B. The Transaction Will Expand Network Coverage for Both AT&T's and Dobson's Customers and Provide a Significant Reduction in Roaming Costs

The Commission has long recognized that expanding the geographic reach of a wireless carrier's network is in the public interest,[35] and that is clearly the case here. Dobson today provides facilities-based service in a territory encompassing parts of 17 states and covering nearly 13 million people, most of whom live in rural or suburban areas.[36] AT&T, in contrast, provides facilities-based coverage in all of the country's top 100 major metropolitan areas that Dobson does not serve. Many of the rural and suburban areas served by Dobson are adjacent to major metropolitan areas served by AT&T, including Lexington, Kentucky; Minneapolis, Minnesota; New York City, New York; Pittsburgh, Pennsylvania; Kansas City, Missouri; Kansas City, Kansas; San Antonio and Austin, Texas; Washington, DC; Detroit, Michigan; Oklahoma City, Oklahoma; and others.[37] Because Dobson does not provide service in the urban centers in these areas, Dobson must use roaming arrangements to serve its customers when they commute to the downtown metropolitan area for work, shopping or entertainment. Likewise, AT&T generally must rely on roaming arrangements when its customers in downtown metropolitan

---

Footnote continued from previous page
coverage, AT&T will not have to incur the expense of building network facilities and will be able to rely more on the use of 850 MHz spectrum instead of its 1900 MHz spectrum in providing services to customers. In areas where AT&T provides service using 1900 MHz spectrum, the integrated network will be able to make use of Dobson's 850 MHz spectrum. *See* Moore Decl. ¶ 12.

[35] *See, e.g.*, *Midwest Wireless Order* ¶¶ 111-12; *Western Wireless Order* ¶¶ 138-40; *Cingular/AT&T Wireless Order* ¶¶ 216-20; *Cingular Order* ¶¶ 47-48.

[36] Dobson Commc'ns, Corp., Annual Report (Form 10-K) at 5 (Feb. 28. 2007) ("Dobson 10-K").

[37] Moore Decl. ¶ 4.

areas travel to the adjacent rural and suburban communities served by Dobson. The merger will allow customers of each company in these areas to enjoy much more extensive on-net service.[38]

Moreover, the elimination of roaming between AT&T and Dobson will lead to the internalization of very significant amounts of roaming expenses, as well as eliminating the transaction costs that both companies must now incur to administer this roaming, thereby lowering the marginal cost of providing service.[39] Dobson's and AT&T's customers roam extensively on each other's networks, and AT&T is, by far, Dobson's largest roaming partner, accounting for approximately 84 percent of Dobson's roaming traffic.[40] This should result in a reduction of roaming fees well in excess of $1 billion over the next five years, based on 2006 roaming rates.[41] The Commission has consistently found that such reductions in marginal costs for wireless carriers are "likely to benefit consumers through lower price and/or increased service."[42] These marginal cost reductions are also likely to stimulate competition from other carriers.[43]

These benefits are clear, demonstrable and merger-specific. The total amount of annual roaming costs represents a very substantial reduction in marginal cost that will be achieved quite quickly as a result of the merger. With respect to integration of the networks, it too can proceed quickly – certainly compared with the time required to build out new facilities – since both

---

[38] Coates Decl. ¶ 8; Moore Decl. ¶¶ 6, 12.

[39] *See* Declaration of Robert D. Willig & Jonathan M. Orzag (July 12, 2007) at ¶ 13 ("Willig/Orzag Decl.").

[40] Dobson 10-K at 7.

[41] *See* Moore Decl. ¶ 5.

[42] *Cingular/AT&T Wireless Order* ¶ 219; *accord Western Wireless Order* ¶ 151 ("ALLTEL's merger with WWC would reduce its roaming costs in geographic markets where ALLTEL and WWC's service areas do not overlap, and the elimination of roaming agreements in these markets would directly benefit . . . its customers . . . ."); *see also* Willig/Orszag Decl. ¶ 13.

[43] *See* Willig/Orszag Decl. ¶ 13.

companies use GSM/EDGE technology and since AT&T clearly has the resources necessary to achieve a seamless and rapid integration of the two networks.[44]

C. The Transaction Will Result in Substantial Additional Cost Synergies

In addition to the compelling direct benefits to customers described above, the merger of AT&T and Dobson also will result in substantial additional savings in costs of operations. These savings will benefit customers by making the combined company a more effective competitor and freeing resources to support the combined company's introduction of innovative new features and services.

AT&T estimates merger-specific synergies with a net present value of approximately $2.5 billion.[45] These calculations are reasonable and attainable, and they take into account AT&T's past experience in achieving cost savings resulting from mergers.[46] AT&T and SBC Communications Inc., its corporate predecessor, have an outstanding record of meeting, and indeed exceeding, synergies projections in connection with previous transactions.[47] For example, with respect to the SBC Communications Inc./AT&T Corp. merger, SBC had estimated total synergies for 2006 of $600 million to $800 million. Actual synergies for 2006 amounted to $1.1 billion, approximately $300 million above the top end of the original target.[48]

As explained below, the cost savings will result from reduced costs in acquiring customers; the consolidation of customer billing functions; the consolidation of cell sites; the reduction of network operating expenses; the reduction of general and administrative costs; and

[44] Moore Decl. ¶ 6; Coates Decl. ¶ 4.

[45] *See* Moore Decl. ¶ 22.

[46] *Id.* ¶ 33.

