

Closed Bidding/Designated Entity Eligibility
Total Gross Revenues for Most Recent Reportable Year

30a) Gross Revenues: \$ 0.00 (Format: 99,999.99)

30b) Year End Date: _____ (Date Format: MM/DD/YYYY)

Total Gross Revenues for One Year Prior to Most Recent Reportable Year

31a) Gross Revenues: \$ 0.00 (Format: 99,999.99)

31b) Year End Date: _____ (Date Format: MM/DD/YYYY)

Total Gross Revenues for Two Years Prior to Most Recent Reportable Year

32a) Gross Revenues: \$ 0.00 (Format: 99,999.99)

32b) Year End Date: _____ (Date Format: MM/DD/YYYY)

Total Aggregate Average Gross Revenues for Designated Entity

33) Aggregate Average Gross Revenue: \$ 0.00 (Format: 99,999.99)

Total Aggregate Average Gross Revenues for Closed Bidding

34) Aggregate Average Gross Revenue: \$ _____ (Format: 99999.99)

Total Assets Disclosure for Closed Bidding

35) Total Assets: \$ _____ (Format: 99,999.99)

Attachment(s):

Type	Description	Date Entered
O	<u>Exhibit 5 (Spectrum Chart)</u>	11/06/2007
C	<u>Exhibit 4 (Portions of Agreement Detailing Purchase Price)</u>	10/23/2007
O	<u>Confidential Treatment Request</u>	10/23/2007
N	<u>Exhibit 3 (Ownership Information)</u>	10/23/2007
O	<u>Exhibit 2 (Statement of No Environmental Impact)</u>	10/23/2007
O	<u>Declaration of Charles C. Townsend</u>	10/23/2007
O	<u>Declaration of Rick L. Moore</u>	10/23/2007
O	<u>Exhibit 1 (Public Interest Statement)</u>	10/23/2007

**DESCRIPTION OF TRANSACTION,
PUBLIC INTEREST SHOWING
AND RELATED DEMONSTRATIONS**

INTRODUCTION AND EXECUTIVE SUMMARY

AT&T's acquisition of 12 MHz of Lower 700 MHz spectrum from Aloha will benefit consumers by better positioning AT&T to keep pace with the steadily growing demand for wireless services. In its most recent annual report on competition in the commercial mobile services market, the Commission noted that the average minutes-of-use per subscriber per month jumped 110 minutes, or almost two hours of additional use, from a year earlier. Growth has been especially pronounced for spectrum-intensive wireless data and content services. There are more than 62 million mobile data subscribers in the United States today, compared to just 22 million in 2005. Mobile applications, such as Internet, video, music, wireless laptops and gaming, are experiencing striking growth. This transaction will allow AT&T to meet its customers' needs for wireless bandwidth more efficiently and enable it to introduce innovative wireless services.

The transaction will not harm competition. Aloha does not yet offer service commercially and would need time, capital and strategic partners in order to do so in the future. Thus, this transaction will eliminate no existing or likely near-term competition. Spectrum holdings of AT&T's competitors will be unaffected, and they will continue to have more than enough spectrum to provide a wide variety of mobile services in competition with AT&T. The approximately 200 MHz of cellular, PCS and SMR that was available in the past for mobile services is dwarfed by the new bands that are becoming available, including 90 MHz of AWS, at least 68 MHz of 700 MHz spectrum, and at least 132 MHz of BRS/EBS, all of which are now or will shortly be in use. The supply of spectrum for mobile services will be further increased by the availability of other spectrum that the Commission has indicated can be used for wireless mobile uses, including, but not limited to, unpaired 700 MHz spectrum, AWS-2 and -3 spectrum, WCS spectrum, 3650-3700 MHz band spectrum and the ancillary terrestrial component of

mobile satellite services. Even after this transaction, Sprint will continue to hold significantly more spectrum suitable for mobile services than is held by AT&T, and other national carriers will continue to have holdings comparable to AT&T. The Commission should promptly approve this transaction, which will benefit consumers by facilitating AT&T's ability to meet their growing demands for wireless services.

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Attachments:

- Declaration of Rick L. Moore
- Declaration of Charles C. Townsend

**DESCRIPTION OF TRANSACTION,
PUBLIC INTEREST SHOWING
AND RELATED DEMONSTRATIONS**

I. OVERVIEW

This Application seeks the Commission's approval for the assignment of licenses held by Aloha Spectrum Holdings Company LLC ("Aloha Spectrum"), a wholly-owned subsidiary of Aloha Partners, L.P. ("Aloha"), to AT&T Mobility II LLC ("AT&T Mobility"), a wholly-owned subsidiary of AT&T Inc. ("AT&T"). The assignment will provide public interest benefits without raising any competitive concerns. Thus, the Commission should approve this Application quickly without any conditions.

II. DESCRIPTION OF THE APPLICANTS AND THEIR EXISTING BUSINESSES

AT&T is a provider of wireless, high-speed Internet access, local and long distance voice, video, data, and directory publishing and advertising services. Aloha Spectrum is a holder of C block licenses in the Lower 700 MHz band, and Aloha has conducted two limited market trials of various mobile applications using that spectrum.

The Commission has concluded repeatedly that AT&T has the qualifications required by the Communications Act to control Commission authorizations,¹ and nothing has changed to

¹ See *In re AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd. 5662, 5758, ¶ 194 (2007) ("AT&T/BellSouth Merger Order"); *In re SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd. 18,290, 18,380-81, ¶¶ 173-76 (2005) ("SBC/AT&T Merger Order"); *In re Applications of AT&T Wireless Servs., Inc. and Cingular Wireless Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd. 21,522, 21,548, ¶ 48 (2004) ("Cingular/AT&T Wireless Merger Order"); *In re Applications of SBC Communications Inc. and BellSouth Corp. for Consent to Transfer Control or Assignment of Licenses and Authorizations*, Memorandum Opinion and Order, 15 FCC Rcd. 25,459, 25,465-66, ¶¶ 14-17 (WTB & IB 2000); *In re Applications of Ameritech Corp. and SBC Communications Inc. for Consent to Transfer Control of Corps. Holding Comm'n Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Comm'n's Rules*,

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disturb this conclusion. Nor can there be any question about Aloha's character or qualifications to hold Commission authorizations.²

III. DESCRIPTION OF THE TRANSACTION

Aloha Spectrum has agreed to assign, upon obtaining Commission consent, all 239 of the C block licenses in the Lower 700 MHz band that it currently holds to AT&T Mobility. In addition, Aloha has agreed to assign to AT&T Mobility 42 Lower 700 MHz band licenses that it is in the process of acquiring, including 31 from LIN Television Corporation ("LIN"), two from Lackawaxen Long Distance Company ("LLDC"), four from SJI, LLC ("SJI") and five from United Wireless Communications, Inc. ("United"), together with certain other related assets.³ The purchase price for all of the acquired assets is \$2.5 billion.

