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I. INTRODUCTION

1. In this order, we consider applications filed by AT&T Inc. ("AT&T") and Dobson Communications Corporation ("Dobson"). In these applications, AT&T and Dobson (together "the Applicants") seek Commission approval of the transfer of control of licenses, authorizations and *de facto* transfer spectrum leases held by Dobson and its subsidiaries from Dobson CC Limited Partnership, the controlling interest holder in Dobson,¹ to AT&T.² At closing, Dobson will continue as a wholly-owned subsidiary of AT&T.³ These transfer of control applications pertain to licenses for the Part 22 Cellular Radiotelephone Service, the Part 24 Personal Communications Service, the Part 27 Advanced Wireless Service, and the Part 101 Common Carrier Fixed Point-to-Point Microwave Service, as well as international section 214 authorizations.

2. Pursuant to sections 214(a) and 310(d) of the Communications Act of 1934, as amended ("Communications Act"),⁴ we must determine whether the Applicants have demonstrated that the proposed acquisition of Dobson would serve the public interest, convenience, and necessity. Based on the record before us, we find that the Applicants have generally met that burden. In 38 markets, the proposed transaction would result in the combination of overlapping mobile telephony coverage and services. After applying an initial screen to identify those markets in which there clearly is no competitive harm, we conduct a market-by-market competitive analysis examining the potential consequences of increasing AT&T's market share and spectrum holdings in those markets. We find that competitive harm is unlikely in most of these markets, primarily because multiple other service providers in these markets would be an effective competitive constraint on the behavior of the merged entity. With regard to four local areas, however, our case-by-case analysis indicates that likely competitive harms will result. In these areas, we impose narrowly tailored conditions that will effectively remedy the potential for these particular harms. We also condition the proposed transaction on AT&T's voluntary commitment to an interim cap on high-cost, competitive Eligible Telecommunications Carrier ("ETC") support provided to AT&T and Dobson.

¹ See Dobson Communications Corporation, FCC Form 602, File No. 0002781671 (filed Oct. 11, 2006).

² For a complete list of applications involved in this transaction, see AT&T Inc. and Dobson Communications Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations and Request a Declaratory Ruling on Foreign Ownership, WT Docket No. 07-153, *Public Notice*, DA 07-3404 (rel. July 26, 2007) ("Comment Public Notice"). File No. 0003092368 has been designated the lead application ("Application"). The other applications contain an exhibit referring to the exhibits attached to file no. 0003092368. Thus, for convenience, when referring to these applications, we only cite to the lead Application.

³ Dobson will continue to own the stock of its subsidiaries, and Dobson and its subsidiaries will continue to hold all of the FCC authorizations and spectrum leases that they held prior to the merger.

⁴ 47 U.S.C. §§ 214(a), 310(d).

II. BACKGROUND

A. Description of Applicants

1. AT&T Inc.

3. AT&T is a communications holding company incorporated in the State of Delaware and has its principal offices in San Antonio Texas.⁵ Through its subsidiaries and affiliates, AT&T is a provider of communications services, including local exchange and long-distance voice services, wireless services, data/broadband services and high-speed Internet access, Wi-Fi, and IP-based communications services to businesses.⁶ Specifically, AT&T provides broadband, long distance, and local voice service over 64.1 million access lines to customers and has 13.3 million High-Speed Internet subscribers, with a concentration in twenty-two states.⁷ AT&T also provides satellite television service through strategic alliances and provides bundled offerings, such as AT&T HomezoneSM, which combines AT&T/DISH Network with AT&T Yahoo!@ High Speed Internet, and AT&T U-verseSM services, including AT&T U-verse TV, AT&T Yahoo!@ High Speed Internet, and Voice over Internet Protocol ("VoIP") services.⁸ Further, AT&T provides domestic and directory publishing and advertising services.⁹

4. AT&T provides wireless service to 63.7 million customers and has more subscribers than any other wireless provider in the United States.¹⁰ It holds spectrum licenses in all fifty states, the District of Columbia, Puerto Rico, and the United States Virgin Islands,¹¹ and has a network footprint that covers over 284 million people.¹² AT&T provides digital service on its network using primarily Global System for Mobile Communications ("GSM") and General Packet Radio Service ("GPRS") technology and offers Enhanced Data rates for GSM Evolution ("EDGE") for wireless broadband.¹³ AT&T is also in the process of deploying Universal Mobile Telecommunications System/High Speed Downlink Packet Access ("UMTS/HSDPA") broadband to deliver high-speed, wireless broadband services.¹⁴ AT&T

⁵ Application, Exhibit 1 at 1; AT&T Inc., Form 10-K, at 1 (Feb. 26, 2007) ("AT&T Form 10-K"), available at <http://www.att.com/gen/investor-relations?pid=5691>; AT&T, Corporate Profile, <http://www.att.com/gen/investor-relations?pid=5711>, at 1 (last visited Oct. 16, 2007) ("AT&T Corporate Profile") (displaying "all segments of the Company Overview").

⁶ Application, Exhibit 1 at 1; AT&T Form 10-K at 1, 4; AT&T to Acquire Dobson Communications, Expand Wireless Coverage, http://www.dobson.net/ir_press_releases.html, at 1 (last visited Oct. 1, 2007) ("Press Release"); AT&T Corporate Profile at 1, 3.

⁷ AT&T Corporate Profile at 2, 5. The twenty-two states are Alabama, Arkansas, California, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas and Wisconsin. *See id.*; *see also* AT&T Form 10-K at 1.

⁸ AT&T Form 10-K at 2 (stating that AT&T is providing AT&T U-verseSM service in limited parts of 11 markets as of December 2006); AT&T Corporate Profile at 3.

⁹ AT&T Form 10-K at 1; Application, Exhibit 1 at 1; Press Release at 1; AT&T Corporate Profile at 2.

¹⁰ AT&T Corporate Profile at 2.

¹¹ *Id.*

¹² *See* Press Release at 4; AT&T, 2006 Online Annual Report, Wireless, http://www.att.com/Investor/ATT_Annual/wireless/index.html (last visited Oct. 19, 2007).

¹³ AT&T Form 10-K at 3; AT&T Corporate Profile at 5. AT&T also provides service using Time Division Multiple Access ("TDMA") technology. *See* AT&T Form 10-K at 3. AT&T states that it has moved most of its wireless traffic over to its GSM network. *See* AT&T, 2006 Online Annual Report, Chairman's Letter, http://www.att.com/Investor/ATT_Annual/letter/02.html (last visited Oct. 19, 2007).

¹⁴ AT&T Form 10-K at 3; AT&T Corporate Profile at 5.

provides its customers the ability to make calls in 190 countries using internationally enabled phones, with wireless data roaming in 130 countries for laptops, hand-held devices and other data services.¹⁵

2. Dobson Cellular Corporation

5. Dobson, which incorporated in Oklahoma in 1997,¹⁶ provides wireless services over a GSM/GPRS/EDGE network¹⁷ to 1.7 million subscribers in rural and suburban communities in 17 states.¹⁸ Dobson's network covers a population of approximately 12.7 million people primarily in rural and suburban areas.¹⁹ Dobson offers digital voice and data services, including messaging and high-speed data functions, such as wireless e-mail and Internet access.²⁰ Dobson offers service on 850 MHz Cellular and 1900 MHz Personal Communications Services ("PCS") licenses that Dobson either owns or has access to through spectrum leasing arrangements.²¹ Dobson also owns 85 Advanced Wireless Services ("AWS") licenses, which are not currently integrated into Dobson's network.²² Dobson's operations are encompassed in its two wholly-owned subsidiaries, Dobson Cellular Systems, Inc. and American Cellular Corporation.²³ Dobson also has roaming arrangements with AT&T and T-Mobile. The roaming agreements with AT&T designate Dobson as the preferred provider, and in some cases exclusive partner, of roaming services in substantially all of Dobson's markets where AT&T and its affiliates do not have a network.²⁴ Dobson provides services under the CELLULARONE® brand name.²⁵

B. Description of Transaction

6. On June 29, 2007, Dobson, AT&T, and Alpine Merger Sub, Inc. ("Alpine Merger Sub") entered into an Agreement and Plan of Merger ("Merger Agreement").²⁶ Pursuant to the Merger

¹⁵ AT&T Corporate Profile at 2; *See* AT&T, 2006 Online Annual Report, Wireless, http://www.att.com/Investor/ATT_Annual/wireless/02.html (last visited Oct. 19, 2007).

¹⁶ Dobson Communications Corporation, Form 10-K, at 3 (Feb. 28, 2007) ("Dobson Form 10-K"), *available at* http://www.dobson.net/ir_sec_filings.html (last visited Oct. 15, 2007).

¹⁷ Application, Exhibit 1 at 1; Dobson Form 10-K at 3, 4; Dobson Communications Corporation, Profile, http://www.dobson.net/dp_profile.html (last visited Oct. 1, 2007) ("Dobson Profile"). Dobson also provides service on a TDMA network. *See* Dobson Form 10-K at 4; Dobson Profile at 1.

¹⁸ Application, Exhibit 1 at 1; Dobson Communications Corporation, Service Area, http://www.dobson.net/dp_service_area.html (last visited Oct. 1, 2007) ("Dobson Service Area"); Dobson Profile at 1; Press Release at 1. Dobson is providing service in portions of Alaska, Arizona, Illinois, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, West Virginia, and Wisconsin. Dobson Form 10-K at 5; Dobson Service Area at 1; Press Release at 2.

¹⁹ Dobson Communications Corporation, <http://www.dobson.net> (last visited Oct. 1, 2007); Dobson Profile at 1; Dobson Form 10-K at 3, 4; Press Release at 1.

²⁰ Dobson Form 10-K at 3, 5; Dobson Profile at 1.

