

ORIGINAL

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

In the Matter of)
)
Applications for the Assignment of License from) WT Docket No. 06-114
Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and)
the Transfer of Control of Interests in Alaska)
DigiTel, L.L.C. to General Communication, Inc.)
)
)
)

MEMORANDUM OPINION AND ORDER

Adopted: December 21, 2006

Released: December 22, 2006

By the Commission: Commissioners Copps and Adelstein concurring and issuing separate statements.

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I. INTRODUCTION

1. In this Order, we consider applications filed by Alaska DigiTel, L.L.C. ("Alaska DigiTel"), Denali PCS, L.L.C. ("Denali"), and General Communication, Inc. ("GCI") for consent to: (1) the assignment of a license held by Denali to Alaska DigiTel, and (2) the transfer of control of a 78 percent non-controlling interest in Alaska DigiTel to GCI.¹ The applications pertain to licenses in the Part 22 Cellular Radiotelephone Service ("cellular"), the Part 24 Personal Communications Service ("PCS"), and the Part 101 Common Carrier Fixed Point-to-Point Microwave Service. Pursuant to section 310(d) of the Communications Act of 1934, as amended ("Communications Act"),² we must determine whether Alaska DigiTel, Denali, and GCI (collectively, the "Applicants") have demonstrated that the applications would serve the public interest, convenience, and necessity. Based on the record before us, we find that the Applicants have met that burden and grant their applications subject to the conditions set out below.³ We deny the petition to deny the applications or designate the applications for an evidentiary hearing filed by Matanuska-Kenai, Inc., d/b/a/ Matanuska Wireless ("MTA Wireless").⁴ Finally, since we are denying the petition for an evidentiary hearing, we also dismiss as moot the petition to intervene in the evidentiary hearing filed by ACS Wireless, Inc. ("ACS Wireless").⁵

II. BACKGROUND**A. Description of the Applicants****1. Alaska DigiTel, LLC**

2. Alaska DigiTel is a limited liability company organized under the laws of the state of

¹ Application to Assign Licenses Held by Denali PCS, L.L.C. to Alaska DigiTel, L.L.C., File No. 0002453582 (filed Jan. 27, 2006) ("Assignment Application"); Application to Transfer Control of Licenses Held by Alaska DigiTel, L.L.C., File No. 0002453706 (filed Jan. 27, 2006) ("Transfer of Control Application"). Both applications contain the identical Exhibit 1, "Description of Transaction and Public Interest Statement" (including Attachments A and B), referenced herein as "Application Exhibit 1."

² 47 U.S.C. §§ 214(a), 310(d).

³ See para. [47] and Appendix A.

⁴ Petition to Deny Applications filed by Matanuska-Kenai, d/b/a/ Matanuska Wireless ("MTA Wireless Petition to Deny") at 2, 7, 15-16. MTA Wireless filed an erratum to update its name to MTA Communications, Inc., d/b/a MTA Wireless. See Letter from Stefan M. Lopatkiewicz, Dorsey & Whitney LLC, Counsel for MTA Wireless, to Catherine W. Seidel, Acting Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Mar. 24, 2006).

⁵ Comments/*Ex Parte* Filing and Petition to Intervene filed by ACS Wireless, Inc. ("ACS Wireless July 21, 2006 Comments/Petition") at 5, 19-20.

Alaska.⁶ The company holds 15 megahertz of the A-block broadband PCS license (KNLF297), with a coverage area over the entire State of Alaska, a 20 megahertz cellular license (WPON879) with a coverage area over St. Paul Island, Alaska,⁷ and three microwave licenses (WQAP303, WQAP304, and WQPA305).⁸ Alaska DigiTel provides wireless services to approximately 24,000 subscribers in and around Anchorage, Mat-Su, Girdwood, Homer, Seward, Soldotna, Fairbanks and Juneau,⁹ using its all-digital Code Division Multiple Access (“CDMA”) network.¹⁰ It has roaming relationships with “the major U.S. CDMA wireless carriers.”¹¹ Alaska DigiTel also offers a data services bundle to its wireless telephone subscribers, which includes web browsing and access to downloadable content.¹²

2. Denali PCS, LLC

3. Denali is a limited liability company organized under the laws of the state of Alaska.¹³ Denali holds 15 megahertz of the A-block broadband PCS license (WPVZ815) with a coverage area over the entire State of Alaska.¹⁴ Based on the record before us, Denali does not appear currently to provide wireless service to the public.¹⁵ Denali and Alaska DigiTel are commonly controlled affiliates under the control of William Yandell.¹⁶

3. General Communication, Inc.

4. GCI is a publicly traded corporation incorporated under the laws of the state of Alaska and headquartered in Anchorage.¹⁷ Through various subsidiaries, GCI holds the 30 megahertz B-block broadband PCS license,¹⁸ with a coverage area over the entire State of Alaska, a B-block Local Multipoint

⁶ See <https://myalaska.state.ak.us/business/soskb/Corp.asp?259680> (last visited Dec. 15, 2006).

⁷ See Application Exhibit 1; www.alaskadigitel.com (last visited Dec. 15, 2006) (“Alaska DigiTel Website”). St. Paul Island is one of four Pribilof Islands lying in the Bering Sea, and has a population of less than 600 people and is approximately 40 square miles. See http://en.wikipedia.org/wiki/Saint_Paul_Island%2C_Alaska (last visited Dec. 15, 2006).

⁸ See Application Exhibit 1 at 2.

⁹ See www.gci.com, News Release of Dec. 7, 2005 (“GCI Announces \$29.5 Million Investment in Alaska DigiTel, LLC”) (“GCI-Alaska DigiTel News Release”).

¹⁰ Alaska DigiTel Website.

¹¹ See GCI-Alaska DigiTel News Release.

¹² Alaska DigiTel Website.

¹³ See <https://myalaska.state.ak.us/business/soskb/Corp.asp?270943> (last visited Dec. 15, 2006).

¹⁴ See Application Exhibit 1 at 1.

¹⁵ MTA Wireless asserts that Denali “has never offered a commercial PCS service to the public.” MTA Wireless Petition to Deny at 3. There is no contrary evidence before us.

¹⁶ See Pro Forma Application to Partially Assign a License Held by Alaska DigiTel, L.L.C. to Denali PCS, L.L.C., File No. 0001034967 at Exhibit 1 (filed Sept. 20, 2002) (disaggregating 15 MHz from KNLF297) (“Pro Forma Application”).

¹⁷ GCI 2005 Annual Report on Form 10-K at 1 (filed Mar. 14, 2006) (“GCI 10-K”), available at http://www.sec.gov/Archives/edgar/data/808461/000110465906017334/a06-6639_110k.htm.

¹⁸ Call Sign: KNLF298.

Distribution System ("LMDS") license¹⁹ that serves Anchorage, a Specialized Mobile Radio ("SMR") license,²⁰ as well as several Industrial Industrial/Business Pool Service,²¹ and Common Carrier Fixed Point-to-Point Microwave licenses.²² With regard to wireless services, GCI offers mobile telephony services by reselling the services of Dobson Cellular Systems, Inc. ("Dobson") pursuant to a 10-year distribution agreement implemented in 2004.²³ Currently GCI provides local access services over its own facilities, operating on its PCS license and its other licenses.²⁴ In addition, through various subsidiaries, GCI provides wireless service, local and long distance wireline telephone service, as well as Internet and data communication services in Alaska.²⁵ It also owns and operates cable systems throughout Alaska,²⁶ and has ownership interests in submarine cables used for wholesale transport of communications to the Lower 48 States.²⁷

B. Description of Transaction

5. As described in the applications, the proposed transaction would occur in a series of contemporaneous steps. First, GCI would acquire all of the membership interests in Denali. Then, Alaska DigiTel would be reorganized, and its new membership interests would be distributed to its current members and GCI. GCI would receive 78 percent of Alaska DigiTel's membership interests and, in return, GCI would contribute cash and its membership interests in Denali to Alaska DigiTel.²⁸ Additionally, as part of this reorganization, Alaska DigiTel would be governed by a Board of Managers. The Board of Managers would have between four to eight members, with GCI having the power to appoint only one of these members while the original owners of Alaska DigiTel would appoint the remainder of the Board of Managers. GCI would, however, receive "non-controlling investor protection rights" that would prevent Alaska DigiTel from taking certain major actions without the consent of GCI.²⁹

¹⁹ Call Sign: WPLM396.

²⁰ Call Sign: KNCD389.

²¹ Call Signs: KNHN226, KNJA855, KNNT594, KTJ272, WNAP874, WNJY380, WNPU406, WNPU410, WNRG645, WPOY279, WPQG371.

²² Call Signs: WHA559, WHA560, WHA629, WHA646, WLC631, WLC632, WLR 379, WLT719, WLT720, WLT721, WLU551, WLV263, WLV267, WMT650.

²³ GCI 10-K at 15, 40, 53. As discussed below, GCI has leased a total of 12 megahertz of its PCS spectrum to Dobson pursuant to long term *de facto* transfer spectrum leasing arrangements. See note 147, *infra*.

²⁴ The licenses are held by GCI's subsidiary, GCI Communication Corp.

²⁵ See, e.g., GCI 10-K at 12, 15. GCI also "provide[s] (or join[s] in providing with other carriers) communications services to and from Alaska, Hawaii, the continental United States, and certain foreign nations and territories." GCI 10-K at 20. GCI further reports that it "provided broadband, IP Data, Private Line and Private Network communications products and services, including SchoolAccess® and rural health Private Line facilities to 403 commercial and government customers at the end of 2005." GCI 10-K at 25.

²⁶ GCI 10-K at 29-30.

²⁷ General Communication, Inc., Application for a License to Land and Operate in the United States a Digital Submarine Cable System Extending Between the Pacific Northwest United States and Alaska, File No. SCL-LIC-19980602-00008, *Cable Landing License*, 12 FCC Rcd 18292, 18293 ¶ 4, 18303 ¶ 40 (1997) (IB 1997) ("*Alaska United East Order*"), *Order on Review*, 16 FCC Rcd 4314 (2001).

²⁸ Application Exhibit 1 at 2.

²⁹ Application Exhibit 1 at 3-5, n.9.

