

Nippon Telegraph and Telephone West Corporation (“NTT West”), each of which is a wholly-owned subsidiary of NTT, operate regional telecommunications services in eastern and western Japan, respectively. NTT Communications Corporation (“NTT Communications”), also a wholly-owned subsidiary of NTT, operates domestic and international long distance and other network services throughout Japan.

NTT, NTT East and NTT West are subject to the NTT Law, which sets forth various provisions regarding NTT’s structure and business. DoCoMo and NTT Communications are not subject to the provisions of the NTT Law.<sup>45</sup> The NTT Law requires that the Japanese government own one-third or more of the total number of issued shares of NTT.<sup>46</sup> As of December 2005, the government holds a 38.37 percent direct voting and equity ownership interest in NTT, which is administered through Japan’s Ministry of Finance. No other entity holds more than a five percent direct or indirect ownership interest in NTT. To the best of DoCoMo’s knowledge, more than 75 percent of NTT’s outstanding shares are held by shareholders from WTO member countries, including Japan and the United States.<sup>47</sup> Neither the government nor any other holder of NTT’s stock possesses special or preferential voting rights. Prior to 1992, foreign nationals and corporations were prohibited from owning NTT shares. Currently, foreign nationals and corporations may own up to one-third of NTT’s total voting rights.<sup>48</sup>

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<sup>45</sup> See DoCoMo 20-F at 48; NTT 20-F at 44.

<sup>46</sup> See NTT 20-F at 23.

<sup>47</sup> A chart listing the top ten NTT shareholders is attached as Exhibit B.

<sup>48</sup> See NTT 20-F at 44-45.

Under the NTT Law, the issuance of new shares generally requires government approval.<sup>49</sup> Appointment of NTT's directors and corporate auditors (all of whom must be Japanese), changes to NTT's Articles of Incorporation, and the disposition of profits also require government approval.<sup>50</sup> In addition, NTT annually must submit to the government a description of its business operating plan for approval.<sup>51</sup> Although the government has the ability to affect NTT's business decisions in its role as a major shareholder, a government official stated in 1997 before the Diet that the government did not intend to use its position as a shareholder of NTT to direct the management of NTT. The government to date has not used its power as a shareholder to direct NTT's management.<sup>52</sup> Moreover, to the extent that any NTT group companies transact business with departments or agencies of the Japanese government, those departments or agencies are treated as separate customers, and all transactions are negotiated on an arm's-length basis.<sup>53</sup>

NTT's Articles of Incorporation limit the company's board of directors to fifteen members. Currently, the board has twelve members, nine of whom also are executive officers of the company. The government does not hold a position on NTT's board of directors. The company also has four corporate auditors, two of whom are independent. Directors and auditors serve two and four year terms, respectively.

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<sup>49</sup> *See id.*

<sup>50</sup> *See id.*

<sup>51</sup> *See id.*

<sup>52</sup> *See id.* at 14.

<sup>53</sup> *See id.* at 24.

## II. DESCRIPTION OF THE TRANSACTION

On March 20, 2006, DoCoMo entered into: (1) a Share Purchase Agreement with the shareholders of Guam Cellular; and (2) an Asset Purchase Agreement with Guam Wireless. The transactions have a combined value of approximately \$71.8 million and involve only the Guam and CNMI market, which, together, have a smaller population than Washington, D.C.<sup>54</sup> The parties intend to close the Share Purchase Agreement and the Asset Purchase Agreement simultaneously.<sup>55</sup>

To effectuate the Share Purchase Agreement, DoCoMo has formed DoCoMo Guam, a wholly-owned subsidiary organized under the laws of Guam. Under the Share Purchase Agreement, DoCoMo, through DoCoMo Guam, will acquire 100 percent of the common shares of Guam Cellular for cash consideration. Following DoCoMo Guam's acquisition of the shares, Guam Cellular will continue in existence and become an indirect wholly-owned subsidiary of DoCoMo.

Under the Asset Purchase Agreement, DoCoMo will acquire for cash consideration certain assets, properties, goodwill and rights of Guam Wireless used to provide wireless voice and data communications products and services in Guam and the CNMI. To effectuate the acquisition, Guam Wireless will assign its FCC authorizations and certain other assets, properties, goodwill and rights to Guam Cellular. Upon closing, Guam Cellular will hold Guam Wireless' wireless-related assets and will continue to operate the business of Guam Wireless.

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<sup>54</sup> DoCoMo Press Release, *NTT DoCoMo to Acquire Guam Cellular and Guam Wireless* (Mar. 20, 2006), available at <http://www.nttdocomo.com/pr/2006/001249.html> ("DoCoMo Press Release").

<sup>55</sup> A chart depicting the ownership structure of Guam Cellular after consummation of the proposed transaction is attached as Exhibit C.

Currently, DoCoMo expects to retain most of the managerial officers and employees of both companies and to continue operating, for the time being, two separate networks in Guam and the CNMI. DoCoMo's plans include enhancing the quality of Guam Wireless' GSM network by adding GPRS capability and in the future deploying a W-CDMA network for third generation ("3G") services over Guam Cellular's cellular licenses.

### **III. THE PROPOSED TRANSACTION SERVES THE PUBLIC INTEREST**

Pursuant to Sections 310(d) and 214 of the Act, control of Guam Cellular may not be transferred and the assets of Guam Wireless may not be assigned unless the Commission finds "that the public interest, convenience and necessity will be served thereby."<sup>56</sup> In conducting its review in other similar transactions, the Commission typically first evaluates the qualifications of the transferee/assignee. As discussed below, DoCoMo is qualified to manage and operate Guam Cellular and the assets of Guam Wireless.