²¹ Dobson Form 10-K at 5. Dobson's network utilizes 850 MHz spectrum in 13 MSAs, which covers a total population of 2.7 million, and 59 RSAs, which cover a total population of 9 million. The network utilizes 1900 MHz spectrum in an area that covers a total population of 1.0 million. *Id.*

²² *Id.* at 4.

²³ *Id.* at 3.

²⁴ *Id.* at 4-5.

²⁵ Application, Exhibit 1 at 1; Dobson Form 10-K at 6 (stating that, until March 2007, Dobson also marketed under the brand name of DOBSON CELLULAR SYSTEMS® in western Oklahoma and the Texas Panhandle).

²⁶ Application, Exhibit 1 at 2; Dobson Communications Corporation, Form 8-K, at 2 (June 29, 2007; filed July 2, 2007) ("Dobson Form 8-K"), *available at* http://www.dobson.net/ir_sec_filings.html.

Agreement, Alpine Merger Sub will be merged with and into Dobson, with Dobson being the surviving entity.²⁷ Each share of Dobson common stock will be canceled and converted into the right to receive \$13.00 per share.²⁸ The total value of the deal is approximately \$2.8 billion in cash.²⁹ At closing, the separate corporate existence of Alpine Merger Sub will cease, and Dobson will continue as the surviving corporation and a wholly-owned subsidiary of AT&T.³⁰ Dobson will continue to own the stock of its subsidiaries, and Dobson and its subsidiaries will continue to hold all of the FCC authorizations and spectrum leasing arrangements that they held prior to the merger.³¹

C. Application Review Process

1. Commission Review

7. On July 13, 2007, pursuant to section 310(d) of the Communications Act,³² the Applicants filed applications seeking consent to the proposed transfer of control of licenses held by subsidiaries of Dobson to AT&T.³³ Pursuant to section 214 of the Communications Act,³⁴ the Applicants also filed applications seeking Commission approval of the transfer of control of three international section 214 authorizations to from Dobson to AT&T.³⁵ On July 26, 2007, the Commission released a Public Notice seeking public comment on the proposed transaction.³⁶ In response to the Comment Public Notice, the Commission received two petitions to deny the applications, filed by East Kentucky Network, LLC ("East Kentucky Network") and Mid-Tex Cellular LTD. ("Mid-Tex Cellular"),³⁷ and two comments filed by T-Mobile USA, Inc. ("T-Mobile") and Governor Jennifer M. Granholm of the state of Michigan.³⁸ The

²⁷ Application, Exhibit 1 at 2; Dobson Form 8-K at 2.

²⁸ Application, Exhibit 1 at 2; Dobson Form 8-K at 2; Press Release at 2.

²⁹ Press Release at 1, 2.

³⁰ Application, Exhibit 1 at 2; Dobson Form 8-K at 2.

³¹ Application, Exhibit 1 at 2-3.

³² 47 U.S.C. § 310(d).

³³ See *supra* note 2 and accompanying text.

³⁴ 47 U.S.C. § 214.

³⁵ See *supra* note 2 and accompanying text.

³⁶ Comment Public Notice, DA 07-3404, at 1. The Comment Public Notice set due dates of August 27, 2007 for Petitions to Deny, September 6, 2007 for Oppositions, and September 13, 2007 for Replies. See *id.*

³⁷ East Kentucky Network, LLC, Petition to Condition Approval or to Deny, filed Aug. 27, 2007 ("East Kentucky Network Petition to Deny"); Mid-Tex Cellular LTD., Petition to Deny, filed Aug. 27, 2007 ("Mid-Tex Cellular Petition to Deny"). East Kentucky filed an errata to its Petition to Deny on September 10, 2007. East Kentucky Network, LLC, Errata to Petition to Condition Approval or to Deny, filed Sept. 10, 2007 ("East Kentucky Network Errata"). Mid-Tex Cellular filed a supplement to its petition to deny on October 26, 2007. Mid-Tex Cellular LTD., Motion for Leave to Supplement Petition to Deny, filed Oct. 26, 2007 ("Mid-Tex Cellular Supplement"). All pleadings and comments are available on the Commission's Electronic Comment Filing System ("ECFS") at www.fcc.gov/cgb/ecfs/.

³⁸ T-Mobile USA, Inc., Comments of T-Mobile USA, Inc., filed Aug. 27, 2007 ("T-Mobile Comments"); Letter from Jennifer M. Granholm, Governor, State of Michigan, to Kevin Martin, Chairman, Michael Copps, Commissioner, Jonathan Adelstein, Commissioner, Deborah Taylor Tate, Commissioner, and Robert McDowell, Commissioner, Federal Communications Commission (filed Nov. 2, 2007) ("Governor Granholm Comments") (discussing the public interest benefits of the proposed transaction).

Applicants filed a Joint Opposition on September 6, 2007,³⁹ to which East Kentucky Network, Mid-Tex Cellular, and T-Mobile each filed a reply on September 13, 2007.⁴⁰

2. Department of Justice Review

8. The Antitrust Division of the Department of Justice ("DOJ") reviews telecommunications mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that are likely to substantially lessen competition.⁴¹ The Antitrust Division's review is limited solely to an examination of the competitive effects of the acquisition, without reference to national security, law enforcement, or other public interest considerations. The Antitrust Division reviewed the proposed merger between AT&T and Dobson. As a result of its analysis, DOJ concluded that the proposed merger was likely to result in competitive harm in certain markets,⁴² and entered into a settlement with the Applicants designed to address its competitive concerns. Thus, on October 30, 2007, DOJ filed a Complaint and Preservation of Assets Stipulation and Order with the United States District Court for the District of Columbia ("District Court"),⁴³ and the parties jointly filed a proposed Final Judgment with the District Court.⁴⁴ DOJ will allow the merger to proceed subject to the Applicants' divestiture of business units in three markets, the divestiture or withdrawal of AT&T's minority interests in partnerships providing wireless service in two markets, and the divestiture of Dobson's Cellular One interests in two markets.⁴⁵

9. Specifically, under the terms of the settlement between the Applicants and DOJ, AT&T and Dobson have agreed to transfer control of certain cellular licenses and related operational and network assets (including certain employees, retail sites, and subscribers) in Kentucky RSA-6 (CMA448), Kentucky RSA-8 (CMA450), and Oklahoma RSA-5 (CMA600). AT&T has agreed to divest its minority interests in Mid-Tex Cellular, Ltd. covering Texas RSA-9 (CMA660), and in Northwest Missouri Cellular Limited partnership, covering Missouri RSA-1 (CMA504). Finally, AT&T and Dobson have agreed to divest Dobson's interests in Cellular One in Pennsylvania RSA-5 (CMA616) and Texas RSA-11 (CMA662).⁴⁶ These assets will be transferred to the court-appointed management trustee

³⁹ AT&T, Inc. and Dobson Communications Corporation, Joint Opposition of AT&T Inc. and Dobson Communications Corporation to Petitions to Deny and Reply to Comments, filed Sept. 6, 2007 ("Joint Opposition").

⁴⁰ East Kentucky Network, LLC, Reply to Joint Opposition of AT&T Inc. and Dobson Communications Corporation, filed Sept. 13, 2007 ("East Kentucky Network Reply"); Mid-Tex Cellular LTD., Reply to Joint Opposition of AT&T Inc. and Dobson Communications Corporation to Petition to Deny, filed Sept. 13, 2007 ("Mid-Tex Cellular Reply"); T-Mobile USA, Inc., Reply Comments of T-Mobile USA, Inc., filed Sept. 13, 2007 ("T-Mobile Reply").

⁴¹ 15 U.S.C. § 18. In addition, DOJ does not review mergers below certain statutorily mandated dollar thresholds, which are currently between \$50 and \$200 million. 15 U.S.C. § 18(a).

⁴² See generally *United States of America v. AT&T Inc. and Dobson Communications Corporation, Competitive Impact Statement*, Case No. 1:07-cv-01952 (filed October 30, 2007) ("DOJ Competitive Impact Statement"). All DOJ filings regarding this matter are available at <http://www.usdoj.gov/atr/cases/dobson.htm>.

⁴³ See *United States of America v. AT&T Inc. and Dobson Communications Corporation, Complaint*, Case No. 1:07-cv-01952-RMC (filed October 30, 2007) ("DOJ Complaint"); *United States of America v. AT&T Inc. and Dobson Communications Corporation, Preservation of Assets Stipulation and Order*, Case No. 1:07-cv-01952-RMC (entered October 30, 2007) ("DOJ Stipulation").

⁴⁴ *United States of America v. AT&T Inc. and Dobson Communications Corporation, Proposed Final Judgment*, Case No. 1:07-cv-01952-RMC (entered October 30, 2007) ("DOJ Proposed Final Judgment").

⁴⁵ See DOJ Proposed Final Judgment at 8-12; DOJ Complaint at 8-9.

⁴⁶ See DOJ Proposed Final Judgment at 2-8; DOJ Complaint at 8-9; DOJ Competitive Impact Statement at 8-9.

("Management Trustee"), who will manage them while AT&T seeks a third-party buyer.⁴⁷ AT&T has a period of 120 days from consummation of the transaction (which can be extended for up to 60 days) to sell the assets to a third-party buyer or divest the assets to a divestiture trustee ("Divestiture Trustee"), who will both manage and market the assets for sale to a third party.⁴⁸

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

10. Pursuant to sections 214(a) and 310(d) of the Communications Act, the Commission must determine whether the applicants involved with each proposed transaction have demonstrated that the respective proposed assignments and/or transfers of control of licenses and authorizations would serve the public interest, convenience, and necessity.⁴⁹ In applying our public interest test, we must assess whether the proposed transaction complies with the specific provisions of the Communications Act,⁵⁰ the Commission's rules, and federal communications policy.⁵¹ If a proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.⁵²

⁴⁷ See DOJ Stipulation at 8-20.

