

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

In the Matter of)	
)	
Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC)	WT Docket No. 08-95
)	
For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and <i>De Facto</i> Transfer Leasing Arrangements)	File Nos. 0003463892, <i>et al.</i> , ITC-T/C- 20080613-00270, <i>et al.</i>
)	
and)	
)	
Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act)	File No. ISP-PDR-20080613-00012
)	

MEMORANDUM OPINION AND ORDER AND DECLARATORY RULING

Adopted: November 4, 2008

Released: November 10, 2008

By the Commission: Chairman Martin and Commissioner Tate issuing separate statements; Commissioner McDowell approving in part, concurring in part and issuing a statement; Commissioners Copps and Adelstein concurring in part, dissenting in part and issuing separate statements.

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I. INTRODUCTION

1. Cellco Partnership d/b/a Verizon Wireless (“Cellco Partnership”) and its wholly-owned subsidiary AirTouch Cellular (“AirTouch”) (collectively, “Verizon Wireless”) and Atlantis Holdings LLC (“Atlantis”) have filed a series of applications pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended (“Communications Act” or “Act”).¹ In these applications, Verizon Wireless and Atlantis (the “Applicants”) seek Commission approval of the transfer of licenses, authorizations, and spectrum manager and *de facto* transfer leasing arrangements through the transfer of control of subsidiaries of ALLTEL Corporation (“ALLTEL”) and partnerships in which ALLTEL has

¹ 47 U.S.C. §§ 214, 310(d).

either controlling or non-controlling general partnership interests (collectively, “ALLTEL Subsidiaries and Partnerships”).

2. These transfer of control applications pertain to licenses for the Part 22 Cellular Radiotelephone Service (“cellular”), the Part 22 Paging and Radiotelephone Service, the Part 24 Personal Communications Service (“PCS”), the Part 27 700 MHz Band Service, the Part 27 700 MHz Guard Band Service, the Part 90 Industrial/Business Pool Service, the Part 90 Private Carrier Paging Service, the Part 90 Specialized Mobile Radio (“SMR”) Service, the Part 101 Common Carrier Fixed Point-to-Point Microwave Service, the Part 101 Fixed Point-to-Point Microwave Service, the Part 101 39 GHz Auctioned Service, the Part 101 Local Television Transmission Service, and the Part 101 Local Multipoint Distribution Service,² as well as domestic and international Section 214 authorizations.³ The Applicants also have filed a petition for declaratory ruling that the public interest would be served by extending to the ALLTEL Subsidiaries and Partnerships and to their wireless licenses and spectrum leasing arrangements, the foreign ownership ruling that the Commission has previously issued to Verizon Wireless under section 310(b)(4) of the Communications Act.⁴

3. Pursuant to sections 214(a), 310(b)(4), and 310(d) of the Communications Act,⁵ we must determine whether the approval of these applications seeking consent to the transfer of licenses, spectrum leasing arrangements, and authorizations to Verizon Wireless and the grant of the petitions for declaratory ruling would serve the public interest, convenience, and necessity. Based on the record before us, we find that the Applicants have generally met that burden, with certain conditions. Because the proposed transaction would result in the combination of overlapping mobile communications coverage and services, we apply an initial screen to identify those markets in which there clearly is no competitive harm. The initial screen indicates that there is no competitive harm in many of the overlap markets,⁶ but identified 218 markets⁷ in which a market-by-market competitive analysis is necessary. Of

² File No. 0003463892 has been designated the lead application (“Application”) for the wireless radio services. The other applications contain an exhibit referring to the exhibits attached to file no. 0003463892. Thus, for convenience, when referring to these applications, we only cite to the lead Application. For a complete list of applications involved in this transaction, see Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer Licenses, Spectrum Manager and *De Facto* Transfer Leasing Arrangements, and Authorizations, and Request a Declaratory Ruling on Foreign Ownership, WT Docket No. 08-95, *Public Notice*, 23 FCC Rcd 10004 (2008). Some applications have been amended to reflect the cancellation of licenses and/or to add after-acquired licenses. See File No. 0003464703 (amended Oct. 31, 2008) (removing a canceled microwave license); File No. 0003464848 (amended Oct. 31, 2008) (removing a canceled microwave license); File No. 0003463892 (amended Oct. 31, 2008 and Nov. 4, 2008) (removing canceled paging and microwave licenses); File No. 0003464857 (amended Oct. 31, 2008) (adding after-acquired microwave licenses); File No. 0003465010 (amended Oct. 31, 2008) (removing a canceled microwave license); File No. 0003464786 (amended Oct. 31, 2008) (adding after-acquired microwave licenses); File No. 0003464784 (amended Oct. 31, 2008) (removing a canceled microwave license and adding after-acquired microwave licenses); File No. 0003464776 (amended Oct. 31, 2008) (removing canceled microwave licenses).

³ See File Nos. ITC-T/C-20080613-00270, ITC-T/C-20080613-00271, ITC-T/C-20080613-00272.

⁴ 47 U.S.C. § 310(b)(4). See Request for Declaratory Ruling on Foreign Ownership, File Nos. ISP-PDR-20070928-00012 (“Petition for Declaratory Ruling”).

⁵ 47 U.S.C. §§ 214(a), 310(b)(4), 310(d).

⁶ The Applicants state that there are 395 Cellular Market Areas (“CMAs”) in which Verizon Wireless and ALLTEL have spectrum overlaps. See Application, Exhibit 4: Spectrum Aggregation.

⁷ The markets identified by the initial screen were 218 CMAs and 116 Component Economic Areas (“CEAs”). The 218 CMAs and 116 CEAs are listed in Appendix C. For convenience, in this Memorandum Opinion and Order and Declaratory Ruling we simply refer to the 218 CMAs. See Appendix C.

the 218 markets identified by the initial screen, Verizon Wireless has voluntarily committed to divest 100 markets. For the remaining 118 markets, we conduct a market-by-market competitive analysis to determine the potential consequences of increasing Verizon Wireless's market share and spectrum holdings in those markets. We find that competitive harm is unlikely in most of these markets, primarily because multiple other service providers currently in these markets would be an effective competitive constraint on the behavior of the merged entity. With regard to five local areas, however, our analysis indicates that absent a remedy, competitive harms would likely result. In these areas, we impose narrowly-tailored conditions that will effectively remedy the potential for these particular harms.

4. With the voluntary divestitures which we impose as conditions, plus the additional divestitures we require, this Memorandum Opinion and Order and Declaratory Ruling essentially enforces the same limits on consolidation that we have applied since we adopted our case-by-case approach to evaluating proposed mobile transactions. Thus, it prevents entirely consolidation in individual markets from advancing to a point at which it would threaten competition and potentially harm consumers. Further, we find that it is in the public interest to impose additional conditions regarding Roaming, Universal Service Fund receipts, and E911 location accuracy, as described herein.

II. BACKGROUND

A. Description of Applicants

1. Verizon Wireless

5. Verizon Wireless is a joint venture of Verizon Communications Inc. ("Verizon") and Vodafone Group Plc. ("Vodafone").⁸ Verizon, as a holder of 55 percent ownership interest,⁹ has majority control of Cellco Partnership and its subsidiaries, including AirTouch.¹⁰

6. Verizon Wireless is a general partnership headquartered in Basking Ridge, New Jersey.¹¹ It is the largest wireless company in the United States based on revenues,¹² as well as the number of retail customers.¹³ For the fiscal year of 2007, Verizon Wireless had revenues of approximately \$43.9 billion.¹⁴ At the end of the second quarter in 2008, Verizon Wireless had 68.7 million customers,

⁸ See Verizon Communications Inc., Form 10-K, at 7 (filed Feb. 28, 2008) ("Verizon Form 10-K"), available at <http://www.sec.gov/Archives/edgar/data/732712/000119312508042027/d10k.htm> (last visited Aug. 4, 2008); Verizon Communications, 2007 Annual Report, at 26 ("Verizon Annual Report"), available at http://investor.verizon.com/financial/quarterly/pdf/07_annual_report.pdf (last visited Aug. 1, 2008). While Verizon Wireless is not a reporting company under the Securities Exchange Act of 1934 and does not make SEC filings, information about Verizon Wireless is included in earnings announcements and SEC filings by Verizon Communication, Inc. See Verizon Wireless, Investors, <http://news.vzw.com/investor/index.html> (last visited Aug. 1, 2008).

⁹ See Verizon Form 10-K at 7; Verizon Annual Report at 26.

¹⁰ See Application, Public Interest Statement at 1.

¹¹ Application, Public Interest Statement at 3; Verizon Wireless, About Us, Facts-at-a-Glance, <http://aboutus.vzw.com/ata glance.html> ("Verizon Wireless Facts") (last visited Aug. 1, 2008).

¹² See Verizon Form 10-K at 7; Verizon Wireless, About Us, Overview, <http://aboutus.vzw.com/aboutusoverview.html> ("Verizon Wireless Overview") (last visited Aug. 1, 2008); Verizon Wireless Facts at 1.

¹³ See Verizon Form 10-K at 7; Verizon Wireless Overview at 1; Verizon Wireless Facts at 1.

¹⁴ Verizon Annual Report at 2, 26; Verizon Wireless, Press Kit, at 2 (May 30, 2008) ("Verizon Wireless Press Kit"), available at http://news.vzw.com/pdf/Verizon_Wireless_Press_Kit.pdf (last visited Aug. 1, 2008); Verizon Wireless Overview at 1; Verizon Wireless Facts at 1.

including 66.7 million retail customers (who are directly served and managed by the company and who buy its branded services).¹⁵ Verizon Wireless provides wireless voice and data services and equipment sales across the United States.¹⁶ Verizon Wireless utilizes Code Division Multiple Access (“CDMA”) technology, along with CDMA 2000 1xRTT (“1xRTT”), Evolution-Data Optimized (“EvDO”) and EvDO Revision A (“EvDO Rev. A”)¹⁷ technology for wireless broadband services, operating on 800 MHz cellular and 2 GHz PCS spectrum.¹⁸ Its digital network, as of the second quarter of 2008, covers a total aggregate population (“POPs”) of almost 268 million in approximately [REDACTED] of the geographic area of the United States,¹⁹ provides service in 49 of the 50 largest metropolitan areas,²⁰ and covers 333 rural service areas (“RSAs”).²¹ Verizon Wireless’s licenses cover approximately 298 million POPs in [REDACTED] of the U.S. geographic area, including in 435 RSAs.²² Verizon Wireless was also the high bidder for licenses in the recent 700 MHz Auction 73.²³

7. Verizon is headquartered in New York and incorporated in Delaware.²⁴ It provides wireline, wireless, and broadband services to mass market, business, government and wholesale customers.²⁵

¹⁵ See Verizon Communications Inc., Form 8-K, Exhibit 99.1 at 1 (filed July 22, 2008), *available at* <http://www.sec.gov/Archives/edgar/data/732712/000119312508155338/dex99.htm> (last visited Aug. 4, 2008); Verizon Wireless, Investor Relations, Business Units, Domestic Wireless, <http://investor.verizon.com/business/wireless.aspx> (“Verizon Domestic Wireless”) (last visited Aug. 1, 2008). At the time it filed the Application seeking consent to the proposed transaction, Verizon Wireless stated that it had 67 million customers. See Application, Public Interest Statement at 2.

¹⁶ See Verizon Domestic Wireless at 1.

¹⁷ Verizon Wireless’s EvDO network is available in 248 major metropolitan areas and 232 major airports across the United States. Application, Public Interest Statement at 12. Verizon Wireless has deployed EvDO Rev. A technology wherever it has deployed EvDO technology. See Letter from Kathleen Q. Abernathy, Counsel for Atlantis Holdings LLC, and Nancy J. Victory, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 3 (Sept. 17, 2008) (“Information Request Response”).

¹⁸ See Application, Public Interest Statement at 2; Verizon Form 10-K at 8. At the end of second quarter 2008, Verizon Wireless’s network provided 1xRTT and EvDO/EvDO Rev. A technology to 267.8 and 256.5 million POPs in approximately [REDACTED] and [REDACTED] of the U.S. geographic area, including in 333 and 287 RSAs, respectively. See Information Request Response at 3. Verizon reported that, as of December 2007, EvDO Rev. A was available to more than 240 million Americans. See Verizon Form 10-K at 8; Verizon, Investor Relations, Company Profile, Corporate History, Recent History, http://investor.verizon.com/profile/history/history_001.aspx (“Verizon Recent History”) (last visited Aug. 4, 2008); Verizon Press Kit at 3.

¹⁹ See Information Request Response at 3. As of December 30, 2007, Verizon Wireless reported that its digital network covered approximately 265 million POPs. See Verizon Form 10-K at 8; Verizon Wireless Press Kit at 3.

²⁰ Verizon Form 10-K at 8; *see also* Verizon Recent History at 1.

²¹ See Information Request Response at 3. The Applicants state that the network coverage data includes only the network using 800 MHz cellular and 2 GHz broadband PCS spectrum. *Ex Parte* Letter from Eric W. DeSilva and Tom W. Davidson, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (Oct. 14, 2008) (“Verizon Wireless October 14, 2008 Informational *Ex Parte* Letter.”)

²² See Information Request Response at 3. The Applicants state that the license coverage data includes 800 MHz cellular, 2 GHz broadband PCS spectrum, 700 MHz, and Advanced Wireless Services (“AWS”) spectrum. Verizon Wireless October 14, 2008 Informational *Ex Parte* Letter at 1.

²³ See Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73, *Public Notice*, 23 FCC Rcd 4572 (WTB 2008). This spectrum is not included in the license coverage data provided in the Information Request Response. See Verizon Wireless October 14, 2008 Informational *Ex Parte* Letter at 1.

²⁴ Verizon Form 10-K at 3; Verizon Recent History at 1.

Verizon operates two network-based business units – the wireline unit, which includes Verizon Telecom and Verizon Business, and Verizon Wireless.²⁶ Verizon Telecom provides communications services, including local telephone services and nationwide long distance, broadband, video and data, and entertainment and information services over a fiber-optic network in 28 states and Washington, D.C. for residential and small business customers.²⁷ Verizon Business provides voice, data, and Internet communications services, along with advanced communications solutions in networking, security, mobility, hosting, and information technology solutions to medium and large businesses and government entities.²⁸ At the end of December 2007, Verizon’s wireline network included more than 41 million wireline access lines and 8.2 million broadband connections nationwide.²⁹ Verizon’s network also includes approximately 13 million miles of local inner-city and long-distance all-digital fiber-optic systems (“FiOS”).³⁰ For the fiscal year of 2007, Verizon’s wireline operations generated approximately \$50.3 billion in gross revenues,³¹ and Verizon, which is traded on the New York Stock Exchange,³² generated consolidated operating revenues of approximately \$93.5 billion.³³

8. Vodafone, a public limited company incorporated in England with a registered office in Newbury, England,³⁴ holds a non-controlling 45 percent interest in Cellco Partnership.³⁵ Vodafone provides mobile voice and data, paging, and internet services in 25 countries in Europe, Asia, the Middle East, and the United States through its subsidiaries, joint ventures, and other investments.³⁶ It holds interests in 33 licensed network operators in 27 countries.³⁷ Since 2006, Vodafone has entered into agreements in the development and marketing services under dual brand logos with network operators in countries where it does not have an equity stake.³⁸ As of March 31, 2008, Vodafone had 260 million

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²⁵ Verizon, Investor Relations, Company Profile, Overview, <http://investor.verizon.com/profile/overview.aspx> (“Verizon Overview”) (last visited Aug. 4, 2008).

²⁶ See Verizon Annual Report at 18, 44; Verizon, Investor Relations, Business Units, <http://investor.verizon.com/business/index.aspx> (“Verizon Business Units”) (last visited Aug. 4, 2008).

²⁷ See Verizon Form 10-K at 3; Verizon Annual Report at 23, 24; Recent History at 2; Verizon, Investor Relations, Business Units, Wireline – Verizon Telecom, <http://investor.verizon.com/business/wireline.aspx> (last visited Aug. 4, 2008).

²⁸ See Verizon Form 10-K at 3; Verizon Annual Report at 23, 24.

²⁹ Verizon Form 10-K at 5; Verizon Recent History at 1.

³⁰ See Verizon Recent History at 1-2.

³¹ Verizon Form 10-K at 3; Verizon Annual Report at 20, 24.

³² Verizon Form 10-K at 16; Verizon, Corporate History, <http://investor.verizon.com/profile/history/index.aspx> (last visited Aug. 4, 2008).

³³ Verizon Annual Report at 2, 5, 20; Verizon Recent History at 2.

³⁴ Vodafone, About Vodafone, http://www.vodafone.com/start/investor_relations/vodafone_at_a_glance0.html (last visited Aug. 4, 2008) (“About Vodafone”).

³⁵ Verizon Form 10-K at 7.

³⁶ See About Vodafone; Vodafone, Fact Sheet, http://www.vodafone.com/start/investor_relations/vodafone_at_a_glance0/fact_sheet.html (last visited Aug. 4, 2008).

³⁷ See Vodafone, Structure and Management, http://www.vodafone.com/start/investor_relations/structure_and_management.html (last visited Aug. 4, 2008).

³⁸ See About Vodafone.

subscribers worldwide calculated on a proportionate basis with Vodafone's interests.³⁹ Its ordinary shares are listed on the London Stock Exchange and its American Depository Shares are listed on the New York Stock Exchange.⁴⁰ Its revenue for the year ending March 31, 2008 was £35,478 million.⁴¹

2. ALLTEL Corporation and Atlantis Holdings LLC

9. ALLTEL, incorporated in Delaware and headquartered in Little Rock, Arkansas, provides wireless communication services to individuals and businesses, primarily in non-major metropolitan and rural markets.⁴² Based on revenues earned and the number of customers served, it is the fifth largest wireless company in the United States.⁴³ For the fiscal year of 2007, ALLTEL reported revenues of \$8.8 billion.⁴⁴ At the end of the first quarter in 2008, ALLTEL reported that it provides voice and advanced data services to 13 million customers in 34 states,⁴⁵ primarily throughout the Southwest and portions of the Northeast, Southwest, and upper Midwest.⁴⁶ Operating on 800 MHz cellular and 2 GHz PCS spectrum, ALLTEL provides wireless voice and advanced data communication services across the United States,⁴⁷ utilizing CDMA technology, including 1xRTT and EvDO (both EvDO Rev. A and its slower variant EvDO Revision 0 ("EvDO Rev. 0")) in order to provide enhanced wireless data services.⁴⁸ Its digital network covers almost 76 million POPs in a geographic area covering almost [REDACTED] of the United States, including in 254 RSAs.⁴⁹ ALLTEL also provides roaming services using a Global System for Mobile Communications ("GSM") network (including General Packet Radio Service ("GPRS") and Enhanced Data Rates for GSM Evolution ("EDGE") technology) to approximately 8.5 million POPs in a geographic area covering almost [REDACTED] of the U.S., including in 113 RSAs.⁵⁰

³⁹ *Id.*; Vodafone Group Plc, Annual Report For the year ended March 31 2007, at 1, 4 ("Vodafone Annual Report"), available at http://www.vodafone.com/etc/medialib/attachments/agm_2008.Par.77336.File.dat/2008_Annual_Report_FINAL.pdf (last visited Aug. 4, 2008).

⁴⁰ Vodafone Annual Report at 1, 4.

⁴¹ *Id.* at 1, 4, 30.

⁴² See ALLTEL Corporation, Form 10-K (Amendment No. 1) at 1, 2 (filed June 16, 2008) ("ALLTEL Form 10-K"), available at <http://www.sec.gov/Archives/edgar/data/65873/000006587308000016/alltel10ka061608.htm> (last visited Aug. 5, 2008).

⁴³ *Id.* at 1.

⁴⁴ ALLTEL Fact Sheet at 1.

⁴⁵ See ALLTEL Corporation, Form 8-K, Exhibit 99.A at 1 (filed May 15, 2008) ("ALLTEL May 15, 2008 Form 8-K"), available at <http://www.sec.gov/Archives/edgar/data/65873/000006587308000012/alltelx99a051508.htm> (last visited Aug. 5, 2008); Application, Public Interest Statement at 4.

⁴⁶ Application, Public Interest Statement at 4.

⁴⁷ See ALLTEL Form 10-K at 1: ALLTEL May 15, 2008 Form 8-K at 1.

⁴⁸ See Application, Public Interest Statement at 4-5. As of December 31, 2007, 1xRTT and EvDO Rev. 0 data coverage by ALLTEL was available to 96% and 76% of its customer base, respectively. See Application, Public Interest Statement at 5; ALLTEL Form 10-K at 2. 1xRTT, EvDO, and EvDO Rev. A technology was available to 76, 57.9, and [REDACTED] POPs in a geographic area covering [REDACTED], [REDACTED], and [REDACTED] of the U.S., including 254, 211, and [REDACTED] RSAs, respectively. See Information Request Response at 4.

⁴⁹ See Information Request Response at 4; see also discussion *supra* note 21 (discussing network coverage data).

⁵⁰ See Information Request Response at 5. ALLTEL has deployed GPRS throughout its entire GSM network and EDGE technology to approximately [REDACTED] POPs in a geographic area covering [REDACTED] of the U.S., which includes [REDACTED] RSAs. See *id.*

ALLTEL's licenses cover approximately 83.4 million POPs in [REDACTED] of the U.S. geographic area, including in 269 RSAs.⁵¹

10. On November 16, 2007, ALLTEL was acquired by Atlantis, a Delaware limited liability company ultimately controlled by the principals of TPG Capital, L.P. ("TPG") and The Goldman Sachs Group, Inc. ("Goldman Sachs").⁵² Atlantis is a holding company for certain investment funds ultimately controlled by the principals of TPG and Goldman Sachs.⁵³ TPG and Goldman Sachs each have negative control of Atlantis, because TPG and Goldman Sachs each control one of Atlantis's two managing members, TPG Media 5 - AIV 1, L.P.⁵⁴ and GS Capital Partners VI Parallel, L.P. (collectively, "Managing Members"), respectively.⁵⁵ Moreover, the Managing Members, which are responsible for the management, operation, and control of the business and affairs of Atlantis, also have negative control of ALLTEL by virtue of each company's negative control of Atlantis's board of directors.⁵⁶ Since the merger, ALLTEL common stock is no longer publicly traded on any stock exchange.⁵⁷

B. Description of Transaction

11. On June 5, 2008, Verizon Wireless, AirTouch, Abraham Merger Corporation ("Merger Sub"), ALLTEL, and Atlantis entered into an Agreement and Plan of Merger ("Merger Agreement") which would result in AirTouch acquiring ALLTEL in a cash merger.⁵⁸ AirTouch will pay

⁵¹ See *id.* at 4; see also discussion *supra* note 22 (discussing license coverage data). The Applicants note that ALLTEL's cellular and PCS licenses cover an area that includes 267 RSAs. In the Application, the Applicants state that ALLTEL had cellular and PCS licenses that covered 265 RSAs, but they informed the Commission in the Joint Opposition that they had not included two additional RSAs in the original footprint calculations. See Information Request Response at 4.

⁵² See ALLTEL Corporation, Form 602, File No. 0003382148, at Attachments 1, 2, 5 (April 2, 2008) ("ALLTEL Form 602"); Applications of ALLTEL Corporation, Transferor, and Atlantis Holdings LLC, Transferee, For Consent To Transfer Control of Licenses, Leases and Authorizations, WT Docket No. 07-128, *Memorandum Opinion and Order*, 22 FCC Rcd 19517, 19518 ¶ 3 (2007) ("ALLTEL-Atlantis Order"); ALLTEL May 15, 2008 Form 8-K at 7. See, e.g., Lead Application, File No. 0003040113 (filed June 6, 2007); Notification of Consummation, File No. 0003257136 (filed Dec. 12, 2007) (notifying the Commission of the consummation of lead application, File No. 0003040113, on November 16, 2007). The transaction was completed through the merger of Atlantis Merger Sub, Inc., a wholly-owned subsidiary of Atlantis, with and into ALLTEL, with ALLTEL surviving as a privately-held, wholly-owned subsidiary of Atlantis. See ALLTEL-Atlantis Order, 22 FCC Rcd at 19518 ¶ 3; ALLTEL Form 10-K at 1; ALLTEL May 15, 2008 Form 8-K at 7.

⁵³ ALLTEL-Atlantis Order, 22 FCC Rcd at 19518 ¶ 3.

⁵⁴ The managing member controlled by TPG, as discussed in the ALLTEL-Atlantis Order, was TPG Atlantis V-A, L.P. See *id.* The Applicants state that the name of this partnership was changed to TPG Media V - AIV 1, L.P. See Verizon Wireless October 14, 2008 Informational *Ex Parte* Letter at 1.

⁵⁵ ALLTEL Form 602 at Attachment 5; ALLTEL-Atlantis Order, 22 FCC Rcd at 19518 ¶ 3. TPG Media 5 - AIV 1, L.P. replaced the TPG managing member of Atlantis, TPG Atlantis V-A, L.P., at the time of the consummation of the merger.

⁵⁶ ALLTEL Form 602 at Attachment 5; ALLTEL-Atlantis Order, 22 FCC Rcd at 19518 ¶ 3. Other investment funds ultimately controlled by the principals of TPG and/or Goldman Sachs hold non-controlling interests in Atlantis. ALLTEL Form 602 at Attachment 5; ALLTEL-Atlantis Order, 22 FCC Rcd at 19518 ¶ 3.

⁵⁷ See ALLTEL Form 10-K at 1 (stating that, on November 30, 2007, ALLTEL's common stock was deregistered and is no longer listed on any stock exchange or quotation system).

⁵⁸ See ALLTEL Corporation, Form 8-K at 1 (filed June 11, 2008) ("ALLTEL June 11, 2008 Form 8-K"), available at <http://www.sec.gov/Archives/edgar/data/65873/000089882208000656/eightk.htm> (last visited Aug. 5, 2008); (continued....)

approximately \$5.9 billion for 100 percent of the equity of ALLTEL,⁵⁹ and assume ALLTEL's outstanding long-term debt.⁶⁰ Merger Sub, a Delaware corporation and a wholly-owned subsidiary of AirTouch, will merge with and into ALLTEL.⁶¹ ALLTEL will continue its corporate existence as a direct wholly-owned subsidiary of AirTouch, an indirect wholly-owned subsidiary of Verizon Wireless.⁶² At the effective time of the merger, ALLTEL's issued and outstanding common stock and options will be canceled and converted into the right to receive cash as calculated according to a formula specified in the Merger Agreement.⁶³ Each share of Merger Sub's common stock will be converted into one share of common stock in ALLTEL, the surviving corporation.⁶⁴

12. Upon consummation of the transaction, all licenses, spectrum leasing arrangements, and authorizations currently held by Atlantis through ALLTEL and its subsidiaries will be controlled by Verizon Wireless.⁶⁵ The combined licenses of the Applicants, before any divestitures, will cover almost 300.8 million POPs in [REDACTED] of the U.S. geographic area, including 446 RSAs. Further, the CDMA networks of the Applicants, before any divestitures, will cover approximately 287.5 million POPs in [REDACTED] of the U.S. geographic area, including 400 RSAs.⁶⁶

13. The Applicants assert that the proposed transaction is in the public interest and would provide considerable benefits for both ALLTEL's and Verizon Wireless's customers.⁶⁷ The Applicants' state their footprints are complementary, with ALLTEL being present predominantly in the center and rural parts of the United States,⁶⁸ while Verizon Wireless operates mostly in large metropolitan areas.⁶⁹ The Applicants further claim that the proposed transaction also will be beneficial to Verizon Wireless's customers, because it will allow Verizon Wireless to enter 11 new CMAs and parts of 43 other CMAs, therefore creating a larger, seamless national network footprint.⁷⁰ As a result of the proposed merger, the Applicants state that Verizon Wireless will be able to add additional spectrum capacity, and thus better support the high demand for broadband services and applications.⁷¹ The Applicants further state that Verizon Wireless will be able to bring to ALLTEL's rural customers its advanced broadband technology

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Verizon Communications Inc., Form 8-K at 1 (filed June 11, 2008) ("Verizon June 11, 2008 Form 8-K"), available at <http://www.sec.gov/Archives/edgar/data/732712/000119312508131890/d8k.htm> (last visited Aug. 5, 2008).

⁵⁹ See ALLTEL June 11, 2008 Form 8-K at 1; Verizon June 11, 2008 Form 8-K at 1.

⁶⁰ See ALLTEL Form 10-K at 2.

⁶¹ See ALLTEL June 11, 2008 Form 8-K at 1; Verizon June 11, 2008 Form 8-K at 1; Application, Public Interest Statement at 5.

⁶² See ALLTEL June 11, 2008 Form 8-K at 1; Verizon June 11, 2008 Form 8-K at 1; Application, Public Interest Statement at 5-6.

⁶³ See Application, Public Interest Statement at 6; Merger Agreement at 3.

⁶⁴ Merger Agreement at 4.

⁶⁵ Application, Public Interest Statement at 7.

⁶⁶ Information Request Response at 6.

⁶⁷ See Application, Public Interest Statement at 9-29.

⁶⁸ ALLTEL's footprint covers 265 RSAs and 1,455 counties having a population density of less than 100 persons per square mile. See *id.* at 11.

⁶⁹ See *id.* at 9.

⁷⁰ See *id.* at 13-14, 23.

⁷¹ See *id.* at 11, 24.

and services, especially EvDO Rev. A, which is currently unavailable in most ALLTEL markets.⁷² They maintain that ALLTEL's customers will be able to enjoy improved service, expanded network coverage, a greater choice of wireless service, devices, and rate plans.⁷³ The Applicants highlight that ALLTEL's customers will also benefit from the Open Development Initiative ("ODI"), which will allow them to use any device on Verizon Wireless's network that meets the company's published technical standards.⁷⁴ In addition, the Applicants note that using the recently won 700 MHz spectrum, Verizon Wireless will be able to swiftly deploy Long Term Evolution ("LTE") technology in the rural ALLTEL markets.⁷⁵ Lastly, the Applicants state that the proposed transaction will not cause material harm to competition in any geographic or product market.⁷⁶ They maintain that the proposed transaction's combination of Verizon Wireless's and ALLTEL's complementary assets and capabilities will create a stronger and more efficient wireless competitor with a larger wireless footprint and a broader variety of broadband and data services and content offerings.⁷⁷

C. Transaction Review Process

1. Commission Review

14. On June 13, 2008, pursuant to section 310(d) of the Communications Act,⁷⁸ the Applicants filed applications seeking consent to the proposed transfer of control of licenses and *de facto* transfer and spectrum manager leasing arrangements held by ALLTEL Subsidiaries and Partnerships from Atlantis to Verizon Wireless.⁷⁹ The Applicants also filed an application, pursuant to section 214 of the Communications Act,⁸⁰ seeking consent to the transfer of control of three international and one domestic section 214 authorizations to Verizon Wireless,⁸¹ and a petition seeking declaratory rulings that it is in the public interest for ALLTEL's subsidiaries and partnerships to have indirect foreign ownership in excess of the 25 percent benchmark under section 310(b)(4) of the Communications Act.⁸² On June 25, 2008, the Commission released a Public Notice seeking comment on the proposed transaction.⁸³ The

⁷² See *id.* at 9, 12-13. Specifically, the Applicants state that 1xRTT, EvDO, and EvDO Rev. A technology will be available to 287.5, 268.4, and 257.8 million POPs, representing 400, 373, and 293 RSAs, respectively. See Information Request Response at 6. The combined entity will continue to provide a GSM network to 8.5 million POPs. See *id.*

⁷³ See Application, Public Interest Statement at 10.

⁷⁴ See *id.* at 10, 18-22.

⁷⁵ See *id.* at 13-14, 23-25.

⁷⁶ See *id.* at 28-30.

⁷⁷ See *id.* at 27-30.

⁷⁸ 47 U.S.C. § 310(d).

⁷⁹ See discussion of wireless radio service applications filed *supra* note 2.

⁸⁰ 47 U.S.C. § 214.

⁸¹ File No. ITC-T/C-20080613-00270 (Kin Network Inc.) seeks Commission approval for the transfer of an international and domestic section 214 from Atlantis to Verizon Wireless. File nos. ITC-T/C-20080613-00271 (ALLTEL Communications, LLC) and ITC-T/C-20080613-00272 (Western Wireless, LLC) seek Commission approval for the transfer of international section 214s from Atlantis to Verizon Wireless.

⁸² 47 U.S.C. § 310(b)(4). See *supra* note 4.

⁸³ See Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer Licenses, Spectrum Manager and De Facto Transfer Leasing Arrangements, and Authorizations, and Request a Declaratory Ruling on Foreign Ownership, WT Docket No. 08-95, *Public Notice*, 23 FCC Rcd 10004 (2008) ("Public Notice").

Public Notice established a pleading cycle for the applications and petitions for declaratory ruling, with petitions to deny due July 25, 2008, oppositions due August 4, 2008, and replies due August 11, 2008.

15. On July 22, 2008, Verizon Wireless filed an *ex parte* letter describing preliminary discussions that it had had with the United States Department of Justice (“DOJ”) and committing to divest 85 cellular markets.⁸⁴ In the letter, Verizon Wireless stated that it was “committing to divest overlapping properties comprising the entire states of North Dakota and South Dakota, as well as overlapping properties comprising partial areas within 16 additional states: California, Colorado, Georgia, Idaho, Illinois, Kansas, Minnesota, Montana, Nevada, New Mexico, North Carolina, Ohio, South Carolina, Utah, Virginia and Wyoming.”⁸⁵ In addition, Verizon Wireless made certain commitments to regional, small and/or rural wireless providers with which it has entered into roaming agreements.⁸⁶ Specifically, Verizon Wireless stated that each “regional, small and/or rural carrier that has a roaming agreement with ALLTEL will have the option to keep the rates set forth in that roaming agreement in force for the full term of the agreement, notwithstanding any change of control or termination for convenience provisions that would give Verizon Wireless the right to accelerate the termination of such agreement,” and each “regional, small and/or rural carrier that currently has roaming agreements with both ALLTEL and Verizon Wireless will have the option to select either agreement to govern all roaming traffic between it and post-merger Verizon Wireless.”⁸⁷

16. In response to the Verizon Wireless July 22, 2008 *Ex Parte* Filing, the Rural Telecommunications Group, Inc. (“Rural Telecommunications Group”) filed a motion, on July 23, 2008, requesting an extension of the petition to deny deadline, along with an extension of the opposition and reply deadlines, of seven days “in order to give interested parties sufficient time to analyze and respond to new information submitted by the applicants.”⁸⁸ The Rural Telecommunications Group’s request for a seven-day extension of the pleading cycle was supported by The National Telecommunications Cooperative Association (“NTCA”) and the Law Firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP (“Blooston *et al.*”), on behalf of its clients, in their comments filed on July 24, 2008.⁸⁹ Additionally, on July 24, 2008, the Consumers Union, Free Press, Media Access Project, and Public Knowledge (“Consumers Union *et al.*”) submitted a letter requesting that the Commission establish a pleading cycle with petitions to deny due August 22, 2008, oppositions due September 2, 2008, and

⁸⁴ *Ex Parte* Letter from John T. Scott, III, Vice President & Deputy General Counsel Regulatory Law, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 22, 2008) (“Verizon Wireless July 22, 2008 *Ex Parte* Filing”).

⁸⁵ Verizon Wireless July 22, 2008 *Ex Parte* Filing at 1. In regard to these divestitures, Verizon Wireless stated that “[t]he specific spectrum, operations and other assets that will be divested in each market will be determined as part of ongoing discussions with the Department of Justice.” *Id.* at 1-2. For a list of the markets that Verizon Wireless voluntarily committed to divest, see *infra* Appendix B.

⁸⁶ Verizon Wireless July 22, 2008 *Ex Parte* Filing at 2.

⁸⁷ *Id.*

⁸⁸ Motion for Extension of Time, filed by Rural Telecommunications Group, Inc., WT Docket No. 08-95, at 1 (filed July 23, 2008) (“Rural Telecommunications Group Extension Motion”). Rural Telecommunications Group also filed an erratum to the Rural Telecommunications Group Extension Motion in order to correct contact information. Erratum to Motion for Extension of Time, filed by Rural Telecommunications Group, Inc., WT Docket No. 08-95 (filed July 24, 2008).

⁸⁹ Comments in Support of Rural Telecommunications Group Motion for Extension of Time, filed by National Telecommunications Cooperative Association, at 1 (filed July 24, 2008); Comments in Support of Rural Telecommunications Group Motion for Extension of Time, filed by Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, at 1 (filed July 24, 2008).

replies due September 9, 2008.⁹⁰ On July 24, 2008, the Applicants filed an opposition to the Rural Telecommunications Group Extension Motion⁹¹ and the *ex parte* presentation opposing the request for an extension of time filed by Consumers Union *et al.*⁹² The Rural Telecommunications Group subsequently filed a reply to the Applicants' opposition.⁹³

17. The Wireless Telecommunications Bureau ("Bureau"), on July 24, 2008, released an order extending the deadlines to file petitions to deny, oppositions, and replies by 15 days.⁹⁴ The Bureau found that the justification offered by the Rural Telecommunications Group for an extension of the pleading cycle was valid, and further found that it was in the public interest to extend the petition to deny deadline, along with the opposition and reply deadlines, by fifteen days to allow interested parties time to consider and analyze the information in the Verizon Wireless July 22, 2008 *Ex Parte* Filing and file petitions to deny.⁹⁵ Accordingly, the revised deadline to file petitions to deny was August 11, 2008, oppositions were due August 19, 2008, and replies were due August 26, 2008.⁹⁶

18. Following release of the Extension Order, the Commission received 16 petitions to deny by the revised deadline of August 11, 2008; 25 comments were also filed by that date.⁹⁷ The Applicants filed a Joint Opposition to Petitions to Deny and Comments ("Joint Opposition") on August 19, 2008.⁹⁸ On August 26, 2008, the Commission received 14 replies to the Joint Opposition.⁹⁹ In addition, the Commission received 26 other comments regarding the transaction.¹⁰⁰

19. On October 7, 2008, Verizon Wireless filed an *ex parte* letter reporting that Verizon Wireless, following additional discussions with DOJ, offered to divest assets in 15 additional markets.¹⁰¹ In the letter, Verizon Wireless stated that it was committing to divest one of the overlapping properties in 15 additional cellular markets.¹⁰² These 15 markets are located in Alabama, Arizona, Georgia, Iowa,

⁹⁰ Letter from Larry A. Blosser, Attorney, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 08-95 (July 24, 2008).

⁹¹ Opposition of Atlantis Holdings LLC and Cellco Partnership d/b/a Verizon Wireless to Motion for Extension of Time of Rural Telecommunications Group, Inc., WT Docket No. 08-95 (filed July 24, 2008).

⁹² Written *Ex Parte* Presentation from Kathleen Q. Abernathy, Counsel to Atlantis Holdings LLC, and Nancy J. Victory, Counsel to Cellco Partnership, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 08-95 (July 24, 2008).

⁹³ Reply to Atlantis and Verizon Wireless Opposition to RTG Motion for Extension of Time (filed July 24, 2008).

⁹⁴ 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, *Order*, 23 FCC Rcd 11210 (WTB 2008) ("Extension Order").

⁹⁵ *See id.* at 11214 ¶ 11.

⁹⁶ *See id.*

⁹⁷ *See* Appendix A.

⁹⁸ Joint Opposition to Petition to Deny and Comments (filed Aug. 19, 2008) ("Joint Opposition").

⁹⁹ *See* Appendix A.

¹⁰⁰ *See id.*

¹⁰¹ *Ex Parte* Letter from John T. Scott, III, Vice President & Deputy General Counsel Regulatory Law, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (Oct. 7, 2008) ("Verizon Wireless October 7, 2008 *Ex Parte* Filing").

¹⁰² Verizon Wireless October 7, 2008 *Ex Parte* Filing at 2.

Minnesota, Nebraska, New Mexico, North Carolina, South Carolina, and Utah.¹⁰³ Verizon Wireless further clarified that “[a]s with the initial 85 markets, Verizon Wireless is voluntarily committing to divest one of the overlapping properties in each of the 15 markets, together with the spectrum, customers and other assets used by that property. Accordingly, the Commission’s approval of the merger may be conditioned on fulfilling that divestiture commitment in these additional markets.”¹⁰⁴

20. *Confidential Materials*. On July 29, 2008, the Bureau issued a Protective Order to ensure that any confidential or proprietary documents submitted to the Commission would be adequately protected from public disclosure.¹⁰⁵ The Bureau received four requests to review the proprietary or confidential information that is in the record. Also on July 29, 2008, 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, 2006, June 30, 2007, and December 31, 2007 would be placed into the record and adopted a protective order pursuant to which the Applicants and third parties would be allowed to review the specific NRUF reports and LNP data placed into the record.¹⁰⁶ The Bureau received 14 requests to review the NRUF and LNP data that is in the record.

21. *Commission Request for Documents*. On September 11, 2008, pursuant to section 308(b) of the Communications Act,¹⁰⁷ the Bureau requested a number of documents and additional information from the Applicants.¹⁰⁸ Among other things, the Bureau asked the Applicants to provide further information regarding the public interest benefits of the transaction, including license and network coverage, services provided, timelines for roll out of EvDO Rev. A and LTE, and the merged entity’s improved ability to meet public safety requirements.¹⁰⁹ The Bureau also requested information on the Applicants’ plans for its GSM network post-transaction.¹¹⁰ The Applicants provided responsive

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ 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, *Protective Order*, 23 FCC Rcd 11154 (WTB 2008) (“Protective Order”).

¹⁰⁶ 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 Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports Placed into the Record, Subject to Protective Order, WT Docket No. 08-95, CC Docket No. 99-200, *Public Notice*, 23 FCC Rcd 11398 (WTB 2008); 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, CC Docket No. 99-200, *Protective Order*, 23 FCC Rcd 11401 (WTB 2008) (“NRUF Protective Order”).

¹⁰⁷ 47 U.S.C. § 308(b).

¹⁰⁸ Letter from James D. Schlichting, Acting Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Kathleen Q. Abernathy, Akin Gump Strauss Hauer & Feld LLP, and Nancy J. Victory, Wiley Rein LLP (Sept. 11, 2008) (“Information Request”).

¹⁰⁹ *See id.* at Attachment.

¹¹⁰ *See id.* The Commission requested that the response to the Information Request be filed by September 22, 2008. *See id.*

documents and information on September 17, 2008, some of which was provided subject to the provisions of the Protective Order.¹¹¹

22. Verizon Wireless provided additional information, at the request of Bureau Staff, on October 1, 2008, regarding the state of wireless competition in three markets – CMA085 Johnson City-Kingsport-Bristol, TN/VA, CMA646 Tennessee 4-Hamblen, and CMA650 Tennessee 8-Johnson.¹¹² Further, on October 14, 2008, Verizon Wireless filed two additional *ex parte* letters in response to inquiries from Commission Staff.¹¹³ In one *ex parte* letter, it provided additional information regarding the figures provided regarding license and network coverage areas in the Information Request Response and clarified the organizational structure of Atlantis.¹¹⁴ It also submitted an *ex parte* letter stating that, “[I]n response to an inquiry and request initiated by staff of the International Bureau, . . . Verizon Wireless will place into a trust the voting rights associated with ALLTEL’s interests in Illinois Valley Cellular RSA # 2-II Partnership (“Illinois Valley”), Northwest Missouri Cellular Limited Partnership (“Northwest Missouri”), and Pittsfield Cellular Telephone Company (“Pittsfield”), thereby precluding Vodafone’s interest in Verizon Wireless from any voting rights in the partnerships.”¹¹⁵ Verizon Wireless filed another *ex parte* letter on November 3, 2008, in which it made additional commitments regarding roaming, the “phase down” of competitive eligible telecommunications carriers (“ETC”) high cost support, and compliance with improved wireless E911 location accuracy measures.¹¹⁶

2. Department of Justice Review

23. The Antitrust Division of DOJ reviews telecommunications mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that may substantially lessen competition.¹¹⁷ The Antitrust Division’s review is limited solely to an examination of the competitive effects of the acquisition, without reference to national security, law enforcement, or other public interest considerations. The Antitrust Division reviewed the proposed merger between Verizon Wireless and ALLTEL.¹¹⁸ As a result

¹¹¹ *See id.* at 1.

¹¹² *Ex Parte* Letter from Kathleen Q. Abernathy, Akin Gump Strauss Hauer & Feld LLP, and Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 1, 2008) (“Verizon Wireless October 1, 2008 *Ex Parte* Letter”).

¹¹³ Verizon Wireless October 14, 2008 Informational *Ex Parte* Letter; *Ex Parte* Letter from Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 14, 2008) (“Verizon Wireless October 14, 2008 Trust *Ex Parte* Letter”).

¹¹⁴ Verizon Wireless October 14, 2008 Informational *Ex Parte* Letter at 1.

¹¹⁵ Verizon Wireless October 14, 2008 Trust *Ex Parte* Letter at 1.

¹¹⁶ *Ex Parte* Letter from John T. Scott, III, Vice President & Deputy General Counsel Regulatory Law, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 3, 2008) (“Verizon Wireless November 3, 2008 *Ex Parte* Letter”).

¹¹⁷ 15 U.S.C. § 18. DOJ does not review mergers below certain statutorily mandated dollar thresholds, which are currently approximately \$63 million (where certain other factors are present) and \$252 million. 15 U.S.C. § 18a.

¹¹⁸ Department of Justice, *Press Release*, Justice Department Requires Divestitures in Verizon’s Acquisition of ALLTEL (Oct. 30, 2008), available at <http://www.usdoj.gov/opa/pr/2008/October/08-at-970.html> (last visited Oct. 31, 2008). DOJ also reviewed some markets, as part of the proposed transaction, that ALLTEL and the predecessors of Verizon had divested in the prior ALLTEL-Midwest and Bell Atlantic-GTE transactions, respectively. Some of the business units and licenses that were divested as part of the ALLTEL-Midwest transaction were acquired by Verizon Wireless and some of the business units and licenses that were divested as part of the Bell Atlantic-GTE transaction were subsequently acquired by ALLTEL. The DOJ final judgments in the ALLTEL-Midwest and Bell Atlantic-GTE transactions preclude the reacquisition of the business units in these markets by the combined entity. (continued....)

of its analysis, DOJ concluded that the proposed merger was likely to substantially lessen competition in certain markets where Verizon Wireless and ALLTEL are among the most significant competitors,¹¹⁹ and entered into a settlement with the Applicants designed to eliminate the anticompetitive affects of the transaction in these markets.¹²⁰ On October 30, 2008, DOJ filed a series of documents, including complaints and preservation of assets stipulations and orders, with the United States District Court for the District of Columbia (“DC District Court”) and United States District Court for the District of Minnesota (“Minnesota District Court” and, together with DC District Court, “District Courts”) reflecting this settlement,¹²¹ and the parties jointly filed proposed Final Judgments with the District Courts.¹²² DOJ will allow the merger to proceed subject to the Applicants’ divestiture of the business

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After review of these markets and to facilitate the consummation of the proposed transaction, DOJ will allow the combined entity to reacquire the wireless system assets in 4 CMAs divested as part of the ALLTEL-Midwest Wireless transaction provided it sells these reacquired assets. See *United States of America and State of Minnesota v. ALLTEL Corporation and Midwest Wireless Holdings L.L.C.*, Memorandum of Plaintiff United States in Support of Joint Motions to Modify Final Judgment, Case No. 06-3631, at 3, 6-8 (filed Oct. 30, 2008) (“DOJ ALLTEL-Midwest Memorandum”). DOJ will also allow the combined entity to reacquire the wireless system assets in 25 CMAs divested as part of the Bell Atlantic-GTE transaction provided it sells the reacquired assets in 3 CMAs. See *United States of America v. Bell Atlantic Corporation, GTE Corporation, and Vodafone AirTouch PLC*, Memorandum of Plaintiff United States in Support of Joint Motions to Modify Final Judgment and to Establish Procedures to Modify Final Judgment, Case No. 1:99-cv-01119, at 7 (filed Oct. 30, 2008) (“DOJ Bell Atlantic-GTE Memorandum”).

¹¹⁹ See *United States of America et al. v. Verizon Communications Inc. and ALLTEL Corporation*, Complaint, Case No. 08-cv-1878, at 1, 8-10 ¶¶ 1, 17-20, 21 (filed Oct. 30, 2008) (“DOJ Verizon-ALLTEL Complaint”); *United States of America et al. v. Verizon Communications Inc. and ALLTEL Corporation*, Competitive Impact Statement, Case No. 08-cv-1878, at 6-12 (filed Oct. 30, 2008) (“DOJ Verizon-ALLTEL Competitive Impact Statement”); DOJ ALLTEL-Midwest Memorandum at 1-2, 6-8. Because the settlement agreement between DOJ and the Applicants has already been executed, we consider moot the argument of Cellular South, Inc. that the Commission should dismiss the applications without prejudice to resubmission “once Verizon Wireless gets its ducks in order with DOJ.” *Petition to Deny of Cellular South, Inc.* at 5-6 (filed Aug. 11, 2008) (“Cellular South Petition to Deny”). Nevertheless, the Commission has independent authority to review the transaction separate and apart from DOJ’s review. See, e.g., *Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., Transferor to Sirius Satellite Radio Inc., Transferee*, MB Docket No. 07-57, *Memorandum Opinion and Order and Report and Order*, 23 FCC Rcd 12348, 12365-66 ¶ 32 (2008) (“*XM-Sirius Order*”). The Commission need not await DOJ’s determination regarding the proposed transaction before acting.