The Commission's public interest analysis also involves a review of the benefits and competitive impact of the proposed transaction.<sup>57</sup> This determination requires both an evaluation of competitive effects of the transaction and a broader public policy analysis that includes "a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license

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<sup>56</sup> 47 U.S.C. §§ 214, 310(d).

<sup>57</sup> See, e.g., *Western Wireless Corp. and ALLTEL Corp.*, 20 FCC Rcd 13053, 13064 (2005) ("ALLTEL/WWC Order"); *AT&T Wireless Services, Inc. and Cingular Wireless Corp.*, 19 FCC Rcd 21522, 21542-43 (2004) ("Cingular/AWS Order"); *Global Crossing Ltd. (Debtor-in-Possession) and GC Acquisition Limited*, 18 FCC Rcd 20301, 20315-16 (IB, WTB, WCB 2003) ("Global Crossing Order"); *VoiceStream Wireless Corp., Powertel, Inc., and Deutsche Telekom AG*, 16 FCC Rcd 9779, 9789 (2001) ("VoiceStream/DT Order").

holdings, and generally managing the spectrum in the public interest.”<sup>58</sup> Specifically, the Commission considers whether the transaction: (1) would result in a violation of the Act or any applicable statutory provisions; (2) would result in a violation of the Commission’s rules; (3) would substantially frustrate or impair the Commission’s implementation or enforcement of the Act or interfere with the objectives of that and other statutes; and (4) promises to yield affirmative public interest benefits.<sup>59</sup>

Assessing the last prong first, the proposed transaction will yield substantial public interest benefits because it will promote competition in the U.S. wireless market, and specifically the wireless market in Guam and the CNMI, which in turn will benefit consumers. The competitive benefits will not be offset by any anti-competitive effects. The proposed transaction also satisfies the first three prongs of the Commission’s analysis because it would not result in the violation or frustration of any statutory provision or the Commission’s rules. Because the transaction is pro-competitive and there are no offsetting public interest harms, the transaction meets the requirement of Section 310(b)(4) of the Act that DoCoMo’s 100 percent investment in Guam Cellular be in the public interest.<sup>60</sup> Moreover, because the wireless licenses involved in this transaction will be held by a U.S. entity upon consummation, the transaction raises no issues under Sections 310(b)(1)-(3) of the Act.<sup>61</sup> Further, notwithstanding the Japanese government’s ownership interest in NTT, because the wireless licenses will be held by an indirect wholly-

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<sup>58</sup> *ALLTEL/WWC Order*, 20 FCC Rcd at 13064; *Cingular/AWS Order*, 19 FCC Rcd at 21542-44; *see also Global Crossing Order*, 18 FCC Rcd at 20315; 47 U.S.C. § 157(a).

<sup>59</sup> *See Ameritech Corp. and SBC Communications Inc.*, 14 FCC Rcd 14712, 14738-39 (1999) (“*Ameritech/SBC Order*”); *see also ALLTEL/WWC Order*, 20 FCC Rcd at 13063-66; *Cingular/AWS Order*, 19 FCC Rcd at 21542-46.

<sup>60</sup> 47 U.S.C. § 310(b)(4).

<sup>61</sup> *Id.* §§ 310(b)(1)-(3).

owned subsidiary of DoCoMo, this transaction also raises no issues under Section 310(a) of the Act.<sup>62</sup>

**A. The Transaction Will Produce Substantial Pro-Competitive Benefits And Poses No Threat To Competition.**

DoCoMo's acquisition of Guam Cellular and the assets of Guam Wireless will serve the public interest by promoting vigorous competition in the U.S. mobile telephony market. As discussed below, the proposed transaction will provide Guam Cellular the financial resources it needs to expand, upgrade, and strengthen the existing networks of Guam Cellular and Guam Wireless. The transaction will create significant economies of scale and scope and will improve Guam Cellular's ability to compete against multiple other wireless operators in Guam and the CNMI.

The Commission typically begins its assessment of a transaction's competitive effects by defining the relevant markets, both in terms of relevant products or services and geographic scope.<sup>63</sup> The Commission next identifies current and potential participants in these markets.<sup>64</sup> The Commission then considers the pro-competitive benefits and any anti-competitive effects of the proposed transaction. Regarding pro-competitive benefits, the Commission examines "merger-specific efficiencies such as cost reductions, productivity enhancements, or improved incentives for innovation, and whether the merger will support the general policies of market-opening and barrier-lowering that underlie the [Telecommunications Act of 1996]."<sup>65</sup> This

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<sup>62</sup> *Id.* § 310(a); *VoiceStream/DT Order*, 16 FCC Rcd at 9805-06.

<sup>63</sup> *See e.g.*, *ALLTEL/WWC Order*, 20 FCC Rcd at 13067; *Cingular/AWS Order*, 19 FCC Rcd at 21552; *VoiceStream/DT Order*, 16 FCC Rcd at 9825-26; *NYNEX Corp. and Bell Atlantic Corp.*, 12 FCC Rcd 19985, 20008 (1997) ("*NYNEX/Bell Atlantic Order*").

<sup>64</sup> *See id.*

<sup>65</sup> *NYNEX/Bell Atlantic Order*, 12 FCC Rcd at 20009.

portion of the “public interest analysis may also entail assessing whether the merger will affect the quality of telecommunications services or will result in the provision of new or additional services to consumers.”<sup>66</sup> With respect to anti-competitive effects, the Commission evaluates “whether the merger is likely to result in either unilateral or coordinated effects that enhance or maintain the market power of the merging parties.”<sup>67</sup> As demonstrated below, this transaction will produce substantial pro-competitive benefits and will pose no threat to competition.

