes a case-by-case review of the competitive effects on the marketplace, including an analysis of spectrum aggregation and market concentration.¹⁰⁵ In previous transactions, the Commission has used a two-part initial screen to help identify those local markets that provide particular reason for further competitive analysis.¹⁰⁶ The first part of the screen considers changes in market concentration for each relevant market as a result of the proposed transaction, and is based on the size of the post-

(Continued from previous page) _____

¹⁰¹ *Id.* at 15, 25-26.

¹⁰² As a result of the vertical arrangement this transaction imposes among newly formed AWN, GCI, and ACS Wireless, we incorporate into our analysis the Antitrust Guidelines for Collaboration Among Competitors, issued by the U.S. Department of Justice and the Federal Trade Commission (“*DOJ/FTC Competitor Collaboration Guidelines*”), in addition to the *2010 DOJ/FTC Horizontal Merger Guidelines*. Under the *2010 DOJ/FTC Horizontal Merger Guidelines*, we analyze the change, if any, in the ability and incentive of AWN, GCI, and ACS Wireless to raise retail prices through the wholesale rates paid by GCI and ACS Wireless or otherwise behave anticompetitively. *See, e.g.*, Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc., WT Docket No. 12-301, *Memorandum Opinion and Order and Declaratory Ruling*, 28 FCC Rcd 2322, 2341 ¶ 55 (WTB, IB 2013) (“*T-Mobile-MetroPCS Order*”). Under the *DOJ/FTC Competitor Collaboration Guidelines*, we also analyze whether the transaction changes the ability or incentive of each Applicant to compete independently at the retail level and whether their formation of a production joint venture and other arrangements are reasonably necessary to achieve the asserted procompetitive benefits. *See, e.g.*, *DOJ/FTC Competitor Collaboration Guidelines* § 4.

¹⁰³ We note that defining the relevant product and geographic markets as well as the input market for spectrum for our competitive analysis is the same under either a merger or competitor collaboration analysis. *See DOJ/FTC Competitor Collaboration Guidelines* § 3.3; *2010 DOJ/FTC Horizontal Merger Guidelines* § 4 (stating that the Agencies typically define relevant markets and calculate market shares and concentration as an initial step in assessing whether the agreement may create or increase market power or facilitate its exercise and thus poses risks to competition).

¹⁰⁴ In the context of a merger, the *2010 DOJ/FTC Horizontal Merger Guidelines* state that, “In any given case, either or both types of effects [unilateral and coordinated] may be present, and the distinction between them may be blurred.” *See 2010 DOJ/FTC Horizontal Merger Guidelines* at 2. For a joint venture, as is the case here, the interplay of these two effects may be even more complex. The labeling of specific effects in this order as unilateral or coordinated is not meant to definitively determine the nature of those effects, as the results here do not turn on the label applied.

¹⁰⁵ *See AT&T-WCS Order*, 27 FCC Rcd at 16467 ¶ 21; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31; *AT&T-Centennial Order*, 24 FCC Rcd at 13938 ¶ 50; *2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services*, WT Docket No. 01-14, *Report and Order*, 16 FCC Rcd 22668, 22693-94 ¶ 50 (2001).

¹⁰⁶ *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16467 ¶ 21; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8720-21 ¶ 32; Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21552 ¶ 58 (2004) (“*Cingular-AT&T Wireless Order*”).

transaction Herfindahl-Hirschman Index (“HHI”) market concentration and the change in the HHI.¹⁰⁷ The second part examines the input market for spectrum available on a market-by-market basis for the relevant markets. However, the Commission is not limited in its consideration of potential competitive harms solely to markets identified by its initial screen.¹⁰⁸

B. Market Definition

34. Determining the relevant market within which to analyze this transaction requires us to define the relevant product market for each level of competition affected by the transaction, as well as the relevant geographic markets.¹⁰⁹ Accordingly, we consider the impact of the transaction on the input market for spectrum suitable and available for the provision of mobile wireless services and the market participants. We consider arguments made in relation to this transaction in establishing the appropriate definitions, and apply these market definitions to the proposed transaction.

1. Product Market

35. Consistent with recent telecommunications transactions, we evaluate this proposed transaction using a combined “mobile telephony/broadband services” product market¹¹⁰ that is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).¹¹¹ The Applicants do not challenge the mobile telephony/broadband product market definition, and we find that the Applicants provide services in the combined mobile telephony/broadband services product market. Thus, we will apply this definition to our competitive analysis.

2. Geographic Market

36. The Commission has found that the relevant geographic markets for certain wireless transactions are “local”¹¹² and also has evaluated a transaction’s competitive effects at the national level

¹⁰⁷ See, e.g., *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8725 ¶ 42; see also *2010 DOJ/FTC Horizontal Merger Guidelines* § 5.3.

¹⁰⁸ See *AT&T-WCS Order*, 27 FCC Rcd at 16467 ¶ 21; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; see also, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17609-10 ¶¶ 49-50.

¹⁰⁹ See, e.g., *2010 DOJ/FTC Horizontal Merger Guidelines* § 4.

¹¹⁰ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 24; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10717 ¶ 53; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17603 ¶ 33; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8721 ¶ 35; *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 37. The Commission has previously determined that there are separate relevant product markets for interconnected mobile voice and data services, and also for residential and enterprise services, but found it reasonable to analyze all of these services under a combined mobile telephony/broadband services product market. See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17603 ¶ 33; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8721 ¶ 35; *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 37.

¹¹¹ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 24; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10717 ¶ 53; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602-03 ¶¶ 32-33; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8721 ¶ 35; *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 37.

¹¹² See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 25; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 54; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604 ¶ 34. In addition, in the *AT&T-Centennial Order*, we concluded that with respect to the continental United States, the most appropriate geographic level for market analysis was the local level. However, we also found that Puerto Rico and the U.S. Virgin Islands were each a separate relevant geographic market because of their unique characteristics, including their limited geographic scope and isolated nature. See *AT&T-Centennial Order*, 24 FCC Rcd at 13934 ¶¶ 41-42.

where a transaction exhibits certain national characteristics that provide cause for concern.¹¹³ The Applicants state that neither GCI nor ACS Wireless provides facilities-based wireless service outside of Alaska.¹¹⁴ The Applicants argue that whether the Commission considers the proposed transaction as affecting Alaska alone, or considers it in the context of the national geographic market for wireless services, there is no harm to competition because the transaction does not increase market concentration.¹¹⁵

37. Because most consumers use their mobile telephony/broadband services at or close to where they live, work, and shop, they purchase mobile telephony/broadband services from providers that offer and market services where they live, work, and shop.¹¹⁶ Service sold in distant locations is generally not a good substitute for service near a consumer's home or work.¹¹⁷ In addition, service providers compete at the local level in terms of coverage and service quality.¹¹⁸ Consistent with past transactions, we will primarily use CMAs as the local geographic markets in which we analyze the potential competitive harms arising from spectrum aggregation as a result of the proposed transaction.¹¹⁹ Further, because of Alaska's isolated geographic location separated from the contiguous markets in the lower 48 states, the potential competitive harms of the proposed transaction are likely to be realized across Alaska and our analysis will also consider the effects of the transaction on a statewide basis.¹²⁰ The Commission evaluates a transaction's competitive effects at the national level only in cases where the transaction exhibits national characteristics, which we do not find here.¹²¹

3. Input Market for Spectrum

38. When assessing spectrum aggregation in its review of wireless transactions, the Commission evaluates the current spectrum holdings of the acquiring firm that are "suitable" and

¹¹³ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 25; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 54; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604-05 ¶¶ 34-37.

¹¹⁴ Public Interest Statement at 14 n.20.

¹¹⁵ *Id.* at 25-26.

¹¹⁶ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 56; *AT&T-Centennial Order*, 24 FCC Rcd at 13934 ¶ 41; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17472 ¶ 52; 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 Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 10-133, *Fifteenth Report*, 26 FCC Rcd 9664, 9693 ¶¶ 23-24 (2011).

¹¹⁷ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 56; *AT&T-Centennial Order*, 24 FCC Rcd at 13934 ¶ 41; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17472 ¶ 52.

¹¹⁸ See, e.g., *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2333 ¶ 31; *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 56.

¹¹⁹ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 56; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604 ¶ 34.

¹²⁰ This treatment is consistent with the Commission's treatment of Puerto Rico and the U.S. Virgin Islands, which were each considered a separate relevant geographic market because of their unique characteristics, including their limited geographic scope and isolated nature. See *AT&T-Centennial Order*, 24 FCC Rcd at 13934 ¶¶ 41-42.

¹²¹ See *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 28; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 58; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604-05 ¶¶ 34-37.

“available” in the near term for the provision of mobile telephony/broadband services.¹²² The Commission previously has determined that cellular, PCS, Specialized Mobile Radio (“SMR”), and 700 MHz band spectrum, as well as AWS-1 and Broadband Radio Service (“BRS”) spectrum,¹²³ and most recently, WCS spectrum, meet this definition.¹²⁴ The Commission traditionally has applied an initial screen to help identify local markets where a proposed transaction might raise particular concerns with respect to spectrum holdings.¹²⁵ The current screen identifies local markets where an entity would acquire more than approximately one-third of the total spectrum suitable and available for the provision of mobile telephony/broadband services.¹²⁶ No party in this proceeding has challenged the Commission’s current evaluation of what spectrum meets the definition of suitability and availability, and we find no need to revisit that determination here.

39. The Commission recently initiated a review of its policies toward mobile spectrum holdings. In the *Mobile Spectrum Holdings NPRM*, we noted, though, that during the pendency of the rulemaking proceeding, we would continue to apply our current case-by-case approach to evaluate mobile spectrum holdings in secondary market transactions and initial spectrum licensing after auctions.¹²⁷ Our analysis of the proposed transaction therefore employs the recently modified spectrum screen, as fully described in the *AT&T-WCS Order*.¹²⁸

4. Market Participants

40. With respect to relevant market participants, the Applicants do not argue that the Commission should alter its competitive analysis to consider Mobile Virtual Network Operators (“MVNOs”) or resellers as market participants for purposes of our competitive analysis of this transaction. Rather, the Applicants argue that retail markets will remain competitive despite the combination of facilities used to provide mobile telephony/broadband services through the AWN joint venture.¹²⁹

41. Accordingly, as in previous transactions we will consider only facilities-based entities providing mobile telephony/broadband services using cellular, broadband PCS, SMR, 700 MHz, AWS-1,

¹²² See *AT&T-WCS Order*, 27 FCC Rcd at 16469-70 ¶ 29; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17605-06 ¶ 38; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8722 ¶ 37; *AT&T-Centennial Order*, 24 FCC Rcd at 13933 ¶ 39.

¹²³ See, e.g., *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591-92 ¶ 53.

¹²⁴ See *AT&T-WCS Order*, 27 FCC Rcd at 16470-71 ¶ 31. In the *AT&T-WCS Order*, we found that 20 megahertz of WCS spectrum – comprised of the paired A and B Blocks – are suitable and available for the provision of mobile telephony/broadband services.

¹²⁵ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16469-70 ¶ 29; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

¹²⁶ See *AT&T-WCS Order*, 27 FCC Rcd at 16470 ¶ 30; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17473 ¶ 54.

¹²⁷ See *Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, *Notice of Proposed Rulemaking*, 27 FCC Rcd 11710, 11718 ¶ 16 n.59 (2012) (“*Mobile Spectrum Holdings NPRM*”). See also *AT&T-WCS Order*, 27 FCC Rcd at 16470 ¶ 30.

¹²⁸ See generally *AT&T-WCS Order*, 27 FCC Rcd at 16459.

¹²⁹ Public Interest Statement at 14-15.

BRS and WCS spectrum to be market participants, but continue to assess the effect of MVNOs and resellers in our competitive evaluation.¹³⁰

C. Competitive Effects of the Proposed Transaction

1. Initial Screen

42. As discussed above, we initially apply a two-part screen to help identify local markets where competitive concerns are more likely.¹³¹ The first part of the screen is based on the size of the post-transaction HHI, a measure of market concentration, and the change in the HHI.¹³² The second part of the screen identifies local markets where an entity would acquire more than approximately one-third of the total spectrum suitable and available for the provision of mobile telephony/broadband services.¹³³ For purposes of determining HHIs in this transaction, we use our June 2012 NRUF database, which tracks phone number usage by all telecommunications service providers.¹³⁴ Consistent with our discussion of the local geographic markets above, in calculating market shares and market concentration, we analyze wireless provider data at the CMA level. Our initial HHI screen identifies Alaska overall as well as each of the four CMAs in Alaska.¹³⁵

¹³⁰ See e.g., *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2334-35 ¶ 37; *AT&T-WCS Order*, 27 FCC Rcd at 16472 ¶ 33; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10722 ¶ 65; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8724 ¶ 41; *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.

¹³¹ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16467 ¶ 21; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8720-21 ¶ 32; *AT&T-Centennial Order*, 24 FCC Rcd at 13935 ¶ 43.

¹³² See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16467 ¶ 21; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8720-21 ¶ 32; *AT&T-Centennial Order*, 24 FCC Rcd at 13935 ¶ 43; see also *2010 DOJ/FTC Horizontal Merger Guidelines* § 5.3.

¹³³ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16467 ¶ 21; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8720-21872021 ¶ 32.; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21552 ¶ 58.

¹³⁴ 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.

¹³⁵ Our initial HHI screen criteria identify, for particular case-by-case market analysis, those markets in which, post-transaction: (1) the HHI would be greater than 2800 and the change in HHI would be 100 or greater; or (2) the change in HHI would be 250 or greater, regardless of the level of the HHI. See, e.g., *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8724-25 ¶ 42. For the state of Alaska, the pre-transaction HHI is [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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Verizon Wireless recently entered Alaska, but its market shares are not included in the calculation on the HHI initial screen.

43. For the spectrum screen, we consider the aggregation of spectrum into a single facilities-based provider, AWN.¹³⁶ We apply our spectrum screen on a county-by-county basis to help identify markets in which we should further analyze the competitive impacts of mobile spectrum holdings. Application of the initial spectrum screen results in one market being triggered.¹³⁷ The Applicants do not challenge the application of the spectrum screen in the instant transaction, but rather argue that the demographics of the state, the low population density, and unused spectrum in many areas are ample justification for the Commission to give greater weight to factors other than spectrum.¹³⁸ The Applicants urge the Commission to examine the presence of other variables, such as the capacity and presence of rival providers in individual markets, as part of the competitive analysis.¹³⁹

2. Unilateral Effects

44. *Background.* Unilateral effects usually arise when a merged firm finds it profitable to alter its behavior following a merger by “elevating price and suppressing output” due to the fact that it no longer will lose sales to the other merging party.¹⁴⁰ In the case of mobile telephony/broadband services, this might take the form of delaying improvements in service quality or adversely adjusting plan features with or without changing the plan price.¹⁴¹ Similar to mergers and acquisitions, joint production ventures and other collaboration agreements may produce unilateral price increases.¹⁴²

45. Under our unilateral effects analysis we consider whether, as a result of this joint venture, there is an increased incentive and ability for AWN to increase the wholesale rates it charges GCI and ACS Wireless (which in turn could increase the rates charged by GCI or ACS Wireless to retail consumers) without considering potential responses from other mobile telephony/broadband providers in Alaska. In assessing whether the transaction creates an increased incentive and ability to unilaterally raise prices, we analyze various provisions of the agreements as well as whether the Applicants’ services and products are close substitutes and if there are other providers in the CMA or Alaska markets that are close substitutes to the Applicants’ services and products. Further, we consider whether other current and potential competitors in Alaska have sufficient coverage and capacity to counter an increase in price, taking into consideration the specific challenges associated with providing mobile telephony/broadband

¹³⁶ Through the Applicants’ Asset Purchase Agreement, GCI and ACS Wireless plan to transfer their spectrum licenses to AWN. Public Interest Statement, App. A, B; Asset Purchase Agreement §§ 2.2, 2.3. For purposes of the Declaratory Ruling addressing certain statutory and regulatory provisions related to universal service support, we find for reasons discussed below that both GCI and ACS Wireless have access to spectrum and are both facilities-based providers. *See infra* ¶¶ 112-128.