This Application covers the 239 licenses that Aloha Spectrum currently holds. If Aloha acquires any or all of the licenses from LIN, LLDC, SJI and United before the Commission completes its review of the Application, the Applicants will file appropriate amendments to add those licenses to this Application.⁴

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Memorandum Opinion and Order, 14 FCC Rcd. 14,712, 14,950, ¶¶ 571-73 (1999) (subsequent history omitted).

² See *Auction No. 44: Revised Qualified Bidder Notification*, Public Notice, 17 FCC Rcd. 15,543, Attachment A (2002).

³ Application for Assignments of Authorization from Lackawaxen Long Distance Tel. Co. to Aloha Partners, L.P., File No. 0003167566 (Sept. 11, 2007); Application for Assignments of Authorization from LIN Television Corp. to Aloha Partners, L.P., File No. 0003171435 (Sept. 18, 2007); Application for Assignments of Authorization from SJI, LLC to Aloha Partners, L.P., File No. 0003176673 (Sept. 21, 2007); Application for Assignments of Authorization from United Wireless Communications, Inc. to Aloha Partners, L.P., File No. 0003193166 (Oct. 8, 2007).

⁴ If Aloha consummates any of its pending acquisitions after the Commission grants this Application, AT&T and Aloha will file additional applications and notifications as necessary to assign the licenses to AT&T.

IV. THE STANDARD OF REVIEW

In deciding whether to grant this Application under Section 310(d) of the Communications Act of 1934, as amended, the Commission must determine whether doing so is in the public interest. Under its established procedures, the Commission first assesses whether the proposed transaction complies with the specific provisions of the Communications Act, other applicable statutes, the Commission's rules, and federal communications policy. The Commission then weighs any potential public interest harms of the proposed transaction against the potential public interest benefits. The Applicants bear the burden of proving by a preponderance of the evidence that the proposed transaction, on balance, serves the public interest.⁵

It is clear that this transaction does not violate any law or rule. Likewise, as shown below, it does not impede realization of the objectives of the Communications Act or the Commission's ability to implement the Act. To the contrary, this transaction will benefit the public in a number of ways without harming competition and, accordingly, should be approved by the Commission expeditiously.

V. THE TRANSACTION WILL SERVE THE PUBLIC INTEREST

The transaction will benefit consumers by facilitating AT&T's ability to meet the growing demand for innovative, spectrum-intensive wireless data and content services, and to provide those services more efficiently. The use of wireless devices and services has been growing at an ever more rapid pace, and innovative new services will continue to drive increased usage. Meeting the demand will require carriers to make more efficient use of the spectrum they hold and to acquire additional spectrum.

⁵ See, e.g., *AT&T/BellSouth Merger Order* ¶ 19; *SBC/AT&T Merger Order* ¶ 16; *Cingular/AT&T Wireless Merger Order* ¶ 40.

In its most recent annual report on competition in the commercial mobile services market, the Commission noted that the average minutes-of-use per subscriber per month jumped 110 minutes, or almost two hours of additional use, from a year earlier.⁶ Demand for data services is growing even faster. There are over 62 million mobile data subscribers in the United States today, compared to 22 million in 2005 – an increase of 180 percent in just two years.⁷ These users are the fastest growing segment of all broadband users. The Commission’s report on high-speed services for Internet access found that of the 26 percent increase in total broadband lines between December 2005 and June 2006, almost 60 percent of those lines were mobile broadband wireless lines.⁸ Over 80 percent of wireless users are predicted to be data users by 2011.⁹ This dramatic increase in wireless broadband demand is compounded by the fact that wireless data services consume much more bandwidth than voice services.¹⁰ For example, AT&T customer laptop data usage this year has been nearly two times greater than what AT&T just last year projected it would be.¹¹ Newer data-capable handsets are driving data usage at rates that are multiple times greater than the data usage rates of older handsets.¹²

⁶ 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. 10,947, 10,995-96, ¶ 168 (2006) (“*Eleventh CMRS Competition Report*”).

⁷ Informa Telecoms and Media, *World Cellular Data Metrics, Quarterly Datasheet - June 2007*.

⁸ *High Speed Services for Internet Access: Status as of June 30, 2006*, 2007 WL 268934 at Tables 1, 8 (Jan. 31, 2007), available at http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-270128A1.pdf.

⁹ *Strategy Analytics Projects Mobile Data Service Spend to Reach \$200 Billion in 2011; Over 80 Percent of All Cellular Users Will Be Data Users by 2011*, BUSINESS WIRE (Feb. 9, 2007) (citing Strategy Analytics, *Global Cellular Data Forecast 2007-2011*).

¹⁰ Declaration of Rick L. Moore, Senior Vice President, AT&T Inc. (Oct. 22, 2007) at ¶ 4 (“*Moore Decl.*”).

¹¹ *Id.*

¹² *Id.*

As the Commission reported in its *Eleventh CMRS Competition Report*, data services are no longer limited to email or similar services.¹³ Carriers now offer wireless laptop,¹⁴ mobile Internet,¹⁵ video,¹⁶ games, music and other enhanced services, which consume significantly greater bandwidth.¹⁷ Among young people, spending on “mobile products such as ringtones, games and graphics is expected to displace spending on many traditional youth products such as music, clothing and movies.”¹⁸ The demand for data-capable handsets with GPS, video and gaming capabilities, and the exponential growth in wireless laptop usage, demonstrates that there is widespread and steadily growing consumer demand for enhanced data services.¹⁹ This

¹³ *Eleventh CMRS Competition Report* ¶¶ 118-23, 136-39, 170.