### **1. The Relevant Markets And Competitive Landscape.**

Guam Cellular and Guam Wireless provide service in two relevant “product” markets – mobile telephony and international services.<sup>68</sup> DoCoMo does not provide service in either of these markets in the United States.

#### **a. Mobile Telephony**

*Product and Geographic Markets.* Guam Cellular and Guam Wireless operate cellular and broadband PCS systems throughout Guam and the CNMI. Cellular and broadband PCS operators are considered CMRS providers and fall within the mobile telephony segment of the larger CMRS market. The Commission has defined the mobile telephony segment to include

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<sup>66</sup> *SBC/Ameritech Order*, 14 FCC Rcd at 14739.

<sup>67</sup> *NYNEX/Bell Atlantic Order*, 12 FCC Rcd at 20009.

<sup>68</sup> As noted above, Guam Cellular also provides domestic direct dialing and calling card interexchange service. These services are de minimis in comparison to Guam Cellular’s wireless service business. Further, it has been long established that the U.S. interexchange market is highly competitive, with hundreds of service providers. *See Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 11 FCC Rcd 20730 (1996), *aff’d*, *MCI WorldCom, Inc. v. Competitive Telecommunications Association* (2000) (ordering the detariffing of the interexchange market because of the highly competitive nature of the market).

cellular, broadband PCS, and digital specialized mobile radio (“SMR”) services.<sup>69</sup> In addition to analog cellular networks, domestic mobile telephony operators have deployed digital networks based on four primary technical standards – CDMA, TDMA, iDEN and GSM.

This mobile telephony market segment has a geographic scope of Guam and the CNMI, both unincorporated territories of the United States.<sup>70</sup> Guam covers a land area of approximately 212 square miles and has a population of approximately 154,805 people. The CNMI is a chain of fourteen volcanic islands that stretches more than 375 miles north to south, with a land area of approximately 175 square miles. There are three major inhabited islands of the CNMI – Saipan, Tinian and Rota – and the vast majority of the CNMI’s 69,221 population resides on Saipan. Saipan, Tinian and Rota have total land areas of approximately 46, 39 and 33 square miles, respectively. Guam and the CNMI collectively have a population of 224,026, which, as a reference point, is approximately 39 percent of the population of Washington, D.C. Guam and the CNMI’s three major islands cover a collective land area of 330 square miles, which is more than five times the size of Washington, D.C.<sup>71</sup> Accordingly, Guam and the CNMI are considered rural service areas.

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<sup>69</sup> See *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Tenth Report, 20 FCC Rcd 15908, 15934 (2005) (“*Tenth CMRS Report*”).

<sup>70</sup> See *Cingular/AWS Order*, 19 FCC Rcd at 21562 (stating that “the proper geographic market is a local one, not national” for purposes of the Commission’s competitive analysis).

<sup>71</sup> The population figures provided above are based upon the U.S. 2000 Census. The U.S. Department of Interior also estimates that the population of Guam and the CNMI as of 2006 is approximately 171,019 and 82,459 people, respectively. The population figures refer to resident population only.

**Significant Market Participants.** Despite the rural nature of Guam and the CNMI, residents enjoy robust competition in the mobile telephony market. The following chart sets forth the ten different entities that hold CMRS licenses in Guam and the CNMI.<sup>72</sup>

	Guam	The CNMI
Cellular A	Guam Cellular	Guam Cellular
Cellular B	Pulse Mobile	GTE Pacifica d/b/a Pacific Telecom
PCS A	Bell Atlantic New Zealand (Pacific Telecom)*	Bell Atlantic New Zealand (Pacific Telecom)*
PCS B	Guam Wireless	Guam Wireless
PCS C	IT&E Overseas	IT&E Overseas
PCS D	IT&E Overseas	IT&E Overseas
PCS E	Pulse Mobile	none
PCS F	Wave Runner	Wave Runner
3MR	Sprint Nextel Choice Phone L.P. Ganacias Enterprises, Inc.	Sprint Nextel Choice Phone L.P. Ganacias Enterprises, Inc.

\* An application is pending to assign the PCS A block license for the Guam-CNMI MTA from Bell Atlantic New Zealand, a wholly-owned indirect subsidiary of Verizon Wireless, to Pacific Telecom.

Numerous other participants in the mobile telephony market in Guam and the CNMI are providing competitive services, and several have stated their intent to increase investment and improve the quality of their services. Several mobile operators also offer a full menu of competitively priced communications services, including local fixed and mobile, long distance, international, and broadband services, further strengthening their position in the larger communications market. Upon consummation of the proposed transaction, DoCoMo will hold indirectly 55 MHz of CMRS spectrum in Guam and the CNMI. Other market competitors hold comparable amounts of spectrum. Moreover, the upcoming auction of Advanced Wireless Service (“AWS”) spectrum will provide opportunities for existing licensees and new entrants to

<sup>72</sup> The information set forth in the chart is based on a search of the CMRS licensing and application records in the Commission’s ULS database as of March 27, 2006.

acquire an additional 90 MHz of spectrum, further enhancing the competitive landscape of the wireless market in Guam and the CNMI.