¹³⁷ The Yukon-Koyukuk borough in CMA 315 (Alaska 1-Wade Hampton) is triggered by the initial spectrum screen (post-transaction, AWN would hold 160 megahertz of total spectrum in this borough). The Applicants’ analysis states that the spectrum screen is triggered in four boroughs. *See* Public Interest Statement at 28-29. Their analysis, however, pre-dates the Commission’s *AT&T-WCS Order* released in December 2012, which modified the screen by adding in 20 megahertz of WCS spectrum. *See AT&T-WCS Order*, 27 FCC Rcd at 16471-72 ¶ 33 n.94.

¹³⁸ Public Interest Statement at 27-28.

¹³⁹ *Id.* at 29-30.

¹⁴⁰ *See, e.g., 2010 DOJ/FTC Horizontal Merger Guidelines* § 6, p. 20; *see, e.g., T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2336 ¶ 42; *AT&T-Centennial Order*, 24 FCC Rcd at 13939-40 ¶ 54; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 84.

¹⁴¹ *See, e.g., T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2336 ¶ 42.

¹⁴² *2010 DOJ/FTC Horizontal Merger Guidelines* § 6.1, p. 20 (stating that a merger between firms selling differentiated products may diminish competition by enabling the merged firm to profit by unilaterally raising the price of one or both products above the pre-merger level); *DOJ/FTC Competitor Collaboration Guidelines* § 3.31(a) (stating that such agreements can create or increase market power or facilitate its exercise).

services in Alaska. In particular, we take into consideration in our analysis of current and potential competition in Alaska that the state is isolated from the contiguous lower 48 states, has a statewide population of only about 710,000, is by far the largest state by area in the nation, has the lowest population density, and presents particular operating challenges for mobile networks, especially in its remote areas.

46. As in prior transactions, we find that the market for mobile telephony/broadband services in the United States is differentiated.¹⁴³ Service providers compete vigorously not only on the basis of price but also on other variables such as plan features, network quality, geographic coverage, and customer service.¹⁴⁴ While service providers can change some of these attributes relatively quickly, others—particularly the non-price attributes—require investments in spectrum or infrastructure and are not easily modified.¹⁴⁵

47. The Applicants contend that the proposed transaction presents no issues of unilateral effects, arguing that the initial spectrum screen is only slightly exceeded in a few areas, and in those areas spectrum cannot be said to be constrained.¹⁴⁶ The Applicants argue that there would be no change in the number of retail wireless service providers in these or any other locations as a result of this transaction.¹⁴⁷ They argue that both GCI and ACS Wireless would continue to offer competitive wireless services everywhere they do today.¹⁴⁸ The Applicants contend that competition for wireless services in Alaska is strong, with AT&T Mobility as the dominant provider, Verizon Wireless a recent entrant, and several other Alaska-based competitors serving rural areas.¹⁴⁹ Specifically, the Applicants argue that it is unlikely that GCI or ACS Wireless could raise prices or reduce output because there simply is too much competition from rivals in the state, and spectrum is available for additional competitive use.¹⁵⁰ The Applicants argue that the instant transaction would allow them to compete more effectively in Alaska against larger and better financed nationwide wireless competitors.¹⁵¹

48. We find that as a result of this transaction, GCI's and ACS Wireless's ability to compete against each other at the retail level in each of the affected areas may be reduced through AWN's

¹⁴³ See *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2336 ¶ 41; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21569 ¶ 116.

¹⁴⁴ See *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2336 ¶ 41; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21569 ¶ 116.

¹⁴⁵ See e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21569 ¶ 116.

¹⁴⁶ Public Interest Statement at 29-30.

¹⁴⁷ *Id.* at 30.

¹⁴⁸ *Id.* at 30.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 30-31.

¹⁵¹ *Id.* at 15. Internal documents of the Applicants indicate that [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION] GCI-0093894 at 11. See also GCI-0093894 at 49 [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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wholesale price setting behavior. Post-transaction, GCI and ACS Wireless would be required to purchase on a wholesale basis relevant services exclusively from AWN.¹⁵² GCI and ACS Wireless would pay AWN for its services at wholesale rates that AWN would set at approximately 30 percent below prevailing market rates.¹⁵³ Although the transaction agreements provide that GCI and ACS Wireless are free to compete on prices at the retail level, the uniform wholesale rates they would pay AWN provides some limitation on their ability to compete on retail price. For example, if AWN raises the wholesale price paid by GCI and ACS Wireless, then that would likely be passed onto consumers through GCI's and ACS Wireless's retail rates.¹⁵⁴ However, the Applicants claim that for existing 2G and 3G services, current prices and service offerings would be maintained for at least two years post-closing, and therefore there would be no increase in prices for these services during this period.¹⁵⁵ LTE services are not subject to this hold, and to the extent that the Applicants are successful in transferring their existing 2G and 3G customers to the these services, the price ceiling on 2G and 3G plans may only have a limited impact on prices. Thus it may be possible for the Applicants to maintain higher post-transaction retail rates.

49. The transaction also limits GCI's and ACS Wireless's ability to compete at the retail level on non-price factors. AWN would establish the plan characteristics and device selection for the mobile wireless services available to GCI and ACS Wireless.¹⁵⁶ Therefore, competition on differentiated plans and devices likely would be reduced, since both GCI and ACS Wireless could only sell AWN services and devices approved by AWN. Also, since both GCI's and ACS Wireless's services would be provided on the same network, competition on coverage and network quality would be eliminated. However, GCI and ACS Wireless would be able at the retail level to repackage the AWN plans with their separate wireline services and to provide promotional and loyalty programs to create new products to compete in the retail market throughout Alaska.¹⁵⁷

50. We also find that certain provisions in the various agreements that make up this transaction may reduce ACS Wireless's incentive to compete at the retail level in each of the relevant markets triggered by our initial screen. As discussed above, the Joint Operating Agreement provides that ACS Wireless would receive a fixed preferential distribution in the first four years of the transaction, subject to certain adjustments.¹⁵⁸ This may reduce ACS Wireless's incentive to compete for customers either on price or on new products and services, as the fixed payment shields it against some of the more serious consequences of diminished profits on sales to customers.¹⁵⁹ We note, however, that the Joint Operating Agreement also includes a subscriber maintenance clause requiring ACS Wireless to maintain a target level of subscribers based on current subscriber levels or pay a penalty proportional to the target

¹⁵² See Public Interest Statement at 11.

¹⁵³ See *id.*

¹⁵⁴ When the wholesale price is raised above marginal cost, the optimal retail price that GCI and ACS Wireless would want to charge rises. Even taking into account the fact that AWN's profits will be returned to them, GCI and ACS Wireless still pay more for their inputs and so would prefer to buy less, and consequently prices faced by consumers are higher. See Chen, Z. and Ross, T.W., 2003, "Cooperating Upstream While Competing Downstream: A Theory of Input Joint Ventures." *International Journal of Industrial Organization*, 21, p. 389.

¹⁵⁵ See Public Interest Statement at 8 & n.12; see *infra* ¶ 63.

¹⁵⁶ See Joint Operating Agreement §§ 2.1(a), 9.2; Public Interest Statement at 8.

¹⁵⁷ See Public Interest Statement at 8, 11-12; see also Facilities and Network Use Agreement § 3(c), (d).

¹⁵⁸ See *supra* ¶ 15.

¹⁵⁹ Unlike GCI, which would be the residual claimant for AWN net income, in the first four years, ACS would not have an additional incentive to lower retail prices in order to earn incremental profits from the difference between the wholesale price and AWN's marginal cost. See *id.*

shortfall.¹⁶⁰ Under certain conditions, these provisions may off-set one another such that the transaction would have a neutral impact on ACS Wireless's incentive to compete for retail customers post-transaction.

51. *Presence and Capacity of AT&T Mobility.* In a market characterized by product differentiation, a firm's ability to raise prices is constrained in part by the threat that its customers will shift their purchases to products that are close substitutes. Therefore, where there are rivals in the market who offer close substitutes for the products offered by the merging firms and who have sufficient capacity to respond to pricing pressures, their presence may deter or counteract anticompetitive unilateral behavior. This is also the case for a joint venture such as this.¹⁶¹

52. AT&T Mobility provides mobile telephony/broadband services in almost all of the areas where GCI's and ACS Wireless's networks overlap in each of the four CMAs.¹⁶² AT&T offers mobile telephony/broadband services on its 2G and 3G networks and has launched its LTE network in Anchorage and Juneau.¹⁶³ AT&T Mobility offers nationwide pricing plans and the same line of devices as it does in the lower 48 states.¹⁶⁴ Further AT&T Mobility has a significant subscriber market share and coverage in each of the relevant markets and holds spectrum throughout the entire state of Alaska.¹⁶⁵

53. To assess whether AT&T Mobility is a close substitute for mobile telephony/broadband services offered by GCI and ACS Wireless, we analyzed LNP data.¹⁶⁶ The LNP data indicate that AT&T Mobility service offerings are fairly close substitutes for GCI's and ACS Wireless's mobile telephony/broadband services.¹⁶⁷ Indeed, more than **[BEGIN HIGHLY CONFIDENTIAL**

¹⁶⁰ See Joint Operating Agreement § 9.4.

¹⁶¹ See DOJ/FTC *Competitor Collaboration Guidelines* § 3.3.

¹⁶² Post-transaction, AT&T Mobility's coverage would overlap approximately 96 percent of AWN's population coverage in Alaska.

¹⁶³ See <http://www.att.com/network/>.

¹⁶⁴ <http://www.att.com/shop/wireless/plans-new.html#fbid=P9NixL4hioM>. See also GCI-0094146 at 2 **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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¹⁶⁵ AT&T Mobility's market share ranges from approximately **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** percent. AT&T Mobility covers approximately 85 to 99.8 percent of the population in each of the four CMAs. On a borough-by-borough basis AT&T Mobility holds between 86 and 160 megahertz of spectrum.

¹⁶⁶ LNP data include each instance of a customer porting a phone number from one mobile provider to another and indicates both the origin and destination provider. The LNP data are provided to the Commission by NeuStar, Inc. See Applications of Nextel Communications, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 14003-04 ¶ 100 n.216 (2005). There are some limitations in using LNP data to analyze substitutability. First, LNP data involve all switches, not just those that are a response to a price increase. Second, because customers often delay switching until their contracts have expired, the act of switching may substantially lag the decision to switch. Third, there are two measures of switching, customers that are porting in and those that are porting out, and there may be substantial differences between the two. Fourth, LNP data do not identify customers that either decrease wireless usage or drop wireless services. Fifth, LNP data represent a small sample of the population of subscribers. It is not clear whether this sample of the population would be representative of the population as a whole. See *id.* at 14004-05 ¶ 102 n.219.

¹⁶⁷ LNP Data, June 2012. See also GCI-0094146, p. 2 **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** -

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INFORMATION] **[END HIGHLY CONFIDENTIAL INFORMATION]** percent of customers leaving either GCI or ACS Wireless port to AT&T Mobility, compared to approximately **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** percent of subscribers porting between GCI and ACS Wireless.¹⁶⁸

54. *Entry by Verizon Wireless.* In addition to AT&T Mobility's significant presence in each of the affected CMAs, Verizon Wireless recently has entered Alaska as a facilities-based mobile broadband services provider.¹⁶⁹ Verizon Wireless began offering service in Anchorage and other large population centers throughout Alaska in June 2013.¹⁷⁰ In response to our request for information on its entry into Alaska, Verizon Wireless submitted to the Commission internal documents and interrogatory responses discussing the company's plans to offer LTE wireless data service.¹⁷¹ Verizon Wireless states that its initial entry will be limited to mobile wireless data services using its LTE network for tablets, air cards, mobile hotspot devices, and machine-to-machine devices. Verizon Wireless states that when Voice over LTE (VoLTE) becomes available, it will begin offering smartphones. The company estimates that VoLTE will be available in the first half of 2014. Verizon Wireless states that the company plans to open and operate a number of retail stores where customers may purchase service and equipment.¹⁷² In each of the overlap areas in the four CMAs, we find that Verizon Wireless has entered with sufficient planned coverage.¹⁷³ Further, in each of the CMAs, Verizon Wireless's documents indicate plans to obtain significant market share, growth and coverage post-entry.¹⁷⁴

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GCI-0008281, p. 10 **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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¹⁶⁸ LNP Data June 2012.

¹⁶⁹ Molly Dischner, *Verizon Turns on Alaska 4G LTE Network*, ALASKA JOURNAL OF COMMERCE, June 6, 2013, available at <http://www.alaskajournal.com/Alaska-Journal-of-Commerce/June-Issue-2-2013/Verizon-turns-on-Alaska-4G-LTE-network/> (last visited July 1, 2013).

¹⁷⁰ Verizon Wireless launched its LTE network in Anchorage, Fairbanks, North Pole, Juneau, and Matanuska-Susitna Borough. *Id.*

¹⁷¹ Letter from John T. Scott to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-187 (Jan. 18, 2013).

¹⁷² Ben Anderson, *After long wait, Verizon rolls out data service in Alaska*, ALASKA DISPATCH, June 3, 2013, available at <http://www.alaskadispatch.com/article/20130603/after-long-wait-verizon-rolls-out-data-service-alaska> (last visited July 1, 2013); Letter from John T. Scott to Marlene H. Dortch, Secretary, Federal Communications Commission, Docket No. 12-187, at 2-3 (Jan. 18, 2013). See also VZW.001.001205, VZW.001.002510, VZW.001.002511, VZW.001.002512, VZW.001.002514, VZW.001.002516, VZW.001.002518.

¹⁷³ See VZW-001.003139, tab 1 for CMAs 187 and 316; VZW-001.003139, tab 2 for CMA 315; VZW-001.003139, tab 3 and VZW-001.002205 at 30-32 for CMA 317. Documents submitted by Verizon Wireless indicate it expects to cover **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] of the population. See VZW-001.001051, VZW-001.003139, tab 1 (CMA 187, 316), VZW-001.002205 at 34, 44 (CMA 187, CMA 317), at 28-29 (CMA 315). See also Molly Dischner, *Verizon Turns on Alaska 4G LTE Network*, ALASKA JOURNAL OF COMMERCE, June 6, 2013, available at <http://www.alaskajournal.com/Alaska-Journal-of-Commerce/June-Issue-2-2013/Verizon-turns-on-Alaska-4G-LTE-network/> (last visited July 1, 2013).