¹²⁰ See DOJ Verizon-ALLTEL Complaint at 7-12; DOJ Bell Atlantic-GTE Memorandum at 14-15; DOJ ALLTEL-Midwest Memorandum at 6-8. All DOJ filings regarding this matter are available at <http://www.usdoj.gov/atr/cases/verizon3.htm>, <http://www.usdoj.gov/atr/cases/alltel2.htm>, or <http://www.usdoj.gov/atr/cases/indx133.htm>.

¹²¹ See generally DOJ Verizon-ALLTEL Complaint; DOJ Verizon-ALLTEL Competitive Impact Statement; *United States of America et al. v. Verizon Communications Inc., and ALLTEL Corporation*, Preservation of Assets Stipulation and Order, Case No.08-cv-1878 (filed Oct. 30, 2008) (“DOJ Verizon-ALLTEL Stipulation and Order”); DOJ Bell Atlantic-GTE Memorandum; *United States of America v. Bell Atlantic Corporation, GTE Corporation, and Vodafone AirTouch PLC*, Order and Stipulation with respect to Modified Final Judgment and Preservation of Assets, Case No. 1:99-cv-01119 (filed Oct. 30, 2008) (“DOJ Bell Atlantic-GTE Modified Stipulation and Order”); DOJ ALLTEL-Midwest Memorandum; *United States of America and State of Minnesota v. ALLTEL Corporation and Midwest Wireless Holdings L.L.C.*, Modified Preservation of Assets Stipulation, Case No. 06-3631 (filed Oct. 30, 2008) (“DOJ ALLTEL-Midwest Stipulation”); *United States of America and State of Minnesota v. ALLTEL Corporation and Midwest Wireless Holdings L.L.C.*, Modified Preservation of Assets Order, Case No. 06-3631 (filed Oct. 30, 2008) (“DOJ ALLTEL-Midwest Order”).

¹²² See *United States of America et al. v. Verizon Communications Inc., and ALLTEL Corporation*, Final Judgment, Case No. 08-cv-1878 (filed Oct. 30, 2008) (“DOJ Verizon-ALLTEL Proposed Final Judgment”); *United States of America v. Bell Atlantic Corporation, GTE Corporation, and Vodafone AirTouch PLC*, Modified Final Judgment, Case No. 1:99-cv-01119 (filed Oct. 30, 2008) (“DOJ Bell Atlantic-GTE Proposed Modified Final Judgment”); (continued....)

units and related assets of either Verizon Wireless or ALLTEL in 100 markets.¹²³ These 100 markets are the same markets that Verizon Wireless voluntarily committed to divest based on initial discussions with DOJ.¹²⁴

24. Specifically, under the terms of the settlement between the Applicants and DOJ, Verizon Wireless and ALLTEL have agreed to divest certain cellular licenses and related operational and network assets (including certain employees, retail sites, and subscribers) in 100 markets.¹²⁵ These assets will be transferred to a court-appointed management trustee (“Management Trustee”), who will manage them while Verizon Wireless seeks a third-party buyer.¹²⁶ The buyer must be someone who, in DOJ’s sole judgment, has the intent and capability of being an effective competitor to Verizon Wireless.¹²⁷ Verizon Wireless has a period of 120 days from consummation of the transaction (which can be extended for up to 60 days) to sell the assets to a third-party buyer or divest the assets to a divestiture trustee (“Divestiture Trustee”), who will both manage and market the assets for sale to a third party.¹²⁸

25. The settlement also requires that a single purchaser acquire all of the divested business units and related assets in each of eighteen separate regions.¹²⁹ DOJ states that these “CMAs have been grouped to reflect the fact that carriers frequently are more competitive where they serve contiguous areas.”¹³⁰ DOJ also states that “in deciding on the particular packages . . . , [it] recognized that selling areas with significant linkages across these areas provides greater assurance that the buyer will be an

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United States of America and State of Minnesota v. ALLTEL Corporation and Midwest Wireless Holdings L.L.C., Modified Final Judgment, Case No. 06-3631 (filed Oct. 30, 2008) (“DOJ ALLTEL-Midwest Proposed Modified Final Judgment”).

¹²³ The divestiture of the operating business and related assets in 94 markets is required in the Verizon-ALLTEL filings in case no. 08-cv-1878 filed in DC District Court on October 30, 2008. See DOJ Verizon-ALLTEL Proposed Final Judgment at 3-5; DOJ Verizon-ALLTEL Complaint at 3, 19-21 ¶ 1, Appendix A; DOJ Verizon-ALLTEL Competitive Impact Statement at 12-15. The divestiture of the operating business and related assets in 3 markets is required in the Bell Atlantic-GTE filings in case no. 1:99-cv-01119 filed in DC District Court on October 30, 2008. See DOJ Bell Atlantic-GTE Proposed Modified Final Judgment at 31, 34-36; DOJ Bell Atlantic-GTE Memorandum at 7, 14-15. The divestiture of the operating business and related assets in 4 markets is required in the ALLTEL-Midwest filings in case no. 1:99-cv-01119 filed in DC District Court on October 30, 2008. See DOJ ALLTEL-Midwest Proposed Modified Final Judgment at 3, 24-26; DOJ ALLTEL-Midwest Memorandum at 3, 6-8. One of the markets required to be divested in the ALLTEL-Midwest filings is also required to be divested in the Verizon-ALLTEL filings. Thus, there are 100 DOJ divestiture markets in total.

¹²⁴ See Verizon Wireless July 22, 2008 *Ex Parte* Filing at 1; Verizon Wireless October 7, 2008 *Ex Parte* Filing at 1-2; see also discussion *supra* paras. 15, 19; Appendix B.

¹²⁵ See DOJ Verizon-ALLTEL Proposed Final Judgment at 3-6, 9; DOJ Verizon-ALLTEL Competitive Impact Statement at 2, 7-10; DOJ Bell Atlantic-GTE Proposed Modified Final Judgment at 1-2, 30-36; DOJ ALLTEL-Midwest Proposed Modified Final Judgment at 1-2, 24-27; see also Verizon Wireless July 22, 2008 *Ex Parte* Filing at 1; Verizon Wireless October 7, 2008 *Ex Parte* Filing at 1-2; Appendix B.

¹²⁶ See DOJ Verizon-ALLTEL Stipulation and Order at 9-15; DOJ Bell Atlantic-GTE Modified Stipulation and Order at 8-14; DOJ ALLTEL-Midwest Stipulation at 8-16; DOJ ALLTEL-Midwest Order at 9-19.

¹²⁷ DOJ Verizon-ALLTEL Proposed Final Judgment at 11; Bell Atlantic-GTE Proposed Modified Final Judgment at 34; DOJ ALLTEL-Midwest Proposed Modified Final Judgment at 27.

¹²⁸ See DOJ Verizon-ALLTEL Proposed Final Judgment at 9; Bell Atlantic-GTE Modified Final Judgment at 34-35; DOJ ALLTEL-Midwest Proposed Modified Final Judgment at 8-18.

¹²⁹ See DOJ Verizon-ALLTEL Proposed Final Judgment at 12-16; DOJ Verizon-ALLTEL Competitive Impact Statement at 13-17; see also Bell Atlantic-GTE Proposed Modified Final Judgment at 35; DOJ ALLTEL-Midwest Proposed Modified Final Judgment at 27.

¹³⁰ DOJ Verizon-ALLTEL Competitive Impact Statement at 16.

effective competitor.”¹³¹ In recognizing that these packages could dissuade potential buyers from attempting to acquire the divested business units,¹³² DOJ states that they struck “a balance between these potential issues by creating bundles that are geographically linked but allowing potential buyers to effectively suggest larger packages by bidding conditionally on multiple packages.”¹³³ Further, DOJ has the sole discretion, upon consultation with the states that joined in the settlement, to “allow even smaller packages of assets as appropriate to ensure successful divestiture.”¹³⁴

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

26. Pursuant to sections 214(a) and 310(d) of the Communications Act, we must determine whether the Applicants have demonstrated that the proposed transfers of control of licenses and authorizations will serve the public interest, convenience, and necessity.¹³⁵ In making this assessment, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act,¹³⁶ other applicable statutes, and the Commission’s rules.¹³⁷ If the transaction does not violate a statute or rule, we next consider whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.¹³⁸ We then employ a balancing test weighing any potential public interest harms of the

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* at 16-17.

¹³⁴ *Id.* at 17.

¹³⁵ 47 U.S.C. §§ 214(a), 310(d).

¹³⁶ Section 310(d), 47 U.S.C. § 310(d), requires that we consider the applications as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. *See, e.g., XM-Sirius Order* 23 FCC Rcd at 12363-64 ¶ 30; Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases, WT Docket No. 07-208, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 12463, 12476-77 ¶ 26 (rel. Aug. 1, 2008) (“*Verizon Wireless-RCC Order*”); Applications of AT&T Inc. and Dobson Communications Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-153, *Memorandum Opinion and Order*, 22 FCC Rcd 20295, 20301 ¶ 10 (2007) (“*AT&T-Dobson Order*”); *ALLTEL-Atlantis Order*, 22 FCC Rcd at 19519-20 ¶ 7; AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74, *Memorandum Opinion and Order*, 22 FCC Rcd 5662, 5672 ¶ 17 (2007) (“*AT&T-BellSouth Order*”); Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc., WT Docket No. 05-339, *Memorandum Opinion and Order*, 21 FCC Rcd 11526, 11535 ¶ 16 (2006) (“*ALLTEL-Midwest Wireless Order*”); Applications of Nextel Communications, Inc. and Sprint Corporation, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 13976 ¶ 20 (2005) (“*Sprint-Nextel Order*”); Applications of Western Wireless Corporation and ALLTEL Corporation, WT Docket No. 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13053, 13062 ¶ 17 (2005) (“*ALLTEL-Western Wireless Order*”); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21542 ¶ 40 (2004) (“*Cingular-AT&T Wireless Order*”).

¹³⁷ *See, e.g., XM-Sirius Order*, 23 FCC Rcd at 12363-64 ¶ 30; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20301 ¶ 10; *ALLTEL-Atlantis Order*, 22 FCC Rcd at 19519-20 ¶ 7; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21542-43 ¶ 40.

¹³⁸ *See, e.g., XM-Sirius Order*, 23 FCC Rcd at 12363-64 ¶ 30; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20301 ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20.

proposed transaction against any potential public interest benefits.¹³⁹ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.¹⁴⁰ If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we must designate the application for hearing under section 309(e) of the Communications Act.¹⁴¹

27. Our public interest evaluation also necessarily encompasses the “broad aims of the Communications Act,” which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest.¹⁴² Our public interest analysis may also entail assessing whether the proposed transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.¹⁴³ In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.¹⁴⁴

¹³⁹ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12363-64 ¶ 30; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062-63 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

¹⁴⁰ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12363-64 ¶ 30; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976-77 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

¹⁴¹ 47 U.S.C. § 309(e). See *XM-Sirius Order*, 23 FCC Rcd at 12363-64 ¶ 30; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672-73 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543-44 ¶ 40; see also Application of EchoStar Communications Corporation (A Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (A Delaware Corporation) (Transferee), CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559, 20620 ¶ 153 (2002). Section 309(e)’s requirement applies only to those applications to which Title III of the Act applies, i.e., radio station licenses. We are not required to designate for hearing applications for the transfer or assignment of Title II authorizations when we are unable to find that the public interest would be served by granting the applications, see *ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979), but of course may do so if we find that a hearing would be in the public interest.

¹⁴² E.g., *XM-Sirius Order*, 23 FCC Rcd at 12364-65 ¶ 31; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12479 ¶ 28; *AT&T-Dobson Order*, 22 FCC Rcd at 20303 ¶ 12; *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

¹⁴³ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12364-65 ¶ 31; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12479 ¶ 28; *AT&T-Dobson Order*, 22 FCC Rcd at 20303-04 ¶ 12; *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064-65 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

¹⁴⁴ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12364-65 ¶ 31; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12479 ¶ 28; *AT&T-Dobson Order*, 22 FCC Rcd at 20304 ¶ 12; *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

28. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.¹⁴⁵ The Commission and 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 DOJ.¹⁴⁶ Like 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. DOJ, however, reviews telecommunications mergers pursuant to section 7 of the Clayton Act, and if it wishes to block a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.¹⁴⁷ Under the Commission's review, the Applicants must show that the transaction will serve the public interest; otherwise the application is set for hearing. DOJ's review is also limited solely to an examination of the competitive effects of the acquisition, without reference to diversity, localism, or other public interest considerations.¹⁴⁸ 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.¹⁴⁹

29. Our analysis recognizes that a proposed transaction may lead to both beneficial and harmful consequences.¹⁵⁰ 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.¹⁵¹ Our public

¹⁴⁵ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12365-66 ¶ 32; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12479-80 ¶ 29; *AT&T-Dobson Order*, 22 FCC Rcd at 20304 ¶ 13; *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 21; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13977-78 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42.

¹⁴⁶ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12365-66 ¶ 32; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12479-80 ¶ 29; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42.

¹⁴⁷ 15 U.S.C. § 18.

¹⁴⁸ See *XM-Sirius Order*, 23 FCC Rcd at 12365-66 ¶ 32; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12479-80 ¶ 29.

¹⁴⁹ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12365-66 ¶ 32; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12479-80 ¶ 29; *AT&T-Dobson Order*, 22 FCC Rcd at 20305 ¶ 13; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11538 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42. The detailed explanation of the differences between the scopes of the competitive analyses performed by the Commission and DOJ refutes the argument of one commenter that "there is no reason for the FCC to duplicate the effort of DOJ in evaluating the competitive effects of the merger." Comments of Randolph J. May at 3-4 (filed Aug. 19, 2008).

¹⁵⁰ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12366 ¶ 33; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12480-81 ¶ 30; *AT&T-Dobson Order*, 22 FCC Rcd at 20305 ¶ 13; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

¹⁵¹ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12366 ¶ 33; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12480-81 ¶ 30; *AT&T-Dobson Order*, 22 FCC Rcd at 20305 ¶ 13; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; (continued....)

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.¹⁵² Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.¹⁵³ 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.”¹⁵⁴ 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.¹⁵⁵ Despite this broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission’s responsibilities under the Communications Act and related statutes.¹⁵⁶ Thus, we generally will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.¹⁵⁷

30. This Memorandum Opinion and Order and Declaratory Ruling is set forth, as follows, in six principal components. First, we address the issues raised regarding the qualifications of the Applicants. Second, we assess the potential horizontal and vertical harms presented by the transaction. Third, we evaluate the public interest benefits that Applicants claim will result from the transaction. Fourth, we

(Continued from previous page) _____

ALLTEL-Midwest Wireless Order, 21 FCC Rcd at 11538 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

¹⁵² See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12366 ¶ 33; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12480-81 ¶ 30; *AT&T-Dobson Order*, 22 FCC Rcd at 20305 ¶ 14; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 22; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 20; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

¹⁵³ 47 U.S.C. § 303(r). See also *XM-Sirius Order*, 23 FCC Rcd at 12366 ¶ 33; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12480-81 ¶ 30; *AT&T-Dobson Order*, 22 FCC Rcd at 20305 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 20; *Sprint-Nextel Order*, 20 FCC Rcd at 13978-79 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

¹⁵⁴ 47 U.S.C. § 214(c). See also *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12480-81 ¶ 30; *AT&T-Dobson Order*, 22 FCC Rcd at 20305-06 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 20; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

¹⁵⁵ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12366 ¶ 33; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12480-81 ¶ 30; *AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 14; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 22; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538-39 ¶ 20; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43. See also *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043, 1049 (7th Cir. 1992) (discussing Commission’s authority to trade off reduction in competition for increase in diversity in enforcing public interest standard).

¹⁵⁶ See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12480-81 ¶ 30; *AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 14; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674-75 ¶ 22; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11539 ¶ 20; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

¹⁵⁷ See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12480-81 ¶ 30; *AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11539 ¶ 20; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

weigh the public interest harms posed by, and the benefits to be gained from, the transaction and, to the extent that likely competitive harms exceed the likely benefits of the transaction, discuss the remedies required to ameliorate the public interest harms posed by the transaction. Next, we discuss other issues that were raised by commenters and petitioners (collectively, “commenters”) in this proceeding. We conclude by examining whether the public interest would be served by extending to the ALLTEL Subsidiaries and Partnerships and to their wireless licenses and spectrum leasing arrangements, the foreign ownership ruling that the Commission has previously issued to Verizon Wireless under section 310(b)(4) of the Communications Act.

IV. QUALIFICATIONS OF APPLICANTS

31. When evaluating applications for consent to transfer control of licenses, spectrum leasing arrangements, and authorization, section 310(d) of the Communications Act requires the Commission to determine whether the proposed transaction will serve “the public interest, convenience and necessity.”¹⁵⁸ 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.”¹⁵⁹ Therefore, as a threshold matter, the Commission must determine whether the applicants to the proposed transaction meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission’s rules.¹⁶⁰

32. In determining whether applicants have the requisite character to be Commission licensees, we look to the Commission's character policy initially developed in the broadcast area as guidance in resolving similar questions in common carrier license transfer proceedings.¹⁶¹ Under this policy, the Commission previously has stated that it will review allegations of misconduct directly before it,¹⁶² as

¹⁵⁸ 47 U.S.C. § 310(d).

¹⁵⁹ *Id.* §§ 308, 310(d). See also *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12477-78 ¶ 27; *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 11; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

¹⁶⁰ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see also *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12477-78 ¶ 27; *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 11; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

¹⁶¹ See, e.g., *WorldCom, Inc. and Its Subsidiaries (Debtors-in-Possession), Transferor, and MCI, Inc., Transferee*, WC Docket No. 02-215, *Memorandum Opinion and Order*, 18 FCC Rcd. 26484, 26493 ¶ 13 (2003) (“WorldCom Order”). See also *Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees*, *Report, Order and Policy Statement*, 102 F.C.C.2d 1179, 1210-11 ¶¶ 60-61 (1986), *Memorandum Opinion and Order*, 1 FCC Rcd 421 (1986); *Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications*, *Policy Statement and Order*, 5 FCC Rcd 3252 (1990), *Memorandum Opinion and Order*, 6 FCC Rcd 3448 (1991), *Memorandum Opinion and Order*, 7 FCC Rcd 6564 (1992). The Commission applies its broadcast character standards to applicants and licensees in the other radio services. See, e.g., 1990 Character Policy Statement, 5 FCC Rcd at 3253 ¶ 10 (adopting 47 C.F.R. § 1.17 to apply prohibition against misrepresentations and material omissions to applicants, licensees, and permittees in all radio services).

¹⁶² See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12477-78 ¶ 27; *AT&T-Dobson Order*, 22 FCC Rcd at 20303 ¶ 11; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

well as conduct that takes place outside of the Commission.¹⁶³ With respect to Commission-related conduct, the Commission has stated that all violations of provisions of the Act, or of the Commission's rules or polices, are predictive of an applicant's future truthfulness and reliability, and thus have a bearing on an applicant's character qualifications.¹⁶⁴ The Commission previously has determined that in its review of character issues, it will consider forms of adjudicated, non-Commission related misconduct that include: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition.¹⁶⁵

33. When evaluating transfers of control or assignments under section 310(d), the Commission does not, as a general rule, re-evaluate the qualifications of the transferor, unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.¹⁶⁶ Commenters have raised concerns about Atlantis's qualifications, so we will address these allegations below. Conversely, section 310(d) obligates the Commission to consider whether the proposed transferee is qualified to hold Commission licenses.¹⁶⁷ However, no issues have been raised with respect to the basic qualifications of the transferee, Verizon Wireless, which was found qualified to hold Commission licenses as recently as August 1, 2008.¹⁶⁸ We therefore find that there is no reason to re-evaluate the basic qualifications of Verizon Wireless at this time.

¹⁶³ See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12477-78 ¶ 27; *AT&T-Dobson Order*, 22 FCC Rcd at 20303 ¶ 11; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

¹⁶⁴ *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12478 n.119; *AT&T-Dobson Order*, 22 FCC Rcd at 20303 n.60; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 172; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 184; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 n.85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47; Policy Regarding Character Qualifications In Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, Gen. Docket No. 81-500, *Report and Order and Policy Statement*, 100 F.C.C. 2d 1179, 1209-10 ¶ 57 (1986), *modified*, 5 FCC Rcd 3252 (1990), *recon. granted in part*, 6 FCC Rcd 3448 (1991), *modified in part*, 7 FCC Rcd 6564 (1992).

¹⁶⁵ See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12478 n.120; *AT&T-Dobson Order*, 22 FCC Rcd at 20303 n.61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 n.86; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

¹⁶⁶ See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12477-78 ¶ 27; *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 11; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063-64 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44. See also Stephen F. Sewell, Assignment and Transfers of Control of FCC Authorizations under Section 310(d) of the Communications Act of 1934, 43 FED. COMM. L.J. 277, 339-40 (1991). The policy of not approving assignments or transfers when issues regarding the licensee's basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. See *id.* The hearing designation is required under Section 309(e) of the Communications Act, 47 U.S.C. § 309(e), only if the record presents a "substantial and material question of fact" whether grant of the application would serve the public interest, convenience, and necessity.

¹⁶⁷ See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20302-03 ¶ 11; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13590 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362 ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

¹⁶⁸ See generally *Verizon Wireless-RCC Order*, 23 FCC Rcd 12463.

34. *The Record*. Ritter Communications, Inc. and Central Arkansas Rural Cellular Limited Partnership (collectively, “Arkansas Limited Partners”) allege that Atlantis made misrepresentations and/or lacked candor in its previous application to acquire ALLTEL, which demonstrates that it lacks the requisite character qualifications to be a Commission licensee.¹⁶⁹ Arkansas Limited Partners claim that the short period of time between the Commission’s consent to the Atlantis-ALLTEL merger and the filing of the current applications indicates that Atlantis never intended to provide any of the planned benefits to rural areas that the Commission relied upon in consenting to the merger.¹⁷⁰ Arkansas Limited Partners further argue that this short timeframe between Atlantis’s acquisition of ALLTEL and the filing of the applications to transfer control of ALLTEL to Verizon Wireless indicates that Atlantis acquired ALLTEL principally for the purpose of a profitable resale to Verizon Wireless, not providing services to the public.¹⁷¹ Arkansas Limited Partners therefore request that the applications be denied or designated for hearing.¹⁷²

35. The Applicants, in their Joint Opposition, dismiss Arkansas Limited Partners’ allegations of misrepresentation and lack of candor as frivolous and unfounded, arguing that they rely only on speculation and inference.¹⁷³ They claim that the facts stated in the Arkansas Limited Partners’ petition are untrue and submit a detailed explanation of the chronology of the events leading to the beginning of the merger negotiations between Atlantis and Verizon Wireless.¹⁷⁴ Specifically, they explain that the capital markets crisis at the end of 2007 caused a credit crunch that resulted in unanticipated difficulties in raising the necessary capital for their planned future investments in ALLTEL.¹⁷⁵ The Applicants state that, while sufficient funds were raised to finance the growth and operations of ALLTEL for several years, including its participation, albeit unsuccessful, in the 700 MHz auction, TPG and Goldman Sachs were concerned about Atlantis’s ability to finance costly, long-term investments in ALLTEL’s growth in rural markets.¹⁷⁶ They further state that banks were unable to sell all of ALLTEL’s debt despite aggressive marketing efforts, and, in early 2008, had to resort to selling the debt at discounted prices.¹⁷⁷ The Applicants assert that this attracted potential investors, including Verizon Wireless, which first approached TPG and Goldman Sachs to discuss a potential acquisition of ALLTEL in April 2008.¹⁷⁸

36. Arkansas Limited Partners respond that the Applicants failed to sufficiently refute the facts raised in Arkansas Limited Partners’ petition and that the applications should therefore be designated for

¹⁶⁹ Petition to Deny of Ritter Communications, Inc. and Central Arkansas Rural Cellular Limited Partnership at 7 (filed Aug. 11, 2008) (“Arkansas Limited Partners Petition to Deny”).

¹⁷⁰ *Id.* at 7. Rural Telecommunications Group, which does not raise specific allegations regarding the character qualifications of Atlantis or ALLTEL, states that ALLTEL “hoodwinked” the Commission “when it promised that the infusion of equity investors would bring new and improved services to rural America.” Reply to Joint Opposition to Petitions to Deny of the Rural Telecommunications Group at 6, n.11 (filed Aug. 26, 2008) (“Rural Telecommunications Group Reply”).

¹⁷¹ Arkansas Limited Partners Petition to Deny at 5. *See also* Arkansas Limited Partners’ discussion of trafficking *infra* Part VIII.H.

¹⁷² Arkansas Limited Partners Petition to Deny at 7.

¹⁷³ *See* Joint Opposition at 85.

¹⁷⁴ *See id.* at 85-87.

¹⁷⁵ *See id.* at 87.

¹⁷⁶ *See id.*

¹⁷⁷ *See id.* at 87 n.280.

¹⁷⁸ *See id.*

a hearing.¹⁷⁹ Specifically, Arkansas Limited Partners claim that the facts presented in their petition (*e.g.*, Atlantis's behavior post-acquisition, Verizon Wireless's previous attempts to buy ALLTEL, Atlantis's failure to obtain spectrum in the 700 MHz auction) clearly demonstrate that Atlantis did not intend to hold and develop ALLTEL.¹⁸⁰ Arkansas Limited Partners maintain that ALLTEL's failure to win any spectrum in the 700 MHz auction and the need to invest more of the private equity investors' own capital in ALLTEL constitute further evidence that Atlantis decided to cut its losses by "flipping" ALLTEL to Verizon Wireless.¹⁸¹ Arkansas Limited Partners also question the Applicants' explanation of a credit crunch being the major contributing factor in Atlantis's decision to sell ALLTEL.¹⁸²

37. Similarly, Rural Telecommunications Group suggests that Atlantis's "true motivation to buy ALLTEL was to flip the entire company in the first place,"¹⁸³ and further questions its assertion that Verizon Wireless approached Atlantis only in April 2008.¹⁸⁴ In the alternative, Rural Telecommunications Group argues that, even if true, Atlantis's explanation that it faced unprecedented financial pressure following its acquisition of ALLTEL should not receive any weight in the Commission's analysis of the proposed transaction, because Atlantis seemed to have entered into discussions concerning the sale of ALLTEL only with Verizon Wireless, and failed to seek and consider investment or partnership alternatives with rural operators.¹⁸⁵

38. *Discussion.* Applicants' and licensees' truthfulness and candor before the Commission, as well as their compliance with its rules, are paramount concerns in determining whether they should acquire licenses or continue to hold existing authorizations.¹⁸⁶ Section 1.17 of the Commission's Rules prohibits misrepresentations and lack of candor in Commission filings.¹⁸⁷ Misrepresentations are false statements of fact made with an intent to deceive, while lack of candor involves concealment, evasion, and other failures to be fully informative, also accompanied by deceptive intent.¹⁸⁸ Such intent may be found from the false statement of fact, coupled with proof that the party making it had knowledge of its falsity.¹⁸⁹

¹⁷⁹ Reply to Joint Opposition by Ritter Communications, Inc. and Central Arkansas Rural Cellular Limited Partnership (filed Aug. 26, 2008) ("Arkansas Limited Partners Reply"). On August 27, 2008, Arkansas Limited Partners filed an *ex parte* presentation enclosing a copy of an article stating that private equity investors expect a 15 to 25% average annual return over several years and have a well-earned reputation for secrecy. *Ex Parte* Letter from Kenneth E. Hardman, Attorney for Ritter Communications Inc. and Central Arkansas Rural Cellular Limited Partnership, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 27, 2008).

¹⁸⁰ See Arkansas Limited Partners Reply at 4-9. Arkansas Limited Partners assert that because private equity investors typically do not intend to hold the acquired business for more than 5 to 7 years, the Applicants' explanation that it decided to sell ALLTEL because it failed to raise sufficient long-term capital is inadequate. See *id.* at 5-6.

¹⁸¹ See *id.* at 8.

¹⁸² See *id.* at 6-7 (stating that this information was available to the Applicants well before the consummation of the Atlantis-ALLTEL merger).

¹⁸³ Comments of Rural Telecommunications Group, Inc., WT Docket No. 08-95, at 3 (filed Oct. 22, 2008) ("Rural Telecommunications Group Comments").

¹⁸⁴ *Id.* at 3.

¹⁸⁵ *Id.* at 3-4.

¹⁸⁶ See *WHW Enterprises, Inc. v. FCC*, 753 F.2d 1132, 1139 (D.C. Cir. 1985).

¹⁸⁷ 47 C.F.R. § 1.17.

¹⁸⁸ See *Fox River Broadcasting, Inc., Order*, 93 F.C.C.2d 127, 129 ¶ 6 (1983).

¹⁸⁹ See *David Ortiz Radio Corp v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991).

39. The evidence before us indicates that Atlantis did not omit or misrepresent facts or lack candor when describing its future business plans in the applications seeking consent to the transfer of control of ALLTEL's licenses, leasing agreements, and authorizations to Atlantis. There is no concrete evidence in the record contradicting Atlantis's assertion that, at the time of ALLTEL's acquisition, it had every intention of developing ALLTEL's business. Instead, Atlantis's assertion is supported by a detailed explanation and chronology of the events leading towards the commencement of the negotiations between Atlantis and Verizon Wireless in April 2008. We do not attach any probative value to Verizon Wireless's two previous unsuccessful attempts to acquire ALLTEL, albeit for a similar price. To the contrary, this only provides support that the credit crunch in the capital markets in late 2007 and early 2008 forced Atlantis to sell ALLTEL at this time and at a lower price than anticipated. We note that it is not the objective of the character qualifications inquiry to evaluate applicants' business acumen, scrutinize their business plan for safety and soundness, or judge their every business decision against other alternatives. The allegations of misconduct offered by Arkansas Limited Partners and Rural Telecommunications Group are based solely on speculation and unfounded inferences and thus fall short of "a substantial and material question of fact" that would warrant a designation of the applications for a hearing and trigger an exception from our policy of not re-evaluating the qualifications of the transferor or assignor.

V. COMPETITIVE ANALYSIS

40. Consistent with our practice when reviewing proposed wireless transactions affecting the mobile communications market, our analysis of the proposed transaction considers the potential competitive effects that might result from increased concentration.¹⁹⁰ Horizontal transactions raise competitive concerns when they reduce the availability of choices to the point that the resulting firm has the incentive and the ability, either by itself or in coordination with other firms, to raise prices. A fundamental tenet of the Commission's public interest review is that, absent significant offsetting efficiencies or other public interest benefits, a transaction that creates or enhances significant market power or facilitates its use is unlikely to serve the public interest.¹⁹¹

41. As we have discussed in several recent wireless transaction orders, transactions, such as mergers, can diminish competition and allow firms to exercise market power in a number of ways.¹⁹² A

¹⁹⁰ See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12481-82 ¶ 3; *AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 15; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11539 ¶ 22; *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 30; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68; Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, at § 0.1, n.6. (Apr. 2, 1992, revised Apr. 8, 1997) ("*DOJ/FTC Merger Guidelines*").

Silver Star Communications urges that we delay the consideration of the applications until the Commission and DOJ have had an opportunity to examine the impact of the recent downturn in the nation's economy on the telecommunications industry. Comments of Silver Star Communications at 1-2 (filed Oct. 15, 2008). We find that the Commission has sufficient information to perform its competitive analysis at the present time.

¹⁹¹ See *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12481-82 ¶ 31; *AT&T-Dobson Order*, 22 FCC Rcd at 20301 ¶ 10; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11540 ¶ 22; *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 30; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68; *DOJ/FTC Merger Guidelines* § 0.1, n.6. The ability to raise prices above competitive levels is generally referred to as "market power." Market power may also enable sellers to reduce competition on dimensions other than price, including innovation and service quality.

¹⁹² See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12482 ¶ 32; *AT&T-Dobson Order*, 22 FCC Rcd at 20307 ¶ 16; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11541 ¶ 24; *Sprint-Nextel Order*, 20 FCC Rcd at 13982 ¶ 32; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 70.

horizontal transaction or merger is unlikely to create or enhance market power or facilitate its exercise, however, unless the transaction significantly increases concentration and results in a concentrated market, properly defined and measured. Transactions that do not significantly increase concentration or do not result in a concentrated market ordinarily require no further competitive analysis. Thus, when examining the effect of proposed transactions, we apply a two-part initial “screen” that identifies those local markets in which no competitive harm clearly arises from the transaction. The first part of the screen is based on the size of the post-transaction Herfindahl-Hirschman Index (“HHI”) market concentration and the change in the HHI. The final part of this screen examines the input market for spectrum available on a nationwide basis for the provision of “mobile telephony/broadband services” (as defined below).¹⁹³ For those markets that are not eliminated by the initial screen, we then conduct, on a market-by-market basis, an analysis of other market factors that pertain to competitive effects, including the incentive and ability of other existing firms to react and of new firms to enter the market, in response to attempted exercises of market power by the merged entity. Ultimately, we must assess whether the combined firm could likely exercise market power in any particular market.¹⁹⁴

42. Our competitive analysis is set forth below. We begin our competitive analysis by determining the appropriate market definitions for this transaction,¹⁹⁵ including a determination of the product market, geographic markets, market participants, and the input market for spectrum available for the provision of mobile telephony/broadband services.

43. We next apply the Commission’s initial screen to this transaction, through which we identify those markets that we subject to further case-by-case review. We then examine any potential competitive harms associated with horizontal concentration and both unilateral and coordinated effects resulting from the merger. We address other concerns raised by commenters in response to this transaction, including the potential adverse impact of the transaction with regard to the provision of roaming services, and examine the public interest benefits of the proposed transaction.¹⁹⁶ Finally, we adopt various conditions and remedies to prevent any harms.

A. Market Definitions

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

¹⁹³ We examine the product market for mobile telephony/broadband services in this proposed transaction. This definition updates the mobile telephony services product market definition used in the Commission’s prior wireless transaction orders. See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12482 ¶ 32; *AT&T-Dobson Order*, 22 FCC Rcd at 20307 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

¹⁹⁴ See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12482 ¶ 32; *AT&T-Dobson Order*, 22 FCC Rcd at 20307 ¶ 16; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11540 ¶ 23; *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 31; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 69; *DOJ/FTC Merger Guidelines* § 1.0.

¹⁹⁵ See *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12482-83 ¶ 33; *AT&T-Dobson Order*, 22 FCC Rcd at 20307 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 28; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558 ¶ 74.

¹⁹⁶ *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12483 ¶ 34; *AT&T-Dobson Order*, 22 FCC Rcd at 20308 ¶ 18.

1. Product Market

45. Because of the substantial ongoing developments in the evolution of the provision of wireless services, especially the increasing prominence of mobile broadband services being offered consumers, we revisit the product market definition that the Commission has employed in previous transactions. In particular, we evaluate this proposed transaction using a combined “mobile telephony/broadband services” product market (as defined herein),¹⁹⁷ which is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services). This combined product market for “mobile telephony/broadband services” encompasses the combined product market for “mobile telephony services” that we used in previous wireless transactions, while emphasizing the recent significant mobile broadband advances to better reflect this component of emerging, next-generation wireless services. Recognizing that mobile broadband data services is a rapidly evolving market, out of an abundance of caution we will analyze the markets for mobile telephony services and mobile broadband services as a combined market, similar to what we have done when evaluating other proposed wireless mergers.¹⁹⁸ In transactions such as this one, we conclude that there are risks associated with defining product markets too narrowly, since doing so may thwart this and future pro-competitive deals that take place in the context of rapidly evolving markets and services.

46. We delineate the scope of a combined market for mobile telephony/broadband services broadly to include mobile voice and data services provided over wireless broadband networks (mobile broadband services), as well as mobile voice and data services provided over less advanced, earlier generation (*e.g.*, 2G, 2.5G) legacy wireless networks. In addition, the market includes a wide array of mobile data services, ranging from handset-based mobile data services marketed primarily as an add-on to mobile voice services to standalone mobile Internet access services for laptop users. We find that analyzing the various older voice and data services as well as the emerging mobile broadband product markets under the combined market for mobile telephony/broadband services is appropriate in order to ensure a reasonable assessment of any potential competitive harm resulting from the proposed transaction under review. As we noted above, we conclude that there are risks associated with defining product markets too narrowly in the context of rapidly evolving markets and services such as those for mobile broadband services.

47. We treat the provision of mobile broadband services using more recent and advanced networks (*e.g.*, 3G, 4G) and the provision of mobile voice and data services over earlier generations of wireless networks as part of a combined mobile telephony/broadband services market, rather than separate markets, based on consideration of various factors, including the nature of these services and their relationship with each other, and our finding that this approach provides a reasonable assessment of any potential competitive harm resulting from the mobile wireless transactions under review. This approach also recognizes that the mobile telecommunications industry is in the process of transitioning from the provision of interconnected mobile voice and add-on mobile data services over legacy wireless networks to the provision of mobile voice and data services over wireless broadband networks (*e.g.*,

¹⁹⁷ See 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*, FCC 08-259, at ¶¶ 38-45 (rel. Nov. 7, 2008) (“*Sprint Nextel-Clearwire Order*”).

¹⁹⁸ Previously, the Commission found that there are separate relevant product markets for interconnected mobile voice services and mobile data services, and also for residential services and enterprise services. It nevertheless analyzed all of these product markets under the combined market for “mobile telephony service.” See *Verizon-RCC Order*, 23 FCC Rcd at 12483-84 ¶ 37; *AT&T-Dobson Order*, 22 FCC Rcd at 20308 ¶ 21; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 29; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558 ¶ 74.

EvDO, Wideband CDMA/High Speed Downlink Packet Access (WCDMA/HSDPA), mobile Worldwide Interoperability for Microwave Access (“WiMAX”), and LTE networks).

48. We find that both Verizon Wireless and ALLTEL provide services in the product market for mobile telephony/broadband services, and we will apply this definition in our analysis of this transaction. Accordingly our analysis herein focuses only on the potential competitive effects that relate to the mobile telephony/broadband services market.

2. Geographic Market

49. In its recent wireless transaction orders, the Commission applied the “hypothetical monopolist test” and found that the relevant geographic markets are local, larger than counties, may encompass multiple counties, and, depending on the consumer’s location, may even include parts of more than one state.¹⁹⁹ The Commission in these orders identified two sets of geographic areas that effectively may be used to define local markets – CEAs and CMAs.²⁰⁰ Because these two sets of geographic areas come from different sides of the equation – demand in one case, supply in the other – the Commission found them to be useful cross-checks on each other and, together, they help ensure that the Commission’s analysis does not overlook local areas that require more detailed analysis.²⁰¹ Consistent with other transactions, we conclude that the most appropriate geographic level for market analysis is comprised of CMAs and CEAs.

50. The Applicants undertake their competitive analysis at the CMA level “in the interest of expedited processing.”²⁰² Nonetheless the Applicants argue that the market for mobile telephony/broadband services is increasingly national in scope.²⁰³ Although the Applicants acknowledge that the Commission has rejected a national geographic scope in prior proceedings,²⁰⁴ they argue that

¹⁹⁹ See *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12484-85 ¶ 39; *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542-43 ¶¶ 29-30; *Sprint-Nextel Order*, 20 FCC Rcd at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562-63 ¶¶ 89-90.

²⁰⁰ We have chosen CEAs and CMAs for our data analysis because both are consistent in order of magnitude with the local market definition we have adopted and because each brings a different consideration to the analysis. CEAs are designed to represent consumers’ patterns of normal travel for personal and employment reasons and may therefore capture areas within which groups of consumers would be expected to shop for wireless service. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURVEY OF CURRENT BUSINESS, February 1995, at 75. In addition, CEAs should be areas within which any service providers present would have an incentive to market—and actually provide—service relatively ubiquitously. Conversely, CMAs are the areas in which the Commission initially granted licenses for the cellular service. Although partitioning has altered this structure in many license areas, CMAs represent the fact that the Commission’s licensing programs have to a certain degree shaped this market by defining the initial areas in which wireless providers had spectrum on which to base service offerings, and they may therefore serve as a reasonable proxy for where consumers face the same competitors. See *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12484 n.151; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105; see also *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542 ¶ 29; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 57; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072-73 ¶¶ 44-45.

²⁰¹ See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12484-85 ¶ 39; *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11546 ¶ 35; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105.

²⁰² Application, Public Interest Statement at 31.

²⁰³ *Id.*

²⁰⁴ *Id.*

Verizon Wireless and other national wireless providers increasingly advertise and set prices on a national basis, with very little local or regional variation in pricing.²⁰⁵ Thus, they contend local market conditions are less relevant to Verizon Wireless's competitive strategy than actions taken by other national wireless providers.²⁰⁶ The Applicants also emphasize the industry's increasing reliance on national rate plans and argue that consumers shop for national plans and national rates, as evidenced by the large (87 percent) share of mobile communications customers who subscribe to a national wireless provider or an affiliate of a national wireless provider.²⁰⁷

51. Several commenters disagree with the Applicants and respond that the Commission should continue to conduct its competitive analysis on a local level.²⁰⁸ Commenters assert that analyzing this transaction using a national market is inappropriate because many affected wireless providers – including ALLTEL – are not national and do not engage in national pricing.²⁰⁹ Commenters also argue against considering this transaction in the context of a national market because (1) Verizon Wireless can offer different promotions and discounts in different markets, (2) the Commission has already rejected the notion of a national market,²¹⁰ and (3) an analysis on a national basis could harm consumers in local, and particularly rural, markets by the decrease in competition.²¹¹ Other commenters add (as detailed below) that the competitive analysis provided by the Applicants in the Public Interest Statement is inadequate.²¹²

52. *Discussion.* We conclude that the most appropriate geographic level for market analysis is comprised of CMAs and CEAs. We determine that the geographic market is the area within which a consumer is most likely to shop for mobile telephony/broadband services.²¹³ For most individuals, this market will be a local area, as opposed to a larger regional or nationwide area.²¹⁴ This is because “in

²⁰⁵ *Id.* at 31-32; *see also* Joint Opposition at 18.

²⁰⁶ Application, Public Interest Statement at 31-32.

²⁰⁷ *Id.*

²⁰⁸ *See, e.g.,* South Dakota Telecommunications Association, Reply to Joint Opposition at 3-4 (filed Aug. 26, 2008) (“South Dakota Telecommunications Association Reply”).

²⁰⁹ Petition to Deny of Leap Wireless International, Inc. at 16-17 (filed Aug. 11, 2008) (“Leap Wireless Petition to Deny”); South Dakota Telecommunications Association Reply at 3-5.

²¹⁰ Reply Comments of Leap Wireless International, Inc. at 9-11 (filed Aug. 26, 2008) (“Leap Wireless Reply”).

²¹¹ Reply to Joint Opposition of Rural Carriers at 3-7, 10, 13 (filed Aug. 26, 2008) (“Rural Carriers Reply”); South Dakota Telecommunications Association Reply at 3-6.

²¹² Reply of North Dakota Network Co. at 4-6 (filed Aug. 26, 2008) (“North Dakota Network Co. Reply”); Petition to Dismiss or Deny of the Ad Hoc Public Interest Spectrum Coalition at 3-4 (filed Aug. 11, 2008) (“PISC Petition to Deny”); Petition to Condition Transaction Approval of the Rural Carriers at 4-7 (filed Aug. 11, 2008) (“Rural Carriers Petition”); South Dakota Telecommunications Association Petition to Condition Transactional Approval at 4-6 (filed Aug. 11, 2008) (“South Dakota Telecommunications Association Petition”); Reply to Joint Opposition to Petition to Deny of Chatham Avalon Park Community Council Reply at 5 (filed Aug. 26, 2008) (“Chatham Reply”).

²¹³ *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12485 ¶ 41; *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23. *See also ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542 ¶ 30; *Sprint-Nextel Order*, 20 FCC Rcd at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 89.

²¹⁴ *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12485 ¶ 41; *AT&T-Dobson Order*, 22 FCC Rcd at 20310-11 ¶ 25; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542 ¶ 30; *Sprint-Nextel Order*, 20 FCC Rcd at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 89. *See also Twelfth Competition Report*, 23 FCC Rcd at 2331-32 ¶ 174 (indicating that the average person (continued....))

response to a small but not insignificant price increase by providers” that offer service where consumers live, work or travel, most consumers are unlikely to switch to alternative wireless providers that operate only outside of such a locality.²¹⁵ Further, the Applicants’ argument that prices are set on a national level, and that consumers shop for national plans and national rates, does not undercut the finding of a local geographic market. We conclude that their assertions regarding the behavior of nationwide service providers and consumers do not establish the existence of a national market.²¹⁶ Accordingly, we will use the same geographic market definition in our analysis for this transaction as the Commission has used in its recent wireless transaction orders discussed above.

3. Input Market for Spectrum

53. In evaluating these transactions, we consider the aggregation of spectrum by Verizon Wireless. In previous Commission orders, the Commission made a determination to include, in its evaluation of potential competitive harm, spectrum in particular bands that is “suitable” for the provision of mobile telephony services.²¹⁷ In connection with these transactions and consistent with our determination to evaluate the broader product market for mobile telephony/broadband services, we will include all spectrum suitable for the provision of wireless broadband over broadband networks, in addition to spectrum suitable for mobile voice and data services. As previously explained by the Commission, suitability is determined by whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its uses for mobile telephony/broadband service.²¹⁸ For the purposes of evaluating spectrum aggregation issues associated with this transaction we include in both our updated market-specific spectrum screen as well as our market-by-market analysis those spectrum bands designated for cellular, PCS, SMR, and 700 MHz services, as well as AWS-1 and Broadband Radio Service (“BRS”) spectrum where available.

54. *Background.* In the *AT&T-Dobson Order*, we applied a 95 megahertz initial nationwide spectrum aggregation screen prior to our market-by-market review of the proposed transaction.²¹⁹ In the *AT&T-Dobson Order*, adopted in November of 2007, the Commission found that, in light of recent developments, spectrum “suitable” for the provision of mobile telephony services includes not only approximately 200 megahertz of cellular, broadband PCS, and SMR spectrum, but also an additional 80 megahertz of 700 MHz band spectrum (in the 698-806 MHz band) throughout the nation, bringing the total amount of spectrum suitable for mobile telephony/broadband services on a nationwide basis to

(Continued from previous page) _____

shops for mobile communications services in markets that include place of work, place of residence, and surrounding areas that are economically related; such areas generally are larger than counties).

²¹⁵ *DOJ/FTC Merger Guidelines* §§ 1.11, 1.12.

²¹⁶ *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12485 ¶ 41; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562 ¶ 88.

²¹⁷ *See Verizon Wireless-RCC Order*, 23 FCC Rcd at 12489 ¶ 51; *AT&T-Dobson Order*, 22 FCC Rcd at 20311 ¶ 26; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21560-61 ¶ 81; *see also ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11543 ¶ 31; *Sprint-Nextel Order*, 20 FCC Rcd at 13992 ¶ 61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 41.

²¹⁸ *AT&T-Dobson Order*, 22 FCC Rcd at 20311 ¶ 26; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21560-61 ¶ 81; *see also ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11543 ¶ 31; *Sprint-Nextel Order*, 20 FCC Rcd at 13992 ¶ 61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 41.

²¹⁹ *See AT&T-Dobson Order*, 22 FCC Rcd at 20312-13 ¶ 30.

approximately 280 megahertz.²²⁰ Applying the Commission's previous determination that a spectrum aggregation screen should be based approximately on one-third of the total bandwidth available for mobile telephony services, we revised the spectrum aggregation screen from 70 megahertz to 95 megahertz, approximately one-third of the 280 megahertz of the spectrum designated as being available for mobile telephony/broadband services. We explained that setting this screen at approximately one-third of the total suitable spectrum is designed to be conservative and ensure that any markets in which there is potential competitive harm based on spectrum aggregation are identified and subjected to more in-depth analysis.²²¹ Under the revised screen, the Commission found that there was no need for additional analysis where there was at least 185 megahertz of spectrum (of the 280 megahertz of mobile communications spectrum) available to other firms to compete in the provision of mobile telephony/broadband services.²²²

55. At the time of the *AT&T-Dobson Order*, we did not find it appropriate to include certain other spectrum bands – particularly AWS-1 and BRS spectrum – in the initial spectrum screen because this spectrum was committed to another use which precluded its use for mobile telephony and was not available nationwide.²²³ We determined in the *AT&T-Dobson Order* that excluding this spectrum on this basis was appropriate since the initial screen was intended to be conservative, that is, erring in the direction of identifying more rather than fewer markets for in-depth review.²²⁴ However, the Commission did consider the extent to which AWS-1 or BRS licenses were in fact available in specific markets, and included them in the local spectrum input market, in our detailed, case-by-case analysis of markets caught by the initial screen.²²⁵ In the *Verizon Wireless-RCC Order*, released on August 1, 2008, we determined that the spectrum screen established in the *AT&T-Dobson Order* was still appropriate.²²⁶

56. The Applicants raise similar proposals as the applicants in the Verizon Wireless-RCC transaction, arguing that additional spectrum bands should be included in the spectrum input market.²²⁷ The Applicants agree that the Commission should include in the spectrum screen the approximately 200 megahertz of spectrum in the cellular, PCS, and SMR bands that the Commission had determined to be suitable for the provision of mobile telephony/broadband services prior to adoption of the *AT&T-Dobson Order*.²²⁸ The Applicants contend, however, that the Commission should adjust the spectrum screen to reflect developments in the provision of mobile telephony services of AWS-1, BRS, and Educational Broadband Service (“EBS”) spectrum.²²⁹ While acknowledging that the Commission declined to include BRS, EBS and AWS-1 spectrum in both the *AT&T-Dobson Order* and the *Verizon Wireless-RCC Order*, the Applicants contend that this spectrum should now be considered because it either is already available for commercial use or soon will be.²³⁰ The Applicants add that the suitability of Mobile Satellite Service

²²⁰ *See id.*

²²¹ *See id.*

²²² *See id.* at 20313 ¶ 30.

