In addition, as noted by Chairman Martin, the recent 700 MHz auction provided "significant opportunities for new entrants, rural providers and non-nationwide incumbents," drawing "wide-ranging interest from a number of new players."[99] The Chairman noted that "[a] bidder other than a nationwide incumbent won a license in every market" and that "[a] total of 99 bidders other than the nationwide wireless incumbents won 754 licenses—representing approximately 69 percent of the 1,090 licenses sold in the 700 MHz auction."[100] Notably, "[i]n the unpaired E block, new entrant Frontier Wireless LLC (Dish Network) won 168 licenses to establish a near nationwide footprint."[101] Indeed, following the auction, and based upon the FCC's research, Chairman Martin indicated that carriers other than Verizon Wireless, AT&T Mobility, Sprint Nextel and T-Mobile, "including rural carriers, new entrants, and small businesses, hold significantly more spectrum in the top 100 markets than any one of the nationwide incumbents alone and hold even more spectrum on average in rural areas."[102]

As a final matter, the parties note the advances in MSS/ATC services. Both Globalstar and MSV have already received ATC authority, which permits those companies to deploy terrestrial mobile networks on almost 50 MHz of spectrum, and ICO's request for ATC authority is currently pending. That increases the amount of spectrum available for mobile services by nearly 70 MHz, and creates three new competitors in the mobile marketplace.

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99 Written Statement of the Honorable Kevin J. Martin, Chairman, Federal Communications Commission, Before the Committee on Energy and Commerce, U.S. House of Representatives (Apr. 15, 2008) *at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-281550A1.pdf (last visited June 4, 2008).

100 *Id.*

101 *Id.*

102 *Id.*

### b. The Proposed Merger Does Not Diminish Significantly Competition in Any Local Market

The proposed transaction will not harm mobile competition in any local markets. As discussed below, the types of harms that the Commission has considered on a local basis are not present in the CMAs involved in this transaction. As the Applicants have previously noted, in fact, the robust competitive forces at the national level operate to discipline the behavior of participants even at the local level. While the Applicants have provided, in Exhibits 4 and 5, details of the competitors present in the overlap counties and overall spectrum aggregation by the combined entity, the harmful behaviors that are analyzed at the local level are infeasible given the existing competitive forces at play in today's mobile marketplace.

#### (1) Unilateral Effects

In the Commission's prior competitive analyses, it has undertaken to determine whether a post-merger firm is capable of unilateral effects. "Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by 'elevating price and suppressing output.' . . . [i]n the case of mobile telephony, this might take the form of delaying improvements in service quality or adversely adjusting plan features without changing the plan price."[103] As discussed below, unilateral effects are typically constrained by competitive responses by rival firms (*i.e.*, other competitors adjusting their behavior to undercut the merged firm's ability to extract supra-competitive profits); the potential for new entry (*i.e.*, the ability of new firms to enter the market); the market share of the post-transaction entity; and the penetration rate in the

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[103] *See ALLTEL-Midwest Order*, 21 FCC Rcd at 11,550 (¶ 47 & n.175) (citing *Sprint-Nextel Order*, 20 FCC Rcd at 14,001 (¶ 91); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,075 (¶ 54); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,570 (¶ 115); *DOJ/FTC Merger Guidelines* § 2.2).

local market (*i.e.*, the ability of firms to acquire new customers as opposed to churning customers from other carriers). Each of these factors is discussed below.

**(a) Competitive Responses by Rivals**

In assessing whether a merged firm has market power, the FCC has stated that "[w]e examine whether competitive responses by rivals to the merged entity—such as through repositioning by existing licensees or entry by a new licensee—would sufficiently counter the merged entity's exercise of market power."[104] Specifically, the FCC has noted that "where a firm is already present in a market, has comparable service coverage, and has excess capacity relative to its current subscriber base, it should be able to relatively quickly adjust such factors as rates, plan features, handsets, and advertising."[105]

The charts attached at Exhibits 4 and 5 make clear that there are multiple carriers licensed to provide CMRS service in the markets where Verizon Wireless' and ALLTEL's spectrum holdings overlap. As discussed above, the Commission has consistently found the CMRS market to be highly competitive and that carriers compete vigorously based upon price, quality, coverage and service packages.[106] In fact, in the *12th Annual Competition Report*, the FCC found that—based upon an analysis starting with Census Blocks—four or more competitors existed in counties comprising 93.6% of the US population.[107] When it is considered that—even if competition is assessed on a rather small CMA basis—the counties with fewer providers are, in

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104 ALLTEL-*Midwest Order,* 21 FCC Rcd at 11,551 (¶ 50 & n.175) (citing *Sprint-Nextel Order*, 20 FCC Rcd at 14,007-009 (¶¶ 108-114); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,079-081 (¶¶ 65-72); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,575-576 (¶¶ 134-137)).

105 ALLTEL-*Midwest Order,* 21 FCC Rcd at 11,551 (¶ 50).

106 *See* pp. 42-45, *supra.*

107 *12th Annual Competition Report*, 23 FCC Rcd at 2265 (¶ 43, tbl. 3).

all likelihood, adjacent to and competitively constrained by by counties where four or more competitors exist, it is clearly the case that an existing firm in any market could respond rapidly to a purported exercise of unilateral market power by a combined company. Moreover, the intense competition among the four national carriers will continue unaffected after the transaction.