¹⁷⁴ Documents submitted by Verizon Wireless indicate that the company has well developed plans to enter these markets with the intention of **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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55. Based on our review of the documents and interrogatory responses, we conclude that Verizon Wireless's recent entry and planned expansion in Alaska likely would increase competition and provide a second nationwide LTE provider in addition to AT&T Mobility in each of these local markets in the areas where GCI and ACS Wireless overlap. Moreover, given the evidence in the record,¹⁷⁵ even if Verizon Wireless achieves only modest market share, the current market shares for GCI and ACS Wireless likely overstate the potential for anticompetitive harm.¹⁷⁶

56. *Market by Market Analysis.* Below we evaluate in more detail the four CMAs triggered by our initial screen and the Alaska market to assess if market conditions exist that likely would counter the effects of any potential reduction in competition as a result of the transaction. In our analysis, we consider numerous variables that are important for predicting the incentive and ability to unilaterally elevate prices or suppress output as a result of the joint venture.¹⁷⁷ The factors we consider in each identified market include, for example, the total number of competitors in the market, their market shares, network coverage, and spectrum holdings as compared to the combined entity's post-transaction market share, network coverage, and spectrum holdings, and the degree of substitutability between providers in the market.¹⁷⁸ As part of our analysis, we take into account the specific market conditions in Alaska, which is geographically isolated from the contiguous lower 48 states, faces unique challenges for a variety of reasons associated with the immense geographic size of the state, its comparatively low statewide population of about 710,000, the lowest population density in the nation (particularly outside of

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[END HIGHLY CONFIDENTIAL INFORMATION] See VZW-001.003139, tab 1 for CMA 187; VZW-001.003139, tab 2 for CMA 315; VZW-001.003139, tab 3 and VZW-001.002205 at 30-32 for CMA 317.

¹⁷⁵ See, e.g., GCI-0004857 at 4-6 [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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¹⁷⁶ See DOJ/FTC *Competitor Collaboration Guidelines* § 3.35. In finding that Verizon Wireless recently has entered the market and that AT&T Mobility is a significant provider that has already deployed LTE in some areas of Alaska, we also note the market transition to LTE may competitively disadvantage (at least in the short run) GCI and ACS Wireless as a result of the challenges each company faces to separately transition to LTE. This may be another factor supporting a finding that the Applicants' current market shares overstate the potential for competitive harm. See, e.g., *U.S. v. General Dynamics Corp.*, 415 U.S. 486, 497-98 (1974) (noting that one of the party's market power was "diminishing" given its capacity and finding that certain market conditions make current or historical market share a poor indicator of a firm's future competitive significance); General Electric Company, GE Subsidiary, Inc. 21, and MCI Communications Corporation, *Memorandum Opinion and Order*, 3 FCC Rcd 2803, 2808 ¶¶ 37-40 (CCB 1998) (following General Dynamics' approach to finding post-merger HHIs overstated, notwithstanding that technical failing firm defense requirements had not been met, given declining revenues, converging service markets and likely entry/expansion) ("The transaction will, "strengthen MCI[']s...ability to compete both in the United States and abroad against companies like AT&T, GTE..."); Western Union Corp., ITT Communications Service, Inc. and Brooke Partners, L.P., *Memorandum Opinion and Order*, 2 FCC Rcd 6063, 6065 ¶ 21 (1987).

¹⁷⁷ See, e.g., *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2338 ¶ 47; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8732-8736 ¶¶ 63-72; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487-88 ¶ 91-92; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17602-3 ¶¶ 79-80; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21593-99 ¶¶ 184-200.

¹⁷⁸ The market share information appearing herein is derived from our analysis of June 2012 NRUF and LNP data. Population data reflects the 2010 Census. Coverage information is derived from Mosaik data and 2010 Census data. Analysis on substitutability is derived from June 2010 LNP data.

its major population centers), its difficult operating conditions, and its market structure. After performing our market-by-market analysis, we find that certain factors may limit generally the ability of GCI or ACS Wireless to unilaterally raise prices or decrease output in these markets.

57. In all four CMAs, there are three providers, GCI, ACS Wireless, and AT&T Mobility, with significant market share.¹⁷⁹ There are additional providers in CMAs 187, 315, and 316, but they serve limited areas in each CMA.¹⁸⁰ Together, the three largest providers cover over 70 percent of the population in every CMA and as much as 99 percent in CMA 187. Also, the LNP data indicate that more than [BEGIN HIGHLY CONFIDENTIAL INFORMATION]--- [END HIGHLY CONFIDENTIAL INFORMATION] percent of GCI and ACS Wireless customers port to AT&T Mobility in each of the four CMAs.¹⁸¹ A significantly smaller portion of customers port between GCI and ACS Wireless, making them weaker substitutes compared to AT&T Mobility.¹⁸² Below we provide additional market-specific analysis for each of the four CMAs.

58. *CMA 187 Anchorage.* CMA 187 is comprised of a single borough—Anchorage. It is the largest population center in Alaska with a population of 291,826, approximately 41 percent of the entire state population, and the highest population density in the state, approximately 171 POPs per square mile. GCI and ACS Wireless have significant overlap in this CMA, with approximately 99 percent of the population covered by both providers. Post-transaction, AWN's and AT&T Mobility's coverage also would overlap approximately 99 percent of the population of the CMA. AT&T Mobility, ACS Wireless,

¹⁷⁹ GCI's market share ranges from [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] ACS Wireless's market share ranges from [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] AT&T Mobility's market share ranges from [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] Verizon Wireless only recently entered the Alaska market, in June 2013.

¹⁸⁰ MTA Wireless covers seven and 44 percent of the CMA populations in CMAs 187 and 316, respectively, and has [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent market share in CMAs 187 and 316, respectively. TelAlaska covers four and three percent of the CMA populations in CMAs 315 and 316, respectively, and has [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent market share in both CMAs. Additionally, in CMA 315, Arctic Slope Telephone and OTZ Telephone each cover five percent of the CMA populations. Both of these carriers have approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent market share in CMA 315. In CMA 316, Copper Valley Wireless has a [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent market share and covers approximately four percent of the population. Cordova Wireless covers approximately one percent of the population and has a [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent market share in CMA 316.

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¹⁸² Customers porting from GCI to ACS Wireless range from [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] while customers porting from ACS Wireless to GCI range from [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]

and Verizon Wireless have launched LTE networks in this CMA.¹⁸³ Therefore, post-transaction, there would be three LTE networks deployed in this CMA. In this CMA, AT&T Mobility and Verizon Wireless have access to sufficient spectrum to expand capacity in the event either GCI or ACS Wireless was to raise price unilaterally.¹⁸⁴ Further, there is over 100 megahertz of spectrum in this CMA that has not been deployed that is available to near-term and potential entrants.

59. *CMA 315 Alaska 1—Wade Hampton.* CMA 315 consists of eight boroughs, including Fairbanks, with a population of 145,928, and the lowest population density of all the Alaska CMAs—0.41 POPs per square mile. GCI and ACS Wireless overlap primarily in the Fairbanks and North Slope boroughs, and the total overlap reflects approximately 65 percent of the CMA population. Post-transaction, AT&T Mobility's coverage would overlap close to 90 percent of AWN's population coverage in CMA 315. ACS Wireless has launched an LTE network only in Fairbanks in this CMA.¹⁸⁵ AT&T Mobility has not launched an LTE network in this CMA. Verizon Wireless has launched in Fairbanks and North Pole.¹⁸⁶

60. This CMA was also triggered by the spectrum screen in one borough—Yukon-Koyukuk. We find that AWN's holding of 160 megahertz of spectrum post-transaction in the Yukon-Koyukuk borough is unlikely to result in competitive harm, even though this exceeds the current spectrum screen of 151 megahertz. This borough has an extremely low population density—0.04 POPs per square mile—and the population of the borough reflects approximately 3.8 percent of the population of CMA 315. No provider has significant coverage in this borough,¹⁸⁷ and there is more than 100 megahertz of spectrum in this CMA that has not been deployed that is available to near term and potential entrants.¹⁸⁸ In addition, we note that AT&T Mobility and Verizon Wireless have access to sufficient spectrum to expand capacity in the event either GCI or ACS Wireless was to raise price unilaterally.

61. *CMA 316 Alaska 2—Bethel.* CMA 316 consists of 10 boroughs, with a population of 200,813 and a population density of 1.12 POPs per square mile. GCI and ACS Wireless overlap primarily in the Kenai Peninsula, Kodiak, and Matanuska-Susitna boroughs, and the total overlap reflects approximately 69 percent of the CMA population. Post-transaction, AT&T Mobility's coverage would overlap close to 98 percent of AWN's population coverage in CMA 316. Also, MTA Wireless holds a

¹⁸³ See http://www.att.com/Common/about_us/pdf/4g_evolution_infographic.pdf (last visited Mar. 15, 2013); http://www.alaskacomunications.com/~media/Files/releases/2012/10_10_2012_4G%20LTE%20Press%20Release.ashx (last visited Mar. 15, 2013); Molly Dischner, *Verizon Turns on Alaska 4G LTE Network*, ALASKA JOURNAL OF COMMERCE, June 6, 2013, available at <http://www.alaskajournal.com/Alaska-Journal-of-Commerce/June-Issue-2-2013/Verizon-turns-on-Alaska-4G-LTE-network/> (last visited July 1, 2013).

¹⁸⁴ In this CMA, AWN would hold 125 megahertz of spectrum whereas AT&T Mobility holds 135 megahertz. Verizon Wireless holds 22 megahertz in this CMA and other paired spectrum licensees holding spectrum throughout the CMA are Sprint (91.875 megahertz), T-Mobile (10 megahertz), MTA Wireless (40 megahertz) and Triad 700 (12 megahertz).

¹⁸⁵ See http://www.alaskacomunications.com/~media/Files/releases/2012/10_10_2012_4G%20LTE%20Press%20Release.ashx (last visited Mar. 15, 2013).

¹⁸⁶ See Molly Dischner, *Verizon Turns on Alaska 4G LTE Network*, ALASKA JOURNAL OF COMMERCE, June 6, 2013, available at <http://www.alaskajournal.com/Alaska-Journal-of-Commerce/June-Issue-2-2013/Verizon-turns-on-Alaska-4G-LTE-network/> (last visited July 1, 2013).

¹⁸⁷ GCI covers approximately 39 percent of the population of Yukon-Koyukuk and no other service provider covers more than 20 percent of the population.

¹⁸⁸ In terms of spectrum holdings throughout the CMA, AWN would hold 125 to 160 megahertz, AT&T Mobility 86 to 111 megahertz and Verizon Wireless 22 megahertz. Other paired spectrum licensees holding spectrum throughout the CMA include Sprint Nextel (91.975 megahertz), T-Mobile (10 megahertz), Alas Connect (12 megahertz), MTA Wireless (20 megahertz), Space Data (20 megahertz), and Triad 700 (12 megahertz).

[BEGIN HIGHLY CONFIDENTIAL INFORMATION] --- [END HIGHLY CONFIDENTIAL INFORMATION] percent share in this CMA, and covers approximately 44 percent of the population.¹⁸⁹ ACS Wireless has deployed an LTE network in Homer, Kenai, Palmer, Seward, Soldotna, Wasilla, and Whittier in this CMA.¹⁹⁰ AT&T Mobility has not launched LTE in this CMA. Verizon Wireless has launched in the Matanuska-Susitna borough and also may see LTE deployment through their LTE in Rural America Program.¹⁹¹ In this CMA, AT&T Mobility and Verizon Wireless have access to sufficient spectrum to expand capacity in the event either GCI or ACS Wireless was to raise price unilaterally.¹⁹² Further, there is over 100 megahertz of spectrum in this CMA that has not been deployed that is available to near term and potential entrants.

62. *CMA 317 Alaska 3—Haines.* CMA 317 consists of ten boroughs, with a population of 71,664 and a population density of 1.87 POPs per square mile. This CMA includes Alaska's capital city Juneau.¹⁹³ GCI and ACS Wireless coverage overlap reflects approximately 75 percent of the CMA population. Post-transaction, AT&T Mobility's coverage would overlap close to 90 percent of Awn's population coverage in CMA 317. ACS Wireless, AT&T Mobility, and Verizon Wireless have launched LTE networks only in Juneau in this CMA.¹⁹⁴ Verizon Wireless has indicated that **[BEGIN HIGHLY CONFIDENTIAL INFORMATION] ----- [END HIGHLY CONFIDENTIAL INFORMATION]**.¹⁹⁵ In this CMA, AT&T Mobility and Verizon Wireless have access to sufficient spectrum to expand capacity in the event either GCI or ACS Wireless was to raise price unilaterally.¹⁹⁶ Further, there is over 100 megahertz of spectrum in this CMA that has not been deployed that is available to near term and potential entrants.

¹⁸⁹ MTA Wireless is a Verizon Wireless Rural LTE Partner. See <http://www.fiercewireless.com/story/verizon-expects-6-rural-lte-carrier-partners-launch-year-end/2012-09-18> (last visited Mar. 15, 2013).

¹⁹⁰ See http://www.alaskacomunications.com/~media/Files/releases/2012/10_10_2012_4G%20LTE%20Press%20Release.ashx (last visited Mar. 15, 2013).

¹⁹¹ Molly Dischner, *Verizon Turns on Alaska 4G LTE Network*, ALASKA JOURNAL OF COMMERCE, June 6, 2013, available at <http://www.alaskajournal.com/Alaska-Journal-of-Commerce/June-Issue-2-2013/Verizon-turns-on-Alaska-4G-LTE-network/> (last visited July 1, 2013). Verizon Wireless and MTA Communications submitted a long-term spectrum manager lease application in which MTA would lease 22 megahertz of Upper 700 MHz C-Block spectrum covering Matanuska-Susitna borough in CMA 316 (as well as Denali borough in CMA 315). This would allow MTA to participate in Verizon's "LTE in Rural America" program. See ULS File No. 0005181322. Additionally, Verizon Wireless and Copper Valley Wireless have submitted a similar lease covering the Valdez-Cordova Census Area in CMA 316 (see ULS File No. 0005483796), and Verizon Wireless and KPU Telecommunications ("KPU") have announced plans for KPU to participate in the LTE in Rural American Program in the Ketchikan area (see Bernie Arnason, *Verizon Rural LTE Program Adds KPU Telecommunications*, TELECOMPETITOR, Apr. 23, 2013, available at <http://www.telecompetitor.com/verizon-rural-lte-program-adds-kpu-telecommunications/> (last visited July 1, 2013).

¹⁹² In terms of spectrum holdings throughout the CMA, Awn would hold 100 to 150 megahertz, AT&T Mobility 110-160 megahertz and Verizon Wireless 22 megahertz. Other licensees of paired spectrum throughout the CMA include Sprint Nextel (91.975 megahertz), T-Mobile (10 megahertz), MTA Wireless (40-65 megahertz), and Triad 700 (12 megahertz).

¹⁹³ Juneau is the third largest city in the state. See <http://www.alaska-demographics.com/juneau-demographics>.

¹⁹⁴ See http://www.alaskacomunications.com/~media/Files/releases/2012/10_10_2012_4G%20LTE%20Press%20Release.ashx (last visited Mar. 15, 2013).

¹⁹⁵ See VZW-001.002205 at 30-32 for CMA 317.

¹⁹⁶ In terms of spectrum holdings throughout the CMA, Awn would hold 135 megahertz, AT&T Mobility 113 megahertz and Verizon Wireless 22 megahertz. Other licensees of paired spectrum include Sprint Nextel (90.375-91.975 megahertz), T-Mobile (10 megahertz), Ketchikan Public Utilities (32 megahertz), MTA Wireless (20 megahertz), and Triad 700 (12 megahertz).