¹⁴ The Commission reported that, at the end of 2005, there were more than 2.3 million 3G PC cards in use. *Eleventh CMRS Competition Report* ¶ 165. Last spring, less than a year and a half later, one analyst estimated that there were more than 10 million high-speed data cards in use. Matt Kapko, *21 Century Nomads*, RCR WIRELESS NEWS (Apr. 16, 2007).

¹⁵ According to one survey cited in the *Eleventh CMRS Competition Report*, 22 percent of mobile subscribers paid to access the Web via their wireless devices in the fourth quarter of 2005. ¶ 163. Another study noted that 9.9 percent of U.S. mobile subscribers browsed news and information using their wireless mobile devices in the first quarter of 2006. *Id.* A more recent survey notes that 63 percent of respondents’ cell phones come with an option for pre-enabled Internet access, and 17 percent of respondents currently subscribe to mobile Internet service. *More Than 25% of Wireless Subscribers Switched to Current Carrier to Gain Better Network Coverage*, WIRELESS NEWS (Jan. 21, 2007).

¹⁶ *Eleventh CMRS Competition Report* ¶¶ 138-140; Moore Decl. ¶ 4.

¹⁷ Brady Rafuse, *Web 2.0 Drives New Bandwidth Demands*, TOTAL TELECOM (Jan. 16, 2007) (reporting that “[h]igh demand for services, such as better voice and data combinations, streaming rich media content and demand for more reactive and user-driven Web sites equals an immense increase in demand for bandwidth to ensure the highest quality experience”); *U.S. Plans to Sell Big Chunk of Wireless Spectrum in 2005*, WALL ST. J. (June 17, 2004) (reporting that “[i]n the past decade, the demand for spectrum . . . has exploded. . . . [I]ncreasing customer demand for gadgets such as handheld devices that search the Internet and cellular phones that beam pictures” requires greater bandwidth because “[s]uch new services soak up more space in the spectrum than traditional cellphone calls.”).

¹⁸ *Research and Markets Offers Frost & Sullivan’s Report: A Competitive Analysis of Tier 1 US Wireless Carriers Markets Post Consolidation*, WIRELESS NEWS (Feb. 9, 2007).

¹⁹ See *Nemerix Delivers A-GPS Platform*, TOTAL TELECOM (Oct. 15, 2007); Rex Crum, *Apple Hits iPhone Sales Target Ahead of Forecast*, MARKETWATCH (Sept. 10, 2007), available at <http://www.marketwatch.com/news/story/apple-hits-iphone-sales-target/story.aspx?guid=4A58F9DF-D43E-4958-8862-FB38E4A676D2&dist=SecMostRead>; *AT&T Ramps Up with Video Share Service*, WIRELESS NEWS (Jul. 31, 2007); *Demand for*

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demand for spectrum-intensive uses is likely to increase substantially as carriers introduce more consumer-friendly Internet interfaces and continue to deploy technologies offering faster access to the wireless network.²⁰ Such improvements will enable carriers to provide a host of higher-speed, more data-intensive services that will meet and stimulate the consumer demand for videos, gaming, ultra mobile PCs and other innovative mobile data services. All of this is expected to require even more bandwidth than today's uses.²¹

This transaction will help AT&T keep pace with its customers' demand for mobile data services. It will provide spectrum for new services, or will reduce the need to engage in costly cell-splitting, especially in densely populated areas.²² This will allow AT&T to provide service more cost effectively and to expand its network more easily.²³ The superior in-building coverage of 700 MHz spectrum also will improve the user experience.²⁴ As the Commission has recognized, such efficiency gains through spectrum acquisition are in the public interest because they lead to better service quality, lower prices and quicker deployment of innovative new services.²⁵

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Wireless Internet Access Drives Surge in Network PC Ownership, RTO ONLINE (Jul. 17, 2006), <http://www.rtoonline.com/content/article/Jul06/InternetAccessFuelingNotebookSales071706.asp>.

²⁰ Moore Decl. ¶ 4.

²¹ See Joanie Wexler, *First Nationwide Carrier Jumps on WiMAX Bandwagon; WiMAX Gets Shot in the Arm from Sprint Nextel*, NETWORK WORLD (Aug. 16, 2006); *Carrier Execs Disagree on How Quickly 4G Will Take Hold*, COMMUNICATIONS DAILY (Apr. 10, 2006).

²² Moore Decl. ¶ 6.

²³ Reducing the need for cell-splitting will allow AT&T to reduce the cost of operating and expanding its network. It will also avoid the potential delays involved in acquiring tower space and obtaining local governmental approvals for new cell sites. Moore Decl. ¶ 7.

²⁴ Moore Decl. ¶ 5.

²⁵ See, e.g., *Cingular/AT&T Wireless Merger Order* ¶¶ 201, 225, 233 (finding that the combination of the applicants' spectrum and network assets was likely to enable the combined entity to achieve improvements in service quality, to facilitate the combined entity's deployment of more robust and ubiquitous advanced services, and to reduce roaming costs, thereby reducing

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VI. THE TRANSACTION WILL NOT HARM COMPETITION

A. Aloha Does Not Compete with AT&T in the Provision of Any Service.

Aloha does not compete with AT&T in the provision of any service. Thus, the transaction does not eliminate any existing competition or near-term potential competition. While Aloha completed a limited wireless broadband trial in Phoenix in January 2007 and will complete a similarly limited, free broadcast-delivered mobile video trial in Las Vegas by the end of this year,²⁶ it has not formulated any specific plans to offer such services on a commercial basis.²⁷ As indicated by the Declaration of Mr. Townsend, absent this transaction, Aloha would evaluate the results of its commercial trials along with other data and determine what the best use of its spectrum would be.²⁸ It has determined that, as an entrepreneurial company, it would require financial, content and operational support from a wireless carrier or other partners to provide network applications, content, marketing, technical and other support in order to deploy a commercial wireless broadband or mobile video service.²⁹ At the time it agreed to sell the

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costs for customers); *In re Applications of Northcoast Communications, LLC and Celco P'ship d/b/a Verizon Wireless for Consent to Assignment of Licenses*, Memorandum Opinion and Order, 18 FCC Rcd. 6490, 6493, ¶ 10 (CWD, WTB2003) (finding that spectrum acquired in the transaction would allow Verizon to “provide new services and serve the growing demands of existing subscribers, as well as accommodating new subscribers.”).

