

in-network services.<sup>12</sup> The transaction rounds out T-Mobile's domestic footprint, allowing it to serve 98 of the top 100 markets in the United States. Moreover, existing and new customers will benefit from T-Mobile's plans for expanding and upgrading SunCom's network. For example, T-Mobile currently intends to continue SunCom's near term deployment of an estimated 400 new sites throughout the Carolinas, and to deploy new sites in Puerto Rico, to improve wireless coverage and quality in these markets. Each carrier's customers also will benefit from the ability to access a wide range of services and full feature functionalities across a broader geographic area. In addition, the transaction will provide T-Mobile with additional spectrum capacity in areas where it already may hold spectrum. The aggregated spectrum holdings will help support increasing consumer demand for wireless voice, data and broadband services without impairing the quality of those services.<sup>13</sup>

**2. New And Existing Customers Will Benefit From T-Mobile's High Quality Wireless Services, Innovative Offerings, And Award Winning Customer Service.**

Existing and new customers of both companies will benefit demonstrably from the proposed transaction. The transaction will enable T-Mobile rapidly to enter these key southeastern United States and Caribbean markets. New customers, as well as existing SunCom customers once integrated, will be able to take advantage of the wide variety of high-quality, innovative wireless services, products and devices offered by T-Mobile.

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<sup>12</sup> Exhibit A depicts T-Mobile's and SunCom's networks in and around the Licensed areas before and after the consummation of the proposed transaction. The U.S. Virgin Islands ("USVI") are not depicted in the exhibit. Although SunCom provides network coverage in USVI, it does not offer service plans to potential USVI customers. T-Mobile does not provide any coverage in USVI.

<sup>13</sup> See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Eleventh Report, 21 FCC Rcd 10947, 11000 (2006) ("*Eleventh CMRS Competition Report*") ("Carriers can increase capacity and improve service quality by acquiring additional spectrum.").

For example, in addition to traditional mobile telephony, T-Mobile customers can have at their fingertips business and entertainment information, messaging, games, ring tones and music, email access, Internet access and applications, and more. T-Mobile offers a wide selection of service plans and packages depending on consumers' needs, including a variety of individual, family, business and prepaid plans that allow regional and national calling, local and long distance services and data and Internet services. T-Mobile's popular myFaves<sup>SM</sup> plan provides customers with unlimited domestic calling to any five numbers on any network, including wireline and wireless networks of other carriers. Another example of unique T-Mobile product offerings is T-Mobile's new HotSpot @Home service<sup>SM</sup>, which is a hybrid CMRS/Wi-Fi service with seamless handoff between the two technologies. Post-transaction, SunCom's customers will be able to take advantage of these innovative offerings.

SunCom customers also are limited in the number of networks on which they can roam outside of the United States.<sup>14</sup> T-Mobile, on the other hand, has comprehensive roaming arrangements with foreign mobile operators worldwide that are part of the DT family and other non-affiliated foreign carriers that allow customers to make and receive calls in 194 countries and locations, including cruise ships. Customers can stay connected with text messaging, Internet browsing, and HotSpots in many of those countries as well. Post-transaction, SunCom customers planning to travel abroad can sign up for T-Mobile's attractive international roaming plans.

Existing and new customers will benefit from T-Mobile's award winning customer care. T-Mobile customer care representatives are available on-line and by telephone 24 hours a day, seven days a week, 365 days a year. T-Mobile also provides dedicated customer service and

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<sup>14</sup> SunCom has roaming agreements in approximately 56 countries.

product support for Spanish-speaking customers, one of the fastest growing segments of wireless customers in the United States. T-Mobile's commitment to customer satisfaction and quality is evident from its consistent high rankings from J.D. Power and Associates ("JDPA"), the leading producer of independent customer satisfaction and product quality surveys. T-Mobile, for the sixth time in a row, recently was named the highest ranking wireless carrier in JDPA's 2007 Wireless Customer Care Performance Study – Volume 2, in which T-Mobile's overall customer care score was significantly higher than any other wireless carrier.<sup>15</sup> T-Mobile also received in 2007 the highest rank in a JDPA study measuring overall customer satisfaction for the fifth consecutive reporting period, ranking ahead of all other wireless carriers in the Northeast, West and Southwest regions and highest in a tie in the Mid-Atlantic, Southeast and North Central regions.<sup>16</sup> T-Mobile also received this year JDPA's highest rank in wireless retail satisfaction for the fifth consecutive reporting period and the highest rank in business wireless satisfaction for service offerings, promotions, cost and customer care.<sup>17</sup>

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<sup>15</sup> See J.D. Power and Associates Press Release, *Wireless Carriers Show Steady Improvement in Timeliness of Resolving Customer Care Issues - T-Mobile Ranks Highest in Wireless Customer Care Performance for a Sixth Consecutive Reporting Period*, July 25, 2007, available at <http://www.jdpower.com/press-releases/pressrelease.aspx?id=2007118>.

<sup>16</sup> See J.D. Power and Associates Press Release, *Call Quality Plays an Increasingly Important Role in Customer Satisfaction With the Wireless Phone Experience - T-Mobile Continues to Lead the Regional Customer Satisfaction Rankings*, Apr. 19, 2007, available at <http://www.jdpower.com/press-releases/pressrelease.aspx?id=2007058>.

<sup>17</sup> See J.D. Power and Associates Press Release, *Satisfaction with the Wireless Retail Sales Experience Declines Considerably When Customers Are Not Greeted within 30 Seconds of Entering the Store - T-Mobile Ranks Highest in Wireless Retail Sales Satisfaction for a Fifth Consecutive Time*, May 10, 2007, available at <http://www.jdpower.com/press-releases/pressrelease.aspx?id=2007070>; J.D. Power and Associates Press Release, *Business Customers are Highly Likely to Switch Providers to Get All Telecommunications Services from One Company - T-Mobile Ranks Highest in Satisfying Business Customers with Wireless Service*, May 17, 2007, available at <http://www.jdpower.com/press-releases/pressrelease.aspx?id=2007074>.