²²³ *See id.* at 20314-20315 ¶¶ 32-34.

²²⁴ *Id.* at 20314 ¶ 32.

²²⁵ *Id.* at 20315 ¶ 35.

²²⁶ *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12486-87 ¶ 44.

²²⁷ *See id.* at 12487 ¶ 45.

²²⁸ *See id.*

²²⁹ Application, Public Interest Statement at 33-40.

²³⁰ *Id.*

(“MSS”)/Ancillary Terrestrial Components (“ATC”) spectrum has also developed recently,²³¹ and that spectrum in the 2155-2175 MHz band should be included because press reports indicate that the Commission intends to license this spectrum for wireless broadband services.²³²

57. Specifically with regard to AWS-1 spectrum, the Applicants contend that the band could be deployed nationwide because government incumbents no longer encumber the spectrum in over 76 percent – 1369 of 1788 counties – of the ALLTEL footprint.²³³ Moreover, the Applicants argue, wireless providers have announced services in many markets, including New York, Philadelphia, Boston, and Las Vegas, that will use the AWS-1 spectrum.²³⁴ The Applicants also contend that a number of AWS-1 licensees have initiated services since the Commission declined in the *AT&T-Dobson Order* to include AWS-1 spectrum.²³⁵ For instance, the Applicants point out that T-Mobile USA, Inc. (“T-Mobile”) plans to commence broadband AWS-1 services in 25 markets by the end of 2008, that almost half of MetroPCS Communications, Inc.’s (“MetroPCS”) covered POPs will be able to access AWS-1 networks, and that other providers, such as Leap Wireless International, Inc. (“Leap Wireless”) and Stelera Wireless, LLC, have also been reported to offer commercial services using AWS-1 spectrum.²³⁶

58. With regard to BRS/EBS spectrum, the Applicants contend that services using those bands have matured substantially since the *AT&T-Dobson Order* and add that wireless providers will complete their transition by February 2009 in Basic Trading Areas (“BTAs”) representing 83 percent of the country’s population.²³⁷ The Applicants note that Sprint Nextel Corporation (“Spring Nextel”) and Clearwire Corporation (“Clearwire”) hope to offer soon a WiMAX network using those bands to compete with Verizon Wireless’s mobile broadband services.²³⁸ According to the Applicants, Sprint Nextel and Clearwire plan to offer mobile broadband services to up to 140 million people by the end of 2010.²³⁹

59. Several commenters oppose the Applicants’ proposal to add more spectrum to the 95 megahertz screen. These commenters suggest spectrum should be included in the screen only after wireless providers deploy services using those frequencies and that AWS-1 and BRS/EBS should not be included because the status of those bands has not significantly changed since the Commission rejected their inclusion in the screen in the *AT&T-Dobson Order*.²⁴⁰ Chatham Avalon Park Community Counsel

²³¹ *Id.* at 38-39; Joint Opposition at 18-22, 28-29. The Applicants contend that the suitability of MSS/ATC spectrum has recently developed by citing developments such as: Mobile Satellite Ventures (“MSV”) received ATC authority; Globalstar, Inc. announced that the Commission had expanded its ATC authority to include almost 20 megahertz of spectrum; the Commission has assigned 20 megahertz of 2 GHz MSS spectrum to ICO Global Communications (Holdings) Limited; and TerreStar Networks, Inc. has pending a request for ATC authority. Joint Opposition at 28-29.

²³² Application, Public Interest Statement at 39.

²³³ Joint Opposition at 22-23 n.67.

²³⁴ *See id.* at 23-24.

²³⁵ Application, Public Interest Statement at 36-37.

²³⁶ *See id.*

²³⁷ Joint Opposition at 24-27.

²³⁸ Application, Public Interest Statement at 34-36.

²³⁹ *See id.* at 35-36.

²⁴⁰ Chatham Reply at 3-4; Petition to Deny of the Rural Telecommunications Group, Inc. at 5 n.12 (filed Aug. 11, 2008) (“Rural Telecommunications Group Petition to Deny”); Rural Telecommunications Group Reply at 8-9; Reply to Opposition to Petition to Deny of the *Ad Hoc* Public Interest Spectrum Coalition at 2-3 (filed Aug. 26, 2008) (“PISC Reply”).

("Chatham") contends, specifically, that the Commission should not use the BRS/EBS spectrum because WiMAX will be difficult to deploy nationally in those bands.²⁴¹ Commenters also assert that the Commission should not include AWS-1 in the spectrum screen because services using AWS-1 spectrum are still not available on a nationwide basis, wireless providers will not actually use much of the AWS-1 spectrum for mobile telephony,²⁴² and the government classified the locations of systems using AWS-1 thereby preventing the public from determining its availability in any particular market.²⁴³ Chatham adds that existing market participants will control most AWS-1 and BRS spectrum, so its use will not increase competition in the market.²⁴⁴ Commenters also contest that satellite services be included in the spectrum screen because the services rely on bulky, expensive handsets and, thus, are not a comparable to other mobile services,²⁴⁵ and because ATC services are not available outside of sparsely populated rural areas and, even there, the Department of Agriculture subsidized the services.²⁴⁶

60. Some commenters argue that, while spectrum, including the spectrum the Applicants assert should be added to the screen, may be suitable for mobile telephony, all wireless spectrum is not equal and should not be treated as fungible by the Commission.²⁴⁷ With regard to the other spectrum bands that the Applicants assert should be included in the spectrum screen, Leap Wireless and other commenters argue that the Commission added spectrum from the 700 MHz band to the screen because it has similar characteristics to the 800 MHz band (which is already included in the screen), but the bands that the Applicants ask to include do not.²⁴⁸ Leap Wireless suggests that "if 2 GHz spectrum is to be pooled together with 800 MHz spectrum for purposes of calculating a screen, spectrum with different properties should be given different weights."²⁴⁹ Further, it argues that the Commission, in evaluating how much spectrum any one entity can hold in a market, should consider how much spectrum will remain and whether that amount is enough to enable competition, because newer services require more bandwidth, thus increasing the amount of spectrum required for new entrants to compete in a market.²⁵⁰

²⁴¹ Petition to Deny of Chatham Avalon Park Community Council Reply at 6-8 (filed Aug. 11, 2008) ("Chatham Petition to Deny"); Chatham Reply at 4.

²⁴² Chatham Petition to Deny at 6-8; Chatham Reply at 4.

²⁴³ PISC Reply at 2-3

²⁴⁴ Chatham Petition to Deny at 9.

²⁴⁵ Rural Telecommunications Group Petition to Deny at 5 n.12; Rural Telecommunications Group Reply at 8-9.

²⁴⁶ Chatham Reply at 5.

²⁴⁷ *See, e.g.*, Leap Wireless Petition to Deny at 2, 12; Leap Wireless Reply at 12-13; Comments of the Rural Cellular Association at i, 4-5 (filed Aug. 11, 2008) ("Rural Cellular Association Comments"); Cellular South Petition to Deny at i-ii, 9-11; Rural Telecommunications Group Petition to Deny at 5 n.12, 19-21; Petition to Deny of Palmetto Mobilenet, L.P. at 5 n.6, 22-23 (filed Aug. 11, 2008) ("Palmetto Petition to Deny").

²⁴⁸ *See* Leap Wireless Reply at 12; *see also* Cellular South Petition to Deny at 9-10; Reply of Cellular South, Inc. to Joint Opposition to Petitions to Deny and Comments at 15-16 (filed Aug. 26, 2008) ("Cellular South Reply"); Rural Cellular Association Comments at 4; Rural Telecommunications Group Petition to Deny at 5 n.12, 19-21; Rural Telecommunications Group Reply at 8-9; Palmetto Petition to Deny at 22-23. Leap Wireless also argues that the Commission should include 700 MHz spectrum in the denominator of the screen only if it is also included in the numerator. Leap Wireless Petition to Deny at 8.

²⁴⁹ Leap Wireless Reply at 12. *See also* Leap Wireless Petition to Deny at 2, 12; Rural Telecommunications Group Petition to Deny at 19-21; Reply to Joint Opposition to Petitions to Deny of Palmetto Mobilenet, L.P. at 16-18 (filed Aug. 26, 2008) ("Palmetto Reply").

²⁵⁰ Leap Wireless Reply at 12-13. *See also* Palmetto Petition to Deny at 6-7.

61. Similarly, several commenters contend that the Commission should apply heightened scrutiny to any markets in which the merged entity will monopolize the cellular spectrum in a market.²⁵¹ These commenters maintain that cellular spectrum is superior for mobile communications, because it provides wider coverage and better signal penetration with less attenuation than other bands, and that cellular systems are more fully developed with a greater customer base.²⁵² The Rural Cellular Association states that the Commission should find that the anticompetitive effect of Verizon Wireless holding all 50 megahertz of cellular spectrum will be exacerbated by its access to between 55 to 65 percent of the 700 MHz spectrum in those CMAs.²⁵³ The Applicants respond that the HHI screen should identify any markets in which a competitive issue arises.²⁵⁴

62. *Discussion.* As noted above, in light of recent developments and our determination to evaluate the broader mobile telephony/broadband services market in our competitive analysis, we decide to include AWS-1 and certain BRS spectrum in an updated, market-specific initial spectrum screen where that spectrum is available. The Commission has previously said with respect to mobile communications that suitability for provision of these services “is determined by the physical properties of the spectrum, the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its uses for mobile telephony.”²⁵⁵ We find that the same factors apply to mobile telephony/broadband services. With respect to spectrum that may become suitable for mobile telephony/broadband services in the near future, we consider that spectrum to be a relevant input if it will meet the criteria for suitable spectrum within two years.²⁵⁶ We also revise our initial spectrum screen so that it applies on a market-by-market basis, rather than on a nationwide basis. This revised, market-specific screen allows us to apply the screen so as to reflect more accurately the availability of spectrum

²⁵¹ See, e.g., Rural Cellular Association Comments at ii, 5-9 (stating that divestitures should be ordered in any market where Verizon Wireless would control all cellular spectrum or, alternatively, presume that cellular monopolies are presumptively anticompetitive and place a heavy burden to overcome the presumption); Cellular South Petition to Deny at ii, 11-15 (stating that transactions resulting in an entity holding both cellular licenses should receive a higher degree of scrutiny and should be considered to be presumptively anticompetitive); see also Rural Carriers Reply at i, 5. The Rural Cellular Association also expresses concern that the Applicants may not have made DOJ aware of its ownership of 50 megahertz of cellular spectrum. Reply of Rural Cellular Association to Joint Opposition to Petitions to Deny and Comments at 5 (filed Aug. 26, 2008) (“Rural Cellular Association Reply”). See also Supplement to Petition to Deny of Cellular South, Inc. at 12-13 (filed Oct. 24, 2008) (“Cellular South Supplement”).

²⁵² See, e.g., Cellular South Petition to Deny at ii, 9-10; Cellular South Reply at 15-17; Rural Cellular Association Comments at i-ii, 4-5; South Dakota Telecommunications Association Reply at ii, 2; Petition of MetroPCS Communications, Inc. and NTELOS Inc. to Condition Consent or Deny Application at 2 n.2, 38-39 (filed Aug. 11, 2008) (“MetroPCS and NTELOS Petition to Deny”); Rural Carriers Petition at 7, 9, Attachment B; PISC Reply at 3; see also *Ex Parte* Letter from John A. Prendergast, Counsel for the Rural Carriers to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1-2 (Oct. 28, 2008) (“Rural Carriers October 28, 2008 *Ex Parte* Filing”). The Rural Telecommunications Group contends that a material issue of fact exists about whether spectrum below 1 GHz is superior to higher frequency bands. Rural Telecommunications Group Reply at 9.

²⁵³ Rural Cellular Association Reply at i, 2. See also Cellular South Reply at iv; Cellular South Supplement at 15.

²⁵⁴ Joint Opposition at 19 n.52.

²⁵⁵ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21560-21561 ¶ 81; see also *Verizon-RCC Order*, 23 FCC Rcd at 12486 ¶ 43; *AT&T-Dobson Order*, 22 FCC Rcd at 20311 ¶ 26; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11543 ¶ 31; *Sprint-Nextel Order*, 20 FCC Rcd at 13992 ¶ 61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 41.

²⁵⁶ See *AT&T-Dobson Order*, 22 FCC Rcd at 20313 ¶ 30. That time frame is consistent with the DOJ/FTC Merger Guidelines, which “state that a significant market impact from entry must result within two years for the entry to be considered ‘timely.’” *Id.* at 20313 n.117 (citing *DOJ/FTC Merger Guidelines* § 3.2).

in particular markets when considering possible spectrum aggregation issues, and results in our considering the same spectrum bands when applying our initial screen and conducting any subsequent, more detailed market-by-market analysis.²⁵⁷

63. As discussed below, based on the current state of the market for mobile telephony/broadband services, we find it appropriate to include 55.5 megahertz of contiguous BRS spectrum (excluding BRS spectrum associated with the Middle Band Segment (MBS) channels, BRS Channel 1, and the J and K guard bands) in a market-specific initial spectrum screen. Particularly, we treat this BRS spectrum as available in markets in which the transition has been completed. We further conclude that sufficient progress has been made in clearing AWS-1 spectrum to include such spectrum in a market-specific spectrum screen in those markets where the spectrum has been cleared and is available for use by the AWS-1 licensees.

64. Accordingly, the spectrum screen will vary in a particular market depending on the availability of AWS-1 and BRS spectrum in that market. For markets in which AWS-1 and BRS spectrum is available, we revise the screen to 145 megahertz. For markets in which AWS-1 is available but BRS is not available, we use a spectrum screen of 125 megahertz. For markets in which BRS is available but AWS-1 is not available, we use a spectrum screen of 115 megahertz. Finally, for markets in which neither BRS nor AWS-1 is available, we use a 95 megahertz spectrum screen.

65. *Inclusion of BRS spectrum.* We are including the 55.5 megahertz of contiguous BRS spectrum (excluding BRS spectrum associated with the MBS channels, BRS Channel 1, and the J and K guard bands), where available, in the initial spectrum screen, consistent with our approach in the Sprint Nextel-Clearwire order.²⁵⁸ As mentioned above, we are revising the initial spectrum screen to apply on a market-specific, rather than a nationwide, basis. This revised, market-specific screen will reflect more accurately the availability of spectrum in particular markets when considering possible spectrum aggregation issues, and will result in the Commission's consideration of the same spectrum bands when applying the initial screen and conducting any subsequent, more detailed market-by-market analyses. In the *AT&T-Dobson Order* adopted last year, we examined the availability of BRS spectrum in particular. We noted that the availability of BRS spectrum for mobile uses was dependent on the process of transitioning to the new band plan. We determined, in the context of a uniform nationwide initial spectrum screen, that we could not yet conclude that sufficient BRS spectrum would be available nationwide soon enough to affect current behavior,²⁵⁹ and therefore decided not to include BRS spectrum as part of the initial spectrum screen. We did, however, include BRS spectrum as part of our market-specific analysis of competitive harm that might result through spectrum aggregation when BRS spectrum was in fact available in a particular market.²⁶⁰ Furthermore, in the time since release of the *AT&T-Dobson Order*, significant additional progress has been made in completing the transition of BRS

²⁵⁷ Compare *AT&T-Dobson Order*, 22 FCC Rcd at 20315 ¶ 35 (stating that, although AWS-1 and BRS was not included in the initial spectrum screen, we considered this spectrum, to the extent that this spectrum was locally available, in our case-by-case analysis of those markets identified by the initial screen).

²⁵⁸ See *Sprint Nextel-Clearwire Order*, FCC 08-259, at ¶¶ 62-70.

²⁵⁹ See *AT&T-Dobson Order*, 22 FCC Rcd at 20315 ¶ 34.

²⁶⁰ See *id.* at 20347 Appendix A (Market-Specific Analysis of Markets Involving Divestiture), Texas 10-Navarro. Although we also did not include AWS-1 spectrum as part of the initial spectrum screen in these orders, when AWS-1 spectrum was in fact available in a particular market, we similarly found it appropriate to include AWS-1 spectrum as part of our analysis of potential competitive harm that might result through spectrum aggregation. See *id.* at 20347 Appendix A (Market-Specific Analysis of Markets Involving Divestiture), Texas 10-Navarro; see also *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12541 (Appendix B Market-Specific Analysis of Markets Involving Divestiture), Vermont 1-Franklin.

spectrum to the new band plan. Currently, the transition has been completed in 337 out of 493 BTAs.²⁶¹ Indeed, all BRS licensees must be operating and be able to demonstrate substantial service by May 1, 2011 or lose their licenses,²⁶² a requirement that should further accelerate completion of the transition. Under these circumstances, we are including BRS spectrum in a market-specific spectrum screen in those markets where the transition has been completed.

66. *Inclusion of AWS-1.* With respect to AWS-1 spectrum in the 1.7/2.1 GHz band, we conclude that sufficient progress has been made in clearing AWS-1 spectrum to consider that spectrum suitable for mobile telephony/broadband services in those markets where the spectrum has been cleared and is available for use. In the *AT&T-Dobson Order*, we concluded, in the context of potentially adopting a nationwide spectrum screen, that AWS-1 spectrum – while meeting the other requirements for suitability – was not generally available for mobile use throughout the country because of the need to clear governmental and non-governmental incumbent users.²⁶³ As with BRS spectrum, in the *AT&T-Dobson Order* we also included AWS-1 spectrum as part of our market-specific analysis of competitive harm that might result through spectrum aggregation when BRS spectrum was in fact available in a particular market.²⁶⁴ Furthermore, recent information available to us now indicates that substantial progress continues to be made in clearing AWS-1 spectrum and that widespread deployment of mobile services using AWS-1 spectrum will be occurring in the near term. Our records show that AWS-1 spectrum has been cleared in approximately two-thirds of all counties. Furthermore, T-Mobile USA, an AWS-1 licensee, recently reported that it intends to offer wireless broadband service using AWS-1 spectrum in 25 markets by the end of 2008 and that it has “placed about one million AWS-ready handsets either into customer hands or the supply chain.”²⁶⁵ Under these circumstances, we find it appropriate also to consider AWS-1 spectrum in our initial market-specific screen in those markets that have already been cleared.

67. *Inclusion of other spectrum.* We decline to make any additional changes to the spectrum screen at this time. Specifically, we decline to include EBS in the spectrum screen.²⁶⁶ The primary purpose of EBS is to further the educational mission of accredited public and private schools, colleges and universities providing a formal educational and cultural development to enrolled students through video, data, or voice transmissions.²⁶⁷ While licensees are allowed to lease their excess capacity to commercial operators, leasing is subject to various special requirements designed to maintain the primary educational character of services provided using EBS.²⁶⁸ In addition, other elements of the EBS licensing regime, such as its solely site-specific character, with the absence of any licensee in various unassigned EBS “white spaces,” complicate use of this spectrum for commercial purposes. Accordingly, we will not consider spectrum associated with EBS spectrum leases as part of the spectrum screen.

68. In addition, with regard to satellite services, in previous Commission orders we stated that although satellite providers offer facilities-based mobile voice and data services, the price of these

²⁶¹ At the time of the *AT&T-Dobson Order*, the transition had been completed in only 113 BTAs. See *AT&T-Dobson Order*, 22 FCC Rcd at 20315 n.128.

²⁶² See 47 C.F.R. § 27.14(o).

²⁶³ See *AT&T-Dobson Order*, 22 FCC Rcd at 20314 ¶¶ 32-33.

²⁶⁴ See *id.* at 20342 Appendix A (Market-Specific Analysis of Markets Involving Divestiture); see also *Verizon-RCC Order*, 23 FCC Rcd at 12532 Appendix B (Market-Specific Analysis of Markets Involving Divestiture).

²⁶⁵ See *Ex Parte* Presentation, T-Mobile USA, WT Docket No. 07-195 at 3 (Jul. 18, 2008).

²⁶⁶ See *Sprint Nextel-Clearwire Order*, FCC 08-259, at ¶ 71.

²⁶⁷ See 47 C.F.R. § 27.1203(b).

²⁶⁸ See generally *id.* § 27.1214.

services is, at present, significantly higher than for services offered by cellular, PCS, or SMR providers. Therefore, most consumers would not view satellite phones as substitutes for mobile telephony/broadband services.²⁶⁹ The record in this proceeding does not provide any basis for revisiting that conclusion. With regard to ATC, we have insufficient evidence of the availability and nature of ATC service to justify placing it in the screen at this time. As for spectrum in the 2155-2175 MHz band,²⁷⁰ the Commission has not yet finalized either the applicable rules or the date for assignments of licenses in the spectrum. Therefore, we find that inclusion of this band in the spectrum screen is premature.

69. *Other issues.* We decline to implement Leap Wireless's suggestion to differentiate between the types of spectrum suitable for the provision of mobile telephony/broadband services.²⁷¹ Since the Commission first determined to evaluate potential spectrum aggregation of 800 MHz cellular spectrum, 800/900 MHz SMR, and 1.9 GHz broadband PCS spectrum for purposes of competitive review, it has not differentiated among these bands. Nor did we do so last year when we expanded the initial spectrum aggregation screen to include 700 MHz band spectrum. We decline to do so here with respect to the particular 2.5 GHz BRS spectrum or the 1.7/2.1 GHz AWS-1 spectrum that we find suitable for mobile telephony/broadband services. This initial spectrum screen is designed to be a trigger for further competitive analysis, in which we examine the each of the identified markets to ensure that no competitive harm would result from the proposed transaction.

70. Also, consistent with existing precedent, we decline to apply any heightened scrutiny to spectrum aggregation involving cellular overlaps. The Commission has previously found that reliance on case-by-case review for aggregation of spectrum and cellular-cross interests better serves the public interest than utilizing a prophylactic rule,²⁷² because "case-by-case review [has a] greater degree of flexibility to reach the appropriate decision in each case, reduced likelihood of prohibiting beneficial transactions or levels of investment both in urban and rural areas, and ability to account for the particular attributes of a transaction or market."²⁷³ In the case-by-case analysis of this transaction that we perform, we make particularized judgments regarding any potential harms and the need for any remedies in each of these markets that we examine.

4. Market Participants

71. In its recent wireless transaction orders, when computing initial measures of market concentration, the Commission limited its analysis of transactions involving mobile telephony services to cellular, PCS, and SMR facilities-based service providers, and excluded satellite service providers, nomadic wireless Voice over Internet Protocol ("VoIP") providers, mobile virtual network operators

²⁶⁹ See Global Com, Iridium Satellite Phone Service Plans, at http://www.globalcomsatphone.com/satellite/services/iridium_service_plans.html (last visited Sept. 17, 2008); GlobalStar, Airtime Pricing, Voice Pricing, at <http://www.globalcomsatphone.com/satellite/services/globalstar.html> (last visited Sept. 17, 2008). See also *AT&T-Dobson Order*, 22 FCC Rcd at 20316 n.130; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38.

²⁷⁰ Application, Public Interest Statement at 39.

²⁷¹ See discussion *supra* para. 60.

²⁷² Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 02-381, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 19078, 19113 ¶ 63 (2004) ("*Rural Report and Order*").

²⁷³ See *id.* at 19115 ¶ 67.

(“MVNOs”), and resellers from consideration.²⁷⁴ We find that mobile telephony/broadband services offered by facilities-based providers using cellular, PCS, and SMR spectrum and employing various technologies offer similar voice and data functionalities and are indistinguishable to the consumer.²⁷⁵ Accordingly, we consider cellular, PCS, and SMR facilities-based mobile telephony/broadband service providers to be market participants. Similarly, to the extent that entities provide facilities-based mobile telephony/broadband services using 700 MHz, AWS-1, and BRS spectrum, we also consider them to be market participants.²⁷⁶

72. The Applicants propose that the Commission include several other service providers, such as satellite providers with ATC authority²⁷⁷ and providers in the 2155-2175 MHz band,²⁷⁸ when computing initial measures of market concentration. But as discussed above, we have insufficient evidence of the availability and nature of ATC service to justify considering providers using this spectrum as market participants. Further, inclusion of the 2155-2175 MHz band would be premature given that the Commission has not finalized the service rules for assignment of licenses in this band.

73. The Applicants also propose that national resellers/MVNOs should be included because they have recently emerged to compete successfully on branded packaged voice and data services,²⁷⁹ and that cable operators should be included because cable operators may bundle wireless services with their video and VoIP offerings.²⁸⁰

74. Under Commission precedent, we generally limit our analysis to facilities-based service providers, either nationwide or regional, excluding MVNOs and resellers from consideration when computing initial concentration measures. While the Commission has acknowledged that non-facilities

²⁷⁴ See *AT&T-Dobson Order*, 22 FCC Rcd at 20316 ¶ 36; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶¶ 38-39; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92. Although satellite providers offer facilities-based mobile voice and data services, the price of these services is, at present, significantly higher than for services offered by cellular, PCS, or SMR providers. Therefore, most consumers would not view satellite phones as substitutes for mobile communications services. See Global Com, Iridium Satellite Phone Service Plans, at http://www.globalcomsatphone.com/satellite/services/iridium_service_plans.html (last visited June 26, 2008); GlobalStar, Airtime Pricing, Voice Pricing, at <http://www.globalcomsatphone.com/satellite/services/globalstar.html> (last visited June 26, 2008). See also *AT&T-Dobson Order*, 22 FCC Rcd at 20316 n.130; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38. We also do not consider wireless VoIP providers as providing the same functionality as mobile communications services providers because the service they provide now is nomadic rather than mobile. See *AT&T-Dobson Order*, 22 FCC Rcd at 20316 n.130; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38. Wireless VoIP services are nomadic in the sense that one can use them from a number of different locations (for example, by using a laptop at different internet cafes all over a town). See *AT&T-Dobson Order*, 22 FCC Rcd at 20316 n.130; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 n.108; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 n.104; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544-45 n.134; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 n.151.

²⁷⁵ See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20316 ¶ 36; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 32; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 91.

²⁷⁶ See *AT&T-Dobson Order*, 22 FCC Rcd at 20316 ¶ 36.

²⁷⁷ Application, Public Interest Statement at 38-39; Joint Opposition at 28-29.

²⁷⁸ Application, Public Interest Statement at 39.

²⁷⁹ See *id.* at 40.

²⁸⁰ See *id.*

based service options have an impact in the marketplace and in some instances may provide additional constraints against anticompetitive behavior, to date, in evaluating proposed transactions involving mergers of wireless service providers, the Commission has not included resellers or MVNOs in its initial screen.²⁸¹ Accordingly, we will consider facilities-based entities providing mobile telephony/broadband services using cellular, PCS, SMR, 700 MHz, AWS-1, and BRS spectrum to be market participants.

B. Initial Screen

75. Having determined the appropriate market definitions for this transaction, our competitive analysis next applies the Commission's initial screen, followed by a further case-by-case review of the markets identified by that screen. As discussed in previous wireless transaction orders, the purpose of this initial screen is to eliminate from further review those markets in which there is clearly no competitive harm relative to today's generally competitive marketplace.²⁸² The Commission designed the initial screen to be conservative and ensure that we do not exclude from further scrutiny any geographic areas in which the potential for anticompetitive effects exists. In addition to market concentration, which we measure with market share data, we consider the input market of spectrum that is suitable for the provision of mobile telephony/broadband services because spectrum is a necessary resource for wireless service providers to compete effectively. This initial screen is only the beginning of our competitive analysis. Subsequent sections examine on a case-by-case analysis those markets identified by the screen, where potential harm is possible, to determine whether harm is likely and a remedy needed.

76. The Applicants include a statement from an economist who argues that the Commission should not use a spectrum screen for three reasons: the screen can act as a *de facto* spectrum cap thereby distorting competition, a poorly designed screen can lead to misallocation of Commission resources, and the public interest rationales for the screen are unsound.²⁸³ Alternatively, the economist contends, the Commission should increase the spectrum used in the screen to minimize these harms.²⁸⁴ Leap Wireless contests the assertion of the Applicants' economist that the Commission should no longer use a spectrum screen, arguing that eliminating the screen would allow anticompetitive effects to escape scrutiny.²⁸⁵ Leap Wireless also argues that the Commission should include spectrum that Verizon Wireless won in Auction 73 in the numerator of the screen.²⁸⁶

77. We reject the arguments of the Applicants that this transaction should not be reviewed under a spectrum screen. With respect to the Applicants' general arguments, we continue to believe that the spectrum screen is a useful tool for identifying markets where there may be competitive issues. The argument that the screen can act as a *de facto* spectrum cap is inconsistent with precedent and our use of the screen. We therefore apply our spectrum screen to the proposed transaction. The licenses won by Verizon Wireless in Auction 73 have been included in our initial spectrum screen.

²⁸¹ See *Verizon Wireless-RCC Order*, 22 FC Rcd at 12488-89 ¶ 50; *AT&T-Dobson Order*, 22 FCC Rcd at 20317 ¶ 38; *GCI- ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶¶ 38-39; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92.

²⁸² See, e.g., *Verizon Wireless-RCC Order*, 22 FC Rcd at 12489 ¶ 51; *AT&T-Dobson Order*, 22 FCC Rcd at 20317 ¶ 39; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11547 n.151; *Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 62; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073-74 ¶ 48; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69 ¶¶ 106-109.

²⁸³ Joint Opposition, Attachment 3: Declaration of Michael L. Katz at 3-8.

²⁸⁴ See *id.* at 10-14.

²⁸⁵ Leap Wireless Reply at 13-14.

²⁸⁶ Leap Wireless Petition to Deny at 8-9.

78. For this transaction, we use our December 2007 NRUF database, which tracks phone number usage by all telecommunications services providers, including wireless service providers, to estimate mobile communication subscribership levels, market shares, and concentration for various geographic markets.²⁸⁷ Consistent with our discussion of the geographic market definition above, in calculating market shares and market concentration, we analyze wireless provider data using two sets of geographic areas, CEAs²⁸⁸ and CMAs.²⁸⁹ Our initial screen criteria identifies, for further case-by-case market analysis, those markets in which, post-transaction: (1) the HHI would be greater than 2800 and the change in HHI will be 100 or greater, or the change in HHI would be 250 or greater, regardless of the level of the HHI, and (2) the Applicants would have, on a market-by-market basis, a 10 percent or greater interest in 95 megahertz, 115 megahertz, 125 megahertz or 145 megahertz or more of cellular, PCS, SMR, 700 MHz, AWS-1 and BRS spectrum, depending upon the availability of AWS-1 and BRS spectrum in any given market.²⁹⁰ This initial screen is only the beginning of our competitive analysis. Subsequent sections examine on a case-by-case analysis those markets identified by the screen, where potential harm is possible, to determine whether harm is likely and a remedy needed.

79. The Applicants did not identify markets that the initial screens would capture based on the post-transaction HHI and the change in the HHI, or the change in the HHI alone. The Applicants attach to the Joint Opposition a market-by-market analysis of 50 markets where they claim that the combined

²⁸⁷ 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. In the Cingular-AT&T Wireless and Sprint-Nextel transactions, the Commission also used billing data submitted by the nationwide wireless service providers. See *Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 63; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 103. Although we may decide to collect such billing data as part of our review of future transactions, we found that the competitive situation associated with this proposed transaction was such that collection of third-party billing data was unnecessary.

²⁸⁸ CEAs are defined by the Bureau of Economic Analysis ("BEA"), and are composed of a single economic node and surrounding counties that are economically related to the node. There are 348 CEAs in the 50 states and the District of Columbia. Of the 3,141 U.S. counties, 2,267 are non-nodal counties that are assigned to a CEA based first on county-to-county commuting flows from the 1990 Census and second on locations of the most widely read regional newspapers. Three quarters of non-nodal counties were assigned based on commuting patterns. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURV. OF CURRENT BUS., Feb. 1995, at 75-81. In November 2004, the BEA updated definitions for CEAs. The total number of CEAs decreased from 348 to 344. Non-nodal county assignment continued to be based on county-to-county commuting flows and locations of the most widely read regional newspapers. See Kenneth P. Johnson & John R. Kort, *2004 Redefinition of the BEA Economic Areas*, SURV. OF CURRENT BUS., Nov. 2004, at 68-71. For purposes of this transaction, we did not adopt the new CEA definitions.

²⁸⁹ See, e.g., *Verizon Wireless-RCC Order*, 22 FC Rcd at 12489-90 ¶ 52; *AT&T-Dobson Order*, 22 FCC Rcd at 20317-18 ¶ 40; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11545 ¶ 35; *Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 63; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072 ¶ 44; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 104. CMAs are the regions originally used by the Commission for issuing cellular licenses. There are 734 CMAs, made up of 305 Metropolitan Statistical Areas ("MSAs"), 428 RSAs, and a market for the Gulf of Mexico. See *Twelfth Competition Report*, 23 FCC Rcd at 2277 ¶ 78. RSAs are regions defined by the Commission for the purpose of issuing spectrum licenses. See *Twelfth Competition Report*, 23 FCC Rcd at 2277 n.145. See discussion justifying the use of CEAs and CMAs *supra* para. 49 and note 200.

²⁹⁰ See discussion *supra* para. 64.

attributable spectrum held by the merged entity would exceed 95 megahertz.²⁹¹ Within each market, the Applicants analyzed the amount of spectrum attributable to the merged entity following the transaction, whether BRS/EBS spectrum is available in the market, the number of competitors in the region and the competitors' spectrum holdings, and potential new entrants into the local market. The Applicants conclude that because the three other national wireless providers, landline replacement carriers, rural telephone companies, and other licensees will all compete with Verizon Wireless after the transaction, none of the markets involved in this transaction raise competitive issues.²⁹²

80. As noted above, several commenters allege that the Applicants' spectrum analysis was incorrect or incomplete. Some argue that the analysis incorrectly included spectrum from the AWS-1, BRS, EBS, and MSS ATC bands, rather than only the bands used in the 95 megahertz screen.²⁹³ Several commenters also argue that the Joint Opposition does not sufficiently analyze the HHI impact or the market share on several markets.²⁹⁴ Others argue that the analysis ignores that Verizon Wireless and ALLTEL are the two dominant wireless providers in many markets and once the transaction is complete, the merged entity will be capable of exercising undue leverage on the market.²⁹⁵ The *Ad Hoc* Public Interest Spectrum Coalition ("PISC") contends that the transaction would result in Verizon Wireless's HHI changing 261 points and that the Applicants' market analysis ignores financial issues that may face new market entrants.²⁹⁶ Palmetto Mobilenet, L.P. ("Palmetto") contends that the initial screen will possibly capture all CMAs in South Carolina.²⁹⁷

81. Our initial HHI screen identifies a total of 218 CMAs and 116 CEAs that require further competitive review. The initial spectrum screen identifies a total of 27 CMAs and 15 CEAs that require competitive review. All of these 27 CMAs and 14 of the 15 CEAs were also flagged by the HHI initial screen.

C. Horizontal Issues

82. This section examines how the transaction could affect competitive behavior in the 218 CMAs and 116 CEAs identified by the initial screen as requiring additional analysis to determine whether the proposed transaction would result in competitive harm. As discussed in the Commission's

²⁹¹ Joint Opposition at Attachment 2.

²⁹² *See id.* at 16.

²⁹³ Rural Carriers Petition at 4-6, 8; South Dakota Telecommunications Association Petition at 5-6; PISC Reply at 2-3; *see also* Chatham Petition to Deny at 4-5 (contending that the merged entity will trigger the 95 MHz screen in 330 markets, concentrated in Minnesota, Montana, North Dakota, South Dakota, and Texas).

²⁹⁴ Rural Carriers Reply at 15-16; Leap Wireless Reply at 15-17. Palmetto also argues that the markets in South Carolina that Verizon Wireless offered to divest do not correspond to their market-by-market analysis. Palmetto Reply at Exhibit A.

²⁹⁵ Rural Carriers Petition at 6.

²⁹⁶ PISC Petition to Deny at 12 n.12, Appendix B; PISC Reply at 3.

²⁹⁷ Palmetto Petition to Deny at 4-5.

recent wireless transaction orders, competition may be harmed either through unilateral actions²⁹⁸ by the merged entity or through coordinated interaction²⁹⁹ among firms competing in the relevant market.

83. In this Memorandum Opinion and Order and Declaratory Ruling, we find that extended discussions of unilateral and coordinated effects are unnecessary.³⁰⁰ First, many aspects of our previous analyses in wireless transaction orders are unchallenged here.³⁰¹ Second, we provide a market-by-market discussion of each CMA where we are requiring business unit divestitures.³⁰² We therefore discuss unilateral effects and coordinated interaction at a general level only to the extent issues are raised by the parties to this proceeding.³⁰³

1. Unilateral Effects

84. Verizon Wireless's acquisition of ALLTEL could lead to changes in the structure of the markets in 218 CMAs and 116 CEAs identified above by our initial screen as needing further analysis. Thus, with regard to these markets, we examine in more detail the possibility that the proposed transaction may lead to competitive harm through unilateral actions by the merged entity.³⁰⁴ Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by

²⁹⁸ Unilateral effects are those that result when a merged firm finds it profitable to alter its behavior by increasing prices or reducing output. *DOJ/FTC Horizontal Merger Guidelines* § 2.2. See *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12491 ¶ 57; *AT&T-Dobson Order*, 22 FCC Rcd at 20318-19 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11550 ¶ 47; *Sprint-Nextel Order*, 20 FCC Rcd at 14001 n.199; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13076 n.155; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 n.341.

²⁹⁹ Coordinated interaction consists of actions by a group of firms that are profitable for each of the firms involved only because the other firms react by accommodating these actions rather than attempting to undercut them. See *DOJ/FTC Horizontal Merger Guidelines* § 2.1; *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12491 ¶ 57; *AT&T-Dobson Order*, 22 FCC Rcd at 20318-19 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11554 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 n.167; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 n.211; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151.

³⁰⁰ See, e.g., *Verizon-RCC*, 22 FCC Rcd at 12492-93 ¶ 58; *AT&T-Dobson Order*, 22 FCC Rcd at 20319 ¶ 43; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21569 ¶ 110; *Sprint-Nextel Order*, 20 FCC Rcd at 13994 ¶ 63.

³⁰¹ For unilateral effects, the unchallenged aspects include: (1) product differentiation and substitutability; (2) network effects; (3) marginal cost reductions; (4) spectrum and advanced wireless services; and (5) penetration. See, e.g., *Verizon Wireless-RCC*, 22 FCC Rcd at 12492-93 ¶ 58; *AT&T-Dobson Order*, 22 FCC Rcd at 20321 ¶ 47; *Sprint-Nextel Order*, 20 FCC Rcd at 14002-07, 14009 ¶¶ 94-107, 115; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13077-85, 13819-21, ¶¶ 59-64, 73-83; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21571-80 ¶¶ 119-133, 138-149; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11553-54 ¶¶ 58-59. For coordinated interaction, the unchallenged aspects include: (1) firm and product homogeneity; (2) existing cooperative ventures; (3) number of firms; (4) technology development; (5) response of rivals; (6) transparency of information; and (7) presence of mavericks. See *Verizon Wireless-RCC*, 22 FCC Rcd at 12492-93 ¶ 58; *AT&T Dobson Order*, 22 FCC Rcd at 20321 ¶ 47; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 13996-400 ¶¶ 71-88; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13086-87 ¶¶ 89-92; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21581-85 ¶¶ 154-163.

³⁰² See discussion *infra* paras. 102-113.

³⁰³ See *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12492-93 ¶ 58; *AT&T-Dobson Order*, 22 FCC Rcd at 20320 ¶ 43; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893-94 ¶ 68; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549-50 ¶ 46.

³⁰⁴ See *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12493 ¶ 59; *AT&T-Dobson Order*, 22 FCC Rcd at 20320 ¶ 44; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11550 ¶ 47; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075 ¶ 54; *Cingular-AT&T Wireless*, 19 FCC Rcd at 21570 ¶ 115; see also *DOJ/FTC Merger Guidelines* § 2.

“elevating price and suppressing output.”³⁰⁵ In the case of mobile telephony/broadband services, as defined above, this might take the form of delaying improvements in service quality or adversely adjusting plan features without changing the plan price.³⁰⁶ Incentives for such unilateral competitive actions vary with the nature of competition in the relevant markets.

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

86. In their application, the Applicants do not discuss the unilateral effects of the proposed transaction on particular CMAs, but argue that the national “commercial mobile radio service market” is highly competitive.³⁰⁷ Even on a CMA basis, they argue, counties with fewer providers are likely to be adjacent to counties with four or more competitors such that an existing firm in any market could respond quickly to an exercise of unilateral market power by another.³⁰⁸ Moreover, they contend that spectrum-related barriers to entry for the market are relatively low because over 600 megahertz of spectrum are available for competing commercial mobile radio services (“CMRS”) and many competitors that hold spectrum licenses can rapidly enter local markets.³⁰⁹ Finally, they contend that based on past trends, the number of potential subscribers is likely to increase, thus decreasing the likelihood of competitive harms; they do not provide, however, any data on subscriber shares for any CMAs.³¹⁰

87. The Roaming Petitioners argue that the proposed transaction will eliminate a major wireless provider and will eliminate the possibility that ALLTEL will combine with other wireless providers to create a new major wireless provider. These losses, according to the Roaming Petitioners, will lessen competition in areas where Verizon Wireless and ALLTEL compete.³¹¹ The South Dakota Telecommunications Association also contends that the transaction will decrease competition in South Dakota because Verizon Wireless and ALLTEL are the two dominant wireless providers in the state,

³⁰⁵ See *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12493 ¶ 59; *AT&T-Dobson Order*, 22 FCC Rcd at 20320 ¶ 44; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11550 ¶ 47; *Sprint-Nextel Order*, 20 FCC Rcd at 14001 ¶ 91; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075 ¶ 54; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115; *DOJ/FTC Merger Guidelines* § 2.2.

³⁰⁶ The term “unilateral” refers to the method used by firms to determine strategy, not to the fact that the merged entity would be the only firm to change its strategy. The term unilateral is used to indicate that strategies are determined unilaterally by each of the firms in the market and not by explicit or tacit collusion. Other firms in the market may find it profitable to alter their behavior as a result of the merger-induced change in market structure by, for example, repositioning their products, changing capacity, or changing their own prices. These reactions can alter the total effect on the market and must be taken into account when evaluating potential unilateral effects. See *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12493 n.205; *AT&T-Dobson Order*, 22 FCC Rcd at 20320 n.150; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11550 n.176; *Sprint-Nextel Order*, 20 FCC Rcd at 14001 n.199; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13076 n.155; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 n.341.

³⁰⁷ Application, Public Interest Statement at 47.

³⁰⁸ *Id.* at 47-48.

³⁰⁹ See *id.* at 48-49.

³¹⁰ Application, Public Interest Statement at 50; Application, Exhibit 3: Declaration of Dennis Carlton, Allan Shampine, and Hal Sider, at 17.

³¹¹ Petition to Deny of the Roaming Petitioners at 5 (filed Aug. 11, 2008) (“Roaming Petitioners Petition to Deny”).

holding licenses for over 95 megahertz of spectrum in more than half the state's counties.³¹² We address these concerns in more detail below.³¹³

2. Coordinated Effects

88. As discussed in previous wireless transaction orders, in markets where only a few firms account for most of the sales of a product, those firms may be able to exercise market power by either explicitly or tacitly coordinating their actions.³¹⁴ Accordingly, one way in which a transaction may create or enhance market power or facilitate its exercise is by making such coordinated interaction among firms more likely, more successful, or more complete.³¹⁵ Successful coordination depends on two key factors. The first is the ability to reach terms that are profitable for each of the firms involved, and the second is the ability to detect and punish deviations that would undermine the coordinated interaction.³¹⁶

89. The Applicants assert that the transaction does not pose any risk of coordinated interaction in the markets in which Verizon Wireless and ALLTEL have overlapping spectrum.³¹⁷ They assert that no risk will arise because the overall market for mobile services is highly competitive and a substantial number of competitors will remain after the transaction.³¹⁸ The Applicants do not identify any specific constraints on the ability of the remaining competitors to reach terms of coordination or to detect and punish deviations following the transaction.³¹⁹

90. The Applicants' arguments on coordinated interaction do not cause us to alter our general views on this topic, as set out in the Commission's recent wireless transaction orders.³²⁰ Specifically, we continue to find that a number of market conditions may affect one or both elements of coordination, including the availability of information about market conditions, the extent of firm and product

³¹² South Dakota Telecommunications Association Petition at 7-9.

³¹³ See *infra* Part VIII.A (Roaming).

³¹⁴ See *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12496 ¶ 67; *AT&T-Dobson Order*, 22 FCC Rcd at 20321 ¶ 48; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11554 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 ¶ 69; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150; *DOJ/FTC Merger Guidelines* § 0.1.

³¹⁵ See *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12496 ¶ 67; *AT&T-Dobson Order*, 22 FCC Rcd at 20321 ¶ 48; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11554 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 ¶ 69; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150.

³¹⁶ See *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12496 ¶ 67; *AT&T-Dobson Order*, 22 FCC Rcd at 20321-22 ¶ 48; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11554 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 ¶ 69; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151; *DOJ/FTC Merger Guidelines* § 2.11.

³¹⁷ Application, Public Interest Statement at 51. *But see* Comments of Consumers Union and Consumer Federation of America at 1 (filed Oct. 28, 2008) ("Consumers Union Comments") (expressing concern over increased prices for text messaging, which "seem to come in parallel . . . in a market dominated by two firms").

³¹⁸ Application, Public Interest Statement at 51.

³¹⁹ See *id.* at 51-52.

³²⁰ See *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12496 ¶ 69; *AT&T-Dobson Order*, 22 FCC Rcd at 20322 ¶ 50; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555 ¶ 62; *Sprint-Nextel Order*, 20 FCC Rcd at 13995-01 ¶¶ 69-89; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085-87 ¶¶ 85-93; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580-86 ¶¶ 150-164.

homogeneity, and the presence of maverick providers in the market.³²¹ As discussed in the previous transactions, these general findings underpin the market-by-market analysis to which we now turn.³²²

D. Market-by-Market Analysis

1. Analytical Standard

91. In this section, we examine the local markets consistent with the approach the Commission has applied in its recent wireless transaction orders.³²³ Although the 100 markets that Verizon Wireless has committed to divest were identified by our initial screen, we do not undertake a market-by-market analysis of these markets because they will be divested. Therefore, we examine the remaining 118 CMAs identified by the Commission's initial screen examining both HHI market concentration and spectrum input. In undertaking this market-by-market analysis, we consider variables that the general analyses in these orders have shown are important for predicting the incentive and ability of service providers to successfully restrict competition on price or non-price terms through coordinated interaction, and the incentive and ability of the merged entity unilaterally to elevate prices or suppress output.³²⁴ These include: the total number of rival service providers; the number of rival firms that can offer competitive nationwide service plans; the coverage of the firms' respective networks; the rival firms' market shares; the merged entity's post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum holdings of each of the rival service providers. In reaching determinations, we balance these factors on a market-specific basis, and consider the totality of the circumstances in each market.

92. Thus, for example, if our count of the number of rival service providers and our scrutiny of their spectrum holdings and network coverage indicates that the response of rival service providers will likely be sufficient to limit the ability and incentive of the combined entity to raise prices unilaterally, we would find that the transaction is not harmful to competition in a specific market even in the presence of a relatively high post-transaction market share of the combined entity.³²⁵ We also scrutinize, and base our determinations on, the uniformity of competitive conditions in local markets. Thus, in some instances, we may find that the transaction is not harmful to competition in a particular market if the

³²¹ See *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12496 ¶ 69; *AT&T-Dobson Order*, 22 FCC Rcd at 20322 ¶ 50; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555 ¶ 62; *Sprint-Nextel Order*, 20 FCC Rcd at 13995-01 ¶¶ 69-89; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085-87 ¶¶ 85-93; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580-86 ¶¶ 150-164.

³²² See *id.*

³²³ See, e.g., *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12496-97 ¶ 70; *AT&T-Dobson Order*, 22 FCC Rcd at 20322 ¶ 51; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555, 11574-75 ¶ 63, App.; *Sprint-Nextel Order*, 20 FCC Rcd at 14046-14053 App. C; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13120-36 App. C, App. D; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21649 App. D.

³²⁴ See, e.g., *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12496-97 ¶ 70; *AT&T-Dobson Order*, 22 FCC Rcd at 20322 ¶ 51; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555 ¶ 63; *Sprint-Nextel Order*, 20 FCC Rcd at 13995-14009 ¶¶ 68-116; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075-87 ¶¶ 54-93; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570-86 ¶¶ 115-164.

³²⁵ See, e.g., *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12497 ¶ 71; *AT&T-Dobson Order*, 22 FCC Rcd at 20322-23 ¶ 52; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555 ¶ 64; *Sprint-Nextel Order*, 20 FCC Rcd at 14010 ¶ 118; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13096 ¶ 118; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 190.

potential harm from the transaction is confined to a small enclave within the market, and this harm is likely to be ameliorated by the more favorable competitive conditions in most of the market.³²⁶

2. Result of Analysis

93. Our market-by-market analysis finds that there would be a significant likelihood of harm in the proposed transaction, either from unilateral effects or coordinated interaction, in five of the 118 CMAs identified by the initial screen.³²⁷ As the Commission determined in its previous wireless transaction orders, this multi-factor, market-specific analysis, which employs a combination of data sources, provides a reliable basis for making our determinations herein.³²⁸

94. For these 118 markets identified by the initial screen, we derive the market share and HHI information from our analysis of data compiled in our NRUF database, which tracks phone number usage by all telecommunications services providers, including wireless service providers. However, our analysis does not rely solely on market shares to determine which markets are likely to experience competitive harm resulting from this transaction. In combination with the other factors in our multi-factor, market-specific analysis, which draws competitive conclusions based on the totality of the circumstances present in a given market, we are confident that these ranges are a reliable basis for our determinations.