- **IT&E Overseas.** IT&E Overseas holds 40 MHz of PCS spectrum in Guam and the CNMI and has provided wireless services since the mid-1990s. The carrier operates a CDMA network, although it has announced that it also will deploy a GSM network in the very near future.<sup>73</sup> IT&E Overseas offers long distance, Internet, DSL, Wi-Fi, voice and other wireless services in the Guam and CNMI market.
- **Pacific Telecom.** Pacific Telecom holds 25 MHz of cellular spectrum in the CNMI and has a pending application before the Commission to acquire an additional 30 MHz of PCS spectrum in Guam and the CNMI. Assuming the pending application is granted, Pacific Telecom will hold 30 MHz and 55 MHz of CMRS spectrum in Guam and the CNMI, respectively. Pacific Telecom provides a variety of wireless services using CDMA technology, Internet service, and long distance service, and is affiliated with a local wireline carrier. It also is a retailer for Verizon Wireless and sells services under the Verizon Wireless brand name. Pacific Telecom has stated its intention to increase its existing wireless services in Guam and the CNMI, including building additional cell sites and deploying 3G services within 24 months of consummating the acquisition.<sup>74</sup>

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<sup>73</sup> See IT&E Overseas, *GSM Coming Soon from ITE& Wireless*, available at [http://www.itepcs.net/ads/gsm\\_teaser.php](http://www.itepcs.net/ads/gsm_teaser.php).

<sup>74</sup> See FCC Form 603, Application to Assign License From Bell Atlantic New Zealand Holdings, Inc. to GTE Pacifica, Inc., Public Interest Statement and Description of Transaction, ULS No. 0002401623 (filed Dec. 12, 2005); Pacific Telecom Inc., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, to Permit Indirect Foreign Ownership Exceeding 25 Percent in Common Carrier Licensee GTE Pacifica Inc., IB Docket 03-115 (Apr. 18, 2003).

- **Pulse Mobile.** Pulse Mobile (a/k/a MPULSE) holds 35 MHz of CMRS spectrum in Guam. Together with its parent company, Teleguam Holdings, Pulse Mobile provides wireless services as well as wireline local, long distance and DSL services. Teleguam Holdings recently purchased the Guam Telephone Authority, the former government owned and operated wireline incumbent carrier. Teleguam Holdings has indicated that it will invest significant capital to improve service quality and offerings to compete more effectively in the marketplace.<sup>75</sup> For example, although Pulse Mobile has a TDMA network, it recently activated a new GSM network and rolled out new GSM-based mobile services.<sup>76</sup> It also is building additional cell towers on Guam.<sup>77</sup>
- **Wave Runner.** Wave Runner holds 10 MHz of PCS spectrum and in Guam and the CNMI. It has announced plans to initiate GSM service in mid-2006.<sup>78</sup>
- **Choice Phone.** Choice Phone (also known as iConnect) holds several SMR frequencies in Guam and the CNMI. It offers iDEN-based digital cellular, push-to-talk, and text messaging services.
- **Other Licensees.** The Commission's database shows that Sprint Nextel holds several SMR licenses in Guam and the CNMI and, according to the company's website, it has

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<sup>75</sup> See GTA News and Events, *available at* [http://www.gta.net/about\\_GTA.asp?inc=about\\_gta\\_news](http://www.gta.net/about_GTA.asp?inc=about_gta_news) (last visited Apr. 3, 2006).

<sup>76</sup> See GTA Press Release, *GTA Launches Guam's All-New GSM Mobile Network -- Wireless Operation Now Re-named MPULSE™ Tamuning* (Jan. 14, 2006), *available at* [http://www.gta.net/about\\_GTA.asp?inc=about\\_gta\\_news](http://www.gta.net/about_GTA.asp?inc=about_gta_news) (follow the News Archives hyperlink for the Year 2006 and select January).

<sup>77</sup> See *id.*

<sup>78</sup> See GSM World, *Wave Runner LLC (Guam) Network Information*, *available at* [http://www.gsmworld.com/roaming/gsminfo/net\\_guwg.shtml](http://www.gsmworld.com/roaming/gsminfo/net_guwg.shtml).

one retailer (Radioshack) located in Guam. LP Ganacias Enterprises d/b/a Radiocom also holds several SMR frequencies to provide wireless services in Guam and the CNMI. Accordingly, consumers in Guam and the CNMI have multiple choices of mobile operators, services, and technologies.

**b. International Services**

*Product and Geographic Markets.* Guam Cellular and Guam Wireless participate in the international services “product” market, which entails the transmission of calls to and from the United States and to and from other countries. The Commission has identified three categories of international services: (1) facilities-based services, which are those provided over facilities that the carrier owns in whole or in part; (2) facilities-resale services, which are those provided over circuits leased from other international carriers; and (3) pure resale service, which resale carriers provide by switching traffic to, and reselling the switched services of, underlying facilities-based carriers. The relevant geographic markets for international services consist of the routes between the United States (specifically Guam and the CNMI) and other countries.

*Significant Market Participants.* Guam Cellular and Guam Wireless both provide either international facilities-resale services over leased lines or pure resold international services. Both are very small participants in the U.S. international telecommunications market and specifically on the international route between Guam and the CNMI and Japan. Guam serves as a telecommunications trans-Pacific hub between the United States and Asia via undersea fiber optic cables. The larger U.S. international carriers, including AT&T, Sprint, MCI and IT&E Overseas operate cable landing stations in Guam. In addition to these larger carriers, many other telecommunications carriers provide international telecommunications services between Guam and the CNMI and Japan on a facilities, facilities-resale, or resold basis. For example, Pacific

Telecom is authorized to provide facilities-based and resold international service from the CNMI and operates an undersea fiber optic cable connecting the CNMI to Guam.

Guam Cellular's and Guam Wireless' total billed revenues for international services are a small fraction of the total billed revenues for U.S.-international services and of the total billed revenues for all U.S. carriers serving the route between Guam and the CNMI and Japan.

