consumers innovative, pro-competitive services and policies of their own. Moreover, as explained in the discussion below, even applying the Commission's traditional geographic area by geographic area analysis, the transaction will provide these benefits without material harm to competition in any geographic or product market.

1. The Analytical Framework

a. The Geographic Scope and Nature of the Relevant Product Market

As the Commission has explained, "[m]ergers raise competitive concerns when they reduce the availability of choices to the point that the merged firm has the incentive and the ability, either by itself or in coordination with other firms, to raise prices."[46] In other words, the FCC's concerns are triggered by market power, and the analysis of market power "begin[s] by determining the appropriate market definitions to employ for the analysis, as well as identifying relevant market participants."[47] As discussed herein, the Applicants have analyzed the proposed transaction under the Commission's typical product market definition—a definition that combines interconnected voice and data services, as well as residential and enterprise services, in a "combined market for mobile telephony service."[48]

---

[46] *See, e.g., ALLTEL-Midwest Order,* 21 FCC Rcd at 11,539 (¶ 22); *Sprint-Nextel Order*, 20 FCC Rcd at 13,981 (¶ 30); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,066 (¶ 22); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,556 (¶ 68); Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, at § 0.1 (Apr. 2, 1992, revised Apr. 8, 1997) ("*DOJ/FTC Merger Guidelines*"), at http://www.usdoj.gov/atc/guidelines/horiz_book/hmg1.html (last visited Aug. 26, 2007).

[47] *See, e.g., ALLTEL-Midwest Order,* 21 FCC Rcd at 11,541 (¶ 25); *Sprint-Nextel Order*, 20 FCC Rcd at 13,981 (¶ 32); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,067 (¶ 24); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,557 (¶ 70).

[48] *See, e.g., ALLTEL-Midwest Order,* 21 FCC Rcd at 11,541 (¶ 26); *Sprint-Nextel Order*, 20 FCC Rcd at 13,983 (¶ 38); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,068 (¶ 29); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,558 (¶ 74).

The Applicants have also undertaken the competitive analysis utilizing the smaller geographic basis used by the FCC in prior wireless merger proceedings—CMAs.[49] Although the Applicants have utilized CMAs for purposes of analyzing this transaction in the interest of expedited processing, the market for mobile telephone service is, in fact, increasingly national in scope. While a national geographic scope has been rejected in certain prior merger proceedings, growing national forces—such as the increasing reliance on national rate plans—argue more and more for redefining how the Commission judges the competitive effects of transactions.[50] In such regard, the *12th Annual Competition Report* observes that "[t]he basic economic principle for defining the scope of the relevant geographic market is to include two mobile services in the same product market if they are essentially interchangeable from the perspective of most consumers—that is, if consumers view them as close substitutes."[51] Like other national carriers, Verizon Wireless primarily prices—and advertises—on a national basis, leaving very little room for local (or even regional) variation in pricing.[52] Most prices are set on a national level, and

---

[49] The FCC has used "two sets of geographic areas that may be used to define local markets—Component Economic Areas ('CEAs') and [CMAs]." *See, e.g., ALLTEL-Midwest Order,* 21 FCC Rcd at 11,542 (¶ 29); *Sprint-Nextel Order*, 20 FCC Rcd at 13,991 (¶ 57); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,072-073; (¶¶ 44-45); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,567-568 (¶¶ 104-105).

[50] On a national basis, it is clear that the proposed transaction will have no negative impact on competition. The FCC's *12th Annual Competition Report* recognizes that there are four national mobile telephone operators—AT&T, Inc., Verizon Wireless, Sprint Nextel Corp. and T-Mobile USA. *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analyis of Competitive Market Conditions With Respect to Commercial Mobile Serives,* Twelfth Report, 23 FCC Rcd 2241, 2254-55 (¶ 18) ("*12th Annual Competition Report*"). The proposed transaction will not diminish the number of nationwide carriers.

[51] *12th Annual Competition Report*, 23 FCC Rcd at 22,534 (¶ 13).