³²⁶ See, e.g., *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12497 ¶ 71; *AT&T-Dobson Order*, 22 FCC Rcd at 20322-3 ¶ 52; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555 ¶ 64; *Sprint-Nextel Order*, 20 FCC Rcd at 14010 ¶ 118; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13095-96 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 190.

³²⁷ In its September 9, 2008, *ex parte* meeting with Commission staff, Verizon Wireless raised the issue of its reacquisition of licenses in markets that the Commission required them to divest in prior transactions. Specifically, in the *Bell Atlantic/Vodafone Order*, the Commission required the merged entity (Verizon Wireless) to divest cellular licenses under the cellular cross-ownership rule in effect at that time. Applications of Vodafone AirTouch, Plc, and Bell Atlantic Corporation for Consent to Transfer of Control or Assignment of Licenses and Authorizations, *Memorandum Opinion and Order*, 15 FCC Rcd 16507, 16517 ¶ 26 (2000). The following cellular licenses were subsequently divested to ALLTEL: CMA026 Phoenix, AZ; CMA077 Tucson, AZ; CMA077 Tucson, AZ; CMA086 Albuquerque, NM; and CMA319 Arizona 2-Coconino. Likewise, in the *Bell Atlantic-GTE Order*, the Commission required the merged entity to divest cellular licenses under the cellular cross-ownership rule. GTE Corp, Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, CC Docket No. 98-184, *Memorandum Opinion and Order*, 15 FCC Rcd 14032, 14207-08 ¶¶ 385-386 (2000). The Commission required a further divestiture of licenses under its spectrum cap (45 megahertz of CMRS spectrum in urban areas, and 55 megahertz in rural areas). *Bell Atlantic-GTE Order*, 15 FCC Rcd at 14207-08 ¶¶ 385-86. Bell Atlantic, which later became part of Verizon Wireless, also entered into a Consent Decree with the Department of Justice that required divestitures. The assets that Verizon Wireless proposes acquiring as part of the current transaction did not rely on the Consent Decree with the DOJ and were divested without additional conditions.

As noted above, following these changes the Commission began using the case-by-case analysis of proposed wireless transactions it is using here to determine the competitive effects and implications for the public interest. See 200 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, *Report and Order*, 16 FCC Rcd 22668, 22695-97 ¶¶ 54-58 (2001). We will therefore evaluate these markets as part of our market-by-market analysis.

³²⁸ *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12497 at ¶ 72; *AT&T-Dobson Order*, 22 FCC Rcd at 20323 ¶ 53; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11556 ¶ 65; *Sprint-Nextel Order*, 20 FCC Rcd at 14010 ¶ 118; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13095-96 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 190.

95. In addition, we examine data from our LNP database through December 30, 2006, June 30, 2007, and December 30, 2007. This information includes each instance of a customer porting a phone number from one mobile provider to another, and indicates both the origin and destination provider.³²⁹ We also analyze launch and coverage information for wireless providers available from a variety of public sources, as well as information regarding spectrum holdings, which we obtained from our licensing databases and from the Application.

96. *Divestitures Proposed by Verizon Wireless.* The Applicants argue that the voluntary divestitures eliminate the primary overlap areas between their networks, leaving only complementary assets.³³⁰ They contend the divestitures of assets in North and South Dakota, as well as others, should alleviate all the commenters' concerns about local competition.³³¹ The Applicants argue generally that the Commission should not revert to a spectrum cap and should continue to use a spectrum screen.³³²

97. While most commenters support Verizon Wireless's offer to divest spectrum in these markets, they ask the Commission to add further conditions to the offer.³³³ Some commenters question whether the merged entity should be allowed to retain more than 95 megahertz or otherwise excessive spectrum in any market.³³⁴ These commenters propose several methods for the Commission to determine which spectrum should be divested, such as that the Commission require that: the merged entity divest

³²⁹ This data was provided to the Commission by NeuStar.

³³⁰ Joint Opposition at 36.

³³¹ *See id.* at 36-37.

³³² *See id.* at 39-40.

³³³ Several commenters asked for divestiture conditions that address specific issues in their regions. The South Dakota Telecommunications Association argues that the merged entity should divest all of ALLTEL's assets in South Dakota that overlap with Verizon Wireless's assets because the two companies are the dominant competitors in the state and the merged entity would control an anti-competitive amount of spectrum with a divestiture. South Dakota Telecommunications Association Petition at 8-9.

Palmetto contends that Verizon Wireless should divest spectrum in 13 CMAs in South Carolina. Palmetto Petition to Deny at 23. Palmetto identifies CMA67 Greenville-Spartanburg, SC; CMA90 Charleston-North Charleston, SC; CMA95 Columbia, SC; CMA108 Augusta, GA/SC; CMA227 Anderson, SC; CMA264 Florence, SC; CMA625 South Carolina 1-Oconee; CMA626 South Carolina 2-Laurens; CMA627 South Carolina 3-Cherokee; CMA630 South Carolina 6-Clarendon; CMA631 South Carolina 7-Calhoun; CMA632 South Carolina 8-Hampton; and CMA633 South Carolina 9-Lancaster. Palmetto expresses concern that without these conditions, competitors would not have a strong enough market presence to counterbalance the merged entities market power and the merged entity will face only three competitors in one third of South Carolina counties. *See also* Palmetto Reply at 2, 17; *see also id.* at 4-15, Exhibit A (analyzing each South Carolina market).

Chatham argues in its reply that Verizon Wireless should divest markets in Minnesota, Montana, North Dakota, and South Dakota because the markets are particularly concentrated in those states. Chatham Reply at 6-7.

The Rural Carriers ask for divestitures in CMA153 Columbus, GA; CMA261 Albany, GA; CMA311 Alabama 5-Cleburne RSA; CMA314 Alabama 8-Lee RSA; CMA375 Georgia 5-Haralson RSA; CMA376 Georgia 6-Spalding; CMA392 Idaho 5-Butte; and CMA393 Idaho 6-Clark. Rural Carriers Reply at 15, 17; Rural Carriers October 28, 2008 *Ex Parte* Filing at 2.

³³⁴ PISC Petition to Deny at 6; Chatham Petition to Deny at 5-6, 15-19 (arguing nearby competition will not suffice to constrain anticompetitive actions); Chatham Reply at 7-8; Rural Carriers Reply at 2 n.3, 8, 11; Petition to Deny of the National Telecommunication Cooperative Association at 6-7 (filed Aug. 11, 2008) ("NTCA Petition to Deny"); PISC Reply at 1-2 n.4.

spectrum in excess of 95 megahertz in any market in which it holds more than 115 megahertz;³³⁵ the merged entity divest CMAAs in which it would hold both cellular spectrum blocks;³³⁶ the merged entity divest all spectrum in excess of 55 megahertz (at the county level) that it would hold below 1 GHz and all spectrum in excess of 110 megahertz that it would hold below 2.3 GHz;³³⁷ or Verizon Wireless divest the ALLTEL cellular systems (including network assets and customers) where it overlaps with Verizon Wireless's cellular spectrum or where spectrum would become excessively concentrated.³³⁸ The Applicants respond that the Commission rejected these sorts of spectrum limits when it abolished its 1999 decision to impose a 55 megahertz cap of cellular, PCS, and SMR spectrum.³³⁹

98. *Market-Specific Analysis.* In performing our market-by-market analysis, we find that, in the great majority of the 118 markets identified by the initial screen, no competitive concerns were raised. For instance, in most of these markets, there would be four or more competitors present post-transaction with thoroughly built-out networks, adequate bandwidth, and the ability to offer competitive nationwide services. For each of these markets we determine, consistent with our findings in previous transaction orders, that competitive harm is unlikely.³⁴⁰ In several other of these markets, we conclude that based on the various particular facts in each of these markets, the proposed transaction would be unlikely to make it profitable for the combined entity to raise price and restrict output. The presence and capacity of rival service providers, taking into account near-term opportunities to obtain access to additional spectrum, are such in these markets as well that the response of these rival service providers would likely be sufficient to deter any unilateral actions or anticompetitive behavior by the merged entity.

99. In ten of the 118 markets, however, we conclude that further discussion herein is merited regarding the factors and particularities associated with our determination as to whether there would be competitive harm in each of these specific markets. As indicated below, in five of these markets we find that divestiture is appropriate, while in the other five we conclude that it is not necessary in order to prevent the likelihood of competitive harm.

100. *Specific Markets in Which Competitive Harm Is Likely.* We list below the markets in which our case-by-case analysis indicates that competitive harm is likely as a result of this transaction.

³³⁵ Chatham Petition to Deny at ii; *see also* Petition to Deny of Organization for the Promotion and Advancement of Small Telecommunications Companies and the Rural Independent Competitive Alliance at 7-8 (filed Aug. 11, 2008) (“OPASTCO and RICA Petition to Deny”) (arguing the Commission should prevent concentration of spectrum with nationwide carriers and proposing that the merged entity divest, to rural carriers, its spectrum assets in any county in which it hold licenses for more than 110 megahertz of spectrum).

³³⁶ Rural Carriers Petition at 9-10. Specifically, the Rural Carriers expressed concern about CMA153 Columbus, GA-AL; CMA261 Albany, GA; CMA31 Alabama 5-Cleburne; CMA314 Alabama 8-Lee; CMA375 Georgia 5-Haralson; CMA376 Georgia 6-Spalding; CMA392 Idaho 5-Butte; and CMA393 Idaho 6-Clark. *Id.*

³³⁷ Rural Telecommunications Group Petition to Deny at 19-21; Palmetto Petition to Deny at 5-7, 22-23; Palmetto Reply at 15-16; Rural Telecommunications Group Reply at 10-12 (clarifying that the commenters are not requesting a new rule, but only suggesting a method for determining how much ALLTEL spectrum Verizon Wireless should be required to divest); *see also* Rural Telecommunications Group Petition to Deny at 19 n.43 (claiming that the Commission can determine the appropriate markets for divestiture using information from the Universal Licensing System (“ULS”) database). Similarly, the Rural Carriers suggest that the Commission should require divestiture of all spectrum in excess of 95 megahertz that it would hold below 2 GHz. Rural Carriers Petition at 9 n.18.

³³⁸ Rural Carriers Petition at 9. In particular, the Rural Carriers suggest the Commission require Verizon Wireless to divest CMA153 Columbus, GA-AL; CMA261 Albany, GA; CMA311 Alabama 5-Cleburne; CMA314 Alabama 8-Lee; CMA375 Georgia 5-Haralson; CMA376 Georgia 6-Spalding; CMA392 Idaho 5-Butte; and CMA393 Idaho 6-Clark. Rural Carriers Petition at 10.

³³⁹ Joint Opposition at 39-40.

³⁴⁰ *Sprint-Nextel Order*, 20 FCC Rcd at 14010 ¶ 119.

Most of these five markets are smaller markets with relatively high market shares for the merged entity and few competing service providers. In these markets, we are concerned that, post-transaction, competing service providers would not be sufficiently numerous to deter anticompetitive behavior by the merged entity.³⁴¹

Market	Market Name
CMA181	Muskegon, MI
CMA427	Iowa 16-Lyon
CMA476	Michigan 5-Manistee
CMA478	Michigan 7-Newaygo
CMA650	Tennessee 8-Johnson

101. Generally, we find that, in any market in which the transaction would reduce the number of genuine competitors to three or fewer, the proposed transaction may result in a significant likelihood of successful unilateral effects and/or coordinated interaction.³⁴² The following five markets, which are the markets where we are requiring business unit divestitures, represent markets in which the acquisition would reduce the number of competitors and result in a significant likelihood of anticompetitive behavior of the combined firm. In fact, in one of these five markets, the number of fully constructed operators will be reduced from two to one.³⁴³ In four of these markets, we expect that the post-transaction market share of the combined entity likely would make it profitable for the entity to raise prices and restrict output. We conclude that the presence and capacity of rival service providers, taking into account near-term opportunities to obtain access to additional spectrum, are such that the response of rival service providers is likely to be insufficient to deter successful unilateral effects and/or coordinated interaction by the merged entity.

102. *Iowa Market.* CMA427 Iowa 16-Lyon is contiguous to several markets that the Applicants have voluntarily agreed to divest.³⁴⁴ We have competitive concerns relating to this market because of a high combined market share that would result with the merged entity, and because there is insufficient coverage by other nationwide service providers or large regional providers that could prevent anticompetitive behavior.³⁴⁵ In this market, the Applicants currently have [REDACTED] market shares, and post transaction the combined entity would have a market share of [REDACTED], [REDACTED] times greater than the nearest competitor. In addition, the transaction would reduce the number of other service providers with market share greater than [REDACTED] to two providers, neither of which offers

³⁴¹ Application of the initial screen on a CEA basis shows that no potential markets of concern are identified that are not also identified by CMA application of the screen. For convenience, we limit our discussion of the markets of concern to CMAs because, upon completing our competitive analysis, we find that the most exact divestiture area to eliminate concerns of competitive harm would be CMAs. Therefore, we undertake our in-depth analysis on the basis of CMA areas only.

³⁴² *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 191.

³⁴³ For purposes of this determination, we define fully built-out as having coverage of at least 70% of the population in the CMA.

³⁴⁴ These contiguous markets are CMA253 Sioux City-IA-NE, CMA267 Sioux Falls, SD, CMA419 Iowa 8-Monona, CMA490 Minnesota 9-Pipestone, and CMA642 South Dakota 9-Hanson.

³⁴⁵ We conclude that spectrum aggregation in this market does not raise concerns of competitive harm. AWS-1 is included in the spectrum aggregation screen, while BRS spectrum is not. Post-transaction, the merged entity would hold 87 to 114 megahertz in this CMA out of a possible 370 megahertz, reflecting approximately 23.5% to 30.8% of this spectrum. There are many other licensees in the market as well as significant other spectrum available for use.

nationwide service plans that could discipline anticompetitive behavior by the merged entity with respect to offering nationwide service. Also, although there would be four service providers, including the merged entity, post-transaction that would cover 70 percent of the CMA population and land area, Verizon Wireless would be the only nationwide or larger regional service provider with this degree of coverage in CMA427 Iowa 16-Lyon.

103. We find that absent divestiture, it is likely that the merged entity could behave in an anticompetitive manner because of its high combined market share and that it would be the only nationwide service provider covering 70 percent or more of the CMA population and more than 50 percent of the CMA land area. Given the demographics of the area, it is unlikely that in the near term a nationwide service provider or large regional provider would be able to enter the market to discipline the combined entity, and therefore a divestiture of this market would provide the opportunity for an additional competitor to enter the market. Therefore, we conclude that there is substantial risk that the proposed transaction, without a divestiture, would lead to anticompetitive harms in the Iowa 16-Lyon CMA.

104. *Michigan Cluster.* This cluster includes three CMAs in Michigan – CMA181 Muskegon, MI, CMA476 Michigan 5-Manistee, and CMA478 Michigan 7-Newaygo – none of which are contiguous to markets being voluntarily divested. These three markets raise specific concerns that relate to the combined market share that would result, as well as the lack of network coverage in terms of both land area and population.³⁴⁶ The combined market share for this cluster ranges from [REDACTED] in CMA181 Muskegon, MI to [REDACTED] in CMA476 Michigan 5-Manistee.³⁴⁷ In terms of market share there is a reduction from four to three service providers in CMA181 Muskegon, MI. Further, in CMA181 Muskegon, MI, there is a reduction from four to three service providers that cover 70 percent or more of the CMA population.

105. We find that absent divestiture, it is likely that the merged entity could behave in an anticompetitive manner. In this cluster, there is a reduction in terms of market share and population coverage from four to three service providers in a non-rural CMA (CMA181 Muskegon, MI). Although the reduction in the number of service providers with sufficient network coverage is less in the two rural CMAs, the merged entity's combined market share in these two markets, coupled with the reduction in competition in CMA181 Muskegon, may facilitate anticompetitive behavior by the merged entity.

106. *CMA650 Tennessee 8-Johnson.* In this CMA, which is contiguous to two markets that are voluntarily being divested,³⁴⁸ we are primarily concerned that because of lack of network coverage by other providers, there is likelihood of competitive harm.³⁴⁹ The transaction as proposed would consolidate the only two service providers covering more than 25 percent or more of this CMA's land area. The transaction also would reduce from three to two the number of service providers covering

³⁴⁶ For CMA181 Muskegon, MI and CMA478 Michigan 7-Newaygo, AWS-1 and BRS spectrum is included in the spectrum aggregation screen. Post-transaction, the merged entity would hold 94 to 119 megahertz in these CMAs out of a possible 425 megahertz, and therefore spectrum aggregation is unlikely in and of itself to result in competitive harms. For CMA476 Michigan 5-Manistee, AWS-1 spectrum is included in the spectrum aggregation screen. Post-transaction, the merged entity would hold 82 to 87 megahertz in this CMA out of a possible 370 megahertz, and therefore spectrum aggregation is unlikely in and of itself to result in competitive harms.

³⁴⁷ Verizon Wireless's market share in CMA476 Michigan 5-Manistee is [REDACTED].

³⁴⁸ The two CMAs are CMA566 North Carolina 2-Yancey and CMA681 Virginia 1-Lee.

³⁴⁹ We conclude that spectrum aggregation in this market does not raise concerns of competitive harm. If all relevant spectrum holdings in this CMA were combined, the merged entity's total spectrum aggregation on a county-by-county basis in this CMA would come to 107 megahertz of a total of 370 megahertz of cellular, PCS, SMR, 700 MHz, AWS-1 spectrum available for mobile telephony/broadband services within the CMA, reflecting approximately 28.9% of this spectrum. There are many other licensees in the market as well as significant other spectrum available for use.

significant percentages of the population. In sum, we find that this transaction would substantially reduce the number of providers covering a significant percentage of the population and land area in this market. Therefore, we find it unlikely that other providers with network coverage in this market could effectively discipline the merged entity, and conclude that divestiture is appropriate.

107. *Specific Markets in Which Competitive Harm Is Not Likely.* We find, as discussed below, that business unit divestitures are not required in the other five markets.

108. *Alabama Cluster.* This cluster includes two CMAs – CMA310 Alabama 4-Bibb and CMA314 Alabama 8-Lee. These CMAs are contiguous to several voluntary divestiture markets.³⁵⁰ Of concern in both of these CMAs is the level of network coverage.³⁵¹ In CMA310 Alabama 4-Bibb, we are primarily concerned with a reduction in the number of service providers that cover more than 70 percent of the population and more than 50 percent of the land area from three service providers to two. For CMA314 Alabama 8-Lee, the merged entity would have a combined market share of [REDACTED], but the transaction would reduce the number of service providers with market share greater than [REDACTED] from six providers to five.

109. Even though these markets raise these concerns, we nonetheless find that, on the balance, it is unlikely that this transaction would result in competitive harm. While in CMA310 Alabama 4-Bibb, there are only three providers that cover more than 70 percent of the population, Sprint Nextel covers approximately 63 percent and T-Mobile 60 percent, and both have sufficient capacity to expand their network to cover 70 percent or more of the population in the near term. Also, both Sprint Nextel and T-Mobile have market shares greater than [REDACTED] in CMA310 Alabama 4-Bibb. Further, the porting data suggests that in this CMA neither ALLTEL's nor Verizon Wireless's customers consider the other as their next best choice of service provider.³⁵² In CMA314 Alabama 8-Lee, we note that, although the combined entity would hold a greater than [REDACTED] market share, two of the other three nationwide service providers hold market shares greater than [REDACTED] and cover more than 70 percent of the CMA population, and therefore would likely be able to discipline the market in the event that the combined firm attempted to behave in an anticompetitive manner. In addition, for both of these Alabama markets, we find that the significant presence of major service providers in nearby metropolitan markets, such as Montgomery, Alabama, and Columbus, Georgia, with their ability to extend their presence, also is likely to provide a check on possible anticompetitive behavior by the merged entity post transaction.

110. *North Carolina Market.* In CMA573 North Carolina 9-Camden, our primary concern is that there would be a loss of a competitor that covers a significant portion of the CMA, leaving only two service providers that cover around 70 percent or more of the CMA population.³⁵³ Specifically, two

³⁵⁰ Both CMAs in the Alabama Cluster are contiguous to CMA313 Alabama 7-Butler. Also, CMA314 Alabama 8 is also contiguous to several other divestiture markets – CMA246 Dothan, AL; CMA379 Georgia 9-Marion; and CMA383 Georgia 13-Early.

³⁵¹ For both of these CMAs, AWS-1 and BRS spectrum is included in the spectrum aggregation screen. Post-transaction, the merged entity would hold 92 to 127 megahertz in these CMAs out of a possible 425 megahertz, and therefore spectrum aggregation is unlikely in and of itself to result in competitive harms.

³⁵² [REDACTED] of Verizon Wireless's customers have ported to ALLTEL and [REDACTED] of ALLTEL's customers have ported to Verizon Wireless.

³⁵³ We conclude that spectrum aggregation in this market does not raise concerns of competitive harm. AWS-1 and BRS are included in the spectrum aggregation screen for this CMA. Post-transaction, the merged entity would hold 87 to 97 megahertz in these CMAs out of a possible 425 megahertz, and therefore spectrum aggregation is unlikely in and of itself to result in competitive harms.

service providers – ALLTEL and U.S. Cellular – currently cover 70 percent or more of the CMA population and 50 percent or more of the land area.

111. Examination of other factors, however, leads us to conclude that, on balance, it is unlikely that this transaction would result in competitive harms. Both Sprint Nextel and T-Mobile have market share greater than [REDACTED] in this market, and all of the other three nationwide providers' network coverage overlaps the majority of the network overlap between Verizon Wireless and ALLTEL. Therefore, the nationwide service providers and U.S. Cellular should be able to effectively discipline the merged entity if it attempts to behave in an anticompetitive manner. Further, in this market more than [REDACTED] of ports for both Verizon Wireless and ALLTEL went to U.S. Cellular, which has a market share of [REDACTED] and covers more in terms of both population and land area than either of the merging entities. Therefore, the transaction may provide a stronger competitor in this market to U.S. Cellular.

112. *Tennessee/North Carolina/Virginia Cluster.* This cluster includes two CMAs – CMA085 Johnson City and CMA646 Tennessee 4-Hamblen. CMA085 Johnson City is contiguous to two voluntary divestiture markets,³⁵⁴ while CMA646 Tennessee 4-Hamblen is not contiguous to any of the markets being voluntarily divested. Our chief concern regarding CMA646 Tennessee 4-Hamblen is that there is a reduction in competition in terms of population covered by the network, while in CMA085 Johnson City our concerns relate to market share and land area coverage.³⁵⁵ The combined market share is [REDACTED] in CMA085 Johnson City and there is a reduction in the number of service providers from five to four in this CMA. In terms of population coverage, there is a reduction from four to three service providers in CMA646 Tennessee 4-Hamblen. In terms of land area coverage there is a reduction from four to three in CMA085 Johnson City. For CMA085 Johnson City, AWS-1 is included in the analysis; however, BRS is not. In this CMA, post transaction, the merged entity would hold 107 megahertz out of a possible 370 megahertz.

113. Although these markets raise these concerns, we conclude, on balance that it is unlikely that this transaction would result in competitive harms. In both CMAs, the nationwide service providers have sufficient market share coverage, and capacity to counter any anticompetitive actions of the combined firm. Specifically in CMA085 Johnson City, the other three nationwide service providers have market share greater than [REDACTED], and extensive network coverage of the population. In CMA646 Tennessee 4-Hamblen, AT&T Mobility LLC (“AT&T Mobility”) has a market share of over [REDACTED] and Sprint Nextel’s share is over [REDACTED]. Therefore, these firms should be able to discipline the merged entity if it behaves in an anticompetitive manner.

VI. POTENTIAL PUBLIC INTEREST BENEFITS

114. In addition to assessing the potential competitive harms of the proposed Verizon Wireless-ALLTEL transaction, we also consider whether the respective combination of these companies’ wireless operations is likely to generate verifiable, transaction-specific public interest benefits.³⁵⁶ In

³⁵⁴ The two CMAs are CMA566 North Carolina 2-Yancey and CMA681 Virginia 1-Lee.

³⁵⁵ For CMA646 Tennessee 4-Hamblen, AWS-1 and BRS are included in the analysis, and post-transaction the merged entity would hold 102 to 107 megahertz in this CMA out of a possible 425 megahertz. Therefore, spectrum aggregation is unlikely in and of itself to result in competitive harms.

³⁵⁶ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12383 at ¶ 75; *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12504 ¶ 91; *AT&T-Dobson Order*, 22 FCC Rcd at 20330 ¶ 73; *AT&T-BellSouth Order*, 22 FCC Rcd at 5760 ¶ 200; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 105; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13100 ¶ 132; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

doing so, we ask whether the resulting combined entity would be able, and would be likely, to pursue business strategies resulting in demonstrable and verifiable benefits to consumers that would not be pursued but for the combination.³⁵⁷

115. As discussed below, we find that the proposed transaction is likely to result in certain transaction-specific public interest benefits. We reach this conclusion, however, recognizing that many of these benefits may be challenging to achieve in the near future because of sizable technological and financial requirements. As a result, it is difficult for us to precisely quantify either the magnitude of or the time period in which these benefits will be realized.³⁵⁸

A. Analytical Framework

116. 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.”³⁵⁹ 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.³⁶⁰

117. 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. This means that the claimed benefit “must be likely to be accomplished as a result of the merger but unlikely to be realized by other means that entail fewer anticompetitive effects.”³⁶¹ Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a merger is in the sole possession of the applicants involved in such a transaction, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude.³⁶² In addition, as the Commission has noted, “the magnitude of benefits must be calculated

³⁵⁷ See, e.g., *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12504 ¶ 91; *AT&T-Dobson Order*, 22 FCC Rcd at 20330 ¶ 73; *AT&T-BellSouth Order*, 22 FCC Rcd at 5760 ¶ 200; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 105; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13100 ¶ 132; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

³⁵⁸ See, e.g., *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12504 ¶ 92; *AT&T-Dobson Order*, 22 FCC Rcd at 20330 ¶ 74.

³⁵⁹ E.g., *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12504-05 ¶ 93; *AT&T-Dobson Order*, 22 FCC Rcd at 20330 ¶ 75; *AT&T-BellSouth Order*, 22 FCC Rcd at 5760 ¶ 201; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 107; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101 ¶ 135; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204; see also *DOJ/FTC Merger Guidelines* § 4.

³⁶⁰ See, e.g., *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12504-05 ¶ 93; *AT&T-Dobson Order*, 22 FCC Rcd at 20330-31 ¶ 75; *AT&T-BellSouth Order*, 22 FCC Rcd at 5760-61 ¶ 201; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 107; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101 ¶ 135; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204.

³⁶¹ *XM-Sirius Order*, 23 FCC Rcd at 12383 ¶ 75; *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12505-06 ¶ 94; *AT&T-Dobson Order*, 22 FCC Rcd at 20331 ¶ 76; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 108; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599-600 ¶ 205. Cf. *DOJ/FTC Merger Guidelines* § 4.

³⁶² See *XM-Sirius Order*, 23 FCC Rcd at 12383 ¶ 75; *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12505-06 ¶ 94; *AT&T-Dobson Order*, 22 FCC Rcd at 20331 ¶ 76; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564-65 ¶ 108; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; (continued....)

net of the cost of achieving them.”³⁶³ Furthermore, as the Commission has previously 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.”³⁶⁴ Third, the Commission has stated that it “will more likely find marginal cost reductions to be cognizable than reductions in fixed cost.”³⁶⁵ 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.³⁶⁶

118. Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims.³⁶⁷ 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.”³⁶⁸ On the other hand, where potential harms appear less likely and less substantial, as in this case,³⁶⁹ we will accept a lesser showing to approve the transaction.³⁷⁰

(Continued from previous page)

ALLTEL-Western Wireless Order, 20 FCC Rcd at 13101-02 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

³⁶³ *XM-Sirius Order*, 23 FCC Rcd at 12383 ¶ 75; *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12505-06 ¶ 94; *AT&T-Dobson Order*, 22 FCC Rcd at 20331 ¶ 76; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565 ¶ 108; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101-02 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

³⁶⁴ *XM-Sirius Order*, 23 FCC Rcd at 12383 ¶ 75; *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12505-06 ¶ 94; *AT&T-Dobson Order*, 22 FCC Rcd at 20331 ¶ 76; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565 ¶ 108; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

³⁶⁵ *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12505-06 ¶ 94; *AT&T-Dobson Order*, 22 FCC Rcd at 20331-32 ¶ 76; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565 ¶ 108; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205. See also *DOJ/FTC Merger Guidelines* § 4.

³⁶⁶ *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12505-06 ¶ 94; *AT&T-Dobson Order*, 22 FCC Rcd at 20332 ¶ 76; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565 ¶ 108; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 137; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206; see also *DOJ/FTC Merger Guidelines* § 4.

³⁶⁷ *XM-Sirius Order*, 23 FCC Rcd at 12384 ¶ 76; *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12506 ¶ 95; *AT&T-Dobson Order*, 22 FCC Rcd at 20332 ¶ 77; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 203; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565 ¶ 109; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 137; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206.

³⁶⁸ *XM-Sirius Order*, 23 FCC Rcd at 12384 ¶ 76; *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12506 ¶ 95; *AT&T-Dobson Order*, 22 FCC Rcd at 20332 ¶ 77; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671-72 ¶ 203; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565-66 ¶ 109; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 137; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206. Cf. *DOJ/FTC Merger Guidelines* § 4 (“The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.”).

³⁶⁹ We evaluate the potential public interest benefits of the proposed transaction taking into account (1) Verizon Wireless’s voluntary commitment to divest 100 markets and (2) our finding that competitive harm is unlikely in all but five of the other 118 markets identified by the initial screen.

B. Discussion

119. The Applicants assert, and many commenters agree, that the proposed transaction will result in a number of public interest and consumer benefits. Specifically, they assert that the proposed transaction will benefit rural customers. The Applicants enumerate the multiple benefits for rural America, including faster and more extensive deployment of wireless broadband service, seamless national coverage, improved customer care, and a greater variety of services, devices, and service plans for ALLTEL subscribers.³⁷¹ In addition, the Applicants note that the merged entity will provide more contiguous coverage and expanded wireless data services for Verizon Wireless subscribers.³⁷² They contend that, overall, the proposed transaction would provide substantial benefits for existing ALLTEL customers as well as existing and future Verizon Wireless customers.

120. Some commenters assert that the Applicants have failed to demonstrate that the proposed transaction is in the public interest³⁷³ or that the harms outweigh the potential public interest benefits.³⁷⁴ Some commenters also oppose the proposed transaction, arguing that the loss of ALLTEL as a service provider will harm the provision of wireless service in rural markets.³⁷⁵ We disagree. Although, as stated above, we recognize that it is difficult to quantify either the magnitude or timeframe for accomplishing many of these potential public interest benefits, we find that certain of these public interest benefits are likely to be realized in the near term because of the proposed transaction.

121. In this section, we will discuss the potential public interest benefits specifically proposed by the Applicants as follows. First, we discuss the Applicants' assertion that the merger would expand Verizon Wireless's wireless footprint.³⁷⁶ Second, we consider the Applicants' contention that this transaction would result in expanded and improved services and features for wireless customers, especially in rural areas.³⁷⁷ Third, we discuss the argument that the combined entity's increased

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³⁷⁰ See, e.g., *See, e.g., XM-Sirius Order*, 23 FCC Rcd at 12384 ¶ 76; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12506 ¶ 95; *AT&T-Dobson Order*, 22 FCC Rcd at 20332 ¶ 77; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 203; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11566 ¶ 109.

³⁷¹ See Joint Opposition at 3.

³⁷² See *id.*

³⁷³ OPASTCO and RICA Petition to Deny at 6; PISC Reply at 1, 8.

³⁷⁴ Palmetto Reply at 1, 6.

³⁷⁵ Rural Telecommunications Group, Inc. Petition to Deny at i (arguing that the proposed transaction “will destroy the availability of Commercial Mobile Radiotelephone Service in rural America.”); NTCA Petition to Deny at 3-4 (asserting that the proposed merger will result in the loss of rural wireless carriers and consequently “the loss of rural wireless service.”). The Rural Telecommunications Group also asserts that the Application present a substantial and material question of fact as to whether the proposed merger serves the public interest and thus should be designated for hearing pursuant to section 309(c) of the Communications Act. *Id.* at 8-9; see also Cellular South Petition to Deny at 16-18 (requesting that the Commission designate the Application for hearing). The Applicants respond that that the Rural Telecommunications Group has cited no material questions of fact that would require a hearing. Joint Opposition at 2 n.3. We agree; neither the Rural Telecommunications Group nor Cellular South has presented material questions of fact warranting a hearing in this matter. Cellular South also argues that the Applicants have made impermissible *ex parte* presentations, which cannot be used to support the Commission's public interest determination, thus further necessitating the designation of the Applications for hearing. Cellular South Supplement at 6. The Applicants' *ex parte* presentations were appropriately made to the Commission and, coupled with the record in this matter, provide ample support for the Commission's public interest determination. See discussion *infra* at paras. 219-220.

³⁷⁶ Application, Public Interest Statement at 9-10, 22-23; Joint Opposition at 3, 7-8.

³⁷⁷ Application, Public Interest Statement at 11-22; Joint Opposition at 4-9.

resources would enable Verizon Wireless to increase broadband deployment and next generation services.³⁷⁸ Fourth, we set forth the Applicants' argument that the proposed transaction would allow the combined entity to provide higher quality service.³⁷⁹ Fifth, we discuss the Applicants' claim that the combined entity would increase efficiency and achieve economies of scale and scope.³⁸⁰ Finally, we discuss the assertion that the proposed transaction would strengthen Verizon Wireless as a competitor in the wireless telecommunications marketplace.³⁸¹

1. Increased Wireless Footprint and Network Coverage

122. *License Coverage.* The Applicants state that completion of the transaction will expand Verizon Wireless's license footprint into all or parts of 54 new CMAs (all of which are RSAs) – 11 rural CMAs³⁸² and portions of 43 other RSAs³⁸³ – where the company currently has no, or lacks complete, cellular or PCS spectrum coverage.³⁸⁴ Post-transaction, Verizon Wireless's license coverage will increase by more than 2.8 million POPs in an area covering approximately [REDACTED] of the geographic United States.³⁸⁵ ALLTEL customers will also benefit from an increased license footprint of more than 217.3 million POPs covering approximately [REDACTED] of the U.S. geographic area, including expanding the license footprint to 175 more RSAs.³⁸⁶ The Applicants state that this combined

³⁷⁸ Application, Public Interest Statement at 23-25; Joint Opposition at 4-5, 8, 9-12.

³⁷⁹ Application, Public Interest Statement at 14-16, 18-22; Joint Opposition at 5-8.

³⁸⁰ Application, Public Interest Statement at 25-27; Joint Opposition at 8-9; Joint Opposition, Attachment 1: Reply Declaration of Dennis Carlton, Allan Champine, and Hal Sider at 2-17 ("Reply Declaration").

³⁸¹ Application, Public Interest Statement at 27-29; Joint Opposition at 9.

³⁸² Application, Public Interest Statement at 10, 23. *See also* Information Request Response at 3, 6 (calculating the difference between the combined entity's license footprint coverage of 446 RSAs and Verizon Wireless's existing coverage of 435 RSAs). These markets include CMA414 Iowa 3-Monroe; CMA424 Iowa 13-Mitchell; CMA425 Iowa 14-Kossuth; CMA430 Kansas 3-Jewell; CMA431 Kansas 4-Marshall; CMA435 Kansas 8-Ellsworth; CMA436 Kansas 9-Morris; CMA441 Kansas 14-Reno; CMA504 Missouri 1-Atchison; CMA506 Missouri 3-Schuyler; and CMA540 Nebraska 8-Chase. Application, Public Interest Statement at 10 n.21.

³⁸³ These markets include CMA325 Arkansas 2-Marion; CMA326 Arkansas 3-Sharp; CMA327 Arkansas 4-Clay; CMA332 Arkansas 9-Polk; CMA333 Arkansas 10-Garland; CMA334 Arkansas 11-Hempstead; CMA335 Arkansas 12-Ouachita; CMA354 Colorado 7-Saguache; CMA381 Georgia 11-Toombs; CMA417 Iowa 6-Iowa; CMA422 Iowa 11-Hardin; CMA423 Iowa 12-Winneshiek; CMA426 Iowa 15-Dickinson; CMA427 Iowa 16-Lyon; CMA432 Kansas 5-Brown; CMA437 Kansas 10-Franklin; CMA442 Kansas 15-Elk; CMA457 Louisiana 4-Caldwell; CMA497 Mississippi 5-Washington; CMA502 Mississippi 10-Smith; CMA503 Mississippi 11-Lamar; CMA505 Missouri 2-Harrison; CMA507 Missouri 4-De Kalb; CMA518 Missouri 15-Stone; CMA520 Missouri 17-Shannon; CMA533 Nebraska 1-Sioux; CMA534 Nebraska 2-Cherry; CMA535 Nebraska 3-Knox; CMA536 Nebraska 4-Grant; CMA537 Nebraska 5-Boone; CMA538 Nebraska 6-Keith; CMA541 Nebraska 9-Adams; CMA554 New Mexico 2-Colfax; CMA558 New Mexico 6-Lincoln; CMA571 North Carolina 7-Rockingham; CMA596 Oklahoma 1-Cimarron; CMA598 Oklahoma 3-Grant; CMA599 Oklahoma 4-Nowata; CMA663 Texas 12-Hudspeth; CMA677 Utah 5-Carbon; CMA687 Virginia 7-Buckingham; CMA706 West Virginia 6-Lincoln; and CMA715 Wisconsin 8-Vernon. Application, Public Interest Statement at 10 n.22.

³⁸⁴ Application, Public Interest Statement at 10, 23; Joint Opposition at 7.

³⁸⁵ Information Request Response at 3, 6 (calculating the difference between the combined entity's license footprint coverage of 300,759,360 POPs throughout [REDACTED] of the U.S. geographic area and Verizon Wireless's existing coverage of 297,919,998 POPs throughout [REDACTED] of the U.S. geographic area); *see also* discussion *supra* note 22 (discussing license coverage data).

³⁸⁶ Information Request Response at 4, 6 (calculating the difference between the combined entity's license footprint coverage of 300,759,360 POPs throughout [REDACTED] of the U.S. geographic area, including 446 RSAs, and (continued....))

footprint will include substantial population coverage in every state, except Alaska, and provide subscribers with a consistent look, feel, and quality of service.³⁸⁷

123. *Network Coverage.* Beyond the increase in the wireless license footprint, the combined entity will achieve an increase in CDMA network coverage. Verizon Wireless's total network coverage will increase by approximately 19.7 million POPs covering almost [REDACTED] of the geographic U.S., including 67 RSAs.³⁸⁸ ALLTEL's customers will benefit from the combined network, which will increase ALLTEL's network coverage by approximately 211.5 million POPs covering an additional [REDACTED] of the geographic U.S., including an additional 146 RSAs.³⁸⁹ The EvDO Rev. A network footprint will also increase. Verizon Wireless already has deployed EvDO Rev. A throughout its EvDO network,³⁹⁰ and throughout the vast majority of its CDMA network.³⁹¹ Verizon Wireless's EvDO Rev. A footprint will expand only slightly upon consummation of the proposed transaction because ALLTEL has deployed EvDO Rev. A on a much more limited basis.³⁹² Post-transaction, Verizon Wireless's EvDO Rev. A coverage will increase to include another 1.4 million POPs covering an area of almost [REDACTED] of the geographic U.S., including an additional six RSAs.³⁹³ ALLTEL's customers will obtain a substantial benefit from being able to access Verizon Wireless's EvDO Rev. A network, as the merged network will cover an additional [REDACTED] POPs covering an additional [REDACTED] of the geographic U.S., including another [REDACTED] RSAs.³⁹⁴

124. *Integration of CDMA Networks.* The Applicants and one commenter contend that Verizon Wireless will be able to "expeditiously integrate" ALLTEL's CDMA network into Verizon

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ALLTEL's existing coverage of 83,425,541 POPs throughout [REDACTED] of the U.S. geographic area, including 269 RSAs).

³⁸⁷ Application, Public Interest Statement at 17.

³⁸⁸ Information Request Response at 3, 6 (calculating the difference between the combined entity's total CDMA network coverage of 287,462,999 POPs throughout [REDACTED] of the U.S. geographic area, including 400 RSAs, and Verizon Wireless's existing coverage of 267,784,907 POPs throughout [REDACTED] of the U.S. geographic area, including 333 RSAs), *see also* discussion *supra* note 21 (discussing network coverage data).

³⁸⁹ Information Request Response at 4, 6 (calculating the difference between the combined entity's total CDMA network coverage of 287,462,999 POPs throughout [REDACTED] of the U.S. geographic area, including 400 RSAs, and ALLTEL's existing coverage of 75,965,981 POPs throughout [REDACTED] of the U.S. geographic area, including 254 RSAs).

³⁹⁰ Application, Public Interest Statement at 12.

³⁹¹ Information Request Response at 3 (showing 256,454,756 POPs covered by EvDO Rev. A out of a total of 267,784,907 POPs covered by Verizon Wireless's total CDMA network).

³⁹² Application, Public Interest Statement at 12-13; Joint Opposition at 11 (ALLTEL intends to cover portions of 18 markets with EvDO Rev. A by year end 2008); Information Request Response at 4 (showing ALLTEL EvDO Rev. A coverage of [REDACTED] POPs).

³⁹³ Information Request Response at 3, 6 (calculating the difference between the combined entity's EvDO Rev. A network coverage of 257,813,104 POPs throughout [REDACTED] of the U.S. geographic area, including 293 RSAs, and Verizon Wireless's existing coverage of 256,454,756 POPs throughout [REDACTED] of the U.S. geographic area, including 287 RSAs).

³⁹⁴ Information Request Response at 4, 6 (calculating the difference between the combined entity's EvDO Rev. A network coverage of 257,813,104 POPs throughout [REDACTED] of the U.S. geographic area, including 293 RSAs, and ALLTEL's existing coverage of [REDACTED] POPs throughout [REDACTED] of the U.S. geographic area, including [REDACTED] RSAs).

Wireless's existing operations.³⁹⁵ They expect the majority of CDMA network integration to be completed within 18 to 24 months after closing the transaction.³⁹⁶ In the short term (0 to 12 months after closing), the Applicants plan to enhance interoperability between the two networks which, they maintain, will improve service quality for customers of both companies.³⁹⁷ The Applicants state that longer-term integration work (6 to 24 months after closing) will address areas where the companies have overlapping network switching and cell sites.³⁹⁸ There, the Applicants state, they will reconfigure equipment to "maximize efficiency and eliminate redundancies."³⁹⁹ Specifically, because the overlapping networks may have redundant facilities, the Applicants maintain that surplus equipment will be redeployed in other areas.⁴⁰⁰ The Applicants state that the "combined network can be expected to provide more coverage, more capacity and operate more efficiently."⁴⁰¹

125. The Applicants enumerate a variety of consumer benefits stemming from the seamless coverage that will be provided by the combined company's national footprint.⁴⁰² First, they note that services that customers enjoy in their home market will be available to them as they travel throughout the country.⁴⁰³ For example, the Applicants explain that both providers currently support all voice-related features (e.g., call waiting, caller-id, voicemail) for roaming customers, but only a limited set of advanced data services (1xRTT data).⁴⁰⁴ Once the companies' networks have been integrated, however, the Applicants assert that the combined company's customers would enjoy all the features that Verizon Wireless currently offers its own customers (e.g., EvDO data rates, VCast™, VZNavigator⁴⁰⁵) anywhere on the combined network.⁴⁰⁶ Second, the Applicants note that ALLTEL's and Verizon Wireless's prepaid customers will benefit because they will no longer have to re-enter their called number when roaming from the one network to the other as is currently required by both companies' pre-pay

³⁹⁵ Application, Public Interest Statement at 16. *See also* Comments of Pacific Research Institute at 1 ("Because Verizon and ALLTEL already utilize compatible technologies, they are well-positioned to integrate their networks and ensure that the roll-out of LTE simultaneously reaches both rural and urban communities.").

³⁹⁶ Information Request Response at 9. Verizon Wireless states that it "cannot provide a more exact timeframe for integrating ALLTEL's CDMA network into Verizon Wireless's existing operations because the companies have not yet conducted detailed integration planning and Verizon Wireless does not yet have the kind of detailed information about ALLTEL's network and operations that would be needed before a precise estimation could be made. *See id.* at 9-10.

³⁹⁷ *Id.* at 10 (stating that the enhanced interoperability achieved by adding connectivity and using software features will provide seamless operations and improved service quality).

³⁹⁸ *Id.*

³⁹⁹ *Id.*

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

⁴⁰² Application, Public Interest Statement at 24.

⁴⁰³ *Id.* at 17; Information Request Response at 20.

⁴⁰⁴ Information Request Response at 20.

⁴⁰⁵ *See* discussion of VCast™ and VZNavigator *infra* paras. 133 and 134.

⁴⁰⁶ Information Request Response at 20.

platforms.⁴⁰⁷ Finally, the Applicants state that seamless coverage will also improve call hand-off between service areas and reduce the number of dropped calls.⁴⁰⁸

126. *GSM Network.* The Applicants also assert that they will continue to operate ALLTEL's current GSM network and provide roaming services to the customers of other wireless service providers under ALLTEL's existing agreements with those providers.⁴⁰⁹ Verizon Wireless states that it views ALLTEL's GSM roaming network as a successful business and plans to maintain this business "for as long as it makes business sense to do so."⁴¹⁰ Verizon Wireless further states that it will maintain the GSM network to at least its current level of quality, including any necessary upgrades and investments, but has no plans to expand the areas covered by ALLTEL's GSM network.⁴¹¹

127. The Rural Telecommunications Group, however, expresses concern over Verizon Wireless's unwillingness to extend ALLTEL's GSM service into new markets, both markets wholly lacking in GSM coverage and those where Verizon Wireless or ALLTEL already has CDMA service.⁴¹² They also raise concerns that Verizon Wireless will not upgrade ALLTEL's GSM networks to Universal Mobile Telecommunications Service ("UMTS"), the 3G standard for GSM networks.⁴¹³ In that event, the Rural Telecommunications Group maintains that all GSM operators will face a "dead end" in terms of service and coverage area in ALLTEL's GSM network territory.⁴¹⁴ The Rural Telecommunications Group further argues that a decision by Verizon Wireless not to upgrade ALLTEL's GSM network to UMTS will have the secondary effect of discouraging new market entrants (who recently have purchased AWS and 700 MHz spectrum) from deploying GSM and UMTS service since they cannot be assured of a roaming partner.⁴¹⁵ The Rural Telecommunications Group, MetroPCS, NTELOS, Inc. ("NTELOS"), Leap Wireless, and the Rural Cellular Association also ask that the Commission condition our approval of the merger on the requirement that Verizon Wireless support ALLTEL's GSM networks "at the same technical and operations standards as Verizon maintains other network facilities and services in the same market" for a period of seven years.⁴¹⁶

⁴⁰⁷ *Id.* at 21.

⁴⁰⁸ *Id.* The Applicants explain that hand-off of calls between cell sites can be managed more effectively and smoothly when the cell sites are in the same integrated network as compared to calls between contiguous networks with different operators, technology, and processes. *Id.*

⁴⁰⁹ Application, Public Interest Statement at 17.

⁴¹⁰ Information Request Response at 11.

⁴¹¹ *Id.*

⁴¹² *Ex Parte* Letter from Caressa D. Bennet, General Counsel, Rural Telecommunications Group, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 9, 2008) at 2 ("Rural Telecommunications Group Oct. 9, 2008 *Ex Parte* Letter").

⁴¹³ Rural Telecommunications Group Oct. 9, 2008 *Ex Parte* Letter at 2.

⁴¹⁴ Rural Telecommunications Group Oct. 9, 2008 *Ex Parte* Letter at 2.

⁴¹⁵ *Id.* at 4.

⁴¹⁶ *Ex Parte* Letter from Jean L. Kiddoo, Bingham McCutchen LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, at Attachment (Oct. 28, 2008) ("MetroPCS *et al.* Roaming *Ex Parte* Letter") (presenting the consensus position regarding roaming conditions of MetroPCS, NTELOS, Leap Wireless, The Rural Telecommunications Group, and the Rural Cellular Association).