⁴⁸ See DOJ Proposed Final Judgment at 8-23.

⁴⁹ 47 U.S.C. §§ 214(a), 310(d).

⁵⁰ Section 310(d), 47 U.S.C. § 310(d), requires that we consider the applications as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. See, e.g., AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74, *Memorandum Opinion and Order*, 22 FCC Rcd 5662, 5672 ¶ 17 ("AT&T-BellSouth Order"); Applications for the Assignment of License from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communications, Inc., WT Docket No. 05-114, *Memorandum Opinion and Order*, 21 FCC Rcd 14863, 14871 ¶ 15 (2006) ("GCI-Alaska DigiTel Order"); Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc., WT Docket No. 06-76, *Memorandum Opinion and Order*, 21 FCC Rcd 13580, 13588 ¶ 13 (2006) ("DoCoMo-Guam Order"); Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc., WT Docket No. 05-339, *Memorandum Opinion and Order*, 21 FCC Rcd 11526, 11535 ¶ 16 (2006) ("ALLTEL-Midwest Wireless Order"); Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees, *Memorandum Opinion and Order*, 21 FCC Rcd 7358, 7360 ¶ 7 (2006) ("Sprint Nextel-Nextel Partners Order"); SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control, WC Docket No. 05-65, *Memorandum Opinion and Order*, 20 FCC Rcd 18290, 18300 ¶ 16 (2005) ("SBC-AT&T Order"); Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control, WC Docket No. 05-75, *Memorandum Opinion and Order*, 20 FCC Rcd 18433, 18442 ¶ 16 (2005) ("Verizon-MCI Order"); Applications of Nextel Communications, Inc. and Sprint Corporation, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 13976 ¶ 20 (2005) ("Sprint-Nextel Order"); Applications of Western Wireless Corporation and ALLTEL Corporation, WT Docket No. 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13053, 13062 ¶ 17 (2005) ("ALLTEL-Western Wireless Order"); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21542 ¶ 40 (2004) ("Cingular-AT&T Wireless Order").

⁵¹ See, e.g., AT&T-BellSouth Order, 22 FCC Rcd at 5672 ¶ 19; GCI-Alaska DigiTel Order, 21 FCC Rcd at 14871 ¶ 15; DoCoMo-Guam Order, 21 FCC Rcd 13588-89 ¶ 13; ALLTEL-Midwest Wireless Order, 21 FCC Rcd 11535 ¶ 16; Sprint Nextel-Nextel Partners Order, 21 FCC Rcd at 7360 ¶ 7; SBC-AT&T Order, 20 FCC Rcd at 18300 ¶ 16; Verizon-MCI Order, 20 FCC Rcd at 18442-43 ¶ 16; Sprint-Nextel Order, 20 FCC Rcd at 13976 ¶ 20; ALLTEL-Western Wireless Order, 20 FCC Rcd at 13062 ¶ 17; Cingular-AT&T Wireless Order, 19 FCC Rcd at 21542-43 ¶ 40.

⁵² See, e.g., AT&T-BellSouth Order, 22 FCC Rcd at 5672 ¶ 19; GCI-Alaska DigiTel Order, 21 FCC Rcd at 14871 ¶ 15; DoCoMo-Guam Order, 21 FCC Rcd at 13589 ¶ 13; ALLTEL-Midwest Wireless Order, 21 FCC Rcd 11535 ¶ 16; SBC-AT&T Order, 20 FCC Rcd at 18300 ¶ 16; Verizon-MCI Order, 20 FCC Rcd at 18442-43 ¶ 16; Sprint-Nextel Order, 20 FCC Rcd at 13976 ¶ 20.

The Commission then employs a balancing test weighing any potential public interest harms of a proposed transaction against any potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest.⁵³ The applicants involved with each transaction bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.⁵⁴ If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, section 309(e) of the Act requires that we designate the application for hearing.⁵⁵

11. Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite "citizenship, character, financial, technical, and other qualifications."⁵⁶ Therefore, as a threshold matter, the Commission must determine whether the applicants to the proposed transaction meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission's rules.⁵⁷ In making this determination, the Commission does not, as a general rule, re-evaluate the qualifications of transferors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant designation for hearing.⁵⁸ Conversely, section 310(d) obligates the Commission to

⁵³ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14871 ¶ 15; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589 ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11535 ¶ 16; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7360 ¶ 7; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062-63 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

⁵⁴ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14871-72 ¶ 15; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589 ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11535 ¶ 16; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7360 ¶ 7; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976-77 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

⁵⁵ 47 U.S.C. § 309(e). See also *AT&T-BellSouth Order*, 22 FCC Rcd at 5672-73 ¶ 19; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 15; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589 ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *SBC-AT&T Order*, 20 FCC Rcd at 18300-01 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543-44 ¶ 40. Section 309(e)'s requirement applies only to those applications to which Title III of the Act applies, i.e., radio station licenses. We are not required to designate for hearing applications for the transfer or assignment of Title II authorizations when we are unable to find that the public interest would be served by granting the applications, see *ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979), but of course may do so if we find that a hearing would be in the public interest.

⁵⁶ 47 U.S.C. §§ 308, 310(d). See also *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11536 ¶ 17; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18525-26 ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd 21546 ¶ 44.

⁵⁷ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see also *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589-90 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd 21546 ¶ 44.

⁵⁸ See, e.g., *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13590 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362 ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063-64 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44. See also Stephen F. Sewell, *Assignment and Transfers* (continued....)

consider whether the proposed transferee is qualified to hold Commission licenses.⁵⁹ When evaluating the qualifications of a potential licensee, the Commission previously has stated that it will review allegations of misconduct directly before it,⁶⁰ as well as conduct that takes place outside of the Commission.⁶¹ In this proceeding, no issues have been raised with respect to the basic qualifications of AT&T or Dobson, both of which previously have been found qualified to hold FCC licenses.⁶² Thus, we find that, at this time, there is no reason to re-evaluate the qualifications of these entities.

12. Our public interest evaluation necessarily encompasses the "broad aims of the Communications Act,"⁶³ which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest.⁶⁴ Our public interest analysis may also entail assessing whether the proposed transaction will

(Continued from previous page)

of Control of FCC Authorizations under Section 310 (d) of the Communications Act of 1934, 43 FED. COMM. L.J. 277, 339-40 (1991). The policy of not approving assignments or transfers when issues regarding the licensee's basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. *See id.*

⁵⁹ *See, e.g., GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd 13590 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362 ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

⁶⁰ *See, e.g., GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13590 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47. The Commission will consider any violation of any provision of the Act, or of the Commission's rules or policies, as predictive of an applicant's future truthfulness and reliability and, thus, as having a bearing on an applicant's character qualifications. *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 172; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 184; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 n.85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47; Policy Regarding Character Qualifications In Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, Gen. Docket No. 81-500, *Report and Order and Policy Statement*, 100 F.C.C. 2d 1179, 1209-10 ¶ 57 (1986), *modified*, 5 FCC Rcd 3252 (1990), *recon. granted in part*, 6 FCC Rcd 3448 (1991), *modified in part*, 7 FCC Rcd 6564 (1992).

⁶¹ *See, e.g., GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872-73 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13590 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47. The Commission previously has determined that in its review of character issues, it will consider forms of adjudicated, non-Commission related misconduct that include: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition. *See, e.g., SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 172; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 184; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 n.86; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

⁶² *See AT&T-BellSouth Order*, 22 FCC Rcd at 5758 ¶ 194 (evaluating AT&T's qualifications to be a Commission licensee).

⁶³ *E.g., AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 20; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 17; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11537 ¶ 18; *SBC-AT&T Order*, 20 FCC Rcd at 18301 ¶ 17; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

⁶⁴ *See, e.g., AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 20; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 17; *DoCoMo-Guam Order*, 21 FCC Rcd 13591 ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11537 ¶ 18; (continued....)

affect the quality of communications services or will result in the provision of new or additional services to consumers.⁶⁵ In conducting this analysis, the Commission may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.⁶⁶

13. In determining the competitive effects of the proposed transaction, our analysis is informed by, but not limited to, traditional antitrust principles.⁶⁷ Because the Commission is charged with determining whether the transfer and assignment of licenses serves the broader public interest,⁶⁸ we take into account factors beyond those considered under a traditional antitrust analysis. In the communications industry, competition is shaped not only by antitrust rules, but also by the regulatory policies that govern the interactions of industry players.⁶⁹ In addition to considering whether the merger will reduce existing

(Continued from previous page)

SBC-AT&T Order, 20 FCC Rcd at 18301 ¶ 17; *Verizon-MCI Order*, 20 FCC Rcd at 18443-44 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

⁶⁵ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 20; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 17; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 18; *SBC-AT&T Order*, 20 FCC Rcd at 18301 ¶ 17; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064-65 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

⁶⁶ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 20; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 17; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 18; *SBC-AT&T Order*, 20 FCC Rcd at 18301-02 ¶ 17; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

⁶⁷ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 18; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 ¶ 16; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13977-78 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42. See also *Satellite Business Systems, Memorandum, Opinion, Order, Authorization and Certification*, 62 F.C.C.2d 997, 1088 (1977), *aff'd sub nom United States v. FCC*, 652 F.2d 72 (DC Cir. 1980) (*en banc*); *Northern Utilities Service Co. v. FERC*, 993 F.2d 937, 947-48 (1st Cir. 1993) (stating that public interest standard does not require agencies "to analyze proposed mergers under the same standards that the Department of Justice . . . must apply"). The Commission and DOJ each have independent authority to examine telecommunications mergers, but the standards governing the Commission's review differ from those of DOJ. See, e.g., *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 n.75; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 n.77; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42. DOJ reviews mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that are likely to lessen competition substantially in any line of commerce. 15 U.S.C. § 18.