**(b) Spectrum and Barriers to Entry**

As the FCC has explained in the context of the *ALLTEL/Midwest Order*, "[a]lthough we no longer have a *per se* limit on the amount of spectrum suitable for mobile telephony that an entity may hold in any one market, we are mindful of the unique role of spectrum as a critical input in the market for wireless services and have carefully analyzed the potential impact of [the ALLTEL/Midwest] merger on that input."[108] The amount of suitable substitute spectrum provides a metric for determining both the ability of competitors to expand capacity, but also—because spectrum is essential to competitors—a measure of whether other firms could enter or expand in response to any effort by the merged firm to exercise market power. Notably, the FCC has recognized that the relevant question is whether the combined company's competitors would have the capacity to absorb sufficient current subscribers of the merging companies to thwart any prospective exercise of market power (*i.e.*, price increases).

The Commission has recognized that, "if entry into a market is easy, then entry or the threat of entry may prevent incumbent operators from exercising market power, either collectively or unilaterally, even in highly concentrated markets."[109] As discussed previously,

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108 ALLTEL-*Midwest Order,* 21 FCC Rcd at 11,552 (¶ 53).

109 *12th Annual Competition Report*, 23 FCC Rcd at 2272-73 (¶ 70).

there is conservatively over 600 MHz available for competing CMRS services.[110] The availability of AWS, BRS/EBS, and MSS/ATC spectrum greatly reduces the capacity constraints faced by the merging companies' competitors.[111] Further, the Commission is currently considering making available additional spectrum for mobile telephony and broadband services.[112]

In addition, many of the competitors with substantial spectrum are positioned to rapidly enter any local market. Clearwire, for example, is allied with existing mobile operator Sprint, and could leverage Sprint's existing backhaul and tower infrastructure to rapidly introduce service in any local area it chooses.[113] This is evidenced by the statement by Sprint's CEO, Dan Hesse, that the Clearwire company will roll-out service to 60 to 80 million POPs in 18 months—a rate of about a million POPs a week. Similarly, many of the firms holding AWS spectrum also have existing mobile networks (*e.g.*, T-Mobile, MetroPCS, and LEAP) or other network resources (*e.g.*, the CATV distribution infrastructure of SpectrumCo's parents). Where companies have discussed deployment schedules, those deployment schedules have been exceptionally rapid. Thus, it is quite clear that the large amount of mobile spectrum currently licensed—even if not currently available to the public in a specific local market—is a highly credible entry threat because of the rapidity of the time to market for many spectrum holders.

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110 *See* p. 42, *supra.*

111 *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,576 (¶ 136 & n.379); *Sprint-Nextel Order*, 20 FCC Rcd at 13,985 (¶ 158), and Appendix C, n.2.

112 *See Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band,* Notice of Proposed Rulemaking, 22 FCC Rcd 17,035 (2007) ("*Advanced Wireless Services 2007 NPRM*").

113 *See Clearwire Application* at 19 (stating that Clearwire "expects to achieve its accelerated schedule of reaching up to 140 million consumers by the end of 2010 by building on the Applicant's collective deployment experience and leveraging Sprint's existing network infrastructure through a series of separately negotiated commercial agreements").

### (c) Subscriber Share and Penetration

The FCC has traditionally recognized that "the presence of few competitors or potential entrants that consumers consider to be good substitutes for the merged firm, combined with a large market share by the merged entity, may increase the likelihood of unilateral effects."[114] Also relevant to this analysis is the potential for the number of potential subscribers to increase—"another factor [the FCC] consider[s] in determining the consequences of a unilateral attempt to exercise market power is penetration rate, both the current rate in a local market as well as the potential for growth in market penetration."[115]

As documented in the attached Declaration of Carlton *et al.*, over the past twenty years, there has been enormous and continuous growth in the number of subscribers to wireless voice services. With the transition from analog to digital technology, wireless data has begun to attract a significant number of subscribers. "These trends are expected to continue. For example, Jefferies & Company forecasts that 'mobile data growth will rapidly outpace voice in [the] next few years.' Moreover, [t]he dramatic increases in output and reductions in price of the wireless telecommunications industry observed in recent years have been achieved as carriers merged and expanded to develop nationwide networks from their original regional service providers."[116] Based on this data, the transaction is unlikely to give rise to competitive harms.

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114 ALLTEL-*Midwest Order,* 21 FCC Rcd at 11,552 (¶ 55 & n.194) (citing *Sprint-Nextel Order*, 20 FCC Rcd at 14,001 (¶ 92); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,076-077 (¶ 58); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,570-571 (¶¶ 117-118); *DOJ/FTC Merger Guidelines* § 2.211).

115 ALLTEL-*Midwest Order,* 21 FCC Rcd at 11,553 (¶ 58) (citing *ALLTEL-WWC Order*, 20 FCC Rcd at 13,083-085 (¶¶ 78-83); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,578-580 (¶¶ 146-149)).