6. After the step reorganizing Alaska DigiTel, Denali would either be merged into Alaska DigiTel or the Denali license would be assigned to Alaska DigiTel, so that, post-transaction, the Denali license would be held by Alaska DigiTel. In the last step of the transaction, GCI would place its interests in Alaska DigiTel in a wholly-owned subsidiary, GCI Holdings, Inc (“GCI Holdings”).³⁰ Post transaction, Alaska DigiTel would directly hold 30 megahertz of PCS spectrum consisting of the two 15 megahertz A-block PCS licenses currently held by Alaska DigiTel and Denali. GCI, in turn, would have an indirect 78 percent interest, through GCI Holdings, in Alaska DigiTel and its two PCS licenses.³¹

7. The Applicants contend that control of Alaska DigiTel would not change because “GCI will have the power to appoint only one of the members of [Alaska DigiTel’s] Board of Managers, leaving the power to appoint a majority of the Board of Managers with the original owner of [Alaska DigiTel].”³² The Applicants nonetheless seek prior approval of the applications,³³ asserting that approval of the proposed transaction is in the public interest. They state that it would result in an infusion of capital into Alaska DigiTel and that increased resources would allow Alaska DigiTel “to improve its services to the public and to compete more effectively against other large competitors in the market.” Further, the Applicants state that this proposed transaction would have no adverse effect on competition in the relevant market. Thus, they conclude that approval of this proposed transaction would serve the public interest.³⁴

C. Application Review Process

8. On January 27, 2006, pursuant to section 310(d) of the Communications Act,³⁵ Alaska DigiTel, Denali, and GCI filed an application seeking consent to the assignment of a license held by Denali to Alaska DigiTel,³⁶ and an application seeking consent to the transfer of control of a 78 percent “non-controlling” interest in Alaska DigiTel to GCI.³⁷ On February 1, 2006, the Wireless Telecommunications Bureau (“Bureau”) sought comment on these applications via public notice.³⁸ On February 15, 2006, MTA Wireless, which holds a cellular license in south central Alaska (Matanuska Valley) just outside of Anchorage and provides mobile telephony service, filed a petition to deny the

³⁰ Application Exhibit 1 at 2-3.

³¹ *See id.* The Applicants also note that the applications do not seek approval of GCI’s option to acquire all of the issued and outstanding ownership interests in Alaska DigiTel, and that any such approval would have to be sought in a separate application. *Id.* at 2-3 n.6.

³² Application Exhibit 1 at 3.

³³ Application Exhibit 1 at 1 n.2 (stating that they seek approval “out of an abundance of caution”).

³⁴ Application Exhibit 1 at 4.

³⁵ 47 U.S.C. § 310(d).

³⁶ Assignment Application.

³⁷ Transfer of Control Application.

³⁸ Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and *De Facto* Transfer Lease Application Accepted for Filing, *Public Notice*, Report No. 2383, at 2, 6 (rel. Feb. 1, 2006) (“Comment Public Notice”). The Comment Public Notice set the Petition to Deny deadline at 14 days after the release of the Public Notice. *See id.* at 1. Pleadings and comments are available on the Commission’s Universal Licensing System (“ULS”) by searching the application file numbers and Electronic Comment Filing System (“ECFS”) website at www.fcc.gov/cgb/ecfs/ by searching under the docket number.

applications or designate the applications for an evidentiary hearing,³⁹ to which the Applicants responded with a joint opposition.⁴⁰ MTA Wireless countered with a reply to the joint opposition, and supplemental filings.⁴¹

9. On June 9, 2006, the Bureau adopted a protective order, pursuant to which third parties would be allowed to review confidential or proprietary documents submitted by the Applicants.⁴² The Bureau also released a public notice changing the *ex parte* status of the proceeding from restricted to permit-but-disclose.⁴³ Contemporaneously with these releases, Bureau staff requested additional information from the Applicants ("Information Request").⁴⁴ The Applicants their response to the Information Request on June 16, 2006.⁴⁵ The Applicants voluntarily provided additional information on July 17, 2006, including: (1) the Reorganization Agreement among GCI, Alaska DigiTel, and Denali dated as of June 16, 2006 which contains exhibits of proposed agreements including the proposed operating agreement that would govern the post-transaction relationship between GCI, Alaska DigiTel, and Denali ("*Operating Agreement*"), a proposed management agreement ("*Management Agreement*"), and a proposed non-compete agreement; (2) the 2004 distribution agreement by which GCI resells Dobson's mobile telephony services in Alaska ("*Resale Agreement*"); and (3) the agreements whereby GCI is leasing portions of its PCS spectrum to Dobson ("*Lease Agreements*").⁴⁶

10. Also on June 9, 2006, the Bureau announced by public notice that information contained

³⁹ See MTA Wireless Petition to Deny.

⁴⁰ Applicants Joint Opposition to Petition to Deny Applications, filed by General Communication, Inc., Alaska DigiTel, LLC, Denali PCS, LLC (Mar. 1, 2006) ("Applicants March 1, 2006 Joint Opposition").

⁴¹ Reply to Applicants Joint Opposition to Deny Applications, filed by Matanuska-Kenai, Inc., d/b/a Matanuska Wireless (Mar. 13, 2006) ("MTA Wireless March 13, 2006 Reply"); Letter from Stefan M. Lopatkiewicz, Dorsey & Whitney LLC, Counsel for MTA Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 9, 2006).

⁴² Applications for the Assignment of Licenses from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communication, Inc., Protective Order, WT Docket No. 06-114, *Protective Order*, DA 06-1246 (rel. June 9, 2006).

⁴³ *Ex Parte* Status of Applications for the Assignment of Licenses from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communication, Inc., WT Docket No. 06-114, *Public Notice*, DA 06-1247 (rel. June 9, 2006).

⁴⁴ Letter from James D. Schlichting, Deputy Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Thomas Gutierrez, Lukas, Nace, Gutierrez & Sachs, and Carl W. Northrop, Paul Hastings Janofsky & Walker, LLP (June 9, 2006).

⁴⁵ Letter from Carl W. Northrop, Paul Hastings Janofsky & Walker, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (confidential version filed June 16, 2006; redacted version filed June 14, 2006) ("Applicants' June 16, 2006 Response to Information Request"). Subsequently, Applicants submitted a revised redacted version of the Noncompetition Agreement requested by Bureau staff because portions of this document were later publicly filed with the U.S. Securities and Exchange Commission and are no longer confidential. See Letter from Michael Lazarus, Paul, Hastings, Janofsky & Walker, LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 29, 2006)..

⁴⁶ Letter from Carl W. Northrop, Paul Hastings Janofsky & Walker, LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (July 17, 2006). The Applicants also submitted an Agreement for WAP Deck Access and an Agreement for Temporary Access to Dobson's Billing and Activation Systems, effective September 29, 2004 ("*Billing Access Agreement*").

in the Numbering Resource Utilization and Forecast (“NRUF”) and disaggregated, carrier-specific local number portability (“LNP”) data related to wireless telecommunications carriers would be placed into the record, subject to a separate protective order (“NRUF Protective Order”).⁴⁷ GCI, MTA Wireless, and ACS Wireless requested access to this data.⁴⁸ The Bureau placed the NRUF and LNP reports into the record, pursuant to a protective order, and provided the NRUF and LNP reports to the Applicants on July 21, 2006.

11. On July 21, 2006, ACS Wireless, which holds cellular licenses in Alaska’s major communities and broadband PCS licenses across the State of Alaska and which provides mobile telephony services, submitted comments and a petition to intervene in support of the MTA Wireless Petition to Deny.⁴⁹ In its comments, ACS Wireless argues that the Commission should deny the applications or designate the applications for an evidentiary hearing. If the Commission determines to designate a hearing, ACS Wireless asks the Commission to grant its petition to intervene in the hearing. ACS Wireless also argues that if the Commission grants the applications, it should impose conditions on GCI such as ordering GCI to divest spectrum and ordering Alaska DigiTel to remain an independent facilities-based provider.⁵⁰ Subsequently, the Applicants, MTA Wireless, and ACS Wireless made a number of filings regarding ACS Wireless’s intervention,⁵¹ access to confidential information,⁵² and the

⁴⁷ Applications for the Assignment of Licenses from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communication, Inc.; Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports Placed into the Record, Subject to Protective Order, WT Docket No. 06-114, *Public Notice*, DA 06-1249 (rel. June 9, 2006); Applications for the Assignment of Licenses from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communication, Inc., Protective Order, WT Docket No. 06-114, *Protective Order*, DA 06-1248 (rel. June 9, 2006).

⁴⁸ See Letter from Carl W. Northrop, Paul Hastings Janofsky & Walker, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (June 19, 2006); Letter from Thomas Gutierrez, Lukas, Nace, Gutierrez & Sachs, to Marlene H. Dortch, Secretary, Federal Communications Commission (June 23, 2006); Letter from Stefan M. Lopatkiewicz, Dorsey & Whitney, Counsel for MTA Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (June 20, 2006); Letter from Elisabeth H. Ross, Birch, Horton, Bittner and Cherot, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 21, 2006).

⁴⁹ ACS Wireless July 21, 2006 Comments/Petition. ACS Wireless also requested that its counsel be able to review confidential information covered by both protective orders adopted by the Bureau on June 9, 2006. Letter from Elisabeth H. Ross, Birch, Horton, Bittner and Cherot, P.C. to Marlene H. Dortch, Secretary, Federal Communications Commission (July 21, 2006).

⁵⁰ ACS Wireless July 21, 2006 Comments/Petition at 5.

⁵¹ Letter from Russell D. Lukas, Lukas, Nace, Gutierrez & Sachs, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 4, 2006) (“Applicants August 4, 2006 Joint Reply”); Letter from Elisabeth H. Ross, Birch, Horton, Bittner and Cherot, P.C. to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 9, 2006). ACS Wireless supplemented this letter with additional arguments in an August 14, 2006 letter. See Letter from Elisabeth H. Ross, Birch, Horton, Bittner and Cherot, PC, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 14, 2006) (“ACS Wireless August 14, 2006 Comments”).

⁵² See Applicants Joint Opposition to ACS Wireless, Inc.’s Acknowledgement of Confidentiality, filed by GCI and Alaska DigiTel (July 26, 2006); Reply to Applicants Joint Opposition to Confidentiality Acknowledgements, filed by ACS Wireless (July 28, 2006); Comments on Filing of ACS Wireless, Inc., filed by MTA Wireless (Aug. 2, 2006) (“MTA Wireless August 2, 2006 Comments”); Letter from Carl W. Northrop, Paul, Hastings, Janofsky, & Walker, LLP and Thomas Gutierrez, Lukas, Nace Gutierrez & Sachs to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 23, 2006); Letter from Elisabeth H. Ross, Birch, Horton, Bittner and Cherot, (continued....)

pending applications.⁵³ On August 24, 2006, the Applicants submitted a letter outlining the procedural agreement reached on August 23, 2006, by GCI, Denali, Alaska DigiTel, ACS Wireless, and MTA Wireless.⁵⁴ In this agreement, the Applicants agreed to provide MTA Wireless and ACS Wireless certain redacted copies of the roaming and service agreements that Alaska DigiTel had entered with SprintCom (respectively, *Roaming Agreement* and *Service Agreement*). These documents were also provided to Bureau staff on September 14, 2006.⁵⁵ The agreement between the Applicants, MTA Wireless, and ACS Wireless, and the submission of the Sprint Agreements, resulted in the filing of additional pleadings and *ex parte* letters.⁵⁶

12. On September 15, 2006, Applicants submitted a redacted version of a letter of intent that had been executed by GCI and Dobson in 2004 ("*Letter of Intent*") that related to their *Resale Agreement*.⁵⁷ On September 25 and 28, 2006, respectively, MTA Wireless and ACS Wireless submitted redacted letters addressing their concerns relating to the *Letter of Intent*.⁵⁸

13. On October 27, 2006, the Bureau released a public notice to inform all interested parties of the Commission's intent to utilize in its analyses and to place in the record of this proceeding updated
(Continued from previous page) _____

P.C. to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 23, 2006); Letter from Elisabeth H. Ross, Birch, Horton, Bittner and Cherot, P.C. to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 28, 2006).