⁶⁸ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 18; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 ¶ 16; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

⁶⁹ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 18; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591-92 ¶ 16; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537-38 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

competition, we also must consider whether the merger will accelerate the decline of market power by dominant firms in the relevant communications markets and the merger's effect on future competition.⁷⁰ We also recognize that the same consequences of a proposed merger that are beneficial in one sense may be harmful in another.⁷¹ For instance, combining assets may allow a merged entity to reduce transaction costs and offer new products, but it may also create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.⁷²

14. Our public interest authority also enables us to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.⁷³ Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.⁷⁴ Similarly, section 214(c) of the Act authorizes the Commission to attach to the certificate "such terms and conditions as in

⁷⁰ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 18; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 16; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11538 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

⁷¹ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 18; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 16; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

⁷² See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873-74 ¶ 18; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11538 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

⁷³ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 22; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43 (conditioning approval on the divestiture of operating units in select markets). See also *WorldCom-MCI Order*, 13 FCC Rcd at 18032 ¶ 10 (conditioning approval on the divestiture of MCI's Internet assets); Applications of VoiceStream Wireless Corporation, PowerTel, Inc., Transferors, and Deutsche Telekom AG, Transferee, IB Docket No. 00-187, *Memorandum Opinion and Order*, 16 FCC Rcd. 9779 (2001) ("*Deutsche Telekom-VoiceStream Wireless Order*") (conditioning approval on compliance with agreements with Department of Justice and Federal Bureau of Investigation addressing national security, law enforcement, and public safety concerns).

⁷⁴ 47 U.S.C. § 303(r). See also *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11538 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18302-03 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978-79 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43; *FCC v. Nat'l Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978) (upholding broadcast-newspaper cross-ownership rules adopted pursuant to section 303(r)); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (section 303(r) powers permit Commission to order cable company not to carry broadcast signal beyond station's primary market); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989) (syndicated exclusivity rules adopted pursuant to section 303(r) authority).

its judgment the public convenience and necessity may require.”⁷⁵ Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to impose and enforce conditions to ensure that the transaction will, overall, serve the public interest.⁷⁶ Despite broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission’s responsibilities under the Communications Act and related statutes.⁷⁷ Thus, we generally will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.⁷⁸

IV. COMPETITIVE ANALYSIS

15. Consistent with our practice when reviewing proposed wireless transactions affecting the mobile telephony market, our analysis of the proposed AT&T-Dobson transaction considers the potential competitive effects that might result from increased concentration.⁷⁹ Horizontal transactions, including mergers, raise competitive concerns when they reduce the availability of choices to the point that the resulting firm has the incentive and the ability, either by itself or in coordination with other firms, to raise prices. A fundamental tenet of the Commission’s public interest review is that, absent significant offsetting efficiencies or other public interest benefits, a transaction that creates or enhances significant market power or facilitates its use is unlikely to serve the public interest.⁸⁰

⁷⁵ 47 U.S.C. § 214(c). See also *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 20; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

⁷⁶ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 22; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592-93 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538-39 ¶ 20; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43. See also *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043, 1049 (7th Cir. 1992) (discussing Commission’s authority to trade off reduction in competition for increase in diversity in enforcing public interest standard).

⁷⁷ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5674-75 ¶ 22; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13593 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11539 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

⁷⁸ See, e.g., *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874-75 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13593 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11539 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

⁷⁹ See, e.g., *CGI-Alaska DigiTel Order*, 21 FCC Rcd at 14875 ¶ 21; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11539 ¶ 22; *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 30; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68; Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, at § 0.1, n.6. (Apr. 2, 1992, revised Apr. 8, 1997) (“*DOJ/FTC Merger Guidelines*”).

⁸⁰ See *GCI-Alaska-DigTel Order*, 21 FCC Rcd at 14871 ¶ 15; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13589-90 ¶ 13; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11540 ¶ 22; *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 30; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68; *DOJ/FTC Merger Guidelines* § 0.1, n.6. The ability to raise prices above competitive levels is (continued....)

16. As we have discussed in several recent wireless merger orders – including *GCI-Alaska DigiTel Order*, *ALLTEL-Midwest Wireless Order*, *Sprint-Nextel Order*, and *Cingular-AT&T Wireless Order* – transactions such as mergers can diminish competition and allow firms to exercise market power in a number of ways.⁸¹ However, a horizontal transaction or merger is unlikely to create or enhance market power or facilitate its exercise unless the transaction significantly increases concentration and results in a concentrated market, properly defined and measured. Transactions that do not significantly increase concentration or do not result in a concentrated market ordinarily require no further competitive analysis. Thus, when examining the effect of proposed transactions, we have first applied a three-part initial “screen” that identifies those local markets in which there is clearly no competitive harm arising from the transaction. Two parts of the screen utilize changes in the measures of the Herfindahl-Hirschman Index (“HHI”) market concentration. The final part of this screen examines the input market for spectrum available on a nationwide basis for the provision of mobile telephony services.⁸² This screen provides only the beginning of the analysis for markets that are not eliminated by the screen. For those markets, we then conduct, on a market-by-market basis, an analysis of other market factors that pertain to competitive effects, including the incentive and ability of other existing firms to react and of new firms to enter the market, in response to attempted exercises of market power by the merged entity. Ultimately, we must assess whether it is likely that the combined firm could exercise market power in any particular market.⁸³

17. Our competitive analysis is set forth in six sections below. First, consistent with these recent wireless merger orders, we begin our competitive analysis by determining the appropriate market definitions for this transaction.⁸⁴ This includes determination of the product market and geographic market definitions that we apply to this transaction, as well as the identification of the market participants. It also considers the input market for spectrum available for the provision of mobile telephony services. As discussed more fully below, by applying the same analysis as in the recent merger orders, we find the product market to be the combined market for mobile telephony services, and the geographic market to be local markets.⁸⁵ With regard to spectrum, however, we no longer limit our examination to spectrum in the cellular, SMR, and broadband PCS bands. Instead, we update our analysis to include 700 MHz spectrum in the initial spectrum screen given its availability and suitability on a nationwide basis for the provision

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generally referred to as “market power.” Market power may also enable sellers to reduce competition on dimensions other than price, including innovation and service quality.

⁸¹ See, e.g., *GCI-Alaska Digital Order*, 21 FCC Rcd at 14875 ¶ 23; *ALLTEL-Midwest Order*, 21 FCC Rcd 11541 ¶ 24; *Sprint-Nextel Order*, 20 FCC Rcd at 13982 ¶ 32; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 70.

⁸² See, e.g., *GCI-Alaska Digital Order* 21 FCC Rcd at 14875 ¶ 22; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13592 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

⁸³ See, e.g., *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14875 ¶ 22; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11540 ¶ 23; *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 31; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 69; *DOJ/FTC Merger Guidelines* § 1.0.

⁸⁴ See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 24; *DoCoMo-Guam Order*, 21 FCC Rcd at 13593-94 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 28; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558 ¶ 74.

⁸⁵ See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876-77 ¶¶ 25-27; *DoCoMo-Guam Order*, 21 FCC Rcd at 13593 ¶ 18; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541-43 ¶¶ 26-31; *Sprint-Nextel Order*, 20 FCC Rcd at 13983-91 ¶¶ 37-57; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067-70 ¶¶ 25-36; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557-63 ¶¶ 71-91.

of mobile telephony services. As a result, our initial spectrum screen for the proposed transaction is 95 MHz, rather than 70 MHz that we previously have used. In addition, while we decide it is premature to include AWS-1 (1710-1755 MHz and 2110-2155 MHz) and Broadband Radio Service ("BRS") spectrum in the initial screen, we will consider such spectrum in our case-by-case analyses to the extent such spectrum is available in any local market not eliminated by our screen. We then examine the market participants holding spectrum in these bands.

18. Second, we apply the Commission's three-part initial screen to this transaction. As described above, through this process, we identify those markets that we subject to further case-by-case review while eliminating from further review those markets in which there clearly is no competitive harm. Third, the order examines the remaining markets with regard to specific issues related to potential competitive harms associated with horizontal concentration. It considers both the potential for unilateral anticompetitive impacts, and the potential for coordinated interaction when only a few firms participate in a market. Fourth, we undertake a granular, market-by-market analysis of the local markets identified by the initial screen. In this section, we identify four markets in which competitive harm is likely. Fifth, we address two other concerns raised by the petitioners in response to this transaction – the potential adverse impact of the transaction with regard to the provision of roaming services and whether AT&T can acquire Dobson's ETC status in one market. Sixth, we examine the public interest benefits of the proposed transaction and conclude that the transaction, subject to the conditions we impose, is likely to result in transaction-specific public interest benefits.

19. Finally, consistent with our determination that the proposed AT&T-Dobson transaction would likely pose significant competitive harms in four local mobile telephony markets, we adopt various conditions and remedies to prevent these harms.

A. Market Definitions

20. Consistent with recent wireless merger orders, we establish at the outset the appropriate market definitions for our evaluation of the AT&T-Dobson transaction. This includes establishing the product and geographic market definitions that we will apply. We also discuss the input market for mobile telephony spectrum and identify market participants that would compete with the proposed merged entity in the provision of mobile telephony services.

21. *Product market.* As noted above, we adopt the same product market definition as applied by the Commission in recent transactions involving the mobile telephony market – *GCI-Alaska DigiTel Order*, *DoCoMo-Guam Order*, *ALLTEL-Midwest Wireless Order*, *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order*. In those orders, the Commission found that there are separate relevant product markets for interconnected mobile voice services and mobile data services, and also for residential services and enterprise services.⁸⁶ Nevertheless, it analyzed all of these product markets under the combined market for mobile telephony service.⁸⁷ Based on consideration of various factors, including the nature of these services and their relationship with each other, the Commission

⁸⁶ See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 25; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 28; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558 ¶ 74.