²⁶ A “broadcast-delivered” mobile video service refers to a mobile video service that delivers a package of programming to all subscribers at once, whereas a unicast-delivered mobile video service provides programming to a particular subscriber on demand. “Broadcast-delivered” does not imply that a service is “broadcasting” or a “broadcast service” as the latter terms are used in the Communications Act and the Commission’s rules. *See* 47 U.S.C. § 153(6); 47 C.F.R. § 27.4.

²⁷ Declaration of Charles C. Townsend, President and CEO, Townsend Enterprises II (October 22, 2007) at ¶ 4 (“Townsend Decl.”). Aloha’s affiliate HiWire is presently providing a mobile video service on a limited, free, trial basis in Las Vegas, Nevada. That trial is scheduled to end at the end of this year. *Id.* The partnerships established for the Phoenix and Las Vegas trials do not hold operational or other assets that would permit the roll out of a commercial service. *Id.* ¶¶ 5-6, 8.

²⁸ *Id.* ¶ 7.

²⁹ *Id.* ¶ 8.

spectrum licenses to AT&T, Aloha had not found such a partner or partners.³⁰ This transaction thus will not adversely affect the current or likely near-term competitive environment.³¹

B. Competitors Will Continue to Have Access to Sufficient Spectrum To Compete Effectively After the Transaction.

This transaction will increase AT&T's spectrum holdings by only 12 MHz in the CMAs in which Aloha holds or is acquiring licenses. There will remain more than enough spectrum, both in the 700 MHz band and in other bands, for numerous competitors to provide the full range of mobile services in competition with AT&T.

In addition to the approximately 200 MHz of cellular, PCS and SMR spectrum that is currently being used for mobile wireless services, the Commission already has auctioned 12 MHz of paired 700 MHz band spectrum (including the licenses AT&T is acquiring in this transaction) and will auction another 56 MHz of paired 700 MHz spectrum early next year. It has also licensed another 90 MHz of AWS spectrum, which will be used for mobile wireless services. Furthermore, several carriers have announced plans to use BRS/EBS (2.5 GHz) spectrum to provide competitive mobile wireless services.³² In all, there is at least approximately

³⁰ *Id.*

³¹ Moreover, even if Aloha were treated as a potential competitor in mobile wireless voice and data services, it would be one of numerous such potential entrants, along with any other holder of spectrum suitable for such uses. Mobile wireless markets are already vigorously competitive. *See Eleventh CMRS Competition Report* ¶ 2. For example, wireless customers continue to receive new and better services at increasingly lower costs. The per-minute cost for wireless calls has declined 72 percent in five years, to \$0.07 per minute, *id.* ¶¶ 150, 154, while wireless usage per customer in the United States is the highest in the world. *see Study Says U.S. Doesn't Lag Europe in Wireless*, COMMUNICATIONS DAILY (Aug. 23, 2007); CTIA, 100 Wireless Facts, <http://www.ctia.org/media/index.cfm/AID/10378>. Consequently, there would be no potential competition concerns arising from this transaction. If Aloha were considered a potential entrant in the provision of broadcast-delivered mobile video service, that is a market in which AT&T does not compete. AT&T's current broadcast-delivered mobile video plans entail utilizing QUALCOMM's MediaFLO service to offer mobile video to its customers. Moore Decl. ¶ 8. The transaction has no effect on AT&T's relationship with MediaFlo at this time. *Id.*

³² Sprint and Clearwire together hold about 40 billion MHz POPs of BRS/EBS spectrum. *See* Paul Saleh, Chief Financial Officer, Sprint, Presentation at Lehman Brothers Worldwide

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490 MHz of spectrum available – or soon to be available – for mobile wireless services which the Commission must consider in evaluating the impact of this acquisition on any input market for spectrum. Moreover, and in view of the fact that much of the spectrum being acquired in this transaction will not be available for use until the completion of the digital television transition in 2009, this number is conservative, since it does not include the availability of other spectrum that the Commission has indicated can be used for mobile wireless uses, including, among others, the following categories: (a) any unpaired 700 MHz spectrum;³³ (b) 40 MHz of AWS-2 and -3 spectrum, even though that spectrum will be available for competitors in the fairly near future;³⁴ (c) 62 MHz of BRS and EBS spectrum;³⁵ (d) Wireless Communications Service (WCS) spectrum, which should be available once licensees resolve technical and equipment issues;³⁶ (e) the 3650-3700 MHz band, which is available on a nationwide, non-exclusive licensing basis

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Wireless and Wireline Conference at 5 (May 30, 2007), *available at* <http://library.corporate-ir.net/library/12/127/127149/items/247927/SprinLehmanBros.pdf>. This translates into a nationwide average of about 132 MHz (*i.e.*, 40 billion divided by the current U.S. population of about 303 million). Although Sprint and Clearwire will use the 2.5 GHz spectrum principally for data services, that does not undermine including that spectrum in the mix of spectrum available for mobile services in general. Those services are and will be competitive with the wireless data services offered by other providers, including AT&T, which will rely on their cellular, PCS, AWS and 700 MHz spectrum to provide them.

³³ See *In re Serv. Rules for Advanced Wireless Serv. in the 2155-2175 MHz Band*, WT Dkt No. 07-194, Notice of Proposed Rulemaking, 2007 WL 2744908 at *6, ¶ 14 (Sept. 19, 2007) (explaining how unpaired spectrum might be used for two-way services).

³⁴ See *In re Serv. Rules for Advanced Wireless Servs. In the 2155-2175 MHz Band*, Notice of Proposed Rulemaking, WT Dkt No. 07-195, 2007 WL 2744908 (Sept. 19, 2007); *In re Serv. Rules for Advanced Wireless Servs. in the 1915-1920 MHz, 2020-2025 MHz and 2175-2180 MHz Bands*, Notice of Proposed Rulemaking, 19 FCC Rcd. 19,263 (2004).