[52] Indeed, as of May 2008, approximately 90.4 percent of current Verizon Wireless subscribers have service plans based on national pricing, and close to 100 percent of new subscribers are enrolled in plans with national pricing.

therefore local market conditions are less relevant to a carrier's competitive strategy than are actions taken by other national carriers. In fact, because of the demand for national coverage, approximately 87 percent of the nation's mobile customers subscribe to a national carrier or an affiliate of a national carrier.[53] This figure supports the conclusion that consumers shop for national plans and shop national rates—all of which are set on a national level. Even if the Commission does not accept that mobile services operate in a market with a national scope, it is clear that strong national forces discipline competition in local markets.

b. Identification of Participants in the Relevant Product Market

In order to identify market participants, the FCC typically evaluates "whether spectrum is within the input market for mobile telephony service by examining its suitability for mobile voice service," an analysis that revolves around specific spectrum bands' "physical properties, 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."[54] In the *AT&T-Dobson Order*, the FCC first noted that it had previously included "only cellular, broadband PCS, and . . . SMR . . . spectrum, which totals approximately 200 MHz," and then determined that "the input market also includes . . . an additional 80 MHz of ... 700 MHz spectrum . . . , bringing the total amount of spectrum suitable for mobile telephony nationwide to approximately 280 MHz."[55]

---

53 *12th Annual Competition Report,* 23 FCC Rcd at 2362 (Table A-4).

54 *See, e.g., ALLTEL-Midwest Order,* 21 FCC Rcd at 11,543 (¶ 31); *Sprint-Nextel Order*, 20 FCC Rcd at 13,992 (¶ 61); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,071 (¶ 41); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,560-61 (¶ 81).

55 *AT&T-Dobson Order*, 22 FCC Rcd at 20,312 (¶¶ 27, 30). As a result, the FCC "revise[d] the spectrum aggregation screen to 95 MHz, approximately one-third of the 280 MHz of the spectrum suitable for mobile telephony today." *Id.* at 20,313 (¶ 30).

The Applicants agree that the range of input spectrum should include cellular, PCS, ESMR and 700 MHz bands. However, the Applicants believe strongly this should not be the only spectrum considered in defining the product market. Significant changes have occurred recently that warrant revisiting prior FCC conclusions about whether to include certain additional bands—and the competitors in them—in the analysis.[56] Indeed, the spectrum input market for the current spectrum screen comprises less than half the spectrum currently available and being used (or imminently to be used) for comparable wireless services. As the Commission itself has noted, "the Commission may from time-to-time need to re-evaluate whether additional spectrum should be viewed as suitable for the provision of mobile telephony services."[57] As discussed below, recent developments warrant the agency's re-evaluation of the relevant input spectrum.[58]

First, developments in the Broadband Radio Service/Educational Broadband Service ("BRS/EBS") 2.5 GHz spectrum have mooted the Commission's previously articulated basis for

---

[56] *AT&T-Dobson Order*, 22 FCC Rcd at 20,314 (¶ 32) (stating "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 it use for mobile telephony, and it is unclear whether it will be available for mobile use in the sufficiently near-term").

[57] *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,543 (¶ 31 & n.129). In the *700 MHz Order*, in fact, the FCC found that "[t]here is potential for additional entry into the broadband market by carriers operating on spectrum in the . . . Advanced Wireless Service (AWS), Broadband Radio Service (BRS), and 3650-3700 MHz bands." *See also 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 Commc'n, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 14,863, 14,878-879 (¶ 30) (2006) (stating "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.").