DoCoMo currently has no authorization to provide international telecommunications services on the U.S.-Japan route. NTT Communications, with which DoCoMo is affiliated through their parent company NTT, owns capacity on fiber optic cables between the mainland United States, Guam, and Japan, which primarily is used as backbone capacity for its global data communications services. As noted above, DoCoMo operates independently of NTT and NTT's other service provider affiliates. Japanese law requires that any transactions between and among them cannot be based on preferential rates, terms and conditions and must be negotiated on an arms-length basis.

**2. The Transaction Will Produce Substantial Pro-Competitive Benefits.**

DoCoMo's acquisition of Guam Cellular and the assets of Guam Wireless will promote the public interest by enhancing the competitive capabilities of each of Guam Cellular's CDMA (and eventually W-CDMA) and GSM operations through the infusion of significant additional economic and management resources and wireless expertise. DoCoMo's leadership in providing advanced wireless services in Japan will provide additional service-related benefits to Guam and CNMI consumers. The transaction also will create economies of scale and scope long term and improve Guam Cellular's ability to compete against the array of carriers in the highly competitive Guam and CNMI market. Moreover, Guam Cellular will be able to deploy advanced wireless services throughout this rural service area far more quickly than it and Guam Wireless could provide absent the capital, wireless experience and management skills afforded

by DoCoMo. Finally, with DoCoMo's substantial investment, Guam Cellular will ensure the expanded availability of global roaming capability for international travelers.

Guam Cellular holds two cellular licenses, one for the Guam rural service area ("RSA") and the other for the CNMI RSA, and has built a network of cell sites throughout its licensed service areas. Similarly, Guam Wireless has provided sufficient coverage on its broadband PCS license for the Guam-CNMI MTA to meet all build out requirements. As discussed above, each carrier has operated a successful business and offered a variety of wireless voice and data services to its customers with consistent quality and affordability. Nonetheless, Guam Wireless has faced financial and/or managerial constraints that have prevented it from engaging in the robust development of its network necessary to provide seamless coverage and a full array of advanced services in all populated areas of the markets. The competitive potential of each carrier, however, will not be fully realized without significant additional capital and expertise. The proposed transaction is key to allowing these cellular and PCS operations to reach their maximum productivity.

Upon consummation of the proposed transaction, DoCoMo anticipates providing additional funds of up to approximately \$6.5 million to strengthen Guam facilities and infrastructure. The majority of these expenditures will be for installation of GPRS packet switching technology on Guam Wireless's current GSM PCS network and for the installation of W-CDMA on Guam Cellular's cellular network. DoCoMo also is considering utilizing Guam Cellular's 700 MHz and 2.3 GHz licenses for wireless broadband applications. These installations will enable an enhanced menu of new advanced wireless services for end users, including mobile broadband Internet. Additionally, DoCoMo plans to make other improvements to the networks for enhanced service quality (resulting in such benefits as fewer dropped calls and improved sound quality) and to offer more services to roaming customers.

The transaction offers the potential for further price reductions as a result of improved economies of scale and scope long term. DoCoMo's acquisition will provide Guam Cellular with the opportunity to procure handsets and infrastructure equipment at attractive prices and to drive down other costs after deploying a W-CDMA network. The resulting savings would benefit consumers. Moreover, as equipment purchase volumes go up, equipment manufacturers are more willing to customize handsets and other device interfaces to match a carrier's service offerings. Thus, DoCoMo will be better positioned to deliver a more attractive customer experience by offering its cellular and PCS subscribers customized handsets. Furthermore, by consolidating functions such as technological research, system development and marketing, DoCoMo will be able to lower these costs and pass the savings on to consumers as well. Finally, by consolidating the best practices of Guam Cellular, Guam Wireless and DoCoMo, the combined companies can be more responsive to subscribers' needs.

Guam Cellular's and Guam Wireless' competitive positions would be enhanced at a time when other wireless carriers in the Guam and CNMI market are becoming increasingly competitive. As described above, IT&E Overseas (40 MHz in Guam and the CNMI), Pacific Telecom (30 MHz in Guam and 55 MHz in the CNMI),<sup>79</sup> Wave Runner/iConnect/Choice Phone (more than 10 MHz in Guam and the CNMI), and Pulse Mobile (35 MHz in Guam) hold significant amounts of spectrum to provide wireless services in Guam and the CNMI. The aggregate spectrum held by some of these competitors would allow them to launch spectrum-intensive 3G services that carriers with less spectrum (such as current Guam Cellular and Guam Wireless) would be hard-pressed to match.

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<sup>79</sup> As previously noted, Pacific Telecom holds 25 MHz of spectrum in the CNMI and has a pending application before the Commission to acquire an additional 30 MHz of spectrum in Guam and the CNMI.

In addition, existing mobile operators in the Guam and CNMI market also have access to substantial revenue flow from other communications service offerings, including local exchange and DSL services. For example, Teleguam Holdings owns both Pulse Mobile and Guam Telephone Authority, the dominant provider of local exchange service in Guam. Pacific Telecom, in addition to providing cellular service in the CNMI, also is the dominant local exchange carrier in the CNMI. Further, during its acquisition of GTE Pacifica, Pacific Telecom in 2003 indicated that it planned new capital expenditures of more than \$16 million to expand coverage and deploy 3G services.<sup>80</sup>

With the imminent auction of 90 MHz of AWS licenses in 1720-1755 MHz and 2110-2155 MHz bands in the Guam and CNMI market and the future availability of significant additional broadband spectrum in the 700 MHz band, carriers will have access to substantial amounts of additional spectrum to support an ever-widening array of advanced services. Guam Cellular and Guam Wireless would have limited ability to acquire additional spectrum or to undertake technological advancements and improvements without an infusion of capital from DoCoMo.