³⁵ Excluding the 1 MHz guard band, there is 194 MHz licensed in the BRS and EBS. Not all of this spectrum is available for commercial wireless services. To be conservative, we are counting only the nationwide average of approximately 132 MHz of BRS and EBS spectrum that Sprint and Clearwire have available to them. See *supra* n. 32.

³⁶ See *In re Consolidated Request of the WCS Coal. for Ltd Waiver of Construction Deadline for 132 WCS Licenses*, Order, 21 FCC Rcd. 14,134, 14,140, ¶ 10, 14,139, ¶ 9 (WTB 2006) (In granting licensees a three-year extension of the construction deadline, the Commission noted that “the technical and equipment challenges in this band are widespread,” but explained “new technology solutions may be available in the near future.”).

with no limit on the number of licenses that may be granted;³⁷ and (f) the ancillary terrestrial component (“ATC”) stations through which mobile satellite service (“MSS”) system providers will provide wireless mobile services integrated with MSS system service, using portions of the spectrum bands assigned for MSS operation.³⁸

Just recently, in adopting service rules for the upcoming 700 MHz band auction, the Commission noted the availability of a wide variety of spectrum, stating that “new entrants wishing to offer wireless broadband Internet access have numerous potential platforms to use for a wireless ‘third pipe,’ both among different 700 MHz band blocks and among other wireless bands.”³⁹ The Commission further noted that “[t]here is potential for additional entry into the broadband market by carriers operating on spectrum in the Wireless Communications Services (WCS), Advanced Wireless Service (AWS), Broadband Radio Service (BRS), and 3650-3700 MHz bands.”⁴⁰

³⁷ See *In re Wireless Operations in the 3650-3700 MHz Band*, Report and Order and Memorandum Opinion and Order, 20 FCC Rcd. 6502, 6503, ¶ 2, 6513-14, ¶¶ 31-32 (2005) (“The licensing scheme that we adopt for this band will provide an opportunity for the introduction of a variety of new wireless broadband services and technologies, such as WiMax.”), *aff’d* Memorandum Opinion and Order, 22 FCC Rcd. 10,421 (2007); *The Impact of the 700 Megahertz Wireless Spectrum Auction on Small Bus.: Hearing Before the H. Comm. on Small Bus.*, 110th Cong. (2007) (written Statement of the Hon. Kevin J. Martin, Federal Communications Commission) (stating “[Spectrum in the 3650 MHz band] will be available on a nationwide, non-exclusive basis and will be shared by multiple providers. This approach will allow an unlimited number of small operators to enter the wireless broadband market quickly, easily, and with minimal cost ...”).

³⁸ See, e.g., *In re Globalstar LLC Request for Authority to Implement an Ancillary Terrestrial Component for the Globalstar Big LEO Mobile Satellite Serv. (MSS) System (Call Sign ES2115)*, Order and Authorization, 21 FCC Rcd. 398, 403, ¶ 15, 413 ¶ 43 (2006) (granting authorization for ATC station and noting that stations can be put into use to provide telecommunications services to customers).

³⁹ *In re Serv. Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Dkt No. 06-150, Second Report and Order, 2007 WL 2301743, *79, ¶ 256 (Aug. 10, 2007).

⁴⁰ *Id.*

Given the current availability of spectrum for competitors, and the imminent availability of still more spectrum, there is no reason for competitive concern about AT&T's acquisition of 12 MHz of 700 MHz spectrum in this transaction. More than two years ago, in the *Sprint/Nextel Order*, the Commission rejected opponents' concerns about the aggregation of a greater amount of spectrum in the 2.5 GHz band because, in part, "[t]he onset of competitors' needs for additional spectrum generally will align with the arrival of suitable spectrum in future auctions, including those for Advanced Wireless Services (AWS)," and because "[t]he record reflects that significant amounts of spectrum currently exist or are expected to become available that will be conducive to the provision of competitive interconnected mobile data services."⁴¹ There is even more reason to take soon-to-be available spectrum into account today than there was two years ago – AT&T's competitors expect to be providing services over AWS, 700 MHz and 2.5 GHz spectrum in the *very* near future.

Clearing of the AWS spectrum has begun in earnest, so the new holders of the spectrum can deploy it for commercial wireless purposes. AWS licensees have begun taking significant steps to relocate non-federal 2.1 GHz incumbents.⁴² Likewise, the U.S. government has begun removing federal users from the 1.7 GHz spectrum. The Office of Management and Budget has projected that most federal users will have vacated their spectrum by early 2010.⁴³

⁴¹ *In re Applications of Nextel Communications, Inc. and Sprint Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd. 13,967, 14,022-23, ¶ 151, 14,025, ¶ 156 (2005).

⁴² *In re Amendment of Part 2 of the Comm'n's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Servs. to Support the Introduction of New Advanced Wireless Servs., Including Third Generation Wireless Sys.*, Report of the CTIA Spectrum Clearinghouse, LLC, ET Dkt No. 00-258 (Jul. 31, 2007); see also *NTIA Carrier Chief Report Progress on AWS Licensee-Agency Negotiations*, TR DAILY (Sept. 17, 2007).

⁴³ Office of Management and Budget, Commercial Spectrum Enhancement Act: Report to Congress on Agency Plans for Spectrum Relocation Funds at 5 (Feb. 16, 2007), available at http://www.ntia.doc.gov/reports/2007/OMBSpectrumRelocationCongressionalNotification_final.

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AWS band clearance is occurring sufficiently rapidly that T-Mobile already has announced its plans to spend \$2.7 billion to build a high-speed 3G data services network that uses its AWS spectrum and to begin offering such services within months.⁴⁴ Likewise, Leap Wireless and MetroPCS have announced that they expect to launch services using this spectrum possibly as soon as next year.⁴⁵ SpectrumCo, a joint venture of several of the largest cable television operators, acquired 20 MHz of AWS spectrum in many of the areas where Aloha holds spectrum and has indicated an interest in acquiring spectrum in the 700 MHz band, thus paving the way for a potent “quadruple play” offering.⁴⁶

The 700 MHz spectrum also will come on-line in the near term. Some of that spectrum was auctioned in 2002, other spectrum was auctioned in 2003 and 2005, and the rest will be auctioned beginning in January 2008. More importantly, incumbent broadcasters face a hard deadline to vacate 120 MHz of that spectrum by February 18, 2009.⁴⁷ Even before that date, the

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pdf.; see also *NTIA Chief, Carrier Report Progress on AWS Licensee-Agency Negotiations*, TR DAILY (Sept. 19, 2007) (NTIA Administrator stating that “I haven’t seen anything to indicate that they [the agencies] won’t be cleared in the time frame that they indicated.”).