116 Exhibit 3 at 17 (¶ 33) (citing CTIA's Wireless Industry Indices, Year-End 2007 Results, May 2008, Chart 25; Romeo A. Reyes, et al., "Special Situations: 700 MHz Auctions – A Prime Area of Wireless Spectrum" Jefferies & Company, Inc., January 22, 2008, p. 7).

### (2) Coordinated Interaction

Beside unilateral effects, the FCC also analyzes the potential for coordinated action. In other words, "in markets where only a few firms account for most of the sales of a product, those firms may be able to exercise market power by either explicitly or tacitly coordinating their actions."[117] The FCC recognizes that "[s]uccessful coordination depends on ... the ability to reach terms that are profitable for each of the firms involved, and ... the ability to detect and punish deviations that would undermine the coordinated interaction."[118] The overlap CMAs do not pose any risk of coordinated interaction because the overall market for mobile services is highly competitive, and each CMA will continue to have a substantial number of competitors post-merger.

Indeed, there is clear evidence to suggest that carriers go to great lengths to compete by attempting to differentiate their products from their competitors. The industry would not have experienced the upheavals that occurred with rate plans offering large buckets of minutes, single rate calling plans, in-network free calling plans, product test drives, network openness and other pricing and service innovations if the market were not competitive. The *12th Annual Competition Report* notes, in fact, that "[i]n addition to investing in network infrastructure and acquiring spectrum, providers continue to pursue marketing strategies designed to differentiate their brand from rival offerings based on dimensions of service quality such as superior network coverage,

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117 ALLTEL-*Midwest Order,* 21 FCC Rcd at 11,554 (¶ 60) (citing *Sprint-Nextel Order*, 20 FCC Rcd at 13,995 (¶ 69); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,085 (¶ 85); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,580 (¶¶ 150); *DOJ/FTC Merger Guidelines* § 0.1).

118 ALLTEL-*Midwest Order,* 21 FCC Rcd at 11,554 (¶ 60).

reliability, and voice quality"[119]—a result that would be unexpected if tacit collaboration were, in fact, occurring.

## III. PROCEDURAL CONSIDERATIONS

### A. Request for Declaratory Ruling on Foreign Ownership

Verizon Wireless requests that the Commission extend Verizon Wireless' current Section 310(b)(4) authority to hold interests in common carrier licenses and authorizations to encompass the ALLTEL Subsidiaries and Partnerships and the FCC licenses they will hold following transfer to Verizon Wireless as a result of this transaction. The Commission has previously approved Vodafone's minority interest in Verizon Wireless, as well as Vodafone's qualifications (as a foreign corporation) to hold indirect interests in common carrier licensees, pursuant to Section 310(b)(4) of the Communications Act.[120] No material changes have occurred in Verizon Wireless' foreign ownership since that authorization was granted. Thus, the proposed transaction raises no new foreign ownership issues, and the Commission can and should extend the previous Section 310(b)(4) authorization to the ALLTEL Subsidiaries and Partnerships and the FCC licenses they will hold following transfer to Verizon Wireless.[121]

Here, Verizon Wireless proposes to acquire Atlantis Holding's interests in the ALLTEL Subsidiaries and Partnerships. As a result of the transaction, these entities will be indirectly

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119 *12th Annual Competition Report,* 23 FCC Rcd at 2310 (¶166).

120 47 U.S.C. §310(b)(4).

121 Verizon Wireless submits that the Commission need not issue a declaratory ruling, given the agency's prior Section 310(b)(4) rulings approving Verizon Wireless' current foreign ownership. Nonetheless, should the Commission determine that a new declaratory ruling is necessary, Verizon Wireless hereby requests such a ruling extending its current Section 310(b)(4) authority to hold interests in common carrier licenses and authorizations to encompass the FCC licensees and licenses in which it will hold an interest as a result of the proposed transaction.

owned by Verizon Wireless. Verizon Wireless is a Delaware general partnership owned indirectly by Verizon Communications and Vodafone. Verizon Communications, a Delaware corporation, owns 55 percent of Verizon Wireless; Vodafone, a public limited company organized under the laws of the United Kingdom, owns 45 percent.

As noted above, Vodafone has previously received authorization from the Commission to hold its indirect interests in Verizon Wireless' common carrier licenses and authorizations. In conjunction with the creation of the partnership, Verizon Communications and Vodafone sought Commission approval, pursuant to Section 310(b)(4), for Vodafone to indirectly hold up to 65.1 percent of Verizon Wireless. The Commission granted the parties' request, determining that "the public interest would be served by allowing the proposed indirect foreign ownership," consistent with the Commission's *Foreign Participation Order*.[122] No material changes have occurred in Verizon Wireless' foreign ownership since that authorization was granted.[123] Further, the