**3. The Transaction Will Facilitate Deployment Of Advanced Wireless Services.**

Demand for new, high speed advanced wireless services continues to increase, and wireless carriers, including T-Mobile, must meet that demand to remain competitive in the wireless marketplace. T-Mobile continues to develop and deploy wireless high speed, advanced services that are capable of providing voice, data and multimedia services. T-Mobile is preparing to roll out a 3G UMTS network using the Advanced Wireless Service (“AWS”) spectrum that it acquired in Auction No. 66.

The proposed transaction will enhance 3G broadband services in two ways. First, the transaction will bring additional wireless broadband competition into SunCom’s Licensed areas. SunCom did not obtain AWS spectrum in Auction No. 66, and its existing spectrum holdings may not be adequate to roll out quickly wireless broadband services. The AWS spectrum T-Mobile acquired in Auction No. 66 provides T-Mobile with sufficient capacity to introduce new, competitive wireless broadband services in the Licensed areas. Second, T-Mobile’s efforts to deploy UMTS and AWS will be aided by the ability to overlay those technologies on SunCom’s existing network rather than building out an entirely new network in the Licensed areas. Thus, T-Mobile’s combined PCS and AWS spectrum post-transaction holdings will enable T-Mobile to provide high quality traditional mobile telephony services, as well as advanced wireless broadband services more quickly to new and existing customers in the Licensed areas.

**4. The Transaction Will Generate Significant Cost Savings And Operational Synergies.**

The proposed transaction will produce significant cost savings and operational synergies that will strengthen T-Mobile’s ability to compete against other wireless carriers, particularly the larger national carriers, operating in the United States. T-Mobile expects to realize estimated synergies with a net present value of approximately \$1 billion through reduced roaming and

other operating expenses. As an initial matter, as noted above, T-Mobile and SunCom both utilize GSM, GPRS and EDGE technologies, and T-Mobile believes that it will be able to integrate the two networks quickly with minimal disruption to customers. In addition, SunCom customers should be able to continue to use their existing handsets.

Furthermore, the transaction will lead to sizable savings through the elimination of roaming costs between the Applicants. Under a reciprocal roaming agreement, T-Mobile and SunCom have been roaming partners since 2004, allowing their customers to roam onto each other's networks where they do not otherwise have a constructed network. T-Mobile pays a substantial amount to roam on SunCom's network – in fact, it is by far SunCom's largest source of roaming traffic and revenue. SunCom also incurs significant costs when its customers roam on T-Mobile's and other carriers' networks. These roaming costs largely will be eliminated under the transaction. As the Commission has previously concluded, the elimination of roaming costs will directly benefit consumers and is an important factor in the Commission's public interest review of a transaction.<sup>18</sup>

The reduction in costs associated with the purchase of network equipment is another example of a synergy produced by the transaction. T-Mobile will be able to purchase larger quantities of equipment post-transaction than either it or SunCom could buy individually, resulting in economies of scale and scope in equipment costs. In addition, the transaction will reduce various administrative costs through the integration of T-Mobile's and SunCom's operations, such as costs associated with billing and accounting, customer acquisition, and corporate and management expenses. These reduced business costs can translate into more

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<sup>18</sup> See, e.g., *Alltel/WWC Order*, 20 FCC Rcd at 13108; *Cingular/AWS Order*, 19 FCC Rcd at 21605.

opportunity to deliver value to consumers in the form of new services and competitive offerings at lower rates.

**5. Consumers Will Benefit From A Stronger Competitor In The CMRS Marketplace.**

As the Commission has concluded repeatedly, the CMRS marketplace is highly competitive. A key factor in a wireless carrier's ability to attract and retain customers is its provision of high quality services and products on a local and national basis.<sup>19</sup> Today, there are four "national" carriers. Each of the other three national carriers – Verizon Wireless, AT&T, and Sprint Nextel – is significantly larger than T-Mobile, based upon both customers and revenues.<sup>20</sup> T-Mobile also competes against numerous regional and local wireless carriers, the majority of which either partner with a national carrier or have roaming arrangements that allow them to offer customers local and nationwide services. Continued robust competition in the wireless marketplace will benefit consumers by encouraging the development and deployment of new and innovative services and equipment, higher quality services, a wider variety of service plans and offerings and lower prices.<sup>21</sup>

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<sup>19</sup> See *Eleventh CMRS Competition Report*, 21 FCC Rcd at 10999.

<sup>20</sup> For example, AT&T has approximately 63 million subscribers and total revenues of \$37.5 billion. See *About Wireless Services from AT&T, Formerly Cingular*, available at <http://www.wireless.att.com/about/> (visited Sept. 19, 2007). Verizon Wireless has approximately 62.1 million subscriber and total revenues of \$38 billion. See *Verizon Wireless, About Us – Overview*, available at <http://aboutus.vzw.com/aboutusoverview.html> (visited Sept. 19, 2007). Sprint Nextel has approximately 51 million subscribers and total revenues of \$41 billion. See *About Sprint Nextel*, available at <http://www2.sprint.com/mr/aboutsprint.do> (visited Sept. 19, 2007), and *Sprint Nextel Investor Quarterly Update – Fourth Quarter 2006 Results*, available at [http://www2.sprint.com/mr/news\\_dtl.do?id=15540](http://www2.sprint.com/mr/news_dtl.do?id=15540) (visited Sept. 19, 2007). In contrast, T-Mobile has approximately 27 million subscribers and total 2006 revenues of \$17.1 billion.

<sup>21</sup> See *Eleventh CMRS Competition Report*, 21 FCC Rcd at 11006.

The transaction will strengthen T-Mobile as a wireless competitor and help ensure that the wireless marketplace remains competitive, particularly in light of the continued growth of other, larger national wireless carriers. As noted above, T-Mobile does not now provide service throughout most of SunCom's service area and thus will be a new entrant that can offer consumers a broader range of services and products. Consumers will be able to select from T-Mobile and other wireless carriers operating in these areas a wider range of services, rate plans and wireless devices. This, in turn, will exert greater competitive pressure on existing and new market participants to continue to develop and deploy innovative, faster and cheaper wireless services and applications.