⁴⁴ See Brian Kirkpatrick, Chief Financial Officer, T-Mobile USA, Presentation at the 20th Telecom Conference at 17 (Sept. 20, 2007), available at <http://www.telekom.com/dtag/cms/content/dt/en/212058> (stating that rollout of next-generation network using HSDPA is “well underway” and would launch in selected markets in the first half of 2008 and broadly later that year); Deutsche Telekom AG, Annual Report (Form 20-F) at 18 (Mar. 1, 2007) (“Based on its newly acquired spectrum, T-Mobile USA plans to offer its first commercial services based on UMTS-FDD technology in the second half of 2007.”); Dan Frommer, *T-Mobile Plays 3G Catch-Up*, Forbes.com (Oct. 6, 2006), http://www.forbes.com/intelligentinfrastructure/2006/10/06/t-mobile-3g-launch-tech-intel-cx_df_1006tmobile.html; Marguerite Reardon, *T-Mobile Outlines Plans for 3G Network*, CNET News.com (Oct. 6, 2006), http://www.news.com/T-Mobile-outlines-plans-for-3G-network/2100-1039_3-6123480.html?tag=item.

⁴⁵ MetroPCS Communications, Inc., Quarterly Report (Form 10-Q) at 24 (Aug. 10, 2007); Leap Wireless International, Inc., Quarterly Report (Form 10-Q) at 25, 36 (Aug. 9, 2007).

⁴⁶ See “*Look Ma, No Cable*”: Comcast May Connect over Wireless Spectrum, TELEVISION A.M. (Sept. 21, 2006); *SpectrumCo Desires 700 MHz Spectrum*, COMMUNICATIONS DAILY (Jan. 10, 2007).

⁴⁷ Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 309, 120 Stat. 4 (2006).

new licensees may begin to deploy services on this spectrum, subject to coordination with the current broadcast licensees. MediaFLO USA, Inc., a QUALCOMM subsidiary, is using QUALCOMM's Lower 700 MHz spectrum to operate a nationwide broadcast-delivered mobile video network to deliver high-quality video and audio programming to wireless subscribers.⁴⁸

Sprint and Clearwire, with an average combined nationwide holding of about 132 MHz, are moving to complete the mandated market transitions in the BRS/EBS spectrum and announced that they will be launching commercial service using their 2.5 GHz spectrum shortly. This 132 MHz of BRS/EBS spectrum makes Sprint the holder of the largest amount of wireless spectrum and assures that AT&T's acquisition of the Aloha spectrum will not adversely affect competition among wireless providers. After the transaction, Sprint will continue to hold more than twice as much spectrum suitable for wireless mobile services than will be held by AT&T and other national carriers which have holdings comparable to AT&T.⁴⁹ AT&T roughly estimates that Sprint will have on average approximately 187 MHz of spectrum available to it in areas where AT&T will acquire Aloha's spectrum.⁵⁰ AT&T, on the other hand, only will hold an

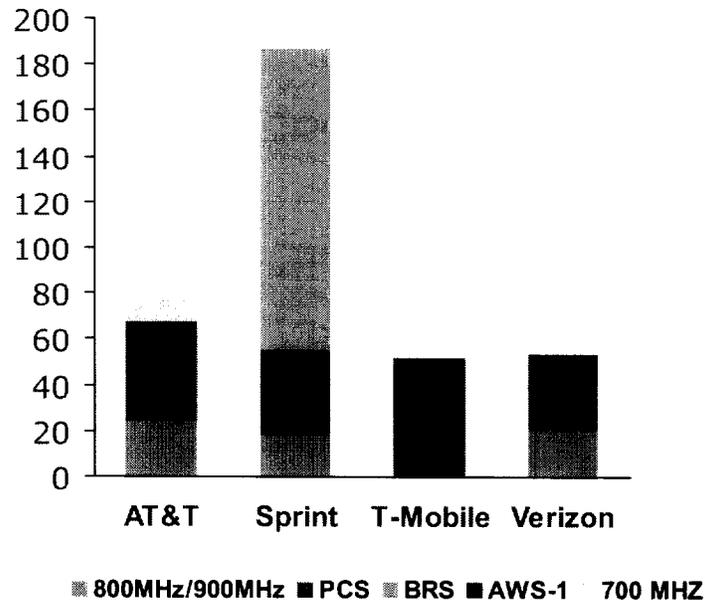
⁴⁸ Dr. Paul E. Jacobs, Presentation at QUALCOMM Annual Stockholder Meeting (Mar. 7, 2006), available at http://files.shareholder.com/downloads/QCOM/32794915x0x33470/9c0c2390-c334-4993-b2f3-6ced7e48519e/pj_stockholder.pdf; Jo Best, *Verizon Wireless Signs Up for Media FLO*, Silicon.com (Dec. 1, 2005), <http://networks.silicon.com/mobile/0,39024665,39154746,00.htm>.

⁴⁹ Moore Decl. ¶¶ 9-10.

⁵⁰ The Sprint estimate includes 18 MHz of 800/900 MHz spectrum, 37 MHz of PCS spectrum, and approximately 132 MHz of BRS/EBS spectrum. See *supra* n.32; Moore Decl. ¶ 9. The 132 MHz BRS/EBS spectrum estimate is the average amount of spectrum held by Sprint and Clearwire nationally and is a conservative estimate. Sprint actually may have up to 154 MHz of BRS/EBS spectrum available to it in some areas since Sprint holds approximately 90 MHz of such spectrum and Clearwire holds approximately 64 MHz of the spectrum. Moore Decl. ¶ 9. The 800/900 MHz, PCS and AWS spectrum amounts for Sprint, AT&T and the other carriers are population-weighted calculations of the average amount of each spectrum held in the top 100 CMAs. *Id.* ¶ 11. The spectrum estimates for each carrier in the Moore Declaration are based on AT&T's initial review of publicly-available data. Moore Decl. ¶ 11.

estimated 80 MHz of spectrum.⁵¹ T-Mobile will hold an estimated 52 MHz of spectrum,⁵² and Verizon will hold an estimated 54 MHz of spectrum.⁵³ And in many areas, regional and local carriers hold spectrum and are capable of providing competitive wireless services.