[58] At a minimum, consistent with its pronouncement in the *AT&T-Dobson Order*, the FCC must, "[i]n [its] detailed, case-by-case analysis of markets caught by the initial screen, . . . 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." *AT&T-Dobson Order*, 22 FCC Rcd at 20,315 (¶ 35).

omitting this spectrum from the product market.[59] Most notably, the recently announced joint venture between Sprint Nextel and Clearwire (with strategic investors Google, Intel, and major cable television companies) "will compete head-to-head against the soon-to-be-launched 4G offerings of Verizon Wireless and AT&T."[60] The companies plan to rapidly deploy in the BRS/EBS band "the first nationwide mobile WiMAX network to provide a true mobile broadband experience for consumers, small businesses, medium and large enterprises, public safety organizations and educational institutions."[61] Clearwire's CEO stated that "[t]he 2.5 GHz band is best for mobile broadband services due to channel size and propagation characteristics," and that "[i]t's ideal for broadband because high bandwidth wireless networks have to deliver capacity, not just coverage."[62] According to the company's fact sheet on the deal, "Clearwire expects to offer its mobile broadband services in urban, suburban and rural communities nationwide, with 60 to 80 million people covered by its network by the end of 2009, 120 to 140 million people covered by the network by the end of 2010, and the network ultimately covering

---

[59] In the *AT&T-Dobson Order*, the FCC concluded that BRS/EBS is not currently part of the input market for mobile telephony service because "the availability of BRS spectrum for new mobile uses depends on the ongoing transition process." *AT&T-Dobson Order*, 22 FCC Rcd at 20,315 (¶ 34). *See also ALLTEL-Midwest Order*, 21 FCC Rcd at 11,543 (¶ 31 & n.129). In prior decisions the FCC based similar conclusions on a finding that the BRS/EBS spectrum "is currently subject to rebanding requirements." The BRS/EBS services have matured substantially, however, in the seven months since the *AT&T-Dobson Order*. Indeed, with respect to the transition, as of May 26, 2008, the transition has been certified complete for 70 percent of the US POPs, and transition plans have been filed covering two-thirds of the remaining POPs.

[60] Applications of Sprint Nextel Corporation and Clearwire Corporation, ULS File No. 0003368272 (LEAD) (filed June 6, 2008), Description of the Transaction and Public Interest Statement (*"Clearwire Application"*) at 16.

[61] Clearwire Connections Home Page, http://www.clearwireconnections.com/pr/ (last visited June 4, 2008).

[62] *New Wireless Venture Seen Drawing Scant Regulatory Scrutiny*, Communications Daily (May 8, 2008).

more than 200 million people across the U.S."[63] The companies note that the mobile WiMax technology they plan to utilize will operate at "speeds fast enough to conduct two-way video conference calls, participate in online multiplayer games, and download multimegabit files in an instant – speeds that, until now, only *wireline* broadband services providers could offer."[64]

The Sprint-Clearwire Application for approval of the venture states that the new Clearwire "will be an effective new entrant in a rivalrous marketplace, offering broadband service that will compete with numerous established players offering mobile and fixed broadband services"[65]—a clear statement of their intention to compete against Verizon Wireless, AT&T, T-Mobile and other cellular, PCS and 700 MHz spectrum holders. Indeed, Dan Hesse, Sprint's CEO, stated that "'[t]he new Clearwire . . . will have an enviable 40 billion MHz pops position,' which is 'the largest spectrum position owned by one company'"—and "[t]hat puts

---

63 UPDATE 1- Clearwire outlines growth for new Sprint venture, Reuters.com, June 12, 2008, *at* http://www.reuters.com/article/mediaNews/idUSN1241590520080612 (last visited June 12, 2008); Clearwire Connections, Clearwire Transaction Announcement Fact Sheet, *at* http://www.clearwireconnections.com/pr/factsheets/documents/FactSheet052708.pdf (last visited June 4, 2008). Notably, this is consistent with regulatory requirements for build-out imposed in the 2005 *Sprint-Nextel Order*. That order conditioned the consummation of that transaction on the merger parties complying with certain construction benchmarks for the BRS/EBS band. Letter from Sprint/Nextel to FCC (Aug. 2, 2005); *see also Sprint-Nextel Order* 20 FCC Rcd at 14,036 (¶ 192). Under the merger condition, Sprint Nextel is required—by August 8, 2009, approximately a year from now—to "offer service in the 2.5 GHz band to a population of no less than 15 million Americans, [including] . . . areas within a minimum of nine of the nation's most populous 100 Basic Trading Areas (BTAs) and at least one BTA less populous than the nation's 200th most populous BTA." In these ten BTAs, the deployment must "cover at least one third of each BTA's population." *Id.* at 14,028 (¶ 164).