**C. The Transaction Will Not Harm Competition In Any Market.**

The Commission's public interest analysis includes an evaluation of the proposed transaction's impact on competition.<sup>22</sup> Under this analysis, a transaction raises competitive concerns if it "reduce[s] the availability of substitute choices to the point that the merged firm has the incentive and the ability... to raise prices" or otherwise engage in anticompetitive behavior.<sup>23</sup> The Commission's analysis "begin[s] by determining the appropriate market definitions to employ for the analysis, as well as identifying relevant market participants."<sup>24</sup> As discussed below, an evaluation of the transaction under the Commission's standard market analysis shows that the transaction raises no significant competitive concerns.

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<sup>22</sup> See, e.g., *Alltel/WWC Order*, 20 FCC Rcd at 13064-65.

<sup>23</sup> *Alltel/WWC Order*, 20 FCC Rcd at 13066; see also *Cingular/AWS Order*, 19 FCC Rcd at 21552; see also *Midwest Wireless Holdings, L.L.C. and Alltel Communications, Inc.*, 21 FCC Rcd 11526, 11539 (2006) ("*Alltel/Midwest Order*").

<sup>24</sup> *Alltel/Midwest Order*, 21 FCC Rcd at 11541; *Alltel/WWC Order*, 20 FCC Rcd at 13067; *Cingular/AWS Order*, 19 FCC Rcd at 21557; see also *Nextel Communications, Inc. and Sprint Corporation*, 20 FCC Rcd 13967, 13981 (2005) ("*Sprint/Nextel Order*").

## 1. The Relevant Product Market.

The relevant product market for purposes of the Commission's competitive analysis consists of all products "that consumers consider reasonably interchangeable for the same purposes."<sup>25</sup> In this case, T-Mobile is acquiring control of SunCom and the SunCom Subsidiaries, which are primarily engaged in the provision of interconnected mobile voice and mobile data services using 1900 MHz band PCS licenses and a single 850 MHz band cellular license.<sup>26</sup> The Commission has determined previously that interconnected mobile voice and mobile data services should be analyzed in the context of a combined market for mobile telephony services – defined as all interconnected mobile voice and data services provided over cellular, PCS, and specialized mobile radio ("SMR") frequencies.<sup>27</sup> Thus, the Commission has concluded that mobile telephony is the relevant product market for evaluating similar transactions.

The Commission has indicated that it also will evaluate the impact of the proposed transaction on the spectrum market in connection with mobile telephony market transactions. When analyzing the impact of the transaction on the availability of spectrum, the Commission typically evaluates the total amount of spectrum that an applicant would hold in the relevant geographic market post-transaction to determine whether these holdings will likely have a

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<sup>25</sup> *Alltel/WWC Order*, 20 FCC Rcd at 13067 (quoting *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 395 (1956)); see also *Cingular/AWS Order*, 19 FCC Rcd at 21557.

<sup>26</sup> The point-to-point microwave licenses held by the SunCom Subsidiaries are incidental to its cellular and PCS operations.

<sup>27</sup> See *Alltel/WWC Order*, 20 FCC Rcd at 13067-69; see also *Cingular/AWS Order*, 19 FCC Rcd at 21553-56, 81, 88.

significant adverse impact on competition.<sup>28</sup> To assist with this analysis, Exhibit B lists on a county-by-county basis the markets in which T-Mobile and the SunCom Subsidiaries currently hold CMRS licenses and the amount of spectrum T-Mobile would hold post-transaction.

According to the Commission, it “may from time-to-time need to re-evaluate whether additional spectrum should be viewed as suitable for the provision of mobile telephony services.”<sup>29</sup> The Commission previously declined to include the recently auctioned AWS spectrum and licensees in its competitive analysis when it considered Alltel Corporation’s acquisition of Midwest Wireless Holdings, L.L.C.<sup>30</sup> The Commission’s conclusion was based on the fact that the auction had recently concluded, the AWS licenses had not been issued, and it was “premature to classify the AWS spectrum as suitable for the provision of mobile telephony for purposes of our analysis” given that the spectrum must still be cleared of government and microwave incumbents.<sup>31</sup> Although the AWS licenses have since been awarded, the relocation of incumbents is on-going.<sup>32</sup> No commercial service has yet been launched by any auction

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<sup>28</sup> *Alltel/WWC Order*, 20 FCC Rcd at 13071; *see also Cingular/AWS Order*, 19 FCC Rcd at 21552.

<sup>29</sup> *Alltel/Midwest Order*, 21 FCC Rcd at 11544 n.129.

<sup>30</sup> *See id.* at 11543-44 n.129.

<sup>31</sup> *Id.*

<sup>32</sup> *See* Office of Management and Budget, *Commercial Spectrum Enhancement Act: Report to Congress on Agency Plans for Spectrum Relocation Funds* (Feb. 16, 2007), [available at www.ntia.doc.gov/reports/2007/OMBSpectrumRelocationCongressionalNotification\\_final.pdf](http://www.ntia.doc.gov/reports/2007/OMBSpectrumRelocationCongressionalNotification_final.pdf). According to the timetables prepared by NTIA, relocation of most federal government incumbents is scheduled to take place between 13 and 36 months. Some incumbents, however, such as certain Department of Defense and Department of Energy users, may take up to six years to complete relocation. *See id.* at 10-11, 17-18, 20-21. T-Mobile is actively working to coordinate around these systems.

winner on the AWS spectrum. However, even if the Commission incorporates AWS spectrum into its spectrum analysis in this transaction, the transaction raises no anticompetitive concerns.