Spectrum Holdings of National Wireless Carriers



Sprint is prepared to use the 132 MHz of 2.5 GHz spectrum in the near future. Sprint has demonstrated key technologies and described operational plans for providing new mobile services using the BRS/EBS spectrum. Sprint also announced its branding for these services under the name the XOHM™, with a soft launch of the network expected by the end of 2007 in

⁵¹ The amount includes 24 MHz cellular, 33 MHz PCS, 11 MHz AWS and the 12 MHz of 700 MHz spectrum obtained as a result of the Aloha transaction. *Id.* ¶ 10. The AT&T estimate also includes the spectrum AT&T will control if the Commission approves the transfer of control of the authorizations and spectrum leases held by Dobson Communications Corporation. *Id.* ¶ 11; *In re Applications of AT&T Inc. and Dobson Communications Corp. for Consent to Transfer Control of Licenses and Authorizations*, WT Dkt No. 07-153, Description of the Transaction Public Interest Showing and Related Demonstrations, (Jul. 13, 2007).

⁵² T-Mobile will hold 26 MHz PCS and 26 MHz AWS. Moore Decl. ¶ 10.

⁵³ Verizon will hold 21 MHz cellular, 20 MHz PCS and 13 MHz AWS. *Id.*

the Chicago and Baltimore/Washington areas.⁵⁴ Under an announced network sharing agreement between Sprint and Clearwire, the buildout is expected to reach 100 million POPs by the end of 2008.⁵⁵ And, equipment manufacturers have announced the availability of equipment for mobile WiMAX systems.⁵⁶

These AWS, 700 MHz and 2.5 GHz services are in addition to the high-speed data services currently provided by national carriers over cellular and PCS spectrum, including Sprint Nextel's EVDO Revision A network, which reaches more than 140 million people,⁵⁷ Verizon Wireless's EVDO Revision A service,⁵⁸ and Alltel's Axxcess broadband service.⁵⁹ Smaller carriers such as Alaska Communications Systems, Cellular South, nTelos and others, also have rolled or are rolling out wireless broadband services, so there is no shortage of competition in mobile broadband service.⁶⁰

⁵⁴ Mike Dano, *Sprint Nextel Pushes WiMAX Into the Xohm*, RCR WIRELESS NEWS (Aug. 20, 2007).

⁵⁵ Matt Kapko, *WiMAX: Pushing Construction Boundaries*, RCR WIRELESS NEWS (Aug. 13, 2007).

⁵⁶ See, e.g., Antone Gonsolves, *Intel Partners Heat Up the Race for WiMax*, INFORMATIONWEEK (Sept. 20, 2007) (announcing that Sprint expects to have WiMAX available in "30ish" U.S. markets with a population of 100 million by next year); Press Release, Airspan, *Airspan Introduces MiMAX™ – Quad-Band, Mobile WiMAX MIMO Device Family* (Sept. 19, 2007) (announcing a mobile WiMAX device for laptop computers that "enables service providers to offer roaming services across multiple WiMAX networks regardless of the frequency band used" and stating that equipment is usable in the 2.3 and 2.5 GHz bands, among others); Press Release, Navini, *Surf's Up! Navini Introduces New Line of 802.11e Modems* (Sept. 18, 2007) (announcing a mobile WiMAX device that will operate in the 2.3 GHz, 2.5 GHz, and 2.6 GHz bands, among others).

⁵⁷ See Denise Pappalardo, *Sprint Adds EV-DO Revision A to More Markets*, NETWORKWORLD (Mar. 29, 2007), available at <http://www.networkworld.com/news/2007/032907-sprint-ev-do-revision-a.html>.

⁵⁸ See Verizon Wireless, *Who We Are*, <http://www.vzw-whoweare.com/best/leadership.asp>.

⁵⁹ See Press Release, Alltel, *Alltel Expands EVDO Wireless Broadband Coverage Around Albany* (Sept. 28, 2007).

⁶⁰ See Press Release, Alcatel-Lucent, *nTelos Selects Alcatel-Lucent to Upgrade Network for Wireless Broadband Services* (Aug. 3, 2007); Press Release, Alaska Communications Systems, *Alaska Communications Systems Announces Expansion of Mobile Broadband Service Across*

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It is clear that there is an abundance of spectrum no matter how the Commission defines the input or product market. While AT&T has not decided whether it will use this spectrum for one-way mobile video, two-way mobile data or some other service,⁶¹ under any scenario, competitors will have enough spectrum to compete effectively. As demonstrated above, there is at least 490 MHz of spectrum available for two-way services. If the Commission, on the other hand, concludes the one-way service market is the relevant market for analyzing this transaction, there still will remain ample spectrum for competitors. There is an abundance of spectrum suitable for one-way services, including, at a minimum, the following spectrum sources: 80 MHz of 700 MHz spectrum, 62 MHz of which will be auctioned shortly,⁶² 90 MHz of AWS spectrum,⁶³ and approximately 32 MHz of “middle band segment” BRS/EBS spectrum.⁶⁴ AT&T’s acquisition of the 12 MHz of 700 MHz spectrum in this transaction will have no appreciable impact on the spectrum available to competitors for potential one-way services.⁶⁵

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the North Slope (Mar. 6, 2007); *Cellular South Opens New High-Tech Center in Heart of Jackson; Technical Operations Center Constructed as Part of Cellular South \$140 Million Network Investment*, MARKET WIRE (Feb. 27, 2007).

⁶¹ See Moore Decl. ¶ 5.

⁶² *Auction of 700 MHz Band Licenses Scheduled for January 24, 2008*, AU Dkt No. 07-157, Public Notice, 2007 WL 2937099 (Oct. 5, 2007).