2. Expanded and Improved Services and Features, Particularly in Rural Areas

128. The Applicants, along with numerous commenters, contend that the proposed transaction will particularly benefit rural areas currently served within ALLTEL's geographic footprint.⁴¹⁷ ALLTEL's current licensed service area includes 265 RSAs and 1,455 counties that are considered "rural" under the Commission's definition, *i.e.*, having a population density of 100 persons or fewer per square mile.⁴¹⁸ The Applicants state that Verizon Wireless is committed to deploying cutting-edge, high speed wireless broadband technology and services in these areas on a faster timetable than is currently planned by ALLTEL.⁴¹⁹ The Rural Telecommunications Group, however, argues that Verizon Wireless has a poor record of providing wireless services to rural America and has no interest in serving rural areas.⁴²⁰ The Rural Telecommunications Group further states that Verizon Wireless has only committed

⁴¹⁷ Application, Public Interest Statement at 9-10. *See, e.g.*, Comments of Communications Consumers United at 1; Comments of Consumers for Competitive Choice at 1 (merger "will speed the spread of wireless broadband technology, especially to consumers in rural areas"); Comments of the Dominican American National Roundtable at 1 ("Verizon Wireless also has the scale and scope to invest in network facilities in urban and rural areas – many areas in which there is a dense Dominican population."); Reply Comments of the Institute for Policy Innovation at 3 ("greatest benefits will accrue to the rural areas, given their enhanced access to a true national network"); Comments of the National Indian Council on Aging at 1 (merged entity "will have the capability to increase investment in ...rural and reservation areas and bring wireless service to more Americans"); Comments of Native American Television at 1 (merged entity will "accelerate delivery of broadband to Native American homes, schools, health clinics and businesses" via ALLTEL's extensive rural coverage); Comments of Nebraska Chamber of Commerce and Industry at 1 ("Verizon has the ability to make significant investment in rural infrastructure"); Comments of the Organizations Concerned About Rural Education at 1 ("combined entity will be good for rural America, particularly for schools in rural communities"); Comments of the Small Business and Entrepreneurship Council at 3 ("In particular, small businesses in the rural areas served by Alltel should experience tremendous gains in terms of wireless speed and services."); Comments of the State of Nebraska at 1 ("The combination of these two complimentary networks will yield technologic and economic benefits to Nebraska and all of rural America."); Comments of Telecommunications for the Deaf at 1 (merger will be of "special benefit to rural Americans seeking broadband service"); Comments of U.S. Cattlemen's Association at 1 ("We believe the merger between Verizon Wireless and Alltel will boost competition in the cell phone industry while bringing broadband and its innovations to all Americans – whether they live in downtown or on the farm.").

⁴¹⁸ Application, Public Interest Statement at 11. *See also Twelfth Competition Report*, 23 FCC Rcd at 2288 ¶ 103 (discussing the Commission's "baseline" definition of rural areas).

⁴¹⁹ Application, Public Interest Statement at 11, 13; Joint Opposition at 3. *See also* Comments of the National Hispanic Council on Aging at 2 ("Furthermore, with Verizon Wireless continually investing in its technology and network, the merger is the fastest way Alltel's 13 million customers, including concentrations of Hispanics in key markets, will gain access to next-generation wireless services."); Comments of the United States-Mexico Chamber of Commerce at 1 (merger will "accelerate the benefits of wireless broadband by extending Verizon's advanced wireless network technology into areas currently served by Alltel"); Comments of the Hispanic Alliance for Progress Institute at 1 (noting that the combination of Verizon Wireless and ALLTEL will "spur innovation and bring fascinating new inventions and technologies to the Hispanic community nationwide"); Comments of American GI Forum of the United States at 1 ("Alltel's services could clearly benefit from an infusion of resources, such as those held by Verizon Wireless, to advance network services and devices.").

⁴²⁰ Rural Telecommunications Group Reply at 5, 7. *See also* Comments of Charlene Schlueter at 1 (filed Oct. 28, 2008) (expressing concern that merger will adversely affect service to rural areas); Comments of All West Communications at 1 (filed Oct. 15, 2008) (arguing that merger has "very real potential to injure competition and to harm small businesses and consumers in rural communities across America"); Comments of Columbine Telephone Company, Inc. at 1 (filed Oct. 15, 2008) (same); Comments of Dubois Telephone Exchange, Inc. at 1 (filed Oct. 15, 2008) (same); Comments of Emery Telecom at 1 (filed Oct. 15, 2008) (same); Comments of Public Service Communications at 1 (filed Oct. 17, 2008) (same); Comments of South Central Utah Telephone Association, Inc. at 1 (filed Oct. 15, 2008) (same).

to upgrade existing services and has not made any commitment to expand services to rural America.⁴²¹ The Rural Telecommunications Group also asserts that, if Verizon Wireless were genuine about serving rural America, it would have provided more than vague promises and submitted information regarding its plans and timelines for the expansion and upgrade of services in rural America.⁴²²

129. *EvDO Deployment.* The Applicants assert that the proposed transaction will expedite the expansion of EvDO Rev. A technology to ALLTEL's customers, including those in rural areas, providing these customers with access to a much expanded range of services. Currently, ALLTEL offers EvDO Rev. 0 in service areas covering 76 percent of its POPs.⁴²³ It offers 1xRTT (with throughput speeds over 20 times slower than Verizon Wireless's EvDO Rev. A) throughout all of its CDMA service areas, with 1xRTT being the only option available to about one quarter of the POPs covered by the ALLTEL CDMA network.⁴²⁴ ALLTEL also offers the next generation of this technology – EvDO Rev. A – in approximately [REDACTED] of its service area.⁴²⁵

130. As noted above, Verizon Wireless employs EvDO Rev. A technology, which provides significantly faster throughput speeds, throughout the vast majority of its network.⁴²⁶ The Applicants indicate that Verizon Wireless expects to complete an upgrade of all of ALLTEL's EvDO Rev. 0 cell sites to EvDO Rev. A technology within one year after the closing date of the proposed transaction.⁴²⁷ They note that this upgrade will result in [REDACTED] RSAs (including [REDACTED] rural counties) being converted to EvDO Rev. A., a substantial increase over the [REDACTED] RSAs (including [REDACTED] rural counties) in which ALLTEL has currently deployed EvDO Rev. A.⁴²⁸

131. Leap Wireless argues that Verizon Wireless's planned deployment of EvDO Rev. A is not a merger-specific benefit because ALLTEL is already deploying this technology.⁴²⁹ In addition, Leap Wireless argues that there will be a loss to consumer welfare in markets where both providers had planned to deploy EvDO technology because, post-merger, there will be only one provider, not two.⁴³⁰ Leap Wireless also maintains that the Applicants failed to provide evidence of the amount of time that will be saved in the deployment of advanced services as a result of the merger, and posits that the merger may, in fact, slow deployment of EvDO Rev. A on ALLTEL's network.⁴³¹ The Rural

⁴²¹ Rural Telecommunications Group Reply at 6, n.10.

⁴²² *Id.* at 6-7.

⁴²³ Application, Public Interest Statement at 12-13; Information Request Response at 4 (EvDO deployed in ALLTEL CDMA networks covering 57,869,756 POPs; ALLTEL CDMA networks cover 75,965,981 POPs).

⁴²⁴ Information Request Response at 4 (showing 1xRTT being available to all POPs covered by ALLTEL's CDMA network).

⁴²⁵ *Id.* at 4 (stating that ALLTEL's CDMA network covers 75,965,981 million POPs and the CDMA network with EvDO Rev. A covers [REDACTED] POPs).

⁴²⁶ See discussion *supra* para. 123; see also Joint Opposition at 10 (1xRTT: published download and upload speeds of 60-80 Kbps; EvDO Rev. 0: published download speeds of 400-700 Kbps, published upload speeds of 60-80 Kbps; EvDO Rev. A: published download speeds of 600 Kbps–1.4 Mbps, published upload speeds of 500-800 Kbps).

⁴²⁷ Application, Public Interest Statement at 13; Joint Opposition at 11; Information Request Response at 15.

⁴²⁸ Information Request Response at 15.

⁴²⁹ Leap Wireless Petition to Deny at 15; Comments of Leap Wireless International, Inc. on Applicants' Confidential Submissions at 4-5 (filed Oct. 27, 2008) ("Leap Wireless Comments").

⁴³⁰ Leap Wireless Reply at 6.

⁴³¹ Leap Wireless Petition to Deny at 15; Leap Wireless Reply at 7-8; Leap Wireless Comments at 2.

Telecommunications Group argues that the Applicants' "commitment to expand services to rural America is disingenuous."⁴³² They contend that the Applicants should have "submitted a proposal setting forth [their] methodology for expansion of services to rural areas along with a plan to upgrade services in areas [they] already serve[]." ⁴³³

132. The Applicants respond that the merged entity's deployment of EvDO Rev. A will be "faster, better, and more extensive[] than otherwise possible, particularly for rural areas," due to Verizon Wireless's technical expertise and experience, as well as its greater financial capabilities because of Verizon Wireless's "more favorable financial leverage and enhanced credit ratings."⁴³⁴ The Applicants explain that ALLTEL currently provides about 76 percent of its covered POPs with EvDO technology, with a plan to extend EvDO service to approximately 82 percent of its covered POPs by the end of 2008.⁴³⁵ The Applicants note, however, that the bulk of this coverage employs EvDO Rev. 0, which provides substantially slower downlink and uplink speeds than the EvDO Rev. A technology that is deployed by Verizon Wireless in much of its network.⁴³⁶ The Applicants state that ALLTEL has deployed EvDO Rev. A to [REDACTED] of its total EvDO POPs and [REDACTED] of its EvDO geographic area, [REDACTED].⁴³⁷ The Applicants further explain that [REDACTED].⁴³⁸ The Applicants underscore that they have committed to convert all of ALLTEL's EvDO Rev. 0 cell sites to EvDO Rev. A within one year of closing the transaction.⁴³⁹ Thus, the Applicants state, the transaction will result in deployment of EvDO Rev. A in markets where ALLTEL has no plans to deploy it.⁴⁴⁰ The Applicants state that this will result in an expansion of EvDO Rev. A from [REDACTED] to [REDACTED] of ALLTEL's total licensed POPs and from [REDACTED] to [REDACTED] of its

⁴³² Rural Telecommunications Group Reply at 5-8.

⁴³³ *Id.* at 6. *See also* Leap Wireless Comments at 5 (noting that Verizon Wireless has never specifically indicated the amount of time that the merger would save in the deployment of EvDo Rev. A in ALLTEL's network).

⁴³⁴ Joint Opposition at 3, 9-10; Information Request Response at 7. Atlantis explains that the decision to sell ALLTEL to Verizon Wireless was based in part upon concerns over Atlantis's ability in secure financing for long-term investments in rural markets given the tightening credit market. *See* Joint Opposition at 85-88; *Ex Parte* Letter from Kathleen Q. Abernathy, Counsel for ALLTEL Communications, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (Oct. 1, 2008). Atlantis further explains that its controlling interests – TPG Capital and Goldman Sachs – "determined that the offer by Verizon Wireless to purchase ALLTEL was the best vehicle available to ensure future capital intensive investments in wireless services that are important to rural America and to ALLTEL's customers." *Id.* Leap Wireless argues that ALLTEL is fully capable of funding the conversion of all of its sites to EvDO Rev. A within a year on its own. Leap Wireless Comments at 5 (quoting August 13, 2008 ALLTEL Corporation, Form 10-Q which states that ALLTEL has been "fund[ing] substantially all of its capital expenditures [(including network upgrades)] through internally generated funds" (additions made by Leap Wireless)).

⁴³⁵ Joint Opposition at 10.

⁴³⁶ *Id.* *See also* Information Request Response at 4 (stating that ALLTEL has deployed EvDO in an area covering approximately 57.9 million POPs and [REDACTED] of the geographic U.S. and EvDO Rev. A in an area covering [REDACTED] POPs and [REDACTED] of the geographic U.S.).

⁴³⁷ Information Request Response at 7.

⁴³⁸ *Id.* at 6.

⁴³⁹ Application, Public Interest Statement at 13; Joint Opposition at 11; Information Request Response at 5.

⁴⁴⁰ Information Request Response at 6.

licensed geographic area.⁴⁴¹ The Applicants also explain that Verizon Wireless will expand EvDO Rev. A coverage to other cell sites as additional capital is available.⁴⁴²

133. *Services.* The Applicants assert that as a result of the proposed transaction, ALLTEL's customers will be able to access "the much broader range of mobile music, video, television and other multimedia services offered by Verizon Wireless," in comparison to the "limited" content options currently available to ALLTEL subscribers.⁴⁴³ The Applicants state that Verizon Wireless's third generation network allows its customers to access music, games, internet-enabled applications, and full-featured mobile video from their wireless devices and laptop computers.⁴⁴⁴ ALLTEL's subscribers can access music content through a Music Connect product.⁴⁴⁵ Verizon Wireless provides music services through VCast™ Music, which the Applicants state is "the world's most comprehensive mobile music service."⁴⁴⁶ Verizon Wireless's music content service has a direct connection to Rhapsody, which allows full track PC downloading, a feature that ALLTEL does not offer.⁴⁴⁷ For video content, ALLTEL offers ALLTEL TV and ALLTEL TV on Demand.⁴⁴⁸ Verizon Wireless's VCast™ Video offers full-motion video clips of news, sports scores and plays, weather, games, entertainment, and more, and VCast™ Mobile TV provides full-length broadcast-quality television to wireless phones.⁴⁴⁹ While ALLTEL TV and ALLTEL TV on Demand have many similar channels to VCast™ Video Clips and VCast™ Mobile TV, VCast™ offers several channels and content sources, such as ESPN, that ALLTEL does not offer.⁴⁵⁰

134. According to the Applicants, ALLTEL provides navigation (ALLTEL Navigation) and Global Positioning System ("GPS") applications to its customers.⁴⁵¹ The Applicants state that Verizon Wireless's broadband network enables it to provide GPS services, including VZNavigator, which provides vehicle assistance capabilities (e.g., maps and turn-by-turn directions), and "Chaperone," which gives parents the ability to identify the location of their child's phone.⁴⁵² In addition, the Applicants state that Verizon Wireless's EvDO Rev. A network enables new mobile emergency and safety applications, such as remote patient monitoring and mobile robotics.⁴⁵³ Although Applicants state that ALLTEL Navigation is similar to VZNavigator, they note that following the merger, customers will be able to use

⁴⁴¹ *Id.* at 7.

⁴⁴² Joint Opposition at 11; Information Request Response at 7 ("[A]s additional capital becomes available, Verizon Wireless will also begin to deploy EvDO Rev. A in other parts of ALLTEL's network, including sites where ALLTEL currently offers only 1xRTT"). PISC asks the Commission to impose build-out timelines and benchmarks on the merged entity's planned upgrade of ALLTEL's network to EvDO Rev. A and LTE as a condition of approval. PISC Petition to Deny at 16. We decline to impose this condition because we find that it is not designed to remedy transaction-specific harms.

⁴⁴³ Application, Public Interest Statement at 18.

⁴⁴⁴ *Id.* at 12.

⁴⁴⁵ Information Request Response at 13.

⁴⁴⁶ Application, Public Interest Statement at 18.

⁴⁴⁷ Information Request Response at 13.

⁴⁴⁸ *Id.*

⁴⁴⁹ Application, Public Interest Statement at 18.

⁴⁵⁰ Information Request Response at 13.

⁴⁵¹ *Id.*

⁴⁵² Application, Public Interest Statement at 12, 19.

⁴⁵³ *Id.* at 12.

this service across the combined company's service area.⁴⁵⁴ In addition, the Applicants state that Verizon Wireless offers several network GPS enhancements that ALLTEL does not offer its customers, such as a user plane location gateway and privacy manager, which provides a higher level of security and the ability to do authentication on the network server side.⁴⁵⁵ The Applicants maintain that following consummation of the transaction, ALLTEL's subscribers will benefit from having access to this much wider range of broadband applications.⁴⁵⁶

135. *LTE Deployment.* Finally, the Applicants point out that Verizon Wireless intends to begin launching LTE in less than two years – starting in 2010⁴⁵⁷ – as compared to ALLTEL's statement that its LTE deployment was at least three to five years in the future.⁴⁵⁸ The Applicants state that they intend to fully deploy LTE on the combined company's CDMA network [REDACTED], market conditions permitting, which would include all ALLTEL market areas and all rural areas covered by the combined company's CDMA network.⁴⁵⁹ The Applicants also state that Verizon Wireless plans to deploy LTE technology using 700 MHz spectrum recently won at auction.⁴⁶⁰ The Applicants indicate that this 700 MHz spectrum⁴⁶¹ will be synergistic with ALLTEL's primarily 800 MHz-based network and that the proximity of spectrum will facilitate extensive build-out of LTE within ALLTEL's service areas.⁴⁶² In particular, the Applicants state that the deployment of LTE will be more rapid in rural areas post-transaction because Verizon Wireless will be able to couple its 700 MHz spectrum with ALLTEL's existing infrastructure.⁴⁶³ Specifically, the Applicants explain that in ALLTEL markets not currently covered by Verizon Wireless, Verizon Wireless can use existing ALLTEL assets (cells, switching

⁴⁵⁴ Information Request Response at 13.

⁴⁵⁵ *Id.* at 13-14.

⁴⁵⁶ Application, Public Interest Statement at 18. *See also* Comments of the U.S. Hispanic Chamber of Commerce at 1 (the transaction “places into the hands of US Hispanic small businesses the best available and innovative wireless services on the market”); Comments of the National Indian Council on Aging at 1 (“This merger will open up new and increased wireless service choice to consumers living in areas with heavier concentrations of American Indians.”); Comments of the League of United Latin American Citizens at 1 (“when the merger is complete, even more consumers will enjoy the innovations Verizon Wireless plans to bring to market in years to come”). The Applicants anticipate that Verizon Wireless's services and content will be available to current ALLTEL subscribers on a market-by-market basis as soon as four months after closing. Information Request Response at 14.

⁴⁵⁷ Application, Public Interest Statement at 13; Joint Opposition at 12; Information Request Response at 8-9.

⁴⁵⁸ Joint Opposition at 12. The Applicants note that ALLTEL does not have a definitive schedule for deploying LTE. Information Request Response at 9.

⁴⁵⁹ Information Request Response at 8-9.

⁴⁶⁰ Application, Public Interest Statement at 13; Information Request Response at 8. The Applicants specifically state that, [REDACTED], LTE will be deployed to [REDACTED] RSAs (including [REDACTED] rural counties) within ALLTEL's footprint. Information Request Response at 15.

⁴⁶¹ Verizon Wireless's 700 MHz spectrum covers the 48 contiguous states and Hawaii. Information Request Response at 8.

⁴⁶² Application, Public Interest Statement at 13; Joint Opposition at 12.

⁴⁶³ Joint Opposition at 12. These benefits are echoed by commenters in the proceeding. *See, e.g.*, Comments of Women Impacting Public Policy at 1 (“extending the advanced Verizon Wireless network to ALLTEL customers would speed the arrival of 4G wireless broadband services in rural as well as urban areas, and to small as well as large businesses”); Comments of Consumers for Competitive Choice at 1 (“This merger would certainly keep [ALLTEL] customers ahead of the curve in wireless broadband by giving them access to the benefits of the 4G and LTE technologies soon to be available through Verizon's advanced network.”).

locations, and network backhaul/facilities) to rapidly deploy LTE without the delays that accompany building facilities from scratch.⁴⁶⁴ The Applicants state that ALLTEL has no 700 MHz or greenfield spectrum to facilitate LTE deployment and instead had planned to introduce LTE technology by clearing narrow slivers of existing spectrum, which would have resulted in a slower deployment of the technology.⁴⁶⁵

3. Expanded Roll-Out of Broadband and Next Generation Services

136. The Applicants maintain that the proposed merger will enhance Verizon Wireless's ability to deploy broadband and next generation services in areas in which the companies' coverage overlaps.⁴⁶⁶ Specifically, the Applicants state that the proposed transaction would increase Verizon Wireless's spectrum capacity in markets where the company already provides service, which will allow Verizon Wireless to better support the increasing demand for broadband services and applications.⁴⁶⁷ The Applicants point out that ALLTEL has network assets – including both spectrum and radio towers – that can be incorporated into the Verizon Wireless network to enhance Verizon Wireless's signal strength in some areas and enable better allocation of network resources in others.⁴⁶⁸ Even more important, they state, is the fact that the additional spectrum held by ALLTEL in particular markets will allow Verizon Wireless to deploy new wireless broadband services, and, in other areas, to enhance existing capacity.⁴⁶⁹ The Applicants emphasize that greater spectrum availability translates into faster broadband access.⁴⁷⁰

4. Improvements in Service Quality

137. The Applicants and commenters anticipate that the combined networks will bring a number of additional benefits to consumers, including improved spectral efficiency,⁴⁷¹ enhanced service quality and reliability,⁴⁷² higher data rates,⁴⁷³ and increased ability to meet public safety requirements and

⁴⁶⁴ Information Request Response at 8-9. The Applicants state that they “cannot specify by how many months the merger would speed the implementation of LTE in ALLTEL’s markets,” however, “the transaction will plainly enable the progression to 4G technology and substantially accelerate implementation of LTE in the former ALLTEL markets.” *Id.* at 9. Leap Wireless argues that access to ALLTEL’s facilities is not a merger-specific benefit because Verizon Wireless could have gone out and leased (rather than built) comparable facilities from third parties (including ALLTEL) at a far lower cost than the cost of the merger. Leap Wireless Comments at 6.

⁴⁶⁵ Application, Public Interest Statement at 13-14; Information Request Response at 9.

⁴⁶⁶ Application, Public Interest Statement at 24.

⁴⁶⁷ *Id.*

⁴⁶⁸ *Id.* at 24; Joint Opposition at 8.

⁴⁶⁹ Application, Public Interest Statement at 24.

⁴⁷⁰ *Id.*

⁴⁷¹ Application, Public Interest Statement at 16-17; Information Request Response at 16-17.

⁴⁷² Application, Public Interest Statement at 16-17; Joint Opposition at 5; Information Request Response at 17. The Applicants state that the coverage and capacity gains that would be realized by the combined network will result in fewer dropped calls, improved connection availability, and better connection speeds. Information Request Response at 17. *See also* Comments of Michigan Chamber of Commerce at 1 (“Allying with Verizon Wireless will give Alltel customers in Michigan and all across the country access to a strong, trusted wireless network.”); Comments of the Dominican American National Roundtable at 1 (“Verizon Wireless is well known for having one of the largest and most reliable national wireless networks in the country, so Alltel’s customers will benefit from its size, reach and quality”); Comments of the Freedom Works Foundation at 2 (“Overall, we believe the acquisition would allow expanded service, a larger network, and competitive affordability to current ALLTEL network users.”)

emergency preparedness.⁴⁷⁴ They also contend that this transaction will result in a greater choice of wireless devices and service plans and improvements in customer service for ALLTEL customers.

138. *Spectral Efficiency.* The Applicants state that improved spectral efficiency will be achieved in a variety of ways. First, the Applicants explain that deployment of EvDO Rev. A will involve use of more efficient modulation schemes, improved data schedulers, and improved user handoffs that will provide customers with improved upload and download speeds as well as fewer dropped data sessions.⁴⁷⁵ Second, they explain that the combined network will be able to accommodate more users than the two networks operating separately by realizing greater trunking efficiencies.⁴⁷⁶ Third, in certain markets, the Applicants expect to achieve spectral efficiencies through the elimination of guard bands.⁴⁷⁷ Finally, the Applicants state that improved cell site configuration will also achieve spectral efficiency.⁴⁷⁸

139. *Service Reliability.* The Applicants state that the combination of the ALLTEL and Verizon Wireless networks “will result in increased capacity, broader geographic coverage, and improved coverage in existing areas.”⁴⁷⁹ As a result, the Applicants state that their customers will see “fewer dropped calls, improved connection availability and better connection speeds – improved reliability.”⁴⁸⁰ The Applicants also state that the combined company will be able to improve service reliability by applying Verizon Wireless’s “industry leading best engineering practices to the ALLTEL markets.”⁴⁸¹

140. *Public Safety.* The Applicants and commenters contend that the merger will create benefits for public safety users through better emergency preparedness.⁴⁸² Specifically, the Applicants state that their deployment of EvDO Rev. A throughout ALLTEL’s network will provide more first responders with access to advanced wireless services and applications such as high capacity downloads,

(Continued from previous page) _____

⁴⁷³ See discussion *supra* at para. 130.

⁴⁷⁴ Application, Public Interest Statement at 16-18; Information Request Response at 17-19.

⁴⁷⁵ Information Request Response at 16.

⁴⁷⁶ *Id.*

⁴⁷⁷ *Id.* at 16-17. For example, the Applicants explain that in the Fergus Falls, Minnesota BTA, Verizon Wireless and ALLTEL hold licenses for adjacent 10 MHz E and F blocks of PCS spectrum and as separate companies are required to protect one another from interference through the use of guard bands. *See id.* They further explain that following the merger, interference protection will no longer be necessary between the E and F blocks of PCS spectrum for the combined network, thus eliminating the need for the existing guard bands, allowing more of the spectrum to be used for capacity, and allowing more traffic to be handled on the same amount of spectrum. *See id.* The Applicants note that guard bands can also be eliminated in Jacksonville, Florida, Corpus Christi, Texas, and Green Bay, Wisconsin, among other markets. *See id.*

⁴⁷⁸ *Id.* at 17.

⁴⁷⁹ *Id.*

⁴⁸⁰ *Id.*

⁴⁸¹ *Id.*

⁴⁸² *Id.* See also Comments of FBI National Academy Associates at 1 (merger “will improve service coverage and eliminate poor connections, dropped calls and otherwise unreliable wireless services – wireless basics that are critically important to law enforcement”); Comments of FBI – Law Enforcement Executive Development Association at 1 (merger will “increase public safety capabilities”); Comments of National Emergency Numbering Association at 1 (“Verizon Wireless has been a consistent leader in promoting public safety through the provision of wireless enhanced 9-1-1”); Comments of Leslie T. Hyman at 1-2 (noting merger will enhance resources provided to law enforcement).

location-based applications, and video messaging.⁴⁸³ In addition, the Applicants note that the additional capacity made available through EvDO Rev. A technology will “enhance the reliability of the network during heavy use emergency situations” as well as “make it easier to provide dedicated channel resources to emergency teams.”⁴⁸⁴

141. The Applicants also highlight Verizon Wireless’s voluntary provision of “Wireless Priority Service” (“WPS”) to national security and emergency services providers.⁴⁸⁵ The Applicants explain that WPS “greatly increases the probability of call completion when an authorized user is unable to complete priority calls while using their handset.”⁴⁸⁶ The Applicants note that ALLTEL does not currently provide WPS, but plans to start deploying WPS in some of its service areas by the end of the year.⁴⁸⁷ In addition, the Applicants state that Verizon Wireless plans to deploy WPS throughout the ALLTEL service area following completion of the merger.⁴⁸⁸ The Applicants maintain that the extension of WPS throughout ALLTEL’s markets will bring a valuable public safety benefit to those areas.⁴⁸⁹

142. The Applicants also identify a number of other ways that Verizon Wireless prepares for natural disasters and other emergencies. For example, the Applicants state that Verizon Wireless has backup power sources at all of its switches and the majority of its cell site locations.⁴⁹⁰ The Applicants note that Verizon Wireless has dozens of Cells on Wheels, Cells on Light Trucks and Generators on Trailers that can be moved to areas needing extra network capacity in the case of emergencies.⁴⁹¹ They add that Verizon Wireless has pre-arranged fuel delivery to mobile units and generators in the event that power is lost for an extended period of time.⁴⁹² The Applicants state that Verizon Wireless will extend its emergency preparedness measures and resources to all ALLTEL markets following the merger.⁴⁹³

143. *Wireless Devices.* The Applicants state that the transfer of control of ALLTEL to Verizon Wireless will permit ALLTEL’s customers to gain access to a broader array of wireless devices.⁴⁹⁴ The Applicants highlight Verizon Wireless’s ODI under which, by the end of 2008, Verizon Wireless’s customers will be allowed to use any device on Verizon Wireless’s network that meets the company’s published technical standards.⁴⁹⁵ The Applicants explain that, through ODI, “anyone can design a device to be utilized on the Verizon Wireless network, or any application to be used on such devices, as long as the device completes the ODI certification process to ensure it meets Verizon

⁴⁸³ Information Request Response at 18.

⁴⁸⁴ *Id.*

⁴⁸⁵ *Id.* The Applicants state that Verizon Wireless voluntarily provides WPS throughout most of its service area and expects to complete service area-wide deployment by early 2009. *Id.*

⁴⁸⁶ *Id.*

⁴⁸⁷ *Id.*

⁴⁸⁸ *Id.*

⁴⁸⁹ *Id.*

⁴⁹⁰ *Id.* at 19.

⁴⁹¹ *Id.*

⁴⁹² *Id.*

⁴⁹³ *Id.*

⁴⁹⁴ Application, Public Interest Statement at 20-21; Joint Opposition at 7. *See also* Comments of the Dominican American National Roundtable at 1 (“[ALLTEL’s] customers will benefit from...ever-greater choices – in plans and phones – [and] one of the most advanced broadband networks”).

⁴⁹⁵ Application, Public Interest Statement at 20.

Wireless'[s] published technical specifications.”⁴⁹⁶ Verizon Wireless anticipates the ODI will result in an innovative array of devices and applications to be deployed on its network, including wireless phones offered by other CDMA providers and smaller manufacturers who do not sell their phones through any service provider, medical devices, and gaming consoles.⁴⁹⁷ Numerous commenters also anticipate that these new wireless devices and application will, in turn, result in the deployment of new, creative services benefiting wireless consumers.⁴⁹⁸ Moreover, Verizon Wireless states that it plans to have ODI devices running on LTE technology when it is launched using Verizon Wireless's 700 MHz spectrum.⁴⁹⁹

144. In addition, the Applicants note that ALLTEL's customers will be able to choose among over 30 models of mobile phones offered by Verizon Wireless (as compared to ALLTEL's 15 offerings), including the widest variety of Hearing Aid Compatible compliant devices of any national service provider, 13 Personal Digital Assistants/Smartphones or Blackberry devices (versus nine offered by ALLTEL), and eight PC cards (versus four offered by ALLTEL).⁵⁰⁰ The Applicants also note that ALLTEL's customers will for the first time have access to Verizon Wireless's faster speed devices available for use on the merged entity's EvDO Rev. A network.⁵⁰¹

145. *Service Plans.* The Applicants state that after completion of the transfer, ALLTEL's subscribers will be able to choose from an increased variety of service plans.⁵⁰² The Applicants indicate that, like ALLTEL's offerings, all of Verizon Wireless's bundled service plans include unlimited nights

⁴⁹⁶ Information Request Response at 22-23.

⁴⁹⁷ Application, Public Interest Statement at 20. The Applicants note that the first device to use the ODI was a wireless device from SupplyNet Communications that automatically measures storage tank levels and reports its readings to a control center. The Applicants maintain that machine-to-machine reporting and sensing devices can be particularly effective in rural areas to notify distant users of the status or condition of a facility or installation. Information Request Response at 23-24. The Applicants state that another device developed to use the ODI is an advanced radio frequency monitoring system used to assist in offender compliance. *Id.*

⁴⁹⁸ See, e.g., Comments of the National Indian Council on Aging at 1 (“Verizon Wireless'[s] Open Development Initiative, has the promise of introducing the needed latest high-tech devices and creative new services to the American Indian population”); Comments of the U.S. Pan Asian American Chamber of Commerce at 1 (ODI “openness will be a boon to competition, helping to increase choice while keeping prices down”); Comments of the National Black Chamber of Commerce at 1 (“Alltel customers will also realize the advantages of the Verizon Wireless Open Development Initiative, which gives entrepreneurs a chance to bring the latest high-tech devices and creative new services to the public”); Comments of the Dominican American National Roundtable at 1 (same); Comments of Hispanic Alliance for Progress Institute at 1 (same); Comments of Michigan Chamber of Commerce at 1 (same).

⁴⁹⁹ Information Request Response at 22.

⁵⁰⁰ Application, Public Interest Statement at 21; Joint Oppositions at 7.

⁵⁰¹ Application, Public Interest Statement at 21 (noting specific devices such as Verizon Wireless's USB727 wireless modem, V740 ExpressCard, AirCard 595, and PC5750 PC Cards).

⁵⁰² Application, Public Interest Statement at 21-22; Joint Opposition 7. Some commenters in the proceeding acknowledge the benefits to consumers from the increased choice of calling plans. See, e.g., Comments of Consumers for Competitive Choice at 1 (“13 million ALLTEL consumers in 34 states will benefit from significantly increased choices in wireless devices, services and calling plans”); Comments of Lansing Regional Chamber of Commerce at 1 (“This transaction would make available to Alltel's Michigan customers the latest technologies, an improved selection of calling plans and the benefits of a nationwide network.”); Comments of ASPIRA Association at 1 (merger will provide consumers with “more choice, better service and more competitive pricing”). PISC, however, notes that ALLTEL subscribers may lose access to unique ALLTEL calling plans such as “My Circle.” PISC Petition to Deny at 8.

and weekends and unlimited mobile-to-mobile minutes.⁵⁰³ Following consummation of the transaction, the Applicants note that the calling base for both companies' unlimited mobile-to-mobile minutes will expand to 80 million subscribers – an increase of 67 million subscribers for ALLTEL's customers and 13 million subscribers for Verizon Wireless's customers.⁵⁰⁴ The Applicants contend that ALLTEL's customers will also benefit from obtaining access to Verizon Wireless's Nationwide and America's Choice plans, which provide specified numbers of bundled minutes and no roaming or long distance fees for calls on Verizon Wireless's preferred network in the United States.⁵⁰⁵ By contrast, the Applicants note that ALLTEL currently charges its customers \$0.59 per minute for nationwide roaming and \$0.40 per minute for long distance when customers are roaming in areas that are not within ALLTEL's National Freedom coverage area.⁵⁰⁶ The Applicants state that Verizon Wireless also offers the following plans: family/small group and shared minute plans for multiple-user households and small businesses, business plans for accounts with over 100 lines and over 1,000 lines, national pre-paid plans, and unlimited flat rate voice plans.⁵⁰⁷

146. *Customer Service.* The Applicants state that ALLTEL's customers will benefit from Verizon Wireless's "award-winning commitment to customer care."⁵⁰⁸ The Applicants highlight Verizon Wireless's "Welcome Call" program, in which each customer that signs up for or changes an existing Verizon Wireless service plan receives a call from a Verizon Wireless representative who reviews the plan's features and answers any questions the customer may have.⁵⁰⁹ In addition, the Applicants state

⁵⁰³ Application, Public Interest Statement at 21.

⁵⁰⁴ *Id.* The Applicants point out that the enlargement of customers' mobile-to-mobile calling base will allow customers to make more mobile-to-mobile calls without tapping into their monthly minutes buckets, thereby creating an effective price reduction because customers can call a larger number of people without incurring additional charges or using their monthly minutes. Application, Public Interest Statement at 21; Information Request Response at 19-20.

⁵⁰⁵ Application, Public Interest Statement at 22.

⁵⁰⁶ *Id.*

⁵⁰⁷ *Id.*

⁵⁰⁸ *Id.* at 15. While stating that Verizon Wireless has "taken many steps to ensure accessibility and usability of its products and services," the American Association for People with Disabilities requests that the Commission require Verizon Wireless to "re-commit[] to the Communications Act's disability accessibility requirements" and require "additional and special commitments to standards for customer service and support for people with disabilities both during the transition period and following the merger." Comments of the American Association for People with Disabilities at 3. Verizon Wireless responds that it is "committed to providing accessible products and services that meet the communications needs of its customers with disabilities" and that it will meet the relevant statutory requirements set forth in the Communications Act. Joint Opposition at 6 n.15. We see no need to condition our approval of the Applications on Verizon Wireless's compliance with existing law. All Commission licensees are required to comply with applicable Commission statutes and rules. *See, e.g.*, International Authorizations Granted, IB Docket No. 04-4, *Public Notice*, 19 FCC Rcd 4079, 4080 ¶ 2 (2004) (stating that "Iridium Satellite, LLC's request to impose a condition that the Applicants comply with the outcome of the BIG LEO Bands Rulemaking is unnecessary because all Commission licensees must adhere to all applicable Commission rules and policies"); Verizon Communications, Inc., Transferor, and América Móvil, S.A. De C.V., Transferee, WT Docket Number 06-113, *Memorandum Opinion and Order and Declaratory Ruling*, 22 FCC Rcd 6195, 6208 ¶ 29 (2007) (refusing to impose conditions on a grant of application because "América Móvil will be subject to those existing legal obligations as well as other generally applicable regulatory requirements imposed on incumbent LECs."); Application of Puerto Rico Telephone Authority and GTE Holdings, LLC, *Memorandum Opinion and Order*, 14 FCC Rcd 3122, 3134 ¶ 28 (1999) (stating that requested conditions were unnecessary because they "would simply require PRTC to comply with its existing legal obligations").

⁵⁰⁹ Application, Public Interest Statement at 15.

that customers of the combined company will have expanded geographic access to customer service and support through the combined company's network of retail outlets.⁵¹⁰ The Applicants also note that Verizon Wireless has the lowest churn rate of all the major wireless companies.⁵¹¹ Further, they contend that ALLTEL's customers will also benefit from the ability to terminate service during the term of a contract with prorated early termination fees.⁵¹²

5. Efficiencies and Economies of Scale and Scope

147. The Applicants maintain that the proposed transaction will result in operational synergies with a net present value, after integration costs, of approximately \$9 billion (approximately one third of the purchase price),⁵¹³ including reductions in (i) roaming costs; (ii) network costs (including reduced capital expenditures and operating costs); (iii) overhead costs (headcount, sales and distribution, customer care); (iv) advertising costs; and (v) information technology expenses.⁵¹⁴ In the second year after closing, the Applicants expect these synergies to generate incremental cost savings of \$1 billion.⁵¹⁵ The Applicants contend, and some commenters concur, that these anticipated cost savings will benefit consumers by providing "incentives [for the merged entity] to expand output and lower price."⁵¹⁶

148. *Roaming Costs.* With regard to roaming, the Applicants contend that the savings resulting from each company's roaming traffic being brought onto the expanded Verizon Wireless network will be substantial.⁵¹⁷ The Applicants state that both Verizon Wireless and ALLTEL are net buyers of roaming services in the United States.⁵¹⁸ The Applicants expect that starting in 2010 and beyond, Verizon Wireless will be able to keep more than [REDACTED] minutes of airtime on the combined entity's network that otherwise would have been served by Verizon Wireless's and ALLTEL's roaming partners.⁵¹⁹ The Applicants explain that the "ability to keep additional minutes on the merged firm's network results in a marginal cost savings because roaming services are priced on a per minute

⁵¹⁰ Information Request Response at 21. The Applicants explain that currently, if an ALLTEL subscriber experiences technical problems outside of ALLTEL's retail service areas, the subscriber cannot take his or her device to a local store for service. Following the merger, however, the Applicants explain that if the same subscriber is within Verizon Wireless's territory, he or she can seek assistance at one of Verizon Wireless's substantially expanded network of stores. *Id.*

⁵¹¹ Application, Public Interest Statement at 16; *see also* Information Request Response at 28-32.

⁵¹² Application, Public Interest Statement at 16.

⁵¹³ *Id.* at 25; Reply Declaration at 3.

⁵¹⁴ Application, Public Interest Statement at 25; Reply Declaration at 4. The Applicants note that, overall, Verizon Wireless's cash expense per subscriber is less than ALLTEL's (*e.g.*, \$28.24 vs. \$33.28 in 2007; \$28.05 vs. \$31.89 in first quarter 2008; and \$28.02 vs. \$31.94 in second quarter 2008), which also results in cost savings. Information Request Response at 25.

⁵¹⁵ Application, Public Interest Statement at 25. The Applicants clarify that this \$1 billion in cost savings claimed for the second year following closing of the transaction is included within the overall \$9 billion operational synergy cost savings calculation. *Id.* at 24.

⁵¹⁶ Reply Declaration at 17. *See also* Comments of Randolph J. May at 2 (merged entity "most likely will use the cost savings realized from the merger's synergies to continually upgrade and expand the merged entity's wireless network"); Comments of the National Black Chamber of Commerce at 1 ("The new network created will be able to use economies of scale and their combined resources to offer their customers affordable, state-of-the-art services.").

⁵¹⁷ Application, Public Interest Statement at 25-26.

⁵¹⁸ Reply Declaration at 5.

⁵¹⁹ *Id.* at 5.

basis at a rate that exceeds the incremental cost of providing that traffic.”⁵²⁰ Further, the Applicants state that Verizon Wireless will be able to save the costs currently incurred by both companies as a result of having to administer the companies’ roaming agreements.⁵²¹ The Applicants argue that the reduction in marginal cost for roaming provides an incentive for the combined entity to “reduce prices charged to both existing and new customers through lower per minute rates and/or expanded ‘bundles’ of minutes.”⁵²²

149. *Network Costs.* The Applicants state that the integration of ALLTEL’s and Verizon Wireless’s compatible CDMA networks will result in significant cost savings from the elimination of redundant cell sites and transport facilities as well as the redeployment of some assets for build-out in other areas.⁵²³ The Applicants explain that the merger will result in cost savings for expansion of the merged entity’s existing cellular/PCS networks as well as the planned network deployment using Verizon Wireless’s 700 MHz spectrum.⁵²⁴ The Applicants maintain that the combined entity will be able to serve the current and projected future demand of each company individually at a lower cost than could be achieved if the companies operated independently.⁵²⁵ The Applicants assert that these savings will “increase the merged firm’s incentive to accelerate and expand the development of new equipment and services,” such as the deployment of EvDO Rev. A to areas served by ALLTEL.⁵²⁶

150. The Applicants expect that the combined company’s increased scale will provide significant volume purchasing opportunities.⁵²⁷ Based on past experience, the Applicants expect lower equipment prices by [REDACTED] as compared to the level that the Applicants would expect to pay on a standalone basis.⁵²⁸ In addition, the Applicants expect the merged entity will reduce capital expenditures by [REDACTED] between 2011 and 2014 and by [REDACTED] in later years as compared to expected costs of the companies individually.⁵²⁹ In total, the Applicants project that the merger-related

⁵²⁰ *Id.* at 6. Verizon Wireless projects that the per minute cost savings derived from shifting each minute from roaming partner’s networks to the merged entity’s network is [REDACTED], and that total roaming cost savings are [REDACTED]. *Id.* at 6.

⁵²¹ Application, Public Interest Statement at 26.

⁵²² Reply Declaration at 19.

⁵²³ Application, Public Interest Statement at 26; Reply Declaration at 8-11.

⁵²⁴ Reply Declaration at 8. Specifically, the Applicants anticipate that more than [REDACTED] cell sites can be redeployed or consolidated between 2009 and 2012. In addition, the Applicants expect that the number of new cell towers required for future expansion in areas where the companies’ networks overlap will be reduced by [REDACTED] through 2018. The Applicants also note that the number of cell sites required for build-out of Verizon Wireless’s 700 MHz spectrum will be reduced by [REDACTED] cell sites per year between 2011 and 2014, and another [REDACTED] cell sites per year through 2018. The Applicants estimate that the merger will result in savings of approximately [REDACTED] per new cell built out in the cellular/PCS network, [REDACTED] per cell for redeployed cells, and [REDACTED] per cell for the 700 MHz build-out. *Id.* at 8-9.

⁵²⁵ *Id.* at 8.

⁵²⁶ *Id.* at 20.

⁵²⁷ Application, Public Interest Statement at 26; *see also* Information Request Response at 27. By way of example, the Applicants note that Verizon Wireless expects to save at least [REDACTED] over the next three years on core network infrastructure equipment as a result of volume discount pricing following Verizon Wireless’s recent acquisition of Rural Cellular Corporation. Information Request Response at 27. Moreover, Verizon Wireless estimates, based on its experience with recent acquisitions, that it will realize at least an incremental [REDACTED] savings on the combined network investment between Verizon Wireless and ALLTEL. *Id.*

⁵²⁸ Reply Declaration at 9.

⁵²⁹ *Id.* at 9-10.

reduction in capital expenditures has an after-tax present value of [REDACTED], net of integration costs.⁵³⁰

151. The Applicants explain that the merger will significantly reduce network operating expenses due to a decrease in the number of dedicated circuits used to transport traffic on the network.⁵³¹ Specifically, the Applicants state that a reduction in the total number of cell sites will reduce the number of transport circuits required.⁵³² Moreover, the Applicants explain that the larger customer base will permit greater use of more cost-effective DS-3 circuits, which have higher capacity and lower cost per unit than DS-1 circuits.⁵³³ The Applicants expect further cost savings from lower cell site-related rent and lease expenses, as well as reduced headcount expenses (e.g., network engineers and technicians).⁵³⁴ In sum, the Applicants expect that the net present value of savings achieved in network operations expenditure reductions is approximately [REDACTED].⁵³⁵

152. *Overhead Costs.* Following the merger, the Applicants expect to significantly reduce overhead costs in accounting, finance, and legal expenses. Specifically, the Applicants expect to reduce headcount by over [REDACTED] in 2009 and by over [REDACTED] by 2012.⁵³⁶ The Applicants anticipate that these reductions in headcount will result in cost savings with a net present value of [REDACTED], after accounting for integration costs.⁵³⁷ The Applicants also anticipate closing duplicative retail stores and reducing the need for new retail outlets by each firm in areas where network expansions are planned.⁵³⁸ The Applicants estimate that these distribution cost savings have a net present value of [REDACTED] with related headcount savings of [REDACTED].⁵³⁹ In addition, the Applicants explain that following the merger, consolidation of the combined entity's customer care functions will realize headcount and overhead savings of approximately [REDACTED] in net present value.⁵⁴⁰

153. *Advertising Costs.* The Applicants state that as a result of the integration of the ALLTEL and Verizon Wireless customer bases, the advertising and administrative costs associated with servicing customers will be reduced.⁵⁴¹ For example, the Applicants state that savings will result from absorbing ALLTEL's advertising expenses into Verizon Wireless's existing nationwide advertising campaigns.⁵⁴² Overall, the Applicants expect the after-tax, present value of advertising-related cost savings to be [REDACTED].⁵⁴³

⁵³⁰ *Id.* at 10.

⁵³¹ *Id.*

⁵³² *Id.*

⁵³³ *Id.*

⁵³⁴ *Id.*

⁵³⁵ *Id.* at 11.

⁵³⁶ *Id.*

⁵³⁷ *Id.* at 4, 11-12.

⁵³⁸ *Id.* at 16.

⁵³⁹ *Id.*

⁵⁴⁰ *Id.* at 17; *see also* Information Request Response at 25.

⁵⁴¹ Application, Public Interest Statement at 26; *see also* Information Request Response at 26.

⁵⁴² Application, Public Interest Statement at 27.

⁵⁴³ Reply Declaration at 13.

154. *Information Technology Expenses.* The Applicants also expect to realize savings from integrating ALLTEL's billing system into Verizon Wireless's billing system.⁵⁴⁴ Because Verizon Wireless estimates that ALLTEL's information technology expenses are higher than Verizon Wireless's on a per subscriber basis, once common technology platforms are implemented post-merger, the Applicants expect ALLTEL's technology expenses related to customer service, billing, and retail functions to drop by [REDACTED] per subscriber per month by 2010.⁵⁴⁵ In total, the Applicants estimate the present value of information technology savings to be [REDACTED].⁵⁴⁶

6. Strengthened Competition

155. The Applicants state, and some commenters agree, that the proposed transaction "will create a stronger and more efficient wireless competitor with greater coverage in an industry where national coverage has proven to be paramount in attracting customers and driving competition."⁵⁴⁷ The Applicants assert that the introduction of a new national provider of wireless services in ALLTEL service areas not currently served by Verizon Wireless will provide consumers with enhanced access to equipment and service, including Verizon Wireless's broad variety of data services and content offerings.⁵⁴⁸ They argue that this broadening of consumer choice will place greater competitive pressure on existing service providers in the relevant markets, which will ultimately encourage better quality of service, more choice in services, applications, rate plans, and wireless devices, and lower prices across all service providers.⁵⁴⁹ The Applicants also contend that the combined company will make Verizon Wireless a more vigorous national competitor in the provision of wireless broadband services among existing national service providers (AT&T Mobility, Sprint Nextel, and T-Mobile) as well as future national wireless broadband service providers (Sprint Nextel/Clearwire).⁵⁵⁰

C. Conclusion

156. While we find that this transaction is likely to result in transaction-specific public interest benefits, we are not able on the basis of this record, using the sliding-scale approach described above, to conclude that they are sufficiently large or imminent to outweigh the potential harms we have identified in certain individual markets. In those markets, therefore, remedies are necessary to ameliorate likely competitive harms.

⁵⁴⁴ Application, Public Interest Statement at 27.

⁵⁴⁵ Reply Declaration at 14.

⁵⁴⁶ *Id.*

⁵⁴⁷ Application, Public Interest Statement at 27. *See also* Comments of the Latino Coalition at 1 (concluding that the merged entity will be "an expanded wireless carrier with the market size, financial strength and technology base to make competitive offers nationwide, all while keeping costs low for the consumer"); Reply Comments of the Institute for Policy Innovation at 3 (merger "adds to competition by allowing the emergence of a new national broadband entity" with the goal of delivering "quality broadband access to rural areas across the country").

⁵⁴⁸ Application, Public Interest Statement at 28.

⁵⁴⁹ *Id.* at 27-28. *See also* Comments of FreedomWorks Foundation at 2 ("On a larger scale, the competitive measures of the ODI and 3G expansion would allow consumer benefits to increase in the aggregate as competitive initiatives are matched by alternative providers.")

⁵⁵⁰ Application, Public Interest Statement at 28.

VII. DIVESTITURE OF MARKETS

157. Using the analytical standards outlined above and in light of Verizon Wireless's voluntary commitment to divest operating units in 100 markets, as discussed above,⁵⁵¹ we find that the Applicants' proposed transaction is unlikely to pose significant competitive harm in most markets. To ensure that any potential harms posed by this transaction will be outweighed by the proposed transaction's alleged public interest benefits, we hereby condition our consent to the proposed transaction on Verizon Wireless's commitment to divest these markets and the divestiture of five additional markets discussed herein. Thus, with the conditions that we adopt in this Memorandum Opinion and Order and Declaratory Ruling, and assuming the Applicants' compliance with these conditions, we find that the Applicants have demonstrated that the proposed transfer of licenses, spectrum leasing arrangements, and authorizations would serve the public interest, convenience, and necessity.