## 2. The Relevant Geographic Market.

The relevant geographic market is “the area in which buyers practically can turn for alternative sources of supply, or in which there are sellers who act to restrain the prices charged to those buyers.”<sup>33</sup> For purposes of analyzing competition in the mobile telephony product market, the Commission previously has indicated that the relevant geographic market is neither national nor county-specific.<sup>34</sup> Instead, the Commission typically has used two relevant geographic markets – Component Economic Areas (“CEAs”) and Cellular Market Areas (“CMAs”) in its analysis.<sup>35</sup> Because the SunCom Subsidiaries, however, hold only one cellular license and 27 PCS licenses, in this case the Commission’s competitive analysis may be facilitated in part by using Basic Trading Areas (“BTAs”) rather than CMAs or CEAs. Accordingly, the following spectrum overlap and aggregation analysis primarily is based upon the BTAs, rather than the CMAs, that comprise the relevant License markets, with the exception of SunCom’s cellular license market. Exhibit B, however, lists on a county-by-county basis all areas in which SunCom holds cellular and PCS licenses and the amount of cellular and PCS

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<sup>33</sup> *Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Co.*, 10 FCC Rcd 13368, 13373 (WTB 1995) (citations omitted), *aff’d* 12 FCC Rcd 22280 (1997); *accord* 2002 *Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620, 13719 n.542 (2003) (describing the “Supreme Court’s definition of the relevant geographic market as the region ‘in which the seller operates, and to which the purchaser can practicably turn for supplies.’ *United States v. Grinnell Corp.*, 384 U.S. 563, 588-89 (1966)”).

<sup>34</sup> See *Alltel/WWC Order*, 20 FCC Rcd at 13069-70; *Cingular/AWS Order*, 19 FCC Rcd at 21563.

<sup>35</sup> See *Alltel/WWC Order*, 20 FCC Rcd at 13072-73; *Cingular/AWS Order*, 19 FCC Rcd at 21567.

spectrum that T-Mobile will hold post-transaction in each of those counties. In addition, T-Mobile holds between 10 and 40 MHz of AWS spectrum in each Licensed area, which also is reflected in Exhibit B.

**3. The Applicants Generally Compete In Complementary Markets And Overlapping Markets Do Not Raise Competitive Concerns.**

T-Mobile and SunCom generally provide competitive services in complementary markets, with only minimal overlap. The primary markets in which both T-Mobile and SunCom compete are the Augusta and Savannah, Georgia BTA markets. In these markets, T-Mobile and SunCom each has a significant number of cell sites, more than a *de minimis* number of subscribers, and offers rate plans to potential subscribers.<sup>36</sup> The Applicants, however, believe that their combined operations represent only a small market share in each of the Augusta and Savannah markets, and that it is highly unlikely that this small market share will create anticompetitive effects.

The Commission previously studied the impact on market concentration of transactions that result in license overlays to determine whether potential anticompetitive effects could result.<sup>37</sup> The Commission typically first distinguishes between: (1) overlap areas that would not raise concentration to a level that would raise competitive concerns, and (2) overlap areas that potentially raise competitive concerns and require a more detailed competitive analysis.<sup>38</sup> The Commission has determined that overlaps do not potentially raise competitive issues *unless*:

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<sup>36</sup> The Applicants assume for purposes of this application that they compete only in areas in which they each have cell sites, more than a *de minimis* number of subscribers, and offer rate plans to potential subscribers.

<sup>37</sup> See *Alltel/WWC Order*, 20 FCC Rcd at 13071-75; *Cingular/AWS Order*, 19 FCC Rcd at 21564-69.

<sup>38</sup> See *Alltel/WWC Order*, 20 FCC Rcd at 13074; *Cingular/AWS Order*, 19 FCC Rcd at 21564-65, 21568-69.

- The transaction would increase the Herfindahl-Hirschman Index (“HHI”) by 100 or more *and* the post-transaction HHI would be greater than 2800;
- The transaction would increase HHI by 250 or more; or
- The transaction would increase the applicant’s spectrum holdings in a relevant geographic market to 70 MHz or more.<sup>39</sup>

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

For many markets where the facts of a high subscriber-based HHI and a high change in HHI might seem to suggest a potential competitive problem, there is in fact little likelihood of harm. We find that *the presence and capacity of other firms matter more for future competitive conditions than do current subscriber-based market shares.*<sup>40</sup>

Under the first and second criteria, the Commission typically calculates HHIs using Numbering Resource Utilization Forecast (“NRUF”) data and other confidential information supplied by wireless carriers. Because the Applicants lack the data to apply the first two criteria,<sup>41</sup> Exhibit B lists the competitors in each market in which T-Mobile and SunCom have overlapping licenses. Exhibit B demonstrates that post-transaction T-Mobile will face competition from at least four, and in most cases five or more, facilities-based operators in each overlap market.

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<sup>39</sup> See *Alltel/WWC Order*, 20 FCC Rcd at 13073; *Cingular/AWS Order*, 19 FCC Rcd at 21568-69.

<sup>40</sup> *Cingular/AWS Order*, 19 FCC Rcd at 21579 (emphasis added).

<sup>41</sup> In the *Alltel/WWC Order* and *Cingular/AWS Order*, the Commission calculated HHIs using NRUF data and confidential information supplied by CMRS carriers. See *Alltel/WWC Order*, 20 FCC Rcd at 13072; *Cingular/AWS Order*, 19 FCC Rcd at 21566-67.

Under the third criterion, post-transaction T-Mobile will hold less than 70 MHz of cellular and PCS spectrum throughout the Licensed areas.<sup>42</sup> If T-Mobile's AWS spectrum is included in the analysis, T-Mobile will hold between 70 MHz and 100 MHz in a number of counties in BTA410 (Savannah, GA) and BTA026 (Augusta, GA), between 75 and 85 MHz in three counties in CMA629 (South Carolina 5 – Georgetown), and 70 MHz in one county in BTA141 (Fayetteville-Lumberton, NC). If the Commission decides to include AWS spectrum in its competitive analysis, however, the 70 MHz threshold should be increased accordingly. Proportionately, the new spectrum aggregation threshold after incorporating AWS spectrum would be approximately 103 MHz.<sup>43</sup> T-Mobile's post-transaction cellular, PCS and AWS spectrum holdings would therefore fall below this adjusted threshold. Thus, under any reasonable measure, the Applicants' overlap areas would not raise competitive concerns or require a more detailed competitive analysis.