[47] *See id.*

[48] *See* AT&T Inc., AT&T Investor Update, 4Q06 Earnings Conference Call (Jan. 25, 2007) at 19, http://www.att.com/gen/investor-relations?pid=262 (follow "Slide Presentation" hyperlink).

reduced capital expenditures. The Commission has credited these sorts of synergies in prior transactions.[49]

1. Reduced Customer Acquisition Costs

The combined company will be able to achieve significant marketing and advertising savings.[50] The reduction from two brands to one will lead to significantly lower advertising costs over the long term. The power of the internationally-known AT&T brand will lead to further savings still. Both business and mass market customers are aware of this brand and its reputation for innovative and quality services. As a result, the combined company, operating under the AT&T brand, will not need to expend the same level of resources as did Dobson to make customers aware of its products and services and of the quality of its offerings.[51]

The other anticipated savings come from multiple sources, including, among others, a reduction in handset procurement costs, closure of redundant retail sales locations, and economies of scale with regard to third-party vendors.[52]

2. Consolidation of Customer Billing Functions, Distribution and Back Office Services

The combined company will achieve significant synergies as a result of consolidation or elimination of duplication in billing functions.[53] The combined company will experience a significant reduction in billing expenses as Dobson's customers are migrated to AT&T's billing

[49] *See SBC/Ameritech Order* ¶ 326; *see also Cingular Order* ¶ 47 ("Alloy will be able to generate efficiencies by consolidating national advertising media [and] reducing customer service and billing costs . . . .").

[50] *See* Moore Decl. ¶¶ 22-25.

[51] *See id.* ¶ 25.

[52] *Id.* ¶ 22.

[53] *See id.* ¶¶ 26-28.

system. Because of its scale, AT&T is able to operate its billing system at a much smaller cost per subscriber than Dobson, which uses a vendor for billing services, is able to achieve. By shifting Dobson's customers to AT&T's billing system, the combined company will be able to take advantage of AT&T's more cost-effective billing system. Further billing savings may occur as a result of AT&T's ability to send a single bill to its wireline customers who are currently Dobson wireless customers.

Other savings will be achieved through reduced equipment upgrade costs.

3. *Consolidation of Redundant Cell Sites and Network Operating Expenses*

AT&T projects that the combined entity can achieve substantial savings in network operating expenses.[54] These include, among others, decommissioning redundant towers where it is possible to do so without adversely affecting customer service, such as where cell sites are on the same tower or in close proximity to one another. Tower decommissioning will not interfere with the increase in cell density described above.

4. Elimination of General and Administrative Costs

The transaction should lead to substantial reductions in general and administrative expenses.[55] The cost savings will stem from the elimination of redundant administrative costs. The merger also will result in a reduction in other corporate expenses, such as savings on purchases of IT equipment and the like.

Because Dobson is a regional carrier with a much smaller customer base than AT&T, its general and administrative costs account for a larger portion of its annual expense per customer

[54] *Id.* ¶¶ 28-29.

[55] *Id.* ¶¶ 30-31.

than AT&T's expense per customer. AT&T, with approximately 62 million customers, enjoys economies of scales that will permit it to absorb Dobson's operations at a lower cost per subscriber than Dobson could achieve absent the transaction.[56]

5. Reduced Capital Expenditure Requirements

The transaction will make possible a savings on network-related capital expenditures, capital expenditures on information technology, expenses associated with redundant retail store closures, and corporate and call center capital expenses.[57]

VI. THE TRANSACTION WILL HAVE NO ADVERSE EFFECT ON COMPETITION

As the Commission has consistently found, the market for wireless services is robustly competitive. The combination of these two wireless carriers will not change that. There is no relevant market where the proposed transaction will adversely affect competition, and in fact it will foster increased competition due to the merger-specific efficiencies described above.

A. Mobile Wireless Voice and Data Services

1. Market Definition

a. Product Market

The Commission defines relevant product markets by including all services that are reasonable substitutes for each other in the eyes of consumers.[58] Applying that definition, the Commission has found in prior orders separate relevant markets for interconnected mobile voice

[56] *Id.* ¶ 31.

[57] Moore Decl. ¶ 32.

[58] *See Western Wireless Order* ¶ 25 ("When one product is considered by consumers to be a reasonable substitute for another product, it is included in the relevant market."); *Cingular/AT&T Wireless Order* ¶ 71 ("[W]hen one product is a reasonable substitute for the other in the eyes of consumers, it is to be included in the relevant market.").

services and mobile data services.[59] For ease of analysis, however, the Commission has analyzed past transactions using a combined market for mobile telephony services, including both voice and data, because it found that doing so would not overlook any potential for competitive harm in a separate mobile data market.[60] The same is true here, where carriers offering mobile voice services generally offer at least some data services.[61]

The Commission's prior orders also hold that there may be separate relevant product markets for mobile telephony services offered to residential customers and those offered to enterprise customers, although, once again, the Commission has not found it necessary to distinguish between the two for purposes of competitive analysis.[62] Because competition for

---

[59] *See, e.g.*, *Western Wireless Order* ¶ 28; *Cingular/AT&T Wireless Order* ¶¶ 74, 79.

[60] *Western Wireless Order* ¶ 29 ("[W]e conclude from our analysis that the market for stand-alone mobile data services is not sufficiently developed at this time to subject to a credible antitrust review. Accordingly, we determine that an analysis based on combined mobile telephony services will provide a reasonable assessment of any potential competitive harm to the markets for mobile voice or data services as a result of the proposed transaction."); *Cingular/AT&T Wireless Order* ¶ 74 ("[W]e believe that an analysis based on combined mobile telephony services is very unlikely to understate potential competitive harm to the market for mobile data services as a result of the transaction. Therefore, by employing an analysis that does not distinguish mobile data subscribers from mobile voice subscribers, we are unlikely to overlook adverse competitive effects in the mobile data market using this approach.").

[61] In addition, providers of mobile data services may face competition, now or in the near future, from additional firms that offer wireless data services but provide limited, if any, mobile voice services. *See, e.g.*, Clearwire, http://www.clearwire.com/company/facts.php (wireless Internet service in more than 420 cities and towns in Alaska, California, Florida, Hawaii, Idaho, Minnesota, Nevada, North Carolina, Oregon, Texas, Virginia, Washington and Wisconsin); MobilePro, http://www.mobileprocorp.com (wireless Internet service in Cleveland, Ohio; Stockton, California; Kansas City, Missouri; Stevensville, Maryland; and Ridgeland, Mississippi); Speednet, http//www.speednet.com/locations/index.php (wireless Internet service in Illinois, Indiana, Iowa, Kansas, Nebraska, Ohio, Oklahoma, South Dakota, and Texas); Commspeed, http//newhome.commspeed.net/ (wireless Internet service in Iowa and Arizona); Mesa Networks, http://www.mesanetworks.com (wireless Internet service in Colorado).