63. *Alaska-Only Plans.* Both GCI and ACS Wireless offer state-wide Alaska-only plans, while AT&T Mobility and Verizon Wireless only offer nationwide plans in Alaska.¹⁹⁷ GCI's and ACS Wireless's Alaska-only plans cost less than their nationwide plans. On average, the price differential between nationwide and Alaska-only voice plans for GCI and ACS Wireless are in the \$15 to \$20 range. ACS Wireless's LTE plans are about \$10 less expensive than its nationwide plans. As a result, these Alaska-only plans are also less expensive than the nationwide plans offered by AT&T. For example, ACS Wireless offers low cost monthly individual calling plans starting at \$24.99 for 400 Alaska-only minutes, while GCI offers a 150 minute plan for \$19.99 and an 800 minute plan for \$29.99. The lowest cost plan offered by AT&T is 450 nationwide minutes for \$39.99, which is approximately 42 percent more expensive (per minute) than the ACS Wireless basic plan.¹⁹⁸ We note that given the Alaska-only plans appear to be held by a much smaller segment of the parties' overall subscribers,¹⁹⁹ any likely harm would not be as significant. However, we are concerned that the proposed transaction may create incentives for GCI and ACS Wireless to raise prices. We recognize that this transaction may lower the incentive of GCI and ACS Wireless to compete on the Alaska-only plans. The parties' agreements require GCI and ACS Wireless to maintain legacy price plans, including Alaska-only plans, for their existing 2G and 3G subscribers for a two-year period, and this provision may mitigate some of the immediate harm. To further mitigate this potential harm, we condition our approval of this transaction on the parties' agreement to make their existing Alaska-only plans available to new customers for a one-year period following the closing date of the transaction.²⁰⁰

64. Finally, we note that as an additional method to assess the potential for unilateral competitive effects, Commission staff also conducted certain analyses consistent with the *2010 DOJ/FTC Horizontal Merger Guidelines*,²⁰¹ which yielded results in line with our other analyses. Based on our market-by-market analyses, we find that the possible increased risks of anticompetitive unilateral effects posed by this transaction with respect to each Alaskan market and across Alaska are mitigated in various degrees. We also consider them below when balancing the potential competitive harms and the potential public interest benefits posed by this transaction.

3. Coordinated Effects

65. 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 Mergers

¹⁹⁷ See e.g., GCI-0009146, March 13, 2012 p. 7 [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]

¹⁹⁸ All plan data is obtained from the carriers' websites. See http://www.att.com/shop/wireless/plans-new.html#fbid=P2-zxA_cwKM; <http://www.alaskacomunications.com/Shop/Plan-Finder/Individual.aspx>; <http://www.gci.com/wireless/plans/talk-text>.

¹⁹⁹ Based on several ACS documents [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] See ACS000214327, ACS000214328.

²⁰⁰ See Letter from Carl Northrop, John Nakahata, counsel for GCI, Karen Brinkmann, counsel for ACS Wireless, and Bonnie Paskvan, General Counsel, AWN, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-187, July 2, 2013.

²⁰¹ See *2010 DOJ/FTC Horizontal Merger Guidelines* § 6.1, p. 21.

²⁰² See, e.g., *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2336-37 ¶ 43; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8731 ¶ 59; *AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 59. Tacit coordination has many forms and includes conscious efforts by one firm to parallel its pricing to the rates of other firms. See *2010 DOJ/FTC Horizontal Merger Guidelines* § 7 ("Coordinated interaction alternatively can involve parallel accommodating conduct not pursuant to a prior understanding...[and] includes situations in which each rival's response to competitive moves made by others is individually rational, and not motivated by retaliation or deterrence nor (continued....)")

and other combinations that reduce the number of firms in the market may also increase concentration sufficiently to make coordination more likely, successful or complete.²⁰³ In addition to an increase in post-merger concentration levels, the ability to successfully coordinate will depend on the strength and predictability of rivals' responses to a price increase or other anticompetitive action.²⁰⁴ Three areas to consider in determining whether a transaction would make coordinated conduct more likely and successful are whether there is a significant increase in concentration, whether the market shows signs of vulnerability to coordination, and whether the transaction would enhance any vulnerability present in the market.²⁰⁵ The ability to coordinate often is affected by the availability of information about market conditions, the extent of firm and product homogeneity, and the presence of maverick providers in the market.²⁰⁶

66. Accordingly, we look at the coordinated effects of the transaction between the Applicants and other service providers such as AT&T Mobility and Verizon Wireless, as well as the effect of the transaction on an increased likelihood that the transaction facilitates information exchanges between GCI and ACS. We recognize that certain aspects of the parties' agreements have the potential to serve as a vehicle for coordination by altering post transaction incentives to compete.

a. Coordination in the Mobile Broadband/Telephony Market in Alaska

67. The Applicants argue that it is unlikely that GCI or ACS Wireless could raise prices or reduce output because of the high level of competition from rivals in the state and the fact that spectrum is available for additional competitive use.²⁰⁷ Instead, the Applicants argue that the transaction would allow them to compete more effectively in Alaska against larger and better financed nationwide wireless competitors.²⁰⁸ Additionally, the Applicants claim that GCI and ACS Wireless would be able to repackage the plans with their wireline services and provide promotional and loyalty programs to create new products to compete in the retail market across Alaska.²⁰⁹

68. Currently, there are three providers in Alaska with significant market share and coverage—GCI, ACS Wireless, and AT&T Mobility. Each has its own network, sets prices, and offers a variety of devices. As a result of this transaction, GCI's and ACS Wireless's services would be significantly more homogenous. GCI and ACS Wireless would both purchase services from Awn on an equal and non-discriminatory basis.²¹⁰ There would be no differentiation in terms of coverage and quality since they will be using the same network. Therefore, post-transaction the mobile telephony/broadband market in Alaska may be characterized as more homogeneous, and given the market structure in Alaska,

(Continued from previous page) _____
intended to sustain an agreed-upon market outcome... Coordinated interaction includes conduct not otherwise condemned by the antitrust laws.”).

²⁰³ 2010 DOJ/FTC Horizontal Merger Guidelines § 7. See also, e.g., *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2336-37 ¶ 43; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8731 ¶ 59; *AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 59.

²⁰⁴ 2010 DOJ/FTC Horizontal Merger Guidelines § 7.

²⁰⁵ 2010 DOJ/FTC Horizontal Merger Guidelines § 7.1.

²⁰⁶ See, e.g., *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2340-41 ¶ 54 n.130; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8732 ¶ 62; *AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 61.

²⁰⁷ Public Interest Statement at 30-31.

²⁰⁸ *Id.* at 15.

²⁰⁹ *Id.* at 8, 11-12; see also *Facilities and Network Use Agreement* § 3(c), (d).

²¹⁰ Public Interest Statement at 11; see also *Facilities and Network Use Agreement* § 2.

may be more susceptible to coordinated interaction. However, as discussed earlier, other provisions in the agreements may dampen the incentives for such coordination.²¹¹

69. Additionally, certain Alaska market factors may also mitigate the potential for and impact of any coordinated interaction. First, we take into account the specific market conditions in Alaska described above, including its relatively small population and high costs. Second, we note that AT&T Mobility offers service in Alaska only at its nationwide prices, and there is no evidence that AT&T Mobility is likely to change its pricing strategy. Third, Verizon Wireless entered the market in June 2013 and projects [BEGIN HIGHLY CONFIDENTIAL INFORMATION] ----- [END HIGHLY CONFIDENTIAL INFORMATION]²¹² Further, there is no evidence that either AT&T Mobility or Verizon Wireless would be capacity constrained, and therefore they would be able to undercut any collusive price to gain market share.²¹³ Thus, while the proposed transaction could make coordination between GCI, ACS Wireless, and other competitors in the mobile telephony/broadband market in Alaska easier, other factors appear to mitigate those risks.

b. Exchanges of Competitively Sensitive Information

70. Because the contemplated transaction is not a full merger at all levels of competition, and GCI and ACS Wireless intend to remain competitors at the retail level in mobile telephony/broadband services and would continue to compete as providers of wireline services (primarily broadband) in Alaska, this transaction creates an additional risk of increasing the ability and/or opportunities for these joint venture partners to collude to the extent they facilitate the exchange of competitively sensitive information to which competitors otherwise might not have access.²¹⁴ Although as discussed above, GCI and ACS Wireless would no longer compete on many price and non-price factors, there are still areas such as bundling, loyalty programs, and advertising that each can use to differentiate its product and compete across Alaska. The Agreements may provide an increased risk of GCI and ACS Wireless coordinating on these non-price factors. Moreover, this increased risk of exchanging competitively sensitive information facilitated by the structure of AWN and the Applicants' contemporaneous agreements is not limited to activities of the joint venture but also may extend to their respective fixed broadband and wireline products and service offerings.²¹⁵

71. As discussed above,²¹⁶ the parties' Joint Operating Agreement contains provisions designed to minimize the risks of improper exchange of information resulting from the structure of the underlying transaction.²¹⁷ The Applicants have agreed to a set of policies and procedures to protect against the disclosure of either party's non-public, commercially sensitive information.²¹⁸ In addition, the

²¹¹ See *supra* ¶ 50.

²¹² Letter from John T. Scott to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-187 (Jan. 18, 2013).

²¹³ See *supra* ¶¶ 58-62.

²¹⁴ See *DOJ/FTC Competitor Collaboration Guidelines* § 3.31(b).

²¹⁵ *Id.* §§ 2.2, 3.32.

²¹⁶ See *supra* ¶ 13.

²¹⁷ Joint Operating Agreement, Exh. L, Commercially Sensitive Information Policies and Procedures ("CSI").

²¹⁸ See Public Interest Statement at 12 n.16; see also Letter from Carl Northrop, John Nakahata, counsel for GCI, Karen Brinkmann, counsel for ACS Wireless, and Bonnie Paskvan, General Counsel, AWN, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-187, July 2, 2013.

GCI Services Agreement and the ACS Services Agreements address the obligations applicable to each of GCI's and ACS Wireless's employees assigned to work at AWN.²¹⁹

72. *Discussion.* As previously explained, post-transaction both GCI and ACS Wireless will be customers of AWN and their respective vertical relationships provide each of them with procompetitive business justifications for access to certain AWN information that otherwise would not be permissible.²²⁰ We must consider, therefore, the adequacy of the Applicants' information exchange protections within this context. In addition, the payment and compensation mechanisms in the Joint Operating Agreement provide GCI and ACS Wireless with the opportunity to review certain AWN financial information for settlement and adjustment purposes,²²¹ which we also find may have a valid business justification given each Applicant's ownership interest in AWN and the compensation revenues they are to receive under their respective service agreements with AWN.²²² In addition, we find a reasonable business justification for the requirement in the Asset Purchase Agreement that GCI and ACS Wireless each give AWN audit and inspection access to their respective financial records relating to assets and businesses contributed to AWN as part of the contemplated transaction.²²³ Accordingly, we will review these information exchange requirements under a rule of reason analysis.²²⁴

73. We recognize that the Applicants have taken steps to prevent anticompetitive results that may be facilitated by the sharing of relevant information for procompetitive purposes in the Alaska markets. For example, we note that section 1(C) of the CSI recognizes the potential for disclosure of commercially sensitive GCI or ACS Wireless information to the other party.²²⁵ In addition, the parties' agreements contemplate that AWN will not compete at retail against GCI or ACS Wireless (since it may provide only wholesale services) and that AWN will provide access to its wholesale services to GCI and ACS Wireless on an equal and nondiscriminatory basis.²²⁶ As such, there is less risk that AWN information made available to GCI or ACS Wireless will have an anticompetitive effect.²²⁷ The Dedicated Employment and Secondment Agreements also provide protections from anticompetitive exchanges of information, imposing a fiduciary duty and loyalty obligation to AWN on seconded GCI or ACS Wireless employees and requiring them to execute secondment agreements that contain non-disclosure requirements applicable to AWN confidential information that continues to apply after the secondment expires and the employee returns to either GCI or ACS Wireless.²²⁸ For the reasons explained below, however, we find that certain of these provisions do not adequately protect anticompetitive exchanges of competitively sensitive information.

²¹⁹ GCI Services Agreement § 4, Exh. A ("Dedicated Employees"), Exh. A-1 ("Form of Personnel Secondment Letter"); *see also supra* ¶ 19.

²²⁰ *See DOJ/FTC Competitor Collaboration Guidelines* § 2.2.

²²¹ *See Joint Operating Agreement* § 9.4.

²²² *Id.* §§ 4, 5 and 9.

²²³ *See Asset Purchase Agreement* § 6.8.

²²⁴ *DOJ/FTC Competitor Collaboration Guidelines* § 1.2.

²²⁵ *See CSI* § 1(C); *see also* Letter from Carl Northrop, John Nakahata, counsel for GCI, Karen Brinkmann, counsel for ACS Wireless, and Bonnie Paskvan, General Counsel, AWN, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-187, July 2, 2013.

²²⁶ *See Public Interest Statement* at 11. *See also supra* ¶¶ 9-12.

²²⁷ *See DOJ/FTC Competitor Collaboration Guidelines* § 3.31.

²²⁸ *See CSI* § 3(A); *see also generally* GCI Services Agreement, Exhs. A, A-1; *Public Interest Statement* at 10-11.

74. *CSI § 2.* Section 2 of the CSI requires that AWN personnel use “aggregated” “information involving subscribers, churn, and commonly used subscriber industry metrics” when reporting such information to the AWN Board.²²⁹ The aggregation of competitively sensitive information for only two competitors when each competitor can easily back out its own information provides little cover in ascertaining the other competitor’s competitively sensitive information.²³⁰ Indeed the requirement to aggregate data from only two providers falls well outside of the antitrust enforcement agencies safety zones,²³¹ and makes it necessary to impose additional protections, including a requirement that any competitively sensitive data provided to the AWN Board shall exclude GCI or ACS Wireless retail rates and information identifying GCI or ACS Wireless subscribers, a requirement limiting the sharing of wireline and backhaul information between GCI and ACS Wireless, and a requirement to limit sharing of competitively sensitive information when calculating the attrition adjustments between the parties pursuant to the Joint Operating Agreement.²³²

75. *CSI § 3.* Section 3(D) of the CSI provides a restriction against using AWN to “facilitate or effect the coordination of decision-making with respect to competitive services between ACS and GCI with respect to assets that they own independent of [AWN].”²³³ Given that GCI and ACS Wireless are to compete against one another using AWN wholesale services, the prohibition in section 3(D) should not be limited to assets that GCI or ACS Wireless own independent of AWN, but instead should extend to AWN assets, such that using AWN to facilitate coordination of the retail sales of AWN services is expressly prohibited.²³⁴ Other changes in section 3 of the CSI provide additional protections against the sharing of competitively sensitive information by and among GCI and ACS Wireless employees, as well as employees that are seconded to AWN.²³⁵

76. *CSI § 4.* Section 4 of the CSI is designed to ensure compliance with the information sharing restrictions in the parties’ agreement by providing certain responsibilities for AWN’s counsel.²³⁶ However, notwithstanding the fiduciary, business dedication and loyalty and non-disclosure requirements imposed on the Company’s counsel, we remain concerned about the inherent conflict of interest when an employee of a competitor company is making decisions that impact the interests of the joint venture, such that the joint venture structure joins together “independent centers of decisionmaking.”²³⁷ Thus, revisions to section 4 of the CSI provide for the additional protections of an independent outside counsel under

²²⁹ CSI § 2(A).

²³⁰ *DOJ/FTC Competitor Collaboration Guidelines* § 3.31; FTC/DOJ 1996 Health Care Statements (“Health Care Statements”), Statement 6.A.

²³¹ *Id.* (establishing a “safety zone” for the exchange of competitively sensitive information that requires among other things that the information be aggregated from at least five providers).