⁵³ See Supplementary Comments in Support of Petition to Deny Applications, filed by MTA Communications, Inc., d/b/a MTA Wireless (July 24, 2006) ("MTA Wireless July 24, 2006 Comments"); Applicants Joint Opposition to MTA Wireless Supplemental Comments, filed by GCI and Alaska DigiTel, (Aug. 8, 2006) ("Applicants August 8, 2006 Joint Opposition").

⁵⁴ Letter from Michael L. Lazarus, Paul, Hastings, Janofsky & Walker, LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 24, 2006) ("Agreement Between Applicants, MTA Wireless, and ACS Wireless").

⁵⁵ Letter from Thomas Gutierrez, Lukas, Nace, Gutierrez & Sachs to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 10, 2006) (memorializing the document delivery for the record) ("Sprint Agreements Letter"). Also included in this document delivery is a letter from Sprint Nextel providing notice of terminating the Service Agreement between SprintCom and Alaska DigiTel. Letter from Wes Coffindaffer, Sprint Nextel to Stephen Roberts, Alaska DigiTel (June 9, 2006) ("Notice of Service Agreement Termination Letter").

⁵⁶ Request that the Commission Ask for a Limited, Supplemental Production of Documents for Purposes of its Public Interest and Competitive Effects Analyses, filed by ACS Wireless (Sept. 6, 2006) ("ACS Wireless September 6, 2006 Request for Supplemental Documents"); Reply to Applicants Filings, filed by MTA Wireless (confidential version filed Sept. 6, 2006; redacted version filed Sept. 7, 2006) ("MTA Wireless September 6, 2006 Comments"); Supplemental Comments, filed by ACS Wireless (confidential version filed Sept. 6, 2006; redacted version filed Sept. 7, 2006) ("ACS Wireless September 6, 2006 Comments"); Applicants Joint Response to September 6, 2006 Submissions of MTA Wireless and ACS Wireless, filed by GCI and Alaska DigiTel (confidential version filed Sept. 13, 2006; redacted version filed Sept. 14, 2006) ("Applicants September 13, 2006 Joint Response").

⁵⁷ Letter from Carl W. Northrop, Paul Hastings, Janofsky & Walker LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 15, 2006). This document had not been identified in response to the Commission's General Information Request of June 9, 2006.

⁵⁸ Letter from Stefan M. Lopatkiewicz, Dorsey & Whitney LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 25, 2006) ("MTA Wireless September 25, 2006 Comments"); Letter from Elisabeth H. Ross, Birch, Horton, Bittner and Cherot, P.C. to Marlene H. Dortch, Secretary, Federal Communications Commission (confidential version filed Sept. 27, 2006; redacted version filed Sept. 28, 2006) ("ACS Wireless September 27, 2006 Comments").

NRUF and LNP data, subject to the provisions of the protective order adopted on June 9, 2006.⁵⁹ On November 17, 2006, the Bureau placed these NRUF and LNP reports into the record.

14. On November 21, 2006, Applicants submitted proposed conditions to address potential harms from coordinated interaction.⁶⁰ On December 4, 2006, ACS Wireless and MTA Wireless submitted letters addressing their concerns on the proposed conditions.⁶¹ On December 6, 2006, the Applicants submitted a letter responding to MTA Wireless's and ACS Wireless's concerns on the proposed conditions,⁶² and on December 19, submitted a letter outlining additional proposed conditions.⁶³

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

15. Pursuant to sections 214(a) and 310(d) of the Communications Act, the Commission must determine whether the Applicants have demonstrated that the proposed assignment of a license held by Denali to Alaska DigiTel and the transfer of control of a 78-percent indirect ownership interest in Alaska DigiTel to GCI would serve the public interest, convenience, and necessity.⁶⁴ In applying our public interest test, we must assess whether the proposed transaction complies with the specific provisions of the Communications Act, the Commission's rules, and federal communications policy.⁶⁵ If a proposed

⁵⁹ Applications for the Assignment of Licenses from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communication, Inc.; Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports Placed into the Record, Subject to Protective Order, WT Docket No. 06-114, *Public Notice*, DA 06-2230 (rel. Oct. 27, 2006).

⁶⁰ Letter from Carl W. Northrop, Paul Hastings Janofsky & Walker, LLP to Marlene Dortch, Secretary, Federal Communications Commission (Nov. 21, 2006) ("Applicants Proposed Conditions").

⁶¹ Letter from Elisabeth H. Ross, Birch, Horton, Bittner and Cherot, P.C. to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 4, 2006) ("ACS Wireless December 4, 2006 Comments"); Letter from Stefan M. Lopatkiewicz, Dorsey & Whitney LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 4, 2006) ("MTA Wireless December 4, 2006 Comments"). On December 5, 2006, the Alaska Telephone Association submitted a letter addressing their concerns with this transaction. Letter from James Rowe, Alaska Telephone Association to Marlene H. Dortch, Secretary Federal Communications Commission (Dec. 5, 2006) ("Alaska Telephone Association Comments").

⁶² Letter from Carl W. Northrop, Paul Hastings Janofsky & Walker, LLP to Marlene Dortch, Secretary, Federal Communications Commission (Dec. 6, 2006) ("Applicants December 6, 2006 Joint Response"). On December 14, 2006, Applicants submitted a letter addressing GCI's and Dobson's relationship. Letter from Carl W. Northrop, Paul Hastings Janofsky & Walker, LLP to Marlene Dortch, Secretary, Federal Communications Commission (Dec. 14, 2006)

⁶³ Letter from Michael Lazarus, Paul Hastings Janofsky & Walker, LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 19, 2006) ("Applicants December 19 Joint Comments").

⁶⁴ 47 U.S.C. §§ 214(a), 310(d).

⁶⁵ Section 310(d), 47 U.S.C. § 310(d), requires that the Commission consider the applications as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. *See, e.g.*, Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc., WT Docket No. 06-96, *Memorandum Opinion and Order*, FCC 06-167, at 9-10 ¶ 13 (rel. Nov. 13, 2006) ("*DoCoMo-Guam Cellular Order*"). Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc., WT Docket No. 05-339, *Memorandum Opinion and Order*, FCC 06-146, at 10 ¶ 16 (rel. Oct. 2, 2006) ("*ALLTEL-Midwest Wireless Order*"); Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees, *Memorandum Opinion and Order*, 21 FCC Rcd 7358, 7360 ¶ 7 (2006) ("*Sprint Nextel-Nextel Partners Order*"); SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control, WC (continued....)

transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes. The Commission then employs a balancing test weighing any potential public interest harms of a proposed transaction against any potential public interest benefits to ensure that, on balance, the proposed transaction would serve the public interest. The applicants involved with each transaction bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.⁶⁶ If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, section 309(e) of the Act requires that we designate the application for hearing.⁶⁷

16. Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite “citizenship, character, financial, technical, and other qualifications.”⁶⁸ Therefore, as a threshold matter, the Commission must determine whether the applicants to the proposed transaction meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission’s rules.⁶⁹ In making this determination, the Commission does not, as a general rule, re-evaluate the qualifications of transferors and/or assignors unless issues related to basic qualifications have been designated for hearing by the Commission or have been

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Docket No. 05-65, *Memorandum Opinion and Order*, 20 FCC Rcd 18290, 18300 ¶ 16 (2005) (“*SBC-AT&T Order*”); Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control, WC Docket No. 05-75, *Memorandum Opinion and Order*, 20 FCC Rcd 18433, 18442-43 ¶ 16 (2005) (“*Verizon-MCI Order*”); Applications of Nextel Communications, Inc. and Sprint Corporation, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 13976 ¶ 20 (2005) (“*Sprint-Nextel Order*”); Applications of Western Wireless Corporation and ALLTEL Corporation, WT Docket No. 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13053, 13062 ¶ 17 (2005) (“*ALLTEL-Western Wireless Order*”); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21542-43 ¶ 40 (2004) (“*Cingular-AT&T Wireless Order*”).

⁶⁶ See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167 at 10 ¶ 13; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 10 ¶ 16; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7360 ¶ 7; *Sprint-Nextel Order*, 20 FCC Rcd at 13976-77 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

⁶⁷ 47 U.S.C. § 309(e). See also *DoCoMo-Guam Cellular Order*, FCC 06-167 at 11 ¶ 14; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 10 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21542-43 ¶ 40. Section 309(e)’s requirement applies only to those applications to which Title III of the Act applies, i.e., radio station licenses. The Commission is not required to designate for hearing applications for the transfer or assignment of Title II authorizations when we are unable to find that the public interest would be served by granting the applications, see *ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979), but of course may do so if we find that a hearing would be in the public interest.