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[122] *In re Applications of Vodafone AirTouch, Plc, and Bell Atlantic Corp., for Consent to Transfer Control or Assignment of Licenses and Authorizations*, Memorandum Opinion and Order, 15 FCC Rcd 16,507, 16,514 (¶ 19) (WTB & IB 2000) ("*Vodafone/Bell Atlantic Order*"). The Commission previously determined that, "[b]ecause the United Kingdom is a Member of the World Trade Organization (WTO), under the Commission's *Foreign Participation Order*, we presume that the public interest would be served by authorizing, under Section 310(b)(4), common carrier radio licenses held by entities indirectly owned by Vodafone and citizens of the United Kingdom." *In re Applications of AirTouch Commc'ns, Inc. and Vodafone Group, Plc, for Consent to Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order, 14 FCC Rcd. 9430, 9434 (¶ 9) (WTB 1999). The Commission authorized Vodafone to hold up to a 100 percent indirect foreign ownership interest in U.S. common carrier radio licensees. *See id.*; *Int'l Authorizations Granted,* Public Notice, 15 FCC Rcd 116 (IB 1999). Subsequently, the Commission granted the request to allow Verizon Wireless to "be indirectly owned by Vodafone in an amount up to 65.1 percent" and authorized the transfer and assignment of numerous common carrier licenses including cellular, PCS, WCS and microwave authorizations. *Vodafone/Bell Atlantic Order,* 15 FCC Rcd at 16,514, 16,521 (¶¶ 19, 38).

[123] On April 8, 2008, Verizon Wireless provided a detailed showing to the Commission confirming that its current foreign ownership remains consistent with the foreign ownership ruling issued by the Commission in the *Vodafone/Bell Atlantic Order*. *See* Letter from Nancy J. Victory, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 07-208, DA 07-4192 (April 8, 2008).

Commission has since extended this authority to permit Verizon Wireless to acquire numerous additional common carrier licenses and authorizations.[124] This request seeks a declaratory ruling allowing Vodafone to hold the same indirect ownership interest of up to 65.1 percent in the authorizations to be acquired and any future licenses and authorizations to be acquired by the ALLTEL Subsidiaries and Partnerships.

The public interest will be served if the Commission extends Verizon Wireless' current Section 310(b)(4) authority to hold interests in common carrier licenses and authorizations to encompass the ALLTEL Subsidiaries and Partnerships and the FCC licenses they will hold following transfer to Verizon Wireless as a result of this transaction. In the *Foreign Participation Order*, the Commission concluded that allowing additional foreign investment in common carrier wireless licensees beyond the 25 percent benchmark of Section 310(b)(4) will promote competition in the U.S. market, thereby serving the public interest.[125] The Commission, therefore, adopted a presumption in favor of allowing such investment if the investment is from entities organized under the laws of WTO Members.[126] As the Commission previously concluded, Vodafone's principal place of business is the United Kingdom, a WTO Member.[127]

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124 *See, e.g., International Authorizations Granted*, Public Notice, 21 FCC Rcd 13,575 (2006) (granting Verizon Wireless' request to extend the existing foreign ownership ruling to AWS and other Wireless Communications Services licenses Verizon Wireless may acquire in the future); *Northcoast Order,* 18 FCC Rcd at 6492 (¶ 6 & n.15) (finding that Verizon Wireless' interest "ha[d] been previously approved by the Commission under Section 310(b)(4)" and because "no changes have occurred in Verizon Wireless' foreign ownership since . . . these rulings . . . the applications raise no new foreign ownership issues").

125 *Rules and Policies on Foreign Participation in the U.S. Telecomms. Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23,891, 23,940 (¶ 111) (1997).

126 *Id.* at 23,913 (¶ 50) and 23,940 (¶¶ 111-12).

127 *Vodafone/Bell Atlantic Order,* 15 FCC Rcd at 16,514 (¶ 18).

The Commission already has determined that the public interest would be served by allowing Vodafone to hold up to a 65.1 percent interest in the common carrier licenses held by Verizon Wireless.[128] The same public interest rationale that applied in that decision should apply with equal force to the ALLTEL Subsidiaries and Partnerships and the FCC licenses being acquired by Verizon Wireless as a result of the proposed transaction.[129] The Commission should therefore issue a declaratory ruling extending Verizon Wireless' Section 310(b)(4) authority to these licenses, to the extent such extension of authority is needed.

### B. Additional Authorizations

As set forth in the Applications, ALLTEL controls or has a minority, non-controlling general partner interest in entities holding numerous Commission licenses. The lists of call signs referenced in the Applications are intended to be complete and to include all licenses held by the respective licensees that are subject to the transaction. One or more of the ALLTEL Subsidiaries and Partnerships, however, may have on file or may hereafter file additional requests for authorizations for new or modified facilities, which may be granted or remain pending during the pendency of the Applications. Accordingly, the Applicants request that the FCC authorize Verizon Wireless to acquire control of the following upon the grant of the transfer of control applications:

- Any authorization issued to or leases obtained by one or more of the ALLTEL Subsidiaries and Partnerships during the Commission's consideration of the Applications and the period required for consummation of the transaction following approval;

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128 *Id.*, 15 FCC Rcd at 16,514 (¶ 19).

129 Further, the network security commitments previously made by Verizon Wireless and Vodafone in connection with an agreement with the United States Department of Defense, Department of Justice, and the Federal Bureau of Investigation, dated Dec. 14, 1999, will apply to the authorizations acquired as a result of this transaction. *See infra* Section III(G).

- Construction permits held by such licensees that mature into licenses after closing; and

- Applications that are filed after the date of the Applications and that are pending at the time of consummation.

Such actions would be consistent with Commission precedent.[130] Moreover, the Applicants request that Commission approval of the transfer applications include any licenses that may have been inadvertently omitted.