[62] *Western Wireless Order* ¶ 28 ("[W]e do not find it necessary to conduct our analysis in this transaction by distinguishing . . . enterprise subscribers from residential subscribers."); *Cingular/AT&T Wireless Order* ¶ 79 ("[W]e believe that an analysis based on combined mobile telephony services is unlikely to understate potential competitive harm to the market for enterprise services.").

high-volume enterprise customers is more intense than competition for residential customers, the Commission concluded that a combined residential and enterprise market tends to provide accurate insights into the residential market without the risk of understating competitive harm to the enterprise service market.[63] Here, the same conclusion holds, especially since Dobson is comparatively less significant in providing mobile services to enterprises.[64]

b. Input Market for Spectrum

In its review of mergers of wireless carriers, the Commission has defined an input market for spectrum comprising all holders of cellular, PCS and SMR spectrum,[65] and its analysis of the market has focused on whether a merger will create such a large aggregation of spectrum that there will be an insufficient supply for other competitors or new entrants.[66] As discussed below, this transaction will not lead to concerns about new entry or the ability of competitors to provide next-generation services even if the focus were solely on CMRS spectrum. Moreover, the

[63] *Western Wireless Order* ¶¶ 29-30 ("[A]n analysis based on subscriber shares for a combined mobile telephony services market will tend to provide more accurate insights into the residential market than the enterprise market. However, analyzing a combined residential and enterprise product market should provide a fair assessment of the potential competitive harm to the enterprise service market. This is because competition among carriers to attract and retain enterprise customers, who are more likely to be high-volume users of mobile voice services than residential customers, is likely to be more intense than competition for residential customers."); *Cingular/AT&T Wireless Order* ¶ 79 (same).

[64] Dobson's 2006 Annual Report states that its direct sales force is primarily focused on business users; Dobson's direct sales force was responsible for only 5 percent of Dobson's 2006 sales. *See* Dobson 10-K at 6-7.

[65] *See In re Applications for the Assignment of License from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to Gen. Commc'n, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd. 14863, 14877 ¶ 28 (2006) ("*Denali/Alaska DigiTel Order*"); *Midwest Wireless Order* ¶ 31 (discussing the same result in the Commission's decisions in the *Sprint/Nextel, Western Wireless*, and *Cingular/AT&T Wireless* merger orders).

[66] *See Western Wireless Order* ¶ 49; *Cingular/AT&T Wireless Order* ¶ 138.

addition of new spectrum the Commission has now licensed and will soon license is a further reason why there is no competitive issue in the input market for spectrum.

c. Geographic Market

In past mergers of wireless carriers, the Commission has defined the relevant market as being no smaller than Cellular Market Areas ("CMAs") or, alternatively, Component Economic Areas ("CEAs").[67] As explained in Section VI.A.6 below, even when considered on that basis, the transaction will not have an adverse effect on competition in any local area. Nonetheless, the evidence shows that the predominant forces driving competition among wireless carriers operate at the national level. Therefore, examining market structure in areas as small as CMAs or CEAs does not accurately account for the competitive forces that will constrain the behavior of the merged firm and assure continued intense competition in all the local areas affected by the merger.

As the Commission has recognized, rate plans of national scope, offering nationwide service at a single price without roaming charges, have become the standard in the wireless industry.[68] These plans are offered not only by the large national carriers but also by many regional carriers, including Dobson, ALLTEL and US Cellular among others.[69]

---

[67] *See Midwest Wireless Order* ¶¶ 35-43; *Western Wireless Order* ¶¶ 44-51; *Sprint Nextel Order* ¶¶ 57, 63-67; *Cingular/AT&T Wireless Order* ¶¶ 104-112.

[68] *See In re Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Mkt. Conditions with Respect to Commercial Mobile Servs.*, Eleventh Report, 21 FCC Rcd. 10947, 10983 ¶ 90 ("*Eleventh CMRS Competition Report*").

[69] *See* Dobson 10-K at 6; CellularOne, www.celloneusa.com (plan rates and availability searchable by zip code); ALLTEL, Individual Plans, http://www.alltel.com/personal/wireless/plans/ plans_individual.html; U.S. Cellular Plans, Wide Area Plans, http://www.uscc.com/uscellular/SilverStream/Pages/b_plan.html?zip= 04358&mkt=604440&tm=0.

AT&T establishes its rate plans and pricing on a national basis, which means that the terms of such plans are set without reference to market structure at the CMA level.[70] Rather, AT&T develops its rate plans, features, and prices in response to competitive conditions and offerings at the regional and national level – primarily the plans offered by the other national carriers.[71] Infrequently, AT&T will lower prices in a local area or region to boost sales. Even in such cases, its decisions are based on the actions of the major national carriers and aggressive local competitors, including Metro PCS and Leap.[72] Dobson's pricing, however, is an inconsequential factor in AT&T's competitive decision making.[73]

The merger will thus not reduce any of the competition that affects AT&T's pricing and service offerings.

2. Competitive Effects

The transaction will not have any adverse effect on competition at the national or local levels for a variety of reasons.

a. National Competition Will Be Unaffected by the Transaction

At the national level, the merger will have a trivial impact on market structure and competition.[74] Dobson's approximately 1.7 million subscribers account for less than one percent

[70] Declaration of Paul Roth, President – Sales and Marketing, AT&T Mobility LLC (July 12, 2007) at ¶¶ 3-4 ("Roth Decl."). Similarly, Dobson also establishes uniform national and statewide plans in the areas it serves in the lower 48 states, and does so primarily with reference to the competing offerings of national carriers. Coates Decl. ¶¶ 17-19.

[71] Roth Decl. ¶¶ 3-5.

[72] *Id.* ¶ 6.

[73] *Id.* ¶ 5.