Out of an abundance of caution, however, a more detailed analysis of the markets in which post-transaction T-Mobile would hold 70 MHz or more of cellular, PCS and AWS

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<sup>42</sup> T-Mobile recently assigned to Sprint Nextel the 10 MHz PCS F Block licenses in BTA 410 (Savannah, GA) and BTA026 (Augusta, GA). The Commission consented to the assignment on April 24, 2007 and the parties consummated the transaction on October 1, 2007. See FCC Public Notice, *Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports Action*, Report Number: 3117 at 9 (rel. Apr. 25, 2007) (consenting to the assignment of licenses from T-Mobile to Wireless Co, L.P., ULS File No. 0002915686). The Applicants' competitive analysis assumes that the 10 MHz F Block licenses have been assigned to Sprint Nextel.

<sup>43</sup> For example, 70 MHz represents about 36.84 percent of the available approximate 190 MHz cellular, PCS and SMR spectrum. See *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, 17 FCC Rcd 23193, 23218 n.186 (2002) (listing the total spectrum allocated by the FCC for commercial wireless services). Accordingly, 36.84 percent of the combined cellular, PCS, SMR and 90 MHz of auctioned AWS spectrum equals approximately 103 MHz of spectrum.

spectrum (collectively, the “Relevant Overlap Markets”) is set forth below. The analysis demonstrates that robust facilities-based competition will remain, and that the transaction will not cause competitive harm, in the Relevant Overlap Markets.

- **BTA410 (Savannah, GA)**

BTA410 (Savannah, Georgia) is composed of 16 counties in Georgia and three counties in South Carolina.<sup>44</sup> Post-transaction, T-Mobile’s PCS and AWS spectrum holdings will total 60 MHz in eight counties and 80 MHz in 11 counties. T-Mobile will continue to face facilities-based competition from five cellular, PCS and SMR licensees, including the other three national carriers, as well as Alltel and Hargray Wireless. These competitors all appear to market and provide services in BTA410. In addition, the SpectrumCo venture, NextWave Broadband, Verizon Wireless, Cricket Communications, Daredevil Communications and Palmetto Rural Telephone Cooperative hold AWS licenses in some or all of BTA410.

- **BTA026 (Augusta, GA)**

BTA026 (Augusta, Georgia) is composed of 11 counties in Georgia and four counties in South Carolina.<sup>45</sup> Post-transaction, T-Mobile’s PCS and AWS spectrum holdings will total 80 MHz in 11 counties and 100 MHz in four counties. T-Mobile will continue to face facilities-based competition from four to five cellular, PCS and SMR licensees throughout BTA026, including the other three national carriers, as well as Alltel and Wilkes Cellular. These competitors all appear to market and provide services in and around BTA026. In addition, the SpectrumCo venture, NextWave Broadband, Verizon Wireless, Cricket Communications, Piedmont Rural Telephone Cooperative and West Carolina Communications hold AWS licenses in some or all of BTA026.

- **CMA629 (South Carolina 5 – Georgetown)**

Post-transaction, T-Mobile’s cellular, PCS and AWS spectrum holdings will total 75 MHz in Horry County, South Carolina and 85 MHz in Georgetown and Marion Counties, South Carolina.<sup>46</sup> Currently, SunCom holds a total of 55 MHz of cellular and PCS spectrum in Horry, Georgetown and Marion Counties. T-Mobile, on the other hand, holds no cellular or PCS spectrum in Horry County and only 10 MHz of PCS spectrum in Georgetown and Marion Counties. T-Mobile also holds 20 MHz of AWS spectrum in each county. Post-transaction, T-Mobile will continue to face facilities-based

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<sup>44</sup> The counties in BTA410 also are in CMAs 155, 378, 380, 381, 382, and 632. See Exhibit B.

<sup>45</sup> The counties in BTA026 also are in CMAs 108, 374, 378, 626, and 631. See Exhibit B.

<sup>46</sup> Horry County, South Carolina is located in BTA312; Georgetown County, South Carolina is located in BTA072; and Marion County, South Carolina is located in BTA147. See Exhibit B.

competition from at least five cellular, PCS, SMR licensees, including the other three national carriers, as well as Alltel, Cricket Communications and Horry Telephone. These competitors, except Cricket Communications, appear to market and provide services in and around this market. In addition, Horry Telephone, the SpectrumCo venture, NextWave Broadband, and Verizon Wireless hold AWS licenses in these counties.

- **BTA141 (Fayetteville-Lumberton, NC)**

Post-transaction, T-Mobile will hold a total of 70 MHz of PCS and AWS spectrum in Cumberland County, North Carolina, which is located in BTA041.<sup>47</sup> Currently, SunCom holds a total of 30 MHz of PCS spectrum in Cumberland County, and T-Mobile holds no cellular or PCS spectrum and 40 MHz of AWS spectrum. Post-transaction, T-Mobile will continue to face facilities-based competition from five cellular, PCS and SMR licensees, including the other three national carriers, as well as Alltel and U.S. Cellular in BTA141. These competitors appear to market and provide services in and around BTA141. In addition, the SpectrumCo venture, AT&T, NextWave Broadband, Verizon Wireless, and Ellerbe Telephone hold AWS licenses in BTA141.

As shown above, vigorous facilities-based competition exists in each of the Relevant Overlap Markets that post-transaction will constrain T-Mobile from acting in an anticompetitive manner in these markets. Furthermore, each competitor holds sufficient spectrum to provide competitive wireless services. Multiple carriers also have new AWS spectrum that they can use either to supplement existing operations or, if they are not providing service in a particular area, to provide the basis for entry into that market.