64 *Clearwire Applications* at 16 (emphasis in original, footnotes omitted); *see also* "Sprint and Clearwire to Combine WiMAX Businesses, Creating a New Mobile Broadband Company," News Release (May 7, 2008), *available at* http://newsreleases.sprint.com/phoenix.zhtml?c=127149&p=irol-newsArticle_Print_newsroom&ID=1141088&highlight= (stating network will operate "multiple times faster than today's 3G wireless networks").

65 *Id.* at 35; *see also id.* at 16 (stating the venture "will compete head-to-head against the soon-to-be-launched 4G offerings of Verizon Wireless and AT&T"); *id.* at 53 (stating "Clearwire will face competition from 4G service providers using 700 MHz spectrum").

them at least two years ahead of the competition."[66] On this basis, the 186 MHz of BRS/EBS spectrum and its licensees must be considered competitors in the relevant product market.

Second, the Applicants believe the FCC's prior decision not to include Advanced Wireless Services ("AWS") spectrum has been overtaken by events. In the *AT&T-Dobson Order*, the Commission declined to consider AWS licensees to be participants in the mobile telephony market, concluding that "[t]he AWS-1 spectrum is not generally available for mobile use as yet due to the ongoing clearance of governmental and non-governmental incumbent users . . . [and] the clearance process has no single timetable."[67] Recently, however, a number of licensees have, in fact, initiated service using the AWS band frequencies. For example, T-Mobile USA has "recently launched broadband AWS-1 operations in the New York market and plans to roll out service in 25 markets by the end of 2008."[68] MetroPCS has launched AWS in

---

66 Sprint CEO Dan Hesse, quoted in Tricia Duryee, "Sprint-Clearwire: Hessee: Spectrum Combo Puts New WiMax JV Two Years Ahead of Competition," Washingtonpost.com (May 7, 2008), *available at* http://www.washingtonpost.com/wp-dyn/content/article/2008/05/07/AR2008050701164.html (last visited June 10, 2008). *See also* Press Release, Sprint and Clearwire to Combine WiMAX Businesses, Creating a New Mobile Broadband Company (May 7, 2008), *at* http://www.clearwireconnections.com/pr/pressreleases/050708.pdf (last visited June 4, 2008) ("the new Clearwire will have a time-to-market advantage over competitors in fourth-generation services, supported by strong spectrum holdings and a national footprint.").

67 *AT&T-Dobson Order*, 22 FCC Rcd at 20,314 (¶ 33); *see also ALLTEL-Midwest Order*, 21 FCC Rcd at 11,543 (¶ 31 & n.129) (stating "it is still premature to classify the AWS spectrum as suitable for the provision of mobile telephony for purposes of our analysis here").

68 Letter from Kathleen O'Brien Ham, Vice President, Federal Regulatory Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 07-195 (June 4, 2008) (regarding meeting with FCC's Office of Engineering and Technology). *See also* Press Release, T-Mobile USA, Inc., T-Mobile USA Begins Commercial 3G Network Rollout (May 5, 2008), *at* http://www.t-mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20080505&title=T-Mobile%20USA%20Begins%20Commercial%203G%20Network%20Rollout (last visited June 4, 2008) (announcing that the company has "launch[ed] its UMTS/HSDPA network in New York City," and that it "plans to continue the rollout of its 3G network across major metropolitan markets through the year [and,] [b]y year's end, . . . expects its high-speed data network will be available in those cities where a majority of its subscribers currently use data services").

