

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

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

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

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

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

¹⁷⁶ See Appendix C. [REDACTED].

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

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

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

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

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

¹⁷⁸ DOJ/FTC Merger Guidelines § 3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁸⁸ *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁹⁸ *Id.* at 17-18 ¶ 34.

¹⁹⁹ *See id.* at 10, 11 ¶¶ 19, 21.

²⁰⁰ *Id.* at 10-11 ¶ 20.

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

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

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

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

²⁰¹ *Id.* at 12 ¶ 23.

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

²⁰³ *Id.* at 12 ¶ 23.

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

²⁰⁵ *Id.* at 12-13 ¶ 24.

²⁰⁶ *Id.* at 13 ¶ 25, n.12.

²⁰⁷ *Id.* at 13 ¶ 25, n.13.

²⁰⁸ *Id.* at 20-21 ¶¶ 40-41.

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

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

b. Coordinated Interaction

85. In markets where only a few firms account for most of the sales of a product, those firms may be able to exercise market power by either explicitly or tacitly coordinating their actions.²¹⁰ Accordingly, one way in which a merger may create or enhance market power or facilitate its exercise is by making such coordinated interaction among firms more likely, more successful, or more complete.²¹¹ Successful coordination depends critically on two key factors.²¹² The first is the ability to reach terms that are profitable for each of the firms involved, and the second is the ability to detect and punish deviations that would undermine the coordinated interaction.

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

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

²¹⁰ *DOJ/FTC Merger Guidelines* § 0.1.

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

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

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

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

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

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

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

²¹⁴ *Id.*

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

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

²¹⁷ *Id.* at 23 ¶ 46.

²¹⁸ Application, Exhibit 1 at 16.

²¹⁹ *Id.* at 16.

²²⁰ *Id.* at 16-17.

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

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

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

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

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

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

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

²²⁴ DOJ/FTC Merger Guidelines § 2.11.

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

²²⁶ DOJ/FTC Merger Guidelines § 2.12.

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

c. Cellular One Brand

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

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

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

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

²²⁹ Dobson Petition at 2.

²³⁰ *Id.*

²³¹ *Id.*

²³² See *id.* at 3.

²³³ See *id.* at 3-4.

²³⁴ *Id.*

²³⁵ *Id.* at 3.

²³⁶ *Id.*

markets.²³⁷ Thus, Dobson seeks divestiture of the Cellular One brand to a buyer with the incentive to promote and develop the brand.²³⁸

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

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

²³⁷ *Id.*

²³⁸ *Id.* at 2.

²³⁹ See Joint Opposition at 14.

²⁴⁰ See Dobson Petition at 4.

²⁴¹ Joint Opposition at 14.

²⁴² *Id.*

²⁴³ Dobson Reply at 3.

²⁴⁴ *Id.*

²⁴⁵ Joint Opposition at 14.

²⁴⁶ Dobson Reply at 3.

²⁴⁷ Joint Opposition at 15.

²⁴⁸ *Id.*

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

²⁵⁰ DOJ Competitive Impact Statement at 13.

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

ensure that the buyer has unimpaired access to the Cellular One mark and that the mark is in the hands of an owner who will aggressively act to promote and preserve it," the Applicants must sell the Cellular One brand name to "an appropriate purchaser with the intent and capability to maintain the value" of the Cellular One brand name.²⁵² Because DOJ has ordered the divestiture of the Cellular One brand, we find that this issue is moot.

3. Vertical Issues – Roaming

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

a. Background

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

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

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

²⁵² *Id.*

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

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

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

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

²⁵⁷ *Id.* at 21629-30 ¶ 4.

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

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

(continued....)

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

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

(Continued from previous page)

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

²⁶⁰ *Id.*

²⁶¹ See Application at 4-5, 8.

²⁶² *Id.* at 8.

²⁶³ *Id.*

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

²⁶⁵ RTG Petition at 8-9.

²⁶⁶ Lamar Petition at 9; RTG Petition at 9.

²⁶⁷ Lamar Petition at 9; RTG Petition at 9.

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

ALLTEL allow automatic roaming access to the merged network by all carriers at rates no less favorable than it has been charging WWC since the merger was announced.²⁶⁹

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

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

²⁶⁹ Lamar Petition at 9; RTG Petition at 9.