### C. Exemption from Cut-Off Rules

Pursuant to Sections 1.927(h), 1.929(a)(2) and 1.933(b) of the Commission's Rules,[131] to the extent necessary,[132] the Applicants request a blanket exemption from any applicable cut-off rules in cases where one or more of the ALLTEL Subsidiaries and Partnerships file amendments to pending applications to reflect consummation of the proposed transfer of control. This exemption is requested so that amendments to pending applications to report the change in ultimate ownership of such licensees, which are parties to these Applications, would not be

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130 *See Cingular-AT&T Wireles Order,* 19 FCC Rcd at 21,626 (¶ 275); *Application of WorldCom, Inc., and MCI Commc'ns Corp. for Transfer of Control of MCI Commc'ns Corp. to WorldCom, Inc., Memorandum Opinion and Order*, 13 FCC Rcd 18,025 (¶ 226) (1998); *Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries, Memorandum Opinion and Order*, 12 FCC Rcd 19,985, 20,097 (¶ 247) (1997) ("*NYNEX-Bell Atlantic Order*"); *Applications of Craig O. McCaw and AT&T for Consent to Transfer of Control of McCaw Cellular Commc'ns, Inc. and Its Subsidiaries, Memorandum Opinion & Order*, 9 FCC Rcd 5836, 5909 (¶ 137 & n.300) (1994) ("*McCaw-AT&T Order*").

131 47 C.F.R. §§ 1.927(h), 1.929(a)(2), and 1.933(b).

132 With respect to cut-off rules under Sections 1.927(h) and 1.929(a)(2), the Commission has previously found that the public notice announcing the transaction will provide adequate notice to the public with respect to the licenses involved, including for any license modifications pending. In such cases, it determined that a blanket exemption of the cut-off rules was unnecessary. *See Applications of Ameritech Corp. and GTE Consumer Servs. Inc., Memorandum Opinion and Order*, 15 FCC Rcd 6667, 6668 (¶ 2 & n.6) (1999); *In re Applications of Comcast Cellular Holdings, Co. and SBC Commc'ns, Inc., Memorandum Opinion and Order*, 14 FCC Rcd 10,604, 10,605 (¶ 2 & n.3) (1999).

treated as major amendments. The scope of the transaction between Verizon Wireless and Atlantis Holdings demonstrates that the ownership change would not be made for the acquisition of any particular pending application, but as part of a larger transaction undertaken for an independent and legitimate business purpose. Grant of such application would be consistent with previous Commission decisions routinely granting a blanket exemption in cases involving similar transactions.[133]

**D. Unconstructed Facilities**

The vast majority of the FCC authorizations covered by the transfer of control applications involve constructed facilities. The only exceptions are 47 recently-obtained point-to-point microwave radio licenses, 59 Local Multipoint Distribution Service licenses, and one cellular license (all of which are authorized, but not yet required to be constructed), as well as seven 39 GHz licenses, which are the subject of a timely-filed, pending request for extension of time to construct.[134] The transfer of control of these unbuilt facilities is incidental to this

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133 *See, e.g. NYNEX-Bell Atlantic Order*, 12 FCC Rcd at 20,091-0922 (¶ 234); *Applications of PacifiCorp Holdings, Inc., Transferor, and Century Tel. Enters., Inc., Transferee, For Consent to Transfer Control of Pacific Telecom, Inc., a Subsidiary of PacifiCorp Holdings, Inc., Memorandum Opinion and Order*, 13 FCC Rcd 8,891, 8915-16 (¶ 47) (1997); *McCaw-AT&T Order*, 9 FCC Rcd at 5909 (¶ 137 & n.300).

134 The station call signs for the unbuilt facilities are: WPLM505, WPLM506, WPLM507, WPLM508, WPLM509, WPLM510, WPLM511, WPLM512, WPLM513, WPLM514, WPLM515, WPLM516, WPLM517, WPLM518, WPLM519, WPLM520, WPLM521, WPLM522, WPLM523, WPLM524, WPLM525, WPLM391, WPLM392, WPLM393, WPLM339, WPLM340, WPLM341, WPLM342, WPLM343, WPLM344, WPLM345, WPLM346, WPLM347, WPLM348, WPLM349, WPLM350, WPLM351, WPLM352, WPLM353, WPLM354, WPLM356, WPLM357, WPLM358, WPLM359, WPLM360, WPLM361, WPLM371, WPLM372, WPLM373, WPLM376, WPLM377, WPLM378, WPLM379, WPLM380, WPLM381, WPLM382, WPLM383, WPLM384, WPLM385, WPQR581, WPQR580, WPQR583, WPQR585, WPQR586, WPQR584, WPQR582, WQGM465, WQHC996, WQHU201, WQHU202, WQHK351, WQHV851, WQHV852, WQIT938, WQHK375, WQHT230, WQHT999, WQIC793, WQIU812, WQGZ566, WQHK349, WQHK350, WQHP971, WQHS338, WQHS339, WQHZ270, WQHS718, WQHM647, WQIC999, WQID200, WQID242, WQID243, WQGX890, WQIF799, WQII537, WQII538, WQII539, WQII544, WQII545, WQII546, WQII547, WQII548, WQII549, WQII550, WQII551,

transaction, with no separate payment being made for any individual authorization or facility. Accordingly, there is no reason to review the transaction from the perspective of trading in licenses.[135]

### E. Unjust Enrichment

None of the authorizations held by ALLTEL were obtained pursuant to set-asides or bidding credits for designated entities. Thus, the unjust enrichment provisions of the Commission's auction rules[136] do not apply.