Las Vegas, Nevada, and recent press reports indicate that numerous other areas are to follow, with "[t]he crown jewel of its footprint, New York, . . . go[ing] live before the end of the 2nd quarter."[69] Notably, at the time that service area is launched, "almost half of Metro's covered pops will be in AWS networks."[70] Other carriers, such as LEAP Wireless and Stelera, have also been reported to have launched commercial services in the AWS bands.[71] Given the substantial roll-out of wireless broadband services in this band, there is no basis to continue to exclude the 90 MHz of AWS spectrum from the input product market. This is particularly the case since the Commission determined to include 700 MHz spectrum as input spectrum before the vast majority of it was licensed and more than a year before the spectrum was cleared for deployment of wireless services.[72]

The Applicants also believe that the Commission should revisit its previous conclusion to "exclude satellite carriers, wireless VoIP providers, MVNOs [Mobile Virtual Network Operators], and resellers from consideration when computing initial measures of market

---

69 Kevin Fitchard, MetroPCS to Complete AWS Shift in One Year, TelephonyOnline, May 9, 2008, *at* http://telephonyonline.com/wireless/news/mettropcs-leap-aws-0509/ (last visited June 4, 2008).

70 *Id.*

71 Press Release, Leap Wireless International, Inc., Leap Launches First Advanced Wireless Services (AWS) Market with Full Capacity Retail and Network Introduction of Cricket Unlimited Wireless Service to Oklahoma City (Mar. 31, 2008), *at* http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle&ID=1123363&highlight= (last visited June 4, 2008); Press Release, Stelera Wireless, Stelera Wireless Launches Inaugural Wireless Network Providing High Speed Internet in Rural America (Feb. 8, 2008), *at* http://www.stelerawireless.com/Portals/0/docs/2.08.08%20Stelera%20Wireless%20Launches%20Inaugural%20Wireless%20Network,%20Providing%20High%20Speed%20INternet%20in%20Rural%20America.pdf (last visited June 4, 2008).

72 Additionally, the Commission determined to include PCS spectrum in the CMRS spectrum cap (the screen's predecessor) well before that spectrum was cleared and available for deployment of competitive CMRS services.

concentration."[73] The inclusion of satellite providers with Ancillary Terrestrial Component ("ATC") authority is especially appropriate. Mobile Satellite Ventures ("MSV") has already received ATC authority, and MSV "is currently authorized to use approximately 30 MHz of coordinated North American spectrum in a terrestrial wireless network with an integrated satellite overlay to provide ubiquitous and enhanced services."[74] Globalstar, Inc. ("Globalstar"), a 1.6/2.4 GHz MSS provider, also recently announced that the FCC had expanded its ATC authority to include almost 20 MHz of spectrum, and noted that the company had "an agreement with Open Range Communications Inc. ("Open Range") permitting Open Range to deploy wireless broadband service in rural America using Globalstar's ATC authority."[75] The press release further notes that Open Range had secured "a $267 million broadband service loan from the Department of Agriculture's Rural Utilities program," and proposes "to use the Globalstar spectrum to deploy wireless WiMAX services to over 500 rural American communities."[76] Additionally, "[t]he FCC has assigned 20 MHz of 2 GHz MSS spectrum to ICO [Global Communications ("ICO"), a 2 GHz mobile satellite service ("MSS") provider,] with geographic coverage of all 50 states in the United States, as well as Puerto Rico and the U.S. Virgin

---

[73] *See, e.g., ALLTEL-Midwest Order,* 21 FCC Rcd at 11,544 (¶ 33); *Sprint-Nextel Order*, 20 FCC Rcd at 13,991 (¶ 58); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,070-71 (¶¶ 38-39); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,564 (¶ 92).

[74] Mobile Satellite Ventures Website, Investor/Financial Company Fact Sheet, http://www.msvlp.com/investor/fact-sheet.cfm (last visited June 4, 2008).

[75] Press Release, Globalstar, Inc., FCC Expands Globalstar's Ancillary Terrestrial Component Authority (Apr. 10, 2008), *at* http://www.globalstar.com/en/news/pressreleases/press_display.php?pressId=481 (last visited June 4, 2008).