158. Moreover, we find that the operating unit divestitures described herein resolve the transaction-specific competitive harms raised by commenters in the record.⁵⁵² As discussed below,⁵⁵³ we will impose additional conditions designed to ensure that the proposed transaction is in the public interest by remedying additional harms which may occur as a result of the proposed transaction.⁵⁵⁴

A. Operating Unit Divestitures

159. We found above that the proposed transaction would be likely to cause significant competitive harm in five geographic markets. Specifically, our analysis indicated that, in those markets, there would not be an adequate number of competing service providers remaining after the transaction with sufficient network and spectrum assets to deter anticompetitive behavior by the merged entity. To address these concerns, we will require the Applicants to divest all licenses, spectrum leasing arrangements, and authorizations and related operational and network assets, which shall include certain employees, retail sites, subscribers, customers, all fixed assets, goodwill, and all spectrum associated therewith and any other assets, tangible or intangible, used by the Applicants in the operation of the mobile telecommunications services to be divested (together, the "Divestiture Assets"), of either Verizon Wireless or ALLTEL, in certain markets. Thus, as in the *Verizon Wireless-RCC Order*, *AT&T-Dobson Order*, and the *Cingular-AT&T Wireless Order*, we will here require the divestiture of all spectrum – including PCS, AWS-1, and cellular spectrum – associated with the Verizon Wireless or ALLTEL business unit being divested, and not just the business unit's cellular spectrum.⁵⁵⁵ Specifically, we condition this grant of authority to transfer control of licenses, authorizations, and spectrum manager

⁵⁵¹ See discussion *supra* paras. 15 and 19.

⁵⁵² One commenter, Chatham, argues that consolidation in the wireless industry increases the likelihood that wireless providers may comply with "overly intrusive government requests for information for fear of retribution." Chatham Petition to Deny at 11. This, in turn, Chatham contends "undermines the confidence of consumers that any violations [of the Communications Act's privacy protections] will be disclosed." *Id.* We find that the issue raised by Chatham is not merger-specific and thus we not address it in the context of this order.

⁵⁵³ See discussion *infra* Part VIII.

⁵⁵⁴ The Institute for Policy Innovation asks the Commission to reject all conditions specific to the proposed merger because the merger process should not be used to make policy. See Reply Comments of the Institute for Policy Innovation at 1-2, 4. In this Memorandum Opinion and Order and Declaratory Ruling, we impose only those conditions necessary to ensure that the proposed transaction is in the public interest and to prevent potential competitive harms caused by the proposed transaction.

⁵⁵⁵ See *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12512-13 ¶ 113; *AT&T-Dobson Order*, 22 FCC Rcd at 20366 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21620 ¶ 254.

leasing arrangements held by the ALLTEL Subsidiaries and Partnerships to Verizon Wireless on the divestiture of the Divestiture Assets in the five markets listed below.

Market	Market Name
CMA181	Muskegon, MI
CMA427	Iowa 16-Lyon
CMA476	Michigan 5-Manistee
CMA478	Michigan 7-Newaygo
CMA650	Tennessee 8-Johnson

Further, to ensure that the proposed transaction does not result in competitive harm and is in the public interest, we condition this grant of authority to transfer control of licenses, authorizations, and spectrum manager leasing arrangements to Verizon Wireless on the completion of the divestiture of the Divestiture Assets in the 100 markets that Verizon Wireless has voluntarily committed to divest.⁵⁵⁶

160. A number of commenters request that the Commission further condition any divestitures it may require of the Applicants by dictating how and to whom the divested spectrum be divested, specifically urging the Commission to take steps to ensure that regional, local, or new wireless providers have an opportunity to acquire the divested assets.⁵⁵⁷ For example, some commenters request that the Applicants be prohibited from divesting any licenses to another nationwide wireless provider.⁵⁵⁸ Instead, some commenters maintain that the Applicants should be required to divest to “rural and mid-tier carriers who would be in the best position to offer roaming services to others.”⁵⁵⁹ MetroPCS and NTELOS also seek to ensure that the Applicants are prohibited from divesting assets to “purely financial investors” unless those investors are required to hold and operate the assets for a minimum of five years.⁵⁶⁰ Other commenters request that divestitures be made in small geographic areas to afford rural service providers an opportunity to acquire licenses in and around their service areas.⁵⁶¹ While others request that divestitures not be limited to “small, low population density area, but [should] include adjoining population centers that would allow the purchaser to offer a viable service.”⁵⁶² Chatham further seeks to require a “right of first negotiation for the acquisition of [divested] businesses or assets to companies

⁵⁵⁶ None of the above conditions apply to the 700 MHz spectrum for which Verizon Wireless was the high bidder in Auction 73, given that the licenses for this spectrum have not been issued to Verizon Wireless.

⁵⁵⁷ PISC Petition to Deny at 7; MetroPCS and NTELOS Petition to Deny at 40-41 (arguing that licenses and assets should be divested to new service providers); South Dakota Telecommunications Association Petition at 7-10; Rural Carriers Petition at 9, 11; OPASTCO and RICA Petition to Deny at 7-8; South Dakota Telecommunications Association Reply at 6-7; *see also* MetroPCS and NTELOS Petition to Deny at 39-40 (arguing that rural and mid-tier carriers should be given priority consideration because the Commission has favored larger carriers in allocation of spectrum in recent auctions); Rural Carriers Reply at 11-12.

⁵⁵⁸ *See, e.g.*, PISC Petition to Deny at 7; MetroPCS and NTELOS Petition to Deny at 40-41; NTCA Petition to Deny at 6-7; Consumers Union Comments at 2.

⁵⁵⁹ MetroPCS and NTELOS Petition to Deny at 40-41; *accord* NTCA Petition to Deny at 6-7; OPASTC Petition to Deny at 7-8; South Dakota Telecommunications Association Petition to Deny at 9-10.

⁵⁶⁰ MetroPCS and NTELOS Petition to Deny at 9, 39-41, 44; South Dakota Telecommunications Association Petition at 7-10.

⁵⁶¹ Rural Carriers Petition at 11-12; MetroPCS and NTELOS Petition to Deny at 42; South Dakota Telecommunications Association Petition to Deny at 10; SDPUC Reply at 6.

⁵⁶² Rural Carriers October 28, 2008 *Ex Parte* Filing at 2.

owned or controlled by members of minority or socially disadvantaged groups.”⁵⁶³ The Oglala Sioux Tribe of the Pine Ridge Indian Reservation (the “Tribe”) in South Dakota seeks the Commission’s assistance “in securing [ALLTEL’s] spectrum and assets on the Reservation to be divested by Verizon.”⁵⁶⁴ The Tribe explains that it would then “assume responsibility for the provision of telecommunications services on the Reservation” using, among other things, the divested spectrum and assets.⁵⁶⁵

161. Several commenters also suggested that specific technology should be divested. MetroPCS and NTELOS ask that the Commission require the divestitures of CDMA technology and that CDMA carriers be considered priority purchasers in markets in which the merged entity will own both CDMA and GSM assets.⁵⁶⁶ Leap Wireless asks that the Commission require the merged entity to divest any markets in which CDMA roaming competitors will decrease from three to two or from two to one.⁵⁶⁷ The Rural Telecommunications Group argues that the merged entity should divest to a competitor offering GSM service either the entire ALLTEL GSM network, or the portion of the network in markets with no GSM competitor, along with sufficient spectrum in the cellular and PCS bands on which to operate that network.⁵⁶⁸ Palmetto also requests that the Applicants be required to divest their GSM operations.⁵⁶⁹

162. We decline to place any conditions on the sale of the Divestiture Assets based on (1) the size, ownership structure, or business plan of the acquirer, or (2) the size of the geographic areas that the Divestiture Areas can be sold to an acquirer. We remind the commenters that the qualifications of the entity(ies) acquiring the Divestiture Assets and whether the specific transaction is in the public interest will be evaluated when an application is filed seeking the Commission’s consent to the transfer or assignment of the Divestiture Assets. We also decline to dictate which network(s) (*i.e.*, CDMA and/or GSM network) will be divested by the Applicants.⁵⁷⁰ We require that the entire operating unit of either Verizon Wireless or ALLTEL be divested in the markets in which we have found that the proposed transaction is likely to result in competitive harm and in the 100 markets that Verizon has voluntarily agreed to divest. We find that this is sufficient to ensure that competition will be preserved and promoted in these markets. Further, we note that, to provide greater assurance that the buyer will be an effective competitor, DOJ is requiring that certain groups of CMAs be divested to a single purchaser.⁵⁷¹ Although we decline to impose specific conditions regarding the potential acquirers of and methods for selling the Divestiture Assets, we encourage Verizon Wireless to consider and implement mechanisms to assist regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups in acquiring the Divestiture Assets and/or accessing spectrum, to the extent possible.

⁵⁶³ Chatham Petition to Deny at 19.

⁵⁶⁴ *Ex Parte* Letter from Jonathan E. Canis, Counsel to the Oglala Sioux Tribe of the Pine Ridge Indian Reservation, to Marlene H. Dortch, Secretary, Federal Communications Commission at 1 (Oct. 23, 2008).

⁵⁶⁵ *Id.* at 1.

⁵⁶⁶ MetroPCS and NTELOS Petition to Deny at iv, 9, 42-44.

⁵⁶⁷ Leap Wireless Reply at 2.

⁵⁶⁸ Rural Telecommunications Group Petition to Deny at 23-24.

⁵⁶⁹ Palmetto Petition to Deny at 24; Rural Telecommunications Group Petition to Deny at 23-24.

⁵⁷⁰ We note that it is a long-standing principle of the Commission not to dictate licensees’ technology choices. *See, e.g., AT&T-Dobson Order*, 22 FCC Rcd at 20336 ¶ 89; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21608 ¶ 227; Spectrum Policy Task Force, ET Docket No. 02-135, Report, at 14 (rel. Nov. 2002).

⁵⁷¹ *See* DOJ Verizon-ALLTEL Competitive Impact Statement at 16; *see also* discussion *supra* para. 25.

B. Operation of Divestitures

163. Disposal of the Divestiture Assets in the five geographic markets in which competitive harm is likely and the 100 markets that Verizon Wireless has voluntarily committed to divest will be accomplished in the following way. A Management Trustee shall be appointed to serve as manager and operator of the Divestiture Assets until such assets are sold to third party purchasers or transferred to a Divestiture Trustee (who may be the same person as the Management Trustee). During the period in which the Management Trustee is in day-to-day control of the Divestiture Assets, Verizon Wireless shall retain *de jure* control and shall have the sole power to market and dispose of the Divestiture Assets to third-party buyers, subject to the Commission's regulatory powers and processes with respect to license transfers and assignments and the terms of the agreements to be contained in any preservation of assets stipulation, proposed final judgment, or other document or agreement that may be entered into between the Applicants and DOJ.

164. To the extent the Applicants file applications to enter into short-term *de facto* transfer spectrum leases in order to transfer certain Divestiture Assets into the trust with the Management Trustee, these applications must include a request to approve the identity of the Management Trustee and the terms of the trust agreement ("Management Trustee Agreement").⁵⁷² We require that all of the Divestiture Assets shall be transferred to the trust in accordance with the terms of this Order no later than upon consummation of this proposed transaction. The Management Trustee Agreement must include all reasonable and necessary rights, powers, and authorities to permit the Management Trustee to perform his duties of day-to-day management of the Divestiture Assets, in the ordinary course of business, in order to run the businesses carried on in those CMAs and to permit expeditious divestiture.⁵⁷³ The Management Trustee will serve at the cost and expense of the Applicants.⁵⁷⁴

165. From the date of release of this Memorandum Opinion and Order and Declaratory Ruling, and until the divestitures ordered herein have been consummated, both the Applicants and the Management Trustee shall preserve, maintain, and continue to support the Divestiture Assets and shall take all steps to manage them in a way as to permit prompt divestiture. We require that the Applicants and the Management Trustee abide by the same provisions relating to the duties of the Management Trustee and the preservation of the Divestiture Assets as those contained in any DOJ preservation of assets stipulation or any other document or agreement. We also require that, to the extent any DOJ preservation of assets stipulation or Management Trustee Agreement or other document or agreement requires the Applicants or the Management Trustee to provide DOJ with any reports, affidavits, notifications, or statements of compliance or requires that the Applicants seek any approvals from DOJ, the Applicants will also provide such reports, affidavits, notifications, and statements to, and seek such approvals from, the Commission.

166. The Applicants will be allowed 120 days from the closing of their transaction or five days after notice of entry of any Final Judgment, whichever is later (the "Management Period"), to divest the Divestiture Assets prior to the second stage of the divestiture procedures becoming operative. Upon application by the Applicants to the Bureau, the Bureau may grant one or more extensions of the

⁵⁷² See *supra* Part II.C.2.

⁵⁷³ The duties and responsibilities of the Management Trustee and the terms relating to how the Divestiture Assets are to be preserved during the term of the trust will be more fully set forth in the preservation of assets stipulation with DOJ filed in the District Courts, and in the Management Trustee Agreement. See *supra* Part II.C.2. Except to the extent that any provisions herein conflict, we require that the Applicants and the Management Trustee fully comply with such provisions as if they were set forth herein *in extenso*.

⁵⁷⁴ See, e.g., DOJ Verizon-ALLTEL Stipulation at 10. See also Management Trustee Agreement.

Management Period, not to exceed 60 days in the aggregate, to allow the Applicants further time to dispose of the Divestiture Assets.⁵⁷⁵

167. Upon expiration of the Management Period, any Divestiture Assets that remain owned by the Applicants shall be irrevocably transferred to a Divestiture Trustee, who shall be solely responsible for accomplishing disposal of the Divestiture Assets. The Applicants will submit to the Bureau, for approval, both the name of the proposed Divestiture Trustee and a draft of the divestiture trust agreement⁵⁷⁶ to be entered into with the Divestiture Trustee together with an appropriate application to effect such transfer no later than 30 days prior to the expiration of the Management Period.⁵⁷⁷ The Divestiture Trustee will serve at the cost and expense of the Applicants and shall file monthly reports with the Bureau setting forth his efforts to divest the Divestiture Assets.

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

169. Subject to our regulatory powers and processes, to the extent that any of the Divestiture Assets are included within any DOJ preservation of assets stipulation, DOJ proposed final judgment or any other document or agreement, we will allow the Applicants to proceed to divest such assets in accordance with the terms of the provisions of those documents. To the extent that this Order requires divestitures in any market that are more extensive than those required by DOJ, we require that the Applicants comply with this Order and completely dispose of the Divestiture Assets included in such markets.

170. To the extent that this Memorandum Opinion and Order and Declaratory Ruling conflicts with any document or agreement among DOJ, the Applicants, the Management Trustee, and the Divestiture Trustee, the Applicants must nonetheless comply with the terms of this Order.

VIII. OTHER ISSUES

A. Roaming

171. *Background.* Roaming occurs when the subscriber of one CMRS provider travels beyond the service area of that provider and uses the facilities of another CMRS provider to place an

⁵⁷⁵ If the Applicants have filed an application with the Commission seeking consent to the sale of any of the Divestiture Assets to a third party within the time periods set forth above but the Commission has not acted by the end of such period, such period will be automatically extended and shall expire five days after the Commission's action with respect to such Divestiture Assets.

⁵⁷⁶ The Bureau will consult with the Office of General Counsel on matters relating to the identity of the proposed divestiture trustee and the terms of the divestiture trust.

⁵⁷⁷ Except to the extent that any provisions herein conflict, we require that the Applicants and the Divestiture Trustee fully comply with the provisions of any DOJ Proposed Final Judgment relating to the responsibilities of the Divestiture Trustee as if they were set forth herein *in extenso*.

outgoing call, to receive an incoming call, or to continue an in-progress call.⁵⁷⁸ Subscribers can roam manually by providing a credit card number to the host carrier, while automatic roaming allows mobile telephone subscribers to place calls while roaming as they do in their home coverage area, by simply entering a phone number and pressing “send.”

172. In the *Roaming Report and Order*,⁵⁷⁹ the Commission determined that the automatic roaming obligation applies to real-time, two-way switched voice or data services that are interconnected with the public switched network and utilize an in-network switching facility that enables providers to reuse frequencies and accomplish seamless hand-offs of subscriber calls.⁵⁸⁰ The Commission declined to extend the scope of the automatic roaming services definition to include non-interconnected services provided over enhanced digital networks, such as wireless broadband Internet access.⁵⁸¹ The Commission determined that automatic roaming, as a common carrier obligation, does not extend to services that are classified as information services or to other wireless services that are not CMRS.⁵⁸² Additionally, the Commission determined that when “a reasonable request is made by a technologically compatible [CMRS] carrier, a host [CMRS] carrier must provide automatic roaming to the requesting carrier outside of the requesting carrier’s home market . . .”⁵⁸³ on reasonable and non-discriminatory terms and conditions.⁵⁸⁴ The Commission also stated that if a carrier makes a reasonable request for automatic roaming, “then the would-be host carrier cannot refuse to negotiate an automatic roaming agreement with the requesting carrier.”⁵⁸⁵ The Commission also found that it would serve the public interest to extend automatic roaming obligations to push-to-talk and Short Message Services (SMS), but declined to adopt a rule extending the automatic roaming obligation beyond that to offerings such as non-interconnected services or features.⁵⁸⁶ Nevertheless, in the *Roaming Further Notice*, the Commission sought comment on whether it should extend the automatic roaming obligation to non-interconnected services or features, including services that have been classified as information services, such as wireless broadband Internet access service, or other non-CMRS services offered by CMRS carriers.⁵⁸⁷ The Commission also maintained its existing manual roaming requirement, which imposes on CMRS providers the obligation to permit customers of other service providers to roam manually on their

⁵⁷⁸ See *AT&T Dobson Order*, 22 FCC Rcd at 20324 ¶ 59; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11561-62 ¶ 98; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13090 ¶ 101; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21586 ¶ 166; see also Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Service, WT Docket No. 05-265, 00-193, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 15047, 15048 ¶ 2 (2005).

⁵⁷⁹ 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 (2007) (“*Roaming Report and Order*” and “*Roaming Further Notice*” respectively).

⁵⁸⁰ See *Roaming Report and Order*, 22 FCC Rcd at 15817, 15839 ¶¶ 1, 60.

⁵⁸¹ See *id.* at 15839 ¶ 60.

⁵⁸² See *id.* at 15818-19, 15839 ¶¶ 2, 60; see also *Wireless Broadband Internet Access Declaratory Ruling*, 22 FCC Rcd at 5906 ¶¶ 11-12.

⁵⁸³ *Roaming Report and Order*, 22 FCC Rcd at 15818, 15831 ¶¶ 2, 33.

⁵⁸⁴ *Id.* at 15826 ¶ 23.

⁵⁸⁵ *Id.* at 15828 ¶ 28.

⁵⁸⁶ See *id.* at 15839 ¶ 60.

⁵⁸⁷ *Roaming Further Notice*, 22 FCC Rcd at 15845-46 ¶ 77-81.

networks.⁵⁸⁸ The provision of roaming is subject to the requirements of sections 201, 202, and 208 of the Communications Act.⁵⁸⁹

173. Verizon Wireless states that it will honor ALLTEL's existing GSM and CDMA roaming contracts with other carriers.⁵⁹⁰ Verizon Wireless voluntarily commits to provide regional, small, or and/or rural carriers that currently are roaming partners with ALLTEL the option of continuing their existing agreements. Verizon Wireless also commits to provide regional, small, and/or rural carriers that have preexisting roaming contracts with both Verizon Wireless and ALLTEL the choice of which contract will govern the ongoing roaming relationship.⁵⁹¹

174. Several commenters request that the Commission impose conditions on this transaction that go beyond these commitments, such as providing roaming to any requesting party at reasonable rates,⁵⁹² the adoption of an expedited process for resolving roaming disputes,⁵⁹³ the provision of automatic roaming in carriers' home markets,⁵⁹⁴ and the provision of automatic data roaming at reasonable rates.⁵⁹⁵ Some commenters also argue that the Commission should impose a condition on Verizon Wireless to "make its roaming agreements available to Requesting Carriers upon request," similar to most favored nation treatment currently required only for interconnection agreements.⁵⁹⁶ Recently, several parties have also submitted *ex parte* filings on requested conditions.⁵⁹⁷

⁵⁸⁸ 47 C.F.R. § 20.12(c) provides:

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

⁵⁸⁹ See generally *Roaming Report and Order*, 22 FCC Red at 15818, 15824 ¶¶ 1, 18.

⁵⁹⁰ Application, Public Interest Statement at ii, 17; Verizon Wireless July 22, 2008 *Ex Parte* Filing at 1-2; Information Request Response at 12.

⁵⁹¹ Verizon Wireless July 22, 2008 *Ex Parte* Filing at 2.

⁵⁹² See, e.g., NTCA Petition to Deny at 5-6; OPASTCO and RICA Petition to Deny at 3-7; Roaming Petitioners Petition to Deny at 2-3, 18-20; Rural Cellular Association Petition to Deny at 13-14; Rural Telecommunications Group Petition to Deny at 9-18; Rural Carriers Petition at 13-14; MetroPCS and NTELOS Petition to Deny at 7-9, 16, 20-22, 25-26; South Dakota Telecommunications Association Reply at 9-10.

⁵⁹³ See, e.g., Leap Wireless Reply at 1-2.

⁵⁹⁴ See, e.g., MetroPCS and NTELOS Petition to Deny at 24-25; Leap Wireless Petition to Deny at 20; OPASTCO and RICA Petition to Deny at 7, 9; PISC Petition to Deny at 9-10; South Dakota Telecommunications Association Petition to Deny at 13-14.

⁵⁹⁵ See, e.g., NTCA Petition to Deny at 5-6; PISC Reply at 5; Petition to Dismiss or Deny of the North Dakota Network Co. at 9-10 (filed July 31, 2008) ("North Dakota Network Co. Petition to Deny"); MetroPCS and NTELOS Petition to Deny at 28-30; Rural Carriers Petition at 13-14; South Dakota Telecommunications Association Petition to Deny at ii, 10-14; Rural Telecommunications Group Petition to Deny at 22-23; Centennial Communications Corp. Petition to Deny at 4-8 (filed Aug. 11, 2008) ("Centennial Petition to Deny"); Roaming Petitioners Petition to Deny at 3, 8-10, 13, 17-18; Leap Wireless Petition to Deny at 20.

⁵⁹⁶ See, e.g., MetroPCS and NTELOS Petition to Deny at 35-38; Rural Carriers Petition at 12-13; South Dakota Telecommunications Association Petition to Deny at 11-12.

⁵⁹⁷ See, e.g., MetroPCS *et al.* *Roaming Ex Parte* Letter at 2; Consumers Union Comments at 2; Rural Carriers October 28, 2008 *Ex Parte* Filing at 1-3; Leap Wireless Comments at 7-9; *Ex Parte* Letter from Todd B. Lantor, Counsel to Rural Cellular Association to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1- (continued....)

175. Verizon Wireless first indicated that it would honor the rates in ALLTEL's existing roaming agreements with regional, small, and/or rural carriers for the term of the agreement or for two years from the closing date of the transaction, whichever is later.⁵⁹⁸ In a more recent filing, Verizon Wireless volunteers to double the term of its commitment from two years to four years. Accordingly, it commits to honor the rates in ALLTEL's existing roaming agreements with each carrier for the full term of the agreement or for four years from the closing date, whichever occurs later.⁵⁹⁹ The Applicants contend that any additional roaming issues are not transaction-specific and that either retail-level competitive markets will ensure that the merged entity will maintain reasonable roaming rates or potential roaming partners can use the Section 208 process.⁶⁰⁰ The Applicants add that the Commission lacks authority under the Communications Act to impose a data-roaming obligation because data roaming is an information service and, in any event, the Commission should not impose data roaming restrictions on the merged entity different from those imposed on the rest of the industry.⁶⁰¹ They also point out that GSM and CDMA roaming opportunities will continue to exist after the transaction because Verizon Wireless plans to operate ALLTEL's GSM network indefinitely and that other opportunities will increase as the industry begins using LTE, reducing the importance of air-interface.⁶⁰² Verizon Wireless also claims that the transaction will allow both companies' customers to benefit from access to the same set of features – including advanced data services – while roaming on each others' networks that they access in their home markets.⁶⁰³

176. Commenters respond that the Commission does have authority to regulate data roaming because data services are often bundled with voice services,⁶⁰⁴ that their proposed conditions for the transaction are narrowly tailored for this transaction, and that these issues will not be addressed in the roaming proceeding.⁶⁰⁵ Commenters add that if the roaming issues can be resolved only through a separate rulemaking, as the Applicants suggest, then the Commission should postpone any action on this transaction until the roaming proceeding has been resolved.⁶⁰⁶ Commenters also contend that, contrary to the Applicants' assertions, a separate market for wholesale roaming does exist and has been recognized

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2 (Oct. 6, 2008); *Ex Parte* Letter from Mark D. Schneider, Counsel to Contour Network to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (Oct. 28, 2008).

⁵⁹⁸ Joint Opposition at iii, 54.

⁵⁹⁹ Verizon Wireless November 3, 2008 *Ex Parte* Filing at 2 (volunteering to extend their commitment to honor the rates in ALLTEL's roaming agreements for four years).

⁶⁰⁰ Joint Opposition at 42-49, 56-57, 62-62.

⁶⁰¹ *Id.* at 60, 62-64.

⁶⁰² *Id.* at 46, 49-54; Information Request Response at 11-12.

⁶⁰³ Information Request Response at 20-21.

⁶⁰⁴ Rural Carriers Reply at 18, 21-22; South Dakota Telecommunications Association Reply at 10; Reply of MetroPCS Communications, Inc. and NTELOS Inc. to Joint Opposition to Petitions to Deny and Comments at 15-16 (filed Aug. 26, 2008) ("MetroPCS and NTELOS Reply").

⁶⁰⁵ MetroPCS and NTELOS Reply at 9-11.

⁶⁰⁶ Rural Carriers Reply at 20; *see also* Rural Cellular Association Reply at 9; Roaming Petitioners Petition to Deny at 9, 17-18; *see also* Rural Telecommunications Group Petition to Deny at 22; OPASTCO and RICA Petition to Deny at 7, 9; Leap Wireless Petition to Deny at 4; Leap Wireless Reply at 19-20.

The Rural Telecommunications Group also argues that material issues of fact remain for hearing about whether retail competitors will become dependent on Verizon for both GSM and CDMA roaming in numerous markets, and whether roaming prices have become a national market. Rural Telecommunications Group Reply at 12-16.

by the Commission.⁶⁰⁷ Commenters further request that Verizon Wireless make clear that their roaming commitment apply to all terms of ALLTEL's existing contracts – not just the rates⁶⁰⁸ – and that Verizon Wireless's commitments be extended for up to ten years.⁶⁰⁹ With regard to Verizon Wireless's plans to continue operating ALLTEL's GSM network, the Rural Telecommunications Group asserts that these plans are inadequate because Verizon Wireless will not extend the network geographically or upgrade the network to 3G and because, in many markets, no other GSM network is currently built out.⁶¹⁰

177. Additionally, commenters raise the issue of “interoperability”—which the Rural Cellular Association describes as the ability for one network to seamlessly transfer calls in progress to another network when a caller begins roaming—arguing that automatic roaming alone is not sufficient without interoperability.⁶¹¹ In response, the Applicants argue that the Commission cannot impose interoperability because the Rural Cellular Association failed to adequately define that concept.⁶¹² Finally, North Dakota Network Co. argues that Verizon Wireless is not qualified to take control of ALLTEL spectrum licenses because Verizon Wireless has not lived up to its CMRS obligations by negotiating for roaming services in good faith.⁶¹³ Verizon Wireless denies North Dakota Network Co.'s allegations that Verizon Wireless has not acted in good faith in negotiating their roaming contracts and argues that this proceeding is not the appropriate venue to resolve such an issue.⁶¹⁴

178. *Discussion.* We condition our approval of this transaction on Verizon Wireless's commitment to honor ALLTEL's existing agreements with other carriers to provide roaming on ALLTEL's CDMA and GSM networks.⁶¹⁵ We additionally condition our approval on the option Verizon Wireless voluntarily offers to each regional, small, and/or rural carrier that has a roaming agreement with ALLTEL to keep the rates set forth in that roaming agreement in force for the full term of the agreement, notwithstanding any change of control or termination for convenience provisions that would give Verizon Wireless the right to accelerate the termination of such agreement.⁶¹⁶ We also condition our approval on each such regional, small, and/or rural carrier that currently has roaming agreements with both ALLTEL and Verizon Wireless having the option to select either agreement to govern all roaming traffic between it and post-merger Verizon Wireless.⁶¹⁷ We further condition our approval on Verizon Wireless's commitment that it will not adjust upward the rates set forth in ALLTEL's existing

⁶⁰⁷ MetroPCS and NTELOS Reply at 18-20; Leap Wireless Reply at 17-20; South Dakota Telecommunications Association Reply at 9-10.

⁶⁰⁸ Leap Wireless Reply at 24. PISC replies that the Applicants' roaming commitments serve only to “deflect attention” from their roaming practices and they should instead commit to provide voice and data roaming at just, reasonable, and non-discriminatory rates and terms. PISC Reply at 5.

⁶⁰⁹ MetroPCS and NTELOS Reply at 11-12; Rural Telecommunications Group Reply at 15; MetroPCS *et al.* Roaming *Ex Parte* Letter at 2.

⁶¹⁰ Rural Telecommunications Group October 9, 2008 *Ex Parte* Letter at 2-3. Rural Telecommunications Group also asks the Commission to review Verizon Wireless's roaming contracts with Tier II, III, and IV carriers and require Verizon Wireless to enter roaming agreements with new market entrants. *Id.* at 3-4.

⁶¹¹ Rural Cellular Association Petition to Deny at 10-11; Rural Cellular Association Reply at 10; Cellular South Reply at 27-29.

⁶¹² Joint Opposition at 60.

⁶¹³ North Dakota Network Co. Petition to Deny at 6-8.

⁶¹⁴ Joint Opposition at 58-29.

⁶¹⁵ *See* Application, Public Interest Statement at ii.

⁶¹⁶ Verizon Wireless July 22, 2008 *Ex Parte* Filing at 2.

⁶¹⁷ *Id.*

agreements with each regional, small and/or rural carrier for the full term of the agreement or for four years from the closing date, which ever occurs later.⁶¹⁸ We remind carriers that roaming is a common carrier service subject to the protections afforded by Sections 201, 202, and 208 of the Communications Act.⁶¹⁹ When a CMRS carrier receives a reasonable request for roaming, pursuant to Sections 201 and 202, that carrier is required to provide roaming on reasonable and non-discriminatory terms and conditions.⁶²⁰ If a requesting carrier believes that particular acts or practices relating to roaming are unjust and unreasonable,⁶²¹ it may file a complaint with the Commission pursuant to Section 208.⁶²²

179. With regard to any additional roaming concerns raised in the record or in the *ex parte* letter filed by MetroPCS and other commenters,⁶²³ as discussed elsewhere in this Memorandum Opinion and Order and Declaratory Ruling, we find that the package of divestitures on which we are conditioning our approval of this transaction, along with the roaming conditions described above, sufficient to prevent the significant competitive harm that this transaction would likely cause in certain geographic markets. Based on this finding that the divestitures, as well as Verizon Wireless's roaming related commitments, will protect competition at the retail level in those geographic markets, we conclude that this transaction will not alter competitive market conditions to harm consumers of mobile telephony/broadband services. We note that our conclusion here is consistent with the Commission's prior findings that competition in the retail market is sufficient to protect consumers against potential harm arising from intercarrier roaming arrangements and practices.⁶²⁴ Accordingly, we decline to condition our approval of the transaction on any additional special requirements relating to roaming rates or arrangements, including a requirement to maintain ALLTEL's GSM network for a specified period of time.

180. Furthermore, the commenters have failed to demonstrate that the transaction will cause the potential harms they purportedly seek to remedy. We note that the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes.⁶²⁵ We will address the concerns about roaming raised in the record of this transaction in other, more appropriate, proceedings.⁶²⁶ We also are considering, in the context of the *Roaming Further Notice*, whether to extend the automatic roaming obligation to non-interconnected services or features,

⁶¹⁸ Verizon Wireless November 3, 2008 *Ex Parte* Filing at 2.

⁶¹⁹ 47 U.S.C. §§ 201, 202, 208.

⁶²⁰ See generally *Roaming Report and Order*, 22 FCC Rcd at 15818-19, 15824, 15826-29 ¶¶ 1-2, 18, 23-29.

⁶²¹ See generally *id.* at 15830-31 ¶¶ 33-35 (discussing reasonableness).

⁶²² See generally *id.* at 15818, 15829-30 ¶¶ 1, 30-32.

⁶²³ MetroPCS *et al.* *Roaming Ex Parte* Letter at 2.

⁶²⁴ See *Verizon-RCC Order*, 23 FCC Rcd at ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21591 ¶ 180; *Roaming Report and Order*, 22 FCC Rcd at 15822 ¶ 13; see also *DoCoMo-Guam Order*, 21 FCC Rcd at 13602 ¶ 36; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11563-64 ¶ 104. See also Rural Cellular Association Petition to Deny at 10-11; Rural Cellular Association Reply at 10; Cellular South Reply at 27-29.

⁶²⁵ See, e.g., *Verizon-RCC Order* 23 FCC Rcd at 12480-81 ¶ 30; *AT&T Dobson Order*, 22 FCC Rcd at 20306 ¶ 14; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674-75 ¶ 22; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13593 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11539 ¶ 20; *Sprint-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order* 20 FCC rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint Nextel Order* 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

⁶²⁶ See *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 (2007).

including services that have been classified as information services.⁶²⁷ Any decisions reached or rules adopted in either of those roaming proceedings will apply with equal force to Verizon Wireless.

181. The Consumers Union also argues that the transaction could lead to increases in text messaging prices.⁶²⁸ We find that the package of divestitures on which we are conditioning our approval of this transaction sufficient to prevent the significant competitive harm that this transaction would likely cause in certain geographic markets. As noted elsewhere in this order, based on our finding that the divestitures will protect competition at the retail level in those geographic markets, we conclude that this transaction will not alter competitive market conditions to harm consumers of mobile telephony/broadband services and, therefore, will not lead to price increases for services, including text messaging.

B. Handset Availability and Exclusive Handset Agreements

182. Several commenters express concern that the transaction will result in a large increase in the merged entity's alleged monopsony power to purchase handsets and the disparity in purchasing power between the merged entity and smaller wireless providers will allow the merged entity to demand exclusive arrangements for handsets that prevent smaller and rural wireless providers from providing those handsets for use on their networks.⁶²⁹ Commenters argue that exclusive contracts for handsets are not in the public interest because without these arrangements, manufacturers have incentives to offer a broad range of devices to consumers rather than forcing consumers to sign with the network with their desired device.⁶³⁰ Cellular South also argues that rural wireless providers' access to handsets may be hurt by the transaction because those wireless providers often use "generic" handset software designed for ALLTEL; Cellular South questions whether after the transaction handset manufacturers will have sufficient incentives to design generic software for rural wireless providers.⁶³¹ Commenters contend that the Commission has authority over the handset contracts under its broad authority to protect consumers from anti-competitive behavior and should exercise its authority by conditioning approval of the transaction on Verizon Wireless waiving any exclusivity agreements with handset manufacturers.⁶³²

⁶²⁷ *Id.*

⁶²⁸ Consumers Comments at 1-2.

⁶²⁹ Cellular South Petition to Deny at 19; Centennial Petition to Deny at 8-12; NTCA Petition to Deny at 8; OPASTCO and RICA Petition to Deny at 8; Palmetto Petition to Deny at 28-29; PISC Petition to Deny at 12; Rural Carriers Petition at 15-16; Rural Cellular Association Petition to Deny at 15-17; Rural Telecommunications Group Petition to Deny at 28-29; South Dakota Telecommunications Association Petition to Deny at 14; PISC Reply at 12-13; Rural Carriers Reply at 23; South Dakota Telecommunications Association Reply at 11; Cellular South Reply at 20-25; Rural Cellular Association Reply at 11-12.

⁶³⁰ PISC Reply at 13; Rural Carriers Reply at 23; South Dakota Telecommunications Association Reply at 11; Cellular South Reply at 20; Rural Cellular Association Reply at 11-13.

⁶³¹ Cellular South Petition to Deny at 20. PISC further argues that it is not requesting generic phones operable on all networks, but only that new phones not be denied for rural carriers. PISC Reply at 13.

⁶³² Centennial Petition to Deny at 9; NTCA Petition to Deny at 8; OPASTCO and RICA Petition to Deny at 3, 8; Rural Carriers Petition at 15-16; Rural Cellular Association Petition to Deny at 15-17; Rural Telecommunications Group Petition to Deny at 28-30; South Dakota Telecommunications Association Petition to Deny at 14; Cellular South Reply at 23; *see also* Palmetto Petition to Deny at 29-31 (asking that the Commission require the merged entity to make handsets available for Tier III carriers); Rural Telecommunications Group Petition to Deny at 31 (same); PISC Petition to Deny at 12-13 (asking the Commission to give no weight to the Applicants' argument about availability of handsets for ALLTEL customers).

Cellular South suggests the merged entity should be required to terminate all exclusivity agreements or be prevented from entering new ones. Cellular South Reply at 20-25. Palmetto, PISC, and the Rural Cellular Association also urge the Commission to ask for comments on a Request for Rulemaking submitted by the Rural Carriers Association (continued....)

PISC also asserts that the loss of a major national wireless provider will mean fewer buyers for phone manufacturers, and an increased ability for those buyers to dictate “take it or leave it” terms to potential vendors, which may result in even fewer choices for subscribers across the entire wireless industry.⁶³³ Several commenters note that the Rural Cellular Association recently filed a petition for a rulemaking addressing situations in which wireless providers negotiate with manufacturers to be the exclusive distributor of certain handsets.⁶³⁴

183. The Applicants assert that, because of Verizon Wireless’s large economies of scale, enhanced access to capital, and advanced technological software capabilities, ALLTEL’s customers will gain access to a wider variety of handsets.⁶³⁵ Specifically, the Applicants assert that ALLTEL’s customers currently have access to only fifteen models of phones, nine personal digital assistants (“PDAs”)/Smartphones or Blackberry devices, and four PC cards,⁶³⁶ while Verizon Wireless’s customers have access to 30 models of phones, thirteen PDAs/Smartphones or Blackberry devices, and 8 PC cards.⁶³⁷ The Applicants points out that Verizon Wireless’s phones include devices that take advantage of the faster speeds on the EvDO Rev. A network.⁶³⁸ The Applicants contend that, to the extent they use any contracts with manufacturers for exclusive access to certain handsets,⁶³⁹ these contracts are beneficial for the public because they allow wireless providers to differentiate themselves and because, without them, handset manufacturers have no incentive to create new devices.⁶⁴⁰

184. The Applicants further argue that the Commission lacks authority under the Communications Act to impose conditions on handset contracts because these agreements are not agreements for the provision of communications or common carrier services.⁶⁴¹ The Applicants also assert that the proposed conditions – namely, preventing the merged entity from entering exclusive contracts with handset manufacturers – are not merger specific and will not prevent other wireless providers from entering exclusive agreements.⁶⁴² The Applicants contend the commenters’ desired goal of achieving “generic” phones available to all wireless providers is not possible because of technical differences between networks.⁶⁴³ The Applicants therefore propose that rural wireless providers can

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addressing exclusivity arrangements for handsets. Palmetto Petition to Deny at 29; PISC Petition to Deny at 12; Rural Cellular Association Petition to Deny at 14-15.

⁶³³ PISC Petition at 12.

⁶³⁴ Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, filed by RCA, May 20, 2008.

⁶³⁵ Application, Public Interest Statement at 20-21.

⁶³⁶ *Id.* at 21.

⁶³⁷ *Id.*

⁶³⁸ *Id.*

⁶³⁹ In their response to our Information Request, Verizon Wireless provides a list of its handset models and distribution numbers for the second quarter of 2008. *Id.* at Appendix B. [REDACTED]. *Id.* at 28. [REDACTED]. *Id.* Verizon Wireless does acknowledge that its handsets incorporate proprietary software and hardware governing the “look and feel” of the handset and that it sometimes uses handset colors that are exclusive for Verizon Wireless. *Id.*

⁶⁴⁰ Joint Opposition at 73-74.

⁶⁴¹ *Id.* at 72.

⁶⁴² *Id.* at 74.

⁶⁴³ *Id.*

address many of the issues they present by banding together, increasing their purchasing power and their ability to enter exclusivity arrangements of their own.⁶⁴⁴

185. *Discussion.* We find that the commenters' proposed conditions prohibiting exclusive handset contracts are not narrowly tailored to prevent a transaction-specific harm and are more appropriate for a rulemaking proceeding where all interested parties have an opportunity to file comments. As noted above, the Rural Carriers Association has filed a petition asking the Commission to review exclusive handset agreements on an industry-wide basis.⁶⁴⁵ The harms alleged by the commenters in the proceeding are more appropriately addressed in that general proceeding. We therefore decline to condition the transaction on such a condition.

C. Open Development Initiative (ODI)

186. PISC raises concerns regarding the merged entity's network openness and argues the transaction will provide Verizon Wireless unprecedented power over the equipment and application markets that the Commission must remedy.⁶⁴⁶ It therefore urges the Commission to condition its approval of the transaction on requirements similar to those governing the development of the C Block from the 700 MHz auction to all its systems, including those acquired from ALLTEL.⁶⁴⁷ PISC also suggests that the Commission mandate that Verizon Wireless extend ODI – Verizon Wireless's program in which it allows anyone to design devices or applications for Verizon Wireless's network so long as the device completes a certification process to ensure it meets certain technical specifications⁶⁴⁸ – to all its services and that Verizon Wireless tie ODI to specific benchmarks.⁶⁴⁹

187. The Applicants respond that Verizon Wireless intends to comply with the requirements for the 700 MHz C Block, but that the Commission has already rejected requests to expand C Block requirements on other spectrum bands.⁶⁵⁰ Moreover, the Applicants argue, expanding the C Block's requirements to this transaction would undermine the Commission's preference for relying on market forces to foster competition,⁶⁵¹ and, in any event, the industry is already moving towards more open platforms.⁶⁵² The Applicants also point out that ODI is a separate, voluntary program that will benefit ALLTEL customers⁶⁵³ and is unrelated to the rules relating to the C Block.⁶⁵⁴ In its reply to our

⁶⁴⁴ *Id.* at 74-75. Cellular South argues that even if rural carriers were to work together to try to negotiate exclusive contracts, they still would not be able to amass as much purchasing power as the merged entity. Cellular South Reply at 24-25.

⁶⁴⁵ See *Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, filed by RCA, May 20, 2008; Wireless Telecommunications Bureau Seeks Comment On Petition For Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers And Handset Manufacturers, *Public Notice*, DA 08-2278 (Oct. 10, 2008).

⁶⁴⁶ PISC Reply at 5-6.

⁶⁴⁷ See 27 C.F.R. §27.16.

⁶⁴⁸ Information Request Response at 23.

⁶⁴⁹ PISC Petition to Deny at 13-14; see also Consumers Union Comments at 2 (expressing concern that Verizon Wireless will not implement ODI by the end of 2008 as originally pledged); Comments of the Computer and Communications Industry Association at 1 (filed Oct. 27, 2008) (urging the Commission to adopt "openness conditions that promote portability of devices among wireless networks")

⁶⁵⁰ Joint Opposition at 67.

⁶⁵¹ *Id.* at 67-68.

⁶⁵² *Id.* at 68-69.

⁶⁵³ Application, Public Interest Statement at 10.

Information Request, Verizon Wireless explains that it plans to have devices designed under ODI run on the LTE platform in the 700 MHz spectrum band, thus increasing speeds and data throughput.⁶⁵⁵

188. *Discussion.* We do not believe that PISC has demonstrated that this transaction will cause the potential harms it seeks to remedy. Nothing in the record demonstrates that this transaction will harm consumers by making Verizon Wireless's network either more or less open. Moreover, ODI is a program that Verizon Wireless created voluntarily and is not affected by the transaction. We therefore decline to require Verizon Wireless to extend its existing ODI program to other services or to tie our approval of the transaction to benchmarks for the development of ODI. With regard to the open platform requirements set out for the C Block, we concluded in the *700 MHz Second Report and Order* that the 700 MHz auction was "an important opportunity to apply requirements for open platforms for devices and applications for the benefit of consumers," but we also stated our desire to avoid "unduly burdening existing services and markets."⁶⁵⁶ PISC's suggestion that we extend these conditions to all of Verizon Wireless's spectrum holdings is not merger-specific and could undermine our goal of not unduly burdening existing services and markets.

D. Network Openness

189. The Applicants assert that the transaction will benefit rural customers by deploying high-speed wireless broadband technology to rural areas, many of which do not currently have access to this technology.⁶⁵⁷ They contend that Verizon Wireless's use of EvDO Rev. A technology will allow ALLTEL customers in rural areas to download files by up to twenty times faster than customers of other wireless providers.⁶⁵⁸ They also claim that the transaction will allow the merged entity to deploy LTE technology more quickly than ALLTEL could in rural areas.⁶⁵⁹

190. PISC suggests that, because extending mobile broadband services to ALLTEL customers is one of the Applicants' claimed public interest benefits of the transaction, the Commission should extend the principles in the Commission's *Internet Policy Statement*⁶⁶⁰ to wireless broadband services.⁶⁶¹ PISC contends that the Commission should impose the principles in the *Internet Policy Statement* in this proceeding because they allow a granular examination of the relevant marketplace.⁶⁶² The Applicants respond that PISC's request for a "neutrality" requirement in this transaction, but not in the Sprint Nextel-Clearwire proceeding, demonstrates an attempt to manipulate the transaction process to hamper certain wireless providers in favor of its more preferred competitors.⁶⁶³ The Applicants' further argue that "Network Neutrality" conditions are not specific to this transaction and that the *Internet Policy*

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⁶⁵⁴ Joint Opposition at 67.

⁶⁵⁵ Information Request Response at 22.

⁶⁵⁶ Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, *Second Report and Order*, FCC 07-132, at ¶ 195 (2007) ("*700 MHz Second Report and Order*").

⁶⁵⁷ Application, Public Interest Statement at 11-13.

⁶⁵⁸ *Id.* at 12.

⁶⁵⁹ *Id.* at 12-13.

⁶⁶⁰ *Internet Policy Statement*, 20 FCC Rcd 14986 (2005).

⁶⁶¹ PISC Petition to Deny at 17-18.

⁶⁶² PISC Reply at 6-7. PISC adds that the Commission has already taken a similar action in the *AT&T-BellSouth Order*.

⁶⁶³ Joint Opposition at 65-66.

Statement has never been—and should not be—applied to wireless broadband.⁶⁶⁴ Finally, the Applicants argue that the concerns raised by PISC are more appropriately addressed in a rulemaking proceeding because otherwise, the merged entity will be unfairly constrained as opposed to the rest of the market.⁶⁶⁵

191. *Discussion.* We decline to impose the broader conditions as requested by PISC. In previous cases where compliance with the *Internet Policy Statement* was made a condition for approval of a transaction, the transactions involved service providers who had voluntarily agreed to the condition in question.⁶⁶⁶ In this instance, we see no benefit associated with making compliance with the *Internet Policy Statement* a condition of approval of this transaction and PISC fails to cite any precedent for such a potentially sweeping review requirement.

E. Universal Service Support

192. The Federal-State Joint Board on Universal Service (“Joint Board”) and the Commission have each recognized and addressed the need to control the explosive growth in high-cost universal service support disbursements to competitive ETCs.⁶⁶⁷ Based on the recommendations of the Joint Board, on May 1, 2008, the Commission adopted an interim, emergency cap on the amount of high-cost support that competitive ETCs may receive.⁶⁶⁸ Specifically, as of August 1, 2008, total annual high-cost competitive ETC support for each state is capped at the level of support that competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis.⁶⁶⁹ The Commission also adopted two limited exceptions from the specific application of the interim cap.⁶⁷⁰ First, a competitive ETC will not be subject to the interim cap to the extent it files cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent local exchange carrier.⁶⁷¹ Second, the Commission adopted a limited exception to competitive ETCs serving tribal lands or Alaska Native regions.⁶⁷² The interim cap will remain in place only until the Commission adopts comprehensive high-cost universal service reform, which is currently being considered in a pending rulemaking.⁶⁷³

⁶⁶⁴ *Id.* at 69-70.

⁶⁶⁵ *Id.* at 71.

⁶⁶⁶ See Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control, WC Docket No. 05-75, *Memorandum Opinion and Order*, 20 FCC Rcd 18433, 18509 ¶ 143 (2005); SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control, WC Docket No. 05-65, *Memorandum Opinion and Order*, 20 FCC Rcd 18290, 18368 ¶ 144 (2005).

⁶⁶⁷ See Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, *Recommended Decision*, 22 FCC Rcd 8998, 8998 ¶ 1 (Fed.-State Jt. Bd. 2007); see also *ALLTEL-Atlantis Order*, 22 FCC Rcd at 19520 ¶ 8.

⁶⁶⁸ High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, *Order*, 23 FCC Rcd 8834 (2008) (“*USF Interim Cap Order*”).

⁶⁶⁹ A summary was published in the Federal Register on July 2, 2008, establishing an effective date of August 1, 2008. See 73 Fed. Reg. 37882 (July 2, 2008).

⁶⁷⁰ *USF Interim Cap Order*, 23 FCC Rcd at 8834 ¶ 1.

⁶⁷¹ *Id.*

⁶⁷² *Id.*

⁶⁷³ *Id.* The Commission is required by statute to act within one year after receiving a recommendation from the Joint Board. 47 U.S.C. § 254(a)(2). See also High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, *Notice of Proposed Rule Making*, 23 FCC Rcd 1531 (2008) (“*Joint Board Recommended Decision NPRM*”); High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, *Notice of Proposed Rule Making*, (continued....)