[74] Where national competitive forces determine prices and the same products are offered nationwide at the same price, the relevant geographic market is national, rather than local. *See, e.g.*, *United States v. Grinnell Corp.*, 384 U.S. 563, 575 (1966) (Relevant market for security services was nationwide where defendants had a "national schedule of prices, rates, and terms."); *see also In re Bell Atl. Mobile Sys., Inc. and NYNEX Mobile Commc'ns Co. Application for*

Footnote continued on next page

of the approximately 213 million subscribers to wireless services nationwide.[75] Numerous competitors, including the four largest national carriers, will remain to serve wireless customers.[76] Moreover, as discussed below, in each CMA in which AT&T and Dobson compete there will be sufficient facilities-based competition, as well as competition from MVNOs and resellers, to assure that there will be no harm to competition.

b. There Are Numerous Market Participants

The participants in the mobile telephony market include the facilities-based carriers using cellular, PCS and SMR spectrum.[77] However, any analysis of the competitive effects of a merger between wireless carriers today also must take account of a new generation of mobile virtual network operators ("MVNOs") and other resellers that have emerged to challenge the facilities-based carriers. The Commission has noted that the number of subscribers receiving mobile service from an MVNO or resale provider tripled, to 13.4 million, between 2003 and 2005, and observed that "resale competition has been growing."[78] Companies such as Virgin

---

Footnote continued from previous page
Transfer of Control of Eighty-Two Cellular Radio Licenses to Cellco P'ship, Order, 10 FCC Rcd. 13368, 13375 ¶ 20 n.28 (WTB 1995) (citing *Grinnell Corp.*).

[75] *See* Press Release, AT&T To Acquire Dobson Commc'ns (June 29, 2007), *available at* http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=24030 (stating the company serves 1.7 million subscribers); *Eleventh CMRS Competition Report* ¶ 158.

[76] *See Eleventh CMRS Competition Report* ¶ 2; FCC, *Trends in Telephone Services*, at 5-5 Table 5.3 (WCB Feb. 2007), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-270407A1.pdf (reporting 432 wireless telephony carriers, including cellular, PCS and SMR).

[77] *See Midwest Wireless Order* ¶¶ 32-33; *Sprint/Nextel Order* ¶¶ 58-60 (including facilities-based cellular, PCS and SMR carriers, as well as "major carriers in the United States that offer" push to talk service); *Cingular/AT&T Wireless Order* ¶¶ 91-94. *But see Denali/Alaska DigiTel Order* ¶¶ 31-35 (including MVNOs and resellers in the analysis of likely competitive effects in the transaction).

[78] *Eleventh CMRS Competition Report* ¶¶ 27-28.

Mobile have attracted millions of customers,[79] and numerous other entrants are offering service.[80] A number of these entrants have particular competitive strategies and strengths, which they use to differentiate themselves. For example, Qwest Wireless was a facilities-based provider, but sold its network and elected to become strictly an MVNO, while retaining its customers.[81] Qwest is able to bundle its wireline voice and high-speed Internet services with resold wireless services.[82] Helio is a joint venture between Internet service provider Earthlink and SK Telecom of Korea, which offers exclusive handheld devices to multimedia users.[83]

Cable television operators are among the latest entrants into the mobile telephony business, leveraging their ability to bundle wireless service with their video, high-speed Internet

---

[79] *See id.* ¶ 28 (noting that Virgin Mobile served almost four million customers as of September 2006).

[80] *See, e.g.*, Press Release, 7-Eleven, 7-Eleven Focuses on Expanding its "Speak Out" Prepaid Wireless Offer: Adds First Wireless Phone With Camera Functionality; 365 Day Airtime Expiration, (Sept. 23, 2004), *available at* http://www.7-eleven.com/newsroom/articles.asp?p=2312 (offering wireless service in 38 geographic areas in Texas, California, Maryland, Massachusetts, New York, Illinois, Michigan, Florida, Pennsylvania, Connecticut, Missouri, Rhode Island, Nevada, Washington and the District of Columbia); Amp'd Mobile, http://get.ampd.com (offering wireless service in 50 states, but currently in Chapter 11); Disney Mobile, http://disneymobile.go.com/disneymobile/home.do; Hawaiian Telecom Phone, http://hawaiiantel.com/Wireless.htm (offering wireless service in Hawaii); Jitterbug Phone, http://www.jitterbug.com (wireless services marketed to seniors); Jump Mobile, http://www.jumpmobile.com (wireless coverage in Washington, Oregon, Idaho, California, Nevada, Utah, Arizona, New Mexico, Nebraska, Kansas, Oklahoma, Texas, Missouri, Arkansas, Tennessee, North Carolina, Georgia, Kentucky, Ohio, Pennsylvania and New York); Kajeet, http://www.kajeet.com (offering wireless services on the Sprint network); KDDI Mobile, http://www.kddimobile.com/ (offering nearly nationwide wireless service); Liberty Wireless, http://prepaid.libertywireless.com (offering wireless service on the Sprint network); Movida Cellular, http://www.movidacelular.com (offering wireless service on the Sprint network); Net10 Wireless, http://www.net10.com (offering wireless service in 50 states); Voce, http://www.voce.com (concierge and wireless service offered over the AT&T GSM network in Arizona, California, Florida, Nevada, New Jersey, and New York); XE Mobile, http://www.xemobile.com (offering nearly nationwide wireless service).

[81] *See* Qwest Wireless, https://www.qwest.com.

[82] *See* Qwest Wireless, Products and Services, http://www.qwest.com/residential/wireless/bundleslanding/.

[83] *See* Helio, http://www.helio.com/.

and voice offerings. Four of the largest cable MSOs – Comcast, Time Warner Cable, Advance/Newhouse and Cox Communications – have formed a joint venture with Sprint to acquire wireless spectrum and provide wireless service.[84] The group purchased 137 licenses for $2.4 billion in the FCC's AWS auction last fall.[85] The service they are offering, promoted as a "quadruple play," provides wireless service to the cable companies' customers under the brand name Pivot.[86] Customers can use the service to "watch live and mobile TV, access home TV listings using a programming guide . . . access the Internet, make unlimited calls between their cable home service and mobile phones, and have . . . one point of contact for service and billing."[87] Time Warner, Cox and Comcast already are offering Pivot service in selected areas, and Advance/Newhouse reportedly will soon launch its version of the service.[88]

These non-facilities-based providers should be included in any analysis of competition in the market for mobile telephony services.[89] Nonetheless, as discussed below in Section VI.A.6, even if the analysis is limited to facilities-based carriers, the transaction still will not harm competition.