⁸⁷ See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 25; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 29; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 74.

found that this approach provided a reasonable assessment of any potential competitive harm resulting from the transactions under review.⁸⁸

22. Neither the Applicants nor the Petitioners challenge this product market definition in their submissions. Specifically, the Applicants note that the Commission has analyzed past transactions using a combined market for mobile telephony services, including both voice and data, based on the Commission's findings that doing so would not overlook any potential for competitive harm in a separate mobile data market.⁸⁹ They also note that the proper level of analysis was the combined market for both business and residential services, noting that the more intense competition for business customers obviated the risk of understating any competitive harm to the business enterprise market.⁹⁰ The Applicants contend the same is true here, where service providers offering mobile voice services generally offer at least some data services, and Dobson derives only 7.5 percent of its revenue from business service, which account for only approximately 11 percent of Dobson's subscribers.⁹¹ East Kentucky Network agrees that the proper level of analysis is the combined voice and data services market for both business and residential customers of mobile telephony.⁹² Based on our precedent and the record in this proceeding, we will use the same product market definition in our analysis of the proposed transaction.

23. *Geographic Market.* In its recent wireless merger orders, the Commission applied the "hypothetical monopolist test" and found that the relevant geographic markets are local, larger than counties, may encompass multiple counties, and, depending on the consumer's location, may even include parts of more than one state.⁹³ The Commission in these orders identified two sets of geographic areas that effectively may be used to define local markets – Component Economic Areas ("CEAs") and Cellular Market Areas ("CMAs").⁹⁴ Because these two sets of geographic areas come from different

⁸⁸ See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 25; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068-69 ¶¶ 29-30; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21559-60 ¶¶ 77, 79.

⁸⁹ Application, Exhibit 1 at 16.

⁹⁰ *Id.* at 16-17.

⁹¹ Coates Declaration at ¶ 6.

⁹² East Kentucky Network Petition to Deny at 10.

⁹³ See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 27; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542-43 ¶¶ 29-30; *Sprint-Nextel Order*, 20 FCC Rcd at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562-63 ¶¶ 89-90.

⁹⁴ We have chosen CEAs and CMAs for our data analysis because both are consistent in order of magnitude with the local market definition we have adopted and because each brings a different consideration to the analysis. CEAs are designed to represent consumers' patterns of normal travel for personal and employment reasons and may therefore capture areas within which groups of consumers would be expected to shop for wireless service. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURVEY OF CURRENT BUSINESS, February 1995, at 75. In addition, CEAs should be areas within which any service providers present would have an incentive to market – and actually provide – service relatively ubiquitously. Conversely, CMAs are the areas in which the Commission initially granted licenses for the cellular service. Although partitioning has altered this structure in many license areas, CMAs represent the fact that the Commission's licensing programs have to a certain degree shaped this market by defining the initial areas in which wireless providers had spectrum on which to base service offerings, and they may therefore serve as a reasonable proxy for where consumers face the same competitors. See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105; see also *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876-77 ¶ 27; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at (continued....)

sides of the equation – demand in one case, supply in the other – the Commission found them to be useful cross-checks on each other and, together, they help ensure that the Commission’s analysis does not overlook local areas that require more detailed analysis.⁹⁵

24. The Applicants assert that a CMA-level analysis will show no adverse effects on competition from the merger.⁹⁶ Nonetheless, the Applicants argue for a national-level examination, asserting that national-level competition makes any local anticompetitive effect unlikely.⁹⁷ In particular, the Applicants argue that the forces driving competition among wireless service providers and their effects are felt at a national level and that examining market structure in areas as small as CMAs or CEAs does not accurately account for the way national-level market constraints will ensure effective competition in any local areas affected by the merger.⁹⁸ The Applicants assert that AT&T establishes its rate plans and pricing on a national basis, which means that the terms of such plans are set without reference to market structure at the CMA level.⁹⁹ Although AT&T admits that it, in fact, sometimes adjusts prices in local markets, it states that it does so only in response to the actions of the major national service providers and aggressive local competitors, and that Dobson is not such a competitor.¹⁰⁰ Moreover, such discounts are typically offered on a state or regional level, not within a specific CMA,¹⁰¹ and are relatively rare.¹⁰² East Kentucky Network argues that the primary competitive analysis should be at the CMA level,¹⁰³ but asserts that larger markets need to be examined to the extent that its petition is based on an examination of the interaction of several CMAs in the East Kentucky Region.

25. For this transaction, we continue to find that the most appropriate geographic level for market analysis is comprised of CMAs and CEAs. For the proposed transaction at issue here, we determine that the geographic market is the area within which a consumer is most likely to shop for mobile telephony service.¹⁰⁴ For most individuals, this will be a local area, as opposed to a larger regional or nationwide area.¹⁰⁵ Further, the Applicants’ pricing argument does not undercut the finding of a local geographic

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11542 ¶ 29; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 57; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072-73 ¶¶ 44-45.

⁹⁵ See, e.g., *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11546 ¶ 35; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105

⁹⁶ Application, Exhibit 1 at 18.

⁹⁷ *Id.* See also Willig and Orszag Declaration at 12.

⁹⁸ Application, Exhibit 1 at 18.

⁹⁹ *Id.* at 19.

¹⁰⁰ Roth Declaration at 2.

¹⁰¹ Willig and Orszag Declaration at 13.

¹⁰² *Id.*; Roth Declaration at 3.

¹⁰³ East Kentucky Network Petition to Deny at 10.

¹⁰⁴ *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542 ¶ 30. See also *Sprint-Nextel Order*, 20 FCC Rcd at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 89.

¹⁰⁵ *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542 ¶ 30; *Sprint-Nextel Order*, 20 FCC Rcd at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 89. See also Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Tenth Report*, 20 FCC Rcd 15908, 15971-72 ¶ 174 (2006) (“*Tenth Competition Report*”) (indicating that the average (continued....)

market. While they argue that there may be substantial similarity in the prices of national rate plans amongst nationwide service providers, they admit to adjusting prices in local markets. We conclude that these assertions regarding the nationwide service providers do not establish the existence of a national market.¹⁰⁶ Accordingly, we will use the same geographic market definition in this analysis as the Commission has used in its recent wireless merger orders discussed above.

26. *Input market for spectrum.* Consistent with the Commission's recent wireless merger orders, we also examine this transaction in light of the input market for spectrum associated with the provision of mobile telephony services. In particular, the Commission determined to include, in its evaluation of potential competitive harm, spectrum in particular bands that is "suitable" for the provision of mobile telephony services. As first explained by the Commission in the 2004 *Cingular-AT&T Wireless Order*, suitability is determined by whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its uses for mobile telephony.¹⁰⁷

27. In previous wireless merger orders, the Commission has found that the input market includes only cellular, broadband PCS, and Specialized Mobile Radio ("SMR") spectrum, which totals approximately 200 MHz of spectrum.¹⁰⁸ In addition, the Commission has applied an initial spectrum aggregation screen to proposed transactions involving these services based on this amount of mobile telephony spectrum. This screen has been set at 70 MHz, approximately one-third of the 200 MHz of spectrum that the Commission has previously deemed available for mobile telephony.¹⁰⁹ As explained in the *Cingular-AT&T Wireless Order*,

As an initial matter, although 70 MHz represents a little more than one-third of the [200 MHz of] total bandwidth available for mobile telephony [when considering cellular, broadband PCS, and SMR spectrum bands], we emphasize that a market may contain more than three viable competitors even where one entity controls this amount of spectrum, because many carriers are competing successfully with far lower amounts of bandwidth today.... Nevertheless, in line with the conservative approach embodied in this initial screen, the function of which was simply to eliminate from further consideration any market in which there is no potential for

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person shops for mobile telephony services in markets that include place of work, place of residence, and surrounding areas that are economically related; such areas generally are larger than counties).

¹⁰⁶ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562 ¶ 88.

¹⁰⁷ See *id.* at 21560-61 ¶ 81; see also *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14877 ¶ 28; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 ¶ 21; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11543 ¶ 31; *Sprint-Nextel Order*, 20 FCC Rcd at 13992 ¶ 61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 41.

¹⁰⁸ The approximately 200 MHz of spectrum includes 50 MHz for cellular services, 120 MHz for Broadband PCS, and additional spectrum for SMR. See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, WT Docket No. 06-17, *Eleventh Report*, 21 FCC Rcd 10947 10971-72 ¶¶ 62-64 ("*Eleventh Competition Report*"); see also *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14877 ¶ 28 n. 95; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 ¶ 21 n.103; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11543 ¶ 31 n.130; *Sprint-Nextel Order*, 20 FCC Rcd at 13992 n.155; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 41; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21561 ¶ 81.

¹⁰⁹ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21569-70 ¶ 109; see also *Sprint-Nextel Order*, 20 FCC Rcd at 13994 ¶ 65; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13074 ¶ 49.

competitive harm as a result of this transaction, we subjected to further review any market in which one entity controls more than one-third of this critical input.¹¹⁰

28. In last year's *GCI-Alaska DigiTel Order*, we recognized the need to reevaluate the input market based on changes that were taking place in additional spectrum bands that can be used in providing mobile telephony services:

We do, however, anticipate that sometime in the near future, as [700 MHz and AWS-1] spectrum becomes available for more immediate use, as technological developments lead to performance and equipment advances, and as spectrum allocations are revised, the Commission will need to re-evaluate whether additional spectrum should be viewed as suitable for the provision of mobile telephony services.¹¹¹

29. The Applicants analyze the transaction using an initial screen of 70 MHz, including PCS, cellular and SMR spectrum.¹¹² The Applicants indicate that, using this screen, the proposed transaction will not lead to concerns about new entry or the ability of competitors to provide next-generation services.¹¹³ In addition, the Applicants argue that consideration of "new spectrum the Commission has now licensed and will soon license" in the input market further alleviates any post-merger competitive concerns.¹¹⁴ Mid-Tex Cellular, in requesting that the Commission require the combined entity to divest "CMRS spectrum" in excess of 70 MHz in any county in Texas 9B2 RSA (part of Texas 9-Runnels (CMA660)), includes AWS-1 spectrum as part of the relevant input market.¹¹⁵

30. In light of recent developments discussed below, we now find that, applying the criteria identified in the *Cingular-AT&T Wireless Order*, the input market also includes throughout the nation an additional 80 MHz of the 698-806 MHz spectrum band ("700 MHz spectrum"), bringing the total amount of spectrum suitable for mobile telephony nationwide to approximately 280 MHz.¹¹⁶ Also consistent with

¹¹⁰ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21569-70 at ¶ 109. See also *Sprint-Nextel Order*, 20 FCC Rcd at 13994 at ¶ 65; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13074 ¶ 49.