Several of ALLTEL's authorizations were originally subject to the Commission's installment payment plan.[137] For all of these authorizations, however, the installment payment obligations have been paid in full.

### F. Environmental Impact

As required by Section 1.923(e) of the Commission's rules,[138] the Applicants state that the transfers of control of licenses and spectrum leases involved in this transaction will not have a significant environmental effect, as defined by Section 1.1307 of the Commission's rules.[139] A

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WQII552, WQII553, WQIL591, WQIL592, WQIM450, WQIS267, WQIS268, WQIS803, andWQIS804.

135 *See* 47 C.F.R. § 1.948(i)(1) (authorizing the Commission to request additional information if the transaction appears to involve unconstructed authorizations obtained for the "principal purpose of speculation"); *id.* § 101.55(c)-(d) (permitting transfers of unconstructed microwave facilities provided that they are "incidental to the sale [of] other facilities or merger of interests."); *id.*

136 47 C.F.R. § 1.2111(b)-(d).

137 *See* ULS Application File Nos. 0003464799, 0003464786, 0003464784, and 0003464996.

138 47 C.F.R. § 1.923(e).

139 *Id.* § 1.1307.

transfer of control of licenses or spectrum lease does not involve any engineering changes and, therefore, cannot have a significant environmental impact.

### G. DOJ Agreement

Verizon Wireless, Bell Atlantic Corporation (Verizon Communications' predecessor-in-interest) and Vodafone are parties to an agreement with the United States Department of Defense, Department of Justice ("DOJ"), and the Federal Bureau of Investigation, dated December 14, 1999. The agreement provides that any system Verizon Wireless later acquires pursuant to an Application for Assignment or Transfer of Control of International 214 Authority is subject to the agreement. Verizon Wireless' understanding of this requirement was recently confirmed in a letter from the Steve Zipperstein, General Counsel of Verizon Wireless, to representatives of the above departments and agencies.[140] Verizon Wireless here again confirms that, following consummation, the licensed systems that are the subject of this transaction will be subject to the DOJ Agreement.

### H. Related Governmental Filings

The DOJ will complete its own review of this transaction pursuant to the Hart-Scott-Rodino Antitrust Improvement Act of 1976[141] and associated regulations. The Applicants plan to submit a pre-merger notification form and an associated documentary appendix to DOJ and the Federal Trade Commission.

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[140] Letter from Steven E. Zipperstein, General Counsel, Verizon Wireless, to the Honorable Laura H. Parsky, Deputy Assistant Attorney General, U.S. Dept. of Justice, Douglas P. Larsen, Esq., Deputy General Counsel for Acquisition and Logistics, U.S. Dept. of Defense, and Gary M. Bald, Executive Assistant Director for Counterterrorism/Counterintelligence, Federal Bureau of Investigation (June 23, 2006).

[141] 15 U.S.C. § 18a.

### I. ALLTEL Minority Partnership Interests

ALLTEL holds a minority, non-controlling general partnership interest in one partnership and two limited partnerships ("Partnerships"), each of which holds various wireless authorizations. The Partnerships include: (1) Illinois Valley Cellular RSA 2-II Partnership; (2) Northwest Missouri Cellular Limited Partnership; and (3) Pittsfield Cellular Telephone Company. Under the relevant partnership agreements, ALLTEL is precluded from exercising control over each of the Partnerships, and each Partnership is controlled and managed by another carrier. The Applicants are filing FCC Forms 603 for the licenses held by each of these entities on a *pro forma*, non-forbearance basis to seek Commission approval to transfer control of these minority, non-controlling interests. The *pro forma* treatment of the transfer of control of licenses in which ALLTEL holds a minority general partner interest is consistent with prior transactions approved by the Commission.[142]

### J. ALLTEL Spectrum Leases

ALLTEL holds a controlling or minority general partner interest in several spectrum leases. The Applicants have applied for authority to transfer control of those leases. Specifically:

- ALLTEL Communications, LLC leases 5 MHz of spectrum from New Cingular Wireless PCS, LLC ("New Cingular") in two counties (Albany and Laramie) in the Cheyenne, WY BTA (BTA077).[143] In particular, ALLTEL Communications, LLC leases 1900-1902.50/1980-1982.50 MHz from New Cingular's C Block license WPTI725.

- ALLTEL Communications, LLC leases 5 MHz of spectrum from New Cingular Wireless PCS, LLC ("New Cingular") in the Paris, TX BTA (BTA341).[144] In

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142 *See, e.g., AT&T Wireless Services, Inc. and Cingular Wireless Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations*, Public Notice, 19 FCC Rcd 6185 (Apr. 2, 2004).

143 *See* ULS Lease No. L000003393.

144 *See* ULS Lease No. L000003394.

particular, ALLTEL Communications, LLC leases 1900-1902.50/1980-1982.50 MHz from New Cingular's C Block license WPTI753.