[76] *Id.*

Islands."[77] ICO recently filed for blanket authority to operate ATC base stations in that 20 MHz of spectrum.[78] TerreStar also has pending a request for ATC authority.[79] These ATC services clearly have the capability to compete with services provided over spectrum already included in the relevant product market and are receiving serious financial backing.[80] Given these developments, any spectrum input analysis should, at a minimum, consider the nearly 90 MHz of ATC spectrum as input spectrum for the analysis.

The Commission is also poised to license a new nationwide wireless broadband competitor in the 2155-2175 MHz band.[81] Based upon press reports, the Commission is readying an order to license this spectrum to a single entity on a nationwide basis. The entity will be required to provide a minimum level of wireless broadband services (at 768 kbps) for free to the public.[82] It will also be permitted to charge a fee for higher speed broadband services.[83] It

---

77 ICO Website, MSS/ATC System, http://www.ico.com/_about/tech/na_mss_atc.php (last visited June 4, 2008).

78 *See* Report No. SES-01012, *FCC Public Notice* (rel. Mar. 5, 2008). Craig McCaw has attributable interests in both the Clearwire venture and ICO.

79 *See* Report No. 01018, *FCC Public Notice* (rel. Mar. 26, 2008).

80 *See* "TerreStar Announces Strategic Investment by EchoStar, Harbinger & Other Investors—Transaction Facilitates Funding through Satellite Launch and will Enhance TerreStar's Nationwide Spectrum Footprint," News Release (Feb. 7, 2008), *available at* http://www.terrestarnetworks.com/news/press/index.html (noting commitment of $300 million in investments in TerreStar, which is building the nation's first integrated mobile satellite-terrestrial (MSS/ATC) communications network); "Mobile Satellite Ventures and SkyTerra Communications Enter Into an Agreement for a $150 Million Financing," News Release (Dec. 17, 2007), *available at* http://www.msvlp.com/media/press-releases-view.cfm?id=157&yr=2007 (noting that MSV is "developing a hybrid satellite-terrestrial communications network, which . . . will provide seamless, transparent and ubiquitous wireless coverage of the United States and Canada to conventional handsets").

81 *See Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band,* Notice of Proposed Rulemaking WT Docket No. 07-195 (rel. Sept. 19, 2007).

82 *See* "Martin's Free Broadband Plan May Face Commission Opposition," *Communications Daily*, June 2, 2008.

is reported that the Commission will adopt service rules for this spectrum in July and proceed to auction it by year end.[84] This new licensee will be an additional competitor in the segment.

Finally, the Applicants also believe that the national resellers/MVNOs that compete successfully on the strength of uniquely packaged voice and data services using their own proprietary brand names should also be considered as legitimate market participants. The Commission itself has found in other contexts that wireless resellers provide additional competition.[85] Some MVNOs are formidable competitors—TRACFONE, for example, serves over 6.5 million customers nationally through resale, while Virgin Mobile serves over 4.8 million customers and, as of March 31, 2007, Boost Mobile served nearly 4.3 million customers nationally, including customers in virtually all of the subject areas. Qwest Wireless resells wireless plans in 14 states, all but two of which (Oregon and Washington) are included in the overlap geographic license areas. Cable operators are also expected to bundle wireless together with their video and VoIP offerings. The Commission should consider these providers to be participants in the relevant product market as well.

---

83 *See id.*

84 *See* "Martin Pulls AWS-3 Order from June Agenda, Wants July Vote," *Communications Daily*, June 9, 2008.