193. *Record.* Some commenters argue that the Commission should require Verizon Wireless, as a condition of the Commission's consent to the applications, to demonstrate costs of providing universal service on a state-by-state basis to receive high-cost support,⁶⁷⁴ or to forgo it entirely.⁶⁷⁵ They claim that such a condition is appropriate in light of the fact that the largest portion of competitive ETC high-cost universal service support is received by ALLTEL,⁶⁷⁶ and also by the Applicants' estimate of \$10 billion in savings from the current transaction.⁶⁷⁷ They further argue that Verizon Wireless, as the largest wireless provider with almost \$100 billion in annual revenues, is not in need of federal subsidies to serve low-density, high-cost markets.⁶⁷⁸

194. The Applicants disagree, stating that such conditions are not merger-specific but industry-wide and thus irrelevant to the Commission's review of the proposed transaction.⁶⁷⁹ They point out that, to address the rapid growth of high-cost universal service disbursements to competitive ETCs, the Commission has already imposed an interim cap on all competitive ETC high-cost funding and is currently considering industry-wide reform of the assessment and distribution of high-cost ETC support.⁶⁸⁰ They also claim that the state-by-state cost demonstration requirement that some commenters propose would establish an entirely new ETC designation process and reimbursement system, which, however, is the authority of the state, and should not, in any event, target only one entity.⁶⁸¹

195. Some commenters respond that the suggested conditions are appropriate, considering the fact that the Commission previously imposed a cap on ALLTEL's high-cost support in a merger proceeding, despite the pendency of a rulemaking addressing the same issue.⁶⁸² They also state that the imposition of a cost demonstration requirement is not an entirely new ETC designation process outside the purview of the Commission, since the same requirement is currently being considered by the Commission in an ongoing rulemaking proceeding on comprehensive high-cost universal service reform.⁶⁸³

196. Despite its objections to the imposition of conditions regarding high-cost competitive ETC support, Verizon Wireless, in order to provide further assurance that the proposed transaction is in

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23 FCC Rcd 1467 (2008) ("*Identical Support NPRM*"); High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, *Notice of Proposed Rule Making*, 23 FCC Rcd 1495 (2008) ("*Reverse Auctions NPRM*") (collectively "*USF Reform NPRMs*").

⁶⁷⁴ See Palmetto Petition to Deny at 28; Rural Carriers Petition at 19; Rural Telecommunications Group Petition to Deny at 27; South Dakota Telecommunications Association Petition at 7, 18.

⁶⁷⁵ See NTCA Petition to Deny at 7; Palmetto Petition to Deny at 26-27; Rural Telecommunications Group Petition to Deny at 24-26.

⁶⁷⁶ Some commenters state that even with the interim cap order, ALLTEL's high-cost support is likely to stay the same. See Rural Telecommunications Group Reply at 18.

⁶⁷⁷ See Rural Carriers Petition at 17, 19; South Dakota Telecommunications Association Petition to Deny at 15, 17. We note that the Applicants have stated in the Application and Information Request Response that they expect the transaction to result in \$9 billion in savings. See discussion *supra* para. 147.

⁶⁷⁸ See NTCA Petition to Deny at 7; Palmetto Petition to Deny at 26; Rural Telecommunications Group Petition to Deny at 25.

⁶⁷⁹ See Joint Opposition at 43.

⁶⁸⁰ See *id.* at 75-76.

⁶⁸¹ See *id.*

⁶⁸² See Rural Carriers Reply at 14; South Dakota Telecommunications Association Reply at 7-8.

⁶⁸³ See Rural Carriers Reply at 25.

the public interest, has committed “to accept a phase down of competitive [ETC] high cost support, for any properties which Verizon Wireless retains, over a five year period following closing of the transaction.”⁶⁸⁴ Specifically, Verizon Wireless commits to a five year transition during which Verizon Wireless’s competitive ETC high cost support would be phased out in equal increments,⁶⁸⁵ as follows:

- Support would be reduced 20 percent beginning 30 days following the closing of the transaction, or no later than December 31, 2008, whichever is earlier. If the transaction does not close prior to December 31, 2008, support would be reduced 20 percent beginning the day after consummation.
- Support would be reduced in equal 20 percent increments annually thereafter, such that all competitive ETC high cost support would be phased out five years after the closing of the transaction.

With regard to this phase down of competitive ETC high cost support, Verizon Wireless states its understanding that the reduction in payments to Verizon Wireless will not result in an increase in high cost payments to other competitive ETCs and that, if the Commission adopts a different transition mechanism or a successor mechanism to the currently capped equal support rule in a rulemaking of general applicability, then that rule of general applicability would apply instead.⁶⁸⁶

197. *Discussion.* The proposed transaction constitutes a merger of the largest wireless company in the United States, based on revenues,⁶⁸⁷ as well as the number of retail customers,⁶⁸⁸ with another wireless company that is the largest recipient of the high-cost competitive ETC support.⁶⁸⁹ Such unique facts and large scope of this transaction compel us to condition our approval of the proposed transaction on Verizon Wireless’s commitment to phase down its competitive ETC high cost support over five years, as discussed herein. In light of Verizon Wireless’s voluntary commitment, we decline to impose a condition that, prior to receipt of such funding, Verizon Wireless demonstrate costs of providing universal service. We find that Verizon Wireless’s voluntary commitment to phase down competitive ETC high cost support over five years is sufficient to relieve commenters’ concerns. We also note that the Commission is currently considering this issue, along with others, in a rulemaking on comprehensive high-cost universal service reform.⁶⁹⁰

F. E911

198. On November 20, 2007, the Commission released a Report and Order (“*Location Accuracy Order*”) requiring wireless licensees subject to section 20.18(h) of the Commission’s rules,⁶⁹¹ which specifies the standards for wireless Enhanced 911 (E911) Phase II location accuracy and reliability, to satisfy these standards at a geographical level defined by the coverage area of a Public

⁶⁸⁴ Verizon Wireless November 3, 2008 *Ex Parte* Letter at 1.

⁶⁸⁵ *Id.*

⁶⁸⁶ *Id.* at 1-2.

⁶⁸⁷ See Verizon Form 10-K at 7; Verizon Wireless Overview at 1; Verizon Wireless Facts at 1.

⁶⁸⁸ See Verizon Form 10-K at 7; Verizon Wireless Overview at 1; Verizon Wireless Facts at 1.

⁶⁸⁹ See *ALLTEL-Atlantis Order*, 22 FCC Rcd at 19521 ¶ 9.

⁶⁹⁰ See *USF Reform NPRMs*, 23 FCC Rcd at 1531 ¶ 1, 23 FCC Rcd at 1468 ¶ 1, 23 FCC Rcd at 1496 ¶ 1. We also acknowledge that currently there is an interim cap imposed on ETC support for all USF recipients, including Verizon Wireless and ALLTEL, which superseded the interim cap adopted in the *ALLTEL-Atlantis Order*. *USF Interim Cap Order*, 23 FCC Rcd at 8837 n.21 (2008).

⁶⁹¹ 47 C.F.R. § 20.18(h).

Safety Answering Point (“PSAP”).⁶⁹² On March 25, 2008, the United States Court of Appeals for the District of Columbia Circuit (Court) stayed the *Location Accuracy Order*.⁶⁹³

199. On July 14, 2008, the Association of Public-Safety Communications Officials – International (“APCO”) and the National Emergency Number Association (“NENA”) filed an *ex parte* letter addressing handset-based and network-based location accuracy criteria, stating that they “are now willing to accept compliance measurements at the county level” rather than at the PSAP level, and that “[p]ublic safety and wireless carriers are in current discussions on a number of other issues associated with E9-1-1.”⁶⁹⁴ On July 31, 2008, the Commission filed with the Court a Motion for Voluntary Remand and Vacatur, which requested remand based on the proposals contained in the July 14, 2008 E911 *Ex Parte* Letter and “[i]n light of the public safety community’s support for revised rules.”⁶⁹⁵ Following this filing with the Court, NENA, APCO, Verizon Wireless, Sprint Nextel, and AT&T Mobility submitted written *ex parte* letters with the Commission with proposed new wireless E911 rules.⁶⁹⁶ Taken together, these proposals reflect agreement among those parties for new E911 accuracy requirements for both handset-based and network-based technologies, in order to achieve E911 accuracy compliance at the county-level.

200. On November 3, 2008, Verizon Wireless filed a letter committing to meet the improved wireless E911 location accuracy measures that it proposed jointly with NENA and APCO.⁶⁹⁷ Verizon Wireless commits that:

- Two years after closing of the transaction, on a county-by-county basis, 67 percent of Phase II calls must be accurate to within 50 meters in all counties; 80 percent of Phase II calls must be accurate to within 150 meters in all counties, provided, however, that a carrier may exclude up to 15 percent of counties from the 150 meter

⁶⁹² Wireless E911 Location Accuracy Requirements, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Association of Public-Safety Communications Officials-International, Inc. Request for Declaratory Ruling, 911 Requirements for IP-Enabled Service Providers, PS Docket No. 07-114, CC Docket No. 94-102, WC Docket No. 05-196, *Report and Order*, 22 FCC Rcd 20105 (2007) (“*Location Accuracy Order*”).

⁶⁹³ *Rural Cellular Association and T-Mobile USA, Inc. v. Federal Communications Commission and the United States of America*, No. 08-1069, slip op. at 1 (DC Cir. Mar. 25, 2008) (per curiam).

⁶⁹⁴ *Ex Parte* Letter from Willis Carter, President, APCO, and Ronald Bonneau, President, NENA, to Derek Poarch, Chief, Public Safety and Homeland Security Bureau, FCC, PS Docket No. 07-114, (July 14, 2008), at 1-2 (“July 14, 2008 E911 *Ex Parte* Letter”).

⁶⁹⁵ Motion of Federal Communications Commission for Voluntary Remand and Vacatur, *Rural Cellular Association and T-Mobile et al v. Federal Communications Commission and United States of America*, No. 08-1069 (D.C. Cir. July 31, 2008). On September 17, 2008, the Court granted the Commission’s request. Order Granting Mot. Rem. (Sept. 17, 2008).

⁶⁹⁶ *Ex Parte* Letter from Brian Fontes, CEO, NENA, Robert M. Gurss, Director, Legal and Government Affairs, APCO, and John T. Scott, II, VP and Deputy General Counsel, Verizon Wireless to The Honorable Kevin Martin, Chairman, Federal Communications Commission, PS Docket No. 07-114, at 1 (Aug. 20, 2008); *Ex Parte* Letter from Brian Fontes, CEO, NENA, Robert M. Gurss, Director, Legal and Government Affairs, APCO, and Robert W. Quinn, Jr., Senior VP – Federal Regulatory, AT&T, to The Honorable Kevin Martin, Chairman, Federal Communications Commission, PS Docket No. 07-114, at 1 (Aug. 25, 2008). In addition, the parties pledged to convene, “within 180 days of the Commission’s order [adopting new location accuracy standards], an industry group to evaluate methodologies for assessing wireless E9-1-1 location accuracy for calls originating indoors and report back to the Commission within one year.” *Id.*

⁶⁹⁷ See Verizon Wireless November 3, 2008 *Ex Parte* Letter at 2.

requirement based upon heavy forestation that limits handset-based technology accuracy in those counties.

- Eight years after closing of the transaction, on a county-by-county basis, 67 percent for Phase II calls must be accurate to within 50 meters in all counties; 90 percent of Phase II calls must be accurate to within 150 meters in all counties, provided, however, that a carrier may exclude up to 15 percent of counties from the 150 meter requirement based upon heavy forestation that limits handset-based technology accuracy in those counties.

201. In light of the important public safety benefits to be derived from improved E911 location accuracy requirements and Verizon Wireless's voluntary commitments in this proceeding, we condition our approval of this transaction on Verizon Wireless's compliance with the E911 location accuracy proposal set forth in the Verizon Wireless November 3, 2008 *Ex Parte* Letter.⁶⁹⁸ We find that such condition will further ensure that consummation of the proposed transaction serves the public interest, convenience, and necessity.

G. Radiofrequency Exposure

202. Pursuant to the National Environmental Policy Act of 1969 ("NEPA"),⁶⁹⁹ the Commission has established guidelines for human exposure to radiofrequency ("RF") radiation.⁷⁰⁰ The guidelines were designed to regulate the amount of RF radiation to which humans may be exposed by various transmitters regulated by the Commission.⁷⁰¹ The current, more restrictive, guidelines were finalized in 1997, based on the recommendations and advice of federal agencies and groups with expertise in health-related areas and in standards setting.⁷⁰² More recently, the Commission updated its procedures for measuring RF exposure from mobile and portable devices.⁷⁰³ These procedures are based on the work and recommendations of an expert group of the Institute of Electrical and Electronics Engineers (IEEE).⁷⁰⁴

⁶⁹⁸ *See id.*

⁶⁹⁹ 42 U.S.C. §§ 4321 *et seq.*

⁷⁰⁰ 47 C.F.R. §§ 1.1307(b), 1.1310, 2.1091, 2.1093.

⁷⁰¹ Responsibility of the Federal Communications Commission to Consider Biological Effects of Radiofrequency Radiation when Authorizing the Use of Radiofrequency Devices; Potential Effects of a Reduction in the Allowable Level of Radiofrequency Radiation on FCC-Authorized Communications Services and Equipment, *Report and Order*, 100 FCC 2d 543 (1985) ("*RF Report & Order*"); on reconsideration, FCC 85-467, 58 RR 2d 1128 (Aug. 22, 1985).

⁷⁰² Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, *Report and Order*, 11 FCC Rcd 15123 (1996); Procedures for Reviewing Requests for Relief from State and Local Regulations Pursuant to Section 332(c)(7)(B)(V) of the Communications Act of 1934; Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, *Second Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd 13494 (1997), *aff'd sub nom.* Cellular Taskforce v. FCC, 205 F.3d 82 (2d Cir. 2000).

⁷⁰³ Office of Engineering and Technology Announces Release of Revised Supplement C to OET Bulletin 65, *Public Notice*, 16 FCC Rcd 21553 (OET 2001); Office of Engineering and Technology Announces a Transition Period for the Phantom Requirements of Supplement C to OET Bulletin 65, *Public Notice*, 17 FCC Rcd 11287 (OET 2002).

⁷⁰⁴ The IEEE Standards Coordinating Committee 34, Subcommittee 2 is convened specifically to develop procedures for evaluating the Specific Absorption Rate of RF emissions from wireless handsets.

203. The RF limits for general population/uncontrolled exposure are set forth in Section 1.1310 of the Commission Rules.⁷⁰⁵ When these limits are exceeded, licensees are required to cooperate with owners of transmitter sites and other licensees at the same location to take necessary steps to control access to such areas.⁷⁰⁶

204. *Background.* On August 8, 2008, the EMR Policy Institute (“EMRPI”) filed a petition to deny the applications until the current Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (ET 93-62) are updated in compliance with NEPA.⁷⁰⁷ EMRPI argues that the current guidelines are obsolete and inadequately protect the general public as well as workers who perform their jobs near transmitter sites.⁷⁰⁸ EMRPI states that the impact of long-term RF exposure on human health has not been addressed by the Commission.⁷⁰⁹ EMRPI asks the Commission to conduct a thorough comprehensive research and study of the guidelines’ impact on human health using a biological approach as specified in its petition.⁷¹⁰ EMRPI claims that the Commission, in formulating the current guidelines, relied on a deficient research record.⁷¹¹ Therefore, EMRPI requests that the Commission review the research studies cited in and attached to its petition before approving the proposed transaction.⁷¹² Lastly, EMRPI requests that the Commission to deny the proposed transaction until Verizon Wireless “demonstrates that it has implemented an RF safety solution that protects the public and all categories of workers whose workplaces are found near [Verizon Wireless’s] antenna sites.”⁷¹³ EMRPI does not specifically claim that Applicants are not in compliance with the current rules on RF exposure.

205. The International Brotherhood of Electrical Workers (“IBEW”), on the other hand, requests that the Commission deny the applications claiming that the Applicants, while in compliance with the Commission’s RF guidelines with respect to their own employees, have not provided the same safeguards to third-party workers who perform their job tasks in the vicinity of the Applicants’ transmitters.⁷¹⁴

206. In their Opposition, the Applicants state that EMRPI’s Petition should be denied because it raises an industry-wide, rather than transaction-specific, issue and is therefore better addressed in a

⁷⁰⁵ 47 C.F.R. §1.1310.

⁷⁰⁶ *Id.* §1.1307(c).

⁷⁰⁷ The EMR Policy Institute, Petition to Deny, at 1, 2 and 15 (filed Aug. 8, 2008) (“EMRPI Petition to Deny”).

⁷⁰⁸ *See id.* at 2, 3.

⁷⁰⁹ *See id.* at 1.

⁷¹⁰ *See id.* at 2, 3.

⁷¹¹ *See id.* at 4.

⁷¹² *See id.* at 15.

⁷¹³ *Id.*

⁷¹⁴ *See* Comments of the International Brotherhood of Electrical Workers at 2-3. In the alternative, IBEW requests that the Commission’s consent to the applications should be conditioned on “the merged company immediately adopt[ing] a nation-wide RF safety system that protects all workers.” *Id.* at 3. We note, however, that IBEW’s filing does not meet the requirements of a petition to deny set forth in Section 309(d)(1) of the Communications Act of 1934, as amended, because it is not supported by an affidavit of a person with personal knowledge of the specific allegations of fact. 47 U.S.C. § 309(d)(1). However, pursuant to Section 1.41 of the Commission’s Rules, we will treat the IBEW’s submission as an informal request for Commission action and consider arguments raised therein. 47 C.F.R. §1.41.

separate rulemaking proceeding on a revision of the current RF exposure rules.⁷¹⁵ They also raise EMRPI's previous unsuccessful attempt to challenge in court the Commission's denial to initiate a proceeding to gather information and opinion about the need to revise the rules.⁷¹⁶ In response to IBEW's allegations of noncompliance with the RF exposure requirements with respect to third-party workers, the Applicants explain that Verizon Wireless and ALLTEL have comprehensive programs under which each site is evaluated for compliance with RF exposure rules prior to activation or modification, including access restrictions, signage or entry barriers if RF limits are exceeded.⁷¹⁷ The Applicants further state that these safeguards are communicated to landlords who are instructed to contact the Applicants if access to restricted areas is needed.⁷¹⁸ Additionally, the Applicants state that third parties conduct audits to "monitor regional implementation of the program, compliance with FCC/Occupational Safety and Health Administration regulations, and overall effectiveness of the RF compliance program."⁷¹⁹

207. *Discussion.* We agree with the Applicants that this is an inappropriate Commission proceeding to consider the issues raised by EMRPI. Possible revision of the RF standards, which apply broadly across the industry, is not an issue specific to this transaction. In addition, in 2001, the Office of Engineering and Technology denied EMRPI's request to initiate a proceeding to gather information and opinion about the need to revise the rules,⁷²⁰ which was upheld by the Commission on review in 2003,⁷²¹ and affirmed by the United States Court of Appeals for the District of Columbia Circuit in 2005.⁷²² Finally, Commission staff continuously monitors scientific developments in this area, and coordinates with other federal agencies, such as the Food & Drug Administration, with expertise on the underlying health and safety issues involved with RF exposure.

208. When authorizing the use of radiofrequency devices, the Commission is obligated to ensure that applicable health and safety guidelines for RF exposure are followed and the general public, including all categories of workers who perform jobs near antenna sites, is adequately protected.⁷²³ The Commission will continue to enforce the RF exposure rules where necessary and work closely with federal agencies and expert groups to review and revise the rules as appropriate. We are unpersuaded by IBEW's allegations that the Applicants are not in compliance with the current RF exposure rules with respect to third-party workers. In addition, to the extent that IBEW is asking the Commission to establish more specific requirements to protect third-party workers in the vicinity of base station transmitters hidden in such locations as church steeples, we find that is not specific to this particular transaction. Therefore we also deny IBEW's request to deny the applications or to condition the Commission's consent.

⁷¹⁵ See Joint Opposition at 82.

⁷¹⁶ See *id.*; see also *EMR Network v. Federal Communications Commission*, 391 F.3d 269 (D.C. Cir. 2004), *cert. denied* 545 U.S. 1116 (2005).

⁷¹⁷ See Joint Opposition at 83.

⁷¹⁸ See *id.*

⁷¹⁹ *Id.*

⁷²⁰ Letter from Bruce A. Franca to James R. Hobson, (Dec. 11, 2001).

⁷²¹ *EMR Network, Order*, 18 FCC Rcd 16,822 (2003).

⁷²² *EMR Network v. Federal Communications Commission*, 391 F.3d 269 (D.C. Cir. 2004), *cert. denied* 545 U.S. 1116 (2005).

⁷²³ See *RF Report & Order*, 100 FCC 2d at 543 ¶¶ 1, 9.

H. Violation of Anti-Trafficking Rules

209. Section 1.948(i) of the Commission’s Rules states that “[a]pplications for approval of assignment or transfer may be reviewed by the Commission to determine if the transaction is for purposes of trafficking in service authorizations.”⁷²⁴ It defines trafficking or warehousing as “obtaining or attempting to obtain an authorization for the principal purpose of speculation or profitable resale of the authorization rather than for the provision of telecommunication services to the public or for the licensee’s own private use.”⁷²⁵ The anti-trafficking rules provide that Commission review for the purposes of determining whether trafficking has occurred is discretionary.⁷²⁶

210. *Background.* Arkansas Limited Partners assert that Atlantis engaged in trafficking of the ALLTEL licenses and authorizations in violation of the Commission’s Rules.⁷²⁷ They claim that the timing of the proposed merger relative to the Commission’s approval of Atlantis’ acquisition of ALLTEL, evidences a “classic situation where trafficking is likely to have occurred.”⁷²⁸ Specifically, Arkansas Limited Partners state that “[a]s a practical matter, negotiations concerning a transaction as complex as the one involved in this proceeding most likely would have commenced very soon after – if not actually *before* – Commission approval of the Alltel acquisitions by Atlantis in late 2007.”⁷²⁹ They further state that there is a “strong *inference* of improper conduct [from] Atlantis’ utter failure during the [period following Commission approval] to take any steps to reform company operations normally associated with acquisitions by private equity investors.”⁷³⁰

211. The Applicants assert that these allegations are untrue and argue that Arkansas Limited Partners failed to meet the Commission’s standard for grant of a petition to deny.⁷³¹ Moreover, they argue that the anti-trafficking rule is aimed at “preventing the speculative acquisition and abusive sale of *unbuilt* licenses *obtained via lotteries or using auction preferences*, such as set-asides, installment plans or bidding credits,”⁷³² and is thus inapplicable here.⁷³³ Arkansas Limited Partners respond that the anti-

⁷²⁴ 47 C.F.R. § 1.948(i).

⁷²⁵ *Id.* § 1.948(i)(1). The Commission may require applicants to submit an affirmative showing demonstrating that the assignor did not acquire the authorization for the principal purpose of speculation or profitable resale of the authorization. *Id.* § 1.948(i)(2).

⁷²⁶ *See id.* § 1.948(i) (stating that “[a]pplications for approval of assignment or transfer *may* be reviewed by the Commission to determine if the transaction is for purposes of trafficking in service authorizations.” (emphasis added)).

⁷²⁷ Arkansas Limited Partners Petition to Deny at 5-6. Arkansas Limited Partners also request that the applications be designated for a hearing. *See id.* at 5.

⁷²⁸ *Id.* at 5.

⁷²⁹ *Id.* (emphasis in original).

⁷³⁰ *Id.* at 5-6 (emphasis added).

⁷³¹ Joint Opposition at 84.

⁷³² *Id.* at 88-89 (emphasis in original) (citing Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from Urban Comm-North Carolina, Inc., Debtor in-Possession, to Celloco Partnership d/b/a Verizon Wireless, *Memorandum Opinion and Order*, 21 FCC Rcd 15050, 15059 ¶ 22 (2006); Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures, *Order on Reconsideration of the Second Report and Order*, 21 FCC Rcd 6703, n. 8 (2006); Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission’s Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, *Report and Order*, 17 FCC Rcd 18401, 18346-48 (¶¶ 70-74) (2002)). The Applicants also state that all but one of the cellular and PCS licenses held by ALLTEL have been constructed. *See id.*

trafficking rule is not confined to speculative sales of unbuilt facilities or transactions by designated entities receiving bidding preferences.⁷³⁴ It also claims that the Applicants' reliance of the legislative history of Section 309(j) of the Communications Act of 1934, as amended, is misplaced, because this section is relevant only to the Commission's authority to award licenses via competitive bidding.⁷³⁵

212. *Discussion.* We find Arkansas Limited Partners' allegations insufficient to support a petition to deny. Under section 1.939(d) of the Commission's rules, a petition to deny must "contain specific allegations of fact sufficient to make a *prima facie* showing that . . . a grant of the application would be inconsistent with the public interest, convenience and necessity."⁷³⁶ Arkansas Limited Partners base their trafficking allegations solely on speculation that Atlantis must have commenced negotiations with Verizon Wireless very soon after – if not before – the Commission approved of Atlantis's acquisition of ALLTEL and on inferences from Atlantis's failure to reform ALLTEL's operations as anticipated.⁷³⁷ Arkansas Limited Partners' allegations are too speculative to support its petition to deny.⁷³⁸

I. Independent Resellers

213. Tom Dickson of North American Business Brokers, Inc. expressed a concern that due to a planned divestiture of ALLTEL's business units in parts of the state of Minnesota, dozens of independent ALLTEL resellers in rural Minnesota will be negatively impacted, unless the Commission ensures that "ALLTEL resellers have a major cell phone provider that they can competitively represent in the rural markets."⁷³⁹ A related concern was voiced by the Wireless Business Owners Consortium ("WiBOC") which fears that, upon the completion of the proposed transaction, Verizon Wireless will be able to "indiscriminately close down independent ALLTEL resellers."⁷⁴⁰ WiBOC requests that ALLTEL resellers should be afforded the opportunity to continue doing business with the merged entity under its like dealer program.⁷⁴¹

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⁷³³ Joint Opposition at 88-89.

⁷³⁴ See Arkansas Limited Partners Reply at 10-13. Arkansas Limited Partners state that there is "no logical reason to confine the offense of trafficking to unbuilt stations, since . . . there is a longstanding public policy against treating licensed communications facilities as mere commodities to be bought and sold for profit." *Id.* at 10. Arkansas Limited Partners also assert that the applications should be denied because, based on the current record, Applicants failed to demonstrate that Atlantis will not realize any profit from the proposed transaction. *Id.* at 3, 12-14.

⁷³⁵ See Arkansas Limited Partners Reply at 11.

⁷³⁶ 47 C.F.R. § 1.939(d).

⁷³⁷ Arkansas Limited Partners Petition to Deny at 5-6. We note that some of the documentation submitted by Arkansas Limited Partners fails to support a finding of authorization trafficking. See, e.g., Allie Winter, *Third time's a charm VZW to Acquire ALLTEL*, RCR WIRELESS, June 9, 2008, available at <http://www.rcrnews.com/article/20080609/SUB/905502577> (last visited October 10, 2008) (regarding investors' potential profit from sale of ALLTEL to Verizon Wireless "[i]t basically boils down to the equity investors making little or no more than what they paid for Alltel last year").

⁷³⁸ See, e.g., Thomas K. Kurian RF Data, Inc., *et al.*, Order, 18 FCC Rcd 21949, 21954 ¶ 16 (PSPWD 2003) (denying commenters' trafficking allegation because of its "generalized, unfounded and speculative nature").

⁷³⁹ Electronic message dated September 16, 2008 from Tom Dickson, North American Business Brokers, Inc. to Carl Kuhl, Constituent Policy Liaison, Office of Senator Norm Coleman.

⁷⁴⁰ Letter from Mark Landiak, Executive Director, the Wireless Business Owners Consortium, to Erin McGrath, Mobility Division, and Susan Singer, Spectrum Competition and Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, at 1 (August 27, 2008).

⁷⁴¹ See *id.* at 2.

214. The divestiture of ALLTEL's business units in parts of Minnesota would involve a divestiture of its entire business in those markets, including reseller agreements.⁷⁴² The agreements will be a part of the assets purchased by an acquirer of a divested market. Verizon Wireless, or the acquirer of a divested market, will replace ALLTEL as a party in all ALLTEL's reseller agreements. To the extent and if the terms of such agreements are violated by either party, *i.e.*, a reseller, Verizon Wireless, or an acquirer (in case of reseller agreements in divested markets), such matters constitute private contractual disputes, that are best resolved by a local court of competent jurisdiction.⁷⁴³ Therefore, we believe that the Commission is not the proper forum to consider the issues raised by Mr. Dickson and WiBOC. Moreover, we trust Verizon Wireless that it will ensure that the service to current ALLTEL's customers, including their ability to purchase new devices from resellers, will not be disrupted. For these reasons, we decline to impose the requested conditions.

J. Procedural Matters

215. *Initial Screen Rulemaking.* Leap Wireless and others also make a procedural argument, contending that the Commission should not change the spectrum screen except through a rulemaking proceeding.⁷⁴⁴ These commenters argue that the Commission must consider a range of issues before changing the screen, namely, under what circumstances should new spectrum be added to the screen, whether the screen needs to be more generally revised to include a "hard cap" for spectrum, and whether the analysis should include a showing of efficient use of previously-owned spectrum.⁷⁴⁵

216. We reject Leap Wireless's argument that a rulemaking proceeding must be undertaken to revise the spectrum screen. As Leap Wireless itself recognizes, the Commission has broad authority to decide whether to proceed by adjudication or rulemaking.⁷⁴⁶ We also have an established standard for determining whether a particular band should be included in the screen. As these transactions demonstrate, the facts concerning suitability of bands for mobile communications service are dynamic and can change over time. We find that the appropriate course is to review our screen on a transaction-by-transaction basis, review comments seeking changes to a screen, and make any changes that are appropriate when we consider a transaction.

217. *Commission Consideration of the Proposed Transaction and Amendments to Applications Based on DOJ Proceeding.* Cellular South claims that "the applications have become 'contingent' on the outcome of Verizon Wireless's discussions with the DOJ" regarding divestitures and

⁷⁴² See generally discussion *supra* Part VII.A. In paragraph 159 above, we stated specifically that we will require the Applicants to divest all licenses, leases, and authorizations and related operational and network assets, which shall include certain employees, retail sites, subscribers, customers, all fixed assets, goodwill, and all spectrum associated therewith, of either Verizon Wireless or ALLTEL, in certain markets.

⁷⁴³ See, e.g., A.L.Z. Broadcasting, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 23200, 23201 ¶ 3 (2000) (finding contractual dispute concerning payment obligations to be within the province of a court of competent jurisdiction, not the Commission) (citations omitted); Verestar, Inc., *Memorandum Opinion, Order, and Authorization*, 19 FCC Rcd 22750, 22756 ¶ 16 (IB & WTB 2004) (declining to defer action on assignment applications pending resolution of litigation, noting it is "long-standing Commission policy not to involve itself with private contractual disputes") (citations omitted).

⁷⁴⁴ Leap Wireless Petition to Deny at 5-6; Leap Wireless Reply at 11-12; see also Rural Carriers Reply at 6 (arguing that if "the current screen mechanism must be replaced, a matter so fundamental should be the subject of a rule making prior to any action on the instant merger petition."); Rural Telecommunications Group Reply at 8-9.

⁷⁴⁵ Leap Wireless Petition to Deny at 5-6.

⁷⁴⁶ *Id.* at 6 (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 202 (1947); *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 294 (1974)).

argues that “no action can be taken until the DOJ review process concludes.”⁷⁴⁷ Cellular South also states that the Commission “must accommodate the concurrent jurisdiction of the DOJ by deferring to the DOJ’s determination that the effect of [the] proposed merger may substantially lessen competition or tend to create a monopoly.”⁷⁴⁸ Accordingly, Cellular South argues that the applications should be dismissed without prejudice until they can be resubmitted with the final details of the divestiture.⁷⁴⁹ Cellular South further asserts that such an amendment would change the specific spectrum, operations, or assets to be transferred and thus would require 30 days public notice as a substantial amendment under section 309(b) of the Communications Act.⁷⁵⁰ The Applicants respond that while some applications may require amendments, these types of amendments of pending applications are permitted and do not create a contingency warranting dismissal.⁷⁵¹

218. The Commission’s statutory authority to review the proposed transaction under the Communications Act is not contingent upon the outcome of any negotiations between the Applicants and DOJ.⁷⁵² As discussed above, the Commission and DOJ each has independent authority to review the competitive impact of the proposed transaction and each has differing standards which govern that review.⁷⁵³ Accordingly, the Commission may act on the proposed merger regardless of whether DOJ has taken any action in furtherance of it own, independent statutory review under section 7 of the Clayton Act.⁷⁵⁴ We also note that any divestitures ultimately ordered by the Commission or DOJ would not require a major amendment of the Applications. Instead, as discussed above, we will require the Applicants to file applications for short-term *de facto* transfer spectrum leasing agreements for any assets that must be divested to a management trustee as a condition of our approval of the proposed merger.⁷⁵⁵ We thus see no need to dismiss the applications without prejudice as suggested by Cellular South.

219. *Ex Parte Status of Proceeding.* In the June 25, 2008 Public Notice seeking comment on the proposed transaction, the Commission, pursuant to its authority under Section 1.1200(a) of the Commission’s Rules,⁷⁵⁶ announced that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under Section 1.1206 of the Commission’s Rules.⁷⁵⁷ On September 24, 2008, Cellular South filed a letter asserting that on August 11, 2008, when Cellular South filed its petition to deny, the proceeding automatically became restricted.⁷⁵⁸ It claims that once the petitions to deny are filed, the Commission is required “to make its public interest determination

⁷⁴⁷ Cellular South Petition to Deny at 6; *see also* Cellular South Supplement at 8-13 (arguing that the Applicants’ offer to divest an 15 additional markets created 15 more “contingent” applications).

⁷⁴⁸ Cellular South Petition to Deny at 17-18.

⁷⁴⁹ *Id.* at 5-6; Cellular South Reply at 3-7.

⁷⁵⁰ Cellular South Petition to Deny at 6 n.20.

⁷⁵¹ Joint Opposition at 36 n.107.

⁷⁵² *See* 47 U.S.C. §§ 214(a), 310(d).

⁷⁵³ *See supra* Part III.

⁷⁵⁴ 15 U.S.C. § 18.

⁷⁵⁵ *See supra* Part VII.B.

⁷⁵⁶ 47 C.F.R. § 1.1200(a).

⁷⁵⁷ *Id.* § 1.1206. *See also* Public Notice, 23 FCC Rcd at 10008-09.

⁷⁵⁸ Letter from David L. Nace, Counsel for Cellular South, Inc. to James D. Schlichting, Acting Chief, Wireless Telecommunications Bureau, Federal Communications Commission at 1, 3 (Sept. 24, 2008) (“Cellular South Letter”); *see also* Cellular South Supplement at 1.

‘on the basis of the application, the pleadings filed, or other matters which it may officially notice.’⁷⁵⁹ Cellular South argues that “the statute cannot be construed to permit the Commission to make a public interest determination on the basis of new information regarding the merits obtained in the course of *ex parte* presentations.”⁷⁶⁰ Moreover, Cellular South argues that the Commission cannot consider newly submitted *ex parte* information unless it: “(1) placed the written statement in the record; (2) notified petitioners that the statement had been submitted; and (3) specified a reasonable deadline by which petitioners could respond to or rebut the facts alleged.”⁷⁶¹

220. We disagree. The permit-but disclose status of a proceeding (and the *ex parte* status of a proceeding generally) continues until “the proceeding is no longer subject to administrative reconsideration or review or to judicial review.”⁷⁶² In applying this principle, there is no reason to distinguish between a proceeding that is designated permit-but-disclose by the rules or, as is the case here, by the staff under its authority to change the *ex parte* status of a proceeding pursuant to Section 1.1200(a).⁷⁶³ Thus, the permit-but-disclose status continues through the entire course of this proceeding and any subsequent administrative or judicial review. We also note that all *ex parte* presentations have been made a part of the public record in this proceeding and commenters have had ample time to review and respond to all such filings if they chose to do so.⁷⁶⁴ The Commission may consider all *ex parte* presentations made and appropriately filed with the Commission.

IX. FOREIGN OWNERSHIP

221. Verizon Wireless requests a declaratory ruling, pursuant to section 310(b)(4) of the Communications Act, that the public interest would be served by extending its current foreign ownership ruling to encompass the ALLTEL Subsidiaries and Partnerships and their FCC licenses and spectrum leases.⁷⁶⁵ We find, subject to the conditions specified herein, that the public interest would be served by extending the current foreign ownership ruling under section 310(b)(4), which the Commission issued to

⁷⁵⁹ Cellular South Letter at 3; *see also* 47 U.S.C. § 309(d)(2).

⁷⁶⁰ Cellular South Letter at 3; Cellular South Supplement at 7-8.

⁷⁶¹ Cellular South Supplement at 3.

⁷⁶² 47 C.F.R. § 1.1206(a).

⁷⁶³ 47 C.F.R. § 1.1200(a) (“Where the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable *ex parte* rules by order, letter, or public notice.”).

⁷⁶⁴ Cellular South claims that the Applicants’ Information Request Response was only made publicly available in a “heavily redacted version” and could only be accessed if Cellular South agreed “to be bound by, the wholly unlawful and prejudicial terms of the anticipatory Protective Order issued by the WTB on July 29, 2008.” Cellular South Supplement at 5. Cellular South argues that contrary to section 0.459 of the Commission’s rules, 47 C.F.R. § 0.459, the Protective Order impermissibly removes the onus from the Applicants to demonstrate why certain information should be withheld from public inspection. Cellular South Letter at 3-4. We disagree. The Commission routinely adopts protective orders where it anticipates that it may seek documents that contain confidential or proprietary information. In adopting the Protective Order in this proceeding, the Commission specifically noted that the Protective Order did not “constitute a resolution of the merits concerning whether any information submitted under the Protective Order would be released publicly by the Commission upon a proper request under the Freedom or Information Act (“FOIA”) or otherwise.” Protective Order, 23 FCC Rcd at 11155 ¶ 2. Pursuant to the terms of the Protective Order, any party could seek access to confidential documents by signing the Acknowledgement of Confidentiality attached to the protective order. *Id.* at 11155 ¶ 3. Cellular South, like all parties in this proceeding, had the opportunity to access, comment on or rebut all *ex parte* presentations made in this proceeding.

⁷⁶⁵ 47 U.S.C. § 310(b)(4). The petition for declaratory ruling is included in the narrative portion of the transfer of control applications and has been assigned File No. ISP-PDR-20080613-00012.

Verizon Wireless in the *Vodafone-Bell Atlantic Order*, to the ALLTEL Subsidiaries and Partnerships in which ALLTEL holds a *controlling* ownership interest and to their wireless licenses and spectrum leases.⁷⁶⁶ We conclude, based on ownership information Verizon Wireless has submitted to the Commission, that its current foreign ownership complies with that section 310(b)(4) ruling. Lastly, we deny Chatham’s petition to deny the requested declaratory ruling.⁷⁶⁷

A. Review of Foreign Ownership Issues

222. We review under section 310(b)(4) of the Communications Act and Commission rules and policies established in the *Foreign Participation Order*⁷⁶⁸ the post-transaction foreign ownership of the remaining ALLTEL Subsidiaries and the Partnerships in which ALLTEL holds a controlling ownership interest. As part of our foreign ownership analysis under section 310(b)(4), we consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the proposed transfer of control.⁷⁶⁹ Section 310(b)(4) of the Communications Act establishes a 25 percent benchmark for investment by foreign individuals, corporations, and governments in U.S.-organized entities that control U.S. common carrier radio licensees.⁷⁷⁰ This section of the Communications Act also grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.⁷⁷¹ The presence of aggregated alien equity or voting interests in a common carrier licensee’s parent in excess of 25 percent triggers the applicability of section 310(b)(4)’s statutory benchmark.⁷⁷² Once the benchmark is triggered, section 310(b)(4) directs the Commission to determine whether the “public interest will be served by the refusal or revocation of such license.”⁷⁷³

223. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by individuals or entities from World Trade Organization (“WTO”) Member countries in U.S. common carrier and aeronautical fixed and aeronautical en route radio licensees.⁷⁷⁴ Therefore, with respect to indirect foreign investment from WTO Members, the Commission adopted a rebuttable presumption that such investment generally raises no competitive concerns.⁷⁷⁵ Because the Commission has previously issued a foreign ownership ruling to

⁷⁶⁶ Applications of Vodafone AirTouch, Plc and Bell Atlantic Corporation for Consent to Transfer of Control or Assignment of Licenses and Authorizations, *Memorandum Opinion and Order*, 15 FCC Rcd 16507, 16514 ¶ 19 (WTB/IB 2000) (“*Vodafone-Bell Atlantic Order*”).

⁷⁶⁷ Chatham Petition to Deny at 22-31; Chatham Reply at 10-16.

⁷⁶⁸ See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order and Order on Reconsideration*, IB Docket Nos. 97-142 and 95-22, 12 FCC Rcd 23891 (1997) (“*Foreign Participation Order*”), *Order on Reconsideration*, 15 FCC Rcd 18158 (2000).

⁷⁶⁹ See *Foreign Participation Order*, 12 FCC Rcd at 23918-21 ¶¶ 59-66. In assessing the public interest, we consider the record and accord the appropriate level of deference to Executive Branch expertise on these issues. See *id.*

⁷⁷⁰ 47 U.S.C. § 310(b)(4).

⁷⁷¹ *Id.*

⁷⁷² See *BBC License Subsidiary*, 10 FCC Rcd 10968, 10973-74 ¶ 25.

⁷⁷³ 47 U.S.C. § 310(b)(4).

⁷⁷⁴ *Foreign Participation Order*, 12 FCC Rcd at 23896, 23913, 23940 ¶¶ 9, 50, 111-112.

⁷⁷⁵ *Id.* at 23913, 23940 ¶¶ 50, 111-112. The Commission stated, in the *Foreign Participation Order*, that it will deny an application if it finds that more than 25% of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that (continued....)

Verizon Wireless under section 310(b)(4), we consider in this proceeding whether Verizon Wireless remains in compliance with that ruling and, if so, whether it is appropriate to extend Verizon Wireless's current ruling to encompass the ALLTEL Subsidiaries and the Partnerships in which ALLTEL holds a controlling ownership interest and the wireless licenses and spectrum leases they will hold following the proposed transfer of control.

224. As discussed above, Verizon Wireless is a general partnership of which 55 percent is indirectly owned by Verizon and the remaining 45 percent is indirectly owned by Vodafone.⁷⁷⁶ Verizon and Vodafone hold their partnership interests in Verizon Wireless through numerous intermediate subsidiaries organized under the laws of Luxembourg, the Netherlands, and the United Kingdom, all of which are WTO Member countries, and the United States.⁷⁷⁷ Verizon is a widely held, publicly traded company organized in the United States. Vodafone is a widely-held, publicly-traded company organized in the United Kingdom.⁷⁷⁸

225. In the *Vodafone-Bell Atlantic Order* issued in 2000, the Commission authorized Verizon Wireless "to be indirectly owned by Vodafone in an amount up to 65.1 percent."⁷⁷⁹ The Commission stated that Verizon Wireless "would need additional Commission authority under section 310(b)(4) before Vodafone could increase its investment above authorized levels"⁷⁸⁰ and that "[a]dditional authority also would be required before any other foreign entity or entities acquire, in the aggregate, a greater-than-25 percent indirect interest" in Verizon Wireless.⁷⁸¹ For purposes of calculating the additional, aggregate 25 percent amount, Verizon Wireless is required to include foreign ownership of Verizon and foreign ownership of Vodafone, other than ownership of Vodafone from the United States and the United Kingdom.⁷⁸²

226. We conclude on this record that current foreign ownership of Verizon Wireless is not inconsistent with the foreign ownership ruling issued in the *Vodafone-Bell Atlantic Order*. On April 8, (Continued from previous page) _____ do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding. *See id.* at 23946 ¶ 131.

⁷⁷⁶ *See* Application, Public Interest Statement at 53.

⁷⁷⁷ *See* Cellco Partnership, Form 602, File No. 0003464689 (June 8, 2008) (providing the current ownership structure); Cellco Partnership, Form 602, File No. 0003467172 (June 10, 2008) (providing the post-transaction ownership structure).

⁷⁷⁸ *See Verizon Wireless-RCC Order*, 23 FCC Rcd at 12523 ¶ 145. To support its requested ruling, Verizon Wireless relies on ownership information it submitted to the Commission in the *Verizon Wireless-RCC* proceeding. *See* Application, Public Interest Statement at 53 n.123 (citing Letter from Nancy J. Victory, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Apr. 8, 2008) ("April 8, 2008 Letter")).

⁷⁷⁹ *Vodafone-Bell Atlantic Order*, 15 FCC Rcd at 16514 ¶ 19. The Commission has extended this ruling to cover the AWS services, *see* International Authorizations Granted, File No. ISP-PDR-20060619-00015, *Public Notice*, 21 FCC Rcd 13575 (IB 2006), and permitted Verizon Wireless to acquire ownership interests in other common carriers, *see, e.g., Verizon Wireless-RCC Order*, 23 FCC Rcd 12463; Applications of Northcoast Communications, LLC and Cellco Partnership d/b/a Verizon Wireless, *Memorandum Opinion and Order*, 18 FCC Rcd 6490, 6492 ¶ 6 & n.15 (CWD/WTB 2003); Wireless Telecommunications Bureau and International Bureau Grant Consent for Assignment or Transfer of Control of Wireless Licenses and Authorizations from Price Communications Corporation to Cellco Partnership d/b/a Verizon Wireless, *Public Notice*, 16 FCC Rcd 7155 (WTB/IB 2001).

⁷⁸⁰ *Vodafone-Bell Atlantic Order*, 15 FCC Rcd at 16514 ¶ 19.

⁷⁸¹ *Id.*

⁷⁸² *See id.* at 16514 ¶ 19 n.34.

2008, Verizon Wireless submitted a detailed showing to the Commission in the Verizon Wireless-RCC proceeding to demonstrate that its foreign ownership remained within the parameters of its foreign ownership ruling.⁷⁸³ The beneficial ownership information that Vodafone and Verizon gathered for that proceeding indicates that non-U.S., non-U.K. ownership of Vodafone (14.55 percent), together with non-U.S. ownership of Verizon (8.65 percent), is below the 25 percent aggregate allowance specified in the Verizon Wireless ruling for such ownership and, thus, complies with that ruling.⁷⁸⁴ We find the beneficial ownership information that Verizon Wireless has submitted for Vodafone and Verizon sufficient to demonstrate compliance with its section 310(b)(4) ruling for the same reasons discussed in the *Verizon Wireless-RCC Order*.⁷⁸⁵

227. In its petition to deny, Chatham argues that Verizon Wireless has failed to establish that its foreign ownership permits a public interest determination under section 310(b)(4) because Verizon Wireless did not undertake a citizenship survey of Vodafone and Verizon shareholders but instead tabulated shareholder addresses for each company.⁷⁸⁶ Relying on the 2007 *América Móvil Order*, Chatham contends that the Commission has expressly rejected shareholder addresses as a valid means for applicants to ascertain the citizenship of shareholders for all purposes under section 310(b).⁷⁸⁷ Chatham states that “the Commission traditionally expects that companies with widely dispersed shareholdings will conduct stock ownership surveys using a statistically valid sample of shares outstanding”⁷⁸⁸ to determine the citizenship of shareholders. Chatham asserts that the Commission cannot accept the Verizon Wireless showing without (1) overruling longstanding policy and precedent rejecting shareholder addresses as a valid means for ascertaining citizenship under section 310(b); and (2) allowing all applicants subject to section 310(b) to adopt the “liberalized definition of ‘foreign ownership’ embodied in the Verizon Wireless approach.”⁷⁸⁹

228. We do not agree with Chatham that the public interest showing Verizon Wireless has submitted under section 310(b)(4) is inadequate or inconsistent with Commission policy. As a factual matter, we believe that Chatham misconstrues the methodology that Verizon Wireless has used to demonstrate compliance with its section 310(b)(4) ruling. Verizon Wireless has provided the Commission with aggregate information regarding the addresses of record of nearly 100 percent of the beneficial owners of Verizon and Vodafone stock.⁷⁹⁰ Thus, in contrast to the foreign ownership

⁷⁸³ See April 8, 2008 Letter at 2-3. The beneficial ownership information for Vodafone is current as of February 29, 2008, and the beneficial ownership information for Verizon is current as of March 3, 2008. See *id.*

⁷⁸⁴ See *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12525 ¶ 148 n.473.

⁷⁸⁵ See *id.* at 23 FCC Rcd at 12525 ¶¶ 147-148.

⁷⁸⁶ Chatham Petition to Deny at 22-31; Chatham Reply at 10-16. Chatham raises the same arguments in its petition for reconsideration of our decision in the *Verizon Wireless-RCC* proceeding. See Chatham Avalon Park Community Council Petition for Reconsideration, WT Docket No. 07-208 (filed Aug. 15, 2008).

⁷⁸⁷ Chatham Petition to Deny at 24-26 (citing Verizon Communications, Inc., Transferor and América Móvil, S.A. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI), WT Docket No. 06-113, *Memorandum Opinion and Order and Declaratory Ruling*, FCC 07-43, 22 FCC Rcd 6195 (2007) (“*América Móvil Order*”)); Chatham Reply to Joint Opposition at 14.