²³² See Letter from Carl Northrop, John Nakahata, counsel for GCI, Karen Brinkmann, counsel for ACS Wireless, and Bonnie Paskvan, General Counsel, AWN, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-187, July 2, 2013.

²³³ CSI § 3(D).

²³⁴ See, e.g., *DOJ/FTC Competitor Collaboration Guidelines* § 3.32.

²³⁵ See Letter from Carl Northrop, John Nakahata, counsel for GCI, Karen Brinkmann, counsel for ACS Wireless, and Bonnie Paskvan, General Counsel, AWN, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-187, July 2, 2013.

²³⁶ CSI § 4.

²³⁷ See *American Needle, Inc. v. NFL*, 130 S. Ct. 2201, 2212 (2010) (finding differing economic interests among decision makers in a joint venture to constitute collusion in violation of Section 1 of the Sherman Act); *Rothery Storage & Van Co. v. Atlas Van Lines*, 792 F.2d 210, 214-15 (D.C. Cir. 1986) (finding that where the members of a joint venture are actual or potential competitors, they have been found to be capable of conspiring under Section 1).

certain circumstances, as well as additional certification and reporting requirements in the event the provisions of the CSI are not followed.²³⁸

77. As a result of the foregoing concerns and consistent with prior transactions that we found to pose concerns about the exchange of competitively sensitive information between competitors, we condition our approval of this transaction on compliance with the protections in the Applicants' amended CSI to ensure that the firewall between GCI and ACS Wireless is adequate to preserve competition between them across Alaska.²³⁹

4. Roaming

78. Roaming occurs when the subscriber of one mobile wireless provider travels beyond the service area of that provider and uses the facilities of another mobile wireless provider to place an outgoing call, to receive an incoming call, or to continue an in-progress call.²⁴⁰ The Commission has adopted roaming rules for voice and data services. The Commission's voice roaming rules, adopted in 2007, provide that 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.²⁴¹ This obligation applies to any real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the carrier to re-use frequencies and accomplish seamless hand-offs of subscriber calls, as well as push-to-talk and text messaging services offered by CMRS carriers.²⁴² The data roaming rule, adopted in April 2011, requires facilities-based providers of commercial mobile data services to offer data roaming arrangements to other such providers on commercially reasonable terms and conditions, subject to certain limitations.²⁴³

79. Both GCI and ACS Wireless have existing roaming arrangements with wireless service providers. Subscribers of these providers, which operate in the contiguous 48 states, use GCI's or ACS Wireless's facilities while traveling in Alaska. Conversely, GCI's and ACS Wireless's subscribers

²³⁸ See Letter from Carl Northrop, John Nakahata, counsel for GCI, Karen Brinkmann, counsel for ACS Wireless, and Bonnie Paskvan, General Counsel, AWN, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-187, July 2, 2013. We note that the Applicants may petition the FCC to lift the breach reporting requirement contained in section 4.E. of the CSI at any time after five years following the Closing Date of the transaction.

²³⁹ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13980 ¶¶ 163-64.

²⁴⁰ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10729 ¶ 81; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17612 ¶ 52; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8741 ¶ 87; *AT&T-Centennial Order*, 24 FCC Rcd at 13963 ¶ 120; 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).

²⁴¹ 47 C.F.R. § 20.12(d). See also *AT&T-Qualcomm Order*, 26 FCC Rcd at 17612 ¶ 52; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8742 ¶ 88; *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*"); *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).

²⁴² 47 C.F.R. § 20.12(a)(2). See also *Roaming Order on Reconsideration*, 25 FCC Rcd at 4128 ¶¶ 5-6.

²⁴³ 47 C.F.R. § 20.12(e); see also *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, *Second Report and Order*, 26 FCC Rcd 5411, 5432 ¶ 43 (2011), *rev. denied*, *Cellco P'ship v. FCC*, 700 F.3d 534 (D.C. Cir. 2012).

traveling in the contiguous 48 states roam on the wireless service providers' networks while traveling in their service areas. If the transaction is approved, GCI and ACS Wireless would assign their roaming agreements to AWN "in order to ensure continuity of service."²⁴⁴ Thereafter, AWN solely would have authority to enter into roaming agreements with third parties.²⁴⁵

80. No party has raised roaming as an issue in the transaction. We find no evidence indicating that approving this transaction is likely to result in roaming-related competitive harms. The current roaming agreements entered into by GCI or ACS Wireless and wireless providers operating outside of Alaska would continue to remain in effect and be assumed by AWN. It is unlikely that the transaction would provide AWN with a competitive advantage in seeking future roaming arrangements. The service providers in the contiguous 48 states will continue to need and rely on the Applicants' networks for roaming capabilities, and the Applicants will continue to need and rely on the service providers' networks to provide subscribers with access to wireless voice and data service while traveling outside of Alaska. Moreover, the proposed transaction may accelerate commercial deployment of LTE, which the Applicants argue is a prerequisite to negotiating reasonable terms for future roaming agreements.²⁴⁶

81. In addition, we find no evidence that the transaction would result in competitive harms to roaming arrangements between wireless service providers operating in Alaska. If anything, the proposed transaction could help accelerate the deployment of a new LTE network, expand roaming opportunities in Alaska, and increase third party reliance on AWN's network for roaming requirements. Accordingly, based on the record before us, we find that the proposed transaction likely would not result in any roaming related competitive harms.²⁴⁷

5. Lansman Petition

82. We deny the Lansman Petition as it relates to the Applications²⁴⁸ on two separate grounds—timeliness and standing—although Petitioners have entwined the two grounds in its argument for waiver of the petition deadline. In the *Comment Public Notice*, we set a deadline of September 21, 2012 for filing petitions to deny the Applications.²⁴⁹ Petitioners assert that waiver of that deadline is justified because they did not have standing until applications were filed to assign the licenses of KTVA(TV), KATH-LD, and KSCT-LP to GCI.²⁵⁰ Petitioners argue that, as broadcasters, they now have standing because the addition of ACS Wireless's wireless infrastructure would make GCI a "more forbidding" broadcast competitor in light of expanded mobile broadband video distribution capability and give GCI the incentive to prefer its own broadcasts.²⁵¹

83. We find that Petitioners fail to establish party-in-interest standing or justify the waiver of the deadline for filing petitions to deny. Section 1.939(d) of the Commission's rules requires that a

²⁴⁴ Public Interest Statement at 8 n.11.

²⁴⁵ *Id.* at 10, 14, 37.

²⁴⁶ *Id.* at 22.

²⁴⁷ We note also that AWN will be subject to our voice and data roaming rules. *See, e.g.*, 47 U.S.C. §§ 201, 202; 47 C.F.R. §§ 20.3, 20.12.

²⁴⁸ We take no action here with respect to the Lansman Petition as it relates to the assignment of licenses of KTVA(TV), KATH-LD, and KSCT-LP.

²⁴⁹ *See supra* ¶ 20.

²⁵⁰ *See* File Nos. BALCDT-20130125ABD, BALTVL-20130125AAK.

²⁵¹ Lansman Petition at 11, 13.

petition to deny contain specific allegations of fact sufficient to make a *prima facie* showing that the petitioner is a party in interest and that a grant of the application would be inconsistent with the public interest, convenience and necessity.²⁵² To establish standing as a party in interest to a specific transaction, a petitioner must allege facts sufficient to demonstrate that grant of the subject applications would cause it to suffer a direct injury.²⁵³ In addition, a petitioner must demonstrate a causal link between the claimed injury and the challenged action,²⁵⁴ and that any injury would be redressable by the relief requested.²⁵⁵

84. Petitioners fail to meet this standard. Their assertions that AWN would make GCI a more forbidding broadcast competitor are at best premature in this proceeding because neither the formation of AWN nor the acquisition of the ACS Wireless licenses by GCI through its control of AWN would modify GCI's capability to produce video programming. As a result, Petitioners have not met their burden in establishing a *prima facie* theory of how *this* instant transaction would harm them. Having failed to establish party-in-interest standing, Petitioners cannot justify waiving a petition deadline that they missed by over four months. Therefore, we deny the Lansman Petition to the extent that it relates to the Applications.

VI. POTENTIAL PUBLIC INTEREST BENEFITS AND EFFICIENCIES

85. In addition to assessing the potential competitive harms of this transaction, we also consider whether the proposed assignment of the subject wireless licenses and the related application for an international authorization is likely to generate quantifiable, verifiable, and transaction-specific public interest benefits that outweigh any identified competitive harms.²⁵⁶ In doing so, we ask whether AWN or the Applicants would be able and likely to pursue business strategies resulting in demonstrable and verifiable benefits to consumers that would not be pursued but for the transaction.²⁵⁷ As discussed below, we anticipate that the proposed transaction likely would result in certain transaction-specific public interest benefits. In particular, we anticipate that the proposed transaction would generate savings from avoiding network duplication, increase coverage of the existing network, and facilitate the deployment of LTE and the provision of mobile broadband in an area of the country that faces unique service challenges. We reach this conclusion, however, recognizing that it is difficult to quantify precisely either the magnitude of these benefits or the time period in which these benefits can be realized.²⁵⁸

²⁵² 47 C.F.R. § 1.939(d).

²⁵³ See *Star Wireless, LLC, Memorandum Opinion and Order*, 28 FCC Rcd 243, 248 ¶ 14 (WTB MD 2013) (“*Star Wireless*”); *AT&T Wireless PCS, Inc., Order*, 15 FCC Rcd 4587, 4588 ¶ 3 (WTB CWD 2000) (“*AT&T Wireless*”) (citing *Sierra Club v. Morton*, 405 U.S. 727, 73 (1972)); Lawrence N. Brandt, *Memorandum Opinion and Order*, 3 FCC Rcd 4082 (1988).

²⁵⁴ *Star Wireless*, 28 FCC Rcd at 248 ¶ 14; *AT&T Wireless*, 15 FCC Rcd at 4588 ¶ 3 (citing *Duke Power Co. v. Carolina Environmental Study Group, Inc.* 438 U.S. 59, 72, 78 (1978)).

²⁵⁵ *Star Wireless*, 28 FCC Rcd at 248 ¶ 14; *Weblink Wireless, Inc., Memorandum Opinion and Order*, 17 FCC Rcd 24642, 24647 ¶ 11 (2002).

²⁵⁶ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16474 ¶ 40; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 95; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17622-23 ¶ 81.

²⁵⁷ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16474 ¶ 40; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 95; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17622-23 ¶ 81.

²⁵⁸ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16474 ¶ 40; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623 ¶ 82; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8736 ¶ 73.

A. Analytical Framework

86. 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.”²⁵⁹ This same analysis applies to the formation of a joint venture that combines the network and facilities like that contemplated by the proposed transaction before us. Under Commission precedent, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms.²⁶⁰

87. 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.²⁶¹ In addition, “the magnitude of benefits must be calculated net of the cost of achieving them.”²⁶² 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.”²⁶³ Third, the Commission has stated that it “will more likely find marginal cost reductions to be cognizable than reductions in fixed cost.”²⁶⁴ 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.²⁶⁵

88. Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims.²⁶⁶ 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.”²⁶⁷ Conversely, where potential harms appear less likely and less substantial,

²⁵⁹ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16474-75 ¶ 41; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 96; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623 ¶ 83.

²⁶⁰ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16474-75 ¶ 41; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 96; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623 ¶ 83.

²⁶¹ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 97; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623 ¶ 84.

²⁶² See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 97; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623 ¶ 84.

²⁶³ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 97; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 84; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8737 ¶ 75.

²⁶⁴ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 97; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 84; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8737 ¶ 75.

²⁶⁵ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 97; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 84; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8737 ¶ 75.

²⁶⁶ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 98; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 85.

²⁶⁷ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 98; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 85; cf. *2010 DOJ/FTC Horizontal Merger Guidelines* at § 10, p. 31 (“The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, (continued....)”).

as is the case here, we will accept a lesser showing.²⁶⁸ We discuss each of the Applicants' claimed efficiencies below.

B. Asserted Benefits

89. The Applicants assert that the proposed transaction and the contemplated arrangements among AWN, GCI, and ACS Wireless would generate significant public interest benefits and efficiencies while retaining the benefits of competition between GCI and ACS Wireless – local companies that will continue to serve residents of the largely rural and unique state of Alaska.²⁶⁹ The Applicants claim three primary efficiencies that would arise from this transaction: (i) network efficiencies from infrastructure consolidation; (ii) expanded coverage and improved service; and (iii) increased competitiveness from timely transition to LTE and handset availability.

1. Network Efficiencies

90. The Applicants claim that network efficiencies resulting from the proposed transaction would come from three sources – eliminating existing duplicative infrastructure, avoiding future duplication, and consolidating the urban fiber network. We discuss each of these claims below.

91. *Eliminating Existing Duplication.* The Applicants claim that combining network infrastructure, thereby eliminating redundant CDMA network facilities, would reduce GCI's and ACS Wireless's expenses of serving residents of Alaska by \$15 million in annual capital expenditures and \$15 million in annual operating expenses.²⁷⁰ According to the Applicants, these savings would come from [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]²⁷¹ In particular, they assert that they can reduce the joint number of cell sites from about 450 to nearly 300.²⁷² Based on a high-level site analysis, the Applicants maintain that the proposed transaction would result in overlapping CDMA network coverage such that [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent of the combined cell sites would be redundant and could be decommissioned.²⁷³ GCI predicts operations and maintenance savings for such CDMA tower decommissioning of [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]²⁷⁴ The

(Continued from previous page) _____
extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.”)

²⁶⁸ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 85; *AT&T/Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8737 ¶ 76.

²⁶⁹ Public Interest Statement at 14-15, 31-40.

²⁷⁰ *Id.* at 36.

²⁷¹ GCI-0004449.

²⁷² The Applicants say that they can reduce the number of tower sites while still expanding wireless coverage for customers of both companies. Public Interest Statement at 37.

²⁷³ GCI-0004449, GCI-0783989.

²⁷⁴ See GCI-0004449, GCI-0783989. The predicted cost savings for decommissioning [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

Applicants' internal documents reflect an expectation that **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **END HIGHLY CONFIDENTIAL INFORMATION]**²⁷⁵ The Applicants also claim that combining network infrastructure would permit the elimination of a CDMA switch and other associated core network elements.²⁷⁶ GCI estimates that there are additional cost savings of about **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**²⁷⁷

92. *Avoiding Future Duplication.* The Applicants also expect to realize savings from efficiently scaling back plans for new sites. Independently, by 2015, GCI and ACS Wireless had planned **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] The Applicants assert that the proposed transaction would allow them to reduce their capital expenditures **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]²⁷⁸

93. *Urban Fiber Consolidation.* The Applicants claim that consolidation of urban fiber to cell site and urban fiber core network projects would result in additional efficiencies that flow from network integration. GCI predicts that this efficiency would generate capital savings of **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]²⁷⁹

2. Expanded Coverage and Improved Service to Current Subscribers

94. The Applicants claim that combining their networks would result in expanded coverage beyond what either GCI or ACS Wireless could reach separately and permit increased network speeds and greater redundancy than either could offer on a standalone basis.²⁸⁰ The Applicants state that ACS Wireless customers would benefit from access to GCI's HSPA+ network as well as access to GCI's 2G network in many communities not served by ACS Wireless.²⁸¹ GCI's customers would benefit from access to ACS Wireless's LTE network.²⁸² GCI's and ACS Wireless's customers would benefit from increased CDMA coverage from the combined network.²⁸³ The Applicants state that ACS Wireless customers also would benefit from GCI's Wi-Fi access points, providing additional connectivity and service options.²⁸⁴ According to the Applicants, a planned functional interconnection between the LTE

²⁷⁵ See GCI-0004449, GCI-0783989. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**

²⁷⁶ Public Interest Statement at 36.