**4. The Level Of Competition That Will Remain In Each Market And Nationwide Makes Unilateral Anticompetitive Behavior By T-Mobile Highly Unlikely.**

Once the Relevant Overlap Markets are identified for further evaluation, the Commission typically assesses whether the transaction “may lead to competitive harm through unilateral actions by the [acquiring] entity” in those markets.<sup>48</sup> The Commission has indicated that, in the context of mobile telephony, these actions “might take the form of delaying improvements in

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<sup>47</sup> Cumberland County is located in CMA149. See Exhibit B.

<sup>48</sup> *Alltel/WWC Order*, 20 FCC Rcd at 13075; *Cingular/AWS Order*, 19 FCC Rcd at 21569-70.

service quality or adversely adjusting plan features without changing plan price.”<sup>49</sup> Unilateral effects are possible only when a company can raise prices and suppress output without being disciplined by other competitors in the market.<sup>50</sup> Unilateral effects are unlikely where other firms in the market sell products that consumers regard as close substitutes for the products sold by the combining firms.<sup>51</sup>

The level of competition described above that will remain in each of the Relevant Overlap Markets post-transaction makes it highly unlikely that any anticompetitive unilateral effects would be profitable for T-Mobile post-transaction. This is particularly true given the presence on a licensee basis of the three other national carriers and additional smaller operators in each of those markets. Should T-Mobile attempt to raise prices or harm consumers in the Relevant Overlap Markets, consumers will be able to switch to another wireless carrier. T-Mobile’s multiple competitors would be able to respond competitively by attracting and absorbing any new customers.

Furthermore, the proposed transaction will not harm competition in the national CMRS marketplace. The Commission’s *Eleventh Annual CMRS Competition Report* found that “there is effective competition in the CMRS marketplace.”<sup>52</sup> The ability of customers to switch providers, which has become commonplace since the widespread availability of local number portability, prevents any wireless carrier from taking unilateral actions that may lead to competitive harm. As the Commission acknowledged, “even a carrier with a large market share

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<sup>49</sup> *Alltel/WWC Order*, 20 FCC Rcd at 13075-76; *Cingular/AWS Order*, 19 FCC Rcd at 21570.

<sup>50</sup> See, e.g., United States Department of Justice/Federal Trade Commission, *Horizontal Merger Guidelines*, at Section 2.2 (Apr. 2, 1992) (“DOJ Merger Guidelines”).

<sup>51</sup> *Id.*

<sup>52</sup> *Eleventh CMRS Competition Report*, 21 FCC Rcd at 10950.

in an area has very little pricing power” due to the intense competition in wireless rates and service offerings.<sup>53</sup> In addition, T-Mobile’s retail rates, like some other national carriers, are set on a national level, with little or no variation by locality or region. The acquisition of SunCom would not materially change T-Mobile’s national pricing strategies or offerings in a manner that would harm consumers. To the contrary, the acquisition will result in the increased availability of competitive and innovative services to consumers. Accordingly, it is unlikely that T-Mobile would or could take unilateral action that would harm wireless competition.

The prospect of new entrants and competition from other sources also undermines the likelihood of anticompetitive unilateral effects on a local or national basis. The Commission has recognized that there is a high degree of substitutability among all mobile telephony providers.<sup>54</sup> Any attempt by T-Mobile to elevate price and suppress output would be unprofitable. Any such attempt would be short-lived or never attempted in the first place.<sup>55</sup> Thus, unilateral effects are unlikely to result from the transaction. In addition to the competitors identified in Exhibit B, T-Mobile will face competitive pressures from mobile virtual network operators (“MVNOs”), satellite providers of interconnected mobile voice services, and wireless Voice over Internet Protocol and Wi-Fi/WiMax offerings. The Commission also is expecting to auction 62 MHz of “beachfront” 700 MHz band spectrum in early 2008.<sup>56</sup> This additional spectrum will strengthen

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<sup>53</sup> *Id.* at 11007 (citation omitted).

<sup>54</sup> See *Alltel/WWC Order*, 20 FCC Rcd at 13077-78; *Cingular/AWS Order*, 19 FCC Rcd at 21575.

<sup>55</sup> See *Alltel/WWC Order*, 20 FCC Rcd at 13077-78; *Cingular/AWS Order*, 19 FCC Rcd at 21575 (noting that competitive concerns are diminished where consumers view remaining competitors as effective substitutes).

<sup>56</sup> See FCC Public Notice, *Auction of 700 MHz Band Licenses Scheduled for January 16, 2008*, DA No. 07-3415 (rel. Aug. 17, 2007). The propagation characteristics of the 700 MHz band make this spectrum particularly valuable to wireless carriers.

existing competitors and enable market entry by new carriers. All of these actual and potential new service providers currently exert competitive pressure on T-Mobile and will continue to do so post-transaction, eliminating the potential for unilateral anticompetitive behavior.

**5. The Transaction Will Not Increase The Likelihood Of Anticompetitive Coordination Among Wireless Carriers.**

The proposed transaction will not increase the likelihood of anticompetitive coordination among wireless carriers. The mobile telephony market is subject to “intense competitive pressure, rather than coordinated interaction.”<sup>57</sup> Carriers “regularly monitor their rivals’ pricing plans, promotions, marketing strategies, and other aspects of their rivals’ operations, and... use this information as a basis for improving their own ability to compete in attracting and retaining customers,” rather than coordinating their actions.<sup>58</sup>

The Commission already has determined that the wireless sector is not currently conducive to coordinated interaction.<sup>59</sup> There also is no evidence that the transaction will increase the likelihood of anticompetitive coordination among wireless carriers<sup>60</sup> or will not create the “ability to detect and punish deviations that would undermine the coordinated interaction.”<sup>61</sup> The evidence presented above demonstrates that there are a significant number of facilities-based competitors in each of the Relevant Overlap Markets. Furthermore, wireless carriers compete based upon multiple factors, such as promotions on handsets, plan features,

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<sup>57</sup> *Cingular/AWS Order*, 19 FCC Rcd at 21582.