⁶³ See Advanced Wireless Services (AWS) Band Plan, <http://wireless.fcc.gov/services/aws/data/awsbandplan.pdf>.

⁶⁴ See BRS-EBS Band Plans: Pre-Transition at 2500-2690 MHz & Post-Transition at 2495-2690 MHz, <http://wireless.fcc.gov/services/brsebs/data/BRS-EBS-BandPlans.pdf>; *In re Amendment of Parts 1, 21, 73, 74, and 101 of the Comm’n’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educ. and Other Advanced Servs. in the 2150-2162 and 2500-2690 MHz Bands*, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd. 5606, 5617, ¶ 13 (2006).

⁶⁵ AT&T has no more than 30 MHz of AWS spectrum in any license area affected by this transaction.

Given the numerous existing competitors and the spectrum that is available (including through the secondary market), as well as the availability of already and soon-to-be licensed 700 MHz spectrum, it is not plausible that competitors will be too capacity-constrained to compete vigorously with AT&T under any scenario. Thus, this transaction will not threaten competitive harm.

VII. RELATED GOVERNMENTAL FILINGS

The Department of Justice will conduct its own review of the competitive aspects of this transaction pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976⁶⁶ and the rules promulgated thereunder. The Applicants are submitting a notification form and an associated documentary appendix to the Department and the Federal Trade Commission, and they fully expect that this review will confirm that the transaction is in the public interest and not anticompetitive.

VIII. MISCELLANEOUS REGULATORY ISSUES

A. After-Acquired Authorizations.

As was noted in the “Description of the Transaction,” Aloha and Aloha Spectrum are in the process of acquiring C block licenses in the Lower 700 MHz band from LIN, LLDC, SJI and United. They have agreed to assign those licenses to AT&T Mobility, and the Applicants will file amendments as appropriate to add those licenses to this Application if those transactions are consummated before the Commission completes its review of this assignment. In addition, Aloha Spectrum may now have on file, and may hereafter file, additional requests for authorizations for new or modified facilities that may be granted before the Commission takes action on this Application.

⁶⁶ 15 U.S.C. § 18a.

Accordingly, the Applicants request that any Commission approval of the Application filed for this transaction include authority for AT&T Mobility to be assigned: (1) any authorization issued to Aloha during the pendency of the transaction and the period required for consummation of the transaction and (2) any applications that are pending at the time of consummation. Such action would be consistent with prior decisions of the Commission.⁶⁷ Moreover, because AT&T Mobility is acquiring all of Aloha Spectrum's FCC authorizations, AT&T Mobility requests that Commission approval include any authorizations that may have been inadvertently omitted when the Applicants filed this Application.

B. Blanket Exemption to Cut-Off Rules.

The public notice announcing this transaction will provide adequate notice to the public with respect to the licenses involved, including any for which license modifications are now pending. Therefore, no waiver needs to be sought from Sections 1.927(h) and 1.929(a)(2) of the Commission's rules to provide a blanket exemption from any applicable cut-off rules in cases where the Applicants file amendments to pending applications to reflect the consummation of the proposed assignment.⁶⁸

⁶⁷ See, e.g., *AT&T/BellSouth Merger Order* ¶ 226; *SBC/AT&T Merger Order* ¶ 212; *Cingular/AT&T Wireless Merger Order* ¶ 275; *In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from S. New Eng. Telecomms. Corp. to SBC Communications Inc.*, Memorandum Opinion and Order, 13 FCC Rcd. 21,292, 21,317, ¶ 49 (1998); *In re Applications of Pac. Telesis Group and SBC Communications Inc. for Consent to Transfer Control of Pac. Telesis Group and Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd. 2624, 2665, ¶ 93 (1997); *In re Applications of NYNEX Corp. and Bell Atl. Corp. for Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd. 19,985, 20,097-98, ¶¶ 246-56 (1997); *In re Applications of Craig O. McCaw and Am. Tel. & Tel. Co. for Consent to Transfer Control of McCaw Cellular Communications, Inc. and Its Subsidiaries*, Memorandum Opinion and Order, 9 FCC Rcd. 5836, 5909, ¶ 137, n.300 (1994), *aff'd sub nom. SBC Communications Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir.), *recons. in part*, 10 FCC Rcd. 11786 (1995).

⁶⁸ See *In re Applications of Ameritech Corp. and GTE Consumer Servs. Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 15 FCC Rcd. 6667, 6668, ¶ 2, n.6 (WTB 1999); *In re Applications of Comcast Cellular Holdings, Co. and SBC*

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C. Designated Entities.

All of Aloha Spectrum's current 239 licenses were acquired with 35 percent bidding credits – 87 on January 24, 2003, six on March 14, 2003, 144 on December 11, 2003 and two on December 5, 2005, and unjust enrichment payments will be due pursuant to Section 1.2111(d)(2)(ii) of the Commission's rules.⁶⁹

D. Consideration.

Only two of the 239 licenses that are the subject of this Application were acquired through competitive bidding procedures within the last three years – WQDY921 and WQDY922, which were granted on December 5, 2005. Pursuant to Section 1.2111(a) of the Commission's rules,⁷⁰ the Applicants are filing with the Commission, pursuant to a request for confidential treatment, the portions of the Asset Purchase Agreement that document the total consideration that Aloha will receive in exchange for the licenses that are the subject of this transaction.⁷¹

IX. CONCLUSION

For the foregoing reasons, the Commission should conclude that the assignment of spectrum from Aloha Spectrum to AT&T Mobility serves the public interest, convenience and necessity, and should expeditiously, and unconditionally, grant this Application to assign Aloha Spectrum's FCC licenses to AT&T Mobility.

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Communications Inc. for Consent to Transfer Control of Licenses and Authorizations, Memorandum Opinion and Order, 14 FCC Rcd. 10,604, 10,605, ¶ 2, n.3 (WTB 1999).

⁶⁹ 47 C.F.R. § 1.2111(d)(2)(ii).

⁷⁰ *Id.* § 1.2111(a).

⁷¹ Asset Purchase Agreement By and Among Aloha Partners, L.P., Aloha Spectrum Holdings Company LLC and AT&T Inc. (dated October 3, 2007).