85 *See, e.g., 2000 Biennial Regulatory Review, Spectrum Aggregation Limits for Commercial Mobile Radio Servs.*, Report and Order, 16 FCC Rcd 22,668, 22,690 (¶ 42) (2001) ("[C]arriers can compete in the provision of CMRS without direct access to spectrum through resale, or a mobile virtual network operator ('MVNO') arrangement."); *id.* at 22,690 n.45 (The MVNO arrangement "is one in which 'a network operator acts as a wholesaler of airtime to another firm, which then markets itself to users just like an independent operator with its own network infrastructure.'"); *see also* J. Moynihan, *et al.*, Merrill Lynch, *US Wireline 1Q04 Roundup* at 3 (May 7, 2004) ("[T]here may be five or more large scale companies reselling wireless service by 2005, along with the five facilities-based wireless providers (post the Cingular/AT&T Wireless transaction).").

c. Initial Screen

In prior mobile transactions, the Commission has used an initial "screen" to focus its competitive inquiry. Specifically, the Commission looks at markets where:

- the post-transaction Herfindahl-Herschman Index ("HHI") would be greater than 2800 and the change in HHI would be 100 or greater;
- the change in HHI would be 250 or greater regardless of the level of the HHI; or
- post-transaction, the Applicants would hold 95 megahertz or more of spectrum.[86]

As discussed above, there are compelling reasons for increasing the spectrum-related part of the initial screen given the other spectrum bands currently, or soon to be, used for competitive CMRS services. At a minimum, the screen must be increased to reflect the inclusion of BRS/EBS, MSS ATC and AWS spectrum in the spectrum screen analysis. Recent developments with respect to the BRS/EBS band—particularly Clearwire's announced plans for rapid deployment of an extensive mobile broadband network that Clearwire has stated will surpass what is available today—make clear that this spectrum and its licensees must be considered in the competition analysis for the relevant product market. There is also plainly no valid reason to continue to exclude the AWS or MSS ATC spectrum from the analysis.

In view of the new spectrum realities, the Commission should modify the spectrum screen. Given the vibrantly competitive CMRS market, all of the new spectrum recently made available for such services, and the continual launch of innovative mobile broadband services

---

[86] *See, e.g., AT&T-Dobson Order*, 22 FCC Rcd at 20,318 (¶ 40); *see also ALLTEL-Midwest Order*, 21 FCC Rcd at 11,546 (¶ 36); *Sprint-Nextel Order*, 20 FCC Rcd at 13,993 (¶ 63); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,073 (¶ 46); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,568 (¶ 106). Consistent with the discussion in the preceding section, the amount of spectrum now available for commercial wireless spectrum dictates a revision of the 95 MHz trigger. The Commission set 95 MHz as the threshold amount for review when there was only 280 MHz of commercial spectrum available for similar services. Today, however, the availability of BRS/EBS, MSS ATC and AWS spectrum raises that amount to over 600 MHz. Accordingly, the Commission should raise the initial trigger substantially.

within existing allocations, there is no continued basis for the current method of analysis. Indeed, counting 50 MHz of cellular, 120 MHz of 1.9 GHz PCS, Sprint's 10 MHz "G" Block, 20 MHz of enhanced SMR, 80 MHz of 700 MHz, 186 MHz of BRS/EBS, 90 MHz of AWS-1,[87] and 90 MHz of MSS ATC, there is a tremendous amount of spectrum—more than 600 MHz—available for competitive CMRS services. Considering the deployment of facilities-based services on this array of spectrum, there are a huge number of existing and potential competitors, augmented by wireless VoIP providers, MVNOs, and resellers. Against that background, there is no basis for establishing a screen at 95 MHz. Further, there is no basis for any competitive concern regarding the instant transaction.

Even assuming *arguendo* that additional competitive CMRS spectrum should not be considered, the transaction does not harm competition under the current initial screen standard. In Exhibit 4, the Applicants have provided a chart detailing the amount of spectrum attributable to the post-transaction Verizon Wireless in the ALLTEL CMAs. Exhibit 5 provides a list of competitors operating in the overlap markets utilizing cellular, PCS, 700 MHz and AWS spectrum.

2. The Proposed Merger Will Not Result in Competitive Harms

a. As the Commission Has Found, Competition for Mobile Subscribers Is Extremely Robust

The Commission's most recent report on CMRS competition found that "there is effective competition in the CMRS marketplace,"[88] observing that:

> [a]s of July 2007, 280 million people, or 98 percent of the total U.S. population, have three or more different operators (cellular, PCS, and/or digital SMR)

---

87 There are at least another 20, if not 40, MHz of spectrum being considered for the provision of AWS.

88 *12th Annual Competition Report*, 23 FCC Rcd at 2245 (¶ 1).