¹¹¹ *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14878-79 ¶ 30. See also *ALLTEL-Midwest Order*, 21 FCC Rcd at 11543 18 ¶ 31 n.129; *Sprint-Nextel Order*, 20 FCC Rcd at 13992-93 n.156; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 10371 n.127; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21561 n.283.

¹¹² Application, Exhibit 1 at 17, 28-30.

¹¹³ *Id.* at 17.

¹¹⁴ *Id.* at 18.

¹¹⁵ Mid-Tex Cellular Petition to Deny at 2 n.3. Mid-Tex Cellular also requests that the Commission closely scrutinize the competitive impact of the proposed transaction on Texas 9B2 RSA in light of the recently proposed acquisition by AT&T of 700 MHz spectrum currently held by Aloha Spectrum Holdings Company LLC ("Aloha"). Mid-Tex Cellular Supplement at 1-3. We decline to consider the impact of AT&T's acquisition of Aloha's 700 MHz spectrum in the context of this proposed transaction. The competitive effects of AT&T's proposed acquisition of this 700 MHz spectrum will be considered in the context of the Commission's evaluation of the AT&T-Aloha transaction.

¹¹⁶ See, e.g., <http://www.cellular-news.com/story/22318.php> (Alcatel-Lucent shows its CDMA2000 mobile network solution for the 700 MHz band). See also, e.g., Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the (continued....)

the Commission's previous reasoning for applying a spectrum aggregation screen based approximately on one-third of the total bandwidth available for mobile telephony, we revise the spectrum aggregation screen to 95 MHz, approximately one-third of the 280 MHz of the spectrum suitable for mobile telephony today. As with the Commission's previous orders, setting this screen at approximately one third of the total suitable spectrum is designed to be conservative and ensure that any markets in which there is potential competitive harm based on spectrum aggregation is identified and subjected to more in-depth analysis. Under the revised screen we are adopting, we adopt a similarly conservative approach, finding that there is no need for additional analysis where there was at least 185 MHz of spectrum (of the 280 MHz of mobile telephony spectrum) available to other firms to compete in the provision of mobile telephony services.

31. We conclude that the commercial spectrum in the 700 MHz band is suitable for the provision of mobile telephony service, as defined above, and should be considered a component of the input market for spectrum when evaluating this transaction. This 700 MHz spectrum not only is technically capable of supporting mobile services, but also is in many respects ideally suited for the provision of these services. We are also confident at this point in time that it will be licensed and available on a nationwide basis in the sufficiently near-term – less than a year and a half¹¹⁷ – that the prospect of its availability will discipline current market behavior.¹¹⁸ Specifically, the Commission already has auctioned and issued authorizations for 18 megahertz of 700 MHz spectrum – 12 megahertz paired and 6 megahertz unpaired – and these licensees are permitted to operate fixed or mobile services, provided that they comply with relevant technical and operational rules contained in Part 27, and at least one licensee is currently using that spectrum to provide mobile service.¹¹⁹ For example, Qualcomm's MediaFLO service uses 700 MHz spectrum to provide mobile video programming.¹²⁰ Licenses covering another 62 MHz allocated for commercial use will be auctioned in Auction 73, scheduled to begin January 24, 2008, with auction

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Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007); and Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76, *Public Notice*, DA 07-4171 (rel. Oct 5, 2007).

¹¹⁷ We note the DOJ/FTC Merger Guidelines state that a significant market impact from entry must result within two years for the entry to be considered "timely," and thus potentially a factor ameliorating the enhancement of market power or hindering its exercise. *DOJ/FTC Merger Guidelines* § 3.2. The timing of nationwide availability of the 700 MHz spectrum falls well within this period.

¹¹⁸ We note that East Kentucky Network, in responding to the Applicants' allegations that it failed to disclose in its petition that it holds a 700 MHz license in CMA450, argues that its 700 MHz license offers "no near-term prospect for improvement of the competitive circumstances in the region." East Kentucky Network Reply at 4. East Kentucky Network argues that handsets using 700 MHz spectrum for voice services that are compatible with CDMA cellular and PCS systems are not readily available, and even if they were, co-channel television incumbents preclude East Kentucky Network from using its 700 MHz license. *Id.*; Kuzehkanani Declaration at 1. As discussed below, we are ordering a business unit divestiture in CMA450 for other reasons, but note that the alleged absence of particular kinds of mobile devices for 700 MHz spectrum does not mean that we should not consider 700 MHz spectrum as part of the input market in this transaction.

¹¹⁹ Section 27.60 permits licensees to operate in the Band and provide reasonable protection to incumbent TV stations.

¹²⁰ *Verizon Wireless Lifts Curtain on V CAST Mobile TV; True Broadcast Quality, the Best of TV*, News Release, Verizon Wireless, Jan. 7, 2007.

procedures having been announced on October 5, 2007.¹²¹ Statutory deadlines for both commencing the auction and for depositing the proceeds with the U.S. Treasury dictate this timeframe for assigning the spectrum. More importantly, all of this spectrum will be cleared of broadcast incumbents and available for mobile use by February 17, 2009, the statutory date mandated by Congress for the completion of the Digital Television transition.¹²²

32. At this time, however, we find it is not appropriate to include other spectrum bands – particularly AWS-1 and BRS spectrum – in the initial spectrum screen that we apply to the input markets for mobile telephony spectrum. These bands do meet one of the criteria for suitability. AWS-1 and BRS spectrum is capable of supporting mobile services given its physical properties and the state of equipment technology. And the spectrum is licensed with allocation and service rules that allow mobile uses.¹²³ However, we conclude that neither AWS-1 spectrum (1710-1755 MHz and 2110-2155 MHz) nor BRS spectrum is available on a nationwide basis. In many markets, this spectrum is currently committed to another use that effectively precludes its use for mobile telephony, and it is unclear whether it will be available for mobile use in the sufficiently near-term. Excluding this spectrum on this basis at this time is appropriate since we have always intended our screen to be conservative, that is, erring in the direction of identifying more rather than fewer markets for in-depth review.¹²⁴ Limiting the scope of suitable spectrum as described here continues this cautious approach with regard to spectrum aggregation.

33. The AWS-1 spectrum is not generally available for mobile use as yet due to the ongoing clearance of governmental and non-governmental incumbent users. Moreover, the clearance process has no single timetable.¹²⁵ Rather, different pieces of the band are on different clearance schedules, with some extending beyond another two years.¹²⁶ Therefore, we cannot find that the AWS-1 spectrum

¹²¹ Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76, *Public Notice*, DA 07-4171 (rel. October 5, 2007) (“700 MHz Procedures Public Notice”).

¹²² See Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (“DRA”) (amending Section 309(j)(14) and Section 337(e) of the Communications Act, as amended). Title III of the DRA is the DTV Act.

¹²³ As of April 30, 2007, the Wireless Telecommunications Bureau had granted all of the 1,087 AWS-1 licenses won in Auction 66, with the exception of one license subject to a November 13, 2007 deadline for the applicant to file a certification to qualify for a Tribal Land Bidding Credit.

¹²⁴ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69 ¶¶ 108-09; see also *Sprint-Nextel Order*, 20 FCC Rcd at 13993-94 ¶¶ 62, 65; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 10374 ¶ 49.

¹²⁵ See Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66, *Public Notice*, 21 FCC Rcd 4562, 4573-77 (2006) (describing incumbents in the 1710-55 MHz and 2110-55 MHz bands).

¹²⁶ See National Telecommunications and Information Administration, 1710-1755 MHz Introduction, <http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm> (last visited Oct. 22, 2007) (provides information on AWS relocation, including a relocation schedule and cost summary for AWS-1 relocation); see also Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Service to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, Service Rules for Advances Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Ninth Report and Order and Order*, 21 FCC Rcd 4473 (2006) (recon. pending) (establishing procedures for the relocation of Broadband Radio Service (BRS) operations from the 2150-2160/62 MHz band and Fixed Microwave Service (FS) operations in the 2.1 GHz band); The Federal Communications Commission and the National Telecommunications and Information Administration – Coordination Procedures in the 1710-1755 MHz Band, *Public Notice*, WTB Docket No. 02-353, 21 FCC Rcd 4730 (2006) (providing guidance to assist AWS-1 licensees in protecting from interference incumbent federal government operations until they have been relocated to other frequency bands or technologies); Letter from Michael D. Gallagher, Assistant Secretary for Communications and Information, United States Department of Commerce, to Kevin J. Martin, Chairman, Federal Communications (continued....)

capacity will be available on a nationwide basis soon enough to be treated as a factor affecting current behavior in every market.

34. Similarly, the availability of BRS spectrum for new mobile uses depends on the ongoing transition process.¹²⁷ This process, while well advanced, is not complete,¹²⁸ and is by its nature local. As a result, progress will differ significantly from market to market. Thus in the case of this spectrum, too, we cannot find that it will be available on a nationwide basis soon enough to be treated as a factor affecting current behavior nationwide.