⁶⁸ See 47 U.S.C. §§ 308, 310(d); see also *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 11 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

⁶⁹ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see also *DoCoMo-Guam Cellular Order*, FCC 06-167 at 11 ¶ 14; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 11 ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 10; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

sufficiently raised in petitions to warrant designation for hearing.⁷⁰ Conversely, section 310(d) obligates the Commission to consider whether the proposed transferee and/or assignee is qualified to hold Commission licenses.⁷¹ When evaluating the qualifications of a potential licensee, the Commission previously has stated that it will review allegations of misconduct directly before it,⁷² as well as conduct that takes place outside of the Commission.⁷³

17. Our public interest evaluation necessarily encompasses the “broad aims of the Communications Act,” which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing the spectrum in the public interest. Our public interest analysis may also entail assessing whether the proposed transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers. In conducting this analysis, the Commission may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.⁷⁴

18. In determining the competitive effects of the proposed transaction, our analysis is

⁷⁰ See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167 at 11 ¶ 14; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 11 ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362 ¶ 10; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063-64 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44. See also Stephen F. Sewell, *Assignment and Transfers of Control of FCC Authorizations under Section 310(d) of the Communications Act of 1934*, 43 FED. COMM. L. J. 277, 339-40 (1991). The policy of not approving assignments or transfers when issues regarding the licensee’s basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. See *id.*

⁷¹ See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167 at 11 ¶ 14; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 11 ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362 ¶ 10; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

⁷² See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 11 ¶ 17; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47. The Commission will consider any violation of any provision of the Act, or of the Commission’s rules or policies, as predictive of an applicant’s future truthfulness and reliability and, thus, as having a bearing on an applicant’s character qualifications. *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 n.85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47; Policy Regarding Character Qualifications In Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, Gen. Docket No. 81-500, *Report and Order and Policy Statement*, 100 F.C.C. 2d 1179, 1209-10 ¶ 57 (1986), *modified*, 5 FCC Rcd 3252 (1990), *recon. granted in part*, 6 FCC Rcd 3448 (1991), *modified in part*, 7 FCC Rcd 6564 (1992).

⁷³ See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 11 ¶ 17; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47. The Commission previously has determined that in its review of character issues, it will consider forms of adjudicated, non-Commission related misconduct that include: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition. See, e.g., *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 n.86; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

⁷⁴ See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167 at 12 ¶ 15; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 12 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

informed by, but not limited to, traditional antitrust principles.⁷⁵ Because the Commission is charged with determining whether the transfer and assignment of licenses serves the broader public interest, we take into account factors beyond those considered under a traditional antitrust analysis. In the communications industry, competition is shaped not only by antitrust rules, but also by the regulatory policies that govern the interactions of industry players. In addition to considering whether a transaction or merger will reduce existing competition, therefore, the Commission also must focus on whether the transaction or merger will accelerate the decline of market power by dominant firms in the relevant communications markets and the merger's effect on future competition. We also recognize that the same consequences of a proposed transaction or merger that are beneficial in one sense may be harmful in another. For instance, combining assets may allow a merged entity to reduce transaction costs and offer new products, but it may also create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.⁷⁶

19. Our public interest authority also enables us to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.⁷⁷ Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.⁷⁸ Similarly, section

⁷⁵ See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167 at 12 ¶ 16; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 12 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13977-78 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42. See also *Satellite Business Systems, Memorandum, Opinion, Order, Authorization and Certification*, 62 F.C.C.2d 997, 1088 (1977), *aff'd sub nom* *United States v. FCC*, 652 F.2d 72 (DC Cir. 1980) (*en banc*); *Northern Utilities Service Co. v. FERC*, 993 F.2d 937, 947-48 (1st Cir. 1993) (stating that public interest standard does not require agencies "to analyze proposed mergers under the same standards that the Department of Justice . . . must apply"). The Commission and the Department of Justice ("DOJ") each have independent authority to examine telecommunications mergers, but the standards governing the Commission's review differ from those of DOJ. See, e.g., *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 12 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42. DOJ reviews mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that are likely to lessen competition substantially in any line of commerce. 15 U.S.C. § 18.

⁷⁶ See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167 at 13 ¶ 16; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 13 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

⁷⁷ See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167, at 13 ¶ 17; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 13 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43 (conditioning approval on the divestiture of operating units in select markets). See also *Application of Worldcom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to Worldcom, Inc.*, CC Docket No. 97-211, *Memorandum Opinion and Order*, 13 FCC Rcd 18025, 18032 ¶ 10 (1998) (conditioning approval on the divestiture of MCI's Internet assets); *Applications of VoiceStream Wireless Corporation, PowerTel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, IB Docket No. 00-187, *Memorandum Opinion and Order*, 16 FCC Rcd. 9779 (2001) ("*Deutsche Telekom-VoiceStream Wireless Order*") (conditioning approval on compliance with agreements with Department of Justice and Federal Bureau of Investigation addressing national security, law enforcement, and public safety concerns).

⁷⁸ 47 U.S.C. § 303(r). See also *DoCoMo-Guam Cellular Order*, FCC 06-167 at 13 ¶ 17; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 13 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *Sprint-Nextel Order*, 20 FCC Rcd at 13978-79 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T* (continued....)

214(c) of the Act authorizes the Commission to attach to the certificate “such terms and conditions as in its judgment the public convenience and necessity may require.”⁷⁹ Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to impose and enforce conditions to ensure that the transaction will, overall, serve the public interest.⁸⁰ Despite broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (i.e., transaction-specific harms) and that are related to the Commission’s responsibilities under the Communications Act and related statutes.⁸¹ Thus, we will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.

IV. PUBLIC INTEREST ANALYSIS

A. Qualifications of Applicants

20. In this proceeding, no issues have been raised with respect to the basic qualifications of Alaska DigiTel, GCI, and Denali. Thus, we find that there is no reason at this time to reevaluate the qualifications of these entities.

B. Competitive Analysis

21. In our analysis of the proposed GCI-Alaska DigiTel-Denali transaction, we consider the potential competitive effects that might result from increased concentration within the mobile telephony market. Horizontal transactions may lead to a loss of a competitor, and such loss could also result in reduced competition. Horizontal transactions, including mergers, raise competitive concerns when they reduce the availability of choices to the point that the resulting firm has the incentive and the ability, either by itself or in coordination with other firms, to raise prices. The ability to raise prices above competitive levels is generally referred to as “market power.” Market power may also enable sellers to reduce competition on dimensions other than price, including innovation and service quality. A fundamental tenet of the Commission’s public interest review is that, absent significant offsetting efficiencies or other public interest benefits, a transaction that creates or enhances significant market power or facilitates its use is unlikely to serve the public interest.⁸²

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Wireless Order, 19 FCC Rcd at 21545 ¶ 43; *FCC v. Nat’l Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978) (upholding broadcast-newspaper cross-ownership rules adopted pursuant to section 303(r)); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (section 303(r) powers permit Commission to order cable company not to carry broadcast signal beyond station’s primary market); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989) (syndicated exclusivity rules adopted pursuant to section 303(r) authority).

⁷⁹ 47 U.S.C. § 214(c). See also *DoCoMo-Guam Cellular Order*, FCC 06-167 at 13-14 ¶ 17; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 13-14 ¶ 20; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

⁸⁰ See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167 at 14 ¶ 17; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 14 ¶ 20; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43. See also *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043, 1049 (7th Cir. 1992) (discussing Commission’s authority to trade off reduction in competition for increase in diversity in enforcing public interest standard).

⁸¹ See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167 at 14 ¶ 17; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 14 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

⁸² See, e.g., *ALLTEL-Midwest Order*, FCC 06-146 at 14 ¶ 22; *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 30; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at (continued....)

22. A horizontal transaction or merger is unlikely to create or enhance market power or facilitate its exercise unless the transaction significantly increases concentration and results in a concentrated market, properly defined and measured. Transactions that do not significantly increase concentration or do not result in a concentrated market ordinarily require no further competitive analysis. Market concentration is generally measured by the Herfindahl-Hirschman Index (“HHI”), and changes in concentration are measured by the change in the HHI. However, HHI data provide only the beginning of the analysis. The Commission then examines other market factors that pertain to competitive effects, including the incentive and ability of other firms to react and of new firms to enter the market. Ultimately, the Commission must assess whether it is likely that the combined firm could exercise market power in any particular market.⁸³

23. As the Commission has discussed, transactions such as mergers can diminish competition and firms can exercise market power in a number of ways. A transaction may create market power in a single firm and allow that firm to act on its own in raising prices, lowering quality, reducing innovation, or restricting deployment of new technologies or services. A transaction also may diminish competition if it makes the firms selling in the market more likely to engage in a coordinated manner that harms consumers, such as tacit or express collusion. The effects of such coordinated behavior may include increased prices, reduced number of minutes in a given price plan, degraded output quality, or some combination of these effects. It may also include adverse effects such as reduced innovation and restricted deployment of new technologies and services.⁸⁴

24. We begin our competitive analysis by determining the appropriate market definitions to employ with respect to the proposed transaction, as well as identifying the relevant market participants. We then examine possible post-transaction concentration concerns, applying our initial screens pertaining to spectrum aggregation and to subscriber-based concentration measures. Next, we consider the possible horizontal competitive harms that could occur due to a significant increase in market concentration or market power⁸⁵ or due to the circumstances and structure of a particular transaction.⁸⁶ Finally, we examine other concerns that have been raised by MTA Wireless and ACS Wireless.

1. Market Definition

a. Product Market

25. For purposes of analyzing this transaction, we adopt the same product market definition as applied by the Commission in its recent wireless merger orders – the *ALLTEL-Midwest Order*, *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order*. In these orders,

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21556 ¶ 68; Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, at § 0.1, n.6. (Apr. 2, 1992, revised Apr. 8, 1997) (“*DOJ/FTC Merger Guidelines*”).

⁸³ See, e.g., *ALLTEL-Midwest Order*, FCC 06-146 at 15 ¶ 23; *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 31; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 69; *DOJ/FTC Merger Guidelines* at § 1.0.

⁸⁴ See, e.g., *ALLTEL-Midwest Order*, FCC 06-146 at 15 ¶ 24; *Sprint-Nextel Order*, 20 FCC Rcd at 13982 ¶ 32; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 70.

⁸⁵ See, e.g., *ALLTEL-Midwest Order*, FCC 06-146 at 16 ¶ 25; *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 32; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 70.

⁸⁶ See Section IV.B.3(b), *infra*.

the Commission found that there are separate relevant product markets for interconnected mobile voice services and mobile data services, and also for residential services and enterprise services. Nevertheless, it analyzed all of these product markets under the combined market for mobile telephony service. Based on consideration of various factors, including the nature of these services and their relationship with each other, the Commission found that this approach provided a reasonable assessment of any potential competitive harm resulting from the transactions under review.⁸⁷ The Applicants, MTA Wireless, and ACS Wireless do not challenge this product market definition in their submissions.

b. Geographic Market

26. We find that the relevant geographic market for analyzing the competitive effect of the GCI-Alaska DigiTel-Denali transaction on mobile telephony is local. As discussed below, this finding is based on the observation that consumers obtain their wireless service in a local area, not on a state-wide basis.