- ALLTEL Communications, LLC leases 10 MHz of spectrum from New Cingular Wireless PCS, LLC ("New Cingular") in 25 of 28 counties in the Billings, MT BTA (BTA041).[145] In particular, ALLTEL Communications, LLC leases 1900-1905/1980-1985 MHz from New Cingular's C Block license WPWQ957.

- WWC Holding Co., Inc. leases 20 MHz of spectrum from WirelessCo, L.P. in 10 of 28 counties in the Spokane-Billings, MT MTA (MTA042).[146] In particular, WWC Holding Co., Inc. leases 1870-1880/1950-1960 MHz from WirelessCo, L.P.'s B Block license WPZZ711.

- Pittsfield Cellular Telephone Company leases 10 MHz of spectrum from Verizon Wireless in the Pittsfield, MA BTA (BTA351).[147] In particular, Pittsfield Cellular Telephone Company leases 1890-1895/1970-1975 MHz from Verizon Wireless' F Block license KNLH265.

With the exception of the Pittsfield Cellular Telephone Company lease, Verizon Wireless does not intend to utilize the spectrum under the other four leases. Verizon Wireless will use commercially reasonable efforts to terminate these four leases after closing. Nevertheless, because Verizon Wireless may hold these leases for an extended period, it has included the spectrum under these leases in the spectrum aggregation chart attached to this Application.

## IV. CONCLUSION

For the above reasons, the proposed transaction complies with all applicable Commission rules and will serve the public interest. Verizon Wireless and Atlantis Holdings accordingly urge the Commission to act expeditiously to grant these Applications. Prompt action is required to speed the deployment of wireless broadband services to rural America and to enable all consumers to enjoy the many benefits of this transaction.

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145 *See* ULS Lease No. L000003395.

146 *See* ULS Lease No. L000001001.

147 *See* ULS Lease No. L000002677.

Approved by OMB
3060–0686

| INTERNATIONAL SECTION 214 AUTHORIZATIONS<br>FOR ASSIGNMENT OR<br>TRANSFER OF CONTROL<br>FCC 214 MAIN FORM FOR OFFICIAL USE ONLY | FCC Use Only |
|---|---|

APPLICANT INFORMATION

Enter a description of this application to identify it on the main menu:

Application for Transfer of Control of Western Wireless, LLC's International Section 214 Authorization to Cellco Partnership

1. Legal Name of Applicant

| | | | |
|---|---|---|---|
| **Name:** | Cellco Partnership | **Phone Number:** | 202–589–3768 |
| **DBA Name:** | | **Fax Number:** | 202–589–3750 |
| **Street:** | 1120 Sanctuary Pkwy<br>Ste 150 GASA5REG | **E–Mail:** | michael.<br>samsock@verizonwireless.com |
| **City:** | Alpharetta | **State:** | GA |
| **Country:** | USA | **Zipcode:** | 30004 – |
| **Attention:** | Michael Samsock | | |

2. Name of Contact Representative

| | | | |
|---|---|---|---|
| **Name:** | Nancy J. Victory | **Phone Number:** | 202–719–7344 |
| **Company:** | Wiley Rein LLP | **Fax Number:** | 202–719–7049 |
| **Street:** | 1776 K Street, NW | **E–Mail:** | nvictory@wileyrein.com |
| **City:** | Washington | **State:** | DC |
| **Country:** | USA | **Zipcode:** | 20006– |
| **Attention:** | Nancy J. Victory | **Relationship:** | Legal Counsel |

CLASSIFICATION OF FILING

3.Choose the button next to the classification that best describes this filing. Choose only one.

○ a. Assignment of Section 214 Authority

An Assignment of an authorization is a transaction in which the authorization, or a portion of it, is assigned from one entity to another. Following an assignment, the authorization will usually be held by an entity other than the one to which it was originally granted. (See Section 63.24(b).)

◉ b. Transfer of Control of Section 214 Authority

A Transfer of Control is a transaction in which the authorization remains held by the same entity, but there is a change in the entity or entities that control the authorization holder. (See Section 63.24(c).)

○ c. Notification of Pro Forma Assignment of Section 214 Authority ( No fee required )

○ d. Notification of Pro Forma Transfer of Control of Section 214 Authority ( No fee required )

Date of Consummation: Must be completed if you selecct c or d.

4. File Number(s) of Section 214 Authority(ies) for Which You Seek Consent to Assign or Transfer Control.
Note: If the Section 214 Authorization Holder whose authority is being assigned or transferred does not have an "ITC" File No. under which it is operating, contact the Help Desk for assistance before proceeding further with this application. &nbspYou cannot enter an "ITC–ASG" or "ITC–T/C" File No. in response to this question. &nbspYour response must specify one or more "ITC" File Nos. &nbspRelevant "ITC–ASG" or "ITC–T/C" File Nos. should be listed only in Attachment 1 in response to Question 10.

| File Number: | File Number: | File Number: | File Number: | File Number: | File Number: | File Number: | File Number: |
|---|---|---|---|---|---|---|---|
| ITC2142001042700254 | | | | | | | |