It is widely accepted that the dramatic increase in wireless competition since the days of the cellular duopoly set the stage for dramatic technological breakthroughs and led to more diversified service options and dramatic reduction in prices. Strengthening the competitiveness of Guam Cellular's operations and the introduction of W-CDMA will produce tangible benefits for consumers by increasing product choice and service quality at affordable prices.

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<sup>80</sup> See Pacific Telecom Inc., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, to Permit Indirect Foreign Ownership Exceeding 25 Percent in Common Carrier Licensee GTE Pacifica Inc., IB Docket 03-115 (Apr. 18, 2003). Pacific Telecom did not consummate this transaction until September 2005.

The incentive to deploy new advanced services and technology is even greater when combined with the enhanced scale and efficiency of the combined companies, which reduces the cost of acquiring the equipment required for the provision of advanced services. Accelerating deployment of advanced wireless services will promote competition not only in the Guam and CNMI wireless market but also in mass-market, high-speed data services, some of which today are provided either over telephone lines through xDSL services or over cable lines through cable modems (to the extent they are available at all). Guam Cellular's advanced wireless services will provide consumers with another technological means of obtaining high-speed data services.

Several features offered in Japan by DoCoMo have not yet been introduced in Guam and the CNMI. DoCoMo customers currently enjoy a wide variety of multimedia and data services, such as video, games, mobile banking, ticket purchasing, travel information, and remote learning. These and other services are becoming far more robust as a result of the introduction of the W-CDMA standard. The development of additional leading-edge services in Japan will continue to accelerate with the further implementation of next-generation services. DoCoMo's extensive experience with such advanced features, and its ongoing investments in research and development, will facilitate DoCoMo's ability to deliver these and other promising new advanced services to Guam and CNMI residents and visitors.

These various service enhancements and potential price reductions are not likely to be limited to Guam Cellular and Guam Wireless's subscribers. Other wireless operators in Guam and the CNMI will come under competitive pressure to improve their own services, and therefore *all* wireless subscribers will benefit.<sup>81</sup> As Guam Cellular becomes an early provider of

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<sup>81</sup> See, e.g., *Tenth CMRS Report*, 20 FCC Rcd at 15911 ("competitive pressure continues to compel carriers to introduce innovative pricing plans and service offerings, and to match the pricing and service innovations introduced by rival carriers").

certain advanced services, other carriers will be forced to upgrade their own service offerings in order to remain competitive. Just as the introduction of 2.5 and 3G services pressured 2G operators to overhaul their networks and service offerings, DoCoMo's operational experience with technologies that have yet to be introduced in Guam and the CNMI will benefit Guam and the CNMI consumers generally.

**3. The Transaction Will Not Cause Any Anti-Competitive Effects In Either Relevant Market.**

The transaction's substantial pro-competitive benefits will not be offset by any anti-competitive effects in the domestic wireless telephony or international services market. Guam Cellular and Guam Wireless's mobile telephony services do not overlap with any DoCoMo service in the United States, including Guam and the CNMI, and any overlap of the two carriers' international services will have no significant impact on competition. DoCoMo today provides no mobile telephony services anywhere in the United States.<sup>82</sup>

*Mobile Telephony.* DoCoMo currently expects to continue operating two separate networks in Guam and the CNMI, with distinct licenses, networks, technologies, service offerings and customer bases, and to enhance the quality of Guam Wireless' GSM network by adding GPRS capability and in the future to deploy a W-CDMA network for 3G services over Guam Cellular's cellular licenses. Therefore, the proposed transaction does not raise significant subscriber transition issues near term or present a significant competitive concern regarding the reduction of mobile operators in the Guam and CNMI market. Moreover, the Guam and CNMI wireless market is intensively competitive, as discussed above, with several carriers currently

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<sup>82</sup> As noted previously, DoCoMo USA provides unregulated Wi-Fi service in the United States to Japanese-speaking U.S. residents. It also recently established a wholly-owned U.S. subsidiary to invest in venture companies that develop advanced mobile communications technologies and acquired an interest in a U.S. mobile assets management service provider.

providing service and planning to increase their presence in the market through additional investment. DoCoMo will be able to parlay its experience as an innovator and market leader in Japan into developing and deploying new and innovative technologies and services in Guam and the CNMI. Even in cases involving the absorption of a significant nationwide mobile telephony operator into another carrier and elimination of the separate operations of the acquired entity – unlike the current proposed transaction – the Commission has found that the pro-competitive benefits of the transaction outweighed any potential anticompetitive effect.<sup>83</sup> In this case, no anticompetitive effects are presented, and instead substantial pro-competitive benefits will be available to consumers.<sup>84</sup>

As further discussed in Section III(B) below, the indirect foreign investment by DoCoMo, NTT and the Japanese government in Guam Cellular raises no competitive concerns and provides no ability to harm competition in the Guam and CNMI market. The domestic and insular nature of the Guam and CNMI market ensure that DoCoMo or NTT cannot possibly leverage their market share or control of facilities in Japan to provide Guam Cellular with an unfair competitive advantage in the Guam and CNMI market. Further, the Japanese government's ownership interest will confer no competitive advantage on Guam Cellular in the Guam and CNMI market. Neither NTT nor DoCoMo benefits from government subsidies, preferential access to capital, or favorable regulatory treatment. Accordingly, the government's indirect minority interest in Guam Cellular will not provide it with an unfair competitive advantage in the Guam and CNMI market.<sup>85</sup>

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<sup>83</sup> See *Cingular/AWS Order*, 19 FCC Rcd at 21599-611.