27. In prior orders, the Commission has found that the relevant geographic markets are local, are larger than counties, may encompass multiple counties and, depending on the consumer's location, may even include parts of more than one state.⁸⁸ In these orders, the Commission has identified two sets of geographic areas that may be used to define local markets – Component Economic Areas (“CEAs”) and Cellular Market Areas (“CMAs”).⁸⁹ MTA Wireless argues that the relevant market is the Anchorage Basic Trading Area (“BTA”)⁹⁰ and secondarily the state-wide mobile telephony market.⁹¹ MTA Wireless does not provide any evidence that the relevant market is either the Anchorage BTA or state-wide for purposes of analyzing this transaction. Therefore, we are not persuaded by MTA Wireless's argument for a state-wide geographic market, and therefore for purposes of analyzing the competitive effects of this transaction, we find that the relevant geographic market is local, and continue to analyze the local markets using CEAs and CMAs, consistent with Commission precedent.

c. Input Market for Spectrum

28. Since wireless carriers need access to spectrum in order to compete in the provision of service, we analyze potential competitive effects of spectrum aggregation that may result from this

⁸⁷ See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167 at 15 ¶ 19; *ALLTEL-Midwest Order*, FCC 06-146 at 16 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 28; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558 ¶ 74.

⁸⁸ See *DoCoMo-Guam Cellular Order*, FCC 06-167 at 15-16 ¶ 20, *Sprint-Nextel Order*, 20 FCC Rcd at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562-63 ¶¶ 89-90. This finding is primarily rooted in the premise that consumers obtain their wireless service in a local area, not on a national basis. See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13989 ¶ 51.

⁸⁹ See *DoCoMo-Guam Cellular Order*, FCC 06-167 at 16 ¶ 20, *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 57; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072-73 ¶¶ 44-45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶¶ 104-105.

⁹⁰ BTAs and Major Trading Areas (“MTAs”) are Material Copyright © 1992 Rand McNally & Company. Rights granted pursuant to a license from Rand McNally & Company through an agreement with the Federal Communications Commission. See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, WT Docket No. 06-17, *Eleventh Report*, FCC 06-142, at 10, n.26 (rel. Sept. 29, 2006) (“*Eleventh Competition Report*”).

⁹¹ MTA Wireless September 6, 2006 Comments at 33.

transaction.⁹² The Commission has previously evaluated whether spectrum should be included within the input market for mobile telephony service by examining its suitability for mobile voice service: its physical properties; the state of equipment technology; whether the spectrum is licensed with a mobile allocation and corresponding service rules; and whether the spectrum is committed to another use that effectively precludes its uses for mobile telephony.⁹³ Consistent with previous Commission determinations, we find that the input market currently includes cellular, PCS, and SMR spectrum⁹⁴ and currently totals approximately 200 MHz of spectrum.⁹⁵

29. The Applicants argue that additional spectrum is scheduled to become available in the near term, including 90 MHz in the Advanced Wireless Services (“AWS”) auction and 60 MHz of 700 MHz spectrum that has been scheduled for auction, and that this additional spectrum should be included in analyzing this transaction.⁹⁶ Also, the Applicants argue that both MTA Wireless and ACS Wireless were participants and qualified bidders in the AWS Auction, and therefore both carriers have an actual and immediate capability to acquire spectrum in Alaska in order to provide additional facilities-based service.⁹⁷ In contrast, MTA Wireless and ACS Wireless argue that the AWS spectrum should not be included in the spectrum input market because this spectrum is encumbered and will not provide immediate capacity for auction winners.⁹⁸ In addition, MTA Wireless argues that although some of the

⁹² *Cingular-AT&T Wireless Order*, 20 FCC Rcd at 21568 ¶ 109; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13074 ¶ 49.

⁹³ *DoCoMo-Guam Cellular Order*, FCC 06-167 at 15-16 ¶ 21; *ALLTEL-Midwest Order*, FCC 06-146 at 18 ¶ 31; *Sprint-Nextel Order*, 20 FCC Rcd at 13992 ¶ 61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 41; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21560-61 ¶ 81.

⁹⁴ Under these decisions, Broadband Radio Service/Educational Broadband Service (“BRS/EBS”) 2.5 GHz spectrum is not considered part of the input market for mobile telephony service. Currently, this spectrum is committed to uses other than mobile telephony. See *DoCoMo-Guam Cellular Order*, FCC 06-167 at 15-16 ¶ 21, n.102; *ALLTEL-Midwest Order*, FCC 06-146 at 18 ¶ 31 n.129; *Sprint-Nextel Order*, 20 FCC Rcd at 13992-93 ¶ 61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 10371 n.127; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21561 n.283.

⁹⁵ The approximately 200 MHz of spectrum includes 50 MHz for cellular services, 120 MHz for Broadband PCS, and additional spectrum for SMR. See *Eleventh Competition Report* at ¶¶ 62-64. See also *DoCoMo-Guam Cellular Order*, FCC 06-167 at 15-16 ¶ 21, n. 103; *ALLTEL-Midwest Order*, FCC 06-146 at 18 ¶ 31 n.130; *Sprint-Nextel Order*, 20 FCC Rcd at 13992 n.155; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 41; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21561 ¶ 81.

⁹⁶ Applicants March 1, 2006 Joint Opposition at 14-15; Applicants August 8, 2006 Joint Opposition at 3.

⁹⁷ Applicants August 8, 2006 Joint Opposition at 3. We note that MTA Wireless had the winning bid in Auction No. 66 for CMA187-A Anchorage Alaska (20 MHz), CMA316-A Alaska 2-Bethel (20 MHz), and REA007-F Alaska (20 MHz), and the Bureau granted MTA Wireless the licenses on December 18, 2006. ACS Wireless was not one of the winning bidders in any of the Alaska markets. See Auction of Advanced Wireless Services Licenses Closes; Winning Bidders Announced for Auction No. 66, *Public Notice*, Report No. AUC-06-66-F (Auction No. 66), DA 06-1882 (rel. Sept. 20, 2006) at Attachment A. See also *Wireless Telecommunications Bureau Grants Advanced Wireless Service Licenses, Public Notice*, DA 06-2536 (rel. Dec. 18, 2006) at Attachment A.

⁹⁸ MTA Wireless March 13, 2006 Reply at 9-10; Declaration of Richard Kenshalo on behalf of Matanuska-Kenai, Inc., d/b/a Matanuska Wireless (Mar. 13, 2006) (“Kenshalo March 13, 2006 Declaration”) at 4-5 ¶ 8; MTA Wireless September 6, 2006 Comments at 28; Declaration of Richard Kenshalo on behalf of MTA Communications, Inc., d/b/a MTA Wireless (confidential version filed Sept. 6, 2006; redacted version filed Sept. 7, 2006) at 1-2; ACS Wireless September 6, 2006 Comments at 20 n.62.

700 MHz spectrum has been auctioned, this spectrum band is encumbered by broadcast users.⁹⁹ Further, MTA Wireless notes that mobile telephony equipment is not currently being produced for either the AWS or 700 MHz spectrum bands.¹⁰⁰ Finally, MTA Wireless asserts that in recent orders that the Commission has limited the input market for spectrum to cellular, PCS, and SMR spectrum, and that this transaction should be considered on the basis of this spectrum only.¹⁰¹

30. For purposes of analyzing this transaction, we do not find it necessary to include either AWS or 700 MHz spectrum in the input market for spectrum as suitable for the provision of mobile telephony service. We note that time is still required to relocate existing government users of the AWS spectrum recently auctioned¹⁰² and for licensees to build systems that operate in this spectrum.¹⁰³ We similarly note that in the 700 MHz band more time is required to relocate existing analog broadcast users, to auction spectrum and issue new licenses, and for licensees to build systems that operate in this spectrum.¹⁰⁴ We do, however, anticipate that sometime in the near future, as this spectrum becomes available for more immediate use, as technological developments lead to performance and equipment advances, and as spectrum allocations are revised, the Commission will need to re-evaluate whether additional spectrum should be viewed as suitable for the provision of mobile telephony services.¹⁰⁵

d. Market Participants

31. The Commission has previously found that mobile telephony services offered by cellular, PCS, and SMR licensees employing various technologies provide the same basic voice and data

⁹⁹ MTA Wireless March 13, 2006 Reply at 10; Kenshalo March 13, 2006 Reply Declaration at 5 ¶ 9.

¹⁰⁰ MTA Wireless March 13, 2006 Reply at 10; Kenshalo March 13, 2006 Reply Declaration at 5-6 ¶ 10.

¹⁰¹ MTA Wireless March 13, 2006 Reply at 10; MTA Wireless September 6, 2006 Comments at 29 citing *ALLTEL-Western Wireless Order*, 20 FCC Rcd. at 13071 n.127.

¹⁰² See "FCC's Advanced Wireless Services (AWS) Spectrum Auction Concludes", News Release (rel. Sept. 18, 2006) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-267467A1.doc (last visited Dec. 15, 2006).

¹⁰³ See *ALLTEL-Midwest*, FCC 06-146 at 18 ¶ 31 n.129; *Sprint-Nextel Order*, 20 FCC Rcd at 13992-93 ¶ 61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 10371 n.127; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21561 n.283.

¹⁰⁴ With respect to the 700 MHz Band, the Digital Television and Public Safety Act of 2005 ("DTV Act"), amends Section 309(j)(14) of the Communications Act, 47 U.S.C. § 309(j)(14), to establish February 17, 2009 as a firm deadline for the end of the digital television (DTV) transition period, and requires the Commission to commence the auction of recovered analog broadcast spectrum no later than January 28, 2008. See Deficit Reduction Act of 2005, Pub.L. No. 109-171, 120 Stat. 4 (2006) (Title III constituting the DTV Act). Before the DTV Act, the Commission had been required to extend the end of the DTV transition at the request of individual broadcast licensees on a market-by-market basis if one or more of the four largest network stations or affiliates were not broadcasting in digital, digital-to-analog converter technology was not generally available, or 15 percent or more of television households were not receiving a digital signal. See 47 U.S.C. § 309(j)(14)(B)(i)-(iii) (2005). Despite the certainty afforded by the DTV Act in providing a date certain for the end of the DTV transition period, until the transition is complete the 700 MHz Band remains occupied by television broadcasters.

¹⁰⁵ See *ALLTEL-Midwest*, FCC 06-146 at 18 ¶ 31 n.129; *Sprint-Nextel Order*, 20 FCC Rcd at 13992-93 ¶ 61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 10371 n.127; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21561 n.283.

functionality and are indistinguishable to the consumer.¹⁰⁶ Generally, when computing initial measures of market concentration, the Commission has limited its analysis of market participants to facilities-based carriers, excluding mobile virtual network operators (“MVNOs”) and resellers¹⁰⁷ as well as satellite carriers and wireless Voice over Internet Protocol (“VoIP”) providers from consideration.¹⁰⁸

32. MTA Wireless and ACS Wireless argue that because the Commission has acknowledged that, in some instances, MVNOs and resellers may have an impact on the market, it should find that GCI through its resale relationship with Dobson would have a significant effect on competition in this market.¹⁰⁹ As a result, MTA Wireless argues that GCI should be considered a potential competitor and the transaction would result in the loss of two potential competitors (GCI and Denali) and one actual competitor (GCI).¹¹⁰ According to MTA Wireless, GCI and Denali would be lost as potential competitors

¹⁰⁶ See *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 19 ¶ 32; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶ 38; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92.