<sup>58</sup> *Alltel/WWC Order*, 20 FCC Rcd at 13086; *Cingular/AWS Order*, 19 FCC Rcd at 21581.

<sup>59</sup> *See Alltel/WWC Order*, 20 FCC Rcd at 13086; *see also Cingular/AWS Order*, 19 FCC Rcd at 21581.

<sup>60</sup> *See, e.g.*, DOJ Merger Guidelines at Section 2.1.

<sup>61</sup> *Alltel/WWC Order*, 20 FCC Rcd at 13085; *see also* DOJ Merger Guidelines at Section 2.1.

service quality, customer service and a wide variety of additional considerations. The uncertainty of future demand for voice, data and advanced services makes coordinated interaction in the wireless sector even more difficult.<sup>62</sup> The divergence in costs, elements of service and product offerings among different carriers makes it more difficult to reach terms of coordination.<sup>63</sup> Accordingly, it is unlikely that any coordinated interaction will occur in the first instance. Thus, the transaction will not affect the difficulty of reaching terms of coordinated interaction or detecting or punishing departures from any such terms, even if they could be reached.

**6. The Transaction Will Not Adversely Affect The Wholesale Roaming Marketplace.**

The proposed transaction will not harm competition in the wholesale roaming marketplace, and other carriers will continue to have the ability to secure competitive roaming agreements from T-Mobile post-transaction. As the fourth largest national wireless carrier in the United States, T-Mobile relies on extensive roaming agreements with other carriers that have compatible systems to fill out its national footprint, especially in rural areas.<sup>64</sup> Because of the tremendous importance of roaming to T-Mobile, it strives to create “win-win” situations benefiting it, its roaming partners, and all associated customers. T-Mobile has strong incentives to negotiate fairly with all carriers – regardless of whether they operate on a nationwide or regional basis – in order to obtain the most efficient and widespread coverage for its customers. T-Mobile endeavors to deal with its roaming partners in a reasonable manner so that not only can

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<sup>62</sup> The Horizontal Merger Guidelines conclude that “[i]f demand or cost fluctuations are relatively infrequent and small, deviations may be relatively easy to deter.” DOJ Merger Guidelines at Section 2.12.

<sup>63</sup> See generally *Eleventh CMRS Competition Report*, 21 FCC Rcd at 10983-11006.

<sup>64</sup> See Comments of T-Mobile USA, Inc., WT Docket No. 05-265, at 2, 4 (Nov. 28, 2005).

T-Mobile's customers roam on their networks, but its partners' customers can roam on T-Mobile's network as well.

Although T-Mobile will expand its facilities-based network by acquiring SunCom, it will continue to rely on roaming agreements in areas where neither T-Mobile nor SunCom currently operates.<sup>65</sup> Furthermore, T-Mobile, like all other wireless carriers, is subject to the Commission's new automatic roaming rules.<sup>66</sup> Post-transaction, any potential for anticompetitive behavior by T-Mobile in the wholesale roaming marketplace will be constrained by the existence of AT&T, the largest national GSM carrier in the United States, which will remain substantially larger than T-Mobile and SunCom combined.<sup>67</sup> Accordingly, the transaction will not harm competition in the wholesale roaming marketplace.

### **III. MISCELLANEOUS ISSUES.**

#### **A. International Authorizations.**

The Commission has authorized the SunCom Subsidiaries to provide international telecommunications service on a resale basis under Section 214 of the Act.<sup>68</sup> Accordingly, applications are being filed concurrently to transfer control of those authorizations to T-Mobile under Section 214 of the Act. The proposed transaction poses no risk of anticompetitive impact

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<sup>65</sup> See *Cingular/AWS Order*, 19 FCC Rcd at 21589 (noting that nationwide carriers have strong incentives to negotiate reciprocal roaming arrangements with other carriers to fill in coverage gaps).

<sup>66</sup> See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 05-265, FCC 07-143 (rel. Aug. 16, 2007).

<sup>67</sup> T-Mobile and other GSM-based carriers rely heavily on AT&T for automatic roaming services. AT&T's unique position as the largest GSM carrier in the United States provides it with significant influence in the roaming marketplace.

<sup>68</sup> See FCC File Nos. ITC-214-20010308-00124 (SunCom Wireless License Company, LLC) and ITC-214-20070626-00246 (SunCom Wireless Puerto Rico License Co., LLC).

on the U.S. international telecommunications marketplace. T-Mobile and SunCom together hold only a very small share of the international telecommunications market. As discussed in the related international Section 214 applications, post-transaction, T-Mobile will have no ability to adversely affect competition. Furthermore, as discussed in the related international Section 214 applications, the vast majority of foreign carriers with which T-Mobile is affiliated are non-dominant in their respective foreign markets. The Commission's international dominant safeguards also are in place on any U.S.-international route in which T-Mobile is affiliated with a dominant foreign carrier. Thus, there is no evidence that consumers or the international calling market will be harmed by this transaction.

**B. Petition For Declaratory Ruling Under Section 310(b)(4) Of The Act.**

In 2001, the Commission issued an order approving DT's acquisition of T-Mobile.<sup>69</sup> The Commission concluded that the acquisition was consistent with the public interest requirements regarding foreign ownership of radio licenses under Section 310(b)(4) of the Act and approved DT's 100 percent foreign ownership of T-Mobile.<sup>70</sup> Concurrently, T-Mobile and SunCom are filing a petition requesting that the Commission confirm that the prior foreign ownership ruling also permits the proposed indirect foreign ownership in each of the SunCom Subsidiaries, as indirect, wholly-owned subsidiaries of T-Mobile, in excess of the 25 percent foreign ownership statutory benchmark, without obtaining new or supplemental rulings.<sup>71</sup> In the alternative, the petition requests that the Commission issue a new declaratory ruling allowing up to 100 percent

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<sup>69</sup> See generally, *VoiceStream/DT Order*. VoiceStream changed its name to T-Mobile after merging with DT.

<sup>70</sup> 47 U.S.C. § 310(b)(4).