<sup>84</sup> See *infra* Section III(A)(3).

<sup>85</sup> See *VoiceStream/DT Order*, 16 FCC Rcd at 9813-23.

The Commission routinely studies the impact of transactions involving license overlays on market concentration to determine whether potential anticompetitive effects could result.<sup>86</sup>

The Commission typically first distinguishes between: (1) overlap areas that would not raise concentration to a level that would raise competitive concerns, and (2) overlap areas that potentially raise competitive concerns and require a more detailed competitive analysis.<sup>87</sup> The Commission has determined that overlaps do not potentially raise competitive issues *unless*:

- The transaction would increase the applicant's spectrum holdings in a relevant geographic market to 70 MHz or more;
- The transaction would increase the Herfindahl-Hirschman Index ("HHI") by 100 or more *and* the post-transaction HHI would be greater than 2800; or
- The transaction would increase HHI by 250 or more.<sup>88</sup>

The Commission, however, has made clear that this threshold determination merely indicates that further Commission review of a particular market is required, not that a *per se* competitive issue results:

For many markets where the facts of a high subscriber-based HHI and a high change in HHI might seem to suggest a potential competitive problem, there is in fact little likelihood of harm. We find that *the presence and capacity of other firms matter more for future competitive conditions than do current subscriber-based market shares.*<sup>89</sup>

Under the first criterion above, the proposed transaction will result in DoCoMo indirectly holding 55 MHz of CMRS spectrum in Guam and the CNMI, a level well below the 70 MHz

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<sup>86</sup> See *ALLTEL/WWC Order*, 20 FCC Rcd at 13071-75; *Cingular/AWS Order*, 19 FCC Rcd at 21564-69.

<sup>87</sup> See *ALLTEL/WWC Order*, 20 FCC Rcd at 13074; *Cingular/AWS Order*, 19 FCC Rcd at 21564-65, 21568-69.

<sup>88</sup> See *ALLTEL/WWC Order*, 20 FCC Rcd at 13073; *Cingular/AWS Order*, 19 FCC Rcd at 21568-69.

<sup>89</sup> *Cingular/AWS Order*, 19 FCC Rcd at 21579 (emphasis added).

threshold that the Commission has established in other transactions involving wireless licenses.<sup>90</sup> This aggregated spectrum level must also be considered in the context of DoCoMo's current intentions to continue operating the separate CDMA (or W-CDMA) and GSM networks. Other market competitors hold comparable amounts of spectrum, and the upcoming AWS auction will provide further opportunities for existing licensees and new entrants to acquire additional spectrum. Accordingly, there are no anti-competitive effects created by DoCoMo's control of 55 MHz of CMRS spectrum in this market.

Under the second and third criteria, the Commission typically calculates HHIs using Numbering Resource Utilization Forecast ("NRUF") data and other confidential information supplied by wireless carriers. DoCoMo lacks sufficient data to determine the market share of individual operators in the market and thus to apply the final two criteria.<sup>91</sup> As demonstrated in Section III(A)(1)(a), however, available information confirms that post-transaction, Guam Cellular will face competition from multiple, well financed facilities-based operators in Guam and the CNMI.

***International Services.*** The transactions will have no significant impact on competition in the U.S., and particularly the Guam and CNMI market for originating or terminating international calls. Because neither Guam Cellular nor Guam Wireless owns any significant international transport facilities, this transaction will not eliminate any significant potential participant in the provision of international services.<sup>92</sup> The *de minimis* nature of Guam Cellular's

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<sup>90</sup> The Commission also has permitted carriers to hold up to 80 MHz in one market. See, e.g., *ALLTEL/WWC Order*; *Cingular/AWS Order*.

<sup>91</sup> In the *ALLTEL/WWC Order* and *Cingular/AWS Order*, the Commission calculated HHIs using NRUF data and confidential information supplied by CMRS carriers. See *ALLTEL/WWC Order*, 20 FCC Rcd at 13072; *Cingular/AWS Order*, 19 FCC Rcd at 21566-67.

<sup>92</sup> See *VoiceStream/DT Order*, 16 FCC Rcd at 9834.

and Guam Wireless' international services precludes a finding of anticompetitive effects. Neither of the two carriers nor DoCoMo controls any bottleneck facility in the United States on which other carriers rely to provide service.<sup>93</sup>

In reviewing the competitive effects of a transaction on the international market, the Commission also considers whether the transferee/assignee will become affiliated with a foreign carrier, in order to determine whether to classify the merged entity as a dominant carrier on certain international routes.<sup>94</sup> Here, Guam Cellular will become an indirect wholly-owned subsidiary of DoCoMo and will become an "affiliate" of DoCoMo under the Commission's rules. As a result, as noted in the accompanying section 214 applications, Guam Cellular will be subject to dominant carrier regulation with respect to the U.S.-Japan route. Specifically, under the Commission's rules, Guam Cellular will be required to: (1) maintain separate books of account from DoCoMo; (2) abstain from joint ownership of transmission or switching facilities with DoCoMo; (3) file quarterly reports of revenue and transmission; (4) file quarterly reports summarizing the provisioning and maintenance of all basic network facilities and services procured from DoCoMo; and (5) file quarterly circuit status reports.<sup>95</sup> These requirements are designed to make a carrier's interaction with its affiliated foreign carrier transparent and to guard against discriminatory conduct. In the unlikely event that Guam Cellular's relationship with DoCoMo poses any potential threat of such conduct, the Commission's dominant-carrier regulations will serve as an adequate safeguard.<sup>96</sup>

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<sup>93</sup> *Id.*

<sup>94</sup> *See id.* at 9812-13, 9834-36.