¹⁰⁷ MVNOs are one kind of reseller, distinguished from “traditional” resellers by a variety of factors including brand appeal, distribution channels, bundling wireless and non-wireless products, and value added services. See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Ninth Report*, 19 FCC Rcd 20597 (2005) at 20614 n.71 (“*Ninth Competition Report*”). The resale sector accounts for approximately 5 percent of all mobile telephony subscribers. See *Ninth Competition Report*, 19 FCC Rcd at 20613 ¶ 38.

¹⁰⁸ See *DoCoMo-Guam Cellular Order*, FCC 06-167 at 15-16 ¶ 22; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 19 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶ 38; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92. Although satellite providers offer facilities-based mobile voice and data services, the price of these services is currently significantly higher than for services offered by cellular, PCS, or SMR carriers. Therefore, most consumers would not view satellite phones as substitutes for mobile telephony. See Global Com, Iridium Satellite Phone Service Plans, at http://www.globalcomsatphone.com/satellite/services/iridium_service_plans.html (last visited Dec. 15, 2006); GlobalStar, Airtime Pricing, Voice Pricing, at <http://www.globalcomsatphone.com/satellite/services/globalstar.html> (last visited Dec. 15, 2006). See also *DoCoMo-Guam Cellular Order*, FCC 06-167 at 17 n.104; *ALLTEL-Midwest Order*, FCC 06-146 at 19 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 8. We also do not consider wireless VoIP carriers in our initial market analysis, in part because they currently provide nomadic service, as opposed to the mobile service provided by the mobile telephony providers. *Id.* By nomadic, we mean that customers are able to use wireless VoIP services from a number of different locations (for example, by using a laptop at different internet cafes all over a town). *DoCoMo-Guam Cellular Order*, FCC 06-167 at 17 n.104; *ALLTEL-Midwest Order*, FCC 06-146 at 19 ¶ 33 n.134; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 n.151.

¹⁰⁹ MTA Wireless March 13, 2006 Reply at 10-11; ACS Wireless July 21, 2006 Comments/Petition at 9.

¹¹⁰ MTA Wireless Petition to Deny at 6. In their Joint Opposition, the Applicants argue that MTA Wireless lacks standing to challenge the instant applications because it has not demonstrated that it is a “party in interest” as required by 47 U.S.C. § 309(d)(1). Applicants March 1, 2006 Joint Opposition at ii, 3-6. MTA Wireless states that it is a competitor “in the Alaska MTA” (MTA Wireless March 1, 2006 Reply at 2) and “seeks to expand its coverage area into Anchorage and other parts of Alaska and to increase its available operating capacity . . .” (MTA Wireless Petition to Deny at 2). MTA Wireless does not claim to compete directly with any of the Applicants for wireless telephone customers in its specific service area, which it describes as the Matanuska Valley, “immediately to the north and west of Anchorage.” MTA Wireless Petition to Deny at 2. Even if MTA Wireless lacks standing, however, we have discretion to consider the Petition as an informal objection. See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 14021 n.335 (citing Nextel License Holdings 4, Inc., *Order*, 17 FCC Rcd 7028, 7033 (WTB 2002) (noting “there is no standing requirement to file an informal objection pursuant to [47 C.F.R. § 1.41].”)); (continued....)

because both hold PCS licenses but do not currently provide service using this spectrum. Because GCI resells Dobson mobile telephony services, it also allegedly would be lost as an actual competitor because, post-transaction, it would no longer act independently of Alaska DigiTel.¹¹¹

33. The Applicants argue that in the *ALLTEL-Western Wireless Order* the Commission concluded that the relevant market participants were facilities-based cellular, PCS, and SMR carriers.¹¹² Further, [REDACTED].¹¹³ [REDACTED]¹¹⁴ Thus, the Applicants [REDACTED].¹¹⁵ Under Commission precedent, we generally limit our competitive analysis to facilities-based carriers, either nationwide or regional, excluding MVNOs and resellers from consideration when computing initial concentration measures. The Commission has acknowledged, however, that non-facilities based service options have an impact in the marketplace and in some instances may provide additional constraints against anti-competitive behavior.¹¹⁶

34. Our review of the *Resale Agreement* between GCI and Dobson indicates that [REDACTED]¹¹⁷ [REDACTED]¹¹⁸ [REDACTED]¹¹⁹ [REDACTED]¹²⁰ [REDACTED]¹²¹

(Continued from previous page)

Application of Tabback Broadcasting Company for Renewal of License of Station KAZM(AM), Sedona, Arizona, *Memorandum Opinion and Order*, 15 FCC Rcd 11899, 11900 (2000) (denying standing but treating petition to deny as informal objection). Accordingly, in the interest of having a full and complete record on which to evaluate the proposed transaction, we consider the merits of MTA Wireless's arguments herein. For the reasons discussed below in this Order, however, we do not find persuasive MTA Wireless's arguments for denial of the applications. See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 14021 n.335 (citing *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21547 n.196).

¹¹¹ MTA Wireless Petition to Deny at 6.

¹¹² Applicants March 1, 2006 Joint Opposition at 12; see also *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 39.

¹¹³ [REDACTED] In this Order, "REDACTED" indicates that confidential or proprietary information that is subject to a Protective Order in this proceeding has been redacted from the public version of this Order. See *Protective Order*, DA 06-1246 (rel. June 9, 2006). The unredacted text is included in the confidential version of this Order, which is available upon request only to those parties who have executed and filed with the Commission signed acknowledgments of the protective orders. Qualified persons who have not yet signed the required acknowledgments may do so in order to obtain the confidential version of this Order.

¹¹⁴ [REDACTED].

¹¹⁵ [REDACTED].

¹¹⁶ See *DoCoMo-Guam Cellular Order*, FCC 06-167 at 17 ¶ 22; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 19 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶¶ 38-39; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92. To date, in evaluating mergers among wireless carriers, the Commission has not included resellers or MVNOs in its initial screen.

¹¹⁷ [REDACTED].

¹¹⁸ [REDACTED].

¹¹⁹ [REDACTED].

¹²⁰ [REDACTED].

¹²¹ [REDACTED].

[REDACTED]¹²² [REDACTED]¹²³

35. In sum, after review of the *Resale Agreement*, we do not find that GCI should be considered the competitive equivalent of a facilities-based carrier. For purposes of this transaction, consistent with Commission precedent, we exclude GCI's subscribers from the combined entity's total when computing initial measures of market concentration. Nevertheless, [REDACTED],¹²⁴ we consider the role of MVNOs and resellers in our analysis of the likely competitive effects of this transaction.¹²⁵

2. Initial Screening

36. In evaluating this transaction, we apply the same screening criteria that the Commission has used in prior wireless industry merger orders to identify whether particular markets in any proposed transaction potentially are adversely affected.¹²⁶ This initial analysis is designed to eliminate from further review those markets in which there is no competitive harm relative to today's generally competitive mobile telephony market.¹²⁷

37. First, because spectrum is a necessary resource for carriers to compete effectively, we have examined the impact of the proposed GCI-Alaska DigiTel-Denali transaction on the concentration of spectrum holdings, or spectrum aggregation that would occur in each geographic market.¹²⁸ Consistent with the approach the Commission has taken when examining previous transactions involving aggregation of PCS and other spectrum used in the provision of mobile telephony services, we give further review to geographic markets where, post-transaction, the merged entity would have a 10 percent or greater interest in 70 MHz or more of cellular, PCS, and SMR spectrum.¹²⁹ In our analysis of GCI's spectrum holdings, we found have only one geographic area, St. Paul Island, where GCI would have a 10 percent or greater interest in 70 MHz or more of spectrum, and our analysis of the competitive effects of this spectrum aggregation is discussed below.¹³⁰

¹²² [REDACTED].

¹²³ [REDACTED].

¹²⁴ *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶ 38; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92.

¹²⁵ See Section IV.B.3, *infra*.

¹²⁶ *DoCoMo-Guam Cellular Order*, FCC 06-167 at 17 ¶ 23; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 20 ¶ 34; *Sprint-Nextel Order*, 20 FCC Rcd at 13993-94 ¶¶ 63-65; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071-74 ¶¶ 40-49; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69 ¶¶ 106-109.

¹²⁷ *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073-74 ¶ 48; *Alltel-Western Wireless Order* 20 FCC Rcd at 10373-74 ¶ 48; *Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 62; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568 ¶ 108.

¹²⁸ *DoCoMo-Guam Cellular Order*, FCC 06-167 at 17 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13074 ¶ 49.

¹²⁹ See *DoCoMo-Guam Cellular Order*, FCC 06-16, at 17-18 ¶ 23; *ALLTEL-Midwest Order*, FCC 06-146 at 22 ¶ 39; *Sprint-Nextel Order*, 20 FCC Rcd at 13993-94 ¶¶ 63, 65; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13074 ¶ 49; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69 ¶¶ 106, 109. 70 megahertz represents a little more than one third of the total bandwidth available for mobile telephony today, leaving approximately 130 megahertz of capacity available for a competitive response by other carriers in a local market. *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13074 ¶ 49.

¹³⁰ See discussion below in Section IV.B.2(a).

38. Second, we have estimated subscriber-based market concentration measures for various geographic markets in order to examine potential market concentration concerns that might arise from the proposed transaction. A horizontal transaction is unlikely to create or enhance market power or facilitate its exercise unless the transaction significantly increases concentration and results in a concentrated market.¹³¹ Specifically for each geographic market, we have calculated the HHI and the change in the HHI for various geographic markets.¹³² Our market concentration analysis of the GCI-Alaska DigiTel transaction applies the same thresholds as the Commission used in previous merger orders: an HHI of 2800 with a change of 100 or greater or a change in the HHI of 250 regardless of the level of the HHI.¹³³ These thresholds are based on our current evaluation of the mobile telephony market.¹³⁴ As discussed above, we conclude that GCI, as a reseller, is not an independent competitor,¹³⁵ and therefore the change in the HHI for all relevant geographic markets is zero because GCI's subscribers are excluded from the combined entity's total subscriber count.¹³⁶ Accordingly, we find no need for a further, in depth analysis of any relevant geographic market. We do go on to examine other horizontal effects that arise from the structure of the particular transaction.¹³⁷

39. In the discussion that follows, we explain in more detail our evaluation of the spectrum aggregation and subscriber-based market concentration that would result from the proposed GCI-Alaska DigiTel-Denali transaction.

a. Spectrum Aggregation

40. To apply the initial screen examining spectrum aggregation for our competitive review, we must first determine the amount of spectrum that should be attributed to GCI. In the filings before us, there is significant disagreement between the MTA Wireless, ACS Wireless, and Applicants on this issue.