35. In our detailed, case-by-case analysis of markets caught by the initial screen, however, we do consider the extent to which AWS-1 or BRS licenses are in fact available *locally*, and if so, include them in the local spectrum input market. As these spectrum bands, and perhaps others, become available for more immediate use on a nationwide basis, we expect to continue to update our initial spectrum screen.¹²⁹

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Commission, dated December 27, 2005 (notifying the Commission of the estimated relocation costs and timelines for relocation of eligible federal entities assigned to frequencies from 1710 to 1755 MHz).

¹²⁷ On July 29, 2004, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking* that revamped the rules and policies governing the licensing of services in the 2500-2690 MHz MDS/ITFS band. See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 03-66, 19 FCC Rcd 14165 (2004) (*BRS/EBS R&O* and *FNPRM* as appropriate). In particular, the Commission adopted a new band plan that restructures the 2500-2690 MHz band into upper and lower-band segments for low-power operations (UBS and LBS, respectively), and a mid-band segment (MBS) for high-power operations. The Commission also adopted a transition plan for relocating EBS licensees and BRS licensees from their current channel locations to their new spectrum blocks in the LBS, MBS, or UBS. Specifically, the transition occurs in the following five phases: (1) initiating the transition process by filing an Initiation Plan with the Commission; (2) planning the transition; (3) reimbursing the costs of the transition; (4) terminating existing operations in transitioned markets; and (5) completing the transition by filing the Post-transition Notification with the Commission and sending a copy to all affected BRS and EBS licensees. *Id.* at 14198 ¶ 74. On April 27, 2006, the Commission released a *Third Memorandum Opinion and Order and Second Report and Order* that, among other things, revised the transition area size from Major Economic Areas (MEAs) to Basic Trading Areas (BTAs). Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Third Memorandum Opinion and Order and Second Report and Order*, WT Docket No. 03-66, 21 FCC Rcd 5606, 5642 ¶ 65 (2006).

¹²⁸ Currently, Initiation Plans have been filed in 327 out of 493 BTAs, and the transition has been completed in 113 BTAs.

¹²⁹ Although the degree to which AWS-1 or BRS licenses will be employed to provide mobile rather than fixed services is not entirely clear, based on our experience and current market trends, we find that a considerable portion of this capacity will be dedicated to mobile service. In addition, any attempt to exercise market power in mobile telephony markets would result in profit opportunities for entrants and so work to attract this spectrum to the mobile sector. At least one AWS license winner has announced plans to deploy a 3G next-generation network using the spectrum licenses it acquired in Auction 66, and is reported to be rolling out its 3G network. See T-Mobile USA Secures Rights from FCC for Auctioned Spectrum, News Release, T-Mobile, Nov. 30, 2006; Simon Flannery et al., 700 MHz Primer: Beachfront Property For Sale, Morgan Stanley Research, Morgan Stanley & Co. Incorporated, Feb. 14, 2007, at 4; Federal Court Allows Wireless Carriers, Handset Makers to Import Qualcomm Chips, TRDAILY, Sept. 13, 2007, at 7; <http://www.intomobile.com/2006/11/27/nokia-selected-to-deploy-wcdma-3g-for-t-mobile-usa.html> (Nokia selected to deploy WCDMA 3G for T-Mobile in the AWS spectrum); <http://www.phonescoop.com/news/item.php?n=2348> (T-Mobile's first 3G phone from Nokia quad-band GSM/EDGE radios as well as AWS 1700 MHz WCDMA). See also Q2 2007 Leap Wireless International Earnings Conference Call – Final, FD (Fair Disclosure) Wire, August 7, 2007 (Leap Wireless is working with the suppliers, to develop an attractive portfolio of AWS capable handsets, for the first half of 2008). On May 21, 2007, Clearwire (continued....)

36. *Market participants.* In its recent wireless merger orders, when computing initial measures of market concentration, the Commission limited its analysis of transactions involving mobile telephony services to cellular, PCS, and SMR facilities-based service providers, and excluded satellite service providers, wireless VoIP providers, MVNOs, and resellers from consideration.¹³⁰ We continue to find that mobile telephony offered by facilities-based providers using cellular, PCS, and SMR spectrum and employing various technologies offer the same basic voice and data functionality and are indistinguishable to the consumer.¹³¹ As discussed above, because of recent developments we also will consider 700 MHz spectrum in our spectrum analysis. To the extent that entities provide facilities-based mobile telephony services using 700 MHz spectrum, we also consider them to be market participants. In addition, we will consider AWS-1 and BRS providers market participants in our in-depth analysis of individual local markets not eliminated by our initial screen to the extent that they provide mobile telephony services.

37. The Applicants assert that “any analysis of the competitive effects of a merger between wireless service providers today must also take account of a new generation of [MVNOs] and other resellers that have emerged to challenge the facilities-based service providers.”¹³² The Applicants note the growth in subscriber numbers for mobile resellers and the entrance of new actors in the mobile reseller market, including cable companies seeking to leverage their market presence and installed customer base. Nonetheless, the Applicants maintain that “even if the analysis is limited to facilities-based service providers, the transaction still will not harm competition.”¹³³ East Kentucky Network asserts that the

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Corporation announced that it has successfully completed the first phase of one of the country's first mobile WiMAX field trials in the Portland, Oregon using infrastructure equipment based on the IEEE 802.16e standard and relying on Clearwire's spectrum in the 2.5GHz frequency band. See

http://newsroom.clearwire.com/phoenix.zhtml?c=214419&p=irol-newsArticle_print&ID=1036441&highlight=

¹³⁰ See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 ¶ 31; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 ¶ 22; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶¶ 38-39; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92. Although satellite providers offer facilities-based mobile voice and data services, the price of these services is, at present, significantly higher than for services offered by cellular, PCS, or SMR providers. Therefore, most consumers would not view satellite phones as substitutes for mobile telephony. See Global Com, Iridium Satellite Phone Service Plans, at http://www.globalcomsatphone.com/satellite/services/iridium_service_plans.html (last visited Sept. 29, 2006); GlobalStar, Airtime Pricing, Voice Pricing, at <http://www.globalcomsatphone.com/satellite/services/globalstar.html/> (last visited Oct. 12, 2006). See also *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 n.108; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 n.104; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38. We also do not consider wireless VoIP providers as providing the same functionality as mobile telephony providers because the service they provide now is nomadic rather than mobile. See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 n.108; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 n.104; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38. Wireless VoIP services are nomadic in the sense that one can use them from a number of different locations (for example, by using a laptop at different internet cafes all over a town). See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 n.108; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 n.104; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544-45 n.134; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 n.151.

¹³¹ See, e.g., *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 ¶ 31; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 32; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 91.

¹³² Application, Exhibit 1 at 20.

¹³³ *Id.* at 22.

Applicants' desire to include MVNOs in the analysis "does not consider the fact that these services are not yet widely available and will likely remain unavailable for a long time – especially in rural markets such as east Kentucky."¹³⁴

38. Under Commission precedent, we generally limit our analysis to facilities-based service providers, either nationwide or regional, excluding MVNOs and resellers from consideration when computing initial concentration measures. While the Commission has acknowledged that non-facilities based service options have an impact in the marketplace and in some instances may provide additional constraints against anti-competitive behavior, to date, in evaluating mergers among wireless service providers, the Commission has not included resellers or MVNOs in its initial screen.¹³⁵ We take account of the role of resellers and MVNOs, to the extent necessary, in our discussion of likely competitive effects below.¹³⁶ Accordingly, we will use the same market participant definition in this analysis as the Commission has in its recent wireless merger orders, and expand this analysis to include facilities-based entities that are using 700 MHz spectrum.

B. Initial Screen

39. Having determined the appropriate market definitions for this transaction, our competitive analysis next applies the Commission's initial screen, followed by a further case-by-case review of the markets identified by that screen. As discussed in previous wireless merger orders, the purpose of this initial screen is to eliminate from further review those markets in which there is clearly no competitive harm relative to today's generally competitive marketplace.¹³⁷ It is designed to be conservative and ensure that we did not exclude from further scrutiny any geographic areas in which the potential for anticompetitive effects exists. In addition to market concentration, which is measured with HHI data, we consider the input market of spectrum that is suitable for the provision of mobile telephony services because spectrum is a necessary resource for wireless service providers to compete effectively. This initial screen is only the beginning of our competitive analysis. Subsequent sections examine in a case-by-case analysis those markets identified by the screen, where potential harm is possible, in order to determine whether harm is in fact likely and a remedy needed.

40. For this transaction, we use our December 2006 Numbering Resource Utilization/Forecast ("NRUF") database, which tracks phone number usage by all telecommunications service providers, including wireless service providers, to estimate mobile telephony subscribership levels, market shares, and concentration for various geographic markets.¹³⁸ Consistent with our discussion of geographic

¹³⁴ East Kentucky Network Reply at 12.

¹³⁵ See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 ¶ 31; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 ¶ 22; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶¶ 38-39; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92.

¹³⁶ *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14881 ¶ 35; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 38; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92.

¹³⁷ See, e.g., *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14881 ¶ 36; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11547 n.151; *Sprint-Nextel Order* at 20 FCC Rcd 13993 ¶ 62; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073-74 ¶ 48; *Cingular-AT&T Wireless Order* 19 FCCR at 21568-69 ¶¶ 106-109.

¹³⁸ These data indicate the number of assigned phone numbers that a wireless carrier has in a particular wireline rate center. Rate centers are geographic areas used by local exchange carriers for a variety of reasons, including the determination of toll rates. See HARRY NEWTON, *NEWTON'S TELECOM DICTIONARY: 19TH EXPANDED & UPDATED EDITION 660* (July 2003). All mobile wireless providers must report to the FCC the quantity of their phone numbers that have been assigned to end users, thereby permitting the Commission to calculate the total number of mobile (continued....)

market definition above, in calculating market shares and market concentration, we analyze carrier data using two sets of geographic areas, CEAs¹³⁹ and CMAs.¹⁴⁰ Our initial screen criteria identifies, for further case-by-case market analysis, those markets in which, post- transaction: (1) the HHI would be greater than 2800 and the change in HHI will be 100 or greater, (2) the change in HHI would be 250 or greater, regardless of the level of the HHI, and (3) the Applicants would have a 10 percent or greater interest in 95 MHz or more of cellular, PCS, SMR, and 700 MHz spectrum.