> offering mobile telephone service in the counties in which they live. Roughly 267 million, or 94 percent of the U.S. population, live in counties with four or more mobile telephone operators competing to offer service. . . . [T]he percent of the U.S. population living in counties with five or more mobile telephone operators . . . grew by 16 percent in the past year.[89]

In the FCC's data gathering process, more than 150 companies identified themselves as terrestrial mobile wireless carriers.[90] The Commission noted that, in addition to these operators, "the CMRS industry also includes mobile telephone resellers and [MVNOs], mobile satellite service providers, and various broadband and narrowband data service providers."[91] The report explained that this determination that effective competition exists, as well as the consumer benefits achieved through effective competition, also extends to rural areas.[92]

The report additionally documented the beneficial impact of robust competition for U.S. subscribers, noting that "U.S. consumers continue to reap significant benefits—including low prices, new technologies, improved service quality and choice among providers—from competition in the [CMRS] marketplace, both terrestrial and satellite CMRS."[93] The report declared that,

> "[t]he continued rollout of differentiated pricing plans also indicates a competitive marketplace. In the mobile telephone sector, we observe independent pricing behavior, in the form of continued experimentation with varying price levels and structures, for varying service packages, with various handsets, and policies on handset pricing.[94]

---

89 *Id.*, 23 FCC Rcd at 2265 (¶¶ 44-45).

90 *Id.*, 23 FCC Rcd at 2245 (¶ 2).

91 *Id.*, 23 FCC Rcd at 2246 (¶ 2).

92 *Id.*, 23 FCC Rcd at 2291 (¶ 110). The report states that the average number of competitors in rural areas has remained generally unchanged in the last 4 years. *Id.*, 23 FCC Rcd at 2289 (¶ 105).

93 *Id.*, 23 FCC Rcd at 2245 (¶ 1).

94 *Id.*, 23 FCC Rcd at 2292 (¶ 112).

The report went on to note one analyst's observation that the "price per-minute is off 10% the past year, 20% over the past two years and 40% over the past three years."[95] The report further noted that "[s]ervice providers in the mobile telecommunications market also compete on many more dimensions other than price, including non-price characteristics such as coverage, call quality, data speeds, and mobile data content."[96] Moreover, the constant prospect of dissatisfied customers switching providers, the ease of which has grown significantly since the Commission's adoption of local number portability rules for wireless service, ensures the existence of a competitive wireless marketplace focused on meeting the pricing and service needs of consumers.[97]

If anything, competition has become even more robust since the *12th Annual Competition Report*. First, in the intervening time, the "new" Clearwire venture was formed, as previously discussed. According to the company, the new Clearwire has "the largest spectrum position owned by one company," as well as the backing of Sprint Nextel, the country's third largest mobile carrier; Google, the world's dominant internet search engine and diversified information technology company; Intel, the world's largest supplier of semiconductor chips[98]; as well as Comcast, Time-Warner, and Brighthouse, respectively the country's largest, second largest, and sixth largest cable television companies. The Clearwire venture plans to serve a substantial portion of the U.S. population by the end of 2009, and must be considered a strong entrant in the mobile marketplace.

---

95 *Id.*, 23 FCC Rcd at 2321-22 (¶ 195).

96 *Id.*, 23 FCC Rcd at 2297 (¶ 124).

97 *Id.*, 23 FCC Rcd at 2317-18 (¶ 183).

98 iSuppli.com, Competitiveness Separates Winners from Losers in 2007 Semiconductor Market (Nov. 27, 2007), http://www.isuppli.com/news/default.asp?id=8675 (last visited June 9, 2008).

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.

---

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

---

[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

---

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,

---

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.

---

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.

---

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,

---

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

---

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

---

[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]

---

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).