<sup>95</sup> *See* 47 C.F.R. § 63.10(c).

<sup>96</sup> *See VoiceStream/DT Order*, 16 FCC Rcd at 9834-36.

The Japanese market is open to competition by U.S. carriers. Moreover, Guam Cellular and Guam Wireless are incapable of discriminating against other international carriers. To the contrary, as primarily resellers, each is dependent on other carriers to transport its customers' calls. Guam Cellular's and Guam Wireless' de minimis presence in the U.S. international market will preclude the competitive threat that exists when a carrier can exercise bottleneck control.

In sum, the net impact of the proposed transaction on competition will be overwhelmingly positive. This transaction easily satisfies the Commission's standard of review for approving transfers of control and assignments.

**B. The Transaction Is Consistent With Section 310(b)(4) Of The Act.**

Section 310(b)(4) of the Act<sup>97</sup> allows foreign individuals, corporations, and governments to own indirectly, in the aggregate, more than 25 percent of the capital stock of a common carrier wireless licensee, if the Commission finds that such ownership serves the public interest. Under its foreign ownership policy, the Commission generally presumes that indirect foreign investments in common carrier wireless licensees by entities from WTO member countries raise no competitive concerns and serve the public interest, unless the foreign investment is shown to pose a "very high risk" to competition.<sup>98</sup> Moreover, in the absence of countervailing public interest considerations, the Commission generally prohibits more than 25 percent of the capital stock of a common carrier wireless licensee from being indirectly owned, in the aggregate, by

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<sup>97</sup> 47 U.S.C. § 310(b)(4).

<sup>98</sup> See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23891, 23896, 23913, 23940 (1997) ("*Foreign Participation Order*").

investors from non-WTO countries that do not offer “effective competitive opportunities” to U.S. investors.<sup>99</sup>

As discussed in Section I above, through its direct, 100 percent ownership of DoCoMo Guam, DoCoMo, a Japanese company, indirectly will own 100 percent of the capital stock of Guam Cellular. As previously noted, DoCoMo is a publicly traded company listed on the Tokyo, London, and New York stock exchanges. NTT, a Japanese company, owns approximately 61.96 percent of each of the equity and voting interests of DoCoMo. The remaining 38.04 percent of the capital stock of DoCoMo is held by Japanese and overseas corporations and individuals, none of which individually holds a five percent or greater ownership interest. As discussed above, at least 75 percent of DoCoMo’s outstanding shares are held by entities from WTO member countries (including Japan, the United States and the United Kingdom).

As further discussed in Section I above, NTT is a publicly traded company listed on the Tokyo, London, and New York stock exchanges and several stock exchanges in Japan. The Japanese government owns approximately 38.37 percent of each of the equity and voting interests of NTT, and thus indirectly holds a 23.77 percent ownership interest in DoCoMo. The remaining 61.63 percent of the capital stock of NTT is held by Japanese and overseas corporations and individuals, none of which individually holds a five percent or greater ownership interest. As previously discussed, at least 75 percent of NTT’s outstanding shares are held by entities from WTO-member countries (including Japan and the United States).

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<sup>99</sup> *Id.* at 23946 (The Commission will “deny an application if we find that more than 25 percent 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 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.”).

Based upon the Commission's principal place of business test, the home market of both DoCoMo and NTT is Japan.<sup>100</sup> Moreover, at least 75 percent or more of the equity and voting interests in each of DoCoMo and NTT is held by investors from WTO member countries (Japan, the United States and the United Kingdom). Accordingly, the Applicants request that the Commission find that the indirect foreign ownership of Guam Cellular serves the public interest under Section 310(b)(4) of the Act and is consistent with the Commission's policies. The Applicants also request that the Commission authorize Guam Cellular to accept aggregate equity or voting interests of up to 25 percent from existing and new non-U.S. investors, in addition to their existing equity and voting interests, without seeking further Commission approval.<sup>101</sup>

**1. No Evidence Rebutts The Strong Presumption In Favor Of DoCoMo's And NTT's Proposed Indirect Ownership Of Guam Cellular.**

Under the Commission's foreign ownership policy, because the home market of both DoCoMo and NTT is Japan, a WTO member country, their proposed indirect ownership of Guam Cellular is presumed to serve the public interest, unless the foreign ownership is shown to pose a "very high risk" to competition. To pose a very high risk to competition, "an applicant

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<sup>100</sup> Under the principal place of business, the following factors are considered in determining the home market or nationality of a foreign entity: (1) the country of the foreign entity's incorporation, organization or charter; (2) the nationality of all investment principals, officers, and directors; (3) the country in which its world headquarters is located; (4) the country in which the majority of its tangible property, including production, transmission, billing, information, and control facilities, is located; and (5) the country from which it derives the greatest sales and revenues from its operations. See *Foreign Participation Order*, 12 FCC Rcd at 23941. Both DoCoMo and NTT are Japanese companies, the majority of whose investment principals, officers, and directors also are Japanese. Additionally, DoCoMo's and NTT's world headquarters and the majority of their tangible properties are located in Japan, and each company derives the greatest sales and revenues from its operations in Japan.

<sup>101</sup> Notwithstanding the requested foreign ownership allowance of an additional, aggregate 25 percent, Guam Cellular will seek Commission approval under Section 310(b)(4) before accepting additional investments from any non-WTO investor that, when aggregated with existing investments from non-WTO investors, are expected to exceed 25 percent.