²⁷⁷ GCI-0004449, GCI-0783989.

²⁷⁸ GCI-0783989.

²⁷⁹ *Id.*

²⁸⁰ Public Interest Statement at 38.

²⁸¹ *Id.*

²⁸² *Id.* GCI claims that, absent this transaction, its customers' access to an LTE network would be delayed because of certain impediments associated with GCI's deployment of LTE on its PCS spectrum. *Id.*

²⁸³ *Id.* at 38-39. The Applicants note that accelerated deployment of LTE will result in increased spectral efficiency and spectrum recovery. *Id.*

²⁸⁴ *Id.* at 39.

network and GCI's HSPA network also would effectively extend the life of the HSPA network and give customers access to more advanced technology over a wider service area.²⁸⁵

3. Increased Competitiveness

95. The Applicants claim that by combining resources into AWN, GCI and ACS Wireless would be stronger competitors in the Alaska wireless market, and would be better equipped to compete against the two largest national providers, AT&T Mobility and Verizon Wireless. The Applicants contend that AWN could deploy "a robust 4G LTE network more quickly than either ACS [Wireless] or GCI could achieve individually"²⁸⁶ and would increase the Applicants' lack of scale economies that they claim currently hinders their ability to roll out high-cost operations in Alaska such as LTE, which consumers increasingly demand.²⁸⁷ In addition, the Applicants claim that broad-scale commercial deployment of LTE in the AWS-1 spectrum band is a "necessary prerequisite for both ACS Wireless and GCI to negotiate commercially reasonable terms for roaming agreements, network technology and consumer devices," thus permitting them to compete more effectively.²⁸⁸

96. The Applicants' internal documents suggest that **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] The documents also indicate, however, that ACS Wireless **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]²⁹¹

97. GCI's internal documents indicate that, prior to reaching the instant agreement with ACS Wireless, GCI executives believed that **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**
[END HIGHLY CONFIDENTIAL INFORMATION] GCI documents also indicate that prior to reaching an agreement with ACS Wireless, **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

²⁸⁵ *Id.*

²⁸⁶ *Id.* at 17; *see also id.* at 22, 26.

²⁸⁷ *Id.* at 22.

²⁸⁸ *Id.*

²⁸⁹ *See, e.g.*, ACS000511334 at 4-5. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]****[END HIGHLY CONFIDENTIAL INFORMATION]**. *Id.*

²⁹⁰ ACS Wireless has begun the process of upgrading to LTE network facilities, launching LTE in November 2012 in Anchorage, Fairbanks, and Juneau. *See* Public Interest Statement at 5; *see also* <http://www.phonescoop.com/articles/article.php?a=11484>. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]****[END HIGHLY CONFIDENTIAL INFORMATION]** ACS_FCC00026768.xlsx.

²⁹¹ *See, e.g.*, ACS000369713 at 3-8.

²⁹² *See* GCI-0821122 at 3-4; *see also* Public Interest Statement at 22, 26.

²⁹³ GCI-0093894.

²⁹⁴ *See generally* GCI-0002124, GCI-0098204, GCI-0855341, GCI-0817035-36, GCI-0093894.

²⁹⁵ GCI-0093894.

[END HIGHLY CONFIDENTIAL INFORMATION]**C. Discussion**

98. As discussed below, we find sufficient evidence to support a finding that the proposed transaction is likely to result in public interest benefits that outweigh the possibility of anticompetitive harm from this transaction affecting the provision of mobile telephony/broadband services in Alaska.

99. With regard to the Applicants' claims about network efficiencies that would result from the proposed transaction, we conclude that the Applicants' claims of reduction in capital and operating expenditures resulting from the elimination of redundant CDMA network facilities are reasonable given the CDMA network coverage overlap of the Applicants. Additionally, we find that the cost savings associated with redundant cell towers and network overlap should include costs avoided for AWN's future site projections, as the requirements for the combined network likely would be less than the total of the number of future sites for which GCI and ACS Wireless had projected individually. Similarly, with respect to urban fiber consolidation, we find that cost-savings resulting from the proposed transaction are likely given that AWN would be able to avoid the cost of extending fiber to a significant number of decommissioned and/or redundant sites.²⁹⁹

100. In evaluating these asserted benefits, we recognize that service providers in Alaska face particular service challenges, including significant areas of low or extremely low population density and difficult operating conditions. We find that there is sufficient evidence in the record that the combination of GCI's and ACS Wireless's infrastructure is likely to result in tangible benefits in terms of improved network access and the elimination of redundancy, thus facilitating a more efficient use of both infrastructure and spectrum across the Alaska markets. As the Applicants' implicitly recognize, however, the ability to combine networks to realize such efficiencies is not without cost to ensure that the existing GCI's GSM/HSPA network can compatibly provide voice and data services in concert with ACS Wireless's LTE network.³⁰⁰ We recognize that these integration costs must be netted against costs avoided as a result of the integration.³⁰¹ We agree with the Applicants, however, that the net effect is

²⁹⁶ GCI-0047767, GCI-0004857.

²⁹⁷ GCI-0855341, GCI-0002124. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]

²⁹⁸ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL

INFORMATION] See GCI-0841803-0841805.

²⁹⁹ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] See GCI-0783989.

³⁰⁰ Public Interest Statement at 39. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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INFORMATION] ACS_FCC000024836-ACS_FCC000024866.

³⁰¹ To realize this claimed efficiency, the Applicants must **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] GCI-0004449, GCI- 0783989.

See also GCI-0046148 **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]

procompetitive.

101. We find evidence in the record, including in GCI's and ACS Wireless's internal documents, that the transaction may provide a more certain and timely path to LTE that will enhance their abilities to compete more effectively against AT&T Mobility and Verizon Wireless in the provision of mobile telephony/broadband services in Alaska. For instance, certain documents establish [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] for ACS Wireless. Further evidence in the record shows that, although GCI is financially stable, executives believed that the company lacked the spectrum required to deploy LTE. In addition, while we believe the Applicants' asserted technological benefits relating to accelerated LTE deployment may be somewhat overstated, we recognize that AWS spectrum perhaps provides for a more certain and timely LTE path, which ultimately will benefit consumers in Alaska.

D. Balancing

102. We review the proposed transaction before us with special regard to the particular market conditions affecting the provision of mobile telephony/broadband services in Alaska. As discussed throughout our analysis above, there are very specific market conditions affecting the provision of mobile services in Alaska, including its isolated geographic location outside the contiguous 48 states, its statewide population of only about 710,000, its significant areas of extremely low population density, and its challenging operating conditions.

103. As explained in detail in Section V above, we find that the possibility of anticompetitive harm from unilateral effects or coordination resulting from the proposed transaction would likely be mitigated by various factors, including not only the various Alaska-specific factors, but also the strong mobile presence in Alaska of AT&T Mobility, the recent entry of Verizon Wireless, and certain provisions in the agreements. Even taking into consideration these factors, however, we remain concerned that the proposed transaction might result in competitive harms. For instance, with respect to concerns that this transaction may facilitate the exchange of competitively sensitive information between GCI and ACS Wireless as retail competitors, we have accepted the Applicants' voluntary commitments to mitigate these concerns.³⁰²

104. Given that the possible anticompetitive harms flowing from the transaction are likely to be limited and subject to certain conditions, we can accept a lesser showing to establish that the claimed efficiencies are transaction-specific, quantifiable, verifiable, and timely such that we should include them in our balancing test. As discussed in Section VI above, the record before us, on balance, supports a finding that the proposed assignment of spectrum to AWN likely would result in positive public interest benefits. The AWN transaction likely would result in network efficiencies that would allow for a more efficient use of spectrum to provide new and better wireless services to consumers in Alaska, which we have acknowledged as having unique service challenges.³⁰³ We also find that these potential benefits may include a more certain and timely path for deploying LTE, which ultimately would inure to the benefit of GCI's and ACS Wireless's customers in Alaska.

105. Accordingly, we find sufficient evidence in the record to support a finding that the Applicants have met their burden in establishing public interest benefits. On balance, we find that the conditions imposed on the exchange of competitively sensitive information combined with the aforementioned efficiencies outweigh the likelihood of significant anticompetitive harms in the Alaska markets, such that the proposed transaction is in the public interest.

³⁰² See *supra* ¶¶ 70-77.

³⁰³ See *supra* ¶ 3 & n.5.

VII. THE APPLICANTS' UNIVERSAL SERVICE SUPPORT

A. Background

106. GCI and ACS Wireless, both CMRS providers in Alaska, currently are designated as competitive Eligible Telecommunications Carriers (ETCs or CETCs) eligible to receive both high-cost and low-income universal service support in specified service areas in Alaska.³⁰⁴ GCI is designated as an ETC in all of ACS Wireless's service areas and additional service areas. Both parties previously received high-cost support pursuant to the former identical support rule, which provided support based on the incumbent LEC's costs of providing universal service in the relevant service area. The *USF/ICC Transformation Order* eliminated the identical support rule and converted identical support into legacy high-cost support. Both GCI and ACS Wireless now receive legacy high-cost support. That legacy high-cost support is subject to a phase-down process established in the *USF/ICC Transformation Order*.

107. The Applicants claim that, following the close of the proposed transaction, GCI and ACS Wireless would remain separate CETCs and each would remain responsible for providing services to its own customers and for meeting all universal service obligations.³⁰⁵ The Applicants indicate that GCI and ACS Wireless would continue to market and sell standalone voice and broadband services on a retail basis throughout Alaska and separately brand and price their individual wireless offerings.³⁰⁶ The Applicants maintain that they would remit any high-cost support received as wireless CETCs to AWN for investment in the operation of the combined network facilities to offer the supported services.³⁰⁷ The Applicants assert that the combined AWN network would, among other things, facilitate better network coverage in Alaska, a wider on-net calling footprint, greater consumer choice of services and handsets, greater resources for public safety and enhanced spectral efficiency.³⁰⁸

108. *Statutory and Regulatory Requirements.* Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support."³⁰⁹ Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area "either using its own facilities or a combination of its own facilities and resale of another carrier's services."³¹⁰

109. On November 18, 2011, the Commission released the *USF/ICC Transformation Order*, which, among other things, established the Mobility Fund to provide support dedicated to mobile services to help ensure the availability of mobile broadband across America.³¹¹ Phase I of the Mobility Fund provides up to \$300 million in one-time support to address gaps in mobile services availability by

³⁰⁴ Petition for Declaratory Ruling at 3.

³⁰⁵ *Id.* at 9. The Applicants state that the infrastructure arrangement will allow both GCI and ACS Wireless to continue operating as retail competitors with the same Alaska customer bases they have prior to closing and that no retail customers will be transferred to the joint venture. They also state that the parties have agreed that the current retail services plans of both GCI and ACS Wireless, including Lifeline offerings, will be supported by AWN for at least two years. *See id.* at 3.

³⁰⁶ *Id.* at 6.

³⁰⁷ *Id.* at 5.

³⁰⁸ *Id.* at 7.

³⁰⁹ 47 U.S.C. § 254(e).

³¹⁰ *Id.* § 214(e)(1).

³¹¹ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17773 ¶ 301.

supporting the build-out of current- and next-generation mobile networks in areas where these networks are unavailable.³¹² The support offered under Phase I of the Mobility Fund is in addition to any ongoing support provided under existing high-cost universal service program mechanisms.

110. The *USF/ICC Transformation Order* established application, performance, and other requirements for Mobility Fund Phase I. Auction 901, which offered \$300 million in Mobility Fund Phase I support, was the first auction to award high-cost universal support through competitive bidding. To participate in Auction 901 and receive Mobility Fund Phase I support, an applicant was required to demonstrate for the areas on which it wishes to bid that it has been designated as an ETC and that it has access to the spectrum necessary to satisfy the applicable performance requirements.³¹³

111. The *USF/ICC Transformation Order* adopted numerous reforms to the universal service high-cost program and proposed additional reforms. Among other things, to rationalize support for mobility, the Commission established a budget for Mobility Fund Phase II to provide \$500 million in annual ongoing support for mobile voice and broadband services, including up to \$100 million dedicated to Tribal lands.³¹⁴ The Commission eliminated the pre-reform identical support rule under which CETCs, primarily providers of mobile services, formerly received the same per-line amount of ongoing high-cost universal service support as the ILEC serving the same area.³¹⁵ Rather than immediately terminate this ongoing support, the Commission phased-down the legacy support provided to CETCs based on the former identical support rule over five years. With respect to remote areas of Alaska, the Commission delayed the beginning of the transition period for two years to preserve newly initiated services and facilitate additional investment in still unserved and underserved areas.³¹⁶ The Commission also proposed rules for distributing Mobility Fund Phase II support, based largely on the rules adopted for Mobility Fund Phase I.

B. Declaratory Ruling

112. Concurrent with the applications for assignment of licenses, the Applicants filed a petition for declaratory ruling seeking confirmation that, following their contribution of network facilities and spectrum licenses to AWN: 1) GCI and ACS Wireless would continue to provide services over their own facilities for purposes of section 214(e) of the Act and the Commission's rules, and 2) both GCI and ACS Wireless would continue to have access to spectrum for the purposes of section 54.1003(b) of the Commission's rules and any similar provisions with respect to Mobility Fund Phase II or future high-cost support mechanisms for wireless services that the Commission may establish.³¹⁷

113. Based on the unique facts presented in this proceeding and subject to the conditions of the transaction described herein, we grant in part the Applicants' petition for declaratory ruling. We find

³¹² *Id.* at 17773 ¶ 299. As part of Phase I, the Commission also designated an additional \$50 million for one-time support targeted exclusively for advanced mobile services on Tribal lands, which it expects will be awarded by auction in 2013. *Id.* at 17819-20 ¶ 481.

³¹³ *Id.* at 17798-17801 ¶¶ 388-99; *see also* 47 C.F.R. § 54.1003. A Tribal entity may participate provided it has applied for designation as an ETC for the relevant area and that application is still pending. Any such entity must still receive designation prior to support being awarded. *USF/ICC Transformation Order*, 26 FCC Rcd at 17823 ¶ 491; 47 C.F.R. § 54.1004(a). The requirement that parties have access to spectrum applies equally to all parties, including Tribal entities.

³¹⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17824 ¶¶ 493-94.

³¹⁵ *Id.* at 17825 ¶ 498.

³¹⁶ *Id.* at 17830, 17835 ¶¶ 512, 529.

³¹⁷ Petition for Declaratory Ruling at 1.

that the contribution of network facilities and spectrum licenses to the newly-formed AWN as proposed will not by itself render GCI and ACS Wireless ineligible for universal service support under the high-cost program. Consistent with the Commission's prior interpretation of "own facilities" in section 214(e)(1)(A) of the Act and based on the facts presented in this particular transaction, we find that both GCI and ACS Wireless will continue to provide services over their "own" facilities for the purposes of section 214(e) once they have contributed network facilities and spectrum licenses to AWN. We also find that based on the particular circumstances of this transaction, both GCI and ACS Wireless will continue to have "spectrum access" for the purposes of Mobility Phase I support and section 54.1003 of the Commission's rules following the contribution of their respective network facilities and spectrum licenses to AWN.

114. We issue this approval of the underlying transaction subject to several conditions related to universal service support, including that GCI and ACS Wireless must remit their universal service high-cost support to AWN and that such support may only be used for the provision, maintenance and upgrading of facilities and services for which the support is intended. Given the nature of the relationship that GCI, ACS Wireless, and AWN have created among themselves and the continuing reform of universal service high-cost support, we further require the parties' consent to additional specified conditions with respect to the consequences of receiving any future form of high-cost support.³¹⁸ These conditions on the transaction form part of the factual basis for our declaratory ruling below.