5. Name of Section 214 Authorization Holder

| | | | |
|---|---|---|---|
| **Name:** | Western Wireless, LLC | **Phone Number:** | 501–905–8555 |
| **DBA Name:** | | **Fax Number:** | 501–905–6193 |
| **Street:** | One Allied Drive, B2F02–A | **E–Mail:** | |
| **City:** | Little Rock | **State:** | AR |
| **Country:** | USA | **Zipcode:** | 72202 – |
| **Attention:** | Regulatory Supervisor | | |

6. Name of Assignor / Transferor

| | | | |
|---|---|---|---|
| **Name:** | Atlantis Holdings LLC | **Phone Number:** | 817–871–4000 |
| **DBA Name:** | | **Fax Number:** | 415–743–1685 |
| **Street:** | 301 Commerce Street | **E–Mail:** | cbode@tpg.com |
| | Suite 3300 | | |
| **City:** | Fort Worth | **State:** | TX |
| **Country:** | USA | **Zipcode:** | 76102 |
| **Attention:** | Clive D. Bode | | |

7. Name of Assignee / Transferee

| | | | |
|---|---|---|---|
| **Name:** | Cellco Partnership | **Phone Number:** | 202–589–3768 |
| **DBA Name:** | | **Fax Number:** | 202–589–3750 |
| **Street:** | 1120 Sanctuary Pkwy<br>Ste 150 GASA5REG | **E–Mail:** | michael.samsock@verizonwireles |
| **City:** | Alpharetta | **State:** | GA |
| **Country:** | USA | **Zipcode:** | 30004<br>– |
| **Attention:** | Michael Samsock | | |

8a. Is a fee submitted with this application?

◉ If Yes, complete and attach FCC Form 159. If No, indicate reason for fee exemption (see 47 C.F.R.Section 1.1114).

○ Governmental Entity ○ Noncommercial educational licensee ○ Notification of Pro Forma (No fee required.)

○ Other(please explain):

8b. You must file a separate application for each legal entity that holds one or more Section 214 authorizations to be assigned or transferred.

Fee Classification CUT – Section 214 Authority

9. Description (Summarize the nature of the application.)

(If the complete description does not appear in this box, please go to the end of the form to view it in its entirety.)

Application for Commission consent to the transfer of control of Western Wireless, LLC's international Section 214 authorization to Cellco Partnership d/b/a Verizon Wireless.

10. In Attachment 1, please respond to paragraphs (c) and (d) of Section 63.18 with respect to the assignor/transferor and the assignee/transferee. Label your response "Answer to Question 10".

11. Does any entity, directly or indirectly, own at least ten (10) percent of the equity of the assignee/transferee as determined by successive multiplication in the manner specified in the note to Section 63.18(h) of the rules? ◉ Yes ○ No

If you answered "Yes" to this question, provide in Attachment 1, the name, address, citizenship, and principal businesses of each person or entity that directly or indirectly owns at least ten (10) percent of the equity of the assignee/transferee, and the percentage of equity owned by each of those persons or entities (to the nearest one percent). Label your response "Answer to Question 11."

12. Does the assignee/transferee have any interlocking directorates with a foreign carrier? ○ Yes ◉ No

If you answered "Yes" to this question, identify each interlocking officer/director in Attachment 1. (See Section 63.09(g).) Provide the name and position/title of the individual or entity, the name of the foreign carrier, and the country in which the foreign carrier is authorized to operate. Label your response: "Answer to Question 12."

13. Provide in Attachment 1 a narrative of the means by which the proposed assignment or transfer of control will take place. In circumstances of a substantial assignment or transfer of control pursuant to Section 63.24(e), where the assignor seeks authority to assign only a portion of its U.S. international assets and/or customer base, please specify whether the assignor requests authority to continue to operate under any or all of its international Section 214 File Nos. after consummation; and, if so, please specify in Attachment 1 each File No. it seeks to retain in its own name. Label your response "Answer to Question 13."

Note: The assignor may retain any or all of its international Section 214 File Nos. In that case, the assignor will continue to hold the international section 214 authorizations that it specifies in response to this question. The ITC–ASG File No. that the Commission assigns to this application will, when granted, constitute Commission authorization of the proposed assignment of assets and /or customers from the assignor to the assignee. Unless Commission grant of the assignment application specifies otherwise, the assignee may provide the same services on the same routes as permitted under the assignor's Section 214 authorization(s), and the assignee may provide such service to any customers it may obtain in the ordinary course of business.

If this filing is not a notification of a pro forma assignment or pro forma transfer of control, please respond to Questions 14–20 below. (See Section 63.24(d).) Otherwise, you may proceed to Question 21 below.

14. Check "Yes" below if the assignee is a foreign carrier or if, upon consummation of the proposed assignment or transfer of control, the Section 214 holder would be affiliated with a foreign carrier. (See Section 63.18 (i).) The terms "foreign carrier" and "affiliated" are defined in Section 63.09 (d) & (e) of the rules respectively.

◉ Yes ○ No

If you answered "Yes" to this question, please specify in Attachment 1 each foreign country in which the assignee is a foreign carrier or in which the Section 214 holder, upon consummation, would be affiliated with a foreign carrier. Label your response, "Answer to Question 14."