---

[84] *See* Jim Barthold, *Sprint Nextel Hedges Wireless Bets*, TELECOMM. INT'L MAGAZINE, Apr. 30, 2007, at 1.

[85] *See FCC Awards Advanced Wireless Services Licenses*, SCREEN DIGEST, Oct. 2006, at 1.

[86] *See* Leslie Ellis and Todd Spangler, *Through the Wire: Sprint Cable Venture: Can They Keep a Secret?*, MULTICHANNEL NEWS, Apr. 9, 2007, at 2.

[87] *Early Watch: Sprint Nextel and Others Announce the Launching of Pivot*, M2 PRESSWIRE, Mar. 27, 2007, at 1.

[88] *See* Time Warner Cable, Products and Services, Introducing Pivot, http://www.timewarnercable.com/SanAntonio/Products/wireless/Pivot/default.html, Comcast Communications, Pivot, http://www.comcast.com/corporate/wireless/default.html; Cox Communications, Pivot, http://www.cox.com/pivot/; Todd Spangler, *Operators Going Slow on Pivot Wireless*, MULTICHANNEL NEWS, Jun. 20, 2007, *available at* http://www.multichannel.com/article/CA6453879.html.

[89] *See* Willig/Orszag Decl. ¶ 36.

c. Wireless Markets Are Highly Competitive

The Commission has consistently found that the wireless industry in the United States is vigorously competitive, and that finding remains true as the industry has undergone dynamic change and expansion.[90] Most recently, as the Commission noted in its *Eleventh CMRS Competition Report*:

> Indicators of market performance show that competition between wireless carriers continues to yield significant benefits to consumers. In the 12 months ending December 2005, the United States mobile telephone sector increased subscribership from 184.7 million to 213 million, raising the nationwide penetration rate to approximately 71 percent of the population. Mobile subscribers continued to increase the amount of time they spend talking on their mobile phones, with average minutes of use per subscriber per month rising to 740 minutes in the second half of 2005 from 584 minutes in 2004 and 507 minutes in 2003. Moreover, . . . the volume of SMS traffic grew to 48.7 billion messages in the second half of 2005, nearly double the 24.7 billion messages in the same period of 2004. Some customer surveys also indicate an improvement in the quality of mobile telephone service in the past year.[91]

Greater subscriber choice and improved wireless service are increasingly available across the United States. In 2005, 98 percent of the population lived in counties served by three or

---

[90] *See Eleventh CMRS Competition Report* ¶ 2 (stating that "although the mobile telephone market has become more concentrated as a result of these mergers, none of the remaining competitors has a dominant share of the market, and the market continues to behave and perform in a competitive manner."); *In re Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Mkt. Conditions With Respect to Commercial Mobile Servs.*, Tenth Report, 20 FCC Rcd. 15908, 15911 ¶ 2 (2005) (stating that "the Commission concludes that even with fewer nationwide mobile telephone carriers there is still effective competition in the CMRS marketplace."); *In re Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Mkt. Conditions With Respect to Commercial Mobile Servs.*, Ninth Report, 19 FCC Rcd. 20597, 20600 ¶ 2 (2004) ("*Ninth CMRS Competition Report*"); *In re Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Mkt. Conditions With Respect to Commercial Mobile Servs.*, Eighth Report, 18 FCC Rcd. 14783, 14791 ¶ 12 (2003) ("*Eighth CMRS Competition Report*").

[91] *Eleventh CMRS Competition Report* ¶ 41.

more wireless operators, and 94 percent lived in counties served by four or more operators.[92] Network coverage has consistently expanded; wireless carriers reported an addition of nearly 12,000 cell sites from the previous year, a number that has grown over 53 percent in the last five years.[93]

Wireless customers also continue to receive new and better services at increasingly lower costs. As the Commission has noted, "competitive pressure continues to drive carriers to introduce innovative pricing plans and service offerings, and to match the pricing and service innovations introduced by rival carriers. Price rivalry is evidenced by the introduction of 'mobile to anyone' calling options, and by the proliferation of a variety of prepaid plans, or distinct prepaid brands . . . targeted at previously untapped segments of the market."[94] The per-minute cost for wireless calls has declined 72 percent in five years, to $0.07 per minute.[95] Beyond varying service packages, companies are also offering "various handsets and policies on handset pricing."[96] Significantly, these conclusions where not limited to customers in urban areas. To the contrary, the Commission has examined rural areas, such as many involved in this transaction, and found that competition in those areas was no less vigorous than in more populous areas.[97]

---

[92] *See Eleventh CMRS Competition Report* ¶ 2; *see also id.* at 11040, Table 6 (showing that as of 2006, 2,764 counties were covered by three or more operators).

[93] *See* CTIA - The Wireless Association, Annualized Wireless Industry Survey Results, Dec. 1985 to Dec. 2006, http://files.ctia.org/pdf/CTIA_Survey_Year_End_2006_Graphics.pdf; *see also Sprint Looks Back on 2006 Achievements – And Forward to 2007 Strategy*, M2 WIRELESS NEWS, Dec. 20, 2006, at 1 (reporting that Sprint added more than 3,000 cell sites in 2006).

[94] *Eleventh CMRS Competition Report* ¶ 2.

[95] *See id.* ¶¶ 150, 154.

[96] *Id.* ¶ 90.

[97] *See id.* ¶ 88.

Customers who are dissatisfied with the pricing, service or features they are receiving from their existing wireless carrier can and frequently do switch carriers, facilitated by wireless local number portability. The Commission reported that carriers experienced monthly churn rates of 1.5 to 3 percent per month in 2005.[98] Even though carriers have worked hard to reduce churn, customers are still switching carriers to obtain better service, new devices or more favorable rate plans. The high frequency of customer switching demonstrates that carriers must compete aggressively to retain the patronage of their customers. AT&T, for example, must attract roughly a million new customers every month simply to replace the customers it loses to churn.[99]

The addition of new spectrum, such as the recently licensed AWS spectrum and the 700 MHz spectrum soon to be auctioned by the Commission, increases the competitive pressures faced by wireless carriers.[100] Wi-Fi and WiMax will also provide mobile users with additional

---

[98] *See id.* ¶ 145.