1. Own Facilities Under Section 214(e)(1)(A)

115. In the *Universal Service First Report and Order*, the Commission interpreted the terms "facilities" and "own facilities" for purposes of section 214(e) of the Act. The Commission stated, "we interpret the term 'facilities,' for purposes of section 214(e), to mean any physical components of the telecommunications network that are used in the transmission or routing of the services designated for support under section 254(c)(1)."³¹⁹ Addressing "own facilities," the Commission noted that "[t]he courts have recognized many times the word 'own' – as well as its numerous derivation – is a 'generic term' that 'varies in its significance according to its use' and 'designate[s] a great variety of interest in property.'"³²⁰ The Commission noted that the word "owner" is broad and flexible, "applying not only to legal title holders, but to others enjoying the beneficial use of property."³²¹ The Commission stated "property may have more than one 'owner' at the same time, and such 'ownership' does not merely involve title interest to that property."³²² The Commission noted that section 214(e)(1) used the term "own facilities" as distinguished from facilities "owned by" a carrier when it contemplated the meaning and application of the statutory language.³²³ The Commission stated "the term 'own facilities' reasonably could refer to property that a carrier considers its own... but to which the carrier does not hold absolute title."³²⁴ The Commission also determined that such a broad interpretation of the section 214(e) "own facilities" requirement advanced the purposes of the Act and the Commission's stated goals.

116. We find that, under the specific factual scenario presented in this transaction, both GCI

³¹⁸ See *infra* ¶¶ 131-138.

³¹⁹ See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, 8861 ¶ 151 (1997) (subsequent history omitted) ("*Universal Service First Report and Order*").

³²⁰ *Universal Service First Report and Order*, 12 FCC Rcd at 8865 ¶ 158.

³²¹ *Id.*

³²² *Id.*

³²³ *Id.* at 8866 ¶ 159.

³²⁴ *Id.*

and ACS Wireless will continue to provide service over their “own facilities” for the purpose of section 214(e). As an initial matter, we note that GCI and ACS Wireless each have already been individually designated by the Alaska Public Utilities Commission as CETCs, and both currently provide the services supported by the Universal Service Fund over their own network facilities, consistent with the requirements of the Act.³²⁵ Specifically, ACS Wireless provides service over its own CDMA and 3G EVDO network facilities and GCI provides service over CDMA and GSM/EDGE/HSPA+ network facilities.³²⁶

117. Under the transaction here, GCI and ACS Wireless will own AWN, and AWN will be contractually obligated to provide service to both GCI and ACS Wireless.³²⁷ Pursuant to the terms of the agreements between the parties, AWN will own or have a right of use for all the cell sites and tower infrastructure currently used by either GCI or ACS Wireless to provide wireless services in Alaska, and both GCI and ACS Wireless would have “equal and non-discriminatory” access to the entire AWN network of combined facilities.³²⁸ Although neither GCI nor ACS Wireless would hold absolute title to the facilities assigned to AWN, both will own AWN, and both ETCs, consistent with the Commission’s prior interpretation of section 214(e), could reasonably consider the facilities assigned to AWN to be their own facilities.

118. Additionally, the ownership interests held in AWN by GCI and ACS Wireless, as presented in the facts of this transaction, are significant in our determination that both companies will provide the supported service over their “own facilities” for the purposes of section 214(e).³²⁹ In designating Virgin Mobile an ETC in several states, for example, the Wireline Competition Bureau found that Sprint’s ownership of Virgin Mobile changed the usual “wholesaler-reseller relationship . . . such that Virgin Mobile now enjoy[ed] ‘beneficial use of Sprint’s wireless facilities’ without arm’s length transactions or purchase of service” and thus that Virgin Mobile had its “own facilities” for purposes of section 214(e).³³⁰ So too here; GCI’s and ACS Wireless’s ownership of, and their specific relationship with, AWN (and hence its “facilities”) distinguishes this arrangement from the usual wholesaler-reseller relationship. And though AWN will not directly receive universal service support, GCI’s and ACS Wireless’s universal service support will pass through to AWN.³³¹ Thus, the support will be used to subsidize the costs of providing service.

119. Therefore, as the Commission has done in the past, here, we construe the statutory requirement of “own facilities” under section 214(e) in a flexible way to meet the goals of universal service and the Commission’s stated goal of helping to ensure the availability of mobile broadband across America. We find compelling the Applicants’ assertion that the combined network operated by AWN would, among other things, facilitate better network coverage in Alaska, greater consumer choice of services, and greater resources for public safety.³³² Consistent with the Commission’s goals of promoting

³²⁵ Petition for Declaratory Ruling at 3.

³²⁶ Public Interest Statement at 5, 6.

³²⁷ Petition for Declaratory Ruling at 4, 6.

³²⁸ *Id.* at 4.

³²⁹ In the future, if the Commission is asked to consider a similar transaction, the Commission will consider the specific facts and issues and make a decision on a case-by-case basis.

³³⁰ See Telecommunications Carriers Eligible for Universal Service Support; Virgin Mobile USA L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, et al., WC Docket No. 09-197, *Order*, 25 FCC Rcd 17797, 17803 ¶ 15 (WCB 2010).

³³¹ See *infra* ¶ 133.

³³² Petition for Declaratory Ruling at 7.

fiscal responsibility and maximizing scarce universal service funds, the combined network will enable the parties to serve their customers more efficiently, thereby making it possible to expand network coverage.³³³ We therefore conclude that the contribution of network facilities to AWN, as proposed in the instant transaction, will not, by itself, prevent GCI and ACS Wireless from continuing to provide services over their “own facilities” for the purposes of section 214(e) of the Act and the Commission’s rules.

120. Our findings here are based on the specific facts presented in this transaction and are applicable to the Applicants’ ability to receive both federal high-cost and low-income universal service support. We caution the Applicants that any changes to the arrangements affecting the ownership interests and/or rights of either GCI or ACS Wireless in AWN may result in non-compliance with the Act, the Commission’s rules, or this Order, and may not fall within this Declaratory Ruling.

2. Spectrum Access

121. As mentioned above, in the *USF/ICC Transformation Order*, the Commission adopted a rule requiring that an applicant for Mobility Fund Phase I support have access to spectrum necessary to fulfill any obligations related to support.³³⁴ The Commission required that an applicant have such access at the time that the applicant applies to participate in an auction.³³⁵ The Commission stated that section 54.1003(b) of its rules could be met if a party holds a license authorizing use of appropriate spectrum in the geographic area(s) for which it will seek support.³³⁶ The Commission also provided that the requirement could be met by leasing appropriate spectrum covering the relevant geographic area(s).³³⁷ This rule requires the applicant to certify that it will retain its spectrum access for at least five years from the date of the award of Phase I support.³³⁸

122. Consistent with its standard procedures used in spectrum license auctions, the Commission adopted a two-stage application process for participation in Auction 901, during which interested applicants such as GCI and ACS Wireless were required to demonstrate their eligibility.³³⁹ Auction applicants were required to file a “short form” application, providing basic ownership and eligibility information and certifying to their qualifications to receive support. Among such certifications, an applicant for Auction 901 was required to describe its spectrum access and to certify that the description was accurate.³⁴⁰ To satisfy the spectrum access eligibility requirement, applicants were instructed to identify the license applicable to the spectrum to be accessed, the licensee holding the spectrum authorization, and, if the licensee was a different party than the applicant, the relationship between the applicant and the licensee that provided the applicant with the required access.³⁴¹ After Auction 901, during the second phase of the Commission’s application process, winning bidders were required to file “long form” applications from which the Commission conducts a more extensive review

³³³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17670 ¶ 11.

³³⁴ See 47 C.F.R. § 54.1003.

³³⁵ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17799-17801 ¶¶ 393-399.

³³⁶ See *id.* at 17799-17800 ¶¶ 394-396.

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ *Id.* at 17804 ¶ 418; see also Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901, AU Docket No. 12-25, *Public Notice*, 27 FCC Rcd 4725,4751 ¶ 82 (WTB/WCB 2012) (“*Auction 901 Procedures Public Notice*”).

³⁴⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17804 ¶ 418.

³⁴¹ *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4770 ¶¶ 167-168.

of an applicant's qualifications.³⁴² Thus, among other certifications and qualification disclosures, winning bidders in Auction 901 were required to provide the same spectrum access information in their long form application, and to certify that the description of the spectrum access was accurate and that the applicant would retain such access for at least five years after the date on which it is authorized to receive support.³⁴³

123. Both GCI and ACS Wireless filed applications to participate in Auction 901 based on their pre-transaction ownership structures. In their short form applications, GCI and ACS Wireless each certified to spectrum access and identified licenses authorized in its own name or in the name of a wholly-owned subsidiary or an affiliate that was wholly owned by the applicant's corporate parent.³⁴⁴ At that time, GCI held the licenses in the cellular and Broadband PCS bands directly or through its wholly-owned subsidiary Unicom.³⁴⁵ ACS Wireless held licenses in the cellular, Broadband PCS, and AWS bands indirectly through its sister subsidiaries of ACS, ACS Wireless License Sub, Inc. and ACS of Anchorage License Sub, Inc.³⁴⁶ ACS Wireless did not submit any bids in Auction 901 and therefore was not required to file a long form application.³⁴⁷ In contrast, GCI submitted numerous winning bids for Mobility Fund Phase I support, and was required to submit a long-form application including certifications and descriptions of its spectrum access to become authorized to receive support.³⁴⁸

124. GCI and ACS Wireless now seek a declaratory ruling that, following the closing of the proposed transaction, they each would still continue to have spectrum access as required under section 54.1003 of the Commission's rules for Mobility Fund Phase I support and any similar provisions with respect to Mobility Fund Phase II or future high-cost support mechanisms for wireless services that the Commission may establish.³⁴⁹ The parties explain that under their agreements, AWN would hold legal title to all property and equipment, and with Commission approval, AWN would acquire spectrum licenses previously authorized to GCI and ACS Wireless or their wholly owned subsidiaries or affiliates.³⁵⁰ GCI and ACS Wireless jointly would own AWN, the "facility sharing subsidiary." GCI would have a two-thirds controlling interest in AWN and GCI or GCI-affiliated executives would occupy two of the three seats on AWN's board of directors, while ACS Wireless would have one-third control and its current CEO would occupy the final board seat.³⁵¹ Thus, the parties conclude each would have an ownership interest in and contractually secured access to the network facilities and services of AWN.

125. In particular, the parties propose that they would achieve spectrum access sufficient to satisfy section 54.1003 through this joint ownership of AWN, as well as the contractual agreements each

³⁴² *USF/ICC Transformation Order*, 26 FCC Rcd at 17804-17805 ¶¶ 416-418.

³⁴³ *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4770 ¶¶ 167-168.

³⁴⁴ Letter from John T. Nakahata, Wiltshire & Grannis, LLP, Counsel for GCI and Karen Brinkmann, KAREN BRINKMANN PLLC, Counsel for ACS, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated November 28, 2012 at 2 ("*Brinkmann Letter*").

³⁴⁵ *See Brinkmann Letter* at 2.

³⁴⁶ *Id.*

³⁴⁷ *Mobility Fund Phase I Auction Closes; Winning Bidders Announced for Auction 901*, AU Docket No. 12-25, *Public Notice*, 27 FCC Rcd 12031, Attachment A (2012) ("*Auction 901 Closing Public Notice*").

³⁴⁸ *Id.*

³⁴⁹ *Petition for Declaratory Ruling* at 2.

³⁵⁰ *Id.* at 4; *Public Interest Statement* at 8-11.

³⁵¹ *Petition for Declaratory Ruling* at 6; *Public Interest Statement* at 12.

has with it.³⁵² The parties explain that pursuant to the terms of their agreements, AWN would be obligated to provide its owners with wholesale services on their jointly owned facilities so that each of those entities then would offer retail wireless services to their respective customers, as competitors.³⁵³ The parties further contend that their respective spectrum access has not changed because AWN would provide these wholesale services using the same cellular, Broadband PCS and AWS licenses that it would receive at the close of the transaction. AWN would develop wholesale wireless plans that it would sell to GCI and ACS Wireless at a discount from prevailing market retail rates.³⁵⁴ AWN would not sell service to retail customers itself.³⁵⁵ The parties explain that, under the agreements, AWN must endeavor to provide functionalities and overall services to both GCI and ACS Wireless that are capable of meeting the Commission's and/or the Regulatory Commission of Alaska's requirements for services offered by CETCs providing mobile service.

126. Moreover, GCI and ACS Wireless assert that after the transaction each would have greater access to spectrum because each would have access to and the beneficial use of the additional spectrum that the other party is contributing.³⁵⁶ Further, GCI and ACS Wireless explain that each party also has agreed to provide excess capacity to AWN through their respective retained assets.³⁵⁷ The parties therefore argue that given all the sharing aspects of their agreements, the Commission should find that GCI and ACS Wireless would have access to spectrum sufficient to satisfy section 54.1003.

127. Although neither GCI nor ACS Wireless would hold absolute title to the facilities assigned to AWN, we have concluded above that the facilities assigned to AWN are GCI's and ACS Wireless's "own facilities" for the purpose of section 214(e) under the facts described here.³⁵⁸ Similarly, to accomplish our universal service policy goals for the award of Mobility Fund Phase I support, we conclude that in these particular circumstances the spectrum access requirements of section 54.1003 will be met. As a general matter, the Mobility Fund Phase I rules were designed to provide qualified recipients with an incentive to extend advanced mobile services in an efficient and cost effective manner, without prescribing any particular solution or limitations.³⁵⁹ In the *USF-ICC Transformation Order*, the Commission concluded that a provider's access to spectrum must support mobile broadband services meeting our requirements and conditions for the required timeframe, but, as described above, did not dictate that a recipient had to demonstrate such access in any particular licensing manner.³⁶⁰ In providing for such flexibility, the Commission recognized that not all applicants would use the same approach for accessing spectrum to achieve their Mobility Fund Phase I obligations. As we have stated previously, we acknowledge that Mobility Fund recipients will have a strong economic incentive to use existing facilities

³⁵² Petition for Declaratory Ruling at 13-14; *Brinkmann Letter* at 4-5.

³⁵³ Public Interest Statement at 8.

³⁵⁴ *Brinkmann Letter* at 4; Public Interest Statement at 11. The Applicants state that GCI and ACS Wireless will purchase all of their CMRS voice, wireless broadband, and public Wi-Fi services from AWN on a wholesale basis.

³⁵⁵ Public Interest Statement at 12.

³⁵⁶ *Id.* at 37-39; *Brinkmann Letter* at 3-4.

³⁵⁷ *Id.*

³⁵⁸ *See supra* ¶ 121.

³⁵⁹ Connect America Fund et al., WC Docket No. 10-90 et al., *Fourth Order on Reconsideration*, 27 FCC Rcd 8814, 8818 ¶ 10 (2012).