41. MTA Wireless contends that the Commission should attribute 125 MHz of spectrum to GCI. This would include: (1) all 30 MHz of GCI's B-block PCS license; (2) Alaska DigiTel's 30 MHz of spectrum holdings post-transaction (the 15 MHz A-block PCS license and Denali's 15 MHz A-block PCS license that Alaska DigiTel would acquire from Denali); (3) Dobson's 55 megahertz of spectrum

¹³¹ *DoCoMo-Guam Cellular Order*, FCC 06-16 at 17 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 23; see also DOJ/FTC Merger Guidelines § 0.1, n.6.

¹³² *DoCoMo-Guam Cellular Order*, FCC 06-16 at 17 ¶ 23; *ALLTEL-Midwest Order*, FCC 06-146 at 22 ¶ 38; *Sprint-Nextel Order*, 20 FCC Rcd at 13993-94 ¶ 63; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13074 ¶ 50; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568 ¶ 106.

¹³³ See *DoCoMo-Guam Cellular Order*, FCC 06-16 at 17 ¶ 23; *ALLTEL-Midwest Wireless Order*, FCC 06-146 at 21 ¶ 36; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13074 ¶ 46; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568 ¶ 106.

¹³⁴ The Commission previously concluded that a market in which a transaction causes a change of less than 100 in the HHI need not be examined further because, even if the post-transaction HHI for such a market would be greater than 2800, the loss of a competitor with such a small market share is not likely to cause significant transaction-specific harm. *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 47; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568 ¶ 107.

¹³⁵ See Section IV.B.1(d), *supra*.

¹³⁶ See para. 65, *infra*.

¹³⁷ See Section IV.B.3(b), *infra*.

(both its 25 MHz cellular license and its 30 MHz C-block PCS license in Anchorage);¹³⁸ and (4) 10 MHz of PCS spectrum in Anchorage held by SprintCom, a Sprint Nextel subsidiary.¹³⁹ In particular, MTA Wireless argues that Dobson's spectrum should be attributed to GCI because the [REDACTED]¹⁴⁰ and contends that [REDACTED].¹⁴¹ ACS Wireless, meanwhile, contends that the Commission should attribute 115 MHz of spectrum to GCI, generally agreeing with MTA Wireless's contentions with respect to attributing GCI's 30 MHz, Alaska DigiTel's 30 MHz, and Dobson's 55 MHz of spectrum to GCI.¹⁴² MTA Wireless and ACS Wireless ask the Commission to deny the applications or designate the applications for an evidentiary hearing.¹⁴³ ACS Wireless and MTA Wireless further contend that, if the Commission grants the applications, it should order GCI to divest spectrum.¹⁴⁴

42. In their application, the Applicants assert that no more than 50 MHz of spectrum should be attributed to GCI – which would include only 20 MHz of GCI's 30 MHz broadband PCS license (because GCI currently is leasing 10 MHz of that spectrum to Dobson) plus Alaska DigiTel's 30 MHz of PCS spectrum – except with regard to St. Paul Island, where Alaska DigiTel holds an additional 20 MHz of cellular spectrum.¹⁴⁵ In later pleadings, the Applicants argue that the Commission should not even attribute any of Alaska DigiTel's spectrum holdings to GCI.¹⁴⁶

43. After reviewing the record and the various arguments made by the parties, we find that a total of 60 MHz of spectrum should be attributed to GCI throughout the state of Alaska except with regard to St. Paul Island, where a total of 80 MHz of spectrum should be attributed to GCI. Because we conclude that it is unlikely that GCI's attributable interest would result in competitive harms, even with regard to St. Paul Island, we do not impose conditions requiring the GCI to divest any of the spectrum holdings associated with the proposed transaction. Below, we address in more detail the various claims that the parties make with regard to spectrum aggregation.

¹³⁸ MTA Wireless Petition to Deny at 9-11; MTA Wireless July 24, 2006 Comments at 19; MTA Wireless September 6, 2006 Comments at 22.

¹³⁹ MTA Wireless August 2, 2006 Comments at 4; MTA Wireless September 6, 2006 Comments at 27.

¹⁴⁰ [REDACTED].

¹⁴¹ MTA Wireless August 2, 2006 Comments at 4; MTA Wireless September 6, 2006 Comments at 27.

¹⁴² ACS Wireless July 21, 2006 Comments/Petition at 6, 8-9; ACS Wireless September 6, 2006 Comments at 15-17; MTA Wireless August 2, 2006 Comments at 4-5.

¹⁴³ MTA Wireless Petition to Deny at 2,7,15; MTA Wireless December 4, 2006 Comments at 1; ACS Wireless July 21, 2006 Comments/Petition at 5, 20.

¹⁴⁴ ACS Wireless July 21, 2006 Comments/Petition at 5, 20; MTA Wireless August 2, 2006 Comments at 10-11. MTA Wireless argues that this capacity should be made available for lease or acquisition. MTA Wireless December 4, 2006 Comments at 5.

¹⁴⁵ Application Exhibit 1 at 4; Applicants March 1, 2006 Joint Opposition at 10-14; Applicants August 8, 2006 Joint Opposition at 3-4, 22; Applicants September 13, 2006 Joint Response at 6; Applicants December 6, 2006 Joint Response at 6. The Applicants also argue that the spectrum being acquired is PCS and not cellular spectrum and that the Commission has previously recognized that cellular carriers have certain advantages, particularly in rural areas, including first-mover advantages and superior propagation characteristics of cellular frequencies to PCS frequencies. According to the Applicants, as this transaction involves PCS spectrum in markets that are dominated by cellular carriers, it would not result in competitive harms to the market. See Applicants March 1, 2006 Joint Opposition at 11-12.

¹⁴⁶ Applicants September 13, 2006 Joint Response at 6-7.

44. *GCI's 30 MHz of PCS spectrum.* The Applicants contend that, for purposes of the Commission's review of spectrum aggregation, only 20 of the 30 MHz of the spectrum that GCI currently holds under its PCS license should be attributed to GCI because it is leasing 10 MHz of its PCS spectrum to Dobson pursuant to a long-term *de facto* transfer spectrum leasing arrangement.¹⁴⁷ MTA Wireless and ACS Wireless disagree, arguing that the Commission should attribute all 30 MHz of GCI's B-block PCS license to GCI.¹⁴⁸

45. Because GCI holds the PCS license, and as licensee ultimately controls use of its spectrum, we will continue to attribute to GCI all 30 MHz of spectrum associated with its license. This approach is consistent with the Commission's conservative approach when performing a competitive analysis in the context of a proposed merger, where all spectrum in which the merged entity would have a 10 percent or greater interest is attributed to that entity.¹⁴⁹

46. *Alaska DigiTel's 30 MHz of PCS spectrum and its 20 MHz of cellular spectrum on St. Paul Island.* MTA Wireless and ACS Wireless assert that the Commission should attribute to GCI all 30 MHz of Alaska DigiTel's post-transaction spectrum holdings (in Alaska DigiTel's 15 MHz PCS license and Denali's 15 MHz PCS license) because GCI would be obtaining a 78 percent ownership interest in Alaska DigiTel as well as board membership and super-majority rights. According to MTA Wireless and ACS Wireless, GCI's equity interest and single seat on Alaska DigiTel's board would provide GCI with control of the Alaska DigiTel/Denali spectrum.¹⁵⁰ In several of their pleadings, the Applicants assert that GCI would not control Alaska DigiTel, and that those spectrum holdings should not be attributed to GCI.¹⁵¹

47. The parties have submitted extensive pleadings in support of their respective contentions. Specifically, MTA Wireless contends that GCI would be obtaining both *de jure* and *de facto* control of

¹⁴⁷ Application Exhibit 1 at 4; Applicants March 1, 2006 Joint Opposition at 10-11; Applicants August 8, 2006 Joint Opposition at 22. The Applicants argue that the 10 MHz of spectrum leased to Dobson should not be attributed to GCI. This spectrum was first leased pursuant to a spectrum manager lease. See Notification of Spectrum Manager Lease between Dobson and GCI, File No. 0001825292 (filed July 30, 2004); Application Exhibit 1 at 4. We note, however, that GCI subsequently filed a long-term *de facto* transfer lease application and is currently leasing this spectrum along with an additional 2 MHz of spectrum to Dobson pursuant to a long-term *de facto* transfer leasing arrangement. See Application for Dobson to *De Facto* Transfer Lease Spectrum held by GCI, File No. 0002134968 (filed April 22, 2005).

¹⁴⁸ MTA Wireless Petition to Deny at 10; ACS Wireless July 21, 2006 Comments/Petition at 6 n.21. Among other things, MTA Wireless argues that the current GCI/Dobson spectrum leasing arrangement is limited to three years, and expires in approximately 30 months, and thus the Commission should continue to attribute it to GCI. MTA Wireless Petition to Deny at 10. [REDACTED]. GCI will have access to the spectrum it leases to Dobson in the long run. ACS Wireless July 21, 2006 Comments/Petition at 6 n.21.

¹⁴⁹ See *DoCoMo-Guam Cellular Order*, FCC 06-167 at 17-18 ¶ 23; *ALLTEL-Midwest Order*, FCC 06-146 at 22 ¶ 39; *Sprint-Nextel Order*, 20 FCC Rcd at 13993-94 ¶¶ 63, 65; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13074 ¶ 49; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69 ¶¶ 106, 109.