[99] As of March 31, 2007, AT&T served 62.2 million wireless customers and, in the first quarter of 2007, its monthly wireless churn rate was 1.7 percent. AT&T Inc., Quarterly Report (Form 10-Q) at 26, 27 (May 4, 2007) (the number of customers (62.2 million) multiplied by the churn rate (1.7 percent) equals approximately one million, which is therefore roughly the number of new customers that AT&T must attract each month to replace the customers lost to churn).

[100] *See 2006 Biennial Regulatory Review*, Staff Report, 22 FCC Rcd. 3006, 3030-31 App. I (WTB 2007); *see also id.* App. I (the Commission must auction certain 700 MHz spectrum by January 2008); *In re Serv. Rules for Advanced Wireless Servs. in the 1.7 GHz & 2.1 GHz Bands*, Report and Order, 18 FCC Rcd. 25162, 25165 ¶ 5; 25167 ¶ 13 (2003) (AWS spectrum could be used to expand wireless voice and data services and licensees can use the spectrum for any fixed or mobile service.); Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (700MHz spectrum may be used for broad range of flexible uses, including mobile wireless commercial services.); *see also Backhaul: The Hidden Ground for Telcos & Cablecos*, THE ONLINE REPORTER, Sept. 30, 2006, http://www.onlinereporter.com/article.php?article_id=7815 (stating that "cablecos intend to move into the mobile phone market this year in a major way."); *AT&T Goes On Pricey Advertising Blitz*, THE ONLINE REPORTER, Jan. 7, 2006, http://www.onlinereporter.com/article.php?article_id=5580 (noting that cable companies are much farther ahead in landline and wireless telephone offerings than telephone companies are in television offerings in the war over bundled services).

options, and major providers are already jumping into the fray.[101] Mobile telephony customers increasingly will be able to utilize these connections to substitute for conventional CMRS usage.

3. Competition Will Remain Intense After This Transaction

Even if each CMA is assumed to be its own relevant geographic market, the proposed transaction will not harm competition. AT&T and Dobson compete in the provision of mobile telephony service to consumers in 38 CMAs throughout the country.[102] As Appendix B indicates, after the merger there will remain no fewer than four facilities-based mobile telephony competitors in all but one of these CMAs, and as many as seven or eight competitors in some. Taken together with the dynamics of competition in the wireless industry, and as explained in the Declaration of Robert D. Willig and Jonathan M. Orszag (the "Willig/Orszag Declaration"), these facts ensure that the merger will not lead to either unilateral or coordinated anticompetitive effects in any market.

[101] T-Mobile has 7,661 "hotspots" where its customers can get connectivity. *Eleventh CMRS Competition Report* ¶ 212 (citation omitted). Companies are also beginning to equip cell phones with Wi-Fi and WiMax capabilities in order to enhance data access. *See T-Mobile and Apple Prepare for Wi-Fi Cell Phone Battle*, INFORMATIONWEEK, May 3, 2007, http://www.informationweek.com/showArticle.jhtml?articleID=199203570; *Diamond Viewpoint: WiMax's Disruptive Potential Driving Strategic Response*, WIRELESS NEWS, Apr. 23, 2007, *available at* http://www.diamondconsultants.com/PublicSite/Company/Press/?release=pressreleases399.asp. This year and next, Sprint plans to spend "at least $2.5 billion to deploy 802.16e mobile WiMAX base stations, covering 100,000 points of presence." John Cox, *Sprint CTO Touts 4G Wireless; CTO Barry West Charged With Leading Huge Mobile WiMax Rollout*, NETWORK WORLD, Oct. 11, 2006, http://www.networkworld.com/news/2006/101109-sprint-west.html.

[102] As is indicated in Appendix B, this figure includes those CMAs where AT&T and Dobson each have cell sites in the CMA, have a non-trivial number of subscribers in the CMA, and offer rate plans to potential subscribers within the CMA. It does not include CMAs in which there is no overlap between AT&T's and Dobson's wireless licenses.

a. Unilateral Effects on Retail Mobile Telephony Service Are Unlikely

The Commission has recognized that a merger of wireless carriers will only lead to the possibility of unilateral anticompetitive effects under highly specific conditions. The foremost prerequisite is that there be few remaining competitors with the ability to constrain the behavior of the merged firm, or that the merged firm have a very high share of subscribers.[103] The accompanying Willig/Orszag Declaration sets out in detail the factors that must be analyzed to determine whether unilateral anticompetitive effects from a merger are likely.[104] In general these fall into four major categories: (1) the number of competitors and share of the merged firm; (2) whether the merging firms' offerings are close substitutes for one another; (3) the ease with which existing and new competitors can take customers away from the merged firm; and (4) the impact of competitive forces outside the CMA on the behavior of the merged firm. Each of these factors separately, and all of them collectively, lead to the conclusion that unilateral anticompetitive effects from this transaction are unlikely in any CMA.[105]

(i) Numerous Competitors Offer Comparable Service in All Areas Affected by the Transaction

The first two factors identified in the Willig/Orszag Declaration, and recognized by the Commission as crucial to whether unilateral anticompetitive effects will occur, are the number of competitors and the merged firm's share of subscribers in the CMA.[106] In this case, the Applicants do not have access to market share data at the CMA level, but it is apparent that they

[103] *See Cingular/AT&T Wireless Order* ¶ 149; Willig/Orszag Decl. ¶¶ 25-26.

[104] *See* Willig/Orszag Decl. ¶¶ 27-47.

[105] *See id.* ¶ 48.

[106] *See Cingular/AT&T Wireless Order* ¶ 149; Willig/Orszag Decl. ¶¶ 28-29.

would have a relatively insignificant share of subscribers in certain of the CMAs where both compete.[107]

More important, available information demonstrates that there are numerous competitors operating and providing service in every CMA affected by the transaction. In all but one CMA where both AT&T and Dobson operate, at least five wireless carriers compete for customers and in the majority of those CMAs there are six wireless competitors or more.[108] Four or five competitors remaining are manifestly sufficient to maintain and even increase the current level of competitive vigor in each area.