³⁶⁰ These requirements include: (1) providing mobile supported services over a 3G or better network that has achieved particular data rates under specified conditions, (2) providing reasonable collocation on new towers owned or managed by Mobility Fund Phase I recipients, and (3) complying with the Commission's voice and data roaming requirements. *USF/ICC Transformation Order*, 26 FCC Rcd at 17791-96 ¶¶ 359-68, 376-77, 379-82.

to offer services, especially given the specific build out obligations required in Mobility Fund Phase I.³⁶¹ It follows that recipients may use some combination of their own and others' spectrum authorizations as well as their own and others' facilities to achieve the level of service required by our Mobility Fund Phase I rules, provided that doing so otherwise complies with their statutory and regulatory requirements.³⁶²

128. Significant to this decision, and consistent with our conclusions above regarding GCI's and ACS Wireless's statutory compliance with section 214(e), we are persuaded that the post-transaction retained possessory ownership interests held by each in AWN are sufficient to ensure that each meet the spectrum access requirements of section 54.1003. Our conclusion here is supported by the fact that each party retains an ownership interest in the entity that is authorized to operate on the same spectrum previously held directly by one or the other of the parties or their subsidiaries, and each has gained increased access to additional spectrum through the jointly owned subsidiary of AWN. The underlying purpose of the spectrum access requirement served to ensure that, consistent with the serious undertakings implicit in bidding for support, winning bidders would have the spectrum necessary to be able to meet their obligations as quickly and successfully as possible.³⁶³ Since AWN is contractually obligated through the FNUA to provide equal non-discriminatory access to its services to both of its owners, the FNUA coupled with the post-transaction possessory ownership interest in the entity holding the spectrum and the facilities satisfy the purposes of section 54.1003.³⁶⁴ We therefore find that the contribution of network facilities and the assignment of spectrum licenses to AWN will not by itself deprive either GCI or ACS Wireless of "spectrum access" for the purposes of Mobility Phase I support and section 54.1003 of the Commission's rules.

C. Conditions Regarding Universal Service Support

129. We have determined above that the transfers of the underlying wireless network facilities and the licenses for the spectrum that the parties utilize to provide service will not render GCI or ACS Wireless ineligible to receive universal service high-cost support. There are, however, additional statutory and regulatory requirements with which the parties must comply to receive support and which necessitate imposing conditions with respect to high-cost support that the parties may receive.

130. The transaction creates a relationship among the Applicants, and among the Applicants and AWN, at the same time that the Commission is implementing once-in-a-generation reforms to the universal service support mechanisms. To ensure consistency with the universal service requirements of the Act and the Commission's reforms, we impose limited conditions on GCI, ACS Wireless and AWN with respect to universal service support. Those reforms are based, in part, on specific forms of new high-cost support being provided to at most one provider in any given area.³⁶⁵ While legacy support currently is not so limited, the Commission has decided that a party receiving new ongoing support in Phase II of the Mobility Fund will no longer receive any legacy support, even if generally the phase-down

³⁶¹ Connect America Fund et al., WC Docket No. 10-90 et al., *Fourth Order on Reconsideration*, 27 FCC Rcd 8814, 8818 ¶ 10 (2012).

³⁶² See 47 U.S.C. § 310(d); see e.g., Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604 ¶ 70 (2003).

³⁶³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17799 ¶ 396.

³⁶⁴ As described above, the Commission has proposed to adopt similar rules for Mobility Fund Phase II. Nothing in this ruling prejudices future Commission action in the ongoing Mobility Fund Phase II proceeding.

³⁶⁵ The Commission has implemented this approach in Connect America Phase I, Connect America Phase II, and Mobility Fund Phase I, and proposes to do the same in other new forms of Connect America high-cost support. See *id.* at 17717 ¶ 137 (Connect America Phase I); 17729 ¶ 170 (Connect America Phase II); 17779 ¶ 316 (Mobility Fund Phase I); 18073-74 ¶ 1136 (Mobility Fund Phase II); and 18086-87 ¶ 1195 (Connect America Fund Phase II).

of legacy support is still ongoing.³⁶⁶ Furthermore, the Commission proposed that new forms of Connect America high-cost support would be provided only in areas where there is no unsubsidized competitor offering the services to which Connect America is intended to provide access.³⁶⁷

131. *Compliance with statutory requirements.* Section 254(e) of the Act requires that a carrier be designated as an ETC pursuant to section 214(e) to receive universal service high-cost or low-income support and that carrier to use “that support only for the provision, maintenance, and upgrading of facilities and services for which the support was intended.”³⁶⁸ Under the terms of the joint venture, both GCI and ACS Wireless are required to maintain their individual CETC designations.³⁶⁹ To assure that support will be used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended,” the Applicants assert that they are “contractually committed” to remit to AWN, which will own the relevant facilities and provide the parties with the services for resale, all high-cost support that the Applicants receive.³⁷⁰

132. Consistent with sections 214(e) and 254(e), GCI and ACS Wireless may continue to receive federal universal service fund support so long as they continue to satisfy their federal and state ETC obligations. Under the facts described here, AWN itself, however, will not seek ETC designation in Alaska and therefore will not be eligible to receive universal service support directly from the federal universal service fund. Therefore, notwithstanding the Applicants’ suggestion that high-cost support could be remitted directly to AWN, universal service support payments may not be made directly to AWN because AWN will not be designated an ETC and otherwise fails to meet the statutory requirements to receive support.³⁷¹ Nevertheless, under the Applicants’ agreements, AWN will be responsible for the operation and maintenance of the combined network facilities.

133. We therefore require as a condition of this transaction, separate and apart from any contractual agreement between the parties, that both GCI and ACS Wireless remit federal high-cost support directly to AWN to be used “only for the provision, maintenance and upgrading of facilities for

³⁶⁶ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17831-32 ¶ 517. The Commission has sought comment on similarly eliminating legacy high-cost support based on the receipt of other new forms of ongoing Connect America high-cost support. See *id.* at 18063-65 ¶¶ 1095-1097. The Commission has not taken this approach with respect to Mobility Fund Phase I, which provides only one-time support and is therefore different in kind from legacy support.

³⁶⁷ See *id.* at 18070-71 ¶ 1124 (Mobility Fund Phase II), and 18085-86 ¶ 1191 (Connect America Fund Phase II) (when price cap carriers decline to make a state-level commitment in Phase II, proposing to exclude from competitive bidding areas with unsubsidized competitors). For purposes of support for fixed services under Connect America Fund Phase II, the Commission defined an unsubsidized competitor as “a facilities-based provider of residential fixed voice and broadband service that does not receive high-cost support.” See 47 C.F.R. § 54.5. The Commission has not yet defined “unsubsidized competitor” for purposes of support for mobile services. With regard to future awards of high cost support for mobile services as currently proposed by the Commission, we clarify that if either GCI or ACS Wireless receives support, and both offer service in the area where one is supported, under the transaction as proposed both would be utilizing AWN’s “subsidized” network to provide that service and the second would not be an “unsubsidized competitor.” We are not prejudging any future action we may take on questions regarding unsubsidized competitors in other contexts, including those raised in the *USF/ICC Transformation FNPRM*.

³⁶⁸ 47 U.S.C. § 254(e).

³⁶⁹ See Petition for Declaratory Ruling at 6.

³⁷⁰ *Id.* at 12.

³⁷¹ See 47 U.S.C. § 254(e) (providing that only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support); 47 U.S.C. § 214(e)(1) (providing that a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms).

which the support is intended.”³⁷² Lifeline support payments, which are intended to reimburse ETCs for the discount provided to eligible households, do not need to be remitted to AWN. To implement this condition, both GCI and ACS Wireless must maintain and be prepared to submit, upon request, records clearly detailing the funds remitted to AWN for compliance with this condition.³⁷³ The Commission or USAC may institute an inquiry on its own motion to examine GCI’s and ACS Wireless’s records and documentation to ensure that the high-cost support they receive is being used for the purpose for which it was intended.³⁷⁴ GCI and ACS Wireless are required to provide such records and documentation to the Commission and/or USAC upon request.

134. *Compliance with regulatory reform.* The *USF/ICC Transformation Order* generally requires that parties receiving new ongoing Connect America high-cost support will stop receiving any ongoing legacy high-cost support based on former pre-reform rules, and that the Commission will provide new forms of Connect America high-cost support to no more than one provider per area.³⁷⁵

135. Following the close of the proposed transaction, both GCI and ACS Wireless will be providing service primarily over the same network. Thus, the legacy support flowing to the two parties is effectively supporting only one network. The *USF/ICC Transformation Order* decided with respect to Mobility Fund Phase II, and proposes generally with respect to other new forms of ongoing Connect America high-cost support, that any party receiving legacy ongoing high-cost support will stop receiving such legacy support with respect to a particular area upon the receipt of any new form of ongoing high-cost support for that area.³⁷⁶ Accordingly, as an additional condition of the transaction, in the event that either of the parties experiences the termination of or a reduction in legacy support as a consequence of receiving Mobility Fund Phase II support consistent with the provisions of the *USF/ICC Transformation Order*, both parties will have their legacy support in the relevant area terminated or reduced on the same terms. In addition, to the extent that the Commission adopts any similar terminations or reductions in legacy support for the same reasons that is premised upon the receipt of support from other Connect America high-cost funds, both parties will incur any termination or reduction if either party receives the new form of Connect America high-cost support.

136. We also accept the Applicants’ voluntary commitments to spur broadband deployment throughout Remote Alaska, and we incorporate these commitments as conditions on our approval of this transaction.³⁷⁷ Specifically, the Applicants have agreed to, by December 31, 2014, (i) extend LTE capability to 35,000 POPs in Remote Alaska; (ii) extend 3G to six Remote Alaska communities; (iii) construct 2G macrosites in 12 communities in Remote Alaska; and (iv) maintain 2G service everywhere in Remote Alaska that it is offered today.³⁷⁸

137. To facilitate our ability and that of the public to monitor the Applicants’ compliance with these conditions, we impose a reporting requirement as an additional condition on our approval of this transaction. Specifically, we require AWN to file quarterly reports with the Commission detailing its

³⁷² 47 U.S.C. § 254(e).

³⁷³ 47 C.F.R. §§ 54.320(b) (ETCs must maintain records for at least ten years from the receipt of funding), 54.417 (recordkeeping requirements for recipients of Lifeline or Link Up support).

³⁷⁴ 47 U.S.C. §§ 220, 403.

³⁷⁵ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17729 ¶ 170.

³⁷⁶ See *supra* ¶ 130.

³⁷⁷ See Letter from Wilson Hughes, CEO, The Alaska Wireless Network, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-187, May 16, 2013.

³⁷⁸ *Id.*

compliance with these commitments. The first such report shall be filed with the FCC on or before October 15, 2013, and shall be for the period from the Closing Date of the transaction (as that term is defined in Section 8.1 of the Asset Purchase Agreement) until September 30, 2013. Thereafter, the reports shall be filed with the FCC on a calendar quarterly basis on or before the fifteenth day of the month following the end of the quarter. The requirement to submit compliance reports shall continue until such time as AWN meets each of the commitments enumerated above and reports its achievement to the Commission.

138. Such compliance reports shall specifically include: (i) a statement as to the status of the Company's compliance with each of the four individual commitments; (ii) the number of POPs in Remote Alaska that are receiving LTE services in accordance with the first commitment that were not receiving LTE services prior to the Closing Date; (iii) the additional Remote Alaska communities (including non-3G portions) that are receiving 3G services in accordance with the second commitment that were not receiving 3G services prior to the Closing Date; (iv) identification of the additional 2G macrosites that have been or are being constructed in Remote Alaska in accordance with the third commitment; (v) status of compliance with the fourth commitment, and (vi) future plans to achieve each of the individual commitments (which does not need to identify specific communities), including any anticipated delays or difficulties in meeting the deadlines.

VIII. CONCLUSION

139. While the assignment of licenses as proposed in the Application raises some competitive concerns, these concerns are mitigated by the efficiencies and public interest benefits of the transaction along with the conditions we impose herein. We find that the proposed transaction, as conditioned, would not result in competitive harm that would outweigh the public interest benefits of this transaction. Accordingly, we conclude that approval of these transactions as conditioned will serve the public interest.

IX. ORDERING CLAUSES

140. Accordingly, having reviewed the applications and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 214, 303(r), 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 303(r), 309, and 310(d), the applications for the assignment of licenses from ACS of Anchorage License Sub, Inc., ACS Wireless License Sub, Inc., GCI Communication Corp., and Unicom, Inc. to The Alaska Wireless Network, LLC are GRANTED to the extent specified in this Memorandum Opinion and Order and Declaratory Ruling and subject to the conditions specified herein.

141. IT IS FURTHER ORDERED that the above grant shall include authority for assignment to The Alaska Wireless Network, LLC of: (a) any license or authorization related to the facilities included in the subject transaction that are issued to ACS of Anchorage License Sub, Inc., ACS Wireless License Sub, Inc., GCI Communication Corp., or Unicom, Inc. during the Commission's consideration of the transfer of control applications or during the period required for consummation of the transaction following approval; and (b) any applications related to the facilities included in the subject transaction that are pending at the time of consummation.

142. 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 filed by Fireweed Communications, LLC and Jeremy Lansman to deny the applications for the assignment of wireless licenses to The Alaska Wireless Network, LLC is DENIED to the extent specified in this Memorandum Opinion and Order and Declaratory Ruling for the reasons stated herein.

143. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 214, the application for authority to provide resale international service to be held by The Alaska Wireless Network, LLC is

GRANTED.

144. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 214, the petition for declaratory ruling filed by General Communication, Inc. and Alaska Communications Systems Group, Inc. is GRANTED to the extent specified in this Memorandum Opinion and Order and Declaratory Ruling.

145. IT IS FURTHER ORDERED that this Memorandum Opinion and Order and Declaratory Ruling shall be effective upon release. Petitions for reconsideration under Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this Memorandum Opinion and Order and Declaratory Ruling.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
ACTING CHAIRWOMAN MIGNON L. CLYBURN**

Re: Applications of GCI Communication Corp., ACS Wireless License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. For Consent To Assign Licenses to The Alaska Wireless Network, LLC, WT Docket No. 12-187; WC Docket No 09-197.

Ensuring robust competition in all sectors of the wireless market is a priority for the Commission. For this reason, we should continue to review carefully all transfer of control and assignment of license applications and prioritize them for timely decision-making. The FCC has approved 95 percent of transaction applications within the 180-day informal timeline. Careful review is, however, especially important in a transaction like this one, which combines the facilities of two of the largest carriers that have long served Alaska. Of course, our ability to act expeditiously depends in large part on the responsiveness of the parties to the application. In this case, I am pleased that the Commission was able to approve the underlying transaction within two weeks of the parties' providing final amended language to protect against the inappropriate use of competitively sensitive information.

**STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *Applications of GCI Communications Corp., ACS Wireless License Sub, Inc. ACS of Anchorage License Sub, Inc. and Unicom, Inc. for Consent to Assign Licenses to the Alaska Wireless Network, LLC, WT Docket No. 12-187; WC Docket No. 09-197.*

Time is of the essence. It's true of the communications marketplace given the rapid evolution of technology and insatiable consumer demand. And it's especially true in Alaska, where the building season is short and winters are long. Hence, when two carriers plan on consolidating their operations in order to reinvest in their communities, we owe it to them to move quickly.

Unfortunately, that didn't happen here. Our informal transaction shot clock is 180 days, but we did not resolve this transaction until day 275. (To our credit, once Commissioners saw a draft order eleven days ago, we approved it in short order.) This—along with the continued calls for FCC process reform in last week's hearing before the House Energy and Commerce Committee's Subcommittee on Communications and Technology—highlights the necessity of codifying the 180-day shot clock and reexamining our procedures to make sure we meet it (perhaps using our forbearance procedural rules as a model). Parties seeking Commission approval for their transactions deserve to know when they will get an answer. There's nothing like a real deadline to keep us on track.