41. Our initial screen identifies a total of 32 CMAs and 29 CEAs that require further competitive review. Neither the Applicants nor Petitioners identify markets that would be captured using any particular initial screens. The Applicants do state, however, that there is facilities-based service overlap in 38 CMAs.¹⁴¹

C. Horizontal Issues

42. This section examines how the transaction could affect competitive behavior in the 32 CMAs and 29 CEAs identified by the initial screen as requiring additional analysis to determine whether the proposed transaction would result in competitive harm. As discussed in the Commission's recent wireless

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subscribers. For purposes of geographical analysis, the rate center data can be associated with a geographic point, and all of those points that fall within a county boundary can be aggregated together and associated with much larger geographic areas based on counties. In the Cingular-AT&T Wireless and Sprint-Nextel transactions, the Commission also used billing data submitted by the nationwide wireless service providers. See *Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 63; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 103. Although we may decide to collect such billing data as part of our review of future transactions, we found that the competitive situation associated with this proposed transaction was such that collection of third-party billing data was unnecessary.

¹³⁹ CEAs are defined by the Bureau of Economic Analysis ("BEA"), and are composed of a single economic node and surrounding counties that are economically related to the node. There are 348 CEAs in the 50 states and the District of Columbia. Of the 3,141 U.S. counties, 2,267 are non-nodal counties that are assigned to a CEA based first on county-to-county commuting flows from the 1990 Census and second on locations of the most widely read regional newspapers. Three quarters of non-nodal counties were assigned based on commuting patterns. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURV. OF CURRENT BUS., Feb. 1995, at 75-81. In November 2004, the Bureau of Economic Analysis updated definitions for CEAs. The total number of CEAs decreased from 348 to 344. Non-nodal county assignment continued to be based on county-to-county commuting flows and locations of the most widely read regional newspapers. See Kenneth P. Johnson & John R. Kort, *2004 Redefinition of the BEA Economic Areas*, SURV. OF CURRENT BUS., Nov. 2004, at 68-71. For purposes of this transaction, we did not adopt the new CEA definitions.

¹⁴⁰ See e.g., *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14890-91 ¶ 61; *DoCoMo-Guam Order*, 21 FCC Rcd at 13596 n.110; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11545 ¶ 35; *Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 63; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072 ¶ 44; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 104. CMAs are the regions originally used by the Commission for issuing cellular licenses. There are 734 CMAs, made up of 305 MSAs, 428 RSAs, and a market for the Gulf of Mexico. See *Tenth Competition Report*, 20 FCC Rcd at 15934-35 ¶ 70. RSAs are regions defined by the Commission for the purpose of issuing spectrum licenses. See *Tenth Competition Report*, 20 FCC Rcd at 20632 ¶ 70 n.145. See discussion justifying the use of CEAs and CMAs *supra* ¶ 25.

¹⁴¹ Willig and Oszag Declaration at 14.

merger orders, competition may be harmed either through unilateral actions¹⁴² by the merged entity or through coordinated interaction¹⁴³ among firms competing in the relevant market.

43. In this order, we find that extended qualitative discussions of unilateral effects and coordinated interaction are unnecessary.¹⁴⁴ First, many aspects of our previous analyses in the wireless merger orders are unchallenged here.¹⁴⁵ Second, because only a limited number of local areas require in-

¹⁴² Unilateral effects are those that result when a merged firm finds it profitable to alter its behavior by increasing prices or reducing output. *DOJ/FTC Horizontal Merger Guidelines* § 2.2. See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 ¶ 68; *DoCoMo-Guam Order*, 21 FCC Rcd at 13597 ¶ 25, n.112; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11550 ¶ 47; *Sprint-Nextel Order*, 20 FCC Rcd at 14001 n.199; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13076 n.155; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 n.341.

¹⁴³ Coordinated interaction consists of actions by a group of firms that are profitable for each of the firms involved only because the other firms react by accommodating these actions rather than attempting to undercut them. See *DOJ/FTC Horizontal Merger Guidelines* § 2.1; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14896 ¶ 77; *DoCoMo-Guam Order*, 21 FCC Rcd at 13597 ¶ 25, n.113; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11554 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 n.167; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 n.211; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151.

¹⁴⁴ In the Commission's recent major CMRS merger orders, the initial screen typically identified large numbers of local areas as requiring in-depth analysis. For example, in the *Cingular-AT&T Wireless* merger, 270 CMAs were caught by the screen; when the screen was applied to CEAs, 180 such regions were caught. See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21569 ¶ 110. The *Sprint-Nextel* screen caught 190 CMAs and 124 CEAs. See *Sprint-Nextel Order*, 20 FCC Rcd at 13994 ¶ 63. Finally, the *ALLTEL-Western Wireless* screen caught 19 CMAs and 11 CEAs. See *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13074 ¶ 50. These large numbers meant that it was impractical to set out in an order a discussion of each local market; however, such an extended exposition was also unnecessary. The Commission proceeded by examining under what circumstances competitive harm—in the form of either coordinated interaction or unilateral effects—would be likely in local mobile telephony markets. This in-depth, qualitative analysis yielded criteria for determining whether harm is likely that were applicable to all the markets caught by the screen, which were then applied to individual markets. See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14894-99 ¶¶ 69-85; *DoCoMo-Guam Order*, 21 FCC Rcd at 13597 n.114; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11550-55 ¶¶ 47-62; *Sprint-Nextel Order*, 20 FCC Rcd at 13995-14009 ¶¶ 68-116; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075-87 ¶¶ 54-93; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570-86 ¶¶ 115-164. Market-specific discussion was primarily confined to those markets for which the Commission concluded that harm was likely, and was contained in confidential appendices.

¹⁴⁵ For unilateral effects, the unchallenged aspects include: (1) product differentiation and substitutability (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 14002-07 ¶¶ 94-107; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13077-79 ¶¶ 59-64; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21571-75 ¶¶ 119-133); (2) network effects (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549 n.73; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13082-83 ¶¶ 75-77; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21578 ¶¶ 142-145); and (3) marginal cost reductions (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 14009 ¶ 115). For coordinated interaction, the unchallenged aspects include: (1) firm and product homogeneity (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 13997 ¶¶ 75-78; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13087 ¶ 90; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21582-84 ¶¶ 156-159); (2) existing cooperative ventures (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549 n.73; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21585 ¶ 163); (3) number of firms (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 13996 ¶¶ 71-72); (4) technology development (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at (continued....))

depth analysis, it is feasible to provide a market-by-market discussion of each CMA where we are requiring business unit divestitures.¹⁴⁶ We therefore discuss unilateral effects and coordinated interaction at a general level only to the extent issues are raised by the parties to this proceeding.¹⁴⁷

44. *Unilateral Actions.* AT&T's acquisition of Dobson could lead to changes in the structure of the 32 CMAs or 29 CEAs identified above by our initial screen for further analysis. Thus, we have examined in more detail the possibility that the merger may lead to competitive harm through unilateral actions by the merged entity.¹⁴⁸ Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by "elevating price and suppressing output."¹⁴⁹ As discussed in the Commission's wireless merger orders, in the case of mobile telephony service, as defined above, this might take the form of delaying improvements in service quality or adversely adjusting plan features without changing the plan price.¹⁵⁰ Incentives for such unilateral competitive actions vary with the nature of competition in the relevant markets.

45. As we explain below, the market for mobile telephony service in the United States appears to be differentiated. Wireless service providers do not offer a completely homogeneous service. Rather, the service providers compete vigorously on the basis not only of price but also of other plan features, call quality and geographic coverage, and customer service. While service providers can change some of

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13598 n.115; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 13998-99 ¶¶ 81-83); (5) response of rivals (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 13999-14000 ¶¶ 84-88); (6) transparency of information (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 13996 ¶¶ 73-74; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13086 ¶ 89; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21581-82 ¶¶ 154-155); and (7) presence of mavericks (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 13997-98 ¶¶ 79-80; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13087 ¶¶ 91-92; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21584-85 ¶¶ 160-162).

¹⁴⁶ See discussion *supra* Appendix A.

¹⁴⁷ See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893-94 ¶ 68; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549-50 ¶ 46.

¹⁴⁸ See *ALLTEL-Midwest Order*, 21 FCC Rcd at 11550 ¶ 47; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075 ¶ 54; *Cingular-AT&T Wireless*, 19 FCC Rcd at 21570 ¶ 115; Application of EchoStar Communications Corporation (A Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (A Delaware Corporation) (Transferee), CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559, 20620 ¶ 153 (2002) ("*EchoStar-DirectTV HDO*"); see also *DOJ/FTC Merger Guidelines* § 2.

¹⁴⁹ See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14894 ¶ 69; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11550 ¶ 47; *Sprint-Nextel Order*, 20 FCC Rcd at 14001 ¶ 91; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075 ¶ 54; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115; *DOJ/FTC Merger Guidelines* § 2.2.

¹⁵⁰ The term "unilateral" refers to the method used by firms to determine strategy, not to the fact that the merged entity would be the only firm to change its strategy. The term unilateral is used to indicate that strategies are determined unilaterally by each of the firms in the market and not by explicit or tacit collusion. Other firms in the market may find it profitable to alter their behavior as a result of the merger-induced change in market structure by, for example, repositioning their products, changing capacity, or changing their own prices. These reactions can alter the total effect on the market and must be taken into account when evaluating potential unilateral effects. See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.204; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11550 n.176; *Sprint-Nextel Order*, 20 FCC Rcd at 14001 n.199; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13076 n.155; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 n.341.