¹⁵⁰ MTA Wireless Petition to Deny at 9-10; MTA Wireless Reply at 4-9; ACS Wireless July 21, 2006 Comments/Petition at 6-7; ACS Wireless December 4, 2006 Comments at 1-2

¹⁵¹ Applicants March 1, 2006 Joint Opposition at 8-9; Applicants August 8, 2006 Joint Opposition at 5-14; Applicants September 13, 2006 Joint Response at 7-14; Applicants December 6, 2006 Joint Response at 2

Alaska DigiTel and thus should be attributed with its 30 MHz of spectrum.¹⁵² MTA Wireless cites to provisions in the *Operating Agreement* to support its claim that GCI would have *de facto* control of Alaska DigiTel—[REDACTED].¹⁵³ ACS Wireless agrees with MTA Wireless's arguments about attributing Alaska DigiTel spectrum to GCI because of the degree of interest it would be acquiring in Alaska DigiTel.¹⁵⁴ In addition, ACS Wireless contends that GCI's investor presentation at its 2006 annual stockholder meeting suggested that it planned to manage and/or develop Alaska DigiTel as part of GCI's own business strategy.¹⁵⁵ ACS Wireless and MTA Wireless recommend that the Commission adopt conditions that would prevent GCI from exercising control over Alaska DigiTel.¹⁵⁶

48. The Applicants claim that the Commission should apply its "designated entity" control standards and conclude that GCI will not have *de facto* control of Alaska DigiTel.¹⁵⁷ The Applicants further contend that they will not have day-to-day control of Alaska DigiTel/Denali.¹⁵⁸ In response to MTA Wireless's contentions regarding GCI's veto power over Alaska DigiTel's annual budget, the Applicants agree to amend the *Operating Agreement* to remove any veto rights of GCI with regards to Alaska DigiTel's budget.¹⁵⁹ We therefore condition this Order on the Applicants' amendment of the Alaska DigiTel *Operating Agreement* to remove GCI's veto rights with regard to Alaska DigiTel's budget.¹⁶⁰

49. In determining whether to attribute Alaska DigiTel's spectrum to GCI for purposes of applying the Commission's initial screen for spectrum aggregation, we do not need to reach or address the

¹⁵² MTA Wireless March 13, 2006 Reply at 4-9; MTA Wireless July 24, 2006 Comments at 3-9, 18; MTA Wireless September 6, 2006 Comments at 3-20; MTA Wireless December 4, 2006 Comments at 2. For instance, MTA Wireless argues that the Commission should apply its traditional rules governing *de jure* and *de facto* control of the post-transaction licenses and conclude that GCI will have both. MTA Wireless July 24, 2006 Comments at 5-9, 18 (discussing various control analyses, including Application of Baker Creek Communications, L.P., DA 98-1921, *Memorandum Opinion and Order*, 13 FCC Rcd 18709 (1998)).

¹⁵³ MTA Wireless July 24, 2006 Comments at 3-9, 18; MTA Wireless September 6, 2006 Comments at 12-18. [REDACTED].

¹⁵⁴ ACS Wireless July 21, 2006 Comments/Petition at 4, 6-8; ACS Wireless September 6, 2006 Comments at 2, 4, 24 -28; ACS Wireless December 4, 2006 Comments at 3.

¹⁵⁵ ACS Wireless July 21, 2006 Comments/Petition at 8, Exhibit B (noting that, at the presentation, GCI included Alaska DigiTel's subscribers in its wireless subscriber count and presented the wireless sector, including Alaska DigiTel, as a major growth area).

¹⁵⁶ These conditions include eliminating GCI's ability to veto certain Alaska DigiTel managerial decisions, eliminating GCI's right to requiring the remaining interest in Alaska DigiTel, and prohibiting GCI from consolidating Alaska DigiTel's financial statements with its own. ACS Wireless September 6, 2006 Comments at 36-37; ACS Wireless December 4, 2006 Comments at 4-5; MTA Wireless December 4, 2006 Comments at 3.

¹⁵⁷ Applicants August 8, 2006 Joint Opposition at 11; Applicants March 1, 2006 Joint Opposition at 8 n.18.

¹⁵⁸ Applicants August 8, 2006 Joint Opposition at 2, 4, 8. For instance, the Applicants assert that GCI will only have the power to appoint one out of four to eight board members, and will not have control of the Board of Managers.

¹⁵⁹ Applicants December 19 Joint Comments at 1; *See also* Applicants August 8, 2006 Joint Opposition at 13-14; Applicants December 6, 2006 Joint Response at 2-3 (offering to amend the *Operating Agreement* to provide that the consent of the GCI Board Member to the Alaska DigiTel budget "shall not be unreasonably withheld").

¹⁶⁰ See list of conditions in Appendix A.

various arguments about control presented by MTA Wireless, ACS Wireless, or the Applicants.¹⁶¹ In attributing spectrum where ownership issues are raised, the Commission generally follows a conservative approach. Specifically, the Commission's practice has been to include in its screen all cellular, PCS, and SMR spectrum in which the merged or resulting entity would have a 10 percent or greater interest.¹⁶² Because GCI would be obtaining a 78 percent equity interest in Alaska DigiTel/Denali's spectrum, we will attribute to GCI the following: Alaska DigiTel/Denali's 30 MHz of A-block PCS spectrum across the State of Alaska and, in addition, Alaska DigiTel's 20 MHz of cellular spectrum on St. Paul Island.

50. *Dobson's 55 MHz of PCS and cellular spectrum.* Both MTA Wireless and ACS Wireless argue that the Commission should attribute all 55 MHz of Dobson's spectrum in the Anchorage market to GCI because it resells Dobson's mobile services and leases spectrum to Dobson. The Applicants contend that, consistent with previous orders and Commission practice, in which the Commission has not attributed spectrum associated with a resale arrangement to the reseller, the Commission should not attribute Dobson's spectrum to GCI.

51. [REDACTED]¹⁶³ [REDACTED]¹⁶⁴ MTA Wireless and ACS Wireless request that the Commission broaden its previous general information request to require Applicants to produce all other documents that might exist between GCI and Dobson relating to possible cooperation.¹⁶⁵ Further, ACS Wireless requests that the Commission require [REDACTED].¹⁶⁶ [REDACTED]¹⁶⁷ Finally, MTA Wireless requests that the Commission condition approval of this transaction on [REDACTED].¹⁶⁸

52. The Applicants present several arguments as to why Dobson's spectrum should not be attributed to GCI. The Applicants contend that there is no legal precedent for MTA Wireless's and ACS Wireless's position and that the Commission has never considered resale agreements when assessing spectrum aggregation, stating that the Commission's focus generally is on assessing facilities-based competition in the market. They assert that, [REDACTED]. They state that if an applicant [REDACTED], the Applicants state that [REDACTED].¹⁶⁹ As regards the good faith negotiations discussed in the *Letter of Intent*, GCI states that there has been no progress on any of these topics and

¹⁶¹ As discussed above, the Applicants contend that the 78 percent ownership interest that GCI would be acquiring would in fact be "non-controlling," while MTA Wireless and ACS Wireless assert that GCI would be obtaining *de facto* control of Alaska DigiTel. Applicants acknowledge that were GCI to determine to exercise its option to acquire more than what they would deem to be a non-controlling interest, they would have to file new applications. Application Exhibit 1 at 2 n.6; Applicants December 6, 2006 Joint Response at 3. See *supra* note 31.

¹⁶² See *DoCoMo-Guam Cellular Order*, FCC 06-167 at 17-18 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21597 ¶ 196.

¹⁶³ [REDACTED].

¹⁶⁴ [REDACTED]

¹⁶⁵ [REDACTED].

¹⁶⁶ [REDACTED].

¹⁶⁷ [REDACTED].

¹⁶⁸ These elements include the "exclusivity provision," the "cross default mechanism with the spectrum leases," the creation of a "planning committee," and the "other cooperative arrangements" that are parts of the *Resale Agreement*. MTA Wireless December 4, 2006 Comments at 4.

¹⁶⁹ Applicants March 1, 2006 Joint Opposition at 12-14; Applicants August 8, 2006 Joint Opposition at 15-22; Applicants September 13, 2006 Joint Response at 19 (redacted version).

argues that this verifies that GCI and Dobson are acting independently and on an arms-length basis.¹⁷⁰ Finally, the Applicants point out that any later effort by GCI to acquire Dobson's Alaska properties would have to be approved by the Commission.¹⁷¹

53. We are not persuaded that Dobson's spectrum should be attributed to GCI for purposes of our competitive analysis. Such a decision would depart from Commission practice not to attribute spectrum associated with a resale of mobile telephony services to the reseller.¹⁷² As discussed above, as a general matter the Commission has not considered resellers to be competitors for purposes of conducting the initial screen. A reseller generally does not have the ability to control price, service, coverage, or contract terms, and our examination of the *Resale Agreement* and the *Letter of Intent* establishes [REDACTED].¹⁷³ Further, in contrast to its ownership interest in Alaska DigiTel (where we attribute Alaska DigiTel's spectrum, as discussed above), GCI holds no ownership interest in Dobson, and thus does not have any of the influence over Dobson that would be associated with ownership interests. Consistent with our determination above that GCI not be considered the competitive equivalent of a facilities-based carrier, we would not expect that GCI in its role as reseller would act as a full competitor with Dobson.

54. After examining these agreements, we find that nothing in them changes the fact that GCI, a reseller, does not have control over Dobson's spectrum or its business decisions related to use of that spectrum. As Applicants suggest, significant cooperation and communication between Dobson and its reseller is appropriate, and does not mean here that Dobson's spectrum should be attributed to GCI. [REDACTED].¹⁷⁴ [REDACTED]¹⁷⁵ thus does not give rise to any potential competitive harm. The *Letter of Intent*, which by its own terms is merely an agreement to negotiate in good faith, likewise does not give GCI any control over Dobson's business decisions. Indeed, the fact that GCI and Dobson have reached no agreement on any of the topics in the *Letter of Intent* in almost two and a half years demonstrates that GCI does not have the ability to influence Dobson's network decisions. Finally, we observe that even were Dobson ultimately to implement [REDACTED]. Having requested and reviewed the documents most relevant to our examination of the GCI-Dobson relationship, we do not believe additional information is necessary at this time, and we deny the requests of MTA Wireless and ACS Wireless that the Commission seek additional information on this matter¹⁷⁶ as well as their requests for additional conditions on the *Resale Agreement* and *Letter of Intent*.¹⁷⁷

¹⁷⁰ *Letter of Intent* at 2 (redacted version).

¹⁷¹ Applicants September 13, 2006 Joint Response at 19.

¹⁷² See *DoCoMo-Guam Cellular Order*, FCC 06-167 at 17 ¶ 22; *ALLTEL-Midwest Order*, FCC 06-146 at 19 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶ 38; *Cingular-AT&T Wireless Order*, 20 FCC Rcd at 21563 ¶ 92.

¹⁷³ See Section IV.B.1(d), *supra*.

¹⁷⁴ [REDACTED]. To the extent that this advance knowledge raises the potential for coordinated interaction, we address that issue below. See Section IV.B.3(b), *infra*.

¹⁷⁵ [REDACTED]

¹⁷⁶ Of course, we note that were GCI ultimately to seek to acquire Dobson, which is not before us, we would attribute Dobson's spectrum to GCI when evaluating potential competitive concerns.

¹⁷⁷ This includes any condition relating to the spectrum leasing arrangements that, as we discuss elsewhere, are consistent with Commission policies. See Section IV.B.4(a), *infra*. Also, we have already taken GCI's leased (continued....)