²⁷⁰ USCC Comments at 3.

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

²⁷² *Id.* at 5.

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

²⁷⁴ USCC Comments at 9-10.

²⁷⁵ Joint Opposition at 8.

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

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

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

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

b. Discussion

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

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

²⁷⁸ *Id.* at 12.

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

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

²⁸¹ *Id.* at 3.

²⁸² *Id.*

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

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

4. Market-by-Market Evaluation

a. Analytical Standard

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

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

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

113. If rival carriers face binding capacity constraints, such as the inability to obtain access to needed spectrum in the relatively near-term, then they likely will not be able to respond to the combined carrier's price increase or other harmful conduct in a manner sufficient in the aggregate to make the action of the combined carrier unprofitable. In other words, if the rival carriers do not have the capacity to add customers (or do not have the capacity to do so without a noticeable deterioration in service

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

quality), then they will not be attractive alternatives for customers and will not restrain the combined carrier's price increase. On the other hand, as discussed in Part IV.B.2.a, above, even rival carriers with relatively small market shares currently may have the ability to discipline the market in the future if they do have adequate capacity to add customers. To account for the capacity of rival carriers, we examined the amount of spectrum suitable for the provision of mobile telephony services that each rival carrier controls in the relevant market and also the geographic coverage of each rival carrier's network in the market.²⁸⁶

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

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

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

117. *Interaction of Variables.* To summarize, we relied on the following variables to identify markets where the transaction is likely to diminish competition: (1) the number of rival carriers and their market shares that offer competitive nationwide service plans as well as regional and local plans; (2) the spectrum holdings of each of the rival carriers; (3) the geographic coverage of their respective networks; (4) the combined entity's post-transaction market share; and (5) the share of spectrum suitable for the provision of mobile telephony services controlled by the combined entity. In reaching determinations on specific markets, we balanced these factors on a market-specific basis, and considered the totality of the circumstances in each market. Thus, for example, if our count of the number of rival carriers and our

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

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

scrutiny of their spectrum holdings and network coverage indicated that the response of rival carriers will likely be sufficient to limit the ability and incentive of the combined entity to raise price unilaterally, we found that the transaction is not harmful to competition in a specific market even in the presence of a relatively high post-transaction market share of the combined entity. We also scrutinized, and based our determinations on, the uniformity of competitive conditions in local markets. Thus, in some instances, we found that the transaction is not harmful to competition in a particular market if the potential harm from the transaction is confined to a small enclave within the market, and this harm is likely to be ameliorated by the more favorable competitive conditions in the majority of the market.

b. Results of Analysis

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

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

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

121. Most of these sixteen markets are smaller markets with high market shares for the merged entity and few competing carriers. In these markets, we are concerned that, post-merger,

competing carriers would not be sufficiently numerous to deter anticompetitive behavior by the merged entity.²⁸⁸

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

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

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

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

²⁸⁹ Lamar Petition at 7; Lamar Reply at 2.

²⁹⁰ Lamar Petition at 7; Lamar Reply at 2.

²⁹¹ Lamar Petition at 8.

²⁹² *Id.* at 7.

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

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

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

²⁹³ See Appendix D.

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

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

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

²⁹⁷ See NRUF data, June 2004.

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

²⁹⁹ Lamar Reply at 3.

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

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

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

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

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

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

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

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

³⁰² Lamar Reply at 2.

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

³⁰⁴ Lamar Reply at 4.

³⁰⁵ Lamar Petition at 4; RTG Petition at 4.

³⁰⁶ Lamar Petition at 5; RTG Petition at 5.

³⁰⁷ Lamar Petition at 5; RTG Petition at 5.

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

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

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

C. Public Interest Benefits

1. Introduction

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

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

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

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

³¹¹ See *id.*

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

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

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

³¹⁵ See Application, Exhibit 1 at 3.

³¹⁶ *Id.* at 4.

³¹⁷ *Id.*

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

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

2. Analytical Framework

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

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

³¹⁸ *Id.*

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

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

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

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

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

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

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

3. Increased Footprint

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

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

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

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

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

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

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

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

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