⁷⁸⁸ Chatham Petition to Deny at 23, 26, 29.

⁷⁸⁹ See *id.* at 23-24; Chatham Reply at 16.

⁷⁹⁰ See April 8, 2008 Letter at 2-4. As discussed in the *Verizon Wireless-RCC Order*, Vodafone obtained address of record information for the beneficial owners of its shares from UBS AG, an investment banking and securities firm. See *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12525 ¶ 147 & n.464 (citing April 8, 2008 Letter, WT Docket No. 07-208, at 2). Verizon obtained its beneficial owners’ address of record information from Broadridge Financial Solutions, Inc. (“Broadridge”), a firm that specializes in securities processing, clearing and outsourcing, (continued....)

information we rejected in the *América Móvil Order*, the Verizon Wireless data does not rely on “the addresses of custodian banks and brokers that hold shares for the more numerous owners that have chosen not to possess the stock certificates.”⁷⁹¹

229. As a matter of policy, the Commission expects that licensees that are subject to the requirements of section 310(b) of the Act “will use reasonable methods to insure compliance with section 310(b).”⁷⁹² Corporate applicants and licensees with widely held securities traditionally have used random surveys to collect foreign ownership from their shareholders.⁷⁹³ At the same time, the Commission has permitted public companies to use methods other than random surveys, including the collection of shareholder addresses, on a fact-specific, case-by-case basis.⁷⁹⁴ Chatham has not provided, and we do not discern, any basis for concluding that the information Verizon Wireless has provided is inaccurate, cannot be relied on, or is insufficient for purposes of demonstrating compliance with its foreign ownership ruling under section 310(b)(4) of the Act.⁷⁹⁵ We conclude, based on the information Verizon Wireless has submitted for the record, that there is no substantial or material question of fact as

(Continued from previous page) _____

and in investor communications. See *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12525 ¶ 148 & n.470 (citing April 8, 2008 Letter, WT Docket No. 07-208, at 4).

⁷⁹¹ *América Móvil Order*, 22 FCC Rcd at 6222-23 ¶ 59. Information that América Móvil submitted in support of its section 310(b)(4) petition for declaratory ruling indicated that approximately 41.03% of its total capital stock was held in the form of Class L American Depositary Shares (“ADSs”) by custodian banks and brokers for which América Móvil obtained only the custodians’ street addresses. See Letter from Philip L. Verveer, Michael G. Jones, and Daniel K. Alvarez, Counsel to América Móvil, S.A.B. de C.V., to Marlene H. Dortch, Secretary, Federal Communications Commission (dated Nov. 26, 2007), IB Docket No. 06-113, at 4. An additional 0.85% of América Móvil’s total capital stock was held in the form of Class L ADSs by shareholders that had taken possession of their stock certificates and for which América Móvil obtained street address information. See *id.*

⁷⁹² See *WWOR-TV, Inc. For Transfer of Control of Station WWOR-TV, Licensee of Station WWOR-TV, Channel 9 Secaucus, New Jersey, Memorandum Opinion and Order*, 6 FCC Rcd 6569, 6572 ¶ 13 (1991) (“*WWOR-TV*”), *appeal dismissed sub nom. Garden State Broadcasting Ltd. Partnership v. F.C.C.*, 996 F.2d 386 (D.C. Cir. 1993)).

⁷⁹³ See *WWOR-TV*, 6 FCC Rcd at 6572, ¶¶ 12-13; see also Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses, *Public Notice*, 19 FCC Rcd 22612, 22639-41 (Int’l Bur. 2004), *erratum*, 21 FCC Rcd 6484 (Int’l Bur. 2006).

⁷⁹⁴ See *WWOR-TV*, 6 FCC Rcd at 6572 ¶ 13 (allowing publicly traded company to use shareholder mailing addresses to demonstrate foreign ownership below the 25% benchmark in section 310(b)(4)). See also Motient Corporation and Subsidiaries, Transferors, and SkyTerra Communications, Inc., Transferee, Application for Authority to Transfer Control of Mobile Satellite Ventures Subsidiary LLC, WC Docket No. 06-106, *Memorandum Opinion and Order and Declaratory Ruling*, 21 FCC Rcd 10198, 10-216, ¶ 41 & n.114 (WTB, OET, Int’l Bur. 2006) (“*2006 MSV Order*”) (allowing applicant to use shareholder addresses to establish foreign ownership of Motient, a public company holding shares in the applicant); Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc. Petition for Declaratory Ruling Under Section 310(b) of the Communications Act of 1934, as Amended; Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P. Petition for Expedited Action for Declaratory Ruling Under Section 310(b) of the Communications Act of 1934, as Amended, *Order and Declaratory Ruling*, 23 FCC Rcd 4436, 4461-462, Appendix B, ¶¶ 24-25 (2008) (“*2008 MSV Order*”) (following the Bureau-level decision in the *2006 MSV Order* and allowing applicant to use shareholder address information submitted in that proceeding for TerreStar (formerly, Motient)).

⁷⁹⁵ We agree with Chatham to the extent it argues that, where a public company has reason to know the citizenship or principal places of business of particular beneficial owners, e.g., based on notifications made pursuant to federal securities regulations, the information should be included in the company’s citizenship calculations. See Chatham Petition to Deny at 29.

to whether Verizon Wireless's foreign ownership complies with the limitations of the *Vodafone-Bell Atlantic Order*.⁷⁹⁶

230. We therefore find that Verizon Wireless is entitled to a rebuttable presumption that, following consummation of the proposed transaction, the indirect foreign ownership in the ALLTEL Subsidiaries, and the Partnerships in which ALLTEL holds a controlling ownership interest, would not pose a risk to competition in the U.S. market. We find no evidence in the record that rebuts this presumption and, as we explained above, we find no basis to conclude that the proposed transaction is likely to harm competition.⁷⁹⁷ In addition, we have received no opposition to or comment on the applications from the Executive Branch.⁷⁹⁸ Accordingly, pursuant to section 310(b)(4) of the Communications Act and the rules and policies established in the *Foreign Participation Order*, we find that it is in the public interest to extend Verizon Wireless's section 310(b)(4) foreign ownership ruling to cover the ALLTEL Subsidiaries and the Partnerships in which ALLTEL holds a controlling ownership interest.

231. Additionally, the application states that, after consummation of the proposed transaction, ALLTEL Communications LLC ("ALLTEL Communications") will continue to hold a "minority, non-controlling general partnership interest[s]" in Illinois Valley, Northwest Missouri, and Pittsfield.⁷⁹⁹ With regard to the indirect foreign voting interests in these partnerships, Verizon Wireless submitted a letter for the record committing that, "immediately upon the closing of [this] transaction, Verizon Wireless will place into a trust the voting rights associated with ALLTEL's interests in Illinois Valley, Northwest Missouri, and Pittsfield, thereby precluding Vodafone's interest in Verizon Wireless from any voting rights in the partnerships."⁸⁰⁰ In order to ensure that the post-transaction foreign ownership of these partnerships complies with the requirements of section 310(b)(3), we grant the transfer application subject to Verizon Wireless's placing its voting rights in these partnerships in a voting trust with terms

⁷⁹⁶ We reject as unsupported and without merit Chatham's suggestion that our conclusions in the recent *Diversification of Ownership Order* are relevant to the determination whether Verizon Wireless has used reasonable means to demonstrate compliance with its section 310(b)(4) ruling. See Chatham Petition to Deny at 26-32 (citing [delete In re] Promoting Diversification of Ownership in the Broadcast Services, *Report and Order and Third Further Notice of Proposed Rulemaking*, MB Docket No. 07-294, 23 FCC Rcd 5922, 5949 (2008)). In that proceeding, we declined to adopt a proposal to permit non-controlling foreign investment in broadcast licensees under section 310(b)(4) as a means to promote diversification of ownership among broadcast licensees, including women and minorities. See *id.* at ¶ 77. Our decision had no bearing on the methodologies that applicants and licensees employ to ascertain their levels of foreign ownership under section 310(b)(4).

⁷⁹⁷ See discussion paras. 157-158; see also *Foreign Participation Order*, 12 FCC Rcd at 23905-09 ¶¶ 33-41.

⁷⁹⁸ We note that Verizon Wireless is a party to an Agreement dated December 14, 1999, as amended March 27, 2008, between Verizon (formerly, Bell Atlantic Corporation), Vodafone, and Verizon Wireless, on the one hand, and the U.S. Department of Defense, the U.S. Department of Justice, the Federal Bureau of Investigation, and the U.S. Department of Homeland Security, on the other. See *Verizon Wireless-RCC Order* at ¶¶ 152-154.

⁷⁹⁹ Application at 60; Section 310(b)(3) of the Communications Act prohibits foreign governments, individuals and corporations from owning more than 20% of the stock of a corporation holding a broadcast, common carrier, aeronautical en route or aeronautical fixed radio station license. 47 U.S.C. § 310(b)(3). The Commission has held that Section 310(b)(3) also prohibits a foreign government, individual or corporation from holding equity or voting interests in a corporate licensee through an intervening U.S.-organized holding company that itself holds non-controlling interests in the licensee. See Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended, *Declaratory Ruling*, 103 F.C.C. 2d 511, 520-522, ¶¶ 16-20, n.45 (1985) ("*Wilner & Scheiner*"), reconsidered in part, 1 FCC Rcd 12 (1986).

⁸⁰⁰ Verizon Wireless October 14, 2008 Trust *Ex Parte* Letter.

satisfactory to the Commission, with a U.S. citizen, or U.S. entity that is controlled by U.S. citizens, in either case subject to Commission approval, serving as trustee.⁸⁰¹

B. Declaratory Ruling

232. Accordingly, this declaratory ruling permits Verizon Wireless to acquire up to and including 100 percent of the equity and voting interests in ALLTEL subject to the terms and conditions of the ruling issued in the *Vodafone-Bell Atlantic Order*.⁸⁰² We emphasize that, as a Commission licensee, Verizon Wireless has an affirmative duty to monitor its foreign equity and voting interests, calculate these interests consistent with the attribution principles enunciated by the Commission, and otherwise ensure continuing compliance with the provisions of section 310(b) of the Act.⁸⁰³

X. CONCLUSION

233. We find that competitive harm is unlikely in most mobile communications markets as a result of this transaction. As discussed above, however, with regard to five local mobile telephony markets, our market-by-market analysis shows that likely competitive harms exceed likely benefits of the transaction, and we therefore require remedies to ameliorate the expected harm. Additionally, to ensure that the proposed transaction does not result in competitive harm, we condition our approval of this transaction on Verizon Wireless's completion of the voluntarily divestures of a business unit in 100 markets. We also find that it is in the public interest to condition this transaction on Verizon Wireless's compliance with the roaming, competitive ETC high cost support, and E911 location accuracy conditions discussed herein.

XI. ORDERING CLAUSES

234. Accordingly, having reviewed the applications, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(b), 310(d), the applications for the transfer of control of licenses from Atlantis Holdings LLC to Cellco Partnership d/b/a Verizon Wireless are GRANTED, to the extent specified in this Memorandum Opinion and Order and Declaratory Ruling and subject to the conditions specified herein.

235. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.24 of the Commission's rules, 47 C.F.R. § 63.24, the applications to transfer control of domestic and international section 214 authorizations from Atlantis Holdings LLC to Cellco Partnership d/b/a Verizon Wireless are GRANTED.

⁸⁰¹ With respect to equity interests, Vodafone, a foreign corporation, holds a 45% equity interest in Verizon Wireless. Verizon Wireless will acquire indirectly, through its 100% ownership of ALLTEL Communications: (1) a 40% equity interest in Illinois Valley, (2) a 32.11% equity interest in Northwest Missouri, and (3) a 23.75% equity interest in Pittsfield. Applying the multiplier to calculate equity interests, we find that upon closing of the proposed transaction Vodafone and Verizon's foreign shareholders will hold: (1) an aggregate 19.90% foreign equity ownership of Illinois Valley, (2) an aggregate 15.54% foreign equity ownership of Northwest Missouri, and (3) an aggregate 11.82% foreign equity ownership of Pittsfield (through Alltel Communications). See *Wilner & Scheiner*, 103 F.C.C. 2d at 521-222, ¶¶ 19-20; *BBC License Subsidiary L.P., Memorandum Opinion and Order*, 10 FCC Rcd 10968, 10973 ¶ 22 (1995) ("*BBC License Subsidiary*"). All of these equity interests are below the 20% benchmark of section 310(b)(3).

⁸⁰² *Vodafone-Bell Atlantic Order*, 15 FCC Rcd at 16514 ¶ 19.

⁸⁰³ *2008 MSV Order*, 23 FCC Rcd at 4443 ¶ 16; *América Móvil Order*, 22 FCC Rcd at 6225 ¶ 68.

236. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petitions to Deny the transfer of control of licenses from Atlantis Holdings LLC to Cellco Partnership d/b/a Verizon Wireless are DENIED IN PART and GRANTED IN PART for the reasons stated herein.

237. IT IS FURTHER ORDERED that grant of the transfer applications with respect to Illinois Valley Cellular RSA 2-II Partnership, Northwest Missouri Cellular Limited Partnership, and Pittsfield Cellular Telephone Company is subject to Verizon Wireless placing its voting rights in these partnerships in a voting trust, with terms satisfactory to the Commission, with a U.S. citizen, or U.S. entity that is controlled by U.S. citizens, in either case subject to Commission approval, serving as trustee.

238. IT IS FURTHER ORDERED that pursuant to section 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b), the petition for declaratory ruling filed by Cellco Partnership d/b/a Verizon Wireless is GRANTED to the extent specified in this Memorandum Opinion and Order and Declaratory Ruling.

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

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Petitioners and Commenters

Petitions:

Ad Hoc Public Interest Spectrum Coalition
Cellular South, Inc.
Centennial Communications Corp.
Chatham Avalon Park Community Council
Choctaw Telephone Company, Custer Telephone Cooperative, Inc., Dubois Telephone Exchange, Inc., Electra Telephone Company, Emery Telcom, Manti Telephone Company, MoKan Dial, Inc., New Ulm Telecom, Inc., Northeast Florida Telephone Company, Inc., Project Mutual Telephone Cooperative Association, Inc., Public Service Communications, Inc. (including its subsidiaries Public Service Telephone Company and Public Service Wireless, Inc.), Range Telephone Cooperative, Inc., South Central Utah Telephone Association, Inc. d/b/a South Central Communications, Uintah Basin Electronic Telecommunications d/b/a UBET Wireless, Yadkin Valley Telephone Membership Corporation (collectively, "Rural Carriers")
Denali Spectrum LLC, Leap Wireless International, Inc., LCW Wireless, LLC, Mobi PCS, NTELOS Inc., Organization for the Promotion and Advancement of Small Telecommunications Companies, Revol Wireless, Rural Telecommunications Group, Inc., SpectrumCo LLC, SouthernLINC Wireless (collectively, "Roaming Petitioners")
Leap Wireless International, Inc.
MetroPCS Communications, Inc. and NTELOS Inc.
National Telecommunications Cooperative Association
North Dakota Network Co.
Organization for the Promotion and Advancement of Small Telecommunications Companies and the Rural Independent Competitive Alliance
Palmetto MobileNet, L.P.
Ritter Communications, Inc. and Central Arkansas Rural Cellular Limited Partnership (collectively, "Arkansas Limited Partners")
Rural Telecommunications Group, Inc.
South Dakota Telecommunications Association
The EMR Policy Institute

Comments:

Rural Cellular Association

Opposition:

Verizon Wireless and ALLTEL

Replies:

Ad Hoc Public Interest Spectrum Coalition
Arkansas Limited Partners
Cellular South, Inc.
Chatham Avalon Park Community Council
Leap Wireless International, Inc.

MetroPCS Communications, Inc. and NTELOS Inc.
North Dakota Network Co.
Palmetto MobileNet, L.P.
Ad Hoc Public Interest Spectrum Coalition
Arkansas Limited Partners
Rural Carriers
Rural Cellular Association
Rural Telecommunications Group, Inc.
South Dakota Telecommunications Association

Reply Comments:

Institute for Policy Innovation
South Dakota Public Utilities Commission
T-Mobile USA, Inc.

Brief Comments in Support:

American Association of People with Disabilities
American GI Forum of the United States
ASPIRA Association
Communications Consumers United
Consumers for Competitive Choice
Dominican American National Roundtable
FBI Law Enforcement Executive Development Association
FBI National Academy Associates, Inc. West Virginia Chapter
FreedomWorks Foundation
Lansing Regional Chamber of Commerce
League of United Latin American Citizens
Leslie T. Hyman
Michigan Chamber of Commerce
National Black Chamber of Commerce
National Emergency Number Association
National Hispanic Council on Aging
National Indian Council on Aging
Native American Television
Nebraska Chamber of Commerce & Industry
Organizations Concerned about Rural Education
Pacific Research Institute
Randolph J. May
Small Business and Entrepreneurship Council
State of Nebraska
Telecommunications for the Deaf, Inc.
The Hispanic Alliance for Prosperity Institute
The Latino Coalition
United States Hispanic Chamber of Commerce
United States-Mexico Chamber of Commerce
United States Cattlemen's Association
U.S. Pan Asian American Chamber of Commerce

West Virginia State Lodge Fraternal Order of Police
Women Impacting Public Policy

Brief Comments Expressing Concern:

All West Communications
Charlene Schlueter
Columbine Telephone Company, Inc. dba Silver Star Communications and Teton Telecom
Computer and Communications Industry Association
Consumers Union and Consumers Federation of America
Dubois Telephone Exchange, Inc.
Emery Telcom
International Brotherhood of Electrical Workers
Jack Privitt
Oglala Sioux Tribe of the Pine Ridge Indian Reservation
Public Service Communications
Shawn Sanders
South Central Utah Telephone Association Inc.
State of North Dakota

APPENDIX B

Markets to be Divested Voluntarily by Verizon Wireless

Market	Market Name
CMA158	Lima, OH
CMA166	Hickory, NC
CMA221	Fargo-Moorehead, ND-MN
CMA227	Anderson, SC
CMA231	Mansfield, OH
CMA246	Dothan, AL
CMA253	Sioux City, IA
CMA261	Albany, GA
CMA262	Danville, VA
CMA267	Sioux Falls, SD
CMA268	Billings, MT
CMA276	Grand Forks, ND-MN
CMA285	Las Cruces, NM
CMA289	Rapid City, SD
CMA297	Great Falls, MT
CMA298	Bismarck, ND
CMA299	Casper, WY
CMA313	Alabama 7-Butler
CMA322	Arizona 5-Gila
CMA341	California 6-Mono
CMA351	Colorado 4-Park
CMA352	Colorado 5-Elbert
CMA353	Colorado 6-San Miguel
CMA354	Colorado 7-Saguache
CMA355	Colorado 8-Kiowa
CMA356	Colorado 9-Costilla
CMA376	Georgia 6-Spalding
CMA377	Georgia 7-Hancock
CMA378	Georgia 8-Warren
CMA379	Georgia 9-Marion
CMA380	Georgia 10-Bleckley
CMA382	Georgia 12-Liberty
CMA383	Georgia 13-Early
CMA389	Idaho 2-Idaho
CMA390	Idaho 3-Lemhi
CMA401	Illinois 8-Washington
CMA402	Illinois 9-Clay
CMA419	Iowa 8-Monona
CMA428	Kansas 1-Cheyenne
CMA429	Kansas 2-Norton
CMA433	Kansas 6-Wallace
CMA434	Kansas 7-Trego
CMA438	Kansas 11-Hamilton
CMA439	Kansas 12-Hodgeman

Market	Market Name
CMA440	Kansas 13-Edwards
CMA482	Minnesota 1-Kittson
CMA483	Minnesota 2-Lake of the Woods
CMA488	Minnesota 7-Chippewa
CMA489	Minnesota 8-Lac qui Parle
CMA490	Minnesota 9-Pipestone
CMA491	Minnesota 10-Le Sueur
CMA523	Montana 1-Lincoln
CMA524	Montana 2-Toole
CMA526	Montana 4-Daniels
CMA527	Montana 5-Mineral
CMA528	Montana 6-Deer Lodge
CMA529	Montana 7-Fergus
CMA530	Montana 8-Beaverhead
CMA531	Montana 9-Carbon
CMA532	Montana 10-Prairie
CMA537	Nebraska 5-Boone
CMA544	Nevada 2-Lander
CMA547	Nevada 5-White Pine
CMA553	New Mexico 1-San Juan
CMA557	New Mexico 5-Grant
CMA558	New Mexico 6-Lincoln
CMA566	North Carolina 2-Yancey
CMA569	North Carolina 5-Anson
CMA580	North Dakota 1-Divide
CMA581	North Dakota 2-Bottineau
CMA582	North Dakota 3-Barnes
CMA583	North Dakota 4-McKenzie
CMA584	North Dakota 5-Kidder
CMA586	Ohio 2-Sandusky
CMA587	Ohio 3-Ashtabula
CMA589	Ohio 5-Hancock
CMA590	Ohio 6-Morrow
CMA625	South Carolina 1-Oconee
CMA626	South Carolina 2-Laurens
CMA627	South Carolina 3-Cherokee
CMA631	South Carolina 7-Calhoun
CMA634	South Dakota 1-Harding
CMA635	South Dakota 2-Corson
CMA636	South Dakota 3-McPherson
CMA637	South Dakota 4-Marshall
CMA638	South Dakota 5-Custer
CMA639	South Dakota 6-Haakon
CMA640	South Dakota 7-Sully
CMA641	South Dakota 8-Kingsbury
CMA642	South Dakota 9-Hanson
CMA675	Utah 3-Juab
CMA676	Utah 4-Beaver

Market	Market Name
CMA677	Utah 5-Daggett
CMA678	Utah 6-Piute
CMA681	Virginia 1-Lee
CMA688	Virginia 8-Amelia
CMA718	Wyoming 1-Park
CMA719	Wyoming 2-Sheridan
CMA721	Wyoming 4-Niobrara
CMA722	Wyoming 5-Converse

APPENDIX C

Markets Identified by the Initial Screen

CMAs Identified by the HHI Screen Only:

Market	Market Name
CMA016	Cleveland, OH
CMA022	Tampa-St. Petersburg, FL
CMA026	Phoenix, AZ
CMA029	New Orleans, LA
CMA043	Norfolk-Virginia Beach-Portsmouth, VA-NC
CMA047	Greensboro-Winston-Salem-High Point, NC
CMA048	Toledo, OH-MI
CMA052	Akron, OH
CMA059	Richmond, VA
CMA061	Charlotte-Gastonia, NC
CMA064	Grand Rapids, MI
CMA065	Omaha, NE-IA
CMA066	Youngstown-Warren, OH
CMA067	Greenville-Spartanburg, SC
CMA071	Raleigh-Durham, NC
CMA077	Tuscon, AZ
CMA078	Lansing-East Lansing, MI
CMA080	Baton Rouge, LA
CMA081	El Paso, TX
CMA083	Mobile, AL
CMA085	Johnson City-Kingsport-Bristol, TN-VA
CMA086	Albuquerque, NM
CMA087	Canton, OH
CMA089	Wichita, KS
CMA090	Charleston-North Charleston, SC
CMA092	Little Rock-North Little Rock, AR
CMA094	Saginaw-Bay City-Midland, MI
CMA095	Columbia, SC
CMA100	Shreveport, Louisiana
CMA104	Newport News-Hampton, VA
CMA108	Augusta, GA/SC
CMA114	Lakeland-Winter Haven, FL
CMA125	Appleton-Oskosh-Neenah, WI
CMA127	Pensacola, FL
CMA132	Kalamazoo, MI
CMA136	Lorain-Elyria, OH
CMA139	Montgomery, AL
CMA149	Fayetteville, NC

Market	Market Name
CMA153	Columbus, GA-AL
CMA155	Savannah, GA
CMA158	Lima, OH
CMA160	Killeen-Temple, TX
CMA164	Fort Myers, FL Counties - Lee
CMA166	Hickory, NC
CMA167	Sarasota, FL
CMA168	Tallahassee, FL
CMA172	Lincoln, NE
CMA177	Battle Creek, MI
CMA179	Topeka, KS
CMA181	Muskegon, MI
CMA184	Houma-Thibodaux, LA
CMA192	Gainesville, FL
CMA193	Benton Harbor, MI
CMA194	Waco, TX
CMA206	Longview-Marshall, TX
CMA207	Jackson, MI
CMA208	Fort Pierce, FL
CMA211	Bradenton, FL
CMA218	Wilmington, NC
CMA227	Anderson, SC
CMA231	Mansfield, OH
CMA235	Petersburg-Colonial Heights-Hopewell, VA
CMA237	Tyler, TX
CMA241	Pueblo, CO
CMA245	Ocala, FL
CMA246	Dothan, AL
CMA253	Sioux City, IA-NE
CMA258	Jacksonville, NC
CMA261	Albany, GA
CMA262	Danville, VA
CMA264	Florence, SC
CMA265	Fort Walton Beach, FL
CMA280	Burlington, NC
CMA283	Panama City, FL
CMA285	Las Cruces, NM
CMA288	Rochester, MN
CMA297	Great Falls, MT
CMA299	Casper, WY
CMA310	Alabama 4-Bibb
CMA313	Alabama 7-Butler
CMA314	Alabama 8-Lee

Market	Market Name
CMA319	Arizona 2-Coconino
CMA321	Arizona 4-Yuma
CMA322	Arizona 5-Gila
CMA323	Arizona 6-Graham
CMA341	California 6-Mono
CMA352	Colorado 5-Elbert
CMA353	Colorado 6-San Miguel
CMA354	Colorado 7-Saguache
CMA355	Colorado 8-Kiowa
CMA356	Colorado 9-Costilla
CMA360	Florida 1-Collier
CMA361	Florida 2-Glades
CMA362	Florida 3-Hardee
CMA363	Florida 4-Citrus
CMA366	Florida 7-Hamilton
CMA375	Georgia 5-Haralson
CMA376	Georgia 6-Spalding
CMA377	Georgia 7-Hancock
CMA378	Georgia 8-Warren
CMA379	Georgia 9-Marion
CMA380	Georgia 10-Bleckley
CMA383	Georgia 13-Early
CMA389	Idaho 2-Idaho
CMA390	Idaho 3-Lemhi
CMA392	Idaho 5-Butte
CMA393	Idaho 6-Clark
CMA399	Illinois 6-Montgomery
CMA401	Illinois 8-Washington
CMA402	Illinois 9-Clay
CMA419	Iowa 8-Monona
CMA427	Iowa 16-Lyon
CMA428	Kansas 1-Cheyenne
CMA429	Kansas 2-Norton
CMA432	Kansas 5-Brown
CMA433	Kansas 6-Wallace
CMA434	Kansas 7-Trego
CMA438	Kansas 11-Hamilton
CMA439	Kansas 12-Hodgeman
CMA440	Kansas 13-Edwards
CMA476	Michigan 5-Manistee
CMA478	Michigan 7-Newaygo
CMA482	Minnesota 1-Kittson
CMA491	Minnesota 10-Le Sueur

Market	Market Name
CMA492	Minnesota 11-Goodhue
CMA529	Montana 7-Fergus
CMA530	Montana 8-Beaverhead
CMA537	Nebraska 5-Boone
CMA544	Nevada 2-Lander
CMA546	Nevada 4-Mineral
CMA547	Nevada 5-White Pine
CMA553	New Mexico 1-San Juan
CMA556	New Mexico 4-Santa Fe
CMA557	New Mexico 5-Grant
CMA558	New Mexico 6-Lincoln
CMA566	North Carolina 2-Yancey
CMA568	North Carolina 4-Henderson
CMA569	North Carolina 5-Anson
CMA570	North Carolina 6-Chatham
CMA571	North Carolina 7-Rockingham
CMA572	North Carolina 8-Northampton
CMA573	North Carolina 9-Camden
CMA574	North Carolina 10-Harnett
CMA575	North Carolina 11-Hoke
CMA576	North Carolina 12-Sampson
CMA577	North Carolina 13-Greene
CMA578	North Carolina 14-Pitt
CMA579	North Carolina 15-Cabarrus
CMA580	North Dakota 1-Divide
CMA586	Ohio 2-Sandusky
CMA587	Ohio 3-Ashtabula
CMA589	Ohio 5-Hancock
CMA590	Ohio 6-Morrow
CMA591	Ohio 7-Tuscarawas
CMA625	South Carolina 1-Oconee
CMA626	South Carolina 2-Laurens
CMA627	South Carolina 3-Cherokee
CMA628	South Carolina 4-Chesterfiel
CMA629	South Carolina 5-Georgetown
CMA630	South Carolina 6-Clarendon
CMA631	South Carolina 7-Calhoun
CMA632	South Carolina 8-Hampton
CMA633	South Carolina 9-Lancaster
CMA638	South Dakota 5-Custer
CMA639	South Dakota 6-Haakon
CMA640	South Dakota 7-Sully
CMA641	South Dakota 8-Kingsbury

Market	Market Name
CMA642	South Dakota 9-Hanson
CMA646	Tennessee 4-Hamblen
CMA650	Tennessee 8-Johnson
CMA658	Texas 7-Fannin
CMA661	Texas 10-Navarro
CMA662	Texas 11-Cherokee
CMA666	Texas 15-Concho
CMA675	Utah 3-Juab
CMA676	Utah 4-Beaver
CMA677	Utah 5-Daggett
CMA678	Utah 6-Piute
CMA681	Virginia 1-Lee
CMA682	Virginia 2-Tazewell
CMA684	Virginia 4-Bedford
CMA686	Virginia 6-Highland
CMA687	Virginia 7-Buckingham
CMA688	Virginia 8-Amelia
CMA689	Virginia 9-Greenville
CMA691	Virginia 11-Madison
CMA716	Wisconsin 9-Columbia
CMA718	Wyoming 1-Park
CMA719	Wyoming 2-Sheridan
CMA721	Wyoming 4-Niobrara
CMA722	Wyoming 5-Converse

CMA's Identified by the HHI and Spectrum Screens:

Market	Market Name
CMA221	Fargo-Moorehead, ND-MN
CMA267	Sioux Falls, SD
CMA268	Billings, MT
CMA276	Grand Forks, ND-MN
CMA289	Rapid City, SD
CMA298	Bismarck, ND
CMA351	Colorado 4-Park
CMA382	Georgia 12-Liberty
CMA483	Minnesota 2-Lake of the Wood
CMA488	Minnesota 7-Chippewa
CMA489	Minnesota 8-Lac qui Parle
CMA490	Minnesota 9-Pipestone
CMA523	Montana 1-Lincoln
CMA524	Montana 2-Toole
CMA526	Montana 4-Daniels

Market	Market Name
CMA527	Montana 5-Mineral
CMA528	Montana 6-Deer Lodge
CMA531	Montana 9-Carbon
CMA532	Montana 10-Prairie
CMA581	North Dakota 2-Bottineau
CMA582	North Dakota 3-Barnes
CMA583	North Dakota 4-McKenzie
CMA584	North Dakota 5-Kidder
CMA634	South Dakota 1-Harding
CMA635	South Dakota 2-Corson
CMA636	South Dakota 3-McPherson
CMA637	South Dakota 4-Marshall

CEAs Identified by the HHI Screen Only:

Market	Market Name
CEA0080	Akron, OH
CEA0120	Albany, GA
CEA0200	Albuquerque, NM-AZ
CEA0440	Ann Arbor, MI
CEA0460	Appleton-Oshkosh-Neenah, WI
CEA0600	Augusta-Aiken, GA-SC
CEA0760	Baton Rouge, LA-MS
CEA0870	Benton Harbor, MI
CEA1260	Bryan-College Station, TX
CEA1320	Canton-Massillon, OH
CEA1350	Casper, WY-ID-UT
CEA1440	Charleston-North Charleston, SC
CEA1520	Charlotte-Gastonia-Rock Hill, NC-SC
CEA1580	Cheyenne, WY
CEA1680	Cleveland-Lorain-Elyria, OH
CEA1760	Columbia, SC
CEA1800	Columbus, GA-AL
CEA1840	Columbus, OH
CEA1950	Danville, VA
CEA2120	Des Moines, IA-IL-MO
CEA2180	Dothan, AL-FL-GA
CEA2200	Dubuque, IA-IL-WI
CEA2320	El Paso, TX
CEA2330	Elkhart-Goshen, IN-MI
CEA2440	Evansville-Henderson, IN-KY-IL
CEA2560	Fayetteville, NC
CEA2655	Florence, SC

Market	Market Name
CEA2700	Fort Myers-Cape Coral, FL
CEA2710	Fort Pierce-Port St. Lucie, FL
CEA2750	Fort Walton Beach, FL
CEA2900	Gainesville, FL
CEA2980	Goldsboro, NC
CEA3000	Grand Rapids-Muskegon-Holland, MI
CEA3080	Green Bay, WI-MI
CEA3120	Greensboro-Winston-Salem-High Point, NC-VA
CEA3150	Greenville, NC
CEA3160	Greenville-Spartanburg-Anderson, SC-NC
CEA3290	Hickory-Morganton, NC-TN
CEA3350	Houma, LA
CEA3520	Jackson, MI
CEA3605	Jacksonville, NC
CEA3660	Johnson City-Kingsport-Bristol, TN-VA
CEA3720	Kalamazoo-Battle Creek, MI
CEA3810	Killeen-Temple, TX
CEA3980	Lakeland-Winter Haven, FL
CEA4040	Lansing-East Lansing, MI
CEA4100	Las Cruces, NM
CEA4320	Lima, OH
CEA4360	Lincoln, NE
CEA4400	Little Rock-North Little Rock, AR
CEA4420	Longview-Marshall, TX
CEA4680	Macon, GA
CEA4720	Madison, WI
CEA4800	Mansfield, OH
CEA5160	Mobile, AL
CEA5240	Montgomery, AL
CEA5330	Myrtle Beach, SC
CEA5345	Naples, FL
CEA5560	New Orleans, LA-MS
CEA5720	Norfolk-Virginia Beach-Newport News, VA-NC
CEA5790	Ocala, FL
CEA5920	Omaha, NE-IA-MO
CEA6015	Panama City, FL
CEA6080	Pensacola, FL
CEA6200	Phoenix-Mesa, AZ-NM
CEA6560	Pueblo, CO-NM
CEA6580	Punta Gorda, FL
CEA6640	Raleigh-Durham-Chapel Hill, NC
CEA6720	Reno, NV-CA
CEA6760	Richmond-Petersburg, VA

Market	Market Name
CEA6820	Rochester, MN-IA-WI
CEA6895	Rocky Mount, NC
CEA6960	Saginaw-Bay City-Midland, MI
CEA7490	Santa Fe, NM
CEA7510	Sarasota-Bradenton, FL
CEA7520	Savannah, GA-SC
CEA7680	Shreveport-Bossier City, LA-AR
CEA7720	Sioux City, IA-NE-SD
CEA8140	Sumter, SC
CEA8240	Tallahassee, FL-GA
CEA8280	Tampa-St. Petersburg-Clearwater, FL
CEA8400	Toledo, OH
CEA8440	Topeka, KS
CEA8520	Tucson, AZ
CEA8640	Tyler, TX
CEA8800	Waco, TX
CEA9000	Wheeling, WV-OH
CEA9040	Wichita, KS-OK
CEA9200	Wilmington, NC
CEA9320	Youngstown-Warren, OH
CEA9360	Yuma, AZ
CEA9502	Flagstaff, AZ-UT
CEA9509	Idaho Falls, ID-WY
CEA9510	Twin Falls, ID
CEA9519	Traverse City, MI
CEA9522	Mankato, MN
CEA9535	Scottsbluff, NE-WY
CEA9540	Farmington, NW-CO-NM
CEA9546	Minot, ND
CEA9560	Staunton, VA-WV
CEA9566	Bluefield, WV-VA

CEAs Identified by the Spectrum Screen Only:

Market	Market Name
CEA2080	Denver, CO-KS-NE

CEAs Identified by the HHI and Spectrum Screens:

Market	Market Name
CEA0880	Billings, MT-WY
CEA1010	Bismarck, ND-MT-SD
CEA2520	Fargo-Moorhead, ND-MN
CEA2985	Grand Forks, ND-MN

Market	Market Name
CEA3040	Great Falls, MT
CEA3600	Jacksonville, FL-GA
CEA5120	Minneapolis-St. Paul, MN-WI
CEA6660	Rapid City, SD-MT-NE-ND
CEA7760	Sioux Falls, SD-IA-MN-NE
CEA9523	Worthington, MN-IA
CEA9529	Missoula, MT
CEA9530	Butte, MT
CEA9554	Aberdeen, SD
CEA9555	Watertown, SD-MN

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: 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, File Nos. 0003463892, et al., WT Docket No. 08-95.

Broadband and the advanced applications that it enables have become increasingly critical drivers of both economic and social development. With these three items, we take significant steps to advance the roll out of wireless broadband Internet access to consumers across the country, and promote long term investment in broadband infrastructure that will support increased innovation, expanded services and economic growth in the future. These items also advance networks that are more open to devices and applications, as we implement the open platform requirements of the 700 MHz C Block and approve a transaction that will advance the promises of New Clearwire to allow applications and devices of the consumers' choice on these networks. Taken together with our action today approving the use of the television "white spaces" for unlicensed wireless use, the future of wireless broadband is indeed bright.

These transactions will provide significant benefits to wireless consumers. Specifically Verizon will now be able to fill in holes in its coverage area and provide a more robust national wireless service to its customers. Notably, Verizon is required to divest overlapping areas, numbering more than 100.

With respect to roaming, the commitment proposed by Verizon Wireless to extend its roaming obligations provides added certainty to small and rural carriers. In addition, Verizon Wireless has made additional commitments with respect to continuing the Alltel GSM network and allowing carriers to choose which roaming agreement to continue. This should all help smaller, rural and regional carriers providing roaming to their consumers.

Consumers are also beneficiaries of a new entrant into the wireless market, Clearwire. This provider will enhance competition and solidify wireless as an additional broadband platform. Moreover, Clearwire committed to embrace more open networks, one open to all applications and devices. This approach will spur innovation and give greater choice and improved services to consumers.

I am also very pleased with the voluntary commitments made by Sprint Nextel and Verizon Wireless with respect to the Universal Service Fund and E911 location accuracy. With respect to E911, these companies have taken a leadership role in the industry and are following through on their promises to meet E911 location accuracy obligations at the county-level. This is an issue that is critical to consumers and first responders, and an issue that has been a priority to me as Chairman. This commitment will allow first responders to reach those in need more quickly, and find callers more consistently. This is clearly in the public interest.

With respect to USF, the phase-out of high-cost competitive ETC funding to these carriers will provide significant benefits to the fund, while also providing certainty to the carriers. High-cost support for competitive ETCs has grown rapidly over the last several years, placing extraordinary pressure on the federal USF. In 2001, high-cost universal service support totaled approximately \$2.6 billion. By 2007, the amount of high-cost support had grown to approximately \$4.3 billion per year. In recent years, this growth has been due mostly to increased support provided to competitive ETCs, which receive high-cost support based not on their own costs, but on the per-line support of the incumbent LECs. Competitive ETC support, since 2001, has grown from under \$17 million to over \$1.18 billion—an annual growth rate

of over 100 percent. The offers made by the carriers here provide certainty for the carriers, while reducing the pressure on the fund over time.

Finally, I note that the industry has made considerable progress with respect to the issue of openness of devices and applications. With the issuance of Verizon Wireless's 700 MHz licenses the open platform obligations we imposed on the C Block become a step closer to implementation. The availability of third party handsets with the capability of downloading the applications of the user's choice will provide substantial opportunities and competitive pressure to ensure that the benefits of open platforms are realized. Moreover, coupled with the considerable openness plans that New Clearwire intends to include as it rolls out its new network and our action today on making available the white spaces, there is a ripe field for wireless innovation and growth.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS
CONCURRING IN PART, DISSENTING IN PART**

Re: 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, File Nos. 0003463892, et al., WT Docket No. 08-95.

This transaction entails the merger of two of the nation's largest wireless carriers. It will create a company with around 80 million customers—the nation's largest. But that tells only part of the story. Equally important is the geographic scope of this company. Although Alltel is by far the smaller of the two carriers when it comes to customers, its network covers a staggering amount of rural territory. The combined entity will have an enormous geographic footprint, and the combination of the two networks will substantially reduce consumer choice. In the short term, of course, the transaction may bring increased data speeds and handset choices to some rural areas. But in the long term, I continue to worry that all the reductions in competition we have seen in recent years translate into lower-quality service and higher prices for American consumers. That's not the direction we should have been heading.

Today's merger is also seriously bad news for smaller carriers who rely on roaming—and their customers. The reason is that the new, merged network will be the only game in town when it comes to roaming in many regions of the country. Smaller carriers that rely on roaming contracts to provide nationwide service will see a critical partner eliminated in rural areas. This development may even put some smaller carriers out of business—thus further consolidating the wireless marketplace. The creation of an ever more dominant carrier will also have ripple effects in many other parts of the wireless marketplace—tipping the balance even more towards the network operator when it comes to dealing with handset manufacturers, content providers, application designers and the many other companies that will be forced to ask for “permission to innovate.”

I must limit myself to concurrence in part of this proceeding and also to a partial dissent. I concur in part only because the company and my colleagues have agreed to modest roaming conditions that will partly—but only partly—ameliorate the problems of creating such an enormous force in the wireless marketplace. The main conditions we secure today are a commitment by Verizon Wireless to extend existing roaming contracts for four years and to maintain Alltel's existing GSM network “indefinitely.” These provisions are better than nothing—and better than what was originally proposed when this item was circulated—but I cannot say that they answer more than a portion of my concerns. And I am disappointed that discussions suggesting a seven year roaming commitment did not end successfully.

Today's item also requires the merged entity to meet important E911 location accuracy benchmarks and to open its books to ensure that its Universal Service Fund support is commensurate with its real costs of providing service. These are two reforms that I have supported in other proceedings and I am glad that consumers will benefit from them here. But, again, I cannot say that these conditions turn the balance in favor of the public interest.

Finally, I must note one additional element that I would have preferred to handle differently. The Commission has a statutory duty to prevent undue consolidation in the wireless marketplace. A spectrum cap—or the far less robust “spectrum screen” that the Commission, over my objection, uses instead—is a critical tool to enforcing this policy. As I have stated before, I believe the right way to account for new bands that have been made available for advanced wireless services would be through a comprehensive, industry-wide proceeding that would establish appropriate rules for valuing the relative desirability of

different spectrum. But we have not conducted such a proceeding. Instead, we simply raise the spectrum screen in an ad hoc fashion merger-by-merger. While I appreciate the willingness of my colleagues to fashion a spectrum screen for this transaction that somewhat reasonably (but far from perfectly) reflects the current marketplace, I think that a general rulemaking is still necessary and desirable.

Thanks to the Bureau and thanks to my colleagues for their hard work on this proceeding.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
CONCURRING IN PART, DISSENTING IN PART**

Re: 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, File Nos. 0003463892, et al., WT Docket No. 08-95.

The Commission must carefully assess whether transactions before us will benefit the public interest. This merger required close scrutiny because of its scope involving two of the largest cell phone service providers in the country. The combined Verizon-Alltel will provide overwhelming coverage to the U.S. population and will serve over 80 million subscribers. I remain deeply concerned about consolidation in the wireless marketplace and the loss of a key roaming partner as a result of this merger. As such, I ultimately concur and dissent in part to this transaction because while there are demonstrable public interest benefits, the Order before us does not include a comprehensive set of conditions to address the very real competitive harms that have been raised by this merger.

The Applicants argue that a grant of this transaction will result in expanded services and features for wireless consumers, particularly in rural areas. The Applicants also submit that the merger would enable the combined entity to increase broadband deployment and next generation services and provide a higher quality of service. Applicants similarly point out the resulting increased efficiencies and economies of scale and scope as a result of combined resources. These are valid arguments, and I certainly support the improved service to Rural America that could result from this transaction. Still, I do not believe we have done enough here to remedy the competitive concerns that are likely in the marketplace for these services.

I am very concerned that the merger of these two entities will reduce competition in the wireless marketplace. I can not fully support this merger in the absence of reasonable conditions. Competition is essential to keeping consumer costs down and driving innovation. I am particularly concerned that a decrease in competition in this instance may have a dramatic effect on the roaming market, and hence on consumers of competing, and smaller, wireless service operators. With the loss of the largest regional CDMA carrier resulting from this transaction, and with only two available CDMA carriers nationwide, there is a real concern that smaller carriers may be unable to negotiate reasonable and nondiscriminatory roaming terms with national carriers. Not only does this threaten consistency in service across the country, with fewer carriers in each market, but roaming rates can easily rise and the costs may ultimately be passed on to consumers. This will undercut the remaining competitive carriers, potentially resulting in reduced competition in the local and national retail market. I would have preferred that the majority adopt transaction specific, pro-competitive conditions to address these very legitimate and specific competitive harms.

The interests of rural consumers and small carriers, to whom roaming is essential, will be protected in part by ensuring that reasonable and nondiscriminatory obligations consistent with sections 201, 202, and 208 of the Communications Act are applicable. I thank my colleagues for ensuring that this was made clear in this item. And while I appreciate that this item incorporates the commitment to extend the duration of Alltel and Verizon agreements for up to four years, this commitment alone is inadequate. I would have preferred more rigorous safeguards regarding roaming obligations beyond those set forth in the item and consistent with the consensus proposal put on the record by affected carriers.

For these reasons, I dissent in part and concur in part in my decision today.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

Re: 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, File Nos. 0003463892, et al., WT Docket No. 08-95.

Like most mergers of established industry players, the merger of Verizon Wireless and Alltel raises important public policy issues. First, there are the potential risks of anticompetitive harm if the merged entity gains substantial market power. On the other hand, potential benefits to consumers may accrue. These potential costs and benefits must be seriously evaluated. In this instance, both the Department of Justice (DOJ) and the Commission have determined that the transaction is in the public interest, subject to certain conditions, to which the parties have agreed.

The conditions applied to this merger are especially important to ensure competition and, ultimately, to protect consumers. First, as a result of its negotiations with DOJ, the merged firm will divest spectrum in 100 cellular markets where Verizon Wireless and Alltel have a significant amount of spectrum overlap. In reviewing this transaction, the Commission agreed that such a divestiture was necessary, and it further determined that divestiture also was appropriate in an additional five markets, including one market in Johnson County, Tennessee. All of this divested spectrum will be made available to existing and potential service providers in these markets, thus helping to ensure competition.

In addition, this order establishes specific requirements related to roaming services the merged entity will provide. Most notably, Verizon Wireless will honor the existing roaming agreements – whether contracted with them or Alltel – for four years. A number of parties, especially mid-sized, small and rural providers, expressed concern that there are too few roaming providers utilizing CDMA technology, and that the proposed merger would even further reduce this number. By maintaining roaming agreements for this longer period of time, it is more likely that Long Term Evolution (LTE) will be available from other providers – including AT&T, which does not offer CDMA service – when many of these roaming contracts expire. This will help ensure more competition in the provision of roaming service at that time.

Finally, this transaction offers real, merger-specific consumer benefits that should not be ignored. Current customers of Alltel may now enjoy many services that already are available to Verizon Wireless customers. Thus, given that Alltel serves rural areas that are not currently served by Verizon Wireless, the merger will make it possible for more rural Americans to join the Verizon Wireless nationwide network, along with its faster deployment of advanced services such as broadband. The combined entity also will have a larger geographic footprint, which will benefit all of its subscribers. At a time when current economic conditions make it difficult to expand, upgrade, or even make a normal investment in expensive communications networks, a transaction that would result in an expanded footprint and upgraded services, especially in rural America, may provide some real public benefits.

Given these reasonable merger conditions and likely pro-consumer benefits, I join my colleagues in approving this item. I thank the staff of the Wireless Bureau for their many hours of hard work in evaluating this transaction and for their commitment to ensuring a pro-competitive telecommunications marketplace for years to come.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL
APPROVING IN PART, CONCURRING IN PART**

Re: 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, File Nos. 0003463892, et al., WT Docket No. 08-95.

I am voting to approve this order because I am satisfied that the spectrum divestitures set forth in the order essentially enforce the same limits on consolidation that we have applied since the Commission adopted its case-by-case approach to evaluating proposed mobile transactions. Accordingly, the parties have voluntarily taken steps to prevent consolidation in individual markets from advancing to a point that may threaten competition and potentially harm consumers. I am particularly pleased that the transaction has the potential to benefit customers in rural America by enabling Verizon Wireless to bring its technical expertise and commitment to deploying cutting-edge, high speed wireless broadband technology to these areas.

With respect to roaming obligations, I am pleased by Verizon Wireless's commitment to keep in place for four years its current roaming rates. The company has also agreed to keep the rates set forth in Alltel's existing agreements with each non-nationwide carrier for the full term of a current agreement, or for four years from the closing date of this transaction, whichever occurs later. I support this condition because it is limited in scope and merger-specific. For the same reason, I am glad we have taken this opportunity to opine on the protections afforded to all carriers pursuant to sections 201, 202 and 208 of the Communications Act. Going forward, carriers requiring roaming now have more legal clarity should they need to avail themselves of the Commission's complaint process.

On the other hand, I can only concur to the universal service condition imposed here. First, this condition is not merger-specific. In addition, while I may agree with some of the universal service policies contained in this order, I see no need to potentially prejudice the Commission's ongoing rulemaking on this important matter. This is especially the case given that I, along with three of my colleagues, have made public our commitment to wrap up our work on universal service reform no later than December 18, 2008. Moreover, the text of today's order is unclear as to whether our action today would be superseded by action in the universal service proceeding.

Nonetheless, I am please to support the overall order. Many thanks to the bureaus and my colleagues for their work on this matter.