Existing competitors face no barriers to expansion in these CMAs due to spectrum availability. In each CMA where AT&T and Dobson both operate today, their existing rivals have access to enough spectrum to compete effectively and to expand their service in the event of a unilateral price increase. As the Commission has recognized, as a general matter wireless carriers will be able to add customers quickly because excess capacity is often available and can be utilized quickly by existing networks.[109] In the less populous areas involved in this transaction, it is especially true that firms can compete effectively with comparatively modest allocations of spectrum.

For similar reasons, there is no reason for concern about the input market for spectrum. In past transactions, the Commission has relied on a screen of 70 MHz of cellular, PCS and SMR

---

[107] *See* Willig/Orszag Decl. ¶ 29.

[108] *See* Appendix B. The only exception is CMA 597 (Oklahoma 2-Harper), and even there, there will be three facilities-based competitors offering nationwide plans after the merger. In addition, while they do not appear to be offering wireless service to customers in CMA 597 today, T-Mobile holds 30 MHz of spectrum, and Verizon and US Cellular each holds 10 MHz throughout the CMA.

[109] *See, e.g., Cingular/AT&T Wireless Order* ¶ 135.

spectrum to determine whether there is any need for further inquiry into possible adverse effects in the input market.[110] The Commission has also noted that a merger such as this one "does not take spectrum away from any competing carriers" – that is, no competitor is made worse off by the transaction – and has focused its concern on whether competitors would be able to compete effectively "at a later point in the deployment of next-generation services."[111]

In this case, after the transaction, the merged firm would have 70 MHz or more spectrum in all or parts of only 20 of the 38 CMAs referenced above where both AT&T and Dobson currently compete, and in each case the remaining carriers have more than adequate spectrum to compete and expand. Even in these 20 CMAs, other competitors will have sufficient spectrum to expand existing services and deploy advanced services, especially in light of the less populous nature of these CMAs. For example, in CMA 130 (Erie, PA), where the combined firm will have 95 MHz, all of the existing competitors have strong spectrum positions. Verizon has a 25 MHz cellular license, T-Mobile has 30 MHz, and Sprint has 34.875 MHz.[112] In addition, Buffalo - Lake Erie, which offers service under the name Blue Wireless, has 10 MHz.

In CMA 432 (Kansas 5- Brown), the merged firm would hold 35 MHz in one county, 55 MHz in one county, 80 MHz in one county and 90 MHz in two counties.[113] T-Mobile has 30

---

[110] *See, e.g., Western Wireless Order* ¶ 49 & n.143 ("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. Our market by market analysis in this proceeding, as well as evidence from mobile telephony markets across the country, indicates that 130 megahertz of capacity is sufficient to support at least three viable competitors.... Many carriers today are competing successfully with even less bandwidth.").

[111] *Cingular/AT&T Wireless Order* ¶ 140.

[112] Sprint's spectrum includes 1.9 GHz spectrum reallocated to it as a result of relinquishing some of Nextel's SMR spectrum.

[113] In Jackson County, AT&T leases 10 MHz to T-Mobile. This spectrum is not counted in AT&T's spectrum total for this county.

MHz in the counties in which the merged firm would have 90 MHz and 20 MHz elsewhere; Sprint has 57.25 MHz throughout; and, in part of the CMA, ALLTEL has a 25 MHz cellular license. Leap, Verizon and US Cellular each have 10 MHz in parts of the CMA and each has obtained a license for AWS spectrum covering the CMA, as has SpectrumCo, the MSO-Sprint joint venture. Given the existing spectrum available to current and potential competitors and the new spectrum the Commission has licensed and will soon license, there is no concern that the merged firm will have so much spectrum in any area that effective competition in next-generation services will not emerge.

(ii) Dobson and AT&T Are Not Close Substitutes

Unilateral effects also are unlikely because the services of Dobson and AT&T are not especially close substitutes. The Commission has previously recognized that wireless carriers are differentiated along such dimensions as quality, coverage and plan features.[114] If customers consider the merging parties "to be more distant substitutes for one another in the spectrum of differentiated choices available, or if there are multiple choices available to customers that they view as similarly close substitutes for one another, then anticompetitive unilateral effects may be less likely to occur or may be less significant."[115] That is the case here.

As noted above, while AT&T focuses on the other national carriers and some regional and local competitors in its competitive decision making, it does not consider Dobson in deciding on pricing and service offerings. That is strong evidence that the competition between them is not especially significant and the merger will not lead to unilateral anticompetitive

[114] *Cingular/AT&T Wireless Order* ¶ 123.

[115] *Id.* ¶ 117; *see also* Willig/Orszag Decl. ¶ 31.

effects.[116] Furthermore, Section V.A.2 above discusses the additional handset and service choices that will be made available to Dobson customers as a result of the transaction. Consumers who most value these offerings today are looking to AT&T and other carriers and not to Dobson.

Of equal importance, even if customers viewed AT&T and Dobson as especially close substitutes, there are no barriers to other carriers repositioning their product and service offerings to replace whatever competition Dobson currently provides to AT&T. Moreover, there are no practical constraints to expansion into affected CMAs by established carriers who do not operate there today. Customers can and do switch,[117] spectrum is generally available,[118] and distribution can be established and expanded without large capital investments.[119] Indeed, the Commission recently noted that "we . . . continue to observe entry in local markets due to the continued expansion of existing carriers."[120]

(iii) Competitors and New Entrants Can Rapidly Win Customers Incumbents

As noted briefly above, another reason unilateral anticompetitive effects are unlikely is, as the Commission has acknowledged, the ease with which customers of the merged carrier could switch to rival carriers in the event of a unilateral price increase.[121] Wireless competitors continue to face significant customer churn, indicating that carriers have little ability to retain

[116] Roth Decl. ¶ 5; *see also* Willig/Orszag Decl. ¶¶ 23-24.

[117] *See supra* Section VI.A.2.c.