<sup>71</sup> Pursuant to Section 310(b)(4) of the Act, the Commission also previously concluded that the current indirect foreign ownership of the SunCom Subsidiaries in excess of 25 percent is consistent with the public interest. See FCC Public Notice, *International Authorizations Granted*, 22 FCC Rcd 8652, 8653-54 (IB 2007) (File No. ISP-PDR-20070309-00003).

foreign ownership in the SunCom Subsidiaries. T-Mobile continues to remain in compliance with the Commission's prior foreign ownership findings.

**C. Compliance With Existing DOJ/FBI Security Agreement.**

T-Mobile requests that the Commission condition its grant of the transaction on compliance with the provisions of the existing security agreement executed between DT and T-Mobile, and the Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI") (the "Security Agreement") in 2001.<sup>72</sup> The Security Agreement provisions are binding upon DT and DT's wholly-owned subsidiaries. Section 7.2 of the Security Agreement provides in relevant part:

DT agrees that in its applications or petitions to the FCC for licensing or other authority filed with the FCC after the Effective Date, except with respect to *pro forma* assignments or *pro forma* transfers of control, it shall request that the FCC condition the grant of such licensing or other authority on DT's compliance with the terms of this Agreement.

The Security Agreement prescribed the following specific language for the conditional grant of interests in FCC licenses in the specific context of the DT's acquisition of T-Mobile:

It is further ordered, that the authorizations and the licenses related thereto are subject to compliance with the provisions of the Agreement between Deutsche Telekom AG, VoiceStream Wireless Corporation, VoiceStream Wireless Holding Corporation on the one hand, and the Department of Justice (the "DOJ") and the Federal Bureau of Investigation (the "FBI") on the other, dated January 12, 2001, which is designed to address national security, law enforcement, and public safety issues of the FBI and the DOJ regarding the authority granted herein. Nothing in the Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to, 47 U.S.C. § 222(a) and (c)(1) and the FCC's implementing regulations.

T-Mobile requests that the Commission impose a similar condition upon grant of the transaction.

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<sup>72</sup> See Agreement between DT, VoiceStream, VoiceStream Wireless Holding Corporation, the DOJ and the FBI (Jan. 12, 2001), which was appended by the Commission to the *VoiceStream/DT Order*.

**D. Related Government Filings.**

The United States Department of Justice will conduct its own review of the competitive aspects of the proposed transaction pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. §18(a), and the rules promulgated thereunder. The Applicants are submitting a Hart-Scott-Rodino notification regarding the transaction.

**E. Additional Authorizations.**

Although the list of call signs referenced in each application that is filed to effectuate the proposed transaction is intended to be complete and to include all of the Licenses that are subject to the transaction, the SunCom Subsidiaries may have now on file, or may subsequently file, additional requests for authorizations for new or modified facilities which may be granted before the Commission takes action on this transaction. Accordingly, the Applicants request that any Commission approval of the applications filed for this transaction include authority for T-Mobile to acquire control of: (1) any authorization issued to the respective licensees/transferor while this transaction is pending and prior to consummation of the transaction; (2) any construction permits held by the respective licensees/transferor that mature into licenses after consummation; and (3) any applications that are pending at the time of consummation. Such action would be consistent with prior decisions of the Commission.<sup>73</sup> Additionally, because T-Mobile is acquiring control of the SunCom Subsidiaries and all of their FCC authorizations, the Applicants request that Commission approval include any facilities that may have been inadvertently omitted.

Furthermore, the Applicants request a blanket exemption from Sections 1.927(h) and 1.933(b) of the Commission's rules<sup>74</sup> in cases where the licensee files amendments to pending

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<sup>73</sup> *NYNEX Corp. and Bell Atlantic Corp.*, 12 FCC Rcd 19985, 20097 (1997); see *Craig O. McCaw and AT&T*, 9 FCC Rcd 5836, 5909 n.300 (1994) ("*McCaw*").

<sup>74</sup> 47 C.F.R. §§ 1.927(h), 1.933(b).

applications to reflect consummation of this application. The exemption is requested so that the amendments reporting the change in ownership will not be treated as major amendments requiring a second public notice for the still-pending applications. Since any ownership changes that result with respect to any particular pending application are part of a larger transaction undertaken for a legitimate business purpose, grant of such an exemption would be consistent with previous Commission decisions.<sup>75</sup>

**F. Trafficking.**

To the extent any authorizations for unconstructed systems are covered by this transaction, those authorizations are merely incidental, with no separate payment being made for any individual authorization or facility. Accordingly, there is no reason to review the transaction from a trafficking perspective.<sup>76</sup>

**G. Unjust Enrichment And Designated Entity Issues.**

To the extent that any of the Licenses are C or F Block PCS licenses, or former “designated entity” licenses, no restrictions prevent the transfer of control of those Licenses to T-Mobile because they were initially granted more than five years ago, and the five-year construction benchmark for these Licenses has been met.<sup>77</sup> Furthermore, there is no outstanding debt owed to the Commission for the Licenses or any unjust enrichment payment required under the transaction.

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<sup>75</sup> See, e.g., *PacifiCorp Holdings, Inc. and Century Telephone Enterprises, Inc.*, 13 FCC Rcd 8891, 8915; *McCaw*, 9 FCC Rcd at 5909 n.300.

<sup>76</sup> 47 C.F.R. § 1.948(i) (noting that the Commission may request additional information regarding trafficking if it appears that a transaction involves unconstructed authorizations that were obtained for the principal purpose of speculation); *id.* § 101.55(c)-(d) (permitting transfers of unconstructed microwave facilities that are “incidental to the sale [of] other facilities or merger of interests”).

<sup>77</sup> See *id.* § 24.839(a).

**IV. CONCLUSION.**

For the foregoing reasons, transferring control of the SunCom Subsidiaries to T-Mobile serves the public interest, convenience and necessity. Accordingly, T-Mobile and SunCom request that the Commission expeditiously consent to the transaction.

Respectfully submitted,

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