[118] *See supra* Section VI.A.3.a.(i).

[119] For example, Dobson derives 23 percent of its sales from a network of 340 independent dealers, including electronics stores and national/regional retail chains. Dobson 10-K at 7.

[120] *Eleventh CMRS Competition Report* ¶ 84.

[121] *See, e.g., Cingular/AT&T Wireless Order* ¶ 132.

their customers if they are not providing competitive pricing, service, and features. The Commission's most recent CMRS Competition report stated that "[c]onsumers continue to pressure carriers to compete on price and other terms and conditions of service by freely switching providers in response to differences in the cost and quality of service."[122] Thus, the merged firm could not unilaterally increase price if there are other wireless competitors offering comparable services.

Past experience in the wireless industry demonstrates that new entrants can quickly attract subscribers. As discussed above, wireless customers have shown that they are willing to switch their allegiance in response to attractive service offerings from other providers. The ease with which customers can switch, particularly in light of local number portability, has allowed new entrants to expand rapidly. For example, between 2000 and 2003, T-Mobile doubled its national subscriber share[123] and surpassed 25 million U.S. subscribers in 2006.[124] Metro PCS first offered wireless telephone services in the Miami area in 2002, and by 2004 had grown to become the second leading carrier in that region based on subscriber share.[125] The Commission

---

[122] *Eleventh CMRS Competition Report* ¶ 4.

[123] *In re Applications of AT&T Wireless Servs. And Cingular Wireless for Consent to Transfer Control of Licenses and Authorizations*, Description of Transaction, Pub. Interest Statement and Waiver Request, WT Dkt. No. 04-70 at 26 (Mar. 17, 2004); *compare Eighth CMRS Competition Report* at A-8 (showing T-Mobile with 13,128,000 subscribers in 2003 – approximately eight percent) *with In re Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report & Analysis of Competitive Mkt. Conditions With Respect to Commercial Mobile Serv.*, Sixth Report, 16 FCC Rcd. 13350, at C-4 (2001) (showing T-Mobile (Voicestream) with 3,879,000 subscribers in 2000 – approximately four percent).

[124] Press Release, T-Mobile (March 1, 2007), *available at* http://www.t-mobile.net/CDA/t-mobile_deutschland_newsdetails,1705,0,newsid-5422-yearid-5234-monthid-5332,en.html.

[125] *See* Press Release, MetroPCS, MetroPCS Launches New Wireless Service for Customers (Feb. 1, 2002), *available at* http://media.corporate-ir.net/media_files/irol/17/177745/corpgov/newsreleases/20020201a.pdf (announcing the launch of the company's provision of wireless services in the Miami area); Press Release, MetroPCS, MetroPCS Celebrates Florida Growth at 1 (Nov. 18, 2004), *available at* http://www.metropcs.com/ releases/2004/20041118.pdf (stating

Footnote continued on next page

has recognized that shifts in share and churn have been commonplace in the wireless industry,[126] and these forces also militate against anticompetitive effects from the merger.[127]

(iv) Metropolitan Areas in Proximity to Overlap CMAs Will Restrain the Merged Firm's Ability To Raise Prices Unilaterally

Many of the CMAs where AT&T and Dobson both operate are adjacent to larger metropolitan areas. Residents of these CMAs often commute to the nearby metropolitan areas for work, shopping or entertainment and are exposed to the same media advertising as metropolitan area residents. As a result, these consumers are able to purchase wireless service from the providers in the metropolitan area, which provides an additional constraint on the merged firm.[128] If a critical number of consumers would buy wireless services in a metropolitan area adjacent to the CMA in the event of a unilateral post-merger price increase, such a price increase would be unprofitable.

The Commission has recognized this phenomenon, stating that Economic Areas ("EAs") "capture the area in which the average person shops for and purchases a mobile phone, most of the time."[129] An EA, according to the Commission, includes "the place of work and the place of residence of its labor force."[130] Most of the CMAs involved in this transaction are located in the same EAs as larger metropolitan areas, and are served by the same media outlets.[131] As a result,

---

Footnote continued from previous page
that the company is "second behind Cingular in terms of the number of local customers and market share in Miami.").

[126] *Cingular/AT&T Wireless Order* ¶ 132.

[127] *See* Willig/Orszag Decl. ¶ 30.

[128] *See id.* ¶¶ 37-38.

[129] *Eleventh CMRS Competition Report* ¶ 44.

[130] *Id.* ¶ 173.

[131] Willig/Orszag Decl. ¶ 39.

the merged firm cannot consider a price increase without taking into account the response of competitors that operate in EAs that encompass the overlap CMAs, nor could it effectively target a price increase.[132] For example, CMA 432 (Kansas 5 - Brown) is located in Kansas but is immediately adjacent to both Kansas City and St. Joseph, Missouri and is part of the Kansas City EA. The largest city in CMA 432, Leavenworth, is 30 miles from Kansas City. Similarly, CMA 448 (Kentucky 6 - Madison) is adjacent to the Lexington MSA and part of the Lexington EA. The largest city, Richmond, is 20 miles from Lexington by major highway. In these cases and others, proximity to the larger area means that consumers in the outlying CMA benefit from competitive conditions in the metropolitan area. Dobson takes account of this phenomenon in its pricing. Since many of its service areas are close to and influenced by advertising from nearby metropolitan areas, it takes account of the behavior of the large national carriers, which advertise in those areas, in pricing its comparable service plans.[133]

b. Coordinated Effects Are Unlikely

This transaction also will not result in coordinated anticompetitive effects. In reviewing previous mergers of wireless carriers, the Commission has found that necessary conditions for successful coordination depend on "the ability to reach terms of coordination that are profitable for each of the firms involved" and "the ability to detect and punish deviations that would undermine the coordinated interaction."[134] As discussed in the Willig/Orszag Declaration, a

[132] *See id.*

[133] Coates Decl. ¶¶ 17, 19.

[134] *Cingular/AT&T Wireless Order* ¶ 151; *see also Denali/Alaska DigiTel Order* ¶ 77; *Midwest Wireless Order* ¶ 60; *Sprint/Nextel Order* ¶ 69.